Talmud - Mas. Baba Kama 2a

C H A P T E R I

MISHNAH. THE PRINCIPAL CATEGORIES OF DAMAGE[1] ARE FOUR: THE OX,[2] THE PIT,[3] THE 'SPOLIATOR' [MAB'EH][4] AND THE FIRE.[5] THE ASPECTS OF THE OX ARE [IN SOME RESPECTS] NOT [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE 'SPOLIATOR';[6] NOR ARE [IN OTHER RESPECTS] THOSE OF THE 'SPOLIATOR' [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE OX;[6] NOR ARE THE ASPECTS OF EITHER OF THEM, IN WHICH THERE IS LIFE, [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE FIRE WHICH IS NOT ENDOWED WITH LIFE;[6] NOR ARE THE ASPECTS OF ANY OF THESE, THE HABIT OF WHICH IS TO BE MOBILE AND DO DAMAGE, [OF SUCH LOW ORDERS OF GRAVITY] AS THOSE OF THE PIT OF WHICH IT IS NOT THE HABIT TO MOVE ABOUT AND DO DAMAGE.[6] THE FEATURE COMMON TO THEM ALL IS THAT THEY ARE IN THE HABIT OF DOING DAMAGE; AND THAT THEY HAVE TO BE UNDER YOUR CONTROL SO THAT WHENEVER ANY ONE [OF THEM] DOES DAMAGE THE OFFENDER IS LIABLE TO INDEMNIFY WITH THE BEST OF HIS ESTATE.[7]

GEMARA. Seeing that PRINCIPAL CATEGORIES are specified, it must be assumed that there are derivatives. Are the latter equal in law to the former or not?

Regarding Sabbath we learnt: The principal classes of prohibited acts are forty less one.[8] 'Principal classes' implies that there must be subordinate classes. Here the latter do in law equal the former; for there is no difference between a principal and a subordinate [prohibited act] with respect either to the law of sin-offering[9] or to that of capital punishment by stoning.[10] In what respect then do the two classes differ? — The difference is that if one simultaneously committed either two principal [prohibited] acts or two subordinate acts one is liable [to bring a sin-offering] for each act, whereas if one committed a principal act together with its respective Subordinate, one is liable for one [offering] only. But according to R. Eliezer who imposes the liability [of an offering] for a subordinate act committed along with its Principal,[11] to begin with why is the one termed 'Principal' and the other 'Subordinate'? — Such acts as were essential in the construction of the Tabernacle are termed 'Principal',[12] whereas such as were not essential in the construction of the Tabernacle are termed 'Subordinate.'

Regarding Defilements we have learnt:[13] The Primary Defilements: The [Dead] Reptile,[14] the Semen Virile[15]

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(1) Explicitly dealt with in Scripture.

(2) Ex. XXI, 35.

(3) Ibid. 33.

(4) Cf. p. 9.

(5) Ex. XXII. 5.

(6) Hence the latter, if not specifically dealt with, would not have been derived from the former.

(7) When money is not tendered; cf. infra p. 33.

(8) Shab. VII, 2.

(9) Cf. Lev. IV, 27-35.

(10) Num. XV, 32-36.

(11) Shab. 75a.

(12) On account of their being stated in juxtaposition in Scripture; v. Ex. XXXV, 2-XXXVI, 7.

(13) Kel. I, 1.

(14) Lev. XI, 29-32.

(15) Ibid. XV, 17.

and the Person who has been in contact with a human corpse.[1] [In this connection] their Resultants[2] are not equal to them in law; for a primary defilement[3] contaminates both human beings and utensils,[4] while Resultants defile only foods and drinks,[5] leaving human beings and utensils undefiled.

Here [in connection with damages] what is the [relationship in] law [between the principal and the secondary kinds]? — Said R. Papa: Some of the derivatives are on a par with their Principals whereas others are not.

Our Rabbis taught: Three principal categories [of damage] have been identified in Scripture with Ox: The Horn, The Tooth, and The Foot. Where is the authority for 'Horn'? For our Rabbis taught: If it will gore.[6] There is no 'goring' but with a horn, as it is said: And Zedekiah the son of Chenaanah made him horns of iron, and said, Thus saith the Lord, With these shalt thou gore the Arameans;[7] and it is further said, His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn: with them he shall gore the people together etc.[8]

Why that 'further' citation? — Because you might perhaps say that Pentateuchal teachings cannot be deduced from post-Pentateuchal texts;[9] come therefore and hear: His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn etc.[8] But is that a [matter of] deduction? Is it not rather merely an elucidation of the term 'goring'[10] as being effected by a horn?[11] — [Were it not for the 'further' citation] you might say that the distinction made by Scripture between [the goring of a] Tam[12] and [that of a] Mu'ad[13] is confined to goring effected by a severed horn,[14] whereas in the case of a horn still naturally attached, all goring is [habitual and consequently treated as of a] Mu'ad; come therefore and hear: His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn, etc.[8]

What are the derivatives of Horn? — Collision, Biting, [malicious] Falling and Kicking.

Why this differentiation? If Goring is termed Principal because it is expressly written, If it will gore,[15] why should this not apply to Collision, as it is also written, If it will collide?[16] — That collision denotes goring, as it was taught: The text opens with collision[16] and concludes with goring[17] for the purpose of indicating that 'collision' here denotes 'goring'.

Why the differentiation between injury to man, regarding which it is written If it will gore,[18] and injury to animal regarding which it is written if it will collide?[19] — Man who possesses foresight is, as a rule, injured [only] by means of [wilful] 'goring',[20] but an animal, lacking foresight, is injured by mere 'collision'. A [new] point is incidentally made known to us, that [an animal] Mu'ad to injure man is considered Mu'ad in regard to animal,[21] whereas Mu'ad to injure animal is not considered Mu'ad in regard to man.[20]

'Biting': is not this a derivative of Tooth? — No; Tooth affords the animal gratification from the damage while Biting affords it no gratification from the damage.

'Falling and Kicking'; are not these derivatives of Foot? — No; the damage of foot occurs frequently while the damage of these does not occur frequently.

But what then are the derivatives which, R. Papa says, are not on a par with their Principals? He can hardly be said to refer to these, since what differentiation is possible? For just as Horn does its damage with intent and, being your property, is under your control, so also these [derivatives] do

damage with intent and, being your property, are under your control! The derivatives of Horn are therefore equal to Horn, and R. Papa's statement refers to Tooth and Foot.

'Tooth' and 'Foot'- where in Scripture are they set down? — It is taught: And he shall send forth[22] denotes Foot, as it is [elsewhere] expressed, That send forth the feet of the ox and the ass.[23] And it shall consume[22] denotes Tooth as [elsewhere] expressed, As the tooth consumeth

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(1) Num. XIX, 11-22.

(2) I.e., the objects rendered defiled by coming in contact with any Primary Defilement.

(3) Such as any one of these three and the others enumerated in Kelim I.

(4) Cf. Lev. XI, 32-33.

(5) V. ibid. 34.

(6) Ex. XXI, 28.

(7) I Kings XXII, 11.

(8) Deut. XXXIII, 17.

(9) [דברי קבדה 'words of tradition'; i.e. the teachings received on tradition from the prophets, a designation for non-Pentateuchal, primarily prophetic, texts. V. Bacher, op. cit., I, 166, II, 185.] The meaning of Ex. XXI, 28, should therefore not he deduced from I Kings XXII, 11.

(10) Which might surely he obtained even from post- Pentateuchal texts.

(11) Hence again why that 'further' citation?

(12) 'Innocuous,' i.e., an animal not having gored on more than three occasions; the payment for damage done on any of the first three incidents (of goring] is half of the total assessment and is realised out of the body of the animal that gored, cf. Ex. XXI, 35 and infra 16b.

(13) 'Cautioned,' i.e., after it had already gored three times, and its owner had been duly cautioned, the payment is for the whole damage and is realised out of the owner's general estate; v. Ex. XXI, 36, and infra 16b.

(14) As was the case in the first quotation from Kings.

(15) V. p. 2, n. 13.

(16) Ex. XXI, 35.

(17) Ibid. 36.

(18) V. p. 2, n. 13.

(19) V. p. 3; n. 10.

(20) As it is more difficult to injure a man than an animal.

(21) Cf. infra 205.

(22) Ex. XXII, 4.

(23) Isa. XXXII, 20.

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to entirety.[1]

The Master has [just] enunciated: 'And he shall send forth denotes Foot , as it is [elsewhere] expressed, That send forth the feet of the ox and the ass.' His reason then is that the Divine Law[2] [also] says, That send forth the feet of the ox and the ass, but even were it not so, how else could you interpret the phrase?[3] It could surely not refer to Horn which is already [elsewhere] set down,[4] nor could it refer to Tooth since this is likewise [already] set down?[3] — It was essential[5] as otherwise it might have entered your mind to regard both [phrases][6] as denoting Tooth: the one when there is destruction of the corpus and the other when the corpus remains unaffected; it is therefore made known to us that this is not the case. Now that we have identified it with Foot, whence could be inferred the liability of Tooth in cases of non-destruction of the corpus? From the analogy of Foot;[7] just as [in the case of] Foot no difference in law is made between destruction and non-destruction of corpus, so [in the case of] Tooth no distinction is made between destruction and non-destruction of corpus.

The Master has [just] enunciated: ‘And it shall consume denotes Tooth, as elsewhere expressed, As the tooth consumeth to entirety.’ His reason then is that the Divine Law [also] says, As the tooth consumeth to entirety, but even were it not so, how else could you interpret the phrase? It could surely not refer to Horn which is already elsewhere set down,[4] nor could it refer to Foot, since this is likewise elsewhere set down?[3] — It is essential,[8] as otherwise it might have entered your mind to regard both phrases[6] as denoting Foot: the one when the cattle went of its own accord and the other[9] when it was sent by its owner [to do damage]; it is, therefore, made known to us that this is not so. Now that we have identified it with Tooth, whence could be inferred the liability of Foot in cases when the cattle went of its own accord? — From the analogy of Tooth;[10] just as in the case of Tooth there is no difference in law whether the cattle went of its own accord or was sent by its owner, so [in the case of] Foot there is no difference in law whether the cattle went of its own accord or was sent by its owner.

But supposing Divine Law had only written, And he shall send forth,[11] omitting And it shall consume, would it not imply both Foot and Tooth? Would it not imply Foot, as it is written, That send forth the feet of the ox and the ass? Again, would it not also imply Tooth, as it is written, And the teeth of beasts will I send upon them?[12] — If there were no further expression I would have said either one or the other [might be meant], either Foot, as the damage done by it is of frequent occurrence, or Tooth, as the damage done by it affords gratification.[13] Let us see now, they are equally balanced, let them then both be included, for which may you exclude?[14] — It is essential [to have the further expression], for [otherwise] it might have entered your mind to assume that these laws [of liability] apply only to intentional trespass,[15] exempting thus cases where the cattle went of its own accord; it is, therefore, made known to us that this is not the case.

The derivative of Tooth, what is it? — When [the cattle] rubbed itself against a wall for its own pleasure [and broke it down], or when it spoiled fruits [by rolling on them] for its own pleasure. Why are these cases different? Just as Tooth affords gratification from the damage [it does] and, being your possession, is under your control, why should not this also be the case with its derivatives which similarly afford gratification from the damage [they do] and, being your possession are under your control? — The derivative of Tooth is therefore equal to Tooth, and R. Papa's statement [to the contrary][16] refers to the derivative of Foot.

What is the derivative of Foot? — When it did damage while in motion either with its body or with its hair, or with the load [which was] upon it, or with the bit in its mouth, or with the bell on its neck. Now, why should these cases be different? Just as Foot does frequent damage and, being your possession, is under your control, why should not this also be the case with its derivatives which similarly do frequent damage and, being your possession, are under your control? The derivative of Foot is thus equal to Foot, and R. Papa's statement [to the contrary][17] refers to the derivative of the Pit.

What is the derivative of Pit? It could hardly be said that the Principal is a pit of ten handbreadths deep and its derivative one nine handbreadths deep, since neither nine nor ten is stated in Scripture! — That is no difficulty: [as] And the dead beast shall be his[18] the Divine Law declares, and it was quite definite with the Rabbis[19] that ten handbreadths could occasion death, whereas nine might inflict injury but could not cause death . But however this may be, is not the one [of ten] a principal [cause] in the event of death, and the other [of nine] a principal [cause] in the event of [mere] injury? — Hence [Rab Papa's statement] must refer to a stone, a knife and luggage which were placed on public ground and did damage. In what circumstances? If they were abandoned [there], according to both Rab and Samuel,[20] they would be included in [the category of] Pit;[21]

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(1) I Kings XIV, 10. [‘Galal’, E.V.: ‘dung’, is interpreted as ‘marble’, ‘ivory’, which teeth resemble; cf. Ezra V, 8. V.

Tosaf. a.l.]
(2) [Lit., 'The Merciful One,' i.e., God, whose word Scripture reveals. V. Bacher, Exeg. Term., II, 207f.]
(3) V. p. 4, n. 6.
(4) Ex. XXI, 35-36.
(5) To cite the verse from Isaiah.
(6) Send forth and consume, cf. n. 2.
(7) Where no term expressing 'Consumption' is employed.
(8) To cite the verse from Kings.
(9) I.e., 'He shall send forth'.
(10) Where no term expressing 'sending forth' is employed.
(11) V. p. 4, n. 6.
(12) Deut. XXXII, 24.
(13) And thus there would be no definite sanction for action in either.
(14) V., however, infra p. 17, that Tooth and Foot were recorded in Scripture not for the sake of liability but to be immune for damage done by them on public ground.
(15) As signified by, 'He shall send forth'.
(16) Cf. supra p. 2.
(17) V. p. 6, n. 6.
(18) Ex. XXI, 34.
(19) Infra 50b.
(20) Infra p. 150.
(21) Being, like Pit, a public nuisance.

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if [on the other hand] they were not abandoned, then, according to Samuel, who maintains that all public nuisances come within the scope of the law applicable to Pit, they would be included in Pit, whereas according to Rab, who maintains that in such circumstances they rather partake of the nature of Ox, they are equivalent in law to Ox.[1]

[And even according to Samuel] why should [the derivatives of Pit] be different? Just as Pit is from its very inception a source of injury, and, being your possession, is under your control, so is the case with these [derivatives] which from their very inception [as nuisances] also are sources of injury and being your possession, are under your control! — The derivative of Pit is therefore equal to Pit, and R. Papa's statement [to the contrary] refers to the derivative of 'Spoliator'. But what is it? If we are to follow Samuel, who takes 'Spoliator' to denote Tooth,[2] behold we have [already] established that the derivative of Tooth equals Tooth;[3] if on the other hand Rab's view is accepted, identifying 'Spoliator' With Man,[2] what Principals and what derivatives could there be in him? You could hardly suggest that Man [doing damage] while awake is Principal, but becomes derivative [when causing damage] while asleep, for have we not learnt:[4] 'Man is in all circumstances Mu'ad,[5] whether awake or asleep'? — Hence [R. Papa's statement[6] will] refer to phlegm[7] [expectorated from mouth or nostrils]. But in what circumstances? If it did damage while in motion, it is [man's] direct agency! If [on the other hand] damage resulted after it was at rest, it would be included, according to both Rab and Samuel,[8] in the category of Pit! — The derivative of 'Spoliator' is therefore equal to 'Spoliator'; and R. Papa's statement [to the contrary][6] refers to the derivative of Fire.

What is the derivative of Fire? Shall I say it is a stone, a knife and luggage which having been placed upon the top of one's roof were thrown down by a normal wind and did damage? Then in what circumstances? If they did damage while in motion, they are equivalent to Fire; and why should they be different? Just as Fire is aided by an external force, and, being your possession, is under your control, so also is the case with these [derivatives] which are aided by an external force, and, being your possession, are under your control! — The derivative of Fire is therefore equal to Fire; and R.

Papa's statement [to the contrary][6] refers to the derivative of Foot.

'Foot'! Have we not established that the derivative of Foot is equal to Foot?[9] — There is the payment of half damages done by pebbles [kicked from under an animal's feet] — a payment established by tradition.[10] On account of what [legal] consequence is it designated 'derivative of Foot'?[11] So that the payment should likewise be enforced [even] from the best of the defendant's possessions.[12] But did not Raba question whether the half-damage of Pebbles is collected only from the body of the animal or from any of the defendant's possessions?[13] — This was doubtful [only] to Raba, whereas R. Papa was [almost] certain about it [that the latter is the case]. But according to Raba, who remained doubtful [on this point], on account of what [legal] consequence is it termed 'derivative of Foot'?[14] — So that it may also enjoy exemption [where the damage was done] on public ground.[15]

THE SPOLIATOR [MABEH] AND THE FIRE etc. What is [meant by] MAB'EH? — Rab said: MAB'EH denotes Man [doing damage], but Samuel said: MAB'EH signifies Tooth [of trespassing cattle]. Rab maintains that MAB'EH denotes Man,[16] for it is written: The watchman said: The morning cometh, and also the night — if ye will enquire, enquire ye.[17] Samuel [on the other hand] holds that MAB'EH signifies Tooth, for it is written: How is Esau searched out! How are his hidden places sought out![18] But how is this deduced?[19] As rendered by R. Joseph:[20] How was Esau ransacked? How were his hidden treasures exposed?[21]

Why did not Rab agree with [the interpretation of] Samuel? — He may object: Does the Mishnah employ the term NIB'EH[22] [which could denote anything 'exposed']?

Why [on the other hand] did not Samuel follow [the inter pretation of] Rab? — He may object: Does the Mishnah employ the term BO'EH[23] [which could denote 'an enquirer']?

But in fact the Scriptural quotations could hardly bear out the interpretation of either of them. Why then did not Rab agree with Samuel? — THE OX [in the Mishnah] covers all kinds of damage done by ox.[24] How then will Samuel explain the fact that ox has already been dealt with? — Rab Judah explained: THE OX [in the Mishnah] denotes Horn, while MAB'EH stands for Tooth; and this is the sequence in the Mishnah: The aspects of Horn, which does not afford gratification from the injury [are not of such order of gravity] as those of Tooth which does afford gratification from the damage;[25]

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(1) The derivatives of which are equal to the Principal.

(2) Infra p. 9.

(3) Supra p. 7.

(4) Infra p. 136.

(5) I.e., civilly liable in full for all misdeeds.

(6) V. p. 6, n. 6.

(7) I.e., the derivative of Man.

(8) V. p. 7, n. 4.

(9) Supra p. 7.

(10) Cf. infra p. 80.

(11) Since it pays only half the damage.

(12) Unlike half damages in the case of Horn where the payment is collected only out of the body of the animal that did the damage.

(13) Infra p. 83.

(14) V. p. 8, n. 10.

(15) Just as is the case with Foot, cf. infra p. 17.

(16) As possessing freedom of will and the faculty of discretion and enquiry, i.e., constituting a cultural and rational

being; idiots and minors are thus excluded, cf. infra p. 502.

(17) תבעון בעיו Isa. XXI, 12; the root in each case being the same.

(18) נבעו Ob. I, 6; the root in each case being the same.

(19) I.e., how could a term denoting 'seeking out' stand for Tooth?

(20) Who was exceptionally well conversant with Targumic texts. Some explain it on account of his having been blind (v. infra p. 501), and thus unable to cite the original Biblical text because of the prohibition to recite orally passages from the Written Law, cf. Git. 60a. [Others ascribe the edition of the Targum on the prophets to him, v. Graetz (Geschichte IV, 326.]

(21) נבעו (E.V.: sought out), translated exposed, indicates exposure and may therefore designate Tooth which is naturally hidden but becomes exposed in grazing.

(22) In the passive voice.

(23) In the kal denoting mere action; the causative (hiph'il) is used with reference to Tooth which the animal exposes in grazing.

(24) Cattle, including Tooth.

(25) And therefore the liability of Tooth could not he derived from that of Horn.

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nor are the aspects of Tooth, which is not prompted by malicious intention to injure, [of such order of gravity] as those of Horn which is prompted by malicious intention to do damage.[1] But can this not be deduced a fortiori? If Tooth, which is prompted by no malicious intention to injure, involves liability to pay, how much more so should this apply to Horn, which is prompted by malicious intention to do damage? — Explicit [Scriptural] warrant for the liability of Horn is, nevertheless, essential, as otherwise you might have possibly thought that I assume [immunity for Horn on] an analogy to the case of man- and maid-servants. Just as a man- and maid-servant, although prompted by malicious intention to do damage, do not devolve any liability [upon their masters],[2] so is the law here [in the case of Horn]. R. Ashi, however, said: Is not the immunity in the case of damage done by man-and maid-servants due to the special reason that, but for this, a servant provoked by his master might go on burning down[3] another's crops, and thus make his master liable to pay sums of money day by day?[4] — The sequence [of the analysis in the Mishnah] must accordingly be [in the reverse direction]: The aspects of Horn, which is actuated by malicious intention to do damage, are not [of such low order of gravity] as those of Tooth, which is not actuated by malicious intention to do damage; again, the aspects of Tooth which affords gratification while doing damage are not [of such low order of gravity] as those of Horn, which affords no gratification from the damage.[5] But what about Foot? Was it entirely excluded [in the Mishnah]? — [The generalisation,][6] Whenever damage has occurred, the offender is liable, includes Foot. But why has it not been stated explicitly? — Raba therefore said: THE OX [stated in the Mishnah] implies Foot,[7] while MAB'EH stands for Tooth; and this is the sequence [in the Mishnah]: The aspects of Foot, which does frequent damage, are not [of such low order of gravity] as those of Tooth, the damage by which is not frequent: again, the aspects of Tooth, which affords gratification from the damage, are not [of such low order of gravity] as those of Foot, which does not afford gratification from the damage.[8] But what about Horn? Was it entirely excluded [in the Mishnah]? — [The generalisation,] Whenever damage has occurred, the offender is liable, includes Horn. But why has it not been stated explicitly? — Those which are Mu'ad ab initio are mentioned explicitly [in the Mishnah] but those which initially are Tam,[9] and [only] finally become Mu'ad, are not mentioned explicitly.

Now as to Samuel, why did he not adopt Rab's interpretation [of the Mishnaic term MAB'EH]? — He may object: If you were to assume that it denotes Man, the question would arise, is not Man explicitly dealt with [in the subsequent Mishnah]: 'Mu'ad cattle and cattle doing damage on the plaintiff's premises and Man'?[10] But why then was Man omitted in the opening Mishnah? — [In that Mishnah] damage done by one's possessions is dealt with, but not that done by one's person.

Then, how could even Rab uphold his interpretation, since Man is explicitly dealt with in the subsequent Mishnah?[10] — Rab may reply: The purpose of that Mishnah is [only] to enumerate Man among those which are considered Mu'ad. What then is the import of [the analysis introduced by] THE ASPECTS ARE NOT etc.? — This is the sequence: The aspects of Ox, which entails the payment of kofer [for loss of human life],[11] are not [of such low order of gravity] as those of Man who does not pay [monetary] compensation for manslaughter;[12] again, the aspects of Man who [in case of human bodily injury] is liable for [additional] four items,[13] are not [of such low order of gravity] as those of Ox, which is not liable for those four items.[14]

THE FEATURE COMMON TO THEM ALL IS THAT THEY ARE IN THE HABIT OF DOING DAMAGE. Is it usual for Ox [Horn][15] to do damage? — As Mu'ad. But even as Mu'ad, is it usual for it to do damage? — Since it became Mu'ad this became its habit. Is it usual for Man to do damage? — When he is asleep. But even when asleep is it usual for Man to do damage? — While stretching his legs or curling them this is his habit.

THEIR HAVING TO BE UNDER YOUR CONTROL. Is not the control of man's body [exclusively] his own?[16] — Whatever view you take,[17] behold Karna taught: The principal categories of damage are four and Man is one of them. [Now] is not the control of a man's body [exclusively] his own? You must therefore say with R. Abbahu who requested the tanna[18] to learn, 'The control of man's body is [exclusively] his own,'

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(1) And therefore the liability of Horn could not be derived from that of Tooth.

(2) Cf. infra p. 502.

(3) But v. infra pp. 47 and 112.

(4) Yad. IV, 6; and the suggested analogy is thus untenable.

(5) So that neither Horn nor Tooth could he derived from each other.

(6) Infra p. 36, v. Tosaf.

(7) And not Horn as first suggested.

(8) So that neither Foot nor Tooth could he derived from each other.

(9) As is the case with Horn.

(10) V. infra 15b.

(11) Lit., 'Ransom', i.e., monetary compensation for manslaughter, cf Ex. XXI, 30; v. Glos.

(12) V. Num. XXXV, 31-32. Hence Man could not be derived from Ox.

(13) I.e., Pain, Healing, Loss of Time and Degradation; cf. infra p. 473.

(14) Ox is liable only for Depreciation.

(15) According to Rab who takes Ox as including Horn.

(16) The phrase in the Mishnah is thus inappropriate to man.

(17) Even if you take Mab'eh as Tooth.

(18) [The term here designates one whose special task was to communicate statements of older authorities to expounding teachers, v. Glos.]

that here also it is to be understood that the control of man's body is his own.[1]

R. Mari, however, demurred: Say perhaps MAB'EH denotes water [doing damage], as it is written, As when the melting fire burneth, fire tib'eh [causeth to bubble] water?[2] — Is it written, 'Water bubbles'? It is written, Fire causes bubbling.[3] R. Zebid demurred: Say then that MAB'EH denotes Fire, as it is fire to which the act of 'tib'eh' in the text is referred? — If this be so what is then the explanation of THE MAB'EH AND THE FIRE? If you suggest the latter to be the interpretation of the former,[4] then instead of 'FOUR' there will be 'three'? If however, you suggest that OX constitutes two [kinds of damage],[5] then what will be the meaning of [the Mishnaic text]: NOR ARE

THE ASPECTS OF EITHER OF THEM [OX and MAB'EH] IN WHICH THERE IS LIFE? Is there any life in fire? Again, what will be conveyed by [the concluding clause] AS THOSE OF THE FIRE?

R. Oshaia: taught There are thirteen principal categories of damage: The Unpaid Bailee and the Borrower, the Paid Bailee and the Hirer, Depreciation, Pain [suffered]. Healing, Loss of Time, Degradation and the Four enumerated in the Mishnah, thus making [a total of] thirteen. Why did our Tanna mention [only the Four and] not the others? According to Samuel,[6] this presents no difficulty, as the Mishnah mentions only damage committed by one's possessions and not that committed by one's person, but according to Rab[7] let the Mishnah also mention the others? — In the mention of Man all kinds of damage committed by him are included. But does not R. Oshaia also mention Man?[8] — Two kinds of damage could result from Man: Man injuring man is treated as one subject, and Man damaging chattel[9] as another.

If this be so let R. Oshaia similarly reckon Ox twice, as two kinds of damage could result also from Ox: [i] Ox damaging chattel[9] and [ii] Ox injuring man? — But is that a logical argument? It is quite proper to reckon Man in this manner as Man damaging chattel pays only for Depreciation, while Man injuring man may also have to pay for four other kinds of damage,[10] but how can Ox be thus reckoned when the liability for damage done by it to either man or chattel is alike and is confined to [only one kind of damage, i.e.] Depreciation?

But behold, are not the Unpaid Bailee and the Borrower, the Paid Bailee and the Hirer, within the sphere of Man damaging chattel and they are nevertheless reckoned by R. Oshaia? — Direct damage and indirect damage are treated by him independently.

R. Hiyya taught: There are twenty-four principal kinds of damage: Double Payment,[11] Fourfold or Fivefold Payment,[12] Theft,[13] Robbery,[14] False Evidence,[15] Rape,[16] Seduction,[17] Slander,[18] Defilement,[19] Adulteration,[20] Vitiation of wine,[21] and the thirteen enumerated above by R. Oshaia,[22] thus making [the total] twenty-four.

Why did not R. Oshaia reckon the twenty-four? — He dealt only with damage involving civil liability but not with that of a punitive nature. But why omit Theft and Robbery which also involve civil liability? — These kinds of damage may be included in the Unpaid Bailee and the Borrower.[23] Why then did not R. Hiyya comprehend the former in the latter? — He reckoned them separately, as in the one case the possession of the chattel was acquired lawfully,[24] while in the other[25] the acquisition was unlawful.

[Why did not R. Oshaia]

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(1) The Mishnaic wording refers to the other categories.

(2) Isa. LXIV, 1.

(3) Hence the term ‘tib'eh’ describes not the act of water but that of fire.

(4) The Mab'eh and the Fire will thus constitute one and the same kind of damage.

(5) And the other two will be: Pit and Fire.

(6) Who takes Mab'eh to denote Tooth and not Man; supra p. 9.

(7) Who takes Mab'eh to denote Man; supra p. 9.

(8) Why does he not include in Man all kinds of damage committed by him?

(9) Lit., ‘cattle’.

(10) I.e., Pain, Healing, Loss of Time and Degradation.

(11) As fine for theft; cf. Ex. XXII, 3.

(12) Fines for the slaughter or sale of a stolen sheep and ox respectively; cf. Ex. XXI, 37.

(13) I.e., the restoration of stolen goods or the payment of their value.

(14) I.e., the unlawful acquisition of chattels by violence; cf. Lev, V, 23.
(15) Cf. Deut. XIX, 19; v. Mak. I.
(16) I.e., fifty shekels of silver; cf. Deut. XXII, 28-29.
(17) Cf. Ex. XXII, 15-16.
(18) I.e., a defaming husband; v. Deut. XXII, 13-19.
(19) Of terumah (v. Glos.) which makes it unfit for human consumption.
(20) Of ordinary grain with that of terumah restricting thereby the use of the mixture to priestly families.
(21) Through idolatrous application by means of libation which renders all the wine in the barrel unfit for any use whatsoever; the last three heads of damage are dealt with in Git. V, 3.
(22) V. p. 13.
(23) I.e., when these are guilty of larceny; cf. Ex. XXII, 7.
(24) I.e in the case of the Unpaid Bailee and Borrower.
(25) I.e., in the case of Theft and Robbery.

Talmud - Mas. Baba Kama 5a

deal with False Evidence, the liability for which is also civil? — He holds the view of R. Akiba who maintains that the liability for False Evidence [is penal in nature and] cannot [consequently][1] be created by confession.[2] But if R. Oshaia follows R. Akiba why does he not reckon Ox as two distinct kinds of damage: Ox damaging chattel and Ox injuring men, for have we not learnt that R. Akiba said: A mutual injury arising between man and [ox even while a] Tam is assessed in full and the balance paid accordingly?[3] This distinction could, however, not be made, since it is elsewhere[4] taught that R. Akiba himself has qualified this full payment.[5] For R. Akiba said: You might think that, in the case of Tam injuring man, payment should be made out of the general estate; it is therefore stated, [This judgment] shall be done unto it,[6] to emphasise that the payment should only be made out of the body of the Tam and not out of any other source whatsoever.

Why did R. Oshaia omit Rape, Seduction and Slander, the liabilities for which are also civil?[7] — What particular liability do you wish to refer to? If for actual loss, this has already been dealt with under Depreciation; if for suffering, this has already been dealt with under Pain; if for humiliation, this has already been dealt with under Degradation; if again for deterioration, this is already covered by Depreciation. What else then can you suggest? The Fine.[8] With this [type of liability] R. Oshaia is not concerned.

Why then omit Defilement , Adulteration and Vitiation of wine, the liabilities for which are civil? — What is your view in regard to intangible damage?[9] If [you consider] intangible damage a civil wrong, defilement has then already been dealt with under Depreciation; if on the other hand intangible damage is not a civil wrong, then any liability for it is penal in nature, with which R. Oshaia is not concerned.

Are we to infer that R. Hiyya considers intangible damage not to be a civil wrong? For otherwise would not this kind of damage already have been reckoned by him under Depreciation? — He may in any case have found it expedient to deal with tangible damage and intangible damage under distinct heads.

It is quite conceivable that our Tanna[10] found it necessary to give the total number [of the principal kinds of damage] in order to exclude those of R. Oshaia;[11] the same applies to R. Oshaia who also gave the total number in order to exclude those of R. Hiyya;[12] but what could be excluded by the total number specified by R. Hiyya? — It is intended to exclude Denunciation[13] and Profanation of sacrifices.[14]

The exclusion of profanation is conceivable as sacrifices are not here reckoned; but why is

Denunciation omitted? — Denunciation is in a different category on account of its verbal nature with which R. Hiyya is not concerned. But is not Slander of a verbal nature and yet reckoned? — Slander is something verbal but dependent upon some act.[15] But is not False Evidence a verbal effect not connected with any act and yet it is reckoned? — The latter though not connected with any act is reckoned because it is described in the Divine Law as an act, as the text has it: Then shall ye do unto him as he had purposed to do unto his brother.[16]

It is quite conceivable that the Tanna of the Mishnah characterises his kinds of damage as Principals in order to indicate the existence of others which are only derivatives: but can R. Hiyya and R. Oshaia characterise theirs as Principals in order to indicate the existence of others which are derivatives? If so what are they? — Said R. Abbahu: All of them are characterised as Principals for the purpose of requiring compensation out of the best of possessions.[17] How is this uniformity [in procedure] arrived at? — By means of a uniform interpretation of each of the following terms: 'Instead',[18] 'Compensation',[19] 'Payment',[20] 'Money'.[21]

THE ASPECTS OF THE OX ARE [IN SOME RESPECTS] NOT [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE 'SPOLIATOR' [MAB'EH]. What does this signify? — R. Zebid in the name of Raba said: The point of this is: Let Scripture record only one kind of damage[22] and from it you will deduce the liability for the other![23] In response it was declared: One kind of damage could not be deduced from the other.[24]

NOR ARE THE ASPECTS OF EITHER OF THEM IN WHICH THERE IS LIFE. What does this signify? R. Mesharsheya in the name of Raba said: The point of it is this:

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(1) Penal liabilities are created only by means of impartial evidence and never by that of confession; cf. infra 64b.

(2) Mak. 2b.

(3) V. infra p. 179.

(4) Infra pp. 180 and 240.

(5) Lit., 'broke the [full] force of his club' (Jast.); Rashi: 'of his fist'.

(6) Ex. XXI. 31.

(7) Cf. Keth. 40a.

(8) V. Deut, XXII, 29; Ex. XXII, 6; and Deut. XXII, 19.

(9) Cf. Git. 53a.

(10) Opening the Tractate.

(11) I.e., the additional nine kinds enumerated by him supra p. 13.

(12) I.e the eleven added by him supra. p. 14.

(13) Cf. infra 62a and 117a.

(14) Cf. Lev. VII, 18 and Zeb. I, 1 and II, 2-3.

(15) The consummation of the marriage rite according to R. Eliezer, or the bribery of false witnesses according to R. Judah; cf. Keth. 46a.

(16) Deut. XIX, 19.

(17) Cf. Ex. XXII, 4.

(18) I.e., for occurring in Ex. XXI, 36, and elsewhere.

(19) I.e., an expression such as, He shall give, cf. EX XXI, 32 and elsewhere.

(20) As in Ex. XXII, 8 and elsewhere.

(21) Such as, e.g., in Ex. XXI, 34 and elsewhere. [One of these four terms occurs with each of the four categories of damage specified in the Mishnah and likewise with each of the kinds of damage enumerated by R. Oshaia and R. Hiyya, thus teaching uniformity in regard to the mode of payment in them all.]

(22) I.e., Ox.

(23) I.e., Mab'eh.

(24) V. supra pp. 11-12.

Talmud - Mas. Baba Kama 5b

Let Scripture record only two kinds of damage[1] and from them you will deduce a further kind of damage?[2] In response it was declared: Even from two kinds of damage it would not be possible to deduce one more.[3]

Raba, however, said: If you retain any one kind of damage along with Pit [in Scripture], all the others but Horn will be deduced by analogy;[4] Horn is excepted as the analogy breaks down, since all the other kinds of damage are Mu'ad ab initio.[5] According, however, to the view that Horn on the other hand possesses a greater degree of liability because of its intention to do damage,[6] even Horn could be deduced. For what purpose then did Scripture record them all? For their [specific] laws: Horn, in order to distinguish between Tam and Mu'ad;[7] Tooth and the Foot, to be immune [for damage done by them] on public ground;[8] Pit, to be immune for [damage done by it to] inanimate objects;[9] and, according to R. Judah who maintains liability for inanimate objects damaged by a pit,[10] in order still to be immune for [death caused by it to] man;[11] Man, to render him liable for four [additional] payments [when injuring man];[12] Fire, to be immune for [damage to] hidden goods;[13] but according to R. Judah, who maintains liability for damage to hidden goods by fire,[13] what [specific purpose] could be served?

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(1) I.e., Ox and Mab'eh.

(2) I.e., Fire.

(3) For the reason stated in the Mishnah.

(4) To the feature common in Pit and the other kind of damage.

(5) I.e., it is usual for them to do damage, whereas Horn does damage only through excitement and evil intention which the owner should not necessarily have anticipated; cf. infra p. 64.

(6) Cf. supra p. 11 and infra p. 64.

(7) Infra p. 73.

(8) Infra p. 94.

(9) Infra 52a.

(10) Infra 53b.

(11) Infra 54a.

(12) Infra p. 473; cf. also supra pp. 12 and 13.

(13) Infra 61b.

Talmud - Mas. Baba Kama 6a

— To include [damage done by fire] lapping his neighbour's ploughed field and grazing his stones.[1]

THE FEATURE COMMON TO THEM ALL . . . What else is this clause intended to include? — Abaye said: A stone, a knife and luggage which, having been placed by a person on the top of his roof, fell down through a normal wind and did damage.[2] In what circumstances [did they do the damage]? If while they were in motion, they are equivalent to Fire! How is this case different? Just as Fire is aided by an external force[3] and, being your possession, is under your control, so also is the case with those which are likewise aided by an external force and, being your possessions are under your control. If [on the other hand, damage was done] after they were at rest, then, if abandoned, according to both Rab and Samuel, they are equivalent to Pit.[4] How is their case different? Just as Pit is from its very inception a source of injury, and, being your possession is under your control, so also is the case with those[5] which from their very inception [as nuisances] are likewise sources of injury, and, being your possession are under your control.[6] Furthermore, even if they were not abandoned, according to Samuel who maintains that we deduce [the law governing] all nuisances from Pit,[4] they are [again] equivalent to Pit? — Indeed they were abandoned, still they are not equivalent to Pit. Why [is liability attached] to Pit if not because no external force assists it? How then can you assert

[the same] in the case of those[5] which are assisted by an external force? — Fire,[7] however, will refute [this reasoning]. But [you may ask] why [is liability attached] to Fire if not because of its nature to travel and do damage?[8] — Pit, however, will refute [this reasoning]. The argument is [thus endlessly] reversible [and liability[9] can be deduced only from the Common Aspects].[10]

Raba said: [This clause is intended] to include a nuisance which is rolled about [from one place to another] by the feet of man and by the feet of animal [and causes damage]. In what circumstances [did it do the damage]? If it was abandoned, according to both Rab and Samuel,[11] it is equivalent to Pit! How does its case differ? Just as Pit is from its very inception a source of injury, and is under your control, so also is the case with that which from its very inception [as a nuisance] is likewise a source of injury, and is under your control. Furthermore, even if it were not abandoned, according to Samuel,[11] who maintains that we deduce [the law governing] all nuisances from Pit, it is [again] equivalent to Pit? — Indeed it was abandoned, still it is not equivalent to Pit: Why [is liability attached] to Pit if not because the making of it solely caused the damage? How then can you assert [the same] in the case of such nuisances,[12] the making of which did not directly cause the damage?[13] — Ox, however, will refute [this reasoning]. But [you may ask] why [is liability attached] to Ox if not because of its habit to walk about and do damage? — Pit will refute [this reasoning]. The argument is [thus endlessly] reversible as the aspect of the one is not comparable to the aspect of the other, [and liability[14] therefore can be deduced only from the Common Aspects].

R. Adda b. Ahabah said: To include that which is taught:[15] 'All those who open their gutters or sweep out the dust of their cellars

[into public thoroughfares] are in the summer period acting unlawfully, but lawfully in winter; [in all cases] however, even though they act lawfully, if special damage resulted they are liable to compensate.' But in what circumstances? If the damage occurred while [the nuisances were] in motion, is it not man's direct act?[16] If, on the other hand, it occurred after they were at rest, [again] in what circumstances? If they were abandoned, then, according to both Rab and Samuel,[17] they are equivalent to Pit! How does their case differ? Just as Pit is from its very inception a source of injury, and, being your possession, is under your control, so also is the case with those which are likewise from their very inception [as nuisances] sources of injury and, being your possession, are under your control. Furthermore, even if they were not abandoned, according to Samuel,[17] who maintains that we deduce [the law governing] all nuisances from Pit, they are [again] equivalent to Pit? — Indeed they were abandoned, still they are not equivalent to Pit: Why [is liability attached] to Pit if not because of its being unlawful?[18] How then could you assert [the same] in the case of those which [in winter] are lawful? —

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(1) As this damage is rather an unusual effect from fire and special reference is therefore essential.

(2) Cf. supra p. 8.

(3) I.e., the blowing wind.

(4) Infra 28b; v. supra p. 7.

(5) I.e., stone, knife and luggage referred to above.

(6) Cf. supra p. 7.

(7) Which is also assisted by an external force, i.e. the wind, but nevertheless creates liability to pay.

(8) Which cannot he said of stone, knife and luggage.

(9) Even when the nuisance has, like Fire, been assisted by an external force and is, like Pit, unable to travel and do damage.

(10) Referred to in the Mishnaic quotation.

(11) Infra 28b and supra p. 7.

(12) Which have been rolling about from one place to another.

(13) But the rolling by man and beast.

(14) Even in the case of nuisances that roll about.

(15) Cf. infra 30a.

(16) The liability for which is self-evident under the category of Man.

(17) Infra 28b and supra p. 7.

(18) It being unlawful to dig a pit in public ground.

Talmud - Mas. Baba Kama 6b

Ox,[1] however, will refute [this reasoning]. But, you may ask, why [is liability attached] to Ox if not because of its nature to walk about and do damage? — PIt will refute [this reasoning]. The argument is [thus endlessly] reversible [and liability[2] can be deduced only from the Common Aspects].

Rabina said: To include that which we have learnt: 'A wall or a tree which accidentally fell into a Public thoroughfare and did damage, involves no liability for compensation. If an order had been served [by the proper authorities] to fell the tree and pull down the wall within a specified time, and they fell within the specified time and did damage, the immunity holds goods, but if after the specified time, liability is incurred.'[3] But what were the circumstances [of the wall and the tree]? If they were abandoned, then according to both Rab and Samuel,[4] they are equivalent to Pit! How is their case different? Just as Pit does frequent damage and is under your control, so also is the case with those which likewise do frequent damage and are under your control. Furthermore, even if they were not abandoned, according to Samuel.[4] who maintains that we deduce [the law governing] all nuisances from Pit, they are [again] equivalent to Pit? — Indeed they were abandoned, still they are not equivalent to Pit: Why [is liability attached] to Pit if not because of its being from its very inception a source of injury? How then can you assert [the same] in the case of those which are not sources of injury from their inception? — Ox, however, will refute [this reasoning]. But [you may ask] why [is liability attached] to Ox if not because of its nature to walk about and do damage? — Pit will refute [this reasoning]. The argument is [thus endlessly] reversible [and liability[5] can be deduced only from Common Aspects].

WHENEVER ANYONE OF THEM DOES DAMAGE THE OFFENDER IS [HAB] LIABLE. 'The offender is HAB!' — 'The offender is HAYYAB'[6] should be the phrase? — Rab Judah, on behalf of Rab, said: This Tanna [of the Mishnaic text] was a Jerusalemite who employed an easier form.[7]

TO INDEMNIFY WITH THE BEST OF HIS ESTATE. Our Rabbis taught: Of the best of his field and of the best of his vineyard shall he make restitution[8] refers to the field of the plaintiff and to the vineyard of the plaintiff, this is the view of R. Ishmael. R. Akiba says: Scripture only intended that damages should be collected out of the best,[9] and this applies even more so to sacred property.[10]

Would R. Ishmael maintain that the defendant, whether damaging the best or worst, is to pay for the best? — R. Idi b. Abin said: This is so where he damaged one of several furrows and it could not be ascertained whether the furrow he damaged was the worst or the best,in which case he must pay for the best. Raba, however, [demurred] saying: Since where we do know that he damaged the worst, he would only have to pay for the worst, now that we do not know whether the furrow damaged was the best or the worst, why pay for the best? It is the plaintiff who has the onus of proving his case by evidence. R. Aha b. Jacob therefore explained: We are dealing here with a case where the best of the plaintiff's estate equals in quality the worst of that of the defendant;[11] and the point at issue is [as follows]: R. Ishmael maintains that the qualities are estimated in relation to those of the plaintiff's estate;[12] but R. Akiba is of the opinion that it is the qualities of the defendant's possessions that have to be considered.[13]

What is the reason underlying R. Ishmael's view? — The term 'Field' occurs both in the latter clause[14] and the earlier clause of the verse;[15] now just as in the earlier clause it refers to the

plaintiff's possessions, so also does it in the latter clause. R. Akiba, however, maintains that [the last clause,] Of the best of his field and of the best of his vineyard shall he make restitution[16] clearly refers to the possessions of the one who has to pay. R. Ishmael [on the other hand,] contends that both the textual analogy[17] of the terms and the plain textual interpretation are complementary to each other. The analogy of the terms is helpful towards establishing the above statement[18] while the plain textual interpretation helps to qualify [the application of the above[18] in] a case where the defendant's estate consists of good and bad qualities, and the plaintiff's estate likewise comprises good quality, but the bad of the defendant's estate is not so good as the good quality of the estate of the plaintiff;[19] for in this case the defendant must pay out of the better quality of his estate, as he cannot say to him, 'Come and be paid out of the bad quality' [which is below the quality of the estate of the plaintiff], but he is entitled to the better quality [of the defendant].

'R. Akiba said: Scripture only intended that damages be collected out of the best, and this applies even more so to sacred property.' What is the import of the last clause? It could hardly be suggested that it refers to a case where a private ox gored an ox consecrated [to the Sanctuary], for does not the Divine Law distinctly say, The ox of one's neighbour,[20] excluding thus [any liability for damage done to] consecrated chattel? Again, it could hardly deal with a personal undertaking by one to pay a maneh to the Treasury of the Temple, thus authorising the treasurer to collect from the best; for surely he should not be in a better position than a private creditor

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(1) Which it is similarly lawful to keep, but which when doing damage creates nevertheless a liability to pay.

(2) Even in the cases referred to by R. Adda b. Ahabah.

(3) B.M. 117b.

(4) Infra 28b.

(5) Even in the case of the wall and the tree.

(6) A slight variation in the Hebrew text: a disyllable instead of a monosyllable.

(7) Preferred a contracted form.

(8) Ex. XXII, 4.

(9) Of the defendant's estate.

(10) I.e., property dedicated to the purposes of the sanctuary.

(11) The amount of damages, however, would never be more than could be proved to have been actually sustained.

(12) I.e., the quality of the field paid by the defendant as damages need not exceed the best quality of the plaintiff's estate. Hence, in the case in hand, the worst of the defendant's will suffice.

(13) The quality of the payment must therefore always he the best of the defendant's estate,

(14) I.e., of the best of his field . . . Ex, XXII,4.

(15) If a man shall cause a field or a vineyard to be eaten, ibid.

(16) Ex. XXII,4.

(17) The (Gezerah Shawah, v. Glos.

(18) 'That the qualities are estimated in relation to those of the plaintiff's estate.'

(19) The bad quality could not thus be tendered.

(20) Ex. XXI, 35.

Talmud - Mas. Baba Kama 7a

who can collect nothing better than the medium quality.[1] If, however, you hold that R. Akiba authorises the payment of all loans out of the best, [the treasurer of the Temple could still hardly avail himself of this privilege as] the analogy between these two kinds of liability could be upset as follows: A private creditor is at an advantage in that for damages he will surely be paid out of the best, but is not the Temple Treasury at a very great disadvantage in this respect?[2] — It may still be maintained that it applies to the case where a private ox gored a consecrated ox, and in answer to the difficulty raised by you — that the Divine Law definitely says The ox of one's neighbour, thus exempting for damage done to consecrated property — it may be suggested that R. Akiba shares the

view of R. Simeon b. Menasya as taught:[3] R. Simeon b. Menasya says: In the case of a consecrated ox goring a private one, there is total exemption; but for a private ox, whether Tam or Mu'ad, goring a consecrated ox, full damages must be paid.[4] If this is R. Akiba's contention, whence could it be proved that the point at issue between R. Ishmael and R. Akiba is as to the best of the plaintiff's equalling the worst of the defendant's? Why not say that on this point they are both of opinion that the qualities are estimated in relation to the plaintiff's possessions,[5] whereas the disagreement between them is on the point at issue between R. Simeon b. Menasya and the Rabbis [i.e., the majority against him], R. Akiba holding the view of R. Simeon b. Menasya, and R. Ishmael that of the Rabbis? — If so, what would be the purport of the first clause of R. Akiba, 'Scripture only intended that damages be collected out of the best'?[6] Again, would not then even the last clause 'And this even more so applies to sacred property' be rather illogically phrased?[7] Furthermore, R. Ashi said: It was explicitly taught: Of the best of his field and of the best of his vineyard shall he make restitution[8] refers to the field of the plaintiff and to the vineyard of the plaintiff: this is the view of R. Ishmael. R. Akiba [on the other hand] says: The best of the defendant's field and the best of the defendant's vineyard.

Abaye pointed out to Raba the following contradiction: Scripture records, Out of the best of his field and out of the best of his vineyard shall he make restitution[8] [thus indicating that payment must be made] only out of the best and not out of anything else; whereas it is taught: He should return,[9] includes payment in kind,[10] even with bran?[11] — There is no contradiction: the latter applies when the payment is made willingly, while the former refers to payments enforced [by law]. 'Ulla the son of R. Elai, thereupon said: This distinction is evident even from the Scriptural term, He shall make restitution,[8] meaning, even against his will. Abaye, on the other hand, said to him: Is it written yeshullam[12] ['Restitution shall be made']? What is written is yeshallem[13] ['He shall make restitution'], which could mean of his own free will! — But said Abaye: [The contradiction can be solved] as the Master[14] [did] in the case taught: An owner of houses, fields and vineyards[15] who cannot find a purchaser [is considered needy and] may be given the tithe for the poor[16] up to half the value of his estate.[17] Now the Master discussed the circumstances under which this permission could apply: If property in general, and his included, dropped in value, why not grant him even the value of more [than the half of his estate's value], since the depreciation is general? If, on the other hand, property in general appreciated, but his, on account of his going about looking here and there for ready money, fell in price,

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(1) Git. V, 1.

(2) On account of the absolute immunity, as stated, for damage done to Temple property.

(3) Infra p. 212.

(4) R. Akiba thus maintains that the Temple Treasury will, for any damage sustained, be reimbursed out of the best of the defendant's estate.

(5) And where the plaintiff's best equals the defendant's worst, the latter will perhaps suffice according to all opinions.

(6) Which indicates that the interpretation of the Scriptural verse (Ex. XXII, 4) is the point at issue.

(7) As according to the view requiring full payment in all cases, the quality of the payment for damage done to sacred property may he higher than that paid for damage done to ordinary property, and in fact nothing less than the very best of the defendant's estate would suffice.

(8) Ex. XXII, 4.

(9) Ex. XXI, 34.

(10) Otherwise the Scriptural text would be superfluous, as payment in specie is evident in an earlier clause.

(11) Infra 9a.

(12) ישלם

(13) ישלם~

(14) Rabbah (Rashi).

(15) The value of which amounted to 200 zuz.

(16) Cf. Deut. XIV, 28-29; this tithe is distributed among those who possess less than two hundred zuz; Pe'ah VIII, 8.

(17) I.e., 100 zuz to enable him to sell his property for half its value which, it is assumed, he can at any time realise.

Talmud - Mas. Baba Kama 7b

why give him anything at all?[1] And the Master thereupon said: No; the above law is applicable to cases where in the month of Nisan[2] property has a higher value, whereas in the month of Tishri[3] it has a lower value. People in general wait until Nisan and then sell, whereas this particular proprietor, being in great need of ready money, finds himself compelled to sell in Tishri at the existing lower price; he is therefore granted half because it is in the nature of property to drop in value up to a half, but it is not in its nature to drop more than that. Now a similar case may also be made out with reference to payment for damage which must be out of the best. If the plaintiff, however, says: 'Give me medium quality but a larger quantity', the defendant is entitled to reply: 'It is only when you take the best quality which is due to you by law that you may calculate on the present price; failing that, whatever you take you will have to calculate according to the higher price anticipated.'[4] But R. Aha b. Jacob demurred: If so, you have weakened the right of plaintiffs for damages in respect of inferior quality. When the Divine Law states out of the best,[5] how can you maintain that inferior qualities are excluded?[6] R — Aha b. Jacob therefore said: If any analogy could he drawn,[7] it may be made in the case of a creditor. A creditor is paid by law out of medium quality; if, however, he says: 'Give me worse quality but greater quantity,' the debtor is entitled to say, 'It is only when you take that quality which is due to you by law that you may calculate on the present price, failing that, whatever you take you will have to calculate according to the higher price anticipated.' R. Aha, son of R. Ika, demurred: If so, you will close the door in the face of prospective borrowers. The creditor will rightly contend, 'Were my money with me I would get property according to the present low price; now that my money is with you, must I calculate according to the anticipated higher price?' — R. Aha, son of R. Ika, therefore said: If any analogy could be drawn,[7] it is only with the case of a Kethubah[8] [marriage settlement][9] which, according to the law, is collected out of the worst quality. But if the woman says to the husband: 'Give me better quality though smaller quantity,' he may rejoin: 'It is only when you take the quality assigned to you by law that you may calculate in accordance with the present low price; failing that, you must calculate in accordance with the anticipated higher price.,

But be it as it is, does the original difficulty[10] still not hold good? — Said Raba: Whatever article is being tendered has to be given out of the best [of that object].[11] But is it not written: 'The best of his field'?[12] — But when R. Papa and R. Huna the son of R. Joshua had arrived from the house of study[13] they explained it thus: All kinds of articles are considered 'best', for if they were not to be sold here they would be sold in another town;[14] it is only in the case of land which is excepted therefrom that the payment has to be made out of the best, so that intending purchasers jump at it.

R. Samuel b. Abba of Akronia[15] asked of R. Abba: When the calculation[16] is made, is it based on his own [the defendant's] property or upon that of the general public? This problem has no application to R. Ishmael's view that the calculation is based upon the quality of the plaintiff's property;[17] it can apply only to R. Akiba's view[17] which takes the defendant's property into account.[18] What would, according to him, be the ruling? Does the Divine Law in saying, 'the best of his field' intend only to exclude the quality of the plaintiff's property from being taken into account, or does it intend to exclude even the quality of the property of the general public? — He [R. Abba] said to him:[19] The Divine Law states, 'the best of his field' how then can you maintain that the calculation is based on the property of the general public?

He[20] raised an objection: [It is taught,] If the defendant's estate consists only of the best, creditors of all descriptions are paid out of the best; if it is of medium quality, they are all paid out of medium quality; if it is of the worst quality, they are all paid out of the worst quality. [It is only] when the defendant's possessions consist of both the best, the medium, and the worst [that] creditors for

damages are paid out of the best, creditors for loans out of the medium and creditors for marriage contracts out of the worst. When [however] the estate consists only of the best and of the medium qualities, creditors for damages are paid out of the best while creditors for loans and for marriage contracts will be paid out of the medium quality. [Again] if the estate consists only of the medium and the worst qualities, creditors for either damages or loans are paid out of the medium quality whereas those for marriage contracts will be paid out of the worst quality.

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(1) Since, in reality, his property is worth 200 zuz.

(2) It being the beginning of Spring and the best season for transactions in property, both for agricultural and building purposes.

(3) I.e., about October, being the end of the season.

(4) The scriptural verse, 'He shall return', introducing payment in kind, would thus authorise the calculation on the higher price anticipated whenever the plaintiff prefers a quality different from that assigned to him by law.

(5) Ex. XXII, 4.

(6) From the option of the plaintiff.

(7) To the case made out by the Master regarding the Tithe of the Poor referred to above.

(8) V. Glos.

(9) Git. V, 1.

(10) Raised by Abaye supra p. 24.

(11) I.e., when bran is tendered it is the best of it which has to he given.

(12) Confining it thus to land, for if otherwise why altogether insert 'of his field'?

(13) בי רב. V. Sanh. (Sonc. ed p. 387, n. 7.

(14) And could therefore be tendered.

(15) [Or Hagronia, a town near Nehardea, v. Obermeyer, J. Die Landschaft Babylonian, p. 265.]

(16) Of the best, medium and worst qualities, out of which to pay creditors for damages, loans and marriage-contracts respectively.

(17) Cf. supra p. 22.

(18) I.e., his estate is divided into three categories; best, medium and worst, out of which the payments will respectively be made.

(19) I.e., to R. Samuel, the questioner.

(20) I.e., R. Samuel.

Talmud - Mas. Baba Kama 8a

If, however, the estate consists only of the best and of the worst qualities, creditors for damages are paid out of the best whereas those for loans and marriage contracts are paid out of the worst quality. Now[1] the intermediate clause states that if the estate consists only of the medium and the worst qualities, creditors for either damages or loans are paid out of the medium quality whereas marriage contracts will be paid out of the worst quality. If, therefore, you still maintain that the calculation is based only upon the qualities of the defendant's estate, is not the medium [when there is no better with him] his best? Why then should not the creditors for loans be thrown back on the worst quality? — This [intermediate clause] deals with a case where the defendant originally possessed[2] property of a better quality but has meanwhile disposed of it. And R. Hisda likewise explained this [intermediate clause] to deal with a case where the defendant originally possessed[2] property of a better quality but has meanwhile disposed of it. This explanation stands to reason, for it is taught elsewhere: If the estate consisted of the medium and the worst qualities, creditors for damages are paid out of the medium quality whereas those for loans and marriage contracts will be paid out of the worst quality. Now these [two Baraithas] do not contradict each other, unless we accept [the explanation that] the one deals with a case where the defendant originally owned property of a better quality but which he has meanwhile disposed of, while the other states the law for a case where he did not have[3] property of a quality better than the medium in his possession. It may, however, on the other hand be suggested that both [Baraithas] state the law when a better quality was not disposed of[4] and there is

yet no contradiction, as the second [Baraitha] presents a case where the defendant's medium quality is as good as the best quality of the general public,[5] whereas in the first [Baraitha] the medium quality was not so good as the best of the public.[6] It may again be suggested that both [Baraithas] present a case where the defendant's medium quality was not better than the medium quality of the general public and the point at issue is this: the second [Baraitha] bases the calculation upon the qualities of the defendant's estate,[7] but the first bases it upon those of the general public.[8]

Rabina said: The point at issue is the view expressed by 'Ulla.[9] For 'Ulla said: Creditors for loans may, according to Pentateuchal Law, be paid out of the worst, as it is said, Thou shalt stand without, and the man to whom thou dost lend shall bring forth the pledge without unto thee.[10] Now it is certainly in the nature of man [debtor] to bring out the worst of his chattels. Why then is it laid down that creditors for loans are paid out of the medium quality?[11] This is a Rabbinic enactment made in order that prospective borrowers should not find the door of their benefactors locked before them. Now this enactment referred to by 'Ulla is accepted by the first [Baraitha] whereas the second disapproves of this enactment.[12]

Our Rabbis taught: If a defendant[13] disposed of all his land[14] to one or to three persons at one and the same time, they all have stepped into the place of the original owner.[15] [If, however, the three sales took place] one after another, creditors of all descriptions will be paid out of the [property purchased] last;[16] if this property does not cover [the liability], the last but one purchased estate is resorted to [for the balance]; if this estate again does not meet [the whole obligation], the very first purchased estate is resorted to [for the outstanding balance].

'If the defendant disposed of all his land to one' — under what circumstances [was it disposed of]? It could hardly be suggested [that it was effected] by one and the same deed, for if in the case of three persons whose purchases may have been after one another,[17] you state that, 'They all have stepped into the place of the original owner,' what need is there to mention one person purchasing all the estate by one and the same deed? It therefore seems pretty certain [that the estate disposed of to one person was effected by] deeds of different dates. But [then] why such a distinction?[18] Just as in the case of three purchasers [in succession] each can [in the first instance] refer any creditor [to the very last purchased property], saying, '[When I bought my estate] I was careful to leave [with the defendant] plenty for you to be paid out of,'[19] why should not also one purchaser [by deeds of different dates] be entitled to throw the burden of payment on to the very last purchased property, saying, '[When I acquired title to the former purchases] I was very careful to leave for you plenty to be paid out of'? — We are dealing here with a case where the property purchased last was of the best quality;[20] also R. Shesheth stated that [this law applies] when the property purchased last was of the best quality. If this be the case, why [on the other hand] should not creditors of all kinds come and be paid out of the best quality [as this was the property purchased last]? — Because the defendant may say to the creditors: 'If you acquiesce and agree to be paid out of the qualities respectively allotted to you by law, you may be paid accordingly, otherwise I will transfer the deed of the worst property back to the original owner — in which case you will all be paid out of the worst.'[21] If so,

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(1) Here begins R. Samuel's argument.

(2) I.e., at the time when the loan took place, in which case the creditors then obtained a claim on the medium quality by the process of law.

(3) At the time when the loan took place, in which case the medium (in the absence of a better quality) was relatively the best, and therefore not available to creditors for loans.

(4) But was either retained, as is the case in the second Baraitha, or on the other hand not owned at all at the time of the loan as is the case in the first Baraitha.

(5) In such a case it is considered the best quality to all intents and purposes, as the calculation is based upon the general standard of quality.

(6) It is thus termed only medium and creditors for loans have access to it.

(7) Hence in the absence of a better quality in his own estate, that property which is termed medium in comparison to the general standard is the best in the eye of the law.
(8) According to which it is but medium.
(9) Git. 50a.
(10) Deut XXIV, 11.
(11) Git. V, 1.
(12) Maintaining that creditors for loans will always he paid out the worst quality.
(13) I.e., a debtor for damages, loans and marriage-settlements.
(14) Consisting of best, medium and worst qualities.
(15) So that creditors for damages, for loans and for marriage-settlements will he paid according to their respective rights.
(16) Whether it be best, medium or worst.
(17) Though on one and the same day; cf, Keth. 94a.
(18) I.e., why should the legal position of one purchaser be worse than that of three?
(19) As, according to a Mishnaic enactment (Git. V, 1), 'Property disposed of by a debtor could not he resorted to by his creditors so long as there are with him available possessions undisposed of.'
(20) In which case it is not in the interest of the purchaser that the last purchase should he available to any one of the creditors.
(21) At the hands of the debtor, according to the Mishnaic enactment, Git. V, 1.

Talmud - Mas. Baba Kama 8b

why should the same not be said regarding creditors for damages?[1] It must therefore he surmised that we deal with [a case where the vendor has meanwhile died, and, as his] heirs are not personally liable to pay,[2] the original liability [which accompanied the purchased properties] must always remain upon the purchaser;[3] who could consequently no longer [threaten the creditors and] say this: ['If you acquiesce . . .'?][4] — But the reason the creditors cannot be paid out of the best is that the vendee may [repudiate their demand and] say to them: 'On what account have the Rabbis enacted that "property disposed of by a debtor can not be attached by his creditors so long as there are available possessions still not disposed of"[5] if not for the sake of protecting my interests? In the present instance I have no interest in availing myself of this enactment.' Exactly as Raba, for Raba elsewhere said: Whoever asserts, 'I have no desire to avail myself of a Rabbinical enactment' such as this is listened to.[6] To what does 'such as this' refer? — To R. Huna, for R. Huna said: A woman is entitled to say to her husband, 'I don't expect any maintenance from you[7] and I do not want to work for you.'[8]

It is quite certain that if the vendee[9] has sold the medium and worst qualities and retained the best, creditors of all descriptions may come along and collect out of the best quality. For this property was acquired by him last; and, since the medium and worst qualities are no more in his possession, he is not in a position to say to the creditors: 'Take payment out of the medium and worst properties, as I have no interest in availing myself of the Rabbinic enactment.'[10] But what is the law when the vendee disposed of the best quality and retained the medium and the worst? — Abaye at first was inclined to say: Creditors of all descriptions are entitled to come and collect out of the best.[11] But Raba said to him.[12] Does not a vendee selling [property] to a sub-vendee assign to him all the rights [connected] therewith] that may accrue to him?[13] Hence just as when the creditors come to claim from the vendee, he is entitled to pay them out of the medium and the worst [respectively], irrespective of the fact that when the medium and the worst qualities were purchased by him, the best property still remained free with the original vendor, and in spite of the enactment that properties disposed of cannot be distrained on [at the hands of the vendee] so long as there is available [with the debtor] property undisposed of,[14] the reason of the exception being that the vendee is entitled to say that he has no interest in availing himself of this enactment, so is the subvendee similarly entitled to say to the creditors: 'Take payment out of the medium and the worst.'[15] For the sub-vendee

entered into the sale only upon the understanding that any right that his vendor may possess in connection with the purchase should also be assigned to him.

Raba said:[16] If Reuben disposed of all his lands to Simeon who in his turn sold one of the fields to Levi, Reuben's creditor may come and collect out of the land which is in the possession either of Simeon or Levi. This law applies only when Levi bought medium quality; but if he purchased either the best or the worst the law is otherwise, as Levi may lawfully contend: 'I have purposely been careful to buy the best or the worst, that is, property which is not available for you.'[17] Again, even when he bought medium quality the creditor will not have this option unless Levi did not leave [with Simeon] medium quality of a similar nature,in which case he is unable to plead, 'l have left for you ample land with Simeon;' but if Levi did leave with Simeon medium quality of a similar nature the creditor is not entitled to distrain on Levi who may lawfully contend, 'I have left for you ample land [with Simeon] to satisfy your claim from it.

Abaye said:[18] If Reuben had disposed of a field to Simeon with a warranty [of indemnity],[19] and an alleged creditor of Reuben came to distrain on it from Simeon, Reuben is entitled by law to come forward and litigate with the creditor, nor can the latter say to him: 'You [Reuben] are no party to me;'[20] for Reuben will surely say to him: 'If you will deprive Simeon of the field purchased by him from me, he will turn on me.'[21] There are some who say: Even if there were no warranty there the same law applies, as Reuben may say to the alleged creditor: 'I don't want Simeon to have any grievance against me.'

And Abaye further said:[22] If Reuben sold a field to Simeon without a warranty [for indemnity]

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(1) I.e., they also should thus not he paid out of the best; like creditors for loans they would still he paid out of the medium quality, as the worst quality they could never lose.

(2) I.e., when no land was left in the inherited estate.

(3) For even by transferring the worst quality to the heirs he would not escape any liability affecting him.

(4) Since the liability upon him will thereby not be affected, why then should they, in such circumstances, not resort to the very best property purchased?

(5) Git. V, 1.

(6) Keth. 83a.

(7) Maintenance is a Rabbinical enactment for married women in exchange for their domestic work; cf. Keth. 47b.

(8) Keth. 58b.

(9) Who at successive sales purchased the whole estate of a debtor, and the last purchase was property of the best quality.

(10) As supra p. 31.

(11) At the hands of the sub-vendee, since nothing else of the same estate is with him to be offered to the creditors

(12) Cf. 'Ar. 31b.

(13) I.e., the vendee.

(14) Git. V, 1.

(15) At the hands of the vendee.

(16) Cf. Keth. 92b.

(17) Cf. supra p. 29.

(18) Cf. Keth. 92b and B.M. 14a.

(19) In case it is distrained on by the vendor's creditors.

(20) For he who has no personal interest in a litigation can be no pleader in it; cf. infra 70a.

(21) To be indemnified for the warranty.

(22) Keth. 92b-93a.

and there appeared claimants [questioning the vendor's title], so long as Simeon had not yet taken possession of it he might withdraw; but after he had taken possession of it he could no longer withdraw. What is the reason for that? — Because the vendor may say to him: 'You have agreed to accept a bag tied up with knots.'[1] From what moment [in this case] is possession considered to be taken? — From the moment he sets his foot upon the landmarks [of the purchased field]. This applies only to a purchase without a warranty. But if there is a warranty the law is otherwise. Some, however, say: Even if there is a warranty the same law applies, as the vendor may still say to him: 'Produce the distress warrant[2] against you and I will indemnify you.'

R. Huna said: [The payment for damages is] either with money or with the best of the estate.[3] R. Nahman objected to R. Huna [from the Baraitha]: He should return[4] shows that payment in kind is included, even with bran?[5] — This deals with a case where nothing else is available. If nothing else is available, is it not obvious? — You might have thought that we tell him to go and take the trouble to sell [the bran] and tender the plaintiff ready money. It is therefore made known to us [that this is not the case.].

R. Assi said: Money is on a par with land. What is the legal bearing of this remark? If to tell us what is best, is this not practically what R. Huna said?[6] It may, however, refer to two heirs[7] who divided an inheritance, one taking the land and the other the money. If then a creditor[8] came and distrained on the land, the aggrieved heir could come forward and share the money with his brother. But is this not self-evident? Is the one a son [to the deceased] and the other one not a son? There are some who argue [quite the reverse]: The one brother may say to the other, 'I have taken the money on the understanding that if it be stolen I should not be reimbursed by you, and you also took the land on the understanding that if it be distrained on there should be no restitution to you out of anything belonging to me.' It[9] will therefore refer to two heirs[7] who divided lands among themselves after which a creditor[8] came along and distrained on the portion of one of them.[10] But has not R. Assi already once enunciated this law? For it was stated;[11] [In the case of] heirs who divided [the land of the inheritance among themselves], if a creditor[8] came along and distrained on the portion of one of them, Rab said: The original apportionment becomes null and void. Samuel said: The portion is waived; but R. Assi said: The portion is refunded by a quarter in land or by a quarter in money.[12] Rab, who said that the partition becomes null and void, maintains that heirs, even after having shared, remain[13] co-heirs;[14] Samuel, who said that the portion is waived, maintains that heirs, after having shared, stand to each other in the relationship of vendees, each being in the position of a purchaser without a warranty [of indemnity];[15] R. Assi, who said that the portion is refunded by a quarter in land or by a quarter in money, is in doubt as to whether heirs, after having shared, still remain co-heirs[16] or stand in the relationship of vendees;[15] and on account of that [doubt] there must be refunded a quarter in land or a quarter in money.[17] What then is the meaning of 'Money is on a par with land'?[18] — In respect of being counted as 'best'. But if so, is not this practically what R. Huna said? — Read 'And so also said R. Assi . . .'

R. Zera said on behalf of R. Huna: For [the performance of] a commandment one should go up to a third. A third of what?

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(1) I.e., you bought it at your own risk; the sale is thus the passing not of ownership but of possession.

(2) **טירפא**, document conferring the right of seizure of a debtor's property sold after the loan (Jast.).

(3) R. Huna refers either to the last clause of the Mishnah on p. 1 or to the problem raised by Abaye on p. 24.

(4) Ex. XXI, 34.

(5) Cf. supra p. 24.

(6) The text should thus run, 'And so also said R. Assi . . .'

(7) Lit. 'brothers'.

(8) Of the deceased.

(9) I.e., R. Assi's statement.

(10) [In which case R. Assi stated that the other can offer in refundment either money or land.]
(11) B.B. 107a.
(12) Cf. Bek. 48a.
(13) In this respect.
(14) So that all of them have to share the burden of the debt and if the portion of the one was distrained on, the portion of the other constitutes the whole inheritance which has equally to he distributed accordingly.
(15) Who cannot thus be reimbursed for the distress effected upon the portion assigned to any one of them.
(16) V. p. 34. n. 11.
(17) On the principle that in such and similar matters the two parties should equally have the benefit of the doubt (Rashi, according to one interpretation).
(18) Stated above by R. Assi.

Talmud - Mas. Baba Kama 9b

You could hardly suggest 'a third of one's possessions,' for if so when one chanced to have three commandments [to perform at one and the same time] would one have to give up the whole of one's possessions? — R. Zera therefore said: For [performing a commandment in] an exemplary manner one should go up to a third of [the ordinary expense involved in] the observance thereof.

R. Ashi queried: Is it a third from within [the ordinary expense][1] or is it a third from the aggregate amount?[2] This stands undecided.

In the West[3] they said in the name of R. Zera: Up to a third, a man must perform it out of his own,[4] but from a third onwards he should perform it in accordance with the special portion the Holy One, blessed be He, has bestowed upon him.[5] MISHNAH. WHENEVER I AM UNDER AN OBLIGATION OF CONTROLLING [ANYTHING IN MY POSSESSION], I AM CONSIDERED TO HAVE PERPETRATED ANY DAMAGE THAT MAY RESULT.[6] WHEN I AM TO BLAME FOR A PART OF THE DAMAGE I AM LIABLE TO COMPENSATE FOR THE DAMAGE AS IF I HAD PERPETRATED THE WHOLE OF THE DAMAGE.

THE [DAMAGED] PROPERTY MUST BE OF A KIND TO WHICH THE LAW OF SACRILEGE[7] HAS NO APPLICATION. THE [DAMAGED] PROPERTY SHOULD BELONG TO PERSONS WHO ARE UNDER [THE JURISDICTION OF] THE LAW.[8] THE PROPERTY SHOULD BE OWNED. THE PLACE [OF THE DAMAGE] IS IMMATERIAL, WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT OR PREMISES OWNED [JOINTLY] BY THE PLAINTIFF AND THE DEFENDANT. WHENEVER DAMAGE HAS OCCURRED, THE OFFENDER IS LIABLE TO INDEMNIFY WITH THE BEST OF HIS ESTATE.

GEMARA. Our Rabbis taught: 'WHENEVER I AM UNDER AN OBLIGATION OF CONTROLLING [ANYTHING IN MY POSSESSION], I AM CONSIDERED TO HAVE PERPETRATED ANY DAMAGE [THAT MAY RESULT]. How is that? When an ox or pit which was left with a deaf-mute, an insane person or a minor, does damage, the owner is liable to indemnify. This, however, is not so with a fire.' With what kind of case are we here dealing? If you say that the ox was chained and the pit covered, which corresponds in the case of fire to a hot coal, what difference is there between the one and the other? If on the other hand the ox was loose and the pit uncovered which corresponds in the case of fire to a flame, the statement 'This, however, is not so with a fire,' would here indicate exemption, but surely Resh Lakish said in the name of Hezekiah: They[9] have not laid down the law of exemption unless there was handed over to him[10] a coal which he has blown up, but in the case of a flame there will be full liability, the reason being that the danger is clear![11] — Still, the ox may have been chained and the pit covered and the fire likewise in a coal, yet your contention, 'Why should we make a difference between the one and the other?'

could be answered thus: An ox is in the habit of loosening itself; so also a pit is in the nature of getting uncovered; but a hot coal, the longer you leave it alone, the more it will get cooler and cooler. According to R. Johanan, however, who said[11] that even when there has been handed over to him[10] a flame the law of exemption applies, the ox here would likewise be loose and the pit uncovered; but why should we make a difference between the one and the other? — There, in the case of the fire, it is the handling of the deaf-mute that causes the damage, whereas here, in the case of the ox and the pit, it is not the handling of the deaf-mute that causes the damage.

Our Rabbis taught: There is an excess in [the liability for] Ox over [that for] Pit, and there is [on the other hand] an excess in [the liability for] Pit over [that for] Ox. The excess in [the liability for] Ox over [that for] Pit is that Ox involves payment of kofer[12] and the liability of thirty [shekels] for the killing of a slave;[13] when judgment [for manslaughter] is entered [against Ox] it becomes vitiated for any use,[14] and it is in its habit to move about and do damage, whereas all this is not so in the case of Pit. The excess in [the liability for] Pit over [that for] Ox is that Pit is from its very inception a source of injury and is Mu'ad ab initio which is not so in the case of Ox.[15]

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(1) I.e., 33-1/3 per cent. of the cost of ordinary performance, the cost of the ordinary performance and that of the exemplary performance would thus stand to each other as 3 to 4.

(2) I.e., 50 per cent. of the cost of the ordinary performance; the cost of the ordinary performance and that of the exemplary performance would thus stand to each other as 2 to 3.

(3) Palestine.

(4) I.e., whether he possesses much or little.

(5) Cf. Shittah Mekubezeth and Nimmuke Joseph a.l. According to Rashi and Tosaf. a.l.: 'The cost up to a third remains man's loss in this world (as the reward for that will he paid only in the world to come); but the cost from a third onwards (if any) will he refunded by the Holy One, blessed be He, in man's lifetime.'

(6) From neglecting the obligation to control.

(7) Of consecrated things. cf. Lev. V, 15-16.

(8) Lit., 'sons of the Covenant', excluding heathens who do not respect the covenant of the law; v. infra p. 211, n. 6.

(9) I.e., the Rabbis of the Mishnah, v. infra 59b.

(10) I.e., to a deaf-mute, an insane person or a minor.

(11) Infra 59b.

(12) Cf. Ex. XXI, 29-30; v. Glos.

(13) Ibid. XXI, 32.

(14) V. infra p. 255.

(15) Cf. supra p. 3, nn. 6-7.

Talmud - Mas. Baba Kama 10a

There is an excess in [the liability for] Ox over [that for] Fire and there is [on the other hand] an excess in [the liability for] Fire over [that for] Ox. The excess in [the liability for] Ox over [that for] Fire is that Ox involves payment of kofer and the liability of thirty [shekels] for the killing of a slave; when judgment [for manslaughter] is entered against Ox it becomes vitiated for any use;[1] if the owner handed it over to the care of a deaf-mute, an insane person or a minor he is still responsible [for any damage that may result];[2] whereas all this is not so in the case of Fire. The excess in [the liability for] Fire over [that for] Ox is that Fire is Mu'ad ab initio which is not so in the case of Ox.

There is an excess in [the liability for] Fire over [that for] Pit, and there is [on the other hand] an excess in [the liability for] Pit over [that for] Fire. The excess in [the liability for] Pit over [that for] Fire is that Pit is from its very inception a source of injury; if its owner handed it over to the care of a deaf-mute, an insane person or a minor, he is still responsible [for any damage that may result],[2] whereas all this is not so in the case of Fire. The excess in [the liability for] Fire over [that for] Pit is that the nature of Fire is to spread and do damage and it is apt to consume both things fit for it and

things unfit for it, whereas all this is not so in the case of Pit.

Why not include in the excess of [liability for] Ox over [that for] Pit [the fact] that Ox is [also] liable for damage done to inanimate objects[3] which is not so in the case of Pit?[4] — The above [Baraitha] is in accordance with R. Judah who enjoins payment for damage to inanimate objects [also] in the case of Pit.[5] If it is in accordance with R. Judah, look at the concluding clause, 'The excess in [the liability for] Fire over [that for] Pit is that the nature of Fire is to spread and do damage, and it is apt to consume both things fit for it and things unfit for it; whereas all this is not so in the case of Pit.' 'Things fit for it:' are they not 'of wood'? 'Things unfit for it: are they not 'utensils'?[6] Now 'all this is not so in the case of Pit'. But if the statement is in accordance with R. Judah, did you not say that R. Judah enjoins payment for damage to inanimate objects [also] in the case of Pit? The Baraitha is, therefore, indeed in accordance with the Rabbis, but it mentions [some points] and omits [others].[7] What else does it omit that it omits that [particular] point?[8] — It also omits the law of hidden goods.[9] On the other hand you may also say that the Baraitha can still be reconciled with R. Judah, for 'things unfit for it' do not include utensils,[10] but do include [damage done by fire] lapping his neighbour's ploughed field and grazing his stones.[11]

R. Ashi demurred: Why not include, in the excess of liability for Ox Over [that for] Pit, [the fact] that Ox is [also] liable for damage done to consecrated animals that have become unfit [for the altar],[12] whereas this is not so in the case of Pit?[13] No difficulty arises if you assume that the Baraitha is in accordance with the Rabbis; just as it had omitted that point,[14] it omitted this point too. But if you maintain that the Baraitha is in accordance with R. Judah, what else did it omit that it omits this [one] point?-It omitted [Ox] trampling upon newly broken land.[15] [No! this is no argument,] for as to [Ox] trampling upon newly broken land there is no omission there, for this [is included in that which] has already been stated, 'It is in its habit to move about and do damage.'[16]

WHEN I HAVE PERPETRATED A PART OF THE DAMAGE. Our Rabbis taught: 'When I have perpetrated a part of the damage I become liable for the compensation for the damage as if I had perpetrated the whole of the damage. How is that? If one had dug a Pit nine handbreadths deep and another came along and completed it to a depth of ten handbreadths, the latter person is liable.' Now this ruling is not in accordance with Rabbi; for it was taught:[17] If one had dug a pit nine handbreadths deep and another came along and completed it to a depth of ten handbreadths, the latter person is liable. Rabbi says: The latter person is liable in cases of death,[18] but both of them in cases of injury![19] — R. Papa said: The Mishnaic ruling[20] deals with cases of death and is unanimous.[21] Some read: May we say that the Mishnah is not in accordance with Rabba? — R. Papa thereupon said: It deals with cases of death and is unanimous.

R. Zera demurred: Are there no other instances?[22] Behold there is [the case] where an ox was handed over to the care of five persons and one of them was careless, so that the ox did damage; that one is liable! — But in what circumstances? If without the care of that one, the ox could not be controlled, is it not obvious that it is that one who perpetrated the whole of the damage?[23] If, [on the other hand] even without the care of that one, the ox could be controlled, what, if anything at all, has that one perpetrated?

R. Shesheth, however, demurred: Behold there is [the case] where a man adds a bundle [of dry twigs to an existing fire]! — But in what circumstances?

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(1) V. p. 37, n. 6.

(2) Cf. supra p. 36.

(3) Lit., 'utensils'.

(4) Cf. supra pp. 17 and 18.

(5) V. supra p. 18 and infra 53b.

(6) Metal or earthenware.
(7) Such as the distinction between Ox and Pit with reference to inanimate objects
(8) As a Tanna would not, in enumeration, just stop short at one point.
(9) For damage to which, according to the Rabbis, there is no liability in the case of Fire; cf. supra p. 18 and infra 61b.
(10) V. p. 38, n. 6.
(11) V. supra p. 18.
(12) On account of a blemish, cf, Lev. XXII, 20 and Deut. XV, 21-22; such animals have to be redeemed, in accordance with Lev. XXVII, 11-13 and 27.
(13) Cf. infra 53b.
(14) I.e., with reference to inanimate objects.
(15) Which is impossible in the case of Pit.
(16) And therefore, if the Baraitha were in accordance with R. Judah, the question, 'What else did it omit etc.', would remain unanswered.
(17) Cf. Tosaf, B.K. VI, 3 and infra 51a.
(18) As without the additional handbreadth done by him the pit would have been nine handbreadths deep which could not occasion any fatal accident; cf, supra p. 7.
(19) For even a pit nine handbreadths deep could occasion injuries.
(20) Which declares the latter person 'who perpetrated part of the damage' liable.
(21) I.e., is even in accordance with Rabbi.
(22) To illustrate the perpetration of a part of the damage involving liability for the whole of the damage.
(23) And not a part of it.

Talmud - Mas. Baba Kama 10b

If without his co-operation the fire would not have spread, is it not obvious [that he is totally to blame]? If [on the other hand] even without his co-operation the fire would have spread, what, if anything at all, has he perpetrated?

R. Papa demurred: Behold there is that case which is taught: 'Five persons were sitting upon one bench and did not break it; when, however, there came along one person more and sat upon it, it broke down; the latter is liable' — supposing him, added R. Papa, to have been as stout as Papa b. Abba.[1] But under what circumstances? If without him the bench would not have broken, is it not obvious [that he is totally to blame]? If, on the other hand, without him it would also have broken, what, if anything at all, has he perpetrated? Be this as it may, how can the Baraitha be justified? — It could hold good when, without the newcomer, the bench would have broken after two hours, whereas now it broke in one hour. They[2] therefore can say to him: 'If not for you we would have remained sitting a little while longer and would then have got up.'[3] But why should he not say to them: 'Had you not been [sitting] there, through me the bench would not have broken'?[4] — No; it holds good when he [did not sit at all on the bench but] merely leaned upon them and the bench broke down. Is it not obvious [that he is liable]? — You might have argued '[Damage done by] a man's force is not comparable with [that done directly by] his body.'It is therefore made known to us that [a man is responsible for] his force [just as he] is [for] his body, for whenever his body breaks [anything] his force also participates in the damage.[5]

Are there no other instances? Behold there is that which is taught:[5] When ten persons beat a man with ten sticks, whether simultaneously or successively, so that he died, none of them is guilty of murder. R. Judah b. Bathyra says: If [they hit] successively, the last is liable, for he was the immediate cause of the death![6] — Cases of murder are not dealt with here.[7] You may also say that controversial cases are not dealt with.[7] Are they not? Did not we suggest that the Mishnah is not in accordance with Rabbi?[8] — That the Mishnah is not in accordance with Rabbi but in accordance with the Rabbis, we may suggest;[9] whereas that it is in accordance with R. Judah b. Bathyra, and not in accordance with the Rabbis, we are not inclined to suggest.[9]

I AM LIABLE TO COMPENSATE FOR THE DAMAGE. ‘I become liable for the replacement of the damage’ is not stated but ‘. . . TO COMPENSATE FOR THE DAMAGE’. We have thus learnt here that which the Rabbis taught elsewhere:[10] ‘“To compensate for damage" imports that the owners [plaintiffs] have to retain the carcass as part payment’. What is the authority for this ruling? — R. Ammi said: Scripture states, He that killeth a beast yeshallemennah [shall make it good];[11] do not read yeshallemennah [‘he shall pay for it’], but yashlimennah[12] [‘He shall complete its deficiency’]. R.Kahana infers it from the following: If it be torn in pieces, let him bring compensation up to [‘ad][13] the value of the carcass,’ he shall not make good that which was torn.[14] ‘Up to’ the value of the carcass[15] he must pay, but for the carcass itself he has not to pay. Hezekiah infers it from the following: And the dead shall be his own,[16] which refers to the plaintiff. It has similarly been taught in the school of Hezekiah: And the dead shall be his own,[16] refers to the plaintiff. You say ‘the plaintiff’. Why not the defendant? You may safely assert: ‘This is not the case.’ Why is this not the case? — Abaye said: If you assume that the carcass must remain with the defendant, why did not the Divine law, stating He shall surely pay ox for ox,[17] stop at that? Why write at all And the dead shall be his own?[18] This shows that it refers to the plaintiff.

And all the quotations serve each its specific purpose. For if the Divine Law had laid down [this ruling only in] the verse ‘He that killeth a beast shall make it good,’ the reason of the ruling would have been assigned to the infrequency of the occurrence,[19] whereas in the case of an animal torn in pieces [by wild beasts]’[20] which is [comparatively] of frequent occurrence, the opposite view might have been held;[21] hence special reference is essential.[20] If [on the other hand] this ruling had been made known to us only in the case of an animal torn in pieces.[22] it would have been explained by the fact that the damage there was done by an indirect agency,[23] whereas in the case of a man killing a beast, where the damage was done by a direct agency, the opposite view might have been held. Again, were this ruling intimated in both cases, it would have been explained in the one case on account of its infrequency,[24] and in the other account of the indirect agency,[25] whereas in the damage to which ‘And the dead shall be his own’[26] refers, which is both frequent and direct,[27] an opposite view might have been taken. If [on the other hand] this ruling had been intimated only in the case referred to by ‘And the dead shall be his own, it would have been explained by the fact of the damage having been done only by man's possession,[28] whereas in cases where the damage resulted from man's person[29] an opposite view might have been taken. Hence all quotations are essential.

R.Kahana said to Rab: The reason [for the ruling] is that the Divine Law says ‘And the dead shall be his own’, and but for this I might have thought that the carcass shall remain with the defendant [yet how can this be]? If, when there are with him[30] several carcasses he is entitled to pay him[31] with them, for the Master stated: He shall return,[32] includes payment in kind, even with bran,[33] what question then about the carcass of his own animal? — No, the verse is required only for the law regarding the decrease of the value of the carcass[34]

May we say that the decrease of the value of the carcass is a point at issue between Tannaitic authorities? For it has been taught: If it be torn in pieces, let him bring it for witness:[35]

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(1) Who was very corpulent, cf. B.M. 84a. [According to Zacuto's Sefer ha-Yuhasin, the reference there is not to R. Papa but to Papa b. Abba]

(2) I.e., the five persons that had previously been sitting upon the bench.

(3) Therefore he is to he regarded as having perpetrated the whole, and not merely a part, of the damage.

(4) And why should he alone be liable?

(5) V. infra pp. 79-80.

(6) Sanh. 78a and infra p. 139. [Why then was this ruling of R. Judah not taken as a further illustration of the Mishnaic principle?]

(7) In the Mishnah before us (which presents the law of civil action and not that of murder).
(8) Cf. supra p. 39.
(9) As it is the view of the majority that prevails; Ex. XXIII, 2.
(10) Tosef. B.K. I. 1.
(11) ישלמנה Lev. XXIV, 18.
(12) Changing the vowels of the Hebrew verb; ישלמנה into ישלימנה
(13) Similarly by changing the vowel; the monosyllable עד (witness) is read עד 'up to'.
(14) Ex. XXII, 12.
(15) I.e., the amount required to make up the deficiency.
(16) Ex. XXI, 36.
(17) Ex. XXI, 36.
(18) Ibid; since it is self-evident that the defendant, having paid for the ox, claims the carcass.
(19) For a man to kill a beast with intent to cause damage to his neighbour.
(20) Ex. XXII, 12.
(21) In the interest of the plaintiff.
(22) V. p. 42, n. 11.
(23) I.e., not by the bailee himself but by a wild beast.
(24) I.e., man killing an animal.
(25) I.e., when the animal in charge was torn by beasts.
(26) I.e.,in the case of a goring ox, Ex. XXI, 36.
(27) The ox being his property, makes the owner responsible for the damage as if it were perpetrated by himself,
(28) I.e., by his cattle.
(29) Such as in Lev. XXIV, 18 and Ex. XXII, 12.
(30) I.e.,with the defendant.
(31) I.e., the plaintiff.
(32) EX.XXI, 34.
(33) Cf. supra p. 24.
(34) That is to he sustained by the plaintiff, since it becomes his from the moment of the goring.
(35) Ex.XXII, 12.

Talmud - Mas. Baba Kama 11a

Let him[1] bring witnesses that it had been torn by sheer accident and free himself. Abba Saul says: Let him[2] [in all cases] bring the torn animal[3] to the Court. Now is not the following the point at issue: The latter maintains that a decrease in value of the carcass will be sustained by the plaintiff,[4] whereas the former view takes it to be sustained by the defendant? — No, it is unanimously held that the decrease will be sustained by the plaintiff. Here, however, the trouble of [providing[5] for bringing up] the carcass [from the pit] is the point at issue,[6] as [indeed] taught: Others say, Whence [could it be derived] that it is upon the owner of the pit to bring up the [damaged] ox from his pit? We derive it from the text, 'Money shall he return unto to the owner. And the dead beast'. . .[7] Abaye said to Raba: What does this trouble about the carcass mean? If the value of the carcass in the pit is one zuz,[8] whereas on the banks[9] its value will be four [zuz], is he not taking the trouble [of bringing up the carcass] solely in his own interests? — He [Raba], however, said: No, it applies when in the pit its value is one zuz, and on the banks its value is similarly one zuz. But is such a thing possible? Yes, as the popular adage has it, 'A beam in town costs a zuz and a beam in a field costs a zuz'.

Samuel said: No assessment is made in theft and robbery[10] but in cases of damage;[11] I, however, maintain that the same applies to borrowing,[12] and Abba[13] agrees with me. It was therefore asked: Did he mean to say that 'to borrowing the law of assessment does apply and Abba agrees with me,' Or did he perhaps mean to say that 'to borrowing the law of assessment does not apply and Abba agrees with me'? — Come and hear: A certain person borrowed an axe from his neighbour and broke it. He came before Rab, who said to him, 'Go and pay [the lender] for his sound axe.'[14] Now,

can you not prove hence[15] that [the law of] assessment does not apply [to borrowing]?[16] — On the contrary, for since R. Kahana and R. Assi [interposed and] said to Rab, 'Is this really the law?' and no reply followed, we can conclude that assessment is made. It has been stated: 'Ulla said on behalf of R. Eleazar: Assessment is [also] made in case of theft and robbery; but R. Papi said that no assessment is made [in these cases]. The law is: No assessment is made in theft and robbery, but assessment is made in cases of borrowing, in accordance with R. Kahana and R. Assi.

'Ulla further said on behalf of R. Eleazar: When a placenta comes out [from a woman] partly on one day and partly on the next day, the counting of the days of impurity[17] commences with the first day [of the emergence]. Raba, however, said to him: What is in your mind? To take the stricter course? Is not this a strictness that will lead to lenience, since you will have to declare her pure[18] by reckoning from the first day? Raba therefore said: 'Out of mere apprehension, notice is taken of the first day [to be considered impure], but actual counting commences only with the second day.' What is the new point made known to us? That even a part of an [emerging] placenta contains a fetus. But have we not learnt this elsewhere:[19] 'A placenta coming partly out of an animal[20] renders [the whole of] it unfit for consumption,[21] as that, which is a sign of a fetus in humankind is similarly a sign of a fetus in an animal'? — As to this Mishnaic statement I might still have argued

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(1) I.e.,the paid bailee who is defending himself against the depositor.

(2) V. p 43 n. 15.

(3) [עד :עדודה being an unaugmented passive participle from the root דדע, v. Halpern, B. ZAW, XXX, p. 57.]

(4) I.e., when the deposited animal has been torn not by accident, in which case the paid bailee has to indemnify. The torn animal is thus brought at once to the Court to ascertain its value at the time of the mishap.

(5) I.e , the expenses involved.

(6) Abba Saul maintains that the defendant has to do it, whereas the other view releases him from this.

(7) Ex. XXI, 34; the subject of the last clause is thus joined to the former sentence as a second object.

(8) A coin; V. Glos.

(9) Of the pit.

(10) In which case payment must b e made in full for the original value of the damaged article.

(11) Where the carcass may he returned to the plaintiff.

(12) Treated in Ex. XXII, 13.

(13) [I.e., Rab whose full name was Abba].

(14) B.M. 96b.

(15) When the value of the broken axe vas not taken into account, but full payment for the axe in its original condition was ordered.

(16) Since Rab ordered the borrower to pay in full for the original value of the axe.

(17) Which are seven for a male child and fourteen for a girl; cf. Lev. XII. 2 and 5.

(18) I.e., after the expiration of the 7 or 14 days for a male or female child respectively, when there commence 33 or 66 days of purity for a boy or girl respectively; cf. Lev. ibid. 4-5.

(19) Hul. 68a.

(20) Before the animal was slaughtered.

(21) As it is considered to contain a fetus which when born is subject to the law of slaughtering on its own accord.

that it is quite possible for a part of a placenta to emerge without a fetus, but that owing to a [Rabbinic] decree a part of a placenta is in practice treated like the whole of it;[1] it is therefore made known to us[2] that this is not the case.

'Ulla further said on behalf of R. Eleazar: A first-born son who has been killed within thirty days [of his birth] need not be redeemed.[3] The same has been taught by Rami b. Hama: From the verse, Shalt thou surely redeem[4] one might infer that this would apply even when the firstborn was killed

within thirty days [of his birth]; there is therefore inserted the term 'but'[5] to exclude it.

'Ulla further said on behalf of R. Eleazar: [Title to] large cattle is acquired by 'pulling'.[6] But did we not learn, . . . by 'delivery'?[7] — He[8] follows another Tanna; for it has been taught:[9] The Rabbis say: Both one and the other[10] [are acquired] by 'pulling'. R. Simeon says: Both one and the other by 'lifting up'.

'Ulla further said on behalf of R. Eleazar: In the case of heirs[11] who are about to divide the estate among themselves, whatever is worn by them will [also] be assessed [and taken into account], but that which is worn by their sons and daughters is not assessed [and not taken into account].[12] R. Papa said: There are circumstances when even that which is worn by the heirs themselves is not assessed. This exception applies to the eldest of the heirs,[13] as it is in the interest of them all that his words should be respected.

'Ulla further said on behalf of R. Eleazar: One bailee handing over his charge to another bailee does not incur thereby any liability.[14] This ruling unquestionably applies to an unpaid bailee handing over his charge to a paid bailee in which case there is a definite improvement in the care; but even when a paid bailee hands over his charge to an unpaid bailee where there is definitely a decrease in the care, still he thereby incurs no liability, since he transfers his charge to a responsible person.

Raba, however, said: One bailee handing over his charge to another bailee becomes liable for all consequences. This ruling unquestionably holds good in the case of a paid bailee handing over his charge to an unpaid bailee where there is a definite decrease in the care; but even when an unpaid bailee hands over his charge to a paid bailee, where there is definitely an improvement in the care, still he becomes liable for all consequences, as the depositor may say [to the original bailee]: You would be trusted by me [should occasion demand] an oath [from you], but your substitute would not be trusted by me in the oath [which he may be required to take].[15]

'Ulla further said on behalf of R. Eleazar: The law is that distraint may be made on slaves.[16] Said R. Nahman to 'Ulla: Did R. Eleazar apply this statement even in the case of heirs[17] [of the debtor]? — No, Only to the debtor himself. To the debtor himself? Could not a debt be collected even from the cloak upon his shoulder?[18] — We are dealing here with a case where a slave was mortgaged,[19] as in the case stated by Raba, for Raba said:[20] Where a debtor mortgaged his slave and then sold him [to another person], the creditor may distrain on him [in the hands of the purchaser]. But where an ox was mortgaged and afterwards sold, the creditor cannot distrain on it [in the hands of the purchaser], the reason [for the distinction] being that in the former case the transaction of the mortgage aroused public interest[21] whereas in the latter case no public interest was aroused.[22]

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(1) On account of mere apprehension, lest no distinction will he made between the emergence of the whole of the placenta and a part of it.

(2) In the statement of 'Ulla on behalf of R. Eleazar,

(3) Notwithstanding Num. XVIII, 15-16.

(4) Ibid. 15.

(5) Hebrew 'Ak אך being a particle of limitation.

(6) I.e., by the buyer; v, Glos. s.v. Meshikah.

(7) l.e., by the seller handing over the bit to the buyer; Kid. 25b.

(8) I.e., 'Ulla on behalf of R. Eleazar.

(9) Cf. Kid. 25b and B.B. 86b.

(10) I.e. Large and small cattle.

(11) Lit., 'brothers'.

(12) As it would be a degradation to them to be forced to appear before the court.

(13) In charge of the administration of the affairs of the heirs.

(14) Cf.B.M. 36a.
(15) The original bailee has thus committed a breach of the trust.
(16) Cf. B.B. 128a.
(17) Who inherited the slaves; v. supra p. 31.
(18) Why then speak about slaves?
(19) By the debtor who had meanwhile died.
(20) Infra 33b and B.B. 44b.
(21) So that the purchaser was no doubt aware of it and should consequently not have bought it.
(22) So that the purchaser is not to blame.

Talmud - Mas. Baba Kama 12a

After R. Nahman went out 'Ulla said to the audience: 'The statement made by R. Eleazar refers even to the case of heirs.' R. Nahman said: 'Ulla escaped my criticism'. A case of this kind arose in Nehardea and the judges of Nehardea[1] distrained [on slaves in the hands of heirs]. A further case took place in Pumbeditha and R. Hana b. Bizna distrained [on slaves in the hands of heirs]. But R. Nahman said to them: 'Go and withdraw [your judgments], otherwise I will distrain on your own homes [to reimburse the aggrieved heirs].'[2] Raba, however, said to R. Nahman: 'There is 'Ulla, there is R. Eleazar, there are the judges of Nehardea and there is R. Hana b. Bizna [who are all joining issue with you]; what authorities is the Master following?' — He said to him:[3] 'I know of a Baraitha, for Abimi learned: "A prosbul[4] is effective only when there is realty[5] [belonging to the debtor] but not when he possesses slaves[6] only. Personalty is transferred along with realty[7] but not along with slaves."'[6]

May we not say that this problem is a point at issue between the following Tannaim? [For it was taught:] 'Where slaves and lands are sold, if possession is taken of the slaves no title is thereby acquired to the land, and similarly by taking possession of the lands no title is acquired to the slaves. In the case of lands and chattels, if possession is taken of the lands title is also acquired to the chattels,[7] but by taking possession of the chattels no title is acquired to the lands. In the case of slaves and chattels, if possession is taken of the slaves no title is thereby acquired to the chattels,[8] and similarly by taking possession of the chattels no title is acquired to the slaves. But [elsewhere] it has been taught: 'If possession is taken of the slaves the title is thereby acquired to the chattels.'[9] Now, is not this problem the point at issue: the latter Baraitha[9] maintains that slaves are considered realty [in the eye of the law], whereas the former Baraitha[10] is of the opinion that slaves are considered personalty? — R. Ika the son of R. Ammi, however, said: [Generally speaking] all [authorities] agree that slaves are considered realty. The [latter] Baraitha stating that the transfer [of the chattels] is effective, is certainly in agreement; the [former] Baraitha stating that the transfer [of the chattels] is ineffective, may maintain that the realty we require is such as shall resemble the fortified cities of Judah in being immovable. For we have learnt: 'Property which is not realty may be acquired incidentally with property which is realty[11] through the medium of either [purchase] money, bill of sale or taking possession.' [And it has been asked:][12] What is the authority for this ruling? And Hezekiah thereupon said: Scripture states, And their father gave them great gifts of silver and of gold and of precious things with fortified cities in Judah.[13] [Alternatively] there are some who report: R. Ika the son of R. Ammi said: [Generally speaking] all [authorities] agree that slaves are considered personalty. The [former] Baraitha stating that the transfer [of the chattels] is ineffective is certainly in agreement; the [latter] Baraitha stating that the transfer of the chattels is effective deals with the case when the chattels [sold] were worn by the slave.[14] But even if they were worn by him, what does it matter? He is but property[15] in motion, and property in motion cannot be the means of conveying anything it carries. Moreover, even if you argue that the slave was then stationary, did not Raba say that whatsoever cannot be the means of conveying while in motion cannot be the means of conveying even while in the state of standing or sitting?[16] — This law applies to the case where the slave was put in stocks. But behold has it not been taught: 'If

possession is taken of the land, title is thereby acquired also to the slaves'?[17] — There the slaves were gathered on the land.[18] This implies that the Baraitha which stated that the transfer of the slaves is ineffective,[19] deals with a case where the slaves were not gathered on the land. That is all very well according to the version that R. Ika the son of R. Ammi said that slaves are considered personalty; there is thus the stipulation that if they were gathered on the land, the transfer is effective, otherwise ineffective. But according to the version which reads that slaves are considered realty, why the stipulation that the slaves be gathered on the land?

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(1) Generally referring to R. Adda b. Minyomi; Sanh. 17b.

(2) As he considered them to have acted against established law, and so ultra vires; cf infra pp. 584ff. and Sanh. 33a.

(3) I.e., R. Nahman to Raba.

(4) ** i.e., an official declaration made in court by a lender to the effect that the law of limitation by the Sabbatical year shall not apply to the loans contracted by him; cf. Sheb. X. 4 and Git. 36a. V. Glos.

(5) As realty even when sold by the debtor could be distrained on in the hands of the purchasers; cf. Git. 37a.

(6) As these are considered personalty. They cannot therefore be distrained on in the hands of heirs.

(7) I.e., the acquisition of land confers title to chattels bought at the same time. Kid. 26a; v. infra, p. 49.

(8) Slaves seem thus to be not realty.

(9) In this Baraitha slaves are treated like realty.

(10) Stating that by taking possession of slaves no title is acquired to chattels.

(11) Lit, 'property which affords no surety may be acquired along with property which does afford surety' (to creditors in case of non-payment of debts); Kid 26a.

(12) Kid. 26a.

(13) II Chron. XXI,3: with עִם is taken in the sense by means of.

(14) They are therefore part and parcel of the slave.

(15) Lit., a courtyard.

(16) Git. 21a, 68a; B.M. 9b.

(17) Apparently on account of the fact that these are treated like personalty.

(18) In which case even if they are not personalty their transfer has to he valid.

(19) When only incidental to the transfer of land.

Talmud - Mas. Baba Kama 12b

Did not Samuel say that if ten fields in ten different countries are sold, as soon as possession is taken of one of them, the transfer of all of them becomes effective?[1] — But even if your reasoning be followed [that it is in accordance with the version reading that slaves are considered personalty], why again the stipulation that the slaves be gathered on the land? Has it not been established that the personalty' need not be gathered on the land? You can therefore only say that there is a distinction in law between movable personalty[2] and immovable personalty. Likewise here also [we say] there is a distinction in law between movable realty[3] and immovable realty: slaves [if realty] are movable realty whereas there [in the case of the ten fields] land is but one block.

THE [DAMAGED] PROPERTY MUST BE OF A KIND TO WHICH THE LAW OF SACRILEGE HAS NO APPLICATION etc. So long as [the penalty of] Sacrilege does not apply. Who is the Tanna [of this view]? — R. Johanan said: This is so in the case of minor sacrifices according to R. Jose the Galilean, who considers them to be private property; for it has been taught: If a soul sin and commit a trespass against the Lord and lie unto his neighbour.[4] . . this indicates also minor sacrifices,[5] as these are considered private property;[6] so R. Jose the Galilean. But, behold, we have learnt: If one betroths [a woman] by means of the priestly portion, whether of major sacrifices or of minor sacrifices, the betrothal is not valid.[7] Are we to say that this Mishnah is not in accordance with R. Jose the Galilean?[8] — You may even reconcile it with R. Jose the Galilean; for R. Jose the Galilean confines his remark to sacrifices that are still alive, whereas, in the case of sacrifices that have already been slaughtered, even R. Jose the Galilean agrees that those who are

entitled to partake of the flesh acquire this right as guests at the divine table.[9] But so long as the sacrifice is still alive, does he really maintain that it is private property? Behold, we have learnt: A firstling, if unblemished, may be sold only while alive; but if blemished [it may be sold] both while alive and when slaughtered. It may similarly be used for the betrothal of a woman.[10] And R. Nahman said on behalf of Rabbah b. Abbuha:[11] This is so only in the case of a firstling at the present time,[12] in which, on account of the fact that it is not destined to be sacrificed, the priests possess a proprietary right; but at the time when the Temple still existed, when it would have been destined to be sacrificed, the law would not have been so.[13] And Raba asked R. Nahman: [Was it not taught:] If a soul sin and commit a trespass against the Lord and lie unto his neighbour. . .;[14] this indicates also minor sacrifices, as these are considered private property;[15] this is the view of R. Jose the Galilean? And Rabina replied that the latter case[16] deals with firstlings from outside [Palestine] and is in accordance with R. Simeon, who maintains that if they were brought [to Palestine] in an unblemished condition, they will be sacrificed.[17] Now this is so only if they were brought [to Palestine, which implies that] there is no necessity to bring them there in the first instance for that specific purpose.[18] Now, if it is the fact that R. Jose the Galilean considers them private property while alive,

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(1) Kid. 27a.

(2) That is to he acquired along with realty; v. Kid. 27a.

(3) Which needs to be gathered on the land.

(4) Lev. V, 21.

(5) E.g., peace offerings, as these belong partly to the Lord and partly to the neighbour; some parts thereof are burnt on the altar but the flesh is consumed by the original owners.

(6) Pes. 90a.

(7) Kid. 52b.

(8) For according to him the flesh is private property and alienable,

(9) I.e., as merely invited without having in them any proprietary rights.

(10) M.Sh. I, 2.

(11) Tem. 7b.

(12) When no sacrifices are offered.

(13) The priests would not have had in it a proprietary right nor have been able to use it for the betrothal of a woman.

(14) Lev, V, 21.

(15) Even in Temple times, since the text requires the offender to bring a trespass offering.

(16) Where they are considered private property.

(17) Tem. III. 5.

(18) And since they need not be brought and sacrificed they are considered the private property of the priests as stated by R. Jose the Galilean.

Talmud - Mas. Baba Kama 13a

why [did Rabina] not reply that the one[1] is in accordance with R. Jose the Galilean,and the other[2] in accordance with the Rabbis?[3] — It was said in answer: How can you refer to priestly gifts? Priestly gifts are altogether different[4] as those who are entitled to them enjoy that privilege as guests at the divine table.[5]

[To refer to] the main text : If a soul sin and commit a trespass against the Lord and lie unto his neighbour:[6] this indicates also minor sacrifices; this is the view of R. Jose the Galilean. Ben ‘Azzai says that it indicates [also] peace-offerings. Abba Jose b. Dostai said that Ben ‘Azzai meant to include only the firstling.

The Master said:[6] ‘Ben Azzai says that it indicates [also] peace-offerings.’ What does he mean to exclude? It can hardly be the firstling, for if in the case of peace-offerings which are subject to the

laws of leaning,[7] libations[8] and the waving of the breast and shoulder,[9] you maintain that they are private property, what question could there be about the firstling?[10] — R. Johanan therefore said: He meant to exclude the tithe,[11] as taught: In the case of the firstling, it is stated, Thou shalt not redeem;[12] it may, however, if unblemished be sold while alive, and if blemished [it may be sold] alive or slaughtered; in the case of the tithe it is stated, It shall not be redeemed,[13] and it can be sold neither alive nor slaughtered neither when unblemished nor when blemished.[14] Rabina connected all the above discussion with the concluding clause: 'Abba Jose b. Dostai said that Ben 'Azzai meant to include only the firstling.' What does he mean to exclude? It can hardly be peace-offerings, for if the firstling which is holy from the very moment it opens the matrix,[15] is private property, what question could there be about peace-offerings?[16] — R. Johanan therefore said: He meant to exclude the tithe, as taught:[17] In regard to the firstling it is stated, Thou shalt not redeem;[18] it may, however, if unblemished be sold while alive and if blemished [it may be sold] alive or slaughtered; in regard to the tithe it is stated, It shall not be redeemed,[19] and it can be sold neither while alive nor when slaughtered, neither when unblemished nor blemished. But does he not say, 'The firstling alone'?[20] This is a difficulty indeed!

Raba [on the other hand] said: What is meant by 'THE [DAMAGED] PROPERTY MUST BE OF A KIND TO WHICH THE LAW OF SACRILEGE HAS NO APPlication' is that the property is not of a class to which the law of sacrilege may have any reference[21] but is such as is owned privately . But why does not the text say. 'Private property'? — This is a difficulty indeed!

R.Abba said: In the case of peace-offerings that did damage,[22] payment will be made[23] out of their flesh but no payment could be made out of their emurim.[24] Is it not obvious that the emurim will go up [and be burnt] on the altar? — No; we require to be told that no payment will be made out of the flesh for the proportion due from the emurim. But according to whose authority is this ruling made? If according to the Rabbis,[25] is this not obvious? Do they not maintain that when payment cannot be recovered from one party, it is not requisite to make it up from the other party? If according to R. Nathan,[26] [it is certainly otherwise] for did he not say that when no payment can be made from one party, it has to be made up from the other party? — If you wish, you may say: The ruling was made in accordance with R. Nathan; or, if you wish, you may say that it was made in accordance with the Rabbis. You may say that it was made in accordance with the Rabbis,for their ruling is confined to a case where the damage was done by two separate agencies,[27] whereas, in the case of one agency,[28] the plaintiff may be justified in demanding payment from whatever source he finds it convenient. Alternatively you may say that the ruling was made in accordance with R. Nathan, for it is only there [in the case of an ox pushing another's ox in a pit] that the owner of the damaged ox is entitled to say to the owner of the pit, 'I have found my ox in your pit; whatever is not paid to me by your co-defendant must be made up by you;'

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(1) Maintaining that a firstling is the private property of the priest.

(2) I.e., the statement of R. Nahman that a firstling is not the private property of the priest.

(3) The opponents of R. Jose the Galilean.

(4) Even R. Jose regards them in no case as the property of the priest; all the Rabbis including R. Jose are thus unanimous on this matter. Hence Rabina was unable to explain the one Baraitha in accordance with R. Jose and the other in accordance with the Rabbis.

(5) Even while the firstling is still alive.

(6) Lev. V, 21.

(7) Ibid. III, 2.

(8) Num. XV, 8-II.

(9) Lev. VII, 30-34.

(10) The sacredness of which is of a lower degree and is not subject to all these rites. Consequently it should thus certainly be considered private property. It, of course, deals with a firstling outside Palestine which is not destined to he sacrificed.

(11) Of cattle dealt with in Lev. XXVII, 32-33.
(12) Num. XVIII, 17, the text is taken not to include alienation, in which case the sanctity of the firstling is not affected.
(13) Lev XXVII, 33; in this case, on account of Gezerah Shawah. i.e. a similarity of phrases between ibid. and verse 28, the right of alienation is included; cf, Bek. 32a.
(14) Tem. 8a. Because it is not private property.
(15) Ex. XIII, 12.
(16) That they should certainly be private property.
(17) Tem. 8a.
(18) Num. XVIII, 17.
(19) Lev. XXVII, 33.
(20) Excluding thus everything else, even peace-offerings.
(21) I.e. is not holy at all.
(22) While still Tam, when the payment must be made out of the body of the doer of the damage, v. infra p. 73.
(23) According to R. Jose the Galilean who maintains, supra p. 50, that minor sacrifices are considered private property.
(24) The part which has to he burnt on the altar; cf. Lev. III, 3-4.
(25) Infra 53a. where in the case of an ox pushing somebody else's animal into a pit, the owner of the pit pays nothing, though the owner of the ox does not pay full damages.
(26) Who makes the owner of the pit also pay.
(27) I.e., the ox and the pit, v. p. 53. n. 12.
(28) Such as in the case of peace-offerings dealt with by R. Abba.

Talmud - Mas. Baba Kama 13b

but in the case in hand, could the plaintiff say, 'The flesh did the damage and the emurim did no damage'?[1]

Raba said: In the case of a thanksgiving-offering that did damage,[2] payment will be made[3] out of the flesh but no payment could be made out of its bread.[4] 'Bread'! Is this not obvious?[5] — He wanted to lead up to the concluding clause: The plaintiff partakes of the flesh,[6] while he, for whose atonement the offering is dedicated,[7] has to bring the bread. Is not this also obvious? — You might have thought that since the bread is but an accessory to the sacrifice,[4] the defendant may be entitled to say to the plaintiff. 'If you will partake of the flesh, why should I bring the bread?' It is therefore made known to us [that this is not the case, but] that the bread is an obligation upon the original owner of the sacrifice.

THE [DAMAGED] PROPERTY SHOULD BELONG TO PERSONS WHO ARE UNDER [THE JURISDICTION OF] THE LAW. What [person] is thereby meant to be excepted? If a heathen,[8] is not this explicitly stated further on: 'An ox of an Israelite that gored an ox of a heathen is not subject to the general law of liability for damage'?[9] — That which has first been taught by implication is subsequently explained explicitly.

THE PROPERTY SHOULD BE OWNED. What is thereby excepted? — Rab Judah said: It excepts the case [of alternative defendants] when the one pleads. 'It was your ox that did the damage,' and the other pleads. 'It was your ox that did the damage.' But is not this explicitly stated further on: If two oxen pursue another ox, and one of the defendants pleads. 'It was your ox that did the damage,' and the other defendant pleads, 'It was your ox that did the damage,' no liability could be attached to either of them?[10] — What is first taught by implication is subsequently explained explicitly. In a Baraitha it has been taught: The exception refers to ownerless property.[11] But in what circumstances? It can hardly be where an owned ox gored an ownerless ox, for who is there to institute an action? If on the other hand an ownerless ox gored an owned ox, why not go and take possession of the ownerless doer of the damage? — Somebody else has meanwhile stepped in and already acquired title to it.[12] Rabina said: It excepts an ox which gored and subsequently became

consecrated or an ox which gored and afterwards became ownerless.[12] It has also been taught thus: Moreover said R. Judah:[13] Even if after having gored, the ox was consecrated by the owner, or after having gored it was declared by him ownerless, he is exempt, as it is said, And it hath been testified to his owner and he hath not kept it in, but it hath killed a man or a woman; the ox shall be stoned.[14] That is so only where conditions are the same at the time of both the manslaughter and the appearance before the Court.[15] Does not the final verdict also need to comply with this same condition? Surely the very verse, The ox shall be stoned, circumscribes also the final verdict! — Read therefore: That is so only when conditions are the same at the time of the manslaughter and the appearance before the Court and the final verdict.[15]

WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT: Because he may argue against the plaintiff, 'What was your ox doing on my premises?' OR PREMISES OWNED [JOINTLY] BY PLAINTIFF AND DEFENDANT. R. Hisda said on behalf of Abimi: [Where damage is done] in jointly owned courts, there is liability for Tooth and Foot,[16] and the [Mishnah] text is to be read thus: WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT, where there is exemption. but in the case of PREMISES OWNED [JOINTLY] BY PLAINTIFF AND DEFENDANT, WHENEVER DAMAGE HAS OCCURRED,[17] THE OFFENDER IS LIABLE. R. Eleazar [on the other hand] said: There is no liability there for Tooth and Foot,[16] and the text is to be understood thus: WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT OR [OF] PREMISES OWNED [JOINTLY] BY PLAINTIFF AND DEFENDANT, where there is also exemption. But WHENEVER DAMAGE HAS OCCURRED [otherwise] THE OFFENDER IS LIABLE etc. introduces Horn.[18] This would be in conformity with Samuel,[19] but according to Rab, who affirmed that ox in the Mishnaic text was intended to include all kinds of damage done by ox,[20] what was meant to be introduced by the clause, THE OFFENDER IS LIABLE? — To introduce that which our Rabbis have taught: WHENEVER DAMAGE HAS OCCURRED THE OFFENDER IS LIABLE introduces liability in the case of a paid bailee and a borrower, an unpaid bailee and a hirer, where the animal in their charge did damage, Tam paying half-damages and Mu'ad paying full damages. If, however, a wall[21] broke open at night, or robbers took it by force and it went out and did damage, there is exemption.

The Master said: 'WHENEVER DAMAGE HAS OCCURRED, THE OFFENDER IS LIABLE introduces liability in the case of an unpaid bailee and a borrower, a paid bailee and a hirer'. Under what circumstances? If the ox of the lender damaged the ox of the borrower, why should not the former say to the latter: 'If my ox had damaged somebody else's, you would surely have had to compensate;[22] now that my ox has damaged your own ox, how can you claim compensation from me?' Again, if the ox of the borrower damaged the ox of the lender, why should not the latter say to the former: 'If my ox had been damaged by somebody else's, you would surely have had to compensate me for the full value of the ox,[23] now that the damage resulted from your ox, how can you offer me half damages?[24] — It must therefore still be that the ox of the lender damaged the ox of the borrower, but we deal with a case where he [the borrower] has taken upon himself responsibility for the safety of the ox

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(1) Hence the flesh need not pay for the emurim.

(2) While still Tam, in which case the payment must he made out of the body of the damage-doer, as infra p. 73.

(3) In accordance with R. Jose the Galilean that minor sacrifices are private property.

(4) I.e., accompanying the offering, cf. Lev. VII, 12-13.

(5) That the bread need not pay, since the bread did not do any damage.

(6) After the offering of the sacrifice.

(7) I.e.,(as a rule) the defendant.

(8) Who does not recognise the covenant of Law, and who does not consider himself bound to control his own cattle from doing damage to others.

(9) V. infra p. 211 and note 6.

(10) V. infra 35a. 'Owned' thus means 'known to belong to a particular defendant.'
(11) Tosef. B.K. I, 1.
(12) In which case the plaintiff will recover nothing.
(13) Infra p. 254.
(14) Ex. XXI, 29.
(15) I.e., where the ox is privately owned all through.
(16) For which there is no liability in a public thoroughfare; cf. supra p. 17.
(17) Even by Tooth and Foot.
(18) For which there is liability even in a public thoroughfare
(19) Who maintains, supra pp. 9-11, that Mab'eh in the Mishnaic text denotes Tooth, and Ox signifies Foot, whereas Horn has not been dealt with explicitly.
(20) Supra p. 10; so that Horn has already been dealt with in the first Mishnah.
(21) Of a sound structure, cf. infra 55b-56a
(22) The borrower being responsible for the damage done by the ox whilst under his charge. V. infra 44b
(23) As laid down in Ex. XXII. 13.
(24) I.e., in the case of the borrower's ox having been Tam.

Talmud - Mas. Baba Kama 14a

but not responsibility for any damage [that it may do].[1] If so, explain the concluding clause: 'If a wall broke open at night, or if robbers took it by force and it went out and did damage, there is exemption.' From this it may surely be inferred that [if this had happened] in the daytime, the borrower would have been liable. Why so, if he did not take upon himself responsibility for any damage [that it may do]? — The meaning must be as follows: [But] if he has taken upon himself responsibility for damage [that it may do], he would be liable to compensate, yet, if a wall broke open at night, or if robbers took it by force and it went out and did damage there is exemption [in such a case]. Is it really so?[2] Did not R. Joseph learn: In the case of jointly owned premises or an inn, there is liability for Tooth and for Foot? Is not this a refutation of R. Eleazar? — R. Eleazar may answer you as follows: Do you really think so? Are Baraithas not divided [in their opinions] on the matter?[3] For it was taught:[4] 'Four general rules were stated by R. Simeon b. Eleazar to apply to the laws of torts: [In the case of damage done in] premises owned by the plaintiff and not at all by the defendant, there is liability in all; if owned by the defendant and not at all by the plaintiff, there is total exemption; but if owned by the one and the other, e.g., jointly owned premises or a valley, there is exemption for Tooth and for Foot, whereas for goring, pushing, biting, falling down, and kicking, Tam pays half-damages and Mu'ad pays full damages; if not owned by the one and the other, e.g., premises not belonging to them both, there is liability for Tooth and for Foot, whereas for goring, pushing, biting, falling down, and kicking, Tam pays half-damages and Mu'ad pays full damages.' It has thus been taught here that in the case of jointly owned premises or a valley there is exemption for Tooth and Foot.[5]

Do then the two Baraithas contradict each other? — The latter Baraitha speaks of a case where the premises were set aside by the one and the other[6] for the purposes of both keeping fruits and keeping cattle in, whereas that of R. Joseph deals with premises set aside for keeping fruits in but not cattle, in which case so far as Tooth is concerned the premises are in practice the plaintiff's ground.[7] In fact the context points to the same effect. In the Baraitha here[8] the jointly owned premises are put on the same footing as an inn whereas in the Baraitha there[9] they are put on the same footing as a valley. This is indeed proved. R. Zera, however, demurred: In the case of premises which are set aside for the purpose of keeping fruits [of the one and the other].[10] how shall we comply with the requirement, and it feed in another man's field,[11] which is lacking in this case? — Abaye said to him: Since the premises are not set aside for keeping cattle in, they may well be termed 'another man's field.'[12]

R. Aha of Difti[13] said to Rabina: May we say that just as the Baraithas[14] are not divided on the

matter so also are the Amoraim[15] not divided on the subject?[16] He answered him: Indeed, it is so; if, however, you think that they are divided [in their views].[17] the objection of R. Zera and the answer of Abaye form the point at issue.[18]

[To revert] to the above text: 'Four general rules were stated by R. Simeon b. Eleazar to apply to the laws of torts: [Where damage is done in] premises owned by the plaintiff, and not at all by the defendant, there is liability in all.' It is not stated 'for all'[19] but 'in all', i.e., in the whole of the damage; is it not in accordance with R. Tarfon who maintains that the unusual damage occasioned by Horn in the plaintiff's premises will be compensated in full.[20] Read, however, the concluding clause: 'If not owned by the one and the other, e.g., premises not belonging to them both, there is liability for Tooth and for Foot.' Now, what is the meaning of 'not owned by the one and the other'? It could hardly mean 'owned neither by the one nor by the other, but by somebody else,' for have we not to comply with the requirement, and it feed in another man's field,[21] which is lacking in this case? It means therefore, of course, not owned by them both, but exclusively by the plaintiff,' and yet it is stated in the concluding clause, 'Tam pays half-damages and Mu'ad pays full damages,' which follows the view of the Rabbis who maintain that the unusual damage occasioned by Horn in the plaintiff's premises will still be compensated only by half-damages.[22] Will the commencing clause be according to R. Tarfon and the concluding clause according to the Rabbis? — Yes, even as Samuel said to Rab Judah: Shinena,[23] leave this Baraitha alone,[24] and follow my view that the commencement of the Baraitha is according to R. Tarfon and its conclusion according to the Rabbis. Rabina, however, said in the name of Raba: The whole Baraitha is according to R. Tarfon; what is meant by 'not owned by the one and the other' is that the right of keeping fruits there is owned not by both, the one and the other, but exclusively by the plaintiff, whereas the right of keeping cattle there is owned by both, the one and the other. In the case of Tooth the premises are in practice the plaintiff's ground,[25] whereas in the case of Horn they are jointly owned ground.[26] If so, how are the rules four in number?[27] Are they not only three? — R. Nahman b. Isaac replied:

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(1) In which case the lender still remains liable for any damage his ox may do.

(2) That R. Eleazar exempts Tooth and Foot doing damage in jointly owned premises.

(3) And my view is supported by one of them.

(4) Tosef. B.K. I, 6.

(5) Thus fully supporting the view of R. Eleazar and contradicting the teaching of R. Joseph's Baraitha.

(6) I.e., by both plaintiff and defendant.

(7) For the defendant had no right to allow his cattle to be there, and is therefore liable for Tooth, etc.

(8) I.e., of R. Joseph.

(9) Recording the view of R. Simeon b. Eleazar.

(10) I.e., by both plaintiff and defendant.

(11) Ex. XXII, 4; implying that the field should belong exclusively to the plaintiff.

(12) For the defendant had no right to allow his cattle to be there, and is therefore liable for Tooth, etc.

(13) [Identified with Dibtha near the famous city of Washit on the Tigris, Obermeyer, op. cit. p. 197].

(14) I.e., that of R. Joseph and that of R. Simeon b. Eleazar.

(15) R. Hisda and R. Eleazar.

(16) R. Hisda deals with a case where the keeping of cattle has not been permitted, while R. Eleazar deals with the case when the premises have been set aside for that also.

(17) When the premises have been set aside not for cattle, but for the keeping of fruit.

(18) R. Hisda is of Abaye's opinion. whereas R. Eleazar prefers R. Zera's reasoning.

(19) Which would mean for all kinds of damage.

(20) Cf. infra 24b.

(21) Ex. XXII, 4, indicating that the field has to belong to the plaintiff.

(22) Cf. infra 24b.

(23) [Lit., (i) 'sharp one', i.e, scholar with keen and sharp mind; (ii) 'long-toothed', denoting a facial characteristic; (iii) 'translator', Rab Judah being so called on account of his frequent translation of Mishnaic terms into the vernacular

Aramaic, Golomb, D. Targumno I, Introduction, XLVff.]

(24) [Give up your attempt to harmonize the two contradictory clauses.]

(25) As the right to keep fruits there is exclusively the plaintiff's.

(26) For they both may keep cattle there.

(27) Since in principle they are only three in number: (a) exclusively the plaintiff's premises. (b) exclusively the defendant's, and (c) partnership premises.

Talmud - Mas. Baba Kama 14b

The rules are three in number, but the places to which they apply may be divided into four.[1]

MISHNAH. THE VALUATION [IS MADE] IN MONEY [BUT MAY BE PAID] BY MONEY'S WORTH, IN THE PRESENCE OF THE COURT AND ON THE EVIDENCE OF WITNESSES WHO ARE FREE MEN AND PERSONS UNDER THE JURISDICTION OF THE LAW. WOMEN ARE ALSO SUBJECT TO THE LAW OF TORTS. [BOTH] THE PLAINTIFF AND DEFENDANT ARE INVOLVED IN THE PAYMENT.

GEMARA. What is the meaning of THE VALUATION IN MONEY? Rab Judah said: This valuation must be made only in specie. We thus learn here that which has been taught by our Rabbis elsewhere:[2] In the case of a cow damaging a garment while the garment also damaged the cow, it should not be said that the damage done by the cow is to be set off against the damage done to the garment and the damage done to the garment against the damage done to the cow, the respective damages have to be estimated at a money value.

BY MONEY'S WORTH. [This is explained by what] our Rabbis taught [elsewhere]:[2] 'MONEY'S WORTH' implies that the Court will not have recourse for distraint save to immovable property. Nevertheless if the plaintiff himself seized some chattels beforehand, the Court will collect payment for him out of them.

The Master stated: "'MONEY'S WORTH" implies that the Court will not have recourse for distraint save to immovable property. How is this implied? Rabbah b. 'Ulla said: The article of distress has to be worth all that is paid for it [in money].[3] What does this mean? An article which is not subject to the law of deception?[4] Are not slaves and deeds also not subject to the law of deception?[4] — Rabbah b. 'Ulla therefore said: An article, title to which is acquired by means of money.[5] Are not slaves[6] and deeds[7] similarly acquired by means of money.[6] R. Ashi therefore said: 'Money's worth' implies that which has money's worth,[8] whereas chattels are considered actual money.[9] Rab Judah b. Hinena pointed out the following contradiction to R. Huna the son of R. Joshua: It has been taught: 'MONEY'S FORTH implies that the Court will not have recourse for distraint save to immovable property; behold, was it not taught: He shall return[10] includes 'money's worth', even bran?[11] — [In the former Baraitha] we are dealing with a case of heirs.[12] If we are dealing with heirs read the concluding clause: 'If the plaintiff himself seized some chattels beforehand, the Court will collect payment for him out of them.' Now, if we are dealing with heirs, how may the Court collect payment for him out of them? — As already elsewhere[13] stated by Raba on behalf of R. Nahman, that the plaintiff seized [the chattels] while the original defendant was still alive, so here too, the seizure took place while the defendant was still alive.

IN THE PRESENCE OF THE COURT,[14] [apparently] exempts a case where the defendant sold his possessions before having been summoned to Court. May it hence be derived that in the case of one who borrowed money and sold his possessions before having been summoned to Court , the Court does not collect the debt out of the estate which has been disposed of?[15] — The text therefore excepts a Court of laymen.[16]

ON THE EVIDENCE OF WITNESSES, thus excepting a confession of [an act punishable by] a fine for which subsequently there appeared witnesses, in which case there is exemption. That would accord with the view that in the case of a confession of [an act punishable by] a fine, for which subsequently there appeared witnesses, there is exemption;[17] but according to the opposite view that in the case of a confession of [an act punishable by] a fine for which subsequently appeared witnesses, there is liability,[17] what may be said [to be the import of the text]? — The important point comes in the concluding clause:

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(1) [I.e.. partnership premises may he subdivided into two: (a) where both have the right to keep fruit, as well as cattle; (b) where the right to keep fruit is exclusively the plaintiff's.]

(2) Tosef. B.K., I.

(3) 'Money's worth' would thus mean 'property which could not be said to be worth less than the price paid for it,' and is thus never subject to the law of deception. This holds good with immovable property; cf. B.M. 56a.

(4) Cf. B.M. ibid.

(5) Kid. 26a.

(6) Cf. Kid. 23b.

(7) [Tosaf. deletes 'deeds' as these are not acquired by money but by Mesirah (v. Glos.). cf. B.B. 76a.]

(8) I.e., immovable property.

(9) As these could easily be converted into money, v. supra p. 26.

(10) Ex. XXI, 34.

(11) Supra p. 24.

(12) Who have to pay only out of the realty of the estate but not out of the personalty; cf. supra p. 31.

(13) Keth. 84b.

(14) Is taken to mean 'the payment in kind is made out of the possessions which are in the presence of the Court', i.e., not disposed of.

(15) Whereas the law is definitely otherwise as in B.B. X, 8.

(16) IN THE PRESENCE OF THE COURT does not refer to payment in kind but to the valuation which has to be made by qualified judges, v. infra 84b.

(17) Infra p. 429.

Talmud - Mas. Baba Kama 15a

FREE MEN AND PERSONS UNDER THE JURISDICTION OF THE LAW. 'FREE MAN' excludes slaves;[1] 'PERSONS UNDER THE JURISDICTION OF THE LAW'[2] excludes heathens. Moreover, it was essential to exclude each of them. For if the exemption had been stated only in reference to a slave, we would have thought it was on account of his lack of [legal] pedigree[3] whereas a heathen who possesses a [legal] pedigree[4] might perhaps have been thought not to have been excluded. Had, on the other hand, the exemption been referred only to a heathen, we should have thought it was on account of his not being subject to the commandments [of the Law], whereas a slave who is subject to the commandments[5] might have been thought not to have been excluded. It was thus essential to exclude each of them independently.

WOMEN ARE ALSO SUBJECT TO THE LAW OF TORTS. Whence is derived this ruling? — Rab Judah said on behalf of Rab, and so was it also taught at the school of R. Ishmael:[6] Scripture states, When a man or woman shall commit any sin.[7] Scripture has thus made woman and man equal regarding all the penalties of the Law. In the School of Eleazar it was taught: Now these are the ordinances which thou shalt set before them.[8] Scripture has thus made woman and man equal regarding all the judgments of the Law. The School of Hezekiah and Jose the Galilean taught: Scripture says. It hath killed a man or a woman.[9] Scripture has thus made woman and man equal regarding all the laws of manslaughter in the Torah. Moreover, [all the quotations] are necessary: Had only the first inference[10] been drawn, [I might have said that] the Divine Law exercised mercy towards her so that she should also have the advantage of atonement, whereas judgments which

concern as a rule man who is engaged in business, should not include woman. Again, were only the inference regarding judgments to have been made, we might perhaps have said that woman should also not be deprived of a livelihood, whereas the law of atonement should be confined to man, as it is he who is subject to all commandments, but should not include woman, since she is not subject to all the commandments.[11] Moreover, were even these two inferences to have been available, [we might have said that] the one is on account of atonement and the other on account of livelihood, whereas regarding manslaughter [it might have been thought that] it is only in the case of man, who is subject to all commandments, that compensation for the loss of life must be made, but this should not be the case with woman. Again, were the inference only made in the case of compensation for manslaughter, [it might have been thought to apply] only where there is loss of human life, whereas in the other two cases, where no loss of human life is involved, I might have said that man and woman are not on the same footing. The independent inferences were thus essential.

THE PLAINTIFF AND DEFENDANT ARE INVOLVED IN THE PAYMENT.

It has been stated:[12] The liability of half-damages[13] is said by R. Papa to be civil, whereas R. Huna the son of R. Joshua considers it to be penal.[14] R. Papa said that it is civil, for he maintains that average cattle cannot control themselves not to gore.[15] Strict justice should therefore demand full payment [in case of damage].[16] It was only Divine Law that exercised mercy [and released half payment] on account of the fact that the cattle have not yet become Mu'ad. R. Huna the son of R. Joshua who said that it is penal, on the other hand maintains that average cattle can control themselves not to gore.[17] Justice should really require no payment at all.[18] It was Divine Law that imposed [upon the owner] a fine [in case of damage] so that additional care should be taken of cattle. We have learnt: THE PLAINTIFF AND THE DEFENDANT ARE INVOLVED IN PAYMENT. That is all very well according to the opinion which maintains that the liability of half-damages is civil. The plaintiff [who receives only half his due] is thus indeed involved in the payment. But according to the opinion that the liability of half-damages is penal, in which case the plaintiff is given that which is really not his due, how is he involved in the payment? — This may apply to the loss caused by a decrease in the value of the carcass [which is sustained by the plaintiff].[19] 'A decrease in the value of the carcass'! Has not this ruling been laid down in a previous Mishnah : 'To compensate for the damage'[20] implying that the owners [plaintiffs] have to retain the carcass as part payment?[21] — One Mishnah gives the law in the case of Tam whereas the other deals with Mu'ad. Moreover these independent indications[22] are of importance: For were the ruling laid down only in the case of Tam, it might have been accounted for by the fact that the animal has not yet become Mu'ad, whereas in the case of Mu'ad I might have thought that the law is different; if on the other hand the ruling had been laid down only in the case of Mu'ad, it might have been explained as due to the fact that the damage is compensated in full, whereas in the case of Tam I might have thought that the law is otherwise. The independent indications were thus essential.

Come and hear: What is the difference [in law] between Tam and Mu'ad? In the case of Tam, half-damages are paid, and only out of the body [of the tort-feasant cattle], whereas in the case of Mu'ad full payment is made out of the best of the estate.[23] Now, if it is so [that the liability of half-damages is penal] why not mention also the following distinction, 'That in the case of Tam no liability is created by mere admission,[24] while in the case of Mu'ad liability is established also by mere admission'? — This Mishnah stated [some points] and omitted [others]. But what else did it omit that the omission of that particular point should be justified?[25] — It also omitted the payment of half-kofer [for manslaughter].[26] The absence of half-kofer [for manslaughter], however, is no omission, as the Mishnah may be in accordance with R. Jose the Galilean who maintains that Tam is not immune from half-liability for kofer [for manslaughter].[27]

Come and hear:

(1) From giving evidence,
(2) V. supra p. 36. n. 3.
(3) As his issue were considered the property of the owner, there being no parental relationship between him and them; cf. infra p. 508.
(4) Of free descent; cf. Yeb. 62a.
(5) Applicable to females; v. Hag. 4a.
(6) Cf. Kid. 35a.
(7) Num. V, 6. This quotation deals with certain laws of atonement.
(8) Ex. XXI. I.
(9) Ibid. XXI, 29.
(10) Dealing with atonement.
(11) Positive precepts prescribed for a definite time or certain periods do not as a rule apply to females; cf. Kid. 29a.
(12) Keth. 41a.
(13) Paid for damage done by (Horn of) Tam
(14) קנס Kenas, v. Glos.
(15) Lit. 'are not presumed to he safe'.
(16) As it was the effect of carelessness on the part of the owner.
(17) Lit., are presumed to be safe'.
(18) Since the owner could not have expected that his cattle would start goring.
(19) Who is in this way involved in the payment.
(20) Supra p. 36.
(21) Supra, p. 42.
(22) That it is the plaintiff who has to sustain any loss occasioned by a decrease in the value of the carcass.
(23) Mishnah, infra 16b.
(24) As penal liabilities are not created by admission; v. supra 5a.
(25) V. supra p. 39, n. I.
(26) [While a Mu'ad has to pay full compensation (Kofer, v. Glos.) for manslaughter. Ex XXI, 25-30, a Tam does not compensate even by half; v. infra 41b.]
(27) infra 26a.

Talmud - Mas. Baba Kama 15b

'My ox committed manslaughter on A'; or 'killed A's ox' '[in either case] a liability to compensate is established by this admission.[1] Now does this Mishnah not deal with the case of Tam?[2] — No, only with Mu'ad. But what is the law in the case of Tam? Would it really be the fact that no liability is established by admission?[3] If this be the case, why state in the concluding clause, 'My ox killed A's slave,'[4] no liability is created by this admission?[5] Why indeed not indicate the distinction in the very same case by stating: 'the rule that liability is established by mere admission is confined to Mu'ad, whereas in the case of Tam no liability is created by mere admission'?[6] — The Mishnah all through deals with Mu'ad.

Come and hear: This is the general rule: In all cases where the payment is more than the actual damage done, no liability is created by mere admission.[5] Now does this not indicate that in cases where the payment is less than the damage,[7] the liability will be established even by mere admission?[8] — No , this is so only when the payment corresponds exactly to the amount of the damages. But what is the law in a case where the payment is less than the damage? Would it really be the fact that no liability is established by admission? If this be the case, why state: 'This is the general rule: In all cases where the payment is more than the actual damage done, no liability is created by mere admission'?[9] Why not state simply: 'This is the general rule: In all cases where the payment does not correspond exactly to the amount of the damages . . ., which would [both] imply 'less' and imply 'more'?[10] This is indeed a refutation.[11] Still the law is definite that the liability of half-damages is penal. But if this opinion was refuted, how could it stand as a fixed law? — Yes!

The sole basis of the refutation is in the fact that the Mishnaic text[9] does not run '. . . where the payment does not correspond exactly to the amount of the damages'. This wording would, however, be not altogether accurate, as there is the liability of half-damages in the case of pebbles[12] which is, in accordance with a halachic tradition, held to be civil. On account of this fact the suggested text has not been adopted.

Now that you maintain the liability of half-damages to be penal. the case of a dog devouring lambs, or a cat devouring hens is an unusual occurrence,[13] and no distress will be executed in Babylon[14] — provided, however, the lambs and hens were big; for if they were small, the occurrence would be usual?[15] Should, however, the plaintiff[16] seize chattels belonging to the defendant, it would not be possible for us to dispossess him of them. So also were the plaintiff to plead 'fix me a definite time for bringing my case to be heard in the Land of Israel,' we would have to fix it for him; were the other party to refuse to obey that order, we should have to excommunicate him. But in any case, we have to excommunicate him until he abates the nuisance, in accordance with the dictum of R. Nathan. For it was taught:[17] R. Nathan says: Whence is it derived that nobody should breed a bad dog in his house, or keep an impaired ladder in his house? [We learn it] from the text, Thou bring not blood upon thine house.[18] M I S H N A H. THERE ARE FIVE CASES OF TAM AND FIVE CASES OF MU'AD. ANIMAL IS MU'AD NEITHER TO GORE, NOR TO COLLIDE, NOR TO BITE, NOR TO FALL DOWN NOR TO KICK.[19] TOOTH, HOWEVER, IS MU'AD TO CONSUME WHATEVER IS FIT FOR IT; FOOT IS MU'AD TO BREAK [THINGS] IN THE COURSE OF WALKING; OX AFTER BECOMING MU'AD; OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES; AND MAN,[20] SO ALSO THE WOLF, THE LION, THE BEAR, THE LEOPARD, THE BARDALIS [PANTHER] AND THE SNAKE ARE MU'AD. R. ELEAZAR SAYS: IF THEY HAVE BEEN TAMED, THEY ARE NOT MU'AD; THE SNAKE, HOWEVER, IS ALWAYS MU'AD.

GEMARA. Considering that it is stated TOOTH IS MU'AD TO CONSUME . . ., it must be assumed that we are dealing with a case where the damage has been done on the plaintiff's premises.[21] It is also stated[22] ANIMAL IS MU'AD NEITHER TO GORE . . . meaning that the compensation will not be in full, but only half-damages will be paid, which is in accordance with the Rabbis who say that for the unusual damage done by Horn [even] on the plaintiff's premises only half-damages will be paid.[23] Read now the concluding clause: OX AFTER HAVING BECOME MU'AD, OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES, AND MAN, which is in accordance with R. Tarfon who said that for the unusual damage done by Horn on the plaintiff's premises full compensation must be paid.[23] Is the commencing clause according to the Rabbis and the concluding clause according to R. Tarfon? — Yes, since Samuel said to Rab Judah, 'Shinena,[24] leave the Mishnah alone[25] and follow my view: the commencing clause is in accordance with the Rabbis, and the concluding clause is in accordance with R. Tarfon.' R. Eleazar in the name of Rab, however, said:

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(1) Keth. 41a.

(2) And if the liability is created by admission it proves that it is not penal but civil.

(3) On account of its being penal.

(4) And the fine of thirty shekels has to he imposed; v, Ex. XXI, 32.

(5) Keth. 41a.

(6) Because it is considered penal.

(7) Such, e.g., as in the case of Tam.

(8) This proves that the penalty is not penal but civil, and this refutes R. Huna b. R. Joshua.

(9) Keth. 41a.

(10) Not to be civil.

(11) Of the view maintaining the liability of Tam to be penal.

(12) Kicked from under an animal's feet and doing damage; cf. supra p. 8.

(13) Falling thus under the category of Horn; as supra p. 4.
(14) As penal liabilities could be dealt with only in the Land of Israel where the judges were specially ordained for the purpose; Mumhin, v. Glos. s. v. Mumhe; cf. infra. 27b, 84a-b.
(15) And would come within the category of Tooth, the payment for which is civil.
(16) Even in Babylon.
(17) Infra 46a and Keth. 41b.
(18) Deut. XXII, 8.
(19) These are the five cases of Tam, v. supra p. 3.
(20) These are the five cases of Mu'ad, v. Glos.
(21) For if otherwise there is no liability in the case of Tooth; cf. Ex. XXII, 4, and supra, 5b.
(22) In the commencing clause of the Mishnah.
(23) Cf. supra 14a; infra 24b.
(24) V. supra p. 60, n. 2.
(25) Cf. supra p. 60, n. 3.

Talmud - Mas. Baba Kama 16a

The whole Mishnah is in accordance with R. Tarfon. The commencing clause deals with premises set aside for the keeping of the plaintiff's fruits whereas both plaintiff and defendant may keep there their cattle. In respect of Tooth the premises are considered [in the eye of the law] the plaintiff's.[1] whereas in respect of Horn they are considered their common premises.[2] R. Kahana said: I repeated this statement in the presence of R. Zebid of Nehardea, and he answered me, 'How can you say that the whole Mishnah is in accordance with R. Tarfon? Has it not been stated TOOTH IS MU'AD TO CONSUME WHAT EVER IS FIT FOR IT? That which is fit for it is included,[3] but that which is unfit for it is not included.[4] But did not R. Tarfon say that for the unusual damage done by Horn on the plaintiff's premises full compensation must be paid?' — It must, therefore, still be maintained that the Mishnah is in accordance with the Rabbis, but there are some phrases missing there; the reading should be thus: 'There are five cases of Tam,'[5] all the five of them may eventually become Mu'ad.[6] Tooth and Foot are however Mu'ad ab initio, and their liability is confined to damage done on the plaintiff's premises.'[7] Rabina demurred: We learn later on: What is meant by [the statement] OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES [etc.]?[8] It is all very well if you say that this damage has previously been dealt with;[9] we may then well ask 'What is meant by it?' But if you say that this damage has never been dealt with previously, how could it be asked 'What is meant by it?'[10] — Rabina therefore said: The Mishnah is indeed incomplete, but its meaning is this: 'There are five cases of Tam,'[5] all the five of them may eventually become Mu'ad[11] — Tooth and Foot are Mu'ad ab initio.[12] In this way Ox is definitely Mu'ad. As to Ox doing damage on the plaintiff's premises there is a difference of opinion between R. Tarfon and the Rabbis.[13] There are other damage-doers which like these cases are similarly Mu'ad, as follows: The wolf, the lion, the bear, the leopard. the panther, and the snake.' This very text has indeed been taught: 'There are five cases of Tam; all the five of them may eventually become Mu'ad. Tooth and Foot are Mu'ad ab initio. In this way Ox is definitely Mu'ad. As to Ox doing damage on the plaintiff's premises there is a difference of opinion between R. Tarfon and the Rabbis. There are other damage-doers which like these are similarly Mu'ad, as follows: The wolf, the lion, the bear, the leopard, the panther and the snake.'

Some arrived at the same interpretation by having first raised the following objection: We learn THERE ARE FIVE CASES OF TAM AND FIVE CASES OF MU'AD; are there no further instances?[14] Behold there are the wolf, the lion, the bear, the leopard, the panther and the snake![15] — The reply was: Rabina said: The Mishnah is incomplete and its reading should be as follows: There are five cases of Tam; all the five of them may eventually become Mu'ad — Tooth and Foot are Mu'ad ab initio. In this way Ox is definitely Mu'ad. As to Ox doing damage on the plaintiff's premises there is a difference of opinion between R. Tarfon and the Rabbis. There are other damage-doers which like these are similarly Mu'ad, as follows: The wolf, the lion, the bear, the

leopard, the panther and the snake.

NOR TO FALL DOWN. R. Eleazar said: This is so only when it falls down on large pitchers, but in the case of small pitchers it is a usual occurrence.[16] May we support him [from the following teaching]: 'Animal is Mu'ad to walk in the usual manner and to break or crush a human being, or an animal, or utensils'? — This however may mean, through contact sideways.[17] Some read: R. Eleazar said: Do not think that it is only in the case of large pitchers that it is unusual, whereas in the case of small pitchers it is usual. It is not so, for even in the case of small pitchers it is unusual. An objection was brought: '. . . or crush a human being, or an animal or utensils?'[18] — This[19] may perhaps mean through contact sideways.[20] Some arrived at the same conclusion by having first raised the following objection: We have learnt: NOR TO FALL DOWN.[18] But was it not taught: '. . . or crush a human being, or an animal or utensils'?[18] R. Eleazar replied: There is no contradiction: the former statement deals with a case of large pitchers,[21] whereas the latter deals with small pitchers.[22]

THE WOLF, THE LION, THE BEAR, THE LEOPARD AND THE BARDALIS [PANTHER].[23] What is bardalis? — Rab Judah said: nafraza.[24] What is nafraza? — R. Joseph said: apa.[25] An objection was raised: R. Meir adds also the zabu'a.[26] R. Eleazar adds, also the snake.[27] Now R. Joseph said that zabu'a means apa![28] — This, however, is no contradiction, for the latter appellation [zabu'a] refers to the male whereas the former [bardalis] refers to the female,[29] as taught elsewhere: The male zabu'a [hyena] after seven years turns into a bat,[30] the bat after seven years turns into an arpad,[31] the arpad after seven years turns into kimmosh,[32] the kimmosh after seven years turns into a thorn, the thorn after seven years turns into a demon. The spine of a man after seven years turns into a snake,[33] should he not bow[34] while reciting the benediction, 'We give thanks unto Thee'.[35] The Master said: 'R. Meir adds also the zabu'a;

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(1) As nobody else had the right to keep there fruits.

(2) Since both plaintiff and defendant had the right to keep there their cattle.

(3) In the category of Tooth.

(4) In the category of Tooth, but being unusual falls under the category of Horn; cf. supra 15b; infra 16b and 19b.

(5) I.e., 'goring', 'colliding', 'biting', 'falling down' and 'kicking'.

(6) These constitute the five cases of Mu'ad.

(7) Cf. Ex. XXII, 4, and supra, 5b. ['OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES' refers thus to Tooth and not to Horn.]

(8) [With reference to damage done by Horn, infra, 24b.]

(9) [In Our Mishnah, i.e.,the damage of Horn on the plaintiff's premises.]

(10) Cf. infra 24b.

(11) [The first clause of the Mishnah thus enumerates the five cases of Mu'ad as well as of Tam.]

(12) [But are not included in the 'five cases of Mu'ad', the clause being added only in parenthesis.]

(13) As infra p. 125.

(14) Of Mu'ad.

(15) Which are Mu'ad ab initio.

(16) And would thus not fall under the category of Horn but under that of Foot; cf, supra p. 4.

(17) Whereas to fall down upon pitchers may perhaps in all cases be unusual.

(18) Is usual.

(19) [So MS.M. Cur.edd, insert 'R. Eleazar said this etc.']

(20) V. p. 70. n. 5.

(21) Which is unusual.

(22) Which is usual.

(23) **

(24) נפרזא D.S. נפריא from נפר 'to run' or 'jump'.

(25) [אפא contraction of אפעא (hyena)].

(26) [Lit., 'the many-coloured'. Another term for hyena on account of its coloured stripes.]

(27) To those which are enumerated in the Mishnah as Mu'ad ab initio.
(28) If zabu'a means apa, how could bardalis, which is mentioned independently, also mean apa.
(29) So Rashi's second interpretation; others reverse.
(30) The male zabu'a is subject to undergo constant and rapid changes in the evolution of its physique, so that on account of these various transformations it has various appellations, such as bardalis, nafraza and apa [For parallels in ancient Greek and Roman literature for this belief, v. Lewysohn. Zoologie, p. 77.]
(31) I.e., a species of bat; cf. Targum Jonathan Lev, XI, 19, where Heb. עטלף is rendered ערפדא.
(32) I.e., a species of thorn (Jast.).
(33) Which is the symbol of ingratitude.
(34) And thus not appreciate the favours of eternal God bestowed upon mortal man. [This is but a quaint way of indicating the depths into which human depravity, which has its source in ingratitude to the Creator, may gradually sink.]
(35) Cf. P.B. p. 51.

Talmud - Mas. Baba Kama 16b

R. Eleazar adds also the snake.' But have we not learned: R. ELEAZAR SAYS, IF THEY HAD BEEN TAMED, THEY ARE NOT MU'AD; THE SNAKE, HOWEVER, IS ALWAYS MU'AD?[1] — Read 'the snake'.[2] Samuel said: In the case of a lion on public ground seizing and devouring [an animal]. there is exemption;[3] but for tearing it to pieces and then devouring it there is liability to pay. In 'seizing and devouring there is exemption' on account of the fact that it is as usual for a lion to seize its prey as it is for an animal to consume fruits and vegetables; it therefore amounts to Tooth on public ground where there is exemption.[3] The 'tearing' [of the prey into pieces] is however not unusual with the lion.[4]

Should it thus be concluded that the tearing of prey is unusual [with the lion]? But behold, it is written: The lion did tear in pieces enough for his whelps?[5] — This is usual only when it is for the sake of his whelps. [But the text continues:] And strangled for his lionesses?[5] — This again is only when it is for the sake of his lionesses. [But the text further states:] And filled his holes with prey?[5] — [This too is usual only when it is done] with the intention of preserving it in his holes. But the text concludes: And his dens with ravin?[5] — [This again is only] when the intention is to preserve it in his dens. But was it not taught: 'Similarly in the case of a beast entering the plaintiff's premises, tearing an animal to pieces and consuming its flesh, the payment must be made in full'?[6] — This Baraitha deals with a case where the tearing was for the purpose of preservation. But behold, it is stated: 'consuming [its flesh]'? — It was by an afterthought that the beast consumed [it]. But how could we know that? Again, also in the case of Samuel why not make the same supposition?[7] — R. Nahman b. Isaac therefore said: Alternative cases are dealt with [in the Baraitha]: . . . If it either tears to pieces for the purpose of preservation, or seizes and devours [it], the payment must he in full.' Rabina, however, said that Samuel dealt with a case of a tame lion, and was following the view of R. Eleazar,[8] that that was unusual [with such a lion] If so, even in the case of seizing there should be liability! — Rabina's statement has, therefore, no reference to Samuel's case but to the Baraitha, which we must thus suppose to deal with a tame lion and to follow the view of R. Eleazar, that that was unusual [with such a lion].[9] If so, [no more than] half-damages should be paid![10] — [The lion dealt with] has already become Mu'ad. If so, why has this Baraitha been taught in conjunction with the secondary kinds of Tooth,[11] whereas it should have been taught in conjunction with the secondary kinds of Horn? This is indeed a difficulty.

M I S H N A H. WHAT IS THE DIFFERENCE [IN LAW] BETWEEN TAM AND MU'AD? IN THE CASE OF TAM ONLY HALF-DAMAGES ARE PAID AND ONLY OUT OF THE BODY [OF THE TORT-FEASENT CATTLE], WHEREAS IN THE CASE OF MU'AD FULL PAYMENT IS MADE OUT OF ['ALIYYAH][12] THE BEST [OF THE ESTATE].

GEMARA. What is 'Aliyyah? — R. Eleazar said: The best of the defendant's estate as stated in

Scripture: And Hezekiah slept with his fathers and they buried him [be-ma'aleh] in the best of the sepulchres of the sons of David;[13] and R. Eleazar said: be-ma'aleh means, near the best of the family, i.e., David and Solomon. [Regarding King Asa it is stated:] And they buried him in his own sepulchres which he had made for himself in the city of David and laid him in the bed which was filled with [besamim u-zenim][14] sweet odours and divers kinds of spices.[15] What is besamim u-zenim? — R. Eleazar said: Divers kinds of spices. But R. Samuel b. Nahmani said: Scents which incite all those who smell them to immorality.[16]

[Regarding Jeremiah it is stated:] For they have digged a ditch to take me and hid snares for my feet.[17] R. Eleazar said: They maliciously accused him of [having illicit intercourse with] a harlot. But R. Samuel b. Nahmani said: They maliciously accused him of having [immoral connections with] another man's wife. No difficulty arises if we accept the view that the accusation was concerning a harlot, since it is written: For a harlot is a deep ditch.[18] But according to the view that the accusation was concerning another man's wife, how is this expressed in the term 'ditch' [employed in Jeremiah's complaint]?[17] — Is then another man's wife [when committing adultery] excluded from the general term of 'harlot'? [On the other hand] there is no difficulty on the view that the accusation was concerning another man's wife, for Scripture immediately afterwards says: Yet Lord, Thou knowest all their counsel against me to slay me;[19] but according to the view that the accusation was concerning a harlot, how did they thereby intend 'to slay him'?[20] — [This they did] by throwing him into a pit of mire.[21]

Raba gave the following exposition: What is the meaning of the concluding verse: But let them be overthrown before Thee; deal thus with them in the time of Thine anger?[22] — Jeremiah thus addressed the Holy One, blessed be He: Lord of the Universe, even when they are prepared to do charity, cause them to be frustrated by people unworthy of any consideration so that no reward be forthcoming to them for that charity.[23]

[To come back to Hezekiah regarding whom it is stated:] And they did him honour at his death:[24] this signifies that they set up a college[25] near his sepulchre. There was a difference of opinion between R. Nathan and the Rabbis. One said: For three days,

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(1) [Which seems to exclude the other animals enumerated in the Mishnah?]

(2) Do not read 'also the snake', but 'the snake', i.e. 'only the snake', excluding 'the hyena' introduced by R. Meir, as well as the other animals enumerated.

(3) Cf. Ex XXII, 4 and supra 5b.

(4) And falls thus under the category of Horn which is not immune even on public ground, cf. supra p. 67 and infra 19b.

(5) Nah. II, 13.

(6) Cf. infra 19b.

(7) [Why then doses he state that, where the lion tore and consumed, there is payment?]

(8) Supra p. 68.

(9) And comes therefore within the category of Horn, for which there is liability even on public grounds.

(10) For in the case of Horn only half-damages are paid on the first three occasions.

(11) I.e., infra 19b.

(12) עלייה

(13) II Chron. XXXII, 33. [The word במעלה (E.V.: 'ascent') is tendered as 'the best' from עלה 'to go up', 'to excel'.]

(14) בשמים וזנים

(15) II Chron. XVI, 14.

(16) [Deriving זנים from זנה to commit whoredom'.]

(17) Jer. XVIII, 22.

(18) Prov. XXIII, 27.

(19) Jer. XVIII, 23; referring to the death penalty prescribed for such an offence. See Lev. XX, 10.

(20) Since no death penalty is attached to that sin,
(21) Jer. XXXVIII, 6.
(22) Ibid. XVIII, 23.
(23) Cf. however Keth. 68a.
(24) II Chron. XXXII, 33.
(25) [Of students to study the law.]

and the other said: For seven days. Others, however, said: For thirty days.[1]

Our Rabbis taught: And they did him honour at his death, in the case of Hezekiah the king of Judah, means that there marched before him thirty-six[2] thousand [warriors] with bare shoulders;[3] this is the view of R. Judah. R. Nehemiah, however, said to him: Did they not do the same before Ahab?[4] [In the case of Hezekiah] they placed the scroll of the Law upon his coffin and declared: 'This one fulfilled all that which is written there.' But do we not even now do the same [on appropriate occasions]?[5] — We only bring out [the scroll of the Law] but do not place [it on the coffin].[5] It may alternatively be said that sometimes we also place [it on the coffin] but do not say. 'He fulfilled [the law] . . .'

Rabbah b. Bar Hanah said: I was once following R. Johanan for the purpose of asking him about the [above] matter. He, however, at that moment went into a toilet room. [When he reappeared and] I put the matter before him, he did not answer until he had washed his hands, put on phylacteries and pronounced the benediction.[6] Then he said to us: Even if sometimes we also say. 'He fulfilled [the law] . . .' we never say. 'He expounded [the law] . . .' But did not the Master say: The importance of the study of the law is enhanced by the fact that the study of the law is conducive to [the] practice [of the law]?[7] — This, however, offers no difficulty; the latter statement deals with studying [the law], the former with teaching [the law].

R. Johanan said in the name of R. Simeon b. Yohai:[8] What is the meaning of the verse: Blessed are ye that sow beside all waters, that send forth thither the feet of the ox and the ass?[9] Whoever is occupied with [the study of] the law and with [deeds of] charity, is worthy of the inheritance of two tribes,[10] as it is said: Blessed are ye that sow. . . Now, sowing [in this connection] signifies 'charity'. as stated, Sow to yourselves in charity, reap in kindness;[11] again, water [in this connection] signifies 'the law' as stated, Lo, everyone that thirsteth, come ye to the waters.[12]

'He is worthy of the inheritance of two tribes:' He is worthy of an inheritance[13] like Joseph, as it is written: Joseph is a fruitful bough . . . whose branches run over the wall;[14] he is also worthy of the inheritance of Issachar, as it is written: Issachar is a strong ass.[15] There are some who say, His enemies will fall before him, as it is written: With them he shall push the people together, to the ends of the earth.[16] He is worthy of understanding like Issachar, as it is written: And of the children of Issachar which were men that had understanding of the times to know what Israel ought to do.[17]

C H A P T E R I I

M I S H N A H. WITH REFERENCE TO WHAT IS FOOT MU'AD?[18] [IT IS MU'AD:] TO BREAK [THINGS] IN THE COURSE OF WALKING. ANY ANIMAL IS MU'AD TO WALK IN ITS USUAL WAY AND TO BREAK [THINGS]. BUT IF IT WAS KICKING OR PEBBLES WERE FLYING FROM UNDER ITS FEET AND UTENSILS WERE [IN CONSEQUENCE] BROKEN, [ONLY] HALF-DAMAGES WILL BE PAID. IF IT TROD UPON A UTENSIL AND BROKE IT, AND A FRAGMENT [OF IT] FELL UPON ANOTHER UTENSIL WHICH WAS ALSO BROKEN, FOR THE FIRST UTENSIL FULL DAMAGES MUST BE PAID,[19] BUT FOR THE SECOND, [ONLY] HALF-DAMAGES WILL BE PAID.[20]

POULTRY[21] ARE MU'AD TO WALK IN THEIR USUAL WAY AND TO BREAK [THINGS]. IF A STRING BECAME ATTACHED TO THEIR FEET, OR WHERE THEY HOP ABOUT AND BREAK UTENSILS, [ONLY] HALF-DAMAGES WILL BE PAID.[20]

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(1) Cf. M.K. 27b.

(2) This figure was arrived at by the numerical value of וְלֹ occurring here in the text.
(3) [As sign of mourning for a righteous man and scholar.]
(4) [Although he was an evil doer.] See Targum on Zech. XII, 11, and Meg. 3a.
(5) Cf., e.g., M. K. 25a and Men. 32b.
(6) V. P.B. p. 4.
(7) Meg. 27a; Kid. 40b; thus indicating that the practice of the law is superior to its study.
(8) V. A.Z. 5b.
(9) Isa. XXXII, 20.
(10) [Joseph and Issachar: the former is compared to an ox (Deut. XXXIII, 17) and the latter to an ass (Gen. XLIX, 14).]
(11) Hos X, 12.
(12) Isa. LV, 1.
(13) So MS.M. The printed editions have 'canopy'. [Rashi connects it with the descriptions of 'branches running over the wall.']
(14) Gen XLIX, 22.
(15) Ibid. 14.
(16) Deut. XXXIII, 17.
(17) I Chron. XII, 32.
(18) Referring to supra p. 68.
(19) As it is subject to the law of 'Foot'.
(20) Since it was broken not by the actual body of the animal (or poultry) but by its agency and force in some other object, it comes within the purview of the law of 'Pebbles'; v. Glos, Zeroroth
(21) Lit. 'The cocks'.

Talmud - Mas. Baba Kama 17b

G E M A R A. Rabina said to Raba: Is not FOOT [Mentioned in the commencing clause] identical with ANIMAL [mentioned in the second clause]?[1] — He answered him: [In the commencing clause the Mishnah] deals with Principals[2] whereas [in the second clause] derivatives are introduced.[3] But according to this, the subsequent Mishnah stating, 'Tooth is Mu'ad . . . Any animal is Mu'ad . . .'[4] what Principals and what derivatives could be distinguished there?[5] — Raba, however, answered him humorously, 'I expounded one [Mishnah], it is now for you to expound the other.' But what indeed is the explanation [regarding the other Mishnah]? — R. Ashi said: [In the first clause, the Mishnah] speaks of 'Tooth' of beast, whereas [in the second place] 'Tooth' of cattle is dealt with. For it might have been thought that since he shall put in be'iroh [his cattle][6] is stated in Scripture, the law concerning Tooth should apply only to cattle, but not to beast; it is therefore made known to us that beast is included in the term 'animal'. If so, cattle[7] should be dealt with first! — Beast, which is deduced by means of interpretation, is more important [to the Mishnah which thus gives it priority]. If so, also in the opening Mishnah [dealing with FOOT, the same method should have been adopted] to state first that which is not recorded [in Scripture]?[8] — What a comparison! There [in the case of Tooth] where both [beast and cattle] are Principals, that which is introduced by means of interpretation is preferable; but here [in the case of Foot], how could the Principal be deferred and the derivative placed first?[9] You may alternatively say: Since [in the previous chapter the Mishnah] concludes with 'Foot',[10] it commences here with 'Foot'.

Our Rabbis taught: An animal is Mu'ad to walk in its usual way and to break [things]. That is to say, in the case of an animal entering into the plaintiff's premises and doing damage [either] with its body while in motion, or with its hair while in motion, or with the saddle [which was] upon it, or with the load [which was] upon it, or with the bit in its mouth, or with the bell on its neck,[11] similarly in the case of an ass [doing damage] with its load, the payment must be in full. Symmachus says: In the case of Pebbles[12] or in the case of a pig burrowing in a dunghill and doing damage. the payment is [also] in full.

[In the case of a pig] actually doing damage, is it not obvious [that the payment must be in full]?[13] — Read therefore: 'When it had caused [something of the dunghill] to fly out so that damage resulted therefrom, the payment will be in full.' But have Pebbles ever been mentioned [in this Baraitha, that Symmachus makes reference to them]? — There is something missing [in the text of the Baraitha where] the reading should be as follows: Pebbles, though being quite usual [with cattle, involve nevertheless] only half-damages; in the case of a pig digging in a dunghill and causing [something of it] to fly out so that damage resulted therefrom, only half-damages will therefore be paid. Symmachus, however, says: In the case of Pebbles, and similarly in the case of a pig digging in a dunghill and causing [something of it] to fly out so that damage resulted therefrom, the payment must he in full.

Our Rabbis taught: In the case of poultry flying from one place to another and breaking utensils with their wings. the payment must be in full: but if the damage was done by the vibration that resulted from their wings, only half-damages will be paid.[14] Symmachus. however, says: [In all cases] the payment must be in full.[15]

Another [Baraitha] taught: In the case of poultry hopping upon dough or upon fruits which they either made dirty or picked at, the payment will be in full; but if the damage resulted from their raising there dust or pebbles, only half damages[14] will be paid. Symmachus. however, says: [In all cases] the payment must be in full.

Another [Baraitha] taught: In the case of poultry flying from one place to another, and breaking vessels with the vibration from their wings, only half-damages will be paid. This anonymous Baraitha records the view of the Rabbis.[16]

Raba said: This fits in very well with [the view of] Symmachus who maintains that [damage done by an animal's] force[17] falls under the law applicable to [damage done by its] body;[18] but what about the Rabbis? If they too maintain that [damage done by an animal's] force is subject to the same law that is applicable to [damage done by its] body. why then not pay in full? If on the other hand it is not subject to the law of damage done by a body,. why pay even half damages? — Raba [in answer] said: It may indeed be subject to the law applicable to damage done by a body, yet the payment of half damages in the case of Pebbles is a halachic principle based on a special tradition.[19]

Raba said: Whatever would involve defilement in [the activities of] a zab[20] will in the case of damage involve full payment, whereas that which in [the activities of] a zab would not involve defilement,[21] will in the case-of damage involve only half damages. Was Raba's sole intention to intimate to us [the law of] Pebbles?[22] — No, Raba meant to tell us the law regarding cattle[23] drawing a waggon [over utensils which were thus broken].[24] It has indeed been taught in accordance with [the view expressed by] Raba: An animal is Mu'ad to break [things] in the course of walking. How is that? In the case of an animal entering into the plaintiff's premises and doing damage either with its body while in motion, or with its hair while in motion, or with the saddle [which was] upon it, or with the load [which was] upon it, or with the bit in its mouth, or with the bell on its neck, similarly in the case of an ass [doing damage] with its load, or again, in the case of a calf drawing a waggon [over utensils which were thus broken], the payment must be in full.

Our Rabbis taught: In the case of poultry picking at a cord attached to a pail so that the cord was snapped asunder and the bucket broken, the payment must be in full.

Raba asked: In the case of [cattle] treading upon a utensil which has not been broken at once, but which was rolled away to some other place where it was then broken, what is the law? Shall we go by the original cause [of the damage in our determination of the law], which would thus amount to damage done by the body,[25] or shall only [the result, i.e.] the breaking of the utensil be the

determining factor, amounting thus to Pebbles? — But why not solve the problem from a statement made by Rabbah?[26] For Rabbah said:[27] If a man threw [his fellow's] utensil from the top of a roof and another one came and and broke it with a stick [before it fell upon the ground. where it would in any case have been broken], the latter is under no liability to pay, as we say. 'It was only a broken utensil that was broken by him.' [Is not this the best proof that it is the cause of the damage which is the determining factor?][28] — To Rabbah that was pretty certain, whereas to Raba it was doubtful.

Come and hear: 'Hopping [with poultry] is not Mu'ad.[29] Some however say: It is Mu'ad.'[30] 'Could 'hopping' [in itself] be thought [in any way not to be habitual with poultry]? Does it not therefore mean: 'Hopping that results in making [a utensil] fly [from one place to another so that it is broken] . . . 'so that the point at issue is this: The latter view maintains that the original cause [of the damage] is the determining factor[30] but the former maintains that only [the result, i.e.,] the breaking of the utensil is the determining factor?[31] — No,

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(1) Wherefore then this redundancy?

(2) I.e. damage done by the actual foot.

(3) I.e. damage done by other parts of the body of the animal, cf. supra p. 6.

(4) [Infra 19b.

(5) For both clauses deal with actual 'eating'.

(6) Ex. XXII, 4. [בעיר תבעירה in Aramaic denotes, 'a grazing animal', 'cattle' (Rashi).]

(7) Which is more obvious.

(8) I.e. damage done by other parts of the body of the animal.

(9) 'Foot' is therefore put in the first place.

(10) Supra p. 68.

(11) CF. supra, p. 6.

(12) See supra p. 8.

(13) Why then was it deemed necessary to give it explicit treatment?

(14) As this kind of damage is subject to the law of Pebbles.

(15) For he maintains that even in the case of Pebbles full payment has to be made.

(16) Who hold that in the case of Pebbles only half payment is made.

(17) Such as in the case of Pebbles.

(18) Which is subject to the law of 'Foot'.

(19) See also supra 8.

(20) I.e., one afflicted with gonorrhoea who is subject to the laws of Lev. XV, 1-15; 19-24. Defilement is caused by him both by actual bodily touch and indirectly.

(21) E.g when the zab throws some article on a person levitically clean.

(22) Is not this obvious?

(23) Lit. 'calf'.

(24) That there is in such a case full payment, because if a zab were to sit in a waggon that passed over clean objects, defilement would have been extended to them — the damage and the defilement respectively being regarded as having been caused by the body and not by its force.

(25) Being therefore subject to the law of 'Foot'.

(26) Who was a predecessor of Raba.

(27) Cf. infra 26b.

(28) Seeing that the latter is under no obligation to compensate, but the whole liability to pay is upon the one who threw the utensil from the top of the roof.

(29) The payment for damage will therefore not be in full.

(30) Payment will thus be in full.

(31) Thus constituting Pebbles, for which payment will not be in full.

the ‘hopping’ only caused pebbles to fly, so that the point at issue is the same as that between Symmachus and the Rabbis.[1]

Come and hear: ‘In the case of poultry picking at a cord attached to a pail so that the cord was snapped asunder and the bucket[2] broken, the payment must be in full.’ Could it not be proved from this [Baraitha] that it is the original cause of the damage that has to be followed? — You may, however, interpret [the liability of full payment] to refer to the damage done to the cord.[3] But behold, is not [the damage of] the cord unusual [with poultry[4] and only half damages ought to be paid]? — It was smeared with dough.[5] But, does it not say ‘and the bucket [was] broken’?[6] This Baraitha must therefore be in accordance with Symmachus, who maintains that also in the case of Pebbles full payment must be made. But if it is in accordance with Symmachus, read the concluding clause: Were a fragment of the broken bucket to fly and fall upon another utensil, breaking it, the payment for the former [i.e., the bucket] must be in full, but for the latter only half damages will be paid. Now does Symmachus ever recognise half damages [in the case of Pebbles]? If you, however, submit that there is a difference according to Symmachus between damage occasioned by direct force[7] and that caused by indirect force,[8] what about the question raised by R. Ashi:[9] Is damage occasioned by indirect force according to Symmachus subject to the same law[10] applicable to direct force, or not subject to the law of direct force?[11] Why is it not evident to him that it is not subject to the law of direct force? Hence the above Baraitha is accordingly more likely to be in accordance with the Rabbis, and proves thus that it is the original cause that has to be followed [as the determining factor]![12] R. Bibi b. Abaye, however, said: The bucket [that was broken] was [not rolled but] continuously pushed by the poultry [from one place to another, so that it was broken by actual bodily touch].[13]

Raba [again] queried: Will the half damages in the case of ‘Pebbles’ be paid out of the body [of the tort-feasant animal][14] or will it be paid out of the best of the defendant's estate?[15] Will it be paid out of the body [of the tort-feasant animal] on account of the fact that nowhere is the payment of half damages made out of the best of the defendant's estate, or shall it nevertheless perhaps be paid out of the best of the defendant's estate since there is no case of habitual damage being compensated out of the body [of the tort-feasant animal]? — Come and hear: ‘Hopping [with poultry] is not Mu'ad. Some, however, say: It is Mu'ad.’ Could ‘hopping’ be said [in any way not to be habitual with poultry]? Does it not therefore mean: ‘Hopping and making [pebbles] fly,’ so that the point at issue is as follows: The former view maintaining that it is not [treated as] Mu'ad, requires payment to be made out of the body [of the tort-feasant poultry][14] whereas the latter view maintaining that it is [treated as] Mu'ad, will require the payment [of the half damages for Pebbles] to be made out of the best of the defendant's estate?[15] — No, the point at issue is that between Symmachus and the Rabbis.[16]

Come and hear: In the case of a dog taking hold of a cake [with live coals sticking to it] and going [with it] to a stack of grain where he consumed the cake and set the stack on fire, full payment must be made for the cake,[17] whereas for the stack only half damages will be paid.[18] Now, what is the reason [that only half damages will be paid for the stack] if not on account of the fact that the damage of the stack is subject to the law of Pebbles?[19] It has, moreover, been taught in connection with this [Mishnah] that the half damages will be collected out of the body [of the tort-feasant dog]. [Does not this ruling offer a solution to the problem raised by Raba?] — But do you really think [the law of ‘Pebbles’ to be at the basis of this ruling]?[20] According to R. Eleazar [who maintains[21] that the payment even for the stack will be in full and out of the body of the tort-feasant dog], do we find anywhere full payment being collected out of the body [of tort-feasant animals]? Must not this ruling[20] therefore be explained to refer to a case where the dog acted in an unusual manner in handling the coal,[22] R. Eleazar being of the same opinion as R. Tarfon, who maintains[23] that [even] for the unusual damage by Horn, if done in the plaintiff's premises, the payment will be in full?[24] — This explanation, however, is not essential. For that which compels you to make R. Eleazar maintain the same opinion as R. Tarfon, is only his requiring full payment [out of the body of the dog]. It may

therefore be suggested on the other hand that R. Eleazar holds the view expressed by Symmachus, that in the case of Pebbles full damages will be paid; and that he further adopts the view of R. Judah who said[25] that [in the case of Mu'ad, half of the payment, i.e.] the part of Tam, remains unaffected, [i .e., is always subject to the law of Tam]; the statement that payment is made out of the body [of the dog] will therefore refer only to [one half] the part for which even Tam would be liable. But R. Samia the son of R. Ashi said lo Rabina: I submit that the view you have quoted in the name of R. Judah is confined to cases of Tam turned into Mu'ad [i.e. Horn],[25] whereas in cases which are Mu'ad ab initio[26]

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(1) I.e., whether full or half payment has to be made for damage caused by Pebbles.

(2) Probably by rolling to some other place, where it finally broke.

(3) Whereas for the bucket only half damages will perhaps be paid.

(4) Being thus subject to the law of 'Horn'.

(5) In which case it is not unusual with poultry to pick at such a cord.

(6) Thus clearly indicating that the payment is in respect of the damage done to the bucket.

(7) Such as in the case of a bucket upon which pebbles were thrown directly by an animal.

(8) I.e., a second bucket damaged by a fragment that fell from a first bucket, which was broken by pebbles thrown by an animal.

(9) Infra 19a.

(10) I.e., to full payment.

(11) But merely to half damages.

(12) I.e., though the bucket rolled to some other place where it broke, the case is still subject to the law of Foot.

(13) And coming within the usual category of Foot.

(14) As in the case of Tam; cf. supra, p. 73.

(15) As in the case of Foot; cf. supra, p. 9.

(16) I.e., whether full or half damages are to be paid in the case of Pebbles.

(17) Being subject to the law applicable to Tooth, cf. supra p. 68.

(18) Infra 21b.

(19) Because the damage to the stack was not done by the actual body of the dog but was occasioned by the dog through the instrumentality of the coal, which, after having been put on a certain spot, spread the damage near and far.

(20) Of half damages for the stack.

(21) In a Baraitha.

(22) By taking it in its mouth and applying it to the stack, in which case it is subject to the law of 'Horn'.

(23) Supra p. 59 and infra 24b.

(24) [Though the payment will still be made out of the body of the tort-feasant animal.)

(25) Infra 39a. 45b.

(26) Such as Foot (and Pebbles at least according to Symmachus).

Talmud - Mas. Baba Kama 18b

you have surely not found him maintaining so! You can therefore only say that R. Eleazar's statement regarding full payment deals with a case where the dog has already become Mu'ad [to set fire to stacks in an unusual manner][1] and the point at issue will be that R. Eleazar maintains that there is such a thing as becoming Mu'ad [also] regarding [the law of] Pebbles[2] whereas the Rabbis maintain that there is no such thing as becoming Mu'ad in the case of Pebbles.[3] But If so what about another problem raised [elsewhere][4] by Raba: 'Is there such a thing as becoming Mu'ad regarding [the law of] Pebbles,[5] or is there no such thing as becoming Mu'ad in the case of Pebbles?'[6] Why then not say that according to the Rabbis there could be no such thing as becoming Mu'ad in the case of Pebbles, whereas according to R. Eleazar there may be a case of becoming Mu'ad even in the case of Pebbles? — Raba, however, may say to you: The problem raised by me [as to the possibility of becoming Mu'ad] is of course based on the view of the Rabbis who differ [in this respect] from Symmachus, whereas here [in the case of the dog] both the Rabbis and R. Eleazar may hold the view

of Symmachus who maintains that Pebbles always involve payment in full. The reason, however, that the Rabbis order only half damages [to be paid][7] is on account of the fact that the dog handled the coal in an unusual manner[8] while it had not yet become Mu'ad [for that]. The point at issue between them[9] would be exactly the same as between R. Tarfon and the Rabbis.[10] But R. Tarfon who took the view that the payment will be in full may perhaps never have intended to make it dependent upon the body [of the tort-feasant cattle]?[11] — Cer tainly so, for he derives his view from [the law of] Horn on public ground[12] and it only stands to reason that Dayyo,[13] [i.e. it is sufficient] to a derivative by means of a Kal wa-homer[14] to involve nothing more than the original case from which it has been deduced.[15] But behold, R. Tarfon is expressly not in favour of the Principle of Dayyo?[13] — He is not in favour of Dayyo only when the Kal wa-homer would thereby be rendered completely ineffective[16] , but where the Kal wa-homer would not be rendered ineffective he too upholds Dayyo.[17]

To revert to the previous theme:[18] Raba asked: Is there such a thing as becoming Mu'ad regarding [the law of] Pebbles, or is there no such thing as becoming Mu'ad in the case of Pebbles? Do we compare Pebbles to Horn [which is subject to the law of Mu'ad] or do we not do so since the law of Pebbles is a derivative of Foot[19] [to which the law of Mu'ad has no application]?

Come and hear: "Hopping is not Mu'ad [with poultry]. Some, however, say: It is Mu'ad.' Could 'hopping' be thought [in any way not to be habitual with poultry]? It, therefore, of course means 'Hopping and making thereby [pebbles] fly.' Now, does it not deal with a case where the same act has been repeated three times, so that the point at issue between the authorities will be that the one Master [the latter] maintains that the law of Mu'ad applies [also to Pebbles] whereas the other Master [the former] holds that the law of Mu'ad does not apply [to Pebbles]? — No, it presents a case where no repetition took place; the point at issue between them being the same as between Symmachus and the Rabbis.[20]

Come and hear: In the case of an animal dropping excrements into dough. R. Judah maintains that the payment must be in full, but R. Eleazar says that only half damages will be paid. Now, does it not deal here with a case where the act has been repeated three times, so that the point at issue between the authorities will be that R. Judah maintains that the animal has thus become Mu'ad whereas R. Eleazar holds that it has not become Mu'ad?[21] — No, it deals with a case where no repetition took place, the point at issue between them being the same which is between Symmachus and the Rabbis. But is it not unusual [with an animal to do so]?[22] — The animal was pressed for space [in which case it is no more unusual]. But why should not R. Judah have explicitly stated that the Halachah is in accordance with Symmachus and similarly R. Eleazar should have stated that the Halachah is in accordance with the Rabbis?[23] — [A specific ruling in regard to] excrements is of importance, for otherwise you might have thought that since these [excrements formed a part of the animal and] were poured out from its body, they should still be considered as a part of its body,[24] it has therefore been made known to us that this is not so.[25]

Come and hear: Rami b. Ezekiel learned:[26] In the case of a cock putting its head into an empty utensil of glass where it crowed so that the utensil thereby broke, the payment must be in full, while R. Joseph on the other hand said[26] that it has been stated in the School of Rab that in the case of a horse neighing or an ass braying so that utensils were thereby broken, only half damages will be paid. Now, does it not mean that the same act has already been repeated three times,

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(1) Being thus subject to the law applicable to Horn whereas in the case of Pebbles not accompanied by an unusual act, R. Eleazar would maintain the view of the Rabbis that the payment will not be in full.

(2) When thrown by an unusual act and repeated on more than three occasions; the payment would thus then have to be in full.

(3) But that in spite of all repetitions of the damage the payment will never exceed half damages on account of the

consideration that the case of Pebbles in the usual way is always Mu'ad ab initio and yet no more than half damages is involved.

(4) Cf. infra p. 86.

(5) So that in the case of an animal making pebbles fly (by means of an unusual act) on more than three occasions, the payment will be in full, on the analogy with Horn

(6) The payment will thus never exceed half damages on account of the fact that the repetition on three occasions renders the act usual and makes it subject to the general laws of Pebbles, requiring half damages in the case of any usual act of an animal making pebbles fly.

(7) In the case of the dog.

(8) Coming thus within the category of Horn.

(9) I.e., between the Rabbis and R. Eleazar.

(10) With reference in damage done by Horn (Tam) on the Plaintiff's premises; cf. supra pp. 59. 84; infra p. 125.

(11) For since the payment is in full why should it not be out of the best of the defendant's estate? Cf. however supra p. 15, infra p. 180; but also pp. 23,212.

(12) Infra 24b.

(13) Lit., 'It is sufficient for it'.

(14) Lit. 'From Minor to Major'; v. Glos.

(15) Which was Horn on public ground where the payment in the case of Tam is made out of the body of the tort-feasant animal.

(16) Such as, e.g., to make on account of Dayyo, the payment in the case of Tam doing damage on the plaintiff's premises only for half damages — a payment which would be ordered even without a Kal wa-homer.

(17) The full payment in the case of Tam on the plaintiff's premises which is deduced from the Hal wa-homer, will therefore be collected only out of the body of the tort-feasant animal, on the strength of the Dayyo.

(18) Supra p. 85.

(19) Cf. supra 3b; v. also p. 85, n. 5.

(20) I.e., whether the payment for Pebbles generally be in full or half; cf. supra 17b.

(21) And thus the problem propounded by Raba is a point at issue between Tannaim.

(22) The case must accordingly come under the category of Horn where only half damages should he paid in the first three occasions.

(23) Why deal at all with the specific case of an animal dropping excrements?

(24) Any damage done by them should thus be compensated in full on the analogy of any other derivative of Foot proper.

(25) I.e., it does not come under the category of Foot proper but under that of Pebbles.

(26) Cf. Kid. 24b.

Talmud - Mas. Baba Kama 19a

so that the point at issue [between the contradictory statements] will be that the one Master [the former] maintains that the law of Mu'ad applies [also to Pebbles][1] whereas the other Master [the latter] holds that the law of Mu'ad does not apply [to Pebbles]?[2] — No, we suppose the act not to have been repeated, the point at issue being the same as that between Symmachus and the Rabbis. But is it not unusual [for a cock to crow into a utensil]?[3] — There had been some seeds there [in which case it was not unusual].

R. Ashi asked: Would an unusual act[4] reduce Pebbles [by half, i.e.,] to the payment of quarter damages or would an unusual act not reduce Pebbles to the payment of quarter damages?[5] — But why not solve this question from that of Raba, for Raba asked [the following]:[6] Is there such a thing as becoming Mu'ad in the case of Pebbles[7] or is there no such thing as becoming Mu'ad in the case of Pebbles?[8] Now, does not this query imply that no unusual act [affects the law of Pebbles]?[9] — Raba may perhaps have formulated his query upon a mere supposition as follows: If you suppose that no unusual act [affects the law of Pebbles], is there such a thing as becoming Mu'ad [in the case of Pebbles] or is there no such thing as becoming Mu'ad? — Let it stand undecided.

R. Ashi further asked: Is [damage occasioned by] indirect force, according to Symmachus,[10] subject to the law applicable to direct force or not so? Is he[11] acquainted with the special halachic tradition [on the matter][12] but he confines its effect to damage done by indirect force or is he perhaps not acquainted at all with this tradition? — Let it stand undecided.

IF IT WAS KICKING OR PEBBLES WERE FLYING FROM UNDER IT'S FEET AND UTENSILS WERE BROKEN, [ONLY] HALF DAMAGES WILL BE PAID. The following query was put forward: Does the text mean to say: 'If it was kicking so that damage resulted from the kicking, or in the case of pebbles flying in the usual way ... [only] half damages will be paid,' being thus in accordance with the Rabbis;[13] or does it perhaps mean to say: 'If it was kicking so that damage resulted from the kicking, or when pebbles were flying as a result of the kicking . . . [only] half damages will be paid.' thus implying that in the case of pebbles flying in the usual way, the payment would be in full, being therefore in accordance with Symmachus?[14]

Come and hear the concluding clause: IF IT TROD UPON A UTENSIL AND BROKE IT, AND A FRAGMENT [OF IT] FELL UPON ANOTHER UTENSIL WHICH WAS ALSO BROKEN, FOR THE FIRST UTENSIL FULL COMPENSATION MUST BE PAID, BUT FOR THE SECOND, [ONLY] HALF DAMAGES. Now, how could the Mishnah be in accordance with Symmachus,[14] who is against half damages [in the case of Pebbles]? If you, however, suggest that THE FIRST UTENSIL refers to the utensil broken by a fragment that flew off from the first [broken] utensil, and THE SECOND refers thus to the utensil broken by a fragment that flew off from, the second [broken] utensil, and further assume that according to Symmachus there is a distinction between damage done by direct force and damage done by indirect force [so that in the latter case only half damages will be paid], then [if so] what about the question of R. Ashi: 'Is [damage occasioned by] indirect force, according to Symmachus, subject to the law of direct force or not subject to the law of direct force?' Why is it not evident to him [R. Ashi] that it is not subject to the law applicable to direct force? — R. Ashi undoubtedly explains the Mishnah in accordance with the Rabbis, and the query[15] is put by him as follows: [Does it mean to say:] 'If it was kicking so that damage resulted from the kicking, or in the case of pebbles flying in the usual way . . . [only] half damages will be paid', thus implying that [in the case of Pebbles flying] as a result of kicking, [only] quarter damages would be paid on account of the fact that an unusual act reduces payment [in the case of Pebbles][16] or [does it perhaps mean to say:] 'If it was kicking so that damage resulted from the kicking or when pebbles were flying as a result of the kicking . . .half damages will be paid,' thus making it plain that an unusual act does not reduce payment [in the case of Pebbles]? — Let it stand undecided.

R. Abba b. Memel asked of R. Ammi, some say of R. Hiyya b. Abba, [the following Problem]: In the case of an animal walking in a place where it was unavoidable for it not to make pebbles fly [from under its feet], while in fact it was kicking and in this way making pebbles fly and doing damage, what would be the law? [Should it be maintained that] since it was unavoidable for it not to make pebbles fly there, the damage would be considered usual;[17] or should it perhaps be argued otherwise, since in fact the damage resulted from kicking[18] that caused the pebbles to fly? — Let it stand undecided.

R. Jeremiah asked R. Zera: In the case of an animal walking on public ground and making pebbles fly from which there resulted damage, what would be the law? Should we compare this case[19] to Horn[20] and thus impose liability; or since, on the other hand, it is a derivative of Foot, should there be exemption [for damage done on public ground]? — He answered him: It stands to reason that [since] it is a secondary kind of Foot [there is exemption on Public ground].[21]

Again [he asked him]: In a case where the pebbles were kicked up on public ground but the

damage that resulted therefrom was done in the plaintiff's premises, what would be the law? — He answered him: if the cause of raising [the pebbles] is not there [to institute liability],[22] how could any liability be attached to the falling down [of the pebbles]? Thereupon he [R. Jeremiah] raised an objection [from the following]: In the case of an animal walking on the road and making pebbles fly either in the plaintiff's premises or on public ground, there is liability to pay. Now, does not this Baraitha deal with a case where the pebbles were made both to fly up on public ground and to do damage on public ground?[23] — No, though the pebbles were made to fly on public ground, the damage resulted on the plaintiff's premises. But did you not say [he asked him further, that in such a case there would still be exemption on account of the argument].'If the cause of raising [the pebbles] is not there [to institute liability], how could any liability be attached to the falling down [of the pebbles]?' He answered him: 'I have since changed my mind [on this matter].'[24]

He raised another objection: IF IT TROD UPON A UTENSIL AND BROKE IT, AND A FRAGMENT [OF IT] FELL UPON ANOTHER UTENSIL WHICH WAS ALSO BROKEN, FOR THE FIRST UTENSIL FULL COMPENSATION MUST BE PAID, BUT FOR THE SECOND [ONLY] HALF DAMAGES. And it was taught on the matter: This ruling is confined to [damage done on] the plaintiff's premises, whereas if it took place on public ground there would be exemption regarding the first utensil though with respect to the second there would be liability to pay. Now, does not the Baraitha present a case where the fragment was made both to fly up on public ground and to do damage on public ground?[25] — No, though the fragment was made to fly on public ground, the damage resulted on the plaintiff's premises.

But did you not say [that in such a case there would still be exemption on account of the argument]: 'If the cause of raising [the pebbles] is not there [to institute liability], how could any liability be attached to the falling down [of the pebbles?]'

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(1) The compensation is therefore in full.

(2) Consequently only half damages will be paid.

(3) Coming thus under the category of Horn only half damages should be paid in the case of Tam.

(4) Done by an animal making pebbles fly through kicking.

(5) But the compensation of half damages will be made in all cases of Pebbles.

(6) Supra p. 85.

(7) For compensation in full.

(8) And no more than half damages will ever be paid

(9) For if otherwise, and quarter damages will be paid in the first instance of an unusual act in the case of Pebbles, how could the compensation rise above half damages?

(10) Who orders full compensation in the case of Pebbles; supra p. 79.

(11) I.e., Symmachus.

(12) Ordering only half damages; v supra p. 79.

(13) Who, against the view of Symmachus, order only half damages to be paid, supra p. 79.

(14) Who orders full compensation in the case of Pebbles; ibid.

(15) As to the reading of the Mishnaic text.

(16) As queried by R. Ashi himself, supra p. 88.

(17) Coming thus under the law applicable to Pebbles in the usual way.

(18) Which is an unusual act and should thus be subject to the query put forward by Raba regarding pebbles that were caused to fly by means of an unusual act.

(19) On account of the liability only for half damages.

(20) Where there is liability even on public ground.

(21) Cf. supra p. 9.

(22) Since it took place on public ground.

(23) Which is a refutation of R. Zera's first ruling.

(24) I.e., on the last point.

(25) Which shows that there is liability for Pebbles, i.e., for 'the second utensil,' on public ground, against the ruling of R. Zera.

Talmud - Mas. Baba Kama 19b

— He answered him: 'I have since changed my mind [on this matter].''

But behold R. Johanan said that in regard to the liability of half damages there is no distinction between the plaintiff's premises and public ground. Now, does not this statement also deal with a case where the pebbles were made both to fly up on public ground and to do damage on public ground? — No, though the pebbles were made to fly up on public ground, the damage resulted on the plaintiff's premises. But did you not say [that in such a case there would still be exemption on account of the argument], 'If the cause of raising [the pebbles] is not there [to institute liability], how could any liability be attached to the falling down [of the pebbles]?' — He answered him: 'I have since changed my mind [on this matter].' Alternatively, you might say that R. Johanan referred only to [the liability attached to] Horn.[1]

R. Judah [II] the Prince and R. Oshaia had both been sitting near the entrance of the house of R. Judah, when the following matter was raised between them: In the case of an animal knocking about with its tail, [and doing thereby damage on public ground] what would be the law? — One of them said in answer: Could the owner be asked to hold the tail of his animal continuously wherever it goes?[2] But if so, why in the case of Horn shall we not say the same: 'Could the owner be asked to hold the horn of his animal continuously wherever it goes?' — There is no comparison. In the case of Horn the damage is unusual, whereas it is quite usual [for an animal] to knock about with its tail.[3] But if it is usual for an animal to knock about with its tail, what then was the problem?[4] — The problem was raised regarding an excessive knocking about.[5]

R. 'Ena queried: In the case of an animal knocking about with its membrum virile and doing thereby damage,[6] what is the law? Shall we say it is analogous to Horn?[7] For in the case of Horn do not its passions get the better of it, as may be said here also? Or shall we perhaps say that in the case of Horn, the animal is prompted by a malicious desire to do damage, whereas, in the case before us, there is no malicious desire to do damage?[8] — Let it stand undecided.

POULTRY ARE MU'AD TO WALK IN THEIR USUAL WAY AND TO BREAK [THINGS]. IF A STRING BECAME ATTACHED TO THEIR FEET OR WHERE THEY HOP ABOUT AND BREAK UTENSILS, [ONLY] HALF DAMAGES WILL BE PAID. R. Huna said: The ruling regarding half damages applies only to a case where the string became attached of itself, but in a case where it was attached by a human being the liability would be in full. But in the case where the string was attached of itself, who would be liable to pay the half damages? It could hardly be suggested that the owner of the string[9] would have to pay it, for in what circumstances could that be possible? If when the string was kept by him in a safe place [so that the fact of the poultry taking hold of it could in no way be attributed to him], surely it was but a sheer accident?[10] If [on the other hand] it was not kept in a safe place, should he not be liable for negligence [to pay in full]? It was therefore the owner of the poultry who would have to pay the half damages. But again why differentiate [his case so as to excuse him from full payment]? If there was exemption from full payment on account of [the inference drawn from] the verse, If a man shall open a pit,[11] which implies that there would be no liability for Cattle opening a Pit, half damages should [for the very reason] similarly not be imposed here as [there could be liability only when] Man created a pit but not [when] Cattle [created] a pit? — The Mishnaic ruling [regarding half damages] must therefore be applicable only to a case where the poultry made the string fly [from one place to another, where it broke the utensils, being thus subject to the law of Pebbles]; and the statement made by R.Huna will accordingly refer to a case which has been dealt with elsewhere [viz.]: In the case of an ownerless

string, R. Huna said that if it had become attached of itself to poultry [and though damage resulted to an animate object tripping over it while it was still attached to the poultry] there would be exemption.[12] But if it had been attached to the poultry by a human being, he would be liable to pay [in full]. Under what category of damage could this liability come?[13] — R. Huna b. Manoah said: Under the category of Pit, which is rolled about by feet of man and feet of animal.[14]

MISHNAH. WITH REFERENCE TO WHAT IS TOOTH MU'AD?[15] [IT IS MU'AD] TO CONSUME WHATEVER IS FIT FOR IT. ANIMAL IS MUA'D TO CONSUME BOTH FRUITS AND VEGETABLES. BUT IF IT HAS DESTROYED CLOTHES OR UTENSILS, [ONLY] HALF DAMAGES WILL BE PAID.[16] THIS RULING APPLIES ONLY TO DAMAGE DONE ON THE PLAINTIFF'S PREMISES, BUT IF IT IS DONE ON PUBLIC GROUND THERE WOULD BE EXEMPTION.[17] WHERE, HOWEVER, THE ANIMAL HAS DERIVED SOME BENEFIT [FROM THE DAMAGE DONE BY IT], PAYMENT WILL [IN ANY CASE] BE MADE TO THE EXTENT OF THE BENEFIT. WHEN WILL PAYMENT BE MADE TO THE EXTENT OF THE BENEFIT? IF IT CONSUMED [FOOD] IN THE MARKET, PAYMENT TO THE EXTENT OF THE BENEFIT WILL BE MADE; [BUT IF IT CONSUMED] IN THE SIDEWAYS OF THE MARKET, THE PAYMENT WILL BE FOR THE ACTUAL. DAMAGE DONE BY THE ANIMAl. [SO ALSO IF IT CONSUMED] AT THE ENTRANCE OF A SHOP, PAYMENT TO THE EXTENT OF THE BENEFIT WILL BE MADE, [BUT IF IT CONSUMED] INSIDE THE SHOP, THE PAYMENT WILL BE FOR THE ACTUAL DAMAGE DONE BY THE ANIMAL.

GEMARA. Our Rabbis taught: Tooth is Mu'ad to consume whatever is fit for it. How is that? In the case of an animal entering the plaintiff's premises and consuming food that is fit for it or drinking liquids that are fit for it, the payment will be in full. Similarly in the case of a wild beast entering the plaintiff's premises, tearing an animal to pieces and consuming its flesh, the payment will be in full. So also in the case of a cow consuming barley, an ass consuming horse-beans, a dog licking oil, or a pig consuming a piece of meat, the payment will be in full. R. Papa [thereupon] said: Since it has been stated that things which in the usual way would be unfit as food [for particular animals] but which under pressing circumstances are consumed by them,[18] come under the designation of food, in the case of a cat consuming dates, and an ass consuming fish, the payment will similarly be in full.

There was a case where an ass consumed bread and chewed also the basket[19] [in which the bread had been kept]. Rab Judah thereupon ordered full payment for the bread, but only half damages for the basket. Why can it not be argued that since it was usual for the ass to consume the bread, it was similarly usual for it to chew at the same time the basket too? — It was only after it had already completed consuming the bread, that the ass chewed the basket. But could bread be considered the usual food of an animal? Here is [a Baraitha] which contradicts this: If it [the animal] consumed bread, meat or broth, only half damages will be paid.[20] Now, does not this ruling refer to [a domestic] animal?[21] — No, it refers to a wild beast. To a wild beast? Is not meat its usual food? — The meat was roasted.[22] Alternatively, you may say: It refers to a deer.[23] You may still further say alternatively that it refers to a [domestic] animal, but the bread was consumed upon a table.[24]

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(1) Where indeed there is no distinction between public ground and the plaintiff's premises; (cf. however, the views of R. Tarfon, supra 14a;18a and infra 24b). but in regard to Pebbles, there is a distinction, and liability is restricted to the plaintiff's premises, according to the ruling of R. Zera.

(2) There will therefore be no liability.

(3) Coming thus under the category of Foot, for which there is no liability on public ground.

(4) Why should it not be regarded as a derivative of Foot?

(5) Whether it is still usual for it or not.

(6) On public ground.

(7) And there will be liability.

(8) It should therefore come under the category of Tooth and Foot, for which there is no liability on public ground.

(9) Not being the owner of the poultry.
(10) He should consequently be freed altogether.
(11) Ex. XXI, 33. (5) I.e., no responsibility is involved in cattle creating a nuisance. Cf. infra 48a; 51a.
(12) As there was no owner to the string, while the owner of the poultry could not be made liable for damage that resulted from a nuisance created by his poultry on the principle that Cattle, creating a nuisance, would in no way involve the owner in any obligation.
(13) Since that human being was neither the owner of the poultry nor the owner of the string, and the damage did not occur at the spot where he attached the string.
(14) For which there is liability, as explained supra p. 19.
(15) V. supra p. 68.
(16) For being an unusual act, it comes under the category of Horn.
(17) Cf. supra p. 17.
(18) E.g., horse-beans by an ass, or meat by a pig.
(19) Or 'split it', 'picked it to pieces' (Rashi).
(20) On the ground that the act was unusual and as such would come under the category of Horn.
(21) This shows that bread is not the usual food of animal.
(22) Which is in such a state not usually consumed even by a wild beast.
(23) Which, as a rule, does not feed on meat.
(24) Which was indeed unusual.

Talmud - Mas. Baba Kama 20a

There was a case where a goat, noticing turnips upon the top of a cask, climbed up there and consumed the turnips and broke the jar. — Raba thereupon ordered full payment both for the turnips and for the jar; the reason being that since it was usual with it to consume turnips it was also usual to climb up [for them].

Ilfa stated: In the case of an animal on public ground stretching out its neck and consuming food that had been placed upon the back of another animal, there would be liability to pay; the reason being that the back of the other animal would be counted as the plaintiff's premises. May we say that the following teaching supports his view: 'In the case of a plaintiff who had a bundle [of grain] hanging over his back and [somebody else's animal] stretched out its neck and consumed [the grain] out of it, there would be liability to pay'? — No, just as Raba elsewhere referred to a case where the animal was jumping [an act which being quite unusual would be subject to the law of Horn[1]], so also this teaching might perhaps similarly deal with a case of jumping.

With reference to what was Raba's statement made? — [It was made] with reference to the following statement of R. Oshaia: In the case of an animal on public ground going along and consuming, there would be exemption, but if it was standing and consuming there would be liability to pay. Why this difference? If in the case of walking [there is exemption, since] it is usual with animal to do so, is it not also in the case of standing usual with it to do so? — [It was on this question that] Raba said: 'Standing' here implies jumping [which being unusual was therefore subject in the law of Horn].[1]

R. Zera asked: [In the case of a sheaf that was] rolling about, what would he the law? (In what circumstances? — When, e.g., grain had originally been placed in the plaintiff's premises, but was rolled thence into public ground [by the animal, which consumed the grain while standing on public ground], what would then be the law?)[2] — Come and hear that which R. Hiyya taught: 'In the case of a bag of food lying partly inside and partly outside [of the plaintiff's premises], if the animal consumed inside, there would be liability [to pay], but if it consumed outside there would be exemption.' Now, did not this teaching refer to a case where the bag was being continually rolled?[3] — No; read . '...which the animal consumed, for the part which had originally been lying inside[4]

there would be liability but for the part that had always been outside there would be exemption.' You might alternatively say that R. Hiyya referred to a bag containing long stalks of grass.[5]

ANIMAL IS MUA'D TO CONSUME BOTH FRUITS AND VEGETABLES. BUT IF IT HAS DESTROYED CLOTHES OR UTENSILS, [ONLY] HALF DAMAGES WILL BE PAID. THIS RULING APPLIES ONLY TO DAMAGE DONE ON THE PLAINTIFF'S PREMISES, BUT IF IT IS DONE ON PUBLIC GROUND THERE WOULD BE EXEMPTION. To what ruling does the last clause refer? — Rab said: [It refers] to all the cases [dealt with in the Mishnah, even to the destruction of clothes and utensils];[6] the reason being that whenever the plaintiff himself acted unlawfully,[7] the defendant, though guilty of misconduct, could be under no liability to pay. Samuel on the other hand said: It refers only to the ruling regarding [the consumption of] fruits and vegetables,[8] whereas in the case of clothes and utensils[9] there would be liability [even when the damage was done on public ground]. [The same difference of opinion is found between Resh Lakish and R. Johanan, for] Resh Lakish said: [It refers] to all the cases [even to the destruction of clothes and utensils].[10] In this Resh Lakish was following a view expressed by him in another connection, where he stated:[11] In the case of two cows on public ground, one lying down and the other walking about, if the one that was walking kicked the one that was lying there would be exemption [since the latter too misconducted itself by laying itself down on public ground], whereas if the one that was lying kicked the one that was walking there would be liability to pay. R. Johanan on the other hand said: The ruling in the Mishnah refers only to the case of fruits and vegetables, whereas in the case of clothes and utensils there would be liability [even when the damage was done on public ground]. Might it thus be inferred that R. Johanan was also against the view expressed by Resh Lakish even in the case of the two cows? — No; [in that case] he could indeed have been in full agreement with him; for while in the case of clothes [and utensils] it might be customary with people to place [their] garments [on public ground] whilst having a rest near by, [in the case of the cows] it is not usual [for an animal to lie down on public ground].[12]

WHERE, HOWEVER, THE ANIMAL HAS DERIVED SOME BENEFIT [FROM THE DAMAGE DONE BY IT]. PAYMENT WILL [IN ANY CASE] BE MADE TO THE EXTENT OF THE BENEFIT. How [could the extent of the benefit be] calculated? — Rabbah said: [It must not exceed] the value of straw [i.e. the coarsest possible food for animals]. But Raba said: The value of barley[13] on the cheapest scale [i.e. two-thirds of the usual price]. There is a Baraitha in agreement with Rabbah, and there is another Baraitha in agreement with Raba. There is a Baraitha in agreement with Rabbah [viz.]: R. Simeon b. Yohai said: The payment [to the extent of the benefit] would not be more than the value of straw.[14] There is a Baraitha in agreement with Raba [viz.]: When the animal derived some benefit [from the damage done by it], payment would [in any case] be made to the extent of the benefit. That is to say, in the case of [an animal] having consumed [on public ground] one kab[15] or two kabs [of barley], no order would be given to pay the full value of the barley [that was consumed], but it would be estimated how much might an owner be willing to spend to let his animal have that particular food [which was consumed] supposing it was good for it, though in practice he was never accustomed to feed it thus. It would therefore follow that in the case of [an animal] having consumed wheat or any other food unwholesome for it, there could be no liability at all.

R.Hisda said to Rami b. Hama: You were not yesterday with us in the House of Study[16] where there were discussed some specially interesting matters. The other thereupon asked him: What were the specially interesting matters? He answered: [The discussion was whether] one who occupied his neighbour's premises unbeknown to him would have to pay rent[17] or not. But under what circumstances? It could hardly be supposed that the premises were not for hire,[18] and he [the one who occupied them] was similarly a man who was not in the habit of hiring any,[19] for [what liability could there be attached to a case where] the defendant derived no benefit and the plaintiff sustained no loss? If on the other hand the premises were for hire and he was a man whose wont it was to hire

premises, [why should no liability be attached since] the defendant derived a benefit and the plaintiff sustained a loss? — No; the problem arises in a case where the premises were not for hire, but his wont was to hire premises. What therefore should be the law? Is the occupier entitled to plead [against the other party]: 'What loss have I caused to you [since your premises were in any case not for hire]?'

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(1) Which could not be exempted from liability even on public ground.

(2) If we were to go by the place of the actual consumption there would be exemption in this case, whereas if the original place whence the food was removed is also taken into account, there would be liability to pay.

(3) According to this Baraitha, the place of actual consumption was the basic point to be considered.

(4) Though removed by the animal and consumed outside.

(5) Which was lying partly inside and partly outside, and as, unlike grain, it constituted one whole, the place of the consumption was material.

(6) For which there would be no liability on public ground, although, being unusual, it would come under the category of Horn.

(7) By allowing his clothes or utensils to be on public ground.

(8) Cf. supra p. 17.

(9) As the damage would come under the category of Horn.

(10) V. p. 97, n. 5.

(11) V. infra 32a.

(12) It was therefore a misconduct on the the part of the animal to lie down, which makes it liable for any damage it caused, whilst it is not entitled to payment for any damage sustained.

(13) I.e., the value of the food actually consumed by the animal.

(14) Even when the animal consumed barley, as it might be alleged that straw would have sufficed it.

(15) A certain measure: v. Glos.

(16) Lit. 'in our district,' 'domain' בחהומא This word is omitted in some texts, v. D. S. a.l.

(17) For the past.

(18) And would in any case have remained vacant.

(19) As he had friends who were willing to accommodate him without any pay.

Talmud - Mas. Baba Kama 20b

Or might the other party retort: 'Since you have derived a benefit [as otherwise you would have had to hire premises], you must pay rent accordingly'? Rami b. Hama thereupon said to R. Hisda: 'The solution to the problem is contained in a Mishnah.' — 'In what Mishnah?' He answered him: 'When you will first have performed for me some service.'[1] Thereupon he, R. Hisda, carefully lifted up his[2] scarf and folded it. Then Rami b. Hama said to him: [The Mishnah is:] WHERE, HOWEVER, THE ANIMAL HAS DERIVED SOME BENEFIT [FROM THE DAMAGE DONE BY IT,] PAYMENT WILL [IN ANY CASE] BE MADE TO THE EXTENT OF THE BENEFIT. Said Raba: How much worry and anxiety is a person [such as Rami b. Hama] spared whom the Master [of all] helps! For though the problem [before us] is not at all analogous to the case dealt with in the Mishnah, R. Hisda accepted the solution suggested by Rami b. Hama. [The difference is as follows:] In the case of the Mishnah the defendant derived a benefit and the plaintiff sustained a loss, whereas in the problem before us the defendant derived a benefit but the plaintiff sustained no loss. Rami b. Hama was, however, of the opinion that generally speaking fruits left on public ground have been [more or less] abandoned by their owner [who could thus not regard the animal that consumed them there as having exclusively caused him the loss he sustained, and the analogy therefore was good].

Come and hear: 'In the case of a plaintiff who [by his fields] has encircled the defendant's field on three sides, and who has made a fence on the one side as well as on the second and third sides [so that the defendant is enjoying the benefit of the fences], no payment can be enforced from the defendant [since on the fourth side his field is still open wide to the world and the benefit he derives

is thus incomplete].'[3] Should, however, the plaintiff make a fence also on the fourth side, the defendant would [no doubt] have to share the whole outlay of the fences. Now, could it not he deduced from this that wherever a defendant has derived benefit, though the plaintiff has thereby sustained no loss,[4] there is liability to pay [for the benefit derived]? — That case is altogether different, as the plaintiff may there argue against the defendant saying: It is you that [by having your field in the middle of my fields] have caused me to erect additional fences[5] [and incur additional expense].

Come and hear: [In the same case] R. Jose said: [It is only] if the defendant [subsequently] of his own accord makes a fence on the fourth side that there would devolve upon him, a liability to pay his share [also] in the existing fences [made by the plaintiff].[6] The liability thus applies only when the defendant fences [the fourth side], but were the plaintiff to fence [the fourth side too] there would be no liability [whatsoever upon the defendant]. Now, could it not be deduced from this that in a case where, though the defendant has derived benefit, the plaintiff has [thereby] sustained no loss, there is no liability to pay? — That ruling again is based on a different principle, since the defendant may argue against the plaintiff saying: 'For my purposes a partition of thorns of the value of zuz[7] would have been quite sufficient.'

Come and hear: '[A structure consisting of] a lower storey and an upper storey, belonging respectively to two persons, has collapsed. The owner of the upper storey thereupon asks the owner of the lower storey to rebuild the ground floor, but the latter does not agree to do so. The owner of the upper storey is then entitled to build the lower storey and to occupy it until the owner of the ground floor refunds the outlay.'[8] Now, seeing that the whole outlay will have to be refunded by the owner of the lower storey, it is evident that no rent may be deducted [for the occupation of the lower storey]. Could it thus not be inferred from this ruling that in a case where, though the defendant has derived a benefit, the plaintiff has [thereby] sustained no loss,[9] there is no liability to pay? — That ruling is based on a different principle as the lower storey is by law accessory to the upper storey.[10]

Come and hear: [In the same case] R. Judah said: Even this one who occupies another man's premises without an agreement with him must nevertheless pay him rent.[11] Is not this ruling a proof that in a case where the defendant has derived benefit, though the plaintiff has [thereby] sustained no loss, there is full liability to pay? — That ruling is based on a different principle, since we have to reckon there with the blackening of the walls [in the case of newly built premises, the plaintiff thus sustaining an actual loss].

The problem was communicated to R. Ammi and his answer was: 'What harm has the defendant done to the other party? What loss has he caused him to suffer? And finally what indeed is the damage that he has done to him?' R. Hiyya b. Abba, however, said: 'We have to consider the matter very carefully.' When the problem was afterwards again laid before R. Hiyya b. Abba he replied: 'Why do you keep on sending the problem to me? If I had found the solution, would I not have forwarded it to you?'

It was stated: R. Kahana quoting R. Johanan said: [In the case of the above problem] there would be no legal obligation to pay rent; but R. Abbahu similarly quoting R. Johanan said: There would be a legal obligation to pay rent. R. Papa thereupon said: The view expressed by R. Abbahu [on behalf of R. Johanan] was not stated explicitly [by R. Johanan] but was only arrived at by inference. For we learnt: He who misappropriates a stone or a beam belonging to the Temple Treasury[12] does not render himself subject to the law of Sacrilege.[13] But if he delivers it to his neighbour, he is subject to the law of Sacrilege,[14] whereas his neighbour is not subject to the law of Sacrilege.[15] So also when he builds it into his house he is not subject to the law of Sacrilege until he actually occupies that house for such a period that the benefit derived from that stone or that beam would amount to the value of a perutah.[16] And Samuel thereupon said that the last ruling referred to a case where the

stone or the beam was [not fixed into the actual structure but] left loose on the roof.[17] Now, R. Abbahu sitting in the presence of R. Johanan said in the name of Samuel that this ruling proved that he who occupied his neighbour's premises without an agreement with him would have to pay him rent.[18] And he [R. Johanan] kept silent. [R. Abbahu] imagined that since he [R. Johanan] remained silent, he thus acknowledged his agreement with this inference. But in fact this was not so. He [R. Johanan] paid no regard to this view on account of his acceptance of an argument which was advanced [later] by Rabbah; for Rabbah[19] said: The conversion of sacred property even without [the] knowledge [of the Temple Treasury] is [subject[20] to the law of Sacrilege][21]

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(1) 'Then will I let you know the source.' The service thus rendered would on the one hand prove the eagerness of the enquirer and on the other make him appreciate the answer;.

(2) I.e.. the other's.

(3) B.B. 4b.

(4) Such as in the case before us where the fences were of course erected primarily for the plaintiff's own use.

(5) I.e., the fencing which was erected between the field of the defendant and the surrounding fields that belong to the plaintiff. This interpretation is given by Rashi but is opposed by the Tosaf. a.l. who explain the case to refer to fencing set up between the fields of the plaintiff and those of the surrounding neighbours.

(6) B.B. 4b.

(7) A small coin; v. Glos.

(8) B.M. 117a.

(9) [Since in this case the owner of the ground floor refused to build.]

(10) The occupation of the newly-built lower storey by the owner of the upper storey is thus under the given circumstances a matter of right.

(11) B.M. 117a.

(12) But which has been all the time in his possession as he had been the authorized Treasurer of the Sanctuary; v. Hag. 11a and Mei. 20a

(13) Since the offender was the Treasurer of the Temple and the possession of the consecrated stone or beam has thus not changed hands, no conversion has been committed in this case. As to the law of Sacrilege, v. Lev. V, 15-16, and supra, p. 50.

(14) For the conversion that has been committed.

(15) Since the article has already been desecrated by the act of delivery.

(16) Mei. V, 4. Perutah is the minimum legal value; cf. also Glossary.

(17) [As otherwise the mere conversion involved would render him liable to the law of Sacrilege.]

(18) For if in the case of private premises there would be no liability to pay rent, why should the law if Sacrilege apply on account of the benefit of the perutah derived from the stone or the beam?

(19) Cf. B.M. 99b, where the reading is Raba.

(20) As nothing escapes the knowledge of Heaven which ordered the law of Sacrilege to apply to all cases of conversion.

(21) Dealt with in Lev. V, 15-16.

Talmud - Mas. Baba Kama 21a

just as the use of private property under an agreement [is subject to the law of Contracts].

R. Abba b. Zabda sent [the following message] to Mari the son of the Master:[1] 'Ask R. Huna as to his opinion regarding the case of one who occupies his neighbour's premises without any agreement with him, must he pay him rent or not?' But in the meanwhile R. Huna's soul went to rest. Rabbah b. R. Huna thereupon replied as follows: 'Thus said my father, my Master, in the name of Rab: He is not legally bound to pay him rent; but he who hires premises from Reuben may have to pay rent to Simeon.' But what connection has Simeon with premises [hired from Reuben, that the rent should be paid to him]? — Read therefore thus: '. . . [Reuben] and the premises were discovered to be the property of Simeon, the rent must be paid to him.' But [if so], do not the two statements [made above in the name of Rab] contradict each other? — The latter statement [ordering payment to Simeon]

deals with premises which were for hire,[2] whereas the former ruling [remitting rent in the absence of an agreement] refers to premises which were not for hire. It has similarly been stated: R. Hiyya b. Abin quoting Rab said, (some say that R. Hiyya b. Abin quoting R. Huna said): 'He who occupies his neighbour's premises without any agreement with him is not under a legal obligation to pay him rent. He, however, who hires premises from the representatives of the town must pay rent to the owners.' What is the meaning of the reference to 'owners'? — Read therefore thus: '. . . [representatives of the town,] and the premises are discovered to be the property of [particular] owners, the rent must be paid to them.' But [if so,] how can the two statements be reconciled with each other? The latter statement [ordering payment to the newly discovered owners] deals with premises which are for hire,[2] whereas the former ruling [remitting rent in the absence of an agreement] refers to premises which are not for hire.

R.Sehorah slated that R. Huna quoting Rab had said: He who occupies his neighbour's premises without having any agreement with him is under no legal obligation to pay him rent, for Scripture says, Through emptiness[3] even the gate gets smitten.[4] Mar, son of R. Ashi, remarked: I myself have seen such a thing[5] and the damage was as great as though done by a goring ox. R. Joseph said: Pre mises that are inhabited by tenants[6] keep in a better condition. What however is the [practical] difference between them?[7] — There is a difference between them in the case where the owner was using the premises for keeping there wood and straw.[8]

There was a case where a certain person built a villa upon ruins that had belonged to orphans. R. Nahman thereupon confiscated the villa from him [for the benefit of the orphans]. May it therefore not be inferred that R. Nahman is of the opinion that he who occupies his neighbour's premises without having any agreement with him must still pay him rent? — [The case of the orphans is based on an entirely different principle, as] that site had originally been occupied by certain Carmanians[9] who used to pay the orphans a small rent.[10] When the defendant had thus been advised by R. Nahman to go and make a peaceful settlement with the orphans, he paid no heed. R. Nahman therefore confiscated the villa from him.

WHEN WILL PAYMENT BE MADE TO THE EXTENT OF THE BENEFIT? [IF IT CONSUMED [FOOD] . . . IN THE SIDEWAYS OF THE MARKET, THE PAYMENT WILL BE FOR THE ACTUAL DAMAGE DONE BY THE ANIMAL.] Rab thereupon said: [The last ruling ordering payment for the actual damage done extends] even to a case where the animal itself [stood in the market place but] turned its head to the sideways [where it in this wise consumed the food]. Samuel on the other hand said: Even in the case of the animal turning its head to the sideways no payment will be made for the actual damage done.[11] But according to Samuel, how then can it happen that there will be liability to pay for actual damage? — Only when, e.g., the animal had quitted the market place altogether and walked right into the sideways of the market place. There are some [authorities] who read this argument [between Rab and Samuel] independent of any [Mishnaic] text: In the case of an animal [standing in a market place but] turning its head into the sideways [and unlawfully consuming food which was lying there], Rab maintains that there will be liability [for the actual damage] whereas Samuel says that there will be no liability [for the actual damage]. But according to Samuel, how then can it happen that there will be liability to pay for actual damage? — Only when, e.g., the animal had quitted the market place altogether and had walked right into the sideways of the market place. R. Nahman b. Isaac raised an objection: [SO ALSO IF IT CONSUMED] AT THE ENTRANCE OF A SHOP, PAYMENT TO THE EXTENT OF THE BENEFIT WILL BE MADE.[12] How could the damage in this case have occurred unless, of course, by the animal having turned [its head to the entrance of the shop]? Yet the text states, PAYMENT TO THE EXTENT OF THE BENEFIT. [That is to say,] only to the extent of the benefit [derived by the animal] but not for the actual damage done by it?[13] — He raised the objection and he himself[14] answered it: The entrance to the shop might have been at a corner [in which case the animal had access to the food placed there without having to turn its head].

There are some [authorities], however, who say that in the case of an animal turning [its head to the sideways of the market place] there was never any argument whatsoever that there would be liability [for the actual damage done]. The point at issue between Rab and Samuel was in the case of a plaintiff who left unfenced a part of his site abutting on public ground, and the statement ran as follows: Rab said that the liability for the actual damage done could arise only in a case where [the food was placed in the sideways of the market to which] the animal turned [its head]. But in the case of a plaintiff leaving unfenced a part of his site abutting on public ground [and spreading out there fruits which were consumed by the defendant's animal] there would be no liability to pay [for the loss sustained].[15] Samuel, however, said that even in the case of a plaintiff leaving unfenced a part of his site abutting on to the public ground, there would be liability to pay [for the loss sustained]. Might it not be suggested that the basic issue [between Rab and Samuel] would be that of a defendant having dug a pit on his own site [and while abandoning the site still retains his ownership of the pit]?[16] Rab who here upholds exemption [for the loss sustained by the owner of the fruits] maintains that a pit dug on one's own site is subject to the law of Pit [so that fruits left on an unfenced site adjoining the public ground constitute a nuisance which may in fact be abated by all and everybody],[17] whereas Samuel who declares liability [for the loss sustained by the owner of the fruits] would maintain that a pit dug on one's own site could never be subject to the law of Pit![18] — Rab could, however, [refute this suggestion and] reason thus: [In spite of your argument] I may nevertheless maintain

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(1) Cf. infra 97a; B.M. 64b.

(2) In which case the owner sustains a loss and rent must be paid.

(3) The Hebrew word She'iyyah שאייה rendered ‘emptiness’, is taken to be the name of a demon that haunts uninhabitated premises; cf. Rashi a.l.

(4) Isa. XXIV, 12.

(5) Lit ‘. . . him referring, to the demon.

(6) Who look after premises.

(7) I.e., between the reason adduced by Rab and that given by R. Joseph.

(8) In which case the premises had in any case not been empty and thus not haunted by the so-called demon ‘She'iyyah’. There would therefore be liability to pay rent. But according to the reason given by R. Joseph that premises inhabited by tenants keep in better condition as the tenants look after their repairs, there would even in this case be no liability of rent upon the tenant who trespassed into his neighbour's premises that had previously been used only for the keeping of wood and straw and thus liable to fall into dilapidation.

(9) I.e., persons who came from Carmania. According to a different reading quoted by Rashi a.l. and occurring also in MS.M., it only means ‘Former settlers’.

(10) In which case the plaintiffs suffered an actual loss, however small it was.

(11) Since the body of the animal is still on public ground.

(12) Supra p. 94.

(13) Supporting thus the view of Samuel but contradicting that of Rab.

(14) I.e., R. Nahman b. Isaac.

(15) But only for the benefit the animal derived from the fruits.

(16) The fruits kept near the public ground are a public nuisance and equal a pit, the ownership of which was retained and which was dug on a site to which the public has full access.

(17) Cf. infra 30a.

(18) Since the pit still remains private property.

that in other respects a pit dug on one's own site is not subject to the law of Pit, but the case before us here is based on a different principle, since the defendant is entitled to plead [in reply to the plaintiff]: ‘You had no right at all to spread out your fruits so near to the public ground as to involve

me in liability through my cattle consuming them.' Samuel on the other hand could similarly contend: In other respects a pit dug on one's own site may be subject to the law of Pit, for it may be reasonable in the case of a pit for a plaintiff to plead that the pit may have been totally overlooked [by the animals that unwittingly fell in]. But in the case of fruits [spread out on private ground], is it possible to plead with reason that they may have been overlooked? Surely they must have been seen.[1]

May it not be suggested that the case of an animal 'turning its head [to the sideways]' is a point at issue between the following Tannaitic authorities? For it has been taught: In the case of an animal [unlawfully] consuming [the plaintiff's fruits] on the market, the payment will be [only] to the extent of the benefit; [but when the fruits had been placed] on the sideways of the market, the payment would be assessed for the damage done by the animal. This is the view of R. Meir and R. Judah. But R. Jose and R. Eleazar say: It is by no means usual for an animal to consume [fruits], Only to walk [there]. Now, is not R. Jose merely expressing the view already expressed by the first-mentioned Tannaitic authorities[2] , unless the case of an animal 'turning its head [to the sideways]' was the point at issue between them, so that the first-mentioned Tannaitic authorities[2] maintained that in the case of an animal 'turning its head [to the sideways]' the payment will still be fixed to the extent of the benefit it had derived, whereas R. Jose would maintain that the payment will be in accordance with the actual damage done by it?[3] — No; all may agree that in the case of an animal 'turning its head [to the sideways]' the law may prevail either in accordance with Rab or in accordance with Samuel; the Point at issue, however, between the Tannaitic authorities here [in the Baraitha] may have been as to the qualifying force of in another man's field.[4] The first Tannaitic authorities[2] maintain that the clause, And it [shall] feed in another man's field, is meant to exclude liability for damage done on public ground, whereas the succeeding authorities[5] are of the opinion that the clause And it [shall] feed in another man's field exempts [liability only for damage done to fruits which had been spread on] the defendant's domain.[6] On the defendant's domain! Is it not obvious that the defendant may plead: What right had your fruit to be on my ground?[7] — But the point at issue [between the authorities mentioned in the Baraitha] will therefore be in reference to the cases dealt With [above][8] by Ilfa[9] and by R. Oshaia.[10]

MISHNAH. IF A DOG OR A GOAT JUMPS DOWN FROM THE TOP OF A ROOF AND BREAKS UTENSILS [ON THE PLAINTIFF'S GROUND] THE COMPENSATION MUST BE IN FULL, FOR ANY OF THEM IS CONSIDERED MU'AD IN RESPECT OF THAT DAMAGE].[11] IF [HOWEVER] A DOG TAKES HOLD OF A CAKE [WITH LIVE COALS STICKING TO IT] AND GOES [WITH IT] TO A BARN, CONSUMES THE CAKE AND SETS THE BARN ON FIRE, [THE OWNER OF THE DOG] PAYS FULL COMPENSATION FOR THE CAKE,[12] WHEREAS FOR THE BARN [HE] PAYS [ONLY] HALF DAMAGES.

GEMARA. The reason of [the liability in the commencing clause] is that the dog or goat has jumped [from the roof][13] , but were it to have fallen down[14] [from the roof and thus broken utensils] there would be exemption. It can thus be inferred that the authority here accepted the view that the inception of [potential] negligence resulting in [mere] accident carries exemption.

It has been explicitly taught to the same effect: 'If a dog or goat jumps down from the top of a roof and breaks utensils [on the plaintiff's ground] the compensation must be in full; were it, however, to have fallen down[15] [and thus broken the utensils] there would be exemption.' This ruling seems to be in accord with the view that where there is negligence at the beginning[16] but the actual damage results from [mere] accident[17] there is exemption,[18] but how could the ruling be explained according to the view that upholds liability? — The ruling may refer to a case where the utensils had, for example, been placed very near to the wall so that were the animal to have jumped it would by jumping have missed them altogether; in which case there was not even negligence at the beginning.[19]

R. Zebid in the name of Raba, however, said: There are certain circumstances where there will be liability even in the case of [the animal] falling down. This might come to pass when the wall had not been in good condition.[20] Still what was the negligence there? It could hardly be that the owner should have borne in mind the possibility of bricks falling down[21] [and doing damage], for since after all it was not bricks that came down but the animal that fell down, why should it not be subject to the law applicable to a case where the damage which might have been done by negligence at the inception actually resulted from accident?[22] — No, it has application where the wall of the railing was exceedingly narrow.[23]

Our Rabbis taught: In the case of a dog or goat jumping [and doing damage], if it was in an upward direction[24] there is exemption;[25] but if in a downward direction there is liability.[26] In case, however, of man or poultry jumping [and doing damage], whether in a downward or upward direction, there is liability.[27]

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(1) And since they were kept on private ground they could not be considered a nuisance. The animal consuming them there has indeed committed trespass.

(2) I.e., R. Meir and R. Judah; for the point at issue could hardly be the case of consumption on public ground where none would think of imposing full liability for the actual damage done, but it must be in regard to the sideways of the market.

(3) For in the case of turning the head it was none the more lawful to consume the fruits.

(4) Ex. XXII, 4.

(5) R. Jose and R. Eleazar.

(6) [But there would be no exemption according to R. Jose for consuming fruits even on the market.]

(7) There should thus be no need of explicit exemption.

(8) Supra p. 96.

(9) Dealing with an animal stretching out its head and consuming fruits kept on the back of the plaintiff's animal, in which case R. Meir and R. Judah impose the liability only to the extent of the benefit, whereas R. Jose and R. Eleazar order compensation for the actual damage sustained by the plaintiff.

(10) Imposing liability in the case of an animal jumping and consuming fruits kept in baskets: R. Meir and R. Judah thus limit the liability to the extent of the benefit derived, whereas R. Jose and R. Eleazar do not limit it thus.

(11) Coming thus within the purview of the law of Foot.

(12) Being subject to the law of Tooth.

(13) An act which is usual with either of them and thus subject to the law of Foot.

(14) By mere accident.

(15) By mere accident.

(16) For the owner should have taken precautions against its jumping.

(17) Since it fell down.

(18) Cf. infra 56a; 58a; B.M. 42a and 93b.

(19) But mere accident all through.

(20) The defendant is thus guilty of negligence.

(21) From the wall, which the defendant kept in a dilapidated state.

(22) Where opinions differ.

(23) Or very sloping. It was thus natural that the animal would be unable to remain there very long, but should slide down and do damage.

(24) An act unusual with any of them.

(25) From full compensation, whereas half damages will be paid in accordance with the law applicable to Horn.

(26) I.e., complete liability, as the act is usual with them and is thus subject to the law of Foot.

(27) As the act is quite usual with poultry, and as to man, he is always Mu'ad, v. supra p. 8.

But was it not [elsewhere] taught: 'In the case of a dog or goat jumping [and doing damage], whether in a downward or upward direction, there is exemption'?[1] — R. Papa thereupon interpreted the latter ruling[2] to refer to cases where the acts done by the animals were the reverse of their respective natural tendencies: e.g, the dog [jumped] by leaping and the goat by climbing. If so, why [complete] exemption?[3] — The exemption indeed is only from full compensation while there still remains liability for half damages.[3]

IF A DOG TAKES HOLD etc. It was stated: R. Johanan said: Fire [involves liability] on account of the human agency that brings it about.[4] Resh Lakish, however, maintained that Fire is chattel.[5] Why did Resh Lakish differ from R. Johanan? — His contention is: Human agency must emerge directly from human force whereas Fire does not emerge from human force.[6] Why, on the other hand, did not R. Johanan agree with Resh Lakish?[7] — He may say: Chattel contains tangible properties, whereas Fire[8] has no tangible properties.

We have learnt:[9] IF A DOG TAKES HOLD OF A CAKE [TO WHICH LIVE COALS WERE STUCK] AND GOES [WITH IT] TO A BARN, CONSUMES THE CAKE AND SETS THE BARN ALIGHT, [THE OWNER] PAYS FULL COMPENSATION FOR THE CAKE, WHEREAS FOR THE BARN [HE] PAYS [ONLY] HALF DAMAGES. This decision accords well with the view that the liability for Fire is on account of the human agency that caused it; in the case of the dog, there is thus some liability upon the owner of the dog as the fire there was caused by the action of the dog.[10] But according to the principle that Fire is chattel, [why indeed should the owner of the dog be liable?] Could the fire be said to be the chattel of the owner of the dog? — Resh Lakish may reply: The Mishnaic ruling deals with a case where the burning coal was thrown by the dog [upon the barn]: full compensation must of course be made for the cake,[11] but only half will be paid for the damage done to the actual spot upon which the coal had originally been thrown,[12] whereas for the barn as a whole there is exemption altogether.[13] R. Johanan, however, maintains that the ruling refers to a dog actually placing the coal upon the barn: For the cake[11] as well as for the damage done to the spot upon which the coal had originally been placed the compensation must be in full,[14] whereas for the barn as a whole only half damages will be paid.[15]

Come and hear: A camel laden with flax passes through a public thoroughfare. The flax enters a shop, catches fire by coming in contact with the shopkeeper's candle and sets alight the whole building. The owner of the camel is then liable. If, however, the shopkeeper left his candle outside [his shop], he is liable. R. Judah says: In the case of a Chanucah candle[16] the shopkeeper would always be quit.[17] Now this accords well with the view that Fire implies human agency: the agency of the camel could thus be traced in the setting alight of the whole building. But according to the view that Fire is chattel, [why should the owner of the camel be liable?] Was the fire in this case the chattel of the owner of the camel? — Resh Lakish may reply that the camel in this case [passed along the entire building and] set every bit of it on fire.[18] If so, read the concluding clause: If, however, the shopkeeper left his candle outside [his shop] he is liable. Now, if the camel set the whole of the building on fire, why indeed should the shopkeeper be liable? — The camel in this case stood still [all of a sudden].[19] But [it is immediately objected] if the camel stood still and yet managed to set fire to every bit of the building, is it not still more fitting that the shopkeeper should be free but the owner of the camel fully liable?[20] — R. Huna b. Manoah in the name of R. Ika [thereupon] said: The rulings apply to [a case where the camel] stood still to pass water;[21]

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(1) Because the act is considered unusual with them.

(2) That exempts in acts towards all directions.

(3) For though the acts are unusual, they should be subject to the law of Horn imposing payment of half damages for unusual occurrences.

(4) Lit., 'his fire is due to his arrows'. Damage done by Fire equals thus damage done by Man himself.

(5) Lit., 'his property'.

(6) Since it travels and spreads of itself.
(7) That Fire is chattel.
(8) I e., the flame; cf. Bez. 39a.
(9) Supra p. 109.
(10) All the damage to the barn that resulted from the fire is thus considered as if done altogether by the dog that caused the live coals to start burning the barn.
(11) On account of the law applicable to Tooth.
(12) For the damage to this spot is solely imputed to the action of the dog throwing there the burning coal. The liability, however, is only for half damages on account of the law of Pebbles to which there is subject any damage resulting from objects thrown by cattle: cf. supra P. 79.
(13) Since the fire in this case could not be said to have been the obnoxious chattel of the owner of the dog [Nor could it be treated as Pebbles, since it spread of itself.]
(14) As the damage to this spot is directly attributed to the action of the dog.
(15) For any damage that results not from the direct act, but from a mere agency of chattels, is subject to the law of Pebbles ordering only half damages to be paid.
(16) Which has to be kept in the open thoroughfare; see infra p. 361.
(17) Ibid.
(18) The damage done to every bit of the building is thus directly attributed to the action of the camel.
(19) V. n. 4.
(20) For not having instantly driven away the camel from such a dangerous spot.
(21) And while it was impossible to drive it away quickly from that spot, the camel meanwhile managed to set every bit of the building on fire.

Talmud - Mas. Baba Kama 22b

[so that] in the commencing clause the owner of the camel is liable, for he should not have overloaded [his camel],[1] but in the concluding clause the shopkeeper is liable for leaving his candle outside [his shop].

Come and hear: In the case of a barn being set on fire, where a goat was bound to it and a slave [being loose] was near by it, and all were burnt, there is liability [for barn and goat].[2] In the case, however, of the slave being chained to it and the goat[3] near by it and all being burnt, there is exemption [for barn and goat].[4] Now this is in accordance with the view maintaining the liability for Fire to be based upon human agency: there is therefore exemption here [since capital punishment is attached to that agency].[4] But, according to the view that Fire is chattel, why should there be exemption? Would there be exemption also in the case of cattle killing a slave?[5] — R. Simeon b. Lakish may reply to you that the exemption refers to a case where the fire was actually put upon the body of the slave[6] so that no other but the major punishment is inflicted.[7] If so, [is it not obvious?] Why state it at all? — No; it has application [in the case] where the goat belonged to one person and the slave to another.[8]

Come and hear: In the case of fire being entrusted to a deaf-mute, an idiot or a minor[9] [and damage resulting], no action can be instituted in civil courts, but there is liability[10] according to divine justice.[11] This again is perfectly consistent with the view maintaining that Fire implies human agency, and as the agency in this case is the action of the deaf mute [there is no liability]; but according to the [other] view that Fire is chattel, [why exemption?] Would there similarly be exemption in the case of any other chattel being entrusted to a deaf-mute, an idiot, or a minor?[12] — Behold, the following has already been stated in connection therewith:[13] Resh Lakish said in the name of Hezekiah that the ruling[11] applies only to a case where it was a [flickering] coal that had been handed over to [the deaf-mute] who fanned it into flame, whereas In the case of a [ready] flame having been handed over there is liability on the ground that the instrument of damage has been fully prepared. R. Johanan, on the other hand, stated that even in the case of a ready flame there is

exemption, maintaining that it was only the handling by[14] the deaf-mute that caused [the damage]; there could therefore be no liability unless chopped wood, chips and actual fire were [carelessly] given him.

Raba said: [Both] Scripture and a Baraitha support [the View of] R. Johanan. 'Scripture': For it is written, If fire break out;[15] 'break out' implies 'of itself' and yet [Scripture continues], He that kindled the fire[16] shall surely make restitution.[17] It could thus be inferred that Fire implies human agency. 'A Baraitha': For it was taught. The verse,[17] though commencing with damage

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(1) To the extent that the flax should penetrate the shop.

(2) But not for the slave, who should have quitted the spot before it was too late; cf. infra 27a.

(3) Whether chained or loose.

(4) Infra 43b and 61b. For all civil actions merge in capital charges and the defendant in this case is charged with murder (since the slave was chained and thus unable to escape death), and thus exempt from all money payment arising out of the charge; cf. infra 70b.

(5) V. Ex. XXI, 32, where the liability of thirty shekels is imposed upon the owner.

(6) The defendant has thus committed murder by his own hands.

(7) V. p.113. n. 8.

(8) Though the capital charge is not instituted by the owner of the goat, no damages could be enforced for the goat, since the defendant has in the same act also committed murder, and is liable to the graver penalty.

(9) Who does not bear responsibility before the law.

(10) Upon the person who entrusted the fire to the deaf-mute, etc. Mishnah, infra 59b.

(11) Cf. supra p. 38.

(12) Supra p. 36; infra 59b.

(13) Supra 9b.

(14) Lit., 'the tongs of'.

(15) Ex. XXII, 5.

(16) The damage that resulted is thus emphatically imputed to human agency.

(17) Ex. XXII 5.

done by property,[1] concludes with damage done by the person[2] [in order] to declare that Fire implies human agency.

Raba said: The following difficulty confronted Abaye:According to the view maintaining that Fire implies human agency, how [and when] was it possible for the Divine law to make exemption[3] for damage done by Fire to hidden things?[4] He solved it thus: Its application is in the case of a fire which would ordinarily not have spread beyond a certain point, but owing to the accident of a fence collapsing not on account of the fire, the conflagration continued setting alight and doing damage in other premises where the original human agency is at an end.[5] If so, even regarding unconcealed goods is not the human agency at an end?[6] — Hence the one maintaining that Fire implies human agency also holds that Fire is chattel,[7] so that liability for unconcealed goods would arise in the case where the falling fence could have been, but was not, repaired in time [to prevent the further spread of the fire], since it would equal chattel[8] left unguarded by the owner.[9] But if the one who holds that fire implies human agency also maintains that Fire is chattel,[7] what then is the practical point at issue?[10] — The point at issue is whether Fire[11] will involve the [additional] Four Items.[12]

[THE OWNER OF THE DOG] PAYS FULL COMPENSATION FOR THE CAKE WHEREAS FOR THE BARN [HE] PAYS [ONLY] HALF DAMAGES. Who is liable [for the barn]? — The owner of the dog. But why should not the owner of the coal also be made liable?[13] — His [burning] coal was [well] guarded by him.[14] If the [burning] coal was well guarded by him, how then did the

dog come to it? — By breaking in. R. Mari the son of R. Kahana thereupon said: This ruling implies that the average door is not beyond being broken in by a dog.[15]

Now in whose premises was the cake devoured? It could hardly be suggested that it was devoured in the barn of another party,[16] for do we not require And shall feed in the field of another[17] [the plaintiff], which is not the case here? — No, it applies where it was devoured in the barn of the owner of the cake. You can thus conclude that [the plaintiff's food carried in] the mouth of [the defendant's] cattle

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(1) I.e., by fire breaking out of itself.

(2) As implied in the clause, He that kindled the fire.

(3) Since in the case of Man doing damage such an exemption does not exist.

(4) V. supra pp. 18 and 39 and infra 61b.

(5) It is in this case (where the human agency is at an end) that there is exemption for hidden goods but liability for unconcealed articles.

(6) And there should therefore be exemption for damage done to all kinds of property.

(7) So that whenever the human agency is at an end, there would still be a possibility of liability being incurred.

(8) Lit., 'his ox'.

(9) Cf. infra 55b.

(10) I.e., what is the difference in law whether the liability for Fire is for the principles of human agency and chattel combined, or only on account of the principle of chattel? The difference could of course be only in the case where the human agency involved in Fire was not yet brought to an end. For otherwise the liability according to both views would only be possible on account of the principle of chattel, a principle which is according to the latest conclusion maintained by all.

(11) In cases where the human agency was not yet at an end.

(12) I.e., Pain, Healing, Loss of Time and Degradation, which in the case of Man, but not Ox, injuring men are paid in addition to Depreciation which is a liability common in all cases; v. supra p. 12. According to R. Johanan who considers Fire a human agency, the liability will be not only for Depreciation but also for the additional Four Items: whereas Resh Lakish maintains that only Depreciation will be paid, as in the case of damage done by Cattle.

(13) Since it was his coal that did the damage.

(14) He is therefore not to blame.

(15) For if otherwise the breaking in should be an act of unusual occurrence that should be subject to the law applicable to Horn, involving only the compensation of half damages for the consumption of the cake.

(16) I.e., a barn not belonging to the owner of the cake.

(17) Ex. XXII, 4.

Talmud - Mas. Baba Kama 23b

is still considered [kept in] the plaintiff's premises.[1] For if it is considered to be in the defendant's premises why should not he say to the plaintiff: What is your bread doing in the mouth of my dog?[2] For there had been propounded a problem: Is [the plaintiff's food carried in] the mouth of [the defendant's] cattle considered as kept in the premises of the plaintiff, or as kept in the premises of the defendant? (Now if you maintain that it is considered to be in the defendant's premises, how can Tooth, for which the Divine Law imposes liability,[3] ever have practical application? — R. Mari the son of R. Kahana, however, replied: [It can have application] in the case where [the cattle] scratched against a wall for the sake of gratification [and pushed it down], or where it soiled fruits [by rolling upon them] for the purpose of gratification.[4] But Mar Zutra demurred: Do we not require, As a man taketh away dung till it all be gone,[5] which is not the case here?[6] — Rabina therefore said; [It has application] in the case where [the cattle] rubbed paintings[7] off [the wall]. R. Ashi similarly said: [It may have application] in the case where the cattle trampled on fruits [and spoilt them completely].[7])

Come and hear: If he incited a dog against him [i.e. his fellowman], or incited a serpent against

him [to do damage], there is exemption.[8] For whom is there exemption? — There is exemption for the inciter, but liability upon the owner of the dog. Now if you contend that [whatever is kept in] the mouth of the defendant's cattle is considered [as kept in] the defendant's premises, why should he not say to the plaintiff: What is your hand doing in the mouth of my dog?[9] — Say, therefore, there is exemption also for the inciter;[10] or if you like, you may say: The damage was done by the dog baring its teeth and wounding the plaintiff.[11]

Come and hear: If a man caused another to be bitten by a serpent, R. Judah makes him liable whereas the Sages exempt him.[8] And R. Aha b. Jacob commented:[12] Should you assume that according to R. Judah the poison of a serpent is ready at its fangs, so that the defendant [having committed murder is executed by] the sword,[13] whereas the serpent [being a mere instrument] is left unpunished, then according to the view of the Sages, the poison is spitten out by the serpent of its own free will, so that the serpent [being guilty of slaughter] is stoned,[14] whereas the defendant, who caused it, is exempt.[15] Now if you maintain that [whatever is kept in] the mouth of the defendant's cattle is considered [to be in] the defendant's premises, why should not the owner of the serpent say to the plaintiff: 'What is your hand doing in the mouth of my serpent?' — Regarding [the] killing [of the serpent] we certainly do not argue thus. Whence can you derive [this]? — For it was taught: Where a man enters another's premises without permission and is gored there to death by the owner's ox, the ox is stoned,[14] but the owner is exempted [from paying] kofer[16] [for lost life].[17] Now 'the owner is exempted [from paying] kofer.' Why? Is it not because he can say, 'What were you doing on my premises?' Why then regarding the ox should not the same argument be put forward [against the victim]: 'What had you to do on my premises?' — Hence, when it is a question of killing [obnoxious beasts] we do not argue thus.

The goats of Be Tarbu[18] used to do damage to [the fields of] R.Joseph. He therefore said to Abaye: 'Go and tell their owners that they should keep them indoors.' But Abaye said: 'What will be the use in my going? Even if I do go, they will certainly say to me "Let the master construct a fence round his land."' But if fences must be constructed, what are the cases in which the Divine Law imposed liability for Tooth?[19] — [Perhaps only] when the cattle pulled down the fence and broke in, or when the fence collapsed at night. It was, however, announced by R. Joseph, or, as others say, by Rabbah: 'Let it be known to those that go up from Babylon to Eretz Yisrael as well as to those that come down from Eretz Yisrael to Babylon, that in the case of goats that are kept for the market day but meanwhile do damage, a warning is to be extended twice and thrice to their owners. If they comply with the terms of the warning well and good, but if not, we bid them: "Slaughter your cattle immediately[20] and sit at the butcher's stall to get whatever money you can."'

MISHNAH. WHAT IS TAM, AND WHAT IS MU'AD? — [CATTLE BECOME] MU'AD AFTER [THE OWNER HAS] BEEN WARNED FOR THREE DAYS [REGARDING THE ACTS OF GORING],[21] BUT [RETURN TO THE STATE OF] TAM AFTER REFRAINING FROM GORING FOR THREE DAYS; THESE ARE THE WORDS OF R. JUDAH. R. MEIR, HOWEVER, SAYS: [CATTLE BECOME] MU'AD AFTER [THE OWNER HAS] BEEN WARNED THREE TIMES [EVEN ON THE SAME DAY], AND [BECOME AGAIN] TAM WHEN CHILDREN KEEP ON TOUCHING THEM AND NO GORING RESULTS.

GEMARA. What is the reason of R. Judah?[22] — Abaye said: [Scripture states, Or, if it be known from yesterday, and the day before yesterday, that he is a goring ox, and yet his owner does not keep him in . . .[23]]: 'Yesterday', denotes one day; 'from yesterday' — two;[24] and 'the day before yesterday' — three [days]; 'and yet his owner does not keep him in' — refers to the fourth goring. Raba said: 'Yesterday' and 'from yesterday'[25] denote one day; 'the day before yesterday' — two, 'and he [the owner] does not keep him in,' then, [to prevent a third goring,] he is liable [in full].[26] What then is the reason of R. Meir?[27] — As it was taught: R. Meir said:

(1) And liability for the consumption of the food is not denied.
(2) [I.e., why should I be liable for the bread consumed in my (the defendant's) premises?]
(3) Ex. XXII, 4.
(4) Cf. supra p. 6.
(5) I Kings XIV, 10.
(6) On account of the fact that the corpus is in any of these cases not being destroyed; v. supra pp. 4-5.
(7) In which case there is total destruction of the corpus.
(8) Sanh. IX, 1; v. also infra 24b.
(9) For which the dog is not much to blame since it was incited to do it.
(10) I.e., both inciter and dog-owner will not be made liable.
(11) In which case his hand has never been kept in the mouth of the dog.
(12) Sanh. 78a.
(13) V. Sanh. IX. 1.
(14) In accordance with Ex. XXI, 28-29.
(15) Being a mere accessory.
(16) Lit., 'atonement', v. Glos.
(17) Contrary to the ruling of Ex. XXI, 30.
(18) A p.n. of a certain family.
(19) Ex. XXII. 4.
(20) Without waiting for the market day.
(21) Committed by his cattle.
(22) Making the law of Mu'ad depend upon the days of goring.
(23) Ex. XXI, 36.
(24) The Hebrew term מתמול denoting 'From yesterday' is thus taken to indicate two days.
(25) Expressed in the one Hebrew word מתמול.
(26) According to Rashi a.l. even for the third goring. But Tosaf. a.l. and Rashi B.B. 28a explain it to refer only to the goring of the fourth time and onwards.
(27) That the number of days is immaterial.

Talmud - Mas. Baba Kama 24a

If for goring at long intervals [during three days], there is [full] liability, how much more so for goring at short intervals.[1] They,[2] however, said to him: 'A zabah[3] disproves your argument, as by noticing her discharges at long intervals [three cases of discharge in three days], she becomes [fully] unclean,[4] whereas by noticing her discharges at short intervals [i.e. on the same day] she does not become [fully unclean].'[5] But he answered them: Behold, Scripture says: And this shall be his uncleanness in his issue.[6] Zab[7] has thus been made dependent upon [the number of] cases of 'noticing', and zabah upon that of 'days'. But whence is it certain that 'And this'[6] is to exempt zabah from being affected by cases of 'noticing'?[8] Say perhaps that it meant only to exempt zab from being affected by the number of 'days'?[9] — The verse says, And of him that hath on issue, of the man, and of the woman.[10] Male is thus made analogous to female: just as female is affected by [the number of] 'days' so is man affected by 'days'.[11] But why not make female analogous to male [and say]: just as male is affected by cases of 'noticing',[8] so also let female be affected by cases of 'noticing'?[8] — But Divine Law has [emphatically] excluded that by stating, 'And this'.[12] On what ground, however, do you say [that the Scriptural phrase excludes the one and not the other]? — It only stands to reason that when cases of 'noticing' are dealt with,[13] cases of 'noticing' are excluded;[14] [for is it reasonable to maintain that] when cases of 'noticing' are dealt with,[13] 'days' should be excluded?[15]

Our Rabbis taught: What is Mu'ad? After the owner has been warned for three days;[16] but [it may return to the state of] Tam, if children keep on touching it and no goring results; this is the dictum of R. Jose. R. Simeon says: Cattle become Mu'ad, after the owner has been warned three times,[17] and the statement regarding three days refers only to the return to the state of Tam.

R. Nahman quoting Adda b. Ahabah said: 'The Halachah is in accordance with R. Judah regarding Mu'ad, for R. Jose agrees with him.[18] But the Halachah is in accordance with R. Meir regarding Tam,[19] since R. Jose agrees with him [on this point].' Raba, however, said to R. Nahman: 'Why, Sir, not say that the Halachah is in accordance with R. Meir regarding Mu'ad for R. Simeon agrees with him, and the Halachah is in accordance with R. Judah regarding Tam, since R. Simeon agrees with him [on this point]?' He answered him: 'I side with R. Jose, because the reasons of R. Jose are generally sound.'[20]

There arose the following question: Do the three days [under discussion] apply to [the goring of] the cattle [so that cases of goring on the same day do not count as more than one], or to the owner [who has to be warned on three different days]?[21] The practical difference becomes evident when three sets of witnesses appear on the same day [and testify to three cases of goring that occurred previously on three different days]. If the three days apply to [the goring of] the cattle there would in this case be a declaration of Mu'ad;[22] but, if the three days refer to the warning given the owner, there would in this case be no declaration of Mu'ad, as the owner may say: 'They have only just now testified against me [while the law requires this to be done on three different days].'

Come and hear: Cattle cannot be declared Mu'ad until warning is given the owner when he is in the presence of the Court of Justice. If warning is given in the presence of the Court while the owner is absent, or, on the other hand, in the presence of the owner, but outside the Court, no declaration of Mu'ad will be issued unless the warning be given before the Court and before the owner. In the case of two witnesses giving evidence of the first time [of goring], and another two of the second time, and again two of the third time [of goring], three independent testimonies have been established. They are, however, taken as one testimony regarding haza mah.[23] Were the first set found zomemim,[24] the remaining two sets would be unaffected; the defendant would, however, escape [full] liability[25] and the zomemim would still not have to pay him [for conspiring to make his cattle Mu'ad].[26] Were also the second set found zomemim, the remaining testimony would be unaffected; the defendant would escape [full] liability[25] and the zomemim would still not have to compensate him [for conspiring to make his cattle Mu'ad].[26] Were the third set also found zomemim, they would all have to share the liability [for conspiring to make the cattle Mu'ad];[27] for it is with reference to such a case that it is stated, Then shall ye do unto him as he had thought to have done unto his brother.[28] Now if it is suggested that the three days refer to [the goring of] the cattle [whereas the owner may be warned in one day], the ruling is perfectly right [as the three pairs may have given evidence in one day].[29]

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(1) I.e., by goring three times in one and the same day.

(2) The other Rabbis headed by R. Judah his opponent.

(3) I.e., a woman who within the eleven days between one menstruation period and another had discharges on three consecutive days; cf. Lev.XV, 25-33.

(4) For seven days.

(5) I.e., for more than one day.

(6) Lev. XV, 3. This text checks the application of the a fortiori in this case as the explanation goes on.

(7) I.e., a male person afflicted with discharges of issue on three different occasions; cf. Lev. XV, 1-15.

(8) On one and the same day.

(9) So that he is affected only by that of the cases of 'noticing'.

(10) Lev. XV, 33.

(11) So that if one discharge lasted with him two or three days, it will render him zab proper.

(12) Lev. XV, 3.

(13) In Lev. ibid.

(14) Regarding zabah.

(15) In the case of zab.

(16) Regarding three acts of goring by their cattle.
(17) For three acts of goring.
(18) Thus constituting a majority against R. Meir on this point.
(19) I.e., the return to the state of Tam.
(20) Lit., 'his depth is with him.' v. Git. 67a.
(21) Regarding three acts of goring committed by his cattle even on one day.
(22) Though the evidence was given in one day.
(23) I.e., proved alibi of a set of witnesses, v. Mak. (Sonc. ed.) p. 1, n. 1.
(24) I.e., proved to have been absent at the material time of the alleged goring; v. Glos.
(25) As his cattle 'would have to be dealt with as Tam.
(26) In accordance with law of retaliation. Deut. XIX, 19. Since regarding the declaration of Mu'ad all the three pairs of witnesses constitute one set, and the law of hazamah applies only when the whole set has been convicted of an alibi.
(27) I.e., the half damages added on account of the declaration of Mu'ad, whereas the original half damages on account of Tam will be imposed only upon the last pair of witnesses.
(28) Deut. XIX. 19.
(29) And since they waited until the last day when they were summoned by the plaintiff of that day, it is plain that their object in giving evidence was to render the ox Mu'ad.

Talmud - Mas. Baba Kama 24b

But if it be suggested that the three days refer to the warning given the owner,[1] why should not the first set say: 'Could we have known that after three days there would appear other sets to render the cattle Mu'ad?'[2] — R. Ashi thereupon said: I repeated this argument to R. Kahana, and he said to me: 'And even if the three days refer to [the goring of] the cattle,[3] is the explanation satisfactory? Why should not the last set say: "How could we have known that all those present at the Court[4] had come to give evidence against the [same] ox? Our aim in coming was only to make the defendant liable for half damages."?'[5] — [But we may be dealing with a case where] all the sets were hinting to one another[6] [thus definitely conspiring to act concurrently]. R. Ashi further said that we may deal with a case where all the sets appeared [in Court] simultaneously.[7] Rabina even said: 'Where the witnesses know only the owner but could not identify the ox.'[8] How then can they render it Mu'ad?[9] — By saying: 'As you have in your herd an ox prone to goring, it should be your duty to control the whole of the herd.'

There arose the following question: In the case of a neighbour's dog having been set on a third person, what is the law? The inciter could undoubtedly not be made liable,[10] but what about the owner of the dog? Are we to say that the owner is entitled to plead: 'What offence have I committed here?' Or may we retort: 'Since you were aware that your dog could easily be incited and do damage you ought not to have left it [unguarded]'?

R. Zera [thereto] said: Come and hear: [CATTLE BECOME AGAIN] TAM, WHEN CHILDREN KEEP ON TOUCHING THEM AND NO GORING RESULTS, implying that were goring to result therefrom there would be liability [though it were caused by incitement]! — Abaye however said: Is it stated: If goring results therefrom there is liability? What perhaps is meant is: If goring does result therefrom there will be no return to the state of Tam, though regarding that [particular] goring no liability will be incurred.

Come and hear: If he incited a dog or incited a serpent against him, there is exemption.[11] Does this not mean that the inciter is free, but the owner of the dog is liable? — No, read: '. . . the inciter too is free.'[12]

Raba said: Assuming that in the case of inciting a neighbour's dog against a third person, the owner of the dog is liable, if the incited dog turns upon the inciter, the owner is free on the ground

that where the plaintiff himself has acted wrongly, the defendant who follows suit and equally acts wrongly [against the former] could not be made liable [to him]. R. Papa thereupon said to Raba: A statement was made in the name of Resh Lakish agreeing with yours; for Resh Lakish said:[13] 'In the case of two cows on public ground, one lying and the other walking, if the walking cow kicks the other, there is no liability [as the plaintiff's cow had no right to be lying on the public ground], but if the lying cow kicks the other cow there will be liability.' Raba, however, said to him: In the case of the two cows I would always order payment[14] as [on behalf of the plaintiff] we may argue against the defendant: 'Your cow may be entitled to tread upon my cow, she has however no right to kick her.'

MISHNAH WHAT IS MEANT BY 'OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES'?[15] IN CASE OF GORING, PUSHING, BITING, LYING DOWN OR KICKING, IF ON PUBLIC GROUND THE PAYMENT[16] IS HALF, BUT IF ON THE PLAINTIFF'S PREMISES R. TARFON ORDERS PAYMENT IN FULL[17] WHEREAS THE SAGES ORDER ONLY HALF DAMAGES.

R.TARFON THERE UPON SAID TO THEM: SEEING THAT, WHILE THE LAW WAS LENIENT TO TOOTH AND FOOT IN THE CASE OF PUBLIC GROUND ALLOWING TOTAL EXEMPTION[18] , IT WAS NEVERTHELESS STRICT WITH THEM REGARDING [DAMAGE DONE ON] THE PLAINTIFF'S PREMISES WHERE IT IMPOSED PAYMENT IN FULL, IN THE CASE OF HORN, WHERE THE LAW WAS STRICT REGARDING [DAMAGE DONE ON] PUBLIC GROUND IMPOSING AT LEAST THE PAYMENT OF HALF DAMAGES, DOES IT NOT STAND TO REASON THAT WE SHOULD MAKE IT EQUALLY STRICT WITH REFERENCE TO THE PLAINTIFFS PREMISES SO AS TO REQUIRE COMPENSATION IN FULL? THEIR ANSWER WAS: IT IS QUITE SUFFICIENT THAT THE LAW IN RESPECT OF THE THING INFERRED[19] SHOULD BE EQUIVALENT TO THAT FROM WHICH IT IS DERIVED:[20] JUST AS FOR DAMAGE DONE ON PUBLIC GROUND THE COMPENSATION [IN THE CASE OF HORN] IS HALF, SO ALSO FOR DAMAGE DONE ON THE PLAINTIFF'S PREMISES THE COMPENSATION SHOULD NOT BE MORE THAN HALF. R. TARFON, HOWEVER, REJOINED: BUT NEITHER DO I

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(1) In which case the three sets dealt with could not have given their evidence in one and the same day, but each set on the day the respective goring took place.

(2) Why then should the first set ever be made responsible for the subsequent rendering of the cattle Mu'ad.

(3) In which case the three pairs may have given their evidence in one day.

(4) I.e., the witnesses that constituted the former sets.

(5) The former sets, however, cannot plead thus since they waited with their evidence until the last day, when they appeared to the summons of the plaintiff of that day, in which case it is more than evident that all that concerned that plaintiff regarding the evidence of the earlier times of goring was solely to render the ox Mu'ad.

(6) And all gave evidence in one and the same day. Rashi a.l. maintains that this would still prove that the three days refer to the goring of the cattle and not to warning the owner. According to an interpretation suggested by Tosaf., however, the first and second sets who also appeared on the third day together with the third set, had already given their evidence on the first and second day respectively. The requirement of the three days could thus accordingly refer to warning the owner.

(7) Cf. n. 2.

(8) In which case the sole intention of all the sets of witnesses was the declaration of Mu'ad. They could not have intended to make the defendant liable for half damages since half damages in the case of Tam is paid only out of the body of the goring ox which the witnesses in this case were unable to identify. This explanation holds good only regarding the intention of the last set of witnesses, whereas the former sets, if for the declaration of Mu'ad they would necessarily have to record their evidence before the third time of goring, could then not have foreseen that the same ox (whose identity was not established by them) would continue goring for three and four times. Rashi thus proves that the three days refer not to warning the owner but to the times of goring committed by the cattle.

(9) Since the identity of the goring ox could not be established.
(10) For he, not having actually done the damage, is but an accessory.
(11) Cf. supra p. 117.
(12) Meaning thus that both inciter and owner are free.
(13) Supra p. 98.
(14) Even in the case of the walking cow kicking the lying cow.
(15) Referred to supra p. 68.
(16) While in the state of Tam; cf. supra p. 73.
(17) V. supra p. 68.
(18) Supra p. 17.
(19) I.e., Horn doing damage on the plaintiff's premises.
(20) I.e., Horn doing damage on public ground.

Talmud - Mas. Baba Kama 25a

INFER HORN [DOING DAMAGE ON THE PLAINTIFF'S PREMISES] FROM HORN [DOING DAMAGE ON PUBLIC GROUND]; I INFER HORN FROM FOOT: SEEING THAT IN THE CASE OF PUBLIC GROUND THE LAW, THOUGH LENIENT WITH REFERENCE TO TOOTH AND FOOT, IS NEVERTHELESS STRICT REGARDING HORN, IN THE CASE OF THE PLAINTIFF'S PREMISES, WHERE THE LAW IS STRICT WITH REFERENCE TO TOOTH AND FOOT, DOES IT NOT STAND TO REASON THAT WE SHOULD APPLY THE SAME STRICTNESS TO HORN? THEY, HOWEVER, STILL ARGUED: IT IS QUITE SUFFICIENT IF THE LAW IN RESPECT OF THE THING INFERRED IS[1] EQUIVALENT TO THAT FROM WHICH IT IS DERIVED.[2] JUST AS FOR DAMAGE DONE ON PUBLIC GROUND THE COMPENSATION [IN THE CASE OF HORN] IS HALF, SO ALSO FOR DAMAGE DONE ON THE PLAINTIFF'S PREMISES, THE COMPENSATION SHOULD NOT BE MORE THAN HALF.

GEMARA. Does R. Tarfon really ignore the principle of Dayyo?[3] Is not Dayyo of Biblical origin as taught:[4] How does the rule of Kal wa-homer[5] work? And the Lord said unto Moses, If her father had but spit in her face, should she not be ashamed seven days?[6] How much the more so then in the case of divine [reproof] should she be ashamed fourteen days? Yet the number of days remains seven, for it is sufficient if the law in respect of the thing inferred[7] be equivalent to that from which it is derived![8] — The principle of Dayyo is ignored by him [R. Tarfon] only when it would defeat the purpose of the a fortiori,[9] but where it does not defeat the purpose of the a fortiori, even he maintains the principle of Dayyo. In the instance quoted there is no mention made at all of seven days in the case of divine reproof; nevertheless, by the working of the a fortiori, fourteen days may be suggested: there follows, however, the principle of Dayyo so that the additional seven days are excluded, whilst the original seven are retained. Whereas in the case before us[10] the payment of not less than half damages has been explicitly ordained [in all kinds of premises]. When therefore an a fortiori is employed, another half-payment is added [for damage on the plaintiff's premises], making thus the compensation complete. If [however] you apply the principle of Dayyo, the sole purpose of the a fortiori would thereby be defeated.[11] And the Rabbis?[12] — They argue that also in the case of divine [reproof] the minimum of seven days has been decreed in the words: Let her be shut out from the camp seven days.[13] And R. Tarfon?[14] — He maintains that the ruling in the words, 'Let her be shut out etc.', is but the result of the application of the principle of Dayyo[15] [decreasing the number of days to seven]. And the Rabbis? — They argue that this is expressed in the further verse: And Miriam was shut out from the camp.[16] And R. Tarfon? — He maintains that the additional statement was intended to introduce the principle of Dayyo for general application so that you should not suggest limiting its working only to that case where the dignity of Moses was involved, excluding thus its acceptance for general application: it has therefore been made known to us [by the additional statement] that this is not the case.

R. Papa said to Abaye: Behold, there is a Tanna who does not employ the principle of Dayyo even when the a fortiori would thereby not be defeated, for it was taught: Whence do we know that the discharge of semen virile in the case of zab[17] causes defilement [either by 'touching' or by 'carrying']?[18] It is a logical conclusion: For if a discharge[19] that is clean in the case of a clean person is defiling in the case of zab,[20] is it not cogent reasoning that a discharge[21] which is defiling in the case of a clean person,[22] should defile in the case of zab? Now this reasoning applies to both 'touching' and 'carrying',[23] But why not argue that the a fortiori serves a useful purpose in the case of 'touching', whilst the principle of Dayyo can be employed to exclude defilement by mere 'carrying'?[24] If, however, you maintain that regarding 'touching' there is no need to apply the a fortiori on the ground that [apart from all inferences] zab could surely not be less defiling than an ordinary clean person,[25] my contention is [that the case may not be so, and] that the a fortiori may [still] be essential. For I could argue: By reason of uncleanness that chanceth him by night[26] is stated in Scripture to imply that the law of defilement applies only to those whose uncleanness has been occasioned solely by reason of their discharging semen virile, excluding thus zab, whose uncleanness has been occasioned not [solely] by his discharging semen virile but by another cause altogether.[27] May not the a fortiori thus have to serve the purpose of letting us know that zab is not excluded?[28] — But where in the verse is it stated that the uncleanness must not have [concurrently] resulted also from any other cause?[29]

Who is the Tanna whom you may have heard maintain that semen virile of zab causes [of itself] defilement by mere 'carrying'? He could surely be neither R. Eliezer, nor R. Joshua, for it was taught:[30] The semen virile of zab causes defilement by 'touching', but causes no defilement by mere 'carrying'. This is the view of R. Eliezer. R. Joshua, however, maintains that it also causes defilement by mere 'carrying', for it must necessarily contain particles of gonorrhoea.[31] Now, the sole reason there of R. Joshua's view is that semen virile cannot possibly be altogether free from particles of gonorrhoea, but taken on its own it would not cause defilement. The Tanna who maintains this[32] must therefore be he who is responsible for what we have learnt: More severe than the former [causes of defilement][33]

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(1) V. p. 125, n. 5.

(2) V. ibid. n. 6. [As in whatever way the argument is put the result is the same — namely, inferring Horn on the plaintiff's premises from Horn on public ground.]

(3) The Hebrew term meaning 'it is sufficient for it', and denoting the qualification applied by the Rabbis to check the full force of the a fortiori; v. Glos.

(4) B.B. II 1a; Zeb. 69b.

(5) The technical term for the logical inference, 'From minor to major,' v. Glos.

(6) Num. XII, 14.

(7) I.e., in the case of Divinity.

(8) I.e., the case of her father. [Hence, even in the case of Divinity, no more than seven days are inferred proving that Dayyo has a Biblical basis.]

(9) I.e., render it completely ineffective.

(10) Regarding compensation whether it be half or full in the case of Horn doing damage.

(11) V. p. 126, n. 9.

(12) I.e., the Sages in the Mishnah: how do they meet R. Tarfon's objection?

(13) Num. XII, 14.

(14) How can he state that no mention is made of seven days in connection with divine reproof?

(15) But not a decree per se.

(16) Num. XII, 15.

(17) A person afflicted with gonorrhoea: cf. Lev. XV, 1-15.

(18) As is the case with gonorrhoeal discharge.

(19) Such as saliva.

(20) Cf. Lev. XV, 8, and Niddah, 55b.
(21) Such as semen virile.
(22) Cf. Lev. XV, 16-17, and supra p. 2.
(23) As it is based on the law applicable to the saliva of zab.
(24) As is the case with the law applicable to semen virile of a clean person.
(25) Whose semen virile causes defilement by touching.
(26) Deut. XXIII, 11.
(27) I.e., by the affliction of gonorrhoea. [I may therefore have assumed that the semen virile of a zab causes no defilement, not even by 'touching'.]
(28) And since the a fortiori would still serve a useful purpose regarding defilement by 'touching', why should not the principle of Dayyo be employed to exclude defilement by mere 'carrying'? Hence this Tanna does not resort to Dayya even where the employment thereof would not render the a fortiori ineffective.
(29) The law applicable to semen virile to cause defilement by 'touching' is thus per se common with all kinds of persons. The inference by means of the a fortiori would therefore indeed be rendered useless if Dayyo, excluding as a result defilement by 'carrying', were admitted.
(30) Naz. 66a.
(31) Which defile both by 'touching' and by 'carrying'.
(32) That semen virile of zab defiles by mere 'carrying' even on its own.
(33) I.e., the three primary Defilements: Dead Reptile, Semen Virile and the Person contaminated by contact with a corpse, all of which do not defile by mere carrying'. v. supra p. 2.

Talmud - Mas. Baba Kama 25b

are the gonorrhoeal discharge of zab, his saliva, his semen virile, his urine and the blood of menstruation, all of which defile whether by 'touching' or by mere 'carrying'.[1] But why not maintain that the reason here is also because the semen virile of zab cannot possibly be altogether free from particles of gonorrhoea? — If this had been the reason, semen virile should have been placed in juxtaposition to gonorrhoeal discharge. Why then was it placed in juxtaposition to saliva if not on account of the fact that its causing defilement is to be inferred from the law applicable to his saliva?[2]

R. Aha of Difti said to Rabina: Behold there is this Tanna who does not employ the principle of Dayyo even when the purpose of the a fortiori would thereby not be defeated. For it was taught: Whence do we learn that mats[3] become defiled if kept within the tent where there is a corpse? — It is a logical conclusion: For if tiny [earthenware] jugs that remain undefiled by the handling of zab[4] become defiled when kept within the tent where there is a corpse,[5] does it not follow that mats, which even in the case of zab become defiled,[6] should become defiled when kept within the tent where there is a corpse.[7] Now this reasoning applies not only to the law of defilement for a single day,[8] but also to defilement for full seven[9] [days]. But why not argue that the a fortiori well serves its purpose regarding the defilement for a single day,[10] whilst the principle of Dayyo is to be employed to exclude defilement for seven days? — He [Rabina] answered him: The same problem had already been raised by R. Nahman b. Zachariah to Abaye, and Abaye answered him that it was regarding mats in the case of a dead reptile[11] that the Tanna had employed the a fortiori, and the text should run as follows: 'Whence do we learn that mats[12] coming in contact with dead reptiles[13] become defiled? It is a logical conclusion: for if tiny [earthenware] jugs that remain undefiled by the handling of zab,[14] become defiled when in contact with dead reptiles,[15] does it not follow that mats which even in the case of zab become defiled,[16] should become defiled by coming in contact with dead reptiles?' But whence the ruling regarding mats[17] kept within the tent of a corpse? — In the case of dead reptiles it is stated raiment or skin,[15] while in the case of a corpse it is also stated, raiment . . . skin:[18] just as in the case of raiment or skin stated in connection with dead reptiles,[15] mats [are included to] become defiled, so is it regarding raiment . . . skin stated in connection with a corpse[18] that mats similarly become defiled. This Gezerah shawah[19] must necessarily be 'free',[20] for

if it were not 'free' the comparison made could be thus upset: seeing that in the case of dead reptiles [causing defilement to mats], their minimum for causing uncleanness is the size of a lentil,[21] how can you draw an analogy to corpses where the minimum to cause uncleanness is not the size of a lentil but that of an olive?[22] — The Gezerah shawah must thus be 'free'. Is it not so? For indeed the law regarding dead reptiles is placed in juxtaposition to semen virile as written, Or a man whose seed goeth from him,[23] and there immediately follows, Or whosoever toucheth any creeping thing. Now in the case of semen virile it is explicitly stated, And every garment, and every skin, whereon is the seed of copulation.[24] Why then had the Divine Law to mention again raiment or skin in the case of dead reptiles?[25] It may thus be concluded that it was [inserted] to be 'free' [for exegetical purposes].[26] Still it has so far only been proved that one part [of the Gezerah shawah][27] is 'free'. This would therefore be well in accordance with the view maintaining[28] that when a Gezerah shawah is 'free', even in one of its texts only, an inference may be drawn and no refutation will be entertained. But according to the view holding[29] that though an inference may be drawn in such a case, refutations will nevertheless be entertained, how could the analogy [between dead reptiles and corpses] be maintained?[30] — The verbal congruity in the text dealing with corpses is also 'free'. For indeed the law regarding corpses is similarly placed in juxtaposition to semen virile, as written, And whoso toucheth any thing that is unclean by the dead or a man whose seed goeth from him etc.[23] Now in the case of semen virile it is explicitly stated, And every garment, and every skin, whereon is the seed of copulation. Why then had the Divine Law to mention again raiment . . . skin in the case of corpses?[31] It may thus be concluded that it was [inserted] to be 'free' for exegetical purposes.[26] The Gezerah shawah is thus 'free' in both texts. Still this would again be only in accordance with the view maintaining[32] that when an inference is made by means of reasoning [from an analogy] the subject of the inference is placed back on its own basis.[33] But according to the view that when an inference is made [by means of an analogy] the subject of the inference must be placed on a par with the other in all respects, how can you establish the law [that mats kept in the tent of a corpse become defiled for seven days,[34] since you infer it from dead reptiles where the defilement is only for the day]?[35] — Said Raba: Scripture states, And ye shall wash your clothes on the seventh day,[36] to indicate that all defilements in the case of corpses cannot be for less than for seven [days].

But should we not let Tooth and Foot involve liability for damage done [even] on public ground because of the following a fortiori: If in the case of Horn[37] where [even] for damage done on the plaintiff's premises only half payment is involved, there is yet liability to pay for damage done on public ground, does it not necessarily follow that in the case of Tooth and Foot where for damage done on the plaintiff's premises the payment is in full, there should be liability for damage done on public ground? — Scripture, however, says, And it shall feed in another man's field,[38] excluding thus [damage done on] public ground.

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(1) Kelim I, 3.

(2) It is thus proved that semen virile of zab causes of itself defilement by 'carrying' and not on account of the particles of gonorrhoea it contains.

(3) Which are not included among the articles referred to in Num. XXXI, 20.

(4) [As he is unable to insert even his small finger within. Earthenware is susceptible to levitical uncleanness only through the medium of its interior. Lev. XI, 33.]

(5) As stated in Num. XIX, 15; and every open vessel . . . is unclean.

(6) In accordance with Lev. XV, 4.

(7) Shab. 84a.

(8) Lit., 'defilement (until) sunset,' which applies to defilements caused by zab; v. Lev. XV, 5-11.

(9) Usual in defilements through a corpse; cf. Num. XIX, 11-16.

(10) [As is the case with the bed of a zab (cf. Lev. XV, 4), since it is derived from zab.]

(11) But not at all regarding corpses; the whole problem thus concerns only defilement for a day; v. infra.

(12) As mats are not included among the articles referred to in Lev. XI, 32.

(13) The minimum quantity for defilement by which is the size of a lentil, a quantity which can easily pass through the

opening of the smallest bottle.
(14) As he is unable to insert even his small finger within. Earthenware is susceptible to levitical uncleanness only through the medium of its interior. Lev. XI, 33.
(15) Lev. XI, 32: . . . whether it be any vessel of wood or raiment or skin . . . it shall be unclean until the even.
(16) In accordance with Lev. XV, 4.
(17) Which are not included among the articles referred to in Num. XXXI, 20.
(18) Num. XXXI, 20: And as to every raiment and all that is made of skin . . . ye shall purify.
(19) The technical term for (an inference from) a verbal congruity in two different portions of the Law; v. Glos.
(20) Heb. מופנה (Mufnah), 'free', that is, for exegetical use, having no other purpose to serve, but solely intended to indicate this particular similarity in law.
(21) Hag. 11a; Naz. 52a.
(22) Naz. 49b.
(23) Lev. XXII, 4.
(24) Ibid. XV, 17.
(25) Lev. XI, 32.
(26) Thus to make the Gezerah shawah irrefutable.
(27) I.e., in the case of dead reptiles.
(28) Nid. 22b.
(29) Shab. 131a; Yeb. 70b.
(30) Since the refutation referred to above may be entertained.
(31) Num. XXXI, 20.
(32) Yeb. 78b.
(33) Becoming subject to the specific laws applicable to its own category. [So here mats in the tent of a corpse, though derived by analogy from reptiles, are subject to the laws of defilement by corpses. i.e., a defilement of 7 days.]
(34) Usual in defilements through a corpse; cf. Num. XIX, 11-16.
(35) Lev. XI, 32.
(36) Num. XXXI, 24.
(37) While in the state of Tam; cf. supra p. 73.
(38) Ex. XXII, 4.

Talmud - Mas. Baba Kama 26a

But have we ever suggested payment in full? It was only half payment that we were arguing for![1] — Scripture further says, And they shall divide the money of it[2] [to indicate that this[3] is confined to] 'the money of it' [i.e.. the goring ox] but does not extend to compensation [for damage caused] by another ox.[4]

But should we not let Tooth and Foot doing damage on the plaintiff's premises involve the liability for half damages only because of the following a fortiori: If in the case of Horn, where there is liability for damage done even on public ground, there is yet no more than half payment for damage done on the plaintiff's premises,[5] does it not follow that, in the case of Tooth and Foot where there is exemption for damage done on public ground,[6] the liability regarding damage done on the plaintiff's premises should be for half compensation only? — Scripture says, He shall make restitution,[7] meaning full[8] compensation.

But should we not [on the other hand] let Horn doing damage on public ground involve no liability at all, because of the following a fortiori: If in the case of Tooth and Foot where the payment for damage done on the plaintiff's premises is in full there is exemption for damage done on public ground.[6] does it not follow that, in the case of Horn where the payment for damage done on the plaintiff's premises, is only half, there should be exemption for damage done on public ground? — Said R. Johanan: Scripture says. [And the dead also] they shall divide,[9] to emphasise that in respect of half payment there is no distinction between public ground and private premises.[10]

But should we not let [also] in the case of Man ransom be paid [for manslaughter][11] because of the following a fortiori: If in the case of Ox where there is no liability to pay the [additional] Four Items,[12] there is yet the liability to pay ransom [for manslaughter,[13] does it not follow that in the case of Man who is liable for the [additional] Four Items,[12] there should be ransom [for manslaughter]? — But Scripture states, Whatsoever is laid upon him: upon him[13] excludes [the payment of ransom] in the case of Man [committing manslaughter].

But should we not [on the other hand] let Ox involve the liability of the [additional] Four Items because of the following a fortiori: If Man who by killing man incurs no liability to pay ransom[14] has, when injuring man, to pay [additional] Four Items,[15] does it not follow that, in the case of Ox where there is a liability to pay ransom [for killing man],[16] there should similarly be a liability to pay the [additional] Four Items when injuring [man]? — Scripture states, If a man cause a blemish in his neighbour,[17] thus excluding Ox injuring the [owner's] neighbour.

It has been asked: In the case of Foot treading upon a child [and killing it] in the plaintiff's premises, what should be the law regarding ransom? Shall we say that this comes under the law applicable to Horn, on the ground that just as with Horn in the case of manslaughter being repeated twice and thrice it becomes habitual with the animal,[18] involving thus the payment of ransom,[19] so also seems to be the case here[20] with hardly any distinction; or shall it perhaps be argued that in the case of Horn there was on the part of the animal a determination to injure, whereas in this case the act was not prompted by a determination to injure? — Come and hear: In the case of an ox having been allowed [by its owner] to trespass upon somebody else's ground and there goring to death the owner of the premises, the ox will be stoned, while its owner must pay full ransom whether [the ox was] Tam or Mu'ad. This is the view of R. Tarfon. Now, whence could R. Tarfon infer the payment of full ransom in the case of Tam, unless he shared the view of R. Jose the Galilean maintaining[21] that Tam involves the payment of half ransom for manslaughter committed on public ground, in which case he[22] could rightly have inferred ransom in full [for manslaughter on the plaintiff's premises] by means of the a fortiori from the law applicable to Foot?[23] This thus proves that ransom has to be paid for [manslaughter committed by] Foot. R. Shimi of Nehardea, however, said that the Tanna[24] might have inferred it from the law applicable to [mere] damage done by Foot.[25] But [if so] cannot the inference be refuted? For indeed what analogy could be drawn to damage done by Foot, the liability for which is common also with Fire [whereas ransom does not apply to Fire]?[26] — [The inference might have been] from damage done to hidden goods [in which case the liability is not common with Fire].[27] Still what analogy is there to hidden goods, the liability for which is common with Pit [whereas ransom for manslaughter does not apply to Pit]?[28] — The inference might have been from damage done to inanimate objects[29] [for which there is no liability in the case of Pit].[30] Still what analogy is there to inanimate objects, the liability for which is again common with Fire? — The inference might therefore have been from damage done to inanimate objects that were hidden [for which neither Fire nor Pit involve liability]. But still what comparison is there to hidden inanimate objects, the liability for which is common at least with Man [whereas ransom is not common with Man]?[31] — Does this therefore not prove that he[32] must have made the inference from ransom [for manslaughter] in the case of Foot,[33] proving thus that ransom has to be paid for manslaughter committed by Foot? — This certainly is proved.

R. Aha of Difti said to Rabina: It even stands to reason that ransom has to be paid in the case of Foot. For if you say that in the case of Foot there is no ransom, and that the Tanna[34] might have made the inference from the law applicable to mere damage done by Foot,[35] his reasoning could easily be refuted. For what analogy could be drawn to damage done by Foot for which there is liability in the case of Foot [whereas this is not the case with ransom]? Does this [by itself] not show that the inference could only have been made from ransom in the case of Foot,[36] proving thus that ransom has to be paid for [manslaughter conmitted by] Foot? — It certainly does show this.

MISHNAH. MAN IS ALWAYS MU'AD WHETHER [HE ACTS] INADVERTENTLY OR WILFULLY, WHETHER AWAKE OR ASLEFP.[37] IF HE BLINDED HIS NEIGHBOUR'S EYE OR BROKE HIS ARTICLES, FULL COMPENSATION MUST [THEREFORE] BE MADE.

GEMARA. Blinding a neighbour's eye is placed here in juxtaposition to breaking his articles [to indicate that] just as in the latter case only Depreciation will be indemnified, whereas the [additional] Four Items [of liability][38] do not apply, so also in the case of inadvertently blinding his neighbour's eye only Depreciation will be indemnified, whereas the [additional] Four Items do not apply.

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(1) On the analogy to Horn where the liability is only for half damages in the case of Tam. The Scriptural text may have been intended to exclude only full compensation.

(2) Ex. XXI, 35.

(3) I.e., the division of compensation.

(4) With the exception of course of damage done by Pebbles according to the Rabbis, who by the authority of a special Mosaic tradition order the payment of half damages; cf. supra p. 80.

(5) In accordance with the Rabbis who differ from R. Tarfon; v. supra p. 125.

(6) Supra p. 132.

(7) Ex. XXII, 4.

(8) Lit., ‘good’, ‘perfect’.

(9) [Ex. XXI, 35; the phrase being superfluous, as the text could have read, They shall divide the money of it and the dead.]

(10) Cf. supra p. 92.

(11) V. Supra p. 12.

(12) I.e., Pain, Medical Expenses, Loss of Time and Degradation, in addition to Depreciation, when injuring a human being; v. supra ibid.

(13) Ex. XXI, 30.

(14) V. supra p. 12.

(15) V. p. 133, n. 8.

(16) V. Ex. XXI, 30.

(17) Lev. XXIV, 19.

(18) Which becomes Mu'ad; v. supra p. 119.

(19) Ex. XXI, 30.

(20) With Foot, which is always considered Mu'ad; v. supra p. 11.

(21) Supra p. 66 and infra 48b.

(22) I.e., R. Tarfon.

(23) In the same way as he derived compensation in full for damage done by Horn on the plaintiff's premises, as argued by him, supra p. 125. [Thus: If in the case of Tooth and Foot, where there is no liability at all involved on public ground, there is liability to pay full ransom on the plaintiff's premises, does it not follow that Horn, which does involve at least payment of half ransom on public ground, should on the plaintiff's premises be liable to pay full ransom.]

(24) V. p. 134, n. 9.

(25) And not from the law applicable to manslaughter committed by Foot, in which case there may be no ransom at all. [Thus: If in the case of Foot, which involves no liability for damage on public ground, there is liability to pay in full in the plaintiff's premises, does it not follow that, in the case of Horn, involving as it does payment of half ransom on public ground, there should be payment of full ransom in plaintiff's premises.]

(26) For the person liable for arson may, in such a case, be indicted for manslaughter; cf. supra pp. 37-38 and p. 113.

(27) [Thus: If in the case of Foot, which involves no liability at all on public ground, there is full liability for hidden goods on the plaintiff's premises, does it not follow that, in the case of Horn, which involves liability to pay half damages on public ground, there should be payment of full ransom in plaintiff's premises?] Cf. supra p. 18.

(28) As stated supra p. 37.

(29) Cf. notes 2 and 4.

(30) V. supra p. 18.

(31) For all civil complaints are merged in the capital accusation of manslaughter; cf. supra, p. 113 and Num. XXXV, 32.
(32) I.e., R. Tarfon.
(33) V. supra. 134, n. 10.
(34) I.e., R. Tarfon
(35) V. supra p. 135, n. 2.
(36) V, supra p. 134, n. 10.
(37) Cf. supra p. 8.
(38) I.e., Pain, Medical Expenses, Loss of Time and Degradation; cf. supra p. 133 n. 8.

Talmud - Mas. Baba Kama 26b

. Whence is this ruling[1] deduced? Hezekiah said, and thus taught a Tanna of the School of Hezekiah: Scripture states, Wound instead of a wound[2] — to impose the liability [for Depreciation] in the case of inadvertence as in that of willfulness, in the case of compulsion as in that of willingness. [But] was not that [verse] required to prescribe [indemnity for] Pain even in the case where Depreciation is independently paid? — If that is all,[3] Scripture should have stated, 'Wound for a wound',[4] why state, [wound] instead of a wound,[5] unless to indicate that both inferences be made from it?

Rabbah said: In the case of a stone lying in a person's bosom without his having knowledge of it, so that when he rose it fell down — regarding damage, there will be liability for Depreciation[6] but exemption regarding the [additional] Four Items;[7] concerning Sabbath[8] [there will similarly be exemption] as it is [only] work that has been [deliberately] purposed that is forbidden by the Law;[9] in a case of manslaughter[10] there is exemption from fleeing [to a city of refuge];[11] regarding [the release of] a slave,[12] there exists a difference of opinion between R. Simeon b. Gamaliel and the Rabbis, as it was taught:[13] If the master was a physician and the slave requested him to attend to his eye and it was accidentally blinded, or [the slave requested the master] to scrape his tooth and it was accidentally knocked out, he may now laugh at the master, for he has already obtained his liberty. R. Simeon b. Gamaliel, however, says: [Scripture states] and [he] destroy it,[14] to make the freedom conditional upon the master intending to ruin the eye of the slave.

If the person, however, had at some time been aware of the stone in his bosom but subsequently forgot all about it, so that when he rose it fell down, — in the case of damage there is liability for Depreciation;[15] but though the exemption regarding the [additional] Four Items still holds good,[16] in the case of manslaughter[17] he will have to flee [to a city of refuge], for Scripture says, at unawares,[18] implying the existence of some [previous] knowledge [as to the dangerous weapon] and in the case before us such knowledge did at a time exist: concerning Sabbath,[19] however, there is still exemption; regarding [the release of] a slave the difference of opinion between R. Simeon b. Gamaliel and the Rabbis[20] still applies.

Where he intended to throw the stone to a distance of two cubits, but it fell at a distance of four,[21] if it caused damage, there is liability for Depreciation; regarding the [additional] Four Items there is still exemption;[16] so also concerning Sabbath,[19] for work [deliberately] planned is required [to make it an offence];[22] in the case of manslaughter,[23] And if a man lie not in wait,[24] is stated by Divine law, excluding a case where there was mention to throw a stone to a distance of two cubits but which fell at a distance of four.[25] Regarding [the release of] a slave, the difference of opinion between R. Simeon b. Gamaliel and the Rabbis[20] still applies. Where the intention was to throw the stone to a distance of four[21] cubits but it fell eight cubits away, — if it caused damage there will be liability for Depreciation; regarding the [additional] Four Items there is still exemption;[16] concerning Sabbath, if there was express intention that the stone should fall anywhere, there is liability for an offence,[21] but in the absence of such express intention no offence was committed;[26] in the case of manslaughter,[27] And if a man lie not in wait,[28] excludes a case where there was intention to throw a stone to a

distance of four cubits, but which fell at a distance of eight. Regarding [the release of] a slave the difference of opinion between R. Simeon b. Gamaliel and the Rabbis[29] still applies.

Rabbah again said: In the case of one throwing a utensil[30] from the top of a roof and another one coming and breaking it with a stick [before it fell upon the ground where it would in any case have been broken], the latter is under no liability to pay; the reason being that it was only a utensil which was already certain to be broken that was broken by him.

Rabbah further said: In the case of a man throwing a utensil[31] from the top of the roof while there were underneath mattresses and cushions which were meanwhile removed by another person, or even if he [who had thrown it] removed them himself, there is exemption; the reason being that at the time of the throwing [of the utensil] his agency had been void of any harmful effect.[32]

Rabbah again said: In the case of one throwing a child from the top of the roof and somebody else meanwhile appearing and catching it on the edge of his sword, there is a difference of opinion between R. Judah b. Bathyra and the Rabbis.[33] For it was taught: In the case of ten persons beating one [to death] with ten sticks, whether simultaneously or consecutively, none of them

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(1) That Man is Mu'ad to pay Depreciation for damage done by him under all circumstances.

(2) [Literal rendering of Ex. XXI, 25, which is superfluous having regard to Lev. XXIV, 19, If a man maim his neighbour, as he hath done so shall it be done to him.]

(3) That one is not merged in the other; cf. infra 85a.

(4) Expressed in Hebrew only by two words פצע בפצע

(5) For which three words are employed in the Hebrew text.

(6) For Man is Mu'ad to pay Depreciation even for damage done while asleep.

(7) On account of the absence of a purpose to do damage.

(8) I.e., if while unaware of the stone in his bosom he carried it with him into the open public thoroughfare, thus violating the Sabbath; cf. Shab. 96b.

(9) V. infra 60a; Hag. 10b.

(10) I.e., if, when the stone fell down, it killed a human being; v. Num. XXXV. 9-34.

(11) Since he never had any knowledge of the stone being in his bosom, he could in no way be made responsible criminally for the accidental manslaughter.

(12) I.e., when the stone in falling down destroyed the eye or the tooth of a slave; v. Ex. XXI. 26-27.

(13) Kid. 24b.

(14) Ex. XXI, 26.

(15) For Man is Mu'ad to pay Depreciation even for damage done while asleep.

(16) On account of the absence of a will to do damage.

(17) I.e., if when the stone fell down, it killed a human being; v. Num. XXXV, 9-34.

(18) Num. XXXV, 11, 15.

(19) I.e., if while unaware of the stone in his bosom he carried it with him into the open public thoroughfare, thus violating the Sabbath; cf. Shab. 96b.

(20) Supra p. 137.

(21) For the minimum of distance to constitute the violation of Sabbath by throwing an object in a public thoroughfare is four cubits; v. Shab. 96b.

(22) v. supra p. 137, n. 7.

(23) I.e., if when the stone fell down, it killed a human being; v. Num. XXXV, 9-34.

(24) Ex. XXI, 13.

(25) [According to one interpretation of Rashi, this is a case for exile; according to another, a case which is excluded from enjoying the protection of the city of refuge: v. Mak. 7b.]

(26) V. p. 137, n. 7.

(27) V. p. 138 n.3.

(28) Ex. XXI, 13.

(29) V. supra p. 137.
(30) Belonging to another. According to the interpretation of Rashi a.l. the utensil was thrown by its owner; cf. however, Rashi, supra 17b.
(31) Belonging to another.
(32) Lit., 'he had let his arrow off', it had spent its force; i.e., when the act of throwing took place it was by no means calculated to do any damage.
(33) According to R. Judah, the latter who caught it on the edge of his sword will be guilty of murder, but according to the Rabbis, no one is guilty of it.

Talmud - Mas. Baba Kama 27a

is guilty of murder: R. Judah b. Bathyra, however says: If consecutively the last is liable, for he was the immediate cause of the death.[1] In the case where an ox meanwhile appeared and caught the [falling] child on its horns there is a difference of opinion between R. Ishmael the son of R. Johanan b. Beroka and the Rabbis.[2] For it was taught: Then he shall give for the redemption of his life[3] [denotes] the value of the [life of] the killed person. R. Ishmael the son of R. Johanan b. Beroka interprets it to refer to the value of the [life of] the defendant.[2]

Rabbah further said: In the case of one falling from the top of the roof and [doing damage by] coming into close contact with a woman, there is liability for four items,[4] though were she his deceased brother's wife[5] he would thereby not yet have acquired her for wife.[6] The Four Items [in this case] include: Depreciation, Pain, Medical Expenses and Loss of Time, but not Degradation. for we have learnt:[7] There is no liability for Degradation unless there is intention [to degrade].

Rabbah further said: In the case of one who through a wind of unusual occurrence fell from the top of the roof [upon a human being] and did damage as well as caused degradation, there will be liability for Depreciation[8] but exemption from the [additional] Four Items:[9] if, however, [the fall had been] through a wind of usual occurrence and damage as well as degradation was occasioned, there is liability for Four Items[4] but exemption from Degradation.[7] If he turned over [while falling][10] there would be liability also for Degradation for it was taught: From the implication of the mere statement, And she putteth forth her hand,[11] would I not have understood that she taketh him? Why then continue in the text and she taketh him?[12] — In order to inform you that since there existed an intention to injure though none to cause degradation [there is liability even for Degradation]. Rabbah again said: In the case of one placing a live coal on a neighbour's heart and death resulting, there is exemption;[13] if, however, it was put upon his belongings[14] which were [thereby] burnt, there is liability.[15] Raba said: Both of the two [latter cases] have been dealt with in Mishnah. Regarding the case 'on a neighbour's heart' we learnt:[16] If one man held another fast down in fire or in water, so that it was impossible for him to emerge and death resulted, he is guilty [of murder]. If, however, he pushed him into fire or into water, and it was yet possible for him to emerge but death resulted, there is exemption. Regarding the case 'Upon his belongings' we have similarly learnt:[17] [If a man says to another,] 'Tear my garment;' 'Break my jug;'[18] there is nevertheless liability [for any damage done to the garment or to the jug]. But if he said, '. . . upon the understanding that you will incur no liability,' there is exemption. Rabbah, however, asked: If a man placed a live coal upon the heart of a slave[19] [and injury[20] results therefrom], what should be the law?[21] Does it come under the law applicable in the case of a coal having been placed upon the body of the master himself,[22] or to that applicable in the case of a coal having been placed upon a chattel of his?[23] Assuming that it is subject to the law applicable in the case of a coal having been placed upon the heart of the master himself,[22] what should be the law regarding a live coal placed upon an ox [from which damage resulted]? — He himself answered the query thus: His slave is on a par with his own body,[22] whereas his ox is on a par with his chattels.[23]

CHAPTER III

MISHNAH. IF A MAN PLACES A [KAD] PITCHER ON PUBLIC GROUND AND ANOTHER ONE COMES AND STUMBLES OVER IT AND BREAKS IT, HE IS EXEMPT. IF THE OTHER ONE WAS INJURED BY IT, THE OWNER OF THE [HABITH] BARREL IS LIABLE TO COMPENSATE FOR THE DAMAGE.

GEMARA. To commence with PITCHER[24] and conclude with BARREL![25] And we have likewise learnt also elsewhere:[26] If one man comes with his [habith] barrel and another comes with his beam and [it so happened that] the [kad] pitcher of this one breaks by [collision with] the beam of that one, he is exempt.[26] Here [on the other hand] the commencement is with barrel[25] and the conclusion with pitcher![24] We have again likewise learnt elsewhere: In the case of this man coming with a [habith] barrel of wine and that one proceeding with a [kad] pitcher of honey, and as the [habith] barrel of honey cracked, the owner of the wine poured out his wine and saved the honey into his barrel, he is entitled to no more than his service.[27] Here again the commencement is with pitcher[25] and the conclusion with barrel![25] R. Papa thereupon said: Both kad and habith may denote one and the same receptacle. But what is the purpose in this observation?[28] — Regarding buying and selling.[29] But under what circumstances? It could hardly be thought to refer to a locality where neither kad is termed habith nor habith designated kad, for are not these two terms then kept there distinct? — No, it may have application in a locality where, though the majority of people refer to kad by the term kad and to habith by the term habith, yet there are some who refer to habith by the term kad and to kad by the term habith. You might perhaps have thought that the law[30] follows the majority.[31]

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(1) Cf. supra p. 41.

(2) Infra pp. 224-5. According to R. Ishmael compensation for manslaughter will have to be made by the owner of the ox, but according to the Rabbis there will be no payment, as the child at the time of the fatal fall was devoid of any value.

(3) Ex. XXI, 30.

(4) For since the falling down was caused by a wind of usual occurrence, it is considered wilful.

(5) V. Deut. XXV, 5, and Yeb. VI, 1.

(6) Cf. Kid. I, 1, and Yeb. 56a.

(7) Infra, 86b.

(8) For Man is Mu'ad to pay Depreciation even for damage done while asleep.

(9) On account of the absence of a will to do damage.

(10) Intending thus to fall upon a human being standing below so as to escape the worst effects of his falling, but without intention to degrade.

(11) Deut. XXV, 11.

(12) Ibid.

(13) Since the person upon whose heart the live coal had been placed was able to remove it.

(14) Lit., ‘garment’.

(15) [In this case, the failure of the owner to remove the coal could be explained as due to his belief that he could claim compensation.]

(16) Sanh. 76b.

(17) Infra p. 531.

(18) This does not imply release from liability, as he might have meant, ‘You may tear, if you wish it,’ with all the consequences it involves.

(19) In the presence of his master; cf. Tosaf. a.l.

(20) Not death.

(21) Regarding compensation, as he could have removed it.

(22) In which case there is exemption.

(23) Where there is liability.

(24) Heb. Kad.

(25) Heb. Habith.
(26) Infra p. 169.
(27) V. infra p. 685.
(28) How can it affect law.
(29) The two terms may be interchanged in contracts as they are synonyms.
(30) Regulating technical terms in contracts of sale.
(31) Who keep the two terms distinct.

Talmud - Mas. Baba Kama 27b

It is therefore made known to us that we do not follow the majority[1] in [disputes on] matters of money.[2]

AND ANOTHER ONE COMES AND STUMBLES OVER IT AND BREAKS IT, HE IS EXEMPT. Why exempt? Has not one to keep one's eyes open when walking? — They said at the school of Rab, even in the name of Rab: The whole of the public ground was filled with barrels.[3] Samuel said: It is with reference to a dark place that we have learnt [the law in the Mishnah]. R. Johanan said: The pitcher was placed at the corner of a turning.[4] R. Papa said: Our Mishnah is not consistent unless in accordance with Samuel or R. Johanan, for according to Rab why exemption only in the case of stumbling [over the pitcher]? Why not the same ruling even when one directly broke it? — R. Zebid thereupon said in the name of Raba: The same law applies even when the defendant directly broke it; for AND STUMBLES was inserted merely because of the subsequent clause which reads, IF THE OTHER ONE WAS INJURED BY IT, THE OWNER OF THE BARREL IS LIABLE TO COMPENSATE FOR THE DAMAGE; and which of course applies only to ‘stumbling’ but not to direct breaking, in which case it only stands to reason that it is the plaintiff who is to blame for the damage he caused to himself. It was therefore on this account that ‘stumbling’ was inserted in the commencing clause.

R.Abba said to R. Ashi: In the West[5] the following [explanation] is stated in the name of R. ‘Ulla: [The exemption[6] is] because it is not the habit of men to look round while walking on the road.[7] Such a case occurred in Nehardea[8] where Samuel ordered compensation [for the broken utensil] and so also in Pumbeditha[8] where Raba similarly ordered compensation to he paid. We understand this in the case of Samuel who abided by the dictum he himself propounded,[9] but regarding Raba are we to say that he [also] embraced the view of Samuel? — R. Papa thereupon said: [In the case of Raba] the damage was done at the corner of an oil factory; and since it was usual to keep there barrels, he[10] ought to have kept his eyes open while walking there.[11]

R.Hisda dispatched [the following query] to R. Nahman: As there has already been fixed a fine[12] of three sela's[13] for kicking with the knee; five for kicking with the foot; thirteen for a blow with the saddle of an ass — what is the fine for wounding with the blade of the hoe or with the handle of the hoe? — The reply was forwarded [as follows]: ‘Hisda, Hisda! Is it your practice in Babylon to impose fines?[14] Tell me the actual circumstances of the case as it occurred.’ He[15] thereupon dispatched him thus: There was a well belonging to two persons. It was used by them on alternate days.[16] One of them, however, came and used it on a day not his. The other party said to him: ‘This day is mine!’ But as the latter paid no heed to that, he took a blade of a hoe and struck him with it. R. Nahman thereupon replied: No harm if he would have struck him a hundred times with the blade of the hoe. For even according to the view that a man may not take the law in his own hands[17] for the protection of his interests, in a case where an irreparable loss is pending[18] he is certainly entitled to do so.

It has indeed been stated: Rab Judah said: No man may take the law into his own hands for the protection of his interests, whereas R. Nahman said: A man may take the law into his own hands for

the protection of his interests. In a case where an irreparable loss is pending, no two opinions exist that he may take the law into his own hands for the protection of his interests: the difference of opinion is only where no irreparable loss is pending. Rab Judah maintains that no man may take the law into his own hands for the [alleged] protection of his interests, for since no irreparable loss is pending let him resort to the Judge; whereas R. Nahman says that a man may take the law into his own hands for the protection of his interests, for since he acts in accordance with [the prescriptions of the] law, why [need he] take the trouble [to go to Court]?

R. Kahana [however] raised an objection; Ben Bag Bag said;[19] Do not enter [stealthily] into thy neighbour's premises for the purpose of appropriating without his knowledge anything that even belongs to thee, lest thou wilt appear to him as a thief. Thou mayest, however, break his teeth and tell him, 'I am taking possession of what is mine.'[20] [Does not this prove that a man may take the law into his own hands[21] for the protection of his rights?[22]] — He[23] thereupon said

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(1) Cf. infra p. 263 and B.B. 92b.

(2) As the defendant is entitled to plead that he belongs to the minority.

(3) Such a public nuisance may thus be abated.

(4) The defendant is thus not to blame.

(5) I.e., in Eretz Yisrael, which is West of Babylon.

(6) For breaking the pitcher.

(7) Probably because the roads in Eretz Yisrael were in better condition than in Babylon; v. Shab. 33b; A. Z. 3a.

(8) A town in Babylon.

(9) That were the pitcher to have been in a visible place there would be liability.

(10) The defendant.

(11) And was thus to blame for the damage he had done.

(12) Cf. infra 90a, dealing with some other fixed fines.

(13) Sela' is a coin equal to one sacred or two common shekels; v. Glos.

(14) For the judicial right to impose fines is confined to Palestinian judges; cf. supra p. 67 and infra 84b.

(15) R. Hisda.

(16) Cf. B.B. 13a.

(17) I.e., resort to force.

(18) As where there is apprehension that the Court will be unable to redress the wrong done, e.g., in case all the water in the well will be used up.

(19) V. Ab. (Sonc. ed.) p. 76. n.7.

(20) Cf. Tosef. B.K. X.

(21) Since it is definitely stated that he may break his teeth . . . [The case dealt with here is where the loss is not irreparable, otherwise, as stated above, he would be allowed to enter even without permission.]

(22) Thus contradicting the view of Rab Judah.

(23) Rab Judah.

Talmud - Mas. Baba Kama 28a

: It is true that Ben Bag Bag supports thy view; but he is only one against the Rabbis[1] who differ from him. R. Jannai [even] suggested that 'Break his teeth' may also mean to bring him before a court of justice. But if so, why 'and thou mayest tell him?' Should it not read 'and they[2] will tell him'? Again, 'I am taking possession of what is mine'; should it not be 'he is taking possession of what is his'? — This is indeed a difficulty.

Come and hear: In the case of an ox throwing itself upon the back of another's ox so as to kill it, if the owner of the ox that was beneath arrived and extricated his ox so that the ox that was above dropped down and was killed, there is exemption. Now, does not this ruling apply to Mu'ad[3] where no irreparable loss is pending? — No, it only applies to Tam[4] where an irreparable loss is indeed

pending. But if so, read the subsequent clause: If [the owner of the ox that was beneath] pushed the ox from above, which was thus killed, there would be liability to compensate. Now if the case dealt with is of Tam,[5] why liability? — Since he was able to extricate his ox from beneath, which in fact he did not do,[he had no right to push and directly kill the assailing ox].[6]

Come and hear: In the case of a trespasser having filled his neighbour's premises with pitchers of wine and pitchers of oil, the owner of the premises is entitled to break them when going out and break them when coming in. [Does not this prove that a man may take the law into his own hands for the protection of his rights?][7] — R. Nahman b. Isaac explained: He is entitled to break them [and make a way][8] when going out [to complain] to the Court of Justice, as well as break them when coming back to fetch some necessary documents.

Come and hear: Whence is derived the ruling that in the case of a [Hebrew] bondman whose term of service, that had been extended by the boring of his ear,[9] has been terminated by the arrival of the Jubilee year[10] if it so happened that his master, while insisting upon him to leave, injured him by inflicting a wound upon him, there is yet exemption? We learn it from the words, And ye shall take no satisfaction for him that is . . . come again . . .[11] implying that we should not adjudicate compensation for him that is determined to 'come again' [as a servant].[12] [Does not this prove that a man may take the law into his own hands for the protection of his interests?][7] — We are dealing here with a case where the servant became suspected of intending to commit theft.[13] But how is it that up to that time he did not commit any theft and just at that time[14] he became suspected of intending to commit theft? — Up to that time he had the fear of his master upon him, whereas from that time[14] he is no more subject to his master's control.[10] R. Nahman b. Isaac said: We are dealing with a bondman to whom his master assigned a Canaanite maidservant as wife:[15] up to the expiration of the term this arrangement was lawful[15] whereas from that time this becomes unlawful.[16]

Come and hear:IF A MAN PLACES A PITCHER ON PUBLIC GROUND AND ANOTHER ONE COMES AND STUMBLES OVER IT AND BREAKS IT, HE IS EXEMPT. Now, is not this so only when the other one stumbled over it, whereas in the case of directly breaking it there is liability?[17] — R. Zebid thereupon said in the name of Raba: The same law applies even in the case of directly breaking it; for 'AND STUMBLES' was inserted merely because of the subsequent clause which reads, IF THE OTHER ONE WAS INJURED BY IT, THE OWNER OF THE BARREL IS LIABLE TO COMPENSATE FOR THE DAMAGE, and which, of course, applies only to stumbling but not to direct breaking, as then it is of course the plaintiff who is to blame for the damage he caused to himself. It was therefore on this account that 'stumbling' was inserted in the commencing clause.

Come and hear: Then thou shalt cut off her hand,[18] means only a monetary fine. Does not this ruling apply even in a case where there was no other possibility for her to save [her husband]?[19] — No, it applies only where she was able to save [him] by some other means.[20] Would indeed no fine be imposed upon her in a case where there was no other possibility for her to save [her husband]? But if so, why state in the subsequent clause: 'And putteth forth her hand,[21] excludes an officer of the Court of Justice [from any liability for degradation caused by him while carrying out the orders of the Court]'? Could not the distinction be made by continuing the very case[22] [in the following manner]: 'Provided that there were some other means at her disposal to save [him],[20] whereas if she was unable to save [him] by any other means there would be exemption'? — This very same thing was indeed meant to be conveyed [in the subsequent clause:] 'Provided that there were some other means at her disposal to save [him],[23] for were she unable to save [him] by any other means, the resort to force in her case should be considered as if exercised by an officer of the Court[24] [in the discharge of his duties] and there would be exemption.'

Come and hear:[25] In the case of a public road passing through the middle of a field of an

individual, who appropriates the road but gives the public another at the side of his field, the gift of the new road holds good, whereas the old one will not thereby revert to the owner of the field. Now, if you maintain that a man may take the law into his own hands for the protection of his interests, why should he not arm himself with a whip and sit there?[26] — R. Zebid thereupon said in the name of Raba: This is a precaution lest an owner [on further occasions] might substitute a round- about way[27] [for an old established road]. R. Mesharsheya even suggested that the ruling applies to an owner who actually replaced [the old existing road by] a roundabout way.[27] R. Ashi said: To turn a road [from the middle] to the side [of a field] must inevitably render the road roundabout, for if for those who reside at that side it becomes more direct, for those who reside at the other side it is made far [and roundabout]. But if so, why does the gift of the new road hold good? Why can the owner not say to the public authorities: 'Take ye yours [the old path] and return me mine [the new one]'? — [That could not be done] because of Rab Judah, for Rab Judah said:[28] A path [once] taken possession of by the public may not be obstructed.

Come and hear: If an owner leaves Pe'ah[29] on one side of the field, whereas the poor arrive at another side and glean there, both sides are subject to the law of Pe'ah. Now, if you really maintain that a man may take the law into his own hands for the protection of his interests why should both sides be subject to the law of Pe'ah?[30] Why should the owner not arm himself with a whip and sit?[31] — Raba thereupon said: The meaning of 'both sides are subject to the law of Pe'ah' is that they are both exempt from tithing,[32] as taught:[33] If a man, after having renounced the ownership of his vineyard, rises early on the following morning and cuts off the grapes,[34] there applies to them the laws of Peret,[35] 'Oleloth,[36] 'Forgetting'[37] and Pe'ah[38] whereas there is exemption from tithing.[39]

MISHNAH. IF HIS PITCHER BROKE ON PUBLIC GROUND AND SOMEONE SLIPPED IN THE WATER OR WAS INJURED BY THE POTSHERD HE IS LIABLE [TO COMPENSATE]. R. JUDAH SAYS: IF IT WAS DONE INTENTIONALLY HE IS LIABLE, BUT IF UNINTENTIONALLY HE IS EXEMPT.

GEMARA. Rab Judah said on behalf of Rab: The Mishnaic ruling refers only to garments soiled in the water.[40]

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(1) I.e., the majority of Rabbis.

(2) I.e., the Judges.

(3) In which case the Court would order compensation in full.

(4) Where compensation is only for a half, the plaintiff losing the other half.

(5) V. p. 145, n. 9.

(6) [Although there was the danger of his losing the full value of his ox.]

(7) Thus contradicting the view of Rab Judah.

(8) But no more.

(9) Ex. XXI, 6.

(10) Lev. XXV, 10, and Kid. 14b, 15a.

(11) Num. XXXV, 32.

(12) According to another rendering quoted by Rashi, it means 'that has to return' to his family, as prescribed in Lev. XXV, 10.

(13) In which case an irreparable loss is pending.

(14) I.e., the arrival of the Jubilee year.

(15) Ex. XXI, 4; Kid. 15a.

(16) Cf. Onkelos on Deut. XXIII, 18; hence the Master may use force to eject him.

(17) Thus opposing the view of R. Nahman.

(18) Deut. XXV, 12.

(19) Thus proving that even where irreparable loss is pending, as in this case, it is not permitted to take the law into one's own hands.

(20) In which case she acted ultra vires, i.e beyond the permission granted by law.
(21) Deut. XXV, 11.
(22) Dealing with a woman coming to rescue her husband.
(23) V. p. 147. n. 6.
(24) Lit. 'her hand is like the hand of the officer'.
(25) B. B. 99b.
(26) To keep away intruders; v. p. 147 n. 5.
(27) Which is of course not an equitable exchange in accordance with the law.
(28) B.B. 12a; 26b; 60b and 100a.
(29) I.e., the portion of the harvest left at a corner of the field for the poor in accordance with Lev. XIX. 9; XXIII, 22; v. Glos.
(30) Thus proving that even where irreparable loss is pending, as in this case, it is not permitted to take the law into his own hands.
(31) I.e., keeping the poor away from the Pe'ah on the former side.
(32) But they will by no means belong to the poor, for the portion left on the former side remains the owner's property.
(33) Infra 94a; Ned. 44b.
(34) So that ownership has been re-established.
(35) I.e.. grapes fallen off during cutting which are the share of the poor as prescribed in Lev. XIX, 10.
(36) Small single bunches reserved for the poor in accordance with Lev. XIX, 10, and Deut. XXIV, 21.
(37) I.e., produce forgotten in the field, belonging to the poor in accordance with Deut. XXIV, 19.
(38) I.e the portion of the harvest left at a corner of the field for the poor in accordance with Lev. XIX, 9; XXIII, 22; v. Glos.
(39) V. infra 94a. For the law of tithing applies only to produce that has never been abandoned even for the smallest space of time; v. Rashi and Tosaf. a.l.
(40) Rab maintains that the Mishnah deals with a case where the water of the broken pitcher has not been abandoned, so that it still remains the chattel of the original owner who is liable for any damage caused by it

Talmud - Mas. Baba Kama 28b

For regarding injury to the person there is exemption, since it was public ground[1] that hurt him.[2] When repeating this statement in the presence of Samuel he said to me: 'Well, is not [the liability for damage occasioned by] a stone, a knife or luggage[3] derived from Pit?[4] So that I adopt regarding them all [the interpretation]: An ox[4] excluding man, An ass[4] excluding inanimate objects! This qualification[5] however applies only to cases of killing, whereas as regards [mere] injury, in the case of man there is liability, though with respect to inanimate objects there is [always] exemption?'[6] — Rab [however, maintains[7] that] these statements apply only to nuisances abandoned [by their owners],[8] whereas in cases where they are not abandoned they still remain [their owner's] chattel.[9]

R. Oshaia however raised an objection: 'And an ox or an ass fall therein'.[4] 'An ox' excluding man; 'an ass' excluding inanimate objects. Hence the Rabbis stated: If there fell into it an ox together with its tools and they thereby broke, [or] an ass together with its equipment which rent, there is liability for the beast but exemption as regards the inanimate objects.[10] To what may the ruling in this case be compared? To that applicable in the case of a stone, a knife and luggage[11] that had been left on public ground and did damage. (Should it not on the contrary read, 'What case may be compared to this ruling?'[12] — It must therefore indeed mean thus: 'What may [be said to] be similar to this ruling? The case of a stone, a knife and luggage that had been left on public ground and did damage'.) 'It thus follows that where a bottle broke against the stone there is liability.' Now, does not the commencing clause[13] contradict the view of Rab,[14] whereas the concluding clause[15] opposes that of Samuel?[16] — But [even] on your view, does not the text contradict itself, stating exemption in the commencing clause[13] and liability in the concluding clause![15] Rab therefore interprets it so as to accord with his reasoning, whereas Samuel [on the other hand] expounds it so as to reconcile it with his view. Rab in accordance with his reasoning interprets it thus: The [above]

statement[13] was made only regarding nuisances that have been abandoned, whereas where they have not been abandoned there is liability.[17] It therefore follows that where a bottle broke against the stone there is liability. Samuel [on the other hand] in reconciling it with his view expounds it thus: Since you have now decided that a stone, a knife and luggage [constitute nuisances that] are equivalent [in law] to Pit, it follows that, according to R. Judah who orders compensation for inanimate objects damaged by Pit,[18] where a bottle smashed against the stone there is liability.

R. Eleazar said: This ruling[15] refers only to a case where the person stumbled over the stone and the bottle broke against the stone. For if the person stumbled because of the public ground, though the bottle broke against the stone, there is exemption.[19] Whose view is here followed? — Of course not that of R. Nathan[20] . There are, however, some who [on the other hand] read: R. Eleazar said: Do not suggest that it is only where the person stumbled upon the stone and the bottle broke against the stone that there is liability, so that where the person stumbled because of the public ground, though the bottle broke against the stone, there would be exemption. For even in the case where the person stumbled because of the public ground, provided the bottle broke against the stone there is liability. Whose view is here followed? — Of course that of Nathan.[20]

R. JUDAH SAYS: IF IT WAS DONE INTENTIONALLY HE IS LIABLE, BUT IF UNINTENTIONALLY HE IS EXEMPT. What does INTENTIONALLY denote? — Rabbah said: [It is sufficient[21] if there was] an intention to bring the pitcher below the shoulder.[22] Said Abaye to him: Does this imply that R. Meir[23] imposes liability even when the pitcher slipped down [by sheer accident]? — He answered him:[24] 'Yes, R. Meir imposes liability even where the handle remained in the carrier's hand.' But why? Is it not sheer accident, and has not the Divine Law prescribed exemption in cases of accident as recorded,[25] But unto the damsel thou shalt do nothing?[26] You can hardly suggest this ruling to apply only to capital punishment, whereas regarding damages there should [always] be liability, for it was taught:[27] If his pitcher broke and he did not remove the potsherds, [or] his camel fell down and he did not raise it, R. Meir orders payment for any damage resulting therefrom, whereas the Sages maintain

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(1) Lit 'ground of the world'.

(2) Whereas the water was only the remote cause of it.

(3) Even when not abandoned; cf. supra p. 7.

(4) Ex. XXI, 33.

(5) Excluding man.

(6) For killing and injury could not be distinguished in the case of inanimate objects. How then could Rab make him liable for soiled garments (and exempt for injury to the person)?

(7) The difference in principle between Samuel and Rab is that the former maintains that nuisances of all kinds, whether abandoned by their owners or not, are subject to the law applicable to Pit, in which case there is no liability either for damage done to inanimate objects or death caused to human beings, whereas the view of Rab is that only abandoned nuisances are subject to these laws of Pit, but nuisances that have not been abandoned by their owners are still his chattels, and as such have to be subject to the law applicable to ox doing damage, in which case no discrimination is made as to the nature of the damaged objects, be they men, beasts or inanimate articles; cf. also supra p. 38.

(8) In which case they are equal (in law) to Pits dug on public ground.

(9) They are thus subject to the law applicable to ox; v. supra p. 18.

(10) V. infra 52a.

(11) Even when not abandoned; cf. supra p. 7.

(12) Since the case of stone, knife and luggage is far less obvious than this case which is explicitly dealt with in Scripture.

(13) Making a stone, a knife and luggage subject to the law applicable to Pit.

(14) Who maintains that unless they have been abandoned they are subject to the law of Ox.

(15) Imposing liability in the case of a bottle having been smashed against the stone.

(16) According to whom it should be subject to the law applicable to Pit imposing no liability for damage done to

inanimate objects.

(17) Even for damage done to inanimate objects, as they are subject not to the law of Pit but to that applicable to Ox.

(18) Supra p. 18.

(19) Since it was ownerless ground that was the primary cause of the accident.

(20) Who holds that where no payment can be exacted from one defendant, the co-defendant, if any, will himself bear the whole liability; cf supra p. 54 and infra 53a

(21) To constitute liability.

(22) Though there was no intention whatever to break it.

(23) Who is usually taken to have been the author of anonymous Mishnaic statements, especially when contradicting those of R. Judah b. Il'ai, his colleague.

(24) I.e., Rabbah to Abaye.

(25) Deut. XXII, 26.

(26) For so far as she is concerned it was a mishap.

(27) Infra 55a.

Talmud - Mas. Baba Kama 29a

that no action can be instituted against him in civil courts though there is liability[1] according to divine justice. The Sages agree however, with R. Meir that, in the case of a stone, a knife and luggage which were left on the top of the roof and fell down because of a wind of usual occurrence[2] and did damage, there will be liability.[3] R. Meir [on the other hand] agrees with the Sages that, regarding bottles that were placed upon the top of the roof for the purpose of getting dry and fell down because of a wind of unusual occurrence[4] and did damage, there is exemption.[5] [Does not this prove that even regarding damages all agree that there is exemption in cases of sheer accident?] — Abaye therefore said: It is on two points that they[6] differ [in the Mishnah]; they differ regarding damage done at the time of the fall [of the pitcher] and they again differ regarding damage occasioned [by the potsherds] subsequently to the fall. The difference of opinion regarding damage done at the time of the fall of the pitcher arises on the question whether stumbling implies negligence [or not];[7] one Master[8] maintaining that stumbling does imply negligence, whereas the other Master[9] is of the opinion that stumbling does not [necessarily] imply negligence.[10] The point at issue in the case of damage occasioned [by the potsherds] subsequently to the fall, is the law as applicable to abandoned nuisances;[11] one Master[8] maintaining that for damage occasioned by abandoned nuisances there is liability,[12] whereas the other Master[9] maintains exemption.[13] But how can you prove this?[14] — From the text which presents two [independent] cases [as follows]; SOMEONE SLIPPED IN THE WATER OR WAS INJURED BY THE POTSHERD; for indeed is not one case the same as the other,[15] unless it was intended to convey, 'Someone slipped in the water while the pitcher had been falling[16] or was injured by the potsherd subsequently to the fall.'

Now that the Mishnah presents two independent cases, it is only reasonable to assume that the Baraitha[17] similarly deals with the same two problems. That is all very well as regards the 'pitcher' where the two [problems] have application [in the case of damage done] at the time of the fall or subsequently to the fall [respectively]. But how in the case of the 'camel'? For though concerning damage occasioned subsequently to the fall, it may well have application where the carcass has been abandoned,[18] yet in the case of damage done at the time of the fall, what point of difference can be found?[19] — R. Aha thereupon said: [It deals with a case] where the camel was led in water along the slippery shore of a river.[20] But under what circumstances? If where there was another [better] way, is it not a case of culpa lata?[21] If on the other hand there was no other way [to pass through], is it not a case of no alternative? — The point at issue can therefore only be where the driver stumbled and together with him the camel also stumbled.

But in the case of abandoning nuisances,[22] where could [the condition of] intention [laid down by R. Judah] come in? — Said R. Joseph: The intention [in this case] refers to the retaining of the

ownership of the potsherd.[23] So also said R. Ashi, that the intention [in this case] refers to the retaining of the ownership of the potsherd.

R. Eleazar said: 'It is regarding damage done at the time of the fall that there is a difference of opinion.' But how in the case of damage done subsequently to the fall? Would there be unanimity that there is exemption? Surely there is R. Meir who expressed [his opinion][24] that there is liability! What else [would you suggest? That in this case] there is unanimity [imposing] liability? Surely there are the Rabbis who stated [their view] that there is exemption! — Hence, what he means [to convey by his statement] 'damage done at the time of the fall', is that there is difference of opinion 'even regarding damage done at the time of the fall', making thus known to us [the conclusions arrived at] by Abaye.[25]

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(1) For not having removed the potsherds or the camel that fell down.

(2) Which the defendant should have anticipated.

(3) For carelessness.

(4) Which could hardly have been anticipated.

(5) For in this case the defendant is not to blame for carelessness.

(6) I.e., R. Judah and the anonymous view which is that of R. Meir.

(7) As it was owing to the defendant having stumbled that his pitcher gave way.

(8) I.e., R. Meir.

(9) I.e., R. Judah.

(10) 'INTENTIONALLY' stated in the Mishnah would thus mean where there was intention actually to break the pitcher, for if the intention was merely to bring the pitcher below the shoulder it would come under the term 'UNINTENTIONALLY', the ground advanced by R. Judah is that in the case of stumbling and breaking a pitcher and doing thereby damage, no negligence was necessarily involved.

(11) Of which the defendant is no longer the owner.

(12) For the liability in the case of Pit is also where it has been dug in public ground and is thus ownerless.

(13) For he holds that the liability in the case of Pit is only where the defendant had dug it in his own ground and though he subsequently abandoned it he retained the ownership of the pit itself; cf. supra p. 107; and infra 50a.

(14) That the points at issue are twofold.

(15) Why then would one case not have sufficed?

(16) And the water was still in the process of being poured out.

(17) Supra p. 152.

(18) The point at issue thus consisting in the law applicable to abandoned nuisances.

(19) For the problem whether 'stumbling' implies negligence or not has surely no application where it was not the driver but the camel that stumbled.

(20) The stumbling of the camel is thus imputed to the driver.

(21) I.e., grave fault, which has nothing to do with the problem of stumbling.

(22) Which is the second point at issue between R. Judah and R. Meir.

(23) [R. Judah therefore means this: If he had the intention of retaining the shards he is liable; if he had no intention to do so but abandoned them, he is exempt.]

(24) Supra p. 152.

(25) Supra p. 153.

Talmud - Mas. Baba Kama 29b

R. Johanan, however, said: 'It is regarding damage occasioned after the fall [of the pitcher] that there is a difference of opinion.' But how in the case of damage done at the time of the fall? Would there be unanimity [granting] exemption? Surely R. Johanan's statement further on[1] that we should not think that the Mishnah[2] [there] follows the view of R. Meir who maintains that stumbling constitutes carelessness, implies that R. Meir imposes liability.[3] What else [would you suggest? That there] be unanimity [imposing] liability? Surely the very statement made further on[1] by R. Johanan

[himself] that we should not think that the Mishnah[2] [there] follows the view of R. Meir, implies that the Rabbis would exempt![3] — Hence what he [R. Johanan] intends to convey to us is that abandoned nuisances have only in this connection been exempted from liability by the Rabbis since the very inception [of the nuisances][4] was by accident, whereas abandoned nuisances in other circumstances involve liability [even according to the Rabbis].[5]

It was stated: In the case of abandoned nuisances [causing damage], R. Johanan and R. Eleazar [differ]. One imposes liability and the other maintains exemption. May we not say that the one imposing liability follows the view of R. Meir,[6] whereas the other, who maintains exemption follows that of the Rabbis?[6] — As to R. Meir's view no one could dispute [that there should be liability].[7] Where they differ is as to the view of the Rabbis. The one who exempts does so because of the Rabbis,[8] while the other who imposes liability can say to you, 'It is I who follow the view even of the Rabbis, for the Rabbis who declare abandoned nuisances exempt do so only in one particular connection, where the very inception [of the nuisances][9] had been by accident, whereas abandoned nuisances in other connections involve liability.' May it not be concluded that it was R. Eleazar who imposed liability? For R. Eleazar said in the name of R. Ishmael:[10] There are two [laws dealing with] matters that are really not within the ownership of man but which are regarded by Scripture as if they were under his ownership. They are [the following]: Pit in public ground,[11] and Leaven after midday [on Passover eve].[12] It may indeed be concluded thus.[13]

But did R. Eleazar really say so? Did not R. Eleazar express himself to the contrary? For we have learnt;[14] 'If a man turns up dung that had been lying on public ground and another person is [subsequently] injured thereby, there is liability for the damage.' And R. Eleazar thereupon said: This Mishnaic ruling applies only to one who [by turning over the dung] intended to acquire title to it. For if he had not intended to acquire title to it there would be exemption. Now, does not this prove that abandoned nuisances are exempt? — R. Adda b. Ahabah suggested [that the amendment made by R. Eleazar] referred to one who has restored the dung to its previous position.[15] Rabina [thus] said: The instance given by R. Adda b. Ahabah may have its equivalent in the case of one who, on coming across an open pit, covered it, but opened it up again. But Mar Zutra the son of R. Mari said to Rabina: What a comparison! In the latter case, [by merely covering the pit] the [evil] deed of the original [offender] has not yet been undone, whereas in the case before us [by removing the dung from its place] the [evil] deed of the original [offender] has been undone! May it not therefore [on the other hand] have its equivalent only in the case of one who, on coming across an open pit, filled it up [with earth] but dug it out again, where, since the nuisance created by the original [offender] had already been completely removed [by filling in the pit], it stands altogether under the responsibility of the new offender? — R. Ashi therefore suggested [that the amendment made by R. Eleazar] referred to one who turned over the dung within the first three [handbreadths][16] of the ground [in which case the nuisance created by the original offender is not yet considered in law as abated]. But what influenced R. Eleazar to make the [Mishnaic] ruling[17] refer to one who turned over the dung within the first three [handbreadths of the ground], and thus to confine its application only to one who intended to acquire title to the dung,[18] excluding thereby one who did not intend to acquire title to it? Why not indeed make the ruling refer to one who turned over the dung above the first three handbreadths, so that even where one did not intend to acquire title to it the liability should hold good? — Raba [thereupon] said: Because of a difficulty in the Mishnaic text[17] [which occurred to him]: Why indeed have 'turning up' in the Mishnaic text and not simply 'raising,'[19] if not to indicate that 'turning up' implies within the first three handbreadths [of the ground].

Now [then] that R. Eleazar was the one who maintained liability,[20] R. Johanan would [of course] be the one who maintained exemption. But could R. Johanan really maintain this? Surely we have learnt: If a man hides thorns and broken glass [in public ground], or makes a fence of thorns, or if a man's fence falls upon public ground and damage results therefrom to another person, there is liability for the damage.[21] And R. Johanan thereupon said: This Mishnaic ruling refers to a case

where the thorns were projecting into the public thoroughfare. For if they were confined within private premises[22] there would be exemption. Now, why should there be exemption in the case where they were confined within private premises if not because they would only constitute a nuisance on private premises? Does this then not imply that it is only a nuisance created upon public ground that involves liability, proving thus that abandoned nuisances do involve liability? — No, it may still be suggested that abandoned nuisances are exempt. The reason for the exemption in the case of thorns confined to private premises is, as it has already been stated in this connection,[21] that R. Aha the son of R. Ika said: Because it is not the habit of men to rub themselves against walls.[23]

But again, could R. Johanan [really] maintain this?[24] Surely R. Johanan stated:[25] The halachah is in accordance with anonymous Mishnaic rulings. And we have learnt: If a man digs a pit in public ground, and an ox or ass falls in and dies, there is liability.[26] [Does this not prove that there is liability for a pit dug in public ground?] — [It must] therefore [be concluded that] R. Johanan was indeed the one who maintained liability. Now then that R. Johanan was the one who maintained liability, R. Eleazar would [of course] be the one who maintained exemption. But did not R. Eleazar say

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(1) Infra p. 166.

(2) Dealing with the case of the two potters, infra p. 166.

(3) For damage done at the time of the fall.

(4) I.e., when the pitcher gave way or the camel fell down.

(5) The statement made by R. Johanan that it was regarding damage occasioned after the fall (of the pitcher) that there was a difference of opinion would thus mean that the difference of opinion between R. Meir and the other Rabbis was only where the inception of the nuisance was with a fall, i.e. with an accident, as where the nuisance had originally been wilfully exposed to the public there would be liability according to all opinions.

(6) V. p. 155, n. 1.

(7) For R. Meir imposes liability for abandoned nuisances even where their very inception was by accident; v. Rashi, but also Tosaf. 29a.

(8) Supra p. 153.

(9) As when the pitcher gave way or the camel fell down.

(10) Pes. 6b.

(11) Which is not the property of the defendant, but for which he is nevertheless responsible on account of his having dug it.

(12) Lit., 'from the sixth hour upwards', when in accordance with Pes. I. 4, it becomes prohibited for any use and is thus rendered ownerless, but for its destruction the original owner is still held responsible.

(13) That according to R. Eleazar abandoning nuisances does not release from responsibility.

(14) Infra p. 161.

(15) In which case the defendant did not aggravate the position.

(16) According to the principle of Labud, which is the legal consideration of separated parts as united, one substance is not regarded as removed from another unless a space of not less than three handbreadths separates them.

(17) Infra p. 161.

(18) Lit., 'and the reason is because he intended', etc.

(19) Which would necessarily mean above the first three handbreadths of the ground level.

(20) In the case of abandoned nuisances that have caused damage.

(21) Infra p. 159.

(22) Although he subsequently abandoned it to the public.

(23) It is therefore the plaintiff himself who is to blame.

(24) That abandoning nuisances releases from responsibility.

(25) Shab. 46a.

(26) Infra 50b.

in the name of R. Ishmael etc.[1] [which proves that abandoned nuisances do involve liability]? — This presents no difficulty. One view[2] is his own whereas the other[3] is that of his master.

MISHNAH. IF A MAN POURS OUT WATER INTO PUBLIC GROUND AND SOME OTHER PERSON IS INJURED BY IT, THERE IS LIABILITY FOR THE DAMAGE. IF HE HIDES THORNS AND BROKEN GLASS, OR MAKES A FENCE OF THORNS, OR, IF A FENCE FALLS INTO THE PUBLIC GROUND AND DAMAGE RESULTS THEREFROM TO SOME OTHER PERSONS, THERE IS [SIMILARLY] LIABILITY FOR THE DAMAGE.[4]

GEMARA. Rab said: This Mishnaic ruling[5] refers only to a case where his garments[6] were soiled in the water. For regarding injury to himself there should be exemption, since it was ownerless ground that hurt him.[7] [But] R. Huna said to Rab: Why should not [the topmost layer of the ground mixed up with private water] be considered as private clay?[8] — Do you suggest [the ruling to refer to] water that has not dried up? [No.] It deals with a case where the water has already dried up. But why [at all] two [texts[9] for one and the same ruling]?[10] — One [text] refers to the summer season whereas the other deals with winter, as indeed [explicitly] taught [elsewhere]: All those who open their gutters or sweep out the dust of their cellars [into public thoroughfares] are, in the summer period, acting unlawfully, but lawfully in winter; [in all cases] even though when acting lawfully, if special damage resulted, they are liable to compensate.[11]

IF HE HIDES THORNS etc., R. Johanan said:[4] This Mishnaic ruling refers only to a case where the thorns were projecting into the public ground. For if they were confined within private premises there would be no liability. On what account is there exemption [in the latter case]? — R. Aha the son of R. Ika [thereupon] answered:[12] Because it is not the habit of men to rub themselves against walls.

Our Rabbis taught: If one hid thorns and broken glasses in a neighbour's wall and the owner of the wall came and pulled his wall down, so that they fell into the public ground and did damage, the one who hid them is liable. R. Johanan [thereupon] said: This ruling refers only to an impaired wall.[13] For in the case of a strong wall the one who hid [the thorns] should be exempt while the owner of the wall would be liable.[14] Rabina commented: This ruling[15] proves that where a man covers his pit with a neighbour's lid and the owner of the lid comes and removes his lid, the owner of the pit would be liable [for any damage that may subsequently be caused by his pit]. Is not this inference quite obvious?[16] — You might perhaps have suggested this ruling[15] [to be confined to the case] there, where the owner of the wall had no knowledge of the identity of the person who hid the thorns in the wall, and was accordingly unable to inform him of the intended pulling down of the wall, whereas in the case of the pit, where the owner of the lid very well knew the identity of the owner of the pit, [you might have argued] that it was his duty to inform him [of the intended removal of the lid].[17] It is therefore made known to us [that this is not the case].[18]

Our Rabbis taught: The pious men of former generations used to hide their thorns and broken glasses in the midst of their fields at a depth of three handbreadths below the surface so that [even] the plough might not be hindered by them. R Shesheth[19] used to throw them into the fire.[20] Raba threw them into the Tigris. Rab Judah said: He who wishes to be pious must [in the first instance particularly] fulfil the laws of [Seder] Nezikin.[21] But Raba said: The matters [dealt with in the Tractate] Aboth;[22] still others said: Matters [dealt with in] Berakoth.[23]

MISHNAH. IF A MAN REMOVES HIS STRAW AND STUBBLE INTO THE PUBLIC GROUND TO BE FORMED INTO MANURE, AND DAMAGE RESULTS TO SOME OTHER PERSON, THERE IS LIABILITY FOR THE DAMAGE, AND WHOEVER SEIZES THEM FIRST ACQUIRES TITLE TO THEM. R. SIMEON B. GAMALIEL SAYS: WHOEVER CREATES ANY

NUISANCES ON PUBLIC GROUND CAUSING [SPECIAL] DAMAGE IS LIABLE TO COMPENSATE, THOUGH WHOEVER SEIZES OF THEM FIRST ACQUIRES TITLE TO THEM. IF HE TURNS UP DUNG THAT HAD BEEN LYING ON PUBLIC GROUND, AND DAMAGE [SUBSEQUENTLY] RESULTS TO ANOTHER PERSON, HE IS LIABLE FOR THE DAMAGE.

GEMARA. May we say that the Mishnaic ruling[24] is not in accordance with R. Judah? For it was taught: R. Judah says: When it is the season of taking out foliage everybody is entitled to take out his foliage into the public ground and heap it up there for the whole period of thirty days so that it may be trodden upon by the feet of men and by the feet of animals; for upon this understanding did Joshua make [Israel][25] inherit the Land. — You may suggest it to be even in accordance with R. Judah, for R. Judah [nevertheless] agrees that where [special] damage resulted, compensation should be made for the damage done. But did we not learn that R. Judah maintains that in the case of a Chanukah candle[26] there is exemption on account of it having been placed there with authorization?[27] Now, does not this authorization mean the permission of the Beth din?[28] — No, it means the sanction of [the performance of] a religious duty[29] as [indeed explicitly] taught: R. Judah says: In the case of a Chanukah candle there is exemption on account of the sanction of [the performance of] a religious duty.

Come and hear: In all those cases where the authorities permitted nuisances to be created on public ground, if [special] damage results there will be liability to compensate. But R. Judah maintains exemption![30] — R. Nahman said: The Mishnah[31] refers to the time when it is not the season to take out foliage and thus it may be in accordance with R. Judah. — R. Ashi further [said]:

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(1) That there is liability for a pit dug in public ground, though it is ownerless.

(2) That abandoning nuisances releases from responsibility.

(3) That abandoning nuisances does not release from responsibility.

(4) Supra p. 158.

(5) Which, according to Rab, deals with a case where the water has not been abandoned, but remained still the chattel of the original owner.

(6) Those of the person who was injured.

(7) Whereas the water was but the remote cause of it.

(8) Lit., ‘his clay’. i.e., of the owner of the water.

(9) The one here and the other supra p. 149.

(10) Expounded by Rab here as well as supra pp. 149-150.

(11) Supra pp. 19-20.

(12) V. p. 159, n. 3.

(13) Which was likely to be pulled down.

(14) For not having taken proper care to safeguard the public.

(15) As stated in the Baraitha quoted.

(16) Why then had Rabina to make it explicit?

(17) Failing that, the sole responsibility should then fall upon him.

(18) But that the responsibility lies upon the owner of the pit.

(19) Who was stricken with blindness; cf. Ber. 58a.

(20) V. Nid. 17a.

(21) [By being careful in matters that may cause damage.]

(22) [Matters affecting ethics and right conduct. Var. lec., ‘Rabina’.]

(23) [The Tractate wherein the benedictions are set forth and discussed.]

(24) Imposing liability in the commencing clause.

(25) B.M. 118b. Why then liability for the damage caused thereby during the specified period permitted by law?

(26) Placed outside a shop and setting aflame flax that has been passing along the public road.

(27) Infra p. 361.

(28) A permission which has similarly been extended in the case of the dung during the specified period and should accordingly effect exemption.
(29) Which is of course absent in the case of removing dung to the public ground, where liability must accordingly be imposed for special damage.
(30) Does not this prove that mere authorization suffices to confer exemption? Cf. n. 2.
(31) V. p. 161, n. 5.

Talmud - Mas. Baba Kama 30b

The Mishnah states, HIS STRAW AND STUBBLE which are slippery [and may never be removed into public ground even according to R. Judah].

WHOEVER SEIZES THEM FIRST ACQUIRES TITLE TO THEM. Rab said: Both to their corpus and to their increase [in value],[1] whereas Ze'ire said: Only to their increase but not to their corpus.[2] Wherein is the point at issue?[3] — Rab maintains that they [the Rabbis] extended the penalty to the corpus on account of the increase thereof, but Ze'ire is of the opinion that they did not extend the penalty to the corpus on account of the increase thereof.

We have learnt: IF HE TURNS UP DUNG THAT HAD BEEN LYING ON PUBLIC GROUND AND DAMAGE [SUBSEQUENTLY] RESULTS TO ANOTHER PERSON, HE IS LIABLE FOR THE DAMAGE. Now, [in this case] it is not stated that 'Whoever seizes it first acquires title to it.'[4] — [This ruling has been] inserted in the commencing clause, and applies as well to the concluding clause. But has it not in this connection[5] been taught [in a Baraitha]: They are prohibited [to be taken possession of] on account of [the law of] robbery?[6] — When [the Baraitha] states 'They are prohibited on account of robbery' the reference is to all the cases [presented] in the Mishnaic text[7] and [is intended] to [protect] the one who had seized [of them] first, having thereby acquired title [to them]. But surely it was not meant thus, seeing that it was taught:[8] 'If a man removes straw and stubble into the public ground to be formed into manure and damage results to another person, he is liable for the damage, and whoever seizes them first acquires title to them, as this may be done irrespective of [the law of] robbery. [However] where he turns up dung on public ground and damage [subsequently] results to another person, he is liable [to compensate] but no possession may be taken of the dung on account of [the law of] robbery'?[6] — R. Nahman b. Isaac [thereupon] exclaimed: What an objection to adduce from the case of dung! [It is only in the case of] an object that is susceptible to increase [in value] that the penalty is extended to the corpus[9] for the purpose of [discouraging any idea of] gain, whereas with regard to an object that yields no increase there is no penalty [at all].[10]

The question was asked: According to the view that the penalty extends also to the corpus for the purpose of [discouraging the idea of] gain,[9] is this penalty imposed at once[11] or is it only after some gain has been produced that the penalty will be imposed? — Come and hear: An objection was raised [against Rab] from the case of dung![12] But do you really think this [solves the problem]? The objection from the case of dung was raised only before R. Nahman expounded the underlying principle;[13] for after the explanation given by R. Nahman what objection indeed could there be raised from the case of dung?[14]

Might not one suggest [the argument between Rab and Ze'ire to have been] the point at issue between [the following] Tannaim? For it was taught: If a bill contains a stipulation of interest,[15] a penalty is imposed so that neither the principal nor the interest is enforced; these are the words of R. Meir, whereas the Sages maintain that the principal is enforced though not the interest.[16] Now, can we not say that Rab adopts the view of R. Meir[17] whereas Ze'ire follows that of the Rabbis?[18] — Rab may explain [himself] to you [as follows]: 'I made my statement even according to the Rabbis: for the Rabbis maintain their view only there, where the principal as such is quite lawful, whereas here

in the case of nuisances the corpus itself is liable to do damage.' Ze'ire [on the other hand] may explain [himself] to you [thus]: 'I made my statement even in accordance with R. Meir; for R. Meir expressed his view only there, where immediately, at the time of the bill having been drawn up, [the evil had been committed] by stipulating the usury, whereas here in the case of nuisances, who can assert that [special] damage will result?'

Might not one suggest [the argument between Rab and Ze'ire to have been] the point at issue between these Tannaim? For it was taught: If a man removes straw and stubble into the public ground to be formed into manure and damage results to another person, he is liable for the damage, and whoever seizes them first acquires title to them. They are prohibited [to be taken possession of] on account of [the law of] robbery. R. Simeon b. Gamaliel says: Whoever creates any nuisances on public ground and causes [special] damage is liable to compensate, though whoever takes possession of them first acquires title to them, and this may be done irrespective of [the law of] robbery. Now, is not the text a contradiction in itself? You read, 'Whoever seizes them first acquires title to them,' then you state [in the same breath], 'They are prohibited [to be taken possession of] on account of [the law of] robbery'! It must therefore mean thus: 'Whoever seizes them first acquires title to them,' viz., to their increase, whereas, 'they are prohibited to be taken possession of on account of [the law of] robbery,' refers to their corpus. R. Simeon b. Gamaliel thereupon proceeded to state that even concerning their corpus, 'whoever seizes them first, acquires title to them.' Now, according to Ze'ire, his view must unquestionably have been the point at issue between these Tannaim,[19] but according to Rab, are we similarly to say that [his view] was the point at issue between these Tannaim? — Rab may say to you: 'It is [indeed] unanimously held that the penalty must extend to the corpus for the purpose [of discouraging the idea] of gain; the point at issue [between the Tannaim] here is whether this halachah[20] should be made the practical rule of the law'.[21] For it was stated: R. Huna on behalf of Rab said: This halachah[20] should not be made the practical rule of the law,[22] whereas R. Adda b. Ahabah said: This halachah[20] should be made the practical rule of the law. But is this really so? Did not R. Huna declare barley [that had been spread out on public ground] ownerless, [just as] R. Adda b. Ahabah declared

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(1) While on public ground.

(2) Which thus still remains the property of the original owner.

(3) I.e., what is the principle underlying it?

(4) This clause, if omitted purposely, would thus tend to prove that the penalty attaches only to straw and stubble and their like, which improve while lying on public ground, but not to dung placed on public ground, apparently on account of the fact that in this case there is neither increase in quantity nor improvement in quality while lying on public ground. This distinction appears therefore to be not in accordance with the view of Rab, maintaining that the penalty extend not only to the increase but also to the corpus of the object of the nuisance.

(5) I.e. in connection with the latter clause.

(6) Which shows that the penalty does not extend to the corpus.

(7) Even to straw and stubble.

(8) [V. D.S. a.l.]

(9) According to the view of Rab.

(10) For, since there is no gain, nobody is likely to be tempted to place dung on public ground.

(11) Even before any gain accrued.

(12) Although no increase will ever accrue there, thus proving that according to Rab the penalty is imposed on the corpus even before it had yielded any gain.

(13) That there is no penalty at all with regard to an object that yields no increase; whereas the query is based on the principle laid down by R. Nahman.

(14) Where no increase will ever accrue.

(15) Which is against the biblical prohibition of Ex. XXII, 24.

(16) Cf. B.M. 72a.

(17) Extending the penalty also to the corpus.

(18) I.e., the Sages who maintain that the penalty attaches only to the increase.

(19) For R. Simeon b. Gamaliel is certainly against his view.

(20) To extend the penalty to the corpus.

(21) As to whether people should be encouraged to avail themselves of it, or not.

(22) For the sake of not disturbing public peace.

Talmud - Mas. Baba Kama 31a

the refuse of boiled dates [that had been placed on public ground] ownerless? We can well understand this in the case of R. Adda b. Ahabah who acted in accordance with his own dictum, but in the case of R. Huna, are we to say that he changed his view? — These owners [in that case] had been warned [several times not to repeat the nuisance].[1]

MISHNAH. IF TWO POTTERS WERE FOLLOWING ONE ANOTHER AND THE FIRST STUMBLED AND FELL DOWN AND THE SECOND STUMBLED BECAUSE OF THE FIRST, THE FIRST IS LIABLE FOR THE DAMAGE DONE TO THE SECOND.

GEMARA. R. Johanan said: Do not think [that the Tanna of] this Mishnah is R. Meir who considers stumbling as implying carelessness that involves liability.[2] For even according to the Rabbis who maintain [that stumbling is] mere accident for which there is exemption,[2] there should be liability here where he[3] had [meanwhile had every possibility] to rise and nevertheless did not rise. [But] R. Nahman b. Isaac said: You may even say that [the Mishnah speaks also of a case] where he[3] did not yet have [any opportunity] to rise, for he[3] was [surely able] to caution[4] and nevertheless did not caution. R. Johanan, however, considers that where he[3] did not yet have [any opportunity] to rise, he[3] could hardly be expected to caution as he was [surely] somewhat distracted.

We have learnt: If the carrier of the beam was in front, the carrier of the barrel behind, and the barrel broke by [colliding with] the beam, he[5] is exempt. But if the carrier of the beam stopped suddenly, he is liable.[6] Now, does this not mean that he stopped for the purpose of shouldering the beam as is usual with carriers, and it yet says that he is liable, [presumably] because [he failed] to caution?[7] — No, he suddenly stopped to rest [which is rather unusual in the course of carrying]. But what should be the law[8] in the case where he stopped to shoulder the beam? Would there then be exemption? Why then state in the subsequent clause,[9] 'Where he, however, warned the carrier of the barrel to stop, he is exempt'? Could the distinction not be made in the statement of the same case [in the following manner]: 'Provided that he stopped to rest; but if he halted to shift the burden on his shoulder, he is exempt'? — It was, however, intended to let us know that even where he stopped to rest, if he warned the carrier of the barrel to stop, he is exempt.

Come and hear: If a number of potters or glass-carriers were walking in line and the first stumbled and fell and the second stumbled because of the first and the third because of the second, the first is liable for the damage [occasioned] to the second, and the second is liable for the damage [occasioned] to the third. Where, however, they all fell because of the first, the first is liable for the damage [sustained] by them all. If [on the other hand] they cautioned one another, there is exemption. Now, does this teaching not deal with a case where there has not yet been [any opportunity] to rise?[10] — No, [on the contrary] they [have already] had [every opportunity] to rise. But what should be the law[8] in the case where they [have not yet] had [any opportunity] to rise? Would there then be exemption? If so, why state in the concluding clause, 'If [on the other hand] they cautioned one another, there is exemption'? Could the distinction not be made in the statement of the same case [in the following manner]: 'Provided that they have already had every opportunity to rise; but if they have not yet had any opportunity to rise, there is exemption'? — This is what it intended to let us know: That even where they [have already] had [every opportunity] to rise, if they cautioned one another, there is exemption.

Raba said: The first is liable for damage [done] to the second whether directly by his person[11] or by means of his chattels,[12] whereas the second is liable for damage to the third only if done by his person[13] but not if caused by his chattels. [Now,] in any case [how could these rulings be made consistent]? [For] if stumbling implies carelessness, why should not also the second be liable [for all kinds of damage]?[14] If [on the other hand] stumbling does not amount to carelessness, why should even the first not enjoy immunity?

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(1) It was therefore a specially aggravated offence.

(2) Supra pp. 153 and 155.

(3) The first potter.

(4) The second potter to stop.

(5) The carrier of the beam.

(6) Infra p. 169.

(7) Which would thus support the interpretation given by R. Nahman and contradict the view expounded by R. Johanan.

(8) According to the view of R. Johanan.

(9) Infra p. 170.

(10) V. p. 166, n. 7.

(11) Being subject to the law applicable to damage done by Man.

(12) Which are subject to the law applicable to Pit.

(13) V. p. 167, n. 4

(14) Even if caused by his chattels.

Talmud - Mas. Baba Kama 31b

— The first was certainly [considered] careless,[1] whilst, as to the second, he is liable for damage done by his person, [that is,] only where he [has already] had [the opportunity] to rise and did [nevertheless] not rise; for damage caused by his chattels he is [however] exempt, as he may say to him:[2] It is not I who dug this pit.[3]

An objection was raised [from the following Baraitha]: All of them are liable for damage [done] by their person,[4] but exempt for damage [caused] by their chattels.[4] Does [this Baraitha] not refer even to the first?[5] — No, with the exception of the first. But is it not stated, 'All of them ...'? — R. Adda b. Ahabah said: 'All of them' refers to [all] the plaintiffs.[6] [But] how is this? If you maintain that the first [is] also [included], we understand why the Baraitha says 'All of them'. But if you contend that the first is excepted, what [meaning could there be in] 'All of them'? Why [indeed] not say 'The plaintiffs'? — Raba [therefore] said: The first[7] is liable for both injuries inflicted upon the person of the second and damage caused to the chattels of the second, whereas the second[8] is liable to compensate the third only for injuries inflicted upon his person but not for damage[9] to his chattels; the reason being that the [person of the] second is subject to the law applicable to Pit, and no case can be found where Pit would involve liability for inanimate objects.[10] This accords well with the view of Samuel, who holds that all nuisances are [subject to the law applicable to] Pit.[11] But according to Rab who maintains that it is only where the nuisance has been abandoned that this is so, whereas if not [abandoned] it is not so,[12] what reason could be advanced?[13] — We must therefore accept the first version,[14] and as to the objection raised by you [from the Baraitha], 'All of them are liable',[15] it has already been interpreted by R. Adda b. Minyomi in the presence of Rabina to refer to a case where inanimate objects have been damaged by the chattels [of the defendant].[16]

The Master stated: 'Where, however, they all fell because of the first, the first is liable for the damage [sustained] by them all.' How [indeed can they all] fall [because of the first]? — R. Papa said: Where he blocked the road like a carcass, [closing the whole width of the road]. R. Zebid said: Like a blind man's staff.[17]

MISHNAH. IF ONE COMES WITH HIS BARREL AND AN OTHER COMES WITH HIS BEAM AND THE PITCHER[18] OF THIS ONE BREAKS BY [COLLISION WITH] THE BEAM OF THIS ONE, HE[19] IS EXEMPT, FOR THE ONE IS ENTITLED TO WALK [THERE AND CARRY BEAMS] AND THE OTHER IS ENTITLED TO WALK [THERE AND CARRY BARRELS]. WHERE THE CARRIER OF THE BEAM WAS IN FRONT, AND THE CARRIER OF THE BARREL BEHIND, AND THE BARREL BROKE BY [COLLISION WITH] THE BEAM, THE CARRIER OF THE BEAM IS EXEMPT.[20]

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(1) [Since stumbling implies carelessness.]

(2) To the third.

(3) I.e., the nuisance was created not by the second, but caused by the first who fell.

(4) Whether to the person or to the chattels of the plaintiff.

(5) Who, according to Raba, is liable for damage caused even by his chattels to the person of the second as being subject to the law applicable to Pit. This Baraitha thus refutes Raba.

(6) The first is thus, as a matter of course, not included.

(7) Being subject to the law applicable to damage done by Man.

(8) Should be subject to the law applicable in Pit.

(9) Though done by the person of the second.

(10) Supra p. 18.

(11) Supra p. 150. [The person of the second may therefore be treated as Pit.]

(12) But is subject to the law applicable to Ox where damage to inanimate objects is also compensated.

(13) For the person of the second, though lying on the ground, has surely never been abandoned by him. Why then exemption for damage done by him to inanimate objects?

(14) Of the statement of Raba, according to which the first is liable for damage done whether by his person or by his chattels, whereas the second is liable for damage done only by his person but not if done by his chattels.

(15) For damage done by their person, but exempt for damage done by their chattels, including thus also the first.

(16) Which are subject to the laws of Pit involving no liability for inanimate objects. Were, however, the person of the plaintiff to have been injured, there would be no exemption even if the injury were caused by the chattels of the first, as expounded by Raba.

(17) [With which the blind gropes his way on either side of the road.]

(18) Cf. supra p. 142.

(19) The owner of the beam.

(20) For the carrier of the barrel who was behind should not have proceeded so fast.

BUT IF THE CARRIER OF THE BEAM [SUDDENLY] STOPPED, HE IS LIABLE.[1] IF, HOWEVER, HE CRIED TO THE CARRIER OF THE BARREL, HALT!' HE IS EXEMPT. WHERE, HOWEVER, THE CARRIER OF THE BARREL WAS IN FRONT, AND THE CARRIER OF THE BEAM BEHIND AND THE BARREL BROKE BY [COLLISION WITH] THE BEAM, HE IS LIABLE.[2] IF, HOWEVER, THE CARRIER OF THE BARREL [SUDDENLY] STOPPED, HE IS EXEMPT. BUT WHERE HE CRIED TO THE CARRIER OF THE BEAM, 'HALT!' HE IS LIABLE. THE SAME APPLIES TO ONE CARRYING A [BURNING] CANDLE WHILE ANOTHER WAS PROCEEDING WITH FLAX.

GEMARA. Rabbah b. Nathan questioned R. Huna: If a man injures his wife through conjugal intercourse, what is [the legal position]? Since he performed this act with full permission is he to be exempt [for damage resulting therefrom], or should perhaps greater care have been taken by him? — He said to him. We have learnt it: ... FOR THE ONE IS ENTITLED TO WALK [THERE AND CARRY BEAMS] AND THE OTHER IS ENTITLED TO WALK [THERE AND CARRY BARRELS].[3] Raba [however] said: There is an a fortiori [to the contrary]: If in the case of the Wood,[4] where this one [the defendant] was entering [as if] into his own domain, and the other [the plaintiff] was [similarly] entering [as if] into his own domain, it is nevertheless considered [in the eye of the law][4] that he entered his fellow's [the plaintiff's] domain, and he is made liable, should this case[5] where this one [the defendant][6] was actually entering the domain of his fellow [the plaintiff][7] not be all the more [subject to the same law]?[8] But surely [the Mishnah] states, . . . FOR THE ONE IS ENTITLED TO WALK THERE [AND CARRY BEAMS] AND THE OTHER IS ENTITLED TO WALK [THERE AND CARRY BARRELS, indicating exemption where the entry was sanctioned]! — There, both of the parties were simultaneously [active against each other], whereas here[9] it was only he[10] that committed the deed. Is she[11] [considered] not [to have participated in the act at all]? Is it not written, The souls that commit them shall be cut off from among their people?[12] — [It is true that] enjoyment is derived by both of them, but it is only he to whom the active part can be ascribed.

WHERE THE CARRIER OF THE BEAM WAS IN FRONT etc. Resh Lakish stated:[13] In the case of two cows on public ground, one lying down [maliciously] and the other walking about, if the one that was walking kicked the one that was lying, there is exemption [since the latter too misconducted itself by laying itself down on public ground], whereas if the one that was lying kicked the one that was walking, there is liability to pay. May not [the following be cited in] support of this:[14] WHERE THE CARRIER OF THE BEAM WAS IN FRONT AND THE CARRIER OF THE BARREL BEHIND, AND THE BARREL BROKE BY [COLLISION WITH] THE BEAM, HE IS EXEMPT. BUT IF THE CARRIER OF THE BEAM [SUDDENLY] STOPPED HE IS LIABLE. For surely [this latter case] here is similar to that of the lying cow kicking the walking cow,[15] and liability is stated! — But do you really think that this [liability] need be proved?[14] [The Mishnaic text however] not only fails to be of any support [in this respect], but affords a contradiction to Resh Lakish, [in whose view] the reason [even for the liability] is that the lying cow kicked the walking cow, thus [implying] that [the latter] sustained damage [because of the former cow] through sheer accident, and there would be exemption. Now, [the case of] the Mishnah surely deals with accidental damage, and still states liability? — The Mishnah [deals with a case] where the beam blocked the [whole] passage as if by a carcass,[16] whereas here [in the case dealt with by Resh Lakish] the cow was lying on one side of the road so that the other cow should have passed on the other side.[17]

But the concluding clause may [be taken to] support Resh Lakish. For it is stated, BUT IF THE CARRIER OF THE BARREL WAS IN FRONT AND THE CARRIER OF THE BEAM BEHIND, AND THE BARREL BROKE BY [COLLISION WITH] THE BEAM, HE IS LIABLE. IF, HOWEVER, THE CARRIER OF THE BARREL [SUDDENLY] STOPPED, HE IS EXEMPT.

Now, surely this case resembles that of the walking cow kicking the lying cow,[18] and the text states exemption? — No! The Mishnah [deals with the case where the damage was done in a usual manner as] he[19] was passing in the ordinary way, whereas here [in the case dealt with by Resh Lakish] it may be argued for the lying cow,[20] 'Even if you are entitled to tread upon me, you have still no right to kick me.'[21]

MISHNAH. IF TWO [PERSONS] WERE PASSING ONE ANOTHER ON PUBLIC GROUND, ONE [OF THEM] RUNNING AND THE OTHER WALKING OR BOTH OF THEM RUNNING, AND THEY WERE INJURED BY EACH OTHER, BOTH OF THEM ARE EXEMPT.[22]

GEMARA. Our Mishnah is not in accordance with Issi b. Judah. For it has been taught: Issi b. Judah maintains that the man who had been running is liable, since his conduct was unusual. Issi, however, agrees [that if it were] on a Sabbath eve before sunset there would be exemption, for running at that time is permissible. R. Johanan stated that the halachah is in accordance with Issi b. Judah. But did R. Johanan [really] maintain this? Has R. Johanan not laid down the rule that the halachah is in accordance with [the ruling of] an anonymous Mishnah?[23] Now, did we not learn . . . ONE [OF THEM] RUNNING AND THE OTHER WALKING OR BOTH OF THEM RUNNING . . . BOTH OF THEM ARE EXEMPT? — Our Mishnah [deals with a case] of a Sabbath eve before sunset. What proof have you of that? — From the text, OR BOTH OF THEM RUNNING . . . BOTH OF THEM ARE EXEMPT; [for indeed] what need was there for this to be inserted? If in the case where one was running and the other walking there is exemption, could there be any doubt[24] where both of them were running?[25] It must accordingly mean thus: ' Where one was running and the other walking there is exemption; provided, however, it was on a Sabbath eve before sunset. For if on a weekday, [in the case of] one running and the other walking there would be liability, [whereas where] both of them were running even though on a weekday they would be exempt.'

The Master stated: 'Issi, however, agrees [that if it were] on a Sabbath eve before sunset there would be exemption, for running at that time is permissible.' On Sabbath eve, why is it permissible? — As [shown by] R. Hanina: for R. Hanina used to say:[26]

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(1) For he is to blame.

(2) For the carrier of the beam, who was in this case second, should have taken care to keep at a reasonable distance.

(3) This proves that where the act is sanctioned no liability is involved.

(4) Referring to Deut. XIX,5: As when a man goeth into the wood with his neighbour to hew wood, and his hand fetcheth a stroke with the axe to cut down the tree and the head slippeth from the helve and lighteth upon his neighbour ... cf. also infra p. 175

(5) I.e., the problem in hand.

(6) The husband.

(7) The wife.

(8) Of liability.

(9) V. p. 170 n. 6.

(10) I.e the husband.

(11) I.e the wife.

(12) Lev. XVIII, 29. [The plural indicates that both are regarded as having participated in the act.]

(13) Supra pp. 98 and 124.

(14) I.e., that misconduct involves liability for damage that may result.

(15) As here, too, the offender is to blame for misconduct.

(16) Consequently the liability extends even to accidental damage.

(17) [There could therefore be no liability attached except where the lying cow maliciously kicked her, but not for accidental damage.]

(18) In that there was contributory misconduct on the part of the plaintiff and his cow respectively.

(19) The carrier of the beam.

(20) Lit ‘she can say to her’.
(21) It was therefore requisite that Resh Lakish should express his rejection of this plausible argument.
(22) So long as they had no intention of injuring each other.
(23) Cf. supra p. 158.
(24) That there should be exemption.
(25) Where there was contributory negligence.
(26) Cf. Shab. 119a.

Talmud - Mas. Baba Kama 32b

‘Come, let us go forth to meet the bride, the queen!’ Some [explicitly] read:’. . . to meet Sabbath, the bride, the queen.’ R. Jannai, [however,] while dressed in his Sabbath attire used to remain standing and say: ‘Come thou, O queen, come thou, O queen!’

MISHNAH. IF A MAN SPLITS WOOD ON PRIVATE PREMISES[1] AND DOES DAMAGE ON PUBLIC GROUND, OR ON PUBLIC GROUND AND DOES DAMAGE ON PRIVATE PREMISES,[2] OR ON PRIVATE PREMISES[3] AND DOES DAMAGE ON ANOTHER'S PRIVATE PREMISES, HE IS LIABLE.

GEMARA. And [all the cases enumerated] are necessary [as serving respective purposes]. For if the Mishnah had stated only the case of splitting wood on private premises and doing damage on public ground, [the ruling could have been ascribed to the fact] that the damage occurred at a place where many people were to be found, whereas in the case of splitting wood on public ground and doing damage on private premises, since the damage occurred in a place where many people were not to be found, the opposite ruling might have been suggested.[4] Again, if the Mishnah had dealt only with the case of splitting wood on public ground and doing damage on private premises,[5] [the ruling could have been explained] on the ground that the act[6] was even at the very outset unlawful, whereas in the case of splitting wood on private premises[3] and doing damage on public ground, [in view of the fact] that the act[6] [as such] was quite lawful, the opposite view might have been suggested.[4] Again, if the Mishnah had dealt only with these two cases [the ruling could have been explained in] the one case on account of the damage having occurred at a place where many people were to be found, and [in] the other on account of the unlawfulness of the act,[6] whereas in the case of splitting wood on private premises[3] and doing damage on another's private premises, since the damage occurred in a place where many people were not to be found and the act[6] was quite lawful even at the very outset, the opposite view might have been suggested.[4] It was [hence] essential [to state explicitly all these cases].

Our Rabbis taught: ‘If a man entered the workshop of a joiner without permission and a chip of wood flew off and struck him in the face and killed him, he [the joiner] is exempt.[7] But if he entered with [the] permission [of the joiner], he is liable.’ Liable for what? — R. Jose b. Hanina said: He is liable for the four [additional] items,[8] whereas regarding the law of refuge[9] he is [still] exempt on account of the fact that the [circumstances of this] case do not [exactly] resemble those of the Wood.[10] For in the case of the Wood the one [the plaintiff] was entering [as if] into his own domain and the other [the defendant] was [similarly] entering [as if] into his own domain, whereas in this case the one [the plaintiff] had [definitely] been entering into his fellow's [the defendant's] workshop. Raba [however,] said: There is an a fortiori [to the contrary]: If in the case of the Wood where the one [the plaintiff] was entering to his own [exclusive] knowledge and that one [the defendant] was similarly entering of his own accord, it is nevertheless considered [in the eye of the law][10] as if he had entered with the consent of his fellow [the defendant] who thus becomes liable to take refuge, should the case before us, where the one [the plaintiff] entered the workshop with the knowledge of his fellow [the joiner], be not all the more subject to the same liability? Raba therefore said: What is meant by being exempt from [being subject to the law of] refuge is that the sin could not be expiated

by mere refuge; the real reason of the statement of R. Jose b. Hanina being this: that his offence,[11] though committed inadvertently, approaches wilful carelessness.[12] Raba [on his own part] raised [however] an objection: If an officer of the Court inflicted on him[13] an additional [unauthorized] stroke, from which he died, he [the officer] is liable to take refuge on his account.[14] Now, does not [the offence] here committed inadvertently approach wilful carelessness?[12] For surely he had to bear in mind that a person might sometimes die just through one [additional] stroke. Why then state, 'he is liable to take refuge on his account'? — R. Shimi of Nehardea there upon said: [The officer committed the offence as he] made a mistake in [counting] the number [of strokes]. [But] Naba tapped R. Shimi's shoe[15] and said to him: Is it he who is responsible for the counting [of the strokes]? Was it not taught: The senior judge recites [the prescribed verses],[16] the second [to him] conducts the counting [of the strokes], and the third directs each stroke to be administered?[17] — No, said R. Shimi of Nehardea; it was the judge himself who made the mistake in counting.

A [further] objection was raised: If a man throws a stone into a public thoroughfare and kills [thereby a human being], he is liable to take refuge.[18] Now, does not [the offence] here committed inadvertently approach wilful carelessness?[19] For surely he had to bear in mind that on a public thoroughfare many people were to be found, yet it states, 'he is liable to take refuge'? — R. Samuel b. Isaac said: The offender [threw the stone while he] was pulling down his wall.[20] But should he not have kept his eyes open? — He was pulling it down at night . But even at night time, should he not have kept his eyes open? — He was [in fact] pulling his wall down in the day time, [but was throwing it] towards a dunghill. [But] how are we to picture this dunghill? If many people were to be found there, is it not a case of wilful carelessness?[19] If [on the other hand] many were not to be found there, is it not sheer accident?[21] — R. Papa [thereupon] said: It could [indeed] have no application unless in the case of a dunghill where it was customary for people to resort at night time, but not customary to resort during the day, though it occasionally occurred that some might come to sit there [even in the day time]. [It is therefore] not a case of wilful carelessness since it was not customary for people to resort there during the day. Nor is it sheer accident since it occasionally occurred that some people did come to sit there [even in the day time].

R. Papa in the name of Raba referred [the remark of R. Jose b. Hanina] to the commencing clause: 'If a man entered the workshop of a joiner without permission and a chip of wood flew off and struck him in the face and killed him, he is exempt.' And R. Jose b. Hanina [thereupon] remarked; He would be liable for the four [additional] items,[22] though he is exempt from [having to take] refuge.[23] He who refers this remark to the concluding clause[24] will, with more reason, refer it to the commencing clause,[25] whereas he who refers it to the commencing clause[25] maintains that, in the [case dealt with] in the concluding clause where the entrance had been made with [the] permission [of the joiner], he would be liable to take refuge.[23] But would he be liable to take refuge [in that case]?[24] Was it not taught: If a man enters the workshop of a smith and sparks fly off and strike him in the face causing his death, he [the smith] is exempt[26] even where the entrance had been made by permission of the smith? — [In this Baraitha] here, we are dealing with an apprentice of the smith. Is an apprentice of a smith to be killed [with impunity]? — Where his master had been urging him to leave but he did not leave. But even where his master had been urging him to leave, [which he did not do,] may he be killed [with impunity]? — Where the master believed that he had already left. If so, why should not the same apply also to a stranger?

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(1) I.e., his own premises.

(2) Of a neighbour.

(3) V. p. 173, n. 5.

(4) Lit., 'I might have said no'.

(5) V. p. 173. n. 6.

(6) Of splitting wood.

(7) From fleeing to the city of refuge. Cf. Num. XXXV, 11-28,Deut. XIX, 4-6; and supra p. 137.

(8) In the case of mere injury; cf. supra p. 133.
(9) Laid down in the case of manslaughter.
(10) Referred to in the verse, As when a man goes into the wood with his neighbour to hew wood, and his hand fetcheth a stroke with the axe to cut down the tree, and the head slippeth from the helve and lighteth upon his neighbour, that he die, he shall flee unto one of those cities, and live; Deut. XIX, 5. Cf. also supra p. 170.
(11) I.e., that of the joiner.
(12) In which case the taking of refuge is insufficient; cf. e.g. Num. XXXV, 16-21, and Deut. XIX, 11-13.
(13) On an offender sentenced to lashes.
(14) The victim's. Mak. III, 14.
(15) To draw his attention.
(16) Deut. XXVIII, 58 etc.; Ps LXXVIII, 38.
(17) Lit., says, "Smite him". Mak. 23a.
(18) Ibid. II. 2.
(19) In which case the taking of refuge is insufficient; cf. e.g. Num XXXV, 16-21 and Deut. XIX, 11-13.
(20) Cf. Mak. 8a.
(21) Why then be subject to the law of refuge?
(22) In the case of mere injury; cf. supra p. 133.
(23) In the case of manslaughter.
(24) Where the entrance had been made with the knowledge of the joiner.
(25) Where the entrance had been made without any imitation.
(26) From having to take refuge.

Talmud - Mas. Baba Kama 33a

— A stranger need not fear the master-smith[1] whereas the apprentice is in fear of his master.[2] R. Zebid in the name of Raba referred [the remark of R Jose b. Hanina] to the following: [The verse,] And [it] lighteth [upon his neighbour],[3] excludes [a case] where the neighbour brings himself [within the range of the missile]. Hence the statement made by R. Eliezer b. Jacob: If a man lets [fly] a stone out of his hand and another [at that moment] puts out his head [through a window] and receives the blow [and is killed], he is exempt.[4] [Now, it was with reference to this case that] R. Jose b. Hanina said: He is exempt from having to take refuge,[5] but he would be liable for the four [additional] items.[6] He who refers this remark to this [last] case will with more reason refer it to the cases dealt with previously,[7] whereas he who refers it to those dealt with previously[7] would maintain that in this [last] case[8] the exemption is from all [kinds of liability].

Our Rabbis taught: If employees come to [the private residence of] their employer to demand their wages from him and [it so happens that] their employer's ox gores them or their employer's dog bites them, with fatal results, he [the employer] is exempt [from ransom].[9] Others,[10] however, maintain that employees have the right to [come and] demand their wages from their employer. Now, what were the circumstances [of the case]? If the employer could be found in [his] city [offices], what reason [could be adduced] for [the view maintained by] the 'Others'.[10] If [on the other hand] he could be found only at home, what reason [could be given] for [the anonymous view expressed by] the first Tanna? — No, the application [of the case] is where the employer could [sometimes] be found [in his city offices] but could not [always] be found [there]. The employees therefore called at his [private] door, when the reply was 'Yes'. One view[11] maintains that 'Yes' implies: 'Enter and come in.' But the other view[12] maintains that 'Yes' may signify: 'Remain standing in the place where you are.' It has indeed been taught in accordance with the view[12] maintaining that 'Yes' may [in this case] signify: 'Remain standing in the place where you are.' For it has been taught: 'If an employee enters the [private] residence of his employer to demand his wages from him and the employer's ox gores him or the employer's dog bites him, he [the employer] is exempt even where the entrance had been made by permission.' Why should there indeed be exemption[13] unless in the case where he called at the door and the employer said: 'Yes'? This thus proves that 'Yes' [in such a

case] signifies: ‘Remain standing in the place where you are.

MISHNAH. IN THE CASE OF TWO TAM OXEN INJURING EACH OTHER, THE PAYMENT OF THE DIFFERENCE WILL BE IN ACCORDANCE WITH THE LAW OF HALF-DAMAGES.[14] WHERE BOTH WERE MU'AD THE PAYMENT OF THE DIFFERENCE WILL BE IN FULL.[14] WHERE ONE WAS TAM AND THE OTHER MU'AD THE PAYMENT OF THE DIFFERENCE FOR DAMAGE DONE BY MU'AD TO TAM WILL BE ON THE BASIS OF FULL COMPENSATION, WHEREAS THE PAYMENT OF THE DIFFERENCE FOR DAMAGE DONE BY TAM TO MU'AD WILL BE IN ACCORDANCE WITH THE LAW OF HALF-DAMAGES. SIMILARLY IN THE CASE OF TWO PERSONS INJURING EACH OTHER, THE PAYMENT OF THE DIFFERENCE WILL BE IN FULL. WHERE MAN HAS DAMAGED MU'AD AND MU'AD HAS INJURED MAN, THE PAYMENT OF THE DIFFERENCE WILL BE IN FULL. BUT WHERE MAN DAMAGED TAM AND TAM INJURED MAN, THE PAYMENT OF THE DIFFERENCE FOR DAMAGE DONE BY MAN TO TAM WILL BE ON THE BASIS OF FULL COMPENSATION, WHEREAS THE PAYMENT OF THE DIFFERENCE FOR DAMAGE DONE BY TAM TO MU'AD WILL BE IN ACCORDANCE WITH THE LAW OF HALF-DAMAGES. R. AKIBA, HOWEVER, SAYS: EVEN IN THE CASE OF TAM INJURING MAN THE PAYMENT OF THE DIFFERENCE WILL BE IN FULL.[15]

GEMARA. Our Rabbis taught: [The words of the Torah] According to this judgement shall be done unto it[16] [imply that] the judgement in the case of Ox damaging ox applies also in the case of Ox injuring man. Just as where Ox has damaged ox half-damages are paid in the case of Tam and full compensation in the case of Mu'ad, so also where Ox has injured man only half damages will be paid in the case of Tam and full compensation in the case of Mu'ad. R. Akiba, however, says: [The words,] ‘According to this judgement’ refer to [the ruling that would apply to the circumstances described in] the latter verse[17] and not in the former verse.[18] Could this then mean that the [full] payment is to be made out of the best [of the estate]?[19] [Not so; for] it is stated ‘Shall it be done unto it [self],’ to emphasise that payment will be made out of the body of Tam, but no payment is to be made out of any other source whatsoever.[20] According to the Rabbis then, what purpose is served by the word ‘this’? — To exempt from liability for the four [additional] items.[21] Whence then does R. Akiba derive the exemption [in this case] from liability for the four [additional] items? — He derives it from the text, And if a man cause a blemish in his neighbour[22] [which indicates that there is liability only where] Man injures his neighbour but not where Ox injures the neighbour [of the owner]. And the Rabbis?[23] — Had the deduction been from that text we might have referred it exclusively to Pain,[24] but as to Medical Expenses and Loss of Time[25] we might have held there is still a liability to pay. We are therefore told[26] [that this is not the case].

MISHNAH. IF AN OX [TAM] OF THE VALUE OF ONE HUNDRED ZUZ HAS GORED AN OX OF THE VALUE OF TWO HUNDRED ZUZ AND THE CARCASS HAD NO VALUE AT ALL, THE PLAINTIFF WILL TAKE POSSESSION OF THE [DEFENDANT'S] OX [THAT DID THE DAMAGE].[27]

GEMARA. Who is the author of our Mishnah? — It is R. Akiba, as it has been taught: The ox [that did the damage] has to be assessed by the Court of law;[28] this is the view of R. Ishmael. R. Akiba, however, says: The [body of the] ox becomes transferred [to the plaintiff]. What is the point at issue? — R. Ishmael maintains that he [the plaintiff] is but a creditor and that he has only a claim of money against him [the defendant], whereas R. Akiba is of the opinion that they both [the plaintiff and defendant] become the owners in common of the ox[29] [that did the damage]. They [thus also] differ as to the interpretation of the verse, Then they shall sell the live ox and divide the money of it.[30] R. Ishmael maintains that it is the Court on which this injunction is laid by Divine Law,[31] whereas R. Akiba is of the opinion that it is the plaintiff and defendant on which it is laid.[32] What is the practical difference between R. Ishmael and R. Akiba? — There is a practical difference between

them where the plaintiff consecrated the ox [that did the damage].[33]

Raba put the following question to R. Nahman: Should the defendant meanwhile dispose of the ox, what would be the law according to R. Ishmael? [Shall we say that] since R. Ishmael considers the plaintiff to be a creditor whose claim [against the defendant] is only regarding money, the sale is valid, or that

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(1) Who should thus have borne in mind that the stranger might not yet have left the place. The smith should therefore not yet have allowed the the sparks to fly off.
(2) Who should not resonably have expected him to have still been there.
(3) Deut. XIX, 5; v. supra, p. 175, n. 3.
(4) Cf. Mak. 8a.
(5) In the case of manslaughter.
(6) Since it was an act of negligence to throw a stone where people are to be found.
(7) In the case of the joiner, who at least knew that a newcomer had entered his workshop.
(8) Dealt with by R. Eliezer b. Jacob, where the defendant is to blame as he put out his head after the stone had already been in motion.
(9) For which cf. Ex. XXI, 30. The vicious beast is, however, stoned; v. supra p. 118.
(10) According to Hor. 13b, the views of R. Meir were sometimes quoted thus; cf. however Ber. 9b; Sot. 12a; A.Z. 64b.
(11) I.e., that of 'Others'.
(12) Put forward by the first Tanna.
(13) Where the entrance had been made by permission.
(14) Cf. supra p. 73.
(15) Cf supra p. 15.
(16) Ex. XXI, 31.
(17) Ibid. XXI, 29 dealing with Mu'ad.
(18) Ibid. XXI, 28 dealing with Tam.
(19) As in the case of an injury done by Mu'ad. Cf. supra, p. 73.
(20) Cf. supra p. 15.
(21) V. supra p. 133.
(22) Lev. XXIV, 19.
(23) [Wherefore apply 'this' to deduce exemption from the four items, since that is already derived from this latter verse?]
(24) The liability for which is not in respect of an actual loss of value.
(25) The liability for which is in respect of an actual loss of money sustained.
(26) By the expression 'this'.
(27) As the full value of it corresponds in this case to the amount of half-damages.
(28) And if its value is not less than the amount of the half-damages, the defendant will have to pay that amount in full, whereas where the value of the ox that did the damage is less than the amount of the half-damages, the defendant will have to pay no more than the actual value of the ox that did the damage.
(29) Where its value is more than the amount of the half-damages.
(30) Ex. XXI, 35.
(31) I.e., to sell the live ox which is still the property of the defendant.
(32) As the live ox became their property in common where its value had been more than the amount of the half-damages.
(33) [According to R. Ishmael the consecration is of no legal effect, whereas R. Akiba would declare it valid.]

Talmud - Mas. Baba Kama 33b

since the ox is mortgaged to the plaintiff,[1] the defendant has no right [to dispose of it]? — He replied: The sale is not valid. But has it not been taught: In the case of [the defendant] having disposed of the ox, the sale is valid? — The plaintiff will still be entitled to come forward and

distrain on it [from the purchaser].[2] But if he is entitled to come forward and distrain on it, to what purpose is the sale valid? — For the ploughing [the ox did with the purchaser].[3] Can we infer from this that in the case of a debtor having sold his chattels, a Court of law will distrain on them for a creditor?[4] — The case there [of the ox][5] is altogether different, since the ox is regarded as if [the owner] had mortgaged it [for half-damages]. But did Raba not say[6] that where a debtor has mortgaged his slave and then sold him [to a third person] the creditor is entitled to distrain on him, whereas where an ox has been mortgaged and then sold [to a third party] the creditor cannot distrain on it?[7] — Is not the reason in the case of the slave that the transaction has been widely talked about?[8] So also in the case of this ox; since it gored it has been talked about, and the name 'The ox that gored' given it.

R. Tahlifa the Western[9] recited in the presence of R. Abbahu: 'Where he sold the ox, the sale is not valid, but where he consecrated it [to the altar], the consecration holds good.' Who sold it? Shall I say the defendant? [In that case the opening clause,] 'Where he sold the ox, the sale is not valid', would be in accordance with the view of R. Akiba that the ox becomes transferred [to the plaintiff], while [the concluding clause.] 'Where he consecrated it, the consecration holds good' could follow only the view of R. Ishmael who said that the ox has to be assessed by the Court. If [on the other hand, it has been disposed of by] the plaintiff, would not [the opening clause.] 'Where he sold the ox, the sale is not valid', be in accordance with the view of R. Ishmael, while [the concluding clause.,] 'Where he consecrated it, the consecration holds good' could follow only the view of R. Akiba? — We may still say that it was the defendant [who disposed of it], and yet [both rulings] will be in agreement with all. 'Where he sold the ox, the sale is valid' [may be explained] even in accordance with R. Ishmael, for the ox is mortgaged to the plaintiff. 'Where he consecrated it, the consecration holds good,' [may again be interpreted] even in accordance with R. Akiba, on account of [the reason given] by R. Abbahu; for R. Abbahu [elsewhere] stated:[10] An extra precaution was taken[11] lest people should say that consecrated objects could lose their status even without any act of redemption.[12]

Our Rabbis taught: If an ox does damage while still Tam, then, as long as its case has not been brought up in Court, if it is sold the sale is valid; if it is consecrated, the consecration holds good; if slaughtered and given away as a gift, what has been done is legally effective. But after the case has come into Court,[13] if it is sold the sale is not valid; if consecrated, the consecration does not hold good; if slaughtered and given away as a gift, the acts have no legal effect; so also where [other] creditors stepped in first and distrained on the ox [while in the hands of the defendant], no matter whether the debt had been incurred before the goring took place or whether the goring had occurred before the debt was incurred, the distraint is not legally effective, since the compensation [for the damage][14] must be made out of the body of the ox [that did it].[15] But in the case of Mu'ad doing damage there is no difference whether the case had already been brought into Court or whether it had not yet come into Court; if it has been sold, the sale is valid; if consecrated, the consecration holds good; if slaughtered and given away as a gift, what has been done is legally effective, where [other] creditors have stepped in and distrained on the ox, no matter whether the debt had been contracted before the goring took place or whether the goring had taken place before the debt was incurred, the distraint is legally effective, since the compensation is paid out of the best of the general estate [of the defendant].[16]

The Master stated: 'If it is sold, the sale is valid'. [This can refer] to ploughing [done by the ox while with the vendee]. 'If consecrated, the consecration holds good'; on account of the reason given by R. Abbahu. 'If slaughtered and given away as a gift, what has been done is legally effective'. We can quite understand that where it has been given away as a gift the act should be legally effective, in respect of the ploughing [meanwhile done by the ox]. But in the case of it having been slaughtered, why should [the claimant] not come and obtain payment out of the flesh? Was it not taught: '[The] live [ox]:[17] this states the rule for when it was alive; whence do we know that the same holds good

even after it has been slaughtered? Because it says further: And they shall sell the ox,[17] i.e., in all circumstances'? — R. Shizbe therefore said: What is referred to must be the diminution in value occasioned by its having been slaughtered.[18] R. Huna the son of Joshua thereupon said: This proves that if a man impairs securities mortgaged to his creditor, he incurs no liability. Is this not obvious?[19] — It might perhaps have been suggested that it was only there[20] where the defendant could argue, ' I have not deprived you of anything at all [of the quantity]', and could even say, 'it is only the mere breath [of life] that I have taken away from your security' [that there should be exemption], whereas in the case of impairing securities in general there should be liability; we are therefore told [that this is not the case]. But has not this been pointed out by Rabbah? For has not Rabbah stated: 'If a man destroys by fire the documents of a neighbour, he incurs no liability'?[21] — It might perhaps have been suggested that it was only there where the defendant could contend 'It was only a mere piece of paper of yours that has actually been burnt' [that there should be exemption], whereas in the case [of spoiling a field held as security] by digging there pits, ditches and caves there should be liability; we are therefore told that [this is not so, for] in the case here the damage resembles that occasioned by digging pits, ditches and caves,[22] and yet it is laid down that 'what has been done is legally effective'.

'Where [other] creditors stepped in first and distrained on the ox [in the hands of the defendant] no matter whether the debt had been incurred before the goring took place or whether the goring had taken place before the debt was incurred, the distraint is not legally effective, since the compensation must be made out of the body of the ox [that did the damage].' We understand this where the goring has taken place before the debt was incurred, in which case the plaintiff for damages has priority. But [why should it be so] where the debt has been contracted before the goring took place, [seeing that in that case] the creditor for the debt has priority?

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(1) For if payment were not forthcoming the plaintiff would be entitled to distrain on the ox to the extent of the amount of the half-damages.

(2) V. p. 181, n. 8.

(3) Who will thus not have to pay for the use of the animal, [or, who will be permitted to put the ox to such service, v. Wilna Gaon, Glosses.]

(4) Whereas according to established law this is usually the case only with immovable property, cf. supra p. 62 but also B.B. 44b.

(5) That did damage by goring while still in the state of Tam.

(6) Supra p. 47. Cf. also B.B. 44b.

(7) Why then distrain on the ox in the case of goring when it had already been sold?

(8) V. B.B. loc. cit.

(9) The Palestinian.

(10) 'Ar. 33a.

(11) In the case of one who consecrates property on which there is a lien of a kethubah or a debt.

(12) It is therefore a better policy to declare the consecration valid and prescribe a nominal sum for redemption.

(13) Since when the ox is legally transferred to the plaintiff.

(14) Which will be only half of the actual amount of the loss sustained.

(15) Cf. supra p. 73.

(16) Cf. Tosef. B.K. V.

(17) Ex. XXI. 35.

(18) For which the defendant is thus not made responsible.

(19) That such an inference could be made; why then the special statement made by R. Huna?

(20) In the case of the ox that had been slaughtered.

(21) Infra p. 570.

(22) Since the damage is visible.

Moreover, even where the goring had taken place before the debt was contracted, was not the creditor actually first [in taking possession of the ox]?[1] Can it be concluded from this that where a creditor of a subsequent date has preceded a creditor of an earlier date in distraining on [the property of the debtor], the distraint is of no legal avail?[2] — No; I may still maintain that [in this case][3] the distraint holds good, whereas in the case there,[4] it is altogether different; as the plaintiff [for damages] may argue,[5] 'Had the ox already been with you [before it gored], would I not have been entitled to distrain on it while in your hands? For surely out of the ox that did the damage I am to be compensated.'

Our Rabbis taught: Where an ox[6] of the value of two hundred [zuz] gored an ox of the same value of two hundred [zuz] and injured it to the amount of fifty zuz, but it so happened that the injured ox [subsequently] improved and reached the value of four hundred zuz, since it can be contended that but for the injury it would have reached the value of eight hundred zuz, compensation will be [still] paid as at the time of the damage.[7] Where it has depreciated, the compensation will be paid in accordance with the value at the time of the case being brought into Court.[8] Where it was the ox which did the damage that [subsequently] improved, the compensation will still be made in accordance with the value at the time of the damage.[9] Where it has [on the other hand] depreciated, the compensation will be made in accordance with the value at the time of the case being brought into Court.[10]

The Master has said: 'Where it was the ox which did the damage that [subsequently] improved, the compensation will still be made as at the time of the damage.' This ruling is in accordance with R. Ishmael, who maintains that the plaintiff is a creditor and he has a pecuniary claim against him [the defendant]. Read now the concluding clause: 'Where it [on the other hand] depreciated, the compensation will be made in accordance with the value at the time of the case being brought into Court'. This ruling, on the other hand, follows the view of R. Akiba, that they both [plaintiff and defendant] become the owners in common [of the ox that did the damage]. [Is it possible that] the first clause should follow the view of R. Ishmael and the second clause follow that of R. Akiba? — No; the whole teaching follows the view of R. Akiba, for we deal here with a case where the improvement was due to the defendant having fattened the ox.[11] If the improvement was due to fattening, how could you explain the opening clause, 'where . . . the injured ox [subsequently] improved and reached the value of four hundred zuz . . . compensation will be paid as at the time of the damage'? For where the improvement was due to the act of fattening [by the owner], what need could there have been to state [that compensation for the original damage has still to be paid]? — R. Papa thereupon said: The ruling in the opening clause[12] applies to all cases, whether where the ox improved by special fattening or where it improved by itself: the statement of the rule was required for the case where the ox improved by itself — even then compensation will be paid as at time of the damage. The ruling in the concluding clause,[13] however, could apply only to a case where the improvement was due to special fattening.

'Where it[14] has depreciated, the compensation will be made in accordance with the value at the time of the case being brought into Court.' Through what can it have depreciated? Shall I say that it has depreciated through hard work? In that case [surely] the defendant can say, 'You cause it to depreciate![15] Could you expect me to pay for it?' — R. Ashi thereupon said: The depreciation [referred to] is due to the injury, in which case the plaintiff is entitled to contend, '[The evil effect of] the horn of your ox is still buried within the suffering animal.'[16]

MISHNAH. WHERE AN OX[17] OF THE VALUE OF TWO HUNDRED [ZUZ] GORED AN OX OF THE SAME VALUE OF TWO HUNDRED [ZUZ] AND THE CARCASS HAD NO VALUE AT ALL, R. MEIR SAID THAT IT WAS WITH REFERENCE TO THIS CASE THAT IT IS WRITTEN, AND THEY SHALL SELL THE LIVE OX AND DIVIDE THE MONEY OF IT.[18] R.

JUDAH, HOWEVER, SAID: THIS IS CERTAINLY THE HALACHAH,[19] BUT WHILE YOU FULFIL [BY THIS RULING THE INJUNCTION], 'AND THEY SHALL SELL THE LIVE OX AND DIVIDE THE MONEY OF IT,' YOU DO NOT FULFIL [THE NEXT INJUNCTION], 'AND THE DEAD OX ALSO THEY SHALL DIVIDE.'[20] THE CASE DEALT WITH BY SCRIPTURE IS THEREFORE WHERE AN OX OF THE VALUE OF TWO HUNDRED [ZUZ] GORED AN OX OF THE SAME VALUE OF TWO HUNDRED [ZUZ] AND THE CARCASS WAS WORTH FIFTY ZUZ: ONE PARTY WOULD HERE GET HALF OF THE LIVING OX TOGETHER WITH HALF OF THE DEAD OX[21] AND THE OTHER PARTY WOULD SIMILARLY GET HALF OF THE LIVING OX TOGETHER WITH HALF OF THE DEAD OX.

GEMARA. Our Rabbis taught: Where an ox of the value of two hundred [zuz] gored an ox of the same value of two hundred [zuz] and the carcass was worth fifty zuz, one party would get half of the living ox together with half of the dead ox and the other party would similarly get half of the living ox together with half of the dead ox. This is the [case of the goring] ox dealt with in the Torah, according to the view of R. Judah. R. Meir, however, says; This is not the [case of the goring] ox dealt with in the Torah, but where an ox of the value of two hundred [zuz] gored an ox of the same value of two hundred [zuz] and the carcass was of no value at all — this is the case regarding which it is laid down, 'And they shall sell the live ox and divide the money of it.' But how could I [in this case] carry out [the other direction],'And the dead ox also they shall divide'? [This only means that] the diminution [in value] brought about by the death[22] has to be [compensated] to the extent of one-half out of the body of the living ox. Now, since [in the former case][23] according to both R. Meir and R. Judah one party will get a hundred and twenty-five [zuz][24] and the other party will similarly get a hundred and twenty-five [zuz], what is the [practical] difference between them? — Raba thereupon said: The difference arises where[25] there has been a decrease in the value of the carcass,[26] R. Meir maintains that the loss in the value of the carcass has to be [wholly] sustained by the plaintiff,[27] whereas R. Judah is of the opinion that the loss in the value of the carcass will be borne by the defendant to the extent of a half.[28] Said Abaye to him:[29] If this be the case, will it not turn out that according to R. Judah

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(1) Why should then the plaintiff for damages override the right of another creditor who had already taken possession of the ox?

(2) Whereas this is a point on which opinions differ; cf. Keth. 94a.

(3) Dealing with two creditors for loans.

(4) Where one of the creditors was a plaintiff for damages.

(5) Against the other creditor.

(6) In the state of Tam.

(7) And the defendant cannot put up the increase in the value of the injured ox as a defence, for but for the injury the ox might have reached the value of even eight hundred zuz.

(8) To the detriment of the defendant.

(9) This view apparently maintains that the plaintiff does not become an owner of a definite portion in the ox that did the damage, but becomes entitled merely to a certain sum of money to be collected out of the body of that ox.

(10) Seemingly because the plaintiff is according to this ruling regarded as having become at the time the goring took place an owner of a definite portion in the ox which has subsequently depreciated. For if he became entitled to a certain sum of money in the body of that ox, why should he suffer on account of depreciation?

(11) In which case it is only reasonable that the plaintiff should not be entitled to any share in the improvement that resulted from the fattening carried out by the defendant.

(12) Dealing with the case where it was the injured ox that improved and increased in value.

(13) Giving the law where the ox that had done the damage improved.

(14) I.e., the ox that had been injured, dealt with in the opening clause.

(15) By hard work.

(16) The depreciation is thus a direct result of the injury for which the defendant is responsible.

(17) In the state of Tam.

(18) Ex. XXI, 35.

(19) That half-damages should be paid in the case of Tam.

(20) As in the case specified by R. Meir the carcass had no value at all.

(21) Amounting altogether to one hundred and twenty-five zuz. The plaintiff would thus get seventy-five zuz in respect of the damage that amounted to one hundred and fifty zuz. Together with the fifty of the carcass of his ox the sum total will be one hundred and twenty-five zuz.

(22) Of the animal attacked resulting from the injuries inflicted upon it.

(23) Specified by R. Judah, where the carcass was worth fifty zuz.

(24) I.e., half of the value of the living ox and half of the value of the carcass.

(25) Since the death of the attacked ox.

(26) Before it has been sold.

(27) As according to R. Meir, the defendant has no interest whatsoever in the carcass.

(28) Since according to R. Judah, both the defendant and the plaintiff have to divide the value of the carcass.

(29) Raba.

Talmud - Mas. Baba Kama 34b

[injury by] Tam would involve a more severe penalty than [injury by] Mu'ad?[1] And should you maintain that this indeed is so,[2] as we have learned: R. Judah says: In the case of Tam there is liability [where the precaution taken to control the ox has not been adequate] whereas in the case of Mu'ad there is no liability,[3] it may be contended that you only heard R. Judah maintaining this with reference to precaution, which is specified in Scripture,[4] but did you ever hear him say this regarding compensation? Moreover, it has been taught: R. Judah says: One might say that where an ox of the value of a maneh [a hundred zuz] gored an ox of the value of five sela' [i.e., twenty zuz] and the carcass was worth a sela' [i.e., four zuz], one party should get half of the living ox[5] together with half of the dead ox[6] and the other party should similarly get half of the living ox and half of the dead ox?[7] [This cannot be so]; for we reason thus: Has Mu'ad been singled out[8] to entail a more severe penalty or a more lenient one? You must surely say: [to entail] a more severe penalty. Now, if in the case of Mu'ad no payment is made but for the amount of the damage, should this not the more so be true in the case of Tam the [penalty in respect of which is] less severe?[9] — R. Johanan therefore said: The practical difference between them[10] arises where there has been an increase in the value of the carcass, one Master[11] maintaining that it will accrue to the plaintiff whereas the other Master holds that it will be shared equally [by the two parties].[12]

And it is just on account of this view that a difficulty was felt by R. Judah: Now that you say that the Divine Law is lenient to the defendant, allowing him to share in the increase [of the value of the carcass] , you might then presume that where an ox of the value of five sela' [i.e. twenty zuz] gored an ox of the value of a maneh [a hundred zuz] and the carcass was valued at fifty zuz, one party would take half of the living ox[13] together with half of the dead ox[14] and the other party would similarly take half of the living ox and half of the dead ox?[15] Say [this cannot be so, for] where could it elsewhere be found that an offender should [by order of the Court] be made to benefit as you would have the offender here in this case to benefit? It is moreover stated, He shall surely make restitution,[16] [emphasising that] the offender could only have to pay but never to receive payment. Why that additional quotation?[17] — [Otherwise] you might have thought this principle to be confined only to a case where the plaintiff was the loser,[18] and that where no loss would be incurred to the plaintiff — as e.g. where an ox of the value of five sela' gored an ox similarly of the value of five sela' [i.e. twenty zuz] and it so happened that the carcass [increased in value and] reached the amount of thirty zuz — the defendant should indeed be entitled to share in the profit;[18] hence the verse, He shall surely make full restitution, is adduced [to emphasise that in all cases] an offender could only have to pay but never to receive payment.

But R. Aha b. Tahlifa said to Raba: If so [that the principle to compensate by half for the decrease

in value brought about by the death is maintained only by R. Meir], will it not be found that according to R. Judah Tam will involve the payment of more than half damages,[19] whereas the Torah [emphatically] stated, And they shall sell the live ox and divide the money of it? — [No;] R. Judah also holds that the decrease in value brought about by the death will be [compensated] by half in the body of the living ox.[20] Whence could he derive this?[21] — From [the verse], And the dead ox also they shall divide.[22] But did not R. Judah derive from this verse that one party will take half of the living ox together with half of the dead ox and the other party will similarly take half of the living ox and half of the dead ox?[23] — If that were all, the text could have run, 'And the dead ox [they shall divide].' Why insert 'also'? It shows that two lessons are to be derived from the verse.[24] MISHNAH. THERE ARE CASES WHERE THERE IS LIABILITY FOR OFFENCES COMMITTED BY ONE'S CATTLE[25] THOUGH THERE WOULD BE NO LIABILITY SHOULD THESE OFFENCES BE COMMITTED BY ONESELF. THERE ARE, AGAIN, CASES WHERE THERE IS NO LIABILITY FOR OFFENCES COMMITTED BY ONE'S CATTLE[25] THOUGH THERE WOULD BE LIABILITY WERE THESE OFFENCES COMMITTED BY ONESELF. FOR INSTANCE, IF CATTLE HAS BROUGHT INDIGNITY [UPON A HUMAN BEING] THERE IS NO LIABILITY,[26] WHEREAS IF THE OWNER CAUSES THE INDIGNITY THERE WOULD BE LIABILITY.[27] SO ALSO IF AN OX PUTS OUT THE EYE OF THE OWNER'S SLAVE OR KNOCKS OUT HIS TOOTH THERE IS NO LIABILITY,[28] WHEREAS IF THE OWNER HIMSELF HAS PUT OUT THE EYE OF HIS SLAVE OR KNOCKED OUT HIS TOOTH HE WOULD BE LIABLE [TO LET HIM GO FREE].[29] AGAIN, IF AN OX HAS INJURED THE FATHER OR MOTHER OF THE OWNER THERE IS LIABILITY,[30] THOUGH WERE THE OWNER HIMSELF TO INJURE HIS FATHER OR HIS MOTHER[31] THERE WOULD BE NO [CIVIL] LIABILITY.[32] SO ALSO WHERE CATTLE HAS CAUSED FIRE TO BE SET TO A BARN ON THE DAY OF SABBATH THERE IS LIABILITY,[30] WHEREAS WERE THE OWNER TO SET FIRE TO A BARN ON SABBATH[33] THERE WOULD BE NO [CIVIL] LIABILITY, AS HE WOULD BE SUBJECT TO A CAPITAL CHARGE.[32]

GEMARA. R. Abbahu recited in the presence of R. Johanan:[34] Any work [on the Sabbath] that has a destructive purpose entails no penalty [for the violation of the Sabbath], with the exception, however, of the act of inflicting a bodily injury, as also of the act of setting on fire. Said R. Johanan to him: Go and recite this outside[35] [for the exception made of] the act of inflicting a bodily injury and of setting on fire is not part of the teaching; and should you find grounds for maintaining that it is,[36] [you may say that] the infliction of a bodily injury refers to where the blood was required to feed a dog;[37] and in the case of setting on fire, where there was some need of the ashes.[37]

We have learnt: WHERE CATTLE HAS CAUSED FIRE TO BE SET TO A BARN ON THE DAY OF SABBATH THERE IS LIABILITY, WHEREAS WERE THE OWNER TO HAVE SET FIRE TO A BARN ON SABBATH THERE WOULD BE NO [CIVIL] LIABILITY. Now, the act of the owner is here placed on a level with that of Cattle; which would show, would it not, that just as in the act of Cattle there was certainly no intention to satisfy any need,

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(1) For in the case of Mu'ad it is certainly the plaintiff who has to bear the whole loss occasioned by a decrease in the value of the carcass; cf. supra p. 65.

(2) And Tam will indeed involve a penalty more severe than that involved by Mu'ad.

(3) B.K. IV, 9.

(4) For which cf. infra, p. 259.

(5) Amounting to fifty zuz.

(6) That would amount to another ten zuz.

(7) The result would be that the plaintiff whose injured ox had altogether been worth twenty zuz would get damages amounting to sixty zuz.

(8) In Scripture; cf. Ex. XXI, 36.

(9) Why should then the defendant in the case of Tam share the loss occasioned by a decrease in the value of the carcass

which he would not have to do in the case of Mu'ad?
(10) R. Meir and R. Judah.
(11) R. Meir, according to whom the defendant has no interest in the carcass.
(12) V. supra p. 189, n. 7.
(13) Amounting to ten zuz.
(14) That would amount to another twenty-five zuz.
(15) The result would be that the defendant instead of paying compensation would make a profit out of the offence, as in lieu of his ox which did the damage and which was worth twenty zuz he would get a total of thirty-five zuz.
(16) Ex. XXI, 36.
(17) I.e., why is not the first objection sufficient?
(18) Of the ten zuz that make the carcass worth more than the ox while alive.
(19) As e.g.. where an ox of the value of fifty zuz gored another's ox of the value of forty zuz and the carcass was worth twenty zuz, in which case the actual damage amounted to twenty zuz, half of which would be ten zuz, whereas if the plaintiff will get half of the living ox and half of the dead ox he shall be in receipt for damages, in addition to the value of the carcass, not of ten but of fifteen zuz.
(20) The sum total received by the plaintiff will therefore never be more than half of the actual loss sustained by him after allowing him, of course, the full value of the carcass of his ox.
(21) Since he is in disagreement with R. Meir as to the implication of the last clause of Ex. XXI, 35.
(22) Ex. XXI, 35.
(23) I.e., that the decrease in value brought about by the death will be compensated for by half in the body of the living ox. V. Supra p. 189.
(24) Viz., the principle laid down in the preceding note and the principle maintained by R. Judah, that the defendant as well as the plaintiff has an interest in the carcass and will share the profits of any increase in its value.
(25) Lit., 'ox'.
(26) As explained supra p. 134.
(27) Cf. B. K. VIII 1-2.
(28) To the law laid down in Ex. XXI, 26-27.
(29) In accordance with ibid, cf. also supra p. 137.
(30) For damages.
(31) Involving thus a capital charge, for which cf Ex. XXI, 15.
(32) As wherever a capital charge is involved by an offence, all civil liabilities that may otherwise have resulted from that offence merge in the capital charge; cf. supra p. 113.
(33) For which cf. Ex. XXXI, 14-15; but v. also ibid. XXXV, 2-3, Mekilta a.l. and Yeb. 7b, 33b and Shab. 70a.
(34) Cf. Shab. 106a.
(35) [I.e., your teaching is fit only for outside and not to be admitted within the Beth Hamidrash; v. Sanh. (Sonc. ed.) p. 425.]
(36) Cf. Shab. 75a; v. also B.K. VIII, 5.
(37) Which case involves the violation of the Sabbath because the purpose has not been altogether destructive.

Talmud - Mas. Baba Kama 35a

so also the owner similarly had no intention to satisfy thereby any need, and yet it is stated THERE WOULD BE NO [CIVIL] LIABILITY AS HE WOULD BE SUBJECT TO A CAPITAL CHARGE?[1] No; it is the act of Cattle, which is placed on the same level as that of the owner himself, to show that just as in the act of the owner there had surely been the intention to satisfy some need, so also in the act of Cattle there must have been the intention to satisfy some need.[2] But how is this possible in the case of Cattle? — R. Iwiya replied: The case here supposed is one of an intelligent animal which, owing to an itching in the back, was anxious to burn the barn so that it might roll in the [hot] ashes. But how could we know [of such an intention]? [By seeing that] after the barn had been burnt, the animal actually rolled in the ashes. But could such a thing ever happen? — Yes, as in the case of the ox which had been in the house of R. Papa, and which, having a severe toothache, went into the brewery, where it removed the lid [that covered the beer] and drank beer

until it became relieved [of the pain]. The Rabbis, however, argued in the presence of R. Papa: How can you say that [the Mishnah places the act of] Cattle on a level with [the act of] the owner himself? For is it not stated: IF CATTLE HAS BROUGHT INDIGNITY [UPON A HUMAN BEING] THERE IS NO LIABILITY,[3] WHEREAS IF THE OWNER CAUSES THE INDIGNITY THERE IS LIABILITY? Now, if we are to put the act of Cattle on a level with that of the owner himself, how are we to find intention [in the case of Cattle]?[4] — Where, for instance, there was intention to do damage, as stated by the Master[5] that where there was intention to do damage though no intention to insult, [liability for insult will attach]. Raba, however, suggested that the Mishnah here[6] deals with a case of inadvertence, [resembling thus Cattle which acts as a rule without any specific purpose] and [the law[7] was laid down] in accordance with the teaching at the School of Hezekiah. For it was taught at the School of Hezekiah:[8] [Scripture places in juxtaposition] He that killeth a man . . . and he that killeth a beast[9] .....[to imply that] just as in the case of killing a beast you can make no distinction whether it was inadvertent or malicious, whether intentional or unintentional, whether by way of coming down or by way of coming up,[10] so as to exempt from pecuniary obligation, but [in all cases] there is pecuniary liability,[11] so also in the case of killing man you should make no distinction whether it was inadvertent or malicious, whether intentional or unintentional, whether by way of coming down or by way of coming up so as to impose a pecuniary liability, but [in all cases] there should be exemption from pecuniary obligation.[12] Said the Rabbis to Raba: How can you assume that the ruling in the Mishnah refers to an inadvertent act?[13] Is it not stated there [that were the owner to have set fire to a barn on Sabbath there would be no civil liability] AS HE WOULD BE SUBJECT TO A CAPITAL CHARGE?[14] — It only means to say this: Since if he would have committed it maliciously he would have been liable to a capital charge, as, e.g., where he had need of the ashes, there should be exemption [from civil liability] even in such a case as this where he did it inadvertently.[15]

MISHNAH. IF AN OX WAS PURSUING AN OTHER'S OX WHICH WAS [AFTERWARDS FOUND TO BE] INJURED, AND THE ONE [PLAINTIFF] SAYS, 'IT WAS YOUR OX THAT DID THE DAMAGE, WHILE THE OTHER PLEADS, 'NOT SO, BUT IT WAS INJURED BY A ROCK [AGAINST WHICH IT HAD BEEN RUBBING ITSELF]',[16] THE BURDEN OF PROOF LIES ON THE CLAIMANT. [SO ALSO] WHERE TWO [OXEN] PURSUED ONE AND THE ONE DEFENDANT ASSERTS, 'IT WAS YOUR OX THAT DID THE DAMAGE', WHILE THE OTHER DEFENDANT ASSERTS, 'IT WAS YOUR OX THAT DID THE DAMAGE',

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(1) Which would show that setting fire on Sabbath even for purely destructive purposes is a violation of the Sabbath, supporting thus the view of R. Abbahu and contradicting that of R. Johanan.

(2) Though with cattle there would really be no legal difference whatsoever whether this was the case or not.

(3) V. p. 192, n. 2.

(4) Being as it is altogether devoid of the whole conception of insult.

(5) Supra p. 141.

(6) Which exempts man setting fire on Sabbath from any civil liability involved.

(7) Exempting from civil liability in the case of Man.

(8) Keth. 35a, 38a; Sanh. 79b and 84b.

(9) Lev. XXIV, 21.

(10) Which, however, forms a distinction in the case of unintentional manslaughter with reference to the liability to take refuge, for which cf. Mak. 7b.

(11) As indeed stated supra p. 136.

(12) Even when there is no actual death penalty involved, and likewise in the Mishnah the man setting fire though inadvertently is exempt from all civil liability, so that you cannot infer therefrom that death penalty is attached to setting fire on Sabbath even for destructive purposes. V. supra p. 192. n. 8.

(13) In which case the capital punishment could never be applied.

(14) V. p. 192, n. 8.

(15) On the basis of the teaching of Hezekiah.

(16) Denying thus any liability.

Talmud - Mas. Baba Kama 35b

NEITHER OF THE DEFENDANTS WILL BE LIABLE. BUT WHERE BOTH OF THE [PURSUING] OXEN BELONGED TO THE SAME OWNER,[1] LIABILITY WILL ATTACH TO BOTH OF THEM. WHERE, HOWEVER, ONE [OF THE OXEN] WAS BIG AND THE OTHER LITTLE[1] AND THE CLAIMANT MAINTAINS THAT THE BIG ONE DID THE DAMAGE,[2] WHILE THE DEFENDANT PLEADS, 'NOT SO, FOR IT WAS THE LITTLE ONE THAT DID THE DAMAGE', OR AGAIN WHERE ONE [OX] WAS TAM AND THE OTHER MU'AD AND THE CLAIMANT MAINTAINS THAT THE MU'AD DID THE DAMAGE[3] WHILE THE DEFENDANT ASSERTS, 'NOT SO, FOR IT WAS THE TAM THAT DID THE DAMAGE,' THE BURDEN OF PROOF LIES ON THE CLAIMANT. [SO ALSO] WHERE THERE WERE TWO INJURED OXEN, ONE BIG AND ONE LITTLE, SIMILARLY TWO PURSUERS, ONE BIG AND ONE LITTLE, AND THE PLAINTIFF ASSERTS THAT THE BIG ONE INJURED THE BIG ONE AND THE LITTLE ONE THE LITTLE ONE, WHILE THE DEFENDANT CONTENDS, 'NOT SO, FOR [IT WAS] THE LITTLE ONE [THAT INJURED] THE BIG ONE AND THE BIG ONE [THAT INJURED] THE LITTLE ONE'; OR AGAIN WHERE ONE WAS TAM AND THE OTHER MU'AD, AND THE PLAINTIFF MAINTAINS THAT THE MU'AD INJURED THE BIG ONE AND THE TAM THE LITTLE ONE, WHILE THE DEFENDANT PLEADS, 'NOT SO, FOR [IT WAS THE] TAM [THAT INJURED] THE BIG ONE AND THE MU'AD [THAT INJURED] THE LITTLE ONE,' THE BURDEN OF PROOF FALLS ON THE CLAIMANT.

GEMARA. R. Hiyya b. Abba stated: This [Mishnaic ruling][4] shows that [in this respect] the colleagues differed from Symmachus who maintained[5] that money of which the ownership cannot be decided has to be equally divided [between the two parties]. Said R. Abba b. Memel to R. Hiyya b. Abba: Did Symmachus maintain his view even where the defendant was as positive as the claimant?[6] — He replied: Yes, Symmachus maintained his view even where the defendant was as positive as the claimant. But [even if you assume otherwise],[7] how do you know that the Mishnah is here dealing with a case where the defendant was as positive as the claimant?[8] — Because it says, THE PLAINTIFF STATES 'IT WAS YOUR OX THAT DID THE DAMAGE', WHILE THE DEFENDANT PLEADS 'NOT SO. . . '[9] R. Papa, however, demurred to this, saying: If in the case presented in the opening clause the defendant was as positive as the claimant, we must suppose that in the case presented in the concluding clause the defendant was similarly as positive as the claimant. [Now,] read the concluding clause; WHERE, HOWEVER, ONE OX WAS BIG AND THE OTHER LITTLE, AND THE PLAINTIFF ASSERTS THAT THE BIG ONE DID THE DAMAGE WHILE THE DEFENDANT PLEADS 'NOT SO, FOR IT WAS THE LITTLE ONE THAT DID THE DAMAGE'; OR AGAIN WHERE ONE OX WAS TAM AND THE OTHER MU'AD, AND THE CLAIMANT MAINTAINS THAT THE MU'AD DID THE DAMAGE, WHILE THE DEFENDANT PLEADS, 'NOT SO, FOR IT WAS THE TAM THAT DID THE DAMAGE', THE BURDEN OF PROOF IS ON THE CLAIMANT. [Now this implies, does it not, that] where he does not produce evidence he will get paid in accordance with the pleading of the defendant. May it now not be argued that this [ruling] is contrary to the view of Rabbah b. Nathan, who said that where the plaintiff claims wheat and the defendant admits barley, he is not liable [for either of them]?[10] — You conclude then that the Mishnah deals with a case where one party was certain and the other doubtful.[11] Which then was certain and which doubtful? It could hardly be suggested that it was the plaintiff who was certain, and the defendant who was doubtful, for would this still not be contrary to the view of Rabbah b. Nathan?[12] It would therefore seem that it was the plaintiff who was doubtful[11] and the defendant certain. And if the concluding clause deals with a case where the plaintiff was doubtful and the defendant certain, we should suppose that the opening clause[13] likewise deals with a case where the plaintiff was doubtful and the defendant certain. But could Symmachus indeed have

applied his principle even to such a case,[14] that the Mishnah thought fit to let us know that this view ought not to be accepted? — [Hence it must be said:] No; but that the concluding clause [deals with a case where] the plaintiff was doubtful and the defendant certain, and the opening clause[13] [presents a case where it was] the plaintiff who was certain and the defendant doubtful.[15] But [even in that case] the opening clause is not co-ordinate with the concluding clause?[16] — I can reply that [a case where the plaintiff is] certain and [the defendant] doubtful[17] and [a case where the claimant is] doubtful and [the defendant] certain[18] are co-ordinate[19] whereas [a case where the claimant is] certain and [the defendant also] certain is not co-ordinate with [a case where the claimant is] doubtful and [the defendant] certain.[20]

The above text states: 'Rabbah b. Nathan said: Where the plaintiff claimed wheat and the defendant admitted barley, he is not liable [for either of them].'[21] What does this tell us? Have we not already learnt [in a Mishnah]: where the plaintiff claimed wheat and the defendant admitted barley he is not liable?[22] If we had only [the Mishnah] there[22] to go by, I might have argued that the exemption was only from the value of the wheat,[23] while there would still be liability for the value of barley;[24] we are therefore told by Rabbah b. Nathan that the exemption is complete.

We have learnt: WHERE THERE WERE TWO INJURED OXEN, ONE BIG AND THE OTHER LITTLE etc. [Now this implies that] where he does not produce evidence he will get paid in accordance with the pleading of the defendant. But why not apply here [the principle of complete exemption laid down in the case of] wheat and barley? — The plaintiff[25] is entitled to get paid [only where he produces evidence to substantiate the claim], but will have nothing at all [where he fails to do so]. But has it not been taught; He will be paid for [the injury done to] the little one out of the body of the big and for [the injury done to] the big one out of the body of the little one? — Only where he had already seized them.[26] We have learnt: IF ONE WAS TAM AND THE OTHER MU'AD, AND THE PLAINTIFF CLAIMS THAT THE MU'AD INJURED THE BIG ONE[27] AND THE TAM THE LITTLE ONE WHILE THE DEFENDANT PLEADS, 'NOT SO, FOR [IT WAS THE] TAM [THAT INJURED] THE BIG ONE AND THE MU'AD [THAT INJURED] THE LITTLE ONE', THE BURDEN OF PROOF FALLS ON THE CLAIMANT. [Now this implies that] where he does not produce evidence he will get paid in accordance with the pleading of the plaintiff. But why should [the principle of complete exemption laid down in the case of] wheat and barley not be applied here? —

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(1) And were in the state of Tam, in which case the half-damages are paid only out of the body of the ox that did the damage, as supra p. 73.

(2) And the body of the big one should secure the payment of the half damages.

(3) And the compensation should thus be made in full.

(4) That it is the claimant on whom falls the onus probandi.

(5) Infra p. 262 and B.M. 2b, 6a, 98b, 100a; B.B. 141a.

(6) In which case not the defendant but only the Court is in doubt.

(7) And suggest that where the defendant has been positive even Symmachus admits that the claimant will get nothing unless by proving his case.

(8) For in the cases dealt with in the Mishnah the defendant is usually unable to speak positively, as in most cases he was not present at the place when the alleged damage was done; cf. also Tosaf. a.l.

(9) Which is apparently a definite defence.

(10) For the claim of wheat has been repudiated by the defendant while the claim for barley admitted by him has tacitly been dispensed with by the plaintiff. The very same thing could be argued in the case of the Mishnah quoted above, where the claim was made in respect of the big one or the Mu'ad, and the defence admitted the little one or the Tam respectively.

(11) In which case the argument contained in the preceding note could no more be maintained.

(12) For surely the plaintiff, by his definite claim in respect of the big one or the Mu'ad, has tacitly waived his claim in respect of the little one or the Tam respectively.

(13) Where the defendant pleads that 'the pursued ox was injured by a rock...' .
(14) Which is really an absurdity, to maintain that a plaintiff pleading mere supposition against a defendant submitting a definite denial should in the absence of any evidence be entitled to any payment whatsoever.
(15) [How then could R. Hiyya maintain that our Mishnah deals with a case where both were certain in their pleas.]
(16) [If so, what is the objection of R. Papa to R. Hiyya's statement, since even on his view there is a lack of co-ordination between these two clauses in the Mishnah.]
(17) As in the case dealt with in the commencing clause.
(18) Which is the case in the concluding clause.
(19) Lit 'are one thing'.
(20) R. Papa was therefore loth to explain the commencing clause as dealing with a case where the defence as well as the claim was put forward on a certainty, but preferred to explain it as presenting a law-suit where, though the claim had been put forward positively, the defence was urged tentatively.
(21) V. p. 197. n. 2.
(22) Shebu. 38b.
(23) Which was denied by the defendant.
(24) Admitted by the defendant.
(25) In the case of the oxen.
(26) In which case the principle of complete exemption maintained by Rabbah b. Nathan apparently does not apply.
(27) V. p. 196. n. 1.

Talmud - Mas. Baba Kama 36a

The plaintiff is entitled to get paid [only where he produces evidence to substantiate the claim] but [failing that he] will have nothing at all. But has it not been taught: He will be paid for [the injury done to] the little one in accordance with the regulations applying to Mu'ad and for [the injury done to] the big one out of the body of the Tam? — Only where he had already seized them.

BUT WHERE BOTH OF THE [PURSUING] OXEN BELONGED TO THE SAME OWNER, LIABILITY WILL ATTACH TO BOTH OF THEM. Raba of Parazika[1] said to R. Ashi: It can be concluded from this that where oxen in the state of Tam [belonging to the same owner] did damage, the plaintiff has the option to distrain either on the one or the other! — [No, replied R. Ashi, for] we are dealing here [in the Mishnah] with a case where they were Mu'ad.[2] If where they were Mu'ad how do you explain the concluding clause: WHERE, HOWEVER, ONE [OF THE OXEN] WAS BIG AND THE OTHER LITTLE AND THE CLAIMANT MAINTAINS THAT THE BIG ONE DID THE DAMAGE WHILE THE DEFENDANT PLEADS 'NOT SO, FOR IT WAS THE LITTLE ONE THAT DID THE DAMAGE' THE BURDEN OF PROOF FALLS ON THE CLAIMANT. For indeed where they were Mu'ad what difference could there be [whether the big one or the little one did the damage] since at all events he has to pay the full value of the ox? — He thereupon said to him: The concluding clause presents a case where they were Tam, though the opening clause deals with a case where the oxen were Mu'ad. Said R. Aha the Elder to R. Ashi: If the commencing clause deals with a case where the oxen were Mu'ad,[2] what is the meaning of 'LIABILITY WILL ATTACH TO BOTH OF THEM'? Should not the text run, 'The owner will be liable'? Again, what is the meaning of 'BOTH OF THEM'? — [The commencing clause also] must therefore deal with a case where the oxen were Tam, and the ruling stated follows the view of R. Akiba, that plaintiff and defendant become the owners in common [of the attacking ox].[3] Now this is so where 'BOTH OF THEM' [the oxen] are with the owner, in which case he cannot possibly shift the claim [from one to the other].[4] But if 'BOTH OF THEM' are not with him he may plead,[5] 'Go and produce evidence that it was this ox [which is still with me][6] that did the damage, and then I will pay you.'

CHAPTER I V

MISHNAH. IF A [TAM] OX HAS GORED FOUR OR FIVE OXEN ONE AFTER THE OTHER,

COMPENSATION SHOULD IN THE FIRST INSTANCE BE MADE [OUT OF THE BODY OF THE OX] FOR THE LAST OFFENCE. SHOULD THERE BE A SURPLUS,[7] COMPENSATION IS TO BE PAID ALSO FOR THE PENULTIMATE OFFENCE; SHOULD THERE STILL BE A SURPLUS, COMPENSATION IS TO BE MADE TO THE ONE BEFORE; THE LATER THE LIABILITY THE PRIOR THE CLAIM.[8] THIS IS THE OPINION OF R. MEIR. R. SIMEON SAYS: IF AN OX OF THE VALUE OF TWO HUNDRED [ZUZ] HAS GORED AN OX OF THE SAME VALUE OF TWO HUNDRED [ZUZ] AND THE CARCASS HAS NO VALUE AT ALL, THE PLAINTIFF WILL GET A HUNDRED ZUZ AND THE DEFENDANT WILL GET A HUNDRED ZUZ [OUT OF THE BODY OF THE OX THAT DID THE DAMAGE].[9] SHOULD THE SAME OX HAVE GORED ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE SECOND CLAIMANT WILL GET A HUNDRED ZUZ, WHILE THE FORMER CLAIMANT WILL GET ONLY FIFTY ZUZ[10] AND THE DEFENDANT WILL HAVE FIFTY ZUZ [IN THE BODY OF HIS OX].[11] SHOULD THE OX HAVE GORED YET ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE THIRD CLAIMANT WILL GET A HUNDRED [ZUZ] WHILE THE SECOND WILL GET ONLY FIFTY [ZUZ][10] AND THE FIRST TWO PARTIES[12] WILL HAVE A GOLD DENAR[13] [EACH IN THE BODY OF THE OX THAT DID THE DAMAGE].[11] GEMARA. Who is the author of our Mishnah? It is in accordance neither with the view of R. Ishmael nor with that of R. Akiba![14] For if it is in accordance with R. Ishmael, who maintains that they [the claimants of damages] are like any other creditors, how can it be said that THE LATER THE LIABILITY THE PRIOR THE CLAIM? Should it not be, the earlier the liability the prior the claim?[15] If, on the other hand, it is in accordance with R. Akiba who maintains that the ox becomes the common property [of the plaintiff and the defendant], how can it be said that, IN THE CASE OF THERE BEING A SURPLUS[16]

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(1) [Identified with Faransag, near Bagdad, v. Obermeyer, op. cit., p. 269.]

(2) In which case the whole estate of the defendant can be distrained upon for the payment of damages; supra p. 73.

(3) Cf. supra p 181.

(4) So that there is no warrant for Raba of Parazika's inference.

(5) Against the plaintiff.

(6) And not the other ox that has been lost.

(7) In the body of the ox.

(8) Lit., 'the later always profits' as it is he who has the right of priority.

(9) As explained supra pp. 187-8.

(10) For the reason v. Gemara, infra p. 203.

(11) As the defendant and the first claimant became the owners of the ox in common.

(12) I.e the defendant and the first claimant.

(13) I.e., twenty-five zuz.

(14) For which cf. supra p. 181.

(15) As is usually the case with other creditors: v. p. 185.

(16) V.p. 201, n. 1.

Talmud - Mas. Baba Kama 36b

COMPENSATION WILL BE MADE FOR THE PENULTIMATE OFFENCE? Should it not be 'Compensation will be made [proportionately] for each offence'? — Raba replied: The Mishnah is indeed in accordance with R. Ishmael, who holds that claimants [of damages] are like any other creditors; and as to your objection to the statement 'THE LATER THE LIABILITY THE PRIOR THE CLAIM', which you contend should be 'The earlier the liability the prior the claim', [it can be argued] that we deal here with a case where each plaintiff has [in turn] seized the goring ox for the purpose of getting paid [the amount due to him] out of its body, in which case each has in turn acquired [in respect of the ox] the status of a paid bailee, liable for subsequent damages done by it.[1] But if so, why does it say. SHOULD THERE BE A SURPLUS COMPENSATION IS TO BE PAID

ALSO FOR THE PENULTIMATE OFFENCE? Should it not be: 'The surplus will revert to the owner'?[2] — Rabina therefore said: The meaning is this: Should there be an excess in the damage done to him[3] over that done to the subsequent plaintiff, the amount of the difference will revert to the plaintiff in respect of the preceding damage.[4] So too, when Rabin returned [from Eretz Yisrael] he stated on behalf of R. Johanan that it was for the failure [to carry out their duty] as bailees that liability was incurred [by the earlier plaintiffs to the later].

How then have you explained the Mishnah? As being in accordance with R. Ishmael! If so, what of the next clause: R. SIMEON SAYS: WHERE AN OX OF THE VALUE OF TWO HUNDRED [ZUZ] HAS GORED AN OX OF THE SAME VALUE OF TWO HUNDRED [ZUZ] AND THE CARCASS HAD NO VALUE AT ALL, THE PLAINTIFF WILL GET A HUNDRED ZUZ AND THE DEFENDANT WILL SIMILARLY GET A HUNDRED ZUZ [OUT OF THE BODY OF THE OX THAT DID THE DAMAGE]. SHOULD THE SAME OX HAVE GORED ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE SECOND CLAIMANT WILL GET A HUNDRED ZUZ, WHILE THE FORMER CLAIMANT WILL GET ONLY FIFTY ZUZ, AND THE DEFENDANT WILL HAVE FIFTY ZUZ [IN THE BODY OF THE OX]. SHOULD THE OX HAVE GORED YET ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE THIRD PLAINTIFF WILL GET A HUNDRED [ZUZ], WHILE THE SECOND PLAINTIFF WILL GET FIFTY [ZUZ] AND THE FIRST TWO PARTIES WILL HAVE A GOLD DENAR [EACH IN THE BODY OF THE OX THAT DID THE DAMAGE]. This brings us back [does it not] to the view of R. Akiba, who maintains that the ox becomes the common property [of the plaintiff and the defendant].[5] Will then the first clause be in accordance with R. Ishmael and the second clause in accordance with R. Akiba? — That is so, since even Samuel said to Rab Judah, 'Shinena,[6] leave this Mishnah alone[7] and accept my explanation. that its first clause is [in accordance with] R. Ishmael and its second clause [in accordance with] R. Akiba.' (It was also stated that R. Johanan said: An actual case in which they would differ is where the plaintiff consecrates the goring ox [to the Temple].)[8]

We have learnt elsewhere:[9] If a man boxes another man's ear, he has to give him a sela'[10] [in compensation]. R. Judah in the name of R. Jose the Galilean says: A hundred zuz. A certain man having [been summoned for] boxing another man's ear, R. Tobiah b. Mattena sent an inquiry to R. Joseph, as to whether a Tyrian sela'[11] is meant in the Mishnah[12] or merely a sela' of [this] country.[13] He sent back a reply: You have learnt it: AND THE FIRST TWO PARTIES WILL HAVE A GOLD DENAR [EACH]. Now, should you assume that the Tanna is calculating by the sela'[13] of [this] country, [we may ask,] why does he not continue the division by introducing a further case where the amount [left for the first two] will come down to twelve [zuz] and one sela'?[14] To which R. Tobiah replied: Has then the Tanna to string out cases like a peddler?[15] What, however, is the solution?[16] — The solution was gathered from the statement made by Rab Judah on behalf of Rab:[17] 'Wherever money[18] is mentioned in the Torah, the reference is to Tyrian money, but wherever it occurs in the words of the Rabbis it means local[19] money.' The plaintiff upon hearing that said to the judge: 'Since it will [only] amount to half a zuz,[12] I do not want it; let him give it to the poor.' Later, however, he said; 'Let him give it to me, as I will go and obtain a cure for myself with it.' But R. Joseph said to him: The poor have already acquired a title to it, for though the poor were not present here, we [in the Court, always] act as the agents[20] of the poor, as Rab Judah said on behalf of Samuel:[21] Orphans

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(1) As supra p. 57, and infra p. 255.

(2) Since it is not the owner but the claimant in regard to the penultimate offence who has to he liable in respect of the last offence.

(3) I.e., to the penultimate plaintiff.

(4) As e.g. where an ox of the value of a hundred zuz gored successively the ox of A the ox of B and the ox of C, and the damages amount to fifty, thirty and twenty zuz respectively, C will be paid the sum of twenty, B only ten, which is the

difference between the compensation due to him and that due from him to C, and A will get twenty, which again is the difference between the compensation due to him from the owner (of the ox that did the damage) and that owing from him to B. All the payments together, which are twenty to A, ten to B and twenty to C, make only fifty, so that the balance of the value of the ox will go to its owner.

(5) For if otherwise, why should the first two parties (the owner and the first claimant) always be treated alike?

(6) Cf. supra p. 60, n. 2.

(7) And do not try to make it self-consistent.

(8) V. supra p. 181. [This bracketed passage is to be deleted with Rashi, v. D.S. a.l.]

(9) Infra p. 520

(10) A Palestinian coin, v. Glos.

(11) Four zuz, v. infra p. 521, n. 6.

(12) As stated by the anonymous view.

(13) Half a zuz.

(14) I.e. where the last claimant will have a maneh, the next fifty zuz, the rest one gold denar, and the first claimant and the owner 12 zuz and one sela' each.

(15) Who cries the whole list of his wares. Cf. Git. 33a.

(16) As to the exact meaning of sela'.

(17) Cf. Kid. 11b and Bek. 50b.

(18) [Lit 'silver'. The market value of silver coinage was determined by Tyre, v. Krauss, op. cit., II, 405]

(19) Lit., 'the country'.

(20) Lit., 'hand'.

(21) Git. 37a.

Talmud - Mas. Baba Kama 37a

do not require a prosbul:[1] and so also Rami b. Hama learned that orphans do not require a prosbul,[2] since Rabban Gamaliel and his Court of law are the representatives[3] of orphans.

The scoundrel Hanan, having boxed another man's ear, was brought before R. Huna, who ordered him to go and pay the plaintiff half a zuz.[4] As [Hanan] had a battered zuz he desired to pay the plaintiff the half zuz [which was due] out of it. But as it could not be exchanged, he slapped him again and gave him [the whole zuz].

MISHNAH. IF AN OX WAS MU'AD TO DO DAMAGE TO ITS OWN SPECIES BUT WAS NOT MU'AD TO DO DAMAGE TO ANY OTHER SPECIES [OF ANIMALS] OR IF IT WAS MU'AD TO DO DAMAGE TO THE HUMAN SPECIES BUT NOT MU'AD TO ANY SPECIES OF BEASTS, OR IF IT WAS MU'AD TO SMALL [CATTLE] BUT NOT MU'AD TO LARGE [CATTLE], IN RESPECT OF DAMAGE DONE TO THE SPECIES TO WHICH IT WAS MU 'AD THE PAYMENT WILL HAVE TO BE IN FULL, BUT IN RESPECT OF DAMAGE DONE TO THAT TO WHICH IT WAS NOT MU' AD, THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. THEY[5] SAID BEFORE R. JUDAH: HERE IS ONE WHICH WAS MU 'AD TO DO DAMAGE ON SABBATH DAYS BUT WAS NOT MU 'AD TO DO DAMAGE ON WEEK DAYS.[6] HE SAID TO THEM: FOR DAMAGE DONE ON SABBATH DAYS THE PAYMENT WILL HAVE TO BE IN FULL, WHEREAS FOR DAMAGE DONE ON WEEK DAYS THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. WHEN [CAN THIS OX] RETURN TO THE STATE OF TAM? WHEN IT REFRAINS [FROM GORING] ON THREE [CONSECUTIVE] SABBATH DAYS.

GEMARA. It was stated: R. Zebid said: The proper reading of the Mishnah [in the first clause is], 'BUT WAS NOT MU 'AD . . .';[7] whereas R. Papa said: The proper reading is 'IT IS NOT [THEREFORE] MU 'AD. . .'[8] R. Zebid, who said that'... BUT WAS NOT MU' AD . . .'is the proper reading of the Mishnah, maintained that until we know the contrary[9] such an ox is considered

Mu'ad [to all species]. But R. Papa, who said that '. . . IT IS NOT [THEREFORE] MU 'AD. . .' is the correct reading of the Mishnah, maintained that even though we do not know the contrary the ox is not considered Mu 'ad [save to the species to which it had actually been Mu'ad]. R. Zebid inferred his view from the later clause [of the Mishnah], whereas R. Papa inferred his view from the opening clause. R. Zebid inferred his view from the later clause which states, IF IT WAS MU 'AD TO SMALL [CATTLE] BUT NOT MU 'AD TO LARGE [CATTLE]. Now this is quite in order if you maintain that BUT WAS NOT MU'AD' is the reading in the Mishnah, implying thus that in the absence of definite knowledge to the contrary the ox should be considered Mu'ad [to all species]. This clause would then teach us [the further point] that even where the ox was Mu 'ad to small [cattle] it would be Mu 'ad also to large [cattle] in the absence of knowledge to the contrary. But if you maintain that '. . . IT IS NOT [THEREFORE] MU'AD . . .' is the correct reading of the Mishnah, implying that even though we know nothing to the contrary the ox would not be considered Mu 'ad, could it not then be argued thus: Since in the case where the ox was Mu 'ad to do damage to small creatures of one species it would not be considered Mu 'ad with reference to small creatures of another species even if we have no definite knowledge to the contrary, was there any need to state that where the ox was Mu 'ad to small [cattle] it would not be considered Mu 'ad to big [cattle]?[10] — R. Papa, however, may say to you: It was necessary to state this, since otherwise you might have been inclined to think that since the ox started to attack a particular species, it was going to attack the whole of that species without making a distinction between the large creatures of that species and the small creatures of that species, it was therefore necessary to let us know that [with reference to the large creatures] it would not be considered Mu'ad. R. Papa on the other hand based his view on the opening clause, which states: WHERE IT WAS MU 'AD TO THE HUMAN SPECIES IT WOULD NOT BE MU 'AD TO ANY SPECIES OF BEASTS. Now this would be quite in order if you maintain that 'IT IS NOT [THEREFORE] MU'AD . . .' is the text in the Mishnah denoting that even where we have no knowledge to the contrary the ox would not be considered Mu 'ad [to other species]; it was therefore necessary to make it known to us that even where the ox was Mu 'ad to the human species and though we knew nothing to the contrary, it would still not be Mu'ad to animals. But if you maintain that '. . . BUT WAS NOT MU 'AD . . .' is the correct reading of the Mishnah, implying that in the absence of knowledge to the contrary the ox would be considered Mu 'ad [to all species], could we not then argue thus: Since in the case where the ox was Mu'ad to one species of beast it would in the absence of knowledge to the contrary be considered Mu 'ad also to any other species of beast, was there any need to state that where the ox was Mu 'ad to the human species it would also be considered Mu 'ad to animals?[11] — R. Zebid may, however, say to you: The opening clause refers to the reversion of the ox to the state of Tam, as, e.g., where the ox had been Mu 'ad to man and Mu 'ad to beast but has subsequently refrained from [doing damage to] beast, having stood near cattle on three different occasions without goring. It might then have been argued that since it has not refrained from injuring men, its refraining from goring cattle should [in the eye of the law] not be considered a proper reversion [to the state of Tam].[12] We are therefore told that the refraining from goring cattle is in fact a proper reversion.

An objection was raised [from the following]: Symmachus says: If an ox is Mu'ad to man it is also Mu'ad to beast, a fortiori: if it is Mu'ad to injure man, how much more so is it Mu'ad to injure beast? Does this not prove that the view of the previous Tanna was that it would not be Mu'ad?'[13] — R. Zebid may, however, say to you: Symmachus was referring to the reversion to the state of Tam, and what he said to the previous Tanna was this: 'Referring to your statement that the refraining [from goring] beasts is a proper reversion, [I maintain that] the refraining [from goring] beasts is not a proper reversion, [and can prove it] by means of an argument a fortiori from the case of man. For since it has not refrained from [attacking] man, will it not assuredly continue attacking beasts?

R. Ashi said: Come and hear: THEY SAID BEFORE R. JUDAH: HERE IS ONE WHICH IS MU 'AD TO DO DAMAGE ON SABBATH DAYS BUT NOT MU 'AD TO DO DAMAGE ON WEEK DAYS. HE SAID TO THEM: FOR DAMAGE DONE ON SABBATH DAYS, THE PAYMENT

WILL HAVE TO BE IN FULL, WHEREAS FOR DAMAGE DONE ON WEEK DAYS THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. Now this is quite in order if you maintain that '. . . BUT WAS NOT MU'AD . . .' is the correct reading. The disciples were thus putting a question before him and he was replying to them accordingly. But If you contend that '. . .IS NOT [THEREFORE] MU 'AD . . .' is the correct text, [would it not appear as if his disciples] were giving instruction to him?[14] Again, what would then be the meaning of his reply to them?[15] R. Jannai thereupon said: The same can also be inferred from the opening clause, where it is stated: IN RESPECT OF DAMAGE DONE TO THE SPECIES TO WHICH IT WAS MU 'AD, THE PAYMENT WILL HAVE TO BE IN FULL, BUT IN RESPECT OF DAMAGE DONE TO THAT TO WHICH IT WAS NOT MU 'AD, THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. Now, this would be in order if you maintain that 'BUT IT WAS NOT MU 'AD . . .'[16] is the correct text, in which case the clause just quoted would be explanatory. But if you maintain that '. . . IT IS NOT [THEREFORE] MU'AD . . .'[17] is the correct text, this statement is complete in itself, and why then the further statement 'IN RESPECT OF DAMAGE DONE TO THE SPECIES TO WHICH IT WAS MU 'AD, THE PAYMENT WILL HAVE TO BE IN FULL, BUT IN RESPECT OF DAMAGE DONE TO THAT TO WHICH IT WAS NOT MU 'AD, THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY? Have we not been told before how that in the case of Mu 'ad the payment is for half the damage whereas in the case of Mu'ad the payment has to be in full?[18] Yet even if you adopt the view of R. Papa,[19] where the animal gored an ox, an ass and a camel [successively] it would still become Mu 'ad to all [species of beasts].[20]

Our Rabbis taught: If the animal sees an ox and gores it, another ox and does not gore it, a third ox and gores it, a fourth ox and does not gore it, a fifth ox and gores it, a sixth ox and does not gore it, the animal becomes Mu'ad to alternate oxen.

Our Rabbis taught: If an animal sees an ox and gores it, an ass and does not gore it, a horse and gores it a camel and does not gore it, a mule and gores it, a wild ass and does not gore it, the animal becomes Mu'ad to alternate beasts of all species.

The following question was raised: If the animal [successively] gored

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(1) Cf. supra p. 48, n. 4 and Glos.

(2) V. p. 204, n. 16.

(3) Lit., 'father'.

(4) As stated by the anonymous view.

(5) The disciples.

(6) Apparently we are to supply the words, 'what is the rule regarding it' the remark being intended as a question. But v. infra p. 208.

(7) As indeed rendered in the Mishnaic text.

(8) The Mishnah should accordingly open thus: 'If an ox is Mu'ad to do damage to its own species, it is not (therefore) Mu'ad to any other species (of animals)' etc., etc.

(9) E.g., by letting other animals pass in front of it and seeing that it does not gore them.

(10) Since it is much less likely to attack big animals than small ones. Why then, on R. Papa's reading, have this clause at all in the Mishnah?

(11) Which it would be more ready to attack than human beings.

(12) Cf. supra p. 119.

(13) In contradiction to the view of R. Zebid.

(14) I.e., we have to read their remark as a statement and not as a question.

(15) After they had already decided the question in the wording of the problem.

(16) V. p. 205, n. 6.

(17) V. p. 206, n. 1

(18) Cf. supra p. 73.

(19) That in absence of knowledge to the contrary it is not Mu ‘ad.
(20) And we should not require three gorings for each.

Talmud - Mas. Baba Kama 37b

one ox, a [second] ox, and a [third] ox, an ass, and a camel, what is the legal position? Shall the last ox be counted together with the [first two] oxen, in which case the animal that gored will still be Mu'ad only to oxen whereas to any other species it will not be considered Mu'ad, or shall perhaps the last ox be counted together with the ass and camel, so that the animal that gored will become Mu'ad to all species [of beasts]? [Again,[1] where an animal has successively gored] an ass, a camel, an ox, another ox, and a [third] ox, what is the legal position? Shall the first ox be counted together with the ass and camel, so that the animal that gored will become Mu'ad to all species [of beasts], or shall it perhaps [rather] be counted together with the [other] oxen, in which case it will still be Mu'ad only to oxen, but not Mu'ad to any other species [of beasts]? [Again, where the consecutive gorings took place on] one Sabbath, [the next] Sabbath and [the third] Sabbath, and then on the [subsequent] Sunday and Monday, what is the legal position? Shall the last Sabbath be counted together with the [first two] Sabbaths, in which case the ox that gored would still be Mu'ad only for Sabbaths, whereas in respect of damage done on week days it would not yet be considered Mu ‘ad, or shall it perhaps be counted together with Sunday and Monday and thus become Mu'ad in respect of all the days [of the week]? [Again, where the consecutive gorings took place on] a Thursday, the eve of Sabbath and the Sabbath, then on [the next] Sabbath and [the third] Sabbath, what is the legal position? Shall the first Sabbath be counted together with Thursday and the eve of Sabbath and the goring ox thus become Mu ‘ad for all days, or shall perhaps the first Sabbath be counted together with the subsequent Sabbaths, in which case the goring ox would become Mu ‘ad only for Sabbaths? — These questions must stand over.

If [an ox has] gored an ox on the fifteenth day of a particular month, and [another ox] on the sixteenth day of the next month, and [a third ox] on the seventeenth day of the third month, there would he a difference of opinion between Rab and Samuel.[2] For it was stated:[3] If the symptom of menstruation has once been noticed on the fifteenth day of a particular month, [then] on the sixteenth day of the next month, and [then] on the seventeenth day of the third month, Rab maintained that a periodical recurrence[4] has thereby been established,[5] whereas Samuel said [that this periodicity is not established] until the skipping is repeated [yet] a third time.[6]

Raba said: Where an ox upon hearing the sound of a trumpet gores and upon hearing [again] the sound of a trumpet gores [a second time], and upon hearing [again] the sound of a trumpet gores [a third time], the ox will become Mu'ad with reference to the hearing of the sound of trumpets. Is not this self-evident? — You might have supposed that [the goring at] the first [hearing of the sound of the] trumpet [should not be taken into account as it] might have been due merely to the sudden fright that came over the ox.[7] We are therefore told [that it would be taken into account].[8]

MISHNAH. IN THE CASE OF PRIVATE OWNER'S[9] CATTLE[10] GORING AN OX CONSECRATED TO THE TEMPLE, OR CONSECRATED CATTLE GORING A PRIVATE OX, THERE IS NO LIABILITY, FOR IT IS STATED: THE OX OF HIS NEIGHBOUR,[11] NOT [THAT IS TO SAY] AN OX CONSECRATED TO THE TEMPLE. WHERE AN OX BELONGING TO AN ISRAELITE HAS GORED AN OX BELONGING TO A CANAANITE, THERE IS NO LIABILITY,[12] WHEREAS WHERE AN OX BELONGING TO A CANAANITE GORES AN OX BELONGING TO AN ISRAELITE, WHETHER WHILE TAM OR MU ‘AD,[13] THE COMPENSATION IS TO BE MADE IN FULL.[14]

GEMARA. The [ruling in the] Mishnah is not in accordance with [the view of] R. Simeon b. Menasya; for it was taught: Where a private ox has gored consecrated cattle or where consecrated

cattle has gored a private ox, there is not liability, as it is stated: The ox of his neighbour,[15] not [that is to say] an ox consecrated to the Temple. R. Simeon b. Menasya, however, says: Where consecrated cattle has gored a private ox there is no liability, but if a private ox has gored consecrated cattle, whether while Tam or Mu ‘ad, payment is to be made for full damage.[16] I might ask, what was the principle adopted by R. Simeon? If the implication of ‘his neighbour’[15] has to be insisted upon,[17] why then even in the case of a private ox goring consecrated cattle should there not be exemption? If on the other hand the implication of ‘his neighbour’ has not to be insisted upon, why then in the case of consecrated cattle goring a private ox should there also not be liability? If, however, you argue that he[18] does in fact maintain that the implication of ‘his neighbour’ has to be insisted upon, yet where a private ox has gored consecrated cattle there is a special reason for liability inferred by means of an a fortiori argument from the case of private cattle [as follows]: If where a private ox has gored private cattle there is liability, should not there be all the more liability where it has gored consecrated cattle? Why then [did he] not employ the principle of Dayyo[19] [i.e. that it was sufficient] that the object[20] to which the inference is made should be on the same footing as the object from which it was made?[21] And since Tam involves there the payment of half damages, [why then should it not] here also involve the payment of half damages [only]? — Resh Lakish therefore said: Originally all cases came under the law of full compensation;[22] when Scripture therefore particularised ‘his neighbour’ in the case of Tam, it meant that it was only where damage had been done to a neighbour that Tam would involve half damages [only], thus implying that where the damage had been done to consecrated property, whether by Tam or Mu'ad. the compensation must be in full;

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(1) Assuming that in the previous case we decide that the last ox will be counted with the first two oxen.

(2) According to Rab it would become Mu'ad to gore every month by missing a day, so that if in the fourth month it gores on the eighteenth day, the compensation would have to be in full, whereas according to Samuel the compensation would still be a half, as the animal could not become Mu'ad until the act of missing a day is repeated three times, so that full compensation would begin with the goring on the nineteenth day of the fifth month.

(3) Nid. 67a.

(4) [MS.M. adds ‘in skipping’, cf. Rashi.]

(5) And the menstruation could accordingly be expected on the eighteenth day of the fourth month.

(6) I.e., until in the fourth month the menstruation recurs on the eighteenth day, in which case it would be expected on the nineteenth day of the fifth month,

(7) So that full compensation should begin with the fifth occasion.

(8) And full liability will commence with the fourth goring at the sound of a trumpet.

(9) [Mishnah text: ‘of an Israelite’.]

(10) Lit., ‘ox’.

(11) Ex. XXI, 35.

(12) As Canaanites did not recognise the laws of social justice, they did not impose any liability for damage done by cattle. They could consequently not claim to be protected by a law they neither recognised nor respected, cf. J. T. a.l. and Maim. Yad, Niz. Mam. VIII, 5. [In ancient Israel as in the modern state the legislation regulating the protection of life and property of the stranger was, as Guttmann. M. (HUCA. III 1 ff.) has shown, on the basis of reciprocity. Where such reciprocity was not recognised, the stranger could not claim to enjoy the same protection of the law as the citizen.]

(13) I.e., the ox that did the damage.

(14) So that they should guard their cattle from doing damage. (Maim. loc. cit.)

(15) V. p. 211, n. 5.

(16) Cf. supra p. 23.

(17) To mean the ox of his peer, of his equal. [This would not exclude Gentiles in general as the term רעהו, his neighbour applies also to them (cf. Ex. XI, 2); cf. next page.]

(18) R. Simeon

(19) V. supra p. 126.

(20) Viz. consecrated cattle.

(21) Viz. private cattle.

(22) As in the case of Mu ‘ad where in contradistinction to Tam no mention was made of ‘his neighbour’: cf. Ex. XXI, 36.

Talmud - Mas. Baba Kama 38a

for if this was not its intention, Scripture should have inserted [the expression] ‘his neighbour’ in the text dealing with Mu'ad.[1]

WHERE AN OX BELONGING TO AN ISRAELITE HAS GORED AN OX BELONGING TO A CANAANITE THERE IS NO LIABILITY etc. But I might here assert that you are on the horns of a dilemma. If the implication of ‘his neighbour’ has to be insisted upon, then in the case of an ox of a Canaanite goring an ox of an Israelite, should there also not be exemption? If [on the other hand] the implication of ‘his neighbour’ has not to be insisted upon, why then even in the case of an ox of an Israelite goring an ox of a Canaanite, should there not be liability? — R Abbahu thereupon said: The Writ says, He stood and measured the earth; he beheld and drove asunder the nations,[2] [which may be taken to imply that] God beheld the seven commandments[3] which were accepted by all the descendants of Noah, but since they did not observe them, He rose up and declared them to be outside the protection of the civil law of Israel [with reference to damage done to cattle by cattle].[4] R. Johanan even said that the same could be inferred from this [verse], He shined forth from Mount Paran,[5] [implying that] from Paran[6] He exposed their money to Israel. The same has been taught as follows: If the ox of an Israelite gores an ox of a Canaanite there is no liability,[7] but if an ox of a Canaanite gores an ox of an Israelite whether the ox [that did the damage] was Tam or whether it had already been Mu ‘ad, the payment is to be in full, as it is said: He stood and measured the earth, he beheld and drove asunder the nations,[2] and again, He shined forth from Mount Paran.[5] Why this further citation? — [Otherwise] you might perhaps think that the verse ‘He stood and measured the earth’ refers exclusively to statements [on other subjects] made by R. Mattena and by R. Joseph; come therefore and hear: ‘He shined forth from Mount Paran,’ implying that from Paran[8] he exposed their money to Israel.

What was the statement made by R. Mattena [referred to above]? — It was this. R. Mattena said: He stood and measured the earth; He beheld etc.[9] What did He behold? He beheld the seven commandments[10] which were accepted by all the descendants of Noah, and since [there were some clans that] rejected them, He rose up and exiled them from their lands.[11] But how can the word in the text[12] be [etymologically] explained to mean ‘exile’? — Here it is written ‘"wa-yatter" the nations’ and in another place it is [similarly] written, ‘"le-natter" withal upon the earth,’[13] which is rendered in the Targum[14] ‘to leap withal upon the earth’.

What was the statement made by R. Joseph [referred to above]? — It was this. R. Joseph said: ‘He stood and measured the earth; he beheld’ etc. What did He behold? He beheld the seven commandments which had been accepted by all the descendants of Noah, and since [there were clans that] rejected them He rose up and granted them exemption. Does this mean that they benefited [by breaking the law]? And if so, will it not be a case of a sinner profiting [by the transgression he committed]? — Mar the son of Rabana[15] thereupon said: ‘It only means that even were they to keep the seven commandments [which had first been accepted but subsequently rejected by them] they would receive no reward.’ Would they not? But it has been taught:[16] ‘R. Meir used to say, Whence can we learn that even where a gentile occupies himself with the study of the Torah he equals [in status] the High Priest? We find it stated: . . . which if a man do he shall live in them;[17] it does not say "priests, Levites and Israelites", but "a man", which shows that even if a gentile occupies himself with the study of the Torah he equals [in status] the High Priest.’ — I mean [in saying that they would receive no reward] that they will receive reward not like those who having been enjoined perform commandments, but like those who not having been enjoined perform good deeds: for R. Hanina has stated:[18] Greater is the reward of those who having been enjoined do good deeds than of

those who not having been enjoined [but merely out of free will] do good deeds.[19]

Our Rabbis taught: The Government of Rome had long ago sent two commissioners to the Sages of Israel with a request to teach them the Torah. It was accordingly read to them once, twice and thrice. Before taking leave they made the following remark: We have gone carefully through your Torah, and found it correct with the exception of this point, viz. your saying that if an ox of an Israelite gores an ox of a Canaanite there is no liability,[20] whereas if the ox of a Canaanite gores the ox of an Israelite, whether Tam or Mu 'ad, compensation has to be paid in full. In no case can this he right. For if the implication of 'his neighbour' has to be insisted upon, why then in the case of an ox of a Canaanite goring an ox of an Israelite should there also not be exemption? If [on the other hand] the implication of 'his neighbour' has not to be insisted upon, why then even in the case of an ox of an Israelite goring an ox of a Canaanite, should there not be liability? We will, however, not report this matter to our Government.[21]

When R. Samuel b. Judah lost a dauther the Rabbis[22] said to 'Ulla: 'Let us go in and console him.' But he answered them: 'What have I to do with the consolation of the Babylonians,[22] which is [almost tantamount to] blasphemy? For they say "What could have been done," which implies that were it possible to do anything they would have done it.' He therefore went alone to the mourner and said to him: [Scripture says,] And the Lord spake unto me, Distress not the Moabites, neither contend with them in battle.[23] Now [we may well ask], could it have entered the mind of Moses to wage war without [divine] sanction? [We must suppose] therefore that Moses of himself reasoned a fortiori as follows: If in the case of the Midianites who came only to assist the Moabites[24] the Torah commanded 'Vex the Midianites and smite them,'[25]

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(1) V. p. 212, n. 8.

(2) Hab. III, 6.

(3) V. A.Z. (Sonc. ed.) p. 5, n. 7.

(4) The exemption from the protection of the civil law of Israel thus referred only to the Canaanites and their like who had wilfully rejected the elementary and basic principles of civilised humanity

(5) Deut. XXXIII, 2. [The Mount at which God appeared to offer the Law to the nations, who, however, refused to accept it. V. A.Z. 2b.]

(6) On account of what occurred thereat.

(7) V. p. 211, n. 6.

(8) Cf. A. Z. 2a.

(9) Hab. III, 2.

(10) V. p. 213, n. 3.

(11) As described in Deut. II, 10-23.

(12) I.e., wa-yatter.

(13) Lev. XI, 21.

(14) Targum Onkelos, the Aramaic version of the Hebrew Bible; cf. J.E. s.v.

(15) [Ms.M.: Rabina.]

(16) Sanh. 59a; A. Z. 3a.

(17) Lev. XVIII, 5.

(18) Infra p. 501. and Kid. 31a.

(19) [For the idea underlying this dictum v. A.Z. (Sonc. ed.) p. 6, n. 1.]

(20) V. p. 211, n. 6.

(21) [The same incident is related with some variations in J.B.K. IV, 4, and Sifre on Deut. XXXIII, 3, where R. Gamaliel (II) is mentioned as the Sage before whom the Commissioners appeared, Graetz, Geschichte, IV, 108, places this in the days of Domitian (81-96) whose distrust of the Jews led him to institute an inquisition into their beliefs and teachings; Halevy, Doroth I.e. 350, in the days of Nerva who wished to find out whether there was any truth in the slander against the Jews encouraged by Domitian.]

(22) I.e., Babylonian Rabbis.

(23) Deut. II, 9.
(24) Cf. Num. XXII, 4.
(25) Ibid XXV, 17.

Talmud - Mas. Baba Kama 38b

in the case of the Moabites [themselves] should not the same injunction apply even more strongly? But the Holy One, blessed be He, said to him: The idea you have in your mind is not the idea I have in My mind. Two doves have I to bring forth from them;[1] Ruth the Moabitess and Naamah the Ammonitess. Now cannot we base on this an a fortiori argument as follows: If for the sake of two virtuous descendants the Holy One, blessed be He, showed pity to two great nations so that they were not destroyed, may we not be assured that if your honour's daughter had indeed been righteous and worthy to have goodly issue, she would have continued to live?

R. Hiyya B. Abba said that R. Johanan had stated:[2] The Holy One, blessed be He, does not deprive any creature of any reward due to it, even if only for a becoming expression: for in the case of the [descendants of the] elder [daughter][3] who named her son 'Moab',[4] the Holy One, Blessed be He, said to Moses, Distress not the Moabites, neither contend with them in battle, [implying that] while actual hostilities against them were forbidden, requisitioning from them was allowed, whereas in the case of the younger [daughter][3] who called her son 'Ben Ammi',[5] the Holy One, Blessed be He, said to Moses: And when thou comest nigh over against the children of Ammon, distress them not, nor meddle with them at all,[6] thus implying that they were not to be subjected even to requisitioning.

R. Hiyya B. Abba further said that R. Joshua b. Korha had stated:[7] At all times should a man try to be first in the performance of a good deed, as on account of the one night by which the elder [daughter][8] preceded the younger she preceded her by four generations [in having a descendant] in Israel: Obed, Jesse, David and Solomon.[9] For the younger [had no descendant in Israel] until [the advent of] Rehoboam, as it is written: And the name of his mother was Naamah the Ammonitess.[10]

Our Rabbis taught: If cattle of an Israelite has gored cattle belonging to a Cuthean[11] there is no liability. But where cattle belonging to a Cuthean gored cattle belonging to an Israelite, in the case of Tam the payment will be for half the damage, whereas in the case of Mu'ad the payment will be in full. R. Meir, however, says: Where cattle belonging to an Israelite gored cattle belonging to a Cuthean there is no liability, whereas in the case of cattle belonging to an Israelite, whether in the case of Tam or in that of Mu'ad, the compensation is to be in full. Does this mean to say that R. Meir maintains that the Cutheans were lion-proselytes?[12] But if [so], an objection would be raised [from the following]:[13] All kinds of stains [found on women's underwear] brought from Rekem[14] are [levitically] clean.[15] But R. Judah considers them unclean, as the inhabitants [of that place] are mainly proselytes[16] who are in error;[17] from among Gentiles[18] they are considered clean. But [where they were brought] from among Israelites[19] or from Cutheans [after having been obtained from private places all agree in declaring them unclean.[20] But where they were brought from Cutheans who had already abandoned them to the public at large][21] R. Meir considers them unclean,[22] whereas the Sages consider them clean, for [even] they[23] were not suspected of being lax in [the exposing of women's stained underwear]. Now does this not prove that R. Meir was of the opinion that Cutheans were true proselytes? — R. Abbahu thereupon said: This was only a pecuniary disability that R. Meir[24] imposed upon them, so that [Israelites] should not intermingle with them.

R. Zera raised an objection [from the following]: These are the damsels through whom the fine[25] is imposed: If a man has connexion with a girl that is a bastard,[26] a Nethinah[27] or a Cuthean.[28] Now if you maintain that R. Meir imposed a pecuniary disability on them, why then not impose it in this case too,[29] so that [Israelites] should not mix with them? Abaye thereupon said:

(1) The Moabites and the Ammonites, who must therefore be saved.
(2) Naz. 23b and Hor. 10b.
(3) Of Lot; cf. Gen. XIX, 30-38.
(4) Lit., 'From father'.
(5) Lit., 'The son of my people'
(6) Deut. II, 19.
(7) Naz. ibid; and Hor. 11a.
(8) V. p. 216, n. 6.
(9) Cf. Ruth IV, 13-22.
(10) I Kings XIV, 31.
(11) I.e., members of the mixed tribes who had been settled on the territory of the former Kingdom of Israel by the Assyrian king and who were subsequently a great hindrance to the Jews who returned from the Babylonian captivity to revive their country and their culture; cf. II Kings, XVII. 24-41; Ezra IV, 1-24 and Neh. III, 33; IV, V, VI, 13.
(12) I.e., they accepted some of the Jewish practices not out of appreciation or with sincerity but simply out of the fear of the lions, which as stated in Scripture had been slaying them; cf. II Kings, XVII, 25.
(13) Nid. VII. 3.
(14) A place mainly inhabited by heathens who are not subject to the laws of purity and menstruation. [Rekem is identified by Targum Onkelos Gen. XVI, 14, with Kadesh; by Josephus (Ant. IV, 7, 1), with Petra.]
(15) As the underwear might naturally be supposed to have been worn by a heathen woman.
(16) Who are subject to all the laws of Scripture and whose menstrual discharge defiles any garment which comes in contact with it.
(17) And have lapsed from the observance of the Law.
(18) Those who have never embraced the religion of Israel and have thus never been subject to the laws of purity and menstruation.
(19) Who as a rule do not expose to the public garments stained with menstrual discharge.
(20) For both Israelites and Cutheans are subject to the laws of purity and menstruation.
(21) The bracketed passage follows the interpretation of this Mishnah given in Nid. 56b.
(22) For Cutheans in contradistinction to Israelites were, according to R. Meir, suspected of being lax in the matter of exposing to the public garments stained with menstrual discharge.
(23) I.e. Cutheans.
(24) Who in other respects considered them true proselytes.
(25) For seduction in accordance with Ex. XXII, 15-16, or for rape in accordance with Deut. XXII, 28-29.
(26) Cf. Deut. XXII, 29 and ibid. XXIII, 3.
(27) A Gibeonite, v. Glos.
(28) Keth. III, 1.
(29) By not allowing them to recover compensation for seduction.

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[No exception was made in this case] so that the sinner[1] should not profit thereby. But let him pay the amount of the fine to the poor?[2] — R. Mari said: It would [in that case have remained] a pecuniary obligation without definite claimants[3] [and would thus never have been discharged].[4] MISHNAH. IF AN OX OF AN OWNER WITH UNIMPAIRED FACULTIES GORES AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR,[5] THE OWNER IS LIABLE. WHERE, HOWEVER, AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR HAS GORED AN OX OF AN OWNER WHOSE FACULTIES ARE UNIMPAIRED, THERE IS NO LIABILITY.[6] IF AN OX OF A DEAF-MUTE AN IDIOT OR A MINOR[7] HAS GORED, THE COURT OF LAW APPOINT A GUARDIAN, IN WHOSE PRESENCE WITNESSES WILL BE ABLE TO TESTIFY [THAT THE OX HAS GORED SO THAT IT WILL EVENTUALLY BE DECLARED MU'AD]. IF THE DEAF-MUTE RECOVERS HIS HEARING [OR SPEECH], OR IF THE IDIOT BECOMES SANE, OR IF THE MINOR COMES OF AGE, THE OX PREVIOUSLY DECLARED MU'AD WILL

RETURN TO THE STATE OF TAM: THESE ARE THE WORDS OF R. MEIR. R. JOSE, HOWEVER, SAYS THAT THE OX WILL REMAIN IN STATUS QUO. IN THE CASE OF A STADIUM OX[8] [KILLING A PERSON], THE DEATH PENALTY IS NOT IMPOSED [UPON THE OX], AS IT IS WRITTEN: IF AN OX GORE,[9] EXCLUDING CASES WHERE IT IS GOADED TO GORE.

GEMARA. Is not the text in contradiction with itself? [In the first clause] you state, IF AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR GORES AN OX BELONGING TO ONE WHOSE FACULTIES ARE UNIMPAIRED THERE IS NO LIABILITY, implying that a guardian is not appointed in the case of Tam to collect [the payment of half-damages] out of its body.[10] But read the following clause: IF AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR HAS GORED, THE COURT OF LAW APPOINT A GUARDIAN IN WHOSE PRESENCE WITNESSES WILL BE ABLE TO TESTIFY [SO THAT IT WILL EVENTUALLY BE DECLARED MU'AD]. Now, does this not prove that a guardian is appointed in the case of Tam to collect [the payment of half-damages] out of its body? — Raba replied [that the text of the concluding clause] should be understood thus: If the oxen are presumed to be gorers, then a guardian is appointed and witnesses will give evidence for the purpose of having the cattle declared Mu'ad, so that should another goring take place,[11] the payment would have to come from the best [of the general estate].[12]

From the best of whose estate [would the payment have to come]? — R. Johanan said: From the best [of the estate] of the orphans;[13] R. Jose b. Hanina said: From the best [of the estate] of the guardian. But did R. Johanan really say so? [Has it not been stated that] R. Judah said in the name of R. Assi:[14] The estate of the orphans[13] must not be distrained upon unless where usury is consuming it, and R.. Johanan said: [Unless there is a liability] either for a bond bearing interest or to a woman for her kethubah,[15] [so as to save from further payment] on account of [her] maintenance?[16] — You must therefore reverse names [to read as follows]: R. Johanan said: From the best [of the estate] of the guardian, whereas R. Jose b. Hanina said: From the best [of the estate] of the orphans. Raba, however, objected, saying: Because there is a contradiction between R. Johanan in one place and R. Johanan in another place, are you to ascribe to R. Jose b. Hanina an erroneous view?[17] Was not R. Jose b. Hanina a judge, able to penetrate to the innermost intention of the Law? — We must therefore not reverse the names, [and the contradiction between the two views of R. Johanan[18] can be reconciled by the consideration that] a case of damage is altogether different.[19] R. Johanan stated that the payment must be made out of the best [of the estate] of the orphans, because if you were to say that it is to be out of the best [of the estate] of the guardians

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(1) The seducer.

(2) So that the sinner should not benefit, but why pay the money to the Cuthean if R. Meir was inclined to impose a disability upon Cutheans?

(3) Any poor man claiming the money could be put off by the plea that he (the seducer) wished to give it to another poor man.

(4) If the Cuthean would not have been entitled to claim it.

(5) Usually up to the age of thirteen. These three form a category for themselves as they are not subject to the obligations of either civil or criminal law.

(6) In the case of Tam: v. the discussion in Gemara.

(7) By evidence having been delivered in the presence of the appointed guardian.

(8) [**, the arena used for wild beast hunts and gladiatorial contests, v. Krauss, op. cit. III, 119.]

(9) Ex. XXI, 28.

(10) Cf.supra p. 73.

(11) But no payment will be made for damage done while the ox was Tam.

(12) V. p. 219, n. 6.

(13) Who were minors.

(14) ‘Ar. 22a.

(15) I.e., marriage settlement; v. Glos.

(16) For as long as the widow does not collect her kethubah, she receives her maintenance from the property of the orphans, v. Keth. XI, 1.

(17) [Raba regarded it as an adopted ruling not to distrain upon the estate of orphans. V. Asheri, a.l.]

(18) I.e., here and in ‘Ar. 22a.

(19) Presumably on account of public safety and public interest it is more expedient not to postpone payment until the orphans come of age.

Talmud - Mas. Baba Kama 39b

people would certainly refrain from accepting this office and would do nothing at all [in the matter]. R. Jose b. Hanina, however, said that the payment should be made out of the best [of the estate] of the guardians. and that these should be reimbursed out of the estate of the orphans when the latter will have come of age.

Whether [or not] guardians could be appointed in the case of Tam to collect payment out of its body, is a point at issue between the following Tannaim: In the case of an ox whose owner has become a deaf-mute, or whose owner became insane or whose owner has gone abroad,[1] Judah b. Nakosa said on behalf of Symmachus that it would have to remain Tam[2] until witnesses could give evidence in the presence of the owner. The Sages, however, say that a guardian should be appointed in whose presence the evidence may be given. Should the deaf-mute recover his faculty [of hearing or speech], or the idiot become sane, or the minor come of age, or the owner return from abroad, Judah b. Nakosa said on behalf of Symmachus that the ox would revert to the state of Tam[3] until evidence is given in the presence of the owner, whereas R. Jose said that it would retain its status quo. Now, we have here to ask, what is the meaning of ‘it would have to remain Tam’[4] in the dictum of Symmachus? It could hardly mean that the ox cannot become Mu'ad at all, for since it is stated in the concluding clause, ‘The ox would revert to the state of Tam’, it is implied that it had formerly been Mu'ad. What then is the meaning of, ‘it would have to remain Tam’?[4] We must say, ‘It would remain Tam [complete],’[5] that is, we do nothing to diminish its value, which would, of course, show that [Symmachus holds] no guardian is appointed in the case of Tam to collect payment out of its body. ‘The Sages, however, say that a guardian should be appointed in whose presence evidence may be given’, from which it follows that [they hold] a guardian may be appointed in the case of Tam to collect payment out of its body.

And what is the point at issue in the concluding clause? The point at issue there is [whether or not a change of] control[6] should cause a change [in the state of the ox].[7] Symmachus maintains that [a change in] control causes a change [in the state of the ox],[7] whereas R. Jose holds that [a change of] control causes no change [in the state of the ox].

Our Rabbis taught: Where an ox of a deaf-mute, an idiot or a minor has gored, R. Jacob pays half-damages. What has R. Jacob to do with it?[8] — But read, ‘R. Jacob orders the payment of half-damages.’ With what case are we here dealing? If with a Tam, is this not obvious?[9] For does not any other owner similarly pay half-damages? If [on the other] hand we are dealing with a Mu'ad, then where proper precautions were taken to control it, why should any payment be made at all?[10] And if no precautions were taken to control it, why should not damages be paid in full? — Raba thereupon said: We are in fact dealing with a Mu'ad, and with a case where precautions of some inferior sort[11] were taken to control the ox, but not really adequate precautions. R. Jacob concurred with R. Judah who said[12] that [even in the case of Mu'ad, half of the payment, i.e.] the part due from Tam remains unaffected [being still subject to the law of Tam]; he also concurred with R. Judah in holding[13] that to procure exemption from the law of Mu'ad even inadequate precautions are sufficient;[14] and he furthermore followed the view of the Rabbis[15] who said that a guardian could be appointed in the case of Tam to collect payment out of its body.[16] Said Abaye to him:[17] Do they[18]

really not differ? Has it not been taught: 'Where the ox of a deaf-mute, an idiot or a minor has gored, R. Judah maintains that there is liability to pay and R. Jacob says that the payment will be only for half the damage'? — Rabbah b. 'Ulla thereupon said: The 'liability to pay' mentioned by R. Judah is here defined [as to its amount] by R. Jacob.[19] But according to Abaye who maintained that they did differ, what was the point at issue between them? — He may tell you that they were dealing with a case of Mu'ad that had not been guarded at all, in regard to which R. Jacob would concur with R. Judah on one point but differ from him on another point. He would concur with him on one point, in that R. Judah lays down that [even with Mu'ad half of the payment, i.e.] the part due from Tam remains unaffected; but he would differ from him on another point, in that R. Judah lays down that a guardian should be appointed in the case of Tam to collect payment out of its body, whereas R. Jacob is of the opinion that a guardian could not be appointed and there could therefore be no payment except the half [which should be subject to the law] of Mu'ad.[20] Said R. Aha b. Abaye to Rabina: All would be very well according to Abaye who maintained that they differ;[21] he is quite right [in explaining the earlier statement of R. Jacob[22] to apply only to Mu'ad].[23] But according to Raba who maintained that they do not differ, why should the former statement [of R. Jacob] be referred only to Mu'ad? Why not also to Tam,

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(1) Lit., 'the Province of the Sea'.

(2) בתמותו

(3) V. the discussion which follows.

(4) In the commencing clause.

(5) Reading בתמימותו instead of בתמותו.

(6) Such as from guardian to owner.

(7) I.e., from the state of Mu'ad to that of Tam.

(8) That he personally should have to pay compensation.

(9) Why then state this at all?

(10) Since so far as the owner was concerned the damage occurred by accident.

(11) For the various degrees of precaution cf. infra 55b.

(12) Supra p. 84 and infra p. 260.

(13) Infra p. 259.

(14) But this would not be sufficient in the case of Tam. Where therefore such a precaution has been taken to control a Mu'ad, the half-damages for which the Tam is liable would be enforced, but not the additional damages for which the Mu'ad is liable.

(15) The Sages, whose view was explained supra.

(16) Hence R. Jacob's ruling for the payment of half-damages.

(17) I.e., to Raba.

(18) R. Jacob and R. Judah.

(19) Who thus makes precise what R. Judah left unspecified.

(20) Which is paid out of the general estate.

(21) I.e., that R. Jacob maintained that no guardian could be appointed in the case of Tam, and R. Judah that he could.

(22) Where the view of R. Judah was not mentioned at all.

(23) Where no precaution to control the ox has been taken.

Talmud - Mas. Baba Kama 40a

if he[1] follows the view of R. Judah,[2] in a case where the precautions taken to control the ox were of an inferior kind and not really adequate,[3] or if he[1] follows the view of R. Eliezer b. Jacob,[4] where no precautions to control the ox had been taken at all,[5] as it has been taught: R. Eliezer b. Jacob says: Whether in the case of Tam or in the case of Mu'ad, if precautions of [at least] some inferior sort have been taken to control the ox, there would be no liability. The new point made known to us by R. Jacob would thus have been that guardians should be appointed even in the case of Tam to collect payment out of its body. [Why then did Raba explain the former statement of R. Jacob to refer only

to Mu'ad? Why did he not explain it to refer to Tam also?] — [In answer] he[6] said: Raba made[7] one statement express two principles [in which R. Jacob is in agreement with R. Judah].[8]

Rabina stated that [the question whether or not a change of] control should cause a change [in the state of the ox] might have been the point at issue between them,[9] e.g., where after the ox had been declared Mu'ad, the deaf-mute recovered his faculty, or the idiot became sane, or the minor came of age, [in which case] R. Judah would maintain that the ox should remain in its status quo whereas R. Jacob would hold that [a change of] control should cause a change [in the state of the ox].

Our Rabbis taught: In the case of guardians, the payment [for damages] will be out of the best of the general estate, though no kofer[10] will be paid by them. Who is the Tanna who holds that [the payment of] kofer is but an act of atonement[11] [which would justify the exemption in this case], as [minor] orphans are not subject to the law of atonement? — R. Hisda said: It is R. Ishmael the son of R. Johanan b. Beroka. For it was taught: [The words,] Then he shall give for the ransom of his life[12] [indicate] the value [of the life] of the person killed. But R. Ishmael the son of R. Johanan b. Beroka interprets it to refer to the value [of the life] of the defendant. Now, is this not the point at issue between them,[13] that the Rabbis consider kofer to constitute a civil liability[14] whereas R. Ishmael the son of R. Johanan b. Beroka holds kofer to be of the nature of propitiation?[15] — R. Papa said that this was not the case. For we may suppose all to agree that kofer is a kind of propitiation, and the point at issue between them here is merely that the Rabbis hold that this propitiatory payment should be fixed by estimating the value [of the life] of the person killed, whereas R. Ishmael the son of R. Johanan b. Beroka maintains that it should be fixed by estimating the value of [the life of] the defendant. What reason have the Rabbis for their view? — The expression 'laying upon' is used in the later context[16] and the same expression 'laying upon' is used in an earlier context;[17] just as there it refers to the plaintiff, so does it here also refer to the plaintiff. But R. Ishmael the son of R. Johanan b. Beroka argued that it is written, 'Then he shall give for the ransom of his life' [referring of course to the defendant]. And the Rabbis? — [They reply,] Yes, it does say 'The ransom of his life', but the amount must be fixed by valuing [the life of] the person killed.

Raba in his conversations with R. Nahman used to praise R. Aha b. Jacob as a great man. He[18] therefore said to him: 'When you come across him, bring him to me.' When he[19] later came to see him he[18] said to him: 'You may put problems to me', whereupon he[19] asked him: 'If an ox of two partners [kill a person] how is the payment of kofer to be made? Shall this one pay kofer and the other one kofer? But one kofer is mentioned by Divine Law and not two kofers! Shall this one [pay] half of the kofer and the other one half of the kofer? A full kofer is commanded by Divine Law and not half of a kofer!' While he[20] was still sitting and pondering over this, he[21] further asked him: We have learnt:[22] 'In the case of debtors for valuations[23] the Sanctuary treasury may demand a pledge, whereas in the case of those who are liable to sin-offerings or for trespass-offerings[24] no pledge can be enforced.' Now, what would be the law in the case of those liable to kofer? [Shall it be said that] since kofer is a kind of propitiation it should be subject to the same ruling as sin-offerings and trespass-offerings,[24] the matter being of serious moment to the defendant so that there is no necessity of enforcing a pledge from him; or [shall it] perhaps [be argued that] since it has to be given to a fellow man it is [considered] a civil liability, and as it does not go to the Temple treasury,[25] it is consequently not taken too seriously by the defendant, for which [reason there may appear to be some] necessity for requiring a pledge? Or, again, since the defendant did not [in this case] himself commit the wrong, for it was his chattel that did the wrong [and committed manslaughter], the whole matter might be considered by him as of no serious moment, and a pledge should therefore be enforced? — He[26] said to him: 'Leave me alone; I am still held prisoner by your first problem [that has not yet been answered by me].'

Our Rabbis taught: If a man borrowed an ox on the assumption that it is in the state of Tam but is subsequently discovered to have already been declared Mu'ad, [if goring is repeated while still with

the borrower] the owner will pay one half of the damages and the borrower will pay [the other] half of the damages. But if it was declared Mu'ad while in the possession of the borrower, and [after it] was returned to the owner [it gored again] , the owner will pay half the damages while the borrower is exempt from any liability whatsoever.

The Master stated: 'If a man borrowed an ox on the assumption that it is in the state of Tam but was subsequently discovered to have already been declared Mu'ad, [if goring is repeated] the owner will pay one half of the damages and the borrower will pay [the other] half of the damages.' But why should the borrower not plead against the owner, 'I wanted to borrow an ox, I did not want to borrow a lion?' — Rab said: we are dealing here with a case where the borrower knew the ox to be a gorer.[27] Still why can he not plead against him: 'I wanted to borrow an ox in the state of Tam but I did not want to borrow an ox that had already been declared Mu'ad'? — [This could not be pleaded] because the owner might argue against him: 'In any case, even had the ox been still Tam, would you not have to pay half-damages? Now, also, you have to pay one half of the damages.' But still why can he not plead against him: 'Had the ox been Tam, damages would have been paid out of its body'?[28] — [This could similarly not be pleaded] because the owner might contend: 'In any case would you not have had to reimburse me [to the full extent of] the value of the ox?'[29] Why can he still not plead against him:

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(1) I.e., R. Jacob.

(2) That an inferior degree of precaution is not sufficient in the case of Tam; v. infra p.259.

(3) Hence the liability to pay half-damages, a guardian being appointed to collect payment out of the body of the Tam.

(4) That a precaution of even an inferior degree suffices with Tam as well as with Mu'ad.

(5) V. p. 223, n. 10.

(6) I.e., Rabina.

(7) [So MS.M. deleting 'he means thus' in cur. edd. of Rashi.]

(8) [By explaining R. Jacob's earlier statement as referring to Mu'ad, he informs us that he shares the views of R. Judah both in regard to the question of precaution and that of the part due from Tam in case of a Mu'ad ox, whilst incidentally we also learn that guardians are appointed in case of Tam etc.]

(9) Between R. Jacob and R. Judah in the second cited Baraitha.

(10) Lit., 'atonement', or 'a sum of money', i.e., compensation paid for manslaughter committed by a beast in lieu of the life of the owner of the beast, as appears from Ex. XXI, 29-30; v. Glos.

(11) And not an ordinary civil obligation like damages.

(12) Ex. XXI, 30

(13) I.e., between R. Ishmael and the other Rabbis his opponents.

(14) The payment must therefore correspond to the value of the loss sustained through the death of the person killed.

(15) For since it was the life of the owner of the beast that should be redeemed the payment must surely correspond to the value of his life.

(16) Ex. XXI, 30.

(17) Ibid. XXI, 22.

(18) R. Nahman.

(19) R. Aha b. Jacob.

(20) V. p. 225, n. 6.

(21) V. ibid., n. 7.

(22) 'Ar. 21a.

(23) I.e. vows of value dealt with in Lev. XXVII, 2-8.

(24) Which are intended to procure atonement and which will consequently not be put off.

(25) [Lit., 'To the (Most) High.' Read with MS.M. 'Since it has to be given to a fellow man and not to the Treasury, it is a civil liability.']

(26) R. Nahman.

(27) Though he did not know that the ox had been declared Mu'ad.

(28) And not from my own estate.

(29) In payment of the ox you borrowed from me.

Talmud - Mas. Baba Kama 40b

'Were the ox to have been Tam I would have admitted [the act of goring] and become exempt from having to pay'?[1] Moreover even according to the view[2] that the payment of half-damages [for goring in the case of Tam] is a civil liability,[3] why should the borrower still not argue: 'Had the ox been Tam I would have caused it to escape to the pasture'?[4] — We must therefore suppose the case to have been one where the Court of law stepped in first and took possession of the ox. But if so why should the owner pay one half of the damages? Why not plead against the borrower: 'You have allowed my ox to fall into the hands of a party against whom I am powerless to bring any legal action'? — [This could not be pleaded] because the borrower might retort to him: 'Were I even to have returned the ox to you, would the Court of Law not have taken it from you?' But why should the owner still not plead against the borrower: 'Were you to have returned it to me, I would have caused it to escape to the pasture'?[5] — [This could not be pleaded] because the borrower might argue against him: 'In any case would the damages not have been paid out of the best [of your general estate]?'[6] This indeed could be effectively argued [by the borrower] where the owner possessed property, but what could be argued in the case where the owner possessed no property? — What therefore the borrower could always argue against the owner is [as follows]: 'Just as I am under a personal obligation to you,[7] so am I under a personal obligation[7] to that party [who is your creditor], in virtue of the rule of R. Nathan, as it was taught,[8] 'R. Nathan says: Whence do we conclude that if A claims a maneh[9] from B, and B [claims a similar sum] from C, the money is collected from C and [directly] handed over to A? From the statement of Scripture:[10] And give it unto him against whom he hath trespassed.[11]

'If it was declared Mu'ad while in the possession of the borrower, and [after it] was returned to the owner [it gored again], the owner will pay half damages while the borrower is exempt from any liability whatsoever.' Does this concluding clause [not appear to prove that a change in the] control [of the ox][12] causes a change [in its status], while the preceding clause [tends to prove that a change in the] control [of the ox][13] causes no change [in its status]? — R. Johanan thereupon said: The contradiction [is obvious]; he who taught one clause certainly did not teach the other clause [in the text of the Baraitha]. Rabbah, however, said: Since the opening clause [tends to prove that a change in the] control[13] does not cause a change [in the status], the concluding clause [may also maintain that a change in the] control does not cause a change [in the status]. For the ruling in the concluding clause could be based on the fact that the owner may argue against the borrower, 'You had no legal right to cause my ox to be declared Mu'ad.'[14] R. Papa, however, said: Since the concluding clause [proves that a change in the] control[15] [of the ox] causes a change [in its status], the opening clause [may also maintain that a change in the] control [of the ox] causes a change [in its status]. For the ruling in the opening clause could be based upon the reason that wherever the ox is put, it bears the name of its owner upon it.[16]

IN THE CASE OF A STADIUM OX [KILLING A PERSON], THE DEATH PENALTY IS NOT IMPOSED [UPON THE OX] etc. The question was raised: What [would have been the position of such an ox] with reference to [its being sacrificed upon] the altar? — Rab said that it would have been eligible, whereas Samuel maintained that it would have been ineligible. Rab considered it eligible since it committed manslaughter only by compulsion, whereas Samuel considered it ineligible since it had been used as an instrument for the commission of a crime.

An objection was raised:[17] [Ye shall bring your offering] of the cattle[18] excludes an animal that has copulated with a woman and an animal that has copulated with a man;[19] even of the herd[18] excludes an animal that has been used as an instrument of idolatry; of the flock[18] excludes an animal that has been set apart for idolatrous purposes; and of the flock excludes an animal that has gored

[and committed manslaughter]. R. Simeon remarked upon this: If it is laid down that an animal that has copulated with a woman[19] [is to be excluded] why was it necessary to lay down that an animal goring [and committing manslaughter is also excluded]?[20] Again, if it is laid down that an animal that gored [and committed manslaughter is to be excluded], why was it necessary to lay down that an animal copulating with a woman [is also excluded]?[20] [The reason is] because there are features in an animal copulating with a woman which are not present in an animal goring [and committing manslaughter], and again there are features in an animal goring [and committing manslaughter] which are not present in the case of an animal copulating with a woman. In the case of an animal copulating with a human being the law makes no distinction between a compulsory[21] and a voluntary act [on the part of the animal],[22] whereas in the case of an animal goring [and committing manslaughter] the law does not place a compulsory act on the same footing as a voluntary one. Again, in the case of an animal goring [and committing manslaughter] there is liability to pay kofer,[23] whereas in the case of an animal copulating with a woman there is no liability to pay kofer.[24] It is on account of these differences that it was necessary to specify both an animal copulating with a woman and an animal goring [and committing manslaughter]. Now, it is here taught that in the case of an animal copulating with a human being the law makes no distinction between a compulsory and a voluntary act, whereas in the case of an animal goring [and committing manslaughter the law] does not place a compulsory act on the same footing as a voluntary one. What rule are we to derive from this? Is it not the rule in respect of eligibility for becoming a sacrifice [upon the altar]?[25] — No; the rule in respect of stoning.[26] This indeed stands also to reason, for if you maintain that it is with reference to the sacrifice that the law does not place a compulsory act on the same footing as a voluntary one in the case of an animal goring, [I would point out that with reference to its eligibility for the altar] the Scripture says nothing explicitly with regard either to a compulsory act or a voluntary act on its part. Does it therefore not [stand to reason that what we are to derive from this is] the rule in respect of stoning?

The Master stated: 'In the case of an animal goring [and committing manslaughter] there is liability to pay kofer, whereas in the case of an animal copulating with a woman there is no liability to pay kofer.' What are the circumstances? It could hardly be that while copulating with a woman it killed her, for what difference could be made between killing by means of a horn and killing by means of copulating? If on the other hand the act of copulating did not result in manslaughter, is the exemption from paying kofer not due to the fact that no killing took place? — Abaye said: We suppose, in fact, that it deals with a case where, by the act of copulating, the animal did not kill the woman, who, however, was brought to the Court of Law and by its orders executed. [In such a case] you might perhaps have thought

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(1) For since the liability of half-damages in the case of Tam is only of a penal nature, confession by the defendant would have annulled the obligation; cf. supra. p. 62.

(2) V. supra p. 64.

(3) And confession would bring no exemption.

(4) And since the payment in the case of Tam is only out of its body he would have evaded it.

(5) V. p.227, n. 7.

(6) For in fact the ox had already been declared Mu'ad in the hands of the owner.

(7) To return the ox.

(8) Pes. 31a; Git. 37a; Keth. 19a, 82a; Kid. 15a.

(9) 100 zuz; cf. Glos.

(10) Num. V,7.

(11) Pointing thus to the last creditor.

(12) I.e. from the hands of the borrower to those of the owner.

(13) I.e, from the hands of the owner to those of the borrower.

(14) And it is because of this fact but not because of the change in the control that the ox reverts to the state of Tam.

(15) V. p. 228, n. 8.

(16) The ox therefore did not, by leaving the owner and coming into the hands of a borrower, undergo any change at all.
(17) From Bek. 41a;Tem. 28a.
(18) Lev. I, 2.
(19) Cf. Lev., XVIII, 23 and ib. XX,15-16.
(20) Since in both cases the animal is to be killed where the crime has been testified to by witnesses.
(21) As in the case of animal copulating with man.
(22) V. p. 229, n. 7.
(23) V. p. 224. n. 6.
(24) See the discussion which follows.
(25) Since this was the point under consideration, which solves the question as to the eligibility of a stadium ox for the altar.
(26) [In respect of which the difference between compulsory goring and voluntary goring is admitted.]

Talmud - Mas. Baba Kama 41a

that the execution amounted to manslaughter on the part of the animal; we are therefore told [that this is not the case]. Raba on the other hand held that [we deal here with a case where] while copulating with a woman the animal did kill her, and as for the objection what difference could be made between killing committed by means of horns and killing committed by means of copulating, [the answer would be that] in the case of Horn the animal purposes to do damage, whereas in this case [of copulating] the intention of the animal is merely for self-gratification. What is the point at issue [between these two explanations]?[1] — [Whether kofer should be paid] in the case of Foot treading upon a child in the premises of the plaintiff [and killing it].[2] According to Abaye there would be liability to pay kofer, whereas according to Raba no payment of kofer would have to be made.[3]

It was taught in accordance with the view of Rab: An ox trained for the arena [that killed a person] is not liable [to be stoned] to death , and is eligible for the altar, for it had been compelled [to commit the manslaughter].

MISHNAH. IF AN OX GORES A MAN AND DEATH RESULTS, IN THE CASE OF MU'AD THERE IS LIABILITY TO PAY KOFER,[4] BUT IN THE CASE OF TAM, THERE IS NO LIABILITY TO PAY KOFER. IN BOTH CASES, HOWEVER, THE OXEN ARE LIABLE [TO BE STONED] TO DEATH.[5] THE SAME [JUDGMENT APPLIES] IN THE CASE OF A [MINOR] SON AND THE SAME [JUDGMENT APPLIES] IN THE CASE OF A [MINOR] DAUGHTER.[6] BUT WHERE THE OX HAS GORED A MANSERVANT OR A MAIDSERVANT [AND DEATH HAS RESULTED], COMPENSATION HAS TO BE GIVEN TO THE AMOUNT OF THIRTY SELA',[7] WHETHER THE KILLED SERVANT WAS WORTH A HUNDRED MANEH[8] OR NOT WORTH ANY MORE THAN ONE DENAR.[9]

GEMARA. But since when it was still the state of Tam it had to be killed [for manslaughter], how could it ever have been possible to declare it Mu'ad? — Rabbah said: We are dealing here with a case where, e.g. it had been estimated that it[10] might have killed three[11] human beings.[12] R. Ashi, however, said that such estimation amount to nothing,[13] and that we are therefore dealing here with a case where the ox gored and endangered the lives of three human beings.[14] R. Zebid [on the other hand] said: [The case is one] where, for instance, it killed three animals.[15] But is an ox [which has been declared] Mu'ad to kill animals also Mu'ad to kill men?[16] — R. Shimi therefore said: [The case is one] where for instance it killed three heathens.[15] But is an ox [which has been declared] Mu'ad to gore persons who are heathens also Mu'ad with reference to those who are Israelites? — R. Simeon b. Lakish therefore said: [The case is one] where, for instance, it killed three persons who had already been afflicted with fatal organic diseases.[15] But is an ox [which has been declared] Mu'ad with reference to persons afflicted with fatal organic diseases also Mu'ad regarding persons in sound

condition? — R. Papa therefore said: [The case is one where] the ox [on the first occasion] killed [a sound person] but escaped to the pasture,[17] killed again [a sound person] but similarly escaped to the pasture. R. Aha the son of R. Ika said: [The case is one] where, for instance, [two witnesses alleged in every case an alibi against the three pairs of witnesses who had testified to the first three occasions of goring,[17] and] it so happened that [after evidence had been given regarding the fourth time of goring the accusation of the alibi with reference to the first three times of goring fell to the ground as] a new pair of witnesses gave evidence of an alibi against the same two witnesses who alleged the alibi [against the three sets of witnesses who had testified to the first three occasions of goring]. Now this explanation would be satisfactory [if the three days required for] the declaration of Mu'ad refer to [the goring of] the ox[18] [so as to make sure that it has an ingrained tendency].[19] But if the three days are needed to warn the owner,[18] why should he not plead [against the plaintiff], 'I was not aware [that the evidence as to the first three gorings was genuine]'? — [This could not be pleaded where] e.g., it was stated [by the very last pair of witnesses] that whenever the ox had [gored and] killed he[20] had been present [and witnessed every occasion]. — Rabina said: [The case of an ox not being stoned after any of the first three fatal gorings might be] where, though recognising the owner of the ox[20] [the witnesses who testified to the first three time of goring] did not at that time recognise the identity of the ox [also].[17] But what could the owner[20] have done [where the ox that gored and killed had not been identified]?[21] — [He is culpable because] they could say to him: 'Knowing that an ox inclined to gore has been among your herd, you ought to have guarded the whole of your herd.'

IN BOTH CASES, HOWEVER, THE OXEN ARE LIABLE [TO BE STONED] TO DEATH. Our Rabbis taught: From the implication of the statement The ox shall be surely stoned[22] would I not have known that it becomes nebelah[23] and that by becoming nebelah it should be forbidden to be consumed for food?[24] Why then was it necessary to state further And his flesh shall not be eaten?[25] Scripture must therefore have intended to tell us that were the ox to be slaughtered after the sentence has been passed upon it, it would be forbidden to be consumed as food. This rule is thus established as regards food; whence could it be derived that it would also be forbidden for any [other] use whatsoever? The text therefore says, But the owner of the ox shall be quit.[25] How does this bear [on the matter in hand]? — Simeon B. Zoma said: [The word 'quit' is used here] as in [the colloquial expression,] So-and-so went out quit from his possessions without having any benefit of them whatsoever.

But how do we know that 'his flesh shall not be eaten' refers to a case where the ox has been slaughtered after the sentence had been passed on it, to indicate that it should be forbidden to be used as food? Why not rather suppose that where it has been slaughtered after the sentence had been passed on it, the ox would be eligible to be used for food, and take the words 'his flesh shall not be eaten' as referring to a case where the ox had already been stoned, and indicating that it should [then] be forbidden for any use whatsoever?[26] Such an implication is even in conformity with the view of R. Abbahu, for R. Abbahu said on behalf of R. Eleazar:[27] Wherever Scripture says either it shall not be eaten[28] or thou shalt not eat[29] or you shall not eat,[30] a prohibition both in respect of food and in respect of any [other] use is implied, unless where Scripture makes an explicit exception, as it did make an exception in the case of a thing that dies of itself, which may be given unto a stranger or sold unto a heathen![24] — It may, however, be argued against this that these words [of R. Abbahu] hold good only where the prohibition both in respect of food and in respect of any [other] use is derived from the one Scriptural text, [viz.,] 'it shall not be eaten', but here where the prohibition in respect of food is derived from '[the ox] shall be surely stoned', should you suggest that [the words] 'his flesh shall not be eaten' were meant as a prohibition for any use, [we may ask] why then did the Divine Law not plainly state 'No benefit shall be derived from it'? Or again, why not merely say, 'It shall not be eaten'? Why [the additional words] 'his flesh', if not to indicate that even where it had been made and prepared to resemble other meat, as where the ox was slaughtered, it should still be forbidden. Mar Zutra strongly demurred to this: Why not [he said] take this prohibition

(1) Given by Abaye and Raba respectively.
(2) Discussed supra p. 134.
(3) Since the intention of the animal was not to do damage.
(4) Ex. XXI, 30.
(5) Ibid. 28-29.
(6) Ibid. 31
(7) Ibid. 32.
(8) V. Glos.
(9) V. Glos.
(10) The ox.
(11) As Mu'ad could be only on the fourth occasion; cf. however Rashi a.l.; also Tosaf. a.l. and supra p. 119.
(12) Whom the ox pursued but who had a very narrow escape from death by running away to a safe place.
(13) Since no actual goring took place.
(14) Who, however, did not die until after the ox gored again on the fourth occasion, and it was on account of this delay that the ox was not stoned previously.
(15) In which case the ox should not be put to death.
(16) Cf. supra p. 4, and p. 205.
(17) The ox thus escaped death.
(18) Cf. supra p.121
(19) As in this case also the first three times of goring took place on three successive days.
(20) I.e. the defendant.
(21) How then could this be called warning?
(22) Ex. XXI. 28.
(23) I.e.. the carcass of an animal not ritually slaughtered.
(24) In accordance with Deut XIV, 21.
(25) V. p. 233, n. 6.
(26) For without this implication it would have followed the general rule that an animal which was not slaughtered in accordance with the requirements of the law could be used for any purpose but food; cf. Deut. XIV, 21 and Lev. VII, 24.
(27) Pes. 21b; Kid. 56b.
(28) Such e.g. as in Ex. XIII,3.
(29) See Lev. XVII, 12 but also Pes. 22a.
(30) Cf. e.g., Gen. XXXII, 33 and Pes. 22a and Hul. 100b.

to refer to a case where the slaughterer prepared[1] a piece of sharp flint and with it slaughtered the ox, which was thus dealt with as if it has been stoned, whereas where it had been slaughtered by means of a knife the prohibition should not apply? — To this it may be replied: Is a knife specifically mentioned in Scripture? Moreover we have learnt:[2] If one slaughters with a hand-sickle, with a flint or with a reed, the act of slaughtering has been properly executed.[2]

And now that the prohibition in respect both of food and of any [other] use has been derived from [the text] 'his flesh shall not be eaten', what additional teaching is afforded to me by [the words] 'The owner of the ox shall be quit'? — [The prohibition of] the use of the skin. For otherwise you might have been inclined to think that it was only the flesh that had been proscribed from being used, whereas the skin should be permitted to be used; we are therefore told [that this is not the case but] that 'the owner of the ox shall be quit.' But what of those Tannaim who employ this [text], 'The owner of the ox shall be quit' for deriving other implications (as we will indeed have to explain infra);[3] whence do they derive the prohibition against the making use of the skin? — They derive it from [the auxiliary term in the Hebrew text] 'eth his flesh', meaning, 'together with that which is joined to its flesh', that is, its skin. This Tanna,[4] however, does not stress [the term] 'eth' for legal

expositions, as it has been taught:[5] Simeon the Imsonite, or as others read, Nehemiah the Imsonite, used to expound [the term] 'eth'[6] wherever it occurred in the Torah. When, however, he reached, Thou shalt fear eth the Lord thy God,[7] he abstained.[8] His disciples said to him: Rabbi, what is to be done with all the expositions of [the term] 'eth' which you have already given?[6] He said to them: Just as I have received reward for the [previous] expositions so have I received reward for the [present] abstention. When R. Akiba, however, came, he taught: 'Thou shalt fear eth the Lord thy God' implies that the scholarly disciples are also to be feared.

Our Rabbis taught: 'But the owner of the ox shall be quit' means, according to the view of R. Eliezer, quit from [paying] half kofer.[9] Said R. Akiba to him: Since any actual liability in the case of the ox itself [being a Tam] is not paid except out of its body,[10] [why cannot the owner say to the plaintiff,] 'Bring it to the Court of Law and be reimbursed out of it' ?[11] R. Eliezer then said to him: 'Do I really appear so [simple] in your eyes that [you should take] my exposition to refer to a case of an ox liable [to be stoned] to death? My exposition referred only to one who killed the human being in the presence of one witness or in the presence of its owner.'[12] In the presence of its owner! Would he not be admitting a penal liability?[13] — R. Eliezer maintains that kofer partakes of a propitiatory character.[14]

Another [Baraitha] teaches: R. Eliezer said to him: Akiba, do I really appear so [simple] in your eyes that [you take] my exposition to refer to an ox liable [to be stoned] to death? My exposition referred only to one who had been intending to kill a beast but [by accident] killed a man, [or where it had been intending to kill] an Egyptian and killed an Israelite, [or] a non-viable child and killed a viable child.[15] Which of the answers, was given first? — R. Kahana in the name of Raba said that [the answer about] intention was given first, whereas R. Tabyomi in the name of Raba said that [the answer about] having killed [the man in the presence of one witness etc.] was given first. R. Kahana, who in the name of Raba said [that the answer about] intention was given first, compared him to a fisherman who had been catching fishes in the sea;

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(1) Lit., 'tested', that is, to see whether it was fit for ritual slaughetering.

(2) Hul. 15b.

(3) V. pp.236-239.

(4) Who needs the whole of the text to imply the prohibition of the skin.

(5) Kid. 57a; Bek. 6b and Pes 22b.

(6) To imply some amplification of the statement actually made.

(7) Deut VI. 13

(8) Being loth to put any being whatsoever on a par with God.

(9) In the case of Tam.

(10) As supra p. 73.

(11) But since the ox is put to death and the carcass including also the skin is proscribed for any use whatsoever, is it not evident that no payment could be made in the case of Tam killing a human being? Why then give a special indication to this effect?

(12) [In which case the ox is not stoned (v. Zeb. 71a: Rashi and Tosaf. s.v. עַל פִּי).]

(13) For the payment of half-damages in the case of Tam is, as decided supra p. 67 of a penal character and as such liability for it could in any case not be established by the admission of the defendant, for which cf. supra p. 62 and infra p. 429.

(14) And liability to it would thus have been established even by the admission of the defendant.

(15) V. supra p. 232. n.11.

Talmud - Mas. Baba Kama 42a

when he caught big ones he took them and when he [subsequently] caught little ones he took them also.[1] But R. Tabyomi, who in the name of Raba said that [the answer about] having killed [the man

in the presence of one witness etc.] was given first, compares him to a fisherman who was catching fishes in the sea and when he caught little ones he took them, but when he [subsequently] caught big ones he threw away the little ones and took the big ones.[2]

Another [Baraitha] teaches: 'And the owner of the ox shall be quit' [implies] according to the statement of R. Jose the Galilean, quit from compensating [in the case of Tam killing] embryos . Said R. Akiba to him: Behold Scripture states: If men strive together and hurt a woman with child etc.,[3] [implying that only] men but not oxen [are liable for killing embryos]![4] Was not this a good question on the part of R. Akiba? — R. 'Ulla the son of R. Idi said: [The implication drawn by R. Jose] is essential. For otherwise it might have occurred to you to apply [R. Akiba's] inference 'Men but not oxen' [exclusively to such] oxen as are comparable to men: Just as men are Mu'ad,[5] so also here the oxen referred to are Mu'ad, whereas in the case of Tam there should be liability. The Divine Law has therefore stated, 'The owner of the ox shall be quit', implying exemption [also in the case of Tam]. Said Raba thereupon: Is the native born to be on the earth and the stranger in the highest heavens?[6] No, said Raba. [The implication drawn by R. Jose] is essential [for this reason, that] you might have been inclined to apply the inference 'Men but not oxen' only to oxen which could be compared to men — just as men are Mu'ad so the oxen here referred to are Mu'ad — and to have extended the exemption to cases of Tam by an argument a fortiori. Therefore the Divine Law purposely states [further], The owner of the ox shall be quit [to indicate that only] in the case of Tam will there be exemption whereas in the case of Mu'ad there will be liability. Said Abaye to him: If that is so, why not argue in the same way in the case of payment for degradation; thus: [Scripture says] 'Men',[7] excluding oxen which could be compared with men: just as the men are Mu'ad so the oxen [thus exempted] must be Mu'ad, and a fortiori exemption is extended to cases of Tam. Thereupon the Divine Law on another occasion purposely states, 'The owner of the ox shall be quit' [to indicate that only] in the case of Tam will there be exemption, whereas in the case of Mu'ad there will be liability [for degradation]? Now you could hardly say that this is indeed the case, for if so why not teach that, 'the owner of the ox shall be quit' [means], according to R. Jose the Galilean, quit from compensating [both in the case of Tam killing] embryos and [in the case of it having caused] degradation?[8] — Abaye and Raba both therefore said: [You might have been inclined to suppose that] in the case of 'men' it is only where no mischief[9] [resulted to the woman] that a liability to pay [for the embryo is imposed] upon them whereas where a mischief [resulted to the woman] no civil liability[10] [is imposed] upon them,[11] but that it is not so with oxen, as in their case even if mischief [results to the woman] a liability to pay is imposed.[12] The Divine Law has therefore on another occasion purposely stated, The owner of the ox shall be quit, to indicate exemption [in all cases]. R. Adda b. Ahabah demurred to this, saying: Does then the matter of civil liability[13] depend upon the non-occurrence of mischief to the woman? Does this matter not depend upon intention [of the defendant]?[14] — R. Adda b. Ahabah therefore said: [You might have been inclined to think thus:] In the case of men where their purpose was to kill one another, even if mischief results to a woman, a civil liability[13] will be imposed, whereas where they purposed to kill the woman herself [who was in fact killed], no civil liability[13] would be imposed. In the case of oxen, however, even where their purpose was to kill the woman [who is indeed killed by them] a civil liability should be imposed for the embryo. [To prevent your reasoning thus] the Divine Law on another occasion purposely states, 'The owner of the ox shall be quit' to indicate exemption [altogether in the case of oxen]. And so also R. Haggai upon returning from the South, came [to the College] and brought the teaching [of a Baraitha] with him stating the case in accordance with the interpretation given by R. Adda b. Ahabab.

Another [Baraitha] teaches: 'The owner of the ox shall be quit' [implies], according to the statement of R. Akiba, quit from compensating for [the killing of] a slave.[15]

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(1) So also here where the better answer was given first and the inferior one later. The answer about intention is considered the better one.

(2) Here also when R. Eliezer subsequently found a better answer he withdrew the answer which he had given first.
(3) Ex. XXI, 22.
(4) Why then a special implication to exempt Tam?
(5) V. supra p. 68.
(6) I.e., how would it be possible to have exemption in the case of Mu'ad and liability in the case of Tam?
(7) Deut. XXV, 11.
(8) But Mu'ad is liable.
(9) I.e., death.
(10) For the embryo.
(11) As all civil claims would merge in the capital charge; cf. supra p. 113 and infra p. 427, n. 2.
(12) For the civil liability of the owner should not be affected by the ox having to be put to death.
(13) V. p. 238, n. 4.
(14) For where he intended to kill another person and it was only by accident that the woman and her embryo were killed, there would, according to R. Adda b. Ahabah, be no capital charge but a civil liability; cf. for such a view infra p.252 and Sanh. 79a.
(15) V. supra p. 232.

Talmud - Mas. Baba Kama 42b

But why should R. Akiba not argue against himself,[1] Since any actual liability in the case of the ox itself [being a Tam] is not paid except out of its body [why should not the owner say to the plaintiff] 'Bring it to the Court of Law and be reimbursed out of it'? — R. Samuel son of R. Isaac thereupon said: [This creates no difficulty; the case is one] where the owner of the ox slaughtered it before [the passing of the sentence].[2] You might suggest in that case that payment should be made out of the flesh; we are therefore told that since the ox [as such] had been liable [to be stoned] to death, no payment could be made out of it even where it was slaughtered [before the passing of the sentence]. But if so, why [did not R. Akiba think of this reply to the objection he made] to R. Eliezer[3] also, viz. that the owner of the ox slaughters it beforehand? — He could indeed have done this, but he thought that R. Eliezer[3] also probably had another explanation better than this which he would tell him. But why did R. Eliezer [himself] not answer him that he referred to a case where the owner slaughtered the ox beforehand? — He could answer: It was only there where the ox aimed at killing a beast but [by accident] killed a man, in which case it is not liable [to be stoned] to death, and you might therefore have thought there was a liability [for kofer], that there was a need for Scripture to indicate that there is [in fact] no liability. But here where the ox had originally been liable [to be stoned] to death, no Scriptural indication should be needed [to exempt from liability] even where the ox has meanwhile been slaughtered.[4] But should not the same argument be employed also regarding the exposition of R. Akiba?[5] — R. Assi therefore said: The explanation of this matter was delivered to me from the mouth of a great man, to wit, R. Jose b. Hanina [who said]: You might be inclined to think that since R. Akiba said, 'Even in the case of Tam injuring Man the payment of the difference must be in full',[6] the compensation for killing a slave should also be paid out of the best [of the general estate]. Divine Law therefore states, The owner of the ox shall be quit, [implying that this is not the case]. Said R. Zera to R. Assi: Did R. Akiba himself not qualify this liability? For it was taught:[7] R. Akiba says, As it might be thought that this full payment[8] has to be made out of the best [of the general estate], it is therefore further stated, According to this judgment shall it be done unto him,[9] [to emphasize that] payment is to be made out of its body, but no payment is to be made out of any other source whatsoever? — Raba therefore [gave a different explanation] saying: The implication is still essential, for otherwise you might have thought that since[10] I have to be more strict in the case of [killing] a slave than in the case of a freeman — for in the case of a freeman worth one sela' the payment[11] will be one sela', and of one worth thirty the payment will be thirty, whereas in the case of a slave even where he was worth one sela' the payment will have to be thirty[10] — there should be compensation for [the killing of] a slave[12] even out of the best of the estate,[13] the Divine Law therefore states, ' The owner of the ox should be quit' [implying that this is

not the case]. It was taught in accordance with [the explanation given by] Raba: 'The owner of the ox should be quit' [implies], according to the statement of R. Akiba, quit from compensation for [the killing of] a slave. But is this not strictly logical?[14] For since there is liability [to pay compensation] for [the killing of] a slave and there is liability [to pay compensation] for [the killing of] a freeman;[11] just as where there is liability [to pay compensation] for [the killing of] a freeman a distinction has been made by you between Tam and Mu'ad,[15] why then in the case where compensation has to be paid for [the killing of] a slave should you similarly not make a distinction between Tam and Mu'ad? This conclusion could moreover be arrived at by the a fortiori argument: If in the case of [killing] a freeman where the compensation[11] is for the whole of his value a distinction has been made by you between Tam and Mu'ad,[15] then in the case of [killing] a slave where the compensation amounts only to thirty [sela'] should it not stand to reason that a distinction must be made by us between Tam and Mu'ad? — Not so, because (on the other hand] I am[16] more strict in the case of [killing] a slave than in that of [killing] a freeman. For in the case of a freeman, where he was worth one sela' the compensation will be one sela',[17] [where he was worth] thirty the compensation will be thirty, whereas in the case of a slave even where he was worth one sela' the compensation has to be thirty.[16] This might have inclined us to think that [even in the case of Tam] there should be liability. It was therefore [further stated], The owner of the ox shall be quit, implying quit from compensation for [the killing of] a slave.

Our Rabbis taught: [It is written,] But it hath killed a man or a woman.[18] R. Akiba says: What does this clause come to teach us? If that there is liability for the goring to death of a woman as of a man, has it not already been stated, if an ox gore a man or a woman?[19] It must therefore have intended to put the woman on the same footing as the man: just as in the case of a man the compensation[17] will go to his heirs, so also in the case of a woman the compensation will go to her heirs.[20] Did R. Akiba thereby mean [to put forward the view] that the husband was not entitled to inherit her? But has it not been taught: 'And he shall inherit her;[21] this shows that the husband is entitled to inherit his wife. This is the view of R. Akiba'?[22] — Resh Lakish therefore said: R. Akiba[23] stated this[24] only with reference to kofer which, since it has not to be paid save after [the] death [of the victim], is regarded as property in anticipation,[25] and a husband is not entitled to inherit property in anticipation as he does property in actual possession.[26] But why [should kofer not be paid except after death]?[27] — Scripture says: But it hath killed a man or a woman; the ox shall be stoned, and its owner also shall be put to death. If there be laid on him a ransom.[28] But did R. Akiba not hold that damages [for injury also are not inherited by the husband]? Has it not been taught:[29] If one hurt a woman so that her embryo departed from her, compensation for Depreciation and for Pain should be given to the woman, compensation for the value of the embryo to the husband.[30] If the husband is not [alive], his due should be given to his heirs, and if the woman is not [alive at the time of payment] her due should be given to her heirs. [Hence] if the woman was a slave that had been emancipated[31]

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(1) Exactly as he argued against R. Eliezer, supra p.236.

(2) In which case the flesh could legitimately be used as food; cf. infra p. 255.

(3) Supra p. 236.

(4) This was the reason why R. Eliezer answered as he did, and not as suggested here that the ox was slaughtered before the sentence had been passed on it.

(5) And if so, the original problem will recur: Why should R. Akiba not argue against himself as he did against R. Eliezer, supra p. 236.

(6) Supra p. 179.

(7) Cf. supra p. 180.

(8) In the case of Tam injuring a human being.

(9) Ex. XXI, 31.

(10) In the case of Mu'ad.

(11) I.e. kofer.

(12) In the case of Tam.
(13) There can thus no more arise the question, 'Since any actual liability in the case of the ox itself (being Tam) is not paid except out of its body, (why should not the owner say to the plaintiff) "Bring it to the Court and be reimbursed out of it"?' Cf. supra p. 236.
(14) Wherefore then the special inference from the verse?
(15) That in the case of Mu'ad, kofer is paid, but not in the case of Tam.
(16) In the case of Mu'ad.
(17) V. p. 241, n. 3.
(18) Ex. XXI, 29.
(19) Ibid. 28.
(20) Not to her husband.
(21) Num. XXVII, 11.
(22) B.B. 111b.
(23) [So MS. M., v. Rashi.]
(24) That the husband does not inherit the compensation due to the woman.
(25) As at the last moment of her life the liability for kofer was neither a chose in possession nor even a chose in action
(26) Cf. B. B. 113a and 125b.
(27) Why not say that as soon as the blow was ascertained to have been fatal the payment of kofer should be enforced?
(28) Implying that the payment of money as kofer is, like the killing of the ox, not enforced before the victim has actually died.
(29) Infra p. 280.
(30) V. Ex. XXI, 22.
(31) And the husband was of the same category.

Talmud - Mas. Baba Kama 43a

or a proselytess the defendant would be the first to acquire title [to all the claims and thus be released from any liability]? — Rabbah thereupon said: We deal [in this latter case] with a divorced woman.[1] So also said R. Nahman [that we deal here] with a divorced woman. [But] I might [here] object: If she was divorced, why should she not also share in the compensation for the value of the embryo?[2] — R. Papa thereupon said: The Torah awarded the value of embryos to the husband even where the cohabitation had taken place not in a married state, the reason being that Scripture says: According as the cohabitator[3] of the woman will lay upon him.[4]

But why should not Rabbah refer the ruling[5] to the case where the payment of the compensation had been collected in money, and R. Nahman to the case where it had been collected out of land? For did Rabbah not say[6] that where an outstanding debt had been collected[7] out of land, the first-born son would take in it [a double portion],[8] but where it had been collected in money the first-born son would not [take in it a double portion]?[9] Or again did R. Nahman not say[10] that [on the contrary] where the debt had been collected in money the first-born would take [in it a double portion],[11] but where it has been collected out of land, the first-born son would not [take in it a double portion]?[12] — It could, however, be answered that these statements were made on the basis of the despatch of the Western Sages according to the view of the Rabbis,[13] whereas in the case here [where Rabbah and R. Nahman interpreted it to have referred to a divorced woman] they were stating the law as maintained by Rabbi.[14]

R. Simeon b. Lakish said: Where an ox killed a slave without purposing to do so, there would be exemption from the payment of thirty shekels, since it is written, He shall give unto their master thirty shekels of silver, and the ox shall be stoned,[15] [implying that] where the ox would be liable to be stoned the owner is to pay thirty shekels, but where the ox would not be liable to be stoned[16] the owner need not pay thirty shekels. Rabbah [similarly] said: Where an ox killed a freeman without purposing to do so there would be exemption from kofer, for it is written[17] The ox should be stoned

and its owner also shall be put to death. If there be laid on him a ransom, [implying that] where the ox has to be stoned[16] the owner has not to pay kofer. Abaye raised an objection to this [from the following Mishnah]:[18] If a man says: 'My ox has killed so-and-so' or 'has killed so-and-so's' ox, [in either case] the defendant has to pay in virtue of his own admission. Now, does the payment [in the former case][19] not mean kofer [though the ox would not become liable to be stoned through the owner's admission]?[20] — No; [it means for] the actual value.[21] If [it means payment for] the pecuniary loss, read the concluding clause: [If he says], 'My ox has killed so-and-so's slave,' the defendant is not liable to pay in virtue of his own admission.[22] Now, if [the payment referred to in the first clause was meant for] the pecuniary loss, why is there no liability [to pay for the pecuniary loss in the case of a slave]?[23] — He, however, said to him: I could have answered you that the opening clause refers to the actual value[24] [of the killed person],[25] whereas the concluding clause refers to the fixed fine [of thirty shekels]. As, however, I have no intention to answer you by means of forced interpretations, [I will say that] both clauses do in fact refer to the actual value [of the killed person].

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(1) For otherwise the husband would inherit her claim for damages.

(2) Since she was his wife no more.

(3) The Hebrew term בעל ('husband' E.V.) is thus understood.

(4) Ex. XXI, 22.

(5) That the damages will be paid to her heirs and not to the husband.

(6) B.B. l24b.

(7) After the death of a creditor.

(8) In accordance with Deut. XXI. 17.

(9) Because the debt collected after the death of the father was not a chose in possession in the lifetime of the creditor, and the first-born takes a double portion only 'of all that' his father 'hath' at the time of death. A husband is in a similar position, as he too has the right to inherit only chooses in possession at the lifetime of his wife.

(10) V. p. 243, n. 10.

(11) For the money collected is considered in the eye of the law as the money which was lent to the father of the debtor.

(12) V. p. 243, n. 13.

(13) V. p. 243, n. 10.

(14) That debts collected after the death of a creditor whether in species or out of land will be subject to the law of double portion in the case of a first-born and similarly to the law of a husband inheriting his wife. v. B.B. (Sonc. ed.) p. 518.

(15) V. Ex. XXI, 32.

(16) As e.g., where it killed a human being by accident.

(17) Ex. XXI, 29.

(18) Keth. III, 9.

(19) Where the defendant admitted that his ox killed a man.

(20) Without the corroboration of witnesses; v. supra p. 236, n. 8.

(21) I.e., the pecuniary loss sustained through the man's death. [It is distinguished from kofer in that the payment of the latter is an act of atonement to be compounded in no circumstance; v. Tosaf. s. v. מאי.]

(22) As the payment of thirty shekels in the case of a slave is of the nature of a penalty which could not be inflicted on the strength of the word of mouth of the defendant.

(23) Does this not prove that in the case of manslaughter committed by cattle no payment for the pecuniary loss would have to be made if you except kofer in the case of a freeman, and the thirty shekels in the case of a slave?

(24) I.e. the pecuniary loss sustained through his death.

(25) Which has to be paid even where kofer could for some reason or other not be imposed upon the defendant.

Talmud - Mas. Baba Kama 43b

But [it is only in the case of] a freeman where kofer may sometimes be paid on the strength of the defendant's own admission — as where witnesses appeared and testified to the ox having killed [a

freeman] without, however, knowing whether it was still Tam or already Mu'ad and the owner admits it to have been Mu'ad, in which case kofer would be paid on the strength of his own admission[1] — that [we say] where witnesses are not at all available payment will be made for the actual value [of the loss]. [Whereas] in the case of a slave where the fixed fine could never be paid through the defendant's own admission — since even where witnesses appear and testify to the ox having killed [a slave], without knowing whether it had still been Tam or already Mu'ad, and the owner admits that it had already been Mu'ad, no fine would be paid — [we say] where no witnesses at all are available there will be no payment even for the amount of the value [of the loss].

R. Samuel son of R. Isaac raised an objection [from the following teaching]: Wherever there is liability in the case of a freeman,[2] there is liability in the case of a slave both for kofer and for stoning. Now, how could kofer ever be [paid] in the case of a slave?[3] Does it therefore not surely mean the payment for the amount of the value [of the loss]?[4] — Some say that he raised the objection and he himself answered it, others say that Rabbah said to him: What is meant is as follows: Wherever there is liability for kofer [i.e.] in the case of a freeman killed intentionally [by the ox] as testified by witnesses, there is [a similar] liability for the fine in the case of a slave, and wherever there is liability for the amount of the value [of the loss, i.e.,] in the case of a freeman killed unintentionally, as testified by witnesses, there is also liability for the amount of the value [of the loss] in the case of a slave killed unintentionally, as testified by witnesses.[5] Raba, however, said to him: If so,[6] why in the case of Fire unintentionally[7] burning a human being [to death], as testified by witnesses, should there also not be liability to pay the amount of the value [of the loss]? And how did Raba know that no payment would be made [in this case]? Shall we say from the following Mishnah: '[Where fire was set to a barn and] a goat had been bound to it and a slave was loose near by it and all were burnt [with the barn] there would be liability.[8] But where the slave had been chained to it, and the goat loose near by it and all were burnt with it there would be no liability.'[9] [But how could Raba prove his point from this case here?][10] Did Resh Lakish not state that this case here should be explained as one where e.g., the defendant put the actual fire upon the body of the slave so that [no other[11] but] the major punishment had to be inflicted? But [it may perhaps be suggested that Raba derived his point] from the following [Baraitha]: For it has been taught: 'The excess in [the liability] for Fire over [that for] Pit is that Fire is apt to consume both things fit for it and things unfit for it, whereas this is not so in the case of Pit.'[12] It is not, however, said that 'in the case of Fire [where a human being has been burnt to death] unintentionally there is liability to pay for the pecuniary loss, whereas it is not so in Pit'.[13] But might [the Baraitha] not perhaps have stated [some points] and omitted [others]? — It must therefore have been that Raba himself was questioning whether in the case of Fire [burning a human being] unintentionally there would be payment for the amount of the value [of the loss] or whether there would be none. Should we say that it was only in the case of cattle — where if the manslaughter was unintentional kofer would be paid — that for unintentional manslaughter the amount of the value [of the loss] is to he paid — whereas in the case of Fire — where for intentional manslaughter no kofer would be paid[14] — there should be no payment of the amount of the value [of the loss] for unintentional manslaughter? Or [shall we] perhaps [rather say that] since in the case of Cattle [killing a person] unintentionally where no kofer is paid, the value [of the loss] is nevertheless paid, so should it also be with Fire where no kofer would be paid for intentional manslaughter, that nevertheless the value [of the loss] caused by unintentional manslaughter should be paid? But as no information was available to us [on this matter], it remained undecided.

When R. Dimi arrived [from Palestine] he said on behalf of R. Johanan: [The word] kofer [I understand]. What is taught by [the expression] If kofer?[15] It implies the inclusion of [the payment of] kofer in cases where there was no intention[16] [to kill] just as kofer [is paid] where there was intention. Abaye however said to him: If so , the same could now surely also be argued in the case of a slave: viz.: What is taught by [the expression] If a slave?[15] [It implies] that a slave killed unintentionally is subject to the same law as a slave, killed intentionally? If that is so, why did Resh

Lakish say that where an ox killed a slave unintentionally there would be exemption from the thirty shekels? He replied: Would you confute one person's view by citing another?[17]

When Rabin arrived [from Palestine] he said on behalf of R. Johanan: [The word] a slaves [I understand], What is taught by [the expression] If a slave? [It implied] that a slave [killed] unintentionally is subject to the same law as a slave [killed] intentionally. Now as regards Resh Lakish [who was of a different view in this respect] shall we also assume that just as he drew no lesson from the distinction between 'a slave' and 'if a slave', so he drew no lesson from the distinction between 'kofer' and 'if kofer'? — I may say that this was not so. From the distinction between 'a slave' and 'if a slave'[18] he did not draw a lesson, whereas from the distinction between 'kofer' and 'if kofer' he did draw a lesson. Why this difference? The expressions 'a slave' and 'if a slave' do not occur in the context dealing with payment,[19] whereas the expressions 'kofer' and 'if kofer' do occur in a context dealing with payment.

THE SAME JUDGMENT APPLIES IN THE CASE OF A SON OR IN THAT OF A DAUGHTER. Our Rabbis taught: [The text] Whether it have gored a son or have gored a daughter[20] [implies] that there is liability in the case of little ones just as in that of grown-ups. But surely this is only logical! For since there is a liability in the case of Man killing man there is similarly a liability in the case of Cattle killing man, just as where Man has killed man no distinction is made between [the victims being] little ones or grown-ups,[21] so also where Cattle killed man no distinction should be made between [the victims being] little ones or grown-ups? Moreover there is an a fortiori argument [to the same effect]; for if in the case of Man killing man where the law did no make [murderers who are] minors liable as [it did make] grown-ups,[22] it nevertheless imposed there liability for little ones as for grown-ups,

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(1) As the ox in this case would be subject to be stoned, [and where the ox is stoned, the owner pays kofer].

(2) I.e. kofer.

(3) V. p. 244, n. 6.

(4) [This shows that pecuniary loss is paid in the case of a slave on his own admission even as in the case of a freeman.]

(5) [Though in the case of self-admission there will still be a distinction between the death of a freeman and that of a slave (by an ox) in regard to the payment of pecuniary loss.]

(6) [That there is payment of pecuniary loss, even where kofer is not payable.]

(7) [If intentionally, the civil liability would merge with the graver capital charge.]

(8) For the barn and the goat but not for the slave, as he should have run away.

(9) Infra 61b.

(10) By not extending the ruling in the second clause to refer also to the barn but confining it to the goat which should have run away, and to the slave, on the alleged ground that no compensation should be paid for the value of the loss occasioned by fire burning a human being to death.

(11) The ruling of exemption in the second clause is thus extended even to the barn.

(12) Supra p. 38.

(13) For which see supra p. 18 and infra 50b.

(14) For it merges with the graver capital charge.

(15) Ex. XXI, 30; for it is surely neither an optional nor a conditional liability.

(16) ['If' אם implying a case where kofer is imposed, though the ox is not stoned, i.e. where there was no intention (contrary to the view of Rabbah, supra); v. Malbim on Ex. XXI, 30.]

(17) As R. Johanan and Resh Lakish might perhaps have differed on this point.

(18) In Ex. XXI, 32.

(19) It could thus hardly have any bearing on the law of payment.

(20) Ibid. 31.

(21) Cf. Nid. 44a.

(22) See Lev. XXIV, 17 and Mek. on Ex. XXI, 12.

now in the case of Cattle killing man where the law made small cattle [liable] as [it did make] big cattle,[1] should it not stand to reason that there is liability for little ones as there is for grown-ups?[2] — No, [for it could have been argued that] if you stated this ruling in the case of Man killing man it was [perhaps] because [where Man injured man] there was liability for the four [additional] items,[3] but how would you be able to prove the same ruling in the case of Cattle where there could be no liability for the four [additional] items? Hence it is further laid down: Whether it have gored a son or have gored a daughter to impose liability for little ones as for grown-ups. So far I know this only in the case of Mu'ad.[4] Whence do I know it in the case of Tam? — We infer it by analogy: Since there is liability for killing Man or Woman and there is similarly liability for killing Son or Daughter, just as regarding the liability for Man or Woman you made no discrimination between Tam and Mu'ad,[5] so also regarding the liability for Son or Daughter you should make no discrimination between Tam and Mu'ad. Moreover there is an a fortiori argument [to the same effect]; for if in the case of Man and Woman who are in a disadvantageous position when damages had been done by them,[6] you have nevertheless made there no discrimination between Tam and Mu'ad, in the case of Son and Daughter who are in an advantageous position when damage has Been done by them,[7] should it not stand to reason that you should make no discrimination between Tam and Mu'ad? — [No,] you cannot argue thus. Can we draw an analogy from a more serious to a lighter case so as to be more severe [with regard to the latter]? If[8] the law is strict with Mu'ad which is a more serious case, how can you argue that it ought to be [equally] strict with Tam which is a lighter case? Moreover, [you could also argue that] the case of Man and Woman [is graver] since they are under obligation to observe the commandments [of the Law],[9] but how draw therefrom an analogy to the case of Son and Daughter seeing that they are exempt from the commandments?[10] It was therefore necessary to state [further]: Whether it have gored a son, or have gored a daughter; [the repetition of the word 'gored' indicating that no discrimination should be made between] goring in the case of Tam and goring in the case of Mu'ad, between goring in the case of killing and goring in the case of mere injury.

MISHNAH. IF AN OX BY RUBBING ITSELF AGAINST A WALL CAUSED IT TO FALL UPON A PERSON [AND KILL HIM], OR IF AN OX WHILE TRYING TO KILL A BEAST [BY ACCIDENT] KILLED A HUMAN BEING, OR WHILE AIMING AT A HEATHEN[11] KILLED AN ISRAELITE, OR WHILE AIMING AT NON-VIABLE INFANTS KILLED A VIABLE CHILD, THERE IS NO LIABILITY.

GEMARA. Samuel said: There is exemption [for the ox in these cases] only from [the penalty of being stoned to] death, but there is lability [for the owner] to pay kofer.[12] Rab, however, said: There is exemption here from both liabilities.[13] But why [kofer]?[14] Was not the ox Tam?[15] — Just as [in an analogous case] Rab said that the ox was Mu'ad to fall upon human beings in pits,[16] so also [in this case we say that] the ox was Mu'ad to rub itself against walls [which thus fell] upon human beings. But if so, why should the ox not be liable to [be stoned to] death? It is correct in this other case where we can explain that the ox was looking at some vegetables and so came to fall [into a pit],[17] but here what ground could we give [for assuming otherwise than an intention to kill on the part of the ox]? — Here also [we may suppose that] the ox had been rubbing itself against the wall for its own gratification.[17] But how can we know this?[18] — [By noticing that] even after the wall had fallen the ox was still rubbing itself against it.

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(1) Cf. infra p. 380, and 'Ed. VI, 1.

(2) Why then was it necessary for Scripture to make this explicit in Ex. XXI, 31?

(3) For which cf. supra p. 12.

(4) As verse 31 follows 29 and 30 which deal with Mu'ad.

(5) As clearly seen in verses 29 and 30.

(6) I.e. they are liable to pay for it. Cf. supra p. 63 but also infra p. 502.

(7) For which they are not liable to pay; see infra p. 502.
(8) [Some texts omit, 'If . . . . Moreover,' v. D.S. a.l.]
(9) Cf. however, supra p. 64, but also Kid. I, 7.
(10) So long as they are minors and have not reached puberty for which cf. Nid. 52a.
(11) Cf. supra p. 211, n. 6.
(12) As also maintained by R. Johanan, supra p. 248, and still earlier by R. Eliezer, supra p. 237.
(13) For the reason v. supra 244
(14) In the case dealt with first in the Mishnah.
(15) In killing a human being by rubbing itself against a wall and thus causing it to fall. In the case of Tam no kofer is paid; see Ex. XXI, 28.
(16) Infra p. 274.
(17) And as intention to kill was lacking, no death penalty could be attached.
(18) Seeing that the ox was Mu'ad to rub itself against walls.

Talmud - Mas. Baba Kama 44b

But granted all this, is this manner of damage[1] not on a par with that done by Pebbles[2] [where there would be no liability for kofer]?[3] — R. Mari the son of R. Kahana thereupon said: [We speak of] a wall gradually brought down by the constant pushing of the ox.[4]

It has been taught in accordance with Samuel and in refutation of Rab: There are cases where the liability is both for [stoning to] death and kofer: there are other cases, where there is liability for kofer but exemption from [stoning to] death; there are again [other] cases where there is liability [for stoning to] death but exemption from kofer; and there are still other cases where there is exemption both from [stoning to] death and from kofer. How so? In the case of Mu'ad [killing a person] intentionally, there is liability both for [stoning to] death and for kofer.[5] In the case of Mu'ad [killing a person] unintentionally there is liability for kofer but exemption from [stoning to] death. In the case of Tam [killing a person] intentionally there is liability [for stoning to] death but exemption from kofer. In the case of Tam [killing a person] unintentionally, there is exemption from both penalties. Whereas in case of injury [caused by the ox] unintentionally, R. Judah says there is liability to pay [damages], but R. Simeon says there is no liability to pay.[6] What is the reason of R. Judah? — He derives [the law of damages from] that of kofer: just as for kofer there is liability even where there was no intention [to kill], so also for damages for injuries there is liability even where there was no intention [to injure]. R. Simeon, on the other hand, derived [the law of damages] from that of the killing of the ox: just as the stoning of the ox is not required where there was no intention [to kill], so also damages are not required where there was no intention [to injure]. But why should R. Judah also not derive [the ruling in this case] from [the law applying to the] killing [of the ox]? It is proper to derive [a ruling regarding] payment from [another ruling regarding] payment, but it is not proper to derive [a ruling regarding] payment from [a ruling regarding] killing. Why then should R. Simeon also not derive [the ruling in this case] from [the law applying to] kofer? — It is proper to derive a liability regarding the ox[7] from another liability that similarly concerns the ox,[8] thus excluding kofer which is a liability that concerns only the owner.[9]

OR IF THE OX WHILE TRYING TO KILL A BEAST [BY ACCIDENT] KILLED A HUMAN BEING . . . THERE IS NO LIABILITY. Where, however, the ox had aimed at killing one human being and [by accident] killed another human being, there would be liability. [This implication of] the Mishnah is not in accordance with R. Simeon. For it has been taught: R. Simeon says: Even where [the ox] aimed at killing one person and [by accident] killed another person there would be no liability. What was the reason of R. Simeon? — Scripture states: The ox shall be stoned and its owner also shall be put to death,[10] [implying that only] in those cases in which the owner would be subject to be put to death [were he to have committed murder], the ox also would be subject to be put to death. Just as therefore in the case of the owner the liability arises only where he was aiming at the

particular person [who was actually killed], so also in the case of the ox the liability will arise only where it was aiming at the particular person [who was actually killed]. But whence do we know that this is so even in the case of the owner himself?[11] — Scripture States: And lie in wait for him and rise up against him[12] [which indicates that he is not liable] unless he bad been aiming at the particular person [whom he killed]. What then do the Rabbis[13] make of [the words,] 'And lie in wait'? — It was said at the School of R. Jannai: They except [on the strength of them a manslaughter committed by] a stone being thrown into a crowd.[14] How is this to be understood? If you say that there were [in the crowd] nine heathens and one Israelite, why not except the case on the ground that the majority [in the crowd] were persons who were heathens?[15] And even where they were half and half, does not an accused in a criminal charge have the benefit of the doubt? — The case is one where there were nine Israelites and one heathen. For though in this case the majority [in the crowd] consisted of Israelites, still since there was among them one heathen he was an essential part [of the group], and essential part[16] is reckoned as equivalent to half, and where there is a doubt in a criminal charge the accused has the benefit.

MISHNAH. WHERE AN OX OF A WOMAN, OR AN OX OF [MINOR] ORPHANS, OR AN OX OF A GUARDIAN, OR AN OX OF THE WILDERNESS, OR AN OX OF THE SANCTUARY, OR AN OX OF A PROSELYTE WHO DIED WITHOUT [LEGAL] HEIRS,[17] [HAS KILLED A PERSON], IT IS LIABLE TO [BE STONED TO] DEATH. R. JUDAH SAYS: IN THE CASE OF AN OX OF THE WILDERNESS, AN OX OF THE SANCTUARY AND AN OX OF A PROSELYTE WHO DIED [WITHOUT HEIRS] THERE WOULD BE EXEMPTION FROM [STONING TO] DEATH SINCE THESE HAVE NO [PRIVATE] OWNERS.

GEMARA. Our Rabbis taught: [The word] ox occurs seven times [in the section dealing with Cattle killing man][18] to include the ox of a woman, the ox of [minor] orphans, the ox of a guardian, the ox of the wilderness, the ox of the Sanctuary and the ox of a proselyte who died without [legal] heirs. R. Judah, however, says: An ox of the wilderness, an ox of the Sanctuary and an ox of a proselyte who died without heirs are exempt from [stoning to] death since these have no [private] owners.

R. Huna said: The exemption laid down By R. Judah extends even to the case where the ox gored and was only subsequently consecrated to the Temple, or where the ox gored and was only subsequently abandoned. Whence do we know this? — From the fact that R. Judah specified both an ox of the wilderness and an ox of a proselyte who died without heirs. Now what actually is 'an ox of a proselyte who died'? Surely since he left no heirs the ox remained ownerless, and this [category] would include equally an ox of the wilderness and an ox of the proselyte who died without heirs? We must suppose then that what he intended to tell us [in mentioning both] was that even where the ox gored but was subsequently consecrated, or where the ox gored but was subsequently abandoned, [the exemption would still apply] and this may be taken as proved. It has also been taught to the same effect:[19] R. Judah went even further, saying: Even if after having gored, the ox was consecrated or after having gored it became ownerless, there is exemption, as it has been said, And it hath been testified to his owner and he hath not kept him in, but that he hath killed a man or a woman, the ox shall be stoned.[20] This applies only when no change of status has taken place between the manslaughter and the appearance before the Court.[21] Does not the final verdict also need to comply with this same condition? Does not the same text, The ox shall be stoned,[22] [apply also to] the final verdict? — Read therefore: That is so only when no change in status has taken place between the manslaughter, the appearance before the Court, and the final verdict.

MISHNAH. IF WHILE AN OX [SENTENCED TO DEATH] IS BEING TAKEN OUT TO BE STONED ITS OWNER DECLARES IT SACRED, IT DOES NOT BECOME SACRED;[23] IF HE SLAUGHTERS IT, ITS FLESH IS FORBIDDEN [FOR ANY USE].[23] IF, HOWEVER. BEFORE THE SENTENCE HAS BEEN PRONOUNCED THE OWNER CONSECRATES IT, IT IS

CONSECRATED, AND IF HE SLAUGHTERS IT, ITS FLESH IS PERMITTED [FOR FOOD].

IF THE OWNER HANDS OVER HIS CATTLE TO AN UNPAID BAILEE OR TO A BORROWER, TO A PAID BAILEE OR TO A HIRER, THEY ENTER INTO ALL LIABILITIES IN LIEU OF THE OWNER: IN THE CASE OF MU'AD THE PAYMENT WOULD HAVE TO BE IN FULL, WHEREAS IN THE CASE OF TAM HALF DAMAGES WOULD BE PAID.

GEMARA. Our Rabbis taught: If an ox has killed [a person], and before its judgment is pronounced its owner sells it,

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(1) Being done not by the body of the ox but by something set in motion by it.

(2) Dealt with supra p. 79.

(3) [Kofer is imposed only where death was caused by the body of the ox even as is the case with 'goring'.]

(4) And was thus the whole time as it were a part of the body of the ox.

(5) Ex. XXI, 29-30.

(6) Cf. Tosef. B.K. IV.

(7) I.e. a liability to make good the damage done by the ox.

(8) Such as the death of the ox for the manslaughter it committed.

(9) As kofer is the ransom of his life.

(10) Ex. XXI, 29.

(11) Committing murder.

(12) Deut. XIX, II.

(13) Who differ from R. Simeon on this point. v. Sanh. 79a.

(14) And a person was killed.

(15) For in matters of judgment the principle of 'majority' is as a rule the deciding factor. [That does not mean to imply that the killing of a heathen was no murder. The Mekilta in Ex. XXI, 12 states explicitly that the crime is equally condemnable irrespective of the religion and nationality of the victim. But what it does mean is that the Biblical legislation in regard to crime did not apply to heathens. As foreigners they fully enjoyed their own autonomous right of self-help, i.e., blood feuds or ransom, prohibited by the Law to the Jews, and accordingly were not governed by the provisions made in the Bible relating to murder, v. Guttmann, loc. cit. p. 16 ff and supra p. 211, n. 6.]

(16) Lit., 'fixed'. For a full discussion of this passage, v. Sanh. (Sonc. ed.) p. 531 and notes a.l.

(17) The ox thus becoming ownerless.

(18) Ex. XXI, 28-32.

(19) Supra p. 55.

(20) Ex. XXI, 29.

(21) Supra p. 56.

(22) Ex. XXI, 29.

(23) Cf. supra p. 234.

the sale holds good; if he declares it sacred, it is sacred; if it is slaughtered, its flesh is permitted [for food]; if a bailee returns it to the house of its owner, it is an effective restoration. But if after its sentence had already been pronounced the owner sold it, the sale would not be valid; if he consecrates it, it is not consecrated; if it is slaughtered its flesh is forbidden [for any use]; if a bailee returns it to the house of its owner, it is not an effective restoration. R. Jacob, however, says: Even if after the sentence had already been pronounced the bailee returned it to its owner, it would be an effective restoration. Shall we say that the point at issue[1] is that in the view of the Rabbis it is of no avail to plead[2] regarding things which became forbidden for any use, 'Here is your property before you',[3] whereas in the view of R. Jacob it can be pleaded even regarding things forbidden for any use, 'Here is your property before you'? — Rabba said: Both parties in fact agree that even regarding things forbidden for any use, the plea, 'Here is your property before you' can be advanced, for if it is

as you said,[4] why did they not differ in the case of leaven[5] on Passover?[6] But the point at issue here [in the case before us] must therefore be whether [or not] sentence may be pronounced over an ox in its absence. The Rabbis maintain that no sentence can be pronounced over an ox in its absence, and the owner may accordingly plead against the bailee: 'If you would have returned it to me [before the passing of the sentence], I would have caused it to escape to the pastures, whereas you have allowed my ox to fall into the hands of those[7] against whom I am unable to bring any action'. R. Jacob, however, maintains that the sentence can be pronounced over the ox even in its absence, and the bailee may accordingly retort to the owner: 'In any case the sentence would have been passed on the ox.' What is the reason of the Rabbis? — [Scripture says]: The ox shall be stoned and its owner also shall be put to death[8] [implying that] the conditions under which the owner would be subject to be put to death [were he to have committed murder], are also the conditions under which the ox would be subject to be put to death; just as in the case of the owner [committing murder, the sentence could be passed only] in his presence,[9] so also [the sentence] in the case of an ox [could be passed only] in its presence. But R. Jacob [argues]: That applies well enough to the case of the owner [committing murder], as he is able to submit pleas, but is the ox also able to submit pleas?[10]

WHERE AN OWNER HAS HANDED OVER HIS CATTLE TO AN UNPAID BAILEE OR TO A BORROWER etc. Our Rabbis taught: The following four [categories of persons] enter into all liabilities in lieu of the owner, viz., Unpaid Bailee and Borrower, Paid Bailee and Hirer. [If cattle so transferred] kill [a person] if they are Tam, they would be stoned to death, but there would be exemption from kofer,[11] whereas in the case of Mu'ad, they would be stoned and the bailees in charge would be liable to pay kofer. In all cases, however, the value of the ox would have to be reimbursed to the owner by all of the bailees with the exception of the Unpaid Bailee. I would here ask with what circumstances are we dealing? If where the ox [was well] guarded, why should all of them[12] not be exempt [from having to reimburse the owner]? If on the other hand it was not guarded well, why should even the Unpaid Bailee not be liable?[13] — It might be said that we are dealing here with a case where inferior precautions[14] were taken to control the ox but not really adequate precautions.[15] In the case of an Unpaid Bailee his obligation to control was thereby fulfilled, whereas the others did thereby not yet fulfil their obligation to control. Still I would ask, whose view is here followed? If that of R. Meir

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(1) I.e. between R. Jacob and the Rabbis.

(2) Against a depositor or against a person who was robbed of an article, before it became prohibited for any use.

(3) The reason is that, by becoming forbidden for any use, the things, though not undergoing any change in their external size and appearance, do not remain (in the eyes of the law) the same things as were previously deposited with the bailee or misappropriated by the robber, their status then having been different.

(4) That R. Jacob and the Rabbis differ on this point.

(5) Stolen before the eve of Passover.

(6) I.e. whether the leaven might be returned by the robber after the approach of Passover when it became forbidden for any use; cf. infra pp. 561, 572.

(7) I.e. the Court of Law.

(8) Ex. XXI, 29.

(9) For which cf. Num. XXXV, 12.

(10) That its presence should be required.

(11) Ex. XXI, 28.

(12) With the exception, however, of the borrower who is liable even for accidents.

(13) For he also is liable for carelessness.

(14) Such as e.g. a door which would withstand only an ordinary wind. V. infra 55b

(15) So as to withstand a wind of even unusual force.

who maintained[1] that Hirer is subject to the same law as Unpaid Bailee, why is it not taught above 'with the exception of Unpaid Bailee and Hirer'? If [on the other hand the view followed] was that of R. Judah who maintained[1] that Hirer should be subject to the same law as Paid Bailee, why was it not taught 'with the exception of Unpaid Bailee, whereas in the case of Mu'ad they all would be exempt from kofer'?[2] — R. Huna b. Hinena thereupon said: This teaching is in accordance with R. Eliezer, who said,[3] that the only precaution for it [Mu'ad] is the slaughter knife, and who regarding Hirer might agree with the view of R. Judah that Hirer should be subject to the same law as Paid Bailee. Abaye, however, said: It could still follow the view of R. Meir, but as transposed by Rabbah b. Abbahu who learnt thus: How is the payment [for the loss of the article] regulated in the case of Hirer? R. Meir says: As in the case of Paid Bailee. R. Judah, however, says: As in the case of Unpaid Bailee.[4]

R. Eleazar said: Where an ox had been handed over to an Unpaid Bailee and damage was done by it, the bailee would be liable, but where damage was done to it, the bailee would be exempt. I would here ask what were the circumstances? If where the bailee had undertaken to guard the ox against damage, why even in the case where it was injured should there be no liability? If, on the other hand, where the bailee had not undertaken to guard against damage why even in the case where damage was done by the ox should there not be exemption? — Raba thereupon said: We suppose in fact that the bailee had undertaken to guard the ox against damage, but the case here is one where he had known the ox to be a gorer, and it is natural that what he did undertake was to prevent the ox from going and doing damage to others, but he did not think of the possibility of others coming and injuring it.

MISHNAH. IF THE OWNER FASTENED HIS OX [TO THE WALL INSIDE THE STABLE] WITH A CORD, OR SHUT THE DOOR IN FRONT OF IT IN THE ORDINARY WAY[5] BUT THE OX GOT OUT AND DID DAMAGE, WHETHER IT HAD BEEN TAM OR ALREADY MU'AD, HE WOULD BE LIABLE; THIS IS THE RULING OF R. MEIR. R. JUDAH, HOWEVER, SAYS: IN THE CASE OF TAM HE WOULD BE LIABLE, BUT IN THE CASE OF MU'AD HE WOULD BE EXEMPT, SINCE IT IS WRITTEN, AND HIS OWNER HATH NOT KEPT HIM IN,[6] [THUS EXCLUDING THIS CASE WHERE] IT WAS KEPT IN. R. ELIEZER SAYS: NO PRECAUTION IS SUFFICIENT [FOR MU'AD] SAVE THE [SLAUGHTER] KNIFE.

GEMARA. What was the reason of R. Meir? — He Maintained that normally oxen are not kept under control,[7] and the Divine Law enacted that Tam should involve liability to show that at least moderate precautions were required. Then the Divine Law stated further in the case of Mu'ad, And his owner hath not kept him in,[6] to show that [for this] really adequate precautions are required;[8] and the goring mentioned in the case of Tam is now placed on a par with the goring mentioned in the case of Mu'ad.[9] R. Judah, however, maintained that oxen normally are kept under control, and the Divine Law stated that in the case of Tam there should be payment to show that really adequate precaution is required. The Divine Law, however, goes on to say, And his owner hath not kept him in,[6] in the case of Mu'ad. [This would imply] that there should be there precaution of a superior degree. [These words, however, constitute] an amplification following an amplification, and as the rule is that an amplification following an amplification intimates nothing but a limitation,[10] Scripture has thus reduced the superior degree of the required precaution. And should you object to this that goring is mentioned in the case of Tam and goring is mentioned in the case of Mu'ad[9] [for mutual inference,[11] the answer is that in this case] the Divine Law has explicitly restricted [this ruling by stating] And his owner hath not kept him in,[6] [the word 'him' confining the application] to this one[12] but not to another.[13] But surely these words are needed for the stated purpose?[14] — [If that were so, the Divine Law should write surely, 'Hath not kept in'. Why does it say, hath not kept him in? To show that the rule applies to this one[15] but not to another.[16]

It has been taught: R. Eliezer b. Jacob says: Whether in the case of Tam or in that of Mu'ad, as

soon as even inferior precautions have been taken [to control the ox], there is exemption. What is his reason? — He concurs with R. Judah, in holding that in the case of Mu'ad precaution even of an inferior degree is sufficient, and he [extended this ruling to Tam as he] on the strength of [the mutual inference[17] conveyed by] the mention of goring in the case both of Tam and of Mu'ad.[17]

R. Adda b. Ahabah said: The exemption laid down by R. Judah applies only to the part of the payment due on account of the ox having been declared Mu'ad,[18] but the portion due on account of Tam remains unaffected.[19] Rab said: Where the ox was declared Mu'ad to gore with the right horn, it would thereby not become Mu'ad for goring with the left horn.[20] I would here ask: In accordance with whose view [was this statement made]? If in accordance with R. Meir, did he not say that whether in the case of Tam or in that of Mu'ad, precaution of a superior degree was needed?[21] If [on the other hand] in accordance with R. Judah,[22] why specify only the left horn? Even in the case of the right horn itself, does not one part of the payment come under the rule of Tam[23] and another under that of Mu'ad? I may say that in fact it is in accordance with R. Judah , and that Rab does not concur in the view. expressed by R. Addah b. Ahabah, and what Rab thus intended to say was that it was only in such an instance[24] that there would be in one ox part Tam and part Mu'ad

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(1) Cf. infra 57b.

(2) For R. Judah maintains that even an inferior precaution in the case of Mu'ad suffices to confer exemption for any damage that has nevertheless resulted.

(3) Infra p. 259.

(4) V. p. 257, n. 7. [And since R. Meir also holds that Mu'ad requires adequate precaution, he rightly makes the Hirer liable to pay kofer as well as reimburse the owner.]

(5) So that it would be perfectly safe in the case of an ordinary wind; cf. infra 55b.

(6) Ex. XXI,36.

(7) Cf. supra p. 64.

(8) So that it would be safe even in the case of a wind of unusual force.

(9) To show that both require really adequate precaution.

(10) V. Shebu. (Sonc. ed.) p. 12, n. 3.

(11) Cf. supra p. 250. [So that for Tam too an inferior precaution should suffice.]

(12) To Mua'd.

(13) To Tam.

(14) Lit., ‘for the negative’, that is, that he is liable because be failed to take the necessary precautions.]

(15) V. p. 259, n.7.

(16) Ibid. n. 8.

(17) Ibid. n. 6.

(18) I.e. the half added on account of the ox having been declared Mu'ad.

(19) And thus constantly subject to the law of Tam.

(20) Damage done by the right horn would thus be subject to the degree of precaution required in the case of Mu'ad while damage done by the left horn would still remain subject to the degree of precaution needed in Tam.

(21) Thus so far as precaution is concerned there would in this case be no difference between the right horn and the left horn.

(22) Who demands a greater degree of precaution in case of a Tam than in that of a Mu'ad, and accordingly there would be no liability if the ox gored with the right horn after inferior precautions had been taken, whereas there would be liability with the left horn.

(23) Requiring on that account adequate precautions, in the absence of which there should be liability.

(24) Where the ox gored three times with the right horn and was declared Mu'ad accordingly, remaining thus Tam in respect of the left horn.

. But in the case of an ox which was altogether Mu'ad no element of Tam could be found in it at all.

R. ELIEZER SAYS: NO PRECAUTION IS SUFFICIENT [FOR MU 'AD] SAVE [THE SLAUGHTER] KNIFE. Rabbah said: What was the reason of R. Eliezer? Because Scripture says: And his owner hath not kept him in,[1] [meaning] that precaution would no more be of any avail for such a one. Said Abaye to him: If that is so, why not similarly say on the strength of the words, And not cover it[2] that a cover would no more be of any avail for such a [pit]? And if you say that this is indeed the case, have we not learnt, 'Where it had been covered properly and an ox or an ass has [nevertheless] fallen into it there is exemption'?[3] — Abaye therefore said: The reason of R. Eliezer was as taught [elsewhere]:[4] R. Nathan says: Whence do we learn that a man should not bring up a vicious dog in his house, or keep a shaky ladder in his house? Because it is said: Thou bring not blood upon thy house.[5]

CHAPTER V

MISHNAH. IF AN OX HAS GORED A COW AND ITS [NEWLY-BORN] CALF IS FOUND [DEAD] NEAR BY, AND IT IS UNKNOWN WHETHER THE BIRTH OF THE CALF PRECEDED THE GORING[6] OR FOLLOWED THE GORING,[7] HALF DAMAGES[8] WILL BE PAID FOR [THE INJURIES INFLICTED UPON] THE COW[9] BUT [ONLY] QUARTER DAMAGES WILL BE PAID FOR [THE LOSS OF] THE CALF.[10] SO ALSO WHERE A COW GORED AN OX AND A [LIVE] CALF WAS FOUND NEAR BY, SO THAT IT WAS UNKNOWN WHETHER THE BIRTH OF THE CALF PRECEDED THE GORING[11] OR FOLLOWED THE GORING,[12] HALF DAMAGES CAN BE RECOVERED OUT OF THE COW, AND QUARTER DAMAGES OUT OF THE CALF.[13]

GEMARA. Rab Judah on behalf of Samuel said: This ruling is the view of Symmachus who held that money, the ownership of which cannot be decided has to be shared [by the parties].[14] The Sages, however, say that it is a fundamental principle in law that the onus probandi falls on the claimant. Why was it necessary to state 'this is a fundamental principle in law'? — It was necessary to imply that even where the plaintiff is positive and the defendant dubious[14] it is still the plaintiff on whom falls onus probandi. Or [we may say] it is also necessary in view of a case of this kind: For it has been stated:[15] If a man sells an ox to another and it is found to be a gorer, Rab maintained that the sale would be voidable,[16] whereas Samuel said that the vendor could plead 'I sold it to be slaughtered'.[17] How so? Why not see whether the vendee was a person buying for field work or whether he was a person buying to slaughter?[18] — Samuel's view can hold good where he was a person buying both for the one and the other. But why not see if the money paid corresponded to the value of an ox for field work, then it must have been purchased for field work; if, on the other hand it corresponded to that of an ox to be slaughtered, then it must have been purchased for slaughter?[19] — Samuel's view could still hold good where there was a rise in the price of meat so that the ox was worth the price paid for one for field work.

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(1) Ex. XXI, 29.

(2) Ibid. 33

(3) Infra 52a.

(4) Supra p. 67.

(5) Deut. XXII, 8. The same prohibition applies to a goring ox.

(6) In which case the death of the calf could not he imputed to the goring of the ox.

(7) So that the miscarriage of the calf was a result of the goring.

(8) In the case of Tam.

(9) As these have certainly resulted from the goring of the ox.

(10) On account of the doubt.

(11) In which case the calf did not participate in the goring.

(12) So that the calf while it was still an embryo took part in the act of the cow.

(13) V. Gemara, infra p. 264.
(14) Cf. also supra p. 196.
(15) B.B. 92a.
(16) At the instance of the vendee.
(17) As Samuel follows his own view that this grand principle in law accepted by the Sages has to he applied in all cases and in all circumstances, as the Gemara proceeds to explain.
(18) Would this consideration not be a piece of good circumstantial evidence?
(19) As indeed maintained by R. Judah in a similar case dealt with in B. B. 77b; as to the other view, cf. Tosaf. a.l.

Talmud - Mas. Baba Kama 46b

I may here ask: If the vendor had not the wherewithal for making payment, why not take the ox in lieu of money?[1] Do not people say, 'From the owner of your loan[2] take payment even in bran'? — No, this is to be applied where he had the wherewithal for making payment.[3] Rab who said that it was a voidable purchase maintained that we decide according to the majority of cases, and the majority of people buy for field work. Samuel, however, said that the vendor might plead against him, 'It was for slaughter that I sold it to thee,' and that we do not follow the majority,[4] for we follow the majority only in ritual matters, but in pecuniary cases we do not follow the majority, but whoever has a [pecuniary] claim against his neighbour the onus probandi falls upon him.

It has been taught to the same effect: 'Where an ox gored a cow and its [newly-born] calf was found [dead] nearby, so that it was unknown whether the birth of the calf preceded the goring, or followed the goring, half damages will be paid for [injuries inflicted upon] the cow but only quarter damages will be paid for [the loss of] the calf; this is the view of Symmachus. The Sages, however, say: If one claims anything from his neighbour, the onus probandi falls upon him.

R. Samuel b. Nahmani stated: Whence can we learn that the onus probandy falls on the claimant? It is said: If any man have any matters to do, let him come unto them,[5] [implying] 'let him bring evidence before them'. But R. Ashi demurred, saying: Do we need Scripture to tell us this?[6] Is it not common sense that if a man has a pain he visits the healer? No: the purpose of the verse is to corroborate the statement made by R. Nahman on behalf of Rabbah b. Abbuha: Whence can we learn that judges should give prior consideration to the first plaintiff?[7] It is said: If any man have any matters to do, let him come unto them[5] [implying]: let him cause his matters to be brought [first] before them. The Nehardeans however, said; It may sometimes be necessary to give prior consideration to the defendant, as for instance in a case where his property would otherwise depreciate in value.[8]

SO ALSO WHERE A COW GORED AN OX etc. [We have here] half damages plus quarter damages! Is it not [only] half of the damage that need be paid for? What then have full damages less a quarter to do here? — Abaye said: Half of the damage means one quarter of the damage,[9] and a quarter of the damage means one eighth of the damage.[10] It is true that where the cow and the calf belong to one owner, the plaintiff would be entitled to plead against the owner of the cow, 'In any case, have you not to pay me half damages?'[11] The ruling, however, applies to the case where the cow belonged to one and the calf to another.[12] Again, where the plaintiff claimed from the owner of the cow first it would still also make no difference, as he would be entitled to argue against the owner of the cow, 'It was your cow that did me the damage, [and it is for you to] produce evidence that there is a joint defendant with you.'[13] But where the rule applies is to a case where he claimed from the owner of the calf first, in which case the owner of the cow may say to him, 'You have made clear your opinion that there is a joint defendant with me.'[14] Some, however, say that even where the plaintiff claimed from the owner of the cow first, the latter might put him off by saying, 'It is definitely known to me[15] that there is a joint defendant with me.'[14] Raba said: Is then 'a fourth of the damage' and 'an eighth of the damage' mentioned in the text? Is not 'half damages' and 'quarter

damages' stated in the text?[16] — Raba therefore said: We suppose that in fact the cow and the calf belonged to one owner,[17] and the meaning is this: Where the cow is available,[18] the payment of half damages will be made out of the cow.[19]

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(1) Since the meat of the ox is worth the purchase money.

(2) I.e. from your debtor who is now the owner of the money lent to him; cf. the Roman 'Mutuum'.

(3) In which case the creditor is entitled to ready cash; cf. Tosaf. a.l. and supra 9a; 27a; B.B. 92b.

(4) Which is otherwise an accepted principle in Rabbinic Law; cf. Hul. 11b.

(5) Ex. XXIV, 14.

(6) Keth. 22a and Nid. 25a.

(7) I.e., where A instituted an action against B, and B on appearance introduced a counter-claim against A; cf. Rashi and Tosaf. a.l., and Sanh. 35a.

(8) Where, e.g., he has an opportunity of disposing of the estate concerned at a high price — an opportunity he might miss through any delay in a settlement of his counter-claim.

(9) I.e., a half of the half, as half constitutes the whole payment in the case of Tam.

(10) I.e., a quarter of the half.

(11) Since both the cow and the calf belong to you.

(12) As e.g., where the cow was sold with the exception of its offspring; Rashi.

(13) That is, that the calf took part in the goring, otherwise you must be held solely responsible.

(14) So that I cannot accordingly be held liable for all the damages.

(15) Unless you prove to the contrary.

(16) How then could Abaye interpret half-damages to mean quarter damages, and quarter damages to mean an eighth of the damage?

(17) In the case stated in the Mishnah.

(18) To be distrained upon for the damages in accordance with the law applicable to Tam.

(19) As she definitely did the damage.

Talmud - Mas. Baba Kama 47a

But where the cow is not available, quarter damages will be paid out of the body of the calf.[1] Now this is so only where it is not known whether the calf was still part of the cow at the time she gored or whether it was not so, but were we certain that the calf was still part of the cow at the time of the goring[2] the whole payment of the half damages would be made from the body of the calf. Raba here adopts the same line of reasoning [as in another place], as Raba has indeed stated: Where a cow has done damage, payment can be collected out of the body of its calf, the reason being that the latter is a part of the body of the former, whereas in the case of a chicken doing damage, no payment will be made out of its eggs, the reason being that they are a separate [body].[3]

Raba further said: [Where an ox has gored a cow and caused miscarriage] the valuation will not be made for the cow separately and for the calf separately, but the valuation will be made for the calf as at the time when it formed a part of the cow; for if you do not adopt this rule,[4] you will be found to be making the defendant suffer unduly. The same method is followed in the case of the cutting off the hand of a neighbour's slave;[5] and the same method is followed in the case of damage done to a neighbour's field.[6] Said R. Aha the son of Raba to R. Ashi: If justice demands, why should not the defendant suffer? — Because he is entitled to say to him: 'Since it was a pregnant cow that I deprived you of, it is a pregnant cow which should be taken into valuation.'

There is no question that where the cow belonged to one owner and the calf to another owner, the value of the fat condition of the cow will go to the owner of the cow.[7] But what of the value of its bulky appearance? — R. Papa said: It will go to the owner of the cow. R. Aha the son of R. Ika said: It will be shared [by the two owners].[8] The law is that it will be shared [by the two owners].

MISHNAH.IF A POTTER BRINGS HIS WARES INTO THE COURTYARD OF ANOTHER PERSON WITHOUT PERMISSION, AND THE CATTLE OF THE OWNER OF THE COURTYARD BREAKS THEM, THERE IS NO LIABILITY.[9] MOREOVER, SHOULD THE ANIMAL BE INJURED BY THEM, THE OWNER OF THE POTTERY IS LIABLE [TO PAY DAMAGES]. IF, HOWEVER, HE BROUGHT [THEM] IN WITH PERMISSION,[10] THE OWNER OF THE COURTYARD IS LIABLE. SIMILARLY IF [A MAN] BRINGS HIS PRODUCE INTO THE COURTYARD OF ANOTHER PERSON WITHOUT PERMISSION AND THE ANIMAL OF THE OWNER OF THE PREMISES CONSUMES IT, THERE IS NO LIABILITY.[11] IF IT WAS HARMED BY IT THE OWNER WOULD BE LIABLE. IF, HOWEVER, HE BROUGHT THEM IN WITH PERMISSION,[10] THE OWNER OF THE PREMISES WOULD BE LIABLE. SO ALSO IF [A MAN] BRINGS HIS OX INTO THE COURTYARD OF ANOTHER WITHOUT

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(1) On account of the doubt involved in the case dealt with in the Mishnah.

(2) In which case it participated in the goring.

(3) [So Rashi. Curr. edd. read 'mere excrement'.]

(4) But that the cow should be valued separately and the calf separately.

(5) [You do not value the hand separately, viz., what price a master would in the first instance be willing to take for depriving his slave of the use of his hand; but the difference in the value of a slave who had his hand cut off — a much smaller price.]

(6) [The valuation is not made on the basis of the single plot which has been damaged, but on the basis of its value in relation to the whole field.]

(7) As the embryo did not increase the fatness of the cow.

(8) As both the cow and embryo participate in the bulky appearance of the animal.

(9) As the plaintiff was a trespasser.

(10) In which case he was no trespasser

(11) V.p. 266, n. 7.

Talmud - Mas. Baba Kama 47b

PERMISSION AND THE OX OF THE OWNER OF THE PREMISES GORES IT OR THE DOG OF THE OWNER OF THE PREMISES BITES IT, THERE IS NO LIABILITY. MOREOVER SHOULD IT GORE THE OX OF THE OWNER OF THE PREMISES ITS OWNER WOULD BE LIABLE. AGAIN, IF IT FALLS [THERE] INTO A PIT OF THE OWNER OF THE PREMISES AND MAKES THE WATER IN IT FOUL, THERE WOULD BE LIABILITY. SO ALSO IF [IT KILLS] THE OWNER'S FATHER OR SON [WHO] WAS INSIDE THE PIT, THERE WOULD BE LIABILITY TO PAY KOFER.[1] IF, HOWEVER, HE BROUGHT IT IN WITH PERMISSION, THE OWNER OF THE YARD WOULD BE LIABLE. RABBI, HOWEVER, SAYS: IN ALL THESE CASES THE OWNER OF THE PREMISES WOULD NOT BE LIABLE UNLESS HE HAS TAKEN IT UPON HIMSELF TO WATCH [THE ARTICLES BROUGHT INTO HIS PREMISES].

GEMARA. The reason why [the potter would be liable for damage occasioned by his pottery to the cattle of the owner of the premises] is because the entry was without permission, which shows that were it with permission the owner of the pots would not be liable for the damage done to the cattle of the owner of the premises and we do not say that the owner of the pots has by implication undertaken to watch the cattle of the owner of the premises. Who is the authority for this view? — Rabbi, who has laid down that without express stipulation no duty to watch is undertaken.[2] Now look at the second clause: IF HE BROUGHT THEM IN WITH PERMISSION, THE OWNER OF THE PREMISES WOULD BE LIABLE. This brings us round to the view of the Rabbis,[3] who said that even without express stipulation he makes himself responsible for watching. Moreover, [it was further stated]: RABBI SAYS: IN ALL THESE CASES THE OWNER OF THE PREMISES WOULD NOT BE LIABLE UNLESS HE HAS TAKEN UPON HIMSELF TO WATCH. [Are we to say that] the opening clause and the concluding clause are in accordance with Rabbi while the middle clause is in accordance with the Rabbis? — R. Zera thereupon said: The contradiction [is obvious]; he who taught one clause cannot have taught the other clause. Raba, however, said; The whole [of the anonymous part of the Mishnah] is in accordance with the Rabbis, for [where the entry was] with permission the owner of the premises undertook the safeguarding of the pots even against breakage by the wind.[4]

IF [A MAN] BRINGS HIS PRODUCE INTO THE COURTYARD OF ANOTHER OWNER etc. Rab said: This rule[5] applies only where the animal [was injured] by slipping on them, but if the animal ate them [and was thereby harmed], there would be exemption on the ground that it should not have eaten them.[6] Said R. Shesheth: I feel inclined to say that it was only when he was drowsy or asleep that Rab could have made such a statement.[7] For it was taught: If one places deadly poison before the animal of another he is exempt from the judgment of Man, but liable to the judgment of Heaven.[8] Now, that is so only in the case of deadly poison which is not usually consumed by an animal, but in the case of products that are usually consumed by an animal, there appears to be liability even to the judgment of Man. But why should this be so? [Why not argue:] It should not have eaten them? — I may reply that strictly speaking even in the case of produce there should be exemption from the judgment of Man, and there was a special purpose in enunciating this ruling with reference to deadly poison, namely that even where the article was one not usually consumed by an animal, there will still be liability to the judgment of Heaven. Or if you wish you may say that by the deadly poison mentioned was meant hypericum,[9] which like a fruit [is eaten by animals].

An objection could be raised [from the following]: If a woman enters the premises of another person to grind wheat without permission, and the animal of the owner consumes it, there is no liability; if the animal is harmed, the woman would be liable. Now, why not argue: It should not have over-eaten? — I can answer: [In what respect] does this case go beyond that of the Mishnah, which was interpreted [to refer to damage occasioned by] the animal having slipped over them? What then was in the mind of the one who made the objection? — He might have said to you; Your

explanation is satisfactory regarding the Mishnah where it says, IF IT WAS HARMED BY IT [which admits of being interpreted] that the animal slipped over them. But here [in the Baraitha] it says, 'if the animal is harmed', without the words 'by them', so that surely the consumption [of the wheat] is what is referred to. And the other?[10] — He can contend [that the omission of these words] makes no difference.

Come and hear: If a man brought his ox into the courtyard of another person without permission, and it ate there wheat and got diarrhoea from which it died, there would be no liability. But if he brought it in with permission, the owner of the courtyard would be liable. Now why not argue: It should not have eaten?[11] — Raba thereupon said: How can you raise an objection from a case where permission was given[12] against a case where permission was not given?[13] Where permission was given, the owner of the premises assumed liability for safeguarding the ox even against its strangling itself.

The question was raised: Where the owner of the premises has assumed responsibility to safeguard [the articles brought in to his premises], what is the legal position? Has the obligation to safeguard been assumed by him [only] against damage from his own [beasts], or has he perhaps also undertaken to safeguard from damage in general? Come and hear: Rab Judah b. Simon learnt in the [Tractate] Nezikin of the School of Karna;[14] If a man brings his produce into the courtyard of another without permission, and an ox from elsewhere comes and consumes it, there is no liability. But if he brought it in with permission there would be liability. Now, who would be exempt[15] and who would be liable?[16] Does it not mean that the owner of the premises would be exempt[15] and[16] the owner of the premises would be liable?[17] — I may say that this is not so, it is the owner of the ox who would be exempt[15] and the owner of the ox who would be liable.[16] But if it refers to the owner of the ox,

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(1) Ex. XXI, 29-30.

(2) [For the present it is assumed that the duty applies alike to the owner of the pottery in regard to the belongings of the owner of the premises as to the latter in regard to the pottery.]

(3) The representatives of the anonymous view cited on the Mishnah.

(4) Whereas the owner of the pottery could never be considered to have by implication accepted upon himself the responsibility for safeguarding the belongings of the owner of the premises.

(5) Imposing liability where the animal was injured by the produce.

(6) Cf. infra 57b.

(7) V. infra p. 376.

(8) V. infra 56a.

(9) [St. John's Wort.]

(10) Rab.

(11) So that the owner of the courtyard should not be liable for the harm occasioned by the wheat to the ox brought in with his permission.

(12) And the harm was done to the ox thus brought in with permission.

(13) I.e. where produce brought in without permission was eaten by the owner's animal which thereby suffered harm, in which case the owner though being a trespasser has still no liability to safeguard to that extent the belongings of the owner of the premises.

(14) [Karna, one of the Judges of the Exile, had a collection of Babylonian traditions, הלכתא דבבלאי (Gen. Rab. XXXIII), of pre-Amoraic days, v. Funk, S., Die Juden in Babylonian, I, n. 1.]

(15) In the absence of permission.

(16) Where permission was granted.

(17) [This shows that the responsibility assumed by the owner of the premises extends in regard to damages in general.]

what has permission or absence of permission to do with the case?[1] — I will answer; [Where the produce was brought in] with permission, the case would be one of Tooth [doing damage] in the plaintiff's premises,[2] and Tooth doing damage in the plaintiff's premises entails liability,[3] whereas in the absence of permission it would be a case of Tooth doing damage on public ground,[4] and Tooth doing damage on public ground entails no liability.[5]

Come and hear: If a man brings his ox into the premises of another person without permission, and an ox from elsewhere comes and gores it, there is no liability. But if he brought it in with permission there would be liability. Now, who would be exempt[6] and who would be liable?[7] Does it not mean that it is the owner of the premises who would be exempt[6] and the owner of the premises who would be liable?[7] — No, it is the owner of the ox [from elsewhere] who would be exempt[6] and similarly it is the owner of the ox [from elsewhere] who would be liable.[7] But if so, what has permission or the absence of permission to do with the case?[8] — I would answer that this teaching is in accordance with R. Tarfon, who held[9] that the unusual damage occasioned by Horn in the plaintiff's premises has to be compensated in full: [Where the ox was brought in] with permission the case would therefore be one of Horn doing damage in the plaintiff's premises[10] and the payment would have to be for full damages, whereas in the absence of permission it would amount to Horn doing damage on public ground,[4] and the payment would accordingly be only for half damages.

A certain woman once entered the house of another person for the purpose of baking bread there, and a goat of the owner of the house came and ate up the dough, from which it became sick and died. [In giving judgment] Raba ordered the woman to pay damages for the value of the goat. Are we to say now that Raba differed from Rab, since Rab said:[11] It should not have eaten?[12] — I may reply, are both cases parallel? There,[11] there was no permission and the owner of the produce did not assume any obligation of safeguarding [the property of the owner of the premises], whereas in this case, permission had been given and the woman had accepted responsibility for safeguarding[13] [the property of the owner of the premises]. But why should the rule in this case be different from [what has been laid down, that] if a woman enters the premises of another person to grind wheat without permission, and the animal of the owner of the premises eats it up, the owner is not liable, and if the animal suffers harm the woman is liable, the reason being that there was no permission, which shows that where permission was granted she would be exempt?[14] — I can answer: In the case of grinding wheat, since there is no need of privacy at all, and the owner of the premises is not required to absent himself, the obligation to take care [of his property] still devolves upon him, whereas in the case of baking where, since privacy is required,[15] the owner of the premises absents himself [from the premises], the obligation to safeguard his property must fall upon the woman.

IF A MAN BRINGS HIS OX INTO THE PREMISES OF ANOTHER PERSON [etc.]. Raba said: If he brings his ox on another person's ground and it digs there pits, ditches, and caves, the owner of the ox would be liable for the damage done to the ground, and the owner of the ground would be liable for any damage resulting from the pit. For though the Master stated:[16] [It says,] If a man shall dig a pit,[17] and not ‘if an ox [shall dig] a pit’, still here [in this case] since it was the duty of the owner of the ground to fill in the pit and he did not fill it in, he is reckoned [in the eyes of the law] as having himself dug it.[18]

Raba further said: If he brings his ox into the premises of another person without permission, and the ox injures the owner of the premises, or the owner of the premises suffers injury through the ox,[19] he is liable, but if it lies down,[20] he has no liability. But why should the fact of its lying down confer exemption?[21] — R. Papa thereupon said: What is meant by ‘it lies down’ is that the ox lays down its excrements [upon the ground], and thereby soils the utensils of the owner of the premises. [The exemption is because] the excrements[22] are a case of Pit, and we have never found Pit involving liability for damage done to inanimate objects.[23] This explanation is satisfactory if we adopt the view of Samuel who held[24] that all kinds of nuisances come under the head of Pit. But on

the view of Rab who said[24] [that they do not come under the head of Pit] unless they have been abandoned,[25] what are we to say? — It may safely be said that excrements as a rule are abandoned.[26]

Raba said further: If one enters the premises of another person without permission, and injures the owner of the premises,[27] or the owner of the premises suffers injury through him[28] there would be liability;[29] and if the owner of the premises injured him, there would be no liability. R. Papa thereupon said: This ruling applies only where the owner had not noticed him. For if he had noticed him, the owner of the premises by injuring him would render himself liable, as the trespasser would be entitled to say to him: 'Though you have the right to eject me, you have no right to injure me.'[30] These authorities[31] followed the line of reasoning [adopted by them elsewhere], for Raba or, as others read, R. Papa stated:

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(1) Since the defendant was not the owner of the premises.

(2) As the plaintiff obtained a legal right to keep there the object which was subsequently damaged by a stray ox.

(3) Ex. XXII, 4.

(4) I.e. on premises where the plaintiff has no more right than the owner of the ox, the defendant.

(5) Cf. supra p. 17.

(6) V. p. 270, n. 4.

(7) V. p. 270, n. 5.

(8) V. p. 270, n. 7.

(9) Supra p. 125.

(10) V. p. 270, n. 8.

(11) Supra p. 268.

(12) And the woman would therefore not have to pay for the damage sustained by the animal of the owner of the premises.

(13) V. the discussion that follows.

(14) Why then should the woman, the owner of the dough, have to pay?

(15) Lit., 'she requires privacy.' As the woman would usually have to uncover her arms.

(16) Infra p. 93 and cf. also supra 51a.

(17) Ex. XXI, 33.

(18) The owner of the ground is therefore liable for any damage resulting from the pit.

(19) By stumbling over it

(20) And, as it is assumed at present, it did damage thereby.

(21) If damage was done by it.

(22) As any other nuisance.

(23) For Scripture said: Ox and ass'; cf. supra p. 18.

(24) Supra p. 150.

(25) But where they were not abandoned they would be subject to the law applicable to Cattle, where there is no exemption for damage done to inanimate objects.

(26) Cf. B.M. 27a.

(27) [Whether with or without intention.]

(28) I.e. the trespasser, by stumbling over him.

(29) Upon the trespasser.

(30) Cf. supra p. 124.

(31) I.e. Raba and R. Papa.

Talmud - Mas. Baba Kama 48b

Where both of them [plaintiff and defendant] had a right [to be where they were][1] or where both of them [on the other hand] had no right [to be where they were],[2] if either of them injured the other, he would be liable, but if either suffered injury through the other, there would be no liability. This is so only where both of them had a right to be where they were[1] or where both of them [on the other

hand] had no right to be where they were,[2] but where one of them had a right and the other had no right, the one who had a right would be exempt,[3] whereas the one who had no right would be liable.[3]

IF IT FALLS [THERE] INTO A PIT OF THE OWNER AND MAKES THE WATER IN IT FOUL, THERE WOULD BE LIABILITY. Raba said: This ruling applies only where the ox makes the water foul at the moment of its falling into the pit.[4] For where the water became foul [only] after it fell in, there would be exemption on the ground that [the damage done by] the ox[5] should then be [subject to the law applicable in the case of] Pit, and water is an inanimate object, and we never find Pit entailing liability for damage done to inanimate objects.[6] Now this is correct if we accept the view of Samuel who said[7] that all kinds of nuisances are subject to the law of Pit. But on the view of Rab who held[7] [that this is not so] unless they have been abandoned,[8] what are we to say? — We must therefore suppose that if the statement was made at all, it was made in this form: Raba said: The ruling [of the Mishnah] applies only where the ox made the water foul by [the dirt of] its body.[4] But where it made the water foul by the smell of its carcass there would be no liability, the reason being that the ox [in this case] was only a [secondary] cause [of the damage], and for a mere [secondary] cause there is no liability.

WHERE [IT KILLS] THE OWNER'S FATHER OR HIS SON [WHO] WAS INSIDE THE PIT, THERE WOULD BE LIABILITY TO PAY KOFER. But why? Was the ox not Tam?[9] — Rab thereupon said: We are dealing with a case where the ox was Mu'ad to fall upon people in pits. But if so, should it not have already been killed [on the first occasion]?[10] — R. Joseph thereupon said: The ox was looking at some grass [growing near the opening of the pit] and thus fell [into it].[11] Samuel, however, said: This ruling is in accordance with R. Jose the Galilean, who held[12] that [killing by] Tam entails the payment of half kofer. ‘Ulla, however, said: It accords with the ruling laid down by R. Jose the Galilean in accordance with R. Tarfon, who said[13] that Horn doing damage in the plaintiff's premises entails the payment of full damages.[14] So here the liability is for the payment of full kofer.[15] ‘Ulla's answer satisfactorily explains why the text [of the Mishnah] says, IF HIS FATHER OR HIS SON WAS INSIDE THE PIT.[16] But if we take the answer of Samuel, why [is the ruling stated] only with reference to his father and his son?[16] Why not with reference to any other person? — The Mishnah took the most usual case.[17]

IF HE BROUGHT THEM IN WITH PERMISSION, THE OWNER OF THE PREMISES WOULD BE LIABLE etc. It was stated: Rab said: ‘The law[18] is in accordance with the first Tanna,’ whereas Samuel said, ‘The law[18] is in accordance with the view of Rabbi.’[19]

Our Rabbis taught: [If the owner of the premises says:] ‘Bring in your ox and watch it,’ should the ox then damage, there would be liability,[20] but should the ox suffer injury there would be no liability.[21] If, however, [the owner says], ‘Bring in your ox and I will watch it,’ should the ox suffer injury there would be liability,[21] but should it do damage[22] there would be no liability.[20] Does not this statement contain a contradiction? You say that [where the owner of the premises said:] ‘Bring in your ox and watch it,’ should the ox do damage there would be liability,[20] but should the ox suffer injury there would be no liability.[21] Now the reason for this is that he expressly said to the owner of the ox ‘watch it’ — [the reason, I mean,] that the owner of the ox will be liable and the owner of the premises exempt; from which I infer that if no explicit mention was made [as to the watching] the owner of the premises would be liable, and the owner of the ox exempt, indicating that without express stipulation to the contrary the former takes it upon himself to safeguard [the ox].[23] Now read the concluding clause: But [if he said]: ‘Bring in your ox and I will watch it’, should the ox suffer injury there would be liability,[24] but should it do damage there would be no liability, [the reason being that] he expressly said to him ‘and I will watch it’ — [the reason,] I mean, that the owner of the premises would be liable and the owner of the ox exempt; from which I infer that if there is no express stipulation, the owner of the ox would be liable and the owner of the premises exempt, as in such a case the owner of the premises does not take it upon himself to safeguard [the ox]. This brings

us round to the view of Rabbi, who laid down [there would be no liability upon him][24] unless where the owner of the premises had taken upon himself to safeguard. Is then the opening clause in accordance with the Rabbis, and the concluding clause in accordance with Rabbi? — R. Eleazar thereupon said: The contradiction [is obvious]; he who taught one clause cannot have taught the other clause.[25] Raba, however, said: The whole [of the Baraitha] can be explained as being in accordance with the Rabbis; since the opening clause required the insertion of the words, 'watch it',[26] there were correspondingly inserted in the concluding clause the words 'And I will take care of it'. R. Papa, however, said: The whole [of the Baraitha] is in accordance with Rabbi;[27] for he concurred in the view of R. Tarfon who stated[28] that Horn doing damage in the plaintiff's premises would entail the payment of full damages. It therefore follows that where he expressly said to him, 'Watch it', he certainly did not transfer a legal right to him to any place in the premises, so that the case[29] becomes one of Horn doing damage in the plaintiff's premises, and [as already explained][30] where Horn does damage in the plaintiff's premises the payment must be for full damages. Where, however, he did not expressly say, 'Watch it', he surely granted him a legal right to place in the premises, so that the case is one of [damage done on] premises of joint owners and [as we know] where Horn does damage on premises of owners in common, there is no liability to pay anything but half damages.[31]

MISHNAH. IF AN OX WHILE CHARGING ANOTHER OX [INCIDENTALLY] INJURES A WOMAN WHO [AS A RESULT] MISCARRIES, NO COMPENSATION NEED BE MADE FOR THE LOSS OF THE EMBRYOS. BUT IF A MAN WHILE MEANING TO STRIKE ANOTHER MAN [INCIDENTALLY] STRUCK A WOMAN WHO THUS MISCARRIED HE WOULD HAVE TO PAY COMPENSATION FOR THE LOSS OF THE EMBRYOS.[32] HOW IS THE COMPENSATION FOR [THE LOSS OF] EMBRYOS FIXED? THE ESTIMATED VALUE OF THE WOMAN BEFORE HER MISCARRIAGE IS COMPARED WITH HER VALUE AFTER MISCARRIAGE.

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(1) Such as e.g. on public ground or on their joint premises.

(2) E.g. where they were running on public ground, for which cf. supra p. 172.

(3) For incidental damage suffered through him.

(4) In which case the damage was direct.

(5) By becoming a stationary nuisance.

(6) Supra p. 18.

(7) V. p. 273, n. 3.

(8) V. p. 273, n. 4.

(9) In which case no kofer has to be paid.

(10) For in a case where the ox threw itself upon a human being in a pit to kill him it could hardly escape being sentenced to death and stoned accordingly. The explanations given supra pp. 232-3 on a similar problem could therefore hardly apply here.

(11) Without any intention to kill the human being in the pit. The ox is therefore exempt from being stoned, but the owner is nevertheless liable to pay kofer as this kind of damage comes under the category of Tooth, since the ox did it for its own gratification; cf. supra p. 6.

(12) Supra p. 66.

(13) V. p. 271, n. 6.

(14) Cf. also supra p. 134.

(15) Since the ox killed the human being on his own premises.

(16) So that he was killed on his own premises.

(17) For it is not quite usual that a person not of the household of the owner of the yard should be in the pit which was the private property of the owner.

(18) [V.l., 'The halachah is.']

(19) Cf. Bez. 40a.

(20) Upon the owner of the ox.

(21) Upon the owner of the premises.
(22) To the belongings of the owner of the premises.
(23) [MS. M. adds: This will be in accordance with the Rabbis who hold that in the absence of any express stipulation there is still the duty to watch.]
(24) Upon the owner of the premises.
(25) Cf. supra p. 268.
(26) As otherwise the owner of the premises would by implication, according to the Rabbis, have accepted liability to safeguard.
(27) For while the inference from the concluding clause holds good, this is not the case with that of the commencing clause, as even where no mention was made about watching the ox brought in, the owner of the premises would still not be liable for any damage done to it. There may, however, be a difference where it gored an ox of the owner of the premises if Rabbi followed the view of R. Tarfon as will be explained in the text.
(28) V. supra p. 125.
(29) Where the ox brought in gored an ox of the owner of the premises.
(30) V. p. 276, n. 6.
(31) Supra. p. 58.
(32) Ex. XXI, 22

Talmud - Mas. Baba Kama 49a

R. SIMEON B. GAMALIEL SAID: IF THIS IS SO, A WOMAN AFTER HAVING GIVEN BIRTH INCREASES IN VALUE.[1] IT IS THEREFORE THE VALUE OF THE EMBRYOS WHICH HAS TO BE ESTIMATED, AND THIS AMOUNT WILL BE GIVEN TO THE HUSBAND. IF, HOWEVER, THE HUSBAND IS NO LONGER ALIVE, IT WOULD BE GIVEN TO HIS HEIRS. IF THE WOMAN WAS A MANUMITTED SLAVE OR A PROSELYTESS [AND THE HUSBAND, ALSO A PROSELYTE, IS NO LONGER ALIVE], THERE WOULD BE COMPLETE EXEMPTION.[2] GEMARA. The reason why there is exemption is because the ox was charging another ox, from which we infer that if it was charging the woman, there would be liability to pay. Will this not be in contradiction to the view of R. Adda b. Ahabah? For did not R. Adda b. Ahabah state[3] that [even] where Cattle were charging the woman, there would [still] be exemption from paying compensation for [the loss] of the embryos? — R. Adda b. Ahabah might reply: The same ruling [of the Mishnah] would apply even in the case of Cattle making for the woman, where there would similarly be exemption from paying compensation for [the loss of] the embryos. And as for the Mishnah saying IF AN OX WHILE CHARGING OTHER CATTLE, the reason is that, since it was necessary to state in the concluding clause BUT IF A MAN WHILE MEANING TO STRIKE ANOTHER MAN, this being the case stated in Scripture,[4] it was also found expedient to have a similar text in the commencing clause IF AN OX WHILE CHARGING ANOTHER OX.

R. Papa said: If an ox gores a woman-slave, causing her to miscarry, there would be liability to pay for the loss of the embryos, the reason being that [in the eyes of the law] it was merely a case of a pregnant she-ass being injured, for Scripture says, Abide ye here with the ass,[5] thus comparing this folk to an ass.[6]

HOW IS THE COMPENSATION FOR THE LOSS OF EMBRYOS FIXED etc.? 'COMPENSATION FOR THE EMBRYOS'? Should it not [also] have been 'Compensation for the increase in [the woman's] value caused by the embryos'?[7] — This indeed was what was meant: How is the compensation for the embryos and for the increase [in the woman's value] due to embryos fixed? Her estimated value before miscarriage is compared with her value after miscarriage.[8]

BUT R. SIMEON B. GAMALIEL SAID; IF THIS IS SO, A WOMAN AFTER HAVING GIVEN BIRTH INCREASES IN VALUE. What did he mean by this statement?[9] — Rabbah said; He meant to say this; Does a woman increase in value before giving birth more than after? Does not a woman

increase in value after giving birth[10] more than before giving birth? It is therefore the value of the embryos which has to be estimated, and this amount will be given to the husband. It was taught to the same effect; Does the value of a woman increase more before giving birth than after giving birth? Does not the value of a woman increase after having given birth[10] more than before giving birth? It is therefore the value of the embryos which has to be estimated, and this amount will be given to the husband. Raba, however, said: What is meant is this.[11] 'Is a woman's increase in value wholly for [the benefit of the husband for] whom she bears, and has she no share at all in the increase [in the value][12] due to the embryo? It is therefore the value of the embryos which has to be estimated and this amount will be given to the husband, whereas the amount of the increase [in the value][12] caused by the embryos will be shared equally [between husband and wife].' It was similarly taught: R. Simeon b. Gamaliel said: Is the increase in a woman's value wholly for [the benefit of the husband for] whom she bears, and has she herself no share at all in the increase [in her value] due to the embryos? No; there is a separate estimation for Depreciation[13] and also for Pain,[13] and the value of the embryos is estimated and given to the husband, whereas the amount of the increase in her value caused by the embryos will be shared equally [between husband and wife]. But is not R. Simeon b. Gamaliel contradicting himself [in this]?[14] — There is no contradiction, for one case[15] is that of a woman pregnant for the first time,[16] and the other of a woman who had already given birth to children.[17]

What was the reason of the Rabbis who stated that the amount of the increase [in the woman's value] due to the embryos also belongs to the husband? — As it was taught: From the words, so that her fruit depart from her,[18] cannot I understand that the woman was pregnant? Why then [the words] with child?[18] To teach you that the increase in her value due to pregnancy belongs to the husband. How then does R. Simeon b. Gamaliel expound the phrase 'with child'? — He required it for the lesson taught in the following: R. Eliezer b. Jacob says: Liability is never incurred save when the blow is given over against the place of the womb. R. Papa said: You are not to understand from this just over against the place of the womb, for wherever the bruise could be communicated to the embryo [will suffice];[19] what is excluded is a blow on the hand or foot, where there would be liability.

IF THE WOMAN WAS A MANUMITTED SLAVE,OR PROSELYTESS [AND THE HUSBAND, ALSO A PROSELYTE, IS NO LONGER ALIVE], THERE WOULD BE EXEMPTION ALTOGETHER.[20] Rabbah said: This rule applies only where the blow was given during the lifetime of the proselyte [husband] and it was only after this that he died, for since the blow was given during the lifetime of the proselyte, he acquired title to the impending payment, so that when he subsequently died[21] the defendant became quit of it as it was an asset of the proselyte.[21] But where the blow was given after the death of the proselyte it was the mother who acquired title to the embryos, so that the defendant would have to make payment to her. Said R. Hisda: O, master of this [teaching]! Are embryos packets of money to which a title can be acquired? It is only when the husband is there[22] that the Divine Law grants payment to him, but not when he is no more.

An objection was raised:[23] 'Where a woman is struck and a miscarriage results, compensation for Depreciation and Pain is to be paid to the woman, but for the loss of the embryos to the husband; where the husband is no more alive it[24] is given to his heirs; so also where the woman is no more alive, it[25] is given to her heirs. Should she be a slave who has been manumitted, or a proselytess [whose husband, also a proselyte, is no longer alive], the defendant becomes entitled to it'?[26] — I would reply: Is there anything more in this case than in that of the Mishnah, which has been interpreted to refer to where the blow was given during the lifetime of the proselyte and [where it was only after this that] the proselyte died?[27] [Why therefore not interpret the text] here also as referring to a case were the blow was given during the lifetime of the proselyte and [where it was only after this that] the proselyte died![27] More-over, if you wish you may [alternatively] say that it might have referred even to a case where the blow was given after the death of the proselyte,

(1) V. the explanation in the Gemara.
(2) The reason being that in this case there is no legitimate plaintiff.
(3) Supra p. 239.
(4) Ex. XXI, 22.
(5) Gen. XXII, 5.
(6) I.e. a mere chattel of the Master.
(7) Before the miscarriage took place. For besides the loss of the value of the embryos there was a loss of the value of the woman herself that was increased by the embryos making her look bigger and stouter. [Rashi reads: 'Is this (referring to the valuation laid down in the Mishnah) compensation for the embryos? Is it not also compensation for the increase etc.?']
(8) [This valuation, that is to say, serves as compensation both for the embryos and for the increase etc.]
(9) For surely the anonymous Tanna expressed himself to the contrary.
(10) Through having emerged safely from the dangers of childbirth.
(11) By R. Simeon b. Gamaliel.
(12) Of her own body.
(13) Cf. supra p. 243 and Keth. VI, 1.
(14) For according to his other statement a woman increases in value after giving birth more than before.
(15) Where he stated that the value of a woman after having given birth is greater than that prior to having given birth.
(16) Where the circumstances are more complicated.
(17) In which case her value later is less than that prior to giving birth
(18) Ex. XXI, 22.
(19) To create liability.
(20) V. p. 277, n. 6.
(21) Without issue, leaving thus no heirs.
(22) I.e. alive.
(23) Cf. supra p. 234.
(24) I.e. the payment for the loss of the embryos.
(25) I.e. the payment for Depreciation and Pain.
(26) Even, it would seem, when the blow was given after the death of the proselyte, which contradicts the view of Rabbah.
(27) V. p. 280, n. 5.

Talmud - Mas. Baba Kama 49b

but read in the text 'she would become entitled to it'.[1]

May we say that there is on this point[2] a difference between Tannaitic authorities? [For it was taught:] If a daughter of an Israelite was married to a proselyte and became pregnant by him, and a blow was given her during the lifetime of the proselyte,[3] the compensation for the loss of the embryos will be given to the proselyte. But if after the death of the proselyte![4] — One Baraitha teaches that there would be liability, whereas another Baraitha teaches that there would be no liability. Now, does this not show that Tannaim differ on this [point]?[5] According to Rabbah there is certainly a difference between Tannaim on this matter.[6] But what of R. Hisda?[7] Must he also hold that Tannaim were divided on it? — [No; he may argue that] there is no difficulty,[8] as one [Baraitha] accepts the view of the Rabbis[9] whereas the other follows that of R. Simeon b. Gamaliel.[10] But if [the Baraitha which says that there is liability follows the view of] R. Simeon b. Gamaliel, why speak only of compensation after the death [of the proselyte]? Would she even during [his] lifetime not have [a half of the payment]? — During [his] lifetime she would have only a half, whereas after death she would have the whole.[11] Or if you wish you may say that both this [Baraitha][12] and the other follow the view of R. Simeon b. Gamaliel,[10] but while one[12] deals with the increase in the value [of the woman caused] by the embryos, the other[13] refers to the compensation for the loss of

the value of the embryos [themselves].[14] I would here ask, why not derive from the rule[12] regarding the increased value due to the embryos the other rule regarding the value of the embryos themselves?[15] And again, why not derive from the ruling[12] of R. Simeon b. Gamaliel also the ruling of the Rabbis?[16] — It may, however, be said that this could not be done. For as regards the increased value [of the woman due] to the embryos, seeing that she has some hold upon it,[17] she can acquire a title to the whole of it,[18] whereas in regard to the compensation for the embryos themselves, on which she has no hold,[19] she can acquire no title to them at all.

R. Yeba the Elder enquired of R. Nahman: If a man has taken possession of the deeds of a proselyte,[20] what is the legal position? [Shall we say that] a man who takes possession of a deed does so with intent to acquire the land [specified in the document], but has thereby not taken possession of the land, nor does he even acquire title to the deed, since his intent was not to obtain the deed?[21] Or [shall we] perhaps [say] that his intent was to obtain the deed also?[21] — He[22] said to him: Tell me, Sir, could he need it to cover the mouth of his flask? — He[23] replied: Yes indeed, [he could need it] to cover[the flask].

Rabbah stated: If the pledge of an Israelite is in the hands of a proselyte [creditor], and the proselyte dies [without any legal issue] and another Israelite comes along and takes possession of it,[20] it would be taken away from him, the reason being that as the proselyte has died, the lien he had upon the pledge has disappeared. But if a pledge of a proselyte [debtor] is in the hands of an Israelite, and the proselyte dies and another Israelite comes along and takes possession of it, the creditor would become owner of the pledge to the extent of the amount due to him, while the one who took possession of it would own the balance. Why should the premises [of the creditor where the pledge was kept] not render him the owner [of the whole pledge]? Did not R. Jose b. Hanina say that a man's premises effect a legal transfer [of ownerless property placed there] even without his knowledge? — It may be said that we are dealing here with a case where the creditor was not there.[24] For it is only where he himself[25] is there,[24] in which case should he so desire he would be able to take possession of it,[26] that his premises could [act on his behalf and] effect the transfer, whereas where he himself[25] was absent, in which case were he to desire to acquire title to it[26] he would have been unable to take possession of it, his premises could similarly not effect a transfer. But the law is that it is only where it [the pledge] was not [kept] in the [creditor's] premises that he would acquire no title to it.[27]

MISHNAH. IF A MAN DIGS A PIT IN PRIVATE GROUND AND OPENS IT ON TO A PUBLIC PLACE, OR IF HE DIGS IT IN PUBLIC GROUND AND OPENS IT ON TO PRIVATE PROPERTY, OR AGAIN, IF HE DIGS IT IN PRIVATE GROUND AND OPENS IT ON TO THE PRIVATE PROPERTY OF ANOTHER, HE BECOMES LIABLE[28] [FOR ANY DAMAGE THAT MAY RESULT].

GEMARA. Our Rabbis taught: If a man digs a pit on private ground and opens it on to a public place, he becomes liable, and this is the Pit of which the Torah[29] speaks. So R. Ishmael. R. Akiba, however, says: When a man abandons his premises without, however, abandoning his pit, this is the Pit of which the Torah[29] speaks. Rabbah thereupon said: In the case of a pit on public ground there is no difference of opinion that there should be liability. What is the reason? — Scripture says, If a man open or if a man dig.[29] Now, if for mere opening there is liability, should there not be so all the more in the case of digging? [Why then mention digging at all?] Scripture must therefore mean to imply that it is on account of the act of opening and on account of the act of digging that the liability is at all brought upon him.[30] A difference arises

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(1) In accordance with the view of Rabbah.

(2) In which Rabbah and R. Hisda differ.

(3) And a miscarriage resulted.

(4) I.e. if the blow was given after the death of the proselyte.
(5) I.e., whether the mother acquires a title to the embryos on the death of her husband, the proselyte, or not.
(6) He therefore followed the view of the former Baraitha laying down liability.
(7) Stating exemption.
(8) I.e., no contradiction between the two Baraithas, which do not deal with the payment for the loss of the embryos but with the payment for the loss of the increment in the value of the woman herself due to the embryos.
(9) Maintaining that the payment for the loss of the increment in the value of the woman herself also belongs to the husband, so that where he was a proselyte dying without issue there would be no liability at all upon the defendant.
(10) According to whom the payment for the loss of the increment in the value of the woman herself has to be shared by the mother and father, so that where he was a proselyte dying without issue she will surely not forfeit her due, but as to the embryos, all agree that the woman acquires in no circumstance title to them.
(11) For since the mother is a joint plaintiff with her husband regarding this payment, where he was a proselyte dying without issue she will remain the sole plaintiff and thus be entitled to the full payment.
(12) Stating liability.
(13) Stating exemption.
(14) To which the mother was never a plaintiff.
(15) That payment should be made to the mother, in contradiction to the view of R. Hisda.
(16) [That she should have the whole where the proselyte husband is no longer alive.]
(17) Even during the lifetime of her husband.
(18) At the demise of the proselyte without any legal issue.
(19) V. p. 282, n. 10.
(20) V. p. 282, n. 11.
(21) I.e., the mere value of the paper of the deed.
(22) R. Nahman.
(23) R. Yeba.
(24) [I.e., 'in town' (Rashi), or (according to Tosaf.) 'beside the premises,' v. B.M. 11a: 'non-guarded premises confer title only when the owner is standing beside them.']
(25) I.e., the owner of the premises.
(26) I.e., the pledge or any other ownerless article.
(27) For where the pledge was kept in the creditor's premises at the time of the demise of the proselyte without issue, the creditor would acquire title to the whole of it, though the creditor were out of town (Rashi). [Tosaf. renders, 'where the creditor was not beside the premises.']
(28) V. Gemara.
(29) Ex. XXI, 33-34
(30) I.e. where the ground of the pit that did the actual damage was not his at all.

Talmud - Mas. Baba Kama 50a

only in regard to a pit on his own premises. R. Akiba maintains that a pit in his own premises should also involve liability, since it says, The owner of the pit,[1] which shows that the Divine Law is speaking of a pit which has an owner; R. Ishmael on the other hand maintaining that this simply refers to the perpetrator of the nuisance.[2] But what then did R. Akiba mean by saying, '[When a man abandons his premises without, however, abandoning his pit] — this is the Pit stated in the Torah'?[3] — [He meant that] this is the Pit with reference to which Scripture first began to lay down[4] the rules for compensation [in the case of Pit]. R. Joseph said: in the case of a pit on private ground there is no difference of opinion that there should be liability. What is the reason? Divine Law says, the owner of the pit, to show that it is a pit having an owner with which we are dealing.[5] They differ only in the case of a pit in public ground. R. Ishmael maintains that a pit on public ground should also involve liability, since it says, 'If a open . . . and if a man dig . . .' Now, if for mere opening there is liability, should there not all the more be so in the case of digging? Scripture therefore must mean to imply that it is on account of the act of opening and on account of the act of digging that the liability is at all brought upon him.[6] And R. Akiba? [He might reply that] both terms[7] required to be explicitly

mentioned. For if the Divine Law had said only 'If a man open' it might perhaps have been said that it was only in the case of opening that covering up would suffice [as a precaution], whereas in the case of digging covering up would not suffice, unless the pit was also filled up. If [on the other hand] the Divine Law had said only If a man dig it might have been said that it was only where he dug it that he ought to cover it, as he actually made the pit, whereas where he merely opened it, in which case he did not actually make the pit, it might have been thought that he was not bound even to cover it. Hence it was necessary to tell us [that this was not the case but that the two actions are on a par in all respects]. But what then did R. Ishmael mean by saying, [If a man digs a pit in private ground and opens it on to a public place, he comes liable] and this is the Pit of which the Torah[8] speaks?[9] — This is the Pit with reference to which Scripture opens[10] the rules concerning damage [caused by Pit].

An objection was raised [from the following]: If a man digs a pit in public ground and opens it to private property there is no liability, in spite of the fact that he has no right to do so as hollows must not be made underneath a public thoroughfare. But if he digs pits, ditches or caves in private premises and opens them on to a public place, there would be liability. If, again, a man digs pits in private ground abutting on a public thoroughfare, such as e.g., workmen digging foundations, there would be no liability. R. Jose b. Judah, however, says there is liability unless he makes a partition of ten handbreaths in height or unless he keeps the pit away from the place where men pass as well as from the place where animals pass at a distance of at least four handbreadths.[11] Now this is so only in the case of foundations,[12] but were the digging made not for foundations there would apparently be liability. In accordance with whose view[13] is this? All would be well if we follow Rabbah, since the opening clause[14] would be in accordance with R. Ishmael and the later clause[15] in accordance with R. Akiba. But if we follow R. Joseph, it is true there would be no difficulty about the concluding clause[15] which would represent a unanimous view, but what about the prior clause[14] which would be in accordance neither with R. Ishmael nor with R. Akiba?[16] — R. Joseph, however, might reply: The whole text represents a unanimous view, for the prior clause deals with a case where the man abandoned neither his premises nor his pit.[17] R. Ashi thereupon said: Since according to R. Joseph you have explained the text to represent a unanimous view, so also according to Rabbah you need not interpret it as representing two opposing views of Tannaim. For as the prior clause[14] was in accordance with R. Ishmael, the later clause would also be in accordance with R. Ishmael; and the statement that this ruling holds good only in the case of foundations whereas if the digging is not for foundations there would be liability, refers to an instance where e.g., the digging was widened out into actual public ground.[18]

An objection was [again] raised: 'If a man digs a pit in private ground and opens it on to a public place he becomes liable, but if he digs it in private ground abutting on a public thoroughfare he would not be liable.' No difficulty arises if we follow Rabbah, since the whole text[19] is in accordance with R. Ishmael. But if we follow R. Joseph, no difficulty, it is true, arises in the prior clause[20] which would be in accordance with R. Ishmael, but what about the concluding clause[19] which would be in accordance neither with R. Ishmael nor with R. Akiba?[21] — He might reply that it deals with digging for foundations,[22] in regard to which the ruling is unanimous.

Our Rabbis taught:[23] If a man dug [a well] and left it open, but transferred it to the public,[24] he would be exempt,[25] whereas if he dug it and left it open without dedicating it to the public he would be liable. Such also was the custom of Nehonia the digger of wells, ditches and caves; he used to dig wells[26] and leave them open and dedicate them to the public.[24] When this matter became known to the Sages they observed, 'This man[27] has fulfilled this Halachah'. Only this Halachah and no more? — Read therefore 'this Halachah also'.

Our Rabbis taught: It happened that the daughter of Nehonia the digger of wells once fell into a deep pit. When people came and informed R. Hanina b. Dosa[28] [about it], during the first hour he

said to them ‘She is well’, during the second he said to them, ‘She is still well’, but in the third hour he said to them, ‘She has by now come out [of the pit].’ They then asked her, ‘ Who brought you up?’ — Her answer was: ‘A ram[29] [providentially] came to my help[30] with an old man[31] leading it.’ They then asked R. Hanina b. Dosa, ‘Are you a prophet?’ He said to them, ‘I am neither a prophet nor the son of a prophet. I only exclaimed: Shall the thing to which that pious man has devoted his labour become a stumbling-block to his seed?’[32] R. Aha, however, said; Nevertheless, his[33] son died of thirst, [thus bearing out what the Scripture] says, And it shall be very tempestuous round about him,[34] which teaches that the Holy One, blessed be He, is particular with those round about Him[35] even for matters as light as a single hair.[36] R. Nehonia[37] derived the same lesson from the verse,[38] God is greatly to be feared in the assembly of the saints and to be had in reverence of all them that are about Him. R. Hanina said: If a man says that the Holy One, blessed be He, is lax in the execution of justice, his life shall be outlawed, for it is stated, He is the Rock, His work is perfect; for all His ways are judment.[39] But R. Hana, or as others read R. Samuel b. Nahmani, said: Why is it written[40]

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(1) Ex. XXI, 34

(2) But did not mean the legal owner of it.

(3) Since even according to R. Akiba the Torah deals with Pit on public ground.

(4) In verse 34.

(5) [As against R. Ishmael who requires the pit itself to be abandoned.]

(6) V. p. 284, n. 4.

(7) Of opening and of digging.

(8) V. p. 284, n. 3.

(9) Since even according to R. Ishmael the Torah deals with Pit on private ground.

(10) I.e., in verse 33.

(11) Rashal reads ‘cubits’.

(12) Which is a general practice.

(13) Either with that of R. Ishmael or with that of R. Akiba.

(14) Stating exemption in the case of Pit open to private ground.

(15) Implying liability in the case of Pit on private ground.

(16) For they both according to R. Joseph maintain liability for Pit on private ground.

(17) In which case the defendant is entitled to put in a defence of trespass on his ground against the plaintiff.

(18) But if the digging was not widened out into actual public ground there would be no difference as to the purpose of the digging for there would be exemption in all cases.

(19) V. p. 286, n. 5.

(20) Stating liability in the case of Pit on public ground.

(21) V. p. 286, n. 7.

(22) V. p. 286, n. 3.

(23) Tosef. B.K. VI.

(24) For the general use of the water.

(25) As it became communal property.

(26) Thus to provide water for the pilgrims who travelled to Jerusalem on the three festivals in accordance with Ex. XXXIV, 23.

(27) I.e. Nehonia.

(28) [On R. Hanina b. Dosa as a ‘man of deeds’ whose acts were viewed as acts of human love and sympathy rather than miracles, v. BŸchler, Types, p. 100ff.]

(29) The ram of Isaac, cf. Gen. XXII,13 and R.H. 16a.

(30) Lit., ‘was appointed for me.’

(31) Abraham.

(32) V. J. Shek. V. 1.

(33) Nehonia's.

(34) Ps. L, 3.

(35) I.e. the pious devoted to Him.
(36) The Hebrew term for ‘tempestuous’ is homonymous with that for ‘hair’.
(37) ‘Hanina’ occurs in Yeb. 121b.
(38) Ps. LXXXIX, 8.
(39) Deut. XXXII, 4.
(40) Ex. XXXIV, 6.

Talmud - Mas. Baba Kama 50b

‘Long of sufferings’[1] and not ‘Long of suffering’?[2] [It must mean,] ‘Long of sufferings’ to both the righteous[3] and the wicked.[4]

Our Rabbis taught: A man should not remove stones from his ground on to public ground. A certain man[5] was removing stones from his ground on to public ground when a pious man found him doing so and said to him, ‘Fool,[6] why do you remove stones from ground which is not yours to ground which is yours?’ The man laughed at him. Some days later he had to sell his field, and when he was walking on that public ground he stumbled over those stones. He then said, ‘How well did that pious man say to me, "Why do you remove stones from ground which is not yours to ground which is yours?"’

MISHNAH. IF A MAN DIGS A PIT ON PUBLIC GROUND AND AN OX OR AN ASS FALLS INTO IT, HE BECOMES LIABLE. WHETHER HE DUG A PIT, OR A DITCH, OR A CAVE, TRENCHES, OR WEDGE-LIKE DITCHES, HE WOULD BE LIABLE. IF SO WHY IS PIT MENTIONED [IN SCRIPTURE]?[7] [TO TEACH THAT] JUST AS PIT CAN CAUSE DEATH BECAUSE IT IS USUALLY TEN HANDBREADTHS [DEEP], SO ALSO ALL [OTHER SIMILAR NUISANCES] MUST BE SUCH AS CAN CAUSE DEATH, [I.E.] TEN HANDBREADTHS [DEEP]. WHERE, HOWEVER, THEY WERE LESS THAN TEN HANDBREADTHS [DEEP], AND AN OX AR AN ASS FELL INTO THEM AND DIED, THERE WOULD BE EXEMPTION.[8] IF THEY WERE ONLY INJURED BY THEM, THERE WOULD BE LIABILITY.

GEMARA. Rab stated: The liability imposed by the Torah in the case of Pit[9] is for the unhealthy air created by excavation, but not for the blow given by it. It could hence he inferred that he held that so far as the blow was concerned it was the ground of the public that caused the damage.[10] Samuel, however, said: For the unhealthy air, and, ˆ plus forte raison, for the blow. And should you say that it was for the blow only that the Torah imposed liability but not for the unhealthy air, (you have to bear in mind that] for the Torah[11] a pit is a pit, even where it is full of pads of wool. What is the practical difference between them? — There is a practical difference between them. Where a man made a mound on public ground: according to Rab there would in the case of a mound be no liability,[12] whereas according to Samuel there would in the case of a mound also be liability. What was the reason of Rab?[13] Because Scripture says, And it fall,[14] [implying that there would be no liability] unless where it fell in the usual way of falling.[15] Samuel [on the other hand maintained that the words] And it fall imply anything [which is like falling].[16]

We have learnt: IF SO WHY WAS PIT MENTIONED [IN SCRIPTURE]?[17] [TO TEACH THAT] JUST AS PIT CAN CAUSE DEATH BECAUSE IT IS USUALLY TEN HANDBREADTHS [DEEP], SO ALSO ALL [OTHER SIMILAR NUISANCES] MUST BE SUCH AS CAN CAUSE DEATH, [I.E.] TEN HANDBREADTHS [DEEP]. Now this creates no difficulty if we follow Samuel, since the phrase SO ALSO ALL would imply mounds also. But according to Rab, what does the phrase SO ALSO ALL imply?[17] — It was meant to imply trenches and wedge-like ditches. But are trenches and wedge-like ditches not explicitly stated in the text? — They were [first] mentioned and then the reason for them explained.

What need was there to mention all the things specified in the text? — They all required [to be explicitly stated]. For if only a pit had been explicitly mentioned, I might have said that it was only a pit where in ten handbreadths [of depth] there could be [sufficient] unhealthy air [to cause death] on account of its being small and circular, whereas in the case of a ditch which is long I might have thought that [even] in ten handbreadths of depth there would still not be [sufficient] unhealthy air [to cause death]. If [again] only a ditch had been mentioned explicitly, I might have said that it was only a ditch where in ten handbreadths [of depth] there could be [sufficient] unhealthy air [to cause death] on account of its being small, whereas in a cave which is square I might have thought that [even] in ten handbreadths of depth there would still not be [sufficient] unhealthy air [to cause death]. Again, if only a cave had been mentioned explicitly, I might have said that it was only a cave where in ten handbreadths [of depth] there could be [sufficient] unhealthy air [to kill] on account of its being covered, whereas in the case of trenches which are uncovered I might have thought that [even] in ten handbreadths [of depth] there would still not be [sufficient] unhealthy air [to cause death]. Further, if only trenches had been stated explicitly, I might have said that it was only trenches where in ten handbreadths [of depth] there could be [sufficient] unhealthy air [to cause death] on account of their not being wider at the top than at the bottom, whereas in wedgelike ditches which are wider at the top than at the bottom I might have said that [even] in ten handbreadths [of depth] there would still not be [sufficient] unhealthy air [to cause death]. It was therefore necessary to let us know [that all of them are on a par in this respect].[18]

We have learnt: WHERE, HOWEVER, THEY WERE LESS THAN TEN HANDBREADTHS [DEEP] AND AN OX OR AN ASS FELL INTO THEM AND DIED, THERE WOULD BE EXEMPTION.[19] IF THEY WERE ONLY INJURED BY THEM THERE WOULD BE LIABILITY. Now what could be the reason that where an ox or an ass fell into them and died there would be exemption? Is it not because the blow was insufficient [to cause death]?[20] — No, it is because there was no unhealthy air there. But if so, why where the animal was merely injured in such a pit should there be liability, seeing that there was no unhealthy air there? — I might reply that there was not unhealthy air there sufficient to kill, but there was unhealthy air there sufficient to injure.

A certain ox fell into a pond which supplied water to the neighbouring fields. The owner hastened to slaughter it, but R. Nahman declared it trefa.[21] Said R. Nahman: ‘Had the owner of this ox taken a kab[22] of flour and come to the house of study, where he would have learnt that "If the ox lasted at least twenty-four hours [before being slaughtered] it would be kasher",[23] I would not have caused him to lose the ox which was worth several kabs.’ This seems to show that R. Nahman held that a deadly blow can be inflicted even by an excavation less than ten handbreadths deep.[24]

Raba raised an objection to R. Nahman: WHERE, HOWEVER, THEY WERE LESS THAN TEN HANDBREADTHS [DEEP] AND AN OX OR AND ASS FELL INTO THEM AND DIED, THERE SHOULD BE EXEMPTION. Now, is not the reason of this [exemption] because there was no deadly blow there?[25]

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(1) **אפים**, the plural.

(2) **אף**, the singular.

(3) By not rewarding them in this world for their good deeds.

(4) By not punishing them in this world for their wicked deeds.

(5) B.K. Tosef. II.

(6) Raca.

(7) Ex. XXI, 33.

(8) As the death of the animal should in this case not be wholly imputed to the pit.

(9) On public ground.

(10) For which the defendant has not to be liable.

(11) Lit., 'the Torah testified that etc.', since 'pit' is left undefined.
(12) As no unhealthy air was created and the blow was given by the public ground.
(13) Is not a mound a nuisance?
(14) Ex. XXI, 33.
(15) Excepting thus a mound.
(16) I.e. including mounds.
(17) Since according to him there would be no liability for mounds.
(18) That the depth of ten handbreadths is sufficient to create enough unhealthy air to cause death in any one of these excavations.
(19) V. p. 289, n. 2.
(20) Though the air was not less unhealthy there will be no liability, thus contradicting the views of both Rab and Samuel.
(21) I.e. forbidden to be eaten in accordance with dietary laws; for the term cf. Ex. XII, 30 and Glossary.
(22) [(V. Glos.), i.e., provision for his journey.]
(23) Cf. Hul. 51b.
(24) For the pond in which the ox fell was only six handbreadths deep.
(25) Thus disproving the view of R. Nahman.

Talmud - Mas. Baba Kama 51a

No; it is because there was no unhealthy air there. But if so, why where it was injured in such a pit would there be liability since there was no unhealthy air there? — He replied: There was not unhealthy air there sufficient to kill, but there was unhealthy air there enough to injure.

A further objection was raised: The scaffold [for stoning] was of the height of two men's statures.[1] And it has been taught regarding this: When you add the stature of the convict there will be there the height of three statures. Now, if you assume that a fall can be fatal even from a height of less than ten handbreadths, why was such a great height as that necessary? — But even according to your argument, why not make the height ten handbreadths only? This must therefore be explained in accordance with R. Nahman, for R. Nahman stated that Rabbah b. Abbuha had said: Scripture says, And thou shalt love thy neighbour as thyself,[2] [which implies], 'thou shalt choose for a convict the easiest possible execution.'[3] But if so, why not raise it still higher? — He would then become disfigured altogether.

A further objection was raised: If any man fall from thence;[4] 'from thence' but not into it. How is that so? Where the public road was ten handbreadths higher than the roof, and a man might fall from the former on to the latter, there is no liability [in respect of a parapet], but if the public road was ten handbreadths lower than the roof, and a man might fall from the latter on to the former, that there will be liability [in respect of a parapet]. Now, if you assume that a fall could be fatal even from a height of less than ten handbreadths, why should it be necessary to have the public road lower by [full] ten handbreadths?[5] — It was said in answer:[6] There is a difference in the case of a house, since if it is less than ten handbreadths [in height] it could not be designated 'house'.[7] But if so, even now when from the outside it is ten handbreadths high, were you to deduct from that the ceiling and the plaster, from the inside it would surely not have the height of ten handbreadths?[8] — To this it was said in reply: [We are dealing here with a case] where, e.g., the owner of the house sank the floor from within.[9] But if so, even where the height from the outside was not ten handbreadths, it could still be possible that from the inside it was ten handbreadths, as for instance where he sank the floor still more? — The reason of R. Nahman must therefore have been this: he considered that from the abdomen of the ox to the level of the ground must be [at least] four handbreadths, and the pond feeding the fields must be six handbreadths;[10] this makes ten handbreadths, with the result that when the ox received the blow it was from the height of ten handbreadths that the blow was given.[11] But why then does the Mishnah say: JUST AS PIT CAN CAUSE DEATH BECAUSE IT IS USUALLY

TEN HANDBREADTHS [DEEP], SO ALSO ALL [OTHER SIMILAR NUISANCES] MUST BE SUCH AS CAN CAUSE DEATH, [I.E.] TEN HANDBREADTHS [DEEP]? Should not six handbreadths be enough?[12] — We could reply that the Mishnah deals with a case where the ox rolled itself over into the pit.[13] MISHNAH. WHERE THERE IS A PIT [IN CHARGE OF] TWO PARTNERS, IF THE FIRST ONE PASSES BY AND DOES NOT COVER IT, AND THE SECOND ONE ALSO [PASSES BY AND DOES] NOT COVER IT,[14] THE SECOND WOULD BE LIABLE.

GEMARA. I would here ask, how can we picture a pit in charge of two partners? True, we can understand this if we take the view of R. Akiba, who said that a pit in private ground would involve liability,[15] in which case such a pit could be found where they jointly own the ground and also a pit in it, and while they abandoned the ground [round about],[16] they did not abandon the pit itself. But if we take the view that a pit on private ground would involve exemption,[15] in which case liability could be found only where it was on public ground, how then is it possible for a pit in public ground to be in charge of two partners?[17] [For if you say that] both of them appointed an agent and said to him: 'Go forth and dig for us', and he went and dug for them, [we reply that] there can be no agency for a sinful act.[18] If again you say that the one[19] dug five handbreadths and the other one[19] dug another five handbreadths, [then we would point out that] the act of the former has become eliminated?[20] It is true that according to Rabbi,[21] we can imagine a pit [in charge of two partners] in respect of mere injury.[22] But in respect of death even according to Rabbi, or in respect whether of death or of mere injury[22] according to the Rabbis,[21] where could we find such a pit? — R. Johanan thereupon said: [We find such a pit] where e.g., both of them removed a layer of ground at the same time and thereby made the pit ten handbreadths deep.[23]

What opinion of Rabbi and what opinion of the Rabbis [was referred to above]? — It was taught:[24] Where one had dug a pit of nine handbreadths [deep] and another one came along and completed it to a depth of ten handbreadths, the latter would be liable.[25] Rabbi says: The last one is responsible in[26] cases of death,[27] but both of them in cases of injury.[28] What was the reason of the Rabbis? — Scripture says; If a man shall open . . . or if a man shall dig . . .[29] Now if for mere opening there is liability, should there not be all the more so in the case of digging? [Why then mention digging at all?] It must be in order to lay down the rule [also] for [the case of] one person digging [in a pit] after another,[30] [namely,] that [in such a case] the act of the one who dug first[31] is regarded as eliminated.[32] And Rabbi?[33] — He might rejoin that it was necessary to mention both terms,[34] as explained elsewhere.[35] And do not the Rabbis also hold that it was necessary?[35] — The reason of the Rabbis must therefore have been that Scripture says, If a man shall dig [indicating that] one person but not two persons [should be liable for one pit]. Rabbi, on the other hand, maintained that [the expression 'a man'] was needed to teach that if a man shall dig a pit [there would be liability] but not where an ox [dug] a 'pit'.[36] And the Rabbis?[37] [They might point out] 'a man . . . a pit' is inserted twice [in the same context].[29] And Rabbi? — He [could rejoin that] having inserted these words in the first text, Scripture retained them in the second also.

Now [according to the Rabbis who hold that Scripture intended to make only one person liable], whence could it be proved that it is the last person [that dug] who should be liable? Why not make the first person [who dug] liable? — Let not this enter your mind, since Scripture has stated, And the dead shall be his[38] [implying that the liability rests upon him] who made the pit capable of killing. But was not this [verse] 'And the dead shall be his' required for the lesson drawn by Raba? For did Raba not say:[39] If a sacred ox which has become disqualified [for the altar][40] falls into a pit, there would be exemption, as Scripture says 'And the dead beast shall be his' [implying that it is only] in the case of an ox whose carcass could be his[41] [that there would be liability]?[42] — To this I might rejoin: Can you not [at the same time] automatically derive from it that it is the man who made the pit capable of killing with whom we are dealing?

Our Rabbis taught: If one person has dug a pit to a depth of ten handbreadths and another person comes along and completes it to a depth of twenty, after which a third person comes along and completes it to a depth of thirty, they all would be liable. A contradiction was here pointed out:[43] If one person dug a pit ten handbreadths deep, and another came along and lined it with plaster and cemented it,[44] the second would be liable.

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(1) Sanh. 45a.

(2) Lev. XIX, 18.

(3) V. Sanh. ibid.

(4) Deut. XXII, 8.

(5) Why should there be no liability to construct a parapet even where the public road was lower by less than ten handbreadths.

(6) Lit., 'He said to him'.

(7) Cf. B.B. 7a.

(8) In which case it would still not be termed house. Why then a parapet?

(9) So that the vertical height inside was not less than ten handbreadths.

(10) V. p. 292, n. 2.

(11) And as a fall from the height of ten handbreadths can be fatal R. Nahman had to declare the ox trefa.

(12) For from the abdomen of the ox to the level of the ground there are surely four handbreadths.

(13) But where the ox fell while walking, even where the pit was only six handbreadths deep the blow would be fatal.

(14) And damage occurred later.

(15) Supra 50a.

(16) In which case they cannot plead trespass on the part of the plaintiff as defence.

(17) For it is the one who dug it that should be responsible.

(18) It will accordingly be the agent and not the principal who will have to be subject to the penalty; cf. B.M. 10b.

(19) Partner.

(20) For it was the latter's act that made the pit complete and capable of causing all kinds of damage.

(21) V. p. 295.

(22) V. the discussion later.

(23) In which case they both made it complete and capable of causing all kinds of damage.

(24) V. supra 10a.

(25) V. p. 294, n. 7.

(26) Lit., 'after the last for'.

(27) For without the latter the pit would have been unable to cause death.

(28) For even without the latter the pit would have been able to cause injury.

(29) Ex. XXI, 33.

(30) The verse would thus imply a case where after one man opened the pit of nine handbreadths deep another man dug an additional handbreadth and thus made it a pit of ten handbreadths deep.

(31) The nine handbreadths.

(32) So that he should become released from any responsibility.

(33) How does he interpret the verse?

(34) Of opening and of digging.

(35) Supra p. 285.

(36) V. supra p. 272.

(37) Whence do they derive this latter deduction?

(38) Ex. XXI, 34.

(39) Infra p. 310.

(40) As it became blemished.

(41) I.e., could be used by him as food for dogs and like purposes.

(42) Excepting thus a scared ox falling into a pit and dying there, as no use could lawfully be made of its carcass.

(43) From the following Baraitha.

(44) Who thus made its width smaller and the air closer and more harmful.

Are we to say that the former statement[1] follows the view of Rabbi[2] whereas the latter[3] follows that of the Rabbis?[3] — R. Zebid thereupon said that the one statement as well as the other could be regarded as following the view of the Rabbis.[3] For even there [in their own case] the Rabbis would not say that the last digger should be liable, save in a case where the first digger did not make the pit of the minimum depth capable of killing, whereas [in this case] where the first digger made the pit of the minimum depth capable of killing even the Rabbis would agree that all the diggers should be liable.[4] But, [what of] the case of [the second] lining it with plaster and cementing it,[5] where the first digger made the pit of the minimum depth capable of killing, and yet it was said that the second would be liable? — It may be answered that the case there was where the unhealthy air was not sufficient to kill,[6] and it was the other person who, by diminishing the size of the pit increased the dangerous effect of the air so as to make it capable of killing. Some report that R. Zebid said that the one statement as well as the other could he regarded as following the view of Rabbi.[7] About the statement that they would all be liable there is [on this supposition] no difficulty. And as for the other statement that the second digger would be liable, this refers to a case where e.g., the unhealthy air was sufficient neither to kill nor to injure, and it was the other person who by diminishing the size of the pit increased the dangerous effect of the air so as to make it capable of both killing and injuring.[8]

Raba said: The case of a man putting a stone round the mouth of a pit and thereby completing it to a depth of ten handbreadths is one which brings us face to face with the difference of opinion between Rabbi and the Rabbis.[9] Is this not obvious? — You might perhaps think that [the difference of opinion] was only where the increase in depth was made at the bottom, in which case it was the unhealthy air added by the second digger that caused death, whereas where the increase was made from the top,[10] in which case it was not the unhealthy air added by him that caused the death, it might have been said that there was no difference of opinion.[11] We are therefore told[12] [that this is not the case].

Raba raised the question: Where [the second comer] filled in the one handbreadth [which he had previously dug] with earth, or where he removed the stones [which he had previously put round the mouth of the pit], what would be the legal position? Are we to say that he has undone what he had previously done,[13] or rather perhaps that the act of the first digger had already been merged [in the act of the second] and the whole pit had since then been in the charge of the second? — Let this remain undecided.

Rabbab b. Bar Hanah said that Samuel b. Martha stated: Where a pit is eight handbreadths deep, but two handbreadths out of these are [full] of water, there would be liability,[14] the reason being that each handbreadth [full] of water is equivalent [in its capacity to cause death] to two handbreadths without water. The question was thereupon raised: Where a pit is of nine handbreadths but one of these is full of water, what should be the law? Should we say that since there is not so much water there, there is not [so much] unhealthy air,[15] or rather that since the pit is deeper there is there [a quantity of] unhealthy air?[16] [Again], where the pit is of seven handbreadths and out of these three handbreadths are full of water, what would be the legal position? Should we say that since there is much water there, the unhealthy air is there [in proportion],[16] or rather that since it is not deep, there is no [great quantity of] unhealthy air there?[15] — Let these queries remain undecided.

R. Shezbi inquired of Rabbah: If the second digger makes it wider, what would be the law? — He replied: Does he not thereby diminish the unhealthy air?[17] Said the other to him: On the contrary, does he not increase the risk of injury?[18] — R. Ashi thereupon said: We have to consider whether [the animal] died through bad air, in which case [the second digger could not be responsible as] he

diminished the unhealthy air, or whether it died through the fall, in which case [the second digger should be responsible as] he increased the risk of injury. Some report that R. Ashi said: We have to see whether [the animal] fell from this side [which was extended], in which [case the second digger would be responsible as] he increased the risk of injury, or whether it fell from the other side, in which case [the second digger would not be to blame, as] he diminished the unhealthy air in the pit.

It was stated: In regard to a pit as deep as it is wide [there is a difference of opinion between] Rabbah and R. Joseph, both of whom made their respective statements in the name of Rabbah b. Bar Hanah who said it in the name of R. Mani. One said that there is always unhealthy air in a pit unless where its width is greater than its depth,[19] the other said that there could never be unhealthy air in a pit unless where its depth was greater than its width.[20]

IF THE FIRST ONE[21] PASSED BY AND DID NOT COVER IT . . . From what point of time will the first one[21] be exempt from responsibility? — [There was a difference of opinion here between] Rabbah and R. Joseph, both of whom made their respective statements in the name of Rabbah b. Bar Hanah who said it in the name of R. Mani. One said, from the moment when the first partner leaves the second in the act of using the well; the other, from the moment when he hands over the cover of the well to him. [The same difference[22] is found] between the following Tannaim: If one [partner] was drawing water from a well and the other came along and said to him, 'Leave it to me as I will also draw water', as soon as the first left the second in the act of using it he would become exempt [from any responsibility]. R. Eliezer b. Jacob said: [The exemption commences] from the time that the first hands over the cover to the second. In regard to what principle do they differ? — R. Eliezer b. Jacob held that there is bererah[23] [so that] the one [partner] was drawing water from his own[24] and so also the other [partner] was drawing the water from his own,[25] whereas the Rabbis maintained that there is no bererah.[26] Rabina thereupon said: They[27] have followed here the same line of reasoning as elsewhere, as we have learnt, Where partners have vowed not to derive benefit from one another they would not be allowed to enter premises jointly owned by them. R. Eliezer b. Jacob, however, says: The one partner enters his own and the other partner enters his own.[28] [Now, it was asked there,] in regard to what principle did they differ? — R. Eliezer b. Jacob held that there is bererah so that the one partner would thus be entering his own and the other partner would similarly be entering his own, whereas the Rabbis maintained that there is no bererah.

R. Eleazar said: If a man sells a pit to another, as soon as he hands over the cover of the pit to him, the conveyance is complete. What are the circumstances? If money was paid, why was the conveyance not completed by the money?[29] If possession was taken [of the pit], why was the conveyance not completed by possession?[29] — In fact, we suppose possession to have been taken [of the pit], and it was still requisite for the seller to say to the buyer, 'Go forth, take possession and become the owner',[30] but as soon as he handed over the cover to him, this was equivalent [in the eyes of the law] to his saying to him, 'Go forth, take possession and complete the conveyance.'

R. Joshua b. Levi said: If a person sells a house to another

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(1) Making them all liable.

(2) Who in the case of mere injury makes them all liable.

(3) Making the second liable in all cases.

(4) Hence the liability upon all of them in the former Baraitha.

(5) V. p. 296, n. 7.

(6) As where its width was more than its depth.

(7) V. p. 296, n. 9.

(8) In which case it stands to reason that the second person only should be liable.

(9) As to whether the second person or both of them would be liable in cases of injury.

(10) As in the case stated by Raba.

(11) And that according to both Rabbi and the Rabbis the second person should not be liable.
(12) By Raba.
(13) And thus released himself from further responsibility.
(14) If an animal fell in and was killed.
(15) And should therefore be subject to the law applicable to a pit of less than ten handbreadths deep.
(16) And should thus be equal to that of a pit ten handbreadths deep.
(17) What liability had he thus incurred?
(18) On account of which he should surely bear responsibility.
(19) Implying that where the width is just equal to the depth there would still be unhealthy air there.
(20) But where the depth just equalled the width there would be no unhealthy air there.
(21) Of the partners.
(22) Between Rabbah and R. Joseph.
(23) I.e., retrospective designation, so that a subsequent selection or definition determines retrospectively a previous state of affairs that was undefined in its nature.
(24) Though this water which he subsequently drew was by no means defined at the time when the partnership was formed.
(25) So that one partner does not use the water of the other to become thereby a borrower of it and thus enter into responsibility regarding it.
(26) So that the water drawn by each of them consists of two parts: one from his own and the other from that of his fellow-partner, with reference to which he in the position of borrower, assuming thus full responsibility also for the part of the partner who is the lender.
(27) The Rabbis and R. Eliezer b. Jacob.
(28) And are consequently not deriving any benefit from one another. (Ned. 45b).
(29) In accordance with Kid. I, 5.
(30) B.B. 53a.

Talmud - Mas. Baba Kama 52a

as soon as he hands over the key to him, the conveyance is complete. What are the circumstances? If money was previously paid, why was the conveyance not completed by the money? If possession was taken, why was the conveyance not completed by possession? — We suppose that in fact possession was taken [of the house], and it was still requisite for the seller to say to the buyer, 'Go forth, take possession and become the owner', but as soon as he handed over the key to him, this was equivalent [in the eye of the law] to his saying to him, 'Go forth, take possession and complete the conveyance.'

Resh Lakish said in the name of R. Jannai: If a man sells a herd to his neighbour, as soon as he has handed over the mashkokith[1] to him, the conveyance is complete. What are the circumstances? If possession by pulling [has already taken place], why was the conveyance not completed by the act of pulling? If delivery [of the flock has already taken place], why was the conveyance not completed by the act of delivery?[2] — We suppose in fact that possession by pulling [has already taken place], and it was still necessary for the seller to say to the buyer, 'Go forth, take possession by pulling and become the owner,'[3] but as soon as he handed over the mashkokith to him, this was equivalent [in the eye of the law] to his saying, 'Go forth, take possession by pulling and complete the conveyance.' What is mashkokith? — Here[4] they explained it: 'The bell'. R. Jacob, however, said: 'The goat that leads the herd.' So too a certain Galilean[5] in one of his discourses before R. Hisda [said] that when the shepherd becomes angry with his flock he appoints for a leader one which is blind.

MISHNAH. IF THE FIRST ONE[6] COVERED IT AND THE SECOND ONE CAME ALONG AND FOUND IT OPEN AND [NEVERTHELESS] DID NOT COVER IT, THE SECOND WOULD BE LIABLE. IF [AN OWNER OF A PIT] HAD COVERED IT PROPERLY, AND AN

OX OR AN ASS [NEVERTHELESS] FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT.[7] BUT IF HE DID NOT COVER IT PROPERLY, AND AN OX OR ASS FELL INTO IT AND WAS KILLED, HE WOULD BE LIABLE. IF IT FELL FORWARD, [BEING FRIGHTENED] ON ACCOUNT OF THE NOISE OF DIGGING, THERE WOULD BE LIABILITY, BUT IF IT FELL BACKWARD ON ACCOUNT OF THE NOISE OF DIGGING, THERE WOULD BE EXEMPTION.[8] IF AN OX FELL INTO IT TOGETHER WITH ITS IMPLEMENTS WHICH THEREBY BROKE, [OR] AN ASS TOGETHER WITH ITS BAGGAGE WHICH WAS THEREBY TORN, THERE WOULD BE LIABILITY FOR THE BEAST BUT EXEMPTION AS REGARDS THE INANIMATE OBJECTS.[9] IF THERE FELL INTO IT AN OX, DEAF, ABNORMAL OR SMALL,[8] THERE WOULD BE LIABILITY. BUT IN THE CASE OF A SON OR A DAUGHTER,[10] A MANSERVANT OR A MAIDSERVANT, THERE WOULD BE EXEMPTION.[9]

GEMARA. Up to when would the first partner be exempt [altogether]? — Rab said: Until he had time to learn [that the cover had been removed]. Samuel said: Until there was time for people to tell him. R. Johanan said: Until there was time for people to tell him and for him to hire labourers and cut cedars to cover it [again].

IF [AN OWNER OF A PIT] HAD COVERED IT PROPERLY AND AN OX OR AN ASS [NEVERTHELESS] FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT. But seeing that he covered it properly, how indeed could the animal have fallen [into it]? — R. Isaac b. Bar Hanah said: We suppose [the boards of the cover] to have decayed from within.[11] It was asked: Suppose he had covered it with a cover which was strong enough for oxen but not strong enough for camels, and some camels happened to come first and weaken the cover and then oxen came and fell into the pit,[12] what would be the legal position? — But I would ask what were the circumstances? If camels frequently passed there, should he not be considered careless?[13] If camels did not frequently pass there, should he not be considered innocent?[14] — The question applies to the case where camels used to pass occasionally, [and we ask]: Are we to say that since from time to time camels passed there he was careless,[13] since he ought to have kept this in mind; or do we rather say that since at the time the camels had not actually been there, he was innocent? — Come and hear: IF HE HAD COVERED IT PROPERLY, AND AN OX OR AN ASS [NEVERTHELESS] FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT.[15] Now, what were the circumstances? If it was covered properly, both as regards oxen and as regards camels, how then did any one fall in there? Does it therefore not mean ‘properly as regards oxen,

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(1) V. the discussion later.

(2) In accordance with Kid. I, 4; v. also supra 11b.

(3) V. p. 300, n. 5.

(4) In Babylon.

(5) Who delivered popular discourses at R. Hisda's; cf. Shab 88a.

(6) Of the partners.

(7) As he is surely not to blame.

(8) V. the discussion in Gemara.

(9) As supra 25b.

(10) Though a minor.

(11) But not noticeable from the outside.

(12) For if the camels had fallen in he would have certainly been liable.

(13) Even regarding oxen, for he should have thought of the possibility that camels might come first and weaken the cover and oxen would then fall in.

(14) As he is surely not to blame.

(15) V. p. 301, n. 7.

but not properly as regards camels'?[1] Again, if camels frequently passed, why should he be exempt where he had been so careless? If [on the other hand] camels did not frequently pass, is it not obvious [that he is exempt since] he was innocent? Did it therefore not refer to a case where camels used to pass occasionally, and it so happened that when camels passed they weakened the cover so that the oxen coming [later on] fell? And [in such cases] the text says, 'he would be exempt.' Does not this prove that since at that time camels had not actually been there he would be considered innocent? — I would say, no. For it might still [be argued that the pit had been covered] properly both as regards oxen and as regards camels; and as for the difficulty raised by you 'how did any one fall in there?', [this has already been removed by] the statement of R. Isaac b. Bar Hanah that [the boards of the cover] decayed from within.[2]

Come and hear: BUT IF HE DID NOT COVER IT PROPERLY AND AN OX OR AN ASS FELL INTO IT AND WAS KILLED, HE WOULD BE LIABLE. Now what were the circumstances? If you say that it means not properly covered as regards oxen', [which would of course imply] also 'not properly covered as regards camels', is it not obvious? Why then was it necessary to state liability? Does it not therefore mean 'that it was properly covered as regards oxen but not properly covered as regards camels'?[1] [Again, I ask,] what were the circumstances? If camels frequently passed [is it not obvious that] he was careless? If [on the other hand] no camels were to be found there, was he not innocent? Does it not [therefore speak of a case] where camels used to arrive occasionally and it so happened that camels in passing had weakened the cover so that the oxen coming [later] fell in? And [in reference to such a case] the text states liability. Does this not prove that since from time to time camels did pass he should be considered careless as he ought to have borne this fact in mind? — In point of fact [I might reply, the text may still speak of a pit covered] 'properly' as regards oxen though 'not properly' as regards camels, and [of one where] camels frequently passed, and as for your question. '[Is it not obvious that] he was careless?' [the answer would be that] since the prior clause contains the words, 'If he covered it properly', the later clause has the wording, 'If he did not cover it properly'.[3]

Some report that certainly no question was ever raised about this, for since the camels used to pass from time to time he was certainly careless, as he ought to have borne this fact in mind. If a question was raised, it was on the following point: Suppose he covered it with a cover that was strong enough for oxen but not strong enough for camels and in a place where camels frequently passed, and it decayed from the inside, what should be the legal position? Should we say miggo,[4] [i.e.,] since he had been careless with respect to camels he ought to be considered careless also with respect to the [accidental] decay; or should we not say miggo? — Come and hear; IF HE COVERED IT PROPERLY AND AN OX OR AN ASS FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT. And it was stated in connection with this ruling that R. Isaac b. Bar Hanah explained that the boards of the cover had decayed from the inside. Now, what were the circumstances? If we say that it means 'properly covered as regards oxen' and also properly covered as regards camels', and that it had decayed from the inside, is it not obvious that there should be exemption? For indeed what more could he have done? Does it not mean, therefore, properly covered as regards oxen though not properly covered as regards camels', and in a place where camels frequently passed, and it so happened that the cover decayed from the inside? And [in such a case] the text states exemption. Does this not prove that we should not say miggo, [i.e.] since he was careless with respect to camels he ought to be considered careless with reference to the decay? — No, it might still [be argued that the pit was covered] properly as regards camels as well as oxen, and it so happened that it became decayed from the inside. And as for your question 'if it becomes decayed [from inside] what indeed should he have done?' [the answer would be that] you might have thought that he ought to have come frequently to the cover and knocked it [to test its soundness], and we are therefore told [that he was not bound to do this].

Come and hear; BUT IF HE DID NOT COVER IT PROPERLY, AND AN OX OR AN ASS FELL INTO IT AND WAS KILLED, HE WOULD BE LIABLE. Now, what were the circumstances? Should you say that it means 'not properly covered as regards oxen, [which would of course imply also] 'not properly covered as regards camels', why then was it necessary to state liability? Does it not therefore mean [that it was covered] properly as regards oxen but not properly as regards camels? But again if camels frequently passed there, [is it not obvious that] he was careless? If [on the other hand] no camels were to be found there, was he not innocent? Does it therefore not deal with a case where camels did frequently pass, but [it so happened] that the cover decayed from the inside? And [in such a case] the text states liability. Does this not prove that we have to say miggo, [i.e.,] since he had been careless with respect to camels, he should be considered careless also with reference to decay?[5] — I would say, No. For it might still [be argued that the pit had been covered] properly as regards oxen but not properly as regards camels, and in a place where camels were to be found frequently, and [it happened that] camels had come along and weakened the cover so that when oxen subsequently came they fell into the pit. And as for your question, 'Is it not obvious that he was careless?' [the answer would be that] since the prior clause contained the words 'If he covered it properly', the later clause similarly uses the wording. 'If he did not cover it [properly]'.

Come and hear; 'If there fell into it an ox that was deaf, abnormal, small, blind or while it walked at night time, there would be liability.[6] But in the case of a normal ox walking during the day there would be exemption.'[7] Why so? Why not say that since the owner of the pit was careless with respect to a deaf animal he should be considered careless also with reference to a normal animal? Does not this show that we should not say miggo.' — This does indeed prove [that we do not say miggo].

IF IT FELL FORWARD etc. Rab said: 'FORWARD' means quite literally 'on its face',[8] and 'BACKWARD' means also literally, 'on its back',[9]

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(1) And it so happened that camels weakened the cover, and when an ox or ass came later on it fell in.

(2) V. p. 302, n. 4.

(3) Though this ruling is obvious.

(4) Cf. Glos.

(5) no note.

(6) Infra 54b.

(7) As the owner of the pit could hardly have thought it likely that a normal ox walking during the day would fall into a pit.

(8) In which case it died from suffocation and there would be liability.

(9) Where the death could not have been caused by suffocation and there is therefore exemption.

Talmud - Mas. Baba Kama 53a

the fall in each case being into the pit. Rab thus adhered to his own view as [elsewhere][1] stated by Rab, that the liability in the case of Pit imposed by the Torah[2] is for injury caused by the unhealthy air [of the pit] but not for the blow [given by it]. Samuel, however, said that where the ox fell into the pit, whether on its face or on its back, there would always be liability, since Samuel adhered to the view stated by him [elsewhere][1] that [the liability is] for the unhealthy air, and a plus forte raison for the blow. How then are we to understand [the words 'Where it fell] BACKWARD ON ACCOUNT OF THE NOISE OF DIGGING', in which case [we are told] there should be exemption? — As, for instance, where it stumbled over the pit and fell to the back of the pit, [i.e.,] outside the pit.[3]

An objection was raised [from the following: If it fell] inside the pit whether on its face or on its

back there would be liability. Is not this a contradiction of the statement of Rab? — R. Hisda replied: Rab would admit that in the case of a pit in private ground[4] there would be liability, as the plaintiff could argue against the defendant: 'Whichever way you take it, if the animal died through the unhealthy air, was not the unhealthy air yours? If [on the other hand] it died through the blow, was not the blow given by your ground?[5] Rabbah, however, said: We are dealing here[6] with a case where the animal turned itself over; it started to fall upon its face but [before reaching the bottom of the pit it] turned itself over and finally fell upon its back, so that the unhealthy air which affected it [at the outset] really did the mischief. R. Joseph. however, said that we are dealing here[6] with a case where damage was done to the pit by the ox, i.e., where the ox made foul the water in the pit,[7] in which case no difference could be made whether it fell on its face or on its back, as there would always be liability.

R. Hananiah learnt [in a Baraitha] in support of the statement of Rab: [Scripture says] And it fall,[8] [implying that there would be no liability] unless where it fell in the usual way of falling.[9] Hence the Sages said: If it fell forward on account of the noise of digging there would be liability, but if it fell backward on account of the noise of digging there would be exemption, though in both cases [it fell] into the pit.

The Master stated: Where it fell forward on account of the noise of digging there would be liability. But why not say that it was the digger who caused it?[10] — R. Shimi b. Ashi thereupon said: This ruling is in accordance with R. Nathan, who stated that it was the owner of the pit who did the actual damage, and whenever no payment can be enforced from one [co-defendant] it is made up from the other[11] as indeed it has been taught: 'If an ox pushes another ox into a pit, the owner of the ox is liable, while the owner of the pit is exempt. R. Nathan, however, said that the owner of the ox would have to pay a half [of the damages] and the owner of the pit would have to pay the other half.' But was it not taught: R. Nathan says: The owner of the pit has to pay three-quarters, and the owner of the ox one quarter? — There is no contradiction, as the latter statement refers to Tam[12] and the former to Mu'ad.[13] On what principle did he base his ruling in the case of Tam? If he held that this [co-defendant] should be considered [in the eye of the law] as having done the whole of the damage, and so also the other co-defendant as having done the whole of the damage, why should not the one pay half and the other also pay half? If [on the other hand] he held that the one did half the damage and the other one also did half the damage, then let the owner of the pit pay half [of the damages] and the owner of the ox a quarter,[14] while the remaining quarter will be lost to the plaintiff? Raba thereupon said: R. Nathan was a judge, and went down to the depth of the law:[15] He did in fact hold that the one was considered as having done the whole of the damage and so also the other was considered as having done the whole of the damage; and as for your question 'Why should the one not pay half and the other half?' [he could answer] because the owner of the ox[16] could say to the owner of the pit, 'What will this your joining me [in the defence] benefit me?'[17] Or if you wish you may [alternatively] say that R. Nathan did in fact hold that the one did half of the damage and the other did half of the damage, and as for your question, 'Why not let the owner of the pit pay half and the owner of the ox a quarter while the remaining quarter will be lost to the plaintiff?' he might answer, because the owner of the killed ox would be entitled to say to the owner of the pit, 'As I have found my ox in your pit, you have killed it. Whatever is paid to me by the other defendant I do not mind being paid [by him], but whatever is not paid to me by him, I will require to be paid by you.'[18]

Raba said: If a man puts a stone near the mouth of a pit [which had been dug by another person] and an ox coming along stumbles over the stone and falls into the pit, we are here brought face to face[19] with the difference of opinion between R. Nathan and the Rabbis.[20] But is this not obvious? — You might perhaps have said that [the difference of opinion was confined to that case] where the owner of the pit could say to the owner of the ox, 'Had not my pit been there at all, your ox would in any case have killed the other ox,' whereas in this case the person who put the stone [near the pit]

could certainly say to the owner of the pit, 'If not for your pit what harm would my stone have done? Were the ox even to have stumbled over it, it might have fallen but would have got up again.' We are therefore told [by this] that the other party can retort, 'If not for your stone, the ox would not have fallen into the pit at all.'

It was stated:

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(1) Supra p. 289.

(2) Ex. XXI, 33-34.

(3) In which case the pit acted only as a secondary cause.

(4) Where the ground round about the pit has been abandoned, while the pit itself and the ground of it still remain with the owner.

(5) Since the pit and its ground remained yours.

(6) Where liability was stated.

(7) Cf. Mishnah 47b.

(8) Ex. XXI, 33.

(9) Cf. supra p. 290.

(10) Why then should the owner of the pit be liable? The digger too should also be exempt as he was but a remote cause to the damage that resulted.

(11) Cf. supra 13a.

(12) In which case the owner of the ox will pay quarter and the owner of the pit three quarters.

(13) Where both of them will pay equally.

(14) Which is half of the payment in the case of Tam.

(15) B.M. 117b; cf. also Hor. 13b.

(16) In the case of Tam.

(17) If I will have to pay half damages which is the maximum payment in my case.

(18) V. p. 307, n. 7. [And similarly in the case of our Mishnah since he cannot claim any damages from the digger, who was but a secondary cause, he is compensated by the owner of the pit.]

(19) As to whether the digger of the pit or the one who put the stone should be liable.

(20) According to whom the one who put the stone would alone have to pay.

Talmud - Mas. Baba Kama 53b

Where an ox [of a private owner] together with an ox that was sacred[1] but became disqualified[2] [for the altar], gored [an animal]. Abaye said that the private owner would have to pay half damages,[3] whereas Rabina said that he would have to pay quarter damages.[3] Both the one and the other are speaking of Tam, but while Rabina followed the view of the Rabbis,[4] Abaye followed that of R. Nathan.[5] Or if you wish you may say that both the one and the other followed the view of the Rabbis,[4] but while Rabina was speaking of Tam[6] Abaye was speaking of Mu'ad. Some report that Abaye stated half damages and Rabina full damages. The one ruling like the other would refer to the case of Mu'ad, but while one[7] followed the Rabbis[8] the other[9] followed the view of R. Nathan.[10] If you wish you may say that the one ruling like the other followed the view of R. Nathan, but while ones was speaking of Mu'ad, the other[7] was speaking of Tam.[11]

Raba said: If an ox along with a man pushes [certain things] into a pit, on account of Depreciation[12] they would all [three][13] be liable, but on account of the four [additional] items[12] or with respect to compensation for the value of [lost] embryos.[14] Man would be liable[15] but Cattle and Pit exempt;[14] in respect of kofer[16] or the thirty shekels[17] for [the killing of] a slave, Cattle would be liable[18] but Man and Pit exempt;[19] in respect of damage done to inanimate objects or to a sacred ox which had become disqualified [for the altar], Man and Cattle would be liable but Pit exempt, the reason being that Scripture says, And the dead beast shall be his,[20] [implying that it was only] in the case of an ox whose carcass could be his[21] [that there would be liability], excluding thus the case of

this [ox] whose carcass could not be his.[22] Does this mean that this last point was quite certain to Raba? Did not Raba put it as a query? For Raba asked; If a sacred ox which had become disqualified[23] [for the altar] fell into a pit, what would be the legal position? Shall we say that this [verse], And the beast shall be his, [confines liability to the case of] an ox whose carcass could be his, thus excluding the case of this ox whose carcass could never be his,[22] or shall we say that the words And the dead beast shall be his are intended only to lay down that the owners [plaintiffs] have to retain the carcass as part payment?[24] [The fact is that] after raising the question he himself solved it. But whence [then] would he derive the law that the owners [plaintiffs] have to retain the carcass as part payment ? — He would derive it from the clause and the dead shall be his own[25] [inserted in the case] of Cattle. What reason have you for rising [the clause] And the dead shall be his own [in the context dealing] with Cattle to derive from it the law that the owners [plaintiffs] have to retain the carcass as part payment, while you rise [the clause] And the dead beast shall be his[26] [in the context dealing] with Pit [to confine liability] to an animal whose carcass could be his?[27] Why should I not reverse [the implications of the clauses]? — It stands to reason that the exemption should be connected with Pit, since there is in Pit exemption also in the case of inanimate objects.[28] On the contrary, should not the exemption be connected with Cattle, since in Cattle there is exemption from half damages [in the case of Tam]? — In any case, exemption from the whole payment is not found [in the case of cattle].

WHERE THERE FELL INTO IT AN OX TOGETHER WITH ITS IMPLEMENTS WHICH THEREBY BROKE etc. This Mishnaic ruling is not in accordance with R. Judah. For it was taught: R. Judah imposes liability for damage to inanimate objects done by Pit. But what was the reason of the Rabbis?[29] — Because Scripture says, And an ox or an ass fall therein,[30] [implying] 'ox' but not 'man',[31] 'ass' but not 'inanimate objects'. R. Judah, [however, maintained that the word] 'or' [was intended] to describe inanimate objects while the [other] Rabbis

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(1) Which is not subject to the law of damage; cf. supra pp. 50ff.

(2) Through a blemish. [As long as such an ox had not been redeemed, it is regarded as an ox of the sanctuary, v. supra 36b. Cur. edd. add in brackets, 'e.g., a first-born ox which cannot be redeemed.' It is however questionable whether such an ox is not to be considered a common animal, having regard to the fact that being blemished it is entirely the priests, no share thereof being offered up on the altar. MS. M. omits these words.]

(3) And the remaining part will be lost to the plaintiff.

(4) Maintaining that each defendant is only liable for himself.

(5) Who stated that if no payment can be enforced from a defendant, his co-defendant has to make it up.

(6) Where quarter damages is half of the maximum payment.

(7) Abaye.

(8) V. p. 309, n. 6.

(9) Rabina.

(10) V. p. 309, n. 7.

(11) Where half damages is the maximum payment.

(12) Cf. supra 26a.

(13) I.e. the man, the owner of the pit and the owner of the ox.

(14) V. supra 49a.

(15) Ex. XXI, 22.

(16) Ibid. 29-30.

(17) Ibid. 32.

(18) Ibid. 28-32.

(19) Supra 28b and 35a

(20) Ex. XXI, 34.

(21) I.e., could be used by him as food for dogs and like purposes.

(22) As no use could lawfully be made of a carcass of a sacred animal that died.

(23) Through a blemish.

(24) Supra 10b.
(25) Ex. XXI, 36.
(26) V. p. 310. n. 14.
(27) V. p. 310. n. 15.
(28) V. supra p. 302, n. 2.
(29) For maintaining exemption.
(30) Ex. XXI, 33.
(31) Dying through falling into a pit.

Talmud - Mas. Baba Kama 54a

[argued that the word] 'or' was necessary as a disjunctive.[1] And R. Judah? — [He maintained that] the disjunction could be derived from [the use of the singular] And it fall.[2] And the Rabbis? — [They could reply that even the singular] And it fall could also imply many [things].[3]

May I say [that the expression] And it fall is intended as a generalisation,[4] while an ox or an ass [follows as] a specification, and where a generalisation is followed by a specification, the generalisation does not apply to anything save what is enumerated in the specification,[5] so that only in the case of an ox or an ass should there be liability, but not for any other object whatsoever? — No; for it could be said that [the clause] The owner of the pit shall make it good[6] generalises again. Now where there is a generalisation preceding a specification which is in its turn followed by another generalisation, you include only such cases as are similar to the specification.[5] [Thus here] as the specification refers to objects possessing life, so too all objects to be included [must be such] as possess life.[7] But [why not argue] since the specification refers to [animate] objects whose carcass would cause defilement whether by touching or by carrying,[8] should we not include [only animate] objects whose carcass would similarly cause defilement whether by touching or by carrying,[9] so that poultry would thus not be included?[10] — If so, the Divine Law would have mentioned only one object in the specification. But which [of the two][11] should the Divine Law have mentioned? Had it inserted [only] 'ox', I might have said that an animal which was eligible to be sacrificed upon the altar[12] should be included, but that which was not eligible to be sacrificed upon the altar[13] should not be included.[14] If [on the other hand] the Divine Law had [only] 'ass', I might have thought that an animal which was subject to the sanctity of firstborn[15] should be included, but that one which was not subject to the sanctity of firstborn[16] should not be included.[17] [But still why indeed not exclude poultry?] Scripture says: 'And the dead shall be his' [implying] all things that are subject to death. [If so,] whether according to the Rabbis who exclude inanimate objects, or according to R. Judah who includes inanimate objects, [the question maybe raised] are inanimate objects subject to death? It may be said that their breaking is their death. But again according to Rab who stated[18] that the liability imposed by the Torah in the case of Pit was for the unhealthy air [of the pit] but not for the blow [it gave], would either the Rabbis or R. Judah maintain that inanimate objects could be damaged by unhealthy air? — It may be said that [this could happen] with new utensils that burst in bad air. But was not this [clause] And the dead shall be his[19] required for the ruling of Raba?[20] For did Raba not say,[21] 'Where a sacred ox which had become disqualified [for the altar] fell into a pit, there would be exemption', as it is said: And the dead shall be his [implying that it was only] in the case of an ox whose carcass could be his [that there would be liability] and thus excluding the case of this ox whose carcass could never be his? — But Scripture says: He should give money unto the owner of it[19] [implying] that everything is included which has an owner. If so, why not also include even inanimate objects and human beings?[22] — Because Scripture says specifically 'an ox', [implying] and not 'a man', 'an ass' [implying] and not inanimate objects. Now according to R. Judah who included inanimate objects we understand the term 'ox' because it was intended to exclude 'man', but what was intended to be excluded by the term an ass? — Raba therefore said:[23] The term 'ass' in the case of Pit, on the view of R. Judah, as well as the term 'sheep' [occurring in the section dealing] with lost property[24] on the view unanimously accepted, remains difficult to

explain.

IF THERE FELL INTO IT AN OX, DEAF, ABNORMAL OR SMALL THERE WOULD BE LIABILITY. What is the meaning of 'AN OX, DEAF, ABNORMAL OR SMALL'? It could hardly be suggested that the meaning is 'an ox of a deaf owner, an ox of an abnormal owner, an ox of a minor', for would not this imply exemption in the case of an ox belonging to a normal owner?[25] — R. Johanan said: [It means] 'an ox which was deaf, an ox which was abnormal, an ox which was small.'

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(1) So that it should not be thought that there should be no liability unless both ox and ass fell in together.

(2) [So that 'or' carries the disjunction further to include utensils attached to the animal, v. Malbim, a.l.]

(3) As in Ex. XXXVI, 1; Deut. XIII, 3; I Sam. XVII, 34 etc.

(4) To include everything.

(5) [This is one of the principles of hermeneutics (Kelal u-ferat) according to R. Ishmael, v. Sanh. (Sonc. ed.) p. 12, n. 9.]

(6) Ex. XXI, 34.

(7) Thus excluding inanimate objects.

(8) Lev. XI, 39-40.

(9) Lev. ibid. 26-28.

(10) As these do not cause defilement either by touching or by carrying.

(11) Ox and ass.

(12) As was the case with ox.

(13) Such as an ass, horse, camel and the like.

(14) Hence ass was inserted to include also animals not eligible to be sacrificed upon the altar.

(15) As was the case with ass; cf. Ex. XIII, 13.

(16) Such as e.g., a horse, camel and the like.

(17) Hence 'ox' was inserted, for though the species of ox is subject to the sanctity of firstborn and would in no case have been excluded, its insertion being thus superfluous was surely intended to include even those animals which are not subject to the sanctity of firstborn.

(18) Supra p. 289.

(19) Ex. XXI, 34.

(20) [How then deduce from it liability in case of poultry?]

(21) Supra p. 296.

(22) E.g., slaves.

(23) Cf. B.M. 27a.

(24) Deut. XXII, 1-3.

(25) Which is of course not the case at all

Talmud - Mas. Baba Kama 54b

Still, would not this imply exemption in the case of an ox which was normal?[1] — R. Jeremiah thereupon said: A particularly strong case is taken:[2] There could be no question that in the case of a normal ox there should be liability, but in the case of an ox which is deaf or abnormal or small it might have been thought that it was its deafness that caused [the damage to it] or that it was its smallness that caused it [to fall] so that the owner of the pit should be exempt.[3] We are therefore told [that even here he is liable]. Said R. Aha to Rabina: But it has been taught: If a creature possessing sense fell into it there would be exemption. Does this not mean an ox possession sense? — He replied: No, it means a man. [If that is so,] would not this imply that only in the case of a man who possesses sense that there would be exemption, whereas if he did not possess sense there would be liability, [and how can this be, seeing that] it is written 'ox' [which implies] 'and not man'? — The meaning of 'one possessing sense' must therefore be 'one of the species of rational being'. But he again said to him: Was it not taught: If there fell into it an ox possessing sense there would be

exemption? — Raba therefore said: [The Mishnaic text indeed means] precisely an ox which was deaf, an ox which was abnormal, an ox which was small, for in the case of an ox which was normal there would be exemption, the reason being that such an ox should have looked more carefully while walking. So indeed was it taught likewise:[4] Where there fell into it an ox which was deaf, or abnormal or small, or blind or while walking at night time, there would be liability whereas if it was normal and walking during the day there would be exemption.

MISHNAH. BOTH AN OX AND ANY OTHER ANIMAL ARE ALIKE [BEFORE THE LAW WITH REFERENCE] TO FALLING INTO A PIT,[5] TO EXCLUSION FROM MOUNT SINAI,[6] TO PAYING DOUBLE [IN CASES OF THEFT],[7] TO RESTORING LOST PROPERTY,[8] TO UNLOADING [BURDENS TOO HEAVY FOR AN ANIMAL TO BEAR],[9] TO ABSTAINING FROM MUZZLING,[10] TO HETEROGENEOUS ANIMALS [BEING COUPLED[11] OR WORKING TOGETHER],[12] TO SABBATH REST.[13] SO ALSO BEASTS AND BIRDS ARE LIKE THEM. IF SO WHY DO WE READ, AN OX OR AN ASS? ONLY BECAUSE SCRIPTURE SPOKE OF THE MORE USUAL [ANIMALS IN DOMESTIC LIFE].

GEMARA. [WITH REFERENCE] TO FALLING INTO A PIT, since it is written, He should give money unto the owner of it,[14] [to include] everything that an owner has, as indeed already stated.[15] TO EXCLUSION FROM MOUNT SINAI [as it is written] Whether it be animal or man, it shall not live.[6] Beast[16] is included in 'animal' and [the word] 'whether' includes 'birds'. TO PAYING DOUBLE, as we said elsewhere:[17] [The expression] for all manner of trespass[18] is comprehensive. TO RESTORING LOST PROPERTY; [this is derived from the words] with all lost things of thy brother.[19] TO UNLOADING [BURDENS TOO HEAVY FOR AN ANIMAL TO BEAR]; we derive this [by] comparing [the term] 'ass'[9] with [the term] 'ass'[13] [occurring in connection] with the Sabbath.[20] TO [ABSTAINING FROM] MUZZLING; this we learn [similarly by] comparing [the term] 'ox'[10] with [the term] 'ox'[13] [used in connection] with Sabbath.[20] TO HETEROGENEOUS ANIMALS; the rule as regards ploughing we learn [by comparing the term] 'ox'[12] with the term 'ox'[13] used [in connection] with Sabbath;[20] and the rule as regards coupling we learn [by comparing the term] 'thy cattle'[11] with the term 'thy cattle'[13] [used in connection] with Sabbath. But whence are [all these rules known] to us in the case of Sabbath [itself]? — As it was taught: R. Jose says in the name of R. Ishmael: In the first Decalogue[21] it is said thy manservant and thy maidservant and thy cattle[22] whereas in the second Decalogue[23] it is said thy ox and thy ass and any of thy cattle.[24] Now, are not 'ox' and 'ass' included in 'any of thy cattle'? Why then were they singled out? To tell us that just as in the case of the 'ox and ass' mentioned here,[24] beasts and birds are on the same footing with them.[25] So also [in any other case where 'ox and ass' are mentioned] all beasts and birds are on the same footing with them. But may we not say that 'thy cattle' in the first Decalogue[21] is a generalisation, and 'thy ox and thy ass' in the second Decalogue is a specification, and [we know that] where a generalisation is followed by a specification, the generalisation does not include anything save what is mentioned in the specification,[26] [whence it would follow that only] 'ox and ass' are [prohibited][27] but not any other thing? — I may reply that the words 'and any of thy cattle' in the second Decalogue constitute a further generalisation, so that we have a generalisation preceding a specification which in its turn is followed by another generalisation; and in such a case you include also[28] that which is similar to the specification,[26] so that as the specification [here] mentions objects possessing life, there should thus also be included all objects possessing life. But, I may say, the specification mentions [living] things whose carcass would cause defilement whether by touching or by carrying.[29] [Why not say that] there should also be included all [living] things whose carcass would similarly cause defilement whether by touching or by carrying,[30] so that birds would thus not be included?[31] — I may reply: If that were the case, the Divine Law would have inserted only one [object in the] specification. But which [of the two][32] should the Divine Law have inserted? For were the Divine Law to have inserted [only] 'ox', I might have thought than an animal which was eligible to be sacrificed upon the altar[33] should be included, but one which was not eligible to be sacrificed upon the altar[34] should not be included, so that the Divine Law was thus

compelled to insert also 'ass'.[35] If [on the other hand] the Divine Law had inserted [only] 'ass', I might have thought that [an animal which was subject to the] sanctity of first birth[36] should be included, but that which was not subject to the sanctity of first birth[37] should not be included; the Divine Law therefore inserted also 'ox'.[38] It must therefore [be said that] and all thy cattle is [not merely a generalisation but] an amplification.[39] [Does this mean to say that] wherever the Divine Law inserts [the word] 'all', it is an amplification? What about tithes where [the word] 'all' occurs and we nevertheless expound it as an instance of generalisation and specification? For it was taught:[40] And thou shalt bestow that money for all that thy soul lusteth after[41] is a generalisation; for oxen, or for sheep, or for wine, or for strong drink[41] is a specification; or for all that thy soul desireth is again a generalisation. Now, where a generalisation precedes a specification which is in its turn followed by another generalisation you cannot include anything save what is similar to the specification. As therefore the specification [here][41] mentions products obtained from products[42] and which spring from the soil[43] there may also be included all kinds of products obtained from products[44] and which spring from the soil.[45] [Does this not prove that the expression 'all' was taken as a generalisation, and not as an amplification?][46] — I might say that [the expression] 'for all'[47] is but a generalisation, whereas 'all' would be an amplification. Or if you wish I may say that [the term] 'all' is also a generalisation, but in this case[48] 'all' is an amplification. For why was it not written And thy cattle just as in the first Decalogue? Why did Scripture insert here 'and all thy cattle' unless it was meant to be an amplification? — Now that you decide that 'all' is an amplification[49] why was it necessary to have 'thy cattle' in the first Decalogue and 'ox and ass' in the second Decalogue? — I may reply that 'ox' was inserted [to provide a basis] for comparison of 'ox' with [the term] 'ox' [used in connection] with muzzling; so also 'ass' [to provide a basis] for comparison of 'ass' with the term 'ass' [used in connection] with unloading; so again 'thy cattle' [to provide a basis] for comparison of 'thy cattle' with [the expression] 'thy cattle' [occurring in connection] with heterogeneity. If that is the case [that heterogeneity is compared with Sabbath breaking] why should even human beings not be forbidden[50] [to plough together with an animal]? Why have we learnt; A human being is allowed to plough [the field] and to pull [a waggon] with any of the beasts?[51] — R. Papa thereupon said: The reason of this matter was known to the Papunean,[52] that is R. Aha b. Jacob [who said that as] Scripture says that thy manservant and thy maidservant may rest as well as thou[48] [it is only] in respect of the law of rest that I should compare them [to cattle] but not of any other matter.

R. Hanina b. 'Agil asked R. Hiyya b. Abba: Why in the first Decalogue is there no mention of wellbeing,[53] whereas in the second Decalogue

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(1) And why should this be so?

(2) Lit., 'He states (a case) where there can be no question'.

(3) Putting in contributory negligence on the part of the plaintiff as a defence.

(4) Supra p. 305.

(5) V. Ex. XXI, 33.

(6) V. ibid., XIX, 13.

(7) V. ibid. XXII, 3.

(8) V. Deut. XXII, 1-3.

(9) V. Ex. XXIII, 5 and Deut. XXII, 4.

(10) V. Deut. XXV, 4.

(11) V. Lev. XIX, 19.

(12) V. Deut. XXII, 10.

(13) V. Ex. XX, 10 and Deut. V, 14.

(14) Ex. XXI, 34.

(15) Supra p. 313.

(16) [I.e., non-domesticated animals.]

(17) Infra p. 364.

(18) Ex. XXII, 8.
(19) Deut. XXII, 3.
(20) As explained anon.
(21) Ex. XX, 2-17
(22) Ibid. 10.
(23) Deut. V, 6-18.
(24) Ibid. 14.
(25) As will be shown anon.
(26) V. supra p. 312, n. 1.
(27) To work on the Sabbath.
(28) Lit., 'only'.
(29) Lev. XI, 39-40.
(30) Ibid. 26-28.
(31) As these do not cause defilement either by touching or by carrying.
(32) Ox and ass.
(33) As was the case with ox.
(34) Such as an ass, horse, camel and the like.
(35) Which would include also animals not eligible to be sacrificed upon the altar.
(36) As was the case with ass; cf. Ex. XIII, 13.
(37) Such as horses and camels and the like.
(38) To include those animals which otherwise would have been excluded; for since the species of ox is subject to the sanctity of first-born and would in no case have been excluded, its insertion being thus superfluous was surely intended to include even those animals which are not subject to the sanctity of first-born. On the other hand, birds should still be excluded since, unlike ox and ass, their carcasses do not defile, either by touching or by carrying.
(39) I.e., the term 'all' does more than generalize, for it includes everything. [On the difference between amplification ribbuy and generalisation kelal, v. Shebu. (Sonc. ed.) p. 12, n. 9.]
(40) V. infra 63a.
(41) Deut. XIV, 26.
(42) Such as wine from grapes.
(43) Which characterises also cattle.
(44) Excluding water, salt and mushrooms.
(45) Thus excluding fishes.
(46) Which would have included all kinds of food and drink.
(47) [בכל , the particle ב ('for') is taken as partitive.]
(48) In Deut. V, 14.
(49) At least in the case of the Sabbath, including thus all kinds of living creatures.
(50) For in the case of Sabbath, servants are included.
(51) Kil. VIII, 6.
(52) [Papunia was a place between Bagdad and Pumbeditha, v. B.B. (Sonc. ed.) p. 79, n. 8.]
(53) For honouring father and mother; v. Ex. XX, 12.

Talmud - Mas. Baba Kama 55a

there is a mention of wellbeing?[1] — He replied: While you are asking me why wellbeing is mentioned there, ask me whether wellbeing is in fact mentioned or not, as I do not know whether wellbeing is mentioned there or not.[2] Go therefore to R. Tanhum b. Hanilai who was intimate with R. Joshua b. Levi, who was an expert in Aggadah. When he came to him he was told by him thus: 'From R. Joshua b. Levi I have not heard anything on the matter. But R. Samuel b. Nahum the brother of the mother of R. Aha son of R. Hanina, or as others say the father of the mother of R. Aha son of R. Hanina, said to me this: Because the [first tablets containing the] Commandments were destined to be broken.'[3] But even if they were destined to be broken, how should this affect [the mention of wellbeing]? — R. Ashi thereupon said: God forbid! Wellbeing would then have ceased in

Israel.[4]

R. Joshua[5] said: He who sees [the letter] teth[6] in a dream [may regard it as] a good omen for himself. Why so? If because it is the initial letter of [the word] 'Tob' ['good'] written in Scripture,[7] why not say [on the contrary that it is also the initial letter of the verb 'ta'atea'[8] commencing the Scriptural verse] And I will sweep it with the besom of destruction?[9] — We are speaking [here of where he saw in a dream only] one teth [whereas ta'atea contains two such letters]. But still why not say [that it might have referred to the word 'tum'ah'[10] as in the verse] Her filthiness is in her skirts?[11] — We are speaking of [where he saw in a dream the letters] 'teth' and 'beth'.[12] But again why not say [that it might have referred to the verb tabe'u[13] as in the verse], Her gates were sunk in to the ground?[14] — The real reason is that Scripture used this letter on the very first occasion to express something good, for from the beginning of Genesis up to [the verse] And God saw the light[15] no teth occurs.[16] R. Joshua b. Levi similarly said: He who sees [the word] hesped[17] in a dream [may take it as a sign that] mercy has been exercised towards him in Heaven, and that he will be released [from trouble].[18] provided, however, [he saw it] in script.

SO ALSO BEASTS AND BIRDS ARE LIKE THEM etc. Resh Lakish said: Rabbi taught here[19] that a cock, a peacock and a pheasant are heterogeneous with one another.[20] Is this not obvious?[21] — R. Habiba said: Since they can breed from one another it might have been thought that they constitute a homogeneous species; we are therefore told [by this that this is not the case]. Samuel said:[22] The [domestic] goose and the wild goose are heterogeneous with each other. Raba son of R. Hanan demurred [saying:] What is the reason? Shall we say because one has a long neck and the other has a short neck? If so, why should a Persian camel and an Arabian camel similarly not be considered heterogeneous with each other, since one has a thick neck and the other a slender neck? — Abaye therefore said: [It is because] one[23] has its genitals discernible from without while the other one[24] has its genitals within. R. Papa said: [It is because] one[23] becomes pregnant with only one egg at fecundation, whereas the other one[21] becomes pregnant with several eggs at one fecundation. R. Jeremiah reported that Resh Lakish said: He who couples two species of sea creatures becomes liable to be lashed.[25] On what ground?[26] R. Adda b. Ahabah said in the name of 'Ulla: This rule comes from the expression 'after its kind'[27] [in the section dealing with fishes] by comparison with 'after its kind'[28] [in reference to creatures] of the dry land. Rehabah inquired: If a man drove [a waggon] by means of a goat and a mullet together, what would be the legal position? Should we say that since a goat could not go down into the sea and a mullet could not go up on to the dry land, no transgression has been committed, or do we say that after all they are now pulling together?[29] Rabina demurred to this: If this is so, supposing one took wheat and barley together in his hand and sowed the wheat on the soil of Eretz Yisrael[30] and the barley on the soil outside Eretz Yisrael,[31] would he be liable [as having transgressed the law]?[32] — I might answer: Where is the comparison? There [in your case][33] Eretz Yisrael is the place subject to this obligation whereas any country outside Eretz Yisrael is not subject to this obligation; but here,[34] both one place[35] and the other[36] are subject to the obligation.[37] [

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(1) Cf. Deut. V, 16, where the following occurs, That thy days may be prolonged, and that it may go well with the . . . .

(2) As no Halachic point was involved, R. Hiyya b. Abba did not observe the difference; see also Tosaf. B.B. 113a.

(3) Ex. XXXII, 19.

(4) I.e. if it would have been inserted in the first Decalogue it would have ceased altogether when the two tablets were broken.

(5) Some add 'b. Levi'.

(6) The ninth letter of the Hebrew alphabet.

(7) On so many occasions.

(8) I.e. to sweep with a besom.

(9) Isa. XIV, 23.

(10) Meaning defilement and filthiness.

(11) Lam. I, 9.
(12) The second letter of the Alphabet.
(13) I.e., they sunk.
(14) Lam. II, 9.
(15) Gen. I, 4.
(16) And since the first teth in Scriptures commences the word denoting 'good' it is a good omen to see it in a dream.
(17) Which denotes an elegy and a lamentation.
(18) As the word hesped could be divided thus: has pad [ah]. i.e. mercy has been exercised and release granted.
(19) By stating that the law of heterogeneity applies also to birds.
(20) I.e., we are justified in maintaining so.
(21) Since they are birds of different kinds.
(22) Bek. 8a.
(23) The wild goose.
(24) The domestic goose.
(25) As be transgressed the negative commandment of Lev. XIX, 19.
(26) Is not 'cattle' specified in Lev. XIX, 19?
(27) Gen. I. 21.
(28) Ibid. 25.
(29) And a sin has been committed.
(30) Which is subject to the law of not being sown with mingled seed.
(31) Which is not subject to this law.
(32) And since he would not be liable, what doubt could be entertained in the case of a goat and mullet?
(33) Of sowing a field with mingled seed.
(34) In the case of a goat and a mullet.
(35) The dry land.
(36) The sea.
(37) As derived above from the similarity of expressions 'after its kind'.]

Talmud - Mas. Baba Kama 55b

C H A P T E R V I

MISHNAH. IF A MAN BRINGS SHEEP INTO A SHED AND LOCKS THE DOOR IN FRONT OF THEM PROPERLY, BUT THE SHEEP [NEVERTHELESS] GET OUT AND DO DAMAGE, HE IS NOT LIABLE.[1] IF, HOWEVER, HE DOES NOT LOCK THE DOOR IN FRONT OF THEM PROPERLY, HE IS LIABLE.[2] IF [THE WALL] BROKE DOWN AT NIGHT, OR IF ROBBERS BROKE IN, AND THEY[3] GOT OUT AND DID DAMAGE, HE WOULD NOT BE LIABLE. IF [HOWEVER] ROBBERS TOOK THEM OUT [FROM THE SHED AND LEFT THEM AT LARGE AND THEY DID DAMAGE] THE ROBBERS WOULD BE LIABLE [FOR THE DAMAGE].[4] BUT IF THE OWNER HAD LEFT THEM IN A SUNNY PLACE, OR HE HAD HANDED A MINOR, AND THEY GOT AWAY AND DID DAMAGE, HE HANDED THEM OVER TO THE CARE OF A DEAF-MUTE, AN IDIOT, HE WOULD BE LIABLE.[4] IF HE HAD HANDED THEM OVER TO THE CARE OF A SHEPHERD, THE SHEPHERD WOULD HAVE ENTERED [INTO ALL RESPONSIBILITIES] INSTEAD OF HIM. IF A SHEEP [ACCIDENTALLY] FELL INTO A GARDEN AND DERIVED BENEFIT [FROM THE FRUIT THERE], PAYMENT WOULD HAVE TO BE MADE TO THE EXTENT OF THE BENEFIT,[5] WHEREAS IF IT HAD GONE DOWN THERE IN THE USUAL WAY AND DONE DAMAGE, THE PAYMENT WOULD HAVE TO BE FOR THE AMOUNT OF THE DAMAGE DONE BY IT.[6] HOW IS PAYMENT MADE FOR THE AMOUNT OF DAMAGE DONE BY IT?[6] BY COMPARING THE VALUE OF AN AREA IN THAT FIELD REQUIRING ONE SE'AH[7] [OF SEED] AS IT WAS [PREVIOUSLY] WITH WHAT ITS WORTH IS [NOW]. R. SIMEON, HOWEVER, SAYS: IF IT CONSUMED RIPE FRUITS THE PAYMENT SHOULD BE FOR RIPE FRUITS; IF ONE SE'AH[8] [IT WOULD BE FOR] ONE

SE'AH, IF TWO SE'AHS [FOR] TWO SE'AHS.

GEMARA. Our Rabbis taught: What is denominated 'properly' and what is not 'properly'? — If the door was able to stand against a normal wind,[9] it would be 'properly', but if the door could not stand against a normal wind, that would be 'not properly'. R. Manni b. Pattish thereupon said: Who can be the Tanna [who holds] that in the case of Mu'ad,[10] even inadequate precaution[11] suffices [to confer exemption]? It is R. Judah. For we have learnt: If the owner fastened his ox [to the wall inside the stable] with a cord or shut the door in front of it properly[12] and the ox got out and did damage, whether it was Tam or already Mu'ad, he would be liable; so R. Meir. R. Judah, however, says: In the case of Tam he would be liable, but in the case of Mu'ad exempt, for it is written, And his owner hath not kept him in[13] [thus excluding this case where] it was kept in. R. Eliezer, however, says: No precaution is adequate [for Mu'ad] save the [slaughter] knife.[14] [But does not an anonymous Mishnah usually follow the view of R. Meir?][15] — We may even say that it is in accordance with R. Meir, for Tooth and Foot are different[16] [in this respect], since the Torah required a lesser degree of precaution in their case as stated by R. Eleazar, or, according to others, as stated in a Baraitha: There are four cases [of damage] where the Torah requires a lesser degree of precaution. They are these: Pit and Fire, Tooth and Foot. Pit as it is written, And if a man shall open a pit, or if a man shall dig a pit and not cover it,[17] implying that if he covered it[18] he would he exempt. Fire, as it is written, He that kindled the fire shall surely make restitution,[19] [that is to say] only where he acted [culpably], as by actually kindling the fire.[20] Tooth, as it is written, And he shall send forth,[21] [that is to say] only where he acted [wrongly] as by actually sending it forth.[20] It was [further] taught:[22] 'And he shall send forth'[23] denotes Foot, as in the similar expression, That send forth the foot of the ox and the ass;[24] And it shall consume denotes 'Tooth',[23] as in the similar expression, As the tooth consumeth to entirety.[25] This is so only for the reason that he acted [culpably] as by actually sending it forth or feeding it there,[26] whereas where he did not act [in such a manner] this would not be so. Rabbah said: The text of the Mishnah also corroborates [this view][27] by taking here the case of sheep. For have we not been dealing all along [so far] with an 'ox'?[28] Why then not say [here also] 'ox'?[29] What special reason was there for taking here SHEEP?[30] Is it not because the Torah required a lesser degree of precaution in their case[31] on account of the fact that it is not Horn that is dealt with here,[32] but Tooth and Foot that are dealt with here? It is thus indicated to us that [this kind of precaution[33] is] only in the case of Tooth and Foot which are Mu'ad [ab initio]; and this may be regarded as proved.

It was taught: R. Joshua said: There are four acts for which the offender is exempt from the judgments of Man but liable to the judgments of Heaven. They are these: To break down a fence in front of a neighbour's animal [so that it gets out and does damage];[34] to bend over a neighbour's standing corn in front of a fire;[34] to hire false witnesses to give evidence; and to know of evidence in favour of another and not to testify on his behalf.[35]

The Master stated: 'To break down a fence in front of a neighbour's animal.' Under what circumstances? If we assume that the wall was sound, why should the offender not be liable even according to the judgments of Man [at least for the damage done to the wall]? — It must therefore be

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(1) As he is not to blame.

(2) As he did not discharge his duty of guarding his cattle.

(3) I.e., the sheep.

(4) Done by the sheep, since they have come into the possession of the robbers, who have thus become liable to control them.

(5) But not to the extent of the actual damage: cf. supra 19b.

(6) In accordance with the law of Tooth.

(7) V. Glos.

(8) V. Glos.

(9) Though unable to withstand an extraordinary wind.
(10) As in the case with Tooth and Foot.
(11) I.e., a door able to withstand a normal wind.
(12) Withstanding a normal wind.
(13) Ex. XXI, 36.
(14) Supra 45b.
(15) According to whom precaution of a lesser degree would not suffice.
(16) From Horn.
(17) Ex. XXI, 33.
(18) Though he did not fill it with sand.
(19) Ex. XXII, 5.
(20) But not where any precaution has been taken.
(21) Ex. XXII, 4.
(22) Cf. supra 2b.
(23) Ex. XXII, 4.
(24) Isa. XXXII, 20.
(25) I Kings XIV,10.
(26) V. supra n. 1.
(27) I.e. the distinction between Tooth and Horn.
(28) And not with sheep.
(29) Which as a rule stands for Horn.
(30) Which damages by Tooth and Foot.
(31) I.e. in Tooth and Foot.
(32) [MS. M. reads 'sheep'. Render accordingly: Because as to sheep there is no mention (in the Torah) in connection with Horn; only Tooth and Foot are mentioned in connection therewith.]
(33) Which would withstand only a normal wind.
(34) V. the discussion later.
(35) Tosef., Shebu. III.

Talmud - Mas. Baba Kama 56a

where the wall was shaky.[1]

The Master stated: 'To bend over a neighbour's corn standing in front of a fire.' Under what circumstances? If we assume that the fire can now reach it in a normal wind, why is he not liable also according to the judgments of Man? — It must therefore be where it would reach them only in an unusual wind. R. Ashi said: What is referred[2] to is 'covering' the offender having caused the stalks to become hidden in the ease of Fire.[3]

The Master stated: 'To hire false witnesses.' Under what circumstances? If we assume for his own benefit,[4] should he not pay the money[5] and should he thus not also be liable even in accordance with the judgments of Man? — It therefore must mean for the benefit of his neighbour.[6]

'To know of evidence in favour of another and not to testify on his behalf.' With what case are we dealing here? If with a case where there are two [witnesses], is it not obvious that it is a Scriptural offence,[7] [as it is written], If he do not utter it then he shall bear his iniquity?[8] — It must therefore be where there is one [witness].[9]

(Mnemonic: He who does, Deadly poison, Entrusts, His fellow, Broken.)

But are there no more cases [of the same category]? Is there not the case of a man who does work with the Water of Purification[10] or with the [Red] Heifer of Purification,[10] where he is similarly

exempt according to the judgments of Man but liable according to the judgments of Heaven?[11] Again, is there not the case of one who placed deadly poison before the animal of a neighbour, where he is exempt from the judgments of Man but liable according to the judgments of Heaven?[12] So also is there not the case of one who entrusts fire to a deaf-mute, an idiot or a minor [and damage results], where he is exempt from the judgments of Man but liable according to the judgments of Heaven?[13] Again, is there not the case of the man who gives his fellow a fright, where he is similarly exempt from the judgments of Man but liable according to the judgments of Heaven?[14] And finally is there not the case of the man who, when his pitcher has broken on public ground, does not remove the potsherds, who, when his camel falls does not raise it, where R. Meir indeed makes him liable for any damage resulting therefrom, but the Sages hold that he is exempt from the judgments of Man though liable according to the judgments of Heaven?[15] — Yes, there are surely many more cases [to come under the same category], but these four cases were particularly necessary to be stated by him,[16] as otherwise you might have thought that even according to the judgments of Heaven there should not be any liability. It was therefore indicated to us [that this is not so]. In the case of breaking down a fence in front of a neighbour's animal you might have said that since the wall was in any case bound to come down, what offence was committed, and that even according to the judgments of Heaven there should be no liability. It was therefore indicated to us [that this is not so]. In the case of bending over a neighbour's standing corn in front of a fire you might also have said that the defendant could argue, 'How could I know that an unusual wind would come?' and that consequently even according to the judgments of Heaven he should not be liable; it was therefore indicated to us [that this is not the case]. So also according to R. Ashi who said that the reference is to 'covering', you might have said that [the defendant could contend], 'I surely intended to cover and thus protect your property,[17] and that even according to the judgments of Heaven he should not be liable. It was therefore indicated to us [that this is not so]. In the case of hiring false witnesses you might also have said that the offender should be entitled to plead, 'Where the words of the Master[18] are contradicted by words of a disciple,[19] whose words should be followed?'[20] and that even according to the judgments of Heaven he should not be liable. It was therefore indicated to us [that this is not so]. In the case where one knows evidence in favour of another and does not testify on his behalf, you might also have said that [the offender could argue], 'Who can say for certain that even had I gone and testified on his behalf, the other party would have admitted [the claim], and would not perhaps have sworn falsely [against my evidence]?'[21] and that even according to the judgments of Heaven he should not be liable. It was therefore indicated to us [that this is not the case].

IF THE WALL BROKE DOWN AT NIGHT OR IF ROBBERS BROKE IN etc., Rabbah said: This[22] is so only where the animal undermined the wall. What then of the case where it did not undermine the wall?[23] Would there then be liability? Under what circumstances? If it be assumed that the wall was sound, why then even where it did not undermine it[23] should there be liability? What else could the defendant have done? But if, on the other hand, the wall was shaky, why even in the case where the animal undermined it should there be exemption? Is not this a case where there is negligence[24] at the beginning but [damage results from] accident[25] at the end? Your view is correct enough on the assumption[26] that where there is negligence at the beginning [and damage results through] accident at the end there is exemption, but if we take the view[26] that where there is negligence at the beginning though [damage results from] accident at the end there is liability, what can be said? — This ruling of the Mishnah therefore refers to a sound wall and even to a case where it did not undermine the wall.[27] For the statement of Rabbah was made with reference to [the ruling in] the concluding clause, IF THE OWNER HAD LEFT THEM IN A SUNNY PLACE OR HANDED THEM OVER TO THE CARE OF A DEAF-MUTE, AN IDIOT OR A MINOR AND THEY GOT AWAY AND DID DAMAGE, HE WOULD BE LIABLE. Rabbah thereupon said: This would be so even where it undermined the wall. For there would be no doubt that [this would be so] where it did not undermine the wall[28] as there was negligence throughout, but even where it did undermine the wall,[29] the ruling[30] would also hold good. You might have said [in that case, that where it undermined the wall][29] it should be regarded as a case of negligence at the beginning but

accident at the end.[31] It was therefore indicated to us[32] that [it is regarded as a case of] negligence throughout, the reason being that the plaintiff might say, 'You should surely have realised that since you left it in a sunny place, it will use every possible device for the purpose of getting out.

IF THE ROBBERS TOOK THEM OUT, THE ROBBERS WOULD BE LIABLE [FOR THE DAMAGE].[33]

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(1) And should in any case have been pulled down.
(2) By the expression 'bending over'.
(3) For which there is no liability according to the view of the Rabbis (v. infra p. 357), and by his act he caused the owner of the corn the loss of all claim to compensation.
(4) I.e., to obtain money really not due to him.
(5) Which he obtained by false pretenses and by the evidence of the false witnesses whom he hired.
(6) I.e. to pay him money not due to him, and it so happened that the neighbour to whom the money was paid could not be made to give back the money he obtained by the false evidence.
(7) Why then state it here?
(8) Lev. V, 1.
(9) Whose evidence would merely entail the imposition of an oath upon the defendant, v. Shebu 40a.
(10) Thus disqualifying it from being used for the purpose of purification, Par. IV, 4.
(11) Git. 53a, and infra 98a.
(12) Supra 47b.
(13) Infra 59b.
(14) Infra 91a.
(15) Supra 28b.
(16) R. Joshua.
(17) But not to cause you the loss of compensation.
(18) Expressed in the Divine Law.
(19) I.e. mortal man.
(20) Surely the word of the former. The witnesses should therefore be exclusively responsible, as they should not have followed the advice of a man in contradiction to the words of the Law. The law of agency could on this account not apply in matters of transgression; cf. Kid. 42b and supra p. 294.
(21) Since one witness could not make the defendant liable for money payment but only for an oath.
(22) Exemption.
(23) Which fell down of itself.
(24) To leave an animal behind a shaky wall which could not withstand a normal wind.
(25) Viz., that the animal broke through it.
(26) Supra 21b.
(27) V. p. 327, n. 6.
(28) But managed to escape through the door.
(29) Which was very sound.
(30) Of liability.
(31) V. p. 327, n. 8.
(32) By Rabbah.
(33) V. p. 324, n. 4.

Talmud - Mas. Baba Kama 56b

Is this not obvious, seeing that as soon as they took it out it was placed under their charge in all respects?[1] The ruling was necessary to meet the case where they merely stood in front of it[2] [thus blocking any other way for it while leaving open that leading to the corn]. This is on the lines of the statement made by Rabbah on behalf of R. Mattena who said it on behalf of Rab: If a man placed the animal of one person near the standing corn of another, he is liable.[3] 'Placed', [you say]? Is this not

obvious? — The ruling was necessary to meet the case where he merely stood in front of it [blocking thus any other way for it while leaving open that leading to the corn]. Said Abaye to R. Joseph: Did you not explain to us that [the ruling of Rab referred to a case where] the animal was [not actually placed but only] beaten [with a stick and thus driven to the corn]? In the case of robbers also, [the ruling in the Mishnah similarly refers to a case where] they had only beaten it. IF HE HANDED THEM OVER TO THE CARE OF A SHEPHERD, THE SHEPHERD WOULD ENTER INTO ALL THE RESPONSIBILITIES INSTEAD OF HIM. I would here ask: 'Instead of whom?' If you say, instead of the owner of the animal, have we not already learnt elsewhere: 'If an owner hands over his cattle to an unpaid bailee or to a borrower, to a paid bailee or to a hirer, each of them would enter into the responsibilities of the owner'?[4] It must therefore mean, instead of a bailee,[5] and the first bailee would be exempt altogether. Would this not be a refutation of Raba? For did Raba not say: One bailee handing over his charge to another bailee becomes liable for all consequences?[6] — Raba might reply that 'he handed it over to a shepherd' means [the shepherd handed it over] to his apprentice, as it is indeed the custom of the shepherd to hand over his sheep to [the care of] his apprentice. Some say that since the text says, HE HANDED THEM OVER TO THE CARE OF A SHEPHERD and does not say 'he handed them over to another person,'it could from this be proved that the meaning of 'HE HANDED THEM OVER TO THE CARE OF A SHEPHERD' is that the shepherd handed [them] over to his apprentice, as it is indeed the custom of the shepherd to hand over [various things] to [the care of] his apprentice, whereas if [he handed it over] to another person this would not be so. May we say that this supports the view of Raba? For did Raba not say: One bailee handing over his charge to another bailee becomes liable for all consequences?[6] — It may however be said that this is no support. For the text perhaps merely mentioned the usual case, though the same ruling would apply [to a case where it was handed over] to another person altogether.

It was stated: A person taking charge of a lost article [which he has found],[7] is according to Rabbah in the position of an unpaid bailee,[8] but according to R. Joseph in the position of a paid bailee.[9] Rabbah said: He is in the position of an unpaid bailee, since what benefit is forthcoming to him? R. Joseph said: He is in the position of a paid bailee on account of the benefit he derives from not being required to give bread to the poor [while occupied in minding the lost article found by him];[10] hence he should be considered a paid bailee. Some, however, explain it thus: R. Joseph said that he would be like a paid bailee as the Divine Law put this obligation[11] upon him even against his will; he must therefore be considered as a paid bailee.[12] R. Joseph brought an objection to the view of Rabbah [from the following]:

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(1) V. p. 325, n. 7.

(2) In which case the sheep did not come into the possession of the robbers.

(3) Though the animal which did the damage is not his.

(4) Supra 44b.

(5) I.e. where the sheep has already been in the hands of a bailee who later transferred it to a shepherd. By declaring the shepherd to be liable it is implied that the bailee will become released from his previous obligations.

(6) Even for accidents, as he had no right to hand over his charge to another person without the consent of the owner, v. supra 11b.

(7) And which he will have to return to the owner.

(8) To whom the law of Ex. XXII, 6-8 applies, and who is thus exempt where the article was stolen or lost.

(9) Who is subject to Ex. XXII, 9-12 and who is therefore liable to pay where the article was stolen or lost.

(10) As while a person is occupied with the performance of one commandment he is not under an obligation to perform at the same time another commandment; cf. Suk. 25a.

(11) Of looking after the lost article which he found.

(12) Who after receiving the consideration is similarly under an obligation to guard.

If a person returns [the lost article which he had found] to a place where the owner is likely to see it, he is not required any longer to concern himself with it. If it is stolen or lost[1] he is responsible for it.[2] Now, what is meant by 'If it is stolen or lost'? Does it not mean, 'If it is stolen while in his house or if it is lost while in his house'?[3] — No; it means from the place to which it had been returned.[4] But was it not stated, 'He is not required any longer to concern himself with it'?[5] — He answered him: We are dealing here with a case where he returned it in the afternoon,[6] Two separate cases are, in fact, stated in the text, which should read thus: If he returned it in the morning to a place where the owner might see it [at a time] when it was usual with him to go in and out so that he would most likely see it, he would no more be required to concern himself with it, but if he returned it in the afternoon to a place where the owner might see it[7] [since it was at the time] when it was not usual with him to go in and out [of the house] and he could thus not be expected to see it, if it was stolen or lost there, he would still be responsible for it. He then brought another objection [from the following]: He is always responsible [for its safety] until he has returned it to the keeping of its owner.[8] Now, what is the meaning of [the term] 'always'? Does it not mean 'even while in the keeper's house'[9] thus proving that he was like a paid bailee?[10] — Rabbah said to him: I agree with you in the case of living things, for since they are in the habit of running out into the fields they need special watching.[11]

Rabbah [on the other hand] brought an objection to the view of R. Joseph [from the following: The text says] 'Return';[12] this tells me only [that it can be returned] to the house of the owner. Whence [could it be derived that it may also be returned] to his garden and to his deserted premises? It says therefore further: Thou shalt return them[12] [that is to say] 'everywhere'.[13] Now, to what kind of garden and deserted premises [may it be returned]? If you say to a garden which is closed in and to deserted premises which are closed in, are these not equivalent to his house? It must surely therefore refer to a garden that is not closed in and to deserted premises that are not closed in. Does not this show that a person taking care of a lost article [which he has found] is like an unpaid bailee?[14] — He replied: In point of fact it refers to a garden which is closed in and to deserted premises which are closed in, and as for your questions, 'Are these not equivalent to his house?' [the answer would be that] it is thereby indicated to us that it is not necessary to notify the owner, as indeed [stated by] R. Eleazar,[13] for R. Eleazar said: In all cases notification must be given to the owner, with the exception, however, of returning a lost article, as the Torah uses in this connection many expressions of returning.[15]

Said Abaye to R. Joseph: Do you really not accept the view that a person minding a lost article [which he has found] is like an unpaid bailee? Did R. Hiyya b. Abba not say that R. Johanan stated that if a man puts forward a plea of theft [to account for the absence of] an article [which had been found by him] he might have to make double payment?[16] Now, if you assume that [the person minding the lost article] is like a paid bailee, why should he have to refund double [seeing that] he has to return the principal?[17] — He replied:[18] We are dealing here with a case where, for instance, he pleads [that it was taken] by all armed malefactor.[19] But, he rejoined:[20] All armed malefactor is surely considered a robber?[21] — He replied:[18] I hold that an armed malefactor, having regard to the fact that he hides himself from the public, is considered a thief.[22]

He[23] brought a [further] objection [from the following]:

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(1) V. the discussion later.

(2) Tosef. B.M. II.

(3) But if he would have to pay where the article was stolen or lost this would prove that he is subject to the law of Paid Bailee.

(4) The liability would therefore be for carelessness.

(5) Why then should he be liable to pay when it was stolen or lost there?

(6) When the owner is usually in the fields and not at home.

(7) Had he been at home.
(8) V. p. 330, n. 8.
(9) Where it was stolen or lost.
(10) V. p. 330, n. 9.
(11) In which case any loss amounts to carelessness.
(12) Literal rendering of Deut. XXII, 1.
(13) B.M. 31a.
(14) And need not take as much care as a paid bailee would have to do.
(15) By doubling the verb 'in return', השב תשיבם
(16) If his false defence of theft has already been corroborated by all oath, v. infra 63a; 106b.
(17) For in his case the plea of an alleged theft would not be a defence but an admission of liability, and no oath would usually be taken to corroborate it. Moreover, the paid bailee could in such circumstances not be required to pay double even after it was found out that he himself had misappropriated the article in his charge.
(18) I.e. R. Joseph to Abaye.
(19) **, 'a rover'. This case is a mere accident as the bailee is not to blame and would not have to pay the principal; this plea would therefore be not an admission of liability but a defence, and if substantiated by a false oath he would have to pay double.
(20) I.e. Abaye to R. Joseph.
(21) And if traced would have to pay the principal and not make double payment (v. infra). The bailee making use of such a defence should therefore never have to pay double, as his plea was not an alleged theft but an alleged robbery.
(22) And would therefore have to pay double when traced. The bailee by submitting such a defence and substantiating it by a false oath should similarly be liable to double payment as his defence was a plea of theft, although had it been true, he would not have to pay even the principal, because the case of an armed malefactor is one of accident, v. note 5.
(23) I.E., Abaye.

Talmud - Mas. Baba Kama 57b

No.[1] Because you say that [a certain liability falls on] the unpaid bailee who is subject to pay double payment,[2] it does not follow that you can say the same in the case of the paid bailee who does not pay double payment.[3] Now if you assume that an armed malefactor is considered a thief,[4] it would be possible that even a paid bailee would [in some cases] have to make double payment, as where he pleaded that [the articles in his charge were taken] by an armed malefactor![5] — He replied:[6] What was meant is this: No. Because you say that a certain liability falls on the unpaid bailee, who has to make double payment,[2] whatever pleas he puts forward,[7] it does not follow that you can say the same in the case of the paid bailee who could not have to make a double payment except where he puts forward the plea that an armed malefactor[5] [took away the article in his charge]. He[8] again brought an objection [from the following]: [From the text] And it be hurt or die[9] I learn only the case of breakage or death. Whence [could there also be derived cases of] theft and loss?[10] An a fortiori argument may be applied here: If in the case of Paid Bailee who is exempt for breakage and death[11] he is nevertheless liable for theft[12] and loss,in the case of Borrower who is liable for breakage and death[9] would it not be all the more certain that he should be liable [also] for theft and loss? This a fortiori has indeed no refutation.[13] Now, if you assume that an armed malefactor is considered a thief why could there be no refutation [of this a fortiori]? It could surely be refuted [thus]: Why [is liability attached] to Paid Bailee if not because he might have to pay double payment where he puts forward the plea [that] an armed malefactor[5] [took the articles in his charge]?[14] — He said to him:[15] This Tanna held that the liability to pay the principal in the absence of any oath[16] is of more consequence than the liability for double payment which is conditioned by taking the oath.[17]

May we say that hɛ[18] derives support [from the following]: If a man hired a cow from his neighbour and it was stolen, and the hirer said, 'I would prefer to pay and not to swear'[19] and [it so happened that] the thief was [subsequently] traced, he should make the double payment to the hirer.[20] Now it was presumed that this statement followed the view of R. Judah[21] who said that

Hirer[22] is equal [in law] to Paid Bailee.[23] Since then it says 'the hirer said "I would prefer to pay and not to swear"',[19] this shows that had he wished he could have freed himself by resorting to the oath. Under what circumstances [could this be so]? Where, for instance, he advances the plea that an armed malefactor [took it].[24] Now seeing that it says, '. . . and it so happened that the thief was [subsequently] traced, he should pay the double payment to the hirer',[25] can it not be concluded from this that an armed malefactor is considered as a thief?[26] — I might answer: Do you presume that this statement follows the view of R. Judah who said that Hirer[22] is equal [in law] to Paid Bailee?[23] Perhaps it follows the view of R. Meir who said that Hirer is equal [in law] to Unpaid Bailee.[27] If you wish[28] I may say: [We should read the relevant views] as they were transposed by Rabbah b. Abbuha, who [taught thus]: How is the payment [for the loss of articles] regulated in the case of Hirer? R. Meir says: As in the case of Paid Bailee. R. Judah, however, says: As in the case of Unpaid Bailee.[29] R. Zera said:[30] We are dealing here with a case where the hirer advances the plea [that it was taken by] an armed malefactor, and it was afterwards discovered that [it was taken by] a malefactor without arms.[31]

IF A SHEEP [ACCIDENTALLY] FELL INTO A GARDEN AND DERIVED BENEFIT [FROM THE FRUITS THERE], PAYMENT WOULD HAVE TO BE MADE TO THE EXTENT OF THE BENEFIT. Rab said: [This applies to benefit derived by the animal] from [the lessening of] the impact.[32] But what when it consumed them? Would there be no need to pay even to the extent of the benefit? Shall we say that Rab is here following the principle laid down by him [elsewhere]? For did Rab not say, 'It should not have eaten'?[33] — But what a comparison! Rab said 'It should not have eaten' only there where it was injured [by over-eating itself], so that the owner of the fruits could say [to the plaintiff], 'I will not pay as it should not have eaten [my fruits]'. But did Rab ever say this in the case where the animal did damage to others that there should be exemption?

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(1) This is a continuation of a Baraitha (now partly lost), which sought at the outset to derive a certain liability (undefined) in the case of a paid bailee by an a fortiori from the case of an unpaid bailee.

(2) V. p. 332, n. 2.

(3) V. p. 332, n. 3.

(4) V. p. 332, n. 9.

(5) V. p. 332, n. 5.

(6) I.e., R. Joseph to Abaye.

(7) I.e., by a thief whether armed or unarmed.

(8) I.e. Abaye.

(9) Ex. XXII, 13 dealing with a borrower.

(10) To involve liability.

(11) In accordance with Ex. ibid. 9-10.

(12) Ibid. 11.

(13) B.M. 95a.

(14) Whereas in the case of Borrower there could never be an occasion for double payment, as any plea of theft whether by an armed malefactor or by an ordinary thief would involve the payment of the principal and would thus be an admission of liability and not a defence at all.

(15) I.e., R. Joseph to Abaye.

(16) Such as is the case with the Borrower.

(17) Such as in the case of a Paid Bailee. Cf. also B.M. 41b and 94b.

(18) I.e. R. Joseph who maintains that a malefactor in arms is subject to the law applicable to an ordinary thief.

(19) In corroboration of my defence.

(20) For by offering to pay the value of the cow he acquired title to all possible payments with reference to it, B.M. 34a.

(21) As this view was followed in B.M. VII, 8; 36a; 97a; Jeb. 66b; Sheb. VIII, 1 and elsewhere; cf. also 'Er. 46b.

(22) Dealt with in Ex. XXII, 14.

(23) V. p. 330, n. 3.

(24) V. p. 332, n. 5.

(25) For by offering to pay the value of the cow he acquired title to all possible payments with reference to it.
(26) V. p. 332, n. 9.
(27) Who is exempt also where the article was stolen by an ordinary thief, in which case the thief referred to in the Baraitha did not necessarily mean a malefactor in arms but an ordinary thief.
(28) To bring the ruling into accord with R. Judah though the reason stated in n.10 may not apply.
(29) V. p. 334, n. 8.
(30) That a hirer might be subject to the law of Paid Bailee, and still the Baraitha affords no support to R. Joseph.
(31) I.e. an ordinary thief who has to pay double, whereas if he would have been with arms he might perhaps have been subject to the law applicable to a robber, and there would have been no place for double payment.
(32) As the fruits protected the animal from being hurt too much.
(33) V. supra 47b. And so here the owner of the animal might plead, 'it should not have eaten'.

Talmud - Mas. Baba Kama 58a

Rab took a particularly strong instance.[1] There can be no doubt that where the benefit was derived from the animal having consumed the fruits payment would have to be made to the extent of the benefit. Regarding, however, [the benefit derived by the animal from the lessening of] the impact, it might have been thought that the fruits served only the purpose of 'preventing a lion from [damaging] a neighbour's property',[2] so that no payment should be made even to the extent of the benefit. It is therefore indicated to us [here that even this benefit has to be paid for]. But why not say that this is so?[3] — [No payment it is true could be claimed] in the case of preventing a lion from [damaging] a neighbour's property as [the act of driving the lion away] is voluntary, but in this case the act was not voluntary.[4] Or again, in the case of preventing the lion from [damaging] a neighbour's property, no expenses were incurred [by the act of driving away the lion], but in this case here there was [pecuniary] loss attached to it.

[How did the animal fall]?[5] — R. Kahana said: It slipped in its own water. Raba, however, said: [The rule would hold good even] where another animal pushed it down. The one who explains the ruling to apply where another animal pushed it down, would certainly apply it where it slipped in its own water.[6] But the one who explains the ruling to apply where it slipped in its own water [might maintain that] where another animal pushed it down there was negligence, and the payment should be for the amount of damage done by it, as the plaintiff would be entitled to say, 'You should have made them go past one by one.'

R. Kahana said: The Mishnaic ruling applies only to the bed [into which it fell].[7] If, however, it went from one bed to another bed, the payment[8] would be for the amount of damage done by it. R. Johanan, however, said that even where it went from one bed to another bed and did so even all day long, [the payment would be made only to the extent of the benefit], unless it left the garden and returned there again with the knowledge [of the owner]. R. Papa thereupon said: Do not imagine this to mean 'unless it left the garden to the knowledge of the owner and returned there again with the knowledge of the owner', for as soon as it left the garden to the knowledge of the owner, even though it returned again without his knowledge [there would already be liability],[9] the reason being that the plaintiff might [rightly] say: Since it had once become known [to it where it can find fruit, you should have realised that] whenever it broke loose it would run to that place.

IF IT WENT DOWN THERE IN THE USUAL WAY AND DID DAMAGE, THE PAYMENT WOULD HAVE TO BE FOR THE AMOUNT OF DAMAGE DONE BY IT. R. Jeremiah raised the question: Where it had gone down there in the usual way but did damage by water resulting from giving birth,[10] what would be the legal position? If we accept the view that where there is negligence at the beginning but [damage actually results] in the end from sheer accident there is liability,[11] no question arises.[12] Where we have to ask is if we accept the view[11] that where there is negligence at the beginning, but [damage actually results] in the end from sheer accident there is exemption. What

[in that case is the law]? Should we say that this is a case where there was negligence at first but the final result was due to accident, and therefore there should be exemption, or should we say [on the contrary that] this case is one of negligence throughout, for since the owner could see that the animal was approaching the time to give birth, he should have watched

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(1) Lit., 'he says there can be no question'.

(2) For which no payment could be demanded, this being merely an act of goodwill and kindness, v. B.B. 52a.

(3) That he is 'preventing a lion' etc.

(4) The owner of the fruit should thus be entitled to compensation.

(5) That it should be considered a mere accident and the payment should only be to the extent of the benefit.

(6) As this is certainly a matter of accident.

(7) Regarding which the whole act is considered an accident.

(8) For the beds except the first one.

(9) To the full extent of the damage.

(10) Which was apparently an accident.

(11) V. Supra 21b.

(12) That there will be liability in this case too.

it and indeed taken more care of it? — Let this remain undecided.

HOW IS PAYMENT MADE FOR THE AMOUNT OF DAMAGE DONE BY IT? BY COMPARING THE VALUE OF AN AREA IN THE FIELD REQUIRING ONE SE'AH OF SEED AS IT WAS [PREVIOUSLY] WITH WHAT ITS WORTH IS [NOW] etc. Whence is this derived? — R. Mattena said: Scripture says, And shall feed in another man's field[1] to teach that the valuation should be made in conjunction with another field. But was this [verse] and shall feed in another man's field not required to exclude public ground [from being subject to this law]? — If so,[2] Scripture would have said 'and shall feed in a neighbour's field' or ['and shall consume] another man's field.' Why then is it said in another [man's] field [unless to teach that] the valuation should be made in conjunction with another field? Let us say then that the whole import [of this verse] was to convey only this ruling, there being thus no authority to exclude public ground? — If so,[3] Scripture would have inserted this clause in the section dealing with payment, e.g., 'of the best of his own field and of the best of his own vineyard shall he make restitution [as valued] in conjunction with another field.' Why then did Scripture put it in juxtaposition with and shall feed unless to indicate that the two [rulings] are to be derived from it.[4]

How is the valuation[5] arrived at? — R. Jose b. Hanina said: [The value of] an area requiring one se'ah of seed [is determined] in proportion to the value of an area requiring sixty se'ahs of seed. R. Jannai said: [The value of] an area requiring one tarkab[6] of seed [is determined] in proportion to the value of an area requiring sixty tarkabs of seed. Hezekiah said: [The value of] each stalk [consumed is determined] in proportion to the value of sixty such stalks.[7] An objection was raised [from the following:] If it consumed one kab in two kabs [of grain], it would not be right to ask payment for their full value,[8] but the amount consumed would have to be considered as if forming a little bed which would thus be estimated. Now, does this not mean that the bed will be valued by itself?[9] — No; in [the proportion of one to] sixty.[10]

Our Rabbis taught: The valuation is made neither of a kab by itself, as this would be an advantage to him,[11] nor of an area required for a kor[12] of seed, as this would be a disadvantage to him.[11] What does this mean? — R. Papa said: What is meant is this: Neither is a kab [of grain consumed] valued in conjunction with sixty kabs, as the defendant would thereby have too great an advantage,[13] nor is a kor valued in conjunction with sixty kors, as this would mean too great a disadvantage for the

defendant.[14] R. Huna b. Manoah demurred to this, saying: Why then does it say, 'nor of an area required for a kor of seed'? [According to your interpretation] should it not have been 'nor a kor'?[15] — R. Huna b. Manoah therefore said in the name of R. Aha the son of R. Ika: What is meant is this: The valuation is made neither of a kab by itself, as this would be too great an advantage to the plaintiff, nor of a kab in conjunction with an area required for a kor of seed, as this would be too great a disadvantage for the plaintiff. It must therefore be made only in conjunction with sixty [times as much].

A certain person cut down a date-tree belonging to a neighbour. When he appeared before the Exilarch, the latter said to him: 'I myself saw the place; three date-trees stood close together[16] and they were worth one hundred zuz. Go therefore and pay the other party thirty-three and a third [zuz].' Said the defendant: 'What have I to do with an Exilarch who judges in accordance with Persian Law?' He therefore appeared before R. Nahman, who said to him [that the valuation should be made] in conjunction with sixty [times as much]. Said Raba to him:[17] If the Sages ordained this valuation in the case of chattels doing damage, would they do the same in the case of damage done by Man with his body? — Abaye, however, said to Raba: In regard to damage done by Man with his body, what is your opinion [if not] that which was taught: 'If a man prunes [the berries from] a neighbour's vineyard while still in the budding stage, it has to be ascertained how much it was worth previously and how much it is worth afterwards', but nothing is said of valuation in conjunction with sixty [times as much]? But has it not been taught similarly with respect to [damage done by] Cattle? For it was taught: If [a beast] breaks off a plant, R. Jose says that the Legislators of [public enactments[18] in Jerusalem stated that if the plant was of the first year, two silver pieces[19] [should be paid] but if it was in its second year, four silver pieces [should be paid]. If it consumed young blades of grain, R. Jose the Galilean says that it has to be considered in the light of the future value of that which was left in the field. The Sages, however, say that it has to be ascertained how much it [the field] was worth [previously] and how much it is worth [now].

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(1) Ex. XXII, 4.

(2) I.e., were it intended only for that.

(3) V. p. 337, n. 7.

(4) I.e. that public ground be excluded and that the valuation be made in conjunction with another field.

(5) Of an area requiring one se'ah of seed.

(6) I.e. half a se'ah, amounting thus to three kabs, though originally it meant two kabs.

(7) The principle underlying this difference of opinion is made clear in the Baraitha that follows.

(8) Cf. supra p. 123.

(9) And not in proportion to the value of a bigger area. This refutes the views of all the cited authorities.

(10) [I.e., either 'se'ahs', 'tarkabs' or 'stalks' as the case may be.]

(11) V. the discussion infra.

(12) I.e., thirty se'ahs; cf. Glos.

(13) As the payment would be very small owing to the fact that the deficiency of one kab in an area required for sixty kabs of seed would hardly be noticed, and so would reduce the general price very little.

(14) For the deficiency of one kor, in an area required for sixty times as much, is conspicuous, and reduces the general price too much. The valutation of a se'ah will therefore be made in proportion to sixty se'ahs.

(15) Should be valued in this way.

(16) Lit., 'in one nest', or 'place'.

(17) R. Nahman.

(18) גוזרי גזירות Admon and Hanan b. Abishalom, identical with the 'Judges of Civil Law' דייני גזירות mentioned in Keth. XIII, 1 (Rashi). Little is known of their functions and power to enable us to explain their designation (Buchler, Das Synedrion, p. 113); cf. also Geiger, Urschrift, p. 119.]

(19) I.e two ma'ahs which were a third of a denar; cf. Glos.

If it consumed grapes while still in the budding stage, R. Joshua says that they should be estimated as if they were grapes ready to be plucked off. But the Sages [here too] say that it will have to be ascertained how much it was worth [previously] and how much it is worth [now]. R. Simeon b. Judah says in the name of R. Simeon:[1] These rulings apply where it consumed sprouts of vines or shoots of fig-trees, but where it consumed [actual] figs or half-ripe grapes they would be estimated as if they were grapes ready to be plucked off.[2] Now, it is definitely taught here, 'The Sages say that it will have to be ascertained how much it was worth [previously] and how much it is worth [now]' and it is not said [explicitly that the valuation will be made] in conjunction with sixty [times as much]. Nevertheless you must say that it is implied that [the valuation is to be made] in conjunction with sixty [times as much]. So also then here, [in the case of Man it is implied that the valuation is to be] in conjunction with Sixty [times as much].

Abaye said: R. Jose the Galilean and R. Ishmael expressed the same view [in this matter]. R. Jose the Galilean as stated by us [above],[3] and R. Ishmael as taught [elsewhere]:[4] 'Of the best of his own field and of the best of his own vineyard shall he make restitution;[5] this means the best of the field of the plaintiff and the best of the vineyard of the plaintiff. This is the view of R. Ishmael. R. Akiba, however, says: Scripture only intended to lay down that damages should be collected out of the best and this applies even more to sacred property. Nor can you say that he [R. Ishmael] meant this in the sense of R. Idi b. Abin, who said [that it deals with a case where] e.g., the cattle consumed one bed out of several beds and we could not ascertain whether its produce was meagre or fertile, so that R. Ishmael would [thus be made to] order the defendant to go and pay for a fertile bed in accordance with the value of the best bed at the time of the damage. This could not be maintained by us, for the reason that the onus probandi falls upon the claimant. R. Ishmael[6] must therefore have meant the best of anticipation, i.e., as it would have matured [at the harvest time].

The Master stated: 'R. Simeon b. Judah says in the name of R. Simeon: These rulings apply only where it consumed sprouts of vines or shoots of fig-trees,' [thus implying that] where it consumed grapes in the budding stage they would be estimated as if they were grapes ready to be plucked off. Read [now] the concluding clause: 'Where it consumed [actual] figs or half-ripe grapes they would be estimated as if they were grapes ready to be plucked off', [implying to the contrary that] where it consumed grapes in the budding stage it would have to be ascertained how much it was worth [previously] and how much it is worth [now]. [Is this not a contradiction?] — Rabina said: Embody [the new case in the text] and teach thus: 'These rulings apply only where it consumed sprouts of vines or shoots of fig-trees, for where it consumed grapes in the budding stage, or [actual] figs or half-ripe grapes they would be estimated as if they were grapes ready to be plucked off.' But if so would R. Simeon b. Judah's view not be exactly the same as that already stated by R. Joshua? — There is a practical difference between them as to [the deduction to be made for] the depreciation of the vines [themselves, through exhaustion, if the grapes had remained there until fully ripe],[7] though the views cannot be identified.[8] Abaye, however, said: They most assuredly could be identified. For who could be the Tanna who takes into consideration the depreciation of the vine, if not R. Simeon b. Judah? For it was taught: R. Simeon b. Judah says in the name of R. Simeon b. Menasya:[9] [Even] in the case of Rape no compensation is made for Pain, as the female would [in any case] have subsequently to undergo the same pain through her husband.[10] The Rabbis however said to him: A woman having intercourse by her free will is not to be compared to one having intercourse by constraint.

Abaye further said: The following Tannaim and R. Simeon b. Judah expressed on this point the same view?[11] R. Simeon b. Judah's view as stated by us [above]. Who are the other Tannaim [referred to]? — As taught: R. Jose says: Deduct the fees of the midwife,[12] but Ben 'Azzai says: Deduct food.[13] The one who says, 'deduct the fees for the midwife' would certainly deduct food,[14] but the one who says, 'deduct food', would not deduct the fees for the midwife, as the plaintiff might

say, ‘My wife is a lively person and does not need a midwife.’[15] R. Papa and R. Huna the son of R. Joshua in an actual case[16] followed the view of R. Nahman and valued in conjunction with sixty times [as much]. According to another report, however, R. Papa and R. Huna the son of R. Joshua valued a palmtree in conjunction with the small piece of ground.[16] The law is in accordance with R. Papa and R. Huna the son of R. Joshua[17] in the case of an Aramean palm,[18] but it is in accordance with the Exilarch[19] in the case of a Persian palm.[20]

Eliezer[21] Ze'era

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(1) B. Yohai.

(2) Keth. 105a.

(3) That it will have to be considered in the light of the future value of that which was left in the field.

(4) V. supra 6b.

(5) Ex. XXII, 4.

(6) [In the case where the quality of the bed consumed by the cattle was not in doubt.]

(7) [I.e., one view would maintain that this deduction has to be made, while the other would not maintain this.]

(8) [It cannot be stated precisely which authority is of the one and which of the other view.]

(9) Keth, 39a.

(10) Proving that a deduction from the amount of the damages is made on a similar accord.

(11) That a deduction should be made on this accord.

(12) From the payment for injuring a pregnant woman resulting in a miscarriage; cf. Ex. XXI, 22 and supra 49a.

(13) I.e. the special diet which would have been necessary during the confinement period.

(14) As the special diet would have been an inevitable expense.

(15) He would therefore have spared this expense.

(16) Where a human being did damage with his body.

(17) To value in conjunction with sixty times as much where a human being did damage with his body.

(18) Which is by itself of no great value.

(19) To value the tree by itself.

(20) Which is even by itself of considerable value.

(21) [V.l. Eleazar].

Talmud - Mas. Baba Kama 59b

once put on a pair of black shoes and stood in the market place of Nehardea. When the attendants of the house of the Exilarch met him there, they said to him: ‘What ground have you for wearing black shoes?’[1] — He said to them: ‘I am mourning for Jerusalem.’ They said to him: ‘Are you such a distinguished person as to mourn over Jerusalem?’[2] Considering this to be a piece of arrogance on his part they brought him and put him in prison. He said to them, ‘I am a great man!’ They asked him: ‘How can we tell?’ He replied, ‘Either you ask me a legal point or let me ask you one.’ They said to him: ‘[We would prefer] you to ask.’ He then said to them: ‘If a man cuts a date-flower, what payment should he have to make?’ — They answered him: ‘The payment will be for the value of the date-flower.’ ‘But would it not have grown into dates?’[3] — They then replied: ‘The payment should be for the value of the dates.’ ‘But’, he rejoined, ‘surely it was not dates which he took from him!’[4] They then said to him: ‘You tell us.’ He replied: ‘The valuation would have to be made in conjunction with sixty times as much.’[5] They said to him: ‘What authority can you find to support you?’ — He thereupon said to them: ‘Samuel is alive and his court of law flourishes [in the town].’ They sent this problem to be considered before Samuel who answered them: ‘The statement he[6] made to you, that the valuation should be in conjunction with sixty times [as much as the damaged date-flower][5] is correct.’ They then released him.

R. SIMEON SAYS: IF IT CONSUMED RIPE FRUITS etc. On what ground?[7] — The statement of the Divine Law, And shall feed in another man's field,[8] teaching that valuation is to be made in

conjunction with the field applies to produce which was still in need of a field, whereas these fruits [in the case before us],[9] since they were no more in need of a field, must be compensated at their actual value.

R. Huna b. Hiyya said that R. Jeremiah stated that Rab gave judgment [in contradistinction to the usual rule][10] in accordance with R. Meir and [on another legal point] decided the law to be in accordance with R. Simeon. He gave judgment in accordance with R. Meir on the matter taught: If the husband drew up a deed for a would-be purchaser [of a field which had been set aside for the payment of the marriage settlement of his wife] and she did not endorse it, and [when a deed on the same field was drawn up] for another purchaser she did endorse it, she has thereby lost her claim to the marriage settlement; this is the view of R. Meir.[11] R. Judah, however, says: She might still argue, 'I made the endorsement merely to gratify my husband; why therefore should you go against me?'[12] [The legal point where] he decided the law to be in accordance with R. Simeon was that which we learnt: R. SIMEON SAYS: IF IT CONSUMED RIPE FRUITS, THE PAYMENT SHOULD BE FOR RIPE FRUITS, IF ONE SE'AH [IT WOULD BE FOR] ONE SE'AH, IF TWO SE'AHS, [FOR] TWO SE'AHS.

MISHNAH. IF A MAN PUTS HIS STACKS OF CORN IN THE FIELD OF ANOTHER WITHOUT PERMISSION, AND THE ANIMAL OF THE OWNER OF THE FIELD EATS THEM, THERE IS NO LIABILITY. MOREOVER, IF IT SUFFERED HARM FROM THEM, THE OWNER (OF THE STACKS WOULD BE LIABLE. IF, HOWEVER, HE PUT THE STACKS THERE WITH PERMISSION, THE OWNER OF THE FIELD WOULD BE LIABLE. GEMARA. May we say that this Mishnah is not in accordance with Rabbi? For if in accordance with Rabbi, did he not say[13] that unless the owner of the premises explicitly took upon himself to safeguard he would not be liable?[14] — R. Papa said: [Here we were dealing with] the watchman of the barns.[15] For since he said, 'Enter and place your stacks', it surely amounted to, 'Enter and I will guard for you'.[16]

MISHNAH. IF A MAN SENT OUT SOMETHING BURNING THROUGH A DEAF MUTE, AN IDIOT, OR A MINOR [AND DAMAGE RESULTED] HE WOULD BE EXEMPT FROM THE JUDGMENTS OF MAN, BUT LIABLE IN ACCORDANCE WITH THE JUDGMENTS OF HEAVEN. BUT IF HE SENT [IT] THROUGH A NORMAL PERSON, THE NORMAL PERSON WOULD BE LIABLE. IF ONE PERSON [FIRST] SUPPLIES THE FIRE AND ANOTHER THE WOOD, HE WHO SUPPLIES THE WOOD WOULD BE LIABLE.[17] WHERE, [ON THE OTHER HAND], THE FIRST SUPPLIES THE WOOD AND THE SECOND THE FIRE, HE WHO SUPPLIES THE FIRE WOULD BE LIABLE.[17] BUT WHERE ANOTHER PERSON CAME ALONG AND FANNED THE FLAME, THE ONE WHO FANNED IT WOULD BE LIABLE.[17] IF IT WAS THE WIND THAT FANNED IT, ALL WOULD BE EXEMPT.

GEMARA. Resh Lakish said in the name of Hezekiah: The Mishnaic ruling[18] holds good only where he handed over a [flickering] coal to [the deaf mute] who fanned it into flame, but if he handed over to him something already in flame he would be liable, the reason being that it was his acts that were the [immediate] cause. R. Johanan, however, said: Even where he handed something already in flame to him, he would still be exempt, the reason being that it was the handling of the deaf mute that caused the damage; he could therefore not be liable unless where he handed over to him tinder,

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(1) Cf. Ta'an. 22a. [Tosaf. regards the black lacing as the distinguishing mark of mourning, v. also Krauss, Talm. Arch. I, 628.]

(2) In such a manner.

(3) Why then not pay for actual dates of which the owner was deprived?

(4) Why then pay for ripe dates?

(5) Including the ground occupied by them.

(6) I.e. Eliezer Ze'era.
(7) Should the valuation not be made in conjunction with the field where ripe fruits were consumed.
(8) Ex. XXII, 4.
(9) In the statement of R. Simeon.
(10) That the law does not prevail in accordance with R. Meir against R. Judah: cf. 'Er. 46b
(11) For by endorsing the deed drawn up for the second purchaser and not that drawn up for the first one, she made it evident that on the one hand she was not out to please her husband by confirming his sale, and on the other that she was finally prepared to forego her claim.
(12) Keth. 95a.
(13) Supra 47b.
(14) Why then should the owner of the field be liable where the corn was stacked with his permission?
(15) As it was the custom to pile all the stacks of the villagers in one place and appoint a guardian to look after them.
(16) In accordance with the custom of the place.
(17) For he being last is mostly to blame.
(18) Of exemption from the judgments of Man.

Talmud - Mas. Baba Kama 60a

shavings and a light, in which case it was certainly his act that was the immediate cause.[1]

BUT IF HE SENT [IT] THROUGH A NORMAL PERSON, THE NORMAL PERSON WOULD BE LIABLE etc. IF ANOTHER PERSON CAME ALONG AND [LIBBAH] FANNED IT etc. R. Nahman b. Isaac said: He who reads in the [original] text libbah[2] is not mistaken; so also he who reads in the text nibbah[3] is similarly not mistaken.[4] He who has in the text libbah[2] is not mistaken, since we find [in Scripture] be-labbath esh[5] [in a flame of fire], and so also he who has in the text nibbah[3] is not mistaken, as we find, I create nib [the movement of] the lips.[6]

IF IT WAS THE WIND THAT FANNED IT, ALL WOULD BE EXEMPT. Our Rabbis taught: Where he fanned it [along with] the wind which also fanned it, if there was enough force in his blowing to set the fire ablaze he would be liable, but if not he would be exempt. But why should he not be liable, as in the case of one winnowing [on Sabbath, who is liable] though the wind was helping him?[7] — Abaye thereupon said: We are dealing here with a case where e.g., he blew it up in one direction and the wind blew it up in a different direction.[8] Raba said: [The case is one] where e.g., he started to blow it up when the wind was only normal, [and would have been unable to set it ablaze], but there [suddenly] came on an unusual wind which made it blaze up. R. Zera said: [The case is one] where e.g., he merely increased the heat by breathing heavily on it.[9] R. Ashi said: When we say that there is liability for winnowing where the wind is helping, this applies to Sabbath where the Torah prohibited any work with a definite object,[10] whereas here [regarding damage] such an act could be considered merely as a secondary cause, and a mere secondary cause in the case of damage carries no liability.

MISHNAH. IF HE ALLOWED FIRE TO ESCAPE AND IT BURNT WOOD, STONES OR [EVEN] EARTH, HE WOULD BE LIABLE, AS IT SAYS: IF FIRE BREAK OUT AND CATCH IN THORNS SO THAT THE STACKS OF CORN, OR THE STANDING CORN, OR THE FIELD BE CONSUMED THEREWITH: HE THAT KINDLED THE FIRE SHALL SURELY MAKE RESTITUTION.[11]

GEMARA. Raba said: Why was it necessary for the Divine Law to mention [both] 'thorns', 'stacks', 'standing corn' and 'field'? They are all necessary. For if the Divine Law had mentioned [only] 'thorns', I might have said that it was only in the case of thorns that the Divine Law imposed liability because fire is found often among them and carelessness in regard to them is frequent,[12] whereas in the case of 'stacks',[13] which are not often on fire and in respect of which negligence is

not usual, I might have held that there is no liability. If [again] the Divine Law had mentioned [only] 'stacks', I might have said that it was only in the case of 'stacks' that the Divine Law imposed liability as the loss involved there was considerable, whereas in the case of 'thorns' where the loss involved was slight I might have thought there was no liability. But why was standing corn' necessary [to be mentioned]? [To teach that] just as 'standing corn' is in an open place, so is everything [which is] in an open space [subject to the same law].[14] But according to R. Judah who imposes[15] liability also for concealed articles damaged by fire, why had 'standing corn' [to be mentioned]? — To include anything possessing stature.[15] Whence then did the [other] Rabbis include anything possessing stature?[16] — They derived this from [the word] 'or' [placed before] 'the standing corn'.[17] And R. Judah? — He needed [the word] 'or' as a disjunctive.[17] Whence then did the [other] Rabbis derive the disjunction? — They derived it from [the word] 'or' [placed before] 'the field'. And R. Judah? — He held that because the Divine Law inserted 'or' [before] 'the standing corn' 'it also inserted 'or' [before] 'the field'. But why was 'field' needed [to be inserted]? — To include [the case of] Fire lapping his neighbour's ploughed field, and grazing his stones.[18] But why did the Divine Law not say only 'field',[19] in which case the others would not have been necessary? They were still necessary. For if the Divine Law had said 'field' only, I might have said that anything in the field would come under the same law, but not any other thing.[20] It was therefore indicated to us [that this is not so].

R. Samuel b. Nahmani stated[21] that R. Johanan said: Calamity comes upon the world only when there are wicked persons in the world, and it always begins with the righteous, as it says: If fire break out and catch in thorns.[22] When does fire break out? Only when thorns are found nearby. It always begins, however, with the righteous, as it says: so that the stack of corn was consumed:[23] It does not say 'and it would consume the stack of corn', but 'that the stack of corn was consumed' which means that the 'stack of corn' had already been consumed.

R. Joseph learnt: What is the meaning of the verse, And none of you shall go out at the door of his house until the morning?[24] Once permission has been granted to the Destroyer, he does not distinguish between righteous and wicked. Moreover, he even begins with the righteous at the very outset, as it says:[25] And I will cut off from thee the righteous and the wicked.[26] R. Joseph wept at this, saying: So much are they[27] compared to nothing![28] But Abaye [consoling him,] said: This is for their advantage, as it is written, That the righteous is taken away from the evil to come.[29]

Rab Judah stated that Rab said:

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(1) Supra 9b.

(2) לִיבָּה (connected with להב, 'flame'), to denote blazing up.

(3) [ניבה from נבא, 'to blow up' to blow a blaze'.]

(4) For similar textual remarks by the same sage, cf. A.Z. 2a.

(5) Ex. III, 2.

(6) Isa. LVII, 19. [The blaze is provided by 'the movement of the lips', i.e., by blowing with the mouth.]

(7) Cf. Shab. VII, 2; v. also B.B. 26a.

(8) So that the wind did not help him at all.

(9) But did not actually blaze it up.

(10) Whether man did it wholly by his own body or not.

(11) Ex. XXII, 5.

(12) As thorns are usually worthless and nobody minds them.

(13) Which are of great value and are usually looked after.

(14) Excluding thus hidden articles.

(15) Supra 5b.

(16) E.g., living objects and plants [Though the latter, unlike 'stacks' are still attached to the ground. Tosaf.]

(17) Cf. supra p. 311, and also Tosaf. Hul. 86b.

(18) V. p. 347. n. 5.
(19) Which includes everything.
(20) Such as the field itself.
(21) [Having stated 'standing corn', the Torah must have added 'field' to indicate the field itself.]
(22) Ex. XXII, 5.
(23) Used metaphorically to express the righteous.
(24) Ex. XII, 22.
(25) Ezek. XXI, 8.
(26) Thus mentioning first the 'righteous' and then the 'wicked'.
(27) I.e., the righteous.
(28) That they are punished even for the wicked.
(29) Isa. LVII, 1.

Talmud - Mas. Baba Kama 60b

A man should always enter [a town] by daytime and leave by daytime, as it say's, And none of you shall go out at the door of his house until the morning.[1]

Our Rabbis taught: When there is an epidemic in the town keep your feet inside [the house], as it says, And none of you shall go out at the door of his house until the morning,[1] and it further says, Come, my people, enter thou into thy chambers and shut thy doors about thee;[2] and it is again said: The sword without, the terror within shall destroy.[3] Why these further citations? — Lest you might think that the advice given above[4] refers only to the night, but not to the day. Therefore, come and hear: Come, my people, enter thou into thy chamber, and shut thy doors about thee.[5] And should you say that these apprehensions apply only where there is no terror inside,[6] whereas where there is terror inside[6] it is much better to go out and sit among people in one company, again come and hear: The sword without, the terror within shall destroy,[3] implying that [even where] the terror is 'within'[6] the 'sword'[7] will destroy [more] without. In the time of an epidemic Raba used to keep the windows shut, as it is written, For death is come up into our windows.[8]

Our Rabbis taught: When there is a famine in town, withdraw your feet,[9] as stated, And there was a famine in the land; and Abram went down into Egypt to sojourn there;[10] and it is further said: If we say: We will enter into the city, then the famine is in the city and we shall die there.[11] Why the additional citation? — Since you might think that this advice[12] applies only where there is no danger to life [in the new settlement], whereas where there is a danger to life [in the new place] this should not be undertaken, come and hear: Now therefore come, and let us fall unto the host of the Arameans; if they save us alive, we shall live.[13]

Our Rabbis taught: When there is an epidemic in a town, one should not walk in the middle of the road, as the Angel of Death walks then in the middle of the road, for since permission has been granted him, he stalks along openly. But when there is peace in the town, one should not walk at the sides of the road, for since [the Angel of Death] has no permission he slinks along in hiding.

Our Rabbis taught: When there is an epidemic in a town nobody should enter the House of Worship[14] alone, as the Angel of Death keeps there his implements. This, however, is the case only where no pupils are being taught there[15] or where ten [males] do not pray there [together].

Our Rabbis taught: When dogs howl, [this is a sign that] the Angel of Death has come to a town. But when dogs frolic, [this is a sign that] Elijah the prophet has come to a town. This is so, however, only if there is no female among them.

When R. Ammi and R. Assi were sitting before R. Isaac the Smith, one of them said to him: 'Will

the Master please tell us some legal points?' while the other said: 'Will the Master please give us some homiletical instruction?' When he commenced a homiletical discourse he was prevented by the one, and when he commenced a legal discourse he was prevented by the other. He therefore said to them: I will tell you a parable: To what is this like? To a man who has had two wives, one young and one old. The young one used to pluck out his white hair, whereas the old one used to pluck out his black hair. He thus finally remained bald on both sides. He further said to them: I will accordingly tell you something which will be equally interesting to both of you:[16] If fire break out and catch in thorns; 'break out' implies 'of itself'. He that kindled the fire shall surely make restitution. The Holy One, blessed be He, said: It is incumbent upon me to make restitution for the fire which I kindled. It was I who kindled a fire in Zion as it says, And He hath kindled a fire in Zion which hath devoured the foundations thereof,[17] and it is I who will one day build it anew by fire, as it says, For I, [saith the Lord] will be unto her a wall of fire round about, and I will be the glory in the midst of her.[18] On the legal side, the verse commences with damage done by chattel,[19] and concludes with damage done by the person,[20] [in order] to show that Fire implies also human agency.[21]

Scripture says:[22] And David longed, and said, Oh that one would give me water to drink of the well of Bethlehem, which is by the gate. And the three mighty men broke through the host of the Philistines and drew water out of the well of Bethlehem that was by the gate etc. What was his difficulty?[23] — Raba stated that R. Nahman had said: His difficulty was regarding concealed articles damaged by fire[24] — whether the right ruling was that of R. Judah[25] or of the Rabbis;[26] and they gave him the solution, whatever it was. R. Huna, however, said: [The problem was this:] There were there[27] stacks of barley which belonged to Israelites but in which Philistines had hidden themselves, and what he asked was whether it was permissible to rescue oneself through the destruction of another's property.[28] The answer they despatched to him was: [Generally speaking] it is forbidden to rescue oneself through the destruction of another's property[29] you however are King and a king may break [through fields belonging to private persons] to make a way [for his army], and nobody is entitled to prevent him [from doing so].[30] But [some] Rabbis, or, as [also] read, Rabbah b. Mari, said: There were there[31] [both] stacks of barley belonging to Israelites and stacks of lentils belonging to the Philistines.[32] The problem on which instruction was needed was whether it would be permissible to take the stacks of barley that belonged to the Israelites and put them before the beasts [in the battle field], on condition of [subsequently] paying for them with the stacks of lentils that belonged to the Philistines. [The reply] they despatched to him [was]: If the wicked restore the pledge, give again the robbery,[33] [implying that] even where the robber [subsequently] pays for the 'robbery', he still remains 'wicked'. You, however, are King and a king may break through [fields of private owners] making thus a way [for his army], and nobody is entitled to prevent him [from doing so]. If we accept the view that he wanted to exchange,[34] we can quite understand how in one verse it is written, Where was a plot of ground full of lentils,[35] and in another verse it is written, Where was a plot of ground full of barley.[36] If we, however, take the view that he wanted to burn them[37] down, what need was there to have these two verses?[38] — He, however, might say to you that there were also there stacks of lentils which belonged to Israelites and in which Philistines were hidden.[39] Now on the view that he wanted to burn them[37] down, we can quite understand why it is written, But he stood in the midst of the ground, and defended it.[40] But according to the view that he wanted to exchange, what would be the meaning of and he defended it?[41] — That he did not allow them to exchange. According to [these] two views, we can quite understand why there are two verses.

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(1) V. p. 348, n. 9.

(2) Isa. XXVI, 20.

(3) Deut. XXXII, 25.

(4) To keep indoors.

(5) Isa. XXVI, 20.

(6) The house.

(7) Of the Angel of Death.

(8) Jer. IX, 20.
(9) I.e., migrate to another place; see also B.M. 75b.
(10) Gen. XII, 10.
(11) II Kings VII, 4.
(12) Implied in Gen. XII, 10.
(13) II Kings VII, 4.
(14) [בית הכנסת Lit., 'House of meeting', the Synagogue. The origin of the term as applied to a synagogue is uncertain. It probably has its source in the assemblies called together for the purpose of considering problems of an economic and social character. These were probably attended with some sort of prayer and out of these evolved the regular meetings for prayers, v. Zeitlin, The Origin of the Synagogue in the Proceedings of the American Academy for Jewish Research, 1930-31, p. 75 ff.]
(15) In the House of Worship.
(16) Ex. XXII, 5.
(17) Lam. IV, 11.
(18) Zech. II, 9.
(19) As the expression 'if a fire break out' means 'break out itself without any direct act on the part of man'; cf. supra p. 115.
(20) By saying, 'He that kindled a fire', implying that there was some direct act on the part of man to kindle the fire.
(21) V. supra p. 115.
(22) II Sam. XXIII, 15-16.
(23) For as 'water' is homiletically used as a metaphor expressing learning, it was aggadically assumed here that instead of actual water David was in need of some legal instruction, especially since mention was made in the verse of 'the gate' which was then the seat of judgment.
(24) As some of his men burned down a stack in which articles were hidden, v. p. 353. n. 6.
(25) Who imposes liability.
(26) Who maintain exemption.
(27) Near the battle-field.
(28) As the warriors of David burned the stacks down for strategical purposes and the problem was whether compensation was to be made or not.
(29) I.e. compensation should be made.
(30) V. Sanh. 20a.
(31) V. p. 351, n. 11.
(32) The enemy.
(33) Ezek. XXXIII, 15.
(34) Stacks of barley belonging to Israelites for stacks of lentils that belong to the enemy.
(35) II Sam. XXIII, 11.
(36) I Chron. XI, 13.
(37) I.e., the stacks of barley belonging to the Israelites without repaying them with the lentils of the enemy.
(38) In fact the two verses contradict each other.
(39) And which had thus also to be burned down.
(40) Ibid. 12. This would show that he did not let his warriors burn the stacks as this was not permissible by strict law.
(41) Since there was no question there of burning down.

Talmud - Mas. Baba Kama 61a

But according to the view that his inquiry concerned concealed goods in the case of Fire, what need was there for the verses?[1] — He might say to you that besides [the problem of] hidden goods [in the case of Fire], one of the other problems [referred to above][2] was asked by him. Now according to the [other] two views we quite understand why it is written, But he would not drink thereof,[3] for he said, 'Since there is a [general] prohibition[4] I do not want it.'[5] But according to the view that his inquiry concerned hidden goods[6] in the case of Fire, was it not a traditional teaching which was despatched to him, [and that being so,][7] what would be the meaning of 'But he would not drink thereof'?[8] —

[The meaning would be] that he did not want to quote this teaching in their names,[9] for he said: 'This has been transmitted to me from the Court of Law presided over by Samuel of Ramah, that no halachic matter may be quoted in the name of one who surrenders himself to meet death for words of the Torah.'

But he poured it out unto the Lord.[3] We quite understand this according to the [other] two views, as he acted thus for the sake of Heaven.[10] But according to the view that [his inquiry concerned] hidden goods in the case of Fire, what would be the meaning [of this verse], 'but he poured it out unto the Lord'? — That he repeated this [halachic statement] in the name of general traditional learning.[11]

MISHNAH. IF IT CROSSED A FENCE FOUR CUBITS HIGH OR A PUBLIC ROAD[12] OR A CANAL, THERE WOULD BE NO LIABILITY.[13]

GEMARA. But was it not taught: 'If it crossed a fence four cubits high there would [still] be liability'? — R. Papa thereupon said: The Tanna of our ruling [here] was reckoning downwards; [at the height of] six cubits there would be exemption; at five cubits, there would be exemption; down to [the height of] four cubits[14] there would [still] be exemption. The Tanna of the Baraitha [was on the other hand] reckoning upwards; at [the height of] two cubits, there would be liability; of three cubits,[15] there would be liability; up to [the height of] four cubits, there would [still] be liability.

Raba said: [The height of] four cubits stated [in the Mishnah] as not involving liability would also suffice even where the fire passed over to a field of thorns. R. Papa, however, said: [The height of] four cubits should be calculated from the top of the thorns.

Rab said: The Mishnaic ruling applies only where the fire was rising in a column, but where it was creeping along there would be liability, even if it crossed a public road of about [the width of] a hundred cubits. Samuel [on the other hand] said that the Mishnah deals with a creeping fire; for in the case of a fire rising in a column there would be exemption if it crossed a public road of any width whatsoever. It was, however, taught in accordance with Rab: This ruling[16] applies only where it was rising in a column; if it was creeping along, and wood happened to be in its path, there would be liability were it even to pass over a public ground of about the width of a hundred mil.[17] If, however, it crossed a river or pool eight cubits wide, there would be exemption. A PUBLIC ROAD. Who was the Tanna [who laid this down]? — Raba said: He was R. Eliezer, as we have indeed learnt: 'R. Eliezer says: [If it was] sixteen cubits [wide] like the road in a public thoroughfare, [there would be exemption].[18]

OR A CANAL. Rab said: It means an actual river. Samuel, however, said: It means a pond for watering fields. The one who says it is an actual river [would maintain the same ruling[19]] even where there was no water there.[19] But the one who says it means a pond for watering fields [would hold that] so long as there was water there the ruling would apply, but not where no water was there.

Elsewhere we have learnt: 'Divisions [of fields] with respect to Pe'ah[20] are effected by the following: a brook, a shelulith, a private road and a public road.[21] What is shelulith? — Rab Judah stated that Samuel had said: A [low lying] place where rainwater collects.[22] R. Bibi, however, said on behalf of R. Johanan: A pond of water which [as it were] distributes spoil[23] to the banks. The one who says that it means a [low-lying] place where rain water collects would certainly apply the ruling to a pond of water,[24] but the one who says that it means a pond of water would on the other hand maintain that [low-lying] places where rain-water collects would not cause a division, as these

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(1) I.e. the whole description of the barley and lentils.

(2) I.e., either to burn the stacks down or to exchange those of Israelites for those of the enemy.

(3) II Sam. XXIII, 16.
(4) In the case of an ordinary man.
(5) I.e., 'to avail myself of the royal prerogative in this respect.'
(6) [And the question was whether those of his men who had burnt the stack were to be made to pay for the hidden goods, cf. Tosaf. and Maharsha, מהדורא בתרא].
(7) [That the matter did not directly affect him.]
(8) Why then did he not accept it?
(9) [The names of those who volunteered to break through the enemy's lines (v. II Sam. XXIII, 16) in order to bring him a decision.]
(10) And did not take advantage of his privileged position as king.
(11) [And not in 'their names'.]
(12) Sixteen cubits wide.
(13) As this could not have been expected; it is thus considered a mere accident.
(14) Including a fence of the height of four cubits.
(15) But not including a fence of the height of four cubits. It thus follows that there is no contradiction between the two statements as where the fence was of the height of four cubits there will be exemption according to all views.
(16) Of exemption in the case of a fire crossing a public road.
(17) I.e., two thousand cubits; v. Glos.
(18) V. next Mishnah.
(19) On account of its great width.
(20) I.e., to leaving the corners of each separate field for the poor; see supra p. 148 and Glos.
(21) Pe'ah II, 1; cf. also B.B. 55a.
(22) As the term 'shalal' also denotes 'to gather'; cf. Bez. 7a.
(23) As shalal means 'spoil'; cf. Num. XXXI, 11.
(24) As this is of a more permanent nature.

Talmud - Mas. Baba Kama 61b

should more properly be called the receptacles of the land.[1]

MISHNAH. IF A MAN KINDLES A FIRE ON HIS OWN [PREMISES], UP TO WHAT DISTANCE CAN THE FIRE PASS ON [BEFORE HE BECOMES FREE OF LIABILITY]? R. ELEAZAR B. AZARIAH SAYS: IT HAS TO BE REGARDED AS BEING IN THE CENTRE OF AN AREA REQUIRING A KOR[2] OF SEED.[3] R. ELIEZER[4] SAYS: [A DISTANCE OF] SIXTEEN CUBITS [SUFFICES], EQUAL TO [THE WIDTH OF] A ROAD IN A PUBLIC THOROUGHFARE.[5] R. AKIBA SAYS FIFTY CUBITS. R. SIMEON SAYS: [SCRIPTURE SAYS] HE WHO KINDLED THE FIRE SHOULD MAKE RESTITUTION,[6] [WHICH SHOWS THAT] ALL DEPENDS UPON THE FIRE.

GEMARA. Did R. Simeon not hold that there is some fixed limit in the case of Fire?[7] Have we not learnt: 'No man shall fix[8] an oven on a ground floor unless there is a space of four cubits from the top of it [to the ceiling]. If he fixes it on an upper floor [he may not do so][8] unless there will be under it three handbreadths of cement; in the case, however, of a portable stove, one handbreadth will suffice. If [after all these precautions] damage has nevertheless resulted, payment must be made for the damage. R. Simeon says that these limits were only to intimate that if damage resulted [after they were observed] there should be exemption.[9] [Does this not prove that R. Simeon maintained a minimum limit of precaution?] — R. Nahman therefore stated that Rabbah b. Abbahu said: [The meaning of R. Simeon's phrase 'all thus depends upon the fire' is that] all should depend upon the height of the fire, [and that no general limits could be fixed].[10] R. Joseph, [however,] stated that Rab Judah said on behalf of Samuel: The halachah is in accordance with R. Simeon.[11] So also said R. Nahman, that Samuel said that the halachah was in accordance with R. Simeon.[11]

MISHNAH. IF A MAN SETS FIRE TO A STACK OF CORN IN WHICH THERE HAPPEN TO BE ARTICLES AND THESE ARE BURNT, R. JUDAH SAYS THAT PAYMENT SHOULD BE MADE FOR ALL THAT WAS THEREIN, WHEREAS THE SAGES SAY THAT NO PAYMENT SHOULD BE MADE EXCEPT FOR A STACK OF WHEAT OR FOR A STACK OF BARLEY. [WHERE FIRE WAS SET TO A BARN TO WHICH] A GOAT HAD BEEN FASTENED AND NEAR WHICH WAS A SLAVE [LOOSE] AND ALL WERE BURNT WITH THE BARN, THERE WOULD BE LIABILITY.[12] IF, HOWEVER, THE SLAVE HAD BEEN CHAINED TO IT, AND THE GOAT WAS LOOSE NEAR BY IT, AND ALL WERE BURNT WITH IT, THERE WOULD BE EXEMPTION.[13] THE SAGES, HOWEVER, AGREE WITH R. JUDAH[14] IN THE CASE OF ONE WHO SET FIRE TO A CASTLE THAT THE PAYMENT SHOULD BE FOR ALL THAT WAS KEPT THEREIN, AS IT IS SURELY THE CUSTOM OF MEN TO KEEP [VALUABLES] IN [THEIR] HOMES.[15]

GEMARA. R. Kahana said: The difference [of opinion][16] was only where the man kindled the fire on his own [premises], from which it passed on and consumed [the stack standing] in his neighbour's premises, R. Judah imposing liability for damage done to Tamun[17] in the case of Fire whereas, the Rabbis[18] grant exemption. But if he kindled the fire on the premises of his neighbour, both agreed that he would have to pay for all that was there.[19] Said Raba to him: 'If so, why does it say in the concluding clause, THE SAGES, HOWEVER, AGREE WITH R. JUDAH IN THE CASE OF ONE WHO SET FIRE TO A CASTLE THAT THE PAYMENT SHOULD BE FOR ALL THAT WAS KEPT THEREIN'? Now why not draw the distinction in the same case by making the text run thus: These statements apply only in the case where be kindled the fire on his own [premises], whence it travelled and consumed [the stacks standing] in his neighbour's premises; but where he kindled the fire in the premises of his neighbour, all would agree that he should pay for all that was kept there? — Raba therefore said: They differed in both cases. They differed where he kindled the fire in his own [premises] whence it travelled and consumed [stacks standing] in his neighbour's premises, R. Judah imposing liability to pay for Tamun in the case of Fire, whereas the [other] Rabbis hold that he is not liable [to pay for Tamun in the case of Fire].[20] They also differed in the case where he kindled a fire in the premises of his neighbour, R. Judah holding that he should pay for everything that was there, including even purses [of money], whereas the Rabbis held that it was only for utensils which were usually put away in the stacks, stich as e.g. threshing sledges and cattle harnesses that payment would have to be made, but for articles not usually kept in stacks no payment would have to be made.

Our Rabbis taught: If a man sets fire to a stack of corn in which there were utensils and they were burnt, R. Judah says that payment should be made for all that was stored there, whereas the Sages say that no payment should be made except for a stack of wheat or for a stack of barley, and that the space occupied by the utensils has to be considered as if it was full of corn.[21]

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(1) And should therefore not cause the fields to be considered separated from one another.

(2) V. Glos.

(3) As fire when rising in columns could not be expected to pass on to further distances.

(4) B. Hyrcanus.

(5) V. p. 355, n. 10.

(6) Ex. XXII, 5.

(7) [Assuming that what R. Simeon means is that it all depends on the damage caused by the fire irrespective of the distance.]

(8) I.e., the neighbours have the right to prevent him from doing so.

(9) B.B. II, 2.

(10) But each case should be considered in accordance with its own circumstances.

(11) [Only of this our Mishnah, but not of B.B. (Rashal).]

(12) For the goat and for the barn, but no liability whatever for the slave, for, since he was loose, he should have

escaped.

(13) For the goat and even for the barn, for since the slave was chained a capital charge is involved, and all civil liabilities merge in capital charges; v. supra p. 113 and p. 192.

(14) Who ordains payment even for concealed articles.

(15) The law about hidden goods could therefore not be applicable in this case.

(16) Between the Sages and R. Judah

(17) I.e., something hidden; v. Glos.

(18) The Sages.

(19) For the act of trespass.

(20) Even for utensils which are customarily kept in stacks.

(21) For which payment will be made.

These statements apply only to the case where he kindled the fire on his own [premises] whence it travelled and consumed [the stack standing] in the premises of his neighbour; but where he kindled the fire in the premises of his neighbour, all agree[1] that he would have to pay for all that was kept there.[2] R. Judah, however, agreed with the Sages that in the case where a man granted his neighbour the loan of a particular place [in his field] for the purpose of piling up a stack, if [the borrower of the place] piled up stacks and hid [some valuable articles there][3] no payment would have to be made except for the value of the stack alone.[4] [So also where permission was granted] for the purpose of piling up stacks of wheat, and he piled up stacks of barley, or [permission was given for] barley and he piled up wheat, or even where he piled up wheat [for which the permission was granted], but covered it with barley, or again where he piled up barley but covered it with wheat; [in these cases] no payment would be made except for the value of the barley alone.[5]

Raba said: If a man gives a gold denar to a woman and says to her, 'Be careful with it, as it is a silver coin', if she damaged it she would have to pay for a gold denar because he could [rightly] plead against her: 'What business had you to damage it?' But if she was [merely] careless with it,[6] she would have to pay only for a silver denar, as she could [rightly] plead against him: 'It was only silver that I undertook to take care of, but I never undertook to take care of gold.' Said R. Mordecai to R. Ashi: 'Do you state this in the name of Raba? We derive it quite definitely from the Baraitha [which states]: [If a man piled up] wheat [for which the permission was granted], but covered it with barley, or again [if he piled up] barley but covered it up with wheat, no payment would be made except for the value of the barley alone. Now, does this not prove that he is entitled to plead against the plaintiff: 'It was only barley that I undertook to take care of?' Here too she is surely entitled to plead against the depositor, 'I never undertook to take care of gold.'

Rab said: I have heard a new point with reference to the view of R. Judah [in the Mishnah here], but do not know what it is. Said Samuel to him: Does Abba[7] really not know what he heard with reference to R. Judah who imposes liability for damage done to Tamun in the case of Fire? It is that the judges must make the ordinance enacted for the benefit of a robbed person[8] extend also to the case of Fire.

Amemar raised the question: Would they similarly make the ordinance enacted for the benefit of a robbed person extend also to the case of an informer or not? According to the view[9] that we should not give judgment [against the defendant] in cases where the damage was [not actually done but] merely caused [by him],[10] there could be no question that also against informers we should not give judgment. But the question could still be raised according to the view that we should give judgment [against the defendant even] in cases where the damage was [not actually done but effectively and directly] caused by him.[10] Would the judges make the ordinance enacted for the benefit of a robbed person extend also to the case of an informer so that the plaintiff would by taking an oath [as to the exact amount of his loss] be paid accordingly, or should this perhaps not be so? — Let this remain undecided.

A certain man kicked another's money-box into the river. The owner came [into Court] and said: 'So much and so much did I have in it.' R. Ashi was sitting and pondering on it: What should be the law in such a case? — Rabina said to R. Aha the son of Raba, or, as others report, R. Aha the son of Raba said to R. Ashi: Is this not exactly what was stated in the Mishnah? For we learnt: 'THE SAGES AGREE WITH R. JUDAH IN THE CASE OF ONE WHO SET FIRE TO A CASTLE, THAT PAYMENT SHOULD BE FOR ALL THAT WAS KEPT THEREIN, AS IT IS SURELY THE CUSTOM OF MEN TO KEEP [VALUABLES] IN [THEIR] HOMES. [Is this not equivalent to the case in hand?][11] — He, however, said to him: If he would have pleaded that he had money there, it would indeed have been the same.[11] But we are dealing with a case where he pleads that he

had jewels there. What should then be the legal position? Do people keep jewels in a money-box or not? — Let this remain undecided.

R. Yemar said to R. Ashi: If he pleads that he had silver cups in the castle [which was burnt], what would be the law? — He answered him: We consider whether he was a wealthy man who was [likely] to have silver cups, or whether he was a trustworthy man with whom people would deposit such things. [If he is,] he would be allowed to swear and be reimbursed accordingly, but if not, he would not be believed [in his allegations without corroborative evidence].

R. Adda the son of R. Iwya said to R. Ashi: What is the [practical] difference between gazlan[12] and hamsan?[13] — He replied: A hamsan [one who expropriates forcibly] offers payment [for what he takes], whereas a gazlan does not make payment. The other rejoined: If he is prepared to make payment, how can you call him hamsan? Did R. Huna not say[14] that [even] where the vendor was [threatened to be] hanged [unless he would agree] to sell, the sale would be a valid sale?[15] — This, however, is no contradiction, as in that case, the vendor did [finally][16] say 'I agree', whereas here [in the case of hamsan] he never said 'I agree'.[17]

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(1) [Tosaf. omits 'all agree that', and take this passage as a continuation of the words of the Sages.]

(2) According to Raba this refers only to utensils which are usually kept in stacks.

(3) And it so happened that they were all burned down by a fire kindled by the owner of the field.

(4) As the owner of the field knew only of the stacks.

(5) As where permission was granted for barley the owner of the field could not have expected that wheat would be piled up. Even where permission was given for wheat, if the stacks were covered with barley, the owner of the field can plead that he only noticed barley.

(6) And the liability upon her is only because of her undertaking to keep it as an unpaid bailee.

(7) Which was the personal name of Rab.

(8) That where the amount of the loss cannot be established by proper evidence the plaintiff is entitled to take an oath as to the loss he sustained; v. Shebu. VII, 1.

(9) Infra 117b.

(10) Such as, e.g., in the case of informers.

(11) For just as it is the custom of men to keep valuables in their homes, it is surely the custom of men to keep money in money boxes.

(12) I.e. robber.

(13) I.e., violent person.

(14) B.B. 47b.

(15) For since he took the money the sale could not be called forced.

(16) After the pressure brought to bear upon him.

(17) The sale could therefore not become valid.

Talmud - Mas. Baba Kama 62b

MISHNAH. IF A SPARK ESCAPES FROM UNDERNEATH A HAMMER AND DOES DAMAGE, THERE WOULD BE LIABILITY. IF WHILE A CAMEL LADEN WITH FLAX WAS PASSING THROUGH A PUBLIC THOROUGHFARE THE FLAX GOT INTO A SHOP AND CAUGHT FIRE BY COMING IN CONTACT WITH THE SHOPKEEPER'S CANDLE, AND SET ALIGHT THE WHOLE BUILDING, THE OWNER OF THE CAMEL WOULD BE LIABLE.[1] IF, HOWEVER, THE SHOPKEEPER LEFT HIS CANDLE OUTSIDE [HIS SHOP], HE WOULD BE LIABLE.[2] R. JUDAH SAYS: IF IT WAS A CHANUKAH[3] CANDLE THE SHOPKEEPER WOULD NOT BE LIABLE.[4]

GEMARA. Rabina said in the name of Raba: From the statement of R. Judah we can learn that it is ordained to place the Chanukah candle within ten handbreadths [from the ground]. For if you

assume [that it can be placed even] above ten handbreadths, why did R. Judah say that in the case of a Chanukah candle there would be exemption? Why should the plaintiff not plead against him: 'You should have placed it above the reach of the camel and its rider?' Does this therefore not prove that it is ordained to place it within the [first] ten handbreadths? — It can, however, be argued that this is not so. For it could still be said that it might be placed even above the height of ten handbreadths, and as for your argument 'You ought to have placed it above the reach of the camel and its rider', [it might be answered that] since he was occupied with the performance of a religious act, the Rabbis could not [rightly] make it so troublesome to him.[5] R. Kahana said that R. Nathan b. Minyomi expounded in the name of R. Tanhum:[6] 'If the Chanukah candle is placed above [the height of] twenty cubits it is disqualified [for the purpose of the religious performance],[7] like a sukkah[8] and an alley-entry.[9]

CHAPTER VII

MISHNAH. THERE IS MORE FREQUENTLY OCCASION FOR THE MEASURE OF DOUBLE PAYMENT[10] [TO BE APPLIED] THAN THE MEASURE OF FOUR-FOLD OR FIVE-FOLD PAYMENTS,[11] SINCE THE MEASURE OF DOUBLE PAYMENT APPLIES BOTH TO A THING POSSESSING THE BREATH OF LIFE AND A THING WHICH DOES NOT POSSESS THE BREATH OF LIFE, WHEREAS THE MEASURE OF FOUR-FOLD AND FIVE-FOLD PAYMENTS[11] HAS NO APPLICATION EXCEPT FOR AN OX AND A SHEEP [RESPECTIVELY] ALONE, AS IT SAYS 'IF A MAN STEAL AN OX OR A SHEEP AND KILL IT OR SELL IT, HE SHALL PAY FIVE OXEN FOR AN OX AND FOUR SHEEP FOR A SHEEP.'[12] ONE WHO STEALS [ARTICLES ALREADY STOLEN] IN THE HANDS OF A THIEF NEED NOT MAKE DOUBLE PAYMENT,[13] AS ALSO HE WHO SLAUGHTERS OR SELLS [THE ANIMAL] WHILE IN THE POSSESSION OF [ANOTHER] THIEF HAS NOT TO MAKE FOURFOLD OR FIVE-FOLD PAYMENT.

GEMARA. That the measure of double payment applies both in the case of a thief and in the case of [an unpaid bailee falsely] alleging a theft,[14] whereas the measure of four-fold or five-fold payments has no application except in the case of a thief alone — [this, be it noted], is not taught here. This [omission] supports the view of R. Hiyya b. Abba, for R. Hiyya b. Abba stated that R. Johanan said: He who falsely alleges a theft [to account for the absence] of a deposit [entrusted to him], may have to make double payment;[14] so also if he slaughtered or sold it he may have to make four-fold or five-fold payment.[15] Some read as follows: Shall we say that this [omission] supports the view of R. Hiyya b. Abba who said in the name of R. Johanan: He who falsely alleges a theft [to account for the absence] of a deposit [entrusted to him] may have to make double payment; so also if he slaughtered or sold it, he may have to make four-fold or five-fold payment'? — But does your text say, 'There is no difference between [this[16] and that[17] except . . .]'? What it says is, THERE IS MORE FREQUENT OCCASION. — While some points were stated in the text others were omitted.[18]

AS THE MEASURE OF DOUBLE PAYMENT APPLIES BOTH TO A THING POSSESSING THE BREATH OF LIFE AND TO A THING WHICH DOES NOT POSSESS THE BREATH OF LIFE etc. Whence is this derived? As our Rabbis taught: For every matter of trespass[19] is a generalisation; whether it be for ox, for ass, for sheep, for raiment, is a specification; or for any manner of lost thing generalises again. We have thus here a generalisation preceding a specification which is in its turn followed by another generalisation,[20] and in such cases we include only that which is similar to the specification. Just as the specification here mentions an object which is movable and which has an intrinsic value, there should therefore be included any object which is movable and which has an intrinsic value. Real estate is thus excluded,[21] not being movable; slaves are similarly excluded as they are on the same footing [in the eye of the law] with real estate;[22] bills are similarly excluded, as though they are movable, they have no intrinsic value; sacred property is

also excluded as the text speaks of 'his neighbour'. But since the specification mentions a living thing whose carcass would cause defilement whether by touching or by carrying,[23] [why not say] there should be included any living thing whose carcass similarly causes defilement whether by touching or by carrying[24] so that birds would not be included?[25] — How can you seriously say this? Is not raiment[26] mentioned here? It may, however, be said that it is only regarding objects possessing life that we have argued.[27] Why then not say in the case of objects possessing life that it is only a thing whose carcass causes defilement by touching and carrying that is included, whereas a thing whose carcass does not cause defilement by touching and carrying should not be included,

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(1) V. supra 22a.

(2) As he is to blame for placing his candle outside his shop.

(3) Feast of Dedication.

(4) As he was entitled to place the Chanukah candle outside.

(5) As to make him place his Chanukah candle on a higher level.

(6) V. Shab. 21a.

(7) As when placed at such a high level it will not be noticed by passersby and publicity will not be given to the miracle.

(8) V. Glos. Cf. Suk. I, 1.

(9) V. 'Er, I, 1. An alley where a post or a stake would be required to be placed at the entrance for the purpose of enabling the inmates of that area to carry their domestic objects on the Sabbath day.

(10) For theft, in accordance with Ex. XXII, 3.

(11) For the slaughtering (or selling) of a sheep or ox respectively; cf. ibid. XXI, 37.

(12) Ibid.

(13) Since the article had in any case already passed out of the possession of the true owner.

(14) In accordance with Ex. XXII, 8.

(15) Infra p. 369.

(16) The measure of double payment.

(17) The measure of four-fold or five-fold payment.

(18) The omission of a particular point should therefore not be taken as a proof.

(19) Ex. XXII, 8.

(20) V. supra 54a.

(21) From the law of double payment.

(22) For which cf. Lev. XXV, 46.

(23) Lev. XI 39-40.

(24) Ibid. 26-28.

(25) As these do not cause defilement either by touching or by carrying.

(26) Which is not a living object at all.

(27) That they should be such that their carcasses would cause defilement whether by touching or by carrying.

as each item in a generalisation and specification[1] is expounded by itself,[2] so that birds would not be included? — If so, the Divine Law should have inserted only one item in the specification.[3] But which item should the Divine Law have inserted? For were the Divine Law to have inserted only 'ox' I might have suggested that an animal which was eligible to be sacrificed upon the altar[4] should be included, but one which was not eligible to be sacrificed upon the altar[5] should not be included. If on the other hand the Divine Law had inserted only 'ass'[6] I might have thought that an animal which is subject to the sanctity of first birth[7] should be included but that one which is not subject to the sanctity of first birth[8] should not be included. [Why then still not exclude birds whose carcasses would, unlike those of the ox and the ass, defile neither by touching nor by carrying?] — It may still be said that if so, the Divine Law would have inserted 'ox' and 'ass'. Why then was 'sheep' inserted, unless to indicate the inclusion of birds [which would otherwise have been excluded]? But still why not say that you can [only] include birds which are [ritually] clean[9] for food, as these in some way

resemble sheep in that they defile the garments worn by him who swallows them[10] [after they have become nebelah],[11] whereas birds [ritually] unclean for food[12] which carry no defilement and do not cause the defilement of garments worn by him who swallows them[13] should not be included? — [The term] 'all' is an amplification.[14] [Does this mean to say that] whenever the Divine Law uses [the word] 'all' it is an amplification? What about tithes, where 'all' occurs and we nevertheless expounded it as a case of generalisation and specification? For it was taught: And thou shalt bestow that money for all that thy soul lusteth after[15] is a generalisation; for oxen, or for sheep, or for wine, or for strong drink is a specification; or for all that thy soul desireth is again a generalisation. Now, where a generalisation precedes a specification which is in its turn followed by another generalisation, you include only that which is similar to the specification. As then the specification [here] mentions produce obtained from produce[16] which springs from the soil[17] there may also be included all kinds of produce obtained from produce[18] which springs from the soil.[19] [Does this not prove that the expression 'all' was taken as a generalisation, and not as an amplification?][20] — It may, however, be said that [the expression] 'for all'[15] is only a generalisation, whereas 'all' would be an amplification.[21] Or if you wish I may say that [the term] 'all' is also a generalisation, but in this case 'all' is an amplification. For at the very outset we find here a generalisation preceding a specification followed in its turn by another generalisation, as it is written: If a man deliver unto his neighbour,[22] which is a generalisation, money or stuff which is a specification, to keep which generalises again. Should you assume that this verse for any matter of trespass etc. was similarly inserted in order to give us a generalisation preceding a specification followed in its turn by another generalisation, why did the Divine Law not insert these items of the specification [of the latter verse] along with the items of the former generalisation, specification and generalisation?[23] Why was the verse for any matter of trespass inserted at all, unless to prove that [this 'all'] was meant as an amplification?[24] But now that you have decided that the term 'all' is an amplification,[25] why do I need all these terms of the specification?[26] — One to exclude real estate, a second to exclude slaves and the third to exclude bills; 'raiment' to exclude articles which have no specification;[27] 'or for any manner of lost thing' was meant as a basis for the view of R. Hiyya b. Abbah, as R. Hiyya b. Abba reported[28] that R. Johanan said:

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(1) [MS.M. omits 'in a . . . . specification'.]

(2) V. infra 64b.

(3) Regarding objects possessing life.

(4) As was the case with ox.

(5) Such as an ass, horse, camel and the like.

(6) Which would include also animals not eligible to be sacrificed upon the altar.

(7) As is the case with ass; cf. Ex. XIII, 13.

(8) Such as horses and camels and the like.

(9) Deut. XIV, 11.

(10) Cf. Hul. 100b.

(11) I.e., a living creature which lost its life not through the prescribed method of ritual slaughter; cf. Glos.

(12) Enumerated in Lev. XI, 13-20 and Deut. XIV, 12-19.

(13) Cf. Hul. loc. cit.

(14) I.e., the term 'all' does more than generalise, for it includes everything, v. supra p. 317. n. 7.

(15) Deut. XIV, 26.

(16) Such as wine from grapes.

(17) Which characterises also cattle.

(18) Excluding water, salt and mushrooms.

(19) Thus excluding fishes. V. supra p. 317.

(20) Which would have included all kinds of food and drink.

(21) V. p. 318, n. 2.

(22) Ex. XXII, 6.

(23) In Ex. XXII, 6.

(24) [That is, with reference to the double payment, whereas the generalisation in the preceding verse refers to the oath (v. Shebu. 43a)].
(25) V. p. 366, n. 3.
(26) Ox, ass, sheep or raiment.
(27) According to Rashi it means that which has no distinguishing mark, but according to Tosaf, that which is not defined by measure, weight or number; see also Shebu. 42b and B.M. 47a.
(28) Supra 57a.

Talmud - Mas. Baba Kama 63b

He who falsely alleges the theft [to account for the non-production] of a find,[1] may have to make double payment,[2] as it says, 'for any manner of lost thing whereof one saith . . .'[3]

We have learnt elsewhere:[4] [If a man says to another] 'Where is my deposit?', and the bailee says 'It was lost', whereupon [the depositor says], 'I call upon you to swear' and the bailee says, 'So be it',[5] if witnesses testify against him that he himself had consumed it, he has to pay [only] the principal,[6] but if he admits [this] of himself, he has to pay the principal together with a fifth and a trespass offering.[7] [If the depositor says] 'Where is my deposit?', and the bailee answers 'It was stolen!', [whereupon the depositor says] 'I call on you to swear', and the bailee says, 'So be it',[5] if witnesses testify against him that he himself had stolen it, he has to make double payment,[8] but if he admits [this] on his own accord, he has to pay the principal together with a fifth and a trespass offering.[7] It is thus stated here that it is only where the bailee falsely alleges theft that he has to make double payment, whereas if he falsely alleges loss, he has not to make double payment. Again, even where he falsely alleges theft it is only where [he confirms the allegation] by an oath that he has to make double payment, whereas where no oath [follows] he has not to make double payment. What is the Scriptural authority for all this? — As the Rabbis taught: If the thief be found;[9] this verse deals with a bailee[10] who falsely alleges theft.[11] Or perhaps not so, but with the thief himself?[12] — As, however, it is further stated, If the thief be not found,[13] we must conclude that the [whole] verse[14] deals with a bailee falsely advancing a plea of theft.[15]

Another [Baraitha] teaches: If the thief be found: this verse deals with the thief himself.[16] You say that it deals with the thief himself. Why, however, not say that it is not so, but that it deals with a bailee falsely alleging theft? — When it further states, If the thief be not found this gives us the case of a bailee falsely alleging theft, How then can I explain [the verse] If the thief be found unless on the supposition that this deals with the thief himself![16] We see at any rate that all agree that [the verse] If the thief be not found deals with a bailee falsely alleging theft. But how is this implied [in the wording of the text]? — Raba said: [We understand the verse to say that] if it will not be found as he[17] stated[18] but that he himself had stolen it, he has to pay double. But whence can we conclude that this is so only in the case of an oath [having been falsely taken by the bailee]? — As it was taught: The master of the house shall come near unto the judges[13] to take an oath. You say to take an oath. Why not say, however, that this is not so, but to stand his trial?[19] — The words 'put his hand unto his neighbour's goods' occur in a subsequent section[20] and the words 'put his hand unto his neighbour's goods' occur in this section[13] which precedes the other one; just as there[20] it is associated with an oath,[21] so here also it should be associated with an oath. Now on the supposition[22] that one verse deals[23] with a thief and the other[24] with [a bailee falsely] alleging theft we quite understand why there are two verses; but on the supposition[25] that both of them deal with a bailee falsely alleging theft, why do I want two verses?[26] — It may be replied that one is to exclude the case of a false allegation of loss [from entailing double payment]. Now on the supposition[22] that one verse deals with a thief and the other with [a bailee falsely] alleging theft, in which case there will be no superfluous verse [in the text] whence can we derive the exclusion of a false allegation of loss [from entailing double payment]? — From [the definite article; as instead of] 'thief' [it is written] 'the thief'.[27] On the supposition[25] that both of the verses deal with [a bailee falsely] alleging theft, in

which case Scripture excludes a bailee falsely alleging loss, how could [the fact that instead of] 'thief' [it is written] 'the thief' be expounded? — He might say to you that it furnishes a basis for the view of R. Hiyya b. Abba reported in the name of R. Johanan, as R. Hiyya b. Abba stated[28] that R. Johanan said that he who falsely alleges theft in the case of a deposit would have to make double payment, and so also if he slaughtered or sold it he would have to make fourfold or five-fold payment. But on the supposition[22] that one verse deals with a thief and the other with [a bailee falsely] alleging theft, and that [the fact that instead of] 'thief', 'the thief' [is written] has been used to exclude a false allegation of loss [from entailing double payment], whence could be derived the view of R. Hiyya b. Abba?[28] — He might say to you: A thief and a bailee falsely alleging theft are made analogous to one another in Scripture,[29] and no objections can be entertained against an analogy.[30] This is all very well on the supposition that one verse deals with a thief and the other with [a bailee falsely] alleging theft. But on the supposition that both of them deal with [a bailee falsely] alleging theft, whence can the law of double payment[31] be derived in the case of a thief himself? And should you say that it can be derived by means of an a fortiori argument from the law of [a bailee falsely] alleging theft, [we may ask], is it not sufficient for the object to which the inference is made to be placed on the same footing as the object from which it is made,[32] so that just as there[33] [the penalty is entailed only where there] is false swearing, so here also[34] [it should be entailed only] where there is false swearing? — It could be derived by the reasoning taught at the School of Hezekiah. For it was taught at the School of Hezekiah: Should not Scripture have mentioned only 'ox' and 'theft'[35] as everything would thus have been included? — If so, I might say that just as the specification[36] mentions an object which is eligible to be sacrificed upon the altar any [living] object which is eligible to be sacrificed upon the altar should be included. What can you include through this? A sheep[37] [as subject to double payment].

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(1) I.e., an article found by him and which he has to return to its owner.

(2) If he took an oath to substantiate his false plea.

(3) Ex. XXII, 8.

(4) Shebu. VIII, 3.

(5) Which amounts to an oath; cf. Shebu. 29b.

(6) But not double payment, as he did not allege theft.

(7) In accordance with Lev. V, 21-25.

(8) As by advancing the false plea of theft and substantiating it by an oath he became subject to the law applicable to theft.

(9) Ex. XXII, 6.

(10) I.e., unpaid.

(11) The clause therefore means this: if he (the bailee) be found to have been the thief, he should pay double.

(12) Whereas the bailee would never have to pay double.

(13) Ex. XXII, 7.

(14) Which should be construed thus: If it be not found as the bailee pleaded that it was stolen by a thief but that he himself was the thief etc.

(15) V. the discussion later.

(16) Who was found to have stolen the deposit, in which case the unpaid bailee is quit and the thief pays double.

(17) The bailee.

(18) That he became dispossessed of it by the thief.

(19) And be ordered to pay.

(20) Ibid. 10.

(21) For the text runs: The oath of the Lord be between them both to see whether he hath not put his hands unto his neighbour's goods.

(22) I.e., the second Baraitha.

(23) Ex. XXII, 6.

(24) Ex. XXII, 7.

(25) I.e., the first Baraitha.

(26) Presenting the same law.

(27) Thus pointing out that the liability for double payment is only where it was the plea of theft that was proved to have been false.

(28) Supra p. 364.

(29) To be subject to the law of double payment which may lead on to a liability of four-fold or five-fold payment.

(30) היקש infra 106b.

(31) For misappropriating either an animate or inanimate object.

(32) I.e., the principle of Dayyo, v. supra p. 126.

(33) In the case of the bailee falsely pleading theft.

(34) In the case of the thief himself.

(35) In Ex. XXII, 3.

(36) I.e., ox.

(37) Which is similarly eligible to be sacrificed upon the altar.

Talmud - Mas. Baba Kama 64a

But when the text continues ‘sheep’, we have sheep explicitly stated. How then am I to explain ‘theft’? To include any object. [If that is so] should Scripture not have mentioned only ‘ox’, ‘sheep’ and ‘theft’ since everything would have thus been included? — If so, I might still say that just as the specification[1] mentions an object which is subject to the sanctity of first birth,[2] so also any object which is subject to the sanctity of first birth [should be included].[3] Now what can you include through this? An ass [as subject to double payment]. But when the text goes on to mention ‘ass’, we have ‘ass’ explicitly stated. What then do I make of ‘theft’? To include any object. [If that is so], should Scripture not have mentioned only ‘ox’ ‘ass’, ‘sheep’ and ‘theft’ since everything would have accordingly been included? — If so, I might still say that just as the specification[4] mentions objects possessing life, so also any other objects possessing life [should be included]. What can you include through this? All other objects possessing life. But when the text continues ‘alive’, we have objects possessing life explicitly stated. How then am I to explain ‘theft’? [It must be] to include any other object whatsoever.[5]

The Master stated: ‘Should not Scripture have mentioned [only] "ox" and "theft"?’ — But does it say ‘ox’ and [then] ‘theft’? Is it not [first] ‘theft’ and [then] ‘ox’ which is written in the text?[6] And if you rejoin that the author of this argument took a hypothetical case, viz.: ‘If it were written [first] "ox" and [then] "theft", how in that case would you be able to say, ‘Just as the specification mentions etc.,’ since ‘ox’ would be the specification and ‘theft’ the generalisation, and in the case of a specification followed by a generalisation the generalisation is considered to add to the specification, so that all objects would be included? If, on the other hand, he based his argument on the actual order of the text, viz.: ‘theft’ and [then] ‘ox’, how again would you be able to say that ‘everything would have been included’, or ‘just as the specification mentions etc.’, since ‘theft’ would be the generalisation and ‘ox’ the specification, and in the case of a generalisation followed by a specification there is nothing included in the generalisation except what is explicit in the specification, [so that here] only ox [would be included] but no other object whatsoever? Raba thereupon said: This Tanna[7] based his argument upon the term ‘alive’ [that follows the specification], so that he argued on the strength of a generalisation[8] [followed by] a specification[9] [which was in its turn followed by] another generalisation.[10] But is the last generalisation[10] analagous in implication to the first generalisation?[11] There is, however, the Tanna of the School of R. Ishmael who did expound texts of this kind on the lines of generalisations and specifications.[12] The problem was therefore this: Why do I require the words in the text, ‘If to be found it be found?’[13] Should not Scripture have mentioned only ‘theft’ and ‘ox’ and ‘alive’, and everything would have then been included?[14] — If so, I might say that just as the specification mentions an object which is eligible to be sacrificed upon the altar, so also any object eligible to be sacrificed upon the altar is [included]. What does this enable you to include? Sheep.[15] But when the text

continues ‘sheep’, we have sheep explicitly stated. What then am I to make of ‘theft’? It must be to include any object. [If that is so] should Scripture not have mentioned only ‘theft’, ‘ox’, ‘sheep’ and ‘alive’ since everything would have then been included?[14] — If so, I might still say that just as the specification mentions an object which is subject to the sanctity of first birth, so also any object which is subject to the sanctity of first birth [should be included]. What does this enable you to include? Ass. But when the text continues ‘ass’, we have ass explicitly stated. What then am I to make of ‘theft’? It must be to include any object. [But in that case] should Scripture not have mentioned only ‘theft’, ‘ox’, ‘sheep’, ‘ass’ and ‘alive’, since everything would have then been included?[14] — If so I might still say that just as the specification mentions objects possessing life, so also any other object possessing life [should be included]. What does this enable you to include? All other objects possessing life. But when the text continues ‘alive’, objects possessing life are explicitly stated. What then am I to make of ‘theft’? [It must be] to include any other object whatsoever. And if so, why do I require the words ‘if to be found it be found[16] ?

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(1) I.e., ox and sheep.

(2) In accordance with Ex. XIII, 12.

(3) Ass would thus also be included; cf. Ex. XXII, 13.

(4) Ox, sheep and ass.

(5) [Hence the derivation of double payment in the case of the thief himself.]

(6) [Being thus a generalisation followed by a specification, in which case the former includes only what is contained in the latter, v. P.B. p. 13.]

(7) Of the School of Hezekiah.

(8) I.e., ‘theft’.

(9) I.e., ‘ox, ass, sheep’.

(10) I.e., ‘alive’. — The argument will be explained anon.

(11) I.e., ‘theft’, being more comprehensive than ‘alive’.

(12) Cf. Zeb. 4b; 8b; and Hul. 66a.

(13) Literal rendering of Ex. XXII, 3. (E.V.: If the theft be certainly found in his hand.)

(14) Why indeed this emphasis on the verb ‘found’?

(15) V. supra p. 370, n. 7.

(16) V. note 2. This concludes the argument of the School of Hezekiah.

Talmud - Mas. Baba Kama 64b

But if this is so, is not this a real difficulty?[1] — There is, however, a refutation of it.[2] For whence would you include any ‘other object’?[3] From [the implication of] the last generalisation.[4] Now, since this very generalisation consists in the term ‘alive’, of what service then is the argument based upon the generalisation followed by a specification which is in its turn followed by another generalisation? It can hardly be to add any [inanimate] object, since the word ‘alive’ is used there, implying only objects possessing life, but not any other object whatsoever. It was therefore because of this that it was necessary to state ‘if to be found it be found.’[5] It may however still be argued, does not this text contain two generalisations which are placed near each other?[6] — Rabina thereupon said: [We dispose of this difficulty] as stated in the West,[7] that wherever you find two generalisations near each other, place a specification between them and explain them as a case of a generalisation followed by a specification.[8] [Here then] place ‘ox’ between [the infinitive and the finite verb],[6] ‘if to be found it be found.’ Now, what additional objects would this introduce? If objects possessing life, are these not to be derived from the term ‘alive’? It must therefore be an object which does not possess life, and we expound thus: Just as the specification mentions an object which is movable and which has an intrinsic value, so also any object which is movable and which has an intrinsic value [should be included to be subject to the double payment]. Now, when you again place ‘ass’ between [the infinitive and the finite verb], ‘if to be found it be found’, what additional objects could this introduce? If an object not possessing life, was not this derived from [placing] ‘ox’ [between the two

generalisations]?[6] It must therefore serve to introduce an object having specification.[9] But if so why do I require the word 'sheep'? — It must therefore be taken as a case of an amplification preceding a diminution followed in its turn by another amplification,[10] as indeed taught at the School of R. Ishmael. For it was taught at the School of R. Ishmael:[11] [The words 'in the waters',[12] 'In the waters', occurring twice in the text should not be treated as a generalisation followed by a specification, but as an amplification followed by a diminution followed in its turn by another amplification, to add everything. What, then, does it add in this case?[13] It adds all objects, But if so, why do I require all these specifications?[14] — One to exclude real estate; the second to exclude slaves, and the third to exclude bills; while 'theft' and 'alive' furnish a basis for the view of Rab who said[15] that the value of the principal is to be resuscitated as it was at the time of theft.[16]

But according to the view that one verse[17] deals with a thief himself and the other[18] with a bailee [falsely] alleging theft, so that the liability of a thief himself to pay double payment is thus derived from the text 'if the thief be found', how is the text 'If to be found it be found' etc. to be expounded? — He may employ it for teaching the view expressed by Raba b. Ahilai; for Raba b. Ahilai said:[19] What was the reason of Rab who maintained that a defendant admitting an offence for which the penalty is a fine would [even] where witnesses subsequently appeared still be exempt? As it is written: 'If to be found it be found' implying that if at the very outset it is found by witnesses then it will 'be' [considered] 'found' in the consideration of the Judges, excepting thus a case where it was the defendant who incriminated himself. Now again, according to the view that both verses deal with a bailee [falsely] advancing a plea of theft, in which case the text 'If to be found it be found' is employed to teach that there is double payment in the case of a thief himself, whence [in Scripture] do we derive the rule regarding a defendant incriminating himself? — From the text, 'Whom the judges shall condemn'[20] [which implies], 'but not him who condemns himself.' But according to the view that one verse deals with a thief and the other with a bailee [falsely] advancing a plea of theft and that the text of 'if to be found it be found' is to introduce the law where the defendant incriminates himself, how could the text, 'whom the judges shall condemn', be expounded? — He might say to you: That text was in the first instance employed to imply that a defendant admitting [an offence entailing] a fine [without witnesses subsequently appearing] would be exempt;[21] whereas the other view, that both of the verses deal with a bailee [falsely] advancing a plea of theft holds that a defendant admitting [an offence entailing] a fine for which witnesses subsequently appear is liable.[22] According to the view that one verse[23] deals with a thief and the other with a bailee [falsely] advancing a plea of theft, so that the case of a thief is derived from the verse there,[24] we have no difficulty with the text 'if to be found it be found', which is employed as a basis for the statement of Raba b. Ahilai, but why do I require all these specifications?[25] — For the reason taught at the school of R. Ishmael,[26] that any section written in Scripture and then repeated is repeated only for the sake of a new point that is added to it.[27] But why not say that even the thief himself should be subject to double payment only after having taken an oath falsely?[28] — Let not this enter your mind, for it was taught: 'R. Jacob says, He shall pay double[29] [even] where he took no oath. Why not rather say only where he took a false oath?[28] You can safely say that this could not be so.' Why could this not be so? — Said Abaye: For the Divine Law should then not have written 'he shall pay double' in the case of a thief, as this would have been derived by an a fortiori from the law applicable to a bailee falsely advancing a plea of theft: If a bailee falsely advancing a plea of theft, into whose hands the article had come lawfully, is ordered by Scripture to pay twice, should this not apply all the more strongly in the case of the thief himself, into whose hands the article came unlawfully? Why then did Scripture say 'He shall pay double' in the case of a thief himself, unless to imply liability even in the absence of an oath!

But how could this [text] 'If to be found it be found' be employed to teach this?[30] Is it not required for what was taught: 'his hand':[31]

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(1) And how are we to meet the question of that Tanna?

(2) So that the emphasis on the verb becomes essential.
(3) To be subject to the law of theft.
(4) [It is a general principle that, in a proposition consisting of a generalisation followed by a specification which in its turn is followed by another generalisation, the inclusion of all things that are similar to the specification is in virtue of the last generalisation, since without it the proposition would include only what is included in the specification, v. p. 371, n. 3.]
(5) [To apply here the principle of generalisation, specification and generalisation.]
(6) I.e., the doubling of the verb expressing 'found'.
(7) In the Land of Israel.
(8) Cf. Shebu. 5a.
(9) To the exclusion of such as have no marks of identification. Cf. p. 367, n. 4.
(10) Cf. supra p. 366.
(11) V. p. 373, n. 6.
(12) Lev. XI, 9.
(13) Which would otherwise not have been subject to the law.
(14) [Strictly speaking, 'diminutions'.]
(15) Infra p. 376.
(16) I.e., that the payment of principal for a stolen article will be in accordance with its value at the time of the theft.
(17) Ex. XXII, 6.
(18) Ibid. 7.
(19) Infra 75a.
(20) Ex. XXI, 8.
(21) [While the other verse is to extend the exemption to the case where witnesses do subsequently appear. Had there been one verse only available, the exemption would have been limited to the former only.]
(22) As indeed maintained by Samuel, infra 75a.
(23) V. p. 374, n. 8.
(24) 'If the thief be found'.
(25) [Since the exclusion of 'real estate, slaves and bills' is already provided for in the verse, For all manner of trespass, etc,; v. supra p. 364.]
(26) Sot. 3a; Shebu. 19a.
(27) I.e., the exclusion of self-admission in case of a fine, as supra.]
(28) Since the law in this case is derived from the section dealing with the unpaid bailee who is not subject to pay double unless where he first took a false oath on the plea of alleged theft.
(29) Ex. XXII, 3.
(30) I.e., any of the above implications.
(31) Ex. XXII, 3.

Talmud - Mas. Baba Kama 65a

this gives me the rule only as applying to his hand. Whence do I learn that it applies to his roof, his courtyard and his enclosure? It distinctly lays down: If to be found it be found [i.e.] in all places'?[1] — But if so[2] the text should have said either 'if to be found, to be found', or 'if it be found, it be found'?[3] The variation in the text[4] enables us to prove two points from it.

The above text states: 'Rab said: "The principal is reckoned as at the time of the theft,"[5] whereas double payment or four-fold and five-fold payments are reckoned on the basis of the value when the case was brought into Court.' What was the reason of Rab? — Scripture says 'theft' and 'alive'. Why does Scripture say 'alive' in the case of theft? [To imply] that I should resuscitate the principal in accordance with its value at the time of theft.[6] Said R. Shesheth: I am inclined to say that it was only when he was half asleep on his bed[7] that Rab could have enunciated such a ruling.[8] For it was taught: [If a thief misappropriated] a lean animal and fattened it, he has to pay the double payment or four-fold and five-fold payments according to the value at the time of theft. [Is this not a

contradiction to the view of Rab?][9] — It might, however, be said [that the thief has to pay thus] because he can say, 'Am I to fatten it and you take it?'[10]

Come and hear: [If a thief misappropriated] a fat animal and caused it to become lean, he has to pay double payment or fourfold and five-fold payments according to the value at the time of theft. [Does this not contradict the ruling enunciated by Rab?][11] — There also [the thief has to pay thus] because we argue against him 'What is the difference whether you killed it altogether or only half-killed it.'[12] But the ruling enunciated by Rab[11] had reference to fluctuations in price. How are we to understand this? If we assume that it was originally worth one zuz and subsequently worth four zuz, would the statement 'the principal will be reckoned as at the time of theft not lead us to suppose that Rab differs from Rabbah? For Rabbah said:[13] If a man misappropriated from his fellow a barrel of wine which was then [worth] one zuz but which became subsequently worth four zuz, if he broke it or drank it he has to pay four,[14] but if it broke of itself he has to pay one zuz.[15] [Would Rab really differ from this view?][16] — It may however, be said that Rab's rule applied to a case where, e.g., it was at the beginning worth four [zuz] but subsequently worth one [zuz], in which case the principal will be reckoned as at the time of theft, whereas double payment or four-fold and five-fold payments will be reckoned on the basis of the value when the case came into Court. R. Hanina learnt in support of the view of Rab: If a bailee advanced a plea of theft regarding a deposit and confirmed it by oath but subsequently admitted his perjury and witnesses appeared and testified [to the same effect], if he confessed before the appearance of the witnesses, he has to pay the principal together with a fifth and a trespass offering;[17] but if he confessed after the appearance of the witnesses, he has to pay double payment[18] together with a trespass offering;[19] the fifth, however, is replaced by the doubling of the payment.[20] So R. Jacob.

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(1) B.M. 10b and 56b.

(2) That it was meant to imply only one point.

(3) I.e., the verb would have been doubled in the same tense.

(4) In the tense of the verb, the infinite followed by the finite.

(5) V. supra p. 374.

(6) V. p. 374, n. 7.

(7) Lit., 'when lying down'.

(8) For a similar expression cf. supra p. 268.

(9) According to whom four-fold and five-fold payments are reckoned on the basis of the value when the case comes into court.

(10) Whereas where there was an increase in price or where the animal became fatter by itself, the ruling of Rab may hold good.

(11) V. p. 376, n. 11.

(12) The liability thus began at the time when the thief caused the animal to become lean.

(13) B.M. 43a.

(14) As was its value at the time when he damaged it.

(15) As was its value at the time of the theft.

(16) And maintain to the contrary that even where the thief broke it or drank it he would still pay only one zuz, which was its value at the time of the theft.

(17) In accordance with Lev. V, 24-25. [But not the doubling, since it is a fine which is not payable on self-admission.]

(18) V. p. 634, n. 7.

(19) V. p. 634, n. 6.

(20) Provided, however, that the doubling and the fifth are equal in amount.

Talmud - Mas. Baba Kama 65b

The Sages, however, say: [Scripture says] In its principal and the fifth part thereof,[1] [implying that it is only] where money is paid as principal that a fifth has to be added, but where the money is not

paid as principal[2] no fifth will be added.[3] R. Simeon b. Yohai says: No fifth or trespass offering is paid in a case where there is double payment.[4] Now it is said here that 'the fifth is replaced by the doubling of the payment;' this being the view of R. Jacob. How are we to understand this? If we say it was at the beginning worth four and subsequently similarly worth four, how could the fifth be replaced by the doubling of the payment when the doubling of the payment amounts to four and the fifth to one?[5] Does it therefore not refer to a case where at the beginning the value was four but subsequently fell to one zuz, so that the doubling of the payment is one zuz[6] and the fifth of the payment is also one zuz,[5] proving thereby that the principal will be reckoned as at the time of theft, whereas double payment or four-fold and five-fold payments will be reckoned on the basis of the value when the case comes into court? — Raba thereupon said: It could still be maintained that at the beginning it was worth four and now it is similarly worth four, for as to the difficulty with respect to the doubling of the payment being four and the fifth of the payment one zuz,[5] it might be said that [we are dealing here with a case] where e.g., he took an oath and repeated it four times, after which he confessed, and as the Torah says 'and its fifths',[7] the Torah has thus assigned many fifths to one principal.[8]

The Master stated: 'The Sages however say: [Scripture says] In its principal and the fifth part thereof [implying that it is only] where money is paid as principal that a fifth has to be added, but where the money is not paid as principal, no fifth will be added.' The trespass offering will nevertheless have to be brought. Why this difference? If he has not to pay the fifth because it is written, In its principal and the fifth part thereof, why should he similarly not have to pay the trespass offering seeing it is written, In its principal and the fifth part thereof . . . and his trespass offering?[9] — The Rabbis might say to you that by the particle 'eth' [occurring before the term denoting his trespass offering][10] Scripture separates them.[11] And R. Simeon b. Yohai?[12] — He maintains that by the 'waw' [conjunctive placed before the particle] 'eth' Scripture combines them.[13] And the Rabbis? — They may say that if this is so, the Divine Law should have inserted neither the 'waw' nor the 'eth'. And R. Simeon b. Yohai? — He might rejoin that as it was impossible for Scripture not to insert 'eth' so as to make a distinction between a chattel due to Heaven[14] and money due to ordinary men,[15] it was therefore necessary to add the 'waw' so as to combine the verses.

R. Elai said: If a thief misappropriates a lamb and it grows into a ram,[16] or a calf and it grows into an ox,[16] as the article has undergone a change[17] while in his hands he would acquire title to it,[18] so that if he slaughters or sells it, it is his which he slaughters it is his which he sells.[19] R. Hanina objected to R. Elai's statement [from the following teaching]: If he misappropriates a lamb and it grows into a ram,[16] or a calf and it grows into an ox,[16] he will have to make double payment or four-fold and five-fold payments reckoned on the basis of the value at the time of theft. Now, if you assume that he acquires title to it by the change, why should he pay?[20] Is it not his which he slaughtered, is it not his which he sold? — He replied:[21] What then [is your opinion]? That a change does not transfer ownership? Why then pay on the basis of the value at the time of theft[22] and not of the present value?[23] — The other replied:[24] He does not pay in accordance with the present value for the reason that he can say to him,[25] 'Did I steal an ox from you, did I steal a ram from you?' Said the other:[21] 'May the All-Merciful save me from accepting this view!' The other one retorted,[24] 'May the All-Merciful save me from accepting your view.'[26] R. Zera demurred saying: Why should he not indeed acquire title to it through the change in name?[27] Raba, however, said to him: An ox one day old is already called 'ox', and a ram one day old is already called 'ram'. 'An ox one day old is called "ox",' as written: When an ox or a sheep or a goat is born.[28] 'A ram one day old is called "ram",' as written: And the rams of thy flocks have I not eaten.[29] Does he mean that it was only the rams that he did not eat, and that he did eat the sheep? [Surely not!] — This shows that a ram one day old is already called 'ram'. But all the same does the objection raised against R. Elai[30] still not hold good? — R. Shesheth thereupon said: The teaching [of the Baraitha] is in accordance with the view of Beth Shammai, that a change leaves the article in the previous position and will accordingly not transfer ownership, as taught:[31] If he gave her [the harlot] as her hire wheat of which she made flour, or

olives of which she made oil, or grapes of which she made wine, it was taught on one occasion that 'the produce is forbidden [to be sacrificed upon the altar],'[32] whereas on another occasion it was taught 'it is permitted',[33] and R. Joseph said: Gorion of Aspurak[34] learnt: 'Beth Shammai prohibit [the produce to be used as sacrifices],[35] whereas Beth Hillel permit it.' Now, what was the reason of Beth Shammai? — Because it is written 'Gam',[36] to include their transformations.[37] But Beth Hillel maintain that [the suffix them][38] implies 'them',[39] and not their transformations. And Beth Shammai? — They maintain that the suffix

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(1) Lev. V, 24.

(2) As here, where double payment has to be made.

(3) Under any circumstances, even where the doubling of the payment and the fifth are not equal in amount, though the trespass offering will have to be brought.

(4) Infra 106a; Shebu. 37b.

(5) The fifth is 25% of the general sum which will have to be paid as principal plus a fifth thereof amounting thus to a fourth of the principal.

(6) As was the value at the time of the coming into court.

(7) E.V.: 'and the fifth part thereof'.

(8) I.e., a fifth will be paid for each false swearing.

(9) Lev. ib., 24-25.

(10) E.V.: 'And . . . his trespass offering, v. 25.

(11) So that the law regarding the trespass offering is not governed by the condition made in verse 24.

(12) [Who holds that he neither brings a trespass offering. How will he meet the argument from the particle 'eth'?]

(13) Making them subject to the same law.

(14) I.e., the trespass offering.

(15) I.e., the fifth.

(16) While still in his possession.

(17) The technical term is Shinnuy.

(18) Having, however, to repay the principal together with the double payment for the act of theft.

(19) The fine for the slaughter or sale will thus not be imposed upon him.

(20) The fine for the slaughter or sale.

(21) R. Elai to R. Hanina.

(22) When it was merely a lamb or a calf.

(23) When it already became a ram, or an ox, if the ownership has not changed.

(24) R. Hanina to R. Elai.

(25) I.e., the thief against the plaintiff.

(26) Cf. Shab. 84b and Keth. 45b.

(27) [Though 'growth' confers no title.]

(28) Lev. XXII, 27.

(29) Gen. XXXI, 38.

(30) By R. Hanina from the teaching imposing the fine of four-fold and five-fold payments.

(31) Infra p. 544 and Tem. 30b.

(32) In accordance with Deut. XXIII, 19.

(33) As it was not the same article which was given as hire.

(34) [Not identified, but probably in Asia; v. Neubauer, p. 386.]

(35) V. p. 380, n. 15.

(36) E.V.: 'even', and which is generally taken as an amplification.

(37) I.e., to prohibit even the articles into which the hire was transformed.

(38) שניהם , 'both of them' (E.V.: 'both these').

(39) I.e., the original articles themselves.

indicates 'them' and not their offsprings.[1] And Beth Hillel? — They reply that you can understand the two points from it: 'Them' — and not their transformations; 'them' — and not their offsprings. But as to Beth Hillel surely it is written Gam? — Gam presents a difficulty according to the view of Beth Hillel.[2]

Their[3] difference extends only so far that one Master[4] maintains that a change transfers and the other Master[5] maintains that a change does not transfer ownership, but regarding payment they both agree that the payment is made on the basis of the original value, even as it is stated:[6] 'He has to make double payment or fourfold and five-fold payments on the basis of the value at the time of the theft.' Are we to say that this [Baraitha] confutes the view of Rab in the statement made by Rab that the principal will be reckoned as at the time of theft, whereas double payment or four-fold and five-fold payments will be reckoned on the basis of the value when the case comes into Court? — Said Raba: [Where he pays with] sheep, [he pays] in accordance with the original value,[7] but [where he pays with] money [he pays] in accordance with the present value.

Rabbah said: That a change[8] transfers ownership is indicated in Scripture and learnt in Mishnah. It is indicated in Scripture in the words, He shall restore the misappropriated object which he violently took away.[9] What is the point of the words 'which he violently took away'? — It is to imply that if it is still as [it was when] he violently took it[10] he shall restore it, but if not, it is only the value of it that he will have to pay.[11] It is learnt [in the Mishnah]: If one misappropriates timber and makes utensils out of it, or wool and makes it into garments, he has to pay in accordance with the value at the time of robbery.[12] Or as also [learnt elsewhere]: If the owner did not manage to give the first of the fleece to the priest[13] until it had already been dyed, he is exempt,[14] thus proving that a change transfers ownership. So has Renunciation[15] been declared by the Rabbis to transfer ownership. We, however, do not know whether this rule is derived from the Scripture, or is purely Rabbinical. Is it Scriptural, it being on a par with the case of one who finds a lost article?[16] For is not the law in the case of a finder of lost property that, if the owner renounced his interest in the article before it came into the hands of the finder the ownership of it is transferred to the finder? So in this case, the thief similarly acquires title to the article as soon as the owner renounces his claim. It thus seems that the transfer is of Scriptural origin! Or are we to say that this case is not comparable to that of a lost article?[16] For it is only in the case of a lost article that the law applies, since when it comes into the hands of the finder,[17] it does so lawfully, whereas in the case of the thief into whose hands it entered unlawfully, the rule therefore might be merely of Rabbinic authority, as the Rabbis might have said that ownership should be transferred by Renunciation in order to make matters easier for repentant robbers. But R. Joseph said: Renunciation does not transfer ownership even by Rabbinic ordinance.

R. Joseph objected to Rabbah's view [from the following:] If a man misappropriated leavened food [before Passover],[18] when Passover has passed[19]

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(1) Such as where, e.g., a cow was given as hire and it gave birth to a calf.

(2) V. supra 54a, and B.M. 27a.

(3) I.e., R. Elai's and R. Hanina's.

(4) R. Elai.

(5) R. Hanina.

(6) In the Baraitha cited supra p. 379.

(7) Rashi explains this to mean that as it was a sheep which he misappropriated it is a sheep which he has to return, but according to Tosaf. it does not refer to the object by which the payment is made but to the object of the theft, and means that if the change in price resulted from a change in the substance of the stolen object all kinds of payment will be in accordance with the value at the time of the theft, whereas where the change in the value was due to fluctuation in price the view of Rab would still hold good.

(8) In the substance of a misappropriated article.

(9) Lev. V. 23.

(10) I.e., without any change in the substance of the object.

(11) But not the misappropriated object itself.

(12) Infra p. 541.

(13) In accordance with Deut. XVIII, 4.

(14) On account of the change which took place in the colour of the wool. (Hul. 135a).

(15) Ye'ush, of the misappropriated article by its owner.

(16) Where Renunciation by the owner would release a subsequent finder from having to restore the article found by him, as derived in B.M. 22b from a Scriptural inference.

(17) After Renunciation.

(18) When it was permitted.

(19) So that the leavened food became forbidden for any use in accordance with Pes. 28a-30a.

Talmud - Mas. Baba Kama 66b

he can say to the plaintiff, 'Here is your stuff before you.'[1] Now, as this plaintiff surely renounced his ownership when the time for prohibiting leavened food arrived,[2] if you assume that Renunciation transfers ownership, why should the thief be entitled to say, 'Here is your stuff before you', when he has a duty upon him to pay the proper value?[3] — He replied:[4] I stated the ruling[5] only where the owner renounces ownership at the time when the thief is desirous of acquiring it, whereas in this case, though the owner renounced ownership, the thief had no desire to acquire it.[6]

Abaye objected to Rabbah's statement [from the following]: [The verse says,] 'His offering,[7] [implying] but not one which was misappropriated.'[8] Now, what were the circumstances? If we assume before Renunciation, why do I require a text, since this is quite obvious?[9] Should we therefore not assume after Renunciation, which would show that Renunciation does not transfer ownership?[10] Said Raba[11] to him: According to your reasoning [how are we to explain] that which was taught: [The verse says,] 'His bed[12] [implying] but not one which was misappropriated'? Under what circumstances? That, for instance, wool was misappropriated and made into a bed? But is there any [accepted] view[13] that a change [in substance] resulting from an act does not transfer ownership?[14] What you have to say is that it refers to a case where the robber misappropriated a neighbour's bed. So also here[15] it refers to a case where he misappropriated a neighbour's offering.[16] Abaye objected to R. Joseph's view [from the following]: In the case of skins belonging to a private owner, mere mental determination renders them capable of becoming [ritually] unclean[17] whereas in the case of those belonging to a tanner no mental determination[18] would render them capable of becoming unclean.[19] Regarding those in the possession of a 'thief', mental determination[20] will make them capable of becoming unclean,[21] whereas those in the possession of a 'robber' no mental determination[22] will render capable of becoming unclean.[23] R. Simeon says that the rulings are to be reversed: Regarding those in the possession of a 'robber', mental determination[22] will render them capable of becoming unclean,[24] whereas regarding those in the possession of a 'thief', no mental determination[20] will render them capable of becoming unclean, as in the last case the owners do not usually abandon hope of discovering who was the thief.[25] Does not this prove that Renunciation transfers ownership?[26] — He replied:[27] We are dealing here with a case where for example he had already trimmed the stolen skins [so that some change in substance was effected].[28] Rabbah son of R. Hanan demurred to this, saying: This was learnt here in connection with a [dining] cover,[29] and [skins intended to be used as] a cover do not require trimming as we have learnt:[30] Wherever there is no need for [finishing] work to be done, mental resolve[31] will render the article capable of becoming unclean, whereas where there is still need for [finishing] work to be done no mental resolve[31] will render it capable of becoming unclean, with the exception however, of a [dining] cover![32] — Raba therefore said: This difficulty was pointed out by Rabbah to R. Joseph for twenty-two years[33] without his obtaining any answer. It was only when R. Joseph occupied the seat as Head[34] that he explained it [by suggesting that] a change in name is equivalent [in the eye of the law] to a change in substance; for just as a change in substance has an effect because, for instance, what was previously

timber is now utensils, so also a change in name should have an effect as what was previously called skin is now called [dining] cover.[35] But what about a beam where there is similarly a change in name as previously it was called a post and now ceiling, and we have nevertheless learnt that 'where a misappropriated beam has been built into a house, the owner will recover only its value, so as to make matters easier for repentant robbers'.[36] The reason is, to make matters easier for repentant robbers,

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(1) As no change took place in the substance of the misappropriated article. (Infra p. 561.)
(2) I.e., on the eve of Passover.
(3) Since the misappropriated article became his.
(4) Rabbah to R. Joseph.
(5) That Renunciation transfers the ownership.
(6) As it was not in his interest to do so.
(7) Lev. I, 3.
(8) Infra p. 388.
(9) That a stolen object could not be brought to the altar.
(10) In contradiction to the view expressed by Rabbah.
(11) Var. lec., 'Rabbah'.
(12) Lev. XV, 5.
(13) With the exception of that of Beth Shammai (cf. supra p. 380). whose view is disregarded when in conflict with Beth Hillel (Tosaf.).
(14) Would the bed in this case not become the legal property of the robber?
(15) In the case of the sacrifice.
(16) [In which case the sacrifice is not acceptable even if offered after renunciation on the part of the original owner.]
(17) As his mental determination is final, and the skins could thus be considered as fully finished articles and thus subject to the law of defilement. (V. Kel. XXVI, 7.)
(18) To use them as they are.
(19) As a tanner usually prepares his skins for the public, and it is for the buyer to decide what article he is going to make out of them.
(20) On the part of the thief to use them as they are.
(21) For the skins became the property of the thief, as Renunciation usually follows theft on account of the fact that the owner does not know against whom to bring an action.
(22) On the part of the robber to use them as they are.
(23) For the skins did not become the property of the robber as robbery does not usually cause Renunciation, since the owner knows against whom to bring an action.
(24) For the skins became the property of the robber as the owner has surely renounced every hope of recovering them for fear of the robber who acted openly.
(25) Kel. XXVI, 8; infra p. 672.
(26) In contradiction to the view maintained by R. Joseph.
(27) R. Joseph to Abaye.
(28) On account of which the ownership was transferred.
(29) Since the case of the skins follows in the Mishnah that of the (dining) cover. [The dining cover (Heb. 'izba), was spread over the ground in the absence of a proper table from which to eat; cf. Rashi and Krauss, Talm. Arch., I, 376.]
(30) Kel. XXVI, 7.
(31) V. p. 384, n. 5.
(32) Since even without trimming the skins could be used as a cover.
(33) I.e., all the days when Rabbah was the head of the college at Pumbeditha; cf. Ber. 64a; Hor. 14a and Rashi Keth. 42b.
(34) In succession to Rabbah.
(35) Whereas mere Renunciation in the case of theft or robbery would not transfer ownership.
(36) 'Ed. VII, 9.

but if not for this, it would have to be restored intact?[1] — R. Joseph replied: A beam retains its name [even subsequently], as taught: 'The sides of the house';[2] these are the casings: 'and the thick planks'; these are the beams.[3] R. Zera said: A change which can revert to its original state is, in the case of a change in name, not considered a change.[4] But is a change in name that cannot revert to its original state[5] considered a change? What then about a trough, the material of which was originally called a plank but now trough, and we have nevertheless been taught[6] that a trough[7] which was first hollowed out and subsequently fixed [into a mikweh][8] will disqualify the mikweh,[9] but where it was first fixed [in to the mikweh] and subsequently hollowed out, it will not disqualify the mikweh![10] But if you maintain that a change in name has a legal effect, why then, even where he fixed it first and subsequently hollowed it out, should it not disqualify the mikweh![11] — The law regarding disqualification through drawn water[12] is different altogether, as it is only of Rabbinic sanction.[13] But if so, why even in the prior clause[14] should it not also be the same? — There, however, the law of a receptacle applied to it while it was still detached, whereas here it was never subject to the law of a receptacle while it was detached.

An objection was raised [from the following]: If a thief, a robber or an annas[15] consecrates a misappropriated article, it will be consecrated; if he sets aside a portion for the priest's gift,[16] it will be terumah;[17] or again if he sets aside a portion for the Levite's gift[18] the tithe will be valid.[19] [Now, does this not prove that Renunciation transfers ownership?][20] — It may be said that in that case there was also a change in name, as previously it was called tebel[21] while now it is called terumah.[17] So also in the case of consecration: previously it was called hullin,[22] but now it is called consecrated.

R. Hisda stated that R. Jonathan said: How do we learn [from Scripture] that a change transfers ownership? — Because it is said: He shall restore the misappropriated object.[23] What [then] is the point of the words, 'which he took violently away'?[23] [It must be to imply that] if it still is as when he took it violently[24] he shall restore it, but if not, it is only the value of it that he will have to pay.[25] But is this [text] 'which he took violently away'[23] not needed to exclude the case of robbery committed by a father, in which the son need not add a fifth [to the payment] for robbery committed by his father?[26] — But if so, the Divine Law should have written only 'he shall restore the misappropriated object.' Why should it further be written. 'which he took violently away'? Thus we can draw from it the two inferences. Some report: R. Hisda stated that R. Jonathan said: How do we learn [from Scripture] that a change does not transfer ownership? — Because it is said: He shall restore the misappropriated object, i.e., in all cases. But is it not written 'which he took violently away'? — That text is needed to indicate that it is only for robbery committed by himself that he has to add a fifth, but has not to add a fifth for robbery committed by his father.

'Ulla said: How do we learn [from Scripture] that Renunciation does not transfer ownership? Because it is said: And ye brought that which was misappropriated, and the lame and the sick.[27] 'That which was misappropriated' is thus compared to 'the lame': just as 'the lame' has no remedy at all

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(1) In spite of the fact that a change in name took place.

(2) Ezek. XLI, 26.

(3) Hence after it became part of the ceiling it is still called beam.

(4) A beam by becoming part of a ceiling did not therefore really undergo a change in name, as the beam could be taken out and thus revert to its original state.

(5) Such as in the case of the skins made into covers.

(6) B.B. 65b.

(7) Through which rain or well water was conducted to a mikweh which should be a gathering of well or rain water that has not passed through a receptacle.

(8) Lit., ‘a gathering of water’ for ritual immersion; cf. Glos.
(9) As the trough in this case was considered a receptacle before it was fixed to the ground.
(10) As when the trough was fixed it was not a receptacle in the eye of the law and could not become such after it became part of the ground to which it was fixed.
(11) As by hollowing out the material which was originally called plank the name was changed into trough, and it should thus become a receptacle in the eye of the law. [Although this change was effected after it had been fixed to the soil, the fact that it goes by the name of a trough should in itself be sufficient to disqualify it for the use of the Mikweh; v. Asheri and Shittah Mekubezeth, a.l.]
(12) In receptacles poured into a mikweh.
(13) Cf. B.B. (Sonc. ed.) pp. 263 ff.
(14) Where he first hollowed it out and subsequently fixed it.
(15) The same as the hamsan, who, as explained supra p. 361 is prepared to pay for the objects which he misappropriates.
(16) In accordance with Num. XVIII, 11-12.
(17) V. Glos.
(18) Cf. Num. XVIII, 21.
(19) V. infra p. 674.
(20) For otherwise what right have they to consecrate or set aside the portions for the priest and Levite?
(21) I.e., produce from which the priest's and Levite's portion has not been set aside.
(22) I.e., unconsecrated property.
(23) Lev. V. 23.
(24) V. p. 382, n. 3.
(25) V. p. 382, n. 4.
(26) I.e., that the son should in this case not be subject to Lev. V, 24-25.
(27) Mal. I, 13.

Talmud - Mas. Baba Kama 67b

[to render it qualified for the altar],[1] so also ‘that which was misappropriated’ has no remedy at all, no matter before Renunciation or after Renunciation. Raba said: [We derive it] from the following: ‘His offering,[2] but not one which was misappropriated.’[3] When is this? If we say before Renunciation, is this not obvious?[4] What then is the point of the verse? It must therefore apply to the time after Renunciation, and it may thus be proved from this that Renunciation does not transfer ownership. But did not Raba himself say[5] that the text referred to a robber misappropriating an offering of his fellow — If you wish I may say that he changed his mind on this matter.[6] Or if you wish I may say that one of these statements was made by R. Papa.[7]

THE MEASURE OF FOUR-FOLD AND FIVE-FOLD PAYMENTS DOES NOT APPLY EXCEPT IN THE CASE OF AN OX OR A SHEEP ALONE. But why not compare [the term] ‘ox’ to ‘ox’ in the case of Sabbath,[8] so that just as there beasts and birds are on the same footing with them [i.e. ox and ass],[9] so also here beasts and birds should be on the same footing with them [i.e. ox and sheep]? — Raba said: Scripture says ‘an ox and a sheep’, ‘an ox and a sheep’[10] twice, [to indicate that] only ox and sheep are subject to this law but not any other object whatsoever. I may ask: Which of these[11] would otherwise be superfluous? Shall we say that ‘ox and sheep’ of the concluding clause would be superfluous, and the Divine Law should have written ‘if a man shall steal an ox or a sheep and slaughter it or sell it, he should restore five oxen instead of it and four sheep instead of it’? Were the Divine Law to have thus written, would I not have thought that he should pay nine for each of them? And should you rejoin that it is written ‘instead of it’, ‘instead of it’ [twice in the text, so that] one ‘instead of it’ would then have been superfluous,[12] [I might retort that] this is required for a further exposition, as taught: It might be maintained that one who stole an ox worth a mina[13] would be able to restore for it five frail oxen. The text says, however, ‘instead of it’, ‘instead of it’ twice.[14] [‘Ox and sheep’ of the concluding clause is thus indispensable]. It thus

appears that it is 'ox and sheep' of the prior clause which would have been superfluous, as the Divine Law should have written: 'If a man shall steal and slaughter it or sell it, he shall restore five oxen for the ox and four sheep for the sheep.' But had the Divine Law to have thus written, I might have thought that it was only where he stole the two animals and slaughtered them [that liability would be attached]! — But surely it is written 'and slaughtered it', implying one animal! It might still be thought that it was only where he stole the two animals and sold them [that liability would be attached]! — But surely it is written, 'and he sold it' implying one animal! It could still be argued that I might have thought that it was only where he stole the two animals and slaughtered one and sold the other [that liability would be attached]! — But surely it is written, 'or he sold it' [indicating that slaughtering and selling were alternative]! I might nevertheless still argue that it was only where he stole the two of them and slaughtered one and left the other, or sold one and left the other![15] — We must say therefore that it is 'ox' of the concluding clause and 'sheep' of the first clause which would have been superfluous, as the Divine Law should have written: 'If a man shall steal an ox and slaughter it or sell it, he shall restore five oxen instead of it and four sheep instead of the sheep.' Why then do I require 'ox' of the concluding clause and 'sheep' of the first clause? To prove from it that only ox and sheep are subject to this law,[16] but not any other object whatsoever.

ONE WHO STEALS FROM A THIEF [WHAT HE HAS ALREADY STOLEN] NEED NOT MAKE DOUBLE PAYMENT etc. Rab said: This Mishnaic ruling applies only where the theft took place before Renunciation; for if after Renunciation, the first thief would have acquired title to the article and the second thief would have had to make double payment to the first thief.[17] Said R. Shesheth: I am inclined to say that it was only when he was half asleep and in bed that Rab could have enunciated this ruling. For it was taught: R. Akiba said: Why has the Torah laid down that where the thief slaughtered or sold [the sheep or ox] he would have to make fourfold and five-fold payments [respectively]? Because he became thereby rooted in sin.[18] Now, when could this be said of him? If before Renunciation,

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(1) Cf. Lev. XXII, 19-25.

(2) V. p. 353, n. 9.

(3) Supra p.383.

(4) V. p. 383, n. 11.

(5) Supra p. 384.

(6) As was the case with the same sage in Shab. 27a; Bez. 18a; Keth. 11b; B.B. 24a; Bek. 54b and Ker. 7a.

(7) Who was a disciple of Raba, and the views of the disciples were regarded as those of the Master. [This supports the reading (on p. 383), 'Raba', instead of 'Rabbah', given in our edition; v. Tosaf.]

(8) Deut. V, 14.

(9) As supra 54b.

(10) Ex. XXI, 37.

(11) 'An ox and sheep', whether on the first or second occasion.

(12) [I.e., if we were to assume that there is a payment of nine in each case.]

(13) V. Glos.

(14) That the payment should be in accordance with the animal slaughtered or sold, but this would still afford no proof against the assumption that there is a payment of nine in each case.

(15) ['Ox and sheep' of the earlier clause are therefore similarly indispensable.]

(16) Of five-fold and four-fold payments respectively.

(17) Who through Renunciation on the part of the owner became the legal possessor of the article.

(18) [His sin struck root in that he has deprived beyond retrieve the owner of his belongings.]

could he then be called 'rooted in sin' [since the sale is of no validity]? It must therefore be after Renunciation.[1] But if you assume that Renunciation transfers ownership, why should he make

four-fold and five-fold payments,[2] when it is his that he slaughters and his that he sells? — It may, however, be said as Raba stated elsewhere,[3] that it means 'because he doubled[4] his sin,' so likewise here it means, 'because he doubled his sin.'[5]

Come and hear: 'He slaughtered it and sold it;[6] just as the slaughter cannot be undone so the sale cannot be undone.' Now, when could this be so? If before Renunciation, why can it not be undone?[7] It must surely therefore be after Renunciation.[1] But if you assume that Renunciation transfers ownership, why should he pay fourfold and five-fold[8] when it is his that he slaughters and his that he sells? — As R. Nahman stated elsewhere, that it means to except a case where he transferred the animal for thirty days,[9] so also here it means to except a case where he transferred the beast for thirty days.[10]

An objection was raised [against this]: If a man steals an article and another comes and steals it from him, the first thief has to make double payment, whereas the second will not pay [anything] but the principal alone.[11] If, however, one stole [a sheep or an ox] and sold it, after which another one came and stole it, the first thief has to make four-fold and five-fold payments [respectively], while the second has to make double payment.[12] If one stole [a sheep or an ox] and slaughtered it, and another one came and stole it, the first thief will make four-fold and five-fold payments [respectively], whereas the second has not to make double payment but to repay the principal only.[11] Now, it has been taught in the middle clause: 'If however, one stole [a sheep or an ox] and sold it, after which another came and stole it, the first thief has to make four-fold and five-fold payments [respectively], while the second has to make double payment.'[12] But when could this be? If before Renunciation, why should the second make[12] double payment?[13] Is there any authority who maintains that a change in possession without Renunciation transfers ownership? It must therefore be after Renunciation. But if you assume that Renunciation transfers ownership, why then has he to make four-fold and five-fold payments,[14] seeing that it is his which he sold? And further, it was taught in the opening clause: 'If a man steals an article and another comes and steals it from him, the first thief has to make double payment, but the second will not pay [anything] but the principal.'[11] Now, since it is the time after Renunciation with which we are dealing, if you assume that Renunciation transfers ownership, why should the second 'not pay anything but the principal'?[15] Does not this show that Renunciation does not transfer ownership, in contradiction to the view of Rab? — Raba said: Do you really think that the text of this teaching is correct? For was it not taught in the concluding clause: 'If one stole [a sheep or an ox] and slaughtered it and another came and stole it, the first thief will make fourfold and five-fold payments [respectively], whereas the second has to pay nothing but the principal'? Now, is there any authority who maintains that a change in substance does not transfer ownership?[16] It must therefore surely still be said that the whole teaching refers to the time before Renunciation, but we have to transpose the ruling of the concluding clause to the case in the middle clause, and the ruling of the middle clause to the case in the concluding clause and read thus: If one stole [a sheep or an ox] and sold it, and another came and stole it, the first thief has to make four-fold and five-fold payments [respectively], but the second has not to pay anything but the principal, as a change in possession without Renunciation transfers no ownership. If, however, one stole [a sheep or an ox] and slaughtered it and another came and stole it, the first thief makes four-fold and five-fold payments [respectively], and the second makes double payment,[17] as ownership was transferred [to the first thief] by the change in substance.' R. Papa, however, said: All the same[18] you need not transpose [the rulings], since [we may say that] the concluding clause is in accordance with Beth Shammai, who maintain[19] that a change leaves the article in its previous status. But if so [that it was after Renunciation], will not the opening clause and middle clause be in contradiction to the view of Rab? — R. Zebid therefore said: The whole text could still refer to the time before Renunciation, as we are dealing here with a case where the owner abandoned hope [of regaining the stolen object] when it was already in the possession of the buyer, but had not abandoned it while it was still in the possession of the thief, so that [so far as the buyer was concerned] there was Renunciation [as well as a change in possession].[20] You should, however,

not think [that this is so] because we need both Renunciation and a change in possession for the purpose of transferring ownership, as even Renunciation alone would also transfer ownership[21] to the thief.[22] It is, however, impossible to find a case in which both the first thief and the second thief should simultaneously pay except in this way.[23]

It was stated: If the thief sells before Renunciation, R. Nahman said that he is liable, while R. Shesheth said that he is exempt. R. Nahman who said that he would be liable held that since the Divine Law says 'and he sold it' and as the thief [in this case] did sell it, it makes no difference whether it was before Renunciation or after Renunciation, while R. Shesheth, who said that he would be exempt, held that the liability was only where he sold it after Renunciation,[24] where the act has a legal validity, whereas before Renunciation, when the act has no legal validity,[25] there could be no liability, as selling is compared to slaughter where it is necessary that the act should be of practical avail. R. Shesheth said: Whence have I inferred the view expressed by me? It was taught: 'R. Akiba said: Why does the Torah say that where the thief slaughtered and sold the stolen [sheep or ox] he should make four-fold and five-fold payments respectively? Because he became thereby rooted in sin.' Now, when could this be said of him? If before Renunciation, could he then be called 'rooted in sin' [since the sale is of no legal validity]?[25] Must it therefore not be after Renunciation?[24] — Raba said: It only means, because he doubled his sin.[26]

Come and hear: 'And he slaughtered it or sold it,'[27] just as slaughter cannot be undone, so the sale [must be one] which cannot be undone.' Now, when could this be so? If before Renunciation, why can it not be undone?[28] Must it therefore not be after Renunciation,[29] thus proving that the liability is only if it is sold after Renunciation?[29] — But R. Nahman interpreted it merely to except a case where he transferred the animal for thirty days.[30] Also R. Eleazar maintained that the liability would be only after Renunciation, as R. Eleazar stated:

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(1) In which case the article will have to remain with the purchaser, as a transfer of possession taking place after Renunciation certainly transfers ownership.

(2) For slaughtering or selling after Renunciation when the thief has already become the legal owner of the animal.

(3) Infra p. 393.

(4) Lit., 'repeated'.

(5) By selling the animal even though the sale is of no validity.

(6) V. p. 388, n. 11.

(7) For a transfer of possession before Renunciation will certainly transfer no ownership to the buyer.

(8) P. 390, n. 5.

(9) V. p. 394, n. 4.

(10) Not to be subject to the law of selling or slaughtering.

(11) To the first thief.

(12) To the purchaser.

(13) For a transfer of possession before Renunciation will certainly transfer no ownership to the buyer.

(14) For selling after Renunciation when the thief has already become the legal owner of the animal.

(15) Why not pay double to the first thief who had already become the legal owner of the object through Renunciation?

(16) [Why not pay double to the first thief who had already become the legal owner through effecting a change in the substance of the article stolen?]

(17) V. p. 391, n. 4.

(18) Even though the teaching refers to the time after Renunciation.

(19) Supra p. 380.

(20) And for this reason the second in the middle clause has to make double payment to the buyer.

(21) In accordance with the view of Rab.

(22) [Mss. omit rightly 'to the thief'; v. D.S. a.l.]

(23) For if Renunciation took place while the article was still in the hands of the first thief, he would not have to make four-fold and five-fold payments for a subsequent sale or slaughter.

(24) In which case the article will have to remain with the purchaser, as a transfer of possession taking place after Renunciation certainly transfers ownership.
(25) V. p. 391, n. 6.
(26) By selling the animal even though the sale is of no validity.
(27) Ex. XXI, 37.
(28) V. p. 391, n. 6.
(29) I.e., where the sale is of legal avail.
(30) But not any other case.

Talmud - Mas. Baba Kama 68b

'You can take it for granted that in the ordinary run of thefts there is Renunciation on the part of the owner; since the Torah has laid down that where the thief slaughtered or sold [the stolen sheep or ox] he should pay fourfold or five-fold payments [respectively]. For is there not a possibility that the owner had not abandoned hope? We must therefore say that in the ordinary run of thefts there is Renunciation on the part of the owner.'[1] But why should the liability not hold good even where hope was not abandoned?[2] — I would say, let not this enter your mind. For selling is placed on a par with slaughter: just as in the case of slaughter his act is of practical avail, so also in the case of selling his act should be of practical validity; and if it takes place before Renunciation, what would be the legal validity?[1] But again can it not be [that the liability is confined to cases] where we actually heard the owner abandoning hope? — I would reply, let not this enter your mind. For selling is put on a par with slaughter, and just as slaughter involves liability [if carried out] immediately [after the theft], so would selling similarly involve liability soon after the theft.[3]

R. Johanan said to him:[4] The law in the case of stealing a man[5] could prove that even where there is no Renunciation on the part of the owner[6] there will be liability. This statement seems to show that R. Johanan held that selling before Renunciation involves liability.[7] What then about selling after Renunciation?[8] — R. Johanan said that the thief is liable, but Resh Lakish said he is exempt. R. Johanan who said that he would be liable held that the liability was both before Renunciation and after Renunciation. But Resh Lakish, who said that he would be exempt,[9] maintained that the liability was only before Renunciation, whereas after Renunciation he would have already acquired title to the animal, and it was his that he slaughtered and his that he sold.

R. Johanan objected to Resh Lakish's view [from the following:] If he stole [a sheep or an ox] and after consecrating it slaughtered it, he should make double payment[10] but would not make four-fold and five-fold payments.[11] Now, when could this be? If before Renunciation, how does the animal become consecrated? Does not the Divine Law say 'And when a man shall sanctify his house to be holy',[12] [implying that] just as his house is his,[13] so also anything he consecrates must be his?[14] It must therefore apply to the time after Renunciation.[15] Now the reason is that he consecrated it: he has not to make four-fold and five-fold payments because when he slaughtered the animal it was a consecrated animal that he slaughtered; had he not, however, consecrated it he would have had to make four-fold and five-fold payments if he would have slaughtered it. Now, if you assume that Renunciation transfers ownership why should he[16] pay since it was his that he slaughtered and his that he sold? — He replied:[17] We are dealing here with a case where, for instance, the owner[18] consecrated the animal while it was in the possession of the thief.[19] But will it in that case become consecrated? Did not R. Johanan say[20] that where a robber misappropriated an article and the owner has not abandoned hope of recovering it, neither of them is able to consecrate it: the one[21] because it is not his, the other[22] because it is not in his possession? — We might reply that he[23] had in mind the practice of the virtuous, as we have learnt: The virtuous[24] used to set aside money and to declare that whatever has been gleaned [by passers-by] from this [vineyard][25] shall be redeemed by this money.[26] But [if the owner consecrated the animal], has not the principal thus been restored to the owner? [Why then should a thief pay double on it? — We assume a case where the consecration took place]

after the case came into court [and evidence had already been given against the thief]. What were the circumstances? If the judges had already ordered him to go and pay the owner, why should exemption be only where he consecrated the animal? Why even where the owner did not consecrate it should the thief be liable? For did Raba not say that if [after the judges said], 'Go forth and pay him,' the thief slaughtered or sold the animal, he would be exempt, the reason being that since the judges had given their final sentence on the matter, when he sold or slaughtered the animal, he became [in the eye of the law] a 'robber', and a 'robber' has not to pay four-fold and five-fold payments,[27]

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(1) [Since he conditions the liability of the fourfold and five-fold by the fact that the owner had despaired of the stolen article, it is evident that he agrees with R. Shesheth.]

(2) [Even where the sale is of no legal avail.]

(3) R. Eleazar thus inferred from this that in ordinary thefts there is immediate Renunciation on the part of the owner.

(4) I.e., R. Eleazar.

(5) Ex. XXI, 16.

(6) For surely no human being will abandon himself.

(7) As also maintained by R. Nahman.

(8) Does he agree in this with Rab, supra p. 390?

(9) V. p. 390, n. 5.

(10) For the theft.

(11) For the slaughter as it was a consecrated animal that he slaughtered, and there is no liability for stealing and selling and slaughtering consecrated animals (infra p. 427; Git. 55b).

(12) Lev. XXVII, 14.

(13) For immovables even when misappropriated always remain in the possession of the owner

(14) Excluding thus a thief consecrating misappropriated property.

(15) In which case the article could become consecrated, as a transfer of possession following Renunciation transfers ownership.

(16) V. p. 390, n. 2.

(17) I.e., Resh Lakish to R. Johanan.

(18) Not the thief.

(19) [Before Renunciation.]

(20) Infra p. 397; B.M. 7a.

(21) The robber.

(22) The owner.

(23) I.e., Resh Lakish.

(24) [צניע (plur. צנועים) 'denotes a positive quality, probably nothing else but discretion or modesty', Buchler, Types (contra Kohler, who identifies the Zenu'im with Essenes) pp. 59 ff.]

(25) In its fourth year, the fruit of which is prohibited unless redeemed, cf. Lev. XIX, 24.

(26) Which seems to show that fruits already misappropriated could also be redeemed by the owner and thus also consecrated. (M.Sh. V, 1).

(27) For the distinction between robber and thief in this respect cf. infra p. 452.

Talmud - Mas. Baba Kama 69a

but if they merely said to him, 'You are liable to pay him,' and after that he slaughtered or sold the animal, he would be liable to pay four-fold or five-fold payment, the reason being that since they have not pronounced final sentence upon the matter he is still a thief?[1] — No, its application is necessary where they have as yet merely said to him, 'You are liable to pay him'.

The above text states:[2] 'R. Johanan said: If a robber misappropriated an article and the owner has not abandoned hope of recovering it neither of them is able to consecrate it: the one[3] because it is not his, the other[4] because it is not in his possession.' Could R. Johanan really have said this? Did not R.

Johanan say[5] that the halachah is in accordance with an anonymous Mishnah; and we have learnt:[6] 'In the case of a vineyard in its fourth year, the owners used to mark it with clods of earth', the sign implying an analogy to earth: just as in the case of earth a benefit may ensue from it,[7] so also the fruit of this vineyard[8] will after being redeemed be permitted to be enjoyed. 'That of 'orlah[9] used to be marked with potsherds', the sign indicating a similarity with potsherds: just as in the case of potsherds no benefit ensues from them,[10] so also the fruit of 'orlah[9] could not be enjoyed for any use whatever. 'A field of graves used to be marked with lime', the sign having the colour of white, like corpses. 'The lime was dissolved in water and then poured out' so as to make its colour more white. 'R. Simeon b. Gamaliel said: These practices were recommended only for the Sabbatical year,' when the fruits on the trees were ownerless;[11] 'for in the case of the other years of the Septennate,[12] you may let the wicked stuff themselves with it till they die.[13] The virtuous however used to set aside money and to declare that whatever has been gleaned from this [vineyard] shall be redeemed by this money.'[14] Does not this contradict R. Johanan? Nor can you urge in reply that the Tanna who recorded the practice of the virtuous was R. Simeon b. Gamaliel,[15] [and R. Johanan might therefore not have concurred with this anonymous view stated by a single Tanna] for did not Rabbah b. Bar Hanah say[16] that R. Johanan stated that whenever R. Simeon expressed a view in a Mishnah the halachah is in accordance with him, with the exception of his view regarding 'Suretyship'.[17] 'Sidon'[18] and the 'last [case dealing with] evidence'?[19] — I may reply that you should not read,[20] 'whatever has been gleaned'[21] but read 'whatever will be gleaned'[22] from this [vineyard]. But could R. Johanan have said this: Did not R. Johanan say that the virtuous and R. Dosa said the same thing, and, as we know, R. Dosa definitely stated 'whatever has been gleaned'?[21] For was it not taught:[23] R. Judah says: In the morning the owner of the field should get up and say 'whatever the poor shall glean during the day should be considered ownerless[24] [from the present moment]'.[25] whereas R. Dosa says: It is at eveningtide that he should say, 'Whatever the poor have gleaned shall be ownerless'![26] — I must transpose the view of R. Judah to R. Dosa[27] and the view of R. Dosa to R. Judah. But why transpose this teaching, and not transpose instead[28] the statement of R. Johanan, assigning to 'the virtuous and to R. Judah the same thing'? — It may, however, be said that it was impossible not to transpose this teaching,[29] since in this teaching[29] it is stated that R. Judah upholds bererah[30] and we find R. Judah holding in other places that there is not bererah as we have learnt[31]

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(1) Subject to the law of paying four-fold and five-fold payments.

(2) Supra p. 396.

(3) The robber.

(4) The owner.

(5) Shab. 46a.

(6) M.Sh. V, I.

(7) In time, as after tilling, sowing and reaping.

(8) Cf. Lev, XIX, 24.

(9) I.e., during the first three years when the fruits are totally forbidden in accordance with Lev. XIX, 23.

(10) As nothing could grow in them properly.

(11) Cf. Lev. XXV, 6-7.

(12) When the fruits were not ownerless.

(13) As it was wrong for passers-by to misappropriate the fruits, they need not be warned by all these signs to abstain from using them in the forbidden manner. [This last passage occurs only in the Jerusalem version of the Mishnah, not in the Babylonian.]

(14) V. p. 396, n. 8.

(15) Who made the immediately preceding statement.

(16) B.M. 38b.

(17) In B.B. 174a.

(18) In Git. 77a.

(19) In Sanh. 31a.

(20) In the words of the 'virtuous'.

(21) In the past.
(22) In the future, so that the redemption will take effect retrospectively from the moment this statement was made, when the gleanings were still in the possession of the owner.
(23) Tosef. Pe'ah II, 4.
(24) As each two ears falling together may be gleaned by the poor who need not tithe them, but not so is the case regarding three ears falling together. Not all the poor, however, know this distinction. It is therefore meritorious on the part of the owner to abandon those which are gleaned by the poor unlawfully.
(25) I.e., retrospectively.
(26) [From this it follows that the declaration of the virtuous was likewise related to the past.]
(27) So that it was R. Dosa who said 'whatever the poor shall glean.'
(28) Of 'the virtuous and R. Dosa.'
(29) Where R. Judah and R. Dosa differ.
(30) I.e., Retrospective designation of that which was abandoned at a time when it was not defined; cf. also supra 51b.
(31) Tosef. Dem. VIII, 5.

Talmud - Mas. Baba Kama 69b

: 'If a man buys wine from among the Cutheans[1] [and it was late on Friday towards sunset and he has no other wine for the Sabbath][2] may say 'two logs [out of a hundred[3]] which I intend to set aside are terumah,[4] ten are the first tithe[5] and nine the second tithe,' and these he may redeem [upon money anywhere in his possession],[6] and he may commence drinking at once. So R. Meir.[7] But R. Judah, R. Jose and R. Simon prohibit this.[8] To this I may rejoin: When all is said and done, why have you transposed [the views mentioned in the Baraitha]? Because R. Judah would otherwise contradict R. Judah! But would not now R. Johanan contradict R. Johanan? For you stated according to R. Johanan that we should not read 'whatever has been gleaned'[9] but read 'whatever will be gleaned',[10] thus proving that he upholds bererah[11] whereas in fact R. Johanan does not uphold bererah. For did not R. Assi say[12] that R. Johanan stated that brothers dividing an inheritance are like purchasers[13] [in the eye of the law], so that they will have to restore the portions to one another on the advent of the jubilee year?[14] — We must therefore still read[15] 'whatever has been gleaned',[9] and [say that] R. Johanan[16] found another anonymous Mishnah, as we have indeed learnt: ONE WHO STEALS [ARTICLES ALREADY STOLEN] IN THE HANDS OF A THIEF NEED NOT MAKE DOUBLE PAYMENT.[17] Why should this be? We grant you that he need not pay the first thief, [since Scripture says:] And it be stolen out of the man's house,[18] [implying] 'but not out of the house of the thief'. But why not pay the owner? We must say that this shows that the one[19] is not entitled to payment because the stolen article is not his, and the other one[20] is not entitled to payment as the article is not in his possession.[21] — But what induced him[22] to follow that anonymous Mishnah?[17] Why should he not act in accordance with the anonymous Mishnah dealing with the virtuous?[23] — Because he was supported by the verse: And when the man shall sanctify his house to be holy unto the Lord,[24] just as his house is in his possession,[25] so anything also which is in his possession can be sanctified.[26]

Abaye said: If R. Johanan had not stated that the virtuous[27] and R. Dosa[28] said the same thing,[29] I might have said that while the virtuous accepted the view of R. Dosa, R. Dosa did not uphold the practice of the virtuous. The virtuous accepted the view of R. Dosa; for if the Rabbis made things easier for a thief,[30] need we say they did so for the poor?[31] But R. Dosa did not uphold the practice of the virtuous: for it was only for the poor[31] that the Rabbis made things easier, whereas for the thief they did not make things easier.[30] Raba said: Had R. Johanan not stated that the virtuous and R. Dosa said the same thing, I should have said that the Tanna followed by the virtuous was R. Meir. For did not R. Meir say[32] that the [second] tithe[33] is Divine property,[34] and even so the Divine Law placed it in the owner's possession in respect of redemption, as written: And if a man will redeem aught of his tithe, he shall add unto it the fifth part thereof,[35] the Divine Law thus designating it 'his tithe' and ordering him to add a fifth.[36] The same applies to the vineyard in the fourth year, as can be derived from the occurrence of the term 'holy' there[37] and in the case of the tithe.[38] For it is written

here 'shall be holy to praise',[37] and it is written in the case of tithe, 'And all tithe of the land whether of seed of the land or of the fruit of the tree it is holy':[38] just as the 'holy' mentioned in connection with tithe although it is divine property, has nevertheless been placed by the Divine Law in the possession of the owner for the purpose of redemption, so also the 'holy' mentioned in connection with a vineyard of the fourth year, although the property is not his own, has been placed by the Divine Law in his possession for the purpose of redemption; now seeing that even when it is in his possession it is not his and yet he may redeem it; hence he may be able to redeem it [also when out of his possession]. But in the case of the gleaning [of ears of corn] which is his own property,[39] it is only when it is [still] in his [own] possession that he is able to declare it ownerless, whereas when not in his possession he should not be entitled to declare it ownerless.[40]

Rabina said: Had R. Johanan not stated that the virtuous and R. Dosa said the same thing, I should have said that the Tanna stating the case of the virtuous was R. Dosa, so that this anonymous Mishnah would not refute the view of R. Johanan, for R. Johanan

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(1) And has thus to set aside both the priestly portion, called terumah, and the first tithe for the Levite and the second tithe to be redeemed or partaken of in Jerusalem.

(2) And without having the time to separate the portions to be set aside.

(3) Logs (v. Glos.) which he bought.

(4) For the priests, (v. Glos.).

(5) For the Levites, v. Num. XVIII, 21.

(6) Cf. Deut. XIV, 22-25.

(7) Maintaining retrospective designation, so that the wine set aside after Sabbath for the respective portions will be considered the very wine which was destined at the outset to be set aside.

(8) As they maintain no retrospective designation which would make the wine drunk the unconsecrated and that which remained the part originally consecrated. [This shows that R. Judah does not uphold Bererah, thus necessitating the transposition of the Baraitha in Pe'ah.]

(9) V. p. 398, n. 7.

(10) V. p. 398, n. 8.

(11) V. p. 398, n. 16.

(12) Bez. 37b; Git. 25a and 48a.

(13) For the portion chosen by each brother for himself could not be considered as having thus retrospectively become the very inheritance designated for him.

(14) In accordance with Lev. XXV, 13.

(15) In the words of the 'virtuous'.

(16) [In maintaining that a consecration made by the owner even before renunciation is not valid, in opposition to the principle underlying the declaration of the 'virtuous'.]

(17) Supra p. 363.

(18) Ex. XXII, 6.

(19) The first thief.

(20) The owner.

(21) This proves that the lack of possession is a defect in the very ownership, and if an article out of possession is not subject to double payment it could neither be subject to the law of consecration and alienation which are incidents of ownership.

(22) V. I.e., R. Johanan.

(23) V. p. 396, n. 8.

(24) V. Lev. XXII, 14.

(25) V. p. 395, n. 8.

(26) Excluding thus an owner consecrating movables out of his possession; and because of this Scriptural authority R. Johanan deviated from the view of the 'virtuous'.

(27) Dealing with the vineyard in the fourth year misappropriated by passers by.

(28) Dealing with the gleaning of the poor.

(29) V. supra p. 398.
(30) To safeguard him from partaking of forbidden fruits.
(31) Who are not out to commit theft and should consequently the more so be safeguarded from partaking of produce that has not been tithed.
(32) Kid. 24a.
(33) To be partaken of in Jerusalem, cf. Deut. XIV, 22-26.
(34) So that the original owner is but an invitee without possessing any legal ownership.
(35) Lev. XXVII, 31.
(36) Whereas one redeeming the second tithe of another person does not add a fifth.
(37) Lev. XIX, 24.
(38) Ibid. XXVII, 30.
(39) In the case of each three ears falling together.
(40) [Thus, had not R. Johanan said that the virtuous and R. Dosa said the same thing, it could rightly be argued that the virtuous would not apply their principle to the gleaning.]

Talmud - Mas. Baba Kama 70a

would have been right in not concurring with an anonymous statement of a single Tanna. The Nehardeans said: We do not execute an assignment on movables[1] [which are outside the possession of the parties].[2] Said R. Ashi to Amemar: On what ground? He replied: Because of the view of R. Johanan. For R. Johanan said: If a robber has misappropriated an article and the owner has not abandoned hope of recovering it, neither of them is able to consecrate it; the one because it is not his, the other because it is not in his possession. Some read that the Nehardeans said: We do not execute an assignment on movables [the claim upon which] was denied [by a bailee]. The reason is that the claim was denied, as the deed of assignment would then appear a lie,[3] whereas where it is not denied, we would be able to execute. The Nehardeans further said: An assignment which does not contain the words, 'Go forth and take legal action so that you may acquire title to it and secure the claim for yourself' is of no validity, the reason being that the defendant might say to him:[4] 'You have no claim against me'. But Abaye said: If it is written, 'You will be entitled to a half or a third or a fourth of the claim', it would be valid, for since he is entitled to litigate regarding the half, he is also entitled to litigate regarding the whole.[5] Amemar said: [In any case] where the assignee became possessed of articles belonging to the defendant, we would not take them away from him.[6] But R. Ashi said: Since it was written for him,[7] 'Whatever will be imposed by the Court of Law I accept upon myself', he was surely appointed but an agent.[8] Some, however, say that he is made a partner. What is the practical difference?[9] Whether he may remain possessed of a half. The law is that he is appointed only an agent.[10] MISHNAH. IF A THIEF IS CONVICTED OF THE THEFT [OF A SHEEP OR AN OX] ON THE EVIDENCE OF TWO WITNESSES,[11] AND OF THE SLAUGHTER OR SALE [OF IT] BY THE SAME TWO, OR ON THE EVIDENCE OF ANOTHER TWO WITNESSES, HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.[12] IF HE STEALS AND SELLS ON THE SABBATH DAY,[13] OR IF HE STEALS AND SELLS FOR IDOLATROUS PURPOSES, OR IF HE STEALS AND SLAUGHTERS ON THE DAY OF ATONEMENT,[14] OR IF HE STEALS FROM HIS OWN FATHER, AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED,[15] OR AGAIN, WHERE HE STEALS AND SLAUGHTERS AND THEN CONSECRATES IT, HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.[16] IF HE STEALS AND SLAUGHTERS TO USE THE MEAT FOR CURATIVE PURPOSES OR TO GIVE TO DOGS, OR IF HE SLAUGHTERS AND FINDS THE ANIMAL TREFA,[17] OR IF HE SLAUGHTERS IT AS UNCONSECRATED IN THE 'AZARAH,[18] HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.[19] R. SIMEON, HOWEVER, RULES THAT THERE IS EXEMPTION IN THESE [LAST] TWO CASES.[20]

GEMARA. Are we to say that the Mishnah is not in accordance with R. Akiba? For how could it be in accordance with R. Akiba who said that [the Scriptural term] 'Matter'[21] implies 'not half a

matter'? As indeed taught:[22] R. Jose said: 'When [my] father Halafta went to R. Johanan b. Nuri to learn Torah, or as others, when R. Johanan b. Nuri went to [my] father

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(1) Shebu. 33b and Bek. 49a.

(2) But if they are in the possession of a bailee they could be assigned as they are considered in the possession of the depositor (Tosaf.).

(3) Since the bailee denies them.

(4) The assignee.

(5) V. B.M. 8a.

(6) For the benefit of the defendant even where the prescribed clause 'to go forth and secure for himself' etc. was not inserted in the instrument of assignment. According, however, to Gaonic interpretation it means that the assignee may retain the articles against the assignor (v. Rashi).

(7) By the assignor.

(8) And could therefore not retain the articles either against the defendant in the circumstances dealt with in the first interpretation, or against the assignor in accordance with the Gaonic interpretation.

(9) Whether he was made a partner or an agent.

(10) [Asheri and Alfasi omit, 'The law is, etc.']

(11) Cf. Deut. XIX, 15.

(12) Respectively.

(13) For though it is prohibited to do any business transactions on the Sabbath day, no capital charge is thereby involved, and civil liability could thus be established; cf. Gemara.

(14) As for desecrating the Day of Atonement in contradistinction to the Sabbath no capital charge is involved, the sole punishment at the hand of man being thirty-nine lashes.

(15) And the thief became an heir to the estate.

(16) For the slaughter which preceded the consecration.

(17) I.e., ritually unfit to be eaten owing to an organic defect in the animal; v. Glos.

(18) I.e., the precincts of the Temple where only sacrificial animals might be slaughtered.

(19) As the ritual unfitness of the animal in the last two cases is not due to a defect in the act of slaughter but arises through other circumstances.

(20) For he is of the opinion that if the slaughter does for any reason whatsoever not effect the ritual fitness of the animal to be eaten, it is not considered in the eye of the law as a slaughter.

(21) A matter shall be established by two witnesses, Deut. XIX, 15.

(22) V. B.B. 56a.

Talmud - Mas. Baba Kama 70b

Halafta, he said to him: Suppose a man had the use of a piece of land for one year as testified by two witnesses, for a second year as testified by two other witnesses, and for a third year as testified by still two other witnesses, what is the position? — He replied: 'This is a proper usucaption'.[1] Whereupon the other rejoined: 'I also say the same, but R. Akiba joins issue on the matter for R. Akiba used to say: [Scripture states] A matter [implying] "but not half a matter"'![2] — Abaye, however, said: You may even say that this is in accordance with R. Akiba. For would R. Akiba not agree in a case where two witnesses state that a certain person had betrothed a woman[3] and two other witnesses testify that another person had subsequently had intercourse with her,[4] that though the evidence regarding the intercourse presupposes the evidence regarding the betrothal [in order to become relevant], nevertheless, since the evidence of betrothal does not presuppose the evidence of intercourse, each testimony should be considered a matter [complete in itself]? So also here, though the evidence regarding the slaughter presupposes the evidence regarding the theft [if it is to be relevant] nevertheless since the evidence regarding the theft does not presuppose the evidence regarding the slaughter, each testimony should be considered a matter [complete in itself].[5] But according to the Rabbis[6] what will this term 'matter' [implying] 'but not half a matter' exclude? — It will exclude a case where one witness testified that there was one hair on her back[7] and the other

states that there was one hair in front. But [since each hair is testified to by one witness],[8] would this not be both half a matter and half a testimony?[9] — [We must say] therefore that it excludes a case where two witnesses testify that there was one hair on her back and two other witnesses state that there was one hair in front, as in this case the one set testify that she was still a minor[10] and the others similarly testify that she was still a minor.

IF HE STEALS AND SELLS ON THE SABBATH DAY . . . [HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT]. But has it not been taught [elsewhere] that he would be exempt? — Said Rami b. Hama: If it was taught there that he would be exempt, it was only where the purchaser said to him:[11] 'pluck figs off my fig-tree[12] and transfer to me [in consideration of them] the objects you have stolen.'[13] It may however, be argued that seeing that if the purchaser claimed from him before us in the court[14] we would be unable to order him to go and to pay since [at the time of the alleged liability,] he became subject to a capital charge, why should not even the sale itself be declared no sale at all?[15] — R. Papa therefore said: There would be exemption [where the purchaser said to him], 'Throw your stolen objects [from a public thoroughfare] into my private courtyard,[16] and transfer to me [thereby][17] the objects you have stolen.'[18] Whom does this follow? R. Akiba,[19] who said that an object intercepted in the air is on the same footing [regarding the law of Sabbath] as if it had already come to rest.[20] For if we were to follow the other Rabbis,[21] while the possession of the stolen objects would be transferred as soon as they reached the air of the court-yard of the purchaser's house,[22] in regard to Sabbath the capital liability would not be incurred until they have reached the actual ground![19] — Raba thereupon said: It may still be in accordance with Rami b. Hama.[23] For the hire [of a harlot] was prohibited by the Torah[24] [from being used for the Temple] even [when given by a son] for having incestuous intercourse with his mother, irrespective of the fact that were she to have claimed it from him before us in the court, we should not have been able to order him to go and give her the hire.[25] We see then that although were she to have claimed it from him by law, we should have been unable to order him to go and pay her,[25] nevertheless when he of his own accord pays her [the hire] it will be subject to the law of the hire [of a harlot].[24] So also here regarding payment [for the figs plucked by the thief on the Sabbath], if the purchaser had claimed it by law in our presence, we should have been unable to order the thief to go and pay;[25]

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(1) [In accordance with B.B. III, 1, that three years of undisturbed possession are required to establish a presumptive title on the part of a possessor.]

(2) [And here no two witnesses testify to more than one year of occupation, which is only a third of the matter in hand. And in our Mishnah the second set of witnesses testify to no more than half a matter, i.e. the slaughter, and according to R. Akiba, should not be able to convict the thief.]

(3) By a valid act of Kiddushin (v. Glos.), thus making her his wife.

(4) Lev. XX, 10.

(5) In which case even R. Akiba will allow such evidence to be given independently by separate sets.

(6) Who even in the case of undisturbed possession admit evidence given independently by three sets of witnesses testifying to each of the three years respectively.

(7) The reference is to the two hairs which are the sign of puberty in a girl. V. Nid. 52a.

(8) Whose evidence in such a case is of no effect whatsoever; cf. Deut. XIX, 15.

(9) And it is quite obvious that evidence of this kind is of no avail.

(10) As the appearance of one hair is no sign of puberty; but where different witnesses testify to different years, each year is considered a 'whole matter'.

(11) To the thief who sold him the animal.

(12) Which is a capital offence if done on the Sabbath; v. Shab. VII, 2.

(13) It thus follows that at the very moment when the sale was completed the thief was desecrating the Sabbath by an act which renders him liable to a capital charge in which all possible civil liabilities to take effect at that time have to merge.

(14) To give some consideration for the fig.

(15) For since the thief would have by law to pay nothing for the consideration given him on the part of the purchaser, there should in the eye of the law be lacking any consideration at all rendering the purchase null and void.

(16) And it is a capital offence to throw anything on Sabbath from a public thoroughfare to private premises; cf. Shab. XI, 1.
(17) I.e., by the animal entering into the premises of the prospective purchaser in accordance with B.M. 11a and supra p. 283.
(18) V. p. 405, n. 7.
(19) Shab. 4b; 97a and Git. 79a.
(20) So that the capital offence was committed at the very moment the transaction of sale became complete by the animal entering the air of the purchaser's court-yard; cf. B.M. 12a and Git. 79a.
(21) Who maintain that the capital offence of desecrating the Sabbath by throwing anything from a public thoroughfare into private premises will be committed only at the moment when the object thrown falls upon the ground.
(22) B.M. 12a and Git. 79a.
(23) That the purchaser said to the thief, 'Pluck off a fig of my fig-tree' etc., despite your objection as to the lack of consideration.
(24) Deut. XXIII, 19.
(25) As the very act that should cause pecuniary liability is a capital offence in which all possible civil liabilities have to merge.

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nevertheless, since the thief was prepared to transfer the possession [of the stolen objects] to him by this procedure it should be considered a sale.

IF HE STEALS AND SLAUGHTERS ON THE DAY OF ATONEMENT etc. I would ask, why [should this be so]? It is true that no capital punishment is attached here,[1] but there will at least be the punishment of lashes, and is it not an established ruling[2] that no man who is lashed can be ordered to pay?[3] — It may, however, be said that the Mishnah is in accordance with R. Meir who said[4] that a person who is lashed may also be ordered to pay.[3] But if in accordance with R. Meir, why should there be no liability even for slaughtering on the Sabbath?[5] And should you affirm that while he holds that one may be lashed and be ordered to pay, he[6] does not hold that one may be condemned to death and also ordered to pay. [I would ask,] does he really not [maintain this second ruling]? Was it not taught:[7] 'If he steals and slaughters on the Sabbath or if he steals and slaughters to serve idols,[8] or if he steals an ox condemned to be stoned[9] and slaughters it, he has to make four-fold or five-fold payment according to R. Meir,[10] but the Rabbis rule that there is exemption'? — I might reply that this ruling applies to all cases save this, for it was stated with reference to it that R. Jacob stated that R. Johanan said, or as others say, that R. Jeremiah stated on behalf of R. Simeon b. Lakish that R. Ile'a and the whole company[11] said in the name of R. Johanan that the slaughter [in that case] was carried out by another person [acting on behalf of the thief].[12] But how could the one[13] commit an offence[14] and the other[15] be liable to a fine?[16] — Raba replied: This offence here is different, as Scripture says: And slaughter it or sell it:[17] just as selling [becomes complete] through the medium of another person,[18] so also slaughter may be effected by another person. The School of R. Ishmael taught: [The term] 'or'[19] [inserted between 'slaughter' and 'selling' was meant] to include the case of an agent.[20] The School of Hezekiah taught: The term 'instead'[19] [was intended] to include the case of an agent.

Mar Zutra demurred to this. Is there [he said] any action for which a man is not liable if done by himself but for which he is liable if done by his agent? — R. Ashi said to him: In that case[21] it was not because he should not be subject to liability, but because he ought to be subject to a penalty[21] severer than that. But if the slaughter was carried out by another one, what is the reason of the Rabbis who ruled that there was exemption? — We might say that the Sages [referred to] were R. Simeon who stated that a slaughter through which the animal would not ritually become fit for food could not be called slaughter [in the eyes of the law].[22] But I would say, I grant you this in regard to serving idols and an ox condemned to be stoned, as [through the slaughter] the animal will in these

cases not become fit for food,[23] but in the case of the Sabbath, does not the slaughter render the animal fit for food? For did we not learn that if a man slaughters on the Sabbath or on the Day of Atonement, though he is liable for a capital offence,[24] his slaughter is ritually valid?[25] — It may, however, be said that he[26] concurred with R. Johanan ha-Sandalar, as we have learned, If a man cooks [a dish] on the Sabbath, if inadvertently, [even] he himself[27] may partake of it,[28] but if deliberately, he should not partake of it[29] [on that day]. So R. Meir. R. Judah says: If inadvertently, he may eat it only after the expiration of the Sabbath,[30] whereas if deliberately he should never partake of it.[31] R. Johanan ha-Sandalar says: If inadvertently, the dish may be partaken of after the expiration of the Sabbath, only by other people, but not by himself, whereas if deliberately, it should never be partaken of either by him or by others.[32] What was the reason of R. Johanan ha-Sandalar? — R. Hiyya expounded at the entrance of the house of the prince:[33] Scripture says: Ye shall keep the Sabbath therefore, for it is holy unto you.[34] Just as holy food is forbidden to be eaten,[35] so also what is unlawfully prepared on the Sabbath is forbidden to be partaken of. But, [you might argue,] just as holy food is forbidden for any use,[35] so should whatever is [unlawfully] prepared on the Sabbath also be forbidden for any use.[36] It is therefore stated further: 'Unto you',[34] implying that it still remains yours for general use.[37] It might [moreover] be thought that the prohibition extends even where prepared inadvertently, it is therefore stated: Everyone that profaneth it shall surely be put to death,[34] [as much as to say], I speak only of the case when it is done deliberately, but not when done inadvertently.

R. Aha and R. Rabina differ in this matter. One said that whatever is [unlawfully] prepared on the Sabbath is forbidden on Scriptural authority whereas the other [Rabbi] said that whatever is [unlawfully] prepared on the Sabbath is forbidden on Rabbinic authority. He who said that it was on Scriptural authority bases his view on the exposition just stated, whereas he who said that it was on Rabbinic authority holds that when Scripture says, 'It is holy', it means that it itself[38] is holy, but that which is [unlawfully] prepared on it is not holy. Now I grant you that according to the view that the prohibition is based on Scriptural authority, the Rabbis because

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(1) V. p. 403, n. 4.

(2) Keth. 32a and B.M. 91a.

(3) For a civil liability arising out of an act done at the time when the transgression for which he is to be lashed was committed.

(4) Keth. 33b.

(5) Why then is it stated infra p. 427, that in this case there would be exemption?

(6) R. Meir.

(7) Keth. loc. cit.

(8) Which is a capital offence; cf. Ex. XXII, 19.

(9) Which is thus forbidden for any use; v. supra p. 234.

(10) Which shows that in R. Meir's opinion liability to pay may he added to capital punishment.

(11) [חבורתא , a term employed in designation of the corporate body of members of the Palestinian schools, primarily of the School of Tiberias. V. Bacher, MGWJ, 1899, p. 345.]

(12) In which case it is not the thief but the other person who is liable to the capital punishment.

(13) I.e., the agent.

(14) Of slaughtering a stolen animal.

(15) I.e., the thief.

(16) Of four-fold or five-fold payment.

(17) Ex. XXI, 37.

(18) For two parties are needed to a sale: one to sell and the other to buy.

(19) Ibid.

(20) To make the principal liable to the fine.

(21) I.e., capital punishment for desecrating the Sabbath or serving idols.

(22) V. p. 403, n. 10.

(23) For serving idols see A.Z. 54a; and Hul. 40a.
(24) In the case of Sabbath the offender would be subject to be stoned as in Ex. XXXV, 2 and Num. XV, 32-36, but in the case of the Day of Atonement he would only be subject to a heavenly punishment of being cut off from among his people, in accordance with Lev. XXIII, 30 and Ker. I, 1.
(25) Hul. 14a.
(26) I.e., R. Simeon.
(27) I.e., he who cooked it.
(28) Even on the same day.
(29) Nor anybody else.
(30) But on the same day neither he nor anybody else may partake of it.
(31) Though others may partake of it after the expiration of the Sabbath.
(32) V. Ter. II, 3. It thus follows that according to R. Johanan an animal deliberately slaughtered on the Sabbath will be forbidden as food; and since such a slaughter renders the animal unfit for food, it involves no liability of the fourfold or fivefold payment.
(33) [The reference is to R. Hiyya b. Abba II and R. Judah the Prince III whose home was at Sepphoris. V. zuri, Mishpat hazibburi, I, 281 ff.]
(34) Ex. XXXI, 14.
(35) Cf. Lev. V, 15-16.
(36) Not only for food to Israelites but also for any use whatever.
(37) For surely if it becomes forbidden for any use there would be no practical purpose in retaining ownership.
(38) I.e., the Sabbath itself.

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of this have rightly ruled that there is exemption,[1] but according to the view that it is based on Rabbinic authority, why did the Rabbis rule that there is exemption?[2] — [Their exemption applies] to the other cases; to serving idols, and an ox condemned to be stoned.

But why does R. Meir impose liability in the case of slaughtering for the service of idols? For as soon as he starts the act of slaughtering in the slightest degree he renders the animal forbidden,[3] so that the continuation of the slaughter is done on an animal already forbidden for any use whatever, and as such, was he therefore not slaughtering that which no longer belonged to the owner?[4] — Raba replied: The rule applies to one who declares that it is only at the very completion of the act of slaughter that he intends to serve idols therewith. But what about an ox condemned to be stoned? Is it not forbidden for any use whatever, so that he slaughters that which does not belong to the owner?[4] — Raba thereupon said: We are dealing here with a case where the owner had handed over the ox to a bailee, and as it did damage [by killing a person] in the house of the bailee it was declared Mu'ad in the house of the bailee and its final verdict was issued while it was in the house of the bailee; R. Meir thus on one point concurred with R. Jacob and on another point he concurred with R. Simeon: On one point he concurred with R. Jacob who said that if even after its final verdict was issued the bailee restored it to the owner, it would be a legal restoration;[5] and on another point he concurred with R. Simeon who stated[6] that an object the absence of which entails money loss is regarded as possessing an intrinsic value,[7] as we have learned: R. Simeon says: In the case of consecrated animals[8] for the loss of which the owner is liable to replace them by others, the thief has to pay,[9] thus proving that an object whose absence entails money loss is regarded as possessing an intrinsic value.[10] R. Kahana said: When I reported this discussion in the presence of R. Zebid of Nehardea, I asked: How could you explain our Mishnah[11] to be [only] in accordance with R. Meir[12] but not in accordance with R. Simeon, since it is stated in the concluding clause, R. SIMEON HOWEVER RULES THAT THERE IS EXEMPTION IN THE LAST TWO CASES,[13] thus implying that in the other cases of the whole Mishnah he agrees? — He[14] however said to me; No, it merely implies that he agrees in the case of slaughtering or selling to use the meat for curative purposes or to give to dogs.[15]

IF HE STEALS FROM HIS OWN FATHER AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED, etc. Raba inquired of R. Nahman: If he steals an ox of two partners and after slaughtering it he confesses to one of them,[16] what would be the law?[17] — Shall we say that the Divine law says: 'Five oxen',[18] [implying] 'but not five halves of oxen', or do the 'five oxen' mentioned by the Divine Law include also five halves of oxen? — He replied:[19] The Divine Law says 'five oxen' [implying] 'but not five halves of oxen'.[20]

He, however, raised an objection against him [from the following]: IF HE STEALS FROM HIS FATHER AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED, HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT. Seeing that the father died,[21] is not this case here on a par with a case where he went[22] and confessed to one of the partners, and it is yet stated that he has to make four-fold or five-fold payment? — He replied: Here we are dealing with a case where, for instance, his father has already appeared in the court before he died.[23] Had he not appeared in court, the son would not have had to make four-fold or five-fold payment. If so, instead of having the subsequent clause 'Where he steals of his father [who subsequently died] and afterwards he slaughters or sells, he has not to pay four-fold and five-fold payments,'[24] why should not [the Mishnah] make the distinction in the same case itself by stating, 'This ruling[25] applies only where the father appeared in court, whereas if he did not manage to appear in court, the thief would not have to make four-fold and five-fold payments'?[26] — He replied:[27] This is indeed so, but since the opening clause runs 'IF HE STEALS FROM HIS FATHER AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED', the later clause also has the wording, 'where he steals from his father and after his father died he slaughters or sells'. In the morning, however, he said to him:[27] When the Divine Law said 'five oxen' it also meant even five halves of oxen, and the reason why I did not say this to you on the previous evening

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(1) As the slaughter of the animal on the Sabbath day would on Scriptural authority render the animal unfit for food and could according to R. Simeon not be considered a slaughter at all.

(2) Since according to substantive law the animal would be fit for use.

(3) Cf. Hul. 40a.

(4) V. p. 409, n. 8.

(5) Supra p. 255.

(6) Infra 437.

(7) So that since if the ox would not have been slaughtered the bailee would have been able to restore it intact without paying anything for its value, whereas now that the ox was stolen and slaughtered he would have to pay for the full value of the ox, the ox is considered of an intrinsic value though it was condemned to be stoned, and the thief has to pay the fine accordingly.

(8) Which as such are not subject to the law of the fine of double and four-fold and five-fold payment, as infra p. 427.

(9) The owner the full fine, v. Mishnah p. 427.

(10) To the one who would be liable to make the outlay of money, and for this reason R. Meir makes the thief liable for the payment of the four-fold or five-fold.

(11) Regarding the case of slaughtering on the Day of Atonement.

(12) Who holds one could be both lashed and ordered to pay.

(13) Supra p. 403.

(14) I.e., R. Zebid.

(15) Which forms a part of the last paragraph which is complete in itself.

(16) So that he will not have to pay any fine to this partner, as a confession in a matter of a fine carried exemption; v. supra p. 62 and infra p. 427.

(17) Regarding the other partner when witnesses will appear.

(18) Ex. XXI, 37.

(19) I.e., R. Nahman to Raba.

(20) There will therefore be here total exemption.

(21) And the thief becomes a partner together with the other brothers in the whole estate.

(22) Lit., 'forestalled' (witnesses).

(23) And the liability was already then fully established.

(24) Infra p. 427. For at the time of the slaughter or sale the thief was a joint owner of the animal.

(25) Of liability.

(26) Even where he slaughtered the animal or sold it before the death of his father.

(27) R. Nahman to Raba.

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was because I had not yet partaken of [a dish of] beef [and felt too feeble to arrive at a carefully thought out conclusion]. But why then this difference between the earlier clause[1] and the later clause?[2] — He replied: In the earlier clause[1] we can rightly apply to the offence [the words] 'and he slaughters it', [in the sense that] the whole act is unlawful,[3] whereas in the concluding clause we cannot apply to the offence [the words] 'and he slaughters it' [in the sense that] the whole act is unlawful.[4]

IF HE SLAUGHTERS AND FINDS THE ANIMAL TREFA [OR WHERE HE SLAUGHTERS IT AS UNCONSECRATED IN THE 'AZARAH HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT]. R. Habibi of Huzna'ah said to R. Ashi: This shows that [from the legal point of view] the term 'slaughter' applies to the act only at its completion for if it applied to the whole process from the beginning to the end, would he not as soon as he started the act of slaughtering in the slightest degree[5] render the animal ritually forbidden for any use,[6] so that what follows the beginning would amount to slaughtering an animal no more belonging to the owner?[7] — R. Huna, the son of Raba,[8] said to him: The liability might have been just for that commencement in the slightest degree.[9] R. Ashi, however, said to him: This is no refutation,[10] [since it says] 'and he slaughters it, we require the whole act of the slaughter, which is absent here. But what about the original difficulty?[11] — He thereupon said to him: R. Gamda stated thus in the name of Raba: We are dealing here with a case where, for instance, he cut a part of the organs of the animal outside of the 'Azarah, but completed the slaughter inside of the 'Azarah.[12]

Some attach this argument to the following statement: R. Simeon[13] said in the name of R. Levi the Elder: The term 'slaughter' applies to the act only at its very completion. R. Johanan, however, said it applies to the whole process from the beginning to the end. R. Habibi of Huzna'ah thereupon said to R. Ashi: Are we to say that R. Johanan held that [the prohibition of slaughtering] unconsecrated animals in the 'Azarah is not based on Scripture?[14]

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(1) Where liability is stated.

(2) Stating exemption, since 'five oxen' imply also 'five halves' of oxen why then should he not pay the part due to his coheirs?

(3) As the slaughter took place while the father was still alive.

(4) For at the time of the slaughter the thief was already a joint owner of the animal.

(5) In the precincts of the Temple.

(6) Cf. Pes. 22a.

(7) For surely after it becomes forbidden for any use, there would be no practical use in retaining ownership.

(8) [Read with MS.M., 'R. Aba b. Raba' as on p. 414, v. D.S. a.l.]

(9) Before the animal became forbidden for any use.

(10) Of the proof suggested by R. Habibi.

(11) That, since the animal became forbidden for any use at the commencement of the slaughter, there should be no liability to pay the fine.

(12) So that the animal became forbidden for any use only at the completion of the slaughter, for which the thief has to pay the fine.

(13) [Read ‘Simeon b. Lakish’, v. D.S. a.l.]
(14) V. p. 413, n. 4.

Talmud - Mas. Baba Kama 72b

For if you assume that it has Scriptural authority, then as soon as he starts the act of slaughtering in the slightest degree would he not render the animal ritually forbidden for any use, so that what follows the beginning would amount to slaughtering an animal no more belonging to the owner? — R. Aha, the son of Raba, said to him: The liability might be just for that commencement in the slightest degree. R. Ashi, however, said to him: This is no refutation;[1] [since it says] ‘and he slaughters it’ we require the whole act of the slaughter, which is absent here. But what about the original difficulty?[2] — He, thereupon, said to him that R. Gamda stated thus in the name of Raba: When does he become liable? When for instance he cuts a part of the organs of the animal outside of the ‘Azarah but completes the slaughter inside of the ‘Azarah.[3]

MISHNAH. IF A THIEF [IS CONVICTED OF THE THEFT OF AN OX] ON THE EVIDENCE OF TWO WITNESSES, AND OF THE SLAUGHTER OR SALE OF IT ON THE EVIDENCE OF THE SAME TWO, AND THESE WITNESSES ARE SUBSEQUENTLY PROVED ZOMEMIM,[4] THEY MUST PAY [THE ACCUSED] IN FULL.[5] IF, HOWEVER, THE THEFT [HAS BEEN ESTABLISHED] BY THE EVIDENCE OF ONE PAIR OF WITNESSES, AND THE SLAUGHTER OR SALE BY THAT OF ANOTHER PAIR,[6] AND BOTH PAIRS ARE PROVED ZOMEMIM, THE FIRST PAIR MAKES [THE ACCUSED] DOUBLE PAYMENT[7] AND THE SECOND PAIR THREEFOLD PAYMENT.[8] WHERE [ONLY] THE SECOND PAIR WERE PROVED ZOMEMIM, THE THIEF MAKES DOUBLE PAYMENT,[9] WHEREAS THEY PAY [HIM] THREEFOLD.[8] SHOULD ONE OF THE SECOND PAIR OF WITNESSES BE PROVED ZOMEM, THE TESTIMONY OF THE SECOND PAIR BECOMES NULL AND VOID.[10] SHOULD ONE OF THE FIRST PAIR OF WITNESSES BE PROVED ZOMEM, THE WHOLE TESTIMONY [OF BOTH PAIRS] BECOMES NULL AND VOID, FOR IF THERE WAS NO THEFT THERE COULD BE NO [ILLEGAL] SLAUGHTER OR SALE.[11]

GEMARA. It has been stated:[12] If a witness has been proved a zomem, Abaye says that he becomes disqualified retrospectively [from the time when he gave his evidence in court],[13] whereas Raba says that he is disqualified only for the future [from the time when he is proved zomem]. Abaye makes the disqualification retrospective on the ground that the witness has been shown to have been wicked at the time when he gave evidence, and the Torah says: Do not accept the wicked as a witness.[14] Raba, on the other hand, holds that the disqualification begins only from the moment when his deceit is proved, because the whole procedure of proving witnesses zomemim is anomalous. For this is a case of two witnesses against two; why then accept the evidence of the one pair rather than that of the other? At least let it take effect only from the time when the anomalous procedure is employed.

Some say that Raba really agrees with Abaye that the disqualification is retrospective, but rejects here this principle on practical grounds, because its adoption

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(1) V. p. 413, n. 8.
(2) V. p. 413, n. 9.
(3) V. p. 413, n. 10.
(4) Lit., ‘plotters’, ‘schemers’ (plural of Zomem), i.e., witnesses proved by the subsequent evidence of two witnesses to have been absent at the time of the alleged offence; their punishment is by the law of retaliation. V. Deut. XIX, 18-19 and Mak. I, 2-4.
(5) I.e., five times the value of the alleged theft. V. Ex. XXI, 37.
(6) For which cf. supra pp. 403-5.

(7) Which he would have to pay through them for the alleged theft.
(8) I.e., the difference between the 'double' and the 'fivefold' payment intended by them to have been inflicted on the accused.
(9) As the evidence regarding the theft still holds good.
(10) Cf. Mak. I, 7.
(11) For the fine of fivefold includes the double payment for the theft so that when the latter could not be established as in the case here no fine could be imposed for the slaughter or sale.
(12) Cf. Sanh. 27a.
(13) Any evidence he gave in the intervening period becomes invalidated.
(14) An interpretation of Ex. XXIII, 1.

Talmud - Mas. Baba Kama 73a

might adversely affect purchasers.[1] What practical difference is there between the two versions?[2] — Where two witnesses have proved one of a pair zomem, and other two witnesses have proved the other one of the pair zomem;[3] or again, where the disqualification of the witnesses is based upon an accusation of larceny brought by a subsequent pair.[4] According to the version which makes Raba base his view[5] on the fact of the procedure being anomalous, he would not apply it here, whereas according to the version which makes his reason the fear of adversely affecting purchasers, it would hold good even here.[6]

R. Jeremiah of Difti said: R. Papa decided in an actual case in accordance with the view of Raba. R. Ashi, however, stated that the law agrees with Abaye. And the law agrees with Abaye [against Raba] on [the matters known as] Y'AL KGM.[7]

We have learnt: IF A THIEF [IS CONVICTED OF THE THEFT OF AN OX] ON THE EVIDENCE OF TWO WITNESSES, AND OF THE SLAUGHTER OR SALE OF IT ON THE EVIDENCE OF THE SAME TWO, AND THESE WITNESSES ARE SUBSEQUENTLY PROVED ZOMEMIM, THEY MUST PAY [THE ACCUSED] IN FULL. Does this not mean that they first gave evidence regarding the theft and then[8] gave evidence again regarding the slaughter, and that they were proved zomemim regarding their evidence about the theft and then were proved zomemim regarding their evidence about the slaughter? Now, if you assume that a witness proved zomem becomes disqualified retrospectively, [it would surely follow that] as soon as these witnesses were declared zomemim regarding the theft, it became clear retrospectively that when they gave evidence regarding the slaughter[9] they were already disqualified.[10] Why then should they pay [the retaliation penalty regarding their evidence] about the slaughter?[11] — It may be said that we are dealing here with a case where they were first declared zomemim regarding their evidence about the slaughter. But it may still be argued that after all since when they were subsequently declared zomemim regarding the theft, it became clear retrospectively that when they gave evidence regarding the slaughter, they had already been disqualified. Why then should they pay the retaliation penalty for the slaughter?[12] — This law would apply only when they testified at one and the same time to both theft and slaughter,[13] and were afterwards declared zomemim.[14]

May we say that this matter[15] formed the point at issue between the following Tannaim: If two witnesses gave evidence against a person that he had stolen an ox and the same witnesses also testified against him that he had slaughtered it, and were declared zomemim regarding the theft, as their evidence became annulled in part[16] it became annulled altogether. But if they were declared zomemim regarding the slaughter, the thief would still have to make double payment and they would have to pay [him] three-fold. R. Jose, however, said: These rulings[17] apply only in the case of two testimonies,[18] for in the case of one testimony the law is that a testimony becoming annulled in part becomes annulled altogether. Now, what is meant by 'two testimonies' and what is meant by 'one testimony'? Are we to say that 'two testimonies' means two absolutely independent testimonies, as

in the case of two separate sets, and 'one testimony' means one set giving the two testimonies after each other, in which case R. Jose would hold that in the case of one testimony, i.e. where one set gave testimonies after each other, as, for instance where they had first given evidence about the theft and then gave evidence again about the slaughter, if they were subsequently declared zomemim with reference to their evidence about the slaughter, the law would be that a testimony becoming annulled regarding a part of it becomes annulled regarding the whole of it, and the witnesses would thus be considered zomemim also regarding the theft? On what could such a view be based? [Why indeed should the testimony given first about the theft be annulled through the annulment of a testimony given later?][19] Must we not therefore say that 'two testimonies' means one evidence resembling two testimonies, that is to say, where one set gives two testimonies one after the other[20] but not where there is one testimony in which all the statements are made at the same time? Now it was assumed that there was agreement on all hands that statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement. The point at issue therefore between them[21] would be as follows: The Rabbis[22] would maintain that a witness proved zomem is disqualified only for the future, and since it is from that time onwards that the effect of zomem will apply it is only with reference to the slaughter regarding which they were declared zomemim that the effect of zomem will apply, whereas with reference to the theft regarding which they were not declared zomemim the effect of zomem will not apply.[23] R. Jose would on the other hand maintain that a witness proved zomem would become disqualified retrospectively, so that from the very moment they had given the evidence, regarding which they were proved zomemim, they would be considered disqualified; from which it would follow that when they were declared zomemim regarding the evidence about the slaughter the effect of zomem should also be extended to the evidence regarding the theft, for statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement. [Would the view of Abaye thus be against that of the Rabbis?] — To this I might reply: Were statements following one another within the minimum of time [sufficient for the utterance of a greeting] equivalent in law to a single undivided statement, it would have been unanimously held [by these Tannaim] that the pair proved zomemim should become disqualified retrospectively. But here it is this very principle whether statements following one another within the minimum of time [sufficient for the utterance of a greeting] should or should not be equivalent in law to a single undivided statement that was the point at issue between them: The Rabbis maintained that statements following one another within the minimum of time [sufficient for the utterance of a greeting]

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(1) Who innocently invited the same witnesses to attest the deeds of purchase.

(2) Regarding the view of Raba.

(3) Thus not being a case of two against two but two against one, and the procedure could not be termed anomalous.

(4) In which case the accused two or more cease to act in the strict capacity of witnesses, but become a party interested and partial in the accusation brought against them personally, and the procedure could no more be considered anomalous.

(5) Regarding witnesses proved zomemim.

(6) For so long as the witnesses were not officially disqualified it would be a great hardship to disqualify deeds signed by them at the invitation of innocent purchasers.

(7) A mnemonic composed of Y for 'Yeush, Abandonment, B.M. 21b-22b; E for 'Ed, Witness proved zomem, here under consideration; L for Lehi, pole forming a mark of an enclosure, 'Er. 15a; K for Kiddushin, a case of betrothal, Kid. 51a-52a; G for Gilluy, intimation affecting agency in the case of a bill of divorce, Git. 34a; and M for Mumar, a Defiant Transgressor whether or not he be eligible as witness, Sanh. 27a.

(8) On a subsequent occasion.

(9) I.e., on a subsequent occasion.

(10) From the moment they had given evidence regarding the theft.

(11) Since their evidence regarding slaughter fell to the ground even before they were proved zomemim with reference to it.

(12) Since their evidence regarding slaughter should have fallen to the ground even without their having to be proved zomemim with reference to it.
(13) In which case the retrospective disqualification through their becoming zomemim with reference to both slaughter and theft begins at the same time.
(14) [But first with reference to their evidence about the slaughter. MSS. rightly omit, 'and were . . . zomemim'.]
(15) In which Abaye and Raba differ.
(16) I.e., the theft.
(17) That the accused will still have to pay double payment.
(18) V. the discussion that follows.
(19) For surely a wrong committed at a later date could not affect the presumed integrity of a man on an earlier occasion.
(20) I.e., on different occasions.
(21) I.e., R. Jose and the other Rabbis.
(22) Representing the anonymous opinion cited first.
(23) And the accused will still have to pay double payment.

Talmud - Mas. Baba Kama 73b

are not equivalent in law to a single undivided statement,[1] whereas R. Jose maintained that statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement.[2] But did R. Jose really maintain that statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement? For we have learnt: If a man declares: Let this animal be a substitute[3] for a burnt-offering, a substitute for a peace-offering, it will be a substitute for the burnt-offering,[4] according to the view of R. Meir, whereas R. Jose says: If from the outset he intended this,[5] his words would have to be acted upon,[6] as it was impossible for him to utter two terms at the same time, but if he first declared; 'Substitute for a burnt-offering', and then changed his mind and said, 'Substitute for a peace-offering', it will be a substitute for a burnt-offering only.[7] Now this statement we found strange; for is not the case of a change of mind obvious?[8] And R. Papa therefore said: We assume that the change of mind took place within the minimum of time [required for the utterance of a greeting]![9] [Does this not prove that R. Jose maintained that statements following one another within the minimum of time sufficient for the utterance of a greeting would not be equivalent in law to a single undivided statement?][10] — It may be said that there are two different minimums of time [within which two different kinds of greetings could be uttered], one sufficient for the greeting given by a disciple to his master, and the other sufficient for the greeting of the master to the disciple. Where[11] R. Jose does not hold [the two statements to be one] is where the interval is sufficient for the greeting of a disciple to the master, viz. 'peace [upon] thee, master [and] teacher,' as this is too long,[12] but where it is only sufficient for the greeting of the master to the disciple, 'peace [upon] thee,[13] he holds that they do [form one].

Raba stated: Witnesses [testifying to a capital charge] who have been proved wrong[14] [by a pair of other witnesses][15] and subsequently also proved zomemim, would be put to death, as the confutation was a first step in the subsequent proof of an alibi,[16] though the proof of this was not yet complete at that time. Raba said: [The authority] on which I base this is that which has been taught: [If a set of witnesses declare], We testify that so-and-so has put out the eye of his slave[17] and[18] knocked out his tooth[19] (and so indeed the master himself says), and these witnesses are [by subsequent witnesses] proved zomemim, they would have to pay[20] the value of the eye to the slave.[21] How are we to understand this? If we assume, according to the apparent meaning of the text, that there was here no other pair of witnesses,[22] why should they pay the value of the eye to the slave? After they have done their best to get him [undeservedly] freed, are they also to pay him the value of his eye? Moreover, should they in such a case not have to pay the owner for the full value of the slave [as they falsely demanded his freedom]? Furthermore, 'and so indeed the master himself says,' — how could the master be satisfied [with such a false allegation to his detriment]? Does it therefore not

mean a case, e.g., in which a pair of witnesses had already appeared [previously] and stated that the master knocked out the slave's tooth and then put out his eye so that the master would have to pay him the value of his eye,[23] and a middle pair of witnesses appeared later and stated that the first put out the slave's eye and then his tooth, so that he would not have to give him anything but the value of his tooth,[24] so that the first set of witnesses confuted the middle set, and it is to this that the words refer 'and so indeed the master himself says', for he was well satisfied with the statement alleged by the middle set? The text then goes on: 'And these are [by subsequent witnesses] proved zomemim' — that is, the middle set — 'they would have to pay the value of the eye to the slave'.[25] Does not this show that the confutation is the first step in a subsequent proof of an alibi?[26] — Abaye said: No; [what we can assume is] that the statement of these witnesses was transposed by a [second] set of witnesses, who also proved them zomemim.[27] That this was so is evident,

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(1) So that the evidence as to the theft and the evidence as to the slaughter could in no manner be considered as one, but are completely independent testimonies, and if the accusation of zomem was proved regarding the latter the former could not be affected.

(2) So that the evidence as to the theft and the evidence as to the slaughter form one testimony to all intents and purposes.

(3) See Lev. XXVII, 10.

(4) The earlier expression being the decisive one.

(5) I.e., that it should be a substitute for both offerings.

(6) And the animal will have to be kept until it becomes blemished when it will be sold and half of the money realised will be utilised for a burnt-offering, and the other half for a peace-offering.

(7) Tem. V, 4.

(8) V. p. 419, n. 4.

(9) Where it might have been suggested that the two utterances constituted a single indivisible statement.

(10) For if otherwise why should the first utterance be more decisive than the second?

(11) In the case of Tem. V, 4.

(12) Consisting as it does of four words. [MS.M. and Asheri omit '(and) teacher,' making it thus consist of three words.]

(13) Consisting only of two words.

(14) On the subject matter of their evidence, after sentence had been passed.

(15) For which, however, no retaliatory punishment could be imposed upon them, as Deut. XIX, 19, does not refer to witnesses who were contradicted on the subject matter of their evidence but against whom the accusation (in a sense) of an alibi was proved, i.e. where they were declared zomemim.

(16) [The term 'alibi' is used here for convenience sake, as it deals here with the presence or absence of the witnesses of the alleged crime at the time when it was committed, rather than with the presence or absence of the accused, as the term is generally understood.]

(17) For which he has to let him go free, cf. Ex. XXI, 26-27.

(18) Subsequently.

(19) For which he has to pay the five items in accordance with infra p. 473.

(20) In retaliation.

(21) Tosef. Mak. 1.

(22) Giving evidence for the slave.

(23) Which is of course more than that of his tooth.

(24) Which is less than that of his eye and thus giving evidence for the benefit of the master and against the slave.

(25) I.e., the difference between the value of the eye and the value of the tooth of which they conspired to deprive the slave.

(26) And that after the accusation of an alibi was proved, the law of retaliation will apply despite the fact that their evidence had already been previously impaired.

(27) [There were, that is to say, only two sets of witnesses, the former set testifying that the injury was done to the eye first and then to the tooth, while the second set giving evidence to the contrary and at the same time proving the first set zomemim, in which case the first would have to pay the slave the value of his eye.]

since, the later clause deals with witnesses whose statements were transposed by the same set of witnesses that proved them zomemim, so also the earlier clause deals with a case where the statements of the witnesses were transposed by the same subsequent set of witnesses who proved their alibi. For it says in the later clause: If a set of witnesses declare: We testify against so-and-so that he had first knocked out his slave's tooth and then put out his eye — as indeed the servant says — and they were by subsequent witnesses proved zomemim, they would have to pay the value of the eye to the master. Now how are we to understand this? If we assume that the witnesses of the second set did not agree [with those of the first set] regarding any injury at all, why then should the first witnesses not have to pay the master the whole value of the slave?[1] Does it therefore not mean that all the witnesses agreed that an injury was inflicted, but that the witnesses of the second set reversed the order stated by the first set of witnesses[2] while they also proved them zomemim? But still, what were the circumstances? If the witnesses of the second set post-dated the injury, why should the witnesses of the first set still not have to pay the master the whole value of the slave, since they falsely alleged liability to have rested upon a man at the time when that man was in fact not yet subject to any liability? — We must therefore say that the witnesses of the second set antedated the injury. But again, if [at the time when the witnesses of the first set gave evidence] the master had not yet appeared before the Court [on the matter], why should they still not have to pay him the whole value of the slave as at that time he was still a man subject to no liability?[3] — It must therefore deal with a case where he had already made his appearance before the Court.[4]

R. Aha the son of R. Ika said to R. Ashi: Whence could Raba prove this point?[5] It could hardly be from the earlier clause, for were the witnesses of the middle set[6] those who were confuted?[7] For indeed were they not proved zomemim; their statements would have remained the decisive evidence[8] as the case would have been decided according to their allegations, on the principle that in the total of two hundred[9] the sum of a hundred[10] is included. Does it not then clearly follow that it was the first set of witnesses[11] who were thus confuted[7] whereas the middle set of witnesses were not confuted at all?[12] — He replied: Raba maintained that as the earlier clause dealt with three sets [of witnesses giving evidence] the later clause similarly presented the law in a case where three sets [gave evidence], and tried thus to prove his point from the later clause. [For this clause would thus have dealt with a case] where e.g., a set of two witnesses had appeared and alleged that the master first knocked out his [slave's] tooth and then put out his eye, and after the verdict was given in accordance with their testimony a set of other witnesses arrived and stated that the first put out his [slave's] eye and then his tooth, thus contradicting the witnesses of the first set, and as these [latter] were also proved zomemim they would have to pay the value of the slave's eye[13] to the master. Now if you assume that a confutation is not considered a first step in a subsequent proof of an alibi, why should they have to pay anything[14] after they had already been confuted? Does this therefore not prove that a confutation does constitute a first step in a subsequent proof of an alibi? And Abaye? — He might have rejoined: I grant you that the earlier clause cannot be explained save on the assumption that there were three sets, for it was stated there ‘as indeed the master also says’,[15] but so far as the later clause is concerned, what need have I for three sets, since the statement ‘as indeed the slave also says’[16] is perfectly natural as the slave would surely say anything, being satisfied at the prospect of going free?[17]

R. Zera demurred [to the general implication]:[18] Why not say that when the master puts out his [slave's] eye

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(1) Whom they wanted without proper ground to set free.

(2) I.e., while the former stated that the master first knocked out his slave's tooth and then put out his eye the second set testified that he first put out the slave's eye and then knocked out his tooth.

(3) And it was they who conspired to allege liability against him; cf. Rashi and Tosaf. a.l. and Mak. 5a.

(4) And he was ordered to let the slave go free on the strength of some testimony by earlier witnesses, without any direction as to any payment to be made to the slave who now seeks to recover from the master compensation for the eye or tooth.
(5) Even according to his interpretation that three sets of witnesses took part in the controversy.
(6) Stating that the master first put out the eye of his slave and then knocked out his tooth.
(7) I.e., the effect of their evidence invalidated.
(8) Against the earlier set testifying that the master first knocked out his slave's tooth and then put out his eye.
(9) I.e., e.g. the value of the eye, testified by the first.
(10) I.e., the value of the tooth, testified by the middle set.
(11) Stating that the master first knocked out his slave's tooth and then put out his eye.
(12) [And this clause can thus afford no proof to Raba's ruling.]
(13) I.e., the difference between the value of the eye and that of the tooth.
(14) Even when proved zomemim.
(15) Corroborating the witnesses stating that he put out the slave's eye and knocked out his tooth, for if these witnesses were the first to give evidence on the matter it would surely not be in the interest of the master to corroborate them. [R. Ashi does not accept as authentic the explanation given above in the name of Abaye, which was based on the assumption that Raba proved his ruling from the earlier clause, v. Tosaf. supra 73b. s.v. אמר .]
(16) In corroboration of the witnesses stating that the master knocked out his tooth and put out his eye.
(17) How much the more so in this case where the evidence of the witnesses is completely for the benefit of the slave.
(18) That a master knocking out the tooth of his slave and putting out his eye should do both — let him go free for the tooth and pay compensation for the eye.

Talmud - Mas. Baba Kama 74b

the slave goes out free in lieu of his eye;[1] when he knocks out his slave's tooth the slave goes out in lieu of his tooth;[2] and so also when he puts out his eye and knocks out his tooth the slave should go out in lieu of both his eye and his tooth [and no payment for either of these should have to be made]? — Abaye said to him: It is to rule out this idea of yours that Scripture says: 'For his eye's sake',[3] implying 'not for the sake of both his eye and tooth'; 'for his tooth's sake'[4] but not for the sake of both his tooth and his eye.

R. Idi b. Abin said: We have also learnt to the same effect:[5] IF A THIEF [IS CONVICTED OF THE THEFT OF AN OX] ON THE EVIDENCE OF TWO WITNESSES, AND OF THE SLAUGHTER OR SALE OF IT ON THE EVIDENCE OF THE SAME TWO, AND THESE WITNESSES ARE SUBSEQUENTLY PROVED ZOMEMIM, THEY MUST PAY [THE ACCUSED] IN FULL. Does this not mean that the witnesses have first given evidence regarding the theft and then [some time later] testified to the slaughter, and that they were first proved zomemim regarding the theft and then [some time later] proved zomemim [also] regarding the slaughter? Now, the fact that they were proved zomemim regarding the theft is in itself a confutation of their evidence regarding the slaughter,[6] and it is nevertheless stated that 'THEY MUST PAY THE ACCUSED IN FULL'. But if you assume that a confutation is not the first step in a subsequent proof of an alibi, why should they pay the retaliation penalty for the slaughter? Does not this then show confutation is a first step in a subsequent proof of an alibi? — It may, however, be said that we are dealing here with a case where for example they were first proved zomemim regarding the slaughter.[7]

In this argument [between Raba and Abaye, earlier Sages already differed]: In the case where witnesses [testifying to a capital charge] were first contradicted by another set of witnesses and subsequently also proved zomemim [by a third set of witnesses] R. Johanan and R. Eleazar differed: one said they would be subject to the death penalty,[8] whereas the other said they would not be subject to the death penalty. There is proof that R. Eleazar was the one who said they would not be subject to the death penalty; for R. Eleazar said: 'If witnesses were confuted [but not proved zomemim] as to their evidence regarding a charge of murder, they would be lashed.[9] Now, if you

assume that R. Eleazar was the one who said that [were they subsequently to be proved zomemim] they would be subject to the death penalty, why should they be lashed [when confuted]? Should we not regard the prohibition here laid down[10] as a preliminary warning that the death penalty will be exacted by a court of law,[11] and every prohibition which can serve as a preliminary warning of a death penalty to be exacted by a court of law does not entail liability for lashes?[12] Does not this show that R. Eleazar was the one who said that[13] they would be subject to the death penalty?[14] — This may indeed be regarded as proved.

[It has been stated that where witnesses were confuted but not proved zomemim as to their evidence regarding a capital charge] 'they would be lashed'.[9] But as this is a case where two witnesses contradict other two witnesses, how then could it appear right to you to rely upon those of the second set? Why not rely upon the others? — Abaye replied: This could be so only where the alleged victim came to us on his own feet [thus disproving the evidence of the first set].[15]

MISHNAH. IF THE THEFT [OF AN OX OR A SHEEP] WAS TESTIFIED TO BY TWO WITNESSES,[16] WHEREAS THE SLAUGHTER OR SALE OF IT WAS TESTIFIED TO BY ONLY ONE WITNESS OR BY THE THIEF HIMSELF, HE WOULD HAVE TO MAKE DOUBLE PAYMENT[17] BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS.[18] IF HE STOLE IT AND Slaughtered IT ON THE SABBATH DAY,[19] OR IF HE STOLE IT AND SLAUGHTERED IT FOR THE SERVICE OF IDOLS,[19] OR IF HE STOLE IT FROM HIS OWN FATHER WHO SUBSEQUENTLY DIED AND THE THIEF THEN SLAUGHTERED IT OR SOLD IT,[20] OR IF HE STOLE IT AND CONSECRATED IT [TO THE TEMPLE],[21] AND AFTERWARDS HE SLAUGHTERED IT OR SOLD IT, HE WOULD HAVE TO MAKE DOUBLE PAYMENT BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS. R. SIMEON, HOWEVER, SAYS: IN THE CASE OF CONSECRATED CATTLE, THE LOSS OF WHICH THE OWNER HAS TO MAKE GOOD, THE THIEF HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT,[22] BUT IN THE CASE OF THOSE THE LOSS OF WHICH THE OWNER HAS NOT TO MAKE GOOD, THE THIEF IS EXEMPT.

GEMARA. Is it not obvious that a testimony from the mouth of one witness [should impose no liability to pay]? — It may, however, be said that what we are told here is that confession by the thief himself is analogous to evidence borne by one witness: just as in the case of evidence given by one witness, if another witness should come along and join him, the thief would be made liable;[23] so also in the case of confession by the thief himself, if witnesses should come along [and corroborate it], he would become liable. This deviates from the view of R. Huna stated on behalf of Rab. For R. Huna stated that Rab said: If a man confessed to a liability for a fine, even though witnesses subsequently appeared [and gave evidence to the same effect], he would be exempt.[24]

The above text states: R. Huna stated that Rab said: If a man confessed to a liability for a fine, even though witnesses subsequently appeared [and gave evidence to the same effect], he would be exempt. R. Hisda objected to [this view of] R. Huna [from the following]: It happened that R. Gamaliel [by accident] put out the eye of Tabi[25] his slave.[26] He rejoiced over it very much, [as he was eager to have this meritorious slave set free],[27] and when he met R. Joshua he said to him: 'Do you know that Tabi my slave has obtained his freedom?' 'How was that'? said the other. 'Because', he replied, 'I have [accidentally] put out his eye.' Said R. Joshua to him.' 'Your words have no force in law, since there were no witnesses for the slave.'[28] This of course implies that had witnesses at that time been available for the slave, R. Gamaliel would have been under obligation [to set him free]. Does not this show us that if a man confesses to a liability for a fine, if subsequently witnesses appear and testify to the same effect, he would be liable?[29] — R. Huna, however, said to him[30] that this case of R. Gamaliel was different altogether, as he made his confession not in the presence of the court of Law.[31] But was R. Joshua not the president of the Court of law?[32]

(1) Ex. XXI, 26.
(2) Ibid. 27.
(3) V. p. 427. n. 7.
(4) V. p. 427, n. 8.
(5) In the case made out by Raba where a contradiction of the subject matter of evidence was followed by proof of an alibi.
(6) For if the evidence regarding the theft fell to the ground it carried with it the evidence regarding the slaughter of the stolen animal.
(7) Which of course did not affect their evidence regarding the theft which was given on an earlier occasion.
(8) Agreeing thus with view of Raba.
(9) Because they transgressed the negative commandment, 'Thou shalt not bear false witness against thy neighbour'. Ex. XX, 13. and the punishment of thirty-nine lashes is administered for breaking such and similar negative commandments.
(10) Ex. XX. 13.
(11) Should the same witnesses afterwards become zomemim.
(12) Cf. Sanh. 86b; Mak. 13b and Shebu. 4a.
(13) Were they even subsequently proved zomemim.
(14) In which case the prohibition of this offence could thus never be able to serve as a warning of a pending execution at a court of law and lashes could therefore be administered.
(15) In which case their falsity has been proved beyond any doubt.
(16) Cf. Deut. XIX, 15.
(17) For the act of stealing testified to by two witnesses.
(18) As the act of slaughter or sale was testified to by one witness who, in matters of fine, could be of no effect at all even for the purpose of imposing an oath. [V. J. Shebu. VI, and S. Strashun's Glosses, a.1.] so also is the admission of the thief himself of no avail in these matters.
(19) Being a capital offence in which all possible civil liabilities have to merge.
(20) So that at the time of the slaughter or sale the thief was a joint owner of the animal.
(21) Temple property is not subject to the law of the fine.
(22) V. the discussion in Gemara.
(23) Cf. B.B. 32a and Sanh. 30a.
(24) From the fine; cf. supra p. 62.
(25) V. Suk. II,1 and Ber. II, 7.
(26) Who would thereby receive his freedom in accordance with Ex. XXI. 26.
(27) He was, however, unable to manumit him as it was considered a sin to manumit heathen slaves. V. Ber. 47b and Git. 38a.
(28) And the obligation imposed on a man to let his slave go free for his eye's sake and for his tooth's sake is only a matter of fine.
(29) In contradiction to the view of Rab stated by R. Huna.
(30) I.e., R. Hisda.
(31) And is therefore not considered in the eye of the law a legal confession to bar subsequent evidence.
(32) [Shortly after the death of R. Johanan b. Zakkai, v. Halevy, Doroth, I.e., p. 154, contra Weiss, Dor, 130.]

Talmud - Mas. Baba Kama 75a

— He was, however, at that time not sitting in the court of law. But has it not been taught that he said to him: 'Your words have no force in law, as you have already confessed'?[1] Must we not then say that Tannaim were divided on this matter, so that the Tanna who reported 'as there are no witnesses for the slave',[2] would maintain that if one confessed to liability for a fine and subsequently witnesses appeared and testified [to the same effect], he should be liable, whereas the Tanna who reported 'as you have already confessed', would maintain that if one confessed to liability for a fine, though witnesses subsequently appeared [and corroborated the confession], he would be exempt? — No, they might both have agreed that if one confessed to the liability of a fine, though witnesses subsequently appeared [and testified to the same effect], he would be exempt, and the point on which

they differed might have been this: the Tanna, who reported 'as there are no witnesses for the slave', was of opinion that the confession took place outside the court of law,[3] whereas the Tanna, who reported 'as you already confessed', was of opinion that the confession was made at the court of law.

It was stated: If a man confesses to liability for a fine, and subsequently witnesses appear [and corroborate the confession], Rab held that he would be quit, whereas Samuel held that he would be liable. Raba b. Ahilai said: The reason of Rab was this. [We expound]: If it [was to] be found[4] by witnesses, it be [considered] found[4] in the consideration of the judges, excepting thus a case where a defendant incriminates himself.[5] Now why do I require this reasoning, seeing that this ruling can be derived from the text 'whom the judges shall condemn',[6] which implies 'not him who condemns himself'? It must be to show that if a man confesses to liability for a fine, even though witnesses subsequently appear [and testify to the same effect], there would be exemption. Samuel, however, might say to you that the doubling of the verb in the verse 'If to be found it be found' was required to make the thief himself subject to double payment, as taught at the School of Hezekiah.[7] Rab objected to [this view of] Samuel [from the following Baraitha:][8] If a thief notices that witnesses are preparing themselves to appear[9] and he confesses 'I have committed the theft [of an ox] but I neither slaughtered it nor sold it', he would not have to pay anything but the principal?[10] — He [Samuel] replied: We are dealing here with a case where, for instance, the witnesses drew back from giving any evidence in the matter. But since it is stated In the concluding clause: 'R. Eleazar son of R. Simeon says that the witnesses should still come forward and testify,' must we not conclude that the first Tanna maintained otherwise?[11] — Samuel thereupon said to him: Is there at least not R. Eleazar son of R. Simeon who concurs with me? I follow R. Eleazar son of R. Simeon. Now according to Samuel, Tannaim certainly differed in this matter. Are we to say that also according to Rab Tannaim differed in this?[12] — Rab might rejoin: My statement can hold good even according to R. Eleazar son of R. Simeon. For R. Eleazar son of R. Simeon would not have expressed the view he did there save for the fact that the thief made his confession because of his fear of the witnesses, whereas here he confessed out of his own free will, even R. Eleazar son of R. Simeon might have agreed [that the confession would bar any pending liability].[13]

R. Hamnuna stated: It stands to reason that the ruling of Rab was confined to the case of a thief saying, 'I have committed a theft' and witnesses then coming [and testifying] that he had indeed committed the theft, in which case he is quit, as he had [by the confession] made himself liable at least for the principal.[14] But if he first said, 'I did not commit the theft,' but when witnesses appeared and declared that he did commit the theft, he turned round and said, 'I even slaughtered [the stolen sheep or ox] or sold it,' and witnesses subsequently came [and testified] that he had indeed slaughtered it or sold it, he would be liable to pay [four-fold or five-fold payment], as [by this confession][15] he was trying to exempt himself from any liability whatever. [But] Raba said: I got the better[16] of the elders of the School of Rab,[17] for R. Gamaliel [by confessing the putting out of his slave's eye] was but exempting himself from any liability, and yet when R. Hisda stated this case [as a proof] against R. Huna[18] he was not answered thus.

It was similarly stated.[19] R. Hiyya b. Abba said in the name of R. Johanan, [that if a thief confessed] 'I have committed a theft', and witnesses then came along [and testified] that he had indeed committed the theft, he would be exempt, as in this case he had [by the confession] made himself liable at least for the principal; for where he had first said 'I did not commit the theft', but when witnesses appeared and declared that he did commit the theft he again came and said, 'I even slaughtered [the stolen sheep or ox] or sold it, and witnesses again came and testified that he had indeed slaughtered it or sold it, he would be liable to pay [four-fold or five-fold payment], as by his confession he was but exempting himself from any liability whatever. R. Ashi said: [Texts from] our Mishnah and the [above] Baraitha tend likewise to prove this distinction. From our Mishnah [the proof is] as we have learnt: IF THE THEFT [OF AN OX OR SHEEP] WAS TESTIFIED TO BY TWO WITNESSES, WHEREAS THE SLAUGHTER OR SALE OF IT WAS TESTIFIED TO BY

ONLY ONE WITNESS OR BY THE THIEF HIMSELF, HE WOULD HAVE TO MAKE DOUBLE PAYMENT BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS. Now, what is the need for the words. IF THE THEFT WAS TESTIFIED TO BY TWO WITNESSES? Why not simply state: 'If the theft and slaughter or [theft and] sale were testified to by one witness or by the thief himself, he would not have to pay anything but the principal alone'?

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(1) Which implies that even if witnesses would subsequently appear and testify to the same effect, it would still be of no avail, thus agreeing with the view of Rab.

(2) As the text runs in the former teaching and which implies that if witnesses should come and testify for the slave he would obtain his freedom, in apparent contradiction to the view of Rab.

(3) [Where a confession is not regarded in the eye of the law as legal so as to bar subsequent evidence.]

(4) Ex. XXII. 3.

(5) V. supra 64b.

(6) Ex. XXII, 8.

(7) Supra p. 370.

(8) Cf. Shebu. VIII, 4, and Tosaf. infra 75b, s.v. ברייתא .

(9) Before the court to give evidence against him.

(10) As confession to the liability for a fine carries exemption from the fine.

(11) I.e., that the evidence of the witnesses would be of no avail.

(12) And that R. Eleazar was against him.

(13) And no witnesses should be permitted to give evidence in the matter.

(14) Which proves that the confession was genuine.

(15) Which was thus not a genuine confession.

(16) In this matter.

(17) As R. Hamnuna was of the elders of the School of Rab; v. Sanh. 17b. [Var. lec.:. Raba said to him (to R. Hamnuna). You have got the better of the elders of the school of Rab (viz. R. Huna), v. Tosaf.]

(18) [I.e., against the ruling R. Huna reported in the name of Rab.]

(19) In support of the distinction made by R. Hamnuna.

Talmud - Mas. Baba Kama 75b

Is not the purpose to indicate to us that it was only where the theft was testified to by two witnesses and the slaughter by one or by the thief himself, in which case it was not the confession[1] which made him liable for the principal, that we argue that confession by the thief himself is meant to be analogous to the testimony borne by one witness? So that just as in the case of testimony by one witness, as soon as another witness appears and joins him liability would be established, so also in the case of confession by the thief himself, if witnesses subsequently appear and testify to the same effect he would become liable. If, however, the very theft and slaughter [or theft and] sale were testified to by one witness or by the thief himself, in which case the confession made him liable at least for the principal, we would not argue that confession by the thief himself should be analogous to the testimony borne by one witness.[2] [The proof] from the Baraitha [is] as it was taught: If a thief notices that witnesses are preparing themselves to appear and he confesses, 'I have committed a theft [of an ox] but I neither slaughtered it nor sold it' he would not have to pay anything but the principal.[3] Now, what need is there for the words, 'and he confessed, I have committed the theft [of an ox] but I neither slaughtered it, nor sold it'? Why not simply state 'I have committed the theft [of an ox], or I slaughtered it or I sold it'? Is not the purpose to indicate that it was only where the thief confessed, 'I have committed the theft [of an ox]'. where it was he who by confession made himself liable for the principal, that he would be exempt from the fine, whereas if he had stated 'I have not committed any theft',and when witnesses arrived and testified that he did commit a theft, he turned round and confessed 'I have even slaughtered it or sold it', and witnesses subsequently appeared [and testified] that he had indeed slaughtered it or sold it, in which case it was not he who made

himself liable for the principal, he would have to be liable for the fine, thus proving that a confession merely regarding the act of slaughter should not be considered a confession [to bar the pending liability of a fine]![4] — It may, however, be said that this is not so,as the purpose [of the apparently superfluous words] might have been to indicate to us the very ruling that since he confessed 'I have committed the theft [of an ox or a sheep]' even though he still said 'I have neither slaughtered it nor sold it' and witnesses appeared [and testified] that he did slaughter it or sell it, he would nevertheless be exempt from any fine, the reason being that the Divine Law says: 'Five-fold or four-fold payment[5] respectively, but not 'four-fold or three-fold payment'[6] respectively.

Shall we say that the following Tannaim differed on this point? [For it has been taught:] Where two witnesses testified to a theft [of an ox] and other two witnesses subsequently gave evidence that the thief had slaughtered it or sold it, and the witnesses regarding the theft were proved zomemim,[7] since the testimony became annulled regarding a part of it,[8] it would become annulled regarding the whole of it.[9] But if [only] the witnesses to the slaughter were proved zomemim, he would have to make double payment,[10] whereas they[11] would [have to pay him three-fold payment as restitution].[12] In the name of Symmachus it was, however, stated that they would have to make double payment,[13] whereas he would have to make three-fold payment for an ox and double payment for a ram.[13] Now, to what did Symmachus refer? It could hardly be to that of the opening clause,[14] for would Symmachus not agree that a testimony becoming annulled regarding a part of it should become annulled regarding the whole of it? If again he referred to the concluding clause,[15] did the Rabbis not state correctly that the thief should make double payment while the false witnesses would have to make three-fold payment? It must therefore be that there was another point at issue between them,[16] viz., where a pair of witnesses came and said to him: 'You have committed the theft [of an ox]'. and he said to them: 'It is true that I have committed the theft [of an ox] and even slaughtered it or sold it, but it was not in your presence that I committed the theft', and he in fact brought witnesses who proved an alibi[17] against the first witnesses that it was not in their presence that he committed the theft, while the plaintiff brought further witnesses who gave evidence against the thief that he had committed the theft [of an ox] and slaughtered it or sold it. They would thus differ as to the confession regarding the slaughter, the Rabbis holding that though in regard to the theft it was certainly because of the witnesses[18] that he confessed, the confession regarding the slaughter[19] should have the usual effect of confession and exempt him from the fine, whereas Symmachus held that since regarding the theft it was because of witnesses that he confessed, the confession of the slaughter should not have the [full] effect of a confession [as it did not tend to establish any civil liability], so that the first witnesses who were found zomemim[20] would have to pay him[21] double, whereas he[21] would have to pay three-fold for an ox and double for a ram![22] — R. Aha the son of R. Ika said: No, all might agree that the confession regarding the slaughter would not have the [exempting] effect of a confession, and where they differ here is regarding evidence given by witnesses whom you would be unable to make subject to the law applicable to zomemim, as e.g., where two witnesses came and said to him: 'You have committed the theft [of the ox]', and he said to them: 'I did commit the theft [of the ox] and even slaughtered it or sold it; it was, however, not in your presence that I committed the theft, but in the presence of so-and-so and so-and-so,' and he in fact brought witnesses who proved an alibi against the first witnesses, that it was not in their presence that he committed the theft, but so-and-so and so-and-so [mentioned by the thief] came and testified against him that he did commit the theft [of the ox] and slaughtered it or sold it. The point at issue in this case would be as follows: The Rabbis maintain that this last evidence was given by witnesses whom you would [of course] be unable to make subject to the law applicable to zomemim [as they were pointed out by the thief himself],[23] and any evidence given by witnesses whom you would be unable to make subject to the law applicable to zomemim could not be considered valid evidence,[24] whereas Symmachus maintained that evidence given by witnesses whom you would be unable to make subject to the law applicable to zomemim would be valid evidence.[25] But is it not an established tradition with us[26] that any evidence given by witnesses whom you would be unable to make subject to the law applicable to zomemim could not be considered valid evidence? — This is

the case only where the witnesses do not know the exact day or the exact hour of the occurrence alleged by them,[27] in which case there is in fact no evidence at all, whereas here [your inability to make them subject to the law applicable to zomemim was only because] the thief himself was in every way corroborating their statements.

The Master stated: 'They[28] would have to make double payment. But since in this case the thief admitted that he did commit the theft, so that he would surely be required to pay the principal, [why should the witnesses proved zomemim have to make double payment?][29] — Said R. Eleazar in the name of Rab: Read:

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(1) But the testimony of two witnesses.
(2) But a confession of this nature bars subsequent evidence in accordance with the view of Rab.
(3) Shebu. 49a.
(4) Supporting thus the distinction made by R. Hamnuna.
(5) Ex. XXI, 37.
(6) I.e., since he confessed regarding the theft, in which case he will only have to pay the principal, since the doubling of it is a fine, he will not be subject to the fine of slaughter or sale even when denied by him and testified to by two witnesses, on account of the fact that the payment in this case would have to be not five-fold but four-fold for an ox and not four-fold but three-fold for a sheep.
(7) V. Glos.
(8) I.e., regarding the theft.
(9) I.e., regarding also the slaughter or sale, for surely if there was no theft there, no slaughter and sale of a stolen animal could have been there.
(10) For the theft which was testified to by the other set of witnesses.
(11) The second set proved zomemim.
(12) In accordance with Deut. XIX, 19.
(13) V.. the discussion later on.
(14) Where the witnesses to the theft were proved zomemim.
(15) Where the witnesses to the slaughter or sale were proved zomemim.
(16) I.e., Symmachus and the Rabbis.
(17) V. p. 421, n. 1.
(18) I.e., the first set of witnesses.
(19) Which was not made through any fear.
(20) Regarding the theft.
(21) The thief.
(22) I.e., the prescribed fine for the slaughter or sale. This therefore proves that the Rabbis maintained that a confession which does not involve the liability of the principal should still have the effect of a confession, in contradiction to R. Hamnuna, whereas Symmachus would maintain that it should be devoid of the absolute exempting effect of a confession to liability for a fine.
(23) Against whom they gave evidence.
(24) [The thief would accordingly be exempt from the fine for the slaughter and sale of which he stands convicted, as it were on his own evidence.]
(25) [Hence the thief, on his part. would have to pay the exclusive fine for the slaughter or sale.]
(26) Cf. Sanh. 41a and 78a.
(27) Cf. Sanh. 40a.
(28) I.e., the witnesses who gave evidence regarding the theft and were proved zomemim.
(29) They should have to pay no more than the amount of a single payment.

the payment of doubling.[1]

IF HE STOLE IT AND CONSECRATED IT [TO THE TEMPLE] AND AFTERWARDS SLAUGHTERED IT OR SOLD IT, HE WOULD HAVE TO MAKE DOUBLE PAYMENT BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS. I would here Say: I grant you that he should not be liable for the slaughter, as when he slaughtered it, it was a consecrated animal which he slaughtered and he did not slaughter that which belonged to the owner. But why should he not be made liable for the very act of consecration?[2] For indeed what difference does it make to me whether he disposed of it to a private owner or whether he disposed of it to the ownership of Heaven? — This represents the view of R. Simeon who said[3] that consecrated objects, the loss of which the consecrator would have to make good, should be considered as if still remaining in the possession of the consecrator.[4] But since the concluding clause gives the view of R. Simeon,[3] the view stated in the previous clause is surely not that of R. Simeon. [Why then no liability for the act of consecration?] — We must therefore be dealing here with a case of minor sacrifices[5] and in accordance with R. Jose the Galilean, who declared[6] that minor sacrifices are private property and thus still remain in the possession of the consecrator. But what would be the law [where the thief consecrated the stolen sheep or ox] for most holy sacrifices?[7] Would he then have to make four-fold or five-fold payment for the act of consecration? If so, why read in the opening clause: 'If he steals and slaughters and consecrates it, he has to make four-fold or five-fold payment'?[8] Why not make the distinction in stating the very case itself: 'This ruling applies only in the case of minor sacrifices, but where he sanctified it for the most holy sacrifices he would have to make four-fold or five-fold payment [for the very act of consecration]'? — We must therefore still say that there is no difference whether [the animal was consecrated for the] most holy sacrifices or merely for minor sacrifices, and to the difficulty raised by you. 'What difference does it make to me whether he disposed of it to a private owner or whether he disposed of it to the ownership of Heaven', [it might be said in answer that] where he disposed of it to a private owner it was previously the ox of Reuben and has now become the ox of Simeon,[9] whereas where he disposed of it to the ownership of Heaven it was previously the ox of Reuben and still remains the ox of Reuben.[10]

R. SIMEON HOWEVER SAYS: IN THE CASE OF CONSECRATED CATTLE THE LOSS OF WHICH THE OWNER HAS TO MAKE GOOD, THE THIEF HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT, BUT IN THE CASE OF THOSE THE LOSS OF WHICH THE OWNER HAS NOT TO MAKE GOOD, THE THIEF IS EXEMPT. I would here say: Granted that in the opinion of R. Simeon it makes no difference whether he disposed of it to a private owner or whether he disposed of it to Heaven,[11] has not the text to be transposed [so as to read as follows]: '[For consecrating the stolen animals as] sacrifices the loss of which he would have to make good the thief should be exempt, as they have not yet been removed altogether from his possession, whereas [for consecrating them as] sacrifices the loss of which he would not have to make good he should be liable, as in this case they have already been removed from his possession'?

It may be said that R. Simeon referred to a different case altogether, and the text [of the Mishnah] is to be read thus: If a man misappropriates an article [already stolen] in the hands of a thief he has not to make four-fold and five-fold payments. So also he who misappropriates a consecrated object from the house of the owner is exempt, the reason being that [the words] 'and it be stolen out of the man's house'[12] imply 'but not from the possession of the sanctuary'. R. Simeon, however, says: In the case of consecrated objects, the loss of which the owner has to make good, the thief is liable to pay, the reason being that to this case [the words of the text] 'and it be stolen out of the man's house'[12] [apply].[13] But in the case of those the loss of which the owner has not to make good, the thief is exempt, as we cannot apply the words 'and it be stolen out of the man's house'. Let us see. We have heard R. Simeon say[14] that a slaughter through which the animal would not ritually become fit for food could not be called slaughter [in the eye of the law]. Is the slaughter [outside the Temple precincts] of sacrifices not similarly a slaughter which would not render the animal fit for food?[15] [Why then should there be liability for slaughtering them thus?] — When R. Dimi arrived[16] he stated

on behalf of R. Johanan [that the liability would arise] if the thief slaughtered the sacrifices while unblemished within the precincts of the Temple in the name of the owner. But has not the principal thus been restored to the owner [since the sacrifice produced atonement for him]?[17] — Said R. Isaac b. Abin: We presume that the blood was poured out [and thus not sprinkled upon the altar, so that no atonement was effected for the owner].[18] When Rabin arrived[16] he said on behalf of R. Johanan that the liability would only be where he slaughtered the sacrifices while unblemished within the precincts of the Temple but not in the name of the owner,[19]

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(1) I.e., a single payment.

(2) As if he would have sold it.

(3) Mishnah supra p. 427.

(4) As they are still under his charge and the transfer was thus incomplete.

(5) Such as peace. offerings and thank-offerings and the like.

(6) Supra p. 50.

(7) Such as burnt-offerings, sin-offerings and the like.

(8) Supra p. 403.

(9) I.e., the transfer from the thief to the purchaser was complete in every respect.

(10) I.e., the transfer from the thief to the Temple was not so complete. as the sacrifice is still credited to him.

(11) So that for the very act of sanctification the thief will become liable for the fine as if he had sold the animal.

(12) Ex. XXII, 6.

(13) For since the loss of these consecrated objects would involve an outlay of money on the part of the original owner, they are in this respect in his ownership as they are under his charge; cf. supra p. 410.

(14) Supra p. 408.

(15) Cf. Lev. XVII. 3-9; Hul. 78a-80b.

(16) From Palestine to Babylon.

(17) Why then should liability for the fine be attached?

(18) Cf. Zeb. 25a.

(19) In which case the owner derives no benefit, as the sacrifice is not credited to him though otherwise it is perfectly valid; cf. Zeb. I,1.

Talmud - Mas. Baba Kama 76b

whereas Resh Lakish said that there will be liability also if the thief slaughtered blemished sacrifices[1] outside the precincts of the Temple.[2] R. Eleazar was astonished at the statement of R. Johanan: Is it the slaughter that renders the sacrificed animal permissible for food?[3] Is it not the sprinkling of the blood that renders it permissible to be partaken of?[4] So also he was astonished at the statement of Resh Lakish: Is it the slaughter that renders the sacrificed animal permissible for food?[5] Is it not its redemption[6] that renders it permissible for food?[5] — It, however, escaped his memory that R. Simeon has laid down that whatever is ready to be sprinkled is considered as if it has already been sprinkled, and whatever is designated for being redeemed is considered as if it had already been redeemed[7] . 'Whatever is ready to be sprinkled is considered as if it had already been sprinkled' — as taught: R. Simeon says: There is nothar[8] which may be subject to defilement in accordance with the law applicable to the defilement of food,[9] but there is also nothar which is not subject to defilement in accordance with the law applicable to the defilement of food. How is this so? If it remains over night before the sprinkling of the blood,[10] it would not be subject to become defiled in accordance with the law applicable to the defilement of food,[11] but if after the sprinkling of blood,[12] it would be subject to become defiled in accordance with the law applicable to the defilement of food.[13] Now, it is an accepted tradition that the meaning of 'before sprinkling' is 'without it first having become fit to be sprinkled' and of 'after sprinkling', 'after it became fit for sprinkling'. Hence, 'where it remained overnight without having first become fit for sprinkling' could only be where there was no time during the day to sprinkle it, such as where the sacrifice was slaughtered close upon sunset, in which case it would not be subject to become defiled in accordance

with the law applicable to the defilement of food; and 'where it remained over night after it had already become fit for sprinkling,' [could only be] where there was time during the [previous] day to sprinkle it, in which case it would be subject to become defiled in accordance with the law applicable to the defilement of food.[14] This proves that whatever is ready to be sprinkled is considered as if it had already been sprinkled.[15] 'Whatever is designated for being redeemed is considered as if it had already been redeemed,' — as taught: 'R. Simeon says:

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(1) [I.e., an animal which became afflicted with a lasting blemish before it was dedicated (Rashi).]

(2) As these may be slaughtered outside the precincts of the Temple, even without being first redeemed.

(3) In the case of unblemished sacrifices slaughtered in the precincts of the Temple.

(4) It accordingly follows that the slaughter as such did not at that time render the animal ritually fit for food.

(5) In the case of blemished sacrifices slaughtered outside the precincts of the Temple.

(6) Subsequent to the slaughter thereof. Cf. Hul. 84a.

(7) So that the slaughter is considered fit; cf. Pes. 13b; Men. 79b and 102b.

(8) Lit., 'That which remaineth'; cf. Ex. XII, 10 and Lev. XIX, 6. denoting portions of sacrifices that had not been eaten or sacrificed upon the altar within the prescribed time and could then no more be sacrificed upon the altar or partaken of or put to any use but had to be burnt in a special place.

(9) Cf. Lev. XI, 34.

(10) In which case the portions have never been allowed to be partaken of.

(11) As according to Bek. 9b, food cannot become defiled unless it was permitted to be made use of as food.

(12) It was left over, in which case there was a time when the portions were ritually fit as food.

(13) Tosef. 'Uk. III, 7' in accordance with Lev. XI, 34.

(14) V. p. 439. n. 9.

(15) And made the sacrifice as if ritually fit to be partaken of.

Talmud - Mas. Baba Kama 77a

The red heifer is subject to become defiled in accordance with the law applicable to the defilement of food,[1] since at one time it had ritual fitness to be used for food',[2]

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(1) Cf. Lev. XI, 34.

(2) Tosef. Par. VI, 9; Shebu. 11b.

Talmud - Mas. Baba Kama 77b

and Resh Lakish observed that R. Simeon used to say that the red heifer could be redeemed even after [it was slaughtered and] placed upon the wood for burning[1] thus proving that whatever has the possibility of being redeemed[2] is considered as if it had already been redeemed.

We can understand why R. Johanan did not give the same answer [to the difficulty[3] propounded] as Resh Lakish,[4] as he was anxious to explain the ruling [of our Mishnah] even in the case of unblemished sacrifices. But why did Resh Lakish not give the same answer as R. Johanan?[5] — He could say: [Scripture says.] 'And he slaughtered it or sold it'[6] implying that it was only an animal [subject to this law] in the case of a sale that could be [subject to it] in the case of slaughter, whereas an animal which would not be [subject to this law] in the case of sale could similarly not be [subject to it] in the case of slaughter either. Now, in the case of these unblemished sacrifices, since if the thief had sold the sacrifices it would not have been a sale [to all intents and purposes],[7] they could not be [subject to this law even] when they were slaughtered. R. Johanan and Resh Lakish indeed followed their own lines of reasoning [elsewhere]. For it was stated: If a thief sells a stolen ox which is trefa,[8] according to R. Simeon,[9] R. Johanan said that he would be liable, whereas Resh Lakish said that he would be exempt. R. Johanan. who said that he would be liable, held that though this ox could not be subject to the law of slaughter it could yet be subject to the law of sale, whereas Resh Lakish who said that he would be exempt maintained that since this ox could not be subject to the law of slaughter, it could similarly not be subject to the law of sale either.

R. Johanan objected to [the view of] Resh Lakish [from the following]: If he stole a hybrid animal and slaughtered it, or a trefa animal and sold it, he would have to make double payment. Now, does not this ruling follow the view of R. Simeon,[10] thus proving that though this ox would not be subject to the law of slaughter it could nevertheless be subject to the law of sale? — He replied: No; this is the view of the Rabbis .[11] But if this is the view of the Rabbis, why should a trefa ox be subject only to the law of sale and not to the law of slaughter? — You say then that it is the view of R. Simeon.[9] Why then should a hybrid animal be subject only to the law of slaughter and not to that of sale? We must say therefore that though slaughter is mentioned[12] the same law was meant to apply also to sale; so also according to the Rabbis, though sale is stated in the text,[13] the same law was meant to apply to slaughter.[14] R. Johanan, however, might say that this does not follow. It is true that if you say that the ruling follows R. Simeon, there is no difficulty: since it was necessary to state liability regarding trefa in the one case [of sale] only, it states liability regarding a hybrid animal also in the one case [of slaughter] only. But if you say that this ruling follows the Rabbis, why not join them together, and state thus: 'If the thief misappropriated a hybrid animal and a trefa [sheep or ox] and slaughtered them or sold them, he would have to make four-fold or five-fold payment'! This indeed is a difficulty.

[But why should there be liability for four-fold or five-fold payment in the case of] a hybrid animal since Scripture says 'sheep'.[15] and Raba [elsewhere] said that this[16] is a locus classicus for the rule that wherever it says 'sheep', the purpose is to exclude a hybrid animal? — This case here is different, as Scripture says 'or',[17] implying the inclusion of a hybrid animal. [Does this mean to say that] the term 'or' everywhere implies an amplification? Was it not taught:[18] 'When a bullock or a

sheep:[19] this excepts a hybrid; or a goat:[19] this excepts an animal looking like a hybrid'? — Said Raba: The term 'or' in the one case is expounded in accordance with the subject matter of the verse, and the term 'or' in the other case is similarly expounded in accordance with the subject matter of that verse. Here in connection with theft where it is written 'an ox or a sheep', since it is impossible to produce a hybrid from the union of these two,[20] the term 'or' should be expounded to include[21] a hybrid [of a different kind], whereas in connection with sacrifices where it is written 'a sheep or a goat',[19] where it is possible for you to produce a hybrid from their union,[22] the term 'or' should rightly be taken to exclude[23] [the hybrid].

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(1) And this is the ritual fitness as food.

(2) Though it was in fact never redeemed.

(3) As to how could the slaughter in the case of a sacrifice render the stolen animal ritually fit for food and thus make the thief liable for the fine.

(4) Who stated that the animal was blemished and slaughtered outside the precincts of the Temple.

(5) That an unblemished animal was slaughtered in the precincts of the Temple but not in the name of the owner.

(6) Ex. XXI, 37.

(7) Cf. Pes. 89b.

(8) V. Glos.

(9) Who in the case of slaughtering such an animal maintains exemption; v. supra p. 403.

(10) For if otherwise, why not state slaughter also in the case of trefa.

(11) According to whom even for slaughter in the case of trefa there is liability for the fine (supra p. 403).

(12) In the case of a hybrid animal.

(13) Dealing with trefa.

(14) [But according to R. Simeon a trefa is not subject even to the law of sale.

(15) In Ex. XXI, 37.

(16) The word 'sheep' in Lev. XXII, 28; v. Hul. 78b.

(17) Ex. XXI, 37.

(18) Hul. 38b.

(19) Lev. XXII, 27.

(20) As an ox could not possibly be the father of the offspring of a sheep.

(21) For if to exclude there was no need for this 'or'.

(22) As a sheep could be the father of the young of a goat.

(23) For if to include there was no need for this 'or' to be inserted.

Talmud - Mas. Baba Kama 78a

But in connection with sacrifices it is also written 'a bullock or a sheep', in which case it is impossible for you to exclude a hybrid born from these two, why then should we not employ the term 'or' to include [a hybrid of a different kind]? — Since the term 'or' in the later phrase[1] is to 'be employed to exclude, the term 'or' in the earlier phrase[2] should similarly be employed to exclude. But why not say on the contrary that, as the term 'or' in the earlier phrase has to be employed to amplify, so also should the term 'or' in the later phrase? — Would this be logical? I grant you that if you say that the term 'or' meant to exclude, then it would be necessary to have two [terms 'or'] to exclude, for even when a hybrid has been excluded, it would still be necessary to exclude an animal looking like a hybrid. But if you say it is meant to amplify, why two amplifications [in the two terms 'or']? For once a hybrid is included, what question could there be of an animal looking like a hybrid. To what halachah then would the statement made by Raba refer, that this is a locus classicus for the rule that wherever it says 'sheep'. the purpose is to exclude a hybrid? If to sacrifices, is it not explicitly said: 'A bullock or a sheep which excepts a hybrid' ? If to the tithes [of animals] , is not the term 'under'[3] compared to 'under' used in connection with sacrifices [making it subject to the same law]? If to a firstling, is the verb expressing 'passing'[4] not compared to 'passing'[3] used in connection with tithe? Or again we may say, since where the animal only looks like a hybrid you say

that it is not [subject to the law of firstling], since it is written: 'But the firstling of an ox'[5] [which implies that the rule holds good] only where the parents were of the species of 'ox' and the firstling was of the species of 'ox', what question can there be regarding a hybrid itself? — The statement made by Raba must therefore have referred to the firstling of an ass,[6] as we have learnt:[7] It can not be redeemed either by a calf or by a wild animal or by a slaughtered sheep or by a trefa sheep or by a hybrid or by a koy.[8] But if we accept the view of R. Eleazar, who allows redemption with a hybrid sheep, as we have learnt: R. Eleazar allows the redemption to be made with a hybrid, for it is a sheep,[7] to what halachah [can we refer the statement of Raba] ? — R. Eleazar might reply that the statement made by Raba is to teach [the prohibition of] an unclean animal[9] born from a clean animal[10] which became pregnant from an unclean animal [being forbidden as food].[11] this opinion not being in accordance with R. Joshua. for R. Joshua derived[12] this prohibition from the verse 'the sheep of sheep and the sheep of goats'.[13] which implies that unless the father was a 'sheep' and the mother a 'sheep' [the offspring is forbidden for food]. But could a clean animal become pregnant from an unclean animal? — Yes, since it is known to us

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(1) Dealing with 'sheep' and 'goat'.

(2) Where 'bullock' and 'sheep' are mentioned.

(3) Lev. XXVII, 32.

(4) Ex. XIII, 12.

(5) E.V. 'a cow'. Num. XVIII. 17.

(6) Which has to be redeemed by a sheep (Ex. XIII. 13). so that a hybrid would therefore not be eligible.

(7) Bek. 1,5.

(8) I.e., a kind of an antelope about which there was a doubt whether it belongs to the species of cattle or to that of beasts of the forest. [V. Lewysohn. Zoologie, p. 115 ff. who identifies it with the Gr. **, 'goat-stag' mentioned by Plinius.]

(9) E.g.. a swine; v. Lev. XI, 7.

(10) Such as a sheep.

(11) Such as where a cow became pregnant from a horse and gave birth to a foal or where a sheep became pregnant from a swine and gave birth to a swine.

(12) Cf. Bek. 7a.

(13) Deut. XIV, 4.

Talmud - Mas. Baba Kama 78b

that it could become pregnant from an animal with uncloven hoofs, [which though born from parents belonging to the species of ox, is considered unclean] in accordance with the view of R. Simeon.[1]

Raba asked: [If one vowed.] 'I take upon myself to sacrifice a burnt — offering.'[2] and he set aside an ox and somebody came and stole it , should the thief be entitled to free himself[3] by paying for a sheep, if we follow the Rabbis, or even for a burnt-offering of a bird, if we follow R. Eleazar b. Azariah, as we have learnt:[4] [If one vowed.] 'I take it upon myself to bring a burnt-offering.' he may bring a sheep;[5] R. Eleazar b. Azariah says that he may even bring a turtle — dove or a young pigeon?[6] What should be the legal position? Shall we say that since he undertook to bring something called a burnt-offering [the thief may be entitled to restore the minimum burnt-offering], or perhaps the donor might be entitled to say to him: 'I am anxious to do my duty in the best manner possible'? After he put the question, on second thoughts he decided that the thief might free himself by paying a sheep, according to the view of the Rabbis, or even a burnt-offering of a bird, according to the view of R. Eleazar b. Azariah. R. Aha the son of R. Ika taught this as a definite ruling, [as follows]: Raba said: [If one vowed.] 'I take it upon myself to sacrifice a burnt-offering.' and he set aside an ox and somebody came and stole it, the thief may free himself by paying for a sheep, if we follow the Rabbis, or even for a burnt-offering of a bird, if we follow R. Eleazar b. Azariah.

MISHNAH. IF HE SOLD [THE STOLEN SHEEP OR OX] WITH THE EXCEPTION OF ONE

HUNDREDTH PART OF IT,[7] OR IF HE HAD SOME PARTNERSHIP IN IT[8] [BEFORE HE STOLE IT] OR IF HE SLAUGHTERED IT AND IT BECAME NEBELAH[9] UNDER HIS HAND, OR IF HE STABBED IT OR TORE LOOSE [THE WIND PIPE AND GULLET BEFORE CUTTING],[10] HE WOULD HAVE TO MAKE DOUBLE PAYMENT[11] BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS.

GEMARA. What is meant by 'with the exception of one hundredth part of it'? — Rab said: With the exception of any part that would be rendered permissible [for food] together with the bulk of the animal through the process of slaughter.[12] Levi, however, said: With the exception even of its wool. It was indeed so taught in a Baraitha: 'With the exception of its wool.'

An objection was raised [from the following]: 'If he sold it with the exception of its fore-paw, or with the exception of its foot, or with the exception of its horn, or with the exception of its wool, he would not have to make four-fold and five-fold payments. Rabbi, however, says: [If he reserved for himself] anything the absence of which would prevent a [ritual] slaughter, he would not have to pay four-fold and five-fold payments, but [if he reserves] anything which is not indispensable for the purposes of [ritual] slaughter[13] he would have to make four-fold or five-fold payment. But R. Simeon b. Eleazar says: If he reserved its horn he would not have to make four-fold or five-fold payment; but if he reserved its wool he would have to make four-fold or five-fold payment'. This presents no difficulty to Levi, as he would concur with the first Tanna, but with whom does Rab concur?[14] — It may he said that Rab concurs with the following Tanna, as taught: R. Simeon b. Eleazar said:[15] 'If he sold it with the exception of its fore-paw or with the exception of its foot he would not have to make four-fold or five-fold payment. But if with the exception of its horn or with the exception of its wool he would have to make four-fold and five-fold payments'. What is the point at issue between all these Tannaim? — The first Tanna held that [to fulfil the words] 'and he slaughter it'[16] we require the whole of it, as also [to fulfil the words] 'and he sell it' we require the whole of it.[17] Rabbi, however, held that 'and he slaughter it' refers only to those parts the absence of which would render the slaughter ineffective, excluding thus anything which has no bearing upon the slaughter, while 'and he sell it' is of course analogous to 'and he slaughter it'. R. Simeon b. Eleazar, on the other hand, maintained that the horn not being a part which is usually cut off could be reckoned as a reservation, so that he would not have to make four-fold and five-fold payments, whereas the wool of the animal being a part which is usually shorn off could not be reckoned as an reservation, and he would thus have to make four-fold or five-fold payment. But the other Tanna of the School of R. Simeon b. Eleazar maintained that its fore-paws or feet which require slaughter [to render them permissible] form a reservation, and he would not have to pay four-fold and five-fold payments, whereas its horns or its wool, as they do not require slaughter [to render them permissible] would not constitute a reservation. But does R. Simeon b. Eleazar not contradict himself? — Two Tannaim report differently the view of R. Simeon b. Eleazar.

Our Rabbis taught: He who steals a crippled, or a lame, or a blind [sheep or ox], and so also he who steals an animal belonging to partners [and slaughters it or sells it] is liable [for four-fold and five-fold payments]. But if partners committed a theft they would be exempt.[18] But was it not taught: 'If partners committed a theft, they would be liable'?[19] — Said R. Nahman: This offers no difficulty, as the former statement deals with a partner stealing from [the animals belonging to him and] his fellow — partner, whereas the latter states the law where a partner stole from outsiders.[20] Raba objected to [this explanation of] R. Nahman [from the following]: 'Lest you might think that if a partner steals from [the animals belonging to himself and to] his fellow — partner, or if partners commit the theft, they should be liable, it is definitely stated, 'And slaughter it',[21] showing that we require the whole of it, which is absent here' — [Does this not prove that partners stealing from outsiders are similarly exempt?] — R. Nahman therefore said: The contradiction [referred to above] offers no difficulty, as the statement [of liability] referred to a partner slaughtering[22] with the authorisation of his fellow — partner,[23] whereas the other ruling referred to a partner slaughtering

without the authorization of his fellow-partner.[24]

R. Jeremiah inquired: If the thief sold a stolen animal with the exception of the first thirty days,[25] or with the exception of its work[26] or with the exception of its embryo,what would be the law?[27] If we accept the view that an embryo is [an integral part like] the thigh of its mother,[28] there could be no question that this would be a sure reservation. The question would arise only if we accept the view that an embryo is not like the thigh of its mother. What indeed should be the law? Shall we say that since it is joined to it, it should count as a reservation, or perhaps since it is destined to be separated from it, it should not be considered a reservation? Some state the question thus: [Shall we say that] since it is not like the thigh of its mother, it should not count as a reservation, or perhaps since at that time it requires [the union with] its mother to become permissible for food through the process of slaughter[29] it should be equal to a reservation made in the actual body of the mother? — Let this stand undecided.

R. papa inquired: If the thief after stealing mutilated it and then sold it, what would be the law?[30] Shall we say that [since] all that he stole he did not sell [he should be exempt], or perhaps [since] in what he sold he reserved nothing [for himself he should be liable]? — Let this [also] stand undecided.

Our Rabbis taught: If he stole [a sheep or an ox] and gave it to another person who slaughtered it, or if he stole it and gave it to another person who sold it,

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(1) Cf. Bek. 6b.

(2) In which case he would be responsible for the loss of the sacrifice which he set aside, having to replace it with another sacrifice, and the thief would therefore according to R. Simeon be liable to the donor.

(3) So far as the owner is concerned.

(4) Men. 107a.

(5) Which could also be brought as a burnt offering; cf. Lev. 1,10.

(6) Cf. ibid. 14.

(7) The exemption here is because the sale did not extend to the whole animal.

(8) In which case not the whole act of the sale was unlawful.

(9) V. Glos.

(10) Thus rendering the animal nebelah.

(11) For the act of theft.

(12) This law would thus not extend to a case where the wool or the horns were excepted from the sale.

(13) E.g., the fore-paw.

(14) For he could not follow the views of Rabbi according to whom even where the fore-paw (which is rendered permissible through the process if slaughter) was excepted, the thief would still have to make four-fold or five-fold payment.

(15) According to the tradition if another School, v. discussion which follows.

(16) Ex. XXI, 37.

(17) Without any exception whatever. (5) Where he excepted it from the sale.

(18) Tosef. B.K. VII, 4.

(19) B.M. 8a.

(20) Where there is liability.

(21) Ex. XXI, 37.

(22) An animal stolen by both of them and for which they both have to share the fine for the theft.

(23) And since in this case the law of agency applies even for the commission of a sin (v. supra 71a), they would both have to share the fine for the slaughter too.

(24) In which case the fellow-partner could certainly not be made liable to pay anything for the slaughter nor again the one who slaughtered the animal, since we could not make him liable for the whole of the slaughter, as though he slaughtered the whole of the animal he was a thief but of half of it.

(25) During which period the thief should still retain it.

(26) The vendee may slaughter it forthwith, but any work done by it should be credited to the vendor.

(27) Regarding the payment of the fine.

(28) Cf. Tem. 30b and also supra p. 265.

(29) In accordance with Hul. 74a.

(30) Regarding the payment of the fine.

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or if he stole it and consecrated it, or if he stole it and sold it on credit, or if he stole it and bartered it, or if he stole it and gave it as a gift, or if he stole it and paid a debt with it, or if he stole it and paid it for goods he had obtained on credit, or if he stole it and sent it as a betrothal gift to the house of his father-in-law, he would have to make four-fold and five-fold payments.[1] What is this meant to tell us? [Is not all this obvious?] — The new point lies in the opening clause: 'If he stole [a sheep or an ox] and gave it to another person who slaughtered it', [which implies] that in this case the law of agency has application even for a matter involving transgression.[2] Though in the whole of the Torah [there is] no [case of an] agent entrusted with a matter involving transgression [rendering the principal liable], sin this case an agent entrusted with a matter involving transgression would render his principal liable, the reason being [that Scripture says]: 'And he slaughter it or sell it', implying that just as a sale cannot be effected without the intervention of some other person,[3] so also where the slaughter was effected [by some other person authorised by the thief to do so the thief would be liable]. There is also a new point in the concluding clause: 'Where he stole it and consecrated it', which tells us that it makes no difference whether he disposed of it to a private person or whether he disposed of it to the ownership of Heaven.[4]

MISHNAH. IF HE STOLE [A SHEEP OR AN OX] IN THE PREMISES OF THE OWNERS AND SLAUGHTERED IT OR SOLD IT OUTSIDE THEIR PREMISES, OR IF HE STOLE IT OUTSIDE THEIR PREMISES AND SLAUGHTERED IT OR SOLD IT ON THEIR PREMISES, OR IF HE STOLE IT AND SLAUGHTERED IT OR SOLD IT OUTSIDE THEIR PREMISES, HE WOULD HAVE TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.[5] BUT IF HE STOLE IT AND SLAUGHTERED IT OR SOLD IT IN THEIR PREMISES, HE WOULD BE EXEMPT.[6] IF AS HE WAS PULLING IT OUT IT DIED WHILE STILL IN THE PREMISES OF THE OWNERS, HE WOULD BE EXEMPT,[6] BUT IF IT DIED AFTER HE HAS LIFTED IT UP[7] OR AFTER HE HAD ALREADY TAKEN IT OUT OF THE PREMISES OF THE OWNERS,[8] HE WOULD BE LIABLE.[9] SO ALSO IF HE GAVE IT TO A PRIEST FOR THE REDEMPTION OF HIS FIRST-BORN SON[10] OR TO A CREDITOR, TO AN UNPAID BAILEE, TO A BORROWER, TO A PAID BAILEE OR TO A HIRER, AND AS HE WAS PULLING IT OUT[11] IT DIED WHILE STILL IN THE PREMISES OF THE OWNERS, HE WOUld BE EXEMPT; BUT IF IT DIED AFTER HE HAD LIFTED IT UP OR ALREADY TAKEN IT OUT OF THE PREMISES OF THE OWNERS, HE[12] WOULD BE LIABLE.

GEMARA. Amemar asked: Was the formality of pulling instituted[13] also in the case of bailees[14] or not? — R. Yemar replied: Come and hear: IF HE GAVE IT TO A PRIEST FOR THE REDEMPTION OF HIS FIRST-BORN SON, TO A CREDITOR, TO AN UNPAID BAILEE, TO A BORROWER, TO A PAID BAILEE OR TO A HIRER AND AS HE WAS PULLING IT OUT IT DIED WHILE IN THE PREMISES OF THE OWNERS HE WOULD BE EXEMPT. Now, this means, does it not, that the bailee was pulling it out, thus proving that the requirement of pulling was instituted also in the case of bailees?[15] — No, he rejoined; the thief was pulling it out.[16] But was not this already stated in the previous clause?[17] — There it was stated in regard to a thief stealing from the house of the owners, whereas here it is stated in regard to a thief stealing from the house of a bailee. Said R. Ashi to him [Amemar]: Do not bring such arguments; what difference does it make whether the thief stole from the house of the bailee or from the house of the owners?[18] No; it must

mean that the bailee was pulling it out, thus proving that pulling was instituted also in the case of bailees.[15] This can indeed he regarded as proved.

It was also stated that R. Eleazar said: Just as the Sages instituted pulling in the case of purchasers, so also have they instituted pulling in the case of bailees.[19] It has in fact been taught likewise: Just as the Sages instituted pulling in the case of purchasers, so have they instituted pulling in the case of bailees, and just as immovable property is transferred by the medium of money payment, a deed or possession,[20] so also is the case with hiring which is similarly acquired by the medium of money, a deed or possession. The hire of what? If you say

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(1) Tosef. B.K. VII.

(2) For which cf. supra 71a, so that the principal will be liable to the fine for the act of slaughter committed by his agent. (5) Cf. Kid. 42b and supra 51a.

(3) I.e. the purchaser.

(4) Provided, however, that he did not consecrate it to be sacrificed as an offering upon the altar, in which case the transfer would not he complete as supra 76a, but where the animal was blemished and he consecrated it to become a permanent asset of the Temple treasury (Tosaf.).

(5) For as soon as he removed it from the premises of the owners the act of theft became complete.

(6) As in this case the theft has never become complete.

(7) As by lifting up possession is transferred even while in the premises of the owner; cf. Kid. 25b.

(8) By the act of pulling possession is not transferred unless the animal has already left the premises of the owners.

(9) For as soon as the animal came into the possession of the thief the theft became complete.

(10) I.e., for the five shekels; v. Num. XVIII. 16.

(11) V. the discussion in Gemara.

(12) The thief.

(13) As it was instituted in the case of purchasers for which cf. B.M. IV. 1 and 47b.

(14) So that the act of pulling would be essential for making the contract of bailment complete.

(15) So that by the act of pulling carried out by the bailee the contract of bailment became complete and the animal could thus be considered as having been transferred from the possession of the owner to that of the thief represented by the bailee who acted on his behalf.

(16) After the owner handed over the animal to any one of those enumerated in the Mishnah.

(17) That the act of pulling is one of the requirements essential to make the theft complete.

(18) Why then deal with them separately.

(19) B.M. 99a.

(20) Cf. Kid. 27a.

the hire of movables, are movables transferred by a deed?[1] — Said R. Hisda: The hire of immovable property.

R. Eleazar stated: If a thief was seen hiding himself in forests [where flocks pasture] and slaughtering or selling [there sheep or oxen], he would have to make four-fold or five-fold payment. But why so, since he did not pull the animal?[2] — Said R. Hisda: We suppose that he struck it with a stick [and thus drew it towards himself]. But I would still ask, since he was seen doing this [publicly], should he on this account not be [subject to the law applicable to] a robber [who has not to pay any fines]?[3] — Since [at the same time] he was hiding himself from the public he is [subject to the law applicable to] a thief.[4]

How then would you define a robber? — Said R. Abbahu: One, for instance, like Benaiah the son of Jehoiadah, of whom we read:[5] And he plucked the spear out of the Egyptian's hand and slew him with his own spear. R. Johanan said: Like the men of Shechem of whom we read:[6] And the men of

Shechem set liers in wait for him on the tops of the mountains, and they robbed all that came along that way by them: and it was told Abimelech. Why did R. Abbahu not give his instance from this last source? He could say that since these were hiding themselves they could not be called robbers. And R. Johanan? — He could argue that the reason they were hiding themselves was so that people should not notice them and run away from them.[7] The disciples of R. Johanan b. Zakkai asked him why the Torah was more severe on a thief[8] than on a robber.[9] He replied: The latter[10] puts the honour of the slave[11] on the same level as the honour of his owner,[12] whereas the former[13] does not put the honour of the slave on the same level as the honour of the master [but higher], for, as it were, he acts as if the eye of Below[14] would not be seeing and the ear of Below would not be hearing, as it says: Woe unto them that seek deep to hide their counsel from the Lord, and their works are in the dark, and they say, Who seeth us? and who knoweth us?[15] Or as it is written: And they say, The Lord will not see, neither will the God of Jacob give heed;[16] or, as again it is written, For they say, the Lord hath forsaken the earth and the Lord seeth not.[17] It was taught:[18] R. Meir said: The following parable is reported in the name of R. Gamaliel. What do the thief and the robber resemble? Two people who dwelt in one town and made banquets. One invited the townspeople and did not invite the royal family, the other invited neither the townspeople nor the royal family.[19] Which deserves the heavier punishment? Surely the one who invited the townspeople but did not invite the royal family.

R. Meir further said: Observe how great is the importance attached to labour, for in the case of an ox [stolen and slaughtered] where the thief interfered with its labour[20] he has to pay five-fold, while in the case of a sheep where he did not disturb it from its labour[21] he has to pay only four-fold. R. Johanan b. Zakkai said: Observe how great is the importance attached to the dignity of Man, for in the case of an ox which walks away on its own feet[22] the payment is five-fold, while in the case of a sheep which was usually carried on the thief's shoulder only four-fold has to be paid.[23]

MISHNAH. IT IS NOT RIGHT TO BREED SMALL CATTLE[24] IN ERETZ YISRAEL.[25] THEY MAY HOWEVER BE BRED IN SYRIA OR IN THE DESERTS OF ERETZ YISRAEL. IT IS NOT RIGHT TO BREED HENS[26] IN JERUSALEM ON ACCOUNT OF THE SACRIFICES,[27] NOR MAY PRIESTS DO SO THROUGHOUT THE WHOLE OF ERETZ YISRAEL, ON ACCOUNT OF THEIR FOOD[28] WHICH HAS TO BE RITUALLY CLEAN.[29] IT IS NOT RIGHT TO BREED PIGS IN ANY PLACE WHATEVER.[30] NO MAN SHOULD BREED A DOG[31] UNLESS IT IS ON A CHAIN. IT IS NOT RIGHT TO PLACE NETS FOR DOVES UNLESS AT A DISTANCE OF THIRTY RIS[32] FROM INHABITED SETTLEMENTS.[33]

GEMARA. Our Rabbis taught: It is not right to breed small cattle in Eretz Yisrael but they may be bred in the woods[34] of Eretz Yisrael or in Syria even in inhabited settlements, and needless to say also outside Eretz Yisrael. Another [Baraitha] taught: 'It is not right to breed small cattle in Eretz Yisrael. They may, however, be bred in the deserts of Judah and in the desert at the border of Acco.[35] Still though the Sages said: 'It is not right to breed small cattle' it is nevertheless quite proper to breed large cattle, for we should not impose a restriction upon the community unless the majority of the community will be able to stand it. Small cattle could be imported from outside Eretz Yisrael, whereas large cattle could not be imported from outside Eretz Yisrael.[36] Again, though they said: 'It is not right to breed small cattle', one may nevertheless keep them before a festival for thirty days and similarly before the wedding festivity of his son for thirty days. He should, however, not retain the animal last bought for thirty days [if these expire after the festival]. So[37] that if the festival had already gone, though since from the time he bought the animal until that time thirty days had not yet elapsed we do not say that a period of thirty days is permitted for keeping the animal, but [we are to say that] as soon as the festival has gone he should not retain it any longer.

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(1) Are they not acquired solely by the medium of pulling as stated in Kid. ibid.?

(2) The theft never became complete.

(3) For a robber has to restore only the article taken by him or its value.

(4) Who is liable to fine.
(5) II Sam. XXIII, 21.
(6) Jud. IX, 25.
(7) But not out of any fear.
(8) That he has to pay double payment for the theft and four-fold and five-fold payments for the subsequent slaughter or sale of the stolen sheep and ox respectively in accordance with Ex. XXI, 37.
(9) Who has to pay only the thing misappropriated by him or its value, in accordance with Lev. V, 23.
(10) I.e., the robber by committing the crime publicly.
(11) I.e., human society.
(12) I.e., the Creator.
(13) I.e., the thief by committing his crime by stealth.
(14) Euphemism for 'Heaven'; cf. Ab. II. 1.
(15) Isa. XXIX. 15.
(16) Ps. XCIV. 7.
(17) Ezek. IX, 9.
(18) [Rashal deletes 'It was taught', as this is the continuation of the preceding passage in Tosef. B.K. VII.]
(19) So also in the case of the thief and the robber the former equals the former and the latter the latter; cf. however B.B. 88b.
(20) For an ox usually labours in the field; cf. Deut. V, 14; Isa. XXX, 24 and Prov. XIV, 4.
(21) As it is in any case not fit for work.
(22) While the thief misappropriates it.
(23) Mek. on Ex. XXII, 6.
(24) As these usually spoil the crops of the field. Cf. supra p. 118.
(25) Where the produce of the fields was of public concern.
(26) As these usually peck in dunghills and expose impurities.
(27) Which are eaten there and might easily be defiled by some impurity brought by the chickens.
(28) Consisting mainly of terumah (v. Glos.).
(29) In accordance with Lev. XXII. 6-7.
(30) Cf. Gemara.
(31) As by barking it might frighten pregnant women and cause miscarriages.
(32) I.e., four miles, cf. Glos.
(33) So that doves belonging to private owners in the settlement should not be enticed into the nets.
(34) Which were considered common property.
(35) [MS.M.: Kefar Amiko, N. of Acco, v. Klein, NB.p.9.]
(36) And cattle could not be dispensed with in an agricultural country where they are vital for field work.
(37) [Following MS.M., which omits 'For you might think' occurring in cur. edd., the whole passage appears to be a copyist's gloss on the cited Baraitha; v. D.S. a.l.]

Talmud - Mas. Baba Kama 80a

'A cattle dealer may, however, buy and slaughter, or buy and [even] keep for the market. He may, however, not retain the animal he bought last for thirty days.'

R. Gamaliel was asked by his disciples whether it is permissible to breed [small cattle]. He said to them: 'It is permissible.' But did we not learn: 'IT IS NOT RIGHT TO BREED'? — What they asked him was really this: 'What about retaining [it]?'[1] He said to them: 'It is permissible, provided it does not go out and pasture with the herd, but is fastened to the legs of the bed.'

Our Rabbis taught:[2] There was once a certain pious person[3] who suffered with his heart, and the doctors on being consulted said that there was no remedy for him unless he sucked warm milk every morning. A goat was therefore brought to him and fastened to the legs of the bed, and he sucked from it every morning. After some days his colleagues came to visit him, but as soon as they noticed

the goat fastened to the legs of the bed they turned back and said: 'An armed robber[4] is in the house of this man, how can we come in to [see] him?' They thereupon sat down and inquired into his conduct, but they did not find any fault in him except this sin about the goat. He also at the time of his death proclaimed: 'I know that no sin can be imputed to me save that of the goat, when I transgressed against the words of my colleagues.'

R. Ishmael[5] said: My father's family belonged to the property owners in Upper Galilee. Why then were they ruined? Because they used to pasture their flocks in forests, and to try money cases without a colleague.[6] The forests were very near to their estates, but there was also a little field near by [belonging to others], and the cattle were led by way of this.

Our Rabbis taught: If a shepherd[7] desires to repent,[8] it would not be right to order him to sell immediately [the small cattle with him], but he may sell by degrees. So also in the case of a proselyte to whom dogs and pigs fall as an inheritance,[9] it would not be right to order him to sell immediately, but he may sell by degrees. So also if one vows to buy a house, or to marry a woman in Eretz Yisrael,[10] it would not be right to order him to enter into a contract immediately, until he finds a house or a woman to suit him. Once a woman being annoyed by her son jumped up [in anger] and swore: 'Whoever will come forward and offer to marry me, I will not refuse him', and as unsuitable persons offered themselves to her, the matter was brought to the Sages, who thereupon said: Surely this woman did not intend her vow to apply save to a suitable person. Just as the Sages said that it is not right to breed small cattle, so also have they said that it is not right to breed small beasts. R. Ishmael said: It is however allowed to breed village dogs,[11] cats, apes, huldoth sena'im [porcupines], as these help to keep the house clean.[12] What are 'huldoth sena'im'? — Rab Judah replied: A certain creeping animal of the harza [species]. Some say, of the harza [species][13] with thin legs which pastures among rose-bushes, and the reason why it is called 'creeping' is because its legs are [short and] underneath it.

Rab Judah said in the name of Rab: We put ourselves in Babylon with reference to the law of breeding small cattle on the same footing as if we were in Eretz Yisrael. R. Adda b. Ahabah said to R. Huna:[14] What about your small cattle? He answered him: Ours are guarded by Hoba.[15] He, however, said to him: Is Hoba prepared to neglect her son so much as to bury him?[16] In point of fact, during the lifetime of R. Adda b. Ahabah, no children born of Hoba survived to R . Huna. Some report : R. Huna said: From the time Rab arrived in Babylon,[17] We put ourselves in Babylon with reference to breeding small cattle on the same footing as if we were in Eretz Yisrael.

Rab and Samuel and R. Assi once met at a circumcision of a boy,[18] or as some say, at the party for the redemption of a son.[19] Rab would not enter before Samuel,[20]

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(1) For a festival; cf. Tosaf. a.l.

(2) Tem. 15b.

(3) [R. Jehudah b. Baba, Tosef. B.K. VIII, 4; cf. however, Tem. 15b and Buchler, Gal. 'Am-ha'ar. p. 191.]

(4) As a goat is prone to pasture anywhere and thus spoil the crops of the public.

(5) [Var. lec., 'R. Simeon Shezuri'.]

(6) Cf. Aboth. IV. 10 and Sanh. I, 1.

(7) Possessing cattle of his own; cf. B.M. 5b.

(8) By taking upon himself not to breed small cattle.

(9) From his heathen relatives; cf. Kid. 17b.

(10) [Tosef. B.K. VIII omits ' Eretz Yisrael'.]

(11) Which are small and harmless.

(12) Tosef. B.K. VIII.

(13) [Harza probably denotes 'digger', and harza 'stinging', v. Lewysohn, Zoologie. p. 94.]

(14) Cf. Naz. 57b.

(15) Who was the wife of R. Huna.

(16) Surely since she has to mind her children she cannot conscientiously guard the cattle. (Tosaf.)

(17) [In 219 C.E. V. Funk, Die Juden in Babylonian, I, note III.]

(18) Lit 'the week of the son', as the circumcision is performed on the eighth day; cf. Lev. XII, 3. [On the term, 'week of the son' v. B.B. (Sonc. ed.) p. 246. n. 8.]

(19) I.e., in the case of a first-born who has to be redeemed on the 31st day; cf. Num. XVIII, 16.

(20) For the reason to be stated.

Talmud - Mas. Baba Kama 80b

nor Samuel before R. Assi,[1] nor R. Assi before Rab.[2] They therefore argued who should go in last, [and it was decided that] Samuel should go in last, and that Rab and R. Assi should go in [together]. But why should not either Rab or R. Assi have been last? — Rab [at first] was merely paying a compliment to Samuel,[3] to make up for the [regrettable] occasion when a curse against him[4] , escaped his lips;[5] for that reason Rab offered him precedence.[6] Meanwhile a cat had come along and bitten off the hand of the child. Rab thereupon went out and declared in his discourse: 'It is permissible to kill a cat, and it is in fact a sin to keep it,[7] and the law of robbery[8] does not apply to it, nor that of returning a lost object to its owner.'[9] Since you have stated that it is permissible to kill it, why again state that it is a sin to keep it? — You might perhaps think that though it is permissible to kill it, there is still no sin committed in keeping it; we are therefore told [that this is not so]. I could still ask: Since you have said that the law of robbery[8] does not apply to it, why again state that the law of returning a lost object to its owner does not apply to it?[10] — Said Rabina: This refers to the skin[10] of the cat [where it was found dead]. An objection was raised [from the following]: R. Simeon b. Eleazar says: It is permissible to breed village dogs, cats, apes and porcupines, as these help to keep the house clean. [Does this not prove that it is permissible to breed cats?] — There is, however, no contradiction, as the latter teaching refers to black cats, whereas the former deals with white ones.[11] But was not the mischief in the case of Rab done by a black cat? — In that case it was indeed a black cat, but it was the offspring of a white one. But is not this the very case about which Rabina raised a question? For Rabina asked: What should be the law in the case of a black cat which is the offspring of a white one? — The problem raised by Rabina was where the black was the offspring of a white one which was in its turn a descendant of a black cat, whereas the accident in the case of Rab occurred through a black cat which was the offspring of a white one that was similarly the offspring of a white cat.

(Mnemonic: Habad Bih Bahan).[12]

R. Aha b. Papa said in the name of R. Abba b. Papa who said it in the name of R. Adda b. Papa, or, as others read, R. Abba b. Papa said in the name of R. Hiyya b. Papa who said it in the name of R. Aha b. Papa, or as others read it still differently, R. Abba b. Papa said in the name of R. Aha b. papa who said it in the name of R. Hanina b. Papa: 'It is permissible to raise an alarm [at public services][13] even on the Sabbath day for the purpose of relieving the epidemic of itching; if the door to prosperity has been shut to an individual it will not speedily be opened; and when one buys a house in Eretz Yisrael, the deed may be written even on the Sabbath day. An objection was raised [from the following:] 'Regarding any other misfortune[14] that might burst forth upon the community, as e.g. itching. locusts, flies, hornets, mosquitoes, a plague of serpents and scorpions, no alarm was raised by [public service, on the Sabbath] but a cry was raised [by privately reciting prayers]?[15] [Does this not prove that no public prayers are to be held on this score on Sabbath?] — There is no contradiction, as the latter case refers to [the period when the plague is in] the moist stage whereas the former deals with dry itching,[16] as R. Joshua b. Levi said:[17] 'The boils brought upon the Egyptians by the Holy One, blessed be He,[18] were moist within but dry without, as it says 'And it became a boil breaking forth with blains upon man and upon beast.'[18]

What is the meaning of the words, 'if the door to prosperity has been shut to an individual it will not speedily be opened'? — Mar Zutra said: It refers to ordination.[19] R. Ashi said: One who is in disfavour is not readily taken into favour.[20] R. Aha of Difti said: He will never be taken into favour. This, however, is not so; for R. Aha of Difti stated this as a matter of personal experience.[21] 'In the case of him who buys a house in Eretz Yisrael the deed may be written even on the Sabbath day.'[22] You mean to say, on the Sabbath?[23] — It must therefore mean as stated by Raba in the case mentioned there,[24] that a Gentile is asked to do it; so also here a Gentile is asked to do it. For though to ask a Gentile to do some work on the Sabbath is Shebuth,[25] the Rabbis did not maintain this prohibition in this case on account of the welfare of Eretz Yisrael.[26] R. Samuel b. Nahmani said in the name of R. Jonathan: He who purchases a town in Eretz Yisrael can be compelled to purchase with it also the roads leading to it from all four sides[27] on account of the welfare of Eretz Yisrael.

Our Rabbis taught:[28] Joshua [on his entry into Eretz Yisrael] laid down ten stipulations:

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(1) On account of seniority.
(2) Whose disciple he was.
(3) Who was the youngest of them.
(4) I.e., Samuel.
(5) For which cf. Shab. 108b.
(6) [But not because he considered Samuel his superior, with the result that, were they to go in together, they would be faced with the dilemma as to which of the two was to enter first; v. Shittah Mekubezeth a.l.]
(7) Cf. Sanh. 15b and supra p. 67.
(8) Lev. XIX. 13.
(9) As required in Deut. XXII,1-3.
(10) That it need not be returned.
(11) Which constitute a danger.
(12) An aid to recollect order of names of the sons of R. Papa that follow in pairs.
(13) On the lines described in Ta'an. 1, 6 and III, 1 etc.
(14) I.e., other than those enumerated in Ta'an. III, 1-8.
(15) Ta'an. 14a.
(16) Which is more dangerous.
(17) Bk. 41a.
(18) Ex. IX, 10.
(19) [Once a man fails in his attempt to secure ordination he cannot obtain it so easily any more.]
(20) Cf. B.B. 12b.
(21) And it should therefore not necessarily be made a general rule.
(22) Cf. Git. 8b.
(23) When it would be a capital offence; cf. Shab. VII. 2.
(24) Shab. 129a and Bez. 22a.
(25) Lit., 'abstention', but which came to denote a matter of mere Rabbinic prohibition on Sabbath and festivals; v. Bez. V, 2.
(26) As they similarly dispensed with Shebuth in the case of Temple service; cf. Pes. 65a.
(27) As transport affects vitally the progress and prosperity of a country.
(28) Cf. 'Er. 17a.

Talmud - Mas. Baba Kama 81a

That cattle be permitted to pasture in woods;[1] that wood may be gathered [by all] in private fields;[1] that grasses may similarly be gathered [by all] in all places, with the exception, however, of a field where fenugrec is growing;[1] that shoots be permitted to be cut off [by all] in all places. with the exception, however, of stumps of olive trees;[1] that a spring emerging [even] for the first time may be used by the townspeople; that it be permitted to fish with an angle in the Sea of Tiberias, provided no

sail is spread as this would detain boats [and thus interfere with navigation]; that it be permitted to ease one's self at the back of a fence even in a field full of saffron; that it be permitted [to the public] to use the paths in private fields until the time when the second rain is expected;[2] that it be permitted to turn aside to [private] sidewalks in order to avoid the road-pegs; that one who has lost himself in the vineyards be permitted to cut his way through when going up and cut his way through when coming down;[3] and that a dead body, which anyone finds has to bury should acquire [the right to be buried on] the spot [where found].

'That cattle be permitted to pasture in woods.' R. Papa said: This applies only to small cattle pasturing in big woods[4] for in the case of small cattle pasturing in small woods or big cattle in big forests it would not be permitted,[5] still less big cattle pasturing in small woods.[5]

'That wood may be gathered [by all] in private fields: 'This applies only to [prickly shrubs such as] Spina regia and hollow.[6] For in the case of other kinds of wood it would not be so. Moreover, even regarding Spina Regia and hollow, permission was not given except where they were still attached to the ground, but after they had been already broken off [by the owner] it would not be so.[7] Again, even in the case of shrubs still attached to the soil, permission was not given except while they were still in a wet state, but once they had become dry it would not be so.[7] But in any case it is not permitted to uproot [them].

'That grasses may similarly be gathered [by all] in all places, with the exception, however, of a field where fenugrec is growing.' Does this mean to say that fenugrec derives some benefit from grasses?[8] If so, a contradiction could be pointed out [from the following:] 'If fenugrec is mixed up with other kinds of grasses, the owner need not be compelled to tear it out[9] [for he will do it in any case on account of the fact that the grasses spoil the fenugrec'.[10] Now, does this not prove that grasses are disadvantageous to fenugrec?] — Said R. Jeremiah: There is no contradiction, for while the latter statement refers to the seeds,[11] the former deals with the pods.[12] It is only to the seeds that grasses are disadvantageous as they make them lean, whereas to the pods[13] they are advantageous, for when placed between grasses they get softer. Or if you like I can say that while one statement refers to fenugrec sown for the use of man, the other refers to fenugrec sown for animals, for since it was sown for animals grasses are also required for it. How can we tell [for what it was sown]?[13] — R. Papa said: If made in beds it is sown for man, but if not in beds it is for animals.

'That shoots be permitted to be cut off [by all] in all places, with the exception, however, of stumps of olive trees.' R. Tanhum and R. Barias explained in the name of a certain old man that in the case of an olive tree the size of the length of an egg has to be left over at the bottom; in the case of reeds and vines [it is only] from the knot and upwards[14] [that it is permitted to cut off shoots]; in the case of all other trees [it is permitted only] from the thick parts of the tree but not from the central part of the tree, and only from a new bough that has not yet yielded fruit but not from an old bough which is yielding fruit; again, only from such spots [on the tree] as do not face the sun

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(1) The reason is given below.

(2) I.e., the seventeenth of Marcheshvan; cf. Ta'an. 6b and Ned VIII,5.

(3) Though damage be done thereby to the vineyard.

(4) Where the trees would thereby not be damaged.

(5) On account of the damage which could be done to the trees.

(6) Or other kinds of thorns and thistles.

(7) As they would then be the exclusive property of the owner.

(8) Which have thus to be preserved.

(9) So as not to transgress Lev. XI. 19: 'thou shalt not sow thy field with mingled seed'; cf. also Shek. I, 1-2.

(10) Kil. II,5.

(11) Which will be used for sowing purposes.

(12) Which are used as food.
(13) So that the stipulation of Joshua should have practical application where it was sown for the use of man.
(14) Cf. B.B. 80b.

Talmud - Mas. Baba Kama 81b

but not from a spot which does face the sun,[1] for so it says 'And for the precious things of the fruits of the sun'.[2]

'That a spring emerging [even] for the first time may be used by the townspeople.' Rabbah son of R. Huna said that the owner[3] is [still] entitled to be paid for its value. The law, however, is not in accordance with this view.

'That it be permitted to fish with an angle in the Sea of Tiberias provided that no sail is spread, as this would detain boats.' It is, however, permitted to fish by means of nets and traps. Our Rabbis taught: 'The tribes stipulated with one another at the very outset that nobody should spread a sail and thus detain boats. It is, however, permitted to fish by means of nets and traps.'[4]

Our Rabbis taught: The Sea of Tiberias was included in the portion of Naphtali. In addition, he received a rope's length of dry land on the southern side to keep nets on, in fulfilment of the verse, Possess thou the sea and the South.[5]

It was taught: R. Simeon b. Eleazar said: Anything found on the mountains detached from the soil was considered as belonging to all the tribes,[6] but if still attached [to the ground] as belonging to the particular tribe [in whose territory it was found]. There was, however, no tribe in Israel which had not land[7] both on the hills and in the vale, in the South and in the valley. as stated: Turn you and take your journey and go to the hill — country of the Amorites, and unto all the places nigh thereunto, in the plain, in the hills and in the vale, and in the South, and by the sea side[8] etc., for you can similarly find the same regarding the Canaanites, perizites and Ammonites who were before them, as stated: 'and unto all nigh thereunto',[8] proving that the same applied to those who were nigh thereunto.

'That it be permitted to ease one's self at the back of a fence even though in a field full of saffron.' R. Aha b. Jacob said: This permission was required only for the taking of a pebble from the fence.[9] R. Hisda said: This may be done even on the Sabbath.[10] Mar Zutra the Pious used to take a pebble from a fence and put it back there and tell his servant[11] to go and make it good again.

'That it be permitted to use the paths in private fields until the time when the second rain is expected.' R. papa said that regarding our land [here in Babylon], even after the fall of [mere] dew this would be harmful.

'That it be permitted to turn aside to [private] sidewalks in order to avoid road pegs.' As Samuel and Rab Judah were once walking on the road, Samuel turned aside to the private sidewalk. Rab Judah thereupon said to him: Do the stipulations laid down by Joshua hold good even in Babylon? — He answered him: I say that it applies even outside Eretz Yisrael. As Rabbi and R. Hiyya were once walking on the road they turned aside to the private sidewalks, while R. Judah b. Kenosa went striding[12] along the main road in front of them. Rabbi thereupon said to R. Hiyya. 'Who is that man who wants to show off[13] in front of us?' R. Hiyya answered him: 'He might perhaps be R. Judah b. Kenosa who is my disciple and who does all his deeds out of pure piety.'[14] When they drew near to him they saw him and R. Hiyya said to him: 'Had you not been Judah b. Kenosa, I would have sawed your joints with an iron saw.'[15]

'That one who lost himself in the vineyards should be permitted to cut his way through when

going up and cut his way through when coming down.' Our Rabbis taught: He who sees his fellow wandering in the vineyards is permitted to cut his way through when going up and to cut his way through when coming down until he brings him into the town or on to the road; so also one who is lost in the vineyards may cut his way through when going up and cut his way through when coming down until he reaches the town or the road.[16] What is the meaning of 'so also'? [Is the latter case not obvious?][17] — You might think that it is only in the case of a fellow-man wandering, in which case he[18] knows where he is going to, that he may cut his way through, whereas in the case of being lost himself, when he does not know where he is going to, he should not be permitted to cut his way through but should have to walk round about the boundaries. We are therefore told that this is not so — Cannot this permission be derived from the Pentateuch? For it was taught: 'Whence can it be derived that it is obligatory to restore the body of a fellow-man?[19] Because it is said: And thou shalt restore it to him[20] [implying him himself, i.e., his person.'[21] Why then was it necessary for Joshua to stipulate this?][22] — As far as the Pentateuch goes, he[23] would have to remain standing between the boundaries [and walk round about]; it was therefore necessary for Joshua to come and ordain that he be permitted to cut his way through when going up and cut his way through when coming down.

'That a dead body, which anyone finding has to bury, should acquire the [right to be buried on the] spot [where found].' A contradiction could be pointed out [from the following:] If one finds a dead person lying on the road, he may remove him to the right side of the road or to the left side of the road. If on the one side of the road there is an uncultivated field and on the other a fallow field, he should remove him to the uncultivated field;[24] so also where on the one side there is a fallow field but on the other a field with seeds he should remove him to the fallow field.[25] But if both of them are uncultivated, or both of them fallow, or both of them sown he may remove him to any place he likes.[26] [Does this not contradict your statement that a dead person acquires the right to be buried on the spot where he was found?] — Said R. Bibi: The dead person [in the latter case] was lying broadways across the boundary so that since permission had to be given to remove him from that spot[27] he may be removed to any place he prefers.

I would here ask: Are these stipulations[28] only ten [in number?] Are they not eleven? — [The permission] to use the paths in private fields is [implied in] a statement made by Solomon, as taught: If a man's produce has already been removed entirely from the field, and nevertheless he does not allow persons to enter his field, what would people say of him if not, 'What [real] benefit has that owner from his field, for in what way would people do him any harm?' It was regarding such a person that the verse says: While you can be good do not call yourself bad.[29] But is it [anywhere] written:[30] 'While you can be good do not call yourself bad'? — Yes, it is written to a similar effect: Withhold not good from him to whom it is due, when it is in the power of thy hand to do it.[31]

But were there no more stipulations?[32] Was there not the one mentioned by R. Judah? For it was taught: 'When it is the season of removing dung, everybody is entitled to remove his dung into the public ground and heap it up there for the whole period of thirty days so that it may be trodden upon by the feet of men and by the feet of animals; for upon this condition did Joshua transfer the land to Israel as an inheritance.[33] Again, was there not also the one referred to by R. Ishmael the son of R. Johanan b. Beroka? For it was taught: R. Ishmael the son of R. Johanan b. Beroka said: It is a stipulation of the Court of Law that the owner of the bees[34] be entitled to go down into his fellow's field and cut off his fellow's bough [upon which his bees have settled] in order to rescue the swarm of his bees while paying only the value of his fellow's bough; it is [similarly] a stipulation of the Court of Law that the owner of wine should pour out his wine [from the flask] so as to save in it the honey of his fellow[35] and recover the value of his wine out of the honey of his fellow; it is [again] a stipulation of the Court of Law that [the owner of a bundle of wood] should remove the wood [from his ass] and load [on his ass] the flax of his fellow [from the back of the ass that fell dead][36] and recover the value of his wood out of the flax of his fellow; for it was upon this stipulation that Joshua transferred the land to Israel for an inheritance.'[37] [Why then were these stipulations not included?]

— Views of individual authorities were not stated [among the stipulations that have unanimous recognition].

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(1) Such as from the sides of the tree.
(2) Deut. XXXIII, 14.
(3) Of the ground where the spring emerged.
(4) Tosef. B.K. VIII.
(5) Deut. XXXIII. 23.
(6) who had an equal right to the spoil.
(7) Cf. B.B. 122a.
(8) In Deut. 1, 7.
(9) Though it would thereby become impaired.
(10) Cf. Shab. 81.
(11) On a weekday.
(12) Upon the road pegs.
(13) By not taking advantage of the stipulation of Joshua and thus showing himself more scrupulous than required by strict law.
(14) Lit., 'in the name of Heaven', and not to show off.
(15) A metaphor for excommunication.
(16) Tosef. B.M. II.
(17) As it is surely covered by the ruling in the former case.
(18) I.e., the guide.
(19) When in danger, just as it is obligatory to restore him his lost chattels.
(20) Deut. XXII. 2.
(21) Cf. Sanh. 73a.
(22) Seeing that it can be derived from the Pentateuch.
(23) The one who lost his way.
(24) So as to interfere as little as possible with agriculture.
(25) V. p. 463,n.9.
(26) 'Er. 17b.
(27) So as not to cause defilement to all those who pass that way.
(28) Enumerated in the cited Baraitha supra p. 459.
(29) Cf. Ber. 30a.
(30) In Scripture.
(31) Prov. III, 27.
(32) Made by Joshua.
(33) Tosef. B.M. XI; supra 30a.
(34) Which settled upon a neighbour's tree.
(35) Carried by him in a jug which suddenly gave way, and the contents which were much more valuable than wine thus became in danger if being wasted.
(36) And which is thus in danger of being wasted if not rescued in time.
(37) Infra 114b.

Talmud - Mas. Baba Kama 82a

But did not R. Abin upon arriving [from Palestine] state on behalf of R. Johanan that the owner of a tree which overhangs a neighbour's field as well as the owner of a tree close to the boundary has to bring the first-fruits [to Jerusalem][1] and read the prescribed text[2] as it was upon this stipulation [that trees might he planted near the boundary of fields and even overhang a neighbour's field] that Joshua transferred the land to Israel[3] for an inheritance.[4] [How then could R. Johanan describe this as a stipulation of Joshua when it was not included in the authoritative text of the Baraitha cited enumerating all the stipulations of Joshua?] — It must therefore be that the Tanna[5] of [the text

enumerating] the ten stipulations laid down by Joshua was R. Joshua b. Levi.[6] R. Gebiha of Be Kathil[7] explicitly taught this in the text: 'R. Tanhum and R. Barias stated in the name of a certain sage, who was R. Joshua b. Levi, that ten stipulations were laid down by Joshua.'

The [following] ten enactments were ordained by Ezra: That the law be read [publicly] in the Minhah[8] service on Sabbath; that the law be read [publicly] on Mondays and Thursdays; that Courts be held on Mondays and Thursdays; that clothes be washed on Thursdays; that garlic be eaten on Fridays; that the housewife rise early to bake bread; that a woman must wear a sinnar;[9] that a woman must comb her hair before performing immersion;[10] that pedlars [selling spicery] be allowed to travel about in the towns,[11] He[12] also decreed[13] immersion to be required[10] by those to whom pollution has happened.[14]

'That the law be read [publicly] in the Minhah service on Sabbath:' on account of shopkeepers [who during the weekdays have no time to hear the reading of the Law].

'That the law be read [publicly] on Mondays and Thursdays.' But was this ordained by Ezra? Was this not ordained even before him? For it was taught: 'And they went three days in the wilderness and found no water,[15] upon which those who expound verses metaphorically[16] said: water means nothing but Torah,[17] as it says: Ho, everyone that thirsteth come ye for water.[18] It thus means that as they went three days without Torah they immediately became exhausted. The prophets among them thereupon rose and enacted that they should publicly read the law on Sabbath, make a break on Sunday, read again on Monday, make a break again on Tuesday and Wednesday, read again on Thursday and then make a break on Friday so that they should not be kept for three days without Torah.'[19] — Originally it was ordained that one man should read three verses or that three men should together read three verses, corresponding to priests, Levites and Israelites.[20] Then Ezra came and ordained that three men should be called up to read, and that ten verses should be read, corresponding to ten batlanim.[21]

'That Courts be held on Mondays and Thursdays' — when people are about, as they come to read the Scroll of the Law. 'That clothes be washed on Thursdays' — that the Sabbath[22] may be duly honoured.

'That garlic be eaten on Fridays' — because of the 'Onah.'[23] as it is written: 'That bringeth forth its fruit in its season'[24] and Rab Judah, or as others say R. Nahman, or as still others say R. Kahana, or again as others say R. Johanan, stated that this refers to him who performs his marital duty every Friday night.[25]

Our Rabbis taught: Five things were said of garlic: It satiates, it keeps the body warm, it brightens up the face, it increases semen, and it kills parasites in the bowels. Some say that it fosters love and removes jealousy.

'That a housewife rise early to bake bread'[26] — so that there should be bread for the poor.[27]

'That a woman must wear a sinnar — out of modesty.

'That a woman comb her hair before performing the immersion.' But this is derived from the pentateuch! For it was taught:[28] 'And he shall bathe [eth besaro] his flesh in water[29] [implying] that there should be nothing intervening between the body and the water; "[eth besaro] his flesh", "eth" [including] whatever is attached to his flesh,[30] i.e. the hair.' [Why then had this to be ordained by Ezra?] — It may, however, be said that as far as the Pentateuch goes it would only have to be necessary to see that the hair should not he knotted or that nothing dirty should be there which might intervene,

(1) Cf. Ex. XXIII. 19.
(2) I.e. Deut. XXVI, 5-10, which could he recited only by one who was the sole legitimate owner of both the fruits and the tree and the ground.
(3) And no misappropriation could thus he traced in the produce of such trees.
(4) How then could R. Johanan, who was an Amora, differ from Tannaitie views?
(5) [MSS omit rightly, 'the Tanna.']
(6) [Who was himself an Amoraic sage from whom R. Johanan might have differed in this case as he did on many other occasions, cf. e.g., Ber. 3b and Meg. 27a.]
(7) [Kathil on the Tigris, N. of Bagdad, Obermeycr, op. cit. p 143.]
(8) I.e., afternoon; cf. Ber. IV, 1.
(9) A sort of garment, breeches (Rashi), or belt. The word is of doubtful origin.
(10) In a ritual plunge bath called Mikweh.
(11) Even against the wishes of the townspeople; cf. B.B. 22a.
(12) I.e., Ezra.
(13) Cf. Ber. 22b.
(14) Cf. Lev. XV, 16; Deut. XXIII, 11-12. [For a discussion of the ten enactments of Ezra, v. Hoffmann, Magazin, 1883 , 48ff.]
(15) Ex. XV. 22.
(16) Doreshe Reshumoth; v. Sanh. (Sonc. ed.) p. 712. n. 12.
(17) Cf. supra p. 76.
(18) Isa. LV, 1.
(19) [Why then was it necessary for Ezra to enact this?]
(20) In which groups the people were classed.
(21) The ten persons released from all obligations and thus having leisure to attend to public duties, and to form the necessary quorum for synagogue services; cf. Meg. 1, 3; v. also Meg. 21b.
(22) Cf. Isa. LVIII. 13 and Shab. 119a.
(23) I.e., the duty of marriage; cf. Ex. XXI, 10 and Keth. V, 6.
(24) Ps. I, 3.
(25) Cf. Keth. 62b.
(26) [J. Meg. IV adds 'on Fridays'.]
(27) Cf. Keth. 67b.
(28) 'Er. 4b.
(29) Lev. XIV, 9.
(30) For a similarity v. supra p. 235.

Talmud - Mas. Baba Kama 82b

whereas Ezra came and ordained actual combing.[1]

'That pedlars selling spicery be allowed to travel about in the towns' — for the purpose of providing toilet articles for the women so that they should not be repulsive in the eyes of their husbands.

'He also decreed that immersion was required for those to whom pollution had happened.' Is not this in the pentateuch, as it is written: And if the flow of seed go out front him, then he shall bathe all his flesh in water?[2] — The pentateuchal requirement referred to terumah and sacrifices and he came and decreed that even for [the study of] the words of the Torah [immersion is needed].

Ten special regulations were applied to Jerusalem:[3] That a house sold there should not be liable to become irredeemable;[4] that it should never bring a heifer whose neck is broken;[5] that it could never be made a condemned city;[6] that its houses would not become defiled through leprosy;[7] that neither

beams nor balconies should be allowed to project there; that no dunghills should be made there; that no kilns should be kept there; that neither gardens nor orchards should be cultivated there, with the exception, however, of the garden of roses[8] which existed from the days of the former prophets;[9] that no fowls should be reared there, and that no dead person should be kept there over night.[10]

'That a house sold there should not be liable to become irredeemable' — for it is written: Then the house that is in the walled city shall be made sure in perpetuity to him that bought it throughout his generations[11] and as it is maintained[12] that Jerusalem was not divided among the tribes.[13]

'That it should never bring a heifer whose neck is broken' — as it is written: If one be found slain in the land which the Lord thy God giveth thee to possess it,[14] and Jerusalem [could not be included as it] was not divided among the tribes.[13]

'That it could never be made a condemned city' — for it is written, [One of] thy cities,[15] and Jerusalem was not divided among the tribes. 'That its houses could not become defiled through leprosy' — for it is written, And I put the plague of leprosy in the house of the land of your possession,[16] and Jerusalem was not divided among the tribes.[13]

'That neither beams nor balconies should be allowed to project' — in order not to form a tent spreading defilement,[17] and not to cause harm to the pilgrims for the festivals.[18]

'That no dunghills be made there' — on account of reptiles.[19]

'That no kilns be kept there' — on account of the smoke.[20]

'That neither gardens nor orchards be cultivated there' — on account of the bad odour [of withered grasses].

'That no fowls be bred there' on account of the sacrifices.

'That no dead person be kept there overnight' — this is known by tradition.

IT IS NOT RIGHT TO BREED PIGS IN ANY PLACE WHATEVER. Our Rabbis taught: When the members of the Hasmonean house were contending with one another, Hyrcanus was within and Aristobulus without [the city wall].[21] [Those who were within] used to let down to the other party every day a basket of denarii, and [in return] cattle were sent up for the regular sacrifices.[22] There was, however, an old man[23] [among the besiegers] who had some knowledge in Grecian Wisdom[24] and who said to them: 'So long as the other party [are allowed to] continue to perform the service of the sacrifices they will not be delivered into your hands.' On the next day when the basket of denarii was let down, a swine was sent up. When the swine reached the centre of the wall it stuck its claws into the wall, and Eretz Yisrael quaked over a distance of four hundred parasangs[25] by four hundred parasangs. It was proclaimed on that occasion: Cursed be the man who would breed swine and cursed be the man who would teach his son Grecian Wisdom. It was concerning this time that we have learnt[26] that the 'Omer[27] was once brought from the gardens of Zarifin and the two loaves[28] from the Valley of En Soker.[29]

But was Grecian Wisdom proscribed? Was it not taught that Rabbi stated: 'Why use the Syriac language in Eretz Yisrael

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(1) For the sake of absolute certainty.

(2) V. Lev. XV. 16.

(3) V. Yoma 23a; 'Ar. 32b and Tosef. Neg. VI, 2. [According to Krauss, REJ. LIII, 29 ff., some of these regulations

relate only to the Temple Mount.]
(4) As should be the case with dwelling houses of a walled city (cf. Lev. XXV, 29-30); but is on the other hand considered as a house of a village which has no wall round about it; (ibid. 31.).
(5) As required in Deut. XXI, 3-4 in the case of a person found slain and it be not known who hath slain him.
(6) Which would he subject to Deut. XIII, 13-18.
(7) Cf. Lev. XIV, 34-53.
(8) Where the Jordan resin grew; cf. Ker. 6a.
(9) [Cf. II Kings XXV, 4; Jer. XXXI, 4; Neh. III, 15. V. Krauss, loc. cit. p. 33.]
(10) Cf. Hag. 26a; v. infra, p. 469.
(11) Lev. XXV. 29-30.
(12) Cf. Yoma 12a.
(13) But was kept in trust for all Israel and could therefore not be subject to a law where absolute private ownership is referred to.
(14) Deut. XXI, 1.
(15) Ibid. XIII, 13.
(16) Lev. XIV, 34.
(17) Cf. Num. XIX, 14.
(18) By the spread of defilement.
(19) Which thrive in dunghills, and as soon as they die they become a source of defilement.
(20) Which would blacken the buildings of the town; cf. B.B. 23a.
(21) [In the parallel passage the roles are reversed, Aristobulus being besieged and Hyrcanus laying the siege; v. Graetz, Geschichte III, p. 710 ff. Cf. Josephus, Ant. XIV, 2,2.]
(22) Cf. Num. XXVIII, 2-4.
(23) [Identified with Antipater, an ally of Hyrcanus, v. Graetz, op. cit. 711.]
(24) [‘Sophistry’. v. Graetz, loc. cit.]
(25) V. Glos.
(26) Men. 64b. [The places are identified respectively with Sarafand near Lydda and Assakar near Nablus.]
(27) Lit., ‘a sheaf’, denoting the public sacrifice of the first-fruits of the harvest described in Lev. XXIII, 10-14.
(28) Cf. ibid. 17.
(29) Sot. 49b and Men. 64b.

Talmud - Mas. Baba Kama 83a

[where] either the Holy Tongue or the Greek language [could be employed]?’ And R. Jose said: ‘Why use the Aramaic language in Babylon [where] the Holy Tongue or the Persian language [could be used]?’ — It may, however, be said that the Greek language is one thing and Grecian Wisdom is another. But was Grecian Wisdom proscribed? Did not Rab Judah say that Samuel stated in the name of R. Simeon b. Gamaliel: ‘[The words] Mine eye affected my soul because of all the daughters of my city[1] [could very well be applied to the] thousand youths who were in my father's house; five hundred of them learned Torah and the other five hundred learned Grecian Wisdom, and out of all of them there remain only I here and the son of my father's brother in Asia’?[2] — It may, however, be said that the family of R. Gamaliel was an exception, as they had associations with the Government, as indeed taught: ‘He who trims the front of his hair[3] in Roman fashion is acting in the ways of the Amorites.’[4] Abtolmus b. Reuben however was permitted to cut his hair in the Gentile fashion as he was in close contact with the Government. So also the members of the family of Rabban Gamaliel were permitted to discuss Grecian Wisdom on account of their having had associations with the Government.

NO MAN SHOULD BREED A DOG UNLESS IT IS ON A CHAIN etc. Our Rabbis taught: No man should breed a dog unless it is kept on a chain. He may, however, breed it in a town adjoining the frontier where he should keep it chained during the daytime and loose it only at night. It was taught: R. Eliezer the Great says that he who breeds dogs is like him who breeds swine. What is the

practical bearing of this comparison? — That he[5] be declared cursed.[6] R. Joseph b. Manyumi said in the name of R. Nahman that Babylon was on a par with a town adjoining the frontier.[7] This, however, was interpreted to refer to Nehardea. R. Dostai of Bira[8] expounded: And when it rested, he said, Return O Lord unto the tens of thousands [and] the thousands of Israel.[9] This, [he said,] teaches that the Shechinah[10] does not rest upon Israel if they are less than two thousand plus two tens of thousands.[11] Were therefore the Israelites [to be twenty-two thousand] less one, and there was there among them a pregnant woman thus capable of completing the number, but a dog barked at her and she miscarried, the [dog] would in this case cause the Shechinah to depart from Israel. A certain woman[12] entered a neighbour's house to bake [there bread], and a dog suddenly barked at her, but the owner of the house said to her: Do not be afraid of the dog as its teeth are gone. She, however, said to him: Take thy kindness and throw it on the thorns, for the embryo has already been moved [from its place].

IT IS NOT RIGHT TO PLACE NETS FOR DOVES UNLESS AT A DISTANCE OF THIRTY RIS FROM INHABITED SETTLEMENTS. But do they proceed so far? Did we not learn that a dove-cote must be kept at a distance from the town of fifty cubits?[13] — Abaye said: They certainly fly much further than that, but they eat their fill within fifty cubits.[14] But do they fly only thirty ris and no more? Was it not taught: 'Where there is an inhabited settlement no net must be spread even for a distance of a hundred mil'? — R. Joseph said: The latter statement refers to a settlement of vineyards;[15] Rabbah said that it refers to a settlement of dove-cotes.[15] But why not lay down the prohibition to spread nets on account of the dovecotes themselves?[16] — If you like I can say that they belong to Cutheans,[17] or if you like I can say that they are ownerless, or if you again like I can say that they are his own. [

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(1) Lam. III, 51.

(2) Sot. 49b and Git. 58a. [This proves that even Grecian Wisdom was not proscribed.]

(3) [Like a fringe on the forehead and lets the curls hang down on the temples (Jast.).]

(4) Which should not be imitated.

(5) Who breeds a dog.

(6) As if he would breed swine.

(7) Cf. 'Er. 45a.

(8) [In Galilee, v. Klein, op. cit., p. 39.]

(9) Num. x, 36; E.V.: unto the many thousands of Israel.

(10) The Divine Presence.

(11) I.e. , twenty-two thousand, comprising the minimum of the plural tens of thousands which is twenty thousand and the minimum of the thousands which is two thousand, cf. also Yeb. 64a.

(12) Cf. Shab. 63a; and supra p. 271.

(13) So that the doves should not consume the produce of the town. (B.B. 11,5.]

(14) On account of which a dove-cote need not be kept away from the town for more than fifty cubits.

(15) Where the doves could thus take rest and fly on to great distances.

(16) Why then base the prohibition upon the proximity of a settlement?

(17) Who did not recognise the necessity of being scrupulous to such an extent and should therefore not be treated better than they treated others: cf. supra p. 211, n. 6. [For a full discussion of the regulations laid down in our Mishnah and developed in the Gemara, as well as their application in the practical life of the Jewish communities in Talmudic times, v. Krauss, REJ, LIII, 14-55.]

Talmud - Mas. Baba Kama 83b

CHAPTER VIII

MISHNAH. ONE WHO INJURES A FELLOW MAN BECOMES LIABLE TO HIM FOR FIVE ITEMS: FOR DEPRECIATION, FOR PAIN, FOR HEALING, FOR LOSS OF TIME AND FOR

DEGRADATION. HOW IS IT WITH 'DEPRECIATION'? IF HE PUT OUT HIS EYE, CUT OFF HIS ARM OR BROKE HIS LEG, THE INJURED PERSON IS CONSIDERED AS IF HE WERE A SLAVE BEING SOLD IN THE MARKET PLACE, AND A VALUATION IS MADE AS TO HOW MUCH HE WAS WORTH [PREVIOUSLY]. AND HOW MUCH HE IS WORTH [NOW]. 'PAIN' — IF HE BURNT HIM EITHER WITH A SPIT OR WITH A NAIL, EVEN THOUGH ON HIS [FINGER] NAIL WHICH IS A PLACE WHERE NO BRUISE COULD BE MADE, IT HAS TO BE CALCULATED HOW MUCH A MAN OF EQUAL STANDING WOULD REQUIRE TO BE PAID TO UNDERGO SUCH PAIN. 'HEALING' — IF HE HAS STRUCK HIM, HE IS UNDER OBLIGATION TO PAY MEDICAL EXPENSES. SHOULD ULCERS [MEANWHILE] ARISE ON HIS BODY, IF AS A RESULT OF THE WOUND, THE OFFENDER WOULD BE LIABLE, BUT IF NOT AS A RESULT OF THE WOUND, HE WOULD BE EXEMPT. WHERE THE WOUND WAS HEALED BUT REOPENED, HEALED AGAIN BUT REOPENED, HE WOULD STILL BE UNDER OBLIGATION TO HEAL HIM. IF, HOWEVER, IT HAD COMPLETELY HEALED [BUT HAD SUBSEQUENTLY REOPENED] HE WOULD NO MORE BE UNDER OBLIGATION TO HEAL HIM. 'LOSS OF TIME' — THE INJURED PERSON IS CONSIDERED AS IF HE WERE A WATCHMAN OF CUCUMBER BEDS[1] [SO THAT THE LOSS OF SUCH WAGES[2] SUSTAINED BY HIM DURING THE PERIOD OF ILLNESS MAY BE REIMBURSED TO HIM]. FOR THERE HAS ALREADY BEEN PAID TO HIM THE VALUE OF HIS HAND OR THE VALUE OF HIS LEG [THROUGH WHICH DEPRIVATION HE WOULD NO MORE BE ABLE TO CARRY ON HIS PREVIOUS EMPLOYMENT]. 'DEGRADATION' — ALL TO BE ESTIMATED IN ACCORDANCE WITH THE STATUS OF THE OFFENDER AND THE OFFENDED.

GEMARA. Why [pay compensation]? Does the Divine Law not say 'Eye for eye'?[3] Why not take this literally to mean [putting out] the eye [of the offender]? — Let not this enter your mind, since it has been taught: You might think that where he put out his eye, the offender's eye should be put out, or where he cut off his arm, the offender's arm should be cut off, or again where he broke his leg, the offender's leg should be broken. [Not so; for] it is laid down, 'He that smiteth any man. . .' 'And he that smiteth a beast . . .'[4] just as in the case of smiting a beast compensation is to be paid, so also in the case of smiting a man compensation is to be paid.[5] And should this [reason] not satisfy you,[6] note that it is stated, 'Moreover ye shall take no ransom for the life of a murderer, that is guilty of death',[7] implying that it is only for the life of a murderer that you may not take 'satisfaction',[8] whereas you may take 'satisfaction' [even] for the principal limbs, though these cannot be restored.' To what case of 'smiting' does it refer? If to [the Verse] 'And he that killeth a beast, shall make it good: and he that killeth a man, shall be put to death',[9] does not this verse refer to murder?[10] — The quotation was therefore made from this text: And he that smiteth a beast mortally shall make it good: life for life,[11] which comes next to and if a man maim his neighbour: as he hath done so shall it be done to him.[12] But is [the term] 'smiting' mentioned in the latter text?[12] — We speak of the effect of smiting implied in this text and of the effect of smiting implied in the other text: just as smiting mentioned in the case of beast refers to the payment of compensation, so also does smiting in the case of man refer to the payment of compensation. But is it not written: And he that smiteth[13] any man mortally shall surely be put to death[14] [which, on account of the fact that the law of murder is not being dealt with here,[15] surely refers to cases of mere injury and means Retaliation]?[16] — [Even this refers to the payment of] pecuniary compensation. How [do you know that it refers] to pecuniary compensation? Why not say that it really means capital punishment?[17] — Let not this enter your mind; first, because it is compared to the case dealt with in the text, 'He that smiteth[13] a beast mortally shall make it good', and furthermore, because it is written soon after, 'as he hath done so shall it be done to him',[18] thus proving that it means pecuniary compensation. But what is meant by the statement, 'if this reason does not satisfy you'? [Why should it not satisfy you?] — The difficulty which further occurred to the Tanna was as follows: What is your reason for deriving the law of man injuring man from the law of smiting a beast and not from the law governing the case of killing a man [where Retaliation is the rule]? I would answer: It is proper to derive [the law of] injury[18] from

[the law governing another case of] injury,[19] and not to derive [the law of] injury[18] from [the law governing the case of] murder. It could, however, be argued to the contrary; [that it is proper] to derive [the law of injury inflicted upon] man from [another case of] man but not to derive [the law of injury inflicted upon] man from [the case of] beast. This was the point of the statement 'If, however, this reason does not satisfy you.' [The answer is as follows:] 'It is stated: Moreover ye shall take no ransom for the life of a murderer that is guilty of death; but he shall surely be put to death, implying that it was only 'for the life of a murderer' that you may not take ransom whereas you may take ransom [even] for principal limbs though these cannot be restored.' But was the purpose of this [verse], Moreover ye shall take no ransom for the life of a murderer, to exclude the case of principal limbs? Was it not requisite that the Divine Law should state that you should not make him[20] subject to two punishments, i.e. that you should not take from him pecuniary compensation as well as kill him? — This, however, could be derived from the verse, According to his crime,[21] [which implies that] you can make him liable for one crime but cannot make him liable for two crimes.[22] But still was it not requisite that the Divine Law should state that you should not take pecuniary compensation from him and release him from the capital punishment? — If so the Divine Law would have written, 'Moreover ye shall take no satisfaction for him who is guilty [and deserving] of death'; why then write 'for the life of a murderer' unless to prove from it that it is only 'for the life of a murderer' that you may not take ransom, whereas you may take ransom [even] for principal limbs though these could not be restored? But since it was written, Moreover ye shall take no ransom [implying the law of pecuniary compensation in the case of mere injury], why do I require [the analogy made between] 'smiting' [in the case of injuring man and] 'smiting' [in the case of injuring beast]? — It may be answered that if [the law would have had to be derived only] from the former text, I might have said that the offender has the option, so that if he wishes he may pay with the loss of his eye or if he desires otherwise he may pay the value of the eye; we are therefore told [that the inference is] from smiting a beast: just as in the case of smiting a beast the offender is liable for pecuniary compensation so also in the case of injuring a man he is liable for pecuniary compensation.

It was taught: R. Dosthai b. Judah says: Eye for eye means pecuniary compensation. You say pecuniary compensation, but perhaps it is not so, but actual retaliation [by putting out an eye] is meant? What then will you say where the eye of one was big and the eye of the other little, for how can I in this case apply the principle of eye for eye? If, however, you say that in such a case pecuniary compensation will have to be taken, did not the Torah state, Ye shall have one manner of law,[23] implying that the manner of law should be the same in all cases? I might rejoin: What is the difficulty even in that case? Why not perhaps say that for eyesight taken away the Divine Law ordered eyesight to be taken away from the offender?[24] For if you will not say this,

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(1) As even a lame or one-armed person could be employed in this capacity.

(2) But not of the previous employment on account of the reason which follows.

(3) Ex. XXI, 24.

(4) Lev. XXIV; for the exact verse see the discussion that follows.

(5) But no resort to Retaliation.

(6) Lit., 'If it is your desire to say (otherwise).'

(7) Num. XXXV, 31.

(8) I.e., ransom, and thus release him from capital punishment.

(9) Lev. XXIV, 21.

(10) Where retaliation actually applies.

(11) Ibid. 18.

(12) Ibid. 19.

(13) E.V.: 'killeth'.

(14) Ibid. 17.

(15) As follows in the text, ' Breach for breach, eye for eye' etc.

(16) The phrase, 'be put to death', would thus refer exclusively to the limb which has to be sacrificed in retaliation.
(17) As indeed appears from the literal meaning of the text.
(18) Lev. XXIV, 19.
(19) I.e., where Man injured beast.
(20) The murderer.
(21) Deut. XXV, 2.
(22) Cf. Mak. 4b and 13b.
(23) Lev. XXIV, 22.
(24) Without taking into consideration the sizes of the respective eyes.

Talmud - Mas. Baba Kama 84a

how could capital punishment be applied in the case of a dwarf killing a giant or a giant killing a dwarf,[1] seeing that the Torah says, Ye shall have one manner of law, implying that the manner of law should be the same in all cases, unless you say that for a life taken away the Divine Law ordered the life of the murderer to be taken away?[2] Why then not similarly say here too that for eyesight taken away the Divine Law ordered eyesight to be taken away from the offender?

Another [Baraitha] taught: R. Simon b. Yohai says: 'Eye for eye' means pecuniary compensation. You say pecuniary compensation, but perhaps it is not so, but actual retaliation [by putting out an eye] is meant? What then will you say where a blind man put out the eye of another man, or where a cripple cut off the hand of another, or where a lame person broke the leg of another? How can I carry out in this case [the principle of retaliation of] 'eye for eye', seeing that the Torah says, Ye shall have one manner of law, implying that the manner of law should be the same in all cases? I might rejoin: What is the difficulty even in this case? Why not perhaps say that it is only where it is possible [to carry out the principle of retaliation that] it is to be carried out, whereas where it is impossible, it is impossible, and the offender will have to be released altogether? For if you will not say this, what could be done in the case of a person afflicted with a fatal organic disease killing a healthy person?[3] You must therefore admit that it is only where it is possible [to resort to the law of retaliation] that it is resorted to, whereas where it is impossible, it is impossible, and the offender will have to be released.

The School of R. Ishmael taught: Scripture says: So shall it be given to him again.[4] The word 'giving' can apply only to pecuniary compensation. But if so, would the words, As he hath [given a blow that] caused a blemish,[4] similarly refer to money?[5] — It may be replied that at the School of R. Ishmael this text was expounded as a superfluous verse; since it has already been written, And if a man maim his neighbour,' as he hath done so shall it be done to him.[6] Why after this do we require the words, so shall it be given to him again? It must, therefore refer to pecuniary compensation. [But still,] why the words, as he hath [given a blow that] caused a blemish in a man? Since it was necessary to write, so shall it be given to him again,[7] the text also writes, as he hath [given a blow that] caused a blemish in a man.

The School of R. Hiyya taught: Scripture says, Hand in hand,[8] meaning an article which is given from hand to hand, which is of course money. But could you also say the same regarding the [next] words, foot in foot? — It may be replied that at the School of R. Hiyya this text was expounded as a superfluous verse, for it has already been written: Then shall ye do unto him as he had purposed to do unto his brother.[9] If then you assume actual retaliation [for injury], why do I require the words, hand in hand? This shows that it means pecuniary compensation. But still, why the words, foot in foot? — Having written 'hand in hand', the text also wrote 'foot in foot'.[8]

Abbaye said: [The principle of pecuniary compensation] could be derived from the teaching of the School of Hezekiah. For the School of Hesekiah taught: Eye for eye, life for life,[10] but not 'life and

eye for eye'. Now if you assume that actual retaliation is meant, it could sometimes happen that eye and life would be taken for eye, as while the offender is being blinded, his soul might depart from him. But what difficulty is this? perhaps what it means is that we have to form an estimate,[11] and only if the offender will be able to stand it will retaliation be adopted, but if he will not be able to stand it, retaliation will not be adopted? And if after we estimate that he would be able to stand it and execute retaliation it so happens that his spirit departs from him, [there is nobody to blame,] as if he dies, let him die. For have we not learnt regarding lashes: 'Where according to estimation he[12] should be able to stand them, but it happened that he died under the hand of the officer of the court, there is exemption [from any blame of manslaughter]'.[13]

R. Zebid said in the name of Raba: Scripture says, Wound for would:[14] This means that compensation is to be made for pain even where Depreciation [is separately compensated].[15] Now, if you assume that actual Retaliation is meant, would it not be that just as the plaintiff suffered pain [through the wound], the offender too would suffer pain through the mere act of retaliation?[16] But what difficulty is this? Why, perhaps, not say that a person who is delicate suffers more pain whereas a person who is not delicate does not suffer [so much] pain, so that the practical result [of the Scriptural inference] would be to pay for the difference [in the pain sustained]!

R. Papa in the name of Raba said: Scripture says, To heal, shall he heal;[17] this means that compensation is to be made for Healing even where Depreciation [is compensated separately]. Now, if you assume that Retaliation is meant, would it not be that just as the plaintiff needed medical attention, the defendant also would surely need medical attention [through the act of retaliation]? But what difficulty is this? Why perhaps not say that there are people whose flesh heals speedily while there are others whose flesh does not heal speedily, so that the practical result [of the Scriptural inference] would be to require payment for the difference in the medical expenses!

R. Ashi said: [The principle of pecuniary compensation] could be derived from [the analogy of the term] 'for' [occurring in connection with Man] with the term 'for' occurring in connection with Cattle. It is written here, 'Eye for eye,' and it is also written there, he shall surely pay ox for ox.[18] [This indicates that] just as in the latter case it is pecuniary compensation that is meant, so also in the former case it means pecuniary compensation. But what ground have you for comparing the term 'for' with 'for' [mentioned in connection] with cattle, rather than with the 'for' [mentioned in connection] with [the killing of] man, as it is written, thou shalt give life for life,[19] so that, just as in the case of murder it is actual Retaliation, so also here it means actual Retaliation? — It may be answered that it is more logical to infer [the law governing] injury from [the law governing another case of] injury[18] than to derive [the law of] injury from [the law applicable in the case of] murder.[19] But why not say on the contrary, that it is more logical to derive [the law applying to] Man from [a law which similarly applies to] Man[19] than to derive [the law applying to] Man from [that applying to] Cattle? — R. Ashi therefore said: It is from the words for he hath humbled her,[20] that [the legal implication of 'eye for eye'] could be derived by analogy, as [the law in the case of] Man is thus derived from [a law which is similarly applicable to] Man, and the case of injury from [a similar case of] injury.

It was taught: R. Eliezer said: Eye for eye literally refers to the eye [of the offender]. Literally, you say? Could R. Eliezer be against all those Tannaim [enumerated above]?[21] — Raba thereupon said: it only means to say that the injured person would not be valued as if he were a slave.[22] Said Abaye to him: How else could he be valued? As a freeman? Could the bodily value of a freeman be ascertained by itself? — R. Ashi therefore said: It means to say that the valuation will be made not of [the eye of] the injured person but of [that of] the offender.[23]

An ass once bit off the hand of a child. When the case was brought before R. Papa b. Samuel he said [to the sheriffs of the court], 'Go forth and ascertain the value of the Four items.'[24] Said Raba to

him: Have we not learnt Five [items]? — He replied: I did not include Depreciation. Said Abaye to him: Was not the damage in this case done by an ass, and in the case of an ass [injuring even man] there is no payment except for Depreciation?[25] — He therefore ordered [the sheriffs], 'Go forth and make valuation of the Depreciation.' But has not the injured person to be valued as if he were a slave? — He therefore said to them, 'Go forth and value the child as if it were a slave.' But the father of the child thereupon said, 'I do not want [this method of valuation], as this procedure is degrading.' They, however, said to him, 'What right have you to deprive the child of the payment which would belong to it?'[26] He replied, 'When it comes of age I will reimburse it out of my own.

An ox once chewed the hand of a child. When the case was brought before Raba, he said [to the sheriffs of the court], 'Go forth and value the child as if it were a slave.' They, however, said to him, 'Did not the Master [himself] say that payment for which the injured party would have to be valued as if he were a slave,[27] cannot be collected in Babylon?'[28] — He replied, 'My order would surely have no application except in case of the plaintiff becoming possessed of property belonging to the defendant.'[29] Raba thus follows his own principle, for Raba said: Payment for damage done to chattel by Cattle[30] or for damage done to chattel by Man can be collected even in Babylon,[31] whereas payment for injuries done to man by Man or for injuries done to man by Cattle cannot be collected in Babylon. Now, what special reason is there why payment for injuries done to man by Cattle cannot [be collected in Babylon] if not because it is requisite [in these cases that the judges be termed] Elohim,[32] [a designation] which is lacking [in Babylon]? Why then should the same not be also regarding payment for [damage done] to chattel by Cattle or to chattel by Man, where there is similarly

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(1) Where the bodies of the murderer and the murdered are not alike.

(2) Without considering the weights and sizes of the respective bodies.

(3) In which case the murderer could not be convicted by the testimony of witnesses; v. Sanh. 78a.

(4) Lev. XXIV. 20.

(5) Which could of course not be maintained.

(6) Ibid. 19.

(7) To indicate that pecuniary compensation is to be paid.

(8) Deut. XIX, 21. (E.V.: Hand for hand, foot for foot.)

(9) Ibid. 19.

(10) Ex. XXI, 24.

(11) Whether the offender would stand the operation or not.

(12) Who is subject to the thirty-nine lashes for having transgressed a negative commandment.

(13) Mak. III. 14.

(14) Ex. XXI, 25.

(15) V. supra 26b.

(16) How then could there he extra compensation for pain?

(17) Ex. XXI, 19. (E.V.: shall cause him to be thoroughly healed.)

(18) Ibid. 36.

(19) Ibid. 23.

(20) Deut.XXII, 29.

(21) Proving against Retaliation.

(22) In the manner described supra p. 473.

(23) As the pecuniary compensation in this case is a substitution for Retaliation.

(24) Enumerated supra p. 473.

(25) V. supra 26a.

(26) Cf, infra 87b.

(27) I.e., where the damages could otherwise not be ascertained.

(28) Because the judges there have not been ordained as Mumhe (v. Glos.) who alone were referred to by the Scriptural term Elohim standing for 'judges' as in Ex. XXI, 6 and XXII, 7-8, and who alone were qualified to administer penal

justice; cf. Sanh. 2b, 5a, and 14a and supra p. 144.

(29) Cf. supra p. 67.

(30) Lit., 'ox'.

(31) As these matters are of a purely civil nature and of frequent occurrence, as brought out by the discussion which follows.

(32) As in Ex. XXI, 6 and XXII, 7-8.

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required the designation of Elohim which is lacking [in Babylon]? But if on the other hand the difference in the case of chattel [damaged] by Cattle or chattel [damaged] by Man is because we [in Babylon] are acting merely as the agents [of the mumhin[1] judges in Eretz Yisrael] as is the practice with matters of admittances and loans,[2] why then in the case of man [injured] by Man or man [injured] by Cattle should we similarly not act as their agents as is indeed the practice with matters of admittances and loans?[2] — It may, however, be said that we act as their agents only in regard to a matter of payment which we can fix definitely, whereas in a matter of payment which we are not able to fix definitely [but which requires valuation] we do not act as their agents. But I might object that [payment for damage done] to chattel by Cattle or to chattel by Man we are similarly not able to fix definitely, but we have to say, 'Go out and see at what price an ox is sold on the market place.' Why then in the case of man [injured] by Man, or man [injured] by Cattle should you not similarly say, 'Go out and see at what price slaves are sold on the market place'? Moreover, why in the case of double payment[3] and four-fold or five-fold payment[4] which can be fixed precisely should we not act as their agents?[5] — It may, however, be said that we may act as their agents only in matters of civil liability, whereas in matters of a penal nature[6] we cannot act as their agents. But why then regarding payment [for an injury done] to man by Man which is of a civil nature should we not act as their agents? — We can act as their agents only in a matter of frequent occurrence, whereas in the case of man injured by Man which is not of frequent occurrence we cannot act as their agents. But why regarding Degradation,[7] which is of frequent occurrence, should we not act as their agents? — It may indeed be said that this is really the case, for R. Papa ordered four hundred zuz to be paid for Degradation. But this order of R. Papa is no precedents for when R. Hisda sent to consult R. Nahman [in a certain case] did not the latter send back word, 'Hisda, Hisda, are you really prepared to order payment of fines in Babylon?'[8] — It must therefore be said that we can act as their agents only in a matter which is of frequent occurrence and where actual monetary loss is involved,[9] whereas in a matter of frequent occurrence but where no actual monetary loss is involved, or again in a matter not of frequent occurrence though where monetary loss is involved we cannot act as their agents. It thus follows that in the case of man [injured] by Man, though there is there actual monetary loss, yet since it is not of frequent occurrence we cannot act as their agents, and similarly in respect of Degradation, though it is of frequent occurrence, since it involves no actual monetary loss, we cannot act as their agents.

Is payment for damage done to chattel by Cattle really recoverable in Babylon? Has not Raba said: 'If Cattle does damage, no payment will be collected in Babylon'?[10] Now, to whom was damage done [in this case stated by Raba]? If we say to man, why then only in the case of Cattle injuring man?[11] Is it not the fact that even in the case of Man injuring man[12] payment will not be collected in Babylon? It must therefore surely refer to a case where damage was done to chattel and it was nevertheless laid down that no payment would be collected in Babylon![13] — It may, however, be said that that statement referred to Tam,[14] whereas this statement deals with Mu'ad.[15] But did Raba not say that there could be no case of Mu'ad[16] in Babylon? — It may, however, be said that where an ox was declared Mu'ad there [in Eretz Yisrael][17] and brought over here [in Babylon, there could be a case of Mu'ad even in Babylon] — But surely this[18] is a matter of no frequent occurrence, and have you not stated that in a matter not of frequent occurrence we cannot act as their agents? — [A case of Mu'ad could arise even in Babylon] where the Rabbis of Eretz Yisrael came to Babylon

and declared the ox Mu'ad here. But still, this also is surely a matter of no frequent occurrence,[19] and have you not stated that in a matter not of frequent occurrence we cannot act as their agents? — Raba must therefore have made his statement [that payment will be collected even in Babylon where chattel was damaged by Cattle] with reference to Tooth and Foot which are Mu'ad ab initio.

PAIN: — IF HE BURNT HIM EITHER WITH A SPIT OR WITH A NAIL, EVEN THOUGH ON HIS [FINGER] NAIL WHICH IS A PLACE WHERE NO BRUISE COULD BE MADE etc. Would Pain be compensated even in a case where no depreciation was thereby caused? Who was the Tanna [that maintains such a view]?Raba replied: He was Ben ‘Azzai, as taught: Rabbi said that ‘burning’[20] without bruising is mentioned at the outset, whereas Ben ‘Azzai said that [it is with] bruising [that it] is mentioned at the outset. What is the point at issue between them? Rabbi holds that as ‘burning’ implies even without a bruise, the Divine Law had to insert ‘bruise’,[21] to indicate that it is only where the burning caused a bruise that there would be liability,[22] but if otherwise this would not be so,[23] whereas Ben ‘Azzai maintained that as ‘burning’ [by itself] implied a bruise, the Divine Law had to insert ‘bruise’ to indicate that ‘burning’ meant even without a bruise.[24] R. Papa demurred: On the contrary, it is surely the reverse that stands to reason:[25] Rabbi who said that ‘burning’, [without bruising] is mentioned at the outset holds that as ‘burning,’ implies also a bruise, the Divine Law inserted ‘bruise’ to indicate that ‘burning,’ meant even without a bruise,[26] whereas Ben ‘Azzai who said that [it was] with bruising [that it] was mentioned at the outset maintains that as ‘burning’ implies even without a bruise, the Divine Law purposely inserted ‘bruise’ to indicate that it was only where the ‘burning’ has caused a bruise that there will be liability, but if otherwise this would not be so; for in this way they[27] would have referred in their statements to the law as it stands now in its final form. Or, alternatively, it may be said that both held that ‘burning’ implies both with a bruise and without a bruise, and here

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(1) V. Glos. s.v. Mumhe.

(2) For which cf. Sanh. (Sonc. ed.) p. 4, n. 3.

(3) For theft.

(4) For having slaughtered or sold the stolen sheep and ox respectively.

(5) Why then should these not be adjudicated and collected in Babylon?

(6) As is the case with double payment and four-fold or five-fold payment.

(7) [Omitting with MS.M. ‘blemish’ paid in case of rape, and occurring in cur. edd.]

(8) Cf. supra 27b.

(9) Excluding thus a loss of mere prospective profits.

(10) V. supra p. 481, n. 5.

(11) Which is of no frequent occurrence at all.

(12) Which is of slightly more frequent occurrence.

(13) This contradicts the statement made by the same Raba (supra p. 481) that payment for damage done to chattel by Cattle will be collected even in Babylon.

(14) In which case the payment is of a penal nature (as decided supra p. 67), which cannot be collected in Babylon.

(15) Where the payment is of a strictly civil nature, and accordingly collected even in Babylon.

(16) Regarding damage done by Horn, for since for the first three times of goring no penalty could be imposed in Babylon, the ox could never be declared Mu'ad.

(17) Where the judges are Mumhin and thus qualified to administer also penal justice.

(18) I.e., to bring over an ox already declared Mu'ad in Eretz Yisrael to Babylon.

(19) Cf. Keth. 110b.

(20) Ex. XXI, 25.

(21) Ibid.

(22) For the payment of Pain.

(23) I.e., Pain would not be compensated since no depreciation was thereby caused.

(24) Pain would therefore even in this case be compensated in accordance with Ben ‘Azzai who could thus be considered to have been the Tanna of the Mishnaic ruling.

(25) That the Tanna of the Mishnaic ruling was most probably Rabbi and not his opponent, and moreover the statements made by Rabbi and Ben ‘Azzai should be taken to give the final implication of the law and not as it would have been on first thoughts.
(26) So that Pain will be paid even in this case according to Rabbi who was the Tanna of the Mishnaic ruling.
(27) I.e., Rabbi and Ben ‘Azzai.

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they were differing on the question of a generalisation and a specification placed at a distance from each other,[1] Rabbi maintaining that in such a case the principle of a generalisation followed by a specification does not apply,[2] whereas Ben ‘Azzai maintained that the principle of a generalisation followed by a specification does apply.[3] And should you ask why, according to Rabbi, was it necessary to insert ‘bruise’,[4] [the answer would be that it was necessary to impose the payment of] additional money.[5] IT HAS TO BE CALCULATED HOW MUCH A MAN OF EQUAL STANDING WOULD REQUIRE TO BE PAID TO UNDERGO SUCH PAIN. But how is pain calculated in a case where Depreciation [also has to be paid]?[6] — The father of Samuel[7] replied: We have to estimate how much a man would require to be paid to have his arm cut off. To have his arm cut off? Would this involve only Pain and not also all the Five Items?[8] Moreover, are we dealing with fools [who would consent for any amount to have their arm cut off]? — It must therefore refer to the cutting off of a mutilated arm.[9] But even [if the calculation be made on the basis of] a mutilated arm, would it amount only to Pain and not also to Pain plus Degradation, as it is surely a humiliation that a part of the body should be taken away and thrown to dogs? — It must therefore mean that we estimate how much a man whose arm had by a written decree of the Government to be taken off by means of a drug would require that it should be cut off by means of a sword. But I might say that even in such a case no man would take anything [at all] to hurt himself [so much]? — It must therefore mean that we have to estimate how much a man whose arm had by a written decree of the Government to be cut off by means of a sword would be prepared to pay that it might be taken off by means of a drug. But if so, instead of TO BE PAID should it not be written ‘to pay’? — Said R. Huna the son of R. Joshua: It means that payment to the plaintiff will have to be made by the offender to the extent of the amount which the person sentenced would have been prepared to pay.

‘HEALING’: — IF HE HAS STRUCK HIM HE IS UNDER OBLIGATION TO PAY MEDICAL EXPENSES etc. Our Rabbis taught: Should ulcers grow on his body as a result of the wound and[10] the wound break open again, he has still to heal him and is liable to pay him for Loss of Time, but if it was not caused through the wound he has not to heal him and need not pay him for Loss of Time. R. Judah, however, said that even if it was caused through the wound, though he has to heal him, he has not to pay him for Loss of Time. The Sages said: The Loss of Time and Healing [are mentioned together in Scripture:][11] Wherever there is liability for Loss of Time there is liability for Healing but wherever there is no liability for Loss of Time there is no liability for Healing. In regard to what principle do they[12] differ? — Rabbah said: ‘I found the Rabbis at the School of Rab sitting and saying[13] that the question whether [or not] a wound may be bandaged[14] [by the injured person] was the point at issue. The Rabbis[15] maintained that a wound may be bandaged, whereas R. Judah maintained that a wound may not be bandaged, so that [it was only] for Healing of which there is a double mention in Scripture[16] that there is liability,[17] but for Loss of Time of which there is no double mention in Scripture there is no liability. I, however, said to them that if a wound may not be bandaged there would be no liability even for Healing.[18] We must therefore say that all are agreed that a wound may be bandaged, but not too much; R. Judah held that since it may not be bandaged too much [it is only] for Healing of which there is a double mention in Scripture that there will be liability, but for Loss of Time of which there is no double mention in Scripture there will be no liability, whereas the Rabbis maintained that since Scripture made a double mention of healing there will be liability also for Loss of Time which is compared to Healing. R. Judah, however, maintained that there will be no liability for Loss of Time as Scripture excepted this by [the term] ‘only’;[11] to

which the Rabbis[19] might rejoin that ‘only’ [was intended to exclude the case] where the ulcers that grew were not caused by the wound. But according to the Rabbis mentioned last[20] who stated that whenever there is liability for Loss of Time there is liability for Healing, whereas where there is no liability for loss of Time there could be no liability for Healing — why do I require the double mention of Healing? — This was necessary for the lesson enunciated by the School of R. Ishmael, as taught: ‘The School of R. Ishmael taught: [The words] "And to heal he shall heal’’[21] [are the source] whence it can be derived that authorisation was granted [by God] to the medical man to heal.’[22]

Our Rabbis taught: Whence can we learn that where ulcers have grown on account of the wound and[23] the wound breaks open again, the offender would still be liable to heal it and also pay him for [the additional] Loss of Time? Because it says: Only he shall pay for the loss of his time and to heal he shall heal.[24] [That being so, I might say] that this is so even where the ulcers were not caused by the wound. It therefore says further ‘only’. R. Jose b. Judah, however, said that even where they were caused by the wound he would be exempt, since it says ‘only’. Some say that [the view of R. Jose that] ‘even where they were caused by the wound he would be exempt’ means altogether from any [liability whatsoever],[25] which is also the view of the Rabbis mentioned last. But others say that even where they were caused by the wound he would be exempt means only from paying for additional Loss of Time, though he would be liable for Healing. With whom [would R. Jose b. Judah then be concurring in his statement]? With his own father.[26]

The Master stated: ‘[In that case I might say] that this is so even where the ulcers were not caused by the wound. It therefore says further "only".’ But is a text necessary to teach [that there is exemption] in the case where they were caused not by the wound?[27] — It may be replied that what is meant by ‘caused not by the wound’ is as taught: ‘If the injured person disobeyed his medical advice and ate honey or any other sort of sweet things, though honey and any other sort of sweetness are harmful to a wound, and the wound in consequence became gargutani [scabby], it might have been said that the offender should still be liable to [continue to] heal him. To rule out this idea it says "only".’[28] What is the meaning of gargutani? — Abaye said: A rough seam.[29] How can it be cured? — By aloes, wax and resin.

If the offender says to the injured person: ‘I can personally act as your healer’,[30] the other party can retort ‘You are in my eyes like a lurking lion.’[31] So also if the offender says to him ‘I will bring you a physician who will heal you for nothing’, he might object, saying ‘A physician who heals for nothing is worth nothing.’ Again, if he says to him ‘I will bring you a physician from a distance’, he might say to him, ‘If the physician is a long way off, the eye will be blind [before he arrives].’[32] If, on the other hand, the injured person says to the offender, ‘Give the money to me personally as I will cure myself’, he might retort ‘You might neglect yourself and thus get from me too much.’ Even if the injured person says to him, ‘Make it a fixed and definite sum’, he might object and say, ‘There is all the more danger that you might neglect yourself [and thus remain a cripple], and I will consequently be called "A harmful ox."’

A Tanna taught: ‘All [the Four Items][33] will be paid [even] in the case where Depreciation [is paid independently].’ Whence can this ruling be deduced? — Said R. Zebid in the name of Raba: Scripture says: Wound for wound,[34] to indicate the payment of pain even in the case where Depreciation [is paid independently].[35] But is not this verse required

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(1) Such as here the term ‘hurts’ which is a generalisation as it implies all kinds of burning whether with a bruise or without a bruise, and the term ‘bruise’ which specifies an injury with a bruise, are separated from each other by the intervening clause ‘wound for wound’.

(2) To render the generalisation altogether ineffective; cf supra p. 371.

(3) Even in such a case.

(4) Since the term ‘burning’ is a generalisation and by itself implies both with a bruise and without a bruise.

(5) I.e., for Depreciation as explained by Rashi, or for the Pain where the burning left a mark and thus aggravated the ill feeling (Tosaf).
(6) Such as where an arm was cut off and Depreciation had already been paid.
(7) Abba b. Abba.
(8) Whereas the problem raised deals with a case where the other items have already been paid for.
(9) Which is still attached to the body but unable to perform any work.
(10) [Maim. Yad, Hobel, II, 19 reads 'or'.]
(11) Ex. XXI, 19.
(12) I.e., R. Judah and the other Rabbis.
(13) In the name of Rab; cf. Suk. 17a.
(14) To prevent the cold from penetrating the wound though the bandage may cause swelling through excessive heat.
(15) In opposing R. Judah.
(16) Ex. XXI, 19 lit., 'to heal he shall heal'.
(17) Though the plaintiff had no right to bandage the wound which caused the ulcers to grow.
(18) Since the plaintiff would be to blame for the ulcer that grew through the bandage if he had no right to put it on.
(19) I.e., the first Tanna.
(20) Under the name of Sages.
(21) Cf. p. 487, n. 6.
(22) And it is not regarded as 'flying in the face of Heaven'; v. Ber. 60a.
(23) V. p. 486, n. 5.
(24) Ex. XXI, 19.
(25) Even from Healing.
(26) I.e., R. Judah who orders payment for Healing but not for Loss of Time.
(27) Why indeed would liability have been suggested?
(28) Implying that the liability is qualified and thus excepted in such and similar cases.
(29) Rashi: 'wild flesh'.
(30) And need thus not employ a medical man.
(31) I.e., 'I am not prepared to trust you'; cf. B.M. 101; B.B. 168a.
(32) [So S. Strashun; Rashi: 'If the physician is from far he might blind the eye'; others: 'A physician from afar has a blind eye'. i.e., he is little concerned about the fate of his patient.]
(33) I.e., Pain, Healing, Loss of Time, and Degradation.
(34) Ex. XXI, 25.
(35) Supra 26b.

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to extend liability [for Depreciation] to the case of inadvertence equally with that of willfulness, and to the case of compulsion equally with that of willingness? — If so [that it was required only for such a rule] Scripture would have said 'Wound in the case of wound'; why [say] '. . . for wound', unless to indicate that both inferences are to be made from it?[1] R. Papa said in the name of Raba: Scripture says And to heal shall he heal,[2] [thus enjoining] payment for Healing even in the case where Depreciation is paid independently. But is not that verse required for the lesson taught at the School of R. Ishmael for it was indeed taught at the School of R. Ishmael that [the text] 'And to heal he shall heal' [is the source] whence it is derived that authorisation was granted [by God] to the medical man to heal?[3] — If so [that it was to be utilised solely for that implication] Scripture would have said, 'Let the physician cause him to be healed' — This shows that payment for Healing should be made even in the case where Depreciation [is paid independently]. But still, is not the text required as said above to provide a double mention in respect of Healing? — If so, Scripture should have said either 'to cause to heal [and] to cause to heal'[4] or 'he shall cause to heal [and] he shall cause to heal.[5] Why say 'and to heal he shall heal'[6] unless to prove that payment should be made for Healing even in the case where Deprecation [is paid independently].

From this discussion it would appear that a case could arise where the Four Items would be paid even where no Depreciation was caused. But how could such a case be found where no Depreciation was caused? — Regarding Pain it was stated: 'PAIN': — IF HE BURNT HIM EITHER WITH A SPIT OR WITH A NAIL, EVEN ON HIS [FINGER] NAIL WHICH IS A PLACE WHERE NO BRUISE COULD BE MADE, Healing could apply in a case where one had been suffering from some wound which was being healed up, but the offender put on the wound a very strong ointment which made the skin look white [like that of a leper] so that other ointments have to be put on to enable him to regain the natural colour of the skin — Loss of Time [without Depreciation could occur] where the offender [wrongfully] locked him up in a room and thus kept him idle. Degradation [could apply] where he spat on his face.

'LOSS OF TIME': — THE INJURED PERSON IS CONSIDERED AS IF HE WERE A WATCHMAN OF CUCUMBER BEDS. Our Rabbis taught: '[In the case of assessing] Loss of Time, the injured person is considered as if he would have been a watchman of cucumbers. You might say that the requirements of justice suffer thereby, since when he was well[7] he would surely not necessarily have worked for the wages of a watchman of cucumber beds but might have carried buckets of water and been paid accordingly, or have acted as a messenger and been paid accordingly.[8] But in truth the requirements of justice do not suffer, for he has already been paid for the value of his hand or for the value of his leg.[9]

Raba said: If he cut off [another's] arm he must pay him for the value of the arm, and as to Loss of Time,[10] the injured person is to be considered as if he were a watchman of cucumber beds; so also if he broke [the other's] leg, he must pay him for the value of the leg, and as to Loss of Time the injured person is to be considered as if he were a door-keeper; if he put out [another's] eye he must pay him for the value of his eye, and as to Loss of Time the injured person is to be considered as if he were grinding in the mill; but if he made [the other] deaf, he must pay for the value of the whole of him.[11]

Raba asked: If he had cut off [another man's] arm and before any appraisement had been made he also broke his leg, and again before any appraisement had been made he put out his eye, and again before any appraisement had been made he made him at last deaf, what would be the law? Shall we say that since no valuation has yet been made one valuation would be enough, so that he would have to pay him altogether for the value of the whole of him, or shall perhaps each occurrence be appraised by itself and paid for accordingly? The practical difference would be whether he would have to pay for Pain and Degradation of each occurrence separately. It is true that he would not have to pay for Depreciation, Healing and Loss of Time regarding each occurrence separately, the reason being that since he has to pay him for the whole of him the injured person is considered as if killed altogether, and there could surely be made no more payment than for the value of the whole of him; but in respect of Pain and Degradation the payment should be made for each occurrence separately, as he surely suffered pain and degradation on each occasion separately. If, however, you find it [more correct] to say that since no appraisement had been yet made he can pay him for the value of the whole of him altogether, what would be the law where separate appraisements were made? Shall we say that since separate valuations were made the payment should be for each occurrence by itself, or since the payment had not yet been made he has perhaps to pay him for the value of the whole of him? This must remain undecided.

Rabbah asked: What would be the law regarding Loss of Time that renders the injured person of less value [for the time being]. How could we give an example? For instance, where he struck him on his arm and the arm was broken but will ultimately recover fully.[12] What would be the legal position?[13] [Shall we say that] since it will ultimately recover fully he need not pay him [for the value of the arm], or perhaps [not so], since for the time being he diminished his value? — Come and hear:[14] If one strikes his father and his mother without making on them a bruise,[15] or injures

another man on the Day of Atonement,[16]

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(1) Ibid.

(2) Ex. XXI, 19. [The emphasis indicates that this payment had to be made in all circumstances.]

(3) V. supra p. 488.

(4) I.e., a repetition of the infinitive.

(5) I.e., a repetition of the verb in the finite mood.

(6) I.e., on one occasion the verb is in the infinitive and on the other in the finite mood.

(7) Cf. Rashi; but also Tosaf. a.l.

(8) Why then not pay him for Loss of Time in accordance with the proper wage?

(9) In the way of Depreciation, and could in fact no more work in his previous employment but in a different capacity such as a watchman of cucumbers or a doorkeeper.

(10) During the days of illness when he is totally unable to do any work.

(11) As by having been made deaf he is unfit to do anything.

(12) In which case the depreciation is but temporary.

(13) Regarding the payment for Depreciation.

(14) Infra p. 87a.

(15) In which case the capital offence of Ex. XXI, 25 has not been committed; v. Sanh. 84b.

(16) The violation of which entails no capital punishment at the hands of a court of law; cf. Lev. XXIII, 30 and Ker. I,1. Again, though lashes could be involved in this case in accordance with Mak. III, 2, the civil liability holds good as supra p. 407.

he is liable for all of the Five Items. Now, how are we to picture no bruise being made [in such a case]? Does this not mean, e.g., where he struck him on his arm which will ultimately recover[1] and it is nevertheless stated that he 'is liable for all of the Five Items'?[2] — It may, however, be said that we are dealing here with a case where e.g.,he made him deaf[3] without making a bruise on him. But did Rabbah not say[4] that he who makes his father deaf is subject to be executed,[5] for it is impossible to cause deafness without first making a bruise through which a drop of blood falls into the ear?[6] — It must therefore be said that we are dealing here with a case where e.g. he shaved him [against his will] — But will not the hair grow again in the case of shaving? And that is the very question propounded.[7] — It may, however, be said that we are dealing here with a case where e.g. he smeared nasha[8] over it so that no hair will ever grow there again. Pain [in such a case should similarly be paid] where he had scratches on his head and thus suffered on account of the sores. Healing [should similarly be paid] as it requires curing. Loss of Time would be where he was a dancer in wine houses and has to make gestures by moving his head and cannot do so [now] on account of these scratches.[9] Degradation [should certainly be paid], for there could hardly be a case of greater degradation.

But this matter which was doubtful to Rabbah was quite certain to Abaye taking one view, and to Raba taking the opposite view. For it was stated: If he struck him on his arm and the arm was broken but so that it would ultimately recover completely, Abaye said that he must pay for General Loss of Time[10] plus Particular Loss of time, whereas Raba said that he will not have to pay him anything but for the amount of the Loss of Time[11] for each day [until he recovers].

It was stated: If a man cuts off the arm of a Hebrew servant of another, Abaye said that he will have to pay the servant for General Loss of Time, and the master for Particular Loss of Time, whereas Raba said that the whole payment should be given to the servant[12] who would have to [invest it and] purchase real property whose produce would be enjoyed by the master. There is no question that where the servant became [through the injury] depreciated in his personal value while no loss was caused so far as the master was concerned, as for instance, where the offender split the top of the servant's ear or the top of his nostrils,[13] the whole payment would go to the servant

himself. It was only where the depreciation affected the master [also][14] that Abaye and Raba differ. 'DEGRADATION': — ALL TO BE ESTIMATED IN ACCORDANCE WITH THE STATUS OF THE OFFENDER AND THE OFFENDED. May we say that our Mishnah is in agreement neither with R. Meir nor with R. Judah but with R. Simeon? For it was taught: 'All [sorts of injured persons] should be considered as if they were freemen who have become impoverished since they are all the children of Abraham, Isaac and Jacob;[15] this is the view of R. Meir. R. Judah says that [Degradation in the case of] the eminent man [will be estimated] in accordance with his eminence, [whereas in the case of] the insignificant man [it will be estimated] in accordance with his insignificance. R. Simeon says that wealthy persons will be considered merely as if they were freemen who have become impoverished, whereas the poor will all be put on the level of the least among them.[16] Now, in accordance with whom is our Mishnah? It could not be in accordance with R. Meir, for the Mishnah states that all are to be estimated in accordance with the status of the offender and the offended, whereas according to R. Meir all [sorts of persons] are treated alike. It could similarly not be in accordance with R. Judah, for the Mishnah [subsequently] states[17] that he who insults even a blind person is liable, whereas R. Judah[18] says that a blind person is not subject to the law of Degradation. Must the Mishnah therefore not be in accordance with R. Simeon?[19] — You may say that they are [even] in accordance with R. Judah. For the statement made by R. Judah that a blind person is not subject to the law of Degradation means that no payment will be exacted from him [where he insulted others], whereas when it comes to paying him [for Degradation where he was insulted by others], We would surely order that he be paid. But since it was stated in the concluding clause 'If he insulted a person who was sleeping he would be liable [to pay for Degradation], whereas if a person who was asleep insulted others he would be exempt', and no statement was made to the effect that a blind person insulting others should be exempt, it surely implied that in the case of a blind person[20] there was no difference whether he was insulted by others or whether he insulted others, [as in all cases the law of Degradation would apply]![21] — It must therefore be considered as proved that the Mishnaic statements were in accordance with R. Simeon.

Who was the Tanna for what our Rabbis taught: If he intended to insult a katon[22] but insulted [by accident] a gadol[23] he would have to pay the gadol the amount due for the degradation of the katon, and so also where he intended to insult a slave but [by accident] insulted a freeman he would have to pay the freeman the amount due for the degradation of the slave? According to whom [is this teaching]? It is in agreement neither with R. Meir nor with R. Judah nor even with R. Simeon, it being assumed that katon meant 'small in possessions' and gadol [similarly meant] 'great in possessions'. It could thus hardly be in accordance with R. Meir, for he said that all classes of people are treated alike. It could similarly not be in accordance with R. Judah, for he stated that in the case of slaves no Degradation need be paid. Again, it could not be in accordance with R. Simeon, since he holds that where the offender intended to insult one person and by an accident insulted another person he would be exempt, the reason being that this might be likened to murder, and just as in the case of murder there is no liability unless where the intention was for the particular person killed,[24] as it is written: 'And lie in wait for him and rise up against him'[25] [implying, according to R. Simeon, that there would be no liability] unless where he aimed at him particularly, so should it also be in the case of Degradation, that no liability should be imposed on the offender unless where he aimed at the person insulted, as it is written: 'And she putteth forth her hand and taketh him by the secrets'[26] [which might similarly imply that there should be no liability] unless where the offence was directed at the person insulted. [Who then was the Tanna of the teaching referred to above]? — It might still be said that he was R. Judah, for the statement made by R. Judah that in the case of slaves there would be no liability for Degradation means only that no payment will be made to them, though in the matter of appraisement we can still base the assessment on them. Or if you like I may say that you may even regard the teaching as being in accordance with R. Meir, for why should you think that gadol means 'great in possessions' and katon means 'small in possessions', and not rather that gadol means an actual gadol [i.e. one who is of age] and katon means an actual katon [i.e. a minor]? But is a minor subject to suffer Degradation? — Yes, as elsewhere stated by R. Papa, that if

where he is reminded of some insult he feels abashed[27] [he is subject to Degradation] so also here

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(1) For since no bruise was made it will surely recover.
(2) In which Depreciation is included.
(3) In which case he will never recover,
(4) Infra 98a.
(5) For having committed a capital offence in accordance with Ex. XXI, 25.
(6) And since a capital offence would thus have been committed no civil liabilities could be entailed; cf. infra p. 502.
(7) Which problem could thus be solved.
(8) I.e., the sap of a plant used as a depilatory; cf. also Mak. 20b.
(9) [MSS. omit 'on account of these scratches', apparently as it is the nasha which was smeared over his head which prevents his appearing in his dancing role.]
(10) Another term for Depreciation.
(11) But not for the temporary depreciation in value.
(12) [Tosaf. reads: 'to the master' as it is the master who is the primary loser in consequence of the servant's enforced idleness.]
(13) Through which injury the servant is not hindered from performing his usual work.
(14) Cf. Rashi and Tosaf. a. l.
(15) V. infra 90b.
(16) I.e., among the poor.
(17) Infra p. 496.
(18) Infra pp. 495-499.
(19) [Who also does not treat all persons alike.]
(20) Whom the Mishnaic statement makes subject to the law of Degradation.
(21) This would contradict R. Judah, who maintained that a blind person would not have to pay Degradation.
(22) Denotes either 'small', or a minor,
(23) Denotes either 'great' or 'one who is of age'.
(24) As indeed maintained by R. Simeon; cf. Sanh. 79a and supra p. 252.
(25) Deut. XIX, 11.
(26) Ibid. XXV, 11.
(27) Infra 86b.

he was a minor who, if the insult were mentioned to him, would feel abashed.

MISHNAH. ONE WHO INSULTS A NAKED PERSON, OR ONE WHO INSULTS A BLIND PERSON, OR ONE WHO INSULTS A PERSON ASLEEP IS LIABLE [FOR DEGRADATION], THOUGH IF A PERSON ASLEEP INSULTED [OTHERS] HE WOULD BE EXEMPT. IF ONE IN FALLING FROM A ROOF DID DAMAGE AND ALSO CAUSED [SOMEBODY] TO BE DEGRADED, HE WOULD BE LIABLE FOR DEPRECIATION BUT EXEMPT FROM [PAYING FOR] DEGRADATION UNLESS HE INTENDED [TO INFLICT IT].[1]

GEMARA. Our Rabbis taught: If he insulted a person who was naked he would be liable[2] though there could be no comparison between one who insulted a person who was naked[3] and one who insulted a person who was dressed. If he insulted him in the public bath he would be liable though one who insulted a person in a public bath[3] could not be compared to one who insulted a person in the market place.

The Master stated: 'If he insulted a person who was naked he would be liable.' But is a person who walks about naked capable of being insulted?[4] — Said R. Papa: The meaning of 'naked' is that a wind [suddenly] came and lifted up his clothes, and then some one came along and raised them still

higher, thus putting him to shame.

'If he insulted him in the public bath he would be liable.' But is a public bath a place where people are apt to feel offended?[5] — Said R. Papa: It meant that he insulted him[6] near the river.[7]

R. Abba b. Memel asked: What would be the law where he humiliated a person who was asleep but who died [before waking]?[8] — What is the principle involved in this query?[9] — Said R. Zebid: The principle involved is this: [Is Degradation paid] because of the insult, and as in this case he died before waking and was never insulted [no payment should thus be made], or is it perhaps on account of the [public] disgrace, and as there was here disgrace [payment should be made to the heirs]? — Come and hear: R. Meir says: A deaf-mute and a minor are subject to [be paid for] Degradation, but an idiot is not subject to be paid for Degradation. Now no difficulty arises if you say that degradation is paid on account of the disgrace; it is then quite intelligible that a minor [should be paid for Degradation]. But if you say that Degradation is paid on account of the insult, [we have to ask,] is a minor subject to feel insulted? — What then? [You say that] Degradation is paid because of the disgrace? Why then should the same not apply even in the case of an idiot? — It may, however, be said that the idiot by himself constitutes a disgrace which is second to none. But in any case, why not conclude from this statement that Degradation is paid on account of the disgrace, for if on account of the insult, is a minor subject to feel insulted? — As elsewhere stated by R. Papa, that if where the insult is recalled to him he feels abashed [he is subject to Degradation]; so also here he was a minor who when the insult was recalled to him would feel abashed.

R. Papa, however, said that the principle involved in the query [of R. Abba] was this: [Is Degradation paid] because of personal insult, and as in this case [where] he died [before waking he did not suffer any personal insult, no payment should be made], or is [Degradation paid] perhaps on account of the insult suffered by the family? — Come and hear: A deaf-mute and a minor are subject to [be paid for] Degradation but an idiot is not subject to [be paid for] Degradation. Now no difficulty arises if you say that Degradation is paid on account of the insult suffered by the family; it is then quite intelligible that a minor [should be paid for Degradation]. But if you say that Degradation is paid on account of personal insult [we have to ask], is a minor subject to personal insult? — What then? [Do you say] that Degradation is paid because of the insult sustained by the members of the family? Why then should the same not apply in the case of an idiot? — It may, however, be said that the idiot by himself constitutes a Degradation [to them] which is second to none. But in any case, why not conclude from this statement that Degradation is paid on account of the insult suffered by the family, for if on account of personal insult[10] , is a minor subject to personal insult? — Said R. Papa: Yes, if when the insult is mentioned to him he feels insulted, as indeed taught: 'Rabbi says: A deaf-mute is subject to [be paid for] Degradation, but an idiot is not subject to [be paid for] Degradation, whereas a minor is sometimes subject to be paid and sometimes not subject to be paid [for Degradation].' The former [must be] in a case where, if the insult is mentioned to him, he would feel abashed, and the latter in a case where if the insult is recalled to him he would not feel abashed.

ONE WHO INSULTS A BLIND PERSON . . . IS LIABLE [FOR DEGRADATION]. This Mishnah is not in accordance with R. Judah. For it was taught: R. Judah says: 'A blind person is not subject to [the law of] Degradation. So also did R. Judah exempt him from the liability of being exiled[11] and from the liability of lashes[12] and from the liability of being put to death by a court of law.'[13] What is the reason of R. Judah? — He derives [the law in the case of Degradation by comparing the term] 'thine eyes' [inserted in the case of Degradation[14] from the term] 'thine eyes'[15] occurring in the case of witnesses who were proved zomemim:[16] just as there[17] blind persons are not included[18] so also here[19] blind persons should not be included. The exemption from the liability to be exiled is derived as taught: Seeing him not[20] excepts a blind person;[21] so R. Judah. R. Meir on the other hand says that it includes a blind person.[22] What is the reason of R. Judah? — He might say to

you [as Scripture says]: 'As when a man goeth into the wood with his neighbour to hew wood',[23] which might include even a blind person. The Divine Law therefore says 'Seeing him not' to exclude [him]. But R. Meir might contend that as the Divine Law inserted 'Seeing him not' [which implies] an exception, and the Divine Law further inserted unawares'[24] [which similarly implies] an exception, we have thus a limitation followed by another limitation, and the established rule is that a limitation followed by another limitation is intended to amplify.[25] And R. Judah? — He could argue that the word 'unawares' came to be inserted to except a case of intention. [Exemption from] liability to be put to death by a court of law is derived [from comparing the term] 'murderer' [used in the section dealing with capital punishment[26] with the term] 'murderer' [used in the section setting out] the liability to be exiled.[27] [Exemption from] liability of lashes is learnt [by comparing the term] 'wicked' [occurring in the Section dealing with lashes[28] with the term] 'wicked'[26] occurring in the case of those who are liable to be put to death by a court of law.

Another [Baraitha] taught: R. Judah says: A blind person is not subject to [the law of] Degradation.

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(1) Supra p. 140.
(2) Even where the insult was caused by further uncovering him; cf. Tosaf. a.l,
(3) In which case the payment will be much less.
(4) By means of being further uncovered; again, how could a naked person be further uncovered?
(5) By means of being uncovered, since everybody is uncovered there.
(6) By uncovering him.
(7) Where people merely bathe their legs and are therefore fully dressed.
(8) So that he personally never felt the humiliation.
(9) Why indeed should there by any payment in such a case.
(10) no note.
(11) For inadvertently killing a person.
(12) When transgressing a negative commandment.
(13) For committing a capital offence.
(14) Deut. XXV, 12.
(15) Ib., XIX, 21.
(16) I.e., against whom the accusation of an alibi was proved; v. Glos.
(17) In the case of witnesses.
(18) For since a blind person could not see he is disqualified from giving evidence, on the strength of Lev. v, 1; cf. Tosaf, B.B. 129a, s.v. אי , and Asheri B.B. VIII, 24; but v. also Shebu. 33b.
(19) In the case of Degradation.
(20) Num. XXXV, 23.
(21) From being subject to the law of exile.
(22) Mak. 9b.
(23) Deut. XIX, 5.
(24) Ibid. 4.
(25) Cf. supra p. 259.
(26) Num. XXXV, 31.
(27) Deut. XIX, 3.
(28) Deut. XXV, 2.

Talmud - Mas. Baba Kama 87a

So also did R. Judah exempt him from all the judgments of the Torah. What is the reason of R. Judah? — Scripture says: Then the congregation shall judge between the smiter and the avenger of blood according to these ordinances,[1] whoever is subject to the law of the 'smiter' and 'the avenger of blood' is subject to judgments, but he[2] who is not subject to the law of the 'smiter' and the

'avenger of blood' is not subject to judgments.

Another [Baraitha] taught: R. Judah.says: 'A blind person is not subject to [the law of] Degradation. So also did R. Judah exempt him from all commandments stated in the Torah.' R. Shisha the son of R. Idi said: The reason of R. Judah was because Scripture says: Now this is the commandment, the statutes and the ordinances;[3] he who is subject to the 'ordinances' is subject to 'commandments' and 'statutes',but he who is not subject to 'ordinances' is not subject to 'commandments' and 'statutes'. R. Joseph stated:[4] Formerly I used to Say: If someone would tell me that the halachah is in accordance with R. Judah who declared that a blind person is exempt from the commandments, I would make a festive occasion for our Rabbis, because though I am not enjoined[5] I still perform commandments, but now that I have heard the statement of R. Hanina, as R. Hanina indeed said[6] that greater is the reward of those who being enjoined do [good deeds] than of those who without being enjoined [but merely of their own free will] do [good deeds], if someone would tell me that the halachah is not in accordance with R. Judah I would make a festive occasion for our Rabbis, because if I am enjoined to perform commandments the reward will be greater for me.

MISHNAH. ON THIS [POINT] THE LAW FOR MAN IS MORE SEVERE THAN THE LAW FOR CATTLE, VIZ., THAT MAN HAS TO PAY FOR DEPRECIATION, PAIN, HEALING, LOSS OF TIME AND DEGRADATION;[7] AND HE PAYS ALSO FOR THE VALUE OF EMBRYOS,[8] WHEREAS IN THE CASE OF CATTLE THERE IS NO PAYMENT FOR ANYTHING BUT DEPRECIATION,[9] AND THERE IS EXEMPTION FROM [PAYING] THE VALUE OF EMBRYOS.[8] ONE WHO STRIKES HIS FATHER AND HIS MOTHER WITHOUT, HOWEVER, MAKING A BRUISE ON THEM,[10] OR ONE WHO INJURED HIS FELLOW ON THE DAY OF ATONEMENT[11] IS LIABLE FOR ALL [THE FIVE ITEMS]. ONE WHO INJURES A HEBREW SLAVE[12] IS SIMILARLY LIABLE FOR ALL OF THEM, WITH THE EXCEPTION, HOWEVER, OF LOSS OF TIME IF HE IS HIS OWN SLAVE. ONE WHO INJURES A CANAANITE SLAVE[13] BELONGING TO ANOTHER PERSON IS [SIMILARLY] LIABLE FOR ALL [THE FIVE ITEMS]. R. JUDAH, HOWEVER, SAYS THAT NO DEGRADATION IS PAID IN THE CASE OF [CANAANITE] SLAVES. A DEAF-MUTE, AN IDIOT AND A MINOR ARE AWKWARD TO DEAL WITH, AS HE WHO INJURES THEM IS LIABLE [TO PAY], WHEREAS IF THEY INJURE OTHERS THEY ARE EXEMPT. [SO ALSO] A SLAVE AND A [MARRIED] WOMAN ARE AWKWARD TO DEAL WITH, AS HE WHO INJURES THEM IS LIABLE [TO PAY], WHEREAS IF THEY INJURE OTHERS THEY ARE EXEMPT,[14] THOUGH THEY MAY HAVE TO PAY AT A LATER DATE; FOR IF THE WOMAN WAS DIVORCED[15] OR THE SLAVE MANUMITTED,[16] THEY WOULD BE LIABLE TO PAY. HE WHO SMITES HIS FATHER OR HIS MOTHER MAKING ALSO A BRUISE ON THEM[17] OR HE WHO INJURES ANOTHER ON THE SABBATH[18] IS EXEMPT FROM ALL [THE FIVE ITEMS], FOR HE IS CHARGED WITH A CAPITAL OFFENCE.[19] [SO ALSO] HE WHO INJURES A CANAANITE SLAVE OF HIS OWN IS EXEMPT FROM ALL [THE ITEMS].[20]

GEMARA. R. Eleazar inquired of Rab: If one injures a minor daughter of another person, to whom should [the payment for] the injury go?[21] Shall we say that since the Divine Law bestowed upon the father [the right to] the income of [his daughter during the days of her] youth,[22] the payment for an injury should also be his, the reason being that her value was surely decreased [by the injury], or [shall we say that it was] perhaps only the income of youth[23] that the Divine Law granted him, since if he wishes to hand her over [in marriage e.g.,] to one afflicted with leprosy he could hand her over,[24] whereas the payment for injury might not have been granted to him by the Divine Law, since if he wishes to injure her he would not have had the right to injure her?[25]

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(1) Num. XXXV, 24.

(2) Such as a blind person.

(3) Deut. VI, 2.

(4) Kid. 31a.
(5) As R. Joseph became blind through an illness; cf. Shab. 109a.
(6) V. supra p. 215.
(7) As supra p. 473.
(8) Cf. Ex, XXI, 22 and supra p. 277.
(9) V, supra 26a.
(10) In which case the capital offence of Ex. XXI,15 has not been committed; v. Sanh. 84b.
(11) The violation of which entails no capital punishment at the hands of a court of law; cf. Lev. XXIII, 30 and Ker. I, 1. Again, though lashes could be involved in this case in accordance with Mak. III, 2, the civil liability holds good as supra p. 407.
(12) Cf. Ex. XXI, 2-6.
(13) V. Lev. XXV, 44-46.
(14) Irrespective of the equality of all before the law, as supra p. 63, no payment could be made here as the possessions of slaves form a part of the estates of their masters as in Kid. 23b, and the property of a married woman is usually in the usufruct of the husband, cf, Keth, IV, 4,
(15) When her estate will return to her.
(16) And property was subsequently acquired by him.
(17) Which is a capital offence, v. Ex. XXI. 15; supra p. 492.
(18) Thus involving capital punishment, v. Shab. 106a; supra p. 192.
(19) In the punishment for which all civil liabilities merge; v. supra p. 192.
(20) For so far as the master is concerned the slave is but his chattel. He will, however, be liable to heal him; Tosaf, a.l.; Git. 12b.
(21) I.e., whether to her or to her father.
(22) Cf. Keth. 46b.
(23) Such as the consideration given by a prospective husband for marrying him, or the hire of her labour and the like.
(24) As could be inferred from Deut. XXII, 16,
(25) Moreover he would thereby commit the sin implied in Deut. XXV, 3.

Talmud - Mas. Baba Kama 87b

— He replied: 'The Torah did not bestow upon the father [any right] save to the income of youth alone.'

An objection was raised[1] [from the following]: ONE WHO INJURES A HEBREW SLAVE IS SIMILARLY LIABLE FOR ALL OF THEM, WITH THE EXCEPTION HOWEVER OF LOSS OF TIME IF HE IS HIS OWN SLAVE![2] — Abaye replied: Rab surely agrees regarding the item of Loss of Time, as the work of her hands during the period preceding the age of womanhood[3] belongs to her father. A [further] objection was raised [from the following]: 'If one injures his son who has already come of age[4] he has to compensate him straight away, but if his son was still a minor[5] he must make for him a safe investment [out of the compensation money], while he who injures his minor daughter is exempt, and what is more, if others injure her they are liable to pay the compensation to her father'?[6] — The rulings here similarly refer to Loss of Time.[7]

Is it really a fact that in the case of a son who has already come of age the father has to compensate him straight away? [If so,] a contradiction could be pointed out [from the following:] 'If one injures the sons and daughters of others, if they have already come of age, he has to pay them straight away, but if they are still minors he should make for them a safe investment [out of the compensation money], whereas where the sons and daughters were his own, he would be exempt [altogether]'![8] — It may, however, be said that there is no difficulty, as the ruling here [stating exemption] refers to a case where the children still reclined at the father's table,[9] whereas the ruling there[10] deals with a case where they did not recline at his table. But how could you explain the former teaching to refer to a case where they did not recline at his table? For if so, read the

concluding clause: 'Whereas he who injures his minor daughter is exempt, and what is more, even others who injure her are liable to pay the compensation to her father.' Why not pay her, since she has to maintain herself? For even according to the view[11] that a master may say to his slave, 'Work with me though I am not prepared to maintain you,' surely this applies only to a Canaanite slave to whom the master can say, 'Do your work during the day and in the evenings you can go out and look about for food,'[12] whereas in the case of a Hebrew slave in connection with whom it is written, Because he fareth well with thee,[13] implying 'with thee in food and with thee in drink',[14] this could certainly not be maintained; how much the more so then in the case of his own daughter?[15] — As stated[16] [in another connection] by Raba the son of R. 'Ulla, that the ruling applies only to the surplus [of the amount of her earnings over the cost of maintenance], so also here in this case this ruling applies only to the surplus [of the amount of compensation over the cost of maintenance]. You have then explained the latter statement [that there is exemption in the case of his own children] as dealing with a case where the children reclined at his table. Why then [in the case of children of other persons] is it stated that 'if they had already come of age he has to pay them straight away, but if they were still minors he should make for them a safe investment [out of the compensation money]? Why should the compensation not be made to their father?[17] — It may, however, be said that the father would be particular only in a matter which would cause him a loss,[18] whereas in regard to a profit coming from outside[19] he would not mind [it going to the children]. But what about a find which is similarly a profit coming from outside, and the father still is particular about it?[20] — It may be said that he is particular even about a profit which comes from outside provided no actual pain was caused to the children through it,[21] whereas in the matter of compensation for injury where the children suffered actual pain and where the profit comes from outside he does not mind. But what of the other case[22] where the daughter suffered actual pain and where there was a profit coming from outside and the father nevertheless was particular about it as stated 'What is more, even others who injure her are liable to pay the compensation to her father'? — It may still be said that it was only in that case[22] where the father was an eccentric person who would not have his children at his table that he could be expected to care for the matter of profit coming even from outside, whereas in the case here[23] where he was not an eccentric person, as his children joined him at his table it is only regarding a matter which would cause him a loss that he would be particular, but he would not mind about a matter of profit coming from outside.

What is meant by 'a safe investment'?[24] — R. Hisda said: [To buy] a scroll of the Law.[25] Rabbah[26] son of R. Huna said: [To buy] a palm tree, from which he gets a profit in the shape of dates.

Resh Lakish similarly said that the Torah did not bestow upon the father any right save to the income of youth alone. R. Johanan however said: 'Even regarding wounding.' How can you think about wounding?[27] Even R. Eleazar did not raise a question[28] except regarding an injury

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(1) [Lit., 'he objected to him.' The objector was evidently not R. Eleazar, as Abaye is the one who replies to the objection.]

(2) Why then should the payment for Loss of Time in the case of a minor girl not go to her father to whom the hire for her labour would belong?

(3) Which begins six months after puberty was reached at approximately the age of twelve; cf. Nid. 45b; 65a and Keth. 39a.

(4) I.e., usually over the age of thirteen; cf. Glos. s.v. Gadol.

(5) I.e., before the age of thirteen; v. Glos. s.v. Katon.

(6) [Is this not against the view of Rab who stated that damages paid for injuring a minor girl would not go to her father?]

(7) For which all agree that payment must be made to the father.

(8) [Does the latter ruling not apply even where the sons and daughters had already come of age, in contradiction to the ruling stated in the former teaching?]

(9) I.e., were maintained and provided by him with all their needs; cf. B.M. 12b.
(10) Stating liability.
(11) Git. 12a.
(12) [Eg. where the work he performs is not worth the cost of his maintenance, v. Git. 12a.]
(13) Deut. XV, 16.
(14) He must share the same pleasures and comforts as the Master. Cf. Kid. 20a.
(15) [Why therefore should the compensation be paid to the father and not to her in a case where she has to maintain herself?]
(16) Keth. 43a.
(17) Since they are maintained by him.
(18) Such as if he would have to pay compensation where he himself injured them.
(19) As where others injured them and would have to pay compensation.
(20) Cf. B.M. 12b.
(21) Such as e.g., in the case of a find.
(22) I.e., in the former teaching.
(23) I.e., in the latter teaching.
(24) B.B. 52a.
(25) Cf. Er. 64a.
(26) B.B. 52: 'Raba'.
(27) Which would usually not decrease her pecuniary value.
(28) Supra p.502.

Talmud - Mas. Baba Kama 88a

through which her pecuniary value is decreased,[1] whereas regarding mere wounding, through which her pecuniary value would not [usually] decrease there was never any question [that the compensation would not go to the father. How then could R. Johanan speak of mere wounding?] — R. Jose b. Hanina replied: We suppose the wound to have been made in her face, thus causing her pecuniary value to be decreased. ONE WHO INJURES A CANAANITE SLAVE BELONGING TO ANOTHER PERSON IS [SIMILARLY] LIABLE FOR ALL [FIVE ITEMS]. R. JUDAH, HOWEVER, SAYS THAT NO DEGRADATION IS PAID IN THE CASE OF [CANAANITE] SLAVES. What is the reason of R. Judah? — As Scripture says:[2] 'When men strive together one with another' the law applies to one who can claim brotherhood and thus excludes a slave who cannot claim brotherhood.[3] And the Rabbis?[4] — They would say that even a slave is a brother in so far as he is subject to commandments. If this is so, would you say that according to R. Judah witnesses proved zomemim[5] in a capital accusation against a slave would not be subject to be put to death in virtue of the words:[6] 'Then shall ye do unto him as he had purposed to do unto his brother'?[7] — Raba said that R. Shesheth stated: The verse concludes:[6] 'So shalt thou put away the evil from among you', implying 'on all accounts' — Would you say that according to the Rabbis[8] a slave would be eligible to be chosen as king?[9] — I would reply: According to your reasoning would the same difficulty not arise regarding a proselyte, whichever view we accept[10] unless we suppose that when Scripture says 'One from among thy brethren',[11] it implies 'one of the choicest of thy brethren'?[12] — But again would you now also say that according to the Rabbis, a slave would be eligible to give evidence,[13] since it says, And behold, if the witness be a false witness and hath testified falsely against his brother?[14] — 'Ulla replied: Regarding evidence you can surely not argue thus. For that he[15] is disqualified from giving evidence can be learnt by means of an a fortiori from the law in the case of Woman: for if Woman who is eligible to enter [by marriage] into the congregation [of Israel] is yet ineligible to give evidence,[16] how much more must a slave who is not eligible to enter [by marriage] into the congregation [of Israel] be ineligible to give evidence? But why is Woman disqualified if not perhaps because she is not subject to the law of circumcision? How then can you assert the same In the case of a slave who is subject to circumcision?[17] — The case of a [male] minor will meet this objection, for in spite of his being subject to circumcision he is

disqualified from giving evidence.[18] But why is a minor disqualified if not perhaps because he is not subject to commandments?[19] How then can you assert the same in the case of a slave who is subject to commandments?[20] — The case of Woman will meet this objection, for though she is subject to commandments she is disqualified from giving evidence. The argument is thus endlessly reversible. There are features in the one instance which are not found in the other, and vice versa. The features common to both[21] are that they are not subject to all the commandments[22] and that they are disqualified from giving evidence. I will therefore include with them a slave who also is not subject to all the commandments and should therefore also be disqualified from giving evidence. But why [I may ask] is the feature common to them[21] that they are disqualified from giving evidence if not perhaps because neither of them is a man?[23] How then can you assert the same in the case of a slave who is a man? — You must therefore deduce the disqualification of a slave from the law applicable in the case of a robber.[24] But why is there this disqualification in the case of a robber if not because his own deeds caused it? How then can you assert the same in the case of a slave whose own deeds could surely not cause it?[25] — You must therefore deduce the disqualification of a slave from both the law applicable to a robber and the law applicable to either of these [referred to above].[26] Mar, the son of Rabina, however, said: Scripture says: 'The fathers shall not be put to death through[27] the children';[28] from this it could be inferred that no sentence of capital punishment should be passed on [the evidence of] the mouth of [persons who if they were to be] fathers would have no legal paternity over their children.[29] For if you assume that the verse is to be taken literally, 'fathers shall not be put to death through children', meaning, 'through the evidence of children', the Divine Law should have written 'Fathers shall not be put to death through their children'. Why then is it written 'children', unless to indicate that no sentence of capital punishment should be passed on [the evidence of] the mouth of [persons who if they were to be] fathers would have no legal paternity over their children? If that is so, would you also say that the concluding clause 'neither shall the children be put to death through the fathers' similarly implies that no sentence of capital punishment should be passed on [the evidence of] the mouth of [witnesses who as] children would have no legal filiation with respect to their fathers, and therefore argue that a proselyte[30] should similarly be disqualified from giving evidence?[31] — It may be said that there is no comparison: It is true that a proselyte has no legal relationship to his ancestors, still he has legal relationship with his descendants, [but we may therefore] exclude a slave who has relationships neither with ancestors nor with descendants. For if you should assume that a proselyte is disqualified from giving evidence, the Divine Law should surely have written: 'Fathers shall not be put to death through their children', which would mean what we stated, that they would not be put to death through the evidence of children, and after this the Divine Law should have written: 'Neither shall children be put to death through fathers,' as from such a text you would have derived the two rules: one that children should not be put to death through the evidence of fathers and the other that no sentence of capital punishment should be passed on [the evidence of] the mouth of [witnesses who as] children have no legal filiation with respect to their fathers.[32] The disqualification in the case of a slave would surely have been derived by means of an a fortiori from the law applicable to a proselyte: for if a proselyte, who has no legal relationship to his ancestors but has legal relationship to his descendants, is disqualified from giving evidence, how much more must a slave who has legal relationship neither to ancestors nor to descendants be disqualified from giving evidence? But since the Divine Law has written: 'Fathers shall not be put to death through children', which implies that no sentence of capital punishment should be passed on [the evidence of] the mouth of [witnesses who as] fathers would have no legal paternity over their children, we can derive from this that it is only a [Canaanite] slave who has relationship neither to ancestors nor to descendants that will be disqualified from giving evidence, whereas a proselyte will be eligible to give evidence on account of the fact that he has legal paternity over his children. If you object, why did the Divine Law not write: 'Neither shall children be put to death through their fathers', and why did the Divine Law write 'And neither shall children be put to death through fathers', which appears to imply that no sentence of capital punishment should be passed [on the evidence of] the mouth of [witnesses who as] children would have no legal filiation with respect to fathers,[33] [my answer is that] since it was written, 'Fathers shall not be put to death

through children', it was further written, 'neither shall children be put to death through fathers.'[34]

A DEAF, MUTE AN IDIOT AND A MINOR ARE AWKWARD TO DEAL WITH. The mother of R. Samuel b. Abba of Hagronia[35] was married to R. Abba,[36] and bequeathed her possessions to R. Samuel b. Abba, her son. After her death

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(1) And a loss thus caused to the father.
(2) Deut. XXV, 11.
(3) Cf. supra p. 63.
(4) The representatives of the anonymous opinion cited first in the Mishnah.
(5) I.e., where an alibi was proved against them; cf. Glos.
(6) Deut. XIX, 19.
(7) Since a slave according to R. Judah could not he considered a brother.
(8) Who consider a slave a brother.
(9) Where the text in Deut. XVII, is states, One from among thy brethren shalt thou set king over thee.
(10) For a proselyte is unanimously considered a brother.
(11) Deut. XVII, 15.
(12) Cf. Yeb. 45b; [and for this reason a slave is not eligible for kingship, not because he is not considered a brother.]
(13) Which would not be in conformity with R. H. I., 8.
(14) Deut. XIX, 18.
(15) I.e., a slave.
(16) V. Shebu. 30a.
(17) Cf. Gen. XVII, 12 and Yeb. 48b.
(18) Cf. B.B. 155b.
(19) Cf. supra p. 250.
(20) In the same way as a woman; cf. Hag. 4a.
(21) I.e., in Woman and male Minor.
(22) Cf. Kid. 29a.
(23) As a minor has not yet reached manhood.
(24) Who is disqualified from giving evidence though being a 'man' and eligible to enter by marriage into the Congregation; cf. Ex. XXIII, 1.
(25) Having done nothing criminal.
(26) I.e., a woman or male minor, the common feature being that they do not observe all commandments — the robber on account of his criminality, the woman or male minor because neither is subject to all the commandments.
(27) E.V. 'for'.
(28) Deut. XXV, 16.
(29) Such as slaves; cf. supra p. 63.
(30) Who has no legal filiation with respect to his ancestors; cf. Yeb. 62a.
(31) Which would not be in conformity with Nid. 49b.
(32) Which would have excluded also a proselyte.
(33) [Excluding thus a proselyte.]
(34) And while the phraseology of the concluding clause follows that of the commencing clause it is not usual in Scripture that the commencing clause should alter its phraseology because of the style of the concluding clause.
(35) V. supra p. 27, n. 1.
(36) He was not the father of R. Samuel as her former husband's name was also Abba.

Talmud - Mas. Baba Kama 88b

R. Samuel b. Abba went to consult R. Jeremiah b. Abba who confirmed him in possession of her property. R. Abba thereupon went and related the case to R. Hoshaia. R. Hoshaia then went and spoke on the matter with Rab Judah who said to him that Samuel had ruled as follows: If a woman disposes of her melog[1] possessions during the lifetime of her husband and then dies, the husband is

entitled to recover them from the hands of the purchasers.[2] When this statement was repeated to R. Jeremiah b. Abba, he said: I [only] know the Mishnaic ruling which we have learnt: 'If a man assigns his possessions to his son, to take effect after his death,[3] neither can the son alienate them [during the lifetime of the father] as they are then still in the possession of the father, nor can the father dispose of them since they are assigned to the son. Still, if the father sells them, the sale is valid until his death; if the son disposes of them the purchaser has no hold on them until the father dies.'[4] This implies, does it not, that when the father dies the purchaser will have the possessions [bought by him from the son during the lifetime of the father], and this even though the son died during the lifetime of the father, in which case they had never yet entered into the possession of the son? For so it was laid down by R. Simeon b. Lakish, who said[5] that there should be no difference whether the son died in the lifetime of the father, in which case the estate never came into the possession of the son, or whether the father died in the lifetime of the son, in which case the estate had entered into the possession of the son; the purchaser would [in either case] acquire title to the estate. (For it was stated:[6] Where the son sold the estate[7] in the lifetime of the father and it so happened that the son died during the lifetime of the father, R. Johanan said that the purchaser would not acquire title [to the estate], whereas Resh Lakish said that the purchaser would acquire title [to the estate]. R. Johanan, who held that the purchaser would not acquire title to the estate, would say to you that the Mishnaic statement, 'If the son disposed of them the purchaser would have no hold on them until the father dies, 'implying that at any rate after the death of the father the purchaser would own them, refers to the case where the son did not die during the lifetime of the father, so that the estate had actually entered into the possession of the son, whereas where the son died during the lifetime of the father, in which case the estate had never entered into the possession of the son, the purchaser would have no title to the estate even after the death of the father. This shows that in the opinion of R. Johanan a right to usufruct amounts in law to a right to the very substance [of the estate],[8] from which it follows that when the son sold the estate [during the lifetime of his father] he was disposing of a thing not belonging to him.[9] Resh Lakish on the other hand said that the purchaser would [in all cases] acquire title [to the estate after the death of the vendor's father], for the Mishnaic statement, 'If the son disposed of them the purchaser would have no hold on them until the father died,'implying that at least after the death of the father the purchaser would own them, applies equally whether the son did not die in the lifetime of the father, in which case the estate had entered into the possession of the son, or whether the son did die during the lifetime of the father, in which case the estate never did come into the possession of the son, [as in all cases] the purchaser would acquire title [to the estate as soon as the vendor's father died]. This shows that in the opinion of Resh Lakish a right to [mere] usufruct does not yet amount to a right in the very substance [of the estate], from which it follows that when the son sold the estate [during his father's lifetime] he was disposing of a thing that legally belonged to him.[10]) Now both[11] R. Jeremiah b. Abba and Rab Judah, concur with Resh Lakish,[12] and R. Jeremiah b. Abba accordingly argues thus: If you assume that a right to usufruct amounts [in law] to a right in the very substance, why then on the death of the father, if the son has previously died during the lifetime of his father, should the purchaser have any title to the estate, since when the son sold it he was disposing of a thing not belonging to him? Does not this show that a right to [mere] usufruct does not amount to a right to the very substance?[13] When, however, the argument was later repeated in the presence of Rab Judah, he said that Samuel had definitely stated: 'This case[14] cannot be compared to that stated in the Mishnah.' On what ground? — R. Joseph replied: We should have no difficulty if the case in the Mishnah were stated in a reversed order, i.e., 'If a son assigns his possessions to his father [to take effect after the son's death, and the father sold them during the lifetime of the son and died before the son,' and if the law would also in this case have been that the purchaser acquired title to the possessions] it would indeed have been possible to prove from it that a right to usufruct does not amount to a right to the very substance. But seeing that what it actually says is, 'If a father assigns his possessions to his son,' [the reason why the sale by the son is valid is] that [since] he was eligible to inherit him, [the father by drawing up the deed must necessarily have intended that the transfer to the son should have legal effect forthwith].[15] Said Abaye to him: Does only a son inherit a father, and does a father never inherit a son?[16] It is therefore

to be assumed that such a deed was drawn up only for the purpose of keeping the possessions out of the hands of the children,[17] and similarly also here[18] the deed might have been drawn up for the sole purpose of keeping the possessions out of the hands of his brothers![19] — The reason of [Samuel's remark that] 'This case cannot be compared to that stated in the Mishnah' is because of the [Rabbinic] enactment at Usha. For R. Jose b. Hanina said: It was enacted at Usha that if a woman disposes of her melog possessions during the lifetime of her husband and subsequently dies, the husband will be entitled to recover them from the hands of the purchasers.[20] R. Idi b. Abin said that we have been taught to the same effect: [Where witnesses state,] 'We can testify against a particular person that he has divorced his wife and paid her for her kethubah',[21]

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(1) Lit., 'plucking', but which denotes a wife's estate in which her husband has the right of usufruct and for which he hears no responsibility regarding any loss or deterioration, v. B.B. (Sonc. ed.) p. 206, n. 7.

(2) According to which statement R. Abba and not R. Samuel would be entitled to the possessions in direct contradiction to the judgment given by R. Jeremiah.

(3) [The father retaining for himself the right for life to the usufruct.]

(4) B.B. 136b.

(5) Ibid.

(6) B.B. 136a.

(7) [Assigned to him to be his after his father's death.]

(8) As indeed followed by him in Git. 47b and elsewhere.

(9) For since the father still had for life the right to usufruct he was for the time being the legal owner of the very substance of the estate, though the son had the reversionary right.

(10) Since he had the reversionary right while the father possessed merely for time being the right to usufruct. [The bracketed passage is an interpolation and not part of R. Jeremiah's argument.]

(11) [So MS.M. cur. edd. read, 'We now assume.']

(12) [That the sale is valid even where the son died in the lifetime of the father.] Cf. Yeb. 36b.

(13) Hence the gift of the mother to R. Samuel her son should become valid at her death in spite of the right to usufruct vested in R. Abba her second husband during her lifetime.

(14) I.e., the gift of the mother to R. Samuel her son.

(15) For if otherwise why was the deed necessary at all? [Whereas in the case of Samuel b. Abba, the deed was necessary for in the absence of one the estate would be inherited by the husband. V. B.B. 111b]

(16) Cf. B.B. VIII, 1. The same argument if at all sound could thus accordingly be raised even in the case made out by you where a son bequeathed his possessions to his father.

(17) Of the son who made the bequest in favour of his father, as otherwise the sons children would have been first to inherit him in accordance with Num. XXVII, 8.

(18) Where the father bequeathed his possessions to a son.

(19) I.e., from the brothers of the particular son in whose favour the bequest was made, as otherwise they would also have had a part in the inheritance on account of their being sons of the same father, and it was not intended that the transfer to the son should have legal effect forthwith. This being so, the case of Samuel b. Abba is on all fours with the Mishnah!

(20) For the right of the husband to the possessions of his wife took effect at the time of the wedding and thus preceded the act of the sale. V. B.B. (Sonc. ed.) p. 208.

(21) V. Glos.

Talmud - Mas. Baba Kama 89a

while the woman in question was still with him[1] and in fact looking after him, and the witnesses were subsequently proved zomemim, it would not be right to say that they should pay [the woman][2] the whole amount of her kethubah, [as she did not lose anything] but the satisfaction of the benefit of [being provided with] her kethubah.[3] How could [the value of] the satisfaction of the benefit of her kethubah be arrived at?[3] An estimate will have to be made of how much a man would be prepared to pay as purchase money for the kethubah of this [particular woman] which can mature only after she

is left a widow or divorced, since, were she [previously] to die her husband would inherit her.[4] Now, if you assume that this enactment of Usha is of no avail, why is it certain that her husband would inherit her? Why should she be unable to sell her kethubah outright?[5] Abaye said: If all this could be said[6] regarding melog possessions,[7] can it also be said[8] regarding the possessions [placed in the husband's hands[9] and secured[10] as if they were] 'iron flocks'?[11]

Abaye further said: Since the subject of the [mere] satisfaction of a benefit has been raised, let us say something on it. The [purchase money of this] satisfaction of the benefit would belong solely to the woman. For if you assume that it should be subject to [the rights of] the husband, why could the witnesses not argue against her: 'What loss did we cause you, for should you even have sold the satisfaction of the benefit, the husband would have taken away [the purchase money] from you'? — R. Shalman, however, said: Because [even then] there would have been ample domestic provision.[12]

Raba stated: 'The law is that the purchase money for the satisfaction of the benefit belongs solely to the woman, and the husband will have no right to enjoy any profit [that may result from it], the reason being that it was only profits that the Rabbis assigned to him,[13] whereas profits out of profits[14] were not assigned to him by the Rabbis.

When R. Papa and R. Huna the son of R. Joshua came from the College they said: We have learnt to the same effect as the enactment of Usha [in the following Mishnah]: A SLAVE AND A WOMAN ARE AWKWARD TO DEAL WITH, AS HE WHO INJURES THEM IS LIABLE [TO PAY], WHEREAS IF THEY HAVE INJURED OTHERS THEY ARE EXEMPT.[15] Now, if you assume that the enactment of Usha is not effective why should she not sell her melog[16] property and with the purchase money pay the compensation? — But even according to your reasoning, granted that the enactment of Usha is effective, in which case she would be powerless to alienate altogether her melog possessions, yet let her sell the melog estate for what the satisfaction of the benefit would fetch[17] and with his purchase money pay the compensation? It must therefore Surely be said that the ruling applies where she had no melog property; so also [according to the other view] the ruling would apply only where she possessed no melog property. But why should she not sell her kethubah for as much as the satisfaction of the benefit will fetch[17] and thus pay compensation? — The ruling is based on the view of R. Meir, who said that it is prohibited for any man to keep his wife without a kethubah even for one hour.[18] But what is the reason of this? So that it should not be an easy matter in his eyes to divorce her. In this case too he will surely not divorce her, for if he were to divorce her those who purchased the kethubah would certainly come and collect the amount of the kethubah from him. [Why then should she not be compelled by law to sell her kethubah and pay her creditors?] — We must therefore say that the satisfaction of such a benefit is a value of an abstract nature[19] and abstract values are not considered mortgaged [for the payment of liabilities]. But why not? Could these abstract values not be sold for actual denarii? — We must therefore [say that it would not be practical to compel her to sell her kethubah] on account of the statement of Samuel. For Samuel said:[20] Where a creditor assigns a liability on a bill to another and subsequently releases the debtor from payment, the debt is considered cancelled. Moreover, the creditor's heir may cancel the liability.[21] I would, however, ask: Why should she not be compelled to sell it and pay with the proceeds the compensation, though if she should subsequently release her husband from the obligation the release would be legally valid? — It may be replied that since it is quite certain that where there is an obligation on the husband the wife will release him,it would not be right to make a sale which will straight away be nullified. Should you say, why should she not assign her kethubah to the person whom she injured, thus letting him have the satisfaction of the benefit,

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(1) I.e., that particular person who was her husband, as he had never divorced her.

(2) In retaliation, as required in Deut. XIX, 19.

(3) Since it was but a conditional liability, i.e., becoming mature either through her being divorced or through her remaining a widow.

(4) And there would then be no occasion for the payment of the kethubah (cf. Mak. 3a).
(5) If the husband would have no right to recover the possessions thus alienated. Why then should the witnesses not pay the woman the full amount of the kethubah?
(6) By R. Jeremiah against Rab Judah, thus ignoring the enactment of Usha.
(7) In which the husband had only the right of usufruct while the substance belonged to the wife; v. Glos.
(8) [That the woman should be able to sell outright.]
(9) As absolutely his own property.
(10) By him on his general estate to pay her for them her Kethubah in case she would become a widow or divorced.
(11) Zon barzel. I.e., 'flocks' sold on credit and the payment made secure as 'iron', v. B.B. (Sonc. ed.) p. 206, n. 3.
(12) As it is also for her benefit that the income of her husband increases.
(13) Out of the substance belonging to her. Cf. Keth. 47b and 79b.
(14) Such as here in the case of the purchase money.
(15) V. supra p. 502, n. 1.
(16) V. Glos.
(17) I.e., that the purchaser should stand in her place and become entitled to it in case she should become a widow or divorced.
(18) Keth. 57a.
(19) Lit., 'words', 'an order for payment'.
(20) B.M. 20a; B.B. 147b.
(21) It would therefore not be practical to compel her to sell her kethubah, for she might subsequently release the husband from the liability of the kethubah.

Talmud - Mas. Baba Kama 89b

for even if she should subsequently release her husband from the obligation, the purchaser[1] would lose nothing as now too she pays him nothing on account of the compensation, [my answer is that] as it is in any case quite certain that where there is an obligation on the husband the wife will release him, it would not be proper to trouble the Court of Law so much for nothing. But seeing that it was taught: 'So also if she injures her husband she does not forfeit her kethubah'.[2] why should she in this case not assign her kethubah to the husband and thus let him have the satisfaction of the benefit as compensation for the injury, for even if she releases her husband from the obligation no loss will result therefrom? — This teaching is surely based on the view of R. Meir who said[3] that it is prohibited for any man to keep his wife without a kethubah even for one hour, the reason being that it should not be an easy matter in the eyes of the husband to divorce a wife. So also here if the kethubah be assigned to him he might easily divorce her and have her kethubah for himself as compensation for the injury. But if so [even now that the kethubah remains with her] would he just the same not find it easy to divorce her, as he would retain the amount of her kethubah as compensation for the injury? [This however would not be so where] e.g., the amount of her kethubah was much more than that of the compensation as on account of the small amount of the compensation he would surely not risk losing more.[4] But again if the amount of her kethubah exceeded that of an ordinary kethubah as fixed by the Law,[5] why should we not reduce the amount to that of the ordinary kethubah fixed by the Law,[6] and she should assign the difference to the husband as compensation for the injury? [This could not be done where,] e.g. the amount of her kethubah did not exceed that of the ordinary kethubah fixed by the Law and the compensation for the injury was assessed to be four zuz, as it is pretty certain that for four zuz he will not risk losing twenty-five [sela'].[7] But what of that which was taught: 'Just as she cannot [be compelled to] assign her kethubah[8] so long as she is with her husband, so also she cannot [be compelled to] remit [anything of] her kethubah so long as she is with her husband'?[9] Are there not times when she would be forced to remit, as, for example where the amount of her kethubah exceeded the amount of an ordinary kethubah fixed by the Law? — Said Raba: This concluding paragraph refers to the clause inserted in the kethubah regarding the male children,[10] and what was meant was this: Just as in the case of a wife assigning her kethubah to others she does thereby not impair the clause in the kethubah

regarding the male children, the reason being that she might have been compelled to do it on account of a pressing need for money, so should also be the case where a wife assigns her kethubah to her own husband, that she would thereby not impair the clause in the Kethubah dealing with male children on the ground that she might have been compelled to do this for lack of funds.

May we say that the enactment of Usha was a point at issue between the following Tannaim? For one [Baraitha] teaches that melog slaves are to go out free for the sake of a tooth or an eye[11] if assaulted by the wife,[12] but not if assaulted by the husband,[13] whereas another [Baraitha] teaches that [they are not to go out free] when assaulted either by the husband or by the wife. Now it was thought that all authorities agree that a right to usufruct does not constitute in law a right to the very substance. Are we not to suppose then that the point at issue between them was that the one who held that they are to go out free if assaulted by the wife did not accept the enactment of Usha, while the one who held that they are not to go out free when assaulted either by the husband or by the wife accepted the enactment of Usha?[14] — No; it is quite certain that the enactment of Usha was unanimously accepted, but the former Baraitha was formulated before the passing of the enactment while the other one was formulated after. Or if you like I may say that both the one Baraitha and the other dealt with conditions prevailing after the enactment, and also that both accepted the enactment of Usha, but the authority who held that the slaves are to go out free if assaulted by the wife and not by the husband did so on account of a reason underlying a statement of Raba, for Raba said:

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(1) I.e., the injured person.

(2) Tosaf. B.K. IX, 8.

(3) V. supra, p. 515, n. 6.

(4) [I.e., the difference between the large amount of the kethubah and the amount due to him as compensation.]

(5) The Bible, i.e., two hundred zuz where she was a virgin at the time of the marriage. Cf. Ex. XXII, 16; Keth. I, 2.

(6) [To provide against the prohibition in the view of R. Meir.]

(7) == 100 zuz, which is the minimum amount of a kethubah even in the case of a non-virgin; v. Keth. I, 2.

(8) [For any damage done to others (Tosaf.).]

(9) [For any damage done by her to her husband (Tosaf.) V. Tosaf. B.K. IX.]

(10) Which runs as follows: 'The male children which you will have with me shall inherit the amount of your kethubah over and above their appropriate portions due to them together with their brothers (if any of another mother).' V.B.B. (Sonc. ed.) p. 546, n.16.

(11) Cf. Ex. XXI, 26-27.

(12) Who possesses the ownership of their substance.

(13) Who has in them but the right of usufruct.

(14) According to which the wife would not be able to impair the right of the husband, [nor would the husband on the other hand be able to impair the right of the wife to the slaves whose substance is actually hers.]

Talmud - Mas. Baba Kama 90a

'The Consecration [of cattle[1] to the altar, the prohibition of] leaven[2] [from any use] and the manumission of a slave[3] release any of these articles [if mortgaged] from the burden of the mortgage.[4] Are we then to say that this statement of Raba constituted a point at issue between these Tannaim? — No; it is possible that all concurred in the ruling of Raba [in general cases], but in this particular case here the Rabbis[5] [might perhaps] have specially protected the mortgage of the husband.[6] Or again if you like I may say that these Tannaim were unanimous in not accepting the enactment of Usha, but in the case here they might have differed as to whether the right to usufruct amounts in law to a right to the very substance, exactly as this was the dividing point between the following Tannaim. For it was taught:[7] 'If an owner sells his slave to a man with whom he stipulates that the slave shall still remain to serve him for the next thirty days, R. Meir says that the vendor[8] would be subject to the law of "a day or two"[9] because the slave was still "under" him,' his view being that the right to a usufruct in the slave amounts in law to a right to the very substance of him.

'R. Judah on the other hand says that it is the purchaser who would be subject to the law of "a day or two"[10] because the slave was "his money",' his view being that a right to a usufruct in the slave does not amount in law to a right to the very substance of him. 'But R. Jose says that both of them[11] would be subject to the right of "a day or two": the vendor because the slave was still "under" him and the purchaser because the slave was already "his money",'for he was in doubt whether a right to a usufruct should amount to a right to the very substance or should not amount to a right to the very substance, and, as is well known, a doubt in capital charges should always be for the benefit of the accused.[12] 'R. Eliezer on the other hand says that neither of them would be subject to the law of "a day or two": the purchaser because the slave is not "under" him, and the vendor because he is not "his money".' Raba said: The reason of R. Eliezer was because Scripture says, For he is his money,[13] implying that he has to be 'his money' owned by him exclusively.[14] Whose view is followed in the statement made by Amemar that if a husband and wife sold the melog property [even simultaneously], their act is of no effect? Of course the view of R. Eliezer.[15] So too, who was the Tanna who stated that which our Rabbis taught: 'One who is half a slave and half a freeman,[16] as well as a slave belonging to two partners does not go out free for the mutilation of the principal limbs,[17] even those which cannot be restored to him'? Said R. Mordecai to R. Ashi: Thus was it stated in the name of Raba, that this ruling gives the view of R. Eliezer. For did R. Eliezer not say that 'his money' implied that which was owned by him exclusively? So also here 'his slave'[18] implies one who is owned by him exclusively.

MISHNAH. IF A MAN BOXES ANOTHER MAN'S EAR, HE HAS TO PAY HIM[19] A SELA'.[20] R. JUDAH IN THE NAME OF R. JOSE THE GALILEAN SAYS THAT [HE HAS TO PAY HIM] A MANEH.[20] IF HE SMACKED HIM [ON THE FACE] HE HAS TO PAY HIM TWO HUNDRED ZUZ;[20] [IF HE DID IT] WITH THE BACK OF HIS HAND HE HAS TO PAY HIM FOUR HUNDRED ZUZ. IF HE PULLED HIS EAR, PLUCKED HIS HAIR, SPAT SO THAT THE SPITTLE REACHED HIM, REMOVED HIS GARMENT FROM UPON HIM, UNCOVERED THE HEAD OF A WOMAN IN THE MARKET PLACE, HE MUST PAY FOUR HUNDRED ZUZ.

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(1) That had previously been mortgaged for a liability.

(2) [In Jewish possession during the Passover which had previously been mortgaged for a liability to a non-Jew]

(3) V. p. 498, n. 5.

(4) So also here though the right of the husband in the melog (v. Glos.) slave is impregnable in the case of a sale or gift, it must give way in the case of manumission.

(5) According to the second Baraitha.

(6) To be inviolable even in the case of a manumission.

(7) B.B. 50a.

(8) During the thirty days.

(9) Stated in Ex. XXI, 21 and according to which if an owner smites his servant, who after having continued to live for a day or two, dies, he would not be punished, though in the case of a stranger the slayer would be liable to death in all circumstances.

(10) Even during the thirty days that the slave had to be with the vendor.

(11) I.e., the vendor and the purchaser.

(12) B.B. 50b; Sanh. 79a also supra p. 253.

(13) Ex. XXI, 21.

(14) [Raba stresses the word 'his'.]

(15) Who considers neither the vendor nor the purchaser as the true owner, and so should be the case regarding husband and wife in the melog estate.

(16) As where the slave belonged to two partners and one of them manumitted him; cf. Git. 41a.

(17) Which are twenty-four in number; cf. Kid. 25a.

(18) Ex. XXI, 26.

(19) On account of Degradation.

(20) V. Glos.

Talmud - Mas. Baba Kama 90b

THIS IS THE GENERAL PRACTICE, THOUGH ALL DEPENDS UPON THE DIGNITY [OF THE INSULTED PERSON]. R. AKIBA SAID THAT EVEN THE POOR IN ISRAEL HAVE TO BE CONSIDERED AS IF THEY ARE FREEMEN REDUCED IN CIRCUMSTANCES, FOR IN FACT THEY ALL ARE THE DESCENDANTS OF ABRAHAM, ISAAC AND JACOB.[1] IT ONCE HAPPENED THAT A CERTAIN PERSON UNCOVERED THE HEAD OF A WOMAN IN THE MARKET PLACE AND WHEN SHE CAME BEFORE R. AKIBA, HE ORDERED THE OFFENDER TO PAY HER FOUR HUNDRED ZUZ. THE LATTER SAID TO HIM, 'RABBI, ALLOW ME TIME [IN WHICH TO CARRY OUT THE JUDGMENT];' R. AKIBA ASSENTED AND FIXED A TIME FOR HIM. HE WATCHED HER UNTIL HE SAW HER STANDING OUTSIDE THE DOOR OF HER COURTYARD, HE THEN BROKE IN HER PRESENCE A PITCHER WHERE THERE WAS OIL OF THE VALUE OF AN ISAR,[2] AND SHE UNCOVERED HER HEAD AND COLLECTED THE OIL WITH HER PALMS AND PUT HER HANDS UPON HER HEAD [TO ANOINT IT]. HE THEN SET UP 'WITNESSES AGAINST HER AND CAME TO R. AKIBA AND SAID TO HIM: HAVE I TO GIVE SUCH A WOMAN[3] FOUR HUNDRED ZUZ?' BUT R. AKIBA SAID TO HIM: 'YOUR ARGUMENT IS OF NO LEGAL EFFECT, FOR WHERE ONE INJURES ONESELF THOUGH FORBIDDEN, HE IS EXEMPT,[4] YET, WERE OTHERS TO INJURE HIM, THEY WOULD BE LIABLE: SO ALSO HE WHO CUTS DOWN HIS OWN PLANTS, THOUGH NOT ACTING LAWFULLY,[5] IS EXEMPT,[4] YET WERE OTHERS TO [DO IT], THEY WOULD BE LIABLE.

GEMARA. It was asked: Is it a Tyrian maneh[6] of which the Mishnaic text speaks or is it only a local maneh[7] which is referred to? — Come and hear: A certain person boxed another's ear and the case was brought before R. Judah Nesi'ah.[8] He said to him: 'Here I am and here is also R. Jose the Galilean, so that you have to pay the plaintiff a Tyrian maneh.' Does this not show that it is a Tyrian maneh which is spoken of in the text? — It does.

What is the meaning of, 'Here I am, and here is also R. Jose the Galilean'? If you say he meant, 'Here I am who witnessed you [doing this] and here is also R. Jose the Galilean who holds that the payment should be a Tyrian maneh; go therefore and thus pay him a Tyrian maneh', would this not imply that a witness is eligible to act [also] as judge? But [how can this be, since] it was taught: If the members of the Sanhedrin saw a man killing another, some of them should act as witnesses and the others should act as judges: this is the opinion of R. Tarfon. R. Akiba [on the other hand] said that all of them are considered witnesses and [they thus cannot act as judges, for] a witness may not act as a judge.[9] Now, even R. Tarfon surely did not mean more than that a part of them should act as witnesses and the others act as judges, but did he ever say that a witness [giving evidence] should be able to act as judge? — The ruling there[10] [that witnesses actually giving evidence would not be eligible to act at the same time as judges] referred only to a case such as where e.g., they saw the murder taking place at night time when they were unable to act in a judicial capacity.[11] Or if you like I may say that what R. Judah Nesi'ah said to the offender was, 'Since I am here who concur with R. Jose the Galilean who stated that a Tyrian maneh should be paid, and since there are here witnesses testifying against you, go and pay the plaintiff a Tyrian maneh.'

Does R. Akiba really maintain that a witness cannot [at the same time] act as judge? But it has been taught: [As Scripture says] And one smite another with a stone or with his fist,[12] Simeon the Temanite remarked that just as a fist is a concrete object that can be submitted for examination to the assembly of the judges and the witnesses, so also it is necessary that all other instruments should be able to be submitted [for consideration] to the assembly of the judges and the witnesses, which excludes the case where the instrument of killing disappeared from under the hands of the

witnesses.[13] Said R. Akiba to him: [Even if the instrument was placed before the judges], yet did the actual killing take place before the judges of the Court of Law that they should be expected to know how many times the murderer struck the victim, or again the part of the body upon which he struck him, whether it was upon his thigh or upon the tip of the heart? Again, supposing the murderer threw a man down from the top of a roof or from the top of a mansion house so that the victim died, would the court of law have to go to the mansion or would the mansion have to go to the court of law? Again, if the mansion meanwhile collapsed, would it be necessary to erect it anew [as it was before for the inspection of the court of law]?[14] We must therefore say that just as a fist is a definite object that was placed before the sight of witnesses [when the murder was committed] so also it is necessary that all other instruments should have been placed before the sight of the witnesses, which excludes the case where the instrument of killing disappeared from under the hand of the murderer who is thus free.' We see then that R. Akiba said to him, 'did the actual killing take place before the judges of the Court of Law that they should be expected to know how many times the murderer struck the victim . . . ?' which would imply that if he had killed him in their presence, [they who were the] witnesses would have been able to act as judges! — He was arguing from the point of view of R. Simeon the Temanite but this was not his own opinion.

Our Rabbis taught: 'If an ox while still Tam[15] killed [a person] and subsequently also did damage, the judges will adjudicate on the loss of life[16] but will not adjudicate on the pecuniary damage.[17] In the case however of Mu'ad[18] killing a person and subsequently doing damage the judges will first deal with the pecuniary matter[19] and then adjudicate on the loss of life.[20] But if [for some reason or other], they have already adjudicated on the capital matter it would no more be possible to start dealing with the pecuniary matter.' But even if they first adjudicated on the capital matter, what has happened that it should no more be possible for them to start dealing with the pecuniary matter? Raba said: 'I found the Rabbis at the School of Rab[21] sitting and stating that this teaching follows the view of R. Simeon the Temanite who said that just as a fist is a definite object which can be submitted to the consideration of the assembly of the judges and the witnesses,

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(1) Cf. B.M. VIII, 1.

(2) A small coin; v. Glos.

(3) Who had herself for the mere value of an isar, publicly uncovered her own head.

(4) From any pecuniary punishment.

(5) Cf. Deut. XX, 19.

(6) Consisting of twenty-five sela's, v. supra p. 204. n. 4.

(7) Which was only an eighth part of a Tyrian maneh; cf. supra p. 204.

(8) I.e., R. Judah II, the Prince.

(9) Sanh. 34b; B.B. 114a.

(10) In the case of Sanhedrin witnessing a murder.

(11) As judgments could be passed only at day time; cf. Sanh. IV, 1. [But where witnessed during the daytime, they can immediately act in the dual capacity of judges and witnesses.]

(12) Ex. XXI, 18.

(13) [Though the witnesses had an opportunity of examining the killing instrument, where the Judges had no such opportunity, no death penalty can be passed.]

(14) [In which case the court relies on the examination made by the witnesses; v. Tosef. Sanh. XII.]

(15) V. Glos.

(16) Cf. Ex. XXI, 28.

(17) Cf. ibid. 35.

(18) V. Glos.

(19) Cf. ibid. 36.

(20) Cf. ibid. 29-30.

(21) Cf. supra p. 487.

[so also all other instruments should be able to be submitted to the consideration of the assembly of the judges and the witnesses], which shows that the inspection[1] [of the instrument] by the Court of Law is essential [before any liability can be imposed]; and in this case where the sentence has already been passed on the ox to be stoned[2] it would not be possible to keep the ox for inspection[1] by the Court of Law, as we could not delay[3] the execution of the judgment. I said to them: 'You may even say that the teaching follows the view of R. Akiba, for we may have been dealing here with a case where the defendant ran away.'[4] But if the defendant ran away even in the case where the capital matter has not yet been adjudicated, how would it be possible to deal with the pecuniary matter in the absence of the defendant? — It was only after the evidence of the witnesses had already been accepted that he ran away.[5] Be that as it may, whence could the payment come[6] [since the defendant ran away]?[7] — Out of the hire obtained from ploughing [done by the ox]. But if so, why also in the case of Tam, should the pecuniary matter not be adjudicated first and the payment made out of the hire obtained from ploughing, and then adjudicate the capital matter? — Said R. Mari the son of R. Kahana: This indeed proves that the hire obtained from ploughing forms a part of the general estate of the owner.[8]

The question was raised: Is an inspection [of the instrument] essential also in the case of mere damage, or is no inspection necessary in the case of mere damage? Shall we say that it is only regarding murder[9] that we have to inspect the instrument, as by means of one instrument life could be taken, while by means of another life could not be taken, whereas regarding mere damage any instrument would be sufficient, or is there perhaps no difference? — Come and hear: 'Just as Pit can cause death because it is usually ten handbreadths [deep], so also [other similar nuisances] should be such as can cause death, [i.e.,] ten handbreadths [deep]. If, however, they were less than ten handbreadths [deep] and an ox or an ass fell into them and died there would be exemption, but if only injured by them there would be liability.'[10] Is not the Tanna here reckoning upwards — so that what he says is that a pit of a depth of from one handbreadth to ten handbreadths could not cause death though it could cause damage, implying that a pit of any depth would involve liability in the case of mere damage and thus indicating that no inspection is necessary regarding mere damage? — No, he reckoned downwards, and thus meant to say that only a pit of ten handbreadths could cause death whereas a Pit a little less than ten handbreadths could cause[11] only damage and not death, so that it may therefore still be argued that inspection might be essential even regarding mere damage and that in each case it may be necessary that the instrument be such as would be fit to cause the particular damage done.

Come and hear: If [the master] struck his slave on the eye and blinded him, or on his ear and deafened him, the slave would on account of that go out free,[12] but if he struck on an object which was opposite the slave's eye through which he lost his sight or on an object which was opposite his ear through which he lost his hearing, the slave would [on account of this] not go out free.[13] Is not the reason of this that consideration of the instrument is required [before any liability can be imposed],[14] which proves that the inspection of the instrument is essential also in the case of mere damage? — No; the reason is because we say that it was the slave who frightened himself, as taught: If a man frightens another he is exempt according to the judgments of Man but liable according to the judgments of Heaven; thus if he blew into his ear and deafened him he would be exempt, but if he actually took hold of his ear and blew into it and thus deafened him he would be liable.[15]

Come and hear: Regarding the Five Items,[16] an estimation will be made and the payment made straight away, though Healing and Loss of Time will have to be estimated for the whole period until he completely recovers. If after the estimation was made his health continued to deteriorate, the payment will not be more than in accordance with the previous estimation. So also if after the estimation was made he recovered rapidly, payment will be made of the whole sum estimated. Does

this not show that estimation is essential also in the case of mere damage? — That an estimate has to be made of the length of the illness likely to result from the wound[17] has never been questioned by us, for it is certain that we would have to make such an estimation; the point which was doubtful to us was whether we estimate if the instrument was one likely to do that damage or not. What is indeed the law? — Come and hear: Simeon the Temanite said[18] that just as a fist is a definite object that can be submitted to the consideration of the assembly of the judges and the witnesses, so also all other instruments should be able to be submitted to the consideration of the assembly of the judges and the witnesses. Does this not show that the inspection of the instrument is essential even in the case of mere damage? — It does indeed.

The Master stated: 'So also if after the estimation was made he recovered rapidly payment will be made of the whole sum estimated.' This appears to support the view of Raba. For Raba said: An injured person whose illness was estimated to last the whole day but who, as it happened recovered in the middle of the day and performed his usual work, would still be paid for the whole day, as the unexpected recovery was an act of mercy especially bestowed upon him from Heaven.

IF HE SPAT SO THAT THE SPITTLE REACHED HIM . . . HE HAS TO PAY FOUR HUNDRED ZUZ. R. Papa said: This Mishnaic ruling applies only where it reached him [his person], but if it reached only his garment this would not be so. But why should this not be equivalent to an insult in words? — It was stated in the West[19] in the name of R. Jose b. Abin that this could indeed prove that where the insult was merely in words, there would be exemption from any liability whatsoever.

ALL DEPENDS UPON THE DIGNITY. . . The question was raised: Did the first Tanna mean by this to mitigate or to aggravate the penalty? Did he mean to mitigate the penalty, so that a poor man would not have to be paid so much, or did he perhaps mean to aggravate the penalty, so that a rich man would have to be paid more? — Come and hear: Since R. Akiba[20] stated THAT EVEN THE POOR IN ISRAEL HAVE TO BE CONSIDERED AS IF THEY ARE FREEMEN WHO HAVE BEEN REDUCED IN CIRCUMSTANCES, FOR IN FACT THEY ALL ARE THE DESCENDANTS OF ABRAHAM, ISAAC AND JACOB, does this not show that the first Tanna meant to mitigate the penalty?[21] — It does indeed.

IT ONCE HAPPENED THAT A CERTAIN PERSON UNCOVERED THE HEAD OF A WOMAN [IN THE MARKET PLACE . . . FIXED A TIME FOR HIM]. But is time allowed[22] [in such a case]? Did R. Hanina not say that no time is granted in cases of injury? — No time is granted in the case of injury where there is an actual loss of money,[23] but in the case of Degradation, where there is no actual loss of money, time[22] to pay may be granted.

HE WATCHED UNTIL HE SAW HER STANDING OUTSIDE THE DOOR OF HER COURTYARD [. . . FOR IF ONE INJURES ONESELF, THOUGH IT IS FORBIDDEN TO DO SO . . .] But was it not taught: R. Akiba said to him, 'You have dived into the depths and have brought up a potsherd in your hand,[24] for a man may injure himself'? — Raba said: There is no difficulty, as the Mishnaic statement deals with actual injury, whereas the other text referred to Degradation. But surely the Mishnah deals with Degradation,

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(1) Lit., 'estimation'.

(2) Lit., 'to be killed'.

(3) V. Sanh. (Sonc. ed.) p. 222, and notes.

(4) So that in his absence we cannot adjudicate the matter.

(5) In which case though judgment could be passed regarding the pecuniary liability it is of no use to do so as the defendant when running away took all available funds with him.

(6) Even in the case where the capital matter has not yet been adjudicated.

(7) With all his available funds.
(8) And could thus not become subject to be paid for damages in the case of Tam, where payment could only be made out of its own body; cf. supra p. 73. [The plaintiff, however, could not take the ox itself in payment as it is to be stoned. V. Tosaf.]
(9) Cf. Num. XXXV, 17, 18 and 23.
(10) V. supra 50b.
(11) I.e., is fit to cause.
(12) Cf. Ex. XXI, 26-27.
(13) Kid. 24b; infra 88a.
(14) And the act of the master in the second case is not considered a cause adequate to effect such a result.
(15) Kid. ibid, and cf. supra 56a.
(16) Enumerated Mishnah supra p. 473,
(17) Lit. 'how long he is likely to suffer . . . and how long he will not.'
(18) Supra pp. 522-3
(19) [This usually represents R. Jeremiah.] Cf. Sanh. 17b.
(20) [And yet R. Akiba does not impose more than four hundred zuz, the same amount as mentioned by the first Tanna.]
(21) [The figure 400 mentioned by him being a maximum whereas R. Akiba would award this amount to all alike.]
(22) For the execution of a judgment.
(23) Sustained by the plaintiff.
(24) I.e., you have gone to a great amount of trouble which could however be of no practical avail.

Talmud - Mas. Baba Kama 91b

and it nevertheless says: If one injures oneself, though it is forbidden to do so, he is exempt? — It was this which he[1] said to him: 'There could be no question regarding Degradation, as a man may put himself to shame, but even in the case of injury where a man may not injure himself, if others injured him they would be liable.' But may a man not injure himself? Was it not taught: You might perhaps think that if a man takes an oath to do harm to himself and did not do so he should be exempt. It is therefore stated: 'To do evil or to do good,'[2] [implying that] just as to do good is permitted, so also to do evil [to oneself] is permitted; I have accordingly to apply [the same law in] the case where a man had sworn to do harm to himself and did not do harm?[3] — Samuel said: The oath referred to was to keep a fast.[4] It would accordingly follow that regarding doing harm to others[5] it would similarly mean to make them keep a fast. But how can one make others keep a fast? — By keeping them locked up in a room. But was it not taught: What is meant by doing harm to others? [If one says], I will smite a certain person and will split his skull?[3] — It must therefore be said that Tannaim differed on this point, for there is one view maintaining that a man may not injure himself and there is another maintaining that a man may injure himself. But who is the Tanna maintaining that a man may not injure himself? It could hardly be said that he was the Tanna of the teaching, And surely your blood of your lives will I require,[6] [upon which] R. Eleazar remarked [that] it meant I will require your blood if shed by the hands of yourselves,[7] for murder is perhaps different. He might therefore be the Tanna of the following teaching: 'Garments may be rent for a dead person[8] as this is not necessarily done to imitate the ways of the Amorites. But R. Eleazar said: I heard that he who rends [his garments] too much for a dead person transgresses the command,[9] 'Thou shalt not destroy',[10] and it seems that this should be the more so in the case of injuring his own body. But garments might perhaps be different, as the loss is irretrievable, for R. Johanan used to call garments 'my honourers',[11] and R. Hisda whenever he had to walk between thorns and thistles used to lift up his garments Saying that whereas for the body [if injured] nature will produce a healing, for garments [if torn] nature could bring up no cure.[12] He must therefore be the Tanna of the following teaching: R. Eleazar Hakkapar Berabbi[13] said: What is the point of the words: 'And make an atonement for him, for that he sinned regarding the soul.'[14] Regarding what soul did this [Nazarite] sin unless by having deprived himself of wine? Now can we not base on this an argument a fortiori: If a Nazarite who deprived himself only of wine is already called a sinner, how much the more so

one who deprives oneself of all matters?'[15]

HE WHO CUTS DOWN HIS OWN PLANTS . . . Rabbah b. Bar Hanah recited in the presence of Rab: [Where a plaintiff pleads] 'You killed my ox, you cut my plants, [pay compensation', and the defendant responds:] 'You told me to kill it, you told me to cut it down', he would be exempt. He [Rab] said to him. If so you almost make it impossible for anyone to live, for how can you trust him? — He therefore said to him: Has this teaching to be deleted? — He replied: No; your teaching could hold good in the case where the ox was marked for slaughter[16] and so also the tree had to be cut down.[17] If so what plea has he against him? — He says to him: I wanted to perform the precept myself in the way taught: 'He shall pour out . . . and cover it',[18] implying that he who poured out[19] has to cover it; but it once happened that a certain person performed the slaughter and another anticipated him and covered [the blood], and R. Gamaliel condemned the latter to pay ten gold coins.[20]

Rab said: A palm tree producing even one kab of fruit may not be cut down. An objection was raised [from the following]: What quantity should be on an olive tree so that it should not be permitted to cut it down? A quarter of a kab.[21] — Olives are different as they are more important. R. Hanina said: Shibhath[22] my son did not pass away except for having cut down a fig tree before its time. Rabina, however, said: If its value [for other purposes] exceeds that for fruit, it is permitted [to cut it down]. It was also taught to the same effect: 'Only the trees of which thou knowest'[23] implies even fruit-bearing trees;[24] That they be not trees for meat, means a wild tree. But since we ultimately include all things, why then was it stated, That they are not trees for food? To give priority[25] to a wild tree over one bearing edible fruits.

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(1) I.e., R. Akiba.

(2) Lev. V, 4.

(3) Shebu. 27a.

(4) But in other ways a man may not injure himself.

(5) Dealt with in Shebu 27a.

(6) Gen. IX, 5.

(7) I.e., for committing suicide.

(8) Cf. II Sam. I, 11, and II Kings II, 12. Cf. also Sanh. 52b.

(9) According to the text, 'Will be lashed on account of transgressing' which could however hardly be substantiated; Cf. Tosaf. a.l.

(10) Deut. XX, 19.

(11) Sanh. 94a.

(12) Cf. Taan. 23a.

(13) A title of some scholars who belonged to the school of R. Judah the prince.

(14) Num. VI, 11; E.V.: for that he sinned by the dead.

(15) R. Eleazar Hakkapar is thus the Tanna forbidding self-injury.

(16) Such as where it killed a human being; cf. Ex. XXI, 28.

(17) Such as where it constituted a danger to the public or where it was planted for idolatrous purposes; cf. Deut. XII, 3.

(18) Lev. XVII, 13.

(19) I.e., he who acted as slaughterer.

(20) Hul. 87a.

(21) Sheb. IV, 10. [Why then should the palm tree require a bigger quantity?]

(22) B.B. 26a. There he is called 'Shikhath'.

(23) Deut. XX, 20.

(24) [That is where it is known that they no longer produce any fruits, v. Malbim, a.l.]

(25) To be cut down.

As you might say that this is so even where the value [for other purposes] exceeds that for fruits, it says 'only'.[1] Samuel's field labourer brought him some dates. As he partook of them he tasted wine in them. When he asked the labourer how that came about, he told him that the date trees were placed between vines. He said to him: Since they are weakening the vines so much, bring me their roots tomorrow.[2] When R. Hisda saw certain palms among the vines he said to his field labourers: 'Remove them with their roots. Vines can easily buy palms but palms cannot buy vines.'[2]

MISHNAH. EVEN THOUGH THE OFFENDER PAYS HIM [COMPENSATION], THE OFFENCE IS NOT FORGIVEN UNTIL HE ASKS HIM FOR PARDON, AS IT SAYS: NOW THEREFORE RESTORE THE MAN'S WIFE ETC.[3] WHENCE CAN WE LEARN THAT SHOULD THE INJURED PERSON NOT FORGIVE HIM HE WOULD BE [STIGMATISED AS] CRUEL? FROM THE WORDS: SO ABRAHAM PRAYED UNTO GOD AND GOD HEALED ABIMELECH ETC.[4] IF THE PLAINTIFF SAID: 'PUT OUT MY EYE, CUT OFF MY ARM AND BREAK MY LEG,' THE OFFENDER WOULD NEVERTHELESS BE LIABLE; [AND SO ALSO EVEN IF HE TOLD HIM TO DO IT] ON THE UNDERSTANDING THAT HE WOULD BE EXEMPT HE WOULD STILL BE LIABLE. IF THE PLAINTIFF SAID: 'TEAR MY GARMENT AND BREAK MY PITCHER,' THE DEFENDANT WOULD STILL BE LIABLE, BUT IF HE SAID TO HIM: '[DO THIS] ON THE UNDERSTANDING THAT YOU WILL BE EXEMPT,' HE WOULD BE EXEMPT.[5] BUT IF ONE SAID TO THE DEFENDANT: 'DO THIS TO A THIRD PERSON[6] ON THE UNDERSTANDING THAT YOU WILL BE EXEMPT,' THE DEFENDANT WOULD BE LIABLE, WHETHER WHERE THE INJURY WAS DONE TO THE PERSON OR TO HIS CHATTELS.

GEMARA. Our Rabbis taught: All these fixed sums stated above[7] specify only the payment [civilly due] for Degradation. For regarding the hurt done to the feelings of the plaintiff, even if the offender should bring all the 'rams of Nebaioth'[8] in the world,[9] the offence would not be forgiven until he asks him for pardon, as it is written: Now therefore restore the man's wife for he is a prophet and he will pray for thee.[10] But is it only the wife of a prophet who has to be restored, whereas the wife of another man need not be restored? R. Samuel b. Nahmani said in the name of R. Johanan: 'Restore the man's wife' [surely implies] in all cases; for as to your allegation, Wilt thou slay even a righteous nation? Said he not unto me, She is my sister and she even she herself said: He is my brother,[11] [you should know that] he is a prophet who has already [by act and deed][12] taught the world that where a stranger comes to a city whether he is to be questioned regarding food and drink — or regarding his wife, whether she is his wife or sister. From this we can learn that a descendant of Noah[13] may become liable to death if he had the opportunity to acquire instruction[14] and did not do so [and so committed a crime through the ignorance of the law].

For to close the Lord had closed up [all the wombs of the house of Abimelech].[15] R. Eleazar said: Why is 'closing up' mentioned twice?[16] There was one 'closing up' in the case of males, viz. semen [virile], and two in the case of females, viz. semen and the giving of birth. In a Baraitha it was taught that there were two in the case of males, viz. semen [virile] and urinating, and three in the case of females, i.e. semen, urinating and the giving of birth. Rabina said: Three in the case of males, viz. semen [virile], urinating and anus, and four in the case of females, viz. semen and the giving of birth, urinating and anus. 'All the wombs of the house of Abimelech.' It was stated at the College of R. Jannai that even a hen of the house of Abimelech did not lay an egg [at that time].

Raba said to Rabbah b. Mari: Whence can be derived the lesson taught by our Rabbis that one who solicits mercy for his fellow while he himself is in need of the same thing, [will be answered first]? — He replied: As it is written: And the Lord changed the fortune of Job when he prayed for his friends.[17] He said to him: You say it is from that text, but I say it is from this text: 'And Abraham

prayed unto God and God healed Abimelech and his wife and his maidservants,'[18] and immediately after it Says: And the Lord remembered Sarah as he had said, etc.,[19] [i.e.] as Abraham had [prayed and] said regarding Abimelech.

Raba [again] said to Rabbah b. Mari: Whence can be derived the proverbial saying that together with the thorn the cabbage is smitten?[20] — He replied: As it is written, Wherefore will ye contend with Me, ye all have transgressed against Me, says the Lord.[21] He said to him: You derive it from that text, but I derive it from this, How long refuse ye[22] to keep My commandments and My laws.[23] Raba [again] said to Rabbah b. Mari: It is written: 'And from among his brethren, he took five men.[24] Who were these five? — He replied: Thus said R. Johanan that 'they were those whose names were repeated [in the Farewell of Moses].'[25] But was not the name Judah repeated too?[26] He replied: The repetition in the case of Judah was for a different purpose, as stated by R. Samuel b. Nahmani that R. Johanan said: What is the meaning of the words, Let Reuben live and not die, in that his men become few, and this is for Judah?[27] All the forty years that the Israelites were in the wilderness the bones of Judah were scattered[28] in the coffin[29] until Moses came and solicited for mercy by saying thus to God: Master of the universe, who brought Reuben to confess[30] if not Judah?[31] Hear [therefore] Lord the voice of Judah! Thereupon each limb fitted itself into its original place.[32] He was, however, not permitted to ascend to the heavenly gathering[33] until Moses said: And bring him in unto his people.[34] As, however, he did not know what the Rabbis were saying and was thus unable to argue with the Rabbis on matters of the law, Moses said: His hands shall contend for him![34] As again he was unable to bring his statement into accord with the Halachah, Moses said, Thou shalt be a help against his adversaries![34]

Raba [again] said to Rabbah b. Mari: Whence[35] can be derived the popular saying that poverty follows the poor?[36] — He replied: We have learnt:[37] 'The rich used to bring the first fruits[38] in baskets of gold and silver, but the poor brought it in wicker baskets made out of the bark of willow, and thus gave the baskets as well as the first-fruits to the priest.'[39] He said to him: You derive it from there, but I derive it from this:

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(1) Which qualifies and thus exempts such a case from giving priority to wild trees over those bearing edible fruits.

(2) As the value of the produce of vines surpasses that of palms.

(3) Gen. XX, 7.

(4) Ibid. 17.

(5) For the distinction between injury to the person and damage to chattels see the Gemara.

(6) Lit., 'to such and such person'; cf. Ruth IV, 1.

(7) Supra pp. 520-1.

(8) Isa. LX, 7.

(9) For the purpose of propitiation.

(10) Gen. XX, 7.

(11) Ibid. 4-5. [Ms.M. 'He learned it from thee'; i.e. thy conduct in questioning a stranger, of which he as 'a prophet' became cognisant, put him on his guard. Cf. Mak. 9a.]

(12) Ibid. XVIII, 2-8.

(13) Who is subject to the seven commandments of civilized humanity enumerated in Sanh. 56a; cf. also supra.

(14) Regarding the elementary laws of humanity.

(15) Gen. XX, 18; E.V.: For the Lord had fast closed up. . .

(16) I.e., in the infinitive and finite mood.

(17) Job XLII, 10.

(18) Gen. XX, 17.

(19) Gen. XXI, I.

(20) I.e., that the good are punished with the bad.

(21) Jer. II, 29.

(22) [Including, as it were, Moses and Aaron.]

(23) Ex. XVI, 28.
(24) Gen. XLVII, 2.
(25) Deut. XXXIII, 2-29; (besides Judah) the five were as follows: Dan, Zebulun, Gad, Asher and Naphtali. These names had to be repeated in the blessing as they were the weakest among the tribes.
(26) As in Deut. XXXIII, 7 (though his tribe was by no means among the weak ones).
(27) Deut. XXXIII, 6.7.
(28) I.e., they were not kept together.
(29) As the bones of all the heads of the tribes just as those of Joseph were, according to homiletic interpretation, carried away from Egypt to the Promised Land. Cf. Mid. Rab. on Gen. L, 25.
(30) Cf. Gen. XXXV, 22 and XLIX, 4.
(31) Who made public confession in Gen. XXXVIII, 26.
(32) I.e., they were again made into one whole.
(33) Where matters of law are considered; cf. B.M. 86a.
(34) Deut. XXXIII, 7.
(35) V. Mak. 11b.
(36) B.B. 174b.
(37) Bik. III, 8.
(38) Cf. Ex. XXXIV, 26.
(39) So that the rich took back their gold or silver baskets, whereas the poor did not receive back their baskets made of the bark of the willow.

Talmud - Mas. Baba Kama 92b

And shall cry unclean, unclean.[1]

Rabbah [again] said to Rabbah b. Mari: Whence can be derived the advice given by our Rabbis:[2] Have early breakfast in the summer because of the heat, and in the winter because of the cold, and people even say that sixty[3] men may pursue him who has early meals in the mornings and will not overtake him? — He replied: As it is written, They shall not hunger nor thirst, neither shall the heat nor sun smite them.[4] He said to him: You derive it from that text but I derive it from this one, And ye shall serve the Lord your God:[5] this [as has been explained] refers to the reading of Shema'[6] and the Tefillah,'[7] 'And he will bless thy bread and thy water:'[5] this refers to the bread dipped in salt and to the pitcher of water;[8] and after this, I will take [Mahalah, i.e.] sickness away from the midst of thee.[5] It was [also] taught: Mahalah[9] means gall;[10] and why is it called mahalah! Because eighty-three different kinds of illnesses may result from it [as the numerical value of mahalah amounts exactly to this];[11] but they all are counteracted by partaking in the morning of bread dipped in salt followed by a pitcher of water.

Raba [again] said to Rabbah b. Mari: Whence can be derived the saying of the Rabbis: 'If thy neighbour calls thee an ass put a saddle on thy back?'[12] — He replied: As it is written: And he said: Hagar, Sarai's handmaid; Whence camest thou and whither goest thou? And she said: I flee from the face of my mistress Sarai.[13]

Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying: 'If there is any matter of reproach in thee be the first to tell it?' — He replied: As it was written: And he said, I am Abraham's servant.[14]

Raba again said to Rabbah b. Mari: Whence can be derived the popular saying: 'Though a duck keeps its head down while walking its eyes look afar'? — He replied: As it is written: And when the Lord shall have dealt well with my lord then remember thy handmaid.[15] Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying, 'Sixty[16] pains reach the teeth of him who hears the noise made by another man eating[17] while he himself does not eat'? — He replied: As it is

written, But me, even me thy servant and Zadok the priest, and Benaiah the son of Jehoiada, and thy servant Solomon, hath he not called.[18] He said to him: You derive it from that verse, but I derive it from this verse, And Isaac brought her unto his mother Sarah's tent, and took Rebekah and she became his wife; and he loved her. And Isaac was comforted for his mother;[19] and soon after it is written, And again Abraham took another wife and her name was Keturah.[20]

Raba [further] said to Rabbah b. Mari: Whence can be derived the popular saying, 'Though the wine belongs to the owner, the thanks are given to the butler'? — He replied: As it is written, And thou shalt put of thy honour upon him, that all the congregation of the children of Israel may hearken,[21] and it is also written, 'And Joshua the son of Nun was full of the spirit of wisdom, for Moses had laid his hands upon him; and the children of Israel hearkened unto him. etc.[22]

Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying, 'A dog when hungry is ready to swallow even his [own] excrements'?[23] — He replied: As it is written, The full soul loatheth an honeycomb, but to the hungry soul every bitter thing is sweet.[24]

Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying, 'A bad palm will usually make its way to a grove of barren trees'? — He replied: This matter was written in the Pentateuch, repeated in the Prophets, mentioned a third time in the Hagiographa, and also learnt in a Mishnah and taught in a Baraitha: It is stated in the Pentateuch as written, So Esau went unto Ishmael;[25] repeated in the prophets, as written, And there gathered themselves to Jephthah idle men and they went out with him;[26] mentioned a third time in the Hagiographa, as written: Every fowl dwells near its kind and man near his equal;[27] it was learnt in the Mishnah: 'All that which is attached to an article that is subject to the law of defilement,[28] will similarly become defiled, but all that which is attached to anything which would always remain [levitically] clean would similarly remain clean;[29] and it was also taught in a Baraitha: R. Eliezer said: 'Not for nothing did the starling follow the raven, but because it is of its kind.'[30] Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying: 'If you draw the attention of your fellow to warn him [and he does not respond], you may push a big wall and throw it at him'?[31] — He replied: As it is written: Because I have purged thee and thou wast not purged, thou shalt not be purged from thy filthiness any more.[32]

Raba again said to Rabbah b. Mari: Whence can be derived the popular saying: 'Into the well from which you have once drank water do not throw clods?' He replied: As it is written: Thou shalt not abhor an Edomite, for he is thy brother; thou shalt not abhor an Egyptian because thou wast a stranger in his land.[33]

Raba again said to Rabbah b. Mari: Whence can be derived the popular Saying, 'If thou wilt join me in lifting the burden I will carry it, and if not I will not carry it?' — He replied: As it is written: And Barak said unto her, If thou wilt go with me, then I will go; but if thou wilt not go with me, I will not go.[34]

Raba again said to Rabbah b. Mari: Whence can be derived the popular Saying: 'When we were young we were treated as men, whereas now that we have grown old we are looked upon as babies'? — He replied: It is first written: And the Lord went before them by day in a pillar of a cloud, to lead them the way; and by night in a pillar of fire to give them light,[35]

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(1) Lev. XIII, 45. I.e., in addition to the affliction of the leprosy, he is compelled by Jaw to make it public.

(2) Cf. B.M. 107b.

(3) A common hyperbolical term.

(4) Isa. XLIX, 10. Which might imply as follows: If they will neither hunger nor thirst, but eat in time and drink in time, then neither the heat nor the sun shall smite them.

(5) Ex. XXIII, 25.

(6) [Lit., 'Hear (O Israel!)' introducing the three passages from Scriptures (Deut. VI, 4-9; XI, 13-21; Num. XV, 37-41) recited twice daily — in the morning and the evening.]
(7) [Lit., 'Prayer', the 'Eighteen Benedictions', the main constituents of the regular prayers recited three times daily.]
(8) Constituting the meal of breakfast after the morning prayer; cf. however Shab. 10a and Pes. 12b.
(9) E.V., disease.
(10) [Evidently connecting mahalah with Gr. ** (Preuss, Medezin, p. 215.]
(11) מחלה == forty, eight, thirty and five.
(12) I.e., do not quarrel with him for the purpose of convincing him otherwise.
(13) Gen. XVI, 8.
(14) Ibid. XXIV, 34.
(15) 1 Sam. XXV, 31. Spoken by Abigail to David and hinting thus that she would wish to become his wife in future days.
(16) V. supra p. 534, n.13.
(17) Cf. Keth. 61.
(18) I Kings, 1, 26.
(19) Gen. XXIV, 67.
(20) Ibid. XXV, 1.
(21) Num. XXVII, 18-20.
(22) Deut. XXXIV, 9. Though the spirit of wisdom belongs to God it is nevertheless ascribed to Moses.
(23) [Others: 'stones'.]
(24) Prov. XXVII, 7.
(25) Gen. XXVIII, 9.
(26) Judges XI, 3.
(27) Ecclesiasticus. XIII, 15.
(28) Such as where a metal hook was fixed into a wooden receptacle, which is subject to the law of defilement.
(29) Such as where the hook was stuck into a piece of wood which did not form a receptacle; v. Kel. XII. 2.
(30) Hul. 65a. [The reference is to the small Egyptian raven incident, v. Gen. Rab. LXV, and R. Eliezer had probably a similar incident in mind.]
(31) I.e., you can no more be responsible for any misfortune that his inattention may bring upon him.
(32) Ezek. XXIV, 13.
(33) Deut. XXIII, 8.
(34) Judges IV, 8.
(35) Ex. XIII, 21.

Talmud - Mas. Baba Kama 93a

but subsequently it is written: Behold I send an angel before thee to keep thee by the way.[1]

Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying: 'Behind an owner of wealth chips are dragged along'? — He replied: As it is written: And Lot also who went with Abram had flocks and herds and tents.[2]

R. Hanan said: He who invokes the judgment of Heaven against his fellow is himself punished first, as it says, And Sarai said unto Abram, My wrong be upon thee[3] etc., and it is subsequently written, And Abraham came to mourn for Sarah, and to weep for her.[4] This, however, is the case only where justice could be obtained in a temporal Court of Law. R. Isaac said: Woe to him who cries [for divine intervention] even more than to him against whom it is invoked! It was taught likewise: Both the one who cries for divine intervention and the one against whom it is invoked come under the Scriptural threat,[5] but punishment is meted out first to the one who cries, [and is] more severe than for the one against whom justice is invoked.[6] R. Isaac again said: The curse of an ordinary man should never be considered a trifling matter in your eyes,[7] for when Abimelech called a curse upon Sarah it was fulfilled in her seed, as it says, Behold it is for thee a covering of the eyes,[8]

[which implies that] he said to her, 'Since thou hast covered the truth from me and not disclosed that he was thy husband, and hast thus caused me all this trouble, let it be the will [of Heaven] that there shall be to thee a covering of the eyes,'[9] and this was actually fulfilled in her seed, as it is written: And it came to pass that when Isaac was old and his eyes were dim so that he could not see.[10] R. Abbahu said: A man should always strive to be rather of the persecuted than of the persecutors as there is none among the birds more persecuted than doves and pigeons, and yet Scripture made them [alone][11] eligible for the altar.[12]

IF THE PLAINTIFF SAID: PUT OUT MY EYE . . . ON THE UNDERSTANDING THAT HE WOULD BE EXEMPT, HE WOULD STILL BE LIABLE. IF THE PLAINTIFF SAID: TEAR MY GARMENT ON THE UNDERSTANDING THAT YOU WILL BE EXEMPT HE WOULD BE EXEMPT. R. Assi b. Hama[13] said to Rabbah:[14] Why is the rule differing in the former case and in the latter case? — He replied: [There is liability in] the former case because no man truly pardons the wounding of his principal limbs. The others rejoined: Does a man then pardon the inflicting of pain, seeing that it was taught: 'If the plaintiff had said, "Smite me and wound me on the understanding that you will be exempt," the defendant would be exempt.' He had no answer and said: Have you heard anything on this matter? — He[15] thereupon said to him: This is what R. Shesheth has said: The liability is because [the plaintiff had no right to pardon] the discredit to the family. It was similarly stated: R. Oshaia said: Because of the discredit to the family, whereas Raba said: Because no man could truly pardon the injury done to his principal limbs. R. Johanan, however, said: Sometimes the term 'Yes' means 'No'[16] and the term 'No' means 'Yes' [as when spoken ironically].[17] It was also taught likewise: If the plaintiff said, 'Smite me and wound me,' and when the defendant interposed, 'On the understanding of being exempt, the plaintiff replied, 'Yes,' there may be a 'Yes' which implies 'No' [i.e., when spoken ironically]. If the plaintiff said, 'Tear my garment,' and when the defendant interposed, 'On the Understanding of being exempt, he said to him, 'No', there may be a 'No' which means 'Yes' [such as when spoken ironically].[17]

IF THE DEFENDANT SAID: BREAK MY PITCHER AND TEAR MY GARMENT, THE DEFENDANT WOULD STILL BE LIABLE. A contradiction was pouched out: "'To keep"[18] but not to destroy; "to keep", but not to tear; "to keep" but not to distribute to the poor,' [in which case the liability of bailees would not apply. Why then liability in the Mishnah]?[19] — Said R. Huna: There is no difficulty, as here[20] the article came into his hands,[21] whereas there[22] the article did not come into his hands.[23] Said Rabbah to him: Does the expression 'To keep'[24] not imply that the article has come into his hands? — Rabbah therefore said: This case as well as the other is one in which the article has come into his hands, and still there is no difficulty, as in the case here[25] the article originally came into his hands[21] for the purpose of being guarded, whereas there[22] it came to his hands for the purpose of being torn.

A purse of money for charity having been brought to Pumbeditha, R. Joseph deposited it with a certain person who, however, was so negligent that thieves came and stole it. R. Joseph declared liability [to pay], but Abaye said to him: Was it not taught: 'To keep'[24] but not to distribute to the poor? — R. Joseph rejoined: The poor of Pumbeditha have a fixed allowance,[26] and the charity money could thus be considered as having been deposited 'to keep' [and not to distribute it to the poor].[27] [

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(1) Ibid. XXIII, 20.

(2) Gen. XIII, 5.

(3) Ibid. XVI, 5.

(4) Ibid. XXIII, 2.

(5) Cf. Ex. XXII, 23.

(6) As in the case of Sarah; Gen. XVI, 5 and ibid. XXIII, 2.

(7) Cf. Ex. XXII, 23.

(8) Gen. XX, 16.
(9) I.e., blindness.
(10) Gen. XXVII, 1.
(11) Among birds.
(12) Cf. Lev.I, 14.
(13) [MS.M.: 'R. Joseph b. Hama' the father of Raba.]
(14) Raba in the text and 'Rab' in the text of Asheri, v. Marginal Glosses in cur. edd.
(15) I.e., R. Assi.
(16) Cf. supra pp. 178-9.
(17) According to Rashi there is strictly speaking no difference between the case dealt with in the commencing and that of the concluding clause; as all depends upon the implied intention, the illustration being in each case taken from what is usual, for while a man will pardon damage done to his chattel, he will not do so in regard to personal pain. But that this was not so was maintained by Tosaf.
(18) Ex. XXII, 6.
(19) Where he gave him the pitcher to break it and the garment to tear it.
(20) In the case of the Mishnah.
(21) I.e., to the hand of the one who did the damage.
(22) In Ex.
(23) But was destroyed before it actually reached the hand of the bailee.
(24) Ibid.
(25) In the case of the Mishnah.
(26) So much per week.
(27) As there were in that case definite plaintiffs.

Talmud - Mas. Baba Kama 93b

CHAPTER IX

MISHNAH. IF ONE MISAPPROPRIATES PIECES OF WOOD AND MAKES UTENSILS OUT OF THEM, OR PIECES OF WOOL AND MAKES GARMENTS OUT OF THEM, HE HAS TO PAY FOR THEM IN ACCORDANCE WITH [THEIR VALUE AT] THE TIME OF THE ROBBERY.[1] IF ONE MISAPPROPRIATED A PREGNANT COW WHICH MEANWHILE GAVE BIRTH [TO A CALF], OR A SHEEP BEARING WOOL WHICH HE SHEARED, HE WOULD PAY THE VALUE OF A COW WHICH WAS ABOUT TO GIVE BIRTH [TO A CALF], AND THE VALUE OF A SHEEP WHICH WAS READY TO BE SHORN [RESPECTIVELY]. BUT IF HE MISAPPROPRIATED A COW WHICH BECAME PREGNANT WHILE WITH HIM AND THEN GAVE BIRTH, OR A SHEEP WHICH WHILE WITH HIM GREW WOOL WHICH HE SHEARED, HE WOULD PAY IN ACCORDANCE WITH [THE VALUE AT] THE TIME OF THE ROBBERY. THIS IS THE GENERAL PRINCIPLE: ALL ROBBERS HAVE TO PAY IN ACCORDANCE WITH [THE VALUE OF THE MISAPPROPRIATED ARTICLES AT] THE TIME OF THE ROBBERY.

GEMARA. Shall we say that it is only where he actually made utensils out of the pieces of wood [that the Mishnaic ruling will apply], whereas if he merely planed them this would not be so?[2] Again, it is only where he made garments out of the wool that this will be so, whereas where he merely bleached it this would not be so! But could not a contradiction be raised from the following: 'One who misappropriated pieces of wood and planed them, stones and chiselled them, wool and bleached it or flax and cleansed it, would have to pay in accordance with [the value] at the time of the robbery'?[3] — Said Abaye: The Tanna of our Mishnah stated the ruling where the change [in the article misappropriated] is only such as is recognised by the Rabbis, that is, where it can still revert [to its former condition] and of course it applies all the more where the change is such[4] as is recognised by the pentateuch:[5] [for the expression ONE WHO MISAPPROPRIATES] PIECES OF

WOOD AND MAKES OUT OF THEM UTENSILS refers to pieces of wood already planed, such as ready-made boards, in which a reversion to the previous condition is still possible, since if he likes he can easily pull the boards out [and thus have them as they were previously]; PIECES OF WOOL AND MADE GARMENTS OUT OF THEE also refers to wool which was already spun, in which [similarly] a reversion to the previous condition is possible, since if he likes he can pull out the threads and restore them to the previous condition; the same law would apply all the more in the case of a change [where the article could no more revert to the previous condition and] which would thus be recognised by the pentateuch.[5] But the Tanna of the Baraitha deals only with a change [where the article could no more revert to its previous condition and] which would thus be recognised by the pentateuch, but does not deal with a change [in which the article could revert to its previous condition and which would be] recognised only by the Rabbis. R. Ashi, however, said: The Tanna of our [Mishnah also] deals with a change which would be recognised by the pentateuch, for by PIECES OF WOOD AND MAKES UTENSILS OUT OF THEM he means clubs, which were changed by planing them; by PIECES OF WOOL AND MAKES GARMENTS OUT OF THEM he similarly means felt cloths, which involves a change that can no more revert to its previous condition.

But should bleaching be considered a change?[6] Could no contradiction be raised [from the following]: 'If the owner did not manage to give the first of the fleece to the priest until it had already been dyed, he would be exempt,[7] but if he only bleached it without having dyed it, he would still be liable'?[8] — Said Abaye: This is no difficulty, as the former statement is in accordance with R. Simeon and the latter in accordance with the Rabbis; for it was taught: 'If after the owner had shorn his sheep he span the wool or wove it, this portion would not be taken into account[9] [with the other wool which was still left in a raw state];[10] but if he only purified it, R. Simeon says: It would [still] not be taken into account, whereas the Sages say that it would be taken into account. But Raba said that both statements might be in accordance with R. Simeon, and there would still be no difficulty, as in one case[11] [the process of bleaching was] by beating the wool [where no actual change took place], whereas in the other case[12] the wool was corded with a comb. R. Hiyya b. Abin said that in one case[11] the wool was merely washed [so that no actual change took place]. whereas in the other[12] it was whitened with sulphur. But since even dyeing is according to R. Simeon not considered a change, how could bleaching be considered a change, for was it not taught: 'Where the owner had shorn one sheep after another and in the interval dyed the [respective] fleeces, [or shorn] one after another and in the interval spun the wool, [or shorn] one after another and in the interval wove the wool, this portion would not be taken into account,[9] but R. Simeon b. Judah said in the name of R. Simeon[13] that if he [only] dyed the wool it would be taken into account'?[14] — Said Abaye: There is no difficulty, as the former statement was made by the Rabbis according to R. Simeon whereas the latter[15] was made by R. Simeon b. Judah according to R. Simeon. But Raba said: You may still say that the Rabbis did not differ from R. Simeon b. Judah on this point,[16] for dyeing might be different, the reason being that since the colour could be removed by soap, [it is not considered a change], and as to the statement made there, 'If the owner did not manage to give the first of his fleece to the priest until it had already been dyed he would be exempt' which has been stated to be accepted unanimously, this deals with a case where it was dyed with indigo [which could not be removed by soap].

Abaye said: R. Simeon b. Judah, Beth Shammai, R. Eliezer b. Jacob. R. Simeon b. Eleazar and R. Ishmael all maintain that a change leaves the article in its previous status: R. Simeon b. Judah here in the text quoted by us; but what about Beth Shammai? — As it was taught:[17] 'Where he gave her as her hire wheat of which she made flour, or olives of which she made oil, or grapes of which she made wine,' one [Baraitha] taught that 'the produce is forbidden to be sacrificed upon the altar,' whereas another [Baraitha] taught 'it is permitted'. and R. Joseph said: Gorion

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(1) I.e., of the pieces of wood and wool but not of the utensils and garments respectively, as by the change which took

place he acquired title to them; cf. supra p. 384.
(2) I.e., the ownership would thereby not be transferred to the robber.
(3) The reason being that through the change which took place the ownership was transferred.
(4) I.e., where the article can no longer revert to its former condition; v. supra p. 386.
(5) To transfer ownership.
(6) In regard to which it was stated in the Baraitha that the robber will thereby acquire title to the wool.
(7) As by this change the original obligation was annulled and the owner acquired unqualified and absolute right to the wool.
(8) Hul. XI, 2; v. supra p. 382. Does not this prove that mere bleaching unlike dyeing does not constitute a change?
(9) In regard to the first fleece offering the minimum of which is according to R. Dosa b. Harkinas the weight of seven maneh and a half collected equally from not less than five sheep, but according to the Rabbis one maneh and a half collected equally from the same number of sheep would suffice; cf. Hul. XI, 2. A maneh amounts to twenty-five sela's; for Samuel's view according to the Rabbis cf ibid. 137b.
(10) On account of the change which had been made.
(11) Not considering it a change.
(12) Considering it a change.
(13) I.e., R. Simeon b. Yohai; cf. Sheb. 2b.
(14) This shows that R. Simeon b. Yohai does not consider dyeing a change, much less bleaching.
(15) v. p. 443. n. 5.
(16) As to the view of R. Simeon b. Yohai on this matter.
(17) For notes on passage following v. supra p. 380.

Talmud - Mas. Baba Kama 94a

of Aspurak taught: 'Beth Shammai prohibit the produce to be used as sacrifices, whereas Beth Hillel permit it.' Now, what was the reason of Beth Shammai? — Because it is written gam, to include their transformation. But Beth Hillel maintains that hem implies only them and not their transformations. Beth Shammai, however, maintains that though hem is written, what it implies is 'them and not their offsprings'. Beth Hillel still argue that you can understand both points from it: 'them and not their transformations, them and not their offsprings.' But how could Beth Hillel explain the insertion of gam? Gam offers a difficulty according to the view of Beth Hillel.

What about R. Eliezer b. Jacob? — As it was taught:[1] R. Eliezer b. Jacob says: If one misappropriated a se'ah[2] of wheat and kneaded it and baked it and set aside a portion of it as hallah,[3] how would he be able to pronounce the benediction?[4] He would surely not be pronouncing a blessing but pronouncing a blasphemy, as to such a one could be applied the words: The robber pronounceth a benediction [but in fact] contemneth the Lord.[5]

What about R. Simeon b. Eleazar? — As it was taught: This principle was stated by R. Simeon b. Eleazar: In respect of any improvement carried out by the robber, he would have the upper hand; if he wishes he can take the improvement, or if he wishes he may say to the plaintiff: 'Here take your own.' What is meant by this [last] statement?[6] — Said R. Shesheth: This is meant: Where the article has been improved, the robber may take the increased value, but where it has deteriorated he may say to him: 'Here, take your own,' as a change leaves the article in its previous status. But if so why should it not be the same even in the case where the article was improved? We may reply, in order to make matters easier for repentant robbers.[7]

What about R. Ishmael? — It was taught:[8] [Strictly speaking,] the precept of Pe'ah[9] requires that it should be set aside from standing crops. If, however, the owner did not set it aside from standing crops he should set it aside from the sheaves; so also if he did not set it aside from the sheaves he should set it aside from the heap [in his store] so long as he has not evened the pile. But if he had already evened the pile[10] he would have first to tithe it and then set aside the Pe'ah for the poor.

Moreover, In the name of R. Ishmael it was stated that the owner would even have to set it aside from the dough and give it to the poor.[11] Said R. papa to Abaye: Why was it necessary to repeat and bring together all these Tannaitic statements for the sole purpose of making us know that they concurred with Beth Shammai?[12] — He replied: It was for the purpose of telling us that Beth Hillel and the Beth Shammai did probably not differ at all on this matter. But Raba said: What ground have we for saying that all these Tannaim follow one view? Why not perhaps say that R. Simeon b. Judah meant his statement there[13] to apply only to the case of dyeing on account of the fact that the colour could be removed by soap, and so also did Beth Shammai mean their view there to apply only to a religious offering because it looks repulsive, or again that R. Eliezer b. Jacob meant his statement there to apply only to a benediction on the ground that it was a precept performed by the means of a transgression,[14] and so also did R. Simeon b. Eleazar mean his view there to apply only to a deterioration which can be replaced, or again R. Ishmael meant his view there to apply only to the law of Pe'ah, on account of the repeated expression. 'Thou shalt leave'?[15] If however you argue that we should derive the law[16] from the latter case,[17] [it might surely be said that] gifts to the poor are altogether different,[18] as is shown by the question of R. Jonathan. For R. Jonathan asked concerning the reason of R. Ishmael: 'Was it because he held that a change does not transfer ownership, or does he as a rule hold that a change would transfer ownership, but here it is different on account of the repeated expression, Thou shalt leave'![19]

But if you find ground for assuming that the reason of R. Ishmael was because a change does not transfer ownership, why then did the Divine Law repeat the expression 'Thou shalt leave'?[15] Again, according to the Rabbis, why did the Divine Law repeat the expression 'Thou shalt leave'? — This [additional] insertion was necessary for that which was taught:[20] If a man after renouncing the ownership of his vineyard gets up early on the following morning and cuts off the grapes, he will be subject to the laws of Peret, 'Oleloth, Forgetting and Pe'ah,[21] but will be exempt from tithes.

Rab Judah said that Samuel stated that the halachah is in accordance with R. Simeon b. Eleazar.[22] But did Samuel really say so? Did not Samuel state that assessment of the carcass is made neither in cases of theft nor of robbery, but only of damage?[23] I grant you that according to Raba who said that the statement made there by R. Simeon b. Eleazar related only to a deterioration where a recovery would still be possible, there would be no difficulty since Samuel in his statement that the halachah is in accordance with R. Simeon b. Eleazar [who holds] that a change leaves the article in its previous status, referred to the case of deterioration where a recovery would still be possible, whereas the statement made there[23] by Samuel that assessment of the carcass is made neither in the case of theft nor of robbery but only of damage would apply to deterioration where no recovery seems possible. But according to Abaye who said that the statement made by R. Simeon b. Eleazar [also] referred to deterioration where a recovery is no more possible, how can we get over the contradiction? — But Abaye might read thus: Rab Judah said that Samuel stated:

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(1) Cf. Sanh. 6b.

(2) V. Glos.

(3) I.e., the priestly portion set aside from dough. cf. Num. XV, 19-21.

(4) According to Asheri on Ber. 45a it refers to the grace over the meal.

(5) Ps. X. 3; [E.V.: And the covetous renounceth, yea, contemneth the Lord. In spite of the many changes the wheat had undergone it is still not his and not fit to have a blessing uttered over it.]

(6) For in the case of improvement it is surely not in the interests of the robber to plead, 'Here is thine before thee.'

(7) Cf. supra p. 383 and infra 547.

(8) Sanh. 68a; Mak. 16b.

(9) 'The corners of the field', cf. Lev. XIX. 9.

(10) When the grain becomes subject to the law of tithing; cf. Ber. 40b and Ma'as. I, 6.

(11) In spite of the many changes which had been made.

(12) Whose views have generally not been accepted; cf. 'Er. 13b.

(13) Regarding the dyeing of the wool which was subject to the law of the first of the fleece to be set aside for the priest.
(14) v. Ber. 47b.
(15) Lev. XIX. 10 and XXIII, 22 — implying in all circumstances.
(16) That change does not transfer ownership.
(17) I.e., from the law of Pe'ah.
(18) [Adreth. S., Hiddushim, improves the text by omitting: 'If however . . . different.']
(19) [This concludes Raba's argument. V. Adreth, loc. cit.]
(20) For notes v. supra pp. 148-9.
(21) On account of the repeated 'Thou shalt leave'.
(22) That in cases of deterioration the robber will be entitled to say. 'Here there is thine before thee.'
(23) Explained supra p. 44.

Talmud - Mas. Baba Kama 94b

They said that the halachah is in accordance with R. Simeon b. Eleazar though Samuel himself did not agree with this.

R. Hiyya b. Abba said that R. Johanan stated that according to the law of the Torah a misappropriated article should even after being changed be returned to the owner in its present condition, as it is said: He shall restore that which he took by robbery[1] — in all cases. And should you cite against me the Mishnaic ruling,[2] my answer is that this was merely an enactment for the purpose of making matters easier for repentant robbers.[3] But did R. Johanan really say this? Did R. Johanan not say[4] that the halachah should be in accordance with an anonymous Mishnah, and we have learnt: 'If the owner did not manage to give the first of the fleece to the priest until it had already been dyed, he is exempt'?[5] — But a certain scholar of our Rabbis whose name was R. Jacob said to them: 'This matter was explained to me by R. Johanan personally, [that his statement referred only to a case] where, e.g., there were misappropriated planed pieces of wood out of which utensils were made, as after such a change the material could still revert to its previous condition.[6]

Our Rabbis taught: 'If robbers or usurers [repent and of their own free will] are prepared to restore [the misappropriated articles], it is not right to accept [them] from them, and he who does accept [them] from them does not obtain the approval of the Sages.'[7] R. Johanan said: It was in the days of Rabbi that this teaching was enunciated, as taught: 'It once happened with a certain man who was desirous of making restitution that his wife said to him, Raca, if you are going to make restitution, even the girdle [you are wearing] would not remain yours, and he thus refrained altogether from making repentance. It was at that time that it was declared that if robbers or usurers are prepared to make restitution it is not right to accept [the misappropriated articles] from them, and he who accepts from them does not obtain the approval of the Sages.'

An objection was raised [from the following:] 'If a father left [to his children] money accumulated by usury, even if the heirs know that the money was [paid as] interest, they are not liable to restore the money [to the respective borrowers].[8] Now, does this not imply that it is only the children who have not to restore, whereas the father would be liable to restore?[9] The law might be that even the father himself would not have had to restore, and the reason why the ruling was stated with reference to the children[10] was that since it was necessary to state in the following clause 'Where the father left them a cow or a garment or anything which could [easily] be identified, they are liable to restore [it], in order to uphold the honour of the father,' the earlier clause similarly spoke of them. But why should they be liable to restore[11] in order to uphold the honour of the father? Why not apply to them [the verse] 'nor curse the role, of thy people',[12] [which is explained to mean.] 'so long as he is acting in the spirit of 'thy people'?[13] — As however, R. Phinehas [elsewhere][14] stated, that the thief might have made repentance, so also here we suppose that the father had made repentance. But if the father made repentance, why was the misappropriated article still left with him? Should he not have

restored it?[15] — But it might be that he had no time to restore it before he [suddenly] died.

Come and hear: Robbers and usurers even after they have collected the money must return it.[16] But what collection could there have been in the case of robbers. for surely if they misappropriated anything they committed robbery, and if they had not misappropriated anything they were not robbers at all? It must therefore read as follows: 'Robbers, that is to say usurers, even after they have already collected the money, must return it.'[17] — It may, however, be said that though they have to make restitution of the money it would not be accepted from them. If so why have they to make restitution? — [To make it quite evident that out of their own free will] they are prepared to fulfil their duty before Heaven.[18]

Come and hear: 'For shepherds, tax collectors and revenue farmers it is difficult to make repentance, yet they must make restitution [of the articles in question] to all those whom they know [they have robbed].[19] — It may, however, [also here] be said that though they have to make restitution, it would not be accepted from them. If so why have they to make restitution? — [To make it quite evident that out of their free will] they are prepared to fulfil their duty before Heaven. But if so why should it be difficult for them to make repentance?[20] Again, why was it said in the concluding clause that out of articles of which they do not know the owners they should make public utilities,[21] and R. Hisda said that these should be wells, ditches and caves?[22] — There is, however, no difficulty, as this teaching[23] was enunciated before the days of the enactment,[24] whereas the other statements were made after the enactment. Moreover, as R. Nahman has now stated that the enactment referred only to a case where the misappropriated article was no more intact, it may even be said that both teachings were enunciated after the days of the enactment, and yet there is no difficulty,

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(1) Lev. V. 23.

(2) That payment is made in accordance with the value at the time of robbery.

(3) v. p. 545. n. 6.

(4) Shab. 46a and supra p. 158.

(5) For notes v. supra p. 382. [This shows that change transfers ownership even where the consideration of penitents does not apply.]

(6) [In which case but for the consideration of penitent robbers, change transfers no ownership. Where the change. however, cannot be reverted, it confers unqualified ownership.]

(7) Rashi renders 'no spirit of wisdom and piety resides in him', but see also Tosaf. Yom Tob. Aboth III, 10.

(8) Tosef. B.M. V, 8.

(9) [Whereas above it is stated that the monies thus returned are not accepted.]

(10) And not to the father himself

(11) In the case dealt with in the concluding clause.

(12) Ex. XXII, 27.

(13) Excluding him who wilfully violates the laws of Israel.

(14) Hag. 26a.

(15) [I.e. not to retain it with him, despite the refusal of the owners to accept it (v. Tosaf.).]

(16) B.M. 62a.

(17) Does this not prove that the misappropriated money if restored would be accepted from them?

(18) As it is only in such a case that the restored money will not be accepted.

(19) Tosef B.M. VIII. Does this not prove that misappropriated articles if restored would be accepted?

(20) Since no actual restitution will have to be made.

(21) Cf. Az. 29a.

(22) And thus provide water to the general public among whom the aggrieved persons are to be found.

(23) Where actual restitution is implied.

(24) Which was ordained in the days of Rabbi.

as the latter deals with a case where the misappropriated article is still intact whereas the other teaching refers to a case where the misappropriated article is no more intact. But what about the girdle [referred to above],[1] in which case the misappropriated article was still intact? — What was meant by 'girdle' was the value of the girdle. But is it really the fact that so long as the misappropriated article was intact our Rabbis did not make this enactment?[2] What then about the beam in which case the misappropriated article was still intact and we have nevertheless learnt: [R. Johanan b. Gudgada testified] that if a misappropriated beam has been built into a house, the owner will recover only its value?[3] — That matter is different altogether, for since the house would otherwise be damaged. the Rabbis regarded the beam as being no longer intact.[4]

IF ONE MISAPPROPRIATED A PREGNANT COW WHICH MEANWHILE GAVE BIRTH [TO A CALF] etc. Our Rabbis taught: 'He who misappropriates a sheep and shears it, or a cow which has meanwhile given birth [to a calf], has to pay for the animal and the wool and the calf;[5] this is the view of R. Meir. R. Judah says that the misappropriated animal will be restored intact.[6] R. Simeon says that the animal will be considered as if it had been insured with the robber for its value [at the time of the robbery].' The question was raised: What was the reason of R. Meir? Was it because he held that a change leaves the article in its existing status?[7] Or [did he hold] in general that a change would transfer ownership, but here he imposes a fine [upon the robber], the practical difference being where the animal became leaner?[8] — Come and hear: If one misappropriated an animal and it became old, or slaves and they became old, he would still have to pay according to [their value at][9] the time of the robbery, but R. Meir said that in the case of slaves[10] [the robber] would be entitled to say to the plaintiff: 'Here, take your own.'[11] It thus appears that in the case of an animal [even R. Meir held that] the payment would have to be in accordance with [the value at] the time of the robbery.[9] Now, if you assume that R. Meir was of the opinion that a change leaves the article in its previous status,[12] why even in the case of an animal [can the robber not say. 'Here, take your own']? Does this therefore not prove that even R. Meir held that a change would transfer ownership, and that [in the case of the wool and the calf] it was only a fine which R. Meir imposed on the robber? — It may, however, be said that R. Meir was arguing from the premises of the Rabbis, thus: According to my view a change does not transfer ownership, so that also in the case of an animal [the robber would be entitled to say. 'Here, take your own'], but even according to your view, that a change does transfer ownership, you must at least agree with me in the case of slaves, who are compared to real property, and, as we know, real property is not subject to the law of robbery.[13] The Rabbis, however, answered him: 'No, for slaves are on a par with movables [in this respect].'[14]

Come and hear: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black but he dyed it red, R. Meir says that he would have to pay [the owner of the wool] for the value of the wool.[15] [It thus appears that] he had to pay only for the original value of the wool but not for the combined value of the wool and the improvement [on account of the colour]. Now, if you suppose that R. Meir held that a change would not transfer ownership, why should he not have to pay for the combined value of the wool and the improvement? Does this therefore not prove that R. Meir held that a change would transfer ownership and that here [in the case of the calf] it was only a fine that R. Meir imposed [upon the robber]? — This could indeed be proved from it. Some even say that this question was never so much as raised; for since Rab transposed [the names in the Mishnah] and read thus: If one misappropriated a cow which became old, or slaves who became old, he would have to pay in accordance with [the value at] the time of the robbery;[16] this is the view of R. Meir, whereas the Sages say that in the case of slaves the robber would be entitled to say, Here, take your own',[16] it is quite certain that according to R. Meir a change would transfer ownership, and that here [in the case of a calf] it was only a fine that R. Meir imposed [upon the robber]. But if a question was raised, it was this: Was the fine imposed only in the case of wilful misappropriation whereas in the

case of inadvertent misappropriation[17] the fine was not imposed, or perhaps even for inadvertent misappropriation the fine was also imposed? — Come and hear: Five [kinds of creditors] are allowed to distrain only on the free assets [of the debtor];[18] they are as follows: [creditors for] produce,[19] for Amelioration showing profits,[20] for an undertaking to maintain the wife's son or the wife's daughter,[21] for a bond of liability without a warranty of indemnity[22] and for the kethubah of a wife where no property is made security.[22] Now, what authority have you heard lay down that the omission to make the property security[22] is not a mere scribal error[23] if not R. Meir?[24] And it is yet stated: 'Creditors for produce and Amelioration showing profits [may distrain on free assets in the hands of the debtor].' Now, who [are creditors for Amelioration showing] profits?[25] They come in, do they not, where the vendor has misappropriated a field from his fellow and sold it to another who ameliorated it and from whose hands it was subsequently taken away. [The law then is that] when the purchaser comes to distrain

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(1) Supra p. 548.

(2) And the actual article would have to be restored.

(3) Cit. V, 5; 'Ed. VII, 9' and supra p. 385.

(4) And the actual beam would not have to be restored. Its value will, however, be paid on account of the fact that the beam was actually in the house.

(5) [The payment, that is to say, will have to be made for the combined value of the calf and wool and the improvement.] Cf. B.M. 43b.

(6) [I.e., in the state it is at the time of payment. The robber will, however, have to make up in money for the difference in the value of the cow as it stood at the time of the robbery. The difference between R. Simeon and R. Judah will be explained anon.]

(7) And no ownership could thereby be transferred.

(8) Where according to the former consideration the robber would escape further liability by restoring the animal, but according to the latter he would have to pay for the difference.

(9) As the change transferred the ownership to the robber.

(10) Who are subject to the law applicable to immovables.

(11) Mishnah, infra p. 561.

(12) And no ownership could thereby be transferred.

(13) Cf. Suk. 30b and 32a.

(14) Cf. supra 12a.

(15) For by acting against the instructions of the owner he rendered himself liable to the law of robbery; Mishnah infra 100b.

(16) V. infra p. 561.

(17) As in the case of the dyer, supra p. 552.

(18) But not if the landed property is already in the hands of a third party such as a purchaser and the like.

(19) Such as where a field full of produce was taken away in the hands of a purchaser through the fault of the vendor: the amount due to the purchaser for his loss of the actual field could be recovered even from property already in the hands of (subsequent) purchasers, whereas the amount due to him for the value of the produce he lost could be recovered only from property still in the hands of the vendor; cf. Git. V, I and B.M. 14b.

(20) Such as where the purchaser spent money on improving the ground which was taken away from him through the fault of the vendor.

(21) Cf. also Keth. XII, 1.

(22) I.e., where the particular clause making the property security was omitted in the document. V. Keth. 51b.

(23) But has legal consequences.

(24) V. B.M. I, 6 and ibid. 14a.

(25) Lit., 'how is this possible?'

he will do so for the principal even on [real] property that has been sold, but for the Amelioration

only on assets which are free [in the hands of the vendor]. [But this is certain,] that the owner of the field is entitled to come and take away the field together with the increment. Now, do we not deal here with a purchaser who was ignorant of the law and did not know whether real property is subject to the law of robbery or is not subject to the law of robbery?[1] And even in such a case the owner of the field will be entitled to come and take away the land together with the increment. Does not this show that even in the case of inadvertent misappropriation,[2] [R. Meir] would impose the fine? — It may however be said that this is not so, [as we are dealing here] with a purchaser who is a scholar and knows very well[3] [that real property is not subject to the law of robbery].[1]

Come and hear: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black and he dyed it red, R. Meir says that he would have to pay [the owner of the wool] for the value of the wool.[4] [It thus appears that he has to pay] only for the original value of the wool but not for the combined value of the wool and the improvement [on account of the colour]. Now, if you assume that R. Meir would impose the fine even in the case of inadvertent misappropriation why should he not have to pay for the combined value of the wool and the improvement? Does this not prove that it is only in the case of wilful misappropriation that the fine is imposed but in the case of inadvertent misappropriation the fine would not be imposed? — This could indeed be proved from it.

'R. Judah says that the misappropriated [animal] will be restored intact. R. Simeon says that the animal be considered as if it had been insured with the robber for its value [at the time of the robbery].' What is the practical difference between them?[5] — Said R. Zebid: They differ regarding the increased value [still] attaching to the misappropriated article. R. Judah maintained that this would belong to the plaintiff[6] whereas R. Simeon was of the opinion that this would belong to the robber.[7] R. papa, however, said that both might agree that an increased value [still] attaching to the misappropriated article should not solely belong to the plaintiff,[8] but where they differed was as to whether the robber should be entitled to retain a half or a third or a fourth[9] for [his attending to the welfare of the article]. R. Judah maintaining that an increased value [still] attaching to the misappropriated article would belong solely to the robber,[10] whereas R. Simeon maintained that the robber would be paid only to the extent of a half, a third or a fourth.

We have learnt: 'BUT IF HE MISAPPROPRIATED A COW WHICH BECAME PREGNANT WHILE WITH HIM AND THEN GAVE BIRTH, OR A SHEEP WHICH WHILE WITH HIM GREW WOOL WHICH HE SHEARED, HE WOULD PAY IN ACCORDANCE WITH [THE VALUE AT] THE TIME OF THE ROBBERY.' That is so only if the cow has already given birth, but if the cow has not given birth yet it would be returned as it is. This accords well with the view of R. Zebid who said that an increased value still attaching to the misappropriated article would according to R. Judah belong to the plaintiff; I [the Mishnah] would then be in accordance with R. Judah. But on the view of R. papa who said that it would belong to the robber,[10] it would be in accordance neither with R. Judah nor with R. Simeon? — R. Papa might say to you that the ruling [stated in the text] would apply even where the cow has not yet given birth, as even then he would have to pay in accordance with [the value at] the time of the robbery. For as for the mention of 'giving birth', the reason is that since the earlier clause contains the words 'giving birth', the later clause similarly mentions 'giving birth'. It was taught in accordance with R. papa: 'R. Simeon says that [the animal] is to be considered as if its pecuniary value had been insured with the robber, [who will however be paid] to the extent of a half, a third or a fourth [of the increase In value].'[11]

R. Ashi said: When we were at the School of R. Kahana, a question was raised with regard to the statement of R. Simeon that the robber will be paid to the extent of a half, a third or a fourth [of the increase in value] whether at the time of his parting with the misappropriated article he can be paid in specie, or is he perhaps entitled to receive his portion out of the body of the misappropriated animal. The answer was found in the statement made by R. Nahman in the name of Samuel: 'There are three cases where increased value will be appraised and paid in money. They are as follow's: [In

the settlement of accounts] between a firstborn and a plain son,[12] between a creditor and a purchaser.[13] and between a creditor[13] and heirs.'[14] Said Rabina to R. Ashi: Did Samuel really say that a creditor will have to pay the purchaser for increased value? Did Samuel not state[15] that a creditor distrains even on the increment?[16] — He replied: There is no difficulty, as the former ruling applies to an increment which could reach the shoulders to be carried away.[17] whereas the latter ruling deals with an increment which could not reach the shoulders to be carried away.[18] He rejoined:[19] Do not cases happen every day where Samuel distrains even on an increment which could reach the shoulders to be carried away? — He replied: There is still no difficulty,

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(1) V. p. 552. n. 1.

(2) Such as was the case here with the purchaser.

(3) Also that the field has been misappropriated by the vendor (cf. Shittah Mekubezeth a.l.) and as such is guilty of wilful misappropriation.

(4) V. Mishnah infra 100b.

(5) I.e., R. Judah and R. Simeon.

(6) Since the article has to be restored intact.

(7) [Since the payment is made according to the value at the time of the robbery.]

(8) Lit., 'should belong to the robber', but which means that it will not solely belong to the plaintiff, as will soon become evident in the text.

(9) I.e., in accordance with the definite percentage in the profits fixed in a given province to be shared by a contractor for his care and attendance to the welfare of the article in question; cf. B.M. V, 4-5.

(10) As the expression 'intact' means intact as it was at the time of the robbery.

(11) V. p. 555. n. 4.

(12) As the firstborn son has two portions in the estate as it was left at the time of the death of the father, but only one portion in the increased value due to amelioration after the father's death, so that by taking two portions in the estate the firstborn would have to pay back the other sons their appropriate portions in the increased value of the additional portion taken by him; cf. B.B. 124a.

(13) I.e., a creditor distraining on a field that originally belonged to his debtor but which was subsequently disposed of or inherited by heirs and the purchaser or heirs increased its value by amelioration.

(14) V. B.M. 110b.

(15) B.M. ibid. and 14b; Bk. 42a.

(16) Without paying for it, v. B.M. ibid.

(17) As where the produce is quite ripe and could be separated from the ground in which case it is the property of the purchaser. V. B.B. (Sonc. ed.) p. 183. n. 3.

(18) I.e., which is inseparable from the ground and which is distrained on together with the field by the creditor.

(19) I.e., Rabina to R. Ashi.

as this is so only where the amount of the debt owing to the creditor covers both the land and the increment,whereas the former ruling[1] applies where [the debt due to him] is only to the extent of the land. He rejoined: I grant you that on the view[2] that [even] if the purchaser possesses money he has no right to bar the creditor from land by paying in specie, your argument would be sound, but according to the view that a purchaser possessing money can bar the creditor from the field by paying him in specie, why should he not say to the creditor, 'If I had had money, I would surely have been able to bar you from the whole field [by paying you in specie]; now also therefore I am entitled to be left with a griva[3] of land corresponding to the value of my amelioration'?[4] — He replied: We are dealing here with a case where the debtor expressly made that field a security, as where he said to him: 'You shall not be paid from anything but from the field.'[5]

Raba stated: [There is no question] that where the robber improved [the misappropriated article] and then sold it, or where the robber improved [the misappropriated article] and then left it to his

heirs, he has genuinely sold or left to his heirs the increment he has created.[6] Raba [however] asked: What would be the law where [after having bought the misappropriated article from the robber] the purchaser improved it? After asking the question he himself gave the answer: That what the former sold the latter, was surely all rights[7] which might subsequently accrue to him.[6]

Raba [again] asked: What would be the law where a heathen[8] [misappropriated an article and] improved it? — Said R. Aha of Difti to Rabina: Shall we trouble ourselves to make an enactment[9] for [the benefit of] a heathen? — He said to him: No; the query might refer to the case where. e.g., he sold it to an Israelite. [But he retorted:] Be that as it may, he who comes to claim through a heathen [predecessor], could surely not expect better treatment than the heathen himself. — No: the query could still refer to the case where, e.g., an Israelite had misappropriated an article and sold it to a heathen who improved it and who subsequently sold it to another Israelite. What then should be the law? Shall we say that since an Israelite was in possession at the beginning and an Israelite was in possession at the end, our Rabbis would also here make [use of] the enactment, or perhaps since a heathen intervened our Rabbis would not make [use of] the enactment? — Let it remain undecided.

R. papa stated: If one misappropriated a palm tree from his fellow and cut it down, he would not acquire title to it even though he threw it from [the other's] field into his own land, the reason being that it was previously called palm tree and is now also called palm tree.[10] [So also] where out of the palm tree he made logs he would not acquire title to them, as even now they would still be called logs of a palm tree.[10] It is only where out of the logs he made beams that he would acquire title to them.[11] But if out of big beams he made small beams he would not acquire title to them,[12] though were he to have made them into boards he would acquire title to them.[11]

Raba said: If one misappropriated a Lulab[13] and converted it into leaves he would acquire title to them, as originally it was called Lulab whereas now they are mere leaves.[11] So also where out of the leaves he made a broom he would acquire title to it, as originally they were leaves whereas now they form a broom,[14] but where out of the broom he made a rope he would not acquire title to it since if he were to undo it, it would again become a broom.

R. papa asked: What would be the law where the central leaf[15] of the Lulab became split? — Come and hear: R. Mathon said that R. Joshua b. Levi stated that if the central leaf of the Lulab was removed the Lulab would be disqualified [for ritual purposes].

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(1) Ordering payment for the amelioration.

(2) B.M. 15b and 110b.

(3) The size of a field needed for a se'ah of seed.

(4) Why then should the creditor distrain on the whole field together with the amelioration?

(5) In which case the purchaser can in no circumstance bar the creditor from the field.

(6) So that the purchaser (or heir) will be entitled to the half or third or quarter in profits to which the robber would have been entitled, according to the view of R. Simeon.

(7) Cf. supra p.32.

(8) Who neither respects nor feels bound by Rabbinic enactments.

(9) That according to R. Simeon payment is to be made for amelioration to the extent of a half or third or quarter.

(10) [The change involved does not confer ownership enabling him to make restitution by payment in money.]

(11) V. p. 552. n. 6.

(12) V. p. 552. n. 5.

(13) I.e., a palm branch used for the festive wreath on the Feast of Tabernacles in accordance with Lev. XXIII, 40.

(14) V. p. 543, n. 6.

(15) Cf. Suk. 32a and Rashi.

Now, would not the same law apply where it was merely split?[1] — No; the case where it was removed is different, as the leaf is then missing altogether. Some [on the other hand] read thus. Come and hear what R. Mathon said, that R. Joshua b. Levi stated that if the central leaf was split it would be considered as if it was altogether removed and the Lulab would be disqualified;[1] which would solve [R. papa's question].

R. papa [further] said: If one misappropriated sand from another and made a brick out of it, he would not acquire title to it, the reason being that it could again be made into sand, but if he converted a brick into sand he would acquire title to it. For should you object that he could perhaps make the sand again into a brick, [it may be said that] that brick would be [not the original but] another brick, as it would be a new entity which would be produced.

R. Papa [further] said: If one misappropriated bullion of silver from another and converted it into coins, he would not acquire title to them, the reason being that he could again convert them into bullion, but if out of coins he made bullion he would acquire title to it. For should you object that he can again convert it into coins, [my answer is that] it would be a new entity which would be produced. If [the coins were] blackened and he made them look new he would thereby not acquire title to them,[2] but if they were new and he made them black he would acquire title to them, for should you object that he could make them look again new, [it may be said that] their blackness will surely always be noticeable.

THIS IS THE GENERAL PRINCIPLE: ALL ROBBERS HAVE TO PAY IN ACCORDANCE WITH [THE VALUE OF THE MISAPPROPRIATED ARTICLES AT] THE TIME OF THE ROBBERY. What additional fact is the expression. THIS IS THE GENERAL PRINCIPLE intended to introduce? — It is meant to introduce that which R. Elai said: If a thief misappropriated a lamb which became a ram, or a calf which became an ox, as the animal underwent a change while in his hands he would acquire title to it, so that if he subsequently slaughtered or sold it, it was his which he slaughtered and it was his which he sold.[3]

A certain man who misappropriated a yoke of oxen from his fellow went and did some ploughing with them and also sowed with them some seeds and at last returned them to their owner. When the case came before R. Nahman he said [to the sheriffs of the court]: 'Go forth and appraise the increment [added to the field].' But Raba said to him: Were only the oxen instrumental in the increment, and did the land contribute nothing to the increment?[4] — He replied: Did I ever order payment of the full appraisement of the increment? I surely meant only half of it. He, however, rejoined:[5] Be that as it may, since the oxen were misappropriated they merely have to be returned intact, as we have indeed learnt: ALL ROBBERS HAVE TO PAY IN ACCORDANCE WITH [THE VALUE] AT THE TIME OF THE ROBBERY. [Why then pay for any work done with them?] — He replied: Did I not say to you that when I am sitting in judgment you should not make any suggestions to me, for Huna our colleague said with reference to me that I and 'King' Shapur[6] are [like] brothers in respect of civil law? That person [who misappropriated the pair of oxen] is a notorious robber, and I want to penalise him.

MISHNAH. IF ONE MISAPPROPRIATED AN ANIMAL AND IT BECAME OLD, OR SLAVES AND THEY BECAME OLD, HE WOULD HAVE TO PAY ACCORDING TO [THE VALUE AT] THE TIME OF THE ROBBERY.[7] R. MEIR, HOWEVER, SAYS THAT IN THE CASE OF SLAVES[8] HE MIGHT SAY TO THE OWNER: HERE, TAKE YOUR OWN. IF HE MISAPPROPRIATED A COIN AND IT BECAME CRACKED, FRUITS AND THEY BECAME STALE OR WINE AND IT BECAME SOUR, HE WOULD HAVE TO PAY ACCORDING TO [THE VALUE AT] THE TIME OF THE ROBBERY.[7] BUT IF THE COIN WENT OUT OF USE, THE TERUMAH[9] BECAME DEFILED,[10] THE LEAVEN FORBIDDEN [FOR ANY USE

BECAUSE] PASSOVER HAD INTERVENED,[11] OR IF THE ANIMAL [HE MISAPPROPRIATED] BECAME THE INSTRUMENT FOR THE COMMISSION OF A SIN[12] OR IT BECAME OTHERWISE DISQUALIFIED FROM BEING SACRIFICED UPON THE ALTAR,[13] OR IF IT WAS TAKEN OUT TO BE STONED,[14] HE CAN SAY TO HIM: 'HERE, TAKE YOUR OWN.'

GEMARA. R. Papa said: The expression IT BECAME OLD does not necessarily mean that it actually became old, for [the same law would apply] even where it had otherwise deteriorated. But do we not expressly learn. IT BECAME OLD?[15] — This indicates that the deterioration has to be equivalent to its becoming old, i.e., where it will no more recover health. Mar Kashisha, the son of R. Hisda, said to R. Ashi: It has been expressly stated in the name of R. Johanan that even where a thief misappropriated a lamb which became a ram, or a calf which became an ox,[16] since the animal underwent a change while in his hands he would acquire title to it, so that if he subsequently slaughtered or sold it, it was his which he slaughtered and it was his which he sold.[17] He said to him: Did I not say to you that you should not transpose the names of scholars?[18] That statement was made in the name of R. Elai.[19]

R. MEIR, HOWEVER. SAYS THAT IN THE CASE OF SLAVES HE MIGHT SAY TO THE OWNER, 'HERE TAKE YOUR OWN.' R. Hanina b. Abdimi said that Rab stated that the halachah is in accordance with R. Meir. But how could Rab abandon the view of the Rabbis[20] and act in accordance with R. Meir? — It may, however, be said that he did so because in the text of the [relevant] Baraitha the names were transposed. But again how could Rab abandon the text of the Mishnah and act in accordance with the Baraitha?[21] — Rab, even in the text of our Mishnah, had transposed the names. But still what was the reason of Rab for transposing the names in the text of the Mishnah because of that of the Baraitha? Why not, on the contrary, transpose the names in the text of the Baraitha because of that of our Mishnah? — It may be answered that Rab, in the text of our Mishnah too, was taught by his masters to have the names transposed. Or if you like I may say that [the text of a Mishnah] is not changed [in order to be harmonised with that of a Baraitha] only in the case where there is one against one, but where there is one against two,[22] it must be changed [as is indeed the case here]; for it was taught:[23] If one bartered a cow for an ass and [the cow] gave birth to a calf [approximately at the very time of the barter], so also if one sold his handmaid and she gave birth to a child [approximately at the time of the sale], and one says that the birth took place while [the cow or handmaid was] in his possession and the other one is silent [on the matter], the former will obtain [the calf or child as the case may be], but if one said 'I don't know', and the other said 'I don't know', they would have to share it. If, however, one says [that the birth took place] when he was owner and the other says [that it took place] when he was owner, the vendor would have to swear that the birth took place when he was owner [and thus retain it], for all those who have to take an oath according to the law of the Torah, by taking the oath release themselves from payment;[24] this is the view of R. Meir. But the Sages say that an oath can be imposed neither in the case of slaves nor of real property.[25] Now [since the text of our Mishnah should have been reversed,[26] why did Rab[27] state that] the halachah is in accordance with R. Meir? Should he not have said that the halachah is in accordance with the Rabbis?[27] — What he said was this: According to the text you taught with the names transposed, the halachah is in accordance with R. Meir.[27]

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(1) [Should it be disqualified, it would, if occurring whilst in the possession of the robber, be considered a change and confer ownership.]

(2) V. p. 543. n. 5.

(3) Supra 379.

(4) Why then should the whole amount of the increase due to the amelioration be paid to the plaintiff?

(5) Raba to R. Nahman.

(6) Meaning Samuel, who was a friend of the Persian King Shapur I, and who is sometimes referred to in this way; cf. B.B. 115b. [To have conferred the right of bearing the name of the ruling monarch, together with the title 'tham',

'mighty'. was deemed the highest honour among the Persians, and 'Malka', 'King'. is apparently the Aramaic counterpart of the Persian title 'Malka' (v. Funk, Die Juden in Babylonien. I, 73). On Samuel's supreme authority in Babylon in matters of civil law, v. Bek. 49b.]

(7) As the change transferred the ownership to him.

(8) Who are subject to the law applicable to immovables, where the law of robbery does not apply.

(9) V. Glos.

(10) And thus unfit as food; cf. Shab. 25a.

(11) Cf. Pes. II. 2.

(12) Such as in Lev. XVIII, 23; cf. also supra p. 229.

(13) Such as through a blemish, hardly noticeable, as where no limb was missing; cf. Zeb. 35b and 85b; v. also Git. 56a.

(14) As in the case of Ex. XXI. 28.

(15) In which a temporary deterioration could hardly be included.

(16) [Although there is an inevitable and natural change.]

(17) [And he would be exempt from the threefold and fourfold restitution.]

(18) Lit., 'people'.

(19) And not in that of R. Johanan: supra p. 379.

(20) The representatives of the anonymous view of the majority cited first in the Mishnah.

(21) In accordance with the anonymous view of the majority cited in the Baraitha.

(22) I.e., where two Baraithas are against the text of one Mishnah.

(23) B.M. 100a, q.v. for notes.

(24) Shebu. VII, 1.

(25) Cf. Shebu. VI, 5. It is thus evident that it was the majority of the Rabbis and not R. Meir who considered slaves to be subject to the law of real property.

(26) In which case it was the Rabbis who maintained that slaves are subject to the law of real property.

(27) Meaning that slaves are on the same footing as real property.

Talmud - Mas. Baba Kama 97a

But did Rab really say that slaves are on the same footing as real property? Did R. Daniel b. Kattina not say that Rab stated that if a man forcibly seizes another's slave and makes him perform some work, he would be exempt from any payment?[1] Now, if you really suppose that slaves are on the same footing as real property. why should he be exempt? Should the slave not be considered as still being in the possession of the owner?[2] — We are dealing there[3] with a case [where he took hold of the slave at a time] when [the owner] usually required no work from him, exactly as R. Abba sent to Mari b. Mar, saying. 'Ask R. Huna whether a person who stays in the premises[4] of another without his knowledge must pay him rent or not, and he sent him back reply that 'he is not liable to pay him rent'.[5] But what comparison is there? There is no difficulty [in that case][6] as if we follow the view that premises which are inhabited by tenants keep in a better condition,[5] [we must say that] the owner is well pleased that his house be inhabited. or again if we follow the view[5] that the gate is smitten unto roll,[7] [we can again say that] the owner benefited by it. But here [in this case][8] what owner could be said to be pleased that his slave became reduced [by overwork]? — It may, however, be said that here[9] also it may be beneficial to the owner that his slave should not become prone to idleness.

Some at the house of R. Joseph b. Hama used to seize slaves of people who owed them money, and make them perform some work. Raba his son said to him: Why do you, Sir, allow this to be done? — He thereupon said to him: Because R. Nahman stated that the [work of the] slave is not worth the bread he eats. He rejoined:[10] Do we not say that R. Nahman meant his statement only to apply to one like Daru his own servant who was a notorious dancer in the wine houses, whereas with all other servants who do some work [the case is not so]? — He however said to him: I hold with R. Daniel b. Kattina, for R. Daniel b. Kattina said that Rab stated that one who forcibly seizes another's slave and makes him perform some work would be exempt from any payment, thus proving that this

is beneficial to the owner, by preventing his slave from becoming idle. He replied:[10] These rulings [could apply] only where he has no money claim against the owner, but [in your case], Sir, since you have a money claim against the owner, it looks like usury, exactly as R. Joseph b. Manyumi said [namely] that R. Nahman stated that though the Rabbis decided that one who occupies another's premises without his consent is not liable to pay him rent, if he lent money to another and then occupied his premises he would have to pay him rent.[11] He thereupon said to him: [If so,] I withdraw.

It was stated: If one forcibly seizes another's ship and performs some work with it, Rab said that if the owner wishes he may demand payment for its hire, or if he wishes he may demand payment for its wear and tear. But Samuel said: He may demand only for its wear and tear. Said R. Papa: They do not differ as Rab referred to the case where the ship was made for hire and Samuel to the case where it was not made for hire. Or if you like, I can say that both statements deal with a case where it was made for hire, but whereas [Rab deals with a case] where possession was taken of it with the intention of paying the hire,[12] '[Samuel refers to one] where possession was taken of it with the intention of robbery.[13]

IF HE MISAPPROPRIATED A COIN AND IT BECAME CRACKED etc. R. Huna said: IT BECAME CRACKED means that it actually cracked, [and] IT WENT OUT OF USE means that the Government declared it obsolete. But Rab Judah said that where the Government declared the coin obsolete it would be tantamount to its being disfigured,[14] and what was meant by IT WENT OUT OF USE is that the inhabitants of a particular province rejected it while it was still in circulation in another province. R. Hisda said to R. Huna: According to your statement that IT WENT OUT OF USE meant that the Government declared it obsolete, why [in our Mishnah] in the case of fruits that became stale, or wine that became sour, which appears to be equivalent to a coin that was declared obsolete by the Government, is it stated that HE WOULD HAVE TO PAY IN ACCORDANCE WITH [THE VALUE AT] THE TIME OF THE ROBBERY?[15] — He replied: There [in the case of the fruits and the wine] the taste and the smell changed, whereas here [in the case of the coin] there was no change [in the substance]. Rabbah on the other hand said to Rab Judah: According to your statement that where the Government declared the coin obsolete it would be tantamount to its having been cracked, why in [our Mishnah in] the case of terumah that became defiled, which appears to resemble a coin that was declared obsolete by the Government[16] is it stated that he can say to him, 'HERE, TAKE YOUR OWN'? — He replied: There [in the case of the terumah] the defect[17] is not noticeable, whereas here [in the case of the coin] the defect is noticeable.[18]

It was stated: If a man lends his fellow [something] on [condition that it should be repaid in] a certain coin, and that coin became obsolete, Rab said

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(1) B.M. 64b.

(2) So that payment for work done by him would have to be enforced.

(3) Lit., 'here'.

(4) [Which the owner is not accustomed to let — a case similar to the one where the owner requires no work from the slave.]

(5) V. supra 21a for notes.

(6) Of the house.

(7) Isa. XXIV, 12.

(8) Of the slave.

(9) [Amounting as it does to the taking of interest.]

(10) I.e., Raba to his father, R. Joseph.

(11) So that it should not look like usury.

(12) In which case the hire may be claimed.

(13) In which case no more than compensation for the wear and tear could be enforced.

(14) Since it would nowhere have currency.
(15) As the change transferred the ownership.
(16) For just as the latter case was proscribed by the political realm, the former was proscribed by the spiritual realm.
(17) By becoming defiled.
(18) As the coins which are in circulation have a different appearance.

Talmud - Mas. Baba Kama 97b

that the debtor would have to pay the creditor with the coin that had currency at that time,[1] whereas Samuel said that the debtor could say to the creditor, 'Go forth and spend it in Meshan.'[2] R. Nahman said that the ruling of Samuel might reasonably be applied where the creditor had occasion to go to Meshan, but if he had no occasion [to go there] it would surely not be so. But Raba raised an objection to this view of R. Nahman [from the following]: 'Redemption [of the second tithe] cannot be made by means of money which has no currency, as for instance if one possessed koziba-coins,[3] of Jerusalem,[4] or of the earlier kings;[5] no redemption could be made [by these].'[6] Now, does this not imply that if the coins were of the later kings, even though analogous [in one respect] to coins of the earlier kings,[7] it would be possible to effect the redemption by means of them?[8] — He, however, said to him that we were dealing here with a case where the Governments of the different provinces were not antagonistic to one another. But since this implies that the statement of Samuel [as explained by R. Nahman] referred to the case where the Governments of the different provinces were antagonistic to one another, how would it be possible to bring the coins [to the province where they still have currency]?[9] — They could be brought there with some difficulty, as where no thorough search was made at the frontier though if the coins were to be discovered there would be trouble.

Come and hear: Redemption [of the second tithe] cannot be effected by means of coins which have currency here[10] but which are actually [with the owner] in Babylon;[11] so also if they have currency in Babylon but are kept here.[10] [But] where the coins have their currency in Babylon and are in Babylon redemption can be effected by means of them. Now, it is at all events stated here [is it not] that no redemption could be effected by means of coins which though having currency here[10] are actually [with the owner] in Babylon irrespective of the fact that the owner will have to go up here?[12] — We are dealing here with a case where the Governments [of the respective countries] were antagonistic to each other.[13] But if so how would coins which have currency in Babylon and are kept in Babylon be utilised as redemption money?[14] — They may be utilised for the purchase of an animal [in Babylon]. which can then be brought up to Jerusalem. But was it not taught[15] that there was an enactment that all kinds of money should be current in Jerusalem?[16] — Said R. Zera: This is no difficulty, as the latter statement refers to the time when Israel had sway [in Eretz Yisrael] over the heathen whereas the former referred to a time when the heathen governed themselves.[17]

Our Rabbis taught: What was the coin of Jerusalem?[18] [The names] David and Solomon [were inscribed] on one side and [the name of] Jerusalem on the other. What was the coin of Abraham our Patriarch? — An old man and an old woman[19] on the one side, and a young man and a young woman[20] on the other.

Raba asked R. Hisda: What would be the law where a man lent his fellow something on [condition of being repaid with] a certain coin,[21] and that coin meanwhile was made heavier?[22] — He replied: The payment will have to be with the coins that have currency at that time. Said the other: Even if the new coin be of the size of a sieve? — He replied: Yes, Said the other: Even if it be of the size of a 'tirtia'![23] — He again replied. Yes. But in such circumstances would not the products have become cheaper?[24] — R. Ashi therefore said: We have to look into the matter. If it was through the [increased weight of the] coin that prices [of products] dropped we would have to deduct [from the payment accordingly],

(1) I.e., at the time of the payment.
(2) [Mesene, a district S.E. of Babylon. It lay on the path of the trade route to the Persian Gulf. V. Obermeyer. op. cit., 89 ff.]
(3) Coins struck by Bar Cochba, the leader of the uprising in Eretz Yisrael against Hadrian. [The name Koziba has been explained either as derivation from the city Kozeba, his home, or as 'Son of Lies', a contumelious designation when his failure belied all the hopes reposed in him, v. Graetz, Geschichte, p. 136.]
(4) [Probably the old shekels. According to Rashi render: namely, Jerusalem coins.]
(5) [Either the Seleucidean Kings or former Roman Emperors.]
(6) Tosef. M. Sh. 1, 6.
(7) Such as where they were declared obsolete in a particular province.
(8) Even where one had not occasion to go there, which refutes R. Nahman's view.
(9) Even though one had occasion to go there.
(10) In Jerusalem.
(11) Where they have no currency.
(12) [Lit. 'there'. The text does not read smoothly, and is suspect. MS.M. in fact omits 'Now . . . here.']
(13) To a greater degree, so that thorough searches are made and the transport of coins would constitute a real danger.
(14) Which would have to be spent for certain commodities to be partaken of in Jerusalem.
(15) Cf. I.M. Sh. I. 2.
(16) How then were Babylonian coins not current there?
(17) A euphemism for Israel.
(18) Cf. p. 556. n. 7.
(19) I.e., Abraham and Sarah.
(20) I.e., Isaac and Rebeccah.
(21) V. p. 566, n. 4.
(22) [The question is according to the view of Rab, ibid., that payment has to be made with the coin that had currency at the time.]
(23) A quoit of certain size.
(24) A larger supply being obtained by the heavier coin, and the increase would appear as usury.

Talmud - Mas. Baba Kama 98a

but if it was through the market supplies[1] that prices dropped, we would not have to deduct anything. Still,[2] would the creditor not derive a benefit from the additional metal? — [We must] therefore [act] like R. Papa and R. Huna the son of R. Joshua who gave judgment in an action about coins, according to [the information[3] of] an Arabian agoran,[4] that the debtor should pay for ten old coins [only] eight new ones.[5]

Rabbah stated: He who throws a coin of another [even] into the ocean[6] is exempt, the reason being that he can say to him, 'Here it lies before you, if you are anxious to have it take it.' This applies, however, only where [the water was] clear so that it could be seen, but if it was so muddy that the coin could not be seen this would not be so. Again, this holds good only where the throwing was merely indirectly caused by him,[7] but if he took it in his hand he would surely have already become subject to the law of robbery[8] and as such would have been liable to make [proper] restitution.[8]

Raba raised an objection [from the following:] 'Redemption [of the second tithe] cannot be made by means of money not in one's actual possession, such as if he had money in Castra or in the King's Mountain[9] or if his purse fell into the ocean; no redemption could then be effected'.[10] — Said Rabbah: The case [of redemption] of tithe is different, as it is required there that the money should be [to all intents and purposes] actually in your hand, for the Divine Law says, And bind up the money in thy hand,[11] which is lacking in this case.[12]

Rabbah further said: One who disfigures a coin belonging to another is exempt, the reason being

that he did not do anything [to reduce the substance of the coin]. This of course applies only where he knocked on it with a hammer and so made it flat, but where he rubbed the stamp off with a file he certainly diminished its substance [and would thus be liable]. Raba raised an objection [from the following:] 'Where [the master] struck [the slave] upon the eye and blinded him or upon the ear and deafened him the slave would on account of that go out free,[13] but [where he struck on an object which was] opposite the slave's eye and he lost his sight or [on an object which was] opposite his ear through which he lost his hearing the slave would [on account of this] not go out free'![14] — Rabbah, however, follows his own reasoning, for Rabbah stated: He who makes his father deaf is subject to be executed,[15] for it is impossible to cause deafness without first making a bruise through which a drop of blood falls into the ear.[16]

And Rabbah [further] stated: He who splits the ear of another's cow[17] is exempt, the reason being that [so far as the value of] the cow [is concerned it] remains as it was before, for he did not do anything [to reduce it], since not all oxen are meant to be sacrificed upon the altar.[18] Raba raised an objection [from the following]: If he did work with the water of Purification or with the Heifer of Purification he would be exempt according to the judgments of Man but liable according to the judgments of Heaven.[19] Now surely this is so only where mere work was done with it,[20] in which case the damage [done to it] is not noticeable, whereas in the case of splitting where the damage is noticeable there would also be liability according to the judgments of Man?[21] — It may, however, be said that the same law would apply in the case of splitting, where he would similarly be exempt [according to the judgments of Man], and that what we are told here is that even in the case of mere work where the damage is not noticeable there would still be liability according to the judgments of Heaven.

Rabbah further stated: If one destroyed by fire the bond of a creditor he would be exempt, because he can say to him, 'It was only a mere piece of paper of yours that I have burnt.'[22] Rami b. Hania demurred: What are the circumstances?

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(1) I.e., through the supply surpassing the demand.

(2) [Even if the drop in the prices was due to the latter cause.]

(3) [That ten old coins had the weight of eight new ones.]

(4) Market commissioner.

(5) If, however, the increase in weight was less than 25%, the new coins paid would have to be equal in number to the old ones; so Rashi; Tosaf. explains differently.

(6) Lit., 'the great sea', the Mediterranean.

(7) [On the principle that damage caused by indirect action is not actionable.]

(8) Cf. Lev. V, 23.

(9) [Har-ha-Melek, also known as Tur Malka. There is still a good deal of uncertainty in regard to the identification of these two localities. Buchler JQR. 1904. 181 ff. maintains that the reference in both cases is to Roman fortifications, access to which was barred to the Jews, the former being simply the Roman Castra, the latter, a fortification situated somewhere in Upper Idumea. For other views, v. Schlatter, Tage Trojans, p. 28, and Neubauer, Geographie, p. 196.]

(10) M.Sh. I, 2. Now, if coins thrown into the ocean are not considered as lost to the owner, as indeed suggested by Rabbah. why should no redemption be effected?

(11) Deut. XIV, 25.

(12) On account of which no redemption could be effected.

(13) In accordance with Ex. XXI, 26-27.

(14) Supra 91a. Does this not prove that even where the substance was not reduced, such as in the case of deafening, still so long as the damage was done there is liability?

(15) As having committed the capital offence of Ex. XXI. 25, v. supra 86a.

(16) [And for the same reason the slave would be set free.]

(17) Rendering her thus disqualified as blemished for the altar; cf. Lev. XXII, 20-25.

(18) Cf. Kid. 66a.

(19) I.e., the ‘red heifer’ rendering it thus disqualified in accordance with Num. XIX. 2 and 9.
(20) V. supra 56a.
(21) Thus contradicting the view of Rabbah.
(22) V. supra 33b.

Talmud - Mas. Baba Kama 98b

If there are witnesses who know what were the contents of the bond why not draw up another bond which would be valid? If on the other hand such witnesses are not available, how could we know [what were the contents]?[1] — Raba said: [The case could arise] where the defendant takes the plaintiff's word [as to the contents of the bond]. R. Dimi b. Hanina said that [regarding this ruling] of Rabbah there was a difference of opinion between R. Simeon and our [other] Rabbis. According to R. Simeon who held[2] that an object whose absence would cause an outlay of money is reckoned in law as money there would be liability,[3] but according to the Rabbis who said that an object whose absence would cause an outlay of money is not reckoned in law as money there would be no liability. R. Huna the son of R. Joshua demurred: I would suggest that you have to understand R. Simeon's statement, that an object whose absence would cause an outlay of money is reckoned in law as money, to apply only to an object whose substance is its intrinsic value, exactly as [in another case made Out by] Rabbah, for Rabbah said that where leaven was misappropriated before [the arrival of] Passover and a third person came along and burnt it, if this took place during the festival he would be exempt as at that time all are enjoined to destroy it,[4] but if after Passover[5] there would be a difference of opinion between R. Simeon and our Rabbis, as according to R. Simeon who held that an object whose absence would cause an outlay of money is reckoned in law as money, he would be liable,[6] while according to our Rabbis who said that an object whose absence would cause an outlay of money is not reckoned in law as money, he would be exempt. [But whence could it be proved that even] regarding an object whose substance is not its intrinsic value R. Simeon similarly maintained the same view?

Amemar said that the authority who is prepared to adjudicate liability in an action for damage done indirectly[7] would similarly here adjudge damages to the amount recoverable on a valid bill. but the one who does not adjudicate liability in an action for damage done indirectly would here adjudge damages only to the extent of the value of the mere paper. It once happened that in such an action Rafram compelled R. Ashi[8] and damages were collected [from him] like a beam fit for decorative mouldings.[9]

BUT IF . . . THE LEAVEN [HE MISAPPROPRIATED BECAME FORBIDDEN FOR ANY USE BECAUSE] PASSOVER HAD INTERVENED . . . HE CAN SAY TO HIM: HERE, TAKE YOUR OWN. Who is the Tanna who, in regard to things forbidden for any use, allows [the offender] to say, ‘Here, take your own’? — R. Hisda said: He is R. Jacob, as indeed taught: If an ox killed [a person], and before its judgment was concluded its owner disposed of it, the sale would hold good; if he pronounced it sacred, it would be sacred; if it was slaughtered its flesh would be permitted [for food]; if a bailee returned it to [the house of] its owner, it would be a legal restoration. But if after its sentence had already been pronounced, the owner disposed of it, the sale would not be valid; if he consecrated it, it would not be sacred; if it was slaughtered its flesh would be forbidden [for any use]; if a bailee returned it to [the house of] its owner, it would not be a legal restoration. R. Jacob, however, says: Even if after the sentence had already been pronounced the bailee returned it to its owner, it would be a legal restoration.[10] Now, is not the point at issue between them[11] that R. Jacob, in the case of things forbidden for any use, allows the offender to say. ‘Here, take your own’, whereas the Rabbis disallow this in the case of things forbidden for any use?[12] Rabbah said to him:[13] No; all may agree that even regarding things forbidden for any use the offender is allowed [in certain circumstances] to say, ‘Here, take your own’, for if otherwise. why did they[11] not differ in the case of leaven during Passover?[14] Rabbah therefore said: Here [in the case before us] the point at issue

must be whether [or not] sentence may be pronounced over an ox in its absence. The Rabbis hold that sentence cannot be pronounced over an ox in its absence so that the owner may plead against the bailee thus: 'if you had returned it to me [before the passing of the sentence], I would have driven it away to the pastures,[15] whereas now you have surrendered my ox into the hands of those against whom I am unable to bring any action.'[16] R. Jacob, however, holds that sentence can be pronounced over the ox even in its absence, so that the bailee may retort to the owner thus: In any case the sentence would have been passed on the ox, even in its absence.

R. Hisda came across Rabbah b. Samuel and said to him: Have you been taught anything regarding things forbidden for any use?[17] — He replied: Yes, I was taught [the following]: 'He shall restore the misappropriated object.[18] What is the point of the additional words, which he violently took away? [It is that] so long as it was intact he may restore it.[19] Hence did the Rabbis declare that if one misappropriated a coin and it went out of use, fruits and they became stale, wine and it became sour,[20] terumah[21] and it became defiled,[22] leaven and [it became forbidden for any use because] Passover intervened,[23] an animal and it became the instrument for the commission of a sin,[24] or an ox and [it subsequently became subject to be stoned,[25] but] its judgment was not yet concluded, he can say to the owner, 'Here, take your own.' Now, which authority can you suppose to apply this ruling only where the judgment was not yet concluded, but not where the judgment was already concluded, if not the Rabbis, and it is at [the same time] stated that [if he misappropriated] leaven and [it became forbidden for any use because] Passover intervened[26] he can say to him, 'Here, take your own'?[27] — He replied:[28] If you happen to meet them[29] [please] do not tell them anything [of this teaching].[30]

['If one misappropriated] fruits and they became stale . . . he can say to him: "Here, take your own."' But did we not learn:[31] [IF HE MISAPPROPRIATED] FRUITS AND THEY BECAME STALE . . . HE WOULD [CERTAINLY] HAVE TO PAY ACCORDING TO [THE VALUE AT] THE TIME OF THE ROBBERY? — Said R. Papa: The latter ruling[32] refers to where the whole of them became stale,[33] the former to where only parts of them became stale.

MISHNAH. IF AN OWNER GAVE CRAFTSMEN [SOME ARTICLES] TO SET IN ORDER AND THEY SPOILT THEM, THEY WOULD BE LIABLE TO PAY. WHERE HE GAVE A JOINER A CHEST, A BOX OR A CUPBOARD[34] SET IN ORDER AND HE SPOILT IT, HE WOULD BE LIABLE TO PAY. IF A BUILDER UNDERTOOK TO PULL DOWN A WALL AND BROKE THE STONES OR DAMAGED THEM, HE WOULD BE LIABLE TO PAY, BUT IF WHILE HE WAS PULLING DOWN THE WALL ON ONE SIDE ANOTHER PART FELL ON ANOTHER SIDE, HE WOULD BE EXEMPT, THOUGH, IF IT WAS CAUSED THROUGH THE KNOCKING, HE WOULD BE LIABLE.

GEMARA. R. Assi said: The Mishnaic ruling could not be regarded as applying except where he gave a joiner a box, a chest, or a cupboard to knock a nail in and while he was knocking in the nail he broke them. But if he gave the joiner timber to make a chest, a box or a cupboard and after he had made the box, the chest or the cupboard they were broken by him, he would be exempt,[35] the reason being that a craftsman acquires title to the increase in [value caused by the construction of] the article.[36] But we have learnt: IF AN OWNER GAVE CRAFTSMEN SOME ARTICLES TO SET IN ORDER AND THEY SPOILT THEM THEY WOULD BE LIABLE TO PAY. Does this not mean that he gave them timber to make utensils?[37] — No, [he gave them] a chest, a box or a cupboard.[38] But since the concluding clause in the text mentions 'chest, box or cupboard' is it not implied that the opening clause refers to timber? — It may, however, be said that [the later clause] only means to expand the earlier [as follows]: 'In the case where an owner gave craftsmen some articles to set in order and they spoiled them, how would they be liable to pay? As, e.g., where he gave a joiner a chest, a box, or a cupboard.' There is also good reason for supposing that the text [of the latter clause] was merely giving an example. For should you assume that the opening clause refers to

timber, after we have been [first] told that [even] in the case of timber they would be liable to pay and that we should not say that the craftsman acquires title to the increase in [value caused by the construction of] the article, what necessity would there be to mention afterwards chest, box and portable turret?[39] — If only on account of this, your point could hardly be regarded as proved, for the later clause might have been inserted to reveal the true meaning of the earlier clause, so that you should not think that the earlier clause refers to [the case where he gave the joiner a] chest, box and cupboard, whereas [where he gave him] timber the law would not be so; hence the concluding clause specifically mentions chest, box and cupboard[38] to indicate that the opening clause refers to timber, and that even in that case the craftsman would be liable to pay.[37] May we say that he[40] can be supported [from the following]: If wool was given to a dyer

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(1) [To know what liability to impose on him.]

(2) Supra 71b.

(3) Since the creditor has through the destruction of his bond suffered an actual loss of money.

(4) Cf. Pes. II. 2.

(5) When though forbidden to be used for any purpose it is still not under an injunction to be destroyed; cf. Pes. II. 2.

(6) To the robber, since the robber would have been able to restore the leaven to the owner and say. 'Here there is thine before thee', whereas after the leaven was destroyed he would have to pay the full original value if the leaven.

(7) I.e., R. Meir; cf. infra 100a.

(8) [Who in his childhood had destroyed a bond of a creditor.]

(9) A metaphorical expression for 'straight and exact and out of the best of the estate', as supra p. 16; v. Rashi and Sh.M. a.l.

(10) v. supra 45a for notes.

(11) R. Jacob and the Rabbis.

(12) Our Mishnah thus represents the view of R. Jacob.

(13) I.e., to R. Hisda.

(14) Whether a robber would be entitled to restore it and plead 'Here there is thine before thee'.

(15) And no sentence would have been passed on it.

(16) [I.e., the court. This plea would, however, not apply to leaven where the incidence of the prohibition is not due to an act of the robber but to the intervention of the Passover (Rashi).]

(17) [Whether the plea 'Here, take your own' is admissible in their case.]

(18) Lev. V, 23.

(19) Though it meanwhile became valueless.

(20) [MS.M. rightly omits 'wine and it became sour' as in this case payment is according to value at time of robbery; Var. lec. and he poured from it a libation (to an idol).]

(21) V. Glos.

(22) V. p. 561, n. 4.

(23) V. ibid., n. 5.

(24) V. ibid., n. 6.

(25) V. ibid., n. 8.

(26) V. p. 561, n. 5.

(27) Thus confirming the view of Rabbah as against that of R. Hisda.

(28) I.e., R. Hisda to Rabbah b. Samuel.

(29) My colleagues.

(30) For a similar attitude cf. 'Er. 11b where R. Shesheth said so to the same Rabbah b. Samuel, and ibid. 39b where the same R. Shesheth said so to Raba(== Rabbah) b. Samuel.

(31) In our Mishnah.

(32) Where payment must be made.

(33) And the change was definite.

(34) Lit., 'a turret', a cupboard in the form of a turret.

(35) So far as the increase in value caused by the construction of the article is concerned, [for when he parts with it he effects a sale of the improvement of the article and the stipulated sum paid to him is but the purchase money for the

same.]

(36) Cf. B.M. 112a.

(37) And their liability would thus extend to the whole value of the utensils made by them.

(38) For some repair, in the performance of which they were broken.

(39) In which case the law is quite evident.

(40) I.e., R. Assi.

Talmud - Mas. Baba Kama 99a

and it was burnt by the dye, he would have to pay the owner the value of his wool.[1] Now, it is only the value of the wool that he has to pay, but not the combined value of the wool and the increase in price.[2] Does this not apply even where it was burnt after the dye was put in,[3] in which case there has already been an increase in value, which would thus show[4] that the craftsman acquires title to the improvement carried out by him on any article? — Said Samuel: We are dealing here with a case where, e.g., it was burnt at the time when the dye was put in,[5] so that there has not yet been any increase in value. But what would it be if it were burnt after it was put in?[6] Would he really have to pay the combined value of the wool and the increase? Must we not therefore say that Samuel did not hold the view of R. Assi?[7] — Samuel might say to you that we are dealing here with a case where e.g., both the wool and the dye belonged to the owner, so that the dyer had to be paid only for the labour of his hands.[8] But if so, should it not have been stated that the dyer would have to pay the owner for the value of both his wool and his dye? — Samuel was only trying to point out that a refutation[9] would be possible.[10] Come and hear:[11] If he gave his garment to a craftsman and the latter finished it and informed him of the fact, even if from that time ten days elapsed [without his paying him] he would through that not be transgressing the injunction thou shalt not keep all night.[12] But if [the craftsman] delivered the garment to him in the middle of the day, as soon as the sun set [without payment having been made] the owner would through that transgress the injunction. Thou shalt not keep all night.[13] Now, if you assume that a craftsman acquires title to the improvement [carried out by him] on any article,[14] why should the owner be transgressing[15] the injunction. Thou shalt not keep all night? — Said R. Mari the son of R. Kahana: [The work required in this case was] to remove the woolly surface of a thick cloth where there was no accretion.[16] But be it as it may, since he gave it to him for the purpose of making it softer, as soon as he made it softer was there not already an improvement? — No; the ruling is necessary [for meeting the case] where he hired him to stamp upon it [and undertook to pay him] for every act of stamping one ma'ah,[17] which is but the hire [for labour].

But according to what we assumed previously that he was not hired for stamping,[18] [this ruling] would have been a support to [the view of] R. Shesheth, for when it was asked of R. Shesheth[19] whether in a case of contracting the owner would transgress[20] the injunction, Thou shalt not keep all night, or would not transgress, he answered that he would transgress! But are we [at the same time] to say that R. Shesheth differed from R. Assi?[21] — Samuel b. Aha said: [R. Shesheth was speaking] of a messenger sent to deliver a letter.[22]

Shall we say [that the same difference is found between] the following Tannaim? [For it was taught: If a woman says,] 'Make for me bracelets, earrings and rings,[23] and I will become betrothed unto thee,'[24] as soon as he makes them she becomes betrothed [unto him];[25] this is the view of R. Meir. But the Sages say that she would not become betrothed until something of actual value has come into her possession.[26] Now, what is meant by actual value? We can hardly say that it refers to this particular value,[27] for this would imply that according to R. Meir [it was] not [necessary for her to come into possession] even of that value. If so, what would be the instrument to effect the betrothal?[25] It therefore appears evident that what was meant by 'actual value' was some other value.[28] Now again, it was presumed [by the students] that according to all authorities there is continuous [growth of liability for] hire from the very commencement of the work until the end of

it,[29] and also that according to all authorities if one betroths [a woman] through [foregoing] a debt [owing to him from her], she would not be betrothed.[30] Would it therefore not appear that they[31] differed on the question whether a craftsman acquires title to the improvement carried out by him upon an article, R. Meir maintaining that a craftsman acquires title to the improvement carried out by him upon an article,[32] while the Rabbis maintained that the craftsman does not acquire title to the improvement carried out by him upon an article?[33] — No; all may agree that the craftsman does not acquire title to the improvement carried out by him upon an article, and here they differ as to whether there is progressive [liability for] hire from the very commencement of the work until the very end, R. Meir maintaining that there is no liability for hire except at the very end,[34] whereas the Rabbis maintained that there is progressive [liability for] hire[35] from the commencement until the very end.[36] Or if you wish I may say that in the opinion of all there is progressive [liability for] hire[35] from the very commencement to the end,[36] but here they[37] differ [in regard to the law] regarding one who betroths [a woman] by [forgoing] a debt [due from her], R. Meir maintaining that one who betroths [a woman] by [forgoing] a debt [due from her] would thereby effect a legal betrothal, whereas the [other] Rabbis maintained that he who betroths [a woman] by [forgoing] a debt [due from her] would thereby not effect a valid betrothal.[38]

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(1) Infra 100b.

(2) Caused by the process of dyeing.

(3) Lit., 'after falling in'. i.e. after the dye had already exercised its effect on the wool which thereby increased in value.

(4) Since he has to pay only for the wool and nor for its increase in value.

(5) Lit., 'at the time of falling in', i.e., before the dye has yet exercised any effect on the wool.

(6) V. supra n. 3.

(7) According to whom even then only the original value of the wool would have to be paid for. [Which means that R. Assi's view cannot stand since in civil law we follow the ruling of Samuel?]

(8) In which case the craftsman acquires no title to the increase in value, since the dye which imparts to the wool the increased value is not his.

(9) Of the proof advanced in support of R. Assi.

(10) Without, however, intending to oppose R. Assi.

(11) Cf. B.M. 112a.

(12) Lev. XIX, 13.

(13) V. p. 576, n. 11.

(14) So that when he parts with it he effects a sale of the improvement of the article and the stipulated sum paid to him is but the purchase money for the same.

(15) For surely by not paying purchase money in time a purchaser would not render himself liable to this transgression.

(16) To which the worker should acquire title.

(17) v. Glos.

(18) But for the completion of a certain undertaking, [in which case he would be a contractor and in a sense a vendor and yet the injunction of not delaying the payment of the hire applies.]

(19) V. B.M. 112a.

(20) By not paying the stipulated sum in time.

(21) Who maintained that a craftsman (i.e., a contractor) becomes the owner of the improvement carried out by him upon the article and when parting with it is but a vendor to whom purchase money has to be paid, and to whom the injunction does not apply.

(22) Where there is no tangible accretion to which a title of ownership could be acquired, and to which consequently there applies the injunction.

(23) The woman giving the man the material.

(24) This was spoken by an unmarried woman to her prospective husband.

(25) In accordance with Kid. I,1.

(26) Kid. 48a.

(27) I.e., the bracelets.

(28) I.e., irrespective of the bracelets, earrings and rings made by him. Whereas according to R. Meir these alone suffice.

(29) I.e., that strictly speaking each perutah of the hire becomes due as soon as work for a perutah is completed; a perutah is the minimum value of liability; v. Glos.
(30) As this is not reckoned in law sufficient consideration; cf. Kid. 6b and 47a.
(31) I.e., R. Meir and the Rabbis.
(32) So that when he makes her bracelets, earrings and rings out of her material, the improvement becomes his and could therefore constitute a valid consideration.
(33) But since the improvement was never his he only had an outstanding debt for the hire upon the other party who was in this case his prospective wife, and as the forfeiture of a debt is not sufficient consideration some 'actual value' must be added to make the consideration valid.
(34) I.e., when he restores her the manufactured bracelets etc., in which case the hire had previously never become a debt.
(35) Which thus becomes a debt rising from perutah to perutah (and as such could not constitute valid consideration).
(36) V. p. 578, n. 7.
(37) R. Meir and the Rabbis.
(38) V. p. 578, n. 8.

Talmud - Mas. Baba Kama 99b

Raba, however, said that all might have been agreed that there is progressive [liability for] hire from the very commencement until the end, and also that one who betroths [a woman] by [forgoing] a debt [due from her] would not thereby effect a valid betrothal, and it was again unanimously held that a craftsman does not acquire title to the improvement carried out by him upon an article,[1] and here we are dealing with a case where, e.g., he added a particle out of his own [funds[2] to the raw material supplied by her], R. Meir holding that where the [instrument of betrothal] is both [the foregoing of] a debt and [the giving of] a perutah,[3] the woman thinks more[4] of the perutah,[2] whereas the Rabbis held that where the [instrument of betrothal] is both [the foregoing of] a debt and [the giving of] a perutah, she thinks more of the debt [which she is excused].

This was also the difference between the following Tannaim, as taught: [If a man says,] 'In consideration of the hire for the work I have already done for you[5] [be betrothed to me],'[6] she would not become betrothed,[7] but [if he says], 'In consideration of the hire for work which I will do for you [be betrothed to me]', she would become betrothed. R. Nathan said that if he said, 'In consideration of the hire for work I will do for you,' she would thereby not become betrothed; and all the more so in this case where he said, 'In consideration of the hire for work I have already done for you.' R. Judah the Prince, however, says: It was truly stated that whether he said, 'In consideration of the hire for the work I have already done for you,'[6] or, 'In consideration of the hire for work I will do for you,' she would not thereby become betrothed, but if he added a particle out of his own funds[8] [to the raw material supplied by her], she would thereby become betrothed.[9] Now, the difference between the first Tanna and R. Nathan is on the question of the liability for hire [whether or not it is progressive from the very commencement],[10] while the difference between R. Nathan and R. Judah the Prince is on the question [what is her attitude when the betrothal is made both by the foregoing of] a debt [and the giving of] a perutah.[11]

Samuel said: An expert slaughterer who did not carry out the slaughter properly[12] would be liable to pay, as he was a damage-doer, [and] he was careless, and this would be considered as if the owner asked him to slaughter for him from one side[13] and he slaughtered for him from the other. But why was it necessary for him to say both 'he was a damage-doer [and] he was careless'? — If he had said only he was a damage-doer,I might have said that this ruling should apply only where he was working for a hire,[14] whereas where he was working gratuitously this would not be so; we are therefore told, [that there is no distinction as] he was careless. R. Hama b. Guria raised an objection to this view of Samuel [from the following]: If an animal was given to a slaughterer and he caused it to become nebelah,[15] if he was an expert he would be exempt, but if an amateur[16] he would be liable.

If, however, he was engaged for hire, whether he was an amateur or expert he would be liable. [Is this not in contradiction to the view of Samuel?] — He replied:[17] Is your brain disordered? Then another one of our Rabbis came along and raised the same objection to his view. He said to him:[18] 'You surely deserve to be given the same as your fellow.[19] I was stating to you the view of R. Meir and you tell me the view of the Rabbis! Why did you not examine my words carefully wherein I said: "For he was a damage-doer [and] he was careless, and this should be considered as if the owner asked him to slaughter for him from one side[20] and he slaughtered for him from the other." For surely who reasons in this way if not R. Meir, who said that a human being has to take greater heed to himself?' But what [statement of] R. Meir [is referred to]? We can hardly say the one of R. Meir which we learned: (Mnemonic: KLN)[21] 'If the owner fastened his ox [to the wall inside the stable] with a cord or shut the door in front of it properly but the ox [nevertheless] got out and did damage, whether it had been Tam or already Mu'ad he would be liable; this is the opinion of R. Meir,'[22] for surely, in that case, there they differed as to the interpretation of Scriptural Verses![23] — It therefore seems to be the one of R. Meir which we learned: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black and he dyed it red, R. Meir says that he would have to pay [the owner] for the value of the wool.[24] But did he not there spoil it[25] with his own hands?[26] — The reference therefore must be to the one of R. Meir which was taught: 'If a pitcher is broken and [the potsherds] are not removed, or a camel falls down and is not raised, R. Meir orders payment for any damage resulting therefrom, whereas the [other] Sages say that no action can be instituted in civil courts though there is liability according to divine justice,'[27] and we came to the conclusion[28] that they differed as to whether or not stumbling implies negligence.

Rabbah b. Bar Hanah said that R. Johanan stated that an expert slaughterer who did not carry out the slaughter properly[29] would be liable to pay, even if he was as skilled as the slaughterer of Sepphoris. But did R. Johanan really say so? Did Rabbah b. Bar Hanah not say that such a case came before R. Johanan in the synagogue of Maon[30] and he said to the slaughterer. 'Go and bring evidence that you are skilled to slaughter hens, and I will declare you exempt'? — There is, however, no difficulty, as the latter ruling was [in a case where the slaughterer was working] gratuitously whereas the former ruling applies [where the slaughterer works] for hire,[31] exactly as R. Zera said: If one wants the slaughterer to become liable to him,[32] he shall give him a dinarius beforehand.[31]

An objection was raised: If wheat was brought to be ground and the miller omitted to moisten it and he made it into branflour or coarse bran, or if flour [was given] to a baker and he made out of it bread which crumbled, or an animal to a slaughterer and he rendered it nebelah,[33] he would be liable, as he is on the same footing as a worker who receives hire.[34] [Does this not imply that he was working gratuitously? — No.] read: 'Because he is a worker receiving hire.'[31]

A case of magrumeta[35] was brought before Rab, who declared it trefa and nevertheless released the slaughterer from any payment. When R. Kahana and R. Assi met that man[36] they said to him: 'Rab did two things with you.' What was meant by these two things? If you say it meant two things to his[36] disadvantage, one that Rab should have declared it kasher in accordance with R. Jose b. Judah,[37] whereas he declared it trefa in accordance with the Rabbis,[37] and again that since he acted in accordance with the Rabbis,[37] he should at any rate have declared the slaughterer liable, is it permitted to say a thing like that? Was it not taught:[38] When [a judge] leaves [the court] he should not say, 'I wanted to declare you innocent, but as my colleagues insisted on declaring you liable I was unable to do anything since my colleagues formed a majority against me,' for to such behaviour is applied the verse, A tale-bearer revealeth secrets?[39] — It must therefore be said that the two things were to his[36] advantage, first that he did not let you eat a thing which was possibly forbidden, secondly that he restrained you from receiving payment which might possibly have been a misappropriation.

It was stated: If a denar was shown to a money changer [and he recommended it as good] but it

was subsequently found to be bad, in one Baraitha it was taught that if he was an expert he would be exempt but if an amateur he would be liable, whereas in another Baraitha it was taught that whether he was an expert or an amateur he would be liable. R. Papa stated: The ruling that in the case of an expert he would be exempt refers to such, e.g., as Dankcho and Issur[40] who needed no [further] instruction whatever, but who made[41] a mistake regarding a new stamp at the time when the coin had just [for the first time] come from the mint.

There was a certain woman who showed a denar to R. Hiyya and he told her that it was good. Later she again came to him and said to him, 'I afterwards showed it [to others] and they said to me that it was bad, and in fact I could not pass it.' He therefore said to Rab: Go forth and change it for a good one and write down in my register that this was a bad business. But why [should he be different from] Dankcho and Issur[42] who would be exempt because they needed no instruction? Surely R. Hiyya also needed no instruction? — R. Hiyya acted within the 'margin of the judgment,'[43] on the principle learnt by R. Joseph: 'And shalt show them[44] means

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(1) V. p. 578, n. 11.

(2) Which could constitute valid consideration.

(3) I.e., a coin which constitutes the minimum of value in legal matters.

(4) V. Sanh. 19b.

(5) The article having been already returned to her.

(6) This was spoken to a prospective wife.

(7) V. p. 578. n. 8.

(8) V. p. 579, n. 7.

(9) Kid. 48b.

(10) [R. Nathan holding that it is, whereas the first Tanna holds that there is no liability except at the very end.]

(11) [R. Nathan maintains that the woman thinks primarily of the debt, while, according to R. Judah the Prince she thinks more of the perutah.]

(12) As required by the ritual, and has thus rendered the animal unfit for consumption according to the dietary laws.

(13) Of the throat.

(14) Where he could be made liable even in the absence of carelessness.

(15) I.e., unfit for consumption through a flaw in the slaughter; v. Glos.

(16) As he had no right to slaughter.

(17) I.e., Samuel to R. Hama.

(18) I.e., Samuel to the other Rabbi.

(19) R. Hama.

(20) V. p. 580, n. 9.

(21) Keyword consisting of the Hebrew initial words of the three teachings that follow.

(22) Supra 45b.

(23) [V. loc. cit. This case cannot accordingly be appealed to as precedent.]

(24) Infra 100b.

(25) Lit., 'burn it'.

(26) Since he intended to dye it in that colour in which he actually dyed it, whereas in the case of the slaughterer, the damage looks more like an accident.

(27) Supra 28b-29a.

(28) [R. Meir holding that a human being must take greater heed to himself.]

(29) V. p. 580, n. 8.

(30) [In Judah, I Sam. XXIII, 24.]

(31) V. p. 580, n. 10.

(32) Were the slaughter not carried out effectively.

(33) V. p. 581, n. 1.

(34) Tosef. B.K. X, 4 and B.B. 93b.

(35) I.e., where the slaughter was started in the appropriate part of the throat but was finished higher up, in which matter

there is a difference of opinion between R. Jose b. Judah and the Rabbis in Hul. 1, 3.

(36) I.e., the owner of the animal.

(37) Hul. ibid.

(38) Sanh. 29a.

(39) Prov. XI, 13.

(40) Two renowned money changers in those days.

(41) Lit., 'But where was their mistake; they made, etc.

(42) V. p. 583. n. 8.

(43) For the sake of equity and mere ethical considerations. [On this principle termed lifenim mi-shurath ha-din according to which man is exhorted not to insist on his legal rights. v. Herford, Talmud and Apocrypha, pp. 140, 280. That there was nothing Essenic in that attitude, but that it is a recognised principle in Rabbinic ethics has already been shown by Buchler, Types, p. 37.]

(44) Ex. XVIII, 20; the verse continues, the way wherein they must walk and the work.

Talmud - Mas. Baba Kama 100a

the source of their livelihood;[1] the way means deeds of lovingkindness; they must walk means the visitation of the sick; wherein means burial, and the work means the law; which they must do means within the margin of the judgment.'[2] Resh Lakish showed a denar to R. Eleazar who told him that it was good. He said to him: You see that I rely upon you. He replied: Suppose you do rely on me, what of it? Do you think that if it is found bad I would have to exchange it [for a good one]? Did not you yourself state that it was [only] R. Meir who adjudicates liability in an action for damage done indirectly,[3] which apparently means that it was only R. Meir who maintained so whereas we did not hold in accordance with his view? — But he said to him: No; R. Meir maintained so and we hold with him. But to what [statement of] R. Meir [was the reference]? It could hardly be the one of R. Meir which we learned: If a judge in giving judgment [in a certain case] has declared innocent the person who was really liable or made liable a person who was really innocent, declared defiled a thing which was levitically clean, or declared clean a thing which was really defiled,[4] his decision would stand, but he would have to make reparation out of his own estate,[5] for was it not taught in connection with this that R. Elai said that Rab stated[6] that [this would be so] only where he personally executed the judgment by his own hand?[7] The reference therefore appears to be the one of R. Meir which we learned: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black and he dyed it red, R. Meir says that he would have to pay [the owner] for the value of his wool.[8] But did he not in that case also spoil it with his own hands?[9] The reference must therefore be to the one of R. Meir which we learned: He who with [the branches of] his vine covers the crops of his fellow renders them proscribed[10] and will be liable for damages.[11] But there also did he not do the mischief with his own hands? The reference must therefore be to the one of R. Meir which was taught: 'If the fence of a vineyard [near a field of crops] is broken through,

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(1) Either the means of an honest livelihood, as explained by Rashi on B.M. 30b or the study of the living law, as interpreted by Rashi a.l.

(2) B.M. 30b.

(3) Supra 98b.

(4) And it so happened that that thing was consequently mixed with clean things and this spoiled them all; v. Sanh. (Sonc. ed.) p. 210, nn. 6-8.

(5) Bk. IV, 4.

(6) Bek. 28b.

(7) I.e., where he acted both as judge and executive officer, in which case the damage was directly committed by him personally.

(8) V. next Mishnah.

(9) By dyeing it the wrong colour.

(10) In accordance with Deut. XXII, 9.

(11) Kil. VII, 4.

Talmud - Mas. Baba Kama 100b

[the owner of the crops] may request [the owner of the vineyard] to repair it;[1] so also if it is broken through again he may similarly request him to repair it. But if the owner of the vineyard abandons it altogether and does not repair it he would render the produce proscribed and would incur full responsibility.[2]

MISHNAH. IF WOOL WAS GIVEN TO A DYER AND THE DYE[3] BURNT IT, HE WOULD HAVE TO PAY THE OWNER THE VALUE OF HIS WOOL. BUT IF HE DYED IT KA'UR,[4] THEN IF THE INCREASE IN VALUE[5] IS GREATER THAN HIS OUTLAY THE OWNER WOULD GIVE HIM ONLY THE OUTLAY, WHEREAS IF THE OUTLAY[6] WAS GREATER THAN THE INCREASE IN VALUE HE WOULD HAVE TO PAY HIM THE AMOUNT OF THE INCREASE, [WHERE WOOL WAS HANDED TO A DYER] TO DYE RED AND HE DYED IT BLACK, OR TO DYE BLACK AND HE DYED IT RED, R. MEIR SAYS THAT HE WOULD HAVE TO PAY [THE OWNER] FOR THE VALUE OF HIS WOOL. R. JUDAH, HOWEVER, SAYS: IF THE INCREASE IN VALUE[7] IS GREATER THAN THE OUTLAY, THE OWNER WOULD PAY THE DYER HIS OUTLAY, WHEREAS IF THE OUTLAY EXCEEDED THE INCREASE IN VALUE HE WOULD HAVE TO PAY HIM NO MORE THAN THE INCREASE.[8]

GEMARA. What does KA'UR mean? — R. Nahman said that Rabbah b. Bar Hanah stated: It means that the 'copper'[9] dyed it. What is meant by saying that the 'copper' dyed it? — Said Rabbah b. Samuel:

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(1) For otherwise he would have to remove his vines four cubits from the border; cf. B.B. 26a.

(2) V. B.B. (Sonc. ed.) p. 2 and notes.

(3) Lit., 'The cauldron', 'the dyer's kettle'.

(4) Explained in the Gemara.

(5) Resulting from the work done by him.

(6) Incurred by the dyer.

(7) V. p. 585, n. 11.

(8) V. supra 95a-b.

(9) **

Talmud - Mas. Baba Kama 101a

He dyed it with the sediments of the kettles.

Our Rabbis taught: If pieces of wood were given to a joiner to make a chair and he made a bench out of them, or to make a bench and he made a chair out of them R. Meir says that he will have to refund to the owner the value of his wood, whereas R. Judah says that if the increase in value exceeds his outlay the owner would pay the joiner his outlay, whereas if the outlay exceeds the increase in value he would have to pay him no more than the increase. R. Meir, however, agrees that where pieces of wood were given to a joiner to make a handsome chair out of and he made an ugly chair out of them, or to make a handsome bench and he made an ugly one if the increased value would exceed the outlay the owner would pay the joiner the amount of his outlay, whereas if the outlay exceeded the increase in value he would have to pay him no more than the amount of the increase.

It was asked: Is the improvement effected by colours a [separate] item independent of the wool, or is the improvement effected by colours not a [separate] item independent of the wool? How can such

a question arise in practice? The case can hardly be one where a man misappropriated pigments and after having crushed and dissolved them he dyed wool with them,for would he not have acquired title to them through the change which they underwent?[1] — No; the query could have application only where he misappropriated pigments already dissolved and used them for dyeing, so that if the improvement effected by colours is a [separate] item independent of the wool the plaintiff might plead: 'Give me back the dyes which you have taken from me',[2] but if on the other hand the improvement effected by colours is not a [separate] item independent of the wool the defendant might say to him: 'I have nothing of yours with me.' But I would here say: [Even] if the improvement effected by colours is not a [separate] item independent of the wool, why should the defendant be able to say to him: 'I have nothing of yours with me', seeing that the plaintiff can say to him: 'Give me back the pigments of which you have deprived me'?[3] — We must therefore take the other alternative: Are we to say that the improvement effected by colours is not a [separate] item independent of the wool and the defendant would have to pay him,[4] or is the improvement effected by colours a [separate] item independent of the wool and the defendant can say to him: 'Here are your dyes before you and you can take them away.'[5] But how can he take them away? By means of soap? But soap would surely remove them without making any restitution![6] — We must therefore be dealing here [in the query] with a case were e.g., a robber misappropriated dyes and wool of one and the same owner, and dyed that wool with those dyes and was returning to him that wool. Now, if the improvement effected by colours is a [separate] item independent of the wool, the robber would thus be returning both the dyes and the wool, but if the improvement effected by colours is not a [separate] item independent of the wool, it was only the wool which he was returning, whereas the dyes he was not returning.[7] But I would still say: Why should it not be sufficient [for the robber to do this] seeing that he caused the wool to increase in value?[8] — No: the query might have application where coloured wool had meanwhile depreciated in price.[9] Or if you wish I may say that it refers to where e.g., he painted with them an ape[10] [in which case there was thereby no increase in value]. Rabina said: We were dealing here [in the query] with a case where e.g., the wool belonged to one person and the dyes to another,[11] and as an ape[12] came along and dyed that wool of the one with those dyes of the other; now, is the improvement effected by the colours a [separate] item independent of the wool so that the owner of the dyes is entitled to say to the owner of the wool: 'Give me my dyes which are with you',[13] or is the improvement effected by colours not a [separate] item apart from the wool, so that he might retort to him: 'I have nothing belonging to you'? — Come and hear: A garment which was dyed with the shells of the fruits of 'Orlah[14] has to be destroyed by fire.[15] This proves that appearance is a distinct item [in valuation]![16] — Said Raba: [It is different in this case where] any benefit visible to the eye[17] was forbidden by the Torah as taught Uncircumcised: it shall not be eaten of;[18] this gives me only its prohibition as food. Whence do I learn that no other benefit should be derived from it, that it should not be used for dyeing with, that a candle should not be lit with it? It was therefore stated further, Ye shall count the fruit thereof as uncircumcised: . . . . uncircumcised, it shall not be eaten of, for the purpose of including all of these.[19]

Come and hear: A garment which was dyed with the shells [of the fruits] of the sabbatical year has to be destroyed by fire![20] — It is different there, as Scripture stated: 'It shall be'[21] implying that it must always be as it was.[22]

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(1) And the whole liability upon him would be to pay the original value of the dyes as supra p. 541.

(2) Since his dyes form now an integral part of the defendant's wool.

(3) And with reference to which you have accordingly become subject to the law of robbery.

(4) For the dyes.

(5) I.e., remove them from the wool.

(6) To which a robber is subject; cf. Lev. V, 23.

(7) And would therefore still have to pay for the dyes.

(8) By having dyed it with the dyes misappropriated from the same plaintiff.

(9) And the increase through the process of dyeing is below the price of the dyes, [in which case the plaintiff can say that he would have sold the pigments before the depreciation].
(10) Or as interpreted by others 'a basket of willows' which he misappropriated from the same plaintiff.
(11) And it was not a case of misappropriation at all.
(12) Belonging to no particular owner who could be made liable.
(13) V. p. 587. n. 2.
(14) I.e., the fruit in the first three years of the plantation of the tree; cf. Glos.
(15) 'Orl. III, 1. 'Orlah is proscribed from any use; cf. Lev. XIX, 23.
(16) To render the garment itself proscribed.
(17) Cf. Me'il. 20a.
(18) Lev. XIX, 23.
(19) Pes. 22b. Kid. 56b. 'Orlah thus affords no precedent.
(20) Now, could it not be proved from this that mere colour is a distinct item!
(21) Lev. XXV, 7.
(22) Even after it has been changed and altered by various processes.

Talmud - Mas. Baba Kama 101b

Raba pointed out a contradiction. We have learnt: 'A garment which was dyed with the shells [of the fruits] of 'Orlah has to be destroyed by fire,' thus proving that colour is a distinct item; but a contradiction could be pointed out: 'If a quarter [of a log][1] of [the] blood [of a dead person] has been absorbed in the floor of a house, [all in] the house[2] would become defiled,[3] or as others say, '[all in] the house would not be defiled'; these two statements, however, do not differ, as the former refers to utensils which were there at the beginning,[4] whereas the latter refers to the utensils which were brought there subsequently [after the blood was already absorbed 'in the ground].[5] 'If the blood was absorbed in a garment, we have to see: if on the garment being washed a quarter [of a log] of blood would come out of it,[6] it would cause defilement,[7] but if not, it would not cause defilement'![8] — Said R. Kahana: The ruling stated in this Mishnah is one of concessions made in respect of quarters [of a log], applicable in the case of blood of one weltering in his blood who defiles by [mere] Rabbinic enactment.[9]

Raba again pointed out a contradiction: We have learnt: '[Among] the species of dyes, the aftergrowths of woad and madder are subject to the law of the sabbatical year,[10] and so also is any value received for them subject to the law of the sabbatical year; they are subject to the law of removal[11] and any value received for them is similarly subject to the law of removal,'[12] thus proving that wood is subject to the sanctity of the sabbatical year; but a contradiction could be pointed out: 'leaves of reeds and leaves of vines which have been heaped up for the purpose of making them into a hiding place upon a field, if they were gathered to be eaten would be subject to the sanctity of the sabbatical year but if they were gathered for firewood they would not be subject to the sanctity of the sabbatical year'![13] — But he himself answered: Scripture stated: 'for food',[14] implying that the law applies only to produce from which a benefit is derived at the time of its consumption,[15] so that the wood for fuel is excluded as the benefit derived from it[16] is after its consumption. But is there not the wood of the pine tree [used for torches] from which a benefit is derived at the time of its consumption? — Raba said:

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(1) A liquid measure; cf. Glos.
(2) Subject to defilement.
(3) As a quarter of a log of blood of a dead person is equal in law to the corpse itself and is subject to Num. XIX, 14.
(4) I.e., before the blood was absorbed in the ground when it caused defilement.
(5) And could no more cause defilement.
(6) As to the way of calculation, v. Rashi and Tosaf. a.l.
(7) As the blood is in stich a case still considered present and existing in the garment.

(8) Because the blood could no more be considered present in the garment. Oh. III, 2. This proves that a mere colour is not a distinct item.
(9) Since it was doubtful whether the quarter of the log of blood oozed out while the person was still alive and clean or afterwards and unclean; cf. Nid. 71a.
(10) Lev. XXV. 2-7.
(11) From the house into the field as soon as similar crops are no more to be found in the field; cf. Sheb. IX. 2-3.
(12) Sheb. VII, 1.
(13) Suk. 40a. Now, does this not prove that wood is not subject to the law of the sabbatical year?
(14) Lev. XXV, 6.
(15) Such as is the case with fruits as food.
(16) For heating purposes.

Talmud - Mas. Baba Kama 102a

Wood as a rule is meant for heating.[1]

R. Kahana said: Whether [or not] we say in regard to the Sabbatical Year that wood is meant as a rule for heating was a matter of difference between the following Tannaim, as taught: The produce of the Sabbatical Year should be handed over neither for the purpose of steeping nor for the purpose of washing with them. R. Jose, however, says that the products of the Sabbatical Year may be put into steep and into the wash.[2] Now, what was the reason of the Rabbis?[3] Because Scripture said, 'for food' implying not for the purpose of steeping, 'for food' and not for the purpose of washing. But R. Jose said that Scripture stated 'for you',[4] implying, for all your needs. But also according to the Rabbis was it not stated: 'for you'? — 'for you'[5] should be analogous to 'for food', referring thus to any uses by which a benefit is derived from the products at the very time of their consumption, excluding thus the purposes of steeping and washing where the benefit is derived from the products after their consumption.[6] But what does R. Jose make of 'for food'?[7] — He might say to you that that was solely necessary for the ruling [of the Baraitha], as taught: 'for food', but not for a plaster. You say 'for food', but not for a plaster; why perhaps not otherwise, 'for food' but not for the purpose of washing? When it says 'for you'[8] the purpose of washing is indicated; what then do I make of 'for food' [if not] 'for food', but not for a plaster. But what reason had you for including the purpose of washing and excluding the purpose of a plaster? — I include the purpose of washing as this is a requirement shared alike by all people,[9] but exclude the purpose of plaster which is a requirement not shared alike by all people.[10] Now, whose view would be followed in that statement which was taught: "'for food" but not for a plaster. "for food" but not for perfume, "for food" but not to make it into an emetic'? — It must be in accordance with R. Jose, for if in accordance with the Rabbis, the purpose of washing and steeping [should also be excluded].

R. JUDAH, HOWEVER, SAYS: IF THE INCREASE IN VALUE etc. (Mnemonic: Saban)[11] R. Joseph was once sitting behind R. Abba in the presence of R. Huna, who was sitting and stating that the halachah was in accordance with R. Joshua b. Karhah and again that the halachah was in accordance with R. Judah. R. Joseph thereupon turned his face towards him[12] and said: I understand his mentioning R. Joshua b. Karhah, as it was necessary to state that the halachah is in accordance with him, since you might have been inclined to think that the principle that where an individual differs from the majority the halachah is in accordance with the majority[13] [applies also] here; it was therefore made known to us that [in this] case the halachah is in accordance with the individual. (What statement of R. Joshua b. Karhah is referred to? — That which was taught: 'R. Joshua b. Karhah says that a debt [recorded] in an instrument should not be collected from them,[14] whereas debts [contracted by mere word] of mouth may be collected from them because this is no more than rescuing one's money from the hands of the debtors.')[15] But why was it necessary to state that the halachah was in accordance with R. Judah? For his view was in the first instance stated as a point at issue [between the authorities] and subsequently as an anonymous ruling; and it is an established rule

that if a view is first dealt with as a point at issue and then stated anonymously, the halachah is in accordance with the anonymous statement![16] The point at issue in this case was in Baba Kamma [IF WOOL WAS HANDED OVER TO A DYER] TO DYE IT RED BUT HE DYED IT BLACK, OR TO DYE IT BLACK BUT HE DYED IT RED, R. MEIR SAYS THAT HE WOULD HAVE TO PAY [THE OWNER] FOR THE VALUE OF HIS WOOL. BUT R. JUDAH SAYS: IF THE INCREASE IN VALUE EXCEEDS THE OUTLAY, THE OWNER WOULD REPAY TO THE DYER HIS OUTLAY, WHILE IF THE OUTLAY EXCEEDED THE INCREASE IN VALUE HE WOULD HAVE TO PAY HIM NO MORE THAN THE AMOUNT OF THE INCREASE, whereas the anonymous statement was made in Baba Mezi'a where we have learnt: 'Whichever party departs from the terms of the agreement is at a disadvantage, so also whichever party retracts from the agreement has the inferior claim'![17] — R. Huna considered that it was necessary for him to state so, since otherwise you might have thought that there was no precise order for [the teaching of] the Mishnah[18] so that this [ruling of R. Judah] might perhaps have been in the first instance anonymous but subsequently a point at issue.[19] [What does] R. Joseph [say to this]? — [He says] that if so, wherever a ruling is first a point at issue and then stated anonymously,[20] it might be questioned that as no precise order may have been kept in [the teaching of] the Mishnah it might have been anonymous in the first instance and a point at issue later on![19] To this R. Huna would answer that we never say that there was no precise order in [the teaching of] the Mishnah in one and the same tractate, whereas in the case of two tractates we might indeed say so. R. Joseph however considered the whole of Nezikin[21] to form only one tractate. If you like, again, I may say that it is because this ruling was stated among fixed laws: 'Whichever party departs from the terms of the agreement is at a disadvantage, and so also whichever party retracts from the argument has an inferior claim.'[22]

Our Rabbis taught: 'Where money was given to an agent

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(1) In which case the benefit is derived after the wood has already been burnt.

(2) Suk. 40a.

(3) The first Tanna.

(4) Lev. XXV. 6: And the sabbath-produce of the land shall be for food for you.

(5) Implying, for all your needs.

(6) As when flax or a garment is put into wine the latter is spoilt before the former becomes thereby improved. According to the interpretation of Rashi a.l., R. Jose would maintain that we do not say that wood as a rule is destined for the purpose of heating, even as we do not say that fruits are meant only for eating and not for steeping or washing, whereas the Rabbis maintained otherwise; cf. however Tosaf. a.l., Rashi and Tosaf. on Suk. 40a.

(7) Thus most probably excluding washing and steeping.

(8) V. p. 590. n. 10.

(9) Cf. Keth. 7a.

(10) As it is used only by people afflicted with wounds.

(11) Standing for the names of the three Rabbis that follow: Joseph, ABba, Huna.

(12) Suk. 11a.

(13) Ber. 9a.

(14) I.e., from idolaters during the three days immediately before their religious festivals, as this might be a cause of special rejoicing to them and for offering additional thanksgiving to their idols, v. A.Z. 6b.

(15) Since no documentary proof against them is available.

(16) Yeb. 42b.

(17) B.M. VI, 2. Why then was it necessary for R. Huna to state explicitly that the halachah is in accordance with the view of R. Judah?

(18) Though its compilation was according to a definite plan and system; cf. Tosaf. a.l.

(19) In which case the anonymous statement does not constitute the accepted halachah.

(20) Where the anonymous statement is considered to be the accepted halachah.

(21) According to R. Sherira Gaon, Maim. and others this refers only to B.K., B.M. and B.B. which constitute three gates of one tractate but not to Sanhedrin and the other tractates of this Order. A different view is taken by Ritba and

others; cf. Yad Malachi 338, and Tosaf. Yom Tob in his introduction to Nezikin.
(22) B.M. VI. 2. So that there was no need for R. Huna to state that the halachah rested with R. Judah.

Talmud - Mas. Baba Kama 102b

to buy wheats and he bought with it barley, or barley and he bought with it wheat,[1] it was taught in one Baraitha that 'if there was a loss, the loss would be sustained by him,[2] and so also if there was a profit, the profit would be enjoyed by him,'[2] but in another Baraitha it was taught that 'if there was a loss, he would sustain the loss, but if there was a profit, the profit would be divided between them.'[3] [Why this difference of opinion?] — Said R. Johanan: There is no difficulty, as one[4] was in accordance with R. Meir and the other with R. Judah; the former was in accordance with R. Meir who said[5] that a change transfers ownership,[6] whereas the latter was in accordance with R. Judah who said[5] that a change does not transfer ownership.[7] R. Eleazar demurred: Whence [can you know this]? May it not be perhaps that R. Meir meant his view to apply only to a matter which was intended to be used by the owner personally,[8] but in regard to matters of merchandise[9] he would not say so?[10] — R. Eleazar therefore said that one as well as the other [Baraitha] might be in accordance with R. Meir, and there would still be no difficulty as the former dealt with a case where the grain was bought for domestic food,[11] whereas in the latter[12] it was bought for merchandise.[13] Moreover, in the West they were even amused[14] at the statement of R. Johanan regarding the view of R. Judah.[7] for [they said] who was it that informed the vendor of the wheat so that he might transfer the ownership of the wheat to the owner of the money?[15] R. Samuel b. Sasarti demurred: If so, why not also say the same even in the case where wheat [was wanted by the principal] and wheat [was bought by the agent]?[16] — R. Abbahu however said: The case where wheat [was wanted] and wheat [was bought] is different, as in this case the agent was acting for the principal upon the terms of his mandate and it is the same [in law] as if the principal himself had done it.[17] This could even be proved from what we have learnt: Neither in the case of one who has declared his possessions consecrated nor in the case of one who has dedicated the valuation of himself[18] can the Temple treasurer claim either the garments of the wife or the garments of the children[19] or the articles which were dyed for them or the new foot-wear bought for them.[20] Now, why not ask here also: Who informed the dyer that he was transferring the ownership of his dye to the wife?[21] But must we not then answer that since the husband was acting on behalf of his wife it is considered as if this was done by the actual hand of the wife? [If so,] also there as the agent was acting upon a mandate[22] it is considered as if the purchase of the wheat had been done by the actual hand of the principal. R. Abba, however, said: No; it was because when a man declares his possessions sacred, he has no intention to include the garments of his wife and children.[19] R. Zera demurred: Could it be said that in such circumstances a man would include in his mind even his Tefillin,[23] and we have nevertheless learnt that 'in the case of one who declares his possessions sacred, even his Tefillin would have to be included in the estimate'?[24] — Abaye, however, said to him: Yes, it is quite possible that a man may in his mind include even his Tefillin, as he who declares his possessions consecrated surely thinks that he is performing a commandment,[25] but no man would in his mind include the garments of his wife and children as this would create ill feeling.[26] R. Oshaia demurred: Was this not stated here as applying also to liabilities for vows of value, regarding which case we have learnt that those who have incurred liabilities for vows of value can be forced to give a pledge,[27] though it could hardly be said that it was in the mind of a man that the giving of a pledge should be enforced upon himself? — R. Abba therefore said: One who declares his possessions consecrated is regarded as having from the very beginning transferred the ownership of the garments of his wife and children to them.

Our Rabbis taught: If one man buys a field in the name of another, he cannot compel the latter to sell it to him; but if he explicitly made this stipulation with the vendor he could force him to sell. What does this mean? Said R. Shesheth: What is meant is this: If one man buys a field from another in the name of the Exilarch,[28] he cannot subsequently force the Exilarch to sell it to him[29] , but if [when buying it] he explicitly made this stipulation[30] he could compel the Exilarch to sell it.[29]

The Master stated: 'If one buys a field in the name of the Exilarch, he cannot subsequently force the Exilarch to sell it', thus implying that he[31] would surely acquire title to it.[32] Shall we say that this differs from the view of the scholars of the West[33] who stated: Who indeed informed the vendor of the wheat so that he may transfer the ownership of the wheat to the owner of the money? — As far as that goes there would be no difficulty, as this could hold good where e.g.,the vendee made this known to the owner of the field and also informed the witnesses [who signed the deed] about it. Read, however, the concluding clause: '[But if when buying it he explicitly made] this stipulation[30] he cold compel the Exilarch to sell it.'[29] But why should it be so? Why should the Exilarch not be entitled to say: 'I want neither your compliments[34] nor your insults.'[35] Abaye therefore said: what was meant was this: If one buys a field in the name of another

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(1) With the understanding that the Profit if any will be shared equally by principal and agent.

(2) I.e., the agent.

(3) I.e., between principal and agent in accordance with the original arrangement.

(4) I.e., the former Baraitha.

(5) In the case of wool given to a dyer to dye red and he dyed it black, as supra p. 586.

(6) From which it would follow that on account of the change in the object purchased the ownership of it passed over to the agent who would thus enjoy the whole of any profit derived.

(7) So that the principal is thus entitled to share any profit that may result from the transaction, though in the case of a loss he can back out and put it completely on the agent as he acted not in accordance with his mandate.

(8) Such as wool to be used for his own garment, and a chair for his own use, as supra p. 586.

(9) As was the case here with the wheat or barley.

(10) For in such a case where the principal was merely out for profit he surely did not intend to distinguish between the objects of the purchase.

(11) Which is on a par with the case of wool and where a change transfers ownership; v. n. 2.

(12) Stating that the profit would be divided between principal and agent.

(13) V. supra n. 6.

(14) V. Sanh. 17b.

(15) Why then should the wheat not altogether be the property of the agent since he acted ultra vires and thus set aside the mandate.

(16) . Since the vendor had no knowledge of the existence of the contract of agency between the purchaser and the principal.

(17) Whereas in the case before us where the agent acted against the instructions, the mandate has thereby been set aside and the purchase could no more be ascribed to the principal.

(18) Lev. XXVII, 1 ff.

(19) Cf. supra p. 46.

(20) 'Ar. VI, 5.

(21) But if the ownership of the dye was transferred to the husband and not to his wife, why then should the Temple treasurer have no claim on it.

(22) And not ultra vires.

(23) I.e., Phylacteries; cf. Deut. VI. 8.

(24) 'Ar. 23b. V. B.B. (Sonc. ed.) p. 652, n. 11.

(25) Which in his view outweighs that of Deut. VI, 8.

(26) And thus counteract the very purpose and function of sanctity and Sanctuary; Isa. LXI, 8 and Mal. I, 13; Mak. 11a.

(27) 'Ar. 21a, supra 40a.

(28) He asked him to draw up the deed in the name of the Exilarch for the purpose of frightening away possible disputants.

(29) I.e., to draw up a new deed in the name of the actual purchaser.

(30) To the vendor.

(31) I.e., the actual purchaser.

(32) Though the deed was drawn up in the name of the Exilarch.

(33) V. supra p. 594.
(34) In drawing up the deed in my name.
(35) In making me appear as a dealer in land.

Talmud - Mas. Baba Kama 103a

[such as] the Exilarch[1] he cannot compel the vendor to sell it to him again. But if when buying it he explicitly made this stipulation he could compel the vendor to sell it to him again.[2] The Master stated: 'If one man buys a field in the name of another [such as] the Exilarch, he cannot compel the vendor to sell it to him again'. But is this not quite obvious? — You might, however, have said that the vendee could argue: 'You very well knew that I was taking the field for myself, and that [in buying it in the name of the other person] I merely wanted protection, and as I was surely not prepared to throw away money for nothing I undoubtedly made the purchase on the understanding that a new deed should be drawn up for me [by you].' It is therefore made known to us that the vendor can retort to him: 'It is for you to make arrangements with the person in whose name you bought the field that he should draw up for you a new title deed.'

'But if when buying it he explicitly made this stipulation he could compel the vendor to sell it to him again.' But is this not obvious? — No, it is required to meet the case where the vendee said to the witnesses in the presence of the vendor: 'You see that I want another deed.' You might in this case think that the vendor could say to him: 'I thought that you referred to a deed to be drawn up by the one in whose name you bought the field'; it is therefore made known to us that the vendee can reply to him: 'It was for that purpose that I took the trouble and stated to the witnesses in your own presence, [to show] that it was from you that I wanted the other deed.'

R. Kahana transmitted some money for the purchase of flax. But as flax subsequently went up in price, the owners of the flax sold it [on his behalf]. He thereupon came before Rab and said to him: What shall I do? May I go and accept the purchase money?[3] — He replied to him: If when they sold it they stated that it was Kahana's flax, you may go and receive the money,[4] but if not you may not accept it.[5] But was this ruling made in accordance with the view of the Western scholars who asked: 'Who was it that informed the vendor of the wheat so that he might transfer the ownership of his wheat to the owner of the money?[6] [But what comparison is there?] Had R. Kahana given four to receive eight [so that it were usury]? Was it not his flax[7] which had by itself gone up in price and which was definitely misappropriated [by the vendors],[8] and regarding this we have learnt that 'All kinds of robbers have to pay in accordance with the value at the time of the robbery'?[9] — It may, however, be said that there it was a case of advance payment.[10] and R. Kahana had never pulled the flax [to acquire title to it],[11] and Rab was following his own reasoning, for Rab [elsewhere] stated: Advance payment[10] [at present prices] may be made for [the future delivery of] products,[12] but no advance payment [at present prices] may be made [if the value of the products will subsequently be paid] in actual money[13] [in lieu of them].

MISHNAH. IF ONE MAN ROBBED ANOTHER TO THE EXTENT OF A PERUTAH[14] AND TOOK [NEVERTHELESS] AN OATH[15] [THAT HE DID NOT DO SO], HE WOULD HAVE TO CONVEY IT PERSONALLY TO HIM[16] [EVEN AS FAR AS] TO MEDIA.[17] HE MAY GIVE IT NEITHER TO HIS SON NOR TO HIS AGENT, THOUGH HE MAY GIVE IT TO THE SHERIFF OF THE COURT OF LAW. IF THE PLAINTIFF DIED, THE ROBBER WOULD HAVE TO RESTORE IT TO THE HEIRS. IF HE REFUNDED TO HIM THE PRINCIPAL BUT DID NOT PAY HIM THE [ADDITIONAL] FIFTH,[18] OR IF THE OTHER EXCUSED HIM THE PRINCIPAL THOUGH NOT THE FIFTH, OR EXCUSED HIM BOTH ONE AND THE OTHER, WITH THE EXCEPTION, HOWEVER, OF LESS THAN THE VALUE OF A PERUTAH ON ACCOUNT OF THE PRINCIPAL, HE WOULD NOT HAVE TO GO AFTER HIM.[19] IF, HOWEVER, HE PAID HIM THE FIFTH BUT DID NOT REFUND THE PRINCIPAL, OR

WHERE THE OTHER EXCUSED HIM THE FIFTH BUT NOT THE PRINCIPAL, OR EVEN WHERE HE REMITTED HIM BOTH ONE AND THE OTHER, WITH THE EXCEPTION, HOWEVER, OF THE VALUE OF A PERUTAH ON ACCOUNT OF THE PRINCIPAL, HE WOULD HAVE TO CONVEY IT PERSONALLY TO HIM.[20] IF HE REFUNDED TO HIM THE PRINCIPAL AND TOOK AN OATH[21] REGARDING THE FIFTH,[18]

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(1) [MS.M. omits 'the Exilarch'; in curr. edd. it is bracketed.]

(2) V. p. 596, n. 2.

(3) For which the flax was sold to the subsequent purchasers; would the acceptance of this increase not be a violation of the laws of usury; v. Lev. XXV, 36-37. Cf. also B.M. V, 1.

(4) For in this case they acted on your behalf and the purchase money received was given to become yours.

(5) For it would appear that for a smaller amount of money received from you, you were subsequently given a bigger sum, and this is against the spirit of the law of usury.

(6) V. supra p 594. So that in this case too the purchase money received from the subsequent vendees was not automatically transferred to R. Kahana when his name was not mentioned at the time of the sale.

(7) After it had legally been transferred to him.

(8) Who sold it in his absence.

(9) Supra 93b. And the value of the flax at the time of robbery in this case was exactly the amount of the purchase money received for it at the second sale.

(10) I.e., when the vendors received the money from R. Kahana they were not yet in possession of flax at all, but acted in accordance with B.M. 72b.

(11) In accordance with Kid. I, 5 and B.M. IV, 2.

(12) I.e., where the very products stipulated for are to be delivered.

(13) As this case would amount to the handing over of a smaller sum of money to be paid by a bigger amount and would thus appear to act against the spirit of the prohibition of usury.

(14) A small coin (v. Glos.); this being the minimum amount of pecuniary value in the eyes of the law.

(15) Falsely.

(16) In accordance with Lev. V. 24.

(17) Even where silver and gold are not of great importance; cf. Isa. XIII, 17. also Kid. 12a.

(18) Lev. V, 24.

(19) As the payment of the Fifth is not an essential condition in the process of atonement.

(20) V. p. 598, n. 12.

(21) v. p. 598. n. 11.

Talmud - Mas. Baba Kama 103b

HE WOULD HAVE TO PAY HIM A FIFTH ON TOP OF THE FIFTH AND SO ON UNTIL THE PRINCIPAL BECOMES REDUCED TO LESS THAN THE VALUE OF A PERUTAH. SO ALSO IS THE CASE REGARDING A DEPOSIT, AS IT IS STATED: IN THAT WHICH WAS DELIVERED HIM TO KEEP, OR IN FELLOWSHIP, OR IN A THING TAKEN AWAY BY VIOLENCE, OR HATH DECEIVED HIS NEIGHBOUR, OR HATH FOUND THAT WHICH WAS LOST AND LIETH CONCERNING IT AND SWEARETH FALSELY,[1] HE HAS TO PAY THE PRINCIPAL AND THE FIFTH AND BRING A TRESPASS OFFERING.[2]

GEMARA. This is so [apparently] only where the robber had taken an oath against him, but if he had not yet taken an oath this would not be so. But would this be not in agreement either with R. Tarfon or with R. Akiba? For we have learnt: If a man robbed one out of five persons without knowing which one he robbed, and each one claims that he was robbed, he may set down the misappropriated article between them and depart. This is the view of R. Tarfon. R. Akiba, however, said that this is not the way to liberate him from sin; for this purpose he must restore the misappropriated article to each of them.[3] Now, in accordance with whose view is the ruling of our Mishnah? If in accordance with R. Tarfon, did he not say that even after he had sworn he may set

down the misappropriated article among them and depart?[4] If again in accordance with R. Akiba, did he not say that even where no oath was taken he would have to restore the [value of the] misappropriated article to each of them? — It might still be in accordance with R. Akiba; for the statement of R. Akiba that he would have to pay for the misappropriated article to each of them was made only where an oath was taken, the reason being that Scripture stated: And give it unto him to whom it appertaineth in the day of his being guilty.[5] R. Tarfon, however, held that though an oath was taken, our Rabbis have still made an enactment to facilitate repentance, as indeed taught: R. Eleazar b. Zadok says: A general[6] enactment was laid down to the effect that where the expense of personally conveying the misappropriated article would be more than actual principal, he should be able to pay the principal and the Fifth to the Court of Law and thereupon bring his guilt offering and so obtain atonement. And R. Akiba?[7] — He argues that the Rabbis made the enactment only where he knew whom he robbed, in which case the amount misappropriated would ultimately be restored to the owner,[8] whereas where he robbed one of five persons and does not know whom he robbed, in which case the amount misappropriated could not be restored to its true owner, our Rabbis did surely not make the enactment.

R. Huna b. Judah raised an objection [from the following]: R. Simeon b. Eleazar said that R. Tarfon and R. Akiba did not differ in regard to one who bought [an article] from one out of five without knowing from whom he bought it, both holding that he may put down the purchase money among them and depart.[9] Where they differed was regarding one who robbed one out of five persons without knowing whom he robbed, R. Tarfon maintaining that he may leave the value of the misappropriated article among them and depart, whereas R. Akiba says that there could be no remedy for him unless he pays for the misappropriated article to each of them.[10] Now, if you assume that an oath was taken here, what difference is there between purchasing and misappropriating?[11]

Raba further objected [from the following]: It once happened that a certain pious man bought an article from two persons without knowing from whom he had bought it, and when he consulted R. Tarfon, the latter said to him: 'Leave the purchase money among them and depart', but when he came to R. Akiba he said to him: 'There is no remedy for you unless you pay each of them.' Now, if you assume that a [false] oath was taken here, would a pious man swear falsely?[12] Nor can you say that he first took an oath and subsequently became a pious man, since wherever we say that 'it once happened with a certain pious man,' he was either R. Judah b. Baba or R. Judah b. Il'ai,[13] and, as is well known, R. Judah b. Baba and R. Judah b. Il'ai were pious men from the very beginning![14] — [The ruling of the Mishnah] must therefore be in accordance with R. Tarfon, for R. Tarfon would agree where a false oath was taken,[15] the reason being that Scripture stated, And give it unto him to whom it appertaineth in the day of his trespass offering.[16] but R. Akiba maintained that even where no oath was taken, a fine has to be imposed.

Now, according to R. Tarfon, let us see. Where he took an oath he would surely not be subject [to the law][17] unless he admitted his guilt.[18] Why then only in the case where HE TOOK AN OATH? Would not the same hold good even where no oath was taken, as indeed taught: 'R. Tarfon agrees that if a man says to two persons, I have robbed one of you and do not know whom, he would have to pay each of them a maneh[19]

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(1) Lev. V, 21-22.

(2) Ibid. 25.

(3) B.M. 37a. Yeb. 118b.

(4) Why then is the robber enjoined by the ruling in our Mishnah here to convey it to the plaintiff personally even so far as to Media?

(5) V. Lev. V, 24.

(6) Lit., 'great'.

(7) What of the enactment?

(8) Through the Court of Law.
(9) As in this case no crime was committed by him.
(10) Yeb. 118b.
(11) Since in both cases the crime of perjury was committed.
(12) I.e. could a person who committed perjury be called pious?
(13) Tem. 15b; v. supra p. 454, n. 5.
(14) It is therefore pretty certain that in the case of the pious man no false oath was taken and that R. Akiba maintained his view even in such circumstances, and if so how could our Mishnah here have confined its ruling to cases of perjury?
(15) That proper restoration has to be made.
(16) Lev. V. 24.
(17) Laid down in our Mishnah.
(18) On the analogy of Num. V, 7.
(19) I.e., a hundred zuz; v. Glos.

Talmud - Mas. Baba Kama 104a

since he made a voluntary admission'?[1] — Raba therefore said: The case of our Mishnah is different altogether, for since he knows whom he robbed and in fact has admitted it, so that it is possible to restore the misappropriated value to the owner, it is considered as if the plaintiff had said to him: Let it [for time being] be in your possession. It is therefore only in the case where an oath was taken that though [it is considered as if] he said to him: Let it [for time being] be in your possession, yet since the robber is in need of atonement,[2] this is not sufficient until it actually comes into the plaintiff's hands, whereas where no oath was taken, the misappropriated article is considered as a deposit with him until the owner comes and takes it.[3]

HE MAY GIVE IT NEITHER TO HIS SON NOR TO HIS AGENT. It was taught: Where an agent was appointed in the presence of witnesses [to receive some payment of money] R. Hisda said that he would be a [properly accredited] agent,[4] but Rabbah said that he is still not an agent [to release the payer of responsibility]. R. Hisda said that he would be a [properly accredited] agent, for it was for this purpose that he took the trouble to appoint him in the presence of witnesses, so that he should stand in his place.[4] But Rabbah said that he is still not an agent [to release the payer of responsibility], for he meant merely to state that this man is honest and if you are prepared to rely upon him you may rely, and if you are prepared to send the payment through him you may send it through him.[5]

We have learnt: If one [agreed to] borrow a cow and the lender sent it by the hand of his son or by the hand of his slave or by the hand of his agent, or even by the hand of the son or by the hand of the slave or by the hand of the agent of the borrower, and it so happened that it died on the way, he would be exempt.[6] Now, how are we to picture this agent?[7] If he was not appointed[8] in the presence of witnesses, whence could we know that he was an agent at all? Must it therefore not be that he appointed him in the presence of witnesses and it is nevertheless stated that the [would-be] borrower is exempt, in contradiction to the view of R. Hisda? — It is as R. Hisda [elsewhere][9] said, that he was a hireling or a lodger of his;[10] so also here he was a hireling or a lodger of his.[10]

We have learnt: HE MAY GIVE IT NEITHER TO HIS SON NOR TO HIS AGENT.[11] How are we to picture this agent? If he did not appoint him in the presence of witnesses, whence could we know that he was appointed an agent at all? Does it therefore not mean that he appointed him in the presence of witnesses?[12] — R. Hisda however interpreted it as referring to a hireling or a lodger.[10] But what would be the law where the agent was appointed in the presence of witnesses? Would he indeed have to be considered a [properly accredited] agent?[13] Why then state in the concluding clause, HE MAY GIVE IT TO THE SHERIFF OF THE COURT OF LAW, and not make the distinction in the same case by saying that these statements refer only to an agent who was not

appointed in the presence of witnesses, whereas if the agent was appointed in the presence of witnesses he would indeed be considered a [properly accredited] agent?[14] — It may, however, be said that on this point [the Tanna] could not state it absolutely. Regarding the sheriff of the Court, no matter whether the plaintiff authorised him or whether the robber authorised him, he could state it absolutely that he is considered a [properly accredited] agent, whereas regarding an agent appointed in the presence of witnesses who if he were appointed by the plaintiff would be considered an agent, but if appointed by the robber would certainly not be a valid agent, he could not State it so absolutely.[15] This would indeed be contrary to the view of the following Tanna, as taught: R. Simeon b. Eleazar says: If the sheriff of the Court of Law was authorised by the plaintiff [to receive payment] though not appointed by the robber [to act on his behalf], or if he was appointed by the robber [to act on his behalf] and the plaintiff sent and received the payment out of his hands, there would be no liability in the case of accident.[16]

R. Johanan and R. Eleazar both said that an agent appointed in the presence of witnesses would be a [properly accredited] agent;[14] for if you raise an objection from the ruling in our Mishnah,[17] [it might be answered] that the agent there was [not appointed but] placed at his[18] disposal, as where he said to him,[19] 'There is some money owing to me from a certain person who does not forward it to me. It may therefore be advisable for you to be seen by him, since perhaps he has found no one with whom to forward it,'[20] or as explained by R. Hisda, that he was a hireling or a lodger of his.[21]

Rab Judah said that Samuel stated that

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(1) Tosaf. Yeb. XIV, 3; B.M. 37b.

(2) Cf. Lev. V, 24-25.

(3) The Mishnah may thus be in agreement with either R. Akiba or R. Tarfon.

(4) And if some accident should happen with the money whilst still in his hands the payer would not be responsible

(5) But the money will still be in the charge of the payer.

(6) B.M. VIII, 3.

(7) Of the would-be borrower.

(8) By the would-be borrower.

(9) V. the discussion which follows.

(10) But not a duly accredited agent by law; cf. Shebu. 46b.

(11) Supra 103a.

(12) [And yet the robber is not released, by handing it over to him, from responsibility, which contradicts R. Hisda.]

(13) Even to the extent of having handed over to him by the robber the misappropriated article.

(14) V. previous note.

(15) Lit., 'it was not decided with him.'

(16) Cf. Tosef. X, 5. Proving that where it was the robber who appointed the sheriff, so long as the payment did not reach the plaintiff, the robber is not yet released from responsibility, as against the interpretation of the Mishnah releasing the robber in such a case.

(17) V. p. 603. n. 7.

(18) I.e., the robber's.

(19) I.e., to the agent.

(20) Such a request is by no means sufficient to render him an agent.

(21) Supra ibid.

Talmud - Mas. Baba Kama 104b

it is not right to forward [trust] money through a person whose power of attorney is authenticated by a mere figure,[1] even if witnesses are signed on it [to identify the authentication]. R. Johanan, however, said: If witnesses are signed on it [to identify the authentication] it may be forwarded. But I would fain say: In accordance with the view of Samuel what remedy is available?[2] — The same as in

the case of R. Abba,[3] to whom money was owing from R. Joseph b. Hama,[4] and who therefore said to R. Safra:[5] 'When you go there, bring it to me,' and it so happened that when the latter came there, Raba the son [of the debtor] said to him, 'Did the creditor give you a written statement that by your accepting the money he will be deemed to have received it,?'[6] and as he said to him, 'No,' he rejoined, 'If so, go back first and let him give you a written statement that by your acceptance he will be deemed to have received the money.'[6] But ultimately he said to him, 'Even if he were to write that by your acceptance he will be deemed to have received the money,[6] it would be of no avail, for before you come back R. Abba might perhaps [in the meantime] have died,[7] and as the money would then already have been transferred to the heirs the receipt executed by R. Abba would be of no avail.'[8] 'What then,' he asked, 'can be the remedy?' — 'Go back and let him transfer to you the ownership of the money by dint of land,[9] and when you come back you will give us a written acknowledgment that you have received the money.'[10] as in the case of R. Papa[11] to whom twelve thousand zuz were owing from men of Be-Huzae[12] and who transferred the ownership of them to Samuel b. Abba[13] by dint of the threshold of his house,[9] and when the latter came back the former [was so pleased that he] went out to meet him as far as Tauak.[14]

IF HE REFUNDED HIM THE PRINCIPAL BUT DID NOT PAY HIM THE FIFTH . . . HE WOULD NOT HAVE TO GO AFTER HIM [FOR THAT]. This surely proves that the Fifth is a civil liability,[15] so that were the robber to die[16] the heirs would have to pay it. We have also learnt: IF HE REFUNDED TO HIM FOR THE PRINCIPAL AND TOOK AN OATH REGARDING THE FIFTH, HE WOULD HAVE TO PAY HIM A FIFTH ON TOP OF THE FIFTH, similarly proving that the Fifth is a civil liability. It was moreover taught to the same effect: If one man robbed another but took an oath [that he did not do so] and [after admitting his guilt he] died, the heirs would have to pay the principal and the Fifth, though they would be exempt from the trespass offering. Now, since heirs are subject to pay the Fifth which their father would have had to pay, [it surely proves that the Fifth is a civil liability which has to be met by heirs]. But a contradiction could be raised [from the following]: 'I would still say that the case where an heir has not to pay the Fifth for a robbery committed by his father is only where neither he nor his father took an oath.[17] Whence could it be proved that [the same holds good] where he though not his father, took an oath or his father but not he took an oath or even where both he and his father took oaths? From the significant words, That which he took by robbery or the thing which he hath gotten by oppression[18] whereas in this case he[19] has neither taken violently away nor deceived anybody.'[20] — Said R. Nahman: There is no contradiction, as in one case the father admitted his guilt [before he died],[21] whereas in the other he[22] never admitted it. But if no admission was made, why should the heirs have to pay even the principal? If, however, you argue that this will indeed be so [that they will not have to pay it].[23] since the whole discussion revolves here[23] around the Fifth, does it not show that the principal will have to be paid? It was moreover taught explicitly: 'I would still say that the case where an heir has to pay the principal for a robbery committed by his father was only where both he and his father took oaths or where his father though not he, or he though not his father took an oath, but whence could it be proved that [the same holds good] where neither he nor his father took an oath? From the significant words: The misappropriated article and the deceitfully gotten article, the lost article and the deposit[24] as [Yesh Talmud==] this is certainly a definite teaching.'[25] And when R. Huna was sitting and repeating this teaching, his son Rabbah[26] said to him: Did the Master mean to say Yesh Talmud [i.e. there is a definite teaching on this subject] or did the Master mean to say Yishtallemu [i.e., it stands to reason that the heirs should have to pay]? He replied to him: I said Yesh Talmud [i.e. there is a definite teaching on the subject] as I maintain that this could be amplified from the [added] Scriptural expressions.[27] — It must therefore be said that what was meant by the statement 'he made no admission' was that the father made no admission though the son did. But why should the son not become liable to pay even a Fifth for his own oath?[28] — It may, however, be said that the misappropriated article was no longer extant in this case.[29] But if the misappropriated article was no longer extant, why should he pay even the principal?[30] — No; it might have application where real possessions were left.[31] (But were even real possessions to be left, of what avail would it be since the

liability is but an oral liability, and, as known,[32] a liability by mere word of mouth can be enforced neither on heirs nor on purchasers?[33] — It may however be said

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(1) Except at the sender's risk. If the figure was of people of great renown it would suffice; (Tosaf. a.l.)

(2) In the case of power of attorney that the payer be released from further responsibility.

(3) Who settled in the Land of Israel, for which cf. Ber. 24b.

(4) Who lived in Mehoza in Babylon. cf. Git. 14a.

(5) Who travelled extensively, cf. infra 116a.

(6) And thus released my father from further responsibility.

(7) On account of old age.

(8) For the contract of agency as any other executory contract would by the death of the principal become null and void, just as he then instantly becomes deprived of the ownership of all his possessions.

(9) In accordance with Kid. 26a, and supra p 49.

(10) As in that case your receipt will suffice, you being the legal owner of the sum claimed.

(11) Who was engaged in commerce in a large way; v. Ber. 44b.

(12) [Modern Khuzistan, S.W. Persia; Obermeyer. p. 204 ff.]

(13) Cf. B.B. 77b and 150b, where 'b. Aha' is in the text as is also in MS.M. and who is mentioned together with R. Papa in Naz. 51b and Men. 34a.

(14) [S. of Naresh, the home of R. Papa.]

(15) As it differs from the Principal only regarding the ruling stated in the Mishnah.

(16) Before having paid the Fifth.

(17) Falsely.

(18) Lev. V, 23.

(19) I.e., the heir.

(20) This ruling contradicts the conclusion arrived at above that the Fifth is a civil liability and that heirs would have to pay it! V. Supra on Lev. V, 23.

(21) In which case he has already become liable for the Fifth and the heirs would have to pay it.

(22) I.e., neither the father nor the son, but cf. the discussion that follows.

(23) In the latter case.

(24) Cf. Lev. V, 23.

(25) Sifra on Lev. V, 23.

(26) Who did not catch the correct pronunciation of the last phrase in the original and was therefore doubtful as to whether it constituted two words or one word.

(27) From the objects of payment enumerated in detail in Lev. V, 23. But if no admission whatever was made why should even the principal be paid?

(28) When he took it falsely.

(29) And as according to the Mishnaic ruling infra 111b the son could in such a case not be made responsible for the misappropriated article, by committing perjury he rendered himself subject to Lev. V, 4, but not to the Fifth etc. ibid. 24-25.

(30) Since the Mishnaic ruling, infra loc. cit. is to apply.

(31) In which case the heirs are liable, v. loc. cit.

(32) V. B.B. 42a, 157a and 175a.

(33) As a liability which is not supported by a legally valid document or judicial decision is only personal with the debtor.

Talmud - Mas. Baba Kama 105a

that [before the father died] he had already appeared in court[1] [and liability was established against him].[2] But if he had already appeared in court[1] [and liability had been established on the denial of which the son took a false oath])[3] why then should the son not pay even the Fifth?[4] — Said R. Huna the son of R. Joshua: Because a Fifth is not paid for the denial of a liability which is secured upon real estate.[5] But Raba said [that the misappropriated article was still extant in this case as the reason

that the son need not pay a Fifth for his own false oath is because] we were dealing here with a case where [the misappropriated article was kept in] his father's bag[6] that was deposited with others.[7] The principal therefore must be paid since it was subsequently discovered to be in existence, whereas the Fifth has not to be paid since when the son took the oath he meant to swear truly, as at that time he did not know [that there was a misappropriated article in the estate].

WITH THE EXCEPTION, HOWEVER, OF LESS THAN THE VALUE OF A PERUTAH [DUE] ON ACCOUNT OF THE PRINCIPAL HE WOULD NOT HAVE TO GO AFTER HIM. R. Papa said: This Mishnaic ruling can apply only where the misappropriated article was no more in existence, for where the misappropriated article was still in existence the robber would still have to go after him, as there is a possibility that it may have risen in value.[8] Others, however, said that R. Papa stated that there was no difference whether the misappropriated article was in existence or not in existence, as in all cases he would not have to go after him, since we disregard the possibility that it may rise in price.[8]

Raba said: If one misappropriated three bundles [of goods altogether] worth three perutahs, but which subsequently fell in price and become worth only two, and it so happened that he restored two bundles, he would still have to restore the third: this could also be proved from the [following] teaching of the Tanna:[9] If one misappropriated leaven and Passover meanwhile came and went,[10] he may say to the plaintiff, Here there is thine before thee.[11] The reason evidently is that the misappropriated article is intact, whereas if it were not intact, even though it has at present no pecuniary value, he would have to pay on account of the fact that it originally[12] had some pecuniary value. So also in this case,[13] though the bundle is now not of the value of a perutah, since originally it was of the value of a perutah he must pay for it.

Raba raised the question: What would be the law where he misappropriated two bundles amounting in value to a perutah and returned the plaintiff one? Do we lay stress on the fact that there is not now with him a misappropriated object of the value of a perutah,[14] or do we say that since he did not restore the robbery[15] which was with him he did not discharge his duty?[16] Raba himself on second thoughts solved it thus: There is neither a robbery here[17] nor is there the performance of restoration here.[18] But if there is no robbery here,[17] is it not surely because there was restoration here? — What he meant was this: Though there remained no robbery here,[19] the performance of the injunction of restoration[20] was similarly not performed here.[21]

Raba said: It has been definitely stated[22] that a Nazirite who performed the duty of shaving[23] but left two hairs unshaved performed nothing at all [of the injunction]. Raba asked: What would be the law where he [subsequently] shaved one of the two and the other fell out of its own accord? — Said R. Aha of Difti[24] to Rabina: How could it have been doubtful to Raba whether a Nazirite would have performed his duty by shaving one hair after another?[25] — He replied:[26] No; the query has application where, e.g., one of the two hairs fell out of itself[27] and the other was shaved by him: Shall we say that [since] now there is no minimum of hair left unshaved [the duty of shaving has been performed], or was there perhaps no performance of shaving since originally he had left two hairs [unshaved] and when he [made up his mind to] shave them now, there were not two hairs to be shaved? On second thoughts Raba himself solved it thus: There is neither any hair here, nor is there the performance of shaving here. But if there is no hair [left] here, was not the duty of shaving surely performed here? — What he meant was this: Though there remained no hair, yet the performance of the injunction of shaving was not performed here.[28]

Raba also said: It has been stated that if an earthenware barrel[29] had a hole which was filled up with lees, they would render it safe [and secure[30] while in a tent where a corpse of a human being was kept, as the barrel would be considered to have a covering tightly fastened upon it].[31] Raba thereupon asked: What would be the law where only half of the hole was blocked up?[32] Said R.

Yemar to R. Ashi: Is this not covered by our Mishnah? For we have learnt: 'If an earthenware barrel[33] had a hole which was filled up with lees, they would render it safe [and secure[34] while in a tent where a corpse of a human being was kept]. If it was corked up with vine shoots[35] it would not do unless it was smeared with mortar.[36] If there were two vine shoots corking it up they would have to be smeared on all sides as well as between one shoot and another.'[37] Now the reason why this is so is because it was smeared, so that if it would not have been smeared this would not have been so. But why should this not be like a case where half of the hole was blocked up?[38] — It might, however, be said that there is no comparison at all: for in that case if he did not smear it the blocking would not hold at all,[39] whereas here[40] half of the hole was blocked up with such a material as would hold.

Raba further said: It was stated: If one misappropriated leaven and Passover came and went, he may say to him. Here there is thine before thee.[41] Raba thereupon asked:

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(1) Where he was summoned on the instigation of witnesses after he had already denied the claim with a false oath; in which case there is no liability of a Fifth, v. Mishnah l08b. Tosaf. a.l.

(2) On the strength of impartial evidence.

(3) The text contained in parenthesis, i.e. 'But . . . oath' is stated by Rashi a.l. to have been an unwarranted insertion on the part of unauthorised scribes, since according to the Mishnah infra 121a, the children are liable to make restitution where real possessions were left to them by their father; v. however Tosaf. a.I.

(4) For the oath he himself took falsely.

(5) As for the denial of such a liability no oath could be imposed; v. Shebu. VI, 5 and 37b.

(6) Cf. **, bisaccium.

(7) So that while the son took the oath that the article was not with him, he meant to swear truly and could therefore not be made liable for perjury; cf. Shebu. 36b.

(8) Cf. Kid. 12a.

(9) Since at the time of the robbery its value was not less than a perutah.

(10) And thus rendered the leaven unfit for any use.

(11) Since no tangible change took place in the misappropriated article, v. supra 96b.

(12) I.e., at the time of the robbery.

(13) Regarding the bundles.

(14) And should accordingly not have to pay for it.

(15) I.e., the whole of it.

(16) In accordance with Lev. V, 23.

(17) In the hands of the defendant.

(18) Since the whole restoration was of an article worth less than a perutah.

(19) V. p. 609, n. 10.

(20) V. p. 609,n. 9.

(21) V. p. 609. n. 11.

(22) V. Naz. 42a.

(23) In accordance with Num. VI, 9 and 18.

(24) V. supra 73a.

(25) Is this not generally so in all cases of shaving? The injunction has surely been performed, since at the beginning of shaving the minimum number of hairs was not lacking.

(26) I.e., Rabina to R. Aha.

(27) Before he started to shave the two hairs.

(28) [I.e., he has not fulfilled the relevant precept (Tosaf.).]

(29) That was covered on all sides.

(30) From becoming defiled.

(31) And thus not be subject to Num. XIX, 15.

(32) [Reducing it to less than the prescribed minimum to act as outlet (v. Kel. IX, 8).]

(33) V. p.610, n. 11.

(34) V.p. 610, n. 12.
(35) But not with lees.
(36) For the purpose of blocking up the hole well.
(37) Kel. X, 6.
(38) Hence the query of Raba should be answered in the negative.
(39) Hence the smearing is essential.
(40) I.e., in the query of Raba.
(41) Supra 96b.

Talmud - Mas. Baba Kama 105b

What would be the law where [instead of availing himself of this plea] the robber took a [false] oath[1] [that he never misappropriated the leaven]? Shall we say that since if the leaven were to be stolen from him he would have to pay for it, there was therefore here a denial of money,[2] or perhaps since the leaven was still intact and was [in the eyes of the law] but mere ashes, there was no denial here of an intrinsic pecuniary value?[3] [It appears that] this matter on which Raba was doubtful was pretty certain to Rabbah, for Rabbah stated: [If one man says to another] 'You have stolen my ox'. and the other says. 'I did not steal it at all,' and when the first asks, 'What then is the reason of its being with you?' the other replies, 'I am a gratuitous bailee regarding it,' [and after affirming this defence by an oath he admitted his guilt], he would be liable,[4] for by this [false] defence he would have been able to release himself from liability in the case of theft or loss;[5] so also where the [false] defence was 'I am a paid bailee regarding it,' he would similarly be liable,[4] as he would thereby have released himself from liability in the case where the animal became maimed or died;[5] again, even where the false defence was that 'I am a borrower regarding it,' he would be liable,[4] for he would thereby have released himself from any liability were the animal to have died merely because of the usual work performed with it.[6] Now, this surely proves that though the animal now stands intact, since if it were to be stolen[7] the statement would amount to a denial of money, it is even now considered to be a denial of money.[4] So also here in this case though the leaven at present is considered [in the eyes of the law] to be equivalent to mere ashes, yet since if it were to be stolen he would have to pay him with proper value, even now there is a denial there of actual money.[4]

Rabbah[8] was once sitting and repeating this teaching when R. Amram pointed out to Rabbah a difficulty [from the following]: And lieth concerning it[9] [has the effect of] excepting a case where there is admission of the substance of the claim, as [where in answer to the plea] 'You have stolen my ox,' the accused says. 'I did not steal it,' but when the plaintiff retorts, 'What then is the reason of its being with you?' the defendant states, 'You sold it to me, you gave it to me as a gift, your father sold it to me, your father gave it to me as a gift, or the ox was running after my cow, or it came of its own accord to me, or I found it straying on the road, or I am a gratuitous bailee regarding it, or I am a paid bailee regarding it, or I am a borrower regarding it,' and after confirming [such a false defence] by an oath he admitted his guilt. But as you might say that he would be liable here, it is therefore stated further: And lieth concerning it,[9] to except a case like this where there is an admission of the substance of the claim'![10] — He replied:[11] This argument is confused, for the teaching there dealt with a case where the defendant tendered him immediate delivery[12] whereas the statement I made refers to a case where the animal was at that time kept on the meadow.[13] But what admission in the substance of the claim could there be in the defence 'You have sold it to me?' — It might have application where the defendant said to him, 'As I have not yet paid you its value, take your ox back and go.' But still what admission in the substance of the claim is there in the defence, 'You gave it to me as a gift or your father gave it to me as a gift'? — It might be [admission] where the defendant said to him, '[As the gift was made] on the condition that I should do you some favour and since I did not do anything for you, you are entitled to take your ox back and go.' But again, where the defence was, 'I found it straying on the road,' why should the plaintiff not plead, 'You surely have had to return it to me'? — But the father of Samuel[14] said: The defendant was alleging,

and confirming it by an oath: 'I found it as a lost article and was not aware that it was yours to return it to you.'

It was taught: Ben 'Azzai said: [The following] three [false] oaths [taken by a single witness[15] are subject to one law]:[16] Where he had cognizance of the lost animal but not of the person who found it, of the person who found it but not of the lost animal, neither of the lost animal nor its finder.[17] But if he had cognizance neither of the lost animal nor of its finder, was he not swearing truly?[18] — Say therefore: '[He had cognizance] both of the lost animal and of its finder.[19] To what decision does this statement[20] point? — R. Ammi said on behalf of R. Hanina: To exemption; but Samuel said: To liability. They are divided on the point at issue between the [following] Tannaim, as taught: 'Where a single witness was adjured[21] [and the oath was subsequently admitted by him to have been false], he would be exempt, but R. Eleazar son of R. Simeon makes him liable.'[22] In what fundamental principle do they differ? — The [latter] Master[23] maintained that a matter which might merely cause some pecuniary liability[24] is regarded in law as directly touching upon money.[25] whereas the [other] Master maintained that it is not regarded as directly touching upon money.[26]

R. Shesheth said: He who [falsely] denies a deposit is [instantly] considered as if he had misappropriated it, and will therefore become liable for all accidents;[27] this is also supported by the [following] Tannaitic teaching:[28] [From the verse] And he lieth concerning it[29] we could derive the penalty,[30] but whence could the warning be derived? From the significant words: Neither shall ye deal falsely.[31] Now, does this not refer to the 'penalty' for merely having denied the money?[32] — No, it refers to the 'penalty' for the [false] oath.[33] But since the concluding clause refers to a case where an oath was taken, it surely follows that the commencing clause deals with a case where no oath was taken, for it was stated in the concluding clause:[28] [From the text] 'And sweareth falsely'[29] we can derive the penalty;[34] but whence can the warning be derived? From the injunction, 'Nor lie.'[35] Now, since the concluding clause deals with a case where an oath was taken, must not the commencing clause deal with a case where no oath was taken?[36] — It may, however, be said that the one clause as well as the other deals with a case where an oath was taken. But while in the case of the concluding clause the defendant admitted [his perjury], in that of the commencing clause witnesses appeared and proved it. Where witnesses appeared and proved the perjury,[37] the defendant would become liable for all accidents [from the very moment he took the false oath], whereas where he himself admitted his perjury he would be liable for the Principal and the Fifth and the trespass offering.[38] Rami b. Hama raised an objection [from the following]:[39] 'Where the other party was suspected regarding the oath.[40] How so? [Where he took falsely] either an oath regarding evidence[41] or an oath regarding a deposit[42] or an oath in vain.'[43] But if there is legal force in your statement,[44] would not that party have become disqualified from the very moment of the denial?[45] — It might, however, be said that we are dealing here with a case where the deposited animal was at that time placed on the meadow, so that the denial could not be considered a genuine one, since he might have thought to himself, 'I will get rid of the plaintiff for the time being [so that he should no more press me for it] and later I will go and deliver up to him the deposited animal.'[46] This view could even be proved [from the following statement]:[47] R. Idi b. Abin said that he who [falsely] denies a loan[48] is not yet disqualified from giving evidence,[49]

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(1) After Passover.

(2) For which he should be subject to Lev. V, 21-25.

(3) And if this is the case the perjurer should be subject only to Lev. V, 4-10.

(4) In accordance with Lev. V, 21-25.

(5) For which a thief is liable but not a bailee.

(6) Which is a valid defence in the case of a borrower but not in that of a thief.

(7) In the case he swore he was an unpaid bailee.

(8) So in MS.M. [This is to be given preference to the reading 'Raba' of cur. edd. as Raba was doubtful on the matter under discussion.]

(9) Lev. V, 22.
(10) Why then has Rabbah made a statement to the contrary effect?
(11) I.e., Rabbah to R. Amram.
(12) Lit., 'said to him, here is thine.' In which case there is no denial of money.
(13) And there is therefore a potential denial of money.
(14) I.e., Abba b. Abba.
(15) So interpreted by Rashi, but v. Malbim on Lev. V, 22, n. 374.
(16) Referring to Lev. V, 1. On the question whether it refers to the law of liability or exemption v. the discussion that follows.
(17) Cf. Sifra on Lev. V, 22.
(18) And no perjury at all was committed.
(19) And took nevertheless an oath to the contrary.
(20) I.e., whether to that of liability or to that of exemption.
(21) To deliver evidence on a pecuniary matter and he falsely denied any knowledge of it.
(22) Shebu. 32a.
(23) I.e. R. Eleazar b. Simeon who follows the view of his father, cf. supra 71b.
(24) I.e., such as where the evidence in question would not directly have any bearing upon a pecuniary matter but might indirectly at a subsequent stage bring about a pecuniary liability; this is so in the case of one witness whose evidence is not sufficient to establish pecuniary liabilities as stated in Deut. XIX, 15, but whose testimony is accepted for the purpose of imposing an oath upon a defendant who, if unprepared to swear, would have to make full payment; v. Shebu. 40a and 41a.
(25) And the law of Lev. V, 1 has to apply.
(26) The law of Lev. V, 1 could therefore not apply in the case of one witness.
(27) In accordance with the law applicable to robbers.
(28) Sifra on Lev. XIX, 11.
(29) Lev. V, 22.
(30) The restitution he is obliged to make, ibid. 23.
(31) Ibid. XIX, 11.
(32) I.e., even before having committed perjury; the fine thus being his becoming liable for all accidents.
(33) In accordance with Lev. V, 21-24.
(34) The Fifth and Guilt offering.
(35) Lev. XIX, 11.
(36) The penalty thus being his becoming liable for all accidents.
(37) In which case Lev. V, 21-24 does not apply as gathered from Num. V, 7; v. infra 108b.
(38) V. p. 614, n. 13.
(39) Shebu. VII, 4.
(40) The plaintiff will take the oath.
(41) Dealt with in Lev. V, 2 and Shebu. IV.
(42) Cf. Lev. V, 21-23.
(43) Cf. ibid. V, 4.
(44) That by mere denial of a deposit the depositor becomes subject to the law of robbery.
(45) Even before having taken the false oath.
(46) For the ruling of R. Shesheth applies only to a case where it was definitely proved that at the time of the denial the deposit was actually in the hands of the depositor.
(47) B.M. 4a, 5b and Shebu. 40b.
(48) Without, however, having taken an oath.
(49) For since the denial was not confirmed by an oath it might have been made merely for the time being. i.e., to get rid of the plaintiff who pressed for immediate payment.

Talmud - Mas. Baba Kama 106a

whereas [if this was done] in the case of a deposit he would thereby become disqualified from giving

evidence.[1] But did Ilfa not say that an oath transfers possession,[2] which appears to prove that it is only the oath which would transfer responsibility, whereas mere denial would not transfer responsibility?[3] But here also we are dealing with a case where the deposited article was at that time situated on the meadow.[4] Or if you wish I may say that what was meant to be conveyed by the statement that an oath transfers possession was as in the case of R. Huna, for R. Huna said that Rab stated: [Where one said to another,] 'You have a maneh[5] of mine' and the other retorted, 'I have nothing of yours'[6] and confirmed it by an oath[7] and then witnesses came forward [and proved the defendant to have perjured himself] he would be exempt[8] as it is stated: And the owner thereof shall accept it and he shall not make restitution,[9] implying that wherever the plaintiff accepted an oath, the defendant could no more be made liable to pay money.

To return to a previous theme: 'R. Huna said that Rab stated [that where one said to another]. "You have a maneh of mine" and the other rejoined. "I have nothing of yours" and confirmed it by an oath and subsequently witnesses came forward [and proved the defendant to have perjured himself] he would be exempt as it is stated: And the owner thereof shall accept it and he shall not make restitution, implying that wherever the plaintiff accepted an oath, the defendant could no more be made liable to pay money.' Raba thereupon said: We should naturally suppose that the statement of Rab is meant to apply to the case of a loan where the money was given to be spent,[10] but not to a deposit which always remains in the possession of the owner.[11] But [I affirm] by God that Rab made his statement even with reference to a deposit, as it was regarding a deposit that the text [of the verse quoted][12] was written. R. Nahman was sitting and repeating this teaching.[13] when R. Aha b. Manyumi pointed out to R. Nahman a contradiction [from the following: If a man says to another] 'Where is my deposit?' and the other replies. 'It is lost,' and the depositor then says. 'Will you take an oath,' and the bailee replies. 'Amen!'[14] then if witnesses testify against him that he himself had consumed it, he has to pay only the Principal,[15] whereas if he admits [this] on his own accord, he has to pay the Principal together with a Fifth and bring a trespass offering?[16] — R. Nahman said to him: We are dealing here with a case where the oath was taken outside the Court of Law.[17] He rejoined:[18] If so read the concluding clause: [But if on being asked] 'Where is my deposit?', the bailee replied: 'It was stolen!', [and when the depositor retorted] 'Will you take an oath?', the bailee said, 'Amen!' if witnesses testify against him that he himself had stolen it, he has to repay double, whereas if he admits this on his own accord, he has to pay the Principal together with a Fifth and a trespass offering. Now, if you assume that the oath was taken outside the Court of Law, how could there be liability for double payment?[19] — He replied: I might indeed answer you that [though in the case of] the commencing clause [the oath was taken] outside the Court of Law, [in that of] the concluding clause [it was taken] in the Court of Law. But as I am not going to give you a forced answer I will therefore say that though in the one case as well as in the other the oath was taken in the Court of Law,[20] there is still no difficulty, as in the first case we suppose that the claimant anticipated the Court[21] [in administering the oath] and in the other case[22] he did not do so.[23] But Rami b. Hama said to R. Nahman: Since you do not personally accept this view of Rab, why are you pledging yourself to defend this statement of Rab? — He replied: I did it [merely] to interpret the view of Rab, presuming that Rab might have thus explained this Mishnaic text. But did not Rab quote a verse[24] to support his view?[25] — It might be said that the verse intends only to indicate that those who have to be adjured by [the law of] the Torah are only they who by taking the oath release themselves from payment,[26] [as it is stated: 'And the owner thereof shall accept it and he shall not make restitution,'[24] [implying that it is] the one who [otherwise] would be under obligation to make it good that has to take the oath.

R. Hamnuna raised an objection [from the following]: 'Where an oath was imposed upon a defendant five times [regarding the same defence], whether in the presence of the Court of Law or not in the presence of the Court of Law, and he denied the claim [on every occasion], he would have to be liable[27] for each occasion. And R. Simeon said: The reason is that [on each occasion] it was open to him to retract and admit the claim.'[28] Now in this case you can hardly say that the action of

the Court was anticipated, for it is stated: 'Where an oath was imposed upon a defendant' [which naturally would mean, by the sanction of the Court]; you can similarly not say that it was done outside the Court of Law, for it is stated 'in the presence of the Court of Law.'[29] As he[30] raised this difficulty so he also solved it, by pointing out that the text should be interpreted disjunctively: 'Where an oath was imposed upon him [by the Court, but taken] outside the Court of law ,[31] or where it was administered in the presence of the Court of Law' but in anticipation of its action.[31] Raba raised an objection [from the following:] If a bailee[32] advanced a plea of theft regarding a deposit and confirmed it by an oath but subsequently admitted [his perjury], and witnesses came forward [and testified to the same effect], if he confessed before the appearance of the witnesses, he has to pay the Principal together with a Fifth and a trespass offering; but if he confessed after the appearance of the witnesses he has to repay double and bring a trespass offering.[33] Now, here it could not be said that it was outside the Court of Law, or that it was done in anticipation [of the action of the Court], since the liability of double payment[34] is mentioned here![35] — Raba therefore said: To all cases of confession,[36] no matter whether he pleaded in defence loss or theft, Rab did not mean his statement to apply, for it is definitely written: Then they shall confess,[37] implying [that in all cases] the perjurer would have to pay the Principal and the Fifth, [and so also in the case] where he pleaded theft[38] and witnesses came forward [and proved otherwise], Rab similarly did not mean his statement to apply, for [it is in this case that] the liability for double payment [is laid down in Scripture];[39] the statement made by Rab applies only to the case where, e.g., he pleaded in defence loss[40] and after confirming it by an oath he did not admit his perjury but witnesses appeared [and proved it].[41] R. Gamda went and repeated this explanation[42] in the presence of R. Ashi who said to him: Seeing that R. Hamnuna was a disciple of Rab[43] and surely knew very well that Rab meant his statement to apply also to the case of confession,[44] since otherwise he would not have raised an objection from a case of confession, how then can you say that Rab did not mean his statement to apply to a case of confession?[44] — Said R. Aha the Elder to R. Ashi: R. Hamnuna's difficulty may have been this:

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(1) V. p. 614, n. 7.

(2) As a deposit (falsely) denied by a bailee committing perjury will no less than in the case of conversion no longer remain in the possession of the depositor but is transferred to the responsibility of the bailee who has become subject to the law of robbery.

(3) And not render the bailee a robber, contrary to the view expressed by R. Shesheth.

(4) V. p. 615, n. 16.

(5) V. Glos.

(6) In which case there is strictly speaking neither a biblical nor a Mishnaic oath, but the 'Heseth' oath which is of later Rabbinic origin, for which v. Shebu. 40b.

(7) Even though in the days of Rab an oath in such circumstances was by no means obligatory; v. also Tur. H.M. 87,8.

(8) From having to pay the maneh, for the oath he took with the consent of the plaintiff had the effect of preventing any possible revival of the claim; the meaning that an oath transfers possession would therefore be that it conclusively bars any further action in the matter.

(9) Ex. XXII. 10.

(10) And no special act to transfer ownership and possession is necessary.

(11) Even while in the hands of the bailee, in which case an act of conveyance is necessary, which could hardly he done by an oath.

(12) Ex. XXII, 10.

(13) Which R. Huna stated in the name of Rab.

(14) 'So be it.' Which in these circumstances amounts to an oath to all intents and purposes; v. Shebu. 29b.

(15) But not double payment as his defence was not theft, and no Fifth as he 'did not confess perjury.

(16) In accordance with Lev. V, 22-25. Sheb. 49a. Supra 63b and infra 108b. Now, the commencing clause is in glaring contradiction to the view of Rab. The case of confession, however, dealt with in the concluding clause would present no difficulty as Rab's ruling could never apply in that case, as it would have been against Lev. V, 22-23 interpreted on the analogy to Num. V, 7; so Rashi but v. also Tosaf. a.l.

(17) Being thus a mere private matter it could not bar the judicial reopening of the case, whereas the ruling of Rab applies to an oath taken at the sitting of the Court of Law.
(18) I.e., R. Aha to R. Nahman.
(19) Which could be imposed upon the bailee only if his defence of theft was confirmed by him by an oath administered to him by the Court of Law.
(20) I.e., in one and the same place.
(21) Lit., 'jumped in'.
(22) The latter clause as well as Rab's statement.
(23) There would therefore still be a difference between the oath in the commencing clause and the oath in the concluding clause, but only in the manner of adjuration and not in the place where it was administered.
(24) Ex. XXII, 10.
(25) How then could anyone depart from it?
(26) I.e., the defendants; v. Shebu. 45a.
(27) In accordance with Lev. V, 21-24.
(28) Shebu. 36b.
(29) This Mishnaic text, from which it could be gathered that, though an oath has already been imposed and taken, the case could still be reopened, will thus be in contradiction to the view of Rab!
(30) I.e., R. Hamnuna.
(31) [In which case it still remains a private matter and does not bar the judicial re-opening of the case.]
(32) Lit., 'the owner of a house'; v. Ex. XXII, 7.
(33) Shebu. 37b; supra 65a.
(34) V. p. 618, n. 1.
(35) Is this not in contradiction to the view of Rab?
(36) Of perjury regarding a claim of pecuniary value.
(37) Num. V, 7.
(38) Confirming it by a false oath.
(39) Ex. XXII, 6-8 as interpreted supra p. 368.
(40) In which case the bailee could never become liable for double payment.
(41) It was in such a case that Rab laid down the ruling that once the oath had been administered the claim could no more be put forward again.
(42) Of Raba.
(43) Cf. Sanh. 17b; v. also supra 74a, n. 10.
(44) Of perjury.

Talmud - Mas. Baba Kama 106b

I could quite understand that if you were to say that if witnesses appeared after he took the oath [thus proving him to be a perjurer] he would have to pay, as it would be on account of this that we should make him liable to bring sacrificial atonement[1] for the oath on the last occasion, since it was always open to him to retract and admit the claim. But if you maintain that should witnesses appear after he took the oath he would be exempt, is it possible that whereas if witnesses were to have come and testified against him he would have been exempt,[2] we should rise and declare him liable to sacrificial atonement[1] for an oath on the mere ground that he could have been able to retract and confess [his perjury]? For the time being at any rate he has not made such a confession!

R. Hiyya b. Abba said that R. Johanan stated: 'He who [falsely] advances a plea of theft with reference to a deposit in his possession may have to repay double;[3] so also if he slaughtered or sold it, he may have to repay fourfold or fivefold.[4] For since a thief repays double[5] and a bailee pleading the defence of theft has to repay double, just as a thief who has to repay double, is liable to repay fourfold or fivefold in the case of slaughter or sale, so also a bailee who, when pleading the defence of theft regarding a deposit has similarly to repay double, should likewise have to repay fourfold or fivefold in the case of slaughter or sale.'[6] But how can you argue from a thief who has to repay

double even in the absence of perjury to a bailee pleading the defence of theft where no double payment has to be made unless where a false oath was taken? — It might, however, be said that a thief and a bailee alleging theft are made analagous [in Scripture],[7] and no refutation could be made against an analogy [in Scripture].[8] This may be granted if we accept the view[9] that one verse deals with a thief and the other with a bailee [falsely] advancing the plea of theft, but if we adopt the view that both [the verses] 'If the thief be found . . . 'and 'If the thief be not found' deal with a bailee falsely advancing a plea of theft, what could be said?[10] — It may still be argued [that they were made analagous by means of the definite article[11] as instead of] 'thief' [it was written] 'the thief'. R. Hiyya b. Abba pointed out to R. Johanan an objection [from the following]: [If a depositor says.] 'Where is my ox?' [and the bailee pleads:] 'It was stolen,' [and upon the plaintiff's saying,] 'I want you to take an oath,' the defendant says 'Amen,'[12] and then witnesses testify against him that he consumed it, he would have to repay double.[13] Now, in this case, where it was impossible [for him] to consume meat even of the size of an olive[14] unless the animal was first slaughtered [effectively].[15] It was stated that he would repay double [thus implying that it is] only double payment which will be made but not fourfold and fivefold pay ments![16] We might have been dealing here with a case where it was consumed nebelah.[17] Why did he[18] not answer that it was consumed terefah?[19] — [He adopted] the View of R. Meir who stated[20] that a slaughter which does not [render the animal ritually] fit for consumption is still designated [in law] slaughter.[21] But again, why not answer that the ox was an animal taken alive out of a slaughtered mother's womb [and as such it may be eaten[22] without any ritual slaughter]?[23] — [But on this point too he[18] followed] the view of R. Meir who said that an animal taken alive out of a slaughtered mother's womb is subject to the law of slaughter.[22] But still, why not answer that the ruling applied where, e.g., the bailee had already appeared in the Court, and was told[24] to 'go forth and pay the plaintiff'? For Raba stated:[25] [Where a thief was ordered to] go and pay the owner [and after that] he slaughtered or sold the animal, he would be exempt,[26] the reason being that since the judges had already adjudicated on the matter, when he sold or slaughtered the animal he became [in the eye of the law] a robber, and a robber has not to make fourfold and fivefold payments;[27] [but where they merely said to him] 'You are liable to pay him' and after that, he slaughtered or sold the animal he would be liable [to repay fourfold or fivefold], the reason being that since they have not delivered the final sentence upon the matter, he is still a thief![28] — To this I might say: Granting all this,[29] why not answer that the bailee was a partner in the theft and slaughtered the ox without the knowledge of his fellow partner [in which case he could not be made liable for fourfold or fivefold payment]?[30] It must therefore be that one out of two or three [possible] answers has been adopted.

R. Hiyya b. Abba said that R. Johanan stated: He who advanced in his own defence a plea of theft regarding a lost article[31] [which had been found by him] would have to repay double, the reason being that it is written: For any manner of lost thing whereof one saith.[32] R. Abba b. Memel pointed out to R. Hiyya b. Abba an objection [from the following:] If a man shall deliver[33] implies that the delivery by a minor[34] is of no effect [in law].[35] So far I only know this to be the case where he was a minor at the time of the delivery and was still a minor at the time of the demand, but whence could it be proved that this is so also in the case where at the time of the delivery he had been a minor though at the time of the demand he had already come of age? Because it says further: The cause of both parties shall come before the judges.[36] [thus showing that the law of bailment does not apply] unless the delivery and the demand were made under the same circumstances.[37] Now, if your view is sound,[38] why should this case [with the minor] not be like that of the lost article?[39] — He replied:[40] We are dealing here with a case where the deposit was consumed by the bailee while the depositor was still a minor.[41] But what would be the law where he consumed it after the depositor had already come of age? Would he have to pay?[42] If so, why state 'unless the delivery and the demand were made under the same circumstances,' and not 'unless the consumption[43] and the demand took place under the same circumstances'? — He said to him:[44] You should indeed read 'unless the consumption[45] and the demand took place under the same circumstances'. R. Ashi moreover said: The two cases[46] could not be compared, as the lost article came into the hands of the finder from the

possession of a person of responsibility,[47] whereas [in the case of a minor] the deposit did not come to the bialee from the possession of a person of responsibility.

R. Hiyya b. Abba further said that R. Johanan stated: He[48] who puts forward a defence of theft in the case of a deposit could not be made liable[49] unless he denies a part and admits a part [of the claim], the reason being that Scripture states: This is it[50] [implying 'this' only].[50] This view is contrary to that of R. Hiyya b. Joseph. for R. Hiyya b. Joseph said:

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(1) In accordance with Lev. V, 21-26.
(2) V. p. 616, n. 8.
(3) If he confirmed the plea by an oath.
(4) Cf. Ex. XXI, 37.
(5) Ibid. XXII, 6.
(6) V. supra 62b, 63b.
(7) Lit. 'It is an analogy, hekkesh. In Ex. XXII, 6-8 as interpreted supra pp. 368 ff.
(8) This being an axiomatic hermeneutic rule; v. supra 63b and Men. 82b.
(9) For notes, v. supra 63b.
(10) I.e., where then were the two made analogous in Scripture?
(11) Which has the effect of denoting the thing par excellence as in Pes. 58b; v. also Kid. 15a.
(12) V. p. 617. n. 5.
(13) Infra 108b, v. also Shebu. 49a.
(14) Which is the minimum quantity constituting the act of eating; cf. 'Er. 4b.
(15) In accordance with the law referred to in Deut. XII, 21 and laid down in detail in Hul. III.
(16) Does this not contradict the view expressed by R. Johanan that even fourfold or fivefold payment would have to be made?
(17) I.e. where the animal was not slaughtered in accordance with the ritual, v. Glos., in which case the law of fourfold and fivefold payments does not apply, as laid down supra p. 445,
(18) I.e., R. Johanan.
(19) I.e., where an organic disease was discovered in the animal, v. Glos.; according to the view of R. Simeon stated supra p. 403 the law of fourfold and fivefold payments does similarly not apply.
(20) Hul. VI, 2.
(21) So that the law of fourfold and fivefold payments will apply which is also the anonymous view stated supra p. 403.
(22) V. Hul. IV, 5.
(23) On account of the ritual slaughter carried out effectively on the mother.
(24) Before he slaughtered the animal, in which case he would not have to make fourfold and fivefold payments for a subsequent slaughter.
(25) Supra 68b.
(26) From fourfold and fivefold payments.
(27) In fact no pecuniary fine at all; cf. supra p. 452.
(28) Who is subject to the law of Ex. XXI, 37. Why then not give this answer?
(29) That there was also some other answer to be given.
(30) V. supra 78b.
(31) Supra 57a and 63a.
(32) V. Ex. XXII, 8.
(33) Ex. XXII, 6.
(34) Since he has not yet attained manhood; cf. Sanh. 69a.
(35) Regarding the possible liability upon the bailee for double payment.
(36) V. Ex. XXII, 8.
(37) Cf. J. Shebu. VI, 5.
(38) That there would be double payment in the case of perjury committed regarding a lost article.
(39) Where there would be liability in the absence of any depositor at all.
(40) I.e., R. Hiyya to R. Abba.

(41) In which case the bailee had regarding that deposit never had any responsibility to a person of age.
(42) Double payment for perjury.
(43) Though not the delivery.
(44) V. p. 623. n. 11.
(45) V. p. 623, n. 14.
(46) I.e. a lost article and a deposit of a minor.
(47) Lit., ‘understanding’, i.e. the person who lost it.
(48) I.e., an unpaid bailee.
(49) To take the oath of the bailees and in case of perjury to have consequently to restore double payment.
(50) And no more, which thus constitutes an admittance of a certain part and the denial of the balance.

Talmud - Mas. Baba Kama 107a

There is here an 'interweaving of sections',[1] as the words, this is it written here[2] have reference to loans.[3] But why a loan [in particular]? In accordance with Rabbah, for Rabbah stated:[4] 'On what ground did the Torah lay down[5] that he who admits a part of a claim has to take an oath?[6] Because of the assumption that no man is so brazen-faced as to deny [outright] in the presence of his creditor[7] [the claim put forward against him].[8] It could therefore be assumed that he[9] was desirous of repudiating the claim altogether, and the reason that he did not deny it outright is[10] because no man is brazen-faced [enough to do so].[11] It may consequently be argued that he was on this account inclined[12] to admit the whole claim; the reason that he denied a part was because he considered: Were I to admit [now] the whole liability, he will soon demand the whole claim from me; I should therefore [better] at least for time being get rid of him,[13] and as soon as I have the money will pay him.[14] It was on account of this that the Divine Law[15] imposed an oath upon him so that he should have to admit the whole of the claim.[16] Now, it is only in the case of a loan that such reasoning could apply.[17] whereas regarding a deposit the bailee would surely brazen it out [against the depositor].[18]

Rami b. Mama learnt: The four bailees

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(1) I.e., an interpolation of another passage; Ex. XXII, 8, v. n. 7.

(2) Confining the imposition of the oath to cases of part-admission.

(3) According to Rashi a.l. the phrase in Ex. XXII, 8 confining the oath to part. admission referred not to v. 6 but to 24; v. also Sanh. (Sonc. ed.) P. 5, n. 3; regarding deposits there would thus he an oath even in cases of total denial. For the interpretation of R. Tam, cf. Tosaf. a.l. and Shebu. 45b. The accepted view is expounded by Riba and Rashb., a.l. that the condition of part admission is attached to all cases of pecuniary litigation including deposits, providing the defences were such as would avail also in cases of loans, such as e.g.. the denial of the contract or a plea of payment and restoration; v. also Maim. Yad., Sekiroth, 11, 11-12; Tur. H.M. 296, 2. The meaning in the Talmudic text here would therefore be 'ascribed as dealing with the defences of loans.' For regarding the specific defences in the case of a deposit, i.e. theft or loss or accident, a biblical oath is imposed even without an admission of part liability. But as Ex. XXII,6 deals with two kinds of deposits, i.e. 'money or stuff' there is indeed an interweaving of sections in this paragraph, for a deposit of money might in accordance with B.M. III, 11, amount to an implied mutuum involving all the liabilities of a loan. In other systems of law it is indeed called depositum irregulare for which see Dig. 19.2.31; Moyle, Imp. Just. Inst. 396 and Goodeve on 'Personal Property', 6th Ed., 25. The phrase in Ex. XXII, 8 confining the oath to part admission is thus said to be ascribed as dealing exclusively with this depositum irregulare, i.e. with the bailment of money when it became a loan to all intents and purposes; v. also J. Shebu. VI, I.

(4) B.M. 3a; Shebu. 42b.

(5) In Ex. XXII. 7-8.

(6) Whereas for total denial there is no biblical oath.

(7) Who was his benefactor.

(8) A total denial in the case of a loan is thus somehow supported by this general assumption; cf. also Shebu. 40b.

(9) Who admitted a part of the claim.

(10) Not perhaps on account of honesty.

(11) The fact that he admitted a part of the claim is to a certain extent a proof that he found it almost impossible to deny the claim outright.

(12) Lit., 'willing'.

(13) At least so far as a part of the claim is concerned.

(14) For the whole of the claim.

(15) Ex. XXII,7-8.

(16) As he would surely be loth to commit perjury.

(17) As the creditor was a previous benefactor of his.

(18) As in this case the bailee was generally the benefactor and not necessarily the depositor, so that the whole psychological argumentation of Rabbah fails; [and an oath is thus to be imposed even where there is a total denial, which is contrary to the view reported by R. Hiyya b. Abba in the name of R. Johanan.]

have to deny a part and admit a part [of the claim before the oath can be imposed upon them]. They are as follows: The unpaid bailee and the borrower, the paid bailee and the hirer.[1] Raba said: The reason of Rami b. Hama is [as follows]: In the case of an unpaid bailee it is explicitly written: This is it;[2] the law for the paid bailee could be derived [by comparing the phrase expressing] 'giving'[3] [to the similar term expressing] 'giving' in the section of unpaid bailee;[4] the law for borrower begins with 'and if a man borrow'[5] so that the waw copula ['and'] thus conjoins it with the former subject;[6] the hirer is similarly subject to the same condition, for according to the view that he is equivalent [in law] to a paid bailee[7] he should be treated as a paid bailee, or again, according to the view that he is equivalent [in law] to an unpaid bailee,[7] he should be subject to the same conditions as the unpaid bailee.

R. Hiyya b. Joseph further said: He who [falsely] advances the defence of theft in the case of a deposit would not be liable[8] unless he had [first] committed conversion,[9] the reason being that Scripture says: The master of the house shall come near unto the judges to see whether he have not put his hand unto his neighbour's goods,[10] implying that if he put his hand he would be liable,[8] and thus indicating that we are dealing here with a case where he had already committed conversion.[9] But R. Hiyya b. Abba said to them:[11] R. Johanan [on the contrary] said thus: The ruling[12] was meant to apply where the animal was still standing at the crib.[13] R. Ze'ira then said to R. Hiyya b. Abba: Did he mean to say that this is so[12] only where it was still standing at the crib,[13] whereas if the bailee had already committed conversion,[9] the deposit would thereby [already] have been transferred to his possession,[14] so that the subsequent oath would have been of no legal avail,[15] or did he perhaps mean to say that this is so even where it was still standing at the crib?[16] — He replied: This I have not heard, but something similar to this I have heard. For R. Assi said that R. Johanan stated: One[17] who had in his defence pleaded loss and had sworn thus, but came afterwards and pleaded theft,[18] also confirming it by an oath, though witnesses appeared [proving otherwise], would be exempt.[19] Now, is the reason of this ruling not because the deposit had already been transferred to his possession through the first[20] oath? — He replied to him:[21] No; the reason is because he had already discharged his duty to the owner by having taken the first oath.[22]

It was indeed similarly stated: R. Abin said that R. Elai stated in the name of R. Johanan: If one advanced in his defence a plea of loss regarding a deposit and had sworn thus, but came afterwards and advanced a plea of theft also confirming it by an oath, and witnesses appeared [proving otherwise], he would be exempt.[19] because he had already discharged his duty to the owner by having taken the first oath.[22]

R. Shesheth said: One[20] who [falsely] pleads theft in the case of a deposit, if he had already committed conversion,[23] would be exempt,[19] the reason being that Scripture says, 'The master of the house shall come near unto the judges to see whether he have not put his hand' etc.[24] implying that were he to have already committed conversion he would be exempt. But R. Nahman said to him: Since three oaths are imposed upon him,[25] an oath that he was not careless, an oath that he did not commit conversion and an oath that the deposit was no more in his possession, does this not mean that the oath 'that he did not commit conversion' should be compared to the oath 'that the deposit was no more in his possession so that just as where he swears 'that the deposit was no more In his possession,' as soon as it becomes known that the deposit was really at that time in his possession he would be liable for double payment, so also where he swore 'that he did not commit conversion, when the matter becomes known that he did commit conversion he would be liable?[26] — He replied: No; the oath 'that he did not commit conversion' was meant to be compared to the oath 'that he was not careless'; just as where he swears 'that he was not careless' even if it should become known that he was careless,[27] he would be exempt from double payment.[28] so also where he swears 'that he did

not commit conversion,' even if it becomes known that he did commit conversion,[29] he would still be exempt from double payment.

Rami b. Hama asked: [Since where there is liability for double payment there is no liability for a Fifth,[30] is it to be understood that] a pecuniary value for which there is liability to make double payment exempts from the Fifth, or is it perhaps the oath which involves the liability of double payment that exempts from the Fifth? In what circumstances [could this problem have practical application]? — E.g., where the bailee had pleaded in his defence theft confirming it by an oath and then came again and pleaded loss and similarly confirmed it by an oath,

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(1) B.M. 5a and 98a.
(2) Ex. XXII, 8.
(3) Opening the section of the paid bailee in Ex. XXII, 9.
(4) V. Ex. XXII, 6, the opening section of the unpaid bailee.
(5) Ibid. XXII, 13.
(6) And makes him analogous in this respect to the bailees dealt with previously; v. B.M. 95a.
(7) Cf. supra 57b.
(8) To double payment in the case of perjury.
(9) Lit., 'put his hand unto it'; v. Ex. XXII, 7.
(10) Ibid.
(11) I.e., to the sages, but correctly omitted in MS.M.
(12) Regarding the liability for double payment.
(13) And no conversion was committed; v. also J. Shebu. VIII, 3.
(14) V. p. 616, n. 2.
(15) Since the bailee had become already subject to the law of robbery.
(16) And no conversion was committed.
(17) An unpaid bailee.
(18) Regarding the same deposit.
(19) From double payment.
(20) V. p. 616, n. 2.
(21) I.e., R. Ze'ira to R. Hiyya b. Abba.
(22) So that the second oath is no more judicial and could therefore not involve double payment.
(23) V. p. 626, n. 9.
(24) Ex. XXII, 7.
(25) An unpaid bailee. Cf. B.M. 6a.
(26) To double payment in case of perjury.
(27) I.e., that the deposit was stolen from him through his carelessness.
(28) Since he did not misappropriate the deposit for himself.
(29) And then misappropriated it for himself.
(30) For which v. supra 65b and 106a.

Talmud - Mas. Baba Kama 108a

and it so happened that witnesses appeared and proved the first oath [to have been perjury][1] while he himself confessed that the last oath was perjury.[2] Now, what is the law? Is it the pecuniary value for which there is liability to make double payment that exempts from the Fifth, so that [as] in this case too there is liability to make double payment [for the deposit, there would be no Fifth for it], or perhaps it is the oath which involves a liability for double payment that exempts from a Fifth, so that since the last oath does not entail liability for double payment[3] it should entail the liability for the Fifth? — Said Raba: Come and hear: If a man said to another in the market: 'Where is my ox which you have stolen,' and the other rejoined, 'I did not steal it at all,' whereupon the first said, 'Swear to me, and the defendant replied, 'Amen,' and witnesses then gave evidence against him that he did

steal it, he would have to repay double, but if he confessed on his own accord, he would have to pay the Principal and a Fifth and bring a trespass offering.[4] Now here it is the witnesses[5] who make him liable for double paymentl, and yet it was only where he confessed of his own accord that he would be subject to the law of a Fifth,[6] whereas where he made a confession after [the evidence was given by] the witnesses, it would not be so. But if you assume that it is the oath involving liability of double payment that exempts from the Fifth, why then [in this case] even where he made confession after the evidence had already been given by the witnesses should the liability for the Fifth not be involved? Since the oath here was not instrumental in imposing the liability for double payment why should it not involve the liability for the Fifth? This would seem conclusively to prove that a pecuniary value for which there is liability to make double payment exempts from the Fifth, would it not? — This could indeed be proved from it.

Rabina asked: What would be the law as to a Fifth and double payment to be borne by two persons respectively? — What were the circumstances? — E.g., where an ox was handed over to two persons and both pleaded in defence theft, but while one of them confirmed it by an oath and subsequently confessed [it to have been perjury] the other one confirmed it by an oath and witnesses appeared [and proved it perjury]. Now, what is the law? Shall we say that it was only in the case of one man that the Divine Law was particular that he should not pay both the Fifth and double payment,[7] so that in this case [where two persons are involved]. one should make double payment and the other should pay a Fifth, or shall it perhaps be said that it was regarding one and the same pecuniary value that the Divine Law was particular that there should not be made any payment of both a Fifth and double payment;[8] and in this case also it was one and the same pecuniary value? — This must stand undecided.

R. Papa asked: What would be the law regarding two Fifths and two double payments in the case of one man? What are the circumstances? E.g., where the bailee first pleaded in his defence loss and after confirming it by an oath confessed [it to have been perjury],[9] but afterwards came back and pleaded [again a subsequent] loss, confirming it by an oath, and then again confessed [it to have been perjury];[9] or, e.g., where he pleaded in defence theft confirming it by an oath and witnesses appeared [and proved it to have been perjury],[10] but he afterwards came back and advanced [again] the defence of [a subsequent] theft, confirming it by an oath, and witnesses appeared against him. Now, what would be the law? Shall we say that it was only two different kinds of pecuniary liability[11] that the Divine Law forbade to be paid regarding one and the same pecuniary value,[8] whereas here the liabilities are of one kind[12] [and should therefore be paid], or perhaps it was two pecuniary liabilities[13] that the Divine Law forbade to be paid regarding one and the same pecuniary value and here also the pecuniary liabilities are two?[12] — Come and hear what Raba stated: And shall add the fifth:[14] the Torah has thus attached many fifths to one principal.[15] It could surely be derived from this.

If the owner had claimed [his deposit] from the bailee who, [though] he [denied the claim] on oath [nevertheless] paid it, and [it so happened that] the actual thief was identified,[16] to whom should the double payment go?[17] — Abaye said: To the owner of the deposit, but Raba said: To [the bailee with] whom the deposit was in charge. Abaye said that it should go to the depositor, for since he was troubled[18] to the extent of having to impose an oath, he could not be expected to have transferred the double payment.[19] But Raba said that it would go to [the bailee with] whom the deposit was in charge, for since [after all] he paid him, the double payment was surely transferred to him. They are divided on the implication of a Mishnah, for we learned: Where one person deposited with another an animal or utensils which were subsequently stolen or lost, if the bailee paid, rather than deny on oath, although it has been stated[20] that an unpaid bailee can by means of an oath discharge his liability and [it so happened that] the actual thief was found and had thus to make double payment, or, if he had already slaughtered the animal or sold it, fourfold or fivefold payment, to whom should he pay? To him with whom the deposit was in charge. But if the bailee took an oath [to defend

himself] rather than pay and [it so happened that] the actual thief was found and has to make double payment, or, where he already slaughtered the animal or sold it, fourfold or fivefold payment, to whom shall he pay? To the owner of the deposit.[21] Now, Abaye infers his view from the commencing clause, whereas Raba deduces his ruling from the concluding clause. Abaye infers his view from the commencing clause where it was stated: 'If the bailee paid, rather than deny on oath . . .' this is so only where he was not willing to swear,

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(1) And thus subject to Ex. XXII, 8.

(2) Rendering himself thus liable under Lev. V, 21-25.

(3) Since he did not confirm a defence of theft.

(4) The Mishnah of Shebu. 49a, where, however, the adjuration is missing, but v. also Jer. ibid. 3.

(5) And not at all the oath.

(6) I.e., Lev. V, 24.

(7) V. p. 628, n. 5.

(8) V. p. 628, n. 5.

(9) V. p. 628, n. 7.

(10) V. p. 628, n. 6.

(11) Such as double payment and a Fifth.

(12) I.e., either two Fifths or two amounts of double payment.

(13) No difference whether of one kind or of two different kinds.

(14) Lev. V, 24.

(15) Supra 65b, v. also Sifra on Lev. V, 24, and Malbim, a.l.

(16) And has to pay double.

(17) Either to the bailee in accordance with B.M. 33b, to be quoted presently, or to the depositor.

(18) By the bailee.

(19) To the bailee; v. B.M. 34a and also 35a.

(20) Ibid VII, 8.

(21) V. B.M. 33b.

but where he did take an oath, even though he subsequently paid, the thief would surely have to pay the owner of the deposit; but Raba deduces his ruling from the concluding clause where it was stated: 'But if the bailee took an oath [to defend himself] rather than pay . . .', this is so only where he was not willing to pay, but where he did pay even though he first denied the claim on oath, the thief would of course have to pay him with whom the deposit was in charge. Does not the implication of the concluding clause contradict the view of Abaye? — Abaye would say to you: What it means to say is this: 'If the bailee swore rather than pay before having taken the oath, though he did so after he took the oath, to whom will the thief pay? To the owner of the deposit.' But does not the implication of the commencing clause contradict the view of Raba? — Raba could say to you that the meaning is this: 'If the bailee paid, as he was not willing to take his stand upon his oath and consequently paid, to whom should the thief pay? To him with whom the deposit was in charge.

Suppose the owner had claimed [his deposit] from the bailee, and the latter denied upon oath, and the actual thief was then identified and the bailee demanded payment from him and he confessed the theft, but when the owner [of the deposit] demanded payment from him he denied it and witnesses were brought, did the thief become exempt[1] through his confession to the bailee,[2] or did the thief not become exempt[1] through his confession to the bailee?[3] — Said Raba: If the oath [taken by the bailee] was true, the thief would become exempt through his confession to the bailee,[4] but if he perjured himself in the oath[5] the thief would not become exempt through his confession to the bailee.[6] But Raba asked: What would be the law where the bailee was prepared to swear falsely but [it so happened that for some reason or other] he was not allowed to do so?[7] — This must remain

undecided. But while R. Kahana was stating the text thus, R. Tabyomi was reading it as follows: 'Rab asked: What would be the law where the bailee has sworn falsely [to defend himself]?'[8] — This must stand undecided.

Suppose the owner claimed [his deposit] from the bailee who thereupon paid him, and the thief was then identified and when the owner demanded payment from him he confessed, whereas when the bailee demanded payment from him he denied it, and witnesses appeared [against him], should the thief become exempt[9] through his confession to the owner or not? Shall we maintain that the bailee is entitled to say to the owner: 'Since you have received the value [of your deposit] your interest has completely lapsed[10] in this matter', or can the owner say to him: 'Just as you did us a favour,[11] we also are willing to do you the same and are therefore hunting after the thief. Let us take back what belonged to us and you receive back what belonged to you'? — This must stand undecided.

It was taught:[12] Where the deposit was stolen through violence[13] and the thief was identified, Abaye said that if the bailee was unpaid he has the option of going to law with him,[14] or of [clearing himself by] an oath [so that the owner will himself have to deal with the thief], whereas if it was a paid bailee he would have to go to law with the thief and he cannot take an oath to discharge his liability.[15] But Raba said: Whichever he is[16] he would have to go to law with the thief and not take an oath. May we say that Raba differs from the view of R. Huna b. Abin, for R. Huna b. Abin sent word that where the deposit was stolen by violence and the thief was identified, if the bailee was unpaid he had the option of going to law with him or of [clearing himself by] an oath, whereas if he was a paid bailee he would have to go to law with the thief and could not clear himself by an oath?[17] — Raba could say to you that [in this last ruling] we are dealing with a case where the paid bailee took the oath before [the thief was identified].[18] But did R. Huna not say: 'He had the option of going to law or of clearing himself by an oath'?[19] — What he meant was this: 'The unpaid bailee had the choice of taking his stand on his oath[20] or of going to law with him.' Rabbah Zuti asked thus: Where the deposited animal was stolen by violence and the thief restored it to the house of the bailee where it then died through carelessness [on the part of the bailee], what should be the law? Shall we say that since it was stolen by violence, the duty of bailment came to an end,[21] or perhaps since it was restored to him it once more came into his charge [which thus revived]?[22] — This must stand undecided.

MISHNAH. [IF A MAN SAYS TO ANOTHER] 'WHERE IS MY DEPOSIT?' AND HE[23] REPLIES: 'IT IS LOST' [AND THE DEPOSITOR THEN SAYS]. 'I PUT IT TO YOU ON OATH.' AND THE OTHER REPLIES. 'AMEN', IF WITNESSES TESTIFY AGAINST HIM THAT HE HIMSELF HAD CONSUMED IT, HE HAS TO PAY ONLY THE PRINCIPAL, WHEREAS IF HE CONFESSES ON HIS OWN ACCORD HE HAS TO REPAY THE PRINCIPAL TOGETHER WITH A FIFTH AND BRING A TRESPASS OFFERING.[24] [BUT IF THE DEPOSITOR SAYS] 'WHERE IS MY DEPOSIT?' AND THE BAILEE REPLIES: 'IT WAS STOLEN' [AND THE DEPOSITOR THEN SAYS] I PUT IT TO YOU ON OATH, AND THE BAILEE REPLIES, AMEN, IF WITNESSES TESTIFY AGAINST HIM THAT HE HIMSELF HAD STOLEN IT HE HAS TO REPAY DOUBLE,[25] WHEREAS IF HE CONFESSES ON HIS OWN ACCORD HE HAS TO REPAY THE PRINCIPAL TOGETHER WITH A FIFTH AND BRING A TRESPASS OFFERING.[24] IF A MAN ROBBED HIS FATHER AND, [WHEN CHARGED BY HIM,] DENIED IT ON OATH, AND [THE FATHER AFTERWARDS] DIED,[26] HE WOULD HAVE TO REPAY THE PRINCIPAL AND A FIFTH [AND A TRESPASS OFFERING][27] TO HIS [FATHER'S] CHILDREN[28] OR TO HIS [FATHER'S] BROTHERS;[29] BUT IF HE IS UNWILLING TO DO SO,[30] OR HE HAS NOTHING WITH HIM,[31] HE SHOULD BORROW [THE AMOUNT FROM OTHERS AND PERFORM THE DUTY OF RESTORATION TO ANY OF THE SPECIFIED RELATIVES] AND THE CREDITORS CAN SUBSEQUENTLY COME AND [DEMAND TO] BE PAID[32] [THE PORTION WHICH WOULD BY LAW HAVE BELONGED TO THE ROBBER AS

HEIR]. IF A MAN SAID TO HIS SON: 'KONAM BE[33] WHATEVER BENEFIT YOU HAVE OF MINE,'[34] AND SUBSEQUENTLY DIED, THE SON WILL INHERIT HIM.[35]

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(1) From paying the fine.
(2) In accordance with supra p. 427.
(3) The problem is whether the bailee had an implied mandate to approach the thief or not, as a confession made not to the plaintiff or his authorised agent but to a third party uninterested in the matter is of no avail to exempt from the fine; cf. however the case of R. Gamaliel and his slave Tabi, supra p. 428.
(4) As in this case the trust in the bailee has not been impaired and the implied mandate not cancelled.
(5) I.e., he advanced another defence, e.g., accidental death.
(6) Who could no longer be trusted and thus had no right to represent the depositor any more.
(7) Has the trust in him thereby been impaired or not?
(8) Shall it be said that though he had already sworn inaccurately he would sooner or later have been compelled by his conscience to make restoration, as he in fact exerted himself to look for the thief and should therefore still retain the trust reposed in him, especially since the article had really been stolen though he advanced for some reason another plea; R. Tabyomi had thus not read the concluding clause in the definite statement made above by Raba.
(9) V. p. 632. n. 1.
(10) Lit., 'removed'.
(11) By paying us for the deposit and not resisting our claim.
(12) Cf. B.M. 93b.
(13) By an armed robber; v. supra, 57a.
(14) I.e. the thief.
(15) For since he was paid, though he is exempt in the case of theft by violence, it is nevertheless his duty to take the trouble to litigate with the thief, since the thief is identified.
(16) I.e., unpaid as well as paid.
(17) B.M. 93b.
(18) In which case the depositor will himself have to deal with the case.
(19) Which makes it clear that the oath has not yet been taken.
(20) 'Already taken by him.
(21) So that the bailee should no more be subject to the law of bailment.
(22) To make the law of bailment still applicable.
(23) Being an unpaid bailee.
(24) In accordance with Lev. V, 21-25.
(25) In accordance with Ex. XXII, 8.
(26) When the son confessed the theft.
(27) The phrase in parenthesis occurs in the Mishnaic text but not in Rashi. [And rightly so, for what have the children etc. to do with the trespass offering.]
(28) I.e., to his own brothers, for if he would retain anything for himself he would not obtain atonement, since he did not make full restoration (Rashi). [Tosaf.: to his own children, or to his own brothers in the absence of any children to him, v. B.B. 159a.]
(29) I.e., his uncles, in the absence of any other children to his father.
(30) I.e., to forfeit his own share in the payment which he has to make.
(31) To be in a position to do so.
(32) From the amount restored.
(33) I.e., Let it be forbidden as sacrifice; v. Ned. I, 2.
(34) [J.: 'that you do not benefit out of anything belonging to me.']
(35) For through the death of the father his possessions passed out of his ownership and the son is no more benefiting out of anything belonging to him; cf. Ned. V, 3.

Talmud - Mas. Baba Kama 109a

[BUT IF HE SAID 'KONAM. . . '] BOTH DURING HIS LIFE AND AFTER HIS DEATH,[1] AND

[THE FATHER] DIED, THE SON WILL NOT INHERIT HIM,[2] [BUT THE PORTION] WILL BE TRANSFERRED TO HIS FATHER'S [OTHER] CHILDREN OR TO HIS [FATHER'S] BROTHERS; IF THE SON HAS NOTHING [FOR A LIVELIHOOD], HE MAY BORROW [FROM OTHERS AN AMOUNT EQUAL TO HIS PORTION IN THE INHERITANCE] AND THE CREDITORS CAN COME AND DEMAND PAYMENT [OUT OF THE ESTATE].

GEMARA. R. Joseph said: [He must pay[3] the amount due for the robbery] even to the charity[4] box.[5] R. Papa added: He must however say, This is due for having robbed my father. But why should he not remit the liability to himself?[6] Have we not learnt: Where the plaintiff released him from payment of the principal though he did not release him from payment of the Fifth [etc.],[7] thus proving that this liability is subject to be remitted? — Said R. Johanan: This is no difficulty as that was the view of R. Jose the Galilean, whereas the ruling [here][6] presents the view of R. Akiba, as indeed taught: But if the man have no kinsman to restore the trespass unto,[8] how could there be a man in Israel who had no kinsmen?[9] Scripture must therefore be speaking of restitution to a proselyte.[10] Suppose a man robbed a proselyte and when charged denied it on oath and as he then heard that the proselyte had died he accordingly took the amount of money [due] and the trespass offering to Jerusalem, but there [as it happened] came across that proselyte who then converted the sum [due to him] into a loan, if the proselyte were subsequently to die the robber would acquire title to the amount in his possession; these are the words of R. Jose the Galilean. R. Akiba, however, said: There is no remedy for him [to obtain atonement] unless he should divest himself of the amount stolen.[11] Thus according to R. Jose the Galilean, whether to himself or to others, the plaintiff may[12] remit the liability,[13] whereas according to R. Akiba no matter whether to others or to himself, he cannot remit it. Again, according to R. Jose the Galilean, the same law[14] would apply even where the proselyte did not convert the amount due into a loan, and the reason why it says, 'who then converted the sum [due to him] into a loan' is to let you know how far R. Akiba is prepared to go, since he maintains that even if the proselyte converted the sum due into a loan there is no remedy for the robber [to obtain atonement] unless he divests himself of the proceeds of the robbery. R. Shesheth demurred to this: If so [he said] why did not R. Jose the Galilean tell us his view in a case where the claimant [remits it] to himself, the rule then applying a fortiori to where he remits it to others? And again why did not R. Akiba tell his view that it is impossible to remit, to others, then arguing a fortiori that he cannot remit it to himself? R. Shesheth therefore said that the one ruling as well as the other is in accordance with R. Jose the Galilean, for the statement made by R. Jose the Galilean that it is possible to remit such a liability applies only where others get the benefit,[15] whereas where he himself would benefit it would not be possible to remit it. Raba, however, said: The one ruling as well as the other [here,] is in accordance with R. Akiba, for when R. Akiba says that it is impossible to remit the liability, he means to himself, whereas to others[15] it is possible for him to remit it.

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(1) [J.: 'both during my life and after my death.']

(2) As in this case it was the estate as such, and not as belonging to his father, which was declared forbidden; Ned. V, 3.

(3) Where no other heir could be traced to his father except himself.

(4) Lit., 'Arnaki', **; v. K. Krauss, Lehnworter, II, 133.

(5) Cf. supra p. 204 and p. 540.

(6) V. p. 635, n. 1.

(7) Supra Mishnah 103a.

(8) Num. V, 8.

(9) Cf.Kid. 21a and Sanh. 68b; for if he has no issue the inheritance will revert to ancestors and their descendants; v. B.B. VIII, 2.

(10) Who has no kinsman in law except the children born to him after he became a proselyte; cf. Sheb. X, 9 and Kid. 17b.

(11) Tosef. B.K. X.

(12) In all cases.

(13) The Mishnah on 103a will accordingly agree with R. Jose.
(14) Stated by him in the case of the proselyte.
(15) V. p. 636. n. 2.

Talmud - Mas. Baba Kama 109b

This would imply that R. Jose the Galilean maintained that even to himself[1] he could remit it. Now, if that is so, how could a case ever arise that restitution for robbery committed upon a proselyte[2] should be made to the priests[3] as ordained in the Divine Law? — Said Raba: We are dealing here with a case where one robbed a proselyte and [falsely] denied to him on oath [that he had done so], and the proselyte having died the robber confessed subsequently, on the proselyte's death,[4] so that at the time he made confession God[5] acquired title to it[6] and granted it to the priests.[7]

Rabina asked: What would be the law where a proselytess was robbed? Shall we say that when the Divine Law says 'man'[7] it does not include 'woman' or perhaps this is only the Scriptural manner of speaking? — Said R. Aaron to Rabina: Come and hear: It was taught: '[The] man';[7] this tells me only that the law applies to a man; whence do I know that it applies also to a woman? When it is further stated 'That the trespass be restored'[7] we have two cases mentioned.[8] But if so, why was 'man' specifically mentioned? To show that only in the case of [a person who has reached] manhood[9] is it necessary to investigate whether he had kinsmen[10] or not, but in the case of a minor it is not necessary, since it is pretty certain that he could have no 'redeemers'.[11]

Our Rabbis taught: Unto the Lord even to the priest[12] means that the Lord acquired title to it[13] and granted it to the priest[14] of that [particular] division. You say 'to the priest of that [particular] division', but perhaps it is not so, but to any priest whom the robber prefers? — Since it is further stated, Beside the ram of atonement whereby he shall make an atonement for him,[12] it proves that Scripture referred to the priest of that [particular] division.

Our Rabbis taught: In the case where the robber was a priest, how do we know that he is not entitled to say: Since the payment would [in any case] have to go to the priests, now that it is in my possession it should surely remain mine? Cannot he argue that if he has a title to payment which is in the possession of others,[15] all the more should he have a title to payment which he has in his own possession? R. Nathan put the argument in a different form: Seeing that a thing in which he had no share until it actually entered his possession cannot be taken from him once it has entered his possession,[16] does it not stand to reason that a thing[17] in which he had a share[18] even before it came into his possession cannot be taken from him once it has come into his possession?[19] This, however, is not so: for while this may be true[20] of a thing in which he had no share, since in that case just as he had no share in it, so has nobody else any share in it, it is not necessarily true[20] of the proceeds of robbery where just as he has a share in it, so also have others a share in it.[21] The [payment for] robbery must therefore be taken away from his possession and shared out to all his bretheren the priests. But is it not written: And every man's hallowed things shall be his?[22] — We are dealing here with a priest who was [levitically] defiled.[23] But if the priest was defiled, could there be anything in which he should have a share?[24] — [The fact is that] the ruling[25] is derived by the analogy of the term, 'To the priest'[26] to a similar term 'To the priest' occurring in the case of a field of [Permanent] possession,[27] as taught:[28] What is the point of the words the [permanent] possession thereof?[27] [The point is this:] How can we know that if a field which would [in due course] have to fall to the priests in the jubilee[27] but was redeemed by one of the priests, he should not have the right to say, 'Since the field is destined to fall to the priests in the jubilee and as it is already in my possession it should remain mine, as is indeed only reasonable to argue, for since I have a title to a field in the possession of others, should this not be the more so when the field is in my own possession?' The text therefore significantly says. As a field devoted, the [permanent] possession thereof shall be the priest's, to indicate that a field of [permanent] possession[29] remains with him, whereas this [field][30] will not

remain with him.[31] What then is to be done with it? It is taken from him and shared out to all his brethren the priests.

Our Rabbis taught: Whence can we learn that a priest is entitled to come and sacrifice his offerings at any time and on any occasion he prefers? It is significantly stated, And come with all the desire of his mind . . . and shall minister.[32] But whence can we learn that the fee for the sacrificial operation[33] and the skin of the animal will belong to him? It is stated: And every man's hallowed thing shall be his,[34] so that if he was blemished,[35] he has to give the offering to a priest of that particular division, while the fee for the operation and the skin will belong to him,

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(1) V. p. 635. n. I.

(2) Who subsequently died without legal issue.

(3) For since the proselyte died without leaving legal issue, why should the robber not acquire title to the payment due for the robbery which is in his possession.

(4) For if the confession was made prior to his death the amount to be paid would have become a liability as a debt upon the robber and would thus become remitted through the subsequent death of the proselyte; cf. supra p. 283.

(5) Lit., 'the Name'.

(6) V. Men. 45b.

(7) V. p. 636, n. 3.

(8) Either because the term expressing 'recompense' or because the term expressing 'trespass' occurs there twice in the text (Rashi). — This solves the question propounded by R. Aaron.

(9) I.e., a proselyte who died after having already come of age.

(10) I.e., descendants, for his ancestors and collateral relatives are not entitled to inherit him; v. Kid. 17b.

(11) V. also Sanh. 68a-69b.

(12) V. p. 636, n. 3.

(13) V. p. 637, n. 7.

(14) On duty at the time of restoration. The priests were divided into twenty-four panels; v. I. Chron. XXIV, 1-18.

(15) [For as soon as the robbery of a proselyte is placed in the charge of a particular division, all priests of that division share a title to it.]

(16) [A priest may come and offer his own sacrifice at any time and retain the flesh and skin for himself without sharing it with the priests of the division on duty. Once he however gave it to another priest who hitherto had no title to it, he cannot reclaim it of him.]

(17) Such as payment for a robbery committed upon a proselyte.

(18) As soon as it was restored to anyone of the division.

(19) As in the case where the priest himself was the robber.

(20) That a priest may retain for himself the priestly portions in his possession.

(21) V. p. 638, n. 8.

(22) Num. V, 10. So that the right to sacrifice the trespass offering would be his. The flesh therefore consequently belongs to him, in which case the payment for the robbery should similarly remain with him.

(23) And as he is thus unable himself to sacrifice the trespass offering he cannot retain the payment.

(24) V. Zeb. XII, 1; how then comes it to be stated in the text that he would be entitled to a share as soon as it was restored to any one of the division?

(25) That a priest may not retain for himself the payment for a robbery he committed upon a proselyte, though he himself had a right to the sacrifice and the whole of the flesh.

(26) V. p. 636, n. 3.

(27) Cf. Lev. XXVII, 21.

(28) 'Ar. 25b.

(29) Which belonged as such to his father and was inherited by him; cf. Rashi' Ar. 25b.

(30) Which he redeemed from the Temple treasury.

(31) After the arrival of the jubilee.

(32) Deut. XVIII, 6-7.

(33) Lit., 'the reward of the service thereof'. I.e., the priestly portions thereof.

(34) Num. V. 10.
(35) And thus himself unable to sacrifice but able to partake of the portions in accordance with Lev. XXI, 17-22.

Talmud - Mas. Baba Kama 110a

but if he was old or infirm[1] he may give it to any priest[2] he prefers, and the fee for the operation and the skin will belong to the members of the division.[3] How are we to understand this 'old or infirm priest'? If he was still able to perform the service,[4] why should the fee for the sacrifice and the skin similarly not be his? If on the other hand he was no longer able to perform the service, how can he appoint an agent?[5] — Said R. Papa: He was able to perform it only with effort, so that in regard to the service which even though carried out only with effort is still a valid service he may appoint an agent, whereas in regard to the eating which if carried through only with effort would constitute an abnormal eating,[6] which is not counted as anything[7] [in the eyes of the law], the fee for the sacrifice and the skin must belong to the members of the division.

R. Shesheth said: If a priest [in the division] is unclean, he has the right to hand over a public sacrifice to whomever[2] he prefers.[8] but the fee and the skin will belong to the members of the division. What are the circumstances? If there were in the division priests who were not defiled, how then could defiled priests perform the service?[9] If on the other hand there were no priests there who were not defiled, how then could the fee for the sacrifice and the skin belong to the members of the division who were defiled and unable to partake of holy food?[10] — Said Raba: Read thus: '[The fee for it and the skin of it will belong] to blemished undefiled priests[11] in that particular division.' R. Ashi said: Where the high priest was an Onan[12] he may hand over his sacrifice to any priest[13] he prefers,[14] whereas the fee for it and the skin of it will belong to the members of the division. What does this tell us [which we do not already know?] Was it not taught: 'The high priest may sacrifice even while an Onan, but he may neither partake of the sacrifice, nor [even] acquire any share in it for the purpose of partaking of it in the evening'?[15] — You might have supposed that the concession made by the Divine Law to the high priest[12] was only that he himself should perform the sacrifice, but not that he should be entitled to appoint an agent; we are therefore told that this is not the case.

MISHNAH. IF ONE ROBBED A PROSELYTE AND [AFTER HE] HAD SWORN TO HIM [THAT HE DID NOT DO SO], THE PROSELYTE DIED, HE WOULD HAVE TO PAY THE PRINCIPAL AND A FIFTH TO THE PRIESTS, AND BRING A TRESPASS OFFERING TO THE ALTAR, AS IT IS SAID: BUT IF THE MAN HAVE NO KINSMAN TO RESTORE THE TRESPASS UNTO, LET THE TRESPASS BE RESTORED UNTO THE LORD, EVEN TO THE PRIEST; BESIDE THE RAM OF ATONEMENT WHEREBY AN ATONEMENT SHALL BE MADE FOR HIM.[16] IF WHILE HE WAS BRINGING THE MONEY AND THE TRESPASS OFFERING UP TO JERUSALEM HE DIED [ON THE WAY], THE MONEY WILL BE GIVEN TO HIS HEIRS,[17] AND THE TRESPASS OFFERING WILL BE KEPT ON THE PASTURE UNTIL IT BECOMES BLEMISHED,[18] WHEN IT WILL BE SOLD AND THE VALUE RECEIVED WILL GO TO THE FUND OR FREEWILL OFFERINGS.[19] BUT IF HE HAD ALREADY GIVEN THE MONEY TO THE MEMBERS OF THE DIVISION AND THEN DIED, THE HEIRS HAVE NO POWER TO MAKE THEM GIVE IT UP, AS IT IS WRITTEN, WHATSOEVER ANY MAN GIVE TO THE PRIEST IT SHALL BE HIS.[20] IF HE GAVE THE MONEY TO JEHOIARIB[21] AND THE TRESPASS OFFERING TO JEDAIAH,[22] HE HAS FULFILLED HIS DUTY.[23] IF, HOWEVER, THE TRESPASS OFFERING WAS FIRST GIVEN TO JEHOIARIB AND THEN THE MONEY TO JEDAIAH, IF THE TRESPASS OFFERING IS STILL IN EXISTENCE THE MEMBERS OF THE JEDAIAH DIVISION WILL HAVE TO SACRIFICE IT,[24] BUT IF IT IS NO MORE IN EXISTENCE HE WOULD HAVE TO BRING ANOTHER TRESPASS OFFERING; FOR HE WHO BRINGS [THE RESTITUTION FOR] ROBBERY BEFORE HAVING BROUGHT THE TRESPASS OFFERING FULFILS HIS OBLIGATION, WHEREAS HE WHO BRINGS THE TRESPASS OFFERING BEFORE HAVING

BROUGHT [THE RESTITUTION FOR] THE ROBBERY HAS NOT FULFILLED HIS OBLIGATION. IF HE HAS REPAID THE PRINCIPAL BUT NOT THE FIFTH, THE [NON-PAYMENT OF THE] FIFTH IS NO BAR [TO HIS BRINGING THE OFFERING].

GEMARA. Our Rabbis taught: The trespass:[25] this indicates the Principal; be restored: this indicates the Fifth. Or perhaps this is not so, but 'the trespass' indicates the ram, and the practical difference as to which view we take would involve the rejection of the view of Raba, for Raba said: '[Restitution for] robbery committed upon a proselyte, if made at night time does not fulfil the obligation, nor does restitution by halves, the reason being that the Divine Law termed it trespass?[26] — Since it says later 'beside the ram of atonement', you must surely say that 'the trespass' is the Principal.

Another [Baraitha]: 'The trespass' is the Principal, 'be restored' is the Fifth. Or perhaps this is not so, but 'the trespass' means the Fifth and the practical difference as to which view we take, would involve the rejection of the ruling of our Mishnah, viz. IF HE HAS REPAID THE PRINCIPAL BUT NOT THE FIFTH, THE [NONPAYMENT OF THE] FIFTH IS NO BAR', for in this case on the contrary the [non-payment of the] Fifth would be a bar?[27] — Since it has already been stated: And he shall recompense his trespass with the Principal thereof and add unto it a Fifth thereof,[28] you must needs say that the trespass is the Principal.

Another [Baraitha] taught: 'The trespass'[29] is the Principal, 'be restored' is the Fifth, as the verse here deals with robbery committed upon a proselyte. Or perhaps this is not so, but 'be restored' indicates the doubling of the payment, the reference being to theft[30] committed upon a proselyte? — Since it has already been stated: And he shall restore his trespass with the Principal thereof and add unto it a Fifth part thereof,[28] it is obvious that Scripture deals here with money which is paid as Principal.[31]

[To revert to] the above text. 'Raba said: [Restitution for] robbery committed upon a proselyte, if made at night time would not be a fulfilment of the obligation, nor would it if made in halves, the reason being that the Divine Law termed it trespass;' Raba further said: If [in the restitution for] robbery committed upon a proselyte there was not the value of a perutah[32] for each priest [of the division] the obligation would not be fulfilled, because it is written: 'The trespass be recompensed' which indicates that unless there be recompense to each priest [there is no atonement]. Raba thereupon asked: What would be the law if it were insufficient with respect to the division of Jehoiarib,[33] but sufficient

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(1) Competent to sacrifice but unable to partake of the portions.

(2) Even of another division.

(3) Men. 74a. For a transposed text cf. J. Yeb. XI, 10.

(4) For priests unlike levites do not become disqualified by age; v. Hul. 1, 6.

(5) Cf. Kid. 23b.

(6) Cf. however Shab. 76a and supra 19b.

(7) Cf. Yoma 80b; and Pes. 107b.

(8) For since he himself can perform the service he can hand it over to whomever he likes.

(9) And since he could not perform the service he should surely be unable to transfer it to whomever he wishes.

(10) V. Zeb. XII, 1.

(11) V. p. 640, n. 6.

(12) I.e., a mourner on the day of the death of a kinsman; V. Lev, XXI, 10-12.

(13) V. p. 640, n. 8.

(14) V. p. 640, n. 14.

(15) Tosef. Zeb. XI, 2; cf. Yoma 13b.

(16) Num. V, 8.

(17) I.e., of the robber.
(18) And thus unfit to be sacrificed, cf. Lev. XXII, 20.
(19) Cf. Shek. VI, 5.
(20) Num. V, 10.
(21) I.e., to a member of the Jehoiarib division, which was the first of the twenty-four divisions of the priests; cf. I Chron. XXIV, 7.
(22) I.e., to a member of the Jedaiah division, which was the second of the priestly divisions, v. ibid.
(23) For the payment of the money has to precede the trespass offering.
(24) For Jehoiarib had no right to accept the trespass offering before the money was paid.
(25) Num. V. 8.
(26) And an offering could not be sacrificed at night time. [Consequently should it be assumed that 'the trespass' denotes the ram and not the Principal Raba's ruling would be rejected.]
(27) Being the trespass.
(28) Num. V, 7.
(29) Num. V, 8.
(30) Which is subject to Ex. XXII, 3.
(31) And not with double payment.
(32) V. Glos.
(33) Consisting of many priests.

Talmud - Mas. Baba Kama 110b

for the division of Jedaiah?[1] What are the circumstances? If we suppose that he paid it to Jedaiah during the time [of service] of the division of Jedaiah,[1] surely in such a case the amount is sufficient?[2] — No, we must suppose that he paid it to Jedaiah[1] during the time of the division of Jehoiarib. Now, what would be the law? Shall we say that since it was not in the time of his division, the restoration is of no avail, or perhaps since it would not do for Jehoiarib it was destined from the very outset to go to Jedaiah? — Let this stand undecided.

Raba again asked: May the priests set [one payment for] a robbery committed upon a proselyte against another [payment for a] robbery committed upon a proselyte? Shall we say that since the Divine Law designated it trespass,[3] therefore, just as in the case of a trespass offering, one trespass offering can not be set against another trespass offering,[4] so also in the case of [payment for] a robbery committed upon a proselyte, one [payment for] robbery committed upon a proselyte cannot be set against another [payment for] robbery committed upon a proselyte[5] or perhaps [since payment for] robbery committed upon a proselyte is a matter of money, [it should not be subject to this restriction]? He however subsequently decided that [as] the Divine Law termed it trespass, [it should follow the same rule]. R. Aha the son of Raba stated this explicitly. Raba said: The priests have no right to set one [payment for a] robbery committed upon a proselyte against another [payment for] robbery committed upon a proselyte, the reason being that the Divine Law termed it trespass.

Raba asked: Are the priests in relation to [the payment for] robbery committed upon a proselyte in the capacity of heirs[6] or in the capacity of recipients of endowments? A practical difference arises where e.g., the robber misappropriated leaven and Passover meanwhile passed by.[7] If now you maintain that they are in the capacity of heirs, it will follow that what they inherited they will have,[8] whereas if you maintain that they are recipients of endowments, the Divine Law surely ordered the giving of an endowment, and in this case nothing would be given them since the leaven is considered [in the eye of the law] as being mere ashes.[9] R. Ze'ira put the question thus: Even if you maintain that they are recipients of endowments, then still no question arises, since it is this endowment [originally due to the proselyte] which the Divine Law has enjoined to be bestowed upon them.[10] What, however, is doubtful to us is where e.g., ten animals fell to the portion of a priest as [payment for] robbery committed upon a proselyte. Is he then under an obligation to set aside a tithe[11] or not?

Are they [the priests] heirs, in which case the dictum of the master applies that [where] heirs have bought animals out of the funds of the general estate they would be liable [to tithe], or are they perhaps endowment recipients in which case we have learnt 'He who buys animals or receives them as a gift is exempt from the law of tithing animals'?[12] Now, what should be the law?[13] — Come and hear: Twenty-four priestly endowments were bestowed upon Aaron and his sons. All these were granted to him by means of a generalisation followed by a specification which was in its turn followed again by a generalisation[14] and a covenant of salt[15] so that to fulfil them is like fulfilling [the whole law which is expounded by] generalisation, specification and generalisation and [like offering all the sacrifices forming] the covenant of salt,[16] whereas to transgress them is like transgressing [the whole Torah which is expounded by] generalisation, specification and generalisation, and [all the sacrifices forming] the covenant of salt. They are these: Ten to be partaken in the precincts of the Temple, four in Jerusalem and ten within the borders [of the Land of Israel]. The ten in the precincts of the Temple are: A sin offering of an animal,[17] a sin offering of a fowl,[18] a trespass offering for a known sin,[19] a trespass offering for a doubtful sin,[20] the peace offering of the congregation,[21] the log of oil in the case of a leper,[22] the remnant of the Omer,[23] the two loaves,[24] the shew bread[25] and the remnant of meal offerings.[26] The four in Jerusalem are: the firstling.[27] the first of the first fruits,[28] the portions separated in the case of the thank offering[29] and in the case of the ram of the Nazirite[30] and the skins of [the most] holy sacrifices.[31] The ten to be partaken in the borders [of the Land of Israel] are: terumah,[32] the terumah of the tithe,[33] hallah,[34] the first of the fleece,[35] the portions[36] [of unconsecrated animals], the redemption of the son,[37] the redemption of the firstling of an ass,[38] a field of possession,[39] a field devoted,[40] and [payment for a] robbery committed upon a proselyte.[41] Now, since it is here designated an 'endowment', this surely proves that the priests are endowment recipients in this respect.[42] This proves it.

BUT IF HE HAD ALREADY GIVEN THE MONEY TO THE MEMBERS OF THE DIVISION etc. Abaye said: We may infer from this that the giving of the money effects half of the atonement: for if it has no [independent] share in the atonement, I should surely say that it ought to be returned to the heirs, on the ground that he would never have parted with the money upon such an understanding.[43] But if this could be argued, why should a sin offering whose owner died not revert to the state of unconsecration,[44] for the owner would surely not have set it aside upon such an understanding?[45] — It may however be said that regarding a sin offering whose owner died there is a halachah handed down by tradition that it should be left to die.[46] But again, according to your argument, why should a trespass offering whose owner died not revert to the state of unconsecration,[47] as the owner would surely not have set it aside upon such an understanding? — With regard to a trespass offering there is similarly a halachah handed down by tradition that whenever [an animal, if set aside as] a sin offering would be left to die, [if set aside as] a trespass offering it would be subject to the law of pasturing.[46] But still, according to your argument why should a deceased brother's wife on becoming bound to one affected with leprosy not be released [even] without the act of halizah,[48] for surely she would not have consented to betroth herself[49] upon this understanding?[50] — In that case we all can bear witness[51]

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(1) Which consisted of not so many priests.

(2) For the priests of the division; why at all consider the number of the priests of a different division?

(3) V. p. 643, n. 8.

(4) But each offering is distributed among all the priests of the division; v. Kid, 531 and Men. 73a.

(5) But each payment would have to be shared by all the priests of the division.

(6) Of the proselyte so far as this liability is concerned,

(7) Rendering the leaven forbidden for any use; v. supra p. 561 and Pes. II. 2.

(8) I.e., whether they would be able to make use of it or not.

(9) Cf. Tem. VII, 5.

(10) The priests could thus never be in a better position then the proselyte himself.

(11) In accordance with Lev. XXVII, 32.

(12) Cf, Bek. IX, 3.
(13) Here where a priest received animals in payment for a robbery committed upon a proselyte.
(14) V. supra, p. 364. [Generalisation: Num. XVIII, 8, where the priestly portions are referred to in general terms; specification: verses 9-18, where they are enumerated; second generalisation: verse 19, where they are again mentioned generally.]
(15) Cf. Num. XVIII, 8-19.
(16) Lev. II, 13.
(17) Ibid. VI, 17-23.
(18) Ibid. V, 8.
(19) For which cf. ibid. V, 14-16; 20-26; ibid. XIX, 20-22 a.e.
(20) Ibid. V, 17-19.
(21) Ibid. XXIII, 19-20.
(22) Ibid. XIV, 12.
(23) Lit., 'Sheaf' referred to in Lev. XXIII, 10-12; the remainder of this meal offering after the handful of flour has been taken and sacrificed, is subject to Lev. VI, 9-11.
(24) Referred to in Lev. XXIII, 17.
(25) Dealt with in Ex. XXV, 30 and Lev. XXIV, 5-9.
(26) Lev. II, 3
(27) Num. XVIII, 17-18.
(28) Cf. Ex. XXIII, 19 and Num. XVIII, 13; v, also Deut. XII, 17 and XXVI, 2-10.
(29) Lev. VII, 11-14.
(30) Num. VI, 14-20.
(31) Such as of the burnt and of the sin and of the trespass offerings; for the skins of the minor sacrifices belong to the donors; v, Zeb. 103b.
(32) Cf. Num. XVIII, 12; v. Glos.
(33) Cf. ibid. 25-29.
(34) I.e., the first of the dough; v. Num. XV, 18-21.
(35) Deut. XVIII, 4.
(36) Lit., 'the gifts'; v. Deut. ibid. 3.
(37) Num. XVIII, 15-16.
(38) Ex. XIII, 13.
(39) Cf. Lev. XXVII, 16-21.
(40) Num. XVIII, 14.
(41) Hul. 133b. Tosef. Hal. II.
(42) I.e., the payment for robbery committed upon a proselyte.
(43) I.e., to obtain no atonement and yet lose the money.
(44) Why then should it be destined by law to die as stated in Tem. II, 2.
(45) That it should be unable to serve any purpose and yet remain consecrated.
(46) No stipulation to the contrary could therefore be of any avail; cf. e.g. Pe'ah VI, 11 and B.M. VII, 11.
(47) Why then should it be kept on the pastures until it will become blemished, as also stated supra p. 642.
(48) I.e., the loosening of his shoe, as required in Deut. XXV, 9; cf. Glos,
(49) And as the retrospective annulment of the betrothal would be not on account of the death of the husband but on account of his brother being a leper, this case, unlike that of the sin offering or trespass offering referred to above, could not be subject to Pe'ah VI, 11 and B.M. VII, 11.
(50) I.e., to become bound to (the husband's brother who was) a leper; cf. Keth. VII, 10.
(51) The brother who died but who had no deformity.

Talmud - Mas. Baba Kama 111a

that she was quite prepared to accept any conditions,[1] as we learn from Resh Lakish; for Resh Lakish said:[2] it is better [for a woman] to dwell as two[3] than to dwell in widowhood.[4]

WHERE HE GAVE THE MONEY TO JEHOIARIB AND THE TRESPASS OFFERING TO JEDAIAH etc. Our Rabbis taught: Where he gave the trespass offering to Jehoiarib and the money to Jedaiah the money will have to be brought to [whom] the trespass offering [is due].[5] This is the view of R. Judah, but the Sages say that the trespass offering will have to be brought[6] to [whom] the money [is due].[7] What are the circumstances? Do we suppose that the trespass offering was given to Jehoiarib during the [time of the] division of Jehoiarib and so also the money was given to Jedaiah during the [time of the] division of Jedaiah? If so, why should the one not acquire title to his and the other to his?[8] — Said Raba: We are dealing here with a case where the trespass offering was given to Jehoiarib during the [time of the] division of Jehoiarib and [so also] the money was given to Jedaiah during [the time of] the division of Jehoiarib. In such a case R. Judah maintained that since it was not [the time of] the division of Jedaiah,[9] it is Jedaiah whom we ought to penalise, and the money has therefore to be brought to the [place of the] trespass offering,[5] whereas the Rabbis maintained that as it was the members of the Jehoiarib division that acted unlawfully[7] in having accepted the trespass offering before the money,[10] it is they who have to be penalised and the trespass offering accordingly should be brought[6] to the [place where] the money [is due].[7]

It was taught: Rabbi said: According to the view of R. Judah, if the members of the Jehoiarib division had already sacrificed the trespass offering,[11] the robber would have to come again and bring another trespass offering which will now be sacrificed by the members of the Jedaiah division,[12] though the others[13] would acquire title to that which remained in their possession.[14] But I would fain ask: For what could the disqualified trespass offering have any value? — Said Raba: For its skin.[15]

It was taught: Rabbi said: According to R. Judah, if the trespass offering was still in existence, the trespass offering will have to be brought[16] to [whom] the money [is due]. But is R. Judah not of the opinion that the money should be brought to [whom] the trespass offering [is due]?[17] We are dealing here with a case where e.g. the division of Jehoiarib has already left without, however, having made any demand,[18] and what we are told therefore is that this should be considered as a waiving of their right in favour of the members of the division of Jedaiah.

Another [Baraitha] taught again: Rabbi said: According to R. Judah, if the trespass offering was still in existence, the money would have to be brought to [whom] the trespass offering [is due].[19] But is this not obvious, since this was actually his view? — We are dealing here with a case where e.g., the divisions of both Jehoiarib and Jedaiah have already left without having made any demand [on each other].[20] In this case you might have thought that they mutually waived their claim on each other.[21] We are therefore told that since there was no demand from either of them[22] we say that the original position must be restored.[23]

FOR HE WHO BRINGS [THE PAYMENT FOR] ROBBERY BEFORE HAVING BROUGHT THE TRESPASS OFFERING [FULFILLS HIS DUTY, WHEREAS HE WHO BRINGS THE TRESPASS OFFERING BEFORE HAVING BROUGHT THE PAYMENT FOR ROBBERY DID NOT FULFILL HIS DUTY]. Whence can these rulings be derived? — Said Raba: Scripture states: Let the trespass be restored unto the Lord, even to the priest, beside the ram of the atonement whereby an atonement shall be made for him,[24] thus implying[25] that the money must be paid first. One of the Rabbis, however, said to Raba: But according to this reasoning will it not follow that in the verse: Ye shall offer these beside the burnt offering in the morning[26] it is similarly implied[27] that the additional offering will have to be sacrificed first? But was it not taught:[28] Whence do we know that no offering should be sacrificed prior to the continual offering of the morning?[29] Because it is stated, And lay the burnt offering in order upon it[30] and Raba stated: 'The burnt offering'[30] means the first burnt offering?[31] — He, however, said to him: I derive it[32] from the clause:[29] 'Whereby an atonement shall be made for him' which indicates[33] that the atonement has not yet been made.

WHERE HE PAID THE PRINCIPAL BUT DID NOT PAY THE FIFTH, THE [NON-PAYMENT OF THE] FIFTH IS NO BAR.

Our Rabbis taught: Whence could it be derived that if he brought the Principal due for sacrilege,[34] but had not yet brought the trespass offering,[35] or if he brought the trespass offering but had not yet brought the Principal due for sacrilege, he did not thereby fulfil his duty? Because it says: With the ram of the trespass offering and it shall be forgiven him[36] . Again, whence could it be derived that if be brought his trespass offering before he brought the Principal due for the sacrilege he did not thereby fulfil his duty? Because it says, 'With the ram of the trespass,' implying that the trespass [itself][37] has already been made good. It might be thought that just as the ram and the trespass are indispensable, so should the Fifth be indispensable? It is therefore stated: 'With the ram of the trespass offering and it shall he forgiven him,' implying that it was only the ram and the trespass which are indispensable in [the atonement for the sacrilege of] consecrated things, whereas the Fifth is not indispensable. Now, the law regarding consecrated things[38] could be derived from that regarding private belongings[39] and that of private belongings could be derived from the law regarding consecrated things. The law regarding consecrated things could be derived from that regarding private belongings: just as 'trespass' there[39] denotes the Principal[40] so does 'trespass' here[38] denote the Principal. The law regarding private belongings could be derived from that regarding consecrated things; just as in the case of consecrated things the Fifth is not indispensable, so in the case of private things the Fifth is similarly not indispensable.

CHAPTER X

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(1) Regarding the state of the husband's brother,

(2) Keth. 75a.

(3) טן דו two bodies, (Rashi); last. 'with a load of grief'.

(4) So that irrespective of any undesirable consequences whatsoever it was an advantage to her to become betrothed to 'the person she hath chosen to dwell together'; cf. Rashi a.l.

(5) I.e. to Jehoiarib.

(6) To Jedaiah.

(7) V. p. 642, n. 7.

(8) At least so far as the division of Jedaiah accepting the money is concerned; why then did R. Judah order the payment to be taken away from Jedaiah and handed over to Jehoiarib?

(9) That Jedaiah accepted the money.

(10) V. p. 642, n. 8.

(11) Before the money was paid, in which case the trespass offering becomes disqualified.

(12) To whom the money was paid and not by Jehoiarib who accepted the previous trespass offering.

(13) I.e., of the Jehoiarib division.

(14) I.e., to the disqualified trespass offering.

(15) V. p. 646, n. 16.

(16) V. p. 648, n. 6.

(17) V. p. 648, n. 5.

(18) For the money accepted by Jedaiah.

(19) To Jehoiarib.

(20) Regarding the money and the trespass offering.

(21) And the money should thus remain with Jedaiah.

(22) Even from Jedaiah (during his time of service) for the trespass offering accepted by Jehoiarib.

(23) I.e., the money will be handed over to Jehoiarib who will sacrifice the trespass offering when their time of service will come round again.

(24) Num. V, 8.

(25) Probably in the term 'beside'.

(26) Num. XXVIII, 23.

(27) In the term ‘beside’.
(28) Pes. 58b.
(29) Cf. Num. XXVIII, 2-4.
(30) Lev. VI, 5.
(31) Cf. Hor, 12a.
(32) Not from the term ‘beside’.
(33) By having the verb in the future tense.
(34) Cf. Lev. V, 16.
(35) In accordance with ibid. 15.
(36) Ibid. 16,
(37) I.e., the payment of the Principal as supra p.642.
(38) Lev. V, 15-16.
(39) Num. V, 6-8.
(40) V. p. 650, n. 14.

Talmud - Mas. Baba Kama 111b

MISHNAH. IF ONE MISAPPROPRIATED [FOODSTUFF] AND FED HIS CHILDREN OR LEFT [IT] TO THEM [AS AN INHERITANCE], THEY WOULD NOT BE LIABLE TO MAKE RESTITUTION, BUT IF THERE WAS ANYTHING [LEFT] WHICH COULD SERVE AS SECURITY THEY WOULD BE LIABLE TO PAY.

GEMARA. R. Hisda said: If one misappropriated [an article] and before the owner gave up hope of recovering it, another person came and consumed it, the owner has the option of collecting payment from either the one[1] or the other,[2] the reason being that so long as the owner did not give up hope of recovery, the misappropriated article is still in the ownership of the original possessor.[3] But we have learnt: IF ONE MISAPPROPRIATED [FOODSTUFF] AND FED HIS CHILDREN[1] [WITH IT], OR LEFT [IT] TO THEM [AS AN INHERITANCE], THEY WOULD NOT BE LIABLE TO MAKE RESTITUTION. Now, is this not a contradiction to the view of R. Hisda? — R. Hisda might say to you that this holds good only after the owner has given up hope.[4]

[IF HE] LEFT [IT] TO THEM [AS AN INHERITANCE], THEY WOULD NOT BE LIABLE TO MAKE RESTITUTION. Rami b. Hama said: This [ruling] proves that the possession of an heir is on the same footing in law as the possession of a purchaser;[5] Raba, however, said the possession of an heir is not on a par with the possession of a purchaser,[6] for here we are dealing with a case where the food was consumed [after the father's death].[7] But since it is stated in the concluding clause, BUT IF THERE WAS ANYTHING [LEFT] WHICH COULD SERVE AS SECURITY[8] THEY WOULD BE LIABLE TO PAY[9] does it not imply that even in the earlier clause[10] we are dealing with a case where the misappropriated article was still in existence?[11] Raba could however say to you that what is meant is this: If their father left them property constituting [legal] security[12] they would be liable to pay.[13] But did Rabbi not teach[14] his son R. Simeon that ‘ANYTHING WHICH COULD SERVE AS SECURITY should not [be taken literally to] mean actual security, for even if he left a cow to plough with or an ass to be driven,[15] they would be liable to restore it, to save their father's good name? — Raba therefore said: When I pass away R. Oshaia will come out to meet me,[16] since I am explaining the Mishnaic text in accordance with his teaching, for R. Oshaia taught: Where he misappropriated [foodstuff] and fed his children, they would not have to make restitution. If he left it to them [as an inheritance] so long as the misappropriated article is in existence they will be liable, but as soon as the misappropriated article is no more intact they will be exempt. But if their father left them property constituting [legal] security they would be liable to pay.

The Master stated: ‘As soon as the misappropriated article is no more intact they would be exempt.’ Should we not say that this is a contradiction to the view of R. Hisda?[17] — R. Hisda could

say to you that the ruling [here] applies subsequent to Renunciation.[18]

The Master said: 'So long as the misappropriated article is in existence they will be liable to pay.' Should we not say that this is a contradiction to the view of Rami b. Hama?[19] — But Rami b. Hama could say to you that this teaching

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(1) I.e., the one who robbed him.

(2) I.e., the one who later on consumed the article.

(3) V. J. Ter. VII, 3.

(4) I.e., the foodstuff was consumed after the proprietor had resigned himself to the loss of it completely.

(5) Maintaining that if after renunciation the robber died, the misappropriated article could rightly remain with the heirs, just as with purchasers under similar circumstances; cf. supra p. 393, n. 5; v. also B.B. 44a.

(6) The article could therefore not rightly remain with the heirs though it would have remained with a purchaser.

(7) But if still intact it would go back to the proprietor.

(8) Now assumed to denote garments and similar conspicuous articles, as would be the case with real property.

(9) For the sake of honouring their father.

(10) Which states the law in the case of inconspicuous articles such as food and the like.

(11) And the heirs seem nevertheless to have the right to retain it.

(12) I.e., realty.

(13) For the father's realty became legally mortgaged for the liability arising out of the robbery he committed.

(14) Infra 113a.

(15) But in the case of inconspicuous things such as food and the like, the heirs would be entitled to retain them.

(16) V. B.M. 62b.

(17) According to whom the person who consumed the misappropriated article could also be called upon to pay.

(18) I.e., the foodstuff was consumed after the proprietor had resigned himself to the loss of it completely.

(19) Maintaining that if after Renunciation the robber died, the misappropriated article could rightly remain with the heirs, just as with purchasers under similar circumstances; cf. supra p. 652; v. also B.B. 44a.

applies prior to Renunciation.[1]

R. Adda b. Ahabah read the statement of Rami b. Hama with reference to the following [teaching]:[2] 'If their father left them money acquired from usury they would not have to restore it even though they [definitely] know that it came from usury. [And it was in connection with this that] Rami b. Hama said that this proves that the possession of an heir is on the same footing as the possession of a purchaser,[3] whereas Raba said: I can still maintain that the possession of an heir is not on the same footing as the possession of a purchaser, for here there is a special reason, as Scripture states: Take thou no usury of him or increase but fear thy God that thy brother may live with thee[4] [as much as to say.] 'Restore it to him so that he may live with thee.' Now, it is the man himself who is thus commanded[5] by the Divine Law, whereas his son is not commanded[5] by the Divine Law. Those who attach the argument[6] to the Baraitha[7] would certainly connect it also with the ruling of our Mishnah,[8] but those who attach to our Mishnah might maintain that as regards the Baraitha[9] Rami b. Hama expounds it in the same way as Raba.[10]

Our Rabbis taught: If one misappropriated [foodstuff] and fed his children, they would not be liable to repay. If, however, he left it [intact] to them, then if they are adults they would be liable to pay, but if minors they would be exempt. But if the adults pleaded: 'We have no knowledge of the accounts which our father kept with you.' they also would be exempt. But how could they become exempt merely because they plead.'We have no knowledge of the accounts which our father kept with you'?[11] Said Raba: What is meant is this, 'If the adults pleaded: "We know quite well the accounts which our father kept with you and are certain that there was no balance in your favour"

they also would be exempt.'Another [Baraitha] taught: If one misappropriated [foodstuff] and fed his children, they would not be liable to repay. If, however, he left it [intact] to them and they consumed it, whether they were adults or minors, they would be liable. But why should minors be liable? They are surely in no worse a case than if they had wilfully done damage?[12] — Said R. Papa: What is meant is this: If, however he left it [intact] before them and they had not yet consumed it, whether they were adults or minors, they would be liable.[13]

Raba said:[14] If their father left them a cow which was borrowed by him, they may use it until the expiration of the period for which it was borrowed, though if it [meanwhile] died they would not be liable for the accident.[15] If they were under the impression that it was the property of their father, and so slaughtered it and consumed it, they would have to pay for the value of meat at the cheapest price.[16] If their father left them property that forms a [legal] security, they would be liable to pay. Some connect this [last ruling] with the commencing clause,[17] but others connect it with the concluding clause.[18] Those who connect it with the commencing clause[17] would certainly apply it to the concluding clause[19] and thus differ from R. Papa.[20] whereas those who connect it with the concluding clause[21] would not apply it in the case of the commencing clause,[22] and so would fall in with the view of R. Papa.[20] for R. Papa stated:[23] If one had a cow that he had stolen and slaughtered it on the Sabbath,[24] he would be liable,[25] for he had already become liable for the theft[26] prior to his having committed the sin of violating the Sabbath[27] but if he had a cow that was borrowed and slaughtered it on the Sabbath, he would be exempt,[28] for in this case the crime of [violating the] Sabbath and the crime of theft were committed simultaneously.[29]

Our Rabbis taught: He shall restore the misappropriated article which he took violently away.[30] What is the point of the words 'which he took violently away'?[31] Restoration should be made so long as it is intact as it was at the time when he took it violently away. Hence it was laid down: If one misappropriated [foodstuff] and fed his children they would not be liable to repay.[32] If, however, he left it to them [intact], whether they were adults or minors, they would be liable; Symmachus, however, was quoted as having ruled that [only] adults would be liable but minors would be exempt. The son[33] of R. Jeremiah's father-in-law [once] bolted the door in the face of R. Jeremiah.[34] The latter thereupon came to complain about this to R. Abin,[35] who however said to him: 'Was he[36] not merely asserting his right to his own?[37] , But R. Jeremiah said to him: 'I can bring witnesses to testify that I took possession of the premises during the lifetime of the father.'[38] To which the other[39] replied: 'Can the evidence of witnesses be accepted

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(1) For the mere transfer of possession, if the owner has not yet given up hope, is surely of no avail.

(2) Tosef. B.M. V, 8; ibid. 62a and supra 94b.

(3) And since there was here a change of possession the heirs are under no liability.

(4) Lev. XXV, 36.

(5) To make restoration.

(6) Between Rami b. Hamah and Raba.

(7) Dealing with usury.

(8) Dealing with robbery where there is no apparent reason for the exemption except the view of Rami b. Hama.

(9) Dealing with usury.

(10) I.e., on the strength of the inference from Lev. XXV, 36.

(11) For since they know of the robbery and the liability is definite, how could they be released by a plea of uncertainty as to the payment; cf. Rashi a.l. but also B.K. X, 7.

(12) In which case they are exempt; cf. supra 87a.

(13) [Since it is in intact it is considered to be then in the possession of the owner.]

(14) Cf. Keth. 34b.

(15) As the liabilities of the contract do not pass to them at least so long as they have not started using it; v. however H.M. 341 where no distinction is made.

(16) Which is generally estimated to be two-thirds of the ordinary price; cf. B.B. 146b; v. also supra p. 98.

(17) Dealing with the case where the cow died of itself.
(18) Stating the law where it was slaughtered and consumed by them.
(19) As there is certainly more liability where they slaughtered the cow than where it died of itself.
(20) Whose ruling is going to be stated soon.
(21) V. p. 655, n. 8.
(22) V. p. 655. n. 7.
(23) Cf. Keth. 34b.
(24) In violation of the Sabbath and thus became subject to capital punishment; in accordance with Ex. XXXI, 14-15; v. also supra p. 408
(25) For fivefold payment, as prescribed in Ex. XXI, 37.
(26) So far as double payment is concerned, in accordance with ibid, XXII, 3.
(27) And since he had already become liable for double payment at the time of the theft, the additional threefold payment which is purely of the nature of a fine is according to this view not affected by the fact that at the time of the slaughter he was committing a capital offence, as also explained in Keth. 34b.
(28) From civil liability.
(29) I.e., at the time of the slaughter when he had to become liable also for the Principal which is a purely civil obligation and which must therefore be merged in the criminal charge; v. also supra p. 407.
(30) Lev. V, 23.
(31) Is this not redundant?
(32) For the foodstuff was no longer intact.
(33) Who was a minor.
(34) Who was desirous of taking possession of premises that belonged to his father-in-law.
(35) MS. M. 'R. Abba'.
(36) I.e., the son of the father-in-law.
(37) In accordance with Num. XXVII, 8.
(38) Who disposed of them to me; cf. B.B. III, 3.
(39) I.e., R. Abin or R. Abba.

Talmud - Mas. Baba Kama 112b

where the other party is not present?'[1] And why not? Was it not stated: 'Whether adults or minors they would be liable'?[2] — The other rejoined: 'Is not the divergent view of Symmachus[3] under your nose?'[4] He[5] retorted: 'Has the whole world made up its mind[6] to adopt the view of Symmachus just in order to deprive me of my property? Meanwhile the matter was referred from one to another till it came to the notice of R. Abbahu[7] who said to them: Have you not heard of what R. Joseph b. Hama reported in the name of Oshaia? For R. Joseph b. Mama said that R. Oshaia stated: If a minor collected his slaves and took possession of another person's field claiming that it was his, we do not say, Let us wait till he come of age, but we wrest it from him forthwith and when he comes of age he can bring forward witnesses [to support his allegation] and then we will consider the matter? — But what comparison is there? In that case we are entitled to take it away from him because he had no presumptive title to it from his father, but in a case where he has such a presumptive title from his father, this should surely not be so.

R. Ashi[8] said that R. Shabbathai stated: [Evidence of] witnesses may be accepted even though the other party to the case is not present. Thereupon R. Johanan remarked in surprise:[9] Is it possible to accept evidence of witnesses if the other party is not present? R. Jose b. Hanina accepted from him the ruling [to apply] in the case where e.g., [either] he[10] was [dangerously] ill, or the witnesses were [dangerously] ill, or where the witnesses were intending to go abroad, and[11] the party in question was sent for but did not appear.

Rab Judah said that Samuel stated that [evidence of] witnesses may be accepted even if the other party is not present. Mar Ukba, however, said: It was explained to me in so many words from

Samuel that this is so only where e.g., the case has already been opened [in the Court] and the party in question was sent for but did not appear, whereas if the case has not yet been opened [in the Court] he might plead: 'I prefer to go to the High Court of Law'.[12] But if so even after the case had already been opened why should he similarly not plead: 'l prefer to go to the High Court of Law'? — Said Rabina: [This plea could not be put forward where] e.g., the local Court is holding a writ [of mandamus] issued by the High Court of Law.

Rab said: A document can be authenticated[13] even not in the presence of the other party [to the suit], whereas R. Johanan said that a document cannot be authenticated in the absence of the other party to the suit. R. Shesheth said to R. Joseph b. Abbahu: I will explain to you the reason of R. Johanan. Scripture says: And it hath been testified to its owner and he hath not kept him in;[14] the Torah thus lays down that the owner of the ox has to appear and stand by his ox [when testimony has to be borne against it]. But Raba said: The law is that a document may be authenticated even not in the presence of the other party; and even if he protests aloud before us [that the document is a forgery]. If, however, he says, 'Give me time till I can bring witnesses, and I will invalidate the document', we have to give him time.[15] If he appears [with witnesses] well and good, but if he does not appear we wait again over the following Monday and Thursday and Monday.[16] If he still does not appear we write a Pethiha[17] out against him to take effect after ninety days. For the first thirty days we do not take possession of his property as we say that he is busy trying to borrow money; during the next thirty we similarly do not take possession of his property as we say perhaps he was unable to raise a loan and is trying to sell his property; during the last thirty days we similarly cannot take possession of his property as we still say that the purchaser[18] himself is busy trying to raise the money. It is only if after all this he still does not appear that we write an adrakta[19] on his property. All this, however, is only if he has pleaded: 'I will come [and defend]', whereas if he said: 'I will not appear at all' we have to write the adrakta forthwith; again these rulings apply only in the case of a loan, whereas in the case of a deposit we have to write the adrakta forthwith.[20] An adrakta can be attached only to immovables but not to movables, lest the creditor should meanwhile carry off the movables and consume them so that should the debtor subsequently appear and bring evidence which invalidates the document, he would find nothing from which to recover payment. But if the creditor is in possession of immovables we may write an adrakta even upon movables.[21] This, however, is not correct; we do not write an adrakta upon movables even though the creditor possesses immovables, since there is a possibility that his property may meanwhile become depreciated in value.[22] Whenever we write an adrakta we notify this to the debtor, provided he resides nearby,[23] but if he resides at a distance this is not done. Again, even where he resides far away if he has relatives nearby or if there are caravans which take that route, we should have to wait another twelve months until the caravan is able to go there and come back, as Rabina waited in the case of Mar Aha twelve months until a caravan was able to go to Be-Huzae[24] and come back. This, however, is no proof for in that case[25] the creditor was a violent man, so that should the adrakta have come into his hand it would never have been possible to get anything back from him, whereas in ordinary cases[26] we need only wait for the usher [of the Court] to go on the third day[27] of the week and come back on the fourth day of the week so that on the fifth day of the week he himself can appear in the Court of Law. Rabina said: The usher of the Court of Law[28] is as credible[29] as two witnesses; this however applies only to the imposition of Shamta,[30] but in the case of Pethiha,[31] seeing that he[32] may be involved in expense through having to pay for the scribe,[33] this would not be so.[34]

Rabina again said: We may convey a legal summons[35] through the mouth of a woman or through the mouth of neighbours; this rule, however, holds good only where the party was at that time not in town,

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(1) And a minor is considered in law as absent to all intents and purposes. For a different description of the case cf. J. Sanh. III, 9.

(2) To restore misappropriated articles inherited by them to the legitimate proprietor.
(3) Who releases the minor heirs.
(4) Lit., 'at your side'.
(5) I.e., R. Jeremiah.
(6) Lit., 'doubled itself'.
(7) Who was the special master of R. Jeremiah, cf. B.B. 140a and Shebu. 37b; v. also B.M. 16b where R. Abbahu called him 'Jeremiah, my son.'
(8) According to R. Isaiah Berlin, this must have been an earlier R. Ashi since R. Johanan refers to this statement, but, as becomes evident from J. Sanh., III. 9, the authority here mentioned was either R. Jose or more correctly R. Assi. A similar confusion is found in Ta'an. 14a. Bek. 25a a.e.
(9) Cf. supra 76b.
(10) I.e., the plaintiff; cf. H.M. 28. 16.
(11) Whether 'and' or 'or' should be read here, cf. Tosaf. a.l. and on B.K. 39a; the text in J. Sanh. III. 9, however, confirms the former reading.
(12) In the Land of Israel; cf. supra p. 67 and Sanh. 31b.
(13) Either by taking oral evidence or by collating the signatures; cf. Keth. II. 3-4.
(14) Ex. XXI, 29.
(15) As a rule for thirty days; cf. B.M. 118a.
(16) I.e., three sittings of the Court; cf. supra p. 466.
(17) I.e., a warrant, containing also a writ of anathema. It was, besides, the opening of preliminary legal proceedings.
(18) Who might perhaps have bought some of his property.
(19) Lit. 'tracing and authorisation', i.e., a legal order to trace the debtor's property for the purpose of having it seized and assessed to the creditor for his debt; v. B.M. (Sonc. ed.) p. 95. n. 8.
(20) For the bailee has no right to detain the deposit for any period of time whatsoever.
(21) For the immovable possessions of the creditor safeguard the repayment to the debtor, should occasion arise.
(22) And would not suffice to meet the repayment.
(23) Within ten parasangs i.e. forty mil, the walking distance of one day, as in M.K. 21b; see Tur, H.M. 98, 9; cf. however Maim. Yad, Malweh we-Loweh, XXII, 4.
(24) [The modern Khuzistan, S.W. persia. Obermeyer, op. cit. p. 200 points out that the distance between Matha Mehasia (Sura) the seat of Rabina's court, and Khuzistan could be easily covered by a caravan within a three weeks' journey, and that the twelve months allowed by Rabina was probably due to some serious obstruction that impeded progress along the caravan route.]
(25) Dealt with by Rabina.
(26) Lit., 'here'.
(27) So Tur. loc. cit , but Maim. loc. cit. reads 'the second day'.
(28) Lit., 'of our Rabbis'.
(29) When stating that the party refuses to appear before the Court.
(30) I.e., oral ban.
(31) V. supra p. 659, n. 2.
(32) [The recalcitrant litigant, when he wishes to have the ban lifted.]
(33) [For drafting the writ of anathema.]
(34) For the usher would then have to corroborate his statements by some further evidence.
(35) Lit., 'give a fixed date'.

Talmud - Mas. Baba Kama 113a

but if he was then in town this would not be so, as there is a possibility that they[1] might not transmit the summons to him, thinking that the usher of the Court of Law will himself surely find him and deliver it to him. Again, we do not apply this rule except where the party would not have to pass by the door of the Court of Law, but if he would have to pass by the door of the Court of Law this would not be so, as they[2] might say that at the Court of Law they will surely find him first and deliver him the summons. Again, we do not rule thus except where the party was to come home on

the same day, but if he had not to come home on the same day this would not be so, for we might say they would surely forget it altogether.

Raba stated: Where a Pethiha was written upon a defaulter for not having appeared before the court,it will not be destroyed so long as he does not [actually] appear before the court.[3] [So also] if it was for not having obeyed the law, it will not be destroyed until he [actually] obeys the law;[3] this however is not correct: as soon as he declares his intention to obey, we have to destroy the Pethiha.

R. Hisda said: [In a legal summons] we cite the man to appear on Monday, [then] on Thursday and [then] on the next Monday, [i.e.] we fix one date and then another date after one more date, and on the morrow [of the last day] we write the Pethiha.

R. Ass.[4] happened to be at R. Kahana's where he noticed that a certain woman had been summoned to appear before the court on the previous evening, [and as she failed to appear] a Pethiha was already written against her on the following morning. He thereupon said to R. Kahana: Does the Master not accept the view expressed by R. Hisda that [in a legal summons] we cite the defendant to appear on Monday, [then] on Thursday and [then] on the next Monday? He replied: This applies only to a man who might be unavoidably prevented, through being out of town, but a woman, being [always] in town and still failing to appear is considered contumacious [after the first act of disobedience].

Rab Judah said: We never cite a defendant to appear either during Nisan,[5] or during Tishri,[5] or on the eve of a holy day or on the eve of a Sabbath. We can, however, during Nisan cite him to appear after Nisan, and so also during Tishri we may cite him to appear after Tishri, but on the eve of the Sabbath we do not cite him to appear after Sabbath, the reason being that he might be busy[6] with preparations for Sabbath.[7] R. Nahman said: We never cite the participants of the Kallah[8] during the period of the Kallah or the participants of the Festival sessions[9] during the Festive Season.[10] When plaintiffs came before R. Nahman [and demanded summonses to be made out during this season] he used to say to them: Have I assembled them for your sake? But now that there are impostors,[11] there is a risk [that they purposely came to the assemblies to escape justice].[12]

BUT IF THERE WAS ANYTHING [LEFT] WHICH COULD SERVE AS SECURITY, THEY WOULD BE LIABLE TO PAY. Rabbi taught R. Simeon his son: The words 'ANYTHING WHICH COULD SERVE AS SECURITY' should not [be taken literally to] mean actual security, for even if he left a cow to plough with or an ass to drive after, they would be liable to restore it to save the good name of their father. R. Kahana thereupon asked Rab: What would be the law in the case of a bed upon which they sit, or a table at which they eat?[13] — He replied[14] [with the verse], Give instructions to a wise man and he will yet be wiser.[15]

MISHNAH. NO MONEY MAY BE TAKEN IN CHANGE EITHER FROM THE BOX OF THE CUSTOMS-COLLECTORS[16] OR FROM THE PURSE OF THE TAX-COLLECTORS,[16] NOR MAY CHARITY BE TAKEN FROM THEM, THOUGH IT MAY BE TAKEN FROM THEIR [OWN COINS WHICH THEY HAVE AT] HOME OR IN THE MARKET PLACE. GEMARA. A Tanna taught: When he gives him[17] a denar he may receive back the balance [due to him].[18]

In the case of customs-collectors, why should the dictum of Samuel not apply that the law of the State is law?[19] — R. Hanina b. Kahana said that Samuel stated that a customs-collector who is bound by no limit [is surely not acting lawfully]. At the School of R. Jannai it was stated that we are dealing here with a customs-collector who acts on his own authority.[20] Some read these statements with reference to [the following]: No man may wear a garment in which wool and linen are mixed[21] even over ten other garments and even for the purpose of escaping the customs.[22] [And it was thereupon asked], Does not this Mishnaic ruling conflict with the view of R. Akiba, as taught: It is an

[unqualified] transgression to elude the customs;[23] R. Simeon however, said in the name of R. Akiba that customs may [sometimes] be eluded[24] [by putting on garments of linen and wool]. Now, regarding garments of linen and wool I can very well explain their difference[25] to consists in this, that while one master[26] maintained that an act done unintentionally could not be prohibited,[27] the other master maintained that an act done unintentionally should also be prohibited;[28] but is it not a definite transgression to elude the customs? Did Samuel not state that the law of the State is law? — R. Hanina b. Kahana said that Samuel stated that a customs-collector who is bound by no limit [is surely not acting lawfully]. At the School of R. Jannai it was stated that we were dealing here with a customs-collector who acted on his own authority.[29]

Still others read these statements with reference to the following: To [escape] murderers or robbers or customs-collectors one may confirm by a vow a statement that [e.g.] the grain is terumah[30] or belongs to the Royal Court, though it was not terumah and though it did not belong to the Royal Court.[31] But [why should] to customs-collectors [not] apply the statement made by Samuel that the law of the State has the force of law? R. Hanina b. Kahana said that a customs-collector who is bound by no limit [is surely not acting lawfully]. At the school of R. Jannai it was stated that we were dealing here with a customs-collector who acted on his own authority.[32] But R. Ashi said: We suppose the customs-collector[33] here to be a heathen publican[34] as it was taught: 'Where a suit arises between an Israelite and a heathen, if you can justify the former according to the laws of Israel, justify him and say: 'This is our law'; so also if you can justify him by the laws of the heathens justify him and say [to the other party:] 'This is your law'; but if this can not be done, we use subterfuges to circumvent him.[34] This is the view of R. Ishmael, but R. Akiba said that we should not attempt to circumvent him on account of the sanctification of the Name. Now according to R. Akiba the whole reason [appears to be,] because of the sanctification of the Name, but were there no infringement of the sanctification of the Name, we could circumvent him! Is then the robbery of a heathen permissible?[35] Has it not been taught[36] that R. Simeon stated that the following matter was expounded by R. Akiba when he arrived from Zifirin:[37] 'Whence can we learn that the robbery of a heathen is forbidden? From the significant words: After that he is sold[38] he may be redeemed again,[39]

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(1) I.e., the women or the neighbours.

(2) V. p. 660, n. 13.

(3) A mere promise to appear does not suffice.

(4) More correctly 'R. Ashi'.

(5) On account of urgent agricultural work; cf. Ber. 35b.

(6) And take no notice of the summons.

(7) Cf. Shab. 119a.

(8) I.e., the Assembly of Babylonian scholars in the months of Elul and Adar; v. B.M. (Sonc. ed.) p. 560, n. 6 and B.B. (Sonc. ed.) p. 60, n. 7.

(9) For otherwise they may abstain from coming to the Assemblies.

(10) Which commences thirty days before the festival; v. Pes. 6a.

(11) Abusing this privilege.

(12) And we therefore issue a summons.

(13) Which is not kept so much in the eye of the public as is the case with the cow or the ass.

(14) The law is exactly the same.

(15) Prov. IX, 9.

(16) As these are considered to act ultra vires and thus unlawfully.

(17) I.e., a customs-collector or a tax-collector.

(18) For otherwise he would lose it altogether.

(19) V. B.B. (Sonc. ed.) p. 222, n. 6. Why then are customs collectors considered as acting unlawfully.

(20) Without the authority of the ruling power.

(21) Cf. Lev. XIX, 19.

(22) Kil. IX, 2.
(23) Cf. Sem. 11, 9 and Tosef, B.K. X, 8.
(24) Where the collectors are acting unlawfully, as will soon be explained.
(25) I.e., the anonymous Tanna and R. Simeon in the name of R. Akiba.
(26) R. Simeon in the name of R. Akiba; cf. Tos. Zeb. 91b.
(27) As also maintained by R. Simeon in the case of other transgressions; v. Shab. 41b, Keth. 5b a.e.
(28) As indeed maintained by R. Judah in Shab. 41b a.e.
(29) Without the authority of the ruling power.
(30) V. Glos.
(31) Ned. III, 4.
(32) V. p. 663, n. 13.
(33) In all these cases referred to above.
(34) V. supra, p. 212, n. 6.
(35) [I.e., in withholding anything to which he is entitled; v. Sanh. (Sonc. ed.) p. 388, n. 6. Graetz MGWJ, 1881, p. 495. shows clearly that the whole controversy whether robbery of a heathen was permissible was directed against the iniquitous Fiscus Judaicus imposed by Vespasian and exacted with much rigor by Domitian.]
(36) Cf. Sifra on Lev. XXV, 48.
(37) Prob. the headland of Cyprus; Zephyrium (Jast.). [Greatz, Geschichte, IV, p. 135. connects R. Akiba's visit to Zifirin with his extensive travels for the purpose of rousing the Jews against the Roman tyranny.]
(38) I.e., an Israelite to a Canaanite.
(39) Lev. XXV, 48.

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which implies that he could not withdraw and leave him [without paying the redemption money]. You might then say that he[1] may demand an exorbitant sum for him? No, since it says: And he shall reckon with him that bought him[2] to emphasise that he must be very precise in making the valuation with him who had bought him.'[3] — Said R. Joseph: There is no difficulty, here [where the exception is made it refers] only to a heathen, whereas there [is indeed no exception] in the case of a Ger Toshab.[4] But Abaye said to him: Are the two of them[5] not mentioned next to one another [so that neither forms an exception in the law],[6] as it says: 'Thy brother . . . sell himself'[7] [implying,] not to you but to a stranger, as it says: 'Unto the stranger'; again, not to a Ger zedek[8] but to a mere Ger Toshab,[4] as it says 'unto a stranger-settler',[9] 'the family of a stranger': this denotes one who worships idols, and when it says or to an 'Eker'[10] it means that the person in question sold himself for idolatrous practices![11] — Raba therefore said: There is no difficulty, as regarding robbery there is indeed no exception, whereas regarding the cancellation of debts [a heathen might not have been included]. Abaye rejoined to him: Is not the purchase of a Hebrew slave[12] merely the cancellation of a debt, [and yet no distinction whatsoever is made as to the person of the master]? — Raba adheres to his own view as [elsewhere] stated by Raba, that a Hebrew slave is actually owned in his body by the master.[13]

R. Bibi b. Giddal said that R. Simeon the pious stated: The robbery of a heathen is prohibited,[14] though an article lost by him is permissible. His robbery is prohibited, for R. Huna said: Whence do we learn that the robbery of a heathen is prohibited? Because it says: 'And thou shalt consume all the peoples that the Lord thy God shall deliver unto thee';[15] only in the time [of war] when they were delivered in thy hand [as enemies] this is permitted, whereas this is not so in the time [of peace] when they are not delivered in thy hand [as enemies]. His lost article is permissible,[16] for R. Hama b. Guria said that Rab stated: Whence can we learn that the lost article of a heathen is permissible?[17] Because it says: And with all lost thing of thy brother's:[18] it is to your brother that you make restoration, but you need not make restoration to a heathen. But why not say that this applies only where the lost article has not yet come into the possession of the finder, in which case he is under no obligation to look round for it, whereas if it had already entered his possession, why not say that he

should return it. — Said Rabina:[19] And thou hast found it[18] surely implies that the lost article has already come into his[20] possession.

It was taught: R. phinehas b. Yair said that where there was a danger of causing a profanation of the Name,[21] even the retaining of a lost article of a heathen is a crime. Samuel said: It is permissible, however, to benefit by his mistake as in the case when Samuel once bought of a heathen a golden bowl under the assumption of it being of copper[22] for four zuz, and also left him minus one zuz. R. Kahana once bought of a heathen a hundred and twenty barrels which were supposed to be a hundred while he similarly left him minus one zuz[23] and said to him: 'See that I am relying upon you.'[24] Rabina together with a heathen bought a palm-tree to chop up [and divide]. He thereupon said to his attendant: Quick, bring to me the parts near to the roots, for the heathen is interested only in the number [but not in the quality].[25] R. Ashi was once walking on the road when he noticed branches of vines outside[26] a vineyard upon which ripe clusters of grapes were hanging. He said to his attendant: 'Go and see, if they belong to a heathen bring them to me,[27] but if to an Israelite do not bring them to me.' The heathen happened to be then sitting in the vineyard and thus overheard this conversation, so he said to him: 'If of a heathen would they be permitted?' — He replied: 'A heathen is usually prepared to [dispose of his grapes and] accept payment, whereas an Israelite is generally not prepared to [do so and] accept payment.

The above text [stated], 'Samuel said: The law of the State is law.' Said Raba: You can prove this from the fact that the authorities fell palm-trees [without the consent of the owners] and construct bridges [with them] and we nevertheless make use of them by passing over them.[28] But Abaye said to him: This is so perhaps because the proprietors have meanwhile abandoned their right in them.[29] He, however, said to him: If the rulings of the State had not the force of law, why should[30] the proprietors abandon their right? Still, as the officers do not fully carry out the instructions of the ruler,[31] since the ruler orders them to go and fell the trees from each valley [in equal proportion], and they come and fell them from one particular valley, [why then do we make use of the bridges which are thus constructed from misappropriated timber?] — The agent of the ruler is like the ruler himself[32] and can not be troubled [to arrange the felling in equal proportion], and it is the proprietors who bring this loss on themselves, since it was for them to have obtained contributions from the owners of all the valleys and handed over [the] money [to defray the public expenditure].

Raba said: He who is found in the barn must pay the king's share [for all the grain in the field].[33] This statement applies only to a partner, whereas an aris[34] has to pay no more than for the portion of his tenancy.[35]

Raba further said: One citizen may be pledged for another citizen [of the same town], provided however the arrears are due for follerar[36] and karga[37] of the current year, whereas if they are due for the year that has already passed [it would not be so], for since the king has already been pacified, the matter will be allowed to slide. Raba further said: In the case of those [heathens] who manure fields [for pay] and reside within the Sabbath limits[38] [round the town], it is prohibited to purchase any animal from them, the reason being that an animal from the town might have been mixed up with theirs:[39] but if they reside outside the Sabbath limits it is permitted to buy animals from them.[40] Rabina however said: If proprietors were pursuing them [for the restoration of misappropriated animals] it would be prohibited [to purchase an animal from them] even [were they to reside] outside the Sabbath limits.

Raba proclaimed or as others say, R. Huna: [Let it be known to those] who go up to the Land of Israel and who come down from Babylonia that if a son of Israel knows some evidence for the benefit of a heathen, and without being called upon [by him] goes into a heathen court of law and bears testimony against a fellow Israelite he deserves to have a Shamta[41] pronounced against him, the reason being that heathens adjudicate the payment of money

(1) The heathen master.
(2) Ibid, 50.
(3) Now does this not conclusively prove that the robbery of whomsoever, without any exception, is a crime?
(4) גר תושב , Lit., 'a stranger-settler,' a resident alien of a different race and of a different religion, since he respects the covenant of the law made by God with all the children of Noah, i.e., the Seven Commandments forming the elementary principles of civilised humanity, he is a citizen enjoying all the rights and privileges of civil law.
(5) I.e., a Ger Toshab and a Canaanite.
(6) Requiring a very accurate reckoning to repay the purchaser whether he was a Ger Toshab or a Canaanite.
(7) Lev. XXV, 47.
(8) Lit., 'a stranger (who embraced the faith) of righteousness, 1.e., a proselyte for the sake of true religion.
(9) E.V. 'Unto the stranger or sojourner.'
(10) E.V. 'or to the stock of', but taken here literally to denote work of destruction and uprooting; cf. Gen. XLIX, 6; Josh. XI, 6 and 9 and Eccl. III, 2.
(11) V. B.M. (Sonc. ed.) p. 71a and notes. Now, does this not prove that nobody whatsoever, whether a resident alien or a heathen, is excepted from being protected by the law of robbery?
(12) Having to pay redemption money, as in Lev. XXV, 50.
(13) Kid. 16a. [To withdraw therefore the slave without payment of redemption money amounts to actual robbery.]
(14) Cf. B.M. 87b and Bk. 13b; v. also Tosef. B.K. X, 8 where it is stated that it is more criminal to rob a Canaanite than to rob an Israelite; cf. P.M. II, 5.
(15) Deut. VII, 16.
(16) I.e., it is not subject to the law of lost property; Deut. XXII, 1-3. V.B.M. (Sonc. ed.) p. 149, n. 6.
(17) Deut. XXII, 1-3.
(18) Ibid. XXII, 3.
(19) B.M. 2a.
(20) I.e., the finder's.
(21) Of Israel and his God; V. The Chief Rabbi's commentary on Lev. XXII, 32.
(22) Cf. however n. 9.
(23) This clause is altogether missing in Alfasi and Asheri.
(24) As to the number of the barrels.
(25) Of the pieces.
(26) According to the reading of MS. M.
(27) Especially since the branches were outside the vineyard and thus probably overhanging a public road; cf. B.B. II, 14.
(28) For if the rulings of the State were not binding by religious law, it would have been a sin to make use of the bridges constructed in such a way.
(29) Cf. supra p. 382.
(30) In accordance with the interpretation of Tosaf. a.l.; v. also supra 148; but according to Rashi read 'What effect could there be even if . . . 'so long as no change in possession followed.
(31) Lit., 'King'.
(32) Cf. Shebu. 47b.
(33) So that the payment exacted is not robbery but in accordance with law; the payer will again be entitled to compel the owners of the other grain to share proportionately the payment he had to make for all of them.
(34) I.e., a farmer-tenant; a field labourer who tills the owner's ground for a certain share in the produce.
(35) But not for the portion of the owner.
(36) ברלא == burla, i.e., a certain Roman land tax adopted by the Persians (fast.).
(37) I.e., capitation tax; the reading of Alfasi is Silo, i.e., fleece.
(38) I.e., two thousand cubits.
(39) And it is unlawful to possess or purchase a misappropriated article even if mixed with many others; cf. Bz. 38b.
(40) For since they are so far away from the town it is not likely that an animal from the town has been mixed up with theirs.
(41) Oral anathema; cf. Glos.

[even] on the evidence of one witness.[1] This holds good if only one witness was concerned but not where there were two. And even to one witness it applies only if he appeared before judges of Magista,[2] but not before the Dawar[3] where the judges similarly impose an oath upon the evidence of a single witness. R. Ashi said: When we were at R. Huna's[4] we raised the question of a prominent man who would be trusted by them as two. [Shall we say that since] money would be adjudicated on his [sole] evidence, he therefore should not bear testimony in their courts, or perhaps since he is a prominent man he can hardly escape their notice and should consequently deliver his evidence? — This question remained undecided.

R. Ashi further said: A son of Israel who sells to a heathen a field bordering on one of a fellow Israelite deserves to have a Shamta pronounced against him. For what reason? If because of the right of [pre-emption enjoyed by] the nearest neighbour to the boundary,[5] did the Master not state[6] that where he buys from a heathen or sells to a heathen the right of [pre-emption enjoyed by] the nearest neighbour to the boundary does not apply?[7] — It must therefore be because the neighbour might say to the vendor: 'You have placed a lion at my border.'[8] He therefore deserves to have a Shamta pronounced against him unless he accepts upon himself the responsibility for any consequent mishap that might result [from the sale]. MISHNAH. IF CUSTOMS-COLLECTORS TOOK AWAY A MAN'S ASS AND GAVE HIM INSTEAD ANOTHER ASS, OR IF BRIGANDS TOOK AWAY HIS GARMENT AND GAVE HIM INSTEAD ANOTHER GARMENT, IT WOULD BELONG TO HIM, FOR THE OWNERS HAVE SURELY GIVEN UP HOPE OF RECOVERING IT.[9] IF ONE RESCUED [ARTICLES] FROM A RIVER OR FROM A MARAUDING BAND OR FROM HIGHWAYMEN, IF THE OWNERS HAVE GIVEN UP HOPE OF THEM, THEY WILL BELONG TO HIM.[10] SO ALSO REGARDING SWARMS OF BEES, IF THE OWNERS HAVE GIVEN UP HOPE OF RECOVERING THEM, THEY WOULD BELONG TO HIM. R. JOHANAN B. BEROKA SAID: EVEN A WOMAN OR A MINOR[11] IS TRUSTED WHEN STATING THAT THIS SWARM STARTED FROM HERE;[12] THE OWNER [OF BEES] IS ALLOWED TO WALK INTO THE FIELD OF HIS NEIGHBOUR FOR THE PURPOSE OF RESCUING HIS SWARM, THOUGH IF HE CAUSES DAMAGE HE WOULD HAVE TO PAY FOR THE AMOUNT OF DAMAGE HE DOES. HE MAY, HOWEVER, NOT CUT OFF HIS NEIGHBOUR'S BOUGH [UPON WHICH HIS BEES HAVE SETTLED] EDEN THOUGH WITH THE INTENTION OF PAYING HIM ITS VALUE: R. ISHMAEL THE SON OF R. JOHANAN B. BEROKA, HOWEVER, SAID THAT HE MAY EVEN CUT OFF HIS NEIGHBOUR'S BOUGH IF HE MEANS TO REPAY HIM THE VALUE.

GEMARA. A Tanna taught: If he was given [anything by customs-collectors] he would have to restore it to the original proprietors. This view thus maintains that Renunciation by itself does not transfer ownership[13] and consequently the misappropriated article has at the very outset come into his possession unlawfully;[14] Some, however, read: 'If he cares to give up [the article given him by the customs-collector], he should restore it to the original proprietors',[15] the reason being that Renunciation by itself transfers ownership,[16] so that it is only when [he[17] made up his mind] saying: 'I do not like to benefit from money which is not [really] mine';[18] he must restore it to the original proprietors.

IT WOULD BELONG TO HIM FOR THE OWNERS HAVE SURELY ABANDONED IT.[19] Said R. Ashi:[20] This Mishnaic ruling applies only where the robber was a heathen,[21] but in the case of a robber who was an Israelite this would not be so, as the proprietor surely thinks: [If not to-day to-morrow] I will take him to law.[22] R. Joseph demurred to this, saying: On the contrary, the reverse is more likely. In the case of heathens who usually administer law forcibly[23] the owner need not give up hope,[24] whereas in the case of an Israelite where the judges merely issue an order to make

restoration [without however employing corporal punishment][25] the owner has surely abandoned any hope of recovery. If therefore a [contrary] statement was ever made it was made only regarding the concluding clause [as follows:] IF ONE RESCUED [ARTICLES] FROM [A RIVER OR FROM] HEATHENS[26] OR FROM ROBBERS, IF THE OWNERS HAVE ABANDONED THEM THEY WILL BELONG TO HIM, Implying that as a rule this would not be so. This implication could, however, not be maintained in the case of heathens who usually administer the law forcibly,[27] whereas in the case of a robber who was an Israelite, since the judges will merely issue an order to make restoration [without however employing corporal punishment] the owner has surely abandoned any hope of recovery.

We learnt elsewhere: In the case of skins belonging to a lay owner, mere mental determination[28] [on the part of the owner] will render them capable of becoming defiled,[29] whereas in the case of those belonging to a tanner no mental determination[28] would render them capable of becoming defiled.[30] Regarding those in possession of a thief mental determination[31] will render them capable of becoming defiled,[32] whereas those in the possession of a robber no mental determination[33] will render them capable of becoming defiled.[34] R. Simeon however, says that the rulings are to be reversed: Regarding those in the possession of a robber mental determination[33] will render them capable of becoming defiled,[35] whereas those in the possession of a thief no mental determinations will render them capable of becoming defiled, as in the last case the owners do not usually abandon hope of finding the thief.[36] Said ‘Ulla: This difference of opinion[37] exists only in average cases, but where Renunciation is definitely known to have taken place opinion is unanimous that Renunciation transfers ownership. Rabbah,[38] however, said: Even where the Renunciation is definitely known to have taken place there is also a difference of opinion. Abaye said to Rabbah:[38] You should not contest the statement of ‘Ulla, for in our Mishnah[39] we learnt in accordance with him: . . . . as the owners do not usually abandon hope of finding the thief. The reason is that usually the owners do not abandon hope of tracing the thief, but where they definitely abandoned hope of doing so, the skins would have become his. He rejoined:[40] We interpret the text in our Mishnah,[to mean][41] ‘For there is no Renunciation of them on the part of the owners.’[42]

We have learnt: IF CUSTOMS-COLLECTORS TOOK AWAY A MAN'S ASS AND GAVE HIM INSTEAD ANOTHER ASS OR IF BRIGANDS TOOK AWAY HIS GARMENT AND GAVE HIM INSTEAD ANOTHER GARMENT, IT WOULD BELONG TO HIM, FOR THE OWNERS HAVE SURELY ABANDONED HOPE OF RECOVERING IT. Now whose view is represented here? If we say, that of the Rabbis[43] , the ruling in the case of robbers[44] raises a difficulty.[45] Again, if that of R. Simeon, the ruling in the case of thieves[46] raises a difficulty![47] The problem, it is true, is easily solved if we accept the view of ‘Ulla who stated that where Renunciation was definitely known to have taken place ownership is transferred; the Mishnaic ruling here would then similarly apply to the case where Renunciation was definitely known to have taken place and would thus be unanimous. But on the view of Rabbah who stated that even where the Renunciation is definitely known to have taken place there is still a difference of opinion,[48] with whose view would the Mishnaic ruling accord? It could neither be with that of the Rabbis nor with that of R. Simeon! — We speak here of an armed highwayman,[49] and the ruling will be in accordance with R. Simeon. But if so, is this case not identical with [that of a customs-collector acting openly like a] ‘robber’?[50] — Yes, but two kinds of robbers[51] are spoken of.

Come and hear: If a thief,[52] a robber, or an annas[53] consecrates a misappropriated article, it is duly consecrated; if he sets aside the portion for the priest's gift,[54] it is genuine terumah; or again if he sets aside the portion for the Levite's gift,[55] the tithe is valid.[56] Now, whose view does this teaching follow? If [we say] that of the Rabbis, the case of robbers creates a difficulty,[57] if that of R. Simeon, the case of the thief creates a difficulty?[58] The problem, it is true, is easily solved if we accept the view of ‘Ulla who stated that where Renunciation was definitely known to have taken place ownership is transferred; the Mishnaic ruling here would then similarly apply to the case where

Renunciation was definitely known to have taken place, and would thus be unanimous. But if we adopt the view of Rabbah who stated that even where the Renunciation is definitely known to have taken place there is still a difference of opinion,[59] with whose view would the Mishnaic ruling accord? It could be neither in accordance with the Rabbis nor in accordance with R. Simeon? — Here too an armed highwayman is meant, and the ruling will be in accordance with R. Simeon. But if so, is this case not identical with that of 'robber'? — Yes, two kinds of robbers are spoken of. Or if you wish I may alternatively say that this teaching is in accordance with Rabbi, as taught: 'Rabbi says: A thief is in this respect [subject to the same law] as a robber', [

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(1) Whereas according to Scripture no less than two witnesses are required; cf. Deut. XIX, 15.

(2) 'Magistratus': v. Targ. II, Esth. IX, 3; also S. Krauss, Lehnworter, II, 322; 'untrained magistrates', Jast. 'a village court', Rashi a.l.

(3) 'The Persian Circuit Court' (Jast.).

(4) R. Kahana's according to MS.M., followed here also by Asheri a.l.

(5) V. B.M. 108a.

(6) Ibid. 108b.

(7) For he who is outside the covenant of the law could not be compelled to abide by its principles.

(8) [It was no uncommon practice for the unscrupulous heathen to interfere with the irrigation on which the life of the neighbouring fields depended and then force the owners to move out and seek their existence elsewhere, v. Funk, Die Juden in Babylonien I, p. 16.]

(9) And as after the Renunciation on the part of the owner there followed a change of possession, ownership was transferred to the possessor.

(10) Cf. B.M. 27a.

(11) Whose evidence is generally not accepted; v. Shebu. IV, 1 and supra p. 507.

(12) And thus establish the ownership of the swarm; for the reason see the discussion infra in the Gemara.

(13) As indeed maintained by R. Joseph supra p. 383, or even by Rabbah according to Tosaf. on B.K. 67b.

(14) According to Tosaf. ibid, the true owner abandoned the article only after it changed hands from the customs-collector to the new possessor; the Mishnaic ruling, however, deals with another case as explained supra p. 670, n. 1.

(15) [MSM.: 'to the customs-collector' (since he acquired it by Renunciation)].

(16) V. supra p. 382 and Tosaf. on 67b.

(17) Being scrupulous.

(18) Though strict law could not enforce it in this case.

(19) And as after the Renunciation on the part of the owner there followed a change of possession, ownership was transferred to the possessor.

(20) 'R. Assi' according to Asheri; cf. D.S. and supra p. 657, n. 11.

(21) In which case the person robbed might be afraid to force him to pay.

(22) And thus never gives up hope of recovering the misappropriated article.

(23) Lit., 'haughtily' (Rashi). Krauss, Lehnworter: lit., 'Gothism', referring to the Goths in the Roman army.

(24) For the robber will be forced by the heathen judges to make restoration even upon the strength of circumstantial evidence, however slender.

(25) But on the other hand take all circumstantial evidence as baseless suggestions and thus require sound testimony to be borne by truthful witnesses.

(26) Who are designated in the Mishnah a troop of invaders. [MS.M. however reads here too MARAUDING BAND.]

(27) V. p. 671, n. 10.

(28) To use them as they are.

(29) As his mental determination is final, and the skins could thus be considered as fully finished articles and thus subject to the law of defilement.

(30) As a tanner usually prepares his skins for the public, and it is for the buyer to decide what article he is going to make out of them.

(31) On the part of the thief to use them as they are.

(32) For the skins became the property of the thief, as Renunciation usually follows theft on account of the fact that the

owner does not know against whom to bring an action.
(33) On the part of the robber to use them as they are.
(34) For the skins did not become the property of the robber as robbery does not usually cause Renunciation, since the owner knows against whom to bring an action.
(35) For the skins became the property of the robber as the owner has surely renounced every hope of recovering them for fear of the robber who acted openly.
(36) V. Kel. XXVI, 8 and supra p. 384.
(37) Between R. Simeon and the other Rabbis.
(38) Var. lec. 'Raba'.
(39) Kel. XXVI, 8 and supra p. 384.
(40) I.e., Rabbah to Abaye.
(41) Cf. Tosaf. s.v. לפי
(42) Since the skins were taken away stealthily the owner will never in reality give up hope of tracing the thief and recovering them, even though they may express their despair of their return.
(43) Who oppose R. Simeon.
(44) I.e., the customs-collector who acts openly.
(45) For according to them there is no Renunciation in the case of a robber.
(46) I.e., the brigand.
(47) For according to him there is no Renunciation in the case of a thief.
(48) Between R. Simeon and the other Rabbis.
(49) Acting openly and not stealthily; cf. supra 57a.
(50) Why then repeat the ruling in two identical cases?
(51) I.e., customs-collectors and brigands.
(52) V. supra p. 386.
(53) Lit., 'a violent man'; the same as the hamsan, who as explained supra p. 361, is prepared to pay for the objects which he misappropriates.
(54) Cf. Num. XVIII, 11-12.
(55) Cf. Num. ibid. 21.
(56) For it is assumed that the proprietors are already resigned to the loss of the misappropriated articles, so that ownership has changed hands, v. supra 67a.
(57) For according to them there is no Renunciation in the case of a robber.
(58) For according to him there is no Renunciation in the case of a thief.
(59) Between R. Simeon and the other Rabbis.

Talmud - Mas. Baba Kama 114b

and it is a known fact that it was to the law applicable to a robber according to R. Simeon[1] [to which a thief was made subject in this statement of Rabbi].[2]

The above text [states]: 'Rabbi says: I maintain that a thief is [in this respect subject to the same law] as a robber.' The question was asked: Did he mean to [make him subject to the law applicable to a] robber as laid down by the Rabbis,[3] in which case ownership is not transferred, or did he perhaps mean to [make him subject to the law applicable to a] robber as defined by R. Simeon,[1] in which case the ownership is transferred? Come and hear: IF CUSTOMS-COLLECTORS TOOK AWAY A MAN'S ASS AND GAVE HIM INSTEAD ANOTHER ASS, OR IF BRIGANDS TOOK AWAY HIS GARMENT, IT WOULD BELONG TO HIM, FOR THE OWNERS HAVE SURELY ABANDONED IT. Now, with whose view does this ruling accord? If with that of the Rabbis, the case of the robber[4] raises a difficulty;[5] if with that of R. Simeon, the case of the thief[6] raises a difficulty.[7] The difficulty is easily solved if you say that Rabbi meant [to make the thief subject to the law] applicable to a robber as defined by R. Simeon,[1] in which case ownership is transferred; the ruling in the Mishnah would then be in accordance with Rabbi, as on this account ownership would be transferred. But if you say that he meant [to make him subject] to the law of robber as defined by

the Rabbis,[3] in which case ownership will not be transferred, whom will the Mishnaic ruling[8] follow? It will be In accordance neither with Rabbi nor with R. Simeon nor with the Rabbis? — The robber spoken of here is an armed brigand[9] and the ruling will be in accordance with R. Simeon.[1] But if so, is this case not identical with [that of a customs-collector acting openly like a] 'robber'?[10] — Yes, two kinds of robbers[11] are spoken of.

Come and hear: If a thief, a robber or an annus consecrates a misappropriated article, it is duly consecrated; if he sets aside the portion for the priests' gift, it is genuine terumah; or again, if he sets aside a portion for the Levite's gift, the tithe is valid.[12] Now, with whose view does this teaching accord? If [we say] it is in accordance with the Rabbis, the case of the robber creates a difficulty?[13] If again [we say] it is in accordance with R. Simeon, the case of the thief[14] creates a difficulty.[15] The difficulty, it is true, is easily solved if you say that Rabbi meant [to make the thief subject to the same law] as robber as defined by R. Simeon in which case ownership is transferred; the ruling in this teaching would then be in accordance with Rabbi, as on this account ownership would be transferred. But if you say that he meant [to make him] subject to the law of robber as defined by the [other] Rabbis, in which case ownership will not be transferred, in accordance with whom will be this ruling?[16] — The thief here spoken of is an armed robber[17] and the ruling will thus be in accordance with R. Simeon.[18] But if so, is this case not identical with that of 'robber'?[10] Yes, but two kinds of robbers are spoken of. R. Ashi said to Rabbah: Come and hear that which Rabbi taught to R. Simeon his son: The words 'anything which could serve as security' should not [be taken literally to] mean actual security, for even if he left a cow to plough with or an ass to drive, they would be liable to restore it because of the honour of their father.[19] Now, the reason is to save the name of their father, but if not for the honour of their father it would not be so,[20] thus proving[21] that Rabbi referred in his statement to the law of a robber[22] as defined by R. Simeon. This proves it.

SO ALSO REGARDING SWARMS OF BEES. What is the point [here] of SO ALSO?[23] — It means this: Even regarding swarms of bees where the proprietorship is only of Rabbinic sanction, and therefore[24] you might have thought that since the title to them has only Rabbinic authority behind it,[25] we presume the owner generally to have resigned his right [unless we know definitely to the contrary], we are told that it was only where the proprietors have [explicitly] renounced them that this will be so,[26] but if not, this will not be so.

R. JOHANAN B. BEROKA SAID [THAT] EVEN A WOMAN OR A MINOR IS TRUSTED WHEN STATING THAT THIS SWARM STARTED FROM HERE. Are a woman and a minor competent to give evidence?[27] — Rab Judah said in the name of Samuel: We are dealing here with a case where, e.g., the proprietors were chasing the bees[28] and a woman or a minor speaking in all innocence[29] said that this swarm started from here.

R. Ashi said: Remarks made by a person in the course of speaking in all innocence cannot be taken as evidence, with the exception only of evidence [of the death of a husband] for the release of his wife.[30] Said Rabina to R. Ashi: Is there no other case in which it would be taken as evidence? Surely in the case of a swarm of bees we deal with a remark made in all innocence?[31] The case of a swarm of bees is different, as the ownership of it has only Rabbinic sanction. But does not the same apply to ordinances based on the Written Law?[32] Did not Rab Judah say that Samuel stated[33] that a certain man speaking in all innocence declared, 'I remember that when I was a child I was once hoisted on the shoulders of my father, and taken out of school and stripped of my shirt and immersed in water[34] in order that I might partake of terumah in the evening,'[35] and R. Hanina completed the statement thus: 'And my comrades were kept separate from me[36] and called me, Johanan who partakes of hallah,'[37] and Rabbi raised him to the status of priesthood upon the strength of [this statement of] his own mouth?[38] — This was only for the purpose of eating terumah of mere Rabbinic authority.[39] Still, would this not apply[40] also to [prohibitions based on] the Written Law? Surely when R. Dimi arrived[41] he stated that R. Hana of Kartigna,[42] or, as others said, R. Aha of Kartigna

related a certain case brought before R. Joshua b. Levi, or, as others say, before Rabbi, regarding a certain child speaking in all innocence who said, 'I and my mother were taken captive among heathens; whenever I went out to draw water I was thinking only of my mother, and when I went out to gather wood I was thinking only of my mother.' And Rabbi permitted her to be married to a priest on the strength of [the statement[43] made by] the child![44] — In the case of a woman taken captive the Rabbis were always lenient.[45]

HE MAY HOWEVER NOT CUT OFF HIS NEIGHBOUR'S BOUGH [etc.]. It was taught:[46] R. Ishmael the son of R. Johanan b. Beroka said: It is a stipulation of the Court of Law that the owner of the bees be entitled to come down into his neighbour's field and cut off his bough [upon which his bees have settled], in order to rescue his swarm of bees, while the owner of the bough will be paid the value of his bough out of the other's swarm; It is [similarly] a stipulation of the Court of Law that the owner of the wine pour out the wine [from the flask] in order to save in it the other man's honey,[47] and that he can recover the value of his wine out of the other's honey.[47] It is [again] a stipulation of the Court of Law that [the owner of the wood] should remove his wood [from his ass] and load on it the other man's flax [from the ass that fell dead], and that he can recover the value of his wood out of the other's flax; for it was upon this condition that Joshua divided the Land among the Israelites.[46]

MISHNAH. IF A MAN IDENTIFIES HIS ARTICLES OR BOOKS IN THE POSSESSION OF ANOTHER PERSON, AND A RUMOUR OF BURGLARY IN HIS PLACE HAD ALREADY BEEN CURRENT IN TOWN, THE PURCHASER [WHILE PLEADING PURCHASE IN MARKET OVERT] WOULD HAVE TO SWEAR HOW MUCH HE PAID [FOR THEM][48] AND WOULD BE PAID ACCORDINGLY [AS HE RESTORES THE ARTICLES OR BOOKS TO THE PLAINTIFF]. BUT IF THIS WAS NOT SO, HE COULD NOT BE BELIEVED, FOR I MAY SAY THAT HE SOLD THEM TO ANOTHER PERSON FROM WHOM THE DEFENDANT PURCHASED THEM [IN A LAWFUL MANNER].

GEMARA. But even if a rumour of burglary in his place had already been current in town, why should the law be so?[49] Why not still suspect that it was he[50] who sold them [in the market] and it was he[50] himself who circulated the rumour? — Rab Judah said in the name of Rab: [We suppose that] e.g., people had entered his house and he rose in the middle of the night and called for help, crying out that he was being robbed. But is this not all the more reason for suspecting that he[50] was merely looking for a pretext? — R. Kahana therefore completed the statement made in the name of Rab as follows: [We suppose] e.g., that a breach was found to have been made in his house and persons who lodged in his house were going out with bundles of articles upon their shoulders so that everyone was saying that so-and-so had had a burglary.[51] But still, there might have been there only articles, but not any books! — R. Hiyya b. Abba said in the name of R. Johanan: [We suppose] that they were all saying that books also were there. But why not apprehend that they might have been little books while he is claiming big ones? — Said R. Jose b. Hanina: [We suppose] they say, Such and such a book. But still they might perhaps have been old books while he is claiming new ones? — Rab[52] said: [We suppose] they were all saying that these were the articles of so-and-so and these were the books of so-and-so. But did Rab really say so?[53] Did Rab not say[54] that if a thief entered a house by breaking in and misappropriated articles and departed with them he would be free,[55] the reason being that he acquired title to them through the risk of life [to which he exposed himself]?[56] — This last ruling that ownership is transferred applies only where the thief entered by breaking in, in which case he from the very outset exposed himself to the risk of being killed, but to those who lodged in his house, since they did not expose themselves to the risk of being killed, this ruling cannot apply. Raba said: All these qualifications apply only to a proprietor[57] who keeps his goods for sale, but in the case of a proprietor who does not keep his goods for sale,

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(1) Who holds that there is Renunciation in the case of a robber.

(2) Maintaining that there is Renunciation both in the case of robbery and in the case of theft.
(3) Who hold that there is no Renunciation in the case of a robber.
(4) I.e., the customs-collector who acts openly.
(5) For according to them there is no Renunciation in the case of a robber.
(6) I.e., the brigand.
(7) For according to him there is no Renunciation in the case of a thief.
(8) Maintaining that there is Renunciation both in the case of robbery and in the case of theft.
(9) Acting openly and not stealthily; cf. supra 57a.
(10) Why then repeat the ruling in two identical cases?
(11) I.e., customs-collectors and brigands.
(12) For notes v. supra p. 674.
(13) For according to them there is no Renunciation in the case of a robber.
(14) I.e., the brigand.
(15) For according to him there is no Renunciation in the case of a thief.
(16) Maintaining that there is Renunciation both in the case of robbery and in the case of theft.
(17) Acting openly and not stealthily.
(18) Who maintains Renunciation in the case of a robber.
(19) V. supra p. 653, n. 9.
(20) They would thus surely be entitled to retain the misappropriated article on account of Renunciation on the part of the owner.
(21) According to established halachah that the possession of heirs is not on the same footing in law as the possession of a purchaser, and does not therefore constitute a legal change of possession.
(22) Maintaining that there is Renunciation both in the case of robbery and in the case of theft.
(23) For why should a swarm of bees be taken to be different from any other kind of property?
(24) For since they cannot be properly controlled, property in them is not so absolute as in other articles. V. Hul. 141b.
(25) Generally conveying no right in rem and thus no legal ownership in substance.
(26) I.e., that their right will come to an end.
(27) As they are exempt from having to appear as witnesses, the testimony borne by them in a Court of Law is not possessed of that absolute impartiality which is the most essential feature in all evidence; cf. supra p. 507.
(28) Even before the minor or woman made a statement to their benefit, so that the testimony is corroborated by circumstantial evidence.
(29) Without any intention of giving evidence.
(30) Cf. Yeb. XVI, 5-7.
(31) As stated in our Mishnah here.
(32) I.e., would ordinary conversation not be trusted?
(33) Keth. 26a.
(34) In a mikweh to become levitically clean; cf. Kid. 80a.
(35) As in Ber. I,1.
(36) Not to cause defilement.
(37) Which is the first of the dough and is on a par with terumah; v. Num. XV, 19-21.
(38) Though a prohibition of the Written Law was involved and the man was talking in all innocence.
(39) For Rabbi lived after the destruction of the Temple when (according to some authorities) all terumah was of mere Rabbinic sanction; cf. Pes. 44a.
(40) I.e., would ordinary conversation not be trusted?
(41) From Palestine to Babylon; v. Rashi M.K. 3b.
(42) I.e., Carthage rebuilt under the Roman Empire on the northern coast of Africa.
(43) From which it appeared that no immoral act was committed upon the mother.
(44) Keth. 27b. Though the prohibition involved was Biblical, for according to Lev. XXI, 7, a priest may not marry a woman who had immoral intercourse.
(45) On account of the immoral act being a matter of mere apprehension; cf. Keth. 23a.
(46) Supra 81b.
(47) Cf. Mishnah infra 115a.

(48) Cf. the oath in Litem administered by the Romans though in different circumstances; v. Dig. 12, 3. Cod. 5,33; 8, 4, 9; cf. also supra p. 359 and Shebu. VII, 1-3.
(49) I.e., to force the possessor to make restoration.
(50) The plaintiff.
(51) There is thus some circumstantial evidence to corroborate the plaintiff's allegations.
(52) More correctly Abbahu as in MS.M.
(53) V. p. 679. n. 4.
(54) Sanh. 72a.
(55) From pecuniary liability.
(56) According to Ex. XXII, 1, and since at the time of breaking in the offence was capital, all civil liabilities merge in it; v. supra p. 192, n. 8. [Consequently the purchaser could not be forced to make restoration seeing that the thief himself is exempt.]
(57) Lit., 'house-owner'.

Talmud - Mas. Baba Kama 115a

it would not be necessary to be so particular.[1] But he might perhaps have been in need of money and thus compelled to sell [some of his articles]? — Said R. Ashi: There is the fact that a rumour of burglary in his place had been current in town.[2]

It was stated: Where articles were stolen and sold by the thief who was subsequently identified, Rab in the name of R. Hiyya said that the owner would have to sue the first,[3] whereas R. Johanan in the name of R. Jannai said that he would have to sue the second.[4] R. Joseph thereupon said: There is no conflict of opinion:[5] in the one case where the purchase took place before Renunciation[6] he could sue the second,[7] whereas in the other, where it took place after Renunciation[8] he would have to sue the first;[3] and both of them[9] adopt the view expressed by R. Hisda.[10] Abaye said to him: Do they[9] indeed not differ? Is the case of endowments to priests[11] not on a par with [a purchase taking place] before Renunciation[12] and there is nevertheless here a difference of opinion? For we learnt: If one asked another to sell him the inside of a cow in which there were included priestly portions he would have to give it to the priest without deducting anything from the [purchase] money; but if he bought it from him by weight he would have to give the portions to the priests and deduct their value from the [purchase] money.[13] And Rab thereupon said that the [last] ruling could not be explained except where it was the purchaser who weighed it for himself, for if the butcher[14] weighed it for him, the priest would have to sue the butcher![15] — Read: 'He can sue also the butcher,'[16] for you might have thought that priestly portions are not subject to the law of robbery;[17] we are therefore told [here that this is not so]. But according to Abaye who stated that there was a difference of opinion between them,[18] what is that difference? — Whether or not to accept the statement of R. Hisda.[19] R. Zebid said: [They differed in regard to a case] where, e.g., the proprietor abandoned hope of recovering the articles when they were in the hands of the purchaser, but did not give up hope so long as they were in the hands of the thief, and the point at issue between them was that while one master[20] maintained that it was only Renunciation followed by a change of possession that transfers ownership,[21] whereas if the change of ownership has preceded Renunciation[22] no ownership is thereby transferred,[23] the other master[24] maintained that there is no distinction.[25] R. Papa said: Regarding the garment itself[26] there could be no difference of opinion at all, as all agree that it will have to be restored to the proprietor.[27] Where they[28] differ here is as to whether the benefit of market overt[29] is to be applied to him. Rab in the name of R. Hiyya said that he[30] has to sue the first; i.e., the claim of the purchaser for recovery of his money is against the thief, as the benefit of market overt does not apply here,[31] whereas R. Johanan stated in the name of R. Jannai that he[30] may sue the second, i.e., the claim of the purchaser for repayment should be against the proprietors since the benefit of market overt does apply also here.[31] But does Rab really maintain that the benefit of market overt should not apply here?[31] Was R. Huna not a disciple of Rab[32] and yet when Hanan the Wicked[33] misappropriated a garment and sold it and was brought before R. Huna, he said to the plaintiff, 'Go forth and redeem

your pledge [in the purchaser's hand]'?[34] — The case of Hanan the Wicked was different, for since it was impossible to get any payment from him, it was the same as where the thief was not identified at all. Raba said: 'Where the thief is notorious, the benefit of [a purchase in] market overt would not apply.[35] But was Hanan the Wicked not notorious, and yet the benefit of [a purchase in] market overt still applied? — He was only notorious for wickedness, but for theft he was not notorious at all.

It was stated: If a man misappropriated [articles] and paid a debt [with them], or if he misappropriated [them] and paid for goods he received on credit, the benefit of [a purchase in] market overt will not apply, for we are entitled to say,[36] 'Whatever credit you gave him was not in return for these stolen articles.' If he pledged them for a hundred, their value being two hundred, the benefit of [a purchase in] market overt would apply. But if their value equalled the amount of money lent on them, Amemar said that the benefit of market overt would not apply[37] whereas Mar Zutra said that the benefit of [a purchase in] market overt should apply. (The established law is that the benefit of a purchase in market overt should apply.)[38] In the case of a sale, where the money paid was the exact amount of the value of the goods, the benefit of [a purchase in] market overt would certainly apply. But where goods of the value of a hundred were bought for two hundred R. Shesheth said that the benefit of [a purchase in] market overt should not apply,[39] whereas Raba said that the benefit of [a purchase in] market overt should apply. The established law in all these cases, however, is that the benefit of [a purchase in] market overt should apply, with the exception of the cases where one misappropriated [articles] and paid a debt with them, and where one misappropriated them and paid for goods received on credit.[40]

Abimi[41] b. Nazi, the father-in-law of Rabina had owing to him four zuz[42] from a certain person. The latter stole a garment and brought it to him [as a pledge] and borrowed on it four further zuz. As the thief was subsequently identified, the case came before Rabina[43] who said: Regarding the former [four zuz] it is a case of a thief misappropriating articles and paying a debt [with them] in which case the plaintiff has to pay nothing whatsoever,[44] whereas regarding the latter four zuz you can demand your money and [then] return the garment. R. Cohen demurred: Why not say that the garment was delivered in consideration of the first four zuz [exclusively], so that it would thus be a case of misappropriating articles and paying [with them] a debt, or misappropriating articles and paying [with them] for goods [received] on credit, whereas the further advance of the last four zuz was a matter of mere trust,[45] just as he trusted him at the very outset? After being referred from one authority to another, the matter reached the notice of R. Abbahu who said that the law was in accordance with R. Cohen.

A Narashean[46] misappropriated a book and sold it to a Papunian[47] for eighty zuz, and this papunian went and sold it to a Mahozean[48] for a hundred and twenty zuz. As the thief was subsequently identified Abaye said that the proprietor of the book could come and pay the Mahozean eighty zuz[49] and get his book back, and the Mahozean would be entitled to go and recover the other forty zuz[50] from the papunian.[51] Raba demurred saying: If in the case of a purchase from the thief himself the benefit of market overt applies should this not be the more so in the case of a purchase from a purchaser?[52] — Raba therefore said: The proprietor of the book can go and pay the Mahozean a hundred and twenty zuz[53] and get back his book, and the proprietor of the book is [then] entitled to go and recover forty zuz from the papunian[51] and eighty zuz from the Narashean.[54]

MISHNAH. IF ONE MAN WAS COMING ALONG WITH A BARREL OF WINE AND ANOTHER WITH A JUG OF HONEY, AND THE BARREL[55] OF HONEY HAPPENED TO CRACK, AND THE OTHER ONE POURED OUT HIS WINE AND RESCUED THE HONEY INTO HIS [EMPTY] BARREL,

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(1) According to Rashi, as to require evidence regarding the identity of the books; but according to Maim. all the other circumscriptions are similarly dispensed with (Wilna Gaon).

(2) So that there is some circumstantial evidence to corroborate the plaintiff's allegations.
(3) I.e., the thief.
(4) I.e., the purchaser.
(5) I.e., between Rab and R. Johanan.
(6) In which case the sale is of no validity at all.
(7) I.e., the purchaser who would have to restore the articles without any payment at all.
(8) Where the purchase is valid since Renunciation was followed by change of possession.
(9) I.e., Rab and R. Johanan.
(10) Supra p. 652, that where a robber misappropriated an article and before Renunciation on the part of the owner it was consumed by another one, the plaintiff has the option of making either of them responsible.
(11) Dealt with in Deut. XVIII, 3.
(12) For the priests have surely never abandoned their right.
(13) Hul. X, 3.
(14) I.e., the vendor.
(15) Now, we are dealing here with a case where there was no Renunciation (v. p. 681, n. 12); why then does Rab maintain that the priest would have to sue the butcher and not the Purchaser?
(16) Having the option to sue either the butcher (who is the vendor) or the purchaser, for the reason stated supra p. 681, n. 10.
(17) For since they are endowments by Divine Law they always remain priestly property wherever they are, so that even where the vendor has personally delivered them to the purchaser it should be the latter alone who would be responsible to the priest.
(18) Rab and R. Johanan.
(19) V. supra p. 681, n. 10.
(20) I.e., R. Johanan.
(21) To the last possessor, I.e. the purchaser.
(22) As was the case here where the Renunciation took place when the articles were already in the hands of the purchaser.
(23) To the purchaser who would thus have to restore the articles without any payment at all.
(24) I.e., Rab.
(25) As in both these cases the ownership is transferred to the purchaser who may thus retain the articles, while the original owner could have a claim only against the thief.
(26) Which has been misappropriated.
(27) As the purchaser acquired no title to it if he bought it before Renunciation.
(28) I.e., Rab and R. Johanan.
(29) תקנת השוק , Lit., 'the ordinance of the market' which provides, in the case of sales made bona fide in open market, for the return of the purchased article to the owner who would have to pay the purchaser the price he had paid as stated in our Mishnah. The ordinance was enacted in the interest of trade, for unless so protected people would be afraid to buy goods for fear lest they are stolen. V. Jung, M. The Jewish Law of Theft, pp. 91 ff. Cf. also pp. 15ff.]
(30) The purchaser.
(31) Where the theft has definitely been established.
(32) Cf. Sanh. 6b.
(33) Also mentioned supra p. 205.
(34) Proving thus that the plaintiff would have to pay the purchase money even where the theft was definitely established.
(35) For the purchaser should not have bought the articles from him.
(36) To the purchaser.
(37) For as it is unusual that the value of the pledge should not exceed the amount of the loan, it is probable that the loan was not based on the security of the pledge.
(38) [The bracketed passage is deleted by Rashal and rightly so, since the very contrary fixed ruling is given infra.]
(39) For since he paid twice the value the transaction resembles rather a gift than a purchase.
(40) Cf. n. 2.
(41) According to Alfasi 'Abaye'.

(42) V. Glos.
(43) 'Rabbanai' according to Hyman, Toledoth, 88; for similar deviations, cf. supra 113b with B.M. 2a.
(44) As decided supra, this page.
(45) And if so, the plaintiff should be entitled to recover the garment without any payment whatsoever.
(46) I.e., a person of Naresh near Sura in Babylonia.
(47) I.e., a person of Papunia, [between Bagdad and Pumbeditha, Obermeyer, op. cit., p 242].
(48) I.e., a person of Mahoza, a trading town on the Tigris.
(49) I.e., the original sum for which the thief sold it.
(50) He paid to the first purchaser who was his vendor.
(51) I.e., the first purchaser who sold it to the second and made a profit of forty zuz.
(52) Who bought it from a thief as was the case here.
(53) I.e., the purchase money he paid.
(54) I.e., the thief who sold the book for this amount.
(55) As to the substitution of 'barrel' for 'jug' v. supra p. 142.

Talmud - Mas. Baba Kama 115b

HE WOULD BE ABLE TO CLAIM NO MORE THAN THE VALUE OF HIS SERVICES;[1] BUT IF HE SAID [AT THE OUTSET], 'I AM GOING TO RESCUE YOUR HONEY AND I EXPECT TO BE PAID THE VALUE OF MY WINE,' THE OTHER HAS TO PAY HIM [ACCORDINGLY]. SO ALSO IF A RIVER SWEPT AWAY HIS ASS AND ANOTHER MAN'S ASS, HIS ASS BEING ONLY WORTH A MANEH[2] AND HIS FELLOW'S ASS TWO HUNDRED ZUZ,[2] AND HE LEFT HIS OWN ASS [TO ITS FATE], AND RESCUED THE OTHER MAN'S ASS, HE WOULD BE ABLE TO CLAIM NO MORE THAN THE VALUE OF HIS SERVICES; BUT IF HE SAID TO HIM [AT THE OUTSET], 'I AM GOING TO RESCUE YOUR ASS AND I EXPECT TO BE PAID AT LEAST THE VALUE OF MY ASS,' THE OTHER WOULD HAVE TO PAY HIM [ACCORDINGLY].

GEMARA. But why [should the rescuer] not be entitled to say, 'I have acquired title to the rescued object[3] as it became ownerless'?[4] Was it not taught [in a Baraitha]: 'If a man carrying pitchers of wine and pitchers of oil noticed that they were about to be broken, he may not say, "I declare this terumah[5] or tithe with respect to other produce which I have at home," and if he says so, his statement is of no legal validity'?[6] — As R. Jeremiah said in another connection, 'Where the bale[7] of the press-house was twined around it [it would not become ownerless]';[8] so also here in the case of the barrel [we suppose] the bale of the press-house was twined around it.[9] [Still, how does the Baraitha state:][10] 'And if he says so, his statement is of no legal validity'? Surely it was taught: If a man was walking on the road with money in his possession, and a robber confronted him, he may not say, 'The produce which I have in my house[11] shall become redeemed[12] by virtue of these coins,'[13] yet if he says so, his statement has legal validity?[14] — Here [in the latter case] we suppose that he was still able to rescue the money.[15] But if he was still able to rescue the money why then should he not be allowed to say so[16] even directly? — We suppose he would be able to rescue it with [some] exertion. But still even where there is likely to be a loss,[17] why should he not be allowed to say so[16] even directly?[18] Surely it was taught: If a man has ten barrels[19] of unclean tebel[20] and notices one of them on the point of becoming broken or uncovered,[21] he may say, 'Let this be the terumah [portion] of the tithe[22] with respect to the other nine barrels,' though in the case of oil he should not do so as he would thereby cause a great loss to the priest?[23] — Said R. Jeremiah: [In this case we suppose that] the bale of the presshouse was still twined around it.[24] This is a sufficient reason in the case where the barrel broke, as [the wine remaining] is still fit to be used, but in the case where the barrel became uncovered, for what use is the wine fit any more? For should you argue that[25] it is still fit for sprinkling purposes, was it not taught: Water which became uncovered should not even be poured out on public ground, and should neither be used for stamping clay, nor for sprinkling the house,[26] nor for feeding either one's own animal or the animal of a neighbour?[27] —

He may make it good by using a strainer, in accordance with the view of R. Nehemiah as taught: A strainer[28] is subject to the law of uncovering;[29] R. Nehemiah, however, says that this is so only where the receptacle underneath was uncovered, but if the receptacle underneath was covered, though the strainer on top was uncovered the liquid [strained into the receptacle beneath] would not be subject to the law of uncovering as the venom of a serpent resembles a fungus and thus remains floating in its previous position.[30] But was it not taught[31] in reference to this that R. Simeon said in the name of R. Joshua b. Levi that this ruling applies only if it has not been stirred, but if it had been stirred it would be forbidden?[32] — Even there it is possible [to rectify matters by] putting some [cloth] on the mouth of the barrel and straining the liquid gently through. But if we follow R. Nehemiah, is it permitted to make unclean produce terumah even with respect to other unclean produce? Surely it has been taught: It is permitted to make unclean produce terumah with respect to other unclean produce, or clean produce with respect to other clean produce, but not unclean produce with respect to clean produce,[33] whereas R. Nehemiah said that unclean produce is not allowed to be made terumah[34] even with respect to unclean produce except in the case of demai![35] — Here also[36] we are dealing with a case of demai.

The Master stated: 'Though in the case of oil he should not do so as he would thereby cause a great loss to the priest'. But why is oil different? Surely because[37] it can be used for lighting; cannot wine[37] similarly be used for sprinkling purposes?[38] And should you argue that sprinkling is not a thing of any consequence, did Samuel not say[38] in the name of R. Hiyya that for drinking purposes one should pay a sela' per log [of wine], whereas, for sprinkling purposes, two sela's[39] per log? We are dealing here with fresh wine.[40] But could it not be kept until it becomes old? — He may happen to use it for a wrong purpose.[41] But why not also in the case of oil apprehend that he may happen to use it[42] for a wrong purpose? — We suppose he keeps it in a filthy receptacle.[43] But why not keep the wine also in a filthy receptacle?[43] — Since it is needed for sprinkling purposes,[44] how could it be placed in a filthy receptacle?

The apprehension of illicit use[41] is in itself a point at issue between Tannaim, as taught: If a barrel of terumah wine became unclean, Beth Shammai maintain

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(1) But not for the value of the wine. For a different view cf. supra p. 679 and Tosef, B .K. X, 13.

(2) V. Glos.

(3) I.e., the honey by receiving it in my receptacle.

(4) For when the jug cracked and the loss of the honey became imminent there is implied Renunciation on the part of the owner; v. also supra p. 670 and B.M. 22a.

(5) V. Glos.

(6) For when the loss of the wine and oil becomes imminent the ownership comes to an end; Tosef. M.Sh. I, 6.

(7) V. Sanh. (Sonc. ed.) p. 151, n. 6.

(8) For the liquid would then merely leak out drop by drop, but not be lost instantly.

(9) And since the honey would not flow out straight away there is no immediate lapse of ownership.

(10) Where the bale of the press-house was not twined around it.

(11) And which was set aside as a second tithe, cf. Lev. XXVII, 30.

(12) In accordance with ibid. 31 and Deut. XIV, 25.

(13) Which were about to be misappropriated by the robber.

(14) And the produce in his house would become redeemed. This contradicts the former Braitha.

(15) From being taken away by the robber.

(16) That the produce should be redeemed by the coins.

(17) [I.e., where he is able to rescue with some exertion.]

(18) Some authorities, however, read thus: 'But still even where there is a definite loss why should his statement be of no legal validity?' V. Tosaf. a.l. but also Rashi and Bah.

(19) Of wine.

(20) I.e., produce prior to the separation of the priestly and levitical portions as required by law.

(21) And will thus become forbidden for use, for fear that a venomous snake partook of the liquid and injected there poison, v. Ter. VIII, 4-7.
(22) I.e., the tithe of the tithe mentioned in Num. XVIII, 26.
(23) The difference between oil and wine is that, since the produce was already defiled, in the case of wine the priest would in any case be unable to make any use of it, whereas in the case of oil he can use it for the purposes of heating and lighting; v. Ter. XI, 10. [Now assuming that the loss involved in the case of the wine, being small (v. infra), is to be compared with a loss that is not definite, does this not prove that where there is only likely to be a loss, the relevant declaration may be made directly?]
(24) In which case the loss is insignificant.
(25) Though it is no more good as a drink.
(26) For the venom which it might contain might injure persons walking there barefooted.
(27) Tosef Ter. XVII, and A.Z. 30b.
(28) I.e., liquid poured therein to be strained.
(29) For the venom, if any, will pass through the strainer.
(30) In the strainer without passing on to the receptacle underneath (Tosef. Ter. ibid. 14.)
(31) Cf. J. Ter. VIII, 5.
(32) [Here likewise, since he cannot avoid stirring the wine while pouring it from the barrel into the strainer, the venom will pass into the receptacle.]
(33) Cf. Ter. II, 2, and Yeb. 89a.
(34) For the setting aside of terumah must be in such a way as to enable it to be given to a priest whilst clean.
(35) I.e., produce bought from a person who could not be trusted to have set aside the necessary tithes. V. Glos. (cf. Ter. II, 2, and Yeb. 89a).
(36) Regarding the ten barrels of unclean tebel.
(37) When unclean and thus unfit for consumption by the priest.
(38) Cf. Pes. 20b.
(39) As wine for sprinkling is more useful than for drinking.
(40) Which is not fit for sprinkling.
(41) For through keeping it for some time he might inadvertently partake of it; it should therefore be forbidden to keep it at all.
(42) As he keeps it for heating and lighting.
(43) As a safeguard against partaking of it.
(44) And thus dependent upon its odour.

Talmud - Mas. Baba Kama 116a

that the whole of it must immediately be poured out, whereas Beth Hillel maintain that it could be used for sprinkling purposes. R. Ishmael b. Jose[1] said: I will suggest a compromise: [If it was already] in the house it might be used for sprinkling purposes, but [if it was still] in the field it would have to be poured out entirely,[2] or as some say: If it was old it might be used for sprinkling purposes, but if it was fresh it should be poured out entirely. They rejoined to him:[3] A compromise based on an independent[4] reasoning cannot be accepted.[5]

BUT IF HE SAID [AT THE OUTSET], I AM GOING TO RESCUE YOUR HONEY AND I EXPECT TO BE PAID THE VALUE OF MY WINE, THE OTHER HAS TO PAY HIM [ACCORDINGLY]. But why should the other party not say to him [subsequently], 'I am merely jesting with you'?[6] Surely it was taught: If a man running away from prison came to a ferry and said to the boatman, 'Take a denar to ferry me across,' he would still have to pay him not more than the value of his services.[7] This shows that he is entitled to say, 'I was merely jesting with you'? Why then also here should he not be entitled to say to him, 'I was merely jesting with you'? — The comparison is rather with the case dealt with in the concluding clause: But if he said to him, 'Take this denar as your fee for ferrying me across,' he would have to pay him the sum stipulated in full. But why this difference between the case in the first clause and that in the second clause? — Said

Rami b. Hama: [In the second clause] the other party was a fisher catching fishes from the sea in which case he can surely say to him, 'You caused me to lose fish amounting in value to a zuz.'[8]

SO ALSO IF A RIVER SWEPT AWAY HIS ASS AND ANOTHER MAN'S ASS, HIS ASS BEING WORTH A MANE HAND THE OTHER'S ASS TWO HUNDRED ZUZ, etc. [Both cases] had to be [stated]. For had we only the former case,[9] we might think that it was only there where a stipulation was made that the payment should be for the whole value [of the wine], since its owner sustained the loss by direct act of his own hands,[10] whereas here[11] where the loss came of itself[12] it might have been said that [in all circumstances] he would have no more than the value of his services. So also if we had had only the second case, we might have thought that it was only here,[11] where no stipulation was made, that he would have no more than the value of his services, since the loss came of itself,[12] whereas in the other case,[13] where the loss was sustained through his own act,[10] I might have said that even where no stipulation was made the payment would have to be for the whole value [of the honey]. It was therefore necessary [to state both cases].

R. Kahana asked Rab: What would be the law if the owner [of the inferior ass] went down to rescue the other's ass [with the stipulation of being paid the value of his own ass], and it so happened that his own ass got out by itself? — He replied: This was surely an act of mercy towards him on the part of Heaven.[14] A similar case happened with R. Safra when he was going along with a caravan. A lion followed them[15] and they had every evening to abandon to it [in turn] an ass of each of them which it ate. When the turn[16] of R. Safra came and he gave it his ass, the lion did not eat it. R. Safra immediately hastened to take possession of it. Said R. Aha of Difti to Rabina: Why was it necessary for him to take possession of it again? For though he had [implicitly] abandoned it, he surely had abandoned it only with respect to the lion, whereas with respect to anybody else in the world he certainly had not abandoned it at all.[17] He replied: R. Safra did it as an extra precaution.[18]

Rab asked Rabbi: What would be the law where he went down to rescue [the more valuable ass] but did not succeed in rescuing it? — He replied: Is this a question? He would surely have no more than the value of his services. An objection was raised: 'If a labourer was hired

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(1) Who lived in a much later period than Shammai and Hillel; Rashi, Pes. 20b.

(2) For while bringing it home it might inadvertently be partaken of.

(3) I.e., his contemporaries; Rashi, Pes. ibid.

(4) Lit., 'third'.

(5) Having no basis in either of the conflicting views, but constituting an opinion by itself, and thus being in principle opposed to both of them. V. Pes. 21a.

(6) To urge you to help.

(7) Yeb. 106a.

(8) I.e., the denar you offered me; in the case in the Mishnah the same argument holds good, hence the same ruling.

(9) Regarding the wine and honey.

(10) As he directly spilt his wine.

(11) In the case of the two asses.

(12) I.e., his ass was drowned by accident.

(13) Regarding the wine and honey.

(14) Which should therefore not affect in any way the stipulation made that the full amount be paid.

(15) To guard them against robbers and beasts.

(16) Lit., time.

(17) Why then was it necessary for him to take possession of it again? The ass would in any case have remained his.

(18) So that there should be no argument in the matter.

to bring cabbage or damascene[1] plums for a sick person, and by the time he arrived he found him already dead or fully recovered, his hire[2] would have to be paid in full'?[3] — He replied: What comparison is there? In that case the messenger performed his errand,[4] whereas here the messenger did not perform his errand.[5]

Our Rabbis taught: If a caravan was travelling through the wilderness and a band of robbers threatened to plunder it, the contribution to be paid by each [for buying them off] will be apportioned in accordance with his possessions [in the caravan,] but not in accordance with the number of persons there.[6] But if they hire a guide to go in front of them, the calculation will have to be made also[7] according to the number of souls in the caravan,[8] though they have no right to deviate from the general custom of the ass-drivers.[9] The ass-drivers are entitled to stipulate that one who loses his ass should be provided with another ass.[10] [If, however, this was caused] by negligence, they would not have to provide him with another ass; where this was done without any negligence [on his part], he is provided with another ass. If he said: Give me the money for the ass and I will [buy it myself and][11] in any case guard the asses,[12] we do not listen to him.[13] Is this not obvious? — No; this is a case where he possesses another ass, and where therefore I might have said that since he has in any case to guard it[14] [his request should be complied with]: we are therefore told that there is a difference between guarding one and guarding two.[15]

Our Rabbis taught: If a boat was sailing on the sea and a gale arose threatening to sink it so that it became necessary to lighten the cargo, the apportionment [of the loss of each passenger] will have to be made according to the weight of the cargo[16] and not according to the value of the cargo, though they should not deviate from the general custom of mariners.[9] The mariners are entitled to stipulate that one who loses his boat should be provided with another boat. If this was caused by his fault, they would not have to provide him with another boat, but if without negligence he is provided with another boat. So also if he sailed to a place where boats should not go [and thus lost his boat] they would not have to provide him with another one.[17] But is this not obvious? — No; [there may be a place where] during Nisan[18] they generally sail one rope's length away from the shore, whereas during Tishri[18] they sail two ropes' length away from the shore,[19] and it so happened here that during Nisan[20] he sailed in the place fit for sailing during Tishri.[21] In this case it might be argued that [as] he took his wanted course in sailing,[22] [he should still be provided with another boat]; we are therefore told [that this is not the case].

Our Rabbis taught: If a caravan was travelling in the desert and a band of robbers threatened to plunder it, and one member of the caravan rose and rescued [some of their belongings], whatever he rescued will go to the respective owners,[23] whereas if he said at the beginning, 'I am going to rescue for myself', whatever he rescued would belong to himself.[24] What are the circumstances? If [the other owners were] able to rescue their belongings,[25] why even in the second case should the rescued belongings not go to the respective owners?[26] If on the other hand no [other owner was] able to rescue [anything],[27] why even in the first case should they not belong to the man himself?[28] — Said Rami b. Hama: We are dealing here with partners, and [in an emergency] like this,[29] a partner may dissolve partnership even without the knowledge of his fellow: so that where he made a stipulation [as in the concluding clause], the partnership has been dissolved,[30] whereas if no stipulation was made [as in the first clause] the partnership has not yet been dissolved.[31] Raba, however, said that we are dealing here with labourers,[32] and the ruling follows the view of Rab, for Rab said that a labourer[33] is entitled to withdraw even in the middle of the day.[34] Hence so long as he did not withdraw, [whatever he rescues is regarded] as being in the possession of the employer, whereas after he had already withdrawn it is a different matter altogether,[35] as it is written: For unto me the Children of Israel are servants; they are my servants,[36] but not servants to servants.[37] R. Ashi said: [We are dealing here with a case] where [any other owner would be] able to rescue [the property] only with great difficulty, so that where he [the one who did the work of rescue] declared his intention,[38] the belongings rescued will go to him, whereas where he did not declare his intention

they will go to their respective owners.[39]

MISHNAH. IF A MAN ROBBED ANOTHER OF A FIELD AND BANDITTI [MASSIKIN][40] CONFISCATED IT, IF THIS BLOW BEFELL THE WHOLE PROVINCE[41] HE MAY SAY TO HIM, 'HERE IS THINE BEFORE THEE'; BUT IF IT WAS CAUSED THROUGH THE ROBBER HIMSELF HE WOULD HAVE TO PROVIDE HIM WITH ANOTHER FIELD. GEMARA. R. Nahman b. Isaac said: One who reads here MASSIKIN[42] is not in error, while one who reads 'Mezikin' is similarly not in error: One who reads 'Mezikin' is not in error as it was written:[43] In the siege and mazok [straitness];[44] so also he who reads MASSIKIN is not in error as it is written: The locust [shall] consume,[45] which is translated,[46] 'The sakkah [sack-carrier][47] shall inherit[48] it.'

BUT IF IT WAS CAUSED THROUGH THE ROBBER HIMSELF, HE WOULD HAVE TO PROVIDE HIM WITH ANOTHER FIELD. How are we to understand this? If only this field was confiscated, while all the other fields were not confiscated, could this not be derived from the earlier clause which says: IF THIS BLOW BEFELL THE WHOLE PROVINCE [HE MAY SAY TO HIM 'HERE IS THINE BEFORE THEE'], which implies that if this was not so, the ruling would be otherwise? — No; it is necessary to state the law where he [did not actually misappropriate the field but merely] pointed it out[49] [to the banditti to confiscate it]. According to another explanation we are dealing here with a case where e.g. heathens demanded of him[50] with threats to show them his fields and he showed them also this field among his own. A certain person showed [to robbers] a heap of wheat that belonged to the house of the Exilarch. He was brought before R. Nahman and ordered by R. Nahman to pay. R. Joseph happened to be sitting at the back of R. Huna b. Hiyya, who was sitting in front of R. Nahman. R. Huna b. Hiyya said to R. Nahman: Is this a judgment or a fine? — He replied: This is the ruling in our Mishnah, as we have learnt: IF IT WAS CAUSED THROUGH THE ROBBER HIMSELF HE WOULD HAVE TO PROVIDE HIM WITH ANOTHER FIELD, which we interpreted to refer to a case where he showed [the field to bandits]. After R. Nahman had gone, R. Joseph said to R. Huna b. Hiyya: 'What difference does it make

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(1) **; Lat. 'Damascina'.

(2) Which owing to the need of the occasion was above the ordinary; cf. Tosaf. a.l.

(3) Tosef. B.M. VII 2. Does this not prove that even where the efforts proved unsuccessful the payment must still be in full?

(4) As he indeed fetched the required objects.

(5) For he did not rescue the ass.

(6) For the robbers came originally for the possessions and not necessarily for souls.

(7) 'Also' is missing in J. B.M. VI, 4.

(8) For a guide is vital also to safeguard life; as to possessions cf. the difference in reading between the text here and J. B.M. VI, 4.

(9) Tosef. B.M. VII; cf. B.B. 7b, 8b.

(10) I.e., a kind of insurance.

(11) [So MS.M.]

(12) In accordance with the custom that each ass-driver had in turn to look after all the asses together with his own.

(13) For he might not buy another ass and thus have no longer any interest in looking after the other asses. Tosef. B.M. XI.

(14) Together with the asses of the other drivers.

(15) As when he has two asses of his own among those of the other drivers he will put more heart into his work.

(16) Though one might be asked to throw away gold and another a similar weight of copper.

(17) Tosef. B.M. XI, 12.

(18) V. p. 25, nn, 6-7.

(19) On account of the shallowness of the water soon after the hot summer period.

(20) When there is an abundance of water in the river.

(21) I.e., far away from the shore; for a transposed text v. Shittah Mekubezeth.

(22) He should not be considered careless.
(23) Lit., 'to the common fund' which will indeed be so according to the interpretation of Rami b. Hama which follows on.
(24) Tosef. B.M., VIII.
(25) In which case they certainly did not give them up.
(26) For how did he acquire title to them.
(27) In which case they surely gave up any hope of retaining their belongings and thus abandoned them, as supra p. 686.
(28) As he became possessed of ownerless property.
(29) Where a loss of property is imminent.
(30) He may thus retain the property he rescued to the extent of his part.
(31) And whatever he rescued will go to the common fund.
(32) Who were hired by the caravan and who rescued the threatened property.
(33) I.e., a day labourer.
(34) B.M. 10a.
(35) For then he works for himself and since the owners were unable to rescue their property it became abandoned so that when rescued by the labourer he acquired title to it.
(36) Lev. XXV, 55.
(37) Unlike in the case of the Hebrew servant of Ex. XXI, 2 the employer has no right in rem with reference to his labourers; cf. Kid. 16a and also 22b.
(38) I.e., that he does it for himself; and as the owner who was present there neither contradicted him nor made any exertion to rescue it, the property became ownerless.
(39) For under such circumstances there could not be traced there any implied Renunciation on their part.
(40) מסיקין V. B.M. (Sonc. ed.) p. 576, n. 5.
(41) I.e., they confiscated other's fields too.
(42) Cf. supra p. 694, n. 12.
(43) Deut. XXVIII, 57.
(44) I.e., oppression.
(45) Ibid. 42.
(46) In Targum Onkelos a.l.; cf. however Rashi there.
(47) So Jast. The name of a locust or a beetle; v. Ta'an. 6a; according however to R. Tam it refers to the enemy.
(48) V. Isa. XXXIV, 11.
(49) Lit., 'showed it'.
(50) I.e., of an actual robber.

Talmud - Mas. Baba Kama 117a

whether it is a judgment or a fine?' — He replied: If it is a judgment we may derive other cases from it,[1] whereas if it is a fine[2] we would be unable to derive other cases from it. But what is your ground for saying that from a matter of [mere] fine we cannot derive any other case? — As it was taught: 'Originally it was said that [liability will attach] for defiling [terumah][3] or for vitiating [wine],[4] but it was subsequently laid down that [it will also attach] for mixing[4] [common grain with terumah grain].'[5] Now, this is so only because it was so laid down subsequently, whereas had it not been so laid down subsequently this would not have been so. Is the reason for this not because liability here is a [matter of mere] fine, [thus proving that] we cannot derive anything from a fine?[6] — No, originally it was thought[7] that it is only where a great loss[8] is involved that we have to be on our guard,[9] whereas where only a small loss[10] is involved, we need not be particular, whereas subsequently it was decided that even in the case of a small loss[10] we should be particular. But this is not so![11] For the father of R. Abin[12] learnt: Originally it was said that [liability will attach] for defiling [terumah] or for mixing[13] [it with unconsecrated grain], but it was subsequently laid down that it will also attach for vitiating [wine]. Now, this is so [only] because it was so laid down subsequently, whereas had it not been so stated subsequently this would not have been so. Is the reason for this not because we are unable to derive anything from a matter of mere fine? — No:

originally the view of R. Abin was taken,[7] but subsequently the view of R. Jeremiah was adopted. 'Originally the view of R. Abin was taken,' — for R. Abin said: If one shot an arrow[14] from the beginning to the end of a space of four cubits[15] and it cut through some silk in its passage, he would be exempt,[16] for the outset [of the motion] was subservient to its termination, for which he is liable to capital punishment;[17] but subsequently it was decided in accordance with R. Jeremiah, for R. Jeremiah said: From the moment the defendant lifted up the wine[18] it entered into his possession,[19] and he thus became liable to make pecuniary compensation[19] whereas he does not become liable to capital punishment until the very moment of the [idolatrous] libation.[20]

Happening to be at Be-Ebyone[21] R. Huna b. Judah visited Raba who said to him: Has any case [about which you are in doubt] recently been decided by you? — He replied: I had to decide the case of an Israelite whom heathens forced to show them another man's possessions and I ordered him to pay. He, however, said to him: Reverse the judgment in favour of the defendant, as taught: An Israelite who was forced by heathens to show them another man's possessions is exempt, though if he personally took it and gave it [to the heathens] with [his own] hand, he would be liable. Rabbah[22] said: If he showed it on his own accord it is the same [in law] as if he personally took it and gave it to the robber with [his own] hand.

A certain man was forced by heathens to show them the wine of Mari the son of R. Phine has[23] the son of R. Hisda. The heathens then said to him, 'Carry the wine and bring it along with us,' so he carried it and brought it along with them. When he was brought before R. Ashi he exempted him. The Rabbis said to R. Ashi: Was it not taught: 'If he personally took it and gave it to the heathens with [his own] hand, he would be liable'? — He said to them: This ruling applies only where the heathens were not standing near it,[24] whereas where they stood near it is the same [in the eye of the law] as if it had already been burnt.[25] R. Abbahu[26] raised an objection to [the explanation of] R. Ashi [from the following]: 'If a ruffian said[27] to him, "Hand me this bunch of sheaves or this cluster of grapes," and he handed it to him, he would be liable'?[28] [No,] we are dealing here with a case where they were standing on two banks of a river.[29] That this was the case could also be proved from the use of the word 'hand' instead of 'give'.[30] This indeed proves it.

Two persons were quarrelling about a certain net. One said, 'It is mine', and the other said, 'It is mine.' One of them eventually went and surrendered it to the Parangaria[31] of the King [for confiscation]. Abaye thereupon said that he should be entitled to plead: 'When I surrendered the article it was my own property that I surrendered.' Said Raba to him: 'Why [should he be] believed [if he says so]?' Raba therefore said: We would have to impose a Shamta[32] upon him until be brings back [the net][33] and appears before the Court.

A certain man who was desirous of showing another man's straw [to be confiscated] appeared before Rab, who said to him: 'Don't show it! Don't show it!' He retorted: 'I will show it! I will show it!' R. Kahana was then sitting before Rab, and he tore [that man's] windpipe out of him. Rab thereupon quoted: Thy sons have fainted, they lie at the heads of all the streets as a wild bull in a net;[34] just as when a 'wild bull' falls into a 'net' no one has mercy upon it, so with the property of an Israelite, as soon as it falls into the hands of heathen oppressors no mercy is exercised towards it.[35] Rab therefore said to him: 'Kahana, until now the Greeks[36] who did not take much notice of bloodshed were [here and had sway, but] now the persians[37] who are particular regarding bloodshed are here, and they will certainly say, "Murder, murder!";[38] arise therefore and go up to the Land of Israel but take it upon yourself that you will not point out any difficulty to R. Johanan[39] for the next seven years. When he arrived there he found Resh Lakish sitting and going over[40] the lecture of the day for [the younger of] the Rabbis.[41] He thereupon said to them: 'Where is Resh Lakish?'[42] They said to him: 'Why do you ask?' He replied: 'This point [in the lecture] is difficult and that point is difficult, but this could be given as an answer and that could be given as an answer.' When they mentioned this to Resh Lakish, Resh Lakish went and said to R. Johanan: 'A lion[43] has come up

from Babylon; let the Master therefore look very carefully into tomorrow's lecture.' On the morrow R. Kahana was seated on the first row of disciples before R. Johanan, but as the latter made one statement and the former did not raise any difficulty, another statement, and the former raised no difficulty, R. Kahana was put back through the seven rows until he remained seated upon the very last row. R. Johanan thereupon said to R. Simeon b. Lakish: 'The lion you mentioned turns out to be a [mere] fox.'[44] R. Kahana thereupon[45] whispered [in prayer]: 'May it be the will [of Heaven] that these seven rows be in the place of the seven years mentioned by Rab.' He thereupon immediately stood on his feet[46] and said to R. Johanan: 'Will the Master please start the lecture again from the beginning.' As soon as the latter made a statement [on a matter of law], R. Kahana pointed out a difficulty, and so also when R. Johanan subsequently made further statements, for which he was placed again on the first row. R. Johanan was sitting upon seven cushions. Whenever he made a statement against which a difficulty was pointed out, one cushion was pulled out from under him, [and so it went on until] all the cushions were pulled out from under him and he remained seated upon the ground. As R. Johanan was then a very old man and his eyelashes were overhanging he said to them, 'Lift up my eyes for me as I want to see him.' So they lifted up his eyelids with silver pincers. He saw that R. Kahana's lips were parted[47] and thought that he was laughing at him. He felt aggrieved and in consequence the soul of R. Kahana went to rest.[48] On the next day R. Johanan said to our Rabbis, 'Have you noticed how the Babylonian was making [a laughing-stock of us]?' But they said to him, 'This was his natural appearance.' He thereupon went to the cave [of R. Kahana's grave] and saw

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(1) By means of analogy.

(2) Imposed for that particular occasion on account of some aggravation of the offence; cf., e.g., supra p. 561.

(3) V. Glos.

(4) Cf. supra p. 14.

(5) Git. 53a.

(6) For if not so, why was it necessary to state explicit liability to the new case.

(7) Lit., 'maintained'.

(8) Such as defiling terumah, vitiating wine and the like.

(9) And impose a penalty for preventive purposes.

(10) Such as in the case of mixing, [where the loss is small, as the mixture can still be sold to priests though at a somewhat reduced price].

(11) That the law in another case could be derived from a ruling merely imposing a fine.

(12) V. Sanh. 51b.

(13) Cf. Git. 53a.

(14) In a public thoroughfare on the Sabbath day, thus committing a capital offence; v. Shab. XI, 1-3.

(15) I.e., passing through a distance of not less than four cubits which is the minimum required to make him liable for the violation of Sabbath; v. supra p. 138.

(16) From civil liability for the silk.

(17) Into which all civil offences committed at that time merge (Keth. 31a); v. supra 192; no civil liability was therefore maintained in the case of vitiating wine by idolatrous libation which is a capital offence; cf. Sanh. VII, 4-6.

(18) I.e., before he ever started to commit the idolatrous libation.

(19) In the capacity of robbery.

(20) Git. 52b. And since the civil liability is neither for the same act nor for the same moment which occasions the liability for capital punishment, each liability holds good.

(21) Lit., 'poor-house', but according to Rashi 'a proper name of a place.' [Funk, Monumenta Talmudica, I, 290, identifies it with a locality Abjum, N. of Mosul on the Tigris; Goldschmidt renders: in an Ebionite town.]

(22) 'Raba' according to MS.M.

(23) But according to MS. M. 'R. Mari and R. Phineas, the sons of . . .' The fact, however, that R. Ashi was a contemporary is rather in favour of the reading in the text; but cf. also Alfasi and Asheri.

(24) I.e., where they have not yet become possessed of it; cf. Rashi and the Codes.

(25) The defendant could thus be made liable neither for the act of showing, for at that time be did not handle the wine,

nor for the act of carrying which was after the wine had virtually entered the possession of the heathens.
(26) More probably 'R. Abba' [since R. Abbahu lived much earlier than R. Ashi; v. D.S.]. Asheri: 'Rabina', Alfasi: 'R. Kahana'.
(27) [אנם another term for 'massik' of the Mishnah. Klein, NB. p. 14, n. 11.]
(28) Is this not a case where the ruffian had already been standing nearby the misappropriated article?
(29) Which separates the robber from the articles he intended to misappropriate.
(30) Cf. 'A.Z. 6b.
(31) I.e., the office of public service; cf. B.M. 83b.
(32) A ban.
(33) Cf. MS.M. and also Alfasi and Asheri a.l.
(34) Isa. LI, 20.
(35) More correctly perhaps, 'towards him', referring thus to the Israelite; v. Ab. II, 2, also Asheri B.K. X, 27; the act of R. Kahana was in this way vindicated.
(36) So MS.M.; cur. edd.: Persians. [The reference is to the Parthians whose sway over Babylon came to an end in 266, when they were defeated by the Sassanians.]
(37) So MS.M.; curr. edd.: Greeks. [Ardeshir, the first of the Sassanian kings, deprived the Jews of the right they had hitherto exercised under the Parthians of inflicting capital punishment, v. Funk, Die fuden in Babylonien, I, 68.]
(38) [Or 'Rebellion '; v. B.M. (Sonc. ed.) p. 235, n. 7.]
(39) V. Hul. 95b.
(40) [So Rashi. Kaplan, J. The Redaction of the Babylonion Talmud, p. 206, explains the phrase וקא מסיים as referring to a particular kind of lecture, devoted to the defining of the terse conclusions reached during the day in the academy.]
(41) Cf. B.M. 84a; also Sanh. 24a.
(42) MS.M. adds, 'and R. Kahana did not know that it was Resh Lakish (who was repeating the other lecture).'
(43) Cf. Ab. IV, 15, and B.M. 84b.
(44) V. p. 699, n. 9.
(45) MS.M.: 'he went out of the college.'
(46) This is missing in MS.M. according to which it was on another day when R. Johanan made new statements that R. Kahana said so.
(47) A physical defect owing to an accidental wound.
(48) V. B.M. 84a regarding R. Johanan and Resh Lakish.

Talmud - Mas. Baba Kama 117b

a snake coiled round it. He said: 'Snake, snake, open thy mouth[1] and let the Master go in to the disciple.' But the snake did not open its mouth. He then said: 'Let the colleague go in to [his] associate!' But it still did not open [its mouth, until he said,] 'Let the disciple enter to his Master,' when the snake did open its mouth.[2] He then prayed for mercy and raised him.[3] He said to him, 'Had I known that the natural appearance of the Master was like that,I should never have taken offence; now, therefore let the Master go with us.' He replied, 'If you are able to pray for mercy that I should never die again [through causing you any annoyance],[4] I will go with you, but if not I am not prepared to go with you. For later on you might change again.' R. Johanan thereupon completely awakened and restored him and he used to consult him on doubtful points, R. Kahana solving them for him. This is implied in the statement made by R. Johanan: 'What[5] I had believed to be yours[6] was In fact theirs.'[7]

There was a certain man who showed a silk[8] ornament of R. Abba [to heathen ruffians]. R. Abbahu and R. Hanina b. Papi and R. Isaac the Smith were sitting in judgment with R. Elai sitting near them. They were inclined to declare the defendant liable, as we have learnt: Where a judge in deciding [on a certain case], declared innocent the person who was really liable, or made liable the person who was really innocent, declared defiled a thing which was [levitically] clean, or declared clean a thing which was really defiled, his decision would stand, but he would have to make

restitution out of his own estate.[9] Thereupon Elai said to them: Thus stated Rab: provided the defendant[10] actually took and gave it away with his own hand.[11] They therefore said to the plaintiff: Go and take your case to R. Simeon b. Eliakim and R. Eleazar b. Pedath who adjudicate liability for damage done by Garmi.[12] When he went to them they declared the defendant liable on the strength of our Mishnah: IF THIS WAS CAUSED THROUGH THE ROBBER HE WOULD HAVE TO PROVIDE HIM WITH ANOTHER FIELD, which we intrepreted[13] to refer to a case where he showed [the field to oppressors].

A certain man had a silver cup which had been deposited with him, and being attacked by thieves he took it and handed it over to them. He was summoned before Rabbah[14] who declared him exempt. Said Abaye to Rabbah: Was this man not rescuing himself by means of another man's money?[15] R. Ashi said: We have to consider the circumstances. If he was a wealthy man,[16] the thieves came [upon him] probably with the intention of stealing his own possessions, but if not, they came for the silver cup.

A certain man had a purse[17] of money for the redemption of captives deposited with him. Being attacked by thieves he took it and handed it over to them. He was thereupon summoned before Raba[18] who nevertheless declared him exempt. Said Abaye to him: Was not that man rescuing himself by means of another man's money? — He replied: There could hardly be a case of redeeming captives more pressing than this.[19]

A certain man managed to get his ass on to a ferry boat before the people in the boat had got out on to shore.[20] The boat was in danger of sinking, so a certain person came along and pushed that man's ass over in to the river, where it drowned. When the case was brought before Rabbah[21] he declared him exempt. Said Abaye to him: Was that person not rescuing himself by means of another man's money? — He, however, said to him: The owner of the ass was from the very beginning in the position of a pursuer.[22] Rabbah follows his own line of reasoning, for Rabbah [elsewhere] said: If a man was pursuing another with the intention of killing him, and in his course broke utensils, whether they belonged to the pursued or to any other person, he would be exempt, for he was at that time[22] incurring capital liability.[23] If, however, he who was pursued broke utensils, he would be exempt only if they belonged to the pursuer, whose possessions could surely not be entitled to greater protection than his body,[24] whereas if they belonged to any other person he would be liable, as it is forbidden to rescue oneself by means of another man's possessions. But if a man ran after a pursuer with the intention of rescuing [some one from him] and [in his course accidentally] broke utensils, whether they belonged to the pursued or to any other person he would be exempt; this,[25] however, is not a matter of [strict] law, but is based upon the consideration that if you were not to rule thus,[26] no man would ever put himself out to rescue a fellow-man from the hands of a pursuer.[27]

MISHNAH. IF A RIVER FLOODED [A MISAPPROPRIATED FIELD, THE ROBBER] IS ENTITLED TO SAY TO THE OTHER PARTY, ‘HERE IS YOURS BEFORE YOU’.[28]

GEMARA. Our Rabbis taught: If a man robbed another of a field and a river flooded it, he would have to present him with another field. This is the opinion of R. Eleazar[29] but the Sages maintain that he would be entitled to say to him: ‘Here is yours before you.’[30] What is the ground of their difference? — R. Eleazar expounds [Scripture] on the principle of amplifications and limitations.[31] [The expression,] And lie unto his neighbour,[32] is an amplification;[33] In that which was delivered him to keep . . .[32] constitutes a limitation;[34] Or all that about which he hath sworn falsely[35] forms again an amplification;[33] and where an amplification is followed by a limitation which precedes another amplification,[35] everything is included. What is thus included? All articles. And what is excluded?[34] Bills.[36] But the Rabbis expound [Scripture] on the principle of generalisation and specification,[31] [thus: The expression,] and lie[37] is a generalisation;[38] In that which was delivered him to keep . . .[37] is a specification;[39] Or all that [about which he has sworn falsely][40] is again a

generalisation;[40] and where a generalisation is followed by a specification that precedes another generalisation[40] you surely cannot include anything save what is similar to the specification.[41] So here, just as the specification is an article which is movable and of which the intrinsic value lies in its substance, you include any other matter which is movable and of which the intrinsic value lies in its very substance. Land is thus excluded[42] as it is not movable; so also are slaves excluded[42] as they are compared [in law] to lands,[43] and bills are similarly excluded,[42] for though they are movables, their substance does not constitute their intrinsic value. But was it not taught: If one misappropriated a cow and a river swept it away, he would have to present him with another cow,[44] according to the opinion of R. Eleazar, whereas the Sages maintain that he would be entitled to say to him: 'Here is yours before you'?[44] Now in what principle did they differ there [in the case of the cow]?[45] — Said R. papa: We are dealing there with a case where, e.g., he robbed a man of a field on which

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(1) [The snake holds its tail in its mouth. MS.M. reads 'open the door'.]

(2) Cf. B.M. 84b; Hill. 7b.

(3) Cf. Ber. 5b.

(4) So Rashi a.l.

(5) I.e., the knowledge of the law.

(6) I.e., the Palestinian scholars'.

(7) I.e., the Babylonians'; v. Suk. 44a.

(8) **.

(9) Bek. IV, 4; v. supra p. 584. Thus proving that for a mere utterance that caused a loss there is liability to pay.

(10) I.e., the judge.

(11) Cf. supra p. 585, Bek. 28b and Sanh. 33a.

(12) I.e., a direct cause; for the difference between Gerama and Garmi, viz. between an indirect and direct cause, v. Asheri, B.B. II, 17.

(13) Supra p. 695.

(14) MS.M.: Raba.

(15) V. supra p. 351 and Sanh. 74a.

(16) Cf. supra p. 360.

(17) ** (Krauss, Lehnworter, II, 133.)

(18) 'Rabbah' according to Asheri.

(19) For even if the depositee was not poor, since at that time he had nothing else with which to rescue himself from the thieves, he was allowed to do so; v. Tosaf. a.l.

(20) So MS.M.; curr. edd.: 'had embarked on the ferry boat'.

(21) MS.M.: 'Raba'.

(22) I.e., of threatening to endanger human life, which involves even a capital liability during the continuance of the threat; v. Ex. XXII, I, and Sanh. VIII, 7

(23) V. supra p. 680, n. 7.

(24) Cf. infra p. 713.

(25) I.e., the latter ruling.

(26) But make him liable.

(27) Sanh. 74a.

(28) Cf. supra p. 694.

(29) I.e., b. Shamua'; MS.M.: Eliezer [b. Horkenos]; as also in Shebu. 37b; v. D.S. n. 2.

(30) Shebu. 37b.

(31) Cf. Shebu. (Sonc. ed.) p. 12, n. 3; and supra 54b.

(32) Lev. V, 21.

(33) Including all matters.

(34) By the fact that it specifies certain transactions.

(35) Ibid. 24.

(36) As their intrinsic value does not lie in their substance; v. also supra p. 364.

(37) V. p. 703, n. 9.

(38) V. p. 703, n. 10.
(39) V. p. 703, n. 11.
(40) V. p. 703, n. 12.
(41) V. supra p. 364.
(42) From the general law of robbery.
(43) Cf. Lev. XXV, 46 and supra p. 364.
(44) V. p. 569, n. 2.
(45) Which is certainly subject to the law of robbery.

Talmud - Mas. Baba Kama 118a

a cow was lying,[1] and a river [subsequently] flooded it, R. Eleazar following his line of reasoning,[2] while the Rabbis followed their own view.[3]

MISHNAH. IF A MAN HAS ROBBED ANOTHER, OR BORROWED MONEY FROM HIM, OR RECEIVED A DEPOSIT FROM HIM[4] IN AN INHABITED PLACE, HE MAY NOT RESTORE IT TO HIM[5] IN THE WILDERNESS;[6] [BUT IF THE TRANSACTION WAS ORIGINALLY MADE] UPON THE STIPULATION THAT HE WAS GOING INTO THE WILDERNESS, HE MAY MAKE RESTORATION EVEN WHILE IN THE WILDERNESS.

GEMARA. A contradiction could be raised [from the following:] 'A loan can be paid in all places, whereas a lost article [which was found], or a deposit cannot be restored save in a place suitable for this'?[7] — Said Abaye: What is meant[8] is this: 'A loan can be demanded in any place, whereas a lost article [which was found] or a deposit cannot be demanded save in the proper place.'

[BUT IF THE TRANSACTION WAS ORIGINALLY MADE] UPON THE STIPULATION OF HIS GOING INTO THE WILDERNESS, etc. Is this ruling not obvious? — No, for we have to consider the case where he said to him, 'Take this article in deposit with you as I intend departing to the wilderness,' and the other said to him, 'I similarly intend departing to the wilderness, so that if you want me to return it to you there,[9] I will be able to do so.

MISHNAH. IF ONE MAN SAYS TO ANOTHER, 'I HAVE ROBBED YOU, I HAVE BORROWED MONEY FROM YOU, I RECEIVED A DEPOSIT FROM YOU BUT I DO NOT KNOW WHETHER I HAVE [ALREADY] RESTORED IT TO YOU OR NOT,' HE HAS TO MAKE RESTITUTION. BUT IF HE SAYS, 'I DO NOT KNOW WHETHER I HAVE ROBBED YOU, WHETHER I HAVE BORROWED MONEY FROM YOU, WHETHER I RECEIVED A DEPOSIT FROM YOU,' HE IS NOT LIABLE TO MAKE RESTITUTION.

GEMARA. It was stated:[10] [If one man alleges:] 'You have a maneh[11] of mine,'[12] and the other says, 'I am not certain about it,'[13] R. Huna and Rab Judah hold that he is liable,[14] but R. Nahman and R. Johanan say that he is exempt.[15] R. Huna and Rab Judah maintain that he is liable, because where a positive plea is met by an uncertain one, the positive plea prevails, but R. Nahman and R. Johanan say that he is exempt, since money [claimed] must remain in the possession of the holder.[16] We have learnt: BUT IF HE SAYS, 'I DO NOT KNOW WHETHER I HAVE BORROWED MONEY FROM YOU,' HE IS NOT LIABLE TO MAKE RESTITUTION. Now, how are we to understand this? If we say that there was no demand on the part of the plaintiff, then the first clause must surely refer to a case where he did not demand it, [and if so] why is there liability? It must therefore refer to a case where a demand was presented and it nevertheless says in the concluding clause,[17] 'HE IS NOT LIABLE to PAY'![18] — No, we may still say that no demand was presented [on the part of the plaintiff], and the first clause is concerned with one who comes to fulfil his duty towards Heaven.[19] It was indeed so stated: R. Hiyya b. Abbah said that R. Johanan stated: If a man says to another, 'You have a maneh of mine,' and the other says, 'I am not certain about it,' he

would be liable to pay[20] if he desires to fulfil his duty towards Heaven.[21]

MISHNAH. IF A MAN STOLE A SHEEP FROM THE HERD AND PUT IT BACK [THERE], AND IT SUBSEQUENTLY DIED OR WAS STOLEN, HE WOULD STILL BE RESPONSIBLE FOR IT. IF THE PROPRIETOR KNEW NEITHER OF THE THEFT NOR OF THE RESTORATION, BUT COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE, [THE THIEF WOULD BE] EXEMPT [IN REGARD TO ANY SUBSEQUENT MISHAP].

GEMARA Rab said: If the proprietor knew [of the theft], he has similarly to know [of the restoration]; where he had no knowledge [of the theft] his counting exempts [the thief]; and the words [HE] COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE, refer [only] to the concluding clause.[22] Samuel, however, said: Whether the proprietor knew, or had no knowledge [of it], his counting would exempt [the thief], and the words: [IF HE] COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE [THE THIEF WOULD BE] EXEMPT, refer to all cases.[23]

R. Johanan moreover said: If the proprietor had knowledge [of the theft], his counting will exempt [the thief], whereas if he had no knowledge [of it], it would not even be necessary to count,[24] and the words, [HE] COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE, refer [exclusively] to the first clause.[25] R. Hisda, however, said: Where the proprietor had knowledge [of the theft], counting will exempt [the thief], whereas where he had no knowledge [of the theft], he would have to be notified [of the restoration], and the words, [HE] COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE, refer [only] to the first clause.[25]

Raba said:

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(1) But the robber did not actually take possession of the cow in any other way, e.g., by 'pulling it'.

(2) That the field entered into the possession of the robber, as would be the case with any other misappropriated object, so that by virtue of his becoming possessed of the field, the cow is supposed to have similarly entered into his possession in accordance with Kid. I, 5 and supra p. 49

(3) That land is not subject to the law of robbery and does not enter into the possession of a robber, and as no independent act was done to take possession of the cow he could not be held responsible in any way regarding it.

(4) Lit., 'He (i.e. the latter) deposited with him.'

(5) Against his will.

(6) On account of the insecurity there.

(7) Is this not against the teaching of the Mishnah?

(8) By the passage quoted.

(9) Which prima facie means 'if you will be in need of money there;' it was therefore made known in the Mishnah that he may compel the creditor to accept payment there.

(10) Keth. 12b; B.M. 97b and 116b.

(11) A hundred zuz; v. Glos.

(12) I.e., 'You have to restore me a maneh which you borrowed from me' or 'which was deposited with you'.

(13) I.e., 'whether you lent me' or 'deposited with me anything at all'.

(14) To pay the maneh.

(15) He would only have to swear to confirm his plea that he is not certain about it (Rashi).

(16) I.e., the defendant.

(17) Where the doubt was not as to payment but as to the initial liability.

(18) Is this not in conflict with the view of R. Huna and Rab Judah?

(19) And since he is certain about the initial liability and only in doubt as to whether it was cancelled by payment, he is liable to make restoration for Heaven's sake even though there was no demand on the part of the plaintiff, whereas in the second clause where the doubt was regarding the initial liability it would not be so; cf. B.M. 37a and supra p. 600.

(20) Provided there was a demand, for otherwise it would not be so since the initial liability is in doubt.

(21) Though he cannot be forced by civil law to do so according to the view of R. Johanan himself.

(22) Where the proprietor had no knowledge of the theft.

(23) Whether the proprietor had knowledge of the theft or not.

(24) Cf. however supra 57a.

(25) Dealing with a case where the proprietor most probably knew of the theft.

Talmud - Mas. Baba Kama 118b

The reason of R. Hisda is because [living things] have the habit of running out[1] into the fields.[2] But did Raba really maintain this? Has not Raba said: If a man saw another lifting up a lamb of his herd and picked up a clod to throw at him and did not notice whether he put back the lamb or did not put it back, and [it so happened that] it died or was stolen [by somebody else], the thief[3] would be responsible for it. Now, does this ruling not hold good even where the herd had subsequently been counted?[4] No, only where the proprietor had not yet counted it.

But did Rab really make this statement?[5] Did not Rab Say: If the thief restored [the stolen sheep] to a herd which the proprietor had in the wilderness, he would thereby have fulfilled his duty![6] — Said R. Hanan b. Abba: Rab would accept the latter ruling in the case of an easily recognisable lamb.[7]

May we say that they[8] differed in the same way as the following Tannaim: If a man steals a lamb from the herd, or a sela'[9] from a purse, he must restore it to the same place from which he stole it. So R. Ishmael, but R. Akiba said that he would have to notify the proprietor.[10] Now, it was presumed that both parties concurred with the statement of R. Isaac who said[11] that a man usually examines his purse at short intervals. Could it therefore not be concluded that they[12] referred to the case of a sela' the theft of which is known to the proprietor[13] so that they[12] differed in the same way as Rab[14] and Samuel?[15] — No, they referred to the case of the lamb the theft of which is probably unknown to the owner[16] and they[12] thus differed in the same way as R. Hisda[17] and R. Johanan.[18]

R. Zebid said in the name of Raba: Where the article[19] was stolen from the actual possession of the proprietor, there is no difference of opinion between them[20] as in such a case they would adopt the view of R. Hisda;[21] but here they[20] differ on a case where a bailee misappropriated [a deposit] in his own possession and subsequently restored it to the place from which he misappropriated it, R. Akiba holding that [when he misappropriated the deposit] the bailment came to an end,[22] whereas R. Ishmael held that the bailment did not [thereby] come to an end.[23]

May we still say that [whether or not] counting exempts is a question at issue between Tannaim; for it was taught: If a man robbed another but made [up for the amount by] inserting it in his settlement of accounts, it was taught on one occasion that he thereby fulfilled his duty, whereas it was taught elsewhere that he did not fulfil his duty.[24] Now, as it is generally presumed that all parties concur with the dictum of R. Isaac who said that a man usually examines his purse from time to time, does it not follow [then] that the two views differ on this point, viz., that the view that he fulfilled his duty implies that counting secures exemption, whereas the view that he did not fulfil his duty implies that counting does not secure exemption? — It may however be said that if they were to accept the saying of R. Isaac they would none of them have questioned that counting should secure exemption; but they did in fact differ regarding the statement of R. Isaac, the one master[25] agreeing with the statement of R. Isaac and the other master[26] disagreeing. Or if you wish I may alternatively say that all are in agreement with the statement of R. Isaac, and still there is no difficulty, as in the former statement[25] we suppose the thief to have counted the money and thrown it into the purse of the other party,[27] whereas in the latter statement[28] we suppose him to have counted it and thrown it into the hand of the other party.[29] Or if you wish,I may alternatively still say that in the one case[28] as well as in the other[30] the robber counted the money and threw it into the purse of the other party,[27] but while on the latter case[28] we suppose some money[31] to have been in the purse,[32] the former[30] deals with a

case where no other money was in the purse.

MISHNAH. IT IS NOT RIGHT TO BUY EITHER WOOL OR MILK OR KIDS FROM THE SHEPHERDS,[33] NOR WOOD NOR FRUITS FROM THOSE WHO ARE IN CHARGE OF FRUITS.[33] IT IS HOWEVER PERMITTED TO BUY FROM HOUSE-WIVES WOOLLEN GOODS IN JUDEA,[34] FLAXEN GOODS IN GALILEE OR CALVES IN SHARON,[35] BUT IN ALL THESE CASES, IF IT WAS STIPULATED BY THEM THAT THE GOODS ARE TO BE HIDDEN, IT IS FORBIDDEN [TO BUY THEM]. EGGS AND HENS MAY, HOWEVER, BE BOUGHT IN ALL PLACES.

GEMARA. Our Rabbis taught: It is not right to buy from shepherds either goats or kids or fleeces or torn pieces of wool, though it is allowed to buy from them made-up garments, as these are certainly theirs.[36] It is Similarly allowed to buy from them milk and cheese in the wilderness[34] though not in inhabited places.[37] It is [also] allowed to buy from them four or five sheep,[38] four or five fleeces, but neither two sheep nor two fleeces. R. Judah Says: Domesticated animals may be bought[39] from them but pasture animals may not be bought from them. The general principle is that anything the absence of which, if it is sold by the shepherd, would be noticed by the proprietor, may be bought from the former, but if the proprietor would not notice it, it may not be bought from him.[40]

The Master stated: 'It is [also] allowed to buy from them four or five sheep, four or five fleeces.' Seeing that it has been said that four may be bought, is it necessary to mention five? — Said R. Hisda: Four may be bought out of five.[41] Some however say that R. Hisda stated that four may be bought out of a small herd and five out of a big herd. But the text itself seems to contain a contradiction. You say: 'Four or five sheep, four or five fleeces', implying that only four or five could be bought but not three, whereas when you read in the concluding clause: 'But not two sheep', is it not implied that three sheep may be bought? — There is no contradiction, as the latter statement refers to fat animals[42] and the former to lean ones.[43]

'R. Judah Says: Domesticated animals may be bought from them but pasture animals may not be bought from them.' It was asked: Did R. Judah refer to the opening clause[44] in which case his ruling would be the stricter,[45] or perhaps to the concluding clause,[46] in which case it would be the more lenient?[45] Did he refer to the opening clause[44] and mean to be more stringent, so that when it says, 'it is allowed to buy from them four or five sheep,' the ruling is to be confined to domesticated animals, whereas in the case of pasture animals even four or five should not be bought? Or did he perhaps refer to the concluding clause[46] and mean to be more lenient, so that when it says 'but neither two sheep nor two fleeces', this ruling would apply only to pasture animals, whereas in the case of domesticated animals even two may be bought? — Come and hear: R. Judah Says: Domesticated animals may be bought from them whereas pasture animals may not be bought from them, but in all places four or five sheep may be bought from them.[47]

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(1) So that where the proprietor did not know of the theft he should be notified about the restoration so as to take more care of his sheep.

(2) Cf. supra 57a.

(3) Who first lifted up the lamb.

(4) Thus proving that counting is not sufficient to exempt the thief where the owner had knowledge of the theft.

(5) That where the proprietor knew of the theft he has similarly to know of the restoration, and where he had no knowledge of the theft counting at least would be required.

(6) Is this ruling not in conflict with the statement made above by Rab?

(7) Lit., spotted'. I.e., the presence of which is conspicuous, so that the shepherd who was looking after the flock in the wilderness would surely notice its restoration.

(8) I.e., Rab and Samuel.

(9) A coin; v. Glos.

(10) B.M. 40b.
(11) Ibid. 21b.
(12) I.e., R. Ishmael and R. Akiba.
(13) For he had most probably meanwhile examined his purse and found a sela' short; the same was the case regarding the lamb of the theft of which the proprietor had knowledge.
(14) Who was thus preceded by R. Akiba.
(15) Who was on the other hand preceded by R. Ishmael.
(16) And so was the case regarding the sela'.
(17) V. supra p. 707.
(18) R. Johanan following R. Ishmael, and R. Hisda following R. Akiba.
(19) According to cur. edd. the reading is 'the bailee was stealing'; v. however Rashi whose amendment is followed.
(20) V. p. 708, n. 10.
(21) That he must (in all cases) notify the proprietor for the reason that living things have the habit of running out into the fields.
(22) So that the restoration must be made to the proprietor himself; cf. also supra 108b.
(23) And the restoration is therefore legally valid.
(24) B.M. 64a.
(25) Taking the restoration to be good.
(26) Maintaining that the duty of restoration has not been fulfilled.
(27) Who surely counted it before long.
(28) V. p. 709, n. 8.
(29) Who might not have counted it at all.
(30) V. p. 709, n. 7.
(31) Of uncertain amount.
(32) In which case the proprietor even after counting the money could hardly have realised the restoration.
(33) As we apprehend that these articles were not their own but were misappropriated by them.
(34) As they were authorised there to do so.
(35) The name of the plain extending along the Mediterranean coast from Jaffa to Carmel; cf. Men. 87a. [The sheep there were plentiful and cheap owing to the rich pasturage.]
(36) For even if the wool was not theirs ownership was transferred by the change in substance.
(37) Where they are supposed to bring the dairy produce to the proprietors.
(38) As the absence of so many is too conspicuous and the shepherd would hardly rely upon the allegation of accidental loss occasioned by beasts.
(39) As the proprietor knows the exact number of such animals.
(40) Tosef. B.K., XI.
(41) I.e., the proportion should be as four to five; MS.M. adds: five may be bought even out of a large herd.
(42) In which case the absence of even three will be noticed by the proprietor.
(43) Where the absence of three might not be noticed.
(44) I.e., that four or five sheep may be bought.
(45) The explanation follows presently.
(46) That two may not be bought.
(47) V. p. 710, n. 13.

Talmud - Mas. Baba Kama 119a

Now since he says 'in all places' we may conclude that he referred to the concluding clause[1] and took the lenient view. This proves it.

NOR WOOD NOR FRUITS FROM THOSE IN CHARGE OF FRUITS. Rab[2] bought bundles of twigs from an aris.[3] Abaye thereupon said to him: Did we not learn, NOR WOOD NOR FRUITS FROM THOSE IN CHARGE OF FRUITS? — He replied: This ruling applies only to a keeper in charge who has no ownership whatsoever in the substance of the land, whereas in the case of an aris

who has a part in it,[4] I can say that he is selling his own goods.

Our Rabbis taught: It is allowed to buy from those in charge of fruits while they are seated and offering their wares, having the baskets before them and the scales[5] in front of them, though in all cases if they tell the purchaser to hide [the goods purchased], it is forbidden. So also it is allowed to buy from them at the entrance of the garden though not at the back of the garden.

It was stated: In the case of a robber, when would it be allowed to buy[6] [goods] from him? — Rab said: Only when the majority [of his possessions] is his, but Samuel said: Even when only the minority [of them] is his. Rab Judah instructed Adda the attendant[7] [of the Rabbis] to act in accordance with the view that even where [only] a smaller part [of his possessions] is his [it is already permitted to deal with him].

Regarding the property of an informer, R. Huna and Rab Judah are divided: One said that it is permitted to destroy it directly[8] whereas the other one said that it is forbidden to destroy it directly. The one who stated that it is permitted to destroy it directly [maintains that an offence against] the property of an informer could surely not be worse than [one against] his body,[9] whereas the one who held that it is forbidden to destroy it maintains that the informer might perhaps have good children, as written, He, the wicked, may prepare it but the just shall put it on.[10]

R. Hisda had [among his employees] a certain aris[11] who weighed and gave,[12] weighed and took[13] [the produce of the field]. He thereupon dismissed him and quoted regarding himself: And the wealth of the sinner is laid tip for the just.[14]

For what is the hope of the hypocrite though he hath gained when God taketh away his soul.[15] R. Huna and R. Hisda differed as to the interpretation of this verse; One said that it referred to the soul of the robbed person, the other one said that it referred to the soul of the robber: The one said that it referred to the soul of the robbed person, for it is written: So are the ways of every one that is greedy of gain; which taketh away the life of the owners thereof,[16] whereas the other said that it referred to the soul of the robber because it is written: Rob not the poor, because he is poor; neither oppress the afflicted in the gate. For the Lord will plead their cause and spoil the soul of those that spoiled then.[17] But what then does the other make of the words: Which taketh away the life of the owners thereof? — By 'the owners thereof' is meant the present possessors thereof.[18] But what then does the other make of the words: And [he will] spoil the soul of those that spoiled them? — The reason [of the punishment] is here given: The reason that He will spoil those that spoiled them is because they had spoiled life.[19]

R. Johanan said: To rob a fellow-man even of the value of a perutah[20] is like taking away his life[21] from him, as it says: So cite the ways of every one that is greedy of gain; which taketh away the life of the owners thereof, and it is also written: And he shall eat up thine harvest and thy bread [which] thy sons and thy daughters [should eat],[22] and it is again said: For hamas [the violence] against the children of Judah because they have shed innocent blood in their land,[23] and it is said further: It is for Saul and for his bloody house because he slew the Gibeonites.[24] But why cite the further statements? Because you might say that this applies only to his own soul but not to the soul of his sons and daughters. Therefore come and hear: The flesh of his sons and his daughters. So also if you say that these statements apply only where no money was given[25] whereas where money was given, this would not be so,[26] come and hear: 'For hamas[27] [the violence] against the children of Judah because they have shed innocent blood in their land.' Again, should you say that these statements refer only to a case where a robbery was directly committed by hand whereas where it was merely caused indirectly this would not be so, come and hear: 'It is for Saul and for his bloody house because he slew the Gibeonites'; for indeed where do we find that Saul slew the Gibeonites? It must therefore be because he slew Nob,[28] the city of the priests, who used to supply them with water and

food,'[29] Scripture considers it as though he had slain them.

IT IS HOWEVER PERMITTED TO BUY FROM HOUSEWIVES. Our Rabbis taught:[30] It is permitted to buy from housewives woollen goods in Judea and flaxen goods in Galilee, but neither wine nor oil nor flour; nor from slaves nor from children. Abba Saul says that a housewife may sell the worth of four or five[31] denarii for the purpose of making a hat for her head. But in all these cases if it was stipulated that the goods should be hidden it is forbidden [to buy them]. Charity collectors may accept from them small donations but not big amounts. In the case of oil pressers it is permitted to buy from them [their housewives][32] olives by measure and oil by measure,[33] but neither olives in a small quantity nor oil in a small quantity. R. Simeon b. Gamaliel however says: In Upper Galilee[34] it is permitted to buy from housewives olives [even] in small quantities,[35] for sometimes a man is ashamed to sell them at the door of his house and so gives them to his wife to sell.

Rabina came once to the city of Mahuza,[36] and the housewives of Mahuza came and threw before him chains and bracelets, which he accepted from them.[37] Said Rabbah[38] Tosfa'ah to Rabina: Was it not taught: Charity collectors may accept from them small donations but not big amounts? He, however, said to him: These things are considered with the people of Mahuza[39] as small amounts.

MISHNAH. SHREDS [OF WOOL] WHICH ARE TAKEN OUT BY THE WASHER BELONG TO HIM[40] BUT THOSE WHICH THE CARDER REMOVES BELONG TO THE PROPRIETOR.[41] THE WASHER MAY REMOVE THE THREE THREADS AT THE EDGE] AND THEY WILL BELONG TO HIM, BUT ALL OVER AND ABOVE THAT WILL BELONG TO THE PROPRIETOR, THOUGH IF THEY WERE BLACK UPON A WHITE SURFACE, HE MAY REMOVE THEM ALL[42] AND THEY WILL BELONG TO HIM. IF A TAILOR LEFT A THREAD SUFFICIENT TO SEW WITH, OR A PATCH OF THE WIDTH OF THREE [FINGERS] BY THREE [FINGERS], IT WILL BELONG TO THE PROPRIETOR.[41] WHATEVER A CARPENTER REMOVES WITH THE ADZE BELONGS TO HIM,[43] BUT THAT WHICH HE REMOVES BY THE AXE BELONGS TO THE PROPRIETOR.[44] IF, HOWEVER, HE WAS WORKING ON THE PROPRIETOR'S PREMISES,[45] EVEN THE SAWDUST BELONGS TO THE PROPRIETOR.

GEMARA. Our Rabbis taught:[46] It is allowed to buy shreds [of wool] from the washer, as they are his.[43] The washer may remove the two upper threads and they will belong to him.

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(1) V. p. 711, n. 8.

(2) 'Raba' according to MS.M.; Alfasi: 'Rabbah'.

(3) I.e., a tenant who tills the owner's ground for a certain share in the produce.

(4) I.e., in the produce.

(5) ** 'trutina'.

(6) Var. lec. 'to collect a debt' or 'to derive a benefit'.

(7) Lit., 'one who pours water over another person's hands' (Jast.).

(8) Lit., 'with the hand'.

(9) Which may be incapacitated to any extent for the sake of public safety; v. A.Z. 26b, also Sanh. 74a and supra p. 703.

(10) Job XXVII, 17. [The words 'the wicked' do not occur in the Massoretic texts. It is more than probable that it is an explanatory gloss inserted by the Talmud; v. marginal glosses and cf. Sanh. (Sonc. ed.) p. 698, n. 8.]

(11) V. Glos.

(12) To R. Hisda half of the produce instead of two-thirds.

(13) For himself half of the produce instead of a third; or he was over-careful in weighing.

(14) Prov. XIII, 22. [He felt glad that he got rid of him.]

(15) Job XXVII, 8.

(16) Prov. 1, 19.

(17) Ibid. XXII, 22-23.

(18) I.e., the robber.
(19) I.e., the life of those who were robbed by them.
(20) Which is the minimum of legal value; v. Glos.
(21) Lit., 'Soul'.
(22) Jer. V, 17.
(23) Joel IV, 19.
(24) II Sam. XXI, 1.
(25) By the robber for the misappropriated article.
(26) Though the whole transaction was by threats and violence.
(27) Implying a purchase by threats and violence as supra p. 361.
(28) I.e., its inhabitants; v. I Sam. XXII, 11-19.
(29) For the Gibeonites were employed there by the priests as hewers of wood and drawers of water; v. Josh. IX, 27.
(30) Cf. Tosef. B.K. XI.
(31) 'Foot or' missing in Tosef.
(32) [So Rashi, supported by reading in MSS.: others; one may buy from oilpressers.]
(33) For since it is done publicly and in a big way they were surely authorised to do so.
(34) Where oil was expensive (Rashi).
(35) 'In small quantities' is missing in Tosef. ibid.
(36) A large trading town on the Tigris.
(37) For charity purposes.
(38) MS.M.; 'Raba'.
(39) Who were of substantial means; cf. Ta'an. 26a.
(40) As the proprietor does surely not care about them.
(41) As they are of some importance to him.
(42) As they spoil the appearance of the garment.
(43) V. p. 715, n. 9.
(44) V. p. 715, n. 10.
(45) As a daily employee.
(46) Cf. Tosef. XI.

Talmud - Mas. Baba Kama 119b

[The carder] must not use [of the cloth for stretching and hackling] more than three widths of a seam. He should similarly not comb the garment towards the warp but towards its woof.[1] He may straighten it out lengthways but not breadthways. If he wants, however, to straighten it out up to a handbreadth he may do so.

The Master stated: 'Two threads.' But did we not learn, THREE'? — There is no difficulty, as the former statement applies to thick threads and the latter to thin ones.

'He should similarly not comb the garment towards the warp but towards its woof.'[1] But was it not taught to the contrary? — There is no difficulty, as the latter statement refers to an everyday garment whereas the former deals with a best cloak [used very seldom].

'[He must] not use [of the cloth for stretching or hackling] more than three widths of a seam.' R. Jeremiah asked: Does [the preliminary drawing of the] needle to and fro count as one stitch, or does it perhaps count as two stitches? — Let it stand undecided. 'He may straighten it out lengthways but not breadthways.' But was it not taught to the contrary? — There is no difficulty, as the former statement refers to a garment and the latter refers to a girdle.[2]

Our Rabbis taught: It is not allowed to buy hackled wool from the carder as it is not his, but in places where it is customary for it to belong to him, it is allowed to buy it. In all places, however, it

is allowed to buy from them a mattress full of stuffing and a cushion full of stuffing,[3] the reason being that these articles had [in any case] been transferred to them through the change [which the stuffing underwent].

Our Rabbis taught:[3] It is not right to buy from a weaver either remnants of woof or of warp or threads of the bobbin or remnants of coils. It is however allowed to buy from him [even] a chequered web,[4] [and] woof and warp if they are spun and woven. I would here ask: [Since it is] now stated that 'if spun' it may be accepted from them, what necessity was there to say 'woven'?[5] — What is meant by 'woven' is merely 'twisted' [without first having been spun].

Our Rabbis taught:[3] 'It is not right to buy from a dyer either test pieces,[6] or samples[7] or torn pieces of wool. But it is allowed to buy from him a coloured garment,[8] yarn, and ready-made garments'.[9] But [since it has] now been stated that yarn may be accepted from him, what doubt could there be regarding ready-made garments?[10] — What is meant by 'ready-made garments' is felt spreadings .[11]

Our Rabbis taught: 'If skins have been given to a tanner the [part] trimmed off and the [pieces of hair] torn off will belong to the proprietor, whereas what comes up by the rinsing in water would belong to him.[12]

IF THEY WERE BLACK UPON A WHITE SURFACE HE MAY REMOVE THEM ALL AND THEY WILL BELONG TO HIM. Rab Judah said: A washer is named Kazra,[13] and he takes the Kazre.[14] Rab Judah again said: All the [three] threads can be reckoned for the purpose of tekeleth[15] though Isaac my son is particular about them.[16]

IF A TAILOR LEFT A THREAD SUFFICIENT TO SEW WITH. How much is SUFFICIENT TO SEW WITH? — Said R. Assi: The length of a needle and beyond the needle. The question was raised: [Does this mean] 'the length of a needle and as much again as the length of the needle,' or perhaps 'the length of the needle and anything beyond the needle'? Come and hear: If a tailor left a thread which is less than sufficient to sew with or a patch less than the width of three [fingers] by three [fingers], if the proprietor is particular about them they would belong to the proprietor, but if the proprietor is not particular about them they would belong to the tailor.[17] Now, there is no difficulty if you say that 'the length of a needle and beyond the needle' means as much again as a needle, for a thread less than that can still make a clip;[18] but if you say that 'the length of a needle and anything beyond the needle' for what purpose could a thread which is less than this be fit? — We may therefore conclude from this that it means 'the length of a needle and beyond the needle as much again as the length of the needle.' This proves it.

WHATEVER A CARPENTER REMOVES WITH THE ADZE BELONGS TO HIM, BUT THAT WHICH HE REMOVES BY THE AXE BELONGS TO THE PROPRIETOR. A contradiction could be raised from the following: Whatever a carpenter removes with the adze or cuts with his saw belongs to the proprietor, for it is only that which comes out from under the borer or from under the chisel or is sawed with the saw that belongs to [the carpenter] himself![15] — Said Raba: In the place where our Tanna [of the Mishnah lived] two kinds of implements were used, the larger called 'axe' and the smaller called 'adze', whereas in the place of the Tanna of the Baraitha there was only one implement [i.e., the larger] and they still called it 'adze'.[19]

IF HOWEVER HE WAS WORKING ON THE PROPRIETOR'S PREMISES EVEN THE SAWDUST BELONGS TO THE PROPRIETOR. Our Rabbis taught: Workmen chiselling stones do not become liable for robbery [by retaining the chips in their possession]. Workmen who thin trees or thin vines or trim shrubs or weed plants or thin vegetables, if the proprietor is particular [about the waste materials] become liable for robbery, but if the proprietor is not particular about them they will

belong to the employees.[20] Rab Judah said: Also cuscuta[21] and lichen[22] are [under such circumstances] not subject to the law of robbery, though in places where proprietors are particular they would be subject to the law of robbery. Rabina thereupon said: Matha Mehasia[23] is a place[24] where the proprietors are particular about them.[25]

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(1) [Where greater importance is attached to appearances, which may be improved by combing towards the woof, than to durability.]

(2) [Of which only the ends hanging down are visible and these alone require straightening out.]

(3) V. p. 716, n. 4.

(4) Lit., 'garment'. [Although it apparently consists of remnants of different materials which he might have acquired unlawfully, for even so the ownership of them was transferred to him by the change in substance.]

(5) For if it is woven it had surely been previously spun; cf. Bek. 29b.

(6) I.e., pieces cut off to test the colour.

(7) Specimens of colour.

(8) Tosef. B.K. XI: 'wool' instead of 'garment'.

(9) Tosef. ibid. 'warp and woof' instead of 'ready-made garments'; so also MS.M.

(10) For these were surely first spun; v. Bek. 29b.

(11) Which were never spun.

(12) [Being negligible, v. Tosaf. ibid.]

(13) Lit., 'shortener'.

(14) Lit., 'the shortening'; i.e., that which resulted from the garment having become shorter.

(15) Lit., 'blue' riband to be put among the zizith (the 'fringes') on the borders of garments in accordance with Num. XV, 38; if the three threads were not taken away by the washer, they need not be removed for the sake of Zizith as they will be included in the measure of the first joint of the thumb required to be between the hold and the edge of the garment, for which v. Men. 42a.

(16) To cut them off.

(17) Tosef. B.K. XI.

(18) Lit., 'is fit as a pin' (fast.) as in the case of a seam. (5) Tosef. B.K. XI. This ruling, that whatever he removes with the adze belongs to the proprietor, thus contradicts the Mishnah which roles that it belongs to the carpenter.

(19) But was in fact the 'axe' of which it is mentioned in the Mishnah that whatever be removed by it belongs to the proprietor.

(20) Tosef. ibid.

(21) I.e., cucumbers or melons in an early stage when they are pubiscent' (Jast.).

(22) Young green cereal.

(23) I.e., the city of Mehasia or Mahesia; a suburb of Sora. V. B.B. (Sonc. ed.) p. 10, n. 1.

(24) Abundant in cattle; Rashi a.I. and Rashbam, B.B. 36a; and thus in great need of fodder.

(25) V. Hor. 12a.