

SYNOPSIS OF SUBJECTS

OF

TRACT BABA KAMA (THE FIRST GATE). [1](#)

CHAPTER I.

MISHNA I. There are four principal cases of tort, etc. One thing is common to all. They are all likely to do damage and must be guarded against. The case of doing damage by digging up gravel. The different explanations of the word "mabeh" by Rabh and Samuel (foot-note). There are thirteen principal tort-feasors. The depository, [2](#) etc. There are twenty-four principal tort-feasors. What are the derivatives of all those principals? Why are the four principals, ox, excavation, mabeh, and fire, enumerated separately in the Scripture? From what and what kind of property must damage be collected? When the standard is taken, is it taken of one's own lands or of those of the public in general? In order not to close the door to borrowers, the sages have enacted that creditors should be paid out of the medium estates. If one conveys his estates to one or several persons, from whom and from what estates shall the creditors collect the money due them? In case one does a meritorious thing he shall do it up to one-third, [1-16](#)

MISHNAS II. TO V. In all that I am charged with taking care of I have prepared the damage. There is a more rigorous rule in case of the ox than in the cases of the pit and the fire, and *vice versa*. How so? If one left his ox in charge of five persons, and one of them left intentionally and the ox caused damage, what is the law? No appraisalment is made for a thief or robber. If one hypothecates his slave or his ox and thereafter sells him. There is a difference between movable and immovable real estate. Slaves are considered movable real estate. During the killing, the bringing of the suit, and the making of the award there shall be one and the same owner. There are five cases which are considered non-vicious and

five which are considered vicious. The tooth is considered vicious to consume, etc. What is a Bardalis? What is meant by "best estates"? The meaning of the verse Is. xxxii. 20, [16-29](#)

CHAPTER II.

MISHNAS I TO III. What tendency makes the foot to be considered vicious? Cocks that were flying from one place to another, and broke vessels with their wings. Cocks that were hopping on dough or on fruit, and made the same dirty, or that were flying and the wind produced by their wings damaged vessels, or that were pecking at a rope from which a water-pail was

suspended, and, severing the rope, broke the water-pail--what is the law? The distinction between primary and secondary force. A dog that snatched and carried off a cake from the burning coals, and with the burning coal that stuck in the cake set fire to the barn, etc. There can be viciousness in case of "gravel in the usual way." If an animal was walking in a place where it was impossible not to kick up gravel, and she kicked, and by so doing kicked up gravel and caused damage; or if an animal caused damage by shaking the tail--what is the law? What tendency makes the tooth to be considered vicious? It happened that an ass consumed a loaf of bread contained in a basket and chewed up the basket, etc. If an animal was standing on private ground and an article was rolling toward the private ground, etc. About one who takes up his dwelling in the court of his neighbor without the latter's knowledge. One who rents a house from Reuben must pay the rent to Simeon, etc. If one uses an unoccupied house of another for storing wood and straw, etc., what is the law? A certain person erected a palace on the ruins belonging to orphans, etc. A dog or a goat that jumps down from the top of a roof and breaks vessels liable for the whole damage. If, however, they fall down, there is no liability. Is one's fire considered one's arrow or one's property? There is no liability for damages done by fire to concealed articles. How can such a case be found in the biblical law? The mouth of an animal (consuming something on the premises of the plaintiff), is it considered as if yet in the court of the plaintiff? There were certain goats belonging to the family of Tarbu that were doing damage to the property of R. Joseph, [30-47](#)

MISHNAS IV. TO VI. What ox is considered non-vicious and what vicious? One that has been warned for three days. The three days in question, are they such as to make the ox vicious, or do they also involve the owner? For one who sets his neighbor's dog on a third person, what is the law? An ox that gored, pushed, bit, lay down on, or kicked while on public ground pays half. The *a fortiori* argument regarding the half-payment of the horn. An ox that steps with his foot on a child lying on the premises of the plaintiff, what is the law in regard to the payment of atonement money? A human being is considered always vicious. One who carries a stone in his lap without being aware of it, and while getting up from his seat drops it, as regards damages he is liable. One who drops a vessel from the top of a roof upon the ground which has been covered with

p. xi

pillows, and if another person remove them before the dropping of the vessel, etc., what is the law? Is a slave considered one's body, and an ox one's property? [47-56](#)

CHAPTER III.

MISHNAS I. TO V. If one place a jug on public ground and another person stumble over it and break it, what is the law? One who kicks another with his knee is fined three selas; with the foot, five; with the fist, thirteen; what is the fine if one strike his neighbor with the handle or the iron of the hoe? A jug that broke on public ground and its contents caused a person to slip and fall, or one to be injured by its fragments, what is the law? About one who renounces ownership to his articles that cause damage. One who empties water into public ground, or one who builds his fence of thorns; or a fence that falls into public ground, and some persons were injured thereby, he is liable. The former pious men used to bury their thorns and broken glass in their fields three spans below the surface. All those who obstruct a public thoroughfare by placing chattels therein and cause damage are liable. If one carrying a barrel followed one carrying a beam, and the barrel was broken by the beam, what is the law? Potters and glaziers that walked one following

the other, and one stumbled and fell, etc. If they all fell because of the first one, the first is liable for the damage of all of them, [57-69](#)

MISHNAS VI. TO XIII. Two that walked on public ground, one running and the other one walking, etc., what is the law? One who chopped wood on public ground and caused damage on private ground, etc. One who enters a carpenter's shop without permission, and was struck on his face by a flying splinter. About employees who came to demand their wages from their employer and were gored by his ox or bitten by his dog. About two non-vicious oxen that wounded each other.

The difference in the explanation of the verse Exod. xxi. 35. About a non-vicious ox that has done damage and was sold, consecrated, slaughtered, or presented to somebody. About an ox of the value of two hundred selas that gored another ox of equal value and the carcass was of no value what ever. There are cases when one is liable for the acts of his ox and is free if they are his own acts, and *vice versa*. How so? The rule is that the burden of proof is upon the plaintiff. If one claims that he is positive, while the other one is not positive, what is the law? [6981](#)

CHAPTER IV.

MISHNAS I. TO IV. An ox that gores four or five oxen one after another, the last of them must be paid from the body of the goring ox, if he was yet considered non-vicious. About an ox that is vicious towards his own species, but not towards other species, or towards human beings, etc. There is a case where an ox became vicious -in alternate order." About an ox

p. xii

belonging to an Israelite that gored an ox belonging to the sanctuary (see footnote). An ox of a sound person that gored an ox belonging to a deaf-mute, idiot, or minor, there is a liability. If the reverse was the case there is none. There is a difference of opinion of the Tanaim as to whether a guardian is appointed in order to collect from the body of the ox. Guardians pay from the best estates, but do not pay the atonement money. About one who borrows an ox with the understanding that he was non-vicious and it was found out that he was vicious, [82-93](#)

MISHNAS V. TO IX. An ox that killed a man by goring him, if he was a vicious one, the atonement money is to be paid, but not when he was a non-vicious one. How can there be found a vicious ox in regard to man? If one confers, saying, "My ox has killed a certain person," or "his ox," he has to pay on his own testimony. If one's fire has done damage without intention, is there a liability or not? About an ox that was rubbing against a wall, whereby the wall fell upon a human being and killed him. About an ox belonging to a woman, to orphans, or their guardian, etc., that killed a man. About an ox that was sentenced to be put to death and his owner consecrated him. About an ox delivered to a gratuitous bailee or a borrower, etc. About an ox which was properly locked up, but yet broke out and did damage. Whence is it deduced that one must not raise a noxious dog in his house, nor maintain a defective ladder? [93-105](#)

CHAPTER V.

MISHNAS I. TO VI. About an ox that gored a cow and the new-born calf was found dead at her

side. The cow and her offspring are not separately appraised. A potter that placed his pottery in the court of another, or one who led his ox into the court of another without permission, what is the law? When he assured the safety of the ox, did it only extend to himself or also to all cattle? About a woman that entered a house to bake, and the house-owner's goat, having consumed the dough, became feverish and died. About one who enters a court without permission and injures the court. owner, or the latter is injured through him. About one who said: "Lead in your ox and take care of him," and he did damage or was injured. About an ox which intended to gore another ox, and injured a woman and caused her to miscarry. To whom must the compensation for the miscarriage be paid, to the woman or to her husband? Does the increase in the valuation also belong to the husband? About an Israelite's pledge which is in the hands of a proselyte, and the latter dies without heirs. About one who digs a pit on private ground and opens it into public ground, or *vice versa*. One who digs and opens a well and delivers it over to the community is free. About one who digs a pit on public ground and an ox or an ass falls into it. Are the vapors therein contained, or is the shock received by the animal, the cause of death when falling into a pit? [106-120](#)

MISHNAS VII. TO IX. When a pit belongs to two partners, and one of them passes by and does not cover it, and so also does the second, the latter only is liable. About a pit which was ten spans deep and which was completed

p. xiii

by another one to be twenty, and still by another one to be thirty spans deep. Each span of water equals two of dry ground. If one dig a pit ten spans deep and another widen it toward one direction only, what is the law? One who sells his house, the title passes with the delivery of the keys. If he sells a flock of cattle, title passes with the delivery of the Mashkhukhith (the forerunning goat kept at the head of the flock as a leader). If he covered the pit sufficiently to withstand oxen but not camels, and camels came along and made the cover shaky and then oxen fell therein, what is the law? What about the *germon* of damage? About one who places a stone on the edge of the opening of a pit, and an ox stumbles over the stone and falls into the pit. About an ox and a man who together push some other into a pit. There is no difference between an ox and another animal as regards falling into a pit, to have been kept distant from Mount Sinai, payment of double, restitution of lost property, unloading, muzzling, Kilayim, and Sabbath. Nor is there any difference between the above-mentioned and a beast or bird. Why in the first commandments is it not written "that it maybe well with thee," while in the second commandments it is? [120-130](#)

CHAPTER VI.

MISHNAS I. TO III. If one drive his sheep into a sheep-cot and properly bolt the gate, but still they manage to come out and do damage, he is free. There are four things for which one who does them cannot be held responsible before an earthly tribunal, although he will be punished for them by the Divine court. Is armed robbery, when not committed publicly, still considered theft as regards the payment of double? For frightening away a lion from one's neighbor's field the law awards no compensation. How does it pay what it damaged? About one who came before the Exilarch and complained of another who destroyed one of his trees. One who destroys a young date-tree, what amount of damage must he pay? There was a case, and Rabh acted in accordance with R. Meir; but in his lectures, however, he declared that the Halakha prevails in accordance with R. Simeon b. Gamaliel (see foot-note). About one who puts up a

stack of grain on another's land without permission. One who started a fire through the medium of a deaf-mute, etc., 131-142

MISHNAS IV. TO VIII. The law about one who starts a fire and it consumes wood, stones, or earth. No chastisements come upon the world unless there are wicked ones in existence. When pestilence is raging in town, stay indoors, etc. Why does the verse begin with the damage by one's property and end with damage done by one's person? About a fire that passed over a fence four ells high. If one starts a fire on his own premises, how far must it pass to make the starter liable? About one who causes his neighbor's stack of grain to burn down, and there are vessels therein which also are burned. If one allowed another to place a stack of wheat and he covered it with barley, or *vice versa*, what is the law? Is it customary with people to keep pearls in a money-pouch? The law about a spark that escapes from under a blacksmith's hammer and does damage, [142-148](#)

p. xiv

CHAPTER VII.

MISHNA I. The payment of double is more rigorous than the payment of four and five fold. The law about one who stole a lamb, and while in his possession it grew into a ram, etc. That a change acquires title is both written and taught. Why did the Scripture say that if he slaughtered and sold it he must pay four and five fold? A stolen thing, which the owners have not resigned hope to regain, cannot be consecrated, etc. The pious man used to place money in the vineyard on a Sabbatical year, declaring: "All that is plucked and gathered of this fruit shall be redeemed by this money." A writ of replevin which does not contain the following directions "Investigate, take possession, and retain it for yourself," is invalid, [149-159](#)

MISHNAS II. TO VI. About two witnesses who testify that the one stole an ox or a sheep, and either the same or other witnesses testify that he slaughtered or sold the same. If he stole from his father. From what time on is a collusive witness disqualified to give testimony? If two witnesses testify that a certain person blinded his slave's eye, and thereafter knocked out one of his teeth, and they also testify that the owner of the slave admitted it, and subsequently the witnesses are found collusive, what must the collusive witnesses pay? If two witnesses testify that he stole it, and one witness, or he himself, testified that he slaughtered or sold it, he pays only two, but not four and five fold. One who admits that he has incurred the liability of a fine, and thereafter witnesses appear, what is the law? About a confession which is made after the appearance of witnesses, and the different opinions in regard to it. If the thief sells all but one hundredth part of it or he is a co-owner of it, what is the law? One who steals an animal which is lame or blind, or which belongs to a copartnership is liable, but partners that steal together are free. About one who steals an animal within the premises of the owner and slaughters or sells it outside of it, or *vice versa*. Why did the Scripture treat more rigorously with the thief than with the robber? Ponder over the greatness of labor, etc., [159-174](#)

MISHNA VII. No tender cattle must be raised in Palestine but in its forests. A shepherd (who raises tender cattle) that repented, we do not compel him to sell out all his cattle at once. No tender beasts shall be raised in Palestine, except dogs, cats, and monkeys. R. A'ha b. Papa said in the name of R. Hanina b. Papa three things. Upon ten conditions did Joshua divide the land among the settlers. The ten enactments of Ezra. No swine is permitted to be raised at anyplace.

Rabbi, the Prince of Palestine, objected to the use of the Syriac language, and insisted that only the Holy and the Greek languages should be used in Palestine. R. Jose objected to the use of the Aramean language in Babylon, and insisted that the Holy and the Persian languages should be used. No dogs shall be kept unless on a chain. In the towns adjoining the frontier they must be kept on a chain only in the day time, 174-181

CHAPTER VIII.

MISHNAS *I. AND II.* The four items of damage: pain, healing, loss of time, and disgrace. How so? It happened that an ox lacerated the arm

p. xv

of a child, and the case came before Rabha, etc. When the damage is paid for, how should the pain be appraised separately? Healing. If pus collected by reason of the wound, and the wound broke out again, etc. The sages say that healing and loss of time go together. If the defendant should say, "I will cure you myself, the plaintiff may object," etc. Shall we assume that the appraisement for the deafness is sufficient, or each of the injuries must be appraised separately? (See foot-note.) If one strikes another and makes him temporarily unfit to labor, what is the law? Disgrace--all those who sustain injury are looked upon as if they were independent men, etc. One who causes disgrace to a nude, blind, or sleeping person is liable. If one causes shame to a sleeping person who subsequently dies while asleep, what is the law? Is the reason because of the hurting of his own feelings, or because of the feelings of his family? Is a blind person required to perform all the commandments? and what R. Joseph, who was blind, said of that, [182-193](#)

MISHNAS *III. TO V.* The law is more rigorous in regard to a man than in regard to an ox, etc. One who assaults his father or mother, but does not bruise them, and one who wounds another on the Day of Atonement, are liable to pay all the items of damage. To whom belongs the compensation received by one's minor daughter for a wound? About an investment for a minor and the nature thereof, Is a slave considered a "brother"? The Halakha prevails that the benefit in case of a woman who sells her right in the marriage contract belongs to herself; and if she bought estates therewith, her husband has nothing even in their income. If one blow into the ear of another, he pays one sela for the disgrace he caused him. What if one strikes another with the palm or with the back of his hand on the cheek? This is the rule: Rank and station of the parties are taken into consideration. May a witness be a judge in the same case? A non-vicious ox that killed a man and also caused damage to another, must his owner pay for the damage, besides the payment of the atonement money? All that was said concerning disgrace is only for the civil court, as to how much the plaintiff should receive, but there can be no satisfaction for the injury to the feelings, for which, if he would even offer all the best rams of the world, they would not atone, unless he prays the plaintiff for forgiveness. The origin of a series of sayings by the rabbis as well as by ordinary people. If one says to another, "Break my pitcher," etc. A money-pouch containing charity funds was sent to Pumbeditha, and R. Joseph deposited it with a certain man who did not take good care of it and it was stolen from him, and R. Joseph held him responsible. What Abayi said to him about it, [193-210](#)

Footnotes

[ix:1](#) See introduction to Synopsis in Tract Aboth, Vol. I. (IX.), p. xi.

[ix:2](#) Farther on we use the term "gratuitous bailee," as being more comprehensive.

[Next: Chapter I.](#)