

CHAPTER IV.

RULES IN REGARD TO OXEN REPEATEDLY GORING OTHER OXEN AND HUMAN BEINGS. OXEN OF ORPHANS AND GUARDIANS AND WHAT IS CONSIDERED "GUARDED."

MISHNA I.: 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., *e.g.*, when the goring was not in succession [1](#)), and from the balance of the half body the last but one must be paid, and if there was still a balance left the last but two must be paid, so that the later the more privileged. Such is the dictum of R. Meir. R. Simeon, however, says that if an ox of the value of two hundred zuz gores an ox of the same value, and the carcass is worth nothing, each one takes one hundred; if he again gores another of the value of two hundred, the last one takes one hundred zuz, and the former takes fifty, and fifty zuz remain for the owner of the goring ox; if he again gores a third one of the same value, the last one takes one hundred, the last but one takes fifty zuz, and the first as well as the owner takes each a golden dinar (twenty-five silver dinars).

GEMARA: According to whom is our Mishna? It is certainly not according to R. Ishmael, who holds that the plaintiffs are considered creditors, for if it be so, then not the last, but the first would be more privileged, for he was prior to the last one in point of time. Neither can it be in accordance with R. Aqiba, who holds that in case of a non-vicious ox the plaintiff and the defendant are considered copartners, for then if there is a balance left from the body of the ox after the goring of the last one, the same would have to be divided equally among all the plaintiffs previous to the last one, and the decree of the Mishna is that the last but one must be paid, etc. Said Rabha:

[[paragraph continues](#)] The Mishna can be explained in accordance with R. Ishmael, and the difficulty that it is stated that *the later*, the more privileged, which ought to be *the first* (according to R. Ishmael), is to be explained thus: that the plaintiff levied upon the ox, and in such a case the plaintiff becomes responsible for the damage done by the ox while under his control, as he is then considered a bailee for hire as regards damages (and so was the case with all others). But if such was the case, then why is it stated that if there is a balance left it goes to the last but one? It ought to go to the owner of the ox (for all the gorings subsequent to the first one were made while the ox was not under his control). Said Rabhina: The statement in question means that if after the last one was paid from the body of the ox, there still remained a balance, the same must be paid over to the preceding one. [1](#) And so when Rabhin came from Palestine he said in the name of R. Johanan that the Mishna is to be explained in the same sense that Rabha did; that is, that the Mishna treats only about the negligence of the plaintiffs who took the ox under their control and neglected to sufficiently guard him as was their duty to do.

Now, when the Mishna is explained to be in accordance with R. Ishmael, how is it about the last part: "R. Simeon said, etc., . . . the first as well as the owner take each a golden dinar"? This is certainly in accordance with R. Aqiba's opinion that the goring ox becomes the common property of a copartnership. Then the Mishna would be in accordance with

p. 84

two different opinions, viz., the first part according to R. Ishmael and the last part in accordance with R. Aqiba. The Schoolmen said: Yea, so it is, for Samuel said to R. Jehudah (concerning this Mishna): "Genius, leave alone the explanation of the Mishna and agree with me that the first part is according to R. Ishmael and the last part according to R. Aqiba." [1](#)

MISHNA II: An ox that is vicious towards his own species, but not towards other species, or towards human beings but not towards animals, or towards young cattle, but not towards full-grown cattle, the whole damage is to be paid to those towards which he is vicious and half to those towards which he is not vicious. The disciples asked R. Jehudah what the law was when an ox was vicious on Sabbath days, but was non-vicious on week days. He answered: The same is the case also here. He pays the whole for damage done on the Sabbath days, and half for that done on week days. When is such an ox restored to non-viciousness? If he refrained from doing damage for three Sabbath days in succession.

GEMARA: It was taught: R. Zbid said: The Mishna teaches "*and not vicious*," which means that as to other species it was certain that he was not vicious, but if it is not certain he is to be considered vicious towards all. R. Papa, however, said: The Mishna teaches "he is not vicious," which means that an ox that is vicious towards his species is not considered vicious towards others. The reason for their difference of opinion is the following: The former lays more stress on the last part of the Mishna, which teaches that when he is vicious towards young cattle he is not considered vicious towards full-grown cattle, and this could be correct only in accordance with his interpretation that it is *certain* that he was not vicious, but according to the explanation that he is considered non-vicious this statement is entirely superfluous, as it was already stated that he is not considered vicious even to young cattle if it is not certain, and it is self-evident that so much the less towards full-grown cattle. The latter attaches more importance to the first part of the Mishna, which teaches that if vicious towards human beings he is not considered so towards cattle, and this could be correct only if it is explained that if it is uncertain that he is vicious to cattle he is also considered non-vicious; then the

p. 85

statement of the Mishna is necessary to teach us that, although he is vicious towards human beings, he is still not considered so towards cattle, but if you should explain that he is considered vicious, even when it is uncertain, then this statement is entirely superfluous, as it was already stated that he is considered vicious even from cattle to cattle, and it is self-evident that so much the more so when he is vicious toward human beings.

Said R. Ashi: The last part of the Mishna could support R. Zbid only. Come and hear: "The disciples questioned R. Jehudah what the law was, etc., . . . and he answered, etc. . . ." Now, if the Mishna is to be explained according to R. Zbid, that when not certain he is considered vicious, both the question and the answer are correct (*i.e.*, they questioned him, when he was

certain for Sabbath days and not certain for week days, how was the law); but if you will explain the Mishna otherwise (*i.e.*, as R. Papa) what was their question? The Mishna states plainly that he is not vicious. Did they intend to teach R. Jehudah and not to question him? And, secondly, was it then an answer of the latter? He only repeated what they said? Said R. Janai: R. Zbid's opinion is supported even from the first part of the Mishna, which states: "The whole is paid to those toward whom he is vicious, and half is paid to those toward whom he is not." This statement can be correct only when he is certain to be non-vicious; then it is correct that the Mishna explains its former statement: To those toward whom he is vicious he must pay so much, and to those, etc., but if the Mishna means to state that one vicious toward human beings *is not* vicious toward cattle, to what purpose is the latter statement? Is it, then, not known how much a vicious ox and how much a non-vicious pays? If, however, an ox gored another ox, an ass, and a camel, he must be considered vicious toward all species of cattle even according to the theory of R. Papa (as these three species make it certain that he is vicious).

The Rabbis taught: There is a case where an ox may become vicious "in alternate order," namely, if he meets an ox and gores him, and subsequently he meets another ox and does not, the third however he meets he again gores, when meeting the fourth one, though, he does not, but when meeting the fifth one he does; and again the sixth he does not. There is another case where an ox may become vicious "in alternate order" towards all species, namely, if he meets an ox and gores him, and subsequently

p. 86

an ass and does not, a horse and does, a camel and does not, a mule and does, a wild-ass and does not gore him.

The Schoolmen propounded a question: How is it if he gores three oxen in succession and subsequently one ass and one camel: shall we count the third ox together with the former two, and should he be considered vicious toward oxen only but not toward other species of cattle, or shall we count the last ox with the ass and camel, so that he gores three times in succession three different species of cattle, and he is then considered vicious toward all species of cattle? This question remains unanswered. [1](#)

Rabha said: "If an ox gores three times, each time upon hearing the blowing of a horn, he is considered vicious when hearing the sound of a horn." Is this not self-evident? Lest one assume that the first time is not to be counted because he became frightened, he comes to teach us that it is counted.

MISHNA III.: An ox belonging to an Israelite that gores an ox belonging to the sanctuary, or of the sanctuary that gores one of a commoner, there is no liability, for it is written [Ex. xxi. 31]: "The ox of *another*" (man), but not of sanctuary. [2](#)

GEMARA: This Mishna is not in accordance with R. Simeon b. Menassia of the following Boraitha: "An ox of a commoner that gores an ox of the sanctuary, or *vice versa*, is free, for it is written: 'The ox of *another*,' but not of the sanctuary. R. Simeon b. Menassia, however, says that an ox of the sanctuary that gores an ox of a commoner is free, but an ox of a commoner that gores an ox of the sanctuary, whether vicious or not, the whole damage must be paid." Let us see what the reason is of R. Simeon's opinion. If R. Simeon interpreted the word "*another man*"

literally, why, then, should the commoner's ox be liable when he gores an ox of the sanctuary (the sanctuary cannot be called another man)? And if he interpreted the word not literally, why should an ox of the sanctuary be free when he gores a commoner's ox? And if one might say that although he interpreted the word literally, he nevertheless makes the

p. 87

commoner pay on the ground of the following *a fortiori* conclusion: When one commoner's ox gores a similar ox he must pay; so much the more if a commoner's ox gores one belonging to the sanctuary, and then his statement that even if he was non-vicious the whole damage must be paid would not be correct, as there is a rule that it is sufficient that an inference should be equal to the law from which it is derived (and under no circumstances more rigorous); why then must he pay the whole damage if it is based only on this *a fortiori* conclusion? Said Resh Lakish: In reality in all cases the whole damage must be paid; the verse, however, making an exception of gores and stating that half only is to be paid, added at the same time the word

•••(which means, literally, "his comrade"), with the intention to exclude all those cases where it cannot be considered of his comrade, *e.g.*, of the sanctuary; and the correctness of this statement may be proved from the fact that when the verse speaks of a vicious ox the above word "Re-ehu" is not mentioned.

When the daughter of R. Samuel bar Jehudah died, one of the Rabbis said to Ula: Let us go and console him. He said to them: What have I to do with the consolation of a Babylonian, for it may turn into a blasphemy, as they are in the habit of saying in such cases, "What can be done?" (against the will of God), which means that if something could be done against His will they would, and this is certainly a blasphemy. He then went alone, and his consolation was as follows: It is written [Deut. ii. 9]: "And the Lord said unto me, Do not attack the Moabites, nor contend with them in battle." Could it, then, ever enter Moses' mind to engage in war without the consent of the Lord? But Moses drew an *a fortiori* conclusion for himself, thus: If of the Midianites who only came to help the Moabites the Scripture reads [Numb. xxv. 17]: "Attack the Midianites, and smite them," the Moabites themselves so much the more? The Holy One, blessed be He, then said: "Thy conclusion was so because thou couldst not imagine what I bear in my mind. Two good doves I have to bring forth from them; namely, Ruth the Moabite and Naomi the Amonite." Now is there not an *a fortiori* conclusion to be drawn? If for two good doves the Holy One, blessed be He, has saved two great nations and has not destroyed them, so much the more would He have saved the life of the master's daughter if she would be righteous and something good would have to come forth from her.

p. 88

MISHNA IV.: An ox of a sound person that gores an ox belonging to a deaf mute, idiot, or minor, there is a liability. If the reverse was the case, there is none. An ox of the three last-named persons that gores, the court should appoint a guardian and the witnesses should testify in the presence of the guardian. If in the meantime the deaf mute is cured, the idiot becomes of sound mind, or the minor becomes of age, the ox is restored to his non-viciousness. Such is the dictum of R. Meir. R. Jose, however, says that he remains in the same position. An ox of the stadium (*i.e.*, the place where oxen are trained for fighting) is not liable to be killed when killing even a human being, for it is written: "If an ox *gore*," which means of his own inclination, but not when he is trained to do so.

GEMARA: Does, then, the Mishna not contradict itself? First it states that if an ox of the three named persons that gores an ox of a sound person, there is no liability, from which it may be inferred that no guardian is to be appointed when the ox is non-vicious to enable the plaintiffs to collect from his body, and immediately after it states that an ox of those three persons that gores, the court should appoint a guardian and witnesses should testify before him, from which it may be inferred that a guardian is appointed for the purpose of enabling to collect from his body? Says Rabha: This is to be interpreted thus: If they were known to be goring oxen the court appoints a guardian, and the witnesses are examined in the presence of the guardian and the ox is declared vicious, so that if he subsequently gores again the damage is collected from the best estates. From whose best estates? R. Johanan said: From those of the orphans. 1 R. Jose b. Hanina said: From those of the guardian.

Did R. Johanan, indeed, say so? Did not R. Jehudah say in the name of R. Assi that the estate of orphans must not be touched (until the orphans reach majority, even when there is a written obligation of their deceased father to be paid), unless interest would grow on the obligation (*e.g.*, when the deceased borrowed money from a Gentile). R. Johanan, however, says also when the widow's marriage contract is to be paid, because she must be paid out of the estate a sum of money for her subsistence so long as her marriage contract remains uncollected. Hence we see that only for the purpose of supporting the widow, or where there is interest growing, R. Johanan permits to collect

p. 89

from orphans' estates, but not otherwise. Reverse the statement in our case, that R. Johanan holds from the estate of the guardian, and R. Jose b. Hanina said from those of the orphans. Said Rabha: Because there is a contradiction between the statements in the name of R. Johanan, you make R. Jose err. R. Jose b. Hanina was a judge, and he always dived to the bottom of the law. Therefore the statement in our case is not to be reversed, but the reason why R. Johanan states in our case that it shall be collected from the estates of the orphans, is because there is no other way, as if it should be collected from the estates of the guardian nobody would consent to become one. And the reason for Jose b. Hanina's statement that it shall be collected from the guardian's estates is because the guardian will be able to collect what he has paid from the orphans' estates when they reach majority.

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 in the following Boraitha: "An ox who has gored and his owner subsequently became a deaf mute, an idiot, or went to the sea countries, Jehudah b. Nekussa in the name of Summachus holds that he must be considered non-vicious until the evidence of viciousness was given in the presence of his owner; the sages, however, hold that a guardian is appointed and the evidence is given in his presence. Should it happen that the deaf mute became cured, the idiot of sound mind, or the owner has returned home, Jehudah b. Nekussa in the name of Summachus says that the ox is restored to his non-viciousness, and remains so until the evidence is given in presence of the owner, and R. Jose says that he remains in the same position he was in." Now let us see what Summachus does mean by his first statement that he must be considered non-vicious, etc. Shall we assume that the ox was still non-vicious; *i.e.*, he had not gored thrice? Then how shall his second statement be explained, that he is *restored* to his non-viciousness, which means that he was already vicious? We must then say that the statement that he is considered non-vicious means that it is considered that he had not gored at all, hence no

guardian is to be appointed to collect from his body, and the sages say that there is one appointed. This is the explanation of the first part of the above Boraitha. In the last part of the Boraitha they differ on another point; that is, if the change of control also changes his state (*i.e.*, whether the change from the control of the guardian to

p. 90

that of the owners changes also his viciousness to non-viciousness)? Summachus holds that it does, and R. Jose holds that it does not.

The rabbis taught: "An ox of a deaf mute, idiot, or minor that gored, according to R. Jacob, the half damages must be paid." How was the case? If it was a non-vicious ox it is self-evident that only half is to be paid, as the same is the case with an ox of a sound man, and if R. Jacob means that only half is paid even if he was vicious, let us see under what circumstances it may be said so. If the necessary care was taken of him then even the half should not be paid (for it is plainly written [Ex. xxi. 29], "and he hath *not* kept him in," but here in this case he had kept him in), and if the necessary care was not taken of him why should not the whole damage be paid (as according to R. Jacob there is no difference who owns the ox)? Said Rabha: This can be explained that it was a vicious ox, and care was taken of him, but not so much as was necessary to prevent him from coming into contact with other oxen; and the reason of R. Jacob's opinion is because he holds in accordance with R. Jehudah, who says that the state of non-viciousness continues until he is declared vicious, and he also agrees with him in that imperfect care is sufficient also for a vicious one, and he agrees also with the Rabbis that a guardian is to be appointed to collect from the body of the ox. Said Abayi to Rabha: But do not R. Jacob and R. Jehudah differ from each other in their opinions? Have we not learned in the following Boraitha that the ox in question R. Jehudah holds him liable, and R. Jacob holds that he must pay half? Said Rabbah b. Ula: R. Jacob only explains the liability to which R. Jehudah holds him, but does not differ with him. Rabhina, however, says that they do differ, but the case was that there was a change of control; that is, that the deaf mute was cured, etc. R. Jehudah holds that he remains in the same position he was in (and therefore he pays the whole), and R. Jacob says that the change of control changes also his status.

The rabbis taught: "Guardians pay from the best estates, but do not pay the atonement money" (see Ex. xxi. 30). Who is the Tana who holds that the money (which is to be paid according to the verse mentioned) is in atonement, and orphans need not have atonement, for they are not of age? Said R. Hisda: It is R. Ishmael, the son of R. Johanan b. Broka, of the following Boraitha: "It is written [ibid., ibid., ibid.]: 'And he

p. 91

shall give the ransom of his life'; that is, the value of the deceased. R. Ishmael, the son of R. Johanan b. Broka, however, says it means the value of the defendant." Shall we not assume that the point of difference is, that the Rabbis hold that the beginning of that verse means the value of the deceased in money as damages, but not in atonement, and R. Ishmael holds that it is in atonement? Said R. Papa: Nay, all agree that it is in atonement, but their point of difference is: The Rabbis hold that the appraisal must be of the person who was killed (because his value is to be paid), and R. Ishmael holds that the appraisal must be of the person of the defendant, because it is written [ibid.]: "And he shall pay the ransom of *his* life." And the Rabbis? Yea, it is true that it states "*his* life," which means that his life is atoned for, but the

amount to be paid for such atonement is the value of the deceased.

Rabha once declared before R. Na'hman that R. A'ha b. Jacob was a great man, and R. Na'hman said to him: When he comes to visit you bring him to me. When he had done so, said R. Na'hman to R. A'ha: Question something of me; and he put him the following question: "An ox belonging to two copartners (who has killed a man), how shall the atonement money be paid? If each copartner should pay the full amount then there would be two atonements, and the verse reads one; and if we should say that each of them shall give only half, then each pays only *half*, while the verse states that 'there shall be laid on *him* a sum of money,' which means the whole sum, and not the half." While R. Na'hman was sitting and deliberating over the case, he put to him another question, as to whether the property of the one who has to pay atonement is levied upon, as such is the case with one who owes sin and trespass-offerings (this will be explained in Tract Eruchin). And R. Na'hman said to him: Leave alone this question. I am still sorrowful that I could not answer the first question at once.

The rabbis taught: "One who borrows an ox with the understanding that he was non-vicious, and it was found out that he was vicious (and while being under the control of the borrower he gored again), the owner pays one-half and the borrower the other half. When, however, he became vicious while being under the control of the borrower, and he has returned him to the owner (and he gored once more), the owner must pay half and the borrower is free." Let us see: The Master said that in case he was borrowed with the, understanding of

p. 92

being non-vicious, and was found vicious, each pays one-half. Why shall the borrower pay anything? Let him say to the owner, I have borrowed an ox, but not a lion. Said Rabh: The case was that it was known to the borrower that he was a goring ox. But still, he can say that he was understood to be non-vicious, and he turned out to be vicious, why shall I pay half? Because the owner may answer him: What difference does it make to you in this case, if even he would be non-vicious? As soon as he has gored while being under your control you would have to pay half; the same is now, you pay only half. But still there is a difference, for a non-vicious ox pays from his body, while a vicious one from the best estates. The owner may say: Even in this case there is no difference to you, for you would have to pay for the other half of the ox to me in money. Now let us see (the second part of the Boraitha): "When he became vicious while under the control of the borrower, etc., the borrower is free;" hence we see that the change of control changes his status, and from the first part it is to be inferred that it does not change the status, as the whole damage is to be paid if he gored while under the control of the borrower. Said R. Johanan: Break 1 this Boraitha: the Tana who taught the first part did not teach the last one. Rabba, however, says: The Boraitha cannot be broken, as in the first part it is declared that change of control does not change the status, the same must be the case with the second part. The reason, however, for its decision is because the owner can say as regards the viciousness of the ox, which occurred while under the control of the borrower: The latter did not take care of him as he was not his, and therefore I do not consider him vicious at all. R. Papa, however, says: As in the last part of the Boraitha the control does change the status, so also is it in the first part, but the reason why there the whole amount is to be paid is because the ox always bears the name of his owner, even while under the control of the borrower, and therefore the change of control is not to be considered.

"*The ox of the stadium*," etc. The Schoolmen propounded a question: Is the ox in question fit for

the altar or not? Rabh said he is, for he was goring by compulsion, and Samuel said he is not, for at any rate a transgression was committed with him. There is a Boraitha supporting Rabh, which states

p. 93

plainly that the ox of a stadium is not guilty of death, and is fit for the altar.

MISHNA V.: An ox that killed a man by goring him, if it was a vicious one, the atonement money is to be paid, but not when he was a non-vicious one. Both of them, however, must be killed. The same is the case when he gored a minor male or female. If he gored a male or a female slave he must pay thirty selas, without regard whether their value was one thousand zuz or only one dinar.

GEMARA: If a non-vicious ox killing a man must be killed, how can there be found a vicious ox in regard to man? Said Rabba: The case was that he was running after three men, two of whom escaped, and the court determined from the circumstances that if he would have caught those two he would have killed them. R. Ashi, however, holds that such determination is of no value, but the case was that he gored two, injuring but not killing them at once, and then gored a third one to death, when the first two also died, and therefore he is considered vicious as to the third to pay the atonement money. R. Zbid, however, says: By "vicious one" is meant simply that he has killed three animals, and an ox that is considered vicious as to animals is considered so also as to human beings. [1](#)

"Both of them," etc. The rabbis taught: "From [Ex. xxi. 28]: 'Then shall the ox be surely stoned'; is it not self-evident that he became a carcass, and a carcass must not be eaten, why then does the verse add 'and his flesh shall not be eaten'?" The verse comes to teach that if he was slaughtered after judgment was rendered the flesh must not be eaten. This is the prohibition of eating it, but whence is it deduced that no benefit must be derived from it? Therefore it is written [ibid., ibid.]: "But the owner of the ox shall be quit," which means he shall be quit from any benefit. Such is the explanation of Simeon b. Zoma. But whence do we know that the words, "his flesh shall not be eaten," mean when he was slaughtered after judgment was rendered; perhaps it means after he was stoned, and the words "shall not be eaten" are to be explained that he shall not derive any benefit, but if he was slaughtered the flesh may be eaten also? The prohibition to eat it is inferred from

p. 94

[paragraph continues] "surely stoned," and if the verse "his flesh shall not be eaten" would mean to prohibit any benefit, it should have stated "shall not be derived any benefit," or "he shall not be eaten." Why the addition "his flesh" to indicate that if he was turned by slaughtering into food, as other meat, it is also prohibited?

The rabbis taught: It is written [ibid. 28]: "But the owner of the ox shall be quit." Said R. Eliezer: He is quit from paying the half of atonement money. (One might say as a non-vicious pays half damage in case of goring an animal, the same is the case when he first gores a man.) Said R. Aqiba to him: Is this not self-evident? The half payment is collected from his body, and here when the ox is stoned its owner may certainly say: "Bring it into court and collect from it."

Said R. Eliezer to him: Do you consider me as common as not to know such a case? I speak of an ox that is not guilty of death; for instance, if he killed a man in the presence of one witness, or in the presence of his owner only (in which case the ox cannot be killed, but one might say that nevertheless the half atonement money must be paid). [You say in the presence of his owner, which means that the owner admits that it was so, then it would be equal to one who confesses of being liable to pay a fine, and the law is that he who confesses of being liable to fine is free? R. Eliezer holds that this money is in atonement and not a fine.]

In another Boraitha we have learned: Said R. Eliezer: "Aqiba, do you consider me so common as to speak of an ox which is to be killed? I speak about an ox who intended to kill an animal but killed a human being, or who intended to kill a non-viable child and killed a viable one." Which of these two statements has R. Eliezer made to R. Aqiba first? R. Kahana in the name of Rabha said the one just mentioned was made first. R. Tibiumi in the name of the same authority said that the first statement was made first. The statement of the former is to be compared to a fisher who catches fishes in the sea; if he finds big fish he takes them, and if afterward he finds small ones he takes them also (although the second statement is much straighter evidence than the first one, he nevertheless made also the other statement), and R. Tibiumi's statement is to be compared to a fisher who keeps the small fish if he catch them first, but catching afterward big fish he abandons the small ones and keeps the big ones. (So was the case with R. Eliezer. He tried to give him evidence from the first statement, but as this

p. 91

was easily objectionable he tried to find stronger evidence and gave it to him.)

We have learned in another Boraitha: "But the owner of the ox shall be quit." R. Jose the Galilean said that means that he is quit from paying the value of *children* (if she was pregnant). Said R. Aqiba to him (Is it necessary to have a separate verse for this)? Is it not written [Ex. xxi. 22]: "If men strike, and hurt a woman with child," etc., from which is to be inferred that only in case of human beings there is a liability for hurting children, but not in case of oxen? (Says the Gemara): Is not R. Aqiba correct? Said R. Ula, the son of R. Idi: Another verse is necessary for the following reason: From the verse just mentioned one might say men, but not oxen that are equal to men. That means, as men are considered always vicious, so vicious oxen are free from liability for hurting children, but non-vicious oxen should be liable. Therefore comes the other verse, "The owner of the ox shall be quit," to teach that even in such a case there is no liability. Said Rabha: Shall the native remain on earth and the stranger be lifted up to the highest heaven? 1 (*i.e.*, how can it enter the mind that a vicious ox shall be free and a non-vicious shall be liable?) Therefore said R. Ada b. A'hba: (This verse alone would not be sufficient, for) in case of men they are liable for the children only when they intended to strike each other and struck the woman, but if they intended to strike the woman herself there is no money liability because they are guilty of a capital crime; but in case of oxen one might say that even when they intended to strike the woman herself their owner shall be punished also to pay for the children, therefore the expression "shall be quit" indicates that it is not so. And so was it taught plainly in a Boraitha which R. Hagi brought when he came from the south, as R. Ada b. A'hba explained it.

We learned in still another Boraitha: R. Aqiba said: "But the owner of the ox shall be quit," means from the payment for a slave (in case he was killed by the ox). But why should not R. Aqiba say to himself, as he said above to R. Eliezer, page 143: "Bring it into court and collect from it," as the ox must be stoned? Said Rabha: The verse is nevertheless needed for the

following reason: One might say: Because there is more rigorousness; about a bondman than about a freeman, as for a bondman thirty shekels are paid even if he was worth only one

p. 96

shekel, and in case of a freeman his actual value only is paid, therefore it might be said that the payment for the bondman must be from the best estates; hence the verse to make him quit.

There is a Boraitha in support of Rabha, as follows: "The owner of the ox shall be quit." Said R. Aqiba: Quit from payment for the bondman: but why is a verse needed for that, is it not common sense? He is liable for a bondman and is liable for a freeman: as in the liability for a freeman you made a distinction between a non-vicious ox and a vicious one, is it not common sense that there shall also be made the same distinction in the liability for a bondman. And in addition to that we may draw the following *a fortiori* conclusion: A freeman for whom there is a liability for his full value, and nevertheless there is a distinction between a vicious and non-vicious ox, a bondman for whom only thirty selas are paid (although he may have been worth one hundred or more), so much the more that there ought to be a distinction between a vicious and non-vicious one (why, then, is the verse needed)? There is more rigorousness about a bondman than about a freeman, for in case of the latter, if he was worth one sela he pays that much--that is, only the actual value--but in case of a bondman thirty selas are paid if even he was worth one sela, and therefore one might say that whether vicious or non-vicious the full amount must be paid, hence the verse that he shall be quit.

The rabbis taught: It is written [ibid., ibid. 29]: "And he killeth a man or a woman." Said R. Aqiba: What does the verse mean to teach us by the expression "a man or a woman," if it is only to teach that a woman is equal to a man? This was already stated in the preceding verse: "If an ox gore a man or a woman." This verse is to make a woman equal to a man in this respect, that as the damages for the killed man must be paid to his heirs, so also in the case of a woman it is paid to her heirs. But does R. Aqiba hold that her husband does not inherit from her? Have we not learned in the following Boraitha: "It is written [Numb. xxvii. 11]: 'And he shall inherit it'? From this is to be inferred that the husband inherits from his wife." So said R. Aqiba. Said Resh Lakish: R. Aqiba meant the atonement money, which payment is made only after her death, and thus it is only considered inchoate and the husband does not inherit such a share in her inchoate as he does in her existing estates. But what is the reason that it is collected only after

p. 97

her death? Perhaps it is to be collected as soon as the court came to the conviction that she must die from the injuries. Therefore it reads [ibid., ibid. 29, 30]: "And he killeth a man or a woman, the ox shall be stoned, and his owner also should of right be put to death. But there shall be laid on him a sum of money in atonement." From which is to be inferred that the money is paid only when "his owner shall of right be put to death," which cannot be when she is still alive. But did not R. Aqiba say that even in cases of damage her husband does not inherit from her? Have we not learned in a Boraitha: "If one struck a woman and caused her to abort he must pay for the damage and pain to herself, and the value of the children to the husband; if her husband is dead he pays to *his* heirs; if the woman is dead he pays to *her* heirs. If she was a bondwoman and became free, or she was a proselyte, the one who has to make the payment need not pay, for he himself acquires title to the payment, as these classes of persons have no legal heirs." Hence we see that even for the damage and pain the payment must be made to her heirs and not to the

husband. Said Rabba: The case was that she was a divorced woman; and so also said R. Na'hman: If the case was with a divorced woman, why should she not take a share of the money paid for the children? Said R. Papa: The Scripture has awarded the money for the children to their father, even if they were begotten illegally, as it is written [Ex. xxi. 22]: "As the husband of the woman lay upon him."

Resh Lakish said: An ox that killed a bondman unintentionally is free from the payment of the thirty shekels, as it is written [ibid., ibid. 32]: "Thirty shekels shall be given to his master, and the ox shall be stoned," from which it is to infer that only when the ox is to be stoned the money is to be paid, but not otherwise. Said Rabba: The same is the case as regards atonement money in case the ox killed a freeman unintentionally, for it is written [ibid.]: "The ox shall be stoned, and his owner also should of right be put to death, but there shall be laid on him a sum of money in atonement," from which is to be inferred that only when the ox is stoned, etc., the atonement money is to be paid, but not otherwise. Abayi objected: We have learned: "(If one confess, saying) my ox has killed a certain person, or his ox, he has to pay on his own testimony." Does it not mean atonement money also? Nay, it means the money for damages. If it is so, why does the latter part state.

p. 98

"My ox has killed the slave of a certain man; he is not compelled to pay on his own testimony"? Now if this is not the fine but damages, why should he not pay? Said Rabba to him: I could answer you that the first part treats of damages and the latter of fine, but I do not like to give you a *far-fetched* answer. Both parts treat of damages, but in the first instance the atonement money is paid upon his own testimony under the following circumstances: That witnesses came and testified that his ox killed a man, but were unable to testify whether he was vicious or non-vicious, and the owner admits that he was vicious, in such a case he has to pay the atonement money on his own testimony, but where there are no witnesses he pays only the damage, but not the atonement money. And in the case of a slave, if witnesses come and testify that the ox killed the slave, but they are unable to testify whether he was vicious or not, and the owner admits that he was vicious, he has not to pay the fine upon his own testimony, and where there are no witnesses he need not pay even the damages. R. Samuel b. Itzhak objected: We have learned: "The same liability one has for a freeman he also has for a bondman, either as to atonement money or as to the death penalty." Is there then any atonement money in case of a bondman? We must therefore say that it means damages; hence we see that one pays damages even on his own testimony. Some say that he himself answered this objection, and others say that Rabba said to him: This Boraitha is to be explained thus: In every case where one is liable to pay atonement money--for instance, a freeman--when done with intention and there is testimony of witnesses, he is liable under the same circumstances to pay a fine of thirty shekels in the case of a slave, and in case he is liable for damages only--as, for instance, when witnesses testify that he has done it without intention--in case of a slave under the same circumstances he pays only damages, but no fine; but if he himself admits, although in case of a freeman he has to pay damages, in case of a slave under such circumstances he is free. Rabba questioned Rabba: If one's fire has done damage without intention is there a liability or not? Shall we assume that it is only in case of an ox where, when intentionally he pays atonement money, when unintentionally he pays damage, but in the case of fire, where there is no atonement money at all (as, if intentionally, he is guilty of a capital crime), if it was unintentionally he shall not pay damages, or the atonement money is not to be taken into consideration, and the damages

p. 90

must be paid at any rate; as we do not know of any reason why fire should be distinguished from an ox when done unintentionally, as both are his property? This remains unanswered. When R. Dimi came from Palestine he said in the name of R. Johanan thus: It could be written: "Shall be laid on him a sum of money in atonement." Why is the word "if" 1 added? To teach that the atonement money shall be paid when done unintentionally as well as if done intentionally. Said Abayi to him: According to your theory, why should we not say the same of a bondman, where it is also written [ibid. 31] "if," even when done unintentionally; and if you should say that so it really is, why then said Resh Lakish that if an ox killed a slave unintentionally he is free from the thirty shekels? He answered: What contradiction do you adduce? They are two different persons, and differ in their opinions. When Rabhin came from Palestine he said that R. Johanan has declared plainly that the same is the case with a slave when killed, even unintentionally, and that he deduced it from the word "if," as explained above.

"*A male or female minor.*" The rabbis taught: It is written [ibid. 3 1]: "If he gore a son or gore a daughter;" that is, to make one liable for little children as for grown persons. But is this not common-sense? There is a liability of a human being for a human being, and the same liability is of an ox for a human being; as in the former there is no difference as to whether young or old, so also in the latter case, and this can be inferred also by the following *a fortiori* conclusion: In the case of human beings, in which the murderer is guilty only when he is a grown-up person, but not a child, for it is written plainly "*man*" (and a child is not called "*man*"); in the case of an ox, in which there is no difference as to whether it is old or young (as the Scripture calls him ox from the very same day he was born, Lev. xxii. 27), so much the more that he shall be guilty for children as well as for grown persons. Why, then, is a verse needed? Nay (as to all that was said above could be objected thus): In the case of human beings there is a liability for the four certain things, which is not the case with an ox, and one might say, as in the case of an ox, there is no liability for the four things; so also should there be a distinction between children

p. 100

and grown persons; hence the above passage. From this passage we deduce only as to a vicious ox; whence do we know that as to a non-vicious one? This is common-sense: As there is a liability for a grown man or woman, and the same liability is for children, and as to grown persons no distinction is made between a vicious and non-vicious ox, the same is the case with children. This can also be inferred by *a fortiori* conclusion: Grown persons, who are responsible for their acts, if they were killed by an ox there is no distinction made between a vicious and non-vicious one; so much the less in case of children, who are not responsible for their acts, that no distinction is to be made whether the ox was vicious or not. Is it not against the rule to draw an *a fortiori* conclusion from a rigorous one to a lenient one to make the lenient rigorous? (It is deduced that no distinction is made between a vicious and non-vicious ox in regard to grown persons from the case of the children, and the verse, "If he gore a son," etc., speaks of a vicious ox; now you compare again the case of children to the case of grown persons, to say that as there is no distinction, so is none here, consequently you draw from the rigorous one, *i.e.*, grown persons, which is based only upon common-sense, to the case of children, where the Scripture says plainly that the ox must be vicious, and consequently lenient, as it can be said that only a vicious and not a non-vicious is meant, to make a non-vicious also liable.) And still we can say that the case of children is more lenient, for children are free from observance of the Law, which is not the case with grown man; therefore it is written: "If he gore a son, or gore a daughter," the repetition of "gore" being superfluous, to teach us that there is no distinction between a vicious

and non-vicious ox, between injured and killed, and in all cases it must be paid.

MISHNA VI.: An ox that was rubbing against a wall whereby the wall fell upon a human being and killed him; if the ox intended to kill an animal and killed a man, or a non-viable child and killed a viable one, he is free.

GEMARA: Said Samuel: He is free from death, but he is liable to pay the atonement money. Rabh, however, says that he is free from both. But why shall atonement money be paid? Is he then not non-vicious? (Is it not said that he was rubbing against the wall, in which case he is surely non-vicious, at least in this case?) As Rabha explained this (*post*, page [112](#)), that it was vicious in this respect as to fall into pits, so also here that

p. 101

it was vicious in rubbing against the wall. But if so, then he must be put to death. It would be correct in the case of Rabha's explanation cited concerning a pit, because he noticed therein vegetables, and intending to eat of them he fell in, but in this case here what can be said? He was rubbing against the wall to derive benefit. How do we know that? From the fact that he continued rubbing even after the falling of the wall. But then is this the proximate cause? Is it not the remote cause, as digging up gravel? Said R. Mari, the son of R. Kahana: The case was that the wall was little by little removed by his rubbing until the very moment it fell, and therefore it was the proximate cause, but still there was no intention to kill.

There is a Boraitha which is a support to Samuel and an objection to Rabh, namely: "There are cases in which the ox is put to death and the owner pays atonement money, and there are other cases in which atonement money is paid, but the ox is not put to death, and still others in which the ox is put to death, but no atonement money is paid, and finally such cases in which there is no liability to either. How so? If there are both viciousness and intention, both atonement money is paid and the ox is killed. If viciousness without intention is present, atonement money only; non-viciousness but intentional, the ox is put to death, but no atonement money. Non-viciousness without intention, no liability at all. But if, however, he has done damage unintentionally R. Jehudah holds him liable and R. Simeon holds him free." What is the reason of R. Jehudah's decision? He compares it to atonement money: as the latter is to be paid if unintentional, so also in damages; and R. Simeon compares it to the killing of the ox: as the ox is not to be killed if it was unintentional, so also is the case with damages.

"*If the ox intended to kill an animal,*" etc. But how is the case if it intended to kill one man and killed another, is there a liability? If so, then this Mishna will not be in accordance with R. Simeon of the following Boraitha, in which he says "that even if he intended to kill one man and killed another he is also free." And his reason is because it is written [Ex. xxi. 29]: "The ox shall be stoned, and its owner," etc. The killing of the ox is equal to the death of its owner: as the owner cannot be put to death unless he killed *this* man intentionally, so also the ox is not killed unless it killed *this* man intentionally. But whence do we deduce that it is so in case of murder? Because

p. 102

it is plainly written [Deut. xix. 11]: "And he lie in *wait for him*, and rise up against him," etc.,

which indicates that he must have the intention for the man he killed.

MISHNA VII.: An ox belonging to a woman, to orphans, or their guardian, or an ownerless ox, or an ox belonging to the sanctuary, or the ox of a proselyte who died without heirs, all those (if they kill a man) are put to death. R. Jehudah, however, holds that an ownerless ox, or that belonging to the sanctuary or to the proselyte in question are not put to death, for the reason that they have no owners.

GEMARA: The rabbis taught: "The word 'ox' is repeated seven times in the chapter of the Scripture treating of the goring of a man by an ox, which repetition means to include all those kinds of oxen stated in the Mishna. R. Jehudah, however, says that notwithstanding these repetitions, an ownerless ox, or one belonging to the sanctuary or to a proselyte are not put to death, because they have no owners. Said R. Huna: R. Jehudah makes him free even if he was consecrated or declared ownerless after the goring. Whence this theory? Because it is repeated in R. Jehudah's statement, "an ox that is ownerless *or* one belonging to a proselyte," etc., are they not both equally ownerless? Hence for the purpose stated. And so it is plainly stated in the following Boraitha: Furthermore, R. Jehudah said: Even if it was consecrated or made ownerless after goring, they are also free, as it is written [Ex. xxi. 29]: "And warning had been given to his owner," etc., which means that it is put to death then only when during the bringing to the court, the judgment, and its execution its owner is still in existence.

MISHNA VIII.: An ox that was sentenced to be put to death and his owner consecrated him, he is not consecrated. If his owner slaughtered him, his meat is prohibited. If, however, this was done before the completion of the sentence, he is consecrated, and if slaughtered his meat may be used.

If one delivered his ox to a gratuitous bailee or borrower, to a bailee for hire, to a hirer, all those substitute the owner as to responsibility for damage: a vicious one pays the whole, and a non-vicious one the half.

GEMARA: The rabbis taught: "An ox that killed a man; if before sentence he was sold or consecrated the act is valid, if slaughtered his meat may be used. If the bailee returned him to his owner the act is valid. If, however, all those enumerated

p. 103

were done after sentence, neither of those acts is valid. R. Jacob, however, said that as regards the bailee the act is valid even if after sentence, and the point of their difference is thus: Whether the ox may be sentenced in its absence from before the court. The rabbis hold that the sentence must be pronounced in the presence of the ox. Now the owner may say to the bailee: If you would have returned him to me before sentence, I would have driven him away into the swamp (so that he could not be brought before the court), and R. Jacob, however, holds that as the sentence may be pronounced in his absence, there is no difference. What is the reason for the rabbis' theory? The verse quoted above, "The ox shall be stoned, and his owner," etc., from which is to infer that the ox is in this respect equal to his owner, as his owner could not be sentenced to death in his absence, the same is the case with the ox. R. Jacob, however, objected and said: The owner is different, because he could argue before the court, but for what purpose is the presence of the ox necessary in the court?

"If he delivered him to a bailee," etc. The rabbis taught: The following four substitute the owner: The gratuitous bailee, the borrower, the bailee for hire, and the hirer. If the ox under the control of the above killed a man while being non-vicious, he must be put to death, and no atonement money is paid; if while being vicious, also atonement money is paid; and all of them with the exception of gratuitous bailee must pay the value of the ox to its owner. Let us see how was the case. If they guarded him as required, let all of them be free; if they have not guarded him as required, let even the gratuitous bailee also pay? The case was that they have not sufficiently guarded him. For the gratuitous bailee it is considered sufficient, and therefore he is free, but for all others it is not sufficient (because a greater degree of care is required of them). Let us see, according to whom is this Boraitha? If according to R. Meir, who says that a hirer is equal to a gratuitous bailee: "Why did not the Boraitha add to the gratuitous bailee also the hirer? And if it is according to R. Jehudah, who says that a hirer is equal to a bailee for hire, why did not the Boraitha add to the gratuitous bailee also that all of them in the case of a vicious ox are free from atonement money" (as R. Jehudah holds that even slight care is sufficient for the above substitutes)? Said R. Huna b. Hinua: The Boraitha is in accordance with R. Eliezer, who says that there is no guard for a vicious ox unless the knife, and he

p. 104

also holds according to R. Jehudah, who says that the hirer is equal to a bailee for hire. Abayi, however, says that the Boraitha is in accordance with R. Meir, and it is as Rabbah b. Abuhu changed the statement of the rabbis as follows: One who hires an ox, how shall he pay? R. Meir says, as a bailee for hire, and R. Jehudah says, as a gratuitous bailee.

R. Elazar said: One who delivered his ox to a gratuitous bailee, and the ox did damage, the bailee is liable, but if he was injured he is free. Let us see how the case was. If the bailee agreed to guard him against injury, then let him be responsible if even he was *injured*, and even he did not let him be free even if he *did* damage. Said Rabha: The case was that he *did* take the responsibility, but he knew at the time that he was a goring ox, and common-sense dictates that his intention was to guard him against goring as it was his habit, but it could not enter his mind that he will be gored by others.

MISHNA IX.: If its owner properly tied him and locked him up, and still he broke out and did damage, be it a vicious or a non-vicious one there is a liability. Such is the dictum of R. Meir. R. Jehudah, however, holds that a non-vicious is liable, and a vicious is not, for it is written [Ex. xxi. 29]: "And he hath not kept him in," but here he had. R. Eliezer, however, says there is no guard for a vicious ox except the knife.

GEMARA: We have learned in a Boraitha: R. Eliezer b. Jacob said: "Whether vicious or non-vicious, if they were slightly guarded (from negligence) he is free from the *whole* damage." The reason for this is because he is in accordance with R. Jehudah, who said above that slight care is sufficient for a vicious ox, and he holds that even a non-vicious ox must also be guarded from the analogy of expression "gore." As in the case of a vicious one it is plainly written, "He hath not kept him in," so also it is in case of a non-vicious.

R. Ada b. A'hba said: R. Jehudah made him free (in our Mishna) from viciousness, but not from *non-viciousness* (*i.e.*, he must still pay half).

Rabh said: If he was vicious to gore with the right horn he is not considered vicious as to the left horn. According to whom is Rabh's saying? (The saying of Rabh is certainly not regarding the payment, as it is certain that even when he was vicious toward human beings he is not considered vicious toward an animal, and it is therefore self-evident that if it was known to be vicious with his right horn, no claim can be made that the

p. 105

whole must be paid if he gored the first time with the left horn. Rabh's saying therefore must be interpreted to have reference to "taking care.") If it is in accordance with R. Meir even a non-vicious one must be taken good care of? And if according to R. Jehudah, who holds that only slight care is sufficient, then why is it necessary to make the distinction between viciousness and non-viciousness, as to goring with left and right horns: there is a distinction also in the very case of the right horn, viz., if no care at all was taken of him then the viciousness prevails, but if any care at all was taken of him, only the non-viciousness prevails and the viciousness is gone? It can be said that he is in accordance with R. Jehudah, but he does not hold of the theory of R. Ada b. A'hba. And Rabh's saying is to be explained thus: To find in one and the same ox both viciousness and non-viciousness, it can be only when he was vicious to gore with the right and not with the left horn; but if he was vicious as to both horns, then the element of non-viciousness can no more be found in him (*i.e.*, if no care at all was taken of him he is vicious in all respects, but if any care at all was taken the viciousness is gone and the non-viciousness remains).

"*R. Eliezer says for a vicious ox,*" etc. Said Abayi: The reason for R. Eliezer's saying is as we have learned in the following Boraitha: R. Nathan said: Whence do we deduce that one must not raise a noxious dog in his house, nor maintain a defective ladder? For it is written [Deut. xxii. 8]: "That thou bring not blood upon thy house."

Footnotes

[82:1](#) Rashi explains this as follows: After the first goring he saw another ox and did not gore and after the second goring he saw two or three other oxen and did not gore them, and so after the third and fourth gorings in which case he is not considered vicious even in alternate order, as explained further on in the text.

[83:1](#) This is very complicated, and the commentaries differ as to the explanation and illustration thereof. Rashi maintains that if the value of the fifth one was only fifty zuz, the carcass being of no value, he collects from the body of the goring ox his full half of twenty-five zuz, and turns over the balance to the fourth one, whose ox was of the value of one hundred zuz, who collects nevertheless only twenty-five zuz, for the reason that the twenty-five zuz collected by the fifth one are deducted from his half damage, because the ox was then under his control, and the balance is turned over to the third one, applying the same rule; one full half value of the ox, however, belongs to the owner, as the ox was not under his control since the first goring. Hananel's illustration of this rule, however, is in reverse order: The first one whose ox was of the same value of the goring ox, who had to collect one hundred zuz out of the body of the goring ox, loses fifty if the goring ox gores another of the value of one hundred while under his control, and so the second pays to the third the one half of the damage done to him, so that only

the last one takes his full half damage, as the ox was not under his control. Tospath remarks that in such cases it can happen that the third and fourth should collect nothing, and even the fifth one may not be able to collect his full half. See the objection of Samuel Eidlis (Marsha) to these remarks of Tospath and the answer of Sabbati Kohen in his commentary on the Schulchan Aruch, §401, and their illustrations.

[84:1](#) Here is an omission which will be supplied in the eighth chapter of this tract, as there is the proper place for it.

[86:1](#) Here follow several similar questions, all remaining unanswered, and they are of no importance.

[86:2](#) For the first time in our translation we omit here a statement of the Mishna regarding the going of an ox belonging to an idolater, for it seems to us that it was inserted here not by the editors of the Mishna; the evidence for this we have set forth in a long article in Hebrew in the monthly "Ner Hamarabi." We will probably explain this to our English readers in an appendix to the "third gate" of this section.

[88:1](#) *I.e.*, those three named in the Mishna.

[92:1](#) This form of expression is often used in the Talmud.

[93:1](#) In the Gemara this last sentence is put as a question, and there are many answers to it which we deem of no importance to be translated. The law, however, prevails as we have translated in our text.

[91:1](#) See explanation of this expression in Tract Erubin, p. 16, footnote.

[90:1](#) The text reads "Im," which literally means "if"; Leeser, however, translates it "but," according to the sense of the verse.

[Next: Chapter V.](#)