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CHAPTER VI.

REGULATIONS CONCERNING THE GUARDING OF ANIMALS AGAINST DOING DAMAGE. CONCERNING THE STARTING OF FIRE; IF IT PASSES OVER A WALL. FOR WHAT DISTANCES PASSED BY A FIRE IF THE ONE WHO STARTED IT LIABLE?

MISHNA *I.*: 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. If he do not properly bolt the gate, he is liable. If they break out in the night time, or robbers break in the gate, and the sheep come out and cause damage, he is free. If the robbers lead them out, they are responsible for the damage. If one exposes his cattle to the sun, or he places them in the custody of a deaf-mute, a fool, or a minor, and they break away and do damage, he is liable; if, however, he places them with a (professional) shepherd, the latter substitutes him (as regards liability for damages). If the cattle fall into a garden and consume something, the value of the benefit they derive is to be paid. If, however, they enter the garden in the usual way, the value of the damage is paid. How is the value of the damage to be ascertained? It is appraised how much a measure of the land required for planting a saah was worth before and how much it is worth after. R. Simeon says: If they consume ripe fruit, the value of ripe fruit is paid; if they consume one saah, the value of one; if two, the value of two is paid.

GEMARA: The rabbis taught: When is it called properly and when not properly bolted? If the gate is bolted so as to withstand an ordinary wind, it is called "properly"; if not, it is called "improperly." Said R. Mani b. Patish: Who is the Tana who holds that slight care is sufficient for a vicious one? It is R. Jehudah of the following Mishna (*supra*, page 104): If his owner secured him with the rope and properly locked him up, and still he came out and did damage, whether he was non-vicious or he was vicious, there is a liability. Such is the dictum of R. Meir. R. Jehudah, however, says: For a non-vicious

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there is, but for a vicious one there is no liability; as it is written [Ex. xxi. 36]: "And his owner had *not* kept him in," but here he had. R. Elazar, however, said: "There is no other care for a vicious one than the knife." It can be said that the Mishna is in accordance with R. Meir also, but the tooth and foot are different, for the Scripture required only slight care with them, as R. Elazar, and according to others a Boraitha taught: "There are four things regarding which the Scripture diminished the amount of care, and they are the pit, the fire, the tooth, and the foot: The pit, as it is written [ibid., ibid. 33]: "And if a man open a pit, or if a man dig a pit, and do not cover it"; but if he had only covered it (without placing a layer of earth on it), it is sufficient. Fire, as it is written [ibid. xxii. 5]: "He that *kindled* the fire shall surely make restitution," which signifies that it must be done *purposely*. The tooth and foot, as it is written [ibid., ibid. 4]: "And he *let* his beasts enter, and they fed in another man's field," which signifies an intentional act, but not otherwise. Said Rabba: From our Mishna it is also to be inferred (that the reason is

because the Scripture diminished the amount of care), for it states *sheep* instead of *ox* (although sheep require less care), of which it treats throughout. We must say, then, that this is because the Law requires only slight care, and therefore the Mishna mentioned only sheep, which usually do damage only with the tooth and foot, and not with the horn, and also for the reason that the tooth and foot are considered vicious from the beginning, which is not the case with the horn. Infer from all this that slight care only is required.

We have learned in a Boraitha: "R. Jehoshua said: 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, and they are: he who breaks the fence of the stall where his neighbor's cattle are kept (only when the fence was shaky); he who bends his neighbor's growing crop in the direction of fire (only during the prevalence of an unusual wind); he who hires a false witness (only for the benefit of his neighbor); and he who suppresses his own testimony and thereby deprives his neighbor from its benefit (only if he was the sole witness). But if the circumstances are different, he is liable also to an earthly tribunal.

R. Ashi said: The case of bending one's crop in the direction of the fire may be explained that he spread blankets over

the crop, and thereby made it "hidden articles," for which there is no liability for the one who starts the fire (as explained elsewhere).

But are there not other cases in which one is liable only to heavenly justice? Yea, there are, but those just stated had to be enumerated here, for one might say that in these cases there should be no liability even to the Divine court. Thus, in the first case, because it had to be abolished anyhow; in the second, because by an unusual wind it would have caught fire without that and (according to R. Ashi it is also necessary to mention this case, lest one say he may argue that he spread the blankets over it in order to protect it against the fire); in the third, because the witness had not to listen to the one who hired him, as it was prohibited by the Law; and in the last case, because who could guarantee that if he should not have testified the other would have admitted his liability? And lest one say that in such cases there is no liability, even to the Divine court, hence the statement.

"*If he expose them to the sun*," etc. Said Rabba: And this is so even if they undermined (the fence and did damage); lest one say that in such a case the damage was done through accident, he comes to teach us that even this is considered wilful. Why so? Because the plaintiff may say to the defendant: Did you not know that when exposing them to the sun they would do all they could to break out?

"*If the robbers lead them out*," etc. Is this not self-evident, for by this act they place them under their own control as regards everything? The case was that they only stood before them on each side (so as to leave only the way leading to the standing crop open). And this is in accordance with Rabba, who said in the name of R. Mathua, quoting Rabh: One who leads another one's animal to, and places it in, one's barn (and it does damage), is liable. "Places?" Is this not self-evident? We must say, then, that it means that he stood before them (as explained above). Said Abayi to R. Joseph: You explained to us the above saying of Rabh, that the case was that he

struck it (driving it on), so also was the case here with the robbers, that they did not lead them out, but only struck them with a cane (and this action is considered equivalent to leading them out with the hand).

"*If he deliver them to a shepherd*," etc. From the fact that it states that he delivered them to a *shepherd*, and it does not

state that "he delivered them to another," it is to be inferred that the shepherd in turn delivered them to his assistant, for such is the custom of a shepherd; but if he delivered them to a layman the shepherd is not liable. Shall we assume that this will be a support to Rabha, who said elsewhere: "A bailee who intrusts his bailment to another bailee is liable?" Nay, perhaps the statement here is because it is customary so to do, but such is the law, even if it was delivered to a layman.

It was taught: A bailee of a lost article, Rabba says that he is considered a gratuitous bailee for he derives no benefit from such bailment; R. Joseph, however, says that because the Scripture imposed this duty upon him, against his will, he is considered a bailee for hire.

R. Joseph objected to Rabba from the following Boraitha: If he returned the lost article in a place where its owner were likely to see it, he is absolved from any obligation to further trouble himself with it; and if it was stolen or lost, he is responsible. Does this not mean if it was stolen or lost while under his control (and still he is liable; hence he is considered a bailee for hire)? Nay, it means from the place to which he returned it. But does it not state that he need not trouble with it any more? He answered him: The case was that he returned it in the noon-time, and it teaches two cases, thus: If he returned it in the morning, when it could be noticed by its owner, who usually passes by that place, he need no more trouble himself with it; if, however, he did so in the noon-time, when the owner does not usually pass by, and it was stolen or lost, he is responsible. He again objected from the following: "He is always liable until he return it to the control of the owner." Does that not mean if even he placed it in his house, hence we see that he is considered a bailee for hire? He answered him: I admit that in case of animated beings more care is required, for they are used to walk away.

Rabba then objected to R. Joseph's statement from a Boraitha which teaches: It is written [Deut. xxii. 1]: "Bring them back." "Bring them" means to the owner's house; "back" means to his garden or to the owner's ruined (vacant) house. We must say, then, that in the last two places the returned property is not guarded; because if it is, then what difference is there between these two places and the house? Now then, if he is considered a bailee for hire, why is he not liable for it at the last two places? And R. Joseph answered: The Boraitha

speaks of a case where the property was guarded, and the difference between those places and the house is that in the former case the owner is not notified, and it comes to teach us that the knowledge of the owner is not required, as R. Elazar states in Baba Metzia, p. 31*a*.

Said Abayi to R. Joseph: Do you yourself not admit that he is considered a gratuitous bailee?

Did not R. Hyya b. Aba say in the name of R. Johanan that, regarding found property, if the finder claims that it was stolen from him (and it was found out that it was not so), he pays double (as it is written [Ex. xxii. 7, 8]: "If the thief be not found . . . or for any manner of lost thing"); and if he would be considered a bailee for hire, why should he pay double (by his own claim he admits that he has to pay the value of the bailment)? He answered: The case was that he claimed to have been robbed by armed robbers (*i.e.*, an accident, in which case he is free). He objected again: If so, then it is robbery, and not theft? R. Joseph rejoined: I say that even armed robbery, when committed not publicly, is still considered theft, and he must pay, according to Scripture, double. Abayi objected again: (It was stated elsewhere in regard to the comparison between a gratuitous bailee and a bailee for hire, as follows:) "Nay, a gratuitous bailee pays double and a bailee for hire does not." Now, if armed robbers pay also double, like ordinary thieves, there can also be a case of a bailee for hire who should pay double, as, for instance, when he claims that he was robbed by armed robbers (and it was found out to be not so)? He rejoined: It means thus: Nay, there can be no comparison between a gratuitous bailee who pays double, whatever his claim may be, and a bailee for hire who pays double only when he claims to have been robbed by armed robbers. He still objected from the following Boraitha: It is written [Ex. xxii. 9]: "And it die, or be hurt"; from this we know only as to death or hurt. Wherefrom do we know also as to theft or loss? This is to be drawn by an *a fortiori* conclusion, thus: A bailee for hire who is not liable for death or hurt is still liable for theft or loss, a borrower who is liable for death or hurt ought so much the more to be liable for theft or loss. And this *a fortiori* conclusion is irrefutable. Now, if armed robbers are considered ordinary thieves, why is it irrefutable-can it then not be refuted thus: There is an exception with a bailee for hire who pays double when he claims that he was robbed by armed robbers? He rejoined: The Tana of this

[paragraph continues] Boraitha holds that even to pay only the actual value without an oath is better than to pay double under oath (and therefore the *a fortiori* conclusion cannot be refuted). (The explanation of this statement will be found in Baba Metzia, where this case is treated at length.)

"*If it fall into a garden*," etc. Said Rabh: The case was that it struck upon the growing crop, and the benefit derived for which payment must be made is that it was prevented from striking hard upon the ground. But how is the case if it consumed some plants, does it not pay? Shall we say that Rabh is in accordance with his theory (above, page 109) "that the animal ought not to have eaten"? What comparison is this? When did Rabh say this? Only when the animal was injured by the fruit which it consumed and the owner of the animal claims payment for such injuries, in such a case the owner of the fruit can say that the animal ought not to have eaten; but when the animal *did injury to the owner of the fruit* by consuming it, did Rabh then say that it must not be paid? But what, then, did Rabh mean by his statement above? Rabh means to state a case of "not only"; viz., Not only that he pays where it consumed, but even when it fell on the crop and consumed nothing it must pay, for the benefit it derived in being prevented from striking hard upon the ground, and lest the owner of the animal say that this was only his duty, similar to frightening away a lion from his neighbor's field, for which the Law awards no compensation, it comes to teach us that payment must be made for the benefit. But why is this really not to be compared to frightening away a lion from one's neighbor's field? Because in such cases one does not incur any expense, but here he has actual loss.

In what manner did it fall? R. Kahana said that it slipped out by reason of the urine it let. Rabha,

however, said that it was pushed in by another animal. According to the latter, so much the more if it happened by reason of her own urine; but according to the former, only in such a case; but when pushed in by another animal it is considered wilful, and the value of the damage is paid, for he (the owner of the field) can say to the owner of the animal. "You should have seen to it that the animals could have passed one by one, without being pushed in." Said R. Kahana: The case is only if it damaged one plant-bed (that it pays the benefit that it derived); but if it went from one plant-bed to another, consuming the plants, it

pays the full value. R. Johanan, however, says that even in such a case, and even if it continued doing so the whole day, only the value of the benefit derived is paid (because when once it was already there it could not keep away from consuming), until the owner has noticed that the animal left the field and then returned again. Said R. Papa: It must not be said that the owner of the animal must have notice of both the leaving and the returning, it is sufficient if he only had notice of the leaving and did not care to keep it from returning, because the owner of the field may say to the owner of the animal: "You should have known that, so long as it knew the way, it would go there at the earliest opportunity, and you should have taken care of it."

"*How does it pay what it damaged*," etc. Whence is this deduced? Said R. Mathua: It is written [Ex. xxii. 4]: "And they feed in another man's field"--this teaches us that the appraisement is made with the *other* field (which was not damaged). But is this passage not necessary, to exclude public ground? If so, then the Scripture ought to read, "and they feed another man's field." Why *in* another man's field? Hence to infer both.

How is the appraisement made? Said R. Jose b. Hanina: One saah in sixty (*i.e.*, the Mishna means not only sixty times the portion damaged, but thus: To the measure of land sufficient for planting a saah of grain, on which the damage was done, are added fifty-nine measures of such dimensions, and appraisement is then made as to the value of such a lot of land if sold as one lot of land; then the value of a measure sufficient for the planting of one saah is apportioned, and then is ascertained the difference in price of such saah on account of such damage. The reason is, that no undue advantage should be taken of the defendant; for a small plot of land is comparatively higher in price than a plot of sixty times its size, because a poor man can also afford to buy it and there are more purchasers). R. Janai, however, says: One Tirkav in sixty (thirty saah, and not sixty saah, in order not to take undue advantage of the plaintiff, as for plots of sixty saah buyers are not so numerous, because for a man of moderate means it is too much and for a rich man it is too small a plot). But Hezkiah says: The appraisement is made only by one in sixty times the quantity damaged. An objection was raised from the following: "If she consumed a kabh or two, one must not say that their

value must be paid, but it is assumed as if it were a small plant-bed and is thus appraised." Is it not to be presumed that this plant-bed is appraised separately and for itself? Nay, it means in sixty times its size.

The rabbis taught: "The appraisement is not one kabh in sixty kabh, for it increases its value; neither one kur in sixty kurs, for it unreasonably reduces its value." What does this mean? Said R. Huna b. Menoa'h in the name of R. Aha the son of R. Ika, it means thus: A measure of a kabh

is not appraised separately, for the plaintiff may unduly benefit by it; nor a kabh as relative to a kur, for the plaintiff may unduly be injured by it (for the damage may not be so well noticed), but every unit is appraised at sixty times its value (for the reason stated above).

It happened that one came before the Exilarch and complained of one who destroyed one of his trees. Said the Exilarch to the defendant: "I know of my own knowledge that the tree was one of a group of three trees which was worth one hundred zuz. You will therefore pay him one-third of this amount." The complainant refused to accept this decision, saying: Before the Exilarch, who applies the Persian law, what have I to do? and he went before R. Na'hman, who assessed the damage by appraising the destroyed tree as relative to a group of sixty trees. Said Rabha to him: The rule of sixty was held when damage was done by one's *property* (without the intention of its owner), and you wish to apply the same rule to this case, where the person himself has done the damage intentionally? Said Abayi to Rabha: Why do you think that in case of damage done by one's own person this rule should not apply, because "sixty" is not mentioned in the following Boraitha: "One who destroys the young grapes of his neighbor's vineyard, the damage is assessed by appraising the value of the vineyard before and after the destruction"? But have we not learned in another Boraitha, similar to this as regards damage by one's property, viz.: If the animal destroyed a bough, R. Jose said, the assessors of fines in Jerusalem say that a bough one year old is worth two silver dinars; two years old--four. If it consumed hay, R. Jose the Galilean says that the damage is assessed by appraising the value of what remained. The sages, however, hold that the value of the land before and after the consumption of the hay is appraised (and the difference in value is the damage). If it consumed grapes in the budding stage,

R. Jehoshua says that they are considered as if ready to be plucked, the rabbis, however, apply the former rule. R. Simeon b. Jehudah says in the name of R. Simeon: This was said only when the grapes or figs were still in sprouts; but if they were already developed to the size of a white bean, they are considered as ready to be plucked? Now then, as to the sages, although they do not mention the rule of sixty, still we know from elsewhere that such is their theory, and therefore it does not state it here expressly. Interpret the above Boraitha in the same manner. The Master said: R. Simeon b. Jehudah said, etc. This was said only when the grapes and figs were still in sprouts, from which it is to be inferred that if they were in the budding stage they are considered as ready to be plucked. How should the latter part be explained: "If it consumed figs or grapes when already of the size of a white bean, they are considered as ready to be plucked"--from which it is to be inferred that if in the budding stage it is appraised as to how much it was worth before and how much after? Said Rabhina: Add, and teach together thus: "This is in a case where it consumed grapes and figs in the sprouting stage; but if in the budding stage or when they were already of the size of a white bean, they are considered as ready to be plucked." If this is so, is it not the same as what R. Jehoshua said? The difference is as to the deduction from the amount of damage of the value of the increased sap (of the tree by reason of the destroyed fruit, which benefits the remaining fruit). But it is not known who is the one who holds him liable. Abayi, however, says: It is very well known, because the Tana who takes into consideration the increase of sap is R. Simeon b. Jehudah, who holds something similar in Khethuboth, p. 39*a*.

R. Papa and R. Huna the son of R. Jehoshua used to appraise the tree together with a small portion of the ground on which it was growing. The Halakha, however, prevails in accordance with R. Papa and R. Huna the son of R. Jehoshua as regards Aramean trees and in accordance

with the Exilarch as regards Persian trees (because they are expensive).

Eliezer the Little once put on black shoes and stood in the market-place of Nahardea. When the officers of the Exilarch asked him for the reason, he answered that it was because he was lamenting the fall of Jerusalem.

They said to him: "Are you such a great man as to be worthy of lamenting the fall of Jerusalem?" And thinking

that he was doing that in search of notoriety, they placed him under arrest. He, however, protested and said: "I am a great man." When asked to prove it, he said: "Either you ask me some difficult question, or I will ask one of you." They said to him: "You ask the question." He asked thus: "One who destroys a young date-tree (on which the dates are not yet ripe), what amount of damages must he pay?" They answered: "He pays the value of the tree." "But there are already dates on it?" They rejoined: "Then let him also pay the value of the dates." "But did he, then, take the dates with him; he only destroyed the tree?" he argued. "Well, let us then hear what you have to say to that." He answered: "The damage is appraised as to one in sixty." They said to him: "But who agrees with you in that?" He answered: "Samuel is still alive and his college is in full bloom." When they inquired of Samuel and verified that he agreed with him, they liberated him.

"*R. Simeon says: If it consumed ripe fruit,*" etc. Why so? Was it not said above that [Ex. xxii. 4]: "And they feed in another man's field" teaches that it should be appraised together with the ground? This is so only when the ground is needed, but in this case (*ripe* fruit), where they no longer need the ground, it must be appraised separately and paid in full. Said R. Huna b. Hyya in the name of R. Jeremiah b. Aba: 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. He acted in accordance with R. Meir of the following Boraitha: If he (the husband) transferred some of his estates to one, and his wife did not sign the release of her dower (the amount stated in her marriage contract), and then he transferred other estates to another and she did sign, she lost her dower. Such is the dictum of R. Meir. (And she cannot say: I did this favor to my husband and signed the release as to the second estates because I lose nothing thereby, as I take my dower in the first estates, from which I have not released my right.) And he lectured that the Halakha prevails in accordance with R. Simeon b. Gamaliel of our Mishna, that if the fruit was ripe it must be appraised separately. [1]

MISHNA *II.*: One who puts up a stack of grain on another's land without permission, and the land-owner's animal consumed some of the grain, he is free. If the animal was injured thereby, the one who put up the stack is liable. If, however, it was done with permission, the land-owner is liable.

GEMARA: Said R. Papa: It treats here of a case where there was a watchman who told him, "Go and put up your stack," which is construed to mean, "Go, put up your stack, and I will take care of it."

MISHNA *III*.: One who started a fire through the medium of a deaf-mute, idiot, or minor, he is free from responsibility to an earthly tribunal, but he is liable to the Divine court. If, however, he started the fire through the medium of a sound person, the latter is liable. If one brought fire and the other wood, he that brought the wood is liable. But if the wood was brought first by one, and subsequently another brought the fire, he who brought the fire is liable. If one came and blew at the fire and kindled it, the one who did so is liable. If, however, it was kindled by the wind, all are free.

GEMARA: Said Resh Lakish in the name of Hezkiah: He is not liable to earthly tribunals only if he delivered to the per. sons mentioned in the Mishna a burning coal and they blew at it; but if he handed them a flame, he who handed it to them is liable. Why so? Because it is his own act that caused the fire. R. Johanan, however, says that even in such a case he is free. Why so? Because it was the deaf-mute's tongs (medium) that caused it. And the court cannot hold him liable unless he handed them both fire and fuel, for in such a case surely his intention was to cause it.

"*If the wind kindled it, all are free*." The rabbis taught: "If he was blowing at the fire and so also was at the same time the wind--if his blowing, independently of the wind, was sufficient to kindle the fire he is liable; if not, he is free. Why so--let it be as if he was winnowing and the wind helped him, in

which case he is liable? Said R. Ashi: This was said only as regards Sabbath, where the Scripture requires intentional work (and of course he is satisfied with the help afforded him by the wind and thus it is intentional); but here he is the mere cause (*germon*), and there is no liability as regards damages for being a mere *germon*.

MISHNA *IV*.: If one start a fire and it consume wood, stones, or earth, he is liable; for it is written [Ex. xxii. 5]: "If a fire break out, and meet with thorns, so that stacks of corn, or the standing corn of the field, be consumed thereby, he that kindled the fire shall surely make restitution."

GEMARA: Said Rabha: All those various things were necessary to be enumerated in the Scripture, for one could not be deduced from the other by comparison. Thus, if it mentioned thorns only, it could be assumed that only in such a case there is a liability, because they are destined to be burnt and one does not take proper care, and therefore it is considered gross negligence; but in case of stacks, which are not so and usually one takes proper care of them, it would be considered an accident, for which there is no liability; again, if it mentioned stacks only, it could be assumed that there is a liability, because the damage is great; but in case of thorns, where the damage is little, one might say that there is no liability. But for what purpose is "standing corn" mentioned? To teach that as standing corn is exposed to view, so everything is exposed to view (to exclude that which was concealed from view). [But according to R. Jehudah, who holds that there is a liability also for such things, what does the case just mentioned teach? It comes to include all that is in a standing position, as trees and animals.] "Field"--to include the case where the fire singed the surface of fallow ground or of stones. But let the Scripture mention only "field," and it would include all the others? If so, one might say that it applies only to the *products* of the field (but not to the ground itself), hence it teaches us

that (by stating "standing corn" expressly and "field," to include the ground itself).

R. Simeon b. Na'hmani said in the name of R. Johanan: No chastisement comes upon the world unless there are wicked ones in existence, as it is written [ibid., ibid.]: "If a fire break out and meet with thorns." When does a fire break out--when there are *thorns* prepared for it? Its first victims, however, are the upright, as it is written [ibid., ibid.]: "So that stacks of

corn *be* consumed"--not it *shall* consume, to signify that the stacks of corn (the upright) are consumed *first*.

R. Joseph taught: It is written [Ex. xii. 22]: "And none of you shall go out from the door of his house until the morning?" Infer from this that as soon as permission is given to the executioner he makes no distinction between upright and wicked; and furthermore, he picks out his first victims from among the upright, as it is written [Ezek. xxi. 8]: "And I will cut off from thee the righteous *and* the wicked." R. Joseph cried, saying: If they are liable to so much misfortune, what good is there in being upright? Said Abayi: It is of great good to them, as it is written [Isa. lvii. 1]: "*Before* the evil the righteous is taken away" (*i.e.*, that he shall not see the evil that will come in the future).

The rabbis taught: When pestilence is raging in town, stay in-doors, as it is written [Ex. xii. 22]: "And none of you shall go out from the door of his house until the morning"; and it is also written [Isa. xxvi. 20]: "Go, my people, enter thou into thy chambers, and shut thy door behind thee"; and again it is written [Deut. xxxii. 25]: "Without shall the sword destroy, and terror within the chambers." Why the citation of the two additional passages? Lest one say that it is so only as to nighttime but not as to day-time, hence the passage in Isaiah, which means at any time; and lest one say that this is so only where there is no terror within the house, but when there is it could be assumed that it were more advisable to go out and associate with others, hence the last-quoted verse in Deuteronomy, to teach that although within the house terror reigns, yet without it is still worse, as "without the sword shall destroy." Rabha in times of fury used to keep the windows shut, for it is written [Jer. ix. 20]: "For death is come up through our *windows*."

The rabbis taught: If there is a famine in town, do not spare your feet and leave town, as it is written [Gen. xii. 10]: "And there arose a famine in the land: and Abram *went down* into Egypt to sojourn there." And it is also written [II Kings, vii. 4]: "If we say, We will enter into the city, then is the famine in the city; and we shall die there." For what purpose is the quotation of the additional passage? Lest one say that it is so only where there is no risk of life, but where there is it is not so, hence the quotation, which is followed by [ibid., ibid.]: "If they let us live, we shall live; and if they kill us, we shall but die."

The rabbis taught again: "When there is a pestilence in town, a person shall not walk in the middle of the road; for so long as the Angel of Death has received his permission to rage, he does so high-handed. On the contrary, when peace reigns, one must not walk on the sideways; for so long as he has not the permission, he hides himself away."

R. Ami and R. Assi were sitting before R. Itz'hak Nap'ha. One was asking him to say some Halakha, and the other to say some Agadah. When he began to say a Halakha he was interrupted by one, and when an Agadah he was interrupted by the other. He then said: I will tell you a parable: It is like unto a man who has two wives-an old one and a young one. The young one picks his gray hair and the old one his black hair. The result is that he becomes bald-headed. I will tell you, however, now something which will be to the satisfaction of both of you: (*Agadah*)--It is written [Ex. xxii. 5]: "If a fire *break* out and meet with thorns"--that means, if it should break out of *itself*--"he that kindled the fire shall surely make restitution." Said the Holy One, blessed be He, "I shall surely make restitution for the fire I kindled in Zion," as it is written [Lam. iv. 11]: "He kindled a fire in Zion, which had devoured her foundations"; and, "I shall also build it up again by fire," as it is written [Zech. ii. 9]: "But I--I will be unto her . . . a wall of fire round about, and for glory will I be in the midst of her." (*Halakha*)--Why does the verse begin with the damage by one's property (if a fire break out) and end with damages done by one's person (*he* that kindled the fire)? To teach thee that one is liable for his fire on the same principle as liability for one's arrow.

MISHNA V.: If the fire passed over a fence four ells high, or through a public highway or a river, there is no liability.

GEMARA: But have we not learned in a Boraitha, as regards a fence of such height, that there is a liability? Said R. Papa: The Tana of our Mishna counts regressively, viz.: For six, five, and down to (and including) four ells there is no liability; while the Tana of the Boraitha counts progressively, viz.: For two, three, up to (but not including) four, there is a liability. (Hence for four ells, according to both, there is no liability.) Said Rabha: The rule that for four ells there is no liability applies also to a field filled with thorns (which makes it very inflammable). Said R. Papa: The four ells begin to count from the edge of the thorns upwards.

Rabh said: Our Mishna treats of a case where the fire was rising upwards, but if it was creeping (and consuming whatever was in its way, and therefore if it even crossed a public highway, there is a liability) there is a liability even up to a hundred ells. Samuel, however, says the reverse: Our Mishna treats where the fire was creeping; but if it was rising upwards, any dimensions are sufficient to relieve from liability. The following Boraitha is in support of Rabh: This (that if it crossed a public highway there is no liability) was said only if the fire was rising; but if it was creeping and fuel was within reach, even a hundred miles, there is a liability. If it crossed a river or a pool eighteen ells wide, there is no liability.

"*A public highway*." Who is the Tana who holds so? Said Rabha: It is R. Eliezer, who says in the following Boraitha: If it was sixteen ells, as wide as a public highway, there is no liability.

"*Or a river*." Rabh said: It means a full-sized river. Samuel, however, said: It means a lake (from which the neighboring fields are irrigated). According to Rabh, it is so even if the river dried up (for so that it be wide enough, it is considered as a public highway), but according to Samuel there must be water in the lake.

MISHNA *VI.*: If one start a fire on his own premises, how far must the fire pass (in order to subject him to liability)? R. Eliezer b. Azariah said: It is looked upon as if it were in the centre

of a space of land sufficient for planting a kur of grain (and if it pass out of such distance, he is liable). R. Eliezer says: Over sixteen ells, as wide as a public highway. R. Aqiba says: Over fifty ells. R. Simeon, however, says: It is written [Ex. xxii. 5]: "He that kindled the fire shall surely make restitution"--that means that he must make restitution for all that was burnt through the fire he started.

GEMARA: Does, then, R. Simeon not hold of distances in regard to fire? (*i.e.*, that a fire must not be built unless it is a certain distance from other objects). Have we not learned in the following Mishna (Baba Bathra, Ch. II., M. 2): R. Simeon says: These distances were said only for the purpose that if they were observed, and still damage was done, there is no liability (hence we see that he holds of distances?). Said R. Na'hman in the name of Rabba b. Abuah: R. Simeon's statement ill the Mishna, that one must pay for what was burnt through his fire means that the fire was made by the one who started it of such height in

that it could pass the different distances stated, respectively. R. Joseph in the name of R. Jehudah, quoting Samuel, said: The Halakha prevails in accordance with R. Simeon, and so also said R. Na'hman in the name of the same authority.

MISHNA *VII.*: If one cause his neighbor's stack of grain to burn down, and there be vessels therein which also are burnt, R. Jehudah says that he must pay also for the vessels. The rabbis, however, hold that he pays only for a stack of wheat or barley, as the case may be, of such dimensions. If a bound kid were therein and a slave was standing near by and both were burnt, he must pay for the kid (but not for the slave, as he should have escaped); if, however, a bound slave were therein and a kid was standing near by and both were burnt, he is free (from damages, because he is guilty of murder). And the sages concede to R. Jehudah that, if one set fire to another's house (or palace), he pays for all that was therein contained, for it is customary with people to keep their property in the house.

GEMARA: R. Kahana said: The rabbis and R. Jehudah differ only in case he started the fire on his own and it communicated to another's premises, in which case R. Jehudah holds one liable for the damage done by fire to concealed articles, and the rabbis do not, but if he started the fire on another's premises, they all agree that he pays for all that was contained therein. Said Rabha to him: If so, why does the Mishna state further on that "the rabbis concede," etc.--let it distinguish in that very statement, and say that the case is so only if he started the fire on his own premises, but if on another's they all agree that he must pay for all that was contained therein? Therefore said Rabha: They differ in both; viz., if he started the fire on his own premises and it communicated to another's. R. Jehudah holds him liable for concealed articles and the rabbis hold him free; and also in the other case, R. Jehudah holds that he must pay for all that was concealed therein, even if it were αρναχις (a belt made with pockets to place money therein). The rabbis, however, hold that he is liable only for such articles as are usually kept there, as a threshing-board or an ox-bow, but not for such articles as it is not customary to keep there.

The rabbis taught: If one cause a stack of grain belonging to another to burn down, and there be vessels therein which also are burnt, R. Jehudah says that he pays for all that was contained therein. The rabbis, however, hold that he pays only for a stack of wheat or barley, and the vessels are considered as

if their space was occupied with grain. This is so only when he started the fire on his own premises and it communicated to another's; but if he started it originally on another's premises, he pays for all that was therein. And R. Jehudah concedes to the rabbis that, if one permit his neighbor to place a stack of grain on his premises and the other did so and concealed some articles therein (and the owner of the premises cause a fire to burn them) he pays only for the grain; if he permitted him a stack of wheat and he placed there a stack of barley, or *vice versa*, or of wheat and he covered it with barley, or of barley and he covered it with wheat, that he pays only the value of barley.

Rabha said: If one give a golden dinar to a woman and say to her: "Take care of it, for it is a silver dinar," and she damage it, she pays for a golden dinar; for he may say to her: "What right had you to damage it?" If, however, it was lost because of her negligence, she pays only for a silver dinar; for she can say to him: "I obliged myself to take care of a silver dinar only, but not of a golden one." Said R. Mordecai to R. Ashi: Ye learned this in the name of Rabha, while we derived it from the above Boraitha, which states that, if one allowed him to place a stack of wheat and he covered it with barley, or *vice versa*, he pays only the value of barley; hence we see that he may say to him that he obliged himself to take care of barley only. So also here. She may say, "I obliged myself to take care of a silver dinar, but not of a golden dinar." Rabh said: I heard something in regard to R. Jehudah of our Mishna, and I cannot recollect what it was. Said Samuel: Does (Aba) not recollect what was said in regard to R. Jehudah's theory that one is liable for concealed articles? That he must make oath as to the value, as enacted in case of a bailee who claims that he was robbed.

It happened that one kicked the money-pouch of his neighbor into the river. The owner came and claimed that such and such articles were therein. When it came before R. Ashi, he was deliberating as to what was the law in such cases. Said Rabhina to R. A'ha the son of Rabha, according to others R. A'ha the son of Rabha to R. Ashi: Is this not stated in our Mishna: "And the sages concede to R. Jehudah that if one," etc., "because it is customary with people," etc.? He answered: If he had claimed that he had money therein it would be so, but here he claims that he had therein pearls; and the

question is, is it customary with people to keep pearls in a money-pouch? This remains unanswered.

Said R. Jemar to R. Ashi: If one claimed that he kept a silver cup in his house, what is the law? He answered: It must be investigated whether he is a man of such standing that he has silver cups, or whether he is a person whom others trust and deposit with him such article. Then he makes oath, and he is paid; if not, he is not believed, and no oath is given him.

R. Ada the son of R. Avia questioned R. Ashi: What difference is there between a robber and one who uses violence? He answered: He who uses violence pays the value (to the owner who gives up the articles under duress) while a robber does not. He rejoined: If he pays the value, why is it called violence--has not R. Huna said: If even one were threatened with hanging in

order to compel him to sell his property, the sale is valid? This presents no difficulty. R. Huna said so only when he finally consented, and said plainly, "I am willing to sell it"; but if he never voluntarily consented it is considered violence, even if the value of the article was received by him.

MISHNA *VIII.*: If a spark escape from under the blacksmith's hammer and do damage, there is a liability. A camel that was walking on a public highway laden with flax, and the flax pressed into a store and caught fire from the storekeeper's lit candle and set fire to the house, the driver of the camel is liable. If, however, the candle was placed outside the store, the store-keeper is liable. R. Jehudah says: If it was a Hanuka lamp, there is no liability.

GEMARA: Said Rabhina in the name of Rabha: From the statement of R. Jehudah it is to be inferred that there is a merit in placing the Hanuka lamp within ten spans (above the ground); for if it should be assumed to be above ten, why should R. Jehudah say that there is no liability--let him say that the store-keeper should have placed it above the camel and its rider? Hence as stated: Nay, it may be said that it might be placed even above them; but as an answer to the claim that he should have placed it above the camel and its rider, he may say that when one is occupied in the performance of a merit the rabbis do not put him to so much trouble.

Footnotes

140:1 No commentary explains for what purpose this statement is made here and what the marriage contract has to do with the appraisement of fruit, or why R. Huna finds it necessary to declare that there is a contradiction in Rabh's decision between his action in practice and the above lecture. It seems to us that this is to be explained p. 141 thus: The opposition to R. Simeon b. Gamaliel in our Mishna is anonymous, and there is a rule that the author of all the anonymous Mishnas is R. Meir; and R. Meir's decree regarding the marriage contract agrees with the decision in our Mishna, as his theory as regards the marriage contract is that, although the two estates are separate, still they are considered one, because they belong to one owner; and according to this theory, although the fruit is ripe and no more needs the ground, it can nevertheless not be appraised separate from the ground, because they belong to one owner, and the verse quoted applies. Hence the contradiction. The statement of R. Huna is the only one of its kind in the whole Talmud.

Next: Chapter VII.