

B A B A K A M M A

TRANSLATED INTO ENGLISH
WITH NOTES, GLOSSARY
AND INDICES

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UNDER THE EDITORSHIP OF
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INTRODUCTION

[page xli] Baba Kamma, ‘The First Gate’, which opens Talmudic Civil Law to be continued in Baba Mezi’a, ‘The Middle Gate’, and Baba Bathra, ‘The Last Gate’, deals with

compensation for injury or loss occasioned to person or property. It contains practically the whole law on the subject of redress, or the field of jurisdiction which in England is exercised mainly by the King's Bench Division, and forms two main divisions, corresponding to the two distinct causes of liability, viz., injury and misappropriation. Under the head of injury come all sorts of damage done by the defendant personally or by any of his chattels and agencies. Misappropriation similarly embraces all kinds of unlawful possession acquired whether through violence or theft, whether intentionally or unintentionally.

[CHAPTER I](#) classifies the various sources of damage under principal heads and their derivatives, and lays down some general rules which apply in common to their several liabilities. To this is appended the division of tort-feasant cattle into *Tam* and *Mu'ad* (v. Glos.). This chapter may thus be termed the General Introduction to Baba Kamma.

[CHAPTER II](#) deals with damage done by Foot and Tooth, also with that occasioned by poultry while flying and by pebbles thrown up by animals while walking. It then proceeds to Horn, defining *Tam* and *Mu'ad* and discussing at length the problem of *Tam* doing damage on the plaintiff's premises, with an incidental exposition of the logical principle of *Dayyo*. It concludes with the reassertion that Man is always *Mu'ad*.

[CHAPTER III](#) begins with some exceptions to this rule and deals with public nuisances coming under the head of Pit as well as with other kinds of damage occasioned on public ground, whether by obstruction or the like. This leads to discussions on contributory negligence and mutual damage of both man and animal. The differences between damage done by man and that by chattel are summarised, and the law of *onus probandi* in cases involving either *Tam* or *Mu'ad* concludes the chapter. [page xlii]

[CHAPTER IV](#) opens with a case where there is more than one plaintiff. It then resumes the consideration of *Tam* and *Mu'ad*, proceeding to the imposition of 'ransom' in the case of manslaughter and the stoning of the ox. The liabilities of bailees for manslaughter and damage done by cattle in their charge are laid down, and the minimum amount of precaution demanded by law is discussed.

[CHAPTER V](#) continues the discussion commenced in [CHAPTER III](#) on *onus probandi*, with special reference to miscarriage caused to animals. After considering the relationship between a licensee and a licensor, between a trespasser and an owner, the question of offences resulting in miscarriage is resumed, this time in the case of human beings, and the relationship between the mother and the

embryo in contradistinction to that between the father and the embryo is discussed; a contrast is also drawn between man and animal committing the offence; Pit in all its aspects is then fully dealt with and finally disposed of.

[CHAPTER VI](#) summarises the law of Tooth and Foot, and illustrates the method of assessing damages. The duties of shepherds and keepers are defined, as also of finders of lost property. The law regarding Fire is then presented, and the precautions to be taken and the limitation of liability are specified.

[CHAPTER VII](#) elaborates the laws of twofold, fourfold and fivefold restitution in Theft. The question when and how ownership would be transferred through theft is exhaustively treated, also whether the fine can be merged in a higher penalty, and whether it should be exacted where the offence is admitted. Other points considered in this connection are the effect of an 'alibi' proved against witnesses, the legal relationship between consecrated objects and their donors, and the kind of sale that would or would not entail the fine. It is also laid down that no theft is constituted unless and until the misappropriated objects actually have entered the possession of the thief or that of his agent acting innocently. Certain exhortations follow as to potential misappropriation especially with respect to agricultural produce, leading on to a discussion on the traditional stipulations which formed the basis of [\[page xliii\]](#) social life since the days of Joshua. This gives rise to a consideration of the enactments of Ezra at the Second Entry of Israel into the Land.

[CHAPTER VIII](#) deals with battery and assault. The additional Four Items of liability are fully illustrated and traced to their sources in the Pentateuch. Assault upon the dignity and reputation of another receives special treatment. Injuries committed by minors and other persons not fully responsible are considered, and the status of married women and their rights to their estates defined. Fixed penalties are laid down for common cases of assault and battery. The duties of offenders are then considered from a purely ethical point of view and illustrated by some popular proverbs with Scriptural parallels.

[CHAPTER IX](#) deals with violence and assault not against the person and his dignity but against his chattels and possessions. The duties of the robber in the matter of restitution are defined, and the possibility of a change of ownership in the case of robbery is discussed on the same lines as in regard to theft. Robbery committed on coins which subsequently went out of circulation is dealt with together with other analogous cases. A material default on the part of a careless contractor working upon the material of another party is discussed under both the law

applicable to misappropriation and the law applicable to damage done through *culpa lata*. Defaulting agents are dealt with under the same heading. Robbery aggravated by perjury receives special treatment, resulting in an exhaustive exposition of the whole law applicable to robbers and bailees perjuring themselves. Akin to this is robbery coupled with perjury in the case of a proselyte who subsequently died without issue. As in the latter case the priests are entitled to the payment, there follows a discussion on the divisions of the priests and their relationship to one another regarding both this emolument and the other endowments allotted to them.

[CHAPTER X](#) continues the law in cases of misappropriation beginning with the liability, if any, of heirs for robbery committed by a deceased predecessor. These are compared and contrasted with innocent purchasers. After some digression on civil procedure [page xliv] where the defendant falls to make an appearance, a discussion is opened on arbitrary and unauthorised impositions of levies and duties, and on the position of third parties who come into possession of articles thus misappropriated, resulting in an exposition of the law relating to goods bought on market overt and the relationship between an innocent purchaser and the claimant. The case of one who rescues another's goods at great pecuniary loss to himself is also treated, and some remarks are made on confiscation of land and the denouncers and informers who thrived in those days.

The conditions in which restitution of misappropriated articles should be made are then dealt with as well as corresponding rules with regard to the payment of debts and the return of deposits. This leads to a discussion of the case where a positive claim is met by a defence of doubt. The Tractate concludes with the prohibition of purchasing certain articles from persons who could reasonably be suspected of having misappropriated them—e.g., wool, milk and young goats from shepherds, produce from keepers of forests and gardens- and with rules to guide certain classes of artisans—the washer, the carder, the tailor, the carpenter, the weaver, the dyer, the tanner, and the agricultural labourer—working upon the material of their respective employers, as to what of the waste matter may lawfully be retained by them and what must be returned to owners of the material.

The Tractate also contains references to other systems of law, and in the notes sources of general law are occasionally quoted. This was not made a constant practice so as not to entangle the reader in the maze of extremely difficult legal conceptions, the object of the notes being to give a lucid exposition of Talmudic law which regulates to the present day the life and conduct of the

Jewish people.

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The indices of this Tractate have been compiled by Judah J. Slotki, M.A.

PREFATORY NOTE BY THE EDITOR

The Editor desires to state that the translation of the several Tractates, and the notes thereon, are the work of the individual contributors and that he has not attempted to secure general uniformity in style or mode of rendering. He has, nevertheless, revised and supplemented, at his own discretion, their interpretation and elucidation of the original text, and has himself added the notes in square brackets containing alternative explanations and matter of historical and geographical interest.

ISIDORE EPSTEIN

