

INTRODUCTION TO *SEDER NEZIKIN*

by

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GENERAL CHARACTER AND CONTENTS

The fourth ‘Order’, with which the Soncino Edition of the Babylonian Talmud is first introduced to the English reading public, was in the oldest sources designated ‘*Seder Yesu’oth*’, the ‘Order of Salvation’. This title is well deserved. As the *corpus juris* comprising the whole of Jewish civil and criminal law and procedure, this ‘Order’ treats of the precepts and regulations that are to govern the lives and actions of the individual and the community, and is thus designed to protect and ‘bring salvation’ to the weak and helpless from the wrong and injustice of the unscrupulous and strong, and confirm all in their property and rights and privileges.

The term ‘*Nezikin*’, ‘Damage’, by which the order became finally known was originally limited to the first three tractates—the ‘Three Gates’: Baba Kamma, Baba Mezi‘a and Baba Bathra, which deal primarily with all kinds of injury and damage to property as well as person and with claims to compensation. It is derived from the third Hebrew word in the opening tractate: [Hebr.]. ‘The principal categories of damage (*nezikin*) are four.’ These ‘Three Gates’ originally constituted one single tractate of thirty chapters, but on account of its excessive length it was subsequently divided into three, each section being designated by the Aramaic ‘Baba’ denoting, as in Arabic, ‘Gate’, ‘Chapter’. Finally the whole of the order came to be described by the term *Nezikin*, even as a whole is often made to bear the name of a part.

The term [Hebr.] is generally taken as plural of [Hebr.] (‘*damage*’, cf. Esther VII. 4) following the plural formation of the noun [Hebr.]. Others treat it as the plural from a substantive [Hebr.], which like [Hebr.] would be active in sense, so that ‘*nezikin*’ [page xxx] would mean ‘doers of damage’, but the existence of this singular noun remains yet to be proved.

The order as we have it now is divided into ten tractates, arranged according to Maimonides and most of the printed and manuscript editions of the Mishnah in the following sequence:¹

1. **BABA KAMMA.** On damage caused to property; injuries perpetrated on the person with or without criminality; and cases of compensation for theft, robbery and violence.

2. **BABA MEZI**‘A. Laws relating to found property, bailments, sale and exchange; defrauding; interest; hiring of labourers and cattle; renting and leasing; joint-ownership in dwellings and fields.
3. **BABA BATHRA**. Deals with laws concerning the division of property held in partnership; restrictions in respect of private and public property; established rights of ownership; acquisition of property; hereditary succession, and drafting of documents.
4. **SANHEDRIN**. Is concerned with Courts of Justice and their composition; trials, arbitration, judicial procedure in monetary and capital cases; prescriptions for death sentences; and Dogmas of the Jewish Religion.
5. **MAKKOTH**. Treats of the punishment of perjurers; the Cities of Refuge; the offences punishable by lashes and the regulations for the administration of stripes.
6. **SHEBU’OTH**. Deals with the various forms of oaths made privately and also those administered (i) to witnesses, (ii) to litigants, (iii) to wardens.
7. **‘EDUYYOTH**. A collection of miscellaneous traditions of earlier authorities cited in the Academy on the day when Rabbi Eleazar ben Azariah was elected as its head.
8. **‘ABODAH ZARAH**. Deals with festivals, rites and cults of idolaters, and prescribes regulations concerning association and social intercourse with heathens. [page xxxi]
9. **ABOTH**. Contains aphorisms and maxims of teachers of successive generations from the men of the Great Assembly onwards.
10. **HORAYOTH**. Deals with erroneous rulings in matters of ritual law by religious authorities.

As will have been seen from the above brief sketch, the ‘Order’ falls into two parts: (i) civil law; (ii) criminal law.

The civil law is dealt with in the first of the three tractates, and for this very reason it is interesting to note that they go in the Jerusalem Talmud by the comprehensive name, [Hebr.] lit., ‘cases of money’, i.e., civil cases. The criminal law is dealt with in Sanhedrin and Makkoth, which latter originally formed the concluding part of Sanhedrin. The other five tractates can be considered more or less appendices to these two sections. Shebu’oth dealing mostly with oaths in civil cases is an appendix to the ‘Three Gates’. The other four are appendices to Sanhedrin; thus ‘Eduyyoth contains mainly important decisions of the Great Sanhedrin in Jabneh, while Aboth is introduced with the enumeration of the heads of the Sanhedrin in succession; and likewise ‘Abodah Zarah, dealing mainly with idolatry, is primarily an elaboration of part of the seventh chapter of Sanhedrin. Finally Horayoth deals mainly with the erroneous decision of the Sanhedrin.

Thus it comes about that though we are not in a position to state definitely

the principles that determined the arrangement of the several tractates within the order, we are, nevertheless, able to trace a distinct logical sequence in that arrangement.²

For the eight volume edition of this publication the order adopted is for practical reasons as follows:

Vol I.	Baba Kamma.
Vol II.	Baba Mezi'a.
Vols. III and IV.	Baba Bathra.
Vols. V and VI.	Sanhedrin.
Vol. VII.	'Abodah Zarah and Horayoth.
Vol. VIII.	Shebu'oth, Makkoth, 'Eduyyoth and Aboth.

[page xxxii] For the edition de luxe it was found expedient to follow another sequence:

Vols. I and II.	Baba Kamma.
Vols. III and IV.	Baba Mezi'a.
Vols. V and VI.	Baba Bathra.
Vols. VII and VIII.	Sanhedrin.
Vol. IX.	Shebu'oth.
Vol. X.	Makkoth and 'Eduyyoth.
Vol. XI.	'Abodah Zarah.
Vol. XII.	Horayoth and Aboth.

Religious and Ethical Importance

'He who wishes to become a *Hasid* (saint) let him observe the teachings of *Nezikin*' ([B.K. 30a](#)).

This striking dictum of Rab Judah, a Babylonian teacher of the third century, well illustrates the true conception of Jewish civil and criminal law. In order to develop a saintly character the Jew is not advised to attend a systematic course in philosophy and ethics, nor is he advised to attach himself to a band of cloistered saints who spend their days in meditation and contemplation. The counsel is: Let him who wishes to become a saint study the teachings of the *Nezikin* order so that he may know how to observe the laws of justice, of right and wrong, of *meum* and *tuum*.

This close connection of ethics and law is the essence of the Jewish legal system.

The civil and criminal law was regarded by the Jews as a part of the Divine Revelation — the Torah. Grounded in the Book and centred in God, it was not, as other legal systems are, the creation of the state, nor did it ever draw its inspiration from political feeling. For the Jew, the Torah was to be an independent and positive source of inspiration, regulating individual and corporate action; and on it was to be reared the whole structure of the Jewish

legal system.

This does not involve the ignoring of the economic and social functions of organised society. Political movements and events did [page xxxiii] play their part in the formation and development of the civil and criminal law; but they were ever subordinated to moral purpose and ethical principle. In other words, morality was the dominant factor in communal life and the underlying principle in all social and economic legislation.

Thus the object of the legal system was not to preserve a particular dynasty or a certain form of government, but to establish social righteousness, and to *maintain* thereby a constant, close, inseparable connection between ethics and law, both flowing from the same Divine source.

The Sanhedrin, the body which framed and enacted laws, was not so much a legislative body as a research institute, where the Torah was investigated and studied and the results of such study applied to the needs of practical life.³

This function, it is significant to note, made in reality the Sanhedrin, and not the king, the leader of the people. Alien to the whole spirit of Judaism was the idea of a single all-dominating authority vested in a person or corporation. All laws, regulations and enactments had authority only in so far as they were able to stand the ethical test of the Torah.

Once they passed this test they were no longer regarded as manmade, but became identified with the very law of God. And this it was which made the Jewish communities able to exhibit, even under the most trying circumstance and the most hostile environment, a moral enthusiasm and a passion for social justice in which even enlightened European states have often lamentably failed.

Thanks to its divine basis, the Jewish civil law never ceased to exercise its humanising influence on the dispersed Jewish communities throughout the exile, enabling them to bring the details of social life into subjection to the divine will, and at the same time into harmony with the changing environments and conditions.

For this reason the study of the *Nezikin* order was from the [page xxxiv] earliest days the most popular. We find it carefully treated in the school of Karna during the second century. A century later, in the days of Rab Judah, the attention of students was chiefly concentrated on this order; and we are told that a boy of six was able to discuss with acumen a passage in the tractate of this order— ‘Abodah Zarah (v. *A.Z. 56b*, Sonc. ed., p. 285). Moreover, it has been recently shown that the compilation of the *Nezikin* order (at least in the Jerusalem version) preceded the compilation of all the other orders.⁴

Nezikin and Comparative Jurisprudence

It is a much disputed question whether definite mutual relations really did exist between Jewish Talmudic law and other law-systems.

Undoubtedly it is true that the former exerted an influence on the legal ordinances and laws of other peoples. The Jews were scattered throughout the world and wherever they went their law went with them. Thus inevitably was their law in many ways made known to the surrounding world. Certainly the Mishnah had an influence on Roman law—an influence that is not to be wondered at seeing that Rabbi Judah the Prince, the compiler of the Mishnah, maintained friendly relations with Roman emperors. It has even been assumed that the institutions of the Gajus were based on the pattern of the Mishnah and also that the compilations of Justinian followed the same pattern.

And the compilers of the canonical law of the Church must, from its very essence, have fallen back on the Talmud.

More difficult is the question: Did Jewish Talmudic law experience foreign influence? Explicit references are rarely found and the spiritually exclusive attitude of the Mishnah and Talmud teachers may be cited as evidence against the existence of such influences. Although the peculiar nature of Talmudic law—a peculiarity which proceeds from its mode of thought and methodology⁵—precludes [page xxxv] us from assuming direct incorporation of foreign legal institutions; yet it is possible that Jewish law has adopted some of these, after reshaping them for its own ends.

The similarity of the institutions and of several legal ordinances found in the Talmud and non-Jewish law need not necessarily indicate mutual influence. Similar circumstances could easily produce similar laws. The resemblance is moreover very limited.

The influence of foreign law, if there was any, was therefore also limited. Besides, the fact must not be overlooked that the Mishnah (and the Jerusalem Talmud) appeared in the Roman Empire while the Babylonian Talmud has its origin in the Babylonian-Persian realm—a difference which accounts for certain different strains; and these can be shown by the foreign words borrowed in the Mishnah and Talmud.

It is questionable, however, if the teachers of the Talmud and Mishnah really knew the Roman legal system as such and constructed their law with a deliberate acceptance or rejection of its institutions.

Be that as it may, knowledge of Jewish law is undoubtedly of value for the study of Jurisprudence. Long ago Sir Henry Sumner Maine made this clear when he declared that in the days of the Renaissance and subsequent generations when the philosophers were trying to devise a new system of law there was one body of records—those of the Jews—which was worth studying.⁶ Nor is this to be wondered at. Such a highly developed system of laws and ordinances, as—apart from the Roman law—the ancient world never knew, must possess far comparative jurisprudence a fulness of interesting material which cannot fail to be of great service for the better understanding of other legal systems.

Method and Scope

TEXT. The Text used for this edition is in the main that of the Wilna Romm Edition. Note has, however, been taken of the most [page xxxvi] important variants of manuscript and printed editions some of which have been adopted in the main body of the translation, the reason for such preference being generally explained or indicated in the Notes. All the censored passages appear either in the text or in the Notes.

TRANSLATION. The translation aims at reproducing in clear and lucid English the central meaning of the original text. It is true some translators will be found to have been less literal than others, but in checking and controlling *every line* of the work, the Editor has not lost sight of the main aim of the translation. Words and passages not occurring in the original are placed in square brackets.

NOTES. The main purpose of these is to elucidate the translation by making clear the course of the arguments, explaining allusions and technical expressions, thus providing a running commentary on the text. With this in view resort has been made to the standard Hebrew commentators, Rashi, the Tosafists, Asheri, Alfasi, Maimonides, Maharsha, the glosses of BaH, Rashal, Strashun, the Wilna Gaon, etc.⁷ Advantage has also been taken of the results of modern scholarship, such as represented by the names of Graetz, Bacher, Weiss, Halevy, Levy, Kohut, Jastrow, and—happily still with us—Krauss, Buchler, Ginzberg, Obermeyer, Klein and Herford among others, in dealing with matters of general cultural interest with which the Talmud teems—historical, geographical, archaeological, philological and social.

GLOSSARY AND INDICES. Each Tractate is equipped with a Glossary wherein recurring technical terms are fully explained, thus obviating the necessity of explaining them afresh each time they appear in the text. To this has been added a Scriptural Index and a General Index of contents.

In the presentation of the tractates the following principles have also been adopted:

- i. The Mishnah and the words of the Mishnah recurring and commented upon in the Gemara are printed in capitals.[page xxxvii]
- ii. [Hebr.] introducing a Mishnah cited in the Gemara, is rendered ‘we have learnt’.
- iii. [Hebr.] introducing a Baraitha, is rendered ‘it has been (or was) taught’.
- iv. [Hebr.] introducing a Tannaitic teaching, is rendered ‘Our Rabbis taught’.
- v. Where an Amora cites a Tannaitic teaching the word ‘learnt’ is used. e.g., [Hebr.] ‘R. Joseph learnt’.
- vi. The word tanna designating a teacher of the Amoraic period (v. Glos.) is written with a small ‘t’.
- vii. A distinction is made between [Hebr.] referring to a Tannaitic ruling and [Hebr.] which refers to the ruling of an Amora, the former being rendered ‘the *halachah* is...’ and the latter, ‘the law is ...’
- viii. R. stands either for Rabbi designating a Palestinian teacher or Rab

designating a Babylonian teacher, except in the case of the frequently recurring Rab Judah where the title 'Rab' has been written in full to distinguish him from the Tanna of the same name.

- ix. [Hebr.] lit., 'The Merciful One', has been rendered 'the Divine Law' in cases where the literal rendering may appear somewhat incongruous to the English ear.
- x. Biblical verses appear in italics except for the emphasized word or words in the quotation which appear in Roman characters.
- xi. No particular English version of the Bible is followed, as the Talmud has its own method of exegesis and its own way of understanding Biblical verses which it cites. Where, however, there is a radical departure from the English versions, the rendering of a recognised English version is indicated in the Notes. References to chapter and verse are those of the Massoretic Hebrew text.
- xii. Any answer to a question is preceded by a dash(—), except where the question and the answer form part of one and the same statement.
- xiii. Inverted commas are used sparingly, that is, where they are deemed essential or in dialogues.
- xiv. The archaic second person 'thou', 'thee' etc. is employed [page xxxviii] only in *Haggadic* passages or where it is necessary to distinguish it from the plural 'you', 'yours', etc.
- xv. The usual English spelling is retained in proper names in vogue like Simeon, Isaac, Akiba, as well as in words like *halachah*, *Shechinah*, *shechinah*, etc. which have almost passed into the English language. The transliteration employed for other Hebrew words is given at the end of each tractate.
- xvi. It might also be pointed out for the benefit of the student that the recurring phrases 'Come and hear:' and 'An objection was raised:' or 'He objected:' introduce Tannaitic teachings, the two latter in contradiction, the former either in support or contradiction of a particular view expressed by an Amora.

Acknowledgments

Before taking leave of the reader I desire to express my grateful appreciation of the learning and industry which the several translators have brought to bear upon their work.

Special thanks are due to Mr. Maurice Simon. M.A., for his helpfulness in many directions, particularly in connection with the revision of the translator's manuscript of Baba Kamma; nor must I forget to thank my dear wife for her invaluable help to me in many ways whilst engaged in this work.

Last but not least, I take special pleasure in paying a tribute to Mr. J. Davidson, the Governing Director of the Soncino Press, through whose initiative and idealism the English translation of the Babylonian Talmud is being realised. His painstaking care and tremendous energy in seeing the first set of volumes through its various stages have been invaluable.

In conclusion, I must tender my humble thanks to the Almighty God for

having given me the strength to carry through, amidst other labours, this exacting and strenuous task. And on behalf of [page xxxix] all those of us who have been closely concerned with this publication, I offer the traditional prayer: [Hebr.] ‘May it be Thy will, O Lord our God, even as Thou hast helped us to complete the *Order Nezikin*, so to help us to begin the other *Sedarim*, ‘Orders’, and complete them.

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Footnotes

1. In the printed editions of the Talmud, the tractates appear in the following order BK., B.M., B.B., A.Z., Sanh., Mak, Shebu., Hor., ‘Ed., Aboth; for other variations, v. Strack, H., *Introduction to the Talmud and Midrash* (Philadelphia, 1931), p. 366.
2. V. Hoffmann, D., *Mischnaiot, Seder Nezikin*, Berlin. 1898, p. viii.
3. V. Gulak. A., [Hebr. text] *W.* p.7.
4. V. Liebermann, *Supplement to Tarbiz* 11₄ (Jerusalem, 1931). pp. 18ff.
5. V. Auerbach, L., *Das Juedische Obligationenrecht*, I, pp. 3ff
6. Maine, *Ancient Law* (London, 1862), p. 90. (I am obliged for this reference to Rabbi Dr. E. W. Kirzner).
7. These names are referred to more fully in the list of Abbreviations at the end of each Tractate.

[Directory of Sedarim and Tractates](#)

