Talmud - Mas. Baba Kama 2a

C H A P T E R I

MISHNAH. THE PRINCIPAL CATEGORIES OF DAMAGE[1] ARE FOUR: THE OX,[2] THE PIT,[3] THE 'SPOLIATOR' [MAB'EH][4] AND THE FIRE.[5] THE ASPECTS OF THE OX ARE [IN SOME RESPECTS] NOT [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE 'SPOLIATOR';[6] NOR ARE [IN OTHER RESPECTS] THOSE OF THE 'SPOLIATOR' [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE OX;[6] NOR ARE THE ASPECTS OF EITHER OF THEM, IN WHICH THERE IS LIFE, [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE FIRE WHICH IS NOT ENDOWED WITH LIFE;[6] NOR ARE THE ASPECTS OF ANY OF THESE, THE HABIT OF WHICH IS TO BE MOBILE AND DO DAMAGE, [OF SUCH LOW ORDERS OF GRAVITY] AS THOSE OF THE PIT OF WHICH IT IS NOT THE HABIT TO MOVE ABOUT AND DO DAMAGE.[6] THE FEATURE COMMON TO THEM ALL IS THAT THEY ARE IN THE HABIT OF DOING DAMAGE; AND THAT THEY HAVE TO BE UNDER YOUR CONTROL SO THAT WHENEVER ANY ONE [OF THEM] DOES DAMAGE THE OFFENDER IS LIABLE TO INDEMNIFY WITH THE BEST OF HIS ESTATE.[7]

GEMARA. Seeing that PRINCIPAL CATEGORIES are specified, it must be assumed that there are derivatives. Are the latter equal in law to the former or not?

Regarding Sabbath we learnt: The principal classes of prohibited acts are forty less one.[8] 'Principal classes' implies that there must be subordinate classes. Here the latter do in law equal the former; for there is no difference between a principal and a subordinate [prohibited act] with respect either to the law of sin-offering[9] or to that of capital punishment by stoning.[10] In what respect then do the two classes differ? — The difference is that if one simultaneously committed either two principal [prohibited] acts or two subordinate acts one is liable [to bring a sin-offering] for each act, whereas if one committed a principal act together with its respective Subordinate, one is liable for one [offering] only. But according to R. Eliezer who imposes the liability [of an offering] for a subordinate act committed along with its Principal,[11] to begin with why is the one termed 'Principal' and the other 'Subordinate'? — Such acts as were essential in the construction of the Tabernacle are termed 'Principal',[12] whereas such as were not essential in the construction of the Tabernacle are termed 'Subordinate.'

Regarding Defilements we have learnt:[13] The Primary Defilements: The [Dead] Reptile,[14] the Semen Virile[15]

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(1) Explicitly dealt with in Scripture.

(2) Ex. XXI, 35.

(3) Ibid. 33.

(4) Cf. p. 9.

(5) Ex. XXII. 5.

(6) Hence the latter, if not specifically dealt with, would not have been derived from the former.

(7) When money is not tendered; cf. infra p. 33.

(8) Shab. VII, 2.

(9) Cf. Lev. IV, 27-35.

(10) Num. XV, 32-36.

(11) Shab. 75a.

(12) On account of their being stated in juxtaposition in Scripture; v. Ex. XXXV, 2-XXXVI, 7.

(13) Kel. I, 1.

(14) Lev. XI, 29-32.

(15) Ibid. XV, 17.

and the Person who has been in contact with a human corpse.[1] [In this connection] their Resultants[2] are not equal to them in law; for a primary defilement[3] contaminates both human beings and utensils,[4] while Resultants defile only foods and drinks,[5] leaving human beings and utensils undefiled.

Here [in connection with damages] what is the [relationship in] law [between the principal and the secondary kinds]? — Said R. Papa: Some of the derivatives are on a par with their Principals whereas others are not.

Our Rabbis taught: Three principal categories [of damage] have been identified in Scripture with Ox: The Horn, The Tooth, and The Foot. Where is the authority for 'Horn'? For our Rabbis taught: If it will gore.[6] There is no 'goring' but with a horn, as it is said: And Zedekiah the son of Chenaanah made him horns of iron, and said, Thus saith the Lord, With these shalt thou gore the Arameans;[7] and it is further said, His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn: with them he shall gore the people together etc.[8]

Why that 'further' citation? — Because you might perhaps say that Pentateuchal teachings cannot be deduced from post-Pentateuchal texts;[9] come therefore and hear: His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn etc.[8] But is that a [matter of] deduction? Is it not rather merely an elucidation of the term 'goring'[10] as being effected by a horn?[11] — [Were it not for the 'further' citation] you might say that the distinction made by Scripture between [the goring of a] Tam[12] and [that of a] Mu'ad[13] is confined to goring effected by a severed horn,[14] whereas in the case of a horn still naturally attached, all goring is [habitual and consequently treated as of a] Mu'ad; come therefore and hear: His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn, etc.[8]

What are the derivatives of Horn? — Collision, Biting, [malicious] Falling and Kicking.

Why this differentiation? If Goring is termed Principal because it is expressly written, If it will gore,[15] why should this not apply to Collision, as it is also written, If it will collide?[16] — That collision denotes goring, as it was taught: The text opens with collision[16] and concludes with goring[17] for the purpose of indicating that 'collision' here denotes 'goring'.

Why the differentiation between injury to man, regarding which it is written If it will gore,[18] and injury to animal regarding which it is written if it will collide?[19] — Man who possesses foresight is, as a rule, injured [only] by means of [wilful] 'goring',[20] but an animal, lacking foresight, is injured by mere 'collision'. A [new] point is incidentally made known to us, that [an animal] Mu'ad to injure man is considered Mu'ad in regard to animal,[21] whereas Mu'ad to injure animal is not considered Mu'ad in regard to man.[20]

'Biting': is not this a derivative of Tooth? — No; Tooth affords the animal gratification from the damage while Biting affords it no gratification from the damage.

'Falling and Kicking'; are not these derivatives of Foot? — No; the damage of foot occurs frequently while the damage of these does not occur frequently.

But what then are the derivatives which, R. Papa says, are not on a par with their Principals? He can hardly be said to refer to these, since what differentiation is possible? For just as Horn does its damage with intent and, being your property, is under your control, so also these [derivatives] do

damage with intent and, being your property, are under your control! The derivatives of Horn are therefore equal to Horn, and R. Papa's statement refers to Tooth and Foot.

'Tooth' and 'Foot'- where in Scripture are they set down? — It is taught: And he shall send forth[22] denotes Foot, as it is [elsewhere] expressed, That send forth the feet of the ox and the ass.[23] And it shall consume[22] denotes Tooth as [elsewhere] expressed, As the tooth consumeth

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(1) Num. XIX, 11-22.

(2) I.e., the objects rendered defiled by coming in contact with any Primary Defilement.

(3) Such as any one of these three and the others enumerated in Kelim I.

(4) Cf. Lev. XI, 32-33.

(5) V. ibid. 34.

(6) Ex. XXI, 28.

(7) I Kings XXII, 11.

(8) Deut. XXXIII, 17.

(9) [דברי קבדה 'words of tradition'; i.e. the teachings received on tradition from the prophets, a designation for non-Pentateuchal, primarily prophetic, texts. V. Bacher, op. cit., I, 166, II, 185.] The meaning of Ex. XXI, 28, should therefore not he deduced from I Kings XXII, 11.

(10) Which might surely he obtained even from post- Pentateuchal texts.

(11) Hence again why that 'further' citation?

(12) 'Innocuous,' i.e., an animal not having gored on more than three occasions; the payment for damage done on any of the first three incidents (of goring] is half of the total assessment and is realised out of the body of the animal that gored, cf. Ex. XXI, 35 and infra 16b.

(13) 'Cautioned,' i.e., after it had already gored three times, and its owner had been duly cautioned, the payment is for the whole damage and is realised out of the owner's general estate; v. Ex. XXI, 36, and infra 16b.

(14) As was the case in the first quotation from Kings.

(15) V. p. 2, n. 13.

(16) Ex. XXI, 35.

(17) Ibid. 36.

(18) V. p. 2, n. 13.

(19) V. p. 3; n. 10.

(20) As it is more difficult to injure a man than an animal.

(21) Cf. infra 205.

(22) Ex. XXII, 4.

(23) Isa. XXXII, 20.

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to entirety.[1]

The Master has [just] enunciated: 'And he shall send forth denotes Foot , as it is [elsewhere] expressed, That send forth the feet of the ox and the ass.' His reason then is that the Divine Law[2] [also] says, That send forth the feet of the ox and the ass, but even were it not so, how else could you interpret the phrase?[3] It could surely not refer to Horn which is already [elsewhere] set down,[4] nor could it refer to Tooth since this is likewise [already] set down?[3] — It was essential[5] as otherwise it might have entered your mind to regard both [phrases][6] as denoting Tooth: the one when there is destruction of the corpus and the other when the corpus remains unaffected; it is therefore made known to us that this is not the case. Now that we have identified it with Foot, whence could be inferred the liability of Tooth in cases of non-destruction of the corpus? From the analogy of Foot;[7] just as [in the case of] Foot no difference in law is made between destruction and non-destruction of corpus, so [in the case of] Tooth no distinction is made between destruction and non-destruction of corpus.

The Master has [just] enunciated: ‘And it shall consume denotes Tooth, as elsewhere expressed, As the tooth consumeth to entirety.’ His reason then is that the Divine Law [also] says, As the tooth consumeth to entirety, but even were it not so, how else could you interpret the phrase? It could surely not refer to Horn which is already elsewhere set down,[4] nor could it refer to Foot, since this is likewise elsewhere set down?[3] — It is essential,[8] as otherwise it might have entered your mind to regard both phrases[6] as denoting Foot: the one when the cattle went of its own accord and the other[9] when it was sent by its owner [to do damage]; it is, therefore, made known to us that this is not so. Now that we have identified it with Tooth, whence could be inferred the liability of Foot in cases when the cattle went of its own accord? — From the analogy of Tooth;[10] just as in the case of Tooth there is no difference in law whether the cattle went of its own accord or was sent by its owner, so [in the case of] Foot there is no difference in law whether the cattle went of its own accord or was sent by its owner.

But supposing Divine Law had only written, And he shall send forth,[11] omitting And it shall consume, would it not imply both Foot and Tooth? Would it not imply Foot, as it is written, That send forth the feet of the ox and the ass? Again, would it not also imply Tooth, as it is written, And the teeth of beasts will I send upon them?[12] — If there were no further expression I would have said either one or the other [might be meant], either Foot, as the damage done by it is of frequent occurrence, or Tooth, as the damage done by it affords gratification.[13] Let us see now, they are equally balanced, let them then both be included, for which may you exclude?[14] — It is essential [to have the further expression], for [otherwise] it might have entered your mind to assume that these laws [of liability] apply only to intentional trespass,[15] exempting thus cases where the cattle went of its own accord; it is, therefore, made known to us that this is not the case.

The derivative of Tooth, what is it? — When [the cattle] rubbed itself against a wall for its own pleasure [and broke it down], or when it spoiled fruits [by rolling on them] for its own pleasure. Why are these cases different? Just as Tooth affords gratification from the damage [it does] and, being your possession, is under your control, why should not this also be the case with its derivatives which similarly afford gratification from the damage [they do] and, being your possession are under your control? — The derivative of Tooth is therefore equal to Tooth, and R. Papa's statement [to the contrary][16] refers to the derivative of Foot.

What is the derivative of Foot? — When it did damage while in motion either with its body or with its hair, or with the load [which was] upon it, or with the bit in its mouth, or with the bell on its neck. Now, why should these cases be different? Just as Foot does frequent damage and, being your possession, is under your control, why should not this also be the case with its derivatives which similarly do frequent damage and, being your possession, are under your control? The derivative of Foot is thus equal to Foot, and R. Papa's statement [to the contrary][17] refers to the derivative of the Pit.

What is the derivative of Pit? It could hardly be said that the Principal is a pit of ten handbreadths deep and its derivative one nine handbreadths deep, since neither nine nor ten is stated in Scripture! — That is no difficulty: [as] And the dead beast shall be his[18] the Divine Law declares, and it was quite definite with the Rabbis[19] that ten handbreadths could occasion death, whereas nine might inflict injury but could not cause death . But however this may be, is not the one [of ten] a principal [cause] in the event of death, and the other [of nine] a principal [cause] in the event of [mere] injury? — Hence [Rab Papa's statement] must refer to a stone, a knife and luggage which were placed on public ground and did damage. In what circumstances? If they were abandoned [there], according to both Rab and Samuel,[20] they would be included in [the category of] Pit;[21]

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(1) I Kings XIV, 10. [‘Galal’, E.V.: ‘dung’, is interpreted as ‘marble’, ‘ivory’, which teeth resemble; cf. Ezra V, 8. V.

Tosaf. a.l.]
(2) [Lit., 'The Merciful One,' i.e., God, whose word Scripture reveals. V. Bacher, Exeg. Term., II, 207f.]
(3) V. p. 4, n. 6.
(4) Ex. XXI, 35-36.
(5) To cite the verse from Isaiah.
(6) Send forth and consume, cf. n. 2.
(7) Where no term expressing 'Consumption' is employed.
(8) To cite the verse from Kings.
(9) I.e., 'He shall send forth'.
(10) Where no term expressing 'sending forth' is employed.
(11) V. p. 4, n. 6.
(12) Deut. XXXII, 24.
(13) And thus there would be no definite sanction for action in either.
(14) V., however, infra p. 17, that Tooth and Foot were recorded in Scripture not for the sake of liability but to be immune for damage done by them on public ground.
(15) As signified by, 'He shall send forth'.
(16) Cf. supra p. 2.
(17) V. p. 6, n. 6.
(18) Ex. XXI, 34.
(19) Infra 50b.
(20) Infra p. 150.
(21) Being, like Pit, a public nuisance.

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if [on the other hand] they were not abandoned, then, according to Samuel, who maintains that all public nuisances come within the scope of the law applicable to Pit, they would be included in Pit, whereas according to Rab, who maintains that in such circumstances they rather partake of the nature of Ox, they are equivalent in law to Ox.[1]

[And even according to Samuel] why should [the derivatives of Pit] be different? Just as Pit is from its very inception a source of injury, and, being your possession, is under your control, so is the case with these [derivatives] which from their very inception [as nuisances] also are sources of injury and being your possession, are under your control! — The derivative of Pit is therefore equal to Pit, and R. Papa's statement [to the contrary] refers to the derivative of 'Spoliator'. But what is it? If we are to follow Samuel, who takes 'Spoliator' to denote Tooth,[2] behold we have [already] established that the derivative of Tooth equals Tooth;[3] if on the other hand Rab's view is accepted, identifying 'Spoliator' With Man,[2] what Principals and what derivatives could there be in him? You could hardly suggest that Man [doing damage] while awake is Principal, but becomes derivative [when causing damage] while asleep, for have we not learnt:[4] 'Man is in all circumstances Mu'ad,[5] whether awake or asleep'? — Hence [R. Papa's statement[6] will] refer to phlegm[7] [expectorated from mouth or nostrils]. But in what circumstances? If it did damage while in motion, it is [man's] direct agency! If [on the other hand] damage resulted after it was at rest, it would be included, according to both Rab and Samuel,[8] in the category of Pit! — The derivative of 'Spoliator' is therefore equal to 'Spoliator'; and R. Papa's statement [to the contrary][6] refers to the derivative of Fire.

What is the derivative of Fire? Shall I say it is a stone, a knife and luggage which having been placed upon the top of one's roof were thrown down by a normal wind and did damage? Then in what circumstances? If they did damage while in motion, they are equivalent to Fire; and why should they be different? Just as Fire is aided by an external force, and, being your possession, is under your control, so also is the case with these [derivatives] which are aided by an external force, and, being your possession, are under your control! — The derivative of Fire is therefore equal to Fire; and R.

Papa's statement [to the contrary][6] refers to the derivative of Foot.

'Foot'! Have we not established that the derivative of Foot is equal to Foot?[9] — There is the payment of half damages done by pebbles [kicked from under an animal's feet] — a payment established by tradition.[10] On account of what [legal] consequence is it designated 'derivative of Foot'?[11] So that the payment should likewise be enforced [even] from the best of the defendant's possessions.[12] But did not Raba question whether the half-damage of Pebbles is collected only from the body of the animal or from any of the defendant's possessions?[13] — This was doubtful [only] to Raba, whereas R. Papa was [almost] certain about it [that the latter is the case]. But according to Raba, who remained doubtful [on this point], on account of what [legal] consequence is it termed 'derivative of Foot'?[14] — So that it may also enjoy exemption [where the damage was done] on public ground.[15]

THE SPOLIATOR [MABEH] AND THE FIRE etc. What is [meant by] MAB'EH? — Rab said: MAB'EH denotes Man [doing damage], but Samuel said: MAB'EH signifies Tooth [of trespassing cattle]. Rab maintains that MAB'EH denotes Man,[16] for it is written: The watchman said: The morning cometh, and also the night — if ye will enquire, enquire ye.[17] Samuel [on the other hand] holds that MAB'EH signifies Tooth, for it is written: How is Esau searched out! How are his hidden places sought out![18] But how is this deduced?[19] As rendered by R. Joseph:[20] How was Esau ransacked? How were his hidden treasures exposed?[21]

Why did not Rab agree with [the interpretation of] Samuel? — He may object: Does the Mishnah employ the term NIB'EH[22] [which could denote anything 'exposed']?

Why [on the other hand] did not Samuel follow [the inter pretation of] Rab? — He may object: Does the Mishnah employ the term BO'EH[23] [which could denote 'an enquirer']?

But in fact the Scriptural quotations could hardly bear out the interpretation of either of them. Why then did not Rab agree with Samuel? — THE OX [in the Mishnah] covers all kinds of damage done by ox.[24] How then will Samuel explain the fact that ox has already been dealt with? — Rab Judah explained: THE OX [in the Mishnah] denotes Horn, while MAB'EH stands for Tooth; and this is the sequence in the Mishnah: The aspects of Horn, which does not afford gratification from the injury [are not of such order of gravity] as those of Tooth which does afford gratification from the damage;[25]

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(1) The derivatives of which are equal to the Principal.

(2) Infra p. 9.

(3) Supra p. 7.

(4) Infra p. 136.

(5) I.e., civilly liable in full for all misdeeds.

(6) V. p. 6, n. 6.

(7) I.e., the derivative of Man.

(8) V. p. 7, n. 4.

(9) Supra p. 7.

(10) Cf. infra p. 80.

(11) Since it pays only half the damage.

(12) Unlike half damages in the case of Horn where the payment is collected only out of the body of the animal that did the damage.

(13) Infra p. 83.

(14) V. p. 8, n. 10.

(15) Just as is the case with Foot, cf. infra p. 17.

(16) As possessing freedom of will and the faculty of discretion and enquiry, i.e., constituting a cultural and rational

being; idiots and minors are thus excluded, cf. infra p. 502.

(17) תבעון בעיו Isa. XXI, 12; the root in each case being the same.

(18) נבעו Ob. I, 6; the root in each case being the same.

(19) I.e., how could a term denoting 'seeking out' stand for Tooth?

(20) Who was exceptionally well conversant with Targumic texts. Some explain it on account of his having been blind (v. infra p. 501), and thus unable to cite the original Biblical text because of the prohibition to recite orally passages from the Written Law, cf. Git. 60a. [Others ascribe the edition of the Targum on the prophets to him, v. Graetz (Geschichte IV, 326.]

(21) נבעו (E.V.: sought out), translated exposed, indicates exposure and may therefore designate Tooth which is naturally hidden but becomes exposed in grazing.

(22) In the passive voice.

(23) In the kal denoting mere action; the causative (hiph'il) is used with reference to Tooth which the animal exposes in grazing.

(24) Cattle, including Tooth.

(25) And therefore the liability of Tooth could not he derived from that of Horn.

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nor are the aspects of Tooth, which is not prompted by malicious intention to injure, [of such order of gravity] as those of Horn which is prompted by malicious intention to do damage.[1] But can this not be deduced a fortiori? If Tooth, which is prompted by no malicious intention to injure, involves liability to pay, how much more so should this apply to Horn, which is prompted by malicious intention to do damage? — Explicit [Scriptural] warrant for the liability of Horn is, nevertheless, essential, as otherwise you might have possibly thought that I assume [immunity for Horn on] an analogy to the case of man- and maid-servants. Just as a man- and maid-servant, although prompted by malicious intention to do damage, do not devolve any liability [upon their masters],[2] so is the law here [in the case of Horn]. R. Ashi, however, said: Is not the immunity in the case of damage done by man-and maid-servants due to the special reason that, but for this, a servant provoked by his master might go on burning down[3] another's crops, and thus make his master liable to pay sums of money day by day?[4] — The sequence [of the analysis in the Mishnah] must accordingly be [in the reverse direction]: The aspects of Horn, which is actuated by malicious intention to do damage, are not [of such low order of gravity] as those of Tooth, which is not actuated by malicious intention to do damage; again, the aspects of Tooth which affords gratification while doing damage are not [of such low order of gravity] as those of Horn, which affords no gratification from the damage.[5] But what about Foot? Was it entirely excluded [in the Mishnah]? — [The generalisation,][6] Whenever damage has occurred, the offender is liable, includes Foot. But why has it not been stated explicitly? — Raba therefore said: THE OX [stated in the Mishnah] implies Foot,[7] while MAB'EH stands for Tooth; and this is the sequence [in the Mishnah]: The aspects of Foot, which does frequent damage, are not [of such low order of gravity] as those of Tooth, the damage by which is not frequent: again, the aspects of Tooth, which affords gratification from the damage, are not [of such low order of gravity] as those of Foot, which does not afford gratification from the damage.[8] But what about Horn? Was it entirely excluded [in the Mishnah]? — [The generalisation,] Whenever damage has occurred, the offender is liable, includes Horn. But why has it not been stated explicitly? — Those which are Mu'ad ab initio are mentioned explicitly [in the Mishnah] but those which initially are Tam,[9] and [only] finally become Mu'ad, are not mentioned explicitly.

Now as to Samuel, why did he not adopt Rab's interpretation [of the Mishnaic term MAB'EH]? — He may object: If you were to assume that it denotes Man, the question would arise, is not Man explicitly dealt with [in the subsequent Mishnah]: 'Mu'ad cattle and cattle doing damage on the plaintiff's premises and Man'?[10] But why then was Man omitted in the opening Mishnah? — [In that Mishnah] damage done by one's possessions is dealt with, but not that done by one's person.

Then, how could even Rab uphold his interpretation, since Man is explicitly dealt with in the subsequent Mishnah?[10] — Rab may reply: The purpose of that Mishnah is [only] to enumerate Man among those which are considered Mu'ad. What then is the import of [the analysis introduced by] THE ASPECTS ARE NOT etc.? — This is the sequence: The aspects of Ox, which entails the payment of kofer [for loss of human life],[11] are not [of such low order of gravity] as those of Man who does not pay [monetary] compensation for manslaughter;[12] again, the aspects of Man who [in case of human bodily injury] is liable for [additional] four items,[13] are not [of such low order of gravity] as those of Ox, which is not liable for those four items.[14]

THE FEATURE COMMON TO THEM ALL IS THAT THEY ARE IN THE HABIT OF DOING DAMAGE. Is it usual for Ox [Horn][15] to do damage? — As Mu'ad. But even as Mu'ad, is it usual for it to do damage? — Since it became Mu'ad this became its habit. Is it usual for Man to do damage? — When he is asleep. But even when asleep is it usual for Man to do damage? — While stretching his legs or curling them this is his habit.

THEIR HAVING TO BE UNDER YOUR CONTROL. Is not the control of man's body [exclusively] his own?[16] — Whatever view you take,[17] behold Karna taught: The principal categories of damage are four and Man is one of them. [Now] is not the control of a man's body [exclusively] his own? You must therefore say with R. Abbahu who requested the tanna[18] to learn, 'The control of man's body is [exclusively] his own,'

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(1) And therefore the liability of Horn could not be derived from that of Tooth.

(2) Cf. infra p. 502.

(3) But v. infra pp. 47 and 112.

(4) Yad. IV, 6; and the suggested analogy is thus untenable.

(5) So that neither Horn nor Tooth could he derived from each other.

(6) Infra p. 36, v. Tosaf.

(7) And not Horn as first suggested.

(8) So that neither Foot nor Tooth could he derived from each other.

(9) As is the case with Horn.

(10) V. infra 15b.

(11) Lit., 'Ransom', i.e., monetary compensation for manslaughter, cf Ex. XXI, 30; v. Glos.

(12) V. Num. XXXV, 31-32. Hence Man could not be derived from Ox.

(13) I.e., Pain, Healing, Loss of Time and Degradation; cf. infra p. 473.

(14) Ox is liable only for Depreciation.

(15) According to Rab who takes Ox as including Horn.

(16) The phrase in the Mishnah is thus inappropriate to man.

(17) Even if you take Mab'eh as Tooth.

(18) [The term here designates one whose special task was to communicate statements of older authorities to expounding teachers, v. Glos.]

that here also it is to be understood that the control of man's body is his own.[1]

R. Mari, however, demurred: Say perhaps MAB'EH denotes water [doing damage], as it is written, As when the melting fire burneth, fire tib'eh [causeth to bubble] water?[2] — Is it written, 'Water bubbles'? It is written, Fire causes bubbling.[3] R. Zebid demurred: Say then that MAB'EH denotes Fire, as it is fire to which the act of 'tib'eh' in the text is referred? — If this be so what is then the explanation of THE MAB'EH AND THE FIRE? If you suggest the latter to be the interpretation of the former,[4] then instead of 'FOUR' there will be 'three'? If however, you suggest that OX constitutes two [kinds of damage],[5] then what will be the meaning of [the Mishnaic text]: NOR ARE

THE ASPECTS OF EITHER OF THEM [OX and MAB'EH] IN WHICH THERE IS LIFE? Is there any life in fire? Again, what will be conveyed by [the concluding clause] AS THOSE OF THE FIRE?

R. Oshaia: taught There are thirteen principal categories of damage: The Unpaid Bailee and the Borrower, the Paid Bailee and the Hirer, Depreciation, Pain [suffered]. Healing, Loss of Time, Degradation and the Four enumerated in the Mishnah, thus making [a total of] thirteen. Why did our Tanna mention [only the Four and] not the others? According to Samuel,[6] this presents no difficulty, as the Mishnah mentions only damage committed by one's possessions and not that committed by one's person, but according to Rab[7] let the Mishnah also mention the others? — In the mention of Man all kinds of damage committed by him are included. But does not R. Oshaia also mention Man?[8] — Two kinds of damage could result from Man: Man injuring man is treated as one subject, and Man damaging chattel[9] as another.

If this be so let R. Oshaia similarly reckon Ox twice, as two kinds of damage could result also from Ox: [i] Ox damaging chattel[9] and [ii] Ox injuring man? — But is that a logical argument? It is quite proper to reckon Man in this manner as Man damaging chattel pays only for Depreciation, while Man injuring man may also have to pay for four other kinds of damage,[10] but how can Ox be thus reckoned when the liability for damage done by it to either man or chattel is alike and is confined to [only one kind of damage, i.e.] Depreciation?

But behold, are not the Unpaid Bailee and the Borrower, the Paid Bailee and the Hirer, within the sphere of Man damaging chattel and they are nevertheless reckoned by R. Oshaia? — Direct damage and indirect damage are treated by him independently.

R. Hiyya taught: There are twenty-four principal kinds of damage: Double Payment,[11] Fourfold or Fivefold Payment,[12] Theft,[13] Robbery,[14] False Evidence,[15] Rape,[16] Seduction,[17] Slander,[18] Defilement,[19] Adulteration,[20] Vitiation of wine,[21] and the thirteen enumerated above by R. Oshaia,[22] thus making [the total] twenty-four.

Why did not R. Oshaia reckon the twenty-four? — He dealt only with damage involving civil liability but not with that of a punitive nature. But why omit Theft and Robbery which also involve civil liability? — These kinds of damage may be included in the Unpaid Bailee and the Borrower.[23] Why then did not R. Hiyya comprehend the former in the latter? — He reckoned them separately, as in the one case the possession of the chattel was acquired lawfully,[24] while in the other[25] the acquisition was unlawful.

[Why did not R. Oshaia]

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(1) The Mishnaic wording refers to the other categories.

(2) Isa. LXIV, 1.

(3) Hence the term ‘tib'eh’ describes not the act of water but that of fire.

(4) The Mab'eh and the Fire will thus constitute one and the same kind of damage.

(5) And the other two will be: Pit and Fire.

(6) Who takes Mab'eh to denote Tooth and not Man; supra p. 9.

(7) Who takes Mab'eh to denote Man; supra p. 9.

(8) Why does he not include in Man all kinds of damage committed by him?

(9) Lit., ‘cattle’.

(10) I.e., Pain, Healing, Loss of Time and Degradation.

(11) As fine for theft; cf. Ex. XXII, 3.

(12) Fines for the slaughter or sale of a stolen sheep and ox respectively; cf. Ex. XXI, 37.

(13) I.e., the restoration of stolen goods or the payment of their value.

(14) I.e., the unlawful acquisition of chattels by violence; cf. Lev, V, 23.
(15) Cf. Deut. XIX, 19; v. Mak. I.
(16) I.e., fifty shekels of silver; cf. Deut. XXII, 28-29.
(17) Cf. Ex. XXII, 15-16.
(18) I.e., a defaming husband; v. Deut. XXII, 13-19.
(19) Of terumah (v. Glos.) which makes it unfit for human consumption.
(20) Of ordinary grain with that of terumah restricting thereby the use of the mixture to priestly families.
(21) Through idolatrous application by means of libation which renders all the wine in the barrel unfit for any use whatsoever; the last three heads of damage are dealt with in Git. V, 3.
(22) V. p. 13.
(23) I.e., when these are guilty of larceny; cf. Ex. XXII, 7.
(24) I.e in the case of the Unpaid Bailee and Borrower.
(25) I.e., in the case of Theft and Robbery.

Talmud - Mas. Baba Kama 5a

deal with False Evidence, the liability for which is also civil? — He holds the view of R. Akiba who maintains that the liability for False Evidence [is penal in nature and] cannot [consequently][1] be created by confession.[2] But if R. Oshaia follows R. Akiba why does he not reckon Ox as two distinct kinds of damage: Ox damaging chattel and Ox injuring men, for have we not learnt that R. Akiba said: A mutual injury arising between man and [ox even while a] Tam is assessed in full and the balance paid accordingly?[3] This distinction could, however, not be made, since it is elsewhere[4] taught that R. Akiba himself has qualified this full payment.[5] For R. Akiba said: You might think that, in the case of Tam injuring man, payment should be made out of the general estate; it is therefore stated, [This judgment] shall be done unto it,[6] to emphasise that the payment should only be made out of the body of the Tam and not out of any other source whatsoever.

Why did R. Oshaia omit Rape, Seduction and Slander, the liabilities for which are also civil?[7] — What particular liability do you wish to refer to? If for actual loss, this has already been dealt with under Depreciation; if for suffering, this has already been dealt with under Pain; if for humiliation, this has already been dealt with under Degradation; if again for deterioration, this is already covered by Depreciation. What else then can you suggest? The Fine.[8] With this [type of liability] R. Oshaia is not concerned.

Why then omit Defilement , Adulteration and Vitiation of wine, the liabilities for which are civil? — What is your view in regard to intangible damage?[9] If [you consider] intangible damage a civil wrong, defilement has then already been dealt with under Depreciation; if on the other hand intangible damage is not a civil wrong, then any liability for it is penal in nature, with which R. Oshaia is not concerned.

Are we to infer that R. Hiyya considers intangible damage not to be a civil wrong? For otherwise would not this kind of damage already have been reckoned by him under Depreciation? — He may in any case have found it expedient to deal with tangible damage and intangible damage under distinct heads.

It is quite conceivable that our Tanna[10] found it necessary to give the total number [of the principal kinds of damage] in order to exclude those of R. Oshaia;[11] the same applies to R. Oshaia who also gave the total number in order to exclude those of R. Hiyya;[12] but what could be excluded by the total number specified by R. Hiyya? — It is intended to exclude Denunciation[13] and Profanation of sacrifices.[14]

The exclusion of profanation is conceivable as sacrifices are not here reckoned; but why is

Denunciation omitted? — Denunciation is in a different category on account of its verbal nature with which R. Hiyya is not concerned. But is not Slander of a verbal nature and yet reckoned? — Slander is something verbal but dependent upon some act.[15] But is not False Evidence a verbal effect not connected with any act and yet it is reckoned? — The latter though not connected with any act is reckoned because it is described in the Divine Law as an act, as the text has it: Then shall ye do unto him as he had purposed to do unto his brother.[16]

It is quite conceivable that the Tanna of the Mishnah characterises his kinds of damage as Principals in order to indicate the existence of others which are only derivatives: but can R. Hiyya and R. Oshaia characterise theirs as Principals in order to indicate the existence of others which are derivatives? If so what are they? — Said R. Abbahu: All of them are characterised as Principals for the purpose of requiring compensation out of the best of possessions.[17] How is this uniformity [in procedure] arrived at? — By means of a uniform interpretation of each of the following terms: 'Instead',[18] 'Compensation',[19] 'Payment',[20] 'Money'.[21]

THE ASPECTS OF THE OX ARE [IN SOME RESPECTS] NOT [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE 'SPOLIATOR' [MAB'EH]. What does this signify? — R. Zebid in the name of Raba said: The point of this is: Let Scripture record only one kind of damage[22] and from it you will deduce the liability for the other![23] In response it was declared: One kind of damage could not be deduced from the other.[24]

NOR ARE THE ASPECTS OF EITHER OF THEM IN WHICH THERE IS LIFE. What does this signify? R. Mesharsheya in the name of Raba said: The point of it is this:

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(1) Penal liabilities are created only by means of impartial evidence and never by that of confession; cf. infra 64b.

(2) Mak. 2b.

(3) V. infra p. 179.

(4) Infra pp. 180 and 240.

(5) Lit., 'broke the [full] force of his club' (Jast.); Rashi: 'of his fist'.

(6) Ex. XXI. 31.

(7) Cf. Keth. 40a.

(8) V. Deut, XXII, 29; Ex. XXII, 6; and Deut. XXII, 19.

(9) Cf. Git. 53a.

(10) Opening the Tractate.

(11) I.e., the additional nine kinds enumerated by him supra p. 13.

(12) I.e the eleven added by him supra. p. 14.

(13) Cf. infra 62a and 117a.

(14) Cf. Lev. VII, 18 and Zeb. I, 1 and II, 2-3.

(15) The consummation of the marriage rite according to R. Eliezer, or the bribery of false witnesses according to R. Judah; cf. Keth. 46a.

(16) Deut. XIX, 19.

(17) Cf. Ex. XXII, 4.

(18) I.e., for occurring in Ex. XXI, 36, and elsewhere.

(19) I.e., an expression such as, He shall give, cf. EX XXI, 32 and elsewhere.

(20) As in Ex. XXII, 8 and elsewhere.

(21) Such as, e.g., in Ex. XXI, 34 and elsewhere. [One of these four terms occurs with each of the four categories of damage specified in the Mishnah and likewise with each of the kinds of damage enumerated by R. Oshaia and R. Hiyya, thus teaching uniformity in regard to the mode of payment in them all.]

(22) I.e., Ox.

(23) I.e., Mab'eh.

(24) V. supra pp. 11-12.

Talmud - Mas. Baba Kama 5b

Let Scripture record only two kinds of damage[1] and from them you will deduce a further kind of damage?[2] In response it was declared: Even from two kinds of damage it would not be possible to deduce one more.[3]

Raba, however, said: If you retain any one kind of damage along with Pit [in Scripture], all the others but Horn will be deduced by analogy;[4] Horn is excepted as the analogy breaks down, since all the other kinds of damage are Mu'ad ab initio.[5] According, however, to the view that Horn on the other hand possesses a greater degree of liability because of its intention to do damage,[6] even Horn could be deduced. For what purpose then did Scripture record them all? For their [specific] laws: Horn, in order to distinguish between Tam and Mu'ad;[7] Tooth and the Foot, to be immune [for damage done by them] on public ground;[8] Pit, to be immune for [damage done by it to] inanimate objects;[9] and, according to R. Judah who maintains liability for inanimate objects damaged by a pit,[10] in order still to be immune for [death caused by it to] man;[11] Man, to render him liable for four [additional] payments [when injuring man];[12] Fire, to be immune for [damage to] hidden goods;[13] but according to R. Judah, who maintains liability for damage to hidden goods by fire,[13] what [specific purpose] could be served?

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(1) I.e., Ox and Mab'eh.

(2) I.e., Fire.

(3) For the reason stated in the Mishnah.

(4) To the feature common in Pit and the other kind of damage.

(5) I.e., it is usual for them to do damage, whereas Horn does damage only through excitement and evil intention which the owner should not necessarily have anticipated; cf. infra p. 64.

(6) Cf. supra p. 11 and infra p. 64.

(7) Infra p. 73.

(8) Infra p. 94.

(9) Infra 52a.

(10) Infra 53b.

(11) Infra 54a.

(12) Infra p. 473; cf. also supra pp. 12 and 13.

(13) Infra 61b.

Talmud - Mas. Baba Kama 6a

— To include [damage done by fire] lapping his neighbour's ploughed field and grazing his stones.[1]

THE FEATURE COMMON TO THEM ALL . . . What else is this clause intended to include? — Abaye said: A stone, a knife and luggage which, having been placed by a person on the top of his roof, fell down through a normal wind and did damage.[2] In what circumstances [did they do the damage]? If while they were in motion, they are equivalent to Fire! How is this case different? Just as Fire is aided by an external force[3] and, being your possession, is under your control, so also is the case with those which are likewise aided by an external force and, being your possessions are under your control. If [on the other hand, damage was done] after they were at rest, then, if abandoned, according to both Rab and Samuel, they are equivalent to Pit.[4] How is their case different? Just as Pit is from its very inception a source of injury, and, being your possession is under your control, so also is the case with those[5] which from their very inception [as nuisances] are likewise sources of injury, and, being your possession are under your control.[6] Furthermore, even if they were not abandoned, according to Samuel who maintains that we deduce [the law governing] all nuisances from Pit,[4] they are [again] equivalent to Pit? — Indeed they were abandoned, still they are not equivalent to Pit. Why [is liability attached] to Pit if not because no external force assists it? How then can you assert

[the same] in the case of those[5] which are assisted by an external force? — Fire,[7] however, will refute [this reasoning]. But [you may ask] why [is liability attached] to Fire if not because of its nature to travel and do damage?[8] — Pit, however, will refute [this reasoning]. The argument is [thus endlessly] reversible [and liability[9] can be deduced only from the Common Aspects].[10]

Raba said: [This clause is intended] to include a nuisance which is rolled about [from one place to another] by the feet of man and by the feet of animal [and causes damage]. In what circumstances [did it do the damage]? If it was abandoned, according to both Rab and Samuel,[11] it is equivalent to Pit! How does its case differ? Just as Pit is from its very inception a source of injury, and is under your control, so also is the case with that which from its very inception [as a nuisance] is likewise a source of injury, and is under your control. Furthermore, even if it were not abandoned, according to Samuel,[11] who maintains that we deduce [the law governing] all nuisances from Pit, it is [again] equivalent to Pit? — Indeed it was abandoned, still it is not equivalent to Pit: Why [is liability attached] to Pit if not because the making of it solely caused the damage? How then can you assert [the same] in the case of such nuisances,[12] the making of which did not directly cause the damage?[13] — Ox, however, will refute [this reasoning]. But [you may ask] why [is liability attached] to Ox if not because of its habit to walk about and do damage? — Pit will refute [this reasoning]. The argument is [thus endlessly] reversible as the aspect of the one is not comparable to the aspect of the other, [and liability[14] therefore can be deduced only from the Common Aspects].

R. Adda b. Ahabah said: To include that which is taught:[15] 'All those who open their gutters or sweep out the dust of their cellars

[into public thoroughfares] are in the summer period acting unlawfully, but lawfully in winter; [in all cases] however, even though they act lawfully, if special damage resulted they are liable to compensate.' But in what circumstances? If the damage occurred while [the nuisances were] in motion, is it not man's direct act?[16] If, on the other hand, it occurred after they were at rest, [again] in what circumstances? If they were abandoned, then, according to both Rab and Samuel,[17] they are equivalent to Pit! How does their case differ? Just as Pit is from its very inception a source of injury, and, being your possession, is under your control, so also is the case with those which are likewise from their very inception [as nuisances] sources of injury and, being your possession, are under your control. Furthermore, even if they were not abandoned, according to Samuel,[17] who maintains that we deduce [the law governing] all nuisances from Pit, they are [again] equivalent to Pit? — Indeed they were abandoned, still they are not equivalent to Pit: Why [is liability attached] to Pit if not because of its being unlawful?[18] How then could you assert [the same] in the case of those which [in winter] are lawful? —

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(1) As this damage is rather an unusual effect from fire and special reference is therefore essential.

(2) Cf. supra p. 8.

(3) I.e., the blowing wind.

(4) Infra 28b; v. supra p. 7.

(5) I.e., stone, knife and luggage referred to above.

(6) Cf. supra p. 7.

(7) Which is also assisted by an external force, i.e. the wind, but nevertheless creates liability to pay.

(8) Which cannot he said of stone, knife and luggage.

(9) Even when the nuisance has, like Fire, been assisted by an external force and is, like Pit, unable to travel and do damage.

(10) Referred to in the Mishnaic quotation.

(11) Infra 28b and supra p. 7.

(12) Which have been rolling about from one place to another.

(13) But the rolling by man and beast.

(14) Even in the case of nuisances that roll about.

(15) Cf. infra 30a.
(16) The liability for which is self-evident under the category of Man.
(17) Infra 28b and supra p. 7.
(18) It being unlawful to dig a pit in public ground.

Talmud - Mas. Baba Kama 6b

Ox,[1] however, will refute [this reasoning]. But, you may ask, why [is liability attached] to Ox if not because of its nature to walk about and do damage? — PIt will refute [this reasoning]. The argument is [thus endlessly] reversible [and liability[2] can be deduced only from the Common Aspects].

Rabina said: To include that which we have learnt: 'A wall or a tree which accidentally fell into a Public thoroughfare and did damage, involves no liability for compensation. If an order had been served [by the proper authorities] to fell the tree and pull down the wall within a specified time, and they fell within the specified time and did damage, the immunity holds goods, but if after the specified time, liability is incurred.'[3] But what were the circumstances [of the wall and the tree]? If they were abandoned, then according to both Rab and Samuel,[4] they are equivalent to Pit! How is their case different? Just as Pit does frequent damage and is under your control, so also is the case with those which likewise do frequent damage and are under your control. Furthermore, even if they were not abandoned, according to Samuel.[4] who maintains that we deduce [the law governing] all nuisances from Pit, they are [again] equivalent to Pit? — Indeed they were abandoned, still they are not equivalent to Pit: Why [is liability attached] to Pit if not because of its being from its very inception a source of injury? How then can you assert [the same] in the case of those which are not sources of injury from their inception? — Ox, however, will refute [this reasoning]. But [you may ask] why [is liability attached] to Ox if not because of its nature to walk about and do damage? — Pit will refute [this reasoning]. The argument is [thus endlessly] reversible [and liability[5] can be deduced only from Common Aspects].

WHENEVER ANYONE OF THEM DOES DAMAGE THE OFFENDER IS [HAB] LIABLE. 'The offender is HAB!' — 'The offender is HAYYAB'[6] should be the phrase? — Rab Judah, on behalf of Rab, said: This Tanna [of the Mishnaic text] was a Jerusalemite who employed an easier form.[7]

TO INDEMNIFY WITH THE BEST OF HIS ESTATE. Our Rabbis taught: Of the best of his field and of the best of his vineyard shall he make restitution[8] refers to the field of the plaintiff and to the vineyard of the plaintiff, this is the view of R. Ishmael. R. Akiba says: Scripture only intended that damages should be collected out of the best,[9] and this applies even more so to sacred property.[10]

Would R. Ishmael maintain that the defendant, whether damaging the best or worst, is to pay for the best? — R. Idi b. Abin said: This is so where he damaged one of several furrows and it could not be ascertained whether the furrow he damaged was the worst or the best,in which case he must pay for the best. Raba, however, [demurred] saying: Since where we do know that he damaged the worst, he would only have to pay for the worst, now that we do not know whether the furrow damaged was the best or the worst, why pay for the best? It is the plaintiff who has the onus of proving his case by evidence. R. Aha b. Jacob therefore explained: We are dealing here with a case where the best of the plaintiff's estate equals in quality the worst of that of the defendant;[11] and the point at issue is [as follows]: R. Ishmael maintains that the qualities are estimated in relation to those of the plaintiff's estate;[12] but R. Akiba is of the opinion that it is the qualities of the defendant's possessions that have to be considered.[13]

What is the reason underlying R. Ishmael's view? — The term 'Field' occurs both in the latter clause[14] and the earlier clause of the verse;[15] now just as in the earlier clause it refers to the

plaintiff's possessions, so also does it in the latter clause. R. Akiba, however, maintains that [the last clause,] Of the best of his field and of the best of his vineyard shall he make restitution[16] clearly refers to the possessions of the one who has to pay. R. Ishmael [on the other hand,] contends that both the textual analogy[17] of the terms and the plain textual interpretation are complementary to each other. The analogy of the terms is helpful towards establishing the above statement[18] while the plain textual interpretation helps to qualify [the application of the above[18] in] a case where the defendant's estate consists of good and bad qualities, and the plaintiff's estate likewise comprises good quality, but the bad of the defendant's estate is not so good as the good quality of the estate of the plaintiff;[19] for in this case the defendant must pay out of the better quality of his estate, as he cannot say to him, 'Come and be paid out of the bad quality' [which is below the quality of the estate of the plaintiff], but he is entitled to the better quality [of the defendant].

'R. Akiba said: Scripture only intended that damages be collected out of the best, and this applies even more so to sacred property.' What is the import of the last clause? It could hardly be suggested that it refers to a case where a private ox gored an ox consecrated [to the Sanctuary], for does not the Divine Law distinctly say, The ox of one's neighbour,[20] excluding thus [any liability for damage done to] consecrated chattel? Again, it could hardly deal with a personal undertaking by one to pay a maneh to the Treasury of the Temple, thus authorising the treasurer to collect from the best; for surely he should not be in a better position than a private creditor

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(1) Which it is similarly lawful to keep, but which when doing damage creates nevertheless a liability to pay.

(2) Even in the cases referred to by R. Adda b. Ahabah.

(3) B.M. 117b.

(4) Infra 28b.

(5) Even in the case of the wall and the tree.

(6) A slight variation in the Hebrew text: a disyllable instead of a monosyllable.

(7) Preferred a contracted form.

(8) Ex. XXII, 4.

(9) Of the defendant's estate.

(10) I.e., property dedicated to the purposes of the sanctuary.

(11) The amount of damages, however, would never be more than could be proved to have been actually sustained.

(12) I.e., the quality of the field paid by the defendant as damages need not exceed the best quality of the plaintiff's estate. Hence, in the case in hand, the worst of the defendant's will suffice.

(13) The quality of the payment must therefore always he the best of the defendant's estate,

(14) I.e., of the best of his field . . . Ex, XXII,4.

(15) If a man shall cause a field or a vineyard to be eaten, ibid.

(16) Ex. XXII,4.

(17) The (Gezerah Shawah, v. Glos.

(18) 'That the qualities are estimated in relation to those of the plaintiff's estate.'

(19) The bad quality could not thus be tendered.

(20) Ex. XXI, 35.

Talmud - Mas. Baba Kama 7a

who can collect nothing better than the medium quality.[1] If, however, you hold that R. Akiba authorises the payment of all loans out of the best, [the treasurer of the Temple could still hardly avail himself of this privilege as] the analogy between these two kinds of liability could be upset as follows: A private creditor is at an advantage in that for damages he will surely be paid out of the best, but is not the Temple Treasury at a very great disadvantage in this respect?[2] — It may still be maintained that it applies to the case where a private ox gored a consecrated ox, and in answer to the difficulty raised by you — that the Divine Law definitely says The ox of one's neighbour, thus exempting for damage done to consecrated property — it may be suggested that R. Akiba shares the

view of R. Simeon b. Menasya as taught:[3] R. Simeon b. Menasya says: In the case of a consecrated ox goring a private one, there is total exemption; but for a private ox, whether Tam or Mu'ad, goring a consecrated ox, full damages must be paid.[4] If this is R. Akiba's contention, whence could it be proved that the point at issue between R. Ishmael and R. Akiba is as to the best of the plaintiff's equalling the worst of the defendant's? Why not say that on this point they are both of opinion that the qualities are estimated in relation to the plaintiff's possessions,[5] whereas the disagreement between them is on the point at issue between R. Simeon b. Menasya and the Rabbis [i.e., the majority against him], R. Akiba holding the view of R. Simeon b. Menasya, and R. Ishmael that of the Rabbis? — If so, what would be the purport of the first clause of R. Akiba, 'Scripture only intended that damages be collected out of the best'?[6] Again, would not then even the last clause 'And this even more so applies to sacred property' be rather illogically phrased?[7] Furthermore, R. Ashi said: It was explicitly taught: Of the best of his field and of the best of his vineyard shall he make restitution[8] refers to the field of the plaintiff and to the vineyard of the plaintiff: this is the view of R. Ishmael. R. Akiba [on the other hand] says: The best of the defendant's field and the best of the defendant's vineyard.

Abaye pointed out to Raba the following contradiction: Scripture records, Out of the best of his field and out of the best of his vineyard shall he make restitution[8] [thus indicating that payment must be made] only out of the best and not out of anything else; whereas it is taught: He should return,[9] includes payment in kind,[10] even with bran?[11] — There is no contradiction: the latter applies when the payment is made willingly, while the former refers to payments enforced [by law]. 'Ulla the son of R. Elai, thereupon said: This distinction is evident even from the Scriptural term, He shall make restitution,[8] meaning, even against his will. Abaye, on the other hand, said to him: Is it written yeshullam[12] ['Restitution shall be made']? What is written is yeshallem[13] ['He shall make restitution'], which could mean of his own free will! — But said Abaye: [The contradiction can be solved] as the Master[14] [did] in the case taught: An owner of houses, fields and vineyards[15] who cannot find a purchaser [is considered needy and] may be given the tithe for the poor[16] up to half the value of his estate.[17] Now the Master discussed the circumstances under which this permission could apply: If property in general, and his included, dropped in value, why not grant him even the value of more [than the half of his estate's value], since the depreciation is general? If, on the other hand, property in general appreciated, but his, on account of his going about looking here and there for ready money, fell in price,

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(1) Git. V, 1.

(2) On account of the absolute immunity, as stated, for damage done to Temple property.

(3) Infra p. 212.

(4) R. Akiba thus maintains that the Temple Treasury will, for any damage sustained, be reimbursed out of the best of the defendant's estate.

(5) And where the plaintiff's best equals the defendant's worst, the latter will perhaps suffice according to all opinions.

(6) Which indicates that the interpretation of the Scriptural verse (Ex. XXII, 4) is the point at issue.

(7) As according to the view requiring full payment in all cases, the quality of the payment for damage done to sacred property may he higher than that paid for damage done to ordinary property, and in fact nothing less than the very best of the defendant's estate would suffice.

(8) Ex. XXII, 4.

(9) Ex. XXI, 34.

(10) Otherwise the Scriptural text would be superfluous, as payment in specie is evident in an earlier clause.

(11) Infra 9a.

(12) ישלם

(13) ישלם~

(14) Rabbah (Rashi).

(15) The value of which amounted to 200 zuz.

(16) Cf. Deut. XIV, 28-29; this tithe is distributed among those who possess less than two hundred zuz; Pe'ah VIII, 8.

(17) I.e., 100 zuz to enable him to sell his property for half its value which, it is assumed, he can at any time realise.

Talmud - Mas. Baba Kama 7b

why give him anything at all?[1] And the Master thereupon said: No; the above law is applicable to cases where in the month of Nisan[2] property has a higher value, whereas in the month of Tishri[3] it has a lower value. People in general wait until Nisan and then sell, whereas this particular proprietor, being in great need of ready money, finds himself compelled to sell in Tishri at the existing lower price; he is therefore granted half because it is in the nature of property to drop in value up to a half, but it is not in its nature to drop more than that. Now a similar case may also be made out with reference to payment for damage which must be out of the best. If the plaintiff, however, says: 'Give me medium quality but a larger quantity', the defendant is entitled to reply: 'It is only when you take the best quality which is due to you by law that you may calculate on the present price; failing that, whatever you take you will have to calculate according to the higher price anticipated.'[4] But R. Aha b. Jacob demurred: If so, you have weakened the right of plaintiffs for damages in respect of inferior quality. When the Divine Law states out of the best,[5] how can you maintain that inferior qualities are excluded?[6] R — Aha b. Jacob therefore said: If any analogy could he drawn,[7] it may be made in the case of a creditor. A creditor is paid by law out of medium quality; if, however, he says: 'Give me worse quality but greater quantity,' the debtor is entitled to say, 'It is only when you take that quality which is due to you by law that you may calculate on the present price, failing that, whatever you take you will have to calculate according to the higher price anticipated.' R. Aha, son of R. Ika, demurred: If so, you will close the door in the face of prospective borrowers. The creditor will rightly contend, 'Were my money with me I would get property according to the present low price; now that my money is with you, must I calculate according to the anticipated higher price?' — R. Aha, son of R. Ika, therefore said: If any analogy could be drawn,[7] it is only with the case of a Kethubah[8] [marriage settlement][9] which, according to the law, is collected out of the worst quality. But if the woman says to the husband: 'Give me better quality though smaller quantity,' he may rejoin: 'It is only when you take the quality assigned to you by law that you may calculate in accordance with the present low price; failing that, you must calculate in accordance with the anticipated higher price.,

But be it as it is, does the original difficulty[10] still not hold good? — Said Raba: Whatever article is being tendered has to be given out of the best [of that object].[11] But is it not written: 'The best of his field'?[12] — But when R. Papa and R. Huna the son of R. Joshua had arrived from the house of study[13] they explained it thus: All kinds of articles are considered 'best', for if they were not to be sold here they would be sold in another town;[14] it is only in the case of land which is excepted therefrom that the payment has to be made out of the best, so that intending purchasers jump at it.

R. Samuel b. Abba of Akronia[15] asked of R. Abba: When the calculation[16] is made, is it based on his own [the defendant's] property or upon that of the general public? This problem has no application to R. Ishmael's view that the calculation is based upon the quality of the plaintiff's property;[17] it can apply only to R. Akiba's view[17] which takes the defendant's property into account.[18] What would, according to him, be the ruling? Does the Divine Law in saying, 'the best of his field' intend only to exclude the quality of the plaintiff's property from being taken into account, or does it intend to exclude even the quality of the property of the general public? — He [R. Abba] said to him:[19] The Divine Law states, 'the best of his field' how then can you maintain that the calculation is based on the property of the general public?

He[20] raised an objection: [It is taught,] If the defendant's estate consists only of the best, creditors of all descriptions are paid out of the best; if it is of medium quality, they are all paid out of medium quality; if it is of the worst quality, they are all paid out of the worst quality. [It is only] when the defendant's possessions consist of both the best, the medium, and the worst [that] creditors for

damages are paid out of the best, creditors for loans out of the medium and creditors for marriage contracts out of the worst. When [however] the estate consists only of the best and of the medium qualities, creditors for damages are paid out of the best while creditors for loans and for marriage contracts will be paid out of the medium quality. [Again] if the estate consists only of the medium and the worst qualities, creditors for either damages or loans are paid out of the medium quality whereas those for marriage contracts will be paid out of the worst quality.

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(1) Since, in reality, his property is worth 200 zuz.

(2) It being the beginning of Spring and the best season for transactions in property, both for agricultural and building purposes.

(3) I.e., about October, being the end of the season.

(4) The scriptural verse, 'He shall return', introducing payment in kind, would thus authorise the calculation on the higher price anticipated whenever the plaintiff prefers a quality different from that assigned to him by law.

(5) Ex. XXII, 4.

(6) From the option of the plaintiff.

(7) To the case made out by the Master regarding the Tithe of the Poor referred to above.

(8) V. Glos.

(9) Git. V, 1.

(10) Raised by Abaye supra p. 24.

(11) I.e., when bran is tendered it is the best of it which has to he given.

(12) Confining it thus to land, for if otherwise why altogether insert 'of his field'?

(13) בי רב. V. Sanh. (Sonc. ed p. 387, n. 7.

(14) And could therefore be tendered.

(15) [Or Hagronia, a town near Nehardea, v. Obermeyer, J. Die Landschaft Babylonian, p. 265.]

(16) Of the best, medium and worst qualities, out of which to pay creditors for damages, loans and marriage-contracts respectively.

(17) Cf. supra p. 22.

(18) I.e., his estate is divided into three categories; best, medium and worst, out of which the payments will respectively be made.

(19) I.e., to R. Samuel, the questioner.

(20) I.e., R. Samuel.

Talmud - Mas. Baba Kama 8a

If, however, the estate consists only of the best and of the worst qualities, creditors for damages are paid out of the best whereas those for loans and marriage contracts are paid out of the worst quality. Now[1] the intermediate clause states that if the estate consists only of the medium and the worst qualities, creditors for either damages or loans are paid out of the medium quality whereas marriage contracts will be paid out of the worst quality. If, therefore, you still maintain that the calculation is based only upon the qualities of the defendant's estate, is not the medium [when there is no better with him] his best? Why then should not the creditors for loans be thrown back on the worst quality? — This [intermediate clause] deals with a case where the defendant originally possessed[2] property of a better quality but has meanwhile disposed of it. And R. Hisda likewise explained this [intermediate clause] to deal with a case where the defendant originally possessed[2] property of a better quality but has meanwhile disposed of it. This explanation stands to reason, for it is taught elsewhere: If the estate consisted of the medium and the worst qualities, creditors for damages are paid out of the medium quality whereas those for loans and marriage contracts will be paid out of the worst quality. Now these [two Baraithas] do not contradict each other, unless we accept [the explanation that] the one deals with a case where the defendant originally owned property of a better quality but which he has meanwhile disposed of, while the other states the law for a case where he did not have[3] property of a quality better than the medium in his possession. It may, however, on the other hand be suggested that both [Baraithas] state the law when a better quality was not disposed of[4] and there is

yet no contradiction, as the second [Baraitha] presents a case where the defendant's medium quality is as good as the best quality of the general public,[5] whereas in the first [Baraitha] the medium quality was not so good as the best of the public.[6] It may again be suggested that both [Baraithas] present a case where the defendant's medium quality was not better than the medium quality of the general public and the point at issue is this: the second [Baraitha] bases the calculation upon the qualities of the defendant's estate,[7] but the first bases it upon those of the general public.[8]

Rabina said: The point at issue is the view expressed by 'Ulla.[9] For 'Ulla said: Creditors for loans may, according to Pentateuchal Law, be paid out of the worst, as it is said, Thou shalt stand without, and the man to whom thou dost lend shall bring forth the pledge without unto thee.[10] Now it is certainly in the nature of man [debtor] to bring out the worst of his chattels. Why then is it laid down that creditors for loans are paid out of the medium quality?[11] This is a Rabbinic enactment made in order that prospective borrowers should not find the door of their benefactors locked before them. Now this enactment referred to by 'Ulla is accepted by the first [Baraitha] whereas the second disapproves of this enactment.[12]

Our Rabbis taught: If a defendant[13] disposed of all his land[14] to one or to three persons at one and the same time, they all have stepped into the place of the original owner.[15] [If, however, the three sales took place] one after another, creditors of all descriptions will be paid out of the [property purchased] last;[16] if this property does not cover [the liability], the last but one purchased estate is resorted to [for the balance]; if this estate again does not meet [the whole obligation], the very first purchased estate is resorted to [for the outstanding balance].

'If the defendant disposed of all his land to one' — under what circumstances [was it disposed of]? It could hardly be suggested [that it was effected] by one and the same deed, for if in the case of three persons whose purchases may have been after one another,[17] you state that, 'They all have stepped into the place of the original owner,' what need is there to mention one person purchasing all the estate by one and the same deed? It therefore seems pretty certain [that the estate disposed of to one person was effected by] deeds of different dates. But [then] why such a distinction?[18] Just as in the case of three purchasers [in succession] each can [in the first instance] refer any creditor [to the very last purchased property], saying, '[When I bought my estate] I was careful to leave [with the defendant] plenty for you to be paid out of,'[19] why should not also one purchaser [by deeds of different dates] be entitled to throw the burden of payment on to the very last purchased property, saying, '[When I acquired title to the former purchases] I was very careful to leave for you plenty to be paid out of'? — We are dealing here with a case where the property purchased last was of the best quality;[20] also R. Shesheth stated that [this law applies] when the property purchased last was of the best quality. If this be the case, why [on the other hand] should not creditors of all kinds come and be paid out of the best quality [as this was the property purchased last]? — Because the defendant may say to the creditors: 'If you acquiesce and agree to be paid out of the qualities respectively allotted to you by law, you may be paid accordingly, otherwise I will transfer the deed of the worst property back to the original owner — in which case you will all be paid out of the worst.'[21] If so,

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(1) Here begins R. Samuel's argument.

(2) I.e., at the time when the loan took place, in which case the creditors then obtained a claim on the medium quality by the process of law.

(3) At the time when the loan took place, in which case the medium (in the absence of a better quality) was relatively the best, and therefore not available to creditors for loans.

(4) But was either retained, as is the case in the second Baraitha, or on the other hand not owned at all at the time of the loan as is the case in the first Baraitha.

(5) In such a case it is considered the best quality to all intents and purposes, as the calculation is based upon the general standard of quality.

(6) It is thus termed only medium and creditors for loans have access to it.

(7) Hence in the absence of a better quality in his own estate, that property which is termed medium in comparison to the general standard is the best in the eye of the law.
(8) According to which it is but medium.
(9) Git. 50a.
(10) Deut XXIV, 11.
(11) Git. V, 1.
(12) Maintaining that creditors for loans will always he paid out the worst quality.
(13) I.e., a debtor for damages, loans and marriage-settlements.
(14) Consisting of best, medium and worst qualities.
(15) So that creditors for damages, for loans and for marriage-settlements will he paid according to their respective rights.
(16) Whether it be best, medium or worst.
(17) Though on one and the same day; cf, Keth. 94a.
(18) I.e., why should the legal position of one purchaser be worse than that of three?
(19) As, according to a Mishnaic enactment (Git. V, 1), 'Property disposed of by a debtor could not he resorted to by his creditors so long as there are with him available possessions undisposed of.'
(20) In which case it is not in the interest of the purchaser that the last purchase should he available to any one of the creditors.
(21) At the hands of the debtor, according to the Mishnaic enactment, Git. V, 1.

Talmud - Mas. Baba Kama 8b

why should the same not be said regarding creditors for damages?[1] It must therefore he surmised that we deal with [a case where the vendor has meanwhile died, and, as his] heirs are not personally liable to pay,[2] the original liability [which accompanied the purchased properties] must always remain upon the purchaser;[3] who could consequently no longer [threaten the creditors and] say this: ['If you acquiesce . . .'?][4] — But the reason the creditors cannot be paid out of the best is that the vendee may [repudiate their demand and] say to them: 'On what account have the Rabbis enacted that "property disposed of by a debtor can not be attached by his creditors so long as there are available possessions still not disposed of"[5] if not for the sake of protecting my interests? In the present instance I have no interest in availing myself of this enactment.' Exactly as Raba, for Raba elsewhere said: Whoever asserts, 'I have no desire to avail myself of a Rabbinical enactment' such as this is listened to.[6] To what does 'such as this' refer? — To R. Huna, for R. Huna said: A woman is entitled to say to her husband, 'I don't expect any maintenance from you[7] and I do not want to work for you.'[8]

It is quite certain that if the vendee[9] has sold the medium and worst qualities and retained the best, creditors of all descriptions may come along and collect out of the best quality. For this property was acquired by him last; and, since the medium and worst qualities are no more in his possession, he is not in a position to say to the creditors: 'Take payment out of the medium and worst properties, as I have no interest in availing myself of the Rabbinic enactment.'[10] But what is the law when the vendee disposed of the best quality and retained the medium and the worst? — Abaye at first was inclined to say: Creditors of all descriptions are entitled to come and collect out of the best.[11] But Raba said to him.[12] Does not a vendee selling [property] to a sub-vendee assign to him all the rights [connected] therewith] that may accrue to him?[13] Hence just as when the creditors come to claim from the vendee, he is entitled to pay them out of the medium and the worst [respectively], irrespective of the fact that when the medium and the worst qualities were purchased by him, the best property still remained free with the original vendor, and in spite of the enactment that properties disposed of cannot be distrained on [at the hands of the vendee] so long as there is available [with the debtor] property undisposed of,[14] the reason of the exception being that the vendee is entitled to say that he has no interest in availing himself of this enactment, so is the subvendee similarly entitled to say to the creditors: 'Take payment out of the medium and the worst.'[15] For the sub-vendee

entered into the sale only upon the understanding that any right that his vendor may possess in connection with the purchase should also be assigned to him.

Raba said:[16] If Reuben disposed of all his lands to Simeon who in his turn sold one of the fields to Levi, Reuben's creditor may come and collect out of the land which is in the possession either of Simeon or Levi. This law applies only when Levi bought medium quality; but if he purchased either the best or the worst the law is otherwise, as Levi may lawfully contend: 'I have purposely been careful to buy the best or the worst, that is, property which is not available for you.'[17] Again, even when he bought medium quality the creditor will not have this option unless Levi did not leave [with Simeon] medium quality of a similar nature,in which case he is unable to plead, 'l have left for you ample land with Simeon;' but if Levi did leave with Simeon medium quality of a similar nature the creditor is not entitled to distrain on Levi who may lawfully contend, 'I have left for you ample land [with Simeon] to satisfy your claim from it.

Abaye said:[18] If Reuben had disposed of a field to Simeon with a warranty [of indemnity],[19] and an alleged creditor of Reuben came to distrain on it from Simeon, Reuben is entitled by law to come forward and litigate with the creditor, nor can the latter say to him: 'You [Reuben] are no party to me;'[20] for Reuben will surely say to him: 'If you will deprive Simeon of the field purchased by him from me, he will turn on me.'[21] There are some who say: Even if there were no warranty there the same law applies, as Reuben may say to the alleged creditor: 'I don't want Simeon to have any grievance against me.'

And Abaye further said:[22] If Reuben sold a field to Simeon without a warranty [for indemnity]

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(1) I.e., they also should thus not he paid out of the best; like creditors for loans they would still he paid out of the medium quality, as the worst quality they could never lose.

(2) I.e., when no land was left in the inherited estate.

(3) For even by transferring the worst quality to the heirs he would not escape any liability affecting him.

(4) Since the liability upon him will thereby not be affected, why then should they, in such circumstances, not resort to the very best property purchased?

(5) Git. V, 1.

(6) Keth. 83a.

(7) Maintenance is a Rabbinical enactment for married women in exchange for their domestic work; cf. Keth. 47b.

(8) Keth. 58b.

(9) Who at successive sales purchased the whole estate of a debtor, and the last purchase was property of the best quality.

(10) As supra p. 31.

(11) At the hands of the sub-vendee, since nothing else of the same estate is with him to be offered to the creditors

(12) Cf. 'Ar. 31b.

(13) I.e., the vendee.

(14) Git. V, 1.

(15) At the hands of the vendee.

(16) Cf. Keth. 92b.

(17) Cf. supra p. 29.

(18) Cf. Keth. 92b and B.M. 14a.

(19) In case it is distrained on by the vendor's creditors.

(20) For he who has no personal interest in a litigation can be no pleader in it; cf. infra 70a.

(21) To be indemnified for the warranty.

(22) Keth. 92b-93a.

and there appeared claimants [questioning the vendor's title], so long as Simeon had not yet taken possession of it he might withdraw; but after he had taken possession of it he could no longer withdraw. What is the reason for that? — Because the vendor may say to him: 'You have agreed to accept a bag tied up with knots.'[1] From what moment [in this case] is possession considered to be taken? — From the moment he sets his foot upon the landmarks [of the purchased field]. This applies only to a purchase without a warranty. But if there is a warranty the law is otherwise. Some, however, say: Even if there is a warranty the same law applies, as the vendor may still say to him: 'Produce the distress warrant[2] against you and I will indemnify you.'

R. Huna said: [The payment for damages is] either with money or with the best of the estate.[3] R. Nahman objected to R. Huna [from the Baraitha]: He should return[4] shows that payment in kind is included, even with bran?[5] — This deals with a case where nothing else is available. If nothing else is available, is it not obvious? — You might have thought that we tell him to go and take the trouble to sell [the bran] and tender the plaintiff ready money. It is therefore made known to us [that this is not the case.].

R. Assi said: Money is on a par with land. What is the legal bearing of this remark? If to tell us what is best, is this not practically what R. Huna said?[6] It may, however, refer to two heirs[7] who divided an inheritance, one taking the land and the other the money. If then a creditor[8] came and distrained on the land, the aggrieved heir could come forward and share the money with his brother. But is this not self-evident? Is the one a son [to the deceased] and the other one not a son? There are some who argue [quite the reverse]: The one brother may say to the other, 'I have taken the money on the understanding that if it be stolen I should not be reimbursed by you, and you also took the land on the understanding that if it be distrained on there should be no restitution to you out of anything belonging to me.' It[9] will therefore refer to two heirs[7] who divided lands among themselves after which a creditor[8] came along and distrained on the portion of one of them.[10] But has not R. Assi already once enunciated this law? For it was stated;[11] [In the case of] heirs who divided [the land of the inheritance among themselves], if a creditor[8] came along and distrained on the portion of one of them, Rab said: The original apportionment becomes null and void. Samuel said: The portion is waived; but R. Assi said: The portion is refunded by a quarter in land or by a quarter in money.[12] Rab, who said that the partition becomes null and void, maintains that heirs, even after having shared, remain[13] co-heirs;[14] Samuel, who said that the portion is waived, maintains that heirs, after having shared, stand to each other in the relationship of vendees, each being in the position of a purchaser without a warranty [of indemnity];[15] R. Assi, who said that the portion is refunded by a quarter in land or by a quarter in money, is in doubt as to whether heirs, after having shared, still remain co-heirs[16] or stand in the relationship of vendees;[15] and on account of that [doubt] there must be refunded a quarter in land or a quarter in money.[17] What then is the meaning of 'Money is on a par with land'?[18] — In respect of being counted as 'best'. But if so, is not this practically what R. Huna said? — Read 'And so also said R. Assi . . .'

R. Zera said on behalf of R. Huna: For [the performance of] a commandment one should go up to a third. A third of what?

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(1) I.e., you bought it at your own risk; the sale is thus the passing not of ownership but of possession.

(2) **טירפא**, document conferring the right of seizure of a debtor's property sold after the loan (Jast.).

(3) R. Huna refers either to the last clause of the Mishnah on p. 1 or to the problem raised by Abaye on p. 24.

(4) Ex. XXI, 34.

(5) Cf. supra p. 24.

(6) The text should thus run, 'And so also said R. Assi . . .'

(7) Lit. 'brothers'.

(8) Of the deceased.

(9) I.e., R. Assi's statement.

(10) [In which case R. Assi stated that the other can offer in refundment either money or land.]
(11) B.B. 107a.
(12) Cf. Bek. 48a.
(13) In this respect.
(14) So that all of them have to share the burden of the debt and if the portion of the one was distrained on, the portion of the other constitutes the whole inheritance which has equally to he distributed accordingly.
(15) Who cannot thus be reimbursed for the distress effected upon the portion assigned to any one of them.
(16) V. p. 34. n. 11.
(17) On the principle that in such and similar matters the two parties should equally have the benefit of the doubt (Rashi, according to one interpretation).
(18) Stated above by R. Assi.

Talmud - Mas. Baba Kama 9b

You could hardly suggest 'a third of one's possessions,' for if so when one chanced to have three commandments [to perform at one and the same time] would one have to give up the whole of one's possessions? — R. Zera therefore said: For [performing a commandment in] an exemplary manner one should go up to a third of [the ordinary expense involved in] the observance thereof.

R. Ashi queried: Is it a third from within [the ordinary expense][1] or is it a third from the aggregate amount?[2] This stands undecided.

In the West[3] they said in the name of R. Zera: Up to a third, a man must perform it out of his own,[4] but from a third onwards he should perform it in accordance with the special portion the Holy One, blessed be He, has bestowed upon him.[5] MISHNAH. WHENEVER I AM UNDER AN OBLIGATION OF CONTROLLING [ANYTHING IN MY POSSESSION], I AM CONSIDERED TO HAVE PERPETRATED ANY DAMAGE THAT MAY RESULT.[6] WHEN I AM TO BLAME FOR A PART OF THE DAMAGE I AM LIABLE TO COMPENSATE FOR THE DAMAGE AS IF I HAD PERPETRATED THE WHOLE OF THE DAMAGE.

THE [DAMAGED] PROPERTY MUST BE OF A KIND TO WHICH THE LAW OF SACRILEGE[7] HAS NO APPLICATION. THE [DAMAGED] PROPERTY SHOULD BELONG TO PERSONS WHO ARE UNDER [THE JURISDICTION OF] THE LAW.[8] THE PROPERTY SHOULD BE OWNED. THE PLACE [OF THE DAMAGE] IS IMMATERIAL, WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT OR PREMISES OWNED [JOINTLY] BY THE PLAINTIFF AND THE DEFENDANT. WHENEVER DAMAGE HAS OCCURRED, THE OFFENDER IS LIABLE TO INDEMNIFY WITH THE BEST OF HIS ESTATE.

GEMARA. Our Rabbis taught: 'WHENEVER I AM UNDER AN OBLIGATION OF CONTROLLING [ANYTHING IN MY POSSESSION], I AM CONSIDERED TO HAVE PERPETRATED ANY DAMAGE [THAT MAY RESULT]. How is that? When an ox or pit which was left with a deaf-mute, an insane person or a minor, does damage, the owner is liable to indemnify. This, however, is not so with a fire.' With what kind of case are we here dealing? If you say that the ox was chained and the pit covered, which corresponds in the case of fire to a hot coal, what difference is there between the one and the other? If on the other hand the ox was loose and the pit uncovered which corresponds in the case of fire to a flame, the statement 'This, however, is not so with a fire,' would here indicate exemption, but surely Resh Lakish said in the name of Hezekiah: They[9] have not laid down the law of exemption unless there was handed over to him[10] a coal which he has blown up, but in the case of a flame there will be full liability, the reason being that the danger is clear![11] — Still, the ox may have been chained and the pit covered and the fire likewise in a coal, yet your contention, 'Why should we make a difference between the one and the other?'

could be answered thus: An ox is in the habit of loosening itself; so also a pit is in the nature of getting uncovered; but a hot coal, the longer you leave it alone, the more it will get cooler and cooler. According to R. Johanan, however, who said[11] that even when there has been handed over to him[10] a flame the law of exemption applies, the ox here would likewise be loose and the pit uncovered; but why should we make a difference between the one and the other? — There, in the case of the fire, it is the handling of the deaf-mute that causes the damage, whereas here, in the case of the ox and the pit, it is not the handling of the deaf-mute that causes the damage.

Our Rabbis taught: There is an excess in [the liability for] Ox over [that for] Pit, and there is [on the other hand] an excess in [the liability for] Pit over [that for] Ox. The excess in [the liability for] Ox over [that for] Pit is that Ox involves payment of kofer[12] and the liability of thirty [shekels] for the killing of a slave;[13] when judgment [for manslaughter] is entered [against Ox] it becomes vitiated for any use,[14] and it is in its habit to move about and do damage, whereas all this is not so in the case of Pit. The excess in [the liability for] Pit over [that for] Ox is that Pit is from its very inception a source of injury and is Mu'ad ab initio which is not so in the case of Ox.[15]

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(1) I.e., 33-1/3 per cent. of the cost of ordinary performance, the cost of the ordinary performance and that of the exemplary performance would thus stand to each other as 3 to 4.

(2) I.e., 50 per cent. of the cost of the ordinary performance; the cost of the ordinary performance and that of the exemplary performance would thus stand to each other as 2 to 3.

(3) Palestine.

(4) I.e., whether he possesses much or little.

(5) Cf. Shittah Mekubezeth and Nimmuke Joseph a.l. According to Rashi and Tosaf. a.l.: 'The cost up to a third remains man's loss in this world (as the reward for that will he paid only in the world to come); but the cost from a third onwards (if any) will he refunded by the Holy One, blessed be He, in man's lifetime.'

(6) From neglecting the obligation to control.

(7) Of consecrated things. cf. Lev. V, 15-16.

(8) Lit., 'sons of the Covenant', excluding heathens who do not respect the covenant of the law; v. infra p. 211, n. 6.

(9) I.e., the Rabbis of the Mishnah, v. infra 59b.

(10) I.e., to a deaf-mute, an insane person or a minor.

(11) Infra 59b.

(12) Cf. Ex. XXI, 29-30; v. Glos.

(13) Ibid. XXI, 32.

(14) V. infra p. 255.

(15) Cf. supra p. 3, nn. 6-7.

Talmud - Mas. Baba Kama 10a

There is an excess in [the liability for] Ox over [that for] Fire and there is [on the other hand] an excess in [the liability for] Fire over [that for] Ox. The excess in [the liability for] Ox over [that for] Fire is that Ox involves payment of kofer and the liability of thirty [shekels] for the killing of a slave; when judgment [for manslaughter] is entered against Ox it becomes vitiated for any use;[1] if the owner handed it over to the care of a deaf-mute, an insane person or a minor he is still responsible [for any damage that may result];[2] whereas all this is not so in the case of Fire. The excess in [the liability for] Fire over [that for] Ox is that Fire is Mu'ad ab initio which is not so in the case of Ox.

There is an excess in [the liability for] Fire over [that for] Pit, and there is [on the other hand] an excess in [the liability for] Pit over [that for] Fire. The excess in [the liability for] Pit over [that for] Fire is that Pit is from its very inception a source of injury; if its owner handed it over to the care of a deaf-mute, an insane person or a minor, he is still responsible [for any damage that may result],[2] whereas all this is not so in the case of Fire. The excess in [the liability for] Fire over [that for] Pit is that the nature of Fire is to spread and do damage and it is apt to consume both things fit for it and

things unfit for it, whereas all this is not so in the case of Pit.

Why not include in the excess of [liability for] Ox over [that for] Pit [the fact] that Ox is [also] liable for damage done to inanimate objects[3] which is not so in the case of Pit?[4] — The above [Baraitha] is in accordance with R. Judah who enjoins payment for damage to inanimate objects [also] in the case of Pit.[5] If it is in accordance with R. Judah, look at the concluding clause, 'The excess in [the liability for] Fire over [that for] Pit is that the nature of Fire is to spread and do damage, and it is apt to consume both things fit for it and things unfit for it; whereas all this is not so in the case of Pit.' 'Things fit for it:' are they not 'of wood'? 'Things unfit for it: are they not 'utensils'?[6] Now 'all this is not so in the case of Pit'. But if the statement is in accordance with R. Judah, did you not say that R. Judah enjoins payment for damage to inanimate objects [also] in the case of Pit? The Baraitha is, therefore, indeed in accordance with the Rabbis, but it mentions [some points] and omits [others].[7] What else does it omit that it omits that [particular] point?[8] — It also omits the law of hidden goods.[9] On the other hand you may also say that the Baraitha can still be reconciled with R. Judah, for 'things unfit for it' do not include utensils,[10] but do include [damage done by fire] lapping his neighbour's ploughed field and grazing his stones.[11]

R. Ashi demurred: Why not include, in the excess of liability for Ox Over [that for] Pit, [the fact] that Ox is [also] liable for damage done to consecrated animals that have become unfit [for the altar],[12] whereas this is not so in the case of Pit?[13] No difficulty arises if you assume that the Baraitha is in accordance with the Rabbis; just as it had omitted that point,[14] it omitted this point too. But if you maintain that the Baraitha is in accordance with R. Judah, what else did it omit that it omits this [one] point?-It omitted [Ox] trampling upon newly broken land.[15] [No! this is no argument,] for as to [Ox] trampling upon newly broken land there is no omission there, for this [is included in that which] has already been stated, 'It is in its habit to move about and do damage.'[16]

WHEN I HAVE PERPETRATED A PART OF THE DAMAGE. Our Rabbis taught: 'When I have perpetrated a part of the damage I become liable for the compensation for the damage as if I had perpetrated the whole of the damage. How is that? If one had dug a Pit nine handbreadths deep and another came along and completed it to a depth of ten handbreadths, the latter person is liable.' Now this ruling is not in accordance with Rabbi; for it was taught:[17] If one had dug a pit nine handbreadths deep and another came along and completed it to a depth of ten handbreadths, the latter person is liable. Rabbi says: The latter person is liable in cases of death,[18] but both of them in cases of injury![19] — R. Papa said: The Mishnaic ruling[20] deals with cases of death and is unanimous.[21] Some read: May we say that the Mishnah is not in accordance with Rabba? — R. Papa thereupon said: It deals with cases of death and is unanimous.

R. Zera demurred: Are there no other instances?[22] Behold there is [the case] where an ox was handed over to the care of five persons and one of them was careless, so that the ox did damage; that one is liable! — But in what circumstances? If without the care of that one, the ox could not be controlled, is it not obvious that it is that one who perpetrated the whole of the damage?[23] If, [on the other hand] even without the care of that one, the ox could be controlled, what, if anything at all, has that one perpetrated?

R. Shesheth, however, demurred: Behold there is [the case] where a man adds a bundle [of dry twigs to an existing fire]! — But in what circumstances?

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(1) V. p. 37, n. 6.

(2) Cf. supra p. 36.

(3) Lit., 'utensils'.

(4) Cf. supra pp. 17 and 18.

(5) V. supra p. 18 and infra 53b.

(6) Metal or earthenware.
(7) Such as the distinction between Ox and Pit with reference to inanimate objects
(8) As a Tanna would not, in enumeration, just stop short at one point.
(9) For damage to which, according to the Rabbis, there is no liability in the case of Fire; cf. supra p. 18 and infra 61b.
(10) V. p. 38, n. 6.
(11) V. supra p. 18.
(12) On account of a blemish, cf, Lev. XXII, 20 and Deut. XV, 21-22; such animals have to be redeemed, in accordance with Lev. XXVII, 11-13 and 27.
(13) Cf. infra 53b.
(14) I.e., with reference to inanimate objects.
(15) Which is impossible in the case of Pit.
(16) And therefore, if the Baraitha were in accordance with R. Judah, the question, 'What else did it omit etc.', would remain unanswered.
(17) Cf. Tosaf, B.K. VI, 3 and infra 51a.
(18) As without the additional handbreadth done by him the pit would have been nine handbreadths deep which could not occasion any fatal accident; cf, supra p. 7.
(19) For even a pit nine handbreadths deep could occasion injuries.
(20) Which declares the latter person 'who perpetrated part of the damage' liable.
(21) I.e., is even in accordance with Rabbi.
(22) To illustrate the perpetration of a part of the damage involving liability for the whole of the damage.
(23) And not a part of it.

Talmud - Mas. Baba Kama 10b

If without his co-operation the fire would not have spread, is it not obvious [that he is totally to blame]? If [on the other hand] even without his co-operation the fire would have spread, what, if anything at all, has he perpetrated?

R. Papa demurred: Behold there is that case which is taught: 'Five persons were sitting upon one bench and did not break it; when, however, there came along one person more and sat upon it, it broke down; the latter is liable' — supposing him, added R. Papa, to have been as stout as Papa b. Abba.[1] But under what circumstances? If without him the bench would not have broken, is it not obvious [that he is totally to blame]? If, on the other hand, without him it would also have broken, what, if anything at all, has he perpetrated? Be this as it may, how can the Baraitha be justified? — It could hold good when, without the newcomer, the bench would have broken after two hours, whereas now it broke in one hour. They[2] therefore can say to him: 'If not for you we would have remained sitting a little while longer and would then have got up.'[3] But why should he not say to them: 'Had you not been [sitting] there, through me the bench would not have broken'?[4] — No; it holds good when he [did not sit at all on the bench but] merely leaned upon them and the bench broke down. Is it not obvious [that he is liable]? — You might have argued '[Damage done by] a man's force is not comparable with [that done directly by] his body.'It is therefore made known to us that [a man is responsible for] his force [just as he] is [for] his body, for whenever his body breaks [anything] his force also participates in the damage.[5]

Are there no other instances? Behold there is that which is taught:[5] When ten persons beat a man with ten sticks, whether simultaneously or successively, so that he died, none of them is guilty of murder. R. Judah b. Bathyra says: If [they hit] successively, the last is liable, for he was the immediate cause of the death![6] — Cases of murder are not dealt with here.[7] You may also say that controversial cases are not dealt with.[7] Are they not? Did not we suggest that the Mishnah is not in accordance with Rabbi?[8] — That the Mishnah is not in accordance with Rabbi but in accordance with the Rabbis, we may suggest;[9] whereas that it is in accordance with R. Judah b. Bathyra, and not in accordance with the Rabbis, we are not inclined to suggest.[9]

I AM LIABLE TO COMPENSATE FOR THE DAMAGE. ‘I become liable for the replacement of the damage’ is not stated but ‘. . . TO COMPENSATE FOR THE DAMAGE’. We have thus learnt here that which the Rabbis taught elsewhere:[10] ‘“To compensate for damage" imports that the owners [plaintiffs] have to retain the carcass as part payment’. What is the authority for this ruling? — R. Ammi said: Scripture states, He that killeth a beast yeshallemennah [shall make it good];[11] do not read yeshallemennah [‘he shall pay for it’], but yashlimennah[12] [‘He shall complete its deficiency’]. R.Kahana infers it from the following: If it be torn in pieces, let him bring compensation up to [‘ad][13] the value of the carcass,’ he shall not make good that which was torn.[14] ‘Up to’ the value of the carcass[15] he must pay, but for the carcass itself he has not to pay. Hezekiah infers it from the following: And the dead shall be his own,[16] which refers to the plaintiff. It has similarly been taught in the school of Hezekiah: And the dead shall be his own,[16] refers to the plaintiff. You say ‘the plaintiff’. Why not the defendant? You may safely assert: ‘This is not the case.’ Why is this not the case? — Abaye said: If you assume that the carcass must remain with the defendant, why did not the Divine law, stating He shall surely pay ox for ox,[17] stop at that? Why write at all And the dead shall be his own?[18] This shows that it refers to the plaintiff.

And all the quotations serve each its specific purpose. For if the Divine Law had laid down [this ruling only in] the verse ‘He that killeth a beast shall make it good,’ the reason of the ruling would have been assigned to the infrequency of the occurrence,[19] whereas in the case of an animal torn in pieces [by wild beasts]’[20] which is [comparatively] of frequent occurrence, the opposite view might have been held;[21] hence special reference is essential.[20] If [on the other hand] this ruling had been made known to us only in the case of an animal torn in pieces.[22] it would have been explained by the fact that the damage there was done by an indirect agency,[23] whereas in the case of a man killing a beast, where the damage was done by a direct agency, the opposite view might have been held. Again, were this ruling intimated in both cases, it would have been explained in the one case on account of its infrequency,[24] and in the other account of the indirect agency,[25] whereas in the damage to which ‘And the dead shall be his own’[26] refers, which is both frequent and direct,[27] an opposite view might have been taken. If [on the other hand] this ruling had been intimated only in the case referred to by ‘And the dead shall be his own, it would have been explained by the fact of the damage having been done only by man's possession,[28] whereas in cases where the damage resulted from man's person[29] an opposite view might have been taken. Hence all quotations are essential.

R.Kahana said to Rab: The reason [for the ruling] is that the Divine Law says ‘And the dead shall be his own’, and but for this I might have thought that the carcass shall remain with the defendant [yet how can this be]? If, when there are with him[30] several carcasses he is entitled to pay him[31] with them, for the Master stated: He shall return,[32] includes payment in kind, even with bran,[33] what question then about the carcass of his own animal? — No, the verse is required only for the law regarding the decrease of the value of the carcass[34]

May we say that the decrease of the value of the carcass is a point at issue between Tannaitic authorities? For it has been taught: If it be torn in pieces, let him bring it for witness:[35]

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(1) Who was very corpulent, cf. B.M. 84a. [According to Zacuto's Sefer ha-Yuhasin, the reference there is not to R. Papa but to Papa b. Abba]

(2) I.e., the five persons that had previously been sitting upon the bench.

(3) Therefore he is to he regarded as having perpetrated the whole, and not merely a part, of the damage.

(4) And why should he alone be liable?

(5) V. infra pp. 79-80.

(6) Sanh. 78a and infra p. 139. [Why then was this ruling of R. Judah not taken as a further illustration of the Mishnaic principle?]

(7) In the Mishnah before us (which presents the law of civil action and not that of murder).
(8) Cf. supra p. 39.
(9) As it is the view of the majority that prevails; Ex. XXIII, 2.
(10) Tosef. B.K. I. 1.
(11) ישלמנה Lev. XXIV, 18.
(12) Changing the vowels of the Hebrew verb; ישלמנה into ישלימנה
(13) Similarly by changing the vowel; the monosyllable עד (witness) is read עד 'up to'.
(14) Ex. XXII, 12.
(15) I.e., the amount required to make up the deficiency.
(16) Ex. XXI, 36.
(17) Ex. XXI, 36.
(18) Ibid; since it is self-evident that the defendant, having paid for the ox, claims the carcass.
(19) For a man to kill a beast with intent to cause damage to his neighbour.
(20) Ex. XXII, 12.
(21) In the interest of the plaintiff.
(22) V. p. 42, n. 11.
(23) I.e., not by the bailee himself but by a wild beast.
(24) I.e., man killing an animal.
(25) I.e., when the animal in charge was torn by beasts.
(26) I.e.,in the case of a goring ox, Ex. XXI, 36.
(27) The ox being his property, makes the owner responsible for the damage as if it were perpetrated by himself,
(28) I.e., by his cattle.
(29) Such as in Lev. XXIV, 18 and Ex. XXII, 12.
(30) I.e.,with the defendant.
(31) I.e., the plaintiff.
(32) EX.XXI, 34.
(33) Cf. supra p. 24.
(34) That is to he sustained by the plaintiff, since it becomes his from the moment of the goring.
(35) Ex.XXII, 12.

Talmud - Mas. Baba Kama 11a

Let him[1] bring witnesses that it had been torn by sheer accident and free himself. Abba Saul says: Let him[2] [in all cases] bring the torn animal[3] to the Court. Now is not the following the point at issue: The latter maintains that a decrease in value of the carcass will be sustained by the plaintiff,[4] whereas the former view takes it to be sustained by the defendant? — No, it is unanimously held that the decrease will be sustained by the plaintiff. Here, however, the trouble of [providing[5] for bringing up] the carcass [from the pit] is the point at issue,[6] as [indeed] taught: Others say, Whence [could it be derived] that it is upon the owner of the pit to bring up the [damaged] ox from his pit? We derive it from the text, 'Money shall he return unto to the owner. And the dead beast'. . .[7] Abaye said to Raba: What does this trouble about the carcass mean? If the value of the carcass in the pit is one zuz,[8] whereas on the banks[9] its value will be four [zuz], is he not taking the trouble [of bringing up the carcass] solely in his own interests? — He [Raba], however, said: No, it applies when in the pit its value is one zuz, and on the banks its value is similarly one zuz. But is such a thing possible? Yes, as the popular adage has it, 'A beam in town costs a zuz and a beam in a field costs a zuz'.

Samuel said: No assessment is made in theft and robbery[10] but in cases of damage;[11] I, however, maintain that the same applies to borrowing,[12] and Abba[13] agrees with me. It was therefore asked: Did he mean to say that 'to borrowing the law of assessment does apply and Abba agrees with me,' Or did he perhaps mean to say that 'to borrowing the law of assessment does not apply and Abba agrees with me'? — Come and hear: A certain person borrowed an axe from his neighbour and broke it. He came before Rab, who said to him, 'Go and pay [the lender] for his sound axe.'[14] Now,

can you not prove hence[15] that [the law of] assessment does not apply [to borrowing]?[16] — On the contrary, for since R. Kahana and R. Assi [interposed and] said to Rab, 'Is this really the law?' and no reply followed, we can conclude that assessment is made. It has been stated: 'Ulla said on behalf of R. Eleazar: Assessment is [also] made in case of theft and robbery; but R. Papi said that no assessment is made [in these cases]. The law is: No assessment is made in theft and robbery, but assessment is made in cases of borrowing, in accordance with R. Kahana and R. Assi.

'Ulla further said on behalf of R. Eleazar: When a placenta comes out [from a woman] partly on one day and partly on the next day, the counting of the days of impurity[17] commences with the first day [of the emergence]. Raba, however, said to him: What is in your mind? To take the stricter course? Is not this a strictness that will lead to lenience, since you will have to declare her pure[18] by reckoning from the first day? Raba therefore said: 'Out of mere apprehension, notice is taken of the first day [to be considered impure], but actual counting commences only with the second day.' What is the new point made known to us? That even a part of an [emerging] placenta contains a fetus. But have we not learnt this elsewhere:[19] 'A placenta coming partly out of an animal[20] renders [the whole of] it unfit for consumption,[21] as that, which is a sign of a fetus in humankind is similarly a sign of a fetus in an animal'? — As to this Mishnaic statement I might still have argued

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(1) I.e.,the paid bailee who is defending himself against the depositor.

(2) V. p 43 n. 15.

(3) [עד :עדודה being an unaugmented passive participle from the root דדע, v. Halpern, B. ZAW, XXX, p. 57.]

(4) I.e., when the deposited animal has been torn not by accident, in which case the paid bailee has to indemnify. The torn animal is thus brought at once to the Court to ascertain its value at the time of the mishap.

(5) I.e , the expenses involved.

(6) Abba Saul maintains that the defendant has to do it, whereas the other view releases him from this.

(7) Ex. XXI, 34; the subject of the last clause is thus joined to the former sentence as a second object.

(8) A coin; V. Glos.

(9) Of the pit.

(10) In which case payment must b e made in full for the original value of the damaged article.

(11) Where the carcass may he returned to the plaintiff.

(12) Treated in Ex. XXII, 13.

(13) [I.e., Rab whose full name was Abba].

(14) B.M. 96b.

(15) When the value of the broken axe vas not taken into account, but full payment for the axe in its original condition was ordered.

(16) Since Rab ordered the borrower to pay in full for the original value of the axe.

(17) Which are seven for a male child and fourteen for a girl; cf. Lev. XII. 2 and 5.

(18) I.e., after the expiration of the 7 or 14 days for a male or female child respectively, when there commence 33 or 66 days of purity for a boy or girl respectively; cf. Lev. ibid. 4-5.

(19) Hul. 68a.

(20) Before the animal was slaughtered.

(21) As it is considered to contain a fetus which when born is subject to the law of slaughtering on its own accord.

that it is quite possible for a part of a placenta to emerge without a fetus, but that owing to a [Rabbinic] decree a part of a placenta is in practice treated like the whole of it;[1] it is therefore made known to us[2] that this is not the case.

'Ulla further said on behalf of R. Eleazar: A first-born son who has been killed within thirty days [of his birth] need not be redeemed.[3] The same has been taught by Rami b. Hama: From the verse, Shalt thou surely redeem[4] one might infer that this would apply even when the firstborn was killed

within thirty days [of his birth]; there is therefore inserted the term 'but'[5] to exclude it.

'Ulla further said on behalf of R. Eleazar: [Title to] large cattle is acquired by 'pulling'.[6] But did we not learn, . . . by 'delivery'?[7] — He[8] follows another Tanna; for it has been taught:[9] The Rabbis say: Both one and the other[10] [are acquired] by 'pulling'. R. Simeon says: Both one and the other by 'lifting up'.

'Ulla further said on behalf of R. Eleazar: In the case of heirs[11] who are about to divide the estate among themselves, whatever is worn by them will [also] be assessed [and taken into account], but that which is worn by their sons and daughters is not assessed [and not taken into account].[12] R. Papa said: There are circumstances when even that which is worn by the heirs themselves is not assessed. This exception applies to the eldest of the heirs,[13] as it is in the interest of them all that his words should be respected.

'Ulla further said on behalf of R. Eleazar: One bailee handing over his charge to another bailee does not incur thereby any liability.[14] This ruling unquestionably applies to an unpaid bailee handing over his charge to a paid bailee in which case there is a definite improvement in the care; but even when a paid bailee hands over his charge to an unpaid bailee where there is definitely a decrease in the care, still he thereby incurs no liability, since he transfers his charge to a responsible person.

Raba, however, said: One bailee handing over his charge to another bailee becomes liable for all consequences. This ruling unquestionably holds good in the case of a paid bailee handing over his charge to an unpaid bailee where there is a definite decrease in the care; but even when an unpaid bailee hands over his charge to a paid bailee, where there is definitely an improvement in the care, still he becomes liable for all consequences, as the depositor may say [to the original bailee]: You would be trusted by me [should occasion demand] an oath [from you], but your substitute would not be trusted by me in the oath [which he may be required to take].[15]

'Ulla further said on behalf of R. Eleazar: The law is that distraint may be made on slaves.[16] Said R. Nahman to 'Ulla: Did R. Eleazar apply this statement even in the case of heirs[17] [of the debtor]? — No, Only to the debtor himself. To the debtor himself? Could not a debt be collected even from the cloak upon his shoulder?[18] — We are dealing here with a case where a slave was mortgaged,[19] as in the case stated by Raba, for Raba said:[20] Where a debtor mortgaged his slave and then sold him [to another person], the creditor may distrain on him [in the hands of the purchaser]. But where an ox was mortgaged and afterwards sold, the creditor cannot distrain on it [in the hands of the purchaser], the reason [for the distinction] being that in the former case the transaction of the mortgage aroused public interest[21] whereas in the latter case no public interest was aroused.[22]

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(1) On account of mere apprehension, lest no distinction will he made between the emergence of the whole of the placenta and a part of it.

(2) In the statement of 'Ulla on behalf of R. Eleazar,

(3) Notwithstanding Num. XVIII, 15-16.

(4) Ibid. 15.

(5) Hebrew 'Ak אך being a particle of limitation.

(6) I.e., by the buyer; v, Glos. s.v. Meshikah.

(7) l.e., by the seller handing over the bit to the buyer; Kid. 25b.

(8) I.e., 'Ulla on behalf of R. Eleazar.

(9) Cf. Kid. 25b and B.B. 86b.

(10) I.e. Large and small cattle.

(11) Lit., 'brothers'.

(12) As it would be a degradation to them to be forced to appear before the court.

(13) In charge of the administration of the affairs of the heirs.

(14) Cf.B.M. 36a.
(15) The original bailee has thus committed a breach of the trust.
(16) Cf. B.B. 128a.
(17) Who inherited the slaves; v. supra p. 31.
(18) Why then speak about slaves?
(19) By the debtor who had meanwhile died.
(20) Infra 33b and B.B. 44b.
(21) So that the purchaser was no doubt aware of it and should consequently not have bought it.
(22) So that the purchaser is not to blame.

Talmud - Mas. Baba Kama 12a

After R. Nahman went out 'Ulla said to the audience: 'The statement made by R. Eleazar refers even to the case of heirs.' R. Nahman said: 'Ulla escaped my criticism'. A case of this kind arose in Nehardea and the judges of Nehardea[1] distrained [on slaves in the hands of heirs]. A further case took place in Pumbeditha and R. Hana b. Bizna distrained [on slaves in the hands of heirs]. But R. Nahman said to them: 'Go and withdraw [your judgments], otherwise I will distrain on your own homes [to reimburse the aggrieved heirs].'[2] Raba, however, said to R. Nahman: 'There is 'Ulla, there is R. Eleazar, there are the judges of Nehardea and there is R. Hana b. Bizna [who are all joining issue with you]; what authorities is the Master following?' — He said to him:[3] 'I know of a Baraitha, for Abimi learned: "A prosbul[4] is effective only when there is realty[5] [belonging to the debtor] but not when he possesses slaves[6] only. Personalty is transferred along with realty[7] but not along with slaves."'[6]

May we not say that this problem is a point at issue between the following Tannaim? [For it was taught:] 'Where slaves and lands are sold, if possession is taken of the slaves no title is thereby acquired to the land, and similarly by taking possession of the lands no title is acquired to the slaves. In the case of lands and chattels, if possession is taken of the lands title is also acquired to the chattels,[7] but by taking possession of the chattels no title is acquired to the lands. In the case of slaves and chattels, if possession is taken of the slaves no title is thereby acquired to the chattels,[8] and similarly by taking possession of the chattels no title is acquired to the slaves. But [elsewhere] it has been taught: 'If possession is taken of the slaves the title is thereby acquired to the chattels.'[9] Now, is not this problem the point at issue: the latter Baraitha[9] maintains that slaves are considered realty [in the eye of the law], whereas the former Baraitha[10] is of the opinion that slaves are considered personalty? — R. Ika the son of R. Ammi, however, said: [Generally speaking] all [authorities] agree that slaves are considered realty. The [latter] Baraitha stating that the transfer [of the chattels] is effective, is certainly in agreement; the [former] Baraitha stating that the transfer [of the chattels] is ineffective, may maintain that the realty we require is such as shall resemble the fortified cities of Judah in being immovable. For we have learnt: 'Property which is not realty may be acquired incidentally with property which is realty[11] through the medium of either [purchase] money, bill of sale or taking possession.' [And it has been asked:][12] What is the authority for this ruling? And Hezekiah thereupon said: Scripture states, And their father gave them great gifts of silver and of gold and of precious things with fortified cities in Judah.[13] [Alternatively] there are some who report: R. Ika the son of R. Ammi said: [Generally speaking] all [authorities] agree that slaves are considered personalty. The [former] Baraitha stating that the transfer [of the chattels] is ineffective is certainly in agreement; the [latter] Baraitha stating that the transfer of the chattels is effective deals with the case when the chattels [sold] were worn by the slave.[14] But even if they were worn by him, what does it matter? He is but property[15] in motion, and property in motion cannot be the means of conveying anything it carries. Moreover, even if you argue that the slave was then stationary, did not Raba say that whatsoever cannot be the means of conveying while in motion cannot be the means of conveying even while in the state of standing or sitting?[16] — This law applies to the case where the slave was put in stocks. But behold has it not been taught: 'If

possession is taken of the land, title is thereby acquired also to the slaves'?[17] — There the slaves were gathered on the land.[18] This implies that the Baraitha which stated that the transfer of the slaves is ineffective,[19] deals with a case where the slaves were not gathered on the land. That is all very well according to the version that R. Ika the son of R. Ammi said that slaves are considered personalty; there is thus the stipulation that if they were gathered on the land, the transfer is effective, otherwise ineffective. But according to the version which reads that slaves are considered realty, why the stipulation that the slaves be gathered on the land?

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(1) Generally referring to R. Adda b. Minyomi; Sanh. 17b.

(2) As he considered them to have acted against established law, and so ultra vires; cf infra pp. 584ff. and Sanh. 33a.

(3) I.e., R. Nahman to Raba.

(4) ** i.e., an official declaration made in court by a lender to the effect that the law of limitation by the Sabbatical year shall not apply to the loans contracted by him; cf. Sheb. X. 4 and Git. 36a. V. Glos.

(5) As realty even when sold by the debtor could be distrained on in the hands of the purchasers; cf. Git. 37a.

(6) As these are considered personalty. They cannot therefore be distrained on in the hands of heirs.

(7) I.e., the acquisition of land confers title to chattels bought at the same time. Kid. 26a; v. infra, p. 49.

(8) Slaves seem thus to be not realty.

(9) In this Baraitha slaves are treated like realty.

(10) Stating that by taking possession of slaves no title is acquired to chattels.

(11) Lit, 'property which affords no surety may be acquired along with property which does afford surety' (to creditors in case of non-payment of debts); Kid 26a.

(12) Kid. 26a.

(13) II Chron. XXI,3: with עִם is taken in the sense by means of.

(14) They are therefore part and parcel of the slave.

(15) Lit., a courtyard.

(16) Git. 21a, 68a; B.M. 9b.

(17) Apparently on account of the fact that these are treated like personalty.

(18) In which case even if they are not personalty their transfer has to he valid.

(19) When only incidental to the transfer of land.

Talmud - Mas. Baba Kama 12b

Did not Samuel say that if ten fields in ten different countries are sold, as soon as possession is taken of one of them, the transfer of all of them becomes effective?[1] — But even if your reasoning be followed [that it is in accordance with the version reading that slaves are considered personalty], why again the stipulation that the slaves be gathered on the land? Has it not been established that the personalty' need not be gathered on the land? You can therefore only say that there is a distinction in law between movable personalty[2] and immovable personalty. Likewise here also [we say] there is a distinction in law between movable realty[3] and immovable realty: slaves [if realty] are movable realty whereas there [in the case of the ten fields] land is but one block.

THE [DAMAGED] PROPERTY MUST BE OF A KIND TO WHICH THE LAW OF SACRILEGE HAS NO APPLICATION etc. So long as [the penalty of] Sacrilege does not apply. Who is the Tanna [of this view]? — R. Johanan said: This is so in the case of minor sacrifices according to R. Jose the Galilean, who considers them to be private property; for it has been taught: If a soul sin and commit a trespass against the Lord and lie unto his neighbour.[4] . . this indicates also minor sacrifices,[5] as these are considered private property;[6] so R. Jose the Galilean. But, behold, we have learnt: If one betroths [a woman] by means of the priestly portion, whether of major sacrifices or of minor sacrifices, the betrothal is not valid.[7] Are we to say that this Mishnah is not in accordance with R. Jose the Galilean?[8] — You may even reconcile it with R. Jose the Galilean; for R. Jose the Galilean confines his remark to sacrifices that are still alive, whereas, in the case of sacrifices that have already been slaughtered, even R. Jose the Galilean agrees that those who are

entitled to partake of the flesh acquire this right as guests at the divine table.[9] But so long as the sacrifice is still alive, does he really maintain that it is private property? Behold, we have learnt: A firstling, if unblemished, may be sold only while alive; but if blemished [it may be sold] both while alive and when slaughtered. It may similarly be used for the betrothal of a woman.[10] And R. Nahman said on behalf of Rabbah b. Abbuha:[11] This is so only in the case of a firstling at the present time,[12] in which, on account of the fact that it is not destined to be sacrificed, the priests possess a proprietary right; but at the time when the Temple still existed, when it would have been destined to be sacrificed, the law would not have been so.[13] And Raba asked R. Nahman: [Was it not taught:] If a soul sin and commit a trespass against the Lord and lie unto his neighbour. . .;[14] this indicates also minor sacrifices, as these are considered private property;[15] this is the view of R. Jose the Galilean? And Rabina replied that the latter case[16] deals with firstlings from outside [Palestine] and is in accordance with R. Simeon, who maintains that if they were brought [to Palestine] in an unblemished condition, they will be sacrificed.[17] Now this is so only if they were brought [to Palestine, which implies that] there is no necessity to bring them there in the first instance for that specific purpose.[18] Now, if it is the fact that R. Jose the Galilean considers them private property while alive,

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(1) Kid. 27a.

(2) That is to he acquired along with realty; v. Kid. 27a.

(3) Which needs to be gathered on the land.

(4) Lev. V, 21.

(5) E.g., peace offerings, as these belong partly to the Lord and partly to the neighbour; some parts thereof are burnt on the altar but the flesh is consumed by the original owners.

(6) Pes. 90a.

(7) Kid. 52b.

(8) For according to him the flesh is private property and alienable,

(9) I.e., as merely invited without having in them any proprietary rights.

(10) M.Sh. I, 2.

(11) Tem. 7b.

(12) When no sacrifices are offered.

(13) The priests would not have had in it a proprietary right nor have been able to use it for the betrothal of a woman.

(14) Lev, V, 21.

(15) Even in Temple times, since the text requires the offender to bring a trespass offering.

(16) Where they are considered private property.

(17) Tem. III. 5.

(18) And since they need not be brought and sacrificed they are considered the private property of the priests as stated by R. Jose the Galilean.

Talmud - Mas. Baba Kama 13a

why [did Rabina] not reply that the one[1] is in accordance with R. Jose the Galilean,and the other[2] in accordance with the Rabbis?[3] — It was said in answer: How can you refer to priestly gifts? Priestly gifts are altogether different[4] as those who are entitled to them enjoy that privilege as guests at the divine table.[5]

[To refer to] the main text : If a soul sin and commit a trespass against the Lord and lie unto his neighbour:[6] this indicates also minor sacrifices; this is the view of R. Jose the Galilean. Ben ‘Azzai says that it indicates [also] peace-offerings. Abba Jose b. Dostai said that Ben ‘Azzai meant to include only the firstling.

The Master said:[6] ‘Ben Azzai says that it indicates [also] peace-offerings.’ What does he mean to exclude? It can hardly be the firstling, for if in the case of peace-offerings which are subject to the

laws of leaning,[7] libations[8] and the waving of the breast and shoulder,[9] you maintain that they are private property, what question could there be about the firstling?[10] — R. Johanan therefore said: He meant to exclude the tithe,[11] as taught: In the case of the firstling, it is stated, Thou shalt not redeem;[12] it may, however, if unblemished be sold while alive, and if blemished [it may be sold] alive or slaughtered; in the case of the tithe it is stated, It shall not be redeemed,[13] and it can be sold neither alive nor slaughtered neither when unblemished nor when blemished.[14] Rabina connected all the above discussion with the concluding clause: 'Abba Jose b. Dostai said that Ben 'Azzai meant to include only the firstling.' What does he mean to exclude? It can hardly be peace-offerings, for if the firstling which is holy from the very moment it opens the matrix,[15] is private property, what question could there be about peace-offerings?[16] — R. Johanan therefore said: He meant to exclude the tithe, as taught:[17] In regard to the firstling it is stated, Thou shalt not redeem;[18] it may, however, if unblemished be sold while alive and if blemished [it may be sold] alive or slaughtered; in regard to the tithe it is stated, It shall not be redeemed,[19] and it can be sold neither while alive nor when slaughtered, neither when unblemished nor blemished. But does he not say, 'The firstling alone'?[20] This is a difficulty indeed!

Raba [on the other hand] said: What is meant by 'THE [DAMAGED] PROPERTY MUST BE OF A KIND TO WHICH THE LAW OF SACRILEGE HAS NO APPlication' is that the property is not of a class to which the law of sacrilege may have any reference[21] but is such as is owned privately . But why does not the text say. 'Private property'? — This is a difficulty indeed!

R.Abba said: In the case of peace-offerings that did damage,[22] payment will be made[23] out of their flesh but no payment could be made out of their emurim.[24] Is it not obvious that the emurim will go up [and be burnt] on the altar? — No; we require to be told that no payment will be made out of the flesh for the proportion due from the emurim. But according to whose authority is this ruling made? If according to the Rabbis,[25] is this not obvious? Do they not maintain that when payment cannot be recovered from one party, it is not requisite to make it up from the other party? If according to R. Nathan,[26] [it is certainly otherwise] for did he not say that when no payment can be made from one party, it has to be made up from the other party? — If you wish, you may say: The ruling was made in accordance with R. Nathan; or, if you wish, you may say that it was made in accordance with the Rabbis. You may say that it was made in accordance with the Rabbis,for their ruling is confined to a case where the damage was done by two separate agencies,[27] whereas, in the case of one agency,[28] the plaintiff may be justified in demanding payment from whatever source he finds it convenient. Alternatively you may say that the ruling was made in accordance with R. Nathan, for it is only there [in the case of an ox pushing another's ox in a pit] that the owner of the damaged ox is entitled to say to the owner of the pit, 'I have found my ox in your pit; whatever is not paid to me by your co-defendant must be made up by you;'

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(1) Maintaining that a firstling is the private property of the priest.

(2) I.e., the statement of R. Nahman that a firstling is not the private property of the priest.

(3) The opponents of R. Jose the Galilean.

(4) Even R. Jose regards them in no case as the property of the priest; all the Rabbis including R. Jose are thus unanimous on this matter. Hence Rabina was unable to explain the one Baraitha in accordance with R. Jose and the other in accordance with the Rabbis.

(5) Even while the firstling is still alive.

(6) Lev. V, 21.

(7) Ibid. III, 2.

(8) Num. XV, 8-II.

(9) Lev. VII, 30-34.

(10) The sacredness of which is of a lower degree and is not subject to all these rites. Consequently it should thus certainly be considered private property. It, of course, deals with a firstling outside Palestine which is not destined to he sacrificed.

(11) Of cattle dealt with in Lev. XXVII, 32-33.
(12) Num. XVIII, 17, the text is taken not to include alienation, in which case the sanctity of the firstling is not affected.
(13) Lev XXVII, 33; in this case, on account of Gezerah Shawah. i.e. a similarity of phrases between ibid. and verse 28, the right of alienation is included; cf, Bek. 32a.
(14) Tem. 8a. Because it is not private property.
(15) Ex. XIII, 12.
(16) That they should certainly be private property.
(17) Tem. 8a.
(18) Num. XVIII, 17.
(19) Lev. XXVII, 33.
(20) Excluding thus everything else, even peace-offerings.
(21) I.e. is not holy at all.
(22) While still Tam, when the payment must be made out of the body of the doer of the damage, v. infra p. 73.
(23) According to R. Jose the Galilean who maintains, supra p. 50, that minor sacrifices are considered private property.
(24) The part which has to he burnt on the altar; cf. Lev. III, 3-4.
(25) Infra 53a. where in the case of an ox pushing somebody else's animal into a pit, the owner of the pit pays nothing, though the owner of the ox does not pay full damages.
(26) Who makes the owner of the pit also pay.
(27) I.e., the ox and the pit, v. p. 53. n. 12.
(28) Such as in the case of peace-offerings dealt with by R. Abba.

Talmud - Mas. Baba Kama 13b

but in the case in hand, could the plaintiff say, 'The flesh did the damage and the emurim did no damage'?[1]

Raba said: In the case of a thanksgiving-offering that did damage,[2] payment will be made[3] out of the flesh but no payment could be made out of its bread.[4] 'Bread'! Is this not obvious?[5] — He wanted to lead up to the concluding clause: The plaintiff partakes of the flesh,[6] while he, for whose atonement the offering is dedicated,[7] has to bring the bread. Is not this also obvious? — You might have thought that since the bread is but an accessory to the sacrifice,[4] the defendant may be entitled to say to the plaintiff. 'If you will partake of the flesh, why should I bring the bread?' It is therefore made known to us [that this is not the case, but] that the bread is an obligation upon the original owner of the sacrifice.

THE [DAMAGED] PROPERTY SHOULD BELONG TO PERSONS WHO ARE UNDER [THE JURISDICTION OF] THE LAW. What [person] is thereby meant to be excepted? If a heathen,[8] is not this explicitly stated further on: 'An ox of an Israelite that gored an ox of a heathen is not subject to the general law of liability for damage'?[9] — That which has first been taught by implication is subsequently explained explicitly.

THE PROPERTY SHOULD BE OWNED. What is thereby excepted? — Rab Judah said: It excepts the case [of alternative defendants] when the one pleads. 'It was your ox that did the damage,' and the other pleads. 'It was your ox that did the damage.' But is not this explicitly stated further on: If two oxen pursue another ox, and one of the defendants pleads. 'It was your ox that did the damage,' and the other defendant pleads, 'It was your ox that did the damage,' no liability could be attached to either of them?[10] — What is first taught by implication is subsequently explained explicitly. In a Baraitha it has been taught: The exception refers to ownerless property.[11] But in what circumstances? It can hardly be where an owned ox gored an ownerless ox, for who is there to institute an action? If on the other hand an ownerless ox gored an owned ox, why not go and take possession of the ownerless doer of the damage? — Somebody else has meanwhile stepped in and already acquired title to it.[12] Rabina said: It excepts an ox which gored and subsequently became

consecrated or an ox which gored and afterwards became ownerless.[12] It has also been taught thus: Moreover said R. Judah:[13] Even if after having gored, the ox was consecrated by the owner, or after having gored it was declared by him ownerless, he is exempt, as it is said, And it hath been testified to his owner and he hath not kept it in, but it hath killed a man or a woman; the ox shall be stoned.[14] That is so only where conditions are the same at the time of both the manslaughter and the appearance before the Court.[15] Does not the final verdict also need to comply with this same condition? Surely the very verse, The ox shall be stoned, circumscribes also the final verdict! — Read therefore: That is so only when conditions are the same at the time of the manslaughter and the appearance before the Court and the final verdict.[15]

WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT: Because he may argue against the plaintiff, 'What was your ox doing on my premises?' OR PREMISES OWNED [JOINTLY] BY PLAINTIFF AND DEFENDANT. R. Hisda said on behalf of Abimi: [Where damage is done] in jointly owned courts, there is liability for Tooth and Foot,[16] and the [Mishnah] text is to be read thus: WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT, where there is exemption. but in the case of PREMISES OWNED [JOINTLY] BY PLAINTIFF AND DEFENDANT, WHENEVER DAMAGE HAS OCCURRED,[17] THE OFFENDER IS LIABLE. R. Eleazar [on the other hand] said: There is no liability there for Tooth and Foot,[16] and the text is to be understood thus: WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT OR [OF] PREMISES OWNED [JOINTLY] BY PLAINTIFF AND DEFENDANT, where there is also exemption. But WHENEVER DAMAGE HAS OCCURRED [otherwise] THE OFFENDER IS LIABLE etc. introduces Horn.[18] This would be in conformity with Samuel,[19] but according to Rab, who affirmed that ox in the Mishnaic text was intended to include all kinds of damage done by ox,[20] what was meant to be introduced by the clause, THE OFFENDER IS LIABLE? — To introduce that which our Rabbis have taught: WHENEVER DAMAGE HAS OCCURRED THE OFFENDER IS LIABLE introduces liability in the case of a paid bailee and a borrower, an unpaid bailee and a hirer, where the animal in their charge did damage, Tam paying half-damages and Mu'ad paying full damages. If, however, a wall[21] broke open at night, or robbers took it by force and it went out and did damage, there is exemption.

The Master said: 'WHENEVER DAMAGE HAS OCCURRED, THE OFFENDER IS LIABLE introduces liability in the case of an unpaid bailee and a borrower, a paid bailee and a hirer'. Under what circumstances? If the ox of the lender damaged the ox of the borrower, why should not the former say to the latter: 'If my ox had damaged somebody else's, you would surely have had to compensate;[22] now that my ox has damaged your own ox, how can you claim compensation from me?' Again, if the ox of the borrower damaged the ox of the lender, why should not the latter say to the former: 'If my ox had been damaged by somebody else's, you would surely have had to compensate me for the full value of the ox,[23] now that the damage resulted from your ox, how can you offer me half damages?[24] — It must therefore still be that the ox of the lender damaged the ox of the borrower, but we deal with a case where he [the borrower] has taken upon himself responsibility for the safety of the ox

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(1) Hence the flesh need not pay for the emurim.

(2) While still Tam, in which case the payment must he made out of the body of the damage-doer, as infra p. 73.

(3) In accordance with R. Jose the Galilean that minor sacrifices are private property.

(4) I.e., accompanying the offering, cf. Lev. VII, 12-13.

(5) That the bread need not pay, since the bread did not do any damage.

(6) After the offering of the sacrifice.

(7) I.e.,(as a rule) the defendant.

(8) Who does not recognise the covenant of Law, and who does not consider himself bound to control his own cattle from doing damage to others.

(9) V. infra p. 211 and note 6.

(10) V. infra 35a. ‘Owned’ thus means ‘known to belong to a particular defendant.’
(11) Tosef. B.K. I, 1.
(12) In which case the plaintiff will recover nothing.
(13) Infra p. 254.
(14) Ex. XXI, 29.
(15) I.e., where the ox is privately owned all through.
(16) For which there is no liability in a public thoroughfare; cf. supra p. 17.
(17) Even by Tooth and Foot.
(18) For which there is liability even in a public thoroughfare
(19) Who maintains, supra pp. 9-11, that Mab'eh in the Mishnaic text denotes Tooth, and Ox signifies Foot, whereas Horn has not been dealt with explicitly.
(20) Supra p. 10; so that Horn has already been dealt with in the first Mishnah.
(21) Of a sound structure, cf. infra 55b-56a
(22) The borrower being responsible for the damage done by the ox whilst under his charge. V. infra 44b
(23) As laid down in Ex. XXII. 13.
(24) I.e., in the case of the borrower's ox having been Tam.

Talmud - Mas. Baba Kama 14a

but not responsibility for any damage [that it may do].[1] If so, explain the concluding clause: ‘If a wall broke open at night, or if robbers took it by force and it went out and did damage, there is exemption.’ From this it may surely be inferred that [if this had happened] in the daytime, the borrower would have been liable. Why so, if he did not take upon himself responsibility for any damage [that it may do]? — The meaning must be as follows: [But] if he has taken upon himself responsibility for damage [that it may do], he would be liable to compensate, yet, if a wall broke open at night, or if robbers took it by force and it went out and did damage there is exemption [in such a case]. Is it really so?[2] Did not R. Joseph learn: In the case of jointly owned premises or an inn, there is liability for Tooth and for Foot? Is not this a refutation of R. Eleazar? — R. Eleazar may answer you as follows: Do you really think so? Are Baraithas not divided [in their opinions] on the matter?[3] For it was taught:[4] ‘Four general rules were stated by R. Simeon b. Eleazar to apply to the laws of torts: [In the case of damage done in] premises owned by the plaintiff and not at all by the defendant, there is liability in all; if owned by the defendant and not at all by the plaintiff, there is total exemption; but if owned by the one and the other, e.g., jointly owned premises or a valley, there is exemption for Tooth and for Foot, whereas for goring, pushing, biting, falling down, and kicking, Tam pays half-damages and Mu'ad pays full damages; if not owned by the one and the other, e.g., premises not belonging to them both, there is liability for Tooth and for Foot, whereas for goring, pushing, biting, falling down, and kicking, Tam pays half-damages and Mu'ad pays full damages.’ It has thus been taught here that in the case of jointly owned premises or a valley there is exemption for Tooth and Foot.[5]

Do then the two Baraithas contradict each other? — The latter Baraitha speaks of a case where the premises were set aside by the one and the other[6] for the purposes of both keeping fruits and keeping cattle in, whereas that of R. Joseph deals with premises set aside for keeping fruits in but not cattle, in which case so far as Tooth is concerned the premises are in practice the plaintiff's ground.[7] In fact the context points to the same effect. In the Baraitha here[8] the jointly owned premises are put on the same footing as an inn whereas in the Baraitha there[9] they are put on the same footing as a valley. This is indeed proved. R. Zera, however, demurred: In the case of premises which are set aside for the purpose of keeping fruits [of the one and the other].[10] how shall we comply with the requirement, and it feed in another man's field,[11] which is lacking in this case? — Abaye said to him: Since the premises are not set aside for keeping cattle in, they may well be termed ‘another man's field.’[12]

R. Aha of Difti[13] said to Rabina: May we say that just as the Baraithas[14] are not divided on the

matter so also are the Amoraim[15] not divided on the subject?[16] He answered him: Indeed, it is so; if, however, you think that they are divided [in their views].[17] the objection of R. Zera and the answer of Abaye form the point at issue.[18]

[To revert] to the above text: 'Four general rules were stated by R. Simeon b. Eleazar to apply to the laws of torts: [Where damage is done in] premises owned by the plaintiff, and not at all by the defendant, there is liability in all.' It is not stated 'for all'[19] but 'in all', i.e., in the whole of the damage; is it not in accordance with R. Tarfon who maintains that the unusual damage occasioned by Horn in the plaintiff's premises will be compensated in full.[20] Read, however, the concluding clause: 'If not owned by the one and the other, e.g., premises not belonging to them both, there is liability for Tooth and for Foot.' Now, what is the meaning of 'not owned by the one and the other'? It could hardly mean 'owned neither by the one nor by the other, but by somebody else,' for have we not to comply with the requirement, and it feed in another man's field,[21] which is lacking in this case? It means therefore, of course, not owned by them both, but exclusively by the plaintiff,' and yet it is stated in the concluding clause, 'Tam pays half-damages and Mu'ad pays full damages,' which follows the view of the Rabbis who maintain that the unusual damage occasioned by Horn in the plaintiff's premises will still be compensated only by half-damages.[22] Will the commencing clause be according to R. Tarfon and the concluding clause according to the Rabbis? — Yes, even as Samuel said to Rab Judah: Shinena,[23] leave this Baraitha alone,[24] and follow my view that the commencement of the Baraitha is according to R. Tarfon and its conclusion according to the Rabbis. Rabina, however, said in the name of Raba: The whole Baraitha is according to R. Tarfon; what is meant by 'not owned by the one and the other' is that the right of keeping fruits there is owned not by both, the one and the other, but exclusively by the plaintiff, whereas the right of keeping cattle there is owned by both, the one and the other. In the case of Tooth the premises are in practice the plaintiff's ground,[25] whereas in the case of Horn they are jointly owned ground.[26] If so, how are the rules four in number?[27] Are they not only three? — R. Nahman b. Isaac replied:

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(1) In which case the lender still remains liable for any damage his ox may do.

(2) That R. Eleazar exempts Tooth and Foot doing damage in jointly owned premises.

(3) And my view is supported by one of them.

(4) Tosef. B.K. I, 6.

(5) Thus fully supporting the view of R. Eleazar and contradicting the teaching of R. Joseph's Baraitha.

(6) I.e., by both plaintiff and defendant.

(7) For the defendant had no right to allow his cattle to be there, and is therefore liable for Tooth, etc.

(8) I.e., of R. Joseph.

(9) Recording the view of R. Simeon b. Eleazar.

(10) I.e., by both plaintiff and defendant.

(11) Ex. XXII, 4; implying that the field should belong exclusively to the plaintiff.

(12) For the defendant had no right to allow his cattle to be there, and is therefore liable for Tooth, etc.

(13) [Identified with Dibtha near the famous city of Washit on the Tigris, Obermeyer, op. cit. p. 197].

(14) I.e., that of R. Joseph and that of R. Simeon b. Eleazar.

(15) R. Hisda and R. Eleazar.

(16) R. Hisda deals with a case where the keeping of cattle has not been permitted, while R. Eleazar deals with the case when the premises have been set aside for that also.

(17) When the premises have been set aside not for cattle, but for the keeping of fruit.

(18) R. Hisda is of Abaye's opinion. whereas R. Eleazar prefers R. Zera's reasoning.

(19) Which would mean for all kinds of damage.

(20) Cf. infra 24b.

(21) Ex. XXII, 4, indicating that the field has to belong to the plaintiff.

(22) Cf. infra 24b.

(23) [Lit., (i) 'sharp one', i.e, scholar with keen and sharp mind; (ii) 'long-toothed', denoting a facial characteristic; (iii) 'translator', Rab Judah being so called on account of his frequent translation of Mishnaic terms into the vernacular

Aramaic, Golomb, D. Targumno I, Introduction, XLVff.]

(24) [Give up your attempt to harmonize the two contradictory clauses.]

(25) As the right to keep fruits there is exclusively the plaintiff's.

(26) For they both may keep cattle there.

(27) Since in principle they are only three in number: (a) exclusively the plaintiff's premises. (b) exclusively the defendant's, and (c) partnership premises.

Talmud - Mas. Baba Kama 14b

The rules are three in number, but the places to which they apply may be divided into four.[1]

MISHNAH. THE VALUATION [IS MADE] IN MONEY [BUT MAY BE PAID] BY MONEY'S WORTH, IN THE PRESENCE OF THE COURT AND ON THE EVIDENCE OF WITNESSES WHO ARE FREE MEN AND PERSONS UNDER THE JURISDICTION OF THE LAW. WOMEN ARE ALSO SUBJECT TO THE LAW OF TORTS. [BOTH] THE PLAINTIFF AND DEFENDANT ARE INVOLVED IN THE PAYMENT.

GEMARA. What is the meaning of THE VALUATION IN MONEY? Rab Judah said: This valuation must be made only in specie. We thus learn here that which has been taught by our Rabbis elsewhere:[2] In the case of a cow damaging a garment while the garment also damaged the cow, it should not be said that the damage done by the cow is to be set off against the damage done to the garment and the damage done to the garment against the damage done to the cow, the respective damages have to be estimated at a money value.

BY MONEY'S WORTH. [This is explained by what] our Rabbis taught [elsewhere]:[2] 'MONEY'S WORTH' implies that the Court will not have recourse for distraint save to immovable property. Nevertheless if the plaintiff himself seized some chattels beforehand, the Court will collect payment for him out of them.

The Master stated: "'MONEY'S WORTH" implies that the Court will not have recourse for distraint save to immovable property. How is this implied? Rabbah b. 'Ulla said: The article of distress has to be worth all that is paid for it [in money].[3] What does this mean? An article which is not subject to the law of deception?[4] Are not slaves and deeds also not subject to the law of deception?[4] — Rabbah b. 'Ulla therefore said: An article, title to which is acquired by means of money.[5] Are not slaves[6] and deeds[7] similarly acquired by means of money.[6] R. Ashi therefore said: 'Money's worth' implies that which has money's worth,[8] whereas chattels are considered actual money.[9] Rab Judah b. Hinena pointed out the following contradiction to R. Huna the son of R. Joshua: It has been taught: 'MONEY'S FORTH implies that the Court will not have recourse for distraint save to immovable property; behold, was it not taught: He shall return[10] includes 'money's worth', even bran?[11] — [In the former Baraitha] we are dealing with a case of heirs.[12] If we are dealing with heirs read the concluding clause: 'If the plaintiff himself seized some chattels beforehand, the Court will collect payment for him out of them.' Now, if we are dealing with heirs, how may the Court collect payment for him out of them? — As already elsewhere[13] stated by Raba on behalf of R. Nahman, that the plaintiff seized [the chattels] while the original defendant was still alive, so here too, the seizure took place while the defendant was still alive.

IN THE PRESENCE OF THE COURT,[14] [apparently] exempts a case where the defendant sold his possessions before having been summoned to Court. May it hence be derived that in the case of one who borrowed money and sold his possessions before having been summoned to Court , the Court does not collect the debt out of the estate which has been disposed of?[15] — The text therefore excepts a Court of laymen.[16]

ON THE EVIDENCE OF WITNESSES, thus excepting a confession of [an act punishable by] a fine for which subsequently there appeared witnesses, in which case there is exemption. That would accord with the view that in the case of a confession of [an act punishable by] a fine, for which subsequently there appeared witnesses, there is exemption;[17] but according to the opposite view that in the case of a confession of [an act punishable by] a fine for which subsequently appeared witnesses, there is liability,[17] what may be said [to be the import of the text]? — The important point comes in the concluding clause:

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(1) [I.e.. partnership premises may he subdivided into two: (a) where both have the right to keep fruit, as well as cattle; (b) where the right to keep fruit is exclusively the plaintiff's.]

(2) Tosef. B.K., I.

(3) 'Money's worth' would thus mean 'property which could not be said to be worth less than the price paid for it,' and is thus never subject to the law of deception. This holds good with immovable property; cf. B.M. 56a.

(4) Cf. B.M. ibid.

(5) Kid. 26a.

(6) Cf. Kid. 23b.

(7) [Tosaf. deletes 'deeds' as these are not acquired by money but by Mesirah (v. Glos.). cf. B.B. 76a.]

(8) I.e., immovable property.

(9) As these could easily be converted into money, v. supra p. 26.

(10) Ex. XXI, 34.

(11) Supra p. 24.

(12) Who have to pay only out of the realty of the estate but not out of the personalty; cf. supra p. 31.

(13) Keth. 84b.

(14) Is taken to mean 'the payment in kind is made out of the possessions which are in the presence of the Court', i.e., not disposed of.

(15) Whereas the law is definitely otherwise as in B.B. X, 8.

(16) IN THE PRESENCE OF THE COURT does not refer to payment in kind but to the valuation which has to be made by qualified judges, v. infra 84b.

(17) Infra p. 429.

Talmud - Mas. Baba Kama 15a

FREE MEN AND PERSONS UNDER THE JURISDICTION OF THE LAW. 'FREE MAN' excludes slaves;[1] 'PERSONS UNDER THE JURISDICTION OF THE LAW'[2] excludes heathens. Moreover, it was essential to exclude each of them. For if the exemption had been stated only in reference to a slave, we would have thought it was on account of his lack of [legal] pedigree[3] whereas a heathen who possesses a [legal] pedigree[4] might perhaps have been thought not to have been excluded. Had, on the other hand, the exemption been referred only to a heathen, we should have thought it was on account of his not being subject to the commandments [of the Law], whereas a slave who is subject to the commandments[5] might have been thought not to have been excluded. It was thus essential to exclude each of them independently.

WOMEN ARE ALSO SUBJECT TO THE LAW OF TORTS. Whence is derived this ruling? — Rab Judah said on behalf of Rab, and so was it also taught at the school of R. Ishmael:[6] Scripture states, When a man or woman shall commit any sin.[7] Scripture has thus made woman and man equal regarding all the penalties of the Law. In the School of Eleazar it was taught: Now these are the ordinances which thou shalt set before them.[8] Scripture has thus made woman and man equal regarding all the judgments of the Law. The School of Hezekiah and Jose the Galilean taught: Scripture says. It hath killed a man or a woman.[9] Scripture has thus made woman and man equal regarding all the laws of manslaughter in the Torah. Moreover, [all the quotations] are necessary: Had only the first inference[10] been drawn, [I might have said that] the Divine Law exercised mercy towards her so that she should also have the advantage of atonement, whereas judgments which

concern as a rule man who is engaged in business, should not include woman. Again, were only the inference regarding judgments to have been made, we might perhaps have said that woman should also not be deprived of a livelihood, whereas the law of atonement should be confined to man, as it is he who is subject to all commandments, but should not include woman, since she is not subject to all the commandments.[11] Moreover, were even these two inferences to have been available, [we might have said that] the one is on account of atonement and the other on account of livelihood, whereas regarding manslaughter [it might have been thought that] it is only in the case of man, who is subject to all commandments, that compensation for the loss of life must be made, but this should not be the case with woman. Again, were the inference only made in the case of compensation for manslaughter, [it might have been thought to apply] only where there is loss of human life, whereas in the other two cases, where no loss of human life is involved, I might have said that man and woman are not on the same footing. The independent inferences were thus essential.

THE PLAINTIFF AND DEFENDANT ARE INVOLVED IN THE PAYMENT.

It has been stated:[12] The liability of half-damages[13] is said by R. Papa to be civil, whereas R. Huna the son of R. Joshua considers it to be penal.[14] R. Papa said that it is civil, for he maintains that average cattle cannot control themselves not to gore.[15] Strict justice should therefore demand full payment [in case of damage].[16] It was only Divine Law that exercised mercy [and released half payment] on account of the fact that the cattle have not yet become Mu'ad. R. Huna the son of R. Joshua who said that it is penal, on the other hand maintains that average cattle can control themselves not to gore.[17] Justice should really require no payment at all.[18] It was Divine Law that imposed [upon the owner] a fine [in case of damage] so that additional care should be taken of cattle. We have learnt: THE PLAINTIFF AND THE DEFENDANT ARE INVOLVED IN PAYMENT. That is all very well according to the opinion which maintains that the liability of half-damages is civil. The plaintiff [who receives only half his due] is thus indeed involved in the payment. But according to the opinion that the liability of half-damages is penal, in which case the plaintiff is given that which is really not his due, how is he involved in the payment? — This may apply to the loss caused by a decrease in the value of the carcass [which is sustained by the plaintiff].[19] 'A decrease in the value of the carcass'! Has not this ruling been laid down in a previous Mishnah : 'To compensate for the damage'[20] implying that the owners [plaintiffs] have to retain the carcass as part payment?[21] — One Mishnah gives the law in the case of Tam whereas the other deals with Mu'ad. Moreover these independent indications[22] are of importance: For were the ruling laid down only in the case of Tam, it might have been accounted for by the fact that the animal has not yet become Mu'ad, whereas in the case of Mu'ad I might have thought that the law is different; if on the other hand the ruling had been laid down only in the case of Mu'ad, it might have been explained as due to the fact that the damage is compensated in full, whereas in the case of Tam I might have thought that the law is otherwise. The independent indications were thus essential.

Come and hear: What is the difference [in law] between Tam and Mu'ad? In the case of Tam, half-damages are paid, and only out of the body [of the tort-feasant cattle], whereas in the case of Mu'ad full payment is made out of the best of the estate.[23] Now, if it is so [that the liability of half-damages is penal] why not mention also the following distinction, 'That in the case of Tam no liability is created by mere admission,[24] while in the case of Mu'ad liability is established also by mere admission'? — This Mishnah stated [some points] and omitted [others]. But what else did it omit that the omission of that particular point should be justified?[25] — It also omitted the payment of half-kofer [for manslaughter].[26] The absence of half-kofer [for manslaughter], however, is no omission, as the Mishnah may be in accordance with R. Jose the Galilean who maintains that Tam is not immune from half-liability for kofer [for manslaughter].[27]

Come and hear:

(1) From giving evidence,
(2) V. supra p. 36. n. 3.
(3) As his issue were considered the property of the owner, there being no parental relationship between him and them; cf. infra p. 508.
(4) Of free descent; cf. Yeb. 62a.
(5) Applicable to females; v. Hag. 4a.
(6) Cf. Kid. 35a.
(7) Num. V, 6. This quotation deals with certain laws of atonement.
(8) Ex. XXI. I.
(9) Ibid. XXI, 29.
(10) Dealing with atonement.
(11) Positive precepts prescribed for a definite time or certain periods do not as a rule apply to females; cf. Kid. 29a.
(12) Keth. 41a.
(13) Paid for damage done by (Horn of) Tam
(14) קנס Kenas, v. Glos.
(15) Lit. 'are not presumed to he safe'.
(16) As it was the effect of carelessness on the part of the owner.
(17) Lit., are presumed to be safe'.
(18) Since the owner could not have expected that his cattle would start goring.
(19) Who is in this way involved in the payment.
(20) Supra p. 36.
(21) Supra, p. 42.
(22) That it is the plaintiff who has to sustain any loss occasioned by a decrease in the value of the carcass.
(23) Mishnah, infra 16b.
(24) As penal liabilities are not created by admission; v. supra 5a.
(25) V. supra p. 39, n. I.
(26) [While a Mu'ad has to pay full compensation (Kofer, v. Glos.) for manslaughter. Ex XXI, 25-30, a Tam does not compensate even by half; v. infra 41b.]
(27) infra 26a.

Talmud - Mas. Baba Kama 15b

'My ox committed manslaughter on A'; or 'killed A's ox' '[in either case] a liability to compensate is established by this admission.[1] Now does this Mishnah not deal with the case of Tam?[2] — No, only with Mu'ad. But what is the law in the case of Tam? Would it really be the fact that no liability is established by admission?[3] If this be the case, why state in the concluding clause, 'My ox killed A's slave,'[4] no liability is created by this admission?[5] Why indeed not indicate the distinction in the very same case by stating: 'the rule that liability is established by mere admission is confined to Mu'ad, whereas in the case of Tam no liability is created by mere admission'?[6] — The Mishnah all through deals with Mu'ad.

Come and hear: This is the general rule: In all cases where the payment is more than the actual damage done, no liability is created by mere admission.[5] Now does this not indicate that in cases where the payment is less than the damage,[7] the liability will be established even by mere admission?[8] — No , this is so only when the payment corresponds exactly to the amount of the damages. But what is the law in a case where the payment is less than the damage? Would it really be the fact that no liability is established by admission? If this be the case, why state: 'This is the general rule: In all cases where the payment is more than the actual damage done, no liability is created by mere admission'?[9] Why not state simply: 'This is the general rule: In all cases where the payment does not correspond exactly to the amount of the damages . . ., which would [both] imply 'less' and imply 'more'?[10] This is indeed a refutation.[11] Still the law is definite that the liability of half-damages is penal. But if this opinion was refuted, how could it stand as a fixed law? — Yes!

The sole basis of the refutation is in the fact that the Mishnaic text[9] does not run '. . . where the payment does not correspond exactly to the amount of the damages'. This wording would, however, be not altogether accurate, as there is the liability of half-damages in the case of pebbles[12] which is, in accordance with a halachic tradition, held to be civil. On account of this fact the suggested text has not been adopted.

Now that you maintain the liability of half-damages to be penal. the case of a dog devouring lambs, or a cat devouring hens is an unusual occurrence,[13] and no distress will be executed in Babylon[14] — provided, however, the lambs and hens were big; for if they were small, the occurrence would be usual?[15] Should, however, the plaintiff[16] seize chattels belonging to the defendant, it would not be possible for us to dispossess him of them. So also were the plaintiff to plead 'fix me a definite time for bringing my case to be heard in the Land of Israel,' we would have to fix it for him; were the other party to refuse to obey that order, we should have to excommunicate him. But in any case, we have to excommunicate him until he abates the nuisance, in accordance with the dictum of R. Nathan. For it was taught:[17] R. Nathan says: Whence is it derived that nobody should breed a bad dog in his house, or keep an impaired ladder in his house? [We learn it] from the text, Thou bring not blood upon thine house.[18] M I S H N A H. THERE ARE FIVE CASES OF TAM AND FIVE CASES OF MU'AD. ANIMAL IS MU'AD NEITHER TO GORE, NOR TO COLLIDE, NOR TO BITE, NOR TO FALL DOWN NOR TO KICK.[19] TOOTH, HOWEVER, IS MU'AD TO CONSUME WHATEVER IS FIT FOR IT; FOOT IS MU'AD TO BREAK [THINGS] IN THE COURSE OF WALKING; OX AFTER BECOMING MU'AD; OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES; AND MAN,[20] SO ALSO THE WOLF, THE LION, THE BEAR, THE LEOPARD, THE BARDALIS [PANTHER] AND THE SNAKE ARE MU'AD. R. ELEAZAR SAYS: IF THEY HAVE BEEN TAMED, THEY ARE NOT MU'AD; THE SNAKE, HOWEVER, IS ALWAYS MU'AD.

GEMARA. Considering that it is stated TOOTH IS MU'AD TO CONSUME . . ., it must be assumed that we are dealing with a case where the damage has been done on the plaintiff's premises.[21] It is also stated[22] ANIMAL IS MU'AD NEITHER TO GORE . . . meaning that the compensation will not be in full, but only half-damages will be paid, which is in accordance with the Rabbis who say that for the unusual damage done by Horn [even] on the plaintiff's premises only half-damages will be paid.[23] Read now the concluding clause: OX AFTER HAVING BECOME MU'AD, OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES, AND MAN, which is in accordance with R. Tarfon who said that for the unusual damage done by Horn on the plaintiff's premises full compensation must be paid.[23] Is the commencing clause according to the Rabbis and the concluding clause according to R. Tarfon? — Yes, since Samuel said to Rab Judah, 'Shinena,[24] leave the Mishnah alone[25] and follow my view: the commencing clause is in accordance with the Rabbis, and the concluding clause is in accordance with R. Tarfon.' R. Eleazar in the name of Rab, however, said:

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(1) Keth. 41a.

(2) And if the liability is created by admission it proves that it is not penal but civil.

(3) On account of its being penal.

(4) And the fine of thirty shekels has to he imposed; v, Ex. XXI, 32.

(5) Keth. 41a.

(6) Because it is considered penal.

(7) Such, e.g., as in the case of Tam.

(8) This proves that the penalty is not penal but civil, and this refutes R. Huna b. R. Joshua.

(9) Keth. 41a.

(10) Not to be civil.

(11) Of the view maintaining the liability of Tam to be penal.

(12) Kicked from under an animal's feet and doing damage; cf. supra p. 8.

(13) Falling thus under the category of Horn; as supra p. 4.
(14) As penal liabilities could be dealt with only in the Land of Israel where the judges were specially ordained for the purpose; Mumhin, v. Glos. s. v. Mumhe; cf. infra. 27b, 84a-b.
(15) And would come within the category of Tooth, the payment for which is civil.
(16) Even in Babylon.
(17) Infra 46a and Keth. 41b.
(18) Deut. XXII, 8.
(19) These are the five cases of Tam, v. supra p. 3.
(20) These are the five cases of Mu'ad, v. Glos.
(21) For if otherwise there is no liability in the case of Tooth; cf. Ex. XXII, 4, and supra, 5b.
(22) In the commencing clause of the Mishnah.
(23) Cf. supra 14a; infra 24b.
(24) V. supra p. 60, n. 2.
(25) Cf. supra p. 60, n. 3.

Talmud - Mas. Baba Kama 16a

The whole Mishnah is in accordance with R. Tarfon. The commencing clause deals with premises set aside for the keeping of the plaintiff's fruits whereas both plaintiff and defendant may keep there their cattle. In respect of Tooth the premises are considered [in the eye of the law] the plaintiff's.[1] whereas in respect of Horn they are considered their common premises.[2] R. Kahana said: I repeated this statement in the presence of R. Zebid of Nehardea, and he answered me, 'How can you say that the whole Mishnah is in accordance with R. Tarfon? Has it not been stated TOOTH IS MU'AD TO CONSUME WHAT EVER IS FIT FOR IT? That which is fit for it is included,[3] but that which is unfit for it is not included.[4] But did not R. Tarfon say that for the unusual damage done by Horn on the plaintiff's premises full compensation must be paid?' — It must, therefore, still be maintained that the Mishnah is in accordance with the Rabbis, but there are some phrases missing there; the reading should be thus: 'There are five cases of Tam,'[5] all the five of them may eventually become Mu'ad.[6] Tooth and Foot are however Mu'ad ab initio, and their liability is confined to damage done on the plaintiff's premises.'[7] Rabina demurred: We learn later on: What is meant by [the statement] OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES [etc.]?[8] It is all very well if you say that this damage has previously been dealt with;[9] we may then well ask 'What is meant by it?' But if you say that this damage has never been dealt with previously, how could it be asked 'What is meant by it?'[10] — Rabina therefore said: The Mishnah is indeed incomplete, but its meaning is this: 'There are five cases of Tam,'[5] all the five of them may eventually become Mu'ad[11] — Tooth and Foot are Mu'ad ab initio.[12] In this way Ox is definitely Mu'ad. As to Ox doing damage on the plaintiff's premises there is a difference of opinion between R. Tarfon and the Rabbis.[13] There are other damage-doers which like these cases are similarly Mu'ad, as follows: The wolf, the lion, the bear, the leopard. the panther, and the snake.' This very text has indeed been taught: 'There are five cases of Tam; all the five of them may eventually become Mu'ad. Tooth and Foot are Mu'ad ab initio. In this way Ox is definitely Mu'ad. As to Ox doing damage on the plaintiff's premises there is a difference of opinion between R. Tarfon and the Rabbis. There are other damage-doers which like these are similarly Mu'ad, as follows: The wolf, the lion, the bear, the leopard, the panther and the snake.'

Some arrived at the same interpretation by having first raised the following objection: We learn THERE ARE FIVE CASES OF TAM AND FIVE CASES OF MU'AD; are there no further instances?[14] Behold there are the wolf, the lion, the bear, the leopard, the panther and the snake![15] — The reply was: Rabina said: The Mishnah is incomplete and its reading should be as follows: There are five cases of Tam; all the five of them may eventually become Mu'ad — Tooth and Foot are Mu'ad ab initio. In this way Ox is definitely Mu'ad. As to Ox doing damage on the plaintiff's premises there is a difference of opinion between R. Tarfon and the Rabbis. There are other damage-doers which like these are similarly Mu'ad, as follows: The wolf, the lion, the bear, the

leopard, the panther and the snake.

NOR TO FALL DOWN. R. Eleazar said: This is so only when it falls down on large pitchers, but in the case of small pitchers it is a usual occurrence.[16] May we support him [from the following teaching]: 'Animal is Mu'ad to walk in the usual manner and to break or crush a human being, or an animal, or utensils'? — This however may mean, through contact sideways.[17] Some read: R. Eleazar said: Do not think that it is only in the case of large pitchers that it is unusual, whereas in the case of small pitchers it is usual. It is not so, for even in the case of small pitchers it is unusual. An objection was brought: '. . . or crush a human being, or an animal or utensils?'[18] — This[19] may perhaps mean through contact sideways.[20] Some arrived at the same conclusion by having first raised the following objection: We have learnt: NOR TO FALL DOWN.[18] But was it not taught: '. . . or crush a human being, or an animal or utensils'?[18] R. Eleazar replied: There is no contradiction: the former statement deals with a case of large pitchers,[21] whereas the latter deals with small pitchers.[22]

THE WOLF, THE LION, THE BEAR, THE LEOPARD AND THE BARDALIS [PANTHER].[23] What is bardalis? — Rab Judah said: nafraza.[24] What is nafraza? — R. Joseph said: apa.[25] An objection was raised: R. Meir adds also the zabu'a.[26] R. Eleazar adds, also the snake.[27] Now R. Joseph said that zabu'a means apa![28] — This, however, is no contradiction, for the latter appellation [zabu'a] refers to the male whereas the former [bardalis] refers to the female,[29] as taught elsewhere: The male zabu'a [hyena] after seven years turns into a bat,[30] the bat after seven years turns into an arpad,[31] the arpad after seven years turns into kimmosh,[32] the kimmosh after seven years turns into a thorn, the thorn after seven years turns into a demon. The spine of a man after seven years turns into a snake,[33] should he not bow[34] while reciting the benediction, 'We give thanks unto Thee'.[35] The Master said: 'R. Meir adds also the zabu'a;

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(1) As nobody else had the right to keep there fruits.

(2) Since both plaintiff and defendant had the right to keep there their cattle.

(3) In the category of Tooth.

(4) In the category of Tooth, but being unusual falls under the category of Horn; cf. supra 15b; infra 16b and 19b.

(5) I.e., 'goring', 'colliding', 'biting', 'falling down' and 'kicking'.

(6) These constitute the five cases of Mu'ad.

(7) Cf. Ex. XXII, 4, and supra, 5b. ['OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES' refers thus to Tooth and not to Horn.]

(8) [With reference to damage done by Horn, infra, 24b.]

(9) [In Our Mishnah, i.e.,the damage of Horn on the plaintiff's premises.]

(10) Cf. infra 24b.

(11) [The first clause of the Mishnah thus enumerates the five cases of Mu'ad as well as of Tam.]

(12) [But are not included in the 'five cases of Mu'ad', the clause being added only in parenthesis.]

(13) As infra p. 125.

(14) Of Mu'ad.

(15) Which are Mu'ad ab initio.

(16) And would thus not fall under the category of Horn but under that of Foot; cf, supra p. 4.

(17) Whereas to fall down upon pitchers may perhaps in all cases be unusual.

(18) Is usual.

(19) [So MS.M. Cur.edd, insert 'R. Eleazar said this etc.']

(20) V. p. 70. n. 5.

(21) Which is unusual.

(22) Which is usual.

(23) **

(24) נפרזא D.S. נפריא from נפר 'to run' or 'jump'.

(25) [אפא contraction of אפעא (hyena)].

(26) [Lit., 'the many-coloured'. Another term for hyena on account of its coloured stripes.]

(27) To those which are enumerated in the Mishnah as Mu'ad ab initio.
(28) If zabu'a means apa, how could bardalis, which is mentioned independently, also mean apa.
(29) So Rashi's second interpretation; others reverse.
(30) The male zabu'a is subject to undergo constant and rapid changes in the evolution of its physique, so that on account of these various transformations it has various appellations, such as bardalis, nafraza and apa [For parallels in ancient Greek and Roman literature for this belief, v. Lewysohn. Zoologie, p. 77.]
(31) I.e., a species of bat; cf. Targum Jonathan Lev, XI, 19, where Heb. עטלף is rendered ערפדא.
(32) I.e., a species of thorn (Jast.).
(33) Which is the symbol of ingratitude.
(34) And thus not appreciate the favours of eternal God bestowed upon mortal man. [This is but a quaint way of indicating the depths into which human depravity, which has its source in ingratitude to the Creator, may gradually sink.]
(35) Cf. P.B. p. 51.

Talmud - Mas. Baba Kama 16b

R. Eleazar adds also the snake.' But have we not learned: R. ELEAZAR SAYS, IF THEY HAD BEEN TAMED, THEY ARE NOT MU'AD; THE SNAKE, HOWEVER, IS ALWAYS MU'AD?[1] — Read 'the snake'.[2] Samuel said: In the case of a lion on public ground seizing and devouring [an animal]. there is exemption;[3] but for tearing it to pieces and then devouring it there is liability to pay. In 'seizing and devouring there is exemption' on account of the fact that it is as usual for a lion to seize its prey as it is for an animal to consume fruits and vegetables; it therefore amounts to Tooth on public ground where there is exemption.[3] The 'tearing' [of the prey into pieces] is however not unusual with the lion.[4]

Should it thus be concluded that the tearing of prey is unusual [with the lion]? But behold, it is written: The lion did tear in pieces enough for his whelps?[5] — This is usual only when it is for the sake of his whelps. [But the text continues:] And strangled for his lionesses?[5] — This again is only when it is for the sake of his lionesses. [But the text further states:] And filled his holes with prey?[5] — [This too is usual only when it is done] with the intention of preserving it in his holes. But the text concludes: And his dens with ravin?[5] — [This again is only] when the intention is to preserve it in his dens. But was it not taught: 'Similarly in the case of a beast entering the plaintiff's premises, tearing an animal to pieces and consuming its flesh, the payment must be made in full'?[6] — This Baraitha deals with a case where the tearing was for the purpose of preservation. But behold, it is stated: 'consuming [its flesh]'? — It was by an afterthought that the beast consumed [it]. But how could we know that? Again, also in the case of Samuel why not make the same supposition?[7] — R. Nahman b. Isaac therefore said: Alternative cases are dealt with [in the Baraitha]: . . . If it either tears to pieces for the purpose of preservation, or seizes and devours [it], the payment must he in full.' Rabina, however, said that Samuel dealt with a case of a tame lion, and was following the view of R. Eleazar,[8] that that was unusual [with such a lion] If so, even in the case of seizing there should be liability! — Rabina's statement has, therefore, no reference to Samuel's case but to the Baraitha, which we must thus suppose to deal with a tame lion and to follow the view of R. Eleazar, that that was unusual [with such a lion].[9] If so, [no more than] half-damages should be paid![10] — [The lion dealt with] has already become Mu'ad. If so, why has this Baraitha been taught in conjunction with the secondary kinds of Tooth,[11] whereas it should have been taught in conjunction with the secondary kinds of Horn? This is indeed a difficulty.

M I S H N A H. WHAT IS THE DIFFERENCE [IN LAW] BETWEEN TAM AND MU'AD? IN THE CASE OF TAM ONLY HALF-DAMAGES ARE PAID AND ONLY OUT OF THE BODY [OF THE TORT-FEASENT CATTLE], WHEREAS IN THE CASE OF MU'AD FULL PAYMENT IS MADE OUT OF ['ALIYYAH][12] THE BEST [OF THE ESTATE].

GEMARA. What is 'Aliyyah? — R. Eleazar said: The best of the defendant's estate as stated in

Scripture: And Hezekiah slept with his fathers and they buried him [be-ma'aleh] in the best of the sepulchres of the sons of David;[13] and R. Eleazar said: be-ma'aleh means, near the best of the family, i.e., David and Solomon. [Regarding King Asa it is stated:] And they buried him in his own sepulchres which he had made for himself in the city of David and laid him in the bed which was filled with [besamim u-zenim][14] sweet odours and divers kinds of spices.[15] What is besamim u-zenim? — R. Eleazar said: Divers kinds of spices. But R. Samuel b. Nahmani said: Scents which incite all those who smell them to immorality.[16]

[Regarding Jeremiah it is stated:] For they have digged a ditch to take me and hid snares for my feet.[17] R. Eleazar said: They maliciously accused him of [having illicit intercourse with] a harlot. But R. Samuel b. Nahmani said: They maliciously accused him of having [immoral connections with] another man's wife. No difficulty arises if we accept the view that the accusation was concerning a harlot, since it is written: For a harlot is a deep ditch.[18] But according to the view that the accusation was concerning another man's wife, how is this expressed in the term 'ditch' [employed in Jeremiah's complaint]?[17] — Is then another man's wife [when committing adultery] excluded from the general term of 'harlot'? [On the other hand] there is no difficulty on the view that the accusation was concerning another man's wife, for Scripture immediately afterwards says: Yet Lord, Thou knowest all their counsel against me to slay me;[19] but according to the view that the accusation was concerning a harlot, how did they thereby intend 'to slay him'?[20] — [This they did] by throwing him into a pit of mire.[21]

Raba gave the following exposition: What is the meaning of the concluding verse: But let them be overthrown before Thee; deal thus with them in the time of Thine anger?[22] — Jeremiah thus addressed the Holy One, blessed be He: Lord of the Universe, even when they are prepared to do charity, cause them to be frustrated by people unworthy of any consideration so that no reward be forthcoming to them for that charity.[23]

[To come back to Hezekiah regarding whom it is stated:] And they did him honour at his death:[24] this signifies that they set up a college[25] near his sepulchre. There was a difference of opinion between R. Nathan and the Rabbis. One said: For three days,

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(1) [Which seems to exclude the other animals enumerated in the Mishnah?]

(2) Do not read 'also the snake', but 'the snake', i.e. 'only the snake', excluding 'the hyena' introduced by R. Meir, as well as the other animals enumerated.

(3) Cf. Ex XXII, 4 and supra 5b.

(4) And falls thus under the category of Horn which is not immune even on public ground, cf. supra p. 67 and infra 19b.

(5) Nah. II, 13.

(6) Cf. infra 19b.

(7) [Why then doses he state that, where the lion tore and consumed, there is payment?]

(8) Supra p. 68.

(9) And comes therefore within the category of Horn, for which there is liability even on public grounds.

(10) For in the case of Horn only half-damages are paid on the first three occasions.

(11) I.e., infra 19b.

(12) עלייה

(13) II Chron. XXXII, 33. [The word במעלה (E.V.: 'ascent') is tendered as 'the best' from עלה 'to go up', 'to excel'.]

(14) בשמים וזנים

(15) II Chron. XVI, 14.

(16) [Deriving זנים from זנה to commit whoredom'.]

(17) Jer. XVIII, 22.

(18) Prov. XXIII, 27.

(19) Jer. XVIII, 23; referring to the death penalty prescribed for such an offence. See Lev. XX, 10.

(20) Since no death penalty is attached to that sin,
(21) Jer. XXXVIII, 6.
(22) Ibid. XVIII, 23.
(23) Cf. however Keth. 68a.
(24) II Chron. XXXII, 33.
(25) [Of students to study the law.]