and the other said: For seven days. Others, however, said: For thirty days.[1]

Our Rabbis taught: And they did him honour at his death, in the case of Hezekiah the king of Judah, means that there marched before him thirty-six[2] thousand [warriors] with bare shoulders;[3] this is the view of R. Judah. R. Nehemiah, however, said to him: Did they not do the same before Ahab?[4] [In the case of Hezekiah] they placed the scroll of the Law upon his coffin and declared: 'This one fulfilled all that which is written there.' But do we not even now do the same [on appropriate occasions]?[5] — We only bring out [the scroll of the Law] but do not place [it on the coffin].[5] It may alternatively be said that sometimes we also place [it on the coffin] but do not say. 'He fulfilled [the law] . . .'

Rabbah b. Bar Hanah said: I was once following R. Johanan for the purpose of asking him about the [above] matter. He, however, at that moment went into a toilet room. [When he reappeared and] I put the matter before him, he did not answer until he had washed his hands, put on phylacteries and pronounced the benediction.[6] Then he said to us: Even if sometimes we also say. 'He fulfilled [the law] . . .' we never say. 'He expounded [the law] . . .' But did not the Master say: The importance of the study of the law is enhanced by the fact that the study of the law is conducive to [the] practice [of the law]?[7] — This, however, offers no difficulty; the latter statement deals with studying [the law], the former with teaching [the law].

R. Johanan said in the name of R. Simeon b. Yohai:[8] What is the meaning of the verse: Blessed are ye that sow beside all waters, that send forth thither the feet of the ox and the ass?[9] Whoever is occupied with [the study of] the law and with [deeds of] charity, is worthy of the inheritance of two tribes,[10] as it is said: Blessed are ye that sow. . . Now, sowing [in this connection] signifies 'charity'. as stated, Sow to yourselves in charity, reap in kindness;[11] again, water [in this connection] signifies 'the law' as stated, Lo, everyone that thirsteth, come ye to the waters.[12]

'He is worthy of the inheritance of two tribes:' He is worthy of an inheritance[13] like Joseph, as it is written: Joseph is a fruitful bough . . . whose branches run over the wall;[14] he is also worthy of the inheritance of Issachar, as it is written: Issachar is a strong ass.[15] There are some who say, His enemies will fall before him, as it is written: With them he shall push the people together, to the ends of the earth.[16] He is worthy of understanding like Issachar, as it is written: And of the children of Issachar which were men that had understanding of the times to know what Israel ought to do.[17]

C H A P T E R I I

M I S H N A H. WITH REFERENCE TO WHAT IS FOOT MU'AD?[18] [IT IS MU'AD:] TO BREAK [THINGS] IN THE COURSE OF WALKING. ANY ANIMAL IS MU'AD TO WALK IN ITS USUAL WAY AND TO BREAK [THINGS]. BUT IF IT WAS KICKING OR PEBBLES WERE FLYING FROM UNDER ITS FEET AND UTENSILS WERE [IN CONSEQUENCE] BROKEN, [ONLY] HALF-DAMAGES WILL BE PAID. IF IT TROD UPON A UTENSIL AND BROKE IT, AND A FRAGMENT [OF IT] FELL UPON ANOTHER UTENSIL WHICH WAS ALSO BROKEN, FOR THE FIRST UTENSIL FULL DAMAGES MUST BE PAID,[19] BUT FOR THE SECOND, [ONLY] HALF-DAMAGES WILL BE PAID.[20]

POULTRY[21] ARE MU'AD TO WALK IN THEIR USUAL WAY AND TO BREAK [THINGS]. IF A STRING BECAME ATTACHED TO THEIR FEET, OR WHERE THEY HOP ABOUT AND BREAK UTENSILS, [ONLY] HALF-DAMAGES WILL BE PAID.[20]

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(1) Cf. M.K. 27b.

(2) This figure was arrived at by the numerical value of וְלֹ occurring here in the text.
(3) [As sign of mourning for a righteous man and scholar.]
(4) [Although he was an evil doer.] See Targum on Zech. XII, 11, and Meg. 3a.
(5) Cf., e.g., M. K. 25a and Men. 32b.
(6) V. P.B. p. 4.
(7) Meg. 27a; Kid. 40b; thus indicating that the practice of the law is superior to its study.
(8) V. A.Z. 5b.
(9) Isa. XXXII, 20.
(10) [Joseph and Issachar: the former is compared to an ox (Deut. XXXIII, 17) and the latter to an ass (Gen. XLIX, 14).]
(11) Hos X, 12.
(12) Isa. LV, 1.
(13) So MS.M. The printed editions have 'canopy'. [Rashi connects it with the descriptions of 'branches running over the wall.']
(14) Gen XLIX, 22.
(15) Ibid. 14.
(16) Deut. XXXIII, 17.
(17) I Chron. XII, 32.
(18) Referring to supra p. 68.
(19) As it is subject to the law of 'Foot'.
(20) Since it was broken not by the actual body of the animal (or poultry) but by its agency and force in some other object, it comes within the purview of the law of 'Pebbles'; v. Glos, Zeroroth
(21) Lit. 'The cocks'.

Talmud - Mas. Baba Kama 17b

G E M A R A. Rabina said to Raba: Is not FOOT [Mentioned in the commencing clause] identical with ANIMAL [mentioned in the second clause]?[1] — He answered him: [In the commencing clause the Mishnah] deals with Principals[2] whereas [in the second clause] derivatives are introduced.[3] But according to this, the subsequent Mishnah stating, 'Tooth is Mu'ad . . . Any animal is Mu'ad . . .'[4] what Principals and what derivatives could be distinguished there?[5] — Raba, however, answered him humorously, 'I expounded one [Mishnah], it is now for you to expound the other.' But what indeed is the explanation [regarding the other Mishnah]? — R. Ashi said: [In the first clause, the Mishnah] speaks of 'Tooth' of beast, whereas [in the second place] 'Tooth' of cattle is dealt with. For it might have been thought that since he shall put in be'iroh [his cattle][6] is stated in Scripture, the law concerning Tooth should apply only to cattle, but not to beast; it is therefore made known to us that beast is included in the term 'animal'. If so, cattle[7] should be dealt with first! — Beast, which is deduced by means of interpretation, is more important [to the Mishnah which thus gives it priority]. If so, also in the opening Mishnah [dealing with FOOT, the same method should have been adopted] to state first that which is not recorded [in Scripture]?[8] — What a comparison! There [in the case of Tooth] where both [beast and cattle] are Principals, that which is introduced by means of interpretation is preferable; but here [in the case of Foot], how could the Principal be deferred and the derivative placed first?[9] You may alternatively say: Since [in the previous chapter the Mishnah] concludes with 'Foot',[10] it commences here with 'Foot'.

Our Rabbis taught: An animal is Mu'ad to walk in its usual way and to break [things]. That is to say, in the case of an animal entering into the plaintiff's premises and doing damage [either] with its body while in motion, or with its hair while in motion, or with the saddle [which was] upon it, or with the load [which was] upon it, or with the bit in its mouth, or with the bell on its neck,[11] similarly in the case of an ass [doing damage] with its load, the payment must be in full. Symmachus says: In the case of Pebbles[12] or in the case of a pig burrowing in a dunghill and doing damage. the payment is [also] in full.

[In the case of a pig] actually doing damage, is it not obvious [that the payment must be in full]?[13] — Read therefore: 'When it had caused [something of the dunghill] to fly out so that damage resulted therefrom, the payment will be in full.' But have Pebbles ever been mentioned [in this Baraitha, that Symmachus makes reference to them]? — There is something missing [in the text of the Baraitha where] the reading should be as follows: Pebbles, though being quite usual [with cattle, involve nevertheless] only half-damages; in the case of a pig digging in a dunghill and causing [something of it] to fly out so that damage resulted therefrom, only half-damages will therefore be paid. Symmachus, however, says: In the case of Pebbles, and similarly in the case of a pig digging in a dunghill and causing [something of it] to fly out so that damage resulted therefrom, the payment must he in full.

Our Rabbis taught: In the case of poultry flying from one place to another and breaking utensils with their wings. the payment must be in full: but if the damage was done by the vibration that resulted from their wings, only half-damages will be paid.[14] Symmachus. however, says: [In all cases] the payment must be in full.[15]

Another [Baraitha] taught: In the case of poultry hopping upon dough or upon fruits which they either made dirty or picked at, the payment will be in full; but if the damage resulted from their raising there dust or pebbles, only half damages[14] will be paid. Symmachus. however, says: [In all cases] the payment must be in full.

Another [Baraitha] taught: In the case of poultry flying from one place to another, and breaking vessels with the vibration from their wings, only half-damages will be paid. This anonymous Baraitha records the view of the Rabbis.[16]

Raba said: This fits in very well with [the view of] Symmachus who maintains that [damage done by an animal's] force[17] falls under the law applicable to [damage done by its] body;[18] but what about the Rabbis? If they too maintain that [damage done by an animal's] force is subject to the same law that is applicable to [damage done by its] body. why then not pay in full? If on the other hand it is not subject to the law of damage done by a body,. why pay even half damages? — Raba [in answer] said: It may indeed be subject to the law applicable to damage done by a body, yet the payment of half damages in the case of Pebbles is a halachic principle based on a special tradition.[19]

Raba said: Whatever would involve defilement in [the activities of] a zab[20] will in the case of damage involve full payment, whereas that which in [the activities of] a zab would not involve defilement,[21] will in the case-of damage involve only half damages. Was Raba's sole intention to intimate to us [the law of] Pebbles?[22] — No, Raba meant to tell us the law regarding cattle[23] drawing a waggon [over utensils which were thus broken].[24] It has indeed been taught in accordance with [the view expressed by] Raba: An animal is Mu'ad to break [things] in the course of walking. How is that? In the case of an animal entering into the plaintiff's premises and doing damage either with its body while in motion, or with its hair while in motion, or with the saddle [which was] upon it, or with the load [which was] upon it, or with the bit in its mouth, or with the bell on its neck, similarly in the case of an ass [doing damage] with its load, or again, in the case of a calf drawing a waggon [over utensils which were thus broken], the payment must be in full.

Our Rabbis taught: In the case of poultry picking at a cord attached to a pail so that the cord was snapped asunder and the bucket broken, the payment must be in full.

Raba asked: In the case of [cattle] treading upon a utensil which has not been broken at once, but which was rolled away to some other place where it was then broken, what is the law? Shall we go by the original cause [of the damage in our determination of the law], which would thus amount to damage done by the body,[25] or shall only [the result, i.e.] the breaking of the utensil be the

determining factor, amounting thus to Pebbles? — But why not solve the problem from a statement made by Rabbah?[26] For Rabbah said:[27] If a man threw [his fellow's] utensil from the top of a roof and another one came and and broke it with a stick [before it fell upon the ground. where it would in any case have been broken], the latter is under no liability to pay, as we say. 'It was only a broken utensil that was broken by him.' [Is not this the best proof that it is the cause of the damage which is the determining factor?][28] — To Rabbah that was pretty certain, whereas to Raba it was doubtful.

Come and hear: 'Hopping [with poultry] is not Mu'ad.[29] Some however say: It is Mu'ad.'[30] 'Could 'hopping' [in itself] be thought [in any way not to be habitual with poultry]? Does it not therefore mean: 'Hopping that results in making [a utensil] fly [from one place to another so that it is broken] . . . 'so that the point at issue is this: The latter view maintains that the original cause [of the damage] is the determining factor[30] but the former maintains that only [the result, i.e.,] the breaking of the utensil is the determining factor?[31] — No,

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(1) Wherefore then this redundancy?

(2) I.e. damage done by the actual foot.

(3) I.e. damage done by other parts of the body of the animal, cf. supra p. 6.

(4) [Infra 19b.

(5) For both clauses deal with actual 'eating'.

(6) Ex. XXII, 4. [בעיר תבעירה in Aramaic denotes, 'a grazing animal', 'cattle' (Rashi).]

(7) Which is more obvious.

(8) I.e. damage done by other parts of the body of the animal.

(9) 'Foot' is therefore put in the first place.

(10) Supra p. 68.

(11) CF. supra, p. 6.

(12) See supra p. 8.

(13) Why then was it deemed necessary to give it explicit treatment?

(14) As this kind of damage is subject to the law of Pebbles.

(15) For he maintains that even in the case of Pebbles full payment has to be made.

(16) Who hold that in the case of Pebbles only half payment is made.

(17) Such as in the case of Pebbles.

(18) Which is subject to the law of 'Foot'.

(19) See also supra 8.

(20) I.e., one afflicted with gonorrhoea who is subject to the laws of Lev. XV, 1-15; 19-24. Defilement is caused by him both by actual bodily touch and indirectly.

(21) E.g when the zab throws some article on a person levitically clean.

(22) Is not this obvious?

(23) Lit. 'calf'.

(24) That there is in such a case full payment, because if a zab were to sit in a waggon that passed over clean objects, defilement would have been extended to them — the damage and the defilement respectively being regarded as having been caused by the body and not by its force.

(25) Being therefore subject to the law of 'Foot'.

(26) Who was a predecessor of Raba.

(27) Cf. infra 26b.

(28) Seeing that the latter is under no obligation to compensate, but the whole liability to pay is upon the one who threw the utensil from the top of the roof.

(29) The payment for damage will therefore not be in full.

(30) Payment will thus be in full.

(31) Thus constituting Pebbles, for which payment will not be in full.

the ‘hopping’ only caused pebbles to fly, so that the point at issue is the same as that between Symmachus and the Rabbis.[1]

Come and hear: ‘In the case of poultry picking at a cord attached to a pail so that the cord was snapped asunder and the bucket[2] broken, the payment must be in full.’ Could it not be proved from this [Baraitha] that it is the original cause of the damage that has to be followed? — You may, however, interpret [the liability of full payment] to refer to the damage done to the cord.[3] But behold, is not [the damage of] the cord unusual [with poultry[4] and only half damages ought to be paid]? — It was smeared with dough.[5] But, does it not say ‘and the bucket [was] broken’?[6] This Baraitha must therefore be in accordance with Symmachus, who maintains that also in the case of Pebbles full payment must be made. But if it is in accordance with Symmachus, read the concluding clause: Were a fragment of the broken bucket to fly and fall upon another utensil, breaking it, the payment for the former [i.e., the bucket] must be in full, but for the latter only half damages will be paid. Now does Symmachus ever recognise half damages [in the case of Pebbles]? If you, however, submit that there is a difference according to Symmachus between damage occasioned by direct force[7] and that caused by indirect force,[8] what about the question raised by R. Ashi:[9] Is damage occasioned by indirect force according to Symmachus subject to the same law[10] applicable to direct force, or not subject to the law of direct force?[11] Why is it not evident to him that it is not subject to the law of direct force? Hence the above Baraitha is accordingly more likely to be in accordance with the Rabbis, and proves thus that it is the original cause that has to be followed [as the determining factor]![12] R. Bibi b. Abaye, however, said: The bucket [that was broken] was [not rolled but] continuously pushed by the poultry [from one place to another, so that it was broken by actual bodily touch].[13]

Raba [again] queried: Will the half damages in the case of ‘Pebbles’ be paid out of the body [of the tort-feasant animal][14] or will it be paid out of the best of the defendant's estate?[15] Will it be paid out of the body [of the tort-feasant animal] on account of the fact that nowhere is the payment of half damages made out of the best of the defendant's estate, or shall it nevertheless perhaps be paid out of the best of the defendant's estate since there is no case of habitual damage being compensated out of the body [of the tort-feasant animal]? — Come and hear: ‘Hopping [with poultry] is not Mu'ad. Some, however, say: It is Mu'ad.’ Could ‘hopping’ be said [in any way not to be habitual with poultry]? Does it not therefore mean: ‘Hopping and making [pebbles] fly,’ so that the point at issue is as follows: The former view maintaining that it is not [treated as] Mu'ad, requires payment to be made out of the body [of the tort-feasant poultry][14] whereas the latter view maintaining that it is [treated as] Mu'ad, will require the payment [of the half damages for Pebbles] to be made out of the best of the defendant's estate?[15] — No, the point at issue is that between Symmachus and the Rabbis.[16]

Come and hear: In the case of a dog taking hold of a cake [with live coals sticking to it] and going [with it] to a stack of grain where he consumed the cake and set the stack on fire, full payment must be made for the cake,[17] whereas for the stack only half damages will be paid.[18] Now, what is the reason [that only half damages will be paid for the stack] if not on account of the fact that the damage of the stack is subject to the law of Pebbles?[19] It has, moreover, been taught in connection with this [Mishnah] that the half damages will be collected out of the body [of the tort-feasant dog]. [Does not this ruling offer a solution to the problem raised by Raba?] — But do you really think [the law of ‘Pebbles’ to be at the basis of this ruling]?[20] According to R. Eleazar [who maintains[21] that the payment even for the stack will be in full and out of the body of the tort-feasant dog], do we find anywhere full payment being collected out of the body [of tort-feasant animals]? Must not this ruling[20] therefore be explained to refer to a case where the dog acted in an unusual manner in handling the coal,[22] R. Eleazar being of the same opinion as R. Tarfon, who maintains[23] that [even] for the unusual damage by Horn, if done in the plaintiff's premises, the payment will be in full?[24] — This explanation, however, is not essential. For that which compels you to make R. Eleazar maintain the same opinion as R. Tarfon, is only his requiring full payment [out of the body of the dog]. It may

therefore be suggested on the other hand that R. Eleazar holds the view expressed by Symmachus, that in the case of Pebbles full damages will be paid; and that he further adopts the view of R. Judah who said[25] that [in the case of Mu'ad, half of the payment, i.e.] the part of Tam, remains unaffected, [i .e., is always subject to the law of Tam]; the statement that payment is made out of the body [of the dog] will therefore refer only to [one half] the part for which even Tam would be liable. But R. Samia the son of R. Ashi said lo Rabina: I submit that the view you have quoted in the name of R. Judah is confined to cases of Tam turned into Mu'ad [i.e. Horn],[25] whereas in cases which are Mu'ad ab initio[26]

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(1) I.e., whether full or half payment has to be made for damage caused by Pebbles.

(2) Probably by rolling to some other place, where it finally broke.

(3) Whereas for the bucket only half damages will perhaps be paid.

(4) Being thus subject to the law of 'Horn'.

(5) In which case it is not unusual with poultry to pick at such a cord.

(6) Thus clearly indicating that the payment is in respect of the damage done to the bucket.

(7) Such as in the case of a bucket upon which pebbles were thrown directly by an animal.

(8) I.e., a second bucket damaged by a fragment that fell from a first bucket, which was broken by pebbles thrown by an animal.

(9) Infra 19a.

(10) I.e., to full payment.

(11) But merely to half damages.

(12) I.e., though the bucket rolled to some other place where it broke, the case is still subject to the law of Foot.

(13) And coming within the usual category of Foot.

(14) As in the case of Tam; cf. supra, p. 73.

(15) As in the case of Foot; cf. supra, p. 9.

(16) I.e., whether full or half damages are to be paid in the case of Pebbles.

(17) Being subject to the law applicable to Tooth, cf. supra p. 68.

(18) Infra 21b.

(19) Because the damage to the stack was not done by the actual body of the dog but was occasioned by the dog through the instrumentality of the coal, which, after having been put on a certain spot, spread the damage near and far.

(20) Of half damages for the stack.

(21) In a Baraitha.

(22) By taking it in its mouth and applying it to the stack, in which case it is subject to the law of 'Horn'.

(23) Supra p. 59 and infra 24b.

(24) [Though the payment will still be made out of the body of the tort-feasant animal.)

(25) Infra 39a. 45b.

(26) Such as Foot (and Pebbles at least according to Symmachus).

Talmud - Mas. Baba Kama 18b

you have surely not found him maintaining so! You can therefore only say that R. Eleazar's statement regarding full payment deals with a case where the dog has already become Mu'ad [to set fire to stacks in an unusual manner][1] and the point at issue will be that R. Eleazar maintains that there is such a thing as becoming Mu'ad [also] regarding [the law of] Pebbles[2] whereas the Rabbis maintain that there is no such thing as becoming Mu'ad in the case of Pebbles.[3] But If so what about another problem raised [elsewhere][4] by Raba: 'Is there such a thing as becoming Mu'ad regarding [the law of] Pebbles,[5] or is there no such thing as becoming Mu'ad in the case of Pebbles?'[6] Why then not say that according to the Rabbis there could be no such thing as becoming Mu'ad in the case of Pebbles, whereas according to R. Eleazar there may be a case of becoming Mu'ad even in the case of Pebbles? — Raba, however, may say to you: The problem raised by me [as to the possibility of becoming Mu'ad] is of course based on the view of the Rabbis who differ [in this respect] from Symmachus, whereas here [in the case of the dog] both the Rabbis and R. Eleazar may hold the view

of Symmachus who maintains that Pebbles always involve payment in full. The reason, however, that the Rabbis order only half damages [to be paid][7] is on account of the fact that the dog handled the coal in an unusual manner[8] while it had not yet become Mu'ad [for that]. The point at issue between them[9] would be exactly the same as between R. Tarfon and the Rabbis.[10] But R. Tarfon who took the view that the payment will be in full may perhaps never have intended to make it dependent upon the body [of the tort-feasant cattle]?[11] — Cer tainly so, for he derives his view from [the law of] Horn on public ground[12] and it only stands to reason that Dayyo,[13] [i.e. it is sufficient] to a derivative by means of a Kal wa-homer[14] to involve nothing more than the original case from which it has been deduced.[15] But behold, R. Tarfon is expressly not in favour of the Principle of Dayyo?[13] — He is not in favour of Dayyo only when the Kal wa-homer would thereby be rendered completely ineffective[16] , but where the Kal wa-homer would not be rendered ineffective he too upholds Dayyo.[17]

To revert to the previous theme:[18] Raba asked: Is there such a thing as becoming Mu'ad regarding [the law of] Pebbles, or is there no such thing as becoming Mu'ad in the case of Pebbles? Do we compare Pebbles to Horn [which is subject to the law of Mu'ad] or do we not do so since the law of Pebbles is a derivative of Foot[19] [to which the law of Mu'ad has no application]?

Come and hear: "Hopping is not Mu'ad [with poultry]. Some, however, say: It is Mu'ad.' Could 'hopping' be thought [in any way not to be habitual with poultry]? It, therefore, of course means 'Hopping and making thereby [pebbles] fly.' Now, does it not deal with a case where the same act has been repeated three times, so that the point at issue between the authorities will be that the one Master [the latter] maintains that the law of Mu'ad applies [also to Pebbles] whereas the other Master [the former] holds that the law of Mu'ad does not apply [to Pebbles]? — No, it presents a case where no repetition took place; the point at issue between them being the same as between Symmachus and the Rabbis.[20]

Come and hear: In the case of an animal dropping excrements into dough. R. Judah maintains that the payment must be in full, but R. Eleazar says that only half damages will be paid. Now, does it not deal here with a case where the act has been repeated three times, so that the point at issue between the authorities will be that R. Judah maintains that the animal has thus become Mu'ad whereas R. Eleazar holds that it has not become Mu'ad?[21] — No, it deals with a case where no repetition took place, the point at issue between them being the same which is between Symmachus and the Rabbis. But is it not unusual [with an animal to do so]?[22] — The animal was pressed for space [in which case it is no more unusual]. But why should not R. Judah have explicitly stated that the Halachah is in accordance with Symmachus and similarly R. Eleazar should have stated that the Halachah is in accordance with the Rabbis?[23] — [A specific ruling in regard to] excrements is of importance, for otherwise you might have thought that since these [excrements formed a part of the animal and] were poured out from its body, they should still be considered as a part of its body,[24] it has therefore been made known to us that this is not so.[25]

Come and hear: Rami b. Ezekiel learned:[26] In the case of a cock putting its head into an empty utensil of glass where it crowed so that the utensil thereby broke, the payment must be in full, while R. Joseph on the other hand said[26] that it has been stated in the School of Rab that in the case of a horse neighing or an ass braying so that utensils were thereby broken, only half damages will be paid. Now, does it not mean that the same act has already been repeated three times,

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(1) Being thus subject to the law applicable to Horn whereas in the case of Pebbles not accompanied by an unusual act, R. Eleazar would maintain the view of the Rabbis that the payment will not be in full.

(2) When thrown by an unusual act and repeated on more than three occasions; the payment would thus then have to be in full.

(3) But that in spite of all repetitions of the damage the payment will never exceed half damages on account of the

consideration that the case of Pebbles in the usual way is always Mu'ad ab initio and yet no more than half damages is involved.

(4) Cf. infra p. 86.

(5) So that in the case of an animal making pebbles fly (by means of an unusual act) on more than three occasions, the payment will be in full, on the analogy with Horn

(6) The payment will thus never exceed half damages on account of the fact that the repetition on three occasions renders the act usual and makes it subject to the general laws of Pebbles, requiring half damages in the case of any usual act of an animal making pebbles fly.

(7) In the case of the dog.

(8) Coming thus within the category of Horn.

(9) I.e., between the Rabbis and R. Eleazar.

(10) With reference in damage done by Horn (Tam) on the Plaintiff's premises; cf. supra pp. 59. 84; infra p. 125.

(11) For since the payment is in full why should it not be out of the best of the defendant's estate? Cf. however supra p. 15, infra p. 180; but also pp. 23,212.

(12) Infra 24b.

(13) Lit., 'It is sufficient for it'.

(14) Lit. 'From Minor to Major'; v. Glos.

(15) Which was Horn on public ground where the payment in the case of Tam is made out of the body of the tort-feasant animal.

(16) Such as, e.g., to make on account of Dayyo, the payment in the case of Tam doing damage on the plaintiff's premises only for half damages — a payment which would be ordered even without a Kal wa-homer.

(17) The full payment in the case of Tam on the plaintiff's premises which is deduced from the Hal wa-homer, will therefore be collected only out of the body of the tort-feasant animal, on the strength of the Dayyo.

(18) Supra p. 85.

(19) Cf. supra 3b; v. also p. 85, n. 5.

(20) I.e., whether the payment for Pebbles generally be in full or half; cf. supra 17b.

(21) And thus the problem propounded by Raba is a point at issue between Tannaim.

(22) The case must accordingly come under the category of Horn where only half damages should he paid in the first three occasions.

(23) Why deal at all with the specific case of an animal dropping excrements?

(24) Any damage done by them should thus be compensated in full on the analogy of any other derivative of Foot proper.

(25) I.e., it does not come under the category of Foot proper but under that of Pebbles.

(26) Cf. Kid. 24b.

Talmud - Mas. Baba Kama 19a

so that the point at issue [between the contradictory statements] will be that the one Master [the former] maintains that the law of Mu'ad applies [also to Pebbles][1] whereas the other Master [the latter] holds that the law of Mu'ad does not apply [to Pebbles]?[2] — No, we suppose the act not to have been repeated, the point at issue being the same as that between Symmachus and the Rabbis. But is it not unusual [for a cock to crow into a utensil]?[3] — There had been some seeds there [in which case it was not unusual].

R. Ashi asked: Would an unusual act[4] reduce Pebbles [by half, i.e.,] to the payment of quarter damages or would an unusual act not reduce Pebbles to the payment of quarter damages?[5] — But why not solve this question from that of Raba, for Raba asked [the following]:[6] Is there such a thing as becoming Mu'ad in the case of Pebbles[7] or is there no such thing as becoming Mu'ad in the case of Pebbles?[8] Now, does not this query imply that no unusual act [affects the law of Pebbles]?[9] — Raba may perhaps have formulated his query upon a mere supposition as follows: If you suppose that no unusual act [affects the law of Pebbles], is there such a thing as becoming Mu'ad [in the case of Pebbles] or is there no such thing as becoming Mu'ad? — Let it stand undecided.

R. Ashi further asked: Is [damage occasioned by] indirect force, according to Symmachus,[10] subject to the law applicable to direct force or not so? Is he[11] acquainted with the special halachic tradition [on the matter][12] but he confines its effect to damage done by indirect force or is he perhaps not acquainted at all with this tradition? — Let it stand undecided.

IF IT WAS KICKING OR PEBBLES WERE FLYING FROM UNDER IT'S FEET AND UTENSILS WERE BROKEN, [ONLY] HALF DAMAGES WILL BE PAID. The following query was put forward: Does the text mean to say: 'If it was kicking so that damage resulted from the kicking, or in the case of pebbles flying in the usual way ... [only] half damages will be paid,' being thus in accordance with the Rabbis;[13] or does it perhaps mean to say: 'If it was kicking so that damage resulted from the kicking, or when pebbles were flying as a result of the kicking . . . [only] half damages will be paid.' thus implying that in the case of pebbles flying in the usual way, the payment would be in full, being therefore in accordance with Symmachus?[14]

Come and hear the concluding clause: IF IT TROD UPON A UTENSIL AND BROKE IT, AND A FRAGMENT [OF IT] FELL UPON ANOTHER UTENSIL WHICH WAS ALSO BROKEN, FOR THE FIRST UTENSIL FULL COMPENSATION MUST BE PAID, BUT FOR THE SECOND, [ONLY] HALF DAMAGES. Now, how could the Mishnah be in accordance with Symmachus,[14] who is against half damages [in the case of Pebbles]? If you, however, suggest that THE FIRST UTENSIL refers to the utensil broken by a fragment that flew off from the first [broken] utensil, and THE SECOND refers thus to the utensil broken by a fragment that flew off from, the second [broken] utensil, and further assume that according to Symmachus there is a distinction between damage done by direct force and damage done by indirect force [so that in the latter case only half damages will be paid], then [if so] what about the question of R. Ashi: 'Is [damage occasioned by] indirect force, according to Symmachus, subject to the law of direct force or not subject to the law of direct force?' Why is it not evident to him [R. Ashi] that it is not subject to the law applicable to direct force? — R. Ashi undoubtedly explains the Mishnah in accordance with the Rabbis, and the query[15] is put by him as follows: [Does it mean to say:] 'If it was kicking so that damage resulted from the kicking, or in the case of pebbles flying in the usual way . . . [only] half damages will be paid', thus implying that [in the case of Pebbles flying] as a result of kicking, [only] quarter damages would be paid on account of the fact that an unusual act reduces payment [in the case of Pebbles][16] or [does it perhaps mean to say:] 'If it was kicking so that damage resulted from the kicking or when pebbles were flying as a result of the kicking . . .half damages will be paid,' thus making it plain that an unusual act does not reduce payment [in the case of Pebbles]? — Let it stand undecided.

R. Abba b. Memel asked of R. Ammi, some say of R. Hiyya b. Abba, [the following Problem]: In the case of an animal walking in a place where it was unavoidable for it not to make pebbles fly [from under its feet], while in fact it was kicking and in this way making pebbles fly and doing damage, what would be the law? [Should it be maintained that] since it was unavoidable for it not to make pebbles fly there, the damage would be considered usual;[17] or should it perhaps be argued otherwise, since in fact the damage resulted from kicking[18] that caused the pebbles to fly? — Let it stand undecided.

R. Jeremiah asked R. Zera: In the case of an animal walking on public ground and making pebbles fly from which there resulted damage, what would be the law? Should we compare this case[19] to Horn[20] and thus impose liability; or since, on the other hand, it is a derivative of Foot, should there be exemption [for damage done on public ground]? — He answered him: It stands to reason that [since] it is a secondary kind of Foot [there is exemption on Public ground].[21]

Again [he asked him]: In a case where the pebbles were kicked up on public ground but the

damage that resulted therefrom was done in the plaintiff's premises, what would be the law? — He answered him: if the cause of raising [the pebbles] is not there [to institute liability],[22] how could any liability be attached to the falling down [of the pebbles]? Thereupon he [R. Jeremiah] raised an objection [from the following]: In the case of an animal walking on the road and making pebbles fly either in the plaintiff's premises or on public ground, there is liability to pay. Now, does not this Baraitha deal with a case where the pebbles were made both to fly up on public ground and to do damage on public ground?[23] — No, though the pebbles were made to fly on public ground, the damage resulted on the plaintiff's premises. But did you not say [he asked him further, that in such a case there would still be exemption on account of the argument].'If the cause of raising [the pebbles] is not there [to institute liability], how could any liability be attached to the falling down [of the pebbles]?' He answered him: 'I have since changed my mind [on this matter].'[24]

He raised another objection: IF IT TROD UPON A UTENSIL AND BROKE IT, AND A FRAGMENT [OF IT] FELL UPON ANOTHER UTENSIL WHICH WAS ALSO BROKEN, FOR THE FIRST UTENSIL FULL COMPENSATION MUST BE PAID, BUT FOR THE SECOND [ONLY] HALF DAMAGES. And it was taught on the matter: This ruling is confined to [damage done on] the plaintiff's premises, whereas if it took place on public ground there would be exemption regarding the first utensil though with respect to the second there would be liability to pay. Now, does not the Baraitha present a case where the fragment was made both to fly up on public ground and to do damage on public ground?[25] — No, though the fragment was made to fly on public ground, the damage resulted on the plaintiff's premises.

But did you not say [that in such a case there would still be exemption on account of the argument]: 'If the cause of raising [the pebbles] is not there [to institute liability], how could any liability be attached to the falling down [of the pebbles?]'

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(1) The compensation is therefore in full.

(2) Consequently only half damages will be paid.

(3) Coming thus under the category of Horn only half damages should be paid in the case of Tam.

(4) Done by an animal making pebbles fly through kicking.

(5) But the compensation of half damages will be made in all cases of Pebbles.

(6) Supra p. 85.

(7) For compensation in full.

(8) And no more than half damages will ever be paid

(9) For if otherwise, and quarter damages will be paid in the first instance of an unusual act in the case of Pebbles, how could the compensation rise above half damages?

(10) Who orders full compensation in the case of Pebbles; supra p. 79.

(11) I.e., Symmachus.

(12) Ordering only half damages; v supra p. 79.

(13) Who, against the view of Symmachus, order only half damages to be paid, supra p. 79.

(14) Who orders full compensation in the case of Pebbles; ibid.

(15) As to the reading of the Mishnaic text.

(16) As queried by R. Ashi himself, supra p. 88.

(17) Coming thus under the law applicable to Pebbles in the usual way.

(18) Which is an unusual act and should thus be subject to the query put forward by Raba regarding pebbles that were caused to fly by means of an unusual act.

(19) On account of the liability only for half damages.

(20) Where there is liability even on public ground.

(21) Cf. supra p. 9.

(22) Since it took place on public ground.

(23) Which is a refutation of R. Zera's first ruling.

(24) I.e., on the last point.

(25) Which shows that there is liability for Pebbles, i.e., for 'the second utensil,' on public ground, against the ruling of R. Zera.

Talmud - Mas. Baba Kama 19b

— He answered him: 'I have since changed my mind [on this matter].''

But behold R. Johanan said that in regard to the liability of half damages there is no distinction between the plaintiff's premises and public ground. Now, does not this statement also deal with a case where the pebbles were made both to fly up on public ground and to do damage on public ground? — No, though the pebbles were made to fly up on public ground, the damage resulted on the plaintiff's premises. But did you not say [that in such a case there would still be exemption on account of the argument], 'If the cause of raising [the pebbles] is not there [to institute liability], how could any liability be attached to the falling down [of the pebbles]?' — He answered him: 'I have since changed my mind [on this matter].' Alternatively, you might say that R. Johanan referred only to [the liability attached to] Horn.[1]

R. Judah [II] the Prince and R. Oshaia had both been sitting near the entrance of the house of R. Judah, when the following matter was raised between them: In the case of an animal knocking about with its tail, [and doing thereby damage on public ground] what would be the law? — One of them said in answer: Could the owner be asked to hold the tail of his animal continuously wherever it goes?[2] But if so, why in the case of Horn shall we not say the same: 'Could the owner be asked to hold the horn of his animal continuously wherever it goes?' — There is no comparison. In the case of Horn the damage is unusual, whereas it is quite usual [for an animal] to knock about with its tail.[3] But if it is usual for an animal to knock about with its tail, what then was the problem?[4] — The problem was raised regarding an excessive knocking about.[5]

R. 'Ena queried: In the case of an animal knocking about with its membrum virile and doing thereby damage,[6] what is the law? Shall we say it is analogous to Horn?[7] For in the case of Horn do not its passions get the better of it, as may be said here also? Or shall we perhaps say that in the case of Horn, the animal is prompted by a malicious desire to do damage, whereas, in the case before us, there is no malicious desire to do damage?[8] — Let it stand undecided.

POULTRY ARE MU'AD TO WALK IN THEIR USUAL WAY AND TO BREAK [THINGS]. IF A STRING BECAME ATTACHED TO THEIR FEET OR WHERE THEY HOP ABOUT AND BREAK UTENSILS, [ONLY] HALF DAMAGES WILL BE PAID. R. Huna said: The ruling regarding half damages applies only to a case where the string became attached of itself, but in a case where it was attached by a human being the liability would be in full. But in the case where the string was attached of itself, who would be liable to pay the half damages? It could hardly be suggested that the owner of the string[9] would have to pay it, for in what circumstances could that be possible? If when the string was kept by him in a safe place [so that the fact of the poultry taking hold of it could in no way be attributed to him], surely it was but a sheer accident?[10] If [on the other hand] it was not kept in a safe place, should he not be liable for negligence [to pay in full]? It was therefore the owner of the poultry who would have to pay the half damages. But again why differentiate [his case so as to excuse him from full payment]? If there was exemption from full payment on account of [the inference drawn from] the verse, If a man shall open a pit,[11] which implies that there would be no liability for Cattle opening a Pit, half damages should [for the very reason] similarly not be imposed here as [there could be liability only when] Man created a pit but not [when] Cattle [created] a pit? — The Mishnaic ruling [regarding half damages] must therefore be applicable only to a case where the poultry made the string fly [from one place to another, where it broke the utensils, being thus subject to the law of Pebbles]; and the statement made by R.Huna will accordingly refer to a case which has been dealt with elsewhere [viz.]: In the case of an ownerless

string, R. Huna said that if it had become attached of itself to poultry [and though damage resulted to an animate object tripping over it while it was still attached to the poultry] there would be exemption.[12] But if it had been attached to the poultry by a human being, he would be liable to pay [in full]. Under what category of damage could this liability come?[13] — R. Huna b. Manoah said: Under the category of Pit, which is rolled about by feet of man and feet of animal.[14]

MISHNAH. WITH REFERENCE TO WHAT IS TOOTH MU'AD?[15] [IT IS MU'AD] TO CONSUME WHATEVER IS FIT FOR IT. ANIMAL IS MUA'D TO CONSUME BOTH FRUITS AND VEGETABLES. BUT IF IT HAS DESTROYED CLOTHES OR UTENSILS, [ONLY] HALF DAMAGES WILL BE PAID.[16] THIS RULING APPLIES ONLY TO DAMAGE DONE ON THE PLAINTIFF'S PREMISES, BUT IF IT IS DONE ON PUBLIC GROUND THERE WOULD BE EXEMPTION.[17] WHERE, HOWEVER, THE ANIMAL HAS DERIVED SOME BENEFIT [FROM THE DAMAGE DONE BY IT], PAYMENT WILL [IN ANY CASE] BE MADE TO THE EXTENT OF THE BENEFIT. WHEN WILL PAYMENT BE MADE TO THE EXTENT OF THE BENEFIT? IF IT CONSUMED [FOOD] IN THE MARKET, PAYMENT TO THE EXTENT OF THE BENEFIT WILL BE MADE; [BUT IF IT CONSUMED] IN THE SIDEWAYS OF THE MARKET, THE PAYMENT WILL BE FOR THE ACTUAL. DAMAGE DONE BY THE ANIMAl. [SO ALSO IF IT CONSUMED] AT THE ENTRANCE OF A SHOP, PAYMENT TO THE EXTENT OF THE BENEFIT WILL BE MADE, [BUT IF IT CONSUMED] INSIDE THE SHOP, THE PAYMENT WILL BE FOR THE ACTUAL DAMAGE DONE BY THE ANIMAL.

GEMARA. Our Rabbis taught: Tooth is Mu'ad to consume whatever is fit for it. How is that? In the case of an animal entering the plaintiff's premises and consuming food that is fit for it or drinking liquids that are fit for it, the payment will be in full. Similarly in the case of a wild beast entering the plaintiff's premises, tearing an animal to pieces and consuming its flesh, the payment will be in full. So also in the case of a cow consuming barley, an ass consuming horse-beans, a dog licking oil, or a pig consuming a piece of meat, the payment will be in full. R. Papa [thereupon] said: Since it has been stated that things which in the usual way would be unfit as food [for particular animals] but which under pressing circumstances are consumed by them,[18] come under the designation of food, in the case of a cat consuming dates, and an ass consuming fish, the payment will similarly be in full.

There was a case where an ass consumed bread and chewed also the basket[19] [in which the bread had been kept]. Rab Judah thereupon ordered full payment for the bread, but only half damages for the basket. Why can it not be argued that since it was usual for the ass to consume the bread, it was similarly usual for it to chew at the same time the basket too? — It was only after it had already completed consuming the bread, that the ass chewed the basket. But could bread be considered the usual food of an animal? Here is [a Baraitha] which contradicts this: If it [the animal] consumed bread, meat or broth, only half damages will be paid.[20] Now, does not this ruling refer to [a domestic] animal?[21] — No, it refers to a wild beast. To a wild beast? Is not meat its usual food? — The meat was roasted.[22] Alternatively, you may say: It refers to a deer.[23] You may still further say alternatively that it refers to a [domestic] animal, but the bread was consumed upon a table.[24]

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(1) Where indeed there is no distinction between public ground and the plaintiff's premises; (cf. however, the views of R. Tarfon, supra 14a;18a and infra 24b). but in regard to Pebbles, there is a distinction, and liability is restricted to the plaintiff's premises, according to the ruling of R. Zera.

(2) There will therefore be no liability.

(3) Coming thus under the category of Foot, for which there is no liability on public ground.

(4) Why should it not be regarded as a derivative of Foot?

(5) Whether it is still usual for it or not.

(6) On public ground.

(7) And there will be liability.

(8) It should therefore come under the category of Tooth and Foot, for which there is no liability on public ground.

(9) Not being the owner of the poultry.
(10) He should consequently be freed altogether.
(11) Ex. XXI, 33. (5) I.e., no responsibility is involved in cattle creating a nuisance. Cf. infra 48a; 51a.
(12) As there was no owner to the string, while the owner of the poultry could not be made liable for damage that resulted from a nuisance created by his poultry on the principle that Cattle, creating a nuisance, would in no way involve the owner in any obligation.
(13) Since that human being was neither the owner of the poultry nor the owner of the string, and the damage did not occur at the spot where he attached the string.
(14) For which there is liability, as explained supra p. 19.
(15) V. supra p. 68.
(16) For being an unusual act, it comes under the category of Horn.
(17) Cf. supra p. 17.
(18) E.g., horse-beans by an ass, or meat by a pig.
(19) Or 'split it', 'picked it to pieces' (Rashi).
(20) On the ground that the act was unusual and as such would come under the category of Horn.
(21) This shows that bread is not the usual food of animal.
(22) Which is in such a state not usually consumed even by a wild beast.
(23) Which, as a rule, does not feed on meat.
(24) Which was indeed unusual.

Talmud - Mas. Baba Kama 20a

There was a case where a goat, noticing turnips upon the top of a cask, climbed up there and consumed the turnips and broke the jar. — Raba thereupon ordered full payment both for the turnips and for the jar; the reason being that since it was usual with it to consume turnips it was also usual to climb up [for them].

Ilfa stated: In the case of an animal on public ground stretching out its neck and consuming food that had been placed upon the back of another animal, there would be liability to pay; the reason being that the back of the other animal would be counted as the plaintiff's premises. May we say that the following teaching supports his view: 'In the case of a plaintiff who had a bundle [of grain] hanging over his back and [somebody else's animal] stretched out its neck and consumed [the grain] out of it, there would be liability to pay'? — No, just as Raba elsewhere referred to a case where the animal was jumping [an act which being quite unusual would be subject to the law of Horn[1]], so also this teaching might perhaps similarly deal with a case of jumping.

With reference to what was Raba's statement made? — [It was made] with reference to the following statement of R. Oshaia: In the case of an animal on public ground going along and consuming, there would be exemption, but if it was standing and consuming there would be liability to pay. Why this difference? If in the case of walking [there is exemption, since] it is usual with animal to do so, is it not also in the case of standing usual with it to do so? — [It was on this question that] Raba said: 'Standing' here implies jumping [which being unusual was therefore subject in the law of Horn].[1]

R. Zera asked: [In the case of a sheaf that was] rolling about, what would he the law? (In what circumstances? — When, e.g., grain had originally been placed in the plaintiff's premises, but was rolled thence into public ground [by the animal, which consumed the grain while standing on public ground], what would then be the law?)[2] — Come and hear that which R. Hiyya taught: 'In the case of a bag of food lying partly inside and partly outside [of the plaintiff's premises], if the animal consumed inside, there would be liability [to pay], but if it consumed outside there would be exemption.' Now, did not this teaching refer to a case where the bag was being continually rolled?[3] — No; read . '...which the animal consumed, for the part which had originally been lying inside[4]

there would be liability but for the part that had always been outside there would be exemption.' You might alternatively say that R. Hiyya referred to a bag containing long stalks of grass.[5]

ANIMAL IS MUA'D TO CONSUME BOTH FRUITS AND VEGETABLES. BUT IF IT HAS DESTROYED CLOTHES OR UTENSILS, [ONLY] HALF DAMAGES WILL BE PAID. THIS RULING APPLIES ONLY TO DAMAGE DONE ON THE PLAINTIFF'S PREMISES, BUT IF IT IS DONE ON PUBLIC GROUND THERE WOULD BE EXEMPTION. To what ruling does the last clause refer? — Rab said: [It refers] to all the cases [dealt with in the Mishnah, even to the destruction of clothes and utensils];[6] the reason being that whenever the plaintiff himself acted unlawfully,[7] the defendant, though guilty of misconduct, could be under no liability to pay. Samuel on the other hand said: It refers only to the ruling regarding [the consumption of] fruits and vegetables,[8] whereas in the case of clothes and utensils[9] there would be liability [even when the damage was done on public ground]. [The same difference of opinion is found between Resh Lakish and R. Johanan, for] Resh Lakish said: [It refers] to all the cases [even to the destruction of clothes and utensils].[10] In this Resh Lakish was following a view expressed by him in another connection, where he stated:[11] In the case of two cows on public ground, one lying down and the other walking about, if the one that was walking kicked the one that was lying there would be exemption [since the latter too misconducted itself by laying itself down on public ground], whereas if the one that was lying kicked the one that was walking there would be liability to pay. R. Johanan on the other hand said: The ruling in the Mishnah refers only to the case of fruits and vegetables, whereas in the case of clothes and utensils there would be liability [even when the damage was done on public ground]. Might it thus be inferred that R. Johanan was also against the view expressed by Resh Lakish even in the case of the two cows? — No; [in that case] he could indeed have been in full agreement with him; for while in the case of clothes [and utensils] it might be customary with people to place [their] garments [on public ground] whilst having a rest near by, [in the case of the cows] it is not usual [for an animal to lie down on public ground].[12]

WHERE, HOWEVER, THE ANIMAL HAS DERIVED SOME BENEFIT [FROM THE DAMAGE DONE BY IT]. PAYMENT WILL [IN ANY CASE] BE MADE TO THE EXTENT OF THE BENEFIT. How [could the extent of the benefit be] calculated? — Rabbah said: [It must not exceed] the value of straw [i.e. the coarsest possible food for animals]. But Raba said: The value of barley[13] on the cheapest scale [i.e. two-thirds of the usual price]. There is a Baraitha in agreement with Rabbah, and there is another Baraitha in agreement with Raba. There is a Baraitha in agreement with Rabbah [viz.]: R. Simeon b. Yohai said: The payment [to the extent of the benefit] would not be more than the value of straw.[14] There is a Baraitha in agreement with Raba [viz.]: When the animal derived some benefit [from the damage done by it], payment would [in any case] be made to the extent of the benefit. That is to say, in the case of [an animal] having consumed [on public ground] one kab[15] or two kabs [of barley], no order would be given to pay the full value of the barley [that was consumed], but it would be estimated how much might an owner be willing to spend to let his animal have that particular food [which was consumed] supposing it was good for it, though in practice he was never accustomed to feed it thus. It would therefore follow that in the case of [an animal] having consumed wheat or any other food unwholesome for it, there could be no liability at all.

R.Hisda said to Rami b. Hama: You were not yesterday with us in the House of Study[16] where there were discussed some specially interesting matters. The other thereupon asked him: What were the specially interesting matters? He answered: [The discussion was whether] one who occupied his neighbour's premises unbeknown to him would have to pay rent[17] or not. But under what circumstances? It could hardly be supposed that the premises were not for hire,[18] and he [the one who occupied them] was similarly a man who was not in the habit of hiring any,[19] for [what liability could there be attached to a case where] the defendant derived no benefit and the plaintiff sustained no loss? If on the other hand the premises were for hire and he was a man whose wont it was to hire

premises, [why should no liability be attached since] the defendant derived a benefit and the plaintiff sustained a loss? — No; the problem arises in a case where the premises were not for hire, but his wont was to hire premises. What therefore should be the law? Is the occupier entitled to plead [against the other party]: 'What loss have I caused to you [since your premises were in any case not for hire]?'

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(1) Which could not be exempted from liability even on public ground.

(2) If we were to go by the place of the actual consumption there would be exemption in this case, whereas if the original place whence the food was removed is also taken into account, there would be liability to pay.

(3) According to this Baraitha, the place of actual consumption was the basic point to be considered.

(4) Though removed by the animal and consumed outside.

(5) Which was lying partly inside and partly outside, and as, unlike grain, it constituted one whole, the place of the consumption was material.

(6) For which there would be no liability on public ground, although, being unusual, it would come under the category of Horn.

(7) By allowing his clothes or utensils to be on public ground.

(8) Cf. supra p. 17.

(9) As the damage would come under the category of Horn.

(10) V. p. 97, n. 5.

(11) V. infra 32a.

(12) It was therefore a misconduct on the the part of the animal to lie down, which makes it liable for any damage it caused, whilst it is not entitled to payment for any damage sustained.

(13) I.e., the value of the food actually consumed by the animal.

(14) Even when the animal consumed barley, as it might be alleged that straw would have sufficed it.

(15) A certain measure: v. Glos.

(16) Lit. 'in our district,' 'domain' בחהומא This word is omitted in some texts, v. D. S. a.l.

(17) For the past.

(18) And would in any case have remained vacant.

(19) As he had friends who were willing to accommodate him without any pay.

Talmud - Mas. Baba Kama 20b

Or might the other party retort: 'Since you have derived a benefit [as otherwise you would have had to hire premises], you must pay rent accordingly'? Rami b. Hama thereupon said to R. Hisda: 'The solution to the problem is contained in a Mishnah.' — 'In what Mishnah?' He answered him: 'When you will first have performed for me some service.'[1] Thereupon he, R. Hisda, carefully lifted up his[2] scarf and folded it. Then Rami b. Hama said to him: [The Mishnah is:] WHERE, HOWEVER, THE ANIMAL HAS DERIVED SOME BENEFIT [FROM THE DAMAGE DONE BY IT,] PAYMENT WILL [IN ANY CASE] BE MADE TO THE EXTENT OF THE BENEFIT. Said Raba: How much worry and anxiety is a person [such as Rami b. Hama] spared whom the Master [of all] helps! For though the problem [before us] is not at all analogous to the case dealt with in the Mishnah, R. Hisda accepted the solution suggested by Rami b. Hama. [The difference is as follows:] In the case of the Mishnah the defendant derived a benefit and the plaintiff sustained a loss, whereas in the problem before us the defendant derived a benefit but the plaintiff sustained no loss. Rami b. Hama was, however, of the opinion that generally speaking fruits left on public ground have been [more or less] abandoned by their owner [who could thus not regard the animal that consumed them there as having exclusively caused him the loss he sustained, and the analogy therefore was good].

Come and hear: 'In the case of a plaintiff who [by his fields] has encircled the defendant's field on three sides, and who has made a fence on the one side as well as on the second and third sides [so that the defendant is enjoying the benefit of the fences], no payment can be enforced from the defendant [since on the fourth side his field is still open wide to the world and the benefit he derives

is thus incomplete].'[3] Should, however, the plaintiff make a fence also on the fourth side, the defendant would [no doubt] have to share the whole outlay of the fences. Now, could it not he deduced from this that wherever a defendant has derived benefit, though the plaintiff has thereby sustained no loss,[4] there is liability to pay [for the benefit derived]? — That case is altogether different, as the plaintiff may there argue against the defendant saying: It is you that [by having your field in the middle of my fields] have caused me to erect additional fences[5] [and incur additional expense].

Come and hear: [In the same case] R. Jose said: [It is only] if the defendant [subsequently] of his own accord makes a fence on the fourth side that there would devolve upon him, a liability to pay his share [also] in the existing fences [made by the plaintiff].[6] The liability thus applies only when the defendant fences [the fourth side], but were the plaintiff to fence [the fourth side too] there would be no liability [whatsoever upon the defendant]. Now, could it not be deduced from this that in a case where, though the defendant has derived benefit, the plaintiff has [thereby] sustained no loss, there is no liability to pay? — That ruling again is based on a different principle, since the defendant may argue against the plaintiff saying: 'For my purposes a partition of thorns of the value of zuz[7] would have been quite sufficient.'

Come and hear: '[A structure consisting of] a lower storey and an upper storey, belonging respectively to two persons, has collapsed. The owner of the upper storey thereupon asks the owner of the lower storey to rebuild the ground floor, but the latter does not agree to do so. The owner of the upper storey is then entitled to build the lower storey and to occupy it until the owner of the ground floor refunds the outlay.'[8] Now, seeing that the whole outlay will have to be refunded by the owner of the lower storey, it is evident that no rent may be deducted [for the occupation of the lower storey]. Could it thus not be inferred from this ruling that in a case where, though the defendant has derived a benefit, the plaintiff has [thereby] sustained no loss,[9] there is no liability to pay? — That ruling is based on a different principle as the lower storey is by law accessory to the upper storey.[10]

Come and hear: [In the same case] R. Judah said: Even this one who occupies another man's premises without an agreement with him must nevertheless pay him rent.[11] Is not this ruling a proof that in a case where the defendant has derived benefit, though the plaintiff has [thereby] sustained no loss, there is full liability to pay? — That ruling is based on a different principle, since we have to reckon there with the blackening of the walls [in the case of newly built premises, the plaintiff thus sustaining an actual loss].

The problem was communicated to R. Ammi and his answer was: 'What harm has the defendant done to the other party? What loss has he caused him to suffer? And finally what indeed is the damage that he has done to him?' R. Hiyya b. Abba, however, said: 'We have to consider the matter very carefully.' When the problem was afterwards again laid before R. Hiyya b. Abba he replied: 'Why do you keep on sending the problem to me? If I had found the solution, would I not have forwarded it to you?'

It was stated: R. Kahana quoting R. Johanan said: [In the case of the above problem] there would be no legal obligation to pay rent; but R. Abbahu similarly quoting R. Johanan said: There would be a legal obligation to pay rent. R. Papa thereupon said: The view expressed by R. Abbahu [on behalf of R. Johanan] was not stated explicitly [by R. Johanan] but was only arrived at by inference. For we learnt: He who misappropriates a stone or a beam belonging to the Temple Treasury[12] does not render himself subject to the law of Sacrilege.[13] But if he delivers it to his neighbour, he is subject to the law of Sacrilege,[14] whereas his neighbour is not subject to the law of Sacrilege.[15] So also when he builds it into his house he is not subject to the law of Sacrilege until he actually occupies that house for such a period that the benefit derived from that stone or that beam would amount to the value of a perutah.[16] And Samuel thereupon said that the last ruling referred to a case where the

stone or the beam was [not fixed into the actual structure but] left loose on the roof.[17] Now, R. Abbahu sitting in the presence of R. Johanan said in the name of Samuel that this ruling proved that he who occupied his neighbour's premises without an agreement with him would have to pay him rent.[18] And he [R. Johanan] kept silent. [R. Abbahu] imagined that since he [R. Johanan] remained silent, he thus acknowledged his agreement with this inference. But in fact this was not so. He [R. Johanan] paid no regard to this view on account of his acceptance of an argument which was advanced [later] by Rabbah; for Rabbah[19] said: The conversion of sacred property even without [the] knowledge [of the Temple Treasury] is [subject[20] to the law of Sacrilege][21]

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(1) 'Then will I let you know the source.' The service thus rendered would on the one hand prove the eagerness of the enquirer and on the other make him appreciate the answer;.

(2) I.e.. the other's.

(3) B.B. 4b.

(4) Such as in the case before us where the fences were of course erected primarily for the plaintiff's own use.

(5) I.e., the fencing which was erected between the field of the defendant and the surrounding fields that belong to the plaintiff. This interpretation is given by Rashi but is opposed by the Tosaf. a.l. who explain the case to refer to fencing set up between the fields of the plaintiff and those of the surrounding neighbours.

(6) B.B. 4b.

(7) A small coin; v. Glos.

(8) B.M. 117a.

(9) [Since in this case the owner of the ground floor refused to build.]

(10) The occupation of the newly-built lower storey by the owner of the upper storey is thus under the given circumstances a matter of right.

(11) B.M. 117a.

(12) But which has been all the time in his possession as he had been the authorized Treasurer of the Sanctuary; v. Hag. 11a and Mei. 20a

(13) Since the offender was the Treasurer of the Temple and the possession of the consecrated stone or beam has thus not changed hands, no conversion has been committed in this case. As to the law of Sacrilege, v. Lev. V, 15-16, and supra, p. 50.

(14) For the conversion that has been committed.

(15) Since the article has already been desecrated by the act of delivery.

(16) Mei. V, 4. Perutah is the minimum legal value; cf. also Glossary.

(17) [As otherwise the mere conversion involved would render him liable to the law of Sacrilege.]

(18) For if in the case of private premises there would be no liability to pay rent, why should the law if Sacrilege apply on account of the benefit of the perutah derived from the stone or the beam?

(19) Cf. B.M. 99b, where the reading is Raba.

(20) As nothing escapes the knowledge of Heaven which ordered the law of Sacrilege to apply to all cases of conversion.

(21) Dealt with in Lev. V, 15-16.

Talmud - Mas. Baba Kama 21a

just as the use of private property under an agreement [is subject to the law of Contracts].

R. Abba b. Zabda sent [the following message] to Mari the son of the Master:[1] 'Ask R. Huna as to his opinion regarding the case of one who occupies his neighbour's premises without any agreement with him, must he pay him rent or not?' But in the meanwhile R. Huna's soul went to rest. Rabbah b. R. Huna thereupon replied as follows: 'Thus said my father, my Master, in the name of Rab: He is not legally bound to pay him rent; but he who hires premises from Reuben may have to pay rent to Simeon.' But what connection has Simeon with premises [hired from Reuben, that the rent should be paid to him]? — Read therefore thus: '. . . [Reuben] and the premises were discovered to be the property of Simeon, the rent must be paid to him.' But [if so], do not the two statements [made above in the name of Rab] contradict each other? — The latter statement [ordering payment to Simeon]

deals with premises which were for hire,[2] whereas the former ruling [remitting rent in the absence of an agreement] refers to premises which were not for hire. It has similarly been stated: R. Hiyya b. Abin quoting Rab said, (some say that R. Hiyya b. Abin quoting R. Huna said): 'He who occupies his neighbour's premises without any agreement with him is not under a legal obligation to pay him rent. He, however, who hires premises from the representatives of the town must pay rent to the owners.' What is the meaning of the reference to 'owners'? — Read therefore thus: '. . . [representatives of the town,] and the premises are discovered to be the property of [particular] owners, the rent must be paid to them.' But [if so,] how can the two statements be reconciled with each other? The latter statement [ordering payment to the newly discovered owners] deals with premises which are for hire,[2] whereas the former ruling [remitting rent in the absence of an agreement] refers to premises which are not for hire.

R.Sehorah slated that R. Huna quoting Rab had said: He who occupies his neighbour's premises without having any agreement with him is under no legal obligation to pay him rent, for Scripture says, Through emptiness[3] even the gate gets smitten.[4] Mar, son of R. Ashi, remarked: I myself have seen such a thing[5] and the damage was as great as though done by a goring ox. R. Joseph said: Pre mises that are inhabited by tenants[6] keep in a better condition. What however is the [practical] difference between them?[7] — There is a difference between them in the case where the owner was using the premises for keeping there wood and straw.[8]

There was a case where a certain person built a villa upon ruins that had belonged to orphans. R. Nahman thereupon confiscated the villa from him [for the benefit of the orphans]. May it therefore not be inferred that R. Nahman is of the opinion that he who occupies his neighbour's premises without having any agreement with him must still pay him rent? — [The case of the orphans is based on an entirely different principle, as] that site had originally been occupied by certain Carmanians[9] who used to pay the orphans a small rent.[10] When the defendant had thus been advised by R. Nahman to go and make a peaceful settlement with the orphans, he paid no heed. R. Nahman therefore confiscated the villa from him.

WHEN WILL PAYMENT BE MADE TO THE EXTENT OF THE BENEFIT? [IF IT CONSUMED [FOOD] . . . IN THE SIDEWAYS OF THE MARKET, THE PAYMENT WILL BE FOR THE ACTUAL DAMAGE DONE BY THE ANIMAL.] Rab thereupon said: [The last ruling ordering payment for the actual damage done extends] even to a case where the animal itself [stood in the market place but] turned its head to the sideways [where it in this wise consumed the food]. Samuel on the other hand said: Even in the case of the animal turning its head to the sideways no payment will be made for the actual damage done.[11] But according to Samuel, how then can it happen that there will be liability to pay for actual damage? — Only when, e.g., the animal had quitted the market place altogether and walked right into the sideways of the market place. There are some [authorities] who read this argument [between Rab and Samuel] independent of any [Mishnaic] text: In the case of an animal [standing in a market place but] turning its head into the sideways [and unlawfully consuming food which was lying there], Rab maintains that there will be liability [for the actual damage] whereas Samuel says that there will be no liability [for the actual damage]. But according to Samuel, how then can it happen that there will be liability to pay for actual damage? — Only when, e.g., the animal had quitted the market place altogether and had walked right into the sideways of the market place. R. Nahman b. Isaac raised an objection: [SO ALSO IF IT CONSUMED] AT THE ENTRANCE OF A SHOP, PAYMENT TO THE EXTENT OF THE BENEFIT WILL BE MADE.[12] How could the damage in this case have occurred unless, of course, by the animal having turned [its head to the entrance of the shop]? Yet the text states, PAYMENT TO THE EXTENT OF THE BENEFIT. [That is to say,] only to the extent of the benefit [derived by the animal] but not for the actual damage done by it?[13] — He raised the objection and he himself[14] answered it: The entrance to the shop might have been at a corner [in which case the animal had access to the food placed there without having to turn its head].

There are some [authorities], however, who say that in the case of an animal turning [its head to the sideways of the market place] there was never any argument whatsoever that there would be liability [for the actual damage done]. The point at issue between Rab and Samuel was in the case of a plaintiff who left unfenced a part of his site abutting on public ground, and the statement ran as follows: Rab said that the liability for the actual damage done could arise only in a case where [the food was placed in the sideways of the market to which] the animal turned [its head]. But in the case of a plaintiff leaving unfenced a part of his site abutting on public ground [and spreading out there fruits which were consumed by the defendant's animal] there would be no liability to pay [for the loss sustained].[15] Samuel, however, said that even in the case of a plaintiff leaving unfenced a part of his site abutting on to the public ground, there would be liability to pay [for the loss sustained]. Might it not be suggested that the basic issue [between Rab and Samuel] would be that of a defendant having dug a pit on his own site [and while abandoning the site still retains his ownership of the pit]?[16] Rab who here upholds exemption [for the loss sustained by the owner of the fruits] maintains that a pit dug on one's own site is subject to the law of Pit [so that fruits left on an unfenced site adjoining the public ground constitute a nuisance which may in fact be abated by all and everybody],[17] whereas Samuel who declares liability [for the loss sustained by the owner of the fruits] would maintain that a pit dug on one's own site could never be subject to the law of Pit![18] — Rab could, however, [refute this suggestion and] reason thus: [In spite of your argument] I may nevertheless maintain

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(1) Cf. infra 97a; B.M. 64b.

(2) In which case the owner sustains a loss and rent must be paid.

(3) The Hebrew word She'iyyah שאייה rendered ‘emptiness’, is taken to be the name of a demon that haunts uninhabitated premises; cf. Rashi a.l.

(4) Isa. XXIV, 12.

(5) Lit ‘. . . him referring, to the demon.

(6) Who look after premises.

(7) I.e., between the reason adduced by Rab and that given by R. Joseph.

(8) In which case the premises had in any case not been empty and thus not haunted by the so-called demon ‘She'iyyah’. There would therefore be liability to pay rent. But according to the reason given by R. Joseph that premises inhabited by tenants keep in better condition as the tenants look after their repairs, there would even in this case be no liability of rent upon the tenant who trespassed into his neighbour's premises that had previously been used only for the keeping of wood and straw and thus liable to fall into dilapidation.

(9) I.e., persons who came from Carmania. According to a different reading quoted by Rashi a.l. and occurring also in MS.M., it only means ‘Former settlers’.

(10) In which case the plaintiffs suffered an actual loss, however small it was.

(11) Since the body of the animal is still on public ground.

(12) Supra p. 94.

(13) Supporting thus the view of Samuel but contradicting that of Rab.

(14) I.e., R. Nahman b. Isaac.

(15) But only for the benefit the animal derived from the fruits.

(16) The fruits kept near the public ground are a public nuisance and equal a pit, the ownership of which was retained and which was dug on a site to which the public has full access.

(17) Cf. infra 30a.

(18) Since the pit still remains private property.

that in other respects a pit dug on one's own site is not subject to the law of Pit, but the case before us here is based on a different principle, since the defendant is entitled to plead [in reply to the plaintiff]: ‘You had no right at all to spread out your fruits so near to the public ground as to involve

me in liability through my cattle consuming them.' Samuel on the other hand could similarly contend: In other respects a pit dug on one's own site may be subject to the law of Pit, for it may be reasonable in the case of a pit for a plaintiff to plead that the pit may have been totally overlooked [by the animals that unwittingly fell in]. But in the case of fruits [spread out on private ground], is it possible to plead with reason that they may have been overlooked? Surely they must have been seen.[1]

May it not be suggested that the case of an animal 'turning its head [to the sideways]' is a point at issue between the following Tannaitic authorities? For it has been taught: In the case of an animal [unlawfully] consuming [the plaintiff's fruits] on the market, the payment will be [only] to the extent of the benefit; [but when the fruits had been placed] on the sideways of the market, the payment would be assessed for the damage done by the animal. This is the view of R. Meir and R. Judah. But R. Jose and R. Eleazar say: It is by no means usual for an animal to consume [fruits], Only to walk [there]. Now, is not R. Jose merely expressing the view already expressed by the first-mentioned Tannaitic authorities[2] , unless the case of an animal 'turning its head [to the sideways]' was the point at issue between them, so that the first-mentioned Tannaitic authorities[2] maintained that in the case of an animal 'turning its head [to the sideways]' the payment will still be fixed to the extent of the benefit it had derived, whereas R. Jose would maintain that the payment will be in accordance with the actual damage done by it?[3] — No; all may agree that in the case of an animal 'turning its head [to the sideways]' the law may prevail either in accordance with Rab or in accordance with Samuel; the Point at issue, however, between the Tannaitic authorities here [in the Baraitha] may have been as to the qualifying force of in another man's field.[4] The first Tannaitic authorities[2] maintain that the clause, And it [shall] feed in another man's field, is meant to exclude liability for damage done on public ground, whereas the succeeding authorities[5] are of the opinion that the clause And it [shall] feed in another man's field exempts [liability only for damage done to fruits which had been spread on] the defendant's domain.[6] On the defendant's domain! Is it not obvious that the defendant may plead: What right had your fruit to be on my ground?[7] — But the point at issue [between the authorities mentioned in the Baraitha] will therefore be in reference to the cases dealt With [above][8] by Ilfa[9] and by R. Oshaia.[10]

MISHNAH. IF A DOG OR A GOAT JUMPS DOWN FROM THE TOP OF A ROOF AND BREAKS UTENSILS [ON THE PLAINTIFF'S GROUND] THE COMPENSATION MUST BE IN FULL, FOR ANY OF THEM IS CONSIDERED MU'AD IN RESPECT OF THAT DAMAGE].[11] IF [HOWEVER] A DOG TAKES HOLD OF A CAKE [WITH LIVE COALS STICKING TO IT] AND GOES [WITH IT] TO A BARN, CONSUMES THE CAKE AND SETS THE BARN ON FIRE, [THE OWNER OF THE DOG] PAYS FULL COMPENSATION FOR THE CAKE,[12] WHEREAS FOR THE BARN [HE] PAYS [ONLY] HALF DAMAGES.

GEMARA. The reason of [the liability in the commencing clause] is that the dog or goat has jumped [from the roof][13] , but were it to have fallen down[14] [from the roof and thus broken utensils] there would be exemption. It can thus be inferred that the authority here accepted the view that the inception of [potential] negligence resulting in [mere] accident carries exemption.

It has been explicitly taught to the same effect: 'If a dog or goat jumps down from the top of a roof and breaks utensils [on the plaintiff's ground] the compensation must be in full; were it, however, to have fallen down[15] [and thus broken the utensils] there would be exemption.' This ruling seems to be in accord with the view that where there is negligence at the beginning[16] but the actual damage results from [mere] accident[17] there is exemption,[18] but how could the ruling be explained according to the view that upholds liability? — The ruling may refer to a case where the utensils had, for example, been placed very near to the wall so that were the animal to have jumped it would by jumping have missed them altogether; in which case there was not even negligence at the beginning.[19]

R. Zebid in the name of Raba, however, said: There are certain circumstances where there will be liability even in the case of [the animal] falling down. This might come to pass when the wall had not been in good condition.[20] Still what was the negligence there? It could hardly be that the owner should have borne in mind the possibility of bricks falling down[21] [and doing damage], for since after all it was not bricks that came down but the animal that fell down, why should it not be subject to the law applicable to a case where the damage which might have been done by negligence at the inception actually resulted from accident?[22] — No, it has application where the wall of the railing was exceedingly narrow.[23]

Our Rabbis taught: In the case of a dog or goat jumping [and doing damage], if it was in an upward direction[24] there is exemption;[25] but if in a downward direction there is liability.[26] In case, however, of man or poultry jumping [and doing damage], whether in a downward or upward direction, there is liability.[27]

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(1) And since they were kept on private ground they could not be considered a nuisance. The animal consuming them there has indeed committed trespass.

(2) I.e., R. Meir and R. Judah; for the point at issue could hardly be the case of consumption on public ground where none would think of imposing full liability for the actual damage done, but it must be in regard to the sideways of the market.

(3) For in the case of turning the head it was none the more lawful to consume the fruits.

(4) Ex. XXII, 4.

(5) R. Jose and R. Eleazar.

(6) [But there would be no exemption according to R. Jose for consuming fruits even on the market.]

(7) There should thus be no need of explicit exemption.

(8) Supra p. 96.

(9) Dealing with an animal stretching out its head and consuming fruits kept on the back of the plaintiff's animal, in which case R. Meir and R. Judah impose the liability only to the extent of the benefit, whereas R. Jose and R. Eleazar order compensation for the actual damage sustained by the plaintiff.

(10) Imposing liability in the case of an animal jumping and consuming fruits kept in baskets: R. Meir and R. Judah thus limit the liability to the extent of the benefit derived, whereas R. Jose and R. Eleazar do not limit it thus.

(11) Coming thus within the purview of the law of Foot.

(12) Being subject to the law of Tooth.

(13) An act which is usual with either of them and thus subject to the law of Foot.

(14) By mere accident.

(15) By mere accident.

(16) For the owner should have taken precautions against its jumping.

(17) Since it fell down.

(18) Cf. infra 56a; 58a; B.M. 42a and 93b.

(19) But mere accident all through.

(20) The defendant is thus guilty of negligence.

(21) From the wall, which the defendant kept in a dilapidated state.

(22) Where opinions differ.

(23) Or very sloping. It was thus natural that the animal would be unable to remain there very long, but should slide down and do damage.

(24) An act unusual with any of them.

(25) From full compensation, whereas half damages will be paid in accordance with the law applicable to Horn.

(26) I.e., complete liability, as the act is usual with them and is thus subject to the law of Foot.

(27) As the act is quite usual with poultry, and as to man, he is always Mu'ad, v. supra p. 8.

But was it not [elsewhere] taught: 'In the case of a dog or goat jumping [and doing damage], whether in a downward or upward direction, there is exemption'?[1] — R. Papa thereupon interpreted the latter ruling[2] to refer to cases where the acts done by the animals were the reverse of their respective natural tendencies: e.g, the dog [jumped] by leaping and the goat by climbing. If so, why [complete] exemption?[3] — The exemption indeed is only from full compensation while there still remains liability for half damages.[3]

IF A DOG TAKES HOLD etc. It was stated: R. Johanan said: Fire [involves liability] on account of the human agency that brings it about.[4] Resh Lakish, however, maintained that Fire is chattel.[5] Why did Resh Lakish differ from R. Johanan? — His contention is: Human agency must emerge directly from human force whereas Fire does not emerge from human force.[6] Why, on the other hand, did not R. Johanan agree with Resh Lakish?[7] — He may say: Chattel contains tangible properties, whereas Fire[8] has no tangible properties.

We have learnt:[9] IF A DOG TAKES HOLD OF A CAKE [TO WHICH LIVE COALS WERE STUCK] AND GOES [WITH IT] TO A BARN, CONSUMES THE CAKE AND SETS THE BARN ALIGHT, [THE OWNER] PAYS FULL COMPENSATION FOR THE CAKE, WHEREAS FOR THE BARN [HE] PAYS [ONLY] HALF DAMAGES. This decision accords well with the view that the liability for Fire is on account of the human agency that caused it; in the case of the dog, there is thus some liability upon the owner of the dog as the fire there was caused by the action of the dog.[10] But according to the principle that Fire is chattel, [why indeed should the owner of the dog be liable?] Could the fire be said to be the chattel of the owner of the dog? — Resh Lakish may reply: The Mishnaic ruling deals with a case where the burning coal was thrown by the dog [upon the barn]: full compensation must of course be made for the cake,[11] but only half will be paid for the damage done to the actual spot upon which the coal had originally been thrown,[12] whereas for the barn as a whole there is exemption altogether.[13] R. Johanan, however, maintains that the ruling refers to a dog actually placing the coal upon the barn: For the cake[11] as well as for the damage done to the spot upon which the coal had originally been placed the compensation must be in full,[14] whereas for the barn as a whole only half damages will be paid.[15]

Come and hear: A camel laden with flax passes through a public thoroughfare. The flax enters a shop, catches fire by coming in contact with the shopkeeper's candle and sets alight the whole building. The owner of the camel is then liable. If, however, the shopkeeper left his candle outside [his shop], he is liable. R. Judah says: In the case of a Chanucah candle[16] the shopkeeper would always be quit.[17] Now this accords well with the view that Fire implies human agency: the agency of the camel could thus be traced in the setting alight of the whole building. But according to the view that Fire is chattel, [why should the owner of the camel be liable?] Was the fire in this case the chattel of the owner of the camel? — Resh Lakish may reply that the camel in this case [passed along the entire building and] set every bit of it on fire.[18] If so, read the concluding clause: If, however, the shopkeeper left his candle outside [his shop] he is liable. Now, if the camel set the whole of the building on fire, why indeed should the shopkeeper be liable? — The camel in this case stood still [all of a sudden].[19] But [it is immediately objected] if the camel stood still and yet managed to set fire to every bit of the building, is it not still more fitting that the shopkeeper should be free but the owner of the camel fully liable?[20] — R. Huna b. Manoah in the name of R. Ika [thereupon] said: The rulings apply to [a case where the camel] stood still to pass water;[21]

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(1) Because the act is considered unusual with them.

(2) That exempts in acts towards all directions.

(3) For though the acts are unusual, they should be subject to the law of Horn imposing payment of half damages for unusual occurrences.

(4) Lit., 'his fire is due to his arrows'. Damage done by Fire equals thus damage done by Man himself.

(5) Lit., 'his property'.

(6) Since it travels and spreads of itself.
(7) That Fire is chattel.
(8) I e., the flame; cf. Bez. 39a.
(9) Supra p. 109.
(10) All the damage to the barn that resulted from the fire is thus considered as if done altogether by the dog that caused the live coals to start burning the barn.
(11) On account of the law applicable to Tooth.
(12) For the damage to this spot is solely imputed to the action of the dog throwing there the burning coal. The liability, however, is only for half damages on account of the law of Pebbles to which there is subject any damage resulting from objects thrown by cattle: cf. supra P. 79.
(13) Since the fire in this case could not be said to have been the obnoxious chattel of the owner of the dog [Nor could it be treated as Pebbles, since it spread of itself.]
(14) As the damage to this spot is directly attributed to the action of the dog.
(15) For any damage that results not from the direct act, but from a mere agency of chattels, is subject to the law of Pebbles ordering only half damages to be paid.
(16) Which has to be kept in the open thoroughfare; see infra p. 361.
(17) Ibid.
(18) The damage done to every bit of the building is thus directly attributed to the action of the camel.
(19) V. n. 4.
(20) For not having instantly driven away the camel from such a dangerous spot.
(21) And while it was impossible to drive it away quickly from that spot, the camel meanwhile managed to set every bit of the building on fire.

Talmud - Mas. Baba Kama 22b

[so that] in the commencing clause the owner of the camel is liable, for he should not have overloaded [his camel],[1] but in the concluding clause the shopkeeper is liable for leaving his candle outside [his shop].

Come and hear: In the case of a barn being set on fire, where a goat was bound to it and a slave [being loose] was near by it, and all were burnt, there is liability [for barn and goat].[2] In the case, however, of the slave being chained to it and the goat[3] near by it and all being burnt, there is exemption [for barn and goat].[4] Now this is in accordance with the view maintaining the liability for Fire to be based upon human agency: there is therefore exemption here [since capital punishment is attached to that agency].[4] But, according to the view that Fire is chattel, why should there be exemption? Would there be exemption also in the case of cattle killing a slave?[5] — R. Simeon b. Lakish may reply to you that the exemption refers to a case where the fire was actually put upon the body of the slave[6] so that no other but the major punishment is inflicted.[7] If so, [is it not obvious?] Why state it at all? — No; it has application [in the case] where the goat belonged to one person and the slave to another.[8]

Come and hear: In the case of fire being entrusted to a deaf-mute, an idiot or a minor[9] [and damage resulting], no action can be instituted in civil courts, but there is liability[10] according to divine justice.[11] This again is perfectly consistent with the view maintaining that Fire implies human agency, and as the agency in this case is the action of the deaf mute [there is no liability]; but according to the [other] view that Fire is chattel, [why exemption?] Would there similarly be exemption in the case of any other chattel being entrusted to a deaf-mute, an idiot, or a minor?[12] — Behold, the following has already been stated in connection therewith:[13] Resh Lakish said in the name of Hezekiah that the ruling[11] applies only to a case where it was a [flickering] coal that had been handed over to [the deaf-mute] who fanned it into flame, whereas In the case of a [ready] flame having been handed over there is liability on the ground that the instrument of damage has been fully prepared. R. Johanan, on the other hand, stated that even in the case of a ready flame there is

exemption, maintaining that it was only the handling by[14] the deaf-mute that caused [the damage]; there could therefore be no liability unless chopped wood, chips and actual fire were [carelessly] given him.

Raba said: [Both] Scripture and a Baraitha support [the View of] R. Johanan. 'Scripture': For it is written, If fire break out;[15] 'break out' implies 'of itself' and yet [Scripture continues], He that kindled the fire[16] shall surely make restitution.[17] It could thus be inferred that Fire implies human agency. 'A Baraitha': For it was taught. The verse,[17] though commencing with damage

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(1) To the extent that the flax should penetrate the shop.

(2) But not for the slave, who should have quitted the spot before it was too late; cf. infra 27a.

(3) Whether chained or loose.

(4) Infra 43b and 61b. For all civil actions merge in capital charges and the defendant in this case is charged with murder (since the slave was chained and thus unable to escape death), and thus exempt from all money payment arising out of the charge; cf. infra 70b.

(5) V. Ex. XXI, 32, where the liability of thirty shekels is imposed upon the owner.

(6) The defendant has thus committed murder by his own hands.

(7) V. p.113. n. 8.

(8) Though the capital charge is not instituted by the owner of the goat, no damages could be enforced for the goat, since the defendant has in the same act also committed murder, and is liable to the graver penalty.

(9) Who does not bear responsibility before the law.

(10) Upon the person who entrusted the fire to the deaf-mute, etc. Mishnah, infra 59b.

(11) Cf. supra p. 38.

(12) Supra p. 36; infra 59b.

(13) Supra 9b.

(14) Lit., 'the tongs of'.

(15) Ex. XXII, 5.

(16) The damage that resulted is thus emphatically imputed to human agency.

(17) Ex. XXII 5.

done by property,[1] concludes with damage done by the person[2] [in order] to declare that Fire implies human agency.

Raba said: The following difficulty confronted Abaye:According to the view maintaining that Fire implies human agency, how [and when] was it possible for the Divine law to make exemption[3] for damage done by Fire to hidden things?[4] He solved it thus: Its application is in the case of a fire which would ordinarily not have spread beyond a certain point, but owing to the accident of a fence collapsing not on account of the fire, the conflagration continued setting alight and doing damage in other premises where the original human agency is at an end.[5] If so, even regarding unconcealed goods is not the human agency at an end?[6] — Hence the one maintaining that Fire implies human agency also holds that Fire is chattel,[7] so that liability for unconcealed goods would arise in the case where the falling fence could have been, but was not, repaired in time [to prevent the further spread of the fire], since it would equal chattel[8] left unguarded by the owner.[9] But if the one who holds that fire implies human agency also maintains that Fire is chattel,[7] what then is the practical point at issue?[10] — The point at issue is whether Fire[11] will involve the [additional] Four Items.[12]

[THE OWNER OF THE DOG] PAYS FULL COMPENSATION FOR THE CAKE WHEREAS FOR THE BARN [HE] PAYS [ONLY] HALF DAMAGES. Who is liable [for the barn]? — The owner of the dog. But why should not the owner of the coal also be made liable?[13] — His [burning] coal was [well] guarded by him.[14] If the [burning] coal was well guarded by him, how then did the

dog come to it? — By breaking in. R. Mari the son of R. Kahana thereupon said: This ruling implies that the average door is not beyond being broken in by a dog.[15]

Now in whose premises was the cake devoured? It could hardly be suggested that it was devoured in the barn of another party,[16] for do we not require And shall feed in the field of another[17] [the plaintiff], which is not the case here? — No, it applies where it was devoured in the barn of the owner of the cake. You can thus conclude that [the plaintiff's food carried in] the mouth of [the defendant's] cattle

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(1) I.e., by fire breaking out of itself.

(2) As implied in the clause, He that kindled the fire.

(3) Since in the case of Man doing damage such an exemption does not exist.

(4) V. supra pp. 18 and 39 and infra 61b.

(5) It is in this case (where the human agency is at an end) that there is exemption for hidden goods but liability for unconcealed articles.

(6) And there should therefore be exemption for damage done to all kinds of property.

(7) So that whenever the human agency is at an end, there would still be a possibility of liability being incurred.

(8) Lit., 'his ox'.

(9) Cf. infra 55b.

(10) I.e., what is the difference in law whether the liability for Fire is for the principles of human agency and chattel combined, or only on account of the principle of chattel? The difference could of course be only in the case where the human agency involved in Fire was not yet brought to an end. For otherwise the liability according to both views would only be possible on account of the principle of chattel, a principle which is according to the latest conclusion maintained by all.

(11) In cases where the human agency was not yet at an end.

(12) I.e., Pain, Healing, Loss of Time and Degradation, which in the case of Man, but not Ox, injuring men are paid in addition to Depreciation which is a liability common in all cases; v. supra p. 12. According to R. Johanan who considers Fire a human agency, the liability will be not only for Depreciation but also for the additional Four Items: whereas Resh Lakish maintains that only Depreciation will be paid, as in the case of damage done by Cattle.

(13) Since it was his coal that did the damage.

(14) He is therefore not to blame.

(15) For if otherwise the breaking in should be an act of unusual occurrence that should be subject to the law applicable to Horn, involving only the compensation of half damages for the consumption of the cake.

(16) I.e., a barn not belonging to the owner of the cake.

(17) Ex. XXII, 4.

Talmud - Mas. Baba Kama 23b

is still considered [kept in] the plaintiff's premises.[1] For if it is considered to be in the defendant's premises why should not he say to the plaintiff: What is your bread doing in the mouth of my dog?[2] For there had been propounded a problem: Is [the plaintiff's food carried in] the mouth of [the defendant's] cattle considered as kept in the premises of the plaintiff, or as kept in the premises of the defendant? (Now if you maintain that it is considered to be in the defendant's premises, how can Tooth, for which the Divine Law imposes liability,[3] ever have practical application? — R. Mari the son of R. Kahana, however, replied: [It can have application] in the case where [the cattle] scratched against a wall for the sake of gratification [and pushed it down], or where it soiled fruits [by rolling upon them] for the purpose of gratification.[4] But Mar Zutra demurred: Do we not require, As a man taketh away dung till it all be gone,[5] which is not the case here?[6] — Rabina therefore said; [It has application] in the case where [the cattle] rubbed paintings[7] off [the wall]. R. Ashi similarly said: [It may have application] in the case where the cattle trampled on fruits [and spoilt them completely].[7])

Come and hear: If he incited a dog against him [i.e. his fellowman], or incited a serpent against

him [to do damage], there is exemption.[8] For whom is there exemption? — There is exemption for the inciter, but liability upon the owner of the dog. Now if you contend that [whatever is kept in] the mouth of the defendant's cattle is considered [as kept in] the defendant's premises, why should he not say to the plaintiff: What is your hand doing in the mouth of my dog?[9] — Say, therefore, there is exemption also for the inciter;[10] or if you like, you may say: The damage was done by the dog baring its teeth and wounding the plaintiff.[11]

Come and hear: If a man caused another to be bitten by a serpent, R. Judah makes him liable whereas the Sages exempt him.[8] And R. Aha b. Jacob commented:[12] Should you assume that according to R. Judah the poison of a serpent is ready at its fangs, so that the defendant [having committed murder is executed by] the sword,[13] whereas the serpent [being a mere instrument] is left unpunished, then according to the view of the Sages, the poison is spitten out by the serpent of its own free will, so that the serpent [being guilty of slaughter] is stoned,[14] whereas the defendant, who caused it, is exempt.[15] Now if you maintain that [whatever is kept in] the mouth of the defendant's cattle is considered [to be in] the defendant's premises, why should not the owner of the serpent say to the plaintiff: 'What is your hand doing in the mouth of my serpent?' — Regarding [the] killing [of the serpent] we certainly do not argue thus. Whence can you derive [this]? — For it was taught: Where a man enters another's premises without permission and is gored there to death by the owner's ox, the ox is stoned,[14] but the owner is exempted [from paying] kofer[16] [for lost life].[17] Now 'the owner is exempted [from paying] kofer.' Why? Is it not because he can say, 'What were you doing on my premises?' Why then regarding the ox should not the same argument be put forward [against the victim]: 'What had you to do on my premises?' — Hence, when it is a question of killing [obnoxious beasts] we do not argue thus.

The goats of Be Tarbu[18] used to do damage to [the fields of] R.Joseph. He therefore said to Abaye: 'Go and tell their owners that they should keep them indoors.' But Abaye said: 'What will be the use in my going? Even if I do go, they will certainly say to me "Let the master construct a fence round his land."' But if fences must be constructed, what are the cases in which the Divine Law imposed liability for Tooth?[19] — [Perhaps only] when the cattle pulled down the fence and broke in, or when the fence collapsed at night. It was, however, announced by R. Joseph, or, as others say, by Rabbah: 'Let it be known to those that go up from Babylon to Eretz Yisrael as well as to those that come down from Eretz Yisrael to Babylon, that in the case of goats that are kept for the market day but meanwhile do damage, a warning is to be extended twice and thrice to their owners. If they comply with the terms of the warning well and good, but if not, we bid them: "Slaughter your cattle immediately[20] and sit at the butcher's stall to get whatever money you can."'

MISHNAH. WHAT IS TAM, AND WHAT IS MU'AD? — [CATTLE BECOME] MU'AD AFTER [THE OWNER HAS] BEEN WARNED FOR THREE DAYS [REGARDING THE ACTS OF GORING],[21] BUT [RETURN TO THE STATE OF] TAM AFTER REFRAINING FROM GORING FOR THREE DAYS; THESE ARE THE WORDS OF R. JUDAH. R. MEIR, HOWEVER, SAYS: [CATTLE BECOME] MU'AD AFTER [THE OWNER HAS] BEEN WARNED THREE TIMES [EVEN ON THE SAME DAY], AND [BECOME AGAIN] TAM WHEN CHILDREN KEEP ON TOUCHING THEM AND NO GORING RESULTS.

GEMARA. What is the reason of R. Judah?[22] — Abaye said: [Scripture states, Or, if it be known from yesterday, and the day before yesterday, that he is a goring ox, and yet his owner does not keep him in . . .[23]]: 'Yesterday', denotes one day; 'from yesterday' — two;[24] and 'the day before yesterday' — three [days]; 'and yet his owner does not keep him in' — refers to the fourth goring. Raba said: 'Yesterday' and 'from yesterday'[25] denote one day; 'the day before yesterday' — two, 'and he [the owner] does not keep him in,' then, [to prevent a third goring,] he is liable [in full].[26] What then is the reason of R. Meir?[27] — As it was taught: R. Meir said:

(1) And liability for the consumption of the food is not denied.
(2) [I.e., why should I be liable for the bread consumed in my (the defendant's) premises?]
(3) Ex. XXII, 4.
(4) Cf. supra p. 6.
(5) I Kings XIV, 10.
(6) On account of the fact that the corpus is in any of these cases not being destroyed; v. supra pp. 4-5.
(7) In which case there is total destruction of the corpus.
(8) Sanh. IX, 1; v. also infra 24b.
(9) For which the dog is not much to blame since it was incited to do it.
(10) I.e., both inciter and dog-owner will not be made liable.
(11) In which case his hand has never been kept in the mouth of the dog.
(12) Sanh. 78a.
(13) V. Sanh. IX. 1.
(14) In accordance with Ex. XXI, 28-29.
(15) Being a mere accessory.
(16) Lit., 'atonement', v. Glos.
(17) Contrary to the ruling of Ex. XXI, 30.
(18) A p.n. of a certain family.
(19) Ex. XXII. 4.
(20) Without waiting for the market day.
(21) Committed by his cattle.
(22) Making the law of Mu'ad depend upon the days of goring.
(23) Ex. XXI, 36.
(24) The Hebrew term מתמול denoting 'From yesterday' is thus taken to indicate two days.
(25) Expressed in the one Hebrew word מתמול.
(26) According to Rashi a.l. even for the third goring. But Tosaf. a.l. and Rashi B.B. 28a explain it to refer only to the goring of the fourth time and onwards.
(27) That the number of days is immaterial.

Talmud - Mas. Baba Kama 24a

If for goring at long intervals [during three days], there is [full] liability, how much more so for goring at short intervals.[1] They,[2] however, said to him: 'A zabah[3] disproves your argument, as by noticing her discharges at long intervals [three cases of discharge in three days], she becomes [fully] unclean,[4] whereas by noticing her discharges at short intervals [i.e. on the same day] she does not become [fully unclean].'[5] But he answered them: Behold, Scripture says: And this shall be his uncleanness in his issue.[6] Zab[7] has thus been made dependent upon [the number of] cases of 'noticing', and zabah upon that of 'days'. But whence is it certain that 'And this'[6] is to exempt zabah from being affected by cases of 'noticing'?[8] Say perhaps that it meant only to exempt zab from being affected by the number of 'days'?[9] — The verse says, And of him that hath on issue, of the man, and of the woman.[10] Male is thus made analogous to female: just as female is affected by [the number of] 'days' so is man affected by 'days'.[11] But why not make female analogous to male [and say]: just as male is affected by cases of 'noticing',[8] so also let female be affected by cases of 'noticing'?[8] — But Divine Law has [emphatically] excluded that by stating, 'And this'.[12] On what ground, however, do you say [that the Scriptural phrase excludes the one and not the other]? — It only stands to reason that when cases of 'noticing' are dealt with,[13] cases of 'noticing' are excluded;[14] [for is it reasonable to maintain that] when cases of 'noticing' are dealt with,[13] 'days' should be excluded?[15]

Our Rabbis taught: What is Mu'ad? After the owner has been warned for three days;[16] but [it may return to the state of] Tam, if children keep on touching it and no goring results; this is the dictum of R. Jose. R. Simeon says: Cattle become Mu'ad, after the owner has been warned three times,[17] and the statement regarding three days refers only to the return to the state of Tam.

R. Nahman quoting Adda b. Ahabah said: 'The Halachah is in accordance with R. Judah regarding Mu'ad, for R. Jose agrees with him.[18] But the Halachah is in accordance with R. Meir regarding Tam,[19] since R. Jose agrees with him [on this point].' Raba, however, said to R. Nahman: 'Why, Sir, not say that the Halachah is in accordance with R. Meir regarding Mu'ad for R. Simeon agrees with him, and the Halachah is in accordance with R. Judah regarding Tam, since R. Simeon agrees with him [on this point]?' He answered him: 'I side with R. Jose, because the reasons of R. Jose are generally sound.'[20]

There arose the following question: Do the three days [under discussion] apply to [the goring of] the cattle [so that cases of goring on the same day do not count as more than one], or to the owner [who has to be warned on three different days]?[21] The practical difference becomes evident when three sets of witnesses appear on the same day [and testify to three cases of goring that occurred previously on three different days]. If the three days apply to [the goring of] the cattle there would in this case be a declaration of Mu'ad;[22] but, if the three days refer to the warning given the owner, there would in this case be no declaration of Mu'ad, as the owner may say: 'They have only just now testified against me [while the law requires this to be done on three different days].'

Come and hear: Cattle cannot be declared Mu'ad until warning is given the owner when he is in the presence of the Court of Justice. If warning is given in the presence of the Court while the owner is absent, or, on the other hand, in the presence of the owner, but outside the Court, no declaration of Mu'ad will be issued unless the warning be given before the Court and before the owner. In the case of two witnesses giving evidence of the first time [of goring], and another two of the second time, and again two of the third time [of goring], three independent testimonies have been established. They are, however, taken as one testimony regarding haza mah.[23] Were the first set found zomemim,[24] the remaining two sets would be unaffected; the defendant would, however, escape [full] liability[25] and the zomemim would still not have to pay him [for conspiring to make his cattle Mu'ad].[26] Were also the second set found zomemim, the remaining testimony would be unaffected; the defendant would escape [full] liability[25] and the zomemim would still not have to compensate him [for conspiring to make his cattle Mu'ad].[26] Were the third set also found zomemim, they would all have to share the liability [for conspiring to make the cattle Mu'ad];[27] for it is with reference to such a case that it is stated, Then shall ye do unto him as he had thought to have done unto his brother.[28] Now if it is suggested that the three days refer to [the goring of] the cattle [whereas the owner may be warned in one day], the ruling is perfectly right [as the three pairs may have given evidence in one day].[29]

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(1) I.e., by goring three times in one and the same day.

(2) The other Rabbis headed by R. Judah his opponent.

(3) I.e., a woman who within the eleven days between one menstruation period and another had discharges on three consecutive days; cf. Lev.XV, 25-33.

(4) For seven days.

(5) I.e., for more than one day.

(6) Lev. XV, 3. This text checks the application of the a fortiori in this case as the explanation goes on.

(7) I.e., a male person afflicted with discharges of issue on three different occasions; cf. Lev. XV, 1-15.

(8) On one and the same day.

(9) So that he is affected only by that of the cases of 'noticing'.

(10) Lev. XV, 33.

(11) So that if one discharge lasted with him two or three days, it will render him zab proper.

(12) Lev. XV, 3.

(13) In Lev. ibid.

(14) Regarding zabah.

(15) In the case of zab.

(16) Regarding three acts of goring by their cattle.
(17) For three acts of goring.
(18) Thus constituting a majority against R. Meir on this point.
(19) I.e., the return to the state of Tam.
(20) Lit., 'his depth is with him.' v. Git. 67a.
(21) Regarding three acts of goring committed by his cattle even on one day.
(22) Though the evidence was given in one day.
(23) I.e., proved alibi of a set of witnesses, v. Mak. (Sonc. ed.) p. 1, n. 1.
(24) I.e., proved to have been absent at the material time of the alleged goring; v. Glos.
(25) As his cattle 'would have to be dealt with as Tam.
(26) In accordance with law of retaliation. Deut. XIX, 19. Since regarding the declaration of Mu'ad all the three pairs of witnesses constitute one set, and the law of hazamah applies only when the whole set has been convicted of an alibi.
(27) I.e., the half damages added on account of the declaration of Mu'ad, whereas the original half damages on account of Tam will be imposed only upon the last pair of witnesses.
(28) Deut. XIX. 19.
(29) And since they waited until the last day when they were summoned by the plaintiff of that day, it is plain that their object in giving evidence was to render the ox Mu'ad.

Talmud - Mas. Baba Kama 24b

But if it be suggested that the three days refer to the warning given the owner,[1] why should not the first set say: 'Could we have known that after three days there would appear other sets to render the cattle Mu'ad?'[2] — R. Ashi thereupon said: I repeated this argument to R. Kahana, and he said to me: 'And even if the three days refer to [the goring of] the cattle,[3] is the explanation satisfactory? Why should not the last set say: "How could we have known that all those present at the Court[4] had come to give evidence against the [same] ox? Our aim in coming was only to make the defendant liable for half damages."?'[5] — [But we may be dealing with a case where] all the sets were hinting to one another[6] [thus definitely conspiring to act concurrently]. R. Ashi further said that we may deal with a case where all the sets appeared [in Court] simultaneously.[7] Rabina even said: 'Where the witnesses know only the owner but could not identify the ox.'[8] How then can they render it Mu'ad?[9] — By saying: 'As you have in your herd an ox prone to goring, it should be your duty to control the whole of the herd.'

There arose the following question: In the case of a neighbour's dog having been set on a third person, what is the law? The inciter could undoubtedly not be made liable,[10] but what about the owner of the dog? Are we to say that the owner is entitled to plead: 'What offence have I committed here?' Or may we retort: 'Since you were aware that your dog could easily be incited and do damage you ought not to have left it [unguarded]'?

R. Zera [thereto] said: Come and hear: [CATTLE BECOME AGAIN] TAM, WHEN CHILDREN KEEP ON TOUCHING THEM AND NO GORING RESULTS, implying that were goring to result therefrom there would be liability [though it were caused by incitement]! — Abaye however said: Is it stated: If goring results therefrom there is liability? What perhaps is meant is: If goring does result therefrom there will be no return to the state of Tam, though regarding that [particular] goring no liability will be incurred.

Come and hear: If he incited a dog or incited a serpent against him, there is exemption.[11] Does this not mean that the inciter is free, but the owner of the dog is liable? — No, read: '. . . the inciter too is free.'[12]

Raba said: Assuming that in the case of inciting a neighbour's dog against a third person, the owner of the dog is liable, if the incited dog turns upon the inciter, the owner is free on the ground

that where the plaintiff himself has acted wrongly, the defendant who follows suit and equally acts wrongly [against the former] could not be made liable [to him]. R. Papa thereupon said to Raba: A statement was made in the name of Resh Lakish agreeing with yours; for Resh Lakish said:[13] 'In the case of two cows on public ground, one lying and the other walking, if the walking cow kicks the other, there is no liability [as the plaintiff's cow had no right to be lying on the public ground], but if the lying cow kicks the other cow there will be liability.' Raba, however, said to him: In the case of the two cows I would always order payment[14] as [on behalf of the plaintiff] we may argue against the defendant: 'Your cow may be entitled to tread upon my cow, she has however no right to kick her.'

MISHNAH WHAT IS MEANT BY 'OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES'?[15] IN CASE OF GORING, PUSHING, BITING, LYING DOWN OR KICKING, IF ON PUBLIC GROUND THE PAYMENT[16] IS HALF, BUT IF ON THE PLAINTIFF'S PREMISES R. TARFON ORDERS PAYMENT IN FULL[17] WHEREAS THE SAGES ORDER ONLY HALF DAMAGES.

R.TARFON THERE UPON SAID TO THEM: SEEING THAT, WHILE THE LAW WAS LENIENT TO TOOTH AND FOOT IN THE CASE OF PUBLIC GROUND ALLOWING TOTAL EXEMPTION[18] , IT WAS NEVERTHELESS STRICT WITH THEM REGARDING [DAMAGE DONE ON] THE PLAINTIFF'S PREMISES WHERE IT IMPOSED PAYMENT IN FULL, IN THE CASE OF HORN, WHERE THE LAW WAS STRICT REGARDING [DAMAGE DONE ON] PUBLIC GROUND IMPOSING AT LEAST THE PAYMENT OF HALF DAMAGES, DOES IT NOT STAND TO REASON THAT WE SHOULD MAKE IT EQUALLY STRICT WITH REFERENCE TO THE PLAINTIFFS PREMISES SO AS TO REQUIRE COMPENSATION IN FULL? THEIR ANSWER WAS: IT IS QUITE SUFFICIENT THAT THE LAW IN RESPECT OF THE THING INFERRED[19] SHOULD BE EQUIVALENT TO THAT FROM WHICH IT IS DERIVED:[20] JUST AS FOR DAMAGE DONE ON PUBLIC GROUND THE COMPENSATION [IN THE CASE OF HORN] IS HALF, SO ALSO FOR DAMAGE DONE ON THE PLAINTIFF'S PREMISES THE COMPENSATION SHOULD NOT BE MORE THAN HALF. R. TARFON, HOWEVER, REJOINED: BUT NEITHER DO I

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(1) In which case the three sets dealt with could not have given their evidence in one and the same day, but each set on the day the respective goring took place.

(2) Why then should the first set ever be made responsible for the subsequent rendering of the cattle Mu'ad.

(3) In which case the three pairs may have given their evidence in one day.

(4) I.e., the witnesses that constituted the former sets.

(5) The former sets, however, cannot plead thus since they waited with their evidence until the last day, when they appeared to the summons of the plaintiff of that day, in which case it is more than evident that all that concerned that plaintiff regarding the evidence of the earlier times of goring was solely to render the ox Mu'ad.

(6) And all gave evidence in one and the same day. Rashi a.l. maintains that this would still prove that the three days refer to the goring of the cattle and not to warning the owner. According to an interpretation suggested by Tosaf., however, the first and second sets who also appeared on the third day together with the third set, had already given their evidence on the first and second day respectively. The requirement of the three days could thus accordingly refer to warning the owner.

(7) Cf. n. 2.

(8) In which case the sole intention of all the sets of witnesses was the declaration of Mu'ad. They could not have intended to make the defendant liable for half damages since half damages in the case of Tam is paid only out of the body of the goring ox which the witnesses in this case were unable to identify. This explanation holds good only regarding the intention of the last set of witnesses, whereas the former sets, if for the declaration of Mu'ad they would necessarily have to record their evidence before the third time of goring, could then not have foreseen that the same ox (whose identity was not established by them) would continue goring for three and four times. Rashi thus proves that the three days refer not to warning the owner but to the times of goring committed by the cattle.

(9) Since the identity of the goring ox could not be established.
(10) For he, not having actually done the damage, is but an accessory.
(11) Cf. supra p. 117.
(12) Meaning thus that both inciter and owner are free.
(13) Supra p. 98.
(14) Even in the case of the walking cow kicking the lying cow.
(15) Referred to supra p. 68.
(16) While in the state of Tam; cf. supra p. 73.
(17) V. supra p. 68.
(18) Supra p. 17.
(19) I.e., Horn doing damage on the plaintiff's premises.
(20) I.e., Horn doing damage on public ground.

Talmud - Mas. Baba Kama 25a

INFER HORN [DOING DAMAGE ON THE PLAINTIFF'S PREMISES] FROM HORN [DOING DAMAGE ON PUBLIC GROUND]; I INFER HORN FROM FOOT: SEEING THAT IN THE CASE OF PUBLIC GROUND THE LAW, THOUGH LENIENT WITH REFERENCE TO TOOTH AND FOOT, IS NEVERTHELESS STRICT REGARDING HORN, IN THE CASE OF THE PLAINTIFF'S PREMISES, WHERE THE LAW IS STRICT WITH REFERENCE TO TOOTH AND FOOT, DOES IT NOT STAND TO REASON THAT WE SHOULD APPLY THE SAME STRICTNESS TO HORN? THEY, HOWEVER, STILL ARGUED: IT IS QUITE SUFFICIENT IF THE LAW IN RESPECT OF THE THING INFERRED IS[1] EQUIVALENT TO THAT FROM WHICH IT IS DERIVED.[2] JUST AS FOR DAMAGE DONE ON PUBLIC GROUND THE COMPENSATION [IN THE CASE OF HORN] IS HALF, SO ALSO FOR DAMAGE DONE ON THE PLAINTIFF'S PREMISES, THE COMPENSATION SHOULD NOT BE MORE THAN HALF.

GEMARA. Does R. Tarfon really ignore the principle of Dayyo?[3] Is not Dayyo of Biblical origin as taught:[4] How does the rule of Kal wa-homer[5] work? And the Lord said unto Moses, If her father had but spit in her face, should she not be ashamed seven days?[6] How much the more so then in the case of divine [reproof] should she be ashamed fourteen days? Yet the number of days remains seven, for it is sufficient if the law in respect of the thing inferred[7] be equivalent to that from which it is derived![8] — The principle of Dayyo is ignored by him [R. Tarfon] only when it would defeat the purpose of the a fortiori,[9] but where it does not defeat the purpose of the a fortiori, even he maintains the principle of Dayyo. In the instance quoted there is no mention made at all of seven days in the case of divine reproof; nevertheless, by the working of the a fortiori, fourteen days may be suggested: there follows, however, the principle of Dayyo so that the additional seven days are excluded, whilst the original seven are retained. Whereas in the case before us[10] the payment of not less than half damages has been explicitly ordained [in all kinds of premises]. When therefore an a fortiori is employed, another half-payment is added [for damage on the plaintiff's premises], making thus the compensation complete. If [however] you apply the principle of Dayyo, the sole purpose of the a fortiori would thereby be defeated.[11] And the Rabbis?[12] — They argue that also in the case of divine [reproof] the minimum of seven days has been decreed in the words: Let her be shut out from the camp seven days.[13] And R. Tarfon?[14] — He maintains that the ruling in the words, 'Let her be shut out etc.', is but the result of the application of the principle of Dayyo[15] [decreasing the number of days to seven]. And the Rabbis? — They argue that this is expressed in the further verse: And Miriam was shut out from the camp.[16] And R. Tarfon? — He maintains that the additional statement was intended to introduce the principle of Dayyo for general application so that you should not suggest limiting its working only to that case where the dignity of Moses was involved, excluding thus its acceptance for general application: it has therefore been made known to us [by the additional statement] that this is not the case.

R. Papa said to Abaye: Behold, there is a Tanna who does not employ the principle of Dayyo even when the a fortiori would thereby not be defeated, for it was taught: Whence do we know that the discharge of semen virile in the case of zab[17] causes defilement [either by 'touching' or by 'carrying']?[18] It is a logical conclusion: For if a discharge[19] that is clean in the case of a clean person is defiling in the case of zab,[20] is it not cogent reasoning that a discharge[21] which is defiling in the case of a clean person,[22] should defile in the case of zab? Now this reasoning applies to both 'touching' and 'carrying',[23] But why not argue that the a fortiori serves a useful purpose in the case of 'touching', whilst the principle of Dayyo can be employed to exclude defilement by mere 'carrying'?[24] If, however, you maintain that regarding 'touching' there is no need to apply the a fortiori on the ground that [apart from all inferences] zab could surely not be less defiling than an ordinary clean person,[25] my contention is [that the case may not be so, and] that the a fortiori may [still] be essential. For I could argue: By reason of uncleanness that chanceth him by night[26] is stated in Scripture to imply that the law of defilement applies only to those whose uncleanness has been occasioned solely by reason of their discharging semen virile, excluding thus zab, whose uncleanness has been occasioned not [solely] by his discharging semen virile but by another cause altogether.[27] May not the a fortiori thus have to serve the purpose of letting us know that zab is not excluded?[28] — But where in the verse is it stated that the uncleanness must not have [concurrently] resulted also from any other cause?[29]

Who is the Tanna whom you may have heard maintain that semen virile of zab causes [of itself] defilement by mere 'carrying'? He could surely be neither R. Eliezer, nor R. Joshua, for it was taught:[30] The semen virile of zab causes defilement by 'touching', but causes no defilement by mere 'carrying'. This is the view of R. Eliezer. R. Joshua, however, maintains that it also causes defilement by mere 'carrying', for it must necessarily contain particles of gonorrhoea.[31] Now, the sole reason there of R. Joshua's view is that semen virile cannot possibly be altogether free from particles of gonorrhoea, but taken on its own it would not cause defilement. The Tanna who maintains this[32] must therefore be he who is responsible for what we have learnt: More severe than the former [causes of defilement][33]

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(1) V. p. 125, n. 5.

(2) V. ibid. n. 6. [As in whatever way the argument is put the result is the same — namely, inferring Horn on the plaintiff's premises from Horn on public ground.]

(3) The Hebrew term meaning 'it is sufficient for it', and denoting the qualification applied by the Rabbis to check the full force of the a fortiori; v. Glos.

(4) B.B. II 1a; Zeb. 69b.

(5) The technical term for the logical inference, 'From minor to major,' v. Glos.

(6) Num. XII, 14.

(7) I.e., in the case of Divinity.

(8) I.e., the case of her father. [Hence, even in the case of Divinity, no more than seven days are inferred proving that Dayyo has a Biblical basis.]

(9) I.e., render it completely ineffective.

(10) Regarding compensation whether it be half or full in the case of Horn doing damage.

(11) V. p. 126, n. 9.

(12) I.e., the Sages in the Mishnah: how do they meet R. Tarfon's objection?

(13) Num. XII, 14.

(14) How can he state that no mention is made of seven days in connection with divine reproof?

(15) But not a decree per se.

(16) Num. XII, 15.

(17) A person afflicted with gonorrhoea: cf. Lev. XV, 1-15.

(18) As is the case with gonorrhoeal discharge.

(19) Such as saliva.

(20) Cf. Lev. XV, 8, and Niddah, 55b.
(21) Such as semen virile.
(22) Cf. Lev. XV, 16-17, and supra p. 2.
(23) As it is based on the law applicable to the saliva of zab.
(24) As is the case with the law applicable to semen virile of a clean person.
(25) Whose semen virile causes defilement by touching.
(26) Deut. XXIII, 11.
(27) I.e., by the affliction of gonorrhoea. [I may therefore have assumed that the semen virile of a zab causes no defilement, not even by 'touching'.]
(28) And since the a fortiori would still serve a useful purpose regarding defilement by 'touching', why should not the principle of Dayyo be employed to exclude defilement by mere 'carrying'? Hence this Tanna does not resort to Dayya even where the employment thereof would not render the a fortiori ineffective.
(29) The law applicable to semen virile to cause defilement by 'touching' is thus per se common with all kinds of persons. The inference by means of the a fortiori would therefore indeed be rendered useless if Dayyo, excluding as a result defilement by 'carrying', were admitted.
(30) Naz. 66a.
(31) Which defile both by 'touching' and by 'carrying'.
(32) That semen virile of zab defiles by mere 'carrying' even on its own.
(33) I.e., the three primary Defilements: Dead Reptile, Semen Virile and the Person contaminated by contact with a corpse, all of which do not defile by mere carrying'. v. supra p. 2.

Talmud - Mas. Baba Kama 25b

are the gonorrhoeal discharge of zab, his saliva, his semen virile, his urine and the blood of menstruation, all of which defile whether by 'touching' or by mere 'carrying'.[1] But why not maintain that the reason here is also because the semen virile of zab cannot possibly be altogether free from particles of gonorrhoea? — If this had been the reason, semen virile should have been placed in juxtaposition to gonorrhoeal discharge. Why then was it placed in juxtaposition to saliva if not on account of the fact that its causing defilement is to be inferred from the law applicable to his saliva?[2]

R. Aha of Difti said to Rabina: Behold there is this Tanna who does not employ the principle of Dayyo even when the purpose of the a fortiori would thereby not be defeated. For it was taught: Whence do we learn that mats[3] become defiled if kept within the tent where there is a corpse? — It is a logical conclusion: For if tiny [earthenware] jugs that remain undefiled by the handling of zab[4] become defiled when kept within the tent where there is a corpse,[5] does it not follow that mats, which even in the case of zab become defiled,[6] should become defiled when kept within the tent where there is a corpse.[7] Now this reasoning applies not only to the law of defilement for a single day,[8] but also to defilement for full seven[9] [days]. But why not argue that the a fortiori well serves its purpose regarding the defilement for a single day,[10] whilst the principle of Dayyo is to be employed to exclude defilement for seven days? — He [Rabina] answered him: The same problem had already been raised by R. Nahman b. Zachariah to Abaye, and Abaye answered him that it was regarding mats in the case of a dead reptile[11] that the Tanna had employed the a fortiori, and the text should run as follows: 'Whence do we learn that mats[12] coming in contact with dead reptiles[13] become defiled? It is a logical conclusion: for if tiny [earthenware] jugs that remain undefiled by the handling of zab,[14] become defiled when in contact with dead reptiles,[15] does it not follow that mats which even in the case of zab become defiled,[16] should become defiled by coming in contact with dead reptiles?' But whence the ruling regarding mats[17] kept within the tent of a corpse? — In the case of dead reptiles it is stated raiment or skin,[15] while in the case of a corpse it is also stated, raiment . . . skin:[18] just as in the case of raiment or skin stated in connection with dead reptiles,[15] mats [are included to] become defiled, so is it regarding raiment . . . skin stated in connection with a corpse[18] that mats similarly become defiled. This Gezerah shawah[19] must necessarily be 'free',[20] for

if it were not 'free' the comparison made could be thus upset: seeing that in the case of dead reptiles [causing defilement to mats], their minimum for causing uncleanness is the size of a lentil,[21] how can you draw an analogy to corpses where the minimum to cause uncleanness is not the size of a lentil but that of an olive?[22] — The Gezerah shawah must thus be 'free'. Is it not so? For indeed the law regarding dead reptiles is placed in juxtaposition to semen virile as written, Or a man whose seed goeth from him,[23] and there immediately follows, Or whosoever toucheth any creeping thing. Now in the case of semen virile it is explicitly stated, And every garment, and every skin, whereon is the seed of copulation.[24] Why then had the Divine Law to mention again raiment or skin in the case of dead reptiles?[25] It may thus be concluded that it was [inserted] to be 'free' [for exegetical purposes].[26] Still it has so far only been proved that one part [of the Gezerah shawah][27] is 'free'. This would therefore be well in accordance with the view maintaining[28] that when a Gezerah shawah is 'free', even in one of its texts only, an inference may be drawn and no refutation will be entertained. But according to the view holding[29] that though an inference may be drawn in such a case, refutations will nevertheless be entertained, how could the analogy [between dead reptiles and corpses] be maintained?[30] — The verbal congruity in the text dealing with corpses is also 'free'. For indeed the law regarding corpses is similarly placed in juxtaposition to semen virile, as written, And whoso toucheth any thing that is unclean by the dead or a man whose seed goeth from him etc.[23] Now in the case of semen virile it is explicitly stated, And every garment, and every skin, whereon is the seed of copulation. Why then had the Divine Law to mention again raiment . . . skin in the case of corpses?[31] It may thus be concluded that it was [inserted] to be 'free' for exegetical purposes.[26] The Gezerah shawah is thus 'free' in both texts. Still this would again be only in accordance with the view maintaining[32] that when an inference is made by means of reasoning [from an analogy] the subject of the inference is placed back on its own basis.[33] But according to the view that when an inference is made [by means of an analogy] the subject of the inference must be placed on a par with the other in all respects, how can you establish the law [that mats kept in the tent of a corpse become defiled for seven days,[34] since you infer it from dead reptiles where the defilement is only for the day]?[35] — Said Raba: Scripture states, And ye shall wash your clothes on the seventh day,[36] to indicate that all defilements in the case of corpses cannot be for less than for seven [days].

But should we not let Tooth and Foot involve liability for damage done [even] on public ground because of the following a fortiori: If in the case of Horn[37] where [even] for damage done on the plaintiff's premises only half payment is involved, there is yet liability to pay for damage done on public ground, does it not necessarily follow that in the case of Tooth and Foot where for damage done on the plaintiff's premises the payment is in full, there should be liability for damage done on public ground? — Scripture, however, says, And it shall feed in another man's field,[38] excluding thus [damage done on] public ground.

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(1) Kelim I, 3.

(2) It is thus proved that semen virile of zab causes of itself defilement by 'carrying' and not on account of the particles of gonorrhoea it contains.

(3) Which are not included among the articles referred to in Num. XXXI, 20.

(4) [As he is unable to insert even his small finger within. Earthenware is susceptible to levitical uncleanness only through the medium of its interior. Lev. XI, 33.]

(5) As stated in Num. XIX, 15; and every open vessel . . . is unclean.

(6) In accordance with Lev. XV, 4.

(7) Shab. 84a.

(8) Lit., 'defilement (until) sunset,' which applies to defilements caused by zab; v. Lev. XV, 5-11.

(9) Usual in defilements through a corpse; cf. Num. XIX, 11-16.

(10) [As is the case with the bed of a zab (cf. Lev. XV, 4), since it is derived from zab.]

(11) But not at all regarding corpses; the whole problem thus concerns only defilement for a day; v. infra.

(12) As mats are not included among the articles referred to in Lev. XI, 32.

(13) The minimum quantity for defilement by which is the size of a lentil, a quantity which can easily pass through the

opening of the smallest bottle.
(14) As he is unable to insert even his small finger within. Earthenware is susceptible to levitical uncleanness only through the medium of its interior. Lev. XI, 33.
(15) Lev. XI, 32: . . . whether it be any vessel of wood or raiment or skin . . . it shall be unclean until the even.
(16) In accordance with Lev. XV, 4.
(17) Which are not included among the articles referred to in Num. XXXI, 20.
(18) Num. XXXI, 20: And as to every raiment and all that is made of skin . . . ye shall purify.
(19) The technical term for (an inference from) a verbal congruity in two different portions of the Law; v. Glos.
(20) Heb. מופנה (Mufnah), 'free', that is, for exegetical use, having no other purpose to serve, but solely intended to indicate this particular similarity in law.
(21) Hag. 11a; Naz. 52a.
(22) Naz. 49b.
(23) Lev. XXII, 4.
(24) Ibid. XV, 17.
(25) Lev. XI, 32.
(26) Thus to make the Gezerah shawah irrefutable.
(27) I.e., in the case of dead reptiles.
(28) Nid. 22b.
(29) Shab. 131a; Yeb. 70b.
(30) Since the refutation referred to above may be entertained.
(31) Num. XXXI, 20.
(32) Yeb. 78b.
(33) Becoming subject to the specific laws applicable to its own category. [So here mats in the tent of a corpse, though derived by analogy from reptiles, are subject to the laws of defilement by corpses. i.e., a defilement of 7 days.]
(34) Usual in defilements through a corpse; cf. Num. XIX, 11-16.
(35) Lev. XI, 32.
(36) Num. XXXI, 24.
(37) While in the state of Tam; cf. supra p. 73.
(38) Ex. XXII, 4.

Talmud - Mas. Baba Kama 26a

But have we ever suggested payment in full? It was only half payment that we were arguing for![1] — Scripture further says, And they shall divide the money of it[2] [to indicate that this[3] is confined to] 'the money of it' [i.e.. the goring ox] but does not extend to compensation [for damage caused] by another ox.[4]

But should we not let Tooth and Foot doing damage on the plaintiff's premises involve the liability for half damages only because of the following a fortiori: If in the case of Horn, where there is liability for damage done even on public ground, there is yet no more than half payment for damage done on the plaintiff's premises,[5] does it not follow that, in the case of Tooth and Foot where there is exemption for damage done on public ground,[6] the liability regarding damage done on the plaintiff's premises should be for half compensation only? — Scripture says, He shall make restitution,[7] meaning full[8] compensation.

But should we not [on the other hand] let Horn doing damage on public ground involve no liability at all, because of the following a fortiori: If in the case of Tooth and Foot where the payment for damage done on the plaintiff's premises is in full there is exemption for damage done on public ground.[6] does it not follow that, in the case of Horn where the payment for damage done on the plaintiff's premises, is only half, there should be exemption for damage done on public ground? — Said R. Johanan: Scripture says. [And the dead also] they shall divide,[9] to emphasise that in respect of half payment there is no distinction between public ground and private premises.[10]

But should we not let [also] in the case of Man ransom be paid [for manslaughter][11] because of the following a fortiori: If in the case of Ox where there is no liability to pay the [additional] Four Items,[12] there is yet the liability to pay ransom [for manslaughter,[13] does it not follow that in the case of Man who is liable for the [additional] Four Items,[12] there should be ransom [for manslaughter]? — But Scripture states, Whatsoever is laid upon him: upon him[13] excludes [the payment of ransom] in the case of Man [committing manslaughter].

But should we not [on the other hand] let Ox involve the liability of the [additional] Four Items because of the following a fortiori: If Man who by killing man incurs no liability to pay ransom[14] has, when injuring man, to pay [additional] Four Items,[15] does it not follow that, in the case of Ox where there is a liability to pay ransom [for killing man],[16] there should similarly be a liability to pay the [additional] Four Items when injuring [man]? — Scripture states, If a man cause a blemish in his neighbour,[17] thus excluding Ox injuring the [owner's] neighbour.

It has been asked: In the case of Foot treading upon a child [and killing it] in the plaintiff's premises, what should be the law regarding ransom? Shall we say that this comes under the law applicable to Horn, on the ground that just as with Horn in the case of manslaughter being repeated twice and thrice it becomes habitual with the animal,[18] involving thus the payment of ransom,[19] so also seems to be the case here[20] with hardly any distinction; or shall it perhaps be argued that in the case of Horn there was on the part of the animal a determination to injure, whereas in this case the act was not prompted by a determination to injure? — Come and hear: In the case of an ox having been allowed [by its owner] to trespass upon somebody else's ground and there goring to death the owner of the premises, the ox will be stoned, while its owner must pay full ransom whether [the ox was] Tam or Mu'ad. This is the view of R. Tarfon. Now, whence could R. Tarfon infer the payment of full ransom in the case of Tam, unless he shared the view of R. Jose the Galilean maintaining[21] that Tam involves the payment of half ransom for manslaughter committed on public ground, in which case he[22] could rightly have inferred ransom in full [for manslaughter on the plaintiff's premises] by means of the a fortiori from the law applicable to Foot?[23] This thus proves that ransom has to be paid for [manslaughter committed by] Foot. R. Shimi of Nehardea, however, said that the Tanna[24] might have inferred it from the law applicable to [mere] damage done by Foot.[25] But [if so] cannot the inference be refuted? For indeed what analogy could be drawn to damage done by Foot, the liability for which is common also with Fire [whereas ransom does not apply to Fire]?[26] — [The inference might have been] from damage done to hidden goods [in which case the liability is not common with Fire].[27] Still what analogy is there to hidden goods, the liability for which is common with Pit [whereas ransom for manslaughter does not apply to Pit]?[28] — The inference might have been from damage done to inanimate objects[29] [for which there is no liability in the case of Pit].[30] Still what analogy is there to inanimate objects, the liability for which is again common with Fire? — The inference might therefore have been from damage done to inanimate objects that were hidden [for which neither Fire nor Pit involve liability]. But still what comparison is there to hidden inanimate objects, the liability for which is common at least with Man [whereas ransom is not common with Man]?[31] — Does this therefore not prove that he[32] must have made the inference from ransom [for manslaughter] in the case of Foot,[33] proving thus that ransom has to be paid for manslaughter committed by Foot? — This certainly is proved.

R. Aha of Difti said to Rabina: It even stands to reason that ransom has to be paid in the case of Foot. For if you say that in the case of Foot there is no ransom, and that the Tanna[34] might have made the inference from the law applicable to mere damage done by Foot,[35] his reasoning could easily be refuted. For what analogy could be drawn to damage done by Foot for which there is liability in the case of Foot [whereas this is not the case with ransom]? Does this [by itself] not show that the inference could only have been made from ransom in the case of Foot,[36] proving thus that ransom has to be paid for [manslaughter conmitted by] Foot? — It certainly does show this.

MISHNAH. MAN IS ALWAYS MU'AD WHETHER [HE ACTS] INADVERTENTLY OR WILFULLY, WHETHER AWAKE OR ASLEFP.[37] IF HE BLINDED HIS NEIGHBOUR'S EYE OR BROKE HIS ARTICLES, FULL COMPENSATION MUST [THEREFORE] BE MADE.

GEMARA. Blinding a neighbour's eye is placed here in juxtaposition to breaking his articles [to indicate that] just as in the latter case only Depreciation will be indemnified, whereas the [additional] Four Items [of liability][38] do not apply, so also in the case of inadvertently blinding his neighbour's eye only Depreciation will be indemnified, whereas the [additional] Four Items do not apply.

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(1) On the analogy to Horn where the liability is only for half damages in the case of Tam. The Scriptural text may have been intended to exclude only full compensation.

(2) Ex. XXI, 35.

(3) I.e., the division of compensation.

(4) With the exception of course of damage done by Pebbles according to the Rabbis, who by the authority of a special Mosaic tradition order the payment of half damages; cf. supra p. 80.

(5) In accordance with the Rabbis who differ from R. Tarfon; v. supra p. 125.

(6) Supra p. 132.

(7) Ex. XXII, 4.

(8) Lit., ‘good’, ‘perfect’.

(9) [Ex. XXI, 35; the phrase being superfluous, as the text could have read, They shall divide the money of it and the dead.]

(10) Cf. supra p. 92.

(11) V. Supra p. 12.

(12) I.e., Pain, Medical Expenses, Loss of Time and Degradation, in addition to Depreciation, when injuring a human being; v. supra ibid.

(13) Ex. XXI, 30.

(14) V. supra p. 12.

(15) V. p. 133, n. 8.

(16) V. Ex. XXI, 30.

(17) Lev. XXIV, 19.

(18) Which becomes Mu'ad; v. supra p. 119.

(19) Ex. XXI, 30.

(20) With Foot, which is always considered Mu'ad; v. supra p. 11.

(21) Supra p. 66 and infra 48b.

(22) I.e., R. Tarfon.

(23) In the same way as he derived compensation in full for damage done by Horn on the plaintiff's premises, as argued by him, supra p. 125. [Thus: If in the case of Tooth and Foot, where there is no liability at all involved on public ground, there is liability to pay full ransom on the plaintiff's premises, does it not follow that Horn, which does involve at least payment of half ransom on public ground, should on the plaintiff's premises be liable to pay full ransom.]

(24) V. p. 134, n. 9.

(25) And not from the law applicable to manslaughter committed by Foot, in which case there may be no ransom at all. [Thus: If in the case of Foot, which involves no liability for damage on public ground, there is liability to pay in full in the plaintiff's premises, does it not follow that, in the case of Horn, involving as it does payment of half ransom on public ground, there should be payment of full ransom in plaintiff's premises.]

(26) For the person liable for arson may, in such a case, be indicted for manslaughter; cf. supra pp. 37-38 and p. 113.

(27) [Thus: If in the case of Foot, which involves no liability at all on public ground, there is full liability for hidden goods on the plaintiff's premises, does it not follow that, in the case of Horn, which involves liability to pay half damages on public ground, there should be payment of full ransom in plaintiff's premises?] Cf. supra p. 18.

(28) As stated supra p. 37.

(29) Cf. notes 2 and 4.

(30) V. supra p. 18.

(31) For all civil complaints are merged in the capital accusation of manslaughter; cf. supra, p. 113 and Num. XXXV, 32.
(32) I.e., R. Tarfon.
(33) V. supra. 134, n. 10.
(34) I.e., R. Tarfon
(35) V. supra p. 135, n. 2.
(36) V, supra p. 134, n. 10.
(37) Cf. supra p. 8.
(38) I.e., Pain, Medical Expenses, Loss of Time and Degradation; cf. supra p. 133 n. 8.

Talmud - Mas. Baba Kama 26b

. Whence is this ruling[1] deduced? Hezekiah said, and thus taught a Tanna of the School of Hezekiah: Scripture states, Wound instead of a wound[2] — to impose the liability [for Depreciation] in the case of inadvertence as in that of willfulness, in the case of compulsion as in that of willingness. [But] was not that [verse] required to prescribe [indemnity for] Pain even in the case where Depreciation is independently paid? — If that is all,[3] Scripture should have stated, 'Wound for a wound',[4] why state, [wound] instead of a wound,[5] unless to indicate that both inferences be made from it?

Rabbah said: In the case of a stone lying in a person's bosom without his having knowledge of it, so that when he rose it fell down — regarding damage, there will be liability for Depreciation[6] but exemption regarding the [additional] Four Items;[7] concerning Sabbath[8] [there will similarly be exemption] as it is [only] work that has been [deliberately] purposed that is forbidden by the Law;[9] in a case of manslaughter[10] there is exemption from fleeing [to a city of refuge];[11] regarding [the release of] a slave,[12] there exists a difference of opinion between R. Simeon b. Gamaliel and the Rabbis, as it was taught:[13] If the master was a physician and the slave requested him to attend to his eye and it was accidentally blinded, or [the slave requested the master] to scrape his tooth and it was accidentally knocked out, he may now laugh at the master, for he has already obtained his liberty. R. Simeon b. Gamaliel, however, says: [Scripture states] and [he] destroy it,[14] to make the freedom conditional upon the master intending to ruin the eye of the slave.

If the person, however, had at some time been aware of the stone in his bosom but subsequently forgot all about it, so that when he rose it fell down, — in the case of damage there is liability for Depreciation;[15] but though the exemption regarding the [additional] Four Items still holds good,[16] in the case of manslaughter[17] he will have to flee [to a city of refuge], for Scripture says, at unawares,[18] implying the existence of some [previous] knowledge [as to the dangerous weapon] and in the case before us such knowledge did at a time exist: concerning Sabbath,[19] however, there is still exemption; regarding [the release of] a slave the difference of opinion between R. Simeon b. Gamaliel and the Rabbis[20] still applies.

Where he intended to throw the stone to a distance of two cubits, but it fell at a distance of four,[21] if it caused damage, there is liability for Depreciation; regarding the [additional] Four Items there is still exemption;[16] so also concerning Sabbath,[19] for work [deliberately] planned is required [to make it an offence];[22] in the case of manslaughter,[23] And if a man lie not in wait,[24] is stated by Divine law, excluding a case where there was mention to throw a stone to a distance of two cubits but which fell at a distance of four.[25] Regarding [the release of] a slave, the difference of opinion between R. Simeon b. Gamaliel and the Rabbis[20] still applies. Where the intention was to throw the stone to a distance of four[21] cubits but it fell eight cubits away, — if it caused damage there will be liability for Depreciation; regarding the [additional] Four Items there is still exemption;[16] concerning Sabbath, if there was express intention that the stone should fall anywhere, there is liability for an offence,[21] but in the absence of such express intention no offence was committed;[26] in the case of manslaughter,[27] And if a man lie not in wait,[28] excludes a case where there was intention to throw a stone to a

distance of four cubits, but which fell at a distance of eight. Regarding [the release of] a slave the difference of opinion between R. Simeon b. Gamaliel and the Rabbis[29] still applies.

Rabbah again said: In the case of one throwing a utensil[30] from the top of a roof and another one coming and breaking it with a stick [before it fell upon the ground where it would in any case have been broken], the latter is under no liability to pay; the reason being that it was only a utensil which was already certain to be broken that was broken by him.

Rabbah further said: In the case of a man throwing a utensil[31] from the top of the roof while there were underneath mattresses and cushions which were meanwhile removed by another person, or even if he [who had thrown it] removed them himself, there is exemption; the reason being that at the time of the throwing [of the utensil] his agency had been void of any harmful effect.[32]

Rabbah again said: In the case of one throwing a child from the top of the roof and somebody else meanwhile appearing and catching it on the edge of his sword, there is a difference of opinion between R. Judah b. Bathyra and the Rabbis.[33] For it was taught: In the case of ten persons beating one [to death] with ten sticks, whether simultaneously or consecutively, none of them

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(1) That Man is Mu'ad to pay Depreciation for damage done by him under all circumstances.

(2) [Literal rendering of Ex. XXI, 25, which is superfluous having regard to Lev. XXIV, 19, If a man maim his neighbour, as he hath done so shall it be done to him.]

(3) That one is not merged in the other; cf. infra 85a.

(4) Expressed in Hebrew only by two words פצע בפצע

(5) For which three words are employed in the Hebrew text.

(6) For Man is Mu'ad to pay Depreciation even for damage done while asleep.

(7) On account of the absence of a purpose to do damage.

(8) I.e., if while unaware of the stone in his bosom he carried it with him into the open public thoroughfare, thus violating the Sabbath; cf. Shab. 96b.

(9) V. infra 60a; Hag. 10b.

(10) I.e., if, when the stone fell down, it killed a human being; v. Num. XXXV. 9-34.

(11) Since he never had any knowledge of the stone being in his bosom, he could in no way be made responsible criminally for the accidental manslaughter.

(12) I.e., when the stone in falling down destroyed the eye or the tooth of a slave; v. Ex. XXI. 26-27.

(13) Kid. 24b.

(14) Ex. XXI, 26.

(15) For Man is Mu'ad to pay Depreciation even for damage done while asleep.

(16) On account of the absence of a will to do damage.

(17) I.e., if when the stone fell down, it killed a human being; v. Num. XXXV, 9-34.

(18) Num. XXXV, 11, 15.

(19) I.e., if while unaware of the stone in his bosom he carried it with him into the open public thoroughfare, thus violating the Sabbath; cf. Shab. 96b.

(20) Supra p. 137.

(21) For the minimum of distance to constitute the violation of Sabbath by throwing an object in a public thoroughfare is four cubits; v. Shab. 96b.

(22) v. supra p. 137, n. 7.

(23) I.e., if when the stone fell down, it killed a human being; v. Num. XXXV, 9-34.

(24) Ex. XXI, 13.

(25) [According to one interpretation of Rashi, this is a case for exile; according to another, a case which is excluded from enjoying the protection of the city of refuge: v. Mak. 7b.]

(26) V. p. 137, n. 7.

(27) V. p. 138 n.3.

(28) Ex. XXI, 13.

(29) V. supra p. 137.
(30) Belonging to another. According to the interpretation of Rashi a.l. the utensil was thrown by its owner; cf. however, Rashi, supra 17b.
(31) Belonging to another.
(32) Lit., 'he had let his arrow off', it had spent its force; i.e., when the act of throwing took place it was by no means calculated to do any damage.
(33) According to R. Judah, the latter who caught it on the edge of his sword will be guilty of murder, but according to the Rabbis, no one is guilty of it.

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is guilty of murder: R. Judah b. Bathyra, however says: If consecutively the last is liable, for he was the immediate cause of the death.[1] In the case where an ox meanwhile appeared and caught the [falling] child on its horns there is a difference of opinion between R. Ishmael the son of R. Johanan b. Beroka and the Rabbis.[2] For it was taught: Then he shall give for the redemption of his life[3] [denotes] the value of the [life of] the killed person. R. Ishmael the son of R. Johanan b. Beroka interprets it to refer to the value of the [life of] the defendant.[2]

Rabbah further said: In the case of one falling from the top of the roof and [doing damage by] coming into close contact with a woman, there is liability for four items,[4] though were she his deceased brother's wife[5] he would thereby not yet have acquired her for wife.[6] The Four Items [in this case] include: Depreciation, Pain, Medical Expenses and Loss of Time, but not Degradation. for we have learnt:[7] There is no liability for Degradation unless there is intention [to degrade].

Rabbah further said: In the case of one who through a wind of unusual occurrence fell from the top of the roof [upon a human being] and did damage as well as caused degradation, there will be liability for Depreciation[8] but exemption from the [additional] Four Items:[9] if, however, [the fall had been] through a wind of usual occurrence and damage as well as degradation was occasioned, there is liability for Four Items[4] but exemption from Degradation.[7] If he turned over [while falling][10] there would be liability also for Degradation for it was taught: From the implication of the mere statement, And she putteth forth her hand,[11] would I not have understood that she taketh him? Why then continue in the text and she taketh him?[12] — In order to inform you that since there existed an intention to injure though none to cause degradation [there is liability even for Degradation]. Rabbah again said: In the case of one placing a live coal on a neighbour's heart and death resulting, there is exemption;[13] if, however, it was put upon his belongings[14] which were [thereby] burnt, there is liability.[15] Raba said: Both of the two [latter cases] have been dealt with in Mishnah. Regarding the case 'on a neighbour's heart' we learnt:[16] If one man held another fast down in fire or in water, so that it was impossible for him to emerge and death resulted, he is guilty [of murder]. If, however, he pushed him into fire or into water, and it was yet possible for him to emerge but death resulted, there is exemption. Regarding the case 'Upon his belongings' we have similarly learnt:[17] [If a man says to another,] 'Tear my garment;' 'Break my jug;'[18] there is nevertheless liability [for any damage done to the garment or to the jug]. But if he said, '. . . upon the understanding that you will incur no liability,' there is exemption. Rabbah, however, asked: If a man placed a live coal upon the heart of a slave[19] [and injury[20] results therefrom], what should be the law?[21] Does it come under the law applicable in the case of a coal having been placed upon the body of the master himself,[22] or to that applicable in the case of a coal having been placed upon a chattel of his?[23] Assuming that it is subject to the law applicable in the case of a coal having been placed upon the heart of the master himself,[22] what should be the law regarding a live coal placed upon an ox [from which damage resulted]? — He himself answered the query thus: His slave is on a par with his own body,[22] whereas his ox is on a par with his chattels.[23]

CHAPTER III