COMPENSATION SHOULD IN THE FIRST INSTANCE BE MADE [OUT OF THE BODY OF THE OX] FOR THE LAST OFFENCE. SHOULD THERE BE A SURPLUS,[7] COMPENSATION IS TO BE PAID ALSO FOR THE PENULTIMATE OFFENCE; SHOULD THERE STILL BE A SURPLUS, COMPENSATION IS TO BE MADE TO THE ONE BEFORE; THE LATER THE LIABILITY THE PRIOR THE CLAIM.[8] THIS IS THE OPINION OF R. MEIR. R. SIMEON SAYS: IF AN OX OF THE VALUE OF TWO HUNDRED [ZUZ] HAS GORED AN OX OF THE SAME VALUE OF TWO HUNDRED [ZUZ] AND THE CARCASS HAS NO VALUE AT ALL, THE PLAINTIFF WILL GET A HUNDRED ZUZ AND THE DEFENDANT WILL GET A HUNDRED ZUZ [OUT OF THE BODY OF THE OX THAT DID THE DAMAGE].[9] SHOULD THE SAME OX HAVE GORED ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE SECOND CLAIMANT WILL GET A HUNDRED ZUZ, WHILE THE FORMER CLAIMANT WILL GET ONLY FIFTY ZUZ[10] AND THE DEFENDANT WILL HAVE FIFTY ZUZ [IN THE BODY OF HIS OX].[11] SHOULD THE OX HAVE GORED YET ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE THIRD CLAIMANT WILL GET A HUNDRED [ZUZ] WHILE THE SECOND WILL GET ONLY FIFTY [ZUZ][10] AND THE FIRST TWO PARTIES[12] WILL HAVE A GOLD DENAR[13] [EACH IN THE BODY OF THE OX THAT DID THE DAMAGE].[11] GEMARA. Who is the author of our Mishnah? It is in accordance neither with the view of R. Ishmael nor with that of R. Akiba![14] For if it is in accordance with R. Ishmael, who maintains that they [the claimants of damages] are like any other creditors, how can it be said that THE LATER THE LIABILITY THE PRIOR THE CLAIM? Should it not be, the earlier the liability the prior the claim?[15] If, on the other hand, it is in accordance with R. Akiba who maintains that the ox becomes the common property [of the plaintiff and the defendant], how can it be said that, IN THE CASE OF THERE BEING A SURPLUS[16]

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(1) [Identified with Faransag, near Bagdad, v. Obermeyer, op. cit., p. 269.]

(2) In which case the whole estate of the defendant can be distrained upon for the payment of damages; supra p. 73.

(3) Cf. supra p 181.

(4) So that there is no warrant for Raba of Parazika's inference.

(5) Against the plaintiff.

(6) And not the other ox that has been lost.

(7) In the body of the ox.

(8) Lit., 'the later always profits' as it is he who has the right of priority.

(9) As explained supra pp. 187-8.

(10) For the reason v. Gemara, infra p. 203.

(11) As the defendant and the first claimant became the owners of the ox in common.

(12) I.e the defendant and the first claimant.

(13) I.e., twenty-five zuz.

(14) For which cf. supra p. 181.

(15) As is usually the case with other creditors: v. p. 185.

(16) V.p. 201, n. 1.

Talmud - Mas. Baba Kama 36b

COMPENSATION WILL BE MADE FOR THE PENULTIMATE OFFENCE? Should it not be 'Compensation will be made [proportionately] for each offence'? — Raba replied: The Mishnah is indeed in accordance with R. Ishmael, who holds that claimants [of damages] are like any other creditors; and as to your objection to the statement 'THE LATER THE LIABILITY THE PRIOR THE CLAIM', which you contend should be 'The earlier the liability the prior the claim', [it can be argued] that we deal here with a case where each plaintiff has [in turn] seized the goring ox for the purpose of getting paid [the amount due to him] out of its body, in which case each has in turn acquired [in respect of the ox] the status of a paid bailee, liable for subsequent damages done by it.[1] But if so, why does it say. SHOULD THERE BE A SURPLUS COMPENSATION IS TO BE PAID

ALSO FOR THE PENULTIMATE OFFENCE? Should it not be: 'The surplus will revert to the owner'?[2] — Rabina therefore said: The meaning is this: Should there be an excess in the damage done to him[3] over that done to the subsequent plaintiff, the amount of the difference will revert to the plaintiff in respect of the preceding damage.[4] So too, when Rabin returned [from Eretz Yisrael] he stated on behalf of R. Johanan that it was for the failure [to carry out their duty] as bailees that liability was incurred [by the earlier plaintiffs to the later].

How then have you explained the Mishnah? As being in accordance with R. Ishmael! If so, what of the next clause: R. SIMEON SAYS: WHERE AN OX OF THE VALUE OF TWO HUNDRED [ZUZ] HAS GORED AN OX OF THE SAME VALUE OF TWO HUNDRED [ZUZ] AND THE CARCASS HAD NO VALUE AT ALL, THE PLAINTIFF WILL GET A HUNDRED ZUZ AND THE DEFENDANT WILL SIMILARLY GET A HUNDRED ZUZ [OUT OF THE BODY OF THE OX THAT DID THE DAMAGE]. SHOULD THE SAME OX HAVE GORED ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE SECOND CLAIMANT WILL GET A HUNDRED ZUZ, WHILE THE FORMER CLAIMANT WILL GET ONLY FIFTY ZUZ, AND THE DEFENDANT WILL HAVE FIFTY ZUZ [IN THE BODY OF THE OX]. SHOULD THE OX HAVE GORED YET ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE THIRD PLAINTIFF WILL GET A HUNDRED [ZUZ], WHILE THE SECOND PLAINTIFF WILL GET FIFTY [ZUZ] AND THE FIRST TWO PARTIES WILL HAVE A GOLD DENAR [EACH IN THE BODY OF THE OX THAT DID THE DAMAGE]. This brings us back [does it not] to the view of R. Akiba, who maintains that the ox becomes the common property [of the plaintiff and the defendant].[5] Will then the first clause be in accordance with R. Ishmael and the second clause in accordance with R. Akiba? — That is so, since even Samuel said to Rab Judah, 'Shinena,[6] leave this Mishnah alone[7] and accept my explanation. that its first clause is [in accordance with] R. Ishmael and its second clause [in accordance with] R. Akiba.' (It was also stated that R. Johanan said: An actual case in which they would differ is where the plaintiff consecrates the goring ox [to the Temple].)[8]

We have learnt elsewhere:[9] If a man boxes another man's ear, he has to give him a sela'[10] [in compensation]. R. Judah in the name of R. Jose the Galilean says: A hundred zuz. A certain man having [been summoned for] boxing another man's ear, R. Tobiah b. Mattena sent an inquiry to R. Joseph, as to whether a Tyrian sela'[11] is meant in the Mishnah[12] or merely a sela' of [this] country.[13] He sent back a reply: You have learnt it: AND THE FIRST TWO PARTIES WILL HAVE A GOLD DENAR [EACH]. Now, should you assume that the Tanna is calculating by the sela'[13] of [this] country, [we may ask,] why does he not continue the division by introducing a further case where the amount [left for the first two] will come down to twelve [zuz] and one sela'?[14] To which R. Tobiah replied: Has then the Tanna to string out cases like a peddler?[15] What, however, is the solution?[16] — The solution was gathered from the statement made by Rab Judah on behalf of Rab:[17] 'Wherever money[18] is mentioned in the Torah, the reference is to Tyrian money, but wherever it occurs in the words of the Rabbis it means local[19] money.' The plaintiff upon hearing that said to the judge: 'Since it will [only] amount to half a zuz,[12] I do not want it; let him give it to the poor.' Later, however, he said; 'Let him give it to me, as I will go and obtain a cure for myself with it.' But R. Joseph said to him: The poor have already acquired a title to it, for though the poor were not present here, we [in the Court, always] act as the agents[20] of the poor, as Rab Judah said on behalf of Samuel:[21] Orphans

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(1) As supra p. 57, and infra p. 255.

(2) Since it is not the owner but the claimant in regard to the penultimate offence who has to he liable in respect of the last offence.

(3) I.e., to the penultimate plaintiff.

(4) As e.g. where an ox of the value of a hundred zuz gored successively the ox of A the ox of B and the ox of C, and the damages amount to fifty, thirty and twenty zuz respectively, C will be paid the sum of twenty, B only ten, which is the

difference between the compensation due to him and that due from him to C, and A will get twenty, which again is the difference between the compensation due to him from the owner (of the ox that did the damage) and that owing from him to B. All the payments together, which are twenty to A, ten to B and twenty to C, make only fifty, so that the balance of the value of the ox will go to its owner.

(5) For if otherwise, why should the first two parties (the owner and the first claimant) always be treated alike?

(6) Cf. supra p. 60, n. 2.

(7) And do not try to make it self-consistent.

(8) V. supra p. 181. [This bracketed passage is to be deleted with Rashi, v. D.S. a.l.]

(9) Infra p. 520

(10) A Palestinian coin, v. Glos.

(11) Four zuz, v. infra p. 521, n. 6.

(12) As stated by the anonymous view.

(13) Half a zuz.

(14) I.e. where the last claimant will have a maneh, the next fifty zuz, the rest one gold denar, and the first claimant and the owner 12 zuz and one sela' each.

(15) Who cries the whole list of his wares. Cf. Git. 33a.

(16) As to the exact meaning of sela'.

(17) Cf. Kid. 11b and Bek. 50b.

(18) [Lit 'silver'. The market value of silver coinage was determined by Tyre, v. Krauss, op. cit., II, 405]

(19) Lit., 'the country'.

(20) Lit., 'hand'.

(21) Git. 37a.

Talmud - Mas. Baba Kama 37a

do not require a prosbul:[1] and so also Rami b. Hama learned that orphans do not require a prosbul,[2] since Rabban Gamaliel and his Court of law are the representatives[3] of orphans.

The scoundrel Hanan, having boxed another man's ear, was brought before R. Huna, who ordered him to go and pay the plaintiff half a zuz.[4] As [Hanan] had a battered zuz he desired to pay the plaintiff the half zuz [which was due] out of it. But as it could not be exchanged, he slapped him again and gave him [the whole zuz].

MISHNAH. IF AN OX WAS MU'AD TO DO DAMAGE TO ITS OWN SPECIES BUT WAS NOT MU'AD TO DO DAMAGE TO ANY OTHER SPECIES [OF ANIMALS] OR IF IT WAS MU'AD TO DO DAMAGE TO THE HUMAN SPECIES BUT NOT MU'AD TO ANY SPECIES OF BEASTS, OR IF IT WAS MU'AD TO SMALL [CATTLE] BUT NOT MU'AD TO LARGE [CATTLE], IN RESPECT OF DAMAGE DONE TO THE SPECIES TO WHICH IT WAS MU 'AD THE PAYMENT WILL HAVE TO BE IN FULL, BUT IN RESPECT OF DAMAGE DONE TO THAT TO WHICH IT WAS NOT MU' AD, THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. THEY[5] SAID BEFORE R. JUDAH: HERE IS ONE WHICH WAS MU 'AD TO DO DAMAGE ON SABBATH DAYS BUT WAS NOT MU 'AD TO DO DAMAGE ON WEEK DAYS.[6] HE SAID TO THEM: FOR DAMAGE DONE ON SABBATH DAYS THE PAYMENT WILL HAVE TO BE IN FULL, WHEREAS FOR DAMAGE DONE ON WEEK DAYS THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. WHEN [CAN THIS OX] RETURN TO THE STATE OF TAM? WHEN IT REFRAINS [FROM GORING] ON THREE [CONSECUTIVE] SABBATH DAYS.

GEMARA. It was stated: R. Zebid said: The proper reading of the Mishnah [in the first clause is], 'BUT WAS NOT MU 'AD . . .';[7] whereas R. Papa said: The proper reading is 'IT IS NOT [THEREFORE] MU 'AD. . .'[8] R. Zebid, who said that'... BUT WAS NOT MU' AD . . .'is the proper reading of the Mishnah, maintained that until we know the contrary[9] such an ox is considered

Mu'ad [to all species]. But R. Papa, who said that '. . . IT IS NOT [THEREFORE] MU 'AD. . .' is the correct reading of the Mishnah, maintained that even though we do not know the contrary the ox is not considered Mu 'ad [save to the species to which it had actually been Mu'ad]. R. Zebid inferred his view from the later clause [of the Mishnah], whereas R. Papa inferred his view from the opening clause. R. Zebid inferred his view from the later clause which states, IF IT WAS MU 'AD TO SMALL [CATTLE] BUT NOT MU 'AD TO LARGE [CATTLE]. Now this is quite in order if you maintain that BUT WAS NOT MU'AD' is the reading in the Mishnah, implying thus that in the absence of definite knowledge to the contrary the ox should be considered Mu'ad [to all species]. This clause would then teach us [the further point] that even where the ox was Mu 'ad to small [cattle] it would be Mu 'ad also to large [cattle] in the absence of knowledge to the contrary. But if you maintain that '. . . IT IS NOT [THEREFORE] MU'AD . . .' is the correct reading of the Mishnah, implying that even though we know nothing to the contrary the ox would not be considered Mu 'ad, could it not then be argued thus: Since in the case where the ox was Mu 'ad to do damage to small creatures of one species it would not be considered Mu 'ad with reference to small creatures of another species even if we have no definite knowledge to the contrary, was there any need to state that where the ox was Mu 'ad to small [cattle] it would not be considered Mu 'ad to big [cattle]?[10] — R. Papa, however, may say to you: It was necessary to state this, since otherwise you might have been inclined to think that since the ox started to attack a particular species, it was going to attack the whole of that species without making a distinction between the large creatures of that species and the small creatures of that species, it was therefore necessary to let us know that [with reference to the large creatures] it would not be considered Mu'ad. R. Papa on the other hand based his view on the opening clause, which states: WHERE IT WAS MU 'AD TO THE HUMAN SPECIES IT WOULD NOT BE MU 'AD TO ANY SPECIES OF BEASTS. Now this would be quite in order if you maintain that 'IT IS NOT [THEREFORE] MU'AD . . .' is the text in the Mishnah denoting that even where we have no knowledge to the contrary the ox would not be considered Mu 'ad [to other species]; it was therefore necessary to make it known to us that even where the ox was Mu 'ad to the human species and though we knew nothing to the contrary, it would still not be Mu'ad to animals. But if you maintain that '. . . BUT WAS NOT MU 'AD . . .' is the correct reading of the Mishnah, implying that in the absence of knowledge to the contrary the ox would be considered Mu 'ad [to all species], could we not then argue thus: Since in the case where the ox was Mu'ad to one species of beast it would in the absence of knowledge to the contrary be considered Mu 'ad also to any other species of beast, was there any need to state that where the ox was Mu 'ad to the human species it would also be considered Mu 'ad to animals?[11] — R. Zebid may, however, say to you: The opening clause refers to the reversion of the ox to the state of Tam, as, e.g., where the ox had been Mu 'ad to man and Mu 'ad to beast but has subsequently refrained from [doing damage to] beast, having stood near cattle on three different occasions without goring. It might then have been argued that since it has not refrained from injuring men, its refraining from goring cattle should [in the eye of the law] not be considered a proper reversion [to the state of Tam].[12] We are therefore told that the refraining from goring cattle is in fact a proper reversion.

An objection was raised [from the following]: Symmachus says: If an ox is Mu'ad to man it is also Mu'ad to beast, a fortiori: if it is Mu'ad to injure man, how much more so is it Mu'ad to injure beast? Does this not prove that the view of the previous Tanna was that it would not be Mu'ad?'[13] — R. Zebid may, however, say to you: Symmachus was referring to the reversion to the state of Tam, and what he said to the previous Tanna was this: 'Referring to your statement that the refraining [from goring] beasts is a proper reversion, [I maintain that] the refraining [from goring] beasts is not a proper reversion, [and can prove it] by means of an argument a fortiori from the case of man. For since it has not refrained from [attacking] man, will it not assuredly continue attacking beasts?

R. Ashi said: Come and hear: THEY SAID BEFORE R. JUDAH: HERE IS ONE WHICH IS MU 'AD TO DO DAMAGE ON SABBATH DAYS BUT NOT MU 'AD TO DO DAMAGE ON WEEK DAYS. HE SAID TO THEM: FOR DAMAGE DONE ON SABBATH DAYS, THE PAYMENT

WILL HAVE TO BE IN FULL, WHEREAS FOR DAMAGE DONE ON WEEK DAYS THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. Now this is quite in order if you maintain that '. . . BUT WAS NOT MU'AD . . .' is the correct reading. The disciples were thus putting a question before him and he was replying to them accordingly. But If you contend that '. . .IS NOT [THEREFORE] MU 'AD . . .' is the correct text, [would it not appear as if his disciples] were giving instruction to him?[14] Again, what would then be the meaning of his reply to them?[15] R. Jannai thereupon said: The same can also be inferred from the opening clause, where it is stated: IN RESPECT OF DAMAGE DONE TO THE SPECIES TO WHICH IT WAS MU 'AD, THE PAYMENT WILL HAVE TO BE IN FULL, BUT IN RESPECT OF DAMAGE DONE TO THAT TO WHICH IT WAS NOT MU 'AD, THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. Now, this would be in order if you maintain that 'BUT IT WAS NOT MU 'AD . . .'[16] is the correct text, in which case the clause just quoted would be explanatory. But if you maintain that '. . . IT IS NOT [THEREFORE] MU'AD . . .'[17] is the correct text, this statement is complete in itself, and why then the further statement 'IN RESPECT OF DAMAGE DONE TO THE SPECIES TO WHICH IT WAS MU 'AD, THE PAYMENT WILL HAVE TO BE IN FULL, BUT IN RESPECT OF DAMAGE DONE TO THAT TO WHICH IT WAS NOT MU 'AD, THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY? Have we not been told before how that in the case of Mu 'ad the payment is for half the damage whereas in the case of Mu'ad the payment has to be in full?[18] Yet even if you adopt the view of R. Papa,[19] where the animal gored an ox, an ass and a camel [successively] it would still become Mu 'ad to all [species of beasts].[20]

Our Rabbis taught: If the animal sees an ox and gores it, another ox and does not gore it, a third ox and gores it, a fourth ox and does not gore it, a fifth ox and gores it, a sixth ox and does not gore it, the animal becomes Mu'ad to alternate oxen.

Our Rabbis taught: If an animal sees an ox and gores it, an ass and does not gore it, a horse and gores it a camel and does not gore it, a mule and gores it, a wild ass and does not gore it, the animal becomes Mu'ad to alternate beasts of all species.

The following question was raised: If the animal [successively] gored

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(1) Cf. supra p. 48, n. 4 and Glos.

(2) V. p. 204, n. 16.

(3) Lit., 'father'.

(4) As stated by the anonymous view.

(5) The disciples.

(6) Apparently we are to supply the words, 'what is the rule regarding it' the remark being intended as a question. But v. infra p. 208.

(7) As indeed rendered in the Mishnaic text.

(8) The Mishnah should accordingly open thus: 'If an ox is Mu'ad to do damage to its own species, it is not (therefore) Mu'ad to any other species (of animals)' etc., etc.

(9) E.g., by letting other animals pass in front of it and seeing that it does not gore them.

(10) Since it is much less likely to attack big animals than small ones. Why then, on R. Papa's reading, have this clause at all in the Mishnah?

(11) Which it would be more ready to attack than human beings.

(12) Cf. supra p. 119.

(13) In contradiction to the view of R. Zebid.

(14) I.e., we have to read their remark as a statement and not as a question.

(15) After they had already decided the question in the wording of the problem.

(16) V. p. 205, n. 6.

(17) V. p. 206, n. 1

(18) Cf. supra p. 73.

(19) That in absence of knowledge to the contrary it is not Mu ‘ad.
(20) And we should not require three gorings for each.

Talmud - Mas. Baba Kama 37b

one ox, a [second] ox, and a [third] ox, an ass, and a camel, what is the legal position? Shall the last ox be counted together with the [first two] oxen, in which case the animal that gored will still be Mu'ad only to oxen whereas to any other species it will not be considered Mu'ad, or shall perhaps the last ox be counted together with the ass and camel, so that the animal that gored will become Mu'ad to all species [of beasts]? [Again,[1] where an animal has successively gored] an ass, a camel, an ox, another ox, and a [third] ox, what is the legal position? Shall the first ox be counted together with the ass and camel, so that the animal that gored will become Mu'ad to all species [of beasts], or shall it perhaps [rather] be counted together with the [other] oxen, in which case it will still be Mu'ad only to oxen, but not Mu'ad to any other species [of beasts]? [Again, where the consecutive gorings took place on] one Sabbath, [the next] Sabbath and [the third] Sabbath, and then on the [subsequent] Sunday and Monday, what is the legal position? Shall the last Sabbath be counted together with the [first two] Sabbaths, in which case the ox that gored would still be Mu'ad only for Sabbaths, whereas in respect of damage done on week days it would not yet be considered Mu ‘ad, or shall it perhaps be counted together with Sunday and Monday and thus become Mu'ad in respect of all the days [of the week]? [Again, where the consecutive gorings took place on] a Thursday, the eve of Sabbath and the Sabbath, then on [the next] Sabbath and [the third] Sabbath, what is the legal position? Shall the first Sabbath be counted together with Thursday and the eve of Sabbath and the goring ox thus become Mu ‘ad for all days, or shall perhaps the first Sabbath be counted together with the subsequent Sabbaths, in which case the goring ox would become Mu ‘ad only for Sabbaths? — These questions must stand over.

If [an ox has] gored an ox on the fifteenth day of a particular month, and [another ox] on the sixteenth day of the next month, and [a third ox] on the seventeenth day of the third month, there would he a difference of opinion between Rab and Samuel.[2] For it was stated:[3] If the symptom of menstruation has once been noticed on the fifteenth day of a particular month, [then] on the sixteenth day of the next month, and [then] on the seventeenth day of the third month, Rab maintained that a periodical recurrence[4] has thereby been established,[5] whereas Samuel said [that this periodicity is not established] until the skipping is repeated [yet] a third time.[6]

Raba said: Where an ox upon hearing the sound of a trumpet gores and upon hearing [again] the sound of a trumpet gores [a second time], and upon hearing [again] the sound of a trumpet gores [a third time], the ox will become Mu'ad with reference to the hearing of the sound of trumpets. Is not this self-evident? — You might have supposed that [the goring at] the first [hearing of the sound of the] trumpet [should not be taken into account as it] might have been due merely to the sudden fright that came over the ox.[7] We are therefore told [that it would be taken into account].[8]

MISHNAH. IN THE CASE OF PRIVATE OWNER'S[9] CATTLE[10] GORING AN OX CONSECRATED TO THE TEMPLE, OR CONSECRATED CATTLE GORING A PRIVATE OX, THERE IS NO LIABILITY, FOR IT IS STATED: THE OX OF HIS NEIGHBOUR,[11] NOT [THAT IS TO SAY] AN OX CONSECRATED TO THE TEMPLE. WHERE AN OX BELONGING TO AN ISRAELITE HAS GORED AN OX BELONGING TO A CANAANITE, THERE IS NO LIABILITY,[12] WHEREAS WHERE AN OX BELONGING TO A CANAANITE GORES AN OX BELONGING TO AN ISRAELITE, WHETHER WHILE TAM OR MU ‘AD,[13] THE COMPENSATION IS TO BE MADE IN FULL.[14]

GEMARA. The [ruling in the] Mishnah is not in accordance with [the view of] R. Simeon b. Menasya; for it was taught: Where a private ox has gored consecrated cattle or where consecrated

cattle has gored a private ox, there is not liability, as it is stated: The ox of his neighbour,[15] not [that is to say] an ox consecrated to the Temple. R. Simeon b. Menasya, however, says: Where consecrated cattle has gored a private ox there is no liability, but if a private ox has gored consecrated cattle, whether while Tam or Mu 'ad, payment is to be made for full damage.[16] I might ask, what was the principle adopted by R. Simeon? If the implication of 'his neighbour'[15] has to be insisted upon,[17] why then even in the case of a private ox goring consecrated cattle should there not be exemption? If on the other hand the implication of 'his neighbour' has not to be insisted upon, why then in the case of consecrated cattle goring a private ox should there also not be liability? If, however, you argue that he[18] does in fact maintain that the implication of 'his neighbour' has to be insisted upon, yet where a private ox has gored consecrated cattle there is a special reason for liability inferred by means of an a fortiori argument from the case of private cattle [as follows]: If where a private ox has gored private cattle there is liability, should not there be all the more liability where it has gored consecrated cattle? Why then [did he] not employ the principle of Dayyo[19] [i.e. that it was sufficient] that the object[20] to which the inference is made should be on the same footing as the object from which it was made?[21] And since Tam involves there the payment of half damages, [why then should it not] here also involve the payment of half damages [only]? — Resh Lakish therefore said: Originally all cases came under the law of full compensation;[22] when Scripture therefore particularised 'his neighbour' in the case of Tam, it meant that it was only where damage had been done to a neighbour that Tam would involve half damages [only], thus implying that where the damage had been done to consecrated property, whether by Tam or Mu'ad. the compensation must be in full;

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(1) Assuming that in the previous case we decide that the last ox will be counted with the first two oxen.

(2) According to Rab it would become Mu'ad to gore every month by missing a day, so that if in the fourth month it gores on the eighteenth day, the compensation would have to be in full, whereas according to Samuel the compensation would still be a half, as the animal could not become Mu'ad until the act of missing a day is repeated three times, so that full compensation would begin with the goring on the nineteenth day of the fifth month.

(3) Nid. 67a.

(4) [MS.M. adds 'in skipping', cf. Rashi.]

(5) And the menstruation could accordingly be expected on the eighteenth day of the fourth month.

(6) I.e., until in the fourth month the menstruation recurs on the eighteenth day, in which case it would be expected on the nineteenth day of the fifth month,

(7) So that full compensation should begin with the fifth occasion.

(8) And full liability will commence with the fourth goring at the sound of a trumpet.

(9) [Mishnah text: 'of an Israelite'.]

(10) Lit., 'ox'.

(11) Ex. XXI, 35.

(12) As Canaanites did not recognise the laws of social justice, they did not impose any liability for damage done by cattle. They could consequently not claim to be protected by a law they neither recognised nor respected, cf. J. T. a.l. and Maim. Yad, Niz. Mam. VIII, 5. [In ancient Israel as in the modern state the legislation regulating the protection of life and property of the stranger was, as Guttmann. M. (HUCA. III 1 ff.) has shown, on the basis of reciprocity. Where such reciprocity was not recognised, the stranger could not claim to enjoy the same protection of the law as the citizen.]

(13) I.e., the ox that did the damage.

(14) So that they should guard their cattle from doing damage. (Maim. loc. cit.)

(15) V. p. 211, n. 5.

(16) Cf. supra p. 23.

(17) To mean the ox of his peer, of his equal. [This would not exclude Gentiles in general as the term רעהו, his neighbour applies also to them (cf. Ex. XI, 2); cf. next page.]

(18) R. Simeon

(19) V. supra p. 126.

(20) Viz. consecrated cattle.

(21) Viz. private cattle.

(22) As in the case of Mu ‘ad where in contradistinction to Tam no mention was made of ‘his neighbour’: cf. Ex. XXI, 36.

Talmud - Mas. Baba Kama 38a

for if this was not its intention, Scripture should have inserted [the expression] ‘his neighbour’ in the text dealing with Mu'ad.[1]

WHERE AN OX BELONGING TO AN ISRAELITE HAS GORED AN OX BELONGING TO A CANAANITE THERE IS NO LIABILITY etc. But I might here assert that you are on the horns of a dilemma. If the implication of ‘his neighbour’ has to be insisted upon, then in the case of an ox of a Canaanite goring an ox of an Israelite, should there also not be exemption? If [on the other hand] the implication of ‘his neighbour’ has not to be insisted upon, why then even in the case of an ox of an Israelite goring an ox of a Canaanite, should there not be liability? — R Abbahu thereupon said: The Writ says, He stood and measured the earth; he beheld and drove asunder the nations,[2] [which may be taken to imply that] God beheld the seven commandments[3] which were accepted by all the descendants of Noah, but since they did not observe them, He rose up and declared them to be outside the protection of the civil law of Israel [with reference to damage done to cattle by cattle].[4] R. Johanan even said that the same could be inferred from this [verse], He shined forth from Mount Paran,[5] [implying that] from Paran[6] He exposed their money to Israel. The same has been taught as follows: If the ox of an Israelite gores an ox of a Canaanite there is no liability,[7] but if an ox of a Canaanite gores an ox of an Israelite whether the ox [that did the damage] was Tam or whether it had already been Mu ‘ad, the payment is to be in full, as it is said: He stood and measured the earth, he beheld and drove asunder the nations,[2] and again, He shined forth from Mount Paran.[5] Why this further citation? — [Otherwise] you might perhaps think that the verse ‘He stood and measured the earth’ refers exclusively to statements [on other subjects] made by R. Mattena and by R. Joseph; come therefore and hear: ‘He shined forth from Mount Paran,’ implying that from Paran[8] he exposed their money to Israel.

What was the statement made by R. Mattena [referred to above]? — It was this. R. Mattena said: He stood and measured the earth; He beheld etc.[9] What did He behold? He beheld the seven commandments[10] which were accepted by all the descendants of Noah, and since [there were some clans that] rejected them, He rose up and exiled them from their lands.[11] But how can the word in the text[12] be [etymologically] explained to mean ‘exile’? — Here it is written ‘"wa-yatter" the nations’ and in another place it is [similarly] written, ‘"le-natter" withal upon the earth,’[13] which is rendered in the Targum[14] ‘to leap withal upon the earth’.

What was the statement made by R. Joseph [referred to above]? — It was this. R. Joseph said: ‘He stood and measured the earth; he beheld’ etc. What did He behold? He beheld the seven commandments which had been accepted by all the descendants of Noah, and since [there were clans that] rejected them He rose up and granted them exemption. Does this mean that they benefited [by breaking the law]? And if so, will it not be a case of a sinner profiting [by the transgression he committed]? — Mar the son of Rabana[15] thereupon said: ‘It only means that even were they to keep the seven commandments [which had first been accepted but subsequently rejected by them] they would receive no reward.’ Would they not? But it has been taught:[16] ‘R. Meir used to say, Whence can we learn that even where a gentile occupies himself with the study of the Torah he equals [in status] the High Priest? We find it stated: . . . which if a man do he shall live in them;[17] it does not say "priests, Levites and Israelites", but "a man", which shows that even if a gentile occupies himself with the study of the Torah he equals [in status] the High Priest.’ — I mean [in saying that they would receive no reward] that they will receive reward not like those who having been enjoined perform commandments, but like those who not having been enjoined perform good deeds: for R. Hanina has stated:[18] Greater is the reward of those who having been enjoined do good deeds than of

those who not having been enjoined [but merely out of free will] do good deeds.[19]

Our Rabbis taught: The Government of Rome had long ago sent two commissioners to the Sages of Israel with a request to teach them the Torah. It was accordingly read to them once, twice and thrice. Before taking leave they made the following remark: We have gone carefully through your Torah, and found it correct with the exception of this point, viz. your saying that if an ox of an Israelite gores an ox of a Canaanite there is no liability,[20] whereas if the ox of a Canaanite gores the ox of an Israelite, whether Tam or Mu 'ad, compensation has to be paid in full. In no case can this he right. For if the implication of 'his neighbour' has to be insisted upon, why then in the case of an ox of a Canaanite goring an ox of an Israelite should there also not be exemption? If [on the other hand] the implication of 'his neighbour' has not to be insisted upon, why then even in the case of an ox of an Israelite goring an ox of a Canaanite, should there not be liability? We will, however, not report this matter to our Government.[21]

When R. Samuel b. Judah lost a dauther the Rabbis[22] said to 'Ulla: 'Let us go in and console him.' But he answered them: 'What have I to do with the consolation of the Babylonians,[22] which is [almost tantamount to] blasphemy? For they say "What could have been done," which implies that were it possible to do anything they would have done it.' He therefore went alone to the mourner and said to him: [Scripture says,] And the Lord spake unto me, Distress not the Moabites, neither contend with them in battle.[23] Now [we may well ask], could it have entered the mind of Moses to wage war without [divine] sanction? [We must suppose] therefore that Moses of himself reasoned a fortiori as follows: If in the case of the Midianites who came only to assist the Moabites[24] the Torah commanded 'Vex the Midianites and smite them,'[25]

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(1) V. p. 212, n. 8.

(2) Hab. III, 6.

(3) V. A.Z. (Sonc. ed.) p. 5, n. 7.

(4) The exemption from the protection of the civil law of Israel thus referred only to the Canaanites and their like who had wilfully rejected the elementary and basic principles of civilised humanity

(5) Deut. XXXIII, 2. [The Mount at which God appeared to offer the Law to the nations, who, however, refused to accept it. V. A.Z. 2b.]

(6) On account of what occurred thereat.

(7) V. p. 211, n. 6.

(8) Cf. A. Z. 2a.

(9) Hab. III, 2.

(10) V. p. 213, n. 3.

(11) As described in Deut. II, 10-23.

(12) I.e., wa-yatter.

(13) Lev. XI, 21.

(14) Targum Onkelos, the Aramaic version of the Hebrew Bible; cf. J.E. s.v.

(15) [Ms.M.: Rabina.]

(16) Sanh. 59a; A. Z. 3a.

(17) Lev. XVIII, 5.

(18) Infra p. 501. and Kid. 31a.

(19) [For the idea underlying this dictum v. A.Z. (Sonc. ed.) p. 6, n. 1.]

(20) V. p. 211, n. 6.

(21) [The same incident is related with some variations in J.B.K. IV, 4, and Sifre on Deut. XXXIII, 3, where R. Gamaliel (II) is mentioned as the Sage before whom the Commissioners appeared, Graetz, Geschichte, IV, 108, places this in the days of Domitian (81-96) whose distrust of the Jews led him to institute an inquisition into their beliefs and teachings; Halevy, Doroth I.e. 350, in the days of Nerva who wished to find out whether there was any truth in the slander against the Jews encouraged by Domitian.]

(22) I.e., Babylonian Rabbis.

(23) Deut. II, 9.
(24) Cf. Num. XXII, 4.
(25) Ibid XXV, 17.

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in the case of the Moabites [themselves] should not the same injunction apply even more strongly? But the Holy One, blessed be He, said to him: The idea you have in your mind is not the idea I have in My mind. Two doves have I to bring forth from them;[1] Ruth the Moabitess and Naamah the Ammonitess. Now cannot we base on this an a fortiori argument as follows: If for the sake of two virtuous descendants the Holy One, blessed be He, showed pity to two great nations so that they were not destroyed, may we not be assured that if your honour's daughter had indeed been righteous and worthy to have goodly issue, she would have continued to live?

R. Hiyya B. Abba said that R. Johanan had stated:[2] The Holy One, blessed be He, does not deprive any creature of any reward due to it, even if only for a becoming expression: for in the case of the [descendants of the] elder [daughter][3] who named her son 'Moab',[4] the Holy One, Blessed be He, said to Moses, Distress not the Moabites, neither contend with them in battle, [implying that] while actual hostilities against them were forbidden, requisitioning from them was allowed, whereas in the case of the younger [daughter][3] who called her son 'Ben Ammi',[5] the Holy One, Blessed be He, said to Moses: And when thou comest nigh over against the children of Ammon, distress them not, nor meddle with them at all,[6] thus implying that they were not to be subjected even to requisitioning.

R. Hiyya B. Abba further said that R. Joshua b. Korha had stated:[7] At all times should a man try to be first in the performance of a good deed, as on account of the one night by which the elder [daughter][8] preceded the younger she preceded her by four generations [in having a descendant] in Israel: Obed, Jesse, David and Solomon.[9] For the younger [had no descendant in Israel] until [the advent of] Rehoboam, as it is written: And the name of his mother was Naamah the Ammonitess.[10]

Our Rabbis taught: If cattle of an Israelite has gored cattle belonging to a Cuthean[11] there is no liability. But where cattle belonging to a Cuthean gored cattle belonging to an Israelite, in the case of Tam the payment will be for half the damage, whereas in the case of Mu'ad the payment will be in full. R. Meir, however, says: Where cattle belonging to an Israelite gored cattle belonging to a Cuthean there is no liability, whereas in the case of cattle belonging to an Israelite, whether in the case of Tam or in that of Mu'ad, the compensation is to be in full. Does this mean to say that R. Meir maintains that the Cutheans were lion-proselytes?[12] But if [so], an objection would be raised [from the following]:[13] All kinds of stains [found on women's underwear] brought from Rekem[14] are [levitically] clean.[15] But R. Judah considers them unclean, as the inhabitants [of that place] are mainly proselytes[16] who are in error;[17] from among Gentiles[18] they are considered clean. But [where they were brought] from among Israelites[19] or from Cutheans [after having been obtained from private places all agree in declaring them unclean.[20] But where they were brought from Cutheans who had already abandoned them to the public at large][21] R. Meir considers them unclean,[22] whereas the Sages consider them clean, for [even] they[23] were not suspected of being lax in [the exposing of women's stained underwear]. Now does this not prove that R. Meir was of the opinion that Cutheans were true proselytes? — R. Abbahu thereupon said: This was only a pecuniary disability that R. Meir[24] imposed upon them, so that [Israelites] should not intermingle with them.

R. Zera raised an objection [from the following]: These are the damsels through whom the fine[25] is imposed: If a man has connexion with a girl that is a bastard,[26] a Nethinah[27] or a Cuthean.[28] Now if you maintain that R. Meir imposed a pecuniary disability on them, why then not impose it in this case too,[29] so that [Israelites] should not mix with them? Abaye thereupon said:

(1) The Moabites and the Ammonites, who must therefore be saved.
(2) Naz. 23b and Hor. 10b.
(3) Of Lot; cf. Gen. XIX, 30-38.
(4) Lit., 'From father'.
(5) Lit., 'The son of my people'
(6) Deut. II, 19.
(7) Naz. ibid; and Hor. 11a.
(8) V. p. 216, n. 6.
(9) Cf. Ruth IV, 13-22.
(10) I Kings XIV, 31.
(11) I.e., members of the mixed tribes who had been settled on the territory of the former Kingdom of Israel by the Assyrian king and who were subsequently a great hindrance to the Jews who returned from the Babylonian captivity to revive their country and their culture; cf. II Kings, XVII. 24-41; Ezra IV, 1-24 and Neh. III, 33; IV, V, VI, 13.
(12) I.e., they accepted some of the Jewish practices not out of appreciation or with sincerity but simply out of the fear of the lions, which as stated in Scripture had been slaying them; cf. II Kings, XVII, 25.
(13) Nid. VII. 3.
(14) A place mainly inhabited by heathens who are not subject to the laws of purity and menstruation. [Rekem is identified by Targum Onkelos Gen. XVI, 14, with Kadesh; by Josephus (Ant. IV, 7, 1), with Petra.]
(15) As the underwear might naturally be supposed to have been worn by a heathen woman.
(16) Who are subject to all the laws of Scripture and whose menstrual discharge defiles any garment which comes in contact with it.
(17) And have lapsed from the observance of the Law.
(18) Those who have never embraced the religion of Israel and have thus never been subject to the laws of purity and menstruation.
(19) Who as a rule do not expose to the public garments stained with menstrual discharge.
(20) For both Israelites and Cutheans are subject to the laws of purity and menstruation.
(21) The bracketed passage follows the interpretation of this Mishnah given in Nid. 56b.
(22) For Cutheans in contradistinction to Israelites were, according to R. Meir, suspected of being lax in the matter of exposing to the public garments stained with menstrual discharge.
(23) I.e. Cutheans.
(24) Who in other respects considered them true proselytes.
(25) For seduction in accordance with Ex. XXII, 15-16, or for rape in accordance with Deut. XXII, 28-29.
(26) Cf. Deut. XXII, 29 and ibid. XXIII, 3.
(27) A Gibeonite, v. Glos.
(28) Keth. III, 1.
(29) By not allowing them to recover compensation for seduction.

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[No exception was made in this case] so that the sinner[1] should not profit thereby. But let him pay the amount of the fine to the poor?[2] — R. Mari said: It would [in that case have remained] a pecuniary obligation without definite claimants[3] [and would thus never have been discharged].[4] MISHNAH. IF AN OX OF AN OWNER WITH UNIMPAIRED FACULTIES GORES AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR,[5] THE OWNER IS LIABLE. WHERE, HOWEVER, AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR HAS GORED AN OX OF AN OWNER WHOSE FACULTIES ARE UNIMPAIRED, THERE IS NO LIABILITY.[6] IF AN OX OF A DEAF-MUTE AN IDIOT OR A MINOR[7] HAS GORED, THE COURT OF LAW APPOINT A GUARDIAN, IN WHOSE PRESENCE WITNESSES WILL BE ABLE TO TESTIFY [THAT THE OX HAS GORED SO THAT IT WILL EVENTUALLY BE DECLARED MU'AD]. IF THE DEAF-MUTE RECOVERS HIS HEARING [OR SPEECH], OR IF THE IDIOT BECOMES SANE, OR IF THE MINOR COMES OF AGE, THE OX PREVIOUSLY DECLARED MU'AD WILL

RETURN TO THE STATE OF TAM: THESE ARE THE WORDS OF R. MEIR. R. JOSE, HOWEVER, SAYS THAT THE OX WILL REMAIN IN STATUS QUO. IN THE CASE OF A STADIUM OX[8] [KILLING A PERSON], THE DEATH PENALTY IS NOT IMPOSED [UPON THE OX], AS IT IS WRITTEN: IF AN OX GORE,[9] EXCLUDING CASES WHERE IT IS GOADED TO GORE.

GEMARA. Is not the text in contradiction with itself? [In the first clause] you state, IF AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR GORES AN OX BELONGING TO ONE WHOSE FACULTIES ARE UNIMPAIRED THERE IS NO LIABILITY, implying that a guardian is not appointed in the case of Tam to collect [the payment of half-damages] out of its body.[10] But read the following clause: IF AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR HAS GORED, THE COURT OF LAW APPOINT A GUARDIAN IN WHOSE PRESENCE WITNESSES WILL BE ABLE TO TESTIFY [SO THAT IT WILL EVENTUALLY BE DECLARED MU'AD]. Now, does this not prove that a guardian is appointed in the case of Tam to collect [the payment of half-damages] out of its body? — Raba replied [that the text of the concluding clause] should be understood thus: If the oxen are presumed to be gorers, then a guardian is appointed and witnesses will give evidence for the purpose of having the cattle declared Mu'ad, so that should another goring take place,[11] the payment would have to come from the best [of the general estate].[12]

From the best of whose estate [would the payment have to come]? — R. Johanan said: From the best [of the estate] of the orphans;[13] R. Jose b. Hanina said: From the best [of the estate] of the guardian. But did R. Johanan really say so? [Has it not been stated that] R. Judah said in the name of R. Assi:[14] The estate of the orphans[13] must not be distrained upon unless where usury is consuming it, and R.. Johanan said: [Unless there is a liability] either for a bond bearing interest or to a woman for her kethubah,[15] [so as to save from further payment] on account of [her] maintenance?[16] — You must therefore reverse names [to read as follows]: R. Johanan said: From the best [of the estate] of the guardian, whereas R. Jose b. Hanina said: From the best [of the estate] of the orphans. Raba, however, objected, saying: Because there is a contradiction between R. Johanan in one place and R. Johanan in another place, are you to ascribe to R. Jose b. Hanina an erroneous view?[17] Was not R. Jose b. Hanina a judge, able to penetrate to the innermost intention of the Law? — We must therefore not reverse the names, [and the contradiction between the two views of R. Johanan[18] can be reconciled by the consideration that] a case of damage is altogether different.[19] R. Johanan stated that the payment must be made out of the best [of the estate] of the orphans, because if you were to say that it is to be out of the best [of the estate] of the guardians

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(1) The seducer.

(2) So that the sinner should not benefit, but why pay the money to the Cuthean if R. Meir was inclined to impose a disability upon Cutheans?

(3) Any poor man claiming the money could be put off by the plea that he (the seducer) wished to give it to another poor man.

(4) If the Cuthean would not have been entitled to claim it.

(5) Usually up to the age of thirteen. These three form a category for themselves as they are not subject to the obligations of either civil or criminal law.

(6) In the case of Tam: v. the discussion in Gemara.

(7) By evidence having been delivered in the presence of the appointed guardian.

(8) [**, the arena used for wild beast hunts and gladiatorial contests, v. Krauss, op. cit. III, 119.]

(9) Ex. XXI, 28.

(10) Cf.supra p. 73.

(11) But no payment will be made for damage done while the ox was Tam.

(12) V. p. 219, n. 6.

(13) Who were minors.

(14) ‘Ar. 22a.

(15) I.e., marriage settlement; v. Glos.

(16) For as long as the widow does not collect her kethubah, she receives her maintenance from the property of the orphans, v. Keth. XI, 1.

(17) [Raba regarded it as an adopted ruling not to distrain upon the estate of orphans. V. Asheri, a.l.]

(18) I.e., here and in ‘Ar. 22a.

(19) Presumably on account of public safety and public interest it is more expedient not to postpone payment until the orphans come of age.

Talmud - Mas. Baba Kama 39b

people would certainly refrain from accepting this office and would do nothing at all [in the matter]. R. Jose b. Hanina, however, said that the payment should be made out of the best [of the estate] of the guardians. and that these should be reimbursed out of the estate of the orphans when the latter will have come of age.

Whether [or not] guardians could be appointed in the case of Tam to collect payment out of its body, is a point at issue between the following Tannaim: In the case of an ox whose owner has become a deaf-mute, or whose owner became insane or whose owner has gone abroad,[1] Judah b. Nakosa said on behalf of Symmachus that it would have to remain Tam[2] until witnesses could give evidence in the presence of the owner. The Sages, however, say that a guardian should be appointed in whose presence the evidence may be given. Should the deaf-mute recover his faculty [of hearing or speech], or the idiot become sane, or the minor come of age, or the owner return from abroad, Judah b. Nakosa said on behalf of Symmachus that the ox would revert to the state of Tam[3] until evidence is given in the presence of the owner, whereas R. Jose said that it would retain its status quo. Now, we have here to ask, what is the meaning of ‘it would have to remain Tam’[4] in the dictum of Symmachus? It could hardly mean that the ox cannot become Mu'ad at all, for since it is stated in the concluding clause, ‘The ox would revert to the state of Tam’, it is implied that it had formerly been Mu'ad. What then is the meaning of, ‘it would have to remain Tam’?[4] We must say, ‘It would remain Tam [complete],’[5] that is, we do nothing to diminish its value, which would, of course, show that [Symmachus holds] no guardian is appointed in the case of Tam to collect payment out of its body. ‘The Sages, however, say that a guardian should be appointed in whose presence evidence may be given’, from which it follows that [they hold] a guardian may be appointed in the case of Tam to collect payment out of its body.

And what is the point at issue in the concluding clause? The point at issue there is [whether or not a change of] control[6] should cause a change [in the state of the ox].[7] Symmachus maintains that [a change in] control causes a change [in the state of the ox],[7] whereas R. Jose holds that [a change of] control causes no change [in the state of the ox].

Our Rabbis taught: Where an ox of a deaf-mute, an idiot or a minor has gored, R. Jacob pays half-damages. What has R. Jacob to do with it?[8] — But read, ‘R. Jacob orders the payment of half-damages.’ With what case are we here dealing? If with a Tam, is this not obvious?[9] For does not any other owner similarly pay half-damages? If [on the other] hand we are dealing with a Mu'ad, then where proper precautions were taken to control it, why should any payment be made at all?[10] And if no precautions were taken to control it, why should not damages be paid in full? — Raba thereupon said: We are in fact dealing with a Mu'ad, and with a case where precautions of some inferior sort[11] were taken to control the ox, but not really adequate precautions. R. Jacob concurred with R. Judah who said[12] that [even in the case of Mu'ad, half of the payment, i.e.] the part due from Tam remains unaffected [being still subject to the law of Tam]; he also concurred with R. Judah in holding[13] that to procure exemption from the law of Mu'ad even inadequate precautions are sufficient;[14] and he furthermore followed the view of the Rabbis[15] who said that a guardian could be appointed in the case of Tam to collect payment out of its body.[16] Said Abaye to him:[17] Do they[18]

really not differ? Has it not been taught: 'Where the ox of a deaf-mute, an idiot or a minor has gored, R. Judah maintains that there is liability to pay and R. Jacob says that the payment will be only for half the damage'? — Rabbah b. 'Ulla thereupon said: The 'liability to pay' mentioned by R. Judah is here defined [as to its amount] by R. Jacob.[19] But according to Abaye who maintained that they did differ, what was the point at issue between them? — He may tell you that they were dealing with a case of Mu'ad that had not been guarded at all, in regard to which R. Jacob would concur with R. Judah on one point but differ from him on another point. He would concur with him on one point, in that R. Judah lays down that [even with Mu'ad half of the payment, i.e.] the part due from Tam remains unaffected; but he would differ from him on another point, in that R. Judah lays down that a guardian should be appointed in the case of Tam to collect payment out of its body, whereas R. Jacob is of the opinion that a guardian could not be appointed and there could therefore be no payment except the half [which should be subject to the law] of Mu'ad.[20] Said R. Aha b. Abaye to Rabina: All would be very well according to Abaye who maintained that they differ;[21] he is quite right [in explaining the earlier statement of R. Jacob[22] to apply only to Mu'ad].[23] But according to Raba who maintained that they do not differ, why should the former statement [of R. Jacob] be referred only to Mu'ad? Why not also to Tam,

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(1) Lit., 'the Province of the Sea'.
(2) בתמותו
(3) V. the discussion which follows.
(4) In the commencing clause.
(5) Reading בתמימותו instead of בתמותו.
(6) Such as from guardian to owner.
(7) I.e., from the state of Mu'ad to that of Tam.
(8) That he personally should have to pay compensation.
(9) Why then state this at all?
(10) Since so far as the owner was concerned the damage occurred by accident.
(11) For the various degrees of precaution cf. infra 55b.
(12) Supra p. 84 and infra p. 260.
(13) Infra p. 259.
(14) But this would not be sufficient in the case of Tam. Where therefore such a precaution has been taken to control a Mu'ad, the half-damages for which the Tam is liable would be enforced, but not the additional damages for which the Mu'ad is liable.
(15) The Sages, whose view was explained supra.
(16) Hence R. Jacob's ruling for the payment of half-damages.
(17) I.e., to Raba.
(18) R. Jacob and R. Judah.
(19) Who thus makes precise what R. Judah left unspecified.
(20) Which is paid out of the general estate.
(21) I.e., that R. Jacob maintained that no guardian could be appointed in the case of Tam, and R. Judah that he could.
(22) Where the view of R. Judah was not mentioned at all.
(23) Where no precaution to control the ox has been taken.

Talmud - Mas. Baba Kama 40a

if he[1] follows the view of R. Judah,[2] in a case where the precautions taken to control the ox were of an inferior kind and not really adequate,[3] or if he[1] follows the view of R. Eliezer b. Jacob,[4] where no precautions to control the ox had been taken at all,[5] as it has been taught: R. Eliezer b. Jacob says: Whether in the case of Tam or in the case of Mu'ad, if precautions of [at least] some inferior sort have been taken to control the ox, there would be no liability. The new point made known to us by R. Jacob would thus have been that guardians should be appointed even in the case of Tam to collect payment out of its body. [Why then did Raba explain the former statement of R. Jacob to refer only

to Mu'ad? Why did he not explain it to refer to Tam also?] — [In answer] he[6] said: Raba made[7] one statement express two principles [in which R. Jacob is in agreement with R. Judah].[8]

Rabina stated that [the question whether or not a change of] control should cause a change [in the state of the ox] might have been the point at issue between them,[9] e.g., where after the ox had been declared Mu'ad, the deaf-mute recovered his faculty, or the idiot became sane, or the minor came of age, [in which case] R. Judah would maintain that the ox should remain in its status quo whereas R. Jacob would hold that [a change of] control should cause a change [in the state of the ox].

Our Rabbis taught: In the case of guardians, the payment [for damages] will be out of the best of the general estate, though no kofer[10] will be paid by them. Who is the Tanna who holds that [the payment of] kofer is but an act of atonement[11] [which would justify the exemption in this case], as [minor] orphans are not subject to the law of atonement? — R. Hisda said: It is R. Ishmael the son of R. Johanan b. Beroka. For it was taught: [The words,] Then he shall give for the ransom of his life[12] [indicate] the value [of the life] of the person killed. But R. Ishmael the son of R. Johanan b. Beroka interprets it to refer to the value [of the life] of the defendant. Now, is this not the point at issue between them,[13] that the Rabbis consider kofer to constitute a civil liability[14] whereas R. Ishmael the son of R. Johanan b. Beroka holds kofer to be of the nature of propitiation?[15] — R. Papa said that this was not the case. For we may suppose all to agree that kofer is a kind of propitiation, and the point at issue between them here is merely that the Rabbis hold that this propitiatory payment should be fixed by estimating the value [of the life] of the person killed, whereas R. Ishmael the son of R. Johanan b. Beroka maintains that it should be fixed by estimating the value of [the life of] the defendant. What reason have the Rabbis for their view? — The expression 'laying upon' is used in the later context[16] and the same expression 'laying upon' is used in an earlier context;[17] just as there it refers to the plaintiff, so does it here also refer to the plaintiff. But R. Ishmael the son of R. Johanan b. Beroka argued that it is written, 'Then he shall give for the ransom of his life' [referring of course to the defendant]. And the Rabbis? — [They reply,] Yes, it does say 'The ransom of his life', but the amount must be fixed by valuing [the life of] the person killed.

Raba in his conversations with R. Nahman used to praise R. Aha b. Jacob as a great man. He[18] therefore said to him: 'When you come across him, bring him to me.' When he[19] later came to see him he[18] said to him: 'You may put problems to me', whereupon he[19] asked him: 'If an ox of two partners [kill a person] how is the payment of kofer to be made? Shall this one pay kofer and the other one kofer? But one kofer is mentioned by Divine Law and not two kofers! Shall this one [pay] half of the kofer and the other one half of the kofer? A full kofer is commanded by Divine Law and not half of a kofer!' While he[20] was still sitting and pondering over this, he[21] further asked him: We have learnt:[22] 'In the case of debtors for valuations[23] the Sanctuary treasury may demand a pledge, whereas in the case of those who are liable to sin-offerings or for trespass-offerings[24] no pledge can be enforced.' Now, what would be the law in the case of those liable to kofer? [Shall it be said that] since kofer is a kind of propitiation it should be subject to the same ruling as sin-offerings and trespass-offerings,[24] the matter being of serious moment to the defendant so that there is no necessity of enforcing a pledge from him; or [shall it] perhaps [be argued that] since it has to be given to a fellow man it is [considered] a civil liability, and as it does not go to the Temple treasury,[25] it is consequently not taken too seriously by the defendant, for which [reason there may appear to be some] necessity for requiring a pledge? Or, again, since the defendant did not [in this case] himself commit the wrong, for it was his chattel that did the wrong [and committed manslaughter], the whole matter might be considered by him as of no serious moment, and a pledge should therefore be enforced? — He[26] said to him: 'Leave me alone; I am still held prisoner by your first problem [that has not yet been answered by me].'

Our Rabbis taught: If a man borrowed an ox on the assumption that it is in the state of Tam but is subsequently discovered to have already been declared Mu'ad, [if goring is repeated while still with

the borrower] the owner will pay one half of the damages and the borrower will pay [the other] half of the damages. But if it was declared Mu'ad while in the possession of the borrower, and [after it] was returned to the owner [it gored again] , the owner will pay half the damages while the borrower is exempt from any liability whatsoever.

The Master stated: 'If a man borrowed an ox on the assumption that it is in the state of Tam but was subsequently discovered to have already been declared Mu'ad, [if goring is repeated] the owner will pay one half of the damages and the borrower will pay [the other] half of the damages.' But why should the borrower not plead against the owner, 'I wanted to borrow an ox, I did not want to borrow a lion?' — Rab said: we are dealing here with a case where the borrower knew the ox to be a gorer.[27] Still why can he not plead against him: 'I wanted to borrow an ox in the state of Tam but I did not want to borrow an ox that had already been declared Mu'ad'? — [This could not be pleaded] because the owner might argue against him: 'In any case, even had the ox been still Tam, would you not have to pay half-damages? Now, also, you have to pay one half of the damages.' But still why can he not plead against him: 'Had the ox been Tam, damages would have been paid out of its body'?[28] — [This could similarly not be pleaded] because the owner might contend: 'In any case would you not have had to reimburse me [to the full extent of] the value of the ox?'[29] Why can he still not plead against him:

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(1) I.e., R. Jacob.

(2) That an inferior degree of precaution is not sufficient in the case of Tam; v. infra p.259.

(3) Hence the liability to pay half-damages, a guardian being appointed to collect payment out of the body of the Tam.

(4) That a precaution of even an inferior degree suffices with Tam as well as with Mu'ad.

(5) V. p. 223, n. 10.

(6) I.e., Rabina.

(7) [So MS.M. deleting 'he means thus' in cur. edd. of Rashi.]

(8) [By explaining R. Jacob's earlier statement as referring to Mu'ad, he informs us that he shares the views of R. Judah both in regard to the question of precaution and that of the part due from Tam in case of a Mu'ad ox, whilst incidentally we also learn that guardians are appointed in case of Tam etc.]

(9) Between R. Jacob and R. Judah in the second cited Baraitha.

(10) Lit., 'atonement', or 'a sum of money', i.e., compensation paid for manslaughter committed by a beast in lieu of the life of the owner of the beast, as appears from Ex. XXI, 29-30; v. Glos.

(11) And not an ordinary civil obligation like damages.

(12) Ex. XXI, 30

(13) I.e., between R. Ishmael and the other Rabbis his opponents.

(14) The payment must therefore correspond to the value of the loss sustained through the death of the person killed.

(15) For since it was the life of the owner of the beast that should be redeemed the payment must surely correspond to the value of his life.

(16) Ex. XXI, 30.

(17) Ibid. XXI, 22.

(18) R. Nahman.

(19) R. Aha b. Jacob.

(20) V. p. 225, n. 6.

(21) V. ibid., n. 7.

(22) 'Ar. 21a.

(23) I.e. vows of value dealt with in Lev. XXVII, 2-8.

(24) Which are intended to procure atonement and which will consequently not be put off.

(25) [Lit., 'To the (Most) High.' Read with MS.M. 'Since it has to be given to a fellow man and not to the Treasury, it is a civil liability.']

(26) R. Nahman.

(27) Though he did not know that the ox had been declared Mu'ad.

(28) And not from my own estate.

(29) In payment of the ox you borrowed from me.

Talmud - Mas. Baba Kama 40b

'Were the ox to have been Tam I would have admitted [the act of goring] and become exempt from having to pay'?[1] Moreover even according to the view[2] that the payment of half-damages [for goring in the case of Tam] is a civil liability,[3] why should the borrower still not argue: 'Had the ox been Tam I would have caused it to escape to the pasture'?[4] — We must therefore suppose the case to have been one where the Court of law stepped in first and took possession of the ox. But if so why should the owner pay one half of the damages? Why not plead against the borrower: 'You have allowed my ox to fall into the hands of a party against whom I am powerless to bring any legal action'? — [This could not be pleaded] because the borrower might retort to him: 'Were I even to have returned the ox to you, would the Court of Law not have taken it from you?' But why should the owner still not plead against the borrower: 'Were you to have returned it to me, I would have caused it to escape to the pasture'?[5] — [This could not be pleaded] because the borrower might argue against him: 'In any case would the damages not have been paid out of the best [of your general estate]?'[6] This indeed could be effectively argued [by the borrower] where the owner possessed property, but what could be argued in the case where the owner possessed no property? — What therefore the borrower could always argue against the owner is [as follows]: 'Just as I am under a personal obligation to you,[7] so am I under a personal obligation[7] to that party [who is your creditor], in virtue of the rule of R. Nathan, as it was taught,[8] 'R. Nathan says: Whence do we conclude that if A claims a maneh[9] from B, and B [claims a similar sum] from C, the money is collected from C and [directly] handed over to A? From the statement of Scripture:[10] And give it unto him against whom he hath trespassed.[11]

'If it was declared Mu'ad while in the possession of the borrower, and [after it] was returned to the owner [it gored again], the owner will pay half damages while the borrower is exempt from any liability whatsoever.' Does this concluding clause [not appear to prove that a change in the] control [of the ox][12] causes a change [in its status], while the preceding clause [tends to prove that a change in the] control [of the ox][13] causes no change [in its status]? — R. Johanan thereupon said: The contradiction [is obvious]; he who taught one clause certainly did not teach the other clause [in the text of the Baraitha]. Rabbah, however, said: Since the opening clause [tends to prove that a change in the] control[13] does not cause a change [in the status], the concluding clause [may also maintain that a change in the] control does not cause a change [in the status]. For the ruling in the concluding clause could be based on the fact that the owner may argue against the borrower, 'You had no legal right to cause my ox to be declared Mu'ad.'[14] R. Papa, however, said: Since the concluding clause [proves that a change in the] control[15] [of the ox] causes a change [in its status], the opening clause [may also maintain that a change in the] control [of the ox] causes a change [in its status]. For the ruling in the opening clause could be based upon the reason that wherever the ox is put, it bears the name of its owner upon it.[16]

IN THE CASE OF A STADIUM OX [KILLING A PERSON], THE DEATH PENALTY IS NOT IMPOSED [UPON THE OX] etc. The question was raised: What [would have been the position of such an ox] with reference to [its being sacrificed upon] the altar? — Rab said that it would have been eligible, whereas Samuel maintained that it would have been ineligible. Rab considered it eligible since it committed manslaughter only by compulsion, whereas Samuel considered it ineligible since it had been used as an instrument for the commission of a crime.

An objection was raised:[17] [Ye shall bring your offering] of the cattle[18] excludes an animal that has copulated with a woman and an animal that has copulated with a man;[19] even of the herd[18] excludes an animal that has been used as an instrument of idolatry; of the flock[18] excludes an animal that has been set apart for idolatrous purposes; and of the flock excludes an animal that has gored

[and committed manslaughter]. R. Simeon remarked upon this: If it is laid down that an animal that has copulated with a woman[19] [is to be excluded] why was it necessary to lay down that an animal goring [and committing manslaughter is also excluded]?[20] Again, if it is laid down that an animal that gored [and committed manslaughter is to be excluded], why was it necessary to lay down that an animal copulating with a woman [is also excluded]?[20] [The reason is] because there are features in an animal copulating with a woman which are not present in an animal goring [and committing manslaughter], and again there are features in an animal goring [and committing manslaughter] which are not present in the case of an animal copulating with a woman. In the case of an animal copulating with a human being the law makes no distinction between a compulsory[21] and a voluntary act [on the part of the animal],[22] whereas in the case of an animal goring [and committing manslaughter] the law does not place a compulsory act on the same footing as a voluntary one. Again, in the case of an animal goring [and committing manslaughter] there is liability to pay kofer,[23] whereas in the case of an animal copulating with a woman there is no liability to pay kofer.[24] It is on account of these differences that it was necessary to specify both an animal copulating with a woman and an animal goring [and committing manslaughter]. Now, it is here taught that in the case of an animal copulating with a human being the law makes no distinction between a compulsory and a voluntary act, whereas in the case of an animal goring [and committing manslaughter the law] does not place a compulsory act on the same footing as a voluntary one. What rule are we to derive from this? Is it not the rule in respect of eligibility for becoming a sacrifice [upon the altar]?[25] — No; the rule in respect of stoning.[26] This indeed stands also to reason, for if you maintain that it is with reference to the sacrifice that the law does not place a compulsory act on the same footing as a voluntary one in the case of an animal goring, [I would point out that with reference to its eligibility for the altar] the Scripture says nothing explicitly with regard either to a compulsory act or a voluntary act on its part. Does it therefore not [stand to reason that what we are to derive from this is] the rule in respect of stoning?

The Master stated: 'In the case of an animal goring [and committing manslaughter] there is liability to pay kofer, whereas in the case of an animal copulating with a woman there is no liability to pay kofer.' What are the circumstances? It could hardly be that while copulating with a woman it killed her, for what difference could be made between killing by means of a horn and killing by means of copulating? If on the other hand the act of copulating did not result in manslaughter, is the exemption from paying kofer not due to the fact that no killing took place? — Abaye said: We suppose, in fact, that it deals with a case where, by the act of copulating, the animal did not kill the woman, who, however, was brought to the Court of Law and by its orders executed. [In such a case] you might perhaps have thought

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(1) For since the liability of half-damages in the case of Tam is only of a penal nature, confession by the defendant would have annulled the obligation; cf. supra. p. 62.

(2) V. supra p. 64.

(3) And confession would bring no exemption.

(4) And since the payment in the case of Tam is only out of its body he would have evaded it.

(5) V. p.227, n. 7.

(6) For in fact the ox had already been declared Mu'ad in the hands of the owner.

(7) To return the ox.

(8) Pes. 31a; Git. 37a; Keth. 19a, 82a; Kid. 15a.

(9) 100 zuz; cf. Glos.

(10) Num. V,7.

(11) Pointing thus to the last creditor.

(12) I.e. from the hands of the borrower to those of the owner.

(13) I.e, from the hands of the owner to those of the borrower.

(14) And it is because of this fact but not because of the change in the control that the ox reverts to the state of Tam.

(15) V. p. 228, n. 8.

(16) The ox therefore did not, by leaving the owner and coming into the hands of a borrower, undergo any change at all.
(17) From Bek. 41a;Tem. 28a.
(18) Lev. I, 2.
(19) Cf. Lev., XVIII, 23 and ib. XX,15-16.
(20) Since in both cases the animal is to be killed where the crime has been testified to by witnesses.
(21) As in the case of animal copulating with man.
(22) V. p. 229, n. 7.
(23) V. p. 224. n. 6.
(24) See the discussion which follows.
(25) Since this was the point under consideration, which solves the question as to the eligibility of a stadium ox for the altar.
(26) [In respect of which the difference between compulsory goring and voluntary goring is admitted.]

Talmud - Mas. Baba Kama 41a

that the execution amounted to manslaughter on the part of the animal; we are therefore told [that this is not the case]. Raba on the other hand held that [we deal here with a case where] while copulating with a woman the animal did kill her, and as for the objection what difference could be made between killing committed by means of horns and killing committed by means of copulating, [the answer would be that] in the case of Horn the animal purposes to do damage, whereas in this case [of copulating] the intention of the animal is merely for self-gratification. What is the point at issue [between these two explanations]?[1] — [Whether kofer should be paid] in the case of Foot treading upon a child in the premises of the plaintiff [and killing it].[2] According to Abaye there would be liability to pay kofer, whereas according to Raba no payment of kofer would have to be made.[3]

It was taught in accordance with the view of Rab: An ox trained for the arena [that killed a person] is not liable [to be stoned] to death , and is eligible for the altar, for it had been compelled [to commit the manslaughter].

MISHNAH. IF AN OX GORES A MAN AND DEATH RESULTS, IN THE CASE OF MU'AD THERE IS LIABILITY TO PAY KOFER,[4] BUT IN THE CASE OF TAM, THERE IS NO LIABILITY TO PAY KOFER. IN BOTH CASES, HOWEVER, THE OXEN ARE LIABLE [TO BE STONED] TO DEATH.[5] THE SAME [JUDGMENT APPLIES] IN THE CASE OF A [MINOR] SON AND THE SAME [JUDGMENT APPLIES] IN THE CASE OF A [MINOR] DAUGHTER.[6] BUT WHERE THE OX HAS GORED A MANSERVANT OR A MAIDSERVANT [AND DEATH HAS RESULTED], COMPENSATION HAS TO BE GIVEN TO THE AMOUNT OF THIRTY SELA',[7] WHETHER THE KILLED SERVANT WAS WORTH A HUNDRED MANEH[8] OR NOT WORTH ANY MORE THAN ONE DENAR.[9]

GEMARA. But since when it was still the state of Tam it had to be killed [for manslaughter], how could it ever have been possible to declare it Mu'ad? — Rabbah said: We are dealing here with a case where, e.g. it had been estimated that it[10] might have killed three[11] human beings.[12] R. Ashi, however, said that such estimation amount to nothing,[13] and that we are therefore dealing here with a case where the ox gored and endangered the lives of three human beings.[14] R. Zebid [on the other hand] said: [The case is one] where, for instance, it killed three animals.[15] But is an ox [which has been declared] Mu'ad to kill animals also Mu'ad to kill men?[16] — R. Shimi therefore said: [The case is one] where for instance it killed three heathens.[15] But is an ox [which has been declared] Mu'ad to gore persons who are heathens also Mu'ad with reference to those who are Israelites? — R. Simeon b. Lakish therefore said: [The case is one] where, for instance, it killed three persons who had already been afflicted with fatal organic diseases.[15] But is an ox [which has been declared] Mu'ad with reference to persons afflicted with fatal organic diseases also Mu'ad regarding persons in sound

condition? — R. Papa therefore said: [The case is one where] the ox [on the first occasion] killed [a sound person] but escaped to the pasture,[17] killed again [a sound person] but similarly escaped to the pasture. R. Aha the son of R. Ika said: [The case is one] where, for instance, [two witnesses alleged in every case an alibi against the three pairs of witnesses who had testified to the first three occasions of goring,[17] and] it so happened that [after evidence had been given regarding the fourth time of goring the accusation of the alibi with reference to the first three times of goring fell to the ground as] a new pair of witnesses gave evidence of an alibi against the same two witnesses who alleged the alibi [against the three sets of witnesses who had testified to the first three occasions of goring]. Now this explanation would be satisfactory [if the three days required for] the declaration of Mu'ad refer to [the goring of] the ox[18] [so as to make sure that it has an ingrained tendency].[19] But if the three days are needed to warn the owner,[18] why should he not plead [against the plaintiff], 'I was not aware [that the evidence as to the first three gorings was genuine]'? — [This could not be pleaded where] e.g., it was stated [by the very last pair of witnesses] that whenever the ox had [gored and] killed he[20] had been present [and witnessed every occasion]. — Rabina said: [The case of an ox not being stoned after any of the first three fatal gorings might be] where, though recognising the owner of the ox[20] [the witnesses who testified to the first three time of goring] did not at that time recognise the identity of the ox [also].[17] But what could the owner[20] have done [where the ox that gored and killed had not been identified]?[21] — [He is culpable because] they could say to him: 'Knowing that an ox inclined to gore has been among your herd, you ought to have guarded the whole of your herd.'

IN BOTH CASES, HOWEVER, THE OXEN ARE LIABLE [TO BE STONED] TO DEATH. Our Rabbis taught: From the implication of the statement The ox shall be surely stoned[22] would I not have known that it becomes nebelah[23] and that by becoming nebelah it should be forbidden to be consumed for food?[24] Why then was it necessary to state further And his flesh shall not be eaten?[25] Scripture must therefore have intended to tell us that were the ox to be slaughtered after the sentence has been passed upon it, it would be forbidden to be consumed as food. This rule is thus established as regards food; whence could it be derived that it would also be forbidden for any [other] use whatsoever? The text therefore says, But the owner of the ox shall be quit.[25] How does this bear [on the matter in hand]? — Simeon B. Zoma said: [The word 'quit' is used here] as in [the colloquial expression,] So-and-so went out quit from his possessions without having any benefit of them whatsoever.

But how do we know that 'his flesh shall not be eaten' refers to a case where the ox has been slaughtered after the sentence had been passed on it, to indicate that it should be forbidden to be used as food? Why not rather suppose that where it has been slaughtered after the sentence had been passed on it, the ox would be eligible to be used for food, and take the words 'his flesh shall not be eaten' as referring to a case where the ox had already been stoned, and indicating that it should [then] be forbidden for any use whatsoever?[26] Such an implication is even in conformity with the view of R. Abbahu, for R. Abbahu said on behalf of R. Eleazar:[27] Wherever Scripture says either it shall not be eaten[28] or thou shalt not eat[29] or you shall not eat,[30] a prohibition both in respect of food and in respect of any [other] use is implied, unless where Scripture makes an explicit exception, as it did make an exception in the case of a thing that dies of itself, which may be given unto a stranger or sold unto a heathen![24] — It may, however, be argued against this that these words [of R. Abbahu] hold good only where the prohibition both in respect of food and in respect of any [other] use is derived from the one Scriptural text, [viz.,] 'it shall not be eaten', but here where the prohibition in respect of food is derived from '[the ox] shall be surely stoned', should you suggest that [the words] 'his flesh shall not be eaten' were meant as a prohibition for any use, [we may ask] why then did the Divine Law not plainly state 'No benefit shall be derived from it'? Or again, why not merely say, 'It shall not be eaten'? Why [the additional words] 'his flesh', if not to indicate that even where it had been made and prepared to resemble other meat, as where the ox was slaughtered, it should still be forbidden. Mar Zutra strongly demurred to this: Why not [he said] take this prohibition

(1) Given by Abaye and Raba respectively.
(2) Discussed supra p. 134.
(3) Since the intention of the animal was not to do damage.
(4) Ex. XXI, 30.
(5) Ibid. 28-29.
(6) Ibid. 31
(7) Ibid. 32.
(8) V. Glos.
(9) V. Glos.
(10) The ox.
(11) As Mu'ad could be only on the fourth occasion; cf. however Rashi a.l.; also Tosaf. a.l. and supra p. 119.
(12) Whom the ox pursued but who had a very narrow escape from death by running away to a safe place.
(13) Since no actual goring took place.
(14) Who, however, did not die until after the ox gored again on the fourth occasion, and it was on account of this delay that the ox was not stoned previously.
(15) In which case the ox should not be put to death.
(16) Cf. supra p. 4, and p. 205.
(17) The ox thus escaped death.
(18) Cf. supra p.121
(19) As in this case also the first three times of goring took place on three successive days.
(20) I.e. the defendant.
(21) How then could this be called warning?
(22) Ex. XXI. 28.
(23) I.e.. the carcass of an animal not ritually slaughtered.
(24) In accordance with Deut XIV, 21.
(25) V. p. 233, n. 6.
(26) For without this implication it would have followed the general rule that an animal which was not slaughtered in accordance with the requirements of the law could be used for any purpose but food; cf. Deut. XIV, 21 and Lev. VII, 24.
(27) Pes. 21b; Kid. 56b.
(28) Such e.g. as in Ex. XIII,3.
(29) See Lev. XVII, 12 but also Pes. 22a.
(30) Cf. e.g., Gen. XXXII, 33 and Pes. 22a and Hul. 100b.

to refer to a case where the slaughterer prepared[1] a piece of sharp flint and with it slaughtered the ox, which was thus dealt with as if it has been stoned, whereas where it had been slaughtered by means of a knife the prohibition should not apply? — To this it may be replied: Is a knife specifically mentioned in Scripture? Moreover we have learnt:[2] If one slaughters with a hand-sickle, with a flint or with a reed, the act of slaughtering has been properly executed.[2]

And now that the prohibition in respect both of food and of any [other] use has been derived from [the text] 'his flesh shall not be eaten', what additional teaching is afforded to me by [the words] 'The owner of the ox shall be quit'? — [The prohibition of] the use of the skin. For otherwise you might have been inclined to think that it was only the flesh that had been proscribed from being used, whereas the skin should be permitted to be used; we are therefore told [that this is not the case but] that 'the owner of the ox shall be quit.' But what of those Tannaim who employ this [text], 'The owner of the ox shall be quit' for deriving other implications (as we will indeed have to explain infra);[3] whence do they derive the prohibition against the making use of the skin? — They derive it from [the auxiliary term in the Hebrew text] 'eth his flesh', meaning, 'together with that which is joined to its flesh', that is, its skin. This Tanna,[4] however, does not stress [the term] 'eth' for legal

expositions, as it has been taught:[5] Simeon the Imsonite, or as others read, Nehemiah the Imsonite, used to expound [the term] 'eth'[6] wherever it occurred in the Torah. When, however, he reached, Thou shalt fear eth the Lord thy God,[7] he abstained.[8] His disciples said to him: Rabbi, what is to be done with all the expositions of [the term] 'eth' which you have already given?[6] He said to them: Just as I have received reward for the [previous] expositions so have I received reward for the [present] abstention. When R. Akiba, however, came, he taught: 'Thou shalt fear eth the Lord thy God' implies that the scholarly disciples are also to be feared.

Our Rabbis taught: 'But the owner of the ox shall be quit' means, according to the view of R. Eliezer, quit from [paying] half kofer.[9] Said R. Akiba to him: Since any actual liability in the case of the ox itself [being a Tam] is not paid except out of its body,[10] [why cannot the owner say to the plaintiff,] 'Bring it to the Court of Law and be reimbursed out of it' ?[11] R. Eliezer then said to him: 'Do I really appear so [simple] in your eyes that [you should take] my exposition to refer to a case of an ox liable [to be stoned] to death? My exposition referred only to one who killed the human being in the presence of one witness or in the presence of its owner.'[12] In the presence of its owner! Would he not be admitting a penal liability?[13] — R. Eliezer maintains that kofer partakes of a propitiatory character.[14]

Another [Baraitha] teaches: R. Eliezer said to him: Akiba, do I really appear so [simple] in your eyes that [you take] my exposition to refer to an ox liable [to be stoned] to death? My exposition referred only to one who had been intending to kill a beast but [by accident] killed a man, [or where it had been intending to kill] an Egyptian and killed an Israelite, [or] a non-viable child and killed a viable child.[15] Which of the answers, was given first? — R. Kahana in the name of Raba said that [the answer about] intention was given first, whereas R. Tabyomi in the name of Raba said that [the answer about] having killed [the man in the presence of one witness etc.] was given first. R. Kahana, who in the name of Raba said [that the answer about] intention was given first, compared him to a fisherman who had been catching fishes in the sea;

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(1) Lit., 'tested', that is, to see whether it was fit for ritual slaughetering.

(2) Hul. 15b.

(3) V. pp.236-239.

(4) Who needs the whole of the text to imply the prohibition of the skin.

(5) Kid. 57a; Bek. 6b and Pes 22b.

(6) To imply some amplification of the statement actually made.

(7) Deut VI. 13

(8) Being loth to put any being whatsoever on a par with God.

(9) In the case of Tam.

(10) As supra p. 73.

(11) But since the ox is put to death and the carcass including also the skin is proscribed for any use whatsoever, is it not evident that no payment could be made in the case of Tam killing a human being? Why then give a special indication to this effect?

(12) [In which case the ox is not stoned (v. Zeb. 71a: Rashi and Tosaf. s.v. עַל פִּי).]

(13) For the payment of half-damages in the case of Tam is, as decided supra p. 67 of a penal character and as such liability for it could in any case not be established by the admission of the defendant, for which cf. supra p. 62 and infra p. 429.

(14) And liability to it would thus have been established even by the admission of the defendant.

(15) V. supra p. 232. n.11.

Talmud - Mas. Baba Kama 42a

when he caught big ones he took them and when he [subsequently] caught little ones he took them also.[1] But R. Tabyomi, who in the name of Raba said that [the answer about] having killed [the man

in the presence of one witness etc.] was given first, compares him to a fisherman who was catching fishes in the sea and when he caught little ones he took them, but when he [subsequently] caught big ones he threw away the little ones and took the big ones.[2]

Another [Baraitha] teaches: 'And the owner of the ox shall be quit' [implies] according to the statement of R. Jose the Galilean, quit from compensating [in the case of Tam killing] embryos . Said R. Akiba to him: Behold Scripture states: If men strive together and hurt a woman with child etc.,[3] [implying that only] men but not oxen [are liable for killing embryos]![4] Was not this a good question on the part of R. Akiba? — R. 'Ulla the son of R. Idi said: [The implication drawn by R. Jose] is essential. For otherwise it might have occurred to you to apply [R. Akiba's] inference 'Men but not oxen' [exclusively to such] oxen as are comparable to men: Just as men are Mu'ad,[5] so also here the oxen referred to are Mu'ad, whereas in the case of Tam there should be liability. The Divine Law has therefore stated, 'The owner of the ox shall be quit', implying exemption [also in the case of Tam]. Said Raba thereupon: Is the native born to be on the earth and the stranger in the highest heavens?[6] No, said Raba. [The implication drawn by R. Jose] is essential [for this reason, that] you might have been inclined to apply the inference 'Men but not oxen' only to oxen which could be compared to men — just as men are Mu'ad so the oxen here referred to are Mu'ad — and to have extended the exemption to cases of Tam by an argument a fortiori. Therefore the Divine Law purposely states [further], The owner of the ox shall be quit [to indicate that only] in the case of Tam will there be exemption whereas in the case of Mu'ad there will be liability. Said Abaye to him: If that is so, why not argue in the same way in the case of payment for degradation; thus: [Scripture says] 'Men',[7] excluding oxen which could be compared with men: just as the men are Mu'ad so the oxen [thus exempted] must be Mu'ad, and a fortiori exemption is extended to cases of Tam. Thereupon the Divine Law on another occasion purposely states, 'The owner of the ox shall be quit' [to indicate that only] in the case of Tam will there be exemption, whereas in the case of Mu'ad there will be liability [for degradation]? Now you could hardly say that this is indeed the case, for if so why not teach that, 'the owner of the ox shall be quit' [means], according to R. Jose the Galilean, quit from compensating [both in the case of Tam killing] embryos and [in the case of it having caused] degradation?[8] — Abaye and Raba both therefore said: [You might have been inclined to suppose that] in the case of 'men' it is only where no mischief[9] [resulted to the woman] that a liability to pay [for the embryo is imposed] upon them whereas where a mischief [resulted to the woman] no civil liability[10] [is imposed] upon them,[11] but that it is not so with oxen, as in their case even if mischief [results to the woman] a liability to pay is imposed.[12] The Divine Law has therefore on another occasion purposely stated, The owner of the ox shall be quit, to indicate exemption [in all cases]. R. Adda b. Ahabah demurred to this, saying: Does then the matter of civil liability[13] depend upon the non-occurrence of mischief to the woman? Does this matter not depend upon intention [of the defendant]?[14] — R. Adda b. Ahabah therefore said: [You might have been inclined to think thus:] In the case of men where their purpose was to kill one another, even if mischief results to a woman, a civil liability[13] will be imposed, whereas where they purposed to kill the woman herself [who was in fact killed], no civil liability[13] would be imposed. In the case of oxen, however, even where their purpose was to kill the woman [who is indeed killed by them] a civil liability should be imposed for the embryo. [To prevent your reasoning thus] the Divine Law on another occasion purposely states, 'The owner of the ox shall be quit' to indicate exemption [altogether in the case of oxen]. And so also R. Haggai upon returning from the South, came [to the College] and brought the teaching [of a Baraitha] with him stating the case in accordance with the interpretation given by R. Adda b. Ahabab.

Another [Baraitha] teaches: 'The owner of the ox shall be quit' [implies], according to the statement of R. Akiba, quit from compensating for [the killing of] a slave.[15]

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(1) So also here where the better answer was given first and the inferior one later. The answer about intention is considered the better one.

(2) Here also when R. Eliezer subsequently found a better answer he withdrew the answer which he had given first.
(3) Ex. XXI, 22.
(4) Why then a special implication to exempt Tam?
(5) V. supra p. 68.
(6) I.e., how would it be possible to have exemption in the case of Mu'ad and liability in the case of Tam?
(7) Deut. XXV, 11.
(8) But Mu'ad is liable.
(9) I.e., death.
(10) For the embryo.
(11) As all civil claims would merge in the capital charge; cf. supra p. 113 and infra p. 427, n. 2.
(12) For the civil liability of the owner should not be affected by the ox having to be put to death.
(13) V. p. 238, n. 4.
(14) For where he intended to kill another person and it was only by accident that the woman and her embryo were killed, there would, according to R. Adda b. Ahabah, be no capital charge but a civil liability; cf. for such a view infra p.252 and Sanh. 79a.
(15) V. supra p. 232.

Talmud - Mas. Baba Kama 42b

But why should R. Akiba not argue against himself,[1] Since any actual liability in the case of the ox itself [being a Tam] is not paid except out of its body [why should not the owner say to the plaintiff] 'Bring it to the Court of Law and be reimbursed out of it'? — R. Samuel son of R. Isaac thereupon said: [This creates no difficulty; the case is one] where the owner of the ox slaughtered it before [the passing of the sentence].[2] You might suggest in that case that payment should be made out of the flesh; we are therefore told that since the ox [as such] had been liable [to be stoned] to death, no payment could be made out of it even where it was slaughtered [before the passing of the sentence]. But if so, why [did not R. Akiba think of this reply to the objection he made] to R. Eliezer[3] also, viz. that the owner of the ox slaughters it beforehand? — He could indeed have done this, but he thought that R. Eliezer[3] also probably had another explanation better than this which he would tell him. But why did R. Eliezer [himself] not answer him that he referred to a case where the owner slaughtered the ox beforehand? — He could answer: It was only there where the ox aimed at killing a beast but [by accident] killed a man, in which case it is not liable [to be stoned] to death, and you might therefore have thought there was a liability [for kofer], that there was a need for Scripture to indicate that there is [in fact] no liability. But here where the ox had originally been liable [to be stoned] to death, no Scriptural indication should be needed [to exempt from liability] even where the ox has meanwhile been slaughtered.[4] But should not the same argument be employed also regarding the exposition of R. Akiba?[5] — R. Assi therefore said: The explanation of this matter was delivered to me from the mouth of a great man, to wit, R. Jose b. Hanina [who said]: You might be inclined to think that since R. Akiba said, 'Even in the case of Tam injuring Man the payment of the difference must be in full',[6] the compensation for killing a slave should also be paid out of the best [of the general estate]. Divine Law therefore states, The owner of the ox shall be quit, [implying that this is not the case]. Said R. Zera to R. Assi: Did R. Akiba himself not qualify this liability? For it was taught:[7] R. Akiba says, As it might be thought that this full payment[8] has to be made out of the best [of the general estate], it is therefore further stated, According to this judgment shall it be done unto him,[9] [to emphasize that] payment is to be made out of its body, but no payment is to be made out of any other source whatsoever? — Raba therefore [gave a different explanation] saying: The implication is still essential, for otherwise you might have thought that since[10] I have to be more strict in the case of [killing] a slave than in the case of a freeman — for in the case of a freeman worth one sela' the payment[11] will be one sela', and of one worth thirty the payment will be thirty, whereas in the case of a slave even where he was worth one sela' the payment will have to be thirty[10] — there should be compensation for [the killing of] a slave[12] even out of the best of the estate,[13] the Divine Law therefore states, ' The owner of the ox should be quit' [implying that this is

not the case]. It was taught in accordance with [the explanation given by] Raba: 'The owner of the ox should be quit' [implies], according to the statement of R. Akiba, quit from compensation for [the killing of] a slave. But is this not strictly logical?[14] For since there is liability [to pay compensation] for [the killing of] a slave and there is liability [to pay compensation] for [the killing of] a freeman;[11] just as where there is liability [to pay compensation] for [the killing of] a freeman a distinction has been made by you between Tam and Mu'ad,[15] why then in the case where compensation has to be paid for [the killing of] a slave should you similarly not make a distinction between Tam and Mu'ad? This conclusion could moreover be arrived at by the a fortiori argument: If in the case of [killing] a freeman where the compensation[11] is for the whole of his value a distinction has been made by you between Tam and Mu'ad,[15] then in the case of [killing] a slave where the compensation amounts only to thirty [sela'] should it not stand to reason that a distinction must be made by us between Tam and Mu'ad? — Not so, because (on the other hand] I am[16] more strict in the case of [killing] a slave than in that of [killing] a freeman. For in the case of a freeman, where he was worth one sela' the compensation will be one sela',[17] [where he was worth] thirty the compensation will be thirty, whereas in the case of a slave even where he was worth one sela' the compensation has to be thirty.[16] This might have inclined us to think that [even in the case of Tam] there should be liability. It was therefore [further stated], The owner of the ox shall be quit, implying quit from compensation for [the killing of] a slave.

Our Rabbis taught: [It is written,] But it hath killed a man or a woman.[18] R. Akiba says: What does this clause come to teach us? If that there is liability for the goring to death of a woman as of a man, has it not already been stated, if an ox gore a man or a woman?[19] It must therefore have intended to put the woman on the same footing as the man: just as in the case of a man the compensation[17] will go to his heirs, so also in the case of a woman the compensation will go to her heirs.[20] Did R. Akiba thereby mean [to put forward the view] that the husband was not entitled to inherit her? But has it not been taught: 'And he shall inherit her;[21] this shows that the husband is entitled to inherit his wife. This is the view of R. Akiba'?[22] — Resh Lakish therefore said: R. Akiba[23] stated this[24] only with reference to kofer which, since it has not to be paid save after [the] death [of the victim], is regarded as property in anticipation,[25] and a husband is not entitled to inherit property in anticipation as he does property in actual possession.[26] But why [should kofer not be paid except after death]?[27] — Scripture says: But it hath killed a man or a woman; the ox shall be stoned, and its owner also shall be put to death. If there be laid on him a ransom.[28] But did R. Akiba not hold that damages [for injury also are not inherited by the husband]? Has it not been taught:[29] If one hurt a woman so that her embryo departed from her, compensation for Depreciation and for Pain should be given to the woman, compensation for the value of the embryo to the husband.[30] If the husband is not [alive], his due should be given to his heirs, and if the woman is not [alive at the time of payment] her due should be given to her heirs. [Hence] if the woman was a slave that had been emancipated[31]

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(1) Exactly as he argued against R. Eliezer, supra p.236.

(2) In which case the flesh could legitimately be used as food; cf. infra p. 255.

(3) Supra p. 236.

(4) This was the reason why R. Eliezer answered as he did, and not as suggested here that the ox was slaughtered before the sentence had been passed on it.

(5) And if so, the original problem will recur: Why should R. Akiba not argue against himself as he did against R. Eliezer, supra p. 236.

(6) Supra p. 179.

(7) Cf. supra p. 180.

(8) In the case of Tam injuring a human being.

(9) Ex. XXI, 31.

(10) In the case of Mu'ad.

(11) I.e. kofer.

(12) In the case of Tam.
(13) There can thus no more arise the question, 'Since any actual liability in the case of the ox itself (being Tam) is not paid except out of its body, (why should not the owner say to the plaintiff) "Bring it to the Court and be reimbursed out of it"?' Cf. supra p. 236.
(14) Wherefore then the special inference from the verse?
(15) That in the case of Mu'ad, kofer is paid, but not in the case of Tam.
(16) In the case of Mu'ad.
(17) V. p. 241, n. 3.
(18) Ex. XXI, 29.
(19) Ibid. 28.
(20) Not to her husband.
(21) Num. XXVII, 11.
(22) B.B. 111b.
(23) [So MS. M., v. Rashi.]
(24) That the husband does not inherit the compensation due to the woman.
(25) As at the last moment of her life the liability for kofer was neither a chose in possession nor even a chose in action
(26) Cf. B. B. 113a and 125b.
(27) Why not say that as soon as the blow was ascertained to have been fatal the payment of kofer should be enforced?
(28) Implying that the payment of money as kofer is, like the killing of the ox, not enforced before the victim has actually died.
(29) Infra p. 280.
(30) V. Ex. XXI, 22.
(31) And the husband was of the same category.

Talmud - Mas. Baba Kama 43a

or a proselytess the defendant would be the first to acquire title [to all the claims and thus be released from any liability]? — Rabbah thereupon said: We deal [in this latter case] with a divorced woman.[1] So also said R. Nahman [that we deal here] with a divorced woman. [But] I might [here] object: If she was divorced, why should she not also share in the compensation for the value of the embryo?[2] — R. Papa thereupon said: The Torah awarded the value of embryos to the husband even where the cohabitation had taken place not in a married state, the reason being that Scripture says: According as the cohabitator[3] of the woman will lay upon him.[4]

But why should not Rabbah refer the ruling[5] to the case where the payment of the compensation had been collected in money, and R. Nahman to the case where it had been collected out of land? For did Rabbah not say[6] that where an outstanding debt had been collected[7] out of land, the first-born son would take in it [a double portion],[8] but where it had been collected in money the first-born son would not [take in it a double portion]?[9] Or again did R. Nahman not say[10] that [on the contrary] where the debt had been collected in money the first-born would take [in it a double portion],[11] but where it has been collected out of land, the first-born son would not [take in it a double portion]?[12] — It could, however, be answered that these statements were made on the basis of the despatch of the Western Sages according to the view of the Rabbis,[13] whereas in the case here [where Rabbah and R. Nahman interpreted it to have referred to a divorced woman] they were stating the law as maintained by Rabbi.[14]

R. Simeon b. Lakish said: Where an ox killed a slave without purposing to do so, there would be exemption from the payment of thirty shekels, since it is written, He shall give unto their master thirty shekels of silver, and the ox shall be stoned,[15] [implying that] where the ox would be liable to be stoned the owner is to pay thirty shekels, but where the ox would not be liable to be stoned[16] the owner need not pay thirty shekels. Rabbah [similarly] said: Where an ox killed a freeman without purposing to do so there would be exemption from kofer, for it is written[17] The ox should be stoned

and its owner also shall be put to death. If there be laid on him a ransom, [implying that] where the ox has to be stoned[16] the owner has not to pay kofer. Abaye raised an objection to this [from the following Mishnah]:[18] If a man says: 'My ox has killed so-and-so' or 'has killed so-and-so's' ox, [in either case] the defendant has to pay in virtue of his own admission. Now, does the payment [in the former case][19] not mean kofer [though the ox would not become liable to be stoned through the owner's admission]?[20] — No; [it means for] the actual value.[21] If [it means payment for] the pecuniary loss, read the concluding clause: [If he says], 'My ox has killed so-and-so's slave,' the defendant is not liable to pay in virtue of his own admission.[22] Now, if [the payment referred to in the first clause was meant for] the pecuniary loss, why is there no liability [to pay for the pecuniary loss in the case of a slave]?[23] — He, however, said to him: I could have answered you that the opening clause refers to the actual value[24] [of the killed person],[25] whereas the concluding clause refers to the fixed fine [of thirty shekels]. As, however, I have no intention to answer you by means of forced interpretations, [I will say that] both clauses do in fact refer to the actual value [of the killed person].

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(1) For otherwise the husband would inherit her claim for damages.

(2) Since she was his wife no more.

(3) The Hebrew term בעל ('husband' E.V.) is thus understood.

(4) Ex. XXI, 22.

(5) That the damages will be paid to her heirs and not to the husband.

(6) B.B. l24b.

(7) After the death of a creditor.

(8) In accordance with Deut. XXI. 17.

(9) Because the debt collected after the death of the father was not a chose in possession in the lifetime of the creditor, and the first-born takes a double portion only 'of all that' his father 'hath' at the time of death. A husband is in a similar position, as he too has the right to inherit only chooses in possession at the lifetime of his wife.

(10) V. p. 243, n. 10.

(11) For the money collected is considered in the eye of the law as the money which was lent to the father of the debtor.

(12) V. p. 243, n. 13.

(13) V. p. 243, n. 10.

(14) That debts collected after the death of a creditor whether in species or out of land will be subject to the law of double portion in the case of a first-born and similarly to the law of a husband inheriting his wife. v. B.B. (Sonc. ed.) p. 518.

(15) V. Ex. XXI, 32.

(16) As e.g., where it killed a human being by accident.

(17) Ex. XXI, 29.

(18) Keth. III, 9.

(19) Where the defendant admitted that his ox killed a man.

(20) Without the corroboration of witnesses; v. supra p. 236, n. 8.

(21) I.e., the pecuniary loss sustained through the man's death. [It is distinguished from kofer in that the payment of the latter is an act of atonement to be compounded in no circumstance; v. Tosaf. s. v. מאי.]

(22) As the payment of thirty shekels in the case of a slave is of the nature of a penalty which could not be inflicted on the strength of the word of mouth of the defendant.

(23) Does this not prove that in the case of manslaughter committed by cattle no payment for the pecuniary loss would have to be made if you except kofer in the case of a freeman, and the thirty shekels in the case of a slave?

(24) I.e. the pecuniary loss sustained through his death.

(25) Which has to be paid even where kofer could for some reason or other not be imposed upon the defendant.

Talmud - Mas. Baba Kama 43b

But [it is only in the case of] a freeman where kofer may sometimes be paid on the strength of the defendant's own admission — as where witnesses appeared and testified to the ox having killed [a

freeman] without, however, knowing whether it was still Tam or already Mu'ad and the owner admits it to have been Mu'ad, in which case kofer would be paid on the strength of his own admission[1] — that [we say] where witnesses are not at all available payment will be made for the actual value [of the loss]. [Whereas] in the case of a slave where the fixed fine could never be paid through the defendant's own admission — since even where witnesses appear and testify to the ox having killed [a slave], without knowing whether it had still been Tam or already Mu'ad, and the owner admits that it had already been Mu'ad, no fine would be paid — [we say] where no witnesses at all are available there will be no payment even for the amount of the value [of the loss].

R. Samuel son of R. Isaac raised an objection [from the following teaching]: Wherever there is liability in the case of a freeman,[2] there is liability in the case of a slave both for kofer and for stoning. Now, how could kofer ever be [paid] in the case of a slave?[3] Does it therefore not surely mean the payment for the amount of the value [of the loss]?[4] — Some say that he raised the objection and he himself answered it, others say that Rabbah said to him: What is meant is as follows: Wherever there is liability for kofer [i.e.] in the case of a freeman killed intentionally [by the ox] as testified by witnesses, there is [a similar] liability for the fine in the case of a slave, and wherever there is liability for the amount of the value [of the loss, i.e.,] in the case of a freeman killed unintentionally, as testified by witnesses, there is also liability for the amount of the value [of the loss] in the case of a slave killed unintentionally, as testified by witnesses.[5] Raba, however, said to him: If so,[6] why in the case of Fire unintentionally[7] burning a human being [to death], as testified by witnesses, should there also not be liability to pay the amount of the value [of the loss]? And how did Raba know that no payment would be made [in this case]? Shall we say from the following Mishnah: '[Where fire was set to a barn and] a goat had been bound to it and a slave was loose near by it and all were burnt [with the barn] there would be liability.[8] But where the slave had been chained to it, and the goat loose near by it and all were burnt with it there would be no liability.'[9] [But how could Raba prove his point from this case here?][10] Did Resh Lakish not state that this case here should be explained as one where e.g., the defendant put the actual fire upon the body of the slave so that [no other[11] but] the major punishment had to be inflicted? But [it may perhaps be suggested that Raba derived his point] from the following [Baraitha]: For it has been taught: 'The excess in [the liability] for Fire over [that for] Pit is that Fire is apt to consume both things fit for it and things unfit for it, whereas this is not so in the case of Pit.'[12] It is not, however, said that 'in the case of Fire [where a human being has been burnt to death] unintentionally there is liability to pay for the pecuniary loss, whereas it is not so in Pit'.[13] But might [the Baraitha] not perhaps have stated [some points] and omitted [others]? — It must therefore have been that Raba himself was questioning whether in the case of Fire [burning a human being] unintentionally there would be payment for the amount of the value [of the loss] or whether there would be none. Should we say that it was only in the case of cattle — where if the manslaughter was unintentional kofer would be paid — that for unintentional manslaughter the amount of the value [of the loss] is to he paid — whereas in the case of Fire — where for intentional manslaughter no kofer would be paid[14] — there should be no payment of the amount of the value [of the loss] for unintentional manslaughter? Or [shall we] perhaps [rather say that] since in the case of Cattle [killing a person] unintentionally where no kofer is paid, the value [of the loss] is nevertheless paid, so should it also be with Fire where no kofer would be paid for intentional manslaughter, that nevertheless the value [of the loss] caused by unintentional manslaughter should be paid? But as no information was available to us [on this matter], it remained undecided.

When R. Dimi arrived [from Palestine] he said on behalf of R. Johanan: [The word] kofer [I understand]. What is taught by [the expression] If kofer?[15] It implies the inclusion of [the payment of] kofer in cases where there was no intention[16] [to kill] just as kofer [is paid] where there was intention. Abaye however said to him: If so , the same could now surely also be argued in the case of a slave: viz.: What is taught by [the expression] If a slave?[15] [It implies] that a slave killed unintentionally is subject to the same law as a slave, killed intentionally? If that is so, why did Resh

Lakish say that where an ox killed a slave unintentionally there would be exemption from the thirty shekels? He replied: Would you confute one person's view by citing another?[17]

When Rabin arrived [from Palestine] he said on behalf of R. Johanan: [The word] a slaves [I understand], What is taught by [the expression] If a slave? [It implied] that a slave [killed] unintentionally is subject to the same law as a slave [killed] intentionally. Now as regards Resh Lakish [who was of a different view in this respect] shall we also assume that just as he drew no lesson from the distinction between 'a slave' and 'if a slave', so he drew no lesson from the distinction between 'kofer' and 'if kofer'? — I may say that this was not so. From the distinction between 'a slave' and 'if a slave'[18] he did not draw a lesson, whereas from the distinction between 'kofer' and 'if kofer' he did draw a lesson. Why this difference? The expressions 'a slave' and 'if a slave' do not occur in the context dealing with payment,[19] whereas the expressions 'kofer' and 'if kofer' do occur in a context dealing with payment.

THE SAME JUDGMENT APPLIES IN THE CASE OF A SON OR IN THAT OF A DAUGHTER. Our Rabbis taught: [The text] Whether it have gored a son or have gored a daughter[20] [implies] that there is liability in the case of little ones just as in that of grown-ups. But surely this is only logical! For since there is a liability in the case of Man killing man there is similarly a liability in the case of Cattle killing man, just as where Man has killed man no distinction is made between [the victims being] little ones or grown-ups,[21] so also where Cattle killed man no distinction should be made between [the victims being] little ones or grown-ups? Moreover there is an a fortiori argument [to the same effect]; for if in the case of Man killing man where the law did no make [murderers who are] minors liable as [it did make] grown-ups,[22] it nevertheless imposed there liability for little ones as for grown-ups,

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(1) As the ox in this case would be subject to be stoned, [and where the ox is stoned, the owner pays kofer].

(2) I.e. kofer.

(3) V. p. 244, n. 6.

(4) [This shows that pecuniary loss is paid in the case of a slave on his own admission even as in the case of a freeman.]

(5) [Though in the case of self-admission there will still be a distinction between the death of a freeman and that of a slave (by an ox) in regard to the payment of pecuniary loss.]

(6) [That there is payment of pecuniary loss, even where kofer is not payable.]

(7) [If intentionally, the civil liability would merge with the graver capital charge.]

(8) For the barn and the goat but not for the slave, as he should have run away.

(9) Infra 61b.

(10) By not extending the ruling in the second clause to refer also to the barn but confining it to the goat which should have run away, and to the slave, on the alleged ground that no compensation should be paid for the value of the loss occasioned by fire burning a human being to death.

(11) The ruling of exemption in the second clause is thus extended even to the barn.

(12) Supra p. 38.

(13) For which see supra p. 18 and infra 50b.

(14) For it merges with the graver capital charge.

(15) Ex. XXI, 30; for it is surely neither an optional nor a conditional liability.

(16) ['If' אם implying a case where kofer is imposed, though the ox is not stoned, i.e. where there was no intention (contrary to the view of Rabbah, supra); v. Malbim on Ex. XXI, 30.]

(17) As R. Johanan and Resh Lakish might perhaps have differed on this point.

(18) In Ex. XXI, 32.

(19) It could thus hardly have any bearing on the law of payment.

(20) Ibid. 31.

(21) Cf. Nid. 44a.

(22) See Lev. XXIV, 17 and Mek. on Ex. XXI, 12.

now in the case of Cattle killing man where the law made small cattle [liable] as [it did make] big cattle,[1] should it not stand to reason that there is liability for little ones as there is for grown-ups?[2] — No, [for it could have been argued that] if you stated this ruling in the case of Man killing man it was [perhaps] because [where Man injured man] there was liability for the four [additional] items,[3] but how would you be able to prove the same ruling in the case of Cattle where there could be no liability for the four [additional] items? Hence it is further laid down: Whether it have gored a son or have gored a daughter to impose liability for little ones as for grown-ups. So far I know this only in the case of Mu'ad.[4] Whence do I know it in the case of Tam? — We infer it by analogy: Since there is liability for killing Man or Woman and there is similarly liability for killing Son or Daughter, just as regarding the liability for Man or Woman you made no discrimination between Tam and Mu'ad,[5] so also regarding the liability for Son or Daughter you should make no discrimination between Tam and Mu'ad. Moreover there is an a fortiori argument [to the same effect]; for if in the case of Man and Woman who are in a disadvantageous position when damages had been done by them,[6] you have nevertheless made there no discrimination between Tam and Mu'ad, in the case of Son and Daughter who are in an advantageous position when damage has Been done by them,[7] should it not stand to reason that you should make no discrimination between Tam and Mu'ad? — [No,] you cannot argue thus. Can we draw an analogy from a more serious to a lighter case so as to be more severe [with regard to the latter]? If[8] the law is strict with Mu'ad which is a more serious case, how can you argue that it ought to be [equally] strict with Tam which is a lighter case? Moreover, [you could also argue that] the case of Man and Woman [is graver] since they are under obligation to observe the commandments [of the Law],[9] but how draw therefrom an analogy to the case of Son and Daughter seeing that they are exempt from the commandments?[10] It was therefore necessary to state [further]: Whether it have gored a son, or have gored a daughter; [the repetition of the word 'gored' indicating that no discrimination should be made between] goring in the case of Tam and goring in the case of Mu'ad, between goring in the case of killing and goring in the case of mere injury.

MISHNAH. IF AN OX BY RUBBING ITSELF AGAINST A WALL CAUSED IT TO FALL UPON A PERSON [AND KILL HIM], OR IF AN OX WHILE TRYING TO KILL A BEAST [BY ACCIDENT] KILLED A HUMAN BEING, OR WHILE AIMING AT A HEATHEN[11] KILLED AN ISRAELITE, OR WHILE AIMING AT NON-VIABLE INFANTS KILLED A VIABLE CHILD, THERE IS NO LIABILITY.

GEMARA. Samuel said: There is exemption [for the ox in these cases] only from [the penalty of being stoned to] death, but there is lability [for the owner] to pay kofer.[12] Rab, however, said: There is exemption here from both liabilities.[13] But why [kofer]?[14] Was not the ox Tam?[15] — Just as [in an analogous case] Rab said that the ox was Mu'ad to fall upon human beings in pits,[16] so also [in this case we say that] the ox was Mu'ad to rub itself against walls [which thus fell] upon human beings. But if so, why should the ox not be liable to [be stoned to] death? It is correct in this other case where we can explain that the ox was looking at some vegetables and so came to fall [into a pit],[17] but here what ground could we give [for assuming otherwise than an intention to kill on the part of the ox]? — Here also [we may suppose that] the ox had been rubbing itself against the wall for its own gratification.[17] But how can we know this?[18] — [By noticing that] even after the wall had fallen the ox was still rubbing itself against it.

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(1) Cf. infra p. 380, and 'Ed. VI, 1.

(2) Why then was it necessary for Scripture to make this explicit in Ex. XXI, 31?

(3) For which cf. supra p. 12.

(4) As verse 31 follows 29 and 30 which deal with Mu'ad.

(5) As clearly seen in verses 29 and 30.

(6) I.e. they are liable to pay for it. Cf. supra p. 63 but also infra p. 502.

(7) For which they are not liable to pay; see infra p. 502.
(8) [Some texts omit, 'If . . . . Moreover,' v. D.S. a.l.]
(9) Cf. however, supra p. 64, but also Kid. I, 7.
(10) So long as they are minors and have not reached puberty for which cf. Nid. 52a.
(11) Cf. supra p. 211, n. 6.
(12) As also maintained by R. Johanan, supra p. 248, and still earlier by R. Eliezer, supra p. 237.
(13) For the reason v. supra 244
(14) In the case dealt with first in the Mishnah.
(15) In killing a human being by rubbing itself against a wall and thus causing it to fall. In the case of Tam no kofer is paid; see Ex. XXI, 28.
(16) Infra p. 274.
(17) And as intention to kill was lacking, no death penalty could be attached.
(18) Seeing that the ox was Mu'ad to rub itself against walls.

Talmud - Mas. Baba Kama 44b

But granted all this, is this manner of damage[1] not on a par with that done by Pebbles[2] [where there would be no liability for kofer]?[3] — R. Mari the son of R. Kahana thereupon said: [We speak of] a wall gradually brought down by the constant pushing of the ox.[4]

It has been taught in accordance with Samuel and in refutation of Rab: There are cases where the liability is both for [stoning to] death and kofer: there are other cases, where there is liability for kofer but exemption from [stoning to] death; there are again [other] cases where there is liability [for stoning to] death but exemption from kofer; and there are still other cases where there is exemption both from [stoning to] death and from kofer. How so? In the case of Mu'ad [killing a person] intentionally, there is liability both for [stoning to] death and for kofer.[5] In the case of Mu'ad [killing a person] unintentionally there is liability for kofer but exemption from [stoning to] death. In the case of Tam [killing a person] intentionally there is liability [for stoning to] death but exemption from kofer. In the case of Tam [killing a person] unintentionally, there is exemption from both penalties. Whereas in case of injury [caused by the ox] unintentionally, R. Judah says there is liability to pay [damages], but R. Simeon says there is no liability to pay.[6] What is the reason of R. Judah? — He derives [the law of damages from] that of kofer: just as for kofer there is liability even where there was no intention [to kill], so also for damages for injuries there is liability even where there was no intention [to injure]. R. Simeon, on the other hand, derived [the law of damages] from that of the killing of the ox: just as the stoning of the ox is not required where there was no intention [to kill], so also damages are not required where there was no intention [to injure]. But why should R. Judah also not derive [the ruling in this case] from [the law applying to the] killing [of the ox]? It is proper to derive [a ruling regarding] payment from [another ruling regarding] payment, but it is not proper to derive [a ruling regarding] payment from [a ruling regarding] killing. Why then should R. Simeon also not derive [the ruling in this case] from [the law applying to] kofer? — It is proper to derive a liability regarding the ox[7] from another liability that similarly concerns the ox,[8] thus excluding kofer which is a liability that concerns only the owner.[9]

OR IF THE OX WHILE TRYING TO KILL A BEAST [BY ACCIDENT] KILLED A HUMAN BEING . . . THERE IS NO LIABILITY. Where, however, the ox had aimed at killing one human being and [by accident] killed another human being, there would be liability. [This implication of] the Mishnah is not in accordance with R. Simeon. For it has been taught: R. Simeon says: Even where [the ox] aimed at killing one person and [by accident] killed another person there would be no liability. What was the reason of R. Simeon? — Scripture states: The ox shall be stoned and its owner also shall be put to death,[10] [implying that only] in those cases in which the owner would be subject to be put to death [were he to have committed murder], the ox also would be subject to be put to death. Just as therefore in the case of the owner the liability arises only where he was aiming at the

particular person [who was actually killed], so also in the case of the ox the liability will arise only where it was aiming at the particular person [who was actually killed]. But whence do we know that this is so even in the case of the owner himself?[11] — Scripture States: And lie in wait for him and rise up against him[12] [which indicates that he is not liable] unless he bad been aiming at the particular person [whom he killed]. What then do the Rabbis[13] make of [the words,] 'And lie in wait'? — It was said at the School of R. Jannai: They except [on the strength of them a manslaughter committed by] a stone being thrown into a crowd.[14] How is this to be understood? If you say that there were [in the crowd] nine heathens and one Israelite, why not except the case on the ground that the majority [in the crowd] were persons who were heathens?[15] And even where they were half and half, does not an accused in a criminal charge have the benefit of the doubt? — The case is one where there were nine Israelites and one heathen. For though in this case the majority [in the crowd] consisted of Israelites, still since there was among them one heathen he was an essential part [of the group], and essential part[16] is reckoned as equivalent to half, and where there is a doubt in a criminal charge the accused has the benefit.

MISHNAH. WHERE AN OX OF A WOMAN, OR AN OX OF [MINOR] ORPHANS, OR AN OX OF A GUARDIAN, OR AN OX OF THE WILDERNESS, OR AN OX OF THE SANCTUARY, OR AN OX OF A PROSELYTE WHO DIED WITHOUT [LEGAL] HEIRS,[17] [HAS KILLED A PERSON], IT IS LIABLE TO [BE STONED TO] DEATH. R. JUDAH SAYS: IN THE CASE OF AN OX OF THE WILDERNESS, AN OX OF THE SANCTUARY AND AN OX OF A PROSELYTE WHO DIED [WITHOUT HEIRS] THERE WOULD BE EXEMPTION FROM [STONING TO] DEATH SINCE THESE HAVE NO [PRIVATE] OWNERS.

GEMARA. Our Rabbis taught: [The word] ox occurs seven times [in the section dealing with Cattle killing man][18] to include the ox of a woman, the ox of [minor] orphans, the ox of a guardian, the ox of the wilderness, the ox of the Sanctuary and the ox of a proselyte who died without [legal] heirs. R. Judah, however, says: An ox of the wilderness, an ox of the Sanctuary and an ox of a proselyte who died without heirs are exempt from [stoning to] death since these have no [private] owners.

R. Huna said: The exemption laid down By R. Judah extends even to the case where the ox gored and was only subsequently consecrated to the Temple, or where the ox gored and was only subsequently abandoned. Whence do we know this? — From the fact that R. Judah specified both an ox of the wilderness and an ox of a proselyte who died without heirs. Now what actually is 'an ox of a proselyte who died'? Surely since he left no heirs the ox remained ownerless, and this [category] would include equally an ox of the wilderness and an ox of the proselyte who died without heirs? We must suppose then that what he intended to tell us [in mentioning both] was that even where the ox gored but was subsequently consecrated, or where the ox gored but was subsequently abandoned, [the exemption would still apply] and this may be taken as proved. It has also been taught to the same effect:[19] R. Judah went even further, saying: Even if after having gored, the ox was consecrated or after having gored it became ownerless, there is exemption, as it has been said, And it hath been testified to his owner and he hath not kept him in, but that he hath killed a man or a woman, the ox shall be stoned.[20] This applies only when no change of status has taken place between the manslaughter and the appearance before the Court.[21] Does not the final verdict also need to comply with this same condition? Does not the same text, The ox shall be stoned,[22] [apply also to] the final verdict? — Read therefore: That is so only when no change in status has taken place between the manslaughter, the appearance before the Court, and the final verdict.

MISHNAH. IF WHILE AN OX [SENTENCED TO DEATH] IS BEING TAKEN OUT TO BE STONED ITS OWNER DECLARES IT SACRED, IT DOES NOT BECOME SACRED;[23] IF HE SLAUGHTERS IT, ITS FLESH IS FORBIDDEN [FOR ANY USE].[23] IF, HOWEVER. BEFORE THE SENTENCE HAS BEEN PRONOUNCED THE OWNER CONSECRATES IT, IT IS

CONSECRATED, AND IF HE SLAUGHTERS IT, ITS FLESH IS PERMITTED [FOR FOOD].

IF THE OWNER HANDS OVER HIS CATTLE TO AN UNPAID BAILEE OR TO A BORROWER, TO A PAID BAILEE OR TO A HIRER, THEY ENTER INTO ALL LIABILITIES IN LIEU OF THE OWNER: IN THE CASE OF MU'AD THE PAYMENT WOULD HAVE TO BE IN FULL, WHEREAS IN THE CASE OF TAM HALF DAMAGES WOULD BE PAID.

GEMARA. Our Rabbis taught: If an ox has killed [a person], and before its judgment is pronounced its owner sells it,

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(1) Being done not by the body of the ox but by something set in motion by it.

(2) Dealt with supra p. 79.

(3) [Kofer is imposed only where death was caused by the body of the ox even as is the case with 'goring'.]

(4) And was thus the whole time as it were a part of the body of the ox.

(5) Ex. XXI, 29-30.

(6) Cf. Tosef. B.K. IV.

(7) I.e. a liability to make good the damage done by the ox.

(8) Such as the death of the ox for the manslaughter it committed.

(9) As kofer is the ransom of his life.

(10) Ex. XXI, 29.

(11) Committing murder.

(12) Deut. XIX, II.

(13) Who differ from R. Simeon on this point. v. Sanh. 79a.

(14) And a person was killed.

(15) For in matters of judgment the principle of 'majority' is as a rule the deciding factor. [That does not mean to imply that the killing of a heathen was no murder. The Mekilta in Ex. XXI, 12 states explicitly that the crime is equally condemnable irrespective of the religion and nationality of the victim. But what it does mean is that the Biblical legislation in regard to crime did not apply to heathens. As foreigners they fully enjoyed their own autonomous right of self-help, i.e., blood feuds or ransom, prohibited by the Law to the Jews, and accordingly were not governed by the provisions made in the Bible relating to murder, v. Guttmann, loc. cit. p. 16 ff and supra p. 211, n. 6.]

(16) Lit., 'fixed'. For a full discussion of this passage, v. Sanh. (Sonc. ed.) p. 531 and notes a.l.

(17) The ox thus becoming ownerless.

(18) Ex. XXI, 28-32.

(19) Supra p. 55.

(20) Ex. XXI, 29.

(21) Supra p. 56.

(22) Ex. XXI, 29.

(23) Cf. supra p. 234.

the sale holds good; if he declares it sacred, it is sacred; if it is slaughtered, its flesh is permitted [for food]; if a bailee returns it to the house of its owner, it is an effective restoration. But if after its sentence had already been pronounced the owner sold it, the sale would not be valid; if he consecrates it, it is not consecrated; if it is slaughtered its flesh is forbidden [for any use]; if a bailee returns it to the house of its owner, it is not an effective restoration. R. Jacob, however, says: Even if after the sentence had already been pronounced the bailee returned it to its owner, it would be an effective restoration. Shall we say that the point at issue[1] is that in the view of the Rabbis it is of no avail to plead[2] regarding things which became forbidden for any use, 'Here is your property before you',[3] whereas in the view of R. Jacob it can be pleaded even regarding things forbidden for any use, 'Here is your property before you'? — Rabba said: Both parties in fact agree that even regarding things forbidden for any use, the plea, 'Here is your property before you' can be advanced, for if it is

as you said,[4] why did they not differ in the case of leaven[5] on Passover?[6] But the point at issue here [in the case before us] must therefore be whether [or not] sentence may be pronounced over an ox in its absence. The Rabbis maintain that no sentence can be pronounced over an ox in its absence, and the owner may accordingly plead against the bailee: 'If you would have returned it to me [before the passing of the sentence], I would have caused it to escape to the pastures, whereas you have allowed my ox to fall into the hands of those[7] against whom I am unable to bring any action'. R. Jacob, however, maintains that the sentence can be pronounced over the ox even in its absence, and the bailee may accordingly retort to the owner: 'In any case the sentence would have been passed on the ox.' What is the reason of the Rabbis? — [Scripture says]: The ox shall be stoned and its owner also shall be put to death[8] [implying that] the conditions under which the owner would be subject to be put to death [were he to have committed murder], are also the conditions under which the ox would be subject to be put to death; just as in the case of the owner [committing murder, the sentence could be passed only] in his presence,[9] so also [the sentence] in the case of an ox [could be passed only] in its presence. But R. Jacob [argues]: That applies well enough to the case of the owner [committing murder], as he is able to submit pleas, but is the ox also able to submit pleas?[10]

WHERE AN OWNER HAS HANDED OVER HIS CATTLE TO AN UNPAID BAILEE OR TO A BORROWER etc. Our Rabbis taught: The following four [categories of persons] enter into all liabilities in lieu of the owner, viz., Unpaid Bailee and Borrower, Paid Bailee and Hirer. [If cattle so transferred] kill [a person] if they are Tam, they would be stoned to death, but there would be exemption from kofer,[11] whereas in the case of Mu'ad, they would be stoned and the bailees in charge would be liable to pay kofer. In all cases, however, the value of the ox would have to be reimbursed to the owner by all of the bailees with the exception of the Unpaid Bailee. I would here ask with what circumstances are we dealing? If where the ox [was well] guarded, why should all of them[12] not be exempt [from having to reimburse the owner]? If on the other hand it was not guarded well, why should even the Unpaid Bailee not be liable?[13] — It might be said that we are dealing here with a case where inferior precautions[14] were taken to control the ox but not really adequate precautions.[15] In the case of an Unpaid Bailee his obligation to control was thereby fulfilled, whereas the others did thereby not yet fulfil their obligation to control. Still I would ask, whose view is here followed? If that of R. Meir

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(1) I.e. between R. Jacob and the Rabbis.

(2) Against a depositor or against a person who was robbed of an article, before it became prohibited for any use.

(3) The reason is that, by becoming forbidden for any use, the things, though not undergoing any change in their external size and appearance, do not remain (in the eyes of the law) the same things as were previously deposited with the bailee or misappropriated by the robber, their status then having been different.

(4) That R. Jacob and the Rabbis differ on this point.

(5) Stolen before the eve of Passover.

(6) I.e. whether the leaven might be returned by the robber after the approach of Passover when it became forbidden for any use; cf. infra pp. 561, 572.

(7) I.e. the Court of Law.

(8) Ex. XXI, 29.

(9) For which cf. Num. XXXV, 12.

(10) That its presence should be required.

(11) Ex. XXI, 28.

(12) With the exception, however, of the borrower who is liable even for accidents.

(13) For he also is liable for carelessness.

(14) Such as e.g. a door which would withstand only an ordinary wind. V. infra 55b

(15) So as to withstand a wind of even unusual force.

who maintained[1] that Hirer is subject to the same law as Unpaid Bailee, why is it not taught above 'with the exception of Unpaid Bailee and Hirer'? If [on the other hand the view followed] was that of R. Judah who maintained[1] that Hirer should be subject to the same law as Paid Bailee, why was it not taught 'with the exception of Unpaid Bailee, whereas in the case of Mu'ad they all would be exempt from kofer'?[2] — R. Huna b. Hinena thereupon said: This teaching is in accordance with R. Eliezer, who said,[3] that the only precaution for it [Mu'ad] is the slaughter knife, and who regarding Hirer might agree with the view of R. Judah that Hirer should be subject to the same law as Paid Bailee. Abaye, however, said: It could still follow the view of R. Meir, but as transposed by Rabbah b. Abbahu who learnt thus: How is the payment [for the loss of the article] regulated in the case of Hirer? R. Meir says: As in the case of Paid Bailee. R. Judah, however, says: As in the case of Unpaid Bailee.[4]

R. Eleazar said: Where an ox had been handed over to an Unpaid Bailee and damage was done by it, the bailee would be liable, but where damage was done to it, the bailee would be exempt. I would here ask what were the circumstances? If where the bailee had undertaken to guard the ox against damage, why even in the case where it was injured should there be no liability? If, on the other hand, where the bailee had not undertaken to guard against damage why even in the case where damage was done by the ox should there not be exemption? — Raba thereupon said: We suppose in fact that the bailee had undertaken to guard the ox against damage, but the case here is one where he had known the ox to be a gorer, and it is natural that what he did undertake was to prevent the ox from going and doing damage to others, but he did not think of the possibility of others coming and injuring it.

MISHNAH. IF THE OWNER FASTENED HIS OX [TO THE WALL INSIDE THE STABLE] WITH A CORD, OR SHUT THE DOOR IN FRONT OF IT IN THE ORDINARY WAY[5] BUT THE OX GOT OUT AND DID DAMAGE, WHETHER IT HAD BEEN TAM OR ALREADY MU'AD, HE WOULD BE LIABLE; THIS IS THE RULING OF R. MEIR. R. JUDAH, HOWEVER, SAYS: IN THE CASE OF TAM HE WOULD BE LIABLE, BUT IN THE CASE OF MU'AD HE WOULD BE EXEMPT, SINCE IT IS WRITTEN, AND HIS OWNER HATH NOT KEPT HIM IN,[6] [THUS EXCLUDING THIS CASE WHERE] IT WAS KEPT IN. R. ELIEZER SAYS: NO PRECAUTION IS SUFFICIENT [FOR MU'AD] SAVE THE [SLAUGHTER] KNIFE.

GEMARA. What was the reason of R. Meir? — He Maintained that normally oxen are not kept under control,[7] and the Divine Law enacted that Tam should involve liability to show that at least moderate precautions were required. Then the Divine Law stated further in the case of Mu'ad, And his owner hath not kept him in,[6] to show that [for this] really adequate precautions are required;[8] and the goring mentioned in the case of Tam is now placed on a par with the goring mentioned in the case of Mu'ad.[9] R. Judah, however, maintained that oxen normally are kept under control, and the Divine Law stated that in the case of Tam there should be payment to show that really adequate precaution is required. The Divine Law, however, goes on to say, And his owner hath not kept him in,[6] in the case of Mu'ad. [This would imply] that there should be there precaution of a superior degree. [These words, however, constitute] an amplification following an amplification, and as the rule is that an amplification following an amplification intimates nothing but a limitation,[10] Scripture has thus reduced the superior degree of the required precaution. And should you object to this that goring is mentioned in the case of Tam and goring is mentioned in the case of Mu'ad[9] [for mutual inference,[11] the answer is that in this case] the Divine Law has explicitly restricted [this ruling by stating] And his owner hath not kept him in,[6] [the word 'him' confining the application] to this one[12] but not to another.[13] But surely these words are needed for the stated purpose?[14] — [If that were so, the Divine Law should write surely, 'Hath not kept in'. Why does it say, hath not kept him in? To show that the rule applies to this one[15] but not to another.[16]

It has been taught: R. Eliezer b. Jacob says: Whether in the case of Tam or in that of Mu'ad, as

soon as even inferior precautions have been taken [to control the ox], there is exemption. What is his reason? — He concurs with R. Judah, in holding that in the case of Mu'ad precaution even of an inferior degree is sufficient, and he [extended this ruling to Tam as he] on the strength of [the mutual inference[17] conveyed by] the mention of goring in the case both of Tam and of Mu'ad.[17]

R. Adda b. Ahabah said: The exemption laid down by R. Judah applies only to the part of the payment due on account of the ox having been declared Mu'ad,[18] but the portion due on account of Tam remains unaffected.[19] Rab said: Where the ox was declared Mu'ad to gore with the right horn, it would thereby not become Mu'ad for goring with the left horn.[20] I would here ask: In accordance with whose view [was this statement made]? If in accordance with R. Meir, did he not say that whether in the case of Tam or in that of Mu'ad, precaution of a superior degree was needed?[21] If [on the other hand] in accordance with R. Judah,[22] why specify only the left horn? Even in the case of the right horn itself, does not one part of the payment come under the rule of Tam[23] and another under that of Mu'ad? I may say that in fact it is in accordance with R. Judah , and that Rab does not concur in the view. expressed by R. Addah b. Ahabah, and what Rab thus intended to say was that it was only in such an instance[24] that there would be in one ox part Tam and part Mu'ad

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(1) Cf. infra 57b.

(2) For R. Judah maintains that even an inferior precaution in the case of Mu'ad suffices to confer exemption for any damage that has nevertheless resulted.

(3) Infra p. 259.

(4) V. p. 257, n. 7. [And since R. Meir also holds that Mu'ad requires adequate precaution, he rightly makes the Hirer liable to pay kofer as well as reimburse the owner.]

(5) So that it would be perfectly safe in the case of an ordinary wind; cf. infra 55b.

(6) Ex. XXI,36.

(7) Cf. supra p. 64.

(8) So that it would be safe even in the case of a wind of unusual force.

(9) To show that both require really adequate precaution.

(10) V. Shebu. (Sonc. ed.) p. 12, n. 3.

(11) Cf. supra p. 250. [So that for Tam too an inferior precaution should suffice.]

(12) To Mua'd.

(13) To Tam.

(14) Lit., ‘for the negative’, that is, that he is liable because be failed to take the necessary precautions.]

(15) V. p. 259, n.7.

(16) Ibid. n. 8.

(17) Ibid. n. 6.

(18) I.e. the half added on account of the ox having been declared Mu'ad.

(19) And thus constantly subject to the law of Tam.

(20) Damage done by the right horn would thus be subject to the degree of precaution required in the case of Mu'ad while damage done by the left horn would still remain subject to the degree of precaution needed in Tam.

(21) Thus so far as precaution is concerned there would in this case be no difference between the right horn and the left horn.

(22) Who demands a greater degree of precaution in case of a Tam than in that of a Mu'ad, and accordingly there would be no liability if the ox gored with the right horn after inferior precautions had been taken, whereas there would be liability with the left horn.

(23) Requiring on that account adequate precautions, in the absence of which there should be liability.

(24) Where the ox gored three times with the right horn and was declared Mu'ad accordingly, remaining thus Tam in respect of the left horn.

. But in the case of an ox which was altogether Mu'ad no element of Tam could be found in it at all.