R. ELIEZER SAYS: NO PRECAUTION IS SUFFICIENT [FOR MU ‘AD] SAVE [THE SLAUGHTER] KNIFE. Rabbah said: What was the reason of R. Eliezer? Because Scripture says: And his owner hath not kept him in,[1] [meaning] that precaution would no more be of any avail for such a one. Said Abaye to him: If that is so, why not similarly say on the strength of the words, And not cover it[2] that a cover would no more be of any avail for such a [pit]? And if you say that this is indeed the case, have we not learnt, ‘Where it had been covered properly and an ox or an ass has [nevertheless] fallen into it there is exemption’?[3] — Abaye therefore said: The reason of R. Eliezer was as taught [elsewhere]:[4] R. Nathan says: Whence do we learn that a man should not bring up a vicious dog in his house, or keep a shaky ladder in his house? Because it is said: Thou bring not blood upon thy house.[5]

CHAPTER V

MISHNAH. IF AN OX HAS GORED A COW AND ITS [NEWLY-BORN] CALF IS FOUND [DEAD] NEAR BY, AND IT IS UNKNOWN WHETHER THE BIRTH OF THE CALF PRECEDED THE GORING[6] OR FOLLOWED THE GORING,[7] HALF DAMAGES[8] WILL BE PAID FOR [THE INJURIES INFLICTED UPON] THE COW[9] BUT [ONLY] QUARTER DAMAGES WILL BE PAID FOR [THE LOSS OF] THE CALF.[10] SO ALSO WHERE A COW GORED AN OX AND A [LIVE] CALF WAS FOUND NEAR BY, SO THAT IT WAS UNKNOWN WHETHER THE BIRTH OF THE CALF PRECEDED THE GORING[11] OR FOLLOWED THE GORING,[12] HALF DAMAGES CAN BE RECOVERED OUT OF THE COW, AND QUARTER DAMAGES OUT OF THE CALF.[13]

GEMARA. Rab Judah on behalf of Samuel said: This ruling is the view of Symmachus who held that money, the ownership of which cannot be decided has to be shared [by the parties].[14] The Sages, however, say that it is a fundamental principle in law that the onus probandi falls on the claimant. Why was it necessary to state ‘this is a fundamental principle in law’? — It was necessary to imply that even where the plaintiff is positive and the defendant dubious[14] it is still the plaintiff on whom falls onus probandi. Or [we may say] it is also necessary in view of a case of this kind: For it has been stated:[15] If a man sells an ox to another and it is found to be a gorer, Rab maintained that the sale would be voidable,[16] whereas Samuel said that the vendor could plead ‘I sold it to be slaughtered’.[17] How so? Why not see whether the vendee was a person buying for field work or whether he was a person buying to slaughter?[18] — Samuel's view can hold good where he was a person buying both for the one and the other. But why not see if the money paid corresponded to the value of an ox for field work, then it must have been purchased for field work; if, on the other hand it corresponded to that of an ox to be slaughtered, then it must have been purchased for slaughter?[19] — Samuel's view could still hold good where there was a rise in the price of meat so that the ox was worth the price paid for one for field work.

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(1) Ex. XXI, 29.

(2) Ibid. 33

(3) Infra 52a.

(4) Supra p. 67.

(5) Deut. XXII, 8. The same prohibition applies to a goring ox.

(6) In which case the death of the calf could not he imputed to the goring of the ox.

(7) So that the miscarriage of the calf was a result of the goring.

(8) In the case of Tam.

(9) As these have certainly resulted from the goring of the ox.

(10) On account of the doubt.

(11) In which case the calf did not participate in the goring.

(12) So that the calf while it was still an embryo took part in the act of the cow.

(13) V. Gemara, infra p. 264.
(14) Cf. also supra p. 196.
(15) B.B. 92a.
(16) At the instance of the vendee.
(17) As Samuel follows his own view that this grand principle in law accepted by the Sages has to he applied in all cases and in all circumstances, as the Gemara proceeds to explain.
(18) Would this consideration not be a piece of good circumstantial evidence?
(19) As indeed maintained by R. Judah in a similar case dealt with in B. B. 77b; as to the other view, cf. Tosaf. a.l.

Talmud - Mas. Baba Kama 46b

I may here ask: If the vendor had not the wherewithal for making payment, why not take the ox in lieu of money?[1] Do not people say, 'From the owner of your loan[2] take payment even in bran'? — No, this is to be applied where he had the wherewithal for making payment.[3] Rab who said that it was a voidable purchase maintained that we decide according to the majority of cases, and the majority of people buy for field work. Samuel, however, said that the vendor might plead against him, 'It was for slaughter that I sold it to thee,' and that we do not follow the majority,[4] for we follow the majority only in ritual matters, but in pecuniary cases we do not follow the majority, but whoever has a [pecuniary] claim against his neighbour the onus probandi falls upon him.

It has been taught to the same effect: 'Where an ox gored a cow and its [newly-born] calf was found [dead] nearby, so that it was unknown whether the birth of the calf preceded the goring, or followed the goring, half damages will be paid for [injuries inflicted upon] the cow but only quarter damages will be paid for [the loss of] the calf; this is the view of Symmachus. The Sages, however, say: If one claims anything from his neighbour, the onus probandi falls upon him.

R. Samuel b. Nahmani stated: Whence can we learn that the onus probandy falls on the claimant? It is said: If any man have any matters to do, let him come unto them,[5] [implying] 'let him bring evidence before them'. But R. Ashi demurred, saying: Do we need Scripture to tell us this?[6] Is it not common sense that if a man has a pain he visits the healer? No: the purpose of the verse is to corroborate the statement made by R. Nahman on behalf of Rabbah b. Abbuha: Whence can we learn that judges should give prior consideration to the first plaintiff?[7] It is said: If any man have any matters to do, let him come unto them[5] [implying]: let him cause his matters to be brought [first] before them. The Nehardeans however, said; It may sometimes be necessary to give prior consideration to the defendant, as for instance in a case where his property would otherwise depreciate in value.[8]

SO ALSO WHERE A COW GORED AN OX etc. [We have here] half damages plus quarter damages! Is it not [only] half of the damage that need be paid for? What then have full damages less a quarter to do here? — Abaye said: Half of the damage means one quarter of the damage,[9] and a quarter of the damage means one eighth of the damage.[10] It is true that where the cow and the calf belong to one owner, the plaintiff would be entitled to plead against the owner of the cow, 'In any case, have you not to pay me half damages?'[11] The ruling, however, applies to the case where the cow belonged to one and the calf to another.[12] Again, where the plaintiff claimed from the owner of the cow first it would still also make no difference, as he would be entitled to argue against the owner of the cow, 'It was your cow that did me the damage, [and it is for you to] produce evidence that there is a joint defendant with you.'[13] But where the rule applies is to a case where he claimed from the owner of the calf first, in which case the owner of the cow may say to him, 'You have made clear your opinion that there is a joint defendant with me.'[14] Some, however, say that even where the plaintiff claimed from the owner of the cow first, the latter might put him off by saying, 'It is definitely known to me[15] that there is a joint defendant with me.'[14] Raba said: Is then 'a fourth of the damage' and 'an eighth of the damage' mentioned in the text? Is not 'half damages' and 'quarter

damages' stated in the text?[16] — Raba therefore said: We suppose that in fact the cow and the calf belonged to one owner,[17] and the meaning is this: Where the cow is available,[18] the payment of half damages will be made out of the cow.[19]

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(1) Since the meat of the ox is worth the purchase money.

(2) I.e. from your debtor who is now the owner of the money lent to him; cf. the Roman 'Mutuum'.

(3) In which case the creditor is entitled to ready cash; cf. Tosaf. a.l. and supra 9a; 27a; B.B. 92b.

(4) Which is otherwise an accepted principle in Rabbinic Law; cf. Hul. 11b.

(5) Ex. XXIV, 14.

(6) Keth. 22a and Nid. 25a.

(7) I.e., where A instituted an action against B, and B on appearance introduced a counter-claim against A; cf. Rashi and Tosaf. a.l., and Sanh. 35a.

(8) Where, e.g., he has an opportunity of disposing of the estate concerned at a high price — an opportunity he might miss through any delay in a settlement of his counter-claim.

(9) I.e., a half of the half, as half constitutes the whole payment in the case of Tam.

(10) I.e., a quarter of the half.

(11) Since both the cow and the calf belong to you.

(12) As e.g., where the cow was sold with the exception of its offspring; Rashi.

(13) That is, that the calf took part in the goring, otherwise you must be held solely responsible.

(14) So that I cannot accordingly be held liable for all the damages.

(15) Unless you prove to the contrary.

(16) How then could Abaye interpret half-damages to mean quarter damages, and quarter damages to mean an eighth of the damage?

(17) In the case stated in the Mishnah.

(18) To be distrained upon for the damages in accordance with the law applicable to Tam.

(19) As she definitely did the damage.

Talmud - Mas. Baba Kama 47a

But where the cow is not available, quarter damages will be paid out of the body of the calf.[1] Now this is so only where it is not known whether the calf was still part of the cow at the time she gored or whether it was not so, but were we certain that the calf was still part of the cow at the time of the goring[2] the whole payment of the half damages would be made from the body of the calf. Raba here adopts the same line of reasoning [as in another place], as Raba has indeed stated: Where a cow has done damage, payment can be collected out of the body of its calf, the reason being that the latter is a part of the body of the former, whereas in the case of a chicken doing damage, no payment will be made out of its eggs, the reason being that they are a separate [body].[3]

Raba further said: [Where an ox has gored a cow and caused miscarriage] the valuation will not be made for the cow separately and for the calf separately, but the valuation will be made for the calf as at the time when it formed a part of the cow; for if you do not adopt this rule,[4] you will be found to be making the defendant suffer unduly. The same method is followed in the case of the cutting off the hand of a neighbour's slave;[5] and the same method is followed in the case of damage done to a neighbour's field.[6] Said R. Aha the son of Raba to R. Ashi: If justice demands, why should not the defendant suffer? — Because he is entitled to say to him: 'Since it was a pregnant cow that I deprived you of, it is a pregnant cow which should be taken into valuation.'

There is no question that where the cow belonged to one owner and the calf to another owner, the value of the fat condition of the cow will go to the owner of the cow.[7] But what of the value of its bulky appearance? — R. Papa said: It will go to the owner of the cow. R. Aha the son of R. Ika said: It will be shared [by the two owners].[8] The law is that it will be shared [by the two owners].

MISHNAH.IF A POTTER BRINGS HIS WARES INTO THE COURTYARD OF ANOTHER PERSON WITHOUT PERMISSION, AND THE CATTLE OF THE OWNER OF THE COURTYARD BREAKS THEM, THERE IS NO LIABILITY.[9] MOREOVER, SHOULD THE ANIMAL BE INJURED BY THEM, THE OWNER OF THE POTTERY IS LIABLE [TO PAY DAMAGES]. IF, HOWEVER, HE BROUGHT [THEM] IN WITH PERMISSION,[10] THE OWNER OF THE COURTYARD IS LIABLE. SIMILARLY IF [A MAN] BRINGS HIS PRODUCE INTO THE COURTYARD OF ANOTHER PERSON WITHOUT PERMISSION AND THE ANIMAL OF THE OWNER OF THE PREMISES CONSUMES IT, THERE IS NO LIABILITY.[11] IF IT WAS HARMED BY IT THE OWNER WOULD BE LIABLE. IF, HOWEVER, HE BROUGHT THEM IN WITH PERMISSION,[10] THE OWNER OF THE PREMISES WOULD BE LIABLE. SO ALSO IF [A MAN] BRINGS HIS OX INTO THE COURTYARD OF ANOTHER WITHOUT

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(1) On account of the doubt involved in the case dealt with in the Mishnah.

(2) In which case it participated in the goring.

(3) [So Rashi. Curr. edd. read 'mere excrement'.]

(4) But that the cow should be valued separately and the calf separately.

(5) [You do not value the hand separately, viz., what price a master would in the first instance be willing to take for depriving his slave of the use of his hand; but the difference in the value of a slave who had his hand cut off — a much smaller price.]

(6) [The valuation is not made on the basis of the single plot which has been damaged, but on the basis of its value in relation to the whole field.]

(7) As the embryo did not increase the fatness of the cow.

(8) As both the cow and embryo participate in the bulky appearance of the animal.

(9) As the plaintiff was a trespasser.

(10) In which case he was no trespasser

(11) V.p. 266, n. 7.

Talmud - Mas. Baba Kama 47b

PERMISSION AND THE OX OF THE OWNER OF THE PREMISES GORES IT OR THE DOG OF THE OWNER OF THE PREMISES BITES IT, THERE IS NO LIABILITY. MOREOVER SHOULD IT GORE THE OX OF THE OWNER OF THE PREMISES ITS OWNER WOULD BE LIABLE. AGAIN, IF IT FALLS [THERE] INTO A PIT OF THE OWNER OF THE PREMISES AND MAKES THE WATER IN IT FOUL, THERE WOULD BE LIABILITY. SO ALSO IF [IT KILLS] THE OWNER'S FATHER OR SON [WHO] WAS INSIDE THE PIT, THERE WOULD BE LIABILITY TO PAY KOFER.[1] IF, HOWEVER, HE BROUGHT IT IN WITH PERMISSION, THE OWNER OF THE YARD WOULD BE LIABLE. RABBI, HOWEVER, SAYS: IN ALL THESE CASES THE OWNER OF THE PREMISES WOULD NOT BE LIABLE UNLESS HE HAS TAKEN IT UPON HIMSELF TO WATCH [THE ARTICLES BROUGHT INTO HIS PREMISES].

GEMARA. The reason why [the potter would be liable for damage occasioned by his pottery to the cattle of the owner of the premises] is because the entry was without permission, which shows that were it with permission the owner of the pots would not be liable for the damage done to the cattle of the owner of the premises and we do not say that the owner of the pots has by implication undertaken to watch the cattle of the owner of the premises. Who is the authority for this view? — Rabbi, who has laid down that without express stipulation no duty to watch is undertaken.[2] Now look at the second clause: IF HE BROUGHT THEM IN WITH PERMISSION, THE OWNER OF THE PREMISES WOULD BE LIABLE. This brings us round to the view of the Rabbis,[3] who said that even without express stipulation he makes himself responsible for watching. Moreover, [it was further stated]: RABBI SAYS: IN ALL THESE CASES THE OWNER OF THE PREMISES WOULD NOT BE LIABLE UNLESS HE HAS TAKEN UPON HIMSELF TO WATCH. [Are we to say that] the opening clause and the concluding clause are in accordance with Rabbi while the middle clause is in accordance with the Rabbis? — R. Zera thereupon said: The contradiction [is obvious]; he who taught one clause cannot have taught the other clause. Raba, however, said; The whole [of the anonymous part of the Mishnah] is in accordance with the Rabbis, for [where the entry was] with permission the owner of the premises undertook the safeguarding of the pots even against breakage by the wind.[4]

IF [A MAN] BRINGS HIS PRODUCE INTO THE COURTYARD OF ANOTHER OWNER etc. Rab said: This rule[5] applies only where the animal [was injured] by slipping on them, but if the animal ate them [and was thereby harmed], there would be exemption on the ground that it should not have eaten them.[6] Said R. Shesheth: I feel inclined to say that it was only when he was drowsy or asleep that Rab could have made such a statement.[7] For it was taught: If one places deadly poison before the animal of another he is exempt from the judgment of Man, but liable to the judgment of Heaven.[8] Now, that is so only in the case of deadly poison which is not usually consumed by an animal, but in the case of products that are usually consumed by an animal, there appears to be liability even to the judgment of Man. But why should this be so? [Why not argue:] It should not have eaten them? — I may reply that strictly speaking even in the case of produce there should be exemption from the judgment of Man, and there was a special purpose in enunciating this ruling with reference to deadly poison, namely that even where the article was one not usually consumed by an animal, there will still be liability to the judgment of Heaven. Or if you wish you may say that by the deadly poison mentioned was meant hypericum,[9] which like a fruit [is eaten by animals].

An objection could be raised [from the following]: If a woman enters the premises of another person to grind wheat without permission, and the animal of the owner consumes it, there is no liability; if the animal is harmed, the woman would be liable. Now, why not argue: It should not have over-eaten? — I can answer: [In what respect] does this case go beyond that of the Mishnah, which was interpreted [to refer to damage occasioned by] the animal having slipped over them? What then was in the mind of the one who made the objection? — He might have said to you; Your

explanation is satisfactory regarding the Mishnah where it says, IF IT WAS HARMED BY IT [which admits of being interpreted] that the animal slipped over them. But here [in the Baraitha] it says, 'if the animal is harmed', without the words 'by them', so that surely the consumption [of the wheat] is what is referred to. And the other?[10] — He can contend [that the omission of these words] makes no difference.

Come and hear: If a man brought his ox into the courtyard of another person without permission, and it ate there wheat and got diarrhoea from which it died, there would be no liability. But if he brought it in with permission, the owner of the courtyard would be liable. Now why not argue: It should not have eaten?[11] — Raba thereupon said: How can you raise an objection from a case where permission was given[12] against a case where permission was not given?[13] Where permission was given, the owner of the premises assumed liability for safeguarding the ox even against its strangling itself.

The question was raised: Where the owner of the premises has assumed responsibility to safeguard [the articles brought in to his premises], what is the legal position? Has the obligation to safeguard been assumed by him [only] against damage from his own [beasts], or has he perhaps also undertaken to safeguard from damage in general? Come and hear: Rab Judah b. Simon learnt in the [Tractate] Nezikin of the School of Karna;[14] If a man brings his produce into the courtyard of another without permission, and an ox from elsewhere comes and consumes it, there is no liability. But if he brought it in with permission there would be liability. Now, who would be exempt[15] and who would be liable?[16] Does it not mean that the owner of the premises would be exempt[15] and[16] the owner of the premises would be liable?[17] — I may say that this is not so, it is the owner of the ox who would be exempt[15] and the owner of the ox who would be liable.[16] But if it refers to the owner of the ox,

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(1) Ex. XXI, 29-30.

(2) [For the present it is assumed that the duty applies alike to the owner of the pottery in regard to the belongings of the owner of the premises as to the latter in regard to the pottery.]

(3) The representatives of the anonymous view cited on the Mishnah.

(4) Whereas the owner of the pottery could never be considered to have by implication accepted upon himself the responsibility for safeguarding the belongings of the owner of the premises.

(5) Imposing liability where the animal was injured by the produce.

(6) Cf. infra 57b.

(7) V. infra p. 376.

(8) V. infra 56a.

(9) [St. John's Wort.]

(10) Rab.

(11) So that the owner of the courtyard should not be liable for the harm occasioned by the wheat to the ox brought in with his permission.

(12) And the harm was done to the ox thus brought in with permission.

(13) I.e. where produce brought in without permission was eaten by the owner's animal which thereby suffered harm, in which case the owner though being a trespasser has still no liability to safeguard to that extent the belongings of the owner of the premises.

(14) [Karna, one of the Judges of the Exile, had a collection of Babylonian traditions, הלכתא דבבלאי (Gen. Rab. XXXIII), of pre-Amoraic days, v. Funk, S., Die Juden in Babylonian, I, n. 1.]

(15) In the absence of permission.

(16) Where permission was granted.

(17) [This shows that the responsibility assumed by the owner of the premises extends in regard to damages in general.]

Talmud - Mas. Baba Kama 48a

what has permission or absence of permission to do with the case?[1] — I will answer; [Where the produce was brought in] with permission, the case would be one of Tooth [doing damage] in the plaintiff's premises,[2] and Tooth doing damage in the plaintiff's premises entails liability,[3] whereas in the absence of permission it would be a case of Tooth doing damage on public ground,[4] and Tooth doing damage on public ground entails no liability.[5]

Come and hear: If a man brings his ox into the premises of another person without permission, and an ox from elsewhere comes and gores it, there is no liability. But if he brought it in with permission there would be liability. Now, who would be exempt[6] and who would be liable?[7] Does it not mean that it is the owner of the premises who would be exempt[6] and the owner of the premises who would be liable?[7] — No, it is the owner of the ox [from elsewhere] who would be exempt[6] and similarly it is the owner of the ox [from elsewhere] who would be liable.[7] But if so, what has permission or the absence of permission to do with the case?[8] — I would answer that this teaching is in accordance with R. Tarfon, who held[9] that the unusual damage occasioned by Horn in the plaintiff's premises has to be compensated in full: [Where the ox was brought in] with permission the case would therefore be one of Horn doing damage in the plaintiff's premises[10] and the payment would have to be for full damages, whereas in the absence of permission it would amount to Horn doing damage on public ground,[4] and the payment would accordingly be only for half damages.

A certain woman once entered the house of another person for the purpose of baking bread there, and a goat of the owner of the house came and ate up the dough, from which it became sick and died. [In giving judgment] Raba ordered the woman to pay damages for the value of the goat. Are we to say now that Raba differed from Rab, since Rab said:[11] It should not have eaten?[12] — I may reply, are both cases parallel? There,[11] there was no permission and the owner of the produce did not assume any obligation of safeguarding [the property of the owner of the premises], whereas in this case, permission had been given and the woman had accepted responsibility for safeguarding[13] [the property of the owner of the premises]. But why should the rule in this case be different from [what has been laid down, that] if a woman enters the premises of another person to grind wheat without permission, and the animal of the owner of the premises eats it up, the owner is not liable, and if the animal suffers harm the woman is liable, the reason being that there was no permission, which shows that where permission was granted she would be exempt?[14] — I can answer: In the case of grinding wheat, since there is no need of privacy at all, and the owner of the premises is not required to absent himself, the obligation to take care [of his property] still devolves upon him, whereas in the case of baking where, since privacy is required,[15] the owner of the premises absents himself [from the premises], the obligation to safeguard his property must fall upon the woman.

IF A MAN BRINGS HIS OX INTO THE PREMISES OF ANOTHER PERSON [etc.]. Raba said: If he brings his ox on another person's ground and it digs there pits, ditches, and caves, the owner of the ox would be liable for the damage done to the ground, and the owner of the ground would be liable for any damage resulting from the pit. For though the Master stated:[16] [It says,] If a man shall dig a pit,[17] and not 'if an ox [shall dig] a pit', still here [in this case] since it was the duty of the owner of the ground to fill in the pit and he did not fill it in, he is reckoned [in the eyes of the law] as having himself dug it.[18]

Raba further said: If he brings his ox into the premises of another person without permission, and the ox injures the owner of the premises, or the owner of the premises suffers injury through the ox,[19] he is liable, but if it lies down,[20] he has no liability. But why should the fact of its lying down confer exemption?[21] — R. Papa thereupon said: What is meant by 'it lies down' is that the ox lays down its excrements [upon the ground], and thereby soils the utensils of the owner of the premises. [The exemption is because] the excrements[22] are a case of Pit, and we have never found Pit involving liability for damage done to inanimate objects.[23] This explanation is satisfactory if we adopt the view of Samuel who held[24] that all kinds of nuisances come under the head of Pit. But on

the view of Rab who said[24] [that they do not come under the head of Pit] unless they have been abandoned,[25] what are we to say? — It may safely be said that excrements as a rule are abandoned.[26]

Raba said further: If one enters the premises of another person without permission, and injures the owner of the premises,[27] or the owner of the premises suffers injury through him[28] there would be liability;[29] and if the owner of the premises injured him, there would be no liability. R. Papa thereupon said: This ruling applies only where the owner had not noticed him. For if he had noticed him, the owner of the premises by injuring him would render himself liable, as the trespasser would be entitled to say to him: 'Though you have the right to eject me, you have no right to injure me.'[30] These authorities[31] followed the line of reasoning [adopted by them elsewhere], for Raba or, as others read, R. Papa stated:

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(1) Since the defendant was not the owner of the premises.

(2) As the plaintiff obtained a legal right to keep there the object which was subsequently damaged by a stray ox.

(3) Ex. XXII, 4.

(4) I.e. on premises where the plaintiff has no more right than the owner of the ox, the defendant.

(5) Cf. supra p. 17.

(6) V. p. 270, n. 4.

(7) V. p. 270, n. 5.

(8) V. p. 270, n. 7.

(9) Supra p. 125.

(10) V. p. 270, n. 8.

(11) Supra p. 268.

(12) And the woman would therefore not have to pay for the damage sustained by the animal of the owner of the premises.

(13) V. the discussion that follows.

(14) Why then should the woman, the owner of the dough, have to pay?

(15) Lit., 'she requires privacy.' As the woman would usually have to uncover her arms.

(16) Infra p. 93 and cf. also supra 51a.

(17) Ex. XXI, 33.

(18) The owner of the ground is therefore liable for any damage resulting from the pit.

(19) By stumbling over it

(20) And, as it is assumed at present, it did damage thereby.

(21) If damage was done by it.

(22) As any other nuisance.

(23) For Scripture said: Ox and ass'; cf. supra p. 18.

(24) Supra p. 150.

(25) But where they were not abandoned they would be subject to the law applicable to Cattle, where there is no exemption for damage done to inanimate objects.

(26) Cf. B.M. 27a.

(27) [Whether with or without intention.]

(28) I.e. the trespasser, by stumbling over him.

(29) Upon the trespasser.

(30) Cf. supra p. 124.

(31) I.e. Raba and R. Papa.

Talmud - Mas. Baba Kama 48b

Where both of them [plaintiff and defendant] had a right [to be where they were][1] or where both of them [on the other hand] had no right [to be where they were],[2] if either of them injured the other, he would be liable, but if either suffered injury through the other, there would be no liability. This is so only where both of them had a right to be where they were[1] or where both of them [on the other

hand] had no right to be where they were,[2] but where one of them had a right and the other had no right, the one who had a right would be exempt,[3] whereas the one who had no right would be liable.[3]

IF IT FALLS [THERE] INTO A PIT OF THE OWNER AND MAKES THE WATER IN IT FOUL, THERE WOULD BE LIABILITY. Raba said: This ruling applies only where the ox makes the water foul at the moment of its falling into the pit.[4] For where the water became foul [only] after it fell in, there would be exemption on the ground that [the damage done by] the ox[5] should then be [subject to the law applicable in the case of] Pit, and water is an inanimate object, and we never find Pit entailing liability for damage done to inanimate objects.[6] Now this is correct if we accept the view of Samuel who said[7] that all kinds of nuisances are subject to the law of Pit. But on the view of Rab who held[7] [that this is not so] unless they have been abandoned,[8] what are we to say? — We must therefore suppose that if the statement was made at all, it was made in this form: Raba said: The ruling [of the Mishnah] applies only where the ox made the water foul by [the dirt of] its body.[4] But where it made the water foul by the smell of its carcass there would be no liability, the reason being that the ox [in this case] was only a [secondary] cause [of the damage], and for a mere [secondary] cause there is no liability.

WHERE [IT KILLS] THE OWNER'S FATHER OR HIS SON [WHO] WAS INSIDE THE PIT, THERE WOULD BE LIABILITY TO PAY KOFER. But why? Was the ox not Tam?[9] — Rab thereupon said: We are dealing with a case where the ox was Mu'ad to fall upon people in pits. But if so, should it not have already been killed [on the first occasion]?[10] — R. Joseph thereupon said: The ox was looking at some grass [growing near the opening of the pit] and thus fell [into it].[11] Samuel, however, said: This ruling is in accordance with R. Jose the Galilean, who held[12] that [killing by] Tam entails the payment of half kofer. ‘Ulla, however, said: It accords with the ruling laid down by R. Jose the Galilean in accordance with R. Tarfon, who said[13] that Horn doing damage in the plaintiff's premises entails the payment of full damages.[14] So here the liability is for the payment of full kofer.[15] ‘Ulla's answer satisfactorily explains why the text [of the Mishnah] says, IF HIS FATHER OR HIS SON WAS INSIDE THE PIT.[16] But if we take the answer of Samuel, why [is the ruling stated] only with reference to his father and his son?[16] Why not with reference to any other person? — The Mishnah took the most usual case.[17]

IF HE BROUGHT THEM IN WITH PERMISSION, THE OWNER OF THE PREMISES WOULD BE LIABLE etc. It was stated: Rab said: ‘The law[18] is in accordance with the first Tanna,’ whereas Samuel said, ‘The law[18] is in accordance with the view of Rabbi.’[19]

Our Rabbis taught: [If the owner of the premises says:] ‘Bring in your ox and watch it,’ should the ox then damage, there would be liability,[20] but should the ox suffer injury there would be no liability.[21] If, however, [the owner says], ‘Bring in your ox and I will watch it,’ should the ox suffer injury there would be liability,[21] but should it do damage[22] there would be no liability.[20] Does not this statement contain a contradiction? You say that [where the owner of the premises said:] ‘Bring in your ox and watch it,’ should the ox do damage there would be liability,[20] but should the ox suffer injury there would be no liability.[21] Now the reason for this is that he expressly said to the owner of the ox ‘watch it’ — [the reason, I mean,] that the owner of the ox will be liable and the owner of the premises exempt; from which I infer that if no explicit mention was made [as to the watching] the owner of the premises would be liable, and the owner of the ox exempt, indicating that without express stipulation to the contrary the former takes it upon himself to safeguard [the ox].[23] Now read the concluding clause: But [if he said]: ‘Bring in your ox and I will watch it’, should the ox suffer injury there would be liability,[24] but should it do damage there would be no liability, [the reason being that] he expressly said to him ‘and I will watch it’ — [the reason,] I mean, that the owner of the premises would be liable and the owner of the ox exempt; from which I infer that if there is no express stipulation, the owner of the ox would be liable and the owner of the premises exempt, as in such a case the owner of the premises does not take it upon himself to safeguard [the ox]. This brings

us round to the view of Rabbi, who laid down [there would be no liability upon him][24] unless where the owner of the premises had taken upon himself to safeguard. Is then the opening clause in accordance with the Rabbis, and the concluding clause in accordance with Rabbi? — R. Eleazar thereupon said: The contradiction [is obvious]; he who taught one clause cannot have taught the other clause.[25] Raba, however, said: The whole [of the Baraitha] can be explained as being in accordance with the Rabbis; since the opening clause required the insertion of the words, 'watch it',[26] there were correspondingly inserted in the concluding clause the words 'And I will take care of it'. R. Papa, however, said: The whole [of the Baraitha] is in accordance with Rabbi;[27] for he concurred in the view of R. Tarfon who stated[28] that Horn doing damage in the plaintiff's premises would entail the payment of full damages. It therefore follows that where he expressly said to him, 'Watch it', he certainly did not transfer a legal right to him to any place in the premises, so that the case[29] becomes one of Horn doing damage in the plaintiff's premises, and [as already explained][30] where Horn does damage in the plaintiff's premises the payment must be for full damages. Where, however, he did not expressly say, 'Watch it', he surely granted him a legal right to place in the premises, so that the case is one of [damage done on] premises of joint owners and [as we know] where Horn does damage on premises of owners in common, there is no liability to pay anything but half damages.[31]

MISHNAH. IF AN OX WHILE CHARGING ANOTHER OX [INCIDENTALLY] INJURES A WOMAN WHO [AS A RESULT] MISCARRIES, NO COMPENSATION NEED BE MADE FOR THE LOSS OF THE EMBRYOS. BUT IF A MAN WHILE MEANING TO STRIKE ANOTHER MAN [INCIDENTALLY] STRUCK A WOMAN WHO THUS MISCARRIED HE WOULD HAVE TO PAY COMPENSATION FOR THE LOSS OF THE EMBRYOS.[32] HOW IS THE COMPENSATION FOR [THE LOSS OF] EMBRYOS FIXED? THE ESTIMATED VALUE OF THE WOMAN BEFORE HER MISCARRIAGE IS COMPARED WITH HER VALUE AFTER MISCARRIAGE.

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(1) Such as e.g. on public ground or on their joint premises.
(2) E.g. where they were running on public ground, for which cf. supra p. 172.
(3) For incidental damage suffered through him.
(4) In which case the damage was direct.
(5) By becoming a stationary nuisance.
(6) Supra p. 18.
(7) V. p. 273, n. 3.
(8) V. p. 273, n. 4.
(9) In which case no kofer has to be paid.
(10) For in a case where the ox threw itself upon a human being in a pit to kill him it could hardly escape being sentenced to death and stoned accordingly. The explanations given supra pp. 232-3 on a similar problem could therefore hardly apply here.
(11) Without any intention to kill the human being in the pit. The ox is therefore exempt from being stoned, but the owner is nevertheless liable to pay kofer as this kind of damage comes under the category of Tooth, since the ox did it for its own gratification; cf. supra p. 6.
(12) Supra p. 66.
(13) V. p. 271, n. 6.
(14) Cf. also supra p. 134.
(15) Since the ox killed the human being on his own premises.
(16) So that he was killed on his own premises.
(17) For it is not quite usual that a person not of the household of the owner of the yard should be in the pit which was the private property of the owner.
(18) [V.l., 'The halachah is.']
(19) Cf. Bez. 40a.
(20) Upon the owner of the ox.

(**21**) Upon the owner of the premises.
(**22**) To the belongings of the owner of the premises.
(**23**) [MS. M. adds: This will be in accordance with the Rabbis who hold that in the absence of any express stipulation there is still the duty to watch.]
(**24**) Upon the owner of the premises.
(**25**) Cf. supra p. 268.
(**26**) As otherwise the owner of the premises would by implication, according to the Rabbis, have accepted liability to safeguard.
(**27**) For while the inference from the concluding clause holds good, this is not the case with that of the commencing clause, as even where no mention was made about watching the ox brought in, the owner of the premises would still not be liable for any damage done to it. There may, however, be a difference where it gored an ox of the owner of the premises if Rabbi followed the view of R. Tarfon as will be explained in the text.
(**28**) V. supra p. 125.
(**29**) Where the ox brought in gored an ox of the owner of the premises.
(**30**) V. p. 276, n. 6.
(**31**) Supra. p. 58.
(**32**) Ex. XXI, 22

Talmud - Mas. Baba Kama 49a

R. SIMEON B. GAMALIEL SAID: IF THIS IS SO, A WOMAN AFTER HAVING GIVEN BIRTH INCREASES IN VALUE.[1] IT IS THEREFORE THE VALUE OF THE EMBRYOS WHICH HAS TO BE ESTIMATED, AND THIS AMOUNT WILL BE GIVEN TO THE HUSBAND. IF, HOWEVER, THE HUSBAND IS NO LONGER ALIVE, IT WOULD BE GIVEN TO HIS HEIRS. IF THE WOMAN WAS A MANUMITTED SLAVE OR A PROSELYTESS [AND THE HUSBAND, ALSO A PROSELYTE, IS NO LONGER ALIVE], THERE WOULD BE COMPLETE EXEMPTION.[2] GEMARA. The reason why there is exemption is because the ox was charging another ox, from which we infer that if it was charging the woman, there would be liability to pay. Will this not be in contradiction to the view of R. Adda b. Ahabah? For did not R. Adda b. Ahabah state[3] that [even] where Cattle were charging the woman, there would [still] be exemption from paying compensation for [the loss] of the embryos? — R. Adda b. Ahabah might reply: The same ruling [of the Mishnah] would apply even in the case of Cattle making for the woman, where there would similarly be exemption from paying compensation for [the loss of] the embryos. And as for the Mishnah saying IF AN OX WHILE CHARGING OTHER CATTLE, the reason is that, since it was necessary to state in the concluding clause BUT IF A MAN WHILE MEANING TO STRIKE ANOTHER MAN, this being the case stated in Scripture,[4] it was also found expedient to have a similar text in the commencing clause IF AN OX WHILE CHARGING ANOTHER OX.

R. Papa said: If an ox gores a woman-slave, causing her to miscarry, there would be liability to pay for the loss of the embryos, the reason being that [in the eyes of the law] it was merely a case of a pregnant she-ass being injured, for Scripture says, Abide ye here with the ass,[5] thus comparing this folk to an ass.[6]

HOW IS THE COMPENSATION FOR THE LOSS OF EMBRYOS FIXED etc.? 'COMPENSATION FOR THE EMBRYOS'? Should it not [also] have been 'Compensation for the increase in [the woman's] value caused by the embryos'?[7] — This indeed was what was meant: How is the compensation for the embryos and for the increase [in the woman's value] due to embryos fixed? Her estimated value before miscarriage is compared with her value after miscarriage.[8]

BUT R. SIMEON B. GAMALIEL SAID; IF THIS IS SO, A WOMAN AFTER HAVING GIVEN BIRTH INCREASES IN VALUE. What did he mean by this statement?[9] — Rabbah said; He meant to say this; Does a woman increase in value before giving birth more than after? Does not a woman

increase in value after giving birth[10] more than before giving birth? It is therefore the value of the embryos which has to be estimated, and this amount will be given to the husband. It was taught to the same effect; Does the value of a woman increase more before giving birth than after giving birth? Does not the value of a woman increase after having given birth[10] more than before giving birth? It is therefore the value of the embryos which has to be estimated, and this amount will be given to the husband. Raba, however, said: What is meant is this.[11] 'Is a woman's increase in value wholly for [the benefit of the husband for] whom she bears, and has she no share at all in the increase [in the value][12] due to the embryo? It is therefore the value of the embryos which has to be estimated and this amount will be given to the husband, whereas the amount of the increase [in the value][12] caused by the embryos will be shared equally [between husband and wife].' It was similarly taught: R. Simeon b. Gamaliel said: Is the increase in a woman's value wholly for [the benefit of the husband for] whom she bears, and has she herself no share at all in the increase [in her value] due to the embryos? No; there is a separate estimation for Depreciation[13] and also for Pain,[13] and the value of the embryos is estimated and given to the husband, whereas the amount of the increase in her value caused by the embryos will be shared equally [between husband and wife]. But is not R. Simeon b. Gamaliel contradicting himself [in this]?[14] — There is no contradiction, for one case[15] is that of a woman pregnant for the first time,[16] and the other of a woman who had already given birth to children.[17]

What was the reason of the Rabbis who stated that the amount of the increase [in the woman's value] due to the embryos also belongs to the husband? — As it was taught: From the words, so that her fruit depart from her,[18] cannot I understand that the woman was pregnant? Why then [the words] with child?[18] To teach you that the increase in her value due to pregnancy belongs to the husband. How then does R. Simeon b. Gamaliel expound the phrase 'with child'? — He required it for the lesson taught in the following: R. Eliezer b. Jacob says: Liability is never incurred save when the blow is given over against the place of the womb. R. Papa said: You are not to understand from this just over against the place of the womb, for wherever the bruise could be communicated to the embryo [will suffice];[19] what is excluded is a blow on the hand or foot, where there would be liability.

IF THE WOMAN WAS A MANUMITTED SLAVE,OR PROSELYTESS [AND THE HUSBAND, ALSO A PROSELYTE, IS NO LONGER ALIVE], THERE WOULD BE EXEMPTION ALTOGETHER.[20] Rabbah said: This rule applies only where the blow was given during the lifetime of the proselyte [husband] and it was only after this that he died, for since the blow was given during the lifetime of the proselyte, he acquired title to the impending payment, so that when he subsequently died[21] the defendant became quit of it as it was an asset of the proselyte.[21] But where the blow was given after the death of the proselyte it was the mother who acquired title to the embryos, so that the defendant would have to make payment to her. Said R. Hisda: O, master of this [teaching]! Are embryos packets of money to which a title can be acquired? It is only when the husband is there[22] that the Divine Law grants payment to him, but not when he is no more.

An objection was raised:[23] 'Where a woman is struck and a miscarriage results, compensation for Depreciation and Pain is to be paid to the woman, but for the loss of the embryos to the husband; where the husband is no more alive it[24] is given to his heirs; so also where the woman is no more alive, it[25] is given to her heirs. Should she be a slave who has been manumitted, or a proselytess [whose husband, also a proselyte, is no longer alive], the defendant becomes entitled to it'?[26] — I would reply: Is there anything more in this case than in that of the Mishnah, which has been interpreted to refer to where the blow was given during the lifetime of the proselyte and [where it was only after this that] the proselyte died?[27] [Why therefore not interpret the text] here also as referring to a case were the blow was given during the lifetime of the proselyte and [where it was only after this that] the proselyte died![27] More-over, if you wish you may [alternatively] say that it might have referred even to a case where the blow was given after the death of the proselyte,

(1) V. the explanation in the Gemara.
(2) The reason being that in this case there is no legitimate plaintiff.
(3) Supra p. 239.
(4) Ex. XXI, 22.
(5) Gen. XXII, 5.
(6) I.e. a mere chattel of the Master.
(7) Before the miscarriage took place. For besides the loss of the value of the embryos there was a loss of the value of the woman herself that was increased by the embryos making her look bigger and stouter. [Rashi reads: 'Is this (referring to the valuation laid down in the Mishnah) compensation for the embryos? Is it not also compensation for the increase etc.?']
(8) [This valuation, that is to say, serves as compensation both for the embryos and for the increase etc.]
(9) For surely the anonymous Tanna expressed himself to the contrary.
(10) Through having emerged safely from the dangers of childbirth.
(11) By R. Simeon b. Gamaliel.
(12) Of her own body.
(13) Cf. supra p. 243 and Keth. VI, 1.
(14) For according to his other statement a woman increases in value after giving birth more than before.
(15) Where he stated that the value of a woman after having given birth is greater than that prior to having given birth.
(16) Where the circumstances are more complicated.
(17) In which case her value later is less than that prior to giving birth
(18) Ex. XXI, 22.
(19) To create liability.
(20) V. p. 277, n. 6.
(21) Without issue, leaving thus no heirs.
(22) I.e. alive.
(23) Cf. supra p. 234.
(24) I.e. the payment for the loss of the embryos.
(25) I.e. the payment for Depreciation and Pain.
(26) Even, it would seem, when the blow was given after the death of the proselyte, which contradicts the view of Rabbah.
(27) V. p. 280, n. 5.

Talmud - Mas. Baba Kama 49b

but read in the text 'she would become entitled to it'.[1]

May we say that there is on this point[2] a difference between Tannaitic authorities? [For it was taught:] If a daughter of an Israelite was married to a proselyte and became pregnant by him, and a blow was given her during the lifetime of the proselyte,[3] the compensation for the loss of the embryos will be given to the proselyte. But if after the death of the proselyte![4] — One Baraitha teaches that there would be liability, whereas another Baraitha teaches that there would be no liability. Now, does this not show that Tannaim differ on this [point]?[5] According to Rabbah there is certainly a difference between Tannaim on this matter.[6] But what of R. Hisda?[7] Must he also hold that Tannaim were divided on it? — [No; he may argue that] there is no difficulty,[8] as one [Baraitha] accepts the view of the Rabbis[9] whereas the other follows that of R. Simeon b. Gamaliel.[10] But if [the Baraitha which says that there is liability follows the view of] R. Simeon b. Gamaliel, why speak only of compensation after the death [of the proselyte]? Would she even during [his] lifetime not have [a half of the payment]? — During [his] lifetime she would have only a half, whereas after death she would have the whole.[11] Or if you wish you may say that both this [Baraitha][12] and the other follow the view of R. Simeon b. Gamaliel,[10] but while one[12] deals with the increase in the value [of the woman caused] by the embryos, the other[13] refers to the compensation for the loss of

the value of the embryos [themselves].[14] I would here ask, why not derive from the rule[12] regarding the increased value due to the embryos the other rule regarding the value of the embryos themselves?[15] And again, why not derive from the ruling[12] of R. Simeon b. Gamaliel also the ruling of the Rabbis?[16] — It may, however, be said that this could not be done. For as regards the increased value [of the woman due] to the embryos, seeing that she has some hold upon it,[17] she can acquire a title to the whole of it,[18] whereas in regard to the compensation for the embryos themselves, on which she has no hold,[19] she can acquire no title to them at all.

R. Yeba the Elder enquired of R. Nahman: If a man has taken possession of the deeds of a proselyte,[20] what is the legal position? [Shall we say that] a man who takes possession of a deed does so with intent to acquire the land [specified in the document], but has thereby not taken possession of the land, nor does he even acquire title to the deed, since his intent was not to obtain the deed?[21] Or [shall we] perhaps [say] that his intent was to obtain the deed also?[21] — He[22] said to him: Tell me, Sir, could he need it to cover the mouth of his flask? — He[23] replied: Yes indeed, [he could need it] to cover[the flask].

Rabbah stated: If the pledge of an Israelite is in the hands of a proselyte [creditor], and the proselyte dies [without any legal issue] and another Israelite comes along and takes possession of it,[20] it would be taken away from him, the reason being that as the proselyte has died, the lien he had upon the pledge has disappeared. But if a pledge of a proselyte [debtor] is in the hands of an Israelite, and the proselyte dies and another Israelite comes along and takes possession of it, the creditor would become owner of the pledge to the extent of the amount due to him, while the one who took possession of it would own the balance. Why should the premises [of the creditor where the pledge was kept] not render him the owner [of the whole pledge]? Did not R. Jose b. Hanina say that a man's premises effect a legal transfer [of ownerless property placed there] even without his knowledge? — It may be said that we are dealing here with a case where the creditor was not there.[24] For it is only where he himself[25] is there,[24] in which case should he so desire he would be able to take possession of it,[26] that his premises could [act on his behalf and] effect the transfer, whereas where he himself[25] was absent, in which case were he to desire to acquire title to it[26] he would have been unable to take possession of it, his premises could similarly not effect a transfer. But the law is that it is only where it [the pledge] was not [kept] in the [creditor's] premises that he would acquire no title to it.[27]

MISHNAH. IF A MAN DIGS A PIT IN PRIVATE GROUND AND OPENS IT ON TO A PUBLIC PLACE, OR IF HE DIGS IT IN PUBLIC GROUND AND OPENS IT ON TO PRIVATE PROPERTY, OR AGAIN, IF HE DIGS IT IN PRIVATE GROUND AND OPENS IT ON TO THE PRIVATE PROPERTY OF ANOTHER, HE BECOMES LIABLE[28] [FOR ANY DAMAGE THAT MAY RESULT].

GEMARA. Our Rabbis taught: If a man digs a pit on private ground and opens it on to a public place, he becomes liable, and this is the Pit of which the Torah[29] speaks. So R. Ishmael. R. Akiba, however, says: When a man abandons his premises without, however, abandoning his pit, this is the Pit of which the Torah[29] speaks. Rabbah thereupon said: In the case of a pit on public ground there is no difference of opinion that there should be liability. What is the reason? — Scripture says, If a man open or if a man dig.[29] Now, if for mere opening there is liability, should there not be so all the more in the case of digging? [Why then mention digging at all?] Scripture must therefore mean to imply that it is on account of the act of opening and on account of the act of digging that the liability is at all brought upon him.[30] A difference arises

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(1) In accordance with the view of Rabbah.

(2) In which Rabbah and R. Hisda differ.

(3) And a miscarriage resulted.

(4) I.e. if the blow was given after the death of the proselyte.
(5) I.e., whether the mother acquires a title to the embryos on the death of her husband, the proselyte, or not.
(6) He therefore followed the view of the former Baraitha laying down liability.
(7) Stating exemption.
(8) I.e., no contradiction between the two Baraithas, which do not deal with the payment for the loss of the embryos but with the payment for the loss of the increment in the value of the woman herself due to the embryos.
(9) Maintaining that the payment for the loss of the increment in the value of the woman herself also belongs to the husband, so that where he was a proselyte dying without issue there would be no liability at all upon the defendant.
(10) According to whom the payment for the loss of the increment in the value of the woman herself has to be shared by the mother and father, so that where he was a proselyte dying without issue she will surely not forfeit her due, but as to the embryos, all agree that the woman acquires in no circumstance title to them.
(11) For since the mother is a joint plaintiff with her husband regarding this payment, where he was a proselyte dying without issue she will remain the sole plaintiff and thus be entitled to the full payment.
(12) Stating liability.
(13) Stating exemption.
(14) To which the mother was never a plaintiff.
(15) That payment should be made to the mother, in contradiction to the view of R. Hisda.
(16) [That she should have the whole where the proselyte husband is no longer alive.]
(17) Even during the lifetime of her husband.
(18) At the demise of the proselyte without any legal issue.
(19) V. p. 282, n. 10.
(20) V. p. 282, n. 11.
(21) I.e., the mere value of the paper of the deed.
(22) R. Nahman.
(23) R. Yeba.
(24) [I.e., 'in town' (Rashi), or (according to Tosaf.) 'beside the premises,' v. B.M. 11a: 'non-guarded premises confer title only when the owner is standing beside them.']
(25) I.e., the owner of the premises.
(26) I.e., the pledge or any other ownerless article.
(27) For where the pledge was kept in the creditor's premises at the time of the demise of the proselyte without issue, the creditor would acquire title to the whole of it, though the creditor were out of town (Rashi). [Tosaf. renders, 'where the creditor was not beside the premises.']
(28) V. Gemara.
(29) Ex. XXI, 33-34
(30) I.e. where the ground of the pit that did the actual damage was not his at all.

Talmud - Mas. Baba Kama 50a

only in regard to a pit on his own premises. R. Akiba maintains that a pit in his own premises should also involve liability, since it says, The owner of the pit,[1] which shows that the Divine Law is speaking of a pit which has an owner; R. Ishmael on the other hand maintaining that this simply refers to the perpetrator of the nuisance.[2] But what then did R. Akiba mean by saying, '[When a man abandons his premises without, however, abandoning his pit] — this is the Pit stated in the Torah'?[3] — [He meant that] this is the Pit with reference to which Scripture first began to lay down[4] the rules for compensation [in the case of Pit]. R. Joseph said: in the case of a pit on private ground there is no difference of opinion that there should be liability. What is the reason? Divine Law says, the owner of the pit, to show that it is a pit having an owner with which we are dealing.[5] They differ only in the case of a pit in public ground. R. Ishmael maintains that a pit on public ground should also involve liability, since it says, 'If a open . . . and if a man dig . . .' Now, if for mere opening there is liability, should there not all the more be so in the case of digging? Scripture therefore must mean to imply that it is on account of the act of opening and on account of the act of digging that the liability is at all brought upon him.[6] And R. Akiba? [He might reply that] both terms[7] required to be explicitly

mentioned. For if the Divine Law had said only ‘If a man open’ it might perhaps have been said that it was only in the case of opening that covering up would suffice [as a precaution], whereas in the case of digging covering up would not suffice, unless the pit was also filled up. If [on the other hand] the Divine Law had said only If a man dig it might have been said that it was only where he dug it that he ought to cover it, as he actually made the pit, whereas where he merely opened it, in which case he did not actually make the pit, it might have been thought that he was not bound even to cover it. Hence it was necessary to tell us [that this was not the case but that the two actions are on a par in all respects]. But what then did R. Ishmael mean by saying, [If a man digs a pit in private ground and opens it on to a public place, he comes liable] and this is the Pit of which the Torah[8] speaks?[9] — This is the Pit with reference to which Scripture opens[10] the rules concerning damage [caused by Pit].

An objection was raised [from the following]: If a man digs a pit in public ground and opens it to private property there is no liability, in spite of the fact that he has no right to do so as hollows must not be made underneath a public thoroughfare. But if he digs pits, ditches or caves in private premises and opens them on to a public place, there would be liability. If, again, a man digs pits in private ground abutting on a public thoroughfare, such as e.g., workmen digging foundations, there would be no liability. R. Jose b. Judah, however, says there is liability unless he makes a partition of ten handbreaths in height or unless he keeps the pit away from the place where men pass as well as from the place where animals pass at a distance of at least four handbreadths.[11] Now this is so only in the case of foundations,[12] but were the digging made not for foundations there would apparently be liability. In accordance with whose view[13] is this? All would be well if we follow Rabbah, since the opening clause[14] would be in accordance with R. Ishmael and the later clause[15] in accordance with R. Akiba. But if we follow R. Joseph, it is true there would be no difficulty about the concluding clause[15] which would represent a unanimous view, but what about the prior clause[14] which would be in accordance neither with R. Ishmael nor with R. Akiba?[16] — R. Joseph, however, might reply: The whole text represents a unanimous view, for the prior clause deals with a case where the man abandoned neither his premises nor his pit.[17] R. Ashi thereupon said: Since according to R. Joseph you have explained the text to represent a unanimous view, so also according to Rabbah you need not interpret it as representing two opposing views of Tannaim. For as the prior clause[14] was in accordance with R. Ishmael, the later clause would also be in accordance with R. Ishmael; and the statement that this ruling holds good only in the case of foundations whereas if the digging is not for foundations there would be liability, refers to an instance where e.g., the digging was widened out into actual public ground.[18]

An objection was [again] raised: ‘If a man digs a pit in private ground and opens it on to a public place he becomes liable, but if he digs it in private ground abutting on a public thoroughfare he would not be liable.’ No difficulty arises if we follow Rabbah, since the whole text[19] is in accordance with R. Ishmael. But if we follow R. Joseph, no difficulty, it is true, arises in the prior clause[20] which would be in accordance with R. Ishmael, but what about the concluding clause[19] which would be in accordance neither with R. Ishmael nor with R. Akiba?[21] — He might reply that it deals with digging for foundations,[22] in regard to which the ruling is unanimous.

Our Rabbis taught:[23] If a man dug [a well] and left it open, but transferred it to the public,[24] he would be exempt,[25] whereas if he dug it and left it open without dedicating it to the public he would be liable. Such also was the custom of Nehonia the digger of wells, ditches and caves; he used to dig wells[26] and leave them open and dedicate them to the public.[24] When this matter became known to the Sages they observed, ‘This man[27] has fulfilled this Halachah’. Only this Halachah and no more? — Read therefore ‘this Halachah also’.

Our Rabbis taught: It happened that the daughter of Nehonia the digger of wells once fell into a deep pit. When people came and informed R. Hanina b. Dosa[28] [about it], during the first hour he

said to them 'She is well', during the second he said to them, 'She is still well', but in the third hour he said to them, 'She has by now come out [of the pit].' They then asked her, ' Who brought you up?' — Her answer was: 'A ram[29] [providentially] came to my help[30] with an old man[31] leading it.' They then asked R. Hanina b. Dosa, 'Are you a prophet?' He said to them, 'I am neither a prophet nor the son of a prophet. I only exclaimed: Shall the thing to which that pious man has devoted his labour become a stumbling-block to his seed?'[32] R. Aha, however, said; Nevertheless, his[33] son died of thirst, [thus bearing out what the Scripture] says, And it shall be very tempestuous round about him,[34] which teaches that the Holy One, blessed be He, is particular with those round about Him[35] even for matters as light as a single hair.[36] R. Nehonia[37] derived the same lesson from the verse,[38] God is greatly to be feared in the assembly of the saints and to be had in reverence of all them that are about Him. R. Hanina said: If a man says that the Holy One, blessed be He, is lax in the execution of justice, his life shall be outlawed, for it is stated, He is the Rock, His work is perfect; for all His ways are judment.[39] But R. Hana, or as others read R. Samuel b. Nahmani, said: Why is it written[40]

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(1) Ex. XXI, 34

(2) But did not mean the legal owner of it.

(3) Since even according to R. Akiba the Torah deals with Pit on public ground.

(4) In verse 34.

(5) [As against R. Ishmael who requires the pit itself to be abandoned.]

(6) V. p. 284, n. 4.

(7) Of opening and of digging.

(8) V. p. 284, n. 3.

(9) Since even according to R. Ishmael the Torah deals with Pit on private ground.

(10) I.e., in verse 33.

(11) Rashal reads 'cubits'.

(12) Which is a general practice.

(13) Either with that of R. Ishmael or with that of R. Akiba.

(14) Stating exemption in the case of Pit open to private ground.

(15) Implying liability in the case of Pit on private ground.

(16) For they both according to R. Joseph maintain liability for Pit on private ground.

(17) In which case the defendant is entitled to put in a defence of trespass on his ground against the plaintiff.

(18) But if the digging was not widened out into actual public ground there would be no difference as to the purpose of the digging for there would be exemption in all cases.

(19) V. p. 286, n. 5.

(20) Stating liability in the case of Pit on public ground.

(21) V. p. 286, n. 7.

(22) V. p. 286, n. 3.

(23) Tosef. B.K. VI.

(24) For the general use of the water.

(25) As it became communal property.

(26) Thus to provide water for the pilgrims who travelled to Jerusalem on the three festivals in accordance with Ex. XXXIV, 23.

(27) I.e. Nehonia.

(28) [On R. Hanina b. Dosa as a 'man of deeds' whose acts were viewed as acts of human love and sympathy rather than miracles, v. BŸchler, Types, p. 100ff.]

(29) The ram of Isaac, cf. Gen. XXII,13 and R.H. 16a.

(30) Lit., 'was appointed for me.'

(31) Abraham.

(32) V. J. Shek. V. 1.

(33) Nehonia's.

(34) Ps. L, 3.

(35) I.e. the pious devoted to Him.
(36) The Hebrew term for 'tempestuous' is homonymous with that for 'hair'.
(37) 'Hanina' occurs in Yeb. 121b.
(38) Ps. LXXXIX, 8.
(39) Deut. XXXII, 4.
(40) Ex. XXXIV, 6.

Talmud - Mas. Baba Kama 50b

'Long of sufferings'[1] and not 'Long of suffering'?[2] [It must mean,] 'Long of sufferings' to both the righteous[3] and the wicked.[4]

Our Rabbis taught: A man should not remove stones from his ground on to public ground. A certain man[5] was removing stones from his ground on to public ground when a pious man found him doing so and said to him, 'Fool,[6] why do you remove stones from ground which is not yours to ground which is yours?' The man laughed at him. Some days later he had to sell his field, and when he was walking on that public ground he stumbled over those stones. He then said, 'How well did that pious man say to me, "Why do you remove stones from ground which is not yours to ground which is yours?"'

MISHNAH. IF A MAN DIGS A PIT ON PUBLIC GROUND AND AN OX OR AN ASS FALLS INTO IT, HE BECOMES LIABLE. WHETHER HE DUG A PIT, OR A DITCH, OR A CAVE, TRENCHES, OR WEDGE-LIKE DITCHES, HE WOULD BE LIABLE. IF SO WHY IS PIT MENTIONED [IN SCRIPTURE]?[7] [TO TEACH THAT] JUST AS PIT CAN CAUSE DEATH BECAUSE IT IS USUALLY TEN HANDBREADTHS [DEEP], SO ALSO ALL [OTHER SIMILAR NUISANCES] MUST BE SUCH AS CAN CAUSE DEATH, [I.E.] TEN HANDBREADTHS [DEEP]. WHERE, HOWEVER, THEY WERE LESS THAN TEN HANDBREADTHS [DEEP], AND AN OX AR AN ASS FELL INTO THEM AND DIED, THERE WOULD BE EXEMPTION.[8] IF THEY WERE ONLY INJURED BY THEM, THERE WOULD BE LIABILITY.

GEMARA. Rab stated: The liability imposed by the Torah in the case of Pit[9] is for the unhealthy air created by excavation, but not for the blow given by it. It could hence he inferred that he held that so far as the blow was concerned it was the ground of the public that caused the damage.[10] Samuel, however, said: For the unhealthy air, and, ^ plus forte raison, for the blow. And should you say that it was for the blow only that the Torah imposed liability but not for the unhealthy air, (you have to bear in mind that] for the Torah[11] a pit is a pit, even where it is full of pads of wool. What is the practical difference between them? — There is a practical difference between them. Where a man made a mound on public ground: according to Rab there would in the case of a mound be no liability,[12] whereas according to Samuel there would in the case of a mound also be liability. What was the reason of Rab?[13] Because Scripture says, And it fall,[14] [implying that there would be no liability] unless where it fell in the usual way of falling.[15] Samuel [on the other hand maintained that the words] And it fall imply anything [which is like falling].[16]

We have learnt: IF SO WHY WAS PIT MENTIONED [IN SCRIPTURE]?[17] [TO TEACH THAT] JUST AS PIT CAN CAUSE DEATH BECAUSE IT IS USUALLY TEN HANDBREADTHS [DEEP], SO ALSO ALL [OTHER SIMILAR NUISANCES] MUST BE SUCH AS CAN CAUSE DEATH, [I.E.] TEN HANDBREADTHS [DEEP]. Now this creates no difficulty if we follow Samuel, since the phrase SO ALSO ALL would imply mounds also. But according to Rab, what does the phrase SO ALSO ALL imply?[17] — It was meant to imply trenches and wedge-like ditches. But are trenches and wedge-like ditches not explicitly stated in the text? — They were [first] mentioned and then the reason for them explained.

What need was there to mention all the things specified in the text? — They all required [to be explicitly stated]. For if only a pit had been explicitly mentioned, I might have said that it was only a pit where in ten handbreadths [of depth] there could be [sufficient] unhealthy air [to cause death] on account of its being small and circular, whereas in the case of a ditch which is long I might have thought that [even] in ten handbreadths of depth there would still not be [sufficient] unhealthy air [to cause death]. If [again] only a ditch had been mentioned explicitly, I might have said that it was only a ditch where in ten handbreadths [of depth] there could be [sufficient] unhealthy air [to cause death] on account of its being small, whereas in a cave which is square I might have thought that [even] in ten handbreadths of depth there would still not be [sufficient] unhealthy air [to cause death]. Again, if only a cave had been mentioned explicitly, I might have said that it was only a cave where in ten handbreadths [of depth] there could be [sufficient] unhealthy air [to kill] on account of its being covered, whereas in the case of trenches which are uncovered I might have thought that [even] in ten handbreadths [of depth] there would still not be [sufficient] unhealthy air [to cause death]. Further, if only trenches had been stated explicitly, I might have said that it was only trenches where in ten handbreadths [of depth] there could be [sufficient] unhealthy air [to cause death] on account of their not being wider at the top than at the bottom, whereas in wedgelike ditches which are wider at the top than at the bottom I might have said that [even] in ten handbreadths [of depth] there would still not be [sufficient] unhealthy air [to cause death]. It was therefore necessary to let us know [that all of them are on a par in this respect].[18]

We have learnt: WHERE, HOWEVER, THEY WERE LESS THAN TEN HANDBREADTHS [DEEP] AND AN OX OR AN ASS FELL INTO THEM AND DIED, THERE WOULD BE EXEMPTION.[19] IF THEY WERE ONLY INJURED BY THEM THERE WOULD BE LIABILITY. Now what could be the reason that where an ox or an ass fell into them and died there would be exemption? Is it not because the blow was insufficient [to cause death]?[20] — No, it is because there was no unhealthy air there. But if so, why where the animal was merely injured in such a pit should there be liability, seeing that there was no unhealthy air there? — I might reply that there was not unhealthy air there sufficient to kill, but there was unhealthy air there sufficient to injure.

A certain ox fell into a pond which supplied water to the neighbouring fields. The owner hastened to slaughter it, but R. Nahman declared it trefa.[21] Said R. Nahman: ‘Had the owner of this ox taken a kab[22] of flour and come to the house of study, where he would have learnt that "If the ox lasted at least twenty-four hours [before being slaughtered] it would be kasher",[23] I would not have caused him to lose the ox which was worth several kabs.’ This seems to show that R. Nahman held that a deadly blow can be inflicted even by an excavation less than ten handbreadths deep.[24]

Raba raised an objection to R. Nahman: WHERE, HOWEVER, THEY WERE LESS THAN TEN HANDBREADTHS [DEEP] AND AN OX OR AND ASS FELL INTO THEM AND DIED, THERE SHOULD BE EXEMPTION. Now, is not the reason of this [exemption] because there was no deadly blow there?[25]

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(1) אפים, the plural.

(2) אף, the singular.

(3) By not rewarding them in this world for their good deeds.

(4) By not punishing them in this world for their wicked deeds.

(5) B.K. Tosef. II.

(6) Raca.

(7) Ex. XXI, 33.

(8) As the death of the animal should in this case not be wholly imputed to the pit.

(9) On public ground.

(10) For which the defendant has not to be liable.

(11) Lit., 'the Torah testified that etc.', since 'pit' is left undefined.
(12) As no unhealthy air was created and the blow was given by the public ground.
(13) Is not a mound a nuisance?
(14) Ex. XXI, 33.
(15) Excepting thus a mound.
(16) I.e. including mounds.
(17) Since according to him there would be no liability for mounds.
(18) That the depth of ten handbreadths is sufficient to create enough unhealthy air to cause death in any one of these excavations.
(19) V. p. 289, n. 2.
(20) Though the air was not less unhealthy there will be no liability, thus contradicting the views of both Rab and Samuel.
(21) I.e. forbidden to be eaten in accordance with dietary laws; for the term cf. Ex. XII, 30 and Glossary.
(22) [(V. Glos.), i.e., provision for his journey.]
(23) Cf. Hul. 51b.
(24) For the pond in which the ox fell was only six handbreadths deep.
(25) Thus disproving the view of R. Nahman.

Talmud - Mas. Baba Kama 51a

No; it is because there was no unhealthy air there. But if so, why where it was injured in such a pit would there be liability since there was no unhealthy air there? — He replied: There was not unhealthy air there sufficient to kill, but there was unhealthy air there enough to injure.

A further objection was raised: The scaffold [for stoning] was of the height of two men's statures.[1] And it has been taught regarding this: When you add the stature of the convict there will be there the height of three statures. Now, if you assume that a fall can be fatal even from a height of less than ten handbreadths, why was such a great height as that necessary? — But even according to your argument, why not make the height ten handbreadths only? This must therefore be explained in accordance with R. Nahman, for R. Nahman stated that Rabbah b. Abbuha had said: Scripture says, And thou shalt love thy neighbour as thyself,[2] [which implies], 'thou shalt choose for a convict the easiest possible execution.'[3] But if so, why not raise it still higher? — He would then become disfigured altogether.

A further objection was raised: If any man fall from thence;[4] 'from thence' but not into it. How is that so? Where the public road was ten handbreadths higher than the roof, and a man might fall from the former on to the latter, there is no liability [in respect of a parapet], but if the public road was ten handbreadths lower than the roof, and a man might fall from the latter on to the former, that there will be liability [in respect of a parapet]. Now, if you assume that a fall could be fatal even from a height of less than ten handbreadths, why should it be necessary to have the public road lower by [full] ten handbreadths?[5] — It was said in answer:[6] There is a difference in the case of a house, since if it is less than ten handbreadths [in height] it could not be designated 'house'.[7] But if so, even now when from the outside it is ten handbreadths high, were you to deduct from that the ceiling and the plaster, from the inside it would surely not have the height of ten handbreadths?[8] — To this it was said in reply: [We are dealing here with a case] where, e.g., the owner of the house sank the floor from within.[9] But if so, even where the height from the outside was not ten handbreadths, it could still be possible that from the inside it was ten handbreadths, as for instance where he sank the floor still more? — The reason of R. Nahman must therefore have been this: he considered that from the abdomen of the ox to the level of the ground must be [at least] four handbreadths, and the pond feeding the fields must be six handbreadths;[10] this makes ten handbreadths, with the result that when the ox received the blow it was from the height of ten handbreadths that the blow was given.[11] But why then does the Mishnah say: JUST AS PIT CAN CAUSE DEATH BECAUSE IT IS USUALLY

TEN HANDBREADTHS [DEEP], SO ALSO ALL [OTHER SIMILAR NUISANCES] MUST BE SUCH AS CAN CAUSE DEATH, [I.E.] TEN HANDBREADTHS [DEEP]? Should not six handbreadths be enough?[12] — We could reply that the Mishnah deals with a case where the ox rolled itself over into the pit.[13] MISHNAH. WHERE THERE IS A PIT [IN CHARGE OF] TWO PARTNERS, IF THE FIRST ONE PASSES BY AND DOES NOT COVER IT, AND THE SECOND ONE ALSO [PASSES BY AND DOES] NOT COVER IT,[14] THE SECOND WOULD BE LIABLE.

GEMARA. I would here ask, how can we picture a pit in charge of two partners? True, we can understand this if we take the view of R. Akiba, who said that a pit in private ground would involve liability,[15] in which case such a pit could be found where they jointly own the ground and also a pit in it, and while they abandoned the ground [round about],[16] they did not abandon the pit itself. But if we take the view that a pit on private ground would involve exemption,[15] in which case liability could be found only where it was on public ground, how then is it possible for a pit in public ground to be in charge of two partners?[17] [For if you say that] both of them appointed an agent and said to him: ‘Go forth and dig for us’, and he went and dug for them, [we reply that] there can be no agency for a sinful act.[18] If again you say that the one[19] dug five handbreadths and the other one[19] dug another five handbreadths, [then we would point out that] the act of the former has become eliminated?[20] It is true that according to Rabbi,[21] we can imagine a pit [in charge of two partners] in respect of mere injury.[22] But in respect of death even according to Rabbi, or in respect whether of death or of mere injury[22] according to the Rabbis,[21] where could we find such a pit? — R. Johanan thereupon said: [We find such a pit] where e.g., both of them removed a layer of ground at the same time and thereby made the pit ten handbreadths deep.[23]

What opinion of Rabbi and what opinion of the Rabbis [was referred to above]? — It was taught:[24] Where one had dug a pit of nine handbreadths [deep] and another one came along and completed it to a depth of ten handbreadths, the latter would be liable.[25] Rabbi says: The last one is responsible in[26] cases of death,[27] but both of them in cases of injury.[28] What was the reason of the Rabbis? — Scripture says; If a man shall open . . . or if a man shall dig . . .[29] Now if for mere opening there is liability, should there not be all the more so in the case of digging? [Why then mention digging at all?] It must be in order to lay down the rule [also] for [the case of] one person digging [in a pit] after another,[30] [namely,] that [in such a case] the act of the one who dug first[31] is regarded as eliminated.[32] And Rabbi?[33] — He might rejoin that it was necessary to mention both terms,[34] as explained elsewhere.[35] And do not the Rabbis also hold that it was necessary?[35] — The reason of the Rabbis must therefore have been that Scripture says, If a man shall dig [indicating that] one person but not two persons [should be liable for one pit]. Rabbi, on the other hand, maintained that [the expression ‘a man’] was needed to teach that if a man shall dig a pit [there would be liability] but not where an ox [dug] a ‘pit’.[36] And the Rabbis?[37] [They might point out] ‘a man . . . a pit’ is inserted twice [in the same context].[29] And Rabbi? — He [could rejoin that] having inserted these words in the first text, Scripture retained them in the second also.

Now [according to the Rabbis who hold that Scripture intended to make only one person liable], whence could it be proved that it is the last person [that dug] who should be liable? Why not make the first person [who dug] liable? — Let not this enter your mind, since Scripture has stated, And the dead shall be his[38] [implying that the liability rests upon him] who made the pit capable of killing. But was not this [verse] ‘And the dead shall be his’ required for the lesson drawn by Raba? For did Raba not say:[39] If a sacred ox which has become disqualified [for the altar][40] falls into a pit, there would be exemption, as Scripture says ‘And the dead beast shall be his’ [implying that it is only] in the case of an ox whose carcass could be his[41] [that there would be liability]?[42] — To this I might rejoin: Can you not [at the same time] automatically derive from it that it is the man who made the pit capable of killing with whom we are dealing?

Our Rabbis taught: If one person has dug a pit to a depth of ten handbreadths and another person comes along and completes it to a depth of twenty, after which a third person comes along and completes it to a depth of thirty, they all would be liable. A contradiction was here pointed out:[43] If one person dug a pit ten handbreadths deep, and another came along and lined it with plaster and cemented it,[44] the second would be liable.

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(1) Sanh. 45a.

(2) Lev. XIX, 18.

(3) V. Sanh. ibid.

(4) Deut. XXII, 8.

(5) Why should there be no liability to construct a parapet even where the public road was lower by less than ten handbreadths.

(6) Lit., 'He said to him'.

(7) Cf. B.B. 7a.

(8) In which case it would still not be termed house. Why then a parapet?

(9) So that the vertical height inside was not less than ten handbreadths.

(10) V. p. 292, n. 2.

(11) And as a fall from the height of ten handbreadths can be fatal R. Nahman had to declare the ox trefa.

(12) For from the abdomen of the ox to the level of the ground there are surely four handbreadths.

(13) But where the ox fell while walking, even where the pit was only six handbreadths deep the blow would be fatal.

(14) And damage occurred later.

(15) Supra 50a.

(16) In which case they cannot plead trespass on the part of the plaintiff as defence.

(17) For it is the one who dug it that should be responsible.

(18) It will accordingly be the agent and not the principal who will have to be subject to the penalty; cf. B.M. 10b.

(19) Partner.

(20) For it was the latter's act that made the pit complete and capable of causing all kinds of damage.

(21) V. p. 295.

(22) V. the discussion later.

(23) In which case they both made it complete and capable of causing all kinds of damage.

(24) V. supra 10a.

(25) V. p. 294, n. 7.

(26) Lit., 'after the last for'.

(27) For without the latter the pit would have been unable to cause death.

(28) For even without the latter the pit would have been able to cause injury.

(29) Ex. XXI, 33.

(30) The verse would thus imply a case where after one man opened the pit of nine handbreadths deep another man dug an additional handbreadth and thus made it a pit of ten handbreadths deep.

(31) The nine handbreadths.

(32) So that he should become released from any responsibility.

(33) How does he interpret the verse?

(34) Of opening and of digging.

(35) Supra p. 285.

(36) V. supra p. 272.

(37) Whence do they derive this latter deduction?

(38) Ex. XXI, 34.

(39) Infra p. 310.

(40) As it became blemished.

(41) I.e., could be used by him as food for dogs and like purposes.

(42) Excepting thus a scared ox falling into a pit and dying there, as no use could lawfully be made of its carcass.

(43) From the following Baraitha.

(44) Who thus made its width smaller and the air closer and more harmful.

Talmud - Mas. Baba Kama 51b

Are we to say that the former statement[1] follows the view of Rabbi[2] whereas the latter[3] follows that of the Rabbis?[3] — R. Zebid thereupon said that the one statement as well as the other could be regarded as following the view of the Rabbis.[3] For even there [in their own case] the Rabbis would not say that the last digger should be liable, save in a case where the first digger did not make the pit of the minimum depth capable of killing, whereas [in this case] where the first digger made the pit of the minimum depth capable of killing even the Rabbis would agree that all the diggers should be liable.[4] But, [what of] the case of [the second] lining it with plaster and cementing it,[5] where the first digger made the pit of the minimum depth capable of killing, and yet it was said that the second would be liable? — It may be answered that the case there was where the unhealthy air was not sufficient to kill,[6] and it was the other person who, by diminishing the size of the pit increased the dangerous effect of the air so as to make it capable of killing. Some report that R. Zebid said that the one statement as well as the other could he regarded as following the view of Rabbi.[7] About the statement that they would all be liable there is [on this supposition] no difficulty. And as for the other statement that the second digger would be liable, this refers to a case where e.g., the unhealthy air was sufficient neither to kill nor to injure, and it was the other person who by diminishing the size of the pit increased the dangerous effect of the air so as to make it capable of both killing and injuring.[8]

Raba said: The case of a man putting a stone round the mouth of a pit and thereby completing it to a depth of ten handbreadths is one which brings us face to face with the difference of opinion between Rabbi and the Rabbis.[9] Is this not obvious? — You might perhaps think that [the difference of opinion] was only where the increase in depth was made at the bottom, in which case it was the unhealthy air added by the second digger that caused death, whereas where the increase was made from the top,[10] in which case it was not the unhealthy air added by him that caused the death, it might have been said that there was no difference of opinion.[11] We are therefore told[12] [that this is not the case].

Raba raised the question: Where [the second comer] filled in the one handbreadth [which he had previously dug] with earth, or where he removed the stones [which he had previously put round the mouth of the pit], what would be the legal position? Are we to say that he has undone what he had previously done,[13] or rather perhaps that the act of the first digger had already been merged [in the act of the second] and the whole pit had since then been in the charge of the second? — Let this remain undecided.

Rabbab b. Bar Hanah said that Samuel b. Martha stated: Where a pit is eight handbreadths deep, but two handbreadths out of these are [full] of water, there would be liability,[14] the reason being that each handbreadth [full] of water is equivalent [in its capacity to cause death] to two handbreadths without water. The question was thereupon raised: Where a pit is of nine handbreadths but one of these is full of water, what should be the law? Should we say that since there is not so much water there, there is not [so much] unhealthy air,[15] or rather that since the pit is deeper there is there [a quantity of] unhealthy air?[16] [Again], where the pit is of seven handbreadths and out of these three handbreadths are full of water, what would be the legal position? Should we say that since there is much water there, the unhealthy air is there [in proportion],[16] or rather that since it is not deep, there is no [great quantity of] unhealthy air there?[15] — Let these queries remain undecided.

R. Shezbi inquired of Rabbah: If the second digger makes it wider, what would be the law? — He replied: Does he not thereby diminish the unhealthy air?[17] Said the other to him: On the contrary, does he not increase the risk of injury?[18] — R. Ashi thereupon said: We have to consider whether [the animal] died through bad air, in which case [the second digger could not be responsible as] he

diminished the unhealthy air, or whether it died through the fall, in which case [the second digger should be responsible as] he increased the risk of injury. Some report that R. Ashi said: We have to see whether [the animal] fell from this side [which was extended], in which [case the second digger would be responsible as] he increased the risk of injury, or whether it fell from the other side, in which case [the second digger would not be to blame, as] he diminished the unhealthy air in the pit.

It was stated: In regard to a pit as deep as it is wide [there is a difference of opinion between] Rabbah and R. Joseph, both of whom made their respective statements in the name of Rabbah b. Bar Hanah who said it in the name of R. Mani. One said that there is always unhealthy air in a pit unless where its width is greater than its depth,[19] the other said that there could never be unhealthy air in a pit unless where its depth was greater than its width.[20]

IF THE FIRST ONE[21] PASSED BY AND DID NOT COVER IT . . . From what point of time will the first one[21] be exempt from responsibility? — [There was a difference of opinion here between] Rabbah and R. Joseph, both of whom made their respective statements in the name of Rabbah b. Bar Hanah who said it in the name of R. Mani. One said, from the moment when the first partner leaves the second in the act of using the well; the other, from the moment when he hands over the cover of the well to him. [The same difference[22] is found] between the following Tannaim: If one [partner] was drawing water from a well and the other came along and said to him, ‘Leave it to me as I will also draw water’, as soon as the first left the second in the act of using it he would become exempt [from any responsibility]. R. Eliezer b. Jacob said: [The exemption commences] from the time that the first hands over the cover to the second. In regard to what principle do they differ? — R. Eliezer b. Jacob held that there is bererah[23] [so that] the one [partner] was drawing water from his own[24] and so also the other [partner] was drawing the water from his own,[25] whereas the Rabbis maintained that there is no bererah.[26] Rabina thereupon said: They[27] have followed here the same line of reasoning as elsewhere, as we have learnt, Where partners have vowed not to derive benefit from one another they would not be allowed to enter premises jointly owned by them. R. Eliezer b. Jacob, however, says: The one partner enters his own and the other partner enters his own.[28] [Now, it was asked there,] in regard to what principle did they differ? — R. Eliezer b. Jacob held that there is bererah so that the one partner would thus be entering his own and the other partner would similarly be entering his own, whereas the Rabbis maintained that there is no bererah.

R. Eleazar said: If a man sells a pit to another, as soon as he hands over the cover of the pit to him, the conveyance is complete. What are the circumstances? If money was paid, why was the conveyance not completed by the money?[29] If possession was taken [of the pit], why was the conveyance not completed by possession?[29] — In fact, we suppose possession to have been taken [of the pit], and it was still requisite for the seller to say to the buyer, ‘Go forth, take possession and become the owner’,[30] but as soon as he handed over the cover to him, this was equivalent [in the eyes of the law] to his saying to him, ‘Go forth, take possession and complete the conveyance.’

R. Joshua b. Levi said: If a person sells a house to another

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(1) Making them all liable.

(2) Who in the case of mere injury makes them all liable.

(3) Making the second liable in all cases.

(4) Hence the liability upon all of them in the former Baraitha.

(5) V. p. 296, n. 7.

(6) As where its width was more than its depth.

(7) V. p. 296, n. 9.

(8) In which case it stands to reason that the second person only should be liable.

(9) As to whether the second person or both of them would be liable in cases of injury.

(10) As in the case stated by Raba.

(11) And that according to both Rabbi and the Rabbis the second person should not be liable.
(12) By Raba.
(13) And thus released himself from further responsibility.
(14) If an animal fell in and was killed.
(15) And should therefore be subject to the law applicable to a pit of less than ten handbreadths deep.
(16) And should thus be equal to that of a pit ten handbreadths deep.
(17) What liability had he thus incurred?
(18) On account of which he should surely bear responsibility.
(19) Implying that where the width is just equal to the depth there would still be unhealthy air there.
(20) But where the depth just equalled the width there would be no unhealthy air there.
(21) Of the partners.
(22) Between Rabbah and R. Joseph.
(23) I.e., retrospective designation, so that a subsequent selection or definition determines retrospectively a previous state of affairs that was undefined in its nature.
(24) Though this water which he subsequently drew was by no means defined at the time when the partnership was formed.
(25) So that one partner does not use the water of the other to become thereby a borrower of it and thus enter into responsibility regarding it.
(26) So that the water drawn by each of them consists of two parts: one from his own and the other from that of his fellow-partner, with reference to which he in the position of borrower, assuming thus full responsibility also for the part of the partner who is the lender.
(27) The Rabbis and R. Eliezer b. Jacob.
(28) And are consequently not deriving any benefit from one another. (Ned. 45b).
(29) In accordance with Kid. I, 5.
(30) B.B. 53a.

Talmud - Mas. Baba Kama 52a

as soon as he hands over the key to him, the conveyance is complete. What are the circumstances? If money was previously paid, why was the conveyance not completed by the money? If possession was taken, why was the conveyance not completed by possession? — We suppose that in fact possession was taken [of the house], and it was still requisite for the seller to say to the buyer, ‘Go forth, take possession and become the owner’, but as soon as he handed over the key to him, this was equivalent [in the eye of the law] to his saying to him, ‘Go forth, take possession and complete the conveyance.’

Resh Lakish said in the name of R. Jannai: If a man sells a herd to his neighbour, as soon as he has handed over the mashkokith[1] to him, the conveyance is complete. What are the circumstances? If possession by pulling [has already taken place], why was the conveyance not completed by the act of pulling? If delivery [of the flock has already taken place], why was the conveyance not completed by the act of delivery?[2] — We suppose in fact that possession by pulling [has already taken place], and it was still necessary for the seller to say to the buyer, ‘Go forth, take possession by pulling and become the owner,’[3] but as soon as he handed over the mashkokith to him, this was equivalent [in the eye of the law] to his saying, ‘Go forth, take possession by pulling and complete the conveyance.’ What is mashkokith? — Here[4] they explained it: ‘The bell’. R. Jacob, however, said: ‘The goat that leads the herd.’ So too a certain Galilean[5] in one of his discourses before R. Hisda [said] that when the shepherd becomes angry with his flock he appoints for a leader one which is blind.

MISHNAH. IF THE FIRST ONE[6] COVERED IT AND THE SECOND ONE CAME ALONG AND FOUND IT OPEN AND [NEVERTHELESS] DID NOT COVER IT, THE SECOND WOULD BE LIABLE. IF [AN OWNER OF A PIT] HAD COVERED IT PROPERLY, AND AN

OX OR AN ASS [NEVERTHELESS] FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT.[7] BUT IF HE DID NOT COVER IT PROPERLY, AND AN OX OR ASS FELL INTO IT AND WAS KILLED, HE WOULD BE LIABLE. IF IT FELL FORWARD, [BEING FRIGHTENED] ON ACCOUNT OF THE NOISE OF DIGGING, THERE WOULD BE LIABILITY, BUT IF IT FELL BACKWARD ON ACCOUNT OF THE NOISE OF DIGGING, THERE WOULD BE EXEMPTION.[8] IF AN OX FELL INTO IT TOGETHER WITH ITS IMPLEMENTS WHICH THEREBY BROKE, [OR] AN ASS TOGETHER WITH ITS BAGGAGE WHICH WAS THEREBY TORN, THERE WOULD BE LIABILITY FOR THE BEAST BUT EXEMPTION AS REGARDS THE INANIMATE OBJECTS.[9] IF THERE FELL INTO IT AN OX, DEAF, ABNORMAL OR SMALL,[8] THERE WOULD BE LIABILITY. BUT IN THE CASE OF A SON OR A DAUGHTER,[10] A MANSERVANT OR A MAIDSERVANT, THERE WOULD BE EXEMPTION.[9]

GEMARA. Up to when would the first partner be exempt [altogether]? — Rab said: Until he had time to learn [that the cover had been removed]. Samuel said: Until there was time for people to tell him. R. Johanan said: Until there was time for people to tell him and for him to hire labourers and cut cedars to cover it [again].

IF [AN OWNER OF A PIT] HAD COVERED IT PROPERLY AND AN OX OR AN ASS [NEVERTHELESS] FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT. But seeing that he covered it properly, how indeed could the animal have fallen [into it]? — R. Isaac b. Bar Hanah said: We suppose [the boards of the cover] to have decayed from within.[11] It was asked: Suppose he had covered it with a cover which was strong enough for oxen but not strong enough for camels, and some camels happened to come first and weaken the cover and then oxen came and fell into the pit,[12] what would be the legal position? — But I would ask what were the circumstances? If camels frequently passed there, should he not be considered careless?[13] If camels did not frequently pass there, should he not be considered innocent?[14] — The question applies to the case where camels used to pass occasionally, [and we ask]: Are we to say that since from time to time camels passed there he was careless,[13] since he ought to have kept this in mind; or do we rather say that since at the time the camels had not actually been there, he was innocent? — Come and hear: IF HE HAD COVERED IT PROPERLY, AND AN OX OR AN ASS [NEVERTHELESS] FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT.[15] Now, what were the circumstances? If it was covered properly, both as regards oxen and as regards camels, how then did any one fall in there? Does it therefore not mean ‘properly as regards oxen,

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(1) V. the discussion later.
(2) In accordance with Kid. I, 4; v. also supra 11b.
(3) V. p. 300, n. 5.
(4) In Babylon.
(5) Who delivered popular discourses at R. Hisda's; cf. Shab 88a.
(6) Of the partners.
(7) As he is surely not to blame.
(8) V. the discussion in Gemara.
(9) As supra 25b.
(10) Though a minor.
(11) But not noticeable from the outside.
(12) For if the camels had fallen in he would have certainly been liable.
(13) Even regarding oxen, for he should have thought of the possibility that camels might come first and weaken the cover and oxen would then fall in.
(14) As he is surely not to blame.
(15) V. p. 301, n. 7.

but not properly as regards camels'?[1] Again, if camels frequently passed, why should he be exempt where he had been so careless? If [on the other hand] camels did not frequently pass, is it not obvious [that he is exempt since] he was innocent? Did it therefore not refer to a case where camels used to pass occasionally, and it so happened that when camels passed they weakened the cover so that the oxen coming [later on] fell? And [in such cases] the text says, 'he would be exempt.' Does not this prove that since at that time camels had not actually been there he would be considered innocent? — I would say, no. For it might still [be argued that the pit had been covered] properly both as regards oxen and as regards camels; and as for the difficulty raised by you 'how did any one fall in there?', [this has already been removed by] the statement of R. Isaac b. Bar Hanah that [the boards of the cover] decayed from within.[2]

Come and hear: BUT IF HE DID NOT COVER IT PROPERLY AND AN OX OR AN ASS FELL INTO IT AND WAS KILLED, HE WOULD BE LIABLE. Now what were the circumstances? If you say that it means not properly covered as regards oxen', [which would of course imply] also 'not properly covered as regards camels', is it not obvious? Why then was it necessary to state liability? Does it not therefore mean 'that it was properly covered as regards oxen but not properly covered as regards camels'?[1] [Again, I ask,] what were the circumstances? If camels frequently passed [is it not obvious that] he was careless? If [on the other hand] no camels were to be found there, was he not innocent? Does it not [therefore speak of a case] where camels used to arrive occasionally and it so happened that camels in passing had weakened the cover so that the oxen coming [later] fell in? And [in reference to such a case] the text states liability. Does this not prove that since from time to time camels did pass he should be considered careless as he ought to have borne this fact in mind? — In point of fact [I might reply, the text may still speak of a pit covered] 'properly' as regards oxen though 'not properly' as regards camels, and [of one where] camels frequently passed, and as for your question. '[Is it not obvious that] he was careless?' [the answer would be that] since the prior clause contains the words, 'If he covered it properly', the later clause has the wording, 'If he did not cover it properly'.[3]

Some report that certainly no question was ever raised about this, for since the camels used to pass from time to time he was certainly careless, as he ought to have borne this fact in mind. If a question was raised, it was on the following point: Suppose he covered it with a cover that was strong enough for oxen but not strong enough for camels and in a place where camels frequently passed, and it decayed from the inside, what should be the legal position? Should we say miggo,[4] [i.e.,] since he had been careless with respect to camels he ought to be considered careless also with respect to the [accidental] decay; or should we not say miggo? — Come and hear; IF HE COVERED IT PROPERLY AND AN OX OR AN ASS FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT. And it was stated in connection with this ruling that R. Isaac b. Bar Hanah explained that the boards of the cover had decayed from the inside. Now, what were the circumstances? If we say that it means 'properly covered as regards oxen' and also properly covered as regards camels', and that it had decayed from the inside, is it not obvious that there should be exemption? For indeed what more could he have done? Does it not mean, therefore, properly covered as regards oxen though not properly covered as regards camels', and in a place where camels frequently passed, and it so happened that the cover decayed from the inside? And [in such a case] the text states exemption. Does this not prove that we should not say miggo, [i.e.] since he was careless with respect to camels he ought to be considered careless with reference to the decay? — No, it might still [be argued that the pit was covered] properly as regards camels as well as oxen, and it so happened that it became decayed from the inside. And as for your question 'if it becomes decayed [from inside] what indeed should he have done?' [the answer would be that] you might have thought that he ought to have come frequently to the cover and knocked it [to test its soundness], and we are therefore told [that he was not bound to do this].

Come and hear; BUT IF HE DID NOT COVER IT PROPERLY, AND AN OX OR AN ASS FELL INTO IT AND WAS KILLED, HE WOULD BE LIABLE. Now, what were the circumstances? Should you say that it means 'not properly covered as regards oxen, [which would of course imply also] 'not properly covered as regards camels', why then was it necessary to state liability? Does it not therefore mean [that it was covered] properly as regards oxen but not properly as regards camels? But again if camels frequently passed there, [is it not obvious that] he was careless? If [on the other hand] no camels were to be found there, was he not innocent? Does it therefore not deal with a case where camels did frequently pass, but [it so happened] that the cover decayed from the inside? And [in such a case] the text states liability. Does this not prove that we have to say miggo, [i.e.,] since he had been careless with respect to camels, he should be considered careless also with reference to decay?[5] — I would say, No. For it might still [be argued that the pit had been covered] properly as regards oxen but not properly as regards camels, and in a place where camels were to be found frequently, and [it happened that] camels had come along and weakened the cover so that when oxen subsequently came they fell into the pit. And as for your question, 'Is it not obvious that he was careless?' [the answer would be that] since the prior clause contained the words 'If he covered it properly', the later clause similarly uses the wording. 'If he did not cover it [properly]'.

Come and hear; 'If there fell into it an ox that was deaf, abnormal, small, blind or while it walked at night time, there would be liability.[6] But in the case of a normal ox walking during the day there would be exemption.'[7] Why so? Why not say that since the owner of the pit was careless with respect to a deaf animal he should be considered careless also with reference to a normal animal? Does not this show that we should not say miggo.' — This does indeed prove [that we do not say miggo].

IF IT FELL FORWARD etc. Rab said: 'FORWARD' means quite literally 'on its face',[8] and 'BACKWARD' means also literally, 'on its back',[9]

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(1) And it so happened that camels weakened the cover, and when an ox or ass came later on it fell in.

(2) V. p. 302, n. 4.

(3) Though this ruling is obvious.

(4) Cf. Glos.

(5) no note.

(6) Infra 54b.

(7) As the owner of the pit could hardly have thought it likely that a normal ox walking during the day would fall into a pit.

(8) In which case it died from suffocation and there would be liability.

(9) Where the death could not have been caused by suffocation and there is therefore exemption.

Talmud - Mas. Baba Kama 53a

the fall in each case being into the pit. Rab thus adhered to his own view as [elsewhere][1] stated by Rab, that the liability in the case of Pit imposed by the Torah[2] is for injury caused by the unhealthy air [of the pit] but not for the blow [given by it]. Samuel, however, said that where the ox fell into the pit, whether on its face or on its back, there would always be liability, since Samuel adhered to the view stated by him [elsewhere][1] that [the liability is] for the unhealthy air, and a plus forte raison for the blow. How then are we to understand [the words 'Where it fell] BACKWARD ON ACCOUNT OF THE NOISE OF DIGGING', in which case [we are told] there should be exemption? — As, for instance, where it stumbled over the pit and fell to the back of the pit, [i.e.,] outside the pit.[3]

An objection was raised [from the following: If it fell] inside the pit whether on its face or on its

back there would be liability. Is not this a contradiction of the statement of Rab? — R. Hisda replied: Rab would admit that in the case of a pit in private ground[4] there would be liability, as the plaintiff could argue against the defendant: ‘Whichever way you take it, if the animal died through the unhealthy air, was not the unhealthy air yours? If [on the other hand] it died through the blow, was not the blow given by your ground?[5] Rabbah, however, said: We are dealing here[6] with a case where the animal turned itself over; it started to fall upon its face but [before reaching the bottom of the pit it] turned itself over and finally fell upon its back, so that the unhealthy air which affected it [at the outset] really did the mischief. R. Joseph. however, said that we are dealing here[6] with a case where damage was done to the pit by the ox, i.e., where the ox made foul the water in the pit,[7] in which case no difference could be made whether it fell on its face or on its back, as there would always be liability.

R. Hananiah learnt [in a Baraitha] in support of the statement of Rab: [Scripture says] And it fall,[8] [implying that there would be no liability] unless where it fell in the usual way of falling.[9] Hence the Sages said: If it fell forward on account of the noise of digging there would be liability, but if it fell backward on account of the noise of digging there would be exemption, though in both cases [it fell] into the pit.

The Master stated: Where it fell forward on account of the noise of digging there would be liability. But why not say that it was the digger who caused it?[10] — R. Shimi b. Ashi thereupon said: This ruling is in accordance with R. Nathan, who stated that it was the owner of the pit who did the actual damage, and whenever no payment can be enforced from one [co-defendant] it is made up from the other[11] as indeed it has been taught: ‘If an ox pushes another ox into a pit, the owner of the ox is liable, while the owner of the pit is exempt. R. Nathan, however, said that the owner of the ox would have to pay a half [of the damages] and the owner of the pit would have to pay the other half.’ But was it not taught: R. Nathan says: The owner of the pit has to pay three-quarters, and the owner of the ox one quarter? — There is no contradiction, as the latter statement refers to Tam[12] and the former to Mu'ad.[13] On what principle did he base his ruling in the case of Tam? If he held that this [co-defendant] should be considered [in the eye of the law] as having done the whole of the damage, and so also the other co-defendant as having done the whole of the damage, why should not the one pay half and the other also pay half? If [on the other hand] he held that the one did half the damage and the other one also did half the damage, then let the owner of the pit pay half [of the damages] and the owner of the ox a quarter,[14] while the remaining quarter will be lost to the plaintiff? Raba thereupon said: R. Nathan was a judge, and went down to the depth of the law:[15] He did in fact hold that the one was considered as having done the whole of the damage and so also the other was considered as having done the whole of the damage; and as for your question ‘Why should the one not pay half and the other half?’ [he could answer] because the owner of the ox[16] could say to the owner of the pit, ‘What will this your joining me [in the defence] benefit me?’[17] Or if you wish you may [alternatively] say that R. Nathan did in fact hold that the one did half of the damage and the other did half of the damage, and as for your question, ‘Why not let the owner of the pit pay half and the owner of the ox a quarter while the remaining quarter will be lost to the plaintiff?’ he might answer, because the owner of the killed ox would be entitled to say to the owner of the pit, ‘As I have found my ox in your pit, you have killed it. Whatever is paid to me by the other defendant I do not mind being paid [by him], but whatever is not paid to me by him, I will require to be paid by you.’[18]

Raba said: If a man puts a stone near the mouth of a pit [which had been dug by another person] and an ox coming along stumbles over the stone and falls into the pit, we are here brought face to face[19] with the difference of opinion between R. Nathan and the Rabbis.[20] But is this not obvious? — You might perhaps have said that [the difference of opinion was confined to that case] where the owner of the pit could say to the owner of the ox, ‘Had not my pit been there at all, your ox would in any case have killed the other ox,’ whereas in this case the person who put the stone [near the pit]

could certainly say to the owner of the pit, ‘If not for your pit what harm would my stone have done? Were the ox even to have stumbled over it, it might have fallen but would have got up again.’ We are therefore told [by this] that the other party can retort, ‘If not for your stone, the ox would not have fallen into the pit at all.’

It was stated:

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(1) Supra p. 289.

(2) Ex. XXI, 33-34.

(3) In which case the pit acted only as a secondary cause.

(4) Where the ground round about the pit has been abandoned, while the pit itself and the ground of it still remain with the owner.

(5) Since the pit and its ground remained yours.

(6) Where liability was stated.

(7) Cf. Mishnah 47b.

(8) Ex. XXI, 33.

(9) Cf. supra p. 290.

(10) Why then should the owner of the pit be liable? The digger too should also be exempt as he was but a remote cause to the damage that resulted.

(11) Cf. supra 13a.

(12) In which case the owner of the ox will pay quarter and the owner of the pit three quarters.

(13) Where both of them will pay equally.

(14) Which is half of the payment in the case of Tam.

(15) B.M. 117b; cf. also Hor. 13b.

(16) In the case of Tam.

(17) If I will have to pay half damages which is the maximum payment in my case.

(18) V. p. 307, n. 7. [And similarly in the case of our Mishnah since he cannot claim any damages from the digger, who was but a secondary cause, he is compensated by the owner of the pit.]

(19) As to whether the digger of the pit or the one who put the stone should be liable.

(20) According to whom the one who put the stone would alone have to pay.

Talmud - Mas. Baba Kama 53b

Where an ox [of a private owner] together with an ox that was sacred[1] but became disqualified[2] [for the altar], gored [an animal]. Abaye said that the private owner would have to pay half damages,[3] whereas Rabina said that he would have to pay quarter damages.[3] Both the one and the other are speaking of Tam, but while Rabina followed the view of the Rabbis,[4] Abaye followed that of R. Nathan.[5] Or if you wish you may say that both the one and the other followed the view of the Rabbis,[4] but while Rabina was speaking of Tam[6] Abaye was speaking of Mu'ad. Some report that Abaye stated half damages and Rabina full damages. The one ruling like the other would refer to the case of Mu'ad, but while one[7] followed the Rabbis[8] the other[9] followed the view of R. Nathan.[10] If you wish you may say that the one ruling like the other followed the view of R. Nathan, but while ones was speaking of Mu'ad, the other[7] was speaking of Tam.[11]

Raba said: If an ox along with a man pushes [certain things] into a pit, on account of Depreciation[12] they would all [three][13] be liable, but on account of the four [additional] items[12] or with respect to compensation for the value of [lost] embryos.[14] Man would be liable[15] but Cattle and Pit exempt;[14] in respect of kofer[16] or the thirty shekels[17] for [the killing of] a slave, Cattle would be liable[18] but Man and Pit exempt;[19] in respect of damage done to inanimate objects or to a sacred ox which had become disqualified [for the altar], Man and Cattle would be liable but Pit exempt, the reason being that Scripture says, And the dead beast shall be his,[20] [implying that it was only] in the case of an ox whose carcass could be his[21] [that there would be liability], excluding thus the case of

this [ox] whose carcass could not be his.[22] Does this mean that this last point was quite certain to Raba? Did not Raba put it as a query? For Raba asked; If a sacred ox which had become disqualified[23] [for the altar] fell into a pit, what would be the legal position? Shall we say that this [verse], And the beast shall be his, [confines liability to the case of] an ox whose carcass could be his, thus excluding the case of this ox whose carcass could never be his,[22] or shall we say that the words And the dead beast shall be his are intended only to lay down that the owners [plaintiffs] have to retain the carcass as part payment?[24] [The fact is that] after raising the question he himself solved it. But whence [then] would he derive the law that the owners [plaintiffs] have to retain the carcass as part payment ? — He would derive it from the clause and the dead shall be his own[25] [inserted in the case] of Cattle. What reason have you for rising [the clause] And the dead shall be his own [in the context dealing] with Cattle to derive from it the law that the owners [plaintiffs] have to retain the carcass as part payment, while you rise [the clause] And the dead beast shall be his[26] [in the context dealing] with Pit [to confine liability] to an animal whose carcass could be his?[27] Why should I not reverse [the implications of the clauses]? — It stands to reason that the exemption should be connected with Pit, since there is in Pit exemption also in the case of inanimate objects.[28] On the contrary, should not the exemption be connected with Cattle, since in Cattle there is exemption from half damages [in the case of Tam]? — In any case, exemption from the whole payment is not found [in the case of cattle].

WHERE THERE FELL INTO IT AN OX TOGETHER WITH ITS IMPLEMENTS WHICH THEREBY BROKE etc. This Mishnaic ruling is not in accordance with R. Judah. For it was taught: R. Judah imposes liability for damage to inanimate objects done by Pit. But what was the reason of the Rabbis?[29] — Because Scripture says, And an ox or an ass fall therein,[30] [implying] 'ox' but not 'man',[31] 'ass' but not 'inanimate objects'. R. Judah, [however, maintained that the word] 'or' [was intended] to describe inanimate objects while the [other] Rabbis

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(1) Which is not subject to the law of damage; cf. supra pp. 50ff.

(2) Through a blemish. [As long as such an ox had not been redeemed, it is regarded as an ox of the sanctuary, v. supra 36b. Cur. edd. add in brackets, 'e.g., a first-born ox which cannot be redeemed.' It is however questionable whether such an ox is not to be considered a common animal, having regard to the fact that being blemished it is entirely the priests, no share thereof being offered up on the altar. MS. M. omits these words.]

(3) And the remaining part will be lost to the plaintiff.

(4) Maintaining that each defendant is only liable for himself.

(5) Who stated that if no payment can be enforced from a defendant, his co-defendant has to make it up.

(6) Where quarter damages is half of the maximum payment.

(7) Abaye.

(8) V. p. 309, n. 6.

(9) Rabina.

(10) V. p. 309, n. 7.

(11) Where half damages is the maximum payment.

(12) Cf. supra 26a.

(13) I.e. the man, the owner of the pit and the owner of the ox.

(14) V. supra 49a.

(15) Ex. XXI, 22.

(16) Ibid. 29-30.

(17) Ibid. 32.

(18) Ibid. 28-32.

(19) Supra 28b and 35a

(20) Ex. XXI, 34.

(21) I.e., could be used by him as food for dogs and like purposes.

(22) As no use could lawfully be made of a carcass of a sacred animal that died.

(23) Through a blemish.

(**24**) Supra 10b.
(**25**) Ex. XXI, 36.
(**26**) V. p. 310. n. 14.
(**27**) V. p. 310. n. 15.
(**28**) V. supra p. 302, n. 2.
(**29**) For maintaining exemption.
(**30**) Ex. XXI, 33.
(**31**) Dying through falling into a pit.

Talmud - Mas. Baba Kama 54a

[argued that the word] 'or' was necessary as a disjunctive.[1] And R. Judah? — [He maintained that] the disjunction could be derived from [the use of the singular] And it fall.[2] And the Rabbis? — [They could reply that even the singular] And it fall could also imply many [things].[3]

May I say [that the expression] And it fall is intended as a generalisation,[4] while an ox or an ass [follows as] a specification, and where a generalisation is followed by a specification, the generalisation does not apply to anything save what is enumerated in the specification,[5] so that only in the case of an ox or an ass should there be liability, but not for any other object whatsoever? — No; for it could be said that [the clause] The owner of the pit shall make it good[6] generalises again. Now where there is a generalisation preceding a specification which is in its turn followed by another generalisation, you include only such cases as are similar to the specification.[5] [Thus here] as the specification refers to objects possessing life, so too all objects to be included [must be such] as possess life.[7] But [why not argue] since the specification refers to [animate] objects whose carcass would cause defilement whether by touching or by carrying,[8] should we not include [only animate] objects whose carcass would similarly cause defilement whether by touching or by carrying,[9] so that poultry would thus not be included?[10] — If so, the Divine Law would have mentioned only one object in the specification. But which [of the two][11] should the Divine Law have mentioned? Had it inserted [only] 'ox', I might have said that an animal which was eligible to be sacrificed upon the altar[12] should be included, but that which was not eligible to be sacrificed upon the altar[13] should not be included.[14] If [on the other hand] the Divine Law had [only] 'ass', I might have thought that an animal which was subject to the sanctity of firstborn[15] should be included, but that one which was not subject to the sanctity of firstborn[16] should not be included.[17] [But still why indeed not exclude poultry?] Scripture says: 'And the dead shall be his' [implying] all things that are subject to death. [If so,] whether according to the Rabbis who exclude inanimate objects, or according to R. Judah who includes inanimate objects, [the question maybe raised] are inanimate objects subject to death? It may be said that their breaking is their death. But again according to Rab who stated[18] that the liability imposed by the Torah in the case of Pit was for the unhealthy air [of the pit] but not for the blow [it gave], would either the Rabbis or R. Judah maintain that inanimate objects could be damaged by unhealthy air? — It may be said that [this could happen] with new utensils that burst in bad air. But was not this [clause] And the dead shall be his[19] required for the ruling of Raba?[20] For did Raba not say,[21] 'Where a sacred ox which had become disqualified [for the altar] fell into a pit, there would be exemption', as it is said: And the dead shall be his [implying that it was only] in the case of an ox whose carcass could be his [that there would be liability] and thus excluding the case of this ox whose carcass could never be his? — But Scripture says: He should give money unto the owner of it[19] [implying] that everything is included which has an owner. If so, why not also include even inanimate objects and human beings?[22] — Because Scripture says specifically 'an ox', [implying] and not 'a man', 'an ass' [implying] and not inanimate objects. Now according to R. Judah who included inanimate objects we understand the term 'ox' because it was intended to exclude 'man', but what was intended to be excluded by the term an ass? — Raba therefore said:[23] The term 'ass' in the case of Pit, on the view of R. Judah, as well as the term 'sheep' [occurring in the section dealing] with lost property[24] on the view unanimously accepted, remains difficult to

explain.

IF THERE FELL INTO IT AN OX, DEAF, ABNORMAL OR SMALL THERE WOULD BE LIABILITY. What is the meaning of ‘AN OX, DEAF, ABNORMAL OR SMALL’? It could hardly be suggested that the meaning is ‘an ox of a deaf owner, an ox of an abnormal owner, an ox of a minor’, for would not this imply exemption in the case of an ox belonging to a normal owner?[25] — R. Johanan said: [It means] ‘an ox which was deaf, an ox which was abnormal, an ox which was small.’

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(1) So that it should not be thought that there should be no liability unless both ox and ass fell in together.
(2) [So that ‘or’ carries the disjunction further to include utensils attached to the animal, v. Malbim, a.l.]
(3) As in Ex. XXXVI, 1; Deut. XIII, 3; I Sam. XVII, 34 etc.
(4) To include everything.
(5) [This is one of the principles of hermeneutics (Kelal u-ferat) according to R. Ishmael, v. Sanh. (Sonc. ed.) p. 12, n. 9.]
(6) Ex. XXI, 34.
(7) Thus excluding inanimate objects.
(8) Lev. XI, 39-40.
(9) Lev. ibid. 26-28.
(10) As these do not cause defilement either by touching or by carrying.
(11) Ox and ass.
(12) As was the case with ox.
(13) Such as an ass, horse, camel and the like.
(14) Hence ass was inserted to include also animals not eligible to be sacrificed upon the altar.
(15) As was the case with ass; cf. Ex. XIII, 13.
(16) Such as e.g., a horse, camel and the like.
(17) Hence ‘ox’ was inserted, for though the species of ox is subject to the sanctity of firstborn and would in no case have been excluded, its insertion being thus superfluous was surely intended to include even those animals which are not subject to the sanctity of firstborn.
(18) Supra p. 289.
(19) Ex. XXI, 34.
(20) [How then deduce from it liability in case of poultry?]
(21) Supra p. 296.
(22) E.g., slaves.
(23) Cf. B.M. 27a.
(24) Deut. XXII, 1-3.
(25) Which is of course not the case at all

Talmud - Mas. Baba Kama 54b

Still, would not this imply exemption in the case of an ox which was normal?[1] — R. Jeremiah thereupon said: A particularly strong case is taken:[2] There could be no question that in the case of a normal ox there should be liability, but in the case of an ox which is deaf or abnormal or small it might have been thought that it was its deafness that caused [the damage to it] or that it was its smallness that caused it [to fall] so that the owner of the pit should be exempt.[3] We are therefore told [that even here he is liable]. Said R. Aha to Rabina: But it has been taught: If a creature possessing sense fell into it there would be exemption. Does this not mean an ox possession sense? — He replied: No, it means a man. [If that is so,] would not this imply that only in the case of a man who possesses sense that there would be exemption, whereas if he did not possess sense there would be liability, [and how can this be, seeing that] it is written ‘ox’ [which implies] ‘and not man’? — The meaning of ‘one possessing sense’ must therefore be ‘one of the species of rational being’. But he again said to him: Was it not taught: If there fell into it an ox possessing sense there would be

exemption? — Raba therefore said: [The Mishnaic text indeed means] precisely an ox which was deaf, an ox which was abnormal, an ox which was small, for in the case of an ox which was normal there would be exemption, the reason being that such an ox should have looked more carefully while walking. So indeed was it taught likewise:[4] Where there fell into it an ox which was deaf, or abnormal or small, or blind or while walking at night time, there would be liability whereas if it was normal and walking during the day there would be exemption.

MISHNAH. BOTH AN OX AND ANY OTHER ANIMAL ARE ALIKE [BEFORE THE LAW WITH REFERENCE] TO FALLING INTO A PIT,[5] TO EXCLUSION FROM MOUNT SINAI,[6] TO PAYING DOUBLE [IN CASES OF THEFT],[7] TO RESTORING LOST PROPERTY,[8] TO UNLOADING [BURDENS TOO HEAVY FOR AN ANIMAL TO BEAR],[9] TO ABSTAINING FROM MUZZLING,[10] TO HETEROGENEOUS ANIMALS [BEING COUPLED[11] OR WORKING TOGETHER],[12] TO SABBATH REST.[13] SO ALSO BEASTS AND BIRDS ARE LIKE THEM. IF SO WHY DO WE READ, AN OX OR AN ASS? ONLY BECAUSE SCRIPTURE SPOKE OF THE MORE USUAL [ANIMALS IN DOMESTIC LIFE].

GEMARA. [WITH REFERENCE] TO FALLING INTO A PIT, since it is written, He should give money unto the owner of it,[14] [to include] everything that an owner has, as indeed already stated.[15] TO EXCLUSION FROM MOUNT SINAI [as it is written] Whether it be animal or man, it shall not live.[6] Beast[16] is included in 'animal' and [the word] 'whether' includes 'birds'. TO PAYING DOUBLE, as we said elsewhere:[17] [The expression] for all manner of trespass[18] is comprehensive. TO RESTORING LOST PROPERTY; [this is derived from the words] with all lost things of thy brother.[19] TO UNLOADING [BURDENS TOO HEAVY FOR AN ANIMAL TO BEAR]; we derive this [by] comparing [the term] 'ass'[9] with [the term] 'ass'[13] [occurring in connection] with the Sabbath.[20] TO [ABSTAINING FROM] MUZZLING; this we learn [similarly by] comparing [the term] 'ox'[10] with [the term] 'ox'[13] [used in connection] with Sabbath.[20] TO HETEROGENEOUS ANIMALS; the rule as regards ploughing we learn [by comparing the term] 'ox'[12] with the term 'ox'[13] used [in connection] with Sabbath;[20] and the rule as regards coupling we learn [by comparing the term] 'thy cattle'[11] with the term 'thy cattle'[13] [used in connection] with Sabbath. But whence are [all these rules known] to us in the case of Sabbath [itself]? — As it was taught: R. Jose says in the name of R. Ishmael: In the first Decalogue[21] it is said thy manservant and thy maidservant and thy cattle[22] whereas in the second Decalogue[23] it is said thy ox and thy ass and any of thy cattle.[24] Now, are not 'ox' and 'ass' included in 'any of thy cattle'? Why then were they singled out? To tell us that just as in the case of the 'ox and ass' mentioned here,[24] beasts and birds are on the same footing with them.[25] So also [in any other case where 'ox and ass' are mentioned] all beasts and birds are on the same footing with them. But may we not say that 'thy cattle' in the first Decalogue[21] is a generalisation, and 'thy ox and thy ass' in the second Decalogue is a specification, and [we know that] where a generalisation is followed by a specification, the generalisation does not include anything save what is mentioned in the specification,[26] [whence it would follow that only] 'ox and ass' are [prohibited][27] but not any other thing? — I may reply that the words 'and any of thy cattle' in the second Decalogue constitute a further generalisation, so that we have a generalisation preceding a specification which in its turn is followed by another generalisation; and in such a case you include also[28] that which is similar to the specification,[26] so that as the specification [here] mentions objects possessing life, there should thus also be included all objects possessing life. But, I may say, the specification mentions [living] things whose carcass would cause defilement whether by touching or by carrying.[29] [Why not say that] there should also be included all [living] things whose carcass would similarly cause defilement whether by touching or by carrying,[30] so that birds would thus not be included?[31] — I may reply: If that were the case, the Divine Law would have inserted only one [object in the] specification. But which [of the two][32] should the Divine Law have inserted? For were the Divine Law to have inserted [only] 'ox', I might have thought than an animal which was eligible to be sacrificed upon the altar[33] should be included, but one which was not eligible to be sacrificed upon the altar[34] should not be included, so that the Divine Law was thus

compelled to insert also 'ass'.[35] If [on the other hand] the Divine Law had inserted [only] 'ass', I might have thought that [an animal which was subject to the] sanctity of first birth[36] should be included, but that which was not subject to the sanctity of first birth[37] should not be included; the Divine Law therefore inserted also 'ox'.[38] It must therefore [be said that] and all thy cattle is [not merely a generalisation but] an amplification.[39] [Does this mean to say that] wherever the Divine Law inserts [the word] 'all', it is an amplification? What about tithes where [the word] 'all' occurs and we nevertheless expound it as an instance of generalisation and specification? For it was taught:[40] And thou shalt bestow that money for all that thy soul lusteth after[41] is a generalisation; for oxen, or for sheep, or for wine, or for strong drink[41] is a specification; or for all that thy soul desireth is again a generalisation. Now, where a generalisation precedes a specification which is in its turn followed by another generalisation you cannot include anything save what is similar to the specification. As therefore the specification [here][41] mentions products obtained from products[42] and which spring from the soil[43] there may also be included all kinds of products obtained from products[44] and which spring from the soil.[45] [Does this not prove that the expression 'all' was taken as a generalisation, and not as an amplification?][46] — I might say that [the expression] 'for all'[47] is but a generalisation, whereas 'all' would be an amplification. Or if you wish I may say that [the term] 'all' is also a generalisation, but in this case[48] 'all' is an amplification. For why was it not written And thy cattle just as in the first Decalogue? Why did Scripture insert here 'and all thy cattle' unless it was meant to be an amplification? — Now that you decide that 'all' is an amplification[49] why was it necessary to have 'thy cattle' in the first Decalogue and 'ox and ass' in the second Decalogue? — I may reply that 'ox' was inserted [to provide a basis] for comparison of 'ox' with [the term] 'ox' [used in connection] with muzzling; so also 'ass' [to provide a basis] for comparison of 'ass' with the term 'ass' [used in connection] with unloading; so again 'thy cattle' [to provide a basis] for comparison of 'thy cattle' with [the expression] 'thy cattle' [occurring in connection] with heterogeneity. If that is the case [that heterogeneity is compared with Sabbath breaking] why should even human beings not be forbidden[50] [to plough together with an animal]? Why have we learnt; A human being is allowed to plough [the field] and to pull [a waggon] with any of the beasts?[51] — R. Papa thereupon said: The reason of this matter was known to the Papunean,[52] that is R. Aha b. Jacob [who said that as] Scripture says that thy manservant and thy maidservant may rest as well as thou[48] [it is only] in respect of the law of rest that I should compare them [to cattle] but not of any other matter.

R. Hanina b. 'Agil asked R. Hiyya b. Abba: Why in the first Decalogue is there no mention of wellbeing,[53] whereas in the second Decalogue

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(1) And why should this be so?

(2) Lit., 'He states (a case) where there can be no question'.

(3) Putting in contributory negligence on the part of the plaintiff as a defence.

(4) Supra p. 305.

(5) V. Ex. XXI, 33.

(6) V. ibid., XIX, 13.

(7) V. ibid. XXII, 3.

(8) V. Deut. XXII, 1-3.

(9) V. Ex. XXIII, 5 and Deut. XXII, 4.

(10) V. Deut. XXV, 4.

(11) V. Lev. XIX, 19.

(12) V. Deut. XXII, 10.

(13) V. Ex. XX, 10 and Deut. V, 14.

(14) Ex. XXI, 34.

(15) Supra p. 313.

(16) [I.e., non-domesticated animals.]

(17) Infra p. 364.

(18) Ex. XXII, 8.
(19) Deut. XXII, 3.
(20) As explained anon.
(21) Ex. XX, 2-17
(22) Ibid. 10.
(23) Deut. V, 6-18.
(24) Ibid. 14.
(25) As will be shown anon.
(26) V. supra p. 312, n. 1.
(27) To work on the Sabbath.
(28) Lit., 'only'.
(29) Lev. XI, 39-40.
(30) Ibid. 26-28.
(31) As these do not cause defilement either by touching or by carrying.
(32) Ox and ass.
(33) As was the case with ox.
(34) Such as an ass, horse, camel and the like.
(35) Which would include also animals not eligible to be sacrificed upon the altar.
(36) As was the case with ass; cf. Ex. XIII, 13.
(37) Such as horses and camels and the like.
(38) To include those animals which otherwise would have been excluded; for since the species of ox is subject to the sanctity of first-born and would in no case have been excluded, its insertion being thus superfluous was surely intended to include even those animals which are not subject to the sanctity of first-born. On the other hand, birds should still be excluded since, unlike ox and ass, their carcasses do not defile, either by touching or by carrying.
(39) I.e., the term 'all' does more than generalize, for it includes everything. [On the difference between amplification ribbuy and generalisation kelal, v. Shebu. (Sonc. ed.) p. 12, n. 9.]
(40) V. infra 63a.
(41) Deut. XIV, 26.
(42) Such as wine from grapes.
(43) Which characterises also cattle.
(44) Excluding water, salt and mushrooms.
(45) Thus excluding fishes.
(46) Which would have included all kinds of food and drink.
(47) [בכל , the particle ב ('for') is taken as partitive.]
(48) In Deut. V, 14.
(49) At least in the case of the Sabbath, including thus all kinds of living creatures.
(50) For in the case of Sabbath, servants are included.
(51) Kil. VIII, 6.
(52) [Papunia was a place between Bagdad and Pumbeditha, v. B.B. (Sonc. ed.) p. 79, n. 8.]
(53) For honouring father and mother; v. Ex. XX, 12.

Talmud - Mas. Baba Kama 55a

there is a mention of wellbeing?[1] — He replied: While you are asking me why wellbeing is mentioned there, ask me whether wellbeing is in fact mentioned or not, as I do not know whether wellbeing is mentioned there or not.[2] Go therefore to R. Tanhum b. Hanilai who was intimate with R. Joshua b. Levi, who was an expert in Aggadah. When he came to him he was told by him thus: 'From R. Joshua b. Levi I have not heard anything on the matter. But R. Samuel b. Nahum the brother of the mother of R. Aha son of R. Hanina, or as others say the father of the mother of R. Aha son of R. Hanina, said to me this: Because the [first tablets containing the] Commandments were destined to be broken.'[3] But even if they were destined to be broken, how should this affect [the mention of wellbeing]? — R. Ashi thereupon said: God forbid! Wellbeing would then have ceased in

Israel.[4]

R. Joshua[5] said: He who sees [the letter] teth[6] in a dream [may regard it as] a good omen for himself. Why so? If because it is the initial letter of [the word] 'Tob' ['good'] written in Scripture,[7] why not say [on the contrary that it is also the initial letter of the verb 'ta'atea'[8] commencing the Scriptural verse] And I will sweep it with the besom of destruction?[9] — We are speaking [here of where he saw in a dream only] one teth [whereas ta'atea contains two such letters]. But still why not say [that it might have referred to the word 'tum'ah'[10] as in the verse] Her filthiness is in her skirts?[11] — We are speaking of [where he saw in a dream the letters] 'teth' and 'beth'.[12] But again why not say [that it might have referred to the verb tabe'u[13] as in the verse], Her gates were sunk in to the ground?[14] — The real reason is that Scripture used this letter on the very first occasion to express something good, for from the beginning of Genesis up to [the verse] And God saw the light[15] no teth occurs.[16] R. Joshua b. Levi similarly said: He who sees [the word] hesped[17] in a dream [may take it as a sign that] mercy has been exercised towards him in Heaven, and that he will be released [from trouble].[18] provided, however, [he saw it] in script.

SO ALSO BEASTS AND BIRDS ARE LIKE THEM etc. Resh Lakish said: Rabbi taught here[19] that a cock, a peacock and a pheasant are heterogeneous with one another.[20] Is this not obvious?[21] — R. Habiba said: Since they can breed from one another it might have been thought that they constitute a homogeneous species; we are therefore told [by this that this is not the case]. Samuel said:[22] The [domestic] goose and the wild goose are heterogeneous with each other. Raba son of R. Hanan demurred [saying:] What is the reason? Shall we say because one has a long neck and the other has a short neck? If so, why should a Persian camel and an Arabian camel similarly not be considered heterogeneous with each other, since one has a thick neck and the other a slender neck? — Abaye therefore said: [It is because] one[23] has its genitals discernible from without while the other one[24] has its genitals within. R. Papa said: [It is because] one[23] becomes pregnant with only one egg at fecundation, whereas the other one[21] becomes pregnant with several eggs at one fecundation. R. Jeremiah reported that Resh Lakish said: He who couples two species of sea creatures becomes liable to be lashed.[25] On what ground?[26] R. Adda b. Ahabah said in the name of 'Ulla: This rule comes from the expression 'after its kind'[27] [in the section dealing with fishes] by comparison with 'after its kind'[28] [in reference to creatures] of the dry land. Rehabah inquired: If a man drove [a waggon] by means of a goat and a mullet together, what would be the legal position? Should we say that since a goat could not go down into the sea and a mullet could not go up on to the dry land, no transgression has been committed, or do we say that after all they are now pulling together?[29] Rabina demurred to this: If this is so, supposing one took wheat and barley together in his hand and sowed the wheat on the soil of Eretz Yisrael[30] and the barley on the soil outside Eretz Yisrael,[31] would he be liable [as having transgressed the law]?[32] — I might answer: Where is the comparison? There [in your case][33] Eretz Yisrael is the place subject to this obligation whereas any country outside Eretz Yisrael is not subject to this obligation; but here,[34] both one place[35] and the other[36] are subject to the obligation.[37] [

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(1) Cf. Deut. V, 16, where the following occurs, That thy days may be prolonged, and that it may go well with the . . . .

(2) As no Halachic point was involved, R. Hiyya b. Abba did not observe the difference; see also Tosaf. B.B. 113a.

(3) Ex. XXXII, 19.

(4) I.e. if it would have been inserted in the first Decalogue it would have ceased altogether when the two tablets were broken.

(5) Some add 'b. Levi'.

(6) The ninth letter of the Hebrew alphabet.

(7) On so many occasions.

(8) I.e. to sweep with a besom.

(9) Isa. XIV, 23.

(10) Meaning defilement and filthiness.