(11) Lam. I, 9.
(12) The second letter of the Alphabet.
(13) I.e., they sunk.
(14) Lam. II, 9.
(15) Gen. I, 4.
(16) And since the first teth in Scriptures commences the word denoting 'good' it is a good omen to see it in a dream.
(17) Which denotes an elegy and a lamentation.
(18) As the word hesped could be divided thus: has pad [ah]. i.e. mercy has been exercised and release granted.
(19) By stating that the law of heterogeneity applies also to birds.
(20) I.e., we are justified in maintaining so.
(21) Since they are birds of different kinds.
(22) Bek. 8a.
(23) The wild goose.
(24) The domestic goose.
(25) As be transgressed the negative commandment of Lev. XIX, 19.
(26) Is not 'cattle' specified in Lev. XIX, 19?
(27) Gen. I. 21.
(28) Ibid. 25.
(29) And a sin has been committed.
(30) Which is subject to the law of not being sown with mingled seed.
(31) Which is not subject to this law.
(32) And since he would not be liable, what doubt could be entertained in the case of a goat and mullet?
(33) Of sowing a field with mingled seed.
(34) In the case of a goat and a mullet.
(35) The dry land.
(36) The sea.
(37) As derived above from the similarity of expressions 'after its kind'.]

Talmud - Mas. Baba Kama 55b

C H A P T E R V I

MISHNAH. IF A MAN BRINGS SHEEP INTO A SHED AND LOCKS THE DOOR IN FRONT OF THEM PROPERLY, BUT THE SHEEP [NEVERTHELESS] GET OUT AND DO DAMAGE, HE IS NOT LIABLE.[1] IF, HOWEVER, HE DOES NOT LOCK THE DOOR IN FRONT OF THEM PROPERLY, HE IS LIABLE.[2] IF [THE WALL] BROKE DOWN AT NIGHT, OR IF ROBBERS BROKE IN, AND THEY[3] GOT OUT AND DID DAMAGE, HE WOULD NOT BE LIABLE. IF [HOWEVER] ROBBERS TOOK THEM OUT [FROM THE SHED AND LEFT THEM AT LARGE AND THEY DID DAMAGE] THE ROBBERS WOULD BE LIABLE [FOR THE DAMAGE].[4] BUT IF THE OWNER HAD LEFT THEM IN A SUNNY PLACE, OR HE HAD HANDED A MINOR, AND THEY GOT AWAY AND DID DAMAGE, HE HANDED THEM OVER TO THE CARE OF A DEAF-MUTE, AN IDIOT, HE WOULD BE LIABLE.[4] IF HE HAD HANDED THEM OVER TO THE CARE OF A SHEPHERD, THE SHEPHERD WOULD HAVE ENTERED [INTO ALL RESPONSIBILITIES] INSTEAD OF HIM. IF A SHEEP [ACCIDENTALLY] FELL INTO A GARDEN AND DERIVED BENEFIT [FROM THE FRUIT THERE], PAYMENT WOULD HAVE TO BE MADE TO THE EXTENT OF THE BENEFIT,[5] WHEREAS IF IT HAD GONE DOWN THERE IN THE USUAL WAY AND DONE DAMAGE, THE PAYMENT WOULD HAVE TO BE FOR THE AMOUNT OF THE DAMAGE DONE BY IT.[6] HOW IS PAYMENT MADE FOR THE AMOUNT OF DAMAGE DONE BY IT?[6] BY COMPARING THE VALUE OF AN AREA IN THAT FIELD REQUIRING ONE SE'AH[7] [OF SEED] AS IT WAS [PREVIOUSLY] WITH WHAT ITS WORTH IS [NOW]. R. SIMEON, HOWEVER, SAYS: IF IT CONSUMED RIPE FRUITS THE PAYMENT SHOULD BE FOR RIPE FRUITS; IF ONE SE'AH[8] [IT WOULD BE FOR] ONE

SE'AH, IF TWO SE'AHS [FOR] TWO SE'AHS.

GEMARA. Our Rabbis taught: What is denominated 'properly' and what is not 'properly'? — If the door was able to stand against a normal wind,[9] it would be 'properly', but if the door could not stand against a normal wind, that would be 'not properly'. R. Manni b. Pattish thereupon said: Who can be the Tanna [who holds] that in the case of Mu'ad,[10] even inadequate precaution[11] suffices [to confer exemption]? It is R. Judah. For we have learnt: If the owner fastened his ox [to the wall inside the stable] with a cord or shut the door in front of it properly[12] and the ox got out and did damage, whether it was Tam or already Mu'ad, he would be liable; so R. Meir. R. Judah, however, says: In the case of Tam he would be liable, but in the case of Mu'ad exempt, for it is written, And his owner hath not kept him in[13] [thus excluding this case where] it was kept in. R. Eliezer, however, says: No precaution is adequate [for Mu'ad] save the [slaughter] knife.[14] [But does not an anonymous Mishnah usually follow the view of R. Meir?][15] — We may even say that it is in accordance with R. Meir, for Tooth and Foot are different[16] [in this respect], since the Torah required a lesser degree of precaution in their case as stated by R. Eleazar, or, according to others, as stated in a Baraitha: There are four cases [of damage] where the Torah requires a lesser degree of precaution. They are these: Pit and Fire, Tooth and Foot. Pit as it is written, And if a man shall open a pit, or if a man shall dig a pit and not cover it,[17] implying that if he covered it[18] he would he exempt. Fire, as it is written, He that kindled the fire shall surely make restitution,[19] [that is to say] only where he acted [culpably], as by actually kindling the fire.[20] Tooth, as it is written, And he shall send forth,[21] [that is to say] only where he acted [wrongly] as by actually sending it forth.[20] It was [further] taught:[22] 'And he shall send forth'[23] denotes Foot, as in the similar expression, That send forth the foot of the ox and the ass;[24] And it shall consume denotes 'Tooth',[23] as in the similar expression, As the tooth consumeth to entirety.[25] This is so only for the reason that he acted [culpably] as by actually sending it forth or feeding it there,[26] whereas where he did not act [in such a manner] this would not be so. Rabbah said: The text of the Mishnah also corroborates [this view][27] by taking here the case of sheep. For have we not been dealing all along [so far] with an 'ox'?[28] Why then not say [here also] 'ox'?[29] What special reason was there for taking here SHEEP?[30] Is it not because the Torah required a lesser degree of precaution in their case[31] on account of the fact that it is not Horn that is dealt with here,[32] but Tooth and Foot that are dealt with here? It is thus indicated to us that [this kind of precaution[33] is] only in the case of Tooth and Foot which are Mu'ad [ab initio]; and this may be regarded as proved.

It was taught: R. Joshua said: There are four acts for which the offender is exempt from the judgments of Man but liable to the judgments of Heaven. They are these: To break down a fence in front of a neighbour's animal [so that it gets out and does damage];[34] to bend over a neighbour's standing corn in front of a fire;[34] to hire false witnesses to give evidence; and to know of evidence in favour of another and not to testify on his behalf.[35]

The Master stated: 'To break down a fence in front of a neighbour's animal.' Under what circumstances? If we assume that the wall was sound, why should the offender not be liable even according to the judgments of Man [at least for the damage done to the wall]? — It must therefore be

---

(1) As he is not to blame.

(2) As he did not discharge his duty of guarding his cattle.

(3) I.e., the sheep.

(4) Done by the sheep, since they have come into the possession of the robbers, who have thus become liable to control them.

(5) But not to the extent of the actual damage: cf. supra 19b.

(6) In accordance with the law of Tooth.

(7) V. Glos.

(8) V. Glos.

(9) Though unable to withstand an extraordinary wind.
(10) As in the case with Tooth and Foot.
(11) I.e., a door able to withstand a normal wind.
(12) Withstanding a normal wind.
(13) Ex. XXI, 36.
(14) Supra 45b.
(15) According to whom precaution of a lesser degree would not suffice.
(16) From Horn.
(17) Ex. XXI, 33.
(18) Though he did not fill it with sand.
(19) Ex. XXII, 5.
(20) But not where any precaution has been taken.
(21) Ex. XXII, 4.
(22) Cf. supra 2b.
(23) Ex. XXII, 4.
(24) Isa. XXXII, 20.
(25) I Kings XIV,10.
(26) V. supra n. 1.
(27) I.e. the distinction between Tooth and Horn.
(28) And not with sheep.
(29) Which as a rule stands for Horn.
(30) Which damages by Tooth and Foot.
(31) I.e. in Tooth and Foot.
(32) [MS. M. reads 'sheep'. Render accordingly: Because as to sheep there is no mention (in the Torah) in connection with Horn; only Tooth and Foot are mentioned in connection therewith.]
(33) Which would withstand only a normal wind.
(34) V. the discussion later.
(35) Tosef., Shebu. III.

Talmud - Mas. Baba Kama 56a

where the wall was shaky.[1]

The Master stated: 'To bend over a neighbour's corn standing in front of a fire.' Under what circumstances? If we assume that the fire can now reach it in a normal wind, why is he not liable also according to the judgments of Man? — It must therefore be where it would reach them only in an unusual wind. R. Ashi said: What is referred[2] to is 'covering' the offender having caused the stalks to become hidden in the ease of Fire.[3]

The Master stated: 'To hire false witnesses.' Under what circumstances? If we assume for his own benefit,[4] should he not pay the money[5] and should he thus not also be liable even in accordance with the judgments of Man? — It therefore must mean for the benefit of his neighbour.[6]

'To know of evidence in favour of another and not to testify on his behalf.' With what case are we dealing here? If with a case where there are two [witnesses], is it not obvious that it is a Scriptural offence,[7] [as it is written], If he do not utter it then he shall bear his iniquity?[8] — It must therefore be where there is one [witness].[9]

(Mnemonic: He who does, Deadly poison, Entrusts, His fellow, Broken.)

But are there no more cases [of the same category]? Is there not the case of a man who does work with the Water of Purification[10] or with the [Red] Heifer of Purification,[10] where he is similarly

exempt according to the judgments of Man but liable according to the judgments of Heaven?[11] Again, is there not the case of one who placed deadly poison before the animal of a neighbour, where he is exempt from the judgments of Man but liable according to the judgments of Heaven?[12] So also is there not the case of one who entrusts fire to a deaf-mute, an idiot or a minor [and damage results], where he is exempt from the judgments of Man but liable according to the judgments of Heaven?[13] Again, is there not the case of the man who gives his fellow a fright, where he is similarly exempt from the judgments of Man but liable according to the judgments of Heaven?[14] And finally is there not the case of the man who, when his pitcher has broken on public ground, does not remove the potsherds, who, when his camel falls does not raise it, where R. Meir indeed makes him liable for any damage resulting therefrom, but the Sages hold that he is exempt from the judgments of Man though liable according to the judgments of Heaven?[15] — Yes, there are surely many more cases [to come under the same category], but these four cases were particularly necessary to be stated by him,[16] as otherwise you might have thought that even according to the judgments of Heaven there should not be any liability. It was therefore indicated to us [that this is not so]. In the case of breaking down a fence in front of a neighbour's animal you might have said that since the wall was in any case bound to come down, what offence was committed, and that even according to the judgments of Heaven there should be no liability. It was therefore indicated to us [that this is not so]. In the case of bending over a neighbour's standing corn in front of a fire you might also have said that the defendant could argue, 'How could I know that an unusual wind would come?' and that consequently even according to the judgments of Heaven he should not be liable; it was therefore indicated to us [that this is not the case]. So also according to R. Ashi who said that the reference is to 'covering', you might have said that [the defendant could contend], 'I surely intended to cover and thus protect your property,[17] and that even according to the judgments of Heaven he should not be liable. It was therefore indicated to us [that this is not so]. In the case of hiring false witnesses you might also have said that the offender should be entitled to plead, 'Where the words of the Master[18] are contradicted by words of a disciple,[19] whose words should be followed?'[20] and that even according to the judgments of Heaven he should not be liable. It was therefore indicated to us [that this is not so]. In the case where one knows evidence in favour of another and does not testify on his behalf, you might also have said that [the offender could argue], 'Who can say for certain that even had I gone and testified on his behalf, the other party would have admitted [the claim], and would not perhaps have sworn falsely [against my evidence]?'[21] and that even according to the judgments of Heaven he should not be liable. It was therefore indicated to us [that this is not the case].

IF THE WALL BROKE DOWN AT NIGHT OR IF ROBBERS BROKE IN etc., Rabbah said: This[22] is so only where the animal undermined the wall. What then of the case where it did not undermine the wall?[23] Would there then be liability? Under what circumstances? If it be assumed that the wall was sound, why then even where it did not undermine it[23] should there be liability? What else could the defendant have done? But if, on the other hand, the wall was shaky, why even in the case where the animal undermined it should there be exemption? Is not this a case where there is negligence[24] at the beginning but [damage results from] accident[25] at the end? Your view is correct enough on the assumption[26] that where there is negligence at the beginning [and damage results through] accident at the end there is exemption, but if we take the view[26] that where there is negligence at the beginning though [damage results from] accident at the end there is liability, what can be said? — This ruling of the Mishnah therefore refers to a sound wall and even to a case where it did not undermine the wall.[27] For the statement of Rabbah was made with reference to [the ruling in] the concluding clause, IF THE OWNER HAD LEFT THEM IN A SUNNY PLACE OR HANDED THEM OVER TO THE CARE OF A DEAF-MUTE, AN IDIOT OR A MINOR AND THEY GOT AWAY AND DID DAMAGE, HE WOULD BE LIABLE. Rabbah thereupon said: This would be so even where it undermined the wall. For there would be no doubt that [this would be so] where it did not undermine the wall[28] as there was negligence throughout, but even where it did undermine the wall,[29] the ruling[30] would also hold good. You might have said [in that case, that where it undermined the wall][29] it should be regarded as a case of negligence at the beginning but

accident at the end.[31] It was therefore indicated to us[32] that [it is regarded as a case of] negligence throughout, the reason being that the plaintiff might say, 'You should surely have realised that since you left it in a sunny place, it will use every possible device for the purpose of getting out.

IF THE ROBBERS TOOK THEM OUT, THE ROBBERS WOULD BE LIABLE [FOR THE DAMAGE].[33]

---

(1) And should in any case have been pulled down.
(2) By the expression 'bending over'.
(3) For which there is no liability according to the view of the Rabbis (v. infra p. 357), and by his act he caused the owner of the corn the loss of all claim to compensation.
(4) I.e., to obtain money really not due to him.
(5) Which he obtained by false pretenses and by the evidence of the false witnesses whom he hired.
(6) I.e. to pay him money not due to him, and it so happened that the neighbour to whom the money was paid could not be made to give back the money he obtained by the false evidence.
(7) Why then state it here?
(8) Lev. V, 1.
(9) Whose evidence would merely entail the imposition of an oath upon the defendant, v. Shebu 40a.
(10) Thus disqualifying it from being used for the purpose of purification, Par. IV, 4.
(11) Git. 53a, and infra 98a.
(12) Supra 47b.
(13) Infra 59b.
(14) Infra 91a.
(15) Supra 28b.
(16) R. Joshua.
(17) But not to cause you the loss of compensation.
(18) Expressed in the Divine Law.
(19) I.e. mortal man.
(20) Surely the word of the former. The witnesses should therefore be exclusively responsible, as they should not have followed the advice of a man in contradiction to the words of the Law. The law of agency could on this account not apply in matters of transgression; cf. Kid. 42b and supra p. 294.
(21) Since one witness could not make the defendant liable for money payment but only for an oath.
(22) Exemption.
(23) Which fell down of itself.
(24) To leave an animal behind a shaky wall which could not withstand a normal wind.
(25) Viz., that the animal broke through it.
(26) Supra 21b.
(27) V. p. 327, n. 6.
(28) But managed to escape through the door.
(29) Which was very sound.
(30) Of liability.
(31) V. p. 327, n. 8.
(32) By Rabbah.
(33) V. p. 324, n. 4.

Talmud - Mas. Baba Kama 56b

Is this not obvious, seeing that as soon as they took it out it was placed under their charge in all respects?[1] The ruling was necessary to meet the case where they merely stood in front of it[2] [thus blocking any other way for it while leaving open that leading to the corn]. This is on the lines of the statement made by Rabbah on behalf of R. Mattena who said it on behalf of Rab: If a man placed the animal of one person near the standing corn of another, he is liable.[3] 'Placed', [you say]? Is this not

obvious? — The ruling was necessary to meet the case where he merely stood in front of it [blocking thus any other way for it while leaving open that leading to the corn]. Said Abaye to R. Joseph: Did you not explain to us that [the ruling of Rab referred to a case where] the animal was [not actually placed but only] beaten [with a stick and thus driven to the corn]? In the case of robbers also, [the ruling in the Mishnah similarly refers to a case where] they had only beaten it. IF HE HANDED THEM OVER TO THE CARE OF A SHEPHERD, THE SHEPHERD WOULD ENTER INTO ALL THE RESPONSIBILITIES INSTEAD OF HIM. I would here ask: 'Instead of whom?' If you say, instead of the owner of the animal, have we not already learnt elsewhere: 'If an owner hands over his cattle to an unpaid bailee or to a borrower, to a paid bailee or to a hirer, each of them would enter into the responsibilities of the owner'?[4] It must therefore mean, instead of a bailee,[5] and the first bailee would be exempt altogether. Would this not be a refutation of Raba? For did Raba not say: One bailee handing over his charge to another bailee becomes liable for all consequences?[6] — Raba might reply that 'he handed it over to a shepherd' means [the shepherd handed it over] to his apprentice, as it is indeed the custom of the shepherd to hand over his sheep to [the care of] his apprentice. Some say that since the text says, HE HANDED THEM OVER TO THE CARE OF A SHEPHERD and does not say 'he handed them over to another person,'it could from this be proved that the meaning of 'HE HANDED THEM OVER TO THE CARE OF A SHEPHERD' is that the shepherd handed [them] over to his apprentice, as it is indeed the custom of the shepherd to hand over [various things] to [the care of] his apprentice, whereas if [he handed it over] to another person this would not be so. May we say that this supports the view of Raba? For did Raba not say: One bailee handing over his charge to another bailee becomes liable for all consequences?[6] — It may however be said that this is no support. For the text perhaps merely mentioned the usual case, though the same ruling would apply [to a case where it was handed over] to another person altogether.

It was stated: A person taking charge of a lost article [which he has found],[7] is according to Rabbah in the position of an unpaid bailee,[8] but according to R. Joseph in the position of a paid bailee.[9] Rabbah said: He is in the position of an unpaid bailee, since what benefit is forthcoming to him? R. Joseph said: He is in the position of a paid bailee on account of the benefit he derives from not being required to give bread to the poor [while occupied in minding the lost article found by him];[10] hence he should be considered a paid bailee. Some, however, explain it thus: R. Joseph said that he would be like a paid bailee as the Divine Law put this obligation[11] upon him even against his will; he must therefore be considered as a paid bailee.[12] R. Joseph brought an objection to the view of Rabbah [from the following]:

---

(1) V. p. 325, n. 7.

(2) In which case the sheep did not come into the possession of the robbers.

(3) Though the animal which did the damage is not his.

(4) Supra 44b.

(5) I.e. where the sheep has already been in the hands of a bailee who later transferred it to a shepherd. By declaring the shepherd to be liable it is implied that the bailee will become released from his previous obligations.

(6) Even for accidents, as he had no right to hand over his charge to another person without the consent of the owner, v. supra 11b.

(7) And which he will have to return to the owner.

(8) To whom the law of Ex. XXII, 6-8 applies, and who is thus exempt where the article was stolen or lost.

(9) Who is subject to Ex. XXII, 9-12 and who is therefore liable to pay where the article was stolen or lost.

(10) As while a person is occupied with the performance of one commandment he is not under an obligation to perform at the same time another commandment; cf. Suk. 25a.

(11) Of looking after the lost article which he found.

(12) Who after receiving the consideration is similarly under an obligation to guard.

If a person returns [the lost article which he had found] to a place where the owner is likely to see it, he is not required any longer to concern himself with it. If it is stolen or lost[1] he is responsible for it.[2] Now, what is meant by 'If it is stolen or lost'? Does it not mean, 'If it is stolen while in his house or if it is lost while in his house'?[3] — No; it means from the place to which it had been returned.[4] But was it not stated, 'He is not required any longer to concern himself with it'?[5] — He answered him: We are dealing here with a case where he returned it in the afternoon,[6] Two separate cases are, in fact, stated in the text, which should read thus: If he returned it in the morning to a place where the owner might see it [at a time] when it was usual with him to go in and out so that he would most likely see it, he would no more be required to concern himself with it, but if he returned it in the afternoon to a place where the owner might see it[7] [since it was at the time] when it was not usual with him to go in and out [of the house] and he could thus not be expected to see it, if it was stolen or lost there, he would still be responsible for it. He then brought another objection [from the following]: He is always responsible [for its safety] until he has returned it to the keeping of its owner.[8] Now, what is the meaning of [the term] 'always'? Does it not mean 'even while in the keeper's house'[9] thus proving that he was like a paid bailee?[10] — Rabbah said to him: I agree with you in the case of living things, for since they are in the habit of running out into the fields they need special watching.[11]

Rabbah [on the other hand] brought an objection to the view of R. Joseph [from the following: The text says] 'Return';[12] this tells me only [that it can be returned] to the house of the owner. Whence [could it be derived that it may also be returned] to his garden and to his deserted premises? It says therefore further: Thou shalt return them[12] [that is to say] 'everywhere'.[13] Now, to what kind of garden and deserted premises [may it be returned]? If you say to a garden which is closed in and to deserted premises which are closed in, are these not equivalent to his house? It must surely therefore refer to a garden that is not closed in and to deserted premises that are not closed in. Does not this show that a person taking care of a lost article [which he has found] is like an unpaid bailee?[14] — He replied: In point of fact it refers to a garden which is closed in and to deserted premises which are closed in, and as for your questions, 'Are these not equivalent to his house?' [the answer would be that] it is thereby indicated to us that it is not necessary to notify the owner, as indeed [stated by] R. Eleazar,[13] for R. Eleazar said: In all cases notification must be given to the owner, with the exception, however, of returning a lost article, as the Torah uses in this connection many expressions of returning.[15]

Said Abaye to R. Joseph: Do you really not accept the view that a person minding a lost article [which he has found] is like an unpaid bailee? Did R. Hiyya b. Abba not say that R. Johanan stated that if a man puts forward a plea of theft [to account for the absence of] an article [which had been found by him] he might have to make double payment?[16] Now, if you assume that [the person minding the lost article] is like a paid bailee, why should he have to refund double [seeing that] he has to return the principal?[17] — He replied:[18] We are dealing here with a case where, for instance, he pleads [that it was taken] by all armed malefactor.[19] But, he rejoined:[20] All armed malefactor is surely considered a robber?[21] — He replied:[18] I hold that an armed malefactor, having regard to the fact that he hides himself from the public, is considered a thief.[22]

He[23] brought a [further] objection [from the following]:

---

(1) V. the discussion later.

(2) Tosef. B.M. II.

(3) But if he would have to pay where the article was stolen or lost this would prove that he is subject to the law of Paid Bailee.

(4) The liability would therefore be for carelessness.

(5) Why then should he be liable to pay when it was stolen or lost there?

(6) When the owner is usually in the fields and not at home.

(7) Had he been at home.
(8) V. p. 330, n. 8.
(9) Where it was stolen or lost.
(10) V. p. 330, n. 9.
(11) In which case any loss amounts to carelessness.
(12) Literal rendering of Deut. XXII, 1.
(13) B.M. 31a.
(14) And need not take as much care as a paid bailee would have to do.
(15) By doubling the verb 'in return', השב תשיבם
(16) If his false defence of theft has already been corroborated by all oath, v. infra 63a; 106b.
(17) For in his case the plea of an alleged theft would not be a defence but an admission of liability, and no oath would usually be taken to corroborate it. Moreover, the paid bailee could in such circumstances not be required to pay double even after it was found out that he himself had misappropriated the article in his charge.
(18) I.e. R. Joseph to Abaye.
(19) **, 'a rover'. This case is a mere accident as the bailee is not to blame and would not have to pay the principal; this plea would therefore be not an admission of liability but a defence, and if substantiated by a false oath he would have to pay double.
(20) I.e. Abaye to R. Joseph.
(21) And if traced would have to pay the principal and not make double payment (v. infra). The bailee making use of such a defence should therefore never have to pay double, as his plea was not an alleged theft but an alleged robbery.
(22) And would therefore have to pay double when traced. The bailee by submitting such a defence and substantiating it by a false oath should similarly be liable to double payment as his defence was a plea of theft, although had it been true, he would not have to pay even the principal, because the case of an armed malefactor is one of accident, v. note 5.
(23) I.E., Abaye.

Talmud - Mas. Baba Kama 57b

No.[1] Because you say that [a certain liability falls on] the unpaid bailee who is subject to pay double payment,[2] it does not follow that you can say the same in the case of the paid bailee who does not pay double payment.[3] Now if you assume that an armed malefactor is considered a thief,[4] it would be possible that even a paid bailee would [in some cases] have to make double payment, as where he pleaded that [the articles in his charge were taken] by an armed malefactor![5] — He replied:[6] What was meant is this: No. Because you say that a certain liability falls on the unpaid bailee, who has to make double payment,[2] whatever pleas he puts forward,[7] it does not follow that you can say the same in the case of the paid bailee who could not have to make a double payment except where he puts forward the plea that an armed malefactor[5] [took away the article in his charge]. He[8] again brought an objection [from the following]: [From the text] And it be hurt or die[9] I learn only the case of breakage or death. Whence [could there also be derived cases of] theft and loss?[10] An a fortiori argument may be applied here: If in the case of Paid Bailee who is exempt for breakage and death[11] he is nevertheless liable for theft[12] and loss,in the case of Borrower who is liable for breakage and death[9] would it not be all the more certain that he should be liable [also] for theft and loss? This a fortiori has indeed no refutation.[13] Now, if you assume that an armed malefactor is considered a thief why could there be no refutation [of this a fortiori]? It could surely be refuted [thus]: Why [is liability attached] to Paid Bailee if not because he might have to pay double payment where he puts forward the plea [that] an armed malefactor[5] [took the articles in his charge]?[14] — He said to him:[15] This Tanna held that the liability to pay the principal in the absence of any oath[16] is of more consequence than the liability for double payment which is conditioned by taking the oath.[17]

May we say that hɛ[18] derives support [from the following]: If a man hired a cow from his neighbour and it was stolen, and the hirer said, 'I would prefer to pay and not to swear'[19] and [it so happened that] the thief was [subsequently] traced, he should make the double payment to the hirer.[20] Now it was presumed that this statement followed the view of R. Judah[21] who said that

Hirer[22] is equal [in law] to Paid Bailee.[23] Since then it says 'the hirer said "I would prefer to pay and not to swear"',[19] this shows that had he wished he could have freed himself by resorting to the oath. Under what circumstances [could this be so]? Where, for instance, he advances the plea that an armed malefactor [took it].[24] Now seeing that it says, '. . . and it so happened that the thief was [subsequently] traced, he should pay the double payment to the hirer',[25] can it not be concluded from this that an armed malefactor is considered as a thief?[26] — I might answer: Do you presume that this statement follows the view of R. Judah who said that Hirer[22] is equal [in law] to Paid Bailee?[23] Perhaps it follows the view of R. Meir who said that Hirer is equal [in law] to Unpaid Bailee.[27] If you wish[28] I may say: [We should read the relevant views] as they were transposed by Rabbah b. Abbuha, who [taught thus]: How is the payment [for the loss of articles] regulated in the case of Hirer? R. Meir says: As in the case of Paid Bailee. R. Judah, however, says: As in the case of Unpaid Bailee.[29] R. Zera said:[30] We are dealing here with a case where the hirer advances the plea [that it was taken by] an armed malefactor, and it was afterwards discovered that [it was taken by] a malefactor without arms.[31]

IF A SHEEP [ACCIDENTALLY] FELL INTO A GARDEN AND DERIVED BENEFIT [FROM THE FRUITS THERE], PAYMENT WOULD HAVE TO BE MADE TO THE EXTENT OF THE BENEFIT. Rab said: [This applies to benefit derived by the animal] from [the lessening of] the impact.[32] But what when it consumed them? Would there be no need to pay even to the extent of the benefit? Shall we say that Rab is here following the principle laid down by him [elsewhere]? For did Rab not say, 'It should not have eaten'?[33] — But what a comparison! Rab said 'It should not have eaten' only there where it was injured [by over-eating itself], so that the owner of the fruits could say [to the plaintiff], 'I will not pay as it should not have eaten [my fruits]'. But did Rab ever say this in the case where the animal did damage to others that there should be exemption?

---

(1) This is a continuation of a Baraitha (now partly lost), which sought at the outset to derive a certain liability (undefined) in the case of a paid bailee by an a fortiori from the case of an unpaid bailee.

(2) V. p. 332, n. 2.

(3) V. p. 332, n. 3.

(4) V. p. 332, n. 9.

(5) V. p. 332, n. 5.

(6) I.e., R. Joseph to Abaye.

(7) I.e., by a thief whether armed or unarmed.

(8) I.e. Abaye.

(9) Ex. XXII, 13 dealing with a borrower.

(10) To involve liability.

(11) In accordance with Ex. ibid. 9-10.

(12) Ibid. 11.

(13) B.M. 95a.

(14) Whereas in the case of Borrower there could never be an occasion for double payment, as any plea of theft whether by an armed malefactor or by an ordinary thief would involve the payment of the principal and would thus be an admission of liability and not a defence at all.

(15) I.e., R. Joseph to Abaye.

(16) Such as is the case with the Borrower.

(17) Such as in the case of a Paid Bailee. Cf. also B.M. 41b and 94b.

(18) I.e. R. Joseph who maintains that a malefactor in arms is subject to the law applicable to an ordinary thief.

(19) In corroboration of my defence.

(20) For by offering to pay the value of the cow he acquired title to all possible payments with reference to it, B.M. 34a.

(21) As this view was followed in B.M. VII, 8; 36a; 97a; Jeb. 66b; Sheb. VIII, 1 and elsewhere; cf. also 'Er. 46b.

(22) Dealt with in Ex. XXII, 14.

(23) V. p. 330, n. 3.

(24) V. p. 332, n. 5.

(25) For by offering to pay the value of the cow he acquired title to all possible payments with reference to it.
(26) V. p. 332, n. 9.
(27) Who is exempt also where the article was stolen by an ordinary thief, in which case the thief referred to in the Baraitha did not necessarily mean a malefactor in arms but an ordinary thief.
(28) To bring the ruling into accord with R. Judah though the reason stated in n.10 may not apply.
(29) V. p. 334, n. 8.
(30) That a hirer might be subject to the law of Paid Bailee, and still the Baraitha affords no support to R. Joseph.
(31) I.e. an ordinary thief who has to pay double, whereas if he would have been with arms he might perhaps have been subject to the law applicable to a robber, and there would have been no place for double payment.
(32) As the fruits protected the animal from being hurt too much.
(33) V. supra 47b. And so here the owner of the animal might plead, 'it should not have eaten'.

Talmud - Mas. Baba Kama 58a

Rab took a particularly strong instance.[1] There can be no doubt that where the benefit was derived from the animal having consumed the fruits payment would have to be made to the extent of the benefit. Regarding, however, [the benefit derived by the animal from the lessening of] the impact, it might have been thought that the fruits served only the purpose of 'preventing a lion from [damaging] a neighbour's property',[2] so that no payment should be made even to the extent of the benefit. It is therefore indicated to us [here that even this benefit has to be paid for]. But why not say that this is so?[3] — [No payment it is true could be claimed] in the case of preventing a lion from [damaging] a neighbour's property as [the act of driving the lion away] is voluntary, but in this case the act was not voluntary.[4] Or again, in the case of preventing the lion from [damaging] a neighbour's property, no expenses were incurred [by the act of driving away the lion], but in this case here there was [pecuniary] loss attached to it.

[How did the animal fall]?[5] — R. Kahana said: It slipped in its own water. Raba, however, said: [The rule would hold good even] where another animal pushed it down. The one who explains the ruling to apply where another animal pushed it down, would certainly apply it where it slipped in its own water.[6] But the one who explains the ruling to apply where it slipped in its own water [might maintain that] where another animal pushed it down there was negligence, and the payment should be for the amount of damage done by it, as the plaintiff would be entitled to say, 'You should have made them go past one by one.'

R. Kahana said: The Mishnaic ruling applies only to the bed [into which it fell].[7] If, however, it went from one bed to another bed, the payment[8] would be for the amount of damage done by it. R. Johanan, however, said that even where it went from one bed to another bed and did so even all day long, [the payment would be made only to the extent of the benefit], unless it left the garden and returned there again with the knowledge [of the owner]. R. Papa thereupon said: Do not imagine this to mean 'unless it left the garden to the knowledge of the owner and returned there again with the knowledge of the owner', for as soon as it left the garden to the knowledge of the owner, even though it returned again without his knowledge [there would already be liability],[9] the reason being that the plaintiff might [rightly] say: Since it had once become known [to it where it can find fruit, you should have realised that] whenever it broke loose it would run to that place.

IF IT WENT DOWN THERE IN THE USUAL WAY AND DID DAMAGE, THE PAYMENT WOULD HAVE TO BE FOR THE AMOUNT OF DAMAGE DONE BY IT. R. Jeremiah raised the question: Where it had gone down there in the usual way but did damage by water resulting from giving birth,[10] what would be the legal position? If we accept the view that where there is negligence at the beginning but [damage actually results] in the end from sheer accident there is liability,[11] no question arises.[12] Where we have to ask is if we accept the view[11] that where there is negligence at the beginning, but [damage actually results] in the end from sheer accident there is exemption. What

[in that case is the law]? Should we say that this is a case where there was negligence at first but the final result was due to accident, and therefore there should be exemption, or should we say [on the contrary that] this case is one of negligence throughout, for since the owner could see that the animal was approaching the time to give birth, he should have watched

---

(1) Lit., 'he says there can be no question'.

(2) For which no payment could be demanded, this being merely an act of goodwill and kindness, v. B.B. 52a.

(3) That he is 'preventing a lion' etc.

(4) The owner of the fruit should thus be entitled to compensation.

(5) That it should be considered a mere accident and the payment should only be to the extent of the benefit.

(6) As this is certainly a matter of accident.

(7) Regarding which the whole act is considered an accident.

(8) For the beds except the first one.

(9) To the full extent of the damage.

(10) Which was apparently an accident.

(11) V. Supra 21b.

(12) That there will be liability in this case too.

it and indeed taken more care of it? — Let this remain undecided.

HOW IS PAYMENT MADE FOR THE AMOUNT OF DAMAGE DONE BY IT? BY COMPARING THE VALUE OF AN AREA IN THE FIELD REQUIRING ONE SE'AH OF SEED AS IT WAS [PREVIOUSLY] WITH WHAT ITS WORTH IS [NOW] etc. Whence is this derived? — R. Mattena said: Scripture says, And shall feed in another man's field[1] to teach that the valuation should be made in conjunction with another field. But was this [verse] and shall feed in another man's field not required to exclude public ground [from being subject to this law]? — If so,[2] Scripture would have said 'and shall feed in a neighbour's field' or ['and shall consume] another man's field.' Why then is it said in another [man's] field [unless to teach that] the valuation should be made in conjunction with another field? Let us say then that the whole import [of this verse] was to convey only this ruling, there being thus no authority to exclude public ground? — If so,[3] Scripture would have inserted this clause in the section dealing with payment, e.g., 'of the best of his own field and of the best of his own vineyard shall he make restitution [as valued] in conjunction with another field.' Why then did Scripture put it in juxtaposition with and shall feed unless to indicate that the two [rulings] are to be derived from it.[4]

How is the valuation[5] arrived at? — R. Jose b. Hanina said: [The value of] an area requiring one se'ah of seed [is determined] in proportion to the value of an area requiring sixty se'ahs of seed. R. Jannai said: [The value of] an area requiring one tarkab[6] of seed [is determined] in proportion to the value of an area requiring sixty tarkabs of seed. Hezekiah said: [The value of] each stalk [consumed is determined] in proportion to the value of sixty such stalks.[7] An objection was raised [from the following:] If it consumed one kab in two kabs [of grain], it would not be right to ask payment for their full value,[8] but the amount consumed would have to be considered as if forming a little bed which would thus be estimated. Now, does this not mean that the bed will be valued by itself?[9] — No; in [the proportion of one to] sixty.[10]

Our Rabbis taught: The valuation is made neither of a kab by itself, as this would be an advantage to him,[11] nor of an area required for a kor[12] of seed, as this would be a disadvantage to him.[11] What does this mean? — R. Papa said: What is meant is this: Neither is a kab [of grain consumed] valued in conjunction with sixty kabs, as the defendant would thereby have too great an advantage,[13] nor is a kor valued in conjunction with sixty kors, as this would mean too great a disadvantage for the

defendant.[14] R. Huna b. Manoah demurred to this, saying: Why then does it say, 'nor of an area required for a kor of seed'? [According to your interpretation] should it not have been 'nor a kor'?[15] — R. Huna b. Manoah therefore said in the name of R. Aha the son of R. Ika: What is meant is this: The valuation is made neither of a kab by itself, as this would be too great an advantage to the plaintiff, nor of a kab in conjunction with an area required for a kor of seed, as this would be too great a disadvantage for the plaintiff. It must therefore be made only in conjunction with sixty [times as much].

A certain person cut down a date-tree belonging to a neighbour. When he appeared before the Exilarch, the latter said to him: 'I myself saw the place; three date-trees stood close together[16] and they were worth one hundred zuz. Go therefore and pay the other party thirty-three and a third [zuz].' Said the defendant: 'What have I to do with an Exilarch who judges in accordance with Persian Law?' He therefore appeared before R. Nahman, who said to him [that the valuation should be made] in conjunction with sixty [times as much]. Said Raba to him:[17] If the Sages ordained this valuation in the case of chattels doing damage, would they do the same in the case of damage done by Man with his body? — Abaye, however, said to Raba: In regard to damage done by Man with his body, what is your opinion [if not] that which was taught: 'If a man prunes [the berries from] a neighbour's vineyard while still in the budding stage, it has to be ascertained how much it was worth previously and how much it is worth afterwards', but nothing is said of valuation in conjunction with sixty [times as much]? But has it not been taught similarly with respect to [damage done by] Cattle? For it was taught: If [a beast] breaks off a plant, R. Jose says that the Legislators of [public enactments[18] in Jerusalem stated that if the plant was of the first year, two silver pieces[19] [should be paid] but if it was in its second year, four silver pieces [should be paid]. If it consumed young blades of grain, R. Jose the Galilean says that it has to be considered in the light of the future value of that which was left in the field. The Sages, however, say that it has to be ascertained how much it [the field] was worth [previously] and how much it is worth [now].

---

(1) Ex. XXII, 4.

(2) I.e., were it intended only for that.

(3) V. p. 337, n. 7.

(4) I.e. that public ground be excluded and that the valuation be made in conjunction with another field.

(5) Of an area requiring one se'ah of seed.

(6) I.e. half a se'ah, amounting thus to three kabs, though originally it meant two kabs.

(7) The principle underlying this difference of opinion is made clear in the Baraitha that follows.

(8) Cf. supra p. 123.

(9) And not in proportion to the value of a bigger area. This refutes the views of all the cited authorities.

(10) [I.e., either 'se'ahs', 'tarkabs' or 'stalks' as the case may be.]

(11) V. the discussion infra.

(12) I.e., thirty se'ahs; cf. Glos.

(13) As the payment would be very small owing to the fact that the deficiency of one kab in an area required for sixty kabs of seed would hardly be noticed, and so would reduce the general price very little.

(14) For the deficiency of one kor, in an area required for sixty times as much, is conspicuous, and reduces the general price too much. The valutation of a se'ah will therefore be made in proportion to sixty se'ahs.

(15) Should be valued in this way.

(16) Lit., 'in one nest', or 'place'.

(17) R. Nahman.

(18) גוזרי גזירות Admon and Hanan b. Abishalom, identical with the 'Judges of Civil Law' דייני גזירות mentioned in Keth. XIII, 1 (Rashi). Little is known of their functions and power to enable us to explain their designation (Buchler, Das Synedrion, p. 113); cf. also Geiger, Urschrift, p. 119.]

(19) I.e two ma'ahs which were a third of a denar; cf. Glos.

If it consumed grapes while still in the budding stage, R. Joshua says that they should be estimated as if they were grapes ready to be plucked off. But the Sages [here too] say that it will have to be ascertained how much it was worth [previously] and how much it is worth [now]. R. Simeon b. Judah says in the name of R. Simeon:[1] These rulings apply where it consumed sprouts of vines or shoots of fig-trees, but where it consumed [actual] figs or half-ripe grapes they would be estimated as if they were grapes ready to be plucked off.[2] Now, it is definitely taught here, 'The Sages say that it will have to be ascertained how much it was worth [previously] and how much it is worth [now]' and it is not said [explicitly that the valuation will be made] in conjunction with sixty [times as much]. Nevertheless you must say that it is implied that [the valuation is to be made] in conjunction with sixty [times as much]. So also then here, [in the case of Man it is implied that the valuation is to be] in conjunction with Sixty [times as much].

Abaye said: R. Jose the Galilean and R. Ishmael expressed the same view [in this matter]. R. Jose the Galilean as stated by us [above],[3] and R. Ishmael as taught [elsewhere]:[4] 'Of the best of his own field and of the best of his own vineyard shall he make restitution;[5] this means the best of the field of the plaintiff and the best of the vineyard of the plaintiff. This is the view of R. Ishmael. R. Akiba, however, says: Scripture only intended to lay down that damages should be collected out of the best and this applies even more to sacred property. Nor can you say that he [R. Ishmael] meant this in the sense of R. Idi b. Abin, who said [that it deals with a case where] e.g., the cattle consumed one bed out of several beds and we could not ascertain whether its produce was meagre or fertile, so that R. Ishmael would [thus be made to] order the defendant to go and pay for a fertile bed in accordance with the value of the best bed at the time of the damage. This could not be maintained by us, for the reason that the onus probandi falls upon the claimant. R. Ishmael[6] must therefore have meant the best of anticipation, i.e., as it would have matured [at the harvest time].

The Master stated: 'R. Simeon b. Judah says in the name of R. Simeon: These rulings apply only where it consumed sprouts of vines or shoots of fig-trees,' [thus implying that] where it consumed grapes in the budding stage they would be estimated as if they were grapes ready to be plucked off. Read [now] the concluding clause: 'Where it consumed [actual] figs or half-ripe grapes they would be estimated as if they were grapes ready to be plucked off', [implying to the contrary that] where it consumed grapes in the budding stage it would have to be ascertained how much it was worth [previously] and how much it is worth [now]. [Is this not a contradiction?] — Rabina said: Embody [the new case in the text] and teach thus: 'These rulings apply only where it consumed sprouts of vines or shoots of fig-trees, for where it consumed grapes in the budding stage, or [actual] figs or half-ripe grapes they would be estimated as if they were grapes ready to be plucked off.' But if so would R. Simeon b. Judah's view not be exactly the same as that already stated by R. Joshua? — There is a practical difference between them as to [the deduction to be made for] the depreciation of the vines [themselves, through exhaustion, if the grapes had remained there until fully ripe],[7] though the views cannot be identified.[8] Abaye, however, said: They most assuredly could be identified. For who could be the Tanna who takes into consideration the depreciation of the vine, if not R. Simeon b. Judah? For it was taught: R. Simeon b. Judah says in the name of R. Simeon b. Menasya:[9] [Even] in the case of Rape no compensation is made for Pain, as the female would [in any case] have subsequently to undergo the same pain through her husband.[10] The Rabbis however said to him: A woman having intercourse by her free will is not to be compared to one having intercourse by constraint.

Abaye further said: The following Tannaim and R. Simeon b. Judah expressed on this point the same view?[11] R. Simeon b. Judah's view as stated by us [above]. Who are the other Tannaim [referred to]? — As taught: R. Jose says: Deduct the fees of the midwife,[12] but Ben 'Azzai says: Deduct food.[13] The one who says, 'deduct the fees for the midwife' would certainly deduct food,[14] but the one who says, 'deduct food', would not deduct the fees for the midwife, as the plaintiff might

say, ‘My wife is a lively person and does not need a midwife.’[15] R. Papa and R. Huna the son of R. Joshua in an actual case[16] followed the view of R. Nahman and valued in conjunction with sixty times [as much]. According to another report, however, R. Papa and R. Huna the son of R. Joshua valued a palmtree in conjunction with the small piece of ground.[16] The law is in accordance with R. Papa and R. Huna the son of R. Joshua[17] in the case of an Aramean palm,[18] but it is in accordance with the Exilarch[19] in the case of a Persian palm.[20]

Eliezer[21] Ze'era

---

(1) B. Yohai.

(2) Keth. 105a.

(3) That it will have to be considered in the light of the future value of that which was left in the field.

(4) V. supra 6b.

(5) Ex. XXII, 4.

(6) [In the case where the quality of the bed consumed by the cattle was not in doubt.]

(7) [I.e., one view would maintain that this deduction has to be made, while the other would not maintain this.]

(8) [It cannot be stated precisely which authority is of the one and which of the other view.]

(9) Keth, 39a.

(10) Proving that a deduction from the amount of the damages is made on a similar accord.

(11) That a deduction should be made on this accord.

(12) From the payment for injuring a pregnant woman resulting in a miscarriage; cf. Ex. XXI, 22 and supra 49a.

(13) I.e. the special diet which would have been necessary during the confinement period.

(14) As the special diet would have been an inevitable expense.

(15) He would therefore have spared this expense.

(16) Where a human being did damage with his body.

(17) To value in conjunction with sixty times as much where a human being did damage with his body.

(18) Which is by itself of no great value.

(19) To value the tree by itself.

(20) Which is even by itself of considerable value.

(21) [V.l. Eleazar].

Talmud - Mas. Baba Kama 59b

once put on a pair of black shoes and stood in the market place of Nehardea. When the attendants of the house of the Exilarch met him there, they said to him: ‘What ground have you for wearing black shoes?’[1] — He said to them: ‘I am mourning for Jerusalem.’ They said to him: ‘Are you such a distinguished person as to mourn over Jerusalem?’[2] Considering this to be a piece of arrogance on his part they brought him and put him in prison. He said to them, ‘I am a great man!’ They asked him: ‘How can we tell?’ He replied, ‘Either you ask me a legal point or let me ask you one.’ They said to him: ‘[We would prefer] you to ask.’ He then said to them: ‘If a man cuts a date-flower, what payment should he have to make?’ — They answered him: ‘The payment will be for the value of the date-flower.’ ‘But would it not have grown into dates?’[3] — They then replied: ‘The payment should be for the value of the dates.’ ‘But’, he rejoined, ‘surely it was not dates which he took from him!’[4] They then said to him: ‘You tell us.’ He replied: ‘The valuation would have to be made in conjunction with sixty times as much.’[5] They said to him: ‘What authority can you find to support you?’ — He thereupon said to them: ‘Samuel is alive and his court of law flourishes [in the town].’ They sent this problem to be considered before Samuel who answered them: ‘The statement he[6] made to you, that the valuation should be in conjunction with sixty times [as much as the damaged date-flower][5] is correct.’ They then released him.

R. SIMEON SAYS: IF IT CONSUMED RIPE FRUITS etc. On what ground?[7] — The statement of the Divine Law, And shall feed in another man's field,[8] teaching that valuation is to be made in

conjunction with the field applies to produce which was still in need of a field, whereas these fruits [in the case before us],[9] since they were no more in need of a field, must be compensated at their actual value.

R. Huna b. Hiyya said that R. Jeremiah stated that Rab gave judgment [in contradistinction to the usual rule][10] in accordance with R. Meir and [on another legal point] decided the law to be in accordance with R. Simeon. He gave judgment in accordance with R. Meir on the matter taught: If the husband drew up a deed for a would-be purchaser [of a field which had been set aside for the payment of the marriage settlement of his wife] and she did not endorse it, and [when a deed on the same field was drawn up] for another purchaser she did endorse it, she has thereby lost her claim to the marriage settlement; this is the view of R. Meir.[11] R. Judah, however, says: She might still argue, 'I made the endorsement merely to gratify my husband; why therefore should you go against me?'[12] [The legal point where] he decided the law to be in accordance with R. Simeon was that which we learnt: R. SIMEON SAYS: IF IT CONSUMED RIPE FRUITS, THE PAYMENT SHOULD BE FOR RIPE FRUITS, IF ONE SE'AH [IT WOULD BE FOR] ONE SE'AH, IF TWO SE'AHS, [FOR] TWO SE'AHS.

MISHNAH. IF A MAN PUTS HIS STACKS OF CORN IN THE FIELD OF ANOTHER WITHOUT PERMISSION, AND THE ANIMAL OF THE OWNER OF THE FIELD EATS THEM, THERE IS NO LIABILITY. MOREOVER, IF IT SUFFERED HARM FROM THEM, THE OWNER (OF THE STACKS WOULD BE LIABLE. IF, HOWEVER, HE PUT THE STACKS THERE WITH PERMISSION, THE OWNER OF THE FIELD WOULD BE LIABLE. GEMARA. May we say that this Mishnah is not in accordance with Rabbi? For if in accordance with Rabbi, did he not say[13] that unless the owner of the premises explicitly took upon himself to safeguard he would not be liable?[14] — R. Papa said: [Here we were dealing with] the watchman of the barns.[15] For since he said, 'Enter and place your stacks', it surely amounted to, 'Enter and I will guard for you'.[16]

MISHNAH. IF A MAN SENT OUT SOMETHING BURNING THROUGH A DEAF MUTE, AN IDIOT, OR A MINOR [AND DAMAGE RESULTED] HE WOULD BE EXEMPT FROM THE JUDGMENTS OF MAN, BUT LIABLE IN ACCORDANCE WITH THE JUDGMENTS OF HEAVEN. BUT IF HE SENT [IT] THROUGH A NORMAL PERSON, THE NORMAL PERSON WOULD BE LIABLE. IF ONE PERSON [FIRST] SUPPLIES THE FIRE AND ANOTHER THE WOOD, HE WHO SUPPLIES THE WOOD WOULD BE LIABLE.[17] WHERE, [ON THE OTHER HAND], THE FIRST SUPPLIES THE WOOD AND THE SECOND THE FIRE, HE WHO SUPPLIES THE FIRE WOULD BE LIABLE.[17] BUT WHERE ANOTHER PERSON CAME ALONG AND FANNED THE FLAME, THE ONE WHO FANNED IT WOULD BE LIABLE.[17] IF IT WAS THE WIND THAT FANNED IT, ALL WOULD BE EXEMPT.

GEMARA. Resh Lakish said in the name of Hezekiah: The Mishnaic ruling[18] holds good only where he handed over a [flickering] coal to [the deaf mute] who fanned it into flame, but if he handed over to him something already in flame he would be liable, the reason being that it was his acts that were the [immediate] cause. R. Johanan, however, said: Even where he handed something already in flame to him, he would still be exempt, the reason being that it was the handling of the deaf mute that caused the damage; he could therefore not be liable unless where he handed over to him tinder,

---

(1) Cf. Ta'an. 22a. [Tosaf. regards the black lacing as the distinguishing mark of mourning, v. also Krauss, Talm. Arch. I, 628.]

(2) In such a manner.

(3) Why then not pay for actual dates of which the owner was deprived?

(4) Why then pay for ripe dates?

(5) Including the ground occupied by them.

(6) I.e. Eliezer Ze'era.
(7) Should the valuation not be made in conjunction with the field where ripe fruits were consumed.
(8) Ex. XXII, 4.
(9) In the statement of R. Simeon.
(10) That the law does not prevail in accordance with R. Meir against R. Judah: cf. 'Er. 46b
(11) For by endorsing the deed drawn up for the second purchaser and not that drawn up for the first one, she made it evident that on the one hand she was not out to please her husband by confirming his sale, and on the other that she was finally prepared to forego her claim.
(12) Keth. 95a.
(13) Supra 47b.
(14) Why then should the owner of the field be liable where the corn was stacked with his permission?
(15) As it was the custom to pile all the stacks of the villagers in one place and appoint a guardian to look after them.
(16) In accordance with the custom of the place.
(17) For he being last is mostly to blame.
(18) Of exemption from the judgments of Man.

Talmud - Mas. Baba Kama 60a

shavings and a light, in which case it was certainly his act that was the immediate cause.[1]

BUT IF HE SENT [IT] THROUGH A NORMAL PERSON, THE NORMAL PERSON WOULD BE LIABLE etc. IF ANOTHER PERSON CAME ALONG AND [LIBBAH] FANNED IT etc. R. Nahman b. Isaac said: He who reads in the [original] text libbah[2] is not mistaken; so also he who reads in the text nibbah[3] is similarly not mistaken.[4] He who has in the text libbah[2] is not mistaken, since we find [in Scripture] be-labbath esh[5] [in a flame of fire], and so also he who has in the text nibbah[3] is not mistaken, as we find, I create nib [the movement of] the lips.[6]

IF IT WAS THE WIND THAT FANNED IT, ALL WOULD BE EXEMPT. Our Rabbis taught: Where he fanned it [along with] the wind which also fanned it, if there was enough force in his blowing to set the fire ablaze he would be liable, but if not he would be exempt. But why should he not be liable, as in the case of one winnowing [on Sabbath, who is liable] though the wind was helping him?[7] — Abaye thereupon said: We are dealing here with a case where e.g., he blew it up in one direction and the wind blew it up in a different direction.[8] Raba said: [The case is one] where e.g., he started to blow it up when the wind was only normal, [and would have been unable to set it ablaze], but there [suddenly] came on an unusual wind which made it blaze up. R. Zera said: [The case is one] where e.g., he merely increased the heat by breathing heavily on it.[9] R. Ashi said: When we say that there is liability for winnowing where the wind is helping, this applies to Sabbath where the Torah prohibited any work with a definite object,[10] whereas here [regarding damage] such an act could be considered merely as a secondary cause, and a mere secondary cause in the case of damage carries no liability.

MISHNAH. IF HE ALLOWED FIRE TO ESCAPE AND IT BURNT WOOD, STONES OR [EVEN] EARTH, HE WOULD BE LIABLE, AS IT SAYS: IF FIRE BREAK OUT AND CATCH IN THORNS SO THAT THE STACKS OF CORN, OR THE STANDING CORN, OR THE FIELD BE CONSUMED THEREWITH: HE THAT KINDLED THE FIRE SHALL SURELY MAKE RESTITUTION.[11]

GEMARA. Raba said: Why was it necessary for the Divine Law to mention [both] 'thorns', 'stacks', 'standing corn' and 'field'? They are all necessary. For if the Divine Law had mentioned [only] 'thorns', I might have said that it was only in the case of thorns that the Divine Law imposed liability because fire is found often among them and carelessness in regard to them is frequent,[12] whereas in the case of 'stacks',[13] which are not often on fire and in respect of which negligence is

not usual, I might have held that there is no liability. If [again] the Divine Law had mentioned [only] 'stacks', I might have said that it was only in the case of 'stacks' that the Divine Law imposed liability as the loss involved there was considerable, whereas in the case of 'thorns' where the loss involved was slight I might have thought there was no liability. But why was standing corn' necessary [to be mentioned]? [To teach that] just as 'standing corn' is in an open place, so is everything [which is] in an open space [subject to the same law].[14] But according to R. Judah who imposes[15] liability also for concealed articles damaged by fire, why had 'standing corn' [to be mentioned]? — To include anything possessing stature.[15] Whence then did the [other] Rabbis include anything possessing stature?[16] — They derived this from [the word] 'or' [placed before] 'the standing corn'.[17] And R. Judah? — He needed [the word] 'or' as a disjunctive.[17] Whence then did the [other] Rabbis derive the disjunction? — They derived it from [the word] 'or' [placed before] 'the field'. And R. Judah? — He held that because the Divine Law inserted 'or' [before] 'the standing corn' 'it also inserted 'or' [before] 'the field'. But why was 'field' needed [to be inserted]? — To include [the case of] Fire lapping his neighbour's ploughed field, and grazing his stones.[18] But why did the Divine Law not say only 'field',[19] in which case the others would not have been necessary? They were still necessary. For if the Divine Law had said 'field' only, I might have said that anything in the field would come under the same law, but not any other thing.[20] It was therefore indicated to us [that this is not so].

R. Samuel b. Nahmani stated[21] that R. Johanan said: Calamity comes upon the world only when there are wicked persons in the world, and it always begins with the righteous, as it says: If fire break out and catch in thorns.[22] When does fire break out? Only when thorns are found nearby. It always begins, however, with the righteous, as it says: so that the stack of corn was consumed:[23] It does not say 'and it would consume the stack of corn', but 'that the stack of corn was consumed' which means that the 'stack of corn' had already been consumed.

R. Joseph learnt: What is the meaning of the verse, And none of you shall go out at the door of his house until the morning?[24] Once permission has been granted to the Destroyer, he does not distinguish between righteous and wicked. Moreover, he even begins with the righteous at the very outset, as it says:[25] And I will cut off from thee the righteous and the wicked.[26] R. Joseph wept at this, saying: So much are they[27] compared to nothing![28] But Abaye [consoling him,] said: This is for their advantage, as it is written, That the righteous is taken away from the evil to come.[29]

Rab Judah stated that Rab said:

---

(1) Supra 9b.

(2) לִיבָּה (connected with להב, 'flame'), to denote blazing up.

(3) [ניבה from נבא, 'to blow up' to blow a blaze'.]

(4) For similar textual remarks by the same sage, cf. A.Z. 2a.

(5) Ex. III, 2.

(6) Isa. LVII, 19. [The blaze is provided by 'the movement of the lips', i.e., by blowing with the mouth.]

(7) Cf. Shab. VII, 2; v. also B.B. 26a.

(8) So that the wind did not help him at all.

(9) But did not actually blaze it up.

(10) Whether man did it wholly by his own body or not.

(11) Ex. XXII, 5.

(12) As thorns are usually worthless and nobody minds them.

(13) Which are of great value and are usually looked after.

(14) Excluding thus hidden articles.

(15) Supra 5b.

(16) E.g., living objects and plants [Though the latter, unlike 'stacks' are still attached to the ground. Tosaf.]

(17) Cf. supra p. 311, and also Tosaf. Hul. 86b.

(18) V. p. 347. n. 5.
(19) Which includes everything.
(20) Such as the field itself.
(21) [Having stated 'standing corn', the Torah must have added 'field' to indicate the field itself.]
(22) Ex. XXII, 5.
(23) Used metaphorically to express the righteous.
(24) Ex. XII, 22.
(25) Ezek. XXI, 8.
(26) Thus mentioning first the 'righteous' and then the 'wicked'.
(27) I.e., the righteous.
(28) That they are punished even for the wicked.
(29) Isa. LVII, 1.

Talmud - Mas. Baba Kama 60b

A man should always enter [a town] by daytime and leave by daytime, as it say's, And none of you shall go out at the door of his house until the morning.[1]

Our Rabbis taught: When there is an epidemic in the town keep your feet inside [the house], as it says, And none of you shall go out at the door of his house until the morning,[1] and it further says, Come, my people, enter thou into thy chambers and shut thy doors about thee;[2] and it is again said: The sword without, the terror within shall destroy.[3] Why these further citations? — Lest you might think that the advice given above[4] refers only to the night, but not to the day. Therefore, come and hear: Come, my people, enter thou into thy chamber, and shut thy doors about thee.[5] And should you say that these apprehensions apply only where there is no terror inside,[6] whereas where there is terror inside[6] it is much better to go out and sit among people in one company, again come and hear: The sword without, the terror within shall destroy,[3] implying that [even where] the terror is 'within'[6] the 'sword'[7] will destroy [more] without. In the time of an epidemic Raba used to keep the windows shut, as it is written, For death is come up into our windows.[8]

Our Rabbis taught: When there is a famine in town, withdraw your feet,[9] as stated, And there was a famine in the land; and Abram went down into Egypt to sojourn there;[10] and it is further said: If we say: We will enter into the city, then the famine is in the city and we shall die there.[11] Why the additional citation? — Since you might think that this advice[12] applies only where there is no danger to life [in the new settlement], whereas where there is a danger to life [in the new place] this should not be undertaken, come and hear: Now therefore come, and let us fall unto the host of the Arameans; if they save us alive, we shall live.[13]

Our Rabbis taught: When there is an epidemic in a town, one should not walk in the middle of the road, as the Angel of Death walks then in the middle of the road, for since permission has been granted him, he stalks along openly. But when there is peace in the town, one should not walk at the sides of the road, for since [the Angel of Death] has no permission he slinks along in hiding.

Our Rabbis taught: When there is an epidemic in a town nobody should enter the House of Worship[14] alone, as the Angel of Death keeps there his implements. This, however, is the case only where no pupils are being taught there[15] or where ten [males] do not pray there [together].

Our Rabbis taught: When dogs howl, [this is a sign that] the Angel of Death has come to a town. But when dogs frolic, [this is a sign that] Elijah the prophet has come to a town. This is so, however, only if there is no female among them.

When R. Ammi and R. Assi were sitting before R. Isaac the Smith, one of them said to him: 'Will

the Master please tell us some legal points?' while the other said: 'Will the Master please give us some homiletical instruction?' When he commenced a homiletical discourse he was prevented by the one, and when he commenced a legal discourse he was prevented by the other. He therefore said to them: I will tell you a parable: To what is this like? To a man who has had two wives, one young and one old. The young one used to pluck out his white hair, whereas the old one used to pluck out his black hair. He thus finally remained bald on both sides. He further said to them: I will accordingly tell you something which will be equally interesting to both of you:[16] If fire break out and catch in thorns; 'break out' implies 'of itself'. He that kindled the fire shall surely make restitution. The Holy One, blessed be He, said: It is incumbent upon me to make restitution for the fire which I kindled. It was I who kindled a fire in Zion as it says, And He hath kindled a fire in Zion which hath devoured the foundations thereof,[17] and it is I who will one day build it anew by fire, as it says, For I, [saith the Lord] will be unto her a wall of fire round about, and I will be the glory in the midst of her.[18] On the legal side, the verse commences with damage done by chattel,[19] and concludes with damage done by the person,[20] [in order] to show that Fire implies also human agency.[21]

Scripture says:[22] And David longed, and said, Oh that one would give me water to drink of the well of Bethlehem, which is by the gate. And the three mighty men broke through the host of the Philistines and drew water out of the well of Bethlehem that was by the gate etc. What was his difficulty?[23] — Raba stated that R. Nahman had said: His difficulty was regarding concealed articles damaged by fire[24] — whether the right ruling was that of R. Judah[25] or of the Rabbis;[26] and they gave him the solution, whatever it was. R. Huna, however, said: [The problem was this:] There were there[27] stacks of barley which belonged to Israelites but in which Philistines had hidden themselves, and what he asked was whether it was permissible to rescue oneself through the destruction of another's property.[28] The answer they despatched to him was: [Generally speaking] it is forbidden to rescue oneself through the destruction of another's property[29] you however are King and a king may break [through fields belonging to private persons] to make a way [for his army], and nobody is entitled to prevent him [from doing so].[30] But [some] Rabbis, or, as [also] read, Rabbah b. Mari, said: There were there[31] [both] stacks of barley belonging to Israelites and stacks of lentils belonging to the Philistines.[32] The problem on which instruction was needed was whether it would be permissible to take the stacks of barley that belonged to the Israelites and put them before the beasts [in the battle field], on condition of [subsequently] paying for them with the stacks of lentils that belonged to the Philistines. [The reply] they despatched to him [was]: If the wicked restore the pledge, give again the robbery,[33] [implying that] even where the robber [subsequently] pays for the 'robbery', he still remains 'wicked'. You, however, are King and a king may break through [fields of private owners] making thus a way [for his army], and nobody is entitled to prevent him [from doing so]. If we accept the view that he wanted to exchange,[34] we can quite understand how in one verse it is written, Where was a plot of ground full of lentils,[35] and in another verse it is written, Where was a plot of ground full of barley.[36] If we, however, take the view that he wanted to burn them[37] down, what need was there to have these two verses?[38] — He, however, might say to you that there were also there stacks of lentils which belonged to Israelites and in which Philistines were hidden.[39] Now on the view that he wanted to burn them[37] down, we can quite understand why it is written, But he stood in the midst of the ground, and defended it.[40] But according to the view that he wanted to exchange, what would be the meaning of and he defended it?[41] — That he did not allow them to exchange. According to [these] two views, we can quite understand why there are two verses.

---

(1) V. p. 348, n. 9.

(2) Isa. XXVI, 20.

(3) Deut. XXXII, 25.

(4) To keep indoors.

(5) Isa. XXVI, 20.

(6) The house.

(7) Of the Angel of Death.

(8) Jer. IX, 20.
(9) I.e., migrate to another place; see also B.M. 75b.
(10) Gen. XII, 10.
(11) II Kings VII, 4.
(12) Implied in Gen. XII, 10.
(13) II Kings VII, 4.
(14) [בית הכנסת Lit., 'House of meeting', the Synagogue. The origin of the term as applied to a synagogue is uncertain. It probably has its source in the assemblies called together for the purpose of considering problems of an economic and social character. These were probably attended with some sort of prayer and out of these evolved the regular meetings for prayers, v. Zeitlin, The Origin of the Synagogue in the Proceedings of the American Academy for Jewish Research, 1930-31, p. 75 ff.]
(15) In the House of Worship.
(16) Ex. XXII, 5.
(17) Lam. IV, 11.
(18) Zech. II, 9.
(19) As the expression 'if a fire break out' means 'break out itself without any direct act on the part of man'; cf. supra p. 115.
(20) By saying, 'He that kindled a fire', implying that there was some direct act on the part of man to kindle the fire.
(21) V. supra p. 115.
(22) II Sam. XXIII, 15-16.
(23) For as 'water' is homiletically used as a metaphor expressing learning, it was aggadically assumed here that instead of actual water David was in need of some legal instruction, especially since mention was made in the verse of 'the gate' which was then the seat of judgment.
(24) As some of his men burned down a stack in which articles were hidden, v. p. 353. n. 6.
(25) Who imposes liability.
(26) Who maintain exemption.
(27) Near the battle-field.
(28) As the warriors of David burned the stacks down for strategical purposes and the problem was whether compensation was to be made or not.
(29) I.e. compensation should be made.
(30) V. Sanh. 20a.
(31) V. p. 351, n. 11.
(32) The enemy.
(33) Ezek. XXXIII, 15.
(34) Stacks of barley belonging to Israelites for stacks of lentils that belong to the enemy.
(35) II Sam. XXIII, 11.
(36) I Chron. XI, 13.
(37) I.e., the stacks of barley belonging to the Israelites without repaying them with the lentils of the enemy.
(38) In fact the two verses contradict each other.
(39) And which had thus also to be burned down.
(40) Ibid. 12. This would show that he did not let his warriors burn the stacks as this was not permissible by strict law.
(41) Since there was no question there of burning down.

Talmud - Mas. Baba Kama 61a

But according to the view that his inquiry concerned concealed goods in the case of Fire, what need was there for the verses?[1] — He might say to you that besides [the problem of] hidden goods [in the case of Fire], one of the other problems [referred to above][2] was asked by him. Now according to the [other] two views we quite understand why it is written, But he would not drink thereof,[3] for he said, 'Since there is a [general] prohibition[4] I do not want it.'[5] But according to the view that his inquiry concerned hidden goods[6] in the case of Fire, was it not a traditional teaching which was despatched to him, [and that being so,][7] what would be the meaning of 'But he would not drink thereof'?[8] —

[The meaning would be] that he did not want to quote this teaching in their names,[9] for he said: 'This has been transmitted to me from the Court of Law presided over by Samuel of Ramah, that no halachic matter may be quoted in the name of one who surrenders himself to meet death for words of the Torah.'

But he poured it out unto the Lord.[3] We quite understand this according to the [other] two views, as he acted thus for the sake of Heaven.[10] But according to the view that [his inquiry concerned] hidden goods in the case of Fire, what would be the meaning [of this verse], 'but he poured it out unto the Lord'? — That he repeated this [halachic statement] in the name of general traditional learning.[11]

MISHNAH. IF IT CROSSED A FENCE FOUR CUBITS HIGH OR A PUBLIC ROAD[12] OR A CANAL, THERE WOULD BE NO LIABILITY.[13]

GEMARA. But was it not taught: 'If it crossed a fence four cubits high there would [still] be liability'? — R. Papa thereupon said: The Tanna of our ruling [here] was reckoning downwards; [at the height of] six cubits there would be exemption; at five cubits, there would be exemption; down to [the height of] four cubits[14] there would [still] be exemption. The Tanna of the Baraitha [was on the other hand] reckoning upwards; at [the height of] two cubits, there would be liability; of three cubits,[15] there would be liability; up to [the height of] four cubits, there would [still] be liability.

Raba said: [The height of] four cubits stated [in the Mishnah] as not involving liability would also suffice even where the fire passed over to a field of thorns. R. Papa, however, said: [The height of] four cubits should be calculated from the top of the thorns.

Rab said: The Mishnaic ruling applies only where the fire was rising in a column, but where it was creeping along there would be liability, even if it crossed a public road of about [the width of] a hundred cubits. Samuel [on the other hand] said that the Mishnah deals with a creeping fire; for in the case of a fire rising in a column there would be exemption if it crossed a public road of any width whatsoever. It was, however, taught in accordance with Rab: This ruling[16] applies only where it was rising in a column; if it was creeping along, and wood happened to be in its path, there would be liability were it even to pass over a public ground of about the width of a hundred mil.[17] If, however, it crossed a river or pool eight cubits wide, there would be exemption. A PUBLIC ROAD. Who was the Tanna [who laid this down]? — Raba said: He was R. Eliezer, as we have indeed learnt: 'R. Eliezer says: [If it was] sixteen cubits [wide] like the road in a public thoroughfare, [there would be exemption].[18]

OR A CANAL. Rab said: It means an actual river. Samuel, however, said: It means a pond for watering fields. The one who says it is an actual river [would maintain the same ruling[19]] even where there was no water there.[19] But the one who says it means a pond for watering fields [would hold that] so long as there was water there the ruling would apply, but not where no water was there.

Elsewhere we have learnt: 'Divisions [of fields] with respect to Pe'ah[20] are effected by the following: a brook, a shelulith, a private road and a public road.[21] What is shelulith? — Rab Judah stated that Samuel had said: A [low lying] place where rainwater collects.[22] R. Bibi, however, said on behalf of R. Johanan: A pond of water which [as it were] distributes spoil[23] to the banks. The one who says that it means a [low-lying] place where rain water collects would certainly apply the ruling to a pond of water,[24] but the one who says that it means a pond of water would on the other hand maintain that [low-lying] places where rain-water collects would not cause a division, as these

---

(1) I.e. the whole description of the barley and lentils.

(2) I.e., either to burn the stacks down or to exchange those of Israelites for those of the enemy.

(3) II Sam. XXIII, 16.
(4) In the case of an ordinary man.
(5) I.e., 'to avail myself of the royal prerogative in this respect.'
(6) [And the question was whether those of his men who had burnt the stack were to be made to pay for the hidden goods, cf. Tosaf. and Maharsha, מהדורא בתרא].
(7) [That the matter did not directly affect him.]
(8) Why then did he not accept it?
(9) [The names of those who volunteered to break through the enemy's lines (v. II Sam. XXIII, 16) in order to bring him a decision.]
(10) And did not take advantage of his privileged position as king.
(11) [And not in 'their names'.]
(12) Sixteen cubits wide.
(13) As this could not have been expected; it is thus considered a mere accident.
(14) Including a fence of the height of four cubits.
(15) But not including a fence of the height of four cubits. It thus follows that there is no contradiction between the two statements as where the fence was of the height of four cubits there will be exemption according to all views.
(16) Of exemption in the case of a fire crossing a public road.
(17) I.e., two thousand cubits; v. Glos.
(18) V. next Mishnah.
(19) On account of its great width.
(20) I.e., to leaving the corners of each separate field for the poor; see supra p. 148 and Glos.
(21) Pe'ah II, 1; cf. also B.B. 55a.
(22) As the term 'shalal' also denotes 'to gather'; cf. Bez. 7a.
(23) As shalal means 'spoil'; cf. Num. XXXI, 11.
(24) As this is of a more permanent nature.

Talmud - Mas. Baba Kama 61b

should more properly be called the receptacles of the land.[1]

MISHNAH. IF A MAN KINDLES A FIRE ON HIS OWN [PREMISES], UP TO WHAT DISTANCE CAN THE FIRE PASS ON [BEFORE HE BECOMES FREE OF LIABILITY]? R. ELEAZAR B. AZARIAH SAYS: IT HAS TO BE REGARDED AS BEING IN THE CENTRE OF AN AREA REQUIRING A KOR[2] OF SEED.[3] R. ELIEZER[4] SAYS: [A DISTANCE OF] SIXTEEN CUBITS [SUFFICES], EQUAL TO [THE WIDTH OF] A ROAD IN A PUBLIC THOROUGHFARE.[5] R. AKIBA SAYS FIFTY CUBITS. R. SIMEON SAYS: [SCRIPTURE SAYS] HE WHO KINDLED THE FIRE SHOULD MAKE RESTITUTION,[6] [WHICH SHOWS THAT] ALL DEPENDS UPON THE FIRE.

GEMARA. Did R. Simeon not hold that there is some fixed limit in the case of Fire?[7] Have we not learnt: 'No man shall fix[8] an oven on a ground floor unless there is a space of four cubits from the top of it [to the ceiling]. If he fixes it on an upper floor [he may not do so][8] unless there will be under it three handbreadths of cement; in the case, however, of a portable stove, one handbreadth will suffice. If [after all these precautions] damage has nevertheless resulted, payment must be made for the damage. R. Simeon says that these limits were only to intimate that if damage resulted [after they were observed] there should be exemption.[9] [Does this not prove that R. Simeon maintained a minimum limit of precaution?] — R. Nahman therefore stated that Rabbah b. Abbahu said: [The meaning of R. Simeon's phrase 'all thus depends upon the fire' is that] all should depend upon the height of the fire, [and that no general limits could be fixed].[10] R. Joseph, [however,] stated that Rab Judah said on behalf of Samuel: The halachah is in accordance with R. Simeon.[11] So also said R. Nahman, that Samuel said that the halachah was in accordance with R. Simeon.[11]

MISHNAH. IF A MAN SETS FIRE TO A STACK OF CORN IN WHICH THERE HAPPEN TO BE ARTICLES AND THESE ARE BURNT, R. JUDAH SAYS THAT PAYMENT SHOULD BE MADE FOR ALL THAT WAS THEREIN, WHEREAS THE SAGES SAY THAT NO PAYMENT SHOULD BE MADE EXCEPT FOR A STACK OF WHEAT OR FOR A STACK OF BARLEY. [WHERE FIRE WAS SET TO A BARN TO WHICH] A GOAT HAD BEEN FASTENED AND NEAR WHICH WAS A SLAVE [LOOSE] AND ALL WERE BURNT WITH THE BARN, THERE WOULD BE LIABILITY.[12] IF, HOWEVER, THE SLAVE HAD BEEN CHAINED TO IT, AND THE GOAT WAS LOOSE NEAR BY IT, AND ALL WERE BURNT WITH IT, THERE WOULD BE EXEMPTION.[13] THE SAGES, HOWEVER, AGREE WITH R. JUDAH[14] IN THE CASE OF ONE WHO SET FIRE TO A CASTLE THAT THE PAYMENT SHOULD BE FOR ALL THAT WAS KEPT THEREIN, AS IT IS SURELY THE CUSTOM OF MEN TO KEEP [VALUABLES] IN [THEIR] HOMES.[15]

GEMARA. R. Kahana said: The difference [of opinion][16] was only where the man kindled the fire on his own [premises], from which it passed on and consumed [the stack standing] in his neighbour's premises, R. Judah imposing liability for damage done to Tamun[17] in the case of Fire whereas, the Rabbis[18] grant exemption. But if he kindled the fire on the premises of his neighbour, both agreed that he would have to pay for all that was there.[19] Said Raba to him: 'If so, why does it say in the concluding clause, THE SAGES, HOWEVER, AGREE WITH R. JUDAH IN THE CASE OF ONE WHO SET FIRE TO A CASTLE THAT THE PAYMENT SHOULD BE FOR ALL THAT WAS KEPT THEREIN'? Now why not draw the distinction in the same case by making the text run thus: These statements apply only in the case where be kindled the fire on his own [premises], whence it travelled and consumed [the stacks standing] in his neighbour's premises; but where he kindled the fire in the premises of his neighbour, all would agree that he should pay for all that was kept there? — Raba therefore said: They differed in both cases. They differed where he kindled the fire in his own [premises] whence it travelled and consumed [stacks standing] in his neighbour's premises, R. Judah imposing liability to pay for Tamun in the case of Fire, whereas the [other] Rabbis hold that he is not liable [to pay for Tamun in the case of Fire].[20] They also differed in the case where he kindled a fire in the premises of his neighbour, R. Judah holding that he should pay for everything that was there, including even purses [of money], whereas the Rabbis held that it was only for utensils which were usually put away in the stacks, stich as e.g. threshing sledges and cattle harnesses that payment would have to be made, but for articles not usually kept in stacks no payment would have to be made.

Our Rabbis taught: If a man sets fire to a stack of corn in which there were utensils and they were burnt, R. Judah says that payment should be made for all that was stored there, whereas the Sages say that no payment should be made except for a stack of wheat or for a stack of barley, and that the space occupied by the utensils has to be considered as if it was full of corn.[21]

---

(1) And should therefore not cause the fields to be considered separated from one another.

(2) V. Glos.

(3) As fire when rising in columns could not be expected to pass on to further distances.

(4) B. Hyrcanus.

(5) V. p. 355, n. 10.

(6) Ex. XXII, 5.

(7) [Assuming that what R. Simeon means is that it all depends on the damage caused by the fire irrespective of the distance.]

(8) I.e., the neighbours have the right to prevent him from doing so.

(9) B.B. II, 2.

(10) But each case should be considered in accordance with its own circumstances.

(11) [Only of this our Mishnah, but not of B.B. (Rashal).]

(12) For the goat and for the barn, but no liability whatever for the slave, for, since he was loose, he should have

escaped.

(13) For the goat and even for the barn, for since the slave was chained a capital charge is involved, and all civil liabilities merge in capital charges; v. supra p. 113 and p. 192.

(14) Who ordains payment even for concealed articles.

(15) The law about hidden goods could therefore not be applicable in this case.

(16) Between the Sages and R. Judah

(17) I.e., something hidden; v. Glos.

(18) The Sages.

(19) For the act of trespass.

(20) Even for utensils which are customarily kept in stacks.

(21) For which payment will be made.

These statements apply only to the case where he kindled the fire on his own [premises] whence it travelled and consumed [the stack standing] in the premises of his neighbour; but where he kindled the fire in the premises of his neighbour, all agree[1] that he would have to pay for all that was kept there.[2] R. Judah, however, agreed with the Sages that in the case where a man granted his neighbour the loan of a particular place [in his field] for the purpose of piling up a stack, if [the borrower of the place] piled up stacks and hid [some valuable articles there][3] no payment would have to be made except for the value of the stack alone.[4] [So also where permission was granted] for the purpose of piling up stacks of wheat, and he piled up stacks of barley, or [permission was given for] barley and he piled up wheat, or even where he piled up wheat [for which the permission was granted], but covered it with barley, or again where he piled up barley but covered it with wheat; [in these cases] no payment would be made except for the value of the barley alone.[5]

Raba said: If a man gives a gold denar to a woman and says to her, 'Be careful with it, as it is a silver coin', if she damaged it she would have to pay for a gold denar because he could [rightly] plead against her: 'What business had you to damage it?' But if she was [merely] careless with it,[6] she would have to pay only for a silver denar, as she could [rightly] plead against him: 'It was only silver that I undertook to take care of, but I never undertook to take care of gold.' Said R. Mordecai to R. Ashi: 'Do you state this in the name of Raba? We derive it quite definitely from the Baraitha [which states]: [If a man piled up] wheat [for which the permission was granted], but covered it with barley, or again [if he piled up] barley but covered it up with wheat, no payment would be made except for the value of the barley alone. Now, does this not prove that he is entitled to plead against the plaintiff: 'It was only barley that I undertook to take care of?' Here too she is surely entitled to plead against the depositor, 'I never undertook to take care of gold.'

Rab said: I have heard a new point with reference to the view of R. Judah [in the Mishnah here], but do not know what it is. Said Samuel to him: Does Abba[7] really not know what he heard with reference to R. Judah who imposes liability for damage done to Tamun in the case of Fire? It is that the judges must make the ordinance enacted for the benefit of a robbed person[8] extend also to the case of Fire.

Amemar raised the question: Would they similarly make the ordinance enacted for the benefit of a robbed person extend also to the case of an informer or not? According to the view[9] that we should not give judgment [against the defendant] in cases where the damage was [not actually done but] merely caused [by him],[10] there could be no question that also against informers we should not give judgment. But the question could still be raised according to the view that we should give judgment [against the defendant even] in cases where the damage was [not actually done but effectively and directly] caused by him.[10] Would the judges make the ordinance enacted for the benefit of a robbed person extend also to the case of an informer so that the plaintiff would by taking an oath [as to the exact amount of his loss] be paid accordingly, or should this perhaps not be so? — Let this remain undecided.

A certain man kicked another's money-box into the river. The owner came [into Court] and said: 'So much and so much did I have in it.' R. Ashi was sitting and pondering on it: What should be the law in such a case? — Rabina said to R. Aha the son of Raba, or, as others report, R. Aha the son of Raba said to R. Ashi: Is this not exactly what was stated in the Mishnah? For we learnt: 'THE SAGES AGREE WITH R. JUDAH IN THE CASE OF ONE WHO SET FIRE TO A CASTLE, THAT PAYMENT SHOULD BE FOR ALL THAT WAS KEPT THEREIN, AS IT IS SURELY THE CUSTOM OF MEN TO KEEP [VALUABLES] IN [THEIR] HOMES. [Is this not equivalent to the case in hand?][11] — He, however, said to him: If he would have pleaded that he had money there, it would indeed have been the same.[11] But we are dealing with a case where he pleads that he

had jewels there. What should then be the legal position? Do people keep jewels in a money-box or not? — Let this remain undecided.

R. Yemar said to R. Ashi: If he pleads that he had silver cups in the castle [which was burnt], what would be the law? — He answered him: We consider whether he was a wealthy man who was [likely] to have silver cups, or whether he was a trustworthy man with whom people would deposit such things. [If he is,] he would be allowed to swear and be reimbursed accordingly, but if not, he would not be believed [in his allegations without corroborative evidence].

R. Adda the son of R. Iwya said to R. Ashi: What is the [practical] difference between gazlan[12] and hamsan?[13] — He replied: A hamsan [one who expropriates forcibly] offers payment [for what he takes], whereas a gazlan does not make payment. The other rejoined: If he is prepared to make payment, how can you call him hamsan? Did R. Huna not say[14] that [even] where the vendor was [threatened to be] hanged [unless he would agree] to sell, the sale would be a valid sale?[15] — This, however, is no contradiction, as in that case, the vendor did [finally][16] say 'I agree', whereas here [in the case of hamsan] he never said 'I agree'.[17]

---

(1) [Tosaf. omits 'all agree that', and take this passage as a continuation of the words of the Sages.]

(2) According to Raba this refers only to utensils which are usually kept in stacks.

(3) And it so happened that they were all burned down by a fire kindled by the owner of the field.

(4) As the owner of the field knew only of the stacks.

(5) As where permission was granted for barley the owner of the field could not have expected that wheat would be piled up. Even where permission was given for wheat, if the stacks were covered with barley, the owner of the field can plead that he only noticed barley.

(6) And the liability upon her is only because of her undertaking to keep it as an unpaid bailee.

(7) Which was the personal name of Rab.

(8) That where the amount of the loss cannot be established by proper evidence the plaintiff is entitled to take an oath as to the loss he sustained; v. Shebu. VII, 1.

(9) Infra 117b.

(10) Such as, e.g., in the case of informers.

(11) For just as it is the custom of men to keep valuables in their homes, it is surely the custom of men to keep money in money boxes.

(12) I.e. robber.

(13) I.e., violent person.

(14) B.B. 47b.

(15) For since he took the money the sale could not be called forced.

(16) After the pressure brought to bear upon him.

(17) The sale could therefore not become valid.

Talmud - Mas. Baba Kama 62b

MISHNAH. IF A SPARK ESCAPES FROM UNDERNEATH A HAMMER AND DOES DAMAGE, THERE WOULD BE LIABILITY. IF WHILE A CAMEL LADEN WITH FLAX WAS PASSING THROUGH A PUBLIC THOROUGHFARE THE FLAX GOT INTO A SHOP AND CAUGHT FIRE BY COMING IN CONTACT WITH THE SHOPKEEPER'S CANDLE, AND SET ALIGHT THE WHOLE BUILDING, THE OWNER OF THE CAMEL WOULD BE LIABLE.[1] IF, HOWEVER, THE SHOPKEEPER LEFT HIS CANDLE OUTSIDE [HIS SHOP], HE WOULD BE LIABLE.[2] R. JUDAH SAYS: IF IT WAS A CHANUKAH[3] CANDLE THE SHOPKEEPER WOULD NOT BE LIABLE.[4]

GEMARA. Rabina said in the name of Raba: From the statement of R. Judah we can learn that it is ordained to place the Chanukah candle within ten handbreadths [from the ground]. For if you