DEGRADATION. HOW IS IT WITH 'DEPRECIATION'? IF HE PUT OUT HIS EYE, CUT OFF HIS ARM OR BROKE HIS LEG, THE INJURED PERSON IS CONSIDERED AS IF HE WERE A SLAVE BEING SOLD IN THE MARKET PLACE, AND A VALUATION IS MADE AS TO HOW MUCH HE WAS WORTH [PREVIOUSLY]. AND HOW MUCH HE IS WORTH [NOW]. 'PAIN' — IF HE BURNT HIM EITHER WITH A SPIT OR WITH A NAIL, EVEN THOUGH ON HIS [FINGER] NAIL WHICH IS A PLACE WHERE NO BRUISE COULD BE MADE, IT HAS TO BE CALCULATED HOW MUCH A MAN OF EQUAL STANDING WOULD REQUIRE TO BE PAID TO UNDERGO SUCH PAIN. 'HEALING' — IF HE HAS STRUCK HIM, HE IS UNDER OBLIGATION TO PAY MEDICAL EXPENSES. SHOULD ULCERS [MEANWHILE] ARISE ON HIS BODY, IF AS A RESULT OF THE WOUND, THE OFFENDER WOULD BE LIABLE, BUT IF NOT AS A RESULT OF THE WOUND, HE WOULD BE EXEMPT. WHERE THE WOUND WAS HEALED BUT REOPENED, HEALED AGAIN BUT REOPENED, HE WOULD STILL BE UNDER OBLIGATION TO HEAL HIM. IF, HOWEVER, IT HAD COMPLETELY HEALED [BUT HAD SUBSEQUENTLY REOPENED] HE WOULD NO MORE BE UNDER OBLIGATION TO HEAL HIM. 'LOSS OF TIME' — THE INJURED PERSON IS CONSIDERED AS IF HE WERE A WATCHMAN OF CUCUMBER BEDS[1] [SO THAT THE LOSS OF SUCH WAGES[2] SUSTAINED BY HIM DURING THE PERIOD OF ILLNESS MAY BE REIMBURSED TO HIM]. FOR THERE HAS ALREADY BEEN PAID TO HIM THE VALUE OF HIS HAND OR THE VALUE OF HIS LEG [THROUGH WHICH DEPRIVATION HE WOULD NO MORE BE ABLE TO CARRY ON HIS PREVIOUS EMPLOYMENT]. 'DEGRADATION' — ALL TO BE ESTIMATED IN ACCORDANCE WITH THE STATUS OF THE OFFENDER AND THE OFFENDED.

GEMARA. Why [pay compensation]? Does the Divine Law not say 'Eye for eye'?[3] Why not take this literally to mean [putting out] the eye [of the offender]? — Let not this enter your mind, since it has been taught: You might think that where he put out his eye, the offender's eye should be put out, or where he cut off his arm, the offender's arm should be cut off, or again where he broke his leg, the offender's leg should be broken. [Not so; for] it is laid down, 'He that smiteth any man. . .' 'And he that smiteth a beast . . .'[4] just as in the case of smiting a beast compensation is to be paid, so also in the case of smiting a man compensation is to be paid.[5] And should this [reason] not satisfy you,[6] note that it is stated, 'Moreover ye shall take no ransom for the life of a murderer, that is guilty of death',[7] implying that it is only for the life of a murderer that you may not take 'satisfaction',[8] whereas you may take 'satisfaction' [even] for the principal limbs, though these cannot be restored.' To what case of 'smiting' does it refer? If to [the Verse] 'And he that killeth a beast, shall make it good: and he that killeth a man, shall be put to death',[9] does not this verse refer to murder?[10] — The quotation was therefore made from this text: And he that smiteth a beast mortally shall make it good: life for life,[11] which comes next to and if a man maim his neighbour: as he hath done so shall it be done to him.[12] But is [the term] 'smiting' mentioned in the latter text?[12] — We speak of the effect of smiting implied in this text and of the effect of smiting implied in the other text: just as smiting mentioned in the case of beast refers to the payment of compensation, so also does smiting in the case of man refer to the payment of compensation. But is it not written: And he that smiteth[13] any man mortally shall surely be put to death[14] [which, on account of the fact that the law of murder is not being dealt with here,[15] surely refers to cases of mere injury and means Retaliation]?[16] — [Even this refers to the payment of] pecuniary compensation. How [do you know that it refers] to pecuniary compensation? Why not say that it really means capital punishment?[17] — Let not this enter your mind; first, because it is compared to the case dealt with in the text, 'He that smiteth[13] a beast mortally shall make it good', and furthermore, because it is written soon after, 'as he hath done so shall it be done to him',[18] thus proving that it means pecuniary compensation. But what is meant by the statement, 'if this reason does not satisfy you'? [Why should it not satisfy you?] — The difficulty which further occurred to the Tanna was as follows: What is your reason for deriving the law of man injuring man from the law of smiting a beast and not from the law governing the case of killing a man [where Retaliation is the rule]? I would answer: It is proper to derive [the law of] injury[18] from

[the law governing another case of] injury,[19] and not to derive [the law of] injury[18] from [the law governing the case of] murder. It could, however, be argued to the contrary; [that it is proper] to derive [the law of injury inflicted upon] man from [another case of] man but not to derive [the law of injury inflicted upon] man from [the case of] beast. This was the point of the statement 'If, however, this reason does not satisfy you.' [The answer is as follows:] 'It is stated: Moreover ye shall take no ransom for the life of a murderer that is guilty of death; but he shall surely be put to death, implying that it was only 'for the life of a murderer' that you may not take ransom whereas you may take ransom [even] for principal limbs though these cannot be restored.' But was the purpose of this [verse], Moreover ye shall take no ransom for the life of a murderer, to exclude the case of principal limbs? Was it not requisite that the Divine Law should state that you should not make him[20] subject to two punishments, i.e. that you should not take from him pecuniary compensation as well as kill him? — This, however, could be derived from the verse, According to his crime,[21] [which implies that] you can make him liable for one crime but cannot make him liable for two crimes.[22] But still was it not requisite that the Divine Law should state that you should not take pecuniary compensation from him and release him from the capital punishment? — If so the Divine Law would have written, 'Moreover ye shall take no satisfaction for him who is guilty [and deserving] of death'; why then write 'for the life of a murderer' unless to prove from it that it is only 'for the life of a murderer' that you may not take ransom, whereas you may take ransom [even] for principal limbs though these could not be restored? But since it was written, Moreover ye shall take no ransom [implying the law of pecuniary compensation in the case of mere injury], why do I require [the analogy made between] 'smiting' [in the case of injuring man and] 'smiting' [in the case of injuring beast]? — It may be answered that if [the law would have had to be derived only] from the former text, I might have said that the offender has the option, so that if he wishes he may pay with the loss of his eye or if he desires otherwise he may pay the value of the eye; we are therefore told [that the inference is] from smiting a beast: just as in the case of smiting a beast the offender is liable for pecuniary compensation so also in the case of injuring a man he is liable for pecuniary compensation.

It was taught: R. Dosthai b. Judah says: Eye for eye means pecuniary compensation. You say pecuniary compensation, but perhaps it is not so, but actual retaliation [by putting out an eye] is meant? What then will you say where the eye of one was big and the eye of the other little, for how can I in this case apply the principle of eye for eye? If, however, you say that in such a case pecuniary compensation will have to be taken, did not the Torah state, Ye shall have one manner of law,[23] implying that the manner of law should be the same in all cases? I might rejoin: What is the difficulty even in that case? Why not perhaps say that for eyesight taken away the Divine Law ordered eyesight to be taken away from the offender?[24] For if you will not say this,

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(1) As even a lame or one-armed person could be employed in this capacity.

(2) But not of the previous employment on account of the reason which follows.

(3) Ex. XXI, 24.

(4) Lev. XXIV; for the exact verse see the discussion that follows.

(5) But no resort to Retaliation.

(6) Lit., 'If it is your desire to say (otherwise).'

(7) Num. XXXV, 31.

(8) I.e., ransom, and thus release him from capital punishment.

(9) Lev. XXIV, 21.

(10) Where retaliation actually applies.

(11) Ibid. 18.

(12) Ibid. 19.

(13) E.V.: 'killeth'.

(14) Ibid. 17.

(15) As follows in the text, ' Breach for breach, eye for eye' etc.

(16) The phrase, 'be put to death', would thus refer exclusively to the limb which has to be sacrificed in retaliation.
(17) As indeed appears from the literal meaning of the text.
(18) Lev. XXIV, 19.
(19) I.e., where Man injured beast.
(20) The murderer.
(21) Deut. XXV, 2.
(22) Cf. Mak. 4b and 13b.
(23) Lev. XXIV, 22.
(24) Without taking into consideration the sizes of the respective eyes.

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how could capital punishment be applied in the case of a dwarf killing a giant or a giant killing a dwarf,[1] seeing that the Torah says, Ye shall have one manner of law, implying that the manner of law should be the same in all cases, unless you say that for a life taken away the Divine Law ordered the life of the murderer to be taken away?[2] Why then not similarly say here too that for eyesight taken away the Divine Law ordered eyesight to be taken away from the offender?

Another [Baraitha] taught: R. Simon b. Yohai says: 'Eye for eye' means pecuniary compensation. You say pecuniary compensation, but perhaps it is not so, but actual retaliation [by putting out an eye] is meant? What then will you say where a blind man put out the eye of another man, or where a cripple cut off the hand of another, or where a lame person broke the leg of another? How can I carry out in this case [the principle of retaliation of] 'eye for eye', seeing that the Torah says, Ye shall have one manner of law, implying that the manner of law should be the same in all cases? I might rejoin: What is the difficulty even in this case? Why not perhaps say that it is only where it is possible [to carry out the principle of retaliation that] it is to be carried out, whereas where it is impossible, it is impossible, and the offender will have to be released altogether? For if you will not say this, what could be done in the case of a person afflicted with a fatal organic disease killing a healthy person?[3] You must therefore admit that it is only where it is possible [to resort to the law of retaliation] that it is resorted to, whereas where it is impossible, it is impossible, and the offender will have to be released.

The School of R. Ishmael taught: Scripture says: So shall it be given to him again.[4] The word 'giving' can apply only to pecuniary compensation. But if so, would the words, As he hath [given a blow that] caused a blemish,[4] similarly refer to money?[5] — It may be replied that at the School of R. Ishmael this text was expounded as a superfluous verse; since it has already been written, And if a man maim his neighbour,' as he hath done so shall it be done to him.[6] Why after this do we require the words, so shall it be given to him again? It must, therefore refer to pecuniary compensation. [But still,] why the words, as he hath [given a blow that] caused a blemish in a man? Since it was necessary to write, so shall it be given to him again,[7] the text also writes, as he hath [given a blow that] caused a blemish in a man.

The School of R. Hiyya taught: Scripture says, Hand in hand,[8] meaning an article which is given from hand to hand, which is of course money. But could you also say the same regarding the [next] words, foot in foot? — It may be replied that at the School of R. Hiyya this text was expounded as a superfluous verse, for it has already been written: Then shall ye do unto him as he had purposed to do unto his brother.[9] If then you assume actual retaliation [for injury], why do I require the words, hand in hand? This shows that it means pecuniary compensation. But still, why the words, foot in foot? — Having written 'hand in hand', the text also wrote 'foot in foot'.[8]

Abbaye said: [The principle of pecuniary compensation] could be derived from the teaching of the School of Hezekiah. For the School of Hesekiah taught: Eye for eye, life for life,[10] but not 'life and

eye for eye'. Now if you assume that actual retaliation is meant, it could sometimes happen that eye and life would be taken for eye, as while the offender is being blinded, his soul might depart from him. But what difficulty is this? perhaps what it means is that we have to form an estimate,[11] and only if the offender will be able to stand it will retaliation be adopted, but if he will not be able to stand it, retaliation will not be adopted? And if after we estimate that he would be able to stand it and execute retaliation it so happens that his spirit departs from him, [there is nobody to blame,] as if he dies, let him die. For have we not learnt regarding lashes: 'Where according to estimation he[12] should be able to stand them, but it happened that he died under the hand of the officer of the court, there is exemption [from any blame of manslaughter]'.[13]

R. Zebid said in the name of Raba: Scripture says, Wound for would:[14] This means that compensation is to be made for pain even where Depreciation [is separately compensated].[15] Now, if you assume that actual Retaliation is meant, would it not be that just as the plaintiff suffered pain [through the wound], the offender too would suffer pain through the mere act of retaliation?[16] But what difficulty is this? Why, perhaps, not say that a person who is delicate suffers more pain whereas a person who is not delicate does not suffer [so much] pain, so that the practical result [of the Scriptural inference] would be to pay for the difference [in the pain sustained]!

R. Papa in the name of Raba said: Scripture says, To heal, shall he heal;[17] this means that compensation is to be made for Healing even where Depreciation [is compensated separately]. Now, if you assume that Retaliation is meant, would it not be that just as the plaintiff needed medical attention, the defendant also would surely need medical attention [through the act of retaliation]? But what difficulty is this? Why perhaps not say that there are people whose flesh heals speedily while there are others whose flesh does not heal speedily, so that the practical result [of the Scriptural inference] would be to require payment for the difference in the medical expenses!

R. Ashi said: [The principle of pecuniary compensation] could be derived from [the analogy of the term] 'for' [occurring in connection with Man] with the term 'for' occurring in connection with Cattle. It is written here, 'Eye for eye,' and it is also written there, he shall surely pay ox for ox.[18] [This indicates that] just as in the latter case it is pecuniary compensation that is meant, so also in the former case it means pecuniary compensation. But what ground have you for comparing the term 'for' with 'for' [mentioned in connection] with cattle, rather than with the 'for' [mentioned in connection] with [the killing of] man, as it is written, thou shalt give life for life,[19] so that, just as in the case of murder it is actual Retaliation, so also here it means actual Retaliation? — It may be answered that it is more logical to infer [the law governing] injury from [the law governing another case of] injury[18] than to derive [the law of] injury from [the law applicable in the case of] murder.[19] But why not say on the contrary, that it is more logical to derive [the law applying to] Man from [a law which similarly applies to] Man[19] than to derive [the law applying to] Man from [that applying to] Cattle? — R. Ashi therefore said: It is from the words for he hath humbled her,[20] that [the legal implication of 'eye for eye'] could be derived by analogy, as [the law in the case of] Man is thus derived from [a law which is similarly applicable to] Man, and the case of injury from [a similar case of] injury.

It was taught: R. Eliezer said: Eye for eye literally refers to the eye [of the offender]. Literally, you say? Could R. Eliezer be against all those Tannaim [enumerated above]?[21] — Raba thereupon said: it only means to say that the injured person would not be valued as if he were a slave.[22] Said Abaye to him: How else could he be valued? As a freeman? Could the bodily value of a freeman be ascertained by itself? — R. Ashi therefore said: It means to say that the valuation will be made not of [the eye of] the injured person but of [that of] the offender.[23]

An ass once bit off the hand of a child. When the case was brought before R. Papa b. Samuel he said [to the sheriffs of the court], 'Go forth and ascertain the value of the Four items.'[24] Said Raba to

him: Have we not learnt Five [items]? — He replied: I did not include Depreciation. Said Abaye to him: Was not the damage in this case done by an ass, and in the case of an ass [injuring even man] there is no payment except for Depreciation?[25] — He therefore ordered [the sheriffs], 'Go forth and make valuation of the Depreciation.' But has not the injured person to be valued as if he were a slave? — He therefore said to them, 'Go forth and value the child as if it were a slave.' But the father of the child thereupon said, 'I do not want [this method of valuation], as this procedure is degrading.' They, however, said to him, 'What right have you to deprive the child of the payment which would belong to it?'[26] He replied, 'When it comes of age I will reimburse it out of my own.

An ox once chewed the hand of a child. When the case was brought before Raba, he said [to the sheriffs of the court], 'Go forth and value the child as if it were a slave.' They, however, said to him, 'Did not the Master [himself] say that payment for which the injured party would have to be valued as if he were a slave,[27] cannot be collected in Babylon?'[28] — He replied, 'My order would surely have no application except in case of the plaintiff becoming possessed of property belonging to the defendant.'[29] Raba thus follows his own principle, for Raba said: Payment for damage done to chattel by Cattle[30] or for damage done to chattel by Man can be collected even in Babylon,[31] whereas payment for injuries done to man by Man or for injuries done to man by Cattle cannot be collected in Babylon. Now, what special reason is there why payment for injuries done to man by Cattle cannot [be collected in Babylon] if not because it is requisite [in these cases that the judges be termed] Elohim,[32] [a designation] which is lacking [in Babylon]? Why then should the same not be also regarding payment for [damage done] to chattel by Cattle or to chattel by Man, where there is similarly

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(1) Where the bodies of the murderer and the murdered are not alike.

(2) Without considering the weights and sizes of the respective bodies.

(3) In which case the murderer could not be convicted by the testimony of witnesses; v. Sanh. 78a.

(4) Lev. XXIV. 20.

(5) Which could of course not be maintained.

(6) Ibid. 19.

(7) To indicate that pecuniary compensation is to be paid.

(8) Deut. XIX, 21. (E.V.: Hand for hand, foot for foot.)

(9) Ibid. 19.

(10) Ex. XXI, 24.

(11) Whether the offender would stand the operation or not.

(12) Who is subject to the thirty-nine lashes for having transgressed a negative commandment.

(13) Mak. III. 14.

(14) Ex. XXI, 25.

(15) V. supra 26b.

(16) How then could there he extra compensation for pain?

(17) Ex. XXI, 19. (E.V.: shall cause him to be thoroughly healed.)

(18) Ibid. 36.

(19) Ibid. 23.

(20) Deut.XXII, 29.

(21) Proving against Retaliation.

(22) In the manner described supra p. 473.

(23) As the pecuniary compensation in this case is a substitution for Retaliation.

(24) Enumerated supra p. 473.

(25) V. supra 26a.

(26) Cf, infra 87b.

(27) I.e., where the damages could otherwise not be ascertained.

(28) Because the judges there have not been ordained as Mumhe (v. Glos.) who alone were referred to by the Scriptural term Elohim standing for 'judges' as in Ex. XXI, 6 and XXII, 7-8, and who alone were qualified to administer penal

justice; cf. Sanh. 2b, 5a, and 14a and supra p. 144.

(29) Cf. supra p. 67.

(30) Lit., 'ox'.

(31) As these matters are of a purely civil nature and of frequent occurrence, as brought out by the discussion which follows.

(32) As in Ex. XXI, 6 and XXII, 7-8.

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required the designation of Elohim which is lacking [in Babylon]? But if on the other hand the difference in the case of chattel [damaged] by Cattle or chattel [damaged] by Man is because we [in Babylon] are acting merely as the agents [of the mumhin[1] judges in Eretz Yisrael] as is the practice with matters of admittances and loans,[2] why then in the case of man [injured] by Man or man [injured] by Cattle should we similarly not act as their agents as is indeed the practice with matters of admittances and loans?[2] — It may, however, be said that we act as their agents only in regard to a matter of payment which we can fix definitely, whereas in a matter of payment which we are not able to fix definitely [but which requires valuation] we do not act as their agents. But I might object that [payment for damage done] to chattel by Cattle or to chattel by Man we are similarly not able to fix definitely, but we have to say, 'Go out and see at what price an ox is sold on the market place.' Why then in the case of man [injured] by Man, or man [injured] by Cattle should you not similarly say, 'Go out and see at what price slaves are sold on the market place'? Moreover, why in the case of double payment[3] and four-fold or five-fold payment[4] which can be fixed precisely should we not act as their agents?[5] — It may, however, be said that we may act as their agents only in matters of civil liability, whereas in matters of a penal nature[6] we cannot act as their agents. But why then regarding payment [for an injury done] to man by Man which is of a civil nature should we not act as their agents? — We can act as their agents only in a matter of frequent occurrence, whereas in the case of man injured by Man which is not of frequent occurrence we cannot act as their agents. But why regarding Degradation,[7] which is of frequent occurrence, should we not act as their agents? — It may indeed be said that this is really the case, for R. Papa ordered four hundred zuz to be paid for Degradation. But this order of R. Papa is no precedents for when R. Hisda sent to consult R. Nahman [in a certain case] did not the latter send back word, 'Hisda, Hisda, are you really prepared to order payment of fines in Babylon?'[8] — It must therefore be said that we can act as their agents only in a matter which is of frequent occurrence and where actual monetary loss is involved,[9] whereas in a matter of frequent occurrence but where no actual monetary loss is involved, or again in a matter not of frequent occurrence though where monetary loss is involved we cannot act as their agents. It thus follows that in the case of man [injured] by Man, though there is there actual monetary loss, yet since it is not of frequent occurrence we cannot act as their agents, and similarly in respect of Degradation, though it is of frequent occurrence, since it involves no actual monetary loss, we cannot act as their agents.

Is payment for damage done to chattel by Cattle really recoverable in Babylon? Has not Raba said: 'If Cattle does damage, no payment will be collected in Babylon'?[10] Now, to whom was damage done [in this case stated by Raba]? If we say to man, why then only in the case of Cattle injuring man?[11] Is it not the fact that even in the case of Man injuring man[12] payment will not be collected in Babylon? It must therefore surely refer to a case where damage was done to chattel and it was nevertheless laid down that no payment would be collected in Babylon![13] — It may, however, be said that that statement referred to Tam,[14] whereas this statement deals with Mu'ad.[15] But did Raba not say that there could be no case of Mu'ad[16] in Babylon? — It may, however, be said that where an ox was declared Mu'ad there [in Eretz Yisrael][17] and brought over here [in Babylon, there could be a case of Mu'ad even in Babylon] — But surely this[18] is a matter of no frequent occurrence, and have you not stated that in a matter not of frequent occurrence we cannot act as their agents? — [A case of Mu'ad could arise even in Babylon] where the Rabbis of Eretz Yisrael came to Babylon

and declared the ox Mu'ad here. But still, this also is surely a matter of no frequent occurrence,[19] and have you not stated that in a matter not of frequent occurrence we cannot act as their agents? — Raba must therefore have made his statement [that payment will be collected even in Babylon where chattel was damaged by Cattle] with reference to Tooth and Foot which are Mu'ad ab initio.

PAIN: — IF HE BURNT HIM EITHER WITH A SPIT OR WITH A NAIL, EVEN THOUGH ON HIS [FINGER] NAIL WHICH IS A PLACE WHERE NO BRUISE COULD BE MADE etc. Would Pain be compensated even in a case where no depreciation was thereby caused? Who was the Tanna [that maintains such a view]?Raba replied: He was Ben ‘Azzai, as taught: Rabbi said that ‘burning’[20] without bruising is mentioned at the outset, whereas Ben ‘Azzai said that [it is with] bruising [that it] is mentioned at the outset. What is the point at issue between them? Rabbi holds that as ‘burning’ implies even without a bruise, the Divine Law had to insert ‘bruise’,[21] to indicate that it is only where the burning caused a bruise that there would be liability,[22] but if otherwise this would not be so,[23] whereas Ben ‘Azzai maintained that as ‘burning’ [by itself] implied a bruise, the Divine Law had to insert ‘bruise’ to indicate that ‘burning’ meant even without a bruise.[24] R. Papa demurred: On the contrary, it is surely the reverse that stands to reason:[25] Rabbi who said that ‘burning’, [without bruising] is mentioned at the outset holds that as ‘burning,’ implies also a bruise, the Divine Law inserted ‘bruise’ to indicate that ‘burning,’ meant even without a bruise,[26] whereas Ben ‘Azzai who said that [it was] with bruising [that it] was mentioned at the outset maintains that as ‘burning’ implies even without a bruise, the Divine Law purposely inserted ‘bruise’ to indicate that it was only where the ‘burning’ has caused a bruise that there will be liability, but if otherwise this would not be so; for in this way they[27] would have referred in their statements to the law as it stands now in its final form. Or, alternatively, it may be said that both held that ‘burning’ implies both with a bruise and without a bruise, and here

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(1) V. Glos. s.v. Mumhe.

(2) For which cf. Sanh. (Sonc. ed.) p. 4, n. 3.

(3) For theft.

(4) For having slaughtered or sold the stolen sheep and ox respectively.

(5) Why then should these not be adjudicated and collected in Babylon?

(6) As is the case with double payment and four-fold or five-fold payment.

(7) [Omitting with MS.M. ‘blemish’ paid in case of rape, and occurring in cur. edd.]

(8) Cf. supra 27b.

(9) Excluding thus a loss of mere prospective profits.

(10) V. supra p. 481, n. 5.

(11) Which is of no frequent occurrence at all.

(12) Which is of slightly more frequent occurrence.

(13) This contradicts the statement made by the same Raba (supra p. 481) that payment for damage done to chattel by Cattle will be collected even in Babylon.

(14) In which case the payment is of a penal nature (as decided supra p. 67), which cannot be collected in Babylon.

(15) Where the payment is of a strictly civil nature, and accordingly collected even in Babylon.

(16) Regarding damage done by Horn, for since for the first three times of goring no penalty could be imposed in Babylon, the ox could never be declared Mu'ad.

(17) Where the judges are Mumhin and thus qualified to administer also penal justice.

(18) I.e., to bring over an ox already declared Mu'ad in Eretz Yisrael to Babylon.

(19) Cf. Keth. 110b.

(20) Ex. XXI, 25.

(21) Ibid.

(22) For the payment of Pain.

(23) I.e., Pain would not be compensated since no depreciation was thereby caused.

(24) Pain would therefore even in this case be compensated in accordance with Ben ‘Azzai who could thus be considered to have been the Tanna of the Mishnaic ruling.

(25) That the Tanna of the Mishnaic ruling was most probably Rabbi and not his opponent, and moreover the statements made by Rabbi and Ben ‘Azzai should be taken to give the final implication of the law and not as it would have been on first thoughts.
(26) So that Pain will be paid even in this case according to Rabbi who was the Tanna of the Mishnaic ruling.
(27) I.e., Rabbi and Ben ‘Azzai.

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they were differing on the question of a generalisation and a specification placed at a distance from each other,[1] Rabbi maintaining that in such a case the principle of a generalisation followed by a specification does not apply,[2] whereas Ben ‘Azzai maintained that the principle of a generalisation followed by a specification does apply.[3] And should you ask why, according to Rabbi, was it necessary to insert ‘bruise’,[4] [the answer would be that it was necessary to impose the payment of] additional money.[5] IT HAS TO BE CALCULATED HOW MUCH A MAN OF EQUAL STANDING WOULD REQUIRE TO BE PAID TO UNDERGO SUCH PAIN. But how is pain calculated in a case where Depreciation [also has to be paid]?[6] — The father of Samuel[7] replied: We have to estimate how much a man would require to be paid to have his arm cut off. To have his arm cut off? Would this involve only Pain and not also all the Five Items?[8] Moreover, are we dealing with fools [who would consent for any amount to have their arm cut off]? — It must therefore refer to the cutting off of a mutilated arm.[9] But even [if the calculation be made on the basis of] a mutilated arm, would it amount only to Pain and not also to Pain plus Degradation, as it is surely a humiliation that a part of the body should be taken away and thrown to dogs? — It must therefore mean that we estimate how much a man whose arm had by a written decree of the Government to be taken off by means of a drug would require that it should be cut off by means of a sword. But I might say that even in such a case no man would take anything [at all] to hurt himself [so much]? — It must therefore mean that we have to estimate how much a man whose arm had by a written decree of the Government to be cut off by means of a sword would be prepared to pay that it might be taken off by means of a drug. But if so, instead of TO BE PAID should it not be written ‘to pay’? — Said R. Huna the son of R. Joshua: It means that payment to the plaintiff will have to be made by the offender to the extent of the amount which the person sentenced would have been prepared to pay.

‘HEALING’: — IF HE HAS STRUCK HIM HE IS UNDER OBLIGATION TO PAY MEDICAL EXPENSES etc. Our Rabbis taught: Should ulcers grow on his body as a result of the wound and[10] the wound break open again, he has still to heal him and is liable to pay him for Loss of Time, but if it was not caused through the wound he has not to heal him and need not pay him for Loss of Time. R. Judah, however, said that even if it was caused through the wound, though he has to heal him, he has not to pay him for Loss of Time. The Sages said: The Loss of Time and Healing [are mentioned together in Scripture:][11] Wherever there is liability for Loss of Time there is liability for Healing but wherever there is no liability for Loss of Time there is no liability for Healing. In regard to what principle do they[12] differ? — Rabbah said: ‘I found the Rabbis at the School of Rab sitting and saying[13] that the question whether [or not] a wound may be bandaged[14] [by the injured person] was the point at issue. The Rabbis[15] maintained that a wound may be bandaged, whereas R. Judah maintained that a wound may not be bandaged, so that [it was only] for Healing of which there is a double mention in Scripture[16] that there is liability,[17] but for Loss of Time of which there is no double mention in Scripture there is no liability. I, however, said to them that if a wound may not be bandaged there would be no liability even for Healing.[18] We must therefore say that all are agreed that a wound may be bandaged, but not too much; R. Judah held that since it may not be bandaged too much [it is only] for Healing of which there is a double mention in Scripture that there will be liability, but for Loss of Time of which there is no double mention in Scripture there will be no liability, whereas the Rabbis maintained that since Scripture made a double mention of healing there will be liability also for Loss of Time which is compared to Healing. R. Judah, however, maintained that there will be no liability for Loss of Time as Scripture excepted this by [the term] ‘only’;[11] to

which the Rabbis[19] might rejoin that 'only' [was intended to exclude the case] where the ulcers that grew were not caused by the wound. But according to the Rabbis mentioned last[20] who stated that whenever there is liability for Loss of Time there is liability for Healing, whereas where there is no liability for loss of Time there could be no liability for Healing — why do I require the double mention of Healing? — This was necessary for the lesson enunciated by the School of R. Ishmael, as taught: 'The School of R. Ishmael taught: [The words] "And to heal he shall heal''[21] [are the source] whence it can be derived that authorisation was granted [by God] to the medical man to heal.'[22]

Our Rabbis taught: Whence can we learn that where ulcers have grown on account of the wound and[23] the wound breaks open again, the offender would still be liable to heal it and also pay him for [the additional] Loss of Time? Because it says: Only he shall pay for the loss of his time and to heal he shall heal.[24] [That being so, I might say] that this is so even where the ulcers were not caused by the wound. It therefore says further 'only'. R. Jose b. Judah, however, said that even where they were caused by the wound he would be exempt, since it says 'only'. Some say that [the view of R. Jose that] 'even where they were caused by the wound he would be exempt' means altogether from any [liability whatsoever],[25] which is also the view of the Rabbis mentioned last. But others say that even where they were caused by the wound he would be exempt means only from paying for additional Loss of Time, though he would be liable for Healing. With whom [would R. Jose b. Judah then be concurring in his statement]? With his own father.[26]

The Master stated: '[In that case I might say] that this is so even where the ulcers were not caused by the wound. It therefore says further "only".' But is a text necessary to teach [that there is exemption] in the case where they were caused not by the wound?[27] — It may be replied that what is meant by 'caused not by the wound' is as taught: 'If the injured person disobeyed his medical advice and ate honey or any other sort of sweet things, though honey and any other sort of sweetness are harmful to a wound, and the wound in consequence became gargutani [scabby], it might have been said that the offender should still be liable to [continue to] heal him. To rule out this idea it says "only".'[28] What is the meaning of gargutani? — Abaye said: A rough seam.[29] How can it be cured? — By aloes, wax and resin.

If the offender says to the injured person: 'I can personally act as your healer',[30] the other party can retort 'You are in my eyes like a lurking lion.'[31] So also if the offender says to him 'I will bring you a physician who will heal you for nothing', he might object, saying 'A physician who heals for nothing is worth nothing.' Again, if he says to him 'I will bring you a physician from a distance', he might say to him, 'If the physician is a long way off, the eye will be blind [before he arrives].'[32] If, on the other hand, the injured person says to the offender, 'Give the money to me personally as I will cure myself', he might retort 'You might neglect yourself and thus get from me too much.' Even if the injured person says to him, 'Make it a fixed and definite sum', he might object and say, 'There is all the more danger that you might neglect yourself [and thus remain a cripple], and I will consequently be called "A harmful ox."'

A Tanna taught: 'All [the Four Items][33] will be paid [even] in the case where Depreciation [is paid independently].' Whence can this ruling be deduced? — Said R. Zebid in the name of Raba: Scripture says: Wound for wound,[34] to indicate the payment of pain even in the case where Depreciation [is paid independently].[35] But is not this verse required

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(1) Such as here the term 'hurts' which is a generalisation as it implies all kinds of burning whether with a bruise or without a bruise, and the term 'bruise' which specifies an injury with a bruise, are separated from each other by the intervening clause 'wound for wound'.

(2) To render the generalisation altogether ineffective; cf supra p. 371.

(3) Even in such a case.

(4) Since the term 'burning' is a generalisation and by itself implies both with a bruise and without a bruise.

(5) I.e., for Depreciation as explained by Rashi, or for the Pain where the burning left a mark and thus aggravated the ill feeling (Tosaf).
(6) Such as where an arm was cut off and Depreciation had already been paid.
(7) Abba b. Abba.
(8) Whereas the problem raised deals with a case where the other items have already been paid for.
(9) Which is still attached to the body but unable to perform any work.
(10) [Maim. Yad, Hobel, II, 19 reads 'or'.]
(11) Ex. XXI, 19.
(12) I.e., R. Judah and the other Rabbis.
(13) In the name of Rab; cf. Suk. 17a.
(14) To prevent the cold from penetrating the wound though the bandage may cause swelling through excessive heat.
(15) In opposing R. Judah.
(16) Ex. XXI, 19 lit., 'to heal he shall heal'.
(17) Though the plaintiff had no right to bandage the wound which caused the ulcers to grow.
(18) Since the plaintiff would be to blame for the ulcer that grew through the bandage if he had no right to put it on.
(19) I.e., the first Tanna.
(20) Under the name of Sages.
(21) Cf. p. 487, n. 6.
(22) And it is not regarded as 'flying in the face of Heaven'; v. Ber. 60a.
(23) V. p. 486, n. 5.
(24) Ex. XXI, 19.
(25) Even from Healing.
(26) I.e., R. Judah who orders payment for Healing but not for Loss of Time.
(27) Why indeed would liability have been suggested?
(28) Implying that the liability is qualified and thus excepted in such and similar cases.
(29) Rashi: 'wild flesh'.
(30) And need thus not employ a medical man.
(31) I.e., 'I am not prepared to trust you'; cf. B.M. 101; B.B. 168a.
(32) [So S. Strashun; Rashi: 'If the physician is from far he might blind the eye'; others: 'A physician from afar has a blind eye'. i.e., he is little concerned about the fate of his patient.]
(33) I.e., Pain, Healing, Loss of Time, and Degradation.
(34) Ex. XXI, 25.
(35) Supra 26b.

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to extend liability [for Depreciation] to the case of inadvertence equally with that of willfulness, and to the case of compulsion equally with that of willingness? — If so [that it was required only for such a rule] Scripture would have said 'Wound in the case of wound'; why [say] '. . . for wound', unless to indicate that both inferences are to be made from it?[1] R. Papa said in the name of Raba: Scripture says And to heal shall he heal,[2] [thus enjoining] payment for Healing even in the case where Depreciation is paid independently. But is not that verse required for the lesson taught at the School of R. Ishmael for it was indeed taught at the School of R. Ishmael that [the text] 'And to heal he shall heal' [is the source] whence it is derived that authorisation was granted [by God] to the medical man to heal?[3] — If so [that it was to be utilised solely for that implication] Scripture would have said, 'Let the physician cause him to be healed' — This shows that payment for Healing should be made even in the case where Depreciation [is paid independently]. But still, is not the text required as said above to provide a double mention in respect of Healing? — If so, Scripture should have said either 'to cause to heal [and] to cause to heal'[4] or 'he shall cause to heal [and] he shall cause to heal.[5] Why say 'and to heal he shall heal'[6] unless to prove that payment should be made for Healing even in the case where Deprecation [is paid independently].

From this discussion it would appear that a case could arise where the Four Items would be paid even where no Depreciation was caused. But how could such a case be found where no Depreciation was caused? — Regarding Pain it was stated: 'PAIN': — IF HE BURNT HIM EITHER WITH A SPIT OR WITH A NAIL, EVEN ON HIS [FINGER] NAIL WHICH IS A PLACE WHERE NO BRUISE COULD BE MADE, Healing could apply in a case where one had been suffering from some wound which was being healed up, but the offender put on the wound a very strong ointment which made the skin look white [like that of a leper] so that other ointments have to be put on to enable him to regain the natural colour of the skin — Loss of Time [without Depreciation could occur] where the offender [wrongfully] locked him up in a room and thus kept him idle. Degradation [could apply] where he spat on his face.

'LOSS OF TIME': — THE INJURED PERSON IS CONSIDERED AS IF HE WERE A WATCHMAN OF CUCUMBER BEDS. Our Rabbis taught: '[In the case of assessing] Loss of Time, the injured person is considered as if he would have been a watchman of cucumbers. You might say that the requirements of justice suffer thereby, since when he was well[7] he would surely not necessarily have worked for the wages of a watchman of cucumber beds but might have carried buckets of water and been paid accordingly, or have acted as a messenger and been paid accordingly.[8] But in truth the requirements of justice do not suffer, for he has already been paid for the value of his hand or for the value of his leg.[9]

Raba said: If he cut off [another's] arm he must pay him for the value of the arm, and as to Loss of Time,[10] the injured person is to be considered as if he were a watchman of cucumber beds; so also if he broke [the other's] leg, he must pay him for the value of the leg, and as to Loss of Time the injured person is to be considered as if he were a door-keeper; if he put out [another's] eye he must pay him for the value of his eye, and as to Loss of Time the injured person is to be considered as if he were grinding in the mill; but if he made [the other] deaf, he must pay for the value of the whole of him.[11]

Raba asked: If he had cut off [another man's] arm and before any appraisement had been made he also broke his leg, and again before any appraisement had been made he put out his eye, and again before any appraisement had been made he made him at last deaf, what would be the law? Shall we say that since no valuation has yet been made one valuation would be enough, so that he would have to pay him altogether for the value of the whole of him, or shall perhaps each occurrence be appraised by itself and paid for accordingly? The practical difference would be whether he would have to pay for Pain and Degradation of each occurrence separately. It is true that he would not have to pay for Depreciation, Healing and Loss of Time regarding each occurrence separately, the reason being that since he has to pay him for the whole of him the injured person is considered as if killed altogether, and there could surely be made no more payment than for the value of the whole of him; but in respect of Pain and Degradation the payment should be made for each occurrence separately, as he surely suffered pain and degradation on each occasion separately. If, however, you find it [more correct] to say that since no appraisement had been yet made he can pay him for the value of the whole of him altogether, what would be the law where separate appraisements were made? Shall we say that since separate valuations were made the payment should be for each occurrence by itself, or since the payment had not yet been made he has perhaps to pay him for the value of the whole of him? This must remain undecided.

Rabbah asked: What would be the law regarding Loss of Time that renders the injured person of less value [for the time being]. How could we give an example? For instance, where he struck him on his arm and the arm was broken but will ultimately recover fully.[12] What would be the legal position?[13] [Shall we say that] since it will ultimately recover fully he need not pay him [for the value of the arm], or perhaps [not so], since for the time being he diminished his value? — Come and hear:[14] If one strikes his father and his mother without making on them a bruise,[15] or injures

another man on the Day of Atonement,[16]

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(1) Ibid.

(2) Ex. XXI, 19. [The emphasis indicates that this payment had to be made in all circumstances.]

(3) V. supra p. 488.

(4) I.e., a repetition of the infinitive.

(5) I.e., a repetition of the verb in the finite mood.

(6) I.e., on one occasion the verb is in the infinitive and on the other in the finite mood.

(7) Cf. Rashi; but also Tosaf. a.l.

(8) Why then not pay him for Loss of Time in accordance with the proper wage?

(9) In the way of Depreciation, and could in fact no more work in his previous employment but in a different capacity such as a watchman of cucumbers or a doorkeeper.

(10) During the days of illness when he is totally unable to do any work.

(11) As by having been made deaf he is unfit to do anything.

(12) In which case the depreciation is but temporary.

(13) Regarding the payment for Depreciation.

(14) Infra p. 87a.

(15) In which case the capital offence of Ex. XXI, 25 has not been committed; v. Sanh. 84b.

(16) The violation of which entails no capital punishment at the hands of a court of law; cf. Lev. XXIII, 30 and Ker. I,1. Again, though lashes could be involved in this case in accordance with Mak. III, 2, the civil liability holds good as supra p. 407.

he is liable for all of the Five Items. Now, how are we to picture no bruise being made [in such a case]? Does this not mean, e.g., where he struck him on his arm which will ultimately recover[1] and it is nevertheless stated that he 'is liable for all of the Five Items'?[2] — It may, however, be said that we are dealing here with a case where e.g.,he made him deaf[3] without making a bruise on him. But did Rabbah not say[4] that he who makes his father deaf is subject to be executed,[5] for it is impossible to cause deafness without first making a bruise through which a drop of blood falls into the ear?[6] — It must therefore be said that we are dealing here with a case where e.g. he shaved him [against his will] — But will not the hair grow again in the case of shaving? And that is the very question propounded.[7] — It may, however, be said that we are dealing here with a case where e.g. he smeared nasha[8] over it so that no hair will ever grow there again. Pain [in such a case should similarly be paid] where he had scratches on his head and thus suffered on account of the sores. Healing [should similarly be paid] as it requires curing. Loss of Time would be where he was a dancer in wine houses and has to make gestures by moving his head and cannot do so [now] on account of these scratches.[9] Degradation [should certainly be paid], for there could hardly be a case of greater degradation.

But this matter which was doubtful to Rabbah was quite certain to Abaye taking one view, and to Raba taking the opposite view. For it was stated: If he struck him on his arm and the arm was broken but so that it would ultimately recover completely, Abaye said that he must pay for General Loss of Time[10] plus Particular Loss of time, whereas Raba said that he will not have to pay him anything but for the amount of the Loss of Time[11] for each day [until he recovers].

It was stated: If a man cuts off the arm of a Hebrew servant of another, Abaye said that he will have to pay the servant for General Loss of Time, and the master for Particular Loss of Time, whereas Raba said that the whole payment should be given to the servant[12] who would have to [invest it and] purchase real property whose produce would be enjoyed by the master. There is no question that where the servant became [through the injury] depreciated in his personal value while no loss was caused so far as the master was concerned, as for instance, where the offender split the top of the servant's ear or the top of his nostrils,[13] the whole payment would go to the servant

himself. It was only where the depreciation affected the master [also][14] that Abaye and Raba differ. 'DEGRADATION': — ALL TO BE ESTIMATED IN ACCORDANCE WITH THE STATUS OF THE OFFENDER AND THE OFFENDED. May we say that our Mishnah is in agreement neither with R. Meir nor with R. Judah but with R. Simeon? For it was taught: 'All [sorts of injured persons] should be considered as if they were freemen who have become impoverished since they are all the children of Abraham, Isaac and Jacob;[15] this is the view of R. Meir. R. Judah says that [Degradation in the case of] the eminent man [will be estimated] in accordance with his eminence, [whereas in the case of] the insignificant man [it will be estimated] in accordance with his insignificance. R. Simeon says that wealthy persons will be considered merely as if they were freemen who have become impoverished, whereas the poor will all be put on the level of the least among them.[16] Now, in accordance with whom is our Mishnah? It could not be in accordance with R. Meir, for the Mishnah states that all are to be estimated in accordance with the status of the offender and the offended, whereas according to R. Meir all [sorts of persons] are treated alike. It could similarly not be in accordance with R. Judah, for the Mishnah [subsequently] states[17] that he who insults even a blind person is liable, whereas R. Judah[18] says that a blind person is not subject to the law of Degradation. Must the Mishnah therefore not be in accordance with R. Simeon?[19] — You may say that they are [even] in accordance with R. Judah. For the statement made by R. Judah that a blind person is not subject to the law of Degradation means that no payment will be exacted from him [where he insulted others], whereas when it comes to paying him [for Degradation where he was insulted by others], We would surely order that he be paid. But since it was stated in the concluding clause 'If he insulted a person who was sleeping he would be liable [to pay for Degradation], whereas if a person who was asleep insulted others he would be exempt', and no statement was made to the effect that a blind person insulting others should be exempt, it surely implied that in the case of a blind person[20] there was no difference whether he was insulted by others or whether he insulted others, [as in all cases the law of Degradation would apply]![21] — It must therefore be considered as proved that the Mishnaic statements were in accordance with R. Simeon.

Who was the Tanna for what our Rabbis taught: If he intended to insult a katon[22] but insulted [by accident] a gadol[23] he would have to pay the gadol the amount due for the degradation of the katon, and so also where he intended to insult a slave but [by accident] insulted a freeman he would have to pay the freeman the amount due for the degradation of the slave? According to whom [is this teaching]? It is in agreement neither with R. Meir nor with R. Judah nor even with R. Simeon, it being assumed that katon meant 'small in possessions' and gadol [similarly meant] 'great in possessions'. It could thus hardly be in accordance with R. Meir, for he said that all classes of people are treated alike. It could similarly not be in accordance with R. Judah, for he stated that in the case of slaves no Degradation need be paid. Again, it could not be in accordance with R. Simeon, since he holds that where the offender intended to insult one person and by an accident insulted another person he would be exempt, the reason being that this might be likened to murder, and just as in the case of murder there is no liability unless where the intention was for the particular person killed,[24] as it is written: 'And lie in wait for him and rise up against him'[25] [implying, according to R. Simeon, that there would be no liability] unless where he aimed at him particularly, so should it also be in the case of Degradation, that no liability should be imposed on the offender unless where he aimed at the person insulted, as it is written: 'And she putteth forth her hand and taketh him by the secrets'[26] [which might similarly imply that there should be no liability] unless where the offence was directed at the person insulted. [Who then was the Tanna of the teaching referred to above]? — It might still be said that he was R. Judah, for the statement made by R. Judah that in the case of slaves there would be no liability for Degradation means only that no payment will be made to them, though in the matter of appraisement we can still base the assessment on them. Or if you like I may say that you may even regard the teaching as being in accordance with R. Meir, for why should you think that gadol means 'great in possessions' and katon means 'small in possessions', and not rather that gadol means an actual gadol [i.e. one who is of age] and katon means an actual katon [i.e. a minor]? But is a minor subject to suffer Degradation? — Yes, as elsewhere stated by R. Papa, that if

where he is reminded of some insult he feels abashed[27] [he is subject to Degradation] so also here

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(1) For since no bruise was made it will surely recover.
(2) In which Depreciation is included.
(3) In which case he will never recover,
(4) Infra 98a.
(5) For having committed a capital offence in accordance with Ex. XXI, 25.
(6) And since a capital offence would thus have been committed no civil liabilities could be entailed; cf. infra p. 502.
(7) Which problem could thus be solved.
(8) I.e., the sap of a plant used as a depilatory; cf. also Mak. 20b.
(9) [MSS. omit 'on account of these scratches', apparently as it is the nasha which was smeared over his head which prevents his appearing in his dancing role.]
(10) Another term for Depreciation.
(11) But not for the temporary depreciation in value.
(12) [Tosaf. reads: 'to the master' as it is the master who is the primary loser in consequence of the servant's enforced idleness.]
(13) Through which injury the servant is not hindered from performing his usual work.
(14) Cf. Rashi and Tosaf. a. l.
(15) V. infra 90b.
(16) I.e., among the poor.
(17) Infra p. 496.
(18) Infra pp. 495-499.
(19) [Who also does not treat all persons alike.]
(20) Whom the Mishnaic statement makes subject to the law of Degradation.
(21) This would contradict R. Judah, who maintained that a blind person would not have to pay Degradation.
(22) Denotes either 'small', or a minor,
(23) Denotes either 'great' or 'one who is of age'.
(24) As indeed maintained by R. Simeon; cf. Sanh. 79a and supra p. 252.
(25) Deut. XIX, 11.
(26) Ibid. XXV, 11.
(27) Infra 86b.

he was a minor who, if the insult were mentioned to him, would feel abashed.

MISHNAH. ONE WHO INSULTS A NAKED PERSON, OR ONE WHO INSULTS A BLIND PERSON, OR ONE WHO INSULTS A PERSON ASLEEP IS LIABLE [FOR DEGRADATION], THOUGH IF A PERSON ASLEEP INSULTED [OTHERS] HE WOULD BE EXEMPT. IF ONE IN FALLING FROM A ROOF DID DAMAGE AND ALSO CAUSED [SOMEBODY] TO BE DEGRADED, HE WOULD BE LIABLE FOR DEPRECIATION BUT EXEMPT FROM [PAYING FOR] DEGRADATION UNLESS HE INTENDED [TO INFLICT IT].[1]

GEMARA. Our Rabbis taught: If he insulted a person who was naked he would be liable[2] though there could be no comparison between one who insulted a person who was naked[3] and one who insulted a person who was dressed. If he insulted him in the public bath he would be liable though one who insulted a person in a public bath[3] could not be compared to one who insulted a person in the market place.

The Master stated: 'If he insulted a person who was naked he would be liable.' But is a person who walks about naked capable of being insulted?[4] — Said R. Papa: The meaning of 'naked' is that a wind [suddenly] came and lifted up his clothes, and then some one came along and raised them still

higher, thus putting him to shame.

'If he insulted him in the public bath he would be liable.' But is a public bath a place where people are apt to feel offended?[5] — Said R. Papa: It meant that he insulted him[6] near the river.[7]

R. Abba b. Memel asked: What would be the law where he humiliated a person who was asleep but who died [before waking]?[8] — What is the principle involved in this query?[9] — Said R. Zebid: The principle involved is this: [Is Degradation paid] because of the insult, and as in this case he died before waking and was never insulted [no payment should thus be made], or is it perhaps on account of the [public] disgrace, and as there was here disgrace [payment should be made to the heirs]? — Come and hear: R. Meir says: A deaf-mute and a minor are subject to [be paid for] Degradation, but an idiot is not subject to be paid for Degradation. Now no difficulty arises if you say that degradation is paid on account of the disgrace; it is then quite intelligible that a minor [should be paid for Degradation]. But if you say that Degradation is paid on account of the insult, [we have to ask,] is a minor subject to feel insulted? — What then? [You say that] Degradation is paid because of the disgrace? Why then should the same not apply even in the case of an idiot? — It may, however, be said that the idiot by himself constitutes a disgrace which is second to none. But in any case, why not conclude from this statement that Degradation is paid on account of the disgrace, for if on account of the insult, is a minor subject to feel insulted? — As elsewhere stated by R. Papa, that if where the insult is recalled to him he feels abashed [he is subject to Degradation]; so also here he was a minor who when the insult was recalled to him would feel abashed.

R. Papa, however, said that the principle involved in the query [of R. Abba] was this: [Is Degradation paid] because of personal insult, and as in this case [where] he died [before waking he did not suffer any personal insult, no payment should be made], or is [Degradation paid] perhaps on account of the insult suffered by the family? — Come and hear: A deaf-mute and a minor are subject to [be paid for] Degradation but an idiot is not subject to [be paid for] Degradation. Now no difficulty arises if you say that Degradation is paid on account of the insult suffered by the family; it is then quite intelligible that a minor [should be paid for Degradation]. But if you say that Degradation is paid on account of personal insult [we have to ask], is a minor subject to personal insult? — What then? [Do you say] that Degradation is paid because of the insult sustained by the members of the family? Why then should the same not apply in the case of an idiot? — It may, however, be said that the idiot by himself constitutes a Degradation [to them] which is second to none. But in any case, why not conclude from this statement that Degradation is paid on account of the insult suffered by the family, for if on account of personal insult[10] , is a minor subject to personal insult? — Said R. Papa: Yes, if when the insult is mentioned to him he feels insulted, as indeed taught: 'Rabbi says: A deaf-mute is subject to [be paid for] Degradation, but an idiot is not subject to [be paid for] Degradation, whereas a minor is sometimes subject to be paid and sometimes not subject to be paid [for Degradation].' The former [must be] in a case where, if the insult is mentioned to him, he would feel abashed, and the latter in a case where if the insult is recalled to him he would not feel abashed.

ONE WHO INSULTS A BLIND PERSON . . . IS LIABLE [FOR DEGRADATION]. This Mishnah is not in accordance with R. Judah. For it was taught: R. Judah says: 'A blind person is not subject to [the law of] Degradation. So also did R. Judah exempt him from the liability of being exiled[11] and from the liability of lashes[12] and from the liability of being put to death by a court of law.'[13] What is the reason of R. Judah? — He derives [the law in the case of Degradation by comparing the term] 'thine eyes' [inserted in the case of Degradation[14] from the term] 'thine eyes'[15] occurring in the case of witnesses who were proved zomemim:[16] just as there[17] blind persons are not included[18] so also here[19] blind persons should not be included. The exemption from the liability to be exiled is derived as taught: Seeing him not[20] excepts a blind person;[21] so R. Judah. R. Meir on the other hand says that it includes a blind person.[22] What is the reason of R. Judah? — He might say to

you [as Scripture says]: 'As when a man goeth into the wood with his neighbour to hew wood',[23] which might include even a blind person. The Divine Law therefore says 'Seeing him not' to exclude [him]. But R. Meir might contend that as the Divine Law inserted 'Seeing him not' [which implies] an exception, and the Divine Law further inserted unawares'[24] [which similarly implies] an exception, we have thus a limitation followed by another limitation, and the established rule is that a limitation followed by another limitation is intended to amplify.[25] And R. Judah? — He could argue that the word 'unawares' came to be inserted to except a case of intention. [Exemption from] liability to be put to death by a court of law is derived [from comparing the term] 'murderer' [used in the section dealing with capital punishment[26] with the term] 'murderer' [used in the section setting out] the liability to be exiled.[27] [Exemption from] liability of lashes is learnt [by comparing the term] 'wicked' [occurring in the Section dealing with lashes[28] with the term] 'wicked'[26] occurring in the case of those who are liable to be put to death by a court of law.

Another [Baraitha] taught: R. Judah says: A blind person is not subject to [the law of] Degradation.

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(1) Supra p. 140.
(2) Even where the insult was caused by further uncovering him; cf. Tosaf. a.l,
(3) In which case the payment will be much less.
(4) By means of being further uncovered; again, how could a naked person be further uncovered?
(5) By means of being uncovered, since everybody is uncovered there.
(6) By uncovering him.
(7) Where people merely bathe their legs and are therefore fully dressed.
(8) So that he personally never felt the humiliation.
(9) Why indeed should there by any payment in such a case.
(10) no note.
(11) For inadvertently killing a person.
(12) When transgressing a negative commandment.
(13) For committing a capital offence.
(14) Deut. XXV, 12.
(15) Ib., XIX, 21.
(16) I.e., against whom the accusation of an alibi was proved; v. Glos.
(17) In the case of witnesses.
(18) For since a blind person could not see he is disqualified from giving evidence, on the strength of Lev. v, 1; cf. Tosaf, B.B. 129a, s.v. אי , and Asheri B.B. VIII, 24; but v. also Shebu. 33b.
(19) In the case of Degradation.
(20) Num. XXXV, 23.
(21) From being subject to the law of exile.
(22) Mak. 9b.
(23) Deut. XIX, 5.
(24) Ibid. 4.
(25) Cf. supra p. 259.
(26) Num. XXXV, 31.
(27) Deut. XIX, 3.
(28) Deut. XXV, 2.

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So also did R. Judah exempt him from all the judgments of the Torah. What is the reason of R. Judah? — Scripture says: Then the congregation shall judge between the smiter and the avenger of blood according to these ordinances,[1] whoever is subject to the law of the 'smiter' and 'the avenger of blood' is subject to judgments, but he[2] who is not subject to the law of the 'smiter' and the

'avenger of blood' is not subject to judgments.

Another [Baraitha] taught: R. Judah.says: 'A blind person is not subject to [the law of] Degradation. So also did R. Judah exempt him from all commandments stated in the Torah.' R. Shisha the son of R. Idi said: The reason of R. Judah was because Scripture says: Now this is the commandment, the statutes and the ordinances;[3] he who is subject to the 'ordinances' is subject to 'commandments' and 'statutes',but he who is not subject to 'ordinances' is not subject to 'commandments' and 'statutes'. R. Joseph stated:[4] Formerly I used to Say: If someone would tell me that the halachah is in accordance with R. Judah who declared that a blind person is exempt from the commandments, I would make a festive occasion for our Rabbis, because though I am not enjoined[5] I still perform commandments, but now that I have heard the statement of R. Hanina, as R. Hanina indeed said[6] that greater is the reward of those who being enjoined do [good deeds] than of those who without being enjoined [but merely of their own free will] do [good deeds], if someone would tell me that the halachah is not in accordance with R. Judah I would make a festive occasion for our Rabbis, because if I am enjoined to perform commandments the reward will be greater for me.

MISHNAH. ON THIS [POINT] THE LAW FOR MAN IS MORE SEVERE THAN THE LAW FOR CATTLE, VIZ., THAT MAN HAS TO PAY FOR DEPRECIATION, PAIN, HEALING, LOSS OF TIME AND DEGRADATION;[7] AND HE PAYS ALSO FOR THE VALUE OF EMBRYOS,[8] WHEREAS IN THE CASE OF CATTLE THERE IS NO PAYMENT FOR ANYTHING BUT DEPRECIATION,[9] AND THERE IS EXEMPTION FROM [PAYING] THE VALUE OF EMBRYOS.[8] ONE WHO STRIKES HIS FATHER AND HIS MOTHER WITHOUT, HOWEVER, MAKING A BRUISE ON THEM,[10] OR ONE WHO INJURED HIS FELLOW ON THE DAY OF ATONEMENT[11] IS LIABLE FOR ALL [THE FIVE ITEMS]. ONE WHO INJURES A HEBREW SLAVE[12] IS SIMILARLY LIABLE FOR ALL OF THEM, WITH THE EXCEPTION, HOWEVER, OF LOSS OF TIME IF HE IS HIS OWN SLAVE. ONE WHO INJURES A CANAANITE SLAVE[13] BELONGING TO ANOTHER PERSON IS [SIMILARLY] LIABLE FOR ALL [THE FIVE ITEMS]. R. JUDAH, HOWEVER, SAYS THAT NO DEGRADATION IS PAID IN THE CASE OF [CANAANITE] SLAVES. A DEAF-MUTE, AN IDIOT AND A MINOR ARE AWKWARD TO DEAL WITH, AS HE WHO INJURES THEM IS LIABLE [TO PAY], WHEREAS IF THEY INJURE OTHERS THEY ARE EXEMPT. [SO ALSO] A SLAVE AND A [MARRIED] WOMAN ARE AWKWARD TO DEAL WITH, AS HE WHO INJURES THEM IS LIABLE [TO PAY], WHEREAS IF THEY INJURE OTHERS THEY ARE EXEMPT,[14] THOUGH THEY MAY HAVE TO PAY AT A LATER DATE; FOR IF THE WOMAN WAS DIVORCED[15] OR THE SLAVE MANUMITTED,[16] THEY WOULD BE LIABLE TO PAY. HE WHO SMITES HIS FATHER OR HIS MOTHER MAKING ALSO A BRUISE ON THEM[17] OR HE WHO INJURES ANOTHER ON THE SABBATH[18] IS EXEMPT FROM ALL [THE FIVE ITEMS], FOR HE IS CHARGED WITH A CAPITAL OFFENCE.[19] [SO ALSO] HE WHO INJURES A CANAANITE SLAVE OF HIS OWN IS EXEMPT FROM ALL [THE ITEMS].[20]

GEMARA. R. Eleazar inquired of Rab: If one injures a minor daughter of another person, to whom should [the payment for] the injury go?[21] Shall we say that since the Divine Law bestowed upon the father [the right to] the income of [his daughter during the days of her] youth,[22] the payment for an injury should also be his, the reason being that her value was surely decreased [by the injury], or [shall we say that it was] perhaps only the income of youth[23] that the Divine Law granted him, since if he wishes to hand her over [in marriage e.g.,] to one afflicted with leprosy he could hand her over,[24] whereas the payment for injury might not have been granted to him by the Divine Law, since if he wishes to injure her he would not have had the right to injure her?[25]

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(1) Num. XXXV, 24.

(2) Such as a blind person.

(3) Deut. VI, 2.

(4) Kid. 31a.
(5) As R. Joseph became blind through an illness; cf. Shab. 109a.
(6) V. supra p. 215.
(7) As supra p. 473.
(8) Cf. Ex, XXI, 22 and supra p. 277.
(9) V, supra 26a.
(10) In which case the capital offence of Ex. XXI,15 has not been committed; v. Sanh. 84b.
(11) The violation of which entails no capital punishment at the hands of a court of law; cf. Lev. XXIII, 30 and Ker. I, 1. Again, though lashes could be involved in this case in accordance with Mak. III, 2, the civil liability holds good as supra p. 407.
(12) Cf. Ex. XXI, 2-6.
(13) V. Lev. XXV, 44-46.
(14) Irrespective of the equality of all before the law, as supra p. 63, no payment could be made here as the possessions of slaves form a part of the estates of their masters as in Kid. 23b, and the property of a married woman is usually in the usufruct of the husband, cf, Keth, IV, 4,
(15) When her estate will return to her.
(16) And property was subsequently acquired by him.
(17) Which is a capital offence, v. Ex. XXI. 15; supra p. 492.
(18) Thus involving capital punishment, v. Shab. 106a; supra p. 192.
(19) In the punishment for which all civil liabilities merge; v. supra p. 192.
(20) For so far as the master is concerned the slave is but his chattel. He will, however, be liable to heal him; Tosaf, a.l.; Git. 12b.
(21) I.e., whether to her or to her father.
(22) Cf. Keth. 46b.
(23) Such as the consideration given by a prospective husband for marrying him, or the hire of her labour and the like.
(24) As could be inferred from Deut. XXII, 16,
(25) Moreover he would thereby commit the sin implied in Deut. XXV, 3.

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— He replied: 'The Torah did not bestow upon the father [any right] save to the income of youth alone.'

An objection was raised[1] [from the following]: ONE WHO INJURES A HEBREW SLAVE IS SIMILARLY LIABLE FOR ALL OF THEM, WITH THE EXCEPTION HOWEVER OF LOSS OF TIME IF HE IS HIS OWN SLAVE![2] — Abaye replied: Rab surely agrees regarding the item of Loss of Time, as the work of her hands during the period preceding the age of womanhood[3] belongs to her father. A [further] objection was raised [from the following]: 'If one injures his son who has already come of age[4] he has to compensate him straight away, but if his son was still a minor[5] he must make for him a safe investment [out of the compensation money], while he who injures his minor daughter is exempt, and what is more, if others injure her they are liable to pay the compensation to her father'?[6] — The rulings here similarly refer to Loss of Time.[7]

Is it really a fact that in the case of a son who has already come of age the father has to compensate him straight away? [If so,] a contradiction could be pointed out [from the following:] 'If one injures the sons and daughters of others, if they have already come of age, he has to pay them straight away, but if they are still minors he should make for them a safe investment [out of the compensation money], whereas where the sons and daughters were his own, he would be exempt [altogether]'![8] — It may, however, be said that there is no difficulty, as the ruling here [stating exemption] refers to a case where the children still reclined at the father's table,[9] whereas the ruling there[10] deals with a case where they did not recline at his table. But how could you explain the former teaching to refer to a case where they did not recline at his table? For if so, read the

concluding clause: 'Whereas he who injures his minor daughter is exempt, and what is more, even others who injure her are liable to pay the compensation to her father.' Why not pay her, since she has to maintain herself? For even according to the view[11] that a master may say to his slave, 'Work with me though I am not prepared to maintain you,' surely this applies only to a Canaanite slave to whom the master can say, 'Do your work during the day and in the evenings you can go out and look about for food,'[12] whereas in the case of a Hebrew slave in connection with whom it is written, Because he fareth well with thee,[13] implying 'with thee in food and with thee in drink',[14] this could certainly not be maintained; how much the more so then in the case of his own daughter?[15] — As stated[16] [in another connection] by Raba the son of R. 'Ulla, that the ruling applies only to the surplus [of the amount of her earnings over the cost of maintenance], so also here in this case this ruling applies only to the surplus [of the amount of compensation over the cost of maintenance]. You have then explained the latter statement [that there is exemption in the case of his own children] as dealing with a case where the children reclined at his table. Why then [in the case of children of other persons] is it stated that 'if they had already come of age he has to pay them straight away, but if they were still minors he should make for them a safe investment [out of the compensation money]? Why should the compensation not be made to their father?[17] — It may, however, be said that the father would be particular only in a matter which would cause him a loss,[18] whereas in regard to a profit coming from outside[19] he would not mind [it going to the children]. But what about a find which is similarly a profit coming from outside, and the father still is particular about it?[20] — It may be said that he is particular even about a profit which comes from outside provided no actual pain was caused to the children through it,[21] whereas in the matter of compensation for injury where the children suffered actual pain and where the profit comes from outside he does not mind. But what of the other case[22] where the daughter suffered actual pain and where there was a profit coming from outside and the father nevertheless was particular about it as stated 'What is more, even others who injure her are liable to pay the compensation to her father'? — It may still be said that it was only in that case[22] where the father was an eccentric person who would not have his children at his table that he could be expected to care for the matter of profit coming even from outside, whereas in the case here[23] where he was not an eccentric person, as his children joined him at his table it is only regarding a matter which would cause him a loss that he would be particular, but he would not mind about a matter of profit coming from outside.

What is meant by 'a safe investment'?[24] — R. Hisda said: [To buy] a scroll of the Law.[25] Rabbah[26] son of R. Huna said: [To buy] a palm tree, from which he gets a profit in the shape of dates.

Resh Lakish similarly said that the Torah did not bestow upon the father any right save to the income of youth alone. R. Johanan however said: 'Even regarding wounding.' How can you think about wounding?[27] Even R. Eleazar did not raise a question[28] except regarding an injury

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(1) [Lit., 'he objected to him.' The objector was evidently not R. Eleazar, as Abaye is the one who replies to the objection.]

(2) Why then should the payment for Loss of Time in the case of a minor girl not go to her father to whom the hire for her labour would belong?

(3) Which begins six months after puberty was reached at approximately the age of twelve; cf. Nid. 45b; 65a and Keth. 39a.

(4) I.e., usually over the age of thirteen; cf. Glos. s.v. Gadol.

(5) I.e., before the age of thirteen; v. Glos. s.v. Katon.

(6) [Is this not against the view of Rab who stated that damages paid for injuring a minor girl would not go to her father?]

(7) For which all agree that payment must be made to the father.

(8) [Does the latter ruling not apply even where the sons and daughters had already come of age, in contradiction to the ruling stated in the former teaching?]

(9) I.e., were maintained and provided by him with all their needs; cf. B.M. 12b.
(10) Stating liability.
(11) Git. 12a.
(12) [Eg. where the work he performs is not worth the cost of his maintenance, v. Git. 12a.]
(13) Deut. XV, 16.
(14) He must share the same pleasures and comforts as the Master. Cf. Kid. 20a.
(15) [Why therefore should the compensation be paid to the father and not to her in a case where she has to maintain herself?]
(16) Keth. 43a.
(17) Since they are maintained by him.
(18) Such as if he would have to pay compensation where he himself injured them.
(19) As where others injured them and would have to pay compensation.
(20) Cf. B.M. 12b.
(21) Such as e.g., in the case of a find.
(22) I.e., in the former teaching.
(23) I.e., in the latter teaching.
(24) B.B. 52a.
(25) Cf. Er. 64a.
(26) B.B. 52: 'Raba'.
(27) Which would usually not decrease her pecuniary value.
(28) Supra p.502.

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through which her pecuniary value is decreased,[1] whereas regarding mere wounding, through which her pecuniary value would not [usually] decrease there was never any question [that the compensation would not go to the father. How then could R. Johanan speak of mere wounding?] — R. Jose b. Hanina replied: We suppose the wound to have been made in her face, thus causing her pecuniary value to be decreased. ONE WHO INJURES A CANAANITE SLAVE BELONGING TO ANOTHER PERSON IS [SIMILARLY] LIABLE FOR ALL [FIVE ITEMS]. R. JUDAH, HOWEVER, SAYS THAT NO DEGRADATION IS PAID IN THE CASE OF [CANAANITE] SLAVES. What is the reason of R. Judah? — As Scripture says:[2] 'When men strive together one with another' the law applies to one who can claim brotherhood and thus excludes a slave who cannot claim brotherhood.[3] And the Rabbis?[4] — They would say that even a slave is a brother in so far as he is subject to commandments. If this is so, would you say that according to R. Judah witnesses proved zomemim[5] in a capital accusation against a slave would not be subject to be put to death in virtue of the words:[6] 'Then shall ye do unto him as he had purposed to do unto his brother'?[7] — Raba said that R. Shesheth stated: The verse concludes:[6] 'So shalt thou put away the evil from among you', implying 'on all accounts' — Would you say that according to the Rabbis[8] a slave would be eligible to be chosen as king?[9] — I would reply: According to your reasoning would the same difficulty not arise regarding a proselyte, whichever view we accept[10] unless we suppose that when Scripture says 'One from among thy brethren',[11] it implies 'one of the choicest of thy brethren'?[12] — But again would you now also say that according to the Rabbis, a slave would be eligible to give evidence,[13] since it says, And behold, if the witness be a false witness and hath testified falsely against his brother?[14] — 'Ulla replied: Regarding evidence you can surely not argue thus. For that he[15] is disqualified from giving evidence can be learnt by means of an a fortiori from the law in the case of Woman: for if Woman who is eligible to enter [by marriage] into the congregation [of Israel] is yet ineligible to give evidence,[16] how much more must a slave who is not eligible to enter [by marriage] into the congregation [of Israel] be ineligible to give evidence? But why is Woman disqualified if not perhaps because she is not subject to the law of circumcision? How then can you assert the same In the case of a slave who is subject to circumcision?[17] — The case of a [male] minor will meet this objection, for in spite of his being subject to circumcision he is

disqualified from giving evidence.[18] But why is a minor disqualified if not perhaps because he is not subject to commandments?[19] How then can you assert the same in the case of a slave who is subject to commandments?[20] — The case of Woman will meet this objection, for though she is subject to commandments she is disqualified from giving evidence. The argument is thus endlessly reversible. There are features in the one instance which are not found in the other, and vice versa. The features common to both[21] are that they are not subject to all the commandments[22] and that they are disqualified from giving evidence. I will therefore include with them a slave who also is not subject to all the commandments and should therefore also be disqualified from giving evidence. But why [I may ask] is the feature common to them[21] that they are disqualified from giving evidence if not perhaps because neither of them is a man?[23] How then can you assert the same in the case of a slave who is a man? — You must therefore deduce the disqualification of a slave from the law applicable in the case of a robber.[24] But why is there this disqualification in the case of a robber if not because his own deeds caused it? How then can you assert the same in the case of a slave whose own deeds could surely not cause it?[25] — You must therefore deduce the disqualification of a slave from both the law applicable to a robber and the law applicable to either of these [referred to above].[26] Mar, the son of Rabina, however, said: Scripture says: 'The fathers shall not be put to death through[27] the children';[28] from this it could be inferred that no sentence of capital punishment should be passed on [the evidence of] the mouth of [persons who if they were to be] fathers would have no legal paternity over their children.[29] For if you assume that the verse is to be taken literally, 'fathers shall not be put to death through children', meaning, 'through the evidence of children', the Divine Law should have written 'Fathers shall not be put to death through their children'. Why then is it written 'children', unless to indicate that no sentence of capital punishment should be passed on [the evidence of] the mouth of [persons who if they were to be] fathers would have no legal paternity over their children? If that is so, would you also say that the concluding clause 'neither shall the children be put to death through the fathers' similarly implies that no sentence of capital punishment should be passed on [the evidence of] the mouth of [witnesses who as] children would have no legal filiation with respect to their fathers, and therefore argue that a proselyte[30] should similarly be disqualified from giving evidence?[31] — It may be said that there is no comparison: It is true that a proselyte has no legal relationship to his ancestors, still he has legal relationship with his descendants, [but we may therefore] exclude a slave who has relationships neither with ancestors nor with descendants. For if you should assume that a proselyte is disqualified from giving evidence, the Divine Law should surely have written: 'Fathers shall not be put to death through their children', which would mean what we stated, that they would not be put to death through the evidence of children, and after this the Divine Law should have written: 'Neither shall children be put to death through fathers,' as from such a text you would have derived the two rules: one that children should not be put to death through the evidence of fathers and the other that no sentence of capital punishment should be passed on [the evidence of] the mouth of [witnesses who as] children have no legal filiation with respect to their fathers.[32] The disqualification in the case of a slave would surely have been derived by means of an a fortiori from the law applicable to a proselyte: for if a proselyte, who has no legal relationship to his ancestors but has legal relationship to his descendants, is disqualified from giving evidence, how much more must a slave who has legal relationship neither to ancestors nor to descendants be disqualified from giving evidence? But since the Divine Law has written: 'Fathers shall not be put to death through children', which implies that no sentence of capital punishment should be passed on [the evidence of] the mouth of [witnesses who as] fathers would have no legal paternity over their children, we can derive from this that it is only a [Canaanite] slave who has relationship neither to ancestors nor to descendants that will be disqualified from giving evidence, whereas a proselyte will be eligible to give evidence on account of the fact that he has legal paternity over his children. If you object, why did the Divine Law not write: 'Neither shall children be put to death through their fathers', and why did the Divine Law write 'And neither shall children be put to death through fathers', which appears to imply that no sentence of capital punishment should be passed [on the evidence of] the mouth of [witnesses who as] children would have no legal filiation with respect to fathers,[33] [my answer is that] since it was written, 'Fathers shall not be put to death

through children', it was further written, 'neither shall children be put to death through fathers.'[34]

A DEAF, MUTE AN IDIOT AND A MINOR ARE AWKWARD TO DEAL WITH. The mother of R. Samuel b. Abba of Hagronia[35] was married to R. Abba,[36] and bequeathed her possessions to R. Samuel b. Abba, her son. After her death

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(1) And a loss thus caused to the father.
(2) Deut. XXV, 11.
(3) Cf. supra p. 63.
(4) The representatives of the anonymous opinion cited first in the Mishnah.
(5) I.e., where an alibi was proved against them; cf. Glos.
(6) Deut. XIX, 19.
(7) Since a slave according to R. Judah could not he considered a brother.
(8) Who consider a slave a brother.
(9) Where the text in Deut. XVII, is states, One from among thy brethren shalt thou set king over thee.
(10) For a proselyte is unanimously considered a brother.
(11) Deut. XVII, 15.
(12) Cf. Yeb. 45b; [and for this reason a slave is not eligible for kingship, not because he is not considered a brother.]
(13) Which would not be in conformity with R. H. I., 8.
(14) Deut. XIX, 18.
(15) I.e., a slave.
(16) V. Shebu. 30a.
(17) Cf. Gen. XVII, 12 and Yeb. 48b.
(18) Cf. B.B. 155b.
(19) Cf. supra p. 250.
(20) In the same way as a woman; cf. Hag. 4a.
(21) I.e., in Woman and male Minor.
(22) Cf. Kid. 29a.
(23) As a minor has not yet reached manhood.
(24) Who is disqualified from giving evidence though being a 'man' and eligible to enter by marriage into the Congregation; cf. Ex. XXIII, 1.
(25) Having done nothing criminal.
(26) I.e., a woman or male minor, the common feature being that they do not observe all commandments — the robber on account of his criminality, the woman or male minor because neither is subject to all the commandments.
(27) E.V. 'for'.
(28) Deut. XXV, 16.
(29) Such as slaves; cf. supra p. 63.
(30) Who has no legal filiation with respect to his ancestors; cf. Yeb. 62a.
(31) Which would not be in conformity with Nid. 49b.
(32) Which would have excluded also a proselyte.
(33) [Excluding thus a proselyte.]
(34) And while the phraseology of the concluding clause follows that of the commencing clause it is not usual in Scripture that the commencing clause should alter its phraseology because of the style of the concluding clause.
(35) V. supra p. 27, n. 1.
(36) He was not the father of R. Samuel as her former husband's name was also Abba.

Talmud - Mas. Baba Kama 88b

R. Samuel b. Abba went to consult R. Jeremiah b. Abba who confirmed him in possession of her property. R. Abba thereupon went and related the case to R. Hoshaia. R. Hoshaia then went and spoke on the matter with Rab Judah who said to him that Samuel had ruled as follows: If a woman disposes of her melog[1] possessions during the lifetime of her husband and then dies, the husband is

entitled to recover them from the hands of the purchasers.[2] When this statement was repeated to R. Jeremiah b. Abba, he said: I [only] know the Mishnaic ruling which we have learnt: 'If a man assigns his possessions to his son, to take effect after his death,[3] neither can the son alienate them [during the lifetime of the father] as they are then still in the possession of the father, nor can the father dispose of them since they are assigned to the son. Still, if the father sells them, the sale is valid until his death; if the son disposes of them the purchaser has no hold on them until the father dies.'[4] This implies, does it not, that when the father dies the purchaser will have the possessions [bought by him from the son during the lifetime of the father], and this even though the son died during the lifetime of the father, in which case they had never yet entered into the possession of the son? For so it was laid down by R. Simeon b. Lakish, who said[5] that there should be no difference whether the son died in the lifetime of the father, in which case the estate never came into the possession of the son, or whether the father died in the lifetime of the son, in which case the estate had entered into the possession of the son; the purchaser would [in either case] acquire title to the estate. (For it was stated:[6] Where the son sold the estate[7] in the lifetime of the father and it so happened that the son died during the lifetime of the father, R. Johanan said that the purchaser would not acquire title [to the estate], whereas Resh Lakish said that the purchaser would acquire title [to the estate]. R. Johanan, who held that the purchaser would not acquire title to the estate, would say to you that the Mishnaic statement, 'If the son disposed of them the purchaser would have no hold on them until the father dies, 'implying that at any rate after the death of the father the purchaser would own them, refers to the case where the son did not die during the lifetime of the father, so that the estate had actually entered into the possession of the son, whereas where the son died during the lifetime of the father, in which case the estate had never entered into the possession of the son, the purchaser would have no title to the estate even after the death of the father. This shows that in the opinion of R. Johanan a right to usufruct amounts in law to a right to the very substance [of the estate],[8] from which it follows that when the son sold the estate [during the lifetime of his father] he was disposing of a thing not belonging to him.[9] Resh Lakish on the other hand said that the purchaser would [in all cases] acquire title [to the estate after the death of the vendor's father], for the Mishnaic statement, 'If the son disposed of them the purchaser would have no hold on them until the father died,'implying that at least after the death of the father the purchaser would own them, applies equally whether the son did not die in the lifetime of the father, in which case the estate had entered into the possession of the son, or whether the son did die during the lifetime of the father, in which case the estate never did come into the possession of the son, [as in all cases] the purchaser would acquire title [to the estate as soon as the vendor's father died]. This shows that in the opinion of Resh Lakish a right to [mere] usufruct does not yet amount to a right in the very substance [of the estate], from which it follows that when the son sold the estate [during his father's lifetime] he was disposing of a thing that legally belonged to him.[10]) Now both[11] R. Jeremiah b. Abba and Rab Judah, concur with Resh Lakish,[12] and R. Jeremiah b. Abba accordingly argues thus: If you assume that a right to usufruct amounts [in law] to a right in the very substance, why then on the death of the father, if the son has previously died during the lifetime of his father, should the purchaser have any title to the estate, since when the son sold it he was disposing of a thing not belonging to him? Does not this show that a right to [mere] usufruct does not amount to a right to the very substance?[13] When, however, the argument was later repeated in the presence of Rab Judah, he said that Samuel had definitely stated: 'This case[14] cannot be compared to that stated in the Mishnah.' On what ground? — R. Joseph replied: We should have no difficulty if the case in the Mishnah were stated in a reversed order, i.e., 'If a son assigns his possessions to his father [to take effect after the son's death, and the father sold them during the lifetime of the son and died before the son,' and if the law would also in this case have been that the purchaser acquired title to the possessions] it would indeed have been possible to prove from it that a right to usufruct does not amount to a right to the very substance. But seeing that what it actually says is, 'If a father assigns his possessions to his son,' [the reason why the sale by the son is valid is] that [since] he was eligible to inherit him, [the father by drawing up the deed must necessarily have intended that the transfer to the son should have legal effect forthwith].[15] Said Abaye to him: Does only a son inherit a father, and does a father never inherit a son?[16] It is therefore

to be assumed that such a deed was drawn up only for the purpose of keeping the possessions out of the hands of the children,[17] and similarly also here[18] the deed might have been drawn up for the sole purpose of keeping the possessions out of the hands of his brothers![19] — The reason of [Samuel's remark that] 'This case cannot be compared to that stated in the Mishnah' is because of the [Rabbinic] enactment at Usha. For R. Jose b. Hanina said: It was enacted at Usha that if a woman disposes of her melog possessions during the lifetime of her husband and subsequently dies, the husband will be entitled to recover them from the hands of the purchasers.[20] R. Idi b. Abin said that we have been taught to the same effect: [Where witnesses state,] 'We can testify against a particular person that he has divorced his wife and paid her for her kethubah',[21]

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(1) Lit., 'plucking', but which denotes a wife's estate in which her husband has the right of usufruct and for which he hears no responsibility regarding any loss or deterioration, v. B.B. (Sonc. ed.) p. 206, n. 7.

(2) According to which statement R. Abba and not R. Samuel would be entitled to the possessions in direct contradiction to the judgment given by R. Jeremiah.

(3) [The father retaining for himself the right for life to the usufruct.]

(4) B.B. 136b.

(5) Ibid.

(6) B.B. 136a.

(7) [Assigned to him to be his after his father's death.]

(8) As indeed followed by him in Git. 47b and elsewhere.

(9) For since the father still had for life the right to usufruct he was for the time being the legal owner of the very substance of the estate, though the son had the reversionary right.

(10) Since he had the reversionary right while the father possessed merely for time being the right to usufruct. [The bracketed passage is an interpolation and not part of R. Jeremiah's argument.]

(11) [So MS.M. cur. edd. read, 'We now assume.']

(12) [That the sale is valid even where the son died in the lifetime of the father.] Cf. Yeb. 36b.

(13) Hence the gift of the mother to R. Samuel her son should become valid at her death in spite of the right to usufruct vested in R. Abba her second husband during her lifetime.

(14) I.e., the gift of the mother to R. Samuel her son.

(15) For if otherwise why was the deed necessary at all? [Whereas in the case of Samuel b. Abba, the deed was necessary for in the absence of one the estate would be inherited by the husband. V. B.B. 111b]

(16) Cf. B.B. VIII, 1. The same argument if at all sound could thus accordingly be raised even in the case made out by you where a son bequeathed his possessions to his father.

(17) Of the son who made the bequest in favour of his father, as otherwise the sons children would have been first to inherit him in accordance with Num. XXVII, 8.

(18) Where the father bequeathed his possessions to a son.

(19) I.e., from the brothers of the particular son in whose favour the bequest was made, as otherwise they would also have had a part in the inheritance on account of their being sons of the same father, and it was not intended that the transfer to the son should have legal effect forthwith. This being so, the case of Samuel b. Abba is on all fours with the Mishnah!

(20) For the right of the husband to the possessions of his wife took effect at the time of the wedding and thus preceded the act of the sale. V. B.B. (Sonc. ed.) p. 208.

(21) V. Glos.

Talmud - Mas. Baba Kama 89a

while the woman in question was still with him[1] and in fact looking after him, and the witnesses were subsequently proved zomemim, it would not be right to say that they should pay [the woman][2] the whole amount of her kethubah, [as she did not lose anything] but the satisfaction of the benefit of [being provided with] her kethubah.[3] How could [the value of] the satisfaction of the benefit of her kethubah be arrived at?[3] An estimate will have to be made of how much a man would be prepared to pay as purchase money for the kethubah of this [particular woman] which can mature only after she

is left a widow or divorced, since, were she [previously] to die her husband would inherit her.[4] Now, if you assume that this enactment of Usha is of no avail, why is it certain that her husband would inherit her? Why should she be unable to sell her kethubah outright?[5] Abaye said: If all this could be said[6] regarding melog possessions,[7] can it also be said[8] regarding the possessions [placed in the husband's hands[9] and secured[10] as if they were] 'iron flocks'?[11]

Abaye further said: Since the subject of the [mere] satisfaction of a benefit has been raised, let us say something on it. The [purchase money of this] satisfaction of the benefit would belong solely to the woman. For if you assume that it should be subject to [the rights of] the husband, why could the witnesses not argue against her: 'What loss did we cause you, for should you even have sold the satisfaction of the benefit, the husband would have taken away [the purchase money] from you'? — R. Shalman, however, said: Because [even then] there would have been ample domestic provision.[12]

Raba stated: 'The law is that the purchase money for the satisfaction of the benefit belongs solely to the woman, and the husband will have no right to enjoy any profit [that may result from it], the reason being that it was only profits that the Rabbis assigned to him,[13] whereas profits out of profits[14] were not assigned to him by the Rabbis.

When R. Papa and R. Huna the son of R. Joshua came from the College they said: We have learnt to the same effect as the enactment of Usha [in the following Mishnah]: A SLAVE AND A WOMAN ARE AWKWARD TO DEAL WITH, AS HE WHO INJURES THEM IS LIABLE [TO PAY], WHEREAS IF THEY HAVE INJURED OTHERS THEY ARE EXEMPT.[15] Now, if you assume that the enactment of Usha is not effective why should she not sell her melog[16] property and with the purchase money pay the compensation? — But even according to your reasoning, granted that the enactment of Usha is effective, in which case she would be powerless to alienate altogether her melog possessions, yet let her sell the melog estate for what the satisfaction of the benefit would fetch[17] and with his purchase money pay the compensation? It must therefore Surely be said that the ruling applies where she had no melog property; so also [according to the other view] the ruling would apply only where she possessed no melog property. But why should she not sell her kethubah for as much as the satisfaction of the benefit will fetch[17] and thus pay compensation? — The ruling is based on the view of R. Meir, who said that it is prohibited for any man to keep his wife without a kethubah even for one hour.[18] But what is the reason of this? So that it should not be an easy matter in his eyes to divorce her. In this case too he will surely not divorce her, for if he were to divorce her those who purchased the kethubah would certainly come and collect the amount of the kethubah from him. [Why then should she not be compelled by law to sell her kethubah and pay her creditors?] — We must therefore say that the satisfaction of such a benefit is a value of an abstract nature[19] and abstract values are not considered mortgaged [for the payment of liabilities]. But why not? Could these abstract values not be sold for actual denarii? — We must therefore [say that it would not be practical to compel her to sell her kethubah] on account of the statement of Samuel. For Samuel said:[20] Where a creditor assigns a liability on a bill to another and subsequently releases the debtor from payment, the debt is considered cancelled. Moreover, the creditor's heir may cancel the liability.[21] I would, however, ask: Why should she not be compelled to sell it and pay with the proceeds the compensation, though if she should subsequently release her husband from the obligation the release would be legally valid? — It may be replied that since it is quite certain that where there is an obligation on the husband the wife will release him,it would not be right to make a sale which will straight away be nullified. Should you say, why should she not assign her kethubah to the person whom she injured, thus letting him have the satisfaction of the benefit,

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(1) I.e., that particular person who was her husband, as he had never divorced her.

(2) In retaliation, as required in Deut. XIX, 19.

(3) Since it was but a conditional liability, i.e., becoming mature either through her being divorced or through her remaining a widow.

(4) And there would then be no occasion for the payment of the kethubah (cf. Mak. 3a).
(5) If the husband would have no right to recover the possessions thus alienated. Why then should the witnesses not pay the woman the full amount of the kethubah?
(6) By R. Jeremiah against Rab Judah, thus ignoring the enactment of Usha.
(7) In which the husband had only the right of usufruct while the substance belonged to the wife; v. Glos.
(8) [That the woman should be able to sell outright.]
(9) As absolutely his own property.
(10) By him on his general estate to pay her for them her Kethubah in case she would become a widow or divorced.
(11) Zon barzel. I.e., 'flocks' sold on credit and the payment made secure as 'iron', v. B.B. (Sonc. ed.) p. 206, n. 3.
(12) As it is also for her benefit that the income of her husband increases.
(13) Out of the substance belonging to her. Cf. Keth. 47b and 79b.
(14) Such as here in the case of the purchase money.
(15) V. supra p. 502, n. 1.
(16) V. Glos.
(17) I.e., that the purchaser should stand in her place and become entitled to it in case she should become a widow or divorced.
(18) Keth. 57a.
(19) Lit., 'words', 'an order for payment'.
(20) B.M. 20a; B.B. 147b.
(21) It would therefore not be practical to compel her to sell her kethubah, for she might subsequently release the husband from the liability of the kethubah.

Talmud - Mas. Baba Kama 89b

for even if she should subsequently release her husband from the obligation, the purchaser[1] would lose nothing as now too she pays him nothing on account of the compensation, [my answer is that] as it is in any case quite certain that where there is an obligation on the husband the wife will release him, it would not be proper to trouble the Court of Law so much for nothing. But seeing that it was taught: 'So also if she injures her husband she does not forfeit her kethubah'.[2] why should she in this case not assign her kethubah to the husband and thus let him have the satisfaction of the benefit as compensation for the injury, for even if she releases her husband from the obligation no loss will result therefrom? — This teaching is surely based on the view of R. Meir who said[3] that it is prohibited for any man to keep his wife without a kethubah even for one hour, the reason being that it should not be an easy matter in the eyes of the husband to divorce a wife. So also here if the kethubah be assigned to him he might easily divorce her and have her kethubah for himself as compensation for the injury. But if so [even now that the kethubah remains with her] would he just the same not find it easy to divorce her, as he would retain the amount of her kethubah as compensation for the injury? [This however would not be so where] e.g., the amount of her kethubah was much more than that of the compensation as on account of the small amount of the compensation he would surely not risk losing more.[4] But again if the amount of her kethubah exceeded that of an ordinary kethubah as fixed by the Law,[5] why should we not reduce the amount to that of the ordinary kethubah fixed by the Law,[6] and she should assign the difference to the husband as compensation for the injury? [This could not be done where,] e.g. the amount of her kethubah did not exceed that of the ordinary kethubah fixed by the Law and the compensation for the injury was assessed to be four zuz, as it is pretty certain that for four zuz he will not risk losing twenty-five [sela'].[7] But what of that which was taught: 'Just as she cannot [be compelled to] assign her kethubah[8] so long as she is with her husband, so also she cannot [be compelled to] remit [anything of] her kethubah so long as she is with her husband'?[9] Are there not times when she would be forced to remit, as, for example where the amount of her kethubah exceeded the amount of an ordinary kethubah fixed by the Law? — Said Raba: This concluding paragraph refers to the clause inserted in the kethubah regarding the male children,[10] and what was meant was this: Just as in the case of a wife assigning her kethubah to others she does thereby not impair the clause in the kethubah

regarding the male children, the reason being that she might have been compelled to do it on account of a pressing need for money, so should also be the case where a wife assigns her kethubah to her own husband, that she would thereby not impair the clause in the Kethubah dealing with male children on the ground that she might have been compelled to do this for lack of funds.

May we say that the enactment of Usha was a point at issue between the following Tannaim? For one [Baraitha] teaches that melog slaves are to go out free for the sake of a tooth or an eye[11] if assaulted by the wife,[12] but not if assaulted by the husband,[13] whereas another [Baraitha] teaches that [they are not to go out free] when assaulted either by the husband or by the wife. Now it was thought that all authorities agree that a right to usufruct does not constitute in law a right to the very substance. Are we not to suppose then that the point at issue between them was that the one who held that they are to go out free if assaulted by the wife did not accept the enactment of Usha, while the one who held that they are not to go out free when assaulted either by the husband or by the wife accepted the enactment of Usha?[14] — No; it is quite certain that the enactment of Usha was unanimously accepted, but the former Baraitha was formulated before the passing of the enactment while the other one was formulated after. Or if you like I may say that both the one Baraitha and the other dealt with conditions prevailing after the enactment, and also that both accepted the enactment of Usha, but the authority who held that the slaves are to go out free if assaulted by the wife and not by the husband did so on account of a reason underlying a statement of Raba, for Raba said:

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(1) I.e., the injured person.

(2) Tosaf. B.K. IX, 8.

(3) V. supra, p. 515, n. 6.

(4) [I.e., the difference between the large amount of the kethubah and the amount due to him as compensation.]

(5) The Bible, i.e., two hundred zuz where she was a virgin at the time of the marriage. Cf. Ex. XXII, 16; Keth. I, 2.

(6) [To provide against the prohibition in the view of R. Meir.]

(7) == 100 zuz, which is the minimum amount of a kethubah even in the case of a non-virgin; v. Keth. I, 2.

(8) [For any damage done to others (Tosaf.).]

(9) [For any damage done by her to her husband (Tosaf.) V. Tosaf. B.K. IX.]

(10) Which runs as follows: 'The male children which you will have with me shall inherit the amount of your kethubah over and above their appropriate portions due to them together with their brothers (if any of another mother).' V.B.B. (Sonc. ed.) p. 546, n.16.

(11) Cf. Ex. XXI, 26-27.

(12) Who possesses the ownership of their substance.

(13) Who has in them but the right of usufruct.

(14) According to which the wife would not be able to impair the right of the husband, [nor would the husband on the other hand be able to impair the right of the wife to the slaves whose substance is actually hers.]

Talmud - Mas. Baba Kama 90a

'The Consecration [of cattle[1] to the altar, the prohibition of] leaven[2] [from any use] and the manumission of a slave[3] release any of these articles [if mortgaged] from the burden of the mortgage.[4] Are we then to say that this statement of Raba constituted a point at issue between these Tannaim? — No; it is possible that all concurred in the ruling of Raba [in general cases], but in this particular case here the Rabbis[5] [might perhaps] have specially protected the mortgage of the husband.[6] Or again if you like I may say that these Tannaim were unanimous in not accepting the enactment of Usha, but in the case here they might have differed as to whether the right to usufruct amounts in law to a right to the very substance, exactly as this was the dividing point between the following Tannaim. For it was taught:[7] 'If an owner sells his slave to a man with whom he stipulates that the slave shall still remain to serve him for the next thirty days, R. Meir says that the vendor[8] would be subject to the law of "a day or two"[9] because the slave was still "under" him,' his view being that the right to a usufruct in the slave amounts in law to a right to the very substance of him.

‘R. Judah on the other hand says that it is the purchaser who would be subject to the law of "a day or two"[10] because the slave was "his money",’ his view being that a right to a usufruct in the slave does not amount in law to a right to the very substance of him. ‘But R. Jose says that both of them[11] would be subject to the right of "a day or two": the vendor because the slave was still "under" him and the purchaser because the slave was already "his money",’for he was in doubt whether a right to a usufruct should amount to a right to the very substance or should not amount to a right to the very substance, and, as is well known, a doubt in capital charges should always be for the benefit of the accused.[12] ‘R. Eliezer on the other hand says that neither of them would be subject to the law of "a day or two": the purchaser because the slave is not "under" him, and the vendor because he is not "his money".’ Raba said: The reason of R. Eliezer was because Scripture says, For he is his money,[13] implying that he has to be ‘his money’ owned by him exclusively.[14] Whose view is followed in the statement made by Amemar that if a husband and wife sold the melog property [even simultaneously], their act is of no effect? Of course the view of R. Eliezer.[15] So too, who was the Tanna who stated that which our Rabbis taught: ‘One who is half a slave and half a freeman,[16] as well as a slave belonging to two partners does not go out free for the mutilation of the principal limbs,[17] even those which cannot be restored to him’? Said R. Mordecai to R. Ashi: Thus was it stated in the name of Raba, that this ruling gives the view of R. Eliezer. For did R. Eliezer not say that ‘his money’ implied that which was owned by him exclusively? So also here ‘his slave’[18] implies one who is owned by him exclusively.

MISHNAH. IF A MAN BOXES ANOTHER MAN'S EAR, HE HAS TO PAY HIM[19] A SELA’.[20] R. JUDAH IN THE NAME OF R. JOSE THE GALILEAN SAYS THAT [HE HAS TO PAY HIM] A MANEH.[20] IF HE SMACKED HIM [ON THE FACE] HE HAS TO PAY HIM TWO HUNDRED ZUZ;[20] [IF HE DID IT] WITH THE BACK OF HIS HAND HE HAS TO PAY HIM FOUR HUNDRED ZUZ. IF HE PULLED HIS EAR, PLUCKED HIS HAIR, SPAT SO THAT THE SPITTLE REACHED HIM, REMOVED HIS GARMENT FROM UPON HIM, UNCOVERED THE HEAD OF A WOMAN IN THE MARKET PLACE, HE MUST PAY FOUR HUNDRED ZUZ.

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(1) That had previously been mortgaged for a liability.

(2) [In Jewish possession during the Passover which had previously been mortgaged for a liability to a non-Jew]

(3) V. p. 498, n. 5.

(4) So also here though the right of the husband in the melog (v. Glos.) slave is impregnable in the case of a sale or gift, it must give way in the case of manumission.

(5) According to the second Baraitha.

(6) To be inviolable even in the case of a manumission.

(7) B.B. 50a.

(8) During the thirty days.

(9) Stated in Ex. XXI, 21 and according to which if an owner smites his servant, who after having continued to live for a day or two, dies, he would not be punished, though in the case of a stranger the slayer would be liable to death in all circumstances.

(10) Even during the thirty days that the slave had to be with the vendor.

(11) I.e., the vendor and the purchaser.

(12) B.B. 50b; Sanh. 79a also supra p. 253.

(13) Ex. XXI, 21.

(14) [Raba stresses the word ‘his’.]

(15) Who considers neither the vendor nor the purchaser as the true owner, and so should be the case regarding husband and wife in the melog estate.

(16) As where the slave belonged to two partners and one of them manumitted him; cf. Git. 41a.

(17) Which are twenty-four in number; cf. Kid. 25a.

(18) Ex. XXI, 26.

(19) On account of Degradation.

(20) V. Glos.

Talmud - Mas. Baba Kama 90b

THIS IS THE GENERAL PRACTICE, THOUGH ALL DEPENDS UPON THE DIGNITY [OF THE INSULTED PERSON]. R. AKIBA SAID THAT EVEN THE POOR IN ISRAEL HAVE TO BE CONSIDERED AS IF THEY ARE FREEMEN REDUCED IN CIRCUMSTANCES, FOR IN FACT THEY ALL ARE THE DESCENDANTS OF ABRAHAM, ISAAC AND JACOB.[1] IT ONCE HAPPENED THAT A CERTAIN PERSON UNCOVERED THE HEAD OF A WOMAN IN THE MARKET PLACE AND WHEN SHE CAME BEFORE R. AKIBA, HE ORDERED THE OFFENDER TO PAY HER FOUR HUNDRED ZUZ. THE LATTER SAID TO HIM, 'RABBI, ALLOW ME TIME [IN WHICH TO CARRY OUT THE JUDGMENT];' R. AKIBA ASSENTED AND FIXED A TIME FOR HIM. HE WATCHED HER UNTIL HE SAW HER STANDING OUTSIDE THE DOOR OF HER COURTYARD, HE THEN BROKE IN HER PRESENCE A PITCHER WHERE THERE WAS OIL OF THE VALUE OF AN ISAR,[2] AND SHE UNCOVERED HER HEAD AND COLLECTED THE OIL WITH HER PALMS AND PUT HER HANDS UPON HER HEAD [TO ANOINT IT]. HE THEN SET UP 'WITNESSES AGAINST HER AND CAME TO R. AKIBA AND SAID TO HIM: HAVE I TO GIVE SUCH A WOMAN[3] FOUR HUNDRED ZUZ?' BUT R. AKIBA SAID TO HIM: 'YOUR ARGUMENT IS OF NO LEGAL EFFECT, FOR WHERE ONE INJURES ONESELF THOUGH FORBIDDEN, HE IS EXEMPT,[4] YET, WERE OTHERS TO INJURE HIM, THEY WOULD BE LIABLE: SO ALSO HE WHO CUTS DOWN HIS OWN PLANTS, THOUGH NOT ACTING LAWFULLY,[5] IS EXEMPT,[4] YET WERE OTHERS TO [DO IT], THEY WOULD BE LIABLE.

GEMARA. It was asked: Is it a Tyrian maneh[6] of which the Mishnaic text speaks or is it only a local maneh[7] which is referred to? — Come and hear: A certain person boxed another's ear and the case was brought before R. Judah Nesi'ah.[8] He said to him: 'Here I am and here is also R. Jose the Galilean, so that you have to pay the plaintiff a Tyrian maneh.' Does this not show that it is a Tyrian maneh which is spoken of in the text? — It does.

What is the meaning of, 'Here I am, and here is also R. Jose the Galilean'? If you say he meant, 'Here I am who witnessed you [doing this] and here is also R. Jose the Galilean who holds that the payment should be a Tyrian maneh; go therefore and thus pay him a Tyrian maneh', would this not imply that a witness is eligible to act [also] as judge? But [how can this be, since] it was taught: If the members of the Sanhedrin saw a man killing another, some of them should act as witnesses and the others should act as judges: this is the opinion of R. Tarfon. R. Akiba [on the other hand] said that all of them are considered witnesses and [they thus cannot act as judges, for] a witness may not act as a judge.[9] Now, even R. Tarfon surely did not mean more than that a part of them should act as witnesses and the others act as judges, but did he ever say that a witness [giving evidence] should be able to act as judge? — The ruling there[10] [that witnesses actually giving evidence would not be eligible to act at the same time as judges] referred only to a case such as where e.g., they saw the murder taking place at night time when they were unable to act in a judicial capacity.[11] Or if you like I may say that what R. Judah Nesi'ah said to the offender was, 'Since I am here who concur with R. Jose the Galilean who stated that a Tyrian maneh should be paid, and since there are here witnesses testifying against you, go and pay the plaintiff a Tyrian maneh.'

Does R. Akiba really maintain that a witness cannot [at the same time] act as judge? But it has been taught: [As Scripture says] And one smite another with a stone or with his fist,[12] Simeon the Temanite remarked that just as a fist is a concrete object that can be submitted for examination to the assembly of the judges and the witnesses, so also it is necessary that all other instruments should be able to be submitted [for consideration] to the assembly of the judges and the witnesses, which excludes the case where the instrument of killing disappeared from under the hands of the

witnesses.[13] Said R. Akiba to him: [Even if the instrument was placed before the judges], yet did the actual killing take place before the judges of the Court of Law that they should be expected to know how many times the murderer struck the victim, or again the part of the body upon which he struck him, whether it was upon his thigh or upon the tip of the heart? Again, supposing the murderer threw a man down from the top of a roof or from the top of a mansion house so that the victim died, would the court of law have to go to the mansion or would the mansion have to go to the court of law? Again, if the mansion meanwhile collapsed, would it be necessary to erect it anew [as it was before for the inspection of the court of law]?[14] We must therefore say that just as a fist is a definite object that was placed before the sight of witnesses [when the murder was committed] so also it is necessary that all other instruments should have been placed before the sight of the witnesses, which excludes the case where the instrument of killing disappeared from under the hand of the murderer who is thus free.' We see then that R. Akiba said to him, 'did the actual killing take place before the judges of the Court of Law that they should be expected to know how many times the murderer struck the victim . . . ?' which would imply that if he had killed him in their presence, [they who were the] witnesses would have been able to act as judges! — He was arguing from the point of view of R. Simeon the Temanite but this was not his own opinion.

Our Rabbis taught: 'If an ox while still Tam[15] killed [a person] and subsequently also did damage, the judges will adjudicate on the loss of life[16] but will not adjudicate on the pecuniary damage.[17] In the case however of Mu'ad[18] killing a person and subsequently doing damage the judges will first deal with the pecuniary matter[19] and then adjudicate on the loss of life.[20] But if [for some reason or other], they have already adjudicated on the capital matter it would no more be possible to start dealing with the pecuniary matter.' But even if they first adjudicated on the capital matter, what has happened that it should no more be possible for them to start dealing with the pecuniary matter? Raba said: 'I found the Rabbis at the School of Rab[21] sitting and stating that this teaching follows the view of R. Simeon the Temanite who said that just as a fist is a definite object which can be submitted to the consideration of the assembly of the judges and the witnesses,

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(1) Cf. B.M. VIII, 1.

(2) A small coin; v. Glos.

(3) Who had herself for the mere value of an isar, publicly uncovered her own head.

(4) From any pecuniary punishment.

(5) Cf. Deut. XX, 19.

(6) Consisting of twenty-five sela's, v. supra p. 204. n. 4.

(7) Which was only an eighth part of a Tyrian maneh; cf. supra p. 204.

(8) I.e., R. Judah II, the Prince.

(9) Sanh. 34b; B.B. 114a.

(10) In the case of Sanhedrin witnessing a murder.

(11) As judgments could be passed only at day time; cf. Sanh. IV, 1. [But where witnessed during the daytime, they can immediately act in the dual capacity of judges and witnesses.]

(12) Ex. XXI, 18.

(13) [Though the witnesses had an opportunity of examining the killing instrument, where the Judges had no such opportunity, no death penalty can be passed.]

(14) [In which case the court relies on the examination made by the witnesses; v. Tosef. Sanh. XII.]

(15) V. Glos.

(16) Cf. Ex. XXI, 28.

(17) Cf. ibid. 35.

(18) V. Glos.

(19) Cf. ibid. 36.

(20) Cf. ibid. 29-30.

(21) Cf. supra p. 487.

[so also all other instruments should be able to be submitted to the consideration of the assembly of the judges and the witnesses], which shows that the inspection[1] [of the instrument] by the Court of Law is essential [before any liability can be imposed]; and in this case where the sentence has already been passed on the ox to be stoned[2] it would not be possible to keep the ox for inspection[1] by the Court of Law, as we could not delay[3] the execution of the judgment. I said to them: 'You may even say that the teaching follows the view of R. Akiba, for we may have been dealing here with a case where the defendant ran away.'[4] But if the defendant ran away even in the case where the capital matter has not yet been adjudicated, how would it be possible to deal with the pecuniary matter in the absence of the defendant? — It was only after the evidence of the witnesses had already been accepted that he ran away.[5] Be that as it may, whence could the payment come[6] [since the defendant ran away]?[7] — Out of the hire obtained from ploughing [done by the ox]. But if so, why also in the case of Tam, should the pecuniary matter not be adjudicated first and the payment made out of the hire obtained from ploughing, and then adjudicate the capital matter? — Said R. Mari the son of R. Kahana: This indeed proves that the hire obtained from ploughing forms a part of the general estate of the owner.[8]

The question was raised: Is an inspection [of the instrument] essential also in the case of mere damage, or is no inspection necessary in the case of mere damage? Shall we say that it is only regarding murder[9] that we have to inspect the instrument, as by means of one instrument life could be taken, while by means of another life could not be taken, whereas regarding mere damage any instrument would be sufficient, or is there perhaps no difference? — Come and hear: 'Just as Pit can cause death because it is usually ten handbreadths [deep], so also [other similar nuisances] should be such as can cause death, [i.e.,] ten handbreadths [deep]. If, however, they were less than ten handbreadths [deep] and an ox or an ass fell into them and died there would be exemption, but if only injured by them there would be liability.'[10] Is not the Tanna here reckoning upwards — so that what he says is that a pit of a depth of from one handbreadth to ten handbreadths could not cause death though it could cause damage, implying that a pit of any depth would involve liability in the case of mere damage and thus indicating that no inspection is necessary regarding mere damage? — No, he reckoned downwards, and thus meant to say that only a pit of ten handbreadths could cause death whereas a Pit a little less than ten handbreadths could cause[11] only damage and not death, so that it may therefore still be argued that inspection might be essential even regarding mere damage and that in each case it may be necessary that the instrument be such as would be fit to cause the particular damage done.

Come and hear: If [the master] struck his slave on the eye and blinded him, or on his ear and deafened him, the slave would on account of that go out free,[12] but if he struck on an object which was opposite the slave's eye through which he lost his sight or on an object which was opposite his ear through which he lost his hearing, the slave would [on account of this] not go out free.[13] Is not the reason of this that consideration of the instrument is required [before any liability can be imposed],[14] which proves that the inspection of the instrument is essential also in the case of mere damage? — No; the reason is because we say that it was the slave who frightened himself, as taught: If a man frightens another he is exempt according to the judgments of Man but liable according to the judgments of Heaven; thus if he blew into his ear and deafened him he would be exempt, but if he actually took hold of his ear and blew into it and thus deafened him he would be liable.[15]

Come and hear: Regarding the Five Items,[16] an estimation will be made and the payment made straight away, though Healing and Loss of Time will have to be estimated for the whole period until he completely recovers. If after the estimation was made his health continued to deteriorate, the payment will not be more than in accordance with the previous estimation. So also if after the estimation was made he recovered rapidly, payment will be made of the whole sum estimated. Does

this not show that estimation is essential also in the case of mere damage? — That an estimate has to be made of the length of the illness likely to result from the wound[17] has never been questioned by us, for it is certain that we would have to make such an estimation; the point which was doubtful to us was whether we estimate if the instrument was one likely to do that damage or not. What is indeed the law? — Come and hear: Simeon the Temanite said[18] that just as a fist is a definite object that can be submitted to the consideration of the assembly of the judges and the witnesses, so also all other instruments should be able to be submitted to the consideration of the assembly of the judges and the witnesses. Does this not show that the inspection of the instrument is essential even in the case of mere damage? — It does indeed.

The Master stated: 'So also if after the estimation was made he recovered rapidly payment will be made of the whole sum estimated.' This appears to support the view of Raba. For Raba said: An injured person whose illness was estimated to last the whole day but who, as it happened recovered in the middle of the day and performed his usual work, would still be paid for the whole day, as the unexpected recovery was an act of mercy especially bestowed upon him from Heaven.

IF HE SPAT SO THAT THE SPITTLE REACHED HIM . . . HE HAS TO PAY FOUR HUNDRED ZUZ. R. Papa said: This Mishnaic ruling applies only where it reached him [his person], but if it reached only his garment this would not be so. But why should this not be equivalent to an insult in words? — It was stated in the West[19] in the name of R. Jose b. Abin that this could indeed prove that where the insult was merely in words, there would be exemption from any liability whatsoever.

ALL DEPENDS UPON THE DIGNITY. . . The question was raised: Did the first Tanna mean by this to mitigate or to aggravate the penalty? Did he mean to mitigate the penalty, so that a poor man would not have to be paid so much, or did he perhaps mean to aggravate the penalty, so that a rich man would have to be paid more? — Come and hear: Since R. Akiba[20] stated THAT EVEN THE POOR IN ISRAEL HAVE TO BE CONSIDERED AS IF THEY ARE FREEMEN WHO HAVE BEEN REDUCED IN CIRCUMSTANCES, FOR IN FACT THEY ALL ARE THE DESCENDANTS OF ABRAHAM, ISAAC AND JACOB, does this not show that the first Tanna meant to mitigate the penalty?[21] — It does indeed.

IT ONCE HAPPENED THAT A CERTAIN PERSON UNCOVERED THE HEAD OF A WOMAN [IN THE MARKET PLACE . . . FIXED A TIME FOR HIM]. But is time allowed[22] [in such a case]? Did R. Hanina not say that no time is granted in cases of injury? — No time is granted in the case of injury where there is an actual loss of money,[23] but in the case of Degradation, where there is no actual loss of money, time[22] to pay may be granted.

HE WATCHED UNTIL HE SAW HER STANDING OUTSIDE THE DOOR OF HER COURTYARD [. . . FOR IF ONE INJURES ONESELF, THOUGH IT IS FORBIDDEN TO DO SO . . .] But was it not taught: R. Akiba said to him, 'You have dived into the depths and have brought up a potsherd in your hand,[24] for a man may injure himself'? — Raba said: There is no difficulty, as the Mishnaic statement deals with actual injury, whereas the other text referred to Degradation. But surely the Mishnah deals with Degradation,

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(1) Lit., 'estimation'.

(2) Lit., 'to be killed'.

(3) V. Sanh. (Sonc. ed.) p. 222, and notes.

(4) So that in his absence we cannot adjudicate the matter.

(5) In which case though judgment could be passed regarding the pecuniary liability it is of no use to do so as the defendant when running away took all available funds with him.

(6) Even in the case where the capital matter has not yet been adjudicated.

(7) With all his available funds.
(8) And could thus not become subject to be paid for damages in the case of Tam, where payment could only be made out of its own body; cf. supra p. 73. [The plaintiff, however, could not take the ox itself in payment as it is to be stoned. V. Tosaf.]
(9) Cf. Num. XXXV, 17, 18 and 23.
(10) V. supra 50b.
(11) I.e., is fit to cause.
(12) Cf. Ex. XXI, 26-27.
(13) Kid. 24b; infra 88a.
(14) And the act of the master in the second case is not considered a cause adequate to effect such a result.
(15) Kid. ibid, and cf. supra 56a.
(16) Enumerated Mishnah supra p. 473,
(17) Lit. 'how long he is likely to suffer . . . and how long he will not.'
(18) Supra pp. 522-3
(19) [This usually represents R. Jeremiah.] Cf. Sanh. 17b.
(20) [And yet R. Akiba does not impose more than four hundred zuz, the same amount as mentioned by the first Tanna.]
(21) [The figure 400 mentioned by him being a maximum whereas R. Akiba would award this amount to all alike.]
(22) For the execution of a judgment.
(23) Sustained by the plaintiff.
(24) I.e., you have gone to a great amount of trouble which could however be of no practical avail.

Talmud - Mas. Baba Kama 91b

and it nevertheless says: If one injures oneself, though it is forbidden to do so, he is exempt? — It was this which he[1] said to him: 'There could be no question regarding Degradation, as a man may put himself to shame, but even in the case of injury where a man may not injure himself, if others injured him they would be liable.' But may a man not injure himself? Was it not taught: You might perhaps think that if a man takes an oath to do harm to himself and did not do so he should be exempt. It is therefore stated: 'To do evil or to do good,'[2] [implying that] just as to do good is permitted, so also to do evil [to oneself] is permitted; I have accordingly to apply [the same law in] the case where a man had sworn to do harm to himself and did not do harm?[3] — Samuel said: The oath referred to was to keep a fast.[4] It would accordingly follow that regarding doing harm to others[5] it would similarly mean to make them keep a fast. But how can one make others keep a fast? — By keeping them locked up in a room. But was it not taught: What is meant by doing harm to others? [If one says], I will smite a certain person and will split his skull?[3] — It must therefore be said that Tannaim differed on this point, for there is one view maintaining that a man may not injure himself and there is another maintaining that a man may injure himself. But who is the Tanna maintaining that a man may not injure himself? It could hardly be said that he was the Tanna of the teaching, And surely your blood of your lives will I require,[6] [upon which] R. Eleazar remarked [that] it meant I will require your blood if shed by the hands of yourselves,[7] for murder is perhaps different. He might therefore be the Tanna of the following teaching: 'Garments may be rent for a dead person[8] as this is not necessarily done to imitate the ways of the Amorites. But R. Eleazar said: I heard that he who rends [his garments] too much for a dead person transgresses the command,[9] 'Thou shalt not destroy',[10] and it seems that this should be the more so in the case of injuring his own body. But garments might perhaps be different, as the loss is irretrievable, for R. Johanan used to call garments 'my honourers',[11] and R. Hisda whenever he had to walk between thorns and thistles used to lift up his garments Saying that whereas for the body [if injured] nature will produce a healing, for garments [if torn] nature could bring up no cure.[12] He must therefore be the Tanna of the following teaching: R. Eleazar Hakkapar Berabbi[13] said: What is the point of the words: 'And make an atonement for him, for that he sinned regarding the soul.'[14] Regarding what soul did this [Nazarite] sin unless by having deprived himself of wine? Now can we not base on this an argument a fortiori: If a Nazarite who deprived himself only of wine is already called a sinner, how much the more so

one who deprives oneself of all matters?'[15]

HE WHO CUTS DOWN HIS OWN PLANTS . . . Rabbah b. Bar Hanah recited in the presence of Rab: [Where a plaintiff pleads] 'You killed my ox, you cut my plants, [pay compensation', and the defendant responds:] 'You told me to kill it, you told me to cut it down', he would be exempt. He [Rab] said to him. If so you almost make it impossible for anyone to live, for how can you trust him? — He therefore said to him: Has this teaching to be deleted? — He replied: No; your teaching could hold good in the case where the ox was marked for slaughter[16] and so also the tree had to be cut down.[17] If so what plea has he against him? — He says to him: I wanted to perform the precept myself in the way taught: 'He shall pour out . . . and cover it',[18] implying that he who poured out[19] has to cover it; but it once happened that a certain person performed the slaughter and another anticipated him and covered [the blood], and R. Gamaliel condemned the latter to pay ten gold coins.[20]

Rab said: A palm tree producing even one kab of fruit may not be cut down. An objection was raised [from the following]: What quantity should be on an olive tree so that it should not be permitted to cut it down? A quarter of a kab.[21] — Olives are different as they are more important. R. Hanina said: Shibhath[22] my son did not pass away except for having cut down a fig tree before its time. Rabina, however, said: If its value [for other purposes] exceeds that for fruit, it is permitted [to cut it down]. It was also taught to the same effect: 'Only the trees of which thou knowest'[23] implies even fruit-bearing trees;[24] That they be not trees for meat, means a wild tree. But since we ultimately include all things, why then was it stated, That they are not trees for food? To give priority[25] to a wild tree over one bearing edible fruits.

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

(2) Lev. V, 4.

(3) Shebu. 27a.

(4) But in other ways a man may not injure himself.

(5) Dealt with in Shebu 27a.

(6) Gen. IX, 5.

(7) I.e., for committing suicide.

(8) Cf. II Sam. I, 11, and II Kings II, 12. Cf. also Sanh. 52b.

(9) According to the text, 'Will be lashed on account of transgressing' which could however hardly be substantiated; Cf. Tosaf. a.l.

(10) Deut. XX, 19.

(11) Sanh. 94a.

(12) Cf. Taan. 23a.

(13) A title of some scholars who belonged to the school of R. Judah the prince.

(14) Num. VI, 11; E.V.: for that he sinned by the dead.

(15) R. Eleazar Hakkapar is thus the Tanna forbidding self-injury.

(16) Such as where it killed a human being; cf. Ex. XXI, 28.

(17) Such as where it constituted a danger to the public or where it was planted for idolatrous purposes; cf. Deut. XII, 3.

(18) Lev. XVII, 13.

(19) I.e., he who acted as slaughterer.

(20) Hul. 87a.

(21) Sheb. IV, 10. [Why then should the palm tree require a bigger quantity?]

(22) B.B. 26a. There he is called 'Shikhath'.

(23) Deut. XX, 20.

(24) [That is where it is known that they no longer produce any fruits, v. Malbim, a.l.]

(25) To be cut down.

As you might say that this is so even where the value [for other purposes] exceeds that for fruits, it says 'only'.[1] Samuel's field labourer brought him some dates. As he partook of them he tasted wine in them. When he asked the labourer how that came about, he told him that the date trees were placed between vines. He said to him: Since they are weakening the vines so much, bring me their roots tomorrow.[2] When R. Hisda saw certain palms among the vines he said to his field labourers: 'Remove them with their roots. Vines can easily buy palms but palms cannot buy vines.'[2]

MISHNAH. EVEN THOUGH THE OFFENDER PAYS HIM [COMPENSATION], THE OFFENCE IS NOT FORGIVEN UNTIL HE ASKS HIM FOR PARDON, AS IT SAYS: NOW THEREFORE RESTORE THE MAN'S WIFE ETC.[3] WHENCE CAN WE LEARN THAT SHOULD THE INJURED PERSON NOT FORGIVE HIM HE WOULD BE [STIGMATISED AS] CRUEL? FROM THE WORDS: SO ABRAHAM PRAYED UNTO GOD AND GOD HEALED ABIMELECH ETC.[4] IF THE PLAINTIFF SAID: 'PUT OUT MY EYE, CUT OFF MY ARM AND BREAK MY LEG,' THE OFFENDER WOULD NEVERTHELESS BE LIABLE; [AND SO ALSO EVEN IF HE TOLD HIM TO DO IT] ON THE UNDERSTANDING THAT HE WOULD BE EXEMPT HE WOULD STILL BE LIABLE. IF THE PLAINTIFF SAID: 'TEAR MY GARMENT AND BREAK MY PITCHER,' THE DEFENDANT WOULD STILL BE LIABLE, BUT IF HE SAID TO HIM: '[DO THIS] ON THE UNDERSTANDING THAT YOU WILL BE EXEMPT,' HE WOULD BE EXEMPT.[5] BUT IF ONE SAID TO THE DEFENDANT: 'DO THIS TO A THIRD PERSON[6] ON THE UNDERSTANDING THAT YOU WILL BE EXEMPT,' THE DEFENDANT WOULD BE LIABLE, WHETHER WHERE THE INJURY WAS DONE TO THE PERSON OR TO HIS CHATTELS.

GEMARA. Our Rabbis taught: All these fixed sums stated above[7] specify only the payment [civilly due] for Degradation. For regarding the hurt done to the feelings of the plaintiff, even if the offender should bring all the 'rams of Nebaioth'[8] in the world,[9] the offence would not be forgiven until he asks him for pardon, as it is written: Now therefore restore the man's wife for he is a prophet and he will pray for thee.[10] But is it only the wife of a prophet who has to be restored, whereas the wife of another man need not be restored? R. Samuel b. Nahmani said in the name of R. Johanan: 'Restore the man's wife' [surely implies] in all cases; for as to your allegation, Wilt thou slay even a righteous nation? Said he not unto me, She is my sister and she even she herself said: He is my brother,[11] [you should know that] he is a prophet who has already [by act and deed][12] taught the world that where a stranger comes to a city whether he is to be questioned regarding food and drink — or regarding his wife, whether she is his wife or sister. From this we can learn that a descendant of Noah[13] may become liable to death if he had the opportunity to acquire instruction[14] and did not do so [and so committed a crime through the ignorance of the law].

For to close the Lord had closed up [all the wombs of the house of Abimelech].[15] R. Eleazar said: Why is 'closing up' mentioned twice?[16] There was one 'closing up' in the case of males, viz. semen [virile], and two in the case of females, viz. semen and the giving of birth. In a Baraitha it was taught that there were two in the case of males, viz. semen [virile] and urinating, and three in the case of females, i.e. semen, urinating and the giving of birth. Rabina said: Three in the case of males, viz. semen [virile], urinating and anus, and four in the case of females, viz. semen and the giving of birth, urinating and anus. 'All the wombs of the house of Abimelech.' It was stated at the College of R. Jannai that even a hen of the house of Abimelech did not lay an egg [at that time].

Raba said to Rabbah b. Mari: Whence can be derived the lesson taught by our Rabbis that one who solicits mercy for his fellow while he himself is in need of the same thing, [will be answered first]? — He replied: As it is written: And the Lord changed the fortune of Job when he prayed for his friends.[17] He said to him: You say it is from that text, but I say it is from this text: 'And Abraham

prayed unto God and God healed Abimelech and his wife and his maidservants,'[18] and immediately after it Says: And the Lord remembered Sarah as he had said, etc.,[19] [i.e.] as Abraham had [prayed and] said regarding Abimelech.

Raba [again] said to Rabbah b. Mari: Whence can be derived the proverbial saying that together with the thorn the cabbage is smitten?[20] — He replied: As it is written, Wherefore will ye contend with Me, ye all have transgressed against Me, says the Lord.[21] He said to him: You derive it from that text, but I derive it from this, How long refuse ye[22] to keep My commandments and My laws.[23] Raba [again] said to Rabbah b. Mari: It is written: 'And from among his brethren, he took five men.[24] Who were these five? — He replied: Thus said R. Johanan that 'they were those whose names were repeated [in the Farewell of Moses].'[25] But was not the name Judah repeated too?[26] He replied: The repetition in the case of Judah was for a different purpose, as stated by R. Samuel b. Nahmani that R. Johanan said: What is the meaning of the words, Let Reuben live and not die, in that his men become few, and this is for Judah?[27] All the forty years that the Israelites were in the wilderness the bones of Judah were scattered[28] in the coffin[29] until Moses came and solicited for mercy by saying thus to God: Master of the universe, who brought Reuben to confess[30] if not Judah?[31] Hear [therefore] Lord the voice of Judah! Thereupon each limb fitted itself into its original place.[32] He was, however, not permitted to ascend to the heavenly gathering[33] until Moses said: And bring him in unto his people.[34] As, however, he did not know what the Rabbis were saying and was thus unable to argue with the Rabbis on matters of the law, Moses said: His hands shall contend for him![34] As again he was unable to bring his statement into accord with the Halachah, Moses said, Thou shalt be a help against his adversaries![34]

Raba [again] said to Rabbah b. Mari: Whence[35] can be derived the popular saying that poverty follows the poor?[36] — He replied: We have learnt:[37] 'The rich used to bring the first fruits[38] in baskets of gold and silver, but the poor brought it in wicker baskets made out of the bark of willow, and thus gave the baskets as well as the first-fruits to the priest.'[39] He said to him: You derive it from there, but I derive it from this:

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(1) Which qualifies and thus exempts such a case from giving priority to wild trees over those bearing edible fruits.

(2) As the value of the produce of vines surpasses that of palms.

(3) Gen. XX, 7.

(4) Ibid. 17.

(5) For the distinction between injury to the person and damage to chattels see the Gemara.

(6) Lit., 'to such and such person'; cf. Ruth IV, 1.

(7) Supra pp. 520-1.

(8) Isa. LX, 7.

(9) For the purpose of propitiation.

(10) Gen. XX, 7.

(11) Ibid. 4-5. [Ms.M. 'He learned it from thee'; i.e. thy conduct in questioning a stranger, of which he as 'a prophet' became cognisant, put him on his guard. Cf. Mak. 9a.]

(12) Ibid. XVIII, 2-8.

(13) Who is subject to the seven commandments of civilized humanity enumerated in Sanh. 56a; cf. also supra.

(14) Regarding the elementary laws of humanity.

(15) Gen. XX, 18; E.V.: For the Lord had fast closed up. . .

(16) I.e., in the infinitive and finite mood.

(17) Job XLII, 10.

(18) Gen. XX, 17.

(19) Gen. XXI, I.

(20) I.e., that the good are punished with the bad.

(21) Jer. II, 29.

(22) [Including, as it were, Moses and Aaron.]

(23) Ex. XVI, 28.
(24) Gen. XLVII, 2.
(25) Deut. XXXIII, 2-29; (besides Judah) the five were as follows: Dan, Zebulun, Gad, Asher and Naphtali. These names had to be repeated in the blessing as they were the weakest among the tribes.
(26) As in Deut. XXXIII, 7 (though his tribe was by no means among the weak ones).
(27) Deut. XXXIII, 6.7.
(28) I.e., they were not kept together.
(29) As the bones of all the heads of the tribes just as those of Joseph were, according to homiletic interpretation, carried away from Egypt to the Promised Land. Cf. Mid. Rab. on Gen. L, 25.
(30) Cf. Gen. XXXV, 22 and XLIX, 4.
(31) Who made public confession in Gen. XXXVIII, 26.
(32) I.e., they were again made into one whole.
(33) Where matters of law are considered; cf. B.M. 86a.
(34) Deut. XXXIII, 7.
(35) V. Mak. 11b.
(36) B.B. 174b.
(37) Bik. III, 8.
(38) Cf. Ex. XXXIV, 26.
(39) So that the rich took back their gold or silver baskets, whereas the poor did not receive back their baskets made of the bark of the willow.

Talmud - Mas. Baba Kama 92b

And shall cry unclean, unclean.[1]

Rabbah [again] said to Rabbah b. Mari: Whence can be derived the advice given by our Rabbis:[2] Have early breakfast in the summer because of the heat, and in the winter because of the cold, and people even say that sixty[3] men may pursue him who has early meals in the mornings and will not overtake him? — He replied: As it is written, They shall not hunger nor thirst, neither shall the heat nor sun smite them.[4] He said to him: You derive it from that text but I derive it from this one, And ye shall serve the Lord your God:[5] this [as has been explained] refers to the reading of Shema'[6] and the Tefillah,'[7] 'And he will bless thy bread and thy water:'[5] this refers to the bread dipped in salt and to the pitcher of water;[8] and after this, I will take [Mahalah, i.e.] sickness away from the midst of thee.[5] It was [also] taught: Mahalah[9] means gall;[10] and why is it called mahalah! Because eighty-three different kinds of illnesses may result from it [as the numerical value of mahalah amounts exactly to this];[11] but they all are counteracted by partaking in the morning of bread dipped in salt followed by a pitcher of water.

Raba [again] said to Rabbah b. Mari: Whence can be derived the saying of the Rabbis: 'If thy neighbour calls thee an ass put a saddle on thy back?'[12] — He replied: As it is written: And he said: Hagar, Sarai's handmaid; Whence camest thou and whither goest thou? And she said: I flee from the face of my mistress Sarai.[13]

Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying: 'If there is any matter of reproach in thee be the first to tell it?' — He replied: As it was written: And he said, I am Abraham's servant.[14]

Raba again said to Rabbah b. Mari: Whence can be derived the popular saying: 'Though a duck keeps its head down while walking its eyes look afar'? — He replied: As it is written: And when the Lord shall have dealt well with my lord then remember thy handmaid.[15] Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying, 'Sixty[16] pains reach the teeth of him who hears the noise made by another man eating[17] while he himself does not eat'? — He replied: As it is

written, But me, even me thy servant and Zadok the priest, and Benaiah the son of Jehoiada, and thy servant Solomon, hath he not called.[18] He said to him: You derive it from that verse, but I derive it from this verse, And Isaac brought her unto his mother Sarah's tent, and took Rebekah and she became his wife; and he loved her. And Isaac was comforted for his mother;[19] and soon after it is written, And again Abraham took another wife and her name was Keturah.[20]

Raba [further] said to Rabbah b. Mari: Whence can be derived the popular saying, 'Though the wine belongs to the owner, the thanks are given to the butler'? — He replied: As it is written, And thou shalt put of thy honour upon him, that all the congregation of the children of Israel may hearken,[21] and it is also written, 'And Joshua the son of Nun was full of the spirit of wisdom, for Moses had laid his hands upon him; and the children of Israel hearkened unto him. etc.[22]

Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying, 'A dog when hungry is ready to swallow even his [own] excrements'?[23] — He replied: As it is written, The full soul loatheth an honeycomb, but to the hungry soul every bitter thing is sweet.[24]

Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying, 'A bad palm will usually make its way to a grove of barren trees'? — He replied: This matter was written in the Pentateuch, repeated in the Prophets, mentioned a third time in the Hagiographa, and also learnt in a Mishnah and taught in a Baraitha: It is stated in the Pentateuch as written, So Esau went unto Ishmael;[25] repeated in the prophets, as written, And there gathered themselves to Jephthah idle men and they went out with him;[26] mentioned a third time in the Hagiographa, as written: Every fowl dwells near its kind and man near his equal;[27] it was learnt in the Mishnah: 'All that which is attached to an article that is subject to the law of defilement,[28] will similarly become defiled, but all that which is attached to anything which would always remain [levitically] clean would similarly remain clean;[29] and it was also taught in a Baraitha: R. Eliezer said: 'Not for nothing did the starling follow the raven, but because it is of its kind.'[30] Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying: 'If you draw the attention of your fellow to warn him [and he does not respond], you may push a big wall and throw it at him'?[31] — He replied: As it is written: Because I have purged thee and thou wast not purged, thou shalt not be purged from thy filthiness any more.[32]

Raba again said to Rabbah b. Mari: Whence can be derived the popular saying: 'Into the well from which you have once drank water do not throw clods?' He replied: As it is written: Thou shalt not abhor an Edomite, for he is thy brother; thou shalt not abhor an Egyptian because thou wast a stranger in his land.[33]

Raba again said to Rabbah b. Mari: Whence can be derived the popular Saying, 'If thou wilt join me in lifting the burden I will carry it, and if not I will not carry it?' — He replied: As it is written: And Barak said unto her, If thou wilt go with me, then I will go; but if thou wilt not go with me, I will not go.[34]

Raba again said to Rabbah b. Mari: Whence can be derived the popular Saying: 'When we were young we were treated as men, whereas now that we have grown old we are looked upon as babies'? — He replied: It is first written: And the Lord went before them by day in a pillar of a cloud, to lead them the way; and by night in a pillar of fire to give them light,[35]

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(1) Lev. XIII, 45. I.e., in addition to the affliction of the leprosy, he is compelled by Jaw to make it public.

(2) Cf. B.M. 107b.

(3) A common hyperbolical term.

(4) Isa. XLIX, 10. Which might imply as follows: If they will neither hunger nor thirst, but eat in time and drink in time, then neither the heat nor the sun shall smite them.

(5) Ex. XXIII, 25.

(6) [Lit., 'Hear (O Israel!)' introducing the three passages from Scriptures (Deut. VI, 4-9; XI, 13-21; Num. XV, 37-41) recited twice daily — in the morning and the evening.]
(7) [Lit., 'Prayer', the 'Eighteen Benedictions', the main constituents of the regular prayers recited three times daily.]
(8) Constituting the meal of breakfast after the morning prayer; cf. however Shab. 10a and Pes. 12b.
(9) E.V., disease.
(10) [Evidently connecting mahalah with Gr. ** (Preuss, Medezin, p. 215.]
(11) מחלה == forty, eight, thirty and five.
(12) I.e., do not quarrel with him for the purpose of convincing him otherwise.
(13) Gen. XVI, 8.
(14) Ibid. XXIV, 34.
(15) 1 Sam. XXV, 31. Spoken by Abigail to David and hinting thus that she would wish to become his wife in future days.
(16) V. supra p. 534, n.13.
(17) Cf. Keth. 61.
(18) I Kings, 1, 26.
(19) Gen. XXIV, 67.
(20) Ibid. XXV, 1.
(21) Num. XXVII, 18-20.
(22) Deut. XXXIV, 9. Though the spirit of wisdom belongs to God it is nevertheless ascribed to Moses.
(23) [Others: 'stones'.]
(24) Prov. XXVII, 7.
(25) Gen. XXVIII, 9.
(26) Judges XI, 3.
(27) Ecclesiasticus. XIII, 15.
(28) Such as where a metal hook was fixed into a wooden receptacle, which is subject to the law of defilement.
(29) Such as where the hook was stuck into a piece of wood which did not form a receptacle; v. Kel. XII. 2.
(30) Hul. 65a. [The reference is to the small Egyptian raven incident, v. Gen. Rab. LXV, and R. Eliezer had probably a similar incident in mind.]
(31) I.e., you can no more be responsible for any misfortune that his inattention may bring upon him.
(32) Ezek. XXIV, 13.
(33) Deut. XXIII, 8.
(34) Judges IV, 8.
(35) Ex. XIII, 21.

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but subsequently it is written: Behold I send an angel before thee to keep thee by the way.[1]

Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying: 'Behind an owner of wealth chips are dragged along'? — He replied: As it is written: And Lot also who went with Abram had flocks and herds and tents.[2]

R. Hanan said: He who invokes the judgment of Heaven against his fellow is himself punished first, as it says, And Sarai said unto Abram, My wrong be upon thee[3] etc., and it is subsequently written, And Abraham came to mourn for Sarah, and to weep for her.[4] This, however, is the case only where justice could be obtained in a temporal Court of Law. R. Isaac said: Woe to him who cries [for divine intervention] even more than to him against whom it is invoked! It was taught likewise: Both the one who cries for divine intervention and the one against whom it is invoked come under the Scriptural threat,[5] but punishment is meted out first to the one who cries, [and is] more severe than for the one against whom justice is invoked.[6] R. Isaac again said: The curse of an ordinary man should never be considered a trifling matter in your eyes,[7] for when Abimelech called a curse upon Sarah it was fulfilled in her seed, as it says, Behold it is for thee a covering of the eyes,[8]

[which implies that] he said to her, ‘Since thou hast covered the truth from me and not disclosed that he was thy husband, and hast thus caused me all this trouble, let it be the will [of Heaven] that there shall be to thee a covering of the eyes,’[9] and this was actually fulfilled in her seed, as it is written: And it came to pass that when Isaac was old and his eyes were dim so that he could not see.[10] R. Abbahu said: A man should always strive to be rather of the persecuted than of the persecutors as there is none among the birds more persecuted than doves and pigeons, and yet Scripture made them [alone][11] eligible for the altar.[12]

IF THE PLAINTIFF SAID: PUT OUT MY EYE . . . ON THE UNDERSTANDING THAT HE WOULD BE EXEMPT, HE WOULD STILL BE LIABLE. IF THE PLAINTIFF SAID: TEAR MY GARMENT ON THE UNDERSTANDING THAT YOU WILL BE EXEMPT HE WOULD BE EXEMPT. R. Assi b. Hama[13] said to Rabbah:[14] Why is the rule differing in the former case and in the latter case? — He replied: [There is liability in] the former case because no man truly pardons the wounding of his principal limbs. The others rejoined: Does a man then pardon the inflicting of pain, seeing that it was taught: ‘If the plaintiff had said, "Smite me and wound me on the understanding that you will be exempt," the defendant would be exempt.’ He had no answer and said: Have you heard anything on this matter? — He[15] thereupon said to him: This is what R. Shesheth has said: The liability is because [the plaintiff had no right to pardon] the discredit to the family. It was similarly stated: R. Oshaia said: Because of the discredit to the family, whereas Raba said: Because no man could truly pardon the injury done to his principal limbs. R. Johanan, however, said: Sometimes the term ‘Yes’ means ‘No’[16] and the term ‘No’ means ‘Yes’ [as when spoken ironically].[17] It was also taught likewise: If the plaintiff said, ‘Smite me and wound me,’ and when the defendant interposed, ‘On the understanding of being exempt, the plaintiff replied, ‘Yes,’ there may be a ‘Yes’ which implies ‘No’ [i.e., when spoken ironically]. If the plaintiff said, ‘Tear my garment,’ and when the defendant interposed, ‘On the Understanding of being exempt, he said to him, ‘No’, there may be a ‘No’ which means ‘Yes’ [such as when spoken ironically].[17]

IF THE DEFENDANT SAID: BREAK MY PITCHER AND TEAR MY GARMENT, THE DEFENDANT WOULD STILL BE LIABLE. A contradiction was pouched out: "’To keep"[18] but not to destroy; "to keep", but not to tear; "to keep" but not to distribute to the poor,’ [in which case the liability of bailees would not apply. Why then liability in the Mishnah]?[19] — Said R. Huna: There is no difficulty, as here[20] the article came into his hands,[21] whereas there[22] the article did not come into his hands.[23] Said Rabbah to him: Does the expression ‘To keep’[24] not imply that the article has come into his hands? — Rabbah therefore said: This case as well as the other is one in which the article has come into his hands, and still there is no difficulty, as in the case here[25] the article originally came into his hands[21] for the purpose of being guarded, whereas there[22] it came to his hands for the purpose of being torn.

A purse of money for charity having been brought to Pumbeditha, R. Joseph deposited it with a certain person who, however, was so negligent that thieves came and stole it. R. Joseph declared liability [to pay], but Abaye said to him: Was it not taught: ‘To keep’[24] but not to distribute to the poor? — R. Joseph rejoined: The poor of Pumbeditha have a fixed allowance,[26] and the charity money could thus be considered as having been deposited ‘to keep’ [and not to distribute it to the poor].[27] [

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(1) Ibid. XXIII, 20.

(2) Gen. XIII, 5.

(3) Ibid. XVI, 5.

(4) Ibid. XXIII, 2.

(5) Cf. Ex. XXII, 23.

(6) As in the case of Sarah; Gen. XVI, 5 and ibid. XXIII, 2.

(7) Cf. Ex. XXII, 23.