The Soncino Babylonian Talmud

Book I

Folios 2a-31a

BABA KAMMA

TRANSLATED INTO ENGLISH WITH NOTES

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UNDER THE EDITORSHIP OF

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BABA KAMMA - 2a-31a

INTRODUCTION TO *SEDER NEZIKIN*

by

Dr. I. Epstein, editor

GENERAL CHARACTER AND CONTENTS

The fourth 'Order', with which the Soncino Edition of the Babylonian Talmud is first introduced to the English reading public, was in the oldest sources designated *'Seder Yesu'oth',* the 'Order of Salvation'. This title is well deserved. As the *corpus juris* comprising the whole of Jewish civil and criminal law and procedure, this 'Order' treats of the precepts and regulations that are to govern the lives and actions of the individual and the community, and is thus designed to protect and 'bring salvation' to the weak and helpless from the wrong and injustice of the unscrupulous and strong, and confirm all in their property and rights and privileges.

The term *'Nezikin',* 'Damage', by which the order became finally known was originally limited to the first three tractates—the 'Three Gates': Baba Kamma, Baba Mezi'a and Baba Bathra, which deal primarily with all kinds of injury and damage to property as well as person and with claims to compensation. It is derived from the third Hebrew word in the opening tractate: [Hebr.]. 'The principal categories of damage (*nezikin*) are four.' These 'Three Gates' originally constituted one single tractate of thirty chapters, but on account of its excessive length it was subsequently divided into three, each section being designated by the Aramaic 'Baba' denoting, as in Arabic, 'Gate', 'Chapter'. Finally the whole of the order came to be described by the term *Nezikin,* even as a whole is often made to bear the name of a part.

The term [Hebr.] is generally taken as plural of [Hebr.] *('damage',* cf. Esther VII. 4) following the plural formation of the noun [Hebr.]. Others treat it as the plural from a substantive [Hebr.], which like [Hebr.] would be active in sense, so that *'nezikin'* would mean 'doers of damage', but the existence of this singular noun remains yet to be proved.

The order as we have it now is divided into ten tractates, arranged according to Maimonides and most of the printed and manuscript editions of the Mishnah in the following sequence:[1]

1. **BABA KAMMA. On damage caused to property; injuries perpetrated on the person with or without criminality; and cases of compensation for theft, robbery and violence.**
2. **BABA MEZI'A. Laws relating to found property, bailments, sale and exchange; defrauding; interest; hiring of laborers and cattle; renting and leasing; joint-ownership in dwellings and fields.**
3. **BABA BATHRA. Deals with laws concerning the division of property held in partnership; restrictions in respect of private and public property; established rights of ownership; acquisition of property; hereditary succession, and drafting of documents.**
4. **SANHEDRIN. Is concerned with Courts of Justice and their composition; trials, arbitration, judicial procedure in monetary and capital cases; prescriptions for death sentences; and Dogmas of the Jewish Religion.**
5. **MAKKOTH. Treats of the punishment of perjurers; the Cities of Refuge; the offences punishable by lashes and the regulations for the administration of stripes.**
6. **SHEBU'OTH. Deals with the various forms of oaths made privately and also those administered (i) to witnesses, (ii) to litigants, (iii) to wardens.**
7. **'EDUYYOTH. A collection of miscellaneous traditions of earlier authorities cited in the Academy on the day when Rabbi Eleazar ben Azariah was elected as its head.**

8. **'ABODAH ZARAH. Deals with festivals, rites and cults of idolaters, and prescribes regulations concerning association and social intercourse with heathens.**

9. **ABOTH. Contains aphorisms and maxims of teachers of successive generations from the men of the Great Assembly onwards.**

10. **HORAYOTH. Deals with erroneous rulings in matters of ritual law by religious authorities.**

As will have been seen from the above brief sketch, the 'Order' falls into two parts: (i) civil law; (ii) criminal law.

The civil law is dealt with in the first of the three tractates, and for this very reason it is interesting to note that they go in the Jerusalem Talmud by the comprehensive name, [Hebr.] lit., 'cases of money', i.e., civil cases. The criminal law is dealt with in Sanhedrin and Makkoth, which latter originally formed the concluding part of Sanhedrin. The other five tractates can be considered more or less appendices to these two sections. Shebu'oth dealing mostly with oaths in civil cases is an appendix to the 'Three Gates'. The other four are appendices to Sanhedrin; thus 'Eduyyoth contains mainly important decisions of the Great Sanhedrin in Jabneh, while Aboth is introduced with the enumeration of the heads of the Sanhedrin in succession; and likewise 'Abodah Zarah, dealing mainly with idolatry, is primarily an elaboration of part of the seventh chapter of Sanhedrin. Finally Horayoth deals mainly with the erroneous decision of the Sanhedrin.

Thus it comes about that though we are not in a position to state definitely the principles that determined the arrangement of the several tractates within the order, we are, nevertheless, able to trace a distinct logical sequence in that arrangement.[2]

Religious and Ethical Importance

'He who wishes to become a *Hasid* (saint) let him observe the teachings of *Nezikin'* (B.K. 30a).

This striking dictum of Rab Judah, a Babylonian teacher of the third century, well illustrates the true conception of Jewish civil and criminal law. In order to develop a saintly character the Jew is not advised to attend a systematic course in philosophy and ethics, nor is he advised to attach himself to a band of cloistered saints who spend their days in meditation and contemplation. The counsel is: Let him who wishes to become a saint study the teachings of the *Nezikin* order so that he may know how to observe the laws of justice, of right and wrong, of *meum* and *tuum.*

This close connection of ethics and law is the essence of the Jewish legal system.

The civil and criminal law was regarded by the Jews as a part of the Divine Revelation — the Torah. Grounded in the Book and centered in God, it was not, as other legal systems are, the creation of the state, nor did it ever draw its inspiration from political feeling. For the Jew, the Torah was to be an independent and positive source of inspiration, regulating individual and corporate action; and on it was to be reared the whole structure of the Jewish legal system.
This does not involve the ignoring of the economic and social functions of organized society. Political movements and events did play their part in the formation and development of the civil and criminal law; but they were ever subordinated to moral purpose and ethical principle. In other words, morality was the dominant factor in communal life and the underlying principle in all social and economic legislation.

Thus the object of the legal system was not to preserve a particular dynasty or a certain form of government, but to establish social righteousness, and to

maintain thereby a constant, close, inseparable connection between ethics and law, both flowing from the same Divine source.

The Sanhedrin, the body which framed and enacted laws, was not so much a legislative body as a research institute, where the Torah was investigated and studied and the results of such study applied to the needs of practical life.[3]
This function, it is significant to note, made in reality the Sanhedrin, and not the king, the leader of the people. Alien to the whole spirit of Judaism was the idea of a single all-dominating authority vested in a person or corporation. All laws, regulations and enactments had authority only in so far as they were able to stand the ethical test of the Torah.

Once they passed this test they were no longer regarded as manmade, but became identified with the very law of God. And this it was which made the Jewish communities able to exhibit, even under the most trying circumstance and the most hostile environment, a moral enthusiasm and a passion for social justice in which even enlightened European states have often lamentably failed.

Thanks to its divine basis, the Jewish civil law never ceased to exercise its humanizing influence on the dispersed Jewish communities throughout the exile, enabling them to bring the details of social life into subjection to the divine will, and at the same time into harmony with the changing environments and conditions.

For this reason the study of the *Nezikin* order was from the earliest days the most popular. We find it carefully treated in the school of Karna during the second century. A century later, in the days of Rab Judah, the attention of students was chiefly concentrated on this order; and we are told that a boy of six was able to discuss with acumen a passage in the tractate of this order— 'Abodah Zarah (v. A.Z. *56b*, Sonc. ed., p. 285). Moreover, it has been recently shown that the compilation of the *Nezikin* order (at least in the Jerusalem version) preceded the compilation of all the other orders.[4]

Nezikin and Comparative Jurisprudence

It is a much disputed question whether definite mutual relations really did exist between Jewish Talmudic law and other law-systems.

Undoubtedly it is true that the former exerted an influence on the legal ordinances and laws of other peoples. The Jews were scattered throughout the world and wherever they went their law went with them. Thus inevitably was their law in many ways made known to the surrounding world. Certainly the Mishnah had an influence on Roman law—an influence that is not to be wondered at seeing that Rabbi Judah the Prince, the compiler of the Mishnah, maintained friendly relations with Roman emperors. It has even been assumed that the institutions of the Gajus were based on the pattern of the Mishnah and also that the compilations of Justinian followed the same pattern.

And the compilers of the canonical law of the Church must, from its very essence, have fallen back on the Talmud.

More difficult is the question: Did Jewish Talmudic law experience foreign influence? Explicit references are rarely found and the spiritually exclusive attitude of the Mishnah and Talmud teachers may be cited as evidence against the existence of such influences. Although the peculiar nature of Talmudic law—a peculiarity which proceeds from its mode of thought and methodology[5]—precludes us from assuming direct incorporation of foreign legal institutions; yet it is possible

that Jewish law has adopted some of these, after reshaping them for its own ends.

The similarity of the institutions and of several legal ordinances found in the Talmud and non-Jewish law need not necessarily indicate mutual influence. Similar circumstances could easily produce similar laws. The resemblance is moreover very limited.

The influence of foreign law, if there was any, was therefore also limited. Besides, the fact must not be overlooked that the Mishnah (and the Jerusalem Talmud) appeared in the Roman Empire while the Babylonian Talmud has its origin in the Babylonian-Persian realm—a difference which accounts for certain different strains; and these can be shown by the foreign words borrowed in the Mishnah and Talmud.

It is questionable, however, if the teachers of the Talmud and Mishnah really knew the Roman legal system as such and constructed their law with a deliberate acceptance or rejection of its institutions.

Be that as it may, knowledge of Jewish law is undoubtedly of value for the study of Jurisprudence. Long ago Sir Henry Sumner Maine made this clear when he declared that in the days of the Renaissance and subsequent generations when the philosophers were trying to devise a new system of law there was one body of records—those of the Jews—which was worth studying.[6] Nor is this to be wondered at. Such a highly developed system of laws and ordinances, as—apart from the Roman law—the ancient world never knew, must possess far comparative jurisprudence a fullness of interesting material which cannot fail to be of great service for the better understanding of other legal systems.

Method and Scope

TEXT. The Text used for this edition is in the main that of the Wilna Romm Edition. Note has, however, been taken of the most important variants of manuscript and printed editions some of which have been adopted in the main body of the translation, the reason for such preference being generally explained or indicated m the Notes. All the censored passages appear either in the text or in the Notes.

TRANSLATION. The translation aims at reproducing in clear and lucid English the central meaning of the original text. It is true some translators will be found to have been less literal than others, but in checking and controlling *every line* of the work, the Editor has not lost sight of the main aim of the translation. Words and passages not occurring in the original are placed in square brackets.

NOTES. The main purpose of these is to elucidate the translation by making clear the course of the arguments, explaining allusions and technical expressions, thus providing a running commentary on the text. With this in view resort has been made to the standard Hebrew commentators, Rashi, the Tosafists, Asheri, Alfasi, Maimonides, Maharsha, the glosses of BaH, Rashal, Strashun, the Wilna Gaon, etc.[7] Advantage has also been taken of the results of modern scholarship, such as represented by the names of Graetz, Bacher, Weiss, Halevy, Levy, Kohut, Jastrow, and—happily still with us—Krauss, Buchler, Ginzberg, Obermeyer, Klein and Herford among others, in dealing with matters of general cultural interest with which the Talmud teems—historical, geographical, archaeological, philological and social.

GLOSSARY AND INDICES. Each Tractate is equipped with a Glossary wherein recurring technical terms are fully explained, thus obviating the necessity of

explaining them afresh each time they appear in the text. To this has been added a. Scriptural Index and a General Index of contents.

In the presentation of the tractates the following principles have also been adopted:

i. **The Mishnah and the words of the Mishnah recurring and commented upon in the Gemara are printed in capitals**
ii. **Hebr.] introducing a Mishnah cited in the Gemara, is rendered 'we have learnt'.**
iii. **[Hebr.] introducing a Baraitha, is rendered 'it has been (or was) taught'.**
iv. **[Hebr.] introducing a Tannaitic teaching, is rendered 'Our Rabbis taught'.**
v. **Where an Amora cites a Tannaitic teaching the word 'learnt' is used. e.g., [Hebr.] 'R. Joseph learnt'.**
vi. **The word Tanna designating a teacher of the Amoraic period (v. Glos.) is written with a small 't'.**
vii. **A distinction is made between [Hebr.] referring to a Tannaitic ruling and [Hebr.] which refers to the ruling of an Amora, the former being rendered 'the *halachah* is…' and the latter, 'the law is …'**
viii. **R. stands either for Rabbi designating a Palestinian teacher or Rab designating a Babylonian teacher, except in the case of the frequently recurring Rab Judah where the title 'Rab' has been written in full to distinguish him from the Tanna of the same name.**
ix. **[Hebr.] lit., 'The Merciful One', has been rendered 'the Divine Law' in cases where the literal rendering may appear somewhat incongruous to the English ear.**
x. **Biblical verses appear in italics except for the emphasized word or words in the quotation which appear in Roman characters.**
xi. **No particular English version of the Bible is followed, as the Talmud has its own method of exegesis and its own way of understanding Biblical verses which it cites. Where, however, there is a radical departure from the English versions, the rendering of a recognized English version is indicated in the Notes. References to chapter and verse are those of the Masoretic Hebrew text.**
xii. **Any answer to a question is preceded by a dash(—), except where the question and the answer form part of one and the same statement.**
xiii. **Inverted commas are used sparingly, that is, where they are deemed essential or in dialogues.**
xiv. **The archaic second person 'thou', 'thee', etc. is employed only in *Haggadic* passages or where it is necessary to distinguish it from the plural 'you', 'yours', etc.**
xv. **The usual English spelling is retained in proper names in vogue like Simeon, Isaac, Akiba, as well as in words like *halachah, Shechinah, shechinah, etc.* which have almost passed into the English language. The transliteration employed for other Hebrew words is given at the end of each tractate.**
xvi. **It might also be pointed out for the benefit of the student that the recurring phrases 'Come and hear:' and 'An objection was raised:' or 'He objected:' introduce Tannaitic teachings, the two latter in contradiction, the former either in support or contradiction of a particular view expressed by an Amora.**

Acknowledgments

Before taking leave of the reader I desire to express my grateful appreciation of the learning and industry which the several translators have brought to bear upon their work. Special thanks are due to Mr. Maurice Simon. M.A., for his helpfulness in many directions, particularly in connection with the revision of the translator's manuscript of Baba Kamma; nor must I forget to thank my dear wife for her invaluable help to me in many ways whilst engaged in this work. Last but not least, I take special pleasure in paying a tribute to Mr. J. Davidson, the Governing Director of the Soncino Press, through whose initiative and idealism the English translation of the Babylonian Talmud is being realized. His painstaking care and tremendous energy in seeing the first set of volumes through its various stages have been invaluable. In conclusion, I must tender my humble thanks to the Almighty God for having given me the strength to carry through, amidst other labors, this exacting and strenuous task. And on behalf of all those of us who have been closely concerned with this publication, I offer the

traditional prayer: [Hebr.] 'May it be Thy will, O Lord our God, even as Thou hast helped us to complete the *Order Nezikin,* so to help us to begin the other *Sedarim,* 'Orders', and complete them.

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Shebat 28, 5695
1 February, 1935

Footnotes

1. In the printed editions of the Talmud, the tractates appear in the following order BK., B.M., B.B., A.Z., Sanh., Mak, Shebu., Hor., 'Ed., Aboth; for other variations, v. Strack, H., *Introduction to the Talmud and Midrash* (Philadelphia, 1931), p. 366.
2. V. Hoffmann, D., *Mischnaiot, Seder Nezikin,* Berlin. 1898, p. viii.
3. V. Gulak. A., [Hebr. text] *W.* p.7.
4. V. Liebermann, *Supplement to Tarbiz* 11_4 (Jerusalem, 1931). pp. 18ff.
5. V. Auerbach, L, *Das Juedische Obligationenrecht,* I, pp. 3ff
6. Maine, *Ancient Law* (London, 1862), p. 90. (I am obliged for this reference to Rabbi Dr. E. W. Kirzner).
7. These names are referred to more fully in the list of Abbreviations at the end of each Tractate.

INTRODUCTION TO BABA KAMMA

Baba Kamma, 'The First Gate', which opens Talmudic Civil Law to be continued in Baba Mezi'a, 'The Middle Gate', and Baba Bathra, 'The Last Gate', deals with compensation for injury or loss occasioned to person or property. It contains practically the whole law on the subject of redress, or the field of jurisdiction which in England is exercised mainly by the King's Bench Division, and forms two main divisions, corresponding to the two distinct causes of liability, viz., injury and misappropriation. Under the head of injury come all sorts of damage done by the defendant personally or by any of his chattels and agencies. Misappropriation similarly embraces all kinds of unlawful possession acquired whether through violence or theft, whether intentionally or unintentionally.

CHAPTER I classifies the various sources of damage under principal heads and their derivatives, and lays down some general rules which apply in common to their several liabilities. To this is appended the division of tort-feasant cattle into *Tam* and *Mu'ad* (v. Glos.). This chapter may thus be termed the General Introduction to Baba Kamma.

CHAPTER II deals with damage done by Foot and Tooth, also with that occasioned by poultry while flying and by pebbles thrown up by animals while walking. It then proceeds to Horn, defining *Tam* and *Mu'ad* and discussing at length the problem of *Tam* doing damage on the plaintiff's premises, with an incidental exposition of the logical principle of *Dayyo.* It concludes with the reassertion that Man is always *Mu'ad.*

CHAPTER III begins with some exceptions to this rule and deals with public nuisances coming under the head of Pit as well as with other kinds of damage occasioned on public ground, whether by obstruction or the like. This leads to discussions on contributory negligence and mutual damage of both man and animal. The differences between damage done by man and that by chattel are summarized, and the law of *onus probandi* in cases involving either *Tam* or *Mu'ad* concludes the chapter.

CHAPTER IV opens with a case where there is more than one plaintiff. It then resumes the consideration of *Tam* and *Mu'ad,* proceeding to the imposition of

'ransom' **in the case of manslaughter and the stoning of the ox. The liabilities of bailees for manslaughter and damage done by cattle in their charge are laid down, and the minimum amount of precaution demanded by law is discussed.**

CHAPTER V continues the discussion commenced in CHAPTER III on *onus probandi,* with special reference to miscarriage caused to animals. After considering the relationship between a licensee and a licensor, between a trespasser and an owner, the question of offences resulting in miscarriage is resumed, this time in the case of human beings, and the relationship between the mother and the embryo in contradistinction to that between the father and the embryo is discussed; a contrast is also drawn between man and animal committing the offence; Pit in all its aspects is then fully dealt with and finally disposed of.

CHAPTER VI summarizes the law of Tooth and Foot, and illustrates the method of assessing damages. The duties of shepherds and keepers are defined, as also of finders of lost property. The law regarding Fire is then presented, and the precautions to be taken and the limitation of liability are specified.

CHAPTER VII elaborates the laws of twofold, fourfold and fivefold restitution in Theft. The question when and how ownership would be transferred through theft is exhaustively treated, also whether the fine can be merged in a higher penalty, and whether it should be exacted where the offence is admitted. Other points considered in this connection are the effect of an 'alibi' proved against witnesses, the legal relationship between consecrated objects and their donors, and the kind of sale that would or would not entail the fine. It is also laid down that no theft is constituted unless and until the misappropriated objects actually have entered the possession of the thief or that of his agent acting innocently. Certain exhortations follow as to potential misappropriation especially with respect to agricultural produce, leading on to a discussion on the traditional stipulations which formed the basis of social life since the days of Joshua. This gives rise to a consideration of the enactments of Ezra at the Second Entry of Israel into the Land.

CHAPTER VIII deals with battery and assault. The additional Four Items of liability are fully illustrated and traced to their sources in the Pentateuch. Assault upon the dignity and reputation of another receives special treatment. Injuries committed by minors and other persons not fully responsible are considered, and the status of married women and their rights to their estates defined. Fixed penalties are laid down for common cases of assault and battery. The duties of offenders are then considered from a purely ethical point of view and illustrated by some popular proverbs with Scriptural parallels.

CHAPTER IX deals with violence and assault not against the person and his dignity but against his chattels and possessions. The duties of the robber in the matter of restitution arc defined, and the possibility of a change of ownership in the case of robbery is discussed on the same lines as in regard to theft. Robbery committed on coins which subsequently went out of circulation is dealt with together with other analogous cases. A material default on the part of a careless contractor working upon the material of another party is discussed under both the law applicable to misappropriation and the law applicable to damage done through *culpa lata.* Defaulting agents are dealt with under the same heading. Robbery aggravated by perjury receives special treatment, resulting in an exhaustive exposition of the whole law applicable to robbers and bailees

perjuring themselves. Akin to this is robbery coupled with perjury in the case of a proselyte who subsequently died without issue. As in the latter case the priests are entitled to the payment, there follows a discussion on the divisions of the priests and their relationship to one another regarding both this emolument and the other endowments allotted to them.

CHAPTER X continues the law in cases of misappropriation beginning with the liability, if any, of heirs for robbery committed by a deceased predecessor. These are compared and contrasted with innocent purchasers. After some digression on civil procedure where the defendant falls to make an appearance, a discussion is opened on arbitrary and unauthorized impositions of levies and duties, and on the position of third parties who come into possession of articles thus misappropriated, resulting in an exposition of the law relating to goods bought on market overt and the relationship between an innocent purchaser and the claimant. The case of one who rescues another's goods at great pecuniary loss to himself is also treated, and some remarks are made on confiscation of land and the denouncers and informers who throve in those days.

The conditions in which restitution of misappropriated articles should be made are then dealt with as well as corresponding rules with regard to the payment of debts and the return of deposits. This leads to a discussion of the case where a positive claim is met by a defense of doubt. The Tractate concludes with the prohibition of purchasing certain articles from persons who could reasonably be suspected of having misappropriated them—e.g., wool, milk and young goats from shepherds, produce from keepers of forests and gardens- and with rules to guide certain classes of artisans-the washer, the carder, the tailor, the carpenter, the weaver, the dyer, the tanner, and the agricultural laborer-working upon the material of their respective employers, as to what of the waste matter may lawfully be retained by them and what must be returned to owners of the material.

The Tractate also contains references to other systems of law, and in the notes sources of general law are occasionally quoted. This was not made a constant practice so as not to entangle the reader in the maze of extremely difficult legal conceptions, the object of the notes being to give a lucid exposition of Talmudic law which regulates to the present day the life and conduct of the Jewish people.

E. W. KIRZNER

Baba Kamma 2a

CHAPTER I

MISHNAH. THE PRINCIPAL CATEGORIES OF DAMAGE[1] ARE FOUR: THE OX,[2] THE PIT,[3] THE 'SPOLIATOR' [*MAB'EH*][4] AND THE FIRE.[5] THE ASPECTS OF THE OX ARE [IN SOME RESPECTS] NOT [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE 'SPOLIATOR';[6] NOR ARE [IN OTHER RESPECTS] THOSE OF THE 'SPOLIATOR' [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE OX;[6] NOR ARE THE ASPECTS OF EITHER OF THEM, IN WHICH THERE IS LIFE, [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE FIRE WHICH IS NOT ENDOWED WITH LIFE;[6] NOR ARE THE ASPECTS OF ANY OF THESE, THE HABIT OF WHICH IS TO BE MOBILE AND DO DAMAGE, [OF SUCH LOW ORDERS OF GRAVITY] AS THOSE OF THE PIT OF WHICH IT IS NOT THE HABIT TO MOVE ABOUT AND DO DAMAGE.[6] THE FEATURE COMMON TO THEM ALL IS THAT THEY ARE IN THE HABIT OF DOING DAMAGE; AND THAT THEY HAVE TO BE UNDER YOUR CONTROL SO THAT WHENEVER ANY ONE [OF THEM] DOES DAMAGE THE OFFENDER IS LIABLE TO INDEMNIFY WITH THE BEST OF HIS ESTATE.[7]

GEMARA. Seeing that PRINCIPAL CATEGORIES are specified, it must be assumed that there are derivatives. Are the latter equal in law to the former or not?

Regarding Sabbath we learnt: The principal classes of prohibited acts are forty less one.[8] 'Principal classes' implies that there must be subordinate classes. Here the latter do in law equal the former; for there is no difference between a principal and a subordinate [prohibited act] with respect either to the law of sin-offering[9] or to that of capital punishment by stoning.[10] In what respect then do the two classes differ? — The difference is that if one simultaneously committed either two principal [prohibited] acts or two subordinate acts one is liable [to bring a sin-offering] for each act, whereas if one committed a principal act together with its respective Subordinate, one is liable for one [offering] only. But according to R. Eliezer who imposes the liability [of an offering] for a subordinate act committed along with its Principal,[11] to begin with why is the one termed 'Principal' and the other 'Subordinate'? — Such acts as were essential in the construction of the Tabernacle are termed 'Principal',[12] whereas such as were not essential in the construction of the Tabernacle are termed 'Subordinate.'

Regarding Defilements we have learnt:[13] The Primary Defilements: The [Dead] Reptile,[14] the Semen Virile[15]

1. Explicitly dealt with in Scripture.
2. Ex. XXI, 35.
3. Ibid. 33.
4. Cf. p. 9.
5. Ex. XXII. 5.
6. Hence the latter, if not specifically dealt with, would not have been derived from the former.
7. When money is not tendered; cf. *infra* p. 33.
8. Shab. VII, 2.
9. Cf. Lev. IV, 27-35.
10. Num. XV, 32-36.
11. Shab. 75a.
12. On account of their being stated in juxtaposition in Scripture; v. Ex. XXXV, 2-XXXVI, 7.
13. Kel. I, 1.
14. Lev. XI, 29-32.
15. Ibid. XV, 17.

Baba Kamma 2b

and the Person who has been in contact with a human corpse.1 [In this connection] their Resultants2 are not equal to them in law; for a primary defilement3 contaminates both human beings and utensils,4 while Resultants defile only foods and drinks,5 leaving human beings and utensils undefiled.

Here [in connection with damages] what is the [relationship in] law [between the principal and the secondary kinds]? — Said

R. Papa: Some of the derivatives are on a par with their Principals whereas others are not.

Our Rabbis taught: Three principal categories [of damage] have been identified in Scripture with Ox: The Horn, The Tooth, and The Foot. Where is the authority for 'Horn'? For our Rabbis taught: If it will gore.[6] There is no 'goring' but with a horn, as it is said: And Zedekiah the son of Chenaanah made him horns of iron, and said, Thus saith the Lord, With these shalt thou gore the Arameans;[7] and it is further said, His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn: with them he shall gore the people together, etc.[8]

Why that 'further' citation? — Because you might perhaps say that Pentateuchal teachings cannot be deduced from post-Pentateuchal texts;[9] come therefore and hear: His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn, etc.[8] But is that a [matter of] deduction? Is it not rather merely an elucidation of the term 'goring'[10] as being effected by a horn?[11] — [Were it not for the 'further' citation] you might say that the distinction made by Scripture between [the goring of a] *Tam*[12] and [that of a] *Mu'ad*[13] is confined to goring effected by a severed horn,[14] whereas in the case of a horn still naturally attached, all goring is [habitual and consequently treated as of a] *Mu'ad*; come therefore and hear: His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn, etc.[8]

What are the derivatives of Horn? — Collision, Biting, [malicious] Falling and Kicking.

Why this differentiation? If Goring is termed Principal because it is expressly written, If it will gore,[15] why should this not apply to Collision, as it is also written, If it will collide?[16] — That collision denotes goring, as it was taught: The text opens with collision[16] and concludes with goring[17] for the purpose of indicating that 'collision' here denotes 'goring'.

Why the differentiation between injury to man, regarding which it is written *If it will gore*,[18] and injury to animal regarding which it is written *if it will collide*?[19] — Man who possesses foresight is, as a rule, injured [only] by means of [willful] 'goring',[20] but an animal, lacking foresight, is injured by mere 'collision'. A [new] point is incidentally made known to us, that [an animal] *Mu'ad* to injure man is considered *Mu'ad* in regard to animal,[21] whereas *Mu'ad* to injure animal is not considered *Mu'ad* in regard to man.[20]

'Biting': is not this a derivative of Tooth? — No; Tooth affords the animal gratification from the damage while Biting affords it no gratification from the damage.

'Falling and Kicking'; are not these derivatives of Foot? — No; the damage of foot occurs frequently while the damage of these does not occur frequently.

But what then are the derivatives which, R. Papa says, are not on a par with their Principals? He can hardly be said to refer to these, since what differentiation is possible? For just as Horn does its damage with intent and, being your property, is under your control, so also these [derivatives] do damage with intent and, being your property, are under your control! The derivatives of Horn are therefore equal to Horn, and R. Papa's statement refers to Tooth and Foot.

'Tooth' and 'Foot'- where in Scripture are they set down? — It is taught: And he shall send forth[22] denotes Foot, as it is [elsewhere] expressed, That send forth the feet of the ox and the ass.[23] And it shall consume[22] denotes Tooth as [elsewhere] expressed, As the tooth consumeth

1. Num. XIX, 11-22.
2. I.e., the objects rendered defiled by coming in contact with any Primary Defilement.

3. Such as any one of these three and the others enumerated in Kelim I.
4. Cf. Lev. XI, 32-33.
5. V. ibid. 34.
6. Ex. XXI, 28.
7. I Kings XXII, 11.
8. Deut. XXXIII, 17.
9. [[H] 'words of tradition'; i.e. the teachings received on tradition from the prophets, a designation for non-Pentateuchal, primarily prophetic, texts. V. Bacher, *op. cit*., I, 166, II, 185.] The meaning of Ex. XXI, 28, should therefore not he deduced from I Kings XXII, 11.
10. Which might surely he obtained even from post- Pentateuchal texts.
11. Hence again why that 'further' citation?
12. 'Innocuous,' i.e., an animal not having gored on more than three occasions; the payment for damage done on any of the first three incidents (of goring] is half of the total assessment and is realized out of the body of the animal that gored, cf. Ex. XXI, 35 and *infra* 16b.
13. 'Cautioned,' i.e., after it had already gored three times, and its owner had been duly cautioned, the payment is for the whole damage and is realized out of the owner's general estate; v. Ex. XXI, 36, and *infra* 16b.
14. As was the case in the first quotation from Kings.
15. V. p. 2, n. 13.
16. Ex. XXI, 35.
17. Ibid. 36.
18. V. p. 2, n. 13.
19. V. p. 3; n. 10.
20. As it is more difficult to injure a man than an animal.
21. Cf. *infra* 205.
22. Ex. XXII, 4.
23. Isa. XXXII, 20.

Baba Kamma 3a

to entirety.[1]

The Master has [just] enunciated: *'And he shall send forth* denotes Foot, as it is [elsewhere] expressed, *That send forth the feet of the ox and the ass.*' His reason then is that the Divine Law[2] [also] says, *That send forth the feet of the ox and the ass*, but even were it not so, how else could you interpret the phrase?[3] It could surely not refer to Horn which is already [elsewhere] set down,[4] nor could it refer to Tooth since this is likewise [already] set down?[3] — It was essential[5] as otherwise it might have entered your mind to regard both [phrases][6] as denoting Tooth: the one when there is destruction of the corpus and the other when the corpus remains unaffected; it is therefore made known to us that this is not the case. Now that we have identified it with Foot, whence could be inferred the liability of Tooth in cases of non-destruction of the corpus? From the analogy of Foot;[7] just as [in the case of] Foot no difference in law is made between destruction and non-destruction of corpus, so [in the case of] Tooth no distinction is made between destruction and non-destruction of corpus.

The Master has [just] enunciated: '*And it shall consume* denotes Tooth, as elsewhere expressed, As the tooth consumeth to entirety.' His reason then is that the Divine Law [also] says, *As the tooth consumeth to entirety*, but even were it not so, how else could you interpret the phrase? It could surely not refer to Horn which is already elsewhere set down,[4] nor could it refer to Foot, since this is likewise elsewhere set down?[3] — It is essential,[8] as otherwise it might have entered your mind to regard both phrases[6] as denoting Foot: the one when the cattle went of its own accord and the other[9] when it was sent by its owner [to do damage]; it is, therefore, made known to us that this is not so. Now that we have identified it with Tooth, whence could be inferred the liability of Foot in cases when the cattle went of its own accord? — From the analogy of Tooth;[10] just as in the case of Tooth there is no difference in law whether the cattle went of its own accord or was sent by its owner, so [in the case of] Foot there is no difference in law whether the cattle went of its own accord or was sent by its owner.

But supposing Divine Law had only written, And he shall send forth,[11] omitting And it shall consume, would it not imply both Foot and Tooth? Would it not imply Foot, as it is written, That send forth the feet of the ox and the ass? Again, would it not also imply Tooth,

as it is written, And the teeth of beasts will I send upon them?[12] — If there were no further expression I would have said either one or the other [might be meant], either Foot, as the damage done by it is of frequent occurrence, or Tooth, as the damage done by it affords gratification.[13] Let us see now, they are equally balanced, let them then both be included, for which may you exclude?[14] — It is essential [to have the further expression], for [otherwise] it might have entered your mind to assume that these laws [of liability] apply only to intentional trespass,[15] exempting thus cases where the cattle went of its own accord; it is, therefore, made known to us that this is not the case.

The derivative of Tooth, what is it? — When [the cattle] rubbed itself against a wall for its own pleasure [and broke it down], or when it spoiled fruits [by rolling on them] for its own pleasure. Why are these cases different? Just as Tooth affords gratification from the damage [it does] and, being your possession, is under your control, why should not this also be the case with its derivatives which similarly afford gratification from the damage [they do] and, being your possession are under your control? — The derivative of Tooth is therefore equal to Tooth, and R. Papa's statement [to the contrary][16] refers to the derivative of Foot.

What is the derivative of Foot? — When it did damage while in motion either with its body or with its hair, or with the load [which was] upon it, or with the bit in its mouth, or with the bell on its neck. Now, why should these cases be different? Just as Foot does frequent damage and, being your possession, is under your control, why should not this also be the case with its derivatives which similarly do frequent damage and, being your possession, are under your control? The derivative of Foot is thus equal to Foot, and R. Papa's statement [to the contrary][17] refers to the derivative of the Pit.

What is the derivative of Pit? It could hardly be said that the Principal is a pit of ten handbreadths deep and its derivative one nine handbreadths deep, since neither nine nor ten is stated in Scripture! — That is no difficulty: [as] And the dead beast shall be his[18] the Divine Law declares, and it was quite definite with the Rabbis[19] that ten handbreadths could occasion death, whereas nine might inflict injury but could not cause death. But however this may be, is not the one [of ten] a principal [cause] in the event of death, and the other [of nine] a principal [cause] in the event of [mere] injury? — Hence [Rab Papa's statement] must refer to a stone, a knife and luggage which were placed on public ground and did damage. In what circumstances? If they were abandoned [there], according to both Rab and Samuel,[20] they would be included in [the category of] Pit;[21]

1. I Kings XIV, 10. ['Galal', E.V.: 'dung', is interpreted as 'marble', 'ivory', which teeth resemble; cf. Ezra V, 8. V. Tosaf. a.l.]
2. [Lit., 'The Merciful One,' i.e., God, whose word Scripture reveals. V. Bacher, Exeg. Term., II, 207f.]
3. V. p. 4, n. 6.
4. Ex. XXI, 35-36.
5. To cite the verse from Isaiah.
6. Send forth and consume, cf. n. 2.
7. Where no term expressing 'Consumption' is employed.
8. To cite the verse from Kings.
9. I.e., 'He shall send forth'.
10. Where no term expressing 'sending forth' is employed.
11. V. p. 4, n. 6.
12. Deut. XXXII, 24. And thus there would be no definite sanction for action in either.
13. V., however, *infra* p. 17, that Tooth and Foot were recorded in Scripture not for the sake of liability but to be immune for damage done by them on public ground.
14. As signified by, 'He shall send forth'.
15. Cf. *supra* p. 2.
16. V. p. 6, n. 6.
17. Ex. XXI, 34.
18. *Infra* 50b.
19. *Infra* p. 150.
20. Being, like Pit, a public nuisance.

if [on the other hand] they were not abandoned, then, according to Samuel, who

maintains that all public nuisances come within the scope of the law applicable to Pit, they would be included in Pit, whereas according to Rab, who maintains that in such circumstances they rather partake of the nature of Ox, they are equivalent in law to Ox.[1]

[And even according to Samuel] why should [the derivatives of Pit] be different? Just as Pit is from its very inception a source of injury, and, being your possession, is under your control, so is the case with these [derivatives] which from their very inception [as nuisances] also are sources of injury and being your possession, are under your control! — The derivative of Pit is therefore equal to Pit, and R. Papa's statement [to the contrary] refers to the derivative of 'Spoliator'.

But what is it? If we are to follow Samuel, who takes 'Spoliator' to denote Tooth,[2] behold we have [already] established that the derivative of Tooth equals Tooth;[3] if on the other hand Rab's view is accepted, identifying 'Spoliator' With Man,[2] what Principals and what derivatives could there be in him? You could hardly suggest that Man [doing damage] while awake is Principal, but becomes derivative [when causing damage] while asleep, for have we not learnt:[4] 'Man is in all circumstances *Mu'ad*,[5] whether awake or asleep'? — Hence [R. Papa's statement[6] will] refer to phlegm[7] [expectorated from mouth or nostrils]. But in what circumstances? If it did damage while in motion, it is [man's] direct agency! If [on the other hand] damage resulted after it was at rest, it would be included, according to both Rab and Samuel,[8] in the category of Pit! — The derivative of 'Spoliator' is therefore equal to 'Spoliator'; and R. Papa's statement [to the contrary][6] refers to the derivative of Fire.

What is the derivative of Fire? Shall I say it is a stone, a knife and luggage which having been placed upon the top of one's roof were thrown down by a normal wind and did damage? Then in what circumstances? If they did damage while in motion, they are equivalent to Fire; and why should they be different? Just as Fire is aided by an external force, and, being your possession, is under your control, so also is the case with these [derivatives] which are aided by an external force, and, being your possession, are under your control! — The derivative of Fire is therefore equal to Fire; and R. Papa's statement [to the contrary][6] refers to the derivative of Foot.

'Foot'! Have we not established that the derivative of Foot is equal to Foot?[9] — There is the payment of half damages done by pebbles [kicked from under an animal's feet] — a payment established by tradition.[10] On account of what [legal] consequence is it designated 'derivative of Foot'?[11] So that the payment should likewise be enforced [even] from the best of the defendant's possessions.[12] But did not Raba question whether the half-damage of Pebbles is collected only from the body of the animal or from any of the defendant's possessions?[13] — This was doubtful [only] to Raba, whereas R. Papa was [almost] certain about it [that the latter is the case]. But according to Raba, who remained doubtful [on this point], on account of what [legal] consequence is it termed 'derivative of Foot'?[14] — So that it may also enjoy exemption [where the damage was done] on public ground.[15]

THE SPOLIATOR [*MAB'EH*] AND THE FIRE, etc. What is [meant by] *MAB'EH*? — Rab said: *MAB'EH* denotes Man [doing damage], but Samuel said: *MAB'EH* signifies Tooth [of trespassing cattle]. Rab maintains that *MAB'EH* denotes Man,[16] for it is written: The watchman said: The morning cometh, and also the night — if ye will enquire, enquire ye.[17] Samuel [on the other hand] holds that *MAB'EH* signifies Tooth, for it is written: How is Esau searched out! How are his hidden places sought out![18] But how is this deduced?[19] As rendered by R. Joseph:[20] How was Esau ransacked? How were his hidden treasures exposed?[21]

Why did not Rab agree with [the interpretation of] Samuel? — He may object: Does the Mishnah employ the term *NIB'EH*[22] [which could denote anything 'exposed']?

Why [on the other hand] did not Samuel follow [the interpretation of] Rab? — He may object: Does the Mishnah employ the term *BO'EH*[23] [which could denote 'an enquirer']?

But in fact the Scriptural quotations could hardly bear out the interpretation of either of them. Why then did not Rab agree with Samuel? — THE OX [in the Mishnah] covers all kinds of damage done by ox.[24] How then will Samuel explain the fact that ox has already been dealt with? — Rab Judah explained: THE OX [in the Mishnah] denotes Horn, while *MAB'EH* stands for Tooth; and this is the sequence in the Mishnah: The aspects of Horn, which does not afford gratification from the injury [are not of such order of gravity] as those of Tooth which does afford gratification from the damage;[25]

1. The derivatives of which are equal to the Principal.
2. *Infra* p. 9.
3. *Supra* p. 7.
4. *Infra* p. 136.
5. I.e., civilly liable in full for all misdeeds.
6. V. p. 6, n. 6.
7. I.e., the derivative of Man.
8. V. p. 7, n. 4.
9. *Supra* p. 7.
10. Cf. *infra* p. 80.
11. Since it pays only half the damage.
12. Unlike half damages in the case of Horn where the payment is collected only out of the body of the animal that did the damage.
13. *Infra* p. 83.
14. V. p. 8, n. 10.
15. Just as is the case with Foot, cf. *infra* p. 17.
16. As possessing freedom of will and the faculty of discretion and enquiry, i.e., constituting a cultural and rational being; idiots and minors are thus excluded, cf. *infra* p. 502.
17. [H] Isa. XXI, 12; the root in each case being the same.
18. [H] Ob. I, 6; the root in each case being the same.
19. I.e., how could a term denoting 'seeking out' stand for Tooth?
20. Who was exceptionally well conversant with Targumic texts. Some explain it on account of his having been blind (v. *infra* p. 501), and thus unable to cite the original Biblical text because of the prohibition to recite orally passages from the Written Law, cf. Git. 60a. [Others ascribe the edition of the *Targum* on the prophets to him, v. Graetz (Geschichte IV, 326.]
21. [H] (E.V.: sought out), translated exposed, indicates exposure and may therefore designate Tooth which is naturally hidden but becomes exposed in grazing.
22. In the passive voice.
23. In the kal denoting mere action; the causative (hiph'il) is used with reference to Tooth which the animal exposes in grazing.
24. Cattle, including Tooth.
25. And therefore the liability of Tooth could not he derived from that of Horn.

Baba Kamma 4a

nor are the aspects of Tooth, which is not prompted by malicious intention to injure, [of such order of gravity] as those of Horn which is prompted by malicious intention to do damage.[1] But can this not be deduced *a fortiori*? If Tooth, which is prompted by no malicious intention to injure, involves liability to pay, how much more so should this apply to Horn, which is prompted by malicious intention to do damage? — Explicit [Scriptural] warrant for the liability of Horn is, nevertheless, essential, as otherwise you might have possibly thought that I assume [immunity for Horn on] an analogy to the case of man- and maid-servants. Just as a man- and maid-servant, although prompted by malicious intention to do damage, do not devolve any liability [upon their masters],[2] so is the law here [in the case of Horn]. R. Ashi, however, said: Is not the immunity in the case of damage done by man-and maid-servants due to the special reason that, but for this, a servant provoked by his master might go on burning down[3] another's crops, and thus make his master liable to pay sums of money day by day?[4] — The sequence [of the analysis in the Mishnah] must accordingly be [in the reverse direction]: The aspects of Horn, which is actuated by malicious intention to do damage, are not [of

such low order of gravity] as those of Tooth, which is not actuated by malicious intention to do damage; again, the aspects of Tooth which affords gratification while doing damage are not [of such low order of gravity] as those of Horn, which affords no gratification from the damage.[5] But what about Foot? Was it entirely excluded [in the Mishnah]? — [The generalization,][6] Whenever damage has occurred, the offender is liable, includes Foot. But why has it not been stated explicitly? — Raba therefore said: THE OX [stated in the Mishnah] implies Foot,[7] while *MAB'EH* stands for Tooth; and this is the sequence [in the Mishnah]: The aspects of Foot, which does frequent damage, are not [of such low order of gravity] as those of Tooth, the damage by which is not frequent: again, the aspects of Tooth, which affords gratification from the damage, are not [of such low order of gravity] as those of Foot, which does not afford gratification from the damage.[8] But what about Horn? Was it entirely excluded [in the Mishnah]? — [The generalization,] Whenever damage has occurred, the offender is liable, includes Horn. But why has it not been stated explicitly? — Those which are *Mu'ad* ab initio are mentioned explicitly [in the Mishnah] but those which initially are *Tam*,[9] and [only] finally become *Mu'ad*, are not mentioned explicitly.

Now as to Samuel, why did he not adopt Rab's interpretation [of the Mishnaic term *MAB'EH*]? — He may object: If you were to assume that it denotes Man, the question would arise, is not Man explicitly dealt with [in the subsequent Mishnah]: 'Mu'ad cattle and cattle doing damage on the plaintiff's premises and Man'?[10] But why then was Man omitted in the opening Mishnah? — [In that Mishnah] damage done by one's possessions is dealt with, but not that done by one's person.

Then, how could even Rab uphold his interpretation, since Man is explicitly dealt with in the subsequent Mishnah?[10] — Rab may reply: The purpose of that Mishnah is [only] to enumerate Man among those which are considered *Mu'ad*. What then is the import of [the analysis introduced by] THE ASPECTS ARE NOT, etc.? — This is the sequence: The aspects of Ox, which entails the payment of *kofer* [for loss of human life],[11] are not [of such low order of gravity] as those of Man who does not pay [monetary] compensation for manslaughter;[12] again, the aspects of Man who [in case of human bodily injury] is liable for [additional] four items,[13] are not [of such low order of gravity] as those of Ox, which is not liable for those four items.[14]

THE FEATURE COMMON TO THEM ALL IS THAT THEY ARE IN THE HABIT OF DOING DAMAGE. Is it usual for Ox [Horn][15] to do damage? — As *Mu'ad*. But even as *Mu'ad*, is it usual for it to do damage? — Since it became *Mu'ad* this became its habit. Is it usual for Man to do damage? — When he is asleep. But even when asleep is it usual for Man to do damage? — While stretching his legs or curling them this is his habit.

THEIR HAVING TO BE UNDER YOUR CONTROL. Is not the control of man's body [exclusively] his own?[16] — Whatever view you take,[17] behold Karna taught: The principal categories of damage are four and Man is one of them. [Now] is not the control of a man's body [exclusively] his own? You must therefore say with R. Abbahu who requested the tanna[18] to learn, 'The control of man's body is [exclusively] his own,'

1. And therefore the liability of Horn could not be derived from that of Tooth.
2. Cf. *infra* p. 502.
3. But v. *infra* pp. 47 and 112.
4. Yad. IV, 6; and the suggested analogy is thus untenable.
5. So that neither Horn nor Tooth could he derived from each other.
6. *Infra* p. 36, v. Tosaf.
7. And not Horn as first suggested.
8. So that neither Foot nor Tooth could he derived from each other.
9. As is the case with Horn.
10. V. *infra* 15b.

11. Lit., 'Ransom', i.e., monetary compensation for manslaughter, cf Ex. XXI, 30; v. Glos.
12. V. Num. XXXV, 31-32. Hence Man could not be derived from Ox.
13. I.e., Pain, Healing, Loss of Time and Degradation; cf. *infra* p. 473.
14. Ox is liable only for Depreciation.
15. According to Rab who takes Ox as including Horn.
16. The phrase in the Mishnah is thus inappropriate to man.
17. Even if you take *Mab'eh* as Tooth.
18. [The term here designates one whose special task was to communicate statements of older authorities to expounding teachers, v. Glos.]

Baba Kamma 4b

that here also it is to be understood that the control of man's body is his own.[1]

R. Mari, however, demurred: Say perhaps *MAB'EH* denotes water [doing damage], as it is written, *As when the melting fire burneth, fire* tib'eh [*causeth to bubble*] *water*?[2] — Is it written, *'Water bubbles'*? It is written, *Fire causes bubbling*.[3] R. Zebid demurred: Say then that *MAB'EH* denotes Fire, as it is fire to which the act of 'tib'eh' in the text is referred? — If this be so what is then the explanation of THE *MAB'EH* AND THE FIRE? If you suggest the latter to be the interpretation of the former,[4] then instead of 'FOUR' there will be 'three'? If however, you suggest that OX constitutes two [kinds of damage],[5] then what will be the meaning of [the Mishnaic text]: NOR ARE THE ASPECTS OF EITHER OF THEM [OX and *MAB'EH*] IN WHICH THERE IS LIFE? Is there any life in fire? Again, what will be conveyed by [the concluding clause] AS THOSE OF THE FIRE?

R. Oshaia: taught There are thirteen principal categories of damage: The Unpaid Bailee and the Borrower, the Paid Bailee and the Hirer, Depreciation, Pain [suffered]. Healing, Loss of Time, Degradation and the Four enumerated in the Mishnah, thus making [a total of] thirteen. Why did our Tanna mention [only the Four and] not the others? According to Samuel,[6] this presents no difficulty, as the Mishnah mentions only damage committed by one's possessions and not that committed by one's person, but according to Rab[7] let the Mishnah also mention the others? — In the mention of Man all kinds of damage committed by him are included. But does not R. Oshaia also mention Man?[8] — Two kinds of damage could result from Man: Man injuring man is treated as one subject, and Man damaging chattel[9] as another.

If this be so let R. Oshaia similarly reckon Ox twice, as two kinds of damage could result also from Ox: [i] Ox damaging chattel[9] and [ii] Ox injuring man? — But is that a logical argument? It is quite proper to reckon Man in this manner as Man damaging chattel pays only for Depreciation, while Man injuring man may also have to pay for four other kinds of damage,[10] but how can Ox be thus reckoned when the liability for damage done by it to either man or chattel is alike and is confined to [only one kind of damage, i.e.] Depreciation?

But behold, are not the Unpaid Bailee and the Borrower, the Paid Bailee and the Hirer, within the sphere of Man damaging chattel and they are nevertheless reckoned by R. Oshaia? — Direct damage and indirect damage are treated by him independently.

R. Hiyya taught: There are twenty-four principal kinds of damage: Double Payment,[11] Fourfold or Fivefold Payment,[12] Theft,[13] Robbery,[14] False Evidence,[15] Rape,[16] Seduction,[17] Slander,[18] Defilement,[19] Adulteration,[20] Vitiation of wine,[21] and the thirteen enumerated above by R. Oshaia,[22] thus making [the total] twenty-four.

Why did not R. Oshaia reckon the twenty-four? — He dealt only with damage involving civil liability but not with that of a punitive nature. But why omit Theft and Robbery which also involve civil liability? — These kinds of damage may be included in the Unpaid Bailee and the Borrower.[23] Why then did not R. Hiyya comprehend the former in

the latter? — He reckoned them separately, as in the one case the possession of the chattel was acquired lawfully,[24] while in the other[25] the acquisition was unlawful.

[Why did not R. Oshaia]

1. The Mishnaic wording refers to the other categories.
2. Isa. LXIV, 1.
3. Hence the term 'tib'eh' describes not the act of water but that of fire.
4. The *Mab'eh* and the Fire will thus constitute one and the same kind of damage.
5. And the other two will be: Pit and Fire.
6. Who takes *Mab'eh* to denote Tooth and not Man; *supra* p. 9.
7. Who takes *Mab'eh* to denote Man; *supra* p. 9.
8. Why does he not include in Man all kinds of damage committed by him?
9. Lit., 'cattle'.
10. I.e., Pain, Healing, Loss of Time and Degradation.
11. As fine for theft; cf. Ex. XXII, 3.
12. Fines for the slaughter or sale of a stolen sheep and ox respectively; cf. Ex. XXI, 37.
13. I.e., the restoration of stolen goods or the payment of their value.
14. I.e., the unlawful acquisition of chattels by violence; cf. Lev, V, 23.
15. Cf. Deut. XIX, 19; v. Mak. I.
16. I.e., fifty *shekels* of silver; cf. Deut. XXII, 28-29.
17. Cf. Ex. XXII, 15-16.
18. I.e., a defaming husband; v. Deut. XXII, 13-19.
19. Of *terumah* (v. Glos.) which makes it unfit for human consumption.
20. Of ordinary grain with that of *terumah* restricting thereby the use of the mixture to priestly families.
21. Through idolatrous application by means of libation which renders all the wine in the barrel unfit for any use whatsoever; the last three heads of damage are dealt with in Git. V, 3.
22. V. p. 13.
23. I.e., when these are guilty of larceny; cf. Ex. XXII, 7.
24. I.e., in the case of the Unpaid Bailee and Borrower.
25. I.e., in the case of Theft and Robbery.

Baba Kamma 5a

deal with False Evidence, the liability for which is also civil? — He holds the view of R. Akiba who maintains that the liability for False Evidence [is penal in nature and] cannot [consequently][1] be created by confession.[2] But if R. Oshaia follows R. Akiba why does he not reckon Ox as two distinct kinds of damage: Ox damaging chattel and Ox injuring men, for have we not learnt that R. Akiba said: A mutual injury arising between man and [ox even while a] *Tam* is assessed in full and the balance paid accordingly?[3] This distinction could, however, not be made, since it is elsewhere[4] taught that R. Akiba himself has qualified this full payment.[5] For R. Akiba said: You might think that, in the case of *Tam* injuring man, payment should be made out of the general estate; it is therefore stated, [This judgment] shall be done unto it,[6] to emphasize that the payment should only be made out of the body of the *Tam* and not out of any other source whatsoever.

Why did R. Oshaia omit Rape, Seduction and Slander, the liabilities for which are also civil?[7] — What particular liability do you wish to refer to? If for actual loss, this has already been dealt with under Depreciation; if for suffering, this has already been dealt with under Pain; if for humiliation, this has already been dealt with under Degradation; if again for deterioration, this is already covered by Depreciation. What else then can you suggest? The Fine.[8] With this [type of liability] R. Oshaia is not concerned.

Why then omit Defilement, Adulteration and Vitiation of wine, the liabilities for which are civil? — What is your view in regard to intangible damage?[9] If [you consider] intangible damage a civil wrong, defilement has then already been dealt with under Depreciation; if on the other hand intangible damage is not a civil wrong, then any liability for it is penal in nature, with which R. Oshaia is not concerned.

Are we to infer that R. Hiyya considers intangible damage not to be a civil wrong? For otherwise would not this kind of damage already have been reckoned by him under

Depreciation? — He may in any case have found it expedient to deal with tangible damage and intangible damage under distinct heads.

It is quite conceivable that our Tanna[10] found it necessary to give the total number [of the principal kinds of damage] in order to exclude those of R. Oshaia;[11] the same applies to R. Oshaia who also gave the total number in order to exclude those of R. Hiyya;[12] but what could be excluded by the total number specified by R. Hiyya? — It is intended to exclude Denunciation[13] and Profanation of sacrifices.[14]

The exclusion of profanation is conceivable as sacrifices are not here reckoned; but why is Denunciation omitted? — Denunciation is in a different category on account of its verbal nature with which R. Hiyya is not concerned. But is not Slander of a verbal nature and yet reckoned? — Slander is something verbal but dependent upon some act.[15] But is not False Evidence a verbal effect not connected with any act and yet it is reckoned? — The latter though not connected with any act is reckoned because it is described in the Divine Law as an act, as the text has it: Then shall ye do unto him as he had purposed to do unto his brother.[16]

It is quite conceivable that the Tanna of the Mishnah characterizes his kinds of damage as Principals in order to indicate the existence of others which are only derivatives: but can R. Hiyya and R. Oshaia characterize theirs as Principals in order to indicate the existence of others which are derivatives? If so what are they? — Said R. Abbahu: All of them are characterized as Principals for the purpose of requiring compensation out of the best of possessions.[17] How is this uniformity [in procedure] arrived at? — By means of a uniform interpretation of each of the following terms: 'Instead',[18] 'Compensation',[19] 'Payment',[20] 'Money'.[21]

THE ASPECTS OF THE OX ARE [IN SOME RESPECTS] NOT [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE 'SPOLIATOR' [*MAB'EH*]. What does this signify? — R. Zebid in the name of Raba said: The point of this is: Let Scripture record only one kind of damage[22] and from it you will deduce the liability for the other![23] In response it was declared: One kind of damage could not be deduced from the other.[24]

NOR ARE THE ASPECTS OF EITHER OF THEM IN WHICH THERE IS LIFE. What does this signify? R. Mesharsheya in the name of Raba said: The point of it is this:

1. Penal liabilities are created only by means of impartial evidence and never by that of confession; cf. *infra* 64b.
2. Mak. 2b.
3. V. *infra* p. 179.
4. *Infra* pp. 180 and 240.
5. Lit., 'broke the [full] force of his club' (Jast.); Rashi: 'of his fist'.
6. Ex. XXI. 31.
7. Cf. Keth. 40a.
8. V. Deut, XXII, 29; Ex. XXII, 6; and Deut. XXII, 19.
9. Cf. Git. 53a.
10. Opening the Tractate.
11. I.e., the additional nine kinds enumerated by him *supra* p. 13.
12. I.e., the eleven added by him *supra*. p. 14.
13. Cf. *infra* 62a and 117a.
14. Cf. Lev. VII, 18 and Zeb. I, 1 and II, 2-3.
15. The consummation of the marriage rite according to R. Eliezer, or the bribery of false witnesses according to R. Judah; cf. Keth. 46a.
16. Deut. XIX, 19.
17. Cf. Ex. XXII, 4.
18. I.e., for occurring in Ex. XXI, 36, and elsewhere.
19. I.e., an expression such as, He shall give, cf. EX XXI, 32 and elsewhere.
20. As in Ex. XXII, 8 and elsewhere.
21. Such as, e.g., in Ex. XXI, 34 and elsewhere. [One of these four terms occurs with each of the four categories of damage specified in the Mishnah and likewise with each of the kinds of damage enumerated by R. Oshaia and R. Hiyya, thus teaching uniformity in regard to the mode of payment in them all.]
22. I.e., Ox.
23. I.e., *Mab'eh*.
24. V. *supra* pp. 11-12.

Baba Kamma 5b

Let Scripture record only two kinds of damage[1] and from them you will deduce a further kind of damage?[2] In response it was declared: Even from two kinds of damage it would not be possible to deduce one more.[3]

Raba, however, said: If you retain any one kind of damage along with Pit [in Scripture], all the others but Horn will be deduced by analogy;[4] Horn is excepted as the analogy breaks down, since all the other kinds of damage are *Mu'ad* ab initio.[5] According, however, to the view that Horn on the other hand possesses a greater degree of liability because of its intention to do damage,[6] even Horn could be deduced. For what purpose then did Scripture record them all? For their [specific] laws: Horn, in order to distinguish between *Tam* and *Mu'ad*;[7] Tooth and the Foot, to be immune [for damage done by them] on public ground;[8] Pit, to be immune for [damage done by it to] inanimate objects;[9] and, according to R. Judah who maintains liability for inanimate objects damaged by a pit,[10] in order still to be immune for [death caused by it to] man;[11] Man, to render him liable for four [additional] payments [when injuring man];[12] Fire, to be immune for [damage to] hidden goods;[13] but according to R. Judah, who maintains liability for damage to hidden goods by fire,[13] what [specific purpose] could be served?

1. I.e., Ox and *Mab'eh*.
2. I.e., Fire.
3. For the reason stated in the Mishnah.
4. To the feature common in Pit and the other kind of damage.
5. I.e., it is usual for them to do damage, whereas Horn does damage only through excitement and evil intention which the owner should not necessarily have anticipated; cf. *infra* p. 64.
6. Cf. *supra* p. 11 and *infra* p. 64.
7. *Infra* p. 73.
8. *Infra* p. 94.
9. *Infra* 52a.
10. *Infra* 53b.
11. *Infra* 54a.
12. *Infra* p. 473; cf. also *supra* pp. 12 and 13.
13. *Infra* 61b.

Baba Kamma 6a

— To include [damage done by fire] lapping his neighbor's plowed field and grazing his stones.[1]

THE FEATURE COMMON TO THEM ALL … What else is this clause intended to include? — Abaye said: A stone, a knife and luggage which, having been placed by a person on the top of his roof, fell down through a normal wind and did damage.[2] In what circumstances [did they do the damage]? If while they were in motion, they are equivalent to Fire! How is this case different? Just as Fire is aided by an external force[3] and, being your possession, is under your control, so also is the case with those which are likewise aided by an external force and, being your possessions are under your control. If [on the other hand, damage was done] after they were at rest, then, if abandoned, according to both Rab and Samuel, they are equivalent to Pit.[4] How is their case different? Just as Pit is from its very inception a source of injury, and, being your possession is under your control, so also is the case with those[5] which from their very inception [as nuisances] are likewise sources of injury, and, being your possession are under your control.[6] Furthermore, even if they were not abandoned, according to Samuel who maintains that we deduce [the law governing] all nuisances from Pit,[4] they are [again] equivalent to Pit? — Indeed they were abandoned, still they are not equivalent to Pit. Why [is liability attached] to Pit if not because no external force assists it? How then can you assert [the same] in the case of those[5] which are assisted by an external force? — Fire,[7] however, will refute [this reasoning]. But [you may ask] why [is liability attached] to Fire if not because of its nature to travel and do damage?[8] — Pit, however, will refute [this reasoning]. The argument is [thus endlessly] reversible [and liability[9] can be deduced only from the Common Aspects].[10]

Raba said: [This clause is intended] to include a nuisance which is rolled about [from one place to another] by the feet of man and by the feet of animal [and causes damage]. In what circumstances [did it do the damage]? If it was abandoned, according to both Rab and Samuel,[11] it is equivalent to Pit! How does its case differ? Just as Pit is from its very inception a source of injury, and is under your control, so also is the case with that which from its very inception [as a nuisance] is likewise a source of injury, and is under your control. Furthermore, even if it were not abandoned, according to Samuel,[11] who maintains that we deduce [the law governing] all nuisances from Pit, it is [again] equivalent to Pit? — Indeed it was abandoned, still it is not equivalent to Pit: Why [is liability attached] to Pit if not because the making of it solely caused the damage? How then can you assert [the same] in the case of such nuisances,[12] the making of which did not directly cause the damage?[13] — Ox, however, will refute [this reasoning]. But [you may ask] why [is liability attached] to Ox if not because of its habit to walk about and do damage? — Pit will refute [this reasoning]. The argument is [thus endlessly] reversible as the aspect of the one is not comparable to the aspect of the other, [and liability[14] therefore can be deduced only from the Common Aspects].

R. Adda b. Ahabah said: To include that which is taught:[15] 'All those who open their gutters or sweep out the dust of their cellars [into public thoroughfares] are in the summer period acting unlawfully, but lawfully in winter; [in all cases] however, even though they act lawfully, if special damage resulted they are liable to compensate.' But in what circumstances? If the damage occurred while [the nuisances were] in motion, is it not man's direct act?[16] If, on the other hand, it occurred after they were at rest, [again] in what circumstances? If they were abandoned, then, according to both Rab and Samuel,[17] they are equivalent to Pit! How does their case differ? Just as Pit is from its very inception a source of injury, and, being your possession, is under your control, so also is the case with those which are likewise from their very inception [as nuisances] sources of injury and, being your possession, are under your control. Furthermore, even if they were not abandoned, according to Samuel,[17] who maintains that we deduce [the law governing] all nuisances from Pit, they are [again] equivalent to Pit? — Indeed they were abandoned, still they are not equivalent to Pit: Why [is liability attached] to Pit if not because of its being unlawful?[18] How then could you assert [the same] in the case of those which [in winter] are lawful? —

1. As this damage is rather an unusual effect from fire and special reference is therefore essential.
2. Cf. *supra* p. 8.
3. I.e., the blowing wind.
4. *Infra* 28b; v. *supra* p. 7.
5. I.e., stone, knife and luggage referred to above.
6. Cf. *supra* p. 7.
7. Which is also assisted by an external force, i.e. the wind, but nevertheless creates liability to pay.
8. Which cannot he said of stone, knife and luggage.
9. Even when the nuisance has, like Fire, been assisted by an external force and is, like Pit, unable to travel and do damage.
10. Referred to in the Mishnaic quotation.
11. *Infra* 28b and *supra* p. 7.
12. Which have been rolling about from one place to another.
13. But the rolling by man and beast.
14. Even in the case of nuisances that roll about.
15. Cf. *infra* 30a.
16. The liability for which is self-evident under the category of Man.
17. *Infra* 28b and *supra* p. 7.
18. It being unlawful to dig a pit in public ground.

Baba Kamma 6b

Ox,[1] however, will refute [this reasoning]. But, you may ask, why [is liability attached] to Ox if not because of its nature to walk about and do damage? — Pit will refute [this reasoning]. The argument is [thus endlessly] reversible [and liability[2] can be deduced only from the Common Aspects].

Rabina said: To include that which we have learnt: 'A wall or a tree which accidentally fell into a Public thoroughfare and did damage, involves no liability for compensation. If an order had been served [by the proper authorities] to fell the tree and pull down the wall within a specified time, and they fell within the specified time and did damage, the immunity holds goods, but if after the specified time, liability is incurred.'[3] But what were the circumstances [of the wall and the tree]? If they were abandoned, then according to both Rab and Samuel,[4] they are equivalent to Pit! How is their case different? Just as Pit does frequent damage and is under your control, so also is the case with those which likewise do frequent damage and are under your control. Furthermore, even if they were not abandoned, according to Samuel.[4] who maintains that we deduce [the law governing] all nuisances from Pit, they are [again] equivalent to Pit? — Indeed they were abandoned, still they are not equivalent to Pit: Why [is liability attached] to Pit if not because of its being from its very inception a source of injury? How then can you assert [the same] in the case of those which are not sources of injury from their inception? — Ox, however, will refute [this reasoning]. But [you may ask] why [is liability attached] to Ox if not because of its nature to walk about and do damage? — Pit will refute [this reasoning]. The argument is [thus endlessly] reversible [and liability[5] can be deduced only from Common Aspects].

WHENEVER ANYONE OF THEM DOES DAMAGE THE OFFENDER IS [HAB] LIABLE. 'The offender is HAB!' — 'The offender is HAYYAB'[6] should be the phrase? — Rab Judah, on behalf of Rab, said: This Tanna [of the Mishnaic text] was a Jerusalemite who employed an easier form.[7]

TO INDEMNIFY WITH THE BEST OF HIS ESTATE. Our Rabbis taught: Of the best of his field and of the best of his vineyard shall he make restitution[8] refers to the field of the plaintiff and to the vineyard of the plaintiff, this is the view of R. Ishmael. R. Akiba says: Scripture only intended that damages should be collected out of the best,[9] and this applies even more so to sacred property.[10]

Would R. Ishmael maintain that the defendant, whether damaging the best or worst, is to pay for the best? — R. Idi b. Abin said: This is so where he damaged one of several furrows and it could not be ascertained whether the furrow he damaged was the worst or the best, in which case he must pay for the best. Raba, however, [demurred] saying: Since where we do know that he damaged the worst, he would only have to pay for the worst, now that we do not know whether the furrow damaged was the best or the worst, why pay for the best? It is the plaintiff who has the onus of proving his case by evidence. R. Aha b. Jacob therefore explained: We are dealing here with a case where the best of the plaintiff's estate equals in quality the worst of that of the defendant;[11] and the point at issue is [as follows]: R. Ishmael maintains that the qualities are estimated in relation to those of the plaintiff's estate;[12] but R. Akiba is of the opinion that it is the qualities of the defendant's possessions that have to be considered.[13]

What is the reason underlying R. Ishmael's view? — The term 'Field' occurs both in the latter clause[14] and the earlier clause of the verse;[15] now just as in the earlier clause it refers to the plaintiff's possessions, so also does it in the latter clause. R. Akiba, however, maintains that [the last clause,] Of the best of his field and of the best of his vineyard shall he make restitution[16] clearly refers to the possessions of the one who has to pay. R. Ishmael [on the other hand,] contends that both the textual analogy[17] of the terms and the plain textual interpretation are complementary to each other. The analogy of the terms is helpful towards establishing the above statement[18] while the plain textual interpretation helps to qualify [the application of the above[18] in] a case where the defendant's estate consists of good and bad qualities, and the plaintiff's estate

likewise comprises good quality, but the bad of the defendant's estate is not so good as the good quality of the estate of the plaintiff;[19] for in this case the defendant must pay out of the better quality of his estate, as he cannot say to him, 'Come and be paid out of the bad quality' [which is below the quality of the estate of the plaintiff], but he is entitled to the better quality [of the defendant].

R. Akiba said: Scripture only intended that damages be collected out of the best, and this applies even more so to sacred property.' What is the import of the last clause? It could hardly be suggested that it refers to a case where a private ox gored an ox consecrated [to the Sanctuary], for does not the Divine Law distinctly say, *The ox of one's neighbour*,[20] excluding thus [any liability for damage done to] consecrated chattel? Again, it could hardly deal with a personal undertaking by one to pay a *maneh* to the Treasury of the Temple, thus authorizing the treasurer to collect from the best; for surely he should not be in a better position than a private creditor

1. Which it is similarly lawful to keep, but which when doing damage creates nevertheless a liability to pay.
2. Even in the cases referred to by R. Adda b. Ahabah.
3. B.M. 117b.
4. *Infra* 28b.
5. Even in the case of the wall and the tree.
6. A slight variation in the Hebrew text: a disyllable instead of a monosyllable.
7. Preferred a contracted form.
8. Ex. XXII, 4.
9. Of the defendant's estate.
10. I.e., property dedicated to the purposes of the sanctuary.
11. The amount of damages, however, would never be more than could be proved to have been actually sustained.
12. I.e., the quality of the field paid by the defendant as damages need not exceed the best quality of the plaintiff's estate. Hence, in the case in hand, the worst of the defendant's will suffice.
13. The quality of the payment must therefore always he the best of the defendant's estate,
14. I.e., of the best of his field … Ex, XXII, 4.
15. If a man shall cause a field or a vineyard to be eaten, ibid.
16. Ex. XXII, 4.
17. The (Gezerah Shawah, v. Glos.
18. 'That the qualities are estimated in relation to those of the plaintiff's estate.'
19. The bad quality could not thus be tendered.
20. Ex. XXI, 35.

Baba Kamma 7a

who can collect nothing better than the medium quality.[1] If, however, you hold that R. Akiba authorizes the payment of all loans out of the best, [the treasurer of the Temple could still hardly avail himself of this privilege as] the analogy between these two kinds of liability could be upset as follows: A private creditor is at an advantage in that for damages he will surely be paid out of the best, but is not the Temple Treasury at a very great disadvantage in this respect?[2] — It may still be maintained that it applies to the case where a private ox gored a consecrated ox, and in answer to the difficulty raised by you — that the Divine Law definitely says The ox of one's neighbor, thus exempting for damage done to consecrated property — it may be suggested that R. Akiba shares the view of R. Simeon b. Menasya as taught:[3] R. Simeon b. Menasya says: In the case of a consecrated ox goring a private one, there is total exemption; but for a private ox, whether *Tam* or *Mu'ad*, goring a consecrated ox, full damages must be paid.[4] If this is R. Akiba's contention, whence could it be proved that the point at issue between R. Ishmael and R. Akiba is as to the best of the plaintiff's equaling the worst of the defendant's? Why not say that on this point they are both of opinion that the qualities are estimated in relation to the plaintiff's possessions,[5] whereas the disagreement between them is on the point at issue between R. Simeon b. Menasya and the Rabbis [i.e., the majority against him], R. Akiba holding the view of R. Simeon b. Menasya, and R. Ishmael that of the Rabbis? — If so, what would be the purport of the first clause of R. Akiba, 'Scripture only intended that damages be collected out of the best'?[6] Again, would

not then even the last clause 'And this even more so applies to sacred property' be rather illogically phrased?[7] Furthermore, R. Ashi said: It was explicitly taught: Of the best of his field and of the best of his vineyard shall he make restitution[8] refers to the field of the plaintiff and to the vineyard of the plaintiff: this is the view of R. Ishmael. R. Akiba [on the other hand] says: The best of the defendant's field and the best of the defendant's vineyard.

Abaye pointed out to Raba the following contradiction: Scripture records, *Out of the best of his field and out of the best of his vineyard shall he make restitution*[8] [thus indicating that payment must be made] only out of the best and not out of anything else; whereas it is taught: He should return,[9] includes payment in kind,[10] even with bran?[11] — There is no contradiction: the latter applies when the payment is made willingly, while the former refers to payments enforced [by law]. 'Ulla the son of R. Elai, thereupon said: This distinction is evident even from the Scriptural term, He shall make restitution,[8] meaning, even against his will. Abaye, on the other hand, said to him: Is it written yeshullam[12] ['Restitution shall be made']? What is written is yeshallem[13] ['He shall make restitution'], which could mean of his own free will! — But said Abaye: [The contradiction can be solved] as the Master[14] [did] in the case taught: An owner of houses, fields and vineyards[15] who cannot find a purchaser [is considered needy and] may be given the tithe for the poor[16] up to half the value of his estate.[17] Now the Master discussed the circumstances under which this permission could apply: If property in general, and his included, dropped in value, why not grant him even the value of more [than the half of his estate's value], since the depreciation is general? If, on the other hand, property in general appreciated, but his, on account of his going about looking here and there for ready money, fell in price,

1. Git. V, 1.
2. On account of the absolute immunity, as stated, for damage done to Temple property.
3. *Infra* p. 212.
4. R. Akiba thus maintains that the Temple Treasury will, for any damage sustained, be reimbursed out of the best of the defendant's estate.
5. And where the plaintiff's best equals the defendant's worst, the latter will perhaps suffice according to all opinions.
6. Which indicates that the interpretation of the Scriptural verse (Ex. XXII, 4) is the point at issue.
7. As according to the view requiring full payment in all cases, the quality of the payment for damage done to sacred property may he higher than that paid for damage done to ordinary property, and in fact nothing less than the very best of the defendant's estate would suffice.
8. Ex. XXII, 4.
9. Ex. XXI, 34.
10. Otherwise the Scriptural text would be superfluous, as payment in specie is evident in an earlier clause.
11. *Infra* 9a.
12. [H]
13. [H]
14. Rabbah (Rashi).
15. The value of which amounted to 200 *zuz*.
16. Cf. Deut. XIV, 28-29; this tithe is distributed among those who possess less than two hundred *zuz*; *Pe'ah* VIII, 8.
17. I.e., 100 *zuz* to enable him to sell his property for half its value which, it is assumed, he can at any time realize.

Baba Kamma 7b

why give him anything at all?[1] And the Master thereupon said: No; the above law is applicable to cases where in the month of Nisan[2] property has a higher value, whereas in the month of Tishri[3] it has a lower value. People in general wait until Nisan and then sell, whereas this particular proprietor, being in great need of ready money, finds himself compelled to sell in Tishri at the existing lower price; he is therefore granted half because it is in the nature of property to drop in value up to a half, but it is not in its nature to drop more than that. Now a similar case may also be made out with reference to payment for damage which must be out of the best. If the plaintiff, however, says: 'Give me medium quality but a larger quantity',

the defendant is entitled to reply: 'It is only when you take the best quality which is due to you by law that you may calculate on the present price; failing that, whatever you take you will have to calculate according to the higher price anticipated.'[4] But R. Aha b. Jacob demurred: If so, you have weakened the right of plaintiffs for damages in respect of inferior quality. When the Divine Law states out of the best,[5] how can you maintain that inferior qualities are excluded?[6] R — Aha b. Jacob therefore said: If any analogy could he drawn,[7] it may be made in the case of a creditor. A creditor is paid by law out of medium quality; if, however, he says: 'Give me worse quality but greater quantity,' the debtor is entitled to say, 'It is only when you take that quality which is due to you by law that you may calculate on the present price, failing that, whatever you take you will have to calculate according to the higher price anticipated.' R. Aha, son of R. Ika, demurred: If so, you will close the door in the face of prospective borrowers. The creditor will rightly contend, 'Were my money with me I would get property according to the present low price; now that my money is with you, must I calculate according to the anticipated higher price?' — R. Aha, son of R. Ika, therefore said: If any analogy could be drawn,[7] it is only with the case of a *Kethubah*[8] [marriage settlement][9] which, according to the law, is collected out of the worst quality. But if the woman says to the husband: 'Give me better quality though smaller quantity,' he may rejoin: 'It is only when you take the quality assigned to you by law that you may calculate in accordance with the present low price; failing that, you must calculate in accordance with the anticipated higher price.,

But be it as it is, does the original difficulty[10] still not hold good? — Said Raba: Whatever article is being tendered has to be given out of the best [of that object].[11] But is it not written: 'The best of his field'?[12] — But when R. Papa and R. Huna the son of R. Joshua had arrived from the house of study[13] they explained it thus: All kinds of articles are considered 'best', for if they were not to be sold here they would be sold in another town;[14] it is only in the case of land which is excepted therefrom that the payment has to be made out of the best, so that intending purchasers jump at it.

R. Samuel b. Abba of Akronia[15] asked of R. Abba: When the calculation[16] is made, is it based on his own [the defendant's] property or upon that of the general public? This problem has no application to R. Ishmael's view that the calculation is based upon the quality of the plaintiff's property;[17] it can apply only to R. Akiba's view[17] which takes the defendant's property into account.[18] What would, according to him, be the ruling? Does the Divine Law in saying, 'the best of his field' intend only to exclude the quality of the plaintiff's property from being taken into account, or does it intend to exclude even the quality of the property of the general public? — He [R. Abba] said to him:[19] The Divine Law states, 'the best of his field' how then can you maintain that the calculation is based on the property of the general public?

He[20] raised an objection: [It is taught,] If the defendant's estate consists only of the best, creditors of all descriptions are paid out of the best; if it is of medium quality, they are all paid out of medium quality; if it is of the worst quality, they are all paid out of the worst quality. [It is only] when the defendant's possessions consist of both the best, the medium, and the worst [that] creditors for damages are paid out of the best, creditors for loans out of the medium and creditors for marriage contracts out of the worst. When [however] the estate consists only of the best and of the medium qualities, creditors for damages are paid out of the best while creditors for loans and for marriage contracts will be paid out of the medium quality. [Again] if the estate consists only of the medium and the worst qualities, creditors for either damages or loans are paid out of the medium quality whereas those for marriage contracts will be paid out of the worst quality.

1. Since, in reality, his property is worth 200 *zuz*.
2. It being the beginning of Spring and the best season for transactions in property, both for agricultural and building purposes.
3. I.e., about October, being the end of the season.
4. The scriptural verse, 'He shall return', introducing payment in kind, would thus authorize the calculation on the higher price anticipated whenever the plaintiff prefers a quality different from that assigned to him by law.
5. Ex. XXII, 4.
6. From the option of the plaintiff.
7. To the case made out by the Master regarding the Tithe of the Poor referred to above.
8. V. Glos.
9. Git. V, 1.
10. Raised by Abaye *supra* p. 24.
11. I.e., when bran is tendered it is the best of it which has to he given.
12. Confining it thus to land, for if otherwise why altogether insert 'of his field'?
13. [H] V. Sanh. (Sonc. ed p. 387, n. 7.
14. And could therefore be tendered.
15. [Or Hagronia, a town near Nehardea, v. Obermeyer, J. Die Landschaft Babylonian, p. 265.]
16. Of the best, medium and worst qualities, out of which to pay creditors for damages, loans and marriage-contracts respectively.
17. Cf. *supra* p. 22.
18. I.e., his estate is divided into three categories; best, medium and worst, out of which the payments will respectively be made.
19. I.e., to R. Samuel, the questioner.
20. I.e., R. Samuel.

Baba Kamma 8a

If, however, the estate consists only of the best and of the worst qualities, creditors for damages are paid out of the best whereas those for loans and marriage contracts are paid out of the worst quality. Now[1] the intermediate clause states that if the estate consists only of the medium and the worst qualities, creditors for either damages or loans are paid out of the medium quality whereas marriage contracts will be paid out of the worst quality. If, therefore, you still maintain that the calculation is based only upon the qualities of the defendant's estate, is not the medium [when there is no better with him] his best? Why then should not the creditors for loans be thrown back on the worst quality? — This [intermediate clause] deals with a case where the defendant originally possessed[2] property of a better quality but has meanwhile disposed of it. And R. Hisda likewise explained this [intermediate clause] to deal with a case where the defendant originally possessed[2] property of a better quality but has meanwhile disposed of it. This explanation stands to reason, for it is taught elsewhere: If the estate consisted of the medium and the worst qualities, creditors for damages are paid out of the medium quality whereas those for loans and marriage contracts will be paid out of the worst quality. Now these [two Baraithas] do not contradict each other, unless we accept [the explanation that] the one deals with a case where the defendant originally owned property of a better quality but which he has meanwhile disposed of, while the other states the law for a case where he did not have[3] property of a quality better than the medium in his possession. It may, however, on the other hand be suggested that both [Baraithas] state the law when a better quality was not disposed of[4] and there is yet no contradiction, as the second [Baraitha] presents a case where the defendant's medium quality is as good as the best quality of the general public,[5] whereas in the first [Baraitha] the medium quality was not so good as the best of the public.[6] It may again be suggested that both [Baraithas] present a case where the defendant's medium quality was not better than the medium quality of the general public and the point at issue is this: the second [Baraitha] bases the calculation upon the qualities of the defendant's estate,[7] but the first bases it upon those of the general public.[8]

Rabina said: The point at issue is the view expressed by 'Ulla.[9] For 'Ulla said: Creditors for loans may, according to Pentateuchal Law, be paid out of the worst, as it is said, Thou shalt stand without, and the man to whom thou dost lend shall bring forth the pledge without unto thee.[10] Now it is certainly in the nature of man [debtor] to bring out the worst of his chattels. Why then is it laid down

that creditors for loans are paid out of the medium quality?[11] This is a Rabbinic enactment made in order that prospective borrowers should not find the door of their benefactors locked before them. Now this enactment referred to by 'Ulla is accepted by the first [Baraitha] whereas the second disapproves of this enactment.[12]

Our Rabbis taught: If a defendant[13] disposed of all his land[14] to one or to three persons at one and the same time, they all have stepped into the place of the original owner.[15] [If, however, the three sales took place] one after another, creditors of all descriptions will be paid out of the [property purchased] last;[16] if this property does not cover [the liability], the last but one purchased estate is resorted to [for the balance]; if this estate again does not meet [the whole obligation], the very first purchased estate is resorted to [for the outstanding balance].

'If the defendant disposed of all his land to one' — under what circumstances [was it disposed of]? It could hardly be suggested [that it was effected] by one and the same deed, for if in the case of three persons whose purchases may have been after one another,[17] you state that, 'They all have stepped into the place of the original owner,' what need is there to mention one person purchasing all the estate by one and the same deed? It therefore seems pretty certain [that the estate disposed of to one person was effected by] deeds of different dates. But [then] why such a distinction?[18] Just as in the case of three purchasers [in succession] each can [in the first instance] refer any creditor [to the very last purchased property], saying, '[When I bought my estate] I was careful to leave [with the defendant] plenty for you to be paid out of,'[19] why should not also one purchaser [by deeds of different dates] be entitled to throw the burden of payment on to the very last purchased property, saying, '[When I acquired title to the former purchases] I was very careful to leave for you plenty to be paid out of'? — We are dealing here with a case where the property purchased last was of the best quality;[20] also R. Shesheth stated that [this law applies] when the property purchased last was of the best quality. If this be the case, why [on the other hand] should not creditors of all kinds come and be paid out of the best quality [as this was the property purchased last]? — Because the defendant may say to the creditors: 'If you acquiesce and agree to be paid out of the qualities respectively allotted to you by law, you may be paid accordingly, otherwise I will transfer the deed of the worst property back to the original owner — in which case you will all be paid out of the worst.'[21] If so,

1. Here begins R. Samuel's argument.
2. I.e., at the time when the loan took place, in which case the creditors then obtained a claim on the medium quality by the process of law.
3. At the time when the loan took place, in which case the medium (in the absence of a better quality) was relatively the best, and therefore not available to creditors for loans.
4. But was either retained, as is the case in the second Baraitha, or on the other hand not owned at all at the time of the loan as is the case in the first Baraitha.
5. In such a case it is considered the best quality to all intents and purposes, as the calculation is based upon the general standard of quality.
6. It is thus termed only medium and creditors for loans have access to it.
7. Hence in the absence of a better quality in his own estate, that property which is termed medium in comparison to the general standard is the best in the eye of the law.
8. According to which it is but medium.
9. Git. 50a.
10. Deut XXIV, 11.
11. Git. V, 1.
12. Maintaining that creditors for loans will always he paid out the worst quality.
13. I.e., a debtor for damages, loans and marriage-settlements.
14. Consisting of best, medium and worst qualities.
15. So that creditors for damages, for loans and for marriage-settlements will he paid according to their respective rights.
16. Whether it be best, medium or worst.
17. Though on one and the same day; cf, Keth. 94a.
18. I.e., why should the legal position of one purchaser be worse than that of three?
19. As, according to a Mishnaic enactment (Git. V, 1), 'Property disposed of by a debtor could not he resorted to by his creditors so long as

there are with him available possessions undisposed of.'

20. In which case it is not in the interest of the purchaser that the last purchase should he available to any one of the creditors.
21. At the hands of the debtor, according to the Mishnaic enactment, Git. V, 1.

Baba Kamma 8b

why should the same not be said regarding creditors for damages?[1] It must therefore he surmised that we deal with [a case where the vendor has meanwhile died, and, as his] heirs are not personally liable to pay,[2] the original liability [which accompanied the purchased properties] must always remain upon the purchaser;[3] who could consequently no longer [threaten the creditors and] say this: ['If you acquiesce …'?][4] — But the reason the creditors cannot be paid out of the best is that the vendee may [repudiate their demand and] say to them: 'On what account have the Rabbis enacted that "property disposed of by a debtor can not be attached by his creditors so long as there are available possessions still not disposed of"5 if not for the sake of protecting my interests? In the present instance I have no interest in availing myself of this enactment.' Exactly as Raba, for Raba elsewhere said: Whoever asserts, 'I have no desire to avail myself of a Rabbinical enactment' such as this is listened to.[6] To what does 'such as this' refer? — To R. Huna, for R. Huna said: A woman is entitled to say to her husband, 'I don't expect any maintenance from you[7] and I do not want to work for you.'[8]

It is quite certain that if the vendee[9] has sold the medium and worst qualities and retained the best, creditors of all descriptions may come along and collect out of the best quality. For this property was acquired by him last; and, since the medium and worst qualities are no more in his possession, he is not in a position to say to the creditors: 'Take payment out of the medium and worst properties, as I have no interest in availing myself of the Rabbinic enactment.'[10] But what is the law when the vendee disposed of the best quality and retained the medium and the worst? — Abaye at first was inclined to say: Creditors of all descriptions are entitled to come and collect out of the best.[11] But Raba said to him.[12] Does not a vendee selling [property] to a sub-vendee assign to him all the rights [connected] therewith] that may accrue to him?[13] Hence just as when the creditors come to claim from the vendee, he is entitled to pay them out of the medium and the worst [respectively], irrespective of the fact that when the medium and the worst qualities were purchased by him, the best property still remained free with the original vendor, and in spite of the enactment that properties disposed of cannot be distrained on [at the hands of the vendee] so long as there is available [with the debtor] property undisposed of,[14] the reason of the exception being that the vendee is entitled to say that he has no interest in availing himself of this enactment, so is the subvendee similarly entitled to say to the creditors: 'Take payment out of the medium and the worst.'[15] For the sub-vendee entered into the sale only upon the understanding that any right that his vendor may possess in connection with the purchase should also be assigned to him.

Raba said:[16] If Reuben disposed of all his lands to Simeon who in his turn sold one of the fields to Levi, Reuben's creditor may come and collect out of the land which is in the possession either of Simeon or Levi. This law applies only when Levi bought medium quality; but if he purchased either the best or the worst the law is otherwise, as Levi may lawfully contend: 'I have purposely been careful to buy the best or the worst, that is, property which is not available for you.'[17] Again, even when he bought medium quality the creditor will not have this option unless Levi did not leave [with Simeon] medium quality of a similar nature, in which case he is unable to plead, 'l have left for you ample land with Simeon;' but if Levi did leave with Simeon medium quality of a similar nature the creditor is not entitled to distrain on Levi who may lawfully contend, 'I have left for

you ample land [with Simeon] to satisfy your claim from it.

Abaye said:[18] If Reuben had disposed of a field to Simeon with a warranty [of indemnity],[19] and an alleged creditor of Reuben came to distrain on it from Simeon, Reuben is entitled by law to come forward and litigate with the creditor, nor can the latter say to him: 'You [Reuben] are no party to me;'[20] for Reuben will surely say to him: 'If you will deprive Simeon of the field purchased by him from me, he will turn on me.'[21] There are some who say: Even if there were no warranty there the same law applies, as Reuben may say to the alleged creditor: 'I don't want Simeon to have any grievance against me.'

And Abaye further said:[22] If Reuben sold a field to Simeon without a warranty [for indemnity]

1. I.e., they also should thus not he paid out of the best; like creditors for loans they would still he paid out of the medium quality, as the worst quality they could never lose.
2. I.e., when no land was left in the inherited estate.
3. For even by transferring the worst quality to the heirs he would not escape any liability affecting him.
4. Since the liability upon him will thereby not be affected, why then should they, in such circumstances, not resort to the very best property purchased?
5. Git. V, 1.
6. Keth. 83a.
7. Maintenance is a Rabbinical enactment for married women in exchange for their domestic work; cf. Keth. 47b.
8. Keth. 58b.
9. Who at successive sales purchased the whole estate of a debtor, and the last purchase was property of the best quality.
10. As *supra* p. 31.
11. At the hands of the sub-vendee, since nothing else of the same estate is with him to be offered to the creditors
12. Cf. 'Ar. 31b.
13. I.e., the vendee.
14. Git. V, 1.
15. At the hands of the vendee.
16. Cf. Keth. 92b.
17. Cf. *supra* p. 29.
18. Cf. Keth. 92b and B.M. 14a.
19. In case it is distrained on by the vendor's creditors.
20. For he who has no personal interest in a litigation can be no pleader in it; cf. *infra* 70a.
21. To be indemnified for the warranty.
22. Keth. 92b-93a.

Baba Kamma 9a

and there appeared claimants [questioning the vendor's title], so long as Simeon had not yet taken possession of it he might withdraw; but after he had taken possession of it he could no longer withdraw. What is the reason for that? — Because the vendor may say to him: 'You have agreed to accept a bag tied up with knots.'[1] From what moment [in this case] is possession considered to be taken? — From the moment he sets his foot upon the landmarks [of the purchased field]. This applies only to a purchase without a warranty. But if there is a warranty the law is otherwise. Some, however, say: Even if there is a warranty the same law applies, as the vendor may still say to him: 'Produce the distress warrant[2] against you and I will indemnify you.'

R. Huna said: [The payment for damages is] either with money or with the best of the estate.[3] R. Nahman objected to R. Huna [from the Baraitha]: He should return[4] shows that payment in kind is included, even with bran?[5] — This deals with a case where nothing else is available. If nothing else is available, is it not obvious? — You might have thought that we tell him to go and take the trouble to sell [the bran] and tender the plaintiff ready money. It is therefore made known to us [that this is not the case.].

R. Assi said: Money is on a par with land. What is the legal bearing of this remark? If to tell us what is best, is this not practically what R. Huna said?[6] It may, however, refer to two heirs[7] who divided an inheritance, one taking the land and the other the money. If then a creditor[8] came and distrained on the land, the aggrieved heir could come forward and share the money with his brother. But is

this not self-evident? Is the one a son [to the deceased] and the other one not a son? There are some who argue [quite the reverse]: The one brother may say to the other, 'I have taken the money on the understanding that if it be stolen I should not be reimbursed by you, and you also took the land on the understanding that if it be distrained on there should be no restitution to you out of anything belonging to me.' It[9] will therefore refer to two heirs[7] who divided lands among themselves after which a creditor[8] came along and distrained on the portion of one of them.[10] But has not R. Assi already once enunciated this law? For it was stated;[11] [In the case of] heirs who divided [the land of the inheritance among themselves], if a creditor[8] came along and distrained on the portion of one of them, Rab said: The original apportionment becomes null and void. Samuel said: The portion is waived; but R. Assi said: The portion is refunded by a quarter in land or by a quarter in money.[12] Rab, who said that the partition becomes null and void, maintains that heirs, even after having shared, remain[13] co-heirs;[14] Samuel, who said that the portion is waived, maintains that heirs, after having shared, stand to each other in the relationship of vendees, each being in the position of a purchaser without a warranty [of indemnity];[15] R. Assi, who said that the portion is refunded by a quarter in land or by a quarter in money, is in doubt as to whether heirs, after having shared, still remain co-heirs[16] or stand in the relationship of vendees;[15] and on account of that [doubt] there must be refunded a quarter in land or a quarter in money.[17] What then is the meaning of 'Money is on a par with land'?[18] — In respect of being counted as 'best'. But if so, is not this practically what R. Huna said? — Read 'And so also said R. Assi …'

R. Zera said on behalf of R. Huna: For [the performance of] a commandment one should go up to a third. A third of what?

1. I.e., you bought it at your own risk; the sale is thus the passing not of ownership but of possession.
2. [H], document conferring the right of seizure of a debtor's property sold after the loan (Jast.).
3. R. Huna refers either to the last clause of the Mishnah on p. 1 or to the problem raised by Abaye on p. 24.
4. Ex. XXI, 34.
5. Cf. *supra* p. 24.
6. The text should thus run, 'And so also said R. Assi …'
7. Lit. 'brothers'.
8. Of the deceased.
9. I.e., R. Assi's statement.
10. [In which case R. Assi stated that the other can offer in refundment either money or land.]
11. B.B. 107a.
12. Cf. Bek. 48a.
13. In this respect.
14. So that all of them have to share the burden of the debt and if the portion of the one was distrained on, the portion of the other constitutes the whole inheritance which has equally to he distributed accordingly.
15. Who cannot thus be reimbursed for the distress effected upon the portion assigned to any one of them.
16. V. p. 34. n. 11.
17. On the principle that in such and similar matters the two parties should equally have the benefit of the doubt (Rashi, according to one interpretation).
18. Stated above by R. Assi.

Baba Kamma 9b

You could hardly suggest 'a third of one's possessions,' for if so when one chanced to have three commandments [to perform at one and the same time] would one have to give up the whole of one's possessions? — R. Zera therefore said: For [performing a commandment in] an exemplary manner one should go up to a third of [the ordinary expense involved in] the observance thereof.

R. Ashi queried: Is it a third from within [the ordinary expense][1] or is it a third from the aggregate amount?[2] This stands undecided.

In the West[3] they said in the name of R. Zera: Up to a third, a man must perform it

out of his own,[4] but from a third onwards he should perform it in accordance with the special portion the Holy One, blessed be He, has bestowed upon him.[5]

***MISHNAH*. WHENEVER I AM UNDER AN OBLIGATION OF CONTROLLING [ANYTHING IN MY POSSESSION], I AM CONSIDERED TO HAVE PERPETRATED ANY DAMAGE THAT MAY RESULT.[6] WHEN I AM TO BLAME FOR A PART OF THE DAMAGE I AM LIABLE TO COMPENSATE FOR THE DAMAGE AS IF I HAD PERPETRATED THE WHOLE OF THE DAMAGE.**

THE [DAMAGED] PROPERTY MUST BE OF A KIND TO WHICH THE LAW OF SACRILEGE[7] HAS NO APPLICATION. THE [DAMAGED] PROPERTY SHOULD BELONG TO PERSONS WHO ARE UNDER [THE JURISDICTION OF] THE LAW.[8] THE PROPERTY SHOULD BE OWNED. THE PLACE [OF THE DAMAGE] IS IMMATERIAL, WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT OR PREMISES OWNED [JOINTLY] BY THE PLAINTIFF AND THE DEFENDANT. WHENEVER DAMAGE HAS OCCURRED, THE OFFENDER IS LIABLE TO INDEMNIFY WITH THE BEST OF HIS ESTATE.

***GEMARA*. Our Rabbis taught: 'WHENEVER I AM UNDER AN OBLIGATION OF CONTROLLING [ANYTHING IN MY POSSESSION], I AM CONSIDERED TO HAVE PERPETRATED ANY DAMAGE [THAT MAY RESULT]. How is that? When an ox or pit which was left with a deaf-mute, an insane person or a minor, does damage, the owner is liable to indemnify. This, however, is not so with a fire.' With what kind of case are we here dealing? If you say that the ox was chained and the pit covered, which corresponds in the case of fire to a hot coal, what difference is there between the one and the other? If on the other hand the ox was loose and the pit uncovered which corresponds in the case of fire to a flame, the statement 'This, however, is not so with a fire,' would here indicate exemption, but surely Resh Lakish said in the name of Hezekiah: They[9] have not laid down the law of exemption unless there was handed over to him[10] a coal which he has blown up, but in the case of a flame there will be full liability, the reason being that the danger is clear![11] — Still, the ox may have been chained and the pit covered and the fire likewise in a coal, yet your contention, 'Why should we make a difference between the one and the other?' could be answered thus: An ox is in the habit of loosening itself; so also a pit is in the nature of getting uncovered; but a hot coal, the longer you leave it alone, the more it will get cooler and cooler. According to R. Johanan, however, who said[11] that even when there has been handed over to him[10] a flame the law of exemption applies, the ox here would likewise be loose and the pit uncovered; but why should we make a difference between the one and the other? — There, in the case of the fire, it is the handling of the deaf-mute that causes the damage, whereas here, in the case of the ox and the pit, it is not the handling of the deaf-mute that causes the damage.**

Our Rabbis taught: There is an excess in [the liability for] Ox over [that for] Pit, and there is [on the other hand] an excess in [the liability for] Pit over [that for] Ox. The excess in [the liability for] Ox over [that for] Pit is that Ox involves payment of *kofer*[12] and the liability of thirty [*shekels*] for the killing of a slave;[13] when judgment [for manslaughter] is entered [against Ox] it becomes vitiated for any use,[14] and it is in its habit to move about and do damage, whereas all this is not so in the case of Pit. The excess in [the liability for] Pit over [that for] Ox is that Pit is from its very inception a source of injury and is *Mu'ad* ab initio which is not so in the case of Ox.[15]

1. **I.e., 33-1/3 per cent. of the cost of ordinary performance, the cost of the ordinary performance and that of the exemplary performance would thus stand to each other as 3 to 4.**
2. **I.e., 50 per cent. of the cost of the ordinary performance; the cost of the ordinary performance and that of the exemplary**

performance would thus stand to each other as 2 to 3.
3. Palestine.
4. I.e., whether he possesses much or little.
5. Cf. Shittah Mekubezeth and Nimmuke Joseph a.l. According to Rashi and Tosaf. a.l.: 'The cost up to a third remains man's loss in this world (as the reward for that will he paid only in the world to come); but the cost from a third onwards (if any) will he refunded by the Holy One, blessed be He, in man's lifetime.'
6. From neglecting the obligation to control.
7. Of consecrated things. cf. Lev. V, 15-16.
8. Lit., 'sons of the Covenant', excluding heathens who do not respect the covenant of the law; v. *infra* p. 211, n. 6.
9. I.e., the Rabbis of the Mishnah, v. *infra* 59b.
10. I.e., to a deaf-mute, an insane person or a minor.
11. *Infra* 59b.
12. Cf. Ex. XXI, 29-30; v. Glos.
13. Ibid. XXI, 32.
14. V. *infra* p. 255.
15. Cf. *supra* p. 3, nn. 6-7.

Baba Kamma 10a

There is an excess in [the liability for] Ox over [that for] Fire and there is [on the other hand] an excess in [the liability for] Fire over [that for] Ox. The excess in [the liability for] Ox over [that for] Fire is that Ox involves payment of *kofer* and the liability of thirty [*shekels*] for the killing of a slave; when judgment [for manslaughter] is entered against Ox it becomes vitiated for any use;[1] if the owner handed it over to the care of a deaf-mute, an insane person or a minor he is still responsible [for any damage that may result];[2] whereas all this is not so in the case of Fire. The excess in [the liability for] Fire over [that for] Ox is that Fire is *Mu'ad* ab initio which is not so in the case of Ox.

There is an excess in [the liability for] Fire over [that for] Pit, and there is [on the other hand] an excess in [the liability for] Pit over [that for] Fire. The excess in [the liability for] Pit over [that for] Fire is that Pit is from its very inception a source of injury; if its owner handed it over to the care of a deaf-mute, an insane person or a minor, he is still responsible [for any damage that may result],[2] whereas all this is not so in the case of Fire. The excess in [the liability for] Fire over [that for] Pit is that the nature of Fire is to spread and do damage and it is apt to consume both things fit for it and things unfit for it, whereas all this is not so in the case of Pit.

Why not include in the excess of [liability for] Ox over [that for] Pit [the fact] that Ox is [also] liable for damage done to inanimate objects[3] which is not so in the case of Pit?[4] — The above [Baraitha] is in accordance with R. Judah who enjoins payment for damage to inanimate objects [also] in the case of Pit.[5] If it is in accordance with R. Judah, look at the concluding clause, 'The excess in [the liability for] Fire over [that for] Pit is that the nature of Fire is to spread and do damage, and it is apt to consume both things fit for it and things unfit for it; whereas all this is not so in the case of Pit.' 'Things fit for it:' are they not 'of wood'? 'Things unfit for it: are they not 'utensils'?[6] Now 'all this is not so in the case of Pit'. But if the statement is in accordance with R. Judah, did you not say that R. Judah enjoins payment for damage to inanimate objects [also] in the case of Pit? The Baraitha is, therefore, indeed in accordance with the Rabbis, but it mentions [some points] and omits [others].[7] What else does it omit that it omits that [particular] point?[8] — It also omits the law of hidden goods.[9] On the other hand you may also say that the Baraitha can still be reconciled with R. Judah, for 'things unfit for it' do not include utensils,[10] but do include [damage done by fire] lapping his neighbor's plowed field and grazing his stones.[11]

R. Ashi demurred: Why not include, in the excess of liability for Ox Over [that for] Pit, [the fact] that Ox is [also] liable for damage done to consecrated animals that have become unfit [for the altar],[12] whereas this is not so in the case of Pit?[13] No difficulty arises if you assume that the Baraitha is in accordance with the Rabbis; just as it had omitted that point,[14] it omitted this point too. But if you maintain that the Baraitha is in

accordance with R. Judah, what else did it omit that it omits this [one] point? — It omitted [Ox] trampling upon newly broken land.[15] [No! this is no argument,] for as to [Ox] trampling upon newly broken land there is no omission there, for this [is included in that which] has already been stated, 'It is in its habit to move about and do damage.'[16]

WHEN I HAVE PERPETRATED A PART OF THE DAMAGE. Our Rabbis taught: 'When I have perpetrated a part of the damage I become liable for the compensation for the damage as if I had perpetrated the whole of the damage. How is that? If one had dug a Pit nine handbreadths deep and another came along and completed it to a depth of ten handbreadths, the latter person is liable.' Now this ruling is not in accordance with Rabbi; for it was taught:[17] If one had dug a pit nine handbreadths deep and another came along and completed it to a depth of ten handbreadths, the latter person is liable. Rabbi says: The latter person is liable in cases of death,[18] but both of them in cases of injury![19] — R. Papa said: The Mishnaic ruling[20] deals with cases of death and is unanimous.[21] Some read: May we say that the Mishnah is not in accordance with Rabba? — R. Papa thereupon said: It deals with cases of death and is unanimous.

R. Zera demurred: Are there no other instances?[22] Behold there is [the case] where an ox was handed over to the care of five persons and one of them was careless, so that the ox did damage; that one is liable! — But in what circumstances? If without the care of that one, the ox could not be controlled, is it not obvious that it is that one who perpetrated the whole of the damage?[23] If, [on the other hand] even without the care of that one, the ox could be controlled, what, if anything at all, has that one perpetrated?

R. Shesheth, however, demurred: Behold there is [the case] where a man adds a bundle [of dry twigs to an existing fire]! — But in what circumstances?

1. Cf. *supra* P. 3, nn 6-7.
2. V. p. 37, n. 6.
3. Cf. *supra* p. 36.
4. Lit., 'utensils'.
5. Cf. *supra* pp. 17 and 18.
6. V. *supra* p. 18 and *infra* 53b.
7. Metal or earthenware.
8. Such as the distinction between Ox and Pit with reference to inanimate objects
9. As a Tanna would not, in enumeration, just stop short at one point.
10. For damage to which, according to the Rabbis, there is no liability in the case of Fire; cf. *supra* p. 18 and *infra* 61b.
11. V. p. 38, n. 6.
12. V. *supra* p. 18.
13. On account of a blemish, cf, Lev. XXII, 20 and Deut. XV, 21-22; such animals have to be redeemed, in accordance with Lev. XXVII, 11-13 and 27.
14. Cf. *infra* 53b.
15. I.e., with reference to inanimate objects.
16. Which is impossible in the case of Pit.
17. And therefore, if the Baraitha were in accordance with R. Judah, the question, 'What else did it omit, etc.', would remain unanswered.
18. Cf. Tosaf, B.K. VI, 3 and *infra* 51a.
19. As without the additional handbreadth done by him the pit would have been nine handbreadths deep which could not occasion any fatal accident; cf, *supra* p. 7.
20. For even a pit nine handbreadths deep could occasion injuries.
21. Which declares the latter person 'who perpetrated part of the damage' liable.
22. I.e., is even in accordance with Rabbi.
23. To illustrate the perpetration of a part of the damage involving liability for the whole of the damage.

Baba Kamma 10b

If without his co-operation the fire would not have spread, is it not obvious [that he is totally to blame]? If [on the other hand] even without his co-operation the fire would have spread, what, if anything at all, has he perpetrated?

R. Papa demurred: Behold there is that case which is taught: 'Five persons were sitting upon one bench and did not break it; when, however, there came along one person more and sat upon it, it broke down; the latter is liable' — supposing him, added R. Papa, to

have been as stout as Papa b. Abba.[1] But under what circumstances? If without him the bench would not have broken, is it not obvious [that he is totally to blame]? If, on the other hand, without him it would also have broken, what, if anything at all, has he perpetrated? Be this as it may, how can the Baraitha be justified? — It could hold good when, without the newcomer, the bench would have broken after two hours, whereas now it broke in one hour. They[2] therefore can say to him: 'If not for you we would have remained sitting a little while longer and would then have got up.'[3] But why should he not say to them: 'Had you not been [sitting] there, through me the bench would not have broken'?[4] — No; it holds good when he [did not sit at all on the bench but] merely leaned upon them and the bench broke down. Is it not obvious [that he is liable]? — You might have argued '[Damage done by] a man's force is not comparable with [that done directly by] his body. 'It is therefore made known to us that [a man is responsible for] his force [just as he] is [for] his body, for whenever his body breaks [anything] his force also participates in the damage.[5]

Are there no other instances? Behold there is that which is taught:[5] When ten persons beat a man with ten sticks, whether simultaneously or successively, so that he died, none of them is guilty of murder. R. Judah b. Bathyra says: If [they hit] successively, the last is liable, for he was the immediate cause of the death![6] — Cases of murder are not dealt with here.[7] You may also say that controversial cases are not dealt with.[7] Are they not? Did not we suggest that the Mishnah is not in accordance with Rabbi?[8] — That the Mishnah is not in accordance with Rabbi but in accordance with the Rabbis, we may suggest;[9] whereas that it is in accordance with R. Judah b. Bathyra, and not in accordance with the Rabbis, we are not inclined to suggest.[9]

I AM LIABLE TO COMPENSATE FOR THE DAMAGE. 'I become liable for the replacement of the damage' is not stated but '… TO COMPENSATE FOR THE DAMAGE'. We have thus learnt here that which the Rabbis taught elsewhere:[10] '"To compensate for damage" imports that the owners [plaintiffs] have to retain the carcass as part payment'. What is the authority for this ruling? — R. Ammi said: Scripture states, He that killeth a beast yeshallemennah [shall make it good];[11] do not read yeshallemennah ['he shall pay for it'], but yashlimennah[12] ['He shall complete its deficiency']. R. Kahana infers it from the following: If it be torn in pieces, let him bring compensation up to ['ad][13] the value of the carcass,' he shall not make good that which was torn.[14] 'Up to' the value of the carcass[15] he must pay, but for the carcass itself he has not to pay. Hezekiah infers it from the following: And the dead shall be his own,[16] which refers to the plaintiff. It has similarly been taught in the school of Hezekiah: And the dead shall be his own,[16] refers to the plaintiff. You say 'the plaintiff'. Why not the defendant? You may safely assert: 'This is not the case.' Why is this not the case? — Abaye said: If you assume that the carcass must remain with the defendant, why did not the Divine law, stating He shall surely pay ox for ox,[17] stop at that? Why write at all And the dead shall be his own?[18] This shows that it refers to the plaintiff.

And all the quotations serve each its specific purpose. For if the Divine Law had laid down [this ruling only in] the verse 'He that killeth a beast shall make it good,' the reason of the ruling would have been assigned to the infrequency of the occurrence,[19] whereas in the case of an animal torn in pieces [by wild beasts]'[20] which is [comparatively] of frequent occurrence, the opposite view might have been held;[21] hence special reference is essential.[20] If [on the other hand] this ruling had been made known to us only in the case of an animal torn in pieces.[22] it would have been explained by the fact that the damage there was done by an indirect agency,[23] whereas in the case of a man killing a beast, where the damage was done by a direct agency, the opposite view might have been

held. Again, were this ruling intimated in both cases, it would have been explained in the one case on account of its infrequency,[24] and in the other account of the indirect agency,[25] whereas in the damage to which 'And the dead shall be his own'[26] refers, which is both frequent and direct,[27] an opposite view might have been taken. If [on the other hand] this ruling had been intimated only in the case referred to by 'And the dead shall be his own, it would have been explained by the fact of the damage having been done only by man's possession,[28] whereas in cases where the damage resulted from man's person[29] an opposite view might have been taken. Hence all quotations are essential.

R. Kahana said to Rab: The reason [for the ruling] is that the Divine Law says 'And the dead shall be his own', and but for this I might have thought that the carcass shall remain with the defendant [yet how can this be]? If, when there are with him[30] several carcasses he is entitled to pay him[31] with them, for the Master stated: He shall return,[32] includes payment in kind, even with bran,[33] what question then about the carcass of his own animal? — No, the verse is required only for the law regarding the decrease of the value of the carcass[34]

May we say that the decrease of the value of the carcass is a point at issue between Tannaitic authorities? For it has been taught: If it be torn in pieces, let him bring it for witness:[35]

1. Who was very corpulent, cf. B.M. 84a. [According to Zacuto's Sefer ha-Yuhasin, the reference there is not to R. Papa but to Papa b. Abba]
2. I.e., the five persons that had previously been sitting upon the bench.
3. Therefore he is to he regarded as having perpetrated the whole, and not merely a part, of the damage.
4. And why should he alone be liable?
5. V. *infra* pp. 79-80.
6. Sanh. 78a and *infra* p. 139. [Why then was this ruling of R. Judah not taken as a further illustration of the Mishnaic principle?]
7. In the Mishnah before us (which presents the law of civil action and not that of murder).
8. Cf. *supra* p. 39.
9. As it is the view of the majority that prevails; Ex. XXIII, 2.
10. Tosef. B.K. I. 1.
11. [H] Lev. XXIV, 18.
12. Changing the vowels of the Hebrew verb; [H] into [H]
13. Similarly by changing the vowel; the monosyllable [H] (witness) is read [H] 'up to'.
14. Ex. XXII, 12.
15. I.e., the amount required to make up the deficiency.
16. Ex. XXI, 36.
17. Ex. XXI, 36.
18. Ibid; since it is self-evident that the defendant, having paid for the ox, claims the carcass.
19. For a man to kill a beast with intent to cause damage to his neighbor.
20. Ex. XXII, 12.
21. In the interest of the plaintiff.
22. V. p. 42, n. 11.
23. I.e., not by the bailee himself but by a wild beast.
24. I.e., man killing an animal.
25. I.e., when the animal in charge was torn by beasts.
26. I.e., in the case of a goring ox, Ex. XXI, 36.
27. The ox being his property, makes the owner responsible for the damage as if it were perpetrated by himself,
28. I.e., by his cattle.
29. Such as in Lev. XXIV, 18 and Ex. XXII, 12.
30. I.e., with the defendant.
31. I.e., the plaintiff.
32. EX.XXI, 34.
33. Cf. *supra* p. 24.
34. That is to he sustained by the plaintiff, since it becomes his from the moment of the goring.
35. Ex.XXII, 12.

Baba Kamma 11a

Let him[1] bring witnesses that it had been torn by sheer accident and free himself. Abba Saul says: Let him[2] [in all cases] bring the torn animal[3] to the Court. Now is not the following the point at issue: The latter maintains that a decrease in value of the carcass will be sustained by the plaintiff,[4] whereas the former view takes it to be sustained by the defendant? — No, it is unanimously held that the decrease will be sustained by the plaintiff. Here, however, the trouble of [providing[5] for bringing up] the

carcass [from the pit] is the point at issue,[6] as [indeed] taught: Others say, Whence [could it be derived] that it is upon the owner of the pit to bring up the [damaged] ox from his pit? We derive it from the text, 'Money shall he return unto to the owner. And the dead beast'…[7] Abaye said to Raba: What does this trouble about the carcass mean? If the value of the carcass in the pit is one *zuz*,[8] whereas on the banks[9] its value will be four [*zuz*], is he not taking the trouble [of bringing up the carcass] solely in his own interests? — He [Raba], however, said: No, it applies when in the pit its value is one *zuz*, and on the banks its value is similarly one *zuz*. But is such a thing possible? Yes, as the popular adage has it, 'A beam in town costs a *zuz* and a beam in a field costs a zuz'.

Samuel said: No assessment is made in theft and robbery[10] but in cases of damage;[11] I, however, maintain that the same applies to borrowing,[12] and Abba[13] agrees with me. It was therefore asked: Did he mean to say that 'to borrowing the law of assessment does apply and Abba agrees with me,' Or did he perhaps mean to say that 'to borrowing the law of assessment does not apply and Abba agrees with me'? — Come and hear: A certain person borrowed an axe from his neighbor and broke it. He came before Rab, who said to him, 'Go and pay [the lender] for his sound axe.'[14] Now, can you not prove hence[15] that [the law of] assessment does not apply [to borrowing]?[16] — On the contrary, for since R. Kahana and R. Assi [interposed and] said to Rab, 'Is this really the law?' and no reply followed, we can conclude that assessment is made. It has been stated: 'Ulla said on behalf of R. Eleazar: Assessment is [also] made in case of theft and robbery; but R. Papi said that no assessment is made [in these cases]. The law is: No assessment is made in theft and robbery, but assessment is made in cases of borrowing, in accordance with R. Kahana and R. Assi.

'Ulla further said on behalf of R. Eleazar: When a placenta comes out [from a woman] partly on one day and partly on the next day, the counting of the days of impurity[17] commences with the first day [of the emergence]. Raba, however, said to him: What is in your mind? To take the stricter course? Is not this a strictness that will lead to lenience, since you will have to declare her pure[18] by reckoning from the first day? Raba therefore said: 'Out of mere apprehension, notice is taken of the first day [to be considered impure], but actual counting commences only with the second day.' What is the new point made known to us? That even a part of an [emerging] placenta contains a fetus. But have we not learnt this elsewhere:[19] 'A placenta coming partly out of an animal[20] renders [the whole of] it unfit for consumption,[21] as that, which is a sign of a fetus in humankind is similarly a sign of a fetus in an animal'? — As to this Mishnaic statement I might still have argued

1. I.e., the paid bailee who is defending himself against the depositor.
2. V. p 43 n. 15.
3. [[H]: [H] being an unaugmented passive participle from the root [H], v. Halpern, B. ZAW, XXX, p. 57.]
4. I.e., when the deposited animal has been torn not by accident, in which case the paid bailee has to indemnify. The torn animal is thus brought at once to the Court to ascertain its value at the time of the mishap.
5. I.e., the expenses involved.
6. Abba Saul maintains that the defendant has to do it, whereas the other view releases him from this.
7. Ex. XXI, 34; the subject of the last clause is thus joined to the former sentence as a second object.
8. A coin; V. Glos.
9. Of the pit.
10. In which case payment must b e made in full for the original value of the damaged article.
11. Where the carcass may he returned to the plaintiff.
12. Treated in Ex. XXII, 13.
13. [I.e., Rab whose full name was Abba].
14. B.M. 96b.
15. When the value of the broken axe vas not taken into account, but full payment for the axe in its original condition was ordered.
16. Since Rab ordered the borrower to pay in full for the original value of the axe.
17. Which are seven for a male child and fourteen for a girl; cf. Lev. XII. 2 and 5.

18. I.e., after the expiration of the 7 or 14 days for a male or female child respectively, when there commence 33 or 66 days of purity for a boy or girl respectively; cf. Lev. ibid. 4-5.
19. Hul. 68a.
20. Before the animal was slaughtered.
21. As it is considered to contain a fetus which when born is subject to the law of slaughtering on its own accord.

Baba Kamma 11b

that it is quite possible for a part of a placenta to emerge without a fetus, but that owing to a [Rabbinic] decree a part of a placenta is in practice treated like the whole of it;[1] it is therefore made known to us[2] that this is not the case.

'Ulla further said on behalf of R. Eleazar: A first-born son who has been killed within thirty days [of his birth] need not be redeemed.[3] The same has been taught by Rami b. Hama: From the verse, *Shalt thou surely redeem*[4] one might infer that this would apply even when the firstborn was killed within thirty days [of his birth]; there is therefore inserted the term *'but'*[5] to exclude it.

'Ulla further said on behalf of R. Eleazar: [Title to] large cattle is acquired by 'pulling'.[6] But did we not learn, … by 'delivery'?[7] — He[8] follows another Tanna; for it has been taught:[9] The Rabbis say: Both one and the other[10] [are acquired] by 'pulling'. R. Simeon says: Both one and the other by 'lifting up'.

'Ulla further said on behalf of R. Eleazar: In the case of heirs[11] who are about to divide the estate among themselves, whatever is worn by them will [also] be assessed [and taken into account], but that which is worn by their sons and daughters is not assessed [and not taken into account].[12] R. Papa said: There are circumstances when even that which is worn by the heirs themselves is not assessed. This exception applies to the eldest of the heirs,[13] as it is in the interest of them all that his words should be respected.

'Ulla further said on behalf of R. Eleazar: One bailee handing over his charge to another bailee does not incur thereby any liability.[14] This ruling unquestionably applies to an unpaid bailee handing over his charge to a paid bailee in which case there is a definite improvement in the care; but even when a paid bailee hands over his charge to an unpaid bailee where there is definitely a decrease in the care, still he thereby incurs no liability, since he transfers his charge to a responsible person.

Raba, however, said: One bailee handing over his charge to another bailee becomes liable for all consequences. This ruling unquestionably holds good in the case of a paid bailee handing over his charge to an unpaid bailee where there is a definite decrease in the care; but even when an unpaid bailee hands over his charge to a paid bailee, where there is definitely an improvement in the care, still he becomes liable for all consequences, as the depositor may say [to the original bailee]: You would be trusted by me [should occasion demand] an oath [from you], but your substitute would not be trusted by me in the oath [which he may be required to take].[15]

'Ulla further said on behalf of R. Eleazar: The law is that distraint may be made on slaves.[16] Said R. Nahman to 'Ulla: Did R. Eleazar apply this statement even in the case of heirs[17] [of the debtor]? — No, Only to the debtor himself. To the debtor himself? Could not a debt be collected even from the cloak upon his shoulder?[18] — We are dealing here with a case where a slave was mortgaged,[19] as in the case stated by Raba, for Raba said:[20] Where a debtor mortgaged his slave and then sold him [to another person], the creditor may distrain on him [in the hands of the purchaser]. But where an ox was mortgaged and afterwards sold, the creditor cannot distrain on it [in the hands of the purchaser], the reason [for the distinction] being that in the former case the transaction of the mortgage aroused public interest[21] whereas

in the latter case no public interest was aroused.[22]

1. On account of mere apprehension, lest no distinction will he made between the emergence of the whole of the placenta and a part of it.
2. In the statement of 'Ulla on behalf of R. Eleazar,
3. Notwithstanding Num. XVIII, 15-16.
4. Ibid. 15.
5. Hebrew 'Ak [H] being a particle of limitation.
6. I.e., by the buyer; v, Glos. s.v. *Meshikah*.
7. I.e., by the seller handing over the bit to the buyer; Kid. 25b.
8. I.e., 'Ulla on behalf of R. Eleazar.
9. Cf. Kid. 25b and B.B. 86b.
10. I.e. Large and small cattle.
11. Lit., 'brothers'.
12. As it would be a degradation to them to be forced to appear before the court.
13. In charge of the administration of the affairs of the heirs.
14. Cf. B.M. 36a.
15. The original bailee has thus committed a breach of the trust.
16. Cf. B.B. 128a.
17. Who inherited the slaves; v. *supra* p. 31.
18. Why then speak about slaves?
19. By the debtor who had meanwhile died.
20. *Infra* 33b and B.B. 44b.
21. So that the purchaser was no doubt aware of it and should consequently not have bought it.
22. So that the purchaser is not to blame.

Baba Kamma 12a

After R. Nahman went out 'Ulla said to the audience: 'The statement made by R. Eleazar refers even to the case of heirs.' R. Nahman said: 'Ulla escaped my criticism'. A case of this kind arose in Nehardea and the judges of Nehardea[1] distrained [on slaves in the hands of heirs]. A further case took place in Pumbeditha and R. Hana b. Bizna distrained [on slaves in the hands of heirs]. But R. Nahman said to them: 'Go and withdraw [your judgments], otherwise I will distrain on your own homes [to reimburse the aggrieved heirs].'[2] Raba, however, said to R. Nahman: 'There is 'Ulla, there is R. Eleazar, there are the judges of Nehardea and there is R. Hana b. Bizna [who are all joining issue with you]; what authorities is the Master following?' — He said to him:[3] 'I know of a Baraitha, for Abimi learned: "A *prosbul*[4] is effective only when there is realty[5] [belonging to the debtor] but not when he possesses slaves[6] only. Personalty is transferred along with realty[7] but not along with slaves."'[6]

May we not say that this problem is a point at issue between the following Tannaim? [For it was taught:] 'Where slaves and lands are sold, if possession is taken of the slaves no title is thereby acquired to the land, and similarly by taking possession of the lands no title is acquired to the slaves. In the case of lands and chattels, if possession is taken of the lands title is also acquired to the chattels,[7] but by taking possession of the chattels no title is acquired to the lands. In the case of slaves and chattels, if possession is taken of the slaves no title is thereby acquired to the chattels,[8] and similarly by taking possession of the chattels no title is acquired to the slaves. But [elsewhere] it has been taught: 'If possession is taken of the slaves the title is thereby acquired to the chattels.'[9] Now, is not this problem the point at issue: the latter Baraitha[9] maintains that slaves are considered realty [in the eye of the law], whereas the former Baraitha[10] is of the opinion that slaves are considered personalty? — R. Ika the son of R. Ammi, however, said: [Generally speaking] all [authorities] agree that slaves are considered realty. The [latter] Baraitha stating that the transfer [of the chattels] is effective, is certainly in agreement; the [former] Baraitha stating that the transfer [of the chattels] is ineffective, may maintain that the realty we require is such as shall resemble the fortified cities of Judah in being immovable. For we have learnt: 'Property which is not realty may be acquired incidentally with property which is realty[11] through the medium of either [purchase] money, bill of sale or taking possession.' [And it has been asked:][12] What is the authority for this ruling? And Hezekiah thereupon said: Scripture states, *And their father gave them great gifts of silver and of gold and of precious things with fortified cities in Judah*.[13] [Alternatively] there are some who report: R. Ika the son of

R. Ammi said: [Generally speaking] all [authorities] agree that slaves are considered personalty. The [former] Baraitha stating that the transfer [of the chattels] is ineffective is certainly in agreement; the [latter] Baraitha stating that the transfer of the chattels is effective deals with the case when the chattels [sold] were worn by the slave.[14] But even if they were worn by him, what does it matter? He is but property[15] in motion, and property in motion cannot be the means of conveying anything it carries. Moreover, even if you argue that the slave was then stationary, did not Raba say that whatsoever cannot be the means of conveying while in motion cannot be the means of conveying even while in the state of standing or sitting?[16] — This law applies to the case where the slave was put in stocks. But behold has it not been taught: 'If possession is taken of the land, title is thereby acquired also to the slaves'?[17] — There the slaves were gathered on the land.[18] This implies that the Baraitha which stated that the transfer of the slaves is ineffective,[19] deals with a case where the slaves were not gathered on the land. That is all very well according to the version that R. Ika the son of R. Ammi said that slaves are considered personalty; there is thus the stipulation that if they were gathered on the land, the transfer is effective, otherwise ineffective. But according to the version which reads that slaves are considered realty, why the stipulation that the slaves be gathered on the land?

1. Generally referring to R. Adda b. Minyomi; Sanh. 17b.
2. As he considered them to have acted against established law, and so ultra vires; cf *infra* pp. 584ff. and Sanh. 33a.
3. I.e., R. Nahman to Raba.
4. [G] i.e., an official declaration made in court by a lender to the effect that the law of limitation by the Sabbatical year shall not apply to the loans contracted by him; cf. Sheb. X. 4 and Git. 36a. V. Glos.
5. As realty even when sold by the debtor could be distrained on in the hands of the purchasers; cf. Git. 37a.
6. As these are considered personalty. They cannot therefore be distrained on in the hands of heirs.
7. I.e., the acquisition of land confers title to chattels bought at the same time. Kid. 26a; v. *infra*, p. 49.
8. Slaves seem thus to be not realty.
9. In this Baraitha slaves are treated like realty.
10. Stating that by taking possession of slaves no title is acquired to chattels.
11. Lit., 'property which affords no surety may be acquired along with property which does afford surety' (to creditors in case of non-payment of debts); Kid 26a.
12. Kid. 26a.
13. II Chron. XXI, 3: *with* [H] is taken in the sense *by means of*.
14. They are therefore part and parcel of the slave.
15. Lit., a courtyard.
16. Git. 21a, 68a; B.M. 9b.
17. Apparently on account of the fact that these are treated like personalty.
18. In which case even if they are not personalty their transfer has to he valid.
19. When only incidental to the transfer of land.

Baba Kamma 12b

Did not Samuel say that if ten fields in ten different countries are sold, as soon as possession is taken of one of them, the transfer of all of them becomes effective?[1] — But even if your reasoning be followed [that it is in accordance with the version reading that slaves are considered personalty], why again the stipulation that the slaves be gathered on the land? Has it not been established that the personalty' need not be gathered on the land? You can therefore only say that there is a distinction in law between movable personalty[2] and immovable personalty. Likewise here also [we say] there is a distinction in law between movable realty[3] and immovable realty: slaves [if realty] are movable realty whereas there [in the case of the ten fields] land is but one block.

THE [DAMAGED] PROPERTY MUST BE OF A KIND TO WHICH THE LAW OF SACRILEGE HAS NO APPLICATION, etc. So long as [the penalty of] Sacrilege does not apply. Who is the Tanna [of this view]? — R.

Johanan said: This is so in the case of minor sacrifices according to R. Jose the Galilean, who considers them to be private property; for it has been taught: *If a soul sin and commit a trespass against the Lord and lie unto his neighbour*[4]… this indicates also minor sacrifices,[5] as these are considered private property;[6] so R. Jose the Galilean. But, behold, we have learnt: If one betroths [a woman] by means of the priestly portion, whether of major sacrifices or of minor sacrifices, the betrothal is not valid.[7] Are we to say that this Mishnah is not in accordance with R. Jose the Galilean?[8] — You may even reconcile it with R. Jose the Galilean; for R. Jose the Galilean confines his remark to sacrifices that are still alive, whereas, in the case of sacrifices that have already been slaughtered, even R. Jose the Galilean agrees that those who are entitled to partake of the flesh acquire this right as guests at the divine table.[9] But so long as the sacrifice is still alive, does he really maintain that it is private property? Behold, we have learnt: A firstling, if unblemished, may be sold only while alive; but if blemished [it may be sold] both while alive and when slaughtered. It may similarly be used for the betrothal of a woman.[10] And R. Nahman said on behalf of Rabbah b. Abbuha:[11] This is so only in the case of a firstling at the present time,[12] in which, on account of the fact that it is not destined to be sacrificed, the priests possess a proprietary right; but at the time when the Temple still existed, when it would have been destined to be sacrificed, the law would not have been so.[13] And Raba asked R. Nahman: [Was it not taught:] *If a soul sin and commit a trespass against the Lord and lie unto his neighbor…*[14] this indicates also minor sacrifices, as these are considered private property;[15] this is the view of R. Jose the Galilean? And Rabina replied that the latter case[16] deals with firstlings from outside [Palestine] and is in accordance with R. Simeon, who maintains that if they were brought [to Palestine] in an unblemished condition, they will be sacrificed.[17] Now this is so only if they were brought [to Palestine, which implies that] there is no necessity to bring them there in the first instance for that specific purpose.[18] Now, if it is the fact that R. Jose the Galilean considers them private property while alive,

1. Kid. 27a.
2. That is to he acquired along with realty; v. Kid. 27a.
3. Which needs to be gathered on the land.
4. Lev. V, 21.
5. E.g., peace offerings, as these belong partly to the Lord and partly to the neighbor; some parts thereof are burnt on the altar but the flesh is consumed by the original owners.
6. Pes. 90a.
7. Kid. 52b.
8. For according to him the flesh is private property and alienable,
9. I.e., as merely invited without having in them any proprietary rights.
10. M.Sh. I, 2.
11. Tem. 7b.
12. When no sacrifices are offered.
13. The priests would not have had in it a proprietary right nor have been able to use it for the betrothal of a woman.
14. Lev, V, 21.
15. Even in Temple times, since the text requires the offender to bring a trespass offering.
16. Where they are considered private property.
17. Tem. III. 5.
18. And since they need not be brought and sacrificed they are considered the private property of the priests as stated by R. Jose the Galilean.

Baba Kamma 13a

why [did Rabina] not reply that the one[1] is in accordance with R. Jose the Galilean, and the other[2] in accordance with the Rabbis?[3] — It was said in answer: How can you refer to priestly gifts? Priestly gifts are altogether different[4] as those who are entitled to them enjoy that privilege as guests at the divine table.[5]

[To refer to] the main text: *If a soul sin and commit a trespass against the Lord and lie unto his neighbour*:[6] this indicates also minor sacrifices; this is the view of R. Jose the Galilean. Ben 'Azzai says that it indicates [also] peace-offerings. Abba Jose b. Dostai

said that Ben 'Azzai meant to include only the firstling.

The Master said:[6] 'Ben Azzai says that it indicates [also] peace-offerings.' What does he mean to exclude? It can hardly be the firstling, for if in the case of peace-offerings which are subject to the laws of leaning,[7] libations[8] and the waving of the breast and shoulder,[9] you maintain that they are private property, what question could there be about the firstling?[10] — R. Johanan therefore said: He meant to exclude the tithe,[11] as taught: In the case of the firstling, it is stated, Thou shalt not redeem;[12] it may, however, if unblemished be sold while alive, and if blemished [it may be sold] alive or slaughtered; in the case of the tithe it is stated, It shall not be redeemed,[13] and it can be sold neither alive nor slaughtered neither when unblemished nor when blemished.[14] Rabina connected all the above discussion with the concluding clause: 'Abba Jose b. Dostai said that Ben 'Azzai meant to include only the firstling.' What does he mean to exclude? It can hardly be peace-offerings, for if the firstling which is holy from the very moment it opens the matrix,[15] is private property, what question could there be about peace-offerings?[16] — R. Johanan therefore said: He meant to exclude the tithe, as taught:[17] In regard to the firstling it is stated, Thou shalt not redeem;[18] it may, however, if unblemished be sold while alive and if blemished [it may be sold] alive or slaughtered; in regard to the tithe it is stated, It shall not be redeemed,[19] and it can be sold neither while alive nor when slaughtered, neither when unblemished nor blemished. But does he not say, 'The firstling alone'?[20] This is a difficulty indeed!

Raba [on the other hand] said: What is meant by 'THE [DAMAGED] PROPERTY MUST BE OF A KIND TO WHICH THE LAW OF SACRILEGE HAS NO APPLICATION' is that the property is not of a class to which the law of sacrilege may have any reference[21] but is such as is owned privately. But why does not the text say. 'Private property'? — This is a difficulty indeed!

R. Abba said: In the case of peace-offerings that did damage,[22] payment will be made[23] out of their flesh but no payment could be made out of their emurim.[24] Is it not obvious that the emurim will go up [and be burnt] on the altar? — No; we require to be told that no payment will be made out of the flesh for the proportion due from the emurim. But according to whose authority is this ruling made? If according to the Rabbis,[25] is this not obvious? Do they not maintain that when payment cannot be recovered from one party, it is not requisite to make it up from the other party? If according to R. Nathan,[26] [it is certainly otherwise] for did he not say that when no payment can be made from one party, it has to be made up from the other party? — If you wish, you may say: The ruling was made in accordance with R. Nathan; or, if you wish, you may say that it was made in accordance with the Rabbis. You may say that it was made in accordance with the Rabbis, for their ruling is confined to a case where the damage was done by two separate agencies,[27] whereas, in the case of one agency,[28] the plaintiff may be justified in demanding payment from whatever source he finds it convenient. Alternatively you may say that the ruling was made in accordance with R. Nathan, for it is only there [in the case of an ox pushing another's ox in a pit] that the owner of the damaged ox is entitled to say to the owner of the pit, 'I have found my ox in your pit; whatever is not paid to me by your co-defendant must be made up by you;'

1. Maintaining that a firstling is the private property of the priest.
2. I.e., the statement of R. Nahman that a firstling is not the private property of the priest.
3. The opponents of R. Jose the Galilean.
4. Even R. Jose regards them in no case as the property of the priest; all the Rabbis including R. Jose are thus unanimous on this matter. Hence Rabina was unable to explain the one Baraitha in accordance with R. Jose and the other in accordance with the Rabbis.

5. Even while the firstling is still alive.
6. Lev. V, 21.
7. Ibid. III, 2.
8. Num. XV, 8-II.
9. Lev. VII, 30-34.
10. The sacredness of which is of a lower degree and is not subject to all these rites. Consequently it should thus certainly be considered private property. It, of course, deals with a firstling outside Palestine which is not destined to he sacrificed.
11. Of cattle dealt with in Lev. XXVII, 32-33.
12. Num. XVIII, 17, the text is taken not to include alienation, in which case the sanctity of the firstling is not affected.
13. Lev XXVII, 33; in this case, on account of *Gezerah Shawah*. i.e. a similarity of phrases between ibid. and verse 28, the right of alienation is included; cf, Bek. 32a.
14. Tem. 8a. Because it is not private property.
15. Ex. XIII, 12.
16. That they should certainly be private property.
17. Tem. 8a.
18. Num. XVIII, 17.
19. Lev. XXVII, 33.
20. Excluding thus everything else, even peace-offerings.
21. I.e. is not holy at all.
22. While still *Tam*, when the payment must be made out of the body of the doer of the damage, v. *infra* p. 73.
23. According to R. Jose the Galilean who maintains, *supra* p. 50, that minor sacrifices are considered private property.
24. The part which has to he burnt on the altar; cf. Lev. III, 3-4.
25. *Infra* 53a. where in the case of an ox pushing somebody else's animal into a pit, the owner of the pit pays nothing, though the owner of the ox does not pay full damages.
26. Who makes the owner of the pit also pay.
27. I.e., the ox and the pit, v. p. 53. n. 12.
28. Such as in the case of peace-offerings dealt with by R. Abba.

Baba Kamma 13b

but in the case in hand, could the plaintiff say, 'The flesh did the damage and the emurim did no damage'?[1]

Raba said: In the case of a thanksgiving-offering that did damage,[2] payment will be made[3] out of the flesh but no payment could be made out of its bread.[4] 'Bread'! Is this not obvious?[5] — He wanted to lead up to the concluding clause: The plaintiff partakes of the flesh,[6] while he, for whose atonement the offering is dedicated,[7] has to bring the bread. Is not this also obvious? — You might have thought that since the bread is but an accessory to the sacrifice,[4] the defendant may be entitled to say to the plaintiff. 'If you will partake of the flesh, why should I bring the bread?' It is therefore made known to us [that this is not the case, but] that the bread is an obligation upon the original owner of the sacrifice.

THE [DAMAGED] PROPERTY SHOULD BELONG TO PERSONS WHO ARE UNDER [THE JURISDICTION OF] THE LAW. What [person] is thereby meant to be excepted? If a heathen,[8] is not this explicitly stated further on: 'An ox of an Israelite that gored an ox of a heathen is not subject to the general law of liability for damage'?[9] — That which has first been taught by implication is subsequently explained explicitly.

THE PROPERTY SHOULD BE OWNED. What is thereby excepted? — Rab Judah said: It excepts the case [of alternative defendants] when the one pleads. 'It was your ox that did the damage,' and the other pleads. 'It was your ox that did the damage.' But is not this explicitly stated further on: If two oxen pursue another ox, and one of the defendants pleads. 'It was your ox that did the damage,' and the other defendant pleads, 'It was your ox that did the damage,' no liability could be attached to either of them?[10] — What is first taught by implication is subsequently explained explicitly. In a Baraitha it has been taught: The exception refers to ownerless property.[11] But in what circumstances? It can hardly be where an owned ox gored an ownerless ox, for who is there to institute an action? If on the other hand an ownerless ox gored an owned ox, why not go and take possession of the ownerless doer of the damage? — Somebody else has meanwhile stepped in and already acquired title to it.[12] Rabina said: It excepts an ox which gored and subsequently became consecrated or an ox which gored

and afterwards became ownerless.[12] It has also been taught thus: Moreover said R. Judah:[13] Even if after having gored, the ox was consecrated by the owner, or after having gored it was declared by him ownerless, he is exempt, as it is said, And it hath been testified to his owner and he hath not kept it in, but it hath killed a man or a woman; the ox shall be stoned.[14] That is so only where conditions are the same at the time of both the manslaughter and the appearance before the Court.[15] Does not the final verdict also need to comply with this same condition? Surely the very verse, The ox shall be stoned, circumscribes also the final verdict! — Read therefore: That is so only when conditions are the same at the time of the manslaughter and the appearance before the Court and the final verdict.[15]

WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT: Because he may argue against the plaintiff, 'What was your ox doing on my premises?' OR PREMISES OWNED [JOINTLY] BY PLAINTIFF AND DEFENDANT. R. Hisda said on behalf of Abimi: [Where damage is done] in jointly owned courts, there is liability for Tooth and Foot,[16] and the [Mishnah] text is to be read thus: WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT, where there is exemption. but in the case of PREMISES OWNED [JOINTLY] BY PLAINTIFF AND DEFENDANT, WHENEVER DAMAGE HAS OCCURRED,[17] THE OFFENDER IS LIABLE. R. Eleazar [on the other hand] said: There is no liability there for Tooth and Foot,[16] and the text is to be understood thus: WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT OR [OF] PREMISES OWNED [JOINTLY] BY PLAINTIFF AND DEFENDANT, where there is also exemption. But WHENEVER DAMAGE HAS OCCURRED [otherwise] THE OFFENDER IS LIABLE, etc. introduces Horn.[18] This would be in conformity with Samuel,[19] but according to Rab, who affirmed that ox in the Mishnaic text was intended to include all kinds of damage done by ox,[20] what was meant to be introduced by the clause, THE OFFENDER IS LIABLE? — To introduce that which our Rabbis have taught: WHENEVER DAMAGE HAS OCCURRED THE OFFENDER IS LIABLE introduces liability in the case of a paid bailee and a borrower, an unpaid bailee and a hirer, where the animal in their charge did damage, *Tam* paying half-damages and *Mu'ad* paying full damages. If, however, a wall[21] broke open at night, or robbers took it by force and it went out and did damage, there is exemption.

The Master said: 'WHENEVER DAMAGE HAS OCCURRED, THE OFFENDER IS LIABLE introduces liability in the case of an unpaid bailee and a borrower, a paid bailee and a hirer'. Under what circumstances? If the ox of the lender damaged the ox of the borrower, why should not the former say to the latter: 'If my ox had damaged somebody else's, you would surely have had to compensate;[22] now that my ox has damaged your own ox, how can you claim compensation from me?' Again, if the ox of the borrower damaged the ox of the lender, why should not the latter say to the former: 'If my ox had been damaged by somebody else's, you would surely have had to compensate me for the full value of the ox,[23] now that the damage resulted from your ox, how can you offer me half damages?[24] — It must therefore still be that the ox of the lender damaged the ox of the borrower, but we deal with a case where he [the borrower] has taken upon himself responsibility for the safety of the ox

1. Hence the flesh need not pay for the emurim.
2. While still *Tam*, in which case the payment must he made out of the body of the damage-doer, as *infra* p. 73.
3. In accordance with R. Jose the Galilean that minor sacrifices are private property.
4. I.e., accompanying the offering, cf. Lev. VII, 12-13.
5. That the bread need not pay, since the bread did not do any damage.
6. After the offering of the sacrifice.
7. I.e., (as a rule) the defendant.

8. Who does not recognize the covenant of Law, and who does not consider himself bound to control his own cattle from doing damage to others.
9. V. *infra* p. 211 and note 6.
10. V. *infra* 35a. 'Owned' thus means 'known to belong to a particular defendant.'
11. Tosef. B.K. I, 1.
12. In which case the plaintiff will recover nothing.
13. *Infra* p. 254.
14. Ex. XXI, 29.
15. I.e., where the ox is privately owned all through.
16. For which there is no liability in a public thoroughfare; cf. *supra* p. 17.
17. Even by Tooth and Foot.
18. For which there is liability even in a public thoroughfare
19. Who maintains, *supra* pp. 9-11, that *Mab'eh* in the Mishnaic text denotes Tooth, and Ox signifies Foot, whereas Horn has not been dealt with explicitly.
20. *Supra* p. 10; so that Horn has already been dealt with in the first Mishnah.
21. Of a sound structure, cf. *infra* 55b-56a
22. The borrower being responsible for the damage done by the ox whilst under his charge. V. *infra* 44b
23. As laid down in Ex. XXII. 13.
24. I.e., in the case of the borrower's ox having been *Tam*.

Baba Kamma 14a

but not responsibility for any damage [that it may do].[1] If so, explain the concluding clause: 'If a wall broke open at night, or if robbers took it by force and it went out and did damage, there is exemption.' From this it may surely be inferred that [if this had happened] in the daytime, the borrower would have been liable. Why so, if he did not take upon himself responsibility for any damage [that it may do]? — The meaning must be as follows: [But] if he has taken upon himself responsibility for damage [that it may do], he would be liable to compensate, yet, if a wall broke open at night, or if robbers took it by force and it went out and did damage there is exemption [in such a case].

Is it really so?[2] Did not R. Joseph learn: In the case of jointly owned premises or an inn, there is liability for Tooth and for Foot? Is not this a refutation of R. Eleazar? — R. Eleazar may answer you as follows: Do you really think so? Are Baraithas not divided [in their opinions] on the matter?[3] For it was taught:[4] 'Four general rules were stated by R. Simeon b. Eleazar to apply to the laws of torts: [In the case of damage done in] premises owned by the plaintiff and not at all by the defendant, there is liability in all; if owned by the defendant and not at all by the plaintiff, there is total exemption; but if owned by the one and the other, e.g., jointly owned premises or a valley, there is exemption for Tooth and for Foot, whereas for goring, pushing, biting, falling down, and kicking, *Tam* pays half-damages and *Mu'ad* pays full damages; if not owned by the one and the other, e.g., premises not belonging to them both, there is liability for Tooth and for Foot, whereas for goring, pushing, biting, falling down, and kicking, *Tam* pays half-damages and *Mu'ad* pays full damages.' It has thus been taught here that in the case of jointly owned premises or a valley there is exemption for Tooth and Foot.[5]

Do then the two Baraithas contradict each other? — The latter Baraitha speaks of a case where the premises were set aside by the one and the other[6] for the purposes of both keeping fruits and keeping cattle in, whereas that of R. Joseph deals with premises set aside for keeping fruits in but not cattle, in which case so far as Tooth is concerned the premises are in practice the plaintiff's ground.[7] In fact the context points to the same effect. In the Baraitha here[8] the jointly owned premises are put on the same footing as an inn whereas in the Baraitha there[9] they are put on the same footing as a valley. This is indeed proved. R. Zera, however, demurred: In the case of premises which are set aside for the purpose of keeping fruits [of the one and the other].[10] how shall we comply with the requirement, and it feed in another man's field,[11] which is lacking in this case? — Abaye said to him: Since the premises are not set aside for keeping cattle in, they may well be termed 'another man's field.'[12]

R. Aha of Difti[13] said to Rabina: May we say that just as the Baraithas[14] are not divided on the matter so also are the Amoraim[15] not divided on the subject?[16] He answered him: Indeed, it is so; if, however, you think that they are divided [in their views].[17] the objection of R. Zera and the answer of Abaye form the point at issue.[18]

[To revert] to the above text: 'Four general rules were stated by R. Simeon b. Eleazar to apply to the laws of torts: [Where damage is done in] premises owned by the plaintiff, and not at all by the defendant, there is liability in all.' It is not stated 'for all'[19] but 'in all', i.e., in the whole of the damage; is it not in accordance with R. Tarfon who maintains that the unusual damage occasioned by Horn in the plaintiff's premises will be compensated in full.[20] Read, however, the concluding clause: 'If not owned by the one and the other, e.g., premises not belonging to them both, there is liability for Tooth and for Foot.' Now, what is the meaning of 'not owned by the one and the other'? It could hardly mean 'owned neither by the one nor by the other, but by somebody else,' for have we not to comply with the requirement, and it feed in another man's field,[21] which is lacking in this case? It means therefore, of course, not owned by them both, but exclusively by the plaintiff,' and yet it is stated in the concluding clause, 'Tam pays half-damages and *Mu'ad* pays full damages,' which follows the view of the Rabbis who maintain that the unusual damage occasioned by Horn in the plaintiff's premises will still be compensated only by half-damages.[22] Will the commencing clause be according to R. Tarfon and the concluding clause according to the Rabbis? — Yes, even as Samuel said to Rab Judah: Shinena,[23] leave this Baraitha alone,[24] and follow my view that the commencement of the Baraitha is according to R. Tarfon and its conclusion according to the Rabbis. Rabina, however, said in the name of Raba: The whole Baraitha is according to R. Tarfon; what is meant by 'not owned by the one and the other' is that the right of keeping fruits there is owned not by both, the one and the other, but exclusively by the plaintiff, whereas the right of keeping cattle there is owned by both, the one and the other. In the case of Tooth the premises are in practice the plaintiff's ground,[25] whereas in the case of Horn they are jointly owned ground.[26] If so, how are the rules four in number?[27] Are they not only three? — R. Nahman b. Isaac replied:

1. In which case the lender still remains liable for any damage his ox may do.
2. That R. Eleazar exempts Tooth and Foot doing damage in jointly owned premises.
3. And my view is supported by one of them.
4. Tosef. B.K. I, 6.
5. Thus fully supporting the view of R. Eleazar and contradicting the teaching of R. Joseph's Baraitha.
6. I.e., by both plaintiff and defendant.
7. For the defendant had no right to allow his cattle to be there, and is therefore liable for Tooth, etc.
8. I.e., of R. Joseph.
9. Recording the view of R. Simeon b. Eleazar.
10. I.e., by both plaintiff and defendant.
11. Ex. XXII, 4; implying that the field should belong exclusively to the plaintiff.
12. For the defendant had no right to allow his cattle to be there, and is therefore liable for Tooth, etc.
13. [Identified with Dibtha near the famous city of Washit on the Tigris, Obermeyer, *op. cit*. p. 197].
14. I.e., that of R. Joseph and that of R. Simeon b. Eleazar.
15. R. Hisda and R. Eleazar.
16. R. Hisda deals with a case where the keeping of cattle has not been permitted, while R. Eleazar deals with the case when the premises have been set aside for that also.
17. When the premises have been set aside not for cattle, but for the keeping of fruit.
18. R. Hisda is of Abaye's opinion. whereas R. Eleazar prefers R. Zera's reasoning.
19. Which would mean for all kinds of damage.
20. Cf. *infra* 24b.
21. Ex. XXII, 4, indicating that the field has to belong to the plaintiff.
22. Cf. *infra* 24b.
23. [Lit., (i) 'sharp one', i.e., scholar with keen and sharp mind; (ii) 'long-toothed', denoting a facial characteristic; (iii) 'translator', Rab Judah being so called on account of his frequent translation of Mishnaic terms into the vernacular Aramaic, Golomb, D. Targumno I, Introduction, XLVff.]

24. [Give up your attempt to harmonize the two contradictory clauses.]
25. As the right to keep fruits there is exclusively the plaintiff's.
26. For they both may keep cattle there.
27. Since in principle they are only three in number: (a) exclusively the plaintiff's premises. (b) exclusively the defendant's, and (c) partnership premises.

Baba Kamma 14b

The rules are three in number, but the places to which they apply may be divided into four.[1]

***MISHNAH*. THE VALUATION [IS MADE] IN MONEY [BUT MAY BE PAID] BY MONEY'S WORTH, IN THE PRESENCE OF THE COURT AND ON THE EVIDENCE OF WITNESSES WHO ARE FREE MEN AND PERSONS UNDER THE JURISDICTION OF THE LAW. WOMEN ARE ALSO SUBJECT TO THE LAW OF TORTS. [BOTH] THE PLAINTIFF AND DEFENDANT ARE INVOLVED IN THE PAYMENT.**

***GEMARA*. What is the meaning of THE VALUATION IN MONEY? Rab Judah said: This valuation must be made only in specie. We thus learn here that which has been taught by our Rabbis elsewhere:[2] In the case of a cow damaging a garment while the garment also damaged the cow, it should not be said that the damage done by the cow is to be set off against the damage done to the garment and the damage done to the garment against the damage done to the cow, the respective damages have to be estimated at a money value.**

BY MONEY'S WORTH. [This is explained by what] our Rabbis taught [elsewhere]:[2] 'MONEY'S WORTH' implies that the Court will not have recourse for distraint save to immovable property. Nevertheless if the plaintiff himself seized some chattels beforehand, the Court will collect payment for him out of them.

The Master stated: "'MONEY'S WORTH" implies that the Court will not have recourse for distraint save to immovable property. How is this implied? Rabbah b. 'Ulla said: The article of distress has to be worth all that is paid for it [in money].[3] What does this mean? An article which is not subject to the law of deception?[4] Are not slaves and deeds also not subject to the law of deception?[4] — Rabbah b. 'Ulla therefore said: An article, title to which is acquired by means of money.[5] Are not slaves[6] and deeds[7] similarly acquired by means of money.[6] R. Ashi therefore said: 'Money's worth' implies that which has money's worth,[8] whereas chattels are considered actual money.[9]

Rab Judah b. Hinena pointed out the following contradiction to R. Huna the son of R. Joshua: It has been taught: 'MONEY'S FORTH implies that the Court will not have recourse for distraint save to immovable property; behold, was it not taught: He shall return[10] includes 'money's worth', even bran?[11] — [In the former Baraitha] we are dealing with a case of heirs.[12] If we are dealing with heirs read the concluding clause: 'If the plaintiff himself seized some chattels beforehand, the Court will collect payment for him out of them.' Now, if we are dealing with heirs, how may the Court collect payment for him out of them? — As already elsewhere[13] stated by Raba on behalf of R. Nahman, that the plaintiff seized [the chattels] while the original defendant was still alive, so here too, the seizure took place while the defendant was still alive.

IN THE PRESENCE OF THE COURT,[14] [apparently] exempts a case where the defendant sold his possessions before having been summoned to Court. May it hence be derived that in the case of one who borrowed money and sold his possessions before having been summoned to Court, the Court does not collect the debt out of the estate which has been disposed of?[15] — The text therefore excepts a Court of laymen.[16]

ON THE EVIDENCE OF WITNESSES, thus excepting a confession of [an act punishable by] a fine for which subsequently there appeared witnesses, in which case there is exemption. That would accord with the view that in the case of a confession of [an act punishable by] a fine, for which subsequently there appeared witnesses, there is exemption;[17] but according to the opposite view that in the case of a confession of [an act punishable by] a fine for which subsequently appeared witnesses, there is liability,[17] what may be said [to be the import of the text]? — The important point comes in the concluding clause:

1. [I.e.. partnership premises may he subdivided into two: (a) where both have the right to keep fruit, as well as cattle; (b) where the right to keep fruit is exclusively the plaintiff's.]
2. Tosef. B.K., I.
3. 'Money's worth' would thus mean 'property which could not be said to be worth less than the price paid for it,' and is thus never subject to the law of deception. This holds good with immovable property; cf. B.M. 56a.
4. Cf. B.M. ibid.
5. Kid. 26a.
6. Cf. Kid. 23b.
7. [Tosaf. deletes 'deeds' as these are not acquired by money but by *Mesirah* (v. Glos.). cf. B.B. 76a.]
8. I.e., immovable property.
9. As these could easily be converted into money, v. *supra* p. 26.
10. Ex. XXI, 34.
11. *Supra* p. 24.
12. Who have to pay only out of the realty of the estate but not out of the personalty; cf. *supra* p. 31.
13. Keth. 84b.
14. Is taken to mean 'the payment in kind is made out of the possessions which are in the presence of the Court', i.e., not disposed of.
15. Whereas the law is definitely otherwise as in B.B. X, 8.
16. IN THE PRESENCE OF THE COURT does not refer to payment in kind but to the valuation which has to be made by qualified judges, v. *infra* 84b.
17. *Infra* p. 429.

Baba Kamma 15a

FREE MEN AND PERSONS UNDER THE JURISDICTION OF THE LAW. 'FREE MAN' excludes slaves;[1] 'PERSONS UNDER THE JURISDICTION OF THE LAW'[2] excludes heathens. Moreover, it was essential to exclude each of them. For if the exemption had been stated only in reference to a slave, we would have thought it was on account of his lack of [legal] pedigree[3] whereas a heathen who possesses a [legal] pedigree[4] might perhaps have been thought not to have been excluded. Had, on the other hand, the exemption been referred only to a heathen, we should have thought it was on account of his not being subject to the commandments [of the Law], whereas a slave who is subject to the commandments[5] might have been thought not to have been excluded. It was thus essential to exclude each of them independently.

WOMEN ARE ALSO SUBJECT TO THE LAW OF TORTS. Whence is derived this ruling? — Rab Judah said on behalf of Rab, and so was it also taught at the school of R. Ishmael:[6] Scripture states, *When a man or woman shall commit any sin*.[7] Scripture has thus made woman and man equal regarding all the penalties of the Law. In the School of Eleazar it was taught: Now these are the ordinances which thou shalt set before them.[8] Scripture has thus made woman and man equal regarding all the judgments of the Law. The School of Hezekiah and Jose the Galilean taught: Scripture says. It hath killed a man or a woman.[9] Scripture has thus made woman and man equal regarding all the laws of manslaughter in the Torah. Moreover, [all the quotations] are necessary: Had only the first inference[10] been drawn, [I might have said that] the Divine Law exercised mercy towards her so that she should also have the advantage of atonement, whereas judgments which concern as a rule man who is engaged in business, should not include woman. Again, were only the inference regarding judgments to have been made, we might perhaps have said that woman should also

not be deprived of a livelihood, whereas the law of atonement should be confined to man, as it is he who is subject to all commandments, but should not include woman, since she is not subject to all the commandments.[11] Moreover, were even these two inferences to have been available, [we might have said that] the one is on account of atonement and the other on account of livelihood, whereas regarding manslaughter [it might have been thought that] it is only in the case of man, who is subject to all commandments, that compensation for the loss of life must be made, but this should not be the case with woman. Again, were the inference only made in the case of compensation for manslaughter, [it might have been thought to apply] only where there is loss of human life, whereas in the other two cases, where no loss of human life is involved, I might have said that man and woman are not on the same footing. The independent inferences were thus essential.

THE PLAINTIFF AND DEFENDANT ARE INVOLVED IN THE PAYMENT.

It has been stated:[12] The liability of half-damages[13] is said by R. Papa to be civil, whereas R. Huna the son of R. Joshua considers it to be penal.[14] R. Papa said that it is civil, for he maintains that average cattle cannot control themselves not to gore.[15] Strict justice should therefore demand full payment [in case of damage].[16] It was only Divine Law that exercised mercy [and released half payment] on account of the fact that the cattle have not yet become *Mu'ad*. R. Huna the son of R. Joshua who said that it is penal, on the other hand maintains that average cattle can control themselves not to gore.[17] Justice should really require no payment at all.[18] It was Divine Law that imposed [upon the owner] a fine [in case of damage] so that additional care should be taken of cattle.

We have learnt: THE PLAINTIFF AND THE DEFENDANT ARE INVOLVED IN PAYMENT. That is all very well according to the opinion which maintains that the liability of half-damages is civil. The plaintiff [who receives only half his due] is thus indeed involved in the payment. But according to the opinion that the liability of half-damages is penal, in which case the plaintiff is given that which is really not his due, how is he involved in the payment? — This may apply to the loss caused by a decrease in the value of the carcass [which is sustained by the plaintiff].[19] 'A decrease in the value of the carcass'! Has not this ruling been laid down in a previous Mishnah: 'To compensate for the damage'[20] implying that the owners [plaintiffs] have to retain the carcass as part payment?[21] — One Mishnah gives the law in the case of *Tam* whereas the other deals with *Mu'ad*. Moreover these independent indications[22] are of importance: For were the ruling laid down only in the case of *Tam*, it might have been accounted for by the fact that the animal has not yet become *Mu'ad*, whereas in the case of *Mu'ad* I might have thought that the law is different; if on the other hand the ruling had been laid down only in the case of *Mu'ad*, it might have been explained as due to the fact that the damage is compensated in full, whereas in the case of *Tam* I might have thought that the law is otherwise. The independent indications were thus essential.

Come and hear: What is the difference [in law] between *Tam* and *Mu'ad*? In the case of *Tam*, half-damages are paid, and only out of the body [of the tort-feasant cattle], whereas in the case of *Mu'ad* full payment is made out of the best of the estate.[23] Now, if it is so [that the liability of half-damages is penal] why not mention also the following distinction, 'That in the case of *Tam* no liability is created by mere admission,[24] while in the case of *Mu'ad* liability is established also by mere admission'? — This Mishnah stated [some points] and omitted [others]. But what else did it omit that the omission of that particular point should be justified?[25] — It also omitted the payment of half-*kofer* [for manslaughter].[26] The absence of half-*kofer* [for manslaughter], however, is no omission, as the Mishnah may be in accordance with R.

Jose the Galilean who maintains that *Tam* is not immune from half-liability for *kofer* [for manslaughter].[27]

Come and hear:

1. From giving evidence,
2. V. *supra* p. 36. n. 3.
3. As his issue were considered the property of the owner, there being no parental relationship between him and them; cf. *infra* p. 508.
4. Of free descent; cf. Yeb. 62a.
5. Applicable to females; v. Hag. 4a.
6. Cf. Kid. 35a.
7. Num. V, 6. This quotation deals with certain laws of atonement.
8. Ex. XXI. I.
9. Ibid. XXI, 29.
10. Dealing with atonement.
11. Positive precepts prescribed for a definite time or certain periods do not as a rule apply to females; cf. Kid. 29a.
12. Keth. 41a.
13. Paid for damage done by (Horn of) *Tam*
14. [H] *Kenas*, v. Glos.
15. Lit. 'are not presumed to he safe'.
16. As it was the effect of carelessness on the part of the owner.
17. Lit., are presumed to be safe'.
18. Since the owner could not have expected that his cattle would start goring.
19. Who is in this way involved in the payment.
20. *Supra* p. 36.
21. *Supra*, p. 42.
22. That it is the plaintiff who has to sustain any loss occasioned by a decrease in the value of the carcass.
23. Mishnah, *infra* 16b.
24. As penal liabilities are not created by admission; v. *supra* 5a.
25. V. *supra* p. 39, n. I.
26. [While a *Mu'ad* has to pay full compensation (Kofer, v. Glos.) for manslaughter. Ex XXI, 25-30, a *Tam* does not compensate even by half; v. *infra* 41b.]
27. *infra* 26a.

Baba Kamma 15b

'My ox committed manslaughter on A'; or 'killed A's ox' '[in either case] a liability to compensate is established by this admission.[1] Now does this Mishnah not deal with the case of *Tam*?[2] — No, only with *Mu'ad*. But what is the law in the case of *Tam*? Would it really be the fact that no liability is established by admission?[3] If this be the case, why state in the concluding clause, 'My ox killed A's slave,'[4] no liability is created by this admission?[5] Why indeed not indicate the distinction in the very same case by stating: 'the rule that liability is established by mere admission is confined to *Mu'ad*, whereas in the case of *Tam* no liability is created by mere admission'?[6] — The Mishnah all through deals with *Mu'ad*.

Come and hear: This is the general rule: In all cases where the payment is more than the actual damage done, no liability is created by mere admission.[5] Now does this not indicate that in cases where the payment is less than the damage,[7] the liability will be established even by mere admission?[8] — No, this is so only when the payment corresponds exactly to the amount of the damages. But what is the law in a case where the payment is less than the damage? Would it really be the fact that no liability is established by admission? If this be the case, why state: 'This is the general rule: In all cases where the payment is more than the actual damage done, no liability is created by mere admission'?[9] Why not state simply: 'This is the general rule: In all cases where the payment does not correspond exactly to the amount of the damages …' which would [both] imply 'less' and imply 'more'?[10] This is indeed a refutation.[11] Still the law is definite that the liability of half-damages is penal. But if this opinion was refuted, how could it stand as a fixed law? — Yes! The sole basis of the refutation is in the fact that the Mishnaic text[9] does not run '… where the payment does not correspond exactly to the amount of the damages'. This wording would, however, be not altogether accurate, as there is the liability of half-damages in the case of pebbles[12] which is, in accordance with a halachic tradition, held to be civil. On account of this fact the suggested text has not been adopted.

Now that you maintain the liability of half-damages to be penal. the case of a dog

devouring lambs, or a cat devouring hens is an unusual occurrence,[13] and no distress will be executed in Babylon[14] — provided, however, the lambs and hens were big; for if they were small, the occurrence would be usual?[15] Should, however, the plaintiff[16] seize chattels belonging to the defendant, it would not be possible for us to dispossess him of them. So also were the plaintiff to plead 'fix me a definite time for bringing my case to be heard in the Land of Israel,' we would have to fix it for him; were the other party to refuse to obey that order, we should have to excommunicate him. But in any case, we have to excommunicate him until he abates the nuisance, in accordance with the dictum of R. Nathan. For it was taught:[17] R. Nathan says: Whence is it derived that nobody should breed a bad dog in his house, or keep an impaired ladder in his house? [We learn it] from the text, Thou bring not blood upon thine house.[18]

MISHNAH. THERE ARE FIVE CASES OF *TAM* AND FIVE CASES OF *MU'AD*. ANIMAL IS *MU'AD* NEITHER TO GORE, NOR TO COLLIDE, NOR TO BITE, NOR TO FALL DOWN NOR TO KICK.[19] TOOTH, HOWEVER, IS *MU'AD* TO CONSUME WHATEVER IS FIT FOR IT; FOOT IS *MU'AD* TO BREAK [THINGS] IN THE COURSE OF WALKING; OX AFTER BECOMING *MU'AD*; OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES; AND MAN,[20] SO ALSO THE WOLF, THE LION, THE BEAR, THE LEOPARD, THE BARDALIS [PANTHER] AND THE SNAKE ARE *MU'AD*. R. ELEAZAR SAYS: IF THEY HAVE BEEN TAMED, THEY ARE NOT *MU'AD*; THE SNAKE, HOWEVER, IS ALWAYS *MU'AD*.

GEMARA. Considering that it is stated TOOTH IS *MU'AD* TO CONSUME … it must be assumed that we are dealing with a case where the damage has been done on the plaintiff's premises.[21] It is also stated[22] ANIMAL IS *MU'AD* NEITHER TO GORE … meaning that the compensation will not be in full, but only half-damages will be paid, which is in accordance with the Rabbis who say that for the unusual damage done by Horn [even] on the plaintiff's premises only half-damages will be paid.[23] Read now the concluding clause: OX AFTER HAVING BECOME *MU'AD*, OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES, AND MAN, which is in accordance with R. Tarfon who said that for the unusual damage done by Horn on the plaintiff's premises full compensation must be paid.[23] Is the commencing clause according to the Rabbis and the concluding clause according to R. Tarfon? — Yes, since Samuel said to Rab Judah, 'Shinena,[24] leave the Mishnah alone[25] and follow my view: the commencing clause is in accordance with the Rabbis, and the concluding clause is in accordance with R. Tarfon.' R. Eleazar in the name of Rab, however, said:

1. Keth. 41a.
2. And if the liability is created by admission it proves that it is not penal but civil.
3. On account of its being penal.
4. And the fine of thirty *shekels* has to he imposed; v, Ex. XXI, 32.
5. Keth. 41a.
6. Because it is considered penal.
7. Such, e.g., as in the case of *Tam*.
8. This proves that the penalty is not penal but civil, and this refutes R. Huna b. R. Joshua.
9. Keth. 41a.
10. Not to be civil.
11. Of the view maintaining the liability of *Tam* to be penal.
12. Kicked from under an animal's feet and doing damage; cf. *supra* p. 8.
13. Falling thus under the category of Horn; as *supra* p. 4.
14. As penal liabilities could be dealt with only in the Land of Israel where the judges were specially ordained for the purpose; Mumhin, v. Glos. s. v. Mumhe; cf. *infra*. 27b, 84a-b.
15. And would come within the category of Tooth, the payment for which is civil.
16. Even in Babylon.
17. *Infra* 46a and Keth. 41b.
18. Deut. XXII, 8.
19. These are the five cases of *Tam*, v. *supra* p. 3.
20. These are the five cases of *Mu'ad*, v. Glos.
21. For if otherwise there is no liability in the case of Tooth; cf. Ex. XXII, 4, and *supra*, 5b.
22. In the commencing clause of the Mishnah.
23. Cf. *supra* 14a; *infra* 24b.
24. V. *supra* p. 60, n. 2.
25. Cf. *supra* p. 60, n. 3.

Baba Kamma 16a

The whole Mishnah is in accordance with R. Tarfon. The commencing clause deals with premises set aside for the keeping of the plaintiff's fruits whereas both plaintiff and defendant may keep there their cattle. In respect of Tooth the premises are considered [in the eye of the law] the plaintiff's.[1] whereas in respect of Horn they are considered their common premises.[2] R. Kahana said: I repeated this statement in the presence of R. Zebid of Nehardea, and he answered me, 'How can you say that the whole Mishnah is in accordance with R. Tarfon? Has it not been stated TOOTH IS *MU'AD* TO CONSUME WHAT EVER IS FIT FOR IT? That which is fit for it is included,[3] but that which is unfit for it is not included.[4] But did not R. Tarfon say that for the unusual damage done by Horn on the plaintiff's premises full compensation must be paid?' — It must, therefore, still be maintained that the Mishnah is in accordance with the Rabbis, but there are some phrases missing there; the reading should be thus: 'There are five cases of *Tam*,'[5] all the five of them may eventually become *Mu'ad*.[6] Tooth and Foot are however *Mu'ad* ab initio, and their liability is confined to damage done on the plaintiff's premises.'[7] Rabina demurred: We learn later on: What is meant by [the statement] OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES [etc.]?[8] It is all very well if you say that this damage has previously been dealt with;[9] we may then well ask 'What is meant by it?' But if you say that this damage has never been dealt with previously, how could it be asked 'What is meant by it?'[10] — Rabina therefore said: The Mishnah is indeed incomplete, but its meaning is this: 'There are five cases of *Tam*,'[5] all the five of them may eventually become *Mu'ad*[11] — Tooth and Foot are *Mu'ad* ab initio.[12] In this way Ox is definitely *Mu'ad*. As to Ox doing damage on the plaintiff's premises there is a difference of opinion between R. Tarfon and the Rabbis.[13] There are other damage-doers which like these cases are similarly *Mu'ad*, as follows: The wolf, the lion, the bear, the leopard. the panther, and the snake.' This very text has indeed been taught: 'There are five cases of *Tam*; all the five of them may eventually become *Mu'ad*. Tooth and Foot are *Mu'ad* ab initio. In this way Ox is definitely *Mu'ad*. As to Ox doing damage on the plaintiff's premises there is a difference of opinion between R. Tarfon and the Rabbis. There are other damage-doers which like these are similarly *Mu'ad*, as follows: The wolf, the lion, the bear, the leopard, the panther and the snake.'

Some arrived at the same interpretation by having first raised the following objection: We learn THERE ARE FIVE CASES OF *TAM* AND FIVE CASES OF *MU'AD*; are there no further instances?[14] Behold there are the wolf, the lion, the bear, the leopard, the panther and the snake![15] — The reply was: Rabina said: The Mishnah is incomplete and its reading should be as follows: There are five cases of *Tam*; all the five of them may eventually become *Mu'ad* — Tooth and Foot are *Mu'ad* ab initio. In this way Ox is definitely *Mu'ad*. As to Ox doing damage on the plaintiff's premises there is a difference of opinion between R. Tarfon and the Rabbis. There are other damage-doers which like these are similarly *Mu'ad*, as follows: The wolf, the lion, the bear, the leopard, the panther and the snake.

NOR TO FALL DOWN. R. Eleazar said: This is so only when it falls down on large pitchers, but in the case of small pitchers it is a usual occurrence.[16] May we support him [from the following teaching]: 'Animal is *Mu'ad* to walk in the usual manner and to break or crush a human being, or an animal, or utensils'? — This however may mean, through contact sideways.[17] Some read: R. Eleazar said: Do not think that it is only in the case of large pitchers that it is unusual, whereas in the case of small pitchers it is usual. It is not so, for even in the case of small pitchers it is unusual. An objection was brought: '… or crush a human being, or an animal or utensils?'[18] — This[19] may perhaps

mean through contact sideways.[20] Some arrived at the same conclusion by having first raised the following objection: We have learnt: NOR TO FALL DOWN.[18] But was it not taught: '… or crush a human being, or an animal or utensils'?[18] R. Eleazar replied: There is no contradiction: the former statement deals with a case of large pitchers,[21] whereas the latter deals with small pitchers.[22]

THE WOLF, THE LION, THE BEAR, THE LEOPARD AND THE BARDALIS [PANTHER].[23] What is bardalis? — Rab Judah said: nafraza.[24] What is nafraza? — R. Joseph said: apa.[25] An objection was raised: R. Meir adds also the zabu'a.[26] R. Eleazar adds, also the snake.[27] Now R. Joseph said that zabu'a means apa![28] — This, however, is no contradiction, for the latter appellation [zabu'a] refers to the male whereas the former [bardalis] refers to the female,[29] as taught elsewhere: The male zabu'a [hyena] after seven years turns into a bat,[30] the bat after seven years turns into an arpad,[31] the arpad after seven years turns into kimmosh,[32] the kimmosh after seven years turns into a thorn, the thorn after seven years turns into a demon. The spine of a man after seven years turns into a snake,[33] should he not bow[34] while reciting the benediction, 'We give thanks unto Thee'.[35]

The Master said: 'R. Meir adds also the zabu'a;

1. As nobody else had the right to keep there fruits.
2. Since both plaintiff and defendant had the right to keep there their cattle.
3. In the category of Tooth.
4. In the category of Tooth, but being unusual falls under the category of Horn; cf. *supra* 15b; *infra* 16b and 19b.
5. I.e., 'goring', 'colliding', 'biting', 'falling down' and 'kicking'.
6. These constitute the five cases of *Mu'ad*.
7. Cf. Ex. XXII, 4, and *supra*, 5b. ['OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES' refers thus to Tooth and not to Horn.]
8. [With reference to damage done by Horn, *infra*, 24b.]
9. [In Our Mishnah, i.e., the damage of Horn on the plaintiff's premises.]
10. Cf. *infra* 24b.
11. [The first clause of the Mishnah thus enumerates the five cases of *Mu'ad* as well as of *Tam*.]
12. [But are not included in the 'five cases of Mu'ad', the clause being added only in parenthesis.]
13. As *infra* p. 125.
14. Of *Mu'ad*.
15. Which are *Mu'ad* ab initio.
16. And would thus not fall under the category of Horn but under that of Foot; cf, *supra* p. 4.
17. Whereas to fall down upon pitchers may perhaps in all cases be unusual.
18. Is usual.
19. [So MS.M. Cur. edd, insert 'R. Eleazar said this, etc.']
20. V. p. 70. n. 5.
21. Which is unusual.
22. Which is usual.
23. [G]
24. [H] D.S. [H] from [H] 'to run' or 'jump'.
25. [[H] contraction of [H] (hyena)].
26. [Lit., 'the many-colored'. Another term for hyena on account of its colored stripes.]
27. To those which are enumerated in the Mishnah as *Mu'ad ab initio*.
28. If *zabu'a* means *apa*, how could *bardalis*, which is mentioned independently, also mean *apa*.
29. So Rashi's second interpretation; others reverse.
30. The male *zabu'a* is subject to undergo constant and rapid changes in the evolution of its physique, so that on account of these various transformations it has various appellations, such as *bardalis, nafraza* and *apa* [For parallels in ancient Greek and Roman literature for this belief, v. Lewysohn. *Zoologie*, p. 77.]
31. I.e., a species of bat; cf. *Targum* Jonathan Lev, XI, 19, where Heb. [H] is rendered [H].
32. I.e., a species of thorn (Jast.).
33. Which is the symbol of ingratitude.
34. And thus not appreciate the favors of eternal God bestowed upon mortal man. [This is but a quaint way of indicating the depths into which human depravity, which has its source in ingratitude to the Creator, may gradually sink.]
35. Cf. P.B. p. 51.

Baba Kamma 16b

R. Eleazar adds also the snake.' But have we not learned: R. ELEAZAR SAYS, IF THEY HAD BEEN TAMED, THEY ARE NOT *MU'AD*; THE SNAKE, HOWEVER, IS ALWAYS *MU'AD*?[1] — Read 'the snake'.[2]

Samuel said: In the case of a lion on *public* ground seizing and devouring [an animal], there is exemption;[3] but for tearing it to pieces and then devouring it there is liability to pay. In 'seizing and devouring there is exemption' on account of the fact that it is as usual for a lion to seize its prey as it is for an animal to consume fruits and vegetables; it therefore amounts to Tooth on public ground where there is exemption.[3] The 'tearing' [of the prey into pieces] is however not unusual with the lion.[4]

Should it thus be concluded that the tearing of prey is unusual [with the lion]? But behold, it is written: *The lion did tear in pieces enough for his whelps*?[5] — This is usual only when it is for the sake of his whelps. [But the text continues:] *And strangled for his lionesses*?[5] — This again is only when it is for the sake of his lionesses. [But the text further states:] *And filled his holes with prey*?[5] — [This too is usual only when it is done] with the intention of preserving it in his holes. But the text concludes: *And his dens with ravin*?[5] — [This again is only] when the intention is to preserve it in his dens. But was it not taught: 'Similarly in the case of a beast entering the plaintiff's premises, tearing an animal to pieces and consuming its flesh, the payment must be made in full'?[6] — This Baraitha deals with a case where the tearing was for the purpose of preservation. But behold, it is stated: 'consuming [its flesh]'? — It was by an afterthought that the beast consumed [it]. But how could we know that? Again, also in the case of Samuel why not make the same supposition?[7] — R. Nahman b. Isaac therefore said: Alternative cases are dealt with [in the Baraitha]: … If it either tears to pieces for the purpose of preservation, or seizes and devours [it], the payment must he in full.' Rabina, however, said that Samuel dealt with a case of a tame lion, and was following the view of R. Eleazar,[8] that that was unusual [with such a lion] If so, even in the case of seizing there should be liability! — Rabina's statement has, therefore, no reference to Samuel's case but to the Baraitha, which we must thus suppose to deal with a tame lion and to follow the view of R. Eleazar, that that was unusual [with such a lion].[9] If so, [no more than] half-damages should be paid![10] — [The lion dealt with] has already become *Mu'ad*. If so, why has this Baraitha been taught in conjunction with the secondary kinds of Tooth,[11] whereas it should have been taught in conjunction with the secondary kinds of Horn? This is indeed a difficulty.

MISHNAH. WHAT IS THE DIFFERENCE [IN LAW] BETWEEN *TAM* AND *MU'AD*? IN THE CASE OF *TAM* ONLY HALF-DAMAGES ARE PAID AND ONLY OUT OF THE BODY [OF THE TORT-FEASENT CATTLE], WHEREAS IN THE CASE OF *MU'AD* FULL PAYMENT IS MADE OUT OF ['ALIYYAH][12] THE BEST [OF THE ESTATE].

GEMARA. What is 'Aliyyah? — R. Eleazar said: The best of the defendant's estate as stated in Scripture: And Hezekiah slept with his fathers and they buried him [be-ma'aleh] in the best of the sepulchers of the sons of David;[13] and R. Eleazar said: be-ma'aleh means, near the best of the family, i.e., David and Solomon. [Regarding King Asa it is stated:] And they buried him in his own sepulchers which he had made for himself in the city of David and laid him in the bed which was filled with [besamim u-zenim][14] sweet odors and diverse kinds of spices.[15] What is besamim u-zenim? — R. Eleazar said: Divers kinds of spices. But R. Samuel b. Nahmani said: Scents which incite all those who smell them to immorality.[16]

[Regarding Jeremiah it is stated:] *For they have digged a ditch to take me and hid snares*

for my feet.[17] R. Eleazar said: They maliciously accused him of [having illicit intercourse with] a harlot. But R. Samuel b. Nahmani said: They maliciously accused him of having [immoral connections with] another man's wife. No difficulty arises if we accept the view that the accusation was concerning a harlot, since it is written: *For a harlot is a deep ditch*.[18] But according to the view that the accusation was concerning another man's wife, how is this expressed in the term '*ditch*' [employed in Jeremiah's complaint]?[17] — Is then another man's wife [when committing adultery] excluded from the general term of 'harlot'? [On the other hand] there is no difficulty on the view that the accusation was concerning another man's wife, for Scripture immediately afterwards says: *Yet Lord, Thou knowest all their counsel against me to slay me*;[19] but according to the view that the accusation was concerning a harlot, how did they thereby intend 'to slay him'?[20] — [This they did] by throwing him into a pit of mire.[21]

Raba gave the following exposition: What is the meaning of the concluding verse: *But let them be overthrown before Thee; deal thus with them in the time of Thine anger*?[22] — Jeremiah thus addressed the Holy One, blessed be He: Lord of the Universe, even when they are prepared to do charity, cause them to be frustrated by people unworthy of any consideration so that no reward be forthcoming to them for that charity.[23]

[To come back to Hezekiah regarding whom it is stated:] *And they did him honor at his death*:[24] this signifies that they set up a college[25] near his sepulcher. There was a difference of opinion between R. Nathan and the Rabbis. One said: For three days,

1. [Which seems to exclude the other animals enumerated in the Mishnah?]
2. Do not read 'also the snake', but 'the snake', i.e. 'only the snake', excluding 'the hyena' introduced by R. Meir, as well as the other animals enumerated.
3. Cf. Ex XXII, 4 and *supra* 5b.
4. And falls thus under the category of Horn which is not immune even on public ground, cf. *supra* p. 67 and *infra* 19b.
5. Nah. II, 13.
6. Cf. *infra* 19b.
7. [Why then doses he state that, where the lion tore and consumed, there is payment?]
8. *Supra* p. 68.
9. And comes therefore within the category of Horn, for which there is liability even on public grounds.
10. For in the case of Horn only half-damages are paid on the first three occasions.
11. I.e., *infra* 19b.
12. [H]
13. II Chron. XXXII, 33. [The word [H] (E.V.: 'ascent') is tendered as 'the best' from [H] 'to go up', 'to excel'.]
14. [H]
15. II Chron. XVI, 14.
16. [Deriving [H] from [H] to commit whoredom'.]
17. Jer. XVIII, 22.
18. Prov. XXIII, 27.
19. Jer. XVIII, 23; referring to the death penalty prescribed for such an offence. See Lev. XX, 10.
20. Since no death penalty is attached to that sin,
21. Jer. XXXVIII, 6.
22. Ibid. XVIII, 23.
23. Cf. however Keth. 68a.
24. II Chron. XXXII, 33.
25. [Of students to study the law.]

Baba Kamma 17a

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

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

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

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

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

CHAPTER II

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

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

1. Cf. M.K. 27b.
2. This figure was arrived at by the numerical value of [H] occurring here in the text.
3. [As sign of mourning for a righteous man and scholar.]
4. [Although he was an evil doer.] See *Targum* on Zech. XII, 11, and Meg. 3a.
5. Cf., e.g., M. K. 25a and Men. 32b.
6. V. P.B. p. 4.
7. Meg. 27a; Kid. 40b; thus indicating that the practice of the law is superior to its study.
8. V. A.Z. 5b.
9. Isa. XXXII, 20.
10. [Joseph and Issachar: the former is compared to an ox (Deut. XXXIII, 17) and the latter to an ass (Gen. XLIX, 14).]
11. Hos X, 12.
12. Isa. LV, 1.
13. So MS.M. The printed editions have 'canopy'. [Rashi connects it with the descriptions of 'branches running over the wall.']
14. Gen XLIX, 22.
15. Ibid. 14.
16. Deut. XXXIII, 17.
17. I Chron. XII, 32.
18. Referring to *supra* p. 68.
19. As it is subject to the law of 'Foot'.

20. Since it was broken not by the actual body of the animal (or poultry) but by its agency and force in some other object, it comes within the purview of the law of 'Pebbles'; v. Glos, Zeroroth
21. Lit. 'The cocks'.

Baba Kamma 17b

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

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

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

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

Another [Baraitha] taught: In the case of poultry hopping upon dough or upon fruits which they either made dirty or picked at,

the payment will be in full; but if the damage resulted from their raising there dust or pebbles, only half damages[14] will be paid. Symmachus. however, says: [In all cases] the payment must be in full.

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

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

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

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

Raba asked: In the case of [cattle] treading upon a utensil which has not been broken at once, but which was rolled away to some other place where it was then broken, what is the law? Shall we go by the original cause [of the damage in our determination of the law], which would thus amount to damage done by the body,[25] or shall only [the result, i.e.] the breaking of the utensil be the determining factor, amounting thus to Pebbles? — But why not solve the problem from a statement made by Rabbah?[26] For Rabbah said:[27] If a man threw [his fellow's] utensil from the top of a roof and another one came and broke it with a stick [before it fell upon the ground. where it would in any case have been broken], the latter is under no liability to pay, as we say. 'It was only a broken utensil that was broken by him.' [Is not this the best proof that it is the cause of the damage which is the determining factor?][28] — To Rabbah that was pretty certain, whereas to Raba it was doubtful.

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

1. **Wherefore then this redundancy?**

2. I.e. damage done by the actual foot.
3. I.e. damage done by other parts of the body of the animal, cf. *supra* p. 6.
4. [*Infra* 19b.
5. For both clauses deal with actual 'eating'.
6. Ex. XXII, 4. [[H], [H] in Aramaic denotes, 'a grazing animal', 'cattle' (Rashi).]
7. Which is more obvious.
8. I.e. damage done by other parts of the body of the animal.
9. 'Foot' is therefore put in the first place.
10. *Supra* p. 68.
11. CF. *supra*, p. 6.
12. See *supra* p. 8.
13. Why then was it deemed necessary to give it explicit treatment?
14. As this kind of damage is subject to the law of Pebbles.
15. For he maintains that even in the case of Pebbles full payment has to be made.
16. Who hold that in the case of Pebbles only half payment is made.
17. Such as in the case of Pebbles.
18. Which is subject to the law of 'Foot'.
19. See also *supra* 8.
20. I.e., one afflicted with gonorrhea who is subject to the laws of Lev. XV, 1-15; 19-24. Defilement is caused by him both by actual bodily touch and indirectly.
21. E.g. when the *zab* throws some article on a person levitically clean.
22. Is not this obvious?
23. Lit. 'calf'.
24. That there is in such a case full payment, because if a *zab* were to sit in a wagon that passed over clean objects, defilement would have been extended to them — the damage and the defilement respectively being regarded as having been caused by the body and not by its force.
25. Being therefore subject to the law of 'Foot'.
26. Who was a predecessor of Raba.
27. Cf. *infra* 26b.
28. Seeing that the latter is under no obligation to compensate, but the whole liability to pay is upon the one who threw the utensil from the top of the roof.
29. The payment for damage will therefore not be in full.
30. Payment will thus be in full.
31. Thus constituting Pebbles, for which payment will not be in full.

Baba Kamma 18a

the 'hopping' only caused pebbles to fly, so that the point at issue is the same as that between Symmachus and the Rabbis.[1] Come and hear: 'In the case of poultry picking at a cord attached to a pail so that the cord was snapped asunder and the bucket[2] broken, the payment must be in full.' Could it not be proved from this [Baraitha] that it is the original cause of the damage that has to be followed? — You may, however, interpret [the liability of full payment] to refer to the damage done to the cord.[3] But behold, is not [the damage of] the cord unusual [with poultry[4] and only half damages ought to be paid]? — It was smeared with dough.[5] But, does it not say 'and the bucket [was] broken'?[6] This Baraitha must therefore be in accordance with Symmachus, who maintains that also in the case of Pebbles full payment must be made. But if it is in accordance with Symmachus, read the concluding clause: Were a fragment of the broken bucket to fly and fall upon another utensil, breaking it, the payment for the former [i.e., the bucket] must be in full, but for the latter only half damages will be paid. Now does Symmachus ever recognize half damages [in the case of Pebbles]? If you, however, submit that there is a difference according to Symmachus between damage occasioned by direct force[7] and that caused by indirect force,[8] what about the question raised by R. Ashi:[9] Is damage occasioned by indirect force according to Symmachus subject to the same law[10] applicable to direct force, or not subject to the law of direct force?[11] Why is it not evident to him that it is not subject to the law of direct force? Hence the above Baraitha is accordingly more likely to be in accordance with the Rabbis, and proves thus that it is the original cause that has to be followed [as the determining factor]![12] R. Bibi b. Abaye, however, said: The bucket [that was broken] was [not rolled but] continuously pushed by the poultry [from one place to another, so that it was broken by actual bodily touch].[13]

Raba [again] queried: Will the half damages in the case of 'Pebbles' be paid out of the body [of the tort-feasant animal][14] or will it be paid out of the best of the defendant's estate?[15] Will it be paid out of the body [of

the tort-feasant animal] on account of the fact that nowhere is the payment of half damages made out of the best of the defendant's estate, or shall it nevertheless perhaps be paid out of the best of the defendant's estate since there is no case of habitual damage being compensated out of the body [of the tort-feasant animal]? —

Come and hear: 'Hopping [with poultry] is not *Mu'ad*. Some, however, say: It is *Mu'ad*.' Could 'hopping' be said [in any way not to be habitual with poultry]? Does it not therefore mean: 'Hopping and making [pebbles] fly,' so that the point at issue is as follows: The former view maintaining that it is not [treated as] *Mu'ad*, requires payment to be made out of the body [of the tort-feasant poultry][14] whereas the latter view maintaining that it is [treated as] *Mu'ad*, will require the payment [of the half damages for Pebbles] to be made out of the best of the defendant's estate?[15] — No, the point at issue is that between Symmachus and the Rabbis.[16]

Come and hear: In the case of a dog taking hold of a cake [with live coals sticking to it] and going [with it] to a stack of grain where he consumed the cake and set the stack on fire, full payment must be made for the cake,[17] whereas for the stack only half damages will be paid.[18] Now, what is the reason [that only half damages will be paid for the stack] if not on account of the fact that the damage of the stack is subject to the law of Pebbles?[19] It has, moreover, been taught in connection with this [Mishnah] that the half damages will be collected out of the body [of the tort-feasant dog]. [Does not this ruling offer a solution to the problem raised by Raba?] — But do you really think [the law of 'Pebbles' to be at the basis of this ruling]?[20] According to R. Eleazar [who maintains[21] that the payment even for the stack will be in full and out of the body of the tort-feasant dog], do we find anywhere full payment being collected out of the body [of tort-feasant animals]? Must not this ruling[20] therefore be explained to refer to a case where the dog acted in an unusual manner in handling the coal,[22] R. Eleazar being of the same opinion as R. Tarfon, who maintains[23] that [even] for the unusual damage by Horn, if done in the plaintiff's premises, the payment will be in full?[24] — This explanation, however, is not essential. For that which compels you to make R. Eleazar maintain the same opinion as R. Tarfon, is only his requiring full payment [out of the body of the dog]. It may therefore be suggested on the other hand that R. Eleazar holds the view expressed by Symmachus, that in the case of Pebbles full damages will be paid; and that he further adopts the view of R. Judah who said[25] that [in the case of *Mu'ad*, half of the payment, i.e.] the part of *Tam*, remains unaffected [i.e., is always subject to the law of *Tam*]; the statement that payment is made out of the body [of the dog] will therefore refer only to [one half] the part for which even *Tam* would be liable. But R. Samia the son of R. Ashi said lo Rabina: I submit that the view you have quoted in the name of R. Judah is confined to cases of *Tam* turned into *Mu'ad* [i.e. Horn],[25] whereas in cases which are *Mu'ad* ab initio[26]

1. I.e., whether full or half payment has to be made for damage caused by Pebbles.
2. Probably by rolling to some other place, where it finally broke.
3. Whereas for the bucket only half damages will perhaps be paid.
4. Being thus subject to the law of 'Horn'.
5. In which case it is not unusual with poultry to pick at such a cord.
6. Thus clearly indicating that the payment is in respect of the damage done to the bucket.
7. Such as in the case of a bucket upon which pebbles were thrown directly by an animal.
8. I.e., a second bucket damaged by a fragment that fell from a first bucket, which was broken by pebbles thrown by an animal.
9. *Infra* 19a.
10. I.e., to full payment.
11. But merely to half damages.
12. I.e., though the bucket rolled to some other place where it broke, the case is still subject to the law of Foot.
13. And coming within the usual category of Foot.
14. As in the case of *Tam*; cf. *supra*, p. 73.
15. As in the case of Foot; cf. *supra*, p. 9.
16. I.e., whether full or half damages are to be paid in the case of Pebbles.

17. Being subject to the law applicable to Tooth, cf. *supra* p. 68.
18. *Infra* 21b.
19. Because the damage to the stack was not done by the actual body of the dog but was occasioned by the dog through the instrumentality of the coal, which, after having been put on a certain spot, spread the damage near and far.
20. Of half damages for the stack.
21. In a Baraitha.
22. By taking it in its mouth and applying it to the stack, in which case it is subject to the law of 'Horn'.
23. *Supra* p. 59 and *infra* 24b.
24. [Though the payment will still be made out of the body of the tort-feasant animal.)
25. *Infra* 39a. 45b.
26. Such as Foot (and Pebbles at least according to Symmachus).

Baba Kamma 18b

you have surely not found him maintaining so! You can therefore only say that R. Eleazar's statement regarding full payment deals with a case where the dog has already become *Mu'ad* [to set fire to stacks in an unusual manner][1] and the point at issue will be that R. Eleazar maintains that there is such a thing as becoming *Mu'ad* [also] regarding [the law of] Pebbles[2] whereas the Rabbis maintain that there is no such thing as becoming *Mu'ad* in the case of Pebbles.[3] But If so what about another problem raised [elsewhere][4] by Raba: 'Is there such a thing as becoming *Mu'ad* regarding [the law of] Pebbles,[5] or is there no such thing as becoming *Mu'ad* in the case of Pebbles?'[6] Why then not say that according to the Rabbis there could be no such thing as becoming *Mu'ad* in the case of Pebbles, whereas according to R. Eleazar there may be a case of becoming *Mu'ad* even in the case of Pebbles? — Raba, however, may say to you: The problem raised by me [as to the possibility of becoming *Mu'ad*] is of course based on the view of the Rabbis who differ [in this respect] from Symmachus, whereas here [in the case of the dog] both the Rabbis and R. Eleazar may hold the view of Symmachus who maintains that Pebbles always involve payment in full. The reason, however, that the Rabbis order only half damages [to be paid][7] is on account of the fact that the dog handled the coal in an unusual manner[8] while it had not yet become *Mu'ad* [for that]. The point at issue between them[9] would be exactly the same as between R. Tarfon and the Rabbis.[10] But R. Tarfon who took the view that the payment will be in full may perhaps never have intended to make it dependent upon the body [of the tort-feasant cattle]?[11] — Certainly so, for he derives his view from [the law of] Horn on public ground[12] and it only stands to reason that Dayyo,[13] [i.e. it is sufficient] to a derivative by means of a Kal wa-homer[14] to involve nothing more than the original case from which it has been deduced.[15] But behold, R. Tarfon is expressly not in favor of the Principle of Dayyo?[13] — He is not in favor of Dayyo only when the Kal wa-*homer* would thereby be rendered completely ineffective,[16] but where the Kal wa-*homer* would not be rendered ineffective he too upholds Dayyo.[17]

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

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

the same as between Symmachus and the Rabbis.[20]

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

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

1. Being thus subject to the law applicable to Horn whereas in the case of Pebbles not accompanied by an unusual act, R. Eleazar would maintain the view of the Rabbis that the payment will not be in full.
2. When thrown by an unusual act and repeated on more than three occasions; the payment would thus then have to be in full.
3. But that in spite of all repetitions of the damage the payment will never exceed half damages on account of the consideration that the case of Pebbles in the usual way is always *Mu'ad ab initio* and yet no more than half damages is involved.
4. Cf. *infra* p. 86.
5. So that in the case of an animal making pebbles fly (by means of an unusual act) on more than three occasions, the payment will be in full, on the analogy with Horn
6. The payment will thus never exceed half damages on account of the fact that the repetition on three occasions renders the act usual and makes it subject to the general laws of Pebbles, requiring half damages in the case of any usual act of an animal making pebbles fly.
7. In the case of the dog.
8. Coming thus within the category of Horn.
9. I.e., between the Rabbis and R. Eleazar.
10. With reference in damage done by Horn (*Tam*) on the Plaintiff's premises; cf. *supra* pp. 59. 84; *infra* p. 125.
11. For since the payment is in full why should it not be out of the best of the defendant's estate? Cf. however *supra* p. 15, *infra* p. 180; but also pp. 23, 212.
12. *Infra* 24b.
13. Lit., 'It is sufficient for it'.
14. Lit. 'From Minor to Major'; v. Glos.
15. Which was Horn on public ground where the payment in the case of *Tam* is made out of the body of the tort-feasant animal.
16. Such as, e.g., to make on account of Dayyo, the payment in the case of *Tam* doing damage on the plaintiff's premises only for half damages — a payment which would be ordered even without a Kal wa-homer.
17. The full payment in the case of *Tam* on the plaintiff's premises which is deduced from the Hal wa-homer, will therefore be collected only out of the body of the tort-feasant animal, on the strength of the Dayyo.
18. *Supra* p. 85.
19. Cf. *supra* 3b; v. also p. 85, n. 5.
20. I.e., whether the payment for Pebbles generally be in full or half; cf. *supra* 17b.
21. And thus the problem propounded by Raba is a point at issue between Tannaim.
22. The case must accordingly come under the category of Horn where only half damages should he paid in the first three occasions.
23. Why deal at all with the specific case of an animal dropping excrements?

24. Any damage done by them should thus be compensated in full on the analogy of any other derivative of Foot proper.
25. I.e., it does not come under the category of Foot proper but under that of Pebbles.
26. Cf. Kid. 24b.

Baba Kamma 19a

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

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

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

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

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

damage resulted from the kicking, or in the case of pebbles flying in the usual way … [only] half damages will be paid', thus implying that [in the case of Pebbles flying] as a result of kicking, [only] quarter damages would be paid on account of the fact that an unusual act reduces payment [in the case of Pebbles][16] or [does it perhaps mean to say:] 'If it was kicking so that damage resulted from the kicking or when pebbles were flying as a result of the kicking … half damages will be paid,' thus making it plain that an unusual act does not reduce payment [in the case of Pebbles]? — Let it stand undecided.

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

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

Again [he asked him]: In a case where the pebbles were kicked up on public ground but the damage that resulted therefrom was done in the plaintiff's premises, what would be the law? — He answered him: if the cause of raising [the pebbles] is not there [to institute liability],[22] how could any liability be attached to the falling down [of the pebbles]?

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

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

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

1. The compensation is therefore in full.
2. Consequently only half damages will be paid.

3. Coming thus under the category of Horn only half damages should be paid in the case of *Tam*.
4. Done by an animal making pebbles fly through kicking.
5. But the compensation of half damages will be made in all cases of Pebbles.
6. *Supra* p. 85.
7. For compensation in full.
8. And no more than half damages will ever be paid
9. For if otherwise, and quarter damages will be paid in the first instance of an unusual act in the case of Pebbles, how could the compensation rise above half damages?
10. Who orders full compensation in the case of Pebbles; *supra* p. 79.
11. I.e., Symmachus.
12. Ordering only half damages; v *supra* p. 79.
13. Who, against the view of Symmachus, order only half damages to be paid, *supra* p. 79.
14. Who orders full compensation in the case of Pebbles; ibid.
15. As to the reading of the Mishnaic text.
16. As queried by R. Ashi himself, *supra* p. 88.
17. Coming thus under the law applicable to Pebbles in the usual way.
18. Which is an unusual act and should thus be subject to the query put forward by Raba regarding pebbles that were caused to fly by means of an unusual act.
19. On account of the liability only for half damages.
20. Where there is liability even on public ground.
21. Cf. *supra* p. 9.
22. Since it took place on public ground.
23. Which is a refutation of R. Zera's first ruling.
24. I.e., on the last point.
25. Which shows that there is liability for Pebbles, i.e., for 'the second utensil,' on public ground, against the ruling of R. Zera.

Baba Kamma 19b

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

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

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

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

POULTRY ARE *MU'AD* TO WALK IN THEIR USUAL WAY AND TO BREAK [THINGS]. IF A STRING BECAME ATTACHED TO THEIR FEET OR

WHERE THEY HOP ABOUT AND BREAK UTENSILS, [ONLY] HALF DAMAGES WILL BE PAID. R. Huna said: The ruling regarding half damages applies only to a case where the string became attached of itself, but in a case where it was attached by a human being the liability would be in full. But in the case where the string was attached of itself, who would be liable to pay the half damages? It could hardly be suggested that the owner of the string[9] would have to pay it, for in what circumstances could that be possible? If when the string was kept by him in a safe place [so that the fact of the poultry taking hold of it could in no way be attributed to him], surely it was but a sheer accident?[10] If [on the other hand] it was not kept in a safe place, should he not be liable for negligence [to pay in full]? It was therefore the owner of the poultry who would have to pay the half damages. But again why differentiate [his case so as to excuse him from full payment]? If there was exemption from full payment on account of [the inference drawn from] the verse, If a man shall open a pit,[11] which implies that there would be no liability for Cattle opening a Pit,[12] half damages should [for the very reason] similarly not be imposed here as [there could be liability only when] Man created a pit but not [when] Cattle [created] a pit? — The Mishnaic ruling [regarding half damages] must therefore be applicable only to a case where the poultry made the string fly [from one place to another, where it broke the utensils, being thus subject to the law of Pebbles]; and the statement made by R. Huna will accordingly refer to a case which has been dealt with elsewhere [viz.]: In the case of an ownerless string, R. Huna said that if it had become attached of itself to poultry [and though damage resulted to an animate object tripping over it while it was still attached to the poultry] there would be exemption.[13] But if it had been attached to the poultry by a human being, he would be liable to pay [in full]. Under what category of damage could this liability come?[14] — R. Huna b. Manoah said: Under the category of Pit, which is rolled about by feet of man and feet of animal.[15]

***MISHNAH*. WITH REFERENCE TO WHAT IS TOOTH *MU'AD*?[16] [IT IS *MU'AD*] TO CONSUME WHATEVER IS FIT FOR IT. ANIMAL IS MUA'D TO CONSUME BOTH FRUITS AND VEGETABLES. BUT IF IT HAS DESTROYED CLOTHES OR UTENSILS, [ONLY] HALF DAMAGES WILL BE PAID.[17] THIS RULING APPLIES ONLY TO DAMAGE DONE ON THE PLAINTIFF'S PREMISES, BUT IF IT IS DONE ON PUBLIC GROUND THERE WOULD BE EXEMPTION.[18] WHERE, HOWEVER, THE ANIMAL HAS DERIVED SOME BENEFIT [FROM THE DAMAGE DONE BY IT], PAYMENT WILL [IN ANY CASE] BE MADE TO THE EXTENT OF THE BENEFIT. WHEN WILL PAYMENT BE MADE TO THE EXTENT OF THE BENEFIT? IF IT CONSUMED [FOOD] IN THE MARKET, PAYMENT TO THE EXTENT OF THE BENEFIT WILL BE MADE; [BUT IF IT CONSUMED] IN THE SIDEWAYS OF THE MARKET, THE PAYMENT WILL BE FOR THE ACTUAL DAMAGE DONE BY THE ANIMAL. [SO ALSO IF IT CONSUMED] AT THE ENTRANCE OF A SHOP, PAYMENT TO THE EXTENT OF THE BENEFIT WILL BE MADE, [BUT IF IT CONSUMED] INSIDE THE SHOP, THE PAYMENT WILL BE FOR THE ACTUAL DAMAGE DONE BY THE ANIMAL.**

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

by them,[19] come under the designation of food, in the case of a cat consuming dates, and an ass consuming fish, the payment will similarly be in full.

There was a case where an ass consumed bread and chewed also the basket[20] [in which the bread had been kept]. Rab Judah thereupon ordered full payment for the bread, but only half damages for the basket. Why can it not be argued that since it was usual for the ass to consume the bread, it was similarly usual for it to chew at the same time the basket too? — It was only after it had already completed consuming the bread, that the ass chewed the basket. But could bread be considered the usual food of an animal? Here is [a Baraitha] which contradicts this: If it [the animal] consumed bread, meat or broth, only half damages will be paid.[21] Now, does not this ruling refer to [a domestic] animal?[22] — No, it refers to a wild beast. To a wild beast? Is not meat its usual food? — The meat was roasted.[23] Alternatively, you may say: It refers to a deer.[24] You may still further say alternatively that it refers to a [domestic] animal, but the bread was consumed upon a table.[25]

1. **Where indeed there is no distinction between public ground and the plaintiff's premises; (cf. however, the views of R. Tarfon, *supra* 14a; 18a and *infra* 24b), but in regard to Pebbles, there is a distinction, and liability is restricted to the plaintiff's premises, according to the ruling of R. Zera.**
2. **There will therefore be no liability.**
3. **Coming thus under the category of Foot, for which there is no liability on public ground.**
4. **Why should it not be regarded as a derivative of Foot?**
5. **Whether it is still usual for it or not.**
6. **On public ground.**
7. **And there will be liability.**
8. **It should therefore come under the category of Tooth and Foot, for which there is no liability on public ground.**
9. **Not being the owner of the poultry.**
10. **He should consequently be freed altogether.**
11. **Ex. XXI, 33.**
12. **I.e., no responsibility is involved in cattle creating a nuisance. Cf. *infra* 48a; 51a.**
13. **As there was no owner to the string, while the owner of the poultry could not be made liable for damage that resulted from a nuisance created by his poultry on the principle that Cattle, creating a nuisance, would in no way involve the owner in any obligation.**
14. **Since that human being was neither the owner of the poultry nor the owner of the string, and the damage did not occur at the spot where he attached the string.**
15. **For which there is liability, as explained *supra* p. 19.**
16. **V. *supra* p. 68.**
17. **For being an unusual act, it comes under the category of Horn.**
18. **Cf. *supra* p. 17.**
19. **E.g., horse-beans by an ass, or meat by a pig.**
20. **Or 'split it', 'picked it to pieces' (Rashi).**
21. **On the ground that the act was unusual and as such would come under the category of Horn.**
22. **This shows that bread is not the usual food of animal.**
23. **Which is in such a state not usually consumed even by a wild beast.**
24. **Which, as a rule, does not feed on meat.**
25. **Which was indeed unusual.**

Baba Kamma 20a

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

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

this teaching might perhaps similarly deal with a case of jumping.

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

R. Zera asked: [In the case of a sheaf that was] rolling about, what would he the law? (In what circumstances? — When, e.g., grain had originally been placed in the plaintiff's premises, but was rolled thence into public ground [by the animal, which consumed the grain while standing on public ground], what would then be the law?)[2] — Come and hear that which R. Hiyya taught: 'In the case of a bag of food lying partly inside and partly outside [of the plaintiff's premises], if the animal consumed inside, there would be liability [to pay], but if it consumed outside there would be exemption.' Now, did not this teaching refer to a case where the bag was being continually rolled?[3] — No; read '… which the animal consumed, for the part which had originally been lying inside[4] there would be liability but for the part that had always been outside there would be exemption.' You might alternatively say that R. Hiyya referred to a bag containing long stalks of grass.[5]

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

WHERE, HOWEVER, THE ANIMAL HAS DERIVED SOME BENEFIT [FROM THE DAMAGE DONE BY IT]. PAYMENT WILL [IN ANY CASE] BE MADE TO THE EXTENT OF THE BENEFIT. How [could

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

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

1. **Which could not be exempted from liability even on public ground.**
2. **If we were to go by the place of the actual consumption there would be exemption in this case, whereas if the original place whence the food was removed is also taken into account, there would be liability to pay.**
3. **According to this Baraitha, the place of actual consumption was the basic point to be considered.**
4. **Though removed by the animal and consumed outside.**
5. **Which was lying partly inside and partly outside, and as, unlike grain, it constituted one whole, the place of the consumption was material.**
6. **For which there would be no liability on public ground, although, being unusual, it would come under the category of Horn.**
7. **By allowing his clothes or utensils to be on public ground.**
8. **Cf. *supra* p. 17.**
9. **As the damage would come under the category of Horn.**
10. **V. p. 97, n. 5.**
11. **V. *infra* 32a.**
12. **It was therefore a misconduct on the part of the animal to lie down, which makes it liable for any damage it caused, whilst it is not entitled to payment for any damage sustained.**
13. **I.e., the value of the food actually consumed by the animal.**
14. **Even when the animal consumed barley, as it might be alleged that straw would have sufficed it.**
15. **A certain measure: v. Glos.**
16. **Lit. 'in our district,' 'domain' [H]. This word is omitted in some texts, v. D. S. a.l.**
17. **For the past.**
18. **And would in any case have remained vacant.**
19. **As he had friends who were willing to accommodate him without any pay.**

Baba Kamma 20b

Or might the other party retort: 'Since you have derived a benefit [as otherwise you

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

Come and hear: 'In the case of a plaintiff who [by his fields] has encircled the defendant's field on three sides, and who has made a fence on the one side as well as on the second and third sides [so that the defendant is enjoying the benefit of the fences], no payment can be enforced from the defendant [since on the fourth side his field is still open wide to the world and the benefit he derives is thus incomplete].'[3] Should, however, the plaintiff make a fence also on the fourth side, the defendant would [no doubt] have to share the whole outlay of the fences. Now, could it not he deduced from this that wherever a defendant has derived benefit, though the plaintiff has thereby sustained no loss,[4] there is liability to pay [for the benefit derived]? — That case is altogether different, as the plaintiff may there argue against the defendant saying: It is you that [by having your field in the middle of my fields] have caused me to erect additional fences[5] [and incur additional expense].

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

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

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

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

It was stated: R. Kahana quoting R. Johanan said: [In the case of the above problem] there would be no legal obligation to pay rent; but R. Abbahu similarly quoting R. Johanan said: There would be a legal obligation to pay rent. R. Papa thereupon said: The view expressed by R. Abbahu [on behalf of R. Johanan] was not stated explicitly [by R. Johanan] but was only arrived at by inference. For we learnt: He who misappropriates a stone or a beam belonging to the Temple Treasury[12] does not render himself subject to the law of Sacrilege.[13] But if he delivers it to his neighbor, he is subject to the law of Sacrilege,[14] whereas his neighbor is not subject to the law of Sacrilege.[15] So also when he builds it into his house he is not subject to the law of Sacrilege until he actually occupies that house for such a period that the benefit derived from that stone or that beam would amount to the value of a *perutah*.[16] And Samuel thereupon said that the last ruling referred to a case where the stone or the beam was [not fixed into the actual structure but] left loose on the roof.[17] Now, R. Abbahu sitting in the presence of R. Johanan said in the name of Samuel that this ruling proved that he who occupied his neighbor's premises without an agreement with him would have to pay him rent.[18] And he [R. Johanan] kept silent. [R. Abbahu] imagined that since he [R. Johanan] remained silent, he thus acknowledged his agreement with this inference. But in fact this was not so. He [R. Johanan] paid no regard to this view on account of his acceptance of an argument which was advanced [later] by Rabbah; for Rabbah[19] said: The conversion of sacred property even without [the] knowledge [of the Temple Treasury] is [subject[20] to the law of Sacrilege][21]

1. 'Then will I let you know the source.' The service thus rendered would on the one hand prove the eagerness of the enquirer and on the other make him appreciate the answer.
2. I.e.. the other's.
3. B.B. 4b.
4. Such as in the case before us where the fences were of course erected primarily for the plaintiff's own use.
5. I.e., the fencing which was erected between the field of the defendant and the surrounding fields that belong to the plaintiff. This interpretation is given by Rashi but is opposed by the Tosaf. a.l. who explain the case to refer to fencing set up between the fields of the plaintiff and those of the surrounding neighbors.
6. B.B. 4b.
7. A small coin; v. Glos.
8. B.M. 117a.
9. [Since in this case the owner of the ground floor refused to build.]
10. The occupation of the newly-built lower storey by the owner of the upper storey is thus under the given circumstances a matter of right.
11. B.M. 117a.
12. But which has been all the time in his possession as he had been the authorized Treasurer of the Sanctuary; v. Hag. 11a and Mei. 20a
13. Since the offender was the Treasurer of the Temple and the possession of the consecrated stone or beam has thus not changed hands, no conversion has been committed in this case. As to the law of Sacrilege, v. Lev. V, 15-16, and *supra*, p. 50.
14. For the conversion that has been committed.

15. Since the article has already been desecrated by the act of delivery.
16. Mei. V, 4. *Perutah* is the minimum legal value; cf. also Glossary.
17. [As otherwise the mere conversion involved would render him liable to the law of Sacrilege.]
18. For if in the case of private premises there would be no liability to pay rent, why should the law if Sacrilege apply on account of the benefit of the *perutah* derived from the stone or the beam?
19. Cf. B.M. 99b, where the reading is Raba.
20. As nothing escapes the knowledge of Heaven which ordered the law of Sacrilege to apply to all cases of conversion.
21. Dealt with in Lev. V, 15-16.

Baba Kamma 21a

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

R. Abba b. Zabda sent [the following message] to Mari the son of the Master:[1] 'Ask R. Huna as to his opinion regarding the case of one who occupies his neighbor's premises without any agreement with him, must he pay him rent or not?' But in the meanwhile R. Huna's soul went to rest. Rabbah b. R. Huna thereupon replied as follows: 'Thus said my father, my Master, in the name of Rab: He is not legally bound to pay him rent; but he who hires premises from Reuben may have to pay rent to Simeon.' But what connection has Simeon with premises [hired from Reuben, that the rent should be paid to him]? — Read therefore thus: '… [Reuben] and the premises were discovered to be the property of Simeon, the rent must be paid to him.' But [if so], do not the two statements [made above in the name of Rab] contradict each other? — The latter statement [ordering payment to Simeon] deals with premises which were for hire,[2] whereas the former ruling [remitting rent in the absence of an agreement] refers to premises which were not for hire. It has similarly been stated: R. Hiyya b. Abin quoting Rab said, (some say that R. Hiyya b. Abin quoting R. Huna said): 'He who occupies his neighbor's premises without any agreement with him is not under a legal obligation to pay him rent. He, however, who hires premises from the representatives of the town must pay rent to the owners.' What is the meaning of the reference to 'owners'? — Read therefore thus: '… [representatives of the town,] and the premises are discovered to be the property of [particular] owners, the rent must be paid to them.' But [if so,] how can the two statements be reconciled with each other? The latter statement [ordering payment to the newly discovered owners] deals with premises which are for hire,[2] whereas the former ruling [remitting rent in the absence of an agreement] refers to premises which are not for hire.

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

There was a case where a certain person built a villa upon ruins that had belonged to orphans. R. Nahman thereupon confiscated the villa from him [for the benefit of the orphans]. May it therefore not be inferred that R. Nahman is of the opinion that he who occupies his neighbor's premises without having any agreement with him must still pay him rent? — [The case of the orphans is based on an entirely different principle, as] that site had originally been occupied by certain Carmanians[9] who used to pay the orphans a small rent.[10] When the defendant had thus been advised by R. Nahman to go and make a peaceful settlement with the

orphans, he paid no heed. R. Nahman therefore confiscated the villa from him.

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

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

1. Cf. *infra* 97a; B.M. 64b.

2. In which case the owner sustains a loss and rent must be paid.
3. The Hebrew word *She'iyyah* [H] rendered *'emptiness'*, is taken to be the name of a demon that haunts uninhabited premises; cf. Rashi a.l.
4. Isa. XXIV, 12.
5. Lit. '… him' referring, to the demon.
6. Who look after premises.
7. I.e., between the reason adduced by Rab and that given by R. Joseph.
8. In which case the premises had in any case not been empty and thus not haunted by the so-called demon 'She'iyyah'. There would therefore be liability to pay rent. But according to the reason given by R. Joseph that premises inhabited by tenants keep in better condition as the tenants look after their repairs, there would even in this case be no liability of rent upon the tenant who trespassed into his neighbor's premises that had previously been used only for the keeping of wood and straw and thus liable to fall into dilapidation.
9. I.e., persons who came from Carmania. According to a different reading quoted by Rashi a.l. and occurring also in MS.M., it only means 'Former settlers'.
10. In which case the plaintiffs suffered an actual loss, however small it was.
11. Since the body of the animal is still on public ground.
12. *Supra* p. 94.
13. Supporting thus the view of Samuel but contradicting that of Rab.
14. I.e., R. Nahman b. Isaac.
15. But only for the benefit the animal derived from the fruits.
16. The fruits kept near the public ground are a public nuisance and equal a pit, the ownership of which was retained and which was dug on a site to which the public has full access.
17. Cf. *infra* 30a.
18. Since the pit still remains private property.

Baba Kamma 21b

that in other respects a pit dug on one's own site is not subject to the law of Pit, but the case before us here is based on a different principle, since the defendant is entitled to plead [in reply to the plaintiff]: 'You had no right at all to spread out your fruits so near to the public ground as to involve me in liability through my cattle consuming them.' Samuel on the other hand could similarly contend: In other respects a pit dug on one's own site may be subject to the law of Pit, for it may be reasonable in the case of a pit for a plaintiff to plead that the pit may have been totally overlooked [by the animals that unwittingly fell in]. But in the case of fruits [spread out on private ground], is it possible to plead with reason that they may have been overlooked? Surely they must have been seen.[1]

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

for damage done to fruits which had been spread on] the defendant's domain.[6] On the defendant's domain! Is it not obvious that the defendant may plead: What right had your fruit to be on my ground?[7] — But the point at issue [between the authorities mentioned in the Baraitha] will therefore be in reference to the cases dealt With [above][8] by Ilfa[9] and by R. Oshaia.[10]

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

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

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

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

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

1. And since they were kept on private ground they could not be considered a nuisance. The animal consuming them there has indeed committed trespass.
2. I.e., R. Meir and R. Judah; for the point at issue could hardly be the case of consumption on public ground where none would think of imposing full liability for the actual damage done, but it must be in regard to the sideways of the market.
3. For in the case of turning the head it was none the more lawful to consume the fruits.
4. Ex. XXII, 4.
5. R. Jose and R. Eleazar.
6. [But there would be no exemption according to R. Jose for consuming fruits even on the market.]
7. There should thus be no need of explicit exemption.
8. *Supra* p. 96.

9. Dealing with an animal stretching out its head and consuming fruits kept on the back of the plaintiff's animal, in which case R. Meir and R. Judah impose the liability only to the extent of the benefit, whereas R. Jose and R. Eleazar order compensation for the actual damage sustained by the plaintiff.
10. Imposing liability in the case of an animal jumping and consuming fruits kept in baskets: R. Meir and R. Judah thus limit the liability to the extent of the benefit derived, whereas R. Jose and R. Eleazar do not limit it thus.
11. Coming thus within the purview of the law of Foot.
12. Being subject to the law of Tooth.
13. An act which is usual with either of them and thus subject to the law of Foot.
14. By mere accident.
15. By mere accident.
16. For the owner should have taken precautions against its jumping.
17. Since it fell down.
18. Cf. *infra* 56a; 58a; B.M. 42a and 93b.
19. But mere accident all through.
20. The defendant is thus guilty of negligence.
21. From the wall, which the defendant kept in a dilapidated state.
22. Where opinions differ.
23. Or very sloping. It was thus natural that the animal would be unable to remain there very long, but should slide down and do damage.
24. An act unusual with any of them.
25. From full compensation, whereas half damages will be paid in accordance with the law applicable to Horn.
26. I.e., complete liability, as the act is usual with them and is thus subject to the law of Foot.
27. As the act is quite usual with poultry, and as to man, he is always *Mu'ad*, v. *supra* p. 8.

Baba Kamma 22a

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

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

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

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

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

Baba Kamma 22b

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

Come and hear: In the case of a barn being set on fire, where a goat was bound to it and a slave [being loose] was near by it, and all were burnt, there is liability [for barn and goat].[2] In the case, however, of the slave being chained to it and the goat[3] near by it and all being burnt, there is exemption [for barn and goat].[4] Now this is in accordance with the view maintaining the liability for Fire to be based upon human agency: there is therefore exemption here [since capital punishment is attached to that agency].[4] But, according to the view that Fire is chattel, why should there be exemption? Would there be exemption also in the case of cattle killing a

slave?[5] — R. Simeon b. Lakish may reply to you that the exemption refers to a case where the fire was actually put upon the body of the slave[6] so that no other but the major punishment is inflicted.[7] If so, [is it not obvious?] Why state it at all? — No; it has application [in the case] where the goat belonged to one person and the slave to another.[8]

Come and hear: In the case of fire being entrusted to a deaf-mute, an idiot or a minor[9] [and damage resulting], no action can be instituted in civil courts, but there is liability[10] according to divine justice.[11] This again is perfectly consistent with the view maintaining that Fire implies human agency, and as the agency in this case is the action of the deaf mute [there is no liability]; but according to the [other] view that Fire is chattel, [why exemption?] Would there similarly be exemption in the case of any other chattel being entrusted to a deaf-mute, an idiot, or a minor?[12] — Behold, the following has already been stated in connection therewith:[13] Resh Lakish said in the name of Hezekiah that the ruling[11] applies only to a case where it was a [flickering] coal that had been handed over to [the deaf-mute] who fanned it into flame, whereas In the case of a [ready] flame having been handed over there is liability on the ground that the instrument of damage has been fully prepared. R. Johanan, on the other hand, stated that even in the case of a ready flame there is exemption, maintaining that it was only the handling by[14] the deaf-mute that caused [the damage]; there could therefore be no liability unless chopped wood, chips and actual fire were [carelessly] given him.

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

1. To the extent that the flax should penetrate the shop.
2. But not for the slave, who should have quitted the spot before it was too late; cf. *infra* 27a.
3. Whether chained or loose.
4. *Infra* 43b and 61b. For all civil actions merge in capital charges and the defendant in this case is charged with murder (since the slave was chained and thus unable to escape death), and thus exempt from all money payment arising out of the charge; cf. *infra* 70b.
5. V. Ex. XXI, 32, where the liability of thirty *shekels* is imposed upon the owner.
6. The defendant has thus committed murder by his own hands.
7. V. p. 113. n. 8.
8. Though the capital charge is not instituted by the owner of the goat, no damages could be enforced for the goat, since the defendant has in the same act also committed murder, and is liable to the graver penalty.
9. Who does not bear responsibility before the law.
10. Upon the person who entrusted the fire to the deaf-mute, etc. Mishnah, *infra* 59b.
11. Cf. *supra* p. 38.
12. *Supra* p. 36; *infra* 59b.
13. *Supra* 9b.
14. Lit., 'the tongs of'.
15. Ex. XXII, 5.
16. The damage that resulted is thus emphatically imputed to human agency.
17. Ex. XXII 5.

Baba Kamma 23a

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

Raba said: The following difficulty confronted Abaye: According to the view maintaining that Fire implies human agency, how [and when] was it possible for the Divine law to make exemption[3] for damage done by Fire to hidden things?[4] He solved it thus: Its application is in the case of a fire which would ordinarily not have spread beyond a certain point, but owing to the accident of a fence collapsing not on account of the fire, the conflagration continued setting alight and doing damage in other premises where the original human agency is at an end.[5] If so, even regarding unconcealed goods is not the human agency at an end?[6] — Hence the one

maintaining that Fire implies human agency also holds that Fire is chattel,[7] so that liability for unconcealed goods would arise in the case where the falling fence could have been, but was not, repaired in time [to prevent the further spread of the fire], since it would equal chattel[8] left unguarded by the owner.[9] But if the one who holds that fire implies human agency also maintains that Fire is chattel,[7] what then is the practical point at issue?[10] — The point at issue is whether Fire[11] will involve the [additional] Four Items.[12]

[THE OWNER OF THE DOG] PAYS FULL COMPENSATION FOR THE CAKE WHEREAS FOR THE BARN [HE] PAYS [ONLY] HALF DAMAGES. Who is liable [for the barn]? — The owner of the dog. But why should not the owner of the coal also be made liable?[13] — His [burning] coal was [well] guarded by him.[14] If the [burning] coal was well guarded by him, how then did the dog come to it? — By breaking in. R. Mari the son of R. Kahana thereupon said: This ruling implies that the average door is not beyond being broken in by a dog.[15]

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

1. I.e., by fire breaking out of itself.
2. As implied in the clause, He that kindled the fire.
3. Since in the case of Man doing damage such an exemption does not exist.
4. V. *supra* pp. 18 and 39 and *infra* 61b.
5. It is in this case (where the human agency is at an end) that there is exemption for hidden goods but liability for unconcealed articles.
6. And there should therefore be exemption for damage done to all kinds of property.
7. So that whenever the human agency is at an end, there would still be a possibility of liability being incurred.
8. Lit., 'his ox'.
9. Cf. *infra* 55b.
10. I.e., what is the difference in law whether the liability for Fire is for the principles of human agency and chattel combined, or only on account of the principle of chattel? The difference could of course be only in the case where the human agency involved in Fire was not yet brought to an end. For otherwise the liability according to both views would only be possible on account of the principle of chattel, a principle which is according to the latest conclusion maintained by all.
11. In cases where the human agency was not yet at an end.
12. I.e., Pain, Healing, Loss of Time and Degradation, which in the case of Man, but not Ox, injuring men are paid in addition to Depreciation which is a liability common in all cases; v. *supra* p. 12. According to R. Johanan who considers Fire a human agency, the liability will be not only for Depreciation but also for the additional Four Items: whereas Resh Lakish maintains that only Depreciation will be paid, as in the case of damage done by Cattle.
13. Since it was his coal that did the damage.
14. He is therefore not to blame.
15. For if otherwise the breaking in should be an act of unusual occurrence that should be subject to the law applicable to Horn, involving only the compensation of half damages for the consumption of the cake.
16. I.e., a barn not belonging to the owner of the cake.
17. Ex. XXII, 4.

Baba Kamma 23b

is still considered [kept in] the plaintiff's premises.[1] For if it is considered to be in the defendant's premises why should not he say to the plaintiff: What is your bread doing in the mouth of my dog?[2] For there had been propounded a problem: Is [the plaintiff's food carried in] the mouth of [the defendant's] cattle considered as kept in the premises of the plaintiff, or as kept in the premises of the defendant? (Now if you maintain that it is considered to be in the defendant's premises, how can Tooth, for which the Divine Law imposes liability,[3] ever have practical application? — R. Mari the

son of R. Kahana, however, replied: [It can have application] in the case where [the cattle] scratched against a wall for the sake of gratification [and pushed it down], or where it soiled fruits [by rolling upon them] for the purpose of gratification.[4] But Mar Zutra demurred: Do we not require, As a man taketh away dung till it all be gone,[5] which is not the case here?[6] — Rabina therefore said; [It has application] in the case where [the cattle] rubbed paintings[7] off [the wall]. R. Ashi similarly said: [It may have application] in the case where the cattle trampled on fruits [and spoilt them completely].[7])

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

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

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

MISHNAH. WHAT IS *TAM*, AND WHAT IS *MU'AD*? — [CATTLE BECOME] *MU'AD* AFTER [THE OWNER HAS] BEEN WARNED FOR THREE DAYS [REGARDING THE ACTS OF GORING],[21] BUT [RETURN TO THE STATE OF] *TAM* AFTER REFRAINING FROM

GORING FOR THREE DAYS; THESE ARE THE WORDS OF R. JUDAH. R. MEIR, HOWEVER, SAYS: [CATTLE BECOME] *MU'AD* AFTER [THE OWNER HAS] BEEN WARNED THREE TIMES [EVEN ON THE SAME DAY], AND [BECOME AGAIN] *TAM* WHEN CHILDREN KEEP ON TOUCHING THEM AND NO GORING RESULTS.

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

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

Baba Kamma 24a

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

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

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

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

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

1. I.e., by goring three times in one and the same day.
2. The other Rabbis headed by R. Judah his opponent.
3. I.e., a woman who within the eleven days between one menstruation period and another had discharges on three consecutive days; cf. Lev. XV, 25-33.
4. For seven days.
5. I.e., for more than one day.
6. Lev. XV, 3. This text checks the application of the *a fortiori* in this case as the explanation goes on.
7. I.e., a male person afflicted with discharges of issue on three different occasions; cf. Lev. XV, 1-15.
8. On one and the same day.
9. So that he is affected only by that of the cases of 'noticing'.
10. Lev. XV, 33.

11. So that if one discharge lasted with him two or three days, it will render him *zab* proper.
12. Lev. XV, 3.
13. In Lev. ibid.
14. Regarding zabah.
15. In the case of *zab*.
16. Regarding three acts of goring by their cattle.
17. For three acts of goring.
18. Thus constituting a majority against R. Meir on this point.
19. I.e., the return to the state of *Tam*.
20. Lit., 'his depth is with him.' v. Git. 67a.
21. Regarding three acts of goring committed by his cattle even on one day.
22. Though the evidence was given in one day.
23. I.e., proved alibi of a set of witnesses, v. Mak. (Sonc. ed.) p. 1, n. 1.
24. I.e., proved to have been absent at the material time of the alleged goring; v. Glos.
25. As his cattle 'would have to be dealt with as *Tam*.
26. In accordance with law of retaliation. Deut. XIX, 19. Since regarding the declaration of *Mu'ad* all the three pairs of witnesses constitute one set, and the law of hazamah applies only when the whole set has been convicted of an alibi.
27. I.e., the half damages added on account of the declaration of *Mu'ad*, whereas the original half damages on account of *Tam* will be imposed only upon the last pair of witnesses.
28. Deut. XIX. 19.
29. And since they waited until the last day when they were summoned by the plaintiff of that day, it is plain that their object in giving evidence was to render the ox *Mu'ad*.

Baba Kamma 24b

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

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

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

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

Raba said: Assuming that in the case of inciting a neighbor's dog against a third person, the owner of the dog is liable, if the incited dog turns upon the inciter, the owner is free on the ground that where the plaintiff himself has acted wrongly, the defendant who follows suit and equally acts wrongly [against the former] could not be made liable [to him].

R. Papa thereupon said to Raba: A statement was made in the name of Resh Lakish agreeing with yours; for Resh Lakish said:[13] 'In the case of two cows on public ground, one lying and the other walking, if the walking cow kicks the other, there is no liability [as the plaintiff's cow had no right to be lying on the public ground], but if the lying cow kicks the other cow there will be liability.' Raba, however, said to him: In the case of the two cows I would always order payment[14] as [on behalf of the plaintiff] we may argue against the defendant: 'Your cow may be entitled to tread upon my cow, she has however no right to kick her.'

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

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

1. **In which case the three sets dealt with could not have given their evidence in one and the same day, but each set on the day the respective goring took place.**
2. **Why then should the first set ever be made responsible for the subsequent rendering of the cattle *Mu'ad*.**
3. **In which case the three pairs may have given their evidence in one day.**
4. **I.e., the witnesses that constituted the former sets.**
5. **The former sets, however, cannot plead thus since they waited with their evidence until the last day, when they appeared to the summons of the plaintiff of that day, in which case it is more than evident that all that concerned that plaintiff regarding the evidence of the earlier times of goring was solely to render the ox *Mu'ad*.**
6. **And all gave evidence in one and the same day. Rashi a.l. maintains that this would still prove that the three days refer to the goring of the cattle and not to warning the owner. According to an interpretation suggested by Tosaf., however, the first and second sets who also appeared on the third day together with the third set, had already given their evidence on the first and second day respectively. The requirement of the three days could thus accordingly refer to warning the owner.**
7. **Cf. n. 2.**
8. **In which case the sole intention of all the sets of witnesses was the declaration of *Mu'ad*. They could not have intended to make the defendant liable for half damages since half damages in the case of *Tam* is paid only out of the body of the goring ox which the witnesses in this case were unable to identify. This explanation holds good only regarding the intention of the last set of witnesses, whereas the former sets, if for the declaration of *Mu'ad* they would necessarily have to record their evidence before the third time of goring, could then not have foreseen that the same ox (whose identity was not established by them) would continue goring for three and four times. Rashi thus proves that the three days refer not to warning the owner but to the times of goring committed by the cattle.**
9. **Since the identity of the goring ox could not be established.**

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

Baba Kamma 25a

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

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

R. Papa said to Abaye: Behold, there is a Tanna who does not employ the principle of *Dayyo* even when the *a fortiori* would thereby not be defeated, for it was taught: Whence do we know that the discharge of semen virile in the case of *zab*[17] causes defilement [either by

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

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

1. V. p. 125, n. 5.
2. V. ibid. n. 6. [As in whatever way the argument is put the result is the same — namely, inferring Horn on the plaintiff's premises from Horn on public ground.]
3. The Hebrew term meaning 'it is sufficient for it', and denoting the qualification applied by the Rabbis to check the full force of the *a fortiori*; v. Glos.
4. B.B. II 1a; Zeb. 69b.
5. The technical term for the logical inference, 'From minor to major,' v. Glos.
6. Num. XII, 14.
7. I.e., in the case of Divinity.
8. I.e., the case of her father. [Hence, even in the case of Divinity, no more than seven days are inferred proving that *Dayyo* has a Biblical basis.]
9. I.e., render it completely ineffective.
10. Regarding compensation whether it be half or full in the case of Horn doing damage.
11. V. p. 126, n. 9.
12. I.e., the Sages in the Mishnah: how do they meet R. Tarfon's objection?
13. Num. XII, 14.
14. How can he state that no mention is made of seven days in connection with divine reproof?
15. But not a decree per se.
16. Num. XII, 15.
17. A person afflicted with gonorrhea: cf. Lev. XV, 1-15.
18. As is the case with gonorrheal discharge.
19. Such as saliva.
20. Cf. Lev. XV, 8, and *Niddah*, 55b.
21. Such as semen virile.
22. Cf. Lev. XV, 16-17, and *supra* p. 2.
23. As it is based on the law applicable to the saliva of *zab*.
24. As is the case with the law applicable to semen virile of a clean person.
25. Whose semen virile causes defilement by touching.
26. Deut. XXIII, 11.
27. I.e., by the affliction of gonorrhea. [I may therefore have assumed that the semen virile of a *zab* causes no defilement, not even by 'touching'.]
28. And since the *a fortiori* would still serve a useful purpose regarding defilement by 'touching', why should not the principle of *Dayyo* be employed to exclude defilement by mere 'carrying'? Hence this Tanna does not resort to Dayya even where the employment thereof would not render the *a fortiori* ineffective.

29. The law applicable to semen virile to cause defilement by 'touching' is thus per se common with all kinds of persons. The inference by means of the *a fortiori* would therefore indeed be rendered useless if *Dayyo*, excluding as a result defilement by 'carrying', were admitted.
30. Naz. 66a.
31. Which defile both by 'touching' and by 'carrying'.
32. That semen virile of *zab* defiles by mere 'carrying' even on its own.
33. I.e., the three primary Defilements: Dead Reptile, Semen Virile and the Person contaminated by contact with a corpse, all of which do not defile by mere carrying'. v. *supra* p. 2.

Baba Kamma 25b

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

R. Aha of Difti said to Rabina: Behold there is this Tanna who does not employ the principle of *Dayyo* even when the purpose of the *a fortiori* would thereby not be defeated. For it was taught: Whence do we learn that mats[3] become defiled if kept within the tent where there is a corpse? — It is a logical conclusion: For if tiny [earthenware] jugs that remain undefiled by the handling of *zab*[4] become defiled when kept within the tent where there is a corpse,[5] does it not follow that mats, which even in the case of *zab* become defiled,[6] should become defiled when kept within the tent where there is a corpse.[7] Now this reasoning applies not only to the law of defilement for a single day,[8] but also to defilement for full seven[9] [days]. But why not argue that the *a fortiori* well serves its purpose regarding the defilement for a single day,[10] whilst the principle of *Dayyo* is to be employed to exclude defilement for seven days? — He [Rabina] answered him: The same problem had already been raised by R. Nahman b. Zachariah to Abaye, and Abaye answered him that it was regarding mats in the case of a dead reptile[11] that the Tanna had employed the *a fortiori*, and the text should run as follows: 'Whence do we learn that mats[12] coming in contact with dead reptiles[13] become defiled? It is a logical conclusion: for if tiny [earthenware] jugs that remain undefiled by the handling of *zab*,[14] become defiled when in contact with dead reptiles,[15] does it not follow that mats which even in the case of *zab* become defiled,[16] should become defiled by coming in contact with dead reptiles?' But whence the ruling regarding mats[17] kept within the tent of a corpse? — In the case of dead reptiles it is stated *raiment or skin*,[15] while in the case of a corpse it is also stated, *raiment … skin*:[18] just as in the case of *raiment or skin* stated in connection with dead reptiles,[15] mats [are included to] become defiled, so is it regarding *raiment … skin* stated in connection with a corpse[18] that mats similarly become defiled. This *Gezerah shawah*[19] must necessarily be 'free',[20] for if it were not 'free' the comparison made could be thus upset: seeing that in the case of dead reptiles [causing defilement to mats], their minimum for causing uncleanness is the size of a lentil,[21] how can you draw an analogy to corpses where the minimum to cause uncleanness is not the size of a lentil but that of an olive?[22] — The *Gezerah shawah* must thus be 'free'. Is it not so? For indeed the law regarding dead reptiles is placed in juxtaposition to semen virile as written, *Or a man whose seed goeth from him*,[23] and there immediately follows, *Or whosoever toucheth any creeping thing*. Now in the case of semen virile it is explicitly stated, *And every garment, and every skin, whereon is the seed of copulation*.[24] Why then had the Divine Law to mention again *raiment or skin* in the case of dead reptiles?[25] It may thus be concluded that it was [inserted] to be

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

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

1. Kelim I, 3.
2. It is thus proved that semen virile of *zab* causes of itself defilement by 'carrying' and not on account of the particles of gonorrhea it contains.
3. Which are not included among the articles referred to in Num. XXXI, 20.
4. [As he is unable to insert even his small finger within. Earthenware is susceptible to levitical uncleanness only through the medium of its interior. Lev. XI, 33.]
5. As stated in Num. XIX, 15; and every open vessel … is unclean.
6. In accordance with Lev. XV, 4.
7. Shab. 84a.
8. Lit., 'defilement (until) sunset,' which applies to defilements caused by *zab*; v. Lev. XV, 5-11.
9. Usual in defilements through a corpse; cf. Num. XIX, 11-16.
10. [As is the case with the bed of a *zab* (cf. Lev. XV, 4), since it is derived from *zab*.]
11. But not at all regarding corpses; the whole problem thus concerns only defilement for a day; v. *infra*.
12. As mats are not included among the articles referred to in Lev. XI, 32.
13. The minimum quantity for defilement by which is the size of a lentil, a quantity which can easily pass through the opening of the smallest bottle.
14. As he is unable to insert even his small finger within. Earthenware is susceptible to levitical uncleanness only through the medium of its interior. Lev. XI, 33.
15. Lev. XI, 32: … whether it be any vessel of wood or raiment or skin … it shall be unclean until the even.
16. In accordance with Lev. XV, 4.
17. Which are not included among the articles referred to in Num. XXXI, 20.
18. Num. XXXI, 20: And as to every raiment and all that is made of skin … ye shall purify.
19. The technical term for (an inference from) a verbal congruity in two different portions of the Law; v. Glos.

20. Heb. vbpun (Mufnah), 'free', that is, for exegetical use, having no other purpose to serve, but solely intended to indicate this particular similarity in law.
21. Hag. 11a; Naz. 52a.
22. Naz. 49b.
23. Lev. XXII, 4.
24. Ibid. XV, 17.
25. Lev. XI, 32.
26. Thus to make the *Gezerah shawah* irrefutable.
27. I.e., in the case of dead reptiles.
28. Nid. 22b.
29. Shab. 131a; Yeb. 70b.
30. Since the refutation referred to above may be entertained.
31. Num. XXXI, 20.
32. Yeb. 78b.
33. Becoming subject to the specific laws applicable to its own category. [So here mats in the tent of a corpse, though derived by analogy from reptiles, are subject to the laws of defilement by corpses. i.e., a defilement of 7 days.]
34. Usual in defilements through a corpse; cf. Num. XIX, 11-16.
35. Lev. XI, 32.
36. Num. XXXI, 24.
37. While in the state of *Tam*; cf. *supra* p. 73.
38. Ex. XXII, 4.

Baba Kamma 26a

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

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

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

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

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

It has been asked: In the case of Foot treading upon a child [and killing it] in the

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

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

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

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

1. On the analogy to Horn where the liability is only for half damages in the case of *Tam*. The Scriptural text may have been intended to exclude only full compensation.
2. Ex. XXI, 35.
3. I.e., the division of compensation.
4. With the exception of course of damage done by Pebbles according to the Rabbis, who by the authority of a special Mosaic tradition order the payment of half damages; cf. *supra* p. 80.
5. In accordance with the Rabbis who differ from R. Tarfon; v. *supra* p. 125.
6. *Supra* p. 132.
7. Ex. XXII, 4.
8. Lit., 'good', 'perfect'.
9. [Ex. XXI, 35; the phrase being superfluous, as the text could have read, They shall divide the money of it and the dead.]
10. Cf. *supra* p. 92.
11. V. *Supra* p. 12.
12. I.e., Pain, Medical Expenses, Loss of Time and Degradation, in addition to Depreciation, when injuring a human being; v. *supra* ibid.
13. Ex. XXI, 30.
14. V. *supra* p. 12.
15. V. p. 133, n. 8.
16. V. Ex. XXI, 30.
17. Lev. XXIV, 19.
18. Which becomes *Mu'ad*; v. *supra* p. 119.
19. Ex. XXI, 30.
20. With Foot, which is always considered *Mu'ad*; v. *supra* p. 11.
21. *Supra* p. 66 and *infra* 48b.
22. I.e., R. Tarfon.
23. In the same way as he derived compensation in full for damage done by Horn on the plaintiff's premises, as argued by him, *supra* p. 125. [Thus: If in the case of Tooth and Foot, where there is no liability at all involved on public ground, there is liability to pay full ransom on the plaintiff's premises, does it not follow that Horn, which does involve at least payment of half ransom on public ground, should on the plaintiff's premises be liable to pay full ransom.]
24. V. p. 134, n. 9.
25. And not from the law applicable to manslaughter committed by Foot, in which case there may be no ransom at all. [Thus: If in the case of Foot, which involves no liability for damage on public ground, there is liability to pay in full in the plaintiff's premises, does it not follow that, in the case of Horn, involving as it does payment of half ransom on public ground, there should be payment of full ransom in plaintiff's premises.]
26. For the person liable for arson may, in such a case, be indicted for manslaughter; cf. *supra* pp. 37-38 and p. 113.
27. [Thus: If in the case of Foot, which involves no liability at all on public ground, there is full liability for hidden goods on the plaintiff's premises, does it not follow that, in the case of Horn, which involves liability to pay half damages on public ground, there should be payment of full ransom in plaintiff's premises?] Cf. *supra* p. 18.
28. As stated *supra* p. 37.
29. Cf. notes 2 and 4.
30. V. *supra* p. 18.
31. For all civil complaints are merged in the capital accusation of manslaughter; cf. *supra*, p. 113 and Num. XXXV, 32.
32. I.e., R. Tarfon.
33. V. *supra*. 134, n. 10.
34. I.e., R. Tarfon
35. V. *supra* p. 135, n. 2.
36. V, *supra* p. 134, n. 10.
37. Cf. *supra* p. 8.
38. I.e., Pain, Medical Expenses, Loss of Time and Degradation; cf. *supra* p. 133 n. 8.

Baba Kamma 26b

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

Rabbah said: In the case of a stone lying in a person's bosom without his having knowledge of it, so that when he rose it fell down — regarding damage, there will be liability for Depreciation[6] but exemption regarding the [additional] Four Items;[7] concerning Sabbath[8] [there will similarly be exemption] as it is [only] work that has been [deliberately] purposed that is forbidden by the Law;[9] in a case of manslaughter[10] there is exemption from fleeing [to a city of refuge];[11] regarding [the release of] a slave,[12] there exists a difference of opinion between R.

Simeon b. Gamaliel and the Rabbis, as it was taught:[13] If the master was a physician and the slave requested him to attend to his eye and it was accidentally blinded, or [the slave requested the master] to scrape his tooth and it was accidentally knocked out, he may now laugh at the master, for he has already obtained his liberty. R. Simeon b. Gamaliel, however, says: [Scripture states] *and [he] destroy it*,[14] to make the freedom conditional upon the master intending to ruin the eye of the slave.

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

Where he intended to throw the stone to a distance of two cubits, but it fell at a distance of four,[21] if it caused damage, there is liability for Depreciation; regarding the [additional] Four Items there is still exemption;[16] so also concerning Sabbath,[19] for work [deliberately] planned is required [to make it an offence];[22] in the case of manslaughter,[23] And if a man lie not in wait,[24] is stated by Divine law, excluding a case where there was mention to throw a stone to a distance of two cubits but which fell at a distance of four.[25] Regarding [the release of] a slave, the difference of opinion between R. Simeon b. Gamaliel and the Rabbis[20] still applies. Where the intention was to throw the stone to a distance of four[21] cubits but it fell eight cubits away, — if it caused damage there will be liability for Depreciation; regarding the [additional] Four Items there is still exemption;[16] concerning Sabbath, if there was express intention that the stone should fall anywhere, there is liability for an offence,[21] but in the absence of such express intention no offence was committed;[26] in the case of manslaughter,[27] And if a man lie not in wait,[28] excludes a case where there was intention to throw a stone to a distance of four cubits, but which fell at a distance of eight. Regarding [the release of] a slave the difference of opinion between R. Simeon b. Gamaliel and the Rabbis[29] still applies.

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

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

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

1. That Man is *Mu'ad* to pay Depreciation for damage done by him under all circumstances.
2. [Literal rendering of Ex. XXI, 25, which is superfluous having regard to Lev. XXIV, 19, If a man maim his neighbor, as he hath done so shall it be done to him.]

3. That one is not merged in the other; cf. *infra* 85a.
4. Expressed in Hebrew only by two words [H] [H]
5. For which three words are employed in the Hebrew text.
6. For Man is *Mu'ad* to pay Depreciation even for damage done while asleep.
7. On account of the absence of a purpose to do damage.
8. I.e., if while unaware of the stone in his bosom he carried it with him into the open public thoroughfare, thus violating the Sabbath; cf. Shab. 96b.
9. V. *infra* 60a; Hag. 10b.
10. I.e., if, when the stone fell down, it killed a human being; v. Num. XXXV. 9-34.
11. Since he never had any knowledge of the stone being in his bosom, he could in no way be made responsible criminally for the accidental manslaughter.
12. I.e., when the stone in falling down destroyed the eye or the tooth of a slave; v. Ex. XXI. 26-27.
13. Kid. 24b.
14. Ex. XXI, 26.
15. For Man is *Mu'ad* to pay Depreciation even for damage done while asleep.
16. On account of the absence of a will to do damage.
17. I.e., if when the stone fell down, it killed a human being; v. Num. XXXV, 9-34.
18. Num. XXXV, 11, 15.
19. I.e., if while unaware of the stone in his bosom he carried it with him into the open public thoroughfare, thus violating the Sabbath; cf. Shab. 96b.
20. *Supra* p. 137.
21. For the minimum of distance to constitute the violation of Sabbath by throwing an object in a public thoroughfare is four cubits; v. Shab. 96b.
22. v. *supra* p. 137, n. 7.
23. I.e., if when the stone fell down, it killed a human being; v. Num. XXXV, 9-34.
24. Ex. XXI, 13.
25. [According to one interpretation of Rashi, this is a case for exile; according to another, a case which is excluded from enjoying the protection of the city of refuge: v. Mak. 7b.]
26. V. p. 137, n. 7.
27. V. p. 138 n. 3.
28. Ex. XXI, 13.
29. V. *supra* p. 137.
30. Belonging to another. According to the interpretation of Rashi a.l. the utensil was thrown by its owner; cf. however, Rashi, *supra* 17b.
31. Belonging to another.
32. Lit., 'he had let his arrow off', it had spent its force; i.e., when the act of throwing took place it was by no means calculated to do any damage.
33. According to R. Judah, the latter who caught it on the edge of his sword will be guilty of murder, but according to the Rabbis, no one is guilty of it.

Baba Kamma 27a

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

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

Rabbah further said: In the case of one who through a wind of unusual occurrence fell from the top of the roof [upon a human being] and did damage as well as caused degradation, there will be liability for Depreciation[8] but exemption from the [additional] Four Items:[9] if, however, [the fall had been] through a wind of usual occurrence and damage as well as degradation was occasioned, there is liability for Four Items[4] but exemption from Degradation.[7] If he turned over [while falling][10] there would be liability also for

Degradation for it was taught: From the implication of the mere statement, And she putteth forth her hand,[11] would I not have understood that she taketh him? Why then continue in the text and she taketh him?[12] — In order to inform you that since there existed an intention to injure though none to cause degradation [there is liability even for Degradation].

Rabbah again said: In the case of one placing a live coal on a neighbor's heart and death resulting, there is exemption;[13] if, however, it was put upon his belongings[14] which were [thereby] burnt, there is liability.[15] Raba said: Both of the two [latter cases] have been dealt with in Mishnah. Regarding the case 'on a neighbor's heart' we learnt:[16] If one man held another fast down in fire or in water, so that it was impossible for him to emerge and death resulted, he is guilty [of murder]. If, however, he pushed him into fire or into water, and it was yet possible for him to emerge but death resulted, there is exemption. Regarding the case 'Upon his belongings' we have similarly learnt:[17] [If a man says to another,] 'Tear my garment;' 'Break my jug;'[18] there is nevertheless liability [for any damage done to the garment or to the jug]. But if he said, '… upon the understanding that you will incur no liability,' there is exemption. Rabbah, however, asked: If a man placed a live coal upon the heart of a slave[19] [and injury[20] results therefrom], what should be the law?[21] Does it come under the law applicable in the case of a coal having been placed upon the body of the master himself,[22] or to that applicable in the case of a coal having been placed upon a chattel of his?[23] Assuming that it is subject to the law applicable in the case of a coal having been placed upon the heart of the master himself,[22] what should be the law regarding a live coal placed upon an ox [from which damage resulted]? — He himself answered the query thus: His slave is on a par with his own body,[22] whereas his ox is on a par with his chattels.[23]

CHAPTER III

MISHNAH. IF A MAN PLACES A [KAD] PITCHER ON PUBLIC GROUND AND ANOTHER ONE COMES AND STUMBLES OVER IT AND BREAKS IT, HE IS EXEMPT. IF THE OTHER ONE WAS INJURED BY IT, THE OWNER OF THE [HABITH] BARREL IS LIABLE TO COMPENSATE FOR THE DAMAGE.

GEMARA. To commence with PITCHER[24] and conclude with BARREL![25] And we have likewise learnt also elsewhere:[26] If one man comes with his [habith] barrel and another comes with his beam and [it so happened that] the [kad] pitcher of this one breaks by [collision with] the beam of that one, he is exempt.[26] Here [on the other hand] the commencement is with barrel[25] and the conclusion with pitcher![24] We have again likewise learnt elsewhere: In the case of this man coming with a [habith] barrel of wine and that one proceeding with a [kad] pitcher of honey, and as the [habith] barrel of honey cracked, the owner of the wine poured out his wine and saved the honey into his barrel, he is entitled to no more than his service.[27] Here again the commencement is with pitcher[25] and the conclusion with barrel![25] R. Papa thereupon said: Both kad and habith may denote one and the same receptacle. But what is the purpose in this observation?[28] — Regarding buying and selling.[29] But under what circumstances? It could hardly be thought to refer to a locality where neither kad is termed habith nor habith designated kad, for are not these two terms then kept there distinct? — No, it may have application in a locality where, though the majority of people refer to kad by the term kad and to habith by the term habith, yet there are some who refer to habith by the term kad and to kad by the term habith. You might perhaps have thought that the law[30] follows the majority.[31]

1. Cf. *supra* p. 41.
2. *Infra* pp. 224-5. According to R. Ishmael compensation for manslaughter will have to

be made by the owner of the ox, but according to the Rabbis there will be no payment, as the child at the time of the fatal fall was devoid of any value.
3. Ex. XXI, 30.
4. For since the falling down was caused by a wind of usual occurrence, it is considered willful.
5. V. Deut. XXV, 5, and Yeb. VI, 1.
6. Cf. Kid. I, 1, and Yeb. 56a.
7. *Infra*, 86b.
8. For Man is *Mu'ad* to pay Depreciation even for damage done while asleep.
9. On account of the absence of a will to do damage.
10. Intending thus to fall upon a human being standing below so as to escape the worst effects of his falling, but without intention to degrade.
11. Deut. XXV, 11.
12. Ibid.
13. Since the person upon whose heart the live coal had been placed was able to remove it.
14. Lit., 'garment'.
15. [In this case, the failure of the owner to remove the coal could be explained as due to his belief that he could claim compensation.]
16. Sanh. 76b.
17. *Infra* p. 531.
18. This does not imply release from liability, as he might have meant, 'You may tear, if you wish it,' with all the consequences it involves.
19. In the presence of his master; cf. Tosaf. a.l.
20. Not death.
21. Regarding compensation, as he could have removed it.
22. In which case there is exemption.
23. Where there is liability.
24. Heb. Kad.
25. Heb. Habith.
26. *Infra* p. 169.
27. V. *infra* p. 685.
28. How can it affect law.
29. The two terms may be interchanged in contracts as they are synonyms.
30. Regulating technical terms in contracts of sale.
31. Who keep the two terms distinct.

Baba Kamma 27b

It is therefore made known to us that we do not follow the majority[1] in [disputes on] matters of money.[2]

AND ANOTHER ONE COMES AND STUMBLES OVER IT AND BREAKS IT, HE IS EXEMPT. Why exempt? Has not one to keep one's eyes open when walking? — They said at the school of Rab, even in the name of Rab: The whole of the public ground was filled with barrels.[3] Samuel said: It is with reference to a dark place that we have learnt [the law in the Mishnah]. R. Johanan said: The pitcher was placed at the corner of a turning.[4] R. Papa said: Our Mishnah is not consistent unless in accordance with Samuel or R. Johanan, for according to Rab why exemption only in the case of stumbling [over the pitcher]? Why not the same ruling even when one directly broke it? — R. Zebid thereupon said in the name of Raba: The same law applies even when the defendant directly broke it; for AND STUMBLES was inserted merely because of the subsequent clause which reads, IF THE OTHER ONE WAS INJURED BY IT, THE OWNER OF THE BARREL IS LIABLE TO COMPENSATE FOR THE DAMAGE; and which of course applies only to 'stumbling' but not to direct breaking, in which case it only stands to reason that it is the plaintiff who is to blame for the damage he caused to himself. It was therefore on this account that 'stumbling' was inserted in the commencing clause.

R. Abba said to R. Ashi: In the West[5] the following [explanation] is stated in the name of R. 'Ulla: [The exemption[6] is] because it is not the habit of men to look round while walking on the road.[7] Such a case occurred in Nehardea[8] where Samuel ordered compensation [for the broken utensil] and so also in Pumbeditha[8] where Raba similarly ordered compensation to he paid. We understand this in the case of Samuel who abided by the dictum he himself propounded,[9] but regarding Raba are we to say that he [also] embraced the view of Samuel? — R. Papa thereupon said: [In the case of Raba] the damage was done at the corner of an oil factory; and since it was usual to keep there barrels, he[10] ought to have kept his eyes open while walking there.[11]

R. Hisda dispatched [the following query] to R. Nahman: As there has already been fixed a fine[12] of three sela's[13] for kicking with the knee; five for kicking with the foot; thirteen for a blow with the saddle of an ass — what is the fine for wounding with the blade of the hoe or with the handle of the hoe? — The reply was forwarded [as follows]: 'Hisda, Hisda! Is it your practice in Babylon to impose fines?[14] Tell me the actual circumstances of the case as it occurred.' He[15] thereupon dispatched him thus: There was a well belonging to two persons. It was used by them on alternate days.[16] One of them, however, came and used it on a day not his. The other party said to him: 'This day is mine!' But as the latter paid no heed to that, he took a blade of a hoe and struck him with it. R. Nahman thereupon replied: No harm if he would have struck him a hundred times with the blade of the hoe. For even according to the view that a man may not take the law in his own hands[17] for the protection of his interests, in a case where an irreparable loss is pending[18] he is certainly entitled to do so.

It has indeed been stated: Rab Judah said: No man may take the law into his own hands for the protection of his interests, whereas R. Nahman said: A man may take the law into his own hands for the protection of his interests. In a case where an irreparable loss is pending, no two opinions exist that he may take the law into his own hands for the protection of his interests: the difference of opinion is only where no irreparable loss is pending. Rab Judah maintains that no man may take the law into his own hands for the [alleged] protection of his interests, for since no irreparable loss is pending let him resort to the Judge; whereas R. Nahman says that a man may take the law into his own hands for the protection of his interests, for since he acts in accordance with [the prescriptions of the] law, why [need he] take the trouble [to go to Court]?

R. Kahana [however] raised an objection; Ben Bag Bag said;[19] Do not enter [stealthily] into thy neighbor's premises for the purpose of appropriating without his knowledge anything that even belongs to thee, lest thou wilt appear to him as a thief. Thou mayest, however, break his teeth and tell him, 'I am taking possession of what is mine.'[20] [Does not this prove that a man may take the law into his own hands[21] for the protection of his rights?[22]] — He[23] thereupon said:

1. Cf. *infra* p. 263 and B.B. 92b.
2. As the defendant is entitled to plead that he belongs to the minority.
3. Such a public nuisance may thus be abated.
4. The defendant is thus not to blame.
5. I.e., in Eretz Yisrael, which is West of Babylon.
6. For breaking the pitcher.
7. Probably because the roads in Eretz Yisrael were in better condition than in Babylon; v. Shab. 33b; A. Z. 3a.
8. A town in Babylon.
9. That were the pitcher to have been in a visible place there would be liability.
10. The defendant.
11. And was thus to blame for the damage he had done.
12. Cf. *infra* 90a, dealing with some other fixed fines.
13. *Sela'* is a coin equal to one sacred or two common *shekels*; v. Glos.
14. For the judicial right to impose fines is confined to Palestinian judges; cf. *supra* p. 67 and *infra* 84b.
15. R. Hisda.
16. Cf. B.B. 13a.
17. I.e., resort to force.
18. As where there is apprehension that the Court will be unable to redress the wrong done, e.g., in case all the water in the well will be used up.
19. V. Ab. (Sonc. ed.) p. 76. n. 7.
20. Cf. Tosef. B.K. X.
21. Since it is definitely stated that he may break his teeth … [The case dealt with here is where the loss is not irreparable, otherwise, as stated above, he would be allowed to enter even without permission.]
22. Thus contradicting the view of Rab Judah.
23. Rab Judah.

Baba Kamma 28a

It is true that Ben Bag Bag supports thy view; but he is only one against the Rabbis[1] who differ from him. R. Jannai [even] suggested that 'Break his teeth' may also

mean to bring him before a court of justice. But if so, why 'and thou mayest tell him?' Should it not read 'and they[2] will tell him'? Again, 'I am taking possession of what is mine'; should it not be 'he is taking possession of what is his'? — This is indeed a difficulty.

Come and hear: In the case of an ox throwing itself upon the back of another's ox so as to kill it, if the owner of the ox that was beneath arrived and extricated his ox so that the ox that was above dropped down and was killed, there is exemption. Now, does not this ruling apply to *Mu'ad*[3] where no irreparable loss is pending? — No, it only applies to *Tam*[4] where an irreparable loss is indeed pending. But if so, read the subsequent clause: If [the owner of the ox that was beneath] pushed the ox from above, which was thus killed, there would be liability to compensate. Now if the case dealt with is of *Tam*,[5] why liability? — Since he was able to extricate his ox from beneath, which in fact he did not do, [he had no right to push and directly kill the assailing ox].[6]

Come and hear: In the case of a trespasser having filled his neighbor's premises with pitchers of wine and pitchers of oil, the owner of the premises is entitled to break them when going out and break them when coming in. [Does not this prove that a man may take the law into his own hands for the protection of his rights?][7] — R. Nahman b. Isaac explained: He is entitled to break them [and make a way][8] when going out [to complain] to the Court of Justice, as well as break them when coming back to fetch some necessary documents.

Come and hear: Whence is derived the ruling that in the case of a [Hebrew] bondman whose term of service, that had been extended by the boring of his ear,[9] has been terminated by the arrival of the Jubilee year[10] if it so happened that his master, while insisting upon him to leave, injured him by inflicting a wound upon him, there is yet exemption? We learn it from the words, And ye shall take no satisfaction for him that is … come again …[11] implying that we should not adjudicate compensation for him that is determined to 'come again' [as a servant].[12] [Does not this prove that a man may take the law into his own hands for the protection of his interests?][7] — We are dealing here with a case where the servant became suspected of intending to commit theft.[13] But how is it that up to that time he did not commit any theft and just at that time[14] he became suspected of intending to commit theft? — Up to that time he had the fear of his master upon him, whereas from that time[14] he is no more subject to his master's control.[10] R. Nahman b. Isaac said: We are dealing with a bondman to whom his master assigned a Canaanite maidservant as wife:[15] up to the expiration of the term this arrangement was lawful[15] whereas from that time this becomes unlawful.[16]

Come and hear: IF A MAN PLACES A PITCHER ON PUBLIC GROUND AND ANOTHER ONE COMES AND STUMBLES OVER IT AND BREAKS IT, HE IS EXEMPT. Now, is not this so only when the other one stumbled over it, whereas in the case of directly breaking it there is liability?[17] — R. Zebid thereupon said in the name of Raba: The same law applies even in the case of directly breaking it; for 'AND STUMBLES' was inserted merely because of the subsequent clause which reads, IF THE OTHER ONE WAS INJURED BY IT, THE OWNER OF THE BARREL IS LIABLE TO COMPENSATE FOR THE DAMAGE, and which, of course, applies only to stumbling but not to direct breaking, as then it is of course the plaintiff who is to blame for the damage he caused to himself. It was therefore on this account that 'stumbling' was inserted in the commencing clause.

Come and hear: *Then thou shalt cut off her hand*,[18] means only a monetary fine. Does not this ruling apply even in a case where there was no other possibility for her to save [her husband]?[19] — No, it applies only where she was able to save [him] by some other

means.[20] Would indeed no fine be imposed upon her in a case where there was no other possibility for her to save [her husband]? But if so, why state in the subsequent clause: '*And putteth forth her hand*,[21] excludes an officer of the Court of Justice [from any liability for degradation caused by him while carrying out the orders of the Court]'? Could not the distinction be made by continuing the very case[22] [in the following manner]: 'Provided that there were some other means at her disposal to save [him],[20] whereas if she was unable to save [him] by any other means there would be exemption'? — This very same thing was indeed meant to be conveyed [in the subsequent clause:] 'Provided that there were some other means at her disposal to save [him],[23] for were she unable to save [him] by any other means, the resort to force in her case should be considered as if exercised by an officer of the Court[24] [in the discharge of his duties] and there would be exemption.'

Come and hear:[25] In the case of a public road passing through the middle of a field of an individual, who appropriates the road but gives the public another at the side of his field, the gift of the new road holds good, whereas the old one will not thereby revert to the owner of the field. Now, if you maintain that a man may take the law into his own hands for the protection of his interests, why should he not arm himself with a whip and sit there?[26] — R. Zebid thereupon said in the name of Raba: This is a precaution lest an owner [on further occasions] might substitute a round- about way[27] [for an old established road]. R. Mesharsheya even suggested that the ruling applies to an owner who actually replaced [the old existing road by] a roundabout way.[27] R. Ashi said: To turn a road [from the middle] to the side [of a field] must inevitably render the road roundabout, for if for those who reside at that side it becomes more direct, for those who reside at the other side it is made far [and roundabout]. But if so, why does the gift of the new road hold good? Why can the owner not say to the public authorities: 'Take ye yours [the old path] and return me mine [the new one]'? — [That could not be done] because of Rab Judah, for Rab Judah said:[28] A path [once] taken possession of by the public may not be obstructed.

Come and hear: If an owner leaves *Pe'ah*[29] on one side of the field, whereas the poor arrive at another side and glean there, both sides are subject to the law of *Pe'ah*. Now, if you really maintain that a man may take the law into his own hands for the protection of his interests why should both sides be subject to the law of *Pe'ah*?[30] Why should the owner not arm himself with a whip and sit?[31] — Raba thereupon said: The meaning of 'both sides are subject to the law of *Pe'ah*' is that they are both exempt from tithing,[32] as taught:[33] If a man, after having renounced the ownership of his vineyard, rises early on the following morning and cuts off the grapes,[34] there applies to them the laws of Peret,[35] 'Oleloth,[36] 'Forgetting'[37] and *Pe'ah*[38] whereas there is exemption from tithing.[39]

MISHNAH. IF HIS PITCHER BROKE ON PUBLIC GROUND AND SOMEONE SLIPPED IN THE WATER OR WAS INJURED BY THE POTSHERD HE IS LIABLE [TO COMPENSATE]. R. JUDAH SAYS: IF IT WAS DONE INTENTIONALLY HE IS LIABLE, BUT IF UNINTENTIONALLY HE IS EXEMPT.

GEMARA. Rab Judah said on behalf of Rab: The Mishnaic ruling refers only to garments soiled in the water.[40]

1. I.e., the majority of Rabbis.
2. I.e., the Judges.
3. In which case the Court would order compensation in full.
4. Where compensation is only for a half, the plaintiff losing the other half.
5. V. p. 145, n. 9.
6. [Although there was the danger of his losing the full value of his ox.]
7. Thus contradicting the view of Rab Judah.
8. But no more.
9. Ex. XXI, 6.
10. Lev. XXV, 10, and Kid. 14b, 15a.
11. Num. XXXV, 32.

12. According to another rendering quoted by Rashi, it means 'that has to return' to his family, as prescribed in Lev. XXV, 10.
13. In which case an irreparable loss is pending.
14. I.e., the arrival of the Jubilee year.
15. Ex. XXI, 4; Kid. 15a.
16. Cf. *Onkelos* on Deut. XXIII, 18; hence the Master may use force to eject him.
17. Thus opposing the view of R. Nahman.
18. Deut. XXV, 12.
19. Thus proving that even where irreparable loss is pending, as in this case, it is not permitted to take the law into one's own hands.
20. In which case she acted ultra vires, i.e., beyond the permission granted by law.
21. Deut. XXV, 11.
22. Dealing with a woman coming to rescue her husband.
23. V. p. 147. n. 6.
24. Lit. 'her hand is like the hand of the officer'.
25. B. B. 99b.
26. To keep away intruders; v. p. 147 n. 5.
27. Which is of course not an equitable exchange in accordance with the law.
28. B.B. 12a; 26b; 60b and 100a.
29. I.e., the portion of the harvest left at a corner of the field for the poor in accordance with Lev. XIX. 9; XXIII, 22; v. Glos.
30. Thus proving that even where irreparable loss is pending, as in this case, it is not permitted to take the law into his own hands.
31. I.e., keeping the poor away from the *Pe'ah* on the former side.
32. But they will by no means belong to the poor, for the portion left on the former side remains the owner's property.
33. *Infra* 94a; Ned. 44b.
34. So that ownership has been re-established.
35. I.e.. grapes fallen off during cutting which are the share of the poor as prescribed in Lev. XIX, 10.
36. Small single bunches reserved for the poor in accordance with Lev. XIX, 10, and Deut. XXIV, 21.
37. I.e., produce forgotten in the field, belonging to the poor in accordance with Deut. XXIV, 19.
38. I.e., the portion of the harvest left at a corner of the field for the poor in accordance with Lev. XIX, 9; XXIII, 22; v. Glos.
39. V. *infra* 94a. For the law of tithing applies only to produce that has never been abandoned even for the smallest space of time; v. Rashi and Tosaf. a.l.
40. Rab maintains that the Mishnah deals with a case where the water of the broken pitcher has not been abandoned, so that it still remains the chattel of the original owner who is liable for any damage caused by it.

Baba Kamma 28b

For regarding injury to the person there is exemption, since it was public ground[1] that hurt him.[2] When repeating this statement in the presence of Samuel he said to me: 'Well, is not [the liability for damage occasioned by] a stone, a knife or luggage[3] derived from Pit?[4] So that I adopt regarding them all [the interpretation]: An ox[4] excluding man, An ass[4] excluding inanimate objects! This qualification[5] however applies only to cases of killing, whereas as regards [mere] injury, in the case of man there is liability, though with respect to inanimate objects there is [always] exemption?'[6] — Rab [however, maintains[7] that] these statements apply only to nuisances abandoned [by their owners],[8] whereas in cases where they are not abandoned they still remain [their owner's] chattel.[9]

R. Oshaia however raised an objection: *'And an ox or an ass fall therein'*:[4] *'An ox'* excluding man; *'an ass'* excluding inanimate objects. Hence the Rabbis stated: If there fell into it an ox together with its tools and they thereby broke, [or] an ass together with its equipment which rent, there is liability for the beast but exemption as regards the inanimate objects.[10] To what may the ruling in this case be compared? To that applicable in the case of a stone, a knife and luggage[11] that had been left on public ground and did damage. (Should it not on the contrary read, 'What case may be compared to this ruling?'[12] — It must therefore indeed mean thus: 'What may [be said to] be similar to this ruling? The case of a stone, a knife and luggage that had been left on public ground and did damage'.) 'It thus follows that where a bottle broke against the stone there is liability.' Now, does not the commencing clause[13] contradict the view of Rab,[14] whereas the concluding clause[15] opposes that of Samuel?[16] — But [even] on your view, does not the text contradict itself, stating exemption in the commencing clause[13] and liability in the concluding clause![15] Rab therefore interprets it so as to accord with his

reasoning, whereas Samuel [on the other hand] expounds it so as to reconcile it with his view. Rab in accordance with his reasoning interprets it thus: The [above] statement[13] was made only regarding nuisances that have been abandoned, whereas where they have not been abandoned there is liability.[17] It therefore follows that where a bottle broke against the stone there is liability. Samuel [on the other hand] in reconciling it with his view expounds it thus: Since you have now decided that a stone, a knife and luggage [constitute nuisances that] are equivalent [in law] to Pit, it follows that, according to R. Judah who orders compensation for inanimate objects damaged by Pit,[18] where a bottle smashed against the stone there is liability.

R. Eleazar said: This ruling[15] refers only to a case where the person stumbled over the stone and the bottle broke against the stone. For if the person stumbled because of the public ground, though the bottle broke against the stone, there is exemption.[19] Whose view is here followed? — Of course not that of R. Nathan.[20] There are, however, some who [on the other hand] read: R. Eleazar said: Do not suggest that it is only where the person stumbled upon the stone and the bottle broke against the stone that there is liability, so that where the person stumbled because of the public ground, though the bottle broke against the stone, there would be exemption. For even in the case where the person stumbled because of the public ground, provided the bottle broke against the stone there is liability. Whose view is here followed? — Of course that of Nathan.[20]

R. JUDAH SAYS: IF IT WAS DONE INTENTIONALLY HE IS LIABLE, BUT IF UNINTENTIONALLY HE IS EXEMPT. What does INTENTIONALLY denote? — Rabbah said: [It is sufficient[21] if there was] an intention to bring the pitcher below the shoulder.[22] Said Abaye to him: Does this imply that R. Meir[23] imposes liability even when the pitcher slipped down [by sheer accident]? — He answered him:[24] 'Yes, R. Meir imposes liability even where the handle remained in the carrier's hand.' But why? Is it not sheer accident, and has not the Divine Law prescribed exemption in cases of accident as recorded,[25] But unto the damsel thou shalt do nothing?[26] You can hardly suggest this ruling to apply only to capital punishment, whereas regarding damages there should [always] be liability, for it was taught:[27] If his pitcher broke and he did not remove the potsherds, [or] his camel fell down and he did not raise it, R. Meir orders payment for any damage resulting therefrom, whereas the Sages maintain

1. Lit., 'ground of the world'.
2. Whereas the water was only the remote cause of it.
3. Even when not abandoned; cf. *supra* p. 7.
4. Ex. XXI, 33.
5. Excluding man.
6. For killing and injury could not be distinguished in the case of inanimate objects. How then could Rab make him liable for soiled garments (and exempt for injury to the person)?
7. The difference in principle between Samuel and Rab is that the former maintains that nuisances of all kinds, whether abandoned by their owners or not, are subject to the law applicable to Pit, in which case there is no liability either for damage done to inanimate objects or death caused to human beings, whereas the view of Rab is that only abandoned nuisances are subject to these laws of Pit, but nuisances that have not been abandoned by their owners are still his chattels, and as such have to be subject to the law applicable to ox doing damage, in which case no discrimination is made as to the nature of the damaged objects, be they men, beasts or inanimate articles; cf. also *supra* p. 38.
8. In which case they are equal (in law) to Pits dug on public ground.
9. They are thus subject to the law applicable to ox; v. *supra* p. 18.
10. V. *infra* 52a.
11. Even when not abandoned; cf. *supra* p. 7.
12. Since the case of stone, knife and luggage is far less obvious than this case which is explicitly dealt with in Scripture.
13. Making a stone, a knife and luggage subject to the law applicable to Pit.

14. Who maintains that unless they have been abandoned they are subject to the law of Ox.
15. Imposing liability in the case of a bottle having been smashed against the stone.
16. According to whom it should be subject to the law applicable to Pit imposing no liability for damage done to inanimate objects.
17. Even for damage done to inanimate objects, as they are subject not to the law of Pit but to that applicable to Ox.
18. *Supra* p. 18.
19. Since it was ownerless ground that was the primary cause of the accident.
20. Who holds that where no payment can be exacted from one defendant, the co-defendant, if any, will himself bear the whole liability; cf *supra* p. 54 and *infra* 53a
21. To constitute liability.
22. Though there was no intention whatever to break it.
23. Who is usually taken to have been the author of anonymous Mishnaic statements, especially when contradicting those of R. Judah b. Il'ai, his colleague.
24. I.e., Rabbah to Abaye.
25. Deut. XXII, 26.
26. For so far as she is concerned it was a mishap.
27. *Infra* 55a.

Baba Kamma 29a

that no action can be instituted against him in civil courts though there is liability[1] according to divine justice. The Sages agree however, with R. Meir that, in the case of a stone, a knife and luggage which were left on the top of the roof and fell down because of a wind of usual occurrence[2] and did damage, there will be liability.[3] R. Meir [on the other hand] agrees with the Sages that, regarding bottles that were placed upon the top of the roof for the purpose of getting dry and fell down because of a wind of unusual occurrence[4] and did damage, there is exemption.[5] [Does not this prove that even regarding damages all agree that there is exemption in cases of sheer accident?] — Abaye therefore said: It is on two points that they[6] differ [in the Mishnah]; they differ regarding damage done at the time of the fall [of the pitcher] and they again differ regarding damage occasioned [by the potsherds] subsequently to the fall. The difference of opinion regarding damage done at the time of the fall of the pitcher arises on the question whether stumbling implies negligence [or not];[7] one Master[8] maintaining that stumbling does imply negligence, whereas the other Master[9] is of the opinion that stumbling does not [necessarily] imply negligence.[10] The point at issue in the case of damage occasioned [by the potsherds] subsequently to the fall, is the law as applicable to abandoned nuisances;[11] one Master[8] maintaining that for damage occasioned by abandoned nuisances there is liability,[12] whereas the other Master[9] maintains exemption.[13] But how can you prove this?[14] — From the text which presents two [independent] cases [as follows]; SOMEONE SLIPPED IN THE WATER OR WAS INJURED BY THE POTSHERD; for indeed is not one case the same as the other,[15] unless it was intended to convey, 'Someone slipped in the water while the pitcher had been falling[16] or was injured by the potsherd subsequently to the fall.'

Now that the Mishnah presents two independent cases, it is only reasonable to assume that the Baraitha[17] similarly deals with the same two problems. That is all very well as regards the 'pitcher' where the two [problems] have application [in the case of damage done] at the time of the fall or subsequently to the fall [respectively]. But how in the case of the 'camel'? For though concerning damage occasioned subsequently to the fall, it may well have application where the carcass has been abandoned,[18] yet in the case of damage done at the time of the fall, what point of difference can be found?[19] — R. Aha thereupon said: [It deals with a case] where the camel was led in water along the slippery shore of a river.[20] But under what circumstances? If where there was another [better] way, is it not a case of culpa lata?[21] If on the other hand there was no other way [to pass through], is it not a case of no alternative? — The point at issue can therefore only be where the driver stumbled and together with him the camel also stumbled.

But in the case of abandoning nuisances,[22] where could [the condition of] intention [laid down by R. Judah] come in? — Said R. Joseph: The intention [in this case] refers to the retaining of the ownership of the potsherd.[23] So also said R. Ashi, that the intention [in this case] refers to the retaining of the ownership of the potsherd.

R. Eleazar said: 'It is regarding damage done at the time of the fall that there is a difference of opinion.' But how in the case of damage done subsequently to the fall? Would there be unanimity that there is exemption? Surely there is R. Meir who expressed [his opinion][24] that there is liability! What else [would you suggest? That in this case] there is unanimity [imposing] liability? Surely there are the Rabbis who stated [their view] that there is exemption! — Hence, what he means [to convey by his statement] 'damage done at the time of the fall', is that there is difference of opinion 'even regarding damage done at the time of the fall', making thus known to us [the conclusions arrived at] by Abaye.[25]

1. For not having removed the potsherds or the camel that fell down.
2. Which the defendant should have anticipated.
3. For carelessness.
4. Which could hardly have been anticipated.
5. For in this case the defendant is not to blame for carelessness.
6. I.e., R. Judah and the anonymous view which is that of R. Meir.
7. As it was owing to the defendant having stumbled that his pitcher gave way.
8. I.e., R. Meir.
9. I.e., R. Judah.
10. 'INTENTIONALLY' stated in the Mishnah would thus mean where there was intention actually to break the pitcher, for if the intention was merely to bring the pitcher below the shoulder it would come under the term 'UNINTENTIONALLY', the ground advanced by R. Judah is that in the case of stumbling and breaking a pitcher and doing thereby damage, no negligence was necessarily involved.
11. Of which the defendant is no longer the owner.
12. For the liability in the case of Pit is also where it has been dug in public ground and is thus ownerless.
13. For he holds that the liability in the case of Pit is only where the defendant had dug it in his own ground and though he subsequently abandoned it he retained the ownership of the pit itself; cf. *supra* p. 107; and *infra* 50a.
14. That the points at issue are twofold.
15. Why then would one case not have sufficed?
16. And the water was still in the process of being poured out.
17. *Supra* p. 152.
18. The point at issue thus consisting in the law applicable to abandoned nuisances.
19. For the problem whether 'stumbling' implies negligence or not has surely no application where it was not the driver but the camel that stumbled.
20. The stumbling of the camel is thus imputed to the driver.
21. I.e., grave fault, which has nothing to do with the problem of stumbling.
22. Which is the second point at issue between R. Judah and R. Meir.
23. [R. Judah therefore means this: If he had the intention of retaining the shards he is liable; if he had no intention to do so but abandoned them, he is exempt.]
24. *Supra* p. 152.
25. *Supra* p. 153.

Baba Kamma 29b

R. Johanan, however, said: 'It is regarding damage occasioned after the fall [of the pitcher] that there is a difference of opinion.' But how in the case of damage done at the time of the fall? Would there be unanimity [granting] exemption? Surely R. Johanan's statement further on[1] that we should not think that the Mishnah[2] [there] follows the view of R. Meir who maintains that stumbling constitutes carelessness, implies that R. Meir imposes liability.[3] What else [would you suggest? That there] be unanimity [imposing] liability? Surely the very statement made further on[1] by R. Johanan [himself] that we should not think that the Mishnah[2] [there] follows the view of R. Meir, implies that the Rabbis would exempt![3] — Hence what he [R. Johanan] intends to convey to us is that abandoned nuisances have only in this connection been exempted from liability by the Rabbis since

the very inception [of the nuisances][4] was by accident, whereas abandoned nuisances in other circumstances involve liability [even according to the Rabbis].[5]

It was stated: In the case of abandoned nuisances [causing damage], R. Johanan and R. Eleazar [differ]. One imposes liability and the other maintains exemption. May we not say that the one imposing liability follows the view of R. Meir,[6] whereas the other, who maintains exemption follows that of the Rabbis?[6] — As to R. Meir's view no one could dispute [that there should be liability].[7] Where they differ is as to the view of the Rabbis. The one who exempts does so because of the Rabbis,[8] while the other who imposes liability can say to you, 'It is I who follow the view even of the Rabbis, for the Rabbis who declare abandoned nuisances exempt do so only in one particular connection, where the very inception [of the nuisances][9] had been by accident, whereas abandoned nuisances in other connections involve liability.' May it not be concluded that it was R. Eleazar who imposed liability? For R. Eleazar said in the name of R. Ishmael:[10] There are two [laws dealing with] matters that are really not within the ownership of man but which are regarded by Scripture as if they were under his ownership. They are [the following]: Pit in public ground,[11] and Leaven after midday [on Passover eve].[12] It may indeed be concluded thus.[13]

But did R. Eleazar really say so? Did not R. Eleazar express himself to the contrary? For we have learnt;[14] 'If a man turns up dung that had been lying on public ground and another person is [subsequently] injured thereby, there is liability for the damage.' And R. Eleazar thereupon said: This Mishnaic ruling applies only to one who [by turning over the dung] intended to acquire title to it. For if he had not intended to acquire title to it there would be exemption. Now, does not this prove that abandoned nuisances are exempt? — R. Adda b. Ahabah suggested [that the amendment made by R. Eleazar] referred to one who has restored the dung to its previous position.[15] Rabina [thus] said: The instance given by R. Adda b. Ahabah may have its equivalent in the case of one who, on coming across an open pit, covered it, but opened it up again. But Mar Zutra the son of R. Mari said to Rabina: What a comparison! In the latter case, [by merely covering the pit] the [evil] deed of the original [offender] has not yet been undone, whereas in the case before us [by removing the dung from its place] the [evil] deed of the original [offender] has been undone! May it not therefore [on the other hand] have its equivalent only in the case of one who, on coming across an open pit, filled it up [with earth] but dug it out again, where, since the nuisance created by the original [offender] had already been completely removed [by filling in the pit], it stands altogether under the responsibility of the new offender? — R. Ashi therefore suggested [that the amendment made by R. Eleazar] referred to one who turned over the dung within the first three [handbreadths][16] of the ground [in which case the nuisance created by the original offender is not yet considered in law as abated]. But what influenced R. Eleazar to make the [Mishnaic] ruling[17] refer to one who turned over the dung within the first three [handbreadths of the ground], and thus to confine its application only to one who intended to acquire title to the dung,[18] excluding thereby one who did not intend to acquire title to it? Why not indeed make the ruling refer to one who turned over the dung above the first three handbreadths, so that even where one did not intend to acquire title to it the liability should hold good? — Raba [thereupon] said: Because of a difficulty in the Mishnaic text[17] [which occurred to him]: Why indeed have 'turning up' in the Mishnaic text and not simply 'raising,'[19] if not to indicate that 'turning up' implies within the first three handbreadths [of the ground].

Now [then] that R. Eleazar was the one who maintained liability,[20] R. Johanan would [of course] be the one who maintained

exemption. But could R. Johanan really maintain this? Surely we have learnt: If a man hides thorns and broken glass [in public ground], or makes a fence of thorns, or if a man's fence falls upon public ground and damage results therefrom to another person, there is liability for the damage.[21] And R. Johanan thereupon said: This Mishnaic ruling refers to a case where the thorns were projecting into the public thoroughfare. For if they were confined within private premises[22] there would be exemption. Now, why should there be exemption in the case where they were confined within private premises if not because they would only constitute a nuisance on private premises? Does this then not imply that it is only a nuisance created upon public ground that involves liability, proving thus that abandoned nuisances do involve liability? — No, it may still be suggested that abandoned nuisances are exempt. The reason for the exemption in the case of thorns confined to private premises is, as it has already been stated in this connection,[21] that R. Aha the son of R. Ika said: Because it is not the habit of men to rub themselves against walls.[23]

But again, could R. Johanan [really] maintain this?[24] Surely R. Johanan stated:[25] The *halachah* is in accordance with anonymous Mishnaic rulings. And we have learnt: If a man digs a pit in public ground, and an ox or ass falls in and dies, there is liability.[26] [Does this not prove that there is liability for a pit dug in public ground?] — [It must] therefore [be concluded that] R. Johanan was indeed the one who maintained liability. Now then that R. Johanan was the one who maintained liability, R. Eleazar would [of course] be the one who maintained exemption. But did not R. Eleazar say

1. *Infra* p. 166.
2. Dealing with the case of the two potters, *infra* p. 166.
3. For damage done at the time of the fall.
4. I.e., when the pitcher gave way or the camel fell down.
5. The statement made by R. Johanan that it was regarding damage occasioned after the fall (of the pitcher) that there was a difference of opinion would thus mean that the difference of opinion between R. Meir and the other Rabbis was only where the inception of the nuisance was with a fall, i.e. with an accident, as where the nuisance had originally been willfully exposed to the public there would be liability according to all opinions.
6. V. p. 155, n. 1.
7. For R. Meir imposes liability for abandoned nuisances even where their very inception was by accident; v. Rashi, but also Tosaf. 29a.
8. *Supra* p. 153.
9. As when the pitcher gave way or the camel fell down.
10. Pes. 6b.
11. Which is not the property of the defendant, but for which he is nevertheless responsible on account of his having dug it.
12. Lit., 'from the sixth hour upwards', when in accordance with Pes. I. 4, it becomes prohibited for any use and is thus rendered ownerless, but for its destruction the original owner is still held responsible.
13. That according to R. Eleazar abandoning nuisances does not release from responsibility.
14. *Infra* p. 161.
15. In which case the defendant did not aggravate the position.
16. According to the principle of Labud, which is the legal consideration of separated parts as united, one substance is not regarded as removed from another unless a space of not less than three handbreadths separates them.
17. *Infra* p. 161.
18. Lit., 'and the reason is because he intended', etc.
19. Which would necessarily mean above the first three handbreadths of the ground level.
20. In the case of abandoned nuisances that have caused damage.
21. *Infra* p. 159.
22. Although he subsequently abandoned it to the public.
23. It is therefore the plaintiff himself who is to blame.
24. That abandoning nuisances releases from responsibility.
25. Shab. 46a.
26. *Infra* 50b.

Baba Kamma 30a

in the name of R. Ishmael, etc.[1] [which proves that abandoned nuisances do involve liability]? — This presents no difficulty. One view[2] is his own whereas the other[3] is that of his master.

MISHNAH. IF A MAN POURS OUT WATER INTO PUBLIC GROUND AND SOME OTHER PERSON IS INJURED BY IT, THERE IS LIABILITY FOR THE DAMAGE. IF HE HIDES THORNS AND BROKEN GLASS, OR MAKES A FENCE OF THORNS, OR, IF A FENCE FALLS INTO THE PUBLIC GROUND AND DAMAGE RESULTS THEREFROM TO SOME OTHER PERSONS, THERE IS [SIMILARLY] LIABILITY FOR THE DAMAGE.[4]

GEMARA. Rab said: This Mishnaic ruling[5] refers only to a case where his garments[6] were soiled in the water. For regarding injury to himself there should be exemption, since it was ownerless ground that hurt him.[7] [But] R. Huna said to Rab: Why should not [the topmost layer of the ground mixed up with private water] be considered as private clay?[8] — Do you suggest [the ruling to refer to] water that has not dried up? [No.] It deals with a case where the water has already dried up. But why [at all] two [texts[9] for one and the same ruling]?[10] — One [text] refers to the summer season whereas the other deals with winter, as indeed [explicitly] taught [elsewhere]: All those who open their gutters or sweep out the dust of their cellars [into public thoroughfares] are, in the summer period, acting unlawfully, but lawfully in winter; [in all cases] even though when acting lawfully, if special damage resulted, they are liable to compensate.[11]

IF HE HIDES THORNS, etc., R. Johanan said:[4] This Mishnaic ruling refers only to a case where the thorns were projecting into the public ground. For if they were confined within private premises there would be no liability. On what account is there exemption [in the latter case]? — R. Aha the son of R. Ika [thereupon] answered:[12] Because it is not the habit of men to rub themselves against walls.

Our Rabbis taught: If one hid thorns and broken glasses in a neighbor's wall and the owner of the wall came and pulled his wall down, so that they fell into the public ground and did damage, the one who hid them is liable. R. Johanan [thereupon] said: This ruling refers only to an impaired wall.[13] For in the case of a strong wall the one who hid [the thorns] should be exempt while the owner of the wall would be liable.[14] Rabina commented: This ruling[15] proves that where a man covers his pit with a neighbor's lid and the owner of the lid comes and removes his lid, the owner of the pit would be liable [for any damage that may subsequently be caused by his pit]. Is not this inference quite obvious?[16] — You might perhaps have suggested this ruling[15] [to be confined to the case] there, where the owner of the wall had no knowledge of the identity of the person who hid the thorns in the wall, and was accordingly unable to inform him of the intended pulling down of the wall, whereas in the case of the pit, where the owner of the lid very well knew the identity of the owner of the pit, [you might have argued] that it was his duty to inform him [of the intended removal of the lid].[17] It is therefore made known to us [that this is not the case].[18]

Our Rabbis taught: The pious men of former generations used to hide their thorns and broken glasses in the midst of their fields at a depth of three handbreadths below the surface so that [even] the plow might not be hindered by them. R Shesheth[19] used to throw them into the fire.[20] Raba threw them into the Tigris. Rab Judah said: He who wishes to be pious must [in the first instance particularly] fulfill the laws of [Seder] Nezikin.[21] But Raba said: The matters [dealt with in the Tractate] Aboth;[22] still others said: Matters [dealt with in] Berakoth.[23]

MISHNAH. IF A MAN REMOVES HIS STRAW AND STUBBLE INTO THE PUBLIC GROUND TO BE FORMED INTO MANURE, AND DAMAGE RESULTS TO SOME OTHER PERSON, THERE IS LIABILITY FOR THE DAMAGE, AND WHOEVER SEIZES THEM FIRST ACQUIRES TITLE TO THEM. R. SIMEON B. GAMALIEL SAYS: WHOEVER CREATES ANY NUISANCES ON PUBLIC GROUND CAUSING [SPECIAL] DAMAGE IS LIABLE TO COMPENSATE, THOUGH

WHOEVER SEIZES OF THEM FIRST ACQUIRES TITLE TO THEM. IF HE TURNS UP DUNG THAT HAD BEEN LYING ON PUBLIC GROUND, AND DAMAGE [SUBSEQUENTLY] RESULTS TO ANOTHER PERSON, HE IS LIABLE FOR THE DAMAGE.

***GEMARA*. May we say that the Mishnaic ruling[24] is not in accordance with R. Judah? For it was taught: R. Judah says: When it is the season of taking out foliage everybody is entitled to take out his foliage into the public ground and heap it up there for the whole period of thirty days so that it may be trodden upon by the feet of men and by the feet of animals; for upon this understanding did Joshua make [Israel][25] inherit the Land. — You may suggest it to be even in accordance with R. Judah, for R. Judah [nevertheless] agrees that where [special] damage resulted, compensation should be made for the damage done. But did we not learn that R. Judah maintains that in the case of a Chanukah candle[26] there is exemption on account of it having been placed there with authorization?[27] Now, does not this authorization mean the permission of the *Beth din*?[28] — No, it means the sanction of [the performance of] a religious duty[29] as [indeed explicitly] taught: R. Judah says: In the case of a Chanukah candle there is exemption on account of the sanction of [the performance of] a religious duty.**

Come and hear: In all those cases where the authorities permitted nuisances to be created on public ground, if [special] damage results there will be liability to compensate. But R. Judah maintains exemption![30] — R. Nahman said: The Mishnah[31] refers to the time when it is not the season to take out foliage and thus it may be in accordance with R. Judah. — R. Ashi further [said]:

1. **That there is liability for a pit dug in public ground, though it is ownerless.**
2. **That abandoning nuisances releases from responsibility.**
3. **That abandoning nuisances does not release from responsibility.**
4. ***Supra* p. 158.**
5. **Which, according to Rab, deals with a case where the water has not been abandoned, but remained still the chattel of the original owner.**
6. **Those of the person who was injured.**
7. **Whereas the water was but the remote cause of it.**
8. **Lit., 'his clay'. i.e., of the owner of the water.**
9. **The one here and the other *supra* p. 149.**
10. **Expounded by Rab here as well as *supra* pp. 149-150.**
11. ***Supra* pp. 19-20.**
12. **V. p. 159, n. 3.**
13. **Which was likely to be pulled down.**
14. **For not having taken proper care to safeguard the public.**
15. **As stated in the Baraitha quoted.**
16. **Why then had Rabina to make it explicit?**
17. **Failing that, the sole responsibility should then fall upon him.**
18. **But that the responsibility lies upon the owner of the pit.**
19. **Who was stricken with blindness; cf. Ber. 58a.**
20. **V. Nid. 17a.**
21. **[By being careful in matters that may cause damage.]**
22. **[Matters affecting ethics and right conduct. *Var. lec*., 'Rabina'.]**
23. **[The Tractate wherein the benedictions are set forth and discussed.]**
24. **Imposing liability in the commencing clause.**
25. **B.M. 118b. Why then liability for the damage caused thereby during the specified period permitted by law?**
26. **Placed outside a shop and setting aflame flax that has been passing along the public road.**
27. ***Infra* p. 361.**
28. **A permission which has similarly been extended in the case of the dung during the specified period and should accordingly effect exemption.**
29. **Which is of course absent in the case of removing dung to the public ground, where liability must accordingly be imposed for special damage.**
30. **Does not this prove that mere authorization suffices to confer exemption? Cf. n. 2.**
31. **V. p. 161, n. 5.**

Baba Kamma 30b

The Mishnah states, HIS STRAW AND STUBBLE which are slippery [and may never be removed into public ground even according to R. Judah].

WHOEVER SEIZES THEM FIRST ACQUIRES TITLE TO THEM. Rab said: Both to their corpus and to their increase [in value],[1] whereas Ze'ire said: Only to their increase but not to their corpus.[2] Wherein is the point at issue?[3] — Rab maintains that they [the Rabbis] extended the penalty to the corpus on account of the increase thereof, but Ze'ire is of the opinion that they did not extend the penalty to the corpus on account of the increase thereof.

We have learnt: IF HE TURNS UP DUNG THAT HAD BEEN LYING ON PUBLIC GROUND AND DAMAGE [SUBSEQUENTLY] RESULTS TO ANOTHER PERSON, HE IS LIABLE FOR THE DAMAGE. Now, [in this case] it is not stated that 'Whoever seizes it first acquires title to it.'[4] — [This ruling has been] inserted in the commencing clause, and applies as well to the concluding clause. But has it not in this connection[5] been taught [in a Baraitha]: They are prohibited [to be taken possession of] on account of [the law of] robbery?[6] — When [the Baraitha] states 'They are prohibited on account of robbery' the reference is to all the cases [presented] in the Mishnaic text[7] and [is intended] to [protect] the one who had seized [of them] first, having thereby acquired title [to them]. But surely it was not meant thus, seeing that it was taught:[8] 'If a man removes straw and stubble into the public ground to be formed into manure and damage results to another person, he is liable for the damage, and whoever seizes them first acquires title to them, as this may be done irrespective of [the law of] robbery. [However] where he turns up dung on public ground and damage [subsequently] results to another person, he is liable [to compensate] but no possession may be taken of the dung on account of [the law of] robbery'?[6] — R. Nahman b. Isaac [thereupon] exclaimed: What an objection to adduce from the case of dung! [It is only in the case of] an object that is susceptible to increase [in value] that the penalty is extended to the corpus[9] for the purpose of [discouraging any idea of] gain, whereas with regard to an object that yields no increase there is no penalty [at all].[10]

The question was asked: According to the view that the penalty extends also to the corpus for the purpose of [discouraging the idea of] gain,[9] is this penalty imposed at once[11] or is it only after some gain has been produced that the penalty will be imposed? — Come and hear: An objection was raised [against Rab] from the case of dung![12] But do you really think this [solves the problem]? The objection from the case of dung was raised only before R. Nahman expounded the underlying principle;[13] for after the explanation given by R. Nahman what objection indeed could there be raised from the case of dung?[14]

Might not one suggest [the argument between Rab and Ze'ire to have been] the point at issue between [the following] Tannaim? For it was taught: If a bill contains a stipulation of interest,[15] a penalty is imposed so that neither the principal nor the interest is enforced; these are the words of R. Meir, whereas the Sages maintain that the principal is enforced though not the interest.[16] Now, can we not say that Rab adopts the view of R. Meir[17] whereas Ze'ire follows that of the Rabbis?[18] — Rab may explain [himself] to you [as follows]: 'I made my statement even according to the Rabbis: for the Rabbis maintain their view only there, where the principal as such is quite lawful, whereas here in the case of nuisances the corpus itself is liable to do damage.' Ze'ire [on the other hand] may explain [himself] to you [thus]: 'I made my statement even in accordance with R. Meir; for R. Meir expressed his view only there, where immediately, at the time of the bill having been drawn up, [the evil had been committed] by stipulating the usury, whereas here in the case of nuisances, who can assert that [special] damage will result?'

Might not one suggest [the argument between Rab and Ze'ire to have been] the point at issue between these Tannaim? For it was

taught: If a man removes straw and stubble into the public ground to be formed into manure and damage results to another person, he is liable for the damage, and whoever seizes them first acquires title to them. They are prohibited [to be taken possession of] on account of [the law of] robbery. R. Simeon b. Gamaliel says: Whoever creates any nuisances on public ground and causes [special] damage is liable to compensate, though whoever takes possession of them first acquires title to them, and this may be done irrespective of [the law of] robbery. Now, is not the text a contradiction in itself? You read, 'Whoever seizes them first acquires title to them,' then you state [in the same breath], 'They are prohibited [to be taken possession of] on account of [the law of] robbery'! It must therefore mean thus: 'Whoever seizes them first acquires title to them,' viz., to their increase, whereas, 'they are prohibited to be taken possession of on account of [the law of] robbery,' refers to their corpus. R. Simeon b. Gamaliel thereupon proceeded to state that even concerning their corpus, 'whoever seizes them first, acquires title to them.' Now, according to Ze'ire, his view must unquestionably have been the point at issue between these Tannaim,[19] but according to Rab, are we similarly to say that [his view] was the point at issue between these Tannaim? — Rab may say to you: 'It is [indeed] unanimously held that the penalty must extend to the corpus for the purpose [of discouraging the idea] of gain; the point at issue [between the Tannaim] here is whether this *halachah*[20] should be made the practical rule of the law'.[21] For it was stated: R. Huna on behalf of Rab said: This *halachah*[20] should not be made the practical rule of the law,[22] whereas R. Adda b. Ahabah said: This *halachah*[20] should be made the practical rule of the law. But is this really so? Did not R. Huna declare barley [that had been spread out on public ground] ownerless, [just as] R. Adda b. Ahabah declared

1. **While on public ground.**
2. **Which thus still remains the property of the original owner.**
3. **I.e., what is the principle underlying it?**
4. **This clause, if omitted purposely, would thus tend to prove that the penalty attaches only to straw and stubble and their like, which improve while lying on public ground, but not to dung placed on public ground, apparently on account of the fact that in this case there is neither increase in quantity nor improvement in quality while lying on public ground. This distinction appears therefore to be not in accordance with the view of Rab, maintaining that the penalty extend not only to the increase but also to the corpus of the object of the nuisance.**
5. **I.e. in connection with the latter clause.**
6. **Which shows that the penalty does not extend to the corpus.**
7. **Even to straw and stubble.**
8. **[V. D.S. a.l.]**
9. **According to the view of Rab.**
10. **For, since there is no gain, nobody is likely to be tempted to place dung on public ground.**
11. **Even before any gain accrued.**
12. **Although no increase will ever accrue there, thus proving that according to Rab the penalty is imposed on the corpus even before it had yielded any gain.**
13. **That there is no penalty at all with regard to an object that yields no increase; whereas the query is based on the principle laid down by R. Nahman.**
14. **Where no increase will ever accrue.**
15. **Which is against the biblical prohibition of Ex. XXII, 24.**
16. **Cf. B.M. 72a.**
17. **Extending the penalty also to the corpus.**
18. **I.e., the Sages who maintain that the penalty attaches only to the increase.**
19. **For R. Simeon b. Gamaliel is certainly against his view.**
20. **To extend the penalty to the corpus.**
21. **As to whether people should be encouraged to avail themselves of it, or not.**
22. **For the sake of not disturbing public peace.**

Baba Kamma 31a

the refuse of boiled dates [that had been placed on public ground] ownerless? We can well understand this in the case of R. Adda b. Ahabah who acted in accordance with his own dictum, but in the case of R. Huna, are we to say that he changed his view? — These owners [in that case] had been warned [several times not to repeat the nuisance].[1]

MISHNAH. IF TWO POTTERS WERE FOLLOWING ONE ANOTHER AND THE FIRST STUMBLED AND FELL DOWN AND THE SECOND STUMBLED BECAUSE OF THE FIRST, THE FIRST IS LIABLE FOR THE DAMAGE DONE TO THE SECOND.

GEMARA. R. Johanan said: Do not think [that the Tanna of] this Mishnah is R. Meir who considers stumbling as implying carelessness that involves liability.[2] For even according to the Rabbis who maintain [that stumbling is] mere accident for which there is exemption,[2] there should be liability here where he[3] had [meanwhile had every possibility] to rise and nevertheless did not rise. [But] R. Nahman b. Isaac said: You may even say that [the Mishnah speaks also of a case] where he[3] did not yet have [any opportunity] to rise, for he[3] was [surely able] to caution[4] and nevertheless did not caution. R. Johanan, however, considers that where he[3] did not yet have [any opportunity] to rise, he[3] could hardly be expected to caution as he was [surely] somewhat distracted.

We have learnt: If the carrier of the beam was in front, the carrier of the barrel behind, and the barrel broke by [colliding with] the beam, he[5] is exempt. But if the carrier of the beam stopped suddenly, he is liable.[6] Now, does this not mean that he stopped for the purpose of shouldering the beam as is usual with carriers, and it yet says that he is liable, [presumably] because [he failed] to caution?[7] — No, he suddenly stopped to rest [which is rather unusual in the course of carrying]. But what should be the law[8] in the case where he stopped to shoulder the beam? Would there then be exemption? Why then state in the subsequent clause,[9] 'Where he, however, warned the carrier of the barrel to stop, he is exempt'? Could the distinction not be made in the statement of the same case [in the following manner]: 'Provided that he stopped to rest; but if he halted to shift the burden on his shoulder, he is exempt'? — It was, however, intended to let us know that even where he stopped to rest, if he warned the carrier of the barrel to stop, he is exempt.

Come and hear: If a number of potters or glass-carriers were walking in line and the first stumbled and fell and the second stumbled because of the first and the third because of the second, the first is liable for the damage [occasioned] to the second, and the second is liable for the damage [occasioned] to the third. Where, however, they all fell because of the first, the first is liable for the damage [sustained] by them all. If [on the other hand] they cautioned one another, there is exemption. Now, does this teaching not deal with a case where there has not yet been [any opportunity] to rise?[10] — No, [on the contrary] they [have already] had [every opportunity] to rise. But what should be the law[8] in the case where they [have not yet] had [any opportunity] to rise? Would there then be exemption? If so, why state in the concluding clause, 'If [on the other hand] they cautioned one another, there is exemption'? Could the distinction not be made in the statement of the same case [in the following manner]: 'Provided that they have already had every opportunity to rise; but if they have not yet had any opportunity to rise, there is exemption'? — This is what it intended to let us know: That even where they [have already] had [every opportunity] to rise, if they cautioned one another, there is exemption.

Raba said: The first is liable for damage [done] to the second whether directly by his person[11] or by means of his chattels,[12] whereas the second is liable for damage to the third only if done by his person[13] but not if caused by his chattels. [Now,] in any case [how could these rulings be made consistent]? [For] if stumbling implies carelessness, why should not also the second be liable [for all kinds of damage]?[14] If [on the other hand] stumbling does not amount to carelessness, why should even the first not enjoy immunity?

1. It was therefore a specially aggravated offence.
2. *Supra* pp. 153 and 155.
3. The first potter.

4. **The second potter to stop.**
5. **The carrier of the beam.**
6. ***Infra* p. 169.**
7. **Which would thus support the interpretation given by R. Nahman and contradict the view expounded by R. Johanan.**
8. **According to the view of R. Johanan.**
9. ***Infra* p. 170.**
10. **V. p. 166, n. 7.**
11. **Being subject to the law applicable to damage done by Man.**
12. **Which are subject to the law applicable to Pit.**
13. **V. p. 167, n. 4**
14. **Even if caused by his chattels.**