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Book III

Folios 62b-93a



BABA KAMMA

TRANSLATED INTO ENGLISH WITH NOTES

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CHAPTER VII

MISHNAH. THERE IS MORE FREQUENTLY OCCASION FOR THE MEASURE OF DOUBLE PAYMENT¹⁰ [TO BE APPLIED] THAN THE MEASURE OF FOUR-FOLD OR FIVE-FOLD PAYMENTS,¹¹ SINCE THE MEASURE OF DOUBLE PAYMENT APPLIES BOTH TO A THING POSSESSING THE BREATH OF LIFE AND A THING WHICH DOES NOT POSSESS THE BREATH OF LIFE, WHEREAS THE MEASURE OF FOUR-FOLD AND FIVE-FOLD PAYMENTS¹¹ HAS NO APPLICATION EXCEPT FOR AN OX AND A SHEEP [RESPECTIVELY] ALONE, AS IT SAYS 'IF A MAN STEAL AN OX OR A SHEEP AND KILL IT OR SELL IT, HE SHALL PAY FIVE OXEN FOR AN OX AND FOUR SHEEP FOR A SHEEP.'¹² ONE WHO STEALS [ARTICLES ALREADY STOLEN] IN THE HANDS OF A THIEF NEED NOT MAKE DOUBLE PAYMENT,¹³ AS ALSO HE WHO SLAUGHTERS OR SELLS [THE ANIMAL] WHILE IN THE POSSESSION OF [ANOTHER] THIEF HAS NOT TO MAKE FOURFOLD OR FIVE-FOLD PAYMENT.

GEMARA. That the measure of double payment applies both in the case of a thief and in the case of [an unpaid bailee falsely] alleging a theft,¹⁴ whereas the measure of four-fold or five-fold payments has no application except in the case of a thief alone — [this, be it noted], is not taught here. This [omission] supports the view of R. Hiyya b. Abba, for R. Hiyya b. Abba stated that R. Johanan said: He who falsely alleges a theft [to account for the absence] of a deposit [entrusted to him], may have to make double payment,¹⁴ so also if he slaughtered or sold it he may have to make four-fold or five-fold payment.¹⁵ Some read as follows: Shall we say that this [omission] supports the view of R. Hiyya b. Abba who said in the name of R.

Johanan: He who falsely alleges a theft [to account for the absence] of a deposit [entrusted to him] may have to make double payment; so also if he slaughtered or sold it, he may have to make four-fold or five-fold payment'? — But does your text say, 'There is no difference between [this¹⁶ and that¹⁷ except...]'? What it says is, THERE IS MORE FREQUENT OCCASION. — While some points were stated in the text others were omitted.¹⁸

AS THE MEASURE OF DOUBLE PAYMENT APPLIES BOTH TO A THING POSSESSING THE BREATH OF LIFE AND TO A THING WHICH DOES NOT POSSESS THE BREATH OF LIFE, etc. Whence is this derived? As our Rabbis taught: *For every matter of trespass¹⁹ is a generalization; whether it be for ox, for ass, for sheep, for raiment, is a specification; or for any manner of lost thing generalizes again.* We have thus here a generalization preceding a specification which is in its turn followed by another generalisation,²⁰ and in such cases we include only that which is similar to the specification. Just as the specification here mentions an object which is movable and which has an intrinsic value, there should therefore be included any object which is movable and which has an intrinsic value. Real estate is thus excluded,²¹ not being movable; slaves are similarly excluded as they are on the same footing [in the eye of the law] with real estate;²² bills are similarly excluded, as though they are movable, they have no intrinsic value; sacred property is also excluded as the text speaks of '*his neighbor*'. But since the specification mentions a living thing whose carcass would cause defilement whether by touching or by carrying,²³ [why not say] there should be included any living thing whose carcass similarly causes defilement whether by touching or by carrying²⁴ so that birds would not be included?²⁵ — How can you seriously say this? Is not raiment²⁶ mentioned here? It may, however, be said that it is only regarding objects possessing life that we have

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argued.²⁷ Why then not say in the case of objects possessing life that it is only a thing whose carcass causes defilement by touching and carrying that is included, whereas a thing whose carcass does not cause defilement by touching and carrying should not be included,

1. V. *supra* 22a.
2. As he is to blame for placing his candle outside his shop.
3. Feast of Dedication.
4. As he was entitled to place the Chanukah candle outside.
5. As to make him place his Chanukah candle on a higher level.
6. V. Shab. 21a.
7. As when placed at such a high level it will not be noticed by passersby and publicity will not be given to the miracle.
8. V. Glos. Cf. Suk. I, 1.
9. V. 'Er, I, 1. An alley where a post or a stake would be required to be placed at the entrance for the purpose of enabling the inmates of that area to carry their domestic objects on the Sabbath day.
10. For theft, in accordance with Ex. XXII, 3.
11. For the slaughtering (or selling) of a sheep or ox respectively; cf. *ibid.* XXI, 37.
12. *Ibid.*
13. Since the article had in any case already passed out of the possession of the true owner.
14. In accordance with Ex. XXII, 8.
15. *Infra* p. 369.
16. The measure of double payment.
17. The measure of four-fold or five-fold payment.
18. The omission of a particular point should therefore not be taken as a proof.
19. Ex. XXII, 8.
20. V. *supra* 54a.
21. From the law of double payment.
22. For which cf. Lev. XXV, 46.
23. Lev. XI 39-40.
24. *Ibid.* 26-28.
25. As these do not cause defilement either by touching or by carrying.
26. Which is not a living object at all.
27. That they should be such that their carcasses would cause defilement whether by touching or by carrying.

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as each item in a generalization and specification¹ is expounded by itself,² so that birds would not be included? — If so, the

Divine Law should have inserted only one item in the specification.³ But which item should the Divine Law have inserted? For were the Divine Law to have inserted only 'ox' I might have suggested that an animal which was eligible to be sacrificed upon the altar⁴ should be included, but one which was not eligible to be sacrificed upon the altar⁵ should not be included. If on the other hand the Divine Law had inserted only 'ass'⁶ I might have thought that an animal which is subject to the sanctity of first birth⁷ should be included but that one which is not subject to the sanctity of first birth⁸ should not be included. [Why then still not exclude birds whose carcasses would, unlike those of the ox and the ass, defile neither by touching nor by carrying?] — It may still be said that if so, the Divine Law would have inserted 'ox' and 'ass'. Why then was 'sheep' inserted, unless to indicate the inclusion of birds [which would otherwise have been excluded]? But still why not say that you can [only] include birds which are [ritually] clean⁹ for food, as these in some way resemble sheep in that they defile the garments worn by him who swallows them¹⁰ [after they have become *nebelah*],¹¹ whereas birds [ritually] unclean for food¹² which carry no defilement and do not cause the defilement of garments worn by him who swallows them¹³ should not be included? — [The term] 'all' is an amplification.¹⁴ [Does this mean to say that] whenever the Divine Law uses [the word] 'all' it is an amplification? What about tithes, where 'all' occurs and we nevertheless expounded it as a case of generalization and specification? For it was taught: *And thou shalt bestow that money for all that thy soul lusteth after*¹⁵ is a generalization; *for oxen, or for sheep, or for wine, or for strong drink* is a specification; *or for all that thy soul desireth* is again a generalization. Now, where a generalization precedes a specification which is in its turn followed by another generalization, you include only that which is similar to the specification. As then the specification [here] mentions produce obtained from produce¹⁶ which springs from

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the soil¹⁷ there may also be included all kinds of produce obtained from produce¹⁸ which springs from the soil.¹⁹ [Does this not prove that the expression 'all' was taken as a generalization, and not as an amplification?]²⁰ — It may, however, be said that [the expression] 'for all'¹⁵ is only a generalization, whereas 'all' would be an amplification.²¹ Or if you wish I may say that [the term] 'all' is also a generalization, but in this case 'all' is an amplification. For at the very outset we find here a generalization preceding a specification followed in its turn by another generalization, as it is written: *If a man deliver unto his neighbour,*²² which is a generalization, *money or stuff* which is a specification, *to keep* which generalizes again. Should you assume that this verse *for any matter of trespass*, etc. was similarly inserted in order to give us a generalization preceding a specification followed in its turn by another generalization, why did the Divine Law not insert these items of the specification [of the latter verse] along with the items of the former generalization, specification and generalisation?²³ Why was the verse *for any matter of trespass* inserted at all, unless to prove that [this 'all'] was meant as an amplification?²⁴ But now that you have decided that the term 'all' is an amplification,²⁵ why do I need all these terms of the specification?²⁶ — One to exclude real estate, a second to exclude slaves and the third to exclude bills; 'raiment' to exclude articles which have no specification;²⁷ 'or for any manner of lost thing' was meant as a basis for the view of R. Hiyya b. Abbah, as R. Hiyya b. Abba reported²⁸ that R. Johanan said:

1. [MS.M. omits 'in a ... specification'.]
2. V. *infra* 64b.
3. Regarding objects possessing life.
4. As was the case with ox.
5. Such as an ass, horse, camel and the like.
6. Which would include also animals not eligible to be sacrificed upon the altar.
7. As is the case with ass; cf. Ex. XIII, 13.
8. Such as horses and camels and the like.
9. Deut. XIV, 11.
10. Cf. Hul. 100b.

11. I.e., a living creature which lost its life not through the prescribed method of ritual slaughter; cf. [Glos.](#)
12. Enumerated in Lev. XI, 13-20 and Deut. XIV, 12-19.
13. Cf. Hul. *loc. cit.*
14. I.e., the term 'all' does more than generalize, for it includes everything, v. *supra* p. 317. n. 7.
15. Deut. XIV, 26.
16. Such as wine from grapes.
17. Which characterizes also cattle.
18. Excluding water, salt and mushrooms.
19. Thus excluding fishes. V. *supra* p. 317.
20. Which would have included all kinds of food and drink.
21. V. p. 318, n. 2.
22. Ex. XXII, 6.
23. In Ex. XXII, 6.
24. [That is, with reference to the double payment, whereas the generalization in the preceding verse refers to the oath (v. Shebu. 43a)].
25. V. p. 366, n. 3.
26. Ox, ass, sheep or raiment.
27. According to Rashi it means that which has no distinguishing mark, but according to Tosaf, that which is not defined by measure, weight or number; see also Shebu. 42b and B.M. 47a.
28. *Supra* 57a.

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He who falsely alleges the theft [to account for the non-production] of a find,¹ may have to make double payment,² as it says, '*for any manner of lost thing whereof one saith ...*'³

We have learnt elsewhere:⁴ [If a man says to another] 'Where is my deposit?', and the bailee says 'It was lost', whereupon [the depositor says], 'I call upon you to swear' and the bailee says, 'So be it',⁵ if witnesses testify against him that he himself had consumed it, he has to pay [only] the principal,⁶ but if he admits [this] of himself, he has to pay the principal together with a fifth and a trespass offering.⁷ [If the depositor says] 'Where is my deposit?', and the bailee answers 'It was stolen!', [whereupon the depositor says] 'I call on you to swear', and the bailee says, 'So be it',⁵ if witnesses testify against him that he himself had stolen it, he has to make double payment,⁸ but if he admits [this] on his own accord, he has to pay the principal together

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with a fifth and a trespass offering.⁷ It is thus stated here that it is only where the bailee falsely alleges theft that he has to make double payment, whereas if he falsely alleges loss, he has not to make double payment. Again, even where he falsely alleges theft it is only where [he confirms the allegation] by an oath that he has to make double payment, whereas where no oath [follows] he has not to make double payment. What is the Scriptural authority for all this? — As the Rabbis taught: If the thief be found;² this verse deals with a bailee¹⁰ who falsely alleges theft.¹¹ Or perhaps not so, but with the thief himself?¹² — As, however, it is further stated, If the thief be not found,¹³ we must conclude that the [whole] verse¹⁴ deals with a bailee falsely advancing a plea of theft.¹⁵

Another [Baraita] teaches: If the thief be found: this verse deals with the thief himself.¹⁶ You say that it deals with the thief himself. Why, however, not say that it is not so, but that it deals with a bailee falsely alleging theft? — When it further states, If the thief be not found this gives us the case of a bailee falsely alleging theft, How then can I explain [the verse] If the thief be found unless on the supposition that this deals with the thief himself!¹⁶ We see at any rate that all agree that [the verse] If the thief be not found deals with a bailee falsely alleging theft. But how is this implied [in the wording of the text]? — Raba said: [We understand the verse to say that] if it will not be found as he¹⁷ stated¹⁸ but that he himself had stolen it, he has to pay double. But whence can we conclude that this is so only in the case of an oath [having been falsely taken by the bailee]? — As it was taught: The master of the house shall come near unto the judges¹³ to take an oath. You say to take an oath. Why not say, however, that this is not so, but to stand his trial?¹⁹ — The words 'put his hand unto his neighbor's goods' occur in a subsequent section²⁰ and the words 'put his hand unto his neighbor's goods' occur in this section¹³ which precedes the other one; just as there²⁰ it is associated with an oath,²¹ so here

also it should be associated with an oath. Now on the supposition²² that one verse deals²³ with a thief and the other²⁴ with [a bailee falsely] alleging theft we quite understand why there are two verses; but on the supposition²⁵ that both of them deal with a bailee falsely alleging theft, why do I want two verses?²⁶ — It may be replied that one is to exclude the case of a false allegation of loss [from entailing double payment]. Now on the supposition²² that one verse deals with a thief and the other with [a bailee falsely] alleging theft, in which case there will be no superfluous verse [in the text] whence can we derive the exclusion of a false allegation of loss [from entailing double payment]? — From [the definite article; as instead of] 'thief' [it is written] 'the thief'.²⁷ On the supposition²⁵ that both of the verses deal with [a bailee falsely] alleging theft, in which case Scripture excludes a bailee falsely alleging loss, how could [the fact that instead of] 'thief' [it is written] 'the thief' be expounded? — He might say to you that it furnishes a basis for the view of R. Hiyya b. Abba reported in the name of R. Johanan, as R. Hiyya b. Abba stated²⁸ that R. Johanan said that he who falsely alleges theft in the case of a deposit would have to make double payment, and so also if he slaughtered or sold it he would have to make fourfold or five-fold payment. But on the supposition²² that one verse deals with a thief and the other with [a bailee falsely] alleging theft, and that [the fact that instead of] 'thief', '*the thief*' [is written] has been used to exclude a false allegation of loss [from entailing double payment], whence could be derived the view of R. Hiyya b. Abba?²⁸ — He might say to you: A thief and a bailee falsely alleging theft are made analogous to one another in Scripture,²⁹ and no objections can be entertained against an analogy.³⁰ This is all very well on the supposition that one verse deals with a thief and the other with [a bailee falsely] alleging theft. But on the supposition that both of them deal with [a bailee falsely] alleging theft, whence can the law of double payment³¹ be derived in the case of a thief himself? And

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should you say that it can be derived by means of an *a fortiori* argument from the law of [a bailee falsely] alleging theft, [we may ask], is it not sufficient for the object to which the inference is made to be placed on the same footing as the object from which it is made,³² so that just as there³³ [the penalty is entailed only where there] is false swearing, so here also³⁴ [it should be entailed only] where there is false swearing? — It could be derived by the reasoning taught at the School of Hezekiah. For it was taught at the School of Hezekiah: Should not Scripture have mentioned only 'ox' and 'theft'³⁵ as everything would thus have been included? — If so, I might say that just as the specification³⁶ mentions an object which is eligible to be sacrificed upon the altar any [living] object which is eligible to be sacrificed upon the altar should be included. What can you include through this? A sheep³⁷ [as subject to double payment].

1. I.e., an article found by him and which he has to return to its owner.
2. If he took an oath to substantiate his false plea.
3. Ex. XXII, 8.
4. Shebu. VIII, 3.
5. Which amounts to an oath; cf. Shebu. 29b.
6. But not double payment, as he did not allege theft.
7. In accordance with Lev. V, 21-25.
8. As by advancing the false plea of theft and substantiating it by an oath he became subject to the law applicable to theft.
9. Ex. XXII, 6.
10. I.e., unpaid.
11. The clause therefore means this: if he (the bailee) be found to have been the thief, he should pay double.
12. Whereas the bailee would never have to pay double.
13. Ex. XXII, 7.
14. Which should be construed thus: If it be not found as the bailee pleaded that it was stolen by a thief but that he himself was the thief, etc.
15. V. the discussion later.
16. Who was found to have stolen the deposit, in which case the unpaid bailee is quit and the thief pays double.
17. The bailee.
18. That he became dispossessed of it by the thief.
19. And be ordered to pay.

20. Ibid. 10.
21. For the text runs: *The oath of the Lord be between them both to see whether he hath not put his hands unto his neighbor's goods.*
22. I.e., the second Baraitha.
23. Ex. XXII, 6.
24. Ex. XXII, 7.
25. I.e., the first Baraitha.
26. Presenting the same law.
27. Thus pointing out that the liability for double payment is only where it was the plea of theft that was proved to have been false.
28. *Supra* p. 364.
29. To be subject to the law of double payment which may lead on to a liability of four-fold or five-fold payment.
30. [H] *infra* 106b.
31. For misappropriating either an animate or inanimate object.
32. I.e., the principle of Dayyo, v. *supra* p. 126.
33. In the case of the bailee falsely pleading theft.
34. In the case of the thief himself.
35. In Ex. XXII, 3.
36. I.e., ox.
37. Which is similarly eligible to be sacrificed upon the altar.

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But when the text continues '*sheep*', we have sheep explicitly stated. How then am I to explain 'theft'? To include any object. [If that is so] should Scripture not have mentioned only 'ox', 'sheep' and 'theft' since everything would have thus been included? — If so, I might still say that just as the specification¹ mentions an object which is subject to the sanctity of first birth,² so also any object which is subject to the sanctity of first birth [should be included].³ Now what can you include through this? An ass [as subject to double payment]. But when the text goes on to mention 'ass', we have 'ass' explicitly stated. What then do I make of 'theft'? To include any object. [If that is so], should Scripture not have mentioned only 'ox' 'ass', 'sheep' and 'theft' since everything would have accordingly been included? — If so, I might still say that just as the specification⁴ mentions objects possessing life, so also any other objects possessing life [should be included]. What can you include through this? All other objects possessing life. But

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when the text continues 'alive', we have objects possessing life explicitly stated. How then am I to explain 'theft'? [It must be] to include any other object whatsoever.⁵

The Master stated: 'Should not Scripture have mentioned [only] "ox" and "theft"?' — But does it say 'ox' and [then] 'theft'? Is it not [first] 'theft' and [then] 'ox' which is written in the text?⁶ And if you rejoin that the author of this argument took a hypothetical case, viz.: 'If it were written [first] "ox" and [then] "theft", how in that case would you be able to say, 'Just as the specification mentions, etc.,' since 'ox' would be the specification and 'theft' the generalization, and in the case of a specification followed by a generalization the generalization is considered to add to the specification, so that all objects would be included? If, on the other hand, he based his argument on the actual order of the text, viz.: 'theft' and [then] 'ox', how again would you be able to say that 'everything would have been included', or 'just as the specification mentions, etc.', since 'theft' would be the generalization and 'ox' the specification, and in the case of a generalization followed by a specification there is nothing included in the generalization except what is explicit in the specification, [so that here] only ox [would be included] but no other object whatsoever? Raba thereupon said: This Tanna⁷ based his argument upon the term 'alive' [that follows the specification], so that he argued on the strength of a generalisation⁸ [followed by] a specification⁹ [which was in its turn followed by] another generalisation.¹⁰ But is the last generalisation¹⁰ analogous in implication to the first generalisation?¹¹ There is, however, the Tanna of the School of R. Ishmael who did expound texts of this kind on the lines of generalizations and specifications.¹² The problem was therefore this: Why do I require the words in the text, 'If to be found it be found?'¹³ Should not Scripture have mentioned only 'theft' and 'ox' and 'alive', and everything would have then been included?¹⁴ — If so, I might say that just as the specification mentions an object which is

eligible to be sacrificed upon the altar, so also any object eligible to be sacrificed upon the altar is [included]. What does this enable you to include? Sheep.¹⁵ But when the text continues 'sheep', we have sheep explicitly stated. What then am I to make of 'theft'? It must be to include any object. [If that is so] should Scripture not have mentioned only 'theft', 'ox', 'sheep' and 'alive' since everything would have then been included?¹⁴ — If so, I might still say that just as the specification mentions an object which is subject to the sanctity of first birth, so also any object which is subject to the sanctity of first birth [should be included]. What does this enable you to include? Ass. But when the text continues 'ass', we have ass explicitly stated. What then am I to make of 'theft'? It must be to include any object. [But in that case] should Scripture not have mentioned only 'theft', 'ox', 'sheep', 'ass' and 'alive', since everything would have then been included?¹⁴ — If so I might still say that just as the specification mentions objects possessing life, so also any other object possessing life [should be included]. What does this enable you to include? All other objects possessing life. But when the text continues 'alive', objects possessing life are explicitly stated. What then am I to make of 'theft'? [It must be] to include any other object whatsoever. And if so, why do I require the words 'if to be found it be found'?¹⁶

1. I.e., ox and sheep.
2. In accordance with Ex. XIII, 12.
3. Ass would thus also be included; cf. Ex. XXII, 13.
4. Ox, sheep and ass.
5. [Hence the derivation of double payment in the case of the thief himself.]
6. [Being thus a generalization followed by a specification, in which case the former includes only what is contained in the latter, v. P.B. p. 13.]
7. Of the School of Hezekiah.
8. I.e., 'theft'.
9. I.e., 'ox, ass, sheep'.
10. I.e., 'alive'. — The argument will be explained anon.

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11. I.e., 'theft', being more comprehensive than 'alive'.
12. Cf. Zeb. 4b; 8b; and Hul. 66a.
13. Literal rendering of Ex. XXII, 3. (E.V.: If the theft be certainly found in his hand.)
14. Why indeed this emphasis on the verb 'found'?
15. V. *supra* p. 370, n. 7.
16. V. note 2. This concludes the argument of the School of Hezekiah.

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But if this is so, is not this a real difficulty?¹ — There is, however, a refutation of it.² For whence would you include any 'other object'?³ From [the implication of] the last generalisation.⁴ Now, since this very generalization consists in the term 'alive', of what service then is the argument based upon the generalization followed by a specification which is in its turn followed by another generalization? It can hardly be to add any [inanimate] object, since the word 'alive' is used there, implying only objects possessing life, but not any other object whatsoever. It was therefore because of this that it was necessary to state 'if to be found it be found.'⁵ It may however still be argued, does not this text contain two generalizations which are placed near each other?⁶ — Rabina thereupon said: [We dispose of this difficulty] as stated in the West,⁷ that wherever you find two generalizations near each other, place a specification between them and explain them as a case of a generalization followed by a specification.⁸ [Here then] place 'ox' between [the infinitive and the finite verb],⁶ 'if to be found it be found.' Now, what additional objects would this introduce? If objects possessing life, are these not to be derived from the term 'alive'? It must therefore be an object which does not possess life, and we expound thus: Just as the specification mentions an object which is movable and which has an intrinsic value, so also any object which is movable and which has an intrinsic value [should be included to be subject to the double payment]. Now, when you again place 'ass' between [the infinitive

and the finite verb], 'if to be found it be found', what additional objects could this introduce? If an object not possessing life, was not this derived from [placing] 'ox' [between the two generalizations]?⁴ It must therefore serve to introduce an object having specification.⁹ But if so why do I require the word 'sheep'? — It must therefore be taken as a case of an amplification preceding a diminution followed in its turn by another amplification,¹⁰ as indeed taught at the School of R. Ishmael. For it was taught at the School of R. Ishmael:¹¹ [The words 'in the waters',¹² 'In the waters', occurring twice in the text should not be treated as a generalization followed by a specification, but as an amplification followed by a diminution followed in its turn by another amplification, to add everything. What, then, does it add in this case?¹³ It adds all objects, But if so, why do I require all these specifications?¹⁴ — One to exclude real estate; the second to exclude slaves, and the third to exclude bills; while 'theft' and 'alive' furnish a basis for the view of Rab who said¹⁵ that the value of the principal is to be resuscitated as it was at the time of theft.¹⁶

But according to the view that one verse¹⁷ deals with a thief himself and the other¹⁸ with a bailee [falsely] alleging theft, so that the liability of a thief himself to pay double payment is thus derived from the text '*if the thief be found*', how is the text '*If to be found it be found*', etc. to be expounded? — He may employ it for teaching the view expressed by Raba b. Ahilai; for Raba b. Ahilai said:¹⁹ What was the reason of Rab who maintained that a defendant admitting an offence for which the penalty is a fine would [even] where witnesses subsequently appeared still be exempt? As it is written: 'If to be found it be found' implying that if at the very outset it is found by witnesses then it will 'be' [considered] 'found' in the consideration of the Judges, excepting thus a case where it was the defendant who incriminated himself. Now again, according to the view that both verses deal with a bailee [falsely] advancing a plea of

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theft, in which case the text 'If to be found it be found' is employed to teach that there is double payment in the case of a thief himself, whence [in Scripture] do we derive the rule regarding a defendant incriminating himself? — From the text, 'Whom the judges shall condemn'²⁰ [which implies], 'but not him who condemns himself.' But according to the view that one verse deals with a thief and the other with a bailee [falsely] advancing a plea of theft and that the text of 'if to be found it be found' is to introduce the law where the defendant incriminates himself, how could the text, 'whom the judges shall condemn', be expounded? — He might say to you: That text was in the first instance employed to imply that a defendant admitting [an offence entailing] a fine [without witnesses subsequently appearing] would be exempt;²¹ whereas the other view, that both of the verses deal with a bailee [falsely] advancing a plea of theft holds that a defendant admitting [an offence entailing] a fine for which witnesses subsequently appear is liable.²² According to the view that one verse²³ deals with a thief and the other with a bailee [falsely] advancing a plea of theft, so that the case of a thief is derived from the verse there,²⁴ we have no difficulty with the text 'if to be found it be found', which is employed as a basis for the statement of Raba b. Ahilai, but why do I require all these specifications?²⁵ — For the reason taught at the school of R. Ishmael,²⁶ that any section written in Scripture and then repeated is repeated only for the sake of a new point that is added to it.²⁷ But why not say that even the thief himself should be subject to double payment only after having taken an oath falsely?²⁸ — Let not this enter your mind, for it was taught: 'R. Jacob says, He shall pay double'²⁹ [even] where he took no oath. Why not rather say only where he took a false oath?²⁸ You can safely say that this could not be so.' Why could this not be so? — Said Abaye: For the Divine Law should then not have written 'he shall pay double' in the case of a thief, as this would have been derived by an *a fortiori* from the law applicable to a

bailee falsely advancing a plea of theft: If a bailee falsely advancing a plea of theft, into whose hands the article had come lawfully, is ordered by Scripture to pay twice, should this not apply all the more strongly in the case of the thief himself, into whose hands the article came unlawfully? Why then did Scripture say 'He shall pay double' in the case of a thief himself, unless to imply liability even in the absence of an oath!

But how could this [text] '*If to be found it be found*' be employed to teach this?³⁰ Is it not required for what was taught: '*his hand*'?³¹

1. And how are we to meet the question of that Tanna?
2. So that the emphasis on the verb becomes essential.
3. To be subject to the law of theft.
4. [It is a general principle that, in a proposition consisting of a generalization followed by a specification which in its turn is followed by another generalization, the inclusion of all things that are similar to the specification is in virtue of the last generalization, since without it the proposition would include only what is included in the specification, v. p. 371, n. 3.]
5. [To apply here the principle of generalization, specification and generalization.]
6. I.e., the doubling of the verb expressing 'found'.
7. In the Land of Israel.
8. Cf. Shebu. 5a.
9. To the exclusion of such as have no marks of identification. Cf. p. 367, n. 4.
10. Cf. *supra* p. 366.
11. V. p. 373, n. 6.
12. Lev. XI, 9.
13. Which would otherwise not have been subject to the law.
14. [Strictly speaking, 'diminutions'.]
15. *Infra* p. 376.
16. I.e., that the payment of principal for a stolen article will be in accordance with its value at the time of the theft.
17. Ex. XXII, 6.
18. *Ibid.* 7.
19. *Infra* 75a.
20. Ex. XXI, 8.
21. [While the other verse is to extend the exemption to the case where witnesses do subsequently appear. Had there been one verse only available, the exemption would have been limited to the former only.]
22. As indeed maintained by Samuel, *infra* 75a.

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23. V. p. 374, n. 8.
24. 'If the thief be found'.
25. [Since the exclusion of 'real estate, slaves and bills' is already provided for in the verse, For all manner of trespass, etc.; v. *supra* p. 364.]
26. Sot. 3a; Shebu. 19a.
27. I.e., the exclusion of self-admission in case of a fine, as *supra*.]
28. Since the law in this case is derived from the section dealing with the unpaid bailee who is not subject to pay double unless where he first took a false oath on the plea of alleged theft.
29. Ex. XXII, 3.
30. I.e., any of the above implications.
31. Ex. XXII, 3.

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this gives me the rule only as applying to his hand. Whence do I learn that it applies to his roof, his courtyard and his enclosure? It distinctly lays down: *If to be found it be found* [i.e.] in all places?¹ — But if so² the text should have said either 'if to be found, to be found', or 'if it be found, it be found'?³ The variation in the text⁴ enables us to prove two points from it.

The above text states: 'Rab said: "The principal is reckoned as at the time of the theft,"⁵ whereas double payment or four-fold and five-fold payments are reckoned on the basis of the value when the case was brought into Court.' What was the reason of Rab? — Scripture says 'theft' and 'alive'. Why does Scripture say 'alive' in the case of theft? [To imply] that I should resuscitate the principal in accordance with its value at the time of theft.⁶ Said R. Shesheth: I am inclined to say that it was only when he was half asleep on his bed⁷ that Rab could have enunciated such a ruling.⁸ For it was taught: [If a thief misappropriated] a lean animal and fattened it, he has to pay the double payment or four-fold and five-fold payments according to the value at the time of theft. [Is this not a contradiction to the view of Rab?]⁹ — It might, however, be said [that the thief has to pay thus] because he can say, 'Am I to fatten it and you take it?'¹⁰

Come and hear: [If a thief misappropriated] a fat animal and caused it to become lean, he has to pay double payment or fourfold and five-fold payments according to the value at the time of theft. [Does this not contradict the ruling enunciated by Rab?]¹¹ — There also [the thief has to pay thus] because we argue against him 'What is the difference whether you killed it altogether or only half-killed it.'¹² But the ruling enunciated by Rab¹³ had reference to fluctuations in price. How are we to understand this? If we assume that it was originally worth one *zuz* and subsequently worth four *zuz*, would the statement 'the principal will be reckoned as at the time of theft not lead us to suppose that Rab differs from Rabbah? For Rabbah said:¹³ If a man misappropriated from his fellow a barrel of wine which was then [worth] one *zuz* but which became subsequently worth four *zuz*, if he broke it or drank it he has to pay four,¹⁴ but if it broke of itself he has to pay one *zuz*.¹⁵ [Would Rab really differ from this view?]¹⁶ — It may however, be said that Rab's rule applied to a case where, e.g., it was at the beginning worth four [*zuz*] but subsequently worth one [*zuz*], in which case the principal will be reckoned as at the time of theft, whereas double payment or four-fold and five-fold payments will be reckoned on the basis of the value when the case came into Court. R. Hanina learnt in support of the view of Rab: If a bailee advanced a plea of theft regarding a deposit and confirmed it by oath but subsequently admitted his perjury and witnesses appeared and testified [to the same effect], if he confessed before the appearance of the witnesses, he has to pay the principal together with a fifth and a trespass offering;¹⁷ but if he confessed after the appearance of the witnesses, he has to pay double payment¹⁸ together with a trespass offering;¹⁹ the fifth, however, is replaced by the doubling of the payment.²⁰ So R. Jacob.

1. B.M. 10b and 56b.
2. That it was meant to imply only one point.
3. I.e., the verb would have been doubled in the same tense.

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4. In the tense of the verb, the infinite followed by the finite.
5. V. *supra* p. 374.
6. V. p. 374, n. 7.
7. Lit., 'when lying down'.
8. For a similar expression cf. *supra* p. 268.
9. According to whom four-fold and five-fold payments are reckoned on the basis of the value when the case comes into court.
10. Whereas where there was an increase in price or where the animal became fatter by itself, the ruling of Rab may hold good.
11. V. p. 376, n. 11.
12. The liability thus began at the time when the thief caused the animal to become lean.
13. B.M. 43a.
14. As was its value at the time when he damaged it.
15. As was its value at the time of the theft.
16. And maintain to the contrary that even where the thief broke it or drank it he would still pay only one *zuz*, which was its value at the time of the theft.
17. In accordance with Lev. V, 24-25. [But not the doubling, since it is a fine which is not payable on self-admission.]
18. V. p. 634, n. 7.
19. V. p. 634, n. 6.
20. Provided, however, that the doubling and the fifth are equal in amount.

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The Sages, however, say: [Scripture says] In its principal and the fifth part thereof,¹ [implying that it is only] where money is paid as principal that a fifth has to be added, but where the money is not paid as principal² no fifth will be added.³ R. Simeon b. Yohai says: No fifth or trespass offering is paid in a case where there is double payment.⁴ Now it is said here that 'the fifth is replaced by the doubling of the payment;' this being the view of R. Jacob. How are we to understand this? If we say it was at the beginning worth four and subsequently similarly worth four, how could the fifth be replaced by the doubling of the payment when the doubling of the payment amounts to four and the fifth to one?⁵ Does it therefore not refer to a case where at the beginning the value was four but subsequently fell to one *zuz*, so that the doubling of the payment is one *zuz*⁶ and the fifth of the payment is also one *zuz*,⁵ proving

thereby that the principal will be reckoned as at the time of theft, whereas double payment or four-fold and five-fold payments will be reckoned on the basis of the value when the case comes into court? — Raba thereupon said: It could still be maintained that at the beginning it was worth four and now it is similarly worth four, for as to the difficulty with respect to the doubling of the payment being four and the fifth of the payment one *zuz*,⁵ it might be said that [we are dealing here with a case] where e.g., he took an oath and repeated it four times, after which he confessed, and as the Torah says 'and its fifths',⁷ the Torah has thus assigned many fifths to one principal.⁸

The Master stated: 'The Sages however say: [Scripture says] In its principal and the fifth part thereof [implying that it is only] where money is paid as principal that a fifth has to be added, but where the money is not paid as principal, no fifth will be added.' The trespass offering will nevertheless have to be brought. Why this difference? If he has not to pay the fifth because it is written, In its principal and the fifth part thereof, why should he similarly not have to pay the trespass offering seeing it is written, In its principal and the fifth part thereof ... and his trespass offering?⁹ — The Rabbis might say to you that by the particle 'eth' [occurring before the term denoting his trespass offering]¹⁰ Scripture separates them.¹¹ And R. Simeon b. Yohai?¹² — He maintains that by the 'waw' [conjunctive placed before the particle] 'eth' Scripture combines them.¹³ And the Rabbis? — They may say that if this is so, the Divine Law should have inserted neither the 'waw' nor the 'eth'. And R. Simeon b. Yohai? — He might rejoin that as it was impossible for Scripture not to insert 'eth' so as to make a distinction between a chattel due to Heaven¹⁴ and money due to ordinary men,¹⁵ it was therefore necessary to add the 'waw' so as to combine the verses.

R. Elai said: If a thief misappropriates a lamb and it grows into a ram,¹⁶ or a calf and it

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grows into an ox,¹⁶ as the article has undergone a change¹⁷ while in his hands he would acquire title to it,¹⁸ so that if he slaughters or sells it, it is his which he slaughters or sells.¹⁹ R. Hanina objected to R. Elai's statement [from the following teaching]: If he misappropriates a lamb and it grows into a ram,¹⁶ or a calf and it grows into an ox,¹⁶ he will have to make double payment or four-fold and five-fold payments reckoned on the basis of the value at the time of theft. Now, if you assume that he acquires title to it by the change, why should he pay?²⁰ Is it not his which he slaughtered, is it not his which he sold? — He replied:²¹ What then [is your opinion]? That a change does not transfer ownership? Why then pay on the basis of the value at the time of theft²² and not of the present value?²³ — The other replied:²⁴ He does not pay in accordance with the present value for the reason that he can say to him,²⁵ 'Did I steal an ox from you, did I steal a ram from you?' Said the other:²¹ 'May the All-Merciful save me from accepting this view!' The other one retorted,²⁴ 'May the All-Merciful save me from accepting your view.'²⁶ R. Zera demurred saying: Why should he not indeed acquire title to it through the change in name?²⁷ Raba, however, said to him: An ox one day old is already called 'ox', and a ram one day old is already called 'ram'. 'An ox one day old is called "ox",' as written: When an ox or a sheep or a goat is born.²⁸ 'A ram one day old is called "ram",' as written: And the rams of thy flocks have I not eaten.²⁹ Does he mean that it was only the rams that he did not eat, and that he did eat the sheep? [Surely not!] — This shows that a ram one day old is already called 'ram'. But all the same does the objection raised against R. Elai³⁰ still not hold good? — R. Shesheth thereupon said: The teaching [of the Baraita] is in accordance with the view of Beth Shammai, that a change leaves the article in the previous position and will accordingly not transfer ownership, as taught:³¹ If he gave her [the harlot] as her hire wheat of which she made flour, or olives of which she made

oil, or grapes of which she made wine, it was taught on one occasion that 'the produce is forbidden [to be sacrificed upon the altar],'³² whereas on another occasion it was taught 'it is permitted',³³ and R. Joseph said: Gorion of Aspurak³⁴ learnt: 'Beth Shammai prohibit [the produce to be used as sacrifices],³⁵ whereas Beth Hillel permit it.' Now, what was the reason of Beth Shammai? — Because it is written 'Gam',³⁶ to include their transformations.³⁷ But Beth Hillel maintain that [the suffix them]³⁸ implies 'them',³⁹ and not their transformations. And Beth Shammai? — They maintain that the suffix

1. Lev. V, 24.
2. As here, where double payment has to be made.
3. Under any circumstances, even where the doubling of the payment and the fifth are not equal in amount, though the trespass offering will have to be brought.
4. *Infra* 106a; Shebu. 37b.
5. The fifth is 25% of the general sum which will have to be paid as principal plus a fifth thereof amounting thus to a fourth of the principal.
6. As was the value at the time of the coming into court.
7. E.V.: 'and the fifth part thereof'.
8. I.e., a fifth will be paid for each false swearing.
9. Lev. ib., 24-25.
10. E.V.: 'And ... his trespass offering, v. 25.
11. So that the law regarding the trespass offering is not governed by the condition made in verse 24.
12. [Who holds that he neither brings a trespass offering. How will he meet the argument from the particle 'eth'?]]
13. Making them subject to the same law.
14. I.e., the trespass offering.
15. I.e., the fifth.
16. While still in his possession.
17. The technical term is Shinnuy.
18. Having, however, to repay the principal together with the double payment for the act of theft.
19. The fine for the slaughter or sale will thus not be imposed upon him.
20. The fine for the slaughter or sale.
21. R. Elai to R. Hanina.
22. When it was merely a lamb or a calf.
23. When it already became a ram, or an ox, if the ownership has not changed.
24. R. Hanina to R. Elai.
25. I.e., the thief against the plaintiff.
26. Cf. Shab. 84b and Keth. 45b.

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27. [Though 'growth' confers no title.]
28. Lev. XXII, 27.
29. Gen. XXXI, 38.
30. By R. Hanina from the teaching imposing the fine of four-fold and five-fold payments.
31. *Infra* p. 544 and Tem. 30b.
32. In accordance with Deut. XXIII, 19.
33. As it was not the same article which was given as hire.
34. [Not identified, but probably in Asia; v. Neubauer, p. 386.]
35. V. p. 380, n. 15.
36. E.V.: 'even', and which is generally taken as an amplification.
37. I.e., to prohibit even the articles into which the hire was transformed.
38. [H], 'both of them' (E.V.: 'both these').
39. I.e., the original articles themselves.

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indicates 'them' and not their offsprings.¹ And Beth Hillel? — They reply that you can understand the two points from it: 'Them' — and not their transformations; 'them' — and not their offspring. But as to Beth Hillel surely it is written Gam? — Gam presents a difficulty according to the view of Beth Hillel.²

Their³ difference extends only so far that one Master⁴ maintains that a change transfers and the other Master⁵ maintains that a change does not transfer ownership, but regarding payment they both agree that the payment is made on the basis of the original value, even as it is stated:⁶ 'He has to make double payment or fourfold and five-fold payments on the basis of the value at the time of the theft.' Are we to say that this [Baraita] confutes the view of Rab in the statement made by Rab that the principal will be reckoned as at the time of theft, whereas double payment or four-fold and five-fold payments will be reckoned on the basis of the value when the case comes into Court? — Said Raba: [Where he pays with] sheep, [he pays] in accordance with the original value,⁷ but [where he pays with] money [he pays] in accordance with the present value.

Rabbah said: That a change⁸ transfers ownership is indicated in Scripture and learnt

in Mishnah. It is indicated in Scripture in the words, *He shall restore the misappropriated object which he violently took away.*⁹ What is the point of the words 'which he violently took away'? — It is to imply that if it is still as [it was when] he violently took it¹⁰ he shall restore it, but if not, it is only the value of it that he will have to pay.¹¹ It is learnt [in the Mishnah]: If one misappropriates timber and makes utensils out of it, or wool and makes it into garments, he has to pay in accordance with the value at the time of robbery.¹² Or as also [learnt elsewhere]: If the owner did not manage to give the first of the fleece to the priest¹³ until it had already been dyed, he is exempt,¹⁴ thus proving that a change transfers ownership. So has Renunciation¹⁵ been declared by the Rabbis to transfer ownership. We, however, do not know whether this rule is derived from the Scripture, or is purely Rabbinical. Is it Scriptural, it being on a par with the case of one who finds a lost article?¹⁶ For is not the law in the case of a finder of lost property that, if the owner renounced his interest in the article before it came into the hands of the finder the ownership of it is transferred to the finder? So in this case, the thief similarly acquires title to the article as soon as the owner renounces his claim. It thus seems that the transfer is of Scriptural origin! Or are we to say that this case is not comparable to that of a lost article?¹⁶ For it is only in the case of a lost article that the law applies, since when it comes into the hands of the finder,¹⁷ it does so lawfully, whereas in the case of the thief into whose hands it entered unlawfully, the rule therefore might be merely of Rabbinic authority, as the Rabbis might have said that ownership should be transferred by Renunciation in order to make matters easier for repentant robbers. But R. Joseph said: Renunciation does not transfer ownership even by Rabbinic ordinance.

R. Joseph objected to Rabbah's view [from the following:] If a man misappropriated leavened food [before Passover],¹⁸ when Passover has passed¹⁹

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1. Such as where, e.g., a cow was given as hire and it gave birth to a calf.
2. V. *supra* 54a, and B.M. 27a.
3. I.e., R. Elai's and R. Hanina's.
4. R. Elai.
5. R. Hanina.
6. In the Baraitha cited *supra* p. 379.
7. Rashi explains this to mean that as it was a sheep which he misappropriated it is a sheep which he has to return, but according to Tosaf. it does not refer to the object by which the payment is made but to the object of the theft, and means that if the change in price resulted from a change in the substance of the stolen object all kinds of payment will be in accordance with the value at the time of the theft, whereas where the change in the value was due to fluctuation in price the view of Rab would still hold good.
8. In the substance of a misappropriated article.
9. Lev. V. 23.
10. I.e., without any change in the substance of the object.
11. But not the misappropriated object itself.
12. *Infra* p. 541.
13. In accordance with Deut. XVIII, 4.
14. On account of the change which took place in the color of the wool. (Hul. 135a).
15. Ye'ush, of the misappropriated article by its owner.
16. Where Renunciation by the owner would release a subsequent finder from having to restore the article found by him, as derived in B.M. 22b from a Scriptural inference.
17. After Renunciation.
18. When it was permitted.
19. So that the leavened food became forbidden for any use in accordance with Pes. 28a-30a.

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he can say to the plaintiff, 'Here is your stuff before you.'¹ Now, as this plaintiff surely renounced his ownership when the time for prohibiting leavened food arrived,² if you assume that Renunciation transfers ownership, why should the thief be entitled to say, 'Here is your stuff before you', when he has a duty upon him to pay the proper value?³ — He replied:⁴ I stated the ruling⁵ only where the owner renounces ownership at the time when the thief is desirous of acquiring it, whereas in this case, though the owner renounced ownership, the thief had no desire to acquire it.⁶

Abaye objected to Rabbah's statement [from the following]: [The verse says,] 'His offering,⁷ [implying] but not one which was misappropriated.'⁸ Now, what were the circumstances? If we assume before Renunciation, why do I require a text, since this is quite obvious?⁹ Should we therefore not assume after Renunciation, which would show that Renunciation does not transfer ownership?¹⁰ Said Raba¹¹ to him: According to your reasoning [how are we to explain] that which was taught: [The verse says,] 'His bed¹² [implying] but not one which was misappropriated'? Under what circumstances? That, for instance, wool was misappropriated and made into a bed? But is there any [accepted] view¹³ that a change [in substance] resulting from an act does not transfer ownership?¹⁴ What you have to say is that it refers to a case where the robber misappropriated a neighbor's bed. So also here¹⁵ it refers to a case where he misappropriated a neighbor's offering.¹⁶ Abaye objected to R. Joseph's view [from the following]: In the case of skins belonging to a private owner, mere mental determination renders them capable of becoming [ritually] unclean¹⁷ whereas in the case of those belonging to a tanner no mental determination¹⁸ would render them capable of becoming unclean.¹⁹ Regarding those in the possession of a 'thief', mental determination²⁰ will make them capable of becoming unclean,²¹ whereas those in the possession of a 'robber' no mental determination²² will render capable of becoming unclean.²³ R. Simeon says that the rulings are to be reversed: Regarding those in the possession of a 'robber', mental determination²² will render them capable of becoming unclean,²⁴ whereas regarding those in the possession of a 'thief', no mental determination²⁰ will render them capable of becoming unclean, as in the last case the owners do not usually abandon hope of discovering who was the thief.²⁵ Does not this prove that Renunciation transfers ownership?²⁶ — He replied:²⁷ We are dealing here with a case where for example he had

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already trimmed the stolen skins [so that some change in substance was effected].²⁸ Rabbah son of R. Hanan demurred to this, saying: This was learnt here in connection with a [dining] cover,²⁹ and [skins intended to be used as] a cover do not require trimming as we have learnt:³⁰ Wherever there is no need for [finishing] work to be done, mental resolve³¹ will render the article capable of becoming unclean, whereas where there is still need for [finishing] work to be done no mental resolve³¹ will render it capable of becoming unclean, with the exception however, of a [dining] cover!³² — Raba therefore said: This difficulty was pointed out by Rabbah to R. Joseph for twenty-two years³³ without his obtaining any answer. It was only when R. Joseph occupied the seat as Head³⁴ that he explained it [by suggesting that] a change in name is equivalent [in the eye of the law] to a change in substance; for just as a change in substance has an effect because, for instance, what was previously timber is now utensils, so also a change in name should have an effect as what was previously called skin is now called [dining] cover.³⁵ But what about a beam where there is similarly a change in name as previously it was called a post and now ceiling, and we have nevertheless learnt that 'where a misappropriated beam has been built into a house, the owner will recover only its value, so as to make matters easier for repentant robbers'.³⁶ The reason is, to make matters easier for repentant robbers,

1. As no change took place in the substance of the misappropriated article. (*Infra* p. 561.)
2. I.e., on the eve of Passover.
3. Since the misappropriated article became his.
4. Rabbah to R. Joseph.
5. That Renunciation transfers the ownership.
6. As it was not in his interest to do so.
7. Lev. I, 3.
8. *Infra* p. 388.
9. That a stolen object could not be brought to the altar.
10. In contradiction to the view expressed by Rabbah.
11. *Var. lec.*, 'Rabbah'.
12. Lev. XV, 5.

13. With the exception of that of Beth Shammai (cf. *supra* p. 380). whose view is disregarded when in conflict with Beth Hillel (Tosaf.).
14. Would the bed in this case not become the legal property of the robber?
15. In the case of the sacrifice.
16. [In which case the sacrifice is not acceptable even if offered after renunciation on the part of the original owner.]
17. As his mental determination is final, and the skins could thus be considered as fully finished articles and thus subject to the law of defilement. (V. Kel. XXVI, 7.)
18. To use them as they are.
19. As a tanner usually prepares his skins for the public, and it is for the buyer to decide what article he is going to make out of them.
20. On the part of the thief to use them as they are.
21. For the skins became the property of the thief, as Renunciation usually follows theft on account of the fact that the owner does not know against whom to bring an action.
22. On the part of the robber to use them as they are.
23. For the skins did not become the property of the robber as robbery does not usually cause Renunciation, since the owner knows against whom to bring an action.
24. For the skins became the property of the robber as the owner has surely renounced every hope of recovering them for fear of the robber who acted openly.
25. Kel. XXVI, 8; *infra* p. 672.
26. In contradiction to the view maintained by R. Joseph.
27. R. Joseph to Abaye.
28. On account of which the ownership was transferred.
29. Since the case of the skins follows in the Mishnah that of the (dining) cover. [The dining cover (Heb. 'izba), was spread over the ground in the absence of a proper table from which to eat; cf. Rashi and Krauss, Talm. Arch., I, 376.]
30. Kel. XXVI, 7.
31. V. p. 384, n. 5.
32. Since even without trimming the skins could be used as a cover.
33. I.e., all the days when Rabbah was the head of the college at Pumbeditha; cf. Ber. 64a; Hor. 14a and Rashi Keth. 42b.
34. In succession to Rabbah.
35. Whereas mere Renunciation in the case of theft or robbery would not transfer ownership.
36. 'Ed. VII, 9.

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but if not for this, it would have to be restored intact?¹ — R. Joseph replied: A beam retains its name [even subsequently], as taught: 'The sides of the house';² these are the casings: 'and the thick planks'; these are the beams.³ R. Zera said: A change which can revert to its original state is, in the case of a change in name, not considered a change.⁴ But is a change in name that cannot revert to its original state⁵ considered a change? What then about a trough, the material of which was originally called a plank but now trough, and we have nevertheless been taught⁶ that a trough⁷ which was first hollowed out and subsequently fixed [into a mikweh]⁸ will disqualify the mikweh,⁹ but where it was first fixed [in to the mikweh] and subsequently hollowed out, it will not disqualify the mikweh!¹⁰ But if you maintain that a change in name has a legal effect, why then, even where he fixed it first and subsequently hollowed it out, should it not disqualify the mikweh!¹¹ — The law regarding disqualification through drawn water¹² is different altogether, as it is only of Rabbinic sanction.¹³ But if so, why even in the prior clause¹⁴ should it not also be the same? — There, however, the law of a receptacle applied to it while it was still detached, whereas here it was never subject to the law of a receptacle while it was detached.

An objection was raised [from the following]: If a thief, a robber or an annas¹⁵ consecrates a misappropriated article, it will be consecrated; if he sets aside a portion for the priest's gift,¹⁶ it will be *terumah*;¹⁷ or again if he sets aside a portion for the Levite's gift¹⁸ the tithe will be valid.¹⁹ [Now, does this not prove that Renunciation transfers ownership?]²⁰ — It may be said that in that case there was also a change in name, as previously it was called *tebel*²¹ while now it is called *terumah*.¹⁷ So also in the case of consecration: previously it was called *hullin*,²² but now it is called consecrated.

R. Hisda stated that R. Jonathan said: How do we learn [from Scripture] that a change transfers ownership? — Because it is said: *He shall restore the misappropriated object.*²³ What [then] is the point of the words, '*which he took violently away*'?²³ [It must be to imply that] if it still is as when he took it violently²⁴ he shall restore it, but if not, it is only the value of it that he will have to pay.²⁵ But is this [text] '*which he took violently away*'²³ not needed to exclude the case of robbery committed by a father, in which the son need not add a fifth [to the payment] for robbery committed by his father?²⁶ — But if so, the Divine Law should have written only 'he shall restore the misappropriated object.' Why should it further be written, '*which he took violently away*'? Thus we can draw from it the two inferences. Some report: R. Hisda stated that R. Jonathan said: How do we learn [from Scripture] that a change does not transfer ownership? — Because it is said: He shall restore the misappropriated object, i.e., in all cases. But is it not written 'which he took violently away'? — That text is needed to indicate that it is only for robbery committed by himself that he has to add a fifth, but has not to add a fifth for robbery committed by his father.

'Ulla said: How do we learn [from Scripture] that Renunciation does not transfer ownership? Because it is said: And ye brought that which was misappropriated, and the lame and the sick.²⁷ 'That which was misappropriated' is thus compared to 'the lame': just as 'the lame' has no remedy at all

1. In spite of the fact that a change in name took place.
2. Ezek. XLI, 26.
3. Hence after it became part of the ceiling it is still called beam.
4. A beam by becoming part of a ceiling did not therefore really undergo a change in name, as the beam could be taken out and thus revert to its original state.
5. Such as in the case of the skins made into covers.
6. B.B. 65b.
7. Through which rain or well water was conducted to a mikweh which should be a

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gathering of well or rain water that has not passed through a receptacle.

8. Lit., 'a gathering of water' for ritual immersion; cf. [Glos.](#)
9. As the trough in this case was considered a receptacle before it was fixed to the ground.
10. As when the trough was fixed it was not a receptacle in the eye of the law and could not become such after it became part of the ground to which it was fixed.
11. As by hollowing out the material which was originally called plank the name was changed into trough, and it should thus become a receptacle in the eye of the law. [Although this change was effected after it had been fixed to the soil, the fact that it goes by the name of a trough should in itself be sufficient to disqualify it for the use of the Mikweh; v. Asheri and Shittah Mekubezeth, a.l.]
12. In receptacles poured into a mikweh.
13. Cf. B.B. (Sonc. ed.) pp. 263 ff.
14. Where he first hollowed it out and subsequently fixed it.
15. The same as the hamsan, who, as explained *supra* p. 361 is prepared to pay for the objects which he misappropriates.
16. In accordance with Num. XVIII, 11-12.
17. V. [Glos.](#)
18. Cf. Num. XVIII, 21.
19. V. *infra* p. 674.
20. For otherwise what right have they to consecrate or set aside the portions for the priest and Levite?
21. I.e., produce from which the priest's and Levite's portion has not been set aside.
22. I.e., unconsecrated property.
23. Lev. V. 23.
24. V. p. 382, n. 3.
25. V. p. 382, n. 4.
26. I.e., that the son should in this case not be subject to Lev. V, 24-25.
27. Mal. I, 13.

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[to render it qualified for the altar],¹ so also 'that which was misappropriated' has no remedy at all, no matter before Renunciation or after Renunciation. Raba said: [We derive it] from the following: 'His offering,² but not one which was misappropriated.'³ When is this? If we say before Renunciation, is this not obvious?⁴ What then is the point of the verse? It must therefore apply to the time after Renunciation, and it may thus be proved from this that Renunciation does not

transfer ownership. But did not Raba himself say⁵ that the text referred to a robber misappropriating an offering of his fellow — If you wish I may say that he changed his mind on this matter.⁶ Or if you wish I may say that one of these statements was made by R. Papa.⁷

THE MEASURE OF FOUR-FOLD AND FIVE-FOLD PAYMENTS DOES NOT APPLY EXCEPT IN THE CASE OF AN OX OR A SHEEP ALONE. But why not compare [the term] 'ox' to 'ox' in the case of Sabbath,⁸ so that just as there beasts and birds are on the same footing with them [i.e. ox and ass],⁹ so also here beasts and birds should be on the same footing with them [i.e. ox and sheep]? — Raba said: Scripture says 'an ox and a sheep', 'an ox and a sheep'¹⁰ twice, [to indicate that] only ox and sheep are subject to this law but not any other object whatsoever. I may ask: Which of these¹¹ would otherwise be superfluous? Shall we say that 'ox and sheep' of the concluding clause would be superfluous, and the Divine Law should have written 'if a man shall steal an ox or a sheep and slaughter it or sell it, he should restore five oxen instead of it and four sheep instead of it'? Were the Divine Law to have thus written, would I not have thought that he should pay nine for each of them? And should you rejoin that it is written 'instead of it', 'instead of it' [twice in the text, so that] one 'instead of it' would then have been superfluous,¹² [I might retort that] this is required for a further exposition, as taught: It might be maintained that one who stole an ox worth a mina¹³ would be able to restore for it five frail oxen. The text says, however, 'instead of it', 'instead of it' twice.¹⁴ ['Ox and sheep' of the concluding clause is thus indispensable]. It thus appears that it is 'ox and sheep' of the prior clause which would have been superfluous, as the Divine Law should have written: 'If a man shall steal and slaughter it or sell it, he shall restore five oxen for the ox and four sheep for the sheep.' But had the Divine Law to have thus written, I might have thought that it was only where he

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stole the two animals and slaughtered them [that liability would be attached]! — But surely it is written 'and slaughtered it', implying one animal! It might still be thought that it was only where he stole the two animals and sold them [that liability would be attached]! — But surely it is written, 'and he sold it' implying one animal! It could still be argued that I might have thought that it was only where he stole the two animals and slaughtered one and sold the other [that liability would be attached]! — But surely it is written, 'or he sold it' [indicating that slaughtering and selling were alternative]! I might nevertheless still argue that it was only where he stole the two of them and slaughtered one and left the other, or sold one and left the other!¹⁵ — We must say therefore that it is 'ox' of the concluding clause and 'sheep' of the first clause which would have been superfluous, as the Divine Law should have written: 'If a man shall steal an ox and slaughter it or sell it, he shall restore five oxen instead of it and four sheep instead of the sheep.' Why then do I require 'ox' of the concluding clause and 'sheep' of the first clause? To prove from it that only ox and sheep are subject to this law,¹⁶ but not any other object whatsoever.

ONE WHO STEALS FROM A THIEF [WHAT HE HAS ALREADY STOLEN] NEED NOT MAKE DOUBLE PAYMENT, etc. Rab said: This Mishnaic ruling applies only where the theft took place before Renunciation; for if after Renunciation, the first thief would have acquired title to the article and the second thief would have had to make double payment to the first thief.¹⁷ Said R. Shesheth: I am inclined to say that it was only when he was half asleep and in bed that Rab could have enunciated this ruling. For it was taught: R. Akiba said: Why has the Torah laid down that where the thief slaughtered or sold [the sheep or ox] he would have to make fourfold and five-fold payments [respectively]? Because he became thereby rooted in sin.¹⁸ Now, when could this be said of him? If before Renunciation,

1. Cf. Lev. XXII, 19-25.
2. V. p. 353, n. 9.
3. *Supra* p. 383.
4. V. p. 383, n. 11.
5. *Supra* p. 384.
6. As was the case with the same sage in Shab. 27a; Bez. 18a; Keth. 11b; B.B. 24a; Bek. 54b and Ker. 7a.
7. Who was a disciple of Raba, and the views of the disciples were regarded as those of the Master. [This supports the reading (on p. 383), 'Raba', instead of 'Rabbah', given in our edition; v. Tosaf.]
8. Deut. V, 14.
9. As *supra* 54b.
10. Ex. XXI, 37.
11. 'An ox and sheep', whether on the first or second occasion.
12. [I.e., if we were to assume that there is a payment of nine in each case.]
13. V. [Glos.](#)
14. That the payment should be in accordance with the animal slaughtered or sold, but this would still afford no proof against the assumption that there is a payment of nine in each case.
15. ['Ox and sheep' of the earlier clause are therefore similarly indispensable.]
16. Of five-fold and four-fold payments respectively.
17. Who through Renunciation on the part of the owner became the legal possessor of the article.
18. [His sin struck root in that he has deprived beyond retrieve the owner of his belongings.]

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could he then be called 'rooted in sin' [since the sale is of no validity]? It must therefore be after Renunciation.¹ But if you assume that Renunciation transfers ownership, why should he make four-fold and five-fold payments,² when it is his that he slaughters and his that he sells? — It may, however, be said as Raba stated elsewhere,³ that it means 'because he doubled⁴ his sin,' so likewise here it means, 'because he doubled his sin.'⁵

Come and hear: 'He slaughtered it and sold it;⁶ just as the slaughter cannot be undone so the sale cannot be undone.' Now, when could this be so? If before Renunciation, why can it not be undone?⁷ It must surely therefore be after Renunciation.¹ But if you assume that

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Renunciation transfers ownership, why should he pay fourfold and five-fold⁸ when it is his that he slaughters and his that he sells? — As R. Nahman stated elsewhere, that it means to except a case where he transferred the animal for thirty days,⁹ so also here it means to except a case where he transferred the beast for thirty days.¹⁰

An objection was raised [against this]: If a man steals an article and another comes and steals it from him, the first thief has to make double payment, whereas the second will not pay [anything] but the principal alone.¹¹ If, however, one stole [a sheep or an ox] and sold it, after which another one came and stole it, the first thief has to make four-fold and five-fold payments [respectively], while the second has to make double payment.¹² If one stole [a sheep or an ox] and slaughtered it, and another one came and stole it, the first thief will make four-fold and five-fold payments [respectively], whereas the second has not to make double payment but to repay the principal only.¹¹ Now, it has been taught in the middle clause: 'If however, one stole [a sheep or an ox] and sold it, after which another came and stole it, the first thief has to make four-fold and five-fold payments [respectively], while the second has to make double payment.'¹² But when could this be? If before Renunciation, why should the second make¹² double payment?¹³ Is there any authority who maintains that a change in possession without Renunciation transfers ownership? It must therefore be after Renunciation. But if you assume that Renunciation transfers ownership, why then has he to make four-fold and five-fold payments,¹⁴ seeing that it is his which he sold? And further, it was taught in the opening clause: 'If a man steals an article and another comes and steals it from him, the first thief has to make double payment, but the second will not pay [anything] but the principal.'¹¹ Now, since it is the time after Renunciation with which we are dealing, if you assume that Renunciation transfers ownership, why should the second 'not pay

anything but the principal'?¹⁵ Does not this show that Renunciation does not transfer ownership, in contradiction to the view of Rab? — Raba said: Do you really think that the text of this teaching is correct? For was it not taught in the concluding clause: 'If one stole [a sheep or an ox] and slaughtered it and another came and stole it, the first thief will make fourfold and five-fold payments [respectively], whereas the second has to pay nothing but the principal'? Now, is there any authority who maintains that a change in substance does not transfer ownership?¹⁶ It must therefore surely still be said that the whole teaching refers to the time before Renunciation, but we have to transpose the ruling of the concluding clause to the case in the middle clause, and the ruling of the middle clause to the case in the concluding clause and read thus: If one stole [a sheep or an ox] and sold it, and another came and stole it, the first thief has to make four-fold and five-fold payments [respectively], but the second has not to pay anything but the principal, as a change in possession without Renunciation transfers no ownership. If, however, one stole [a sheep or an ox] and slaughtered it and another came and stole it, the first thief makes four-fold and five-fold payments [respectively], and the second makes double payment,¹⁷ as ownership was transferred [to the first thief] by the change in substance.' R. Papa, however, said: All the same¹⁸ you need not transpose [the rulings], since [we may say that] the concluding clause is in accordance with Beth Shammai, who maintain¹⁹ that a change leaves the article in its previous status. But if so [that it was after Renunciation], will not the opening clause and middle clause be in contradiction to the view of Rab? — R. Zebid therefore said: The whole text could still refer to the time before Renunciation, as we are dealing here with a case where the owner abandoned hope [of regaining the stolen object] when it was already in the possession of the buyer, but had not abandoned it while it was still in the possession of the thief, so that [so far as the buyer was concerned] there was

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Renunciation [as well as a change in possession].²⁰ You should, however, not think [that this is so] because we need both Renunciation and a change in possession for the purpose of transferring ownership, as even Renunciation alone would also transfer ownership²¹ to the thief.²² It is, however, impossible to find a case in which both the first thief and the second thief should simultaneously pay except in this way.²³

It was stated: If the thief sells before Renunciation, R. Nahman said that he is liable, while R. Shesheth said that he is exempt. R. Nahman who said that he would be liable held that since the Divine Law says '*and he sold it*' and as the thief [in this case] did sell it, it makes no difference whether it was before Renunciation or after Renunciation, while R. Shesheth, who said that he would be exempt, held that the liability was only where he sold it after Renunciation,²⁴ where the act has a legal validity, whereas before Renunciation, when the act has no legal validity,²⁵ there could be no liability, as selling is compared to slaughter where it is necessary that the act should be of practical avail. R. Shesheth said: Whence have I inferred the view expressed by me? It was taught: 'R. Akiba said: Why does the Torah say that where the thief slaughtered and sold the stolen [sheep or ox] he should make four-fold and five-fold payments respectively? Because he became thereby rooted in sin.' Now, when could this be said of him? If before Renunciation, could he then be called 'rooted in sin' [since the sale is of no legal validity]?²⁵ Must it therefore not be after Renunciation?²⁴ — Raba said: It only means, because he doubled his sin.²⁶

Come and hear: '*And he slaughtered it or sold it*,'²⁷ just as slaughter cannot be undone, so the sale [must be one] which cannot be undone.' Now, when could this be so? If before Renunciation, why can it not be undone?²⁸ Must it therefore not be after Renunciation,²⁹ thus proving that the liability is only if it is sold *after* Renunciation?²⁹ —

But R. Nahman interpreted it merely to except a case where he transferred the animal for thirty days.³⁰ Also R. Eleazar maintained that the liability would be only after Renunciation, as R. Eleazar stated:

1. In which case the article will have to remain with the purchaser, as a transfer of possession taking place after Renunciation certainly transfers ownership.
2. For slaughtering or selling after Renunciation when the thief has already become the legal owner of the animal.
3. *Infra* p. 393.
4. Lit., 'repeated'.
5. By selling the animal even though the sale is of no validity.
6. V. p. 388, n. 11.
7. For a transfer of possession before Renunciation will certainly transfer no ownership to the buyer.
8. P. 390, n. 5.
9. V. p. 394, n. 4.
10. Not to be subject to the law of selling or slaughtering.
11. To the first thief.
12. To the purchaser.
13. For a transfer of possession before Renunciation will certainly transfer no ownership to the buyer.
14. For selling after Renunciation when the thief has already become the legal owner of the animal.
15. Why not pay double to the first thief who had already become the legal owner of the object through Renunciation?
16. [Why not pay double to the first thief who had already become the legal owner through effecting a change in the substance of the article stolen?]
17. V. p. 391, n. 4.
18. Even though the teaching refers to the time after Renunciation.
19. *Supra* p. 380.
20. And for this reason the second in the middle clause has to make double payment to the buyer.
21. In accordance with the view of Rab.
22. [Mss. omit rightly 'to the thief'; v. D.S. a.l.]
23. For if Renunciation took place while the article was still in the hands of the first thief, he would not have to make four-fold and five-fold payments for a subsequent sale or slaughter.
24. In which case the article will have to remain with the purchaser, as a transfer of possession taking place after Renunciation certainly transfers ownership.

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25. V. p. 391, n. 6.
26. By selling the animal even though the sale is of no validity.
27. Ex. XXI, 37.
28. V. p. 391, n. 6.
29. I.e., where the sale is of legal avail.
30. But not any other case.

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'You can take it for granted that in the ordinary run of thefts there is Renunciation on the part of the owner; since the Torah has laid down that where the thief slaughtered or sold [the stolen sheep or ox] he should pay fourfold or five-fold payments [respectively]. For is there not a possibility that the owner had not abandoned hope? We must therefore say that in the ordinary run of thefts there is Renunciation on the part of the owner.'¹ But why should the liability not hold good even where hope was not abandoned?² — I would say, let not this enter your mind. For selling is placed on a par with slaughter: just as in the case of slaughter his act is of practical avail, so also in the case of selling his act should be of practical validity; and if it takes place before Renunciation, what would be the legal validity?¹ But again can it not be [that the liability is confined to cases] where we actually heard the owner abandoning hope? — I would reply, let not this enter your mind. For selling is put on a par with slaughter, and just as slaughter involves liability [if carried out] immediately [after the theft], so would selling similarly involve liability soon after the theft.³

R. Johanan said to him:⁴ The law in the case of stealing a man⁵ could prove that even where there is no Renunciation on the part of the owner⁶ there will be liability. This statement seems to show that R. Johanan held that selling before Renunciation involves liability.⁷ What then about selling after Renunciation?⁸ — R. Johanan said that the thief is liable, but Resh Lakish said he is exempt. R. Johanan who said that he would be liable held that the liability was both before Renunciation and after Renunciation.

But Resh Lakish, who said that he would be exempt,⁹ maintained that the liability was only before Renunciation, whereas after Renunciation he would have already acquired title to the animal, and it was his that he slaughtered and his that he sold.

R. Johanan objected to Resh Lakish's view [from the following:] If he stole [a sheep or an ox] and after consecrating it slaughtered it, he should make double payment¹⁰ but would not make four-fold and five-fold payments.¹¹ Now, when could this be? If before Renunciation, how does the animal become consecrated? Does not the Divine Law say 'And when a man shall sanctify his house to be holy',¹² [implying that] just as his house is his,¹³ so also anything he consecrates must be his?¹⁴ It must therefore apply to the time after Renunciation.¹⁵ Now the reason is that he consecrated it: he has not to make four-fold and five-fold payments because when he slaughtered the animal it was a consecrated animal that he slaughtered; had he not, however, consecrated it he would have had to make four-fold and five-fold payments if he would have slaughtered it. Now, if you assume that Renunciation transfers ownership why should he¹⁶ pay since it was his that he slaughtered and his that he sold? — He replied:¹⁷ We are dealing here with a case where, for instance, the owner¹⁸ consecrated the animal while it was in the possession of the thief.¹⁹ But will it in that case become consecrated? Did not R. Johanan say²⁰ that where a robber misappropriated an article and the owner has not abandoned hope of recovering it, neither of them is able to consecrate it: the one²¹ because it is not his, the other²² because it is not in his possession? — We might reply that he²³ had in mind the practice of the virtuous, as we have learnt: The virtuous²⁴ used to set aside money and to declare that whatever has been gleaned [by passers-by] from this [vineyard]²⁵ shall be redeemed by this money.²⁶ But [if the owner consecrated the animal], has not the principal thus been restored to the owner? [Why then should a

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thief pay double on it? — We assume a case where the consecration took place] after the case came into court [and evidence had already been given against the thief]. What were the circumstances? If the judges had already ordered him to go and pay the owner, why should exemption be only where he consecrated the animal? Why even where the owner did not consecrate it should the thief be liable? For did Raba not say that if [after the judges said], 'Go forth and pay him,' the thief slaughtered or sold the animal, he would be exempt, the reason being that since the judges had given their final sentence on the matter, when he sold or slaughtered the animal, he became [in the eye of the law] a 'robber', and a 'robber' has not to pay four-fold and five-fold payments,²⁷

1. [Since he conditions the liability of the fourfold and five-fold by the fact that the owner had despaired of the stolen article, it is evident that he agrees with R. Shesheth.]
2. [Even where the sale is of no legal avail.]
3. R. Eleazar thus inferred from this that in ordinary thefts there is immediate Renunciation on the part of the owner.
4. I.e., R. Eleazar.
5. Ex. XXI, 16.
6. For surely no human being will abandon himself.
7. As also maintained by R. Nahman.
8. Does he agree in this with Rab, *supra* p. 390?
9. V. p. 390, n. 5.
10. For the theft.
11. For the slaughter as it was a consecrated animal that he slaughtered, and there is no liability for stealing and selling and slaughtering consecrated animals (*infra* p. 427; Git. 55b).
12. Lev. XXVII, 14.
13. For immovables even when misappropriated always remain in the possession of the owner
14. Excluding thus a thief consecrating misappropriated property.
15. In which case the article could become consecrated, as a transfer of possession following Renunciation transfers ownership.
16. V. p. 390, n. 2.
17. I.e., Resh Lakish to R. Johanan.
18. Not the thief.
19. [Before Renunciation.]
20. *Infra* p. 397; B.M. 7a.
21. The robber.
22. The owner.

23. I.e., Resh Lakish.
24. [[H] (plur. [H]) 'denotes a positive quality, probably nothing else but discretion or modesty', Buchler, Types (*contra* Kohler, who identifies the *Zenu'im* with Essenes) pp. 59 ff.]
25. In its fourth year, the fruit of which is prohibited unless redeemed, cf. Lev. XIX, 24.
26. Which seems to show that fruits already misappropriated could also be redeemed by the owner and thus also consecrated. (M.Sh. V, 1).
27. For the distinction between robber and thief in this respect cf. *infra* p. 452.

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but if they merely said to him, 'You are liable to pay him,' and after that he slaughtered or sold the animal, he would be liable to pay four-fold or five-fold payment, the reason being that since they have not pronounced final sentence upon the matter he is still a thief?¹ — No, its application is necessary where they have as yet merely said to him, 'You are liable to pay him'.

The above text states:² 'R. Johanan said: If a robber misappropriated an article and the owner has not abandoned hope of recovering it neither of them is able to consecrate it: the one³ because it is not his, the other⁴ because it is not in his possession.' Could R. Johanan really have said this? Did not R. Johanan say⁵ that the *halachah* is in accordance with an anonymous Mishnah; and we have learnt:⁶ 'In the case of a vineyard in its fourth year, the owners used to mark it with clods of earth', the sign implying an analogy to earth: just as in the case of earth a benefit may ensue from it,⁷ so also the fruit of this vineyard⁸ will after being redeemed be permitted to be enjoyed. 'That of *'orlah*⁹ used to be marked with potsherds', the sign indicating a similarity with potsherds: just as in the case of potsherds no benefit ensues from them,¹⁰ so also the fruit of *'orlah*⁹ could not be enjoyed for any use whatever. 'A field of graves used to be marked with lime', the sign having the color of white, like corpses. 'The lime was dissolved in water and then poured out' so as to make its color more

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white. 'R. Simeon b. Gamaliel said: These practices were recommended only for the Sabbatical year,' when the fruits on the trees were ownerless;¹¹ 'for in the case of the other years of the Septennate,¹² you may let the wicked stuff themselves with it till they die.¹³ The virtuous however used to set aside money and to declare that whatever has been gleaned from this [vineyard] shall be redeemed by this money.'¹⁴ Does not this contradict R. Johanan? Nor can you urge in reply that the Tanna who recorded the practice of the virtuous was R. Simeon b. Gamaliel,¹⁵ [and R. Johanan might therefore not have concurred with this anonymous view stated by a single Tanna] for did not Rabbah b. Bar Hanah say¹⁶ that R. Johanan stated that whenever R. Simeon expressed a view in a Mishnah the *halachah* is in accordance with him, with the exception of his view regarding 'Suretyship'.¹⁷ 'Sidon'¹⁸ and the 'last [case dealing with] evidence'?¹⁹ — I may reply that you should not read,²⁰ 'whatever has been gleaned'²¹ but read 'whatever will be gleaned'²² from this [vineyard]. But could R. Johanan have said this: Did not R. Johanan say that the virtuous and R. Dosa said the same thing, and, as we know, R. Dosa definitely stated 'whatever has been gleaned'?²¹ For was it not taught:²³ R. Judah says: In the morning the owner of the field should get up and say 'whatever the poor shall glean during the day should be considered ownerless'²⁴ [from the present moment].²⁵ whereas R. Dosa says: It is at evening-tide that he should say, 'Whatever the poor have gleaned shall be ownerless!'²⁶ — I must transpose the view of R. Judah to R. Dosa²⁷ and the view of R. Dosa to R. Judah. But why transpose this teaching, and not transpose instead²⁸ the statement of R. Johanan, assigning to 'the virtuous and to R. Judah the same thing'? — It may, however, be said that it was impossible not to transpose this teaching,²⁹ since in this teaching²⁹ it is stated that R. Judah upholds *bererah*³⁰ and we find R. Judah holding in other places that there is not *bererah* as we have learnt:³¹

1. Subject to the law of paying four-fold and five-fold payments.
2. *Supra* p. 396.
3. The robber.
4. The owner.
5. Shab. 46a.
6. M.Sh. V, I.
7. In time, as after tilling, sowing and reaping.
8. Cf. Lev, XIX, 24.
9. I.e., during the first three years when the fruits are totally forbidden in accordance with Lev. XIX, 23.
10. As nothing could grow in them properly.
11. Cf. Lev. XXV, 6-7.
12. When the fruits were not ownerless.
13. As it was wrong for passers-by to misappropriate the fruits, they need not be warned by all these signs to abstain from using them in the forbidden manner. [This last passage occurs only in the Jerusalem version of the Mishnah, not in the Babylonian.]
14. V. p. 396, n. 8.
15. Who made the immediately preceding statement.
16. B.M. 38b.
17. In B.B. 174a.
18. In Git. 77a.
19. In Sanh. 31a.
20. In the words of the 'virtuous'.
21. In the past.
22. In the future, so that the redemption will take effect retrospectively from the moment this statement was made, when the gleanings were still in the possession of the owner.
23. Tosef. *Pe'ah* II, 4.
24. As each two ears falling together may be gleaned by the poor who need not tithe them, but not so is the case regarding three ears falling together. Not all the poor, however, know this distinction. It is therefore meritorious on the part of the owner to abandon those which are gleaned by the poor unlawfully.
25. I.e., retrospectively.
26. [From this it follows that the declaration of the virtuous was likewise related to the past.]
27. So that it was R. Dosa who said 'whatever the poor shall glean.'
28. Of 'the virtuous and R. Dosa.'
29. Where R. Judah and R. Dosa differ.
30. I.e., Retrospective designation of that which was abandoned at a time when it was not defined; cf. also *supra* 51b.
31. Tosef. Dem. VIII, 5.

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Baba Kamma 69b

'If a man buys wine from among the Cutheans¹ [and it was late on Friday towards sunset and he has no other wine for the Sabbath]² may say 'two logs [out of a hundred]³ which I intend to set aside are *terumah*,⁴ ten are the first tithe⁵ and nine the second tithe,' and these he may redeem [upon money anywhere in his possession],⁶ and he may commence drinking at once. So R. Meir.⁷ But R. Judah, R. Jose and R. Simon prohibit this.⁸ To this I may rejoin: When all is said and done, why have you transposed [the views mentioned in the Baraitha]? Because R. Judah would otherwise contradict R. Judah! But would not now R. Johanan contradict R. Johanan? For you stated according to R. Johanan that we should not read 'whatever has been gleaned'⁹ but read 'whatever will be gleaned',¹⁰ thus proving that he upholds *bererah*¹¹ whereas in fact R. Johanan does not uphold *bererah*. For did not R. Assi say¹² that R. Johanan stated that brothers dividing an inheritance are like purchasers¹³ [in the eye of the law], so that they will have to restore the portions to one another on the advent of the jubilee year?¹⁴ — We must therefore still read¹⁵ 'whatever has been gleaned',⁹ and [say that] R. Johanan¹⁶ found another anonymous Mishnah, as we have indeed learnt: ONE WHO STEALS [ARTICLES ALREADY STOLEN] IN THE HANDS OF A THIEF NEED NOT MAKE DOUBLE PAYMENT.¹⁷ Why should this be? We grant you that he need not pay the first thief, [since Scripture says:] And it be stolen out of the man's house,¹⁸ [implying] 'but not out of the house of the thief'. But why not pay the owner? We must say that this shows that the one¹⁹ is not entitled to payment because the stolen article is not his, and the other one²⁰ is not entitled to payment as the article is not in his possession.²¹ — But what induced him²² to follow that anonymous Mishnah?¹⁷ Why should he not act in accordance with the anonymous Mishnah dealing with the virtuous?²³ — Because he was supported by

the verse: And when the man shall sanctify his house to be holy unto the Lord,²⁴ just as his house is in his possession,²⁵ so anything also which is in his possession can be sanctified.²⁶

Abaye said: If R. Johanan had not stated that the virtuous²⁷ and R. Dosa²⁸ said the same thing,²⁹ I might have said that while the virtuous accepted the view of R. Dosa, R. Dosa did not uphold the practice of the virtuous. The virtuous accepted the view of R. Dosa; for if the Rabbis made things easier for a thief,³⁰ need we say they did so for the poor?³¹ But R. Dosa did not uphold the practice of the virtuous: for it was only for the poor³¹ that the Rabbis made things easier, whereas for the thief they did not make things easier.³⁰ Raba said: Had R. Johanan not stated that the virtuous and R. Dosa said the same thing, I should have said that the Tanna followed by the virtuous was R. Meir. For did not R. Meir say³² that the [second] tithe³³ is Divine property,³⁴ and even so the Divine Law placed it in the owner's possession in respect of redemption, as written: *And if a man will redeem aught of his tithe, he shall add unto it the fifth part thereof*,³⁵ the Divine Law thus designating it 'his tithe' and ordering him to add a fifth.³⁶ The same applies to the vineyard in the fourth year, as can be derived from the occurrence of the term '*holy*' there³⁷ and in the case of the tithe.³⁸ For it is written here '*shall be holy to praise*',³⁷ and it is written in the case of tithe, '*And all tithe of the land whether of seed of the land or of the fruit of the tree it is holy*':³⁸ just as the '*holy*' mentioned in connection with tithe although it is divine property, has nevertheless been placed by the Divine Law in the possession of the owner for the purpose of redemption, so also the '*holy*' mentioned in connection with a vineyard of the fourth year, although the property is not his own, has been placed by the Divine Law in his possession for the purpose of redemption; now seeing that even when it is in his possession it is not his and yet he may redeem it; hence he may be able to redeem it [also

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when out of his possession]. But in the case of the gleaning [of ears of corn] which is his own property,³⁹ it is only when it is [still] in his [own] possession that he is able to declare it ownerless, whereas when not in his possession he should not be entitled to declare it ownerless.⁴⁰

Rabina said: Had R. Johanan not stated that the virtuous and R. Dosa said the same thing, I should have said that the Tanna stating the case of the virtuous was R. Dosa, so that this anonymous Mishnah would not refute the view of R. Johanan, for R. Johanan

1. And has thus to set aside both the priestly portion, called *terumah*, and the first tithe for the Levite and the second tithe to be redeemed or partaken of in Jerusalem.
2. And without having the time to separate the portions to be set aside.
3. Logs (v. [Glos.](#)) which he bought.
4. For the priests, (v. [Glos.](#)).
5. For the Levites, v. Num. XVIII, 21.
6. Cf. Deut. XIV, 22-25.
7. Maintaining retrospective designation, so that the wine set aside after Sabbath for the respective portions will be considered the very wine which was destined at the outset to be set aside.
8. As they maintain no retrospective designation which would make the wine drunk the unconsecrated and that which remained the part originally consecrated. [This shows that R. Judah does not uphold *Bererah*, thus necessitating the transposition of the Baraitha in *Pe'ah*.]
9. V. p. 398, n. 7.
10. V. p. 398, n. 8.
11. V. p. 398, n. 16.
12. Bez. 37b; Git. 25a and 48a.
13. For the portion chosen by each brother for himself could not be considered as having thus retrospectively become the very inheritance designated for him.
14. In accordance with Lev. XXV, 13.
15. In the words of the 'virtuous'.
16. [In maintaining that a consecration made by the owner even before renunciation is not valid, in opposition to the principle underlying the declaration of the 'virtuous'.]
17. *Supra* p. 363.
18. Ex. XXII, 6.
19. The first thief.
20. The owner.
21. This proves that the lack of possession is a defect in the very ownership, and if an article out of possession is not subject to double payment it could neither be subject to the law of consecration and alienation which are incidents of ownership.
22. V. I.e., R. Johanan.
23. V. p. 396, n. 8.
24. V. Lev. XXII, 14.
25. V. p. 395, n. 8.
26. Excluding thus an owner consecrating movables out of his possession; and because of this Scriptural authority R. Johanan deviated from the view of the 'virtuous'.
27. Dealing with the vineyard in the fourth year misappropriated by passers by.
28. Dealing with the gleaning of the poor.
29. V. *supra* p. 398.
30. To safeguard him from partaking of forbidden fruits.
31. Who are not out to commit theft and should consequently the more so be safeguarded from partaking of produce that has not been tithed.
32. Kid. 24a.
33. To be partaken of in Jerusalem, cf. Deut. XIV, 22-26.
34. So that the original owner is but an invitee without possessing any legal ownership.
35. Lev. XXVII, 31.
36. Whereas one redeeming the second tithe of another person does not add a fifth.
37. Lev. XIX, 24.
38. Ibid. XXVII, 30.
39. In the case of each three ears falling together.
40. [Thus, had not R. Johanan said that the virtuous and R. Dosa said the same thing, it could rightly be argued that the virtuous would not apply their principle to the gleaning.]

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would have been right in not concurring with an anonymous statement of a single Tanna.

The Nehardeans said: We do not execute an assignment on movables¹ [which are outside the possession of the parties].² Said R. Ashi to Amemar: On what ground? He replied: Because of the view of R. Johanan. For R. Johanan said: If a robber has misappropriated an article and the owner has not abandoned hope of recovering it, neither of them is able to consecrate it; the one because it is not his, the other because it is not in his possession. Some read that the

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Nehardeans said: We do not execute an assignment on movables [the claim upon which] was denied [by a bailee]. The reason is that the claim was denied, as the deed of assignment would then appear a lie,³ whereas where it is not denied, we would be able to execute. The Nehardeans further said: An assignment which does not contain the words, 'Go forth and take legal action so that you may acquire title to it and secure the claim for yourself' is of no validity, the reason being that the defendant might say to him:⁴ 'You have no claim against me'. But Abaye said: If it is written, 'You will be entitled to a half or a third or a fourth of the claim', it would be valid, for since he is entitled to litigate regarding the half, he is also entitled to litigate regarding the whole.⁵ Amemar said: [In any case] where the assignee became possessed of articles belonging to the defendant, we would not take them away from him.⁶ But R. Ashi said: Since it was written for him,⁷ 'Whatever will be imposed by the Court of Law I accept upon myself', he was surely appointed but an agent.⁸ Some, however, say that he is made a partner. What is the practical difference?⁹ Whether he may remain possessed of a half. The law is that he is appointed only an agent.¹⁰

MISHNAH. IF A THIEF IS CONVICTED OF THE THEFT [OF A SHEEP OR AN OX] ON THE EVIDENCE OF TWO WITNESSES,¹¹ AND OF THE SLAUGHTER OR SALE [OF IT] BY THE SAME TWO, OR ON THE EVIDENCE OF ANOTHER TWO WITNESSES, HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.¹² IF HE STEALS AND SELLS ON THE SABBATH DAY,¹³ OR IF HE STEALS AND SELLS FOR IDOLATROUS PURPOSES, OR IF HE STEALS AND SLAUGHTERS ON THE DAY OF ATONEMENT,¹⁴ OR IF HE STEALS FROM HIS OWN FATHER, AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED,¹⁵ OR AGAIN, WHERE HE STEALS AND SLAUGHTERS AND THEN CONSECRATES IT, HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.¹⁶ IF HE STEALS AND SLAUGHTERS TO USE THE MEAT FOR

CURATIVE PURPOSES OR TO GIVE TO DOGS, OR IF HE SLAUGHTERS AND FINDS THE ANIMAL *TREFA*,¹⁷ OR IF HE SLAUGHTERS IT AS UNCONSECRATED IN THE 'AZARAH,¹⁸ HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.¹⁹ R. SIMEON, HOWEVER, RULES THAT THERE IS EXEMPTION IN THESE [LAST] TWO CASES.²⁰

GEMARA. Are we to say that the Mishnah is not in accordance with R. Akiba? For how could it be in accordance with R. Akiba who said that [the Scriptural term] '*Matter*'²¹ implies 'not half a matter'? As indeed taught:²² R. Jose said: 'When [my] father Halafta went to R. Johanan b. Nuri to learn Torah, or as others, when R. Johanan b. Nuri went to [my] father

1. Shebu. 33b and Bek. 49a.
2. But if they are in the possession of a bailee they could be assigned as they are considered in the possession of the depositor (Tosaf.).
3. Since the bailee denies them.
4. The assignee.
5. V. B.M. 8a.
6. For the benefit of the defendant even where the prescribed clause 'to go forth and secure for himself', etc. was not inserted in the instrument of assignment. According, however, to Gaonic interpretation it means that the assignee may retain the articles against the assignor (v. Rashi).
7. By the assignor.
8. And could therefore not retain the articles either against the defendant in the circumstances dealt with in the first interpretation, or against the assignor in accordance with the Gaonic interpretation.
9. Whether he was made a partner or an agent.
10. [Asheri and Alfasi omit, 'The law is, etc.']
11. Cf. Deut. XIX, 15.
12. Respectively.
13. For though it is prohibited to do any business transactions on the Sabbath day, no capital charge is thereby involved, and civil liability could thus be established; cf. Gemara.
14. As for desecrating the Day of Atonement in contradistinction to the Sabbath no capital charge is involved, the sole punishment at the hand of man being thirty-nine lashes.
15. And the thief became an heir to the estate.
16. For the slaughter which preceded the consecration.

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17. I.e., ritually unfit to be eaten owing to an organic defect in the animal; v. [Glos.](#)
18. I.e., the precincts of the Temple where only sacrificial animals might be slaughtered.
19. As the ritual unfitness of the animal in the last two cases is not due to a defect in the act of slaughter but arises through other circumstances.
20. For he is of the opinion that if the slaughter does for any reason whatsoever not effect the ritual fitness of the animal to be eaten, it is not considered in the eye of the law as a slaughter.
21. A matter shall be established by two witnesses, Deut. XIX, 15.
22. V. B.B. 56a.

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Halaftha, he said to him: Suppose a man had the use of a piece of land for one year as testified by two witnesses, for a second year as testified by two other witnesses, and for a third year as testified by still two other witnesses, what is the position? — He replied: 'This is a proper usucaption'.¹ Whereupon the other rejoined: 'I also say the same, but R. Akiba joins issue on the matter for R. Akiba used to say: [Scripture states] A matter [implying] "but not half a matter"!'² — Abaye, however, said: You may even say that this is in accordance with R. Akiba. For would R. Akiba not agree in a case where two witnesses state that a certain person had betrothed a woman³ and two other witnesses testify that another person had subsequently had intercourse with her,⁴ that though the evidence regarding the intercourse presupposes the evidence regarding the betrothal [in order to become relevant], nevertheless, since the evidence of betrothal does not presuppose the evidence of intercourse, each testimony should be considered a matter [complete in itself]? So also here, though the evidence regarding the slaughter presupposes the evidence regarding the theft [if it is to be relevant] nevertheless since the evidence regarding the theft does not presuppose the evidence regarding the slaughter, each testimony should be considered a matter [complete in itself].⁵ But according to the Rabbis⁶ what will this term

'matter' [implying] 'but not half a matter' exclude? — It will exclude a case where one witness testified that there was one hair on her back⁷ and the other states that there was one hair in front. But [since each hair is testified to by one witness],⁸ would this not be both half a matter and half a testimony?⁹ — [We must say] therefore that it excludes a case where two witnesses testify that there was one hair on her back and two other witnesses state that there was one hair in front, as in this case the one set testify that she was still a minor¹⁰ and the others similarly testify that she was still a minor.

IF HE STEALS AND SELLS ON THE SABBATH DAY ... [HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT]. But has it not been taught [elsewhere] that he would be exempt? — Said Rami b. Hama: If it was taught there that he would be exempt, it was only where the purchaser said to him:¹¹ 'pluck figs off my fig-tree¹² and transfer to me [in consideration of them] the objects you have stolen.'¹³ It may however, be argued that seeing that if the purchaser claimed from him before us in the court¹⁴ we would be unable to order him to go and to pay since [at the time of the alleged liability,] he became subject to a capital charge, why should not even the sale itself be declared no sale at all?¹⁵ — R. Papa therefore said: There would be exemption [where the purchaser said to him], 'Throw your stolen objects [from a public thoroughfare] into my private courtyard,¹⁶ and transfer to me [thereby]¹⁷ the objects you have stolen.'¹⁸ Whom does this follow? R. Akiba,¹⁹ who said that an object intercepted in the air is on the same footing [regarding the law of Sabbath] as if it had already come to rest.²⁰ For if we were to follow the other Rabbis,²¹ while the possession of the stolen objects would be transferred as soon as they reached the air of the court-yard of the purchaser's house,²² in regard to Sabbath the capital liability would not be incurred until they have reached the actual ground!¹⁹ — Raba thereupon said: It may still be in accordance with Rami b. Hama.²³ For the

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hire [of a harlot] was prohibited by the Torah²⁴ [from being used for the Temple] even [when given by a son] for having incestuous intercourse with his mother, irrespective of the fact that were she to have claimed it from him before us in the court, we should not have been able to order him to go and give her the hire.²⁵ We see then that although were she to have claimed it from him by law, we should have been unable to order him to go and pay her,²⁵ nevertheless when he of his own accord pays her [the hire] it will be subject to the law of the hire [of a harlot].²⁴ So also here regarding payment [for the figs plucked by the thief on the Sabbath], if the purchaser had claimed it by law in our presence, we should have been unable to order the thief to go and pay;²⁵

1. [In accordance with B.B. III, 1, that three years of undisturbed possession are required to establish a presumptive title on the part of a possessor.]
2. [And here no two witnesses testify to more than one year of occupation, which is only a third of the matter in hand. And in our Mishnah the second set of witnesses testify to no more than half a matter, i.e. the slaughter, and according to R. Akiba, should not be able to convict the thief.]
3. By a valid act of *Kiddushin* (v. [Glos.](#)), thus making her his wife.
4. Lev. XX, 10.
5. In which case even R. Akiba will allow such evidence to be given independently by separate sets.
6. Who even in the case of undisturbed possession admit evidence given independently by three sets of witnesses testifying to each of the three years respectively.
7. The reference is to the two hairs which are the sign of puberty in a girl. V. Nid. 52a.
8. Whose evidence in such a case is of no effect whatsoever; cf. Deut. XIX, 15.
9. And it is quite obvious that evidence of this kind is of no avail.
10. As the appearance of one hair is no sign of puberty; but where different witnesses testify to different years, each year is considered a 'whole matter'.
11. To the thief who sold him the animal.
12. Which is a capital offence if done on the Sabbath; v. Shab. VII, 2.
13. It thus follows that at the very moment when the sale was completed the thief was

desecrating the Sabbath by an act which renders him liable to a capital charge in which all possible civil liabilities to take effect at that time have to merge.

14. To give some consideration for the fig.
15. For since the thief would have by law to pay nothing for the consideration given him on the part of the purchaser, there should in the eye of the law be lacking any consideration at all rendering the purchase null and void.
16. And it is a capital offence to throw anything on Sabbath from a public thoroughfare to private premises; cf. Shab. XI, 1.
17. I.e., by the animal entering into the premises of the prospective purchaser in accordance with B.M. 11a and *supra* p. 283.
18. V. p. 405, n. 7.
19. Shab. 4b; 97a and Git. 79a.
20. So that the capital offence was committed at the very moment the transaction of sale became complete by the animal entering the air of the purchaser's court-yard; cf. B.M. 12a and Git. 79a.
21. Who maintain that the capital offence of desecrating the Sabbath by throwing anything from a public thoroughfare into private premises will be committed only at the moment when the object thrown falls upon the ground.
22. B.M. 12a and Git. 79a.
23. That the purchaser said to the thief, 'Pluck off a fig of my fig-tree', etc., despite your objection as to the lack of consideration.
24. Deut. XXIII, 19.
25. As the very act that should cause pecuniary liability is a capital offence in which all possible civil liabilities have to merge.

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nevertheless, since the thief was prepared to transfer the possession [of the stolen objects] to him by this procedure it should be considered a sale.

IF HE STEALS AND SLAUGHTERS ON THE DAY OF ATONEMENT, etc. I would ask, why [should this be so]? It is true that no capital punishment is attached here,¹ but there will at least be the punishment of lashes, and is it not an established ruling² that no man who is lashed can be ordered to pay?³ — It may, however, be said that the Mishnah is in accordance with R. Meir who said⁴ that a person who is lashed may also be ordered to

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pay.³ But if in accordance with R. Meir, why should there be no liability even for slaughtering on the Sabbath?⁵ And should you affirm that while he holds that one may be lashed and be ordered to pay, he⁶ does not hold that one may be condemned to death and also ordered to pay. [I would ask,] does he really not [maintain this second ruling]? Was it not taught:⁷ 'If he steals and slaughters on the Sabbath or if he steals and slaughters to serve idols,⁸ or if he steals an ox condemned to be stoned² and slaughters it, he has to make four-fold or five-fold payment according to R. Meir,¹⁰ but the Rabbis rule that there is exemption'? — I might reply that this ruling applies to all cases save this, for it was stated with reference to it that R. Jacob stated that R. Johanan said, or as others say, that R. Jeremiah stated on behalf of R. Simeon b. Lakish that R. Ile'a and the whole company¹¹ said in the name of R. Johanan that the slaughter [in that case] was carried out by another person [acting on behalf of the thief].¹² But how could the one¹³ commit an offence¹⁴ and the other¹⁵ be liable to a fine?¹⁶ — Raba replied: This offence here is different, as Scripture says: *And slaughter it or sell it:*¹⁷ just as selling [becomes complete] through the medium of another person,¹⁸ so also slaughter may be effected by another person. The School of R. Ishmael taught: [The term] 'or'¹⁹ [inserted between 'slaughter' and 'selling' was meant] to include the case of an agent.²⁰ The School of Hezekiah taught: The term 'instead'¹⁹ [was intended] to include the case of an agent.

Mar Zutra demurred to this. Is there [he said] any action for which a man is not liable if done by himself but for which he is liable if done by his agent? — R. Ashi said to him: In that case²¹ it was not because he should not be subject to liability, but because he ought to be subject to a penalty²¹ severer than that. But if the slaughter was carried out by another one, what is the reason of the Rabbis who ruled that there was exemption? — We might say that the Sages [referred to] were R. Simeon who stated that a slaughter through

which the animal would not ritually become fit for food could not be called slaughter [in the eyes of the law].²² But I would say, I grant you this in regard to serving idols and an ox condemned to be stoned, as [through the slaughter] the animal will in these cases not become fit for food,²³ but in the case of the Sabbath, does not the slaughter render the animal fit for food? For did we not learn that if a man slaughters on the Sabbath or on the Day of Atonement, though he is liable for a capital offence,²⁴ his slaughter is ritually valid?²⁵ — It may, however, be said that he²⁶ concurred with R. Johanan ha-Sandalar, as we have learned, If a man cooks [a dish] on the Sabbath, if inadvertently, [even] he himself²⁷ may partake of it,²⁸ but if deliberately, he should not partake of it²⁹ [on that day]. So R. Meir. R. Judah says: If inadvertently, he may eat it only after the expiration of the Sabbath,³⁰ whereas if deliberately he should never partake of it.³¹ R. Johanan ha-Sandalar says: If inadvertently, the dish may be partaken of after the expiration of the Sabbath, only by other people, but not by himself, whereas if deliberately, it should never be partaken of either by him or by others.³² What was the reason of R. Johanan ha-Sandalar? — R. Hiyya expounded at the entrance of the house of the prince:³³ Scripture says: *Ye shall keep the Sabbath therefore, for it is holy unto you.*³⁴ Just as holy food is forbidden to be eaten,³⁵ so also what is unlawfully prepared on the Sabbath is forbidden to be partaken of. But, [you might argue,] just as holy food is forbidden for any use,³⁵ so should whatever is [unlawfully] prepared on the Sabbath also be forbidden for any use.³⁶ It is therefore stated further: 'Unto you',³⁴ implying that it still remains yours for general use.³⁷ It might [moreover] be thought that the prohibition extends even where prepared inadvertently, it is therefore stated: *Everyone that profaneth it shall surely be put to death,*³⁴ [as much as to say], I speak only of the case when it is done deliberately, but not when done inadvertently.

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R. Aha and R. Rabina differ in this matter. One said that whatever is [unlawfully] prepared on the Sabbath is forbidden on Scriptural authority whereas the other [Rabbi] said that whatever is [unlawfully] prepared on the Sabbath is forbidden on Rabbinic authority. He who said that it was on Scriptural authority bases his view on the exposition just stated, whereas he who said that it was on Rabbinic authority holds that when Scripture says, 'It is holy', it means that it itself³⁸ is holy, but that which is [unlawfully] prepared on it is not holy. Now I grant you that according to the view that the prohibition is based on Scriptural authority, the Rabbis because

1. V. p. 403, n. 4.
2. Keth. 32a and B.M. 91a.
3. For a civil liability arising out of an act done at the time when the transgression for which he is to be lashed was committed.
4. Keth. 33b.
5. Why then is it stated *infra* p. 427, that in this case there would be exemption?
6. R. Meir.
7. Keth. *loc. cit.*
8. Which is a capital offence; cf. Ex. XXII, 19.
9. Which is thus forbidden for any use; v. *supra* p. 234.
10. Which shows that in R. Meir's opinion liability to pay may be added to capital punishment.
11. [[H], a term employed in designation of the corporate body of members of the Palestinian schools, primarily of the School of Tiberias. V. Bacher, *MGWJ*, 1899, p. 345.]
12. In which case it is not the thief but the other person who is liable to the capital punishment.
13. I.e., the agent.
14. Of slaughtering a stolen animal.
15. I.e., the thief.
16. Of four-fold or five-fold payment.
17. Ex. XXI, 37.
18. For two parties are needed to a sale: one to sell and the other to buy.
19. *Ibid.*
20. To make the principal liable to the fine.
21. I.e., capital punishment for desecrating the Sabbath or serving idols.
22. V. p. 403, n. 10.
23. For serving idols see A.Z. 54a; and Hul. 40a.
24. In the case of Sabbath the offender would be subject to be stoned as in Ex. XXXV, 2 and Num. XV, 32-36, but in the case of the Day of Atonement he would only be subject to a

heavenly punishment of being cut off from among his people, in accordance with Lev. XXIII, 30 and Ker. I, 1.

25. Hul. 14a.
26. I.e., R. Simeon.
27. I.e., he who cooked it.
28. Even on the same day.
29. Nor anybody else.
30. But on the same day neither he nor anybody else may partake of it.
31. Though others may partake of it after the expiration of the Sabbath.
32. V. Ter. II, 3. It thus follows that according to R. Johanan an animal deliberately slaughtered on the Sabbath will be forbidden as food; and since such a slaughter renders the animal unfit for food, it involves no liability of the fourfold or fivefold payment.
33. [The reference is to R. Hiyya b. Abba II and R. Judah the Prince III whose home was at Sepphoris. V. zuri, *Mishpat hazibburi*, I, 281 ff.]
34. Ex. XXXI, 14.
35. Cf. Lev. V, 15-16.
36. Not only for food to Israelites but also for any use whatever.
37. For surely if it becomes forbidden for any use there would be no practical purpose in retaining ownership.
38. I.e., the Sabbath itself.

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of this have rightly ruled that there is exemption,¹ but according to the view that it is based on Rabbinic authority, why did the Rabbis rule that there is exemption?² — [Their exemption applies] to the other cases; to serving idols, and an ox condemned to be stoned.

But why does R. Meir impose liability in the case of slaughtering for the service of idols? For as soon as he starts the act of slaughtering in the slightest degree he renders the animal forbidden,³ so that the continuation of the slaughter is done on an animal already forbidden for any use whatever, and as such, was he therefore not slaughtering that which no longer belonged to the owner?⁴ — Raba replied: The rule applies to one who declares that it is only at the very completion of the act of slaughter that he intends to serve idols therewith. But

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what about an ox condemned to be stoned? Is it not forbidden for any use whatever, so that he slaughters that which does not belong to the owner?⁴ — Raba thereupon said: We are dealing here with a case where the owner had handed over the ox to a bailee, and as it did damage [by killing a person] in the house of the bailee it was declared *Mu'ad* in the house of the bailee and its final verdict was issued while it was in the house of the bailee; R. Meir thus on one point concurred with R. Jacob and on another point he concurred with R. Simeon: On one point he concurred with R. Jacob who said that if even after its final verdict was issued the bailee restored it to the owner, it would be a legal restoration;⁵ and on another point he concurred with R. Simeon who stated⁶ that an object the absence of which entails money loss is regarded as possessing an intrinsic value,⁷ as we have learned: R. Simeon says: In the case of consecrated animals⁸ for the loss of which the owner is liable to replace them by others, the thief has to pay,⁹ thus proving that an object whose absence entails money loss is regarded as possessing an intrinsic value.¹⁰ R. Kahana said: When I reported this discussion in the presence of R. Zebid of Nehardea, I asked: How could you explain our Mishnah¹¹ to be [only] in accordance with R. Meir¹² but not in accordance with R. Simeon, since it is stated in the concluding clause, R. SIMEON HOWEVER RULES THAT THERE IS EXEMPTION IN THE LAST TWO CASES,¹³ thus implying that in the other cases of the whole Mishnah he agrees? — He¹⁴ however said to me; No, it merely implies that he agrees in the case of slaughtering or selling to use the meat for curative purposes or to give to dogs.¹⁵

IF HE STEALS FROM HIS OWN FATHER AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED, etc. Raba inquired of R. Nahman: If he steals an ox of two partners and after slaughtering it he confesses to one of them,¹⁶ what would be the law?¹⁷ — Shall we say that the Divine law says: '*Five oxen*',¹⁸ [implying] 'but not five

halves of oxen', or do the '*five oxen*' mentioned by the Divine Law include also five halves of oxen? — He replied:¹⁹ The Divine Law says '*five oxen*' [implying] 'but not five halves of oxen'.²⁰

He, however, raised an objection against him [from the following]: IF HE STEALS FROM HIS FATHER AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED, HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT. Seeing that the father died,²¹ is not this case here on a par with a case where he went²² and confessed to one of the partners, and it is yet stated that he has to make four-fold or five-fold payment? — He replied: Here we are dealing with a case where, for instance, his father has already appeared in the court before he died.²³ Had he not appeared in court, the son would not have had to make four-fold or five-fold payment. If so, instead of having the subsequent clause 'Where he steals of his father [who subsequently died] and afterwards he slaughters or sells, he has not to pay four-fold and five-fold payments,'²⁴ why should not [the Mishnah] make the distinction in the same case itself by stating, 'This ruling²⁵ applies only where the father appeared in court, whereas if he did not manage to appear in court, the thief would not have to make four-fold and five-fold payments'?²⁶ — He replied:²⁷ This is indeed so, but since the opening clause runs 'IF HE STEALS FROM HIS FATHER AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED', the later clause also has the wording, 'where he steals from his father and after his father died he slaughters or sells'. In the morning, however, he said to him:²⁷ When the Divine Law said '*five oxen*' it also meant even five halves of oxen, and the reason why I did not say this to you on the previous evening

1. As the slaughter of the animal on the Sabbath day would on Scriptural authority render the animal unfit for food and could according to R. Simeon not be considered a slaughter at all.

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2. Since according to substantive law the animal would be fit for use.
3. Cf. Hul. 40a.
4. V. p. 409, n. 8.
5. *Supra* p. 255.
6. *Infra* 437.
7. So that since if the ox would not have been slaughtered the bailee would have been able to restore it intact without paying anything for its value, whereas now that the ox was stolen and slaughtered he would have to pay for the full value of the ox, the ox is considered of an intrinsic value though it was condemned to be stoned, and the thief has to pay the fine accordingly.
8. Which as such are not subject to the law of the fine of double and four-fold and five-fold payment, as *infra* p. 427.
9. The owner the full fine, v. Mishnah p. 427.
10. To the one who would be liable to make the outlay of money, and for this reason R. Meir makes the thief liable for the payment of the four-fold or five-fold.
11. Regarding the case of slaughtering on the Day of Atonement.
12. Who holds one could be both lashed and ordered to pay.
13. *Supra* p. 403.
14. I.e., R. Zebid.
15. Which forms a part of the last paragraph which is complete in itself.
16. So that he will not have to pay any fine to this partner, as a confession in a matter of a fine carried exemption; v. *supra* p. 62 and *infra* p. 427.
17. Regarding the other partner when witnesses will appear.
18. Ex. XXI, 37.
19. I.e., R. Nahman to Raba.
20. There will therefore be here total exemption.
21. And the thief becomes a partner together with the other brothers in the whole estate.
22. Lit., 'forestalled' (witnesses).
23. And the liability was already then fully established.
24. *Infra* p. 427. For at the time of the slaughter or sale the thief was a joint owner of the animal.
25. Of liability.
26. Even where he slaughtered the animal or sold it before the death of his father.
27. R. Nahman to Raba.

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was because I had not yet partaken of [a dish of] beef [and felt too feeble to arrive at a carefully thought out conclusion]. But why

then this difference between the earlier clause¹ and the later clause?² — He replied: In the earlier clause¹ we can rightly apply to the offence [the words] '*and he slaughters it*', [in the sense that] the whole act is unlawful,³ whereas in the concluding clause we cannot apply to the offence [the words] '*and he slaughters it*' [in the sense that] the whole act is unlawful.⁴

IF HE SLAUGHTERS AND FINDS THE ANIMAL *TREFA* [OR WHERE HE SLAUGHTERS IT AS UNCONSECRATED IN THE 'AZARAH HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT]. R. Habibi of Huzna'ah said to R. Ashi: This shows that [from the legal point of view] the term 'slaughter' applies to the act only at its completion for if it applied to the whole process from the beginning to the end, would he not as soon as he started the act of slaughtering in the slightest degree⁵ render the animal ritually forbidden for any use,⁶ so that what follows the beginning would amount to slaughtering an animal no more belonging to the owner?⁷ — R. Huna, the son of Raba,⁸ said to him: The liability might have been just for that commencement in the slightest degree.⁹ R. Ashi, however, said to him: This is no refutation,¹⁰ [since it says] '*and he slaughters it*', we require the whole act of the slaughter, which is absent here. But what about the original difficulty?¹¹ — He thereupon said to him: R. Gamda stated thus in the name of Raba: We are dealing here with a case where, for instance, he cut a part of the organs of the animal outside of the 'Azarah, but completed the slaughter inside of the 'Azarah.¹²

Some attach this argument to the following statement: R. Simeon¹³ said in the name of R. Levi the Elder: The term 'slaughter' applies to the act only at its very completion. R. Johanan, however, said it applies to the whole process from the beginning to the end. R. Habibi of Huzna'ah thereupon said to R. Ashi: Are we to say that R. Johanan held that [the prohibition of slaughtering]

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unconsecrated animals in the 'Azarah is not based on Scripture?¹⁴

1. Where liability is stated.
2. Stating exemption, since 'five oxen' imply also 'five halves' of oxen why then should he not pay the part due to his coheirs?
3. As the slaughter took place while the father was still alive.
4. For at the time of the slaughter the thief was already a joint owner of the animal.
5. In the precincts of the Temple.
6. Cf. Pes. 22a.
7. For surely after it becomes forbidden for any use, there would be no practical use in retaining ownership.
8. [Read with MS.M., 'R. Aba b. Raba' as on p. 414, v. D.S. a.l.]
9. Before the animal became forbidden for any use.
10. Of the proof suggested by R. Habibi.
11. That, since the animal became forbidden for any use at the commencement of the slaughter, there should be no liability to pay the fine.
12. So that the animal became forbidden for any use only at the completion of the slaughter, for which the thief has to pay the fine.
13. [Read 'Simeon b. Lakish', v. D.S. a.l.]
14. V. p. 413, n. 4.

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For if you assume that it has Scriptural authority, then as soon as he starts the act of slaughtering in the slightest degree would he not render the animal ritually forbidden for any use, so that what follows the beginning would amount to slaughtering an animal no more belonging to the owner? — R. Aha, the son of Raba, said to him: The liability might be just for that commencement in the slightest degree. R. Ashi, however, said to him: This is no refutation;¹ [since it says] 'and he slaughters it' we require the whole act of the slaughter, which is absent here. But what about the original difficulty?² — He, thereupon, said to him that R. Gamda stated thus in the name of Raba: When does he become liable? When for instance he cuts a part of the organs of the animal outside of the 'Azarah but completes the slaughter inside of the 'Azarah.³

MISHNAH. IF A THIEF [IS CONVICTED OF THE THEFT OF AN OX] ON THE EVIDENCE OF TWO WITNESSES, AND OF THE SLAUGHTER OR SALE OF IT ON THE EVIDENCE OF THE SAME TWO, AND THESE WITNESSES ARE SUBSEQUENTLY PROVED ZOMEMIM,⁴ THEY MUST PAY [THE ACCUSED] IN FULL.⁵ IF, HOWEVER, THE THEFT [HAS BEEN ESTABLISHED] BY THE EVIDENCE OF ONE PAIR OF WITNESSES, AND THE SLAUGHTER OR SALE BY THAT OF ANOTHER PAIR,⁶ AND BOTH PAIRS ARE PROVED ZOMEMIM, THE FIRST PAIR MAKES [THE ACCUSED] DOUBLE PAYMENT⁷ AND THE SECOND PAIR THREEFOLD PAYMENT.⁸ WHERE [ONLY] THE SECOND PAIR WERE PROVED ZOMEMIM, THE THIEF MAKES DOUBLE PAYMENT,⁹ WHEREAS THEY PAY [HIM] THREEFOLD.⁸ SHOULD ONE OF THE SECOND PAIR OF WITNESSES BE PROVED ZOMEMIM, THE TESTIMONY OF THE SECOND PAIR BECOMES NULL AND VOID.¹⁰ SHOULD ONE OF THE FIRST PAIR OF WITNESSES BE PROVED ZOMEMIM, THE WHOLE TESTIMONY [OF BOTH PAIRS] BECOMES NULL AND VOID, FOR IF THERE WAS NO THEFT THERE COULD BE NO [ILLEGAL] SLAUGHTER OR SALE.¹¹

GEMARA. It has been stated:¹² If a witness has been proved a zomem, Abaye says that he becomes disqualified retrospectively [from the time when he gave his evidence in court],¹³ whereas Raba says that he is disqualified only for the future [from the time when he is proved zomem]. Abaye makes the disqualification retrospective on the ground that the witness has been shown to have been wicked at the time when he gave evidence, and the Torah says: Do not accept the wicked as a witness.¹⁴ Raba, on the other hand, holds that the disqualification begins only from the moment when his deceit is proved, because the whole procedure of proving witnesses zomemim is anomalous. For this is a case of two witnesses against two; why then accept the evidence of the one pair rather than that of the other? At least let it take effect only

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from the time when the anomalous procedure is employed.

Some say that Raba really agrees with Abaye that the disqualification is retrospective, but rejects here this principle on practical grounds, because its adoption

1. V. [p. 413, n. 8.](#)
2. V. [p. 413, n. 9.](#)
3. V. [p. 413, n. 10.](#)
4. Lit., 'plotters', 'schemers' (plural of *Zomem*), i.e., witnesses proved by the subsequent evidence of two witnesses to have been absent at the time of the alleged offence; their punishment is by the law of retaliation. V. Deut. XIX, 18-19 and Mak. I, 2-4.
5. I.e., five times the value of the alleged theft. V. Ex. XXI, 37.
6. For which cf. supra pp. 403-5.
7. Which he would have to pay through them for the alleged theft.
8. I.e., the difference between the 'double' and the 'fivefold' payment intended by them to have been inflicted on the accused.
9. As the evidence regarding the theft still holds good.
10. Cf. Mak. I, 7.
11. For the fine of fivefold includes the double payment for the theft so that when the latter could not be established as in the case here no fine could be imposed for the slaughter or sale.
12. Cf. Sanh. 27a.
13. Any evidence he gave in the intervening period becomes invalidated.
14. An interpretation of Ex. XXIII, 1.

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might adversely affect purchasers.¹ What practical difference is there between the two versions?² — Where two witnesses have proved one of a pair *zomem*, and other two witnesses have proved the other one of the pair *zomem*;³ or again, where the disqualification of the witnesses is based upon an accusation of larceny brought by a subsequent pair.⁴ According to the version which makes Raba base his view⁵ on the fact of the procedure being anomalous, he would not apply it here, whereas according to the version which makes his reason the fear of adversely affecting purchasers, it would hold good even here.⁶

R. Jeremiah of Difti said: R. Papa decided in an actual case in accordance with the view of Raba. R. Ashi, however, stated that the law agrees with Abaye. And the law agrees with Abaye [against Raba] on [the matters known as] Y'AL KGM.⁷

We have learnt: IF A THIEF [IS CONVICTED OF THE THEFT OF AN OX] ON THE EVIDENCE OF TWO WITNESSES, AND OF THE SLAUGHTER OR SALE OF IT ON THE EVIDENCE OF THE SAME TWO, AND THESE WITNESSES ARE SUBSEQUENTLY PROVED *ZOMEMIM*, THEY MUST PAY [THE ACCUSED] IN FULL. Does this not mean that they first gave evidence regarding the theft and then⁸ gave evidence again regarding the slaughter, and that they were proved *zomemim* regarding their evidence about the theft and then were proved *zomemim* regarding their evidence about the slaughter? Now, if you assume that a witness proved *zomem* becomes disqualified retrospectively, [it would surely follow that] as soon as these witnesses were declared *zomemim* regarding the theft, it became clear retrospectively that when they gave evidence regarding the slaughter⁹ they were already disqualified.¹⁰ Why then should they pay [the retaliation penalty regarding their evidence] about the slaughter?¹¹ — It may be said that we are dealing here with a case where they were first declared *zomemim* regarding their evidence about the slaughter. But it may still be argued that after all since when they were subsequently declared *zomemim* regarding the theft, it became clear retrospectively that when they gave evidence regarding the slaughter, they had already been disqualified. Why then should they pay the retaliation penalty for the slaughter?¹² — This law would apply only when they testified at one and the same time to both theft and slaughter,¹³ and were afterwards declared *zomemim*.¹⁴

May we say that this matter¹⁵ formed the point at issue between the following Tannaim:

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If two witnesses gave evidence against a person that he had stolen an ox and the same witnesses also testified against him that he had slaughtered it, and were declared *zomemim* regarding the theft, as their evidence became annulled in part¹⁶ it became annulled altogether. But if they were declared *zomemim* regarding the slaughter, the thief would still have to make double payment and they would have to pay [him] three-fold. R. Jose, however, said: These rulings¹⁷ apply only in the case of two testimonies,¹⁸ for in the case of one testimony the law is that a testimony becoming annulled in part becomes annulled altogether. Now, what is meant by 'two testimonies' and what is meant by 'one testimony'? Are we to say that 'two testimonies' means two absolutely independent testimonies, as in the case of two separate sets, and 'one testimony' means one set giving the two testimonies after each other, in which case R. Jose would hold that in the case of one testimony, i.e. where one set gave testimonies after each other, as, for instance where they had first given evidence about the theft and then gave evidence again about the slaughter, if they were subsequently declared *zomemim* with reference to their evidence about the slaughter, the law would be that a testimony becoming annulled regarding a part of it becomes annulled regarding the whole of it, and the witnesses would thus be considered *zomemim* also regarding the theft? On what could such a view be based? [Why indeed should the testimony given first about the theft be annulled through the annulment of a testimony given later?]¹⁹ Must we not therefore say that 'two testimonies' means one evidence resembling two testimonies, that is to say, where one set gives two testimonies one after the other²⁰ but not where there is one testimony in which all the statements are made at the same time? Now it was assumed that there was agreement on all hands that statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement. The point at issue

therefore between them²¹ would be as follows: The Rabbis²² would maintain that a witness proved *zomem* is disqualified only for the future, and since it is from that time onwards that the effect of *zomem* will apply it is only with reference to the slaughter regarding which they were declared *zomemim* that the effect of *zomem* will apply, whereas with reference to the theft regarding which they were not declared *zomemim* the effect of *zomem* will not apply.²³ R. Jose would on the other hand maintain that a witness proved *zomem* would become disqualified retrospectively, so that from the very moment they had given the evidence, regarding which they were proved *zomemim*, they would be considered disqualified; from which it would follow that when they were declared *zomemim* regarding the evidence about the slaughter the effect of *zomem* should also be extended to the evidence regarding the theft, for statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement. [Would the view of Abaye thus be against that of the Rabbis?] — To this I might reply: Were statements following one another within the minimum of time [sufficient for the utterance of a greeting] equivalent in law to a single undivided statement, it would have been unanimously held [by these Tannaim] that the pair proved *zomemim* should become disqualified retrospectively. But here it is this very principle whether statements following one another within the minimum of time [sufficient for the utterance of a greeting] should or should not be equivalent in law to a single undivided statement that was the point at issue between them: The Rabbis maintained that statements following one another within the minimum of time [sufficient for the utterance of a greeting]

1. Who innocently invited the same witnesses to attest the deeds of purchase.
2. Regarding the view of Raba.
3. Thus not being a case of two against two but two against one, and the procedure could not be termed anomalous.

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4. In which case the accused two or more cease to act in the strict capacity of witnesses, but become a party interested and partial in the accusation brought against them personally, and the procedure could no more be considered anomalous.
5. Regarding witnesses proved *zomemim*.
6. For so long as the witnesses were not officially disqualified it would be a great hardship to disqualify deeds signed by them at the invitation of innocent purchasers.
7. A mnemonic composed of Y for 'Yeush, Abandonment, B.M. 21b-22b; E for 'Ed, Witness proved *zomem*, here under consideration; L for Lehi, pole forming a mark of an enclosure, 'Er. 15a; K for *Kiddushin*, a case of betrothal, Kid. 51a-52a; G for Gilluy, intimation affecting agency in the case of a bill of divorce, Git. 34a; and M for Mumar, a Defiant Transgressor whether or not he be eligible as witness, Sanh. 27a.
8. On a subsequent occasion.
9. I.e., on a subsequent occasion.
10. From the moment they had given evidence regarding the theft.
11. Since their evidence regarding slaughter fell to the ground even before they were proved *zomemim* with reference to it.
12. Since their evidence regarding slaughter should have fallen to the ground even without their having to be proved *zomemim* with reference to it.
13. In which case the retrospective disqualification through their becoming *zomemim* with reference to both slaughter and theft begins at the same time.
14. [But first with reference to their evidence about the slaughter. MSS. rightly omit, 'and were ... *zomemim*']
15. In which Abaye and Raba differ.
16. I.e., the theft.
17. That the accused will still have to pay double payment.
18. V. the discussion that follows.
19. For surely a wrong committed at a later date could not affect the presumed integrity of a man on an earlier occasion.
20. I.e., on different occasions.
21. I.e., R. Jose and the other Rabbis.
22. Representing the anonymous opinion cited first.
23. And the accused will still have to pay double payment.

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are not equivalent in law to a single undivided statement,¹ whereas R. Jose maintained that

statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement.² But did R. Jose really maintain that statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement? For we have learnt: If a man declares: Let this animal be a substitute³ for a burnt-offering, a substitute for a peace-offering, it will be a substitute for the burnt-offering,⁴ according to the view of R. Meir, whereas R. Jose says: If from the outset he intended this,⁵ his words would have to be acted upon,⁶ as it was impossible for him to utter two terms at the same time, but if he first declared; 'Substitute for a burnt-offering', and then changed his mind and said, 'Substitute for a peace-offering', it will be a substitute for a burnt-offering only.⁷ Now this statement we found strange; for is not the case of a change of mind obvious?⁸ And R. Papa therefore said: We assume that the change of mind took place within the minimum of time [required for the utterance of a greeting].⁹ [Does this not prove that R. Jose maintained that statements following one another within the minimum of time sufficient for the utterance of a greeting would not be equivalent in law to a single undivided statement?]¹⁰ — It may be said that there are two different minimums of time [within which two different kinds of greetings could be uttered], one sufficient for the greeting given by a disciple to his master, and the other sufficient for the greeting of the master to the disciple. Where¹¹ R. Jose does not hold [the two statements to be one] is where the interval is sufficient for the greeting of a disciple to the master, viz. 'peace [upon] thee, master [and] teacher,' as this is too long,¹² but where it is only sufficient for the greeting of the master to the disciple, 'peace [upon] thee,¹³ he holds that they do [form one].

Raba stated: Witnesses [testifying to a capital charge] who have been proved wrong¹⁴ [by a

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pair of other witnesses]¹⁵ and subsequently also proved *zomemim*, would be put to death, as the confutation was a first step in the subsequent proof of an alibi,¹⁶ though the proof of this was not yet complete at that time. Raba said: [The authority] on which I base this is that which has been taught: [If a set of witnesses declare], We testify that so-and-so has put out the eye of his slave¹⁷ and¹⁸ knocked out his tooth¹⁹ (and so indeed the master himself says), and these witnesses are [by subsequent witnesses] proved *zomemim*, they would have to pay²⁰ the value of the eye to the slave.²¹ How are we to understand this? If we assume, according to the apparent meaning of the text, that there was here no other pair of witnesses,²² why should they pay the value of the eye to the slave? After they have done their best to get him [undeservedly] freed, are they also to pay him the value of his eye? Moreover, should they in such a case not have to pay the owner for the full value of the slave [as they falsely demanded his freedom]? Furthermore, 'and so indeed the master himself says,' — how could the master be satisfied [with such a false allegation to his detriment]? Does it therefore not mean a case, e.g., in which a pair of witnesses had already appeared [previously] and stated that the master knocked out the slave's tooth and then put out his eye so that the master would have to pay him the value of his eye,²³ and a middle pair of witnesses appeared later and stated that the first put out the slave's eye and then his tooth, so that he would not have to give him anything but the value of his tooth,²⁴ so that the first set of witnesses confuted the middle set, and it is to this that the words refer 'and so indeed the master himself says', for he was well satisfied with the statement alleged by the middle set? The text then goes on: 'And these are [by subsequent witnesses] proved *zomemim*' — that is, the middle set — 'they would have to pay the value of the eye to the slave'.²⁵ Does not this show that the confutation is the first step in a subsequent proof of an alibi?²⁶ — Abaye said: No; [what we can assume is] that the statement of these

witnesses was transposed by a [second] set of witnesses, who also proved them *zomemim*.²⁷ That this was so is evident,

1. So that the evidence as to the theft and the evidence as to the slaughter could in no manner be considered as one, but are completely independent testimonies, and if the accusation of *zomem* was proved regarding the latter the former could not be affected.
2. So that the evidence as to the theft and the evidence as to the slaughter form one testimony to all intents and purposes.
3. See Lev. XXVII, 10.
4. The earlier expression being the decisive one.
5. I.e., that it should be a substitute for both offerings.
6. And the animal will have to be kept until it becomes blemished when it will be sold and half of the money realized will be utilized for a burnt-offering, and the other half for a peace-offering.
7. Tem. V, 4.
8. V. p. 419, n. 4.
9. Where it might have been suggested that the two utterances constituted a single indivisible statement.
10. For if otherwise why should the first utterance be more decisive than the second?
11. In the case of Tem. V, 4.
12. Consisting as it does of four words. [MS.M. and Asheri omit '(and) teacher,' making it thus consist of three words.]
13. Consisting only of two words.
14. On the subject matter of their evidence, after sentence had been passed.
15. For which, however, no retaliatory punishment could be imposed upon them, as Deut. XIX, 19, does not refer to witnesses who were contradicted on the subject matter of their evidence but against whom the accusation (in a sense) of an alibi was proved, i.e. where they were declared *zomemim*.
16. [The term 'alibi' is used here for convenience sake, as it deals here with the presence or absence of the witnesses of the alleged crime at the time when it was committed, rather than with the presence or absence of the accused, as the term is generally understood.]
17. For which he has to let him go free, cf. Ex. XXI, 26-27.
18. Subsequently.
19. For which he has to pay the five items in accordance with *infra* p. 473.
20. In retaliation.
21. Tosef. Mak. 1.
22. Giving evidence for the slave.
23. Which is of course more than that of his tooth.

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24. Which is less than that of his eye and thus giving evidence for the benefit of the master and against the slave.
25. I.e., the difference between the value of the eye and the value of the tooth of which they conspired to deprive the slave.
26. And that after the accusation of an alibi was proved, the law of retaliation will apply despite the fact that their evidence had already been previously impaired.
27. [There were, that is to say, only two sets of witnesses, the former set testifying that the injury was done to the eye first and then to the tooth, while the second set giving evidence to the contrary and at the same time proving the first set *zomemim*, in which case the first would have to pay the slave the value of his eye.]

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since, the later clause deals with witnesses whose statements were transposed by the same set of witnesses that proved them *zomemim*, so also the earlier clause deals with a case where the statements of the witnesses were transposed by the same subsequent set of witnesses who proved their alibi. For it says in the later clause: If a set of witnesses declare: We testify against so-and-so that he had first knocked out his slave's tooth and then put out his eye — as indeed the servant says — and they were by subsequent witnesses proved *zomemim*, they would have to pay the value of the eye to the master. Now how are we to understand this? If we assume that the witnesses of the second set did not agree [with those of the first set] regarding any injury at all, why then should the first witnesses not have to pay the master the whole value of the slave?¹ Does it therefore not mean that all the witnesses agreed that an injury was inflicted, but that the witnesses of the second set reversed the order stated by the first set of witnesses² while they also proved them *zomemim*? But still, what were the circumstances? If the witnesses of the second set post-dated the injury, why should the witnesses of the first set still not have to pay the master the whole value of the slave, since they falsely alleged liability to have rested upon a man at the time when that man

was in fact not yet subject to any liability? — We must therefore say that the witnesses of the second set antedated the injury. But again, if [at the time when the witnesses of the first set gave evidence] the master had not yet appeared before the Court [on the matter], why should they still not have to pay him the whole value of the slave as at that time he was still a man subject to no liability?³ — It must therefore deal with a case where he had already made his appearance before the Court.⁴

R. Aha the son of R. Ika said to R. Ashi: Whence could Raba prove this point?⁵ It could hardly be from the earlier clause, for were the witnesses of the middle set⁶ those who were confuted?⁷ For indeed were they not proved *zomemim*; their statements would have remained the decisive evidence⁸ as the case would have been decided according to their allegations, on the principle that in the total of two hundred⁹ the sum of a hundred¹⁰ is included. Does it not then clearly follow that it was the first set of witnesses¹¹ who were thus confuted⁷ whereas the middle set of witnesses were not confuted at all?¹² — He replied: Raba maintained that as the earlier clause dealt with three sets [of witnesses giving evidence] the later clause similarly presented the law in a case where three sets [gave evidence], and tried thus to prove his point from the later clause. [For this clause would thus have dealt with a case] where e.g., a set of two witnesses had appeared and alleged that the master first knocked out his [slave's] tooth and then put out his eye, and after the verdict was given in accordance with their testimony a set of other witnesses arrived and stated that the first put out his [slave's] eye and then his tooth, thus contradicting the witnesses of the first set, and as these [latter] were also proved *zomemim* they would have to pay the value of the slave's eye¹³ to the master. Now if you assume that a confutation is not considered a first step in a subsequent proof of an alibi, why should they have to pay anything¹⁴ after they had already been confuted? Does this

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therefore not prove that a confutation does constitute a first step in a subsequent proof of an alibi? And Abaye? — He might have rejoined: I grant you that the earlier clause cannot be explained save on the assumption that there were three sets, for it was stated there 'as indeed the master also says',¹⁵ but so far as the later clause is concerned, what need have I for three sets, since the statement 'as indeed the slave also says'¹⁶ is perfectly natural as the slave would surely say anything, being satisfied at the prospect of going free?¹⁷

R. Zera demurred [to the general implication]:¹⁸ Why not say that when the master puts out his [slave's] eye

1. Whom they wanted without proper ground to set free.
2. I.e., while the former stated that the master first knocked out his slave's tooth and then put out his eye the second set testified that he first put out the slave's eye and then knocked out his tooth.
3. And it was they who conspired to allege liability against him; cf. Rashi and Tosaf. a.l. and Mak. 5a.
4. And he was ordered to let the slave go free on the strength of some testimony by earlier witnesses, without any direction as to any payment to be made to the slave who now seeks to recover from the master compensation for the eye or tooth.
5. Even according to his interpretation that three sets of witnesses took part in the controversy.
6. Stating that the master first put out the eye of his slave and then knocked out his tooth.
7. I.e., the effect of their evidence invalidated.
8. Against the earlier set testifying that the master first knocked out his slave's tooth and then put out his eye.
9. I.e., e.g. the value of the eye, testified by the first.
10. I.e., the value of the tooth, testified by the middle set.
11. Stating that the master first knocked out his slave's tooth and then put out his eye.
12. [And this clause can thus afford no proof to Raba's ruling.]
13. I.e., the difference between the value of the eye and that of the tooth.
14. Even when proved *zomemim*.
15. Corroborating the witnesses stating that he put out the slave's eye and knocked out his tooth, for if these witnesses were the first to

give evidence on the matter it would surely not be in the interest of the master to corroborate them. [R. Ashi does not accept as authentic the explanation given above in the name of Abaye, which was based on the assumption that Raba proved his ruling from the earlier clause, v. Tosaf. *supra* 73b. s.v. [H].]

16. In corroboration of the witnesses stating that the master knocked out his tooth and put out his eye.
17. How much the more so in this case where the evidence of the witnesses is *completely* for the benefit of the slave.
18. That a master knocking out the tooth of his slave and putting out his eye should do both — let him go free for the tooth and pay compensation for the eye.

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the slave goes out free in lieu of his eye;¹ when he knocks out his slave's tooth the slave goes out in lieu of his tooth;² and so also when he puts out his eye and knocks out his tooth the slave should go out in lieu of both his eye and his tooth [and no payment for either of these should have to be made]? — Abaye said to him: It is to rule out this idea of yours that Scripture says: 'For his eye's sake',³ implying 'not for the sake of both his eye and tooth'; 'for his tooth's sake'⁴ but not for the sake of both his tooth and his eye.

R. Idi b. Abin said: We have also learnt to the same effect:⁵ IF A THIEF [IS CONVICTED OF THE THEFT OF AN OX] ON THE EVIDENCE OF TWO WITNESSES, AND OF THE SLAUGHTER OR SALE OF IT ON THE EVIDENCE OF THE SAME TWO, AND THESE WITNESSES ARE SUBSEQUENTLY PROVED *ZOMEMIM*, THEY MUST PAY [THE ACCUSED] IN FULL. Does this not mean that the witnesses have first given evidence regarding the theft and then [some time later] testified to the slaughter, and that they were first proved *zomemim* regarding the theft and then [some time later] proved *zomemim* [also] regarding the slaughter? Now, the fact that they were proved *zomemim* regarding the theft is in itself a confutation of their evidence regarding the slaughter,⁶ and it is

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nevertheless stated that 'THEY MUST PAY THE ACCUSED IN FULL'. But if you assume that a confutation is not the first step in a subsequent proof of an alibi, why should they pay the retaliation penalty for the slaughter? Does not this then show confutation is a first step in a subsequent proof of an alibi? — It may, however, be said that we are dealing here with a case where for example they were first proved *zomemim* regarding the slaughter.⁷

In this argument [between Raba and Abaye, earlier Sages already differed]: In the case where witnesses [testifying to a capital charge] were first contradicted by another set of witnesses and subsequently also proved *zomemim* [by a third set of witnesses] R. Johanan and R. Eleazar differed: one said they would be subject to the death penalty,⁸ whereas the other said they would not be subject to the death penalty. There is proof that R. Eleazar was the one who said they would not be subject to the death penalty; for R. Eleazar said: 'If witnesses were confuted [but not proved *zomemim*] as to their evidence regarding a charge of murder, they would be lashed.⁹ Now, if you assume that R. Eleazar was the one who said that [were they subsequently to be proved *zomemim*] they would be subject to the death penalty, why should they be lashed [when confuted]? Should we not regard the prohibition here laid down¹⁰ as a preliminary warning that the death penalty will be exacted by a court of law,¹¹ and every prohibition which can serve as a preliminary warning of a death penalty to be exacted by a court of law does not entail liability for lashes?¹² Does not this show that R. Eleazar was the one who said that¹³ they would be subject to the death penalty?¹⁴ — This may indeed be regarded as proved.

[It has been stated that where witnesses were confuted but not proved *zomemim* as to their evidence regarding a capital charge] 'they would be lashed'.² But as this is a case where two witnesses contradict other two witnesses, how then could it appear right to you to rely

upon those of the second set? Why not rely upon the others? — Abaye replied: This could be so only where the alleged victim came to us on his own feet [thus disproving the evidence of the first set].¹⁵

MISHNAH. IF THE THEFT [OF AN OX OR A SHEEP] WAS TESTIFIED TO BY TWO WITNESSES,¹⁶ WHEREAS THE SLAUGHTER OR SALE OF IT WAS TESTIFIED TO BY ONLY ONE WITNESS OR BY THE THIEF HIMSELF, HE WOULD HAVE TO MAKE DOUBLE PAYMENT¹⁷ BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS.¹⁸ IF HE STOLE IT AND SLAUGHTERED IT ON THE SABBATH DAY,¹⁹ OR IF HE STOLE IT AND SLAUGHTERED IT FOR THE SERVICE OF IDOLS,¹⁹ OR IF HE STOLE IT FROM HIS OWN FATHER WHO SUBSEQUENTLY DIED AND THE THIEF THEN SLAUGHTERED IT OR SOLD IT,²⁰ OR IF HE STOLE IT AND CONSECRATED IT [TO THE TEMPLE],²¹ AND AFTERWARDS HE SLAUGHTERED IT OR SOLD IT, HE WOULD HAVE TO MAKE DOUBLE PAYMENT BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS. R. SIMEON, HOWEVER, SAYS: IN THE CASE OF CONSECRATED CATTLE, THE LOSS OF WHICH THE OWNER HAS TO MAKE GOOD, THE THIEF HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT,²² BUT IN THE CASE OF THOSE THE LOSS OF WHICH THE OWNER HAS NOT TO MAKE GOOD, THE THIEF IS EXEMPT.

GEMARA. Is it not obvious that a testimony from the mouth of one witness [should impose no liability to pay]? — It may, however, be said that what we are told here is that confession by the thief himself is analogous to evidence borne by one witness: just as in the case of evidence given by one witness, if another witness should come along and join him, the thief would be made liable;²³ so also in the case of confession by the thief himself, if witnesses should come along [and corroborate it], he would become liable. This deviates from the view of R. Huna stated on

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behalf of Rab. For R. Huna stated that Rab said: If a man confessed to a liability for a fine, even though witnesses subsequently appeared [and gave evidence to the same effect], he would be exempt.²⁴

The above text states: R. Huna stated that Rab said: If a man confessed to a liability for a fine, even though witnesses subsequently appeared [and gave evidence to the same effect], he would be exempt. R. Hisda objected to [this view of] R. Huna [from the following]: It happened that R. Gamaliel [by accident] put out the eye of Tabi²⁵ his slave.²⁶ He rejoiced over it very much, [as he was eager to have this meritorious slave set free],²⁷ and when he met R. Joshua he said to him: 'Do you know that Tabi my slave has obtained his freedom?' 'How was that?' said the other. 'Because', he replied, 'I have [accidentally] put out his eye.' Said R. Joshua to him: 'Your words have no force in law, since there were no witnesses for the slave.'²⁸ This of course implies that had witnesses at that time been available for the slave, R. Gamaliel would have been under obligation [to set him free]. Does not this show us that if a man confesses to a liability for a fine, if subsequently witnesses appear and testify to the same effect, he would be liable?²⁹ — R. Huna, however, said to him³⁰ that this case of R. Gamaliel was different altogether, as he made his confession not in the presence of the court of Law.³¹ But was R. Joshua not the president of the Court of law?³²

1. Ex. XXI, 26.
2. Ibid. 27.
3. V. p. 427. n. 7.
4. V. p. 427, n. 8.
5. In the case made out by Raba where a contradiction of the subject matter of evidence was followed by proof of an alibi.
6. For if the evidence regarding the theft fell to the ground it carried with it the evidence regarding the slaughter of the stolen animal.
7. Which of course did not affect their evidence regarding the theft which was given on an earlier occasion.
8. Agreeing thus with view of Raba.
9. Because they transgressed the negative commandment, 'Thou shalt not bear false

witness against thy neighbor'. Ex. XX, 13. and the punishment of thirty-nine lashes is administered for breaking such and similar negative commandments.

10. Ex. XX. 13.
11. Should the same witnesses afterwards become *zomemim*.
12. Cf. Sanh. 86b; Mak. 13b and Shebu. 4a.
13. Were they even subsequently proved *zomemim*.
14. In which case the prohibition of this offence could thus never be able to serve as a warning of a pending execution at a court of law and lashes could therefore be administered.
15. In which case their falsity has been proved beyond any doubt.
16. Cf. Deut. XIX, 15.
17. For the act of stealing testified to by two witnesses.
18. As the act of slaughter or sale was testified to by one witness who, in matters of fine, could be of no effect at all even for the purpose of imposing an oath. [V. J. Shebu. VI, and S. Strashun's Glosses, a.l.] so also is the admission of the thief himself of no avail in these matters.
19. Being a capital offence in which all possible civil liabilities have to merge.
20. So that at the time of the slaughter or sale the thief was a joint owner of the animal.
21. Temple property is not subject to the law of the fine.
22. V. the discussion in Gemara.
23. Cf. B.B. 32a and Sanh. 30a.
24. From the fine; cf. *supra* p. 62.
25. V. Suk. II, 1 and Ber. II, 7.
26. Who would thereby receive his freedom in accordance with Ex. XXI. 26.
27. He was, however, unable to manumit him as it was considered a sin to manumit heathen slaves. V. Ber. 47b and Git. 38a.
28. And the obligation imposed on a man to let his slave go free for his eye's sake and for his tooth's sake is only a matter of fine.
29. In contradiction to the view of Rab stated by R. Huna.
30. I.e., R. Hisda.
31. And is therefore not considered in the eye of the law a legal confession to bar subsequent evidence.
32. [Shortly after the death of R. Johanan b. Zakkai, v. Halevy, Doroth, I.e., p. 154, contra Weiss, Dor, 130.]

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— He was, however, at that time not sitting in the court of law. But has it not been taught

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that he said to him: 'Your words have no force in law, as you have already confessed'?¹ Must we not then say that Tannaim were divided on this matter, so that the Tanna who reported 'as there are no witnesses for the slave',² would maintain that if one confessed to liability for a fine and subsequently witnesses appeared and testified [to the same effect], he should be liable, whereas the Tanna who reported 'as you have already confessed', would maintain that if one confessed to liability for a fine, though witnesses subsequently appeared [and corroborated the confession], he would be exempt? — No, they might both have agreed that if one confessed to the liability of a fine, though witnesses subsequently appeared [and testified to the same effect], he would be exempt, and the point on which they differed might have been this: the Tanna, who reported 'as there are no witnesses for the slave', was of opinion that the confession took place outside the court of law,³ whereas the Tanna, who reported 'as you already confessed', was of opinion that the confession was made at the court of law.

It was stated: If a man confesses to liability for a fine, and subsequently witnesses appear [and corroborate the confession], Rab held that he would be quit, whereas Samuel held that he would be liable. Raba b. Ahilai said: The reason of Rab was this. [We expound]: *If it [was to] be found*⁴ by witnesses, *it be [considered] found*⁴ in the consideration of the judges, excepting thus a case where a defendant incriminates himself.⁵ Now why do I require this reasoning, seeing that this ruling can be derived from the text '*whom the judges shall condemn*',⁶ which implies 'not him who condemns himself'? It must be to show that if a man confesses to liability for a fine, even though witnesses subsequently appear [and testify to the same effect], there would be exemption. Samuel, however, might say to you that the doubling of the verb in the verse '*If to be found it be found*' was required to make the thief himself subject to double

payment, as taught at the School of Hezekiah.⁷

Rab objected to [this view of] Samuel [from the following Baraita:]⁸ If a thief notices that witnesses are preparing themselves to appear⁹ and he confesses 'I have committed the theft [of an ox] but I neither slaughtered it nor sold it', he would not have to pay anything but the principal?¹⁰ — He [Samuel] replied: We are dealing here with a case where, for instance, the witnesses drew back from giving any evidence in the matter. But since it is stated in the concluding clause: 'R. Eleazar son of R. Simeon says that the witnesses should still come forward and testify,' must we not conclude that the first Tanna maintained otherwise?¹¹ — Samuel thereupon said to him: Is there at least not R. Eleazar son of R. Simeon who concurs with me? I follow R. Eleazar son of R. Simeon.

Now according to Samuel, Tannaim certainly differed in this matter. Are we to say that also according to Rab Tannaim differed in this?¹² — Rab might rejoin: My statement can hold good even according to R. Eleazar son of R. Simeon. For R. Eleazar son of R. Simeon would not have expressed the view he did there save for the fact that the thief made his confession because of his fear of the witnesses, whereas here he confessed out of his own free will, even R. Eleazar son of R. Simeon might have agreed [that the confession would bar any pending liability].¹³

R. Hammuna stated: It stands to reason that the ruling of Rab was confined to the case of a thief saying, 'I have committed a theft' and witnesses then coming [and testifying] that he had indeed committed the theft, in which case he is quit, as he had [by the confession] made himself liable at least for the principal.¹⁴ But if he first said, 'I did not commit the theft,' but when witnesses appeared and declared that he did commit the theft, he turned round and said, 'I even slaughtered [the stolen sheep or ox] or sold it,' and witnesses subsequently came [and testified] that he had indeed slaughtered it or sold it, he would be liable to

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pay [four-fold or five-fold payment], as [by this confession]¹⁵ he was trying to exempt himself from any liability whatever. [But] Raba said: I got the better¹⁶ of the elders of the School of Rab,¹⁷ for R. Gamaliel [by confessing the putting out of his slave's eye] was but exempting himself from any liability, and yet when R. Hisda stated this case [as a proof] against R. Huna¹⁸ he was not answered thus.

It was similarly stated:¹⁹ R. Hiyya b. Abba said in the name of R. Johanan, [that if a thief confessed] 'I have committed a theft', and witnesses then came along [and testified] that he had indeed committed the theft, he would be exempt, as in this case he had [by the confession] made himself liable at least for the principal; for where he had first said 'I did not commit the theft', but when witnesses appeared and declared that he did commit the theft he again came and said, 'I even slaughtered [the stolen sheep or ox] or sold it, and witnesses again came and testified that he had indeed slaughtered it or sold it, he would be liable to pay [four-fold or five-fold payment], as by his confession he was but exempting himself from any liability whatever. R. Ashi said: [Texts from] our Mishnah and the [above] Baraitha tend likewise to prove this distinction. From our Mishnah [the proof is] as we have learnt: IF THE THEFT [OF AN OX OR SHEEP] WAS TESTIFIED TO BY TWO WITNESSES, WHEREAS THE SLAUGHTER OR SALE OF IT WAS TESTIFIED TO BY ONLY ONE WITNESS OR BY THE THIEF HIMSELF, HE WOULD HAVE TO MAKE DOUBLE PAYMENT BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS. Now, what is the need for the words. IF THE THEFT WAS TESTIFIED TO BY TWO WITNESSES? Why not simply state: 'If the theft and slaughter or [theft and] sale were testified to by one witness or by the thief himself, he would not have to pay anything but the principal alone'?

1. Which implies that even if witnesses would subsequently appear and testify to the same effect, it would still be of no avail, thus agreeing with the view of Rab.
2. As the text runs in the former teaching and which implies that if witnesses should come and testify for the slave he would obtain his freedom, in apparent contradiction to the view of Rab.
3. [Where a confession is not regarded in the eye of the law as legal so as to bar subsequent evidence.]
4. Ex. XXII. 3.
5. V. *supra* 64b.
6. Ex. XXII, 8.
7. *Supra* p. 370.
8. Cf. Shebu. VIII, 4, and Tosaf. *infra* 75b, s.v. [H].
9. Before the court to give evidence against him.
10. As confession to the liability for a fine carries exemption from the fine.
11. I.e., that the evidence of the witnesses would be of no avail.
12. And that R. Eleazar was against him.
13. And no witnesses should be permitted to give evidence in the matter.
14. Which proves that the confession was genuine.
15. Which was thus not a genuine confession.
16. In this matter.
17. As R. Hamnuna was of the elders of the School of Rab; v. Sanh. 17b. [*Var. lec.*: Raba said to him (to R. Hamnuna), You have got the better of the elders of the school of Rab (viz. R. Huna), v. Tosaf.]
18. [I.e., against the ruling R. Huna reported in the name of Rab.]
19. In support of the distinction made by R. Hamnuna.

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Is not the purpose to indicate to us that it was only where the theft was testified to by two witnesses and the slaughter by one or by the thief himself, in which case it was not the confession¹ which made him liable for the principal, that we argue that confession by the thief himself is meant to be analogous to the testimony borne by one witness? So that just as in the case of testimony by one witness, as soon as another witness appears and joins him liability would be established, so also in the case of confession by the thief himself, if witnesses subsequently appear and testify to the same effect he would become liable. If,

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however, the very theft and slaughter [or theft and] sale were testified to by one witness or by the thief himself, in which case the confession made him liable at least for the principal, we would not argue that confession by the thief himself should be analogous to the testimony borne by one witness.² [The proof] from the Baraitha [is] as it was taught: If a thief notices that witnesses are preparing themselves to appear and he confesses, 'I have committed a theft [of an ox] but I neither slaughtered it nor sold it' he would not have to pay anything but the principal.³ Now, what need is there for the words, 'and he confessed, I have committed the theft [of an ox] but I neither slaughtered it, nor sold it'? Why not simply state 'I have committed the theft [of an ox], or I slaughtered it or I sold it'? Is not the purpose to indicate that it was only where the thief confessed, 'I have committed the theft [of an ox]'. where it was he who by confession made himself liable for the principal, that he would be exempt from the fine, whereas if he had stated 'I have not committed any theft', and when witnesses arrived and testified that he did commit a theft, he turned round and confessed 'I have even slaughtered it or sold it', and witnesses subsequently appeared [and testified] that he had indeed slaughtered it or sold it, in which case it was not he who made himself liable for the principal, he would have to be liable for the fine, thus proving that a confession merely regarding the act of slaughter should not be considered a confession [to bar the pending liability of a fine]!⁴ — It may, however, be said that this is not so, as the purpose [of the apparently superfluous words] might have been to indicate to us the very ruling that since he confessed 'I have committed the theft [of an ox or a sheep]' even though he still said 'I have neither slaughtered it nor sold it' and witnesses appeared [and testified] that he did slaughter it or sell it, he would nevertheless be exempt from any fine, the reason being that the Divine Law says: *'Five-fold or four-fold payment'*⁵ respectively, but not 'four-fold or three-fold payment'⁶ respectively.

Shall we say that the following Tannaim differed on this point? [For it has been taught:] Where two witnesses testified to a theft [of an ox] and other two witnesses subsequently gave evidence that the thief had slaughtered it or sold it, and the witnesses regarding the theft were proved *zomemim*,⁷ since the testimony became annulled regarding a part of it,⁸ it would become annulled regarding the whole of it.⁹ But if [only] the witnesses to the slaughter were proved *zomemim*, he would have to make double payment,¹⁰ whereas they¹¹ would [have to pay him three-fold payment as restitution].¹² In the name of Symmachus it was, however, stated that they would have to make double payment,¹³ whereas he would have to make three-fold payment for an ox and double payment for a ram.¹⁴ Now, to what did Symmachus refer? It could hardly be to that of the opening clause,¹⁴ for would Symmachus not agree that a testimony becoming annulled regarding a part of it should become annulled regarding the whole of it? If again he referred to the concluding clause,¹⁵ did the Rabbis not state correctly that the thief should make double payment while the false witnesses would have to make three-fold payment? It must therefore be that there was another point at issue between them,¹⁶ viz., where a pair of witnesses came and said to him: 'You have committed the theft [of an ox]'. and he said to them: 'It is true that I have committed the theft [of an ox] and even slaughtered it or sold it, but it was not in your presence that I committed the theft', and he in fact brought witnesses who proved an alibi¹⁷ against the first witnesses that it was not in their presence that he committed the theft, while the plaintiff brought further witnesses who gave evidence against the thief that he had committed the theft [of an ox] and slaughtered it or sold it. They would thus differ as to the confession regarding the slaughter, the Rabbis holding that though in regard to the theft it was certainly because of the witnesses¹⁸ that he confessed, the confession regarding the slaughter¹⁹ should have the usual effect of

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confession and exempt him from the fine, whereas Symmachus held that since regarding the theft it was because of witnesses that he confessed, the confession of the slaughter should not have the [full] effect of a confession [as it did not tend to establish any civil liability], so that the first witnesses who were found *zomemim*²⁰ would have to pay him²¹ double, whereas he²¹ would have to pay three-fold for an ox and double for a ram.²² — R. Aha the son of R. Ika said: No, all might agree that the confession regarding the slaughter would not have the [exempting] effect of a confession, and where they differ here is regarding evidence given by witnesses whom you would be unable to make subject to the law applicable to *zomemim*, as e.g., where two witnesses came and said to him: 'You have committed the theft [of the ox]', and he said to them: 'I did commit the theft [of the ox] and even slaughtered it or sold it; it was, however, not in your presence that I committed the theft, but in the presence of so-and-so and so-and-so,' and he in fact brought witnesses who proved an alibi against the first witnesses, that it was not in their presence that he committed the theft, but so-and-so and so-and-so [mentioned by the thief] came and testified against him that he did commit the theft [of the ox] and slaughtered it or sold it. The point at issue in this case would be as follows: The Rabbis maintain that this last evidence was given by witnesses whom you would [of course] be unable to make subject to the law applicable to *zomemim* [as they were pointed out by the thief himself],²³ and any evidence given by witnesses whom you would be unable to make subject to the law applicable to *zomemim* could not be considered valid evidence,²⁴ whereas Symmachus maintained that evidence given by witnesses whom you would be unable to make subject to the law applicable to *zomemim* would be valid evidence.²⁵ But is it not an established tradition with us²⁶ that any evidence given by witnesses whom you would be unable to make subject to the law applicable to *zomemim* could not be considered valid evidence? — This is the case

only where the witnesses do not know the exact day or the exact hour of the occurrence alleged by them,²⁷ in which case there is in fact no evidence at all, whereas here [your inability to make them subject to the law applicable to *zomemim* was only because] the thief himself was in every way corroborating their statements.

The Master stated: 'They²⁸ would have to make double payment. But since in this case the thief admitted that he did commit the theft, so that he would surely be required to pay the principal, [why should the witnesses proved *zomemim* have to make double payment?]²⁹ — Said R. Eleazar in the name of Rab: Read:

1. But the testimony of two witnesses.
2. But a confession of this nature bars subsequent evidence in accordance with the view of Rab.
3. Shebu. 49a.
4. Supporting thus the distinction made by R. Hamnuna.
5. Ex. XXI, 37.
6. I.e., since he confessed regarding the theft, in which case he will only have to pay the principal, since the doubling of it is a fine, he will not be subject to the fine of slaughter or sale even when denied by him and testified to by two witnesses, on account of the fact that the payment in this case would have to be not five-fold but four-fold for an ox and not four-fold but three-fold for a sheep.
7. V. [Glos.](#)
8. I.e., regarding the theft.
9. I.e., regarding also the slaughter or sale, for surely if there was no theft there, no slaughter and sale of a stolen animal could have been there.
10. For the theft which was testified to by the other set of witnesses.
11. The second set proved *zomemim*.
12. In accordance with Deut. XIX, 19.
13. V.. the discussion later on.
14. Where the witnesses to the theft were proved *zomemim*.
15. Where the witnesses to the slaughter or sale were proved *zomemim*.
16. I.e., Symmachus and the Rabbis.
17. V. p. 421, n. 1.
18. I.e., the first set of witnesses.
19. Which was not made through any fear.
20. Regarding the theft.
21. The thief.

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22. I.e., the prescribed fine for the slaughter or sale. This therefore proves that the Rabbis maintained that a confession which does not involve the liability of the principal should still have the effect of a confession, in contradiction to R. Hamnuna, whereas Symmachus would maintain that it should be devoid of the absolute exempting effect of a confession to liability for a fine.
23. Against whom they gave evidence.
24. [The thief would accordingly be exempt from the fine for the slaughter and sale of which he stands convicted, as it were on his own evidence.]
25. [Hence the thief, on his part, would have to pay the exclusive fine for the slaughter or sale.]
26. Cf. Sanh. 41a and 78a.
27. Cf. Sanh. 40a.
28. I.e., the witnesses who gave evidence regarding the theft and were proved *zomemim*.
29. They should have to pay no more than the amount of a single payment.

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the payment of doubling.¹

IF HE STOLE IT AND CONSECRATED IT [TO THE TEMPLE] AND AFTERWARDS SLAUGHTERED IT OR SOLD IT, HE WOULD HAVE TO MAKE DOUBLE PAYMENT BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS. I would here say: I grant you that he should not be liable for the slaughter, as when he slaughtered it, it was a consecrated animal which he slaughtered and he did not slaughter that which belonged to the owner. But why should he not be made liable for the very act of consecration?² For indeed what difference does it make to me whether he disposed of it to a private owner or whether he disposed of it to the ownership of Heaven? — This represents the view of R. Simeon who said³ that consecrated objects, the loss of which the consecrator would have to make good, should be considered as if still remaining in the possession of the consecrator.⁴ But since the concluding clause gives the view of R. Simeon,³ the view stated in the previous clause is surely not that of R. Simeon. [Why then no liability for the act of

consecration?] — We must therefore be dealing here with a case of minor sacrifices⁵ and in accordance with R. Jose the Galilean, who declared⁶ that minor sacrifices are private property and thus still remain in the possession of the consecrator. But what would be the law [where the thief consecrated the stolen sheep or ox] for most holy sacrifices?⁷ Would he then have to make four-fold or five-fold payment for the act of consecration? If so, why read in the opening clause: 'If he steals and slaughters and consecrates it, he has to make four-fold or five-fold payment'⁸? Why not make the distinction in stating the very case itself: 'This ruling applies only in the case of minor sacrifices, but where he sanctified it for the most holy sacrifices he would have to make four-fold or five-fold payment [for the very act of consecration]'? — We must therefore still say that there is no difference whether [the animal was consecrated for the] most holy sacrifices or merely for minor sacrifices, and to the difficulty raised by you. 'What difference does it make to me whether he disposed of it to a private owner or whether he disposed of it to the ownership of Heaven', [it might be said in answer that] where he disposed of it to a private owner it was previously the ox of Reuben and has now become the ox of Simeon,⁹ whereas where he disposed of it to the ownership of Heaven it was previously the ox of Reuben and still remains the ox of Reuben.¹⁰

R. SIMEON HOWEVER SAYS: IN THE CASE OF CONSECRATED CATTLE THE LOSS OF WHICH THE OWNER HAS TO MAKE GOOD, THE THIEF HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT, BUT IN THE CASE OF THOSE THE LOSS OF WHICH THE OWNER HAS NOT TO MAKE GOOD, THE THIEF IS EXEMPT. I would here say: Granted that in the opinion of R. Simeon it makes no difference whether he disposed of it to a private owner or whether he disposed of it to Heaven,¹¹ has not the text to be transposed [so as to read as follows]: '[For consecrating

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the stolen animals as] sacrifices the loss of which he would have to make good the thief should be exempt, as they have not yet been removed altogether from his possession, whereas [for consecrating them as] sacrifices the loss of which he would not have to make good he should be liable, as in this case they have already been removed from his possession'?

It may be said that R. Simeon referred to a different case altogether, and the text [of the Mishnah] is to be read thus: If a man misappropriates an article [already stolen] in the hands of a thief he has not to make four-fold and five-fold payments. So also he who misappropriates a consecrated object from the house of the owner is exempt, the reason being that [the words] 'and it be stolen out of the man's house'¹² imply 'but not from the possession of the sanctuary'. R. Simeon, however, says: In the case of consecrated objects, the loss of which the owner has to make good, the thief is liable to pay, the reason being that to this case [the words of the text] 'and it be stolen out of the man's house'¹² [apply].¹³ But in the case of those the loss of which the owner has not to make good, the thief is exempt, as we cannot apply the words 'and it be stolen out of the man's house'. Let us see. We have heard R. Simeon say¹⁴ that a slaughter through which the animal would not ritually become fit for food could not be called slaughter [in the eye of the law]. Is the slaughter [outside the Temple precincts] of sacrifices not similarly a slaughter which would not render the animal fit for food?¹⁵ [Why then should there be liability for slaughtering them thus?] — When R. Dimi arrived¹⁶ he stated on behalf of R. Johanan [that the liability would arise] if the thief slaughtered the sacrifices while unblemished within the precincts of the Temple in the name of the owner. But has not the principal thus been restored to the owner [since the sacrifice produced atonement for him]?¹⁷ — Said R. Isaac b. Abin: We presume that the blood was poured out [and thus not sprinkled upon the altar, so that no

atonement was effected for the owner].¹⁸ When Rabin arrived¹⁶ he said on behalf of R. Johanan that the liability would only be where he slaughtered the sacrifices while unblemished within the precincts of the Temple but not in the name of the owner,¹⁹

1. I.e., a single payment.
2. As if he would have sold it.
3. Mishnah *supra* p. 427.
4. As they are still under his charge and the transfer was thus incomplete.
5. Such as peace. offerings and thank-offerings and the like.
6. *Supra* p. 50.
7. Such as burnt-offerings, sin-offerings and the like.
8. *Supra* p. 403.
9. I.e., the transfer from the thief to the purchaser was complete in every respect.
10. I.e., the transfer from the thief to the Temple was not so complete. as the sacrifice is still credited to him.
11. So that for the very act of sanctification the thief will become liable for the fine as if he had sold the animal.
12. Ex. XXII, 6.
13. For since the loss of these consecrated objects would involve an outlay of money on the part of the original owner, they are in this respect in his ownership as they are under his charge; cf. *supra* p. 410.
14. *Supra* p. 408.
15. Cf. Lev. XVII. 3-9; Hul. 78a-80b.
16. From Palestine to Babylon.
17. Why then should liability for the fine be attached?
18. Cf. Zeb. 25a.
19. In which case the owner derives no benefit, as the sacrifice is not credited to him though otherwise it is perfectly valid; cf. Zeb. I, 1.

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whereas Resh Lakish said that there will be liability also if the thief slaughtered blemished sacrifices¹ outside the precincts of the Temple.² R. Eleazar was astonished at the statement of R. Johanan: Is it the slaughter that renders the sacrificed animal permissible for food?³ Is it not the sprinkling of the blood that renders it permissible to be partaken of?⁴ So also he was astonished at the statement of Resh Lakish: Is it the slaughter

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that renders the sacrificed animal permissible for food?⁵ Is it not its redemption⁶ that renders it permissible for food?⁵ — It, however, escaped his memory that R. Simeon has laid down that whatever is ready to be sprinkled is considered as if it has already been sprinkled, and whatever is designated for being redeemed is considered as if it had already been redeemed.⁷ 'Whatever is ready to be sprinkled is considered as if it had already been sprinkled' — as taught: R. Simeon says: There is nothar⁸ which may be subject to defilement in accordance with the law applicable to the defilement of food,⁹ but there is also nothar which is not subject to defilement in accordance with the law applicable to the defilement of food. How is this so? If it remains over night before the sprinkling of the blood,¹⁰ it would not be subject to become defiled in accordance with the law applicable to the defilement of food,¹¹ but if after the sprinkling of blood,¹² it would be subject to become defiled in accordance with the law applicable to the defilement of food.¹³ Now, it is an accepted tradition that the meaning of 'before sprinkling' is 'without it first having become fit to be sprinkled' and of 'after sprinkling', 'after it became fit for sprinkling'. Hence, 'where it remained overnight without having first become fit for sprinkling' could only be where there was no time during the day to sprinkle it, such as where the sacrifice was slaughtered close upon sunset, in which case it would not be subject to become defiled in accordance with the law applicable to the defilement of food; and 'where it remained over night after it had already become fit for sprinkling,' [could only be] where there was time during the [previous] day to sprinkle it, in which case it would be subject to become defiled in accordance with the law applicable to the defilement of food.¹⁴ This proves that whatever is ready to be sprinkled is considered as if it had already been sprinkled.¹⁵ 'Whatever is designated for being redeemed is considered as if it had already been redeemed,' — as taught: 'R. Simeon says:

1. [I.e., an animal which became afflicted with a lasting blemish before it was dedicated (Rashi).]
2. As these may be slaughtered outside the precincts of the Temple, even without being first redeemed.
3. In the case of unblemished sacrifices slaughtered in the precincts of the Temple.
4. It accordingly follows that the slaughter as such did not at that time render the animal ritually fit for food.
5. In the case of blemished sacrifices slaughtered outside the precincts of the Temple.
6. Subsequent to the slaughter thereof. Cf. Hul. 84a.
7. So that the slaughter is considered fit; cf. Pes. 13b; Men. 79b and 102b.
8. Lit., 'That which remaineth'; cf. Ex. XII, 10 and Lev. XIX, 6. denoting portions of sacrifices that had not been eaten or sacrificed upon the altar within the prescribed time and could then no more be sacrificed upon the altar or partaken of or put to any use but had to be burnt in a special place.
9. Cf. Lev. XI, 34.
10. In which case the portions have never been allowed to be partaken of.
11. As according to Bek. 9b, food cannot become defiled unless it was permitted to be made use of as food.
12. It was left over, in which case there was a time when the portions were ritually fit as food.
13. Tosef. 'Uk. III, 7' in accordance with Lev. XI, 34.
14. V. p. 439. n. 9.
15. And made the sacrifice as if ritually fit to be partaken of.

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The red heifer is subject to become defiled in accordance with the law applicable to the defilement of food,¹ since at one time it had ritual fitness to be used for food',²

1. Cf. Lev. XI, 34.
2. Tosef. Par. VI, 9; Shebu. 11b.

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and Resh Lakish observed that R. Simeon used to say that the red heifer could be redeemed even after [it was slaughtered and] placed upon the wood for burning¹ thus proving that whatever has the possibility of

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being redeemed² is considered as if it had already been redeemed.

We can understand why R. Johanan did not give the same answer [to the difficulty³ propounded] as Resh Lakish,⁴ as he was anxious to explain the ruling [of our Mishnah] even in the case of unblemished sacrifices. But why did Resh Lakish not give the same answer as R. Johanan?⁵ — He could say: [Scripture says.] '*And he slaughtered it or sold it*'⁶ implying that it was only an animal [subject to this law] in the case of a sale that could be [subject to it] in the case of slaughter, whereas an animal which would not be [subject to this law] in the case of sale could similarly not be [subject to it] in the case of slaughter either. Now, in the case of these unblemished sacrifices, since if the thief had sold the sacrifices it would not have been a sale [to all intents and purposes],⁷ they could not be [subject to this law even] when they were slaughtered.

R. Johanan and Resh Lakish indeed followed their own lines of reasoning [elsewhere]. For it was stated: If a thief sells a stolen ox which is *trefa*,⁸ according to R. Simeon,⁹ R. Johanan said that he would be liable, whereas Resh Lakish said that he would be exempt. R. Johanan, who said that he would be liable, held that though this ox could not be subject to the law of slaughter it could yet be subject to the law of sale, whereas Resh Lakish who said that he would be exempt maintained that since this ox could not be subject to the law of slaughter, it could similarly not be subject to the law of sale either.

R. Johanan objected to [the view of] Resh Lakish [from the following]: If he stole a hybrid animal and slaughtered it, or a *trefa* animal and sold it, he would have to make double payment. Now, does not this ruling follow the view of R. Simeon,¹⁰ thus proving that though this ox would not be subject to the law of slaughter it could nevertheless be subject to the law of sale? — He replied: No; this is the view of the Rabbis.¹¹ But if this is the view of the Rabbis, why should a *trefa* ox

be subject only to the law of sale and not to the law of slaughter? — You say then that it is the view of R. Simeon.² Why then should a hybrid animal be subject only to the law of slaughter and not to that of sale? We must say therefore that though slaughter is mentioned¹² the same law was meant to apply also to sale; so also according to the Rabbis, though sale is stated in the text,¹³ the same law was meant to apply to slaughter.¹⁴ R. Johanan, however, might say that this does not follow. It is true that if you say that the ruling follows R. Simeon, there is no difficulty: since it was necessary to state liability regarding *trefa* in the one case [of sale] only, it states liability regarding a hybrid animal also in the one case [of slaughter] only. But if you say that this ruling follows the Rabbis, why not join them together, and state thus: 'If the thief misappropriated a hybrid animal and a *trefa* [sheep or ox] and slaughtered them or sold them, he would have to make four-fold or five-fold payment!' This indeed is a difficulty.

[But why should there be liability for four-fold or five-fold payment in the case of] a hybrid animal since Scripture says '*sheep*'.¹⁵ and Raba [elsewhere] said that this¹⁶ is a locus classicus for the rule that wherever it says '*sheep*', the purpose is to exclude a hybrid animal? — This case here is different, as Scripture says '*or*',¹⁷ implying the inclusion of a hybrid animal. [Does this mean to say that] the term '*or*' everywhere implies an amplification? Was it not taught:¹⁸ '*When a bullock or a sheep*:¹⁹ this excepts a hybrid; *or a goat*:¹⁹ this excepts an animal looking like a hybrid'? — Said Raba: The term '*or*' in the one case is expounded in accordance with the subject matter of the verse, and the term '*or*' in the other case is similarly expounded in accordance with the subject matter of that verse. Here in connection with theft where it is written '*an ox or a sheep*', since it is impossible to produce a hybrid from the union of these two,²⁰ the term '*or*' should be expounded to include²¹ a hybrid [of a different kind], whereas in connection with

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sacrifices where it is written '*a sheep or a goat*',¹⁹ where it is possible for you to produce a hybrid from their union,²² the term '*or*' should rightly be taken to exclude²³ [the hybrid].

1. And this is the ritual fitness as food.
2. Though it was in fact never redeemed.
3. As to how could the slaughter in the case of a sacrifice render the stolen animal ritually fit for food and thus make the thief liable for the fine.
4. Who stated that the animal was blemished and slaughtered outside the precincts of the Temple.
5. That an unblemished animal was slaughtered in the precincts of the Temple but not in the name of the owner.
6. Ex. XXI, 37.
7. Cf. Pes. 89b.
8. V. [Glos.](#)
9. Who in the case of slaughtering such an animal maintains exemption; v. *supra* p. 403.
10. For if otherwise, why not state slaughter also in the case of *trefa*.
11. According to whom even for slaughter in the case of *trefa* there is liability for the fine (*supra* p. 403).
12. In the case of a hybrid animal.
13. Dealing with *trefa*.
14. [But according to R. Simeon a *trefa* is not subject even to the law of sale.
15. In Ex. XXI, 37.
16. The word 'sheep' in Lev. XXII, 28; v. Hul. 78b.
17. Ex. XXI, 37.
18. Hul. 38b.
19. Lev. XXII, 27.
20. As an ox could not possibly be the father of the offspring of a sheep.
21. For if to exclude there was no need for this '*or*'.
22. As a sheep could be the father of the young of a goat.
23. For if to include there was no need for this '*or*' to be inserted.

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But in connection with sacrifices it is also written '*a bullock or a sheep*', in which case it is impossible for you to exclude a hybrid born from these two, why then should we not employ the term '*or*' to include [a hybrid of a different kind]? — Since the term '*or*' in the

later phrase¹ is to 'be employed to exclude, the term '*or*' in the earlier phrase² should similarly be employed to exclude. But why not say on the contrary that, as the term '*or*' in the earlier phrase has to be employed to amplify, so also should the term '*or*' in the later phrase? — Would this be logical? I grant you that if you say that the term '*or*' meant to exclude, then it would be necessary to have two [terms '*or*'] to exclude, for even when a hybrid has been excluded, it would still be necessary to exclude an animal looking like a hybrid. But if you say it is meant to amplify, why two amplifications [in the two terms '*or*']? For once a hybrid is included, what question could there be of an animal looking like a hybrid. To what *halachah* then would the statement made by Raba refer, that this is a *locus classicus* for the rule that wherever it says 'sheep'. the purpose is to exclude a hybrid? If to sacrifices, is it not explicitly said: 'A bullock or a sheep which excepts a hybrid'? If to the tithes [of animals], is not the term '*under*'³ compared to '*under*' used in connection with sacrifices [making it subject to the same law]? If to a firstling, is the verb expressing '*passing*'⁴ not compared to '*passing*'³ used in connection with tithe? Or again we may say, since where the animal only looks like a hybrid you say that it is not [subject to the law of firstling], since it is written: '*But the firstling of an ox*'⁵ [which implies that the rule holds good] only where the parents were of the species of '*ox*' and the firstling was of the species of '*ox*', what question can there be regarding a hybrid itself? — The statement made by Raba must therefore have referred to the firstling of an ass,⁶ as we have learnt:⁷ It cannot be redeemed either by a calf or by a wild animal or by a slaughtered sheep or by a *trefa* sheep or by a hybrid or by a koy.⁸ But if we accept the view of R. Eleazar, who allows redemption with a hybrid sheep, as we have learnt: R. Eleazar allows the redemption to be made with a hybrid, for it is a sheep,⁷ to what *halachah* [can we refer the statement of Raba]? — R. Eleazar might reply that the statement made by Raba is to teach [the

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prohibition of] an unclean animal⁹ born from a clean animal¹⁰ which became pregnant from an unclean animal [being forbidden as food].¹¹ this opinion not being in accordance with R. Joshua. for R. Joshua derived¹² this prohibition from the verse 'the sheep of sheep and the sheep of goats'.¹³ which implies that unless the father was a 'sheep' and the mother a 'sheep' [the offspring is forbidden for food]. But could a clean animal become pregnant from an unclean animal? — Yes, since it is known to us

1. Dealing with 'sheep' and 'goat'.
2. Where 'bullock' and 'sheep' are mentioned.
3. Lev. XXVII, 32.
4. Ex. XIII, 12.
5. E.V. 'a cow'. Num. XVIII, 17.
6. Which has to be redeemed by a sheep (Ex. XIII, 13), so that a hybrid would therefore not be eligible.
7. Bek. 1, 5.
8. I.e., a kind of an antelope about which there was a doubt whether it belongs to the species of cattle or to that of beasts of the forest. [V. Lewysohn. Zoologie, p. 115 ff. who identifies it with the [G], 'goat-stag' mentioned by Plinius.]
9. E.g., a swine; v. Lev. XI, 7.
10. Such as a sheep.
11. Such as where a cow became pregnant from a horse and gave birth to a foal or where a sheep became pregnant from a swine and gave birth to a swine.
12. Cf. Bek. 7a.
13. Deut. XIV, 4.

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that it could become pregnant from an animal with uncloven hoofs, [which though born from parents belonging to the species of ox, is considered unclean] in accordance with the view of R. Simeon.¹

Raba asked: [If one vowed.] 'I take upon myself to sacrifice a burnt — offering.'² and he set aside an ox and somebody came and stole it, should the thief be entitled to free himself³ by paying for a sheep, if we follow the Rabbis, or even for a burnt-offering of a bird, if we follow R. Eleazar b. Azariah, as we have learnt:⁴ [If one vowed.] 'I take it upon myself to bring a burnt-offering.' he may

bring a sheep;⁵ R. Eleazar b. Azariah says that he may even bring a turtle — dove or a young pigeon?⁶ What should be the legal position? Shall we say that since he undertook to bring something called a burnt-offering [the thief may be entitled to restore the minimum burnt-offering], or perhaps the donor might be entitled to say to him: 'I am anxious to do my duty in the best manner possible'? After he put the question, on second thoughts he decided that the thief might free himself by paying a sheep, according to the view of the Rabbis, or even a burnt-offering of a bird, according to the view of R. Eleazar b. Azariah. R. Aha the son of R. Ika taught this as a definite ruling, [as follows]: Raba said: [If one vowed.] 'I take it upon myself to sacrifice a burnt-offering.' and he set aside an ox and somebody came and stole it, the thief may free himself by paying for a sheep, if we follow the Rabbis, or even for a burnt-offering of a bird, if we follow R. Eleazar b. Azariah.

MISHNAH. IF HE SOLD [THE STOLEN SHEEP OR OX] WITH THE EXCEPTION OF ONE HUNDREDTH PART OF IT,⁷ OR IF HE HAD SOME PARTNERSHIP IN IT⁸ [BEFORE HE STOLE IT] OR IF HE SLAUGHTERED IT AND IT BECAME *NEBELAH*⁹ UNDER HIS HAND, OR IF HE STABBED IT OR TORE LOOSE [THE WIND PIPE AND GULLET BEFORE CUTTING],¹⁰ HE WOULD HAVE TO MAKE DOUBLE PAYMENT¹¹ BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS.

GEMARA. What is meant by 'with the exception of one hundredth part of it'? — Rab said: With the exception of any part that would be rendered permissible [for food] together with the bulk of the animal through the process of slaughter.¹² Levi, however, said: With the exception even of its wool. It was indeed so taught in a Baraitha: 'With the exception of its wool.'

An objection was raised [from the following]: 'If he sold it with the exception of its fore-paw, or with the exception of its foot, or with

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the exception of its horn, or with the exception of its wool, he would not have to make four-fold and five-fold payments. Rabbi, however, says: [If he reserved for himself] anything the absence of which would prevent a [ritual] slaughter, he would not have to pay four-fold and five-fold payments, but [if he reserves] anything which is not indispensable for the purposes of [ritual] slaughter¹³ he would have to make four-fold or five-fold payment. But R. Simeon b. Eleazar says: If he reserved its horn he would not have to make four-fold or five-fold payment; but if he reserved its wool he would have to make four-fold or five-fold payment'. This presents no difficulty to Levi, as he would concur with the first Tanna, but with whom does Rab concur?¹⁴ — It may be said that Rab concurs with the following Tanna, as taught: R. Simeon b. Eleazar said:¹⁵ 'If he sold it with the exception of its fore-paw or with the exception of its foot he would not have to make four-fold or five-fold payment. But if with the exception of its horn or with the exception of its wool he would have to make four-fold and five-fold payments'. What is the point at issue between all these Tannaim? — The first Tanna held that [to fulfill the words] '*and he slaughter it*'¹⁶ we require the whole of it, as also [to fulfill the words] '*and he sell it*' we require the whole of it.¹⁷ Rabbi, however, held that '*and he slaughter it*' refers only to those parts the absence of which would render the slaughter ineffective, excluding thus anything which has no bearing upon the slaughter, while '*and he sell it*' is of course analogous to '*and he slaughter it*'. R. Simeon b. Eleazar, on the other hand, maintained that the horn not being a part which is usually cut off could be reckoned as a reservation, so that¹⁸ he would not have to make four-fold and five-fold payments, whereas the wool of the animal being a part which is usually shorn off could not be reckoned as an reservation, and he would thus have to make four-fold or five-fold payment. But the other Tanna of the School of R. Simeon b. Eleazar maintained that its fore-paws or feet which require

slaughter [to render them permissible] form a reservation, and he would not have to pay four-fold and five-fold payments, whereas its horns or its wool, as they do not require slaughter [to render them permissible] would not constitute a reservation. But does R. Simeon b. Eleazar not contradict himself? — Two Tannaim report differently the view of R. Simeon b. Eleazar.

Our Rabbis taught: He who steals a crippled, or a lame, or a blind [sheep or ox], and so also he who steals an animal belonging to partners [and slaughters it or sells it] is liable [for four-fold and five-fold payments]. But if partners committed a theft they would be exempt.¹⁹ But was it not taught: 'If partners committed a theft, they would be liable'?²⁰ — Said R. Nahman: This offers no difficulty, as the former statement deals with a partner stealing from [the animals belonging to him and] his fellow — partner, whereas the latter states the law where a partner stole from outsiders.²¹ Raba objected to [this explanation of] R. Nahman [from the following]: 'Lest you might think that if a partner steals from [the animals belonging to himself and to] his fellow — partner, or if partners commit the theft, they should be liable, it is definitely stated, 'And slaughter it',²² showing that we require the whole of it, which is absent here' — [Does this not prove that partners stealing from outsiders are similarly exempt?] — R. Nahman therefore said: The contradiction [referred to above] offers no difficulty, as the statement [of liability] referred to a partner slaughtering²³ with the authorization of his fellow — partner,²⁴ whereas the other ruling referred to a partner slaughtering without the authorization of his fellow-partner.²⁵

R. Jeremiah inquired: If the thief sold a stolen animal with the exception of the first thirty days,²⁶ or with the exception of its work²⁷ or with the exception of its embryo, what would be the law?²⁸ If we accept the view that an embryo is [an integral part like] the thigh of its mother,²⁹ there could be no

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question that this would be a sure reservation. The question would arise only if we accept the view that an embryo is not like the thigh of its mother. What indeed should be the law? Shall we say that since it is joined to it, it should count as a reservation, or perhaps since it is destined to be separated from it, it should not be considered a reservation? Some state the question thus: [Shall we say that] since it is not like the thigh of its mother, it should not count as a reservation, or perhaps since at that time it requires [the union with] its mother to become permissible for food through the process of slaughter²⁰ it should be equal to a reservation made in the actual body of the mother? — Let this stand undecided.

R. papa inquired: If the thief after stealing mutilated it and then sold it, what would be the law?²¹ Shall we say that [since] all that he stole he did not sell [he should be exempt], or perhaps [since] in what he sold he reserved nothing [for himself he should be liable]? — Let this [also] stand undecided.

Our Rabbis taught: If he stole [a sheep or an ox] and gave it to another person who slaughtered it, or if he stole it and gave it to another person who sold it,

1. Cf. Bek. 6b.
2. In which case he would be responsible for the loss of the sacrifice which he set aside, having to replace it with another sacrifice, and the thief would therefore according to R. Simeon be liable to the donor.
3. So far as the owner is concerned.
4. Men. 107a.
5. Which could also be brought as a burnt offering; cf. Lev. 1, 10.
6. Cf. *ibid.* 14.
7. The exemption here is because the sale did not extend to the whole animal.
8. In which case not the whole act of the sale was unlawful.
9. V. [Glos.](#)
10. Thus rendering the animal *nebelah*.
11. For the act of theft.
12. This law would thus not extend to a case where the wool or the horns were excepted from the sale.
13. E.g., the fore-paw.

14. For he could not follow the views of Rabbi according to whom even where the fore-paw (which is rendered permissible through the process if slaughter) was excepted, the thief would still have to make four-fold or five-fold payment.
15. According to the tradition if another School, v. discussion which follows.
16. Ex. XXI, 37.
17. Without any exception whatever.
18. Where he excepted it from the sale.
19. Tosef. B.K. VII, 4.
20. B.M. 8a.
21. Where there is liability.
22. Ex. XXI, 37.
23. An animal stolen by both of them and for which they both have to share the fine for the theft.
24. And since in this case the law of agency applies even for the commission of a sin (v. *supra* 71a), they would both have to share the fine for the slaughter too.
25. In which case the fellow-partner could certainly not be made liable to pay anything for the slaughter nor again the one who slaughtered the animal, since we could not make him liable for the whole of the slaughter, as though he slaughtered the whole of the animal he was a thief but of half of it.
26. During which period the thief should still retain it.
27. The vendee may slaughter it forthwith, but any work done by it should be credited to the vendor.
28. Regarding the payment of the fine.
29. Cf. Tem. 30b and also *supra* p. 265.
30. In accordance with Hul. 74a.
31. Regarding the payment of the fine.

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or if he stole it and consecrated it, or if he stole it and sold it on credit, or if he stole it and bartered it, or if he stole it and gave it as a gift, or if he stole it and paid a debt with it, or if he stole it and paid it for goods he had obtained on credit, or if he stole it and sent it as a betrothal gift to the house of his father-in-law, he would have to make four-fold and five-fold payments.¹ What is this meant to tell us? [Is not all this obvious?] — The new point lies in the opening clause: 'If he stole [a sheep or an ox] and gave it to another person who slaughtered it', [which implies] that in this case the law of agency has application even

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for a matter involving transgression.² Though in the whole of the Torah [there is] no [case of an] agent entrusted with a matter involving transgression [rendering the principal liable],³ sin in this case an agent entrusted with a matter involving transgression would render his principal liable, the reason being [that Scripture says]: '*And he slaughter it or sell it*', implying that just as a sale cannot be effected without the intervention of some other person,⁴ so also where the slaughter was effected [by some other person authorized by the thief to do so the thief would be liable]. There is also a new point in the concluding clause: '*Where he stole it and consecrated it*', which tells us that it makes no difference whether he disposed of it to a private person or whether he disposed of it to the ownership of Heaven.⁵

MISHNAH. IF HE STOLE [A SHEEP OR AN OX] IN THE PREMISES OF THE OWNERS AND SLAUGHTERED IT OR SOLD IT OUTSIDE THEIR PREMISES, OR IF HE STOLE IT OUTSIDE THEIR PREMISES AND SLAUGHTERED IT OR SOLD IT ON THEIR PREMISES, OR IF HE STOLE IT AND SLAUGHTERED IT OR SOLD IT OUTSIDE THEIR PREMISES, HE WOULD HAVE TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.⁶ BUT IF HE STOLE IT AND SLAUGHTERED IT OR SOLD IT IN THEIR PREMISES, HE WOULD BE EXEMPT.⁷ IF AS HE WAS PULLING IT OUT IT DIED WHILE STILL IN THE PREMISES OF THE OWNERS, HE WOULD BE EXEMPT,⁷ BUT IF IT DIED AFTER HE HAS LIFTED IT UP⁸ OR AFTER HE HAD ALREADY TAKEN IT OUT OF THE PREMISES OF THE OWNERS,⁹ HE WOULD BE LIABLE.¹⁰ SO ALSO IF HE GAVE IT TO A PRIEST FOR THE REDEMPTION OF HIS FIRST-BORN SON¹¹ OR TO A CREDITOR, TO AN UNPAID BAILEE, TO A BORROWER, TO A PAID BAILEE OR TO A HIRER, AND AS HE WAS PULLING IT OUT¹² IT DIED WHILE STILL IN THE PREMISES OF THE OWNERS, HE WOULD BE EXEMPT; BUT IF IT DIED AFTER HE HAD LIFTED IT UP OR ALREADY

TAKEN IT OUT OF THE PREMISES OF THE OWNERS, HE¹³ WOULD BE LIABLE.

GEMARA. Amemar asked: Was the formality of pulling instituted¹⁴ also in the case of bailees¹⁵ or not? — R. Yemar replied: Come and hear: IF HE GAVE IT TO A PRIEST FOR THE REDEMPTION OF HIS FIRST-BORN SON, TO A CREDITOR, TO AN UNPAID BAILEE, TO A BORROWER, TO A PAID BAILEE OR TO A HIRER AND AS HE WAS PULLING IT OUT IT DIED WHILE IN THE PREMISES OF THE OWNERS HE WOULD BE EXEMPT. Now, this means, does it not, that the bailee was pulling it out, thus proving that the requirement of pulling was instituted also in the case of bailees?¹⁶ — No, he rejoined; the thief was pulling it out.¹⁷ But was not this already stated in the previous clause?¹⁸ — There it was stated in regard to a thief stealing from the house of the owners, whereas here it is stated in regard to a thief stealing from the house of a bailee. Said R. Ashi to him [Amemar]: Do not bring such arguments; what difference does it make whether the thief stole from the house of the bailee or from the house of the owners?¹⁹ No; it must mean that the bailee was pulling it out, thus proving that pulling was instituted also in the case of bailees.¹⁶ This can indeed be regarded as proved.

It was also stated that R. Eleazar said: Just as the Sages instituted pulling in the case of purchasers, so also have they instituted pulling in the case of bailees.²⁰ It has in fact been taught likewise: Just as the Sages instituted pulling in the case of purchasers, so have they instituted pulling in the case of bailees, and just as immovable property is transferred by the medium of money payment, a deed or possession,²¹ so also is the case with hiring which is similarly acquired by the medium of money, a deed or possession. The hire of what? If you say

1. Tosef. B.K. VII.

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2. For which cf. *supra* 71a, so that the principal will be liable to the fine for the act of slaughter committed by his agent.
3. Cf. Kid. 42b and *supra* 51a.
4. I.e. the purchaser.
5. Provided, however, that he did not consecrate it to be sacrificed as an offering upon the altar, in which case the transfer would not be complete as *supra* 76a, but where the animal was blemished and he consecrated it to become a permanent asset of the Temple treasury (Tosaf.).
6. For as soon as he removed it from the premises of the owners the act of theft became complete.
7. As in this case the theft has never become complete.
8. As by lifting up possession is transferred even while in the premises of the owner; cf. Kid. 25b.
9. By the act of pulling possession is not transferred unless the animal has already left the premises of the owners.
10. For as soon as the animal came into the possession of the thief the theft became complete.
11. I.e., for the five *shekels*; v. Num. XVIII. 16.
12. V. the discussion in Gemara.
13. The thief.
14. As it was instituted in the case of purchasers for which cf. B.M. IV. 1 and 47b.
15. So that the act of pulling would be essential for making the contract of bailment complete.
16. So that by the act of pulling carried out by the bailee the contract of bailment became complete and the animal could thus be considered as having been transferred from the possession of the owner to that of the thief represented by the bailee who acted on his behalf.
17. After the owner handed over the animal to any one of those enumerated in the Mishnah.
18. That the act of pulling is one of the requirements essential to make the theft complete.
19. Why then deal with them separately.
20. B.M. 99a.
21. Cf. Kid. 27a.

Baba Kamma 79b

the hire of movables, are movables transferred by a deed?¹ — Said R. Hisda: The hire of immovable property.

R. Eleazar stated: If a thief was seen hiding himself in forests [where flocks pasture] and

slaughtering or selling [there sheep or oxen], he would have to make four-fold or five-fold payment. But why so, since he did not pull the animal?² — Said R. Hisda: We suppose that he struck it with a stick [and thus drew it towards himself]. But I would still ask, since he was seen doing this [publicly], should he on this account not be [subject to the law applicable to] a robber [who has not to pay any fines]?³ — Since [at the same time] he was hiding himself from the public he is [subject to the law applicable to] a thief.⁴

How then would you define a robber? — Said R. Abbahu: One, for instance, like Benaiah the son of Jehoiadah, of whom we read:⁵ *And he plucked the spear out of the Egyptian's hand and slew him with his own spear.* R. Johanan said: Like the men of Shechem of whom we read:⁶ *And the men of Shechem set liers in wait for him on the tops of the mountains, and they robbed all that came along that way by them: and it was told Abimelech.* Why did R. Abbahu not give his instance from this last source? He could say that since these were hiding themselves they could not be called robbers. And R. Johanan? — He could argue that the reason they were hiding themselves was so that people should not notice them and run away from them.⁷

The disciples of R. Johanan b. Zakkai asked him why the Torah was more severe on a thief⁸ than on a robber.⁹ He replied: The latter¹⁰ puts the honor of the slave¹¹ on the same level as the honor of his owner,¹² whereas the former¹³ does not put the honor of the slave on the same level as the honor of the master [but higher], for, as it were, he acts as if the eye of Below¹⁴ would not be seeing and the ear of Below would not be hearing, as it says: *Woe unto them that seek deep to hide their counsel from the Lord, and their works are in the dark, and they say, Who seeth us? and who knoweth us?*¹⁵ Or as it is written: *And they say, The Lord will not see, neither will the God of Jacob give heed;*¹⁶ or, as again it is written, *For they say, the Lord hath forsaken the earth and the Lord seeth*

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*not.*¹⁷ It was taught:¹⁸ R. Meir said: The following parable is reported in the name of R. Gamaliel. What do the thief and the robber resemble? Two people who dwelt in one town and made banquets. One invited the townspeople and did not invite the royal family, the other invited neither the townspeople nor the royal family.¹⁹ Which deserves the heavier punishment? Surely the one who invited the townspeople but did not invite the royal family.

R. Meir further said: Observe how great is the importance attached to labor, for in the case of an ox [stolen and slaughtered] where the thief interfered with its labour²⁰ he has to pay five-fold, while in the case of a sheep where he did not disturb it from its labour²¹ he has to pay only four-fold. R. Johanan b. Zakkai said: Observe how great is the importance attached to the dignity of Man, for in the case of an ox which walks away on its own feet²² the payment is five-fold, while in the case of a sheep which was usually carried on the thief's shoulder only four-fold has to be paid.²³

MISHNAH. IT IS NOT RIGHT TO BREED SMALL CATTLE²⁴ IN ERETZ YISRAEL.²⁵ THEY MAY HOWEVER BE BRED IN SYRIA OR IN THE DESERTS OF ERETZ YISRAEL. IT IS NOT RIGHT TO BREED HENS²⁶ IN JERUSALEM ON ACCOUNT OF THE SACRIFICES,²⁷ NOR MAY PRIESTS DO SO THROUGHOUT THE WHOLE OF ERETZ YISRAEL, ON ACCOUNT OF THEIR FOOD²⁸ WHICH HAS TO BE RITUALLY CLEAN.²⁹ IT IS NOT RIGHT TO BREED PIGS IN ANY PLACE WHATEVER.³⁰ NO MAN SHOULD BREED A DOG³¹ UNLESS IT IS ON A CHAIN. IT IS NOT RIGHT TO PLACE NETS FOR DOVES UNLESS AT A DISTANCE OF THIRTY RISH³² FROM INHABITED SETTLEMENTS.³³

GEMARA. Our Rabbis taught: It is not right to breed small cattle in Eretz Yisrael but they may be bred in the woods³⁴ of Eretz Yisrael or in Syria even in inhabited settlements, and needless to say also outside Eretz Yisrael. Another [Baraitha] taught: 'It is not right to

breed small cattle in Eretz Yisrael. They may, however, be bred in the deserts of Judah and in the desert at the border of Acco.³⁵ Still though the Sages said: 'It is not right to breed small cattle' it is nevertheless quite proper to breed large cattle, for we should not impose a restriction upon the community unless the majority of the community will be able to stand it. Small cattle could be imported from outside Eretz Yisrael, whereas large cattle could not be imported from outside Eretz Yisrael.³⁶ Again, though they said: 'It is not right to breed small cattle', one may nevertheless keep them before a festival for thirty days and similarly before the wedding festivity of his son for thirty days. He should, however, not retain the animal last bought for thirty days [if these expire after the festival]. So³⁷ that if the festival had already gone, though since from the time he bought the animal until that time thirty days had not yet elapsed we do not say that a period of thirty days is permitted for keeping the animal, but [we are to say that] as soon as the festival has gone he should not retain it any longer.

1. Are they not acquired solely by the medium of pulling as stated in Kid. *ibid.*?
2. The theft never became complete.
3. For a robber has to restore only the article taken by him or its value.
4. Who is liable to fine.
5. II Sam. XXIII, 21.
6. Jud. IX, 25.
7. But not out of any fear.
8. That he has to pay double payment for the theft and four-fold and five-fold payments for the subsequent slaughter or sale of the stolen sheep and ox respectively in accordance with Ex. XXI, 37.
9. Who has to pay only the thing misappropriated by him or its value, in accordance with Lev. V, 23.
10. I.e., the robber by committing the crime publicly.
11. I.e., human society.
12. I.e., the Creator.
13. I.e., the thief by committing his crime by stealth.
14. Euphemism for 'Heaven'; cf. Ab. II. 1.
15. Isa. XXIX. 15.
16. Ps. XCIV. 7.
17. Ezek. IX, 9.

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18. [Rashal deletes 'It was taught', as this is the continuation of the preceding passage in Tosef. B.K. VII.]
19. So also in the case of the thief and the robber the former equals the former and the latter the latter; cf. however B.B. 88b.
20. For an ox usually labors in the field; cf. Deut. V, 14; Isa. XXX, 24 and Prov. XIV, 4.
21. As it is in any case not fit for work.
22. While the thief misappropriates it.
23. Mek. on Ex. XXII, 6.
24. As these usually spoil the crops of the field. Cf. *supra* p. 118.
25. Where the produce of the fields was of public concern.
26. As these usually peck in dunghills and expose impurities.
27. Which are eaten there and might easily be defiled by some impurity brought by the chickens.
28. Consisting mainly of *terumah* (v. [Glos.](#)).
29. In accordance with Lev. XXII. 6-7.
30. Cf. Gemara.
31. As by barking it might frighten pregnant women and cause miscarriages.
32. I.e., four miles, cf. [Glos.](#)
33. So that doves belonging to private owners in the settlement should not be enticed into the nets.
34. Which were considered common property.
35. [MS.M.: Kefar Amiko, N. of Acco, v. Klein, NB.p. 9.]
36. And cattle could not be dispensed with in an agricultural country where they are vital for field work.
37. [Following MS.M., which omits 'For you might think' occurring in cur. edd., the whole passage appears to be a copyist's gloss on the cited Baraita; v. D.S. a.l.]

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'A cattle dealer may, however, buy and slaughter, or buy and [even] keep for the market. He may, however, not retain the animal he bought last for thirty days.'

R. Gamaliel was asked by his disciples whether it is permissible to breed [small cattle]. He said to them: 'It is permissible.' But did we not learn: 'IT IS NOT RIGHT TO BREED'? — What they asked him was really this: 'What about retaining [it]?'¹ He said to them: 'It is permissible, provided it does not go out and pasture with the herd, but is fastened to the legs of the bed.'

Our Rabbis taught:² There was once a certain pious person³ who suffered with his heart, and the doctors on being consulted said that there was no remedy for him unless he sucked warm milk every morning. A goat was therefore brought to him and fastened to the legs of the bed, and he sucked from it every morning. After some days his colleagues came to visit him, but as soon as they noticed the goat fastened to the legs of the bed they turned back and said: 'An armed robber⁴ is in the house of this man, how can we come in to [see] him?' They thereupon sat down and inquired into his conduct, but they did not find any fault in him except this sin about the goat. He also at the time of his death proclaimed: 'I know that no sin can be imputed to me save that of the goat, when I transgressed against the words of my colleagues.'

R. Ishmael⁵ said: My father's family belonged to the property owners in Upper Galilee. Why then were they ruined? Because they used to pasture their flocks in forests, and to try money cases without a colleague.⁶ The forests were very near to their estates, but there was also a little field nearby [belonging to others], and the cattle were led by way of this.

Our Rabbis taught: If a shepherd⁷ desires to repent,⁸ it would not be right to order him to sell immediately [the small cattle with him], but he may sell by degrees. So also in the case of a proselyte to whom dogs and pigs fall as an inheritance,⁹ it would not be right to order him to sell immediately, but he may sell by degrees. So also if one vows to buy a house, or to marry a woman in Eretz Yisrael,¹⁰ it would not be right to order him to enter into a contract immediately, until he finds a house or a woman to suit him. Once a woman being annoyed by her son jumped up [in anger] and swore: 'Whoever will come forward and offer to marry me, I will not refuse him', and as unsuitable persons offered themselves to her, the matter was brought to the Sages, who thereupon said: Surely this woman did not

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intend her vow to apply save to a suitable person. Just as the Sages said that it is not right to breed small cattle, so also have they said that it is not right to breed small beasts. R. Ishmael said: It is however allowed to breed village dogs,¹¹ cats, apes, *huldoth sena'im* [porcupines], as these help to keep the house clean.¹² What are '*huldoth sena'im*'? — Rab Judah replied: A certain creeping animal of the *harza* [species]. Some say, of the *harza* [species]¹³ with thin legs which pastures among rose-bushes, and the reason why it is called 'creeping' is because its legs are [short and] underneath it.

Rab Judah said in the name of Rab: We put ourselves in Babylon with reference to the law of breeding small cattle on the same footing as if we were in Eretz Yisrael. R. Adda b. Ahabah said to R. Huna:¹⁴ What about your small cattle? He answered him: Ours are guarded by Hoba.¹⁵ He, however, said to him: Is Hoba prepared to neglect her son so much as to bury him?¹⁶ In point of fact, during the lifetime of R. Adda b. Ahabah, no children born of Hoba survived to R. Huna. Some report: R. Huna said: From the time Rab arrived in Babylon,¹⁷ We put ourselves in Babylon with reference to breeding small cattle on the same footing as if we were in Eretz Yisrael.

Rab and Samuel and R. Assi once met at a circumcision of a boy,¹⁸ or as some say, at the party for the redemption of a son.¹⁹ Rab would not enter before Samuel,²⁰

1. For a festival; cf. Tosaf. a.l.
2. Tem. 15b.
3. [R. Jehudah b. Baba, Tosef. B.K. VIII, 4; cf. however, Tem. 15b and Buchler, Gal. 'Am-ha'ar. p. 191.]
4. As a goat is prone to pasture anywhere and thus spoil the crops of the public.
5. [Var. lec., 'R. Simeon Shezuri'.]
6. Cf. Aboth. IV. 10 and Sanh. I, 1.
7. Possessing cattle of his own; cf. B.M. 5b.
8. By taking upon himself not to breed small cattle.
9. From his heathen relatives; cf. Kid. 17b.
10. [Tosef. B.K. VIII omits 'Eretz Yisrael'.]
11. Which are small and harmless.

12. Tosef. B.K. VIII.
13. [Harza probably denotes 'digger', and harza 'stinging', v. Lewysohn, Zoologie. p. 94.]
14. Cf. Naz. 57b.
15. Who was the wife of R. Huna.
16. Surely since she has to mind her children she cannot conscientiously guard the cattle. (Tosaf.)
17. [In 219 C.E. V. Funk, Die Juden in Babylonian, I, note III.]
18. Lit., 'the week of the son', as the circumcision is performed on the eighth day; cf. Lev. XII, 3. [On the term, 'week of the son' v. B.B. (Sonc. ed.) p. 246. n. 8.]
19. I.e., in the case of a first-born who has to be redeemed on the 31st day; cf. Num. XVIII, 16.
20. For the reason to be stated.

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nor Samuel before R. Assi,¹ nor R. Assi before Rab.² They therefore argued who should go in last, [and it was decided that] Samuel should go in last, and that Rab and R. Assi should go in [together]. But why should not either Rab or R. Assi have been last? — Rab [at first] was merely paying a compliment to Samuel,³ to make up for the [regrettable] occasion when a curse against him,⁴ escaped his lips;⁵ for that reason Rab offered him precedence.⁶ Meanwhile a cat had come along and bitten off the hand of the child. Rab thereupon went out and declared in his discourse: 'It is permissible to kill a cat, and it is in fact a sin to keep it,⁷ and the law of robbery⁸ does not apply to it, nor that of returning a lost object to its owner.'⁹ Since you have stated that it is permissible to kill it, why again state that it is a sin to keep it? — You might perhaps think that though it is permissible to kill it, there is still no sin committed in keeping it; we are therefore told [that this is not so]. I could still ask: Since you have said that the law of robbery⁸ does not apply to it, why again state that the law of returning a lost object to its owner does not apply to it?¹⁰ — Said Rabina: This refers to the skin¹⁰ of the cat [where it was found dead]. An objection was raised [from the following]: R. Simeon b. Eleazar says: It is permissible to breed village dogs, cats, apes and porcupines, as these help to keep the

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house clean. [Does this not prove that it is permissible to breed cats?] — There is, however, no contradiction, as the latter teaching refers to black cats, whereas the former deals with white ones.¹¹ But was not the mischief in the case of Rab done by a black cat? — In that case it was indeed a black cat, but it was the offspring of a white one. But is not this the very case about which Rabina raised a question? For Rabina asked: What should be the law in the case of a black cat which is the offspring of a white one? — The problem raised by Rabina was where the black was the offspring of a white one which was in its turn a descendant of a black cat, whereas the accident in the case of Rab occurred through a black cat which was the offspring of a white one that was similarly the offspring of a white cat.

(Mnemonic: *HaBaD BiH BaHaN*).¹²

R. Aha b. Papa said in the name of R. Abba b. Papa who said it in the name of R. Adda b. Papa, or, as others read, R. Abba b. Papa said in the name of R. Hiyya b. Papa who said it in the name of R. Aha b. Papa, or as others read it still differently, R. Abba b. Papa said in the name of R. Aha b. papa who said it in the name of R. Hanina b. Papa: 'It is permissible to raise an alarm [at public services]¹³ even on the Sabbath day for the purpose of relieving the epidemic of itching; if the door to prosperity has been shut to an individual it will not speedily be opened; and when one buys a house in Eretz Yisrael, the deed may be written even on the Sabbath day. An objection was raised [from the following:] 'Regarding any other misfortune¹⁴ that might burst forth upon the community, as e.g. itching, locusts, flies, hornets, mosquitoes, a plague of serpents and scorpions, no alarm was raised by [public service, on the Sabbath] but a cry was raised [by privately reciting prayers]?¹⁵ [Does this not prove that no public prayers are to be held on this score on Sabbath?] — There is no contradiction, as the latter case refers to [the period when the plague is in] the moist stage whereas the

former deals with dry itching,¹⁶ as R. Joshua b. Levi said:¹⁷ 'The boils brought upon the Egyptians by the Holy One, blessed be He,¹⁸ were moist within but dry without, as it says *'And it became a boil breaking forth with blains upon man and upon beast.'*¹⁸

What is the meaning of the words, 'if the door to prosperity has been shut to an individual it will not speedily be opened'? — Mar Zutra said: It refers to ordination.¹⁹ R. Ashi said: One who is in disfavor is not readily taken into favour.²⁰ R. Aha of Difti said: He will never be taken into favor. This, however, is not so; for R. Aha of Difti stated this as a matter of personal experience.²¹

'In the case of him who buys a house in Eretz Yisrael the deed may be written even on the Sabbath day.'²² You mean to say, on the Sabbath?²³ — It must therefore mean as stated by Raba in the case mentioned there,²⁴ that a Gentile is asked to do it; so also here a Gentile is asked to do it. For though to ask a Gentile to do some work on the Sabbath is Shebuth,²⁵ the Rabbis did not maintain this prohibition in this case on account of the welfare of Eretz Yisrael.²⁶ R. Samuel b. Nahmani said in the name of R. Jonathan: He who purchases a town in Eretz Yisrael can be compelled to purchase with it also the roads leading to it from all four sides²⁷ on account of the welfare of Eretz Yisrael.

Our Rabbis taught:²⁸ Joshua [on his entry into Eretz Yisrael] laid down ten stipulations:

1. On account of seniority.
2. Whose disciple he was.
3. Who was the youngest of them.
4. I.e., Samuel.
5. For which cf. Shab. 108b.
6. [But not because he considered Samuel his superior, with the result that, were they to go in together, they would be faced with the dilemma as to which of the two was to enter first; v. Shittah Mekubezeth a.l.]
7. Cf. Sanh. 15b and *supra* p. 67.
8. Lev. XIX. 13.
9. As required in Deut. XXII, 1-3.
10. That it need not be returned.
11. Which constitute a danger.

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12. An aid to recollect order of names of the sons of R. Papa that follow in pairs.
13. On the lines described in Ta'an. 1, 6 and III, 1, etc.
14. I.e., other than those enumerated in Ta'an. III, 1-8.
15. Ta'an. 14a.
16. Which is more dangerous.
17. Bk. 41a.
18. Ex. IX, 10.
19. [Once a man fails in his attempt to secure ordination he cannot obtain it so easily any more.]
20. Cf. B.B. 12b.
21. And it should therefore not necessarily be made a general rule.
22. Cf. Git. 8b.
23. When it would be a capital offence; cf. Shab. VII. 2.
24. Shab. 129a and Bez. 22a.
25. Lit., 'abstention', but which came to denote a matter of mere Rabbinic prohibition on Sabbath and festivals; v. Bez. V, 2.
26. As they similarly dispensed with Shebuth in the case of Temple service; cf. Pes. 65a.
27. As transport affects vitally the progress and prosperity of a country.
28. Cf. 'Er. 17a.

Baba Kamma 81a

That cattle be permitted to pasture in woods;¹ that wood may be gathered [by all] in private fields;¹ that grasses may similarly be gathered [by all] in all places, with the exception, however, of a field where fenugreek is growing;¹ that shoots be permitted to be cut off [by all] in all places, with the exception, however, of stumps of olive trees;¹ that a spring emerging [even] for the first time may be used by the townspeople; that it be permitted to fish with an angle in the Sea of Tiberias, provided no sail is spread as this would detain boats [and thus interfere with navigation]; that it be permitted to ease one's self at the back of a fence even in a field full of saffron; that it be permitted [to the public] to use the paths in private fields until the time when the second rain is expected;² that it be permitted to turn aside to [private] sidewalks in order to avoid the road-pegs; that one who has lost himself in the vineyards be permitted to cut his way

through when going up and cut his way through when coming down;³ and that a dead body, which anyone finds has to bury should acquire [the right to be buried on] the spot [where found].

'That cattle be permitted to pasture in woods.' R. Papa said: This applies only to small cattle pasturing in big woods⁴ for in the case of small cattle pasturing in small woods or big cattle in big forests it would not be permitted,⁵ still less big cattle pasturing in small woods.⁵

'That wood may be gathered [by all] in private fields: 'This applies only to [prickly shrubs such as] Spina regia and hollow.⁶ For in the case of other kinds of wood it would not be so. Moreover, even regarding Spina Regia and hollow, permission was not given except where they were still attached to the ground, but after they had been already broken off [by the owner] it would not be so.⁷ Again, even in the case of shrubs still attached to the soil, permission was not given except while they were still in a wet state, but once they had become dry it would not be so.⁷ But in any case it is not permitted to uproot [them].

'That grasses may similarly be gathered [by all] in all places, with the exception, however, of a field where fenugreek is growing.' Does this mean to say that fenugreek derives some benefit from grasses?⁸ If so, a contradiction could be pointed out [from the following:] 'If fenugreek is mixed up with other kinds of grasses, the owner need not be compelled to tear it out⁹ [for he will do it in any case on account of the fact that the grasses spoil the fenugreek'.¹⁰ Now, does this not prove that grasses are disadvantageous to fenugreek?] — Said R. Jeremiah: There is no contradiction, for while the latter statement refers to the seeds,¹¹ the former deals with the pods.¹² It is only to the seeds that grasses are disadvantageous as they make them lean, whereas to the pods¹³ they are advantageous, for when placed between grasses they get softer. Or if you like I can say that while one statement refers to fenugreek sown for the

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use of man, the other refers to fenugreek sown for animals, for since it was sown for animals grasses are also required for it. How can we tell [for what it was sown]?¹³ — R. Papa said: If made in beds it is sown for man, but if not in beds it is for animals.

'That shoots be permitted to be cut off [by all] in all places, with the exception, however, of stumps of olive trees.' R. Tanhum and R. Barias explained in the name of a certain old man that in the case of an olive tree the size of the length of an egg has to be left over at the bottom; in the case of reeds and vines [it is only] from the knot and upwards¹⁴ [that it is permitted to cut off shoots]; in the case of all other trees [it is permitted only] from the thick parts of the tree but not from the central part of the tree, and only from a new bough that has not yet yielded fruit but not from an old bough which is yielding fruit; again, only from such spots [on the tree] as do not face the sun

1. The reason is given below.
2. I.e., the seventeenth of Marcheshvan; cf. Ta'an. 6b and Ned VIII, 5.
3. Though damage be done thereby to the vineyard.
4. Where the trees would thereby not be damaged.
5. On account of the damage which could be done to the trees.
6. Or other kinds of thorns and thistles.
7. As they would then be the exclusive property of the owner.
8. Which have thus to be preserved.
9. So as not to transgress Lev. XI. 19: 'thou shalt not sow thy field with mingled seed'; cf. also Shek. I, 1-2.
10. Kil. II, 5.
11. Which will be used for sowing purposes.
12. Which are used as food.
13. So that the stipulation of Joshua should have practical application where it was sown for the use of man.
14. Cf. B.B. 80b.

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but not from a spot which does face the sun,¹ for so it says 'And for the precious things of the fruits of the sun'.²

'That a spring emerging [even] for the first time may be used by the townspeople.' Rabbah son of R. Huna said that the owner³ is [still] entitled to be paid for its value. The law, however, is not in accordance with this view.

'That it be permitted to fish with an angle in the Sea of Tiberias provided that no sail is spread, as this would detain boats.' It is, however, permitted to fish by means of nets and traps. Our Rabbis taught: 'The tribes stipulated with one another at the very outset that nobody should spread a sail and thus detain boats. It is, however, permitted to fish by means of nets and traps.'⁴

Our Rabbis taught: The Sea of Tiberias was included in the portion of Naphtali. In addition, he received a rope's length of dry land on the southern side to keep nets on, in fulfillment of the verse, Possess thou the sea and the South.⁵

It was taught: R. Simeon b. Eleazar said: Anything found on the mountains detached from the soil was considered as belonging to all the tribes,⁶ but if still attached [to the ground] as belonging to the particular tribe [in whose territory it was found]. There was, however, no tribe in Israel which had not land⁷ both on the hills and in the vale, in the South and in the valley. as stated: *Turn you and take your journey and go to the hill — country of the Amorites, and unto all the places nigh thereunto, in the plain, in the hills and in the vale, and in the South, and by the sea side⁸*, etc., for you can similarly find the same regarding the Canaanites, perizites and Ammonites who were before them, as stated: *'and unto all nigh thereunto'*,⁸ proving that the same applied to those who were nigh thereunto.

'That it be permitted to ease one's self at the back of a fence even though in a field full of saffron.' R. Aha b. Jacob said: This permission was required only for the taking of a pebble from the fence.⁹ R. Hisda said: This may be done even on the Sabbath.¹⁰ Mar

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Zutra the Pious used to take a pebble from a fence and put it back there and tell his servant¹¹ to go and make it good again.

'That it be permitted to use the paths in private fields until the time when the second rain is expected.' R. papa said that regarding our land [here in Babylon], even after the fall of [mere] dew this would be harmful.

'That it be permitted to turn aside to [private] sidewalks in order to avoid road pegs.' As Samuel and Rab Judah were once walking on the road, Samuel turned aside to the private sidewalk. Rab Judah thereupon said to him: Do the stipulations laid down by Joshua hold good even in Babylon? — He answered him: I say that it applies even outside Eretz Yisrael. As Rabbi and R. Hiyya were once walking on the road they turned aside to the private sidewalks, while R. Judah b. Kenosa went striding¹² along the main road in front of them. Rabbi thereupon said to R. Hiyya. 'Who is that man who wants to show off¹³ in front of us?' R. Hiyya answered him: 'He might perhaps be R. Judah b. Kenosa who is my disciple and who does all his deeds out of pure piety.'¹⁴ When they drew near to him they saw him and R. Hiyya said to him: 'Had you not been Judah b. Kenosa, I would have sawed your joints with an iron saw.'¹⁵

'That one who lost himself in the vineyards should be permitted to cut his way through when going up and cut his way through when coming down.' Our Rabbis taught: He who sees his fellow wandering in the vineyards is permitted to cut his way through when going up and to cut his way through when coming down until he brings him into the town or on to the road; so also one who is lost in the vineyards may cut his way through when going up and cut his way through when coming down until he reaches the town or the road.¹⁶ What is the meaning of 'so also'? [Is the latter case not obvious?]¹⁷ — You might think that it is only in the case of a fellow-man wandering, in which case he¹⁸ knows where he is going to, that he may cut his way through, whereas in the case of being lost

himself, when he does not know where he is going to, he should not be permitted to cut his way through but should have to walk round about the boundaries. We are therefore told that this is not so — Cannot this permission be derived from the Pentateuch? For it was taught: 'Whence can it be derived that it is obligatory to restore the body of a fellow-man?¹⁹ Because it is said: And thou shalt restore it to him²⁰ [implying him himself, i.e., his person.'²¹ Why then was it necessary for Joshua to stipulate this?]²² — As far as the Pentateuch goes, he²³ would have to remain standing between the boundaries [and walk round about]; it was therefore necessary for Joshua to come and ordain that he be permitted to cut his way through when going up and cut his way through when coming down.

'That a dead body, which anyone finding has to bury, should acquire the [right to be buried on the] spot [where found].' A contradiction could be pointed out [from the following:] If one finds a dead person lying on the road, he may remove him to the right side of the road or to the left side of the road. If on the one side of the road there is an uncultivated field and on the other a fallow field, he should remove him to the uncultivated field;²⁴ so also where on the one side there is a fallow field but on the other a field with seeds he should remove him to the fallow field.²⁵ But if both of them are uncultivated, or both of them fallow, or both of them sown he may remove him to any place he likes.²⁶ [Does this not contradict your statement that a dead person acquires the right to be buried on the spot where he was found?] — Said R. Bibi: The dead person [in the latter case] was lying broadways across the boundary so that since permission had to be given to remove him from that spot²⁷ he may be removed to any place he prefers.

I would here ask: Are these stipulations²⁸ only ten [in number?] Are they not eleven? — [The permission] to use the paths in private fields is [implied in] a statement made by

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Solomon, as taught: If a man's produce has already been removed entirely from the field, and nevertheless he does not allow persons to enter his field, what would people say of him if not, 'What [real] benefit has that owner from his field, for in what way would people do him any harm?' It was regarding such a person that the verse says: While you can be good do not call yourself bad.²⁹ But is it [anywhere] written:³⁰ 'While you can be good do not call yourself bad'? — Yes, it is written to a similar effect: *Withhold not good from him to whom it is due, when it is in the power of thy hand to do it.*³¹

But were there no more stipulations?³² Was there not the one mentioned by R. Judah? For it was taught: 'When it is the season of removing dung, everybody is entitled to remove his dung 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 condition did Joshua transfer the land to Israel as an inheritance.³³ Again, was there not also the one referred to by R. Ishmael the son of R. Johanan b. Beroka? For it was taught: R. Ishmael the son of R. Johanan b. Beroka said: It is a stipulation of the Court of Law that the owner of the bees³⁴ be entitled to go down into his fellow's field and cut off his fellow's bough [upon which his bees have settled] in order to rescue the swarm of his bees while paying only the value of his fellow's bough; it is [similarly] a stipulation of the Court of Law that the owner of wine should pour out his wine [from the flask] so as to save in it the honey of his fellow³⁵ and recover the value of his wine out of the honey of his fellow; it is [again] a stipulation of the Court of Law that [the owner of a bundle of wood] should remove the wood [from his ass] and load [on his ass] the flax of his fellow [from the back of the ass that fell dead]³⁶ and recover the value of his wood out of the flax of his fellow; for it was upon this stipulation that Joshua transferred the land to Israel for an inheritance.'³⁷ [Why then were these stipulations not included?] —

Views of individual authorities were not stated [among the stipulations that have unanimous recognition].

1. Such as from the sides of the tree.
2. Deut. XXXIII, 14.
3. Of the ground where the spring emerged.
4. Tosef. B.K. VIII.
5. Deut. XXXIII, 23.
6. who had an equal right to the spoil.
7. Cf. B.B. 122a.
8. In Deut. 1, 7.
9. Though it would thereby become impaired.
10. Cf. Shab. 81.
11. On a weekday.
12. Upon the road pegs.
13. By not taking advantage of the stipulation of Joshua and thus showing himself more scrupulous than required by strict law.
14. Lit., 'in the name of Heaven', and not to show off.
15. A metaphor for excommunication.
16. Tosef. B.M. II.
17. As it is surely covered by the ruling in the former case.
18. I.e., the guide.
19. When in danger, just as it is obligatory to restore him his lost chattels.
20. Deut. XXII, 2.
21. Cf. Sanh. 73a.
22. Seeing that it can be derived from the Pentateuch.
23. The one who lost his way.
24. So as to interfere as little as possible with agriculture.
25. V. p. 463, n. 9.
26. 'Er. 17b.
27. So as not to cause defilement to all those who pass that way.
28. Enumerated in the cited Baraita *supra* p. 459.
29. Cf. Ber. 30a.
30. In Scripture.
31. Prov. III, 27.
32. Made by Joshua.
33. Tosef. B.M. XI; *supra* 30a.
34. Which settled upon a neighbor's tree.
35. Carried by him in a jug which suddenly gave way, and the contents which were much more valuable than wine thus became in danger if being wasted.
36. And which is thus in danger of being wasted if not rescued in time.
37. *Infra* 114b.

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But did not R. Abin upon arriving [from Palestine] state on behalf of R. Johanan that the owner of a tree which overhangs a neighbor's field as well as the owner of a tree close to the boundary has to bring the first-fruits [to Jerusalem]¹ and read the prescribed text² as it was upon this stipulation [that trees might be planted near the boundary of fields and even overhang a neighbor's field] that Joshua transferred the land to Israel³ for an inheritance.⁴ [How then could R. Johanan describe this as a stipulation of Joshua when it was not included in the authoritative text of the Baraita cited enumerating all the stipulations of Joshua?] — It must therefore be that the Tanna⁵ of [the text enumerating] the ten stipulations laid down by Joshua was R. Joshua b. Levi.⁶ R. Gebiha of Be Kathil⁷ explicitly taught this in the text: 'R. Tanhum and R. Barias stated in the name of a certain sage, who was R. Joshua b. Levi, that ten stipulations were laid down by Joshua.'

The [following] ten enactments were ordained by Ezra: That the law be read [publicly] in the Minhah⁸ service on Sabbath; that the law be read [publicly] on Mondays and Thursdays; that Courts be held on Mondays and Thursdays; that clothes be washed on Thursdays; that garlic be eaten on Fridays; that the housewife rise early to bake bread; that a woman must wear a sinner;⁹ that a woman must comb her hair before performing immersion;¹⁰ that peddlers [selling spicery] be allowed to travel about in the towns,¹¹ He¹² also decreed¹³ immersion to be required¹⁰ by those to whom pollution has happened.¹⁴

'That the law be read [publicly] in the Minhah service on Sabbath:' on account of shopkeepers [who during the weekdays have no time to hear the reading of the Law].

'That the law be read [publicly] on Mondays and Thursdays.' But was this ordained by Ezra? Was this not ordained even before

him? For it was taught: '*And they went three days in the wilderness and found no water,*¹⁵ upon which those who expound verses metaphorically¹⁶ said: water means nothing but Torah,¹⁷ as it says: *Ho, everyone that thirsteth come ye for water.*¹⁸ It thus means that as they went three days without Torah they immediately became exhausted. The prophets among them thereupon rose and enacted that they should publicly read the law on Sabbath, make a break on Sunday, read again on Monday, make a break again on Tuesday and Wednesday, read again on Thursday and then make a break on Friday so that they should not be kept for three days without Torah.'¹⁹ — Originally it was ordained that one man should read three verses or that three men should together read three verses, corresponding to priests, Levites and Israelites.²⁰ Then Ezra came and ordained that three men should be called up to read, and that ten verses should be read, corresponding to ten batlanim.²¹

'That Courts be held on Mondays and Thursdays' — when people are about, as they come to read the Scroll of the Law.

'That clothes be washed on Thursdays' — that the Sabbath²² may be duly honored.

'That garlic be eaten on Fridays' — because of the '*Onah.*'²³ as it is written: '*That bringeth forth its fruit in its season*'²⁴ and Rab Judah, or as others say R. Nahman, or as still others say R. Kahana, or again as others say R. Johanan, stated that this refers to him who performs his marital duty every Friday night.²⁵

Our Rabbis taught: Five things were said of garlic: It satiates, it keeps the body warm, it brightens up the face, it increases semen, and it kills parasites in the bowels. Some say that it fosters love and removes jealousy.

'That a housewife rise early to bake bread'²⁶ — so that there should be bread for the poor.²⁷

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'That a woman must wear a *sinnar* — out of modesty.

'That a woman comb her hair before performing the immersion.' But this is derived from the Pentateuch! For it was taught:²⁸ '*And he shall bathe [eth besaro] his flesh in water*²⁹ [implying] that there should be nothing intervening between the body and the water; "[*eth besaro*] his flesh", "*eth*" [including] whatever is attached to his flesh,³⁰ i.e. the hair.' [Why then had this to be ordained by Ezra?] — It may, however, be said that as far as the Pentateuch goes it would only have to be necessary to see that the hair should not be knotted or that nothing dirty should be there which might intervene,

1. Cf. Ex. XXIII. 19.
2. I.e. Deut. XXVI, 5-10, which could be recited only by one who was the sole legitimate owner of both the fruits and the tree and the ground.
3. And no misappropriation could thus be traced in the produce of such trees.
4. How then could R. Johanan, who was an Amora, differ from Tannaitic views?
5. [MSS omit rightly, 'the Tanna.']
6. [Who was himself an Amoraic sage from whom R. Johanan might have differed in this case as he did on many other occasions, cf. e.g., Ber. 3b and Meg. 27a.]
7. [Kathil on the Tigris, N. of Bagdad, Obermeyer, *op. cit.* p 143.]
8. I.e., afternoon; cf. Ber. IV, 1.
9. A sort of garment, breeches (Rashi), or belt. The word is of doubtful origin.
10. In a ritual plunge bath called Mikweh.
11. Even against the wishes of the townspeople; cf. B.B. 22a.
12. I.e., Ezra.
13. Cf. Ber. 22b.
14. Cf. Lev. XV, 16; Deut. XXIII, 11-12. [For a discussion of the ten enactments of Ezra, v. Hoffmann, *Magazin*, 1883, 48ff.]
15. Ex. XV. 22.
16. Doreshe Reshumoth; v. Sanh. (Sonc. ed.) p. 712. n. 12.
17. Cf. *supra* p. 76.
18. Isa. LV, 1.
19. [Why then was it necessary for Ezra to enact this?]
20. In which groups the people were classed.
21. The ten persons released from all obligations and thus having leisure to attend to public duties, and to form the necessary quorum for

synagogue services; cf. Meg. 1, 3; v. also Meg. 21b.

22. Cf. Isa. LVIII. 13 and Shab. 119a.
23. I.e., the duty of marriage; cf. Ex. XXI, 10 and Keth. V, 6.
24. Ps. I, 3.
25. Cf. Keth. 62b.
26. [J. Meg. IV adds 'on Fridays'.]
27. Cf. Keth. 67b.
28. 'Er. 4b.
29. Lev. XIV, 9.
30. For a similarity v. *supra* p. 235.

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whereas Ezra came and ordained actual combing.¹

'That peddlers selling spicery be allowed to travel about in the towns' — for the purpose of providing toilet articles for the women so that they should not be repulsive in the eyes of their husbands.

'He also decreed that immersion was required for those to whom pollution had happened.' Is not this in the Pentateuch, as it is written: *And if the flow of seed go out front him, then he shall bathe all his flesh in water?*² — The Pentateuchal requirement referred to *terumah* and sacrifices and he came and decreed that even for [the study of] the words of the Torah [immersion is needed].

Ten special regulations were applied to Jerusalem:³ That a house sold there should not be liable to become irredeemable;⁴ that it should never bring a heifer whose neck is broken;⁵ that it could never be made a condemned city;⁶ that its houses would not become defiled through leprosy;⁷ that neither beams nor balconies should be allowed to project there; that no dunghills should be made there; that no kilns should be kept there; that neither gardens nor orchards should be cultivated there, with the exception, however, of the garden of roses⁸ which existed from the days of the former prophets;⁹ that no fowls should be reared there, and that no dead person should be kept there over night.¹⁰

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'That a house sold there should not be liable to become irredeemable' — for it is written: *Then the house that is in the walled city shall be made sure in perpetuity to him that bought it throughout his generations*¹¹ and as it is maintained¹² that Jerusalem was not divided among the tribes.¹³

'That it should never bring a heifer whose neck is broken' — as it is written: *If one be found slain in the land which the Lord thy God giveth thee to possess it,*¹⁴ and Jerusalem [could not be included as it] was not divided among the tribes.¹⁵

'That it could never be made a condemned city' — for it is written, [*One of*] *thy cities,*¹⁵ and Jerusalem was not divided among the tribes.

'That its houses could not become defiled through leprosy' — for it is written, *And I put the plague of leprosy in the house of the land of your possession,*¹⁶ and Jerusalem was not divided among the tribes.¹⁵

'That neither beams nor balconies should be allowed to project' — in order not to form a tent spreading defilement,¹⁷ and not to cause harm to the pilgrims for the festivals.¹⁸

'That no dunghills be made there' — on account of reptiles.¹⁹

'That no kilns be kept there' — on account of the smoke.²⁰

'That neither gardens nor orchards be cultivated there' — on account of the bad odor [of withered grasses].

'That no fowls be bred there' on account of the sacrifices.

'That no dead person be kept there overnight' — this is known by tradition.

IT IS NOT RIGHT TO BREED PIGS IN ANY PLACE WHATSOEVER. Our Rabbis taught: When the members of the Hasmonean house were contending with one another, Hyrcanus was within and

Aristobulus without [the city wall].²¹ [Those who were within] used to let down to the other party every day a basket of *denarii*, and [in return] cattle were sent up for the regular sacrifices.²² There was, however, an old man²³ [among the besiegers] who had some knowledge in Grecian Wisdom²⁴ and who said to them: 'So long as the other party [are allowed to] continue to perform the service of the sacrifices they will not be delivered into your hands.' On the next day when the basket of *denarii* was let down, a swine was sent up. When the swine reached the centre of the wall it stuck its claws into the wall, and Eretz Yisrael quaked over a distance of four hundred parasangs²⁵ by four hundred parasangs. It was proclaimed on that occasion: Cursed be the man who would breed swine and cursed be the man who would teach his son Grecian Wisdom. It was concerning this time that we have learnt²⁶ that the '*Omer*²⁷ was once brought from the gardens of Zarifin and the two loaves²⁸ from the Valley of En Soker.²⁹

But was Grecian Wisdom proscribed? Was it not taught that Rabbi stated: 'Why use the Syriac language in Eretz Yisrael

1. For the sake of absolute certainty.
2. V. Lev. XV. 16.
3. V. Yoma 23a; 'Ar. 32b and Tosef. Neg. VI, 2. [According to Krauss, REJ. LIII, 29 ff., some of these regulations relate only to the Temple Mount.]
4. As should be the case with dwelling houses of a walled city (cf. Lev. XXV, 29-30); but is on the other hand considered as a house of a village which has no wall round about it; (ibid. 31).
5. As required in Deut. XXI, 3-4 in the case of a person found slain and it be not known who hath slain him.
6. Which would be subject to Deut. XIII, 13-18.
7. Cf. Lev. XIV, 34-53.
8. Where the Jordan resin grew; cf. Ker. 6a.
9. [Cf. II Kings XXV, 4; Jer. XXXI, 4; Neh. III, 15. V. Krauss, *loc. cit.* p. 33.]
10. Cf. Hag. 26a; v. *infra*, p. 469.
11. Lev. XXV. 29-30.
12. Cf. Yoma 12a.

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13. But was kept in trust for all Israel and could therefore not be subject to a law where absolute private ownership is referred to.
14. Deut. XXI, 1.
15. Ibid. XIII, 13.
16. Lev. XIV, 34.
17. Cf. Num. XIX, 14.
18. By the spread of defilement.
19. Which thrive in dunghills, and as soon as they die they become a source of defilement.
20. Which would blacken the buildings of the town; cf. B.B. 23a.
21. [In the parallel passage the roles are reversed, Aristobulus being besieged and Hyrcanus laying the siege; v. Graetz, *Geschichte III*, p. 710 ff. Cf. Josephus, *Ant. XIV*, 2, 2.]
22. Cf. Num. XXVIII, 2-4.
23. [Identified with Antipater, an ally of Hyrcanus, v. Graetz, *op. cit.* 711.]
24. ['Sophistry'. v. Graetz, *loc. cit.*]
25. V. [Glos.](#)
26. Men. 64b. [The places are identified respectively with Sarafand near Lydda and Assakar near Nablus.]
27. Lit., 'a sheaf', denoting the public sacrifice of the first-fruits of the harvest described in Lev. XXIII, 10-14.
28. Cf. *ibid.* 17.
29. Sot. 49b and Men. 64b.

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[where] either the Holy Tongue or the Greek language [could be employed]?' And R. Jose said: 'Why use the Aramaic language in Babylon [where] the Holy Tongue or the Persian language [could be used]?' — It may, however, be said that the Greek language is one thing and Grecian Wisdom is another. But was Grecian Wisdom proscribed? Did not Rab Judah say that Samuel stated in the name of R. Simeon b. Gamaliel: '[The words] *Mine eye affected my soul because of all the daughters of my city*¹ [could very well be applied to the] thousand youths who were in my father's house; five hundred of them learned Torah and the other five hundred learned Grecian Wisdom, and out of all of them there remain only I here and the son of my father's brother in Asia'² — It may, however, be said that the family of R. Gamaliel was an exception, as they had associations with the Government, as indeed taught: 'He who trims the front of his hair³ in

Roman fashion is acting in the ways of the Amorites.'⁴ Abtolmus b. Reuben however was permitted to cut his hair in the Gentile fashion as he was in close contact with the Government. So also the members of the family of Rabban Gamaliel were permitted to discuss Grecian Wisdom on account of their having had associations with the Government.

NO MAN SHOULD BREED A DOG UNLESS IT IS ON A CHAIN, etc. Our Rabbis taught: No man should breed a dog unless it is kept on a chain. He may, however, breed it in a town adjoining the frontier where he should keep it chained during the daytime and loose it only at night. It was taught: R. Eliezer the Great says that he who breeds dogs is like him who breeds swine. What is the practical bearing of this comparison? — That he⁵ be declared cursed.⁶ R. Joseph b. Manyumi said in the name of R. Nahman that Babylon was on a par with a town adjoining the frontier.⁷ This, however, was interpreted to refer to Nehardea. R. Dostai of Bira⁸ expounded: *And when it rested, he said, Return O Lord unto the tens of thousands [and] the thousands of Israel.*⁹ This, [he said,] teaches that the *Shechinah*¹⁰ does not rest upon Israel if they are less than two thousand plus two tens of thousands.¹¹ Were therefore the Israelites [to be twenty-two thousand] less one, and there was there among them a pregnant woman thus capable of completing the number, but a dog barked at her and she miscarried, the [dog] would in this case cause the *Shechinah* to depart from Israel. A certain woman¹² entered a neighbor's house to bake [there bread], and a dog suddenly barked at her, but the owner of the house said to her: Do not be afraid of the dog as its teeth are gone. She, however, said to him: Take thy kindness and throw it on the thorns, for the embryo has already been moved [from its place].

IT IS NOT RIGHT TO PLACE NETS FOR DOVES UNLESS AT A DISTANCE OF THIRTY RIS FROM INHABITED

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SETTLEMENTS. But do they proceed so far? Did we not learn that a dove-cote must be kept at a distance from the town of fifty cubits?¹³ — Abaye said: They certainly fly much further than that, but they eat their fill within fifty cubits.¹⁴ But do they fly only thirty *ris* and no more? Was it not taught: 'Where there is an inhabited settlement no net must be spread even for a distance of a hundred *mil*'? — R. Joseph said: The latter statement refers to a settlement of vineyards;¹⁵ Rabbah said that it refers to a settlement of dove-cotes.¹⁵ But why not lay down the prohibition to spread nets on account of the dovecotes themselves?¹⁶ — If you like I can say that they belong to Cutheans,¹⁷ or if you like I can say that they are ownerless, or if you again like I can say that they are his own.

1. Lam. III, 51.
2. Sot. 49b and Git. 58a. [This proves that even Grecian Wisdom was not proscribed.]
3. [Like a fringe on the forehead and lets the curls hang down on the temples (Jast.).]
4. Which should not be imitated.
5. Who breeds a dog.
6. As if he would breed swine.
7. Cf. 'Er. 45a.
8. [In Galilee, v. Klein, *op. cit.*, p. 39.]
9. Num. x, 36; E.V.: unto the many thousands of Israel.
10. The Divine Presence.
11. I.e., twenty-two thousand, comprising the minimum of the plural tens of thousands which is twenty thousand and the minimum of the thousands which is two thousand, cf. also Yeb. 64a.
12. Cf. Shab. 63a; and *supra* p. 271.
13. So that the doves should not consume the produce of the town. (B.B. 11, 5.)
14. On account of which a dove-cote need not be kept away from the town for more than fifty cubits.
15. Where the doves could thus take rest and fly on to great distances.
16. Why then base the prohibition upon the proximity of a settlement?
17. Who did not recognize the necessity of being scrupulous to such an extent and should therefore not be treated better than they treated others: cf. *supra* p. 211, n. 6. [For a full discussion of the regulations laid down in our Mishnah and developed in the Gemara, as well as their application in the practical life of the

Jewish communities in Talmudic times, v. Krauss, REJ, LIII, 14-55.]

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CHAPTER VIII

MISHNAH. ONE WHO INJURES A FELLOW MAN BECOMES LIABLE TO HIM FOR FIVE ITEMS: FOR DEPRECIATION, FOR PAIN, FOR HEALING, FOR LOSS OF TIME AND FOR DEGRADATION. HOW IS IT WITH 'DEPRECIATION'? IF HE PUT OUT HIS EYE, CUT OFF HIS ARM OR BROKE HIS LEG, THE INJURED PERSON IS CONSIDERED AS IF HE WERE A SLAVE BEING SOLD IN THE MARKET PLACE, AND A VALUATION IS MADE AS TO HOW MUCH HE WAS WORTH [PREVIOUSLY]. AND HOW MUCH HE IS WORTH [NOW]. 'PAIN' — IF HE BURNT HIM EITHER WITH A SPIT OR WITH A NAIL, EVEN THOUGH ON HIS [FINGER] NAIL WHICH IS A PLACE WHERE NO BRUISE COULD BE MADE, IT HAS TO BE CALCULATED HOW MUCH A MAN OF EQUAL STANDING WOULD REQUIRE TO BE PAID TO UNDERGO SUCH PAIN. 'HEALING' — IF HE HAS STRUCK HIM, HE IS UNDER OBLIGATION TO PAY MEDICAL EXPENSES. SHOULD ULCERS [MEANWHILE] ARISE ON HIS BODY, IF AS A RESULT OF THE WOUND, THE OFFENDER WOULD BE LIABLE, BUT IF NOT AS A RESULT OF THE WOUND, HE WOULD BE EXEMPT. WHERE THE WOUND WAS HEALED BUT REOPENED, HEALED AGAIN BUT REOPENED, HE WOULD STILL BE UNDER OBLIGATION TO HEAL HIM. IF, HOWEVER, IT HAD COMPLETELY HEALED [BUT HAD SUBSEQUENTLY REOPENED] HE WOULD NO MORE BE UNDER OBLIGATION TO HEAL HIM. 'LOSS OF TIME' — THE INJURED PERSON IS CONSIDERED AS IF HE WERE A WATCHMAN OF CUCUMBER BEDS¹ [SO THAT THE LOSS OF SUCH WAGES² SUSTAINED BY HIM DURING THE PERIOD OF ILLNESS MAY BE REIMBURSED TO HIM]. FOR THERE HAS ALREADY BEEN PAID TO HIM THE VALUE OF HIS HAND OR THE VALUE OF HIS LEG [THROUGH WHICH

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DEPRIVATION HE WOULD NO MORE BE ABLE TO CARRY ON HIS PREVIOUS EMPLOYMENT]. 'DEGRADATION' — ALL TO BE ESTIMATED IN ACCORDANCE WITH THE STATUS OF THE OFFENDER AND THE OFFENDED.

GEMARA. Why [pay compensation]? Does the Divine Law not say '*Eye for eye*'?³ Why not take this literally to mean [putting out] the eye [of the offender]? — Let not this enter your mind, since it has been taught: You might think that where he put out his eye, the offender's eye should be put out, or where he cut off his arm, the offender's arm should be cut off, or again where he broke his leg, the offender's leg should be broken. [Not so; for] it is laid down, '*He that smiteth any man...*' '*And he that smiteth a beast ...*'⁴ just as in the case of smiting a beast compensation is to be paid, so also in the case of smiting a man compensation is to be paid.⁵ And should this [reason] not satisfy you,⁶ note that it is stated, '*Moreover ye shall take no ransom for the life of a murderer, that is guilty of death*,'⁷ implying that it is only for the life of a murderer that you may not take '*satisfaction*,'⁸ whereas you may take '*satisfaction*' [even] for the principal limbs, though these cannot be restored.' To what case of '*smiting*' does it refer? If to [the Verse] '*And he that killeth a beast, shall make it good: and he that killeth a man, shall be put to death*'⁹ does not this verse refer to murder?¹⁰ — The quotation was therefore made from this text: '*And he that smiteth a beast mortally shall make it good: life for life*,'¹¹ which comes next to and if a man maim his neighbor: *as he hath done so shall it be done to him*.¹² But is [the term] '*smiting*' mentioned in the latter text?¹² — We speak of the *effect* of smiting implied in this text and of the *effect* of smiting implied in the other text: just as smiting mentioned in the case of beast refers to the payment of compensation, so also does smiting in the case of man refer to the payment of compensation. But is it not written: '*And he that smiteth*¹³ *any man mortally shall surely be put to death*'¹⁴ [which,

on account of the fact that the law of murder is not being dealt with here,¹⁵ surely refers to cases of mere injury and means Retaliation]?¹⁶ — [Even this refers to the payment of] pecuniary compensation. How [do you know that it refers] to pecuniary compensation? Why not say that it really means capital punishment?¹⁷ — Let not this enter your mind; first, because it is compared to the case dealt with in the text, '*He that smiteth*¹³ *a beast mortally shall make it good*', and furthermore, because it is written soon after, '*as he hath done so shall it be done to him*'¹⁸ thus proving that it means pecuniary compensation. But what is meant by the statement, 'if this reason does not satisfy you?' [Why should it not satisfy you?] — The difficulty which further occurred to the Tanna was as follows: What is your reason for deriving the law of man injuring man from the law of smiting a beast and not from the law governing the case of killing a man [where Retaliation is the rule]? I would answer: It is proper to derive [the law of] injury¹⁸ from [the law governing another case of] injury,¹⁹ and not to derive [the law of] injury¹⁸ from [the law governing the case of] murder. It could, however, be argued to the contrary; [that it is proper] to derive [the law of injury inflicted upon] man from [another case of] man but not to derive [the law of injury inflicted upon] man from [the case of] beast. This was the point of the statement 'If, however, this reason does not satisfy you.' [The answer is as follows:] 'It is stated: *Moreover ye shall take no ransom for the life of a murderer that is guilty of death; but he shall surely be put to death*, implying that it was only '*for the life of a murderer*' that you may not take ransom whereas you may take ransom [even] for principal limbs though these cannot be restored.' But was the purpose of this [verse], *Moreover ye shall take no ransom for the life of a murderer*, to exclude the case of principal limbs? Was it not requisite that the Divine Law should state that you should not make him²⁰ subject to two punishments, i.e. that you should not take from him pecuniary compensation as well as

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

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

even in that case? Why not perhaps say that for eyesight taken away the Divine Law ordered eyesight to be taken away from the offender?²⁴ For if you will not say this,

1. As even a lame or one-armed person could be employed in this capacity.
2. But not of the previous employment on account of the reason which follows.
3. Ex. XXI, 24.
4. Lev. XXIV; for the exact verse see the discussion that follows.
5. But no resort to Retaliation.
6. Lit., 'If it is your desire to say (otherwise).'
7. Num. XXXV, 31.
8. I.e., ransom, and thus release him from capital punishment.
9. Lev. XXIV, 21.
10. Where retaliation actually applies.
11. Ibid. 18.
12. Ibid. 19.
13. E.V.: 'killeth'.
14. Ibid. 17.
15. As follows in the text, 'Breach for breach, eye for eye', etc.
16. The phrase, 'be put to death', would thus refer exclusively to the limb which has to be sacrificed in retaliation.
17. As indeed appears from the literal meaning of the text.
18. Lev. XXIV, 19.
19. I.e., where Man injured beast.
20. The murderer.
21. Deut. XXV, 2.
22. Cf. Mak. 4b and 13b.
23. Lev. XXIV, 22.
24. Without taking into consideration the sizes of the respective eyes.

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

Another [Baraita] taught: R. Simon b. Yohai says: 'Eye for eye' means pecuniary

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compensation. You say pecuniary compensation, but perhaps it is not so, but actual retaliation [by putting out an eye] is meant? What then will you say where a blind man put out the eye of another man, or where a cripple cut off the hand of another, or where a lame person broke the leg of another? How can I carry out in this case [the principle of retaliation of] 'eye for eye', seeing that the Torah says, Ye shall have one manner of law, implying that the manner of law should be the same in all cases? I might rejoin: What is the difficulty even in this case? Why not perhaps say that it is only where it is possible [to carry out the principle of retaliation that] it is to be carried out, whereas where it is impossible, it is impossible, and the offender will have to be released altogether? For if you will not say this, what could be done in the case of a person afflicted with a fatal organic disease killing a healthy person?² You must therefore admit that it is only where it is possible [to resort to the law of retaliation] that it is resorted to, whereas where it is impossible, it is impossible, and the offender will have to be released.

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

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

Abbaye said: [The principle of pecuniary compensation] could be derived from the teaching of the School of Hezekiah. For the School of Hesekiah taught: *Eye for eye, life for life,*¹⁰ but not 'life and eye for eye'. Now if you assume that actual retaliation is meant, it could sometimes happen that eye and life would be taken for eye, as while the offender is being blinded, his soul might depart from him. But what difficulty is this? perhaps what it means is that we have to form an estimate,¹¹ and only if the offender will be able to stand it will retaliation be adopted, but if he will not be able to stand it, retaliation will not be adopted? And if after we estimate that he would be able to stand it and execute retaliation it so happens that his spirit departs from him, [there is nobody to blame,] as if he dies, let him die. For have we not learnt regarding lashes: 'Where according to estimation he¹² should be able to stand them, but it happened that he died under the hand of the officer of the court, there is exemption [from any blame of manslaughter]'.¹³

R. Zebid said in the name of Raba: Scripture says, Wound for wound.¹⁴ This means that compensation is to be made for pain even where Depreciation [is separately compensated].¹⁵ Now, if you assume that actual Retaliation is meant, would it not be

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that just as the plaintiff suffered pain [through the wound], the offender too would suffer pain through the mere act of retaliation?¹⁶ But what difficulty is this? Why, perhaps, not say that a person who is delicate suffers more pain whereas a person who is not delicate does not suffer [so much] pain, so that the practical result [of the Scriptural inference] would be to pay for the difference [in the pain sustained]!

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

R. Ashi said: [The principle of pecuniary compensation] could be derived from [the analogy of the term] 'for' [occurring in connection with Man] with the term 'for' occurring in connection with Cattle. It is written here, 'Eye for eye,' and it is also written there, he shall surely pay ox for ox.¹⁸ [This indicates that] just as in the latter case it is pecuniary compensation that is meant, so also in the former case it means pecuniary compensation. But what ground have you for comparing the term 'for' with 'for' [mentioned in connection] with cattle, rather than with the 'for' [mentioned in connection] with [the killing of] man, as it is written, thou shalt give life for life,¹⁹ so that, just as in the case of murder it is actual Retaliation, so also here it means actual Retaliation? — It may be answered that it is more logical to infer [the law governing] injury from [the law governing another case of] injury¹⁸ than to

derive [the law of] injury from [the law applicable in the case of] murder.¹⁹ But why not say on the contrary, that it is more logical to derive [the law applying to] Man from [a law which similarly applies to] Man¹⁹ than to derive [the law applying to] Man from [that applying to] Cattle? — R. Ashi therefore said: It is from the words for he hath humbled her,²⁰ that [the legal implication of 'eye for eye'] could be derived by analogy, as [the law in the case of] Man is thus derived from [a law which is similarly applicable to] Man, and the case of injury from [a similar case of] injury.

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

An ass once bit off the hand of a child. When the case was brought before R. Papa b. Samuel he said [to the sheriffs of the court], 'Go forth and ascertain the value of the Four items.'²⁴ Said Raba to him: Have we not learnt Five [items]? — He replied: I did not include Depreciation. Said Abaye to him: Was not the damage in this case done by an ass, and in the case of an ass [injuring even man] there is no payment except for Depreciation?²⁵ — He therefore ordered [the sheriffs], 'Go forth and make valuation of the Depreciation.' But has not the injured person to be valued as if he were a slave? — He therefore said to them, 'Go forth and value the child as if it were a slave.' But the father of the child thereupon said, 'I do not want [this method of valuation], as this procedure is degrading.' They, however, said to him, 'What right have you to deprive the child of

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the payment which would belong to it?'²⁶ He replied, 'When it comes of age I will reimburse it out of my own.

An ox once chewed the hand of a child. When the case was brought before Raba, he said [to the sheriffs of the court], 'Go forth and value the child as if it were a slave.' They, however, said to him, 'Did not the Master [himself] say that payment for which the injured party would have to be valued as if he were a slave,²⁷ cannot be collected in Babylon?'²⁸ — He replied, 'My order would surely have no application except in case of the plaintiff becoming possessed of property belonging to the defendant.'²⁹ Raba thus follows his own principle, for Raba said: Payment for damage done to chattel by Cattle³⁰ or for damage done to chattel by Man can be collected even in Babylon,³¹ whereas payment for injuries done to man by Man or for injuries done to man by Cattle cannot be collected in Babylon. Now, what special reason is there why payment for injuries done to man by Cattle cannot [be collected in Babylon] if not because it is requisite [in these cases that the judges be termed] *Elohim*,³² [a designation] which is lacking [in Babylon]? Why then should the same not be also regarding payment for [damage done] to chattel by Cattle or to chattel by Man, where there is similarly

1. Where the bodies of the murderer and the murdered are not alike.
2. Without considering the weights and sizes of the respective bodies.
3. In which case the murderer could not be convicted by the testimony of witnesses; v. Sanh. 78a.
4. Lev. XXIV. 20.
5. Which could of course not be maintained.
6. Ibid. 19.
7. To indicate that pecuniary compensation is to be paid.
8. Deut. XIX, 21. (E.V.: Hand for hand, foot for foot.)
9. Ibid. 19.
10. Ex. XXI, 24.
11. Whether the offender would stand the operation or not.

12. Who is subject to the thirty-nine lashes for having transgressed a negative commandment.
13. Mak. III. 14.
14. Ex. XXI, 25.
15. V. *supra* 26b.
16. How then could there be extra compensation for pain?
17. Ex. XXI, 19. (E.V.: shall cause him to be thoroughly healed.)
18. Ibid. 36.
19. Ibid. 23.
20. Deut. XXII, 29.
21. Proving against Retaliation.
22. In the manner described *supra* p. 473.
23. As the pecuniary compensation in this case is a substitution for Retaliation.
24. Enumerated *supra* p. 473.
25. V. *supra* 26a.
26. Cf. *infra* 87b.
27. I.e., where the damages could otherwise not be ascertained.
28. Because the judges there have not been ordained as Mumhe (v. [Glos.](#)) who alone were referred to by the Scriptural term *Elohim* standing for 'judges' as in Ex. XXI, 6 and XXII, 7-8, and who alone were qualified to administer penal justice; cf. Sanh. 2b, 5a, and 14a and *supra* p. 144.
29. Cf. *supra* p. 67.
30. Lit., 'ox'.
31. As these matters are of a purely civil nature and of frequent occurrence, as brought out by the discussion which follows.
32. As in Ex. XXI, 6 and XXII, 7-8.

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required the designation of *Elohim* which is lacking [in Babylon]? But if on the other hand the difference in the case of chattel [damaged] by Cattle or chattel [damaged] by Man is because we [in Babylon] are acting merely as the agents [of the mumhin¹ judges in Eretz Yisrael] as is the practice with matters of admittances and loans,² why then in the case of man [injured] by Man or man [injured] by Cattle should we similarly not act as their agents as is indeed the practice with matters of admittances and loans?² — It may, however, be said that we act as their agents only in regard to a matter of payment which we can fix definitely, whereas in a matter of payment which we are not able to fix definitely [but which requires valuation]

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we do not act as their agents. But I might object that [payment for damage done] to chattel by Cattle or to chattel by Man we are similarly not able to fix definitely, but we have to say, 'Go out and see at what price an ox is sold on the market place.' Why then in the case of man [injured] by Man, or man [injured] by Cattle should you not similarly say, 'Go out and see at what price slaves are sold on the market place'? Moreover, why in the case of double payment³ and four-fold or five-fold payment⁴ which can be fixed precisely should we not act as their agents?⁵ — It may, however, be said that we may act as their agents only in matters of civil liability, whereas in matters of a penal nature⁶ we cannot act as their agents. But why then regarding payment [for an injury done] to man by Man which is of a civil nature should we not act as their agents? — We can act as their agents only in a matter of frequent occurrence, whereas in the case of man injured by Man which is not of frequent occurrence we cannot act as their agents. But why regarding Degradation,⁷ which is of frequent occurrence, should we not act as their agents? — It may indeed be said that this is really the case, for R. Papa ordered four hundred *zuz* to be paid for Degradation. But this order of R. Papa is no precedents for when R. Hisda sent to consult R. Nahman [in a certain case] did not the latter send back word, 'Hisda, Hisda, are you really prepared to order payment of fines in Babylon?'⁸ — It must therefore be said that we can act as their agents only in a matter which is of frequent occurrence and where actual monetary loss is involved,⁹ whereas in a matter of frequent occurrence but where no actual monetary loss is involved, or again in a matter not of frequent occurrence though where monetary loss is involved we cannot act as their agents. It thus follows that in the case of man [injured] by Man, though there is there actual monetary loss, yet since it is not of frequent occurrence we cannot act as their agents, and similarly in respect of Degradation, though it is of frequent

occurrence, since it involves no actual monetary loss, we cannot act as their agents.

Is payment for damage done to chattel by Cattle really recoverable in Babylon? Has not Raba said: 'If Cattle does damage, no payment will be collected in Babylon'?¹⁰ Now, to whom was damage done [in this case stated by Raba]? If we say to man, why then only in the case of Cattle injuring man?¹¹ Is it not the fact that even in the case of Man injuring man¹² payment will not be collected in Babylon? It must therefore surely refer to a case where damage was done to chattel and it was nevertheless laid down that no payment would be collected in Babylon!¹³ — It may, however, be said that that statement referred to *Tam*,¹⁴ whereas this statement deals with *Mu'ad*.¹⁵ But did Raba not say that there could be no case of *Mu'ad*¹⁶ in Babylon? — It may, however, be said that where an ox was declared *Mu'ad* there [in Eretz Yisrael]¹⁷ and brought over here [in Babylon, there could be a case of *Mu'ad* even in Babylon] — But surely this¹⁸ is a matter of no frequent occurrence, and have you not stated that in a matter not of frequent occurrence we cannot act as their agents? — [A case of *Mu'ad* could arise even in Babylon] where the Rabbis of Eretz Yisrael came to Babylon and declared the ox *Mu'ad* here. But still, this also is surely a matter of no frequent occurrence,¹⁹ and have you not stated that in a matter not of frequent occurrence we cannot act as their agents? — Raba must therefore have made his statement [that payment will be collected even in Babylon where chattel was damaged by Cattle] with reference to Tooth and Foot which are *Mu'ad ab initio*.

PAIN: — IF HE BURNT HIM EITHER WITH A SPIT OR WITH A NAIL, EVEN THOUGH ON HIS [FINGER] NAIL WHICH IS A PLACE WHERE NO BRUISE COULD BE MADE, etc. Would Pain be compensated even in a case where no depreciation was thereby caused? Who was the Tanna [that maintains such a view]? Raba replied: He was Ben 'Azzai, as taught:

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Rabbi said that 'burning'²⁰ without bruising is mentioned at the outset, whereas Ben 'Azzai said that [it is with] bruising [that it] is mentioned at the outset. What is the point at issue between them? Rabbi holds that as 'burning' implies even without a bruise, the Divine Law had to insert 'bruise',²¹ to indicate that it is only where the burning caused a bruise that there would be liability,²² but if otherwise this would not be so,²³ whereas Ben 'Azzai maintained that as 'burning' [by itself] implied a bruise, the Divine Law had to insert 'bruise' to indicate that 'burning' meant even without a bruise.²⁴

R. Papa demurred: On the contrary, it is surely the reverse that stands to reason:²⁵ Rabbi who said that 'burning', [without bruising] is mentioned at the outset holds that as 'burning,' implies also a bruise, the Divine Law inserted 'bruise' to indicate that 'burning,' meant even without a bruise,²⁶ whereas Ben 'Azzai who said that [it was] with bruising [that it] was mentioned at the outset maintains that as 'burning' implies even without a bruise, the Divine Law purposely inserted 'bruise' to indicate that it was only where the 'burning' has caused a bruise that there will be liability, but if otherwise this would not be so; for in this way they²⁷ would have referred in their statements to the law as it stands now in its final form. Or, alternatively, it may be said that both held that 'burning' implies both with a bruise and without a bruise, and here

1. V. [Glos.](#) s.v. Mumhe.
2. For which cf. Sanh. (Sonc. ed.) p. 4, n. 3.
3. For theft.
4. For having slaughtered or sold the stolen sheep and ox respectively.
5. Why then should these not be adjudicated and collected in Babylon?
6. As is the case with double payment and four-fold or five-fold payment.
7. [Omitting with MS.M. 'blemish' paid in case of rape, and occurring in cur. edd.]
8. Cf. *supra* 27b.
9. Excluding thus a loss of mere prospective profits.
10. V. *supra* p. 481, n. 5.
11. Which is of no frequent occurrence at all.
12. Which is of slightly more frequent occurrence.

13. This contradicts the statement made by the same Raba (*supra* p. 481) that payment for damage done to chattel by Cattle will be collected even in Babylon.
14. In which case the payment is of a penal nature (as decided *supra* p. 67), which cannot be collected in Babylon.
15. Where the payment is of a strictly civil nature, and accordingly collected even in Babylon.
16. Regarding damage done by Horn, for since for the first three times of goring no penalty could be imposed in Babylon, the ox could never be declared *Mu'ad*.
17. Where the judges are Mumhin and thus qualified to administer also penal justice.
18. I.e., to bring over an ox already declared *Mu'ad* in Eretz Yisrael to Babylon.
19. Cf. Keth. 110b.
20. Ex. XXI, 25.
21. Ibid.
22. For the payment of Pain.
23. I.e., Pain would not be compensated since no depreciation was thereby caused.
24. Pain would therefore even in this case be compensated in accordance with Ben 'Azzai who could thus be considered to have been the Tanna of the Mishnaic ruling.
25. That the Tanna of the Mishnaic ruling was most probably Rabbi and not his opponent, and moreover the statements made by Rabbi and Ben 'Azzai should be taken to give the final implication of the law and not as it would have been on first thoughts.
26. So that Pain will be paid even in this case according to Rabbi who was the Tanna of the Mishnaic ruling.
27. I.e., Rabbi and Ben 'Azzai.

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they were differing on the question of a generalization and a specification placed at a distance from each other,¹ Rabbi maintaining that in such a case the principle of a generalization followed by a specification does not apply,² whereas Ben 'Azzai maintained that the principle of a generalization followed by a specification does apply.³ And should you ask why, according to Rabbi, was it necessary to insert 'bruise',⁴ [the answer would be that it was necessary to impose the payment of] additional money.⁵

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IT HAS TO BE CALCULATED HOW MUCH A MAN OF EQUAL STANDING WOULD REQUIRE TO BE PAID TO UNDERGO SUCH PAIN. But how is pain calculated in a case where Depreciation [also has to be paid]?⁶ — The father of Samuel⁷ replied: We have to estimate how much a man would require to be paid to have his arm cut off. To have his arm cut off? Would this involve only Pain and not also all the Five Items?⁸ Moreover, are we dealing with fools [who would consent for any amount to have their arm cut off]? — It must therefore refer to the cutting off of a mutilated arm.⁹ But even [if the calculation be made on the basis of] a mutilated arm, would it amount only to Pain and not also to Pain plus Degradation, as it is surely a humiliation that a part of the body should be taken away and thrown to dogs? — It must therefore mean that we estimate how much a man whose arm had by a written decree of the Government to be taken off by means of a drug would require that it should be cut off by means of a sword. But I might say that even in such a case no man would take anything [at all] to hurt himself [so much]? — It must therefore mean that we have to estimate how much a man whose arm had by a written decree of the Government to be cut off by means of a sword would be prepared to pay that it might be taken off by means of a drug. But if so, instead of TO BE PAID should it not be written 'to pay'? — Said R. Huna the son of R. Joshua: It means that payment to the plaintiff will have to be made by the offender to the extent of the amount which the person sentenced would have been prepared to pay.

'HEALING': — IF HE HAS STRUCK HIM HE IS UNDER OBLIGATION TO PAY MEDICAL EXPENSES, etc. Our Rabbis taught: Should ulcers grow on his body as a result of the wound and¹⁰ the wound break open again, he has still to heal him and is liable to pay him for Loss of Time, but if it was not caused through the wound he has not to heal him and need not pay him for Loss of Time. R. Judah, however, said that even if it

was caused through the wound, though he has to heal him, he has not to pay him for Loss of Time. The Sages said: The Loss of Time and Healing [are mentioned together in Scripture:]¹¹ Wherever there is liability for Loss of Time there is liability for Healing but wherever there is no liability for Loss of Time there is no liability for Healing. In regard to what principle do they¹² differ? — Rabbah said: 'I found the Rabbis at the School of Rab sitting and saying¹³ that the question whether [or not] a wound may be bandaged¹⁴ [by the injured person] was the point at issue. The Rabbis¹⁵ maintained that a wound may be bandaged, whereas R. Judah maintained that a wound may not be bandaged, so that [it was only] for Healing of which there is a double mention in Scripture¹⁶ that there is liability,¹⁷ but for Loss of Time of which there is no double mention in Scripture there is no liability. I, however, said to them that if a wound may not be bandaged there would be no liability even for Healing.¹⁸ We must therefore say that all are agreed that a wound may be bandaged, but not too much; R. Judah held that since it may not be bandaged too much [it is only] for Healing of which there is a double mention in Scripture that there will be liability, but for Loss of Time of which there is no double mention in Scripture there will be no liability, whereas the Rabbis maintained that since Scripture made a double mention of healing there will be liability also for Loss of Time which is compared to Healing. R. Judah, however, maintained that there will be no liability for Loss of Time as Scripture excepted this by [the term] 'only';¹⁹ to which the Rabbis¹⁹ might rejoin that 'only' [was intended to exclude the case] where the ulcers that grew were not caused by the wound. But according to the Rabbis mentioned last²⁰ who stated that whenever there is liability for Loss of Time there is liability for Healing, whereas where there is no liability for loss of Time there could be no liability for Healing — why do I require the double mention of Healing? — This was necessary for the lesson enunciated by the School of R. Ishmael, as

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taught: 'The School of R. Ishmael taught: [The words] "And to heal he shall heal"²¹ [are the source] whence it can be derived that authorization was granted [by God] to the medical man to heal.'²²

Our Rabbis taught: Whence can we learn that where ulcers have grown on account of the wound and²³ the wound breaks open again, the offender would still be liable to heal it and also pay him for [the additional] Loss of Time? Because it says: Only he shall pay for the loss of his time and to heal he shall heal.²⁴ [That being so, I might say] that this is so even where the ulcers were not caused by the wound. It therefore says further 'only'. R. Jose b. Judah, however, said that even where they were caused by the wound he would be exempt, since it says 'only'. Some say that [the view of R. Jose that] 'even where they were caused by the wound he would be exempt' means altogether from any [liability whatsoever],²⁵ which is also the view of the Rabbis mentioned last. But others say that even where they were caused by the wound he would be exempt means only from paying for additional Loss of Time, though he would be liable for Healing. With whom [would R. Jose b. Judah then be concurring in his statement]? With his own father.²⁶

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

— Abaye said: A rough seam.²⁹ How can it be cured? — By aloes, wax and resin.

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

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

1. Such as here the term 'hurts' which is a generalization as it implies all kinds of burning whether with a bruise or without a bruise, and the term 'bruise' which specifies an injury with a bruise, are separated from each other by the intervening clause 'wound for wound'.
2. To render the generalization altogether ineffective; cf *supra* p. 371.
3. Even in such a case.
4. Since the term 'burning' is a generalization and by itself implies both with a bruise and without a bruise.
5. I.e., for Depreciation as explained by Rashi, or for the Pain where the burning left a mark and thus aggravated the ill feeling (Tosaf).

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

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to extend liability [for Depreciation] to the case of inadvertence equally with that of willfulness, and to the case of compulsion equally with that of willingness? — If so [that it was required only for such a rule] Scripture would have said 'Wound in the case of

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

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

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idle. Degradation [could apply] where he spat on his face.

'LOSS OF TIME': — THE INJURED PERSON IS CONSIDERED AS IF HE WERE A WATCHMAN OF CUCUMBER BEDS. Our Rabbis taught: '[In the case of assessing] Loss of Time, the injured person is considered as if he would have been a watchman of cucumbers. You might say that the requirements of justice suffer thereby, since when he was well⁷ he would surely not necessarily have worked for the wages of a watchman of cucumber beds but might have carried buckets of water and been paid accordingly, or have acted as a messenger and been paid accordingly.⁸ But in truth the requirements of justice do not suffer, for he has already been paid for the value of his hand or for the value of his leg.⁹

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

Raba asked: If he had cut off [another man's] arm and before any appraisalment had been made he also broke his leg, and again before any appraisalment had been made he put out his eye, and again before any appraisalment had been made he made him at last deaf, what would be the law? Shall we say that since no valuation has yet been made one valuation would be enough, so that he would have to pay him altogether for the value of the whole of him, or shall perhaps each occurrence be appraised by itself and paid for accordingly? The practical difference would be whether he would have to pay for Pain and

Degradation of each occurrence separately. It is true that he would not have to pay for Depreciation, Healing and Loss of Time regarding each occurrence separately, the reason being that since he has to pay him for the whole of him the injured person is considered as if killed altogether, and there could surely be made no more payment than for the value of the whole of him; but in respect of Pain and Degradation the payment should be made for each occurrence separately, as he surely suffered pain and degradation on each occasion separately. If, however, you find it [more correct] to say that since no appraisalment had been yet made he can pay him for the value of the whole of him altogether, what would be the law where separate appraisalments were made? Shall we say that since separate valuations were made the payment should be for each occurrence by itself, or since the payment had not yet been made he has perhaps to pay him for the value of the whole of him? This must remain undecided.

Rabbah asked: What would be the law regarding Loss of Time that renders the injured person of less value [for the time being]. How could we give an example? For instance, where he struck him on his arm and the arm was broken but will ultimately recover fully.¹² What would be the legal position?¹³ [Shall we say that] since it will ultimately recover fully he need not pay him [for the value of the arm], or perhaps [not so], since for the time being he diminished his value? — Come and hear:¹⁴ If one strikes his father and his mother without making on them a bruise,¹⁵ or injures another man on the Day of Atonement,¹⁶

1. Ibid.
2. Ex. XXI, 19. [The emphasis indicates that this payment had to be made in all circumstances.]
3. V. *supra* p. 488.
4. I.e., a repetition of the infinitive.
5. I.e., a repetition of the verb in the finite mood.
6. I.e., on one occasion the verb is in the infinitive and on the other in the finite mood.
7. Cf. Rashi; but also Tosaf. a.l.

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8. Why then not pay him for Loss of Time in accordance with the proper wage?
9. In the way of Depreciation, and could in fact no more work in his previous employment but in a different capacity such as a watchman of cucumbers or a doorkeeper.
10. During the days of illness when he is totally unable to do any work.
11. As by having been made deaf he is unfit to do anything.
12. In which case the depreciation is but temporary.
13. Regarding the payment for Depreciation.
14. *Infra* p. 87a.
15. In which case the capital offence of Ex. XXI, 25 has not been committed; v. Sanh. 84b.
16. The violation of which entails no capital punishment at the hands of a court of law; cf. Lev. XXIII, 30 and Ker. I, 1. Again, though lashes could be involved in this case in accordance with Mak. III, 2, the civil liability holds good as *supra* p. 407.

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he is liable for all of the Five Items. Now, how are we to picture no bruise being made [in such a case]? Does this not mean, e.g., where he struck him on his arm which will ultimately recover¹ and it is nevertheless stated that he 'is liable for all of the Five Items'?² — It may, however, be said that we are dealing here with a case where e.g., he made him deaf³ without making a bruise on him. But did Rabbah not say⁴ that he who makes his father deaf is subject to be executed,⁵ for it is impossible to cause deafness without first making a bruise through which a drop of blood falls into the ear?⁶ — It must therefore be said that we are dealing here with a case where e.g. he shaved him [against his will] — But will not the hair grow again in the case of shaving? And that is the very question propounded.⁷ — It may, however, be said that we are dealing here with a case where e.g. he smeared nasha⁸ over it so that no hair will ever grow there again. Pain [in such a case should similarly be paid] where he had scratches on his head and thus suffered on account of the sores. Healing [should similarly be paid] as it requires curing. Loss of Time would be where he was a

dancer in wine houses and has to make gestures by moving his head and cannot do so [now] on account of these scratches.⁹ Degradation [should certainly be paid], for there could hardly be a case of greater degradation.

But this matter which was doubtful to Rabbah was quite certain to Abaye taking one view, and to Raba taking the opposite view. For it was stated: If he struck him on his arm and the arm was broken but so that it would ultimately recover completely, Abaye said that he must pay for General Loss of Time¹⁰ plus Particular Loss of time, whereas Raba said that he will not have to pay him anything but for the amount of the Loss of Time¹¹ for each day [until he recovers].

It was stated: If a man cuts off the arm of a Hebrew servant of another, Abaye said that he will have to pay the servant for General Loss of Time, and the master for Particular Loss of Time, whereas Raba said that the whole payment should be given to the servant¹² who would have to [invest it and] purchase real property whose produce would be enjoyed by the master. There is no question that where the servant became [through the injury] depreciated in his personal value while no loss was caused so far as the master was concerned, as for instance, where the offender split the top of the servant's ear or the top of his nostrils,¹³ the whole payment would go to the servant himself. It was only where the depreciation affected the master [also]¹⁴ that Abaye and Raba differ.

'DEGRADATION': — ALL TO BE ESTIMATED IN ACCORDANCE WITH THE STATUS OF THE OFFENDER AND THE OFFENDED. May we say that our Mishnah is in agreement neither with R. Meir nor with R. Judah but with R. Simeon? For it was taught: 'All [sorts of injured persons] should be considered as if they were freemen who have become impoverished since they are all the children of Abraham, Isaac and Jacob;¹⁵ this is the view of R. Meir. R. Judah

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says that [Degradation in the case of] the eminent man [will be estimated] in accordance with his eminence, [whereas in the case of] the insignificant man [it will be estimated] in accordance with his insignificance. R. Simeon says that wealthy persons will be considered merely as if they were freemen who have become impoverished, whereas the poor will all be put on the level of the least among them.¹⁶ Now, in accordance with whom is our Mishnah? It could not be in accordance with R. Meir, for the Mishnah states that all are to be estimated in accordance with the status of the offender and the offended, whereas according to R. Meir all [sorts of persons] are treated alike. It could similarly not be in accordance with R. Judah, for the Mishnah [subsequently] states¹⁷ that he who insults even a blind person is liable, whereas R. Judah¹⁸ says that a blind person is not subject to the law of Degradation. Must the Mishnah therefore not be in accordance with R. Simeon?¹⁹ — You may say that they are [even] in accordance with R. Judah. For the statement made by R. Judah that a blind person is not subject to the law of Degradation means that no payment will be exacted from him [where he insulted others], whereas when it comes to paying him [for Degradation where he was insulted by others], We would surely order that he be paid. But since it was stated in the concluding clause 'If he insulted a person who was sleeping he would be liable [to pay for Degradation], whereas if a person who was asleep insulted others he would be exempt', and no statement was made to the effect that a blind person insulting others should be exempt, it surely implied that in the case of a blind person²⁰ there was no difference whether he was insulted by others or whether he insulted others, [as in all cases the law of Degradation would apply]!²¹ — It must therefore be considered as proved that the Mishnaic statements were in accordance with R. Simeon.

Who was the Tanna for what our Rabbis taught: If he intended to insult a katon²² but insulted [by accident] a gadol²³ he would have to pay the gadol the amount due for the degradation of the katon, and so also where he intended to insult a slave but [by accident] insulted a freeman he would have to pay the freeman the amount due for the degradation of the slave? According to whom [is this teaching]? It is in agreement neither with R. Meir nor with R. Judah nor even with R. Simeon, it being assumed that katon meant 'small in possessions' and gadol [similarly meant] 'great in possessions'. It could thus hardly be in accordance with R. Meir, for he said that all classes of people are treated alike. It could similarly not be in accordance with R. Judah, for he stated that in the case of slaves no Degradation need be paid. Again, it could not be in accordance with R. Simeon, since he holds that where the offender intended to insult one person and by an accident insulted another person he would be exempt, the reason being that this might be likened to murder, and just as in the case of murder there is no liability unless where the intention was for the particular person killed,²⁴ as it is written: 'And lie in wait for him and rise up against him'²⁵ [implying, according to R. Simeon, that there would be no liability] unless where he aimed at him particularly, so should it also be in the case of Degradation, that no liability should be imposed on the offender unless where he aimed at the person insulted, as it is written: 'And she putteth forth her hand and taketh him by the secrets'²⁶ [which might similarly imply that there should be no liability] unless where the offence was directed at the person insulted. [Who then was the Tanna of the teaching referred to above]? — It might still be said that he was R. Judah, for the statement made by R. Judah that in the case of slaves there would be no liability for Degradation means only that no payment will be made to them, though in the matter of appraisal we can still base the assessment on them. Or if you like I may say that you may even regard the teaching as being in

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accordance with R. Meir, for why should you think that gadol means 'great in possessions' and katon means 'small in possessions', and not rather that gadol means an actual gadol [i.e. one who is of age] and katon means an actual katon [i.e. a minor]? But is a minor subject to suffer Degradation? — Yes, as elsewhere stated by R. Papa, that if where he is reminded of some insult he feels abashed²⁷ [he is subject to Degradation] so also here

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

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

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

GEMARA. Our Rabbis taught: If he insulted a person who was naked he would be liable² though there could be no comparison between one who insulted a person who was naked³ and one who insulted a person who was dressed. If he insulted him in the public bath he would be liable though one who insulted a person in a public bath³ could not be compared to one who insulted a person in the market place.

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

'If he insulted him in the public bath he would be liable.' But is a public bath a place where people are apt to feel offended?⁵ — Said R. Papa: It meant that he insulted him⁶ near the river.⁷

R. Abba b. Memel asked: What would be the law where he humiliated a person who was asleep but who died [before waking]?⁸ — What is the principle involved in this query?⁹ — Said R. Zebid: The principle involved is this: [Is Degradation paid] because of the

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

R. Papa, however, said that the principle involved in the query [of R. Abba] was this: [Is Degradation paid] because of personal insult, and as in this case [where] he died [before waking he did not suffer any personal insult, no payment should be made], or is [Degradation paid] perhaps on account of the insult suffered by the family? — Come and hear: A deaf-mute and a minor are subject to [be paid for] Degradation but an idiot is not subject to [be paid for] Degradation. Now no difficulty arises if you say that Degradation is paid on account of the insult suffered by the family; it is then quite intelligible that a minor [should be paid for Degradation]. But if you say that Degradation is paid on account of personal insult [we have to ask], is a minor subject to personal insult? — What then? [Do

you say] that Degradation is paid because of the insult sustained by the members of the family? Why then should the same not apply in the case of an idiot? — It may, however, be said that the idiot by himself constitutes a Degradation [to them] which is second to none. But in any case, why not conclude from this statement that Degradation is paid on account of the insult suffered by the family, for if on account of personal insult,¹⁰ is a minor subject to personal insult? — Said R. Papa: Yes, if when the insult is mentioned to him he feels insulted, as indeed taught: 'Rabbi says: A deaf-mute is subject to [be paid for] Degradation, but an idiot is not subject to [be paid for] Degradation, whereas a minor is sometimes subject to be paid and sometimes not subject to be paid [for Degradation].' The former [must be] in a case where, if the insult is mentioned to him, he would feel abashed, and the latter in a case where if the insult is recalled to him he would not feel abashed.

ONE WHO INSULTS A BLIND PERSON ... IS LIABLE [FOR DEGRADATION]. This Mishnah is not in accordance with R. Judah. For it was taught: R. Judah says: 'A blind person is not subject to [the law of] Degradation. So also did R. Judah exempt him from the liability of being exiled¹¹ and from the liability of lashes¹² and from the liability of being put to death by a court of law.'¹³ What is the reason of R. Judah? — He derives [the law in the case of Degradation by comparing the term] 'thine eyes' [inserted in the case of Degradation¹⁴ from the term] 'thine eyes'¹⁵ occurring in the case of witnesses who were proved *zomemim*:¹⁶ just as there¹⁷ blind persons are not included¹⁸ so also here¹⁹ blind persons should not be included. The exemption from the liability to be exiled is derived as taught: Seeing him not²⁰ excepts a blind person;²¹ so R. Judah. R. Meir on the other hand says that it includes a blind person.²² What is the reason of R. Judah? — He might say to you [as Scripture says]: 'As when a man goeth into the wood with his neighbor to hew wood',²³ which

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might include even a blind person. The Divine Law therefore says 'Seeing him not' to exclude [him]. But R. Meir might contend that as the Divine Law inserted 'Seeing him not' [which implies] an exception, and the Divine Law further inserted unawares'²⁴ [which similarly implies] an exception, we have thus a limitation followed by another limitation, and the established rule is that a limitation followed by another limitation is intended to amplify.²⁵ And R. Judah? — He could argue that the word 'unawares' came to be inserted to except a case of intention. [Exemption from] liability to be put to death by a court of law is derived [from comparing the term] 'murderer' [used in the section dealing with capital punishment²⁶ with the term] 'murderer' [used in the section setting out] the liability to be exiled.²⁷ [Exemption from] liability of lashes is learnt [by comparing the term] 'wicked' [occurring in the Section dealing with lashes²⁸ with the term] 'wicked'²⁶ occurring in the case of those who are liable to be put to death by a court of law.

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

1. *Supra* p. 140.
2. Even where the insult was caused by further uncovering him; cf. Tosaf. a.l.
3. In which case the payment will be much less.
4. By means of being further uncovered; again, how could a naked person be further uncovered?
5. By means of being uncovered, since everybody is uncovered there.
6. By uncovering him.
7. Where people merely bathe their legs and are therefore fully dressed.
8. So that he personally never felt the humiliation.
9. Why indeed should there be any payment in such a case.
10. no note.
11. For inadvertently killing a person.
12. When transgressing a negative commandment.
13. For committing a capital offence.
14. Deut. XXV, 12.
15. *Ib.*, XIX, 21.

16. I.e., against whom the accusation of an alibi was proved; v. [Glos.](#)
17. In the case of witnesses.
18. For since a blind person could not see he is disqualified from giving evidence, on the strength of Lev. v, 1; cf. Tosaf, B.B. 129a, s.v. [H], and Asheri B.B. VIII, 24; but v. also Shebu. 33b.
19. In the case of Degradation.
20. Num. XXXV, 23.
21. From being subject to the law of exile.
22. Mak. 9b.
23. Deut. XIX, 5.
24. *Ibid.* 4.
25. Cf. *supra* p. 259.
26. Num. XXXV, 31.
27. Deut. XIX, 3.
28. Deut. XXV, 2.

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So also did R. Judah exempt him from all the judgments of the Torah. What is the reason of R. Judah? — Scripture says: Then the congregation shall judge between the smiter and the avenger of blood according to these ordinances,¹ whoever is subject to the law of the 'smiter' and 'the avenger of blood' is subject to judgments, but he² who is not subject to the law of the 'smiter' and the 'avenger of blood' is not subject to judgments.

Another [Baraita] taught: R. Judah says: 'A blind person is not subject to [the law of] Degradation. So also did R. Judah exempt him from all commandments stated in the Torah.' R. Shisha the son of R. Idi said: The reason of R. Judah was because Scripture says: Now this is the commandment, the statutes and the ordinances;³ he who is subject to the 'ordinances' is subject to 'commandments' and 'statutes', but he who is not subject to 'ordinances' is not subject to 'commandments' and 'statutes'. R. Joseph stated:⁴ Formerly I used to Say: If someone would tell me that the *halachah* is in accordance with R. Judah who declared that a blind person is exempt from the commandments, I would make a festive occasion for our Rabbis, because though I am not enjoined⁵ I still perform commandments, but now that I have heard the statement of R.

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Hanina, as R. Hanina indeed said⁶ that greater is the reward of those who being enjoined do [good deeds] than of those who without being enjoined [but merely of their own free will] do [good deeds], if someone would tell me that the *halachah* is not in accordance with R. Judah I would make a festive occasion for our Rabbis, because if I am enjoined to perform commandments the reward will be greater for me.

MISHNAH. ON THIS [POINT] THE LAW FOR MAN IS MORE SEVERE THAN THE LAW FOR CATTLE, VIZ., THAT MAN HAS TO PAY FOR DEPRECIATION, PAIN, HEALING, LOSS OF TIME AND DEGRADATION;⁷ AND HE PAYS ALSO FOR THE VALUE OF EMBRYOS,⁸ WHEREAS IN THE CASE OF CATTLE THERE IS NO PAYMENT FOR ANYTHING BUT DEPRECIATION,⁹ AND THERE IS EXEMPTION FROM [PAYING] THE VALUE OF EMBRYOS.⁸ ONE WHO STRIKES HIS FATHER AND HIS MOTHER WITHOUT, HOWEVER, MAKING A BRUISE ON THEM,¹⁰ OR ONE WHO INJURED HIS FELLOW ON THE DAY OF ATONEMENT¹¹ IS LIABLE FOR ALL [THE FIVE ITEMS]. ONE WHO INJURES A HEBREW SLAVE¹² IS SIMILARLY LIABLE FOR ALL OF THEM, WITH THE EXCEPTION, HOWEVER, OF LOSS OF TIME IF HE IS HIS OWN SLAVE. ONE WHO INJURES A CANAANITE SLAVE¹³ BELONGING TO ANOTHER PERSON IS [SIMILARLY] LIABLE FOR ALL [THE FIVE ITEMS]. R. JUDAH, HOWEVER, SAYS THAT NO DEGRADATION IS PAID IN THE CASE OF [CANAANITE] SLAVES. A DEAF-MUTE, AN IDIOT AND A MINOR ARE AWKWARD TO DEAL WITH, AS HE WHO INJURES THEM IS LIABLE [TO PAY], WHEREAS IF THEY INJURE OTHERS THEY ARE EXEMPT. [SO ALSO] A SLAVE AND A [MARRIED] WOMAN ARE AWKWARD TO DEAL WITH, AS HE WHO INJURES THEM IS LIABLE [TO PAY], WHEREAS IF THEY INJURE OTHERS THEY ARE EXEMPT,¹⁴ THOUGH THEY MAY HAVE TO PAY AT A LATER DATE; FOR IF THE WOMAN WAS DIVORCED¹⁵ OR THE SLAVE MANUMITTED,¹⁶ THEY WOULD BE LIABLE

TO PAY. HE WHO SMITES HIS FATHER OR HIS MOTHER MAKING ALSO A BRUISE ON THEM¹⁷ OR HE WHO INJURES ANOTHER ON THE SABBATH¹⁸ IS EXEMPT FROM ALL [THE FIVE ITEMS], FOR HE IS CHARGED WITH A CAPITAL OFFENCE.¹⁹ [SO ALSO] HE WHO INJURES A CANAANITE SLAVE OF HIS OWN IS EXEMPT FROM ALL [THE ITEMS].²⁰

GEMARA. R. Eleazar inquired of Rab: If one injures a minor daughter of another person, to whom should [the payment for] the injury go?²¹ Shall we say that since the Divine Law bestowed upon the father [the right to] the income of [his daughter during the days of her] youth,²² the payment for an injury should also be his, the reason being that her value was surely decreased [by the injury], or [shall we say that it was] perhaps only the income of youth²³ that the Divine Law granted him, since if he wishes to hand her over [in marriage e.g.,] to one afflicted with leprosy he could hand her over,²⁴ whereas the payment for injury might not have been granted to him by the Divine Law, since if he wishes to injure her he would not have had the right to injure her?²⁵

1. Num. XXXV, 24.
2. Such as a blind person.
3. Deut. VI, 2.
4. Kid. 31a.
5. As R. Joseph became blind through an illness; cf. Shab. 109a.
6. V. *supra* p. 215.
7. As *supra* p. 473.
8. Cf. Ex. XXI, 22 and *supra* p. 277.
9. V, *supra* 26a.
10. In which case the capital offence of Ex. XXI, 15 has not been committed; v. Sanh. 84b.
11. The violation of which entails no capital punishment at the hands of a court of law; cf. Lev. XXIII, 30 and Ker. I, 1. Again, though lashes could be involved in this case in accordance with Mak. III, 2, the civil liability holds good as *supra* p. 407.
12. Cf. Ex. XXI, 2-6.
13. V. Lev. XXV, 44-46.
14. Irrespective of the equality of all before the law, as *supra* p. 63, no payment could be made here as the possessions of slaves form a part of the estates of their masters as in Kid. 23b, and the property of a married woman is usually in the usufruct of the husband, cf. Keth, IV, 4,

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15. When her estate will return to her.
16. And property was subsequently acquired by him.
17. Which is a capital offence, v. Ex. XXI. 15; *supra* p. 492.
18. Thus involving capital punishment, v. Shab. 106a; *supra* p. 192.
19. In the punishment for which all civil liabilities merge; v. *supra* p. 192.
20. For so far as the master is concerned the slave is but his chattel. He will, however, be liable to heal him; Tosaf, a.l.; Git. 12b.
21. I.e., whether to her or to her father.
22. Cf. Keth. 46b.
23. Such as the consideration given by a prospective husband for marrying him, or the hire of her labor and the like.
24. As could be inferred from Deut. XXII, 16,
25. Moreover he would thereby commit the sin implied in Deut. XXV, 3.

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

An objection was raised¹ [from the following]: ONE WHO INJURES A HEBREW SLAVE IS SIMILARLY LIABLE FOR ALL OF THEM, WITH THE EXCEPTION HOWEVER OF LOSS OF TIME IF HE IS HIS OWN SLAVE!² — Abaye replied: Rab surely agrees regarding the item of Loss of Time, as the work of her hands during the period preceding the age of womanhood³ belongs to her father. A [further] objection was raised [from the following]: 'If one injures his son who has already come of age⁴ he has to compensate him straight away, but if his son was still a minor⁵ he must make for him a safe investment [out of the compensation money], while he who injures his minor daughter is exempt, and what is more, if others injure her they are liable to pay the compensation to her father?'⁶ — The rulings here similarly refer to Loss of Time.⁷

Is it really a fact that in the case of a son who has already come of age the father has to compensate him straight away? [If so,] a contradiction could be pointed out [from the

following:] 'If one injures the sons and daughters of others, if they have already come of age, he has to pay them straight away, but if they are still minors he should make for them a safe investment [out of the compensation money], whereas where the sons and daughters were his own, he would be exempt [altogether]'!⁸ — It may, however, be said that there is no difficulty, as the ruling here [stating exemption] refers to a case where the children still reclined at the father's table,⁹ whereas the ruling there¹⁰ deals with a case where they did not recline at his table. But how could you explain the former teaching to refer to a case where they did not recline at his table? For if so, read the concluding clause: 'Whereas he who injures his minor daughter is exempt, and what is more, even others who injure her are liable to pay the compensation to her father.' Why not pay her, since she has to maintain herself? For even according to the view¹¹ that a master may say to his slave, 'Work with me though I am not prepared to maintain you,' surely this applies only to a Canaanite slave to whom the master can say, 'Do your work during the day and in the evenings you can go out and look about for food,'¹² whereas in the case of a Hebrew slave in connection with whom it is written, Because he fareth well with thee,¹³ implying 'with thee in food and with thee in drink',¹⁴ this could certainly not be maintained; how much the more so then in the case of his own daughter?¹⁵ — As stated¹⁶ [in another connection] by Raba the son of R. 'Ulla, that the ruling applies only to the surplus [of the amount of her earnings over the cost of maintenance], so also here in this case this ruling applies only to the surplus [of the amount of compensation over the cost of maintenance]. You have then explained the latter statement [that there is exemption in the case of his own children] as dealing with a case where the children reclined at his table. Why then [in the case of children of other persons] is it stated that 'if they had already come of age he has to pay them straight away, but if they were still minors he should make for them a safe investment [out of the

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compensation money]? Why should the compensation not be made to their father?¹⁷ — It may, however, be said that the father would be particular only in a matter which would cause him a loss,¹⁸ whereas in regard to a profit coming from outside¹⁹ he would not mind [it going to the children]. But what about a find which is similarly a profit coming from outside, and the father still is particular about it?²⁰ — It may be said that he is particular even about a profit which comes from outside provided no actual pain was caused to the children through it,²¹ whereas in the matter of compensation for injury where the children suffered actual pain and where the profit comes from outside he does not mind. But what of the other case²² where the daughter suffered actual pain and where there was a profit coming from outside and the father nevertheless was particular about it as stated 'What is more, even others who injure her are liable to pay the compensation to her father'? — It may still be said that it was only in that case²² where the father was an eccentric person who would not have his children at his table that he could be expected to care for the matter of profit coming even from outside, whereas in the case here²³ where he was not an eccentric person, as his children joined him at his table it is only regarding a matter which would cause him a loss that he would be particular, but he would not mind about a matter of profit coming from outside.

What is meant by 'a safe investment'?²⁴ — R. Hisda said: [To buy] a scroll of the Law.²⁵ Rabbah²⁶ son of R. Huna said: [To buy] a palm tree, from which he gets a profit in the shape of dates.

Resh Lakish similarly said that the Torah did not bestow upon the father any right save to the income of youth alone. R. Johanan however said: 'Even regarding wounding.' How can you think about wounding?²⁷ Even R. Eleazar did not raise a question²⁸ except regarding an injury

1. [Lit., 'he objected to him.' The objector was evidently not R. Eleazar, as Abaye is the one who replies to the objection.]
2. Why then should the payment for Loss of Time in the case of a minor girl not go to her father to whom the hire for her labor would belong?
3. Which begins six months after puberty was reached at approximately the age of twelve; cf. Nid. 45b; 65a and Keth. 39a.
4. I.e., usually over the age of thirteen; cf. Glos. s.v. Gadol.
5. I.e., before the age of thirteen; v. Glos. s.v. Katon.
6. [Is this not against the view of Rab who stated that damages paid for injuring a minor girl would not go to her father?]
7. For which all agree that payment must be made to the father.
8. [Does the latter ruling not apply even where the sons and daughters had already come of age, in contradiction to the ruling stated in the former teaching?]
9. I.e., were maintained and provided by him with all their needs; cf. B.M. 12b.
10. Stating liability.
11. Git. 12a.
12. [E.g. where the work he performs is not worth the cost of his maintenance, v. Git. 12a.]
13. Deut. XV, 16.
14. He must share the same pleasures and comforts as the Master. Cf. Kid. 20a.
15. [Why therefore should the compensation be paid to the father and not to her in a case where she has to maintain herself?]
16. Keth. 43a.
17. Since they are maintained by him.
18. Such as if he would have to pay compensation where he himself injured them.
19. As where others injured them and would have to pay compensation.
20. Cf. B.M. 12b.
21. Such as e.g., in the case of a find.
22. I.e., in the former teaching.
23. I.e., in the latter teaching.
24. B.B. 52a.
25. Cf. Er. 64a.
26. B.B. 52: 'Raba'.
27. Which would usually not decrease her pecuniary value.
28. *Supra* p. 502.

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through which her pecuniary value is decreased,¹ whereas regarding mere wounding, through which her pecuniary

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value would not [usually] decrease there was never any question [that the compensation would not go to the father. How then could R. Johanan speak of mere wounding?] — R. Jose b. Hanina replied: We suppose the wound to have been made in her face, thus causing her pecuniary value to be decreased. **ONE WHO INJURES A CANAANITE SLAVE BELONGING TO ANOTHER PERSON IS [SIMILARLY] LIABLE FOR ALL [FIVE ITEMS]. R. JUDAH, HOWEVER, SAYS THAT NO DEGRADATION IS PAID IN THE CASE OF [CANAANITE] SLAVES.** What is the reason of R. Judah? — As Scripture says:² 'When men strive together one with another' the law applies to one who can claim brotherhood and thus excludes a slave who cannot claim brotherhood.³ And the Rabbis?⁴ — They would say that even a slave is a brother in so far as he is subject to commandments. If this is so, would you say that according to R. Judah witnesses proved *zomemim*⁵ in a capital accusation against a slave would not be subject to be put to death in virtue of the words:⁶ 'Then shall ye do unto him as he had purposed to do unto his brother'?⁷ — Raba said that R. Shesheth stated: The verse concludes:⁸ 'So shalt thou put away the evil from among you', implying 'on all accounts' — Would you say that according to the Rabbis⁸ a slave would be eligible to be chosen as king?⁹ — I would reply: According to your reasoning would the same difficulty not arise regarding a proselyte, whichever view we accept¹⁰ unless we suppose that when Scripture says 'One from among thy brethren',¹¹ it implies 'one of the choicest of thy brethren'?¹² — But again would you now also say that according to the Rabbis, a slave would be eligible to give evidence,¹³ since it says, And behold, if the witness be a false witness and hath testified falsely against his brother?¹⁴ — 'Ulla replied: Regarding evidence you can surely not argue thus. For that he¹⁵ is disqualified from giving evidence can be learnt by means of an *a fortiori* from the law in the case of Woman: for if Woman who is eligible to enter [by

marriage] into the congregation [of Israel] is yet ineligible to give evidence,¹⁶ how much more must a slave who is not eligible to enter [by marriage] into the congregation [of Israel] be ineligible to give evidence? But why is Woman disqualified if not perhaps because she is not subject to the law of circumcision? How then can you assert the same In the case of a slave who is subject to circumcision?¹⁷ — The case of a [male] minor will meet this objection, for in spite of his being subject to circumcision he is disqualified from giving evidence.¹⁸ But why is a minor disqualified if not perhaps because he is not subject to commandments?¹⁹ How then can you assert the same in the case of a slave who is subject to commandments?²⁰ — The case of Woman will meet this objection, for though she is subject to commandments she is disqualified from giving evidence. The argument is thus endlessly reversible. There are features in the one instance which are not found in the other, and vice versa. The features common to both²¹ are that they are not subject to all the commandments²² and that they are disqualified from giving evidence. I will therefore include with them a slave who also is not subject to all the commandments and should therefore also be disqualified from giving evidence. But why [I may ask] is the feature common to them²¹ that they are disqualified from giving evidence if not perhaps because neither of them is a man?²³ How then can you assert the same in the case of a slave who is a man? — You must therefore deduce the disqualification of a slave from the law applicable in the case of a robber.²⁴ But why is there this disqualification in the case of a robber if not because his own deeds caused it? How then can you assert the same in the case of a slave whose own deeds could surely not cause it?²⁵ — You must therefore deduce the disqualification of a slave from both the law applicable to a robber and the law applicable to either of these [referred to above].²⁶ Mar, the son of Rabina, however, said: Scripture says: '*The fathers shall not be put to death through²⁷ the children*';²⁸ from this it could be

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inferred that no sentence of capital punishment should be passed on [the evidence of] the mouth of [persons who if they were to be] fathers would have no legal paternity over their children.²⁹ For if you assume that the verse is to be taken literally, 'fathers shall not be put to death through children', meaning, 'through the evidence of children', the Divine Law should have written 'Fathers shall not be put to death through their children'. Why then is it written 'children', unless to indicate that no sentence of capital punishment should be passed on [the evidence of] the mouth of [persons who if they were to be] fathers would have no legal paternity over their children? If that is so, would you also say that the concluding clause '*neither shall the children be put to death through the fathers*' similarly implies that no sentence of capital punishment should be passed on [the evidence of] the mouth of [witnesses who as] children would have no legal filiation with respect to their fathers, and therefore argue that a proselyte³⁰ should similarly be disqualified from giving evidence?³¹ — It may be said that there is no comparison: It is true that a proselyte has no legal relationship to his ancestors, still he has legal relationship with his descendants, [but we may therefore] exclude a slave who has relationships neither with ancestors nor with descendants. For if you should assume that a proselyte is disqualified from giving evidence, the Divine Law should surely have written: 'Fathers shall not be put to death through their children', which would mean what we stated, that they would not be put to death through the evidence of children, and after this the Divine Law should have written: '*Neither shall children be put to death through fathers,*' as from such a text you would have derived the two rules: one that children should not be put to death through the evidence of fathers and the other that no sentence of capital punishment should be passed on [the evidence of] the mouth of [witnesses who as] children have no legal filiation with respect to their fathers.³² The disqualification in the case of a slave would surely have been derived by

means of an *a fortiori* from the law applicable to a proselyte: for if a proselyte, who has no legal relationship to his ancestors but has legal relationship to his descendants, is disqualified from giving evidence, how much more must a slave who has legal relationship neither to ancestors nor to descendants be disqualified from giving evidence? But since the Divine Law has written: 'Fathers shall not be put to death through children', which implies that no sentence of capital punishment should be passed on [the evidence of] the mouth of [witnesses who as] fathers would have no legal paternity over their children, we can derive from this that it is only a [Canaanite] slave who has relationship neither to ancestors nor to descendants that will be disqualified from giving evidence, whereas a proselyte will be eligible to give evidence on account of the fact that he has legal paternity over his children. If you object, why did the Divine Law not write: 'Neither shall children be put to death through their fathers', and why did the Divine Law write 'And neither shall children be put to death through fathers', which appears to imply that no sentence of capital punishment should be passed [on the evidence of] the mouth of [witnesses who as] children would have no legal filiation with respect to fathers,³³ [my answer is that] since it was written, 'Fathers shall not be put to death through children', it was further written, '*neither shall children be put to death through fathers.*'³⁴

A DEAF, MUTE AN IDIOT AND A MINOR ARE AWKWARD TO DEAL WITH. The mother of R. Samuel b. Abba of Hagronia³⁵ was married to R. Abba,³⁶ and bequeathed her possessions to R. Samuel b. Abba, her son. After her death

1. And a loss thus caused to the father.
2. Deut. XXV, 11.
3. Cf. *supra* p. 63.
4. The representatives of the anonymous opinion cited first in the Mishnah.
5. I.e., where an alibi was proved against them; cf. [Glos.](#)
6. Deut. XIX, 19.

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

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R. Samuel b. Abba went to consult R. Jeremiah b. Abba who confirmed him in

possession of her property. R. Abba thereupon went and related the case to R. Hoshai. R. Hoshai then went and spoke on the matter with Rab Judah who said to him that Samuel had ruled as follows: If a woman disposes of her *melog*¹ possessions during the lifetime of her husband and then dies, the husband is entitled to recover them from the hands of the purchasers.² When this statement was repeated to R. Jeremiah b. Abba, he said: I [only] know the Mishnaic ruling which we have learnt: 'If a man assigns his possessions to his son, to take effect after his death,³ neither can the son alienate them [during the lifetime of the father] as they are then still in the possession of the father, nor can the father dispose of them since they are assigned to the son. Still, if the father sells them, the sale is valid until his death; if the son disposes of them the purchaser has no hold on them until the father dies.'⁴ This implies, does it not, that when the father dies the purchaser will have the possessions [bought by him from the son during the lifetime of the father], and this even though the son died during the lifetime of the father, in which case they had never yet entered into the possession of the son? For so it was laid down by R. Simeon b. Lakish, who said⁵ that there should be no difference whether the son died in the lifetime of the father, in which case the estate never came into the possession of the son, or whether the father died in the lifetime of the son, in which case the estate had entered into the possession of the son; the purchaser would [in either case] acquire title to the estate. (For it was stated:⁶ Where the son sold the estate⁷ in the lifetime of the father and it so happened that the son died during the lifetime of the father, R. Johanan said that the purchaser would not acquire title [to the estate], whereas Resh Lakish said that the purchaser would acquire title [to the estate]. R. Johanan, who held that the purchaser would not acquire title to the estate, would say to you that the Mishnaic statement, 'If the son disposed of them the purchaser would have no hold on them until the father dies, 'implying that at any rate

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after the death of the father the purchaser would own them, refers to the case where the son did not die during the lifetime of the father, so that the estate had actually entered into the possession of the son, whereas where the son died during the lifetime of the father, in which case the estate had never entered into the possession of the son, the purchaser would have no title to the estate even after the death of the father. This shows that in the opinion of R. Johanan a right to usufruct amounts in law to a right to the very substance [of the estate],⁸ from which it follows that when the son sold the estate [during the lifetime of his father] he was disposing of a thing not belonging to him.⁹ Resh Lakish on the other hand said that the purchaser would [in all cases] acquire title [to the estate after the death of the vendor's father], for the Mishnaic statement, 'If the son disposed of them the purchaser would have no hold on them until the father died, 'implying that at least after the death of the father the purchaser would own them, applies equally whether the son did not die in the lifetime of the father, in which case the estate had entered into the possession of the son, or whether the son did die during the lifetime of the father, in which case the estate never did come into the possession of the son, [as in all cases] the purchaser would acquire title [to the estate as soon as the vendor's father died]. This shows that in the opinion of Resh Lakish a right to [mere] usufruct does not yet amount to a right in the very substance [of the estate], from which it follows that when the son sold the estate [during his father's lifetime] he was disposing of a thing that legally belonged to him.¹⁰) Now both¹¹ R. Jeremiah b. Abba and Rab Judah, concur with Resh Lakish,¹² and R. Jeremiah b. Abba accordingly argues thus: If you assume that a right to usufruct amounts [in law] to a right in the very substance, why then on the death of the father, if the son has previously died during the lifetime of his father, should the purchaser have any title to the estate, since when the son sold it he was disposing of a thing not belonging to him? Does not this

show that a right to [mere] usufruct does not amount to a right to the very substance?¹³ When, however, the argument was later repeated in the presence of Rab Judah, he said that Samuel had definitely stated: 'This case¹⁴ cannot be compared to that stated in the Mishnah.' On what ground? — R. Joseph replied: We should have no difficulty if the case in the Mishnah were stated in a reversed order, i.e., 'If a son assigns his possessions to his father [to take effect after the son's death, and the father sold them during the lifetime of the son and died before the son,' and if the law would also in this case have been that the purchaser acquired title to the possessions] it would indeed have been possible to prove from it that a right to usufruct does not amount to a right to the very substance. But seeing that what it actually says is, 'If a father assigns his possessions to his son,' [the reason why the sale by the son is valid is] that [since] he was eligible to inherit him, [the father by drawing up the deed must necessarily have intended that the transfer to the son should have legal effect forthwith].¹⁵ Said Abaye to him: Does only a son inherit a father, and does a father never inherit a son?¹⁶ It is therefore to be assumed that such a deed was drawn up only for the purpose of keeping the possessions out of the hands of the children,¹⁷ and similarly also here¹⁸ the deed might have been drawn up for the sole purpose of keeping the possessions out of the hands of his brothers!¹⁹ — The reason of [Samuel's remark that] 'This case cannot be compared to that stated in the Mishnah' is because of the [Rabbinic] enactment at Usha. For R. Jose b. Hanina said: It was enacted at Usha that if a woman disposes of her *melog* possessions during the lifetime of her husband and subsequently dies, the husband will be entitled to recover them from the hands of the purchasers.²⁰ R. Idi b. Abin said that we have been taught to the same effect: [Where witnesses state,] 'We can testify against a particular person that he has divorced his wife and paid her for her kethubah',²¹

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1. Lit., 'plucking', but which denotes a wife's estate in which her husband has the right of usufruct and for which he bears no responsibility regarding any loss or deterioration, v. B.B. (Sonc. ed.) p. 206, n. 7.
2. According to which statement R. Abba and not R. Samuel would be entitled to the possessions in direct contradiction to the judgment given by R. Jeremiah.
3. [The father retaining for himself the right for life to the usufruct.]
4. B.B. 136b.
5. Ibid.
6. B.B. 136a.
7. [Assigned to him to be his after his father's death.]
8. As indeed followed by him in Git. 47b and elsewhere.
9. For since the father still had for life the right to usufruct he was for the time being the legal owner of the very substance of the estate, though the son had the reversionary right.
10. Since he had the reversionary right while the father possessed merely for time being the right to usufruct. [The bracketed passage is an interpolation and not part of R. Jeremiah's argument.]
11. [So MS.M. cur. edd. read, 'We now assume.']
12. [That the sale is valid even where the son died in the lifetime of the father.] Cf. Yeb. 36b.
13. Hence the gift of the mother to R. Samuel her son should become valid at her death in spite of the right to usufruct vested in R. Abba her second husband during her lifetime.
14. I.e., the gift of the mother to R. Samuel her son.
15. For if otherwise why was the deed necessary at all? [Whereas in the case of Samuel b. Abba, the deed was necessary for in the absence of one the estate would be inherited by the husband. V. B.B. 111b]
16. Cf. B.B. VIII, 1. The same argument if at all sound could thus accordingly be raised even in the case made out by you where a son bequeathed his possessions to his father.
17. Of the son who made the bequest in favor of his father, as otherwise the sons children would have been first to inherit him in accordance with Num. XXVII, 8.
18. Where the father bequeathed his possessions to a son.
19. I.e., from the brothers of the particular son in whose favor the bequest was made, as otherwise they would also have had a part in the inheritance on account of their being sons of the same father, and it was not intended that the transfer to the son should have legal effect forthwith. This being so, the case of

Samuel b. Abba is on all fours with the Mishnah!

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

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while the woman in question was still with him¹ and in fact looking after him, and the witnesses were subsequently proved *zomemim*, it would not be right to say that they should pay [the woman]² the whole amount of her *kethubah*, [as she did not lose anything] but the satisfaction of the benefit of [being provided with] her *kethubah*.³ How could [the value of] the satisfaction of the benefit of her *kethubah* be arrived at?³ An estimate will have to be made of how much a man would be prepared to pay as purchase money for the *kethubah* of this [particular woman] which can mature only after she is left a widow or divorced, since, were she [previously] to die her husband would inherit her.⁴ Now, if you assume that this enactment of Usha is of no avail, why is it certain that her husband would inherit her? Why should she be unable to sell her *kethubah* outright?⁵ Abaye said: If all this could be said⁶ regarding *melog* possessions,⁷ can it also be said⁸ regarding the possessions [placed in the husband's hands² and secured¹⁰ as if they were] 'iron flocks'?¹¹

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

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Raba stated: 'The law is that the purchase money for the satisfaction of the benefit belongs solely to the woman, and the husband will have no right to enjoy any profit [that may result from it], the reason being that it was only profits that the Rabbis assigned to him,¹³ whereas profits out of profits¹⁴ were not assigned to him by the Rabbis.

When R. Papa and R. Huna the son of R. Joshua came from the College they said: We have learnt to the same effect as the enactment of Usha [in the following Mishnah]: A SLAVE AND A WOMAN ARE AWKWARD TO DEAL WITH, AS HE WHO INJURES THEM IS LIABLE [TO PAY], WHEREAS IF THEY HAVE INJURED OTHERS THEY ARE EXEMPT.¹⁵ Now, if you assume that the enactment of Usha is not effective why should she not sell her *melog*¹⁶ property and with the purchase money pay the compensation? — But even according to your reasoning, granted that the enactment of Usha is effective, in which case she would be powerless to alienate altogether her *melog* possessions, yet let her sell the *melog* estate for what the satisfaction of the benefit would fetch¹⁷ and with his purchase money pay the compensation? It must therefore Surely be said that the ruling applies where she had no *melog* property; so also [according to the other view] the ruling would apply only where she possessed no *melog* property. But why should she not sell her *kethubah* for as much as the satisfaction of the benefit will fetch¹⁷ and thus pay compensation? — The ruling is based on the view of R. Meir, who said that it is prohibited for any man to keep his wife without a *kethubah* even for one hour.¹⁸ But what is the reason of this? So that it should not be an easy matter in his eyes to divorce her. In this case too he will surely not divorce her, for if he were to divorce her those who purchased the *kethubah* would certainly come and collect the amount of the *kethubah* from him. [Why then should she not be compelled by law to sell her *kethubah* and pay her creditors?] — We must therefore say

that the satisfaction of such a benefit is a value of an abstract nature¹⁹ and abstract values are not considered mortgaged [for the payment of liabilities]. But why not? Could these abstract values not be sold for actual *denarii*? — We must therefore [say that it would not be practical to compel her to sell her *kethubah*] on account of the statement of Samuel. For Samuel said:²⁰ Where a creditor assigns a liability on a bill to another and subsequently releases the debtor from payment, the debt is considered cancelled. Moreover, the creditor's heir may cancel the liability.²¹ I would, however, ask: Why should she not be compelled to sell it and pay with the proceeds the compensation, though if she should subsequently release her husband from the obligation the release would be legally valid? — It may be replied that since it is quite certain that where there is an obligation on the husband the wife will release him, it would not be right to make a sale which will straight away be nullified. Should you say, why should she not assign her *kethubah* to the person whom she injured, thus letting him have the satisfaction of the benefit,

1. I.e., that particular person who was her husband, as he had never divorced her.
2. In retaliation, as required in Deut. XIX, 19.
3. Since it was but a conditional liability, i.e., becoming mature either through her being divorced or through her remaining a widow.
4. And there would then be no occasion for the payment of the *kethubah* (cf. Mak. 3a).
5. If the husband would have no right to recover the possessions thus alienated. Why then should the witnesses not pay the woman the full amount of the *kethubah*?
6. By R. Jeremiah against Rab Judah, thus ignoring the enactment of Usha.
7. In which the husband had only the right of usufruct while the substance belonged to the wife; v. [Glos.](#)
8. [That the woman should be able to sell outright.]
9. As absolutely his own property.
10. By him on his general estate to pay her for them her *Kethubah* in case she would become a widow or divorced.

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11. Zon barzel. I.e., 'flocks' sold on credit and the payment made secure as 'iron', v. B.B. (Sonc. ed.) p. 206, n. 3.
12. As it is also for her benefit that the income of her husband increases.
13. Out of the substance belonging to her. Cf. Keth. 47b and 79b.
14. Such as here in the case of the purchase money.
15. V. *supra* p. 502, n. 1.
16. V. [Glos.](#)
17. I.e., that the purchaser should stand in her place and become entitled to it in case she should become a widow or divorced.
18. Keth. 57a.
19. Lit., 'words', 'an order for payment'.
20. B.M. 20a; B.B. 147b.
21. It would therefore not be practical to compel her to sell her *kethubah*, for she might subsequently release the husband from the liability of the *kethubah*.

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for even if she should subsequently release her husband from the obligation, the purchaser¹ would lose nothing as now too she pays him nothing on account of the compensation, [my answer is that] as it is in any case quite certain that where there is an obligation on the husband the wife will release him, it would not be proper to trouble the Court of Law so much for nothing. But seeing that it was taught: 'So also if she injures her husband she does not forfeit her *kethubah*'.² why should she in this case not assign her *kethubah* to the husband and thus let him have the satisfaction of the benefit as compensation for the injury, for even if she releases her husband from the obligation no loss will result therefrom? — This teaching is surely based on the view of R. Meir who said³ that it is prohibited for any man to keep his wife without a *kethubah* even for one hour, the reason being that it should not be an easy matter in the eyes of the husband to divorce a wife. So also here if the *kethubah* be assigned to him he might easily divorce her and have her *kethubah* for himself as compensation for the injury. But if so [even now that the *kethubah* remains with her] would he just the same not find it easy to divorce her, as he

would retain the amount of her *kethubah* as compensation for the injury? [This however would not be so where] e.g., the amount of her *kethubah* was much more than that of the compensation as on account of the small amount of the compensation he would surely not risk losing more.⁴ But again if the amount of her *kethubah* exceeded that of an ordinary *kethubah* as fixed by the Law,⁵ why should we not reduce the amount to that of the ordinary *kethubah* fixed by the Law,⁶ and she should assign the difference to the husband as compensation for the injury? [This could not be done where,] e.g. the amount of her *kethubah* did not exceed that of the ordinary *kethubah* fixed by the Law and the compensation for the injury was assessed to be four *zuz*, as it is pretty certain that for four *zuz* he will not risk losing twenty-five [*sela*'].⁷ But what of that which was taught: 'Just as she cannot [be compelled to] assign her *kethubah*'⁸ so long as she is with her husband, so also she cannot [be compelled to] remit [anything of] her *kethubah* so long as she is with her husband'?⁹ Are there not times when she would be forced to remit, as, for example where the amount of her *kethubah* exceeded the amount of an ordinary *kethubah* fixed by the Law? — Said Raba: This concluding paragraph refers to the clause inserted in the *kethubah* regarding the male children,¹⁰ and what was meant was this: Just as in the case of a wife assigning her *kethubah* to others she does thereby not impair the clause in the *kethubah* regarding the male children, the reason being that she might have been compelled to do it on account of a pressing need for money, so should also be the case where a wife assigns her *kethubah* to her own husband, that she would thereby not impair the clause in the *Kethubah* dealing with male children on the ground that she might have been compelled to do this for lack of funds.

May we say that the enactment of Usha was a point at issue between the following Tannaim? For one [Baraitha] teaches that *melog* slaves are to go out free for the sake of

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a tooth or an eye¹¹ if assaulted by the wife,¹² but not if assaulted by the husband,¹³ whereas another [Baraita] teaches that [they are not to go out free] when assaulted either by the husband or by the wife. Now it was thought that all authorities agree that a right to usufruct does not constitute in law a right to the very substance. Are we not to suppose then that the point at issue between them was that the one who held that they are to go out free if assaulted by the wife did not accept the enactment of Usha, while the one who held that they are not to go out free when assaulted either by the husband or by the wife accepted the enactment of Usha?¹⁴ — No; it is quite certain that the enactment of Usha was unanimously accepted, but the former Baraita was formulated before the passing of the enactment while the other one was formulated after. Or if you like I may say that both the one Baraita and the other dealt with conditions prevailing after the enactment, and also that both accepted the enactment of Usha, but the authority who held that the slaves are to go out free if assaulted by the wife and not by the husband did so on account of a reason underlying a statement of Raba, for Raba said:

1. I.e., the injured person.
2. Tosaf. B.K. IX, 8.
3. V. *supra*, p. 515, n. 6.
4. [I.e., the difference between the large amount of the *kethubah* and the amount due to him as compensation.]
5. The Bible, i.e., two hundred *zuz* where she was a virgin at the time of the marriage. Cf. Ex. XXII, 16; Keth. I, 2.
6. [To provide against the prohibition in the view of R. Meir.]
7. = 100 *zuz*, which is the minimum amount of a *kethubah* even in the case of a non-virgin; v. Keth. I, 2.
8. [For any damage done to others (Tosaf.).]
9. [For any damage done by her to her husband (Tosaf.) V. Tosaf. B.K. IX.]
10. Which runs as follows: 'The male children which you will have with me shall inherit the amount of your *kethubah* over and above their appropriate portions due to them together with their brothers (if any of another mother).' V.B.B. (Sonc. ed.) p. 546, n. 16.
11. Cf. Ex. XXI, 26-27.

12. Who possesses the ownership of their substance.
13. Who has in them but the right of usufruct.
14. According to which the wife would not be able to impair the right of the husband, [nor would the husband on the other hand be able to impair the right of the wife to the slaves whose substance is actually hers.]

Baba Kamma 90a

'The Consecration [of cattle¹ to the altar, the prohibition of] leaven² [from any use] and the manumission of a slave³ release any of these articles [if mortgaged] from the burden of the mortgage.⁴ Are we then to say that this statement of Raba constituted a point at issue between these Tannaim? — No; it is possible that all concurred in the ruling of Raba [in general cases], but in this particular case here the Rabbis⁵ [might perhaps] have specially protected the mortgage of the husband.⁶ Or again if you like I may say that these Tannaim were unanimous in not accepting the enactment of Usha, but in the case here they might have differed as to whether the right to usufruct amounts in law to a right to the very substance, exactly as this was the dividing point between the following Tannaim. For it was taught:⁷ 'If an owner sells his slave to a man with whom he stipulates that the slave shall still remain to serve him for the next thirty days, R. Meir says that the vendor⁸ would be subject to the law of "a day or two"⁹ because the slave was still "under" him,' his view being that the right to a usufruct in the slave amounts in law to a right to the very substance of him. 'R. Judah on the other hand says that it is the purchaser who would be subject to the law of "a day or two"¹⁰ because the slave was "his money",' his view being that a right to a usufruct in the slave does not amount in law to a right to the very substance of him. 'But R. Jose says that both of them¹¹ would be subject to the right of "a day or two": the vendor because the slave was still "under" him and the purchaser because the slave was already "his money", 'for he was in doubt whether a right to a usufruct should amount

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

MISHNAH. IF A MAN BOXES ANOTHER MAN'S EAR, HE HAS TO PAY HIM¹⁹ A SELA'.²⁰ R. JUDAH IN THE NAME OF R. JOSE THE GALILEAN SAYS THAT [HE HAS TO PAY HIM] A MANEH.²⁰ IF HE SMACKED HIM [ON THE FACE] HE HAS TO PAY HIM TWO HUNDRED ZUZ;²⁰ [IF HE DID IT] WITH THE BACK OF HIS HAND HE HAS TO PAY HIM FOUR HUNDRED ZUZ. IF HE PULLED HIS EAR, PLUCKED HIS HAIR, SPAT SO THAT THE SPITTLE REACHED HIM, REMOVED HIS GARMENT FROM UPON HIM, UNCOVERED THE HEAD OF A WOMAN IN THE MARKET PLACE, HE MUST PAY FOUR HUNDRED ZUZ.

1. That had previously been mortgaged for a liability.

2. [In Jewish possession during the Passover which had previously been mortgaged for a liability to a non-Jew]
3. V. p. 498, n. 5.
4. So also here though the right of the husband in the *melog* (v. [Glos.](#)) slave is impregnable in the case of a sale or gift, it must give way in the case of manumission.
5. According to the second Baraitha.
6. To be inviolable even in the case of a manumission.
7. B.B. 50a.
8. During the thirty days.
9. Stated in Ex. XXI, 21 and according to which if an owner smites his servant, who after having continued to live for a day or two, dies, he would not be punished, though in the case of a stranger the slayer would be liable to death in all circumstances.
10. Even during the thirty days that the slave had to be with the vendor.
11. I.e., the vendor and the purchaser.
12. B.B. 50b; Sanh. 79a also *supra* p. 253.
13. Ex. XXI, 21.
14. [Raba stresses the word 'his'.]
15. Who considers neither the vendor nor the purchaser as the true owner, and so should be the case regarding husband and wife in the *melog* estate.
16. As where the slave belonged to two partners and one of them manumitted him; cf. Git. 41a.
17. Which are twenty-four in number; cf. Kid. 25a.
18. Ex. XXI, 26.
19. On account of Degradation.
20. V. [Glos.](#)

Baba Kamma 90b

THIS IS THE GENERAL PRACTICE, THOUGH ALL DEPENDS UPON THE DIGNITY [OF THE INSULTED PERSON]. R. AKIBA SAID THAT EVEN THE POOR IN ISRAEL HAVE TO BE CONSIDERED AS IF THEY ARE FREEMEN REDUCED IN CIRCUMSTANCES, FOR IN FACT THEY ALL ARE THE DESCENDANTS OF ABRAHAM, ISAAC AND JACOB.¹ IT ONCE HAPPENED THAT A CERTAIN PERSON UNCOVERED THE HEAD OF A WOMAN IN THE MARKET PLACE AND WHEN SHE CAME BEFORE R. AKIBA, HE ORDERED THE OFFENDER TO PAY HER FOUR HUNDRED ZUZ. THE LATTER SAID TO HIM, 'RABBI, ALLOW ME TIME [IN WHICH TO CARRY OUT THE JUDGMENT];' R. AKIBA ASSENTED

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AND FIXED A TIME FOR HIM. HE WATCHED HER UNTIL HE SAW HER STANDING OUTSIDE THE DOOR OF HER COURTYARD, HE THEN BROKE IN HER PRESENCE A PITCHER WHERE THERE WAS OIL OF THE VALUE OF AN ISAR,² AND SHE UNCOVERED HER HEAD AND COLLECTED THE OIL WITH HER PALMS AND PUT HER HANDS UPON HER HEAD [TO ANOINT IT]. HE THEN SET UP 'WITNESSES AGAINST HER AND CAME TO R. AKIBA AND SAID TO HIM: HAVE I TO GIVE SUCH A WOMAN³ FOUR HUNDRED ZUZ?' BUT R. AKIBA SAID TO HIM: 'YOUR ARGUMENT IS OF NO LEGAL EFFECT, FOR WHERE ONE INJURES ONESELF THOUGH FORBIDDEN, HE IS EXEMPT,⁴ YET, WERE OTHERS TO INJURE HIM, THEY WOULD BE LIABLE: SO ALSO HE WHO CUTS DOWN HIS OWN PLANTS, THOUGH NOT ACTING LAWFULLY,⁵ IS EXEMPT,⁴ YET WERE OTHERS TO [DO IT], THEY WOULD BE LIABLE.

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

What is the meaning of, 'Here I am, and here is also R. Jose the Galilean'? If you say he meant, 'Here I am who witnessed you [doing this] and here is also R. Jose the Galilean who holds that the payment should be a Tyrian *maneh*; go therefore and thus pay him a Tyrian *maneh*', would this not imply that a witness is eligible to act [also] as judge? But [how can this be, since] it was taught: If the members of the Sanhedrin saw a man killing another, some of them should act as witnesses and the others should act as judges: this is the opinion of R. Tarfon. R. Akiba [on the other hand] said that all of them are considered

witnesses and [they thus cannot act as judges, for] a witness may not act as a judge.⁹ Now, even R. Tarfon surely did not mean more than that a part of them should act as witnesses and the others act as judges, but did he ever say that a witness [giving evidence] should be able to act as judge? — The ruling there¹⁰ [that witnesses actually giving evidence would not be eligible to act at the same time as judges] referred only to a case such as where e.g., they saw the murder taking place at night time when they were unable to act in a judicial capacity.¹¹ Or if you like I may say that what R. Judah Nesi'ah said to the offender was, 'Since I am here who concur with R. Jose the Galilean who stated that a Tyrian *maneh* should be paid, and since there are here witnesses testifying against you, go and pay the plaintiff a Tyrian *maneh*.'

Does R. Akiba really maintain that a witness cannot [at the same time] act as judge? But it has been taught: [As Scripture says] And one smite another with a stone or with his fist,¹² Simeon the Temanite remarked that just as a fist is a concrete object that can be submitted for examination to the assembly of the judges and the witnesses, so also it is necessary that all other instruments should be able to be submitted [for consideration] to the assembly of the judges and the witnesses, which excludes the case where the instrument of killing disappeared from under the hands of the witnesses.¹³ Said R. Akiba to him: [Even if the instrument was placed before the judges], yet did the actual killing take place before the judges of the Court of Law that they should be expected to know how many times the murderer struck the victim, or again the part of the body upon which he struck him, whether it was upon his thigh or upon the tip of the heart? Again, supposing the murderer threw a man down from the top of a roof or from the top of a mansion house so that the victim died, would the court of law have to go to the mansion or would the mansion have to go to the court of law? Again, if the mansion meanwhile collapsed,

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

Our Rabbis taught: 'If an ox while still *Tam*¹⁵ killed [a person] and subsequently also did damage, the judges will adjudicate on the loss of life¹⁶ but will not adjudicate on the pecuniary damage.¹⁷ In the case however of *Mu'ad*¹⁸ killing a person and subsequently doing damage the judges will first deal with the pecuniary matter¹⁹ and then adjudicate on the loss of life.²⁰ But if [for some reason or other], they have already adjudicated on the capital matter it would no more be possible to start dealing with the pecuniary matter.' But even if they first adjudicated on the capital matter, what has happened that it should no more be possible for them to start dealing with the pecuniary matter? Raba said: 'I found the Rabbis at the School of Rab²¹ sitting and stating that this teaching follows the view of R. Simeon the Temanite who said that just as a fist is a definite object which can be submitted to the consideration of the assembly of the judges and the witnesses,

1. Cf. B.M. VIII, 1.
2. A small coin; v. [Glos.](#)
3. Who had herself for the mere value of an isar, publicly uncovered her own head.
4. From any pecuniary punishment.

5. Cf. Deut. XX, 19.
6. Consisting of twenty-five sela's, v. *supra* p. 204. n. 4.
7. Which was only an eighth part of a Tyrian *maneh*; cf. *supra* p. 204.
8. I.e., R. Judah II, the Prince.
9. Sanh. 34b; B.B. 114a.
10. In the case of Sanhedrin witnessing a murder.
11. As judgments could be passed only at day time; cf. Sanh. IV, 1. [But where witnessed during the daytime, they can immediately act in the dual capacity of judges and witnesses.]
12. Ex. XXI, 18.
13. [Though the witnesses had an opportunity of examining the killing instrument, where the Judges had no such opportunity, no death penalty can be passed.]
14. [In which case the court relies on the examination made by the witnesses; v. Tosef. Sanh. XII.]
15. V. [Glos.](#)
16. Cf. Ex. XXI, 28.
17. Cf. *ibid.* 35.
18. V. [Glos.](#)
19. Cf. *ibid.* 36.
20. Cf. *ibid.* 29-30.
21. Cf. *supra* p. 487.

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[so also all other instruments should be able to be submitted to the consideration of the assembly of the judges and the witnesses], which shows that the inspection¹ [of the instrument] by the Court of Law is essential [before any liability can be imposed]; and in this case where the sentence has already been passed on the ox to be stoned² it would not be possible to keep the ox for inspection¹ by the Court of Law, as we could not delay³ the execution of the judgment. I said to them: 'You may even say that the teaching follows the view of R. Akiba, for we may have been dealing here with a case where the defendant ran away.'⁴ But if the defendant ran away even in the case where the capital matter has not yet been adjudicated, how would it be possible to deal with the pecuniary matter in the absence of the defendant? — It was only after the evidence of the witnesses had already been accepted that he ran away.⁵ Be that as it may, whence could the payment come⁶ [since the defendant ran away]?² —

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Out of the hire obtained from plowing [done by the ox]. But if so, why also in the case of *Tam*, should the pecuniary matter not be adjudicated first and the payment made out of the hire obtained from plowing, and then adjudicate the capital matter? — Said R. Mari the son of R. Kahana: This indeed proves that the hire obtained from plowing forms a part of the general estate of the owner.⁸

The question was raised: Is an inspection [of the instrument] essential also in the case of mere damage, or is no inspection necessary in the case of mere damage? Shall we say that it is only regarding murder⁹ that we have to inspect the instrument, as by means of one instrument life could be taken, while by means of another life could not be taken, whereas regarding mere damage any instrument would be sufficient, or is there perhaps no difference? — Come and hear: 'Just as Pit can cause death because it is usually ten handbreadths [deep], so also [other similar nuisances] should be such as can cause death, [i.e.,] ten handbreadths [deep]. If, however, they were less than ten handbreadths [deep] and an ox or an ass fell into them and died there would be exemption, but if only injured by them there would be liability.'¹⁰ Is not the Tanna here reckoning upwards — so that what he says is that a pit of a depth of from one handbreadth to ten handbreadths could not cause death though it could cause damage, implying that a pit of any depth would involve liability in the case of mere damage and thus indicating that no inspection is necessary regarding mere damage? — No, he reckoned downwards, and thus meant to say that only a pit of ten handbreadths could cause death whereas a Pit a little less than ten handbreadths could cause¹¹ only damage and not death, so that it may therefore still be argued that inspection might be essential even regarding mere damage and that in each case it may be necessary that the instrument be such as would be fit to cause the particular damage done.

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

Come and hear: Regarding the Five Items,¹⁶ an estimation will be made and the payment made straight away, though Healing and Loss of Time will have to be estimated for the whole period until he completely recovers. If after the estimation was made his health continued to deteriorate, the payment will not be more than in accordance with the previous estimation. So also if after the estimation was made he recovered rapidly, payment will be made of the whole sum estimated. Does this not show that estimation is essential also in the case of mere damage? — That an estimate has to be made of the length of the illness likely to result from the wound¹⁷ has never been questioned by us, for it is certain that we would have to make such an estimation; the point which was doubtful to us was whether we estimate if the instrument was one likely to do that damage or not. What is indeed the law? — Come and hear: Simeon the Temanite said¹⁸ that just as a fist is a definite object that can be submitted to the consideration of the assembly of the judges and the witnesses, so also all other

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instruments should be able to be submitted to the consideration of the assembly of the judges and the witnesses. Does this not show that the inspection of the instrument is essential even in the case of mere damage? — It does indeed.

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

IF HE SPAT SO THAT THE SPITTLE REACHED HIM ... HE HAS TO PAY FOUR HUNDRED ZUZ. R. Papa said: This Mishnaic ruling applies only where it reached him [his person], but if it reached only his garment this would not be so. But why should this not be equivalent to an insult in words? — It was stated in the West¹⁹ in the name of R. Jose b. Abin that this could indeed prove that where the insult was merely in words, there would be exemption from any liability whatsoever.

ALL DEPENDS UPON THE DIGNITY ... The question was raised: Did the first Tanna mean by this to mitigate or to aggravate the penalty? Did he mean to mitigate the penalty, so that a poor man would not have to be paid so much, or did he perhaps mean to aggravate the penalty, so that a rich man would have to be paid more? — Come and hear: Since R. Akiba²⁰ stated **THAT EVEN THE POOR IN ISRAEL HAVE TO BE CONSIDERED AS IF THEY ARE FREEMEN WHO HAVE BEEN REDUCED IN CIRCUMSTANCES, FOR IN FACT THEY ALL ARE THE DESCENDANTS OF ABRAHAM, ISAAC AND JACOB,** does this not show that the first Tanna meant to mitigate the penalty?²¹ — It does indeed.

IT ONCE HAPPENED THAT A CERTAIN PERSON UNCOVERED THE HEAD OF A WOMAN [IN THE MARKET PLACE ... FIXED A TIME FOR HIM]. But is time allowed²² [in such a case]? Did R. Hanina not say that no time is granted in cases of injury? — No time is granted in the case of injury where there is an actual loss of money,²³ but in the case of Degradation, where there is no actual loss of money, time²² to pay may be granted.

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

1. Lit., 'estimation'.
2. Lit., 'to be killed'.
3. V. Sanh. (Sonc. ed.) p. 222, and notes.
4. So that in his absence we cannot adjudicate the matter.
5. In which case though judgment could be passed regarding the pecuniary liability it is of no use to do so as the defendant when running away took all available funds with him.
6. Even in the case where the capital matter has not yet been adjudicated.
7. With all his available funds.
8. And could thus not become subject to be paid for damages in the case of *Tam*, where payment could only be made out of its own body; cf. *supra* p. 73. [The plaintiff, however, could not take the ox itself in payment as it is to be stoned. V. Tosaf.]
9. Cf. Num. XXXV, 17, 18 and 23.
10. V. *supra* 50b.
11. I.e., is fit to cause.
12. Cf. Ex. XXI, 26-27.
13. Kid. 24b; *infra* 88a.
14. And the act of the master in the second case is not considered a cause adequate to effect such a result.
15. Kid. *ibid*, and cf. *supra* 56a.
16. Enumerated Mishnah *supra* p. 473,

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17. Lit. 'how long he is likely to suffer ... and how long he will not.'
18. *Supra* pp. 522-3
19. [This usually represents R. Jeremiah.] Cf. Sanh. 17b.
20. [And yet R. Akiba does not impose more than four hundred *zuz*, the same amount as mentioned by the first Tanna.]
21. [The figure 400 mentioned by him being a maximum whereas R. Akiba would award this amount to all alike.]
22. For the execution of a judgment.
23. Sustained by the plaintiff.
24. I.e., you have gone to a great amount of trouble which could however be of no practical avail.

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and it nevertheless says: If one injures oneself, though it is forbidden to do so, he is exempt? — It was this which he¹ said to him: 'There could be no question regarding Degradation, as a man may put himself to shame, but even in the case of injury where a man may not injure himself, if others injured him they would be liable.' But may a man not injure himself? Was it not taught: You might perhaps think that if a man takes an oath to do harm to himself and did not do so he should be exempt. It is therefore stated: 'To do evil or to do good,'² [implying that] just as to do good is permitted, so also to do evil [to oneself] is permitted; I have accordingly to apply [the same law in] the case where a man had sworn to do harm to himself and did not do harm?³ — Samuel said: The oath referred to was to keep a fast.⁴ It would accordingly follow that regarding doing harm to others⁵ it would similarly mean to make them keep a fast. But how can one make others keep a fast? — By keeping them locked up in a room. But was it not taught: What is meant by doing harm to others? [If one says], I will smite a certain person and will split his skull?³ — It must therefore be said that Tannaim differed on this point, for there is one view maintaining that a man may not injure himself and there is another maintaining that a man may injure himself. But who is the Tanna maintaining that a man

may not injure himself? It could hardly be said that he was the Tanna of the teaching, And surely your blood of your lives will I require,⁶ [upon which] R. Eleazar remarked [that] it meant I will require your blood if shed by the hands of yourselves,⁷ for murder is perhaps different. He might therefore be the Tanna of the following teaching: 'Garments may be rent for a dead person⁸ as this is not necessarily done to imitate the ways of the Amorites. But R. Eleazar said: I heard that he who rends [his garments] too much for a dead person transgresses the command,⁹ 'Thou shalt not destroy',¹⁰ and it seems that this should be the more so in the case of injuring his own body. But garments might perhaps be different, as the loss is irretrievable, for R. Johanan used to call garments 'my honourers',¹¹ and R. Hisda whenever he had to walk between thorns and thistles used to lift up his garments Saying that whereas for the body [if injured] nature will produce a healing, for garments [if torn] nature could bring up no cure.¹² He must therefore be the Tanna of the following teaching: R. Eleazar Hakkapar Berabbi¹³ said: What is the point of the words: 'And make an atonement for him, for that he sinned regarding the soul.'¹⁴ Regarding what soul did this [Nazarite] sin unless by having deprived himself of wine? Now can we not base on this an argument *a fortiori*: If a Nazarite who deprived himself only of wine is already called a sinner, how much the more so one who deprives oneself of all matters?'¹⁵

HE WHO CUTS DOWN HIS OWN PLANTS ... Rabbah b. Bar Hanah recited in the presence of Rab: [Where a plaintiff pleads] 'You killed my ox, you cut my plants, [pay compensation', and the defendant responds:] 'You told me to kill it, you told me to cut it down', he would be exempt. He [Rab] said to him. If so you almost make it impossible for anyone to live, for how can you trust him? — He therefore said to him: Has this teaching to be deleted? — He replied: No; your teaching could hold good in the case where the ox was marked for slaughter¹⁶ and

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so also the tree had to be cut down.¹⁷ If so what plea has he against him? — He says to him: I wanted to perform the precept myself in the way taught: 'He shall pour out ... and cover it',¹⁸ implying that he who poured out¹⁹ has to cover it; but it once happened that a certain person performed the slaughter and another anticipated him and covered [the blood], and R. Gamaliel condemned the latter to pay ten gold coins.²⁰

Rab said: A palm tree producing even one *kab* of fruit may not be cut down. An objection was raised [from the following]: What quantity should be on an olive tree so that it should not be permitted to cut it down? A quarter of a *kab*.²¹ — Olives are different as they are more important. R. Hanina said: *Shibhath*²² my son did not pass away except for having cut down a fig tree before its time. Rabina, however, said: If its value [for other purposes] exceeds that for fruit, it is permitted [to cut it down]. It was also taught to the same effect: 'Only the trees of which thou knowest'²³ implies even fruit-bearing trees;²⁴ That they be not trees for meat, means a wild tree. But since we ultimately include all things, why then was it stated, That they are not trees for food? To give priority²⁵ to a wild tree over one bearing edible fruits.

1. I.e., R. Akiba.
2. Lev. V, 4.
3. Shebu. 27a.
4. But in other ways a man may not injure himself.
5. Dealt with in Shebu 27a.
6. Gen. IX, 5.
7. I.e., for committing suicide.
8. Cf. II Sam. I, 11, and II Kings II, 12. Cf. also Sanh. 52b.
9. According to the text, 'Will be lashed on account of transgressing' which could however hardly be substantiated; Cf. Tosaf. a.l.
10. Deut. XX, 19.
11. Sanh. 94a.
12. Cf. Taan. 23a.
13. A title of some scholars who belonged to the school of R. Judah the prince.
14. Num. VI, 11; E.V.: for that he sinned by the dead.

15. R. Eleazar Hakkapar is thus the Tanna forbidding self-injury.
16. Such as where it killed a human being; cf. Ex. XXI, 28.
17. Such as where it constituted a danger to the public or where it was planted for idolatrous purposes; cf. Deut. XII, 3.
18. Lev. XVII, 13.
19. I.e., he who acted as slaughterer.
20. Hul. 87a.
21. Sheb. IV, 10. [Why then should the palm tree require a bigger quantity?]
22. B.B. 26a. There he is called 'Shikhath'.
23. Deut. XX, 20.
24. [That is where it is known that they no longer produce any fruits, v. Malbim, a.l.]
25. To be cut down.

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

MISHNAH. EVEN THOUGH THE OFFENDER PAYS HIM [COMPENSATION], THE OFFENCE IS NOT FORGIVEN UNTIL HE ASKS HIM FOR PARDON, AS IT SAYS: NOW THEREFORE RESTORE THE MAN'S WIFE, etc.³ WHENCE CAN WE LEARN THAT SHOULD THE INJURED PERSON NOT FORGIVE HIM HE WOULD BE [STIGMATISED AS] CRUEL? FROM THE WORDS: SO ABRAHAM PRAYED UNTO GOD AND GOD HEALED ABIMELECH, etc.⁴ IF THE PLAINTIFF SAID: 'PUT OUT MY EYE, CUT OFF MY ARM AND BREAK MY LEG,' THE OFFENDER WOULD NEVERTHELESS BE LIABLE; [AND SO ALSO EVEN IF HE TOLD HIM TO DO IT] ON THE UNDERSTANDING THAT HE WOULD BE EXEMPT HE WOULD STILL BE LIABLE. IF

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THE PLAINTIFF SAID: 'TEAR MY GARMENT AND BREAK MY PITCHER,' THE DEFENDANT WOULD STILL BE LIABLE, BUT IF HE SAID TO HIM: '[DO THIS] ON THE UNDERSTANDING THAT YOU WILL BE EXEMPT,' HE WOULD BE EXEMPT.⁵ BUT IF ONE SAID TO THE DEFENDANT: 'DO THIS TO A THIRD PERSON⁶ ON THE UNDERSTANDING THAT YOU WILL BE EXEMPT,' THE DEFENDANT WOULD BE LIABLE, WHETHER WHERE THE INJURY WAS DONE TO THE PERSON OR TO HIS CHATTELS.

GEMARA. Our Rabbis taught: All these fixed sums stated above⁷ specify only the payment [civilly due] for Degradation. For regarding the hurt done to the feelings of the plaintiff, even if the offender should bring all the 'rams of Nebaioth'⁸ in the world,⁹ the offence would not be forgiven until he asks him for pardon, as it is written: Now therefore restore the man's wife for he is a prophet and he will pray for thee.¹⁰ But is it only the wife of a prophet who has to be restored, whereas the wife of another man need not be restored? R. Samuel b. Nahmani said in the name of R. Johanan: 'Restore the man's wife' [surely implies] in all cases; for as to your allegation, Wilt thou slay even a righteous nation? Said he not unto me, She is my sister and she even she herself said: He is my brother,¹¹ [you should know that] he is a prophet who has already [by act and deed]¹² taught the world that where a stranger comes to a city whether he is to be questioned regarding food and drink — or regarding his wife, whether she is his wife or sister. From this we can learn that a descendant of Noah¹³ may become liable to death if he had the opportunity to acquire instruction¹⁴ and did not do so [and so committed a crime through the ignorance of the law].

For to close the Lord had closed up [all the wombs of the house of Abimelech].¹⁵ R. Eleazar said: Why is 'closing up' mentioned twice?¹⁶ There was one 'closing up' in the case of males, viz. semen [virile], and two in

the case of females, viz. semen and the giving of birth. In a Baraita it was taught that there were two in the case of males, viz. semen [virile] and urinating, and three in the case of females, i.e. semen, urinating and the giving of birth. Rabina said: Three in the case of males, viz. semen [virile], urinating and anus, and four in the case of females, viz. semen and the giving of birth, urinating and anus. *'All the wombs of the house of Abimelech.'* It was stated at the College of R. Jannai that even a hen of the house of Abimelech did not lay an egg [at that time].

Raba said to Rabbah b. Mari: Whence can be derived the lesson taught by our Rabbis that one who solicits mercy for his fellow while he himself is in need of the same thing, [will be answered first]? — He replied: As it is written: *And the Lord changed the fortune of Job when he prayed for his friends.*¹⁷ He said to him: You say it is from that text, but I say it is from this text: 'And Abraham prayed unto God and God healed Abimelech and his wife and his maidservants,'¹⁸ and immediately after it Says: And the Lord remembered Sarah as he had said, etc.,¹⁹ [i.e.] as Abraham had [prayed and] said regarding Abimelech.

Raba [again] said to Rabbah b. Mari: Whence can be derived the proverbial saying that together with the thorn the cabbage is smitten?²⁰ — He replied: As it is written, Wherefore will ye contend with Me, ye all have transgressed against Me, says the Lord.²¹ He said to him: You derive it from that text, but I derive it from this, How long refuse ye²² to keep My commandments and My laws.²³ Raba [again] said to Rabbah b. Mari: It is written: 'And from among his brethren, he took five men.'²⁴ Who were these five? — He replied: Thus said R. Johanan that 'they were those whose names were repeated [in the Farewell of Moses].'²⁵ But was not the name Judah repeated too?²⁶ He replied: The repetition in the case of Judah was for a different purpose, as stated by R. Samuel b. Nahmani that R. Johanan said:

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What is the meaning of the words, Let Reuben live and not die, in that his men become few, and this is for Judah?²⁷ All the forty years that the Israelites were in the wilderness the bones of Judah were scattered²⁸ in the coffin²⁹ until Moses came and solicited for mercy by saying thus to God: Master of the universe, who brought Reuben to confess³⁰ if not Judah?³¹ Hear [therefore] Lord the voice of Judah! Thereupon each limb fitted itself into its original place.³² He was, however, not permitted to ascend to the heavenly gathering³³ until Moses said: And bring him in unto his people.³⁴ As, however, he did not know what the Rabbis were saying and was thus unable to argue with the Rabbis on matters of the law, Moses said: His hands shall contend for him!³⁴ As again he was unable to bring his statement into accord with the *Halachah*, Moses said, *Thou shalt be a help against his adversaries!*³⁴

Raba [again] said to Rabbah b. Mari: Whence³⁵ can be derived the popular saying that poverty follows the poor?³⁶ — He replied: We have learnt:³⁷ 'The rich used to bring the first fruits³⁸ in baskets of gold and silver, but the poor brought it in wicker baskets made out of the bark of willow, and thus gave the baskets as well as the first-fruits to the priest.'³⁹ He said to him: You derive it from there, but I derive it from this:

1. Which qualifies and thus exempts such a case from giving priority to wild trees over those bearing edible fruits.
2. As the value of the produce of vines surpasses that of palms.
3. Gen. XX, 7.
4. Ibid. 17.
5. For the distinction between injury to the person and damage to chattels see the Gemara.
6. Lit., 'to such and such person'; cf. Ruth IV, 1.
7. *Supra* pp. 520-1.
8. Isa. LX, 7.
9. For the purpose of propitiation.
10. Gen. XX, 7.
11. Ibid. 4-5. [Ms. M. 'He learned it from thee'; i.e. thy conduct in questioning a stranger, of

which he as 'a prophet' became cognizant, put him on his guard. Cf. Mak. 9a.]

12. Ibid. XVIII, 2-8.
13. Who is subject to the seven commandments of civilized humanity enumerated in Sanh. 56a; cf. also *supra*.
14. Regarding the elementary laws of humanity.
15. Gen. XX, 18; E.V.: For the Lord had fast closed up...
16. I.e., in the infinitive and finite mood.
17. Job XLII, 10.
18. Gen. XX, 17.
19. Gen. XXI, 1.
20. I.e., that the good are punished with the bad.
21. Jer. II, 29.
22. [Including, as it were, Moses and Aaron.]
23. Ex. XVI, 28.
24. Gen. XLVII, 2.
25. Deut. XXXIII, 2-29; (besides Judah) the five were as follows: Dan, Zebulun, Gad, Asher and Naphtali. These names had to be repeated in the blessing as they were the weakest among the tribes.
26. As in Deut. XXXIII, 7 (though his tribe was by no means among the weak ones).
27. Deut. XXXIII, 6. 7.
28. I.e., they were not kept together.
29. As the bones of all the heads of the tribes just as those of Joseph were, according to homiletic interpretation, carried away from Egypt to the Promised Land. Cf. Mid. Rab. on Gen. L, 25.
30. Cf. Gen. XXXV, 22 and XLIX, 4.
31. Who made public confession in Gen. XXXVIII, 26.
32. I.e., they were again made into one whole.
33. Where matters of law are considered; cf. B.M. 86a.
34. Deut. XXXIII, 7.
35. V. Mak. 11b.
36. B.B. 174b.
37. Bik. III, 8.
38. Cf. Ex. XXXIV, 26.
39. So that the rich took back their gold or silver baskets, whereas the poor did not receive back their baskets made of the bark of the willow.

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*And shall cry unclean, unclean.*¹

Rabbah [again] said to Rabbah b. Mari: Whence can be derived the advice given by our Rabbis:² Have early breakfast in the summer because of the heat, and in the winter because of the cold, and people even say that sixty³ men may pursue him who has early meals in the mornings and will not

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overtake him? — He replied: As it is written, *They shall not hunger nor thirst, neither shall the heat nor sun smite them.*⁴ He said to him: You derive it from that text but I derive it from this one, And ye shall serve the Lord your God:⁵ this [as has been explained] refers to the reading of *Shema*⁶ and the Tefillah,⁷ 'And he will bless thy bread and thy water:'⁸ this refers to the bread dipped in salt and to the pitcher of water;⁸ and after this, *I will take [Mahalah, i.e.] sickness away from the midst of thee.*⁵ It was [also] taught: *Mahalah*² means gall,¹⁰ and why is it called mahalah! Because eighty-three different kinds of illnesses may result from it [as the numerical value of mahalah amounts exactly to this];¹¹ but they all are counteracted by partaking in the morning of bread dipped in salt followed by a pitcher of water.

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

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

Raba again said to Rabbah b. Mari: Whence can be derived the popular saying: 'Though a duck keeps its head down while walking its eyes look afar?' — He replied: As it is written: *And when the Lord shall have dealt well with my lord then remember thy handmaid.*¹⁵ Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying, 'Sixty¹⁶ pains reach the teeth of him who hears the noise made by another man eating¹⁷ while he himself does not eat'? — He replied: As it is written, But me, even me thy servant and Zadok the priest, and Benaiah the son of Jehoiada, and thy servant Solomon,

hath he not called.¹⁸ He said to him: You derive it from that verse, but I derive it from this verse, And Isaac brought her unto his mother Sarah's tent, and took Rebekah and she became his wife; and he loved her. And Isaac was comforted for his mother;¹⁹ and soon after it is written, And again Abraham took another wife and her name was Keturah.²⁰

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

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

Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying, 'A bad palm will usually make its way to a grove of barren trees'? — He replied: This matter was written in the Pentateuch, repeated in the Prophets, mentioned a third time in the Hagiographa, and also learnt in a Mishnah and taught in a Baraitha: It is stated in the Pentateuch as written, So Esau went unto Ishmael;²⁵ repeated in the prophets, as written, And there gathered themselves to Jephthah idle men and they went out with him;²⁶ mentioned a third time in the Hagiographa, as written: Every fowl dwells near its kind and man near his equal;²⁷ it was learnt in the Mishnah: 'All that which is attached to an article that is subject to the law of defilement,²⁸ will similarly become defiled, but all that which is attached to anything which would always remain

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[levitically] clean would similarly remain clean;²⁹ and it was also taught in a Baraita: R. Eliezer said: 'Not for nothing did the starling follow the raven, but because it is of its kind.'³⁰ Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying: 'If you draw the attention of your fellow to warn him [and he does not respond], you may push a big wall and throw it at him'?³¹ — He replied: As it is written: *Because I have purged thee and thou wast not purged, thou shalt not be purged from thy filthiness any more.*³²

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

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

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

1. Lev. XIII, 45. I.e., in addition to the affliction of the leprosy, he is compelled by Jaw to make it public.
2. Cf. B.M. 107b.
3. A common hyperbolic term.
4. Isa. XLIX, 10. Which might imply as follows: If they will neither hunger nor thirst, but eat in time and drink in time, then neither the heat nor the sun shall smite them.
5. Ex. XXIII, 25.
6. [Lit., 'Hear (O Israel!)' introducing the three passages from Scriptures (Deut. VI, 4-9; XI,

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

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

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

R. Hanan said: He who invokes the judgment of Heaven against his fellow is himself punished first, as it says, *And Sarai said unto Abram, My wrong be upon thee*³, etc., and it is subsequently written, *And Abraham came to mourn for Sarah, and to weep for her.*⁴ This, however, is the case only where justice could be obtained in a temporal Court of Law. R. Isaac said: Woe to him who cries [for divine intervention] even more than to him against whom it is invoked! It was taught likewise: Both the one who cries for divine intervention and the one against whom it is invoked come under the Scriptural threat,⁵ but punishment is meted out first to the one who cries, [and is] more severe than for the one against whom justice is invoked.⁶ R. Isaac again said: The curse of an ordinary man should never be considered a trifling matter in your eyes,⁷ for when Abimelech called a curse upon Sarah it was fulfilled in her seed, as it says, *Behold it is for thee a covering of the eyes,*⁸ [which implies that] he said to her, 'Since thou hast covered the truth from me and not disclosed that he was thy husband, and hast thus caused me all this trouble, let it be the will [of Heaven] that there shall be to thee a covering of the eyes,'⁹ and this was actually fulfilled in her seed, as it is written: *And it came to pass that when Isaac was old and his eyes were dim so that he could not see.*¹⁰ R. Abbahu said: A man should always strive to be rather of the persecuted than of the persecutors as there is none among the birds more persecuted than doves and pigeons, and yet Scripture made them [alone]¹¹ eligible for the altar.¹²

IF THE PLAINTIFF SAID: PUT OUT MY EYE ... ON THE UNDERSTANDING THAT HE WOULD BE EXEMPT, HE WOULD STILL BE LIABLE. IF THE PLAINTIFF SAID: TEAR MY GARMENT ON THE

UNDERSTANDING THAT YOU WILL BE EXEMPT HE WOULD BE EXEMPT. R. Assi b. Hama¹³ said to Rabbah:¹⁴ Why is the rule differing in the former case and in the latter case? — He replied: [There is liability in] the former case because no man truly pardons the wounding of his principal limbs. The others rejoined: Does a man then pardon the inflicting of pain, seeing that it was taught: 'If the plaintiff had said, "Smite me and wound me on the understanding that you will be exempt," the defendant would be exempt.' He had no answer and said: Have you heard anything on this matter? — He¹⁵ thereupon said to him: This is what R. Shesheth has said: The liability is because [the plaintiff had no right to pardon] the discredit to the family. It was similarly stated: R. Oshaia said: Because of the discredit to the family, whereas Raba said: Because no man could truly pardon the injury done to his principal limbs. R. Johanan, however, said: Sometimes the term 'Yes' means 'No'¹⁶ and the term 'No' means 'Yes' [as when spoken ironically].¹⁷ It was also taught likewise: If the plaintiff said, 'Smite me and wound me,' and when the defendant interposed, 'On the understanding of being exempt, the plaintiff replied, 'Yes,' there may be a 'Yes' which implies 'No' [i.e., when spoken ironically]. If the plaintiff said, 'Tear my garment,' and when the defendant interposed, 'On the Understanding of being exempt, he said to him, 'No', there may be a 'No' which means 'Yes' [such as when spoken ironically].¹⁷

IF THE DEFENDANT SAID: BREAK MY PITCHER AND TEAR MY GARMENT, THE DEFENDANT WOULD STILL BE LIABLE. A contradiction was pouched out: "'To keep'¹⁸ but not to destroy; 'to keep', but not to tear; 'to keep' but not to distribute to the poor,' [in which case the liability of bailees would not apply. Why then liability in the Mishnah]?¹⁹ — Said R. Huna: There is no difficulty, as here²⁰ the article came into his hands,²¹ whereas there²² the article did not come into his hands.²³ Said Rabbah to him: Does the expression 'To

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keep'²⁴ not imply that the article has come into his hands? — Rabbah therefore said: This case as well as the other is one in which the article has come into his hands, and still there is no difficulty, as in the case here²⁵ the article originally came into his hands²¹ for the purpose of being guarded, whereas there²² it came to his hands for the purpose of being torn.

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

21. I.e., to the hand of the one who did the damage.
22. In Ex.
23. But was destroyed before it actually reached the hand of the bailee.
24. Ibid.
25. In the case of the Mishnah.
26. So much per week.
27. As there were in that case definite plaintiffs.

1. Ibid. XXIII, 20.
2. Gen. XIII, 5.
3. Ibid. XVI, 5.
4. Ibid. XXIII, 2.
5. Cf. Ex. XXII, 23.
6. As in the case of Sarah; Gen. XVI, 5 and *ibid.* XXIII, 2.
7. Cf. Ex. XXII, 23.
8. Gen. XX, 16.
9. I.e., blindness.
10. Gen. XXVII, 1.
11. Among birds.
12. Cf. Lev. I, 14.
13. [MS.M.: 'R. Joseph b. Hama' the father of Raba.]
14. Raba in the text and 'Rab' in the text of Asheri, v. Marginal Glosses in *cur. edd.*
15. I.e., R. Assi.
16. Cf. *supra* pp. 178-9.
17. According to Rashi there is strictly speaking no difference between the case dealt with in the commencing and that of the concluding clause; as all depends upon the implied intention, the illustration being in each case taken from what is usual, for while a man will pardon damage done to his chattel, he will not do so in regard to personal pain. But that this was not so was maintained by Tosaf.
18. Ex. XXII, 6.
19. Where he gave him the pitcher to break it and the garment to tear it.
20. In the case of the Mishnah.