

**BABA KAMMA- 31b-62b**

31b

**The Soncino Babylonian Talmud**

**Book II**

**Folios 31b-62b**



# **BABA KAMMA**

**TRANSLATED INTO ENGLISH WITH NOTES**

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UNDER THE EDITORSHIP OF

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## Baba Kamma 31b

— The first was certainly [considered] careless,<sup>1</sup> whilst, as to the second, he is liable for damage done by his person, [that is,] only where he [has already] had [the opportunity] to rise and did [nevertheless] not rise; for damage caused by his chattels he is [however] exempt, as he may say to him:<sup>2</sup> It is not I who dug this pit.<sup>3</sup>

An objection was raised [from the following Baraitha]: All of them are liable for damage [done] by their person,<sup>4</sup> but exempt for damage [caused] by their chattels.<sup>4</sup> Does [this Baraitha] not refer even to the first?<sup>5</sup> — No, with the exception of the first. But is it not stated, 'All of them...'? — R. Adda b. Ahabah said: 'All of them' refers to [all] the plaintiffs.<sup>6</sup> [But] how is this? If you maintain that the first [is] also [included], we understand why the Baraitha says 'All of them'. But if you contend that the first is excepted, what [meaning could there be in] 'All of them'? Why [indeed] not say 'The plaintiffs'? — Raba [therefore] said: The first<sup>7</sup> is liable for both injuries inflicted upon the person of the second and damage caused to the chattels of the second, whereas the second<sup>8</sup> is liable to compensate the third only for injuries inflicted upon his person but not for damage<sup>9</sup> to his chattels; the reason being that the [person of the] second is subject to the law applicable to Pit, and no case can be found where Pit would involve liability for inanimate objects.<sup>10</sup> This accords well with the view of Samuel, who holds that all nuisances are [subject to the law applicable to] Pit.<sup>11</sup> But according to Rab who maintains that it is only where the nuisance has been abandoned that this is so, whereas if not [abandoned] it is not so,<sup>12</sup> what reason could be advanced?<sup>13</sup> — We must therefore accept the first version,<sup>14</sup> and as to the objection raised by you [from the Baraitha], 'All of them are liable',<sup>15</sup> it has already been interpreted by R. Adda b. Minyomi in the presence of Rabina to refer to a case where

inanimate objects have been damaged by the chattels [of the defendant].<sup>16</sup>

The Master stated: 'Where, however, they all fell because of the first, the first is liable for the damage [sustained] by them all.' How [indeed can they all] fall [because of the first]? — R. Papa said: Where he blocked the road like a carcass, [closing the whole width of the road]. R. Zebid said: Like a blind man's staff.<sup>17</sup>

*MISHNAH.* IF ONE COMES WITH HIS BARREL AND AN OTHER COMES WITH HIS BEAM AND THE PITCHER<sup>18</sup> OF THIS ONE BREAKS BY [COLLISION WITH] THE BEAM OF THIS ONE, HE<sup>19</sup> IS EXEMPT, FOR THE ONE IS ENTITLED TO WALK [THERE AND CARRY BEAMS] AND THE OTHER IS ENTITLED TO WALK [THERE AND CARRY BARRELS]. WHERE THE CARRIER OF THE BEAM WAS IN FRONT, AND THE CARRIER OF THE BARREL BEHIND, AND THE BARREL BROKE BY [COLLISION WITH] THE BEAM, THE CARRIER OF THE BEAM IS EXEMPT.<sup>20</sup>

1. [Since stumbling implies carelessness.]
2. To the third.
3. I.e., the nuisance was created not by the second, but caused by the first who fell.
4. Whether to the person or to the chattels of the plaintiff.
5. Who, according to Raba, is liable for damage caused even by his chattels to the person of the second as being subject to the law applicable to Pit. This Baraitha thus refutes Raba.
6. The first is thus, as a matter of course, not included.
7. Being subject to the law applicable to damage done by Man.
8. Should be subject to the law applicable in Pit.
9. Though done by the person of the second.
10. *Supra* p. 18.
11. *Supra* p. 150. [The person of the second may therefore be treated as Pit.]
12. But is subject to the law applicable to Ox where damage to inanimate objects is also compensated.
13. For the person of the second, though lying on the ground, has surely never been abandoned by him. Why then exemption for damage done by him to inanimate objects?

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14. Of the statement of Raba, according to which the first is liable for damage done whether by his person or by his chattels, whereas the second is liable for damage done only by his person but not if done by his chattels.
15. For damage done by their person, but exempt for damage done by their chattels, including thus also the first.
16. Which are subject to the laws of Pit involving no liability for inanimate objects. Were, however, the person of the plaintiff to have been injured, there would be no exemption even if the injury were caused by the chattels of the first, as expounded by Raba.
17. [With which the blind gropes his way on either side of the road.]
18. Cf. *supra* p. 142.
19. The owner of the beam.
20. For the carrier of the barrel who was behind should not have proceeded so fast.

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BUT IF THE CARRIER OF THE BEAM [SUDDENLY] STOPPED, HE IS LIABLE.<sup>1</sup> IF, HOWEVER, HE CRIED TO THE CARRIER OF THE BARREL, 'HALT!' HE IS EXEMPT. WHERE, HOWEVER, THE CARRIER OF THE BARREL WAS IN FRONT, AND THE CARRIER OF THE BEAM BEHIND AND THE BARREL BROKE BY [COLLISION WITH] THE BEAM, HE IS LIABLE.<sup>2</sup> IF, HOWEVER, THE CARRIER OF THE BARREL [SUDDENLY] STOPPED, HE IS EXEMPT. BUT WHERE HE CRIED TO THE CARRIER OF THE BEAM, 'HALT!' HE IS LIABLE. THE SAME APPLIES TO ONE CARRYING A [BURNING] CANDLE WHILE ANOTHER WAS PROCEEDING WITH FLAX.

**GEMARA.** Rabbah b. Nathan questioned R. Huna: If a man injures his wife through conjugal intercourse, what is [the legal position]? Since he performed this act with full permission is he to be exempt [for damage resulting therefrom], or should perhaps greater care have been taken by him? — He said to him. We have learnt it: ... FOR THE ONE IS ENTITLED TO WALK [THERE AND CARRY BEAMS] AND THE OTHER IS ENTITLED TO WALK [THERE AND CARRY BARRELS].<sup>3</sup> Raba [however] said: There is an *a fortiori* [to the

contrary]: If in the case of the Wood,<sup>4</sup> where this one [the defendant] was entering [as if] into his own domain, and the other [the plaintiff] was [similarly] entering [as if] into his own domain, it is nevertheless considered [in the eye of the law]<sup>4</sup> that he entered his fellow's [the plaintiff's] domain, and he is made liable, should this case<sup>5</sup> where this one [the defendant]<sup>6</sup> was actually entering the domain of his fellow [the plaintiff]<sup>7</sup> not be all the more [subject to the same law]?<sup>8</sup> But surely [the Mishnah] states, ... FOR THE ONE IS ENTITLED TO WALK THERE [AND CARRY BEAMS] AND THE OTHER IS ENTITLED TO WALK [THERE AND CARRY BARRELS, indicating exemption where the entry was sanctioned]! — There, both of the parties were simultaneously [active against each other], whereas here<sup>2</sup> it was only he<sup>10</sup> that committed the deed. Is she<sup>11</sup> [considered] not [to have participated in the act at all]? Is it not written, The souls that commit them shall be cut off from among their people?<sup>12</sup> — [It is true that] enjoyment is derived by both of them, but it is only he to whom the active part can be ascribed.

WHERE THE CARRIER OF THE BEAM WAS IN FRONT, etc. Resh Lakish stated:<sup>13</sup> In the case of two cows on public ground, one lying down [maliciously] and the other walking about, if the one that was walking kicked the one that was lying, there is exemption [since the latter too misconducted itself by laying itself down on public ground], whereas if the one that was lying kicked the one that was walking, there is liability to pay. May not [the following be cited in] support of this:<sup>14</sup> WHERE THE CARRIER OF THE BEAM WAS IN FRONT AND THE CARRIER OF THE BARREL BEHIND, AND THE BARREL BROKE BY [COLLISION WITH] THE BEAM, HE IS EXEMPT. BUT IF THE CARRIER OF THE BEAM [SUDDENLY] STOPPED HE IS LIABLE. For surely [this latter case] here is similar to that of the lying cow kicking the walking cow,<sup>15</sup> and liability is stated! — But do you really think that this [liability] need

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be proved?<sup>14</sup> [The Mishnaic text however] not only fails to be of any support [in this respect], but affords a contradiction to Resh Lakish, [in whose view] the reason [even for the liability] is that the lying cow kicked the walking cow, thus [implying] that [the latter] sustained damage [because of the former cow] through sheer accident, and there would be exemption. Now, [the case of] the Mishnah surely deals with accidental damage, and still states liability? — The Mishnah [deals with a case] where the beam blocked the [whole] passage as if by a carcass,<sup>16</sup> whereas here [in the case dealt with by Resh Lakish] the cow was lying on one side of the road so that the other cow should have passed on the other side.<sup>17</sup>

But the concluding clause may [be taken to] support Resh Lakish. For it is stated, **BUT IF THE CARRIER OF THE BARREL WAS IN FRONT AND THE CARRIER OF THE BEAM BEHIND, AND THE BARREL BROKE BY [COLLISION WITH] THE BEAM, HE IS LIABLE. IF, HOWEVER, THE CARRIER OF THE BARREL [SUDDENLY] STOPPED, HE IS EXEMPT.** Now, surely this case resembles that of the walking cow kicking the lying cow,<sup>18</sup> and the text states exemption? — No! The Mishnah [deals with the case where the damage was done in a usual manner as] he<sup>19</sup> was passing in the ordinary way, whereas here [in the case dealt with by Resh Lakish] it may be argued for the lying cow,<sup>20</sup> 'Even if you are entitled to tread upon me, you have still no right to kick me.'<sup>21</sup>

**MISHNAH. IF TWO [PERSONS] WERE PASSING ONE ANOTHER ON PUBLIC GROUND, ONE [OF THEM] RUNNING AND THE OTHER WALKING OR BOTH OF THEM RUNNING, AND THEY WERE INJURED BY EACH OTHER, BOTH OF THEM ARE EXEMPT.<sup>22</sup>**

**GEMARA.** Our Mishnah is not in accordance with Issi b. Judah. For it has been taught: Issi b. Judah maintains that the man who had been running is liable, since his conduct

was unusual. Issi, however, agrees [that if it were] on a Sabbath eve before sunset there would be exemption, for running at that time is permissible.

R. Johanan stated that the *halachah* is in accordance with Issi b. Judah. But did R. Johanan [really] maintain this? Has R. Johanan not laid down the rule that the *halachah* is in accordance with [the ruling of] an anonymous Mishnah?<sup>23</sup> Now, did we not learn ... **ONE [OF THEM] RUNNING AND THE OTHER WALKING OR BOTH OF THEM RUNNING ... BOTH OF THEM ARE EXEMPT?** — Our Mishnah [deals with a case] of a Sabbath eve before sunset. What proof have you of that? — From the text, **OR BOTH OF THEM RUNNING ... BOTH OF THEM ARE EXEMPT;** [for indeed] what need was there for this to be inserted? If in the case where one was running and the other walking there is exemption, could there be any doubt<sup>24</sup> where both of them were running?<sup>25</sup> It must accordingly mean thus: 'Where one was running and the other walking there is exemption; provided, however, it was on a Sabbath eve before sunset. For if on a weekday, [in the case of] one running and the other walking there would be liability, [whereas where] both of them were running even though on a weekday they would be exempt.'

The Master stated: 'Issi, however, agrees [that if it were] on a Sabbath eve before sunset there would be exemption, for running at that time is permissible.' On Sabbath eve, why is it permissible? — As [shown by] R. Hanina: for R. Hanina used to say:<sup>26</sup>

1. For he is to blame.
2. For the carrier of the beam, who was in this case second, should have taken care to keep at a reasonable distance.
3. This proves that where the act is sanctioned no liability is involved.
4. Referring to Deut. XIX, 5: *As when a man goeth into the wood with his neighbor to hew wood, and his hand fetcheth a stroke with the*

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*axe to cut down the tree and the head slippeth from the helve and lighteth upon his neighbor... cf. also infra p. 175*

5. I.e., the problem in hand.
6. The husband.
7. The wife.
8. Of liability.
9. V. p. 170 n. 6.
10. I.e., the husband.
11. I.e., the wife.
12. Lev. XVIII, 29. [The plural indicates that both are regarded as having participated in the act.]
13. *Supra* pp. 98 and 124.
14. I.e., that misconduct involves liability for damage that may result.
15. As here, too, the offender is to blame for misconduct.
16. Consequently the liability extends even to accidental damage.
17. [There could therefore be no liability attached except where the lying cow maliciously kicked her, but not for accidental damage.]
18. In that there was contributory misconduct on the part of the plaintiff and his cow respectively.
19. The carrier of the beam.
20. Lit., 'she can say to her'.
21. It was therefore requisite that Resh Lakish should express his rejection of this plausible argument.
22. So long as they had no intention of injuring each other.
23. Cf. *supra* p. 158.
24. That there should be exemption.
25. Where there was contributory negligence.
26. Cf. Shab. 119a.

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'Come, let us go forth to meet the bride, the queen!' Some [explicitly] read: '... to meet Sabbath, the bride, the queen.' R. Jannai, [however,] while dressed in his Sabbath attire used to remain standing and say: 'Come thou, O queen, come thou, O queen!'

**MISHNAH. IF A MAN SPLITS WOOD ON PRIVATE PREMISES<sup>1</sup> AND DOES DAMAGE ON PUBLIC GROUND, OR ON PUBLIC GROUND AND DOES DAMAGE ON PRIVATE PREMISES,<sup>2</sup> OR ON PRIVATE PREMISES<sup>3</sup> AND DOES DAMAGE ON ANOTHER'S PRIVATE PREMISES, HE IS LIABLE.**

**GEMARA.** And [all the cases enumerated] are necessary [as serving respective purposes]. For if the Mishnah had stated only the case of splitting wood on private premises and doing damage on public ground, [the ruling could have been ascribed to the fact] that the damage occurred at a place where many people were to be found, whereas in the case of splitting wood on public ground and doing damage on private premises, since the damage occurred in a place where many people were not to be found, the opposite ruling might have been suggested.<sup>4</sup> Again, if the Mishnah had dealt only with the case of splitting wood on public ground and doing damage on private premises,<sup>5</sup> [the ruling could have been explained] on the ground that the act<sup>6</sup> was even at the very outset unlawful, whereas in the case of splitting wood on private premises<sup>3</sup> and doing damage on public ground, [in view of the fact] that the act<sup>6</sup> [as such] was quite lawful, the opposite view might have been suggested.<sup>4</sup> Again, if the Mishnah had dealt only with these two cases [the ruling could have been explained in] the one case on account of the damage having occurred at a place where many people were to be found, and [in] the other on account of the unlawfulness of the act,<sup>6</sup> whereas in the case of splitting wood on private premises<sup>3</sup> and doing damage on another's private premises, since the damage occurred in a place where many people were not to be found and the act<sup>6</sup> was quite lawful even at the very outset, the opposite view might have been suggested.<sup>4</sup> It was [hence] essential [to state explicitly all these cases].

Our Rabbis taught: 'If a man entered the workshop of a joiner without permission and a chip of wood flew off and struck him in the face and killed him, he [the joiner] is exempt.<sup>7</sup> But if he entered with [the] permission [of the joiner], he is liable.' Liable for what? — R. Jose b. Hanina said: He is liable for the four [additional] items,<sup>8</sup> whereas regarding the law of refuge<sup>9</sup> he is [still] exempt on account of the fact that the [circumstances of this] case do not [exactly]

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resemble those of the Wood.<sup>10</sup> For in the case of the Wood the one [the plaintiff] was entering [as if] into his own domain and the other [the defendant] was [similarly] entering [as if] into his own domain, whereas in this case the one [the plaintiff] had [definitely] been entering into his fellow's [the defendant's] workshop. Raba [however,] said: There is an *a fortiori* [to the contrary]: If in the case of the Wood where the one [the plaintiff] was entering to his own [exclusive] knowledge and that one [the defendant] was similarly entering of his own accord, it is nevertheless considered [in the eye of the law]<sup>10</sup> as if he had entered with the consent of his fellow [the defendant] who thus becomes liable to take refuge, should the case before us, where the one [the plaintiff] entered the workshop with the knowledge of his fellow [the joiner], be not all the more subject to the same liability? Raba therefore said: What is meant by being exempt from [being subject to the law of] refuge is that the sin could not be expiated by mere refuge; the real reason of the statement of R. Jose b. Hanina being this: that his offence,<sup>11</sup> though committed inadvertently, approaches willful carelessness.<sup>12</sup> Raba [on his own part] raised [however] an objection: If an officer of the Court inflicted on him<sup>13</sup> an additional [unauthorized] stroke, from which he died, he [the officer] is liable to take refuge on his account.<sup>14</sup> Now, does not [the offence] here committed inadvertently approach willful carelessness?<sup>12</sup> For surely he had to bear in mind that a person might sometimes die just through one [additional] stroke. Why then state, 'he is liable to take refuge on his account'? — R. Shimi of Nehardea there upon said: [The officer committed the offence as he] made a mistake in [counting] the number [of strokes]. [But] Naba tapped R. Shimi's shoe<sup>15</sup> and said to him: Is it he who is responsible for the counting [of the strokes]? Was it not taught: The senior judge recites [the prescribed verses],<sup>16</sup> the second [to him] conducts the counting [of the strokes], and the third directs each stroke to be administered?<sup>17</sup> — No, said R. Shimi of

Nehardea; it was the judge himself who made the mistake in counting.

A [further] objection was raised: If a man throws a stone into a public thoroughfare and kills [thereby a human being], he is liable to take refuge.<sup>18</sup> Now, does not [the offence] here committed inadvertently approach willful carelessness?<sup>19</sup> For surely he had to bear in mind that on a public thoroughfare many people were to be found, yet it states, 'he is liable to take refuge'? — R. Samuel b. Isaac said: The offender [threw the stone while he] was pulling down his wall.<sup>20</sup> But should he not have kept his eyes open? — He was pulling it down at night. But even at night time, should he not have kept his eyes open? — He was [in fact] pulling his wall down in the day time, [but was throwing it] towards a dunghill. [But] how are we to picture this dunghill? If many people were to be found there, is it not a case of willful carelessness?<sup>19</sup> If [on the other hand] many were not to be found there, is it not sheer accident?<sup>21</sup> — R. Papa [thereupon] said: It could [indeed] have no application unless in the case of a dunghill where it was customary for people to resort at night time, but not customary to resort during the day, though it occasionally occurred that some might come to sit there [even in the day time]. [It is therefore] not a case of willful carelessness since it was not customary for people to resort there during the day. Nor is it sheer accident since it occasionally occurred that some people did come to sit there [even in the day time].

R. Papa in the name of Raba referred [the remark of R. Jose b. Hanina] to the commencing clause: 'If a man entered the workshop of a joiner without permission and a chip of wood flew off and struck him in the face and killed him, he is exempt.' And R. Jose b. Hanina [thereupon] remarked; He would be liable for the four [additional] items,<sup>22</sup> though he is exempt from [having to take] refuge.<sup>23</sup> He who refers this remark to the concluding clause<sup>24</sup> will, with more reason, refer it to the commencing clause,<sup>25</sup>

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whereas he who refers it to the commencing clause<sup>25</sup> maintains that, in the [case dealt with] in the concluding clause where the entrance had been made with [the] permission [of the joiner], he would be liable to take refuge.<sup>23</sup> But would he be liable to take refuge [in that case]?<sup>24</sup> Was it not taught: If a man enters the workshop of a smith and sparks fly off and strike him in the face causing his death, he [the smith] is exempt<sup>26</sup> even where the entrance had been made by permission of the smith? — [In this Baraitha] here, we are dealing with an apprentice of the smith. Is an apprentice of a smith to be killed [with impunity]? — Where his master had been urging him to leave but he did not leave. But even where his master had been urging him to leave, [which he did not do,] may he be killed [with impunity]? — Where the master believed that he had already left. If so, why should not the same apply also to a stranger?

1. I.e., his own premises.
2. Of a neighbor.
3. V. p. 173, n. 5.
4. Lit., 'I might have said no'.
5. V. p. 173, n. 6.
6. Of splitting wood.
7. From fleeing to the city of refuge. Cf. Num. XXXV, 11-28, Deut. XIX, 4-6; and *supra* p. 137.
8. In the case of mere injury; cf. *supra* p. 133.
9. Laid down in the case of manslaughter.
10. Referred to in the verse, As when a man goes into the wood with his neighbor to hew wood, and his hand fetcheth a stroke with the axe to cut down the tree, and the head slippeth from the helve and lighteth upon his neighbor, that he die, he shall flee unto one of those cities, and live; Deut. XIX, 5. Cf. also *supra* p. 170.
11. I.e., that of the joiner.
12. In which case the taking of refuge is insufficient; cf. e.g. Num. XXXV, 16-21, and Deut. XIX, 11-13.
13. On an offender sentenced to lashes.
14. The victim's. Mak. III, 14.
15. To draw his attention.
16. Deut. XXVIII, 58, etc.; Ps LXXVIII, 38.
17. Lit., says, "Smite him". Mak. 23a.
18. Ibid. II. 2.
19. In which case the taking of refuge is insufficient; cf. e.g. Num XXXV, 16-21 and Deut. XIX, 11-13.
20. Cf. Mak. 8a.

21. Why then be subject to the law of refuge?
22. In the case of mere injury; cf. *supra* p. 133.
23. In the case of manslaughter.
24. Where the entrance had been made with the knowledge of the joiner.
25. Where the entrance had been made without any imitation.
26. From having to take refuge.

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— A stranger need not fear the master-smith<sup>1</sup> whereas the apprentice is in fear of his master.<sup>2</sup>

R. Zebid in the name of Raba referred [the remark of R Jose b. Hanina] to the following: [The verse,] *And [it] lighteth [upon his neighbor],*<sup>3</sup> excludes [a case] where the neighbor brings himself [within the range of the missile]. Hence the statement made by R. Eliezer b. Jacob: If a man lets [fly] a stone out of his hand and another [at that moment] puts out his head [through a window] and receives the blow [and is killed], he is exempt.<sup>4</sup> [Now, it was with reference to this case that] R. Jose b. Hanina said: He is exempt from having to take refuge,<sup>5</sup> but he would be liable for the four [additional] items.<sup>6</sup> He who refers this remark to this [last] case will with more reason refer it to the cases dealt with previously,<sup>7</sup> whereas he who refers it to those dealt with previously<sup>7</sup> would maintain that in this [last] case<sup>8</sup> the exemption is from all [kinds of liability].

Our Rabbis taught: If employees come to [the private residence of] their employer to demand their wages from him and [it so happens that] their employer's ox gores them or their employer's dog bites them, with fatal results, he [the employer] is exempt [from ransom].<sup>9</sup> Others,<sup>10</sup> however, maintain that employees have the right to [come and] demand their wages from their employer. Now, what were the circumstances [of the case]? If the employer could be found in [his] city [offices], what reason [could be adduced] for [the view maintained by] the 'Others'.<sup>10</sup> If [on the other hand] he could be found only at home, what reason [could be given] for

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[the anonymous view expressed by] the first Tanna? — No, the application [of the case] is where the employer could [sometimes] be found [in his city offices] but could not [always] be found [there]. The employees therefore called at his [private] door, when the reply was 'Yes'. One view<sup>11</sup> maintains that 'Yes' implies: 'Enter and come in.' But the other view<sup>12</sup> maintains that 'Yes' may signify: 'Remain standing in the place where you are.' It has indeed been taught in accordance with the view<sup>12</sup> maintaining that 'Yes' may [in this case] signify: 'Remain standing in the place where you are.' For it has been taught: 'If an employee enters the [private] residence of his employer to demand his wages from him and the employer's ox gores him or the employer's dog bites him, he [the employer] is exempt even where the entrance had been made by permission.' Why should there indeed be exemption<sup>13</sup> unless in the case where he called at the door and the employer said: 'Yes'? This thus proves that 'Yes' [in such a case] signifies: 'Remain standing in the place where you are.'

**MISHNAH.** IN THE CASE OF TWO TAM OXEN INJURING EACH OTHER, THE PAYMENT OF THE DIFFERENCE WILL BE IN ACCORDANCE WITH THE LAW OF HALF-DAMAGES.<sup>14</sup> WHERE BOTH WERE MU'AD THE PAYMENT OF THE DIFFERENCE WILL BE IN FULL.<sup>14</sup> WHERE ONE WAS TAM AND THE OTHER MU'AD THE PAYMENT OF THE DIFFERENCE FOR DAMAGE DONE BY MU'AD TO TAM WILL BE ON THE BASIS OF FULL COMPENSATION, WHEREAS THE PAYMENT OF THE DIFFERENCE FOR DAMAGE DONE BY TAM TO MU'AD WILL BE IN ACCORDANCE WITH THE LAW OF HALF-DAMAGES. SIMILARLY IN THE CASE OF TWO PERSONS INJURING EACH OTHER, THE PAYMENT OF THE DIFFERENCE WILL BE IN FULL. WHERE MAN HAS DAMAGED MU'AD AND MU'AD HAS INJURED MAN, THE PAYMENT OF THE DIFFERENCE WILL BE IN FULL. BUT WHERE MAN DAMAGED TAM AND TAM INJURED MAN, THE PAYMENT OF

THE DIFFERENCE FOR DAMAGE DONE BY MAN TO TAM WILL BE ON THE BASIS OF FULL COMPENSATION, WHEREAS THE PAYMENT OF THE DIFFERENCE FOR DAMAGE DONE BY TAM TO MU'AD WILL BE IN ACCORDANCE WITH THE LAW OF HALF-DAMAGES. R. AKIBA, HOWEVER, SAYS: EVEN IN THE CASE OF TAM INJURING MAN THE PAYMENT OF THE DIFFERENCE WILL BE IN FULL.<sup>15</sup>

**GEMARA.** Our Rabbis taught: [The words of the Torah] *According to this judgment shall be done unto it*<sup>16</sup> [imply that] the judgment in the case of Ox damaging ox applies also in the case of Ox injuring man. Just as where Ox has damaged ox half-damages are paid in the case of *Tam* and full compensation in the case of *Mu'ad*, so also where Ox has injured man only half damages will be paid in the case of *Tam* and full compensation in the case of *Mu'ad*. R. Akiba, however, says: [The words,] 'According to this judgment' refer to [the ruling that would apply to the circumstances described in] the latter verse<sup>17</sup> and not in the former verse.<sup>18</sup> Could this then mean that the [full] payment is to be made out of the best [of the estate]?<sup>19</sup> [Not so; for] it is stated 'Shall it be done unto it [self],' to emphasize that payment will be made out of the body of *Tam*, but no payment is to be made out of any other source whatsoever.<sup>20</sup> According to the Rabbis then, what purpose is served by the word 'this'? — To exempt from liability for the four [additional] items.<sup>21</sup> Whence then does R. Akiba derive the exemption [in this case] from liability for the four [additional] items? — He derives it from the text, And if a man cause a blemish in his neighbour<sup>22</sup> [which indicates that there is liability only where] Man injures his neighbor but not where Ox injures the neighbor [of the owner]. And the Rabbis?<sup>23</sup> — Had the deduction been from that text we might have referred it exclusively to Pain,<sup>24</sup> but as to Medical Expenses and Loss of Time<sup>25</sup> we might have held there is still a liability to pay. We are therefore told<sup>26</sup> [that this is not the case].

# BABA KAMMA- 31b-62b

**MISHNAH.** IF AN OX [TAM] OF THE VALUE OF ONE HUNDRED ZUZ HAS GORED AN OX OF THE VALUE OF TWO HUNDRED ZUZ AND THE CARCASS HAD NO VALUE AT ALL, THE PLAINTIFF WILL TAKE POSSESSION OF THE [DEFENDANT'S] OX [THAT DID THE DAMAGE].<sup>27</sup>

**GEMARA.** Who is the author of our Mishnah? — It is R. Akiba, as it has been taught: The ox [that did the damage] has to be assessed by the Court of law;<sup>28</sup> this is the view of R. Ishmael. R. Akiba, however, says: The [body of the] ox becomes transferred [to the plaintiff]. What is the point at issue? — R. Ishmael maintains that he [the plaintiff] is but a creditor and that he has only a claim of money against him [the defendant], whereas R. Akiba is of the opinion that they both [the plaintiff and defendant] become the owners in common of the ox<sup>29</sup> [that did the damage]. They [thus also] differ as to the interpretation of the verse, Then they shall sell the live ox and divide the money of it.<sup>30</sup> R. Ishmael maintains that it is the Court on which this injunction is laid by Divine Law,<sup>31</sup> whereas R. Akiba is of the opinion that it is the plaintiff and defendant on which it is laid.<sup>32</sup> What is the practical difference between R. Ishmael and R. Akiba? — There is a practical difference between them where the plaintiff consecrated the ox [that did the damage].<sup>33</sup>

Raba put the following question to R. Nahman: Should the defendant meanwhile dispose of the ox, what would be the law according to R. Ishmael? [Shall we say that] since R. Ishmael considers the plaintiff to be a creditor whose claim [against the defendant] is only regarding money, the sale is valid, or that

1. Who should thus have borne in mind that the stranger might not yet have left the place. The smith should therefore not yet have allowed the sparks to fly off.
2. Who should not reasonably have expected him to have still been there.
3. Deut. XIX, 5; v. *supra*, p. 175, n. 3.
4. Cf. Mak. 8a.

5. In the case of manslaughter.
6. Since it was an act of negligence to throw a stone where people are to be found.
7. In the case of the joiner, who at least knew that a newcomer had entered his workshop.
8. Dealt with by R. Eliezer b. Jacob, where the defendant is to blame as he put out his head after the stone had already been in motion.
9. For which cf. Ex. XXI, 30. The vicious beast is, however, stoned; v. *supra* p. 118.
10. According to Hor. 13b, the views of R. Meir were sometimes quoted thus; cf. however Ber. 9b; Sot. 12a; A.Z. 64b.
11. I.e., that of 'Others'.
12. Put forward by the first Tanna.
13. Where the entrance had been made by permission.
14. Cf. *supra* p. 73.
15. Cf. *supra* p. 15.
16. Ex. XXI, 31.
17. Ibid. XXI, 29 dealing with *Mu'ad*.
18. Ibid. XXI, 28 dealing with *Tam*.
19. As in the case of an injury done by *Mu'ad*. Cf. *supra*, p. 73.
20. Cf. *supra* p. 15.
21. V. *supra* p. 133.
22. Lev. XXIV, 19.
23. [Wherefore apply 'this' to deduce exemption from the four items, since that is already derived from this latter verse?]
24. The liability for which is not in respect of an actual loss of value.
25. The liability for which is in respect of an actual loss of money sustained.
26. By the expression 'this'.
27. As the full value of it corresponds in this case to the amount of half-damages.
28. And if its value is not less than the amount of the half-damages, the defendant will have to pay that amount in full, whereas where the value of the ox that did the damage is less than the amount of the half-damages, the defendant will have to pay no more than the actual value of the ox that did the damage.
29. Where its value is more than the amount of the half-damages.
30. Ex. XXI, 35.
31. I.e., to sell the live ox which is still the property of the defendant.
32. As the live ox became their property in common where its value had been more than the amount of the half-damages.
33. [According to R. Ishmael the consecration is of no legal effect, whereas R. Akiba would declare it valid.]

# BABA KAMMA- 31b-62b

## Baba Kamma 33b

since the ox is mortgaged to the plaintiff,<sup>1</sup> the defendant has no right [to dispose of it]? — He replied: The sale is not valid. But has it not been taught: In the case of [the defendant] having disposed of the ox, the sale is valid? — The plaintiff will still be entitled to come forward and distrain on it [from the purchaser].<sup>2</sup> But if he is entitled to come forward and distrain on it, to what purpose is the sale valid? — For the plowing [the ox did with the purchaser].<sup>3</sup> Can we infer from this that in the case of a debtor having sold his chattels, a Court of law will distrain on them for a creditor?<sup>4</sup> — The case there [of the ox]<sup>5</sup> is altogether different, since the ox is regarded as if [the owner] had mortgaged it [for half-damages]. But did Raba not say<sup>6</sup> that where a debtor has mortgaged his slave and then sold him [to a third person] the creditor is entitled to distrain on him, whereas where an ox has been mortgaged and then sold [to a third party] the creditor cannot distrain on it?<sup>7</sup> — Is not the reason in the case of the slave that the transaction has been widely talked about?<sup>8</sup> So also in the case of this ox; since it gored it has been talked about, and the name 'The ox that gored' given it.

R. Tahlifa the Western<sup>9</sup> recited in the presence of R. Abbahu: 'Where he sold the ox, the sale is not valid, but where he consecrated it [to the altar], the consecration holds good.' Who sold it? Shall I say the defendant? [In that case the opening clause,] 'Where he sold the ox, the sale is not valid', would be in accordance with the view of R. Akiba that the ox becomes transferred [to the plaintiff], while [the concluding clause.] 'Where he consecrated it, the consecration holds good' could follow only the view of R. Ishmael who said that the ox has to be assessed by the Court. If [on the other hand, it has been disposed of by] the plaintiff, would not [the opening clause.] 'Where he sold the ox, the sale is not valid', be in accordance with the view of R. Ishmael, while [the concluding clause.,] 'Where he

consecrated it, the consecration holds good' could follow only the view of R. Akiba? — We may still say that it was the defendant [who disposed of it], and yet [both rulings] will be in agreement with all. 'Where he sold the ox, the sale is valid' [may be explained] even in accordance with R. Ishmael, for the ox is mortgaged to the plaintiff. 'Where he consecrated it, the consecration holds good,' [may again be interpreted] even in accordance with R. Akiba, on account of [the reason given] by R. Abbahu; for R. Abbahu [elsewhere] stated:<sup>10</sup> An extra precaution was taken<sup>11</sup> lest people should say that consecrated objects could lose their status even without any act of redemption.<sup>12</sup>

Our Rabbis taught: If an ox does damage while still *Tam*, then, as long as its case has not been brought up in Court, if it is sold the sale is valid; if it is consecrated, the consecration holds good; if slaughtered and given away as a gift, what has been done is legally effective. But after the case has come into Court,<sup>13</sup> if it is sold the sale is not valid; if consecrated, the consecration does not hold good; if slaughtered and given away as a gift, the acts have no legal effect; so also where [other] creditors stepped in first and distrained on the ox [while in the hands of the defendant], no matter whether the debt had been incurred before the goring took place or whether the goring had occurred before the debt was incurred, the distraint is not legally effective, since the compensation [for the damage]<sup>14</sup> must be made out of the body of the ox [that did it].<sup>15</sup> But in the case of *Mu'ad* doing damage there is no difference whether the case had already been brought into Court or whether it had not yet come into Court; if it has been sold, the sale is valid; if consecrated, the consecration holds good; if slaughtered and given away as a gift, what has been done is legally effective, where [other] creditors have stepped in and distrained on the ox, no matter whether the debt had been contracted before the goring took place or whether the goring had taken place before the debt was incurred, the distraint is legally effective, since the

# BABA KAMMA- 31b-62b

compensation is paid out of the best of the general estate [of the defendant].<sup>16</sup>

The Master stated: 'If it is sold, the sale is valid'. [This can refer] to plowing [done by the ox while with the vendee]. 'If consecrated, the consecration holds good'; on account of the reason given by R. Abbahu. 'If slaughtered and given away as a gift, what has been done is legally effective'. We can quite understand that where it has been given away as a gift the act should be legally effective, in respect of the plowing [meanwhile done by the ox]. But in the case of it having been slaughtered, why should [the claimant] not come and obtain payment out of the flesh? Was it not taught: '[The] live [ox]:<sup>17</sup> this states the rule for when it was alive; whence do we know that the same holds good even after it has been slaughtered? Because it says further: And they shall sell the ox,<sup>17</sup> i.e., in all circumstances'? — R. Shizbe therefore said: What is referred to must be the diminution in value occasioned by its having been slaughtered.<sup>18</sup> R. Huna the son of Joshua thereupon said: This proves that if a man impairs securities mortgaged to his creditor, he incurs no liability. Is this not obvious?<sup>19</sup> — It might perhaps have been suggested that it was only there<sup>20</sup> where the defendant could argue, 'I have not deprived you of anything at all [of the quantity]', and could even say, 'it is only the mere breath [of life] that I have taken away from your security' [that there should be exemption], whereas in the case of impairing securities in general there should be liability; we are therefore told [that this is not the case]. But has not this been pointed out by Rabbah? For has not Rabbah stated: 'If a man destroys by fire the documents of a neighbor, he incurs no liability'?<sup>21</sup> — It might perhaps have been suggested that it was only there where the defendant could contend 'It was only a mere piece of paper of yours that has actually been burnt' [that there should be exemption], whereas in the case [of spoiling a field held as security] by digging there pits, ditches and caves there should be liability; we are therefore told that

[this is not so, for] in the case here the damage resembles that occasioned by digging pits, ditches and caves,<sup>22</sup> and yet it is laid down that 'what has been done is legally effective'.

'Where [other] creditors stepped in first and distrained on the ox [in the hands of the defendant] no matter whether the debt had been incurred before the goring took place or whether the goring had taken place before the debt was incurred, the distraint is not legally effective, since the compensation must be made out of the body of the ox [that did the damage].' We understand this where the goring has taken place before the debt was incurred, in which case the plaintiff for damages has priority. But [why should it be so] where the debt has been contracted before the goring took place, [seeing that in that case] the creditor for the debt has priority?

1. For if payment were not forthcoming the plaintiff would be entitled to distrain on the ox to the extent of the amount of the half-damages.
2. V. p. 181, n. 8.
3. Who will thus not have to pay for the use of the animal, [or, who will be permitted to put the ox to such service, v. Wilna Gaon, Glosses.]
4. Whereas according to established law this is usually the case only with immovable property, cf. *supra* p. 62 but also B.B. 44b.
5. That did damage by goring while still in the state of *Tam*.
6. *Supra* p. 47. Cf. also B.B. 44b.
7. Why then distrain on the ox in the case of goring when it had already been sold?
8. V. B.B. *loc. cit.*
9. The Palestinian.
10. 'Ar. 33a.
11. In the case of one who consecrates property on which there is a lien of a *kethubah* or a debt.
12. It is therefore a better policy to declare the consecration valid and prescribe a nominal sum for redemption.
13. Since when the ox is legally transferred to the plaintiff.
14. Which will be only half of the actual amount of the loss sustained.
15. Cf. *supra* p. 73.
16. Cf. Tosef. B.K. V.

# BABA KAMMA- 31b-62b

17. Ex. XXI. 35.
18. For which the defendant is thus not made responsible.
19. That such an inference could be made; why then the special statement made by R. Huna?
20. In the case of the ox that had been slaughtered.
21. *Infra* p. 570.
22. Since the damage is visible.

## Baba Kamma 34a

Moreover, even where the goring had taken place before the debt was contracted, was not the creditor actually first [in taking possession of the ox]?<sup>1</sup> Can it be concluded from this that where a creditor of a subsequent date has preceded a creditor of an earlier date in distraining on [the property of the debtor], the distraint is of no legal avail?<sup>2</sup> — No; I may still maintain that [in this case]<sup>3</sup> the distraint holds good, whereas in the case there,<sup>4</sup> it is altogether different; as the plaintiff [for damages] may argue,<sup>5</sup> 'Had the ox already been with you [before it gored], would I not have been entitled to distrain on it while in your hands? For surely out of the ox that did the damage I am to be compensated.'

Our Rabbis taught: Where an ox<sup>6</sup> of the value of two hundred [zuz] gored an ox of the same value of two hundred [zuz] and injured it to the amount of fifty zuz, but it so happened that the injured ox [subsequently] improved and reached the value of four hundred zuz, since it can be contended that but for the injury it would have reached the value of eight hundred zuz, compensation will be [still] paid as at the time of the damage.<sup>7</sup> Where it has depreciated, the compensation will be paid in accordance with the value at the time of the case being brought into Court.<sup>8</sup> Where it was the ox which did the damage that [subsequently] improved, the compensation will still be made in accordance with the value at the time of the damage.<sup>9</sup> Where it has [on the other hand] depreciated, the compensation will be made in accordance with the value at

the time of the case being brought into Court.<sup>10</sup>

The Master has said: 'Where it was the ox which did the damage that [subsequently] improved, the compensation will still be made as at the time of the damage.' This ruling is in accordance with R. Ishmael, who maintains that the plaintiff is a creditor and he has a pecuniary claim against him [the defendant]. Read now the concluding clause: 'Where it [on the other hand] depreciated, the compensation will be made in accordance with the value at the time of the case being brought into Court'. This ruling, on the other hand, follows the view of R. Akiba, that they both [plaintiff and defendant] become the owners in common [of the ox that did the damage]. [Is it possible that] the first clause should follow the view of R. Ishmael and the second clause follow that of R. Akiba? — No; the whole teaching follows the view of R. Akiba, for we deal here with a case where the improvement was due to the defendant having fattened the ox.<sup>11</sup> If the improvement was due to fattening, how could you explain the opening clause, 'where ... the injured ox [subsequently] improved and reached the value of four hundred zuz ... compensation will be paid as at the time of the damage'? For where the improvement was due to the act of fattening [by the owner], what need could there have been to state [that compensation for the original damage has still to be paid]? — R. Papa thereupon said: The ruling in the opening clause<sup>12</sup> applies to all cases, whether where the ox improved by special fattening or where it improved by itself: the statement of the rule was required for the case where the ox improved by itself — even then compensation will be paid as at time of the damage. The ruling in the concluding clause,<sup>13</sup> however, could apply only to a case where the improvement was due to special fattening.

'Where it<sup>14</sup> has depreciated, the compensation will be made in accordance with the value at the time of the case being

## BABA KAMMA- 31b-62b

brought into Court.' Through what can it have depreciated? Shall I say that it has depreciated through hard work? In that case [surely] the defendant can say, 'You cause it to depreciate!'<sup>15</sup> Could you expect me to pay for it?' — R. Ashi thereupon said: The depreciation [referred to] is due to the injury, in which case the plaintiff is entitled to contend, '[The evil effect of] the horn of your ox is still buried within the suffering animal.'<sup>16</sup>

**MISHNAH.** WHERE AN OX<sup>17</sup> OF THE VALUE OF TWO HUNDRED [ZUZ] GORED AN OX OF THE SAME VALUE OF TWO HUNDRED [ZUZ] AND THE CARCASS HAD NO VALUE AT ALL, R. MEIR SAID THAT IT WAS WITH REFERENCE TO THIS CASE THAT IT IS WRITTEN, AND THEY SHALL SELL THE LIVE OX AND DIVIDE THE MONEY OF IT.<sup>18</sup> R. JUDAH, HOWEVER, SAID: THIS IS CERTAINLY THE *HALACHAH*,<sup>19</sup> BUT WHILE YOU FULFIL [BY THIS RULING THE INJUNCTION], 'AND THEY SHALL SELL THE LIVE OX AND DIVIDE THE MONEY OF IT,' YOU DO NOT FULFIL [THE NEXT INJUNCTION], 'AND THE DEAD OX ALSO THEY SHALL DIVIDE.'<sup>20</sup> THE CASE DEALT WITH BY SCRIPTURE IS THEREFORE WHERE AN OX OF THE VALUE OF TWO HUNDRED [ZUZ] GORED AN OX OF THE SAME VALUE OF TWO HUNDRED [ZUZ] AND THE CARCASS WAS WORTH FIFTY ZUZ: ONE PARTY WOULD HERE GET HALF OF THE LIVING OX TOGETHER WITH HALF OF THE DEAD OX<sup>21</sup> AND THE OTHER PARTY WOULD SIMILARLY GET HALF OF THE LIVING OX TOGETHER WITH HALF OF THE DEAD OX.

**GEMARA.** Our Rabbis taught: Where an ox of the value of two hundred [zuz] gored an ox of the same value of two hundred [zuz] and the carcass was worth fifty zuz, one party would get half of the living ox together with half of the dead ox and the other party would similarly get half of the living ox together with half of the dead ox. This is the [case of the goring] ox dealt with in the Torah, according to the view of R. Judah. R. Meir,

however, says; This is not the [case of the goring] ox dealt with in the Torah, but where an ox of the value of two hundred [zuz] gored an ox of the same value of two hundred [zuz] and the carcass was of no value at all — this is the case regarding which it is laid down, '*And they shall sell the live ox and divide the money of it.*' But how could I [in this case] carry out [the other direction], '*And the dead ox also they shall divide*'? [This only means that] the diminution [in value] brought about by the death<sup>22</sup> has to be [compensated] to the extent of one-half out of the body of the living ox. Now, since [in the former case]<sup>23</sup> according to both R. Meir and R. Judah one party will get a hundred and twenty-five [zuz]<sup>24</sup> and the other party will similarly get a hundred and twenty-five [zuz], what is the [practical] difference between them? — Raba thereupon said: The difference arises where<sup>25</sup> there has been a decrease in the value of the carcass,<sup>26</sup> R. Meir maintains that the loss in the value of the carcass has to be [wholly] sustained by the plaintiff,<sup>27</sup> whereas R. Judah is of the opinion that the loss in the value of the carcass will be borne by the defendant to the extent of a half.<sup>28</sup> Said Abaye to him:<sup>29</sup> If this be the case, will it not turn out that according to R. Judah

1. Why should then the plaintiff for damages override the right of another creditor who had already taken possession of the ox?
2. Whereas this is a point on which opinions differ; cf. Keth. 94a.
3. Dealing with two creditors for loans.
4. Where one of the creditors was a plaintiff for damages.
5. Against the other creditor.
6. In the state of *Tam*.
7. And the defendant cannot put up the increase in the value of the injured ox as a defense, for but for the injury the ox might have reached the value of even eight hundred zuz.
8. To the detriment of the defendant.
9. This view apparently maintains that the plaintiff does not become an owner of a definite portion in the ox that did the damage, but becomes entitled merely to a certain sum of money to be collected out of the body of that ox.
10. Seemingly because the plaintiff is according to this ruling regarded as having become at the time the goring took place an owner of a

# BABA KAMMA- 31b-62b

definite portion in the ox which has subsequently depreciated. For if he became entitled to a certain sum of money in the body of that ox, why should he suffer on account of depreciation?

11. In which case it is only reasonable that the plaintiff should not be entitled to any share in the improvement that resulted from the fattening carried out by the defendant.
12. Dealing with the case where it was the injured ox that improved and increased in value.
13. Giving the law where the ox that had done the damage improved.
14. I.e., the ox that had been injured, dealt with in the opening clause.
15. By hard work.
16. The depreciation is thus a direct result of the injury for which the defendant is responsible.
17. In the state of *Tam*.
18. Ex. XXI, 35.
19. That half-damages should be paid in the case of *Tam*.
20. As in the case specified by R. Meir the carcass had no value at all.
21. Amounting altogether to one hundred and twenty-five *zuz*. The plaintiff would thus get seventy-five *zuz* in respect of the damage that amounted to one hundred and fifty *zuz*. Together with the fifty of the carcass of his ox the sum total will be one hundred and twenty-five *zuz*.
22. Of the animal attacked resulting from the injuries inflicted upon it.
23. Specified by R. Judah, where the carcass was worth fifty *zuz*.
24. I.e., half of the value of the living ox and half of the value of the carcass.
25. Since the death of the attacked ox.
26. Before it has been sold.
27. As according to R. Meir, the defendant has no interest whatsoever in the carcass.
28. Since according to R. Judah, both the defendant and the plaintiff have to divide the value of the carcass.
29. Raba.

## Baba Kamma 34b

[injury by] *Tam* would involve a more severe penalty than [injury by] *Mu'ad*?<sup>1</sup> And should you maintain that this indeed is so,<sup>2</sup> as we have learned: R. Judah says: In the case of *Tam* there is liability [where the precaution taken to control the ox has not been adequate] whereas in the case of *Mu'ad* there is no liability,<sup>3</sup> it may be contended

that you only heard R. Judah maintaining this with reference to precaution, which is specified in Scripture,<sup>4</sup> but did you ever hear him say this regarding compensation? Moreover, it has been taught: R. Judah says: One might say that where an ox of the value of a *maneh* [a hundred *zuz*] gored an ox of the value of five *sela'* [i.e., twenty *zuz*] and the carcass was worth a *sela'* [i.e., four *zuz*], one party should get half of the living ox<sup>5</sup> together with half of the dead ox<sup>6</sup> and the other party should similarly get half of the living ox and half of the dead ox?<sup>7</sup> [This cannot be so]; for we reason thus: Has *Mu'ad* been singled out<sup>8</sup> to entail a more severe penalty or a more lenient one? You must surely say: [to entail] a more severe penalty. Now, if in the case of *Mu'ad* no payment is made but for the amount of the damage, should this not the more so be true in the case of *Tam* the [penalty in respect of which is] less severe?<sup>9</sup> — R. Johanan therefore said: The practical difference between them<sup>10</sup> arises where there has been an increase in the value of the carcass, one Master<sup>11</sup> maintaining that it will accrue to the plaintiff whereas the other Master holds that it will be shared equally [by the two parties].<sup>12</sup>

And it is just on account of this view that a difficulty was felt by R. Judah: Now that you say that the Divine Law is lenient to the defendant, allowing him to share in the increase [of the value of the carcass], you might then presume that where an ox of the value of five *sela'* [i.e. twenty *zuz*] gored an ox of the value of a *maneh* [a hundred *zuz*] and the carcass was valued at fifty *zuz*, one party would take half of the living ox<sup>13</sup> together with half of the dead ox<sup>14</sup> and the other party would similarly take half of the living ox and half of the dead ox?<sup>15</sup> Say [this cannot be so, for] where could it elsewhere be found that an offender should [by order of the Court] be made to benefit as you would have the offender here in this case to benefit? It is moreover stated, He shall surely make restitution,<sup>16</sup> [emphasizing that] the offender could only have to pay but

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never to receive payment. Why that additional quotation?<sup>17</sup> — [Otherwise] you might have thought this principle to be confined only to a case where the plaintiff was the loser,<sup>18</sup> and that where no loss would be incurred to the plaintiff — as e.g. where an ox of the value of five *sela'* gored an ox similarly of the value of five *sela'* [i.e. twenty *zuz*] and it so happened that the carcass [increased in value and] reached the amount of thirty *zuz* — the defendant should indeed be entitled to share in the profit;<sup>18</sup> hence the verse, He shall surely make full restitution, is adduced [to emphasize that in all cases] an offender could only have to pay but never to receive payment.

But R. Aha b. Tahlifa said to Raba: If so [that the principle to compensate by half for the decrease in value brought about by the death is maintained only by R. Meir], will it not be found that according to R. Judah *Tam* will involve the payment of more than half damages,<sup>19</sup> whereas the Torah [emphatically] stated, *And they shall sell the live ox and divide the money of it?* — [No;] R. Judah also holds that the decrease in value brought about by the death will be [compensated] by half in the body of the living ox.<sup>20</sup> Whence could he derive this?<sup>21</sup> — From [the verse], *And the dead ox also they shall divide.*<sup>22</sup> But did not R. Judah derive from this verse that one party will take half of the living ox together with half of the dead ox and the other party will similarly take half of the living ox and half of the dead ox?<sup>23</sup> — If that were all, the text could have run, 'And the dead ox [they shall divide].' Why insert '*also*'? It shows that two lessons are to be derived from the verse.<sup>24</sup>

**MISHNAH.** THERE ARE CASES WHERE THERE IS LIABILITY FOR OFFENCES COMMITTED BY ONE'S CATTLE<sup>25</sup> THOUGH THERE WOULD BE NO LIABILITY SHOULD THESE OFFENCES BE COMMITTED BY ONESELF. THERE ARE, AGAIN, CASES WHERE THERE IS NO LIABILITY FOR OFFENCES COMMITTED BY ONE'S CATTLE<sup>25</sup> THOUGH THERE WOULD BE

LIABILITY WERE THESE OFFENCES COMMITTED BY ONESELF. FOR INSTANCE, IF CATTLE HAS BROUGHT INDIGNITY [UPON A HUMAN BEING] THERE IS NO LIABILITY,<sup>26</sup> WHEREAS IF THE OWNER CAUSES THE INDIGNITY THERE WOULD BE LIABILITY.<sup>27</sup> SO ALSO IF AN OX PUTS OUT THE EYE OF THE OWNER'S SLAVE OR KNOCKS OUT HIS TOOTH THERE IS NO LIABILITY,<sup>28</sup> WHEREAS IF THE OWNER HIMSELF HAS PUT OUT THE EYE OF HIS SLAVE OR KNOCKED OUT HIS TOOTH HE WOULD BE LIABLE [TO LET HIM GO FREE].<sup>29</sup> AGAIN, IF AN OX HAS INJURED THE FATHER OR MOTHER OF THE OWNER THERE IS LIABILITY,<sup>30</sup> THOUGH WERE THE OWNER HIMSELF TO INJURE HIS FATHER OR HIS MOTHER<sup>31</sup> THERE WOULD BE NO [CIVIL] LIABILITY.<sup>32</sup> SO ALSO WHERE CATTLE HAS CAUSED FIRE TO BE SET TO A BARN ON THE DAY OF SABBATH THERE IS LIABILITY,<sup>30</sup> WHEREAS WERE THE OWNER TO SET FIRE TO A BARN ON SABBATH<sup>33</sup> THERE WOULD BE NO [CIVIL] LIABILITY, AS HE WOULD BE SUBJECT TO A CAPITAL CHARGE.<sup>32</sup>

**GEMARA.** R. Abbahu recited in the presence of R. Johanan:<sup>34</sup> Any work [on the Sabbath] that has a destructive purpose entails no penalty [for the violation of the Sabbath], with the exception, however, of the act of inflicting a bodily injury, as also of the act of setting on fire. Said R. Johanan to him: Go and recite this outside<sup>35</sup> [for the exception made of] the act of inflicting a bodily injury and of setting on fire is not part of the teaching; and should you find grounds for maintaining that it is,<sup>36</sup> [you may say that] the infliction of a bodily injury refers to where the blood was required to feed a dog;<sup>37</sup> and in the case of setting on fire, where there was some need of the ashes.<sup>37</sup>

We have learnt: WHERE CATTLE HAS CAUSED FIRE TO BE SET TO A BARN ON THE DAY OF SABBATH THERE IS LIABILITY, WHEREAS WERE THE OWNER TO HAVE SET FIRE TO A BARN ON SABBATH THERE WOULD BE NO

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[CIVIL] LIABILITY. Now, the act of the owner is here placed on a level with that of Cattle; which would show, would it not, that just as in the act of Cattle there was certainly no intention to satisfy any need,

1. For in the case of *Mu'ad* it is certainly the plaintiff who has to bear the whole loss occasioned by a decrease in the value of the carcass; cf. *supra* p. 65.
2. And *Tam* will indeed involve a penalty more severe than that involved by *Mu'ad*.
3. B.K. IV, 9.
4. For which cf. *infra*, p. 259.
5. Amounting to fifty *zuz*.
6. That would amount to another ten *zuz*.
7. The result would be that the plaintiff whose injured ox had altogether been worth twenty *zuz* would get damages amounting to sixty *zuz*.
8. In Scripture; cf. Ex. XXI, 36.
9. Why should then the defendant in the case of *Tam* share the loss occasioned by a decrease in the value of the carcass which he would not have to do in the case of *Mu'ad*?
10. R. Meir and R. Judah.
11. R. Meir, according to whom the defendant has no interest in the carcass.
12. V. *supra* p. 189, n. 7.
13. Amounting to ten *zuz*.
14. That would amount to another twenty-five *zuz*.
15. The result would be that the defendant instead of paying compensation would make a profit out of the offence, as in lieu of his ox which did the damage and which was worth twenty *zuz* he would get a total of thirty-five *zuz*.
16. Ex. XXI, 36.
17. I.e., why is not the first objection sufficient?
18. Of the ten *zuz* that make the carcass worth more than the ox while alive.
19. As e.g., where an ox of the value of fifty *zuz* gored another's ox of the value of forty *zuz* and the carcass was worth twenty *zuz*, in which case the actual damage amounted to twenty *zuz*, half of which would be ten *zuz*, whereas if the plaintiff will get half of the living ox and half of the dead ox he shall be in receipt for damages, in addition to the value of the carcass, not of ten but of fifteen *zuz*.
20. The sum total received by the plaintiff will therefore never be more than half of the actual loss sustained by him after allowing him, of course, the full value of the carcass of his ox.
21. Since he is in disagreement with R. Meir as to the implication of the last clause of Ex. XXI, 35.
22. Ex. XXI, 35.
23. I.e., that the decrease in value brought about by the death will be compensated for by half in the body of the living ox. V. *Supra* p. 189.
24. Viz., the principle laid down in the preceding note and the principle maintained by R. Judah, that the defendant as well as the plaintiff has an interest in the carcass and will share the profits of any increase in its value.
25. Lit., 'ox'.
26. As explained *supra* p. 134.
27. Cf. B. K. VIII 1-2.
28. To the law laid down in Ex. XXI, 26-27.
29. In accordance with *ibid*, cf. also *supra* p. 137.
30. For damages.
31. Involving thus a capital charge, for which cf. Ex. XXI, 15.
32. As wherever a capital charge is involved by an offence, all civil liabilities that may otherwise have resulted from that offence merge in the capital charge; cf. *supra* p. 113.
33. For which cf. Ex. XXXI, 14-15; but v. also *ibid*. XXXV, 2-3, Mekilta a.l. and Yeb. 7b, 33b and Shab. 70a.
34. Cf. Shab. 106a.
35. [I.e., your teaching is fit only for outside and not to be admitted within the *Beth Hamidrash*; v. Sanh. (Sonc. ed.) p. 425.]
36. Cf. Shab. 75a; v. also B.K. VIII, 5.
37. Which case involves the violation of the Sabbath because the purpose has not been altogether destructive.

## Baba Kamma 35a

so also the owner similarly had no intention to satisfy thereby any need, and yet it is stated **THERE WOULD BE NO [CIVIL] LIABILITY AS HE WOULD BE SUBJECT TO A CAPITAL CHARGE?**<sup>1</sup> No; it is the act of Cattle, which is placed on the same level as that of the owner himself, to show that just as in the act of the owner there had surely been the intention to satisfy some need, so also in the act of Cattle there must have been the intention to satisfy some need.<sup>2</sup> But how is this possible in the case of Cattle? — R. Iwiyā replied: The case here supposed is one of an intelligent animal which, owing to an itching in the back, was anxious to burn the barn so that it might roll in the [hot] ashes. But how could we know

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[of such an intention]? [By seeing that] after the barn had been burnt, the animal actually rolled in the ashes. But could such a thing ever happen? — Yes, as in the case of the ox which had been in the house of R. Papa, and which, having a severe toothache, went into the brewery, where it removed the lid [that covered the beer] and drank beer until it became relieved [of the pain]. The Rabbis, however, argued in the presence of R. Papa: How can you say that [the Mishnah places the act of] Cattle on a level with [the act of] the owner himself? For is it not stated: IF CATTLE HAS BROUGHT INDIGNITY [UPON A HUMAN BEING] THERE IS NO LIABILITY,<sup>3</sup> WHEREAS IF THE OWNER CAUSES THE INDIGNITY THERE IS LIABILITY? Now, if we are to put the act of Cattle on a level with that of the owner himself, how are we to find intention [in the case of Cattle]?<sup>4</sup> — Where, for instance, there was intention to do damage, as stated by the Master<sup>5</sup> that where there was intention to do damage though no intention to insult, [liability for insult will attach]. Raba, however, suggested that the Mishnah here<sup>6</sup> deals with a case of inadvertence, [resembling thus Cattle which acts as a rule without any specific purpose] and [the law<sup>7</sup> was laid down] in accordance with the teaching at the School of Hezekiah. For it was taught at the School of Hezekiah:<sup>8</sup> [Scripture places in juxtaposition] *He that killeth a man ... and he that killeth a beast*<sup>9</sup> ... [to imply that] just as in the case of killing a beast you can make no distinction whether it was inadvertent or malicious, whether intentional or unintentional, whether by way of coming down or by way of coming up,<sup>10</sup> so as to exempt from pecuniary obligation, but [in all cases] there is pecuniary liability,<sup>11</sup> so also in the case of killing man you should make no distinction whether it was inadvertent or malicious, whether intentional or unintentional, whether by way of coming down or by way of coming up so as to impose a pecuniary liability, but [in all cases] there should be exemption from pecuniary obligation.<sup>12</sup> Said the Rabbis to Raba: How can you assume that the ruling in the

Mishnah refers to an inadvertent act?<sup>13</sup> Is it not stated there [that were the owner to have set fire to a barn on Sabbath there would be no civil liability] AS HE WOULD BE SUBJECT TO A CAPITAL CHARGE?<sup>14</sup> — It only means to say this: Since if he would have committed it maliciously he would have been liable to a capital charge, as, e.g., where he had need of the ashes, there should be exemption [from civil liability] even in such a case as this where he did it inadvertently.<sup>15</sup>

*MISHNAH.* IF AN OX WAS PURSUING AN OTHER'S OX WHICH WAS [AFTERWARDS FOUND TO BE] INJURED, AND THE ONE [PLAINTIFF] SAYS, 'IT WAS YOUR OX THAT DID THE DAMAGE, WHILE THE OTHER PLEADS, 'NOT SO, BUT IT WAS INJURED BY A ROCK [AGAINST WHICH IT HAD BEEN RUBBING ITSELF]',<sup>16</sup> THE BURDEN OF PROOF LIES ON THE CLAIMANT. [SO ALSO] WHERE TWO [OXEN] PURSUED ONE AND THE ONE DEFENDANT ASSERTS, 'IT WAS YOUR OX THAT DID THE DAMAGE', WHILE THE OTHER DEFENDANT ASSERTS, 'IT WAS YOUR OX THAT DID THE DAMAGE',

1. Which would show that setting fire on Sabbath even for purely destructive purposes is a violation of the Sabbath, supporting thus the view of R. Abbahu and contradicting that of R. Johanan.
2. Though with cattle there would really be no legal difference whatsoever whether this was the case or not.
3. V. p. 192, n. 2.
4. Being as it is altogether devoid of the whole conception of insult.
5. *Supra* p. 141.
6. Which exempts man setting fire on Sabbath from any civil liability involved.
7. Exempting from civil liability in the case of Man.
8. Keth. 35a, 38a; Sanh. 79b and 84b.
9. Lev. XXIV, 21.
10. Which, however, forms a distinction in the case of unintentional manslaughter with reference to the liability to take refuge, for which cf. Mak. 7b.
11. As indeed stated *supra* p. 136.
12. Even when there is no actual death penalty involved, and likewise in the Mishnah the man setting fire though inadvertently is exempt from all civil liability, so that you

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cannot infer therefrom that death penalty is attached to setting fire on Sabbath even for destructive purposes. V. *supra* p. 192, n. 8.

13. In which case the capital punishment could never be applied.
14. V. p. 192, n. 8.
15. On the basis of the teaching of Hezekiah.
16. Denying thus any liability.

## Baba Kamma 35b

NEITHER OF THE DEFENDANTS WILL BE LIABLE. BUT WHERE BOTH OF THE [PURSUING] OXEN BELONGED TO THE SAME OWNER,<sup>1</sup> LIABILITY WILL ATTACH TO BOTH OF THEM. WHERE, HOWEVER, ONE [OF THE OXEN] WAS BIG AND THE OTHER LITTLE<sup>1</sup> AND THE CLAIMANT MAINTAINS THAT THE BIG ONE DID THE DAMAGE,<sup>2</sup> WHILE THE DEFENDANT PLEADS, 'NOT SO, FOR IT WAS THE LITTLE ONE THAT DID THE DAMAGE', OR AGAIN WHERE ONE [OX] WAS *TAM* AND THE OTHER *MU'AD* AND THE CLAIMANT MAINTAINS THAT THE *MU'AD* DID THE DAMAGE<sup>3</sup> WHILE THE DEFENDANT ASSERTS, 'NOT SO, FOR IT WAS THE *TAM* THAT DID THE DAMAGE,' THE BURDEN OF PROOF LIES ON THE CLAIMANT. [SO ALSO] WHERE THERE WERE TWO INJURED OXEN, ONE BIG AND ONE LITTLE, SIMILARLY TWO PURSUERS, ONE BIG AND ONE LITTLE, AND THE PLAINTIFF ASSERTS THAT THE BIG ONE INJURED THE BIG ONE AND THE LITTLE ONE THE LITTLE ONE, WHILE THE DEFENDANT CONTENDS, 'NOT SO, FOR [IT WAS] THE LITTLE ONE [THAT INJURED] THE BIG ONE AND THE BIG ONE [THAT INJURED] THE LITTLE ONE'; OR AGAIN WHERE ONE WAS *TAM* AND THE OTHER *MU'AD*, AND THE PLAINTIFF MAINTAINS THAT THE *MU'AD* INJURED THE BIG ONE AND THE *TAM* THE LITTLE ONE, WHILE THE DEFENDANT PLEADS, 'NOT SO, FOR [IT WAS THE] *TAM* [THAT INJURED] THE BIG ONE AND THE *MU'AD* [THAT INJURED] THE LITTLE ONE,' THE BURDEN OF PROOF FALLS ON THE CLAIMANT.

*GEMARA*. R. Hiyya b. Abba stated: This [Mishnaic ruling]<sup>4</sup> shows that [in this respect] the colleagues differed from Symmachus who maintained<sup>5</sup> that money of which the ownership cannot be decided has to be equally divided [between the two parties]. Said R. Abba b. Memel to R. Hiyya b. Abba: Did Symmachus maintain his view even where the defendant was as positive as the claimant?<sup>6</sup> — He replied: Yes, Symmachus maintained his view even where the defendant was as positive as the claimant. But [even if you assume otherwise],<sup>7</sup> how do you know that the Mishnah is here dealing with a case where the defendant was as positive as the claimant?<sup>8</sup> — Because it says, THE PLAINTIFF STATES 'IT WAS YOUR OX THAT DID THE DAMAGE', WHILE THE DEFENDANT PLEADS 'NOT SO...'<sup>9</sup> R. Papa, however, demurred to this, saying: If in the case presented in the opening clause the defendant was as positive as the claimant, we must suppose that in the case presented in the concluding clause the defendant was similarly as positive as the claimant. [Now,] read the concluding clause; WHERE, HOWEVER, ONE OX WAS BIG AND THE OTHER LITTLE, AND THE PLAINTIFF ASSERTS THAT THE BIG ONE DID THE DAMAGE WHILE THE DEFENDANT PLEADS 'NOT SO, FOR IT WAS THE LITTLE ONE THAT DID THE DAMAGE'; OR AGAIN WHERE ONE OX WAS *TAM* AND THE OTHER *MU'AD*, AND THE CLAIMANT MAINTAINS THAT THE *MU'AD* DID THE DAMAGE, WHILE THE DEFENDANT PLEADS, 'NOT SO, FOR IT WAS THE *TAM* THAT DID THE DAMAGE', THE BURDEN OF PROOF IS ON THE CLAIMANT. [Now this implies, does it not, that] where he does not produce evidence he will get paid in accordance with the pleading of the defendant. May it now not be argued that this [ruling] is contrary to the view of Rabbah b. Nathan, who said that where the plaintiff claims wheat and the defendant admits barley, he is not liable [for either of them]?<sup>10</sup> — You conclude then that the

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Mishnah deals with a case where one party was certain and the other doubtful.<sup>11</sup> Which then was certain and which doubtful? It could hardly be suggested that it was the plaintiff who was certain, and the defendant who was doubtful, for would this still not be contrary to the view of Rabbah b. Nathan?<sup>12</sup> It would therefore seem that it was the plaintiff who was doubtful<sup>11</sup> and the defendant certain. And if the concluding clause deals with a case where the plaintiff was doubtful and the defendant certain, we should suppose that the opening clause<sup>13</sup> likewise deals with a case where the plaintiff was doubtful and the defendant certain. But could Symmachus indeed have applied his principle even to such a case,<sup>14</sup> that the Mishnah thought fit to let us know that this view ought not to be accepted? — [Hence it must be said:] No; but that the concluding clause [deals with a case where] the plaintiff was doubtful and the defendant certain, and the opening clause<sup>13</sup> [presents a case where it was] the plaintiff who was certain and the defendant doubtful.<sup>15</sup> But [even in that case] the opening clause is not co-ordinate with the concluding clause?<sup>16</sup> — I can reply that [a case where the plaintiff is] certain and [the defendant] doubtful<sup>17</sup> and [a case where the claimant is] doubtful and [the defendant] certain<sup>18</sup> are co-ordinate<sup>19</sup> whereas [a case where the claimant is] certain and [the defendant also] certain is not co-ordinate with [a case where the claimant is] doubtful and [the defendant] certain.<sup>20</sup>

The above text states: 'Rabbah b. Nathan said: Where the plaintiff claimed wheat and the defendant admitted barley, he is not liable [for either of them].'<sup>21</sup> What does this tell us? Have we not already learnt [in a Mishnah]: where the plaintiff claimed wheat and the defendant admitted barley he is not liable?<sup>22</sup> If we had only [the Mishnah] there<sup>22</sup> to go by, I might have argued that the exemption was only from the value of the wheat,<sup>23</sup> while there would still be liability for the value of barley;<sup>24</sup> we are therefore told by Rabbah b. Nathan that the exemption is complete.

We have learnt: WHERE THERE WERE TWO INJURED OXEN, ONE BIG AND THE OTHER LITTLE, etc. [Now this implies that] where he does not produce evidence he will get paid in accordance with the pleading of the defendant. But why not apply here [the principle of complete exemption laid down in the case of] wheat and barley? — The plaintiff<sup>25</sup> is entitled to get paid [only where he produces evidence to substantiate the claim], but will have nothing at all [where he fails to do so]. But has it not been taught; He will be paid for [the injury done to] the little one out of the body of the big and for [the injury done to] the big one out of the body of the little one? — Only where he had already seized them.<sup>26</sup> We have learnt: IF ONE WAS TAM AND THE OTHER MU'AD, AND THE PLAINTIFF CLAIMS THAT THE MU'AD INJURED THE BIG ONE<sup>27</sup> AND THE TAM THE LITTLE ONE WHILE THE DEFENDANT PLEADS, 'NOT SO, FOR [IT WAS THE] TAM [THAT INJURED] THE BIG ONE AND THE MU'AD [THAT INJURED] THE LITTLE ONE', THE BURDEN OF PROOF FALLS ON THE CLAIMANT. [Now this implies that] where he does not produce evidence he will get paid in accordance with the pleading of the plaintiff. But why should [the principle of complete exemption laid down in the case of] wheat and barley not be applied here?

1. And were in the state of *Tam*, in which case the half-damages are paid only out of the body of the ox that did the damage, as *supra* p. 73.
2. And the body of the big one should secure the payment of the half damages.
3. And the compensation should thus be made in full.
4. That it is the claimant on whom falls the onus probandi.
5. *Infra* p. 262 and B.M. 2b, 6a, 98b, 100a; B.B. 141a.
6. In which case not the defendant but only the Court is in doubt.
7. And suggest that where the defendant has been positive even Symmachus admits that the claimant will get nothing unless by proving his case.

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8. For in the cases dealt with in the Mishnah the defendant is usually unable to speak positively, as in most cases he was not present at the place when the alleged damage was done; cf. also Tosaf. a.l.
9. Which is apparently a definite defense.
10. For the claim of wheat has been repudiated by the defendant while the claim for barley admitted by him has tacitly been dispensed with by the plaintiff. The very same thing could be argued in the case of the Mishnah quoted above, where the claim was made in respect of the big one or the *Mu'ad*, and the defense admitted the little one or the *Tam* respectively.
11. In which case the argument contained in the preceding note could no more be maintained.
12. For surely the plaintiff, by his definite claim in respect of the big one or the *Mu'ad*, has tacitly waived his claim in respect of the little one or the *Tam* respectively.
13. Where the defendant pleads that 'the pursued ox was injured by a rock...'
14. Which is really an absurdity, to maintain that a plaintiff pleading mere supposition against a defendant submitting a definite denial should in the absence of any evidence be entitled to any payment whatsoever.
15. [How then could R. Hiyya maintain that our Mishnah deals with a case where both were certain in their pleas.]
16. [If so, what is the objection of R. Papa to R. Hiyya's statement, since even on his view there is a lack of co-ordination between these two clauses in the Mishnah.]
17. As in the case dealt with in the commencing clause.
18. Which is the case in the concluding clause.
19. Lit., 'are one thing'.
20. R. Papa was therefore loath to explain the commencing clause as dealing with a case where the defense as well as the claim was put forward on a certainty, but preferred to explain it as presenting a law-suit where, though the claim had been put forward positively, the defense was urged tentatively.
21. V. p. 197. n. 2.
22. Shebu. 38b.
23. Which was denied by the defendant.
24. Admitted by the defendant.
25. In the case of the oxen.
26. In which case the principle of complete exemption maintained by Rabbah b. Nathan apparently does not apply.
27. V. p. 196. n. 1.

## Baba Kamma 36a

The plaintiff is entitled to get paid [only where he produces evidence to substantiate the claim] but [failing that he] will have nothing at all. But has it not been taught: He will be paid for [the injury done to] the little one in accordance with the regulations applying to *Mu'ad* and for [the injury done to] the big one out of the body of the *Tam*? — Only where he had already seized them.

**BUT WHERE BOTH OF THE [PURSUING] OXEN BELONGED TO THE SAME OWNER, LIABILITY WILL ATTACH TO BOTH OF THEM.** Raba of Parazika<sup>1</sup> said to R. Ashi: It can be concluded from this that where oxen in the state of *Tam* [belonging to the same owner] did damage, the plaintiff has the option to distrain either on the one or the other! — [No, replied R. Ashi, for] we are dealing here [in the Mishnah] with a case where they were *Mu'ad*.<sup>2</sup> If where they were *Mu'ad* how do you explain the concluding clause: **WHERE, HOWEVER, ONE [OF THE OXEN] WAS BIG AND THE OTHER LITTLE AND THE CLAIMANT MAINTAINS THAT THE BIG ONE DID THE DAMAGE WHILE THE DEFENDANT PLEADS 'NOT SO, FOR IT WAS THE LITTLE ONE THAT DID THE DAMAGE' THE BURDEN OF PROOF FALLS ON THE CLAIMANT.** For indeed where they were *Mu'ad* what difference could there be [whether the big one or the little one did the damage] since at all events he has to pay the full value of the ox? — He thereupon said to him: The concluding clause presents a case where they were *Tam*, though the opening clause deals with a case where the oxen were *Mu'ad*. Said R. Aha the Elder to R. Ashi: If the commencing clause deals with a case where the oxen were *Mu'ad*,<sup>2</sup> what is the meaning of 'LIABILITY WILL ATTACH TO BOTH OF THEM'? Should not the text run, 'The owner will be liable'? Again, what is the meaning of 'BOTH OF THEM'? — [The commencing clause also] must therefore deal with a case where the oxen were *Tam*, and the ruling

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stated follows the view of R. Akiba, that plaintiff and defendant become the owners in common [of the attacking ox].<sup>3</sup> Now this is so where 'BOTH OF THEM' [the oxen] are with the owner, in which case he cannot possibly shift the claim [from one to the other].<sup>4</sup> But if 'BOTH OF THEM' are not with him he may plead,<sup>5</sup> 'Go and produce evidence that it was this ox [which is still with me]<sup>6</sup> that did the damage, and then I will pay you.'

1. [Identified with Faransag, near Bagdad, v. Obermeyer, *op. cit.*, p. 269.]
2. In which case the whole estate of the defendant can be distrained upon for the payment of damages; *supra* p. 73.
3. Cf. *supra* p 181.
4. So that there is no warrant for Raba of Parazika's inference.
5. Against the plaintiff.
6. And not the other ox that has been lost.
- 7.

## Baba Kamma 36b

COMPENSATION WILL BE MADE FOR THE PENULTIMATE OFFENCE? Should it not be 'Compensation will be made [proportionately] for each offence'? — Raba replied: The Mishnah is indeed in accordance with R. Ishmael, who holds that claimants [of damages] are like any other creditors; and as to your objection to the statement 'THE LATER THE LIABILITY THE PRIOR THE CLAIM', which you contend should be 'The earlier the liability the prior the claim', [it can be argued] that we deal here with a case where each plaintiff has [in turn] seized the goring ox for the purpose of getting paid [the amount due to him] out of its body, in which case each has in turn acquired [in respect of the ox] the status of a paid bailee, liable for subsequent damages done by it.<sup>1</sup> But if so, why does it say. SHOULD THERE BE A SURPLUS COMPENSATION IS TO BE PAID ALSO FOR THE PENULTIMATE OFFENCE? Should it not be: 'The surplus will revert to the owner'?<sup>2</sup> — Rabina therefore said: The meaning is this: Should there be an excess in

the damage done to him<sup>3</sup> over that done to the subsequent plaintiff, the amount of the difference will revert to the plaintiff in respect of the preceding damage.<sup>4</sup> So too, when Rabin returned [from Eretz Yisrael] he stated on behalf of R. Johanan that it was for the failure [to carry out their duty] as bailees that liability was incurred [by the earlier plaintiffs to the later].

How then have you explained the Mishnah? As being in accordance with R. Ishmael! If so, what of the next clause: R. SIMEON SAYS: WHERE AN OX OF THE VALUE OF TWO HUNDRED [ZUZ] HAS GORED AN OX OF THE SAME VALUE OF TWO HUNDRED [ZUZ] AND THE CARCASS HAD NO VALUE AT ALL, THE PLAINTIFF WILL GET A HUNDRED ZUZ AND THE DEFENDANT WILL SIMILARLY GET A HUNDRED ZUZ [OUT OF THE BODY OF THE OX THAT DID THE DAMAGE]. SHOULD THE SAME OX HAVE GORED ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE SECOND CLAIMANT WILL GET A HUNDRED ZUZ, WHILE THE FORMER CLAIMANT WILL GET ONLY FIFTY ZUZ, AND THE DEFENDANT WILL HAVE FIFTY ZUZ [IN THE BODY OF THE OX]. SHOULD THE OX HAVE GORED YET ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE THIRD PLAINTIFF WILL GET A HUNDRED [ZUZ], WHILE THE SECOND PLAINTIFF WILL GET FIFTY [ZUZ] AND THE FIRST TWO PARTIES WILL HAVE A GOLD DENAR [EACH IN THE BODY OF THE OX THAT DID THE DAMAGE]. This brings us back [does it not] to the view of R. Akiba, who maintains that the ox becomes the common property [of the plaintiff and the defendant].<sup>5</sup> Will then the first clause be in accordance with R. Ishmael and the second clause in accordance with R. Akiba? — That is so, since even Samuel said to Rab Judah, 'Shinena,<sup>6</sup> leave this Mishnah alone<sup>7</sup> and accept my explanation. that its first clause is [in accordance with] R. Ishmael and its second clause [in accordance

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with] R. Akiba.' (It was also stated that R. Johanan said: An actual case in which they would differ is where the plaintiff consecrates the goring ox [to the Temple].)<sup>8</sup>

We have learnt elsewhere:<sup>9</sup> If a man boxes another man's ear, he has to give him a *sela'*<sup>10</sup> [in compensation]. R. Judah in the name of R. Jose the Galilean says: A hundred *zuz*. A certain man having [been summoned for] boxing another man's ear, R. Tobiah b. Mattena sent an inquiry to R. Joseph, as to whether a Tyrian *sela'*<sup>11</sup> is meant in the Mishnah<sup>12</sup> or merely a *sela'* of [this] country.<sup>13</sup> He sent back a reply: You have learnt it: **AND THE FIRST TWO PARTIES WILL HAVE A GOLD DENAR [EACH]**. Now, should you assume that the Tanna is calculating by the *sela'*<sup>13</sup> of [this] country, [we may ask,] why does he not continue the division by introducing a further case where the amount [left for the first two] will come down to twelve [*zuz*] and one *sela'*?<sup>14</sup> To which R. Tobiah replied: Has then the Tanna to string out cases like a peddler?<sup>15</sup> What, however, is the solution?<sup>16</sup> — The solution was gathered from the statement made by Rab Judah on behalf of Rab:<sup>17</sup> 'Wherever money<sup>18</sup> is mentioned in the Torah, the reference is to Tyrian money, but wherever it occurs in the words of the Rabbis it means local<sup>19</sup> money.' The plaintiff upon hearing that said to the judge: 'Since it will [only] amount to half a *zuz*,<sup>12</sup> I do not want it; let him give it to the poor.' Later, however, he said; 'Let him give it to me, as I will go and obtain a cure for myself with it.' But R. Joseph said to him: The poor have already acquired a title to it, for though the poor were not present here, we [in the Court, always] act as the agents<sup>20</sup> of the poor, as Rab Judah said on behalf of Samuel:<sup>21</sup>  
**Orphans**

1. As *supra* p. 57, and *infra* p. 255.
2. Since it is not the owner but the claimant in regard to the penultimate offence who has to be liable in respect of the last offence.
3. I.e., to the penultimate plaintiff.
4. As e.g. where an ox of the value of a hundred *zuz* gored successively the ox of A the ox of B

and the ox of C, and the damages amount to fifty, thirty and twenty *zuz* respectively, C will be paid the sum of twenty, B only ten, which is the difference between the compensation due to him and that due from him to C, and A will get twenty, which again is the difference between the compensation due to him from the owner (of the ox that did the damage) and that owing from him to B. All the payments together, which are twenty to A, ten to B and twenty to C, make only fifty, so that the balance of the value of the ox will go to its owner.

5. For if otherwise, why should the first two parties (the owner and the first claimant) always be treated alike?
6. Cf. *supra* p. 60, n. 2.
7. And do not try to make it self-consistent.
8. V. *supra* p. 181. [This bracketed passage is to be deleted with Rashi, v. D.S. a.l.]
9. *Infra* p. 520
10. A Palestinian coin, v. [Glos.](#)
11. Four *zuz*, v. *infra* p. 521, n. 6.
12. As stated by the anonymous view.
13. Half a *zuz*.
14. I.e. where the last claimant will have a *maneh*, the next fifty *zuz*, the rest one gold *denar*, and the first claimant and the owner 12 *zuz* and one *sela'* each.
15. Who cries the whole list of his wares. Cf. Git. 33a.
16. As to the exact meaning of *sela'*.
17. Cf. Kid. 11b and Bek. 50b.
18. [Lit., 'silver'. The market value of silver coinage was determined by Tyre, v. Krauss, *op. cit.*, II, 405]
19. Lit., 'the country'.
20. Lit., 'hand'.
21. Git. 37a.

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do not require a *prosbul*:<sup>1</sup> and so also Rami b. Hama learned that orphans do not require a *prosbul*,<sup>2</sup> since Rabban Gamaliel and his Court of law are the representatives<sup>3</sup> of orphans.

The scoundrel Hanan, having boxed another man's ear, was brought before R. Huna, who ordered him to go and pay the plaintiff half a *zuz*.<sup>4</sup> As [Hanan] had a battered *zuz* he desired to pay the plaintiff the half *zuz* [which was due] out of it. But as it could not be exchanged, he slapped him again and gave him [the whole *zuz*].

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**MISHNAH.** IF AN OX WAS *MU'AD* TO DO DAMAGE TO ITS OWN SPECIES BUT WAS NOT *MU'AD* TO DO DAMAGE TO ANY OTHER SPECIES [OF ANIMALS] OR IF IT WAS *MU'AD* TO DO DAMAGE TO THE HUMAN SPECIES BUT NOT *MU'AD* TO ANY SPECIES OF BEASTS, OR IF IT WAS *MU'AD* TO SMALL [CATTLE] BUT NOT *MU'AD* TO LARGE [CATTLE], IN RESPECT OF DAMAGE DONE TO THE SPECIES TO WHICH IT WAS *MU'AD* THE PAYMENT WILL HAVE TO BE IN FULL, BUT IN RESPECT OF DAMAGE DONE TO THAT TO WHICH IT WAS NOT *MU'AD*, THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. THEY<sup>5</sup> SAID BEFORE R. JUDAH: HERE IS ONE WHICH WAS *MU'AD* TO DO DAMAGE ON SABBATH DAYS BUT WAS NOT *MU'AD* TO DO DAMAGE ON WEEK DAYS.<sup>6</sup> HE SAID TO THEM: FOR DAMAGE DONE ON SABBATH DAYS THE PAYMENT WILL HAVE TO BE IN FULL, WHEREAS FOR DAMAGE DONE ON WEEK DAYS THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. WHEN [CAN THIS OX] RETURN TO THE STATE OF *TAM*? WHEN IT REFRAINS [FROM GORING] ON THREE [CONSECUTIVE] SABBATH DAYS.

**GEMARA.** It was stated: R. Zebid said: The proper reading of the Mishnah [in the first clause is], 'BUT WAS NOT *MU'AD* ...';<sup>2</sup> whereas R. Papa said: The proper reading is 'IT IS NOT [THEREFORE] *MU'AD* ...'<sup>3</sup> R. Zebid, who said that '... BUT WAS NOT *MU'AD* ...' is the proper reading of the Mishnah, maintained that until we know the contrary<sup>2</sup> such an ox is considered *Mu'ad* [to all species]. But R. Papa, who said that '... IT IS NOT [THEREFORE] *MU'AD* ...' is the correct reading of the Mishnah, maintained that even though we do not know the contrary the ox is not considered *mu'ad* [save to the species to which it had actually been *Mu'ad*]. R. Zebid inferred his view from the later clause [of the Mishnah], whereas R. Papa inferred his view from the opening clause. R. Zebid inferred his view from the later clause which states, IF IT WAS *MU'AD* TO SMALL [CATTLE] BUT NOT *MU'AD*

TO LARGE [CATTLE]. Now this is quite in order if you maintain that BUT WAS NOT *MU'AD*' is the reading in the Mishnah, implying thus that in the absence of definite knowledge to the contrary the ox should be considered *Mu'ad* [to all species]. This clause would then teach us [the further point] that even where the ox was *mu'ad* to small [cattle] it would be *mu'ad* also to large [cattle] in the absence of knowledge to the contrary. But if you maintain that '... IT IS NOT [THEREFORE] *MU'AD* ...' is the correct reading of the Mishnah, implying that even though we know nothing to the contrary the ox would not be considered *mu'ad*, could it not then be argued thus: Since in the case where the ox was *mu'ad* to do damage to small creatures of one species it would not be considered *mu'ad* with reference to small creatures of another species even if we have no definite knowledge to the contrary, was there any need to state that where the ox was *mu'ad* to small [cattle] it would not be considered *mu'ad* to big [cattle]?<sup>10</sup> — R. Papa, however, may say to you: It was necessary to state this, since otherwise you might have been inclined to think that since the ox started to attack a particular species, it was going to attack the whole of that species without making a distinction between the large creatures of that species and the small creatures of that species, it was therefore necessary to let us know that [with reference to the large creatures] it would not be considered *Mu'ad*. R. Papa on the other hand based his view on the opening clause, which states: WHERE IT WAS *MU'AD* TO THE HUMAN SPECIES IT WOULD NOT BE *MU'AD* TO ANY SPECIES OF BEASTS. Now this would be quite in order if you maintain that 'IT IS NOT [THEREFORE] *MU'AD* ...' is the text in the Mishnah denoting that even where we have no knowledge to the contrary the ox would not be considered *mu'ad* [to other species]; it was therefore necessary to make it known to us that even where the ox was *mu'ad* to the human species and though we knew nothing to the contrary, it would still not be *Mu'ad* to animals. But if you maintain that '... BUT

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WAS NOT *MU'AD ...*' is the correct reading of the Mishnah, implying that in the absence of knowledge to the contrary the ox would be considered *mu'ad* [to all species], could we not then argue thus: Since in the case where the ox was *Mu'ad* to one species of beast it would in the absence of knowledge to the contrary be considered *mu'ad* also to any other species of beast, was there any need to state that where the ox was *mu'ad* to the human species it would also be considered *mu'ad* to animals?<sup>11</sup> — R. Zebid may, however, say to you: The opening clause refers to the reversion of the ox to the state of *Tam*, as, e.g., where the ox had been *mu'ad* to man and *mu'ad* to beast but has subsequently refrained from [doing damage to] beast, having stood near cattle on three different occasions without goring. It might then have been argued that since it has not refrained from injuring men, its refraining from goring cattle should [in the eye of the law] not be considered a proper reversion [to the state of *Tam*].<sup>12</sup> We are therefore told that the refraining from goring cattle is in fact a proper reversion.

An objection was raised [from the following]: Symmachus says: If an ox is *Mu'ad* to man it is also *Mu'ad* to beast, *a fortiori*: if it is *Mu'ad* to injure man, how much more so is it *Mu'ad* to injure beast? Does this not prove that the view of the previous Tanna was that it would not be *Mu'ad*?<sup>13</sup> — R. Zebid may, however, say to you: Symmachus was referring to the reversion to the state of *Tam*, and what he said to the previous Tanna was this: 'Referring to your statement that the refraining [from goring] beasts is a proper reversion, [I maintain that] the refraining [from goring] beasts is not a proper reversion, [and can prove it] by means of an argument *a fortiori* from the case of man. For since it has not refrained from [attacking] man, will it not assuredly continue attacking beasts?

R. Ashi said: Come and hear: THEY SAID BEFORE R. JUDAH: HERE IS ONE

WHICH IS *MU'AD* TO DO DAMAGE ON SABBATH DAYS BUT NOT *MU'AD* TO DO DAMAGE ON WEEK DAYS. HE SAID TO THEM: FOR DAMAGE DONE ON SABBATH DAYS, THE PAYMENT WILL HAVE TO BE IN FULL, WHEREAS FOR DAMAGE DONE ON WEEK DAYS THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. Now this is quite in order if you maintain that '*... BUT WAS NOT MU'AD ...*' is the correct reading. The disciples were thus putting a question before him and he was replying to them accordingly. But If you contend that '*... IS NOT [THEREFORE] MU'AD ...*' is the correct text, [would it not appear as if his disciples] were giving instruction to him?<sup>14</sup> Again, what would then be the meaning of his reply to them?<sup>15</sup> R. Jannai thereupon said: The same can also be inferred from the opening clause, where it is stated: IN RESPECT OF DAMAGE DONE TO THE SPECIES TO WHICH IT WAS *MU'AD*, THE PAYMENT WILL HAVE TO BE IN FULL, BUT IN RESPECT OF DAMAGE DONE TO THAT TO WHICH IT WAS NOT *MU'AD*, THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. Now, this would be in order if you maintain that '*BUT IT WAS NOT MU'AD ...*'<sup>16</sup> is the correct text, in which case the clause just quoted would be explanatory. But if you maintain that '*... IT IS NOT [THEREFORE] MU'AD ...*'<sup>17</sup> is the correct text, this statement is complete in itself, and why then the further statement '*IN RESPECT OF DAMAGE DONE TO THE SPECIES TO WHICH IT WAS MU'AD*, THE PAYMENT WILL HAVE TO BE IN FULL, BUT IN RESPECT OF DAMAGE DONE TO THAT TO WHICH IT WAS NOT *MU'AD*, THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY? Have we not been told before how that in the case of *mu'ad* the payment is for half the damage whereas in the case of *Mu'ad* the payment has to be in full?<sup>18</sup> Yet even if you adopt the view of R. Papa,<sup>19</sup> where the animal gored an ox, an ass

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and a camel [successively] it would still become *mu'ad* to all [species of beasts].<sup>20</sup>

**Our Rabbis taught:** If the animal sees an ox and gores it, another ox and does not gore it, a third ox and gores it, a fourth ox and does not gore it, a fifth ox and gores it, a sixth ox and does not gore it, the animal becomes *Mu'ad* to alternate oxen.

**Our Rabbis taught:** If an animal sees an ox and gores it, an ass and does not gore it, a horse and gores it a camel and does not gore it, a mule and gores it, a wild ass and does not gore it, the animal becomes *Mu'ad* to alternate beasts of all species.

The following question was raised: If the animal [successively] gored

1. Cf. *supra* p. 48, n. 4 and [Glos.](#)
2. V. p. 204, n. 16.
3. Lit., 'father'.
4. As stated by the anonymous view.
5. The disciples.
6. Apparently we are to supply the words, 'what is the rule regarding it' the remark being intended as a question. But v. *infra* p. 208.
7. As indeed rendered in the Mishnaic text.
8. The Mishnah should accordingly open thus: 'If an ox is *Mu'ad* to do damage to its own species, it is not (therefore) *Mu'ad* to any other species (of animals)', etc., etc.
9. E.g., by letting other animals pass in front of it and seeing that it does not gore them.
10. Since it is much less likely to attack big animals than small ones. Why then, on R. Papa's reading, have this clause at all in the Mishnah?
11. Which it would be more ready to attack than human beings.
12. Cf. *supra* p. 119.
13. In contradiction to the view of R. Zebid.
14. I.e., we have to read their remark as a statement and not as a question.
15. After they had already decided the question in the wording of the problem.
16. V. p. 205, n. 6.
17. V. p. 206, n. 1
18. Cf. *supra* p. 73.
19. That in absence of knowledge to the contrary it is not *mu'ad*.
20. And we should not require three gorings for each.

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one ox, a [second] ox, and a [third] ox, an ass, and a camel, what is the legal position? Shall the last ox be counted together with the [first two] oxen, in which case the animal that gored will still be *Mu'ad* only to oxen whereas to any other species it will not be considered *Mu'ad*, or shall perhaps the last ox be counted together with the ass and camel, so that the animal that gored will become *Mu'ad* to all species [of beasts]? [Again,<sup>1</sup> where an animal has successively gored] an ass, a camel, an ox, another ox, and a [third] ox, what is the legal position? Shall the first ox be counted together with the ass and camel, so that the animal that gored will become *Mu'ad* to all species [of beasts], or shall it perhaps [rather] be counted together with the [other] oxen, in which case it will still be *Mu'ad* only to oxen, but not *Mu'ad* to any other species [of beasts]? [Again, where the consecutive gorings took place on] one Sabbath, [the next] Sabbath and [the third] Sabbath, and then on the [subsequent] Sunday and Monday, what is the legal position? Shall the last Sabbath be counted together with the [first two] Sabbaths, in which case the ox that gored would still be *Mu'ad* only for Sabbaths, whereas in respect of damage done on week days it would not yet be considered *mu'ad*, or shall it perhaps be counted together with Sunday and Monday and thus become *Mu'ad* in respect of all the days [of the week]? [Again, where the consecutive gorings took place on] a Thursday, the eve of Sabbath and the Sabbath, then on [the next] Sabbath and [the third] Sabbath, what is the legal position? Shall the first Sabbath be counted together with Thursday and the eve of Sabbath and the goring ox thus become *mu'ad* for all days, or shall perhaps the first Sabbath be counted together with the subsequent Sabbaths, in which case the goring ox would become *mu'ad* only for Sabbaths? — These questions must stand over.

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If [an ox has] gored an ox on the fifteenth day of a particular month, and [another ox] on the sixteenth day of the next month, and [a third ox] on the seventeenth day of the third month, there would be a difference of opinion between Rab and Samuel.<sup>2</sup> For it was stated:<sup>3</sup> If the symptom of menstruation has once been noticed on the fifteenth day of a particular month, [then] on the sixteenth day of the next month, and [then] on the seventeenth day of the third month, Rab maintained that a periodical recurrence<sup>4</sup> has thereby been established,<sup>5</sup> whereas Samuel said [that this periodicity is not established] until the skipping is repeated [yet] a third time.<sup>6</sup>

Raba said: Where an ox upon hearing the sound of a trumpet gores and upon hearing [again] the sound of a trumpet gores [a second time], and upon hearing [again] the sound of a trumpet gores [a third time], the ox will become *Mu'ad* with reference to the hearing of the sound of trumpets. Is not this self-evident? — You might have supposed that [the goring at] the first [hearing of the sound of the] trumpet [should not be taken into account as it] might have been due merely to the sudden fright that came over the ox.<sup>7</sup> We are therefore told [that it would be taken into account].<sup>8</sup>

**MISHNAH.** IN THE CASE OF PRIVATE OWNER'S<sup>9</sup> CATTLE<sup>10</sup> GORING AN OX CONSECRATED TO THE TEMPLE, OR CONSECRATED CATTLE GORING A PRIVATE OX, THERE IS NO LIABILITY, FOR IT IS STATED: THE OX OF HIS NEIGHBOUR,<sup>11</sup> NOT [THAT IS TO SAY] AN OX CONSECRATED TO THE TEMPLE. WHERE AN OX BELONGING TO AN ISRAELITE HAS GORED AN OX BELONGING TO A CANAANITE, THERE IS NO LIABILITY,<sup>12</sup> WHEREAS WHERE AN OX BELONGING TO A CANAANITE GORES AN OX BELONGING TO AN ISRAELITE, WHETHER WHILE *TAM* OR *MU'AD*,<sup>13</sup> THE COMPENSATION IS TO BE MADE IN FULL.<sup>14</sup>

**GEMARA.** The [ruling in the] Mishnah is not in accordance with [the view of] R. Simeon b. Menasya; for it was taught: Where a private ox has gored consecrated cattle or where consecrated cattle has gored a private ox, there is not liability, as it is stated: The ox of his neighbour,<sup>15</sup> not [that is to say] an ox consecrated to the Temple. R. Simeon b. Menasya, however, says: Where consecrated cattle has gored a private ox there is no liability, but if a private ox has gored consecrated cattle, whether while *Tam* or *mu'ad*, payment is to be made for full damage.<sup>16</sup> I might ask, what was the principle adopted by R. Simeon? If the implication of 'his neighbour'<sup>15</sup> has to be insisted upon,<sup>17</sup> why then even in the case of a private ox goring consecrated cattle should there not be exemption? If on the other hand the implication of 'his neighbor' has not to be insisted upon, why then in the case of consecrated cattle goring a private ox should there also not be liability? If, however, you argue that he<sup>18</sup> does in fact maintain that the implication of 'his neighbor' has to be insisted upon, yet where a private ox has gored consecrated cattle there is a special reason for liability inferred by means of an *a fortiori* argument from the case of private cattle [as follows]: If where a private ox has gored private cattle there is liability, should not there be all the more liability where it has gored consecrated cattle? Why then [did he] not employ the principle of Dayyo<sup>19</sup> [i.e. that it was sufficient] that the object<sup>20</sup> to which the inference is made should be on the same footing as the object from which it was made?<sup>21</sup> And since *Tam* involves there the payment of half damages, [why then should it not] here also involve the payment of half damages [only]? — Resh Lakish therefore said: Originally all cases came under the law of full compensation;<sup>22</sup> when Scripture therefore particularized 'his neighbor' in the case of *Tam*, it meant that it was only where damage had been done to a neighbor that *Tam* would involve half damages [only], thus implying that where the damage had been done to consecrated property, whether by

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*Tam* or *Mu'ad*, the compensation must be in full;

1. Assuming that in the previous case we decide that the last ox will be counted with the first two oxen.
2. According to Rab it would become *Mu'ad* to gore every month by missing a day, so that if in the fourth month it gores on the eighteenth day, the compensation would have to be in full, whereas according to Samuel the compensation would still be a half, as the animal could not become *Mu'ad* until the act of missing a day is repeated three times, so that full compensation would begin with the goring on the nineteenth day of the fifth month.
3. Nid. 67a.
4. [MS.M. adds 'in skipping', cf. Rashi.]
5. And the menstruation could accordingly be expected on the eighteenth day of the fourth month.
6. I.e., until in the fourth month the menstruation recurs on the eighteenth day, in which case it would be expected on the nineteenth day of the fifth month,
7. So that full compensation should begin with the fifth occasion.
8. And full liability will commence with the fourth goring at the sound of a trumpet.
9. [Mishnah text: 'of an Israelite'.]
10. Lit., 'ox'.
11. Ex. XXI, 35.
12. As Canaanites did not recognize the laws of social justice, they did not impose any liability for damage done by cattle. They could consequently not claim to be protected by a law they neither recognized nor respected, cf. J. T. a.l. and Maim. Yad, Niz. Mam. VIII, 5. [In ancient Israel as in the modern state the legislation regulating the protection of life and property of the stranger was, as Guttman. M. (HUCA. III 1 ff.) has shown, on the basis of reciprocity. Where such reciprocity was not recognized, the stranger could not claim to enjoy the same protection of the law as the citizen.]
13. I.e., the ox that did the damage.
14. So that they should guard their cattle from doing damage. (Maim. *loc. cit.*)
15. V. p. 211, n. 5.
16. Cf. *supra* p. 23.
17. To mean the ox of his peer, of his equal. [This would not exclude Gentiles in general as the term [H], *his neighbor* applies also to them (cf. Ex. XI, 2); cf. next page.]
18. R. Simeon

19. V. *supra* p. 126.

20. Viz. consecrated cattle.

21. Viz. private cattle.

22. As in the case of *mu'ad* where in contradistinction to *Tam* no mention was made of 'his neighbor': cf. Ex. XXI, 36

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for if this was not its intention, Scripture should have inserted [the expression] 'his neighbor' in the text dealing with *Mu'ad*.<sup>1</sup>

WHERE AN OX BELONGING TO AN ISRAELITE HAS GORED AN OX BELONGING TO A CANAANITE THERE IS NO LIABILITY, etc. But I might here assert that you are on the horns of a dilemma. If the implication of 'his neighbor' has to be insisted upon, then in the case of an ox of a Canaanite goring an ox of an Israelite, should there also not be exemption? If [on the other hand] the implication of 'his neighbor' has not to be insisted upon, why then even in the case of an ox of an Israelite goring an ox of a Canaanite, should there not be liability? — R Abbahu thereupon said: The Writ says, *He stood and measured the earth; he beheld and drove asunder the nations*,<sup>2</sup> [which may be taken to imply that] God beheld the seven commandments<sup>3</sup> which were accepted by all the descendants of Noah, but since they did not observe them, He rose up and declared them to be outside the protection of the civil law of Israel [with reference to damage done to cattle by cattle].<sup>4</sup> R. Johanan even said that the same could be inferred from this [verse], He shined forth from Mount Paran,<sup>5</sup> [implying that] from Paran<sup>6</sup> He exposed their money to Israel. The same has been taught as follows: If the ox of an Israelite gores an ox of a Canaanite there is no liability,<sup>7</sup> but if an ox of a Canaanite gores an ox of an Israelite whether the ox [that did the damage] was *Tam* or whether it had already been *Mu'ad*, the payment is to be in full, as it is said: *He stood and measured the earth, he beheld and drove asunder the nations*,<sup>2</sup> and again, *He shined forth from Mount Paran*.<sup>5</sup> Why this

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further citation? — [Otherwise] you might perhaps think that the verse *'He stood and measured the earth'* refers exclusively to statements [on other subjects] made by R. Mattena and by R. Joseph; come therefore and hear: *'He shined forth from Mount Paran,'* implying that from Paran<sup>8</sup> he exposed their money to Israel.

What was the statement made by R. Mattena [referred to above]? — It was this. R. Mattena said: *He stood and measured the earth; He beheld, etc.*<sup>9</sup> What did He behold? He beheld the seven commandments<sup>10</sup> which were accepted by all the descendants of Noah, and since [there were some clans that] rejected them, He rose up and exiled them from their lands.<sup>11</sup> But how can the word in the text<sup>12</sup> be [etymologically] explained to mean 'exile'? — Here it is written "*wa-yatter" the nations'* and in another place it is [similarly] written, "*le-natter" withal upon the earth,*"<sup>13</sup> which is rendered in the *Targum*<sup>14</sup> 'to leap withal upon the earth'.

What was the statement made by R. Joseph [referred to above]? — It was this. R. Joseph said: *'He stood and measured the earth; he beheld,'* etc. What did He behold? He beheld the seven commandments which had been accepted by all the descendants of Noah, and since [there were clans that] rejected them He rose up and granted them exemption. Does this mean that they benefited [by breaking the law]? And if so, will it not be a case of a sinner profiting [by the transgression he committed]? — Mar the son of Rabana<sup>15</sup> thereupon said: 'It only means that even were they to keep the seven commandments [which had first been accepted but subsequently rejected by them] they would receive no reward.' Would they not? But it has been taught:<sup>16</sup> 'R. Meir used to say, Whence can we learn that even where a Gentile occupies himself with the study of the Torah he equals [in status] the High Priest? We find it stated: ... *which if a man do he shall live in them;*<sup>17</sup> it does not say "priests, Levites and Israelites", but "*a man*", which shows that even if a Gentile

occupies himself with the study of the Torah he equals [in status] the High Priest.' — I mean [in saying that they would receive no reward] that they will receive reward not like those who having been enjoined perform commandments, but like those who not having been enjoined perform good deeds: for R. Hanina has stated:<sup>18</sup> Greater is the reward of those who having been enjoined do good deeds than of those who not having been enjoined [but merely out of free will] do good deeds.<sup>19</sup>

Our Rabbis taught: The Government of Rome had long ago sent two commissioners to the Sages of Israel with a request to teach them the Torah. It was accordingly read to them once, twice and thrice. Before taking leave they made the following remark: We have gone carefully through your Torah, and found it correct with the exception of this point, viz. your saying that if an ox of an Israelite gores an ox of a Canaanite there is no liability,<sup>20</sup> whereas if the ox of a Canaanite gores the ox of an Israelite, whether *Tam* or *Mu 'ad*, compensation has to be paid in full. In no case can this be right. For if the implication of '*his neighbor*' has to be insisted upon, why then in the case of an ox of a Canaanite goring an ox of an Israelite should there also not be exemption? If [on the other hand] the implication of '*his neighbor*' has not to be insisted upon, why then even in the case of an ox of an Israelite goring an ox of a Canaanite, should there not be liability? We will, however, not report this matter to our Government.<sup>21</sup>

When R. Samuel b. Judah lost a daughter the Rabbis<sup>22</sup> said to 'Ulla: 'Let us go in and console him.' But he answered them: 'What have I to do with the consolation of the Babylonians,<sup>22</sup> which is [almost tantamount to] blasphemy? For they say "What could have been done," which implies that were it possible to do anything they would have done it.' He therefore went alone to the mourner and said to him: [Scripture says,] *And the Lord spake unto me, Distress not the Moabites, neither contend with them in*

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*battle.*<sup>23</sup> Now [we may well ask], could it have entered the mind of Moses to wage war without [divine] sanction? [We must suppose] therefore that Moses of himself reasoned *a fortiori* as follows: If in the case of the Midianites who came only to assist the Moabites<sup>24</sup> the Torah commanded '*Vex the Midianites and smite them,*'<sup>25</sup>

1. V. p. 212, n. 8.
2. Hab. III, 6.
3. V. A.Z. (Sonc. ed.) p. 5, n. 7.
4. The exemption from the protection of the civil law of Israel thus referred only to the Canaanites and their like who had willfully rejected the elementary and basic principles of civilized humanity.
5. Deut. XXXIII, 2. [The Mount at which God appeared to offer the Law to the nations, who, however, refused to accept it. V. A.Z. 2b.]
6. On account of what occurred thereat.
7. V. p. 211, n. 6.
8. Cf. A. Z. 2a.
9. Hab. III, 2.
10. V. p. 213, n. 3.
11. As described in Deut. II, 10-23.
12. I.e., wa-yatter.
13. Lev. XI, 21.
14. *Targum Onkelos*, the Aramaic version of the Hebrew Bible; cf. J.E. s.v.
15. [Ms.M.: Rabina.]
16. Sanh. 59a; A. Z. 3a.
17. Lev. XVIII, 5.
18. *Infra* p. 501. and Kid. 31a.
19. [For the idea underlying this dictum v. A.Z. (Sonc. ed.) p. 6, n. 1.]
20. V. p. 211, n. 6.
21. [The same incident is related with some variations in J.B.K. IV, 4, and Sifre on Deut. XXXIII, 3, where R. Gamaliel (II) is mentioned as the Sage before whom the Commissioners appeared, Graetz, *Geschichte*, IV, 108, places this in the days of Domitian (81-96) whose distrust of the Jews led him to institute an inquisition into their beliefs and teachings; Halevy, *Doroth* I.e. 350, in the days of Nerva who wished to find out whether there was any truth in the slander against the Jews encouraged by Domitian.]
22. I.e., Babylonian Rabbis.
23. Deut. II, 9.
24. Cf. Num. XXII, 4.
25. *Ibid* XXV, 17.

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in the case of the Moabites [themselves] should not the same injunction apply even more strongly? But the Holy One, blessed be He, said to him: The idea you have in your mind is not the idea I have in My mind. Two doves have I to bring forth from them;<sup>1</sup> Ruth the Moabite and Naamah the Ammonite. Now cannot we base on this on *a fortiori* argument as follows: If for the sake of two virtuous descendants the Holy One, blessed be He, showed pity to two great nations so that they were not destroyed, may we not be assured that if your honor's daughter had indeed been righteous and worthy to have goodly issue, she would have continued to live?

R. Hiyya B. Abba said that R. Johanan had stated:<sup>2</sup> The Holy One, blessed be He, does not deprive any creature of any reward due to it, even if only for a becoming expression: for in the case of the [descendants of the] elder [daughter]<sup>3</sup> who named her son 'Moab',<sup>4</sup> the Holy One, Blessed be He, said to Moses, Distress not the Moabites, neither contend with them in battle, [implying that] while actual hostilities against them were forbidden, requisitioning from them was allowed, whereas in the case of the younger [daughter]<sup>3</sup> who called her son 'Ben Ammi',<sup>5</sup> the Holy One, Blessed be He, said to Moses: And when thou comest nigh over against the children of Ammon, distress them not, nor meddle with them at all,<sup>6</sup> thus implying that they were not to be subjected even to requisitioning.

R. Hiyya B. Abba further said that R. Joshua b. Korha had stated:<sup>7</sup> At all times should a man try to be first in the performance of a good deed, as on account of the one night by which the elder [daughter]<sup>8</sup> preceded the younger she preceded her by four generations [in having a descendant] in Israel: Obed, Jesse, David and Solomon.<sup>2</sup> For the younger [had no descendant in Israel] until [the advent of] Rehoboam, as it

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is written: And the name of his mother was Naamah the Ammonitess.<sup>10</sup>

Our Rabbis taught: If cattle of an Israelite has gored cattle belonging to a Cuthean<sup>11</sup> there is no liability. But where cattle belonging to a Cuthean gored cattle belonging to an Israelite, in the case of *Tam* the payment will be for half the damage, whereas in the case of *Mu'ad* the payment will be in full. R. Meir, however, says: Where cattle belonging to an Israelite gored cattle belonging to a Cuthean there is no liability, whereas in the case of cattle belonging to an Israelite, whether in the case of *Tam* or in that of *Mu'ad*, the compensation is to be in full. Does this mean to say that R. Meir maintains that the Cutheans were lion-proselytes?<sup>12</sup> But if [so], an objection would be raised [from the following]:<sup>13</sup> All kinds of stains [found on women's underwear] brought from *Rekem*<sup>14</sup> are [levitically] clean.<sup>15</sup> But R. Judah considers them unclean, as the inhabitants [of that place] are mainly proselytes<sup>16</sup> who are in error;<sup>17</sup> from among Gentiles<sup>18</sup> they are considered clean. But [where they were brought] from among Israelites<sup>19</sup> or from Cutheans [after having been obtained from private places all agree in declaring them unclean.<sup>20</sup> But where they were brought from Cutheans who had already abandoned them to the public at large]<sup>21</sup> R. Meir considers them unclean,<sup>22</sup> whereas the Sages consider them clean, for [even] they<sup>23</sup> were not suspected of being lax in [the exposing of women's stained underwear]. Now does this not prove that R. Meir was of the opinion that Cutheans were true proselytes? — R. Abbahu thereupon said: This was only a pecuniary disability that R. Meir<sup>24</sup> imposed upon them, so that [Israelites] should not intermingle with them.

R. Zera raised an objection [from the following]: These are the damsels through whom the fine<sup>25</sup> is imposed: If a man has connection with a girl that is a bastard,<sup>26</sup> a *Nethinah*<sup>27</sup> or a Cuthean.<sup>28</sup> Now if you maintain that R. Meir imposed a pecuniary disability on them, why then not impose it in

this case too,<sup>29</sup> so that [Israelites] should not mix with them? Abaye thereupon said:

1. The Moabites and the Ammonites, who must therefore be saved.
2. Naz. 23b and Hor. 10b.
3. Of Lot; cf. Gen. XIX, 30-38.
4. Lit., 'From father'.
5. Lit., 'The son of my people'
6. Deut. II, 19.
7. Naz. ibid; and Hor. 11a.
8. V. p. 216, n. 6.
9. Cf. Ruth IV, 13-22.
10. I Kings XIV, 31.
11. I.e., members of the mixed tribes who had been settled on the territory of the former Kingdom of Israel by the Assyrian king and who were subsequently a great hindrance to the Jews who returned from the Babylonian captivity to revive their country and their culture; cf. II Kings, XVII. 24-41; Ezra IV, 1-24 and Neh. III, 33; IV, V, VI, 13.
12. I.e., they accepted some of the Jewish practices not out of appreciation or with sincerity but simply out of the fear of the lions, which as stated in Scripture had been slaying them; cf. II Kings, XVII, 25.
13. Nid. VII. 3.
14. A place mainly inhabited by heathens who are not subject to the laws of purity and menstruation. [*Rekem* is identified by *Targum Onkelos* Gen. XVI, 14, with *Kadesh*; by Josephus (*Ant. IV, 7, 1*), with *Petra*.]
15. As the underwear might naturally be supposed to have been worn by a heathen woman.
16. Who are subject to all the laws of Scripture and whose menstrual discharge defiles any garment which comes in contact with it.
17. And have lapsed from the observance of the Law.
18. Those who have never embraced the religion of Israel and have thus never been subject to the laws of purity and menstruation.
19. Who as a rule do not expose to the public garments stained with menstrual discharge.
20. For both Israelites and Cutheans are subject to the laws of purity and menstruation.
21. The bracketed passage follows the interpretation of this Mishnah given in Nid. 56b.
22. For Cutheans in contradistinction to Israelites were, according to R. Meir, suspected of being lax in the matter of exposing to the public garments stained with menstrual discharge.
23. I.e. Cutheans.
24. Who in other respects considered them true proselytes.

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25. For seduction in accordance with Ex. XXII, 15-16, or for rape in accordance with Deut. XXII, 28-29.
26. Cf. Deut. XXII, 29 and *ibid.* XXIII, 3.
27. A Gibeonite, v. [Glos.](#)
28. Keth. III, 1.
29. By not allowing them to recover compensation for seduction.

## Baba Kamma 39a

[No exception was made in this case] so that the sinner<sup>1</sup> should not profit thereby. But let him pay the amount of the fine to the poor?<sup>2</sup> — R. Mari said: It would [in that case have remained] a pecuniary obligation without definite claimants<sup>3</sup> [and would thus never have been discharged].<sup>4</sup>

**MISHNAH.** IF AN OX OF AN OWNER WITH UNIMPAIRED FACULTIES GORES AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR,<sup>5</sup> THE OWNER IS LIABLE. WHERE, HOWEVER, AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR HAS GORED AN OX OF AN OWNER WHOSE FACULTIES ARE UNIMPAIRED, THERE IS NO LIABILITY.<sup>6</sup> IF AN OX OF A DEAF-MUTE AN IDIOT OR A MINOR<sup>7</sup> HAS GORED, THE COURT OF LAW APPOINT A GUARDIAN, IN WHOSE PRESENCE WITNESSES WILL BE ABLE TO TESTIFY [THAT THE OX HAS GORED SO THAT IT WILL EVENTUALLY BE DECLARED *MU'AD*]. IF THE DEAF-MUTE RECOVERS HIS HEARING [OR SPEECH], OR IF THE IDIOT BECOMES SANE, OR IF THE MINOR COMES OF AGE, THE OX PREVIOUSLY DECLARED *MU'AD* WILL RETURN TO THE STATE OF *TAM*: THESE ARE THE WORDS OF R. MEIR. R. JOSE, HOWEVER, SAYS THAT THE OX WILL REMAIN IN STATUS QUO. IN THE CASE OF A STADIUM OX<sup>8</sup> [KILLING A PERSON], THE DEATH PENALTY IS NOT IMPOSED [UPON THE OX], AS IT IS WRITTEN: IF AN OX GORE,<sup>9</sup> EXCLUDING CASES WHERE IT IS GOADED TO GORE.

**GEMARA.** Is not the text in contradiction with itself? [In the first clause] you state, IF AN OX OF A DEAF-MUTE, AN IDIOT OR

A MINOR GORES AN OX BELONGING TO ONE WHOSE FACULTIES ARE UNIMPAIRED THERE IS NO LIABILITY, implying that a guardian is not appointed in the case of *Tam* to collect [the payment of half-damages] out of its body.<sup>10</sup> But read the following clause: IF AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR HAS GORED, THE COURT OF LAW APPOINT A GUARDIAN IN WHOSE PRESENCE WITNESSES WILL BE ABLE TO TESTIFY [SO THAT IT WILL EVENTUALLY BE DECLARED *MU'AD*]. Now, does this not prove that a guardian is appointed in the case of *Tam* to collect [the payment of half-damages] out of its body? — Raba replied [that the text of the concluding clause] should be understood thus: If the oxen are presumed to be gorers, then a guardian is appointed and witnesses will give evidence for the purpose of having the cattle declared *Mu'ad*, so that should another goring take place,<sup>11</sup> the payment would have to come from the best [of the general estate].<sup>12</sup>

From the best of whose estate [would the payment have to come]? — R. Johanan said: From the best [of the estate] of the orphans;<sup>13</sup> R. Jose b. Hanina said: From the best [of the estate] of the guardian. But did R. Johanan really say so? [Has it not been stated that] R. Judah said in the name of R. Assi:<sup>14</sup> The estate of the orphans<sup>13</sup> must not be distrained upon unless where usury is consuming it, and R.. Johanan said: [Unless there is a liability] either for a bond bearing interest or to a woman for her *kethubah*,<sup>15</sup> [so as to save from further payment] on account of [her] maintenance?<sup>16</sup> — You must therefore reverse names [to read as follows]: R. Johanan said: From the best [of the estate] of the guardian, whereas R. Jose b. Hanina said: From the best [of the estate] of the orphans. Raba, however, objected, saying: Because there is a contradiction between R. Johanan in one place and R. Johanan in another place, are you to ascribe to R. Jose b. Hanina an erroneous view?<sup>17</sup> Was not R. Jose b. Hanina a judge, able to

# BABA KAMMA- 31b-62b

penetrate to the innermost intention of the Law? — We must therefore not reverse the names, [and the contradiction between the two views of R. Johanan<sup>18</sup> can be reconciled by the consideration that] a case of damage is altogether different.<sup>19</sup> R. Johanan stated that the payment must be made out of the best [of the estate] of the orphans, because if you were to say that it is to be out of the best [of the estate] of the guardians

1. The seducer.
2. So that the sinner should not benefit, but why pay the money to the Cuthean if R. Meir was inclined to impose a disability upon Cutheans?
3. Any poor man claiming the money could be put off by the plea that he (the seducer) wished to give it to another poor man.
4. If the Cuthean would not have been entitled to claim it.
5. Usually up to the age of thirteen. These three form a category for themselves as they are not subject to the obligations of either civil or criminal law.
6. In the case of *Tam*: v. the discussion in Gemara.
7. By evidence having been delivered in the presence of the appointed guardian.
8. [ [G], the arena used for wild beast hunts and gladiatorial contests, v. Krauss, *op. cit.* III, 119.]
9. Ex. XXI, 28.
10. Cf. *supra* p. 73.
11. But no payment will be made for damage done while the ox was *Tam*.
12. V. p. 219, n. 6.
13. Who were minors.
14. 'Ar. 22a.
15. I.e., marriage settlement; v. [Glos.](#)
16. For as long as the widow does not collect her *kethubah*, she receives her maintenance from the property of the orphans, v. Keth. XI, 1.
17. [Raba regarded it as an adopted ruling not to distraint upon the estate of orphans. V. Asheri, a.l.]
18. I.e., here and in 'Ar. 22a.
19. Presumably on account of public safety and public interest it is more expedient not to postpone payment until the orphans come of age.

## Baba Kamma 39b

people would certainly refrain from accepting this office and would do nothing at

all [in the matter]. R. Jose b. Hanina, however, said that the payment should be made out of the best [of the estate] of the guardians. and that these should be reimbursed out of the estate of the orphans when the latter will have come of age.

Whether [or not] guardians could be appointed in the case of *Tam* to collect payment out of its body, is a point at issue between the following Tannaim: In the case of an ox whose owner has become a deaf-mute, or whose owner became insane or whose owner has gone abroad,<sup>1</sup> Judah b. Nakosa said on behalf of Symmachus that it would have to remain *Tam*<sup>2</sup> until witnesses could give evidence in the presence of the owner. The Sages, however, say that a guardian should be appointed in whose presence the evidence may be given. Should the deaf-mute recover his faculty [of hearing or speech], or the idiot become sane, or the minor come of age, or the owner return from abroad, Judah b. Nakosa said on behalf of Symmachus that the ox would revert to the state of *Tam*<sup>3</sup> until evidence is given in the presence of the owner, whereas R. Jose said that it would retain its status quo. Now, we have here to ask, what is the meaning of 'it would have to remain *Tam*'<sup>4</sup> in the dictum of Symmachus? It could hardly mean that the ox cannot become *Mu'ad* at all, for since it is stated in the concluding clause, 'The ox would revert to the state of *Tam*', it is implied that it had formerly been *Mu'ad*. What then is the meaning of, 'it would have to remain *Tam*'?<sup>4</sup> We must say, 'It would remain *Tam* [complete],'<sup>5</sup> that is, we do nothing to diminish its value, which would, of course, show that [Symmachus holds] no guardian is appointed in the case of *Tam* to collect payment out of its body. 'The Sages, however, say that a guardian should be appointed in whose presence evidence may be given', from which it follows that [they hold] a guardian may be appointed in the case of *Tam* to collect payment out of its body.

## BABA KAMMA- 31b-62b

And what is the point at issue in the concluding clause? The point at issue there is [whether or not a change of] control<sup>6</sup> should cause a change [in the state of the ox].<sup>2</sup> Symmachus maintains that [a change in] control causes a change [in the state of the ox],<sup>2</sup> whereas R. Jose holds that [a change of] control causes no change [in the state of the ox].

Our Rabbis taught: Where an ox of a deaf-mute, an idiot or a minor has gored, R. Jacob pays half-damages. What has R. Jacob to do with it?<sup>8</sup> — But read, 'R. Jacob orders the payment of half-damages.' With what case are we here dealing? If with a *Tam*, is this not obvious?<sup>2</sup> For does not any other owner similarly pay half-damages? If [on the other] hand we are dealing with a *Mu'ad*, then where proper precautions were taken to control it, why should any payment be made at all?<sup>10</sup> And if no precautions were taken to control it, why should not damages be paid in full? — Raba thereupon said: We are in fact dealing with a *Mu'ad*, and with a case where precautions of some inferior sort<sup>11</sup> were taken to control the ox, but not really adequate precautions. R. Jacob concurred with R. Judah who said<sup>12</sup> that [even in the case of *Mu'ad*, half of the payment, i.e.] the part due from *Tam* remains unaffected [being still subject to the law of *Tam*]; he also concurred with R. Judah in holding<sup>13</sup> that to procure exemption from the law of *Mu'ad* even inadequate precautions are sufficient;<sup>14</sup> and he furthermore followed the view of the Rabbis<sup>15</sup> who said that a guardian could be appointed in the case of *Tam* to collect payment out of its body.<sup>16</sup> Said Abaye to him:<sup>17</sup> Do they<sup>18</sup> really not differ? Has it not been taught: 'Where the ox of a deaf-mute, an idiot or a minor has gored, R. Judah maintains that there is liability to pay and R. Jacob says that the payment will be only for half the damage'? — Rabbah b. 'Ulla thereupon said: The 'liability to pay' mentioned by R. Judah is here defined [as to its amount] by R. Jacob.<sup>19</sup> But according to Abaye who maintained that they did differ, what was the point at issue between them?

— He may tell you that they were dealing with a case of *Mu'ad* that had not been guarded at all, in regard to which R. Jacob would concur with R. Judah on one point but differ from him on another point. He would concur with him on one point, in that R. Judah lays down that [even with *Mu'ad* half of the payment, i.e.] the part due from *Tam* remains unaffected; but he would differ from him on another point, in that R. Judah lays down that a guardian should be appointed in the case of *Tam* to collect payment out of its body, whereas R. Jacob is of the opinion that a guardian could not be appointed and there could therefore be no payment except the half [which should be subject to the law] of *Mu'ad*.<sup>20</sup> Said R. Aha b. Abaye to Rabina: All would be very well according to Abaye who maintained that they differ;<sup>21</sup> he is quite right [in explaining the earlier statement of R. Jacob<sup>22</sup> to apply only to *Mu'ad*].<sup>23</sup> But according to Raba who maintained that they do not differ, why should the former statement [of R. Jacob] be referred only to *Mu'ad*? Why not also to *Tam*,

1. Lit., 'the Province of the Sea'.
2. [H]
3. V. the discussion which follows.
4. In the commencing clause.
5. Reading [H] instead of [H].
6. Such as from guardian to owner.
7. I.e., from the state of *Mu'ad* to that of *Tam*.
8. That he personally should have to pay compensation.
9. Why then state this at all?
10. Since so far as the owner was concerned the damage occurred by accident.
11. For the various degrees of precaution cf. *infra* 55b.
12. *Supra* p. 84 and *infra* p. 260.
13. *Infra* p. 259.
14. But this would not be sufficient in the case of *Tam*. Where therefore such a precaution has been taken to control a *Mu'ad*, the half-damages for which the *Tam* is liable would be enforced, but not the additional damages for which the *Mu'ad* is liable.
15. The Sages, whose view was explained *supra*.
16. Hence R. Jacob's ruling for the payment of half-damages.
17. I.e., to Raba.
18. R. Jacob and R. Judah.

# BABA KAMMA- 31b-62b

19. Who thus makes precise what R. Judah left unspecified.
20. Which is paid out of the general estate.
21. I.e., that R. Jacob maintained that no guardian could be appointed in the case of *Tam*, and R. Judah that he could.
22. Where the view of R. Judah was not mentioned at all.
23. Where no precaution to control the ox has been taken.

## Baba Kamma 40a

if he<sup>1</sup> follows the view of R. Judah,<sup>2</sup> in a case where the precautions taken to control the ox were of an inferior kind and not really adequate,<sup>3</sup> or if he<sup>1</sup> follows the view of R. Eliezer b. Jacob,<sup>4</sup> where no precautions to control the ox had been taken at all,<sup>5</sup> as it has been taught: R. Eliezer b. Jacob says: Whether in the case of *Tam* or in the case of *Mu'ad*, if precautions of [at least] some inferior sort have been taken to control the ox, there would be no liability. The new point made known to us by R. Jacob would thus have been that guardians should be appointed even in the case of *Tam* to collect payment out of its body. [Why then did Raba explain the former statement of R. Jacob to refer only to *Mu'ad*? Why did he not explain it to refer to *Tam* also?] — [In answer] he<sup>6</sup> said: Raba made<sup>7</sup> one statement express two principles [in which R. Jacob is in agreement with R. Judah].<sup>8</sup>

Rabina stated that [the question whether or not a change of] control should cause a change [in the state of the ox] might have been the point at issue between them,<sup>9</sup> e.g., where after the ox had been declared *Mu'ad*, the deaf-mute recovered his faculty, or the idiot became sane, or the minor came of age, [in which case] R. Judah would maintain that the ox should remain in its status quo whereas R. Jacob would hold that [a change of] control should cause a change [in the state of the ox].

Our Rabbis taught: In the case of guardians, the payment [for damages] will be out of the best of the general estate, though no *kofer*<sup>10</sup> will be paid by them. Who is the Tanna who

holds that [the payment of] *kofer* is but an act of atonement<sup>11</sup> [which would justify the exemption in this case], as [minor] orphans are not subject to the law of atonement? — R. Hisda said: It is R. Ishmael the son of R. Johanan b. Beroka. For it was taught: [The words,] Then he shall give for the ransom of his life<sup>12</sup> [indicate] the value [of the life] of the person killed. But R. Ishmael the son of R. Johanan b. Beroka interprets it to refer to the value [of the life] of the defendant. Now, is this not the point at issue between them,<sup>13</sup> that the Rabbis consider *kofer* to constitute a civil liability<sup>14</sup> whereas R. Ishmael the son of R. Johanan b. Beroka holds *kofer* to be of the nature of propitiation?<sup>15</sup> — R. Papa said that this was not the case. For we may suppose all to agree that *kofer* is a kind of propitiation, and the point at issue between them here is merely that the Rabbis hold that this propitiatory payment should be fixed by estimating the value [of the life] of the person killed, whereas R. Ishmael the son of R. Johanan b. Beroka maintains that it should be fixed by estimating the value of [the life of] the defendant. What reason have the Rabbis for their view? — The expression 'laying upon' is used in the later context<sup>16</sup> and the same expression 'laying upon' is used in an earlier context;<sup>17</sup> just as there it refers to the plaintiff, so does it here also refer to the plaintiff. But R. Ishmael the son of R. Johanan b. Beroka argued that it is written, 'Then he shall give for the ransom of his life' [referring of course to the defendant]. And the Rabbis? — [They reply,] Yes, it does say 'The ransom of his life', but the amount must be fixed by valuing [the life of] the person killed.

Raba in his conversations with R. Nahman used to praise R. Aha b. Jacob as a great man. He<sup>18</sup> therefore said to him: 'When you come across him, bring him to me.' When he<sup>19</sup> later came to see him he<sup>18</sup> said to him: 'You may put problems to me', whereupon he<sup>19</sup> asked him: 'If an ox of two partners [kill a person] how is the payment of *kofer* to be made? Shall this one pay *kofer* and the other one *kofer*? But one *kofer* is mentioned by

# BABA KAMMA- 31b-62b

Divine Law and not two kofers! Shall this one [pay] half of the *kofer* and the other one half of the *kofer*? A full *kofer* is commanded by Divine Law and not half of a *kofer*!' While he<sup>20</sup> was still sitting and pondering over this, he<sup>21</sup> further asked him: We have learnt:<sup>22</sup> 'In the case of debtors for valuations<sup>23</sup> the Sanctuary treasury may demand a pledge, whereas in the case of those who are liable to sin-offerings or for trespass-offerings<sup>24</sup> no pledge can be enforced.' Now, what would be the law in the case of those liable to *kofer*? [Shall it be said that] since *kofer* is a kind of propitiation it should be subject to the same ruling as sin-offerings and trespass-offerings,<sup>24</sup> the matter being of serious moment to the defendant so that there is no necessity of enforcing a pledge from him; or [shall it] perhaps [be argued that] since it has to be given to a fellow man it is [considered] a civil liability, and as it does not go to the Temple treasury,<sup>25</sup> it is consequently not taken too seriously by the defendant, for which [reason there may appear to be some] necessity for requiring a pledge? Or, again, since the defendant did not [in this case] himself commit the wrong, for it was his chattel that did the wrong [and committed manslaughter], the whole matter might be considered by him as of no serious moment, and a pledge should therefore be enforced? — He<sup>26</sup> said to him: 'Leave me alone; I am still held prisoner by your first problem [that has not yet been answered by me].'

Our Rabbis taught: If a man borrowed an ox on the assumption that it is in the state of *Tam* but is subsequently discovered to have already been declared *Mu'ad*, [if goring is repeated while still with the borrower] the owner will pay one half of the damages and the borrower will pay [the other] half of the damages. But if it was declared *Mu'ad* while in the possession of the borrower, and [after it] was returned to the owner [it gored again], the owner will pay half the damages while the borrower is exempt from any liability whatsoever.

The Master stated: 'If a man borrowed an ox on the assumption that it is in the state of *Tam* but was subsequently discovered to have already been declared *Mu'ad*, [if goring is repeated] the owner will pay one half of the damages and the borrower will pay [the other] half of the damages.' But why should the borrower not plead against the owner, 'I wanted to borrow an ox, I did not want to borrow a lion?' — Rab said: we are dealing here with a case where the borrower knew the ox to be a gorer.<sup>27</sup> Still why can he not plead against him: 'I wanted to borrow an ox in the state of *Tam* but I did not want to borrow an ox that had already been declared *Mu'ad*'? — [This could not be pleaded] because the owner might argue against him: 'In any case, even had the ox been still *Tam*, would you not have to pay half-damages? Now, also, you have to pay one half of the damages.' But still why can he not plead against him: 'Had the ox been *Tam*, damages would have been paid out of its body'?<sup>28</sup> — [This could similarly not be pleaded] because the owner might contend: 'In any case would you not have had to reimburse me [to the full extent of] the value of the ox?'<sup>29</sup> Why can he still not plead against him:

1. I.e., R. Jacob.
2. That an inferior degree of precaution is not sufficient in the case of *Tam*; v. *infra* p. 259.
3. Hence the liability to pay half-damages, a guardian being appointed to collect payment out of the body of the *Tam*.
4. That a precaution of even an inferior degree suffices with *Tam* as well as with *Mu'ad*.
5. V. p. 223, n. 10.
6. I.e., Rabina.
7. [So MS.M. deleting 'he means thus' in cur. edd. of Rashi.]
8. [By explaining R. Jacob's earlier statement as referring to *Mu'ad*, he informs us that he shares the views of R. Judah both in regard to the question of precaution and that of the part due from *Tam* in case of a *Mu'ad* ox, whilst incidentally we also learn that guardians are appointed in case of *Tam*, etc.]
9. Between R. Jacob and R. Judah in the second cited Baraitha.
10. Lit., 'atonement', or 'a sum of money', i.e., compensation paid for manslaughter committed by a beast in lieu of the life of the

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- owner of the beast, as appears from Ex. XXI, 29-30; v. [Glos.](#)
11. And not an ordinary civil obligation like damages.
  12. Ex. XXI, 30
  13. I.e., between R. Ishmael and the other Rabbis his opponents.
  14. The payment must therefore correspond to the value of the loss sustained through the death of the person killed.
  15. For since it was the life of the owner of the beast that should be redeemed the payment must surely correspond to the value of his life.
  16. Ex. XXI, 30.
  17. Ibid. XXI, 22.
  18. R. Nahman.
  19. R. Aha b. Jacob.
  20. V. p. 225, n. 6.
  21. V. *ibid.*, n. 7.
  22. 'Ar. 21a.
  23. I.e. vows of value dealt with in Lev. XXVII, 2-8.
  24. Which are intended to procure atonement and which will consequently not be put off.
  25. [Lit., 'To the (Most) High.' Read with MS.M. 'Since it has to be given to a fellow man and not to the Treasury, it is a civil liability.']
  26. R. Nahman.
  27. Though he did not know that the ox had been declared *Mu'ad*.
  28. And not from my own estate.
  29. In payment of the ox you borrowed from me.

## Baba Kamma 40b

'Were the ox to have been *Tam* I would have admitted [the act of goring] and become exempt from having to pay'?<sup>1</sup> Moreover even according to the view<sup>2</sup> that the payment of half-damages [for goring in the case of *Tam*] is a civil liability,<sup>3</sup> why should the borrower still not argue: 'Had the ox been *Tam* I would have caused it to escape to the pasture'?<sup>4</sup> — We must therefore suppose the case to have been one where the Court of law stepped in first and took possession of the ox. But if so why should the owner pay one half of the damages? Why not plead against the borrower: 'You have allowed my ox to fall into the hands of a party against whom I am powerless to bring any legal action'? — [This could not be pleaded] because the borrower might retort to him: 'Were I even to have returned the ox to you, would the Court of

Law not have taken it from you?' But why should the owner still not plead against the borrower: 'Were you to have returned it to me, I would have caused it to escape to the pasture'?<sup>5</sup> — [This could not be pleaded] because the borrower might argue against him: 'In any case would the damages not have been paid out of the best [of your general estate]?'<sup>6</sup> This indeed could be effectively argued [by the borrower] where the owner possessed property, but what could be argued in the case where the owner possessed no property? — What therefore the borrower could always argue against the owner is [as follows]: 'Just as I am under a personal obligation to you,<sup>7</sup> so am I under a personal obligation<sup>7</sup> to that party [who is your creditor], in virtue of the rule of R. Nathan, as it was taught,<sup>8</sup> 'R. Nathan says: Whence do we conclude that if A claims a *maneh*<sup>2</sup> from B, and B [claims a similar sum] from C, the money is collected from C and [directly] handed over to A? From the statement of Scripture:<sup>10</sup> *And give it unto him against whom he hath trespassed.*<sup>11</sup>

'If it was declared *Mu'ad* while in the possession of the borrower, and [after it] was returned to the owner [it gored again], the owner will pay half damages while the borrower is exempt from any liability whatsoever.' Does this concluding clause [not appear to prove that a change in the] control [of the ox]<sup>12</sup> causes a change [in its status], while the preceding clause [tends to prove that a change in the] control [of the ox]<sup>13</sup> causes no change [in its status]? — R. Johanan thereupon said: The contradiction [is obvious]; he who taught one clause certainly did not teach the other clause [in the text of the Baraitha]. Rabbah, however, said: Since the opening clause [tends to prove that a change in the] control<sup>13</sup> does not cause a change [in the status], the concluding clause [may also maintain that a change in the] control does not cause a change [in the status]. For the ruling in the concluding clause could be based on the fact that the owner may argue against the borrower, 'You had no legal right to cause my ox to be

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declared *Mu'ad*.<sup>14</sup> R. Papa, however, said: Since the concluding clause [proves that a change in the] control<sup>15</sup> [of the ox] causes a change [in its status], the opening clause [may also maintain that a change in the] control [of the ox] causes a change [in its status]. For the ruling in the opening clause could be based upon the reason that wherever the ox is put, it bears the name of its owner upon it.<sup>16</sup>

IN THE CASE OF A STADIUM OX [KILLING A PERSON], THE DEATH PENALTY IS NOT IMPOSED [UPON THE OX], etc. The question was raised: What [would have been the position of such an ox] with reference to [its being sacrificed upon] the altar? — Rab said that it would have been eligible, whereas Samuel maintained that it would have been ineligible. Rab considered it eligible since it committed manslaughter only by compulsion, whereas Samuel considered it ineligible since it had been used as an instrument for the commission of a crime.

An objection was raised:<sup>17</sup> [*Ye shall bring your offering*] of the cattle<sup>18</sup> excludes an animal that has copulated with a woman and an animal that has copulated with a man;<sup>19</sup> *even of the herd*<sup>18</sup> excludes an animal that has been used as an instrument of idolatry; *of the flock*<sup>18</sup> excludes an animal that has been set apart for idolatrous purposes; and *of the flock* excludes an animal that has gored [and committed manslaughter]. R. Simeon remarked upon this: If it is laid down that an animal that has copulated with a woman<sup>19</sup> [is to be excluded] why was it necessary to lay down that an animal goring [and committing manslaughter is also excluded]?<sup>20</sup> Again, if it is laid down that an animal that gored [and committed manslaughter is to be excluded], why was it necessary to lay down that an animal copulating with a woman [is also excluded]?<sup>20</sup> [The reason is] because there are features in an animal copulating with a woman which are not present in an animal goring [and committing manslaughter], and

again there are features in an animal goring [and committing manslaughter] which are not present in the case of an animal copulating with a woman. In the case of an animal copulating with a human being the law makes no distinction between a compulsory<sup>21</sup> and a voluntary act [on the part of the animal],<sup>22</sup> whereas in the case of an animal goring [and committing manslaughter] the law does not place a compulsory act on the same footing as a voluntary one. Again, in the case of an animal goring [and committing manslaughter] there is liability to pay *kofer*,<sup>23</sup> whereas in the case of an animal copulating with a woman there is no liability to pay *kofer*.<sup>24</sup> It is on account of these differences that it was necessary to specify both an animal copulating with a woman and an animal goring [and committing manslaughter]. Now, it is here taught that in the case of an animal copulating with a human being the law makes no distinction between a compulsory and a voluntary act, whereas in the case of an animal goring [and committing manslaughter the law] does not place a compulsory act on the same footing as a voluntary one. What rule are we to derive from this? Is it not the rule in respect of eligibility for becoming a sacrifice [upon the altar]?<sup>25</sup> — No; the rule in respect of stoning.<sup>26</sup> This indeed stands also to reason, for if you maintain that it is with reference to the sacrifice that the law does not place a compulsory act on the same footing as a voluntary one in the case of an animal goring, [I would point out that with reference to its eligibility for the altar] the Scripture says nothing explicitly with regard either to a compulsory act or a voluntary act on its part. Does it therefore not [stand to reason that what we are to derive from this is] the rule in respect of stoning?

The Master stated: 'In the case of an animal goring [and committing manslaughter] there is liability to pay *kofer*, whereas in the case of an animal copulating with a woman there is no liability to pay *kofer*.' What are the circumstances? It could hardly be that while

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copulating with a woman it killed her, for what difference could be made between killing by means of a horn and killing by means of copulating? If on the other hand the act of copulating did not result in manslaughter, is the exemption from paying *kofer* not due to the fact that no killing took place? — Abaye said: We suppose, in fact, that it deals with a case where, by the act of copulating, the animal did not kill the woman, who, however, was brought to the Court of Law and by its orders executed. [In such a case] you might perhaps have thought

1. For since the liability of half-damages in the case of *Tam* is only of a penal nature, confession by the defendant would have annulled the obligation; cf. *supra*. p. 62.
2. V. *supra* p. 64.
3. And confession would bring no exemption.
4. And since the payment in the case of *Tam* is only out of its body he would have evaded it.
5. V. p. 227, n. 7.
6. For in fact the ox had already been declared *Mu'ad* in the hands of the owner.
7. To return the ox.
8. Pes. 31a; Git. 37a; Keth. 19a, 82a; Kid. 15a.
9. 100 *zuz*; cf. [Glos.](#)
10. Num. V, 7.
11. Pointing thus to the last creditor.
12. I.e. from the hands of the borrower to those of the owner.
13. I.e., from the hands of the owner to those of the borrower.
14. And it is because of this fact but not because of the change in the control that the ox reverts to the state of *Tam*.
15. V. p. 228, n. 8.
16. The ox therefore did not, by leaving the owner and coming into the hands of a borrower, undergo any change at all.
17. From Bek. 41a; Tem. 28a.
18. Lev. I, 2.
19. Cf. Lev., XVIII, 23 and ib. XX, 15-16.
20. Since in both cases the animal is to be killed where the crime has been testified to by witnesses.
21. As in the case of animal copulating with man.
22. V. p. 229, n. 7.
23. V. p. 224, n. 6.
24. See the discussion which follows.
25. Since this was the point under consideration, which solves the question as to the eligibility of a stadium ox for the altar.
26. [In respect of which the difference between compulsory goring and voluntary goring is admitted.]

## Baba Kamma 41a

that the execution amounted to manslaughter on the part of the animal; we are therefore told [that this is not the case]. Raba on the other hand held that [we deal here with a case where] while copulating with a woman the animal did kill her, and as for the objection what difference could be made between killing committed by means of horns and killing committed by means of copulating, [the answer would be that] in the case of Horn the animal purposes to do damage, whereas in this case [of copulating] the intention of the animal is merely for self-gratification. What is the point at issue [between these two explanations]?<sup>1</sup> — [Whether *kofer* should be paid] in the case of Foot treading upon a child in the premises of the plaintiff [and killing it].<sup>2</sup> According to Abaye there would be liability to pay *kofer*, whereas according to Raba no payment of *kofer* would have to be made.<sup>3</sup>

It was taught in accordance with the view of Rab: An ox trained for the arena [that killed a person] is not liable [to be stoned] to death, and is eligible for the altar, for it had been compelled [to commit the manslaughter].

**MISHNAH.** IF AN OX GORES A MAN AND DEATH RESULTS, IN THE CASE OF *MU'AD* THERE IS LIABILITY TO PAY *KOFER*,<sup>4</sup> BUT IN THE CASE OF *TAM*, THERE IS NO LIABILITY TO PAY *KOFER*. IN BOTH CASES, HOWEVER, THE OXEN ARE LIABLE [TO BE STONED] TO DEATH.<sup>5</sup> THE SAME [JUDGMENT APPLIES] IN THE CASE OF A [MINOR] SON AND THE SAME [JUDGMENT APPLIES] IN THE CASE OF A [MINOR] DAUGHTER.<sup>6</sup> BUT WHERE THE OX HAS GORED A MANSERVANT OR A MAIDSERVANT [AND DEATH HAS RESULTED], COMPENSATION HAS TO BE GIVEN TO THE AMOUNT OF THIRTY *SELA*,<sup>7</sup> WHETHER THE KILLED SERVANT WAS WORTH A HUNDRED *MANEH*<sup>8</sup> OR NOT WORTH ANY MORE THAN ONE *DENAR*.<sup>2</sup>

## BABA KAMMA- 31b-62b

**GEMARA.** But since when it was still the state of *Tam* it had to be killed [for manslaughter], how could it ever have been possible to declare it *Mu'ad*? — Rabbah said: We are dealing here with a case where, e.g. it had been estimated that it<sup>10</sup> might have killed three<sup>11</sup> human beings.<sup>12</sup> R. Ashi, however, said that such estimation amount to nothing,<sup>13</sup> and that we are therefore dealing here with a case where the ox gored and endangered the lives of three human beings.<sup>14</sup> R. Zebid [on the other hand] said: [The case is one] where, for instance, it killed three animals.<sup>15</sup> But is an ox [which has been declared] *Mu'ad* to kill animals also *Mu'ad* to kill men?<sup>16</sup> — R. Shimi therefore said: [The case is one] where for instance it killed three heathens.<sup>15</sup> But is an ox [which has been declared] *Mu'ad* to gore persons who are heathens also *Mu'ad* with reference to those who are Israelites? — R. Simeon b. Lakish therefore said: [The case is one] where, for instance, it killed three persons who had already been afflicted with fatal organic diseases.<sup>15</sup> But is an ox [which has been declared] *Mu'ad* with reference to persons afflicted with fatal organic diseases also *Mu'ad* regarding persons in sound condition? — R. Papa therefore said: [The case is one where] the ox [on the first occasion] killed [a sound person] but escaped to the pasture,<sup>17</sup> killed again [a sound person] but similarly escaped to the pasture. R. Aha the son of R. Ika said: [The case is one] where, for instance, [two witnesses alleged in every case an alibi against the three pairs of witnesses who had testified to the first three occasions of goring,<sup>17</sup> and] it so happened that [after evidence had been given regarding the fourth time of goring the accusation of the alibi with reference to the first three times of goring fell to the ground as] a new pair of witnesses gave evidence of an alibi against the same two witnesses who alleged the alibi [against the three sets of witnesses who had testified to the first three occasions of goring]. Now this explanation would be satisfactory [if the three days required for] the declaration of *Mu'ad* refer to [the goring of] the ox<sup>18</sup> [so as to make sure

that it has an ingrained tendency].<sup>19</sup> But if the three days are needed to warn the owner,<sup>18</sup> why should he not plead [against the plaintiff], 'I was not aware [that the evidence as to the first three gorings was genuine]'? — [This could not be pleaded where] e.g., it was stated [by the very last pair of witnesses] that whenever the ox had [gored and] killed he<sup>20</sup> had been present [and witnessed every occasion]. — Rabina said: [The case of an ox not being stoned after any of the first three fatal gorings might be] where, though recognizing the owner of the ox<sup>20</sup> [the witnesses who testified to the first three time of goring] did not at that time recognize the identity of the ox [also].<sup>17</sup> But what could the owner<sup>20</sup> have done [where the ox that gored and killed had not been identified]?<sup>21</sup> — [He is culpable because] they could say to him: 'Knowing that an ox inclined to gore has been among your herd, you ought to have guarded the whole of your herd.'

IN BOTH CASES, HOWEVER, THE OXEN ARE LIABLE [TO BE STONED] TO DEATH. Our Rabbis taught: From the implication of the statement *The ox shall be surely stoned*<sup>22</sup> would I not have known that it becomes *nebelah*<sup>23</sup> and that by becoming *nebelah* it should be forbidden to be consumed for food?<sup>24</sup> Why then was it necessary to state further *And his flesh shall not be eaten*?<sup>25</sup> Scripture must therefore have intended to tell us that were the ox to be slaughtered after the sentence has been passed upon it, it would be forbidden to be consumed as food. This rule is thus established as regards food; whence could it be derived that it would also be forbidden for any [other] use whatsoever? The text therefore says, But the owner of the ox shall be quit.<sup>25</sup> How does this bear [on the matter in hand]? — Simeon B. Zoma said: [The word 'quit' is used here] as in [the colloquial expression,] So-and-so went out quit from his possessions without having any benefit of them whatsoever.

# BABA KAMMA- 31b-62b

But how do we know that '*his flesh shall not be eaten*' refers to a case where the ox has been slaughtered after the sentence had been passed on it, to indicate that it should be forbidden to be used as food? Why not rather suppose that where it has been slaughtered after the sentence had been passed on it, the ox would be eligible to be used for food, and take the words '*his flesh shall not be eaten*' as referring to a case where the ox had already been stoned, and indicating that it should [then] be forbidden for any use whatsoever?<sup>26</sup> Such an implication is even in conformity with the view of R. Abbahu, for R. Abbahu said on behalf of R. Eleazar:<sup>27</sup> Wherever Scripture says either *it shall not be eaten*<sup>28</sup> or *thou shalt not eat*<sup>29</sup> or you shall not eat,<sup>30</sup> a prohibition both in respect of food and in respect of any [other] use is implied, unless where Scripture makes an explicit exception, as it did make an exception in the case of a thing that dies of itself, which may be given unto a stranger or sold unto a heathen.<sup>24</sup> — It may, however, be argued against this that these words [of R. Abbahu] hold good only where the prohibition both in respect of food and in respect of any [other] use is derived from the one Scriptural text, [viz.,] '*it shall not be eaten*', but here where the prohibition in respect of food is derived from '[the ox] shall be surely stoned', should you suggest that [the words] '*his flesh shall not be eaten*' were meant as a prohibition for any use, [we may ask] why then did the Divine Law not plainly state 'No benefit shall be derived from it'? Or again, why not merely say, '*It shall not be eaten*'? Why [the additional words] '*his flesh*', if not to indicate that even where it had been made and prepared to resemble other meat, as where the ox was slaughtered, it should still be forbidden. Mar Zutra strongly demurred to this: Why not [he said] take this prohibition

1. Given by Abaye and Raba respectively.
2. Discussed *supra* p. 134.
3. Since the intention of the animal was not to do damage.
4. Ex. XXI, 30.
5. Ibid. 28-29.

6. Ibid. 31
7. Ibid. 32.
8. V. [Glos.](#)
9. V. [Glos.](#)
10. The ox.
11. As *Mu'ad* could be only on the fourth occasion; cf. however Rashi a.l.; also Tosaf. a.l. and *supra* p. 119.
12. Whom the ox pursued but who had a very narrow escape from death by running away to a safe place.
13. Since no actual goring took place.
14. Who, however, did not die until after the ox gored again on the fourth occasion, and it was on account of this delay that the ox was not stoned previously.
15. In which case the ox should not be put to death.
16. Cf. *supra* p. 4, and p. 205.
17. The ox thus escaped death.
18. Cf. *supra* p. 121.
19. As in this case also the first three times of goring took place on three successive days.
20. I.e. the defendant.
21. How then could this be called warning?
22. Ex. XXI. 28.
23. I.e.. the carcass of an animal not ritually slaughtered.
24. In accordance with Deut XIV, 21.
25. V. p. 233, n. 6.
26. For without this implication it would have followed the general rule that an animal which was not slaughtered in accordance with the requirements of the law could be used for any purpose but food; cf. Deut. XIV, 21 and Lev. VII, 24.
27. Pes. 21b; Kid. 56b.
28. Such e.g. as in Ex. XIII, 3.
29. See Lev. XVII, 12 but also Pes. 22a.
30. Cf. e.g., Gen. XXXII, 33 and Pes. 22a and Hul. 100b.

## Baba Kamma 41b

to refer to a case where the slaughterer prepared<sup>1</sup> a piece of sharp flint and with it slaughtered the ox, which was thus dealt with as if it has been stoned, whereas where it had been slaughtered by means of a knife the prohibition should not apply? — To this it may be replied: Is a knife specifically mentioned in Scripture? Moreover we have learnt:<sup>2</sup> If one slaughters with a hand-sickle, with a flint or with a reed, the act of slaughtering has been properly executed.<sup>2</sup>

## BABA KAMMA- 31b-62b

And now that the prohibition in respect both of food and of any [other] use has been derived from [the text] '*his flesh shall not be eaten*', what additional teaching is afforded to me by [the words] '*The owner of the ox shall be quit*'? — [The prohibition of] the use of the skin. For otherwise you might have been inclined to think that it was only the flesh that had been proscribed from being used, whereas the skin should be permitted to be used; we are therefore told [that this is not the case but] that '*the owner of the ox shall be quit*.' But what of those Tannaim who employ this [text], '*The owner of the ox shall be quit*' for deriving other implications (as we will indeed have to explain *infra*);<sup>3</sup> whence do they derive the prohibition against the making use of the skin? — They derive it from [the auxiliary term in the Hebrew text] '*eth* his flesh', meaning, 'together with that which is joined to its flesh', that is, its skin. This Tanna,<sup>4</sup> however, does not stress [the term] '*eth*' for legal expositions, as it has been taught:<sup>5</sup> Simeon the Imsonite, or as others read, Nehemiah the Imsonite, used to expound [the term] '*eth*'<sup>6</sup> wherever it occurred in the Torah. When, however, he reached, *Thou shalt fear eth the Lord thy God*,<sup>7</sup> he abstained.<sup>8</sup> His disciples said to him: Rabbi, what is to be done with all the expositions of [the term] '*eth*' which you have already given?<sup>6</sup> He said to them: Just as I have received reward for the [previous] expositions so have I received reward for the [present] abstention. When R. Akiba, however, came, he taught: '*Thou shalt fear eth the Lord thy God*' implies that the scholarly disciples are also to be feared.

Our Rabbis taught: '*But the owner of the ox shall be quit*' means, according to the view of R. Eliezer, quit from [paying] half *kofer*.<sup>9</sup> Said R. Akiba to him: Since any actual liability in the case of the ox itself [being a *Tam*] is not paid except out of its body,<sup>10</sup> [why cannot the owner say to the plaintiff,] 'Bring it to the Court of Law and be reimbursed out of it?'<sup>11</sup> R. Eliezer then said to him: 'Do I really appear so [simple] in your eyes that [you should take] my

exposition to refer to a case of an ox liable [to be stoned] to death? My exposition referred only to one who killed the human being in the presence of one witness or in the presence of its owner.'<sup>12</sup> In the presence of its owner! Would he not be admitting a penal liability?<sup>13</sup> — R. Eliezer maintains that *kofer* partakes of a propitiatory character.<sup>14</sup>

Another [Baraita] teaches: R. Eliezer said to him: Akiba, do I really appear so [simple] in your eyes that [you take] my exposition to refer to an ox liable [to be stoned] to death? My exposition referred only to one who had been intending to kill a beast but [by accident] killed a man, [or where it had been intending to kill] an Egyptian and killed an Israelite, [or] a non-viable child and killed a viable child.<sup>15</sup> Which of the answers, was given first? — R. Kahana in the name of Raba said that [the answer about] intention was given first, whereas R. Tabyomi in the name of Raba said that [the answer about] having killed [the man in the presence of one witness, etc.] was given first. R. Kahana, who in the name of Raba said [that the answer about] intention was given first, compared him to a fisherman who had been catching fishes in the sea;

1. Lit., 'tested', that is, to see whether it was fit for ritual slaughtering.
2. Hul. 15b.
3. V. pp. 236-239.
4. Who needs the whole of the text to imply the prohibition of the skin.
5. Kid. 57a; Bek. 6b and Pes 22b.
6. To imply some amplification of the statement actually made.
7. Deut VI. 13
8. Being loath to put any being whatsoever on a par with God.
9. In the case of *Tam*.
10. As *supra* p. 73.
11. But since the ox is put to death and the carcass including also the skin is proscribed for any use whatsoever, is it not evident that no payment could be made in the case of *Tam* killing a human being? Why then give a special indication to this effect?
12. [In which case the ox is not stoned (v. Zeb. 71a: Rashi and Tosaf. s.v. [H]).]
13. For the payment of half-damages in the case of *Tam* is, as decided *supra* p. 67 of a penal

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character and as such liability for it could in any case not be established by the admission of the defendant, for which cf. *supra* p. 62 and *infra* p. 429.

14. And liability to it would thus have been established even by the admission of the defendant.
15. V. *supra* p. 232. n. 11.

### Baba Kamma 42a

when he caught big ones he took them and when he [subsequently] caught little ones he took them also.<sup>1</sup> But R. Tabyomi, who in the name of Raba said that [the answer about] having killed [the man in the presence of one witness, etc.] was given first, compares him to a fisherman who was catching fishes in the sea and when he caught little ones he took them, but when he [subsequently] caught big ones he threw away the little ones and took the big ones.<sup>2</sup>

Another [Baraita] teaches: '*And the owner of the ox shall be quit*' [implies] according to the statement of R. Jose the Galilean, quit from compensating [in the case of *Tam* killing] embryos. Said R. Akiba to him: Behold Scripture states: If men strive together and hurt a woman with child, etc.,<sup>3</sup> [implying that only] men but not oxen [are liable for killing embryos].<sup>4</sup> Was not this a good question on the part of R. Akiba? — R. 'Ulla the son of R. Idi said: [The implication drawn by R. Jose] is essential. For otherwise it might have occurred to you to apply [R. Akiba's] inference 'Men but not oxen' [exclusively to such] oxen as are comparable to men: Just as men are *Mu'ad*,<sup>5</sup> so also here the oxen referred to are *Mu'ad*, whereas in the case of *Tam* there should be liability. The Divine Law has therefore stated, '*The owner of the ox shall be quit*', implying exemption [also in the case of *Tam*]. Said Raba thereupon: Is the native born to be on the earth and the stranger in the highest heavens?<sup>6</sup> No, said Raba. [The implication drawn by R. Jose] is essential [for this reason, that] you might have been inclined to apply the inference 'Men but not oxen' only to oxen which could be compared to men —

just as men are *Mu'ad* so the oxen here referred to are *Mu'ad* — and to have extended the exemption to cases of *Tam* by an argument *a fortiori*. Therefore the Divine Law purposely states [further], '*The owner of the ox shall be quit*' [to indicate that only] in the case of *Tam* will there be exemption whereas in the case of *Mu'ad* there will be liability. Said Abaye to him: If that is so, why not argue in the same way in the case of payment for degradation; thus: [Scripture says] 'Men',<sup>7</sup> excluding oxen which could be compared with men: just as the men are *Mu'ad* so the oxen [thus exempted] must be *Mu'ad*, and *a fortiori* exemption is extended to cases of *Tam*. Thereupon the Divine Law on another occasion purposely states, '*The owner of the ox shall be quit*' [to indicate that only] in the case of *Tam* will there be exemption, whereas in the case of *Mu'ad* there will be liability [for degradation]? Now you could hardly say that this is indeed the case, for if so why not teach that, '*the owner of the ox shall be quit*' [means], according to R. Jose the Galilean, quit from compensating [both in the case of *Tam* killing] embryos and [in the case of it having caused] degradation?<sup>8</sup> — Abaye and Raba both therefore said: [You might have been inclined to suppose that] in the case of 'men' it is only where no mischief<sup>9</sup> [resulted to the woman] that a liability to pay [for the embryo is imposed] upon them whereas where a mischief [resulted to the woman] no civil liability<sup>10</sup> [is imposed] upon them,<sup>11</sup> but that it is not so with oxen, as in their case even if mischief [results to the woman] a liability to pay is imposed.<sup>12</sup> The Divine Law has therefore on another occasion purposely stated, '*The owner of the ox shall be quit*', to indicate exemption [in all cases]. R. Adda b. Ahabah demurred to this, saying: Does then the matter of civil liability<sup>13</sup> depend upon the non-occurrence of mischief to the woman? Does this matter not depend upon intention [of the defendant]?<sup>14</sup> — R. Adda b. Ahabah therefore said: [You might have been inclined to think thus:] In the case of men where their purpose was to kill one another, even if mischief results to a woman, a civil

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liability<sup>13</sup> will be imposed, whereas where they purposed to kill the woman herself [who was in fact killed], no civil liability<sup>13</sup> would be imposed. In the case of oxen, however, even where their purpose was to kill the woman [who is indeed killed by them] a civil liability should be imposed for the embryo. [To prevent your reasoning thus] the Divine Law on another occasion purposely states, '*The owner of the ox shall be quit*' to indicate exemption [altogether in the case of oxen]. And so also R. Haggai upon returning from the South, came [to the College] and brought the teaching [of a Baraitha] with him stating the case in accordance with the interpretation given by R. Adda b. Ahabab.

Another [Baraitha] teaches: '*The owner of the ox shall be quit*' [implies], according to the statement of R. Akiba, quit from compensating for [the killing of] a slave.<sup>15</sup>

1. So also here where the better answer was given first and the inferior one later. The answer about intention is considered the better one.
2. Here also when R. Eliezer subsequently found a better answer he withdrew the answer which he had given first.
3. Ex. XXI, 22.
4. Why then a special implication to exempt *Tam*?
5. V. *supra* p. 68.
6. I.e., how would it be possible to have exemption in the case of *Mu'ad* and liability in the case of *Tam*?
7. Deut. XXV, 11.
8. But *Mu'ad* is liable.
9. I.e., death.
10. For the embryo.
11. As all civil claims would merge in the capital charge; cf. *supra* p. 113 and *infra* p. 427, n. 2.
12. For the civil liability of the owner should not be affected by the ox having to be put to death.
13. V. p. 238, n. 4.
14. For where he intended to kill another person and it was only by accident that the woman and her embryo were killed, there would, according to R. Adda b. Ahabab, be no capital charge but a civil liability; cf. for such a view *infra* p. 252 and Sanh. 79a.
15. V. *supra* p. 232.

But why should R. Akiba not argue against himself,<sup>1</sup> Since any actual liability in the case of the ox itself [being a *Tam*] is not paid except out of its body [why should not the owner say to the plaintiff] 'Bring it to the Court of Law and be reimbursed out of it'? — R. Samuel son of R. Isaac thereupon said: [This creates no difficulty; the case is one] where the owner of the ox slaughtered it before [the passing of the sentence].<sup>2</sup> You might suggest in that case that payment should be made out of the flesh; we are therefore told that since the ox [as such] had been liable [to be stoned] to death, no payment could be made out of it even where it was slaughtered [before the passing of the sentence]. But if so, why [did not R. Akiba think of this reply to the objection he made] to R. Eliezer<sup>3</sup> also, viz. that the owner of the ox slaughters it beforehand? — He could indeed have done this, but he thought that R. Eliezer<sup>3</sup> also probably had another explanation better than this which he would tell him. But why did R. Eliezer [himself] not answer him that he referred to a case where the owner slaughtered the ox beforehand? — He could answer: It was only there where the ox aimed at killing a beast but [by accident] killed a man, in which case it is not liable [to be stoned] to death, and you might therefore have thought there was a liability [for *kofer*], that there was a need for Scripture to indicate that there is [in fact] no liability. But here where the ox had originally been liable [to be stoned] to death, no Scriptural indication should be needed [to exempt from liability] even where the ox has meanwhile been slaughtered.<sup>4</sup> But should not the same argument be employed also regarding the exposition of R. Akiba?<sup>5</sup> — R. Assi therefore said: The explanation of this matter was delivered to me from the mouth of a great man, to wit, R. Jose b. Hanina [who said]: You might be inclined to think that since R. Akiba said, 'Even in the case of *Tam* injuring Man the payment of the difference must be in full',<sup>6</sup> the compensation for killing a slave should also be paid out of the best [of the general estate]. Divine Law therefore states, The owner of the ox shall be quit, [implying

## BABA KAMMA- 31b-62b

that this is not the case]. Said R. Zera to R. Assi: Did R. Akiba himself not qualify this liability? For it was taught:<sup>7</sup> R. Akiba says, As it might be thought that this full payment<sup>8</sup> has to be made out of the best [of the general estate], it is therefore further stated, According to this judgment shall it be done unto him,<sup>9</sup> [to emphasize that] payment is to be made out of its body, but no payment is to be made out of any other source whatsoever? — Raba therefore [gave a different explanation] saying: The implication is still essential, for otherwise you might have thought that since<sup>10</sup> I have to be more strict in the case of [killing] a slave than in the case of a freeman — for in the case of a freeman worth one *sela'* the payment<sup>11</sup> will be one *sela'*, and of one worth thirty the payment will be thirty, whereas in the case of a slave even where he was worth one *sela'* the payment will have to be thirty<sup>10</sup> — there should be compensation for [the killing of] a slave<sup>12</sup> even out of the best of the estate,<sup>13</sup> the Divine Law therefore states, 'The owner of the ox should be quit' [implying that this is not the case]. It was taught in accordance with [the explanation given by] Raba: 'The owner of the ox should be quit' [implies], according to the statement of R. Akiba, quit from compensation for [the killing of] a slave. But is this not strictly logical?<sup>14</sup> For since there is liability [to pay compensation] for [the killing of] a slave and there is liability [to pay compensation] for [the killing of] a freeman,<sup>11</sup> just as where there is liability [to pay compensation] for [the killing of] a freeman a distinction has been made by you between *Tam* and *Mu'ad*,<sup>15</sup> why then in the case where compensation has to be paid for [the killing of] a slave should you similarly not make a distinction between *Tam* and *Mu'ad*? This conclusion could moreover be arrived at by the *a fortiori* argument: If in the case of [killing] a freeman where the compensation<sup>11</sup> is for the whole of his value a distinction has been made by you between *Tam* and *Mu'ad*,<sup>15</sup> then in the case of [killing] a slave where the compensation amounts only to thirty [*sela'*] should it not stand to reason

that a distinction must be made by us between *Tam* and *Mu'ad*? — Not so, because (on the other hand) I am<sup>16</sup> more strict in the case of [killing] a slave than in that of [killing] a freeman. For in the case of a freeman, where he was worth one *sela'* the compensation will be one *sela'*,<sup>17</sup> [where he was worth] thirty the compensation will be thirty, whereas in the case of a slave even where he was worth one *sela'* the compensation has to be thirty.<sup>16</sup> This might have inclined us to think that [even in the case of *Tam*] there should be liability. It was therefore [further stated], The owner of the ox shall be quit, implying quit from compensation for [the killing of] a slave.

Our Rabbis taught: [It is written,] *But it hath killed a man or a woman*.<sup>18</sup> R. Akiba says: What does this clause come to teach us? If that there is liability for the going to death of a woman as of a man, has it not already been stated, *if an ox gore a man or a woman*?<sup>19</sup> It must therefore have intended to put the woman on the same footing as the man: just as in the case of a man the compensation<sup>17</sup> will go to his heirs, so also in the case of a woman the compensation will go to her heirs.<sup>20</sup> Did R. Akiba thereby mean [to put forward the view] that the husband was not entitled to inherit her? But has it not been taught: *'And he shall inherit her*;<sup>21</sup> this shows that the husband is entitled to inherit his wife. This is the view of R. Akiba'?<sup>22</sup> — Resh Lakish therefore said: R. Akiba<sup>23</sup> stated this<sup>24</sup> only with reference to *kofer* which, since it has not to be paid save after [the] death [of the victim], is regarded as property in anticipation,<sup>25</sup> and a husband is not entitled to inherit property in anticipation as he does property in actual possession.<sup>26</sup> But why [should *kofer* not be paid except after death]?<sup>27</sup> — Scripture says: *But it hath killed a man or a woman; the ox shall be stoned, and its owner also shall be put to death. If there be laid on him a ransom*.<sup>28</sup> But did R. Akiba not hold that damages [for injury also are not inherited by the husband]? Has it not been taught:<sup>29</sup> If one hurt a woman so that her embryo departed

# BABA KAMMA- 31b-62b

from her, compensation for Depreciation and for Pain should be given to the woman, compensation for the value of the embryo to the husband.<sup>30</sup> If the husband is not [alive], his due should be given to his heirs, and if the woman is not [alive at the time of payment] her due should be given to her heirs. [Hence] if the woman was a slave that had been emancipated<sup>31</sup>

1. Exactly as he argued against R. Eliezer, *supra* p. 236.
2. In which case the flesh could legitimately be used as food; cf. *infra* p. 255.
3. *Supra* p. 236.
4. This was the reason why R. Eliezer answered as he did, and not as suggested here that the ox was slaughtered before the sentence had been passed on it.
5. And if so, the original problem will recur: Why should R. Akiba not argue against himself as he did against R. Eliezer, *supra* p. 236.
6. *Supra* p. 179.
7. Cf. *supra* p. 180.
8. In the case of *Tam* injuring a human being.
9. Ex. XXI, 31.
10. In the case of *Mu'ad*.
11. I.e. *kofer*.
12. In the case of *Tam*.
13. There can thus no more arise the question, 'Since any actual liability in the case of the ox itself (being *Tam*) is not paid except out of its body, (why should not the owner say to the plaintiff) "Bring it to the Court and be reimbursed out of it"?' Cf. *supra* p. 236.
14. Wherefore then the special inference from the verse?
15. That in the case of *Mu'ad*, *kofer* is paid, but not in the case of *Tam*.
16. In the case of *Mu'ad*.
17. V. p. 241, n. 3.
18. Ex. XXI, 29.
19. *Ibid.* 28.
20. Not to her husband.
21. Num. XXVII, 11.
22. B.B. 111b.
23. [So MS.M., v. Rashi.]
24. That the husband does not inherit the compensation due to the woman.
25. As at the last moment of her life the liability for *kofer* was neither a chose in possession nor even a chose in action
26. Cf. B. B. 113a and 125b.
27. Why not say that as soon as the blow was ascertained to have been fatal the payment of *kofer* should be enforced?

28. Implying that the payment of money as *kofer* is, like the killing of the ox, not enforced before the victim has actually died.
29. *Infra* p. 280.
30. V. Ex. XXI, 22.
31. And the husband was of the same category.

## Baba Kamma 43a

or a proselytess the defendant would be the first to acquire title [to all the claims and thus be released from any liability]? — Rabbah thereupon said: We deal [in this latter case] with a divorced woman.<sup>1</sup> So also said R. Nahman [that we deal here] with a divorced woman. [But] I might [here] object: If she was divorced, why should she not also share in the compensation for the value of the embryo?<sup>2</sup> — R. Papa thereupon said: The Torah awarded the value of embryos to the husband even where the cohabitation had taken place not in a married state, the reason being that Scripture says: *According as the cohabitor<sup>3</sup> of the woman will lay upon him.<sup>4</sup>*

But why should not Rabbah refer the ruling<sup>5</sup> to the case where the payment of the compensation had been collected in money, and R. Nahman to the case where it had been collected out of land? For did Rabbah not say<sup>6</sup> that where an outstanding debt had been collected<sup>7</sup> out of land, the first-born son would take in it [a double portion],<sup>8</sup> but where it had been collected in money the first-born son would not [take in it a double portion]?<sup>9</sup> Or again did R. Nahman not say<sup>10</sup> that [on the contrary] where the debt had been collected in money the first-born would take [in it a double portion],<sup>11</sup> but where it has been collected out of land, the first-born son would not [take in it a double portion]?<sup>12</sup> — It could, however, be answered that these statements were made on the basis of the despatch of the Western Sages according to the view of the Rabbis,<sup>13</sup> whereas in the case here [where Rabbah and R. Nahman interpreted it to have referred to a divorced woman] they were stating the law as maintained by Rabbi.<sup>14</sup>

# BABA KAMMA- 31b-62b

R. Simeon b. Lakish said: Where an ox killed a slave without purposing to do so, there would be exemption from the payment of thirty *shekels*, since it is written, He shall give unto their master thirty *shekels* of silver, and the ox shall be stoned,<sup>15</sup> [implying that] where the ox would be liable to be stoned the owner is to pay thirty *shekels*, but where the ox would not be liable to be stoned<sup>16</sup> the owner need not pay thirty *shekels*. Rabbah [similarly] said: Where an ox killed a freeman without purposing to do so there would be exemption from *kofer*, for it is written<sup>17</sup> The ox should be stoned and its owner also shall be put to death. If there be laid on him a ransom, [implying that] where the ox has to be stoned<sup>16</sup> the owner has not to pay *kofer*. Abaye raised an objection to this [from the following Mishnah]:<sup>18</sup> If a man says: 'My ox has killed so-and-so' or 'has killed so-and-so's' ox, [in either case] the defendant has to pay in virtue of his own admission. Now, does the payment [in the former case]<sup>19</sup> not mean *kofer* [though the ox would not become liable to be stoned through the owner's admission]?<sup>20</sup> — No; [it means for] the actual value.<sup>21</sup> If [it means payment for] the pecuniary loss, read the concluding clause: [If he says], 'My ox has killed so-and-so's slave,' the defendant is not liable to pay in virtue of his own admission.<sup>22</sup> Now, if [the payment referred to in the first clause was meant for] the pecuniary loss, why is there no liability [to pay for the pecuniary loss in the case of a slave]?<sup>23</sup> — He, however, said to him: I could have answered you that the opening clause refers to the actual value<sup>24</sup> [of the killed person],<sup>25</sup> whereas the concluding clause refers to the fixed fine [of thirty *shekels*]. As, however, I have no intention to answer you by means of forced interpretations, [I will say that] both clauses do in fact refer to the actual value [of the killed person].

1. For otherwise the husband would inherit her claim for damages.
2. Since she was his wife no more.
3. The Hebrew term [H] ('husband' E.V.) is thus understood.
4. Ex. XXI, 22.

5. That the damages will be paid to her heirs and not to the husband.
6. B.B. 124b.
7. After the death of a creditor.
8. In accordance with Deut. XXI. 17.
9. Because the debt collected after the death of the father was not a *chose* in possession in the lifetime of the creditor, and the first-born takes a double portion only 'of all that' his father 'hath' at the time of death. A husband is in a similar position, as he too has the right to inherit only *chooses* in possession at the lifetime of his wife.
10. V. p. 243, n. 10.
11. For the money collected is considered in the eye of the law as the money which was lent to the father of the debtor.
12. V. p. 243, n. 13.
13. V. p. 243, n. 10.
14. That debts collected after the death of a creditor whether in species or out of land will be subject to the law of double portion in the case of a first-born and similarly to the law of a husband inheriting his wife. v. B.B. (Sonc. ed.) p. 518.
15. V. Ex. XXI, 32.
16. As e.g., where it killed a human being by accident.
17. Ex. XXI, 29.
18. Keth. III, 9.
19. Where the defendant admitted that his ox killed a man.
20. Without the corroboration of witnesses; v. *supra* p. 236, n. 8.
21. I.e., the pecuniary loss sustained through the man's death. [It is distinguished from *kofer* in that the payment of the latter is an act of atonement to be compounded in no circumstance; v. Tosaf. s.v. [H].]
22. As the payment of thirty *shekels* in the case of a slave is of the nature of a penalty which could not be inflicted on the strength of the word of mouth of the defendant.
23. Does this not prove that in the case of manslaughter committed by cattle no payment for the pecuniary loss would have to be made if you except *kofer* in the case of a freeman, and the thirty *shekels* in the case of a slave?
24. I.e. the pecuniary loss sustained through his death.
25. Which has to be paid even where *kofer* could for some reason or other not be imposed upon the defendant.

## Baba Kamma 43b

But [it is only in the case of] a freeman where *kofer* may sometimes be paid on the strength

## BABA KAMMA- 31b-62b

of the defendant's own admission — as where witnesses appeared and testified to the ox having killed [a freeman] without, however, knowing whether it was still *Tam* or already *Mu'ad* and the owner admits it to have been *Mu'ad*, in which case *kofer* would be paid on the strength of his own admission<sup>1</sup> — that [we say] where witnesses are not at all available payment will be made for the actual value [of the loss]. [Whereas] in the case of a slave where the fixed fine could never be paid through the defendant's own admission — since even where witnesses appear and testify to the ox having killed [a slave], without knowing whether it had still been *Tam* or already *Mu'ad*, and the owner admits that it had already been *Mu'ad*, no fine would be paid — [we say] where no witnesses at all are available there will be no payment even for the amount of the value [of the loss].

R. Samuel son of R. Isaac raised an objection [from the following teaching]: Wherever there is liability in the case of a freeman,<sup>2</sup> there is liability in the case of a slave both for *kofer* and for stoning. Now, how could *kofer* ever be [paid] in the case of a slave?<sup>3</sup> Does it therefore not surely mean the payment for the amount of the value [of the loss]?<sup>4</sup> — Some say that he raised the objection and he himself answered it, others say that Rabbah said to him: What is meant is as follows: Wherever there is liability for *kofer* [i.e.] in the case of a freeman killed intentionally [by the ox] as testified by witnesses, there is [a similar] liability for the fine in the case of a slave, and wherever there is liability for the amount of the value [of the loss, i.e.,] in the case of a freeman killed unintentionally, as testified by witnesses, there is also liability for the amount of the value [of the loss] in the case of a slave killed unintentionally, as testified by witnesses.<sup>5</sup> Raba, however, said to him: If so,<sup>6</sup> why in the case of Fire unintentionally<sup>7</sup> burning a human being [to death], as testified by witnesses, should there also not be liability to pay the amount of the value [of the loss]? And how did Raba know that no payment would be made [in this

case]? Shall we say from the following Mishnah: '[Where fire was set to a barn and] a goat had been bound to it and a slave was loose near by it and all were burnt [with the barn] there would be liability.'<sup>8</sup> But where the slave had been chained to it, and the goat loose near by it and all were burnt with it there would be no liability.'<sup>9</sup> [But how could Raba prove his point from this case here?]<sup>10</sup> Did Resh Lakish not state that this case here should be explained as one where e.g., the defendant put the actual fire upon the body of the slave so that [no other<sup>11</sup> but] the major punishment had to be inflicted? But [it may perhaps be suggested that Raba derived his point] from the following [Baraita]: For it has been taught: 'The excess in [the liability] for Fire over [that for] Pit is that Fire is apt to consume both things fit for it and things unfit for it, whereas this is not so in the case of Pit.'<sup>12</sup> It is not, however, said that 'in the case of Fire [where a human being has been burnt to death] unintentionally there is liability to pay for the pecuniary loss, whereas it is not so in Pit'.<sup>13</sup> But might [the Baraita] not perhaps have stated [some points] and omitted [others]? — It must therefore have been that Raba himself was questioning whether in the case of Fire [burning a human being] unintentionally there would be payment for the amount of the value [of the loss] or whether there would be none. Should we say that it was only in the case of cattle — where if the manslaughter was unintentional *kofer* would be paid — that for unintentional manslaughter the amount of the value [of the loss] is to be paid — whereas in the case of Fire — where for intentional manslaughter no *kofer* would be paid<sup>14</sup> — there should be no payment of the amount of the value [of the loss] for unintentional manslaughter? Or [shall we] perhaps [rather say that] since in the case of Cattle [killing a person] unintentionally where no *kofer* is paid, the value [of the loss] is nevertheless paid, so should it also be with Fire where no *kofer* would be paid for intentional manslaughter, that nevertheless the value [of the loss] caused by unintentional manslaughter should be paid?

## BABA KAMMA- 31b-62b

But as no information was available to us [on this matter], it remained undecided.

When R. Dimi arrived [from Palestine] he said on behalf of R. Johanan: [The word] *kofer* [I understand]. What is taught by [the expression] *If kofer?*<sup>15</sup> It implies the inclusion of [the payment of] *kofer* in cases where there was no intention<sup>16</sup> [to kill] just as *kofer* [is paid] where there was intention. Abaye however said to him: If so, the same could now surely also be argued in the case of a slave: viz.: What is taught by [the expression] *If a slave?*<sup>15</sup> [It implies] that a slave killed unintentionally is subject to the same law as a slave, killed intentionally? If that is so, why did Resh Lakish say that where an ox killed a slave unintentionally there would be exemption from the thirty *shekels*? He replied: Would you confute one person's view by citing another?<sup>17</sup>

When Rabin arrived [from Palestine] he said on behalf of R. Johanan: [The word] a slave<sup>18</sup> [I understand], What is taught by [the expression] *If a slave?* [It implied] that a slave [killed] unintentionally is subject to the same law as a slave [killed] intentionally. Now as regards Resh Lakish [who was of a different view in this respect] shall we also assume that just as he drew no lesson from the distinction between '*a slave*' and '*if a slave*', so he drew no lesson from the distinction between '*kofer*' and '*if kofer*'? — I may say that this was not so. From the distinction between '*a slave*' and '*if a slave*' he did not draw a lesson, whereas from the distinction between '*kofer*' and '*if kofer*' he did draw a lesson. Why this difference? The expressions '*a slave*' and '*if a slave*' do not occur in the context dealing with payment,<sup>19</sup> whereas the expressions '*kofer*' and '*if kofer*' do occur in a context dealing with payment.

THE SAME JUDGMENT APPLIES IN THE CASE OF A SON OR IN THAT OF A DAUGHTER. Our Rabbis taught: [The text] *Whether it have gored a son or have gored a daughter*<sup>20</sup> [implies] that there is liability in the case of little ones just as in that of grown-

ups. But surely this is only logical! For since there is a liability in the case of Man killing man there is similarly a liability in the case of Cattle killing man, just as where Man has killed man no distinction is made between [the victims being] little ones or grown-ups,<sup>21</sup> so also where Cattle killed man no distinction should be made between [the victims being] little ones or grown-ups? Moreover there is an *a fortiori* argument [to the same effect]; for if in the case of Man killing man where the law did not make [murderers who are] minors liable as [it did make] grown-ups,<sup>22</sup> it nevertheless imposed there liability for little ones as for grown-ups,

1. As the ox in this case would be subject to be stoned, [and where the ox is stoned, the owner pays *kofer*].
2. I.e. *kofer*.
3. V. p. 244, n. 6.
4. [This shows that pecuniary loss is paid in the case of a slave on his own admission even as in the case of a freeman.]
5. [Though in the case of self-admission there will still be a distinction between the death of a freeman and that of a slave (by an ox) in regard to the payment of pecuniary loss.]
6. [That there is payment of pecuniary loss, even where *kofer* is not payable.]
7. [If intentionally, the civil liability would merge with the graver capital charge.]
8. For the barn and the goat but not for the slave, as he should have run away.
9. *Infra* 61b.
10. By not extending the ruling in the second clause to refer also to the barn but confining it to the goat which should have run away, and to the slave, on the alleged ground that no compensation should be paid for the value of the loss occasioned by fire burning a human being to death.
11. The ruling of exemption in the second clause is thus extended even to the barn.
12. *Supra* p. 38.
13. For which see *supra* p. 18 and *infra* 50b.
14. For it merges with the graver capital charge.
15. Ex. XXI, 30; for it is surely neither an optional nor a conditional liability.
16. ['If' [H] implying a case where *kofer* is imposed, though the ox is not stoned, i.e. where there was no intention (contrary to the view of Rabbah, *supra*); v. Malbim on Ex. XXI, 30.]

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17. As R. Johanan and Resh Lakish might perhaps have differed on this point.
18. In Ex. XXI, 32.
19. It could thus hardly have any bearing on the law of payment.
20. Ibid. 31.
21. Cf. Nid. 44a.
22. See Lev. XXIV, 17 and Mek. on Ex. XXI, 12.

## Baba Kamma 44a

now in the case of Cattle killing man where the law made small cattle [liable] as [it did make] big cattle,<sup>1</sup> should it not stand to reason that there is liability for little ones as there is for grown-ups?<sup>2</sup> — No, [for it could have been argued that] if you stated this ruling in the case of Man killing man it was [perhaps] because [where Man injured man] there was liability for the four [additional] items,<sup>3</sup> but how would you be able to prove the same ruling in the case of Cattle where there could be no liability for the four [additional] items? Hence it is further laid down: Whether it have gored a son or have gored a daughter to impose liability for little ones as for grown-ups. So far I know this only in the case of *Mu'ad*.<sup>4</sup> Whence do I know it in the case of *Tam*? — We infer it by analogy: Since there is liability for killing Man or Woman and there is similarly liability for killing Son or Daughter, just as regarding the liability for Man or Woman you made no discrimination between *Tam* and *Mu'ad*,<sup>5</sup> so also regarding the liability for Son or Daughter you should make no discrimination between *Tam* and *Mu'ad*. Moreover there is an *a fortiori* argument [to the same effect]; for if in the case of Man and Woman who are in a disadvantageous position when damages had been done by them,<sup>6</sup> you have nevertheless made there no discrimination between *Tam* and *Mu'ad*, in the case of Son and Daughter who are in an advantageous position when damage has been done by them,<sup>7</sup> should it not stand to reason that you should make no discrimination between *Tam* and *Mu'ad*? — [No,] you cannot argue thus. Can we draw an analogy from a more serious to a lighter case so as to be more severe [with regard to

the latter]? If<sup>8</sup> the law is strict with *Mu'ad* which is a more serious case, how can you argue that it ought to be [equally] strict with *Tam* which is a lighter case? Moreover, [you could also argue that] the case of Man and Woman [is graver] since they are under obligation to observe the commandments [of the Law],<sup>9</sup> but how draw therefrom an analogy to the case of Son and Daughter seeing that they are exempt from the commandments?<sup>10</sup> It was therefore necessary to state [further]: Whether it have gored a son, or have gored a daughter; [the repetition of the word 'gored' indicating that no discrimination should be made between] goring in the case of *Tam* and goring in the case of *Mu'ad*, between goring in the case of killing and goring in the case of mere injury.

**MISHNAH.** IF AN OX BY RUBBING ITSELF AGAINST A WALL CAUSED IT TO FALL UPON A PERSON [AND KILL HIM], OR IF AN OX WHILE TRYING TO KILL A BEAST [BY ACCIDENT] KILLED A HUMAN BEING, OR WHILE AIMING AT A HEATHEN<sup>11</sup> KILLED AN ISRAELITE, OR WHILE AIMING AT NON-VIABLE INFANTS KILLED A VIABLE CHILD, THERE IS NO LIABILITY.

**GEMARA.** Samuel said: There is exemption [for the ox in these cases] only from [the penalty of being stoned to] death, but there is liability [for the owner] to pay *kofer*.<sup>12</sup> Rab, however, said: There is exemption here from both liabilities.<sup>13</sup> But why [*kofer*]?<sup>14</sup> Was not the ox *Tam*?<sup>15</sup> — Just as [in an analogous case] Rab said that the ox was *Mu'ad* to fall upon human beings in pits,<sup>16</sup> so also [in this case we say that] the ox was *Mu'ad* to rub itself against walls [which thus fell] upon human beings. But if so, why should the ox not be liable to [be stoned to] death? It is correct in this other case where we can explain that the ox was looking at some vegetables and so came to fall [into a pit],<sup>17</sup> but here what ground could we give [for assuming otherwise than an intention to kill on the part of the ox]? — Here also [we may

## BABA KAMMA- 31b-62b

suppose that] the ox had been rubbing itself against the wall for its own gratification.<sup>17</sup> But how can we know this?<sup>18</sup> — [By noticing that] even after the wall had fallen the ox was still rubbing itself against it.

1. Cf. *infra* p. 380, and 'Ed. VI, 1.
2. Why then was it necessary for Scripture to make this explicit in Ex. XXI, 31?
3. For which cf. *supra* p. 12.
4. As verse 31 follows 29 and 30 which deal with *Mu'ad*.
5. As clearly seen in verses 29 and 30.
6. I.e. they are liable to pay for it. Cf. *supra* p. 63 but also *infra* p. 502.
7. For which they are not liable to pay; see *infra* p. 502.
8. [Some texts omit, 'If ... Moreover,' v. D.S. a.l.]
9. Cf. however, *supra* p. 64, but also Kid. I, 7.
10. So long as they are minors and have not reached puberty for which cf. Nid. 52a.
11. Cf. *supra* p. 211, n. 6.
12. As also maintained by R. Johanan, *supra* p. 248, and still earlier by R. Eliezer, *supra* p. 237.
13. For the reason v. *supra* 244
14. In the case dealt with first in the Mishnah.
15. In killing a human being by rubbing itself against a wall and thus causing it to fall. In the case of *Tam* no *kofer* is paid; see Ex. XXI, 28.
16. *Infra* p. 274.
17. And as intention to kill was lacking, no death penalty could be attached.
18. Seeing that the ox was *Mu'ad* to rub itself against walls.

### Baba Kamma 44b

But granted all this, is this manner of damage<sup>1</sup> not on a par with that done by Pebbles<sup>2</sup> [where there would be no liability for *kofer*]?<sup>3</sup> — R. Mari the son of R. Kahana thereupon said: [We speak of] a wall gradually brought down by the constant pushing of the ox.<sup>4</sup>

It has been taught in accordance with Samuel and in refutation of Rab: There are cases where the liability is both for [stoning to] death and *kofer*: there are other cases, where there is liability for *kofer* but exemption from [stoning to] death; there are again [other] cases where there is liability

[for stoning to] death but exemption from *kofer*; and there are still other cases where there is exemption both from [stoning to] death and from *kofer*. How so? In the case of *Mu'ad* [killing a person] intentionally, there is liability both for [stoning to] death and for *kofer*.<sup>5</sup> In the case of *Mu'ad* [killing a person] unintentionally there is liability for *kofer* but exemption from [stoning to] death. In the case of *Tam* [killing a person] intentionally there is liability [for stoning to] death but exemption from *kofer*. In the case of *Tam* [killing a person] unintentionally, there is exemption from both penalties. Whereas in case of injury [caused by the ox] unintentionally, R. Judah says there is liability to pay [damages], but R. Simeon says there is no liability to pay.<sup>6</sup> What is the reason of R. Judah? — He derives [the law of damages from] that of *kofer*: just as for *kofer* there is liability even where there was no intention [to kill], so also for damages for injuries there is liability even where there was no intention [to injure]. R. Simeon, on the other hand, derived [the law of damages] from that of the killing of the ox: just as the stoning of the ox is not required where there was no intention [to kill], so also damages are not required where there was no intention [to injure]. But why should R. Judah also not derive [the ruling in this case] from [the law applying to the] killing [of the ox]? It is proper to derive [a ruling regarding] payment from [another ruling regarding] payment, but it is not proper to derive [a ruling regarding] payment from [a ruling regarding] killing. Why then should R. Simeon also not derive [the ruling in this case] from [the law applying to] *kofer*? — It is proper to derive a liability regarding the ox<sup>7</sup> from another liability that similarly concerns the ox,<sup>8</sup> thus excluding *kofer* which is a liability that concerns only the owner.<sup>9</sup>

OR IF THE OX WHILE TRYING TO KILL A BEAST [BY ACCIDENT] KILLED A HUMAN BEING ... THERE IS NO LIABILITY. Where, however, the ox had aimed at killing one human being and [by accident] killed another human being, there

## BABA KAMMA- 31b-62b

would be liability. [This implication of] the Mishnah is not in accordance with R. Simeon. For it has been taught: R. Simeon says: Even where [the ox] aimed at killing one person and [by accident] killed another person there would be no liability. What was the reason of R. Simeon? — Scripture states: The ox shall be stoned and its owner also shall be put to death,<sup>10</sup> [implying that only] in those cases in which the owner would be subject to be put to death [were he to have committed murder], the ox also would be subject to be put to death. Just as therefore in the case of the owner the liability arises only where he was aiming at the particular person [who was actually killed], so also in the case of the ox the liability will arise only where it was aiming at the particular person [who was actually killed]. But whence do we know that this is so even in the case of the owner himself?<sup>11</sup> — Scripture States: And lie in wait for him and rise up against him<sup>12</sup> [which indicates that he is not liable] unless he had been aiming at the particular person [whom he killed]. What then do the Rabbis<sup>13</sup> make of [the words,] 'And lie in wait'? — It was said at the School of R. Jannai: They except [on the strength of them a manslaughter committed by] a stone being thrown into a crowd.<sup>14</sup> How is this to be understood? If you say that there were [in the crowd] nine heathens and one Israelite, why not except the case on the ground that the majority [in the crowd] were persons who were heathens?<sup>15</sup> And even where they were half and half, does not an accused in a criminal charge have the benefit of the doubt? — The case is one where there were nine Israelites and one heathen. For though in this case the majority [in the crowd] consisted of Israelites, still since there was among them one heathen he was an essential part [of the group], and essential part<sup>16</sup> is reckoned as equivalent to half, and where there is a doubt in a criminal charge the accused has the benefit.

**MISHNAH.** WHERE AN OX OF A WOMAN, OR AN OX OF [MINOR] ORPHANS, OR AN OX OF A GUARDIAN, OR AN OX OF THE

WILDERNESS, OR AN OX OF THE SANCTUARY, OR AN OX OF A PROSELYTE WHO DIED WITHOUT [LEGAL] HEIRS,<sup>17</sup> [HAS KILLED A PERSON], IT IS LIABLE TO [BE STONED TO] DEATH. R. JUDAH SAYS: IN THE CASE OF AN OX OF THE WILDERNESS, AN OX OF THE SANCTUARY AND AN OX OF A PROSELYTE WHO DIED [WITHOUT HEIRS] THERE WOULD BE EXEMPTION FROM [STONING TO] DEATH SINCE THESE HAVE NO [PRIVATE] OWNERS.

**GEMARA.** Our Rabbis taught: [The word] ox occurs seven times [in the section dealing with Cattle killing man]<sup>18</sup> to include the ox of a woman, the ox of [minor] orphans, the ox of a guardian, the ox of the wilderness, the ox of the Sanctuary and the ox of a proselyte who died without [legal] heirs. R. Judah, however, says: An ox of the wilderness, an ox of the Sanctuary and an ox of a proselyte who died without heirs are exempt from [stoning to] death since these have no [private] owners.

R. Huna said: The exemption laid down By R. Judah extends even to the case where the ox gored and was only subsequently consecrated to the Temple, or where the ox gored and was only subsequently abandoned. Whence do we know this? — From the fact that R. Judah specified both an ox of the wilderness and an ox of a proselyte who died without heirs. Now what actually is 'an ox of a proselyte who died'? Surely since he left no heirs the ox remained ownerless, and this [category] would include equally an ox of the wilderness and an ox of the proselyte who died without heirs? We must suppose then that what he intended to tell us [in mentioning both] was that even where the ox gored but was subsequently consecrated, or where the ox gored but was subsequently abandoned, [the exemption would still apply] and this may be taken as proved. It has also been taught to the same effect.<sup>19</sup> R. Judah went even further, saying: Even if after having gored, the ox was consecrated or after having gored it became ownerless,

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there is exemption, as it has been said, *And it hath been testified to his owner and he hath not kept him in, but that he hath killed a man or a woman, the ox shall be stoned.*<sup>20</sup> This applies only when no change of status has taken place between the manslaughter and the appearance before the Court.<sup>21</sup> Does not the final verdict also need to comply with this same condition? Does not the same text, *The ox shall be stoned,*<sup>22</sup> [apply also to] the final verdict? — Read therefore: That is so only when no change in status has taken place between the manslaughter, the appearance before the Court, and the final verdict.

**MISHNAH.** IF WHILE AN OX [SENTENCED TO DEATH] IS BEING TAKEN OUT TO BE STONED ITS OWNER DECLARES IT SACRED, IT DOES NOT BECOME SACRED;<sup>23</sup> IF HE SLAUGHTERS IT, ITS FLESH IS FORBIDDEN [FOR ANY USE].<sup>23</sup> IF, HOWEVER, BEFORE THE SENTENCE HAS BEEN PRONOUNCED THE OWNER CONSECRATES IT, IT IS CONSECRATED, AND IF HE SLAUGHTERS IT, ITS FLESH IS PERMITTED [FOR FOOD].

IF THE OWNER HANDS OVER HIS CATTLE TO AN UNPAID BAILEE OR TO A BORROWER, TO A PAID BAILEE OR TO A HIRER, THEY ENTER INTO ALL LIABILITIES IN LIEU OF THE OWNER: IN THE CASE OF *MU'AD* THE PAYMENT WOULD HAVE TO BE IN FULL, WHEREAS IN THE CASE OF *TAM* HALF DAMAGES WOULD BE PAID.

**GEMARA.** Our Rabbis taught: If an ox has killed [a person], and before its judgment is pronounced its owner sells it,

1. Being done not by the body of the ox but by something set in motion by it.
2. Dealt with *supra* p. 79.
3. [*Kofer* is imposed only where death was caused by the body of the ox even as is the case with 'goring'.]
4. And was thus the whole time as it were a part of the body of the ox.
5. Ex. XXI, 29-30.
6. Cf. Tosef. B.K. IV.

7. I.e. a liability to make good the damage done by the ox.
8. Such as the death of the ox for the manslaughter it committed.
9. As *kofer* is the ransom of his life.
10. Ex. XXI, 29.
11. Committing murder.
12. Deut. XIX, II.
13. Who differ from R. Simeon on this point. v. Sanh. 79a.
14. And a person was killed.
15. For in matters of judgment the principle of 'majority' is as a rule the deciding factor. [That does not mean to imply that the killing of a heathen was no murder. The Mekilta in Ex. XXI, 12 states explicitly that the crime is equally condemnable irrespective of the religion and nationality of the victim. But what it does mean is that the Biblical legislation in regard to crime did not apply to heathens. As foreigners they fully enjoyed their own autonomous right of self-help, i.e., blood feuds or ransom, prohibited by the Law to the Jews, and accordingly were not governed by the provisions made in the Bible relating to murder, v. Guttman, *loc. cit.* p. 16 ff and *supra* p. 211, n. 6.]
16. Lit., 'fixed'. For a full discussion of this passage, v. Sanh. (Sonc. ed.) p. 531 and notes a.l.
17. The ox thus becoming ownerless.
18. Ex. XXI, 28-32.
19. *Supra* p. 55.
20. Ex. XXI, 29.
21. *Supra* p. 56.
22. Ex. XXI, 29.
23. Cf. *supra* p. 234.

## Baba Kamma 45a

the sale holds good; if he declares it sacred, it is sacred; if it is slaughtered, its flesh is permitted [for food]; if a bailee returns it to the house of its owner, it is an effective restoration. But if after its sentence had already been pronounced the owner sold it, the sale would not be valid; if he consecrates it, it is not consecrated; if it is slaughtered its flesh is forbidden [for any use]; if a bailee returns it to the house of its owner, it is not an effective restoration. R. Jacob, however, says: Even if after the sentence had already been pronounced the bailee returned it to its owner, it would be an effective restoration. Shall we say that the point at issue<sup>1</sup> is that in the view of the Rabbis it is of no avail to

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plead<sup>2</sup> regarding things which became forbidden for any use, 'Here is your property before you',<sup>3</sup> whereas in the view of R. Jacob it can be pleaded even regarding things forbidden for any use, 'Here is your property before you'? — Rabba said: Both parties in fact agree that even regarding things forbidden for any use, the plea, 'Here is your property before you' can be advanced, for if it is as you said,<sup>4</sup> why did they not differ in the case of leaven<sup>5</sup> on Passover?<sup>6</sup> But the point at issue here [in the case before us] must therefore be whether [or not] sentence may be pronounced over an ox in its absence. The Rabbis maintain that no sentence can be pronounced over an ox in its absence, and the owner may accordingly plead against the bailee: 'If you would have returned it to me [before the passing of the sentence], I would have caused it to escape to the pastures, whereas you have allowed my ox to fall into the hands of those<sup>7</sup> against whom I am unable to bring any action'. R. Jacob, however, maintains that the sentence can be pronounced over the ox even in its absence, and the bailee may accordingly retort to the owner: 'In any case the sentence would have been passed on the ox.' What is the reason of the Rabbis? — [Scripture says]: The ox shall be stoned and its owner also shall be put to death<sup>8</sup> [implying that] the conditions under which the owner would be subject to be put to death [were he to have committed murder], are also the conditions under which the ox would be subject to be put to death; just as in the case of the owner [committing murder, the sentence could be passed only] in his presence,<sup>9</sup> so also [the sentence] in the case of an ox [could be passed only] in its presence. But R. Jacob [argues]: That applies well enough to the case of the owner [committing murder], as he is able to submit pleas, but is the ox also able to submit pleas?<sup>10</sup>

WHERE AN OWNER HAS HANDED OVER HIS CATTLE TO AN UNPAID BAILEE OR TO A BORROWER, etc. Our Rabbis taught: The following four [categories of persons] enter into all

liabilities in lieu of the owner, viz., Unpaid Bailee and Borrower, Paid Bailee and Hirer. [If cattle so transferred] kill [a person] if they are *Tam*, they would be stoned to death, but there would be exemption from *kofer*,<sup>11</sup> whereas in the case of *Mu'ad*, they would be stoned and the bailees in charge would be liable to pay *kofer*. In all cases, however, the value of the ox would have to be reimbursed to the owner by all of the bailees with the exception of the Unpaid Bailee. I would here ask with what circumstances are we dealing? If where the ox [was well] guarded, why should all of them<sup>12</sup> not be exempt [from having to reimburse the owner]? If on the other hand it was not guarded well, why should even the Unpaid Bailee not be liable?<sup>13</sup> — It might be said that we are dealing here with a case where inferior precautions<sup>14</sup> were taken to control the ox but not really adequate precautions.<sup>15</sup> In the case of an Unpaid Bailee his obligation to control was thereby fulfilled, whereas the others did thereby not yet fulfill their obligation to control. Still I would ask, whose view is here followed? If that of R. Meir

1. I.e. between R. Jacob and the Rabbis.
2. Against a depositor or against a person who was robbed of an article, before it became prohibited for any use.
3. The reason is that, by becoming forbidden for any use, the things, though not undergoing any change in their external size and appearance, do not remain (in the eyes of the law) the same things as were previously deposited with the bailee or misappropriated by the robber, their status then having been different.
4. That R. Jacob and the Rabbis differ on this point.
5. Stolen before the eve of Passover.
6. I.e. whether the leaven might be returned by the robber after the approach of Passover when it became forbidden for any use; cf. *infra* pp. 561, 572.
7. I.e. the Court of Law.
8. Ex. XXI, 29.
9. For which cf. Num. XXXV, 12.
10. That its presence should be required.
11. Ex. XXI, 28.
12. With the exception, however, of the borrower who is liable even for accidents.
13. For he also is liable for carelessness.

# BABA KAMMA- 31b-62b

14. Such as e.g. a door which would withstand only an ordinary wind. V. *infra* 55b
15. So as to withstand a wind of even unusual force.

## Baba Kamma 45b

who maintained<sup>1</sup> that Hirer is subject to the same law as Unpaid Bailee, why is it not taught above 'with the exception of Unpaid Bailee and Hirer'? If [on the other hand the view followed] was that of R. Judah who maintained<sup>1</sup> that Hirer should be subject to the same law as Paid Bailee, why was it not taught 'with the exception of Unpaid Bailee, whereas in the case of *Mu'ad* they all would be exempt from *kofer*'?<sup>2</sup> — R. Huna b. Hinena thereupon said: This teaching is in accordance with R. Eliezer, who said,<sup>3</sup> that the only precaution for it [*Mu'ad*] is the slaughter knife, and who regarding Hirer might agree with the view of R. Judah that Hirer should be subject to the same law as Paid Bailee. Abaye, however, said: It could still follow the view of R. Meir, but as transposed by Rabbah b. Abbahu who learnt thus: How is the payment [for the loss of the article] regulated in the case of Hirer? R. Meir says: As in the case of Paid Bailee. R. Judah, however, says: As in the case of Unpaid Bailee.<sup>4</sup>

R. Eleazar said: Where an ox had been handed over to an Unpaid Bailee and damage was done by it, the bailee would be liable, but where damage was done to it, the bailee would be exempt. I would here ask what were the circumstances? If where the bailee had undertaken to guard the ox against damage, why even in the case where it was injured should there be no liability? If, on the other hand, where the bailee had not undertaken to guard against damage why even in the case where damage was done by the ox should there not be exemption? — Raba thereupon said: We suppose in fact that the bailee had undertaken to guard the ox against damage, but the case here is one where he had known the ox to be a gorer, and it is natural that what he did undertake

was to prevent the ox from going and doing damage to others, but he did not think of the possibility of others coming and injuring it.

**MISHNAH.** IF THE OWNER FASTENED HIS OX [TO THE WALL INSIDE THE STABLE] WITH A CORD, OR SHUT THE DOOR IN FRONT OF IT IN THE ORDINARY WAY<sup>5</sup> BUT THE OX GOT OUT AND DID DAMAGE, WHETHER IT HAD BEEN *TAM* OR ALREADY *MU'AD*, HE WOULD BE LIABLE; THIS IS THE RULING OF R. MEIR. R. JUDAH, HOWEVER, SAYS: IN THE CASE OF *TAM* HE WOULD BE LIABLE, BUT IN THE CASE OF *MU'AD* HE WOULD BE EXEMPT, SINCE IT IS WRITTEN, AND HIS OWNER HATH NOT KEPT HIM IN,<sup>6</sup> [THUS EXCLUDING THIS CASE WHERE] IT WAS KEPT IN. R. ELIEZER SAYS: NO PRECAUTION IS SUFFICIENT [FOR *MU'AD*] SAVE THE [SLAUGHTER] KNIFE.

**GEMARA.** What was the reason of R. Meir? — He Maintained that normally oxen are not kept under control,<sup>7</sup> and the Divine Law enacted that *Tam* should involve liability to show that at least moderate precautions were required. Then the Divine Law stated further in the case of *Mu'ad*, And his owner hath not kept him in,<sup>8</sup> to show that [for this] really adequate precautions are required;<sup>8</sup> and the goring mentioned in the case of *Tam* is now placed on a par with the goring mentioned in the case of *Mu'ad*.<sup>9</sup> R. Judah, however, maintained that oxen normally are kept under control, and the Divine Law stated that in the case of *Tam* there should be payment to show that really adequate precaution is required. The Divine Law, however, goes on to say, And his owner hath not kept him in,<sup>6</sup> in the case of *Mu'ad*. [This would imply] that there should be there precaution of a superior degree. [These words, however, constitute] an amplification following an amplification, and as the rule is that an amplification following an amplification intimates nothing but a limitation,<sup>10</sup> Scripture has thus reduced the

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superior degree of the required precaution. And should you object to this that goring is mentioned in the case of *Tam* and goring is mentioned in the case of *Mu'ad*<sup>2</sup> [for mutual inference,<sup>11</sup> the answer is that in this case] the Divine Law has explicitly restricted [this ruling by stating] And his owner hath not kept him in,<sup>6</sup> [the word 'him' confining the application] to this one<sup>12</sup> but not to another.<sup>13</sup> But surely these words are needed for the stated purpose?<sup>14</sup> — [If that were so, the Divine Law should write surely, 'Hath not kept in'. Why does it say, hath not kept him in? To show that the rule applies to this one<sup>15</sup> but not to another.<sup>16</sup>

It has been taught: R. Eliezer b. Jacob says: Whether in the case of *Tam* or in that of *Mu'ad*, as soon as even inferior precautions have been taken [to control the ox], there is exemption. What is his reason? — He concurs with R. Judah, in holding that in the case of *Mu'ad* precaution even of an inferior degree is sufficient, and he [extended this ruling to *Tam* as he] on the strength of [the mutual inference<sup>17</sup> conveyed by] the mention of goring in the case both of *Tam* and of *Mu'ad*.<sup>17</sup>

R. Adda b. Ahabah said: The exemption laid down by R. Judah applies only to the part of the payment due on account of the ox having been declared *Mu'ad*,<sup>18</sup> but the portion due on account of *Tam* remains unaffected.<sup>19</sup> Rab said: Where the ox was declared *Mu'ad* to gore with the right horn, it would thereby not become *Mu'ad* for goring with the left horn.<sup>20</sup> I would here ask: In accordance with whose view [was this statement made]? If in accordance with R. Meir, did he not say that whether in the case of *Tam* or in that of *Mu'ad*, precaution of a superior degree was needed?<sup>21</sup> If [on the other hand] in accordance with R. Judah,<sup>22</sup> why specify only the left horn? Even in the case of the right horn itself, does not one part of the payment come under the rule of *Tam*<sup>23</sup> and another under that of *Mu'ad*? I may say that in fact it is in accordance with R. Judah, and that Rab does not concur in the view.

expressed by R. Addah b. Ahabah, and what Rab thus intended to say was that it was only in such an instance<sup>24</sup> that there would be in one ox part *Tam* and part *Mu'ad*.

1. Cf. *infra* 57b.
2. For R. Judah maintains that even an inferior precaution in the case of *Mu'ad* suffices to confer exemption for any damage that has nevertheless resulted.
3. *Infra* p. 259.
4. V. p. 257, n. 7. [And since R. Meir also holds that *Mu'ad* requires adequate precaution, he rightly makes the Hirer liable to pay *kofer* as well as reimburse the owner.]
5. So that it would be perfectly safe in the case of an ordinary wind; cf. *infra* 55b.
6. Ex. XXI, 36.
7. Cf. *supra* p. 64.
8. So that it would be safe even in the case of a wind of unusual force.
9. To show that both require really adequate precaution.
10. V. Shebu. (Sonc. ed.) p. 12, n. 3.
11. Cf. *supra* p. 250. [So that for *Tam* too an inferior precaution should suffice.]
12. To *Mu'ad*.
13. To *Tam*.
14. Lit., 'for the negative', that is, that he is liable because he failed to take the necessary precautions.]
15. V. p. 259, n. 7.
16. *Ibid.* n. 8.
17. *Ibid.* n. 6.
18. I.e. the half added on account of the ox having been declared *Mu'ad*.
19. And thus constantly subject to the law of *Tam*.
20. Damage done by the right horn would thus be subject to the degree of precaution required in the case of *Mu'ad* while damage done by the left horn would still remain subject to the degree of precaution needed in *Tam*.
21. Thus so far as precaution is concerned there would in this case be no difference between the right horn and the left horn.
22. Who demands a greater degree of precaution in case of a *Tam* than in that of a *Mu'ad*, and accordingly there would be no liability if the ox gored with the right horn after inferior precautions had been taken, whereas there would be liability with the left horn.
23. Requiring on that account adequate precautions, in the absence of which there should be liability.
24. Where the ox gored three times with the right horn and was declared *Mu'ad* accordingly, remaining thus *Tam* in respect of the left horn.

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## Baba Kamma 46a

But in the case of an ox which was altogether *Mu'ad* no element of *Tam* could be found in it at all.

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

## CHAPTER V

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

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

1. Ex. XXI, 29.
2. Ibid. 33
3. *Infra* 52a.
4. *Supra* p. 67.
5. Deut. XXII, 8. The same prohibition applies to a goring ox.
6. In which case the death of the calf could not be imputed to the goring of the ox.
7. So that the miscarriage of the calf was a result of the goring.
8. In the case of *Tam*.
9. As these have certainly resulted from the goring of the ox.
10. On account of the doubt.
11. In which case the calf did not participate in the goring.
12. So that the calf while it was still an embryo took part in the act of the cow.

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

## Baba Kamma 46b

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

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

R. Samuel b. Nahmani stated: Whence can we learn that the onus probandi falls on the

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

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

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put him off by saying, 'It is definitely known to me<sup>15</sup> that there is a joint defendant with me.'<sup>14</sup> Raba said: Is then 'a fourth of the damage' and 'an eighth of the damage' mentioned in the text? Is not 'half damages' and 'quarter damages' stated in the text?<sup>16</sup> — Raba therefore said: We suppose that in fact the cow and the calf belonged to one owner,<sup>17</sup> and the meaning is this: Where the cow is available,<sup>18</sup> the payment of half damages will be made out of the cow.<sup>19</sup>

1. Since the meat of the ox is worth the purchase money.
2. I.e. from your debtor who is now the owner of the money lent to him; cf. the Roman 'Mutuum'.
3. In which case the creditor is entitled to ready cash; cf. Tosaf. a.l. and *supra* 9a; 27a; B.B. 92b.
4. Which is otherwise an accepted principle in Rabbinic Law; cf. Hul. 11b.
5. Ex. XXIV, 14.
6. Keth. 22a and Nid. 25a.
7. I.e., where A instituted an action against B, and B on appearance introduced a counter-claim against A; cf. Rashi and Tosaf. a.l., and Sanh. 35a.
8. Where, e.g., he has an opportunity of disposing of the estate concerned at a high price — an opportunity he might miss through any delay in a settlement of his counter-claim.
9. I.e., a half of the half, as half constitutes the whole payment in the case of *Tam*.
10. I.e., a quarter of the half.
11. Since both the cow and the calf belong to you.
12. As e.g., where the cow was sold with the exception of its offspring; Rashi.
13. That is, that the calf took part in the goring, otherwise you must be held solely responsible.
14. So that I cannot accordingly be held liable for all the damages.
15. Unless you prove to the contrary.
16. How then could Abaye interpret half-damages to mean quarter damages, and quarter damages to mean an eighth of the damage?
17. In the case stated in the Mishnah.
18. To be distrained upon for the damages in accordance with the law applicable to *Tam*.
19. As she definitely did the damage.

## Baba Kamma 47a

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

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

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

# BABA KAMMA- 31b-62b

**MISHNAH.** IF A POTTER BRINGS HIS WARES INTO THE COURTYARD OF ANOTHER PERSON WITHOUT PERMISSION, AND THE CATTLE OF THE OWNER OF THE COURTYARD BREAKS THEM, THERE IS NO LIABILITY.<sup>2</sup> MOREOVER, SHOULD THE ANIMAL BE INJURED BY THEM, THE OWNER OF THE POTTERY IS LIABLE [TO PAY DAMAGES]. IF, HOWEVER, HE BROUGHT [THEM] IN WITH PERMISSION,<sup>10</sup> THE OWNER OF THE COURTYARD IS LIABLE. SIMILARLY IF [A MAN] BRINGS HIS PRODUCE INTO THE COURTYARD OF ANOTHER PERSON WITHOUT PERMISSION AND THE ANIMAL OF THE OWNER OF THE PREMISES CONSUMES IT, THERE IS NO LIABILITY.<sup>11</sup> IF IT WAS HARMED BY IT THE OWNER WOULD BE LIABLE. IF, HOWEVER, HE BROUGHT THEM IN WITH PERMISSION,<sup>10</sup> THE OWNER OF THE PREMISES WOULD BE LIABLE. SO ALSO IF [A MAN] BRINGS HIS OX INTO THE COURTYARD OF ANOTHER WITHOUT

1. On account of the doubt involved in the case dealt with in the Mishnah.
2. In which case it participated in the goring.
3. [So Rashi. Curr. edd. read 'mere excrement'.]
4. But that the cow should be valued separately and the calf separately.
5. [You do not value the hand separately, viz., what price a master would in the first instance be willing to take for depriving his slave of the use of his hand; but the difference in the value of a slave who had his hand cut off — a much smaller price.]
6. [The valuation is not made on the basis of the single plot which has been damaged, but on the basis of its value in relation to the whole field.]
7. As the embryo did not increase the fatness of the cow.
8. As both the cow and embryo participate in the bulky appearance of the animal.
9. As the plaintiff was a trespasser.
10. In which case he was no trespasser
11. V.p. 266, n. 7.

## Baba Kamma 47b

PERMISSION AND THE OX OF THE OWNER OF THE PREMISES GOES IT OR THE DOG OF THE OWNER OF THE PREMISES BITES

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

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

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have taught the other clause. Raba, however, said; The whole [of the anonymous part of the Mishnah] is in accordance with the Rabbis, for [where the entry was] with permission the owner of the premises undertook the safeguarding of the pots even against breakage by the wind.<sup>4</sup>

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

An objection could be raised [from the following]: If a woman enters the premises of another person to grind wheat without permission, and the animal of the owner consumes it, there is no liability; if the animal is harmed, the woman would be liable. Now, why not argue: It should not have over-eaten? — I can answer: [In what respect] does this case go beyond that of the

Mishnah, which was interpreted [to refer to damage occasioned by] the animal having slipped over them? What then was in the mind of the one who made the objection? — He might have said to you; Your explanation is satisfactory regarding the Mishnah where it says, IF IT WAS HARMED BY IT [which admits of being interpreted] that the animal slipped over them. But here [in the Baraitha] it says, 'if the animal is harmed', without the words 'by them', so that surely the consumption [of the wheat] is what is referred to. And the other?<sup>10</sup> — He can contend [that the omission of these words] makes no difference.

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

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

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and<sup>16</sup> the owner of the premises would be liable?<sup>17</sup> — I may say that this is not so, it is the owner of the ox who would be exempt<sup>15</sup> and the owner of the ox who would be liable.<sup>16</sup> But if it refers to the owner of the ox,

1. Ex. XXI, 29-30.
2. [For the present it is assumed that the duty applies alike to the owner of the pottery in regard to the belongings of the owner of the premises as to the latter in regard to the pottery.]
3. The representatives of the anonymous view cited on the Mishnah.
4. Whereas the owner of the pottery could never be considered to have by implication accepted upon himself the responsibility for safeguarding the belongings of the owner of the premises.
5. Imposing liability where the animal was injured by the produce.
6. Cf. *infra* 57b.
7. V. *infra* p. 376.
8. V. *infra* 56a.
9. [St. John's Wort.]
10. Rab.
11. So that the owner of the courtyard should not be liable for the harm occasioned by the wheat to the ox brought in with his permission.
12. And the harm was done to the ox thus brought in with permission.
13. I.e. where produce brought in without permission was eaten by the owner's animal which thereby suffered harm, in which case the owner though being a trespasser has still no liability to safeguard to that extent the belongings of the owner of the premises.
14. [Karna, one of the Judges of the Exile, had a collection of Babylonian traditions, [H] (Gen. Rab. XXXIII), of pre-Amoraic days, v. Funk, S., *Die Juden in Babylonian*, I, n. 1.]
15. In the absence of permission.
16. Where permission was granted.
17. [This shows that the responsibility assumed by the owner of the premises extends in regard to damages in general.]

## Baba Kamma 48a

what has permission or absence of permission to do with the case?<sup>21</sup> — I will answer; [Where the produce was brought in] with permission, the case would be one of Tooth [doing damage] in the plaintiff's premises,<sup>2</sup> and Tooth doing damage in the

plaintiff's premises entails liability,<sup>3</sup> whereas in the absence of permission it would be a case of Tooth doing damage on public ground,<sup>4</sup> and Tooth doing damage on public ground entails no liability.<sup>5</sup>

Come and hear: If a man brings his ox into the premises of another person without permission, and an ox from elsewhere comes and gores it, there is no liability. But if he brought it in with permission there would be liability. Now, who would be exempt<sup>6</sup> and who would be liable?<sup>7</sup> Does it not mean that it is the owner of the premises who would be exempt<sup>6</sup> and the owner of the premises who would be liable?<sup>7</sup> — No, it is the owner of the ox [from elsewhere] who would be exempt<sup>6</sup> and similarly it is the owner of the ox [from elsewhere] who would be liable.<sup>7</sup> But if so, what has permission or the absence of permission to do with the case?<sup>8</sup> — I would answer that this teaching is in accordance with R. Tarfon, who held<sup>2</sup> that the unusual damage occasioned by Horn in the plaintiff's premises has to be compensated in full: [Where the ox was brought in] with permission the case would therefore be one of Horn doing damage in the plaintiff's premises<sup>10</sup> and the payment would have to be for full damages, whereas in the absence of permission it would amount to Horn doing damage on public ground,<sup>4</sup> and the payment would accordingly be only for half damages.

A certain woman once entered the house of another person for the purpose of baking bread there, and a goat of the owner of the house came and ate up the dough, from which it became sick and died. [In giving judgment] Raba ordered the woman to pay damages for the value of the goat. Are we to say now that Raba differed from Rab, since Rab said:<sup>11</sup> It should not have eaten?<sup>12</sup> — I may reply, are both cases parallel? There,<sup>11</sup> there was no permission and the owner of the produce did not assume any obligation of safeguarding [the property of the owner of the premises], whereas in this case, permission had been given and the woman

## BABA KAMMA- 31b-62b

had accepted responsibility for safeguarding<sup>13</sup> [the property of the owner of the premises]. But why should the rule in this case be different from [what has been laid down, that] if a woman enters the premises of another person to grind wheat without permission, and the animal of the owner of the premises eats it up, the owner is not liable, and if the animal suffers harm the woman is liable, the reason being that there was no permission, which shows that where permission was granted she would be exempt?<sup>14</sup> — I can answer: In the case of grinding wheat, since there is no need of privacy at all, and the owner of the premises is not required to absent himself, the obligation to take care [of his property] still devolves upon him, whereas in the case of baking where, since privacy is required,<sup>15</sup> the owner of the premises absents himself [from the premises], the obligation to safeguard his property must fall upon the woman.

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

Raba further said: If he brings his ox into the premises of another person without permission, and the ox injures the owner of the premises, or the owner of the premises suffers injury through the ox,<sup>19</sup> he is liable, but if it lies down,<sup>20</sup> he has no liability. But why should the fact of its lying down confer exemption?<sup>21</sup> — R. Papa thereupon said: What is meant by 'it lies down' is that the ox lays down its excrements [upon the ground], and thereby soils the utensils of the owner of

the premises. [The exemption is because] the excrements<sup>22</sup> are a case of Pit, and we have never found Pit involving liability for damage done to inanimate objects.<sup>23</sup> This explanation is satisfactory if we adopt the view of Samuel who held<sup>24</sup> that all kinds of nuisances come under the head of Pit. But on the view of Rab who said<sup>24</sup> [that they do not come under the head of Pit] unless they have been abandoned,<sup>25</sup> what are we to say? — It may safely be said that excrements as a rule are abandoned.<sup>26</sup>

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

1. Since the defendant was not the owner of the premises.
2. As the plaintiff obtained a legal right to keep there the object which was subsequently damaged by a stray ox.
3. Ex. XXII, 4.
4. I.e. on premises where the plaintiff has no more right than the owner of the ox, the defendant.
5. Cf. *supra* p. 17.
6. V. p. 270, n. 4.
7. V. p. 270, n. 5.
8. V. p. 270, n. 7.
9. *Supra* p. 125.
10. V. p. 270, n. 8.
11. *Supra* p. 268.
12. And the woman would therefore not have to pay for the damage sustained by the animal of the owner of the premises.
13. V. the discussion that follows.
14. Why then should the woman, the owner of the dough, have to pay?

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15. Lit., 'she requires privacy.' As the woman would usually have to uncover her arms.
16. *Infra* p. 93 and cf. also *supra* 51a.
17. Ex. XXI, 33.
18. The owner of the ground is therefore liable for any damage resulting from the pit.
19. By stumbling over it
20. And, as it is assumed at present, it did damage thereby.
21. If damage was done by it.
22. As any other nuisance.
23. For Scripture said: Ox and ass'; cf. *supra* p. 18.
24. *Supra* p. 150.
25. But where they were not abandoned they would be subject to the law applicable to Cattle, where there is no exemption for damage done to inanimate objects.
26. Cf. B.M. 27a.
27. [Whether with or without intention.]
28. I.e. the trespasser, by stumbling over him.
29. Upon the trespasser.
30. Cf. *supra* p. 124.
31. I.e. Raba and R. Papa.

## Baba Kamma 48b

Where both of them [plaintiff and defendant] had a right [to be where they were]<sup>1</sup> or where both of them [on the other hand] had no right [to be where they were],<sup>2</sup> if either of them injured the other, he would be liable, but if either suffered injury through the other, there would be no liability. This is so only where both of them had a right to be where they were<sup>1</sup> or where both of them [on the other hand] had no right to be where they were,<sup>2</sup> but where one of them had a right and the other had no right, the one who had a right would be exempt,<sup>3</sup> whereas the one who had no right would be liable.<sup>3</sup>

**IF IT FALLS [THERE] INTO A PIT OF THE OWNER AND MAKES THE WATER IN IT FOUL, THERE WOULD BE LIABILITY.** Raba said: This ruling applies only where the ox makes the water foul at the moment of its falling into the pit.<sup>4</sup> For where the water became foul [only] after it fell in, there would be exemption on the ground that [the damage done by] the ox<sup>5</sup> should then be [subject to the law applicable in the case of] Pit, and water is an inanimate

object, and we never find Pit entailing liability for damage done to inanimate objects.<sup>6</sup> Now this is correct if we accept the view of Samuel who said<sup>7</sup> that all kinds of nuisances are subject to the law of Pit. But on the view of Rab who held<sup>7</sup> [that this is not so] unless they have been abandoned,<sup>8</sup> what are we to say? — We must therefore suppose that if the statement was made at all, it was made in this form: Raba said: The ruling [of the Mishnah] applies only where the ox made the water foul by [the dirt of] its body.<sup>4</sup> But where it made the water foul by the smell of its carcass there would be no liability, the reason being that the ox [in this case] was only a [secondary] cause [of the damage], and for a mere [secondary] cause there is no liability.

**WHERE [IT KILLS] THE OWNER'S FATHER OR HIS SON [WHO] WAS INSIDE THE PIT, THERE WOULD BE LIABILITY TO PAY KOFER.** But why? Was the ox not *Tam*?<sup>2</sup> — Rab thereupon said: We are dealing with a case where the ox was *Mu'ad* to fall upon people in pits. But if so, should it not have already been killed [on the first occasion]?<sup>10</sup> — R. Joseph thereupon said: The ox was looking at some grass [growing near the opening of the pit] and thus fell [into it].<sup>11</sup> Samuel, however, said: This ruling is in accordance with R. Jose the Galilean, who held<sup>12</sup> that [killing by] *Tam* entails the payment of half *kofer*. 'Ulla, however, said: It accords with the ruling laid down by R. Jose the Galilean in accordance with R. Tarfon, who said<sup>13</sup> that Horn doing damage in the plaintiff's premises entails the payment of full damages.<sup>14</sup> So here the liability is for the payment of full *kofer*.<sup>15</sup> 'Ulla's answer satisfactorily explains why the text [of the Mishnah] says, **IF HIS FATHER OR HIS SON WAS INSIDE THE PIT.**<sup>16</sup> But if we take the answer of Samuel, why [is the ruling stated] only with reference to his father and his son?<sup>16</sup> Why not with reference to any other person? — The Mishnah took the most usual case.<sup>17</sup>

## BABA KAMMA- 31b-62b

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

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

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

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

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## MISCARRIAGE IS COMPARED WITH HER VALUE AFTER MISCARRIAGE.

1. Such as e.g. on public ground or on their joint premises.
2. E.g. where they were running on public ground, for which cf. *supra* p. 172.
3. For incidental damage suffered through him.
4. In which case the damage was direct.
5. By becoming a stationary nuisance.
6. *Supra* p. 18.
7. V. p. 273, n. 3.
8. V. p. 273, n. 4.
9. In which case no *kofer* has to be paid.
10. For in a case where the ox threw itself upon a human being in a pit to kill him it could hardly escape being sentenced to death and stoned accordingly. The explanations given *supra* pp. 232-3 on a similar problem could therefore hardly apply here.
11. Without any intention to kill the human being in the pit. The ox is therefore exempt from being stoned, but the owner is nevertheless liable to pay *kofer* as this kind of damage comes under the category of Tooth, since the ox did it for its own gratification; cf. *supra* p. 6.
12. *Supra* p. 66.
13. V. p. 271, n. 6.
14. Cf. also *supra* p. 134.
15. Since the ox killed the human being on his own premises.
16. So that he was killed on his own premises.
17. For it is not quite usual that a person not of the household of the owner of the yard should be in the pit which was the private property of the owner.
18. [V.l., 'The *halachah* is.']
19. Cf. Bez. 40a.
20. Upon the owner of the ox.
21. Upon the owner of the premises.
22. To the belongings of the owner of the premises.
23. [MS.M. adds: This will be in accordance with the Rabbis who hold that in the absence of any express stipulation there is still the duty to watch.]
24. Upon the owner of the premises.
25. Cf. *supra* p. 268.
26. As otherwise the owner of the premises would by implication, according to the Rabbis, have accepted liability to safeguard.
27. For while the inference from the concluding clause holds good, this is not the case with that of the commencing clause, as even where no mention was made about watching the ox brought in, the owner of the premises would still not be liable for any damage done to it. There may, however, be a difference where it

gored an ox of the owner of the premises if Rabbi followed the view of R. Tarfon as will be explained in the text.

28. V. *supra* p. 125.
29. Where the ox brought in gored an ox of the owner of the premises.
30. V. p. 276, n. 6.
31. *Supra*. p. 58.
32. Ex. XXI, 22

## Baba Kamma 49a

R. SIMEON B. GAMALIEL SAID: IF THIS IS SO, A WOMAN AFTER HAVING GIVEN BIRTH INCREASES IN VALUE.<sup>1</sup> IT IS THEREFORE THE VALUE OF THE EMBRYOS WHICH HAS TO BE ESTIMATED, AND THIS AMOUNT WILL BE GIVEN TO THE HUSBAND. IF, HOWEVER, THE HUSBAND IS NO LONGER ALIVE, IT WOULD BE GIVEN TO HIS HEIRS. IF THE WOMAN WAS A MANUMITTED SLAVE OR A PROSELYTESS [AND THE HUSBAND, ALSO A PROSELYTE, IS NO LONGER ALIVE], THERE WOULD BE COMPLETE EXEMPTION.<sup>2</sup>

*GEMARA*. The reason why there is exemption is because the ox was charging another ox, from which we infer that if it was charging the woman, there would be liability to pay. Will this not be in contradiction to the view of R. Adda b. Ahabah? For did not R. Adda b. Ahabah state<sup>3</sup> that [even] where Cattle were charging the woman, there would [still] be exemption from paying compensation for [the loss] of the embryos? — R. Adda b. Ahabah might reply: The same ruling [of the Mishnah] would apply even in the case of Cattle making for the woman, where there would similarly be exemption from paying compensation for [the loss of] the embryos. And as for the Mishnah saying IF AN OX WHILE CHARGING OTHER CATTLE, the reason is that, since it was necessary to state in the concluding clause BUT IF A MAN WHILE MEANING TO STRIKE ANOTHER MAN, this being the case stated in Scripture,<sup>4</sup> it was also found expedient to have a similar

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text in the commencing clause IF AN OX WHILE CHARGING ANOTHER OX.

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

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

BUT R. SIMEON B. GAMALIEL SAID; IF THIS IS SO, A WOMAN AFTER HAVING GIVEN BIRTH INCREASES IN VALUE. What did he mean by this statement?<sup>2</sup> — Rabbah said; He meant to say this; Does a woman increase in value before giving birth more than after? Does not a woman increase in value after giving birth<sup>10</sup> more than before giving birth? It is therefore the value of the embryos which has to be estimated, and this amount will be given to the husband. It was taught to the same effect; Does the value of a woman increase more before giving birth than after giving birth? Does not the value of a woman increase after having given birth<sup>10</sup> more than before giving birth? It is therefore the value of the embryos which has to be estimated, and this amount will be given to the husband. Raba, however, said: What is meant is this.<sup>11</sup> 'Is a woman's increase in value wholly for [the benefit of the husband for] whom she bears, and has she no share at all in the increase [in the value]<sup>12</sup> due to the embryo? It is therefore the value of the embryos which has to be estimated and this

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

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

IF THE WOMAN WAS A MANUMITTED SLAVE, OR PROSELYTESS [AND THE HUSBAND, ALSO A PROSELYTE, IS NO LONGER ALIVE], THERE WOULD BE EXEMPTION ALTOGETHER.<sup>20</sup> Rabbah said: This rule applies only where the blow

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was given during the lifetime of the proselyte [husband] and it was only after this that he died, for since the blow was given during the lifetime of the proselyte, he acquired title to the impending payment, so that when he subsequently died<sup>21</sup> the defendant became quit of it as it was an asset of the proselyte.<sup>21</sup> But where the blow was given after the death of the proselyte it was the mother who acquired title to the embryos, so that the defendant would have to make payment to her. Said R. Hisda: O, master of this [teaching]! Are embryos packets of money to which a title can be acquired? It is only when the husband is there<sup>22</sup> that the Divine Law grants payment to him, but not when he is no more.

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

1. V. the explanation in the Gemara.
2. The reason being that in this case there is no legitimate plaintiff.
3. *Supra* p. 239.
4. Ex. XXI, 22.
5. Gen. XXII, 5.
6. I.e. a mere chattel of the Master.

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

## Baba Kamma 49b

but read in the text 'she would become entitled to it'.<sup>1</sup>

May we say that there is on this point<sup>2</sup> a difference between Tannaitic authorities? [For it was taught:] If a daughter of an Israelite was married to a proselyte and became pregnant by him, and a blow was given her during the lifetime of the proselyte,<sup>3</sup> the compensation for the loss of the embryos will be given to the proselyte. But if after the death of the proselyte!<sup>4</sup> — One Baraita teaches that there would be

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liability, whereas another Baraitha teaches that there would be no liability. Now, does this not show that Tannaim differ on this [point]?<sup>5</sup> According to Rabbah there is certainly a difference between Tannaim on this matter.<sup>6</sup> But what of R. Hisda?<sup>7</sup> Must he also hold that Tannaim were divided on it? — [No; he may argue that] there is no difficulty,<sup>8</sup> as one [Baraitha] accepts the view of the Rabbis<sup>9</sup> whereas the other follows that of R. Simeon b. Gamaliel.<sup>10</sup> But if [the Baraitha which says that there is liability follows the view of] R. Simeon b. Gamaliel, why speak only of compensation after the death [of the proselyte]? Would she even during [his] lifetime not have [a half of the payment]? — During [his] lifetime she would have only a half, whereas after death she would have the whole.<sup>11</sup> Or if you wish you may say that both this [Baraitha]<sup>12</sup> and the other follow the view of R. Simeon b. Gamaliel,<sup>10</sup> but while one<sup>12</sup> deals with the increase in the value [of the woman caused] by the embryos, the other<sup>13</sup> refers to the compensation for the loss of the value of the embryos [themselves].<sup>14</sup> I would here ask, why not derive from the rule<sup>12</sup> regarding the increased value due to the embryos the other rule regarding the value of the embryos themselves?<sup>15</sup> And again, why not derive from the ruling<sup>12</sup> of R. Simeon b. Gamaliel also the ruling of the Rabbis?<sup>16</sup> — It may, however, be said that this could not be done. For as regards the increased value [of the woman due] to the embryos, seeing that she has some hold upon it,<sup>17</sup> she can acquire a title to the whole of it,<sup>18</sup> whereas in regard to the compensation for the embryos themselves, on which she has no hold,<sup>19</sup> she can acquire no title to them at all.

R. Yeba the Elder enquired of R. Nahman: If a man has taken possession of the deeds of a proselyte,<sup>20</sup> what is the legal position? [Shall we say that] a man who takes possession of a deed does so with intent to acquire the land [specified in the document], but has thereby not taken possession of the land, nor does he even acquire title to the deed, since his intent was not to obtain the deed?<sup>21</sup> Or [shall we]

perhaps [say] that his intent was to obtain the deed also?<sup>21</sup> — He<sup>22</sup> said to him: Tell me, Sir, could he need it to cover the mouth of his flask? — He<sup>23</sup> replied: Yes indeed, [he could need it] to cover [the flask].

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

*MISHNAH.* IF A MAN DIGS A PIT IN PRIVATE GROUND AND OPENS IT ON TO A PUBLIC PLACE, OR IF HE DIGS IT IN PUBLIC GROUND AND OPENS IT ON TO PRIVATE PROPERTY, OR AGAIN, IF HE DIGS IT IN PRIVATE GROUND AND OPENS IT ON TO THE PRIVATE PROPERTY OF

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ANOTHER, HE BECOMES LIABLE<sup>28</sup> [FOR ANY DAMAGE THAT MAY RESULT].

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

1. In accordance with the view of Rabbah.
2. In which Rabbah and R. Hisda differ.
3. And a miscarriage resulted.
4. I.e. if the blow was given after the death of the proselyte.
5. I.e., whether the mother acquires a title to the embryos on the death of her husband, the proselyte, or not.
6. He therefore followed the view of the former Baraitha laying down liability.
7. Stating exemption.
8. I.e., no contradiction between the two Baraithas, which do not deal with the payment for the loss of the embryos but with the payment for the loss of the increment in the value of the woman herself due to the embryos.
9. Maintaining that the payment for the loss of the increment in the value of the woman herself also belongs to the husband, so that where he was a proselyte dying without issue there would be no liability at all upon the defendant.
10. According to whom the payment for the loss of the increment in the value of the woman herself has to be shared by the mother and father, so that where he was a proselyte dying without issue she will surely not forfeit her due, but as to the embryos, all agree that the woman acquires in no circumstance title to them.

11. For since the mother is a joint plaintiff with her husband regarding this payment, where he was a proselyte dying without issue she will remain the sole plaintiff and thus be entitled to the full payment.
12. Stating liability.
13. Stating exemption.
14. To which the mother was never a plaintiff.
15. That payment should be made to the mother, in contradiction to the view of R. Hisda.
16. [That she should have the whole where the proselyte husband is no longer alive.]
17. Even during the lifetime of her husband.
18. At the demise of the proselyte without any legal issue.
19. V. p. 282, n. 10.
20. V. p. 282, n. 11.
21. I.e., the mere value of the paper of the deed.
22. R. Nahman.
23. R. Yeba.
24. [I.e., 'in town' (Rashi), or (according to Tosaf.) 'beside the premises,' v. B.M. 11a: 'non-guarded premises confer title only when the owner is standing beside them.']
25. I.e., the owner of the premises.
26. I.e., the pledge or any other ownerless article.
27. For where the pledge was kept in the creditor's premises at the time of the demise of the proselyte without issue, the creditor would acquire title to the whole of it, though the creditor were out of town (Rashi). [Tosaf. renders, 'where the creditor was not beside the premises.']
28. V. Gemara.
29. Ex. XXI, 33-34
30. I.e. where the ground of the pit that did the actual damage was not his at all.

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only in regard to a pit on his own premises. R. Akiba maintains that a pit in his own premises should also involve liability, since it says, The owner of the pit,<sup>1</sup> which shows that the Divine Law is speaking of a pit which has an owner; R. Ishmael on the other hand maintaining that this simply refers to the perpetrator of the nuisance.<sup>2</sup> But what then did R. Akiba mean by saying, '[When a man abandons his premises without, however, abandoning his pit] — this is the Pit stated in the Torah'?<sup>3</sup> — [He meant that] this is the Pit with reference to which Scripture first began to lay down<sup>4</sup> the rules for compensation [in the case of Pit]. R. Joseph said: in the case of a pit on private ground

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there is no difference of opinion that there should be liability. What is the reason? Divine Law says, the owner of the pit, to show that it is a pit having an owner with which we are dealing.<sup>5</sup> They differ only in the case of a pit in public ground. R. Ishmael maintains that a pit on public ground should also involve liability, since it says, 'If a man dig ... and if a man dig ...' Now, if for mere opening there is liability, should there not all the more be so in the case of digging? Scripture therefore must mean to imply that it is on account of the act of opening and on account of the act of digging that the liability is at all brought upon him.<sup>6</sup> And R. Akiba? [He might reply that] both terms<sup>7</sup> required to be explicitly mentioned. For if the Divine Law had said only 'If a man open' it might perhaps have been said that it was only in the case of opening that covering up would suffice [as a precaution], whereas in the case of digging covering up would not suffice, unless the pit was also filled up. If [on the other hand] the Divine Law had said only 'If a man dig' it might have been said that it was only where he dug it that he ought to cover it, as he actually made the pit, whereas where he merely opened it, in which case he did not actually make the pit, it might have been thought that he was not bound even to cover it. Hence it was necessary to tell us [that this was not the case but that the two actions are on a par in all respects]. But what then did R. Ishmael mean by saying, [If a man digs a pit in private ground and opens it on to a public place, he comes liable] and this is the Pit of which the Torah<sup>8</sup> speaks?<sup>9</sup> — This is the Pit with reference to which Scripture opens<sup>10</sup> the rules concerning damage [caused by Pit].

An objection was raised [from the following]: If a man digs a pit in public ground and opens it to private property there is no liability, in spite of the fact that he has no right to do so as hollows must not be made underneath a public thoroughfare. But if he digs pits, ditches or caves in private premises and opens them on to a public place, there would be liability. If, again, a

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

An objection was [again] raised: 'If a man digs a pit in private ground and opens it on to a public place he becomes liable, but if he digs it in private ground abutting on a public thoroughfare he would not be liable.' No difficulty arises if we follow Rabbah, since the whole text<sup>19</sup> is in accordance with R. Ishmael. But if we follow R. Joseph, no

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difficulty, it is true, arises in the prior clause<sup>20</sup> which would be in accordance with R. Ishmael, but what about the concluding clause<sup>19</sup> which would be in accordance neither with R. Ishmael nor with R. Akiba?<sup>21</sup> — He might reply that it deals with digging for foundations,<sup>22</sup> in regard to which the ruling is unanimous.

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

Our Rabbis taught: It happened that the daughter of Nehonia the digger of wells once fell into a deep pit. When people came and informed R. Hanina b. Dosa<sup>28</sup> [about it], during the first hour he said to them 'She is well', during the second he said to them, 'She is still well', but in the third hour he said to them, 'She has by now come out [of the pit].' They then asked her, 'Who brought you up?' — Her answer was: 'A ram<sup>29</sup> [providentially] came to my help<sup>30</sup> with an old man<sup>31</sup> leading it.' They then asked R. Hanina b. Dosa, 'Are you a prophet?' He said to them, 'I am neither a prophet nor the son of a prophet. I only exclaimed: Shall the thing to which that pious man has devoted his labor become a stumbling-block to his seed?'<sup>32</sup> R. Aha, however, said; Nevertheless, his<sup>33</sup> son died of thirst, [thus bearing out what the Scripture] says, *And it shall be very tempestuous round about him*,<sup>34</sup> which teaches that the Holy One, blessed be He, is particular with those round about Him<sup>35</sup> even for matters as light as a single hair.<sup>36</sup> R. Nehonia<sup>37</sup> derived the same lesson from the verse,<sup>38</sup> *God is greatly to be feared in the assembly of the saints and to be had in reverence of all them that are*

*about Him*. R. Hanina said: If a man says that the Holy One, blessed be He, is lax in the execution of justice, his life shall be outlawed, for it is stated, *He is the Rock, His work is perfect; for all His ways are judgment*.<sup>39</sup> But R. Hana, or as others read R. Samuel b. Nahmani, said: Why is it written<sup>40</sup>

1. Ex. XXI, 34
2. But did not mean the legal owner of it.
3. Since even according to R. Akiba the Torah deals with Pit on public ground.
4. In verse 34.
5. [As against R. Ishmael who requires the pit itself to be abandoned.]
6. V. p. 284, n. 4.
7. Of opening and of digging.
8. V. p. 284, n. 3.
9. Since even according to R. Ishmael the Torah deals with Pit on private ground.
10. I.e., in verse 33.
11. Rashal reads 'cubits'.
12. Which is a general practice.
13. Either with that of R. Ishmael or with that of R. Akiba.
14. Stating exemption in the case of Pit open to private ground.
15. Implying liability in the case of Pit on private ground.
16. For they both according to R. Joseph maintain liability for Pit on private ground.
17. In which case the defendant is entitled to put in a defense of trespass on his ground against the plaintiff.
18. But if the digging was not widened out into actual public ground there would be no difference as to the purpose of the digging for there would be exemption in all cases.
19. V. p. 286, n. 5.
20. Stating liability in the case of Pit on public ground.
21. V. p. 286, n. 7.
22. V. p. 286, n. 3.
23. Tosef. B.K. VI.
24. For the general use of the water.
25. As it became communal property.
26. Thus to provide water for the pilgrims who travelled to Jerusalem on the three festivals in accordance with Ex. XXXIV, 23.
27. I.e. Nehonia.
28. [On R. Hanina b. Dosa as a 'man of deeds' whose acts were viewed as acts of human love and sympathy rather than miracles, v. Buchler, Types, p. 100ff.]
29. The ram of Isaac, cf. Gen. XXII, 13 and R.H. 16a.
30. Lit., 'was appointed for me.'
31. Abraham.

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32. V. J. Shek. V. 1.
33. Nehonia's.
34. Ps. L, 3.
35. I.e. the pious devoted to Him.
36. The Hebrew term for 'tempestuous' is homonymous with that for 'hair'.
37. 'Hanina' occurs in Yeb. 121b.
38. Ps. LXXXIX, 8.
39. Deut. XXXII, 4.
40. Ex. XXXIV, 6.

## Baba Kamma 50b

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

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

**MISHNAH.** IF A MAN DIGS A PIT ON PUBLIC GROUND AND AN OX OR AN ASS FALLS INTO IT, HE BECOMES LIABLE. WHETHER HE DUG A PIT, OR A DITCH, OR A CAVE, TRENCHES, OR WEDGE-LIKE DITCHES, HE WOULD BE LIABLE. IF SO WHY IS PIT MENTIONED [IN SCRIPTURE]?<sup>2</sup> [TO TEACH THAT] JUST AS PIT CAN CAUSE DEATH BECAUSE IT IS USUALLY TEN HANDBREADTHS [DEEP], SO ALSO ALL [OTHER SIMILAR NUISANCES] MUST BE SUCH AS CAN CAUSE DEATH, [I.E.] TEN HANDBREADTHS [DEEP]. WHERE, HOWEVER, THEY WERE LESS THAN TEN HANDBREADTHS [DEEP], AND AN OX OR AN ASS FELL INTO THEM AND DIED, THERE WOULD BE EXEMPTION.<sup>8</sup> IF THEY WERE ONLY INJURED BY THEM, THERE WOULD BE LIABILITY.

**GEMARA.** Rab stated: The liability imposed by the Torah in the case of Pit<sup>2</sup> is for the unhealthy air created by excavation, but not for the blow given by it. It could hence be inferred that he held that so far as the blow was concerned it was the ground of the public that caused the damage.<sup>10</sup> Samuel, however, said: For the unhealthy air, and, ^ plus forte raison, for the blow. And should you say that it was for the blow only that the Torah imposed liability but not for the unhealthy air, (you have to bear in mind that) for the Torah<sup>11</sup> a pit is a pit, even where it is full of pads of wool. What is the practical difference between them? — There is a practical difference between them. Where a man made a mound on public ground: according to Rab there would in the case of a mound be no liability,<sup>12</sup> whereas according to Samuel there would in the case of a mound also be liability. What was the reason of Rab?<sup>13</sup> Because Scripture says, And it fall,<sup>14</sup> [implying that there would be no liability] unless where it fell in the usual way of falling.<sup>15</sup> Samuel [on the other hand maintained that the words] And it fall imply anything [which is like falling].<sup>16</sup>

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

What need was there to mention all the things specified in the text? — They all required [to be explicitly stated]. For if only a pit had been explicitly mentioned, I might

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

We have learnt: **WHERE, HOWEVER, THEY WERE LESS THAN TEN HANDBREADTHS [DEEP] AND AN OX OR AN ASS FELL INTO THEM AND DIED, THERE WOULD BE EXEMPTION.**<sup>19</sup> **IF THEY WERE ONLY INJURED BY THEM THERE WOULD BE LIABILITY.** Now what could be the reason that where an ox or an ass fell into them and died there would be exemption? Is it not

because the blow was insufficient [to cause death]?<sup>20</sup> — No, it is because there was no unhealthy air there. But if so, why where the animal was merely injured in such a pit should there be liability, seeing that there was no unhealthy air there? — I might reply that there was not unhealthy air there sufficient to kill, but there was unhealthy air there sufficient to injure.

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

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

1. [H], the plural.
2. [H], the singular.
3. By not rewarding them in this world for their good deeds.
4. By not punishing them in this world for their wicked deeds.
5. B.K. Tosef. II.
6. Raca.
7. Ex. XXI, 33.
8. As the death of the animal should in this case not be wholly imputed to the pit.
9. On public ground.
10. For which the defendant has not to be liable.
11. Lit., 'the Torah testified that, etc.', since 'pit' is left undefined.
12. As no unhealthy air was created and the blow was given by the public ground.
13. Is not a mound a nuisance?
14. Ex. XXI, 33.
15. Excepting thus a mound.

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16. I.e. including mounds.
17. Since according to him there would be no liability for mounds.
18. That the depth of ten handbreadths is sufficient to create enough unhealthy air to cause death in any one of these excavations.
19. V. p. 289, n. 2.
20. Though the air was not less unhealthy there will be no liability, thus contradicting the views of both Rab and Samuel.
21. I.e. forbidden to be eaten in accordance with dietary laws; for the term cf. Ex. XII, 30 and Glossary.
22. (V. [Glos.](#)), i.e., provision for his journey.
23. Cf. Hul. 51b.
24. For the pond in which the ox fell was only six handbreadths deep.
25. Thus disproving the view of R. Nahman.

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

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

A further objection was raised: *If any man fall from thence*;<sup>4</sup> 'from thence' but not into it. How is that so? Where the public road was ten handbreadths higher than the roof,

and a man might fall from the former on to the latter, there is no liability [in respect of a parapet], but if the public road was ten handbreadths lower than the roof, and a man might fall from the latter on to the former, that there will be liability [in respect of a parapet]. Now, if you assume that a fall could be fatal even from a height of less than ten handbreadths, why should it be necessary to have the public road lower by [full] ten handbreadths?<sup>5</sup> — It was said in answer:<sup>6</sup> There is a difference in the case of a house, since if it is less than ten handbreadths [in height] it could not be designated 'house'.<sup>7</sup> But if so, even now when from the outside it is ten handbreadths high, were you to deduct from that the ceiling and the plaster, from the inside it would surely not have the height of ten handbreadths?<sup>8</sup> — To this it was said in reply: [We are dealing here with a case] where, e.g., the owner of the house sank the floor from within.<sup>9</sup> But if so, even where the height from the outside was not ten handbreadths, it could still be possible that from the inside it was ten handbreadths, as for instance where he sank the floor still more? — The reason of R. Nahman must therefore have been this: he considered that from the abdomen of the ox to the level of the ground must be [at least] four handbreadths, and the pond feeding the fields must be six handbreadths;<sup>10</sup> this makes ten handbreadths, with the result that when the ox received the blow it was from the height of ten handbreadths that the blow was given.<sup>11</sup> But why then does the Mishnah say: **JUST AS PIT CAN CAUSE DEATH BECAUSE IT IS USUALLY TEN HANDBREADTHS [DEEP], SO ALSO ALL [OTHER SIMILAR NUISANCES] MUST BE SUCH AS CAN CAUSE DEATH, [I.E.] TEN HANDBREADTHS [DEEP]?** Should not six handbreadths be enough?<sup>12</sup> — We could reply that the Mishnah deals with a case where the ox rolled itself over into the pit.<sup>13</sup>

**MISHNAH.** WHERE THERE IS A PIT [IN CHARGE OF] TWO PARTNERS, IF THE

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FIRST ONE PASSES BY AND DOES NOT COVER IT, AND THE SECOND ONE ALSO [PASSES BY AND DOES] NOT COVER IT,<sup>14</sup> THE SECOND WOULD BE LIABLE.

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

What opinion of Rabbi and what opinion of the Rabbis [was referred to above]? — It was taught:<sup>24</sup> Where one had dug a pit of nine handbreadths [deep] and another one came along and completed it to a depth of ten handbreadths, the latter would be liable.<sup>25</sup> Rabbi says: The last one is responsible in<sup>26</sup> cases of death,<sup>27</sup> but both of them in cases of injury.<sup>28</sup> What was the reason of the Rabbis? — Scripture says; If a

man shall open ... or if a man shall dig ...<sup>29</sup> Now if for mere opening there is liability, should there not be all the more so in the case of digging? [Why then mention digging at all?] It must be in order to lay down the rule [also] for [the case of] one person digging [in a pit] after another,<sup>30</sup> [namely,] that [in such a case] the act of the one who dug first<sup>31</sup> is regarded as eliminated.<sup>32</sup> And Rabbi?<sup>33</sup> — He might rejoin that it was necessary to mention both terms,<sup>34</sup> as explained elsewhere.<sup>35</sup> And do not the Rabbis also hold that it was necessary?<sup>35</sup> — The reason of the Rabbis must therefore have been that Scripture says, If a man shall dig [indicating that] one person but not two persons [should be liable for one pit]. Rabbi, on the other hand, maintained that [the expression 'a man'] was needed to teach that if a man shall dig a pit [there would be liability] but not where an ox [dug] a 'pit'.<sup>36</sup> And the Rabbis?<sup>37</sup> [They might point out] 'a man ... a pit' is inserted twice [in the same context].<sup>29</sup> And Rabbi? — He [could rejoin that] having inserted these words in the first text, Scripture retained them in the second also.

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

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

1. Sanh. 45a.
2. Lev. XIX, 18.
3. V. Sanh. *ibid*.
4. Deut. XXII, 8.
5. Why should there be no liability to construct a parapet even where the public road was lower by less than ten handbreadths.
6. Lit., 'He said to him'.
7. Cf. B.B. 7a.
8. In which case it would still not be termed house. Why then a parapet?
9. So that the vertical height inside was not less than ten handbreadths.
10. V. p. 292, n. 2.
11. And as a fall from the height of ten handbreadths can be fatal R. Nahman had to declare the ox *trefa*.
12. For from the abdomen of the ox to the level of the ground there are surely four handbreadths.
13. But where the ox fell while walking, even where the pit was only six handbreadths deep the blow would be fatal.
14. And damage occurred later.
15. *Supra* 50a.
16. In which case they cannot plead trespass on the part of the plaintiff as defense.
17. For it is the one who dug it that should be responsible.
18. It will accordingly be the agent and not the principal who will have to be subject to the penalty; cf. B.M. 10b.
19. Partner.
20. For it was the latter's act that made the pit complete and capable of causing all kinds of damage.
21. V. p. 295.
22. V. the discussion later.
23. In which case they both made it complete and capable of causing all kinds of damage.
24. V. *supra* 10a.
25. V. p. 294, n. 7.
26. Lit., 'after the last for'.
27. For without the latter the pit would have been unable to cause death.

28. For even without the latter the pit would have been able to cause injury.
29. Ex. XXI, 33.
30. The verse would thus imply a case where after one man opened the pit of nine handbreadths deep another man dug an additional handbreadth and thus made it a pit of ten handbreadths deep.
31. The nine handbreadths.
32. So that he should become released from any responsibility.
33. How does he interpret the verse?
34. Of opening and of digging.
35. *Supra* p. 285.
36. V. *supra* p. 272.
37. Whence do they derive this latter deduction?
38. Ex. XXI, 34.
39. *Infra* p. 310.
40. As it became blemished.
41. I.e., could be used by him as food for dogs and like purposes.
42. Excepting thus a scared ox falling into a pit and dying there, as no use could lawfully be made of its carcass.
43. From the following Baraita.
44. Who thus made its width smaller and the air closer and more harmful.

## Baba Kamma 51b

Are we to say that the former statement<sup>1</sup> follows the view of Rabbi<sup>2</sup> whereas the latter<sup>3</sup> follows that of the Rabbis?<sup>3</sup> — R. Zebid thereupon said that the one statement as well as the other could be regarded as following the view of the Rabbis.<sup>3</sup> For even there [in their own case] the Rabbis would not say that the last digger should be liable, save in a case where the first digger did not make the pit of the minimum depth capable of killing, whereas [in this case] where the first digger made the pit of the minimum depth capable of killing even the Rabbis would agree that all the diggers should be liable.<sup>4</sup> But, [what of] the case of [the second] lining it with plaster and cementing it,<sup>5</sup> where the first digger made the pit of the minimum depth capable of killing, and yet it was said that the second would be liable? — It may be answered that the case there was where the unhealthy air was not sufficient to kill,<sup>6</sup> and it was the other person who, by diminishing the size of the pit increased the dangerous effect of the air so as to make it

## BABA KAMMA- 31b-62b

capable of killing. Some report that R. Zebid said that the one statement as well as the other could be regarded as following the view of Rabbi.<sup>7</sup> About the statement that they would all be liable there is [on this supposition] no difficulty. And as for the other statement that the second digger would be liable, this refers to a case where e.g., the unhealthy air was sufficient neither to kill nor to injure, and it was the other person who by diminishing the size of the pit increased the dangerous effect of the air so as to make it capable of both killing and injuring.<sup>8</sup>

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

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

Rabbab b. Bar Hanah said that Samuel b. Martha stated: Where a pit is eight handbreadths deep, but two handbreadths out of these are [full] of water, there would

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

R. Shezbi inquired of Rabbah: If the second digger makes it wider, what would be the law? — He replied: Does he not thereby diminish the unhealthy air?<sup>17</sup> Said the other to him: On the contrary, does he not increase the risk of injury?<sup>18</sup> — R. Ashi thereupon said: We have to consider whether [the animal] died through bad air, in which case [the second digger could not be responsible as] he diminished the unhealthy air, or whether it died through the fall, in which case [the second digger should be responsible as] he increased the risk of injury. Some report that R. Ashi said: We have to see whether [the animal] fell from this side [which was extended], in which [case the second digger would be responsible as] he increased the risk of injury, or whether it fell from the other side, in which case [the second digger would not be to blame, as] he diminished the unhealthy air in the pit.

It was stated: In regard to a pit as deep as it is wide [there is a difference of opinion between] Rabbah and R. Joseph, both of whom made their respective statements in the name of Rabbah b. Bar Hanah who said it in the name of R. Mani. One said that there is always unhealthy air in a pit unless

## BABA KAMMA- 31b-62b

where its width is greater than its depth,<sup>19</sup> the other said that there could never be unhealthy air in a pit unless where its depth was greater than its width.<sup>20</sup>

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

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

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

1. Making them all liable.
2. Who in the case of mere injury makes them all liable.
3. Making the second liable in all cases.
4. Hence the liability upon all of them in the former Baraitha.
5. V. p. 296, n. 7.
6. As where its width was more than its depth.
7. V. p. 296, n. 9.
8. In which case it stands to reason that the second person only should be liable.
9. As to whether the second person or both of them would be liable in cases of injury.
10. As in the case stated by Raba.
11. And that according to both Rabbi and the Rabbis the second person should not be liable.
12. By Raba.
13. And thus released himself from further responsibility.
14. If an animal fell in and was killed.
15. And should therefore be subject to the law applicable to a pit of less than ten handbreadths deep.
16. And should thus be equal to that of a pit ten handbreadths deep.
17. What liability had he thus incurred?
18. On account of which he should surely bear responsibility.
19. Implying that where the width is just equal to the depth there would still be unhealthy air there.
20. But where the depth just equaled the width there would be no unhealthy air there.
21. Of the partners.
22. Between Rabbah and R. Joseph.

# BABA KAMMA- 31b-62b

23. I.e., retrospective designation, so that a subsequent selection or definition determines retrospectively a previous state of affairs that was undefined in its nature.
24. Though this water which he subsequently drew was by no means defined at the time when the partnership was formed.
25. So that one partner does not use the water of the other to become thereby a borrower of it and thus enter into responsibility regarding it.
26. So that the water drawn by each of them consists of two parts: one from his own and the other from that of his fellow-partner, with reference to which he in the position of borrower, assuming thus full responsibility also for the part of the partner who is the lender.
27. The Rabbis and R. Eliezer b. Jacob.
28. And are consequently not deriving any benefit from one another. (Ned. 45b).
29. In accordance with Kid. I, 5.
30. B.B. 53a.

## Baba Kamma 52a

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

Resh Lakish said in the name of R. Jannai: If a man sells a herd to his neighbor, as soon as he has handed over the mashkokith<sup>1</sup> to him, the conveyance is complete. What are the circumstances? If possession by pulling [has already taken place], why was the conveyance not completed by the act of pulling? If delivery [of the flock has already taken place], why was the conveyance not completed by the act of delivery?<sup>2</sup> — We suppose in fact that possession by pulling [has already taken place], and it was still

necessary for the seller to say to the buyer, 'Go forth, take possession by pulling and become the owner,'<sup>3</sup> but as soon as he handed over the mashkokith to him, this was equivalent [in the eye of the law] to his saying, 'Go forth, take possession by pulling and complete the conveyance.' What is mashkokith? — Here<sup>4</sup> they explained it: 'The bell'. R. Jacob, however, said: 'The goat that leads the herd.' So too a certain Galilean<sup>5</sup> in one of his discourses before R. Hisda [said] that when the shepherd becomes angry with his flock he appoints for a leader one which is blind.

**MISHNAH.** IF THE FIRST ONE<sup>6</sup> COVERED IT AND THE SECOND ONE CAME ALONG AND FOUND IT OPEN AND [NEVERTHELESS] DID NOT COVER IT, THE SECOND WOULD BE LIABLE. IF [AN OWNER OF A PIT] HAD COVERED IT PROPERLY, AND AN OX OR AN ASS [NEVERTHELESS] FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT.<sup>7</sup> BUT IF HE DID NOT COVER IT PROPERLY, AND AN OX OR ASS FELL INTO IT AND WAS KILLED, HE WOULD BE LIABLE. IF IT FELL FORWARD, [BEING FRIGHTENED] ON ACCOUNT OF THE NOISE OF DIGGING, THERE WOULD BE LIABILITY, BUT IF IT FELL BACKWARD ON ACCOUNT OF THE NOISE OF DIGGING, THERE WOULD BE EXEMPTION.<sup>8</sup> IF AN OX FELL INTO IT TOGETHER WITH ITS IMPLEMENTS WHICH THEREBY BROKE, [OR] AN ASS TOGETHER WITH ITS BAGGAGE WHICH WAS THEREBY TORN, THERE WOULD BE LIABILITY FOR THE BEAST BUT EXEMPTION AS REGARDS THE INANIMATE OBJECTS.<sup>9</sup> IF THERE FELL INTO IT AN OX, DEAF, ABNORMAL OR SMALL,<sup>8</sup> THERE WOULD BE LIABILITY. BUT IN THE CASE OF A SON OR A DAUGHTER,<sup>10</sup> A MANSERVANT OR A MAIDSERVANT, THERE WOULD BE EXEMPTION.<sup>2</sup>

**GEMARA.** Up to when would the first partner be exempt [altogether]? — Rab said: Until he had time to learn [that the cover had been removed]. Samuel said: Until there was

# BABA KAMMA- 31b-62b

time for people to tell him. R. Johanan said: Until there was time for people to tell him and for him to hire laborers and cut cedars to cover it [again].

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

1. V. the discussion later.
2. In accordance with Kid. I, 4; v. also *supra* 11b.
3. V. p. 300, n. 5.
4. In Babylon.
5. Who delivered popular discourses at R. Hisda's; cf. Shab 88a.
6. Of the partners.

7. As he is surely not to blame.
8. V. the discussion in Gemara.
9. As *supra* 25b.
10. Though a minor.
11. But not noticeable from the outside.
12. For if the camels had fallen in he would have certainly been liable.
13. Even regarding oxen, for he should have thought of the possibility that camels might come first and weaken the cover and oxen would then fall in.
14. As he is surely not to blame.
15. V. p. 301, n. 7.

## Baba Kamma 52b

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

Come and hear: BUT IF HE DID NOT COVER IT PROPERLY AND AN OX OR AN ASS FELL INTO IT AND WAS KILLED, HE WOULD BE LIABLE. Now what were the circumstances? If you say that it means not properly covered as regards oxen', [which would of course imply] also 'not properly covered as regards camels', is it not obvious? Why then was it necessary to state liability? Does it not therefore mean 'that it was properly covered as regards oxen but not properly covered as regards camels'?<sup>1</sup> [Again, I ask,] what were the

## BABA KAMMA- 31b-62b

circumstances? If camels frequently passed [is it not obvious that] he was careless? If [on the other hand] no camels were to be found there, was he not innocent? Does it not [therefore speak of a case] where camels used to arrive occasionally and it so happened that camels in passing had weakened the cover so that the oxen coming [later] fell in? And [in reference to such a case] the text states liability. Does this not prove that since from time to time camels did pass he should be considered careless as he ought to have borne this fact in mind? — In point of fact [I might reply, the text may still speak of a pit covered] 'properly' as regards oxen though 'not properly' as regards camels, and [of one where] camels frequently passed, and as for your question. '[Is it not obvious that] he was careless?' [the answer would be that] since the prior clause contains the words, 'If he covered it properly', the later clause has the wording, 'If he did not cover it properly'.<sup>3</sup>

Some report that certainly no question was ever raised about this, for since the camels used to pass from time to time he was certainly careless, as he ought to have borne this fact in mind. If a question was raised, it was on the following point: Suppose he covered it with a cover that was strong enough for oxen but not strong enough for camels and in a place where camels frequently passed, and it decayed from the inside, what should be the legal position? Should we say *miggo*,<sup>4</sup> [i.e.,] since he had been careless with respect to camels he ought to be considered careless also with respect to the [accidental] decay; or should we not say *miggo*? — Come and hear; IF HE COVERED IT PROPERLY AND AN OX OR AN ASS FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT. And it was stated in connection with this ruling that R. Isaac b. Bar Hanah explained that the boards of the cover had decayed from the inside. Now, what were the circumstances? If we say that it means 'properly covered as regards oxen' and also properly covered as regards camels', and that it had decayed

from the inside, is it not obvious that there should be exemption? For indeed what more could he have done? Does it not mean, therefore, properly covered as regards oxen though not properly covered as regards camels', and in a place where camels frequently passed, and it so happened that the cover decayed from the inside? And [in such a case] the text states exemption. Does this not prove that we should not say *miggo*, [i.e.] since he was careless with respect to camels he ought to be considered careless with reference to the decay? — No, it might still [be argued that the pit was covered] properly as regards camels as well as oxen, and it so happened that it became decayed from the inside. And as for your question 'if it becomes decayed [from inside] what indeed should he have done?' [the answer would be that] you might have thought that he ought to have come frequently to the cover and knocked it [to test its soundness], and we are therefore told [that he was not bound to do this].

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

# BABA KAMMA- 31b-62b

covered] properly as regards oxen but not properly as regards camels, and in a place where camels were to be found frequently, and [it happened that] camels had come along and weakened the cover so that when oxen subsequently came they fell into the pit. And as for your question, 'Is it not obvious that he was careless?' [the answer would be that] since the prior clause contained the words 'If he covered it properly', the later clause similarly uses the wording, 'If he did not cover it [properly]'.

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

**IF IT FELL FORWARD**, etc. Rab said: 'FORWARD' means quite literally 'on its face',<sup>8</sup> and 'BACKWARD' means also literally, 'on its back',<sup>2</sup>

1. And it so happened that camels weakened the cover, and when an ox or ass came later on it fell in.
2. V. p. 302, n. 4.
3. Though this ruling is obvious.
4. Cf. [Glos.](#)
5. no note.
6. *Infra* 54b.
7. As the owner of the pit could hardly have thought it likely that a normal ox walking during the day would fall into a pit.
8. In which case it died from suffocation and there would be liability.
9. Where the death could not have been caused by suffocation and there is therefore exemption.

## Baba Kamma 53a

the fall in each case being into the pit. Rab thus adhered to his own view as [elsewhere]<sup>1</sup> stated by Rab, that the liability in the case of

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

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

R. Hananiah learnt [in a Baraita] in support of the statement of Rab: [Scripture says] And it fall,<sup>8</sup> [implying that there would be no liability] unless where it fell in the usual way of falling.<sup>2</sup> Hence the Sages said: If it fell forward on account of the noise of

## BABA KAMMA- 31b-62b

digging there would be liability, but if it fell backward on account of the noise of digging there would be exemption, though in both cases [it fell] into the pit.

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

defense] benefit me?'<sup>17</sup> Or if you wish you may [alternatively] say that R. Nathan did in fact hold that the one did half of the damage and the other did half of the damage, and as for your question, 'Why not let the owner of the pit pay half and the owner of the ox a quarter while the remaining quarter will be lost to the plaintiff?' he might answer, because the owner of the killed ox would be entitled to say to the owner of the pit, 'As I have found my ox in your pit, you have killed it. Whatever is paid to me by the other defendant I do not mind being paid [by him], but whatever is not paid to me by him, I will require to be paid by you.'<sup>18</sup>

Raba said: If a man puts a stone near the mouth of a pit [which had been dug by another person] and an ox coming along stumbles over the stone and falls into the pit, we are here brought face to face<sup>19</sup> with the difference of opinion between R. Nathan and the Rabbis.<sup>20</sup> But is this not obvious? — You might perhaps have said that [the difference of opinion was confined to that case] where the owner of the pit could say to the owner of the ox, 'Had not my pit been there at all, your ox would in any case have killed the other ox,' whereas in this case the person who put the stone [near the pit] could certainly say to the owner of the pit, 'If not for your pit what harm would my stone have done? Were the ox even to have stumbled over it, it might have fallen but would have got up again.' We are therefore told [by this] that the other party can retort, 'If not for your stone, the ox would not have fallen into the pit at all.'

It was stated:

1. *Supra* p. 289.
2. Ex. XXI, 33-34.
3. In which case the pit acted only as a secondary cause.
4. Where the ground round about the pit has been abandoned, while the pit itself and the ground of it still remain with the owner.
5. Since the pit and its ground remained yours.
6. Where liability was stated.
7. Cf. Mishnah 47b.
8. Ex. XXI, 33.

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9. Cf. *supra* p. 290.
10. Why then should the owner of the pit be liable? The digger too should also be exempt as he was but a remote cause to the damage that resulted.
11. Cf. *supra* 13a.
12. In which case the owner of the ox will pay quarter and the owner of the pit three quarters.
13. Where both of them will pay equally.
14. Which is half of the payment in the case of *Tam*.
15. B.M. 117b; cf. also Hor. 13b.
16. In the case of *Tam*.
17. If I will have to pay half damages which is the maximum payment in my case.
18. V. p. 307, n. 7. [And similarly in the case of our Mishnah since he cannot claim any damages from the digger, who was but a secondary cause, he is compensated by the owner of the pit.]
19. As to whether the digger of the pit or the one who put the stone should be liable.
20. According to whom the one who put the stone would alone have to pay.

## Baba Kamma 53b

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

Raba said: If an ox along with a man pushes [certain things] into a pit, on account of

Depreciation<sup>12</sup> they would all [three]<sup>13</sup> be liable, but on account of the four [additional] items<sup>12</sup> or with respect to compensation for the value of [lost] embryos.<sup>14</sup> Man would be liable<sup>15</sup> but Cattle and Pit exempt;<sup>14</sup> in respect of *kofer*<sup>16</sup> or the thirty *shekels*<sup>17</sup> for [the killing of] a slave, Cattle would be liable<sup>18</sup> but Man and Pit exempt;<sup>19</sup> in respect of damage done to inanimate objects or to a sacred ox which had become disqualified [for the altar], Man and Cattle would be liable but Pit exempt, the reason being that Scripture says, And the dead beast shall be his,<sup>20</sup> [implying that it was only] in the case of an ox whose carcass could be his<sup>21</sup> [that there would be liability], excluding thus the case of this [ox] whose carcass could not be his.<sup>22</sup> Does this mean that this last point was quite certain to Raba? Did not Raba put it as a query? For Raba asked; If a sacred ox which had become disqualified<sup>23</sup> [for the altar] fell into a pit, what would be the legal position? Shall we say that this [verse], And the beast shall be his, [confines liability to the case of] an ox whose carcass could be his, thus excluding the case of this ox whose carcass could never be his,<sup>22</sup> or shall we say that the words And the dead beast shall be his are intended only to lay down that the owners [plaintiffs] have to retain the carcass as part payment?<sup>24</sup> [The fact is that] after raising the question he himself solved it. But whence [then] would he derive the law that the owners [plaintiffs] have to retain the carcass as part payment? — He would derive it from the clause and the dead shall be his own<sup>25</sup> [inserted in the case] of Cattle. What reason have you for rising [the clause] And the dead shall be his own [in the context dealing] with Cattle to derive from it the law that the owners [plaintiffs] have to retain the carcass as part payment, while you rise [the clause] And the dead beast shall be his<sup>26</sup> [in the context dealing] with Pit [to confine liability] to an animal whose carcass could be his?<sup>27</sup> Why should I not reverse [the implications of the clauses]? — It stands to reason that the exemption should be connected with Pit, since there is in Pit exemption also in the case of inanimate

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objects.<sup>28</sup> On the contrary, should not the exemption be connected with Cattle, since in Cattle there is exemption from half damages [in the case of *Tam*]? — In any case, exemption from the whole payment is not found [in the case of cattle].

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

1. Which is not subject to the law of damage; cf. *supra* pp. 50ff.
2. Through a blemish. [As long as such an ox had not been redeemed, it is regarded as an ox of the sanctuary, v. *supra* 36b. Cur. edd. add in brackets, 'e.g., a first-born ox which cannot be redeemed.' It is however questionable whether such an ox is not to be considered a common animal, having regard to the fact that being blemished it is entirely the priests, no share thereof being offered up on the altar. MS.M. omits these words.]
3. And the remaining part will be lost to the plaintiff.
4. Maintaining that each defendant is only liable for himself.
5. Who stated that if no payment can be enforced from a defendant, his co-defendant has to make it up.
6. Where quarter damages is half of the maximum payment.
7. Abaye.
8. V. p. 309, n. 6.
9. Rabina.
10. V. p. 309, n. 7.
11. Where half damages is the maximum payment.
12. Cf. *supra* 26a.
13. I.e. the man, the owner of the pit and the owner of the ox.
14. V. *supra* 49a.
15. Ex. XXI, 22.
16. Ibid. 29-30.
17. Ibid. 32.
18. Ibid. 28-32.

19. *Supra* 28b and 35a
20. Ex. XXI, 34.
21. I.e., could be used by him as food for dogs and like purposes.
22. As no use could lawfully be made of a carcass of a sacred animal that died.
23. Through a blemish.
24. *Supra* 10b.
25. Ex. XXI, 36.
26. V. p. 310, n. 14.
27. V. p. 310, n. 15.
28. V. *supra* p. 302, n. 2.
29. For maintaining exemption.
30. Ex. XXI, 33.
31. Dying through falling into a pit.

## Baba Kamma 54a

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

May I say [that the expression] *And it fall* is intended as a generalisation,<sup>4</sup> while *an ox* or *an ass* [follows as] a specification, and where a generalization is followed by a specification, the generalization does not apply to anything save what is enumerated in the specification,<sup>5</sup> so that only in the case of an ox or an ass should there be liability, but not for any other object whatsoever? — No; for it could be said that [the clause] *The owner of the pit shall make it good*<sup>6</sup> generalizes again. Now where there is a generalization preceding a specification which is in its turn followed by another generalization, you include only such cases as are similar to the specification.<sup>5</sup> [Thus here] as the specification refers to objects possessing life, so too all objects to be included [must be such] as possess life.<sup>7</sup> But [why not argue] since the specification refers to [animate] objects whose carcass would cause defilement whether by touching or by carrying,<sup>8</sup> should we not include [only animate] objects whose carcass would similarly cause defilement whether by touching or by carrying,<sup>9</sup> so that poultry

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would thus not be included?<sup>10</sup> — If so, the Divine Law would have mentioned only one object in the specification. But which [of the two]<sup>11</sup> should the Divine Law have mentioned? Had it inserted [only] 'ox', I might have said that an animal which was eligible to be sacrificed upon the altar<sup>12</sup> should be included, but that which was not eligible to be sacrificed upon the altar<sup>13</sup> should not be included.<sup>14</sup> If [on the other hand] the Divine Law had [only] 'ass', I might have thought that an animal which was subject to the sanctity of firstborn<sup>15</sup> should be included, but that one which was not subject to the sanctity of firstborn<sup>16</sup> should not be included.<sup>17</sup> [But still why indeed not exclude poultry?] Scripture says: *'And the dead shall be his'* [implying] all things that are subject to death. [If so,] whether according to the Rabbis who exclude inanimate objects, or according to R. Judah who includes inanimate objects, [the question maybe raised] are inanimate objects subject to death? It may be said that their breaking is their death. But again according to Rab who stated<sup>18</sup> that the liability imposed by the Torah in the case of Pit was for the unhealthy air [of the pit] but not for the blow [it gave], would either the Rabbis or R. Judah maintain that inanimate objects could be damaged by unhealthy air? — It may be said that [this could happen] with new utensils that burst in bad air. But was not this [clause] *And the dead shall be his*<sup>19</sup> required for the ruling of Raba?<sup>20</sup> For did Raba not say,<sup>21</sup> 'Where a sacred ox which had become disqualified [for the altar] fell into a pit, there would be exemption', as it is said: *And the dead shall be his* [implying that it was only] in the case of an ox whose carcass could be his [that there would be liability] and thus excluding the case of this ox whose carcass could never be his? — But Scripture says: He should give money unto the owner of it<sup>19</sup> [implying] that everything is included which has an owner. If so, why not also include even inanimate objects and human beings?<sup>22</sup> — Because Scripture says specifically 'an ox', [implying] and not 'a man', 'an ass' [implying] and not inanimate

objects. Now according to R. Judah who included inanimate objects we understand the term 'ox' because it was intended to exclude 'man', but what was intended to be excluded by the term an ass? — Raba therefore said:<sup>23</sup> The term 'ass' in the case of Pit, on the view of R. Judah, as well as the term 'sheep' [occurring in the section dealing] with lost property<sup>24</sup> on the view unanimously accepted, remains difficult to explain.

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

1. So that it should not be thought that there should be no liability unless both ox and ass fell in together.
2. [So that 'or' carries the disjunction further to include utensils attached to the animal, v. Malbim, a.l.]
3. As in Ex. XXXVI, 1; Deut. XIII, 3; I Sam. XVII, 34, etc.
4. To include everything.
5. [This is one of the principles of hermeneutics (Kelal u-ferat) according to R. Ishmael, v. Sanh. (Sonc. ed.) p. 12, n. 9.]
6. Ex. XXI, 34.
7. Thus excluding inanimate objects.
8. Lev. XI, 39-40.
9. Lev. *ibid.* 26-28.
10. As these do not cause defilement either by touching or by carrying.
11. Ox and ass.
12. As was the case with ox.
13. Such as an ass, horse, camel and the like.
14. Hence ass was inserted to include also animals not eligible to be sacrificed upon the altar.
15. As was the case with ass; cf. Ex. XIII, 13.
16. Such as e.g., a horse, camel and the like.
17. Hence 'ox' was inserted, for though the species of ox is subject to the sanctity of firstborn and would in no case have been excluded, its insertion being thus superfluous

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was surely intended to include even those animals which are not subject to the sanctity of firstborn.

18. *Supra* p. 289.
19. Ex. XXI, 34.
20. [How then deduce from it liability in case of poultry?]
21. *Supra* p. 296.
22. E.g., slaves.
23. Cf. B.M. 27a.
24. Deut. XXII, 1-3.
25. Which is of course not the case at all

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Still, would not this imply exemption in the case of an ox which was normal?<sup>1</sup> — R. Jeremiah thereupon said: A particularly strong case is taken:<sup>2</sup> There could be no question that in the case of a normal ox there should be liability, but in the case of an ox which is deaf or abnormal or small it might have been thought that it was its deafness that caused [the damage to it] or that it was its smallness that caused it [to fall] so that the owner of the pit should be exempt.<sup>3</sup> We are therefore told [that even here he is liable]. Said R. Aha to Rabina: But it has been taught: If a creature possessing sense fell into it there would be exemption. Does this not mean an ox possessing sense? — He replied: No, it means a man. [If that is so,] would not this imply that only in the case of a man who possesses sense that there would be exemption, whereas if he did not possess sense there would be liability, [and how can this be, seeing that] it is written 'ox' [which implies] 'and not man'? — The meaning of 'one possessing sense' must therefore be 'one of the species of rational being'. But he again said to him: Was it not taught: If there fell into it an ox possessing sense there would be exemption? — Raba therefore said: [The Mishnaic text indeed means] precisely an ox which was deaf, an ox which was abnormal, an ox which was small, for in the case of an ox which was normal there would be exemption, the reason being that such an ox should have looked more carefully while walking. So indeed was it taught likewise:<sup>4</sup> Where there fell into it an ox which was deaf, or abnormal or small, or blind or while

walking at night time, there would be liability whereas if it was normal and walking during the day there would be exemption.

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

**GEMARA.** [WITH REFERENCE] TO FALLING INTO A PIT, since it is written, He should give money unto the owner of it,<sup>14</sup> [to include] everything that an owner has, as indeed already stated.<sup>15</sup> TO EXCLUSION FROM MOUNT SINAI [as it is written] Whether it be animal or man, it shall not live.<sup>6</sup> Beast<sup>16</sup> is included in 'animal' and [the word] 'whether' includes 'birds'. TO PAYING DOUBLE, as we said elsewhere:<sup>17</sup> [The expression] for all manner of trespass<sup>18</sup> is comprehensive. TO RESTORING LOST PROPERTY; [this is derived from the words] with all lost things of thy brother.<sup>19</sup> TO UNLOADING [BURDENS TOO HEAVY FOR AN ANIMAL TO BEAR]; we derive this [by] comparing [the term] 'ass'<sup>9</sup> with [the term] 'ass'<sup>13</sup> [occurring in connection] with the Sabbath.<sup>20</sup> TO [ABSTAINING FROM] MUZZLING; this we learn [similarly by] comparing [the term] 'ox'<sup>10</sup> with [the term] 'ox'<sup>13</sup> [used in connection] with Sabbath.<sup>20</sup> TO HETEROGENEOUS ANIMALS; the rule as regards plowing we learn [by comparing the term] 'ox'<sup>12</sup> with the term 'ox'<sup>13</sup> used [in connection] with Sabbath,<sup>20</sup> and the rule as regards coupling we learn [by comparing the

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term] 'thy cattle'<sup>11</sup> with the term 'thy cattle'<sup>13</sup> [used in connection] with Sabbath. But whence are [all these rules known] to us in the case of Sabbath [itself]? — As it was taught: R. Jose says in the name of R. Ishmael: In the first Decalogue<sup>21</sup> it is said thy manservant and thy maidservant and thy cattle<sup>22</sup> whereas in the second Decalogue<sup>23</sup> it is said thy ox and thy ass and any of thy cattle.<sup>24</sup> Now, are not 'ox' and 'ass' included in 'any of thy cattle'? Why then were they singled out? To tell us that just as in the case of the 'ox and ass' mentioned here,<sup>24</sup> beasts and birds are on the same footing with them.<sup>25</sup> So also [in any other case where 'ox and ass' are mentioned] all beasts and birds are on the same footing with them. But may we not say that 'thy cattle' in the first Decalogue<sup>21</sup> is a generalization, and 'thy ox and thy ass' in the second Decalogue is a specification, and [we know that] where a generalization is followed by a specification, the generalization does not include anything save what is mentioned in the specification,<sup>26</sup> [whence it would follow that only] 'ox and ass' are [prohibited]<sup>27</sup> but not any other thing? — I may reply that the words 'and any of thy cattle' in the second Decalogue constitute a further generalization, so that we have a generalization preceding a specification which in its turn is followed by another generalization; and in such a case you include also<sup>28</sup> that which is similar to the specification,<sup>26</sup> so that as the specification [here] mentions objects possessing life, there should thus also be included all objects possessing life. But, I may say, the specification mentions [living] things whose carcass would cause defilement whether by touching or by carrying.<sup>29</sup> [Why not say that] there should also be included all [living] things whose carcass would similarly cause defilement whether by touching or by carrying,<sup>30</sup> so that birds would thus not be included?<sup>31</sup> — I may reply: If that were the case, the Divine Law would have inserted only one [object in the] specification. But which [of the two]<sup>32</sup> should the Divine Law have inserted? For were the Divine Law to have inserted [only] 'ox', I might have

thought than an animal which was eligible to be sacrificed upon the altar<sup>33</sup> should be included, but one which was not eligible to be sacrificed upon the altar<sup>34</sup> should not be included, so that the Divine Law was thus compelled to insert also 'ass'.<sup>35</sup> If [on the other hand] the Divine Law had inserted [only] 'ass', I might have thought that [an animal which was subject to the] sanctity of first birth<sup>36</sup> should be included, but that which was not subject to the sanctity of first birth<sup>37</sup> should not be included; the Divine Law therefore inserted also 'ox'.<sup>38</sup> It must therefore [be said that] and all thy cattle is [not merely a generalization but] an amplification.<sup>39</sup> [Does this mean to say that] wherever the Divine Law inserts [the word] 'all', it is an amplification? What about tithes where [the word] 'all' occurs and we nevertheless expound it as an instance of generalization and specification? For it was taught:<sup>40</sup> And thou shalt bestow that money for all that thy soul lusteth after<sup>41</sup> is a generalization; for oxen, or for sheep, or for wine, or for strong drink<sup>41</sup> 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 cannot include anything save what is similar to the specification. As therefore the specification [here]<sup>41</sup> mentions products obtained from products<sup>42</sup> and which spring from the soil<sup>43</sup> there may also be included all kinds of products obtained from products<sup>44</sup> and which spring from the soil.<sup>45</sup> [Does this not prove that the expression 'all' was taken as a generalization, and not as an amplification?]<sup>46</sup> — I might say that [the expression] 'for all'<sup>47</sup> is but a generalization, whereas 'all' would be an amplification. Or if you wish I may say that [the term] 'all' is also a generalization, but in this case<sup>48</sup> 'all' is an amplification. For why was it not written And thy cattle just as in the first Decalogue? Why did Scripture insert here 'and all thy cattle' unless it was meant to be an amplification? — Now that you decide that 'all' is an amplification<sup>49</sup> why was it necessary to have 'thy cattle' in the first

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Decalogue and 'ox and ass' in the second Decalogue? — I may reply that 'ox' was inserted [to provide a basis] for comparison of 'ox' with [the term] 'ox' [used in connection] with muzzling; so also 'ass' [to provide a basis] for comparison of 'ass' with the term 'ass' [used in connection] with unloading; so again 'thy cattle' [to provide a basis] for comparison of 'thy cattle' with [the expression] 'thy cattle' [occurring in connection] with heterogeneity. If that is the case [that heterogeneity is compared with Sabbath breaking] why should even human beings not be forbidden<sup>50</sup> [to plow together with an animal]? Why have we learnt; A human being is allowed to plow [the field] and to pull [a wagon] with any of the beasts?<sup>51</sup> — R. Papa thereupon said: The reason of this matter was known to the Papunean,<sup>52</sup> that is R. Aha b. Jacob [who said that as] Scripture says that thy manservant and thy maidservant may rest as well as thou<sup>48</sup> [it is only] in respect of the law of rest that I should compare them [to cattle] but not of any other matter.

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

1. And why should this be so?
2. Lit., 'He states (a case) where there can be no question'.
3. Putting in contributory negligence on the part of the plaintiff as a defense.
4. *Supra* p. 305.
5. V. Ex. XXI, 33.
6. V. *ibid.*, XIX, 13.
7. V. *ibid.* XXII, 3.
8. V. Deut. XXII, 1-3.
9. V. Ex. XXIII, 5 and Deut. XXII, 4.
10. V. Deut. XXV, 4.
11. V. Lev. XIX, 19.
12. V. Deut. XXII, 10.
13. V. Ex. XX, 10 and Deut. V, 14.
14. Ex. XXI, 34.
15. *Supra* p. 313.
16. [I.e., non-domesticated animals.]
17. *Infra* p. 364.
18. Ex. XXII, 8.
19. Deut. XXII, 3.
20. As explained anon.
21. Ex. XX, 2-17

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

## Baba Kamma 55a

there is a mention of wellbeing?<sup>1</sup> — He replied: While you are asking me why

## BABA KAMMA- 31b-62b

wellbeing is mentioned there, ask me whether wellbeing is in fact mentioned or not, as I do not know whether wellbeing is mentioned there or not.<sup>2</sup> Go therefore to R. Tanhum b. Hanilai who was intimate with R. Joshua b. Levi, who was an expert in *Aggadah*. When he came to him he was told by him thus: 'From R. Joshua b. Levi I have not heard anything on the matter. But R. Samuel b. Nahum the brother of the mother of R. Aha son of R. Hanina, or as others say the father of the mother of R. Aha son of R. Hanina, said to me this: Because the [first tablets containing the] Commandments were destined to be broken.'<sup>3</sup> But even if they were destined to be broken, how should this affect [the mention of wellbeing]? — R. Ashi thereupon said: God forbid! Wellbeing would then have ceased in Israel.<sup>4</sup>

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

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

# BABA KAMMA- 31b-62b

country outside Eretz Yisrael is not subject to this obligation; but here,<sup>34</sup> both one place<sup>35</sup> and the other<sup>36</sup> are subject to the obligation.<sup>37</sup>

1. Cf. Deut. V, 16, where the following occurs, That thy days may be prolonged, and that it may go well with the ...
2. As no Halachic point was involved, R. Hiyya b. Abba did not observe the difference; see also Tosaf. B.B. 113a.
3. Ex. XXXII, 19.
4. I.e. if it would have been inserted in the first Decalogue it would have ceased altogether when the two tablets were broken.
5. Some add 'b. Levi'.
6. The ninth letter of the Hebrew alphabet.
7. On so many occasions.
8. I.e. to sweep with a besom.
9. Isa. XIV, 23.
10. Meaning defilement and filthiness.
11. Lam. I, 9.
12. The second letter of the Alphabet.
13. I.e., they sunk.
14. Lam. II, 9.
15. Gen. I, 4.
16. And since the first *teth* in Scriptures commences the word denoting 'good' it is a good omen to see it in a dream.
17. Which denotes an elegy and a lamentation.
18. As the word *hesped* could be divided thus: *has pad* [ah]. i.e. mercy has been exercised and release granted.
19. By stating that the law of heterogeneity applies also to birds.
20. I.e., we are justified in maintaining so.
21. Since they are birds of different kinds.
22. Bek. 8a.
23. The wild goose.
24. The domestic goose.
25. As he transgressed the negative commandment of Lev. XIX, 19.
26. Is not 'cattle' specified in Lev. XIX, 19?
27. Gen. I. 21.
28. Ibid. 25.
29. And a sin has been committed.
30. Which is subject to the law of not being sown with mingled seed.
31. Which is not subject to this law.
32. And since he would not be liable, what doubt could be entertained in the case of a goat and mullet?
33. Of sowing a field with mingled seed.
34. In the case of a goat and a mullet.
35. The dry land.
36. The sea.
37. As derived above from the similarity of expressions 'after its kind'.]

Baba Kamma 55b

## CHAPTER VI

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

## BABA KAMMA- 31b-62b

**GEMARA.** Our Rabbis taught: What is denominated 'properly' and what is not 'properly'? — If the door was able to stand against a normal wind,<sup>2</sup> it would be 'properly', but if the door could not stand against a normal wind, that would be 'not properly'. R. Manni b. Pattish thereupon said: Who can be the Tanna [who holds] that in the case of *Mu'ad*,<sup>10</sup> even inadequate precaution<sup>11</sup> suffices [to confer exemption]? It is R. Judah. For we have learnt: If the owner fastened his ox [to the wall inside the stable] with a cord or shut the door in front of it properly<sup>12</sup> and the ox got out and did damage, whether it was *Tam* or already *Mu'ad*, he would be liable; so R. Meir. R. Judah, however, says: In the case of *Tam* he would be liable, but in the case of *Mu'ad* exempt, for it is written, And his owner hath not kept him in<sup>13</sup> [thus excluding this case where] it was kept in. R. Eliezer, however, says: No precaution is adequate [for *Mu'ad*] save the [slaughter] knife.<sup>14</sup> [But does not an anonymous Mishnah usually follow the view of R. Meir?]<sup>15</sup> — We may even say that it is in accordance with R. Meir, for Tooth and Foot are different<sup>16</sup> [in this respect], since the Torah required a lesser degree of precaution in their case as stated by R. Eleazar, or, according to others, as stated in a Baraitha: There are four cases [of damage] where the Torah requires a lesser degree of precaution. They are these: Pit and Fire, Tooth and Foot. Pit as it is written, And if a man shall open a pit, or if a man shall dig a pit and not cover it,<sup>17</sup> implying that if he covered it<sup>18</sup> he would be exempt. Fire, as it is written, He that kindled the fire shall surely make restitution,<sup>19</sup> [that is to say] only where he acted [culpably], as by actually kindling the fire.<sup>20</sup> Tooth, as it is written, And he shall send forth,<sup>21</sup> [that is to say] only where he acted [wrongly] as by actually sending it forth.<sup>20</sup> It was [further] taught:<sup>22</sup> 'And he shall send forth'<sup>23</sup> denotes Foot, as in the similar expression, That send forth the foot of the ox and the ass;<sup>24</sup> And it shall consume denotes 'Tooth',<sup>23</sup> as in the similar expression, As the tooth consumeth to entirety.<sup>25</sup> This is so only for the reason that

he acted [culpably] as by actually sending it forth or feeding it there,<sup>26</sup> whereas where he did not act [in such a manner] this would not be so. Rabbah said: The text of the Mishnah also corroborates [this view]<sup>27</sup> by taking here the case of sheep. For have we not been dealing all along [so far] with an 'ox'?<sup>28</sup> Why then not say [here also] 'ox'?<sup>29</sup> What special reason was there for taking here SHEEP?<sup>30</sup> Is it not because the Torah required a lesser degree of precaution in their case<sup>31</sup> on account of the fact that it is not Horn that is dealt with here,<sup>32</sup> but Tooth and Foot that are dealt with here? It is thus indicated to us that [this kind of precaution<sup>33</sup> is] only in the case of Tooth and Foot which are *Mu'ad* [ab initio]; and this may be regarded as proved.

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

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

1. As he is not to blame.
2. As he did not discharge his duty of guarding his cattle.
3. I.e., the sheep.
4. Done by the sheep, since they have come into the possession of the robbers, who have thus become liable to control them.
5. But not to the extent of the actual damage: cf. *supra* 19b.
6. In accordance with the law of Tooth.
7. V. [Glos.](#)
8. V. [Glos.](#)
9. Though unable to withstand an extraordinary wind.

# BABA KAMMA- 31b-62b

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

## Baba Kamma 56a

where the wall was shaky.<sup>1</sup>

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

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

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

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

But are there no more cases [of the same category]? Is there not the case of a man who does work with the Water of Purification<sup>10</sup> or with the [Red] Heifer of Purification,<sup>10</sup> where he is similarly exempt according to the judgments of Man but liable according to the judgments of Heaven?<sup>11</sup> Again, is there not the case of one who placed deadly poison before the animal of a neighbor, where he is exempt from the judgments of Man but liable according to the judgments of Heaven?<sup>12</sup> So also is there not the case of one who entrusts fire to a deaf-mute, an idiot or a minor [and damage results], where he is exempt from the judgments of Man but liable according to the judgments of Heaven?<sup>13</sup> Again, is there not the case of the man who gives his fellow a fright, where he is similarly exempt from the judgments of Man but liable according to the judgments of Heaven?<sup>14</sup> And finally is there not the case of the man who, when his pitcher has broken on public ground, does not remove the potsherds, who, when his camel falls does not raise it, where R. Meir indeed makes him liable for any damage resulting therefrom, but the Sages hold that he is exempt from the judgments of Man though liable according to the judgments of Heaven?<sup>15</sup> — Yes, there are surely many more cases [to come under the same category], but these four cases were particularly necessary to be stated by him,<sup>16</sup> as otherwise you might have thought that even according to the judgments of Heaven there should not be any liability. It was therefore indicated to us [that this is not so]. In the case of breaking down a fence in front of a neighbor's animal you might have said

# BABA KAMMA- 31b-62b

that since the wall was in any case bound to come down, what offence was committed, and that even according to the judgments of Heaven there should be no liability. It was therefore indicated to us [that this is not so]. In the case of bending over a neighbor's standing corn in front of a fire you might also have said that the defendant could argue, 'How could I know that an unusual wind would come?' and that consequently even according to the judgments of Heaven he should not be liable; it was therefore indicated to us [that this is not the case]. So also according to R. Ashi who said that the reference is to 'covering', you might have said that [the defendant could contend], 'I surely intended to cover and thus protect your property,<sup>17</sup> and that even according to the judgments of Heaven he should not be liable. It was therefore indicated to us [that this is not so]. In the case of hiring false witnesses you might also have said that the offender should be entitled to plead, 'Where the words of the Master<sup>18</sup> are contradicted by words of a disciple,<sup>19</sup> whose words should be followed?'<sup>20</sup> and that even according to the judgments of Heaven he should not be liable. It was therefore indicated to us [that this is not so]. In the case where one knows evidence in favor of another and does not testify on his behalf, you might also have said that [the offender could argue], 'Who can say for certain that even had I gone and testified on his behalf, the other party would have admitted [the claim], and would not perhaps have sworn falsely [against my evidence]?'<sup>21</sup> and that even according to the judgments of Heaven he should not be liable. It was therefore indicated to us [that this is not the case].

**IF THE WALL BROKE DOWN AT NIGHT OR IF ROBBERS BROKE IN, etc.,** Rabbah said: This<sup>22</sup> is so only where the animal undermined the wall. What then of the case where it did not undermine the wall?<sup>23</sup> Would there then be liability? Under what circumstances? If it be assumed that the wall was sound, why then even where it did not undermine it<sup>23</sup> should there be liability?

What else could the defendant have done? But if, on the other hand, the wall was shaky, why even in the case where the animal undermined it should there be exemption? Is not this a case where there is negligence<sup>24</sup> at the beginning but [damage results from] accident<sup>25</sup> at the end? Your view is correct enough on the assumption<sup>26</sup> that where there is negligence at the beginning [and damage results through] accident at the end there is exemption, but if we take the view<sup>26</sup> that where there is negligence at the beginning though [damage results from] accident at the end there is liability, what can be said? — This ruling of the Mishnah therefore refers to a sound wall and even to a case where it did not undermine the wall.<sup>27</sup> For the statement of Rabbah was made with reference to [the ruling in] the concluding clause, **IF THE OWNER HAD LEFT THEM IN A SUNNY PLACE OR HANDED THEM OVER TO THE CARE OF A DEAF-MUTE, AN IDIOT OR A MINOR AND THEY GOT AWAY AND DID DAMAGE, HE WOULD BE LIABLE.** Rabbah thereupon said: This would be so even where it undermined the wall. For there would be no doubt that [this would be so] where it did not undermine the wall<sup>28</sup> as there was negligence throughout, but even where it did undermine the wall,<sup>29</sup> the ruling<sup>30</sup> would also hold good. You might have said [in that case, that where it undermined the wall]<sup>29</sup> it should be regarded as a case of negligence at the beginning but accident at the end.<sup>31</sup> It was therefore indicated to us<sup>32</sup> that [it is regarded as a case of] negligence throughout, the reason being that the plaintiff might say, 'You should surely have realized that since you left it in a sunny place, it will use every possible device for the purpose of getting out.

**IF THE ROBBERS TOOK THEM OUT, THE ROBBERS WOULD BE LIABLE [FOR THE DAMAGE].<sup>33</sup>**

1. And should in any case have been pulled down.
2. By the expression 'bending over'.
3. For which there is no liability according to the view of the Rabbis (v. *infra* p. 357), and

# BABA KAMMA- 31b-62b

by his act he caused the owner of the corn the loss of all claim to compensation.

4. I.e., to obtain money really not due to him.
5. Which he obtained by false pretenses and by the evidence of the false witnesses whom he hired.
6. I.e. to pay him money not due to him, and it so happened that the neighbor to whom the money was paid could not be made to give back the money he obtained by the false evidence.
7. Why then state it here?
8. Lev. V, 1.
9. Whose evidence would merely entail the imposition of an oath upon the defendant, v. Shebu 40a.
10. Thus disqualifying it from being used for the purpose of purification, Par. IV, 4.
11. Git. 53a, and *infra* 98a.
12. *Supra* 47b.
13. *Infra* 59b.
14. *Infra* 91a.
15. *Supra* 28b.
16. R. Joshua.
17. But not to cause you the loss of compensation.
18. Expressed in the Divine Law.
19. I.e. mortal man.
20. Surely the word of the former. The witnesses should therefore be exclusively responsible, as they should not have followed the advice of a man in contradiction to the words of the Law. The law of agency could on this account not apply in matters of transgression; cf. Kid. 42b and *supra* p. 294.
21. Since one witness could not make the defendant liable for money payment but only for an oath.
22. Exemption.
23. Which fell down of itself.
24. To leave an animal behind a shaky wall which could not withstand a normal wind.
25. Viz., that the animal broke through it.
26. *Supra* 21b.
27. V. p. 327, n. 6.
28. But managed to escape through the door.
29. Which was very sound.
30. Of liability.
31. V. p. 327, n. 8.
32. By Rabbah.
33. V. p. 324, n. 4.

## Baba Kamma 56b

Is this not obvious, seeing that as soon as they took it out it was placed under their charge in all respects?<sup>1</sup> The ruling was necessary to meet the case where they merely stood in front of it<sup>2</sup> [thus blocking any other

way for it while leaving open that leading to the corn]. This is on the lines of the statement made by Rabbah on behalf of R. Mattena who said it on behalf of Rab: If a man placed the animal of one person near the standing corn of another, he is liable.<sup>3</sup> 'Placed', [you say]? Is this not obvious? — The ruling was necessary to meet the case where he merely stood in front of it [blocking thus any other way for it while leaving open that leading to the corn]. Said Abaye to R. Joseph: Did you not explain to us that [the ruling of Rab referred to a case where] the animal was [not actually placed but only] beaten [with a stick and thus driven to the corn]? In the case of robbers also, [the ruling in the Mishnah similarly refers to a case where] they had only beaten it. **IF HE HANDED THEM OVER TO THE CARE OF A SHEPHERD, THE SHEPHERD WOULD ENTER INTO ALL THE RESPONSIBILITIES INSTEAD OF HIM.** I would here ask: 'Instead of whom?' If you say, instead of the owner of the animal, have we not already learnt elsewhere: 'If an owner hands over his cattle to an unpaid bailee or to a borrower, to a paid bailee or to a hirer, each of them would enter into the responsibilities of the owner'?<sup>4</sup> It must therefore mean, instead of a bailee,<sup>5</sup> and the first bailee would be exempt altogether. Would this not be a refutation of Raba? For did Raba not say: One bailee handing over his charge to another bailee becomes liable for all consequences?<sup>6</sup> — Raba might reply that 'he handed it over to a shepherd' means [the shepherd handed it over] to his apprentice, as it is indeed the custom of the shepherd to hand over his sheep to [the care of] his apprentice. Some say that since the text says, **HE HANDED THEM OVER TO THE CARE OF A SHEPHERD** and does not say 'he handed them over to another person, 'it could from this be proved that the meaning of 'HE HANDED THEM OVER TO THE CARE OF A SHEPHERD' is that the shepherd handed [them] over to his apprentice, as it is indeed the custom of the shepherd to hand over [various things] to [the care of] his apprentice, whereas if [he

## BABA KAMMA- 31b-62b

handed it over] to another person this would not be so. May we say that this supports the view of Raba? For did Raba not say: One bailee handing over his charge to another bailee becomes liable for all consequences?<sup>6</sup> — It may however be said that this is no support. For the text perhaps merely mentioned the usual case, though the same ruling would apply [to a case where it was handed over] to another person altogether.

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

1. V. p. 325, n. 7.
2. In which case the sheep did not come into the possession of the robbers.
3. Though the animal which did the damage is not his.
4. *Supra* 44b.
5. I.e. where the sheep has already been in the hands of a bailee who later transferred it to a shepherd. By declaring the shepherd to be liable it is implied that the bailee will become released from his previous obligations.
6. Even for accidents, as he had no right to hand over his charge to another person without the consent of the owner, v. *supra* 11b.
7. And which he will have to return to the owner.
8. To whom the law of Ex. XXII, 6-8 applies, and who is thus exempt where the article was stolen or lost.
9. Who is subject to Ex. XXII, 9-12 and who is therefore liable to pay where the article was stolen or lost.

10. As while a person is occupied with the performance of one commandment he is not under an obligation to perform at the same time another commandment; cf. Suk. 25a.
11. Of looking after the lost article which he found.
12. Who after receiving the consideration is similarly under an obligation to guard.

### Baba Kamma 57a

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

Rabbah [on the other hand] brought an objection to the view of R. Joseph [from the

## BABA KAMMA- 31b-62b

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

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

He<sup>23</sup> brought a [further] objection [from the following]:

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

# BABA KAMMA- 31b-62b

## Baba Kamma 57b

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

May we say that he<sup>18</sup> derives support [from the following]: If a man hired a cow from his neighbor and it was stolen, and the hirer said, 'I would prefer to pay and not to swear'<sup>19</sup> and [it so happened that] the thief was [subsequently] traced, he should make the double payment to the hirer.<sup>20</sup> Now it was presumed that this statement followed the view of R. Judah<sup>21</sup> who said that Hirer<sup>22</sup> is equal [in law] to Paid Bailee.<sup>23</sup> Since then it says 'the hirer said "I would prefer to pay and not to swear"',<sup>19</sup> this shows that had he wished he could have freed himself by resorting to the oath. Under what circumstances [could this be so]? Where, for instance, he advances the plea that an armed malefactor [took it].<sup>24</sup> Now seeing that it says, '... and it so happened that the thief was [subsequently] traced, he should pay the double payment to the hirer',<sup>25</sup> can it not be concluded from this that an armed malefactor is considered as a thief?<sup>26</sup> — I might answer: Do you presume that this statement follows the view of R. Judah who said that Hirer<sup>22</sup> is equal [in law] to Paid Bailee?<sup>23</sup> Perhaps it follows the view of R. Meir who said that Hirer is equal [in law] to Unpaid Bailee.<sup>27</sup> If you wish<sup>28</sup> I may say: [We should read the relevant views] as they were transposed by Rabbah b. Abbuha, who [taught thus]: How is the payment [for the loss of articles] regulated in the case of Hirer? R. Meir says: As in the case of Paid Bailee. R. Judah, however, says: As in the case of Unpaid Bailee.<sup>29</sup> R. Zera said:<sup>30</sup> We are dealing here with a case where the hirer advances the plea [that it was taken by] an armed malefactor, and it was afterwards discovered that [it was taken by] a malefactor without arms.<sup>31</sup>

IF A SHEEP [ACCIDENTALLY] FELL INTO A GARDEN AND DERIVED BENEFIT [FROM THE FRUITS THERE], PAYMENT WOULD HAVE TO BE MADE TO THE EXTENT OF THE BENEFIT. Rab said: [This applies to benefit derived by the animal] from [the lessening of] the impact.<sup>32</sup> But what when it consumed them? Would there be no need to pay even to the extent of

# BABA KAMMA- 31b-62b

the benefit? Shall we say that Rab is here following the principle laid down by him [elsewhere]? For did Rab not say, 'It should not have eaten'?<sup>33</sup> — But what a comparison! Rab said 'It should not have eaten' only there where it was injured [by over-eating itself], so that the owner of the fruits could say [to the plaintiff], 'I will not pay as it should not have eaten [my fruits]'. But did Rab ever say this in the case where the animal did damage to others that there should be exemption?

1. This is a continuation of a Baraitha (now partly lost), which sought at the outset to derive a certain liability (undefined) in the case of a paid bailee by an *a fortiori* from the case of an unpaid bailee.
2. V. p. 332, n. 2.
3. V. p. 332, n. 3.
4. V. p. 332, n. 9.
5. V. p. 332, n. 5.
6. I.e., R. Joseph to Abaye.
7. I.e., by a thief whether armed or unarmed.
8. I.e. Abaye.
9. Ex. XXII, 13 dealing with a borrower.
10. To involve liability.
11. In accordance with Ex. *ibid.* 9-10.
12. *Ibid.* 11.
13. B.M. 95a.
14. Whereas in the case of Borrower there could never be an occasion for double payment, as any plea of theft whether by an armed malefactor or by an ordinary thief would involve the payment of the principal and would thus be an admission of liability and not a defense at all.
15. I.e., R. Joseph to Abaye.
16. Such as is the case with the Borrower.
17. Such as in the case of a Paid Bailee. Cf. also B.M. 41b and 94b.
18. I.e. R. Joseph who maintains that a malefactor in arms is subject to the law applicable to an ordinary thief.
19. In corroboration of my defense.
20. For by offering to pay the value of the cow he acquired title to all possible payments with reference to it, B.M. 34a.
21. As this view was followed in B.M. VII, 8; 36a; 97a; Jeb. 66b; Sheb. VIII, 1 and elsewhere; cf. also 'Er. 46b.
22. Dealt with in Ex. XXII, 14.
23. V. p. 330, n. 3.
24. V. p. 332, n. 5.
25. For by offering to pay the value of the cow he acquired title to all possible payments with reference to it.

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

## Baba Kamma 58a

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

[How did the animal fall]?<sup>5</sup> — R. Kahana said: It slipped in its own water. Raba, however, said: [The rule would hold good

# BABA KAMMA- 31b-62b

even] where another animal pushed it down. The one who explains the ruling to apply where another animal pushed it down, would certainly apply it where it slipped in its own water.<sup>5</sup> But the one who explains the ruling to apply where it slipped in its own water [might maintain that] where another animal pushed it down there was negligence, and the payment should be for the amount of damage done by it, as the plaintiff would be entitled to say, 'You should have made them go past one by one.'

R. Kahana said: The Mishnaic ruling applies only to the bed [into which it fell].<sup>2</sup> If, however, it went from one bed to another bed, the payment<sup>3</sup> would be for the amount of damage done by it. R. Johanan, however, said that even where it went from one bed to another bed and did so even all day long, [the payment would be made only to the extent of the benefit], unless it left the garden and returned there again with the knowledge [of the owner]. R. Papa thereupon said: Do not imagine this to mean 'unless it left the garden to the knowledge of the owner and returned there again with the knowledge of the owner', for as soon as it left the garden to the knowledge of the owner, even though it returned again without his knowledge [there would already be liability],<sup>2</sup> the reason being that the plaintiff might [rightly] say: Since it had once become known [to it where it can find fruit, you should have realized that] whenever it broke loose it would run to that place.

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

the view<sup>11</sup> that where there is negligence at the beginning, but [damage actually results] in the end from sheer accident there is exemption. What [in that case is the law]? Should we say that this is a case where there was negligence at first but the final result was due to accident, and therefore there should be exemption, or should we say [on the contrary that] this case is one of negligence throughout, for since the owner could see that the animal was approaching the time to give birth, he should have watched

1. Lit., 'he says there can be no question'.
2. For which no payment could be demanded, this being merely an act of goodwill and kindness, v. B.B. 52a.
3. That he is 'preventing a lion', etc.
4. The owner of the fruit should thus be entitled to compensation.
5. That it should be considered a mere accident and the payment should only be to the extent of the benefit.
6. As this is certainly a matter of accident.
7. Regarding which the whole act is considered an accident.
8. For the beds except the first one.
9. To the full extent of the damage.
10. Which was apparently an accident.
11. V. *Supra* 21b.
12. That there will be liability in this case too.

## Baba Kamma 58b

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

HOW IS PAYMENT MADE FOR THE AMOUNT OF DAMAGE DONE BY IT? BY COMPARING THE VALUE OF AN AREA IN THE FIELD REQUIRING ONE *SE'AH* OF SEED AS IT WAS [PREVIOUSLY] WITH WHAT ITS WORTH IS [NOW], etc. Whence is this derived? — R. Mattena said: Scripture says, And shall feed in another man's field<sup>1</sup> to teach that the valuation should be made in conjunction with another field. But was this [verse] and shall feed in another man's field not required to exclude public ground [from being subject to this law]? — If so,<sup>2</sup> Scripture would have said 'and shall feed in a neighbor's field' or ['and

## BABA KAMMA- 31b-62b

shall consume] another man's field.' Why then is it said in another [man's] field [unless to teach that] the valuation should be made in conjunction with another field? Let us say then that the whole import [of this verse] was to convey only this ruling, there being thus no authority to exclude public ground? — If so,<sup>3</sup> Scripture would have inserted this clause in the section dealing with payment, e.g., 'of the best of his own field and of the best of his own vineyard shall he make restitution [as valued] in conjunction with another field.' Why then did Scripture put it in juxtaposition with and shall feed unless to indicate that the two [rulings] are to be derived from it.<sup>4</sup>

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

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

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

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

# BABA KAMMA- 31b-62b

Galilean says that it has to be considered in the light of the future value of that which was left in the field. The Sages, however, say that it has to be ascertained how much it [the field] was worth [previously] and how much it is worth [now].

1. Ex. XXII, 4.
2. I.e., were it intended only for that.
3. V. p. 337, n. 7.
4. I.e. that public ground be excluded and that the valuation be made in conjunction with another field.
5. Of an area requiring one *se'ah* of seed.
6. I.e. half a *se'ah*, amounting thus to three *kabs*, though originally it meant two *kabs*.
7. The principle underlying this difference of opinion is made clear in the Baraita that follows.
8. Cf. *supra* p. 123.
9. And not in proportion to the value of a bigger area. This refutes the views of all the cited authorities.
10. [I.e., either 'se'ahs', 'tarkabs' or 'stalks' as the case may be.]
11. V. the discussion *infra*.
12. I.e., thirty se'ahs; cf. [Glos.](#)
13. As the payment would be very small owing to the fact that the deficiency of one *kab* in an area required for sixty *kabs* of seed would hardly be noticed, and so would reduce the general price very little.
14. For the deficiency of one *kor*, in an area required for sixty times as much, is conspicuous, and reduces the general price too much. The valuation of a *se'ah* will therefore be made in proportion to sixty se'ahs.
15. Should be valued in this way.
16. Lit., 'in one nest', or 'place'.
17. R. Nahman.
18. [H] Admon and Hanan b. Abishalom, identical with the 'Judges of Civil Law' [H] mentioned in Keth. XIII, 1 (Rashi). Little is known of their functions and power to enable us to explain their designation (Buchler, *Das Synedrion*, p. 113); cf. also Geiger, *Urschrift*, p. 119.]
19. I.e., two *ma'ahs* which were a third of a *denar*; cf. [Glos.](#)

## Baba Kamma 59a

If it consumed grapes while still in the budding stage, R. Joshua says that they should be estimated as if they were grapes ready to be plucked off. But the Sages [here

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

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

## BABA KAMMA- 31b-62b

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

Abaye further said: The following Tannaim and R. Simeon b. Judah expressed on this point the same view?<sup>11</sup> R. Simeon b. Judah's view as stated by us [above]. Who are the

other Tannaim [referred to]? — As taught: R. Jose says: Deduct the fees of the midwife,<sup>12</sup> but Ben 'Azzai says: Deduct food.<sup>13</sup> The one who says, 'deduct the fees for the midwife' would certainly deduct food,<sup>14</sup> but the one who says, 'deduct food', would not deduct the fees for the midwife, as the plaintiff might say, 'My wife is a lively person and does not need a midwife.'<sup>15</sup> R. Papa and R. Huna the son of R. Joshua in an actual case<sup>16</sup> followed the view of R. Nahman and valued in conjunction with sixty times [as much]. According to another report, however, R. Papa and R. Huna the son of R. Joshua valued a palm tree in conjunction with the small piece of ground.<sup>16</sup> The law is in accordance with R. Papa and R. Huna the son of R. Joshua<sup>17</sup> in the case of an Aramean palm,<sup>18</sup> but it is in accordance with the Exilarch<sup>19</sup> in the case of a Persian palm.<sup>20</sup>

Eliezer<sup>21</sup> Ze'era

1. B. Yohai.
2. Keth. 105a.
3. That it will have to be considered in the light of the future value of that which was left in the field.
4. V. *supra* 6b.
5. Ex. XXII, 4.
6. [In the case where the quality of the bed consumed by the cattle was not in doubt.]
7. [I.e., one view would maintain that this deduction has to be made, while the other would not maintain this.]
8. [It cannot be stated precisely which authority is of the one and which of the other view.]
9. Keth, 39a.
10. Proving that a deduction from the amount of the damages is made on a similar accord.
11. That a deduction should be made on this accord.
12. From the payment for injuring a pregnant woman resulting in a miscarriage; cf. Ex. XXI, 22 and *supra* 49a.
13. I.e. the special diet which would have been necessary during the confinement period.
14. As the special diet would have been an inevitable expense.
15. He would therefore have spared this expense.
16. Where a human being did damage with his body.
17. To value in conjunction with sixty times as much where a human being did damage with his body.

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18. Which is by itself of no great value.
19. To value the tree by itself.
20. Which is even by itself of considerable value.
21. [V.I. Eleazar].

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

**R. SIMEON SAYS: IF IT CONSUMED RIPE FRUITS, etc.** On what ground?<sup>7</sup> — The statement of the Divine Law, *And shall feed in another man's field*,<sup>8</sup> teaching that valuation is to be made in conjunction with the field applies to produce which was still in need of a field, whereas these fruits [in the case before us],<sup>9</sup> since they were no more in

need of a field, must be compensated at their actual value.

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

**MISHNAH.** IF A MAN PUTS HIS STACKS OF CORN IN THE FIELD OF ANOTHER WITHOUT PERMISSION, AND THE ANIMAL OF THE OWNER OF THE FIELD EATS THEM, THERE IS NO LIABILITY. MOREOVER, IF IT SUFFERED HARM FROM THEM, THE OWNER (OF THE STACKS WOULD BE LIABLE. IF, HOWEVER, HE PUT THE STACKS THERE WITH PERMISSION, THE OWNER OF THE FIELD WOULD BE LIABLE.

**GEMARA.** May we say that this Mishnah is not in accordance with Rabbi? For if in accordance with Rabbi, did he not say<sup>13</sup> that unless the owner of the premises explicitly took upon himself to safeguard he would not be liable?<sup>14</sup> — R. Papa said: [Here we were dealing with] the watchman of the barns.<sup>15</sup>

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For since he said, 'Enter and place your stacks', it surely amounted to, 'Enter and I will guard for you'.<sup>16</sup>

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

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

1. Cf. Ta'an. 22a. [Tosaf. regards the black lacing as the distinguishing mark of mourning, v. also Krauss, Talm. Arch. I, 628.]
2. In such a manner.
3. Why then not pay for actual dates of which the owner was deprived?
4. Why then pay for ripe dates?
5. Including the ground occupied by them.

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

## Baba Kamma 60a

shavings and a light, in which case it was certainly his act that was the immediate cause.<sup>1</sup>

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

IF IT WAS THE WIND THAT FANNED IT, ALL WOULD BE EXEMPT. Our Rabbis taught: Where he fanned it [along with] the wind which also fanned it, if there was enough force in his blowing to set the fire ablaze he would be liable, but if not he

## BABA KAMMA- 31b-62b

would be exempt. But why should he not be liable, as in the case of one winnowing [on Sabbath, who is liable] though the wind was helping him?<sup>7</sup> — Abaye thereupon said: We are dealing here with a case where e.g., he blew it up in one direction and the wind blew it up in a different direction.<sup>8</sup> Raba said: [The case is one] where e.g., he started to blow it up when the wind was only normal, [and would have been unable to set it ablaze], but there [suddenly] came on an unusual wind which made it blaze up. R. Zera said: [The case is one] where e.g., he merely increased the heat by breathing heavily on it.<sup>9</sup> R. Ashi said: When we say that there is liability for winnowing where the wind is helping, this applies to Sabbath where the Torah prohibited any work with a definite object,<sup>10</sup> whereas here [regarding damage] such an act could be considered merely as a secondary cause, and a mere secondary cause in the case of damage carries no liability.

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

**GEMARA.** Raba said: Why was it necessary for the Divine Law to mention [both] 'thorns', 'stacks', 'standing corn' and 'field'? They are all necessary. For if the Divine Law had mentioned [only] 'thorns', I might have said that it was only in the case of thorns that the Divine Law imposed liability because fire is found often among them and carelessness in regard to them is frequent,<sup>12</sup> whereas in the case of 'stacks',<sup>13</sup> which are not often on fire and in respect of which negligence is not usual, I might have held that there is no liability. If [again] the Divine Law had mentioned [only] 'stacks', I might have said that it was only in the case of 'stacks' that the Divine Law imposed liability as the loss

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

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

# BABA KAMMA- 31b-62b

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

Rab Judah stated that Rab said:

1. *Supra* 9b.
2. [H] (connected with [H], 'flame'), to denote blazing up.
3. [ [H] from [H], 'to blow up' to blow a blaze'. ]
4. For similar textual remarks by the same sage, cf. A.Z. 2a.
5. Ex. III, 2.
6. Isa. LVII, 19. [The blaze is provided by 'the movement of the lips', i.e., by blowing with the mouth.]
7. Cf. Shab. VII, 2; v. also B.B. 26a.
8. So that the wind did not help him at all.
9. But did not actually blaze it up.
10. Whether man did it wholly by his own body or not.
11. Ex. XXII, 5.
12. As thorns are usually worthless and nobody minds them.
13. Which are of great value and are usually looked after.
14. Excluding thus hidden articles.
15. *Supra* 5b.
16. E.g., living objects and plants [Though the latter, unlike 'stacks' are still attached to the ground. Tosaf.]
17. Cf. *supra* p. 311, and also Tosaf. Hul. 86b.
18. V. p. 347. n. 5.
19. Which includes everything.
20. Such as the field itself.
21. [Having stated 'standing corn', the Torah must have added 'field' to indicate the field itself.]
22. Ex. XXII, 5.
23. Used metaphorically to express the righteous.
24. Ex. XII, 22.
25. Ezek. XXI, 8.
26. Thus mentioning first the 'righteous' and then the 'wicked'.
27. I.e., the righteous.
28. That they are punished even for the wicked.

29. Isa. LVII, 1.

## Baba Kamma 60b

A man should always enter [a town] by daytime and leave by daytime, as it says, *And none of you shall go out at the door of his house until the morning.*<sup>1</sup>

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

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

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Arameans; if they save us alive, we shall live.<sup>13</sup>

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

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

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

When R. Ammi and R. Assi were sitting before R. Isaac the Smith, one of them said to him: 'Will the Master please tell us some legal points?' while the other said: 'Will the Master please give us some homiletical instruction?' When he commenced a homiletical discourse he was prevented by the one, and when he commenced a legal discourse he was prevented by the other. He therefore said to them: I will tell you a parable: To what is this like? To a man who has had two wives, one young and one old. The young one used to pluck out his white hair, whereas the old one used to pluck out his black hair. He thus finally remained bald on both sides. He further said to them: I will accordingly tell you something which will be equally interesting to both of you:<sup>16</sup> If fire break out and catch in thorns; 'break out' implies 'of itself'. He that kindled the fire shall surely make restitution. The Holy One, blessed be He, said: It is incumbent upon me to make restitution for the fire which I

kindled. It was I who kindled a fire in Zion as it says, And He hath kindled a fire in Zion which hath devoured the foundations thereof,<sup>17</sup> and it is I who will one day build it anew by fire, as it says, For I, [saith the Lord] will be unto her a wall of fire round about, and I will be the glory in the midst of her.<sup>18</sup> On the legal side, the verse commences with damage done by chattel,<sup>19</sup> and concludes with damage done by the person,<sup>20</sup> [in order] to show that Fire implies also human agency.<sup>21</sup>

Scripture says:<sup>22</sup> And David longed, and said, Oh that one would give me water to drink of the well of Bethlehem, which is by the gate. And the three mighty men broke through the host of the Philistines and drew water out of the well of Bethlehem that was by the gate, etc. What was his difficulty?<sup>23</sup> — Raba stated that R. Nahman had said: His difficulty was regarding concealed articles damaged by fire<sup>24</sup> — whether the right ruling was that of R. Judah<sup>25</sup> or of the Rabbis;<sup>26</sup> and they gave him the solution, whatever it was. R. Huna, however, said: [The problem was this:] There were there<sup>27</sup> stacks of barley which belonged to Israelites but in which Philistines had hidden themselves, and what he asked was whether it was permissible to rescue oneself through the destruction of another's property.<sup>28</sup> The answer they dispatched to him was: [Generally speaking] it is forbidden to rescue oneself through the destruction of another's property<sup>29</sup> you however are King and a king may break [through fields belonging to private persons] to make a way [for his army], and nobody is entitled to prevent him [from doing so].<sup>30</sup> But [some] Rabbis, or, as [also] read, Rabbah b. Mari, said: There were there<sup>31</sup> [both] stacks of barley belonging to Israelites and stacks of lentils belonging to the Philistines.<sup>32</sup> The problem on which instruction was needed was whether it would be permissible to take the stacks of barley that belonged to the Israelites and put them before the beasts [in the battle field], on condition of [subsequently] paying for them with the

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stacks of lentils that belonged to the Philistines. [The reply] they dispatched to him [was]: If the wicked restore the pledge, give again the robbery,<sup>33</sup> [implying that] even where the robber [subsequently] pays for the 'robbery', he still remains 'wicked'. You, however, are King and a king may break through [fields of private owners] making thus a way [for his army], and nobody is entitled to prevent him [from doing so]. If we accept the view that he wanted to exchange,<sup>34</sup> we can quite understand how in one verse it is written, Where was a plot of ground full of lentils,<sup>35</sup> and in another verse it is written, Where was a plot of ground full of barley.<sup>36</sup> If we, however, take the view that he wanted to burn them<sup>37</sup> down, what need was there to have these two verses?<sup>38</sup> — He, however, might say to you that there were also there stacks of lentils which belonged to Israelites and in which Philistines were hidden.<sup>39</sup> Now on the view that he wanted to burn them<sup>37</sup> down, we can quite understand why it is written, But he stood in the midst of the ground, and defended it.<sup>40</sup> But according to the view that he wanted to exchange, what would be the meaning of and he defended it?<sup>41</sup> — That he did not allow them to exchange. According to [these] two views, we can quite understand why there are two verses.

1. V. p. 348, n. 9.
2. Isa. XXVI, 20.
3. Deut. XXXII, 25.
4. To keep indoors.
5. Isa. XXVI, 20.
6. The house.
7. Of the Angel of Death.
8. Jer. IX, 20.
9. I.e., migrate to another place; see also B.M. 75b.
10. Gen. XII, 10.
11. II Kings VII, 4.
12. Implied in Gen. XII, 10.
13. II Kings VII, 4.
14. [ [H] Lit., 'House of meeting', the Synagogue. The origin of the term as applied to a synagogue is uncertain. It probably has its source in the assemblies called together for the purpose of considering problems of an economic and social character. These were

probably attended with some sort of prayer and out of these evolved the regular meetings for prayers, v. Zeitlin, *The Origin of the Synagogue in the Proceedings of the American Academy for Jewish Research, 1930-31, p. 75 ff.*]

15. In the House of Worship.
16. Ex. XXII, 5.
17. Lam. IV, 11.
18. Zech. II, 9.
19. As the expression 'if a fire break out' means 'break out itself without any direct act on the part of man'; cf. supra p. 115.
20. By saying, 'He that kindled a fire', implying that there was some direct act on the part of man to kindle the fire.
21. V. supra p. 115.
22. II Sam. XXIII, 15-16.
23. For as 'water' is homiletically used as a metaphor expressing learning, it was aggadically assumed here that instead of actual water David was in need of some legal instruction, especially since mention was made in the verse of 'the gate' which was then the seat of judgment.
24. As some of his men burned down a stack in which articles were hidden, v. p. 353. n. 6.
25. Who imposes liability.
26. Who maintain exemption.
27. Near the battle-field.
28. As the warriors of David burned the stacks down for strategical purposes and the problem was whether compensation was to be made or not.
29. I.e. compensation should be made.
30. V. Sanh. 20a.
31. V. p. 351, n. 11.
32. The enemy.
33. Ezek. XXXIII, 15.
34. Stacks of barley belonging to Israelites for stacks of lentils that belong to the enemy.
35. II Sam. XXIII, 11.
36. I Chron. XI, 13.
37. I.e., the stacks of barley belonging to the Israelites without repaying them with the lentils of the enemy.
38. In fact the two verses contradict each other.
39. And which had thus also to be burned down.
40. Ibid. 12. This would show that he did not let his warriors burn the stacks as this was not permissible by strict law.
41. Since there was no question there of burning down.

## Baba Kamma 61a

But according to the view that his inquiry concerned concealed goods in the case of

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Fire, what need was there for the verses?<sup>1</sup> — He might say to you that besides [the problem of] hidden goods [in the case of Fire], one of the other problems [referred to above]<sup>2</sup> was asked by him. Now according to the [other] two views we quite understand why it is written, *But he would not drink thereof*,<sup>3</sup> for he said, 'Since there is a [general] prohibition<sup>4</sup> I do not want it.'<sup>5</sup> But according to the view that his inquiry concerned hidden goods<sup>6</sup> in the case of Fire, was it not a traditional teaching which was dispatched to him, [and that being so,]<sup>7</sup> what would be the meaning of '*But he would not drink thereof*'?<sup>8</sup> — [The meaning would be] that he did not want to quote this teaching in their names,<sup>9</sup> for he said: 'This has been transmitted to me from the Court of Law presided over by Samuel of Ramah, that no halachic matter may be quoted in the name of one who surrenders himself to meet death for words of the Torah.'

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

**MISHNAH.** IF IT CROSSED A FENCE FOUR CUBITS HIGH OR A PUBLIC ROAD<sup>12</sup> OR A CANAL, THERE WOULD BE NO LIABILITY.<sup>13</sup>

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

would be liability; up to [the height of] four cubits, there would [still] be liability.

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

Rab said: The Mishnaic ruling applies only where the fire was rising in a column, but where it was creeping along there would be liability, even if it crossed a public road of about [the width of] a hundred cubits. Samuel [on the other hand] said that the Mishnah deals with a creeping fire; for in the case of a fire rising in a column there would be exemption if it crossed a public road of any width whatsoever. It was, however, taught in accordance with Rab: This ruling<sup>16</sup> applies only where it was rising in a column; if it was creeping along, and wood happened to be in its path, there would be liability were it even to pass over a public ground of about the width of a hundred *mil*.<sup>17</sup> If, however, it crossed a river or pool eight cubits wide, there would be exemption.

**A PUBLIC ROAD.** Who was the Tanna [who laid this down]? — Raba said: He was R. Eliezer, as we have indeed learnt: 'R. Eliezer says: [If it was] sixteen cubits [wide] like the road in a public thoroughfare, [there would be exemption].'<sup>18</sup>

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

Elsewhere we have learnt: 'Divisions [of fields] with respect to *Pe'ah*<sup>20</sup> are affected by the following: a brook, a *shelulith*, a private road and a public road.<sup>21</sup> What is *shelulith*?

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— Rab Judah stated that Samuel had said: A [low lying] place where rainwater collects.<sup>22</sup> R. Bibi, however, said on behalf of R. Johanan: A pond of water which [as it were] distributes spoil<sup>23</sup> to the banks. The one who says that it means a [low-lying] place where rain water collects would certainly apply the ruling to a pond of water,<sup>24</sup> but the one who says that it means a pond of water would on the other hand maintain that [low-lying] places where rain-water collects would not cause a division, as these

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

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should more properly be called the receptacles of the land.<sup>1</sup>

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

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

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

**GEMARA.** R. Kahana said: The difference [of opinion]<sup>16</sup> was only where the man kindled the fire on his own [premises], from which it passed on and consumed [the stack standing] in his neighbor's premises, R. Judah imposing liability for damage done to Tamun<sup>17</sup> in the case of Fire whereas, the Rabbis<sup>18</sup> grant exemption. But if he kindled the fire on the premises of his neighbor, both agreed that he would have to pay for all that was there.<sup>19</sup> Said Raba to him: 'If so, why does it say in the concluding clause, THE SAGES, HOWEVER, AGREE WITH R. JUDAH IN THE CASE OF ONE WHO SET FIRE TO A CASTLE THAT THE PAYMENT SHOULD BE FOR ALL THAT WAS KEPT THEREIN'? Now why not draw the distinction in the same case by making the text run thus: These statements apply only in the case where he kindled the fire on his own [premises], whence it travelled and consumed [the stacks standing] in his neighbor's premises; but where he kindled the fire in the premises of his neighbor, all would agree that he should pay for all that

was kept there? — Raba therefore said: They differed in both cases. They differed where he kindled the fire in his own [premises] whence it travelled and consumed [stacks standing] in his neighbor's premises, R. Judah imposing liability to pay for Tamun in the case of Fire, whereas the [other] Rabbis hold that he is not liable [to pay for *Tamun* in the case of Fire].<sup>20</sup> They also differed in the case where he kindled a fire in the premises of his neighbor, R. Judah holding that he should pay for everything that was there, including even purses [of money], whereas the Rabbis held that it was only for utensils which were usually put away in the stacks, such as e.g. threshing sledges and cattle harnesses that payment would have to be made, but for articles not usually kept in stacks no payment would have to be made.

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

1. And should therefore not cause the fields to be considered separated from one another.
2. V. Glos.
3. As fire when rising in columns could not be expected to pass on to further distances.
4. B. Hyrcanus.
5. V. p. 355, n. 10.
6. Ex. XXII, 5.
7. [Assuming that what R. Simeon means is that it all depends on the damage caused by the fire irrespective of the distance.]
8. I.e., the neighbors have the right to prevent him from doing so.
9. B.B. II, 2.
10. But each case should be considered in accordance with its own circumstances.
11. [Only of this our Mishnah, but not of B.B. (Rashal).]
12. For the goat and for the barn, but no liability whatever for the slave, for, since he was loose, he should have escaped.
13. For the goat and even for the barn, for since the slave was chained a capital charge is

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- involved, and all civil liabilities merge in capital charges; v. *supra* p. 113 and p. 192.
14. Who ordains payment even for concealed articles.
  15. The law about hidden goods could therefore not be applicable in this case.
  16. Between the Sages and R. Judah
  17. I.e., something hidden; v. [Glos.](#)
  18. The Sages.
  19. For the act of trespass.
  20. Even for utensils which are customarily kept in stacks.
  21. For which payment will be made.

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

Raba said: If a man gives a gold *denar* to a woman and says to her, 'Be careful with it, as it is a silver coin', if she damaged it she would have to pay for a gold *denar* because he could [rightly] plead against her: 'What business had you to damage it?' But if she was [merely] careless with it,<sup>6</sup> she would have to pay only for a silver *denar*, as she could [rightly] plead against him: 'It was only silver that I undertook to take care of,

but I never undertook to take care of gold.' Said R. Mordecai to R. Ashi: 'Do you state this in the name of Raba? We derive it quite definitely from the Baraitha [which states]: [If a man piled up] wheat [for which the permission was granted], but covered it with barley, or again [if he piled up] barley but covered it up with wheat, no payment would be made except for the value of the barley alone. Now, does this not prove that he is entitled to plead against the plaintiff: 'It was only barley that I undertook to take care of?' Here too she is surely entitled to plead against the depositor, 'I never undertook to take care of gold.'

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

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

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A certain man kicked another's money-box into the river. The owner came [into Court] and said: 'So much and so much did I have in it.' R. Ashi was sitting and pondering on it: What should be the law in such a case? — Rabina said to R. Aha the son of Raba, or, as others report, R. Aha the son of Raba said to R. Ashi: Is this not exactly what was stated in the Mishnah? For we learnt: 'THE SAGES AGREE WITH R. JUDAH IN THE CASE OF ONE WHO SET FIRE TO A CASTLE, THAT PAYMENT SHOULD BE FOR ALL THAT WAS KEPT THEREIN, AS IT IS SURELY THE CUSTOM OF MEN TO KEEP [VALUABLES] IN [THEIR] HOMES. [Is this not equivalent to the case in hand?]<sup>14</sup> — He, however, said to him: If he would have pleaded that he had money there, it would indeed have been the same.<sup>15</sup> But we are dealing with a case where he pleads that he had jewels there. What should then be the legal position? Do people keep jewels in a money-box or not? — Let this remain undecided.

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

R. Adda the son of R. Iwya said to R. Ashi: What is the [practical] difference between gazlan<sup>12</sup> and hamsan?<sup>13</sup> — He replied: A hamsan [one who expropriates forcibly] offers payment [for what he takes], whereas a gazlan does not make payment. The other rejoined: If he is prepared to make payment, how can you call him hamsan? Did R. Huna not say<sup>14</sup> that [even] where the vendor was [threatened to be] hanged [unless he would agree] to sell, the sale would be a valid sale?<sup>15</sup> — This, however, is no contradiction, as in that case, the vendor did [finally]<sup>16</sup> say

'I agree', whereas here [in the case of hamsan] he never said 'I agree'.<sup>17</sup>

1. [Tosaf. omits 'all agree that', and take this passage as a continuation of the words of the Sages.]
2. According to Raba this refers only to utensils which are usually kept in stacks.
3. And it so happened that they were all burned down by a fire kindled by the owner of the field.
4. As the owner of the field knew only of the stacks.
5. As where permission was granted for barley the owner of the field could not have expected that wheat would be piled up. Even where permission was given for wheat, if the stacks were covered with barley, the owner of the field can plead that he only noticed barley.
6. And the liability upon her is only because of her undertaking to keep it as an unpaid bailee.
7. Which was the personal name of Rab.
8. That where the amount of the loss cannot be established by proper evidence the plaintiff is entitled to take an oath as to the loss he sustained; v. Shebu. VII, 1.
9. *Infra* 117b.
10. Such as, e.g., in the case of informers.
11. For just as it is the custom of men to keep valuables in their homes, it is surely the custom of men to keep money in money boxes.
12. I.e. robber.
13. I.e., violent person.
14. B.B. 47b.
15. For since he took the money the sale could not be called forced.
16. After the pressure brought to bear upon him.
17. The sale could therefore not become valid.

### Baba Kamma 62b

**MISHNAH.** IF A SPARK ESCAPES FROM UNDERNEATH A HAMMER AND DOES DAMAGE, THERE WOULD BE LIABILITY. IF WHILE A CAMEL LADEN WITH FLAX WAS PASSING THROUGH A PUBLIC THOROUGHFARE THE FLAX GOT INTO A SHOP AND CAUGHT FIRE BY COMING IN CONTACT WITH THE SHOPKEEPER'S CANDLE, AND SET ALIGHT THE WHOLE BUILDING, THE OWNER OF THE CAMEL WOULD BE LIABLE.<sup>1</sup> IF, HOWEVER, THE SHOPKEEPER LEFT HIS CANDLE OUTSIDE [HIS SHOP], HE WOULD BE LIABLE.<sup>2</sup> R.

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JUDAH SAYS: IF IT WAS A CHANUKAH<sup>3</sup>  
CANDLE THE SHOPKEEPER WOULD NOT  
BE LIABLE.<sup>4</sup>

**GEMARA.** Rabina said in the name of Raba:  
From the statement of R. Judah we can learn  
that it is ordained to place the Chanukah  
candle within ten handbreadths [from the  
ground]. For if you assume [that it can be  
placed even] above ten handbreadths, why  
did R. Judah say that in the case of a  
Chanukah candle there would be exemption?  
Why should the plaintiff not plead against  
him: 'You should have placed it above the  
reach of the camel and its rider?' Does this  
therefore not prove that it is ordained to  
place it within the [first] ten handbreadths?  
— It can, however, be argued that this is not  
so. For it could still be said that it might be  
placed even above the height of ten  
handbreadths, and as for your argument  
'You ought to have placed it above the reach  
of the camel and its rider', [it might be  
answered that] since he was occupied with  
the performance of a religious act, the  
Rabbis could not [rightly] make it so  
troublesome to him.<sup>5</sup> R. Kahana said that R.  
Nathan b. Minyomi expounded in the name  
of R. Tanhum:<sup>6</sup> 'If the Chanukah candle is  
placed above [the height of] twenty cubits it  
is disqualified [for the purpose of the  
religious performance],<sup>7</sup> like a *sukkah*<sup>8</sup> and  
an alley-entry.<sup>9</sup>