

# Introduction to Tractate Baba Mesi'a

## Three tractates related to civil law

The civil law of Judaism is set forth in the three tractates bearing *Baba* (“gate”) in their title, *Baba Qamma* (“first gate”), *Baba Mesi'a* (“middle gate”), and *Baba Batra* (“last gate”). For a summary of the relationship among these tractates see the conclusion of the introduction to tractate *Baba Batra*.

## Baba Mesi'a

Continuing the topical program of *Baba Qamma*, *Baba Mesi'a* takes up where the former left off. *Baba Qamma* concludes with the analysis of the law of restoring what has been stolen. *Baba Mesi'a* starts with the law of restoring what has been lost. It then shifts to a new topic, the law governing transactions of an equitable character between buyer and seller, and between employer and employee. In the former case, the law focuses on the counterpart to theft, overcharging, and usury. In the latter, it proceeds to an account of what each party owes the other. It concludes with attention to matters of real estate, specifically to the relationships between partners in a given household, that is, relationships between tenant and landlord and relationships between tenant-farmer and householder.

- I. The disposition of other peoples' possessions
  - A. Conflicting claims on lost objects
  - B. Returning an object to the original owner
  - C. Rules of bailment
- II. Commercial transactions
  - A. Overcharge and misrepresentation
  - B. Usury
- III. Hiring workers; rentals and bailments
  - A. The mutual obligations of worker and employer
  - B. Rentals
  - C. Bailments
  - D. The mutual obligations of worker and employer
  - E. Bailments
- IV. Real estate
  - A. Prologue
  - B. Landlord-tenant relationships
  - C. The landlord's relationships with a tenant farmer and sharecropper
  - D. Paying laborers promptly; taking a pledge
  - E. Joint holders of a common property

The law in *Baba Mesi'a* pays specific attention to the attitude of participants in a given transaction: when the participants' attitude governs; when it is dismissed as null; and when it takes a subordinate position in an exchange. These three readings of the role of the will of the parties to a transaction—

- (1) paramount,
- (2) excluded, and
- (3) subordinated but effective—form the outline of *Baba Mesi'a*'s exposition.

When it comes to resolving conflicting claims, it focuses upon the attitudes of the participants to the conflict. First, parties in conflict ought to resolve the conflict in a manner that is not only equitable but also that is *deemed* to be equitable by all parties. Second, in assessing rights of ownership, the attitude of the original owner is taken into account, particularly the one who gives up his title when he despairs of regaining his property. Third, in assessing liability of a bailee, *Baba Mesi'a* assigns restitution in proportion to the responsibility that the bailee has accepted. In all three instances, therefore, the variables of the law respond to the attitudes of the participants in a transaction of untoward consequences.

When *Baba Mesi'a* deals with market-transactions, however, it treats as subordinate or dismisses outright as irrelevant the attitude of the players—both the informed seller and the willing buyer. Rather, it imposes the criterion of a fixed or true value. That criterion overrides the agreement of the parties to the transaction. The law underscores that in the face of the fixed and true value that inheres in a transaction, the willingness of the parties to ignore true value is simply nullified. A borrower may willingly pay usury—in the innocent form of a warm greeting, for instance, or a gesture of friendship—but the transaction is, nonetheless, illegal. Even though a purchaser is willing to pay a premium for an object, his attitude does not affect the value of the object. One may be willing to pay a premium for the use of capital, but such a premium is deemed not a return on capital, but usury, and is illegal. All transactions must conform to a measure of exact exchange of true value.

Private agreements can, however, be taken into account in other exchanges. In transactions involving labor, rentals, and bailment, the attitude of the participants to an agreement fixes the terms of the agreement, which then cannot be unilaterally revised. Labor, like slaves, bonds, and other documents, has no true value in the way that grain does. Each party bargains in good faith without the constraints governing usury. But once the transaction involving such and such a wage for work or when a span of labor is agreed upon by both parties, it is binding. Here the initial agreement governs because each party had acceded willingly to it and the attitude or intention of one party cannot then dictate changes not accepted by the other.

In the matter of bailments, liability corresponds to the level of responsibility imposed by the variable compensation available to the bailee; he is assumed to be willing to take greater precautions and accept more substantial liability in response to greater compensation.