

1

Bavli Baba Qamma Chapter One

Folios 2A-17A

1:1

- A. [There are] four generative classifications of causes of damages: (1) ox (Exo. 21:35-36), (2) pit (Exo. 21:33), (3) crop-destroying beast (Exo. 22: 4), and (4) conflagration (Exo. 22: 5).
- B. [The indicative characteristic] of the ox is not equivalent to that of the crop-destroying beast;
- C. nor is that of the crop-destroying beast equivalent to that of the ox;
- D. nor are this one and that one, which are animate, equivalent to fire, which is not animate;
- E. nor are this one and that one, which usually [get up and] go and do damage, equivalent to a pit, which does not usually [get up and] go and do damage.
- F. What they have in common is that they customarily do damage and taking care of them is your responsibility.
- G. And when one [of them] has caused damage, the [owner] of that which causes the damage is liable to pay compensation for damage out of the best of his land (Exo. 22: 4).

I.1

- A. [Four generative causes of damages:]
- B. *Since the framer of the passages makes reference to **generative causes**, it is to be inferred that there are derivative ones as well.* Are the derivative causes

equivalent [in effect] to the generative causes or are they not equivalent to them in effect?

- C. *We have learned with reference to the Sabbath: **The generative categories of acts of labor [prohibited on the Sabbath] are forty less one [M. Shab. 7:2A].** Since the framer of the passages makes reference to **generative categories**, it is to be inferred that there are derivative ones as well. Are the derivative categories equivalent to the generative categories or are they not equivalent to them?*
- D. *Well, there is no difference between one's inadvertently carrying out an act of labor that falls into a generative category, in which case he is liable to present a sin-offering, and one's inadvertently carrying out an act of labor that falls into a derivative category of labor, in which case he is also liable to present a sin-offering. [The outcome is the same as to penalty.] There is no difference between one's deliberately carrying out an act of labor that falls into a generative category, in which case he is liable to the death penalty through stoning, and one's deliberately carrying out an act of labor that falls into a derivative category of labor, in which case he is also liable to the death penalty through stoning.*
- E. *So then what's the difference between an act that falls into the generative category and one that falls into the derivative category?*
- F. *The upshot is that if one simultaneously carried out two actions that fall into the class of generative acts of labor, or two actions that fall into the classification of a derivative category, he is liable for each such action, while, if he had performed simultaneously both a generative act of labor and also a derivative of that same generative action, he is liable on only one count.*
- G. *And from the perspective of R. Eliezer, who imposes liability for a derivative action even when one is simultaneously liable on account of carrying out an act in the generative category, on what basis does one classify one action as generative and another as derivative [if it makes no practical difference]?*
- H. *Those actions that are carried out [even on the Sabbath] in the building of the tabernacle are reckoned as generative actions, and those that were not carried out on the Sabbath in the building of the tabernacle are classified as derivative.*

- I.2** A. *With reference to uncleanness we have learned in the Mishnah: **The generative causes of uncleanness [are] (1) the creeping thing, and (2) semen [of an adult Israelite], [2B] and (3) one who has contracted corpse***

uncleanness, [and (4) the leper in the days of his counting, and (5) sin-offering water of insufficient quantity to be sprinkled. Lo, these render man and vessels unclean by contact, and earthenware vessels by [presence within the vessels' contained] air space. But they do not render unclean by carrying] [M. Kel. 1:1]. And their derivatives are not equivalent to them, for while a generative cause of uncleanness imparts uncleanness to a human being and utensils, a derivative source of uncleanness imparts uncleanness to food and drink but not to a human being or utensils.

- I.3** A. *Here what is the upshot of the distinction at hand?*
 B. Said R. Pappa, "There are some derivatives that are equivalent in effect to the generative cause, and there are some that are not equivalent in effect to the generative cause."

The Scriptural Foundations for the Definition of Generative Causes of Damage; the Subsets of the Classifications

- I.4** A. *Our rabbis have taught on Tannaite authority:*
 B. Three [of the four] generative causes of damage are stated with respect to the ox: horn, tooth, and foot.
- I.5** A. *How on the basis of Scripture do we know the case of the horn?*
 B. *It is in line with that which our rabbis have taught on Tannaite authority:*
 C. "If it will gore..." (Exo. 21:28) — and goring is done only with the horn, as it is said, "And Zedekiah, son of Chenaanah, made him horns of iron and said, Thus saith the Lord, with these shall you gore the Aramaeans" (1Ki. 22:11);
 D. and it is further said, "His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn; with them he shall gore the people together" (Deu. 33:17).
 E. *What's the point of "and it is further said"?*
 F. *Should you say that teachings on the strength of the Torah are not to be derived from teachings that derive from prophetic tradition, then come and take note: "His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn; with them he shall gore the people together" (Deu. 33:17).*
 G. *Yeah, well, is this really a deduction out of a scriptural proof-text? To me it looks more like a mere elucidation, showing that "goring" is something that is done by a horn.*

H. *What might you otherwise have supposed? That where Scripture makes an important distinction between an ox that was not known to gore and one that is a certified danger, that concerns a horn that is cut off [as in the case of the first of the two examples, that of 1Ki. 22:11], but as to one that is actually attached to the beast, all goring is classified as done by an ox that is an attested danger. Then come and take note: “His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn; with them he shall gore the people together” (Deu. 33:17).*

- I.6**
- A. *What are the derivatives of the horn?*
 - B. *Butting, biting, falling, and kicking.*
 - C. *How come goring is called a generative cause of damages? Because it is stated explicitly, “If it will gore...” (Exo. 21:28). But then in reference to butting, it also is written, “If it butts” (Exo. 21:35).*
 - D. *That reference to butting refers in fact to goring, as has been taught on Tannaite authority: Scripture opens with a reference to butting (Exo. 21:35) and concludes with a reference to goring (Exo. 21:16) to tell you that in this context “butting” means “goring.”*

- I.7**
- A. *Why, when the Scripture refers to injury to a human being, does it say, “If it will gore” (Exo. 21:28), while when Scripture refers to an ox’s injuring an animal, it uses the language, “if it will butt” (Exo. 21:35)?*
 - B. *In connection with a human being, who is subject to a star [planetary influence], will be injured only by [Kirzner: willful] goring, but an animal, who is not subject to a star, is injured by mere accidental butting.*
 - C. *And by the way, Scripture tangentially informs us of another matter, namely, an animal that is an attested danger for a human being is an attested danger for other beasts, but an animal that is an attested danger for beasts is not necessarily an attested danger for injuring a human being.*

- I.8**
- A. *Biting: does this not fall into the classification of a derivative of tooth?*
 - B. *Not at all, for what characterizes injury under the classification of “tooth” is that there is pleasure that comes from doing the damage, but biting is not characterized by giving pleasure in the doing of the damage.*

I.9 A. Falling, and kicking: *do these not fall into the classification of derivatives of foot?*

B. *Not at all, for what characterizes injury under the classification of “foot” is that it is quite common, while damage done by these is not so common.*

I.10 A. *Now, then, as to those derivatives that are not equivalent to the generative causes [from which the derivatives come], to which R. Pappa made reference, what might they be? Should we say that he makes reference to these? Then how are they different from the generative cause? Just as horn is a classification that involves damage done with intent, one’s own property, and one’s responsibility for adequate guardianship, so these, too, form classifications that involve damage done with intent, one’s own property, and one’s responsibility for adequate guardianship. So it must follow that the derivatives of horn are equivalent to the principal, the horn, and R. Pappa must then refer to tooth and foot.*

I.11 A. *Where in Scripture is reference made to tooth and foot?*

B. *It is taught on Tannaite authority: “And he shall send forth” (Exo. 22: 4) — this refers to the foot, and so Scripture says, “That send forth the feet of the ox and the ass” (Isa. 32:20). “And it shall consume” (Exo. 22: 4) — this refers to the tooth, in line with this usage: “As the tooth consumes [3A] to entirety” (1Ki. 14:10).*

I.12 A. The master has said: ““And he shall send forth’ (Exo. 22: 4) — this refers to the foot, and so Scripture says, ‘That send forth the feet of the ox and the ass’ (Isa. 32:20).”

B. *So the operative consideration is that Scripture has said, “That send forth the feet of the ox and the ass.” Lo, if Scripture had not so stated, how else would you have interpreted the phrase, “And he shall send forth” (Exo. 22: 4)? It could hardly refer to horn, which is written elsewhere, nor could it mean tooth, since this, too, is referred to elsewhere.*

C. *No, the proof nonetheless was required, for it might have entered your mind to suppose that “send forth” and “consume” refers to tooth, in the one case where there is destruction of the principal, in the other*

where there is no destruction of the principal, so we are informed that that is not so.

- D. *Now that you have established that the cited verse refers to foot in particular, then how on the basis of Scripture do we know that there is liability for damage done by the tooth in a case in which the principal has not been destroyed?*
- E. *It would follow by analogy from the case of damage done by the foot. Just as in the case of damage done by the foot, there is no distinction to be drawn between a case in which the principal has been destroyed and one in which the principal has not been destroyed, so in the case of damage done by the tooth, there is no distinction to be drawn between a case in which the principal has been destroyed and one in which the principal has not been destroyed.*

I.13 A. The master has said, “‘And it shall consume’ (Exo. 22: 4) — this refers to the tooth, in line with this usage: ‘As the tooth consumes to entirety’ (1Ki. 14:10).”

- B. *So the operative consideration is that Scripture has said, “As the tooth consumes to entirety.” Lo, were it not for that statement, how might we have interpreted the phrase anyhow? It could hardly have been a reference to horn, for that is stated explicitly in Scripture, and it also could not have been a reference to foot for the same reason.*
- C. *No, it was necessary to make that point in any event. For it might otherwise have entered your mind to suppose that both phrases speak of foot, the one referred to a case in which the beast was going along on its own, the other when the owner sent it to do damage, and so we are informed that that is not the case. [So we are informed that that is not the case.]*
 - D. *If then we have identified the matter with tooth, then how could we know that one is liable under the category of foot when the cattle went and did damage on its own?*
 - E. *The matter is treated by analogy to damage done in the category of tooth. Just as in the case of tooth we draw no distinction between a case in which the owner sent the beast out and it did damage and one in which the beast went along on its own, so in the case of foot, there is no distinction*

between a case in which the owner sent the beast out and one in which the beast went out on its own.

- I.14** A. *Then let the Scripture make reference to “And he shall send forth” (Exo. 22: 4) and omit “And it shall consume,” which would cover the classifications of both foot and tooth? It would cover foot in line with this verse: “That send forth the feet of the ox and the ass,” and it would cover tooth, in line with this verse, “And the teeth of beasts will I send upon them” (Deu. 32:24).*
- B. *Were it not for this apparently redundant statement, I might have imagined that the intent was either the one or the other, either foot, since damage done by the foot is commonplace, or tooth, since damage done by the tooth gives pleasure.*
- C. *Well, we still have to include them both, since, after all, which one would you exclude anyhow [in favor of the other], their being equally balanced?*
- D. *The additional clarification still is required, for you might otherwise have supposed that the liability pertains only where the damage is intentional, excluding a case in which the cattle went on its own; so we are informed that that is not the case.*

- I.15** A. *What is the derivative of the generative category of tooth?*
- B. *If for its own pleasure the cow rubbed itself against a wall and broke it, or spoiled produce by rolling around in it.*
- C. *What distinguishes damage done by the tooth [as a generative category] is that it is a form of damage that gives pleasure to the one that does it, it derives from what is your own property, and you are responsible to take care of it? Well, in these cases, too, one may say the same thing, namely, here we have a form of damage that gives pleasure to the one that does it, it derives from what is your own property, and you are responsible to take care of it.*
- D. *It must follow that the derivative classes of the generative category of tooth are equivalent to the generative category itself, and when R. Pappa made his statement, he must have referred to the generative category of foot.*

- I.16** A. *What is the derivative of the generative category of foot?*

- B. If the beast while moving did damage with its body or hair or with a load on it or with a bit in its mouth or with a bell around its neck.
 - C. *What distinguishes damage done by the foot [as a generative category] is that it is a form of damage that is very common, it derives from what is your own property, and you are responsible to take care of it. Well, in these cases, too, one may say the same thing, namely, here we have a form of damage that is very common, it derives from what is your own property, and you are responsible to take care of it.*
 - D. *It must follow that the derivative classes of the generative category of foot are equivalent to the generative category itself, and when R. Pappa made his statement, he must have referred to the generative category of pit.*

I.17 A. *Then what would be derivatives of the generative category of pit?*

- B. *Should I say that the generative category is a pit ten handbreadths deep, but a derivative class is one nine handbreadths deep, Scripture does not make explicit reference to either one ten handbreadths deep nor to one nine handbreadths deep!*
- C. *In point of fact that is not a problem, since the All-Merciful has said, "And the dead beast shall be his" (Exo. 21:34). And, for their part, rabbis established that a pit ten handbreadths deep will cause death, one only nine handbreadths deep will cause only injury, but will not cause death.*
- D. *So what difference does that make? The one is a generative classification of pit when it comes to yielding death, the other an equally generative classification yielding injury.*
 - E. *So R. Pappa's statement must speak of a stone, knife, or luggage, left in the public domain, that did damage.*
 - F. *How then can we imagine damage of this kind? If they were declared ownerless and abandoned in the public domain, then from the perspective of both Rab and Samuel, they fall into the classification of pit. [3B] And if they were not declared ownerless and abandoned in the public domain, then from the perspective of Samuel, who has said, "All public nuisances are derived by analogy to the generative classification of pit," they fall into the classification of pit, and from the perspective of Rab, who has held, "All of them do we derive by analogy to ox," they fall under the classification of ox.*

G. *What is it that characterizes the pit? It is that to begin with it is made as a possible cause of damage, it is your property, and you are responsible to watch out for it. So of these, too, it may be said, to begin with it is made as a possible cause of damage, it is your property, and you are responsible to watch out for it. It therefore follows that the derivatives of pit are the same as the pit itself, and when R. Pappa made his statement, it was with reference to the derivatives of the crop-destroying beast.*

I.18 A. *So what can these derivatives of the crop-destroying beast be anyhow? From the perspective of Samuel, who has said, “The crop-destroying beast is the same as tooth [that is, trespassing cattle],” lo, the derivative of tooth is in the same classification as tooth [as we have already shown], and from the perspective of Rab, who has said, “The crop-destroying beast is in fact the human being,” then what generative categories and what derivatives therefrom are to be identified with a human being! Should you allege that a human being when awake is the generative classification, and the human being when asleep is a derivative, have we not learned in the Mishnah: **Man is perpetually an attested danger [M. B.Q. 2:6A]** — whether awake or asleep!*

B. *So when R. Pappa made his statement, he must have referred to a human being’s phlegm or snot.*

C. *Yeah, well, then, under what conditions? If the damage was done while in motion, it comes about through man’s direct action, and if it does its damage after it comes to rest, then, whether from Rab’s or Samuel’s perspective, it falls into the classification of pit. And, it must follow, the offspring of the crop-destroying beast is in the same classification as the crop-destroying beast, so when R. Pappa made his statement, he must have been talking about the derivatives of fire.*

I.19 A. *So what are derivatives of fire? Shall we say that such would be a stone, knife, or luggage, that one left on one’s roof and were blown off by an ordinary wind and caused damage? Then here, too, under what conditions? If the damage was done while in motion, then they fall into the category of fire itself. For what characterizes fire is that it derives from an external force, is your property, and is yours to guard, and these, too, are to be described in the same way, since each derives from an external force, is your property, and is yours to guard.*

B. *And, it must follow, the offspring of fire are in the same classification as fire, so when R. Pappa made his statement, he must have been talking about the derivatives of foot.*

I.20 A. *Foot? Surely you're joking! Have we not already established the fact that the derivative of foot is in the same classification as the generative classification of foot itself?*

B. *At issue is the payment of half-damages done by pebbles kicked by an animal's foot, which we have learned by tradition.*

C. *And why is such damage classified as a derivative of foot?*

D. *So that compensation should be paid only from property of the highest class possessed by the defendant.*

E. *But did not Raba raise the question on this very matter? For Raba raised this question, "Is the half-damage to be paid for damage caused by pebbles to be paid only from the body of the beast itself or from the beast property of the owner of the beast?"*

F. *Well, that was a problem for Raba, but R. Pappa was quite positive about the matter.*

G. *Well, if it's a problem to Raba, then from his perspective, why would pebbles kicked by an animal's foot be classified as a derivative of foot?*

H. *So that the owner in such a case may be exempted from having to pay compensation where the damage was done in the public domain [just as damage caused by the generative category, foot, is not to be compensated if it was done in the public domain].*

II.1 A. Crop-destroying beast, and conflagration:

B. *What is the meaning of "the crop-destroying beast"?*

C. Rab said, "The crop-destroying beast is in fact the human being."

D. And Samuel said, "The crop-destroying beast is the same as tooth [that is, trespassing cattle]."

E. Rab said, "The crop-destroying beast is in fact the human being," as it is written, "The watchman said, The morning comes, and also the night, if you will ask, then ask" (Isa. 21:12) [where the letters used in the word for crop-destroying beast occur].

- F. And Samuel said, “The crop-destroying beast is the same as tooth [that is, trespassing cattle],” as it is written, “How is Esau searched out, how are his hidden places sought out” (Oba. 1: 6) [where the letters used in the word for crop-destroying beast occur].
- G. *And how does that verse yield the interpretation given by Samuel?*
- H. *It is in line with the translation into Aramaic given by R. Joseph, “[Kirzner:] How was Esau ransacked? How were his hidden treasures exposed?” [Kirzner: Tooth is naturally hidden but becomes exposed in grazing.]*
- I. *And how come Rab did not accept the proof of Samuel?*
- J. *He objects: “Does the Mishnah use the letters formed into the passive [which would then refer to anything that is exposed]?”*
- K. *And how come Samuel does not go along with Rab?*
- L. *He objects, “Does the Mishnah use the letters in a form that would denote mere action?” [Kirzner: The form that is used is causative, hence with reference to tooth, which the animal exposes in grazing.]*
- M. *Well, let’s face the fact that the scriptural verses do not decisively settle the question either in favor of the position of this master or in favor of the position of that one, so why really did Rab not concur with Samuel?*
- N. *When the Mishnah paragraph refers to ox, it covers all classifications of damage done by the ox.*
- O. *Then from Samuel’s perspective, has not the Tannaite authority already covered “ox”?*
- P. *Said R. Judah, “When the Tannaite authority of the Mishnah paragraph referred to ‘ox,’ it was to the horn, and when he referred to crop-destroying beast, it was with reference to tooth, and this is the sense of his statement: The indicative traits of the horn, in which instance doing damage does not give pleasure to the one who does the damage, are not the same as the indicative traits of the tooth, in which case there is pleasure to the one who does the damage, [4A] and the indicative traits of tooth, in which the intent of the beast that does the damage is not in fact to do damage, are not the same as the indicative traits of the horn, in which case the one who does the damage really does intend to do the damage he has done.”*

Q. Well, this point can then be derived on the strength of an argument a fortiori, as follows: if one bears responsibility for damages in the classification of tooth, in which case there is no intent to inflict injury, then in the case of damages in the classification of horn, in which case there is every intent to inflict injury, is it not an argument a fortiori that one should bear responsibility for injuries done in that way?

R. *No, it was necessary for Scripture to make explicit reference to damages done by the horn, for you might otherwise have taken for granted that one is immune for damages in the classification of the horn by analogy to the matter of damages done by one's male and female slaves. Just as a male or a female slave, though bearing every intent to do injury, do not bring upon their master liability for damages that they do, so I might have otherwise thought that the law would be the same in the case of the horn.*

S. *Said R. Ashi, "But isn't it the fact that an overriding consideration comes into play in the matter of the male and female slave, specifically, we take account of the possibility that the master will punish the slave, and the slave may then go and burn up the standing grain of his neighbor, so from day to day this one will turn out to impose upon his master a fine of a hundred maneh? Rather, this is the way in which the challenge is to be framed:* The indicative traits of the horn, in which case the one who does the damage really does intend to do the damage he has done, to the indicative traits of damages in the classification of tooth, in which case the damages are not done deliberately, nor are the indicative traits of tooth, in which case the one that does the damage gains benefit from the damage done, to be compared to the indicative traits of the damages in the classification of horn, in which case the one that does the damage gets no benefit from them [Kirzner: so neither horn nor tooth could be derived from each other]."

T. *How come foot is left out of the catalogue?*

U. The rule that whenever damage has been done, the one who has done it is liable to pay damages *encompasses the foot.*

V. *So why not so formulate the Tannaite rule as to say that in so many words?*

W. *Well, said Raba, “The Tannaite formulation refers to the **ox**, encompassing the foot, and the **crop-destroying beast**, encompassing the tooth, and this is the sense of the statement:* The indicative traits of the foot, damages in the classification of which are commonplace, like the indicative traits of the tooth, damages in the classification of which are not commonplace; nor are the indicative traits of damages in the classification of tooth, which benefit the one who does the damage, like the indicative traits of damages in the classification of the foot, in which case there is no benefit to the one that does the damage.”

X. *How come horn is left out of the catalogue?*

Y. *The rule that whenever damage has been done, the one who has done it is liable to pay damages encompasses the horn.*

Z. *So why not so formulate the Tannaite rule as to say that in so many words?*

AA. *The Mishnah rule addresses classifications of causes of damage for which beasts to begin with are deemed habitually capable, while the Mishnah rule does not address classifications of causes of damage for which beasts to begin with are deemed innocent, but only at the end habitually capable.*

- II.2** A. *So why doesn't Samuel state matters as does Rab [in explaining the meaning of **crop-destroying beast** [Rab said, “The crop-destroying beast is in fact the human being”]]?*
- B. *He will say to you, “If it should enter your mind that this refers to man, lo, the passage states further on: **And an ox which causes damage in the domain of the one who is injured; and (5) man [M. 1:4F-G]!**”*
- C. *But why not include man in the initial clause anyhow?*
- D. *The opening clause addresses cases of damages done by one's chattels, and it does not address the case of damages done by oneself.*

- II.3** A. *And so far as Rab is concerned, does not the passage state further on: **and an ox which causes damage in the domain of the one who is injured; and (5) man [M. 1:4F-G]**?*
- B. *Rab will say to you, “That serves the purpose of including man among those that are considered attested dangers.”*
- C. *Then what is the sense of the language, **[The indicative characteristic] of the ox is not equivalent to that of the crop-destroying beast...?***
- D. *This is the sense of that language: The indicative characteristic of the ox, which if it kills a man imposes on the owner the necessity of paying a ransom the same as the indicative trait of man, who does not impose [e.g., on the owner of the slave] the obligation of paying a ransom, nor is the indicative trait of a man, who is liable to pay damages on four distinct counts, equivalent to the indicative traits of the ox, who is not liable to pay damages on four distinct counts. **What they have in common is that they customarily do damage.***
- E. *So is it customary for the ox [horn] to do damage?*
- F. *Reference is made here to an ox that is an attested danger.*
- G. *Well, is an ox that is an attested danger going customarily to do damage?*
- H. *Well, yes, since it has been declared an attested danger, it is assumed customarily to do damage!*
- I. *Well, is it customary for man to do damage?*
- J. *When he is sleeping.*
- K. *Are you saying that when man is asleep, he customarily does damage?*
- L. *Since he stretches out his legs or curls them up, he really does customarily do damage in such a way.*
- M. **And taking care of them is your responsibility:** *Is not the care of a human being exclusively his or her own responsibility? [How can we say, **taking care of them is your responsibility?** How can this refer to man, as Rab maintains?]*
- N. *In accord with your contrary view, lo, Qarna has repeated as his Tannaite formulation: **[There are] four generative causes of damages, and Man is one of them.** But is not the care of a human being exclusively his or her own responsibility?*
- O. *Rather, it is in accord with the manner in which R. Abbahu instructed the Tannaite authority to frame matters: “Taking care of a human*

being [not to inflict damage] is his or her responsibility,” [4B] *and here, too*, taking care of a human being [not to inflict damage] is his or her responsibility.

- II.4** A. *Objected R. Mari, “But maybe **crop-destroying beast** really refers to water that does damage, in line with the verse: ‘As when the melting fire burns, fire causes water to bubble’ (Isa. 54: 1) [in which the consonants used in crop-destroying beast recur].”*
- B. Does the verse say, “Water bubbles”? What says is, “fire causes bubbling.”
- C. *Objected R. Zebid, “But maybe **crop-destroying beast** really refers to fire, since fire is the referent of the cited verse?”*
- D. If that’s were so, how would you deal with the repeating, **crop-destroying beast and fire?! If you should propose that “fire” stands in apposition to “crop-destroying beast,” then instead of four classifications of generative causes, there would be only three, and if you suggest that ox stands for two distinct classifications, then what will be the sense of the statement, nor are this one and that one, which are animate? How is fire animate?! And what will be the sense of the concluding part of the same clause, equivalent to fire?**

- II.5** A. *R. Oshaia repeated as a Tannaite formulation: There are thirteen generative causes of damages, including unpaid bailee, borrower, paid bailee, one who rents; compensation paid for depreciation, pain, healing, loss of time, humiliation; and the four enumerated in our Mishnah paragraph. That makes up thirteen. Now how come the Tannaite authority of our paragraph listed four and not the others?*
- B. *From Samuel’s perspective there is no problem in answering that question, since the Mishnah speaks only of damage committed by one’s chattel, not that committed by one’s person, but as to Rab, [who has held that the crop-destroying beast refers to man], why not include these items?*
- C. *By speaking of man, the framer of the passage has encompassed every kind of damage done by man.*
- D. *Yeah, well, then how come R. Oshaia’s version does not make reference to man?*
- E. *There is a distinction to be drawn between types of damage that man does: one is damage done by man to man, the other, damage done by man to chattel [and these latter are specified, e.g., pain, healing, and so on].*

- F. *If so, then why not draw the same distinction among damages done by ox: one is damage done by an ox to chattel, the other, damage done by an ox to a human being?*
- G. *How are these parallel? There is no problem in explaining how the distinction pertains to man, since if a man damages chattel, he pays for depreciation but not the other four kinds of classes of damages, but if he does damage to a human being, he has to pay the other four types of compensation, but how can an ox be treated in this way, since damage done by it to either man or chattel is the same and involves only one kind of damage [namely, depreciation]?*
- H. *Well, what about unpaid bailee, borrower, paid bailee, one who rents? These all are in the framework of a man who does damage to chattel, and yet they are included in R. Oshaia's reckoning.*
- I. *Damage done by a person directly and damage done indirectly are kept distinct by him.*

- II.6** A. *R. Hiyya taught as his Tannaite version of the passage before us: There are twenty-four generative causes of damages, including double payment [for theft], fourfold or fivefold payment, theft, robbery, a conspiracy to give false evidence, rape, seduction, slander, one who imparts uncleanness to someone else's property, one who renders someone else's property doubtfully tithed produce, and one who renders someone else's wine into libation wine [in all three cases diminishing their value], and the thirteen enumerated by R. Oshaia, twenty-four in all.*
- B. *How come R. Oshaia did not reckon these others?*
 - C. *He addressed classifications of damages involving civil liability but not with extrajudicial penalties.*
 - D. *So why not include theft and robbery, which also form civil liabilities?*
 - E. *They fall under the classifications of unpaid bailee and borrower.*
 - F. *Well, why didn't R. Hiyya include them in those classifications?*
 - G. *He dealt with each on its own, since in the one case possession of the chattel comes into one's hands lawfully, in the other [theft, robbery], it is in violation of a prohibition.*
 - H. **[5A]** *Well, a conspiracy to give false evidence is classified as a civil liability, so why not [have Oshaia] include that item?*

- I. *He concurs with R. Aqiba, who said, "A conspiracy of witnesses is not required to pay compensation on the basis of their own testimony." [Kirzner: "Liability for false evidence is penal in nature and cannot consequently be created by confession."]*
- J. *If he concurs with R. Aqiba, then why not distinguish in the classification of ox and identify two distinct classifications of damage, the damage done by an ox to chattel, and the damage done by an ox to a human being, for have we not learned in the Mishnah: **R. Aqiba says, "Also: An ox deemed harmless [which injured] a man — [the owner] pays full damages for the excess" [M. B.Q. 3:8K]**?*
- K. *As a matter of fact, R. Aqiba himself has vitiated the force of that distinction, for it has been taught on Tannaite authority: R. Aqiba says, "Might one suppose that even a beast deemed harmless who did injury to a human being — the owner should have to pay compensation from land of the highest quality? Scripture states, 'This judgment shall be done to it' (Exo. 21:31), meaning that the liability to damages should be limited to the value of the corpus of the beast that is formerly deemed harmless, and not out of any other source."*
- L. *What about rape, seduction, and slander, which also fall under the classification of civil liabilities, why should R. Oshaia not include these as well?*
- M. *What can you mean? If it was for liability to depreciation, he's got that on his list, and if it's for liability to suffering, he has that in the classification of pain, and if it is humiliation, he's got that in the classification of degradation; and if it's for deterioration, he's got that under depreciation. So what can you have in mind?*
- N. *The extrajudicial penalty involved in these items.*
- O. *[Oshaia] was not reckoning with extrajudicial penalties.*
- P. *[And how come Oshaia omitted from his list] one who imparts uncleanness to someone else's property, one who renders someone else's property doubtfully tithed produce, and one who renders someone else's wine into libation wine [in all three cases diminishing their value]? These, too, involve a civil liability!*
- Q. *Well, what do you think about injury that is intangible? If you classify it as injury, then he has included in his list the classification of depreciation; and if you maintain that it is not classified as civil damage, then any liability would fall into the classification of an extrajudicial penalty, with which, as we saw, R. Oshaia is not dealing here.*

- R. *Shall we then maintain that R. Hiyya takes the position that intangible injury is not classified as depreciation and a matter of civil liability? For if he maintained that such was classified as a civil liability, lo, he has specified in his list depreciation?*
- S. *What he did was specify in his Tannaite formulation tangible damages and then he went on and specified intangible damages as well.*

II.7

- A. *Now we can well understand why our Tannaite authority has specified the number of classifications of generative causes of damages, since it was to include the number of classifications reckoned by R. Oshaia, and, of course, R. Oshaia specified as his Tannaite formulation the number of damages, so as to include the must larger number conceived by R. Hiyya. But what is accomplished by the exclusive number reckoned by R. Hiyya?*
- B. *That serves to exclude the cases of one who squeals [to the government, and so causes loss to an Israelite] and one who by his improper intentionality spoils the offering of someone and renders it null.*
- C. *Well, why not include them?*
- D. *Well, there is no problem in explaining why he has not counted in his classifications the matter of the priest who by his improper intentionality spoils someone's offering, since our Tannaite compilation is not dealing with Holy Things anyhow. But what reason can there be for omitted reference to one who squeals?*
- E. *That matter is exceptional, since it involves a mere verbal assault, and he is not dealing with verbal assaults?*
- F. *Well, if he's not dealing with verbal assaults, then what about the matter of slander, which is nothing other than a verbal assault, and he has included it in his Tannaite formulation!*
- G. *That is a verbal assault involving a concrete action.*
- H. *Well, then, what about the conspiracy to give false testimony? Here, too, we have a verbal assault without any concrete action, and yet he has included on his list!*
- I. *Well, in that case, you are dealing with something that may not involve a concrete action, but Scripture itself has classified it as a concrete action, in the language: "You shall do to him as he proposed to do to his brother" (Deu. 19:19).*

- II.8** A. *Now there is no problem in understanding why our Tannaite authority has specified generative categories, since he maintains that there are also derivative ones. But from the perspectives of R. Hiyya and R. Oshaia, if we speak of generative categories, bearing the implication that there might be derivative ones, then what might these be?*
- B. Said R. Abbahu, “So far as the requirement that damages be paid out of the best of one’s real estate, all of them are classified as generative classifications. How come? We treat as a verbal analogy references in common to ‘instead,’ ‘compensation,’ ‘payment,’ and money” [Exo. 21:36, Exo. 21:32, Exo. 22: 8, and Exo. 21:34, respectively. Kirzner: One of these four terms occurs with each of the four categories of damage specified in the Mishnah, and likewise with each of the kinds of damage enumerated by Oshaia and Hiyya, thus teaching uniformity in regard to the mode of payment in them all.]

- III.1** A. **[The indicative characteristic] of the ox is not equivalent to that of the crop-destroying beast:**
- B. *What is the sense of this statement?*
- C. *Said R. Zebid in the name of Raba, “This is the sense of the statement: if someone should maintain, ‘Let Scripture explicitly make reference to only one kind of damage, and you may deduce the liability for the other,’ the answer is given, ‘The rule governing one kind of damage cannot be deduced from any other.’”*

- IV.1** A. **Nor are this one and that one, which are animate, equivalent to fire, which is not animate:**
- B. *What is the sense of this statement?*
- C. *Said R. Mesharshayya in the name of Raba, “This is the sense of the statement: [5B] If someone should say, ‘let Scripture explicitly make reference to only two of the three kinds of damage [ox and crop-destroying beast], and you may deduce the liability for the remaining one,’ the answer is given, [nor are this one and that one, which are animate, equivalent to fire, which is not animate], so even from two kinds of damage we cannot deduce the rule governing a third.”*

- IV.2** A. *Said Raba, “If you include pit but not any one other classification of damage, all the others will then be derived by analogy [via the feature common to pit and any other classification of damage], except for the case of horn. Horn is exceptional, in that all the other kinds of damage are classified as attested*

dangers to begin with [except for damage done by a goring ox, where the distinction between an attested danger and an ox deemed harmless is drawn].

- B. *“But within the view that damage done by the horn is a weightier matter since in that case the beast had every intention to do damage, then even the classification of horn could be deduced. And, in that case, for what definitive purpose did Scripture find it necessary to make explicit reference to each such classification?”*
- C. [1] Horn: to make the distinction between the beast deemed harmless and that one that is an attested danger.
- D. [2] Tooth and foot: to exempt the owner from damage that was done within these classifications in public domain.
- E. [3] Pit: to exempt the owner from damage done to inanimate objects;
- F. *and from the perspective of R. Judah, who takes the view that one is liable for damage done to inanimate objects by a pit one has dug, it is to exempt one from liability to death caused by it to man.*
- G. [4] Man: to impose upon him the four additional classifications of compensation to be paid for damage done by a human being to another human being.
- H. [5] Fire: to make one immune for damage done to objects that were hidden away [and not known by the person who kindled the fire] by a fire one has kindled;
- I. *and according to R. Judah, who maintains that one is liable to damage done by fire to hidden objects, what purpose is served?*
- J. [6A] *It is to encompass under the rule damage done by fire lapping his neighbor’s ploughed field and grazing his stones.*

V.1 A. What they have in common is that they customarily do damage and taking care of them is your responsibility:

- B. *So what is encompassed by this generalization?*
- C. *Said Abbaye, “It is to encompass the stone, knife, and bundle that one left on his rooftop, which fell by the action of a seasonal breeze and did injury.”*
- D. *Under what conditions? If the damage was done while in motion, then they fall into the category of fire itself. For what characterizes fire is that it derives from an external force, is your property, and is yours to guard, and these, too, are to be described in the same way, since each derives from an external force,*

is your property, and is yours to guard. *So it must follow that the damage was done after these things came to rest.*

- E. *Well, if the damage was done after they came to rest, then how then can we imagine damage of this kind? If they were declared ownerless and abandoned in the public domain, then from the perspective of both Rab and Samuel, they fall into the classification of pit.*
- F. *What is it that characterizes the pit? It is that to begin with it is made as a possible cause of damage, it is your property, and you are responsible to watch out for it. So of these, too, it may be said, to begin with it is made as a possible cause of damage, it is your property, and you are responsible to watch out for it. It therefore follows that they were not declared ownerless and abandoned in the public domain.*
- G. *But then from the perspective of Samuel, who has said, "All public nuisances are derived by analogy to the generative classification of pit," they fall into the classification of pit, [and from the perspective of Rab, who has held, "All of them do we derive by analogy to ox," they fall under the classification of ox].*
- H. *In point of fact, they have not been declared ownerless property, but they still are not to be classified along with the pit. For the indicative traits of the pit are that no external force is involved with it, and you must say in the case of these that an external force is involved in it. [The stone, knife, and luggage are indeed to be characterized in that way.]*
- I. But that fire [carried by an external force, the wind, but nonetheless imposes liability for compensation] is a refutation for that reasoning.
- J. The indicative trait of fire is that it is routine for it to go along and do damage.
- K. A pit will prove the contrary, and we have come full circle.

- V.2** A. **[What they have in common is that they customarily do damage and taking care of them is your responsibility:** *So what is encompassed by this generalization:] Raba said, "Encompassed is a pit [Kirzner: a nuisance] that is moved around by the feet of man or beast."*
- B. *If it was declared ownerless and abandoned in the public domain, then from the perspective of both Rab and Samuel, they fall into the classification of pit.*
 - C. *What is it that characterizes the pit? It is that to begin with it is made as a possible cause of damage, it is your property, and you are responsible to watch out for it. So of these, too, it may be said, to begin with it is made as a possible cause of damage, it is your property, and you are responsible to watch*

out for it. *It therefore follows that they were not declared ownerless and abandoned in the public domain.*

- D. *But then from the perspective of Samuel, who has said, “All public nuisances are derived by analogy to the generative classification of pit,” they fall into the classification of pit, [and from the perspective of Rab, who has held, “All of them do we derive by analogy to ox,” they fall under the classification of ox].*
- E. *In point of fact, they have been declared ownerless property, but they still are not to be classified along with the pit. For the indicative trait of the pit is that the sole cause of damage is that one has made the pit. But how can you say the same in the case of this nuisance, making the nuisance by itself is not the direct cause of the damage [but the man or beast who moved it from place to place is the cause]?*
- F. The classification of ox then proves the contrary.
- G. The distinctive trait of the ox is that it routinely goes along and causes damage [which does not apply here].
- H. The pit proves the contrary.
- I. We have come full circle. The indicative trait of the one is not the same thing as the indicative trait of the other.

- V.3**
- A. *R. Adda bar Ahba said, “It serves to encompass that which has been taught in the following Tannaite formulation: All those of whom they have spoken, who open up their gutters or sweep out the dust of their cellars into the public domain, in the dry season have no right to do so, but in the rainy season, have every right to do so. But even though they do so with every right, nonetheless, if what they have done causes damage, they are liable to pay compensation.”*
 - B. *Well, how can we imagine such a case? If these things do damage as he goes along and sweeps them, then the damage that they do is a direct result of his own action. So it must be after they have come to rest, but in that case, how can we imagine the case? If they were declared ownerless and abandoned in the public domain, then from the perspective of both Rab and Samuel, they fall into the classification of pit.*
 - C. *What is it that characterizes the pit? It is that to begin with it is made as a possible cause of damage, it is your property, and you are responsible to watch out for it. So of these, too, it may be said, to begin with it is made as a possible cause of damage, it is your property, and you are responsible to watch out for it. It therefore follows that they were not declared ownerless and abandoned in the public domain.*

- D. *But then from the perspective of Samuel, who has said, “All public nuisances are derived by analogy to the generative classification of pit,” they fall into the classification of pit, [and from the perspective of Rab, who has held, “All of them do we derive by analogy to ox,” they fall under the classification of ox].*
- E. *In point of fact, they have been declared ownerless property, but they still are not to be classified along with the pit. For the indicative trait of the pit is that one makes it without the right to do so. But how can you say the same in the case of this nuisance, since the one who made it had every right to do so?*
- F. **[6B]** The classification of ox then proves the contrary.
- G. The distinctive trait of the ox is that it routinely goes along and causes damage [which does not apply here].
- H. The pit proves the contrary.
- I. We have come full circle. The indicative trait of the one is not the same thing as the indicative trait of the other. [Kirzner: And liability can be deduced only from the common aspects.]

- V.4** A. *Rabina said, “It serves to encompass that which has been taught in the following Tannaite formulation: **The wall or the tree which fell down into public domain and inflicted injury — [the owner] is exempt from having to pay compensation. [If] they gave him time to cut down the tree or to tear down the wall, and they fell down during that interval, [the owner] is exempt. [If they fell down] after that time, [the owner] is liable [M. B.M. 10:4F-K].**”*
- B. *Well, how can we imagine such a case? If these things do damage as he goes along and sweeps them, then the damage that they do is a direct result of his own action. So it must be after they have come to rest, but in that case, how can we imagine the case? If they were declared ownerless and abandoned in the public domain, then from the perspective of both Rab and Samuel, they fall into the classification of pit.*
 - C. *What is it that characterizes the pit? It is that it commonly does damage, it is your property, and you are responsible to watch out for it. So of these, too, it may be said, it commonly does damage, it is your property, and you are responsible to watch out for it.*
 - D. *But if they were not declared ownerless and abandoned in the public domain, then from the perspective of Samuel, who has said, “All public nuisances are derived by analogy to the generative classification of pit,” they fall into the*

classification of pit, [and from the perspective of Rab, who has held, “All of them do we derive by analogy to ox,” they fall under the classification of ox].

- E. *In point of fact, they have been declared ownerless property, but they still are not to be classified along with the pit. For the indicative trait of the pit to begin with is that making it serves as a cause of injury. But how can you say the same in the case of those things that, from the moment they are made, are causes of injury?*
- F. The classification of ox then proves the contrary.
- G. The distinctive trait of the ox is that it routinely goes along and causes damage [which does not apply here].
- H. The pit proves the contrary.
- I. We have come full circle. The indicative trait of the one is not the same thing as the indicative trait of the other. [Kirzner: And liability can be deduced only from the common aspects.]

VI.1 A. And when one [of them] has caused damage, the [owner] of that which causes the damage is liable:

- B. *The Mishnaic word choice is odd, and should be liable [HYYB] and not accountable [HB]!*
- C. *Said R. Judah said Rab, “This Tannaite authority comes from Jerusalem and uses the [Kirzner:] easier form [the contraction].”*

VII.1 A. Out of the best of his land (Exo. 22: 4):

- B. *Our rabbis have taught on Tannaite authority:*
- C. “Of the best of his field and of the best of his vineyard shall he make restitution” (Exo. 22: 4) —
- D. [As to the reference of “his,”] “This refers to the field of the injured party or the vineyard of the injured party,” the words of R. Ishmael.
- E. R. Aqiba says, “The purpose of Scripture is solely to indicate that damages are to be paid out of the real estate of the best quality [belonging to the defendant], even more so to property that has been consecrated to the Temple.”

VII.2 A. *And from R. Ishmael’s perspective, if the defendant has damaged the quality of the best property, he would pay from the best, but if he damaged real estate of the worst property, would he still pay from the best?*

- B. *Said R. Idi bar Abin, “Here with what sort of a case do we deal? It would be one in which he damaged a furrow among several furrows,*

and it is not known whether the furrow that he damaged was the best or the worst. In that case he compensates for the best.”

- C. *Said Raba, “Well, if we knew for sure that he damaged the worst, he would pay only for the worst, and now that we don’t know for sure whether the furrow he damaged was of the best or the worst quality, why should he pay for the best? The one who bears the burden of proof is the plaintiff.”*
- D. *Rather, said R. Aha bar Jacob, “Here with what sort of a case do we deal? It is one in which the best of the estate of the injured party is as good as the worst of the property of the defendant’s property, and what is at issue among the two Tannaite authorities is this: R. Ishmael takes the view that the quality of the land that is paid in compensation is valued in relationship to what is owned by the injured party, and R. Aqiba says that the quality of the real estate of the defendant is what has to be assessed in determining compensation.”*

VII.3 A. *What is the scriptural basis for the position of R. Ishmael?*

- B. *We find a reference to the word “field” in both parts of the verse [“of the best of his field” (Exo. 22: 4), “if a man cause a field or a vineyard to be eaten” (Exo. 22: 4)]. Just as in the earlier usage reference is made to the property of the injured party, so in the latter clause it refers to the property of the injured party.*
- C. *And R. Aqiba?*
- D. *“Of the best of his field and of the best of his vineyard shall he make restitution” (Exo. 22: 4) clearly speaks of the person who does the paying.*
- E. *And R. Ishmael?*
- F. *The verbal analogy just now drawn and the sense of the verse of Scripture itself both serve to make the point. The verbal analogy makes the point [that the quality of the land is assessed in the context of the estate of the injured party], and the clear sense of Scripture makes its point as well, which is to deal with a case in which the defendant’s estate is made up of real estate of good quality and of bad quality, and the injured party’s estate likewise is made up of land of good and bad quality, but the worst of the defendant’s estate is not so good as the best of the property of the injured party; in this case, the defendant pays out of the real property of his estate that is of the*

better quality, since he has not got the right to say to him, "Come and be paid out of land of bad quality" [which is below the quality of the estate of the plaintiff (Kirzner)], but he is entitled to the land of the better quality.

- VII.4** A. R. Aqiba says, "The purpose of Scripture is solely to indicate that damages are to be paid out of the real estate of the best quality [belonging to the defendant], even more so to property that has been consecrated to the Temple": *what is the purpose of that concluding clause, even more so to property that has been consecrated to the Temple? If we say that we speak of a case in which an ox belonging to a common person gored an ox consecrated to the sanctuary, in fact does not Scripture say, "the ox of one's neighbor," so excluding liability for damage done to consecrated property?*
- B. Then it would deal with a case in which someone said, "Lo, incumbent on me is a maneh to be paid for the upkeep of the Temple," *in which case the Temple treasurer may collect from land of the highest quality.*
- C. But the Temple treasurer should not be in a better position than an ordinary creditor, **[7A]** and an ordinary creditor collects only from land of middling quality.
- D. *And, moreover, should you maintain that R. Aqiba takes the view that a creditor may collect what is owing to him even from property of the highest quality, one may pose the following challenge then to the implicit analogy: What characterizes the common creditor is that he also has a strong claim in the matter of torts, but will you say the same of the Temple treasury, which has no strong claim in the matter of torts?*
- E. *In point of fact we really do deal with a case in which an ox belonging to a common person gored an ox consecrated to the sanctuary, and as to the question that you raised, namely, in fact does not Scripture say, "the ox of one's neighbor," so excluding liability for damage done to consecrated property, R. Aqiba concurs with the position of R. Simeon b. Menassia, for it has been taught on Tannaite authority: R. Simeon b. Menassia says, "An ox belonging to the sanctuary that gored an ox of a common person — the sanctuary is exempt from paying damages. An ox of a common person that gored an ox belonging to the*

sanctuary, whether the ox was assumed harmless or an attested danger — the owner pays full damages.”

- F. *If that is the case, then with reference to the dispute of R. Ishmael and R. Aqiba, how do you know that at issue between them is a case in which the best of the injured party's land is of the quality of the worst of the defendant's? Perhaps all parties concur that we make our estimate based on the quality of the property of the injured party, but what is at issue here is the dispute between R. Simeon b. Menassia and rabbis. R. Aqiba concurs with R. Simeon b. Menassia, and R. Ishmael agrees with rabbis?*
- G. *If so, then what is the meaning of the statement, R. Aqiba says, “The purpose of Scripture is solely to indicate that damages are to be paid out of the real estate of the best quality [belonging to the defendant]”? And, moreover, what is the sense of, “even more so to property that has been consecrated to the Temple”? Furthermore, lo, said R. Ashi, “It has been explicitly stated in a Tannaite formulation in this regard: “Of the best of his field and the best of his vineyard shall he make restitution” (Exo. 22: 4) — it is to be the best of the field of the injured party, and the best of the vineyard of the injured party,’ the words of R. Ishmael. R. Aqiba says, “...the best of the field” of the one who did the damage, and “the best of the vineyard” of the one who did the damage.”’ [So that proposal is null.]*

VII.5

- A. Abbaye pointed out to Raba the following contradiction: “It is written, ‘Of the best of his field and the best of his vineyard shall he make restitution’ (Exo. 22: 4), so one may then conclude that compensation must be only out of the best of one's property, not out of anything of lesser quality. *But has it not further been taught on Tannaite authority: ‘...he should return’ (Exo. 21:34) — encompassing whatever has monetary value, even bran?*”
- B. *“That really does not form a contradiction. The one speaks of a case in which payment is made with the defendant's full intentionality and consent, the other [the former] a case in which it is against his will [and solely by court order].”*
- C. *Said Ulla b. R. Ilai, “Note that the language of Scripture itself yields such an inference: ‘...restitution shall be paid...’ (Exo. 21:34), that is, even against his will.”*

- D. *Said to him Abbayye, "Are the letters given consonants so that one must read them as '...shall be paid...'? The letters standing on their own may be read, '...he shall pay...', meaning, with the defendant's full intentionality and consent."*
- E. *Rather, said Abbayye, "It is in line with what the master said in that which has been taught on Tannaite authority: In the case of someone who possessed houses, fields, and vineyards, but is not able to sell them [to realize the cash he needs for his day to day expenses], they provide him with food out of poorman's tithe up to half the value of his property [Kirzner: to enable him to sell his property for half its value, which, it is assumed, he can realize any time]. Now reflecting on that statement, the master asked: 'What sort of case can be in hand? If everybody's land was depressed, and his, too, was depressed, then why not give him even more than half the value of his estate, since the depression of prices is universal? Then if it is a case in which everybody's land inflated, but his, because he had to go and get some cash, fell, then [7B] one should not give him even a minimal value [his property really being worth the money, but his own circumstance preventing him from realizing its value (Kirzner)]!' Rather, the master said, 'The rule pertains to a case in which, in the month of Nisan [spring] property is worth more, in Tishri [fall] less. In general everybody waits until Nisan to put his property on the market, but this one, since he is in need of money, is ready to sell at the prevailing mark to even half of the anticipated price. So he is given half, since, it is the way of real estate to drop to half its value, but it is not the way of real estate to fall below half its value.' Now here, too, with reference to compensation for damages, the law is that the injured party is to be paid out of property of the best quality. But if the injured party said to him, 'Give me property of middling quality but more of it,' the defendant has the right to reply, 'If you take the land in accord with the law of what's coming to you, take it at the present valuation; but otherwise, you'll have to take it in accord with the higher price that will be coming later on.'" [Kirzner: "He shall return," introducing payment in kind, authorizes calculation on the higher price anticipated whenever the plaintiff prefers a quality different from that assigned to him by law.]*
- F. *Objected R. Aha bar Jacob, "If so, you have diminished the claim of plaintiffs for damages to be paid of land of middling and poor quality. For the All-Merciful has said, 'out of the best' (Exo. 22: 4), but you have then said that even from land of middling and poor quality, payment may not be exacted!"*

- G. *Rather, said R. Aha bar Jacob, "If there is any pertinent analogy [to the case of the rule governing poor person's tithe to an estate holder], we should draw that analogy to the case of paying a creditor. For as a matter of right he is to be paid out of land of middling quality. But if he said to the debtor, 'Give me property of middling quality but more of it,' the defendant has the right to reply, 'If you take the land in accord with the law of what's coming to you, take it at the present valuation; but otherwise, you'll have to take it in accord with the higher price that will be coming later on.'"*
- H. *Objected R. Aha b. R. Iqa, "If so, you will close the door in the face of borrowers. For the creditor may say to him, 'If I had my money in hand, I could go and buy land at the present prices, but now that my money is with you, I can only buy land in accordance with the higher prices that are anticipated later on!'"*
- I. *Rather, said R. Aha b. R. Iqa, "If there is any pertinent analogy [to the case of the rule governing a poor person's tithe to an estate holder], we should draw that analogy to the case of paying a marriage contract. For as a matter of right it is to be paid out of land of the poorest quality. But if he said to the debtor, 'Give me property of middling quality but less of it,' the defendant has the right to reply, 'If you take the land it in accord with the law of what's coming to you, take it at the present valuation; but otherwise, you'll have to take it in accord with the higher price that will be coming later on.'"*
- J. *One way or the other, there is still a problem!*
- K. *Said Raba, "Whatever is paid over has to fall into the class of the best quality of its class" [thus bran would have to be the best type of bran].*
- L. *But Scripture says, "The best of his field" [and that means, the best of land, not the best of anything else]!*
- M. *Anyhow, when R. Pappa and R. Huna b. R. Joshua came from the household of their master, they explained as follows: "Anything may be 'best.' If they were not to be sold here, they could be sold somewhere else, except for land, so that is where payment has to be made out of the best, so that possible buyers may leap for the chance of buying it."*

VII.6

A. *R. Samuel bar Abba from Iqronayya asked R. Abba, "When they estimate the value of property, is the calculation based on what the defendant owns, or upon what people in general own?"*

B. *Now as a matter of fact, that question is not addressed to the position of R. Ishmael, for he maintains that the calculation is based on the*

value of the property of the injured party pure and simple; where the question is raised, it can be only within the position of R. Aqiba, who has said that we make the estimate based on the property of the defendant in the case. Now what is the answer? When Scripture says, ‘...the best of his field,’ is the intent only to exclude from the calculation the property of the injured party, or perhaps it is meant to exclude from consideration even the quality of property in general?

- C. *He said to him, “Scripture has said, ‘...the best of his field,’ and do you really want to maintain that the sense is, the calculation is based on the value of property in general?”*
- D. *He objected, “If the defendant possesses only property of the finest quality, then all plaintiffs are paid out of property of the finest quality; if he has only property of middling quality, then all plaintiffs are paid out of property of middling quality; if he has only property of the poorest quality, all of them are paid out of property of the poorest quality. If he had property of the finest, middling, and poorest quality, then damages are compensated out of property of the finest quality; debts are collected out of property of middling quality; and the collection of a marriage settlement for a wife is made out of property of the poorest quality. If he had only property of the finest and middling quality, then damages are compensated out of property of the finest quality, and debts and a woman’s marriage settlement are collected out of property of middling quality. If he had only property of middling and of the poorest quality, then damages and debts are paid out of property of middling quality, and a woman’s marriage settlement out of property of the poorest quality. [8A] If he had only property of the finest and the poorest quality, then compensation for damages is paid out of property of the finest quality, and debts and a woman’s marriage contract are paid out of property of the poorest quality. Now the intermediate clause of the passage in any event is explicit, If he had only property of middling and of the poorest quality, then damages and debts are paid out of property of middling quality, and a woman’s marriage settlement out of property of the poorest quality. Now if matters were as you say, that they make the estimate in terms of the property of the defendant, then why not treat the middling property of the defendant as property of the finest quality [since relative to what he owns, that is just what it is], and then assign the creditor to the class of property of the poorest quality?”*
- E. *Here with what sort of case do we deal? It is one in which the defendant had owned property of the best quality, but he had sold it, and so said R. Hisda, “It*

is one in which the defendant had owned property of the best quality, but he had sold it.” *And that stands to reason, for the further clause explicitly formulates the Tannaite rule in this language:* If he had only property of middling and of the poorest quality, then damages and debts are paid out of property of middling quality, and a woman’s marriage settlement out of property of the poorest quality. *These would contradict one another, unless we draw the inference that in the one case, the defendant had owned property of the best quality, but he had sold it, and in the other case, he did not have quality of the highest quality, which he had sold.*

- F. *Or, if you prefer, I shall explain, in both cases the man did not have property of the best quality that he had sold, but there still is no contradiction. The one speaks of a case in which this man’s property of middling quality was equivalent in value to real estate of the highest quality in general, and the other speaks of a case in which the middling property of this man was not equivalent in value to real estate of the highest quality in general. And if you prefer, I shall explain that both rules refer to a situation in which the defendant’s real estate of middling quality was equivalent in value to middling property in general, but, subject to dispute is the following: One party maintains that they assess the value in terms of his property, and the other party maintains that they estimate the value in terms of generally prevailing standards.*
- G. *Rabina said, “What is under dispute is what Ulla said, for said Ulla, ‘By the strict law of the Torah, a creditor should be paid out of land of the poorest quality, since it is said, “You shall stand outside, and the man to whom you lend shall bring forth the pledge outside to you” (Deu. 24:11). Now in general, people would bring outside the worst of his possessions. So how come the creditor for loans is paid out of land of middling quality? It is so as not to close the door in the face of borrowers.’ Now the one authority accepts this ordinance stated by Ulla, and the other does not accept it.”*

VII.7 A. *Our rabbis have taught on Tannaite authority:*

- B. If someone [who was a debtor for damages, a loan, and a marriage-settlement] sold all of his land to someone else, or all of it to three other persons simultaneously, all of them assume the status of the original owner of the field. If he sold land to them sequentially, all of the claimants come and collect from the last of the land to be sold. If that does not suffice, they collect from the

land sold before that. If that does not suffice, they collect from the land sold before that.

- C. *“If someone [who was a debtor for damages, a loan, and a marriage settlement] sold all of his land to someone else” — how are we to imagine such a case? Should we say that all of the land was transferred at one moment [in a single deed]? But if he sold it to three persons, in which case one could maintain that one of them came prior to another, you have maintained that all of them assume the status of the original owner of the field, can there be any question at all of the rule that applies if he sold all the property to one person? So it is obvious that we deal with a case in which the sale of the lands was sequential. But then how are we going to differentiate [so that one purchaser is in a less secure legal position than another]?*
- D. *It is because each one of them may say to him, “I left you a spot for collecting what is owing to you.”*
- E. *Well, then, why can’t the purchaser who bought the land all by himself but by deeds of different dates likewise assign the burden of payment to the property purchased last, saying, “When I acquired title to the earlier purchases, I was careful to leave you plenty of land to collect from”?*
- F. *Here with what sort of a situation do we deal? It is one in which he purchased land of the finest quality at the end of the purchase property, and so said R. Sheshet, “It is one in which he purchased land of the finest quality at the end of the purchase property.”*
- G. *Well, if that’s the case, then why can’t all the creditors come and get paid out of land of the best quality [which is the land that was bought last in sequence]?*
- H. *Because the defendant may say to them, “If you shut up and collect what is coming to you by law, take it, but if not, I will assign the deed of the property of the worst quality to the original owner, so all of you will be paid out of that.”*
- I. *If so, [8B] why not say the same in the matter of those who are owed compensation for damages? Rather, with what sort of a case do we deal here? it is one in which the seller of the land has died, and his heirs are not personally liable to pay [there being no real estate left in the inherited estate (Kirzner)], the original liability [assumed with the*

property when it was purchased] remains on the purchaser [Kirzner: for even by transferring the worst quality to the heirs, he would not escape any liability affecting him]. Now he could not say, "If you shut up and collect what is coming to you by law, take it, but if not, I will assign the deed of the property of the worst quality to the original owner, so all of you will be paid out of that." [Kirzner: The liability upon him will not thereby be affected, so why should they not resort to the best property that was purchased?]

- J. *Rather, the reason that the creditors cannot be paid out of land of the finest quality is that he may say to them, "What is the reason that the rabbis have ordained, 'Property that has been sold by a debtor cannot be attached if he still have other property subject to his own disposition'? It is for my sake. But here, I am not interested in taking advantage of this ordinance of the rabbis."*
- K. *That is in line with what Raba said, for said Raba, "Whoever says, 'I am not interested in taking advantage of the ordinance of rabbis in such a case' is listened to."*
- L. *What is the sense of, in such a case?*
- M. *It is in line with what R. Huna said, for said R. Huna, "A woman has the power to say to her husband, 'I shall not accept maintenance from you, and I do not want you to benefit from the work that I do.'"*

VII.8 A. *It is obvious that if the purchaser of a property [who has successively bought the estate of a debtor, with the last of the purchases being the property of the highest quality (Kirzner)] has sold over property of a middling and a poor quality but kept for himself property of the best quality, then all of the classes of claimants may come and collect what is owing to them out of land of the finest quality, for that property was acquired by him at the end, and since he no longer possesses property of the medium and the poorest quality, he cannot say to the creditors, "Collect from the land of the medium or poorest quality, since I do not wish to take advantage of the rabbinic enactment." But if he had sold off the land of the best quality and kept land of the medium and the worst quality, what is the law?*

B. *Abbaye considered ruling, “Let all of them come and collect from the land of the highest quality” [Kirzner: since nothing else of the same estate is with him to be offered to the creditors].*

C. Said to him Raba, “Has not the first one sold to the second one [property with the stipulation] ‘all rights connected therewith that may accrue to him’? *So just as when the creditors come to claim from the initial purchaser, he can pay them out of land of the medium or worst quality, without regard to the fact that when the medium and the worst quality lands were purchased by him, the original seller still had property of the highest quality, and in spite of the ordinance that properties that have been sold off cannot be attached from a purchaser when the original debtor still has property that he has not disposed of. The reason is that the purchaser has the right to say he does not wish to take advantage of the rabbinic ordinance, and so the next purchaser has the same right to say to the creditors, ‘Take your payment out of real estate of the middling or poorest quality.’ For the one who purchased from the purchaser had entered the sale only with the clear understanding that any right that the one from whom he buys the land may possess in the context of the purchase also is assigned to him.*”

VII.9 A. Said Raba, “In a case in which Reuben sold all of his fields to Simeon, and Simeon went and sold one field to Levi, and a creditor of Reuben came to collect what was owing to him, if he wanted, he may collect from this party, and if he wanted, he may collect from that party. *But we have stated that rule only if he has sold land of middling quality. But if he sold land of the highest and of the lowest quality, that is not the case. For Levi may say, ‘I was careful to purchase land of the highest and of the lowest quality, which is to say, property that is not available for you to collect what is owing to you.’ And we have stated that rule only in a case in which he did not leave himself land of middling quality of a similar kind, in which case he cannot plead, ‘I leave*

you a place for collecting from Simeon.’ *But if Levi did leave with Simeon land of medium quality of a similar character, the creditor may not attach the land of Levi, since he may quite properly reply, ‘I left you plenty of land with Simeon for you to collect what is owing to you.’”*

VII.10 A. *Abbayye said, “Reuben who sold a field to Simeon with a guarantee [against seizure by Reuben’s creditors], and a creditor of Reuben came and went and seized the field from [Simeon] — Reuben may go and sue the creditor, and the creditor cannot say to Reuben, ‘I have no business to do with you.’ For Reuben may say to the creditor, ‘What you seized from Simeon comes back on me [since I shall have to refund the purchase money. I am concerned with the action against Simeon and can stop you from seizing his land because of my counter-claim].”*

B. *Some say, “Even if the field is sold without a guarantee, for [Reuben] may say to him, ‘I don’t want Simeon to have a complaint against me.’”*

C. *And said Abbayye, “Reuben who sold a field to Simeon without a guarantee [against seizure by Reuben’s creditors], [9A] and claimants came forth, contesting Reuben’s title to the field and right to sell the land — Simeon may retract on the sale prior to his taking possession of it, but once he has taken possession of the land, he has not got the right to retract on the sale. How come? Reuben may say to Simeon [in declining to cancel the sale], ‘You went and bought a bag that is sealed with knots. [You agreed to the sale without examining my title, and you have to live with it.] Now you’ve got it!’”*

D. *At what point is the act of taking possession complete? When the buyer has set foot on the landmarks.*

E. *That is the case only if the field had been sold without a guarantee. But if it was sold with a guarantee, that is not the case. But some say, "Even if the field had been sold with a guarantee also, [Simeon may not retract on the sale], for Reuben may claim, 'Show me the document that legalizes the seizure of the field and then I shall pay you back the purchase price. [I don't have to refund your money until the court has given a decision on the legality of the seizure and given you a right to have your money returned (Daiches, Baba Mesia)]."*

VIII.1 A. **[And when one [of them] has caused damage, the [owner] of that which causes the damage is liable to pay compensation for damage out of the best of his land:]** R. Huna said, "He may pay compensation either in ready cash or with the best of his landed estate."

- B. R. Nahman objected to R. Huna, "'He shall return' (Exo. 21:34) — this serves to encompass even what has monetary value, even bran."
- C. *Here with what case do we deal? It is one in which he has nothing else.*
- D. *Well, if he has nothing else, it's obvious that he can pay any way he can!*
- E. *Well, what might you otherwise have supposed? We might say to him, "Go and take the trouble and sell the bran and pay him off in ready cash"? So we are informed that that is not the case.*

VIII.2 A. Said R. Assi, "As to ready cash, lo, it is in the same category as real estate."

- B. *For what legal purpose? If he says that it has to do with payment in terms of the best of his property, that is precisely what R. Huna has just told us. Rather, it is to deal with a case of the following character: Two brothers who divided an estate, and one of them took real estate, the other ready cash, and a creditor of the deceased came and collected what was owing from real estate. The other then may go and collect half of the value of the debt he has paid in behalf of his father out of the ready cash that the brother has collected from the estate.*
- C. *So what else is new?! Is one a son and the other not a son?!*
- D. *There are those who say quite the opposite: The other brother may say to him, "But that is precisely why I took my share in ready cash; and if that money were stolen from me, I would not have been able to be compensated by you.*

And it was precisely for the same reason that you took cash, even though, if the land were seized from you, you could not come and collect reparations from me.”

- E. *Rather, the pertinence of the statement is to the following case: Two brothers who divided an estate, and a creditor of the deceased father came and collected what was owing to him from one of them. [The other can pay him back in either ready cash or land.]*
- F. *But lo, R. Assi already said this once, for it has been stated: Two brothers who divided an estate, and a creditor came and attached the share of one of them — Rab said, “The original division of the estate is null.”*
- G. *And Samuel said, “He has waived his share.”*
- H. *R. Assi said, “The portion is compensated either a quarter in land or a quarter in money.”*
- I. *Rab said, “The original division of the estate is null”: he takes the view that brothers who have divided an estate remain co-heirs no matter what.*
- J. *And Samuel said, “He has waived his share”: he takes the view that brothers who have divided an estate are in the status of purchasers, specifically, like purchasers who have made the deal without the right of claiming an indemnity in such a case as this.*
- K. *R. Assi said, “The portion is compensated either a quarter in land or a quarter in money”: he takes the view that it is a matter of doubt whether brothers who have divided an estate remain co-heirs no matter what or whether brothers who have divided an estate are in the status of purchasers. That is why compensation is either a quarter in land or a quarter in money.*
- L. *So what can be the meaning of the statement, “As to ready cash, lo, it is in the same category as real estate”? This has to do with the matter of compensation out of the best of one’s property.*
- M. *So isn’t this the same thing that R. Huna said?*
- N. *Phrase matters as, “And so did R. Assi say.”*

VIII.3 A. *Said R. Huna, “In a matter of a religious duty, one may go up a third.”*

- B. *What is the meaning of a third? [9B] One can hardly say, a third of one’s entire household property, since, if it then happened that one had to perform three religious duties at pretty much the same time, it would mean giving up all of his possessions!*

- C. Rather, said R. Zira, “This has to do with carrying out a religious duty in the best possible way, in which case, one goes up to a third more than the anticipated expense in carrying out the duty.”

VIII.4 A. *R. Ashi raised this question: “Is it a third calculated within the ordinary expense, or a third calculated from the aggregate [33 percent or 50 percent]?”*

B. *That question stands.*

VIII.5 A. *In the West they said in the name of R. Zira, “Up to a third comes out of the person’s own resources. To do more than a third, it must come from what belongs to the Holy One, blessed be He.”*

We open with a sizable exercise in explaining the language of our Mishnah paragraph, in line with the same usage in other Mishnah paragraphs, **I.1-3**. No. 4 then turns to the amplification of the Mishnah’s statement by appeal to other Tannaite materials; we start with a complement that locates in Scripture the generative categories that are before us. This complement forms an integral part in the exposition of No. 3, and the entire composite goes from No. 3 through No. 20. That the whole is a continuous, beautifully crafted composite, shaped into a single coherent and unfolding statement, is beyond all doubt. **II.1-4** gloss the Mishnah’s word choices. This leads into a first-rate exercise in Mishnah criticism, dealing both with the formulation and the underlying logic. Then, in the continuing analysis of the problem introduced at **II.1**, we have other versions of the opening statement of the Mishnah tractate, those of Oshaia and Hiyya, Nos. 5-6, further expounded at Nos. 7-8. **III.1**, **IV.1** go through the same process of Mishnah exegesis, explaining the implication of the Mishnah’s formulation. No. 2 continues the foregoing. **V.1-4** once more address the exegesis of the language of the Mishnah, asking a familiar question; each entry follows a single, well-crafted form. **VI.1** adds a minor gloss to the Mishnah’s language. **VII.1** adds a Tannaite complement to the Mishnah’s rule. Nos. 2-4 provide a talmud to the foregoing. Nos. 5, 6 address the same problem in a fresh way. Nos. 7, 8-11 carry forward the issues of No. 6. **VIII.1**, 2+3-5 implicitly treat the same matter.

1:2

- A. **In the case of anything of which I am liable to take care, I am deemed to render possible whatever damage it may do.**
- B. **[If] I am deemed to have rendered possible part of the damage it may do,**
- C. **I am liable for compensation as if [I have] made possible all of the damage it may do.**

- D. (1) Property which is not subject to the law of sacrilege, (2) property belonging to members of the covenant [Israelites], (3) property that is held in ownership,
- E. and that is located in any place other than in the domain which is in the ownership of the one who has caused the damage,
- F. or in the domain which is shared by the one who suffers injury and the one who causes injury —
- G. when one has caused damage [under any of the aforelisted circumstances] ,
- H. [the owner of] that one which has caused the damage is liable to pay compensation for damage out of the best of his land.

I.1

- A. *Our rabbis have taught on Tannaite authority:*
- B. **In the case of anything of which I am liable to take care, I am deemed to render possible whatever damage it may do.**
- C. How so?
- D. In the case of an ox or a pit that one has handed over to a deaf-mute, an insane person, or a minor, which did damage, one is liable to pay compensation, which is not the case with fire.
 - E. *With what sort of case do we deal? If it is the case of an ox that was chained or a pit that was tied up, corresponding to the case of fire in a hot coal, then what distinguishes the one from the other? So we must be dealing with a case of an ox that was not tied up and a pit that was not covered up. But, then, this is comparable to the case of a flaming fire. Then the language, which is not the case with fire, would mean that one is not liable to pay compensation. But lo, said R. Simeon b. Laqish in the name of Hezekiah, "They have declared one is exempt from having to pay compensation only if he handed over to a deaf-mute, insane person, or minor, a coal, which the guard has then blown upon [making it a flame, which then kindled other things]. But if he handed over what was an already glowing flame, there is full liability. Why is this so? Since the danger was clear and present."*
 - F. In point of fact, we deal with an ox that was tied up or a pit that was covered up. *And as to the statement, "corresponding to the case of fire in a hot coal, then what distinguishes the one from the other?" here is the answer: It would be quite usual for an ox to loosen itself,*

and for a pit to get uncovered, but as to a hot coal, the longer you leave it alone, the cooler it gets.

G. And from the perspective of R. Yohanan, who has said, "Even when a flaming fire has been handed over to him, one is still exempt, here, too, the ox could have been untied and the pit uncovered, so why should we differentiate the one from the other?"

H. In the case of the fire, it is how the deaf-mute handles the fire that makes damage, while in the case of the ox and the pit, nothing that the deaf-mute does is going to cause the damage.

- I.2**
- A. *Our rabbis have taught on Tannaite authority:*
 - B. A more stringent rule pertains to the ox than to the pit, and a more stringent rule pertains to the pit than to the ox.
 - C. A more stringent rule pertains to the ox than to the pit, in that on account of an ox's killing a man, the owner has to pay a ransom and is liable to paying thirty sheqels if the ox kills a slave. When the case against the ox has been completed, the ox may no longer be used in any beneficial manner. It is routine for the ox to move about and cause damage. None of this pertains to the pit.
 - D. And a more stringent rule pertains to the pit than to the ox, in that to begin with, the pit is made to do damage; it is to begin with an attested danger, which is not the case of an ox.
 - E. **[10A]** A more stringent rule pertains to the ox than to fire, and a more stringent rule pertains to fire than to the ox.
 - F. A more stringent rule pertains to the ox than to fire, in that on account of an ox's killing a man, the owner has to pay a ransom and is liable to paying thirty sheqels if the ox kills a slave. When the case against the ox has been completed, the ox may no longer be used in any beneficial manner. If one handed it over to a deaf-mute, an insane person, or a minor, one is liable, which is not the case for fire.
 - G. And a more stringent rule pertains to fire than to the ox, in that in that fire is an attested danger to begin with, which is not the case for the ox.
 - H. A more stringent rule applies to fire than to the pit, and a more stringent rule applies to the pit than to fire.
 - I. A more stringent rule applies to the pit than to fire, for to begin with it is made to cause damage. If one handed it over to the guardianship of a deaf-mute,

insane person, or minor, he is liable for the damage that may be caused, which is not the case with fire.

- J. A more stringent rule applies to fire than to the pit, for it is the way of fire to go along and do damage, and it is an attested danger to consume both what is suitable for it and what is not suitable for it, which is not the case with a pit.

I.3 A. *Why not include in the Tannaite formulation:* A more strict rule applies to the ox than to the pit, for the owner of the ox is liable for damage done to utensils [inanimate objects], which is not the case with the pit?

B. *Lo, who is the authority behind this anonymous rule? It is R. Judah, who declares the owner liable for damages done to utensils in the case of a pit.*

C. *If you really think it is R. Judah, then let me cite the concluding statement to you:* A more stringent rule applies to fire than to the pit, for it is the way of fire to go along and do damage, and it is an attested danger to consume both what is suitable for it and what is not suitable for it, which is not the case with a pit! *Now what might fall into the classification of what is suitable for it? Wood. And what might fall into the classification of what is not suitable for it? Utensils — which is not the case with a pit! Now if this really is R. Judah, lo, you have maintained that R. Judah holds one responsible for the pit's damages to utensils. So in hand must be the position of rabbis, and the Tannaite framer of the passage set matters forth but omitted reference to some items.*

D. *Well, then, what else has he left out, if he has left out this item?*

E. He omitted reference to one's liability to pay for damages done by one's fire to goods that are hidden.

F. *If you prefer, I shall say that in point of fact the passage does set forth the view of R. Judah, and what might fall into the classification of what is not suitable for it? It is not to encompass under the rule utensils, but rather, to encompass a case in which the fire did damage by lapping at the neighbor's ploughed furrow and grazing the stones.*

G. *Objected R. Ashi, "Well then why not formulate the Tannaite statement in this way:* A more strict rule applies to the ox than to the pit, for in the case of an ox the owner is liable for damage done to consecrated animals that were not fit for the altar, and that is not the case for the pit? *Now if you maintain that before us is the position of*

rabbis, there is no problem, for having omitted one possible entry, they will also have omitted this other. But if you maintain that before us is the position of R. Judah, then what else has he left out, along with the item at hand?"

- H. He has left out the case of one's ox's trampling newly broken land [which a pit cannot do].
- I. *If you maintain that the further omission is the case of one's ox's trampling newly broken land, that is not a good example of an omission, for this is covered when the framer says in so many words, for it is the way of fire to go along and do damage!*

- II.1** A. **[If] I am deemed to have rendered possible part of the damage it may do, I am liable for compensation as if [I have] made possible all of the damage it may do:**
- B. *Our rabbis have taught on Tannaite authority:*
 - C. **[If] I am deemed to have rendered possible part of the damage it may do, I am liable for compensation as if [I have] made possible all of the damage it may do:** how so?
 - D. he who digs a pit nine cubits deep, and someone else comes along and finishes it to ten — the latter is liable [having completed the pit so that it can kill someone].
 - E. *That does not accord with the position of Rabbi, for it has been taught on Tannaite authority:*
 - F. He who digs a pit nine cubits deep, and someone else comes along and finishes it to ten — the latter is liable.
 - G. Rabbi says, "We go after the latter in the case of death, but after both of them in the case of damages." [The pit can cause death only if it is ten cubits deep, but it can cause injury even at a lesser depth.]
 - H. R. Pappa said, "The passage before us refers to death and represents the view of all parties."
 - I. *There are those who set matters forth as follows: May one say that this does not accord with the position of Rabbi?*
 - J. Said R. Pappa, "The passage before us refers to death and represents the view of all parties."
 - K. *Objected R. Zira, "Well, aren't there any other examples? Lo, there is the case of one's handing over one's ox to five persons, one of whom*

was careless, so that the ox did damage — that one bears the liability. Now how can we imagine such a case? If it is a case in which, were it not for that one man, the ox would not have been cared for at all, then it's self-evident that that is the one who is responsible for damages! So it is a case in which, even without that one, the ox would have been subject to control. But, then, what has that man done to warrant having to pay damages all by himself?"

- L. Objected R. Sheshet, "Lo, there is the case of someone who adds twigs to a fire."
- M. Well, what sort of a case can be in mind? **[10B]** If it were a case in which, without him, the fire would not have spread, then obviously he is entirely culpable. If without his cooperation the fire would have spread, then what has he done anyhow to deserve culpability?
- N. Objected R. Pappa, "Lo, there is that which has been taught on Tannaite authority: If there were five people sitting on a bench and they did not break it, but someone else came along and sat down on it with them and they broke it, only the last person is liable. And said R. Pappa, 'That is assuming he was as fat as Pappa bar Abba.' Now what sort of case can be in mind? If we should say that if without him the bench would not have broken, then that statement is obvious. So it has to be a case in which without that man the bench would have broken anyhow. So what did he do to warrant being held liable?"
- O. One way or the other how in the world can this Tannaite formulation be worked out?
- P. It is necessary to cover a case in which, without the newcomer, the bench would have broken after a couple of hours, while now it broke after only one. So the other five sitting on the bench may say to him, "If it weren't for you, we could have sat a bit more on the bench and then gotten up."
- Q. So why can't he say to him, "If it weren't for you, the bench would never have broken on my account at all"?
- R. The rule is necessary to cover a case in which he never actually sat down on the bench but only leaned on the people sitting there, and the bench broke.
- S. So obviously he's liable! What else is new?

- T. *Well, you might have supposed that the damage done by someone's secondary effects is not the same as that done by the person himself. So we are informed that one is responsible for what happens through secondary effects as much as for what he himself does, for whoever one personally causes damage, his secondary effects are involved.*
- U. *Are there no other examples? Lo, there is that which has been taught on Tannaite authority: If ten people hit someone with ten sticks, whether simultaneously or sequentially, and the man died, all of them are exempt. R. Judah b. Betera says, "If they did it sequentially, then the last one is liable, since he [Kirzner:] was the immediate cause of the death."*
- V. *We're not dealing here with murder cases.*
- W. *Or, if you prefer, we're not dealing with laws that are subject to dispute.*
- X. *Oh we're not, aren't we? Then didn't we just establish the fact that the passage does not accord with Rabbi?*
- Y. *As a matter of fact, while we are prepared to establish that the Mishnah paragraph is not in accord with Rabbi but is in accord with rabbis, we are not prepared to establish that it is in accord with R. Judah b. Betera and not in accord with rabbis [since we prefer to assign the Mishnah's rules to the majority of sages' opinion].*

III.1 A. ...I am liable for compensation as if [I have] made possible all of the damage it may do:

- B. *The language that is used is not, I am liable for making up the damage, but, I am liable for compensation. That has been set forth as a Tannaite rule, for our rabbis have taught on Tannaite authority: I am liable for compensation — this teaches that the owner has to take care of the disposition of the carcass [receiving the proceeds as part payment] [T. B.Q. 1:1E-F].*
 - C. *What is the scriptural basis for this ruling?*
 - D. Said R. Ammi, "Said Scripture, 'He who kills a beast shall make it good' (Lev. 24:18) — the letters of the word 'shall make it good' can be read 'he shall complete its deficiency.'"
 - E. R. Kahana said, "From here: 'If it be born in pieces, let him bring compensation up to the value of the carcass; he shall not make good that which was torn' (Exo. 22:12) — 'up to' the value of the carcass he pays, but for the carcass itself he does not have to pay."

- F. Hezekiah said, “From here: ‘And the dead shall be his own’ (Exo. 21:36) — referring to the owner of the beast.”
- G. *And so the Tannaite authority of the household of Hezekiah:* “‘And the dead shall be his own’ (Exo. 21:36) — referring to the owner of the beast. You say that it is to the injured party, but perhaps it refers to the party responsible for the injury? You may state, ‘that is not the case.’”
 - H. *What is the meaning of “that is not the case”?*
 - I. *Said Abbayye, “If it should enter your mind that the carcass is going to belong to the party responsible for the injury, then why didn’t the Merciful stop when it had finished saying, ‘He shall surely pay ox for ox’ (Exo. 21:36)? What is the point of adding, ‘And the dead shall be his own’ (Exo. 21:36)? This shows that the Scripture speaks [when it says, ‘his own’], of the injured party.”*

- III.2** A. *And the various verses of Scripture that have been cited all are necessary. For had Scripture stated only, “He who kills a beast shall make it good” (Lev. 24:18), I might have supposed that the reason for the ruling was that it is an unusual event [for someone to kill a beast intending to cause his neighbor harm], but if an animal was torn to pieces by a wild beast, which is pretty common, I might have taken the opposite view [Kirzner: in the interest of the plaintiff].*
- B. *And if Scripture had made reference only to that which is torn [“If it be born in pieces, let him bring compensation up to the value of the carcass; he shall not make good that which was torn” (Exo. 22:12)], I might have supposed that the operative consideration is that the damage was done not by the bailee but by an indirect cause, but if a man killed the beast, where the damage was done by a direct agency, I might have taken the opposite view.*
 - C. *And if Scripture had made reference to both of these cases, I might have supposed that the one is special because it is infrequent, and the other is exceptional because it deals with indirect agency. But the damage to which the language, “And the dead shall be his own” (Exo. 21:36), refers, being both frequent and the result of direct action, would be subject to an opposite rule.*
 - D. *And if Scripture had given us only, “And the dead shall be his own” (Exo. 21:36), I might have appealed to the explanation that the*

damage has been done only by the man's own possession, while if the damage was done by the man's own person [as is the case at Lev. 24:18 and Exo. 22:12], I might have supposed otherwise. So all of the verses of Scripture are required.

- III.3** A. *Said R. Kahana to Rab[a], "So the operative consideration is that Scripture has said, 'And the dead shall be his own' (Exo. 21:36). Lo, if it were not for that statement, I would have thought that the carcass should belong to the party responsible for the damage. Then it must follow that, if there were in the hands of the person responsible for the damage a number of such carcasses, he has the right to pay the injured party with them, for the master has said, "He shall return" (Exo. 21:34) — even payment in kind, even bran,' so what question can there be about doing so with the carcass of his own animal!"*
- B. *The verse is required to cover a case in which the carcass has decreased in value [and the injured party is going to suffer that loss, since from the moment the beast was gored, the carcass is assigned to him].*

III.4 A. *May we say that at issue between the following Tannaite authorities is the question of the decrease in the value of the carcass? For it has been taught on Tannaite authority: "If it be torn in pieces, let him bring it for testimony" (Exo. 22:12) — [11A] "let him bring it for testimony" that it was born by accident and so exempt himself from having to pay damages. Abba Saul says, "Let him bring the torn animal to court." Is this not what is at issue, namely: one authority takes the view that the decreased value of the carcass is assigned to the injured party, and the other party maintains that it is assigned to the party responsible for the injury?*

B. *Not at all. All parties take the position that it is assigned to the injured party, but what is at issue here is the responsibility for bringing up the carcass from the pit, in line with that which has been taught on Tannaite authority: Others say, "How on the basis of Scripture do we know that the owner of the pit is responsible to raise up the ox from his pit? Scripture says, 'Money shall he return to the owner, and the dead beast...'*

(Exo. 21:34) [that is, he shall return both money and the dead beast, which he is then responsible to recover].”

C. *Said Abbayye to Raba, “So as to the trouble of dealing with the carcass, what are we talking about? If the value of the carcass in the pit is a zuz, and if it is on the bank of the pit it is worth four zuz, then is he not taking the trouble of bringing up the carcass only in his own interest anyhow?”*

D. *He said to him, “The rule is required to cover a case in which when in the pit the carcass is worth a zuz, and on the banks it is also worth a zuz.”*

E. *Is such case possible?*

F. *It certainly is, for people say, “A beam in town is worth a zuz, and a beam in the field is worth a zuz.”*

III.5 A. Said Samuel, “They do not make an estimate in the case of a thief or a robber [the guilty party having to pay in full for the original value of the damaged article (Kirzner)] but they do so for compensation for damages [the carcass going back to the injured party]. And I say that the same is the case for borrowing, and Abba [Rab] agrees with me.”

B. *The question was raised: Is this the sense of what he said, ‘So, too, in the case of borrowing, they make an estimate, and Abba agrees with me’? Or perhaps this is the sense of what he said: ‘And I say, even in the case of a borrower they do not make an estimate, and Abba agrees with me’?”*

C. *Come and take note: There was the case of someone who borrowed an axe from his neighbor and broke it. The case came before Rab. He said to him, “Go pay him for the originally sound axe.” Does this not show that the law of assessment does not apply to borrowing [since the responsible party does not get to deduct the value of the sherds of the axe]?*

D. *To the contrary, since R. Kahana and R. Assi said to Rab, “Is this the rule?” and Rab shut up, it must follow that they did in fact make an assessment [of the*

remnants of the axe, and they deducted their value from the compensation to be paid].

III.6 A. *It has been stated:*

B. Said Ulla said R. Eleazar, “They make an estimate [of the value of the remnant of a stolen object] in the case of a thief or a robber [who then pays compensation for the rest of the loss, deducting the value of the remnant of the stolen object, which the original owner gets back as part of his compensation].”

C. R. Pappa said, “They do not make such an estimate.”

D. *And the decided law is that they do not make such an estimate in the case of a thief or a robber, but in the case of a borrower they do make such an estimate, in accord with the position of R. Kahana and R. Assi.*

Composite of Sayings in the name of Ulla citing Eleazar

The following set is organized not by theme and proposition but by the cited authority, covering a variety of problems; it is inserted whole because at its head stands III.6.

III.7 A. And said Ulla said R. Eleazar, “In a case in which the placenta emerges partly on one day, partly on the next, they count the days of uncleanness [decreed at Lev. 12:1ff.] from the first day.”

B. *Said to him, Raba, “Now what are you thinking? That this yields a stringent ruling? Well, it’s a stringent ruling that yields a lenient one, because you have not only declared her unclean as of the first day, but you have declared her clean also as of the first day.”*

C. *Rather, said Raba, “We take account of the possibility that the first day [is unclean], but the actual counting begins on the second day.”*

D. *What’s your point? That there is no placenta that does not contain part of the foetus? That we have already learned as a Tannaite statement: **An afterbirth, part of which emerged, is prohibited to be eaten. It is a token of [the birth of] an offspring in a woman, and the token of [the birth of] an offspring in a beast [M. Hul. 4:7E-F].***

E. *Had I had to derive the rule only from the Mishnah paragraph, I might have supposed [11B] that it is entirely conceivable that there can be a placenta that does not contain part of the foetus, but that*

sages made a decree concerning a case in which part of the placenta came forth because of the case in which the whole of it came forth. So we are informed that that consideration is not in play.

III.8 A. And said Ulla said R. Eleazar, “A firstborn that perished within the first thirty days of birth — they do not redeem him.”

B. *And so taught Rammi bar Hama as a Tannaite statement:* “‘You shall surely redeem’ (Num. 18:15) — might one think that is the case even if he perished within the first thirty days of birth? Scripture says, ‘...but...,’ as exclusionary language.”

III.9 A. And said Ulla said R. Eleazar, “A large beast is acquired through the act of drawing.”

B. *But we have learned in the Mishnah that that is through an act of delivery!*

C. *He made that statement in accord with the position of the Tannaite authority of the following:* And sages say, “This and that [large, small beasts alike] are acquired through drawing.” R. Simeon says, “This and that are acquired through lifting up the beast.”

III.10 A. And said Ulla said R. Eleazar, “Brothers who divide an estate among themselves — whatever they are wearing is assessed in the value of the estate, but what is worn by their sons and daughters is not assessed as part of the estate.”

B. Said R. Pappa, “Sometimes even what they are wearing is not assessed in the value of the estate. *You would find such a case in the instance of the eldest of the sons, [who is spared this degrading procedure] since the rest of them would concur that what he says should be treated with respect.*”

III.11 A. And said Ulla said R. Eleazar, “A bailee who handed over the bailment to another bailee is exempt from further liability. *Now that is beyond question when it comes to the case of an unpaid bailee who handed over his bailment to a paid bailee, for in that case, the quality of the guardianship of the bailment is improved. But even if a paid bailee hands over the bailment to an unpaid one, where the quality of guardianship diminishes, he is still not liable, for he has transferred the bailment in any event to a responsible party.*”

B. Raba said, "A bailee who entrusted [the bailment] to another bailee is liable. *There is no issue in respect to a paid bailee who handed the bailment over to an unpaid bailee, in which case he has diminished the standard of care of the bailment. But even in the case of an unpaid bailee who handed the beast over to a paid bailee, in which case he has improved the conditions of the bailment, he remains liable. What is the reason? He may say to him, 'You are credible to me when you take an oath, but the other party is not credible to me when he takes an oath.'*"

III.12 A. And said Ulla said R. Eleazar, "The decided law is that to collect a debt the creditor may attach the slaves of the debtor."

B. *Said R. Nahman to Ulla, "Did R. Eleazar make this statement even with reference to attaching the slaves of an estate?"*

C. *"No, only from him."*

D. *"Well if it was only with reference to him, then one can collect a debt even by seizing the cloak on his back! [So why bother to make such a statement anyhow?]"*

E. *"Here with what case do we deal? It is one in which the slave was mortgaged for the debt, in line with what Raba said. For said Raba, 'If one mortgaged one's slave and then sold him, the creditor can collect by attaching the slave. If he mortgaged his ox and sold it, the creditor cannot collect from it. What's the difference? In the one case, the matter is publicly known, but in the other, the matter is not going to be publicly known [so the creditor has no way of knowing what has happened].'"*

F. **[12A]** *After [Nahman] left, Ulla said to them, "This is what R. Eleazar said, '...even with reference to attaching the slaves of an estate.'"*

G. *[Hearing about this reversion,] said R. Nahman, "Ulla spoke disingenuously."*

H. *There was a case in Nehardea, and the judges of Nehardea attached the slaves in the hands of the heirs to pay a debt of the deceased.*

I. *There was a case in Pumbedita and R. Hana bar Bizna attached the slaves in the hands of the heirs to pay a debt of the deceased.*

J. *Said to them R. Nahman, "Go, retract your rulings, and if not, then we are going to attach your houses [to*

compensate the parties whom your incorrect rulings have damaged].”

K. *Said Raba to R. Nahman, “And lo, there is Ulla, there is R. Eleazar, there are the judges of Nehardea, there is R. Hana bar Bizna. So what authorities do you claim to evoke in support of your position?”*

L. *He said to him, “Well, as a matter of fact, we know a Tannaite formulation, for Abimi stated as a Tannaite formulation: ‘A prosbol [nullifying the remission of debts in the Sabbatical Year] applies to real estate but it does not apply to slaves. Movables are acquired along with real estate but are not acquired along with slaves.’ [So slaves are in a different category from real estate, just as I have said.]”*

III.13 A. *May we say that the same issue is what is under debate in the following Tannaite dispute: If one party sold to another slaves and real estate, if the purchaser has acquired possession of the slaves, he has not acquired possession of the real estate. If he acquired possession of the real estate, he has not acquired possessions of the slaves. If the sale involved real estate and movables, if he acquired possession of the real estate, he has acquired possession of the movables. If he has acquired possessions of the movables, he has not acquired possession of the real estate. If the sale involved slaves and movables, if he acquired possession of the slaves, he has not acquired possession of the movables. If he acquired possession of the movables, he has acquired possession of the slaves. And lo, it has been taught on Tannaite authority: If he has acquired possession of the slaves, he also has acquired possession of the movables. Now is this not what is at issue between the two formulations of the rule, namely: One authority takes the view that slaves are in the classification of real estate, and the other authority maintains that slaves are in the classification of movables?*

B. *Said R. Iqa b. R. Ammi, “All parties concur that slaves are in the classification of real estate. When the latter formulation tells us that, if he has acquired possession of the slaves, he also has*

acquired possession of the movables, *that poses no problem. But when the other, prior formulation states that there has been no valid act of acquisition, that is because the kind of real estate that we require is what bears the same indicative traits as the walled cities of Judah, which are utterly immovable. For we have learned in the Mishnah: Property for which there is security is acquired through money, writ, and usucaption. And that for which there is no security is acquired only by an act of drawing [from one place to another]. Property for which there is no security is acquired along with property for which there is security through money, writ, and usucaption. And property for which there is no security imposes the need for an oath on property for which there is security [M. Qid. 1:5].*”

C. *What is the scriptural basis for this ruling?*

D. Said Hezekiah, “Said Scripture, ‘And their father gave them great gifts of silver and of gold and of precious things with fortified cities in Judah’ (2Ch. 21: 3).”

E. *There are those who say, said R. Iqa b. R. Ammi, “All parties concur that slaves are in the classification of movables. When the latter formulation tells us that, if he has not acquired possession, that poses no problem. But when the other, prior formulation states that there has been a valid act of acquisition, that is because the movables that were acquired were actually worn by the slave.”*

F. *But even if they were actually worn by him, what difference does that make? What he is is just a walking courtyard, and a walking courtyard does not effect ownership [of its contents for the person who acquires it]. And if you say that the rule refers to a case in which he is standing still, lo, said Raba, “In any case in which, if something were in motion, it would not effect transfer of ownership, if the same thing is standing still or sitting down, it also does not effect transfer of ownership.”*

G. *The law refers to a case in which the slave was in stocks.*

H. *But has it not been taught in the cited Tannaite formulation: If one acquired ownership of the land, he has acquired ownership of the slaves?*

I. *That speaks of a case in which the slaves were standing within the limits of the real estate.*

J. *Is there then the inference that the reason that acquisition has not been effected is a case in which the slaves were not standing within the limits of the real estate that was acquired? Then that poses no problem to this formulation of the view of R. Iqa b. R. Ammi that slaves are classified as movables. That explains why, if they are standing in the property, the transfer is effected for them as well as for the real estate, but if not, then it is not effected. But in line with the formulation, "Slaves are classified as real estate," what difference does it make to me whether they were standing in the real estate when it was acquired, or whether they were not there? Lo, said Samuel, "If one has sold to someone ten fields in two states, once one has made acquisition of one of them, he has acquired them all"!*

K. *Well, in accord with your version of matters, namely, "Slaves are classified as real estate," then what difference does it make to me whether the slaves were standing within the property or not?! [12B] Lo, we have as established fact that we do not require the slaves to be gathered on the land anyhow. So what is there to be said? It is only that there is a distinction to be drawn between movables that are in fact in motion and movables that in fact cannot be moved about. And here, too, we maintain that there is a distinction to be drawn between immovables that are in fact in motion and immovables that in fact cannot be moved about. Specifically, slaves are now conceived to be in the classification of real estate that is movable, while the ten fields, the land is conceived to be one integrated plot.*

IV.1 A. Property which is not subject to the law of sacrilege:

- B. *It is specifically property that is not at that moment subject to the law of sacrilege that is excluded from the rule at hand, lo, property that has been consecrated is not exempt from the rule at hand. So who is the Tannaite authority behind that position?*
- C. *Said R. Yohanan, "In the case of Lesser Holy Things, it is the view of R. Yosé the Galilean, who has said that they are classified as the property of the owner. For so it has been taught on Tannaite authority: "If a soul sin and*

commit an act of sacrilege against the Lord and lie to his neighbor” (Lev. 5:21) — this extends the law to Lesser Holy Things, which are classified as the property of the neighbor,’ the words of R. Yosé the Galilean.” [Kirzner: E.g., peace-offerings belong partly to the Lord and partly to the neighbor, parts burnt on the altar, parts consumed.]

- D. *But lo, we have learned in the Mishnah: He [who was a priest] who betroths a woman with his share [of the priestly gifts], whether they were Most Holy Things or Lesser Holy Things — she is not betrothed [M. Qid. 2:8A-B]. Now do we have to say that that rule does not accord with the position of R. Yosé the Galilean?*
- E. *Well, you may even maintain that that does accord with the position of R. Yosé the Galilean. When R. Yosé the Galilean made his ruling, it concerned animals that had been consecrated but were still alive, but in the cases of Holy Things that had been slaughtered, even R. Yosé the Galilean concurs that when those who have a right to eat the flesh acquire that right, it is from the table of the Most High that they have acquired that right.*
- F. *Well, then, when the beast is alive, does he actually take the view that the consecrated beast in the case of Lesser Holy Things is private property? Lo, we have learned in the Mishnah: [As to] the firstling [the first calves of the year’s herd]: (1) they [the priests] sell it [when the animal is] unblemished [and] alive; (2) and [when the animal is] blemished, [whether it is] alive or slaughtered. (3) And they give it as a token of betrothal to women. They do not deconsecrate [produce in the status of] second tithe with (1) a poorly minted coin nor with (2) coin that is not [currently] circulating, nor with (3) money that is not in one’s possession [M. M.S. 1:2]. And said R. Nahman said Rabbah bar Abbuha, “This rule pertains only to a firstling at this time [after the destruction of the Temple], for, since it is not suitable to be offered up, the priests have a right of ownership in it; but in the time that the sanctuary was standing, when the beast was suitable for an offering, that was not the case” [Kirzner: the priests would not have had in it a proprietary right nor have been able to use it for the betrothal of a woman]. And objected Raba to R. Nahman, ““If a soul sin and commit an act of sacrilege against the Lord and lie to his neighbor” (Lev. 5:21) — this extends the law to Lesser Holy Things, which are classified as the property of the neighbor,’ the words of R. Yosé the Galilean.” And Rabina replied, “[They are considered private property] only in the case of a firstling born outside of the Land, along the lines of the position of R. Simeon, who has said, ‘If firstlings were brought,*

unblemished, from abroad, they may be offered up.” *So that is the case only if they actually had been brought to the country, but if they were not brought there, there was no requirement to bring them there to begin with for that purpose [so they are merely the private property of the priests]. Now if it really is the position of R. Yosé the Galilean that they are private property when they are alive, [13A] then why did Rabina not simply say, “This represents the position of R. Yosé the Galilean, the other, the position of rabbis”?* [Yosé would then maintain that the firstling is the private property of the priests; Nahman’s statement that a firstling is not private property represents the position of his opposition (Kirzner).]

- G. *Do you make reference to the priestly gifts? The priestly gifts are exceptional [even Yosé regards them in no way as the private property of the priest, and all rabbis concur on the same point, which is why Rabina could not appeal to the distinction between Yosé’s and rabbis’ opinions on the matter] (Kirzner)], for, when people gain their entitlement to them, it is from the table of the Most High that they gain that entitlement [Kirzner: even while the firstling is still alive].*

IV.2 A. *Reverting to the body of the prior composition:*

- B. “‘If a soul sin and commit an act of sacrilege against the Lord and lie to his neighbor’ (Lev. 5:21) — this extends the law to Lesser Holy Things, which are classified as the property of the neighbor,” the words of R. Yosé the Galilean.
- C. Ben Azzai says, “That phrase serves to encompass peace-offerings.”
- D. Abba Yosé b. Dosetai says, “Ben Azzai made that statement solely with reference to a firstling.”

IV.3 A. The master has said, “Ben Azzai says, ‘That phrase serves to encompass peace-offerings’”:

- B. *What is this meant to eliminate? If we say it is meant to eliminate the firstling [from the classification of property that is subject to compensation for damages], now if peace-offerings, on which the owner has to lay hands, which have to be accompanied by libations, and the breast and thigh of which have to be waved, are classified as private property, is there any question that the firstling will be classified as private property [since these rites do not pertain to him]?*

C. *Rather, said R. Yohanan, "It is meant to eliminate tithe [of cattle, which is not private property,] in line with that which has been taught on Tannaite authority: 'With respect to a firstling, Scripture states, "You shall not redeem" (Num. 18:17), bearing the implication that it may be sold [if the animal is blemished, the owner may sell it as a firstling to a priest, since Scripture only forbids redeeming it but not selling it (Miller, Temurah)]. Scripture states with respect to an animal that has been designated as tithe, "You shall not redeem" (Lev. 27:28), that that means, it may not be sold alive or dead, unblemished or blemished.'"*

D. Rabina repeats the foregoing with respect to the concluding clause of the cited passage: "Abba Yosé b. Dosetai says, 'Ben Azzai made that statement solely with reference to a firstling.' What is this meant to eliminate? If we say it is meant to eliminate the peace-offerings [from the classification of property that is subject to compensation for damages], now if the firstling, which is sanctified from the womb, is deemed to be the property of the owner, then can there be any question about peace-offerings?"

E. *Rather, said R. Yohanan, "It is meant to eliminate tithe [of cattle, which is not private property,] in line with that which has been taught on Tannaite authority: 'With respect to a firstling, Scripture states, "You shall not redeem" (Num. 18:17), bearing the implication that it may be sold [if the animal is blemished, the owner may sell it as a firstling to a priest, since Scripture only forbids redeeming it but not selling it (Miller, Temurah)]. Scripture states with respect to an animal that has been designated as tithe, "You shall not redeem" (Lev. 27:28), that that means, it may not be sold alive or dead, unblemished or blemished.'"*

F. *But he has said, "the firstling alone"! [This then excludes everything else, even peace-offerings (Kirzner).]*

G. *That is a problem.*

- IV.4** A. *Raba said, “What is the meaning of **Property which is not subject to the law of sacrilege**? This means, property which does not to begin with fall into the category to which the law of sacrilege applies to begin with. And what might that be? It is property belonging to a common person.”*
- B. *Well then, why not just say, “property belonging to a common person”?*
- C. *So that’s a problem.*
- IV.5** A. *Said Raba, “In the case of an animal designated as peace-offerings that inflicted damage [while still deemed harmless, so that the damages must be collected only out of the value of the body of the beast itself (Kirzner)], the injured party collects what is owing only from the meat of the beast, but he cannot collect what is owing out of the value of the sacrificial parts.”*
- B. *So what else is new! The sacrificial parts belong to the Most High!*
- C. *No, the ruling is required to indicate that one does not collect from the meat in proportion to what is due from the sacrificial parts.*
- D. *In accord with whose principle would such a position be set forth anyhow? It cannot be in accord with the position of rabbis, for that would then be obvious. They maintain that, if there is no possibility of collecting what is owing from one party, there is then no occasion to make it up from the other party. And it cannot be held that it accords with R. Nathan [who says that the beast is not private property], for he holds that if one cannot collect from one party, one may still collect from the other party anyhow.*
- E. *If you prefer, I shall explain that, in point of fact, it is in accord with R. Nathan, but if you like, I can also explain that it is in accord with rabbis.*
- F. *If you like, I can explain that it is in accord with rabbis: the position of rabbis pertains when there are two distinct agencies that are responsible for having done the damage, but if the damage was done by one agency, the injured party may still be able to require payment from wherever he can get it. And if you like, you may say that the ruling accords with R., Nathan, for it is only in a case in which one ox pushed another’s ox into a pit that the owner of the injured ox may say to the owner of the pit, “I found my ox in your pit; whatever is not paid to me by your co-defendant will be paid by you.” [13B] But here, could the injured party say, “The meat did the damage and the sacrificial parts did not damage”?!*

- IV.6** A. Said Raba, “An animal designated as a thanksgiving-offering that did damage — the injured party collects from the meat of the animal, but he may not collect from the bread-offering that has been designated to go along with it.”
- B. *The bread-offering! So what else is new!*
- C. *Well, it was because of the concluding part of the same rule that it was necessary to make that statement, namely: The injured party eats the bread, and the one who is going to achieve atonement through his animal then has to present the bread-offering. [That is, the party who presents the animal also produces the bread-offering that goes with it.]*
- D. *So what else is new!*
- E. *What might you otherwise have said? Since the bread-offering is required to validate the sacrifice, the party responsible for the injury may say to the plaintiff, “Should you eat the meat and I bring the bread?” So we are informed that that is not so, but the bread-offering is an obligation for the original owner of the sacrifice.*

- V.1** A. **Property belonging to members of the covenant [Israelites]:**
- B. *What is excluded by this qualification? If it is to exclude a gentile, lo, that is later on made explicit: **An ox belonging to an Israelite which gored an ox belonging to a gentile — [the Israelite owner] is exempt [M. 4:3A-B].***
- C. *The Tannaite authority here lays out the principle and there articulates it.*

- VI.1** A. **Property that is held in ownership:**
- B. *What is excluded by this qualification*
- C. *Said R. Judah, “It is to exclude a case in which [there are two defendants, and] one says, ‘Your ox did the damage,’ and the other says, ‘Your ox did the damage.’”*
- D. *Well, is this not explicitly stated below: If there were two oxen pursuing a third, and this party claims, “Your ox did the damage,” and that party claims, “Your ox did the damage,” both parties are exempt from having to pay compensation?*
- E. *The Tannaite authority here lays out the principle and there articulates it.*

- VI.2** A. *In a Tannaite formulation it has been stated: What is excluded is ownerless property.*
- B. *How shall we imagine such a situation? If we say that an ox belonging to us has gored an ownerless ox, against whom is there to lay claim? And if it is an*

ownerless ox that gored an ox belonging to one of us, then why not just go and seize the ownerless ox that has done the damage?

- C. *The rule speaks of a case in which someone else went and acquired the ownerless beast [and in line with the Mishnah's qualification, the injured party gets nothing].*

- VI.3** A. *Rabina said, "The phrase is meant to exclude this case: An ox gored, and then the owner sanctified it, or the ox gored, and then the owner declared it free for all."*
- B. *So, too, it has been taught on Tannaite authority:*
- C. *Furthermore said R. Judah, "Even if an ox gored and afterward the owner declared it sanctified, or it gored and afterward the owner declared it free for all, the owner is exempt, in line with this verse: 'And if it has been testified to his owner, and he has not kept it in, but it has killed a man or a woman, the ox shall be stoned' (Exo. 21:29). That is the case only where the conditions that prevail at the time of the killing are the same as those that prevail at the time of the court appearance [that is, the beast must be private property throughout the process]."*
- D. *Well, would we not then require that the same conditions prevail at the time of the final verdict? Lo, the verse itself, saying, "The ox shall be stoned" speaks of the time of the final verdict!*
- E. *Formulate the matter in this way: That is the case only where the conditions that prevail at the time of the killing are the same as those that prevail at the time of the court appearance and at the time of the final verdict.*

- VII.1** A. **And that is located in any place other than in the domain which is in the ownership of the one who has caused the damage:**

- B. *That is because the defendant may argue against the plaintiff, "What is your ox doing on my property?"*

- VIII.1** A. **Or in the domain which is shared by the one who suffers injury and the one who causes injury:**

- B. *Said R. Hisda said Abimi, "In the case of a courtyard owned by partners, liability is incurred for damages caused under the generative classifications of tooth and foot, and this is the sense of the Mishnah's statement: **And that is located in any place other than in the domain which is in the ownership of the one who has caused the damage,** in which case the defendant is exempt; but **in the domain which is shared by the one who suffers injury***

and the one who causes injury,...[the owner of] that one which has caused the damage is liable to pay compensation for damage.”

- C. But R. Eleazar said, “No liability is incurred for damages caused under the generative classifications of tooth and foot, *and this is the sense of the Mishnah’s statement: ...Except for that which is located in any place other than in the domain which is in the ownership of the one who has caused the damage, or in the domain which is shared by the one who suffers injury and the one who causes injury* — where there is also an exception. But **when one has otherwise caused damage, [the owner of] that one which has caused the damage is liable to pay compensation.**”
- D. *That statement encompasses damage in the classification of the generative category of horn* [Kirzner: for which there is liability even in public domain].
- E. *That position poses no problems to Samuel, but from the perspective of Rab, who has said, “The Tannaite authority has made reference to ox with the intention of encompassing all kinds of damage that an ox may do, what is encompassed by the clause, when one has otherwise caused damage, [the owner of] that one which has caused the damage is liable to pay compensation?*
- F. *It was meant to encompass that concerning which our rabbis have taught on Tannaite authority: ...When one has otherwise caused damage, [the owner of] that one which has caused the damage is liable to pay compensation* is meant to encompass liability for a paid bailee and a borrower, an unpaid bailee or a hirer, in the case in which any one of these has an animal as a bailment that did damage; then the ox that was presumed innocent pays half-damages, and the ox that was an attested danger pays damages. But if a wall was broken open at night or robbers took the beast by force, and then it went out and did damages, they are exempt.

VIII.2 A. The master has said: “**When one has otherwise caused damage, [the owner of] that one which has caused the damage is liable to pay compensation** is meant to encompass liability for a paid bailee and a borrower, an unpaid bailee or a hirer, in the case in which any one of these has an animal as a bailment that did damage; then the ox that was presumed innocent pays half-damages, and the ox that was an attested danger pays damages...”:

- B. *Now how are we to imagine such a case? If we should say that the ox belonging to the lender did injury to the ox that belonged to the*

borrower, why cannot the lender say to the borrower, “If my ox had done damage to someone else’s, you would have had to pay compensation” [since the borrower is responsible for any damage an ox he has borrowed may do], so now that my ox has done damage to your ox, how can you claim compensation from me?” And if the ox of the borrower did injury to the ox of the lender, why cannot the lender say to the borrower, “If my ox had been injured by anybody else’s, you would have had to compensate me for the full value of my ox. Now that your ox has done the damage, how can you pay me half-damages?”

- C. *In point of fact, we deal with a case in which the ox of the lender did injury to the ox of the borrower. But here with what sort of a case do we deal? It is one in which the borrower had taken upon himself responsibility for the body of the ox [14A] but not for any damage that the ox may do to a third party.*
- D. *Yeah — well what about the rest of the story: But if a wall was broken open at night or robbers took the beast by force, and then it went out and did damages, they are exempt? Then if it happened by day, he would have been responsible! Yet you just said that he did not take responsibility for any damage that the ox might do to a third party.*
- E. *This is the sense of the statement: But if he accepted responsibility for damage that it might do, he would be liable to pay compensation. But if a wall broke open at night or robbers took the beast by force, and then it went out and did damages, they are exempt.*

VIII.3 A. [But R. Eleazar said, “No liability is incurred for damages caused under the generative classifications of tooth and foot”:] *Is that so? But did not R. Joseph teach as a Tannaite statement: “In the case of a jointly owned courtyard or an inn, there is liability for damages that fall into the classification or tooth and foot.” Does this not refute R. Eleazar’s position?*

- B. *R. Eleazar may say to you, “But do you really think that no one dissents from that Tannaite formulation? But has it not been taught on Tannaite authority: **Four general principles did R. Simeon b. Eleazar state in connection with damages: In any situation in which the injured party has domain and the party responsible for the injury does not have domain, the party responsible for the***

injury is liable to pay the full damages for injury he has caused. If the party responsible for the injury has domain and the injured party does not, the former is exempt from all obligation for compensation for damages. If this one and that one both enjoy rights of domain, for instance, a courtyard belonging to partners, or a valley, as to damage done by tooth or leg, the party responsible for the injury is exempt. As to damage done by goring, pushing biting, lying down, or kicking, a beast that is an attested danger imposes upon the owner the obligation to pay full damages, and one that had been deemed harmless imposes upon the owner the obligation to pay half-damages. In any situation in which neither this party nor that party has domain, for instance, a courtyard that belongs to neither party, for damage done by tooth or leg, the owner pays full damages; and as to damage done by goring, pushing, biting, lying down, or kicking, a beast that is an attested danger imposes upon the owner the obligation to pay full damages, and one that had been deemed harmless imposes upon the owner the obligation to pay half-damages” [T. B.Q. 1:9]. So in any event, the passage is explicit: If this one and that one both enjoy rights of domain, for instance, a courtyard belonging to partners, or a valley, as to damage done by tooth or leg, the party responsible for the injury is exempt! So the passages in the names of Tannaite authorities do contradict one another.”

- C. *When that latter formulation was set forth, it was meant to make exclusive reference to a courtyard that was designated for the plaintiff and the defendant whether for use for storing produce or for tying up oxen. The formulation cited by R. Joseph, by contrast, referred to a courtyard that was designated for use for storing produce, but not for tying up oxen. So with respect to damage done by tooth, the premises were regarded in effect as the domain of the plaintiff along [there being no right to tie up cattle there]. You may find in the language of the formulation support for that view, for here we find a reference that is explicit: ...an inn. In the other formulation, by contrast, the comparison is drawn to “...a jointly owned valley.”*
- D. *That’s decisive proof.*
- E. *Objected R. Zira, “While, if the courtyard is designated for the produce of both parties, lo, we require that the condition be met,*

‘...and it feed in another man’s field’ (Exo. 22: 4), *which condition has not been met in this case!*”

- F. *Said to him Abbayye, “Since it is not designated for use for oxen, it falls into the category of a field belonging to a third party.”*
- G. *Said R. Aha of Difti to Rabina, “May we then say that since the Tannaite formulations do not differ on this matter, so, too, the Amoraic formulations also do not differ?”* [Kirzner: Hisda deals with a case where the keeping of cattle has not been permitted, Eleazar with one in which the premises may be used for that purpose also.]
- H. *He said to him, “Quite so.”*
- I. *But if you prefer to think that they do differ, then what is at issue between them is the question raised by R. Zira and the solution proposed by Abbayye* [Kirzner: Hisda concurs with Abbayye, Eleazar concurs with Zira].

VIII.4 A. *Reverting to the body of the foregoing: Four general principles did R. Simeon b. Eleazar state in connection with damages: In any situation in which the injured party has domain and the party responsible for the injury does not have domain, the party responsible for the injury is liable in all.*

B. *Now the language that is used is not “for all [kinds of damages]” but “liable in all” — meaning, for the whole of the damage. Now is this not in accord with R. Tarfon, who takes the view, “Damage varying from the norm that is done by horn in the premises of the injured party will be compensated in full”?*

C. *But then what about what comes later on: In any situation in which neither this party nor that party has domain, for instance, a courtyard that belongs to neither party, there is liability for damage done by tooth or foot! Now what can be the meaning of neither this party nor that party has domain? If we say that neither this party nor that party has domain, but someone else does, for there has to be compliance with the condition, “and it feed in another man’s field” (Exo. 22: 4) [the field must belong to the plaintiff], and that condition has not been met here. So it is obvious that the sense*

of neither this party nor that party has domain is, it is owned only by the plaintiff. And yet it states at the end, a beast that is an attested danger imposes upon the owner the obligation to pay full damages, and one that had been deemed harmless imposes upon the owner the obligation to pay half-damages. Now that accords with the view of rabbis, who maintain, "Damage varying from the norm that is done by horn in the premises of the injured party will be compensated only by half-damages." So are we going to end up in the position of having the opening clause accord with the view of R. Tarfon and the closing one with rabbis?

D. *Yes indeed. For lo, Samuel said to R. Judah, "Sharp-wit! Ignore the Tannaite formulation and accept my position that the opening clause accords with the view of R. Tarfon and the closing one with rabbis."*

E. *Rabina in the name of Raba said, "The whole really represents the position of R. Tarfon. And what is the meaning of the language, neither this party nor that party has domain? Neither this party nor that party has domain with respect to storing produce, but all the same are this party and that party with respect to tying up oxen. So with reference to damage done by the tooth, the produce belongs to the injured party, but with regard to damages done by the horn, it is regarded as public domain."*

F. *Well, if that's the case, then how can you say that there are four classifications, when there are only three? [Kirzner: In principle they are only three in number, exclusively the plaintiff's premises, exclusively the defendants, and partnership premises.]*

G. *Said R. Nahman bar Isaac, [14B] "There are three comprehensive principles, applying to four distinct situations [Kirzner: partnership premises may be subdivided into two, where both have the right to keep produce and cattle and where the right to keep produce is exclusively the plaintiffs]."*

I.1 commences with a Tannaite complement to the Mishnah's rule. After a talmudic reading of that passage, we proceed, at No. 2, to a second Tannaite complement, this one,

too, accorded its own, considerable talmud, at No. 3. **II.1-2** complement the Mishnah's statement with a concrete case, illustrating the principle of the Mishnah and investigating its implications and logic. We end up with a very good example illustrating the rather subtle rule of the Mishnah. **III.1** finds the scriptural authority behind the Mishnah's ruling. Nos. 2, 3, 4 provide a talmud to No. 1. Nos. 5-6 continue the inquiry into how damages are assessed in the present matter, all thus extending the Mishnah's rule and amplifying it. Nos. 7-12+13 are tacked on to No. 6 because they form a composite made up of materials that share the same named authorities. **IV.1** finds the authority behind the Mishnah's rule, a common mode of Mishnah exegesis. Nos. 2-3 provide an appendix to the foregoing. No. 4 provides another amplification of the language of the Mishnah. At Nos. 5, 6 we have a secondary problem in amplification of the Mishnah's rule. **V.1, VI.1-3** ask the same question of Mishnah exegesis. **VII.1** then explains the reasoning behind the Mishnah's rule. **VIII.1**, with its talmud at Nos. 2, 3 (for 1.C), and its appendix at No. 4, a talmud for 3.B, provides an important qualification for the Mishnah's rule.

1:3

- A. **Assessment [of the compensation for an injury to be paid] is in terms of ready cash [but may be paid in kind — that is,] in what is worth money.**
- B. **[Assessment of the compensation for an injury to be paid is] before a court.**
- C. **[Assessment of the compensation for an injury to be paid is] on the basis of evidence given by witnesses who are freemen and members of the covenant.**
- D. **Women fall into the category of [parties to suits concerning] damages.**
- E. **And the one who suffers damages and the one who causes damages [may share] in the compensation.**

- I.1** A. **[Assessment [of the compensation for an injury to be paid] is in terms of ready cash:] *what is the meaning of* in terms of ready cash?**
- B. Said R. Judah, "This evaluation is to be reckoned only in specie."
- C. *That is in line with what our rabbis have taught as a Tannaite statement: In the case of a cow that did damage to a garment and the garment also did damage to the cow, they do not rule, "Let the cow be handed over for the cloak that it has damaged, and let the cloak be handed over in compensation for the injury done to the cow." But they estimate their value in ready cash [T. B.Q. 1:2B].*

- II.1** A. **But may be paid in kind — that is, in what is worth money:**

- B. *That is in line with what our rabbis have taught on Tannaite authority: In what is worth money — this teaches that the court makes an evaluation only of immovable property. If there is movable property that has been seized by the one who has been injured, they make an estimate in settlement of his claim from that property [T. B.Q. 1:2D-F].*

II.2 A. The master has said, “In what is worth money — this teaches that the court makes an evaluation only of immovable property”:

- B. *How is this to be inferred?*
C. Said Rabbah bar Ulla, “It must be something that is fully worth what is paid for it in cash.”
D. *What might this mean?*
E. Something that is not subject to the law of deception [as to true value]. [Kirzner: Money’s worth would thus mean, property which could not be said to be worth less than the price paid for it, and is thus never subject to the law of deception; this holds good with immovable property.]
F. *Well, slaves and bonds also are not subject to the law of deception!*
G. Rather, said Rabbah bar Ulla, “It must be something that may be purchased with ready cash.”
H. *Well, slaves and bonds also are purchased with ready cash.*
I. *Rather, said R. Ashi, “What ‘worth money’ means is, worth money but not actually money, but all of these are things are equivalent in themselves to ready cash.”*

II.3 A. *To R. Huna b. R. Joshua, R. Judah bar Hinena pointed out the following contradiction: “A Tannaite formulation states, In what is worth money — this teaches that the court makes an evaluation only of immovable property. But has it not further been taught on Tannaite authority: “...He should return” (Exo. 21:34) — encompassing whatever has monetary value, even bran’?”*

- B. *In the former instance with what situation do we deal? It is a case of heirs [who have to pay only out of the real estate but not out of slaves or other property (Kirzner)].*
C. *If you claim we are deal with heirs to an estate, then notice the concluding part of the same statement: If there is movable property that has been seized by the one who has been injured, they make an estimate in*

settlement of his claim from that property [T. B.Q. 1:2D-F]! *But if we are dealing with heirs, how is the court going to collect payment for him out of them?*

- D. *It is in line with that which Raba said R. Nahman said, "It is a case in which the plaintiff seized the property while the original defendant was alive. Here, too, the seizure was while the defendant was still alive."*

III.1 A. [Assessment of the compensation for an injury to be paid is] before a court [Kirzner: meaning, payment in kind is made out of possessions that are in the presence of the court, not disposed of]:

- B. That then excludes the case of one who first sells off his property and then goes to court.
- C. *Does that not then yield the inference that, where one has borrowed money and then sold off his property before going to court, the court cannot collect the debt out of an estate that has been disposed of? [That is an impossible inference.]*
- D. The purpose of the text is to exclude a court of laymen [this: in the presence of the court, means, only by qualified judges (Kirzner)].

IV.1 A. [Assessment of the compensation for an injury to be paid is] on the basis of evidence given by witnesses who are freemen and members of the covenant:

- B. That then excludes the case of one who confesses an act that is subject to an extrajudicial fine [in which case he is exempt from the fine], but afterwards witnesses came along [and testified he had done what he had confessed; that makes no difference, he remains exempt from the extrajudicial sanction].
- C. *That inference poses no problem to him who says that in the case of one who confesses an act that is subject to an extrajudicial fine [in which case he is exempt from the fine], but afterwards witnesses came along [and testified he had done what he had confessed; that makes no difference, he remains exempt from the extrajudicial sanction]. But from the perspective of him who says that in the case of one who confesses an act that is subject to an extrajudicial fine [in which case he is exempt from the fine], but afterwards witnesses came along [and testified he had done what he had confessed], he is liable, what is to be said?*
- D. *It is the conclusion of the passage that is necessary, [15A] namely: witnesses who are freemen and members of the covenant. ...Who are freemen serves to exclude slaves; ...and members of the covenant serves to exclude*

gentiles. And it was necessary to make these exclusions explicit, for had we been given the rule only concerning the slave, we might have thought that he was excluded only because he has no identifiable parentage, but a gentile, who has identifiable parentage, I might have said is not excluded; and had we been given only the case of the gentile, I might have thought that he is excluded because he is not subject to the commandments, but a slave, who is subject to the commandments, I might have thought was not excluded. So it was necessary to specify both.

- V.1 A. Women fall into the category of [parties to suits concerning] damages:**
- B. *What is the scriptural basis for this ruling?*
 - C. Said R. Judah said Rab, and so, too, has a Tannaite authority of the household of R. Ishmael stated, “‘When a man or a woman commits any sin that men commit’ (Num. 5: 6). In this language, Scripture has treated the woman as comparable to the man for the purpose of all the penalties that are imposed by the Torah.”
 - D. The household of R. Eleazar repeated as its Tannaite formulation: “‘Now these are the ordinances that you shall set before them’ (Exo. 21: 1) — in this language, Scripture has treated the woman as comparable to the man for the purpose of all the laws that are imposed by the Torah.”
 - E. The household of Hezekiah and R. Yosé the Galilean presented as a Tannaite formulation, “Said Scripture, ‘It has killed a man or a woman’ (Exo. 21: 1) — in this language, Scripture has treated the woman as comparable to the man for the purpose of all the forms of the death penalty that are specified in the Torah.
 - F. *And all three proofs are required to make the point. For had we heard only the initial one, we might have thought that it is in that area in particular that the All-Merciful has taken pity on a woman, so that she will have a means of atonement, but so far as civil laws in general, a man, who is engaged in business transactions, would be subject to the law, but I might have thought that a woman is not.*
 - G. *And had we been given the rule concerning the civil law, I might have thought that that is so that a woman should have a way of making a living, but as to atonement, since a man is responsible to carry out the religious duties, he would be given the means of making atonement for sin, but a woman, who is not responsible for keeping [all] religious duties, is not under the law.*

- H. *And had we been given these two, the one because of making atonement, the other because of making a living, but as to the matter of manslaughter, a man, who is subject to the religious duty of paying a ransom in the case of manslaughter, would be subject to the law, but a woman would not.*
- I. *And had we been given the matter of ransom, it might have been thought because in that matter, it is because a soul has perished, but as to these other matters, in which there is no issue of a soul's having perished, I might have thought that that was not the case. So all of them are required.*

VI.1 A. And the one who suffers damages and the one who causes damages [may share] in the compensation:

- B. *It has been stated:*
- C. *Half-damages —*
- D. *R. Pappa said, "They are classified as civil damages."*
- E. *R. Huna b. R. Joshua said, "They fall into the classification of an extrajudicial sanction."*
 - F. *R. Pappa said, "They are classified as civil damages": he takes the view that oxen under ordinary circumstances are not assumed to be properly guarded, and therefore as a matter of law, the owner should have to pay full damages, but it is the All-Merciful who has taken pity on his situation, since up to that point his ox has not yet been placed under a warning.*
 - G. *R. Huna b. R. Joshua said, "They fall into the classification of an extrajudicial sanction": he takes the view that oxen under ordinary circumstances are assumed to be properly guarded, and therefore, as a matter of law, the owner should not have to pay any damages at all. But it is the All-Merciful that has imposed an extrajudicial sanction on him so that he will take good care of his oxen.*
- H. *We have learned in the Mishnah: **And the one who suffers damages and the one who causes damages [may share] in the compensation.** Now from the perspective of him who has said, "They are classified as civil damages," that is why the plaintiff, getting only half of what is coming to him, is involved in the payment. But from the perspective of him who maintains, "They fall into the classification of an extrajudicial sanction," since, after all, this payment*

really does not belong to the plaintiff at all, how can he be involved in the payment?

- I. *The reference is required to cover a case in which the loss derives from the decrease in the value of the carcass of the beast [which the injured party suffers].*
- J. *As to the decrease in the value of the carcass of the beast [which the injured party suffers], lo, that is covered by the prior statement, namely, **I am liable for compensation as if [I have] made possible all of the damage it may do — this teaches that the owner has to take care of the disposition of the carcass [receiving the proceeds as part payment] [T. B.Q. 1:1E-F].***
- K. *The one statement speaks of a beast that was deemed harmless, the other a beast that was an attested danger. And it was necessary to make the same point in both cases, for had we been given the rule concerning the beast that was deemed harmless, we might have supposed that the reason for the rule is that the owner has not yet been subjected to a warning to watch out for his ox. But in the case of an ox, in which the owner had been warned, I might have said that that is not the case. And had we been given the rule covering the beast that was an attested danger, the operative consideration would have been that he pays the whole of the damages, but as to the beast that was deemed innocent, I might not have thought that the same rule applied. So both rules are required.*
- L. *Come and take note: **What is the difference between what is deemed harmless and an attested danger? But if that which is deemed harmless [causes damage], [the owner] pays half of the value of the damage which has been caused, [with liability limited to the value of the] carcass [of the beast which has caused the damage]. But [if that which is] an attested danger [causes damage], [the owner] pays the whole of the value of the damage which has been caused from the best property [he may own, and his liability is by no means limited to the value of the animal which has done the damage] [M. 1:4K-N].** Now if it were the fact that liability for half-damages is an extrajudicial sanction, why not add to the foregoing the following point of difference: The owner of the beast that was deemed harmless will not have to pay if he confesses to the matter on his own, while the owner of a beast that was an attested danger has to pay if he confesses on his own.*
- M. *The Tannaite authority left out items from his list.*

- N. *Yeah, well, if he left out items from his list, what else did he leave off?*
- O. *He left out the matter of the half-ransom for manslaughter [which does not have to be paid by the owner of the beast that was deemed harmless; the owner of the beast that was an attested danger pays full ransom].*
- P. *That is no real omission, since the Mishnah may accord with the position of R. Yosé the Galilean, who takes the view that the owner of the beast deemed harmless does pay half-liability as a ransom.*
- Q. *Come and take note: [15B] “My ox killed Mr. So-and-so,” or “...Mr. So-and-so’s ox” — lo, this one pays compensation on the strength of his own testimony. Now does this not refer to the case of an ox that was deemed harmless? [Kirzner: And if the liability is created by admission, it proves that it is not an extrajudicial penalty but a civil penalty.]*
- R. *No, it refers to an ox that was an attested danger.*
- S. *Then what is the rule in the case of a beast that was deemed harmless? Is it not the fact that, here, too, he would not pay if he himself confessed the facts?*
- T. *If so, why include further on, “My ox killed Mr. So-and-so’s slave” — he does not have to pay on the strength of his own confession. Why not just formulate matters covering both cases by saying the rule in this language: Under what circumstances? In the case of an ox that was an attested danger. But in the case of an ox that was thought to be harmless, he does not pay on the strength of his own confession?*
- U. *The whole of the passage speaks of an ox that was an attested danger.*
- V. *Come and take note: This is the governing principle. In any case in which the payment exceeds the value of the actual damages, one does not pay on the strength of his own confession. Would this then not yield the inference that in cases where payment is less than the actual damage, liability comes about even by one’s own confession?*
- W. *Not at all, that is the case only when the payment is the same as the amount of the damage done. But what is the law where the payment is less than the value of the damage done? Would it be the fact that confession does not establish liability? If so, why state, this is the governing principle. In any case in which the payment exceeds the value of the actual damages, one does not pay on the strength of his own confession? Why not use this language: This is the governing principle. In any case in which the payment is not exactly the same as the amount of the damages..., and that would bear the inference of payment being less or more.*

- X. *That's a solid refutation. Nonetheless, the decided law is that half-damages fall into the classification of an extrajudicial sanction.*
- Y. *Can you have a case in which there is a refutation, but what is refuted stands as the decided law?*
- Z. *Well, as a matter of fact, you can, for what constitutes the refutation anyhow? It is only that the Tannaite formulation does not say, "...where the payment does not correspond exactly to the amount of the damages." But that is not entirely precise, since there is liability for half-damages in the case of pebbles [that an animal kicks], which in accord to the law that has been received as a tradition is classified as civil. And it is on that account that the proposed formulation is not the one that was adopted.*

AA. *Now that you have reached the position that liability for half-damages is an extrajudicial sanction, lo, if a dog ate a lamb or a cat ate a hen, which is regarded as an unusual occasion, and we do not in Babylonia collect extrajudicial penalties, [so these should not be actionable cases in Babylonia], on condition that the lambs or chickens were big, but if they were little, it would be a commonplace event [and then would be a civil damage under the classification of tooth]. Now if the injured party had seized property of the one responsible for the injury, we would not take the property back from him. And if the injured party were to say, "Set a fixed time, so that I may go to the land of Israel, and plead my case," we do set a fixed time, and if the other party did not go along for the trip, we excommunicate him. Now, one way or the other, we should excommunicate him until he removes the source of the damage, in line with what R. Nathan said. For it has been taught on Tannaite authority: R. Nathan says, "How on the basis of Scripture do we know that someone should not raise a vicious dog in his house or maintain a shaky ladder in his house? 'You shall not bring blood upon your house' (Deu. 22: 8)."*

I.1, II.1 appeal to Tannaite clarifications of the rule given by the Mishnah. Nos. 2, 3 further analyze the materials of No. 1. **III.1** corrects a possible, false interpretation of the Mishnah's rule. **IV.1** goes through the same exercise. **V.1** finds a scriptural basis for the Mishnah's ruling. **VI.1** presents an analysis of the Mishnah's topic, utilizing the Mishnah's rule in the course of the argument.

1:4A-J

- A. [There are] five [deemed] harmless, and five [deemed] attested dangers.
- B. A domesticated beast is not regarded as an attested danger in regard to [1] butting, (2) pushing, (3) biting, (4) lying down, or (5) kicking.
- C. (1) A tooth is deemed an attested danger in regard to eating what is suitable for [eating].
- D. (2) The leg is deemed an attested danger in regard to breaking something as it walks along.
- E. (3) And an ox which is an attested danger [so far as goring is concerned];
- F. (4) and an ox which causes damage in the domain of the one who is injured;
- G. and (5) man.
- H. (1) A wolf, (2) lion, (3) bear, (4) leopard, (5) panther, and (6) a serpent — lo, these are attested dangers.
- I. R. Eliezer says, “When they are trained, they are not attested dangers.
- J. “But the serpent is always an attested danger.”

- I.1** A. *Since the passage of the Mishnah has stated, **A tooth is deemed an attested danger in regard to eating what is suitable for [eating], it must be inferred that we deal with the courtyard belonging to the injured party [Kirzner: for otherwise there is no liability in the case of tooth]. And it is further stated here, A domesticated beast is not regarded as an attested danger in regard to [1] butting, (2) pushing, (3) biting, (4) lying down, or (5) kicking, with the inference that the compensation will not be for the entirety of the damages but only the half-damages. In accord with whom is this ruling? It is in accord with the position of rabbis, who maintain, if damage that is of an unusual character is done, even on the premises of the injured party, only half-damages are paid. Now go on to the end of the same passage: (3) And an ox which is an attested danger [so far as goring is concerned]; (4) and an ox which causes damage in the domain of the one who is injured; and (5) man. This accords with the view of R. Tarfon, who has said, “Damage varying from the norm that is done by horn in the premises of the injured party will be compensated in full.” So are we left with a situation in which the opening clause of the passage accords with the rabbis and the concluding clause is in accord with the view of R. Tarfon!?***

- B. *Yes indeed, for did not Samuel say to R. Judah, “Sharp-wit! Ignore the Tannaite formulation and accept my position that the opening clause accords with the view of R. Tarfon and the closing one with rabbis.”*
- C. *R. Eleazar in the name of Rab said, [16A] “The whole really represents the position of R. Tarfon. The opening clause refers to a courtyard that is reserved for produce for one of them, while both this one and that one may use it for oxen. Now in regard to damage in the classification of tooth, therefore, the courtyard is held to belong to the injured party. With respect to injuries that fall into the classification of horn, it is regarded as public domain.” [Kirzner: Both plaintiff and defendant had the right to keep their cattle there.]*
- D. *Said R. Kahana, “I repeated this tradition before R. Zebid of Nehardea, and he said to me, ‘Can you really establish this passage wholly in accord with the position of R. Tarfon? Is it not taught in the Mishnah: **A tooth is deemed an attested danger in regard to eating what is suitable for [eating]**? If it is suitable for it, then that is the case, but if it is not suitable for it, then that is not the case. But were it R. Tarfon who was responsible for what is before us, has he not said, “Damage varying from the norm that is done by horn in the premises of the injured party will be compensated in full”?’ So, in point of fact, the passage represents the position of rabbis, but it suffers from a lacuna, and this is how it should read: **[There are] five [deemed] harmless**, but if the owner is warned in their regard, then they are deemed to be attested dangers. And the tooth and foot are deemed to be attested dangers to begin with. And in what regard are they deemed to have been attested as dangers? In the courtyard of the injured party.” [Kirzner: The ox doing damage on the plaintiff’s premises refers to tooth and not to horn.]*
- E. *To this proposition objected Rabina, “We have as our Tannaite formulation below, **An ox which causes damage in the domain of the one who is injured [M. 1:4F] — how so? [If it gored, pushed, bit, lay down, or kicked [= M. 1:4B], in the public domain, the owner pays half of the value of the damages the ox has caused. If it did so in the domain of the injured party, R. Tarfon says, ‘The owner pays the full value of the damages the ox has caused.’ And sages say, ‘Half of the value’] [M. 2:5]. Now if you maintain that this damage has been covered in the passage before us, that is why the passage then adds, how so? But if you hold the view that this is a kind of damage that has not been dealt with, then how could the passage proceed as it does, how so?”***

- F. *Rather, said Rabina, “The passage presents us with a lacuna, and this is how it should read: [There are] five [deemed] harmless, but if they are subjected to a warning, then all five of them are then classified as attested dangers. And the tooth and foot are held to be attested dangers to begin with. And this is the way in which the ox is an attested danger. And as to the ox that does damages in the domain of the injured party, there is a dispute between R. Tarfon and rabbis. There are, moreover, other classifications of those that are attested danger in the same category as these: (1) A wolf, (2) lion, (3) bear, (4) leopard, (5) panther, and (6) a serpent — lo, these are attested dangers.”*
- G. *So, too, it has been taught on Tannaitic authority: [There are] five [deemed] harmless, but if they are subjected to a warning, then all five of them are then classified as attested dangers. And the tooth and foot are held to be attested dangers to begin with. And this is the way in which the ox is an attested danger. And as to the ox that does damages in the domain of the injured party, there is a dispute between R. Tarfon and rabbis. There are, moreover, other classifications of those that are attested danger in the same category as these: (1) A wolf, (2) lion, (3) bear, (4) leopard, (5) panther, and (6) a serpent — lo, these are attested dangers.”*
- H. *There are those who reached this conclusion by raising the following objection: we have learned in the Mishnah, [There are] five [deemed] harmless, and five [deemed] attested dangers. But are there no more? Lo, there are (1) A wolf, (2) lion, (3) bear, (4) leopard, (5) panther, and (6) a serpent — lo, these are attested dangers. And in this regard it is set forth as follows: Said Rabina, “The passage presents us with a lacuna, and this is how it should read: [There are] five [deemed] harmless, but if they are subjected to a warning, then all five of them are then classified as attested dangers. And the tooth and foot are held to be attested dangers to begin with. And this is the way in which the ox is an attested danger. And as to the ox that does damages in the domain of the injured party, there is a dispute between R. Tarfon and rabbis. There are, moreover, other classifications of those that are attested danger in the same category as these: (1) A wolf, (2) lion, (3) bear, (4) leopard, (5) panther, and (6) a serpent — lo, these are attested dangers.”*

II.1 A. A domesticated beast is not regarded as an attested danger in regard to butting, (2) pushing, (3) biting, (4) lying down, or (5) kicking:

- B. Said R. Eleazar, "That is the rule only in the case of big jugs. But in the case of small jugs, *that is a routine occurrence.*"
- C. *May we say that the following supports his view:* A beast is deemed an attested danger to walk in its normal way or to break things or to crush a person, animal, or utensils.
- D. *But maybe this refers to doing so from the side.*
 - E. *There are those who state the matter in the following way: Said R. Eleazar, "Do not state this rule in such a way that it pertains only to big jugs, in which case this would not be the ox's usual practice, but in regard to little jugs, which it would be usual for him to break, the rule applies; but even in the case of little jugs, it also is not usual for him to do that."*
 - F. *An objection was raised:* A beast is deemed an attested danger to walk in its normal way or to break things or to crush a person, animal, or utensils.
 - G. *Said R. Eleazar, "But maybe this refers to doing so from the side."*
 - H. *There are those who to begin with raise this as an objection: We have learned in the Mishnah, **not regarded as an attested danger...lying down.***
 - I. *But has it not been taught on Tannaite authority:* A beast is deemed an attested danger to walk in its normal way or to break things or to crush a person, animal, or utensils?
 - J. *Said R. Eleazar, "That is no problem. The one speaks of big jugs, the other, of little ones."*

- III.1** A. **(1) A wolf, (2) lion, (3) bear, (4) leopard, (5) panther, and (6) a serpent — lo, these are attested dangers:**
- B. *What is the definition of a panther?*
 - C. *Said R. Judah, "A jumper."*
 - D. *What is a jumper?*
 - E. *Said R. Joseph, "A hyena."*
 - F. *An objection was raised:* R. Meir says, "Also a many colored one" [a hyena]. R. Eleazar says, "Also a snake." *Now R. Joseph has said that the jumper is a hyena!*
 - G. *That is no problem, the one speaks of a male, the other, a female, as has been taught on Tannaite authority:* [Kirzner:] A male hyena after seven years turns

into a bat, a bat after seven years turns into an arpad-bat, an arpad-bat after seven years turns into a kimmosh-thorn, a kimmosh-thorn after seven years turns into a thorn, a thorn after seven years turns into a demon. The spine of a man after seven years turns into a snake, *But that is the case only if he did not bow when he recited the benediction*, “We give thanks to you.”

III.2 A. A master has said: R. Meir says, “Also a many colored one” [a hyena]. **[16B]** R. Eleazar says, “Also a snake.” R. Meir says, “Also a many-colored one” [a hyena]. R. Eleazar says, “Also a snake.”

B. *But have we not learned in the Mishnah: R. Eliezer says, “When they are trained, they are not attested dangers. But the serpent is always an attested danger”?*

C. *Read: the snake [alone].* [Kirzner: Only the snake, excluding the hyena and the other animals on the list.]

III.3 A. Said Samuel, “In the case of a lion in public domain, if it seized and ate an animal, the owner is exempt, but if it tore the animal to pieces and ate it, he is liable.

B. “...If it seized and ate an animal, the owner is exempt: *Since it is its way to seize, it is as though an animal ate fruit and vegetable, so it is classified as damage in the category of tooth in public domain, and there is an exemption from the requirement of paying damages.*

C. “But if it tore the animal to pieces and ate it, he is liable: *This is not the ordinary custom of a lion* [Kirzner: and it falls into the category of horn, which is not immune even in public domain].”

D. *Is that to imply that it is unusual for a lion to tear at its prey? But it is written, “The lion did tear in pieces enough for his whelps” (Nah. 2:13)!*

E. It is usual only when it is for the sake of the whelps.

F. But what about the next clause, “And strangled for his lionesses” (Nah. 2:13).

G. It is usual only for the sake of the lionesses.

H. “And filled his holes with prey” (Nah. 2:13)?

I. It is usual only when it is done to preserve the prey in his holes.

J. “And his dens with ravage”?

- K. It is usual only when it is done to preserve the prey in his dens.
- L. *But has it not been taught on Tannaite authority:* So, too, if a wild animal went into the courtyard of the injured party and tore up a beast and ate up the meat, the owner has to pay full damages?
- M. *Here with what sort of a case do we deal? It is one in which* he tore up the animal to preserve it.
- N. *But lo, it is taught,* ate up the meat!
- O. *It changed its mind and ate it up after all.*
- P. *Yeah, and how would we know what it was thinking? And in the matter of Samuel's ruling, why not assume the same thing anyhow?*
- Q. *Said R. Nahman, "The passages have to be interpreted to deal with diverse cases, namely, if it either tears to pieces for the purpose of preservation, or seizes and eats the meat, the payment must be full damages."*
- R. *Rabina said, "When Samuel made his statement, he dealt with a tame lion, and it was within the framework of the position of R. Eleazar, who said, 'That is not the usual thing for a tame lion to do.'"*
- S. *Well, then, even in the case of the lion's seizing, the same rule should apply and there should be liability!*
- T. *What Rabina said does not pertain to what Samuel said, but rather to the Tannaite formulation, which, then, we have to assume treats a tame lion and takes the view of R. Eleazar that such a lion does not usually do that sort of thing.*
- U. *Then why not pay only half-damages?*
- V. *The owner of the lion was warned that the beast was an attested danger.*
- W. *If so, then why present this formulation with regard to the secondary classifications of tooth, while it should be presented in regard to the secondary classifications of horn?*
- X. *That's a good question.*

The analysis of the implications of the Mishnah paragraph, and how they conflict, is well executed at **I.1**. **II.1** provides a minor clarification of the rule of the Mishnah. **III.1+2** glosses the Mishnah's language. No. 3 adds a refinement to the law.

1:4K-N

- K. What is the difference between what is deemed harmless and an attested danger?**
- L. But if that which is deemed harmless [causes damage], [the owner] pays half of the value of the damage which has been caused,**
- M. [with liability limited to the value of the] carcass [of the beast which has caused the damage].**
- N. But [if that which is] an attested danger [causes damage], [the owner] pays the whole of the value of the damage which has been caused from the best property [he may own, and his liability is by no means limited to the value of the animal which has done the damage].**

- I.1** A. **[The best property:]** *What is the meaning of the best property?*
- B. Said R. Eleazar, "The best of the estate of the defendant: 'And Hezekiah slept with his father, and they buried him in the best of the sepulchres of the sons' of David' (2Ch. 32:33)."
- C. And R. Eleazar said, "'In the best...' means, near the best of the family, David and Solomon."

Composite on Hezekiah and Jeremiah

- I.2** A. "And they buried him in his own sepulchres, when he had made for himself in the city of David, and laid him in the bed that was filled with sweet odors and diverse kinds of spices" (2Ch. 16:14):
- B. *What is the meaning of, "with sweet odors and diverse kinds of spices"?*
- C. R. Eleazar said, "Just that."
- D. R. Samuel bar Nahmani said, "Spices such that whoever smells them becomes lustful."
- I.3** A. "For they have dug a ditch to take me and hid snares for my feet" (Jer. 18:22)
—
- B. R. Eleazar said, "They suspected him of having sexual relations with a whore."
- C. Samuel bar Nahmani said, "They suspected him of having sexual relations with a married woman."

- D. *Now with respect to the position of the one who has said, “They suspected him of having sexual relations with a whore,” that is in line with how it is written, “For a harlot is a deep ditch” (Pro. 23:27). But from the perspective of him who said, “They suspected him of having sexual relations with a married woman,” what is the connection between the term “ditch” and “a married woman”?*
- E. *Well, is a married woman not a whore under such circumstances?*
- F. *Now with respect to the position of the one who has said, “They suspected him of having sexual relations with a married woman,” Scripture thereafter states, “Yet Lord you know all their counsel against me to slay me” (Jer. 18:23). But from the perspective of him who said, “They suspected him of having sexual relations with a whore,” how did they propose to slay him? [They did not accuse him of a sin punishable by death.]*
- G. They threw him into a pit of mud.

I.4 A. *Raba interpreted, “What is the meaning of the verse, ‘But let them be overthrown before you; deal thus with them in the time of your anger’ (Jer. 18:23)? Said Jeremiah before the Holy One, blessed be He, ‘Lord of the world, even when they do acts of righteousness, make them stumble through people who are unworthy of the charity, so that they will not receive a reward for the good that they do.’”*

- I.5** A. “And they did him honor at his death” (2Ch. 32:33) — this teaches that they called a session [for Torah study] at his grave.
- B. There was a dispute in that regard between R. Nathan and rabbis. One say, “It was for three days,” **[17A]** and the other said, “It was for seven days.”
- C. And some say, “For thirty days.”

- I.6** A. *Our rabbis have taught on Tannaite authority:*
- B. ““And they did him honor at his death’ (2Ch. 32:33) — this refers to Hezekiah, King of Judah, before whom thirty-six thousand soldiers marched forth with bare shoulders,” the words of R. Judah.
- C. Said to him R. Nehemiah, “But didn’t they do the same before Ahab? But what they did as special honor was to place a stroll of the Torah on his bier, saying, ‘This one carried out what is written in that.’”
- D. *Don’t we do the same thing at this time too?*
- E. *We carry it forth, but we do not put it on the bier.*

- F. *If you prefer, we put it on the bier, but we do not use the language, “This one carried out what is written in that.”*

- I.7** A. *Said Rabbah bar bar Hanna, “I was following R. Yohanan to ask him about this tradition, when he went into a privy. I put the matter before him [when he came out], but he did not answer my question until he had washed his hands, put his prayer-boxes containing verses of Scripture back on, and recited the benediction. Then he said to us, ‘We even do use the language, “This one carried out what is written in that,” we do not say, “He taught the Torah....”’”*
- B. *But did not a master say, “Great is the study of the Torah, for study brings about practice”?*
- C. *There is no contradiction, the one speaks of studying the Torah, the other, teaching the Torah.*

- I.8** A. *Said R. Yohanan in the name of R. Simeon b. Yohai, “What is the meaning of the verse of Scripture, ‘Happy are you who sow beside all waters, that send forth the feet of the ox and the ass’ (Isa. 32:20)? Whoever is devoted to the Torah and to doing deeds of grace, has the merit of inheriting two tribes: ‘Blessed are you that sow.’ And ‘sowing’ speaks of acts of charity, ‘Sow to yourselves in charity, reap in kindness’ (Hos. 10:12). Water stands for the Torah: ‘everyone that thirsts, come to the water’ (Isa. 55: 1).”*
- B. *“Here is worthy of the inheritance of two tribes,” Joseph: “Joseph is a fruitful bough, whose branches run over the wall” (Gen. 49:22); and Issachar, “Issachar is a strong ass” (Gen. 49:14).*
- C. *Some say, “His enemies will fall before him: ‘With them he shall push the people together to the ends of the earth’ (Deu. 33:17).”*
- D. *He is worthy of understanding like Issachar, “which were men who had understanding of the times, to know what Israel out to do” (1Ch. 12:12).*

I.1 defines a term of the Mishnah. This bears in its wake the composite of Nos. 2-8. No. 8 strikes me as completely miscellaneous; I do not see why it is included here at all.