

# XI

## THE STRUCTURE OF BABYLONIAN TALMUD BABA QAMMA

Whether or not the Talmud of Babylonia is carefully organized in large-scale, recurrent structures and guided by a program that we may call systematic forms the principal question addressed by an academic commentary. The preceding chapters therefore have pointed toward the presentation set forth here.

By “structure” I mean, a clearly-articulated pattern that governs the location of fully-spelled out statements. By “system,” I mean, a well-crafted and coherent set of ideas that explain the social order of the community addressed by the writers of a document, a social philosophy, a theory of the way of life, world view, and character of the social entity formed by a given social group. I see a collective, anonymous, and political document, such as the one before us, as a statement to, and about, the way in which people should organize their lives and govern their actions. At issue then in any document such as the remarkable one before us is simple: does this piece of writing present information or a program, facts to whom it may concern, or a philosophically and aesthetically cogent statement about how things should be?

The connection between structure and system is plain to see. From the way in which people consistently frame their thoughts, we move to the world that, in saying things one way rather than in some other, they wish to imagine the world in which they wish to live, to which they address these thoughts. For if the document exhibits structure and sets forth a system, then it is accessible to questions of rationality. We may ask about the statement that its framers or compilers wished to make by putting the document together as they did. But if we discern no structure and perceive no systematic inquiry or governing points of analysis, then all we find here is inert and miscellaneous information, facts but no propositions, arguments, viewpoints.

Now the Talmud commonly finds itself represented as lacking organization and exhibiting a certain episodic and notional character. That view moreover characterizes the reading and representation of the document by learned and experienced scholars, who have devoted their entire lives to Talmud study and exegesis. It must follow that upon the advocate of the contrary view — the one implicit in the representation of the document for academic analysis — rests the burden of proof. I set forth the allegation that the Talmud exhibits a structure and follows a system and therefore exhibits a commonly-intelligible rationality. The claim to write an academic commentary explicitly states that proposition. For the tractate before us, I have therefore to adduce evidence and argument.

I maintain that through the normal procedures of reasoned analysis we may discern in the tractate a well-crafted structure. I hold that the structure made manifest, we may further

identify the purpose and perspective, the governing system of thought and argument, of those who collected and arranged the tractate's composites and put them together in the way in which we now have them. By "structure" I mean, how is a document organized? and by "system," what do the compilers of the document propose to accomplish in producing this complete, organized piece of writing? The answers to both questions derive from a simple outline of the tractate as a whole, underscoring the types of compositions and composites of which it is comprised. Such an outline tells us what is principal and what subordinate, and how each unit — composition formed into composites, composites formed into a complete statement — holds together and also fits with other units, fore and aft. The purpose of the outline then is to identify the character of each component of the whole, and to specify its purpose or statement. The former information permits us to describe the document's structure, the latter, its system.

While the idea of simply outlining a Talmud-tractate beginning to end may seem obvious, I have never made such an outline before, nor has anyone else.\* Yet, as we shall now see, the character of the outline dictates all further analytical initiatives. Specifically, when we follow the layout of the whole, we readily see the principles of organization that govern. These same guidelines on organizing discourse point also to the character of what is organized: complete units of thought, with a beginning, middle, and end, often made up of smaller, equally complete units of thought. The former we know as composites, the latter as compositions.

\*I have provided complete outlines for the Mishnah and for the Tosefta in relationship to the Mishnah, and, not always in outline form, for the Midrash-compilations of late antiquity as well.

Identifying and classifying the components of the tractate — the composites, the compositions of which they are made up — we see clearly how the document coheres: the plan and program worked out from beginning to end. When we define that plan and program, we identify the facts of a pattern that permit us to say in a specific and concrete way precisely what the compilers of the tractate intended to accomplish. The structure realizes the system, the program of analysis and thought that takes the form of the presentation we have before us. From what people do, meaning, the way in which they formulate their ideas and organized them into cogent statements, we discern what they proposed to do, meaning, the intellectual goals that they set for themselves.

These goals — the received document they wished to examine, the questions that they brought to that document — realized in the layout and construction of their writing, dictate the points of uniformity and persistence that throughout come to the surface. How people lay out their ideas guides us into what they wished to find out and set forth in their writing, and that constitutes the system that defined the work they set out to accomplish. We move from how people speak to the system that the mode of discourse means to express, in the theory that modes of speech or writing convey modes of thought and inquiry.

We move from the act of thought and its written result backward to the theory of thinking, which is, by definition, an act of social consequence. We therefore turn to the matter of intention that provokes reflection and produces a system of inquiry. That statement does not mean to imply I begin with the premise of order, which sustains the thesis of a prior system that defines the order. To the contrary, the possibility of forming a coherent outline out of the data we have examined defines the first test of whether or not the

document exhibits a structure and realizes a system. So everything depends upon the possibility of outlining the writing, from which all else flows. If we can see the order and demonstrate that the allegation of order rests on ample evidence, then we may proceed to describe the structure that gives expression to the order, and the system that the structure sustains.

The present work undertakes the exegesis of exegesis, for the Talmud of Babylonia, like its counterpart in the Land of Israel, is laid out as a commentary to the Mishnah. That obvious fact defined the character of my academic commentary, since we have already faced the reality that our Bavli-tractate is something other than a commentary, though it surely encompasses one. The problems that captured my attention derived from the deeper question of how people make connections and draw conclusions. To ask about how people make connections means that we identify a problem — otherwise we should not have to ask — and what precipitated the problem here has been how a composition or a composite fits into its context, when the context is defined by the tasks of Mishnah-commentary, and the composition or composite clearly does not comment on the Mishnah-passage that is subjected to comment.

The experience of analyzing the document with the question of cogency and coherence in mind therefore yields a simple recognition. Viewed whole, the tractate contains no gibberish but only completed units of thought, sentences formed into intelligible thought and self-contained in that we require no further information to understand those sentences, beginning to end. The tractate organizes these statements as commentary to the Mishnah. But large tracts of the writing do not comment on the Mishnah in the way in which other, still larger tracts do. Then how the former fit together with the latter frames the single most urgent question of structure and system that I can identify.

Since we have already examined enormous composites that find their cogency in an other than exegetical program, alongside composites that hold together by appeal to a common, prior, coherent statement — the Mishnah-sentences at hand — what justifies my insistence that an outline of the document, resting on the premise that we deal with a Mishnah-commentary, govern all further description? To begin with, the very possibility of outlining Babylonian Talmud tractate Baba Qamma derives from the simple fact that the framers have given to their document the form of a commentary to the Mishnah. It is in the structure of the Mishnah-tractate that they locate everything together that they wished to compile. We know that is the fact because the Mishnah-tractate defines the order of topics and the sequence of problems.

Relationships to the Mishnah are readily discerned; a paragraph stands at the head of a unit of thought; even without the full citation of the paragraph, we should find our way back to the Mishnah because at the head of numerous compositions, laid out in sequence one to the next, clauses of the Mishnah-paragraph are cited in so many words or alluded to in an unmistakable way. So without printing the entire Mishnah-paragraph at the head, we should know that the received code formed the fundamental structure because so many compositions cite and gloss sentences of the Mishnah-paragraph and are set forth in sequence dictated by the order of sentences of said Mishnah-paragraph. Internal evidence alone suffices, then, to demonstrate that the structure of the tractate rests upon the Mishnah-tractate cited and discussed here. Not only so, but the sentences of the Mishnah-paragraphs of our tractate are discussed in no other place in the entire Talmud of

Babylonia in the sequence and systematic exegetical framework in which they are set forth here; elsewhere we may find bits or pieces, but only here, the entirety of the tractate.

That statement requires one qualification, and that further leads us to the analytical task of our outline. While the entire Mishnah-tractate of Baba Qamma is cited in the Talmud, the framers of the Talmud by no means find themselves required to say something about every word, every sentence, every paragraph. On the contrary, they discuss only what they choose to discuss, and glide without comment by large stretches of the tractate. A process of selectivity, which requires description and analysis, has told the compilers of the Talmud's composites and the authors of its compositions\* what demands attention, and what does not. Our outline has therefore to signal not only what passage of the Mishnah-tractate is discussed, but also what is not discussed, and we require a general theory to explain the principles of selection ("making connections, drawing conclusions" meaning, to begin with, making selections). For that purpose, in the outline, I reproduce the entirety of a Mishnah-paragraph that stands at the head of a Talmudic composite, and I underscore those sentences that are addressed, so highlighting also those that are not.

\*This statement requires refinement. I do not know that all available compositions have been reproduced, and that the work of authors of compositions of Mishnah-exegesis intended for a talmud is fully exposed in the document as we have it. That is not only something we cannot demonstrate — we do not have compositions that were not used, only the ones that were — but something that we must regard as unlikely on the face of matters. All we may say is positive: the character of the compositions that address Mishnah-exegesis tells us about the concerns of the writers of those compositions, but we cannot claim to outline all of their concerns, on the one side, or to explain why they chose not to work on other Mishnah-sentences besides the ones treated here. But as to the program of the compositors, that is another matter: from the choices that they made (out of a corpus we cannot begin to imagine or invent for ourselves) we may describe with great accuracy the kinds of materials they wished to include and the shape and structure they set forth out of those materials. We know what they did, and that permits us to investigate why they did what they did. What we cannot know is what they did not do, or why they chose not to do what they did not do. People familiar with the character of speculation and criticism in Talmudic studies will understand why I have to spell out these rather commonplace observations. I lay out an argument based on evidence, not on the silences of evidence, or on the absence of evidence — that alone.

It follows that the same evidence that justifies identifying the Mishnah-tractate as the structure (therefore also the foundation of the system) of the Talmud-tractate before us also presents puzzles for considerable reflection. The exegesis of Mishnah-exegesis is only one of these. Another concerns the purpose of introducing into the document enormous compositions and composites that clearly hold together around a shared topic or proposition, e.g., my appendix on one theme or another, my elaborate footnote providing information that is not required but merely useful, and the like. My earlier characterization of composites as appendices and footnotes signalled the fact that the framers of the document chose a not-entirely satisfactory way of setting out the materials they wished to include here, for large components of the tractate do not contribute to Mishnah-exegesis in any way at all. If these intrusions of other-than-exegetical compositions were proportionately modest, or of topical composites negligible in size, we might dismiss them as appendages, not structural components that bear much of the weight of the edifice as a whole. Indeed, the language that I chose for identifying and defining these composites — footnotes, appendices, and the like — bore the implication that what is not Mishnah-commentary also is extrinsic to the Talmud's structure and system.

But that language served only for the occasion. In fact, the outline before us will show that the compositions are large and ambitious, the composites formidable and defining. Any description of the tractate's structure that dismisses as mere accretions or intrusions so large a proportion of the whole misleads. Any notion that "footnotes" and "appendices" impede exposition and disrupt thought, contribute extraneous information or form tacked-on appendages — any such notion begs the question: then why fill up so much space with such purposeless information? The right way is to ask whether the document's topical composites play a role in the representation of the Mishnah-tractate by the compilers of the Talmud. We have therefore to test two hypotheses:

**1** the topical composites ("appendices," "footnotes") do belong and serve the compilers' purpose, or

**2** the topical composites do not participate in the re-presentation of the Mishnah-tractate by the Talmud and do not belong because they add nothing and change nothing.

The two hypotheses may be tested against the evidence framed in response to a single question: is this topical composite necessary? The answer to that question lies in our asking, what happens to the reading of the Mishnah-tractate in light of the topical composites that would not happen were we to read the same tractate without them? The outline that follows systematically raises that question, with results specified in due course. It suffices here to state the simple result of our reading of the tractate, start to finish: the question of structure, therefore also that of system, rests upon the position we identify for that massive component of the tractate that comprises not Mishnah-commentary but free-standing compositions and composites of compositions formed for a purpose other than Mishnah-commentary.

The principal rubrics are given in small caps. The outline takes as its principal rubrics two large-scale organizing principles.

The first is the divisions of the Mishnah-tractate to which the Talmud-tractate serves as a commentary. That simple fact validates the claim that the tractate exhibits a fully-articulated structure. But the outline must also underscore that the Mishnah-tractate provides both more and less than the paramount outline of the Talmud-tractate. It is more because sentences in the Mishnah-tractate are not analyzed at all. These untreated Mishnah-sentences are given in bold face lower case caps, like the rest of the Mishnah, but then are specified by underlining and enclosure in square brackets.

Second, it is less because the structure of the tractate accommodates large composites that address topics not defined by the Mishnah-tractate. That brings us to the second of the two large-scale modes of holding together both sustained analytical exercises and also large sets of compositions formed into cogent composites. These are treated also as major units and are indicated by Roman numerals, alongside the Mishnah-paragraphs themselves; they are also signified in small caps. But the principal rubrics that do not focus on Mishnah-commentary but on free-standing topics or propositions or problems are not given in boldface type. Consequently, for the purposes of a coherent outline we have to identify as autonomous entries in our outline those important composites that treat themes or topics not contributed by the Mishnah-tractate.

## **I. Mishnah-Tractate Baba Qamma 1:1**

### **A. THERE ARE FOUR GENERATIVE CLASSIFICATIONS OF CAUSES OF DAMAGES: (1) OX (EXO. 21:35-36), (2) PIT (EXO. 21:33);**

1. I:1: 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? What's the difference between an act that falls into the generative category and one that falls into the derivative category?

2. I:2: 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.

3. I:3: What is the upshot of the distinction at hand? 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."

### **B. THE SCRIPTURAL FOUNDATIONS FOR THE DEFINITION OF GENERATIVE CAUSES OF DAMAGE; THE SUBSETS OF THE CLASSIFICATIONS**

1. I:4: Three of the four generative causes of damage are stated with respect to the ox: horn, tooth, and foot.

2. I:5: How on the basis of Scripture do we know the case of the horn?

3. I:6: What are the derivatives of the horn?

a. I:7: 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. I:8: Biting: does this not fall into the classification of a derivative of tooth?

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

I. I:10: 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?

4. I:11: Where in Scripture is reference made to tooth and foot?

a. I:12: Gloss of the foregoing.

b. I:13: As above.

c. I:14: Continuation: 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).

5. I:15: What is the derivative of the generative category of tooth?

6. I:16: What is the derivative of the generative category of foot?
7. I:17: What would be derivatives of the generative category of pit?
8. I:18: What can these derivatives of the crop-destroying beast be anyhow?
9. I:19: What are derivatives of fire?
- a. I:20: Secondary development of foregoing.

**C. (3) CROP-DESTROYING BEAST (EXO. 22: 4), AND (4) CONFLAGRATION (EXO. 22: 5):**

1. II:1: What is the meaning of “the crop-destroying beast”? Rab said, “The crop-destroying beast is in fact the human being.” And Samuel said, “The crop-destroying beast is the same as tooth that is, trespassing cattle.”
2. II:2: So why doesn’t Samuel state matters as does Rab in explaining the meaning of crop-destroying beast, for Rab said, “The crop-destroying beast is in fact the human being”?
3. II:3: 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)?
4. II:4: 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.”
5. II:5: 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? 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?
6. II:6: 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. How come R. Oshaia did not reckon these others?
7. II:7: 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?

8. II:8: 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?

**D. THE INDICATIVE CHARACTERISTIC OF THE OX IS NOT EQUIVALENT TO THAT OF THE CROP-DESTROYING BEAST:**

1. III:1: What is the sense of this statement?

**E. NOR IS THAT OF THE CROP-DESTROYING BEAST EQUIVALENT TO THAT OF THE OX; NOR ARE THIS ONE AND THAT ONE, WHICH ARE ANIMATE, EQUIVALENT TO FIRE, WHICH IS NOT ANIMATE; 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.**

1. IV:1: What is the sense of this statement? Said R. Mesharshayya in the name of Raba, "This is the sense of the statement: 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...."

2. IV:2: 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..."

**F. WHAT THEY HAVE IN COMMON IS THAT THEY CUSTOMARILY DO DAMAGE AND TAKING CARE OF THEM IS YOUR RESPONSIBILITY.**

1. V:1: So what is encompassed by this generalization?

2. V:2: So what is encompassed by this generalization? Raba said, "Encompassed is a pit that is moved around by the feet of man or beast.

3. V:3: 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."

4. 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**)."

**G. AND WHEN ONE OF THEM HAS CAUSED DAMAGE, THE OWNER OF THAT WHICH CAUSES THE DAMAGE IS LIABLE TO PAY COMPENSATION FOR DAMAGE:**



1. VI:1: The Mishnaic word choice is odd, and should be liable HYYB and not accountable HB!

#### **H. ...OUT OF THE BEST OF HIS LAND (EXO. 22: 4):**

1. VII:1: “Of the best of his field and of the best of his vineyard shall he make restitution” (Exo. 22: 4) — 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. 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.”

a. VII:2: Secondary development of foregoing. 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. VII:3: As above. What is the scriptural basis for the position of R. Ishmael?

c. VII:4: As above. 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?

2. VII:5: 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?”

3. VII:6: 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?”

4. VII:7: 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.

a. VII:8: 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 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?

**I. VII:9:** 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.’”

**II. VII:10:** Abbaye 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.’”

**I. AND WHEN ONE OF THEM HAS CAUSED DAMAGE, THE OWNER OF THAT WHICH CAUSES THE DAMAGE IS LIABLE TO PAY COMPENSATION FOR DAMAGE:**

**1. VIII:1:** R. Huna said, “He may pay compensation either in ready cash or with the best of his landed estate.” R. Nahman objected to R. Huna, “‘He shall return’ (Exo. 21:34) — this serves to encompass even what has monetary value, even bran.”

**2. VIII:2:** Said R. Assi, “As to ready cash, lo, it is in the same category as real estate.”

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

**a. VIII:4:** 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.** VIII:5: 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.”

## **II. Mishnah-Tractate Baba Qamma 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.**

**1.** I:1: How so? 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.

**2.** I:2: 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. 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. 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.

**a.** I:3: Gloss of foregoing.

### **B. 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.**

**1.** II:1: how so? 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.

### **C. ...I AM LIABLE FOR COMPENSATION AS IF I HAVE MADE POSSIBLE ALL OF THE DAMAGE IT MAY DO**

**1.** III:1: 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**). Scriptural proofs for that proposition.

**a.** III:2: Continuation: 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 in the interest of the plaintiff.

**b.** III:3: Said R. Kahana to Raba, “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!”

**I. III:4:** 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) — “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?

**II. III:5:** 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 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.”

**III. III:6:** 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.”

**5.** Pappa said, “They do not make such an estimate.”

#### **D. COMPOSITE OF SAYINGS IN THE NAME OF ULLA CITING ELEAZAR**

**1. III:7:** 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.”

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

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

**4. III:10:** 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.”

**5. III:11:** 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.”

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

a. III:13: Gloss of foregoing: May we say that the same issue is what is under debate in the following Tannaite dispute.

#### **E. (1) PROPERTY WHICH IS NOT SUBJECT TO THE LAW OF SACRILEGE:**

1. IV:1: 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?

a. IV:2: “‘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.

l. IV:3: Gloss of foregoing.

2. IV:4: 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.”

3. IV:5: 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, 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.

4. IV:6: 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.”

#### **F. (2) PROPERTY BELONGING TO MEMBERS OF THE COVENANT ISRAELITES:**

1. V:1: What is excluded by this qualification?

#### **G. (3) PROPERTY THAT IS HELD IN OWNERSHIP,**

1. VI:1: What is excluded by this qualification?

2. VI:2: In a Tannaite formulation it has been stated: What is excluded is ownerless property.

3. VI:3: 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.”

#### **H. 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,**

1. VII:1: That is because the defendant may argue against the plaintiff, “What is your ox doing on my property?”

**I. OR IN THE DOMAIN WHICH IS SHARED BY THE ONE WHO SUFFERS INJURY AND THE ONE WHO CAUSES INJURY: WHEN ONE HAS CAUSED DAMAGE UNDER ANY OF THE AFORELISTED CIRCUMSTANCES, THE OWNER OF THAT ONE WHICH HAS CAUSED THE DAMAGE IS LIABLE TO PAY COMPENSATION FOR DAMAGE OUT OF THE BEST OF HIS LAND.**

1. VIII:1: 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.” 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.”

a. VIII:2: Gloss of a tangential detail of the foregoing.

b. VIII:3: Gloss of Eleazar’s statement.

I. VIII:4: Gloss of a tangential detail of the foregoing.

### **III. Mishnah-Tractate Baba Qamma 1:3**

**A. ASSESSMENT OF THE COMPENSATION FOR AN INJURY TO BE PAID IS IN TERMS OF READY CASH:**

1. I:1: what is the meaning of “in terms of ready cash”?

**B. BUT MAY BE PAID IN KIND — THAT IS, IN WHAT IS WORTH MONEY.**

1. II:1: 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**).

a. II:2: Gloss of foregoing.

2. II:3: 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’?”

**C. ASSESSMENT OF THE COMPENSATION FOR AN INJURY TO BE PAID IS BEFORE A COURT.**

1. III:1: That then excludes the case of one who first sells off his property and then goes to court.

**D. 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.**

1. IV:1: 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.

**E. WOMEN FALL INTO THE CATEGORY OF PARTIES TO SUITS CONCERNING DAMAGES.**

1. V:1: What is the scriptural basis for this ruling?

**F. AND THE ONE WHO SUFFERS DAMAGES AND THE ONE WHO CAUSES DAMAGES MAY SHARE IN THE COMPENSATION.**

1. VI:1: Half-damages — R. Pappa said, “They are classified as civil damages.” R. Huna b. R. Joshua said, “They fall into the classification of an extrajudicial sanction.”

## **IV. Mishnah-Tractate Baba Qamma 1:4A-J**

**A. THERE ARE FIVE DEEMED HARMLESS, AND FIVE DEEMED ATTESTED DANGERS.**

1. I:1: 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 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. 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.**

1. II:1: 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. (1) A TOOTH IS DEEMED AN ATTESTED DANGER IN REGARD TO EATING WHAT IS SUITABLE FOR EATING. (2) THE LEG IS DEEMED AN ATTESTED DANGER IN REGARD TO BREAKING SOMETHING AS IT WALKS ALONG (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.**

**(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. BUT THE SERPENT IS ALWAYS AN ATTESTED DANGER.”**

**1. III:1: What is the definition of a panther?**

**a. III:2: Gloss of the foregoing.**

**2. III:3: 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.”**

## **V. Mishnah-Tractate Baba Qamma 1:4K-N**

**A. 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.**

**1. I:1: What is the meaning of the best property?**

**B. COMPOSITE ON HEZEKIAH AND ON JEREMIAH**

**1. I:2: “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):What is the meaning of, “with sweet odors and diverse kinds of spices”?**

**2. I:3: “For they have dug a ditch to take me and hid snares for my feet” (Jer. 18:22) — R. Eleazar said, “They suspected him of having sexual relations with a whore.”**

**3. I:4: 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.’**

**4. I:5: “And they did him honor at his death” (2Ch. 32:33) — this teaches that they called a session for Torah study at his grave.**

**5. I:6: “‘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.**



- a. I:7: Gloss of the foregoing.
- b. I:8: Miscellaneous entry.

## VI. Mishnah-Tractate Baba Qamma 2:1

**A. HOW IS THE LEG DEEMED AN ATTESTED DANGER IN REGARD TO BREAKING SOMETHING AS IT WALKS ALONG? A DOMESTICATED BEAST IS AN ATTESTED DANGER TO GO ALONG IN THE NORMAL WAY AND TO BREAK SOMETHING.**

1. I:1: Said Rabina to Raba, “Is not ‘foot’ the same as ‘beast’?”

2. I:2: A domesticated beast is an attested danger to go along in the normal way and to break something: how so? A domesticated beast that entered the courtyard of the injured party and did damage with its body as it went along, or with its hair as it went along, or with the saddle that was on it, or with the burden that was on it, or with the bit in its mouth, or with the bell on its neck, or an ass that did damage with its burden — the owner pays full damages.

a. 3. I:3: Gloss of a tangential detail of the foregoing.

3. I:4: Three Tannaite formulations continuing I:2: In the case of chickens that were flying about from place to place and breaking utensils with their wings, the owner pays full damages; but if wind was stirred up under their wings and it broke utensils, the damage came about by vibration from their wings, he pays only half-damages. Sumekhosh says, “Full damages” (T. **B.Q. 2:1I-L**).

a. I:5: Amplification of foregoing.

4. I:6: Said Raba, “Any action that done on the part of a person afflicted with flux uncleanness (Lev. 15) would result in his conveying uncleanness to something in the case of damages would involve compensation of full damages, while any action that done on the part of a person afflicted with flux uncleanness would not result in his conveying uncleanness to something in the case of damages would involve compensation of only half-damages.”

**5. I:7: Chickens that were pecking at the rope of a well bucket, and in consequence it was weakened and fell and broke, the owner pays full damages. If it fell and broke and furthermore broke another utensil alongside, for the first the owner pays full damages, and for the second, half-damages (T. **B.Q. 2:1E-G**).**

a. I:8: Raba’s analysis of the foregoing. Raba raised this question: “If a beast tread on a utensil and did not break it, but it rolled off to some other place and then broke, what is the law? The operative criterion is what happened at the outset, in which case the damage has been done by the body of the beast and the case is subject to the classification of foot? Or is the operative consideration the breaking of the utensil, in which case we classify the damage under the rubric of pebbles?”

b. I:9: As above. 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 best property of the owner of the beast? Will it be paid only from the body of the beast itself since we do not find a case in which

half-damages are collected from the best property of the responsible party? Or perhaps it will be paid from the best property of the responsible party, since we do not find a case in which damages done in an ordinary way will be compensated only out of the body of the beast that has done the damage?"

**I. I:10:** Secondary gloss of a detail of the foregoing.

**6. I:11:** R. Ashi raised this question: "Would an act that was extraordinary reduce the payment, in the case of damage that fell into the classification of pebbles, to the payment of a quarter-damages in compensation, or would an act that was extraordinary not reduce the payment, in the case of damage that fell into the classification of pebbles, to the payment of a quarter-damages in compensation?"

**7. I:12:** R. Ashi raised this question: From the viewpoint of Sumekhosh, do we take account of damages that are caused by indirect force or do we not? Has he received a tradition on the matter, the effect of which he limits to damage done by indirect force, or has he no such tradition anyhow?"

**B. BUT IF IT WAS KICKING, OR IF PEBBLES WERE SCATTERED FROM UNDER ITS FEET AND IT THEREBY BROKE UTENSILS — THE OWNER PAYS HALF OF THE VALUE OF THE DAMAGES CAUSED BY HIS OX. IF IT STEPPED ON A UTENSIL AND BROKE IT, AND THE UTENSIL FELL ON ANOTHER UTENSIL AND BROKE IT, FOR THE FIRST THE OWNER PAYS THE FULL VALUE OF THE DAMAGE. BUT FOR THE SECOND HE PAYS HALF OF THE VALUE OF THE DAMAGE.**

**1. II:1:** The question was raised: What is the sense of the statement, If it was kicking and damage resulted from the kicking or in the case of pebbles flying in the usual way, half-damages are paid, that is, in accord with the view of rabbis vs. Sumekhosh, or is the sense of the statement, if it was kicking and it did damage through its kicking, or when pebbles went flying as a result of the kicking, then only half-damages are assessed, bearing the implication that if pebbles fly in the ordinary way, damages are paid in full, following the view of Sumekhosh?

**2. II:2:** R. Abba bar Mamel asked R. Ammi, and some say, R. Hiyya bar Abba, "If the cow was walking along in a place in which it was not possible not for her to make pebbles fly off, but in any event it was kicking and so made pebbles fly and do damage, what is the law? Since it was not possible for the cow to produce any other effect, we have to classify this as the normal course or events? Or should we say that, well, anyhow, in this case in any event, the pebbles are scattered on account of the cow's own kicking?"

**3. II:3:** R. Jeremiah asked R. Zira, "If a cow was going along in the public road and kicked a pebble, which did damage, what is the law? Do we compare the case to one in which damage results from horn, liability applying even in public domain, so that the owner is liable? Or do we compare it to a derivative of foot, in which case the owner is exempt?"

**4. II:4:** R. Judah Nesiah and R. Oshaia happened to be at the gate of R. Judah. The following matter came up between them: "If an animal knocked about with the till and caused damage in public domain, what is the law?"

5. II:5: R. Ina raised this question: “If the animal knocked around with its prick and did damage, what’s the law? Do we say that it is comparable to horn? But in the case of horn, desire does not take over, while here it does? Or perhaps in the case of horn, the animal wants to do damage, but here the animal doesn’t want to do damage but only have sex?”

**C. FOWL ARE AN ATTESTED DANGER TO GO ALONG IN THE NORMAL WAY AND TO BREAK SOMETHING. IF A FOWL HAD ITS FEET ENTANGLED, OR IF IT WAS SCRATCHING AND THEREBY BROKE UTENSILS, THE OWNER PAYS ONLY HALF OF THE VALUE OF THE DAMAGE HIS FOWL HAS CAUSED.**

1. III:1: Said R. Huna, “This rule applies only in a case in which the string became attached on its own, but if somebody had attached it, then liability would be for full damages.”

## **VII. Mishnah-Tractate Baba Qamma 2:2**

**A. HOW IS THE TOOTH DEEMED AN ATTESTED DANGER IN REGARD TO EATING WHAT IS SUITABLE FOR EATING?**

1. I:1: How is the tooth deemed an attested danger in regard to eating what is suitable for eating: How so? A beast that entered the courtyard of the injured party and ate food that was suitable for it, or drank liquid that was suitable for it — the owner pays full damages. So, too, a wild beast that went into the injured party’s domain and tore an animal to pieces and ate its meat — the owner pays full damages. And a cow that ate barley, an ass that ate horse beans, a dog that licked oil, or a pig that ate a piece of meat — the owner pays full damages (T. B.Q. 1:8A-I).

2. I:2: Said R. Pappa, “Now that you have specified all these items which, under ordinary circumstances, would not serve as food for beasts but which in an emergency will be eaten by them as food, if a cat ate dates or an ass ate fish, — the owner pays full damages.”

a. I:3: Illustrative case.

b. I:4: As above.

3. I:5: Said Ilfa, “If a beast was in public domain and stretched out its neck and ate food on the back of another beast, the owner is liable. How come? The food that is on the back of the other beast is as though it were in the courtyard of the injured party.”

a. I:6: Gloss of a detail of the foregoing.

4. I:7: R. Zira raised this question: “If a sheaf was rolling around, what is the law?”

**B. AN OX IS AN ATTESTED DANGER TO EAT FRUIT AND VEGETABLES. IF, HOWEVER, IT ATE A PIECE OF CLOTHING OR UTENSILS, THE OWNER PAYS HALF OF THE VALUE OF THE DAMAGE IT HAS CAUSED.**

**UNDER WHAT CIRCUMSTANCES? WHEN THIS TAKES PLACE IN THE DOMAIN OF THE INJURED PARTY. BUT IF IT TAKES PLACE IN THE PUBLIC DOMAIN, HE IS EXEMPT.**

1. II:1: To what does the final ruling Under what circumstances? When this takes place in the domain of the injured party. But if it takes place in the public domain, he is exempt) refer?

**C. BUT IF IT THE OX DERIVED BENEFIT FROM DAMAGE DONE IN PUBLIC DOMAIN, THE OWNER PAYS FOR THE VALUE OF WHAT HIS OX HAS ENJOYED. HOW DOES HE PAY FOR THE BENEFIT OF WHAT HIS OX HAS ENJOYED?**

1. III:1: And how much might that enjoyment be? Rabbah said, “The cost of straw of a very coarse and cheap kind.” Raba said, “The cost of barley of a cheap grade.”

2. III:2: He who without the owner’s knowledge or consent lives in the upper room of someone else — does he have to pay him rent or does he not have to pay him rent? The question is settled by reference to our Mishnah-passage.

a. III:3: Continuation of foregoing.

b. III:4: As above.

c. III:5: As above.

d. III:6: As above.

e. III:7: As above.

**D. IF IT ATE SOMETHING IN THE MIDST OF THE MARKETPLACE, HE PAYS FOR THE VALUE OF WHAT IT HAS ENJOYED. IF IT ATE FROM THE SIDES OF THE MARKETPLACE, HE PAYS FOR THE VALUE OF THE DAMAGE THAT THE OX HAS CAUSED. IF HE ATE FROM WHAT IS LOCATED AT THE DOORWAY OF A STORE, THE OWNER PAYS FOR THE VALUE OF WHAT IT HAS ENJOYED. IF IT ATE FROM WHAT IS LOCATED INSIDE THE STORE, THE OWNER PAYS FOR THE VALUE OF THE DAMAGES THAT IT HAS CAUSED.**

1. IV:1: If it ate from what is located inside the store, the owner pays for the value of the damages that it has caused: Said Rab, “That is so even if the animal had stood in the market but turned its head to the side and ate the food.” Samuel said, “Even if the animal had stood in the market but turned its head to the side and ate the food, the owner is exempt.”

2. IV:2: May we say that what is at issue between them is the case of a pit that is dug on the property of the defendant and while abandoning the site, retains ownership of the pit? Rab says that the owner of the cow is exempt for the loss of the produce holds that a pit dug on one’s own site is subject to the law of pit so that fruits left on an unfenced site adjoining public ground constitute a nuisance that may be abated by all and everybody, and Samuel, who holds the owner of the cow liable for the loss sustained by the owner of the produce takes the view that a pit dug on one’s own site is never classified under the law of pit the pit being on private property.

3. IV:3: May we say that the issue of the animal’s turning its head to the sideways is subject to dispute in the following Tannaite formulation, as has been taught on Tannaite authority.

## **VIII. Mishnah-Tractate Baba Qamma 2:3**

**A. THE DOG OR THE GOAT THAT JUMPED FROM THE TOP OF THE ROOF AND BROKE UTENSILS — THE OWNER PAYS THE FULL VALUE OF THE DAMAGE THEY HAVE CAUSED, BECAUSE THEY ARE ATTESTED DANGERS.**

1. I:1: The operative consideration is that they jumped off the roof, but if they had only fallen down and broken the utensils en route in their fall, they would be exempt. It must follow then that the authority at hand takes the view that if the beginning of an action that results in damage is by reason of negligence but the end is an accident, then the defendant does not have to pay damages.

2. I:2: A dog or a goat that jumped — if it was from below to above, the owner is exempt. If it was from above to below, the owner is liable. In the former case, this would be unusual, and the owner does not have to pay full damages, but only half-damages in the classification of horn. In the case of men or chickens, whether they jumped from below to above or above to below, they are liable since men and chickens jump a lot.

**B. THE DOG WHICH TOOK A CAKE TO WHICH A CINDER ADHERED AND WENT TO STANDING GRAIN, ATE THE CAKE, AND SET THE STACK ON FIRE:**

1. II:1: R. Yohanan said, “One is liable for the damage done by fire one has set on account of one’s arrows that is to say, the human agency that causes the fire.” R. Simeon b. Laqish said, “One is responsible for the fire on account of the damage that has been done by one’s property.”

a. II:2: Said Raba, “Both Scripture and a Tannaite teaching sustain the position of R. Yohanan.”

2. II:3: Said Raba, “Abbaye found a problem in the following: in the view of one who maintains that the responsibility for the fire is because of one’s arrows that is, human agency, how would we ever come up with an example of a case for which the All-Merciful has granted an exemption involving damage done by fire to what is hidden? If a human being did such damage, there would not be an exemption.”

**C. FOR THE CAKE THE OWNER PAYS FULL DAMAGES, BUT FOR THE STANDING GRAIN HE PAYS ONLY FOR HALF OF THE DAMAGES HIS DOG HAS CAUSED.**

1. III:1: Who is liable for the damages to the barn?

2. III:2: Where did the dog eat the cookie? If we say he ate it in someone else’s barn, don’t we require “and shall feed in the field of another” (Exo. 22: 4), that other person being the plaintiff? And that condition has not been met here!

a. III:3: Case: The household of Tarbu had some goats that did damage to R. Joseph’s fields. He instructed Abbaye, “Go tell the owner to keep them in.”

## **IX. Mishnah-Tractate Baba Qamma 2:4**

**A. WHAT IS THE DEFINITION OF A HARMLESS ANIMAL, AND WHAT IS THE DEFINITION OF ONE WHICH IS AN ATTESTED DANGER? AN ATTESTED DANGER IS**

**ANY ONE ABOUT WHICH PEOPLE HAVE GIVEN TESTIMONY FOR THREE DAYS. AND A HARMLESS ONE IS THAT WHICH HAS REFRAINED FROM DOING DAMAGE ON THREE DAYS,” THE WORDS OF R. JUDAH. R. MEIR SAYS, “AN ATTESTED DANGER IS ONE AGAINST WHICH PEOPLE HAVE GIVEN TESTIMONY FOR THREE TIMES. AND A HARMLESS ONE IS ANY WHICH CHILDREN CAN TOUCH WITHOUT ITS GORING THEM.”**

**1. I:1:** What is the scriptural basis behind the position of R. Judah and of R. Meir?

**a. I:2:** Tannaite complement: “What is the definition of a beast that is an attested danger? It is any the owner of which has been warned on three days. And a beast deemed innocent? It is one between the horns of which children can play and he will not gore them,” the words of R. Yosé. R. Simeon says, “One that is an attested danger is any against which testimony has been given three times. The language ‘three days’ was used only in connection with having the beast return to the status of one deemed harmless” (cf. T. **B.Q. 2: 2**).

**b. I:3:** Said R. Adda bar Ahba, “The decided law conforms to the position of R. Judah in the case of the ox declared an attested danger, for lo, R. Yosé concurs with him, and the decided law is in accord with R. Meir in the matter of the ox deemed harmless, for lo, R. Yosé concurs with him.”

**2. I:4:** The question was raised, “When we speak of three days, does this pertain to the goring of cattle, so that if the ox gores more than one cow on one day, it still counts as one, or is the reference to the owner, who has to be warned on three different days regarding three acts of goring committed by his ox, even though all were on one day?”

**3. I:5:** The question was raised: He who sickens the dog of a second party on a third party — what is the law? Obviously, the one who has sickened the dog is exempt from having to pay damages, but what is the status of the owner of the dog? Do we say he can say to him, “What in the world did I do to the victim?” Or perhaps we say to him, “Since you knew that your dog could be sickened and do injury, should should not have let it be”?

**a. I:6:** Said Raba, “If you should reach the conclusion that he who sickens the dog of a second party on a third party is exempt from having to pay damages, if one sickened the dog against himself, the owner is liable. How come? Whoever himself diverges from the usual practice, and then someone else diverges as well from the usual practice, the latter party is exempt.”

## **X. Mishnah-Tractate Baba Qamma 2:5**

**A. AN OX WHICH CAUSES DAMAGE IN THE DOMAIN OF THE ONE WHO IS INJURED — HOW SO? IF IT GORED, PUSHED, BIT, LAY DOWN, OR KICKED, 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.” SAID TO THEM R. TARFON, “NOW IN A CASE IN**

WHICH THE LAW DEALS LENIENTLY, NAMELY, WITH DAMAGE CAUSED BY TOOTH OR FOOT IN THE PUBLIC DOMAIN, IN WHICH CASE THE OWNER IS EXEMPT, THE LAW NONETHELESS HAS DEALT STRICTLY WITH THEM IN THE DOMAIN OF THE INJURED PARTY, SO THAT THE OWNER HAS TO PAY THE FULL VALUE OF THE DAMAGES CAUSED BY HIS OX; IN A PLACE IN WHICH, TO BEGIN WITH, THE LAW HAS DEALT STRICTLY, NAMELY, IN THE CASE OF DAMAGE DONE BY THE HORN GORING IN THE PUBLIC DOMAIN, SO THAT THE OWNER HAS TO PAY HALF-DAMAGES, IS IT NOT LOGICAL THAT WE SHOULD NOW IMPOSE A STRICT RULE ON THAT SAME MATTER WHEN THE DAMAGE TAKES PLACE IN THE DOMAIN OF THE INJURED PARTY, SO THAT HE SHOULD HAVE TO PAY FULL DAMAGES?" THEY SAID TO HIM, "IT IS SUFFICIENT FOR THE INFERRED LAW TO BE AS STRICT AS THAT FROM WHICH IT IS INFERRED. NOW JUST AS WHEN THE DAMAGE DONE BY THE HORN TAKES PLACE IN THE PUBLIC DOMAIN, THE OWNER PAYS HALF-DAMAGES, SO IF IT TAKES PLACE IN THE DOMAIN OF THE INJURED PARTY, THE OWNER PAYS HALF-DAMAGES." HE SAID TO THEM, "I SHALL NOT DERIVE THE LAW FOR THE DAMAGE CAUSED BY THE HORN BY ANALOGY TO ANOTHER CASE OF DAMAGES CAUSED BY THE HORN. I SHALL DERIVE THE LAW COVERING DAMAGE CAUSED BY THE HORN FROM THE LAW OF DAMAGE CAUSED BY THE FOOT. NOW IF IN A SITUATION IN WHICH THE LAW RULED LENIENTLY, NAMELY, IN RESPECT TO THE DAMAGE CAUSED BY TOOTH AND FOOT IN THE PUBLIC DOMAIN, THE LAW HAS NONETHELESS IMPOSED A STRINGENT RULE IN THE CASE OF DAMAGE CAUSED BY THE HORN; IN A SITUATION IN WHICH THE LAW HAS IMPOSED A STRINGENT RULE, NAMELY, IN THE CASE OF DAMAGE CAUSED BY THE TOOTH AND THE FOOT, WHEN THE INJURY TAKES PLACE IN THE DOMAIN OF THE INJURED PARTY, IS IT NOT REASONABLE THAT WE SHOULD IMPOSE A STRICT RULE IN THE CASE OF DAMAGE CAUSED BY THE HORN?" THEY SAID TO HIM, "IT IS SUFFICIENT FOR THE INFERRED LAW TO BE AS STRICT AS THAT FROM WHICH IT IS INFERRED. JUST AS WHEN THE DAMAGE TAKES PLACE IN THE PUBLIC DOMAIN, THE OWNER PAYS HALF-DAMAGES, SO WHEN THE DAMAGE TAKES PLACE IN THE DOMAIN OF THE INJURED PARTY, THE OWNER PAYS HALF-DAMAGES."

1. I:1: But is it possible that R. Tarfon declines to recognize the principle that it is sufficient for the inferred law to be as strict as that from which it is inferred? But lo, the principle that is sufficient for the inferred law to be as strict as that from which it is inferred derives from the Torah!

a. I:2: Continuation of foregoing, with attention to a secondary argument: Said R. Pappa to Abbaye, "But lo, here in what follows we have a Tannaite authority who does not invoke the principle of sufficiency, and that is the case even though it is a case in which an argument a fortiori would thereby be annulled."

I. I:3: Gloss of a tangential detail of the foregoing.

b. I:4: Continuation of the argument of I:2. Said R. Aha of Difti to Rabina, "Lo, the following Tannaite authority does not invoke the principle of sufficiency even when the upshot of the argument a fortiori would not be nullified thereby."

2. I:5: Why not have tooth and foot be liable for damage done in public domain on the basis of the following argument a fortiori....?

6. I:6: The question was raised: “In the case of damages done in the classification of foot, when an ox stepped on a child in the courtyard of the injured party, what is the law as to payment of the ransom by the ox’s owner? Do we say that the case is comparable to damages classified under horn, since just as with horn, if the animal should commit manslaughter two or three times, it becomes the animal’s normal way so the owner must pay ransom, and here, too, there is no difference? Or perhaps in the case of damages in the category of horn, the intent of the beast is to do damage, while here it is not the intent of the beast to do damage?

a. 7. I:7: Secondary gloss of the foregoing: Said R. Aha of Difti to Rabina, “It really does stand to reason that ransom is required in the case of manslaughter committed in the category of foot, for if you should image that ransom is not required in the case of manslaughter committed in the category of foot, and the Tannaite authority has derived his ruling from the law pertaining merely to damage done in the category of foot, it would have been pretty easy to refute his argument.”

## **XI. Mishnah-Tractate Baba Qamma 2:6**

**A. MAN IS PERPETUALLY AN ATTESTED DANGER — WHETHER WHAT IS DONE IS DONE INADVERTENTLY OR DELIBERATELY, WHETHER MAN IS AWAKE OR ASLEEP. IF HE BLINDED THE EYE OF HIS FELLOW OR BROKE HIS UTENSILS, HE PAYS THE FULL VALUE OF THE DAMAGE HE HAS CAUSED.**

1. I:1: The Tannaite formulation treats the clauses, If he blinded the eye of his fellow, and, or broke his utensils, as comparable, so that, just as in the latter case, there is payment of compensation for damage but not for the other four counts, so if he blinded his fellow’s eye, he pays compensation for damage but not for the other four counts.

2. I:2: Man is perpetually an attested danger...he pays the full value of the damage he has caused: what is the scriptural basis for this ruling?

3. I:3: Said Rabbah, “If there was a stone lying in someone’s bosom and he did not know about it, and when he got up, it fell down — as to the matter of paying damages, he is liable; as to the matter of paying the other four counts, he is exempt; as to the Sabbath, it is work done intentionally that the Torah has prohibited so he is not liable; as to manslaughter, he is exempt from having to flee to a city of refuge; as to the matter of the release of a slave if the stone put out its eye or tooth, Exo. 21:26-27, there is a dispute between Rabban Simeon b. Gamaliel and rabbis.”

## **XII. Mishnah-Tractate Baba Qamma 3:1A-D**

**A. HE WHO LEAVES A JUG IN THE PUBLIC DOMAIN:**

1. I:1: How come the framer of the passage refers to begin with to a jug but then concludes with reference to a barrel?



**B. AND SOMEONE ELSE CAME ALONG AND STUMBLED ON IT AND BROKE IT — THE ONE WHO BROKE IT IS EXEMPT. AND IF THE ONE WHO BROKE IT WAS INJURED BY IT, THE OWNER OF THE BARREL IS LIABLE TO PAY DAMAGES FOR HIS INJURY:**

1. II:1: Why should he be exempt? He should have opened his eyes as he walked along!

2. II:2: The reason is that people do not ordinarily look out when they walk along the way.

a. II:3: Illustrative case.

**C. A MAN HAS GOT THE RIGHT TO TAKE THE LAW INTO HIS OWN HANDS WHERE THERE WILL BE A LOSS.**

1. II:4: Theoretical problem: R. Judah said, “A man has not got the right to take the law into his own hands.” R. Nahman said, “A man has got the right to take the law into his own hands where there will be a loss.” — introduced here because our Mishnah-paragraph contributes to the analytical exercise.

### **XIII. Mishnah-Tractate Baba Qamma 3:1E-I**

**A. IF HIS JUG WAS BROKEN IN THE PUBLIC DOMAIN, AND SOMEONE SLIPPED ON THE WATER, OR WAS HURT BY THE SHERDS, HE IS LIABLE:**

1. I:1: Said R. Judah said Rab, “The rule applies only to a case in which the clothing of the injured party was soiled in the water. But as to the injury to the person himself, the responsible party is exempt, since it was the public domain that did the injury.”

**B. R. JUDAH SAYS, “IN A CASE IN WHICH HE DID SO DELIBERATELY, HE IS LIABLE, AND IN A CASE IN WHICH HE DID NOT DO SO DELIBERATELY, HE IS EXEMPT:”**

1. II:1: What is the sense of deliberately? Said Rabbah, “If someone deliberately brought the pitcher down from his shoulder” even if he did not intend to break it.

2. II:2: If someone abandoned his nuisance, declaring it ownerless, then where would the question of intentionality enter in anyhow, as Judah says it does?

3. II:3: R. Eleazar said, “There is a dispute concerning the rule covering damages done when the pitcher was falling.” And R. Yohanan said, “The dispute pertains to damage that took place after the pitcher fell.”

4. II:4: He who declares ownerless a property of his that has become a nuisance — R. Yohanan and R. Eleazar — One said, “He remains liable for damage that may result from the nuisance.” And the other said, “He is exempt from having to pay damages that may result from the nuisance.”

### **XIV. Mishnah-Tractate Baba Qamma 3:2**

**A. HE WHO POURS WATER OUT INTO THE PUBLIC DOMAIN, AND SOMEONE ELSE WAS INJURED ON IT, IS LIABLE TO PAY COMPENSATION FOR HIS INJURY:**

1. I:1: Said Rab, “The rule applies only to a case in which the clothing of the injured party were soiled in the water. But as to the injury to the person himself, the responsible party is exempt, since it was the public domain that did the injury.”

**B. HE WHO PUT AWAY THORNS OR GLASS, AND HE WHO MAKES HIS FENCE OUT OF THORNS, AND A FENCE WHICH FELL INTO THE PUBLIC WAY — AND OTHERS WERE INJURED BY THEM — HE IS LIABLE TO PAY COMPENSATION FOR THEIR INJURY :**

1. II:1: Said R. Yohanan, “This ruling pertains only to a case in which the thorns project into public domain. But if they were within private domain, he would not be liable.”

2. II:2: He who stored away thorns and glass in the wall of his fellow, and the owner of the wall came along and tore it down, and someone else came along and was injured by them, lo, this one nonetheless is liable (T. **B.Q. 2:6A-D**). Said R. Yohanan, “This rule pertains only in the case of a decrepit wall. But if it were a strong wall, the one who hid the thorns would be exempt, the owner of the wall liable.”

a. II:3: Said Rabina, “That is to say, he who covers his pit with a cover belong to his fellow, and the owner of the cover came along and took away his cover — the owner of the pit is liable.”

3. II:4: The pious men of old would put away thorns in fields that they themselves owned and dig them a hole three handbreadths deep, so that the plough would not catch on them (T. **B.Q. 2:6E**).

a. II:5: Said R. Judah, “Someone who wants to be truly pious will fulfill the teachings concerning damages.”

## **XV. Mishnah-Tractate Baba Qamma 3:3**

**A. HE WHO BRINGS OUT HIS STRAW AND STUBBLE INTO THE PUBLIC DOMAIN TO TURN THEM INTO MANURE, AND SOMEONE ELSE WAS INJURED ON THEM — HE IS LIABLE TO PAY COMPENSATION FOR HIS INJURY.**

1. I:1: May we say that our Mishnah paragraph does not accord with the view of R. Judah, who says, “At the time of fertilizing the fields, a man may take out his manure and pile it up at the door of his house in the public way so that it will be pulverized by the feet of man and beast, for a period of thirty days. For it was on that very stipulation that Joshua caused the Israelites to inherit the land”?

**B. BUT WHOEVER GRABS THEM FIRST EFFECTS POSSESSION OF THEM. RABBAN SIMEON B. GAMALIEL SAYS, “ALL THOSE WHO DISRUPT THE PUBLIC DOMAIN AND THEREBY CAUSED INJURY ARE LIABLE TO PAY COMPENSATION. AND WHOEVER GRABS WHAT THEY LEFT OUT IN THE PUBLIC DOMAIN FIRST EFFECTS POSSESSION OF THEM.” HE WHO HEAPS UP CATTLE DUNG IN THE PUBLIC DOMAIN AND SOMEONE ELSE WAS INJURED BY IT — HE IS LIABLE TO PAY COMPENSATION FOR HIS INJURY.**

1. II:1: Said Rab, “He acquires both the corpus and also the right to the increase in value that has accrued while they were in the public domain.” Zeiri said, “He

acquires the right to the increase in value that has accrued while they were in the public domain but not to the corpus themselves.”

a. II:2: Secondary refinement of the foregoing: The question was raised: In the opinion of him who maintains that rabbis imposed the sanction of assigning ownership to the corpus on account of right to the increase in value that has accrued while they were in the public domain, is the sanction imposed on the spot? Of is it only when the profit is produced that we impose the sanction on the corpus too?

b. II:3: May we say that the same issue is worked out between the following Tannaite authorities...?

c. II:4: May we say that the same issue is worked out between the following Tannaite authorities...?

## **XVI. Mishnah-Tractate Baba Qamma 3:4**

**A. TWO POT SELLERS WHO WERE GOING ALONG, ONE AFTER ANOTHER, AND THE FIRST OF THEM STUMBLED AND FELL DOWN, AND THE SECOND STUMBLED OVER THE FIRST — THE FIRST ONE IS LIABLE TO PAY COMPENSATION FOR THE INJURIES OF THE SECOND.**

1. I:1: Said R. Yohanan, “Do not say that the Mishnah paragraph represents the schismatic view of R. Meir, who maintains that one who stumbles is deemed negligent and so is liable. But even from the perspective of rabbis, who say that such a person is excused on grounds of a mere accident, so that one would be exempt from having to pay compensation, he is here liable, since he should have stood up, and he did not do so.”

2. I:2: Said Raba, “‘...The first is liable for the damages suffered by the second’ — both the damages done by his person, being subject to the law applicable to damage done by man and the damages done by his property which are subject to the law applicable to damage done by pit; ‘the second is liable for the damages suffered by the third’ — for damages done by his person but not for damages done by his property.”

a. I:3: Gloss on a detail of the foregoing.

## **XVII. Mishnah-Tractate Baba Qamma 3:5**

**A. THIS ONE COMES ALONG WITH HIS JAR, AND THAT ONE COMES ALONG WITH HIS BEAM — IF THE JAR OF THIS ONE WAS BROKEN BY THE BEAM OF THAT ONE, THE OWNER OF THE BEAM IS EXEMPT, FOR THIS ONE HAS EVERY RIGHT TO WALK ALONG IN THE STREET, AND THAT ONE HAS EVERY RIGHT TO WALK ALONG IN THE SAME STREET —**

1. I:1: Rabbah bar Nathan addressed this question to R. Huna: “He who during sexual relations does injury to his wife — what is the law? Since he acts well within the realm of what is permitted, he is exempt from paying damages, or perhaps he ought to have taken care?”

**B. IF THE ONE CARRYING THE BEAM WAS COMING FIRST, AND THE ONE CARRYING THE JAR WAS FOLLOWING BEHIND, IF THE JAR WAS BROKEN ON THE BEAM, (1) THE ONE CARRYING THE BEAM IS EXEMPT. (2) BUT IF THE ONE CARRYING THE BEAM STOPPED SHORT, HE IS LIABLE. (3) AND IF HE SAID TO THE ONE CARRYING THE JAR, “WAIT UP!” HE IS EXEMPT. IF THE ONE CARRYING THE JAR WAS FIRST, AND THE ONE CARRYING THE BEAM WAS FOLLOWING BEHIND, IF THE JAR WAS BROKEN ON THE BEAM, (1) THE ONE CARRYING THE BEAM IS LIABLE. (2) BUT IF THE ONE CARRYING THE JAR STOPPED SHORT, THE ONE CARRYING THE BEAM IS EXEMPT. (3) AND IF HE SAID TO THE ONE CARRYING THE BEAM, “WAIT UP!” HE IS LIABLE. AND SO IS THE RULE IN THE CASE OF THIS ONE COMING ALONG CARRYING HIS FLAME, AND THAT ONE COMING ALONG CARRYING HIS FLAX.**

1. II:1: Said R. Simeon b. Laqish, “Two cows in public domain, one lying down, one walking along — the one walking along butted the one lying down — the owner is exempt. The one lying down butted the one walking along — the owner is liable.” May we then say that the following supports his position: If the one carrying the beam was coming first, and the one carrying the jar was following behind, if the jar was broken on the beam, the one carrying the beam is exempt. But if the one carrying the beam stopped short, he is liable. Now here it is parallel to the case of the cow that was lying down kicking the cow that was walking, and the owner is liable

### **XVIII. Mishnah-Tractate Baba Qamma 3:6**

**A. TWO WHO WERE GOING ALONG IN THE PUBLIC DOMAIN, ONE WAS RUNNING, THE OTHER AMBLING, OR BOTH OF THEM RUNNING, AND THEY INJURED ONE ANOTHER — BOTH OF THEM ARE EXEMPT.**

1. I:1: The Mishnah-passage before us does not accord with the position of Issi b. Judah.

a. I:2: Gloss of a detail of the foregoing.

### **XIX. Mishnah-Tractate Baba Qamma 3:7**

**A. HE WHO CHOPS WOOD IN PRIVATE PROPERTY, AND THE CHIPS INJURED SOMEONE IN PUBLIC DOMAIN, IN PUBLIC DOMAIN, AND THE CHIPS INJURED SOMEONE IN PRIVATE PROPERTY, IN PRIVATE PROPERTY, AND THE CHIPS INJURED SOMEONE IN SOMEONE ELSE’S PRIVATE PROPERTY — HE IS LIABLE.**

1. I:1: All of the several cases before us are absolutely required.

2. I:2: Tannaite complement: He who enters a carpenter’s shop without permission, and a chip of wood flew and hit him in the face and killed him — the carpenter is exempt from having to go into exile. But if the man had entered with permission, the carpenter is liable.

a. I:3: Continuation of the discussion of the foregoing.

b. I:4: As above.

c. I:5: As above.

d. I:6: As above.

3. I:7: A worker who has come to collect his wages from the household, and the ox of the householder gored him, or the dog of the householder bit him, and he died — the householder is exempt from having to pay ransom.

a. I:8: Continuation of the discussion of the foregoing.

## **XX. Mishnah-Tractate Baba Qamma 3:8**

**A. TWO OXEN GENERALLY DEEMED HARMLESS WHICH INJURED ONE ANOTHER — THE OWNER PAYS HALF-DAMAGES FOR THE EXCESS OF THE VALUE OF THE INJURY DONE BY THE LESS INJURED TO THE MORE INJURED OX. IF BOTH OF THEM WERE ATTESTED DANGERS, THE OWNER PAYS FULL DAMAGES FOR THE EXCESS OF THE INJURY DONE BY THE LESS INJURED TO THE MORE INJURED OX. IF ONE WAS DEEMED HARMLESS AND ONE AN ATTESTED DANGER, IF IT WAS AN OX WHICH WAS AN ATTESTED DANGER WHICH INJURED AN OX DEEMED HARMLESS, THE OWNER PAYS FULL DAMAGES FOR THE EXCESS. IF IT WAS THE OX DEEMED HARMLESS WHICH INJURED THE ONE WHICH WAS AN ATTESTED DANGER, THE OWNER PAYS HALF-DAMAGES FOR THE EXCESS. AND SO IS THE RULE FOR TWO MEN WHO INJURED ONE ANOTHER: THEY PAY FULL DAMAGES FOR THE EXCESS OF THE INJURY DONE BY THE LESS INJURED TO THE MORE INJURED MAN. IF IT WAS A CASE OF A MAN WHO INJURED AN OX WHICH WAS AN ATTESTED DANGER, OR AN OX WHICH WAS AN ATTESTED DANGER WHICH INJURED A MAN, ONE PAYS FULL DAMAGES FOR THE EXCESS OF THE INJURY DONE BY THE ONE TO THE OTHER. IF IT WAS A MAN WHO INJURED AN OX DEEMED HARMLESS, OR AN OX DEEMED HARMLESS WHICH INJURED A MAN — IF IT WAS THE MAN WHO INJURED THE OX DEEMED HARMLESS, HE PAYS FULL DAMAGES FOR THE EXCESS. IF IT WAS THE OX DEEMED HARMLESS WHICH INJURED THE MAN, ONE PAYS HALF-DAMAGES FOR THE EXCESS. R. AQIBA SAYS, “ALSO: AN OX DEEMED HARMLESS WHICH INJURED A MAN — THE OWNER PAYS FULL DAMAGES FOR THE EXCESS.”**

1. I:1: “According to this judgment shall be done to it” (Exo. 21:31) — as is the judgment of an ox that has injured an ox, so is the judgment of the ox that has injured a man. Just as when an ox injures an ox, an ox that is deemed harmless pays only half-damages, but one that is an attested danger pays full damages, so when an ox injures a man, the ox that is deemed harmless pays only half-damages, but one that is an attested danger pays full damages. R. Aqiba says, “‘According to this judgment shall be done to it’ (Exo. 21:31) — this speaks of the ruling that pertains in the latter verse Exo. 21:29, dealing with the ox that is an attested danger and now in accord with the former verse Exo. 21:28, dealing with an ox that was deemed harmless. Might one then suppose that the owner must pay from real estate of the highest quality? Scripture says, ‘...shall be done to it’ (Exo. 21:31), meaning, the owner pays through the carcass of the ox, and he does not pay by handing over his real estate of the highest quality.”

## **XXI. Mishnah-Tractate Baba Qamma 3:9A-C**

**A. AN OX DEEMED HARMLESS WORTH A MANEH A HUNDRED ZUZ WHICH GORED AN OX WORTH TWO HUNDRED ZUZ, AND THE CARCASS OF THE LATTER IS WORTH NOTHING — THE OWNER OF THE OX WHICH IS GORED AND WORTHLESS TAKES THE OX WORTH A MANEH, WHICH DID THE GORING.**

**1. I:1:** In accord with what Tannaite authority is the rule before us?

**a. I:2:** Raba addressed this question to R. Nahman, “If the party responsible for the injury sold the carcass, from the perspective of R. Ishmael, what is the law? Since in the judgment of R. Ishmael, the injured party is in the status of a creditor, and he has a claim merely of money against the defendant, the beast is held to be sold. Or perhaps, 33B since the ox is subject to the lien of the injured party, the party responsible for the injury has not got the power to sell it?”

**b. I:3:** May one then infer that if one has taken out a loan and then sold his movables, the court may collect the debt in behalf of a creditor? But it is usually only real estate that may be distrained in such a case!

**c. I:4:** R. Tahalipa, the Westerner, repeated as a Tannaite formulation before R. Abbahu, “While if the party responsible for the injury sold the carcass, it is not validly sold, if he sanctified it to the altar, it is properly sanctified.’ Who sold it? If we say that it is the party responsible for the damages, then the clause, ‘the sale is not valid’ accords with the position of R. Aqiba that the ox is transferred to the injured party, while the concluding clause of this same passage, ‘if he sanctified it, it is a valid action’ would concur only with the position of R. Ishmael, who maintains that the ox has to be assessed by the court. If we maintain that it is the injured party has sold it, then would not the opening clause, ‘where he sold the ox, it is not valid,’ accord only with the position of R. Ishmael and the concluding clause would accord with the view of R. Aqiba!”

**5. I:5:** Tannaite complement: An ox that had been deemed harmless that inflicted injury, if before it came to court the owner declared it consecrated, it is consecrated. If he slaughtered it, sold it, or gave it away as a gift, what he has done is valid. If after it came to court the owner declared it consecrated, it is not deemed consecrated. If he slaughtered it or sold it or gave it away as a gift, what he has done is not valid. For he has to pay compensation from the corpus of the animal itself which must be kept available, once the court has made its determination, for use in compensation (T. **B.Q.5:1A-I**).

**a. I:6:** Gloss of foregoing.

**b. I:7:** If he slaughtered it, sold it, or gave it away as a gift, what he has done is valid.

**c. I:8:** Further gloss.

**6. I:9:** Tannaite complement: An ox worth two hundred zuz that gored an ox worth two hundred zuz, and did to the beast damages worth fifty zuz, but then the

injured ox increased in value and was worth for hundred zuz, since one may claim that, if it had not been injured, it would have been worth eight hundred zuz, the responsible party has to pay damages in accord with the state of affairs at the time of the injury. The defendant cannot put up the increase of the value of the injured ox as a defense.

a. I:10: Gloss of foregoing.

b. I:11: As above.

## **XXII. Mishnah-Tractate Baba Qamma 3:9D-I**

**A. AN OX WORTH TWO HUNDRED ZUZ WHICH GORED AN OX WORTH TWO HUNDRED, AND THE CARCASS OF THE LATTER IS WORTH NOTHING — SAID R. MEIR, “CONCERNING SUCH A CASE IT IS SAID IN SCRIPTURE, ‘THEN THEY SHALL SELL THE LIVE OX AND DIVIDE THE PROCEEDS OF IT’ (EXO. 21:35).” SAID TO HIM R. JUDAH, “TRUE, THIS IS THE LAW. SURELY YOU HAVE CARRIED OUT THE VERSE WHICH SAYS, ‘THEN THEY SHALL SELL THE LIVE OX AND DIVIDE ITS PROCEEDS.’ BUT YOU HAVE NOT YET CARRIED OUT THE VERSE WHICH SAYS, ‘AND THE DEAD ONE ALSO THEY SHALL DIVIDE’! NOW WHAT IS AN EXAMPLE OF THAT RULE? THIS IS AN OX WORTH TWO HUNDRED WHICH GORED AN OX WORTH TWO HUNDRED, AND THE CARCASS OF THE DEAD OX IS WORTH FIFTY ZUZ — FOR IN THIS CASE, THIS PARTY TAKES HALF THE VALUE OF THE LIVING OX AND HALF THE VALUE OF THE CORPSE, AND THAT ONE TAKES HALF THE VALUE OF THE LIVING OX AND HALF THE VALUE OF THE CORPSE.”**

**1. I:1:** “An ox worth two hundred zuz that gored an ox of two hundred zuz, and the carcass was worth fifty — this one takes half of the value of the living animal and half of the value of the corpse, and that one takes half of the value of the living animal and half of the value of the corpse, and this is that ox of which the Torah has spoken,” the words of R. Judah. R. Meir says, “This is not the ox of which the Torah has spoken, but rather: an ox worth two hundred zuz that gored an ox worth two hundred, and the carcass is worth nothing — it is that case concerning which it is said, ‘And they shall sell the live ox and divide the money of it’ (Exo. 21:35).”

a. I:2: Now, since in the case specified by R. Judah, in which the carcass is worth fifty zuz, both R. Meir and R. Judah concur that this party gets one hundred twenty-five zuz and that party gets one hundred twenty-five zuz, what’s at stake in the dispute anyhow?

b. I:3: And this is what was troubling R. Judah and that led him to take the position that he took: Now that you have maintained that the All-Merciful has favored the party responsible for the injury, giving him a share in the increase in the value of the carcass, then, might one suppose that if an ox that was worth five selas twenty zuz gored an ox that was worth a maneh a hundred zuz, with the corpse worth fifty zuz, that this party would take half of the living beast and half of the corpse, and that one would take half of the living beast and half of the corpse? Now would you really say so? And where have we found a case in which the party responsible for the



damages makes a profit? And furthermore Scripture says, “He shall surely make restitution” (Exo. 21:36), meaning, the owner of the goring ox make restitution but they do not collect restitution!

**I.** I:4: So what’s the point of And furthermore Scripture says, “He shall surely make restitution” (Exo. 21:36), meaning, the owner of the goring ox make restitution but they do not collect restitution?

**II.** I:5: Said R. Aha bar Tahalipa to Raba, “If the principle to compensate by half for the decrease in value brought about by the death is maintained only by Meir but not by Judah, we find a case in which, from the perspective of R. Judah, the owner of a beast deemed harmless will pay more than half-damages! But the Torah has stated, ‘And they shall sell the live ox and divide the money of it’!”

### **XXIII. Mishnah-Tractate Baba Qamma 3:10**

**A. THERE IS HE WHO IS LIABLE FOR THE DEED OF HIS OX AND EXEMPT ON ACCOUNT OF HIS OWN DEED, EXEMPT FOR THE DEED OF HIS OX AND LIABLE ON ACCOUNT OF HIS OWN DEED. HIS OX WHICH INFLICTED EMBARRASSMENT — THE OWNER IS EXEMPT. BUT HE WHO INFLICTED EMBARRASSMENT IS LIABLE. HIS OX WHICH BLINDED THE EYE OF HIS SLAVE OR KNOCKED OUT HIS TOOTH — THE OWNER IS EXEMPT. BUT HE WHO BLINDED THE EYE OF HIS SLAVE OR KNOCKED OUT HIS TOOTH IS LIABLE. (1) HIS OX WHICH INJURED HIS FATHER OR HIS MOTHER — THE OWNER IS LIABLE. BUT HE WHO INJURED HIS FATHER AND HIS MOTHER IS EXEMPT. HIS OX WHICH SET FIRE TO A SHOCK OF GRAIN ON THE SABBATH — THE OWNER IS LIABLE. N BUT HE WHO SET FIRE TO A SHOCK OF GRAIN ON THE SABBATH IS EXEMPT BECAUSE HE IS SUBJECT TO LIABILITY FOR HIS LIFE.**

**1.** I:1: R. Abbahu repeated as a Tannaite formulation before R. Yohanan: “All actions that serve destructive purposes done on the Sabbath are exempt from liability on account of violating the Sabbath, except for someone who does injury to another and one who sets a fire for a destructive purpose.”

**2.** I:2: Raba said, “The Mishnah’s rule, But he who set fire to a shock of grain on the Sabbath is exempt because he is subject to liability for his life, deals with an act that was inadvertent, in line with the Tannaite formulation of the household of Hezekiah.

### **XXIV. Mishnah-Tractate Baba Qamma 3:11**

**A. AN OX WHICH WAS RUNNING AFTER ANOTHER OX, AND THAT LATTER OX WAS INJURED — THIS ONE CLAIMS, “YOUR OX DID THE INJURY,” AND THAT ONE CLAIMS, “NOT SO, BUT IT WAS HIT BY A STONE” — HE WHO WANTS TO EXACT COMPENSATION FROM HIS FELLOW BEARS THE BURDEN OF PROOF. IF TWO OXEN WERE RUNNING AFTER ONE OX — THIS ONE SAYS, “YOUR OX DID THE DAMAGE,” AND THAT ONE SAYS, “YOUR OX DID THE DAMAGE” — BOTH OF THEM ARE EXEMPT.**



1. I:1: Said R. Hiyya bar Abba, “That he who wants to exact compensation from his fellow bears the burden of proof is to say, the colleagues of Sumekhosh differed from him, who has said, ‘Where there is doubt about the disposition of property, it is divided in half.’”

a. I:2: And how do you know that in our Mishnah paragraph, we deal with a conflict of two absolutely certain claims?

I. I:3: Gloss of foregoing.

**B. BUT IF BOTH OF THEM BELONGED TO THE SAME MAN, BOTH OF THEM OXEN ARE LIABLE TO PAY COMPENSATION. IF ONE OF THEM WAS BIG AND ONE LITTLE — THE ONE WHOSE OX HAS SUFFERED AN INJURY SAYS, “THE BIG ONE DID THE DAMAGE,” BUT THE ONE WHO IS RESPONSIBLE FOR THE DAMAGE SAYS, “NOT SO, BUT THE LITTLE ONE DID THE DAMAGE” — ONE OF THEM WAS DEEMED HARMLESS, AND ONE WAS AN ATTESTED DANGER — THE ONE WHOSE OX HAS SUFFERED AN INJURY SAYS, “THE ONE WHICH WAS THE ATTESTED DANGER HAS DONE THE DAMAGE,” BUT THE ONE WHO IS RESPONSIBLE FOR THE DAMAGE SAYS, “NOT SO, BUT THE ONE WHICH HAD BEEN DEEMED HARMLESS DID THE DAMAGE” — HE WHO WANTS TO EXACT COMPENSATION FROM HIS FELLOW BEARS THE BURDEN OF PROOF. IF THOSE OXEN THAT WERE INJURED WERE TWO, ONE BIG AND ONE SMALL, AND THOSE OXEN RESPONSIBLE FOR THE INJURIES WERE TWO, ONE BIG AND ONE SMALL — THE ONE WHOSE OX WAS INJURED SAYS, “THE BIG ONE DID THE DAMAGE TO THE BIG ONE, AND THE LITTLE ONE TO THE LITTLE ONE,” AND THE ONE RESPONSIBLE FOR THE DAMAGE SAYS, “NOT SO, BUT THE BIG ONE INJURED THE LITTLE ONE, AND THE LITTLE ONE INJURED THE BIG ONE” — ONE OF THEM WAS DEEMED HARMLESS AND ONE WAS AN ATTESTED DANGER — THE ONE WHOSE OX HAS SUFFERED AN INJURY SAYS, “THE ONE WHICH WAS THE ATTESTED DANGER DID THE DAMAGE TO THE BIG OX, AND THE ONE WHICH HAD BEEN DEEMED HARMLESS DID THE DAMAGE TO THE LITTLE OX,” AND THE ONE RESPONSIBLE FOR THE DAMAGE SAYS, “NOT SO, BUT THE ONE WHICH HAD BEEN DEEMED HARMLESS INJURED THE BIG OX, AND THE ONE WHICH HAD BEEN AN ATTESTED DANGER INJURED THE LITTLE ONE” — HE WHO WANTS TO EXACT COMPENSATION FROM HIS FELLOW BEARS THE BURDEN OF PROOF.**

1. II:1: Said Raba of Paraziqa to R. Ashi, “That yields the inference that if two oxen that were held to be harmless and belonged to the same owner did damage, if the injured party wanted to collect from this one, he may do so, and if the injured party wanted to collect from this one, he may do so.”

## **XXV. Mishnah-Tractate Baba Qamma 4:1**

**A. “AN OX DEEMED HARMLESS WHICH GORED FOUR OR FIVE OXEN ONE AFTER THE OTHER, FIRST PAYS COMPENSATION TO THE LAST AMONG THEM. IF THERE IS EXCESS VALUE RECEIVED FROM THE PROCEEDS OF THE OX WHICH HAS DONE THE GORING, ONE GOES ON TO THE ONE BEFORE IT. IF THERE STILL IS EXCESS VALUE, ONE GOES ON TO THE ONE WHICH IS BEFORE THAT ONE. THE LAST OF THE CLAIM THUS IS THE ONE WHICH IS GIVEN THE ADVANTAGE,” THE WORDS OF R. MEIR. R. SIMEON SAYS, “AN OX DEEMED HARMLESS WORTH TWO HUNDRED ZUZ WHICH GORED AN OX WHICH WAS WORTH TWO HUNDRED ZUZ, AND THE CARCASS OF THE**

**GORED OX IS WORTH NOTHING — THIS ONE TAKES A MANEH A HUNDRED ZUZ, AND THAT ONE TAKES A MANEH. IF IT GORED ANOTHER OX, WORTH TWO HUNDRED ZUZ, THE LAST ONE TAKES A HUNDRED ZUZ AND AS TO THE ONE BEFORE IT — THIS ONE TAKES FIFTY ZUZ, AND THAT ONE TAKES FIFTY ZUZ. IF IT GORED YET ANOTHER OX WORTH TWO HUNDRED, THE LAST ONE TAKES A HUNDRED ZUZ, AND THE ONE BEFORE IT, FIFTY ZUZ, AND THE FIRST TWO EACH TAKE A GOLDEN DENAR TWENTY-FIVE ZUZ.”**

**1. I:1:** Who is the authority behind our Mishnah’s rule? For it is not in accord with the principle of R. Ishmael, nor is it in accord with the principle of R. Aqiba. It is not in accord with R. Ishmael, who has said that the injured party is in the status merely of a creditor, and he has a claim merely of money against the defendant, so how can the rule be, The last of the claims thus is the one which is given the advantage, when it should be the first of the claims is the one that is given the advantage. Nor can the rule accord with the position of R. Aqiba, who has said that both parties become joint owners of the ox responsible for the damage.

**a. I:2:** How then have you interpreted the Mishnah? In accord with the position of R. Ishmael. But then what about what follows: R. Simeon says, “An ox deemed harmless worth two hundred zuz which gored an ox which was worth two hundred zuz, and the carcass of the gored ox is worth nothing — this one takes a maneh a hundred zuz, and that one takes a maneh. If it gored another ox, worth two hundred zuz, the last one takes a hundred zuz and as to the one before it — this one takes fifty zuz, and that one takes fifty zuz. If it gored yet another ox worth two hundred, the last one takes a hundred zuz, and the one before it, fifty zuz, and the first two each take a golden denar twenty-five zuz”? Now is this not along the lines of the position of R. Aqiba, who has said that both parties become joint owners of the ox responsible for the damage? So is the upshot going to be that the opening clause accords with R. Ishmael and the closing one with R. Aqiba?

**3. I:3:** Case in which our Mishnah-rule figures.

**4. I:4:** As above.

## **XXVI. Mishnah-Tractate Baba Qamma 4:2**

**A. AN OX WHICH IS AN ATTESTED DANGER AS TO ITS OWN SPECIES, BUT NOT AN ATTESTED DANGER AS TO WHAT IS NOT ITS OWN SPECIES — OR AN ATTESTED DANGER AS TO MAN, BUT NOT AN ATTESTED DANGER AS TO BEAST, OR AN ATTESTED DANGER TO SMALL BEASTS BUT NOT AN ATTESTED DANGER AS TO LARGE ONES — FOR INJURIES DONE TO THAT FOR WHICH IT IS AN ATTESTED DANGER, THE OWNER PAYS FULL DAMAGES, AND FOR INJURIES DONE TO THAT FOR WHICH IT IS NOT AN ATTESTED DANGER, HE PAYS HALF-DAMAGES. THEY SAID BEFORE R. JUDAH, “LO, WHAT IF IT WAS AN ATTESTED DANGER FOR SABBATHS BUT NOT AN ATTESTED DANGER FOR ORDINARY DAYS?” HE SAID TO THEM, “FOR DAMAGE DONE ON SABBATHS THE OWNER PAYS FULL DAMAGES, AND FOR DAMAGE DONE ON ORDINARY DAYS THE OWNER PAYS HALF-DAMAGES.” WHEN IS IT THEN**

## **DEEMED TO BE HARMLESS? WHEN IT REFRAINS FROM DOING DAMAGES FOR THREE SUCCESSIVE SABBATHS.**

1. I:1: R. Zebid said, “We have learned as the formulation of the Mishnah, but was not an attested danger.” R. Pappa said, “We have learned as the formulation of the Mishnah, it is therefore not an attested danger.”

2. I:2: Tannaite complement: If the ox sees another ox and gores it, another and does not gore it, another and gores it, another and does not gore it, another and gores it, another and does not gore it, it is deemed an ox that is an attested danger alternately to gore other oxen.

3. I:3: Tannaite complement: If the ox sees another ox and gores it, an ass and does not gore it, a horse and gores it, a camel and does not gore it, a mule and gores it, a wild ass and does not gore it, it is deemed an ox that is an attested danger alternately to gore other species.

a. I:4: The question was raised: If it gored an ox, then another, then a third, then an ass, then a camel, what is the law? Do we assign the third ox to the class of the first two, in which case while he is deemed an attested danger to other oxen, he is not an attested danger to any other species? Or do we assign the final ox to the class of the ass and the camel, with the result that he is deemed an attested danger to all of them?

I. I:5: If an ox gored on the fifteenth of this month, the sixteenth of the next, and the seventeenth of the month beyond, there is a dispute between Rab and Samuel.

II. I:6: Said Raba, “If an ox heard the sound of the ram’s horn and gored, the sound of a ram’s horn and gored, the sound of a ram’s horn and gored, it is deemed an attested danger in respect to the sound of the ram’s horn.”

## **XXVII. Mishnah-Tractate Baba Qamma 4:3**

**A. AN OX OF AN ISRAELITE WHICH GORED AN OX BELONGING TO THE SANCTUARY — OR AN OX BELONGING TO THE SANCTUARY WHICH GORED AN OX BELONGING TO AN ISRAELITE — THE OWNER IS EXEMPT, SINCE IT IS SAID, “THE OX BELONGING TO HIS NEIGHBOR” (EXO. 21:35) — AND NOT AN OX BELONGING TO THE SANCTUARY.**

1. I:1: Our Mishnah paragraph's rule is not in accord with the position of R. Simeon b. Menassayya. For R. Simeon b. Menassayya 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.”

**B. AN OX BELONGING TO AN ISRAELITE WHICH GORED AN OX BELONGING TO A GENTILE — THE ISRAELITE OWNER IS EXEMPT. AND ONE OF A GENTILE WHICH GORED ONE OF AN ISRAELITE — WHETHER IT IS HARMLESS OR AN ATTESTED DANGER, THE GENTILE OWNER PAYS FULL DAMAGES.**

**1. II:1:** Well, how do you want it? If the meaning of “neighbor” is to be read literally, then if a Canaanite’s ox gored an Israelite’s, there also should be no liability. But if the meaning of “neighbor” is not to be read literally, then even if the ox of an Israelite gored the ox of a Canaanite, liability should be incurred!

**a. II:2:** Gloss of a detail of the foregoing: What is it that R. Mattenah said?

**b. II:3:** Gloss of a detail of the foregoing: What is it that R. Joseph said?

**2. II:4:** Tannaite complement: The Government of Rome sent two commissioners to the sages of Israel: “Teach us your Torah.” They recited it, repeated, and did it a third time. When leaving, they said, “We have paid close attention to the whole of your Torah, and it is certainly true, except for this one thing that you say, namely: An ox belonging to an Israelite which gored an ox belonging to a gentile — the Israelite owner is exempt. And one of a gentile which gored one of an Israelite — whether it is harmless or an attested danger, the gentile owner pays full damages. Well, how do you want it? If the meaning of “neighbor” is to be read literally, then if a Canaanite’s ox gored an Israelite’s, there also should be no liability. But if the meaning of “neighbor” is not to be read literally, then even if the ox of an Israelite gored the ox of a Canaanite, liability should be incurred! So this one thing we shall not report to the government.”

## **C. APPENDIX ON GENTILES AND THE EFFECT OF THEIR CARRYING OUT RELIGIOUS DUTIES**

**1. II:5:** “‘And the Lord spoke to me, Do not distress the Moabites, neither contend with them in battle’ (Deu. 2: 9). So would it have entered Moses’ mind to go into battle without divine permission? But Moses on his own proposed the following argument a fortiori: If in regard to the Midianites, who came only to help the Moabites Num. 22:4, the Torah has said, ‘Pursue the Midianites and smite them’ (Num. 25:17), the Moabites should surely be subject to the same commandment! Said to him the Holy One, blessed be He, ‘What has entered your mind has not entered my mind. I have two beautiful doves to bring forth from them: Ruth the Moabite and Naamah the Ammonite. Now does this not yield an argument a fortiori: If on account of two beautiful doves, the Holy One, blessed be He, took pity on two great nations and did not put them to the sword, as to the daughter of my lord, if she had been a virtuous woman and worthy to produce something good, all the more so she would have lived.’”

**2. II:6:** Said R. Hiyya bar Abba said R. Yohanan, “The Holy One, blessed be He, does not hold back from any creature the reward that is coming to it, even the reward for a few appropriate words.”

**3. II:7:** Said R. Hiyya bar Abba said R. Joshua b. Qorha, “One should always give precedence to a matter involving a religious duty, since, on account of the one night by which the elder daughter of Lot came prior to the younger, she came prior to her by four generations: Obed, Jesse, David, and Solomon via Ruth. As to the younger, she had none until Rehoboam: ‘And the name of his mother was Naamah the Ammonitess’ (1Ki. 14:31).”

## **D. THE SPECIAL CASE OF THE SAMARITAN**

1. II:8: Tannaite complement: An ox of an Israelite that gored an ox of a Samaritan — the Israelite is exempt from having to pay damages. But in the case of a Samaritan's ox that gored an Israelite's ox, the Samaritan will pay half-damages in the case of an ox that was deemed harmless, but full damages in the case of an ox that was deemed an attested danger.

## XXVIII. Mishnah-Tractate Baba Qamma 4:4

**A. AN OX OF A PERSON OF SOUND SENSES WHICH GORED AN OX BELONGING TO A DEAF-MUTE, AN IDIOT, OR A MINOR — THE OWNER IS LIABLE. BUT ONE OF A DEAF-MUTE, IDIOT, OR MINOR WHICH GORED AN OX BELONGING TO A PERSON OF SOUND SENSES — THE OWNER IS EXEMPT. AS TO THE OX OF A DEAF-MUTE, IDIOT, OR MINOR, THE COURT APPOINTS A GUARDIAN FOR THEM, AND THEY BRING TESTIMONY AGAINST THE OX, TO HAVE IT DECLARED AN ATTESTED DANGER TO THE GUARDIAN. IF THE DEAF-MUTE GAINED CAPACITY TO HEAR, THE IDIOT REGAINED HIS SENSES, OR THE MINOR REACHED MATURITY, “AN OX BELONGING TO ONE OF THEM WHICH HAD BEEN DECLARED AN ATTESTED DANGER HAS RETURNED TO ITS STATUS OF BEING DEEMED HARMLESS,” THE WORDS OF R. MEIR. R. YOSÉ SAYS, “LO, IT REMAINS IN ITS ESTABLISHED STATUS.”**

1. I:1: Now there is a contradiction in the body of the formulation of the passage before us. First you say, But one of a deaf-mute, idiot, or minor which gored an ox belonging to a person of sound senses — the owner is exempt. Then it follows that a guardian is not appointed over an ox deemed harmless, so that half-damages may be collected out of the corpus. But then look what comes later: As to the ox of a deaf-mute, idiot, or minor, the court appoints a guardian for them, and they bring testimony against the ox, to have it declared an attested danger to the guardian. Then it follows that a guardian is appointed over an ox deemed harmless, so that half-damages may be collected out of the corpus.

a. I:2: Gloss of foregoing.

b. I:3: Expansion of the gloss.

l. I:4: Gloss on the expansion of the gloss.

2. I:5: Tannaite complement: An ox belonging to a deaf-mute, an idiot, or a minor, that gored — R. Jacob says, “The owner pays half-damages.”

3. I:6: Tannaite complement: As to guardians, they pay for damages out of real estate of the highest quality, but they are not required to pay a ransom for manslaughter by the beast.

a. I:7: Who is the Tannaite authority that takes the view that the ransom falls into the category of a form of atonement — not an ordinary civil obligation, and orphans are not subject to atonement?

4. I:8: In the case of an ox belonging to two partners, how do they pay ransom? Does this one pay a ransom and that as well? But Scripture has spoken of one ransom, and not two ransoms. Then does one party pay a half-ransom and the other pay a half-ransom? But Scripture has spoken of a complete ransom, and not of a half-ransom.

5. I:9: If someone borrowed an ox assuming that it was harmless but it turned out an attested danger, the owner would have to pay half-damages, and the one who borrowed it would pay half-damages. If the beast was declared an attested danger while in the household of the borrower and he returned it to the owner, the owner would then have to pay half-damage and the owner would be exempt from any payment whatsoever.

a. I:10: Gloss of the foregoing.

6. I:11: If the beast was declared an attested danger while in the household of the borrower and he returned it to the owner, the owner would then have to pay half-damage and the owner would be exempt from any payment whatsoever:

**B. AN OX BELONGING TO THE STADIUM TRAINED TO FIGHT OTHER OXEN OR MEN IS NOT LIABLE TO THE DEATH PENALTY, SINCE IT IS SAID, “WHEN IT WILL GORE,” (EXO. 21:28) AND NOT, “WHEN OTHERS WILL CAUSE IT TO GORE.”**

1. I:1: What is the rule as to offering such a beast on the altar?

a. I:2: Gloss of a detail of the foregoing.

2. I:3: Continuation of I:1.

## **XXIX. Mishnah-Tractate Baba Qamma 4:5**

**A. AN OX WHICH GORED A MAN, WHO DIED — IF IT WAS AN ATTESTED DANGER, THE OWNER PAYS A RANSOM PRICE OF THE VALUE OF THE DECEASED. BUT IF IT WAS DEEMED HARMLESS, HE IS EXEMPT FROM PAYING THE RANSOM PRICE:**

1. I:1: Since even when an ox is deemed harmless, should it kill a person it is put to death, how shall we ever find a case in which an ox that was an attested danger would be covered by this law there being no possibility of such an ox that has killed three times and so been declared an attested danger?

**B. AND IN THIS CASE AND IN THAT CASE, THE OXEN ARE LIABLE TO THE DEATH PENALTY. AND SO IS THE RULE IF IT KILLED A LITTLE BOY OR GIRL:**

1. II:1: Tannaite complement: Since Scripture is explicit, “The ox will certainly be stoned” (Exo. 21:28), do I not know that the carcass is carrion, and it is forbidden to eat carrion? So why in the world does Scripture find it necessary to state explicitly, “And its meat shall not be eaten” (Exo. 21:28)? Scripture thereby informs you that if after the court decree has been issued, the beast was properly slaughtered rather than stoned, it is forbidden to eat it.

a. II:2: Continuation of foregoing.

b. II:3: As above.

2. II:4: “The owner of the ox shall be clean” — R. Eliezer says, “He is free from having to pay half-ransom if the beast was deemed harmless.” Said to him R. Aqiba, “But is it not the fact that any liability in the case of an ox that is deemed harmless is paid only out of the corpus of the beast? So the owner can say to the injured party, ‘Bring it to court and get your money out of it!’” But that is of course impossible, since the corpus cannot be used, so if there was a beast deemed

harmless, how could payment be made anyhow? Hence, the question at hand is, why should Scripture have to say what is obvious?

**a.** II:5: Gloss of foregoing.

**3.** II:6: Tannaite complement: “The owner of the ox shall be clean” — R. Yosé the Galilean says, “He is clean of having to pay compensation if a beast deemed harmless killed an embryo.”

**a.** II:7: Gloss of foregoing.

**4.** II:8: “The owner of the ox shall be clean” — R. Aqiba says, “He is clean of having to pay compensation for a slave.”

**a.** II:9: Gloss of foregoing.

**b.** II:10: As above.

**c.** II:11: As above.

**5.** II:12: Tannaite complement: “But it has killed a man or a woman” (Exo. 21:29) — Said R. Aqiba, “So what has this verse of Scripture come to teach us? If it is to impose liability for the killing of a woman as of a man, lo, it has already been stated, ‘If an ox gore a man or a woman’ (Exo. 21:28). Rather, it serves to form a governing analogy between man and woman: Just as in the case of a man, the compensation goes to his heirs, so in the case of a woman, the compensation goes to her heirs.”

**a.** II:13: Gloss of foregoing.

**b.** II:14: As above.

**I.** II:15: Gloss of the foregoing gloss.

**6.** II:16: Said R. Simeon b. Laqish, “If an ox killed a slave unintentionally, the owner is exempt from having to pay thirty sheqels, since Scripture says, ‘He shall give to the master thirty sheqels of silver, and the ox shall be stoned’ (Exo. 21:32) — in any case in which the ox is subject to stoning, the owner pays the thirty sheqels. If the ox is not subject to stoning, the master does not have to pay thirty sheqels.” Said Rabbah, “If an ox killed a slave unintentionally, the owner is exempt from having to pay the ransom, since Scripture says, ‘The ox will be stoned, and also the owner shall be put to death. If there be laid on him a ransom,’ meaning, in any case in which the ox is subject to stoning, the owner pays the ransom. If the ox is not subject to stoning, the master does not have to pay the ransom.”

**a.** II:17: “As to the word ‘ransom,’ why does Scripture say, ‘If a ransom...’ (Exo. 21:30)? Why the if, since it is neither optional nor conditional? It serves to encompass payment of a ransom in an instance where there was no intention to kill, even as a ransom is paid where there was such intentionality.”

**b.** II:18: “As to the word slave, what is the sense of ‘if a slave...’? It is to cover the case of a slave that was killed unintentionally, making that case subject to the same rule as the one covering an ox that intentionally killed a slave.”

**C. IF IT GORED A BOY SLAVE OR A GIRL SLAVE, THE OWNER PAYS THIRTY SELAS EXO. 21:32, WHETHER THE SLAVE WAS WORTH A MANEH OR A SINGLE DENAR:**

1. III:1: Tannaite complement: “Whether it gore a son or a daughter” (Exo. 21:31)  
— This proves that one is liable in the case of minors just as in the case of adults.

**XXX. Mishnah-Tractate Baba Qamma 4:6**

**A. AN OX WHICH WAS RUBBING ITSELF AGAINST A WALL, AND THE WALL FELL ON A MAN:**

1. I:1: Said Samuel, “The ox is exempt from the death penalty, but the owner is liable to pay the ransom.” And Rab said, “The exemption is both from the death penalty and the ransom.”

a. I:2: Tannaite complement.

**B. IF IT HAD INTENDED TO KILL (1) ANOTHER BEAST, BUT KILLED A MAN, (2) A GENTILE BUT KILLED AN ISRAELITE, (3) AN UNTIMELY BIRTH BUT KILLED A VIABLE INFANT — THE OX IS EXEMPT**

1. I:1: Lo, if the ox had intended to kill one person but accidentally killed another, then he would have been liable. It follows that our Mishnah paragraph is not in accord with the position of R. Simeon.

**XXXI. Mishnah-Tractate Baba Qamma 4:7**

**A. (1) AN OX BELONGING TO A WOMAN, (2) AN OX BELONGING TO ORPHANS, (3) AN OX BELONGING TO A GUARDIAN, (4) AN OX OF THE WILDERNESS, (5) AN OX BELONGING TO THE SANCTUARY, (6) AN OX BELONGING TO A PROSELYTE WHO DIED LACKING HEIRS — LO, THESE OXEN ARE LIABLE TO THE DEATH PENALTY.**

1. I:1: Tannaite complement: In the section on oxen that kill human beings, the word, ox, occurs six times, thus encompassing an ox belonging to a woman, (2) an ox belonging to orphans, (3) an ox belonging to a guardian, (4) an ox of the wilderness, (5) an ox belonging to the sanctuary, (6) an ox belonging to a proselyte who died lacking heirs. R. Judah says, “(4) An ox of the wilderness wild and abandoned, (5) an ox belonging to the sanctuary, and (6) the ox of a proselyte who died are exempt from liability to the death penalty, for they are not subject to a particular owner.”

**B. R. JUDAH SAYS, “(4) AN OX OF THE WILDERNESS, (5) AN OX BELONGING TO THE SANCTUARY, AND (6) THE OX OF A PROSELYTE WHO DIED ARE EXEMPT FROM LIABILITY TO THE DEATH PENALTY, FOR THEY ARE NOT SUBJECT TO A PARTICULAR OWNER.”**

1. II:1: Said R. Huna, “R. Judah declares an exemption even if the ox gored and only then was declared consecrated, or the ox gored and was only then declared ownerless. On what basis do we know this? Since he specifies both an ox of the wilderness wild and abandoned, and the ox of a proselyte who died. But what is “an ox of a proselyte who died”? Since the proselyte by definition has no heirs, it is none other than an ox that was ownerless, that is to say, an ox of the wilderness, which is the same thing as the ox of a proselyte who died without heirs. So why



bother with all this repetition? In this way he informs us that even if the ox gored and only then was declared consecrated, or the ox gored and was only then declared ownerless, he is exempt.”

## **XXXII. Mishnah-Tractate Baba Qamma 4:8-4:9A-F**

**A. AN OX WHICH GOES FORTH TO BE STONED, AND WHICH THE OWNER THEN DECLARED TO BE SANCTIFIED IS NOT DEEMED TO HAVE BEEN SANCTIFIED IF ONE HAS SLAUGHTERED IT, ITS MEAT IS PROHIBITED (EXO. 21:28). BUT IF BEFORE THE COURT PROCESS HAD BEEN COMPLETED THE OWNER DECLARED IT SANCTIFIED, IT IS DEEMED SANCTIFIED. AND IF ONE HAD SLAUGHTERED IT, ITS MEAT IS PERMITTED.**

1. I:1: Tannaite complement: An ox that killed someone — if the owner sold it before the court decree was issued, it is deemed to have been validly sold. If the owner sanctified it to the Temple, it is validly sanctified. If he slaughtered it, its meat is permitted. If the bailee returned it to the household of the owner, it is validly returned and the bailee has no further obligation.

a. I:2: May we say that this is what is subject to dispute here: Rabbis take the view that, in matters that have become prohibited for any use or benefit, it is not permitted to say, “Here is yours before you.” And R. Jacob maintains that, in matters that have become prohibited for any use or benefit, it is permitted to say, “Here is yours before you.”

**B. IF ONE HAD HANDED IT OVER TO AN UNPAID BAILEE, OR TO A BORROWER, TO A PAID BAILEE, OR TO A RENTER, THEY TAKE THE PLACE AND ASSUME THE LIABILITIES OF THE OWNER. FOR AN OX DEEMED AN ATTESTED DANGER ONE OF THESE PAYS FULL DAMAGES, AND FOR ONE DEEMED HARMLESS HE PAYS HALF-DAMAGES.**

1. II:1: Tannaite complement: There are four classes of persons that take the place and assume the liabilities of the owner, and these are they: An unpaid bailee, or a borrower, a paid bailee, or a renter. If cattle subject to their bailment that were deemed harmless went and killed, the cattle are put to death, and persons in these classifications are exempt from having to pay a ransom. If the cattle were attested dangers, then the cattle are put to death and persons in these classifications pay the ransom and are moreover liable to repay the owner for the value of the ox, except in the case of the unpaid bailee.

2. II:2: Said R. Eleazar, “If one handed over one’s ox to an unpaid bailee and the ox did damage, the bailee is responsible, but if the ox was damaged, he is exempt from paying compensation.”

## **XXXIII. Mishnah-Tractate Baba Qamma 4:9G-O**

**A. IF THE OWNER TIED IT UP WITH A HALTER, OR LOCKED IT UP IN A PROPER WAY, AND IT WENT OUT AND DID DAMAGE — ALL THE SAME ARE AN ANIMAL DEEMED HARMLESS AND ONE WHICH IS AN ATTESTED DANGER — THE OWNER IS LIABLE,” THE WORDS OF R. MEIR. R. JUDAH SAYS, “THE OWNER OF AN ANIMAL DEEMED**

**HARMLESS IS LIABLE, BUT ONE REGARDED AS AN ATTESTED DANGER IS EXEMPT, SINCE IT IS SAID, ‘AND IT HAS BEEN TESTIFIED TO ITS OWNER, BUT HE DID NOT KEEP HIM IN’ (EXO. 21:29) — BUT THIS ONE HAS BEEN KEPT IN.”**

**1. I:1:** What is the operative consideration behind the position of R. Meir?

**2. I:2:** Tannaite complement: R. Eliezer b. Jacob says, “All the same are the cases of an ox that was deemed harmless and one that was an attested danger, which were given a rather minimal form of guardianship — the guardian is exempt from having to pay any sort of damages.”

**3. I:3:** Said R. Adda bar Ahbah, “R. Judah declares exempt from having to pay compensation only that component of the payment that is due by reason of the ox’s having been classified as an attested danger, but, as to the portion of the payment that would be owing because the beast was deemed harmless, that part is unaffected and must be paid.”

**4. I:4:** Said Rab, “A beast that was an attested danger to gore with the right horn is not an attested danger to gore with the left horn.” In accord with whose position is this statement made? If it is within the framework of the position of R. Meir, has he not said, “All the same are the beast deemed harmless and one that was an attested danger, in both cases, an absolutely foolproof precaution must be taken” so what difference does this distinction make here? And if it is within the framework of the position of R. Judah, what difference does the goring by the left horn make?

**B. R. ELIEZER SAYS, “THE ONLY APPROPRIATE ‘KEEPING IN’ FOR SUCH AN ANIMAL AS IS AN ATTESTED DANGER IS THE KNIFE.”**

**1. II:1:** Said Rabbah, “What is the scriptural basis here? Said Scripture, ‘And his owner has not kept him in’ (Exo. 21:29) — this one can never again be subject to any sort of guardianship but must die.”

## **XXXIV. Mishnah-Tractate Baba Qamma 5:1**

**A. AN OX DEEMED HARMLESS WHICH GORED A COW WHICH DIED AND HER NEWLY BORN CALF WAS FOUND DEAD BESIDE HER — AND IT IS NOT KNOWN WHETHER, BEFORE IT GORED HER, SHE GAVE BIRTH, OR AFTER IT GORED HER, SHE GAVE BIRTH — THE OWNER OF THE OX PAYS HALF-DAMAGES FOR THE COW, AND QUARTER-DAMAGES FOR THE OFFSPRING:**

**1. I:1:** Said R. Judah said Samuel, “This represents the view of Sumekhosh, who has said, ‘When a monetary claim is subject to doubt, the parties divide the claim.’ But sages say, ‘This is the governing principle: He who wants to exact compensation from his fellow bears the burden of proof.’”

**a. I:2:** Continuation of analytical discussion of a detail of the foregoing.

**I. I:3:** As above. Tannaite recapitulation of the same point.

**b. I:4:** How on the basis of Scripture do we know that he who lays a monetary claim against his fellow bears the burden of proof?

**B. AND SO, TOO, A COW DEEMED HARMLESS WHICH GORED AN OX, AND HER NEWLY BORN YOUNG WAS FOUND BESIDE HER, AND IT IS NOT KNOWN WHETHER**

**BEFORE SHE GORED, SHE GAVE BIRTH, OR AFTER SHE GORED, SHE GAVE BIRTH — THE OWNER OF THE COW PAYS HALF-DAMAGES FROM THE CORPUS OF THE COW, AND A QUARTER-DAMAGES FROM THE CORPUS OF THE OFFSPRING.**

1. II:1: Half-damages and quarter-damages? But it's only the half-damages that have to be paid? So what can the reference to full damages less a quarter-damages possibly be doing here?

2. II:2: If the cow and the offspring belonged to the same owner, then the injured party would certainly have every right to say to the owner of the ox, "Whichever way you want it, you're going to have to pay me half-damages." Why pay any less than that — for example, quarter-damages?

a. II:3: Said Raba, "But is the language, 'a fourth of the damage' or 'an eighth of the damage' used? Rather, it is half-damages' and 'quarter-damages.'" How then could Abbaye interpret half-damages to mean quarter-damages, and quarter-damages to mean an eighth of the damage?

l. II:4: Raba is consistent with views expressed elsewhere, for said Raba, "If a cow did injury, the compensation may be exacted from the corpus of the calf. How come? It is deemed part of the cow. But if a chicken did damage, compensation is not paid from its egg. How come? The egg is not deemed part of the chicken but a distinct body."

### **XXXV. Mishnah-Tractate Baba Qamma 5:2-3**

**A. (1) THE POTTER WHO BROUGHT HIS POTS INTO THE COURTYARD OF THE HOUSEHOLDER WITHOUT PERMISSION, AND THE BEAST OF THE HOUSEHOLDER BROKE THEM — THE HOUSEHOLDER IS EXEMPT. (2) AND IF THE BEAST WAS INJURED ON THEM, THE OWNER OF THE POTS IS LIABLE:**

1. I:1: The operative consideration behind the rule, The potter who brought his pots into the courtyard of the householder without permission, and the beast of the householder broke them — the householder is exempt. And if the beast was injured on them, the owner of the pots is liable, is that it was done without permission. Lo, if it were with permission, the owner of the pots would not have been liable for the injury done to the ox of the householder, and we do not say that the owner of the pots has undertaken to watch out for the ox of the householder. Then who is the authority behind this rule? It is Rabbi, who has taken the position that without an articulate statement, one does not undertake an act of guardianship.

**B. (3) IF HOWEVER, HE BROUGHT THEM IN WITH PERMISSION, THE OWNER OF THE COURTYARD IS LIABLE, (1) IF HE BROUGHT HIS PRODUCE INTO THE COURTYARD OF THE HOUSEHOLDER WITHOUT PERMISSION, AND THE BEAST OF THE HOUSEHOLDER ATE THEM UP, THE HOUSEHOLDER IS EXEMPT. (2) AND IF THE BEAST WAS INJURED BY THEM, THE OWNER OF THE PRODUCE IS LIABLE. BUT IF HE BROUGHT THEM IN WITH PERMISSION, THE OWNER OF THE COURTYARD IS LIABLE.**

1. II:1: Said Rab, "This rule, if the beast was injured by them, the owner of the produce is liable, applies only if the animal slipped on them, but if he ate them and

was harmed, the owner of the produce would be exempt. How come? It is that the cow should not have eaten the produce.”

**2. II:2:** The question was raised: In a case in which the owner of the courtyard has accepted responsibility to guard what is brought into the courtyard, what is the law? It is to safeguard what is brought in against damage done by his own property that he has undertaken, or perhaps it is to safeguard the bailment in general that he has undertaken?

**a. II:3:** Illustrative case. There was a woman who went into her neighbor's house to bake bread. A goat belonging to the house came along and ate up the dough, fell sick, and died. Raba declared the woman liable to pay damages for the value of the goat.

**C. (1) IF HE BROUGHT HIS OX INTO THE COURTYARD OF A HOUSEHOLDER WITHOUT PERMISSION, AND THE OX OF THE HOUSEHOLDER GORED IT, OR THE DOG OF THE HOUSEHOLDER BIT IT, THE HOUSEHOLDER IS EXEMPT. (2) IF THAT OX GORED THE OX OF THE HOUSEHOLDER, THE OWNER IS LIABLE:**

**1. III:1:** Said Raba, “If without permission one brought his ox into the courtyard of a householder and the ox dug there pits, ditches, and caves, the owner of the ox is liable for damages done to the courtyard, and the owner of the courtyard is liable for damages done by the pit, ditch, or cave. For even though a master has stated, “‘if a man shall dig a pit” (Exo. 21:33) and not if an ox shall dig a pit,’ in this case since it was the duty of the owner of the courtyard to fill in the pit and he didn’t do it, he is regarded as though he himself had dug it.”

**D. IF IT FELL INTO HIS WELL AND POLLUTED ITS WATER, THE OWNER OF THE OX IS LIABLE:**

**1. IV:1:** Said Raba, “That is the case only if the ox made the water foul at the moment that it fell into the pit so the damage was quite direct. But if this took place only after the ox fell into the pit, the owner of the ox is exempt from having to pay liability. How come? The ox would then be in the class of the law covered under pit, and the water is in the class of utensils inanimate objects, an

**E. IF HIS FATHER OR SON WAS IN THE WELL AND WAS KILLED, THE OWNER OF THE OX PAYS RANSOM MONEY:**

**1. V:1:** But why should this be the case? Was the ox not deemed harmless so there should be no ransom here?

**F. (3) BUT IF HE BROUGHT IT IN WITH PERMISSION, THE OWNER OF THE COURTYARD IS LIABLE. RABBI SAYS, “IN ALL CASES THE HOUSEHOLDER IS LIABLE ONLY IF HE UNDERTAKES UPON HIMSELF TO GUARD THE OX:”**

**1. VI:1:** Rab said, “The decided law is in accord with the initial Tannaite statement.” And Samuel said, “The decided law is in accord with Rabbi.”

**2. VI:2:** Tannaite complement: “Bring your ox in, but you watch it,” if the ox then did damage, the owner of the ox would be liable, but if the ox is injured, the owner of the courtyard would not be liable. “Bring your ox in, and I’ll watch it,” if the ox was injured, the owner of the courtyard would be liable, but if it did damage, he is exempt (T. **B.Q. 5:8A-D**).

## **XXXVI. Mishnah-Tractate Baba Qamma 5:4**

**A. AN OX WHICH WAS INTENDING TO GORE ITS FELLOW, BUT HIT A WOMAN, AND HER OFFSPRING CAME FORTH AS A MISCARRIAGE — THE OWNER OF THE OX IS EXEMPT FROM PAYING COMPENSATION FOR THE OFFSPRING.**

**AND A MAN WHO WAS INTENDING TO HIT HIS FELLOW BUT HIT A WOMAN, AND HER OFFSPRING CAME FORTH DEAD, PAYS COMPENSATION FOR THE OFFSPRING:**

1. I:1: The operative consideration for the exemption is that the ox was deliberately charging another ox, but if he had been deliberately charging the woman, the owner would have to pay the compensation for the offspring. May we then say that this is a refutation of the position of R. Adda bar Ahba, for said R. Adda bar Ahba, “Oxen that were charging a woman — the owner is exempt from having to pay compensation for the embryo.”

2. I:2: Said R. Pappa, “An ox that gored a slave girl and her foetus aborted — the owner pays the value of the foetus. What is the operative consideration? She is in the class of injury to a pregnant she-ass, and Scripture has said, ‘Stay here with the ass’ (Gen. 22: 5) — a people in the class of the ass.”

**B. HOW DOES ONE ASSESS COMPENSATION FOR OFFSPRING? THEY MAKE AN ESTIMATE OF THE WOMAN’S VALUE BEFORE SHE GAVE BIRTH, AND HOW MUCH SHE IS WORTH NOW.**

1. II:1: Would not the appropriate language have been “not compensation for offspring” but “compensation for the increase in the value of the woman because of the offspring”?

**C. SAID RABBAN SIMEON B. GAMALIEL, “IF SO, ONCE A WOMAN GIVES BIRTH, SHE SHOULD GAIN IN VALUE!” BUT: THEY MAKE AN ESTIMATE OF THE OFFSPRING’S VALUE.” AND ONE PAYS THE HUSBAND (EXO. 21:22). BUT IF SHE DOES NOT HAVE A HUSBAND, THE OWNER OF THE OX PAYS THE HUSBAND’S HEIRS:**

1. III:1: What is the sense of this statement?

2. III:2: And as to rabbis, who took the view that the increase in the woman’s value due to the embryos also is assigned to the husband — what is the operative consideration in their thinking?

**D. IF SHE WAS A SLAVE GIRL WHO WAS FREED, OR A CONVERT, THE MAN IS EXEMPT FROM PAYING COMPENSATION.**

1. IV:1: Said Rabbah, “This rule applies only when the injury took place while the proselyte was alive, and then the proselyte died, for, since the injury was given to the woman during the lifetime of the proselyte, the proselyte acquired title to the compensation that was due, and, when he died, the party responsible for the injury was exempt from having to pay, since it fell into the category of an asset belonging to a proselyte. But if the injury was given to the woman after the death of the proselyte, since she has acquired title to the embryo, he is obligated to pay the money to her.” Said R. Hisda, “Master, are embryos little money bags, to which title can be acquired or transferred? But if the husband is alive, it is to him that the

All-Merciful has assigned title. If the husband is not alive, then that is not the case.”

**a. IV:2:** As to the dispute between Rabbah and Hisda, may we say that at issue is the same point of contention separating Tannaite authorities?

**2. IV:3:** R. Yeba the Elder asked R. Nahman, “He who seizes possession of the deeds of a proselyte — what is the law? When one seizes a deed, he is thinking about the land that it represents, but to title to the land itself he has not acquired possession, nor does he even acquire ownership of the deed, since he never intended to acquire title to that? Or perhaps his intention was to gain title to the deed too?”

**3. IV:4:** Said Rabbah, “If the pledge given by an Israelite is in the possession of a proselyte, who then dies, and another Israelite third party came along and took possession of it, they retrieve it from his possession. How come? At the very moment at which the proselyte died, the lien on the pledge disappeared. If the pledge given by a proselyte is in the possession of an Israelite, then the proselyte dies and another Israelite came along and took possession of it, the creditor would take title to the pledge to the extent of what is owing to him, and the third party, who seized it, would keep the change.”

## **XXXVII. Mishnah-Tractate Baba Qamma 5:5A-D**

**A. HE WHO DIGS A PIT IN PRIVATE DOMAIN AND OPENS IT INTO PUBLIC DOMAIN, OR IN PUBLIC DOMAIN AND OPENS IT INTO PRIVATE DOMAIN, OR IN PRIVATE DOMAIN AND OPENS IT INTO PRIVATE DOMAIN BELONGING TO SOMEONE ELSE, IS LIABLE FOR DAMAGE DONE BY THE PIT.**

**1. I:1:** Tannaite complement: “He who digs a pit in private domain and opens it into public domain, is liable for damage done by the pit. And this is the pit of which the Torah has spoken at Exo. 21:33-34,” the words of R. Ishmael. R. Aqiba says, “If one has declared his property ownerless but has not declared his pit ownerless, this is the pit of which the Torah has spoken at Exo. 21:33-34.”

**a. I:2:** Said Rabbah, “As to a pit in public domain, no one differs as to the issue of liability. How come? Scripture states, ‘If a man open or if a man dig’ (Exo. 21:33)...” And R. Joseph said, “As to a pit in private domain, no one differs as to the issue of liability. How come? Scripture states, ‘the owner of the pit’ (Exo. 21:33), is what the All-Merciful has said, speaking of any pit that has an owner. Where there is a dispute, it concerns a pit in the public domain.”

**3. I:3:** Tannaite complement: If one has a pit and opened it up and handed it over to the public, he is exempt. If he dug the pit and opened it up but did not hand it over to the public, he is liable. And this was the practice of Nehunia, who was responsible for the digging of cisterns, ditches, and caves. He would dig a pit and open the cistern and hand it over to the public. And when sages heard about the matter, they said, “This person has fulfilled this law” (T. **B.Q. 6: 5**).

**4. I:4:** Tannaite complement: There was the case involving the daughter of Nehunia, who was responsible for the digging of cisterns, ditches, and caves. She



fell into a big hole, and they came and told R. Hanina b. Dosa. During the first hour, he said to them, “She is o.k.” During the second hour, he said to him, “She is o.k.” During the third hour, he said to him, “She has gotten out of the pit.”

a. I:5: Said R. Aha, “Nonetheless, his son died of thirst: ‘And it shall be very tempestuous round about him’ (Psa. 50: 3) — this teaches that the Holy One, blessed be He, is very meticulous about those who are around him, even in matters as light as a single hair which word uses the same letters as tempestuous.”

I. I:6: Said R. Hanina, “Whoever says that the Holy One, blessed be He, is lenient — his life will be deemed at risk the key words sharing the same letters, as it is said, ‘He is the rock, his work is perfect, for all his ways are judgment’ (Deu. 32: 4).”

5. I:7: Tannaite complement: Someone should not take stones off his own property and toss them into public domain. There was a case in which someone was removing stones from his property into the public domain, and a certain righteous man came upon him. He said to him, “Empty head! How come you’re removing stones from a domain that is not yours to a domain that is yours?” The other ridiculed him. Some time later the man had to sell his field, and he was walking in that very public domain and stumbled on those very stones. He said, “Well did that righteous man speak to me, when he said, ‘How come you’re removing stones from a domain that is not yours to a domain that is yours?’” (T. B.Q. 2:13A-D).

### **XXXVIII. Mishnah-Tractate Baba Qamma 5:5E-J**

#### **A. HE WHO DIGS A PIT IN PUBLIC DOMAIN, AND AN OX OR AN ASS FELL INTO IT AND DIED, IS LIABLE:**

1. I:1: Said Rab, “The reason for the liability incurred through digging a pit is on account of the unhealthy air because of the hole, but not on account of the blow that is given by the hole.” And Samuel said, “The reason for the liability incurred through digging a pit is on account of the unhealthy air because of the hole, and all the more so on account of the blow that is given by the hole.”

a. I:2: Secondary analysis of the foregoing.

**B. IT IS ALL THE SAME WHETHER ONE DIGS A PIT, A TRENCH, CAVERN, DITCHES, OR CHANNELS — HE IS LIABLE. IF SO, THEN WHY IS IT WRITTEN IN PARTICULAR, “A PIT” (EXO. 21:33)? JUST AS A PIT UNDER DISCUSSION IS ONE WHICH IS SUFFICIENTLY DEEP SO AS TO CAUSE DEATH, NAMELY, TEN HANDBREADTHS IN DEPTH, SO ANYTHING WHICH IS SUFFICIENTLY DEEP SO AS TO CAUSE DEATH WILL BE AT LEAST TEN HANDBREADTHS IN DEPTH.**

1. II:1: Now what need did I have for the explicit mention of all of these distinct items anyhow?

**C. IF THEY WERE LESS THAN TEN HANDBREADTHS IN DEPTH AND AN OX OR AN ASS FELL INTO IT AND DIED, THE OWNER IS EXEMPT. BUT IF THEY WERE INJURED IN IT, HE IS LIABLE**

1. III:1: We have learned in the Mishnah: If they were less than ten handbreadths in depth and an ox or an ass fell into it and died, the owner is exempt. But if they were injured in it, he is liable. Now what is the reason that if, an ox or an ass fell into it and died, the owner is exempt? Is it not because the blow is not sufficient to cause death: though the air was not less unhealthy, there will be no liability, thus contradicting the views of both Rab and Samuel?

2. III:2: Illustrative case.

## XXXIX. Mishnah-Tractate Baba Qamma 5:6A-D

### A. A PIT BELONGING TO TWO PARTNERS...:

1. I:1: How do we find a case of a pit belonging to two partners? That would pose no problem if we follow the reasoning of R. Aqiba, who has said, “For damages done by a pit dug in one’s own domain, one bears liability.” Then you would find such a case when the courtyard belonged to them both and also the pit belonged to them both, and they declared the property ownerless, but they did not abandon the pit. But if we take the position that for damages done by a pit dug in one’s own domain, one is exempt from all liability, then how would you find such a case? For one would be liable only for a pit in public domain, and where in the world are we going to find on public domain a pit that belongs to two partners?

a. I:2: Clarification of a detail of the foregoing.

l. I:3: Continuation of the foregoing: secondary analysis.

2. I:4: Tannaite complement: All the same are the person who dug the pit to a depth of ten handbreadths, and the one who came along and dug it down to twenty, and someone else who came along and dug it down to thirty — all of them are liable (T. **B.Q. 6:9C-D**).

3. I:5: Continuation of the foregoing. An objection was raised: If someone dug a hole to ten handbreadths and someone else came along and put in plaster and cemented it, the one who came along at the end is liable (T. **B.Q. 6:9A-B**). Shall we then say, the former statement all are liable represents the view of Rabbi, the latter of Rabbis the second is liable in all cases?

a. I:6: Said Raba, “If someone put a stone around the mouth of the pot and so completed its depth to ten handbreadths, we come to the dispute of Rabbi and rabbis” as to whether the second person or both would be liable to injury.

l. I:7: Raba raised this question: “If the second party filled in with dirt a handbreadth of the depth that he had dug, or if he removed the stones that he had put there, what is the law? Do we say that what he did he has now removed, or perhaps while the act of the first party has been merged in the act of the second, the entire pit then is the responsibility of the second party?”

4. I:8: Said Rabbah bar bar Hanna said Samuel bar Marta, “In the case of a pit eight handbreadths deep, with two of them filled with water, one is liable if an animal fell in and died. How come? Every handbreadth of water is equivalent to



two of dry land.” The question was raised: If a pit was nine handbreadths deep, with one of them water, what is the law? Do we say that since there is not so much water there, there also is not so much bad air so the pit is deemed one not ten handbreadths deep after all, or perhaps, since the pit is deeper, there is still an ample quantity of unhealthy air and the pit is classified as one ten handbreadths deep?

a. I:9: R. Shizbi asked Rabbah, “If the second party broadened the pit, what is the law?”

b. I:10: A pit that is as deep as it is broad — Rabbah and R. Joseph, both of them in the name of Rabbah bar bar Hannah, who spoke in the name of R. Mani — One said, “There is always unhealthy air assumed to be in the pit, unless the breadth is greater than the depth.” And the other said, “It is always assumed that there is no unhealthy air in the pit, unless the depth is greater than the breadth.”

**B. ...ONE OF THEM PASSED BY IT AND DID NOT COVER IT, AND THE SECOND ONE ALSO DID NOT COVER IT — THE SECOND ONE IS LIABLE.**

1. II:1: At what point in time is the first one of the partners exempt?

a. II:2: Tannaite dispute on the same problem.

2. II:3: Said R. Eleazar, “He who sells a pit to someone else, once he has handed over the cover to him, the other has acquired title to the pit.”

3. II:4: Said R. Joshua b. Levi, “He who sells a house to his fellow, once he has handed over to him the key to the house, the other party has acquired title.”

4. II:5: Said R. Simeon b. Laqish in the name of R. Yannai, “He who sells a herd to his neighbor, once he has handed over to him the judas-goat, the latter has acquired title to the herd.”

a. II:6: Gloss of foregoing.

## **XL. Mishnah-Tractate Baba Qamma 5:6E-N**

**A. IF THE FIRST ONE COVERED IT UP, AND THE SECOND ONE CAME ALONG AND FOUND IT UNCOVERED AND DID NOT COVER IT UP. THE SECOND ONE IS LIABLE.**

1. I:1: At what point in time is the first one of the partners exempt?

**B. IF HE COVERED IT UP IN A PROPER WAY, AND AN OX OR AN ASS FELL INTO IT AND DIED, HE IS EXEMPT. IF HE DID NOT COVER IT UP IN THE PROPER WAY AND AN OX OR AN ASS FELL INTO IT AND DIED, HE IS LIABLE.**

1. II:1: So if he covered it up in a proper way, how in the world did an ox or ass fall into the pit?

2. II:2: The question was raised: If the responsible party covered the pit with a cover strong enough to withstand the weight of oxen but not strong enough to withstand the weight of camels, and camels came along and weakened it, and oxen came along and fell through into it, what is the law?

a. II:3: Reformulation of the foregoing problem.

**C. IF IT FELL FORWARD NOT INTO THE PIT BECAUSE OF THE SOUND OF THE DIGGING, THE OWNER OF THE PIT IS LIABLE. IF IT FELL BACKWARD NOT INTO THE PIT BECAUSE OF THE SOUND OF THE DIGGING, THE OWNER OF THE PIT IS EXEMPT.**

1. III:1: Said Rab, “Forward is meant literally, on its face so it died of suffocation and there would be liability, and backward is meant literally, on its back, and in both cases it was into the pit.” And Samuel said, “If the ox fell into a pit, whether forward or backward, the owner of the pit would invariably be liable.”

a. III:2: Secondary Tannaite support for Rab’s position.

I. III:3: Gloss of a detail of the foregoing.

b. III:4: Continuation of the analysis of III:3. Said Raba, “If someone not the owner of the pit left a stone on the mouth of the pit and an ox came along and stumbled on it and fell into the pit — we come to the dispute of R. Nathan and rabbis.” Rabbis hold the one who put the stone on the pit alone has to pay compensation.

2. III:5: An ox belonging to a common person and an ox that had been consecrated but was unfit for the altar and is not liable to pay damages that gored another beast — Abbaye said, “The private person nonetheless pays half-damages.” Rabina said, “The private party pays quarter-damages.”

3. III:6: Said Raba, “An ox and a man who pushed something into a pit thus sharing liability — as to damages all three the owner of the ox, the man, and the owner of the pit are liable. As to the Four Matters to which a man is liable and as to payment for the loss of embryos, the man would be liable, cattle and pit exempt; in regard to the ransom or paying thirty sheqels for killing a slave, the owner of the ox would be liable, but the man and the owner of the pit are exempt. As to damaging inanimate objects or injuring an ox that had been consecrated for the altar but disqualified, man and cattle would be liable, the pit exempt. How come? It is that Scripture is explicit: ‘And the dead beast shall be his’ (Exo. 21:34) — meaning, in the case of an ox the carcass of which could be his is there liability, excluding a case in which the carcass of the ox would not be his.”

**D. IF AN OX CARRYING ITS TRAPPINGS FELL INTO IT AND THEY WERE BROKEN, AN ASS AND ITS TRAPPINGS AND THEY WERE SPLIT, THE OWNER OF THE PIT IS LIABLE FOR THE BEAST BUT EXEMPT FOR THE TRAPPINGS.**

1. IV:1: Our paragraph of the Mishnah is not in accord with R. Judah.

2. IV:2: What is the scriptural basis for the position of rabbis that one is exempt for damage done by a pit to utensils?

a. IV:3: Continuation of the analysis of the scriptural basis.

b. IV:4: Now whether from the perspective of rabbis, who exclude inanimate objects, or R. Judah, who includes them, we may now raise this question: Then are inanimate objects subject to death anyhow?

c. IV:5: And from the perspective of Rab, who has said, “The reason for the liability incurred through digging a pit is on account of the unhealthy air because of the hole, but not on account of the blow that is given by the

hole,” do either rabbis or R. Judah take the view that inanimate objects are subject to the deleterious effect of unhealthy air?

I. IV:6: Now is not the phrase, “and the dead shall be his” needed for the law stated by Raba?

**E. IF AN OX BELONGING TO A DEAF-MUTE, AN IDIOT, OR A MINOR FELL INTO IT, THE OWNER IS LIABLE. IF A LITTLE BOY OR GIRL, A SLAVE BOY OR A SLAVE GIRL FELL INTO IT, HE IS EXEMPT FROM PAYING A RANSOM.**

1. V:1: What is the meaning of, an ox...a deaf-mute, an idiot, or a minor? If we say that the meaning is, an ox belonging to a deaf-mute, an ox belonging to an idiot, or an ox belonging to a minor, then if it were an ox belonging to a person of sound senses, would the owner of the pit be exempt from liability?

## **XLI. Mishnah-Tractate Baba Qamma 5:7**

**A. ALL THE SAME ARE AN OX AND ALL OTHER BEASTS SO FAR AS (1) FALLING INTO A PIT:**

1. I:1: “He should give money to the honor of it” (Exo. 21:33) — everything that has an owner, as we said earlier.

**B. (2) KEEPING APART FROM MOUNT SINAI:**

1. II:1: “Whether animal or man it shall not live” (Exo. 19:13) — wild beast is covered by domesticated animal, and “whether” covers birds.

**C. (3) PAYING A DOUBLE INDEMNITY IN THE CASE OF THEFT:**

1. III:1: As we have said: “For every kind of trespass” (Exo. 22: 8) is inclusive.

**D. (4) THE RETURNING OF THAT WHICH IS LOST**

1. IV:1: “With all lost things of your brother” (Deu. 22: 3).

**E. (5), UNLOADING:**

1. V:1: The analogy is to be drawn between the use of the word “ass” at Exo. 20:10 and Deu. 5:14 in the context of the Sabbath and in the present context.

**F. (6) MUZZLING:**

1. VI:1: The analogy is to be drawn between the use of the word “ox” at Exo. 20:10 and Deu. 5:14 in the context of the Sabbath and in the present context.

**G. (7) HYBRIDIZATION AND THE (8) SABBATH:**

1. VII:1: In respect to ploughing, the analogy is to be drawn between the use of the word “ox” at Exo. 20:10 and Deu. 5:14 in the context of the Sabbath and in the present context.

a. VII:2: Gloss of a detail of the foregoing.

b. VII:3: Continuation of foregoing.

c. VII:4: As above.

I. VII:5: Secondary supplement to foregoing.

A. VII:6: As above.

**B. VII:7: As above.**

**H. AND SO, TOO, ARE WILD BEASTS AND FOWL SUBJECT TO THE SAME LAWS. IF SO, WHY IS AN OX OR AN ASS SPECIFIED? BUT SCRIPTURE SPEAKS IN TERMS OF PREVAILING CONDITIONS:**

1. VIII:1: Said R. Simeon b. Laqish, “In framing matters as he did in this case, Rabbi has taught the rule: ‘A cock, peacock, and pheasant are deemed distinct species from one another and may not be hybridized.’”

**I. COMPOSITE ON HYBRIDIZATION**

1. VIII:2: Samuel said, “The domestic goose and the wild goose are classified as hybrids if they are paired.”

2. VIII:3: Said R. Jeremiah said R. Simeon b. Laqish, “He who mates two species of sea creatures is penalized with a flogging.”

3. VIII:4: Rahba raised this question: “He who did the impossible and drives a wagon pulled by a goat and a mullet, what is the law? Do we say that, since the goat can’t go into the sea, and the mullet can’t come up onto dry land, the man has done nothing at all? Or perhaps, in any event, he is driving them?”

## **XLII. Mishnah-Tractate Baba Qamma 6:1-2**

**A. HE WHO BRINGS A FLOCK INTO A FOLD AND SHUT THE GATE BEFORE IT AS REQUIRED, BUT THE FLOCK GOT OUT AND DID DAMAGE, IS EXEMPT IF HE DID NOT SHUT THE GATE BEFORE IT AS REQUIRED, AND THE FLOCK GOT OUT AND DID DAMAGE, HE IS LIABLE.**

1. I:1: What is the definition of as required, and what is the definition of not as required? A gate that can withstand a normal wind — that is the definition of one that is shut as required. A gate that cannot withstand a normal wind — that is the definition of one that is shut not as required.

a. I:2: Said R. Mani b. Patish, “Now what Tannaite authority takes the view that it suffices to provide even the most minimal care for a beast that is an attested danger? It is R. Judah.”

b. I:3: Said Rabbah, “The formulation of the Mishnah concurs in distinguishing tooth and horn, for it makes reference to sheep. Now up to now, have we not been dealing with oxen? Now the framer of the passage comes along and instead of dealing further with oxen, introduces the matter of sheep! So how come he has made reference to sheep? Isn’t it because the Torah imposed a lesser requirement of guardianship in these instances of tooth and foot, since not horn but tooth and foot are dealt with here? So it has the effect of telling us that this kind of rather ordinary precaution where the gate would withstand a normal wind but nothing more, in the case of tooth and foot, which are attested dangers to begin with?

2. I:4: Tannaite complement: Said R. Joshua, “There are four classes of actions for which one is exempt from penalty on the basis of the laws made by human beings but liable by the laws of heaven, and these are they: He who breaks down a gate before the beast of his neighbor, he who bends his neighbor’s standing grain in

front of a fire, he who hires false witnesses to give testimony, and he who has evidence to give in favor of someone else but does not testify” (T. Shebu. 3:1J).

a. I:5: Amplification of the foregoing.

b. I:6: As above.

c. I:7: As above.

d. I:8: As above.

I. I:9: As above: Now aren’t there any other examples of the classes of cases to which R. Joshua has made reference?

**B. IF THE FENCE WAS BROKEN DOWN BY NIGHT, OR THUGS BROKE IT DOWN, AND THE FLOCK GOT OUT AND DID DAMAGE, HE IS EXEMPT.**

1. II:1: Said Rabbah, “That exemption is the case only if an animal had undermined the wall.”

**C. IF THE THUGS TOOK THE FLOCK OUT, AND THE FLOCK DID DAMAGE, THE THUGS ARE LIABLE:**

1. III:1: That’s obvious. As soon as they removed the flock, it stood in their domain for all purposes. The rule was required to address a case in which they merely stood in front of the sheep but did not take possession of them, merely blocking the way out, and leaving open the path to the grain .

**D. IF HE LEFT IT IN THE SUN, OR IF HE HANDED IT OVER TO A DEAF-MUTE, IDIOT, OR MINOR, AND THE FLOCK GOT OUT AND DID DAMAGE, HE IS LIABLE.**

**IF HE HANDED IT OVER TO A SHEPHERD, THE SHEPHERD TAKES THE PLACE OF THE OWNER AS TO LIABILITY:**

1. IV:1: Takes the place of whom? If we say, in place of the owner of the beast, we have already learned that in the Mishnah once: If one had handed it over to an unpaid bailee, or to a borrower, to a paid bailee, or to a renter, they take the place and assume the liabilities of the owner. For an ox deemed an attested danger one of these pays full damages, and for one deemed harmless he pays half-damages (M. **B.Q. 4:9A-F**). So it must refer to the bailee, where the sheep has already been in the hands of a bailee, who later transferred it to a shepherd; by declaring the shepherd liable, it is implied that the bailee will be released from his previous obligations. The meaning, then, is that the first bailee would be entirely exempt from any further responsibility.

a. IV:2: Now would this not refute the position of Raba? For said Raba, “A bailee who entrusted the bailment to another bailee is liable.”

2. IV:3: One who is bailee for lost property — Rabbah said, “He is in the category of an unpaid bailee.” R. Joseph said, “He is in the category of a paid bailee.”

**E. IF THE FLOCK ACCIDENTALLY FELL INTO A VEGETABLE PATCH AND DERIVED BENEFIT FROM THE PRODUCE, THE OWNER MUST PAY COMPENSATION ONLY FOR THE VALUE OF THE BENEFIT DERIVED BY THE FLOCK:**

1. V:1: Said Rab, “That refers to the cushioning of the impact of falling into the garden, but as to what the flock has eaten, even for what the flock has benefited the owner does not have to pay compensation.”

2. V:2: How did the animal fall into the garden so that we are dealing with an accident, which limits the liability of the animal's owner to the extent of the benefit, not of the loss to the garden owner?

3. V:3: Said R. Kahana, "The ruling applies only to compensation for that bed into which the animal fell, but if then it went from one bed to another, the reparations would cover the entire amount of the damage done by the beast." And R. Yohanan said, "Even if it went from one bed to another, and even if it stuck around munching all day long, the compensation would be assessed in the same, original way, until the the animal went out and with the owner's knowledge then came back into the garden."

**F. IF THE FLOCK WENT DOWN IN THE NORMAL WAY AND DID DAMAGE, THE OWNER MUST PAY COMPENSATION FOR THE ACTUAL DAMAGE WHICH THE FLOCK INFLICTED.**

1. VI:1: R. Jeremiah raised this question: "If the flock went down in the normal way but then did damage to the crop through the water of an afterbirth which would be a very unusual way to damage the crop, what is the law? From the perspective of him who has said, 'If the beginning of an action that results in damage is by reason of negligence but the end is an accident, then the defendant does have to pay damages,' there is no question, of course. Where the question arises, it is from the perspective of him who has said, 'If the beginning of an action that results in damage is by reason of negligence but the end is an accident, then the defendant does have to pay damages.' What is the rule? Do we say, since to begin with it was through negligence but in the end it was an accident, the owner is exempt, or do we say that this is one in which there was negligence beginning to end, for, since he realized that the beast was going to give birth soon, he should have taken special care of it and made sure that nothing happened?"

**G. HOW DOES THE OWNER PAY COMPENSATION FOR THE ACTUAL DAMAGE WHICH THE FLOCK INFLICTED? THEY MAKE AN ESTIMATE OF THE VALUE OF A SEAH AREA OF LAND IN THAT FIELD, AS TO HOW MUCH IT HAD BEEN WORTH AND HOW MUCH IT NOW IS WORTH:**

1. VII:1: What is the scriptural source of this rule?

2. VII:2: How is the estimate reached?

3. VII:3: Tannaite complement: They do not make an estimate of the value of damage done in the measure of a qab's area, because that increases the value for the side of the defendant, nor in the area of a kor, because that diminishes it (T. **B.Q. 6:21A-B**).

a. VII:4: Illustrative case.

I. VII:5: Gloss of a detail.

A. VII:6: Gloss of foregoing.

III. VII:7: Illustrative case. R. Pappa and R. Huna b. R. Joshua ruled in an actual case in accord with the position of R. Nahman, conducting the valuation in accord with sixty times as much.

IV. VII:8: As above. The evaluation of damages is made in conjunction with a figure of sixty times as much.

**H. R. SIMEON SAYS, “IF THE FLOCK CONSUMED RIPE PRODUCE, THE OWNER PAYS COMPENSATION FOR RIPE PRODUCE. IF THE FLOCK DESTROYED A SEAH OF RIPE PRODUCE, HE MUST PAY FOR A SEAH; IF TWO SEAHS, TWO SEAHS:”**

1. VIII:1: What is the scriptural basis for this rule?

2. VIII:2: Rab made a decision in accord with the position of R. Meir, and he decided the law in accord with the view of R. Simeon.

### **XLIII. Mishnah-Tractate Baba Qamma 6:3**

**A. HE WHO STACKS SHEAVES IN THE FIELD OF HIS FELLOW WITHOUT PERMISSION, AND THE BEAST OF THE OWNER OF THE FIELD ATE THEM UP, THE OWNER OF THE FIELD IS EXEMPT. AND IF IT WAS INJURED BY THEM, THE OWNER OF THE SHEAVES IS LIABLE. BUT IF HE HAD PUT HIS SHEAVES THERE WITH PERMISSION, THE OWNER OF THE FIELD IS LIABLE:**

1. I:1: May we say that the Mishnah as given anonymously has been formulated not in accord with the position of Rabbi? For if it were in line with Rabbi's position, has he not said, “In all cases the householder is liable only if he undertakes upon himself to guard the ox” (M. 5:3J)?

### **XLIV. Mishnah-Tractate Baba Qamma 6:4A-F**

**A. HE WHO CAUSES A FIRE TO BREAK OUT THROUGH THE ACTION OF A DEAF-MUTE, IDIOT, OR MINOR, IS EXEMPT FROM PUNISHMENT UNDER THE LAWS OF MAN, BUT LIABLE TO PUNISHMENT UNDER THE LAWS OF HEAVEN.**

1. I:1: 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, since the danger was clear and present.” R. Yohanan said, “Even when a flaming fire has been handed over to him, one is still exempt.”

**B. IF HE DID SO THROUGH THE ACTION OF A PERSON OF SOUND SENSES, THE PERSON OF SOUND SENSES IS LIABLE. IF ONE PERSON BROUGHT THE FLAME, THEN ANOTHER PERSON BROUGHT THE WOOD, THE ONE WHO BRINGS THE WOOD IS LIABLE. IF ONE PERSON BROUGHT THE WOOD AND THE OTHER PERSON THEN BROUGHT THE FLAME, THE ONE WHO BROUGHT THE FLAME IS LIABLE.**

**IF A THIRD PARTY CAME ALONG AND FANNED THE FIRE, THE ONE WHO FANNED THE FLAME IS LIABLE.**

1. II:1: Said R. Nahman bar Isaac, “One who repeats the formulation using the language, ‘blazing up,’ does not err, and one who reads it to mean, ‘blowing up’ does not err. he who reads ‘blazing up’ does not err, since Scripture speaks of ‘in a flame of fire’ (Exo. 3: 2), and one who reads it as ‘blowing up’ does not err, as

we find the same word in the verse, 'I create the movement of the lips' (Isa. 57:19).

### **C. IF THE WIND FANNED THE FLAME, ALL OF THEM ARE EXEMPT.**

1. III:1: Tannaite complement: If one has fanned the flame and the wind then fanned it, if there is sufficient force in his fanning of the flame so as to make it grow into a large fire, lo, this one is liable, and if not, lo, this one is exempt (T. **B.Q. 6:22A-C**).

a. III:2: But why should this be the case? Why not treat it as equivalent to a case in which a man was winnowing on the Sabbath with the wind helping him? He would be liable to violating the Sabbath."

## **XLV. Mishnah-Tractate Baba Qamma 6:4G-H**

**A. HE WHO CAUSES A FIRE TO BREAK OUT, WHICH CONSUMED WOOD, STONES, OR DIRT, IS LIABLE, SINCE IT IS SAID, "IF FIRE BREAKS OUT AND CATCHES IN THORNS SO THAT THE SHEAVES OF WHEAT OR THE STANDING GRAIN OR THE FIELD BE CONSUMED, HE THAT KINDLED THE FIRE SHALL SURELY MAKE RESTITUTION" (EXO. 22: 6).**

1. I:1: Said Raba, "How come the All-Merciful made reference to 'thorns,' 'stacks,' 'standing grain,' and 'field'? Each had individually to be specified..."

### **B. COMPOSITE ON HOW PUNISHMENT AND MISFORTUNE COME INTO THE WORLD**

1. I:2: Said R. Simeon bar Nahmani said R. Jonathan, "Punishment comes into the world only when there are wicked people in the world, but it begins only with the righteous first of all

2. I:3: R. Joseph repeated as a Tannaite statement: "What is the meaning of the verse of Scripture: 'And none of you shall go out at the door of his house until the morning' (Exo. 12:22)? Once permission is given to the destructive angel to do his work, he does not distinguish between righteous and wicked."

3. I:4: Said R. Judah said Rab, "One should always enter a town with 'it was good' that is, in daylight and leave with 'it was good' in light: 'And none of you shall go out at the door of his house until the morning' (Exo. 12:22)."

4. I:5: If there is an epidemic in town, stay indoors: "And none of you shall go out at the door of his house until the morning" (Exo. 12:22).

a. I:6: In a time of epidemic, Raba would close the windows: "For death has come up into our windows" (Jer. 9:20).

5. I:7: If there is an epidemic in town, stay indoors: "And there was a famine in the land, and Abram went down into Egypt to sojourn there" (Gen. 12:10). And further: "If we say, we will enter into the city, then the famine is in the city and we shall die there" (2Ki. 7: 4).

6. I:8: If there is an epidemic in town, a person should not walk down the middle of the road, for the angel of death walks down the middle of the road.

7. I:9: If there is an epidemic in town, a person should not enter the house of assembly by himself, for the angel of death deposits his utensils there.



8. I:10: When dogs howl, it means the angel of death is coming to town. When dogs romp, it means Elijah the prophet is coming to town.

#### **C. LINKING LAW TO LORE: ‘IF FIRE BREAK OUT AND CATCH IN THORNS’**

1. I:11: “‘If fire break out and catch in thorns’ — ‘break out’ on itself. ‘...He who kindled the fire shall surely make restitution’ — said the Holy One, blessed be He, ‘It is my obligation to pay for the fire which I kindled. I was the one who kindled a fire in Zion: “And he has kindled a fire in Zion which has devoured the foundations of thereof” (Lam. 4:11); I am the one who will build it again by fire: “For I will be unto her a wall of fire round about and I will be the glory in the midst of her” (Zec. 2: 9).’ And as to the side of law: the verse speaks first of all of damage done with chattel and then ends with damage done by the person, to show you that implied in the classification of damage done by fire is human agency.”

2. I:12: “And David longed and said, Oh that one would give me water to drink of the well of Bethlehem which is by the gate. And the three mighty men broke through the host of the Philistines and drew water out of the well that was by the gate” (2Sa. 23:15-16): What was the problem? Said Raba said R. Nahman, “What he required was a ruling in connection with the status of hidden objects that are burned up, since he did not know whether the law accords with R. Judah or with rabbis, and they solved the problem for them in whatever way they solved it.”

3. I:13: “But he poured it out unto the Lord” (2Sa. 23:16): Now from the perspective of him who has said one of these two things, it is because he acted for the sake of heaven. But from the perspective of him who said that at issue was the status of compensation for buried goods damaged in a fire, what is the meaning of the verse, “But he poured it out unto the Lord.”

### **XLVI. Mishnah-Tractate Baba Qamma 6:4I**

#### **A. IF THE FIRE CROSSED A FENCE FOUR HANDBREADTHS HIGH:**

1. I:1: But has it not been taught on Tannaite authority: If it crossed a fence four cubits high, the one who set the fire still would be liable?

a. I:2: Said Raba, “The four cubits of which they spoke, at which the person who set the fire would be exempt, applies even to a field of thorns.”

2. I:3: Said Rab, “The ruling of the Mishnah pertains to a fire that was rising in a column, but if it was creeping, there would be liability even if it crossed a public way a hundred cubits wide.” And Samuel said, “Our Mishnah’s rule speaks of a creeping fire, but if it were a fire rising in a column, the one who set the fire would be exempt even if it crossed a public road however wide.”

#### **B. OR A ROAD:**

1. II:1: Who is the Tannaite authority behind this rule?

#### **C. OR A STREAM — THE ONE WHO STARTED IT IS EXEMPT:**

1. III:1: Rab said, “What is meant is actually a stream.” And Samuel said, “A pond for watering fields.”

## **XLVII. Mishnah-Tractate Baba Qamma 6:4J-N**

**A. HE WHO MAKES A FIRE ON HIS OWN PROPERTY — HOW FAR MAY IT SPREAD SO THAT HE REMAINS LIABLE FOR DAMAGE WHICH IT DOES? R. ELEAZAR B. AZARIAH SAYS, “THEY REGARD THE FIRE AS IF IT WERE IN THE MIDDLE OF A KOR’S AREA OF LAND.” R. ELIEZER SAYS, “SIXTEEN CUBITS, LIKE A PUBLIC ROAD.” R. AQIBA SAYS, “FIFTY CUBITS.” R. SIMEON SAYS, “‘HE THAT KINDLED THE FIRE SHALL SURELY MAKE RESTITUTION’ (EXO. 22: 5) — ALL ACCORDS WITH THE CHARACTER OF THE FIRE ITSELF.”**

1. I:1: Assuming that Simeon’s meaning is that everything depends on the damage done by the fire without regard to the distance from the starting point doesn’t R. Simeon take the view that there is some fixed limit of liability in the case of a fire?

## **XLVIII. Mishnah-Tractate Baba Qamma 6:5**

**A. HE WHO SETS FIRE TO A STACK OF GRAIN, AND THERE WERE UTENSILS IN IT, WHICH BURNED UP — R. JUDAH SAYS, “THE ONE WHO LIT THE FIRE PAYS COMPENSATION FOR WHAT IS CONCEALED IN THE STACK.” AND SAGES SAY, “HE PAYS ONLY FOR A STACK OF WHEAT OR BARLEY SUCH AS WAS VISIBLE.” IF A KID WAS TIED UP TO A BARN, AND A SLAVE BOY WAS NEARBY, AND THEY GOT BURNED ALONG WITH THE BARN, HE IS LIABLE FOR THE KID AND THE BARN. IF A SLAVE BOY WAS TIED UP TO IT, AND A KID WAS NEARBY, AND THESE GOT BURNED ALONG WITH IT, HE IS EXEMPT FOR THE SLAVE BOY, SINCE HE DOES NOT PAY COMPENSATION, BEING SUBJECT TO TRIAL FOR HIS LIFE. AND SAGES CONCEDE TO R. JUDAH IN THE CASE OF HIM WHO SETS FIRE TO A LARGE BUILDING, THAT HE PAYS COMPENSATION FOR EVERYTHING WHICH IS IN IT. FOR IT CERTAINLY IS NORMAL FOR PEOPLE TO LEAVE THINGS IN THEIR HOUSES.**

1. I:1: Said R. Kahana, “The dispute concerns a case in which the man set the fire in his own property, and the fire spread and consumed what was in his fellow’s property, in which case R. Judah declares the man liable for damages done by fire to what was concealed, and rabbis declare him exempt. But if he had kindled the fire in the property of the other, all parties concur that he has to pay damages for everything in the other’s house that was burned up.”

2. I:2: Tannaite complement: He who set fire to a stack of grain, in which were utensils that burned up — R. Judah says, “He pays damages for everything that was in it.” And sages say, “He pays only for a stack of wheat or for a stack of barley, and we regard the space in which the utensils were located as though it were filled up with grain.

3. I:3: Said Raba, “He who gives a gold coin to a woman and said to her, ‘Watch over it, since it’s a silver coin,’ and she did damage to it — she pays for the value of a gold coin, since he may say to her, ‘What were you doing with it that you damaged it at all!’ But if she was negligent with it but did not damage it deliberately, she pays only for a silver coin, for she may say to him, ‘I accepted responsibility to take care of a silver coin, but I never accepted responsibility to take care of a gold one.’”

4. I:4: Said Rab, “I heard something with regard to the position of R. Judah, but I don’t know what it is.” Said to him Samuel, “Does not Abba know what he heard as a tradition in respect to the position of R. Judah when he declares one liable for damages done by fire to what is concealed?”

a. I:5: Illustrative case. Somebody kicked someone else’s money box into the river. The victim came and claimed, “This is what I had in the box.” R. Ashi went into session and examined the case: “What is the ruling in a case such as this?” Said Rabina to R. Aha b. Raba, and some say, R. Aha b. Raba said to R. Ashi, “Is this not in line with the following passage of the Mishnah: And sages concede to R. Judah in the case of him who sets fire to a large building, that he pays compensation for everything which is in it. For it certainly is normal for people to leave things in their houses?”

I. I:6: If he claimed a silver cup, what is the rule? Does the householder take an oath and collect?

II. I:7: Said R. Ada b. R. Avayya to R. Ashi, “What is the difference between a robber and a bully?”

## **XLIX. Mishnah-Tractate Baba Qamma 6:6**

**A. A SPARK WHICH FLEW OUT FROM UNDER THE HAMMER AND DID DAMAGE — THE SMITH IS LIABLE. A CAMEL WHICH WAS CARRYING FLAX AND PASSED BY IN THE PUBLIC WAY, AND THE FLAX IT WAS CARRYING GOT POKED INTO A STORE AND CAUGHT FIRE FROM THE LAMP OF THE STOREKEEPER AND SET FIRE TO THE BUILDING — THE OWNER OF THE CAMEL IS LIABLE. IF THE STOREKEEPER HAD LEFT HIS LAMP OUTSIDE, THE STOREKEEPER IS LIABLE.**

**R. JUDAH SAYS, “IN THE CASE OF A LAMP FOR HANUKKAH, HE IS EXEMPT.”**

1. I:1: Said Rabina in the name of Raba, “Since R. Judah has said what he has, it must follow that the religious duty concerning the candle lit at Hanukkah is that it be placed within ten handbreadths of the ground, for if you take the view that it can be put even ten handbreadths above the ground, why did R. Judah say that, if the fire was caused by the Hanukkah candle, one would be exempt? Couldn’t the injured party plead, ‘You should have placed it well above the reach of the camel and its rider’? It must follow that the religious duty concerning the candle lit at Hanukkah is that it be placed within ten handbreadths of the ground.”

## **L. Mishnah-Tractate Baba Qamma 7:1**

**A. MORE ENCOMPASSING IS THE RULE COVERING PAYMENT OF TWOFOLD RESTITUTION THAN THE RULE COVERING PAYMENT OF FOURFOLD OR FIVEFOLD RESTITUTION:**

1. I:1: The principle is not presented here that the penalty of having to pay a double indemnity applies both to a thief and to an unpaid bailee who falsely said the bailment was stolen, the indemnity of a fourfold or fivefold payment applies only to the thief alone. That omission then sustains the position of R. Hiyya bar Abba, for said R. Hiyya bar Abba said, R. Yohanan, “He who falsely claims that a

bailment has been stolen on that account pays the double indemnity that a thief pays. If he sold or slaughtered the animal, he has to pay the fourfold or fivefold indemnity.”

**B. FOR THE RULE COVERING TWOFOLD RESTITUTION APPLIES TO SOMETHING WHETHER ANIMATE OR INANIMATE.**

**1. II:1:** What is the source in Scripture for this statement? Tannaite proof from Scripture. In this case, just as in the particular cases, we deal with something that is movable and that contains intrinsic value, so whatever is movable and contains intrinsic value is covered, excluding then real estate, which is not movable; slaves, which are comparable to real estate Lev. 25:46 treating slaves and real estate as forming a single category within the rules of inheritance; deeds, which, while movable, bear no intrinsic value.

**C. COMPOSITE ON THE EXEGETICAL RULES OF AMPLIFICATION AND EXTENSION AS AGAINST THOSE OF GENERALIZATION, PARTICULARIZATION, AND GENERALIZATION**

**a. II:2:** Secondary test of the foregoing proposition: Is it the fact, then, that wherever Scripture uses the language, “all,” it serves for the purpose of amplification and extension of the law? And lo, with reference to tithe, we find the word “all” used, but it is read as an example of generalization and particularization?

**b. II:3:** Continuation of foregoing.

**I. II:4:** Further demonstration of the same method of deriving proof from Scripture for a Tannaite proposition.

**A. II:5:** Gloss of a tangential detail of the foregoing.

**B. II:6:** Continuation of foregoing.

**C. II:7:** As above.

**1. II:8:** Gloss of a tangential detail of the foregoing. Said Rab, “When it comes to restoring the principal of what has been stolen, it is valued as it was at the time that it was stolen. As to assessing the double indemnity and the four- and five-time payment, the evaluation is made as of the time that the court trial takes place.”

**I. II:9:** As above.

**D. HOW COMPENSATION IS ASSESSED**

**1. II:10:** Said R. Ilai, “If one stole a lamb and it grew up into a ram, or a calf and it grew up into an ox, since the article has undergone a change while in his domain, he would acquire title to it. If then he slaughters or sells it, he is slaughtering or selling his own property and does not any longer have to pay the indemnity that has been specified, four or five times the value.”

**a. II:11:** Said Rabbah, “The fact that a change in the character of an object effects a transfer of title is shown both by Scripture and also repeated as a rule in the Mishnah.”

**b. II:12:** Continuation of foregoing. Said R. Hisda said R. Jonathan, “How on the basis of Scripture do we know that a change effects the transfer of title?”

**c. II:13:** As above. Said Ulla, “How on the basis of Scripture do we know that the despair of the owner does not effect the transfer of title to the thief?”

**E. BUT THE RULE COVERING FOURFOLD OR FIVEFOLD RESTITUTION APPLIES ONLY TO AN OX OR A SHEEP ALONE, SINCE IT SAYS, “IF A MAN SHALL STEAL AN OX OR A SHEEP AND KILL IT OR SELL IT, HE SHALL PAY FIVE OXEN FOR AN OX AND FOUR SHEEP FOR A SHEEP:”**

**1. III:1:** But why not draw the analogy to the matter of “ox” as the term “ox” is used in the setting of the Sabbath at Deu. 5:14, with the result that, just as beasts and birds are regarded as equivalent in that context to the ox and the ass and so are given the Sabbath day for rest, so in the present context beasts and birds are comparable to oxen and sheep and compensated in the same way?

**F. THE ONE WHO STEALS FROM A THIEF DOES NOT PAY TWOFOLD RESTITUTION. AND THE ONE WHO SLAUGHTERS OR SELLS WHAT IS STOLEN DOES NOT PAY FOURFOLD OR FIVEFOLD RESTITUTION:**

**1. IV:1:** Said Rab, “This rule applies only if the theft took place before the owner had given up hope of getting the object back, but if this was afterward, the first thief acquires title, and the second thief has to pay the double payment to the first thief now the owner of title to the object.”

**2. IV:2:** He who sells a beast prior to the owner’s having despaired of getting it back and so renouncing ownership — R. Nahman said, “He is liable.” R. Sheshet said, “He is exempt.”

**3. IV:3:** Also R. Eleazar took the view that liability would be incurred only after renunciation, for said R. Eleazar, “You may know that in the case of any routine theft, the owner gives up hope of getting the beast back, for lo, the Torah has said that if the thief has slaughtered or sold the beast, he has to pay a fourfold or fivefold indemnity. But is there any possibility that the owner has not given up hope of getting the beast back? But is this not because we say that in the case of any routine theft, the owner gives up hope of getting the beast back?”

**a. IV:4:** Expansion of foregoing: Then it must follow that R. Yohanan takes the view that prior to renouncing ownership, the thief incurs liability. What is his position on the rule that pertains after the owner has renounced ownership?

**l. IV:5:** Gloss of foregoing. R. Yohanan said, “If one has stolen a beast and the owner has not yet abandoned hope of recovering the beast and so retains title — neither party has the power to consecrate the beast, this one because it does not belong to him, and that one because it is not now in his domain.”

**A. IV:6:** As above. Drawing conclusions from R. Yohanan’s statement.

## **LI. Mishnah-Tractate Baba Qamma 7:2**

**A. IF ONE STOLE AN OX OR A SHEEP ON THE EVIDENCE OF TWO WITNESSES, AND WAS CONVICTED OF HAVING SLAUGHTERED OR SOLD ON THE BASIS OF THEIR TESTIMONY, OR ON THE BASIS OF THE TESTIMONY OF TWO OTHER WITNESSES, HE PAYS FOURFOLD OR FIVEFOLD RESTITUTION:**

1. I:1: May we say that our passage of the Mishnah does not conform to the view of R. Aqiba?

**B. IF HE STOLE OR SOLD AN OX OR A SHEEP ON THE SABBATH...HE PAYS FOURFOLD OR FIVEFOLD RESTITUTION.**

1. II:1: But has it not been taught on Tannaite authority: He is exempt from having to make such a payment?

**C. ...STOLE AND SLAUGHTERED AN OX OR A SHEEP ON THE DAY OF ATONEMENT...HE PAYS FOURFOLD OR FIVEFOLD RESTITUTION:**

1. III:1: Why should that be the rule? Even though there is no consideration of the death penalty, there still is the consideration of a flogging, and we have it as an established law that someone is not penalized both by a flogging and a monetary sentence as well?

2. III:2: R. Aha and Rabina — One said, “The prohibition of what is made on the Sabbath derives from the authority of the Torah.” The other said, “The prohibition of what is made on the Sabbath derives from the authority of the rabbis.”

3. III:3: But why should R. Meir impose liability to the fourfold or fivefold indemnity — stole and sold an ox or a sheep for idolatrous purposes — if someone slaughtered such a beast to an idol? As soon as one merely started the act of slaughter, he made the animal forbidden, in which case, when he continued the act of slaughter, he was slaughtering an animal that already was forbidden for any purpose, and he was therefore slaughtering something that no longer belonged to the owner!

**D. ...STOLE AN OX OR A SHEEP BELONGING TO HIS FATHER AND SLAUGHTERED OR SOLD IT, AND AFTERWARD HIS FATHER DIED, STOLE AND SLAUGHTERED, AND AFTERWARD CONSECRATED AN OX OR A SHEEP, HE PAYS FOURFOLD OR FIVEFOLD RESTITUTION.**

1. IV:1: Raba addressed this question to R. Nahman: “If one stole an ox that belonging to two partners and slaughtered it and then confessed to one of the two that he had done so, what is the law? He does not have to pay the fine to the partner to whom he confessed, since confessing the matter freed him from the indemnity; but when witnesses come and tell the other partner what has happened, what is the rule? Scripture has said, ‘Five oxen,’ but not five halves of oxen, or does ‘five oxen’ that Scripture stated encompass five halves of oxen?”

**E. (1) IF HE STOLE AND SLAUGHTERED AN OX OR A SHEEP FOR USE IN HEALING OR FOR FOOD FOR DOGS, HE WHO STEALS AND SLAUGHTERS AN OX OR A SHEEP WHICH TURNS OUT TO BE TEREFAH, HE WHO SLAUGHTERS UNCONSECRATED BEASTS IN**

**THE TEMPLE COURTYARD — HE PAYS FOURFOLD OR FIVEFOLD RESTITUTION. R. SIMEON DECLARES HIM EXEMPT IN THESE LAST TWO MATTERS.**

1. V:1: Said R. Habibi of Hozana to R. Ashi, “That yields the inference that pertinent to the act of slaughter is only the outcome, for if pertinent to the act of slaughter also is all that takes place start to finish, then once the man had slaughtered even the smallest part of the beast, the rest of the beast would have been forbidden as well, with the result that what he slaughtered no longer belonged to its owner anyhow.”

**LII. Mishnah-Tractate Baba Qamma 7:3**

**A. IF ONE STOLE AN OX OR A SHEEP ON THE EVIDENCE OF TWO WITNESSES, AND WAS CONVICTED OF HAVING SLAUGHTERED OR SOLD IT ON THE BASIS OF THEIR TESTIMONY, AND THEY TURNED OUT TO BE FALSE WITNESSES, THEY PAY FULL RESTITUTION. IF HE STOLE ON THE EVIDENCE OF TWO WITNESSES, AND WAS CONVICTED OF HAVING SLAUGHTERED OR SOLD IT ON THE BASIS OF THE TESTIMONY OF TWO OTHER WITNESSES, AND THESE AND THOSE TURN OUT TO BE FALSE WITNESSES, THE FIRST PAIR OF WITNESSES PAYS TWOFOLD RESTITUTION, AND THE SECOND PAIR OF WITNESSES PAYS THREEFOLD RESTITUTION. IF THE LATTER PAIR OF WITNESSES TURN OUT TO BE FALSE WITNESSES, HE PAYS TWOFOLD RESTITUTION, AND THEY PAY THREEFOLD RESTITUTION. IF ONE OF THE LATTER PAIR OF WITNESSES TURNS OUT TO BE FALSE, THE EVIDENCE OF THE SECOND ONE IS NULL. IF ONE OF THE FIRST PAIR OF WITNESSES TURNS OUT TO BE FALSE, THE ENTIRE TESTIMONY IS NULL. FOR IF THERE IS NO CULPABLE ACT OF STEALING, THERE IS NO CULPABLE ACT OF SLAUGHTERING OR SELLING.**

1. I:1: As to a witness who is proved to have conspired to commit perjury, Abbaye said, “When between the time he gave his testimony and the time he was proved a perjurer, some days have elapsed, his status as a witness is treated as invalid retrospectively from the time he began to give his evidence in court, and all the evidence he has given in the intervening period becomes invalidated.” And Raba said, “It is only from that point onward that he becomes an invalid witness.”

2. I:2: We have learned in the Mishnah: If one stole an ox or a sheep on the evidence of two witnesses, and was convicted of having slaughtered or sold it on the basis of their testimony, and they turned out to be false witnesses, they pay full restitution. Does this not mean that the witnesses gave their testimony concerning the theft and then they went and gave their testimony on the slaughter of the beast, and then they were proved to be a conspiracy of false witnesses in respect to the testimony concerning the theft, and then they again were convicted of forming a conspiracy of false witnesses as to the slaughter of the beast? Now, if it should enter your mind that as Abbaye has said, as to a witness who is proved to have conspired to commit perjury, when between the time he gave his testimony and the time he was proved a perjurer, some days have elapsed, his status as a witness is treated as invalid retrospectively, then these witnesses, once they were shown to have been a conspiracy of false witnesses in respect to the theft, have been shown retrospectively to be what they are, so that when they gave testimony as to the slaughter of the beast, they were already unfit to give testimony, so why in the

world do they have to pay compensation for the testimony concerning the slaughter of the beast?

a. I:3: May we say that the difference of opinion between Abbayye and Raba is what is at stake between the following Tannaite authorities....

3. I:4: Said Raba, “Witnesses that are contradicted by other witnesses in making a capital charge and then are proven to be a conspiracy of perjurers are put to death, since the contradictory evidence is the beginning of the process of proving that they are perjurers, but that process is not brought to a conclusion by the contradictory testimony.”

4. I:5: If the witnesses were contradicted but not proven a conspiracy of perjurers in a capital case, they are flogged. But what you have here is a case in which two witnesses contradict two other witnesses. So how come you rely on these? Rely rather on those?

### **LIII. Mishnah-Tractate Baba Qamma 7:4**

**A. IF ONE WAS CONVICTED OF A CHARGE THAT HE STOLE AN OX OR A SHEEP ON THE EVIDENCE OF TWO WITNESSES AND OF HAVING SLAUGHTERED OR SOLD THE OX OR SHEEP ON THE BASIS OF ONLY ONE:**

1. I:1: So what else is new? Lo, we are informed that testimony on the basis of the evidence of his own confession is equivalent to testimony on the basis of only one witness. Just as in the case of testimony by a single witness, if another witness should come along, he is joined together with the first to impose liability, so too, in the case of his own confession, if another witness should come along and corroborate his, he would be liable. That then excludes from consideration the position that R. Huna said Rab said, for said R. Huna said Rab, “If someone confessed to a crime punishable by an extrajudicial sanction, and then witnesses came along to the same effect, he would still be exempt from having to pay the sanction.”

a. I:2: Gloss of a secondary detail of the foregoing.

b. I:3: As above. Refinement on the same issue.

c. I:4: As above.

l. I:5: Gloss of the final gloss.

**B. OR ON THE BASIS OF THE EVIDENCE OF HIS OWN CONFESSION, HE PAYS TWOFOLD RESTITUTION AND DOES NOT PAY FOURFOLD OR FIVEFOLD RESTITUTION (1) IF HE STOLE AND SLAUGHTERED ON THE SABBATH, (2) STOLE AND SLAUGHTERED FOR IDOLATROUS PURPOSES, (3) STOLE FROM HIS FATHER’S HERD OF OXEN OR SHEEP AND THEN HIS FATHER DIED AND AFTERWARD HE SLAUGHTERED OR SOLD THE BEAST, (4) STOLE AND THEN CONSECRATED THE ANIMAL AND AFTERWARD SLAUGHTERED OR SOLD IT, HE PAYS TWOFOLD RESTITUTION AND DOES NOT PAY FOURFOLD OR FIVEFOLD RESTITUTION.**

1. II:1: Now there is no problem understanding why he is not liable in respect to slaughtering the beast, since, at the moment he slaughtered it, it was a sanctified beast, and he did not slaughter a beast belonging to a particular master. But as to



the act of sanctifying the beast, he should be held liable. For what difference does it make to me whether he sold it to a common person or whether he sold it to Heaven?

**C. R. SIMEON SAYS, “FOR HOLY THINGS FOR THE REPLACEMENT, IF LOST, OF WHICH HE BEARS RESPONSIBILITY DOES HE PAY FOURFOLD OR FIVEFOLD RESTITUTION. AND FOR THOSE FOR THE REPLACEMENT, IF LOST, OF WHICH HE BEARS NO RESPONSIBILITY, HE IS EXEMPT.”**

**1. III:1:** Granted that R. Simeon takes the view, “What difference does it make to me whether he sold it to a common person or whether he sold it to Heaven?” Then matters should be reversed in this way: As to Holy Things for which the thief bears responsibility for replacement should the animal be lost or stolen, he is exempt from having to pay the specified indemnities, since they still have not left his domain. But as to Holy Things for which the thief bears no responsibility for replacement should the animal be lost or stolen, he is liable, since they still have left his domain.

**a. III:2:** Now why is there liability to the fourfold or fivefold indemnity in the case of stealing and slaughtering or selling a hybrid, since Scripture says, “Sheep,” and said Raba, “This is the generative case governing every passage in which reference is made to ‘sheep,’ in which case the intent is only to exclude from the rule the case of a hybrid animal which is not regarded as a sheep alone”? The present case is exceptional, since Scripture used the word “or,” (Exo. 21:37), which serves to extend the law even to the hybrid. But then does every usage of the word “or” serve to extend the law under discussion?

**b. III:3:** Raba raised this question: “If someone said, ‘Lo, incumbent upon me is a burnt-offering,’ and he then designated for that purpose an ox, and someone else came and stole the ox — from the perspective of rabbis, can the thief exempt himself from any further claim on the part of an owner by supplying him with funds for a sheep for the burnt-offering that is owed, and from the perspective of R. Eleazar b. Azariah, by supplying him with funds for a bird?

## **LIV. Mishnah-Tractate Baba Qamma 7:5A-F**

**A. (1) IF ONE SOLD ALL BUT ONE HUNDREDTH PART OF A STOLEN OX OR SHEEP, (2) OR IF THE THIEF ALREADY OWNED A SHARE OF IT, (3) HE WHO SLAUGHTERS AN OX OR A SHEEP AND IT TURNS OUT TO BE MADE INTO CARRION BY HIS OWN HAND, (4) HE WHO PIERCES THE WINDPIPE, (5) AND HE WHO TEARS OUT ITS GULLET PAYS TWOFOLD RESTITUTION AND DOES NOT PAY FOURFOLD OR FIVEFOLD RESTITUTION.**

**1. I:1:** What is the meaning of the language, but one hundredth part of a stolen ox or sheep? Said Rab, “Except for any part of the beast that would be rendered available as food, along with the bulk of the beast, in the proper process of slaughter.” Excepted then is wool or horn, so that the law would not extend to a

case in which the wool or horns were excluded from the sale. And Levi said, “Except for the wool.”

a. I:2: Gloss of foregoing. What is at issue among these authorities?

2. I:3: Tannaite complement: He who steals an ox or a sheep that was mutilated, lame or blind, he who steals a beast belonging to partners, is liable to pay the fourfold or fivefold indemnity. But if partners stole an ox or a sheep, while they pay a twofold indemnity, they are exempt from having to pay in addition fourfold or fivefold indemnities (T. **B.Q. 7:16A-D**).

3. I:4: R. Jeremiah raised this question: “If the thief sold the beast, excepting ownership during the initial thirty days which the thief would retain for himself, or excepting the work that it may perform, or excepting ownership of its embryo, what is the law? Now that last item would not be a question from the viewpoint of him who maintains that the embryo is no more than a limb of the mother, since that would constitute an effective exclusion. Where the problem would arise, it would be within the premise of him who maintains that the embryo is a distinct being from the limb of the mother. Now what is the law? Shall we say that, since the embryo is joined to the mother, it is validly excepted, or since it is going to be separated from the mother, it is not validly excepted?”

4. I:5: R. Papa raised this question: “If the thief stole the beast and cut off a piece of it and then sold it, what is the law? Do we say, what he stole he did not sell, he is exempt? Or since he has excepted nothing for himself in what he sold, he is liable?”

5. I:6: Tannaite complement: If one stole and gave the ox and sheep to someone else, who slaughtered it, or stole and gave it to someone else, who sold it, or stole and traded an ox, or stole and consecrated the ox or sheep, or stole and gave the ox or sheep to someone else as a gift, or stole and gave the ox or sheep to someone as a loan, or stole and paid with the ox or sheep a debt that he owed, or stole and sent the ox or sheep to his father-in-law’s house as a gift, he must pay the fourfold or fivefold indemnity (T. **B.Q. 7:14A-I**).

a. I:7: Analysis of foregoing.

## **LV. Mishnah-Tractate Baba Qamma 7:5G-K, 7:6**

**A. IF (1) HE STOLE IT IN THE OWNER’S DOMAIN BUT SLAUGHTERED OR SOLD IT OUTSIDE OF HIS DOMAIN, OR (2) IF HE STOLE IT OUTSIDE OF HIS DOMAIN AND SLAUGHTERED OR SOLD IT IN HIS DOMAIN, OR (3) IF HE STOLE AND SLAUGHTERED OR SOLD IT OUTSIDE OF HIS DOMAIN, HE PAYS FOURFOLD OR FIVEFOLD RESTITUTION. BUT IF HE STOLE AND SLAUGHTERED OR SOLD IT WHOLLY IN HIS DOMAIN, HE IS EXEMPT. IF THE THIEF WAS DRAGGING A SHEEP OR OX OUT OF THE OWNER’S DOMAIN, BUT IT DIED IN THE DOMAIN OF THE OWNER, HE IS EXEMPT. IF HE LIFTED IT UP OR REMOVED IT FROM THE DOMAIN OF THE OWNER AND THEN IT DIED, HE IS LIABLE.**

**IF HE HANDED IT OVER FOR (1) THE FIRSTBORN-OFFERING AT THE BIRTH OF HIS SON, OR (2) TO A CREDITOR, TO (3) AN UNPAID BAILEE, OR (4) TO A BORROWER, OR (5) TO A PAID BAILEE, OR (6) TO A RENTER, AND ONE OF THESE WAS DRAGGING IT**

**AWAY, AND IT DIED IN THE DOMAIN OF THE OWNER, HE IS EXEMPT. IF HE RAISED IT UP OR REMOVED IT FROM THE DOMAIN OF THE OWNER AND THEN IT DIED, HE IS LIABLE.**

1. I:1: Amemar raised this question: “In the case of bailees, has the rite of transfer through drawing the beast been decreed as it is in the case of those who purchase the beast, or is that not the case?”

2. I:2: Just as sages instituted the requirement of effecting possession through an act of drawing on the part of purchasers, so sages instituted the requirement of effecting possession through an act of drawing on the part of bailees.

a. I:3: Gloss of a detail of the foregoing.

3. I:4: If people saw a thief concealed in woods where flocks are located and there slaughtering or selling sheep or oxen, he has to pay the fourfold or fivefold indemnity.” But why should this be the case? Lo, he has not also acquired the beast through drawing it?

## **B. THE THIEF AND THE ROBBER: THE DIFFERENCE**

1. I:5: So what is the definition of a robber? Said R. Abbahu, “It would be someone like Benaiah, son of Jehoiadah: ‘And he plucked the spear out of the Egyptian’s hand and slew him with his own spear’ (2Sa. 23:21).”

2. I:6: On what account does the Torah impose a more strict rule on the thief who pays not only the double indemnity but also the fourfold and fivefold indemnities if he slaughtered or sold the sheep or ox than upon the robber who pays only the value of the thing he has stolen, in line with Lev. 5:23?

3. I:7: To what are the thief and the robber comparable? To two people who lived in the same town and made parties. One invited the townsfolk but not the royal family, the other, neither the townsfolk nor the royal family. Who is subject to the more severe reprisal? It is the one who invited the townsfolk but not the royal family

4. I:8: Come and reflect on how beloved is hard work before him who merely by speaking brought the world into being: for an ox, because the thief has kept it away from its work for the farmer, the thief pays fivefold compensation. For a sheep, which does no labor for the owner, the thief pays fourfold compensation.

## **LVI. Mishnah-Tractate Baba Qamma 7:7**

**A. THEY DO NOT REAR SMALL CATTLE IN THE LAND OF ISRAEL, BUT THEY DO REAR THEM IN SYRIA AND IN THE WASTELANDS WHICH ARE IN THE LAND OF ISRAEL. THEY DO NOT REAR CHICKENS IN JERUSALEM, ON ACCOUNT OF THE HOLY THINGS, NOR DO PRIESTS REAR CHICKENS ANYWHERE IN THE LAND OF ISRAEL, BECAUSE OF THE NECESSITY TO PRESERVE THE CLEANNES OF HEAVE-OFFERING AND CERTAIN OTHER FOODS WHICH ARE HANDED OVER TO THE PRIESTS:**

1. I:1: Tannaite complement: They do not rear small cattle in the Land of Israel, but they do rear them in woodlands in the Land of Israel, and in Syria, even in inhabited areas, and one need not say outside of the Land of Israel altogether.

**2. I:2:** The disciples asked Rabban Gamaliel, “What is the rule about breeding small cattle?”

**3. I:3:** Tannaite complement: There is the case of a certain pious man, who groaned because of heartburn, and they asked the physicians, who said, “There is no remedy unless he drink hot milk from a goat morning by morning.” So they brought a goat and tied it to the foot of his bed, and he would suck hot milk from it morning by morning.

**4. I:4:** Tannaite complement: Said R. Ishmael, “My father was one of the householders of Upper Galilee, and how come his properties were wiped out? Because they would pasture their flocks in forests, try civil cases with a single judge, T.: and raised small cattle. The forests were nearly contiguous with their lands, but there was a little field nearby that belonged to someone else, and the cattle was led in and out by way of this.”

**5. I:5:** Tannaite complement: A shepherd of small cattle in the Land of Israel who wanted to repent — they do not obligate him to sell all of them simultaneously, but he proceeds to sell them one by one. If someone received as an inheritance pigs or dogs, they do not require him to sell them all simultaneously, but he proceeds to sell them little by little (T. **B.Q. 8:15**).

**6. I:6:** Tannaite complement: Just as they do not raise small domesticated cattle, so they do not raise small wild beasts.

**a. I:7:** Gloss of foregoing.

**7. I:8:** In Babylonia we have treated ourselves as equivalent to the Land of Israel when it comes to the rule governing small cattle.

**a. I:9:** Gloss of foregoing.

**8. I:10:** As to a cat, it is permitted to kill it and forbidden to keep it, and there is no consideration in its regard as to robbery, nor does one have to return it to its owner.

**a. I:11:** Gloss of foregoing.

## **B. OTHER RULES ON CORRECT MANAGEMENT OF THE LAND OF ISRAEL**

**1. I:12:** They sound the shofar as an alarm even on the Sabbath day on account of an epidemic of itching. A door that is closed is not going to be quickly reopened for example, the door of prosperity once shut is not rapidly reopened.

**a. I:13:** Gloss of foregoing.

**b. I:14:** As above.

**c. I:15:** As above.

**2. I:16:** Tannaite complement: There were ten stipulations that Joshua made when the Israelites entered the Land: 1 that cattle may be allowed to pasture in forests; 2 that wood may be gathered freely in private fields; 3 that grass may be gathered freely in private property, except for a field where fenugreek is growing; 4 that shoots may be cut off freely in any place, except for stumps of olive trees; 5 that a spring emerging even to begin with may be used by townsfolk; 6 that it is permitted to fish at an angle in the Sea of Tiberias, so long as no sail is spread out,

since this would detain the boats; 7 that it is permitted to take a crap at the back of any fence, even in a field full of saffron; 8 that it is permitted to use paths in private fields until the time that the second rains are anticipated; 9 that it is permitted to turn aside to private paths to avoid road pegs; 10 that someone who is lost in vineyards is permitted to cut through going up or cut through going down; 11 that a dead body that someone finds neglected and subject to immediate burial acquires the spot on which it is found.

**a.** I:17: Gloss of foregoing.

**b.** I:18: Gloss of foregoing.

**c.** I:19: Gloss of foregoing.

**d.** I:20: Gloss of foregoing.

**e.** I:21: Gloss of foregoing.

**f.** I:22: Gloss of foregoing.

**3.** I:23: Tannaite complement: The tribes made the collective stipulation to begin with that no one may spread a sail and detain boats, but one may fish with nets and traps.

**4.** I:24: Tannaite complement: The Sea of Tiberias was included in the portion of Naphtali, and in addition, Naphtali got a rope's length of dry land on the southern side to keep nets on: "Possess the sea and the south" (Deu. 33:23).

**5.** I:25: Tannaite complement: R. Simeon b. Eleazar says, "Things that are harvested that are found in the wilderness — lo, they belong to all of the tribes; and those that are still attached to the ground, lo, they belong to the tribe in whose property they are located."

**a.** I:26: Further gloss of I.16.

**b.** I:27: As above.

**c.** I:28: As above.

**d.** I:29: As above.

**e.** I:30: As above.

**f.** I:31: As above.

**g.** I:32: As above.

**h.** I:33: As above.

**6.** I:34: Ten stipulations did Ezra make: That the Torah should be read aloud at the afternoon service on the Sabbath; that the Torah should be read on Monday and on Thursday; that courts should go into session on Monday and on Thursday; that laundry is to be done on Monday and on Thursday; that garlic be eaten Fridays; that a woman must rise early to bake bread; that a woman must wear a sinner's garment; that a woman must comb her hair before immersing; that pedlars must be allowed to travel around in the towns. He also decreed that one who had emitted semen must immerse in a cultic bath.

**a.** I:35: Gloss of foregoing.

**b.** I:36: As above.

- c. I:37: As above.
- d. I:38: As above.
- e. I:39: As above.
- f. I:40: As above.
- g. I:41: As above.
- h. I:42: As above.
- i. I:43: As above.
- j. I:44: As above.

7. I:45: Ten statements were made with reference to Jerusalem: a house that is sold there is never permanently transferred; Jerusalem does not have to present a heifer the neck of which was to be broken in the case of a neglected corpse; it cannot be declared an apostate city no matter what happens there; it cannot be made unclean by plague marks; beams or balconies are not allowed to project there; they do not make dung heaps there; they do not make kilns there; they do not cultivate gardens or orchards there, except for a rose garden, which was there from the time of the former prophets; they do not raise chickens there; they do not keep a corpse there overnight.

- a. I:46: Gloss of foregoing.
- b. I:47: As above.
- c. I:48: As above.
- d. I:49: As above.
- e. I:50: As above.
- f. I:51: As above.
- g. I:52: As above.
- h. I:53: As above.
- i. I:54: As above.
- j. I:55: As above.

### **C. THEY DO NOT REAR PIGS ANYWHERE.**

- 1. II:1: Illustrative story explaining the origin of the rule.

### **D. A PERSON SHOULD NOT REAR A DOG, UNLESS IT IS KEPT TIED UP BY A CHAIN:**

- 1. III:1: A person should not keep a dog unless it is tied up on a chain, but he may do so in a town near the frontier, and he then ties it up by day and lets it loose by night.
- 2. III:2: R. Eliezer the Great says, “He who raises dogs is as though he raised pigs.”
- 3. III:3: R. Dosetai of Bira expounded, “‘And when it rested, he said, Return O Lord to the tens of thousands and thousands of Israel’ (Num. 10:36) — this teaches you that the Presence of God comes to rest on Israel only if there are two thousand and two tens of thousands. If they lacked one, but a pregnant woman

was among them, able then to make up the number, but a dog barked at her and caused a miscarriage, the dog would then have caused God's presence to depart from Israel."

a. III:4: Illustrative story.

**E. THEY DO NOT SET TRAPS FOR PIGEONS, UNLESS THEY ARE THIRTY RIS FROM A SETTLEMENT.**

1. IV:1: Do they go such a distance as that? Have we not learned in the Mishnah: A dovecote must be kept fifty cubits from a town (M. B.B. 2: 5)?

**LVII. Mishnah-Tractate Baba Qamma 8:1A-R**

**A. HE WHO INJURES HIS FELLOW IS LIABLE TO COMPENSATE HIM ON FIVE COUNTS: (1) INJURY, (2) PAIN, (3) MEDICAL COSTS, (4) LOSS OF INCOME LIT.: LOSS OF TIME, AND (5) INDIGNITY. FOR INJURY: HOW SO? IF ONE HAS BLINDED HIS EYE, CUT OFF HIS HAND, BROKEN HIS LEG, THEY REGARD HIM AS A SLAVE UP FOR SALE IN THE MARKET AND MAKE AN ESTIMATE OF HOW MUCH HE WAS WORTH BEFOREHAND WHEN WHOLE, AND HOW MUCH HE IS NOW WORTH:**

1. I:1: Why should there be monetary compensation? Scripture states, "An eye for an eye" (Exo. 21:24), so might I not say that it means an eye literally?

a. I:2: Gloss of foregoing.

b. I:3: As above.

c. I:4: As above.

2. I:5: R. Dosethai b. Judah says, "'An eye for an eye' means that monetary reparations are to be paid."

3. I:6: R. Simeon b. Yohai says, "'An eye for an eye' means that a money payment is paid."

4. I:7: A Tannaite authority of the household of R. Ishmael stated, "Said Scripture, 'So shall it be given to him again' (Lev. 24:20) — and 'giving' refers only to a monetary payment."

5. I:8: A Tannaite authority of the household of R. Hiyya stated, "Said Scripture, 'Hand for hand' (Deu. 19:21) — something that is handed over from hand to hand, and what might that be? It is a monetary payment."

6. I:9: Abbayye says, "The required demonstration derives from the Tannaite authority of the household of Hezekiah, for the Tannaite authority of the household of Hezekiah stated, "...eye for eye, life for life" (Exo. 21:24) — and not a life and an eye for an eye.' Now if you should imagine that this is to be done literally, then it on occasion may turn out that the court will exact both the eye and the life for an eye, since with taking out the eye, the court officer may take away the man's life!"

7. I:10: R. Zebid in the name of Raba said, "Said Scripture, 'Wound for wound' (Exo. 21:25) — this means that one may have to pay compensation for pain in addition to paying compensation for personal injury. Now, if you imagine that this means that actual retaliation, then is the sense not that just as the victim has

suffered pain when he was injured, so the felon will suffer pain when he suffers the retaliation and in such a case, how can we pay compensation for pain over and above the actual injury, such as Scripture here is understood to mean?”

**8. I:11:** R. Pappa said in the name of Raba, “Said Scripture, ‘To heal, shall he heal’ (Exo. 21:19) — this means that one may have to pay compensation for medical expenses in addition to paying compensation for personal injury. Now, if you imagine that this means that actual retaliation, then is the sense not that just as the victim has had medical expenses, so the felon will have medical expenses and in such a case, how can we pay compensation for medical expenses over and above the actual injury, such as Scripture here is understood to mean?”

**9. I:12:** R. Ashi said, “We draw an analogy based on the verbal intersection of the word ‘for’ used in connection with a human being and the same term used in connection with beasts. Here we find ‘eye for eye’ and there, ‘he shall surely pay ox for ox.’ Just as in the latter context Scripture speaks of monetary reparations, so here, too, Scripture speaks of monetary reparations.”

**10. I:13:** R. Eliezer says, “‘An eye for an eye’ — literally.”

**a. I:14:** A case.

**b. I:15:** Another case.

**I. I:16:** Gloss on the foregoing. What differentiates the matter of injuries done by a human being to a human being or injuries done by a human being to an ox, that may not be compensated? It is because to collect such compensation, the judges that issue the decree must fall into the classification of the language used in Scripture, “to the judges...,” and that classification of judges is not found in Babylonia but only in the Land of Israel

**B. PAIN: IF HE BURNED HIM WITH A SPIT OR A NAIL, AND EVEN ON HIS FINGERNAIL, A PLACE IN WHICH THE INJURY DOES NOT LEAVE A LASTING WOUND:**

**1. II:1:** Is compensation paid for pain even in a case in which there was no physical damage depreciation? What Tannaite authority takes that position?

**C. THEY ASSESS HOW MUCH A MAN IN HIS STATUS IS WILLING TO TAKE TO SUFFER PAIN OF THAT SORT:**

**1. III:1:** How do we assess compensation for pain in a case in which there has been actual depreciation that was already compensated for example, an arm was cut off, depreciation has been paid?

**D. MEDICAL COSTS: IF HE HIT HIM, HE IS LIABLE TO PROVIDE FOR HIS MEDICAL CARE. IF SORES ARISE ON HIM, IF THEY ARE ON ACCOUNT OF THE BLOW, HE IS LIABLE; BUT IF THEY ARE NOT ON ACCOUNT OF THE BLOW, HE IS EXEMPT. IF THE WOUND GOT BETTER AND OPENED UP AGAIN, GOT BETTER AND OPENED UP AGAIN, HE REMAINS LIABLE TO PROVIDE FOR HIS MEDICAL CARE. IF THE WOUND PROPERLY HEALED, HE IS NO LONGER LIABLE TO PROVIDE MEDICAL CARE FOR HIM:**

**1. IV:1:** Tannaite complement: If ulcers grew up on the body because of the wound, and the wound broke open again, he still has to heal him and pay for loss



of time, but if it was not because of the wound, he does not have to pay for the healing or the loss of time. R. Judah says, “Even if it was on account of the original injury, while he has to pay for the medical bills, he does not have to pay him for the loss of work time.” And sages say, “The loss of work time and the costs of medical bills go together: whoever is liable to pay for the loss of work time is liable to pay for medical bills, and whoever is not liable for the loss of work time is not liable for the medical bills” (T. **B.Q. 9: 4**).

**a. IV:2:** Gloss of foregoing: what is at stake in the dispute?

**2. IV:3:** How on the basis of Scripture do we know that if ulcers grew on account of the original injury, and the injury broke open again, the responsible party still would be obligated to pay the doctors bills and also for the loss of work time? Scripture says, “Only he shall pay for the loss of his time and healing he shall heal” (Exo. 21:19).

**a. IV:4:** Gloss of foregoing. Does Scripture have to make the point that if the ulcers grew up not on account of the original injury, the responsible party would have to pay compensation?

**b. IV:5:** As above. So what are scabs?

**3. IV:6:** If the responsible party said to the victim, “I’ll heal you myself,” the other one can say, “In my view, you’re no better than a crouching lion.”

**4. IV:7:** A Tannaite statement: And all of the other four items of compensation will be paid even where compensation for the injury has been paid independently.

**5. IV:8:** R. Pappa in the name of Raba said, “Said Scripture, ‘And healing he shall heal’ (Exo. 21:19) — payment for the doctor’s bills is required even where compensation for the injury is paid independently.”

**a. IV:9:** That would then yield the inference that the other four items would be paid even where there was no injury yielding depreciation in the value of the person at all. How then could a case exist in which there was no depreciation but in which there would be compensation on the other counts?

#### **E. LOSS OF INCOME: THEY REGARD HIM IN ESTIMATING INCOME AS IF HE IS A KEEPER OF A CUCUMBER FIELD, FOR THE DEFENDANT ALREADY HAS PAID OFF THE VALUE OF HIS HAND OR HIS LEG:**

**1. V:1:** Loss of income: They regard him in estimating income as if he is a keeper of a cucumber field. Now if you say that, in that ruling, true justice is smitten, for, when this man was well, he would never have accepted the salary of a watchmen over a bed of cucumbers, but he would have been a water bearer and would have gotten that salary, or he would have gone out as a messenger and gotten that salary, but, in point of fact, in that ruling, true justice is not smitten, for the defendant already has paid off the value of his hand or his leg (T. **B.Q. 9:2B-F**).

**2. V:2:** Said Raba, “If one cut off the other’s hand, he pays him the value of his hand, and, as to loss of time from work, they regard him as though he were a watchmen of a cucumber field. If he cut off his leg, he pays him for the depreciation to his worth caused by the loss of the leg, and, as to loss of time from

work, they regard him as they he were a doorkeeper. If he put out his eye, he pays him for the depreciation of his value because of the loss of the eye, and as to the loss of time from work, he is regarded as if he were pushing the grinding wheel in a mill. But if he made the other party deaf, he pays the entire value of the person, pure and simple since he is worth nothing.”

**3. V:3:** Raba raised this question: “If he cut off the hand of the other, and, before there was an appraisal of the cost of that injury, he also broke his leg, and, before there was an appraisal of the cost of that injury, he also put out his eye, and, before there was an appraisal of the cost of that injury, he also made him deaf, what is the law?

**4. V:4:** Rabbah raised this question: “As to payment for loss of work time that, at this moment, renders the victim of less value, what is the law? For example, if he was hit on the arm, and the arm is now broken but is going to heal, what would be the rule? Since in the end he will get better, does he not have to pay him for the loss of the value of the arm, or perhaps, since at this moment, he is of diminished value, perhaps he does have to pay him for the loss at this time?”

**5. V:5:** He who cuts off the hand of a Hebrew servant belonging to his fellow — Abbayye said, “He pays to the man compensation for the principal loss of time meaning, depreciation and to the owner compensation for the minor loss of time meaning, loss in work time.” Raba said, “Everything is paid to the slave, and he buys land with the funds, and the master enjoys the usufruct.”

#### **F. INDIGNITY: ALL IS ASSESSED IN ACCORD WITH THE STATUS OF THE ONE WHO INFLECTS THE INDIGNITY AND THE ONE WHO SUFFERS THE INDIGNITY.**

**1. VI:1:** Who is the authority behind this anonymous statement, for it can be neither R. Meir nor R. Judah? It is R. Simeon, for it has been taught on Tannaite authority: “All who are injured are regarded as though they were free persons who lost their money, for they are children of Abraham, Isaac, and Jacob,” the words of R. Meir. R. Simeon says, “As to the rich, they are are regarded as though they were free persons who lost their money, for they are children of Abraham, Isaac, and Jacob. And as to the poor, they are regarded as the least of the poor.”

**a. VI:2:** Who among those just now cited is the Tannaite authority behind that which our rabbis have taught on Tannaite authority: If someone intended to degrade a minor person and degraded a major person, he pays to the major person the compensation coming to a minor. If he intended to degrade a slave and he degraded a free person, he pays to the free person the compensation he would have had to pay for degrading a slave.

### **LVIII. Mishnah-Tractate Baba Qamma 8:1S-AA**

#### **A. HE WHO INFLECTS INDIGNITY ON ONE WHO IS NAKED:**

**1. I:1:** Tannaite complement: He who inflicts indignity on his fellow when he is naked, lo, he is liable. But it is not the same thing to inflict indignity upon him when he is naked as it is to inflict indignity on him when he is clothed. If he inflicted indignity on him when he was in the bathhouse, lo, this one is liable. But it is not the same thing to inflict indignity upon him when he is in the bathhouse as

it is to inflict indignity on him when he is in the market. And it is not the same thing to receive an indignity from an honored person as it is to receive an indignity from a worthless person. And the indignity inflicted upon a great person who is humiliated is not equivalent to the indignity inflicted upon an unimportant person who is humiliated, or the child of important parents who is subjected to an indignity to the child of unimportant parents who is subjected to an indignity.

a. I:2: Gloss of foregoing.

b. I:3: Gloss of foregoing.

I. I:4: Secondary refinement of the rule of the foregoing.

**B. HE WHO INFLICTS INDIGNITY ON ONE WHO IS BLIND, OR HE WHO INFLICTS INDIGNITY ON ONE WHO IS ASLEEP IS LIABLE. BUT ONE WHO IS SLEEPING WHO INFLICTED INDIGNITY IS EXEMPT ON THAT COUNT. IF HE FELL FROM THE ROOF AND DID INJURY AND ALSO INFLICTED INDIGNITY, HE IS LIABLE FOR THE INJURY HE HAS INFLICTED BUT EXEMPT FROM THE INDIGNITY, AS IT IS SAID, “AND SHE PUTS FORTH HER HAND AND GRABS HIM BY THE BALLS” (DEU. 25:11). ONE IS LIABLE ON THE COUNT OF INDIGNITY ONLY IF HE INTENDED TO INFLICT INDIGNITY.**

1. I:1: The Mishnah statement does not accord with the position of R. Judah, for it has been taught on Tannaite authority: R. Judah says, “A blind person is not subject to compensation for indignity. And so did R. Judah declare a blind person from liability of going into exile, from liability to a flogging, and from liability to being put to death by a court.”

## **LIX. Mishnah-Tractate Baba Qamma 8:2-5**

**A. THIS RULE IS MORE STRICT IN THE CASE OF MAN THAN IN THE CASE OF AN OX. FOR A MAN PAYS COMPENSATION FOR INJURY, PAIN, MEDICAL COSTS, LOSS OF INCOME, AND INDIGNITY; AND HE PAYS COMPENSATION FOR THE OFFSPRING (EXO. 21: 22). BUT THE OWNER OF AN OX PAYS COMPENSATION ONLY FOR THE INJURY. AND HE IS EXEMPT FROM LIABILITY TO PAY COMPENSATION FOR THE OFFSPRING. HE WHO HITS HIS FATHER OR HIS MOTHER BUT DID NOT MAKE A WOUND ON THEM, OR HE WHO INJURES HIS FELLOW ON THE DAY OF ATONEMENT IS LIABLE ON ALL COUNTS. HE WHO INJURES A HEBREW SLAVE IS LIABLE ON ALL COUNTS, EXCEPT FOR LOSS OF TIME, WHEN HE BELONGS TO HIM WHO DID THE DAMAGE.**

1. I:1: R. Eleazar asked Rab, “He who inflicts an injury on the minor daughter of another person — to whom does the payment for the injury go? Do we say that, since the All-Merciful has assigned to the father title to the daughter’s income during her period of youth, the payment for injury also goes to him, since her value has certainly decreased? Or do we say that it was the income of her youth that the All-Merciful has given to him, since, if he wants to marry her over to a man afflicted with leprosy he may do so, but payment for an injury has not been assigned by the All-Merciful to him, since if the father wishes to do injury to her, he has not got the right to do so?”

a. I:2: Gloss of a detail of the foregoing.

I. I:3: Gloss of a detail of I:2.

4. I:4: Continuation of I:1: So, too, said R. Simeon b. Laqish, “The Torah has assigned to the father the title only to the income of her youth alone.”

**B. HE WHO INJURES A CANAANITE SLAVE BELONGING TO OTHER PEOPLE IS LIABLE ON ALL COUNTS. R. JUDAH SAYS, “SLAVES ARE NOT SUBJECT TO COMPENSATION FOR INDIGNITY.” A DEAF-MUTE, IDIOT, AND MINOR — MEETING UP WITH THEM IS A BAD THING. HE WHO INJURES THEM IS LIABLE. BUT THEY WHO INJURE OTHER PEOPLE ARE EXEMPT.**

1. II:1: What is the scriptural basis for the position of R. Judah?

a. II:2: Secondary expansion of a detail of the foregoing dialectic.

**C. A SLAVE AND A WOMAN MEETING UP WITH THEM IS A BAD THING. HE WHO INJURES THEM IS LIABLE. AND THEY WHO INJURE OTHER PEOPLE ARE EXEMPT. BUT THEY PAY COMPENSATION AFTER AN INTERVAL: IF THE WOMAN IS DIVORCED, THE SLAVE FREED, THEY BECOME LIABLE TO PAY COMPENSATION. HE WHO HITS HIS FATHER OR HIS MOTHER AND DID MAKE A WOUND ON THEM, AND HE WHO INJURES HIS FELLOW ON THE SABBATH IS EXEMPT ON ALL COUNTS, FOR HE IS PUT ON TRIAL FOR HIS LIFE. AND HE WHO INJURES A CANAANITE SLAVE BELONGING TO HIMSELF IS EXEMPT ON ALL COUNTS.**

1. III:1: The basic principle that one may recover later on damages committed at a time at which compensation cannot immediately be extracted is illustrated by a case not pertinent to our Mishnah’s rule, specifically: If a woman disposes of her iron flock estate during the lifetime of her husband and then dies, the husband may recover the estate from the hand of the purchaser.

a. III:2: Gloss of a tangential detail of the foregoing. At III.2.D we find the reason for the insertion of the entire composite.

I. III:3: As above.

II. III:4: As above.

## **LX. Mishnah-Tractate Baba Qamma 8:6**

**A. HE WHO BOXES THE EAR OF HIS FELLOW PAYS HIM A SELA. R. JUDAH SAYS IN THE NAME OF R. YOSÉ THE GALILEAN, “A MANEH.” IF HE SMACKED HIM, HE PAYS HIM TWO HUNDRED ZUZ. IF IT IS WITH THE BACK OF HIS HAND, HE PAYS HIM FOUR HUNDRED ZUZ. IF HE (1) TORE AT HIS EAR, (2) PULLED HIS HAIR,**

1. I:1: The question was raised: “Does the Mishnah speak of a Tyrian maneh twenty-five selas or only a local one an eighth of the Tyrian one?”

a. I:2: Gloss of a detail of the foregoing.

I. I:3: Gloss of a detail of the foregoing.

A. I:4: As above.

B. I:5: As above. Secondary refinement of a principle introduced at I:4.

1. I:6: As above.

**B. ... (3) SPIT, AND THE SPIT HIT HIM, (4) PULLED OFF HIS CLOAK, (5) PULLED APART THE HAIRDO OF A WOMAN IN THE MARKETPLACE, HE PAYS FOUR HUNDRED ZUZ.**

1. II:1: Said R. Pappa, “That rule applies only if the spit actually touched the person, but if it touched merely the garment, that is not the case.”

**C. THIS IS THE GOVERNING PRINCIPLE: EVERYTHING IS IN ACCORD WITH ONE’S STATION. SAID R. AQIBA, “EVEN THE POOREST ISRAELITES DO THEY REGARD AS GENTLE FOLK WHO HAVE LOST THEIR FORTUNES. FOR THEY ARE THE CHILDREN OF ABRAHAM, ISAAC, AND JACOB.”**

1. III:1: The question was raised: Was the intent of the initial Tannaite authority by stating this rule to make the penalty lighter or heavier? Did he intend to make the penalty lighter, in that a poor person would not have to be paid so much, or did he want to make the penalty more severe, so that a rich person would have to be given more?

**D. THERE WAS A CASE IN WHICH SOMEONE PULLED APART THE HAIRDO OF A WOMAN IN THE MARKETPLACE. SHE CAME BEFORE R. AQIBA, WHO REQUIRED HIM TO PAY HER FOUR HUNDRED ZUZ. HE SAID TO HIM, “RABBI, GIVE ME TIME TO PAY HER OFF.” HE GAVE HIM TIME.**

1. IV:1: But do we allow for such a continuance? And did not R. Hanina say, “They do not give extra time in cases of personal injury”?

**E. HE CAUGHT HER STANDING AT THE DOOR OF HER COURTYARD AND BROKE A JAR OF OIL IN FRONT OF HER, CONTAINING NO MORE THAN AN ISSAR’S WORTH OF OIL. SHE LET DOWN HER HAIR AND MOPPED UP THE OIL AND PUT HER HAND WITH THE OIL ON HER HAIR SO MAKING USE OF THAT SMALL QUANTITY OF OIL. NOW HE HAD SET WITNESSES UP AGAINST HER. THEN HE CAME BEFORE R. AQIBA. HE SAID TO HIM, “RABBI, TO A WOMAN SUCH AS THIS AM I TO PAY OFF FOUR HUNDRED ZUZ?” HE SAID TO HIM, “YOU HAVE NO CLAIM WHATSOEVER. HE WHO DOES INJURY TO HIMSELF, EVEN THOUGH HE HAS NO RIGHT TO DO SO, IS EXEMPT. BUT OTHERS WHO DID INJURY TO HIM ARE LIABLE.”**

1. V:1: But was it not taught on Tannaite authority: Said to him R. Aqiba, “You have dived into deep waters and have come up with a piece of potsherd. Someone has the right to do injury to himself.” Said Raba, “There is no contradiction. In the one case, we deal with personal injury, in the other, with humiliation.”

2. V:2: And is it the fact that one has not got the right to do injury to himself?

**F. HE WHO CUTS DOWN HIS OWN SHOOTS, EVEN THOUGH HE HAS NO RIGHT, IS EXEMPT OTHERS WHO CUT DOWN HIS SHOOTS ARE LIABLE.**

1. VI:1: Rabbah bar bar Hannah repeated as a Tannaite version in the presence of Rab: “‘You killed my ox, you cut down my plants’ — and the other says, ‘You told me to kill it, you told me to cut it down’ — the accused is exempt from having to pay compensation.”

2. VI:2: Said Rab, “It is forbidden to cut down a palm tree that produces a qab of dates.”

a. VI:3: Case illustrative of a detail of the foregoing.

b. VI:4: Case illustrative of a detail of the foregoing.

## **LXI. Mishnah-Tractate Baba Qamma 8:7**

**A. EVEN THOUGH THE DEFENDANT PAYS OFF THE PLAINTIFF, HE IS NOT FORGIVEN UNTIL HE SEEKS FORGIVENESS FROM THE PLAINTIFF, SINCE IT IS SAID, “NOW RESTORE THE MAN’S WIFE...AND HE WILL PRAY FOR YOU” (GEN. 20: 7). AND HOW DO WE KNOW THAT THE ONE WHO IS SUPPOSED TO FORGIVE SHOULD NOT BE CHURLISH? SINCE IT IS SAID, “AND ABRAHAM PRAYED TO GOD, AND GOD HEALED ABIMELEKH” (GEN. 20:17).**

**1. I:1:** All of these sums that are specified represent the monetary compensation for humiliation, but as to the anguish, even if the offender brought all of the finest rams in the world, the man is not forgiven until he asks forgiveness from him, as it is said, “Now restore the man’s wife...and he will pray for you” (Gen. 20: 7).

**a. I:2:** Gloss of a detail of the foregoing.

**I. I:3:** Further exegesis of the proof-text cited above.

**B. SAYINGS ATTRIBUTED TO RABA BEFORE RABBAH BAR MARI**

**1. I:4:** Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which our rabbis have said, ‘He who prays for mercy for his fellow when he himself needs the same thing will be answered first?’”

**2. I:5:** Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘The cabbage is smitten along with the thorn?’”

**3. I:6:** Said Raba to Rabbah bar Mari, “It is written, ‘And from among his brothers he took five men’ (Gen. 47: 2). Who were these five?”

**4. I:7:** Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘Poverty follows the poor?’”

**5. I:8:** Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which our rabbis have said, ‘Get up early in the morning to eat breakfast, in the summer because of the heat, and in the winter because of the cold; and people say, even sixty men may chase him who has early meals in the mornings but they will not overtake him?’”

**6. I:9:** Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘If your neighbor calls you an ass, put a saddle on your back?’”

**7. I:10:** Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘If you have any fault, be the first to tell it?’”

**8. I:11:** Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘Though the duck keeps its head down while it walks, its eyes look out into the distance?’”

**9. I:12:** Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘Sixty pains torture the teeth of him who hears the noise made by someone else eating, while he has nothing to eat?’”

10. I:13: Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘Though the wine belongs to the householder, the thanks go to the butler’?”

11. I:14: Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘When a dog is hungry, it will eat its own shit’?”

12. I:15: Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘A bad palm will usually find its way to a grove of barren trees’?”

13. I:16: Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘If you get someone’s attention to warn him and he pays no attention, you can push a big wall and throw it at him’?”

14. I:17: Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘Into the well from which you have drunk do not throw clods’?”

15. I:18: Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘If you will join me in lifting the burden I will carry it, and if not, not’?”

16. I:19: Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘When we were young, we were treated like men, now that we are old, we are treated like babies’?”

17. I:20: Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘Behind an owner of wealth, chips are dragged along’?”

#### C. REVERTING TO THE TOPIC OF ABIMELECH, ABRAM AND SARAI

1. I:21: Said R. Hanan, “He who brings a suit against his fellow is the one who is punished first: ‘And Sarai said to Abram, My wrong be upon you’ (Gen. 16: 5), and then, ‘And Abraham came to mourn for Sarah and to weep for her’ (Gen. 23: 2).”

a. I:22: Extension of the foregoing.

2. I:23: And said R. Isaac, “Do not ever treat the curse of a common person lightly, for lo, Abimelech cursed Sarah, and the curse was carried out in her seed: ‘Behold it is for thee a covering of the eyes’ (Gen. 20:16).”

a. I:24: Extension of the foregoing principle: Said R. Abbahu, “A person should be among those who are pursued, never among the pursuers, for you have among birds none that is more hunted than doves and pigeons, and yet Scripture has declared them alone to be valid for the altar.”

#### D. HE WHO SAYS, “BLIND MY EYE,” “CUT OFF MY HAND,” “BREAK MY LEG” — THE ONE WHO DOES SO IS LIABLE. IF HE ADDED, “...ON CONDITION OF BEING EXEMPT,” THE ONE WHO DOES SO IS LIABLE ANYHOW.

1. II:1: Said R. Assi bar Hama to Rabbah, “What is the difference between the former and the latter case?”

2. II:2: R. Oshaia said, “The liability is on account of the shame to the family of the victim.” Raba said, “It is because a person never really pardons damage done to his principal limbs.”

a. II:3: Tannaite recapitulation.

**E. “TEAR MY CLOAK,” “BREAK MY JAR” — THE ONE WHO DOES SO IS LIABLE. IF HE ADDED, “...ON CONDITION OF BEING EXEMPT,” THE ONE WHO DOES SO IS EXEMPT. “DO IT TO MR. SO-AND-SO, ON CONDITION OF BEING EXEMPT,” HE WHO DOES SO IS LIABLE, WHETHER THIS IS TO HIS PERSON OR TO HIS PROPERTY.**

1. III:1: And an objection was raised: “To keep” (Exo. 22: 6) — but not to destroy. “To keep” — but not to tear. “To keep” — but not to give out to the poor. In these cases, liability of bailees would not apply; why the liability in the Mishnah, where he gave him the pitcher to break and the garment to tear?

a. III:2: Illustrative case.

## **LXII. Mishnah-Tractate Baba Qamma 9:1**

**A. HE WHO STEALS WOOD AND MADE IT INTO UTENSILS, WOOL AND MADE IT INTO CLOTHING, PAYS COMPENSATION IN ACCORD WITH THE VALUE OF THE WOOD OR WOOL AT THE TIME OF THE THEFT. IF HE STOLE A PREGNANT COW AND IT GAVE BIRTH, A EWE HEAVY WITH WOOL NEEDING SHEARING, AND HE SHEARED IT — HE PAYS THE VALUE OF A COW WHICH IS ABOUT TO GIVE BIRTH, OR OF A EWE WHICH IS ABOUT TO BE SHEARED. IF HE STOLE A COW, AND IT GOT PREGNANT WHILE WITH HIM AND GAVE BIRTH, A EWE, AND IT BECAME HEAVY WITH WOOL WHILE WITH HIM, AND HE SHEARED, HE PAYS COMPENSATION IN ACCORD WITH THE VALUE OF THE COW OR EWE AT THE TIME OF THE THEFT. THIS IS THE GOVERNING PRINCIPLE: ALL ROBBERS PAY COMPENSATION IN ACCORD WITH THE VALUE OF THE STOLEN OBJECT AT THE TIME OF THE THEFT.**

1. I:1: It is in particular he who steals wood and made it into utensils, who has to pay as specified, but if he merely planed the wood, that would not be the case? It is in particular he who steals wool and made it into clothing who has to pay as specified, but if he merely bleached the wool, that would not be the case? Then in contradiction we may cite the following: He who stole wood and planed it, wool and bleached it, thread and bleached it, flax and washed it, stones and smoothed them down, he pays compensation in accord with their value at the time of the theft (T. **B.Q. 10:2A-B**)!

2. I:2: With reference to the language, wool and bleached it, is bleaching regarded as a change such that the stolen goods have been irretrievably transformed? And an objection may be raised on the basis of the following: If he did not give to the priest the first of the fleece before he dyed it, he is free of the obligation to give it. If he bleached it but did not dye it, he is liable (M. **Hul. 11:2K-L**).

a. I:3: Secondary expansion of the foregoing.

3. I:4: Said Abbayye, “R. Simeon b. Judah, the House of Shammai, R. Eliezer b. Jacob, R. Simeon b. Eleazar, and R. Ishmael all maintain the view that a change in the character of an object leaves the object in its established status.”



a. I:5: Said R. Judah said Samuel, “The decided law is in accord with R. Simeon b. Eleazar, This governing principle did R. Simeon b. Eleazar state, ‘In the case of any object the value of which the thief has increased, his hand is on top. If he wants, he pays compensation in accord with the value at the time of the theft, if he wants, he says to him, ‘Lo, there is your property before you and take it as is’.”

4. I:6: Said R. Hiyya bar Abba said R. Yohanan, “As a matter of the law of the Torah, a stolen object that has been changed should still go back to the original owner as is: ‘He shall restore that which he took by robbery’ (Lev. 5:23) — under all circumstances. And if you should cite our Mishnah paragraph pays compensation in accord with the value of the wood or wool at the time of the theft, that is a rule that is made to facilitate the penitence of those who would repent.”

5. I:7: Tannaite complement: Robbers or usurers who repent and wish to restore what they have stolen — they do not take back from them what they offer by way of restitution, and one who does accept back from them what they have stolen — the spirit of sages derives no pleasure from him.

**B. IF HE STOLE A COW, AND IT GOT PREGNANT WHILE WITH HIM AND GAVE BIRTH, A EWE, AND IT BECAME HEAVY WITH WOOL WHILE WITH HIM, AND HE SHEARED, HE PAYS COMPENSATION IN ACCORD WITH THE VALUE OF THE COW OR EWE AT THE TIME OF THE THEFT.**

1. II:1: “He who steals a ewe and sheared it, a cow and it bears offspring must pay for the ewe, the shearings, and the offspring,” the words of R. Meir. R. Judah says, “The object that is stolen returns as is.” R. Simeon says, “They regard the animal as though it had been assessed with the robber for money at the time of the robbery.”

a. II:2: Gloss of foregoing: What is the operative consideration behind the ruling of R. Meir?

b. II:3: What’s at stake in the dispute between Judah and Simeon.

l. II:4: Secondary gloss of foregoing.

2. II:5: Said Raba, “If the robber stole and improved the stolen article and sold it, or if he stole and improved the value and left it to the heirs, then the value of the improvement he has validly sold, or the value of the improvement he has validly bequeathed.”

3. II:6: Raba raised this question: “If a gentile had improved the value of an object that was stolen, what is the law?”

4. II:7: Said R. Pappa, “Someone who stole a palm tree from another party and cut it down, even though he threw it from the other person’s field into his own field, he would not acquire title. What is the operative consideration? To begin with it was called a palm tree and now it is called a palm tree.

5. II:8: Said Raba, “Someone who stole a lulab and turned it into leaves would acquire title to them. To begin with the object was called a lulab, but now it is called leaves. If out of the leaves he made a broom, he would acquire title, since

to begin with they were leaves and now they are a broom. But if he made a rope out of the broom, he would not acquire title, since if he were to take it apart again, it would become a broom once more.”

**6. II:9:** R. Pappa raised this question: “If the central leaf of a lulab split, what is the law?”

**7. II:10:** Said R. Pappa, “Someone who stole sand from another party and made a brick out of it would not acquire title. How come? Because it could be turned back into sand. But if he turned a brick into sand, he would acquire title to it. If you should claim, well, perhaps he could turn the sand back into a brick, that brick would still not be the original one, but would be just another one, and, as a new entity that would be produced it would be compensated in cash, not in kind.”

**8. II:11:** Said R. Pappa, “Someone who stole silver bullion from someone else and turned it into coins would not acquire title to the coins, since he could turn them back into bullion. But if out of coins he made bullion, he would acquire title. And if you say that he can turn it back into coins, in fact the coins would be a new entity that would be produced. If he took black coins and polished them up like new, he would not acquire title to them, but if they were new and he blackened them, he would acquire title to them, and if you say that he can make them new again, in fact the blackness will always mark them.”

**C. THIS IS THE GOVERNING PRINCIPLE: ALL ROBBERS PAY COMPENSATION IN ACCORD WITH THE VALUE OF THE STOLEN OBJECT AT THE TIME OF THE THEFT.**

**1. III:1:** What further information does the language, **This is the governing principle**, encompass?

**a. III:2:** Illustrative case.

### **LXIII. Mishnah-Tractate Baba Qamma 9:2**

**A. IF HE STOLE A BEAST AND IT GOT OLD, SLAVES AND THEY GOT OLD, HE PAYS COMPENSATION FOR THEM IN ACCORD WITH THEIR VALUE AT THE TIME OF THE THEFT.**

**1. I:1:** Said R. Pappa, “The meaning of and they got old is not literal. Rather, even if they got weak, the same law applies.”

**B. R. MEIR SAYS, “IN THE CASE OF SLAVES, HE MAY SAY TO HIM, ‘HERE IS WHAT IS YOURS BEFORE YOU!’”**

**1. II:1:** Said R. Hanina bar Abdimi said Rab, “The decided law accords with R. Meir.”

**a. II:2:** Gloss of a detail of the foregoing.

**i. II:3:** Illustrative case.

**2. II:4:** He who seizes someone else’s boat and does some work with it — Rab said, “If the owner wants, he may collect a fee for the use of the boat, but if he wants, he may collect a fee for the deterioration of the boat.” And Samuel said, “He may collect only a fee for the deterioration of the boat.”

**C. IF HE STOLE (1) A COIN AND IT GOT CRACKED, (2) PIECES OF FRUIT AND THEY TURNED ROTTEN, (3) WINE AND IT TURNED INTO VINEGAR, HE PAYS COMPENSATION FOR THEM IN ACCORD WITH THEIR VALUE AT THE TIME OF THE THEFT.**

1. III:1: Said R. Huna, “When the Mishnah rule refers to the coin’s getting cracked, that is literal; when it speaks of its being declared invalid, that means that the government officially declared it invalid.” And R. Judah said, “If the government declared the coin invalid, that is equivalent to the coin’s being cracked. But what is the sense of its being declared invalid? That means that while one province declared it invalid, the coin still circulates in some other province.”

2. III:2: He who lends to his fellow on the stipulation that the loan should be repaid in a designated type of coinage, and that coinage became invalidated — Rab said, “He repays him in coinage that circulates at that time.” Samuel said, “He may say to him, ‘Go, spend it the designated type of coinage, which has been invalidated in Meshan where it is now circulating.’”

a. III:3: Gloss of foregoing.

b. III:4: Within the premise of Rab’s ruling, Raba raised this question of R. Hisda, “He who lent money to his fellow on condition of being repaid with a designated coin, and, in the interval, the coin was made heavier and more costly — what is the law?”

**D. COMPOSITE OF RULINGS BY RABBAH ON EXEMPTIONS FOR DESTROYING OTHER PEOPLES’ PROPERTY**

1. III:5: Said Rabbah, “He who tosses someone else’s coin into the Great Sea is exempt from having to pay reparations. How come? He can say to him, ‘There it is, lying before you; if you want it, go get it.’ But that ruling pertains to a case in which the water was clear, so he can see it. But if the water was murky, so he can’t see it, that is not the case. And this rule further applies to a case in which the act of throwing was only indirectly caused by him, but if he himself took the coin and threw it, then this is a case of robbery, and he would have to make restitution of the money.”

2. III:6: And said Rabbah, “One who disfigures a coin belonging to someone else is exempt from having to make restitution. How come? He didn’t do anything to reduce the substance of the coin. That ruling applies in a case in which he knocked on it with a hammer and flattened it. But if with a file he rubbed the mint mark off the coin, he has actually diminished its substance and is liable.”

3. III:7: And said Rabbah, “He who splits the ear of someone else’s cow and so renders it unfit for use on the altar of the Temple is exempt from having to pay compensation. How come? The cow is as it was, since he did nothing to reduce its value, since not every ox is going to be sacrificed on the altar.”

4. III:8: And said Rabbah, “He who destroys by fire the bond of a creditor, he would not have to pay compensation. How come? The one who burned the bond may say to him, ‘All I burned of yours was a piece of paper.’”

**E. IF HE STOLE (1) A COIN, AND IT WAS DECLARED INVALID, (2) HEAVE-OFFERING, AND IT BECAME UNCLEAN, (3) LEAVEN, AND THE FESTIVAL OF PASSOVER PASSED MAKING IT NO LONGER AVAILABLE FOR ISRAELITE USE, (4) A BEAST, AND A TRANSGRESSION WAS COMMITTED UPON IT, OR (5) A BEAST WHICH WAS INVALIDATED FOR USE ON THE ALTAR, OR (6) WHICH WAS GOING FORTH TO BE STONED, THE ROBBER SAYS TO HIM, “HERE IS WHAT IS YOURS RIGHT IN FRONT OF YOU!”**

1. IV:1: What Tannaite authority takes the view that with reference to something from which one cannot derive any benefit whatsoever, one may still say to the plaintiff, “There is yours before you”?

2. IV:2: R. Hisda came across Rabbah bar Samuel, saying to him, “Have you learned as a Tannaite statement anything concerning things that are forbidden for any use with special reference to whether or not we accept the plea, ‘Here is yours before you’?”

a. IV:3: Gloss of foregoing.

## **LXIV. Mishnah-Tractate Baba Qamma 9:3**

**A. IF ONE GAVE SOMETHING TO CRAFTSMEN TO REPAIR, AND THEY SPOILED THE OBJECT, THEY ARE LIABLE TO PAY COMPENSATION. IF HE GAVE TO A JOINER A BOX, CHEST, OR CUPBOARD TO REPAIR, AND HE SPOILED IT, HE IS LIABLE TO PAY COMPENSATION. A BUILDER WHO TOOK UPON HIMSELF TO DESTROY A WALL, AND WHO SMASHED THE ROCKS OR DID DAMAGE IS LIABLE TO PAY COMPENSATION. IF HE WAS TEARING DOWN THE WALL ON ONE SIDE, AND IT FELL DOWN ON THE OTHER SIDE, HE IS EXEMPT. BUT IF IT IS BECAUSE OF THE BLOW WHICH HE GAVE IT, HE IS LIABLE.**

1. I:1: If one gave something to craftsmen to repair, and they spoiled the object, they are liable to pay compensation: Said R. Assi, “That rule applies only to a case in which he gave to a joiner a box, chest, or cupboard for the purpose of nailing, and while he was hammering the nail, he broke the box. But if he gave to a joiner wood for the purpose of making a box, chest, or cupboard, and after he made the box, chest, or cupboard, he broke them, he is exempt. How come? The craftsman acquires title to the increase in the utensil that he has made.”

a. I:2: Continuation of the foregoing. May we say that Assi may find support for his allegation that the craftsman acquires title to the increase in the utensil that he has made in the following: He who hands over wool to a dyer, and the dye in the cauldron burned it, the dyer pays the value of the wool. He pays the value of the wool, but not the value of the wool as well as of the increase in its value from having been dyed. Is this not the rule even where the wool was burned after the dye was put in, so that the increase in value has already taken effect, and that would prove that the craftsman acquires title to the increase in the utensil that he has made?

I. I:3: As above: May one say that at issue is what is debated among Tannaite authorities.

2. I:4: Said Samuel, “A professional slaughterer who spoiled the task is liable to pay damages. He has done damage and so is deemed negligent. It is treated as though the owner had said to him, ‘Slaughter it for me on this side,’ and he slaughtered it for him on the other side.”

a. I:5: Complement to the foregoing.

3. I:6: Said Rabbah bar bar Hannah said R. Yohanan, “A professional slaughterer who spoiled the task is liable to pay damages. And that is so even if he were as skilled as the professional slaughterers of Sepphoris.”

a. I:7: Illustrative case.

4. I:8: He who shows a coin to a money changer who validated it and it turns out to be an invalid one — One Tannaite formulation: The expert is exempt, but the amateur is liable. And another Tannaite formulation: Whether expert or amateur, he is liable.

a. I:9: Illustrative case.

b. I:10: As above.

## **LXV. Mishnah-Tractate Baba Qamma 9:4**

**A. HE WHO HANDS OVER WOOL TO A DYER, AND THE DYE IN THE CAULDRON BURNED IT, THE DYER PAYS THE VALUE OF THE WOOL. IF HE DYED IT IN A BAD COLOR, IF THE WOOL INCREASED IN VALUE MORE THAN THE OUTLAY OF THE DYER, THE OWNER OF THE WOOL PAYS HIM THE MONEY HE HAS LAID OUT IN THE PROCESS OF DYEING. BUT IF THE OUTLAY OF THE DYER IS GREATER THAN THE INCREASE IN VALUE OF THE WOOL, THE OWNER PAYS HIM BACK ONLY THE VALUE OF THE IMPROVEMENT. IF HE GAVE WOOL TO A DYER TO DYE IT RED, AND HE DYED IT BLACK, OR TO DYE IT BLACK, AND HE DYED IT RED — R. MEIR SAYS, “THE DYER PAYS HIM BACK THE VALUE OF HIS WOOL.”**

1. I:1: What is the meaning of “bad color”?

2. I:2: Tannaite complement: If one handed wood over to a joiner to make a chair for him and he made a bench, a bench and he made a chair, R. Meir says, “He pays him the cost of his wood.” R. Judah says, “If the increase in value is greater than the outlay, the owner pays him back the outlay. And if the outlay is greater than the increase in the value of the wood, the carpenter pays him the increase in value of the wood.” And R. Meir concedes that if he gave wood to a carpenter to make him a nice chair and he made him an ugly one, a nice bench and he made him an ugly one, then if the outlay is greater than the increase in the value of the wood, the carpenter pays him only the increase in value of the wood, and if the outlay is greater than the increase in the value of the wood, the carpenter pays him only the increase in value of the wood” (T. **B.Q. 10:8D-I**).

a. I:3: Refining the foregoing, the question was raised: Is the improvement brought about by the colors in the dyeing a distinct item, separate from the wool, or is the improvement brought about by the colors in the dyeing not a distinct item, separate from the wool?

**B. R. JUDAH SAYS, “IF THE INCREASE IN VALUE IS GREATER THAN THE OUTLAY FOR THE PROCESS OF DYEING, THE OWNER PAYS HIM BACK THE OUTLAY FOR THE PROCESS OF DYEING. AND IF THE OUTLAY FOR THE PROCESS OF DYEING IS GREATER THAN THE INCREASE IN THE VALUE OF THE WOOL, THE DYER PAYS HIM ONLY THE INCREASE IN VALUE OF THE WOOL.”**

1. II:1: R. Joseph was in session behind R. Abba, with R. Abba in session facing R. Huna, who, in session, said, “The law accords with R. Joshua b. Qorhah, and the law accords with R. Judah.”

2. II:2: Tannaite complement: He who gives money to an agent to buy wheat and he bought barley, or barley and he brought wheat — It has been taught as one Tannaite statement: “If there was a loss, the loss is assigned to the agent, and if there is a profit, the profit is assigned to the agent.” And it has been taught as another Tannaite statement: “If there was a loss, the loss is assigned to the agent, and if there is a profit, the profit is divided between the agent and the principal.”

3. II:3: He who buys a field in the name of his fellow — they do not force the latter to sell it to him. But if he had said to the seller, “It is on the stipulation that they will then force him to sell it to me,” that condition is met.

a. II:4: Gloss of foregoing.

b. II:5: As above.

c. II:6: As above.

I. II:7: Case.

## **LXVI. Mishnah-Tractate Baba Qamma 9:5-7F**

**A. HE WHO STOLE SOMETHING FROM HIS FELLOW WORTH ONLY A PERUTAH, AND TOOK AN OATH TO HIM THAT HE HAD STOLEN NOTHING, BUT THEN WANTS TO MAKE RESTITUTION, MUST TAKE IT TO HIM, EVEN ALL THE WAY TO MEDIA:**

1. I:1: So if he took an oath falsely, that would be the rule, but if he did not take an oath, then that would not be the rule. So who is the authority behind the rule before us? It is not R. Tarfon nor R. Aqiba. For we have learned in the Mishnah: If one stole from one of five men and does not know from which one of them he stole, and each one of them says, “From me did he steal,” “he leaves that which he stole among them and takes his leave,” — the words of R. Tarfon. R. Aqiba says, “This is not the way to remove him from the toils of transgression, unless he pays the value of that which was stolen to each and every one of them” (M. **Yeb. 15:7J-M**). Now whose opinion can be before us in the passage at hand? It cannot be R. Tarfon, for has he not said that, even after he took the oath, all he has to do is leave the stolen goods among them and shove off? And if it were in accord with R. Aqiba, would he not hold the opinion that even where there was no oath taken, he still would have to restore the value of the stolen article to each and every one of them!?

**B. HE SHOULD NOT GIVE IT TO HIS SON OR HIS AGENT, BUT HE MAY HAND IT OVER TO AN AGENT APPOINTED BY A COURT. AND IF THE VICTIM DIED, THE ROBBER RESTORES THE OBJECT TO HIS ESTATE:**

1. II:1: A messenger appointed in the presence of witnesses to receive a money payment — R. Hisda said, “He is a validly appointed agent” and if some accident should happen with the money while it is in his hands, the one who paid the money would not be responsible to make it up. Rabbah said, “He is not a validly appointed agent” and if some accident should happen with the money while it is in his hands, the one who paid the money would be responsible to make it up.

2. II:2: R. Yohanan and R. Eleazar both say, “An agent appointed in the presence of witnesses is a validly appointed agent.”

3. II:3: Said R. Judah said Samuel, “Except at the sender’s risk, they do not send trust funds by means of a person whose power of attorney is validated only by a sign, even if witnesses have signed on it to authenticate the authentication.”

**C. IF THE THIEF PAID HIM BACK THE PRINCIPAL BUT DID NOT PAY THE ADDED FIFTH, IF THE VICTIM FORGAVE HIM THE VALUE OF THE PRINCIPAL BUT DID NOT FORGIVE HIM THE VALUE OF THE ADDED FIFTH, IF HE FORGAVE HIM FOR THIS AND FOR THAT, EXCEPT FOR SOMETHING LESS A PERUTAH OUT OF THE PRINCIPAL, HE NEED NOT TAKE IT BACK TO HIM. IF HE THE THIEF GAVE HIM BACK THE ADDED FIFTH AND DID NOT HAND OVER THE PRINCIPAL, IF THE VICTIM FORGAVE HIM THE ADDED FIFTH BUT DID NOT FORGIVE HIM THE PRINCIPAL:**

1. III:1: Therefore the Added Fifth is a civil liability, so that if the thief were to die in the interim, the estate would have to pay it.

**D. ...FORGAVE HIM FOR THIS AND FOR THAT, EXCEPT FOR AN AMOUNT OF THE PRINCIPAL THAT ADDED UP TO A PERUTAH, THEN HE HAS TO GO AFTER HIM TO MAKE RESTITUTION, WHEREVER HE MAY BE.**

1. IV:1: Said R. Pappa, “That rule applies only if the stolen object is not available, but if the stolen object is available, he has to go after him. We take account of the possibility that the stolen article has gone up in value.”

**E. RABA’S REFINEMENTS OF THE THEORY OF RESTITUTION: THEORETICAL PROBLEMS**

1. IV:2: Said Raba, “If one stole three bundles of goods worth three pennies, which then fell in price to two, and he stored two bundles, he would still have to make up one more.”

2. IV:3: Raba asked this question: “If one stole two bundles of goods worth one penny, and he returned one of them, what is the law? Do we say that now, at any rate, no stolen object is with him to the value of a penny so he should not have to pay? Or, perhaps, lo, he has not in any event returned what he stole that he had in hand?”

a. IV:4: Cases in other areas of law that illustrate the same basic principle: And said Raba, “A Nazirite who performed his act of shaving his head but left two hairs has done nothing at all.” Asked Raba, “If he shaved one off, and the other fell off by itself, what is the law?”

b. IV:5: And said Raba, “Lo, they have said: A jug that was perforated and that lees stopped up would afford protection in the tent of a corpse, so it would be regarded as tightly sealed.” Asked Raba, “If only half of the hole was blocked up, what is the law?”

c. IV:6: And said Raba, “Lo, they have said, leaven, and the festival of Passover passed making it no longer available for Israelite use...the robber says to him, ‘Here is what is yours right in front of you!’” Raba raised this question: “What if, after Passover, instead of making that plea, the robber took a false oath? Do we say that, if the leaven were stolen from him, he would have to pay for it, so what he has denied in fact is worth money so he is subject to penalty for the false oath and for the costs of restoration, Lev. 5:21-25, or perhaps, since the leaven was still intact but was null in value, he has not denied anything of any substantial monetary value and he is subject to Lev. 5: 4-10 for the false oath?”

**F. IF HE PAID HIM BACK THE PRINCIPAL BUT SWORE FALSELY TO HIM ABOUT THE ADDED FIFTH AND THEN CONFESSED, LO, THIS ONE PAYS BACK AN ADDED FIFTH FOR THE ADDED FIFTH, AND SO IS THE RULE UNTIL THE VALUE OF THE PRINCIPAL OF THE ADDED FIFTH BECOMES LESS THAN A PERUTAH IN VALUE.**

**AND SO IS THE RULE IN THE CASE OF A BAILMENT. FOR IT IS WRITTEN, “IN A MATTER OF DEPOSIT OR OF BARGAIN OR OF ROBBERY, OR IF HE HAS OPPRESSED HIS NEIGHBOR OR HAS FOUND THAT WHICH WAS LOST, DEALING FALSELY THEREIN AND SWEARING TO A LIE” (LEV. 6: 2-3) — LO, THIS ONE PAYS BACK THE PRINCIPAL, AN ADDED FIFTH, AND A GUILT-OFFERING.**

1. V:1: Said Ben Azzai, “These three false oaths, taken by one witness, are subject to a single law: He knew about the lost animal but not the person who found it, the person who found it but not the lost animal, neither the lost animal nor the person who found it.”

2. V:2: Said R. Sheshet, “He who denies holding a bailment is regarded as though he had stolen it and therefore will be liable for any accidents that happen to it as a robber is liable.”

a. V:3: Gloss of a detail of the foregoing.

**G. COMPOSITE OF R. HIYYA BAR ABBA IN THE NAME OF R. YOHANAN**

1. V:4: Said R. Hiyya bar Abba said R. Yohanana, “He who falsely claims that a bailment has been stolen on that account pays the double indemnity that a thief pays. If he sold or slaughtered the animal, he has to pay the fourfold or fivefold indemnity. Since a thief pays double indemnity and a bailee who presents the defense of theft has to pay the double indemnity, just as the thief liable to the double indemnity also is liable to pay fourfold or fivefold if he slaughters or sells the beast, so the bailee who defends himself through a plea of theft of the bailment has to be double, he should also have to repay fourfold or fivefold if he turns out to have lost or sold the beast.”

2. V:5: Said R. Hiyya bar Abba said R. Yohanana, “He who falsely claims that a bailment has been stolen on that account pays the double indemnity that a thief pays. If he sold or slaughtered the animal, he has to pay the fourfold or fivefold indemnity. What is the pertinent verse of Scripture? ‘For any manner of lost thing of which one says’ (Exo. 22: 8).”

3. V:6: Said R. Hiyya bar Abba said R. Yohanana, “An unpaid bailee who sets forth a defense that the bailment has been stolen and is shown a perjurer is made liable



only if he denies a part of the bailment and admits a part. What is the scriptural basis for that position? ‘This is it’ (Exo. 22: 8) — this only.”

## H. THEORETICAL PROBLEMS

1. V:7: R. Ammi bar Hama repeated as a Tannaite statement: “If they are to be subjected to an oath, four sorts of bailees have to have denied part of the bailment and conceded part of the bailment, namely, the unpaid bailee, the borrower, the paid bailee, and the one who rents.”

2. V:8: And said R. Hiyya bar Joseph, “He who falsely claims in the case of a bailment that the object has been stolen is liable only if he has laid hands on the object and stolen it for his own use. What is the scriptural basis for that position? ‘The master of the house shall come to the judges to see whether he has not put his hand unto his neighbor’s goods’ (Exo. 22: 7), meaning, if he actually put his hand to the goods he is liable; and here therefore we must be dealing with a case in which he had already done so.”

3. V:9: Said R. Sheshet, “An unpaid bailee who presented as his defense in the case of a bailment the plea that the object had been stolen, if he had already laid hands on the object, would be exempt from having to pay double indemnity. What is the scriptural basis for that position? ‘The master of the house shall come to the judges to see whether he has not put his hand unto his neighbor’s goods’ (Exo. 22: 7), meaning, if he actually put his hand to the goods he is exempt.”

4. V:10: R. Ammi bar Hama raised this question: “Since where there is liability for double payment, there is no liability for the Added Fifth, does money for which one is liable to pay double indemnity exempt one from having to pay the Added Fifth, or perhaps the oath that involves liability to double indemnity is what exempts him from the Added Fifth?”

5. V:11: Rabina raised this question: “What would be the law as to an Added Fifth and double indemnity that were assigned to two persons, respectively? For instance? For instance, he handed over his ox to two persons and they claimed that it had been stolen. One of them then took an oath and then confessed the oath was false, and the other took an oath, and then witnesses came along. So what is the rule? Do we say that it is only in the case of a single person that the All-Merciful was concerned that he not have to pay both the Added Fifth and double indemnity, so that, where there are two persons, one makes the double payment, the other pays the Added Fifth, or do we say that it was regarding a single pecuniary obligation that the All-Merciful was concerned not to impose both the Added Fifth and double indemnity, in which case this is one and the same monetary obligation?”

6. V:12: R. Pappa raised this question: “How about a situation in which there might be two Added Fifths or two double indemnities assigned to one individual? For instance? For instance, the bailee claimed that the bailment was lost, and he took an oath and then confessed, and then he claimed that the bailment was lost and took another oath and then confessed; or, also, for instance, he claimed that the bailment was stolen and took an oath, and then witnesses came along; and then he claimed that it was stolen, and he took another oath, and witnesses came along, and so on. Now do we say that it was two distinct kinds of liability to a money

payment that the All-Merciful did not permit to have paid with respect to a single monetary obligation, but here the liabilities are of a single kind either two Added Fifths or two double indemnities? Or perhaps it was two monetary obligations that the All-Merciful did not wish to have paid with respect to the same monetary obligation, and here we have two distinct monetary liabilities?"

7. V:13: If the owner demanded the return of his bailment from the bailee, who denying the claim on oath, nonetheless paid for it, and then the actual thief was found, to whom does the double payment go? Abbayye said, "To the owner of the bailment." Raba said, "To the bailee."

8. V:14: If the owner asked the bailee to return the beast, who paid the value of the beast, and then the thief was identified, and when the owner demanded payment from him, he confessed, but when the bailee demanded payment from him, he denied the claim, and then witnesses appeared against him, has the thief exempted himself from paying the indemnity through his confession to the owner, or is that not the case?

9. V:15: If the bailment was stolen through violence, and the thief was caught — said Abbayye, "If the bailee was uncompensated, if he wanted, he may go to court with the thief, and if he wanted, he may take an oath and the owner of the animal then will deal with the thief. If the bailee was paid, he goes to court with the thief, but he may not take an oath." Raba said, "The same rule applies to both classes of bailee: He must go to court with the thief and may not take an oath."

10. V:16: Rabbah the Younger raised this question: "If the bailment was stolen through violence, and the thief brought the animal back to the house of the bailee, where it died through negligence on the bailee's part, what is the law? Do we say that, since the bailment was stolen through violence, this marks the end of his bailment? Or, perhaps, since the bailment was brought back to him, it has been restored to him in the status of a bailment?"

## **LXVII. Mishnah-Tractate Baba Qamma 9:7G-M, 9:8-10**

**A. IF ONE SAID, "WHERE IS MY BAILMENT?" HE SAID TO HIM, "IT GOT LOST." "I IMPOSE AN OATH ON YOU!" AND HE SAID, "AMEN." THEN WITNESSES COME ALONG AND GIVE TESTIMONY AGAINST HIM THAT HE HAD EATEN IT UP — HE PAYS BACK THE PRINCIPAL.**

**IF HE HAD CONFESSED ON HIS OWN, HE PAYS BACK THE PRINCIPAL, THE ADDED FIFTH, AND A GUILT-OFFERING. "WHERE IS MY BAILMENT?" HE SAID TO HIM, "IT WAS STOLEN." "I IMPOSE AN OATH ON YOU!" AND HE SAID, "AMEN" — THEN WITNESSES COME ALONG AND TESTIFY AGAINST HIM THAT HE STOLE IT, HE PAYS TWOFOLD RESTITUTION. IF HE HAD CONFESSED ON HIS OWN, HE PAYS THE PRINCIPAL, AN ADDED FIFTH, AND A GUILT-OFFERING.**

**HE WHO STEALS FROM HIS FATHER AND TAKES AN OATH TO HIM, AND THEN THE FATHER DIES — LO, THIS ONE PAYS BACK THE PRINCIPAL AND AN ADDED FIFTH TO HIS FATHER'S OTHER SONS OR BROTHERS AND BRINGS THE GUILT-OFFERING. BUT IF HE DOES NOT WANT TO DO SO OR DOES NOT HAVE THAT TO PAY BACK, HE**

**TAKES OUT A LOAN, AND THE CREDITORS COME ALONG AND COLLECT WHAT IS OWING.**

**HE WHO SAYS TO HIS SON, “QONAM! YOU WILL NOT DERIVE BENEFIT FROM ANYTHING THAT IS MINE!” — IF THE FATHER DIED, THE SON MAY INHERIT HIM. BUT IF HE HAD SPECIFIED THAT THE VOW APPLIED IN LIFE AND AFTER DEATH, IF THE FATHER DIED, THE SON MAY NOT INHERIT HIM. AND HE MUST RETURN WHAT HE HAS OF THE FATHER’S TO HIS SONS OR TO HIS BROTHERS. AND IF HE DOES NOT HAVE THAT TO REPAY, HE TAKES OUT A LOAN, AND THE CREDITORS COME ALONG AND COLLECT WHAT IS OWING.**

1. I:1: Where there is no other heir to the estate, said R. Joseph, “Then he must pay what is owing for the theft even to the charity box.”

2. I:2: Rabina raised this question: “If one robbed from a woman proselyte, what is the law? Do we say that Scripture said, ‘man’ (Num. 5: 8) — not woman, or perhaps Scripture just used its common expression but did not mean to exclude a woman from the rule?”

3. I:3: Tannaite complement: “The Lord’s, even the priest’s” (Num. 5: 8). Where this stranger has no heir, his property is assigned to the priests. In context that means to the officiating priests of the Temple. Accordingly, the Lord has acquired it what has been stolen from the stranger and assigned it to the priestly troop that is then officiating.

4. I:4: Tannaite complement: If the robber was a priest, how do we know that he may not say, “Since the stolen goods revert to the priesthood, and lo, it is in my possession already, so I’ll keep it. And that is, after all, a matter of sheer logic: If when it belongs to others, this one has a claim on it, if it is in his own domain, is that not a matter a fortiori?!

a. I:5: Tannaite complement: How on the basis of Scripture do we know that a priest may come to present his offerings at any occasion and at any time that he wants?

5. I:6: Said R. Sheshet, “If one of the priests in the officiating division was unclean, he may hand over the communal-offering to any priest he wants, and the fee for the service and the hide are assigned to the members of the division in service at that time.

## **LXVIII. Mishnah-Tractate Baba Qamma 9:11-12**

**A. HE WHO STEALS FROM A PROSELYTE AND TAKES A FALSE OATH TO HIM, AND THEN THE PROSELYTE DIES — LO, THIS PERSON PAYS THE PRINCIPAL AND ADDED FIFTH TO THE PRIESTS, AND THE GUILT-OFFERING TO THE ALTAR, SINCE IT IS SAID, “BUT IF THE MAN HAS NO KINSMAN TO WHOM RESTITUTION MAY BE MADE FOR THE GUILT, THE RESTITUTION FOR GUILT WHICH IS MADE UNTO THE LORD SHALL BE THE PRIEST’S, BESIDE THE RAM OF ATONEMENT WHEREBY ATONEMENT SHALL BE MADE FOR HIM” (NUM. 5: 8). IF THE THIEF WAS BRINGING UP THE MONEY AND THE GUILT-OFFERING, AND HE DIED, THE MONEY IS TO BE GIVEN TO HIS THE THIEF’S SONS. AND THE GUILT-OFFERING IS SET OUT TO PASTURE UNTIL IT**

**SUFFERS A DISFIGURING BLEMISH, THEN IT IS SOLD, AND THE MONEY RECEIVED FOR IT FALLS TO THE CHEST FOR THE PURCHASE OF A FREEWILL-OFFERING.**

**IF HE WHO HAD STOLEN FROM A PROSELYTE HAD PAID OVER THE MONEY TO THE MEN OF THE PRIESTLY WATCH ON DUTY, AND THEN THE THIEF DIED, THE HEIRS CANNOT RETRIEVE THE FUNDS FROM THEIR POSSESSION, SINCE IT IS SAID, “WHATSOEVER ANY MAN GIVES TO THE PRIEST SHALL BE HIS” (NUM. 5: 10).**

1. I:1: Tannaite complement: “But if the man has no kinsman to whom restitution may be made for the guilt, the restitution for guilt which is made unto the Lord shall be the priest’s, beside the ram of atonement whereby atonement shall be made for him” (Num. 5: 8). “The guilt-offering” — this refers to the principal; “...the restitution...” — this refers to the Added Fifth.

2. I:2: Tannaite complement: “But if the man has no kinsman to whom restitution may be made for the guilt, the restitution for guilt which is made unto the Lord shall be the priest’s, beside the ram of atonement whereby atonement shall be made for him” (Num. 5: 8). “The guilt-offering” — this refers to the principal; “...the restitution...” — this refers to the Added Fifth.

3. I:3: “But if the man has no kinsman to whom restitution may be made for the guilt, the restitution for guilt which is made unto the Lord shall be the priest’s, beside the ram of atonement whereby atonement shall be made for him” (Num. 5: 8). “The guilt-offering” — this refers to the principal; “...the restitution...” — this refers to the Added Fifth.

a. I:4: Gloss of foregoing: Said Raba, “What one has stolen from a proselyte which he has returned by night — one has not carried out his obligation, nor if he returned it by halves has he carried out his obligation, since the All-Merciful has classified it as a guilt-offering.”

## **B. THREE THEORETICAL QUESTIONS RAISED BY RABA**

1. I:5: Raba raised this question: “If the recompense were not sufficient for the division of Jehoiarib, but it was sufficient for the division of Jedaiah, what is the law? The former division was numerous, the latter not.”

2. I:6: And Raba asked, “As to the priests, what is the law on their setting one payment for a robbery committed against a proselyte against another one giving a division of the priests more of one, less of another? Do we say that, since Scripture has classified the restitution as a guilt-offering, then, just as in the case of a guilt-offering, one such offering cannot be set against another but each must be passed out among all the priests of the officiating division, so also with respect for the restitution of what has been stolen from a proselyte, one such act of restitution cannot be set against another but each must be divided among all the priests of the officiating division? Or perhaps, being merely a monetary payment and not an actual guilt-offering, that consideration is null?”

3. I:7: Raba asked this question: “In relationship to the payment for restitution of funds stolen from a proselyte, are the priests classified as heirs or as recipients of gifts?”

**C. IF HE GAVE THE MONEY TO THE PRIESTLY WATCH OF JEHOIARIB WHICH IS PRIOR, AND THE GUILT-OFFERING TO THE PRIESTLY WATCH OF JEDAIAH WHICH IS LATER, HE HAS CARRIED OUT HIS OBLIGATION.**

1. II:1: Said Abbaye, “That rule yields the inference that paying over the money forms an intrinsic part of the process of atonement. For if it constitutes no share in the atonement, I should say that it ought to be handed over to the heirs, on the ground that he would never have parted with the money on the understanding that he would lose the money and yet gain no atonement.”

**D. IF HE GAVE THE GUILT-OFFERING TO THE PRIESTLY WATCH OF JEHOIARIB AND THE MONEY TO THE PRIESTLY WATCH OF JEDAIAH, IF THE GUILT-OFFERING IS YET AVAILABLE, THE FAMILY OF JEDAIAH SHOULD OFFER IT UP. AND IF NOT, HE SHOULD GO AND BRING ANOTHER GUILT-OFFERING.**

1. III:1: “If he gave the guilt-offering to the priestly watch of Jehoiarib and the money to the priestly watch of Jedaiah, he should restore the money to where the guilt-offering is,” the words of R. Judah. And sages say, “He should bring the guilt-offering to where the money is” (T. **B.Q. 10:18E-G**).

a. III:2: Gloss of foregoing.

b. III:3: Tannaite complement: Said Rabbi, “In accord with the position of R. Judah, if the members of the division of Jehoiarib went ahead and offered the guilt-offering, the penitent should go and bring another guilt-offering, and it should be offered up by the division of Jedaiah, and the latter has acquired title to what they have in hand.”

c. III:4: Tannaite complement: Said Rabbi, “In accord with the position of R. Judah, if the animal designated as a guilt-offering is still available, the animal should be restored to where the money is.”

d. III:5: Said Rabbi, “In accord with the position of R. Judah, if the animal designated as a guilt-offering is still available, the money should be restored to where the animal is.”

**E. FOR HE WHO BRINGS BACK WHAT HE HAD STOLEN BEFORE HE BROUGHT HIS GUILT-OFFERING HAS FULFILLED HIS OBLIGATION. BUT IF HE BROUGHT HIS GUILT-OFFERING BEFORE HE BROUGHT BACK WHAT HE HAD STOLEN, HE HAS NOT FULFILLED HIS OBLIGATION;**

1. IV:1: What is the scriptural foundation for this ruling?

**F. IF HE HANDED OVER THE PRINCIPAL BUT DID NOT HAND OVER THE ADDED FIFTH, THE ADDED FIFTH DOES NOT STAND IN THE WAY OF OFFERING THE GUILT-OFFERING AND SO COMPLETING HIS OBLIGATION.**

1. V:1: Tannaite complement: How on the basis of Scripture do we know that if one has brought what he has to give back because of sacrilege but not his guilt-offering, or his guilt-offering but not the sacrilege, he has not carried out his obligation? Scripture states, “With the ram of the trespass-offering and it shall be forgiven him” (Num. 28:23).

## **LXIX. Mishnah-Tractate Baba Qamma 10:1A-C**

### **A. HE WHO STEALS FOOD AND FEEDS WHAT HE STOLE TO HIS CHILDREN:**

1. I:1: Said R. Hisda, “If one stole something such as an animal, and, before the owner had despaired of getting it back at which point the thief acquires title to the object, someone else came along and ate up what he stole, the owner has the choice of collecting the payment from the one or the other. How come? The reason is that, for so long as the owner did not despair of getting the thing back, the stolen object is still in the title of the original owner.”

### **B. ...OR LEFT IT TO THEM — THEY ARE EXEMPT FROM MAKING RESTITUTION:**

1. II:1: Said R. Ammi bar Hama, “That is to say, the domain of the heir is equivalent to the domain of the purchaser and if after despairing of getting the object back, at which point the object was subject to the robber’s title, the robber died, the article would remain with the heirs, just as would an article that was purchased.” And Raba said, “The domain of the heir is not equivalent to the domain of the purchaser, for with what sort of a case do we deal? It is one in which the food was eaten after the father died.”

a. II:2: Gloss of foregoing.

b. II:3: Gloss of foregoing.

I. II:4: Gloss of foregoing.

2. II:5: Tannaite complement: He who steals something and feeds it to his children — they are exempt from having to pay restitution. If he left it before them as an inheritance, the adult heirs are obligated to pay restitution. The minors are exempt from having to pay restitution. If the adults say, “We are not familiar with the dealings of our father with you,” they would also be exempt from having to pay restitution (T. **B.Q. 10:21D-E**).

a. II:6: Gloss of foregoing.

3. II:7: Tannaite complement: He who steals something and feeds it to his children — the latter are exempt from having to pay restitution. If he left it before them as an inheritance and they consumed it, whether adult or minor, they are liable.

a. II:8: Gloss of foregoing.

4. II:9: Said Raba, “If he left before them a borrowed cow, they may make use of it through the entire term for which it has been borrowed. If it died, they are not liable on account of any accidents that happen to it. If they supposed that it was the property of their father and they slaughtered or sold it, they have to pay for the value of the meat at the lowest possible price. If their father left them property that would serve as security for example, real estate, they are liable to pay restitution for it.”

5. II:10: Tannaite complement: “He shall restore the misappropriated object which he violently took away” (Lev. 5:23) — what is the sense of “which he violently took away”? If it is like what he violently took away, he shall restore it; if not, then it is the value that he must pay. In this connection sages have said: “He who

steals something and feeds it to his children — the latter are exempt from having to pay restitution. If he left it before them as an inheritance and they consumed it, whether adult or minor, they are liable.”

**a.** II:11: Gloss of foregoing.

**I.** II:12: Gloss of foregoing.

**C. COMPOSITE ON ACCEPTING TESTIMONY EVEN THOUGH THE OTHER PARTY IS NOT PRESENT.**

**A.** II:12: Said R. Ashi said R. Shabbetai, “They accept testimony even though the other party is not present.”

**B.** II:13: Said R. Judah said Samuel, “They accept testimony even though the other party is not present.”

**C.** II:14: Said Rab, “They validate a writ not in the presence of the other party.” And R. Yohanan said, “They do not validate a writ not in the presence of the other party.”

**1.** II:15: But if he said, “Give me time to bring witnesses and I will invalidate the document,” we do give him the time he needs. If he then comes along, he comes along and well and good. If not, we wait on him for a Monday and Thursday and a Monday. If he does not appear, we write out a warrant against him to take effect in ninety days. For the first thirty days, we do not place a lien on his property, in the theory that he is busy trying to borrow money. In the next thirty we do not do so, in the theory that he cannot raise the loan so is selling the property. In the final thirty we do not take possession of the property, in the theory that the purchaser who might have bought the property is trying to raise the money to pay him off. If after all this, he does not appear, then we write an order to trace the property and an authorization to seize it. All of this happens only if he pleads, “I will come and contest the case.” But if he said, “I will not appear at all,” then right off the bat we write an order to trace the property and an authorization to seize it.

**D. BUT IF IT REMAINED SOMETHING WHICH COULD SERVE AS SECURITY FOR EXAMPLE, SUBJECT TO A MORTGAGE, THAT IS, REAL ESTATE, THEY ARE LIABLE TO MAKE RESTITUTION:**

**1.** III:1: “The meaning is not literally, something which could serve as security for example, subject to a mortgage, that is, real estate, but rather, even a cow that could be used for ploughing, or an ass that could be used for driving, they are liable to make restitution, on account of the honor that is owing to their father.”

## **LXX. Mishnah-Tractate Baba Qamma 10:1D-F**

### **A. THEY DO NOT CHANGE MONEY...:**

1. I:1: But when he gives him a tax collector a denar, he may return change to him.

### **B. ...FROM THE CHEST OF THE EXCISE COLLECTORS OR FROM THE FUND OF THE TAX FARMERS.**

**AND THEY DO NOT TAKE FROM THEM CONTRIBUTIONS TO CHARITY. BUT ONE MAY TAKE FROM THEM CONTRIBUTIONS FOR CHARITY WHEN THE FUNDS ARE FROM THE COLLECTOR'S OWN HOME OR FROM THE MARKETPLACE.**

1. II:1: But did not Samuel say, "The law of the state is valid law"? Said R. Hanina bar Kahana said Samuel, "This rule speaks of a tax collector who is subject to no limits but grabs everything he can get."

2. II:2: R. Ashi said, "It refers to a Canaanite tax collector, for it has been taught on Tannaite authority: 'An Israelite and a Canaanite tax collector who come to court — if you can find in favor of the Israelite according to the laws of Israel, find in his favor, and say to the other, 'That is our law.' If you can find in favor of the Israelite through the laws of the Canaanites, find in his favor, and say to him, 'That is in accord with your law.' But if not, then do whatever you can anyhow,'" the words of R. Ishmael. R. Aqiba says, "Do not use any subterfuge whatever, on account of the sanctification of the Name of Heaven."

### **C. THE LEGAL STATUS OF GENTILES AND THEIR PROPERTY**

1. II:3: Said R. Bibi bar Giddal said R. Simeon the Pious, "It is forbidden to steal from a Canaanite; it is permitted to keep a lost object that belongs to him."

2. II:4: R. Phineas b. Yair says, "In a situation in which there is the possibility of a profanation of the Name of Heaven, then even as to a lost object belonging to a gentile, it is forbidden to keep the object, but it must be returned."

3. II:5: Said Samuel, "But as to a mistake that he may have made, it is permitted to benefit from that."

a. II:6: Gloss of foregoing.

4. II:7: Said Raba, "He who gets caught at the barn has to pay the government's share of the grain in the field. He can then force the owners of the other grain to share proportionately in the payment he had to make for all of them."

5. II:8: And said Raba, "One townsman may be pledged for another townsman, so long as what is at issue are arrears for the land tax or the head tax of the current year, but not if they are in arrears for the year that has passed, for, since for the prior year the government has accepted the take of that town, the matter will be allowed to pass."

6. II:9: And said Raba, "As to those who manure fields for pay and live inside the Sabbath limits, it is forbidden to buy any animal from them. How come? An animal from the town might have been confused with their animals and it may be stolen property. But if they live outside of the Sabbath limits, it is permitted to buy animals from them."



7. II:10: Raba proclaimed — others say, R. Huna — “Those who go up to the Land of Israel, those who come down from Babylonia, know that if an Israelite knows evidence for the benefit of a gentile, and if without being subpoenaed, goes into a gentile court and testifies against another Israelite in such a case, we shall excommunicate him. How come? Because they collect money even on the evidence of a single witness.

a. II:11: Gloss of foregoing.

8. II:12: Said R. Ashi, “An Israelite who sells land to a gentile which borders on land of another Israelite shall we excommunicate.”

## **LXXI. Mishnah-Tractate Baba Qamma 10:2**

**A. IF EXCISE COLLECTORS TOOK ONE’S ASS AND GAVE HIM ANOTHER ASS, IF THUGS TOOK HIS GARMENT AND GAVE HIM ANOTHER GARMENT,**

1. I:1: A Tannaite statement: If he took something from the customs collectors, he has to give it back to the original owner.

**B. LO, THESE ARE HIS, BECAUSE THE ORIGINAL OWNERS HAVE GIVEN UP HOPE OF GETTING THEM BACK.**

**HE WHO SAVES SOMETHING FROM A RIVER, FROM A RAID, OR FROM THUGS, IF THE OWNER HAS GIVEN UP HOPE OF GETTING THEM BACK, LO, THESE BELONG TO HIM.**

1. II:1: Said R. Assi, “This rule pertains only to a case in which the robber was a gentile, but if he was an Israelite, that is not the case. The owner will imagine, “Tomorrow I’ll take him to court” and hence he does not despair of getting the things back.

2. II:2: We have learned in the Mishnah: The hides of the householders — intention makes them susceptible to uncleanness. And of the tanner — intention does not make them susceptible to uncleanness. Of the one stolen by thief — intention makes them susceptible to uncleanness. And of the stolen by robber — intention does not make them susceptible to uncleanness. R. Simeon says, “Matters are reversed: Hides of the robber — intention makes them susceptible to uncleanness. And of the thief — intention does not make them susceptible to uncleanness” (M. **Kel. 26: 8**). Said Ulla, “The dispute concerns a situation in which there is no evidence one way or the other, but if it is known that the owner has despaired of regaining the object, that effects a transfer of title.”

a. II:3: Secondary expansion of the foregoing: we have learned in the Mishnah: If excise collectors took one’s ass and gave him another ass, if thugs took his garment and gave him another garment, lo, these are his, because the original owners have given up hope of getting them back. Now whose view is represented here? It cannot be rabbis, since the ruling on the robber — the customs collector who acts openly — is a problem for them, for in their view there is no renunciation in the case of a robber, and it cannot be R. Simeon, since, from his view, the thief would represent a problem. The brigand is a problem, for according to Simeon there is no renunciation in the case of a thief. But from the perspective of Ulla, who

has said that all parties concur that if it is known that the owner has despaired of regaining the object, that effects a transfer of title, here, too, we deal with a case in which it is known that the owner has despaired of regaining the object, and all parties concur on this point. But from Rabbah's view, which maintains that the dispute also concerns a situation in which it is known that the owner has despaired of regaining the object, who can be represented in this rule? It is not Rabbah nor R. Simeon!

I. II:4: Expansion of foregoing.

A. II:5: Gloss of foregoing.

**C. AND SO A SWARM OF BEES: IF THE OWNER HAD GIVEN UP HOPE OF GETTING IT BACK, LO, THIS BELONGS TO HIM.**

1. III:1: What is the meaning of the language, And so a swarm of bees?

**D. SAID R. YOHANAN B. BEROQAH, "A WOMAN OR MINOR IS BELIEVED TO TESTIFY, 'FROM THIS PLACE DID THIS SWARM GO FORTH.'" AND ONE MAY WALK THROUGH THE FIELD OF HIS FELLOW TO GET BACK HIS SWARM OF BEES. BUT IF HE DID DAMAGE, HE PAYS COMPENSATION FOR THE DAMAGE WHICH HE DID. "**

1. IV:1: So can a woman or a minor give evidence?

a. IV:2: Said R. Ashi, "Speaking without guile validates only a woman's evidence alone that a man has died, so that the widow is free to remarry."

**E. BUT HE MAY NOT CUT OFF A BRANCH OF HIS TREE TO RETRIEVE THE SWARM, EVEN ON CONDITION THAT HE PAY DAMAGES FOR IT. R. ISHMAEL, SON OF R. YOHANAN B. BEROQAH, SAYS, "ALSO, HE CUTS DOWN THE BRANCH AND PAYS DAMAGES FOR IT.**

1. V:1: Tannaite complement: R. Ishmael b. R. Yohanan b. Beroqa says, "It is a stipulation established by the court that a person may go down into a fellow's field and cut the bough of a tree on which his bees have settled so as to rescue the swarm of his bees, paying the value of the bough; it is likewise a stipulation of the court that the owner of wine may pour out his wine from the flask so as to save the honey of his fellow and get back the value of his wine out of the honey he has saved; it is a stipulation of the court that the owner of a bundle of wood may remove the wood from his ass and load on the ass his fellow's flax, and get back the value of the wood out of the flax of his fellow, for it was on that very stipulation that Joshua caused the Israelites to inherit the land."

## **LXXII. Mishnah-Tractate Baba Qamma 10:3**

**A. HE WHO RECOGNIZES HIS UTENSILS OR HIS BOOKS IN SOMEONE ELSE'S POSSESSION, AND A REPORT OF THEFT HAD GONE FORTH IN THE TOWN — THE PURCHASER TAKES AN OATH TO HIM SPECIFYING HOW MUCH HE HAD PAID AND TAKES THE PRICE IN COMPENSATION FROM THE ORIGINAL OWNER, AND GIVES BACK THE PROPERTY. AND IF NOT, THE ORIGINAL OWNER HAS NOT GOT THE POWER TO GET HIS PROPERTY BACK. FOR I SAY, "THE ORIGINAL OWNER SOLD THEM TO SOMEONE ELSE, AND THIS ONE LAWFULLY BOUGHT THEM FROM THAT OTHER PERSON."**

1. I:1: But even if a report of theft had gone forth in the town, so what? Why not take account of the possibility that the plaintiff himself is the one who sold the goods and that he was the one who circulated the rumor!

2. I:2: Said Raba, “The rule applies only in a case in which the householder was one who would ordinarily sell his possessions, but if it was a householder who did not ordinarily sell his possessions, it is not necessary to follow up on the matter.”

3. I:3: If the thief stole and then sold the goods, and then the thief was caught — Rab in the name of R. Hiyya said, “The original owner would have to sue the first party the thief.” R. Yohanan in the name of R. Yannai said, “The case should be brought against the second party who had purchased the stolen goods.”

4. I:4: If someone stole and paid off a debt with the stolen goods, or if he stole and paid with the stolen goods for goods he had received on credit, the ordinance of the market does not apply, for we say to the purchaser, “Whatever credit you gave him was not with repayment in stolen goods in mind.” If he gave them in pledge for a loan of a hundred, and they were worth two hundred, then the ordinance of the market would apply. But if they were worth precisely what was lent on them as a pledge — Amemar said, “The ordinance of the market would not apply.” Mar Zutra said, “The ordinance of the market would apply.”

a. I:5: Illustrative case.

b. I:6: As above.

### **LXXIII. Mishnah-Tractate Baba Qamma 10:4**

**A. THIS ONE IS COMING ALONG WITH HIS JAR OF WINE, AND THAT ONE IS COMING ALONG WITH HIS JUG OF HONEY — THE JUG OF HONEY CRACKED — AND THIS ONE POURED OUT HIS WINE AND SAVED THE HONEY IN HIS JAR — HE HAS A CLAIM ONLY FOR HIS WAGES:**

1. I:1: Why should this be the rule? Since the owner of the honey must have despaired in the interim of saving his honey, why cannot the one who saved the honey say, “I acquired title to the honey, since it became ownerless by reason of your despair”?

a. I:2: Now with regard to a case in which the barrel broke, the wine that is left is still suitable for use, but where the barrel became uncovered, what good is it anyhow?

l. I:3: Gloss of foregoing.

A. I:4: Gloss of foregoing.

**B. AND IF HE SAID, “I’LL SAVE YOURS IF YOU PAY ME BACK FOR MINE,” THE OWNER OF THE HONEY IS LIABLE TO PAY HIM BACK.**

1. II:1: Why should this be the case? Why cannot the other say to him later on, “That was just a come-on I was only joking with you to get you to help”? Has it not been taught on Tannaite authority: Lo, if someone was escaping from prison and there was a ford before him, and he said to the boatman, “Take this denar as your fee and carry me across” — the boatman may claim only his usual fee and not

so huge a payment as was offered? Therefore he could later on claim, “That was just a come-on I was only joking with you to get you to help.” Here, too, let him just say, “That was just a come-on”!

**C. IF THE RIVER SWEEPED AWAY HIS ASS AND THE ASS OF HIS FELLOW, HIS BEING WORTH A MANEH AND HIS FELLOW’S WORTH TWO HUNDRED ZUZ TWICE AS MUCH, IF HE THEN LEFT HIS OWN AND SAVED THAT OF HIS FELLOW, HE HAS A CLAIM ONLY FOR HIS WAGES. BUT IF HE SAID, “I’LL SAVE YOURS, IF YOU PAY ME BACK FOR MINE,” THE OWNER OF THE BETTER ASS IS LIABLE TO PAY HIM BACK.**

1. III:1: It was necessary to make explicit both examples. For had we been given only the former wine, honey, we might have supposed that it was only in that case, where an articulated stipulation was made, that payment would cover the whole value of the wine, because it was by a deliberate action on his own part that the owner sustained the loss spilling the wine. But here, where the loss comes about on its own, one might have thought that, under all circumstances, the helper would have as a claim no more than the value of his services. And had we been given only the second of the two clauses, we might have supposed that here in particular where no stipulation was articulated that he would get no more than the value of his service, since the loss came about on its own, but in the other case, where the loss came about through his own actions, I might have thought that, even absent a stipulation, payment would have to cover the whole value of the honey. Therefore both cases were required.

2. III:2: R. Kahana raised this question of Rab: “If the owner of the miserable ass got down to save the other’s ass with the condition of being paid for his own, and it turned out that his ass took care of itself and got out, what is the law?”

a. III:3: Illustrative case.

i. III:4: Gloss of foregoing.

3. III:5: Rab raised this question of Rabbi: “If the owner of the miserable ass got down to save the other’s ass with the condition of being paid for his own, and

4. III:6: Tannaite complement: A caravan that was passing through the wilderness, and a band of thugs fell on it and seized it for ransom — they make a reckoning in accord with the property loss and not in accord with the number of people. But if they sent out a pathfinder before them, they also make a reckoning of the number of people. But in any event they do not vary from the accepted practice governing those who travel in caravans (T. **B.M. 7:13**). The ass drivers have the right to declare, “Whoever loses an ass will be given another ass.” But if the loss is caused by negligence, they would not have to meet that stipulation, and if it was not on account of negligence, he is given another ass. And if he said, “Give me the money and I’ll watch out for it as a paid bailee,” they do not listen to him (T. **B.M. 11:25B-G**).

5. III:7: Tannaite complement: A boat that was coming along in the sea and got hit by a storm, so they had to toss some cargo overboard — they make a reckoning in accord with the property loss and not in accord with the number of people. But in any event they do not vary from the accepted practice of sailors (T. **B.M. 7:14A-C**).

6. III:8: Tannaite complement: A caravan that was traveling along in the wilderness, and a troop of thugs attacked it, and one of them went and saved the common property with his own — what he has saved he has saved for the common benefit of all participants. But if he had made a stipulation with them in a court, then what he has saved he has saved to his own account (T. **B.M. 8:25A-E**).

#### **LXXIV. Mishnah-Tractate Baba Qamma 10:5A-F**

**A. HE WHO STOLE A FIELD FROM HIS FELLOW, AND BANDITS SEIZED IT FROM HIM — IF IT IS A BLOW FROM WHICH THE WHOLE DISTRICT SUFFERED, HE MAY SAY TO HIM, “LO, THERE IS YOURS BEFORE YOU.”**

1. I:1: Said R. Nahman bar Isaac, “If someone repeats as the Tannaite formulation, ‘bandits,’ he does not err, and if someone repeats, ‘thieves,’ he does not err. If someone repeats as the Tannaite formulation, ‘bandits,’ he does not err: ‘In the siege and straitness using the former spelling’ (Deu. 28:57).

**B. BUT IF IT IS BECAUSE OF THE DEEDS OF THE THIEF IN PARTICULAR, HE IS LIABLE TO REPLACE IT FOR HIM WITH ANOTHER FIELD.**

1. II:1: How shall we understand this case? If only this field was grabbed and none of the others, would this rule not follow from the opening clause, If it is a blow from which the whole district suffered, he may say to him, “Lo, there is yours before you,” which implies that if that is not the case, the ruling would be the oppose.

- a. II:2: Illustrative case.
- b. II:3: Illustrative case.
- c. II:4: Illustrative case.
- d. II:5: Illustrative case.
- e. II:6: Illustrative case.
- f. II:7: Illustrative case.
- g. II:8: Illustrative case.
- h. II:9: Illustrative case.
- i. II:10: Illustrative case.

#### **LXXV. Mishnah-Tractate Baba Qamma 10:5G**

**A. IF A RIVER SWEEPED IT AWAY, HE MAY SAY TO HIM, “LO, THERE IS YOURS BEFORE YOU.”**

1. I:1: Tannaite complement: “He who steals a field from his fellow and the river swept it away is liable to provide him with a field,” the words of R. Eliezer. And sages say, “He may say to him, “‘Lo, there is yours before you.’”” What is at issue between the two opinions? R. Eliezer interprets scriptural evidences of inclusionary and exclusionary usages, and sages expound the law in accord with the principle of an encompassing principle and its associated particularization, in

which case the encompassing principle is limited by what is covered by the particularization thereof.

## **LXXVI. Mishnah-Tractate Baba Qamma 10:6**

**A. HE WHO (1) STOLE SOMETHING FROM HIS FELLOW, OR (2) BORROWED SOMETHING FROM HIM, OR (3) WITH WHOM THE LATTER DEPOSITED SOMETHING, IN A SETTLED AREA — MAY NOT RETURN IT TO HIM IN THE WILDERNESS.**

1. I:1: He who (1) stole something from his fellow, or (2) borrowed something from him, or (3) with whom the latter deposited something, in a settled area — may not return it to him in the wilderness: A contradictory rule is as follows: A loan may be repaid in any location, a lost article or a bailment may be restored only in a suitable place.

**B. IF IT WAS ON THE STIPULATION THAT HE WAS GOING TO GO FORTH TO THE WILDERNESS, HE MAY RETURN IT TO HIM IN THE WILDERNESS.**

1. II:1: So what else is new?

## **LXXVII. Mishnah-Tractate Baba Qamma 10:7**

**A. HE WHO SAYS TO HIS FELLOW, “I HAVE STOLEN FROM YOU...,” “YOU HAVE LENT SOMETHING TO ME...,” “YOU HAVE DEPOSITED SOMETHING WITH ME...,” “AND I DON’T KNOW WHETHER OR NOT I RETURNED THE OBJECT TO YOU” IS LIABLE TO PAY HIM RESTITUTION. BUT IF HE SAID TO HIM, “I DON’T KNOW WHETHER I STOLE SOMETHING FROM YOU,” “...WHETHER YOU LENT ME SOMETHING,” “...WHETHER YOU DEPOSITED SOMETHING WITH ME,” HE IS EXEMPT FROM PAYING RESTITUTION.**

1. I:1: If someone says to another, “You have a maneh of mine in your possession,” and the other says, “I don’t know” — R. Huna and R. Judah say, “He is liable.” R. Nahman and R. Yohanan say, “He is exempt from liability.”

## **LXXVIII. Mishnah-Tractate Baba Qamma 10:8**

**A. HE WHO STEALS A LAMB FROM A FLOCK AND UNBEKNOWNST TO THE OWNER RETURNED IT, AND IT DIED OR WAS STOLEN AGAIN, IS LIABLE TO MAKE IT UP. IF THE OWNER DID NOT KNOW EITHER THAT IT HAD BEEN STOLEN OR THAT IT HAD BEEN RETURNED, AND HE COUNTED UP THE FLOCK AND IT WAS COMPLETE, THEN THE THIEF IS EXEMPT.**

1. I:1: Said Rab, “If the householder knew that the beast had been stolen, then for the thief to be no longer liable he must also know about the restoration; if he did not know about the theft, then the act of counting the herd and finding it complete exempts the thief from further obligation to restore the stolen animal. The language, And he counted up the flock and it was complete, then the thief is exempt, refers only to the concluding clause.” And Samuel said, “Whether or not the householder knew of the theft, the counting of the herd would exempt the thief, and the language, And he counted up the flock and it was complete, then the thief is exempt, refers to the entire set of cases.” And R. Yohanan said, “If the

householder knew about the theft, his act of counting the herd exempts the thief, but if he had no knowledge of the theft, even counting is not required, and the language, And he counted up the flock and it was complete, then the thief is exempt, refers only to the first clause.” The first clause deals with a case in which the householder probably knew of the theft. R. Hisda said, “If the householder knew about the theft, counting exempts the thief, if not, he would have to be informed that the beast was brought back before the thief would be no longer liable for the fate of the beast, and the language, And he counted up the flock and it was complete, then the thief is exempt, refers only to the first clause.” The first clause deals with a case in which the householder probably knew of the theft.

a. I:2: Secondary amplification of the foregoing.

b. I:3: Secondary amplification of the foregoing.

c. I:4: Secondary amplification of the dispute of Rab and Samuel.

2. I:5: Said R. Zebid said Raba, “In a case in which a bailee has stolen a beast from the domain of the owner, all parties concur in the position of R. Hisda that he must invariably notify the householder, since animals wander. Here Ishmael and Aqiba differ on a case in which a bailee has stolen a bailment in his own domain and then put it back there. R. Aqiba holds that, at the moment he stole the bailment, his agency as bailee has come to an end and the bailment must be given back to the owner, and R. Ishmael maintains that the bailment did not come to an end and the unannounced restoration is valid.”

a. I:6: Gloss of foregoing. May we say that at issue between the following Tannaite authorities is whether or not the householder’s act of counting the herd exempts the thief from further liability?

## **LXXIX. Mishnah-Tractate Baba Qamma 10:9**

### **A. THEY DO NOT PURCHASE FROM HERDSMEN WOOL, MILK, OR KIDS,**

1. I:1: Tannaite complement: They do not purchase from shepherds either goats or shearings or bits of wool. But they purchase from them garments that have been sewn, for ones that have been sewn belong to them. And they purchase from them milk and cheese in the wilderness, but not in settled country. They may buy from them four or five sheep, four or five bundles of fleece, but not two sheep or two bundles of fleece. R. Judah says, “They purchase from them domesticated ones but not those that are wild.” The summary principle of the matter is this: Anything that a shepherd may steal without the householder’s knowing about it one may not purchase from a shepherd, and anything which it is impossible to steal without the householder’s knowing about it may be purchased from him (T. **B.Q. 11:9A-K**).

a. I:2: Gloss of foregoing.

b. I:3: Gloss of foregoing.

c. I:4: Gloss of foregoing.

### **B. OR FROM WATCHMEN OF AN ORCHARD WOOD OR FRUIT:**



1. II:1: Raba bought bundles of wood from a sharecropper. Said to him Abbaye, “But have we not learned in the Mishnah: ‘Or from watchmen of an orchard wood’?”

2. II:2: Tannaite complement: If a watchman over produce sits and sells produce with his basket before him, if he sits and weighs it out with his balance before him, it is permitted to purchase from them. But in any case in which they said to hide away what has been purchased, one may not make such a purchase (T. 11:8A-D).

3. II:3: As to a robber, at what point is it permitted to purchase something from him? Rab said, “When the greater part of what he has belongs to himself.” And Samuel said, “Even when the smaller part of what he has belongs to himself.”

4. II:4: As to a quisling — R. Huna and R. Judah — One said, “It is permitted to destroy his property through a deliberate action.” The other said, “It is forbidden to destroy his property through a deliberate action.”

#### C. COMPOSITE ON DEALING WITH THIEVES AND ROBBERS

1. II:5: Case: R. Hisda had a sharecropper who weighed and gave, weighed and took. He fired him and in his own regard cited the verse, “The wealth of the sinner is laid up for the just” (Pro. 13:22).

2. II:6: “For what is the hope of the hypocrite though he has gained when God takes away his soul” (Job. 27: 8): R. Huna and R. Hisda — One said, “The life of the robber.” The other said, “The life of the victim.”

3. II:7: Said R. Yohanan, “Anyone who steals so much as a penny from someone else is as though he takes away his life, as it is said, ‘So are the ways of everyone that is greedy of gain, that takes away the life of the owners thereof’ (Pro. 1:19), and also, ‘And he shall eat up your harvest and your bread, that your sons and daughters should eat’ (Jer. 5:17), and further, ‘For the violence against the children of Judah because they have shed innocent blood in their land’ (Joel 4:19), and ‘It is for Saul and for his bloody house because he slew the Gibeonites’ (2Sa. 21: 1).”

a. II:8: Gloss of Saul and the Gibeonites.

#### **D. BUT THEY PURCHASE CLOTHING OF WOOL FROM WOMEN IN JUDAH, FLAX CLOTHING IN GALILEE, AND CALVES IN SHARON. AND IN ALL CASES IN WHICH THE SELLERS SAY TO HIDE THEM AWAY, IT IS PROHIBITED TO MAKE SUCH A PURCHASE. THEY PURCHASE EGGS AND CHICKENS IN EVERY LOCALE.**

1. III:1: Tannaite complement: They purchase from housewives clothing of wool in Judea and of flax in Galilee, but not wine nor oil nor flour; nor do they make purchases from slaves or children. Abba Saul says, “A woman may sell things worth four or five denarii to make a hat for her head.

a. III:2: Case.

### **LXXX. Mishnah-Tractate Baba Qamma 10:10**

#### **A. SHREDS OF WOOL WHICH THE LAUNDRYMAN PULLS OUT — LO, THESE BELONG TO HIM. AND THOSE WHICH THE WOOL COMBER PULLS OUT — LO, THEY BELONG**



**TO THE HOUSEHOLDER. THE LAUNDRYMAN PULLS OUT THREE THREADS, AND THEY ARE HIS. BUT MORE THAN THIS — LO, THEY BELONG TO THE HOUSEHOLDER.**

1. I:1: Tannaite complement: They purchase flockings from laundrymen, because these belong to him. And he should not comb the garment along its warp but along its woof. He should not use the cloth for stretching and hackling more than three widths of a seam. And he should not place in the garment more than three fuller's hooks for stretching the garment, and the two upper threads — lo, these are his. He may straighten it out lengthwise but not breadth-wise. If he wants to straighten it out up to a handbreadth, he may do so (T. **B.Q. 11:13A-E**).

a. I:2: Gloss of foregoing.

a. I:3: Gloss of foregoing.

a. I:4: Gloss of foregoing.

a. I:5: Gloss of foregoing.

2. I:6: Tannaite complement: They do not buy flockings from the fuller, because these do not belong to him. But in a place in which they are usually his, lo, these are assumed to be his and may be purchased from him (T. **B.Q. 11:11C-E**).

3. I:7: Tannaite complement: They do not purchase from a weaver either thorns, remnants of wool, threads of the bobbin, or remnants of the coil. But they purchase from them a checkered web, spun wool, warp, or woof (T. **B.Q. 11:11A-B**).

4. I:8: Tannaite complement: They do not purchase from a dyer either test pieces, samples, or wool that has been pulled out, but they purchase from him dyed wool, spun wool, warp, or woof (T. **B.Q. 11:12A-B**).

5. I:9: Tannaite complement: He who gives skins to the tanner — the trimmings and hair torn off belongs to the householder, and what comes up by rinsing in water belongs to the tanner (T. **B.Q. 11:16A-C**).

**B. IF THEY WERE BLACK THREADS ON A WHITE SURFACE, HE TAKES ALL, AND THEY ARE HIS.**

1. II:1: Said R. Judah, “A washer is called a shrinker and he takes the shrinkage.”

**C. A TAILOR WHO LEFT OVER A THREAD SUFFICIENT FOR SEWING, OR A PIECE OF CLOTH THREE BY THREE FINGERBREADTHS — LO, THESE BELONG TO THE HOUSEHOLDER:**

1. III:1: How much is sufficient for sewing?

2. III:2: The question was raised: “Is the meaning of ‘the length of a needle and a bit beyond’ ‘as much again as the length of the needle,’ or is it merely ‘the length of the needle and a little more than that’?”

**D. WHAT THE CARPENTER TAKES OFF THE PLANE — LO, THESE ARE HIS. BUT WHAT HE TAKES OFF WITH A HATCHET BELONGS TO THE HOUSEHOLDER.**

1. IV:1: A contrary formulation of the rule is as follows: Whatever a carpenter removes with the adze or cuts with the saw belongs to the householder, and only

what comes out from under the borer or the chisel or is sawed with the saw belongs to the carpenter himself (T. **B.Q. 11:15**).

**E. AND IF HE WAS WORKING IN THE HOUSEHOLD OF THE HOUSEHOLDER, EVEN THE SAWDUST BELONGS TO THE HOUSEHOLDER.**

**1.** V:1: Tannaite complement: Stone cutters are not subject to the law of robbery if they keep the chips. Workers who trim shrubs or cut vines or weed plants or thin vegetables, if the householder cares about the waste, are subject to the law of robbery, but if not, then what they cut belongs to them (cf. T. **B.Q. 11:18A-J**).

## Points of Structure

### **1. DOES BABYLONIAN TALMUD-TRACTATE FOLLOW A COHERENT OUTLINE GOVERNED BY A CONSISTENT RULES?**

The compilers of Bavli-tractate Baba Qamma drew upon a variety of compositions and composites. These they organized around the exegesis and amplification of the Mishnah. While some compositions and even large-scale composites go in their own direction, all of them find their place in the Talmud only in relationship to the Mishnah, or to a secondary amplification of a principle that the Mishnah's law sets forth in terms of its own distinctive cases. The sizable composites that have nothing to do with the Mishnah invariably have much to do with a detail of a composition or composite that to begin with is inserted for the purpose of Mishnah-exegesis, as just now defined: if not the case, then the principle. Not only so, but a consistent rule of editing is that what pertains to the Mishnah comes first; no secondary expansion ever makes its statement prior to the amplification of the Mishnah, and the Mishnah's clauses or phrases are never treated as secondary in interest to matters of principle. When it comes to Mishnah-exegesis, if words or phrases require amplification, that ordinarily comes first; if scriptural foundations are to be uncovered, that exercise takes priority; only after one or the other of these two exegetical procedures has been accomplished will any other issues come to the fore.

### **2. WHAT ARE THE SALIENT TRAITS OF ITS STRUCTURE?**

As just now noted, first comes the Mishnah's statements and the Mishnah's principles, then will come secondary and subordinated amplification of those matters, and, finally, attention to items tangential in even that secondary and subordinated statement. That simple fact stands behind the character of this outline — and the very possibility of making an outline of the Bavli-tractate that consistently subordinates (in the formal outline before us, indents) what comes later in an exposition. That is, the later a composition, the more remote from the Mishnah's own statement — and the outline before us, with its systematic indentation, shows what is at issue. Readers will have noted, to be sure, that within a composition devoted to the Mishnah or to an exposition of an abstract principle or other analytical exercise will be indented items, which I have treated as insertions or secondary glosses within the primary structure at hand. But that does not change the clear picture of a composite that follows a simple and orderly structure.

### **3. WHAT IS THE RATIONALITY OF THE STRUCTURE?**

First comes what is primary, defined by what is in the Mishnah; then comes what is secondary, defined by the primary exposition; then comes additional materials of one or two kinds: [1] footnotes to the primary or secondary exposition; [2] topical composites formulated in their own terms, around their own point of interest, and inserted here as an appendix; these topical composites serve neither Mishnah-exegesis nor the secondary amplification or theoretical or analytical inquiry precipitated by Mishnah-exegesis. In that sense they mark the boundary between the structural rationality of our Talmud and the aspects of irrationality.

### **4. WHERE ARE THE POINTS OF IRRATIONALITY IN THE STRUCTURE?**

These are the relevant points of irrationality: I.B, II.D, V.B, XII.C, XXVII.C, D, XLI.I, XLV.B, C, L.C, D, LV.D, LVI.B, LXI.B, C, LXIII.D, LXVI.E, G, H, LXVIII.B,

LXIX.C, LXX.C, LXXIX.C. It is noteworthy that none of the composites formulated in terms other than those of Mishnah-commentary or amplification comes at the head of its Mishnah-unit; all of them are subordinated to sizable composites that clarify the sense or implications of the Mishnah's statements.

## Points of System

### **1. DOES THE BABYLONIAN TALMUD-TRACTATE SERVE ONLY AS A REPRESENTATION OF THE MISHNAH-TRACTATE OF THE SAME NAME?**

The answer is a qualified affirmative. Not every Mishnah-phrase or clause is supplied with a comment, but the omissions prove episodic and random. I cannot offer a theory that would permit us to predict which types of Mishnah-statements will be given talmuds, which not; or for that matter, which types of Tosefta-statements will carry their own talmudic amplification, and which not. If the data are other than random, I am unable to discern any pattern at all. So the structure of the tractate — Mishnah-commentary, then Mishnah-amplification (inclusive of amplification of the Mishnah's implicit principles) — prevails in detail.

### **2. HOW DO THE TOPICAL COMPOSITES FIT INTO THE TALMUD-TRACTATE AND WHAT DO THEY CONTRIBUTE THAT THE MISHNAH-TRACTATE OF THE SAME NAME WOULD LACK WITHOUT THEM?**

Here I distinguish between appendices that demand a position in a commentary on the Mishnah, even though the character of their contribution diverges from the narrowly exegetical or topical, and composites that stand wholly autonomous from the Mishnah and from the secondary amplification of its statements. The former are indented, the latter not. Further, I underline those appendices that contain no proposition at all or that address no common theme but take shape around some other than a topical program.

I.B: The scriptural foundations for the definition of the generative classifications of causes are spelled out in their own terms. The subsets are defined. While this composite is enormous, it also borders on Mishnah-exegesis and in no way can be identified as free-standing or as a mere appendix. I state very simply that the reading of our Mishnah-paragraph is inconceivable absent this magnificent composite.

II.D: This composite is formed around the citation-formula Ulla-Eleazar; there is no one topic that prevails, and I discern no order for the whole. Clearly, a principle of organizing composites involved collecting sayings around set-piece names. Nothing in the composite, other than the opening item, has any bearing upon the larger discussion, and the composite as a whole makes no impact upon its context, either upon our grasp of the principles at hand or even upon our perception of what may be introduced into the exposition of the topic itself.

V.B: The composite on Hezekiah and on Jeremiah set here in particular strikes me as random, out of relationship to the larger context. As in the foregoing, from within the rationality of the Mishnah and the Talmud, this item is to be classified as irrational — or as expressing a different rationality of coherence and cogency.

XII.C: A man has got the right to take the law into his own hands where there will be a loss — introduced here because our Mishnah-paragraph contributes to the analytical exercise.

XXVII.C. The appendix on gentiles and their carrying out religious duties is inserted because the Mishnah has referred to the property rights of gentiles in torts involving Israelites.

XXVII.D: The special case of the Samaritan follows suit.

XLI.I: The composite on hybridization responds as a secondary amplification to the exegesis of the Mishnah-passage at hand, which calls for a reference to that topic.

XLV.B: Composite on how punishment and misfortune come into the world: here we really do have an important insertion, since the cited verse refers to a misfortune that is caused by the action of a person, who therefore is responsible for what he has done. Then the issue of culpability and punishment, responsibility and unavoidable accident, is introduced and framed in the anticipated, theological framework. Misfortune takes place because there are wicked people in the world, and the righteous suffer first of all. That insertion, at just this point, reframes the issue of the Mishnah: “he who causes fire to break out...” then is responsible, and innocent people suffer for his action. That stands at the head of a large and important composite on the stated theme.

XLV.C: Once we have introduced the larger theological issue of culpability and penalty, we immediately raise the subject of that other fire — the fire that destroyed the Temple — and speak of responsibility for what has happened: It is my obligation to pay for the fire which I kindled. “I was the one who kindled a fire in Zion.”

I.C.: Composite on the Exegetical Rules of Amplification and Extension as against Those of Generalization, Particularization, and Generalization. This expands on the foundations in Scripture for the rule that is given in explanation of the Mishnah’s law’s origin.

L.D: How compensation is assessed: this introduces the more abstract issue, implicit in the Mishnah, of the affect upon title of a change in the character of an object: a change in the character of an object effects a transfer of title.

LV.D: The difference between the thief and the robber forms part of the exegetical premise of the Mishnah-amplification before us. It is not a free-standing intrusion and it does not effect a drastic revision in our reading of the larger context.

LVI.B: Rules on Correct Management of the Land of Israel: Here we have a large, free-standing composite, which has not been assembled for the amplification of our Mishnah-rule. But the theme of the Mishnah-rule — general principles governing utilization of the land, the protection of the environment, and the common rights accorded to all — that theme certainly encompasses the Mishnah’s own rule. So the composite is topical and inserting it here is quite rational: it is a standard thematic appendix.

LXI: B: Sayings attributed to Raba before Rabbah bar Mari. How on the basis of Scripture do we know...

LXI: C: Reverting to the Topic of Abimelech, Abram and Sarai.

LXIII.D: Composite of Rulings by Rabbah on Exemptions for Destroying Other Peoples' Property. This composite falls well within the thematic and even the logical framework of Mishnah-exegesis.

LXVI.E: Raba's Refinements of the Theory of Restitution: Theoretical Problems. As above.

LXVI.G: Composite of **R.** Hiyya bar Abba in the Name of **R.** Yohanan

LXVI.H: Theoretical problems, in line with LXVI.E.

LXVIII.B: Three Theoretical Questions Raised by Raba. These problems fall well within the framework of the Mishnah's topical program.

LXIX.C: Composite on Accepting Testimony even though the other party is not present. As above.

LXX.C: The Legal Status of Gentiles and their Property. As above.

LXXIX.C: Composite on Dealing with Thieves and Robbers. As above.

### **3. CAN WE STATE WHAT THE COMPILERS OF THIS DOCUMENT PROPOSE TO ACCOMPLISH IN PRODUCING THIS COMPLETE, ORGANIZED PIECE OF WRITING?**

Clearly, my definition of the asymmetrical composites proves too generous, since a sizable proportion of the ones identified here turn out to supplement the Mishnah's own topic or propositional principle. I have treated as falling outside of the Talmud's principles of rationality a sizable number of composites that pursue a legal problem quite coherent with that of the Mishnah-paragraph into the discussion of which they are inserted. These cohere fully with the rationality of Mishnah-commentary, broadly defined. On the other extreme come the non-propositional composites. Specifically, several of the composites are formed around quite asymptotic principles — a given authority's name.

That leaves only a few items introduce quite fresh dimensions to the consideration of the Mishnah's program. Specifically, XLV.B, C require attention. These two, rather lonely items introduce a theological dimension into the consideration of the Mishnah's program: why do these things happen at all? What, in God's plan, accommodates misfortunes. At the end, with Baba Batra, we shall see a more systematic study of that profound issue; and when the problem of evil — in the setting of torts — intervenes, it will be read in the dimensions of Israel's catastrophe in particular. But we must conclude that our Talmud-tractate has presented the Mishnah-tractate in a faithful way, clarifying, amplifying, explaining — but rarely contributing a fundamentally fresh perspective on the topic of the Mishnah.