

# Introduction to Tractate Baba Qamma

## Three tractates related to civil law

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

## Baba Qamma

*Baba Qamma* expounds the process by which the victim of assault or robbery is to be returned to his prior condition with the thug or thief not gaining thereby. In this instance the Scripture supplies much of the information that the law in *Baba Qamma* sets forth. Thus for the opening unit, there are four generative causes of damages: the ox (Exo. 21:35–36), a pit (Exo. 21:33–34), a crop-destroying animal (Exod. 22: 5), and fire (Exo. 22: 6). The law distinguishes between a beast that is deemed harmless and one that is an attested danger, with half-damages paid in the case of a goring by the former and full damages in the case of a goring by the latter, paid by selling an ox and dividing the proceeds (Exo. 21:35–36). The distinction between the rule covering payment of twofold restitution and the rule covering payment of fourfold or fivefold restitution derives from Exo. 22:1–3, 7. One compensates a person whom one has injured according to Exo. 21:18–19. Requiring compensation for what one has stolen is the point of Lev. 5:20–24. Thus by reference to the written Torah we may account for nearly the entire exegetical program expounded by sages in *Baba Qamma*.

- I. Damages done by chattels
  - A. The fundamental rules for assessing damages when the cause is one’s property, whether animate or not
  - B. Damages done by chattels in the public domain
  - C. Damages done by the ox
  - D. Damages done by the pit
  - E. Damages done by the crop-destroying beast
  - F. Damages done by fire
- II. Damages done by persons
  - A. Penalties for the theft of an ox or a sheep
  - B. Penalties for abuse of the land
  - C. Penalties for assault
  - D. Penalties for damages done by persons to property; restoring what is stolen

Given these facts, what did the sages contribute to the elucidation of these laws of Scripture? They clarified details and worked out the secondary and tertiary implications. For instance, they spelled out the full range of responsibility:

“In the case of anything of which I am liable to take care, I am deemed to render possible whatever damage it may do. [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.”

(Mishnah tractate *Baba Qamma* 1:2A–C).

They defined the specifics required for applying Scripture’s general rules, for example, “a tooth is deemed an attested danger in regard to eating what is suitable for eating.” (Mishnah tractate *Baba Qamma* 1:4C). In the manner of geometry, they showed how, within a given set of postulates, a range of problems was to be solved to yield a proof for a set of theorems. In other words, they did everything but the main thing, which in the case of other native categories is to make a powerful, consequential legal statement of their own. And yet despite this omission, the native category delineated by *Baba Qamma* (along with the other two *Baba* tractates) takes the primary position in the curriculum of the classical academies where the law is studied.