

6

Bavli Baba Qamma Chapter Six

Folios 55B-62B

6:1

- A. [55B] He who brings a flock into a fold and shut the gate before it as required,
- B. but [the flock] got out and did damage,
- C. is exempt.
- D. [If] he did not shut the gate before it as required,
- E. and [the flock] got out and did damage,
- F. he is liable.
- G. [If the fence] was broken down by night,
- H. or thugs broke it down,
- I. and [the flock] got out and did damage,
- J. he is exempt.
- K. [If] the thugs took [the flock] out, [and the flock did damage], the thugs are liable.

6:2

- A. [If] he left it in the sun,
- B. [or if] he handed it over to a deaf-mute, idiot, or minor,
- C. and [the flock] got out and did damage,
- D. he is liable.

- E. [If] he handed it over to a shepherd, the shepherd takes the place of the owner [as to liability].
- F. [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].
- G. [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.
- H. How does [the owner] pay compensation for the [actual] damage which [the flock] inflicted?
- I. 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.
- J. R. Simeon says, “[If the flock] consumed ripe produce, [the owner] pays compensation for ripe produce.
- K. “[If the flock destroyed] a seah [of ripe produce], [he must pay for] a seah; if two seahs, two seahs.”

I.1

- A. *Our rabbis have taught on Tannaite authority:*
- B. What is the definition of **as required**, and what is the definition of **not as required**?
- C. 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**.

I.2

A. *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, for we have learned in the Mishnah: [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.” R. Eliezer says, “The only appropriate ‘keeping in’ for such an animal [that is an attested danger] is the knife” [M. 4:9G-O].”*

B. *You may even say that it represents the view of R. Meir. The cases of damage done in the classification of tooth and foot are different from damage done by the horn, for the Torah imposed a lesser requirement of guardianship for them, in line with what R. Eleazar said, and some say it was taught in a Tannaite formulation: “There are four matters for which the Torah imposed a lesser requirement of guardianship, and these are they: pit, fire, tooth, and foot.*

C. “Pit: ‘And if a man shall open a pit or if a man shall dig a pit and not cover it’ (Exo. 21:33) — lo, if he had covered it, he would have been exempt.

D. “Fire: ‘He that kindled the fire shall surely make restitution’ (Exo. 22: 5) — *he is liable only if he acted in a culpable manner, by actually lighting the fire* [but not where he had taken precautions (Kirzner)].

E. “Tooth: ‘And he shall send forth’ (Exo. 22: 4) — *he is liable only if he acted in a culpable manner.*”

F. *So, too, it has been taught on Tannaite authority:*

G. “And he shall send forth” (Exo. 22: 4) — this refers to the foot, and so Scripture says, “That send forth the feet of the ox and the ass” (Isa. 32:20). “And it shall consume” (Exo. 22: 4) — this refers to the tooth, in line with this usage: “As the tooth consumes to entirety” (1Ki. 14:10).

H. *The operative consideration, then, is that he acted in a culpable manner, by actually lighting the fire. Lo, if he did not do so in some active way, he would not be liable.*

I.3

A. *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 (Kirzner)], in the case of tooth and foot, which are attested dangers to begin with?”*

B. *That is a decisive argument.*

I.4 A. *It has been taught on Tannaite authority:*

B. **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].**

I.5 A. The master has stated, **“He who breaks down a gate before the beast of his neighbor”:**

B. *How are we to imagine this case? If we say that it was a solid wall, then the man should be liable also to judgment by the laws of human beings. So it must be [56A] that he broke down a a shaky wall.*

I.6 A. The master has stated, **“He who bends his neighbor’s standing grain in front of a fire:”**

B. *Under what circumstances? If we say that the fire could have reached the grain in a normal wind, then how come he is not liable also to judgment by the laws of human beings? So it must be an extraordinary wind.*

C. *And R. Ashi said, “The rule has been stated to cover a case in which he covered [the stalks, so that in case of fire, people would not have known about them].”*

I.7 A. The master has stated, **“He who hires false witnesses to give testimony:”**

B. *Under what circumstances? If we say that this was for his own gain, then he has to pay him monetary compensation, so he is also liable under the laws of humanity. So it must be to the advantage of a third party.*

I.8 A. **He who has evidence to give in favor of someone else but does not testify:**

B. *Under what circumstances? If we say that there are two witnesses, then it is obvious. The matter is explicit in Scripture: “If he does not utter it, then he shall bear his iniquity” (Lev. 5: 1). So it must be a case in which there was a single witness.*

- I.9** A. *Now aren't there any other [examples of the classes of cases to which R. Joshua has made reference]? Lo, there is the following:* He who performs an act of labor with water set aside for the preparation of purification water or with a red cow that has been designated for the purification-offering is exempt under the laws of humanity but liable under the laws of heaven.
- B. *Lo, there is the following:* He who puts a deadly poison in front of his neighbor's beast is exempt under the laws of humanity but liable under the laws of heaven.
- C. *Lo, there is the following:* He who sends in the hand of a deaf-mute, idiot, or minor, a fire that results in damage is exempt under the laws of humanity but liable under the laws of heaven.
- D. *Lo, there is the following:* He who frightens his fellow to death is exempt under the laws of humanity but liable under the laws of heaven.
- E. *Lo, there is the following:* He whose pitcher broke in the public domain but does not pick up the potsherds, or whose camel fell down but does not raise it up —
- F. R. Meir declares the man liable for damage that may result.
- G. But sages say, "He is exempt under the laws of humanity but liable under the laws of heaven."
- H. *Well, all right, in fact there were a great many more examples of the same thing, but these four items had to be listed. For in these instances, what might you have imagined? While he is exempt under the laws of humanity, he also is not liable under the laws of heaven? So we are informed that he is liable. [Let me now explain:]*
- I. **He who breaks down a gate before the beast of his neighbor:** *What might you have supposed? Since the wall was going to come down anyhow, what has this man done? So he also should be exempt from judgment under the rules of heaven. So we are informed that that is not the case.*
- J. **He who bends his neighbor's standing grain in front of a fire:** *What might you have supposed? He*

could claim, “Who knew that an extraordinary wind was going to come along? So therefore he should not be exposed to judgment even by the law of heaven. So we are informed that that is not the case.

K. Well, then, from the perspective of R. Ashi, who has said, “The rule has been stated to cover a case in which he covered [the stalks, so that in case of fire, people would not have known about them],” what is to be said?

L. What might you have supposed? He could plead, “Well, my intention was to cover it up for you and protect your property,” so therefore he should not be exposed to judgment even by the law of heaven. So we are informed that that is not the case.

M. He who hires false witnesses to give testimony: *What might you have supposed? “As between the teachings of the master and the teachings of the disciple, whose teachings are to be obeyed,” so therefore he should not be exposed to judgment even by the law of heaven. [Kirzner: The witnesses should therefore be exclusively responsible, as they should not have followed the advice of a man in contradiction to the words of the law; the law of agency could on this account not apply.] So we are informed that that is not the case.*

N. And he who has evidence to give in favor of someone else but does not testify: *What might you have supposed? “Who can say that even if I had gone and testified for him, the other party would have admitted the claim and not sworn falsely anyhow?” So therefore he should not be exposed to judgment even by the law of heaven. So we are informed that that is not the case.*

II.1 A. [If the fence] was broken down by night, or thugs broke it down, and [the flock] got out and did damage, he is exempt.

- B. Said Rabbah, "That exemption is the case only if an animal had undermined the wall."
- C. *But if an animal had not undermined the wall, what would the rule be?*
- D. He would be liable.
- E. *Then under what conditions? If it was a solid wall, then even if the animal had not undermined the wall, why should he be liable? What was he supposed to have done. But then, if it were a dilapidated wall, if an animal had undermined it, why should he be exempt?*
- F. To begin with, he was negligent, then it was merely in the end that he was the victim of an accident!
- G. *Well, that poses no problems for the position of one who maintains that if, to begin with, he was negligent, then it was merely in the end that he was the victim of an accident, one is exempt. But from the perspective of him who holds that if, to begin with, he was negligent, then it was merely in the end that he was the victim of an accident, one is liable, what is to be said?*
- H. *Rather, the Mishnah's rule deals with a sturdy wall and addresses even a case in which animals did not undermine the wall. And when the statement of Rabbah was made, it referred to the concluding clause of the Mishnah, namely: [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. Said Rabbah, "And even if animals undermined the wall."*
- I. *There is no problem in a case in which animals did not undermine the wall, in which the entire sequence of events is a result of the man's own negligence. But even if animals had undermined the wall, the rule is the same. What might you have supposed? We have here a case in which the beginning of the incident was through negligence and the end through an accident. So we are informed that, as a matter of fact, the entire incident is a result of the man's own negligence. How come? The victim may well say to the man, "Well, you should have known perfectly well that, since you left the herd in the sun, it would use every way it could to get out of there."*

III.1 A. [If] the thugs took [the flock] out, [and the flock did damage], the thugs are liable:

- B. **[56B]** *That's obvious. As soon as they removed the flock, it stood in their domain for all purposes.*

- C. *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 (Kirzner)].*
- D. *That is in line with what Raba said R. Mattenah said Rab said, “He who sets up someone else’s beast before the grain of a third party is liable” [Kirzner: though the animal that did the damage is not his].*
- E. *Set up?! That’s obvious!*
- F. *That point is required, to deal with a case in which they merely stood in front of the sheep.*
- G. *Said Abbayye to R. Joseph, “You said to us that the ruling [of Rab pertained to a case in which the animal was] hit by a stick [and driven to the grain]. And the case of the robbers is likewise one in which the animal was] hit by a stick [and driven to the grain].”*

IV.1 A. [If] he handed it over to a shepherd, the shepherd takes the place of the owner [as to liability]:

- B. *Say: 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.** [Kirzner: 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.*

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

B. *Raba may say to you, “What is the sense of **If he handed it over to a shepherd?** If the shepherd handed it over to his apprentice, for it is routine for a shepherd to hand over the flock to his apprentice. [Then the shepherd is responsible, but, under ordinary conditions, that would not be the case.]”*

C. *There are those who say, since the language of the Mishnah is, **[If] he handed it over to a shepherd,** and it is not, he handed it over to someone else, one must draw the*

conclusion, what is the meaning of [If] he handed it over to a shepherd? It is, if the shepherd handed the flock over to his apprentice, as is quite common, that is the rule; but if he handed it over to someone else, that would not be the case.

D. Now would this not confirm the position of Raba? For said Raba, “A bailee who entrusted [the bailment] to another bailee is liable.”

E. Say: Not really, perhaps the formulation is in terms of common practice, but the same rule would apply if he handed it over to someone else.

IV.3 A. *It has been stated:*

B. One who is bailee for lost property —

C. Rabbah said, “He is in the category of an unpaid bailee.”

D. R. Joseph said, “He is in the category of a paid bailee.”

E. Rabbah said, “He is in the category of an unpaid bailee” — *What benefit can he possibly get from this transaction?*

F. R. Joseph said, “He is in the category of a paid bailee” — *For he does not have to give bread to the poor [while he is taking care of the lost article, for doing one religious duty, he is not obligated to do another], so he is in the category of a paid bailee.*

G. *There are those who explain matters in this way:*

H. R. Joseph said, “He is in the category of a paid bailee” — *since the All-Merciful has assigned him this task willy-nilly, so he is in the category of a paid bailee.*

I. *R. Joseph objected to Rabbah, [57A] “He may put the found object in a place where the owner will see it and is not liable to take any more care of it. If it was stolen or lost, however, he is then liable to make it up [T. B.Q. 2:23]. Now what is the sense of If it was stolen or lost? Is it not that it was stolen from his house or lost from his house?” [He would have to pay for the article, which proves he is in the class of a paid bailee.]*

J. *No, it is that it was stolen from the place to which he restored the object.*

K. *But, the rule is, he is not liable to take any more care of it. [Why should he have to make it up if it was stolen from such a place?]*

L. *He said to him, “Here with what sort of a case are we dealing? It is one in which he returned it in the afternoon. And the rule contains two distinct cases,*

and this is how it should read: If he returned it in the morning to a place in which the owner might see it, when it was common for him to come and go, so that he would see it, then he is not liable to take any more care of it. If he returned it in the afternoon to a place in which the owner might see it, when it was not common for him to come and go, so that he might not see it, and it was stolen or lost, however, he is then liable to make it up.

- M. *An objection was raised: **He is under all circumstances liable to replace it until he brings it into the owner's domain [T. B.Q. 2:23E].** What is the meaning of **under all circumstances**? Is it not even if it was stolen from his house or lost from his house, which proves he is in the class of a paid bailee?*
- N. *He said to him, "I concede to you in the case of animate creatures, since they will run around in the field, they require special care [Kirkner: so any loss amounts to carelessness]."*
- O. *Rabbah objected to R. Joseph, "'Return' (Deu. 22: 1) — I know only that that is to the house of the owner. How on the basis of Scripture do I know that the object may be returned to his garden or to his ruin? Scripture says, 'You shall return them,' meaning, anywhere. Now what is the meaning here of his garden or to his ruin? Should I say, to his garden that is subject to guardianship, or to his ruin that is subject to guardianship? Then these would be no different from his house. So it obviously has to refer to his garden that is not subject to guardianship or to his ruin that is not subject to guardianship. And that would prove that he is in the status of an unpaid guardian!"*
- P. *He said to him, "In point of fact, it is to his garden that is subject to guardianship or his ruin that is subject to guardianship. And as to the question that you have raised, Then these would be no different from his house, so we are informed that we do not require that an object be returned in such a way that the owner knows that it has been returned [and one does not have to notify the owner]. That is in line with the position of R. Eleazar, for said R. Eleazar, 'Every act of returning an object must be done with the knowledge and consent of the owner, except for returning a lost object, in which case the Torah has made provision for a large variety of appropriate acts of returning [including returning the beast to the guarded garden or ruin of the owner, even though the owner does not know that the beast has been left there].'"*
- Q. *Said Abbaye to R. Joseph, "Well, then, don't you concur that a person who is guarding a lost object is in the status of an unpaid bailee? But lo, said R.*

Hiyya bar Abba said R. Yohanan, 'He who pleads in the case of theft of an absent article that he had found would have to make a double payment [if he took an oath and it was false].' *Now if you maintain that he is in the status of a paid bailee, why would he have to pay double, since anyhow all he has to return is the principle?*" [Kirzner: For in his case the plea of an alleged theft would not be a defense but an admission of liability, and no oath would be taken to corroborate it. Moreover, the paid bailee could not be required to pay double even after it was found out that he had stolen the article.]

- R. [Joseph] said to [Abbaye], "*With what sort of case do we deal here? It is one in which he pleads that the object was stolen by an armed robber.*" [Kirzner: That is classed as a mere accident, and the bailee is not to blame and would not have to pay; this would be no admission of liability but a defense, and if a false oath was taken, he would have to pay double.]
- S. He said to him, "An armed robber is none other than a robber" [Kirzner: who would be responsible; the bailee would never have to pay double, as his plea was not an alleged theft but an alleged robbery.]
- T. *He said to him, "But I maintain that an armed robber, since he hides from people, is in the classification of a thief"* [Kirzner: and would therefore have to pay double when traced; the bailee, by submitting such a defense and substantiating it by a false oath, should similarly be liable to double payment as his defense was a plea of theft, although had it been true, he would not have to pay even the principal, because the case of an armed malefactor is one of accident].
- U. [Abbaye] objected: **[57B]** "[In context, what is at issue here is proof that an indeterminate liability in the case of a paid bailee may be derived by an argument a fortiori from the case of an unpaid bailee, who bears responsibility for that liability (Kirzner):] 'No, if you have said that the indeterminate liability pertains to an unpaid bailee, who is obligated to pay the double payment [under the circumstances just now worked out], would you say the same of a paid bailee who is not obligated to pay the double payment [under the circumstances just now worked out]?' [Abbaye continues:] Now, if you assume that an armed robber is classified as a thief, then there would be instances in which it would be the fact that a paid bailee would have to make a double payment, for example, when he claimed that the articles in his charge were stolen by an armed robber!"
- V. [Joseph] said to [Abbaye], "*This is the sense of the statement: 'No, if you have made that statement in connection with the unpaid bailee, who pays a*

double indemnity whatever he may plead, can you say the same in the case of a paid bailee, who would pay double indemnity only if he pled that the object was stolen by an armed robber?”

- W. [Citing yet another argument a fortiori involving an unpaid bailee,] *[Abbaye]* objected: ““If a man borrows anything of his neighbor and it is hurt or dies” — I know only the rule covering the case of injury or death. How do I know the rule covering its being stolen or lost? You may state the following argument a fortiori: If a paid bailee, who is exempt in the case of the animal’s injury or death, is liable if the animal is stolen or lost, one who borrows, who is liable in the case of the animal’s injury or death, surely should be liable in the case of the animal’s being stolen or lost. And this, as a matter of fact, is an argument a fortiori that bears no refuting!’ Now, if you take the view that an armed robber is classified as a thief, why could the argument not be refuted? For there is this refutation ready at hand: The distinctive trait of the paid bailee is that he would have to pay a double indemnity if he claimed that the object was stolen by an armed robber!”
- X. *[Joseph]* said to *[Abbaye]*, “The Tannaite authority behind this formulation takes the view that liability to repay the principal without taking an oath is more weighty than liability to pay double indemnity that is subject to the condition of taking an oath” *[Kirzner: as in the case of the paid bailee]*.

Y. *May we say that the following supports [Joseph’s position, that an armed robber is subject to the law that applies to an ordinary thief (Kirzner)]:* **He who rented a cow from his fellow and it was stolen, and the other said, “Lo, I shall pay you compensation for it rather than taking an oath,” and afterward the thief was found, the thief pays twofold restitution or fourfold or fivefold restitution to the one who rented the beast [T. B.M. 3:3A-D: deposit rather than rent, otherwise verbatim]?** *Reading the rule in accord with the position of R. Judah, who has said, “The one who rents out a cow is in the status of the one who is a paid bailee,” since it is stated as the Tannaite formulation, He who rented a cow from his fellow and it was stolen, and the other said, “Lo, I shall pay you compensation for it rather than taking an oath,” it must follow that, if he had wanted to, he could have freed himself by taking an oath. Now what are the circumstances in which this is the case? It would be a case in which he claimed that the beast was stolen by an armed robber, and yet it says, and afterward the thief was found, the thief pays*

twofold restitution or fourfold or fivefold restitution to the one who rented the beast! *Does it not follow, then, that an armed robber is classified as a thief?*

Z. Say: *What makes you suppose that the rule accords with the position of R. Judah, who has said, "The one who rents out a cow is in the status of the one who is a paid bailee," when it may just as well accord with the view of R. Meir, who has said, "The one who rents out a cow is in the status of an unpaid bailee" [Kirzner: who is exempt also where the article was stolen by an ordinary thief, not an armed robber, in which case the thief referred to did not necessarily mean an armed robber but an ordinary thief]?*

AA. *[To show that the ruling must accord with Judah's principle, not Meir's,] if you wish, I may say, "The passage involving the debate between Judah and Meir should be read in the way in which Rabbah bar Abbuha does, who presented it in this language: One who rents out an object — in accord with what category of bailee does he have to pay should the object be lost? R. Meir says, 'He is classed as a paid bailee.' R. Judah says, 'He is classed as an unpaid bailee.'"*

BB. *[Showing that a hirer may be subject to the law of a paid bailee and still the passage affords no support to Joseph (Kirzner),] R. Zira said, "Here with what sort of case do we deal? It is one in which the hirer pleads that the object was taken by an armed robber, but it turned out that it was not an armed robber but a mere thief." [Kirzner: An ordinary thief has to pay double, while if he had been armed, he would have not had to pay double.]*

V.1 A. [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]:

B. 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."

C. *One may therefore say that Rab is consisted with principles enunciated elsewhere, for said Rab, "It should not have eaten." [Kirzner: The owner here may plead, "It should not have eaten."]*

D. Say: *the cases are hardly comparable! While in that case, Rab perfectly well stated, "It should not have eaten," in a case in which the*

beast was injured by overeating, for the owner of the produce may say to the plaintiff, "I won't pay, since it should not have eaten my produce." *But in the present instance, has Rab ever said that that should be the case where the animal did damage to others, so that in such a case the owner also may plead, "It should not have eaten"?*

E. **[58A]** *Rather, what we have here is a statement of ascending order of improbability: There is no doubt that if the flock ate, the owner has to pay for the benefit of what it has gained. But if the impact of the fall into the garden was limited by the impact on the produce, I might have ruled, the owner is in the position of driving away a lion by using the property of someone else, so that here, too, it should not have to pay, but I am informed that to the contrary, the owner does have to pay.*

F. *But why can't I say here the owner is in the position of driving away a lion by using the property of someone else with the full knowledge and consent of the other party [so that he surely does not have to pay compensation]?*

G. *Not at all, in this case, it is not with his full knowledge and consent. Or, alternatively, driving away a lion with the property of another party does not involve a considerable financial loss, but here there is a considerable financial loss.*

V.2 A. *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]?*

B. R. Kahana said, "It slipped in its own piss."

C. Raba said, "Its fellow shoved it."

D. *One who said that its fellow shoved it all the more so would maintain the same view if it slipped in its own piss. But the one who said that it slipped in its own piss would maintain that if its fellow shoved it, that represented negligence on the part of the owner of the beast, who therefore would have to pay not for what he gained in the accident but the full cost of the damages he has caused. For the other party may say to him, "You should have made them pass one by one.*

V.3 A. 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."

- B. 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.”

C. *Said R. Pappa, “Do not say, ‘unless the animal goes out with the full knowledge of its own and comes back with the full knowledge of its owner,’ but rather, ‘once it has gone out of the garden with the full knowledge of its owner, even though it went back without his knowledge, [actual damages have to be paid].’ How come? The injured party may claim, ‘Once the beast knew where to find its lunch, you should have known that, whenever it broke out, it would run there.’”*

VI.1 A. [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:

- B. *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 [58B] and made sure that nothing happened?”*
- C. *The question stands.*

VII.1 A. 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:

- B. *What is the scriptural source of this rule?*

- C. Said R. Mattenah, “Said Scripture, ‘...and shall feed in another man’s field’ (Exo. 22: 4) — this teaches that an estimate is made in conjunction with another field.”
- D. *But is the verse, “...and shall feed in another man’s field,” not required to exclude the public domain from coverage under this law?*
- E. *If so, Scripture would have been more specific and said, “and shall feed in a neighbors field,” or, “another man’s field.” Why say, “in another man’s field” unless to indicate that the estimate of loss is to be made in conjunction with another field?*
- F. *Might I not say that the present proposition covers the entirety of the cited verse, so that there is no exclusion from the coverage of this law of public domain?*
- G. *If that were the case, then the verse before us should have been inserted when Scripture deals with payment, for example, “of the best of his own field and vineyard he shall make restitution” as valued in conjunction with another field. Why did Scripture place the matter into relationship with “and shall feed”? It was to show that two rulings were to be extracted.*

VII.2 A. *How is the estimate reached?*

- B. Said R. Yosé bar Hanina, “[Kirzner:] The value of an area requiring one seah of seed is determined in proportion to the value of an area requiring sixty seahs of seed.”
- C. R. Yannai said, “The value of an area requiring one tarqab of seed is determined in proportion to the value of an area requiring sixty tarqabs of seed.”
- D. Hezekiah said, “The value of each stalk that was consumed is determined in proportion to the value of sixty stalks.”
- E. *An objection was raised:* If it ate one qab or two, they do not say, “Pay their full cost,” but they regard the qab as though it had formed a little bed, which then would be estimated. *Does this not mean that the bed is valued by itself [not in proportion to the value of a larger area, refuting all the cited authorities (Kirzner)]?*
- F. No, everything is valued in the proportion of one to sixty.

VII.3 A. *Our rabbis have taught on Tannaite authority:*

- B. **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].

- C. *What's this all about?*
- D. *Said R. Pappa, "Here is what this is all about: 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. [Kirzner: The payment would be very small, owing to the fact that the deficiency of one qab in an area required for sixty qabs of seed would hardly be noticed, and so would reduce the general price very little], nor in the area of a kor, because that diminishes the value for the side of the defendant [Kirzner: for the deficiency of one kor, in an area required for sixty times as much, is conspicuous and reduces the general price too much; the valuation of a seah will therefore be made in proportion to sixty seahs]."*
- E. *Objected to this proposition R. Huna bar Manoah, "Then why say, nor in the area of a kor, when the language that is needed is nor a kor?"*
- F. *Rather, said R. Huna bar Manoah in the name of R. Aha b. R. Iqa, "This is the sense of the statement: They do not make an estimate of the value of damage done in the measure of a qab's area by itself, because that increases the value for the side of the defendant, nor of a qab in conjunction with an area required for a kor of seed, since this would be too great a disadvantage for the injured party. It must be made only in conjunction with sixty times as much."*

VII.4 A. *Somebody cut down a date tree of someone else. When the case came before the exilarch, he said to him, "I personally have seen the spot; there were three date trees close together, and they were worth a hundred zuz, so go and pay him thirty-three and a third-zuz."*

B. *He said to him, "With an exilarch who judges in accord with Persian law what business do I have to do?!" He went to R. Nahman, who said to him, "The compensation must be assessed in conjunction with sixty times as much."*

C. *Said Raba to [Nahman], "If sages have said with respect to damages done by one's chattel that that is how the valuation is to be done, do they say the same in the case of damage that a man does with his own body?"*

D. *Said Abbaye to Raba, "As to damages done by a man with his own body, what do you think? For it has been stated on Tannaite authority: He who prunes the grapes from a neighbor's vineyard while*

they are still in bud [and not fully ripe] — to estimate damages, they assess how much it was worth before and how much it is worth now,’ *and nothing here has anything to do with a valuation in conjunction with sixty!*”

E. “*Yeah, well, isn’t the same thing taught on Tannaite authority with regard to damages done by beasts? For it has been taught on Tannaite authority: A beast that broke off a plant — R. Yosé says, ‘Those who in Jerusalem make decrees say, ‘For the plants in the first year of growth, two silver pieces; for those in the second year, four.’” If it ate young blades of grain, R. Yosé the Galilean says, ‘It is judged by reference to the future value of what is left in the field.’ Sages say, ‘They make an estimate of how much the field was worth and how much it is worth now.’* [59A] *If it ate grapes before they had ripened but were still in bud, R. Joshua says, ‘They regard it as though they were grapes waiting cutting. But sages say, ‘They make an estimate of how much the field was worth and how much it is worth now.’ R. Simeon b. Judah says in the name of R. Simeon, ‘Under what circumstances is this the case? Where it ate the sprouts of vines or shoots of fig trees, but where it ate figs or half-ripe grapes, the estimate is made of their value as though they were grapes ready to be plucked.’ Now, in any event, the Tannaite formulation is explicit: Sages say, ‘They make an estimate of how much the field was worth and how much it is worth now.’ And there is no reference to invoking the principle of an assessment in terms of sixty! Nonetheless, what you have to say is that it is implied that the valuation is made in conjunction with sixty, and here, too, in the case of man, the implication is that the valuation is in conjunction with sixty.*”

F. Said Abbaye, “R. Yosé the Galilean and R. Ishmael have said the same thing [on this subject], R. Yosé the Galilean as we have just said, and R. Ishmael *in the following, which has been taught on Tannaite authority: “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.’

G. *“And you may not say that he made that statement in line with what R. Idi bar Abin said, for said R. Idi bar Abin, ‘It deals with a case in which the beasts ate one bed out of several, and we do not know whether its crop was sparse or rich, so that R. Ishmael would order the defendant to go and pay for a fertile bed in accord with the value of the best bed that there was at the time that the damage happened.’ We could not take that view, for the simple reason that he who lays claim on his fellow bears the burden of proof. It must follow that R. Ishmael meant the best of the anticipated crop, that is, as it would have matured at the time of harvest.”*

VII.5 A. The master has said: “R. Simeon b. Judah says in the name of R. Simeon, ‘Under what circumstances is this the case? Where it ate the sprouts of vines or shoots of fig trees.’” *So where it ate grapes that were in the bed, they would be estimated at the value of grapes ready to be picked. Note what follows:* But where it ate figs or half-ripe grapes, the estimate is made of their value as though they were grapes ready to be plucked — *so that is the point at which compensation is estimated* as though they were grapes ready to be plucked. *So if the produce was grapes in the bud, the estimate would be made in terms of how much it had been worth and how much it is now worth!*

B. *Said Rabina, “Encompass the new case within and set forth the statement in its entirety as follows:* Under what circumstances? Where the animal ate the sprouts of vines or shoots of fig trees. But if it ate figs or half-ripe grapes, the estimate is made of their value as though they were grapes ready to be plucked.”

C. *If so, then what’s the difference between what R. Simeon b. Judah says and what R. Joshua has already said?*

D. *The difference between them is the depreciation in the vines themselves had the grapes been left unpicked until they ripened. [Is a deduction from the compensation made for that consideration?] But it is not entirely clear who said what.*

E. *Abbaye said, "It is certainly clear who said what! What authority takes into account the depreciation of the vine on which grapes ripen? It certainly is R. Simeon b. Judah, for it has been taught on Tannaite authority: R. Simeon b. Judah says in the name of R. Simeon b. Menassayya, 'In the case of rape, the rapist does not have to pay the compensation for pain, since the woman would have undergone the same pain when she had intercourse with her husband anyhow.'* [Kirzner: This proves that a deduction from the amount of damages would be made under other conditions.] *They said to him, 'You cannot compare the situation of a woman who has sexual relations willingly with one who has sexual relations under constraint.'"*

F. *Said Abbaye, "The following Tannaite authorities as well as R. Simeon b. Judah all say the same thing, R. Simeon b. Judah as just noted, and, as to the other Tannaite authorities, as has been taught as a Tannaite statement: R. Yosé says, 'Deduct the fees of the midwife' [from the payment for injuring a pregnant woman and causing a miscarriage (Kirzner)]. Ben Azzai says, 'Deduct food' [of the special sort used during pregnancy]."*

VII.6 A. *He who says "Deduct fees for the midwife" would obviously deduct food, but the one who says, "deduct food" would not necessarily deduct the fees for the midwife, since the injured party would claim, "My wife is a healthy specimen and doesn't need a midwife."*

VII.7 A. *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.*

B. *Another version: R. Pappa and R. Huna b. R. Joshua valued a palm tree in accord with a piece of ground.*

C. The decided law is in accord with *R. Pappa* and *R. Huna* b. *R. Joshua* in respect to an Aramaean palm [which on its own is not very valuable] but in accord with the exilarch when it comes to a Persian palm [which by itself is very valuable].

- VII.8** A. *Eliezer the Younger* [59B] put on black shoes and stood in the marketplace of Nehardea. Members of the household of the exilarch came upon him and said to him, "How come you're wearing black shoes?"
- B. He said to them, "I'm in mourning for Jerusalem."
- C. They said to him, "[So are we all in mourning for Jerusalem.] What makes you so special?" They saw this as arrogance on his part. They took him and imprisoned him.
- D. He said to them, "I am a preeminent authority."
- E. They said to him, "So how are we supposed to know that?"
- F. He said to them, "Well, you ask me a tough question, or I'll ask you a tough question."
- G. They said to him, "You ask us."
- H. He said to them, "If somebody cuts a date flower, how is the payment to be assessed?"
- I. They said to him, "So he'll pay the value of a date flower."
- J. He said to them, "Yes, but it would have ripened into dates."
- K. They said to him, "So he'll pay the value of the dates."
- L. He said to them, "But he didn't deprive him of dates."
- M. They said to him, "You tell us."
- N. He said to them, "The evaluation of damages is made in conjunction with a figure of sixty times as much."
- O. They said to him, "Who rules as you do?"
- P. He said to them, "Look, Samuel's alive, and his court is right there."
- Q. They sent word to Samuel, who said to them, "He told you rightly: the evaluation of damages is made in conjunction with a figure of sixty times as much." So they released him from jail.

VIII.1 A. 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”:

B. *What is the scriptural basis for this rule?*

C. *The All-Merciful has said, “And shall feed in another man’s field” (Exo. 22: 4) — this teaches that the evaluation is made in conjunction with a field in a case in which the produce still needed a field, but the produce in this context no longer had need of a field, so they are compensated at actual value.*

VIII.2 A. Said R. Huna bar Hiyya said R. Jeremiah bar Abba, “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.”

B. Rab made a decision in accord with the position of R. Meir, *as has been taught on Tannaite authority*: If the husband wrote out a deed for a purchaser [of a field designated for payment for the wife’s marriage settlement] and she did not sign off on it, but [when a deed for the same field was written] for another, she did sign off on it, she has lost her claim to the marriage settlement,” the words of R. Meir.

C. R. Judah says, “She may claim, ‘I really did it only to please my husband, so what claim do you have against me anyhow?’”

D. ...and he decided the law in accord with the view of R. Simeon, *in line with what he has said we have learned in the Mishnah*: **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.”**

I.1 complements the Mishnah with a Tannaite formulation of a congruent rule. No. 2, supplemented at No. 3, provides a talmud to No. 1 and to our Mishnah paragraph read in light of No. 1. No. 4 is relevant in a general way to the theme of our Mishnah paragraph, since it deals with breaking down measures that someone has taken in precaution to keep his animals in place. Nos. 5-8 form a talmud to No. 4, and then No. 9 continues the exposition thereof. **II.1** amplifies the conditions to which the law of the Mishnah pertains. **III.1** explains why it was found necessary to make the point that the Mishnah presents. **IV.1** glosses the language of the Mishnah. No. 2 then pursues a secondary issue. No. 3 goes on to its own issue, intersecting with the general problem of our Mishnah paragraph. But it pursues its own, rather complex problem and argument, and scarcely bears upon our Mishnah paragraph at all. **V.1** explains the basis for the compensation provided by the Mishnah’s rule. No. 2 continues the exposition of the Mishnah paragraph, now explaining

the circumstances of the case. No. 3 completes the process of exegesis of the Mishnah paragraph. **VI.1** asks a secondary question, predicated on the Mishnah's rule. **VII.1** supplies the scriptural source for the Mishnah paragraph's rule. No. 2 proceeds to another aspect of Mishnah amplification. The Tannaite complement, No. 3, directly amplifies the Mishnah's rule. No. 4 is a case tacked on for illustrative purposes. No. 5, with its own footnote at No. 6, footnotes the foregoing. Nos. 7-8 revert to the issue at hand. **VIII.1** adds a scriptural basis for the Mishnah authority's rule. No. 2 then speaks of the decided law.

6:3

- A. He who stacks sheaves in the field of his fellow without permission,
- B. and the beast of the owner of the field ate them up
- C. [the owner of the field] is exempt.
- D. And [if] it was injured by them, the owner of the sheaves is liable.
- E. But if he had put his sheaves there with permission, the owner of the field is liable,

- I.1** A. *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]?*
- B. *Said R. Pappa, "At issue here we deal with a watchman of barns [responsible for everybody's produce]. Since he said, 'Come on in and stack up your grain,' he obviously was understood to mean, 'Come on in and I'll guard your grain for you.'"*

I.1 asks about the authority behind our Mishnah's rule.

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.
- B. [If] he did so through the action of a person of sound senses, the person of sound senses is liable.
- C. [If] one person brought the flame, then another person brought the wood, the one who brings the wood is liable.
- D. [If] one person brought the wood and the other person then brought the flame, the one who brought the flame is liable.

E. **[If] a third party came along and fanned the fire, the one who fanned the flame is liable.**

F. **[If] the wind fanned the flame, all of them are exempt.**

I.1 A. *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.”*

B. *How come?*

C. *It was his own deed that caused the damage.*

D. R. Yohanan said, “Even when a flaming fire has been handed over to him, one is still exempt.”

E. *How come?*

F. *The conduct of the deaf-mute is what caused the damage. He would be liable only if he handed over to him a tinder, [60A] shavings, and a light, in which instance it was his act that was the immediate cause.*

II.1 A. **[If] he did so through the action of a person of sound senses, the person of sound senses is liable:**

B. *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).*

III.1 A. **[If] the wind fanned the flame, all of them are exempt:**

B. *Our rabbis have taught on Tannaite authority:*

C. **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].**

III.2 A. *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.]”*

B. *Said Abbaye, "With what sort of a situation do we deal here? It is one in which he blew on the fire on one side, and the wind blew on it on the other side" [Kirzner: so the wind did not help him at all].*

C. Raba said, "It is one in which he began to blow on the flame during an ordinary wind, but then an extraordinary wind came along and it made the flame blaze up."

D. R. Zira said, "It is one in which he merely increased the flame by blowing strongly on it."

E. R. Ashi said, "*When do we invoke the case of one's winnowing with the wind helping him? It concerns the Sabbath, for the Torah has prohibited purposive labor. But here, it is a rather generalized and secondary cause, and when it comes to damages, an indirect cause is null.*"

I.1 explains the circumstances that govern the application of the Mishnah's rule. **II.1** goes over the correct reading of the Mishnah's language. **III.1** complements the Mishnah with a Tannaite statement, and No. 2 adds its own talmud to the complement.

6:4G-H

G. He who causes a fire to break out, which consumed wood, stones, or dirt, is liable,

H. 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).

- I.1**
- A. *Said Raba, "How come the All-Merciful made reference to 'thorns,' 'stacks,' 'standing grain,' and 'field'? Each had individually to be specified.*
 - B. *"For if the All-Merciful had referred only to thorns, I might have supposed that it was the burning of thorns that was subjected to liability by the All-Merciful, because fire is commonly located among thorns, and people are frequently careless. But as to stacks of grain, which are not commonly burned, and where people are not likely to be negligent, I might have thought that there is no liability.*
 - C. *"And if the All-Merciful had made mention only of stacks, I might have supposed that it was only in the case of stacks that the All-Merciful declared liability, since the loss involved in stacks of grain is formidable, while, in the case of thorns where the loss is negligible, I might have thought that there was no liability.*

- D. *“And how about standing grain? It was to teach the lesson that, just as standing grain is in an open place, so everything that is in an open space is subject to the same law [that is, everything without limit].”*
- E. *And from the perspective of R. Judah, who imposes liability if fire burns something that was hidden from sight [and not only things that were out in the open, as Raba has just now said], what need is there for the reference to standing grain?*
- F. It serves to encompass under the law anything [Kirkner:] possessing stature.
- G. *So how do rabbis [vis-à-vis Judah] prove that encompassed under the law are all things possessing stature?*
- H. *They derive that extension of the rule from the use of “or” [in **or the standing grain**].*
- I. And R. Judah?
- J. *He regards it as disjunctive.*
- K. *And how do rabbis know that the law is disjunctive [so that any of the various classes are subject to the same law, not only something that falls into all of them]?*
- L. *They derive the disjunctive character of the statement from **or the field**.*
- M. *And R. Judah?*
- N. *Well, since Scripture wrote “or the standing grain” for reasons of style it said “or the field.”*
- O. And why include a reference to the field?
- P. It serves to encompass a case in which fire lapped at his neighbor’s plowed field and grazed his stones.
- Q. *Then why did the All-Merciful not simply make reference to the field, and it would not have been necessary to put in the other specific references?*
- R. *Not at all, it was necessary to include the others as well. For if the All-Merciful had made reference only to the field, then I might have thought that anything in the field would be covered by the law, but not anything else, and so we are informed that that is not the case. Thus we are informed to the contrary.*

Composite on How Punishment and Misfortune Come into the World

- I.2** A. 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, as it is said, ‘If fire breaks out and catches in thorns...’ (Exo. 22: 6). When does fire break out? Only when there are thorns. But it begins only with the righteous: ‘so that the sheaves of wheat or the standing grain or the field be consumed....’ What is said is not ‘it consumes the sheaves of wheat,’ but, sheaves of wheat are consumed’ — meaning, it has already been consumed [before the thorns are touched].”
- I.3** A. 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.
- B. “And not only so, but so far as he is concerned, he begins with the righteous first: ‘And I will cut off from you the righteous and the wicked’ (Eze. 21: 8).”
- C. *Now when R. Joseph said this, he wept, So much are the righteous compared to nothing?”*
- D. *Said to him Abbaye, “It is in fact an act of kindness to them: ‘That the righteous is taken away from the evil to come’ (Isa. 57: 1).”*
- I.4** A. Said R. Judah said Rab, **[60B]** “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).”
- I.5** A. *Our rabbis have taught on Tannaite authority:*
- B. 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). And further: “Come my people, enter you into your chambers and shut your doors about you” (Isa. 26:20). And further: “The sword without, the terror within shall destroy” (Deu. 32:25).
- C. *Why the other two proof-texts?*
- D. *Should you say that the counsel given here applies only at night but not to day: “Come my people, enter you into your chambers and shut your doors about you” (Isa. 26:20).*
- E. And should you say that that pertains only where there is nothing to be afraid of inside, but if there is something to be afraid of inside, it is better to go out and sit among people all together: “The sword without,

the terror within shall destroy” (Deu. 32:25). Even the terror is within, the sword will destroy more without.

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

- I.7** A. *Our rabbis have taught on Tannaite authority:*
B. 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).
C. *Why the other proof-text?*
D. *Should you say that the counsel given here applies only where there is no danger to life, but where there is a danger to life, don’t do it, so come and hear: “Now therefore come and let us fall into the host of the Aramaeans, if they save us alive, we shall live” (2Ki. 7: 4).*

- I.8** A. *Our rabbis have taught on Tannaite authority:*
B. 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.
C. *Once he has been given permission to do his work, he does it quite openly.*
D. If there is peace in town, a person should not walk down the side of the road.
E. *If the angel of death has not got permission to do his work, he hides and slinks along the sides of the road.*

- I.9** A. *Our rabbis have taught on Tannaite authority:*
B. 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.
C. *That rule applies only if no children are reciting Scripture there or ten people are not praying there.*

- I.10** A. *Our rabbis have taught on Tannaite authority:*
B. When dogs howl, it means the angel of death is coming to town.
C. When dogs romp, it means Elijah the prophet is coming to town.
D. *But that rule applies only if there is not among them a bitch in heat.*

Linking Law to Lore: “If fire break out and catch in thorns”

- I.11** A. *R. Ammi and R. Assi in session before R. Isaac Nappaha —*

- B. *One of them said to him, "May the master teach us some traditions of law."*
- C. *The other of them said to him, "May the master teach us some traditions of lore."*
- D. *So when he started to teach lore, the one would not let him go on, and when he started some traditions of law, the other would not let him go on. He said to them, "I shall draw a parable for you: to what is the matter comparable? It is like the case of a man who had two wives, one a girl, the other an old lady. The girl plucked out the white hair, the old lady, the black, so he was made bald on both sides."*
- E. He said to them, "Well, if that's the situation, let me say for you something that will please both sides: '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."

- I.12** A. "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):
- B. *What was the problem?*
 - C. *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."*
 - D. *R. Huna said, "Well, this is the problem: there were near the battlefield stacks of barley that belonged to Israelites, and Philistines had concealed themselves in them, and he wanted to know the law as follows: Is it permitted to save one's own life at the cost of the property of someone else?"*
 - E. They sent him word: "It is forbidden to save one's own life at the cost of the property of someone else. But you are the king, **and the king [may exercise**

the right to] open a road for himself, and [others] may not stop him [M. San. 2:4B].”

- F. *Rabbis, and some say, Rabbah bar Mari, said, “There were near the battlefield stacks of barley that belonged to Israelites and stacks of lentils that belonged to Philistines. And this is the question that required an answer: What is the law on taking the stacks of barley belonging to the Israelites to feed the beasts of the army on the stipulation that later on they would pay for them with the stacks of lentils that belonged to the Philistines? They sent him word, “If the wicked restore the pledge, give again what was taken by the robber” (Eze. 33:15) — even if the robber later on pays up for what he robbed, he is still wicked. But you are the king, and the king [may exercise the right to] open a road for himself, and [others] may not stop him [M. San. 2:4B].”*
- G. *Now from the viewpoint of him who has said that he wanted to make an exchange of barley and lentils, that is in line with the the verse, “Where was a plot of ground full of lentils” (2Sa. 23:11) and also “where there was a plot of ground full of barley” (1Ch. 11:13). But from the perspective of him who says that at issue was whether or not he could burn them down, what need is there for these two verses?*
- H. *He may say to you, “There were also stacks of lentils there that belonged to Israelites, in which Philistines were concealed” [and had to be burned down].*
- I. *From the perspective of him who has said that he wanted to burn down the stacks of barley belonging to the Israelites and repay them later on, we can understand the verse, “But he stood in the midst of the ground and defended it” (1Ch. 11:12). But from the perspective of the one who says he wanted to make a trade, what is the point of “...and defended it” (1Ch. 11:12)?*
- J. *He did not allow them to make the exchange.*
- K. *Now in line with these two views, we can understand why the two verses are set forth. [61A] But from the angle of vision of him who has said that what he needed to know was the rule governing what is concealed but burned in a fire, what need is there for these two verses?*
- L. *He will say to you that besides the issue of the compensation for hidden goods in case of fire, he also had one of those other problems in mind as well.*
- M. *Now in line with the other two views, we can understand the meaning of, “But David would not drink thereof” (2Sa. 23:16), for he said, “Since it is subject to a prohibition, I don’t want it.” But from the perspective of him who*

maintained that at issue was the status of hidden goods burned in a fire, didn't they send him a received, traditional teaching, so what would be the sense of "But David would not drink thereof" (2Sa. 23:16)?

- N. *He didn't want to quote the teaching in their names [those who broke through the lines], for he said, "This is what I have received as a tradition from the court of Samuel of Ramah: 'Whoever risks his life for teachings of the Torah — they never cite a legal teaching in his name.' [Whatever positions such a person takes would be authoritative and supported by the collegium of the masters, hence would not be marked as schismatic by being assigned only an individual's name.]"*

I.13 A. "But he poured it out unto the Lord" (2Sa. 23:16):

- B. *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" (2Sa. 23:16)?*

- C. *He repeated the rule in the name of tradition [and not in a particular authority's name].*

I.1 shows that all of the details mentioned in the Mishnah's cited verse of Scripture, Exo. 22:6, are required. No. 2 is tacked on at the head of a long series of items, because it invokes our Mishnah's proof-text for its own purposes. Then the thematic composite — Nos. 3-9 — flows along its own lines. No. 10 then commences another treatment of the same verse, with Nos. 11+12 tacked on for obvious reasons.

6:4I

- I. [If the fire] crossed a fence four handbreadths high or a road or a stream, [the one who started it] is exempt.

- I.1** A. *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?*
- B. *Said R. Pappa, "The Tannaite authority before us was counting downwards, so, at the height of six cubits, at five likewise, down from the height of four cubits, there would be an exemption. The Tannaite authority just now cited counts upwards: At the height of two cubits, there will be liability, at three likewise, up to four there would still be liability."*

I.2 A. *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.”*

B. *Said R. Pappa, “The height of the cubits is calculated from the top of the thorns.”*

I.3 A. *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.”*

B. *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.”*

C. *It has been taught on Tannaite authority in accord with the opinion of Rab: Under what circumstances [does the Mishnah’s rule apply]? It is in the case of a fire rising in a column. But if it was creeping and there was wood along the way, there would be liability even if it crossed a public way a hundred mil wide. If it crossed a river or a pool eight cubits wide, the one who set it would be exempt.*

II.1 A. **Or a road:**

B. *Who is the Tannaite authority behind this rule?*

C. *Said Raba, “It is R. Eliezer, as has been taught in a Tannaite statement: **R. Eliezer says, ‘If it was sixteen cubits wide, like a road in a public thoroughfare, one would be exempt’ [T. B.Q. 6:22F].**”*

III.1 A. **Or a stream:**

B. *Rab said, “What is meant is actually a stream.”*

C. *And Samuel said, “A pond for watering fields.”*

D. *He who said that what is meant is literally a stream would hold that that is the case even if the riverbed has no water in it, but the one who said that it means a pond for watering fields would hold that if it had water, then the rule would apply, but if not, then it would not.*

E. *We have learned elsewhere: **And these [landmarks] establish [the boundaries of a field] for [purposes of designating] peah: (1) a river, (2) pond, (3) private road, (4) public road, (5) public path, (6) private path that is in use in the hot season and in the rainy season, (7) uncultivated land, (8) newly broken land, (9) and [an area sown with] a different [type of] seed [M. Pe. 2:1A-B].***

F. *What is the meaning of the word translated “river”?*

G. Said R. Judah said Samuel, “It is a place into which rain water collects.”

H. R. Bibi said R. Yohanan [said], “It is a water channel that distributes ‘spoil’ to the banks.”

I. *The one who says that the word means a place in which rain water collect would all the more so regard a water channel as suitable for the present purpose, but the one who says that it is a water channel would not regard a place in which rain water collects as suitable for this purpose. [61B] The reason is that these should be called receptacles of land [Kirzner: and should therefore not cause the fields to be considered separate from one another].*

We start with a comparison of contradictory Tannaite statements of the Mishnah’s proposition, **I.1**. Nos. 2, 3 qualify the Mishnah’s rule as well. **II.1** identifies the Tannaite authority at hand, and **III.1** clarifies the usage of the Mishnah.

6:4J-N

J. He who makes a fire on his own property — how far may it spread [so that he remains liable for damage which it does]?

K. R. Eleazar b. Azariah says, “They regard [the fire] as if it were in the middle of a kor’s area of land.”

L. R. Eliezer says, “Sixteen cubits, like a public road.”

M. R. Aqiba says, “Fifty cubits.”

N. R. Simeon says, “He that kindled the fire shall surely make restitution’ (Exo. 22: 5) — all accords with the character of the fire itself.”

I.1 A. [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 (Kirzner),] *doesn’t R. Simeon take the view that there is some fixed limit of liability in the case of a fire? And have we not learned in the Mishnah: A person should not set up an oven in a room, unless there is a space of four cubits above it. [If] he was setting it up in the upper story, there has to be a layer of plaster under it three handbreadths thick, and in the case of a stove, a handbreadth thick. And if it did damage, [the owner of the oven] has to pay for the damage. R. Simeon says, “All of these measures have been stated only so that if [the object] inflicted damage, [the owner]*

is exempt from paying compensation [if the stated measures have been observed]" [B. B.B. 2:2]? [So here Simeon does limit the liability.]

- B. Said R. Nahman said Rabbah bar Abbuha, "[The meaning of the phrase, **all accords with the character of the fire itself,**] is, everything depends on the height of the fire [so there can be no fixed rule]."

C. Said R. Joseph said R. Judah said Samuel, "The decided law is in accord with R. Simeon."

D. So said R. Nahman said Samuel, "The decided law is in accord with R. Simeon."

I.1 simply harmonizes two apparently contradictory rulings assigned to Simeon.

6:5

- A. He who sets fire to a stack of grain, and there were utensils in it, which burned up —
- B. R. Judah says, "[The one who lit the fire] pays compensation for what is [concealed] in [the stack]."
- C. And sages say, "He pays only for a stack of wheat or barley [such as was visible]."
- D. [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].
- E. [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].
- F 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.
- G. For it certainly is normal for people to leave things in their houses.

- I.1 A. 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."
- B. Said to him Raba, "If that were the case, then what about what follows: **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? Why not**

divide the matter and set it forth in its own terms in this language: Under what circumstances? If he sets the fire in his own property, and then it spread and consumed what was in his neighbor's. But if he set the fire in his neighbor's property, all parties concur that he pays damages for whatever was in the house of the neighbor?"

- C. *Rather, said Raba, "There are in point of fact disputes on two points. They dispute on the 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 maintain that for what is concealed but burned up in fire, he is not liable. And they also dispute the case in which he had kindled the fire in the property of the other, in which case R. Judah maintains that he pays for everything that was there, even for what was hidden in a chest, and rabbis take the view that for things that it is normal for people to leave in their stacks, for example, threshing sledges and cattle harnesses, compensation has to be paid, but for things not usually kept in stacks there is no liability to pay damages."*

I.2

- A. *Our rabbis have taught on Tannaite authority:*
- B. **He who set fire to a stack of grain, in which were utensils that burned up —**
- C. **R. Judah says, "He pays damages for everything that was in it."**
- D. **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.**
- E. **[62A] Under what circumstances? If the man lit the fire in his own property and it spread and burned in his fellow's property. But if he had lit it in his fellow's property, he pays for everything that was there.**
- F. **And R. Judah concedes to sages that if one lends a place in his property for his stacks of grain, and the fellow stacked his grain there and hid objects therein, that he has to pay only for the cost of the stacks of grain alone.**
- G. **If he lent him space for stacking wheat and he stacked barley, barley and he stacked wheat, wheat and he covered it with barley, barley and he covered it with wheat, he has to pay only for the cost of barley [T. B.Q. 6:24].**

- I.3** A. 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.’*”
- B. Said R. Mordecai to R. Ashi, “Do you people say this in the name of Raba? We derive the same rule from a Tannaite formulation, which is perfectly clear to us, as follows: **If he lent him space for stacking wheat and he stacked barley, barley and he stacked wheat, wheat and he covered it with barley, barley and he covered it with wheat, he has to pay only for the cost of barley [T. B.Q. 6:24].** Therefore he may say to him, ‘I accepted responsibility to take care of barley,’ and here, too, she says to him, ‘I never accepted responsibility to take care of a gold coin.’”
- I.4** A. Said Rab, “I heard something with regard to the position of R. Judah, but I don’t know what it is.”
- B. 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? It is this: Judges are to extend the ordinance that benefits a robbed person [**And who are they who take an oath and collect what they claim is owing to them?...the victim of a theft (M. Shebu. 7: 1)**] also to the case of fire’s burning what is concealed.”
- C. Amemar raised this question, “Are judges to extend the ordinance that benefits a robbed person [**And who are they who take an oath and collect what they claim is owing to them?...the victim of a theft (M. Shebu. 7: 1)**] also to the case of an informer, or is that not the case? *From the perspective of him who says that we do not judge against the accused where the damage was merely caused by him, there is no issue; against informers we do not apply that enactment. The question is raised from the perspective of him who says that we do issue a judgment against the defendant for damages not done by him but caused by him. Do the judges extend the ordinance that benefits a robbed person also to the case of an informer, so that the victim may take an oath and collect what he claims he has lost? Or is that not the case?*”
- D. The question stands.

- I.5** A. *Somebody kicked someone else's money box into the river. The victim came and claimed, "This is what I had in the box."*
B. *R. Ashi went into session and examined the case: "What is the ruling in a case such as this?"*
C. *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?**"*
D. *He said to him, "Well, if his claim that there was money in the box, that would then have been an appropriate parallel. But his claim is that he had jewels there. So what is the rule? Do people ordinarily keep jewels in a money box? Or don't they do that?"*
E. *The question stands.*

- I.6** A. *Said R. Yemar to R. Ashi, "If he claimed a silver cup, what is the rule? [Does the householder take an oath and collect?]"*
B. *He said to him, "We look at the facts of the case. If the householder is reputed to be rich, or if he was reputed to be reliable so people would deposit with him valuable articles, he does take an oath and gets the cup. But if not, he doesn't."*

- I.7** A. *Said R. Ada b. R. Avayya to R. Ashi, "What is the difference between a robber and a bully?"*
B. *He said to him, "A bully is one who offers payment for what he grabs, and a robber doesn't."*
C. *He said to him, 'If the man is willing to pay for what he grabs, how come you call him a bully? Did not R. Huna say, 'Even if the man threatened to hang the seller if he didn't make the sale, still the sale is a valid one'?"*

D. *That is no contradiction, in the one case, the man said, "Well, I'm willing," and in the other case he made no such statement.*

I.1 clarifies the issues of the dispute in the Mishnah paragraph. No. 2 adds a Tannaite complement. No. 3 then provides a secondary rule, dependent on a principle subordinate in the foregoing. No. 4, with a case to illustrate the general procedure at No. 5, reverts to the exegesis of the Mishnah paragraph but develops only a subordinate point. Secondary supplements to the foregoing then are tacked on at Nos. 6, 7.

6:6

- A. [62B] A spark which flew out from under the hammer and did damage —
- B. [the smith] is liable.
- C. 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 —
- D. the owner of the camel is liable.
- E. [If] the storekeeper had left his lamp outside, the storekeeper is liable.
- F. R. Judah says, "In the case of a lamp for Hanukkah, he is exempt."

I.1 A. *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."*

B. *Say: Not at all. I may say to you that it may be placed even above ten handbreadths. And, as to the plea, "You should have placed it well above the reach of the camel and its rider," since the man was involved in doing a religious duty, sages did not want to impose so much bother on him.*

C. *Said R. Kahana, "R. Nathan bar Minyumi gave the following exposition in the name of R. Tanhum: 'The Hanukkah candle that one set at a height above twenty cubits is invalid as would be a sukkah built with a roof that high or an alleyway with a crossbar that high.'"*

I.1 glosses the Mishnah by asking about its implications for another matter altogether.