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Bavli Baba Qamma Chapter Five

Folios 46A-55A

5:1

- A. An ox [deemed harmless] which gored a cow [which died] and her newly born calf was found [dead] beside her —
- B. and it is not known whether, before it gored her, she gave birth, or after it gored her, she gave birth —
- C. [the owner of the ox] pays half-damages for the cow, and quarter-damages for the offspring.
- D. And so, too, a cow [deemed harmless] which gored an ox, and her newly born young was found beside her,
- E. and it is not known whether before she gored, she gave birth, or after she gored, she gave birth —
- F. [the owner of the cow] pays half-damages from the corpus of the cow, and a quarter-damages from the corpus of the offspring.

- I.1** A. Said R. Judah said Samuel, “This represents the view of Sumekhos, 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.’”
- B. *Why say*, “This is the governing principle”?
 - C. *It was necessary to indicate that*, even if the injured party says, “I am certain,” and the party responsible for the injury says, “I am not

sure,” he who wants to exact [compensation] from his fellow bears the burden of proof.

I.2

A. *Or it is on account of the following, which has been stated:*

B. He who sells an ox to his fellow and it turned out to be a habitual gorer —

C. Rab said, “Lo, this is a sale made in error [and null, the seller returning the purchase money].”

D. And Samuel said, “The seller can say to him, ‘I sold it to you for slaughter.’” [There has been no misrepresentation of the merchandise; the sale is valid.]

E. *But examine the case: If it is someone who ordinarily buys a beast for slaughtering, then his presumed intent was to buy this beast for slaughtering, and if it was someone who would ordinarily have bought the beast for use in ploughing, then it was for the purpose of ploughing! [So what’s the point of the dispute?]*

F. *What we are dealing with here is someone who purchases for both purposes.*

G. *Well, why not examine how much money was paid [which will also indicate the purchaser’s intent]?*

H. *The dispute concerns a case in which the price of a beast sold for meat went up and stands at the same level as the price for an animal for ploughing.*

I. *Yeah, then what difference does it make anyhow?*

J. *What difference it makes is in regard to the trouble [of butchering the beast].*

K. *So what sort of case [would be involved in making the seller give the money back] anyhow? Say: [46B] And if there is no money for paying the buyer back, let the ox be retained for the money, as people say, “From someone who owes you money, accept as payment even bran.”*

L. *The dispute concerns itself with a case in which there really is money to pay the buyer back. In that case, Rab said, “Lo, this is a sale made in error [and*

null, the seller returning the purchase money],” *the operative criterion being majority practice, and the majority buys oxen for ploughing.*

M. And Samuel said, “The seller can say to him, ‘I sold it to you for slaughter,’” *the operative criterion being majority practice, only in matters of religious prohibitions, but not in matters involving money*, but he who lays a monetary claim against his fellow bears the burden of proof.

- I.3** A. *So, too, it has been taught on Tannaite authority:*
B. “An ox [deemed harmless] which gored a cow [which died] and her newly born calf was found [dead] beside her —
C. “and it is not known whether, before it gored her, she gave birth, or after it gored her, she gave birth —
D. “[the owner of the ox] pays half-damages for the cow, and quarter-damages for the offspring,” the words of Sumekhosh.
E. But sages say, “He who lays a monetary claim against his fellow bears the burden of proof.”

- I.4** A. Said R. Samuel bar Nahmani, “How on the basis of Scripture do we know that he who lays a monetary claim against his fellow bears the burden of proof? ‘If any man has any matters to do, let him come to them’ (Exo. 24:14) — Let him bring before them proof.”
B. Objected R. Ashi, “Why in the world do I require a verse of Scripture to tell me something so ineffably obvious? *It is a matter of pure reason. If someone has a pain, he goes to a doctor. Rather, the cited verse of Scripture pertains to what R. Nahman said Rabbah bar Abbuha said, for said R. Nahman said Rabbah bar Abbuha, ‘How on the basis of Scripture do we know that the claimant in a case is given his hearing first of all? As it is said, ‘If any man has any matters to do, let him come to them’ (Exo. 24:14). Let him bring his matters before them first.’*”
C. *The Nehardeans say, “Sometimes the court pays attention first of all to him against whom the claim is made. For instance? For instance, a case in which, otherwise, his property would go down in value.”*

II.1 A. 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:

- B. *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?*
- C. *Said Abbaye, "The meaning of 'half-damages' is a quarter of the entire damages [half of the half, as half constitutes the whole payment in the case of a beast that was held to be harmless (Kirzner)], and a quarter-damages means an eighth of the whole [a quarter of a half]."*

II.2 A. *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?]*

- B. *But the ruling pertains to a case in which the cow belonged to one party, and the offspring to another. [The cow was sold to one party, the offspring to some other.]*
- C. *If the injured party claimed from the owner of the cow first, it would pose no problem, as he could plead against the owner of the cow, "Yours was the cow that did damage to me, so you have to produce evidence that there is a joint defendant with you" [the calf took part in the goring; otherwise you are solely responsible (Kirzner)].*
- D. *The ruling pertains to a case in which he claimed compensation from the owner of the calf first, so the owner of the cow may say to him, "You have now made it clear that you think that there is a joint defendant with me [so I don't have to pay all the damages]."*
- E. *Some say, "Even though the injured party laid his claim before the owner of the cow first, the owner of the cow can still say to him, 'I know as a matter of fact that there is a joint defendant with me [so I don't have to pay all the damages].'"*

II.3 A. *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.'" [Kirzner: How then could Abbaye interpret half-damages*

to mean quarter-damages, and quarter-damages to mean an eighth of the damage?]

B. *Rather, said Raba, "In point of fact we deal [in the Mishnah] with a case in which the cow and the offspring belonged to the same owner. And this is the sense of the passage: If the cow is in hand [Kirzner: to be distrained upon for the damages in accord with the law applicable to an ox deemed harmless], then the payment of half-damages is extracted from the corpus of the cow. [47A] If the cow is not in hand, quarter-damages will be exacted from the corpus of the calf [there being a doubt as to the facts of the matter]."*

C. *So the operative criterion is that we are subject to doubt in this case as to whether or not the offspring was still part of the calf at the time of the goring, or whether it was not part of the calf. But if we knew for sure that the offspring was still part of the calf at the time of the goring, the entire payment of the half-damages would be made from the corpus of the calf.*

II.4 A. *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."*

B. And said Raba, "They do not assess the value of a cow by itself and the offspring by itself, but they assess the value of the offspring along with the cow, for if you do not say so, then you will turn out to treat the party responsible for the injury unfairly.

C. "And so you find is the case in the situation of one who has cut off the hand of the slave of someone else [Kirzner: you do not value the hand separately, that is, what price a master would in the first instance be willing to take for depriving his slave of the use of his hand; but the difference in the value of a slave who had his hand cut off, a much smaller price], and so you find is the rule in the case of one who has done damage to the field of someone else."

D. Said R. Aha b. Raba to R. Ashi, “Yeah, but if it’s what the law requires, so you should treat the party responsible for the injury unfairly.”

E. [He said to him,] “It is because he can say to him, ‘Since I did damage to a pregnant cow, let the value of a pregnant cow be assessed.’”

F. It is obvious that if the cow belonged to one party and the offspring to another, the value of the fat of the cow goes to the owner of the cow [the offspring contributing nothing to that]. But what about the value of its bulky appearance [following Kirzner]?

G. R. Pappa said, “It is assigned to the owner of the cow.”

H. R. Aha b. R. Iqa said, “They divide it.”

I. And the decided law is that they divide it.

I.1 asks about the authority behind the Mishnah’s rule. No. 2 is tacked on for obvious reasons, but it has been formulated in its own terms and framework. No. 3 complements No. 1 with a Tannaite formulation. No. 4 then asks for a scriptural foundation for a position announced in the foregoing. II.1 undertakes a necessary issue of Mishnah exegesis. No. 2 then raises a question of refinement of the situation to which the rule pertains, and No. 3 carries forward the discussion inaugurated at No. 1. No. 4 is an appendix to No. 3.

5:2-3

5:2

- A. (1) The potter who brought his pots into the courtyard of the householder without permission,
- B. and the beast of the householder broke them —
- C. [the householder] is exempt.
- D. (2) And if [the beast] was injured on them,
- E. the owner of the pots is liable.
- F. (3) If [however], he brought them in with permission,
- G. the owner of the courtyard is liable,
- H. (1) [If] he brought his produce into the courtyard of the householder without permission,

- I. and the beast of the householder ate them up,
- J. [the householder] is exempt.
- K. (2) And if [the beast] was injured by them, the owner of the produce is liable.
- L. (3) But if he brought them in with permission, the owner of the courtyard is liable.

5:3

- A. (1) [If] he brought his ox into the courtyard of a householder without [47B] permission,
- B. and the ox of the householder gored it,
- C. or the dog of the householder bit it,
- D. [the householder] is exempt.
- E. (2) [If] that [ox] gored the ox of the householder,
- F. [the owner] is liable.
- G. [If] it fell into his well and polluted its water, [the owner of the ox] is liable.
- H. [If] his father or son was in [the well and was killed], [the owner of the ox] pays ransom money.
- I. (3) But if he brought it in with permission, the owner of the courtyard is liable.
- J. Rabbi says, “In all cases [the householder] is liable only if he undertakes upon himself to guard the ox.”

- I.1** A. *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. *But then look at what follows: If [however], he brought them in with permission, the owner of the courtyard is liable. That then introduces the*

position of rabbis, who take the view that even without an articulate statement, one does undertake an act of guardianship. Furthermore: Rabbi says, “In all cases [the householder] is liable only if he undertakes upon himself to guard the ox.” So is the upshot that the opening clause and concluding one follow the view of Rabbi, while the intermediate clause accords with the position of rabbis?

- C. *Said R. Zira, “Split it up, so that the authority behind the one part is not the same as the authority behind the other part.”*
- D. *Raba said, “The whole of the composition represents the position of rabbis, and when the potter puts his pots therein with permission, it was the guardianship of his pots that the householder undertook, even if the wind broke them” [Kirzner: whereas the owner of the pottery could never be considered to have by implication accepted upon himself the responsibility for safeguarding the belongings of the owner of the premises.]*

II.1 A. [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:

- B. *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.”*
- C. *Said R. Sheshet, “I should say that it was only when he was drowsy or sleeping that Rab made such a dumb statement. For it has been taught on Tannaite authority: He who places poison before someone’s animal is exempt from having to pay compensation by reason of the order of an earthly court, but he is liable to the judgment of heaven. Now it is some sort of deadly poison that an animal will not usually eat, for which one is not obligated, but as to things that an animal usually will eat, one would then be liable even to the reparations ordered by an earthly court.*
- D. *“But why should that be the rule? It really should not have eaten the produce!”*
- E. *Say: that is the rule also even in the case of produce: one should be exempt from the judgment of an earthly court. But there was a particular reason for framing the rule with reference to a deadly poison, so that, even if the article was one that is not usually eaten by an animal, one still would be liable to the judgment of heaven. Or, if you wish, you may say that it was some sort of a*

poison such as [Kirzner:] hypericum, which is like produce [that animals would eat].

- F. *An objection was raised: A woman who without permission came in to someone else's domain to grind wheat, and the animal of the householder ate the wheat, — the householder is exempt. If the animal did suffer damage, the woman would be liable. But why should this be the case? Why not say that it really should not have eaten the produce?*
- G. *Say: how is this any more than the case that is presented in the Mishnah, which has been assigned to a case in which [in Rab's view] the animal slipped on the produce?*
- H. *So what could have been in the mind of the person who just raised that objection anyhow?*
- I. *He may say to you, "Well, I can well understand the case of the Mishnah, in which it is explicitly stated, **And if the beast was injured on them.** For this would indicate that it slipped on them. But here, the language that is used is, If the animal did suffer damage, without explicit reference to on them. The upshot is that it is the eating of the wheat that is in mind.*
- J. *And the other party?*
- K. *He will say to you, "The omission of those words makes no difference."*
- L. *Come and take note: If without permission someone took his ox into the courtyard of a household and the beast ate wheat and got the runs and died, the owner of the courtyard is exempt from all liability. But if the beast was brought in with permission, the owner of the courtyard is liable. But why should this be the case? Why not say that it really should not have eaten the produce?*
- M. *Said Raba, "Are you raising an objection from a case in which someone was given permission [and harm was done to an ox brought in with permission (Kirzner)] to a case in which permission was never granted [Kirzner: where produce brought in without permission was eaten by the owner's animal, in which case the owner, though being a trespasser, has still no liability to safeguard to that extent the belongings of the owner of the premises]? When he gave permission, the owner of the courtyard took liability for safeguarding the ox, even against the possibility of its strangling itself."*

II.2 A. *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?

- B. *Come and take note: For R. Judah bar Simon repeated as the Tannaite formulation of the rules of damages set forth in the household of Qarna: If someone brought his produce into the courtyard of someone else without permission, and an ox belonging to a third party comes and consumes it, the owner of the courtyard is not liable. But if he brought the produce in with permission, he is liable. Now who would be exempt [where there was no permission] and who would be liable [where there was permission]? Is it not the owner of the courtyard who would be exempt and the owner of the courtyard who would be liable?*
- C. *Say: no, it is the owner of the ox who would be exempt or the owner of the ox who would be liable.*
- D. *If it is the owner of the ox, [48A] then what relevance does the issue of having permission or not having permission have in his case?*
- E. *Say: if the produce was brought in with permission, then the damage that was done by the ox would fall into the category of damages by the tooth done in the domain of the injured party, and damages done by the tooth in the domain of the injured party are liable for compensation. But if it was not with permission that the produce was there, then it would be equivalent to damages done by tooth in public domain, and for damages done by tooth in the public domain, the owner of the ox is exempt from having to pay compensation.*
- F. *Come and take note: If without permission someone brought his ox into the courtyard of a householder, and an ox came from some other place and gored it, he is exempt, but if it was with permission that he brought in his ox, then he is liable. Now who would be exempt [where there was no permission] and who would be liable [where there was permission]? Is it not the owner of the courtyard who would be exempt and the owner of the courtyard who would be liable?*
- G. *No, it is the owner of the ox who would be exempt or the owner of the ox who would be liable.*
- H. *If it is the owner of the ox, then what relevance does the issue of having permission or not having permission have in his case?*
- I. *Say: who is the authority behind that ruling? It is in accord with R. Tarfon, who takes the view, "Damage varying from the norm that is done by horn in the premises of the injured party will be compensated in full." If the ox was*

brought in with permission, then the damage that was done by the ox would fall into the category of damages by the horn done in the domain of the injured party, and damages done by the horn in the domain of the injured party are liable for compensation. But if it was not with permission that the ox was there, then it would be equivalent to damages done by horn in public domain, and for damages done by horn in the public domain, the owner of the ox pays only half-damages.

II.3 A. *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.*

B. *Shall we say that he differs from Rab, who has said, "The goat shouldn't have eaten the dough"?*

C. *Say: how are the cases comparable? There it was a case in which the person entered without permission, and the owner of the produce accepted no responsibility whatsoever to guard the produce, but here it was with permission, and the owner of the household accepted responsibility.*

D. *But how are you to differentiate this case from the one in which a woman went into grind wheat, without permission, in her neighbor's house. If the cow belonging to the householder ate the grain, he is exempt, and if the animal was harmed thereby, the woman is liable. So the operative consideration was that it was not with permission, so if she had had permission, she would have been exempt.*

E. *Say: when it comes to grinding wheat, since it does not require privacy, and the owner of the household does not have to leave the house, the obligation to take care of his property is still his, while in the case of baking, where, since privacy is required, the owner of the house has to leave the house, the woman is the one who has to keep watch over his property.*

III.1 A. **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. If that ox gored the ox of the householder, the owner] is liable:**

- B. 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.*"
- C. And said Raba, "If without permission one brought his ox into the courtyard of a householder and the ox injured the householder, or if the household was injured by it, the owner of the ox is liable to pay damages. If the ox lay down, he is exempt from paying damages."
- D. *So just because the ox lay down is the owner exempt from paying damages?*
- E. Said R. Pappa, "What is the meaning of 'lay down'? That it laid down its shit on the ground and the property of the householder was dirtied. The shit falls into the category of pit, and we find no case in which one is liable for damage done by a pit to utensils [inanimate objects, but only to man]."
- F. *That poses no problems to the position of Samuel, who has said, "Any nuisance is classified as a pit." But from the perspective of Rab, who said, "That is so only if they have been declared ownerless and abandoned," what is to be said?*
- G. *Say: Under routine circumstances shit is regarded as ownerless and abandoned.*
- H. And said Raba, "If without permission one went into the courtyard of a householder and did injury to the householder, or the householder was injured by him, he is liable. If the householder injured him the householder is exempt."
- I. Said R. Pappa, "That is the case only if the owner was unaware of him. But if he was aware of his presence, if the owner of the courtyard injured him, he is liable. How come? Because one may say to him, 'Granted, you have every right to eject me, you have no right to injure me.'"
- J. *And [Raba and Pappa] are consistent with rulings stated elsewhere, for said Raba, and some say, R. Pappa, [48B] "If both of them were there with permission, or both of them were there without permission, if one party injured the other, they are liable; if one party was injured by the other, they are exempt. So the operative consideration is that both of them were present with permission or without permission. But if one of them had permission and the other*

did not, then the one who had permission is exempt from having to pay compensation, and the one who was there without permission is liable.”

IV.1 A. [If] it fell into his well and polluted its water, [the owner of the ox] is liable:

- B. 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 (Kirkner)]. 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], and we have no case in which pit involves payment of damages done to utensils.”

C. *That poses no problems to the position of Samuel, who has said, “Any nuisance is classified as a pit.” But from the perspective of Rab, who said, “That is so only if they have been declared ownerless and abandoned,” what is to be said?*

D. *If the statement was made, this is how it must, therefore, have been formulated: Said Raba, “That is the case only if the ox made the water foul by the body of the ox itself. But if the water was fouled merely by the smell of its carcass, there would be no liability. How come? The cow is a merely secondary cause of damage, and there is no liability for a secondary cause of damage.”*

V.1 A. [If] his father or son was in [the well and was killed], [the owner of the ox] pays ransom money:

- B. *But why should this be the case? Was the ox not deemed harmless [so there should be no ransom here]?*
- C. *It is in line with what Rab said, “We deal with an ox that is deemed an attested danger to fall on human beings who are located in pits.”*
- D. *But if so, then the ox should already have been killed.*
- E. *Said R. Joseph, “The ox having seen some vegetables and having fallen into the pit [but never intended to kill the man in the pit] .”*
- F. *Samuel said, “Lo, who is the authority behind this ruling? It is R. Yosef the Galilean, who takes the view that the owner of the beast deemed harmless does pay half-liability as a ransom.”*
- G. *Ulla said, “It is R. Yosef the Galilean, all right, but it was what he said in accord with the position of R. Tarfon, who has said, ‘A beast was deemed*

harmless in the courtyard of the injured party pays a complete ransom.’ *Here, too, he pays a complete ransom.”*

H. *Now there is no problem for Ulla in the language of the Mishnah, which says, [If] his father or son was in [the well and was killed], [the owner of the ox] pays ransom money. [He was killed on his own premises.] But from the perspective of Samuel, why specify his father or son? Even a stranger would have been covered by the law.*

I. *The law is framed in terms of the most common circumstances.*

VI.1 A. But if he brought it in with permission, the owner of the courtyard is liable:

B. *It was stated:*

C. Rab said, “The decided law is in accord with the initial Tannaite statement.”

D. And Samuel said, “The decided law is in accord with Rabbi.”

VI.2 A. Our rabbis have taught on Tannaite authority:

B. **“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.**

C. **“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].**

D. *Now, as a matter of fact, in the very body of this formulation, there is a contradiction. First you say, “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. So the operative consideration is that he said to the owner of the ox, “Watch out for the ox,” and that explains why the owner of the ox is liable and the owner of the courtyard exempt; then it must follow that, if there is no explicit and articulate statement concerning watching the beast, the owner of the courtyard would then be liable and the owner of the ox would be exempt. Then it follows that without an articulated stipulation to the contrary, the owner of the courtyard accepts responsibility to guard the ox. But then look at what follows: “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. So now the operative consideration that the owner of the*

courtyard is liable and the owner of the ox is exempt is that such a statement was made; then it would follow that if there is no articulated stipulation, the owner of the ox is liable and the owner of the courtyard exempt; for in such a case, then it is assumed, the owner of the courtyard does not take it upon himself to watch out for the ox. And that carries us to the position of Rabbi, who has held that liability is incurred by the householder only if the householder has taken responsibility to take care of the ox. So are we going to have to say that the opening clause accords with rabbis and the concluding one with Rabbi?

E. Said R. Eleazar, “Well, yes, you have to split up the passage: The one who repeated the one clause did not repeat the other.”

F. Raba said, “The whole of the statement accords with rabbis. Since it was necessary to state in the opening clause, ‘guard it,’ the Tannaite formulation for the closing clause added, ‘And I shall guard it.’”

G. R. Pappa said, “The whole of the statement accords with Rabbi, and he concurs with the position of R. Tarfon, who has said, ‘Damage in the classification of horn done in the property of the injured party would involve compensation for full damages.’ Therefore if the man said to him, ‘Guard it,’ he did not transfer to him a legal right to any place in the premises, so we have a case in which there is damage in the classification of horn in the premises of the injured party, so full damages are required. If he did not say to him, ‘Watch it,’ though, he did grant him a legal right to a place on the premises, in which case we have damage on the premises of joint owners, and where there is damage in the classification of horn on premises of joint owners, there is liability to pay only half-damages.”

I.1 develops a study of the authority behind our Mishnah rule, hence moving us to a clearer understanding of what is implicit in the rule. **II.1** then amplifies the rule of the Mishnah. No. 2 undertakes a secondary refinement of the theme of the foregoing. No. 3 follows up with a case. **III.1** is enriched with a set of rules assigned to Raba, which, in general terms, run parallel in principle to the case before us. The same is the program of **IV.1**. **V.1** clarifies the rule of the Mishnah. **VI.1** determines the decided law and then at No. 2 adds a Tannaite complement, which carries its own fine talmud.

5:4

- A. An ox which was intending [to gore] its fellow, but hit a woman, and her offspring came forth [as a miscarriage] —
- B. [the owner of the ox] is exempt from paying compensation for the offspring.
- C. And a man who was intending [to hit] his fellow but hit a woman, and her offspring came forth [dead],
- D. pays compensation for the offspring.
- E. How does one assess compensation for offspring?
- F. They make an estimate of the woman's value before she gave birth, and how much she is worth now.
- G. Said Rabban Simeon b. Gamaliel, [49A] "If so, once a woman gives birth, she should gain in value!"
- H. "But: They make an estimate of the offspring's value."
- I. And one pays the husband (Exo. 21:22).
- J. But if she does not have a husband, [the owner of the ox] pays the [husband's] heirs.
- K. [If] she was a slave girl who was freed, or a convert, [the man] is exempt [from paying compensation].

- I.1** 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:] *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."*
- B. *R. Adda bar Ahba may say to you, "No, that rule pertains even to a case in which the ox was aiming at the woman herself. The owner in that case likewise would be exempt from having to pay compensation for the offspring. But the reason that the framer of the Mishnah formulated matters in the language, An ox which was intending to gore its fellow, but hit a woman..., is that since in the concluding clause, the framer proposed to go over the ground of this language, 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 which Scripture itself has specified [at Exo. 21:22], he found it good form to use the same formulation in the opening clause. **An ox which was intending to gore its fellow, but hit a woman....**

- I.2** A. 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.”

- II.1** A. **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:**

- B. *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. *Quite so, and that is the sense of the statement:* **How does one assess compensation for offspring and for the increase in the value of the woman because of the offspring? They make an estimate of the woman’s value before she gave birth, and how much she is worth now.**

- III.1** A. **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”:**

- B. *What is the sense of this statement?*
- C. *Said Rabbah, “This is the sense of the statement:* Does a woman increase in value before she gives birth more than after she gives birth? Is it not the fact that a woman gains in value more after she gives birth than before she gives birth? **But they make an estimate of the offspring’s value and give it to the husband.”**

- D. *So, too, it has been taught on Tannaite authority:* Does a woman increase in value before she gives birth more than after she gives birth? Is it not the fact that a woman gains in value more after she gives birth than before she gives birth? But: They make an estimate of the offspring’s value and give it to the husband.
- E. *Raba said, “This is the sense of the statement:* Does the increase in the value of a woman go wholly to the one for whom she bears the child, and does she have no share at all in the increase in value on account of the offspring? **But**

they make an estimate of the offspring's value and give it to the husband, but the increase in the value caused by the offspring will be divided equally between husband and wife."

F. *So, too, it has been taught on Tannaite authority:* Said Rabban Simeon b. Gamaliel, "Does the increase in the value of a woman go wholly to the one for whom she bears the child, and does she have no share at all in the increase in value on account of the offspring? But they make an estimate of the damage that she has suffered and of the pain, and they estimate the offspring's value and give it to the husband, but the increase in the value caused by the offspring will be divided equally between husband and wife."

G. [Since the other statement maintains that a woman increases in value after giving birth more than before (Kirzner),] *then there is a conflict between two statements attributed to Rabban Simeon b. Gamaliel!*

H. *There is no contradiction.* In the one case [the value of the woman after giving birth is greater than the value before] the woman was pregnant for the first time [so we do not know what the outcome will be], in the other, she has already given birth to live children.

- III.2** A. *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?*
- B. *It is in line with that which has been taught on Tannaite authority:*
- C. On the basis of the language, "...so that her fruit depart from her" (Exo. 21:22), don't I know that she had been pregnant? So why does Scripture find it necessary to specify, "...pregnant..."? To tell you that the increase in the value of the woman due to the pregnancy is assigned to the husband.
- D. *And as to Rabban Simeon b. Gamaliel, how does he interpret the cited language?*
- E. *He requires it in line with that which has been taught on Tannaite authority:*
- F. R. Eliezer b. Jacob says, "The guilty party is liable only if he hits the woman right against the womb."
- G. *Said R. Pappa, "Don't say literally, against the womb, but rather, any place where the bruise would be felt by the embryo, excluding then a blow on the hand or foot, in which case the guilty party would not be liable."*

IV.1 A. If she was a slave girl who was freed, or a convert, the man is exempt from paying compensation:

- B. 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.*”
- C. 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.”
- D. *An objection was raised:* If someone hit a woman so she lost her foetus, he pays the compensation for the injury and pain to the woman, the compensation for the foetus to the husband. If the husband is not alive, what is going to him is paid to his heirs. If the woman is not alive, her compensation is given to her heirs. If the woman was a slave and was freed, or a convert, the defendant has acquired title to what he owes. [Kirzner: The husband is in the same category as the proselyte; the defendant does not have to pay him; the husband does not inherit her claim for damages.] [Kirzner: This is even when the blow was given after the death of the proselyte, which contradicts Rabbah’s view.]
- E. *Say: Does this formulation present something more than what is in the Mishnah, which we have interpreted to refer to a case in which the injury was given when the proselyte was yet alive and then the proselyte died? Here, too, the injury was given in the lifetime of the proselyte, and then the proselyte died. But if you prefer, I shall say, it was after the death of the proselyte, [49B] but repeat the formulation, she would become entitled to it.*

IV.2 A. [As to the dispute between Rabbah and Hisda,] may we say that at issue is the same point of contention separating the following Tannaite authorities?

- B. An Israelite woman who married a proselyte and became pregnant by him, and was injured during the lifetime of the proselyte — the guilty party pays the value of the embryo to the proselyte. If this was after the death of the proselyte —

- C. *One Tannaite version states: He is liable [as Rabbah maintains].*
- D. *And the other Tannaite version states: He is exempt from further liability.*
- E. *Does this not show that there is a conflict of Tannaite formulations on this point?*
- F. *From the perspective of Rabbah that is certainly so. But from the viewpoint of R. Hisda, will he, too, maintain that there is a Tannaite conflict here?*
- G. *There is no contradiction between these two rulings at all. The one represents the view of rabbis, the other, of Rabban Simeon b. Gamaliel. [Kirzner: Rabbis maintain that the payment for the loss of the increment in the value of the woman herself also belongs to the husband, so that where he was a proselyte dying without issue, there would be no liability at all upon the defendant; Simeon b. Gamaliel says the payment for the loss of the increment in the value of the woman herself has to be shared by the mother and the father, so that where he was a proselyte who died without issue, she will not forfeit her due; but as to the embryo, all agree that the woman acquires no title to it under any circumstance.]*
- H. *But if the ruling that there is liability accords with the position of R. Simeon b. Gamaliel, then why raise the issue of compensation after the death of the proselyte: Wouldn't she not have half of the compensation even when he is alive?*
- I. *When he is alive, she gets only half, after death, the whole payment.*
- J. *If you prefer, I shall say, both the formulation that holds there is liability and the one that holds there is no liability accord with the position of Rabban Simeon b. Gamaliel [payment for the loss of the increment in the value of the woman herself has to be shared by the mother and the father, so that where he was a proselyte who died without issue, she will not forfeit her due], but the one [imposing liability] speaks of the increase in the value of the woman caused by the embryo, the other [no liability] speaks of compensation for the loss of the value of the embryos [which the mother never owned].*
- K. *Say: Derive from the rule covering the increased value due to the embryos the rule regarding the value of the embryos themselves*

[paying the money to the mother, as against Hisda's position]? And why not derive from Rabban Simeon b. Gamaliel's ruling [that there is liability] the position of rabbis [Kirzner: That she should have the whole where the proselyte husband is no longer alive]?

L. Say: In respect to the increased value of the woman due to the embryos, she has some hold on it [even when the husband is alive], so she can acquire title to the whole of it [when the proselyte dies], but in respect to compensation for the embryos themselves, to which she has no claim at all, she cannot acquire title to them at all.

IV.3 A. *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?"*

B. *[Nahman] said to him, "So tell me, my lord, what in the world does he want the deed on its own for? To stop up his flask?"*

C. *"Yeah — to stop up his flask."*

IV.4 A. *Said Rabbah, "If the pledge given by an Israelite is in the possession of a proselyte, who then dies, and another Israelite, a 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.*

B. *"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."*

C. *How come the courtyard of the creditor, where the pledge was located, acquire possession of the object for him? For has not R. Yosé bar Hanina stated, "A person's courtyard acquires title for him even when he does not know it"?*

D. *Say: Here with what sort of a situation do we deal? It is one in which the creditor was not around. For it is only when he himself is there so that, if he wanted, he could take possession of the pledge, that his courtyard acts on his behalf and does the same, but if he himself is not around, so that if he wanted to take title to the object, he would not have been able to do so, then his premises likewise do not effect transfer of title.*

- E. *But the decided law is this: Only if the pledge is not located in the premises of the creditors would he not acquire title to it.*

I.1 links our rule to another, intersecting dispute. No. 2 adds a minor refinement. **II.1** refines the language of the Mishnah, telling the obvious. **III.1** clarifies the sense of the Mishnah's language. No. 2 amplifies what is at issue in the Mishnah's formulation. **IV.1** provides an account of the conditions for the application of the Mishnah's rule. No. 2 extends the foregoing, and Nos. 3, 4 do the same for No. 2.

5:5A-D

- A. **He who digs a pit in private domain and opens it into public domain,**
- B. **or in public domain and opens it into private domain,**
- C. **or in private domain and opens it into private domain belonging to someone else,**
- D. **is liable [for damage done by the pit].**

- I.1** A. *Our rabbis have taught on Tannaite authority:*
- B. "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.
- C. 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]."
- I.2** A. *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). Now if for merely opening a pit one is liable, can there be any doubt as to liability for digging one? Scripture therefore has to be read to mean that it is on account of the act of opening the pit and on account of digging the pit that liability has come to the man. There is a dispute only [50A] as to the status of a pit in his own domain. R. Aqiba takes the view that one is also liable for damages done by a pit in one's own domain, since it is written, 'the owner of the pit' (Exo. 21:34), so Scripture is speaking of any pit that has an owner. And R. Ishmael takes the view that this language speaks of the person responsible for the nuisance [in general]. So then, what did R. Aqiba have in mind in the language, '...this is the pit of which the Torah has spoken [at Exo. 21:33-34]'? [This is what he*

meant:] ‘This is the kind of pit concerning which Scripture commenced its treatment of the subject when it spoke of paying reparations.’”

B. 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. R. Ishmael maintains that one is also responsible for damages done by a pit he has dug in the public domain, since Scripture states, ‘If a man open..if a man dig.’ Now if for merely opening a pit one is liable, can there be any doubt as to liability for digging one? Scripture therefore has to be read to mean that it is on account of the act of opening the pit and on account of digging the pit that liability has come to the man. R. Aqiba takes the view that these terms [opening, digging] are required in their own right. For had Scripture spoken only of opening, I might have thought it is only when one opens a pit that it suffices to cover it up [and then one is not liable], but if he actually dug a pit, covering it would not suffice, but he would have to fill it up. And if Scripture had spoken only of digging the pit, I might think that it is if he actually dug the pit that he would have to cover it up, since he has done a deed of substance, but for merely opening it, in which case he has not done much of anything, I might have supposed that he does not even have to cover it up. So we are informed of the facts of the matter. So then, what did R. Ishmael have in mind in the language, ‘...this is the pit of which the Torah has spoken [at Exo. 21:33-34]’? [This is what he meant:] ‘This is the kind of pit concerning which Scripture commenced its treatment of the subject when it spoke of paying reparations.’”*

C. **An objection was raised: He who digs a pit in the public domain with its opening onto private domain is exempt, and that is the rule even though he has not got the right to do so, since people may not make holes underneath the public domain. He who digs cisterns, ditches, or caves in private domain, with the opening into public domain, is liable for damages they do. And he who digs cisterns in the private domain quite near public domain, for instance, those who dig holes for foundations, is exempt. R. Yosé b. R. Judah declares him liable, unless he sets up a partition ten handbreadths high, or keeps the pit four handbreadths away from**

the place where people walk or the place where cattle walk [cf. **T. B.Q. 6:6**]. *Now the operative consideration is digging holes for foundations, but if one is not digging holes for foundations, he would be liable. But who would take such a view [as between Ishmael and Aqiba]? There is no problem answering that question from within the position of Rabbah, for the opening clause [he who digs a pit in the public domain with its opening onto private domain is exempt] stands for the view of R. Ishmael, and the closing one [He who digs cisterns, ditches, or caves in private domain, with the opening into public domain, is liable for damages they do] that of R. Aqiba. But from R. Joseph's perspective, while the concluding rule represents the view of all parties, in accord with whom is the opening clause? It can be neither R. Ishmael nor R. Aqiba!*" [Kirzner: For they both maintain liability for the pit on private ground.]

D. *R. Joseph will say to you, "The entire formulation represents the view of all parties. The opening clause speaks of a case in which the owner has not declared ownerless either his domain or his pit."* [Kirzner: In this case the responsible party can point out that the injured party trespassed on his domain.]

E. *Said R. Ashi, "Now that you have interpreted the cited passage from the perspective of R. Joseph as representing the view of all parties, then from the perspective of Rabbah you do not have to assign the distinct clauses of the cited passage to two contradictory Tannaite positions. For since the opening clause accords with the view of R. Ishmael, so the closing one agrees with him, and the statement, **And he who digs cisterns in the private domain quite near public domain, for instance, those who dig holes for foundations, is exempt, so that if the digging is not for foundations, one would be liable, speaks of a case in which the digging was widened out to the public domain.**"* [Kirzner: But if the digging was not widened out into the public domain" there would be no difference as to the purpose of the digging, for there would be exemption in all cases].

F. *An objection was raised: He who digs a pit on private domain with the opening to public domain is liable for damage it does. if it was on private domain near public domain, he is*

exempt. *Now there is no problem from the perspective of Rabbah: The whole represents the position of R. Ishmael. But from the perspective of R. Joseph, while the opening statement represents the view of R. Ishmael, who can be represented by the concluding one? It is neither R. Ishmael nor R. Aqiba!*

G. He will say to you, “The rule speaks of digging holes for foundations and represents the position of all parties.”

- I.3** A. *Our rabbis have taught on Tannaite authority:*
B. **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].**

C. **This law** — *and no others?*

D. *Rather:* Even this law.

- I.4** A. *Our rabbis have taught on Tannaite authority:*
B. 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.”
C. They said to her, “Who got you up out of the pit?”
D. She said to them, “A ram [Gen. 22] was assigned to me, and an old man was leading it.”
E. They said to him, “Are you a prophet?”
F. He said to them, “Of course I’m not prophet, nor the disciple of a prophet, but this is what I said to myself: ‘Should something to which that pious man devoted such painstaking care turn out to be a source of anguish to his child?’”

- I.5** A. 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].”

B. R. Nehunia says, “Proof of the proposition is from here: ‘God is greatly to be feared in the assembly of the saints and held in reverence by all those who are about him’ (Psa. 89: 8).”

I.6 A. 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).”

B. *Said R. Hana, and some say, R. Samuel bar Nahmani, “What is the meaning of the verse of Scripture, [50B] ‘Long of suffering’ (Exo. 34: 6), not ‘long suffering’? It means, ‘long of sufferings for both the righteous and the wicked.’”*

- I.7** A. *Our rabbis have taught on Tannaite authority:*
- B. **Someone should not take stones off his own property and toss them into public domain.**
- C. **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?”**
- D. **The other ridiculed him.**
- E. **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.**
- F. **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].**

I.1 provides a Tannaite complement. No. 2 serves the foregoing as a talmud. Nos. 3-4 and 7 present other Tannaite complements. No. 5 carries in its wake Nos. 6, 7, which could be set apart as a small composite on their own theological theme.

5:3E-J

- E. **He who digs a pit in public domain, and an ox or an ass fell into it and died, is liable.**
- F. **It is all the same whether one digs a pit, a trench, cavern, ditches, or channels — he is liable.**
- G. **If so, then why is it written in particular, “A pit” (Exo. 21:33)?**

- H. 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.
- I. [If] they were less than ten handbreadths in depth and an ox or an ass fell into it and died, [the owner] is exempt.
- J. But if they were injured in it, he is liable.

I.1 A. 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.” *Therefore he takes the view that the blow delivered by the pit into which the beast has fallen is given merely by the earth that belongs to the public [and the party who dug the hole is not responsible for it].*

- B. 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. And should you say that it was only for the blow alone that the Torah has imposed liability, but not for the bad air of the pit, so far as the Torah is concerned, a hole is a hole, even if it is full of balls of wool.”

C. *What is at issue between them?*

D. *At issue between them is a case in which someone made a mound in public domain. From the perspective of Rab, for a mound there is no liability, and from the perspective of Samuel, for a mound, too, there is liability.*

E. *What is the scriptural basis for the position of Rab?*

F. Scripture states, “and it fall” — liability is incurred only if the beast fell in the ordinary way.

G. And Samuel?

H. “And it fall” — anything which is akin to falling.

I.2 A. *We have learned in the Mishnah: 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. Now from the*

*perspective of Samuel, this poses no problem, since the language, **so anything...**, implies mounds as well. But from the perspective of Rab, what is covered by the language, **so anything...**?*

B. It is to encompass trenches and [Kirzner:] wedge-like ditches.

C. But are not these items, trenches and ditches, not stated explicitly in the text at hand?

D. Well, they were noted and then later on explained.

- II.1** A. **[It is all the same whether one digs a pit, a trench, cavern, ditches, or channels — he is liable:]** *now what need did I have for the explicit mention of all of these distinct items anyhow?*
- B. *Each was necessary. For if the Tannaite framer of the passage had referred only to a pit, I might have supposed that a pit ten handbreadths deep is the sort that causes injury, because there, there would be enough unhealthy air because the pit is small and circular, but in the case of a ditch, which is long, I might have thought that, even if it were ten handbreadths deep, it would still not have enough unhealthy air to cause death.*
- C. *And if only a ditch were listed, I might have supposed that only a ditch ten handbreadths deep would have enough unhealthy air, because it is small, but a cave, which is square, might have been supposed to be unable to cause death even at ten handbreadths in depth.*
- D. *And if only a cave had been mentioned, I might have supposed that only a cave ten handbreadths deep would have enough unhealthy air to kill because it is covered over, but trenches, which are not covered over, might not have enough unhealthy air, even at a depth of ten handbreadths.*
- E. *And if only trenches had been mentioned, I might have supposed that only trenches at ten handbreadths of depth would have enough unhealthy air, because they are not wider at the top than at the bottom, while in the case of channels, which are wider at the top than at the bottom, might not have enough unhealthy air even at ten handbreadths of depth. So it was necessary to make explicit reference to each item.*

- III.1** A. **[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:]**

- B. *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 [Kirzner: though the air was not less unhealthy, there will be no liability, thus contradicting the views of both Rab and Samuel]?*
- C. *No, it is because there is no unhealthy air there.*
- D. *If so, then how come if they were injured in it, he is liable? There wasn't unhealthy air there!*
- E. *Say: There wasn't enough unhealthy air to kill, but there was enough to cause injury.*

III.2 A. *There was an ox that fell into a pond that provided water to the fields in the area. The owner slaughtered it. R. Nahman said it was in the class of what was dying [and hence not permitted for food].*

B. *Said R. Nahman, "If the owner of that ox had taken a qab of meal and gone to learn Tannaite traditions in the house of study, he would have learned: 'If the ox had survived for twenty-four hours before slaughter, it is valid.' Then I would not have cost him the loss of an ox worth many qabs of flour."*

C. *It follows that R. Nahman takes the view that there is sufficient bad air to cause death even in a hole that is less than ten handbreadths deep [the bond being six].*

D. *Objected Raba to the position of R. Nahman: "If they were less than ten handbreadths in depth and an ox or an ass fell into it and died, [the owner] is exempt. Now is the reason not that in a hole less than ten handbreadths deep there is not sufficient bad air to kill?"*

E. **[51A]** *No, it is because there is no unhealthy air there at all.*

F. *If so, then what about the following: But if they were injured in it, he is liable. But you just said that there is no unhealthy air there at all.*

G. *He said to him, "There is not bad air there sufficient to cause death, but there is bad air there sufficient to cause injury."*

H. *An objection was raised: The place of stoning was twice the height of a man [M. San. 6:4A]. And it has been taught on Tannaite*

authority: And with his own height, lo, the place of stoning was three heights of a man [T. San. 9:6F]. Now if you think that there is sufficient bad air to kill in a depth of less than ten handbreadths, then what do I need such a height for?

I. So, from your reasoning, the height could be a mere ten handbreadths anyhow! So the passage should be explained in line with what R. Nahman said, for said R. Nahman said Rabbah bar Abbuha, "Scripture has said, 'You will love your neighbor as yourself' (Lev. 19:18), [meaning,] select for him a pleasant form of death [and do not inflict needless suffering]."

J. If so, let it be even higher?

K. That would cause disfigurement [of the corpse].

L. An objection was raised: "If any man fall from there" (Deu. 22: 8) — "from there," but not into there. How so? If the public domain was ten handbreadths higher than the roof, and someone fell from the public way to the roof, there would be no liability as to not having built a parapet, but if the public way was ten handbreadths lower than the roof, and someone fell from the roof to the public domain, the owner is liable for not having built a rail. Now, if you assume that a fall would produce death even from a height of less than ten handbreadths, why have the public road ten handbreadths lower [when less would do the job]?

M. He said to him, "The case of a house is exceptional, since any house that is less than ten handbreadths in height is not classified as a house."

N. If that is the case, then even if from the outside the house is ten handbreadths in height, if you then deduct the ceiling and plaster, at the inside it would not be ten handbreadths high [and wouldn't be a house, so why require a rail]?

O. He said to him, "For instance, if the owner of the house sank the floor on the inside" [Kirzner: so the vertical height inside was not less than ten handbreadths].

P. If so, then even if the height on the outside was not ten handbreadths, on the inside it could have been ten handbreadths in height, for instance if he sank the floor still more.

Q. *Rather, this is the operative consideration behind the position of R. Nahman: He takes the view that from the abdomen of the ox to the level of the ground must be at least four handbreadths, and the floor is six handbreadths in depth, thus ten in all, so that, when the ox was hit, it was from a height of ten handbreadths that the ox was given the blow* [Kirzner: and as a fall from the height of ten handbreadths can be fatal, Nahman declared the ox unfit by reason of being a dying beast at the time of slaughter].

R. *Then what is the point of the Mishnah when it says, **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?** Six would have done the job!*

S. *Say: The Mishnah deals with a case in which the ox rolled over into the pit [and being four handbreadths in height, it fell only six].*

I.1 asks about the theoretical basis for liability assumed by the Mishnah paragraph's rule. No. 2 carries forward the initial discussion. **II.1** advances the analysis of the language of the Mishnah. **III.1** reverts to the considerations introduced by Rab and Samuel at **I.1**. No. 2 explains how the rule of No. 1 works.

5:6A-D

- A. **A pit belonging to two partners —**
- B. **one of them passed by it and did not cover it,**
- C. **and the second one also did not cover it —**
- D. **the second one is liable.**

I.1 A. *Say: 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? [The individual who dug it should be responsible (Kirzner)]. If both of them appointed an agent in common, saying*

to him, “Go, dig a pit for us,” and he went and dug a pit, in point of fact there is no such thing as an agent to carry out a transgression [and he personally is responsible]. And if it was the case that this partner dug five handbreadths of the pit, and that partner dug five handbreadths of the pit, then the act of the former of the two is eliminated by the latter. Now, true enough, from the perspective of Rabbi, we may find such a pit that would impose on the two responsibility for injury [as we shall see in a moment], but even from Rabbi’s viewpoint in the matter of death, or in the view of rabbis in the matter of death and injury, where in the world would we find such a pit?

- B. Said R. Yohanan, “It would be a case in which the two of them removed a layer of ground at the same time and in so doing brought the pit to a depth of ten handbreadths.”

I.2 A. *What is the position of Rabbi and rabbis to which reference has just now been made? It is in line with that which has been taught on Tannaite authority:*

B. He who digs a pit nine cubits deep, and someone else comes along and finishes it to ten — the latter is liable.

C. Rabbi says, “We go after the latter in the case of death, but after both of them in the case of damages.”

D. *What is the scriptural basis for the position of rabbis?*

E. “If a man shall open...or if a man shall dig...” (Exo. 21:33) — Now for merely opening a pit one is liable, can there be any doubt as to liability for digging one? So the purpose of the statement must be to deal with a case of someone who dug after someone else had dug, indicating that the latter has done away with the deed of the former [and bears responsibility for the pit he has completed].

F. *And Rabbi will say to you, “It was necessary to make use of both terms, as we have said.”* [R. Aqiba takes the view that these terms [opening, digging] are required in their own right. For had Scripture spoken only of opening, I might have thought it is only when one opens a pit that it suffices to cover it up [and then one is not liable], but if he actually dug a pit, covering it would not suffice, but he would have to fill it up. And if Scripture had spoken only of digging the pit, I might think that it is if he actually dug the pit that he would have to cover it up,

since he has done a deed of substance, but for merely opening it, in which case he has not done much of anything, I might have supposed that he does not even have to cover it up. So we are informed of the facts of the matter.]

G. *And rabbis?*

H. *Well, the two terms really are needed, but this is the real basis for their ruling: “If a man shall dig” — one, not two [are liable for one pit].*

I. *And Rabbi?*

J. *He requires that language for the following purpose: “If a man shall dig” — not an ox.*

K. *And rabbis?*

L. *The passage refers twice to “a man...a pit,” leaving space for this other meaning as well.*

M. *And Rabbi?*

N. *Since Scripture used the words once, it went ahead and used them a second time for the sake of consistency.*

I.3 A. *Now from the perspective of rabbis, how come the second person is the one who is liable for himself and for what the first has done, maybe the sense is that the first person is liable for what he has done and what the second person will do?*

B. *Perish the thought! For Scripture has said, “And the dead shall be his” (Exo. 21:34) — that is, the one who made the pit capable of doing the beast to death.*

C. *But this verse, “And the dead shall be his” (Exo. 21:34), is required in line with what Raba said, for said Raba, “If an ox that was consecrated but disqualified for use on the altar, the responsible person is exempt, for Scripture states, ‘And the dead shall be his’ (Exo. 21:34), meaning, only in a case in which the carcass of the ox could be his [is there liability].”*

D. *Say: But does it not in any event follow without much articulation that we are dealing with the party*

who made the pit capable of doing the beast to death anyhow.

- I.4** A. *Our rabbis have taught on Tannaite authority:*
- B. **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].**
- I.5** A. *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].*
- B. **[51B]** *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]?*
- C. *Said R. Zebid, “Not at all. Both statements stand for the position of rabbis. The rabbis take the view that the last party is liable only in a case in which the first party did not himself dig the pit to a depth able to cause death, but in a case in which the first party dug the pit so deep as to be able to cause death, then even rabbis take the view that all parties will be liable. [That accounts for the opening rule.]”*
- D. *Well, then, what about the case in which the man has lined the pit with plaster and cemented it, where the one who dug first made the pit deep enough to cause death, but the second is liable?*
- E. *Say: In that case, the unhealthy air did not suffice to kill [Kirzner: as where the width was more than the depth], so the second party came along and added to the amount of bad air by diminishing the size of the pit and so made the pit of such a character that it could kill.*
- F. *There are those who say, said R. Zebid, “Both this statement and that represent the position of Rabbi. Where he says that all of them are liable, there is of course no problem. And as to the statement that the second one to come along is liable, this is a case in which the unhealthy air in the pit could not kill or even injure, but the other one, who diminished the size of the pit and increased the bad air in it, is the one who made it capable of both killing and injuring.” [Kirzner: In this case it stands to reason that the second person alone should be liable.]*

I.6 A. 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" [Kirzner: as to whether the second person or both would be liable to injury].

B. *So what else is new?*

C. *Well, you might have supposed that it is only in a case in which the increase in the depth of the pit was made at the bottom, so that it was the unhealthy air added by the second party, that the second party has caused death, but if the increase was made at the top, in which the unhealthy air was not added by the second party so as to cause death, then there might have been no difference of opinion [and all parties would concur that the second party is not liable]. So we are informed that that is not the case.*

I.7 A. *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?"*

B. *That question can stand.*

I.8 A. 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.*"

B. *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]?*

C. A pit seven handbreadths deep, of which three are full of water, what is the rule? *Do we say that since there is more water, there also is more bad air, or, since it is not all that deep, there is not so much bad air anyhow?*

D. *These question stand.*

- I.9** A. *R. Shizbi asked Rabbah, “If the second party broadened the pit, what is the law?”*
B. He said to him, “Lo, he diminishes the volume of unhealthy air [so is hardly responsible].”
C. He said to him, “To the contrary! He increases the danger of injury.”
D. *Rather, said R. Ashi, “Let us examine the case. If it was through the unhealthy air that the animal died, lo, the second party has diminished the amount of unhealthy air, and if it was on account of the blow that it died, lo, the second party has increased the risk of injury.”*
E. *There are those who report this statement as follows: Said R. Ashi, “Let us examine the case. If the animal fell from that side [that had been broadened], then it was the second party that was responsible, having increased the possibility of injury; if it fell from the other side, [the second party has done nothing], for he diminished the volume of bad air in the pit.”*

- I.10** A. *It has been stated:*
B. A pit that is as deep as it is broad —
C. *Rabbah and R. Joseph, both of them in the name of Rabbah bar bar Hannah, who spoke in the name of R. Mani —*
D. *One said, “There is always unhealthy air assumed to be in the pit, unless the breadth is greater than the depth.”*
E. *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.”*

- II.1** A. **...One of them [the partners] passed by it and did not cover it, and the second one also did not cover it — the second one is liable:**
B. *At what point in time is the first one of the partners exempt?*
C. *Rabbah and R. Joseph, both of them in the name of Rabbah bar bar Hannah, who spoke in the name of R. Mani —*
D. *One said, “From the moment at which the first partner leaves the second while the latter is using the well.”*
E. *And the other said, “From the moment that he hands over to him the cover of the well.”*

II.2 A. *This is in accord with the following dispute among Tannaite authorities:*

B. He who was drawing water from a well, and his partner came along and said to him, “Leave it to me, and I’ll draw water” — at the moment that the former has left the other using the well, he is exempt from any further damages.

C. R. Eliezer b. Jacob says, “It is at the point at which he hands over to him the cover of the well.”

D. *What is at issue here?*

E. R. Eliezer b. Jacob takes the view that we invoke the principle of [Kirzner:] retrospective designation [Kirzner: so that a subsequent selection or definition determines retrospectively a previous state of affairs that was undefined in its nature], *so that the one partner was drawing water from his own* [Kirzner: though this water which he subsequently drew was by no means defined at the time that the partnership was formed], *and the other partner was drawing water from his own* [Kirzner: so that one partner does not use the water of the other, to become thereby a borrower of it and therefore enter into responsibility regarding it]. *And rabbis maintain that we do not invoke the principle of retrospective designation.*

F. *Said Rabina, “And they are consistent with views expressed elsewhere, for we have learned in the Mishnah: Partners who prohibited themselves by vow from deriving benefit from one another are prohibited from entering the common courtyard. R. Eliezer b. Jacob says, “This one enters the part which is his, and that one enters the part which is his” [M. Ned. 5:1A-B]. What is at issue there? R. Eliezer b. Jacob takes the view that we invoke the principle of retrospective designation, so that this partner is entering his own property and so is that one, and rabbis maintain that we do not invoke the principle of retrospective designation.*

II.3 A. 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.”

B. *What sort of case is contemplated here? If he handed over money, then let the money effect the transfer of title, and if it was a transfer through usucaption, then let the act of usucaption effect transfer of title!*

C. *Well, in point of fact, it was a transfer through usucaption, but the seller still has to say to the buyer, "Go, take possession of your property and become the owner." When he hands over the cover to him, this is the counterpart to his saying to him, "Go, take possession of your property and become the owner."*

II.4 A. Said R. Joshua b. Levi, "He who sells a house to his fellow, [52A] once he has handed over to him the key to the house, the other party has acquired title."

B. *What sort of case is contemplated here? If he handed over money, then let the money effect the transfer of title, and if it was a transfer through usucaption, then let the act of usucaption effect transfer of title!*

C. *Well, in point of fact, it was a transfer through usucaption, but the seller still has to say to the buyer, "Go, take possession of your property and become the owner." When he hands over the key to him, this is the counterpart to his saying to him, "Go, take possession of your property and become the owner."*

II.5 A. 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."

B. *What sort of case is contemplated here? If the herd was to be acquired through an act of drawing, then let the act of drawing effect the transfer of title, and if it was a transfer through the act of delivery, then let the act of delivery effect transfer of title!*

C. *Well, in point of fact, it was a transfer through an act of drawing, but the seller still has to say to the buyer, "Go, draw, and so take possession of your property and become the owner." When he hands over the judas-goat to him, this is the counterpart to his saying to him, "Go, draw and become the owner."*

II.6 A. *What is the definition of the judas-goat?*

B. *Here it is translated "bell."*

C. R. Jacob says, “*It is the goat that goes at the head of the herd.*”

D. *That is in accord with what a certain Galilean said in one of his addresses before R. Hisda, “When the shepherd becomes angry with the flock, he makes the leader a blind man.”*

I.1 explains the circumstances to which our Mishnah paragraph’s rule applies. No. 2 footnotes the foregoing, and No. 3 continues the same process of systematic amplification of prior materials. No. 4, with its talmud at Nos. 5, 6, 7 then takes up the work of Tannaite complement to the Mishnah. Nos. 8, 9 then turn to questions of refinement of the rule of the Mishnah. No. 10 (joined at just this point because of the attribution, dominant in what follows) completes the exposition of the law at hand. **II.1** answers a question important in the explanation of the Mishnah’s law, and No. 2 complements the foregoing. Nos. 3, 4, 5+6 then move along with the issue of the point at which transfer of ownership takes place.

5:6E-N

- E. [If] the first one covered it up, and the second one came along and found it uncovered and did not cover it up.
- F. the second one is liable.
- G. [If] he covered it up in a proper way, and an ox or an ass fell into it and died, he is exempt.
- H. [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.
- I. [If] it fell forward [not into the pit] because of the sound of the digging, [the owner of the pit] is liable.
- J. [If] it fell backward [not into the pit] because of the sound of the digging, [the owner of the pit] is exempt.
- K. [If] an ox carrying its trappings fell into it and they were broken, an ass and its trappings and they were split,
- L. [the owner of the pit] is liable for the beast but exempt for the trappings.
- M. [If] an ox belonging to a deaf-mute, an idiot, or a minor fell into it, [the owner] is liable.
- N. [If] a little boy or girl, a slave boy or a slave girl [fell into it], he is exempt [from paying a ransom].

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

- B. Said Rab, “Until he had sufficient time to find out what had happened.”
- C. And Samuel said, “Until there was sufficient time to inform him of what had happened.”
- D. And R. Yohanan said, “Until there was sufficient time to inform him of what had happened and for him to hire workers to cut down cedars to cover up the hole.”

II.1 A. [If] he covered it up in a proper way, and an ox or an ass fell into it and died, he is exempt:

- B. *So if he covered it up in a proper way, how in the world did an ox or ass fall into the pit?*
- C. Said R. Isaac bar bar Hanna, “The boards got wormy on the inside [so on the outside, no one knew the cover had weakened.”

II.2 A. *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?*

- B. *Say: What would be the circumstances of the case? If camels commonly walked around there, then he is negligent, and if they did not ordinarily pass that way, then he is the victim of an accident. [So what kind of a question is this?]*
- C. *The question is required to deal with a situation in which camels come from time to time. Do we rule that, since they come along from time to time, he is negligent, for he should have taken that fact into account, or perhaps, since, at that time at any rate there weren't any camels around, he is victim of an accident?*
- D. *Come and take note: [If] he covered it up in a proper way, and an ox or an ass fell into it and died, he is exempt. Now how are we to imagine the circumstances of the case? If we say that the cover was suitable for oxen and suitable for camels, so how did the oxen fall in? But rather, it was suitable for oxen [52B] but not suitable for camels. Furthermore, if camels were commonly found there, why should he be exempt? He is negligent. And if camels don't come by all that often, then — obviously — he is merely the victim of an accident. So is it not the fact that we deal with a situation in which camels come from time to time, and camels came along and weakened it, and oxen came along and fell through into it. And the Tannaite rule is that he is exempt from having to pay compensation. So it must follow that since,*

at that time at any rate there weren't any camels around, he is victim of an accident.

- E. *Say: Not at all. In point of fact it was suitable for oxen and suitable for camels. But as to your question, so how did the oxen fall in? Said R. Isaac bar Hanna, "The boards got wormy on the inside [so on the outside, no one knew the cover had weakened]."*
- F. *Come and take note: **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.** Under what circumstances? If we say that it was not covered up properly for oxen and not covered up properly for camels, then is it necessary to say that he is liable? So does the rule not cover a case in which the cover was suitable to bear the weight of oxen but not suitable to bear the weight of camels. But what sort of case is before us? If camels often went by there, then he is negligent, and if they did not often go by there, then he is the victim of an accident. But is this not a case in which they would come from time to time, and camels came along and weakened the cover, and oxen came along and fell in, and it is taught as the Tannaite rule that the responsible party is liable. Therefore it follows that, even if they come along only from time to time, he is deemed negligent, since he should have kept that fact in mind.*
- G. *Not at all. In point of fact it was suitable for oxen and not suitable for camels. But camels would often pass by there. And as to your question, isn't he negligent, that is not an issue, for, since the opening clause used the language, ...**cover it up in the proper way**, the concluding clause used the language, ...**did not cover it up in the proper way**.*

II.3 A. *There are those who state matters in different terms altogether, namely, the question that has been set forth certainly never bothered anybody, because, since camels come along from time to time, the responsible party is deemed to have been negligent, since he should have kept in mind that fact and provided for it. But where a question did arise for us, this is the question that we asked: If the responsible party covered the pit with a cover that could withstand the weight of oxen but could not withstand the weight of camels, and camels commonly passed by there, and the boards were eaten by worms on the inside, what is the law? Do we say that, since he is negligent in regard to camels anyhow, he is regarded as negligent, too, with respect to the decay of the boards? Or perhaps we do not say that, since he is*

negligent in regard to camels anyhow, he is regarded as negligent, too, with respect to the decay of the boards?

B. *Come and take note: **[If] he covered it up in a proper way, and an ox or an ass fell into it and died, he is exempt.** Now in this regard it has been stated: Said R. Isaac bar bar Hanna, "The boards got wormy on the inside [so on the outside, no one knew the cover had weakened." And what would be the circumstances of such a case? If we say it was suitable to withstand the weight of oxen and also suitable to withstand the weight of camels and it got moldy on the inside, it is obvious that he is going to be exempt. What in the world was he supposed to have done? But is this not a case in which it was suitable for oxen but not suitable for camels, and camels were commonly passing by there, and the cover got worm-eaten on the inside, and it is taught, **he is exempt.** Therefore it must follow that we do not say that, since he is negligent in regard to camels anyhow, he is regarded as negligent, too, with respect to the decay of the boards.*

C. *Not at all. In point of fact it was suitable for camels and suitable for oxen, and, indeed, worm-eaten on the inside, and as to your question, so if it got worm-eaten on the inside, what was he supposed to have done? what should you say? He should have gone and checked out the cover frequently [which he did not do]. So we are informed [that he was not expected to do so].*

D. *Come and take note: **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.** Under what circumstances? If we say that the cover was not suitable for oxen nor suitable for camels, do we need to be told that he is liable? So is it not a case in which it was suitable for oxen but not suitable for camels? And if camels ordinarily passed by there, then he is negligent. But if ordinarily camels did not pass by there, he is victim of an accident. So is it not a case in which camels ordinarily passed by there, but the boards got worm-eaten on the inside, and it is taught **he is liable.** Therefore, it must follow, we do say that, since he is negligent in regard to camels anyhow, he is regarded as negligent, too, with respect to the decay of the boards.*

E. *Say: no, not at all. In point of fact the cover was suitable to bear the weight of oxen but not to bear the weight of camels, and camels were constantly passing by, so camels came along and weakened the*

cover, and oxen came along and fell in. And as to your question, well, then, it's obvious that he is negligent, that is not an issue, for, since the opening clause used the language, ...cover it up in the proper way, the concluding clause used the language, ...did not cover it up in the proper way.

F. Come and take note: If into the pit fell an ox that was deaf, deranged, undersized, or blind, or walking along by night, he is liable. If it was an ox of sound senses, going along by day, he is exempt. Now why should this be the case? Why not say that, since the owner of the pit was negligent with regard to a deaf beast, he should be held negligent with respect to a normal one too? Does this not prove that we do not invoke the argument, since he is negligent in regard to camels anyhow, he is regarded as negligent, too, with respect to the decay of the boards?

G. Yup.

- III.1 A. 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:**
- B. Said Rab, “**Forward** is meant literally, on its face [so it died of suffocation and there would be liability (Kirzner)], and **backward** is meant literally, on its back, **[53A]** and in both cases it was into the pit.”
- C. Rab is consistent with a position stated elsewhere, for 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.”*
- D. And Samuel said, “If the ox fell into a pit, whether forward or backward, the owner of the pit would invariably be liable.”
- E. Samuel is consistent with a position stated elsewhere, for 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.”*
- F. Then [from Samuel's perspective] what is the meaning of **If it fell backward [not into the pit] because of the sound of the digging, the owner of the pit is exempt?***

- G. *For instance, if the beast stumbled over the pit and then fell behind the pit, that is, outside of it. [Kirzner: In this case the pit acted only as a secondary cause.]*
- H. *An objection was raised: If it fell into the pit, whether frontward or backward, the owner of the pit is liable. Does this not refute the interpretation of Rab?*
- I. *Said R. Hisda, "Rab concedes in the case of a pit that is within the domain of the owner [the ground around the pit is ownerless, the pit and the ground remain the property of the owner] that the owner is liable, since the injured party could argue against the responsible party, 'Which way do you want it? If it died because of the bad air, the bad air was surely yours, and if it died through the blow, the blow was delivered by your ground [of which you retained ownership]!'"*
- J. *Rabbah said, "With what sort of a case do we deal here? It is one in which the animal turned over; it started to fall on its face but then turned over and fell on its back, so that the unhealthy air that affected it to begin with did the job."*
- K. *R. Joseph said, "Here we deal with a case in which the damage was done to the pit by the ox. For instance? For instance it pissed in the water. So there is no difference whether it fell forward or backward. In any event the owner is liable."*

III.2 A. *R. Hananiah repeated as a Tannaite formulation in support of the position of Rab: "'And it fall' (Exo. 21:33) — liability is incurred only if the animal falls in the ordinary way that people fall. In this connection sages have said, '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, and both in this case and in that, it fell into the pit.'"*

III.3 A. *The master has said: If it fell forward [not into the pit] because of the sound of the digging, the owner of the pit is liable: But why should this be so? Why not plead that it was the one who was digging who caused the damage?*

B. *Said R. Shimi bar Ashi, "Who is the authority behind this rule? It is R. Nathan, who has said, 'The owner of the pit is the one who did the damage, and in any case in which it is not*

possible to collect damages from one party, one collects damages from the other.'"

C. *For it has been taught on Tannaite authority:* If an ox pushed its fellow into a pit, the owner of the ox is liable, the owner of the pit is exempt. R. Nathan says, "The owner of the ox pays half, and the owner of the pit pays half."

D. *But has it not been taught on Tannaite authority:* R. Nathan says, "The owner of the pit pays three parts, the owner of the ox a fourth part"?

E. *That is no problem. The one* [The owner of the pit pays three parts, the owner of the ox a fourth part"] *speaks of an ox that was deemed harmless, the other* [The owner of the ox pays half, and the owner of the pit pays half] *an ox that was an attested danger.*

F. *Now in the case of the animal deemed harmless, what is the operative theory? If he takes the view that the one party is responsible for the entire injury and so is the other, then this party should pay half and that party should pay half. And if he took the view that this one is responsible for half the damage and that party is responsible for half the damage, then the owner of the pit should pay half and the owner of the ox a quarter, and the other quarter the injured party loses!*

G. *Said Raba, "R. Nathan was a great jurist, and he penetrated into the heart of the law. In point of fact, he took the view that this party is responsible for having done the whole of the damage, and that party is responsible for having done the whole of the damage. And as to your question, let this party then pay half and that party then pay half, it is because the owner of the deceased ox [deemed harmless] says to the owner of the pit, 'What good will it do for me if you become a partner with me?'*

H. *"If you prefer, I shall say, in point of fact he took as his view that this party is responsible for having done half of the damage, and that party is responsible*

for having done half of the damage. And as to your question, so then the owner of the pit should pay half and the owner of the ox a quarter, and the other quarter the injured party loses! it is because the owner of the ox says to the owner of the pit, 'So I found my ox in your pit, and you are the one who killed him. Whatever is paid to me by the other defendant I can accept without quibble, but whatever I don't get from him I demand from you.'" [Kirzner: And similarly in the case of our Mishnah, since he cannot claim any damages from the digger, who was but a secondary cause, he is compensated by the owner of the pit.]

III.4 A. 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 (Kirzner).]

B. *Yeah, so what else is new?*

C. *What might you have supposed? It is in that case in particular that the owner of the pit may say to the owner of the ox, "Even if my pit had not been there anyhow, your ox would have killed the other ox," but in the case of the person who put the stone near the pit, that person may assuredly say to the owner of the pit, 'If it were not for your pit, what harm would my stone have done? Even if an ox had stumbled on it, it might have fallen, but it would have been able to get up again.' So we are informed that the other party may answer, "Yeah, well, if it weren't for your stone, the ox would not have fallen into my pit anyhow."*

III.5 A. *It has been stated:*

- B. **[53B]** 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] —
- C. Abbaye said, "The private person nonetheless pays half-damages."
- D. Rabina said, "The private party pays quarter-damages."

E. *Both this party and that party referred to an animal deemed harmless, with the latter authority in accord with rabbis, the former, with R. Nathan.*

F. *If you wish, I shall say, both parties make their ruling within the position of rabbis [vis-à-vis Nathan], the one party [Rabina] addressing the case of an animal deemed harmless [quarter-damages then are half of the requirement] and the other party [Abbaye] addressing the case of an animal that was an attested danger.*

G. *There are those who say:*

H. Abbaye said, “The private person nonetheless pays half-damages.”

I. Rabina said, “The private party pays full damages.”

J. *Both then refer to the case of the animal that was an attested danger, but while Abbaye concurred with rabbis, Rabina took the position of R. Nathan.*

K. *Or, if you wish, I shall say, the one party like the other concurred with the position of R. Nathan, and Rabina spoke of an animal that was an attested danger, Abbaye an animal that was deemed harmless.*

III.6 A. 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.”

B. *Does this then imply that it was obvious to Raba [that the final rule is the fact]? But lo, Raba raised it as a question. For Raba asked, “If an ox that had been consecrated to the altar and had become invalid for use on the altar fell into a pit, what is the law? Does the phrase, ‘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, mean, excluding a case in which the carcass of the ox would not be his?*

Or perhaps the phrase, ‘And the dead beast shall be his’ (Exo. 21:34) — means that the owner of the injured ox has to accept as payment the corpus of the ox?”

C. Well, after he asked the question, he himself found the answer to it.

D. Then how on the basis of Scripture does he know that the owner of the injured ox has to accept as payment the corpus of the ox?

E. He derives that fact from the phrase, “And the dead shall be his own,” (Exo. 21:36), that pertains to an ox.

F. Then on what basis do you utilize the language, “And the dead shall be his own” spoken in connection with cattle to yield the law that the plaintiff has to retain the carcass as part payment, and you appeal to the language “and the dead beast shall be his” in the context of pit to limit liability to an animal the carcass of which could belong to him? Why not say matters in reverse?

G. I found it more reasonable to connect the exemption to the pit, since in the case of the pit, an exemption is derived also for inanimate objects.

H. Quite to the contrary! Derive the exemption from the case of cattle, since for cattle there is an exemption for half-damages!

I. But exemption from the entirety of a payment never pertains to cattle [but it does to a pit].

IV.1 A. **[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:**

B. *Our paragraph of the Mishnah is not in accord with R. Judah, for it has been taught on Tannaite authority:*

C. R. Judah imposes liability for damage done by a pit to utensils [inanimate objects].

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

B. “And an ox or an ass fall therein” —

C. “An ox” — but not a man; “an ass” — but not inanimate objects.

- D. And R. Judah?
- E. “Or” — serves to encompass within the law inanimate objects.
- F. And rabbis?
- G. **[54A]** “...Or” is required as disjunctive.
- H. And R. Judah?
- I. *That derives from the use of the singular, “fell...”*
- J. And rabbis?
- K. “Fell...” *can bear a variety of meanings.*

IV.3 A. *Might I say that the language “fell” serves as a generalization [covering anything that might fall into a pit], with the reference to “ox or ass” a particularization. So we have a generalization followed by a particularization, with the result that covered by the generalization is only what is stated in the particularization thereof. If, then, an ox or an ass was injured, there would be compensation, but nothing else at all!*

B. *Say: “The owner of the pit shall make it good” (Exo. 21:34) goes back and adds another generalization. So now we have a generalization, a particularization, and another generalization. So you treat the particularization as exemplary: Just as what is explicit in the particularization is that we deal with animate creatures, so all animate creatures that fall into the pit are subject to reparation.*

C. *Well then how about this:* Just as what is explicit in the particularization is that we deal with something the carcass of which imparts uncleanness if it is touched and carried, so anything the carcass of which imparts uncleanness when touched or carried would be subject to compensation, but not fowl?

D. *If that were the indicative trait that governed, then Scripture ought to have given only a single particularization [which would have sufficed to make that point].*

E. *Yeah, well, then, which one? If Scripture had referred only to ox, I might have supposed that if a beast is suitable to be offered on the altar, it will be subject to compensation if damaged by a pit, but if it is not suitable to be offered on the altar, it would not. And if the All-Merciful had made written reference to the ass, I might have supposed that if the animate creature may be sanctified from the womb, it would*

be subject to compensation if damaged in a pit, but if it is not subject to sanctification in the womb, it would not.

F. [And why not exclude fowl?] Scripture says, “And the dead shall be his” — something that is subject to death.

IV.4 A. *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?*

B. *Say: Breaking them represents their death.*

IV.5 A. *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?*

B. *Say: Sure, in the case of new utensils, that may burst in bad air.*

IV.6 A. *Now is not the phrase, “and the dead shall be his” needed for the law stated by Raba? For said Raba, “If an ox that was consecrated but disqualified for use on the altar, the responsible person is exempt, for Scripture states, ‘And the dead shall be his’ (Exo. 21:34), meaning, only in a case in which the carcass of the ox could be his [is there liability].”*

B. *Scripture has said, “He should give money to the owner of it” (Exo. 21:34).*

C. *If so, then does this not serve to extend the law to anything that has an owner, even animate objects, even man?*

D. *Scripture has said, “And an ox or an ass fall there in” — “an ox” — but not a man; “an ass” — but not inanimate objects.*

E. *And to R. Judah, who extends the law to cover even inanimate objects, while the language “an ox” — means, but not a man, what is the sense of the exclusionary language, “an ass”?*

F. *Rather, said Raba, “The term ‘ass’ in the case of the pit, from R. Judah’s perspective, and the term ‘sheep, in the section on lost property (Deu. 22:1-3) in the view of all parties, stand as problems not so readily explained.”*

- V.1** A. [If] an ox...a deaf-mute, an idiot, or a minor fell into it, [the owner] is liable:
- B. *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? [Obviously not!]*
- C. Said R. Yohanan, "The meaning is, 'an ox that was deaf, an ox that was deranged, an ox that was substandard in size.'"
- D. **[54B]** So, anyhow, if it were an ox of sound senses would he be exempt from liability?
- E. *Said R. Jeremiah, "The sense of the statement is, 'It goes without saying.' That is to say: it goes without saying that if it is an ox that is of sound senses that the owner would be liable for damages. But even if it is an ox that was deaf, an ox that was deranged, an ox that was substandard in size, in which case I might have said that it was the deafness that caused the accident, or the small size that caused the accident, so the owner should be exempt from having to pay, he still is liable, and that is what we are informed of by the formulation of the Mishnah's rule."*
- F. *Said R. Aha to Rabina, "But has it not been taught on Tannaite authority: If one of sound senses fell into it, he is exempt? Does this not mean, an ox of sound senses?"*
- G. He said to him, "No, a man."
- H. *Then would it be the rule that only if a man had sound senses would the owner of the pit be exempt, but if he did not have sound senses, the owner would be liable? And is it not written, "an ox," not a man?*
- I. *Rather, what is the meaning of "one of sound senses"? It is a creature that can have sound senses [meaning, a human being]."*
- J. *He said to him, "But has it not been taught on Tannaite authority: If an ox of sound senses fell into it, he is exempt?"*
- K. Rather, said Raba, "The meaning indeed is, 'an ox that was deaf, an ox that was deranged, an ox that was substandard in size.' So if the ox were of sound senses, the owner of the pit would be exempt. *How come? Because the ox should have paid attention as it walked along.*"

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

M. If into the pit fell an ox that was deaf, an ox that was deranged, an ox that was substandard in size, or an ox that was blind or that was walking at night, the owner is liable, but if it was normal or walking by day, the owner is exempt.

I.1 commences with an exegetical question in line with the foregoing. **II.1** asks a question demanded by the Mishnah's rule. No. 2 proceeds to a secondary question, to be settled by appeal to our Mishnah's rule. No. 3 carries forward a different version of this same question. **III.1-2** gloss the language and principles of the Mishnah's rule. No. 3 continues the analysis of the Mishnah's language. No. 4 clarifies the foregoing, showing the limits of the positions outlined there. No. 5 then goes on to a theoretical question precipitated by the foregoing. No. 6 finally asks a question that moves into fresh theoretical grounds. **IV.1** asks about the authority of the Mishnah paragraph. No. 2 proceeds to the scriptural basis for the ruling of the Mishnah paragraph. No. 3 then proposes an alternative reading of the verse operative in the foregoing. Nos. 4-6 carry forward the same inquiry. **V.1** clarifies the sense of the language of the Mishnah.

5:7

- A. All the same are an ox and all other beasts so far as (1) falling into a pit, (2) keeping apart from Mount Sinai (Exo. 19:12), (3) paying a double indemnity [in the case of theft, Exo. 22:7], (4) the returning of that which is lost (Deu. 22:3, Exo. 23: 4) (5), unloading (Exo. 23: 5), (6) muzzling (Deu. 25: 4), (7) hybridization (Lev. 19:19, Deu. 22:10), and the (8) Sabbath (Exo. 20:10, Deu. 5:14).
- B. And so, too, are wild beasts and fowl subject to the same laws.
- C. If so, why is an ox or an ass specified? But Scripture speaks in terms of prevailing conditions.

I.1 A. Falling into a pit:

- B. "He should give money to the honor of it" (Exo. 21:33) — *everything that has an owner, as we said earlier.*

II.1 A. Keeping apart from Mount Sinai:

- B. "Whether animal or man it shall not live" (Exo. 19:13) — wild beast is covered by domesticated animal, and "whether" covers birds.

III.1 A. Paying a double indemnity [in the case of theft]:

- B. As we have said: "For every kind of trespass" (Exo. 22: 8) is inclusive.

IV.1 A. The returning of that which is lost:

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

V.1 A. Unloading:

- B. 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.

VI.1 A. Muzzling:

- B. 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.

VII.1 A. Hybridization:

- B. 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.
- C. In respect to mating, the analogy is to be drawn between the use of the word “cattle” [at Exo. 20:10 and Deu. 5:14] in the context of the Sabbath and in the present context.

VII.2 A. *And how, to begin with, do we know the rule in connection with the Sabbath?*

B. *It is in accord with that which has been taught on Tannaite authority:*

C. R. Yosé in the name of R. Ishmael says, “In the first statement of the ten commandments it is said, ‘your man slave and your woman slave and your cattle’ (Exo. 20:10), and in the second statement of the ten commandments it is said, ‘your ox and your ass and any of your cattle’ (Deu. 5:14). Now are not ‘ox’ and ‘ass’ covered by ‘any of your cattle’? So why identify them in particular? It is to tell us that, just as in the case of ‘ox and ass’ stated here, beasts and birds are in the same classification, so beasts and birds are in the same classification in any other case in which there is a reference to ox and ass.”

D. *But might one not propose the following:* The mention of “cattle” in the first formulation of the ten commandments represents a generalization, and then the appearance of “your ox and your ass” in the second statement of the ten commandments represents a particularization. Hence we have a generalization followed by a particularization, with the result that, covered by the generalization is only what fits into the particularization. *Thus the ox and the ass are subject to the stated lo, but nothing else!*

E. *State*: “And any of your cattle” included in the second statement of the ten commandments forms a second generalization. So now we have a generalization, a particularization, and another generalization. Then you treat the particularization as exemplary: Just as the particularization speaks of animate creatures, so all animate creatures are covered by the law.

F. *But might I not say*: Just as what is explicit in the particularization is that we deal with something the carcass of which imparts uncleanness if it is touched and carried, so anything the carcass of which imparts uncleanness when touched or carried would be subject to compensation, but not fowl?

G. *If that were the indicative trait that governed, then Scripture ought to have given only a single particularization [which would have sufficed to make that point]*.

H. *Yeah, well, then, which one? If Scripture had referred only to ox, I might have supposed that if a beast is suitable to be offered on the altar, it will be subject to compensation if damaged by a pit, but if it is not suitable to be offered on the altar, it would not. And if the All-Merciful had made written reference to the ass, I might have supposed that if the animate creature may be sanctified as firstborn, it would be subject to the law, but if it is not sanctified as firstborn, it would not. So Scripture had to refer to ox. So it must follow that what we have here in the language “and all your cattle” is an extension of the law, not merely a generalization.*

VII.3 A. *Is that then to say 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? For it has been taught on Tannaite authority:*

B. “And you shall bestow that money for all that your soul desires” (Deu. 14:26) — that is a generalization; “for oxen, or for sheep, or for wine, or for strong drink” is then a particularization of the foregoing; “or for all that you desire” is a generalization. Now what we have here is a generalization, a particularization, and a generalization, and you cannot encompass under the generalization anything except what bears the indicative traits of the specified items. Just as here, the

particularization involves products that derive from produce and that grow from the ground, so anything that derives from produce and that grows from the ground [may be purchased with funds of this character]. [Here, therefore, “all” serves as a generalization, and not an amplification and extension of the law.]

C. Say: “For all” is a generalization, but standing by itself, “all” would indeed be an amplification and extension of the law. Or, if you prefer, I shall say, “all” would indeed form a generalization in other contexts, but in this context, [at Deu. 5:14] it serves as an amplification. For why was the language, “and your cattle,” written only in the first statement of the ten commandments, and why in this passage was the language, “and all your cattle” inserted, unless it was meant to serve as an amplification?

D. Now that you have taken the view that the language “all” may serve as an amplification and extension of the law, when the first statement of the ten commandments refers to “your cattle,” and “ox and ass” in the second, what purpose is thereby served?

E. Say: The use of “ox” was to provide a verbal analogy with the use of the same term in the context of muzzling; the term “ass” was used to establish a verbal analogy to “ass” used in the context of unloading; “your cattle” was to serve as the basis for a verbal comparison in connection with “your cattle” in hybridization.

VII.4 A. Well, if we compare the rule on hybridization to the matter of the Sabbath, then, [since a human being is required to keep the Sabbath], why should it not be the rule that a human being may not pull the plough along with a beast or pull a wagon along with a beast? But how come we have learned in the Mishnah: **And a man is permitted [to be joined] with all of them [with either a wild or domesticated animal] to pull [a wagon], plough, or be led [M. Kil. 8:6H]?**

B. Said R. Pappa, “The Pappunean knows the reason of this rule, and who is that? It is R. Aha bar Jacob: ‘Said Scripture, “so that your man slave and your woman slave may rest as well as you” (Exo. 20:12) — it is as to rest that I have drawn such a comparison [to cattle], but not for any other purpose.’”

VII.5 A. R. Hanina b. Agil asked R. Hiyya bar Abba, “How come in the first statement of the ten commandments there is no

reference to well-being in connection with paying respect to father and mother, while in the second statement of the ten commandments [55A] there is an explicit reference to well-being?”

B. He said to him, “Before you ask me about why well-being is introduced, you’d better ask me whether or not well-being is mentioned at all, since I really don’t know whether or not well-being is mentioned there [in the context of any concrete aspect of behavior and its norms]. Why don’t you go on over to R. Tanhum bar Hanilai, who was a regular at the lessons of R. Joshua b. Levi, who was an expert in matters of lore [since he would have paid attention to such things as do not pertain to the norms of behavior].”

C. *He went to him.* He said to him, “From him [Joshua], I’ve heard not a word. But this is what Samuel bar Nahum, the brother of the mother of R. Aha b. R. Hanina, and some say, the brother of the father of the mother of R. Ahai b. R. Hanina, said to me: ‘It is because, in the end, the first statement of the ten commandments was destined to be broken up.’”

D. *So even if,* in the end, the first statement of the ten commandments was destined to be broken up, *what difference does that make anyhow?*

E. Said R. Ashi, “God forbid! In that case, well-being would have come to an end in Israel.”

VII.6 A. Said R. Joshua [b. Levi], “He who in a dream sees the letter *tet* [which is the first letter of the word ‘well-being’] — that’s a good omen for him.”

B. *How come? If we say that it is because it is the first letter of the word for “good,” then why not say, to the contrary, that it is the first word of the letter “sweep” in the verse, “And I will sweep it with the besom of destruction” (Isa. 14:23)?*

C. *[But that word has two tets, and goodness has only one, so it must follow that] where it is*

a good omen, it is where the word has only one letter tet.

D. *Say: It can refer to “uncleanness” [which also begins with the letter tet, as in the verse:] “Her filthiness is in her skirts” (Lam. 1: 9).*

E. *We are referring only to a word that has the letter tet and the letter bet as well [which is not the case there].*

F. *Say [that it can refer to the word “sunk” in the verse in which you do have a tet and a bet, as follows:] “Her gates were sunk into the ground” (Lam. 2: 9)?*

G. *Well, in point of fact, since Scripture used that letter to stand for something good at the very start of the book of Genesis, up to “And God saw the Light” (Gen. 1: 4), and up to that point, no tet occurs.*

VII.7 A. *And said R. Joshua [b. Levi], “He who in a dream sees the word “elegy” may know it as an omen that he has been shown mercy in heaven, and he will be redeemed.”*

B. *But that is the case only if he saw it written out.*

VIII.1 A. **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 spoke in terms of prevailing conditions:**

B. 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.]”

C. *That’s obvious.*

D. *Said R. Habiba, “Since it is possible for them to procreate with one another, what might you have thought? They represent a single species. So we are informed that that is not the case.”*

Composite on Hybridization

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

B. *To that proposition objected Raba bar R. Hanan, "How come? Shall we say because one has a long neck, the other short? Then should not a Persian and an Arabian camel also be regarded as hybrids if they are paired? For one has a thick neck, the other a thin one."*

C. Rather, said Abbaye, "This one has its testicles on the outside, and that one has its testicles on the inside."

D. *R. Pappa said, "This one gets pregnant with only one egg when it is fecund, and the other with several at one time."*

VIII.3

A. Said R. Jeremiah said R. Simeon b. Laqish, "He who mates two species of sea creatures is penalized with a flogging."

B. *How come?*

C. *Said R. Adda bar Ahbah in the name of Ulla, "We draw a verbal analogy between the words 'after its kind' as these occur with reference to fish [at Gen. 1:21] and with reference to creatures of the dry land [at Gen. 1:25]."*

VIII.4

A. *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?"*

B. *An objection was raised to this question by Rabina, "Well what about the following case: If [someone did the impossible, and] into his hand someone took wheat and barley, and he sowed the wheat on the ground of the Land of Israel and the barley on the ground of soil outside of the Land of Israel, is he liable along these same lines?"*

C. *Say: What sort of a comparison is to be made? In your case, the Land of Israel is subject to the obligation at hand, while territory outside is not, but here, both one locale [the sea] and the other [dry land] are equally subject to the same obligatory law.*

I.1-VII.1 provide proofs out of Scripture for the Mishnah paragraph's allegation. No. 2 then provides a proof required by the antecedent items, and Nos. 3, 4 form an appendix to No. 2. No. 5 then pursues the theme introduced in the foregoing, the comparison of the two versions of the ten commandments. Nos. 6+7 is an appendix to the foregoing. VIII.1 draws a pertinent conclusion from the rule of the Mishnah. Nos. 2-4 are tacked on for thematic purposes.