

# 8

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## Bavli Baba Qamma Chapter Eight

### Folios 83B-93B

#### 8:1A-R

- A. He who injures his fellow is liable to [compensate] him on five counts:
- B. (1) Injury, (2) pain, (3) medical costs, (4) loss of income [lit.: loss of time], and (5) indignity.
- C. For injury: How so?
- D. [If] one has blinded his eye, cut off his hand, broken his leg, they regard him as a slave up for sale in the market and make an estimate of how much he was worth beforehand [when whole], and how much he is now worth.
- E. Pain:
- F. [If] he burned him with a spit or a nail,
- G. and even on his fingernail, a place in which [the injury] does not leave a lasting wound,
- H. they assess how much a man in his status is willing to take to suffer pain of that sort.
- I. Medical costs:
- J. [If] he hit him, he is liable to provide for his medical care.
- K. [If] sores arise on him, if [they are] on account of the blow, he is liable; [but if] they are not on account of the blow, he is exempt.

- L. [If] the wound got better and opened up again, got better and opened up again, he remains liable to provide for his medical care.
- M. [If the wound] properly healed, he is no longer liable to provide medical care for him.
- N. Loss of income:
- O. They regard him [in estimating income] as if he is a keeper of a cucumber field,
- P. for [the defendant] already has paid off the value of his hand or his leg.
- Q. Indignity:
- R. All [is assessed] in accord with the status of the one who inflicts the indignity and the one who suffers the indignity.

- I.1**
- A. *Why [should there be monetary compensation]? Scripture states, “An eye for an eye” (Exo. 21:24), so might I not say that it means an eye literally?*
  - B. *Perish the thought! For it has been taught on Tannaite authority: Might one suppose that if someone blinded a person’s eye the court should blind his eye? Or if he cut off his hand, then the court should cut off his hand, or if he broke his leg, the court should break his leg? Scripture states, “He who hits any man...and he who hits any beast” — just as if someone hits a beast, he is assigned to pay monetary compensation, so if he hits a man, he is required to pay monetary compensation.*
  - C. *And if you prefer, then note the following: “Moreover you shall take no ransom for the life of a murderer, who is guilty of death” (Num. 35:31) — for the life of a murderer you shall take no ransom, but you shall take a ransom for the major limbs, which will not grow back.*

- I.2**
- A. *To what verse in regard to smiting does the cited passage “He who hits any man...and he who hits any beast” refer? If we say, to “And he who kills a beast shall make it good, and he who kills a man shall be put to death” (Lev. 24:21), that verse refers to not personal damages but death. Rather, it is the following: “And he who smites a beast mortally shall make it good: life for life” (Lev. 24:18), and nearby, “and if a man maim his neighbor as he has done so shall it be done to him” (Lev. 24:19).*

B. *But that verse speaks not at all of smiting!*

C. *We are speaking of what happens when one hits, that is at the foundation of this verse, and what happens when one hits, that is at the*

*foundation of the other: just as hitting mentioned in the case of the beast speaks of payment of monetary damages, so also here smiting in the case of man speaks of payment of reparations in money.*

D. *Yeah, well, what about, “And he who hits any man mortally shall surely be put to death” (Lev. 24:17)?*

E. *That speaks of monetary compensation.*

F. *How do you know it speaks of monetary compensation? Maybe it speaks of the death penalty?*

G. *Perish the thought! First of all, it is linked with the stated case, “He who hits a beast mortally shall make it good,” and, furthermore, it is written in context, “as he has done, so shall be done to him” (Lev. 24:19) — meaning, then, monetary compensation!*

### **I.3**

A. *What is the meaning of, And if you prefer, [then note the following: “Moreover you shall take no ransom for the life of a murderer, who is guilty of death” (Num. 35:31) — for the life of a murderer you shall take no ransom, but you shall take a ransom for the major limbs, which will not grow back]?*

B. *This is what troubled the Tannaite author of the passage: How come you derive the lesson on the law covering a human being who injures a human being from the law that covers the case of a human being that hits an animal, and not from the law governing a case in which a human being kills another human being [where he would be put to death, that is, literal retaliation]? In that case, I would answer: we derive the law covering injury from the law covering injury, and we do not derive the law covering injury from the law covering murder. But then, someone could well argue, derive the law of injury dealing with man from another case of a tort done to man, but do not derive the law of injury on man from the case of a beast. And that explains the resort to a further proof, namely, And if you prefer, then note the following: “Moreover you shall take no ransom for the life of a murderer, who is guilty of death” (Num. 35:31) — for the life of a murderer you shall take no ransom, but you shall take a ransom for the major limbs, which will not grow back.*

### **I.4**

A. *But does the verse, “Moreover you shall take no ransom for the life of a murderer, who is guilty of death” (Num. 35:31), serve that purpose in particular, namely, to exclude not taking ransom for the*

*major limbs? Is it not required so that the All-Merciful might make the statement that you should not impose upon such a criminal two penalties, that is, do not take money from him and then put him to death?*

*B. Not at all, for that proposition derives from “According to his crime” (Deu. 25: 2), meaning, for one crime you hold him liable, but you do not hold him liable for two crimes.*

*C. Still, maybe the sense of the All-Merciful is that you should not take money from him and then release him?*

*D. If that were the case, Scripture should have said, “You shall not take a ransom for the one who is guilty of death.” Why specify “for the life of the murderer in particular,” unless it is to show that “for the life of the murderer” you shall take no ransom, but you shall take a ransom for the major limbs, which will not grow back?*

*E. Then since it is written, “Moreover you shall take no ransom,” why do I have to draw an analogy in the matter of hitting a beast and a human being?*

*F. Say: If I had to derive the rule only from that passage, I might have supposed, if he wants, let him give the actual eye, and if he wants, let him give the price of the eye. So we are informed: just as if someone hits a beast, he is assigned to pay monetary compensation, so if he hits a man, he is required to pay monetary compensation.*

- I.5** A. *It has been taught on Tannaite authority:*
- B. R. Dosethai b. Judah says, “‘An eye for an eye’ means that monetary reparations are to be paid.
- C. “You say that monetary reparations are to be paid. But perhaps it means an eye literally?
- D. “Say: Lo, if the eye of this one was big and the eye of that one was little — how then am I going to invoke the statement, ‘an eye for an eye’?
- E. “*And if you should say, in such a case as this take money [but where it can be done right, it means there should be literal retaliation], the Torah has said, ‘You shall have one law’ (Lev. 24:22), meaning, the same law for all cases in which you are involved.*
- F. *Say: So what’s the problem anyhow? Maybe the meaning is, the other has taken away this one’s sight, so take away the other one’s sight from him. Is that what Scripture means? And if you don’t say*

this, [84A] then if a small person killed a big one, or a big one a small one, how are we going to put that one to death, for the Torah has said, ‘You shall have one law’ (Lev. 24:22), meaning, the same law for all cases in which you are involved?

G. *But as a matter of simple fact, this one has taken away the other’s life, so the Torah has said to take away the life of the other. So, too, here, this one has taken away the sight of the other, so the Torah has said to take away the sight of the other.*

- I.6** A. *It has further been taught on Tannaite authority:*
- B. R. Simeon b. Yohai says, “‘An eye for an eye’ means that a money payment is paid.
- C. “You say that it means that a money payment is paid. But mainly it means only that an eye is literally put out?
- D. “Lo, if someone who was blind blinded another person, or who had a hand cut off cut off someone else’s hand, or who was a cripple crippled another person, how am I going to carry out in such a case ‘an eye for an eye’? And yet the Torah has said, ‘You shall have one law’ (Lev. 24:22), meaning, the same law for all cases in which you are involved?”
- E. *Say: So what’s the problem? Maybe if you can do it, then do it, and if you can’t carry out retaliation, you just don’t carry out literal retaliation but you set the man under such circumstances free? For if you don’t say this, then if you have a man who is suffering from a fatal disease who killed a healthy person, what in the world are we going to do to him? But just as, if it is possible, it is possible to carry out the law, and if it is not possible, it simply is not possible to carry out the law, so we free him, here, too, that is the solution?*

- I.7** A. *A Tannaite authority of the household of R. Ishmael stated, “Said Scripture, ‘So shall it be given to him again’ (Lev. 24:20) — and ‘giving’ refers only to a monetary payment.”*
- B. *Then what about the following: “As he gave a blow that cause a blemish” (Lev. 24:20) — does this, too, refer to monetary compensation?*
- C. *Say: A Tannaite authority of the household of R. Ishmael refers to an apparent excess in the formulation of Scripture, namely, since it is written, “And if someone injure his neighbor, as he has done so shall be done to him” (Lev. 24:19), what need do I further have for the*

*repetition of the language, ‘So shall it be given to him again’ (Lev. 24:20)? It indicates that a monetary payment is required.*

*D. Then what need do I have for the language, “As he gave a blow that cause a blemish” (Lev. 24:20)?*

*E. Since Scripture wished to use the language, “So shall it be given to him again,” [proving that monetary compensation is paid,] the framer also stated, “as he has given...that caused a blemish in a man.”*

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

*B. Then what about the following: “foot for foot”? Are you going to say the same here, too?*

*C. Say: The member of the household of R. Hiyya interprets a superfluous usage of Scripture, since it is stated in any event, “Then you shall do to him as he proposed to do to his brother” (Deu. 19:19), and if you assume that actual retaliation is required, then what need do I have for the words, “hand in hand”? This shows that monetary compensation is paid.*

*D. And why “foot in foot”?*

*E. Since the framer of Scripture was going to say, “hand in hand,” he added the balancing language, “foot for foot.”*

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

*B. But what’s the problem here? Maybe we say to him, if he can take it, we do it to him, and if he cannot take it, we do not do it to him? And if we say that he can take it and we do it to him and then he dies, if he dies, let him die? Have we not learned in the Mishnah with respect to a flogging, **And if [they made an assessment of how much the victim can take, and then] the victim dies under the hand of the one who does the flogging, the latter is exempt from punishment [M. Mak. 3:14]?***

**I.10** A. R. Zebid in the name of Raba said, “Said Scripture, ‘Wound for wound’ (Exo. 21:25) — this means that one may have to pay compensation for pain in addition to paying compensation for personal injury. *Now, if you imagine that this means that actual retaliation, then is the sense not that just as the victim has suffered pain when he was injured, so the felon will suffer pain when he suffers the retaliation [and in such a case, how can we pay compensation for pain over and above the actual injury, such as Scripture here is understood to mean]?”*

B. *But what’s the problem here? Maybe since someone who is acutely sensitive to pain will suffer more pain, and someone who is not acutely sensitive to pain will suffer less pain, so the upshot of what Scripture has said is to pay for the difference.*

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

B. *But what’s the problem here? Maybe this party will be healed quite quickly and that party will take a long time in healing, so the upshot of what Scripture has said is to pay for the difference.*

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

B. *But on what basis do you derive the verbal analogy based on the intersection of the word “for” in connection with a human being and an ox? Rather, establish your verbal analogy with the occurrence of the selected word in connection with human being in the following: “You shall give life for life” (Exo. 21:23), meaning, just as in that case, the sense is quite literal, so here, too, the sense is quite literal.*

C. Say: We derive the rule governing personal injuries from the rule covering injuries, and we do not derive the rule covering injuries from the rule pertaining to the death penalty.

D. To the contrary, derive the rule governing a human being from a verse that refers to a human being, and do not derive the analogy covering a human being from the case covering an ox.

- E. Rather, said R. Ashi, “‘for he has humbled her’ (Deu. 22:29) — here we have a use of the same word with reference to a human being, so we may now derive our rule from the case of [1] damages done to [2] a human being [and here it is clear that a monetary compensation is to be paid].”

**I.13** A. It has been taught on Tannaite authority:

- B. R. Eliezer says, “‘An eye for an eye’ — literally.”

C. Now come off it! Do you think that it is meant literally? And does R. Eliezer reject the position of all of these Tannaite demonstrations to the contrary?

D. Said Raba, “The point is that they do not assess the injured person as though he were a slave.”

E. Said to him Abbaye, “Then is it as though he were a free person? But is a free person subject to compensation? [What monetary value can be ascertained if someone is not a slave]?”

F. Rather, said R. Ashi, “It is meant to say that we make the estimate in terms of not the value of the injured party but the value of the party responsible for the injury.”

**I.14** A. There was an ass that bit off the hand of a child. The case came before R. Pappa bar Samuel. He said to him, “Go and estimate the cost of compensation for the Four Aspects of compensation.”

B. Raba said to him, “But do we not learn in the Mishnah that there are **five**?”

C. He said to them, “What I meant was, in addition to the compensation for the injury itself.”

D. Said to him Abbaye, “And lo, the injury was done by an ass, and an ass has to pay compensation only for the injury done [but not the other four counts].”



E. *He said to them, "Go and estimate the cost of compensating him for the damage that has been done to him."*

F. *"But isn't it not the fact that he has to be evaluated for the present purpose as though he were a slave?"*

G. *He said to them, "Go and estimate the cost of compensating him for the damage that has been done to him as though he were a slave."*

H. *Said the father of the child to him, "I don't want it, because it is humiliating."*

I. *They said to him, "So now you will deny the child what is coming to him!"*

J. *He said to them, "When he grows up, I'll make it go for him out of my own property."*

**I.15** A. *There was an ox that chewed up the hand of a child. The case came before Raba. He said to them, "Go and estimate the cost of compensating him for the damage that has been done to him as though he were a slave."*

B. *They said to him, "But lo, the master is the one who has said, 'If there is a case of payment for which the injured party would have to be evaluated as a slave, damages cannot be collected in Babylonia.'"*

C. *He said to them, "Well, it's necessary to do it that way, in case the injured party grabs property belonging to the defendant."*

D. *Raba is entirely consistent, for said Raba, "Compensation for injuries done by an ox to an ox or by an ox to a human being is collected in Babylonia, but compensation for damage done by a human being to a human being or by a human being to an ox may not be collected in Babylonia."*

**I.16** A. *What differentiates the matter of injuries done by a human being to a human being or injuries done by a human being to an ox, that may not be compensated?*

B. *It is because to collect such compensation, the judges that issue the decree must fall into the*

*classification of the language used in Scripture, “to the judges...,” and that classification of judges is not found in Babylonia but only in the Land of Israel.*

*C. Since the same verse speaks of injuries done by an ox to an ox or an ox to a human being, here, too, [84B] the judges that issue the decree must fall into the classification of the language used in Scripture, “to the judges...”!*

*D. But then what differentiates the cases of injuries done by an ox to an ox or an ox to a human being? It is that we are acting here as their agents, just as we do with the matters of admissions and loans.*

*E. So why should we not also act as their agents in the matters of injuries done by a human being to a human being or injuries done by a human being to an ox, just as we do with the matters of admissions and loans?*

*F. Say: When we act as their agents, it is in matters of payments that can be definitely fixed. But as to matters in which the payment cannot be definitely fixed [but require valuations], we do not act as their agents.*

*G. Yeah, well when there is injury done by an ox to an ox or an ox to a human being, we don't have a fixed valuation either! Rather, what we have to say is, “Go see what oxen are selling for in the market.” So in the case of a human being injured by a human being or cattle, we can just as well say, “Go and see what slaves are going for in the market”? And, furthermore, in the matters of the double indemnity and fourfold or fivefold payment, which can be fixed precisely, can't we act as their agents there, too, [but we don't]!*

*H. Say: Where we act as their agents, it concerns monetary compensation, but where what is at issue is extrajudicial indemnities such as those listed, we do not act as their agents.*

*I. Then where a human being does injury to another injury, which is a matter of monetary compensation and*

*not extrajudicial indemnity, why should we not act as their agents?*

*J. Well, where we act as their agents, it is in a matter that is pretty commonplace, but in matters of human beings doing injuries to other human beings, which are uncommon, we do not act as their agents!*

*K. Well, then, what about compensation for humiliation and degradation, which are common cases, in these matters we should serve as their agents?*

*L. Say: That's true. For lo, R. Pappa collected four hundred zuz for humiliation.*

*M. Yeah, but that's no precedent, for R. Hisda sent word to R. Nahman about it, and he replied, "Hisda, Hisda! Are you really collecting extrajudicial penalties in Babylonia?"*

*N. So, in point of fact, where we act as their agents in Babylonia, it concerns a matter that is routine, and a matter that involves an out-of-pocket loss, but in a matter that is routine but does not involve an out-of-pocket loss, or a matter that is not routine but does involve an out-of-pocket loss, we do not act as their agents. Therefore, in cases of injury done by a human being to a human being, even though it involves an out-of-pocket loss, since it is not common, we do not act as their agents.*

*O. So does that mean that we in Babylonia do collect damages in cases of injury done by an ox to an ox? But did not Raba say, "An ox that did damage — they do not collect damages in Babylonia." Now to whom was the damage done? If we say it was to a human being, then is the rule only in the case of oxen that injured a human being? Isn't it the fact that if a human being injures a human being, damages are not collectible? So it must speak of a case in which damage was done to an ox, and here, too, it was stated very clearly that reparations are not going to be*

*collected in Babylonia [but Raba has just say that payment for damages done to property by cattle can be collected in Babylonia]!*

*P. That statement spoke of an ox that was deemed harmless, while this statement speaks of an ox that was an attested danger.*

*Q. But didn't Raba say that there is no case of declaring an ox an attested danger in Babylonia?*

*R. If an ox was declared an attested danger over there and then brought over here, then there would be a case of an ox that was an attested danger even here.*

*S. Sure, but not every day, and didn't you say that in a matter that is not routine, we cannot act as their agents?*

*T. You could have such a case if rabbis of the Land of Israel came to Babylonia and declared the ox an attested danger over here.*

*U. Sure, but that really does not happen very often, and didn't you say that in a matter that is not routine, we cannot act as their agents?*

*V. Rather, when Raba made his statement, it has to do with damages that fall into the classification of tooth or foot, which fall into the category of being deemed perpetually attested dangers.*

- II.1 A. Pain: [If] he burned him with a spit or a nail, and even on his fingernail, a place in which [the injury] does not leave a lasting wound, they assess how much a man in his status is willing to take to suffer pain of that sort:**
- B. Is compensation paid for pain even in a case in which there was no physical damage [depreciation]? What Tannaite authority takes that position?
- C. *Said Raba, "It is Ben Azzai. For it has been taught on Tannaite authority: Rabbi says, 'There is a reference to "burning" (Exo. 21:25) to begin with.' Ben Azzai says, 'The reference to begin with is to a bruise.' Now what is at stake in this dispute? Rabbi takes the view that 'burning' means even without a bruise, so the All-Merciful had to make reference to 'bruise' to indicate that only where the burning cause an injury is there liability, but otherwise, where the burning cause pain but no injury, that is not the case [and the pain would*

*not be compensated without depreciation (Kirzner)], and Ben Azzai takes the view that 'burning' is covered by 'bruise,' and the reason that the All-Merciful made reference to 'bruise' is to show that burning even without a bruise is compensated."*

- D. *Objected R. Pappa, "To the contrary! The opposite stands to reason. Rabbi says, 'There is a reference to "burning" (Exo. 21:25) to begin with.' He takes the view that 'burning' involves a bruise, so the All-Merciful added a reference to bruise to indicate that even if there was burning without a bruise, it must be compensated for. Ben Azzai says, 'The reference to begin with is to a bruise.' He takes the view that 'burning' does not involve a bruise, so the All-Merciful added a reference to bruise to indicate that even there was burning without a bruise, it need not be compensated for. [Kirzner:] In this way they would have referred in their statements to the law as it stands now in its final form. Or, alternatively, all parties concur that 'burning' bears the meaning of a bruise that contains an injury and one that does not, and here what is at stake is [85A] how we interpret a case in which we have a generalization and a particularization thereof that stands some distance away. Rabbi takes the view that in such a case we do not invoke the principle of the generalization and the particularization [that limits the foregoing], and Ben Azzai maintains that in such a case we do invoke the principle of the generalization followed by a limiting particularization. And if you should say that, in that case, what purpose is served in Rabbi's view by the language 'bruise,' the answer is that that imposes payment of additional charges" [Kirzner: for depreciation or for pain].*

### **III.1 A. They assess how much a man in his status is willing to take to suffer pain of that sort.**

- B. *How do we assess compensation for pain in a case in which there has been actual depreciation that was already compensated [for example, an arm was cut off, depreciation has been paid]?*
- C. *Said the father of Samuel, "They assess how much someone would be willing to take to have his hand cut off."*
- D. *To have his hand cut off?! But this would involve not only pain alone but all five categories of compensation! And moreover, do you really think we are going to get involved with kooks? Rather, it must be how much one would take to have a mutilated arm cut off.*

- E. *But with a mutilated arm, too, we're not dealing only with pain alone, since there are also the costs of compensation for humiliation, since it is degrading to someone to have part of his body cut off and thrown to the dogs.*
- F. Rather, we make an estimate of how much someone is willing to take to have his hand cut off by a sword in a case in which the government has made a written order that it be cut off by a drug.
- G. *Say: Here, too, no one is going to take anything to allow so much hurt done to himself!*
- H. Rather, we make an estimate of how much someone is willing to take to have his hand cut off by a sword in a case in which the government has made a written order that it be cut off by either sword or a drug.
- I. *What you need then is not "to take" but rather "to pay" [to have it done painlessly].*
- J. Said R. Huna b. R. Joshua, "What the language of the Mishnah, **to take**, means is that the injured party will have to be paid by the responsible party to the extent of the amount that a person subject to such a sentence would have been prepared to pay."

- IV.1** A. **Medical costs: [If] he hit him, he is liable to provide for his medical care. [If] sores arise on him, if [they are] on account of the blow, he is liable; [but if] they are not on account of the blow, he is exempt. [If] the wound got better and opened up again, got better and opened up again, he remains liable to provide for his medical care. [If the wound] properly healed, he is no longer liable to provide medical care for him:**
- B. *Our rabbis have taught on Tannaite authority:*
  - C. **If ulcers grew up on the body because of the wound, and the wound broke open again, he still has to heal him and pay for loss of time, but if it was not because of the wound, he does not have to pay for the healing or the loss of time.**
  - D. **R. Judah says, "Even if it was on account of the original injury, while he has to pay for the medical bills, he does not have to pay him for the loss of work time."**
  - E. **And sages say, "The loss of work time and the costs of medical bills go together: whoever is liable to pay for the loss of work time is liable to pay for medical bills, and whoever is not liable for the loss of work time is not liable for the medical bills" [T. B.Q. 9:4].**

#### IV.2 A. *What is at stake in that dispute?*

B. *Said Rabbah, "I came across the rabbis of the household of Rab who were in session and stating, 'Here what is at issue is whether or not a wound may be bandaged. [Kirzner: May the wound be bandaged to prevent the cold from penetrating the wound, though the bandage may cause swelling through excessive heat.] Rabbis [at A] maintain that the wound may be bandaged, R. Judah holds that the wound may not be bandaged. As to paying medical bills, to which Scripture makes mention two times [in using the intensive form of the verb at Exo. 21:19], there is liability, but for time lost from work, to which Scripture does not devote the intensive form of the verb, there is no such liability. And I then said to them, 'Well, if the wound may not be bandaged, then one also should not be obligated to pay the medical bills. [The injured party would bear the blame of any ulcers that grew up.] So all parties must concur that the wound may be bandaged, but not too much. The R. Judah took the view that since the wound may not be bandaged too much, then as to paying the medical bills, in which case Scripture uses the intensive form of the verb, there will be liability, but not for loss of time from which, to which Scripture does not devote the intensive form of the verb. And rabbis hold the position that since Scripture has made use of the intensive form of the verb when speaking of paying medical bills, there is liability also to paying for time lost from work, which is treated as comparable to the payment of medical bills. R. Judah maintains, by contrast, that one is not liable for the payment of time lost from work, because Scripture has used the limiting language, 'only.' And rabbis for their part take that limiting language, 'only,' to deal with a case in which the ulcers did not come about because of the original injury at all."*

C. *And as to the other rabbis [at C], who have said, **whoever is liable to pay for the loss of work time is liable to pay for medical bills, and whoever is not liable for the loss of work time is not liable for the medical bills**, what need do I have for Scripture's use of the intensive form of the verb at all?*

D. *They require that formulation in connection with what has been framed as a Tannaite statement by the Tannaite authority of the household of R. Ishmael, for it has been stated on Tannaite authority:*

“‘and to heal he shall heal’ — on this basis a physician is granted the right to heal a patient.”

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

- B. How on the basis of Scripture do we know that if ulcers grew on account of the original injury, and the injury broke open again, the responsible party still would be obligated to pay the doctors bills and also for the loss of work time? Scripture says, “Only he shall pay for the loss of his time and healing he shall heal” (Exo. 21:19).
- C. Might I suppose that that is the case even if the ulcers did not grow up on account of the original injury?
- D. Scripture uses limiting language when it says “only.”
- E. R. Yosé bar Judah says, “Even if the ulcers grew up on account of the original injury, the responsible party is exempt, since it is said, ‘...only.’”
  - F. Some say: “Also if the ulcers grew up on account of the original injury he is entirely exempt from having to pay further compensation.” *That would then accord with the final set of rabbis in the cited passage.*
  - G. Some say: “Also if the ulcers grew up on account of the original injury he is exempt from having to pay compensation for time lost from work but liable to pay the doctor’s bills.” *That would then accord with his father’s ruling in the cited passage.*

**IV.4** A. The master has said: “Might I suppose that that is the case even if the ulcers did not grow up on account of the original injury? Scripture uses limiting language when it says ‘only’”:

- B. *Does Scripture have to make the point that if the ulcers grew up not on account of the original injury, the responsible party would have to pay compensation?*
- C. *What is the meaning of* if the ulcers grew up not on account of the original injury? *It is in accord with that which has been taught on Tannaite authority:* Lo, if the injured party ignored sound medical advice, for example, if he ate honey or anything sweet, though honey and sweet things are bad for the injury, and his wound produced scabs, might one suppose that the responsible party would have to pay the



medical bill for such a case? Scripture says, “only” [by way of limitation].

**IV.5** A. *So what are scabs?*

B. *Said Abbayye, [Kirzner:] “Rough seams.”*

C. *How do we cure them?*

D. *Aloes, wax, and resin.*

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

B. *If the responsible party said to the victim, “I’ll get you a doctor of my own choosing, who cures for nothing,” the other one can say, “A doctor who cures for nothing is worth nothing.”*

C. *If the responsible party said to the victim, “I’ll get you a doctor from quite way off,” the other one can say, “A doctor who comes from far off — the eye will go blind before he ever gets there.”*

D. *If the victim says to the responsible party, “Give me the money, and I’ll take care of it myself,” the other may reply, “You may neglect yourself and collect more from me than you have coming.”*

E. *If the victim says to the responsible party, “So make it a definite sum and be done with it,” the other may reply, “All the more so you’ll be negligent, and people will call me, seeing you, ‘a goring ox.’”*

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

B. *What is the scriptural source of that statement?*

C. R. Zebid in the name of Raba said, “Said Scripture, ‘Wound for wound’ (Exo. 21:25) — this means that one may have to pay compensation for pain in addition to paying compensation for personal injury.”

D. *But that is required [85B] to extend liability for depreciation equally to cases in which the action was inadvertent as willful, under constraint as deliberate.*

E. *If that were the case, then Scripture could as well have said, “Wound in the case of wound.” Why use the language, “wound for wound”? It is to make both points.*

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

B. *Is that the purpose which the cited verse is meant to serve? Do they require that formulation in connection with what has been framed as a Tannaite statement by the Tannaite authority of the household of R. Ishmael, for it has been stated on Tannaite authority: “‘And to heal he shall heal’ — on this basis a physician is granted the right to heal a patient”?*

C. *If so, Scripture could have stated, “Let the physician have him healed.” The present formulation shows that payment for the doctor’s bills is required even where compensation for the injury is paid independently.*

D. *Nonetheless, is not the verse required to make the point that we earlier adduced?*

E. *If so, Scripture should have said either “healing, healing” or “he shall heal, he shall heal.” Why say, “healing, he shall heal”? It is to prove that payment for the doctor’s bills is required even where compensation for the injury is paid independently.*

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

B. *As to pain, it would be in line with that which is stated as the Tannaite version in the Mishnah itself: **Pain: [If] he burned him with a spit or a nail, and even on his fingernail, a place in which [the injury] does not leave a lasting wound.***

C. *Healing: Someone had a wound that was healing but caused pain, but the responsible party put on the wound a strong ointment that turned the skin white, so other ointments had to be put on to restore the natural color of the skin.*

D. *Time lost from work: The responsible party locked him up and kept him from working.*

E. *Humiliation: He spat in his face.*

- V.1** A. **Loss of income:** They regard him [in estimating income] as if he is a keeper of a cucumber field, for [the defendant] already has paid off the value of his hand or his leg:
- B. *Our rabbis have taught on Tannaite authority:*
- C. **Loss of income:** They regard him [in estimating income] as if he is a keeper of a cucumber field. Now if you say that, in that ruling, true justice is smitten, for, when this man was well, he would never have accepted the salary of a watchmen over a bed of cucumbers, but he would have been a water bearer and would have gotten that salary, or he would have gone out as a messenger and gotten that salary, but, in point of fact, in that ruling, true justice is not smitten, for [the defendant] already has paid off the value of his hand or his leg [T. B.Q. 9:2B-F].
- V.2** A. Said Raba, “If one cut off the other’s hand, he pays him the value of his hand, and, as to loss of time from work, they regard him as though he were a watchmen of a cucumber field. If he cut off his leg, he pays him for the depreciation to his worth caused by the loss of the leg, and, as to loss of time from work, they regard him as they he were a doorkeeper. If he put out his eye, he pays him for the depreciation of his value because of the loss of the eye, and as to the loss of time from work, he is regarded as if he were pushing the grinding wheel in a mill. But if he made the other party deaf, he pays the entire value of the person, pure and simple [since he is worth nothing].”
- V.3** A. *Raba raised this question: “If he cut off the hand of the other, and, before there was an appraisal of the cost of that injury, he also broke his leg, and, before there was an appraisal of the cost of that injury, he also put out his eye, and, before there was an appraisal of the cost of that injury, he also made him deaf, what is the law? Do we say that, since there was no assessment of all, we do it all with a single assessment and give him the value of the man as a whole all at once? Or perhaps we make an assessment piecemeal and give him the sum? The practical consequence would concern whether or not he would have to pay for pain and humiliation item by item. True enough, he would not have to pay item for item for depreciation, doctor’s bills, and loss of time from work, since he has to pay him for the whole of his value, so the victim is regarded as though he were just killed, and there would be no more payment than for the value of the whole of the man; but as to pain and humiliation, perhaps payment should be made piecemeal, since he suffered the pain and humiliation piecemeal. And if you rule that*

*since there has been no appraisal at all, we just pay the value of the man altogether, what would be the law if separate appraisals were made? Do we say that, since separate appraisals were made, the compensation is piecemeal, or since the payment for the whole has not been made, perhaps he just pays the value of the whole?"*

B. *The question stands.*

- V.4** A. *Rabbah raised this question: "As to payment for loss of work time that, at this moment, renders the victim of less value, what is the law? For example, if he was hit on the arm, and the arm is now broken but is going to heal, what would be the rule? Since in the end he will get better, does he not have to pay him for the loss of the value of the arm, or perhaps, since at this moment, he is of diminished value, perhaps he does have to pay him for the loss at this time?"*
- B. *Come and take note: **He who hits his father or his mother but did not make a wound on them, or he who injures his fellow on the Day of Atonement [86A] is liable on all counts [M. B.Q. 8:3A-C].** Now how are we to imagine such a case in which one made no bruise? Is it not a case in which he hit him on his hand but it is going to recover? And lo, it is taught, **he is liable on all counts.**"*
- C. *Say: Here with what situation do we deal? It is one in which he made him deaf but did not make a wound on him.*
- D. *But did not Rabbah state, "He who deafens his father is put to death, since it is not possible to cause deafness without making a wound through which a drop of blood falls into the ear"?"*
- E. *Rather, with what sort of a case do we deal here? It is one in which he shaved him.*
- F. *Yeah, but the hair will grow back.*
- G. *And that's just the problem before us!*
- H. *Say: With what sort of a case do we deal here? It is one in which he put on an ointment that removes the hair permanently, so no hair will grow there again. In such a case, you compensate for pain if he scratched his head and caused sores, from which he suffers; healing would be paid because medicine is needed. Loss of time from work would be paid because he was a danger in the wine bars, and he has to make gestures by moving his hand and can't do it because of the scratches. Humiliation is paid because there is no greater embarrassment.*

I. *What was in doubt in Rabbah's mind was obvious to Abbayye, on the one side, and to Raba on the other — with contradictory consequences. For it has been stated:*

J. If he hit him on the arm, and the arm is now broken but is going to heal —

K. Abbayye said, "He pays him compensation for the principal loss of time [meaning, depreciation] and for the minor loss of time [meaning, loss in work time]."

L. And Raba said, "He pays him only the amount of time lost from work from day to day until he recovers [but not for his temporary loss in value]."

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

B. He who cuts off the hand of a Hebrew servant belonging to his fellow —

C. Abbayye said, "He pays to the man compensation for the principal loss of time [meaning, depreciation] and to the owner compensation for the minor loss of time [meaning, loss in work time]."

D. Raba said, "Everything is paid to the slave, and he buys land with the funds, and the master enjoys the usufruct."

E. *It is obvious that if the servant lost in value but the master suffered no loss, for instance, if he split the servant's ear or the top of his nostrils, the entire payment would go to the servant. Where the dispute pertains, it is to a case in which the loss in value has also affected the master.*

**VI.1** A. **Indignity: All [is assessed] in accord with the status of the one who inflicts the indignity and the one who suffers the indignity:**

B. *Who is the authority behind this anonymous statement, for it can be neither R. Meir nor R. Judah? It is R. Simeon, for it has been taught on Tannaite authority: "All who are injured are regarded as though they were free persons who lost their money, for they are children of Abraham, Isaac, and Jacob," the words of R. Meir.*

C. R. Judah says, "The damages paid to an eminent person are estimated in accord with his eminence, and to a trivial person in accord with his triviality."

D. R. Simeon says, "As to the rich, they are regarded as though they were free persons who lost their money, for they are children of Abraham, Isaac, and Jacob. And as to the poor, they are regarded as the least of the poor."

E. Now in accord with whom among these authorities has our Mishnah's rule been formulated? It cannot accord with R. Meir, for while our Mishnah paragraph maintains, **All [is assessed] in accord with the status of the one who inflicts the indignity and the one who suffers the indignity**, for his part he treats all persons within the same classification. Our Mishnah paragraph also cannot accord with R. Judah, for while our Mishnah raises the issue of **he who inflicts indignity on one who is blind**, for his part R. Judah maintains that a blind person has no dignity. So is it not R. Simeon?

F. Well, you may even maintain that it is R. Judah. When R. Judah made his statement that a blind person is not subject to indignity, that was so far as collecting damages from him on such a count. But as to paying him damages, they most certainly pay him damages.

G. Note that later on it states, **He who inflicts indignity on one who is naked, he who inflicts indignity on one who is blind, or he who inflicts indignity on one who is asleep is liable. But one who is sleeping who inflicted indignity is exempt [on that count]**, and there is no allusion to the fact that a blind person who humiliates someone else is exempt, so there should then be the implication that we make no distinction, with reference to a blind person, between his being insulted by others and his insulting others! Hence it is better to conclude that the Mishnah does represent the position of R. Simon.

**VI.2** A. Who is the Tannaite authority behind that which our rabbis have taught on Tannaite authority:

B. If someone intended to degrade a minor person and degraded a major person, he pays to the major person the compensation coming to a minor. If he intended to degrade a slave and he degraded a free person, he pays to the free person the compensation he would have had to pay for degrading a slave.

C. Who is the authority behind this ruling? Assuming that by "minor person" is meant minor in means, and a major person means "major in means," it can be neither R. Meir nor R. Judah nor R. Simeon. It cannot accord with R. Meir, for while our Mishnah paragraph maintains, **All [is assessed] in accord with the status of the one who inflicts the indignity and the**

*one who suffers the indignity, for his part he treats all persons within the same classification. Our paragraph also cannot accord with R. Judah, for R. Judah maintains, "A slave cannot be subjected to indignity." And it cannot accord with R. Simeon, for has he not said, "If someone intended to degrade a minor person and degraded a major person, he is exempt from having to pay compensation"? How come? This is comparable to a case of murder, and, just as in the case of murder, one is liable only if he intended to kill a particular person and killed him, as it is written, "And lie in wait for him and rise up against him" (Deu. 25:11), so in this case, from R. Simeon's viewpoint, one would be liable only if he particularly aimed at degrading the person who in fact has been insulted, in line with, "And she puts forth her hand and grabs him by the balls" (Deu. 25:11), so in the matter of an insult, too, one is liable only if he has insulted the person he intended to insult!*

*D. In point of fact the authority is R. Judah, and when R. Judah made the statement, "A slave cannot be subjected to indignity," that meant as to paying actual money to them, but as to assessing the penalty, such an assessment indeed is made, [to the rule just now given serves a purpose]. Or if you wish, I may say that it represents the view of R. Meir. For do you think that by "minor person" is meant minor in means, and a major person means "major in means"? These rather are meant literally, but the minor is a minor in age, and a major person is an adult.*

*E. So is a minor subject to compensation for degradation?*

*F. Yup. That is in line with what R. Pappa said, "When he is reminded of an embarrassment, he feels embarrassed." Here, too, [86B] when he is reminded of an embarrassment, he does feel embarrassed."*

**I.1**, glossed by No. 2, bearing its own little talmud at Nos. 3-4, provides scriptural bases for both the premises and the rules of the Mishnah paragraph. Nos. 5-13 continue the sequence of proofs begun at No. 1, each bearing its contraindication as well. Nos. 14-15 deal with the issue of assessing damages that is introduced at No. 13. No. 16 is a footnote to the foregoing. **II.1** opens with an inquiry into the Tannaite authority behind the Mishnah's rule. **III.1** clarifies the way in which we carry out the law of the Mishnah.

**IV.1**, with a talmud at No. 2, complements the Mishnah's rule with a Tannaite entry. No. 3 then continues No. 2's interest in the exegesis of a proof-text, and No. 4, with its gloss and extension at Nos. 5, 6 forms an appendix to No. 3. Nos. 7, 8+9 then revert to the earlier issue of Mishnah exegesis, now raising a secondary question that depends on the foregoing and providing a variety of scriptural demonstrations. **V.1** complements the Mishnah with a Tannaite entry, which really glosses and amplifies the rule of the Mishnah. Nos. 2+3-4, 5 then provide refinements for the rule of the Mishnah. **VI.1-2** asks about the authority behind our anonymous Mishnah ruling.

### 8:1S-AA

- S. He who inflicts indignity on one who is naked,**
- T. he who inflicts indignity on one who is blind,**
- U. or he who inflicts indignity on one who is asleep**
- V. is liable.**
- W. But one who is sleeping who inflicted indignity is exempt [on that count].**
- X. [If] he fell from the roof and did injury and also inflicted indignity,**
- Y. he is liable for the injury [he has inflicted] but exempt from the indignity,**
- Z. as it is said, "And she puts forth her hand and grabs him by the balls" (Deu. 25:11).**
- AA. One is liable on the count of indignity only if he intended [to inflict indignity].**

- I.1** A. *Our rabbis have taught on Tannaite authority:*
- B. **He who inflicts indignity on his fellow when he is naked, lo, he is liable. But it is not the same thing to inflict indignity upon him when he is naked as it is to inflict indignity on him when he is clothed. If he inflicted indignity on him when he was in the bathhouse, lo, this one is liable. But it is not the same thing to inflict indignity upon him when he is in the bathhouse as it is to inflict indignity on him when he is in the market. [And it is not the same thing to receive an indignity from an honored person as it is to receive an indignity from a worthless person. And the indignity inflicted upon a great person who is humiliated is not equivalent to the indignity inflicted upon an unimportant person who is humiliated, or the child of important parents who is subjected to an indignity to the child of unimportant parents who is subjected to an indignity] [T. B.Q. 9:12].**



**I.2** A. The master has said: **He who inflicts indignity on his fellow when he is naked, lo, he is liable:**

B. *Is someone who is naked subject to indignity?*

C. Said R. Pappa, “What is the meaning here of ‘naked’? A wind came along and lifted up his garments, and someone else came along and raised them higher, embarrassing him.”

**I.3** A. **If he inflicted indignity on him when he was in the bathhouse, lo, this one is liable:**

B. *Is the bathhouse a place in which anyone can be subjected to indignity?*

C. Said R. Pappa, “He embarrassed him down by the riverside.”

**I.4** A. R. Abba bar Mammel raised this question: “If someone humiliated a sleeping person, who died in his sleep, what is the law?”

B. *So what’s he asking?*

C. Said R. Zebid, “This is what he’s asking: Is the principle of compensation on grounds of embarrassment, and, since this one died in his sleep and never felt the embarrassment, there is no compensation, or perhaps it is because of the public disgrace, and since there was an aspect of disgrace [perceived by the heirs], compensation is required?”

D. *Come and take note:* R. Meir says, “A deaf-mute and a minor may collect damages for humiliation, but an idiot is not able to collect damages for humiliation.” Now, if you say that the damages are on account of disgrace, then that is why a minor should be paid, but if it is on account of the insult, then can a minor feel an insult?

E. *So what’s the point? That it is on account of disgrace? Then the same would apply to the idiot.*

F. *Say: As to an idiot, there is no greater disgrace than being an idiot?*

G. *Anyhow, what’s the point? Draw the conclusion that compensation for degradation is on grounds of disgrace, not embarrassment, for if it is on account of the embarrassment, can a minor feel an insult?*

H. *That is in line with what R. Pappa said, "When he is reminded of an embarrassment, he feels embarrassed." Here, too, when he is reminded of an embarrassment, he does feel embarrassed."*

I. *R. Pappa said, "This is the question that he meant to raise: Is the principle of compensation on grounds of embarrassment, and, since this one died in his sleep and never felt the embarrassment, there is no compensation, or perhaps it is because of the public disgrace suffered by his family?"*

J. *Come and take note: A deaf-mute and a minor may collect damages for humiliation, but an idiot is not able to collect damages for humiliation. Now, if you maintain that it is because of the insult suffered by the family, that explains why a minor should get it. But if it is on account of a personal insult, is a minor subject to personal insult?*

K. *So what's the point? That it is on account of the insult sustained by the family? Then how about the idiot [who has a family, too]?*

L. *Having the idiot in the family is the greatest degradation the family can suffer.*

M. *So what's the point? Why not conclude that degradation is paid on account of the insult suffered by the family, for if it is on account of personal insult, can a minor be personally insulted?*

N. *R. Pappa said, "Yes, indeed. When he is reminded of an embarrassment, he feels embarrassed." Here, too, when he is reminded of an embarrassment, he does feel embarrassed.*

O. *But has it not been taught on Tannaite authority: **Rabbi says, "A deaf-mute is subject to degradation, an idiot is not subject to degradation, and as to a minor, sometimes he is, and sometimes he is not, subject to degradation"** [T. B.Q. 9:13C]?*

P. *In the former case, if the insult is mentioned, he is embarrassed, and in the latter, when the insult is mentioned, he is not embarrassed.*

- II.1 A. He who inflicts indignity on one who is blind or he who inflicts indignity on one who is asleep is liable:**
- B. *The Mishnah statement does not accord with the position of R. Judah, for it has been taught on Tannaite authority: R. Judah says, "A blind person is not subject to compensation for indignity. And so did R. Judah declare a blind person from liability of going into exile, from liability to a flogging, and from liability to being put to death by a court."*
- C. *What is the scriptural basis for the position of R. Judah?*
- D. *He forms a verbal analogy for the matter of degradation on the basis of the use of "your eyes" that occurs in that context and also in the context of the witnesses who are a conspiracy of perjurers. Just as in the latter case, blind persons are not included, so here, too, they are excluded from the law.*
- E. *As to the matter of going into exile, it is in line with that which has been taught on Tannaite authority:*
- F. *Our rabbis have taught on Tannaite authority:*
- G. "But if he thrust him suddenly...not seeing him...and the congregation of judges shall judge...and restore him to the city of refuge" (Num. 35:22-25):
- H. "'...not seeing him' excludes a blind person from the law," the words of R. Judah.
- I. R. Meir says, "'...not seeing him' includes the blind person."
- J. *On what basis does R. Judah reach his conclusion?*
- K. *It is written, "As when someone goes into the wood with his neighbor" (Deu. 19: 5) encompasses everybody, including a blind person. Then "...not seeing him" serves to exclude the blind person.*
- L. And R. Meir?
- M. "Not seeing him" serves to limit the application of the rule, and "unawares" serves also to limit the application of the rule, and since we have one limitation after another, the upshot is to extend the rule.
- N. And R. Judah?
- O. *He interprets "unawares" as an exclusion of what is done intentionally.*

P. *As to exemption from liability to death at the hand of an earthly court, it is established by identifying a verbal analogy accomplished through the occurrence of the word “murderer” used in the scriptural passage on capital punishment and the same term used in the section about liability to exile.*

Q. *And exemption from liability to a flogging is established by appeal to the analogy established by the occurrence of the word “wicked” with reference to flogging and the word wicked used with reference to those who are subject to the death penalty before an earthly court.*

R. *A further Tannaite statement: R. Judah says, “A blind person is not subject to compensation for indignity.” [87A] And so did R. Judah declare a blind person exempt from liability to all the laws of the Torah.*

S. *What is the scriptural basis for the position of R. Judah?*

T. *“Then the congregation shall judge between the smiter and avenger of blood according to these ordinances” (Num. 35:24). Whoever is subject to the law of the smiter and avenger of blood is subject to judgment but he who is not subject to the law of the smiter and avenger of blood [for example, who does not go into exile] also is not subject to judgment on any other count.*

U. *A further Tannaite statement: R. Judah says, “A blind person is not subject to compensation for indignity.” And so did R. Judah declare a blind person exempt from liability to all the commandments of the Torah.*

V. *Said R. Sheshet b. R. Idi, “What is the scriptural basis for the position of R. Judah? Scripture has said, ‘Now this is the commandment, the statutes and the ordinances’ (Deu. 6: 1) — whoever is subject to the ordinances is subject to the commandments, and if someone is not subject to the ordinances, he also is not subject to the commandments or the statutes.”*

W. *Said R. Joseph, “To begin with, I used to say, whenever someone tells me that the decided law accords with R. Judah, who has said that a blind person is exempt from the commandments, I would have*

*celebrated a festival day for the rabbis. How come? Because I am not commanded but I carry out the religious duties. But now that I have heard what R. Hanina said, for said R. Hanina, 'Greater is the one who carries out religious duties because he is commanded to do so than he who carries out religious duties but is not commanded to do so,' if somebody comes and tells me that the decided law does not accord with R. Judah, I will make a festival day for the rabbis. How come? Because if I am commanded, I gain a greater reward."*

**I.1** commences with a Tannaite complement to our Mishnah paragraph, which bears its own Talmud at Nos. 2, 3. Then No. 4 raises a secondary question, refining the law in its theory. **II.1** asks about the authority behind our rule.

### 8:2

- A. This rule is more strict in the case of man than in the case of an ox.
- B. For a man pays compensation for injury, pain, medical costs, loss of income, and indignity;
- C. and he pays compensation for the offspring (Exo. 21:22).
- D. But [the owner of] an ox pays compensation only for the injury.
- E. And he is exempt from liability to pay compensation for the offspring.

### 8:3

- A. He who hits his father or his mother but did not make a wound on them,
- B. or he who injures his fellow on the Day of Atonement
- C. is liable on all counts.
- D. He who injures a Hebrew slave is liable on all counts, except for loss of time,
- E. when he belongs to him [who did the damage].
- F. He who injures a Canaanite slave belonging to other people is liable on all counts.
- G. R. Judah says, "Slaves are not subject to compensation for indignity."

### 8:4

- A. A deaf-mute, idiot, and minor — meeting up with them is a bad thing.
- B. He who injures them is liable.

- C. But they who injure other people are exempt.
- D. A slave and a woman meeting up with them is a bad thing.
- E. He who injures them is liable.
- F. And they who injure other people are exempt.
- G. But they pay compensation after an interval:
- H. [if] the woman is divorced, the slave freed, they become liable to pay compensation.

## 8:5

- A. He who hits his father or his mother and did make a wound on them,
- B. and he who injures his fellow on the Sabbath
- C. is exempt on all counts,
- D. for he is put on trial for his life.
- E. And he who injures a Canaanite slave belonging to himself is exempt on all counts.

- I.1** A. *R. Eleazar asked Rab, "He who inflicts an injury on the minor daughter of another person — to whom does the payment for the injury go? Do we say that, since the All-Merciful has assigned to the father title to the daughter's income during her period of youth, the payment for injury also goes to him, since her value has certainly decreased? Or do we say that it was the income of her youth that the All-Merciful has given to him, since, if he wants to marry her over to a man afflicted with leprosy he may do so, but payment for an injury has not been assigned by the All-Merciful to him, since if the father wishes to do injury to her, he has not got the right to do so?"*
- B. **[87B]** He said to him, "All that the All-Merciful has assigned to the father is the income of her youth, that alone."
  - C. He objected: "**He who injures a Hebrew slave is liable on all counts, except for loss of time, when he belongs to him [who did the damage].**" [Kirzner: Why then should the payment for loss of time in the case of a minor girl not go to the father to whom the hire for her labor would belong?]
  - D. Said Abbaye, "Rab concurs in the case of loss of work time, that, since the income from her work goes to the father, that payment also belongs to her father."
  - E. *An objection was raised: He who injures his adult son pays him right away. If it is his minor son, he provides for him a good investment. He*

who injures his minor daughter is exempt from having to pay compensation, and if others injure her, moreover, they pay the compensation to the father [cf. T. B.Q. 9:8A-G]. [Kirzner: Is this not against the view of Rab, who stated that damages paid for injuring a minor girl would not go to her father?]

F. This too speaks of payment for loss of work time.

**I.2 A. He who injures his adult son pays him right away:**

B. *An objection was raised:* He who does injury to the sons or daughters of others — as to the adults, he pays them off right away. As to the minors, he makes a safe investment for them. If it is his own sons or daughters, he does not have to pay compensation.

C. *Say: That presents no contradiction.* The ruling that says he is exempt speaks of children who are still eating at the father's table, while the ruling which says that he is liable speaks of children who do not eat at his table.

D. *How then have you read the opening clause — that it speaks of a case in which they are not eating at his table? Then, if so, note what follows:* He who injures his minor daughter is exempt from having to pay compensation, and if others injure her, moreover, they pay the compensation to the father. *But shouldn't they pay her, not the father, since she has to provide her own food? And even in accord with the opinion of him who maintains, "The master may say to the slave, work for me, but I won't provide your food," that rule applies to a Canaanite slave, to whom one may indeed say, "Do your work all day long, and, in the even, go out and look for food." But with regard to a Hebrew slave, in which instance it is written, "Because he fares well with you" (Deu. 15:16), meaning, with you in food and with you in drink, that would not be a plausible position, all the more so with his own daughter!*

E. *It is in accord with what Raba b. R. Ulla said, "That ruling pertains only to the surplus of her earnings over the cost of her maintenance." Here, too, the ruling pertains to the surplus of the compensation over the cost of maintenance."*

F. *How then have you read the concluding clause — that it speaks of a case in which they are eating at his table? Then, if so, how come [in the case of the children of someone else] do we have the rule: He who*

*does injury to the sons or daughters of others — as to the adults, he pays them off right away. As to the minors, he makes a safe investment for them. But why not give the money to their father [who supports them]?*

G. Say: When their father would object to such an arrangement, it would involve a situation in which he would suffer a loss, but in a situation in which a benefit is coming from an outside source, he does not object to having the money go to the children.

H. *Well, then, what about something that they find, which is a benefit that comes from an outside source, about which a father is assumed to object [and which he would want handed over to him]?*

I. Say: *Well, he would be concerned about a benefit that comes from an outside source if the children do not suffer on its account, but if the children have suffered pain and the benefit comes from some outside source, then he does not mind if the children gain the benefit in their own account.*

J. *But in the other case, in which the girl feels bodily pain, and the benefit comes from an outside source, and yet the father concerns himself with the money, since it is stated; and not only so, but if others injure her, moreover, they pay the compensation to the father?*

K. Say: *In that case, the father is very strict, so that even if the children are not at his table, he would still concern himself with a benefit that comes from an outside source, while here, where he is not very strict, when his children are eating at his table, then he would be concerned only about what would cause him loss, but as to a profit coming from the outside to them, he would not be concerned.*

**I.3** A. *What is meant by a safe investment?*

B. *What is the definition of a safe investment?*

C. R. Hisda said, “A scroll of the Torah.”

D. Rabbah bar R. Huna said, “A date palm, the fruit of which he can eat.”

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

B. R. Yohanan said, “Even wounding.”



C. “Even wounding” *do you imagine?! Even R. Eleazar raised the question only with respect to an injury [88A] on account of which she became worth less. But as to a mere wound, through which she did not become worth less, no one ever raised a question [for everyone assumed the payment would go to her, not to her father].*

D. *Said R. Yosé bar Hanina, “The wound would have been made to her face, which made her worth less.”*

- II.1 A. He who injures a Canaanite slave belonging to other people is liable on all counts. R. Judah says, “Slaves are not subject to compensation for indignity:”**
- B. *What is the scriptural basis for the position of R. Judah?*
- C. Scripture has said, “When men strive together, a man with his brother” (Deu. 25:11) [yielding compensation for humiliation in the fight].
- D. [Scripture thus assigns compensation for humiliation] to one who is subject to bonds of brotherhood, excluding a slave, who is not subject to bonds of brotherhood.
- E. And rabbis?
- F. He indeed does fall into the category of “brother” so far as keeping the religious duties is concerned.
- G. Then from R. Judah’s viewpoint, the conspiracy of perjurers against a slave should not have to be put to death, since it is written, “Then you shall do to him as he had proposed to do to his brother” (Deu. 19:19)!
- H. Said Raba to R. Sheshet, “The verse concludes, ‘So you shall put away the evil from among you,’ meaning, in all possible ways.”
- I. *From the viewpoint of rabbis, then, a slave could be selected as king!*
- J. *Say: Well, from your perspective, the same problem arises with regard to a proselyte within the position of all parties.*
- K. Rather, Scripture has said, “One from among your brothers” (Deu. 17:15), meaning, from the finest of your brothers.
- L. *And how will rabbis deal with the following:* A slave should be valid for giving testimony, since it is written, “And behold, if the witness be a false witness and has testified falsely against his brother” (Deu. 19:18)?
- M. *Said Ulla, “As to testimony, you cannot say so. For the matter of giving testimony derives by an argument a fortiori from the case of a woman: If a woman, who may enter the congregation, is invalid to give testimony, a slave,*

who is not suitable to enter the congregation, surely should be invalid to give testimony!”

- N. But the distinguishing trait of a woman is that she cannot be circumcised. Will you say the same of a slave, who can be circumcised?
- O. A minor male will prove the contrary, for he, too, may be circumcised, but he cannot give testimony.
- P. The distinguishing trait of a minor is that he is not subject to keeping any of the religious duties. But will you say the same of the slave who is subject to keeping religious duties?
- Q. A woman will prove the contrary, for she is subject to religious duties but she is invalid to give testimony.
- R. So we have come full circle. The indicative trait of the one is not the same as the indicative trait of the other, and the indicative trait of the other is not the same as the indicative trait of the one. But what they have in common is that none of them is subject to all of the religious duty, and they are invalid to give testimony, so I shall introduce the case of the slave under the same rubric, since he, too, is not subject to all of the religious duties and he also is invalid to give testimony.
- S. But what the other two classes of persons have in common is that they are not adult males. Will you say the same of the slave, who is an adult male?
- T. Rather, bring the proof from the case of the robber. [He cannot give testimony, but he is an adult male and may enter the congregation via marriage, so Exo. 23: 1 (Kirzner)].
- U. The indicative trait of the robber is that what he himself has done is what has caused him to be in his present category. Now will you say the same of the slave, whose own deeds have not caused him to be in his present category?
- V. Then derive the rule from the case of both the robber and one of these other classes of persons.

**II.2** A. Mar b. Rabina said, “Said Scripture, ‘The fathers shall not be put to death through the children’ (Deu. 25:16). They shall not be put to death on the basis of the evidence of fathers who have no legal relationship of paternity to their sons. For if you should imagine that ‘fathers should not be put to death through evidence given by their children,’ Scripture should have written, ‘Fathers shall not be put to death through their children.’ What is the point of saying ‘children’? It

is that they shall not be put to death on the basis of the evidence of fathers who have no legal relationship of paternity to their sons.”

B. Then what about the following: “Neither shall the children be put to death through the fathers”? Does this, too, mean that a sentence of death cannot be issued on the basis of the testimony of witnesses who as children have no legal relationship with their fathers? Then would you say that a proselyte cannot give testimony?

C. *Say: What sort of a parallel is that? While a proselyte has no legal relationship with his ancestors, he most certainly does have a legal relationship with his descendants. But that eliminates the slave, who has no legal relationship with either his ancestors or his descendants. For if you should say that a proselyte is invalid to give testimony, Scripture should say, “Neither shall the children be put to death through their fathers.” That would then mean, as we have said, that they should not be put to death on the testimony of children. Then it should have said, “And children should not be put to death on the evidence of fathers,” which would have yielded two points: first, children should not die through testimony of fathers, and second, testimony from witnesses who as children have no legal relationship with their fathers should not serve to put someone to death. The case of the slave would then derive from an argument a fortiori based on the case of the proselyte, namely: if a proselyte, who vis-à-vis ancestors has no legal relationship, but who has a legal relationship to his descendants, is invalid to give testimony, a slave, who has no legal relationship with either ancestors or descendants, surely should be invalid to give testimony. But since the All-Merciful has written, “The fathers shall not be put to death through the children” (Deu. 25:16), which bears the message that they are not to be put to death on the testimony of fathers who have no legal relationship with their children, it follows that a slave, who has no legal relationship with either ancestors nor descendants, is the one who is invalid to give testimony, but the proselyte, who does have a legal relationship with his descendants, is valid to give testimony. And should you say, “Well, then, let Scripture say, ‘Sons shall not die on the evidence of their fathers,’ and why did Scripture say, ‘And neither shall the children be put to death through the fathers,’ which seems to mean that one should not be subjected to the death penalty on the testimony of witnesses who*

*as children would have no legal affiliation to their fathers, I say: Since it wrote 'Fathers shall not be put to death through the children,' it was natural to match that clause with 'neither shall children be put to death through fathers.'"*

- III.1 A. A deaf-mute, idiot, and minor — meeting up with them is a bad thing. He who injures them is liable. But they who injure other people are exempt:**
- B. *The mother of R. Samuel bar Abba of Hagronia was married to R. Abba, and she bequeathed her estate to R. Samuel bar Abba, her son. After she died [88B] R. Samuel bar Abba went to ask R. Jeremiah, who confirmed him in the possession of the estate. R. Abba then went and reported the case to R. Hoshaia, and R. Hoshaia went and consulted R. Judah, who said to him, "This is what Samuel said: 'If a woman disposes of her iron flock estate during the lifetime of her husband and then dies, the husband may recover the estate from the hand of the purchaser.'"*
- C. *When this statement was repeated to R. Jeremiah bar Abba, he said, "I know a relevant ruling of the Mishnah, which we have learned, **He who writes over his property to his son [to take effect] after his death — the father cannot sell the property, because it is written over to the son, and the son cannot sell the property, because it is [yet] in the domain of the father. [If] the father sold [it], the property is sold until he dies. If the son sold the property, the purchaser has no right whatever in the property until the father dies. The father harvests the crops and gives the usufruct to anyone whom he wants. And whatever he left already harvested lo, it belongs to his heirs [M. B.B. 8:7]. So if the father dies, the purchaser will have the property bought by him from the son during the lifetime of the father, and that is the rule even though the son died while the father was alive, so that in fact the son never actually gained possession of the property.**"*
- D. *That is in accord with the ruling of R. Simeon b. Laqish, who said, "There is no difference between a case in which the son died in the lifetime of the father, in which case the property never came into the domain of the son, and a case in which the father died in the lifetime of the son, in which case the property did enter his domain; the purchaser gains the title."*
- E. *For it has been stated:*

F. If the son sold the property in the lifetime of the father and died in the lifetime of the father —

G. R. Yohanan said, “The purchaser has not acquired the property.”

H. R. Simeon b. Laqish said, “The purchaser has acquired the property.”

I. R. Yohanan said, “The purchaser has not acquired the property”: *he will say to you, “When the Mishnah formulation states, **If the son sold the property, the purchaser has no right whatever in the property until the father dies**, with the implication that, in any event, after the father dies, the purchaser does acquire ownership, that speaks of a case in which the son did not die during the lifetime of the father, so that the property actually did enter the domain of the son. But if the son died during the lifetime of the father, so that the estate never entered the domain of the son, the purchaser would have no title to the estate even afterward.” The upshot is that, in the opinion of R. Yohanan, the right to the usufruct [such as the stepfather in our case had] is tantamount in law to the right to the substance of the estate, so that when the son sold the estate during the lifetime of the father, he sold something that he did not own. [Kirzner: Since the father still had for life the right to usufruct, he was for the time being the legal owner of the substance of the estate, though the son had the reversionary right.]*

J. R. Simeon b. Laqish said, “The purchaser has acquired the property”: *he will say to you, “When the Mishnah formulation states, **If the son sold the property, the purchaser has no right whatever in the property until the father dies**, with the implication that at the death of the father, the purchaser would gain ownership, that applies to either case: if the son did not die in the lifetime of the father, so that the estate entered the domain of the son, or if the son died in the lifetime of the father, so the estate never came into the possession of the son; in any event, the purchaser would acquire ownership of the estate.” The upshot is that, in the opinion of R. Simeon b. Laqish, the right to the usufruct [such as the stepfather in our case had] is not tantamount in law to the right to the substance*

*of the estate, so that when the son sold the estate during the lifetime of the father, he sold something that he did own.*

K. Now both R. Jeremiah bar Abba and R. Judah concur with R. Simeon b. Laqish in this matter [the sale is valid even when the son died in the lifetime of the father]. R. Jeremiah bar Abba then makes the following case: “If you maintain that right to usufruct is tantamount to right to the substance of the property, then why when the father dies, if the son has already died during the lifetime of the father, does the purchaser from the son have title to the estate, since, when the son sold it, he sold something he did not own? Does this not prove that right to usufruct is not tantamount to the right to the substance of the matter?” [Kirzner: The gift of the mother to Samuel her son would be valid at her death in spite of the right to usufruct vested in Abba, her second husband, during her lifetime.]

L. When this was repeated before R. Judah, he said to him, “This is what Samuel said: ‘This [gift of the mother to her son] is not parallel to the case in our Mishnah paragraph at all.’”

M. What’s the reason?

N. Said R. Joseph, “Now if the contrary were stated, namely, A son who writes over his property to his father [to take effect] after his death — [the son cannot sell the property, because it is written over to the father, and the father cannot sell the property, because it is [yet] in the domain of the son.] If the father sold the property in the lifetime of the son and died before the son, and if the law in this case *then was that the purchaser has acquired title to the property, then it would have been possible to prove that the right to the usufruct is not the same as the right to title of the property. But since the passage does say, **He who writes over his property to his son**, it is because he is eligible to inherit him, so by drawing up the deed, the father must have intended to transfer the property to the son in a way that had legal effect forthwith.*”

O. Said to him Abbaye, “Well, does the son inherit the father but does the father never inherit the son? [Even if the son left his estate to the father, the case would be no different.] So we assume that the deed was drawn up only to keep the estate out of the hands of the heirs of the son himself [the son left the estate to the favor, otherwise his

*children would have inherited the property in line with Num. 27: 8]. Here, too, you can make the case that the deed was drawn up only to keep the estate out of the hands of the other heirs [and the father's intent was not to transfer ownership forthwith.]* [Kirzner: Hence Samuel bar Abba's claim squares with the Mishnah.]

P. *So then what is the meaning of Samuel's statement, "This [gift of the mother to her son] is not parallel to the case in our Mishnah paragraph at all"?*

Q. *It is on account of the ordinance made at Usha, for said R. Yosé bar Hanina, "In Usha they made the ordinance as follows: 'A woman who during her husband's lifetime sold off property of hers that is in the status of "usufruct property" [that is, she has retained ownership but the husband has the usufruct through the life of the marriage], and then died — the husband may extract the property from the possession of the purchasers.'"*

R. *Said R. Idi bar Abin, "So we, too, have learned: [If they had said,] "We testify concerning Mr. So-and-so, that he has divorced his wife and not paid off her marriage settlement" — [89A] and lo, she is still with him and serving him, and the witnesses were proven to be a conspiracy of perjurers (and is it not so that whether it is today or tomorrow, he certainly is going to pay off her marriage settlement — ) they do not say, let them pay off the entire value of her marriage settlement, but they make an estimate of how much a man will be willing to pay [now] for the ownership of her marriage settlement, on the condition that, if she should be widowed or divorced, [he will take it over], but if she should die, her husband will inherit her [estate, including said marriage settlement] [M. Mak. 1:1H-K]. Now if you maintain that the ordinance of Usha is null, then why are we so sure that the husband will inherit her? Why can't she sell her marriage contract outright?"*

S. *Said Abbaye, "If [Jeremiah, vs. Judah, ignoring the Ushan ordinance] could have said this of the property that is available for the husband's plucking [where the wife retains title], can it also be stated with regard to the iron flock property [where the husband guarantees the value but then treats the property as his own?"*

- III.2** A. Said Abbayye, “As to the issue of one’s possessing something only so that he may gain the benefit of using it has come up, let us say something about it, namely: what someone paid in the agreement outlined above [**how much a man will be willing to pay now for the ownership of her marriage settlement, on the condition that, if she should be widowed or divorced, he will take it over, but if she should die, her husband will inherit her**] is paid to the wife. For if you should imagine that it is paid to the husband, then the witnesses [proven perjurers] can very well say to the husband, ‘What loss did we cause you? Even if you sold the benefit of the marriage settlement as just now described, the husband would have taken away the money from you anyhow [when the wife died]!’”
- B. Said R. Shalman, “It is because [Kirzner:] there would have been ample domestic provision [since she benefits when the husband gets the money].”
- C. Said Raba, “The decided law is that the purchase money paid in the agreement outlined above is assigned only to the wife, and the husband has no claim to any benefit from it. *What is the reason? The reason is that it was only the profit that the rabbis assigned to him [out of her estate] but not the benefit of the benefit [here: the purchase money].*”
- D. When R. Pappa and R. Huna b. R. Joshua came from the household of the master, they said, “We have learned a Tannaite statement to the same effect as the ordinance of Usha: **A deaf-mute, idiot, and minor — meeting up with them is a bad thing. He who injures them is liable. But they who injure other people are exempt.** Now if you take the view that the ordinance of Usha is null, why cannot the woman sell the plucking property and pay compensation for any damages she may do?”
- E. Well, from your perspective, even though the ordinance of Usha were still valid, while she still cannot entirely sell off her plucking property, she still



*can sell off her plucking property for the benefit described in the condition above [how much a man will be willing to pay now...], and pay that to someone she has injured. It must follow that the ruling applies where she had no plucking property at all, and from the contrary perspective, the ruling would apply only where she had no plucking property.*

*F. Well, still, why can she not sell off her marriage settlement itself under the stated condition?*

*G. Lo, who is the authority behind our Mishnah paragraph? It is R. Meir, who has said, "It is forbidden for a man to remain with a woman as her husband, even for a single hour, without her having a marriage settlement in hand."*

*H. But what is the operative consideration? It is so that it will not be a trivial matter in his view to divorce her. In this case, obviously, the husband is not going to divorce her, since those who purchased the marriage settlement will come along and collect, so he will have to pay off the marriage settlement to the third party if he does!*

*I. [But the reason she cannot sell her marriage settlement under the stated condition to pay off creditors whom she has injured is this:] A sale in exchange for the intangible benefit of the possibility of taking over the property is nothing more than words, and such an abstraction is not regarded as subject to a lien for the payment of a liability.*

*J. So why not? After all, someone is willing to pay good cash for this abstract statement!*

*K. Rather, the operative consideration is on account of Samuel's view, for said Samuel, "He who sells a bond of indebtedness to a third party and then renounces the debt — the debt is deemed renounced [and does not have to be paid to the purchaser of the bond by the*

original debtor]. And even the heir to the bond has the right to renounce the debt.”

L. *Say: Well, let her sell it and pay the compensation with what she gets, even though, if she should release the husband from the obligation to pay off the marriage settlement, that is a valid action?*

M. *Say: In any case in which the wife has an obligation on her husband, she will certainly release him from that obligation, what’s the point in making a sale that will forthwith be null?*

N. *And should you say, why should she not assign her marriage settlement itself to the injured party, thus giving him directly the benefit of the possibility that he may receive the settlement under the stated conditions, [89B] since, after all, even if later on she forgives the husband the debt, the injured party in this case loses nothing now, since she has given him nothing by way of compensation at all,*

O. *in any event, in any case in which the wife has an obligation on her husband, she will certainly release him from that obligation. So it would be a big trouble for the court for nothing, and we do not trouble a court for such a transaction.*

P. *But since it has been taught on Tannaite authority: **And so a woman who inflicted injury on her husband does not lose any of the value of her marriage settlement on that account; and just as she cannot sell off her marriage settlement while she is subject to him, so she cannot lose a penny of the value of her marriage settlement while she is subject to him [T. B.Q. 9:22G-I], why can’t she sell her marriage settlement to her husband under the stated conditions, that would then serve as compensation for the injury, for even if she releases her husband from the obligation, there will be no loss?***

Q. *This certainly represents a formulation within the theory of R. Meir, who has said, "It is forbidden for a man to remain with a woman as her husband, even for a single hour, without her having a marriage settlement in hand." Here, too, what he'll do is divorce her and keep the marriage settlement for himself in compensation for the injury.*

R. *If so, well, here, too, he may divorce her and collect the value of the injury from her.*

S. *Here we deal with a case in which the amount of her marriage settlement vastly exceeds the compensation she owes him, and on account of collecting a small amount of reparations, he is not going to risk losing a great deal of capital.*

T. *Well, if the amount of her marriage settlement is much greater than the marriage settlement that is required by the Torah, then why not reduce the amount that is to be paid to the amount specified in the ordinary marriage settlement that is required by the Torah, and let her assign the difference to the husband in compensation for the injury.*

U. *But that would not work where the amount of her marriage settlement did not exceed the amount required by the Torah for a marriage settlement; and since the compensation for the injury will be four zuz, we can be sure that for a mere four zuz, he is not going to risk the twenty-five sela [one hundred zuz] that is required for the marriage settlement by the Torah.*

V. *Well, what about that which has been taught on Tannaite authority: **And just as she cannot sell off her marriage settlement while she is subject to him, so she cannot lose a penny of the value of her marriage settlement while she is subject to him** [Kirzner: for any damage done by her to her husband]? But would there not be occasions on which it would turn out that she would lose, for instance, if the amount of her*

*marriage settlement was greater than the amount of the marriage settlement required by the Torah?*

*W. Said Raba, "That concluding statement refers to the clause of the marriage settlement referring to male children ['male children you will have with me shall inherit the amount of your marriage settlement over and above their appropriate portions due to them together with their brothers, if any, who are born to another wife']. And this is the point of the statement: just as she cannot sell off her marriage contract to others in such a way as to impair the clause in the marriage settlement regarding the male children, since she might have been compelled to make such a sale on account of an urgent need of money, so also if she assigns the marriage settlement to her own husband, she does not impair the clause in the marriage settlement concerning the male children, since she might have been forced to do so because she needed the money."*

**III.3** *A. May we say that at issue between the following Tannaite formulations is the validity of the ordinance made at Usha? For one Tannaite formulation states, Slaves in the status of plucking property go out free if the wife causes them to lose a tooth or an eye, but not if the husband does [though he has the right to usufruct, not ownership], and another Tannaite formulation states that they do not go free when either the husband or the wife causes them to lose an eye or a tooth. Now in the assumption that all parties concur that if one has the right to the usufruct, he does not thereby own the title of the estate, is this not what is at issue? The one who maintains that the slave goes free when he is hit by the wife does not concur in the ordinance of Usha, and the one who says that they do not go free when hit by either husband*

*or wife accepted the ordinance of Usha* [Kirzner: according to which the wife would not be able to impair the right of the husband nor would the husband be able to impair the right of the wife to the slaves whose title belonged to her].

B. *Not at all. All parties concur in the validity of the ordinance of Usha. But here, the one ruling was made prior to the ordinance at Usha, the other, afterward; or if you prefer, both speak to the conditions that pertain after the ordinance of Usha, and both accept the ordinance. Still, the one who maintained that the slaves go free if hit by the wife but not the husband takes that position in line with the operative consideration important to Raba, for said Raba, [90A] “Sanctification of cattle [mortgaged for a liability] or of leaven and the freeing of a slave remove these things from the mortgage that may have previously pertained.”* [Kirzner: So also here though the right of the husband to the plucking property slave is solid in the case of a sale or gift, it gives way in the case of manumission.]

C. *Then is what is at issue between the Tannaite formulations the validity of the position outlined by Raba?*

D. *Not at all. All parties concur on the validity of the position outlined by Raba, but here rabbis proposed to protect the mortgage of the husband [even in the case of manumission of the slave.] Or, if you prefer, all parties reject the ordinance of Usha, but what is at issue here is whether or not the possession of the usufruct is equivalent to the possession of the title to the estate itself. And they are following up on the dispute of the following Tannaite authorities:*

E. He who sells his slave but stipulated with the purchaser that the slave should continue to serve him for thirty days —

F. R. Meir says, “The rule of ‘one or two days’ [‘If a man smite his servant with a rod and he die under his hand, he shall be surely punished; nevertheless if he continue a day or two he shall not be punished, for he is his money’ (Exo. 21:20-21)] pertains to the first purchaser, since the slave remains ‘under him,’ but the second party is not subject to the rule of ‘one or two days’ [‘If a man smite his servant with a rod and he die under his hand, he shall be surely punished; nevertheless if he continue a day or two he shall not be punished, for he is his money’ (Exo. 21:20-21)], since the slave is not ‘under him.’” *R. Meir takes the view that possession of the increment is equivalent to possession of the principal [here: the labor of the slave, the slave himself; Meir holds that the one who disposes of the labor of the slave is in the position of the owner (Simon)].*

G. R. Judah says, “The second party [the purchaser] is subject to the rule of ‘one or two days’ [‘If a man smite his servant with a rod and he die under his hand, he shall be surely punished; nevertheless if he continue a day or two he shall not be punished, for he is his money’ (Exo. 21:20-21)], since at that point the slave is ‘his money,’ and the first party [the seller] is not subject to the rule of ‘one or two days’ [‘If a man smite his servant with a rod and he die under his hand, he shall be surely punished; nevertheless if he continue a day or two he shall not be punished, for he is his money’ (Exo. 21:20-21)], since the slave is not ‘his money.’” *He takes the view that possession*

*of the increment is not equivalent to possession of the principal.*

H. R. Yosé says, “Both parties are subject to the rule of ‘one or two days’ [‘If a man smite his servant with a rod and he die under his hand, he shall be surely punished; nevertheless if he continue a day or two he shall not be punished, for he is his money’ (Exo. 21:20-21)], since in the case of the one, the slave remains ‘under him,’ and in the case of the other, he is ‘his money.’” *So he is in doubt whether or not possession of the increment is not equivalent to possession of the principal. Where there is a matter of doubt in a capital case, the more lenient ruling is imposed.*

I. R. Eleazar says, “Neither party is subject to the rule of ‘one or two days,’ the purchaser because the slave is not yet ‘under him,’ the seller because the slave is no longer ‘his money.’”

J. And said Raba, “What is the verse of Scripture that sustains R. Eleazar’s position? ‘He shall not be punished, for the slave is his money’ (Exo. 21:21), meaning he must be wholly his own.”

**III.4** A. *In accord with whom is that which Amemar has said, “If either the husband or the wife sold off the property the usufruct of which is assigned to the husband, the sale is null”? [He cannot sell it, because it belongs to her, and she cannot sell it, because he enjoys the usufruct.]*

B. *In accordance with whom? It is in accordance with R. Eliezer.*

C. *In accordance with which Tannaite authority is the following, which our rabbis have taught on Tannaite authority: One who is*

half-slave and a half-free man, and so, too, a slave who belongs to two partners, does not go free at the loss of the major limbs which do not grow back?

*D. Said R. Mordecai to R. Ashi, "This is what they say in the name of Raba: 'It is R. Eliezer. For has not R. Eliezer said, "'for he is his money"' (Exo. 21:21), meaning he must be wholly his own.' Here, too, 'his slave' means one that is exclusively owned by him."*

**I.1**, with an amplification of its own at No. 2, which is glossed at No. 3, and No. 4, uses a passage of our Mishnah paragraph to solve a problem that is free-standing. **II.1** asks about the scriptural foundations for a position taken in the Mishnah. No. 2 is tacked on since it proves the besought point in a fresh way. **III.1** introduces a case illustrative of the basic point of the Mishnah; the case has not been composed in such a way as to comment upon or clarify the Mishnah's rule. No. 2, amplified at Nos. 3, 4, continues the exposition, but then shows us why the entire, free-standing composition has been parachuted down here. Here we do have an important clarification of the rule of the Mishnah: why one of the mentioned parties is on its list.

### 8:6

- A. He who boxes the ear of his fellow pays him a sela.
- B. R. Judah says in the name of R. Yosé the Galilean, "A maneh."
- C. [If] he smacked him, he pays him two hundred zuz.
- D. [If] it is with the back of his hand, he pays him four hundred zuz.
- E. [If] he (1) tore at his ear, (2) pulled his hair, (3) spit, and the spit hit him, (4) pulled off his cloak, (5) pulled apart the hairdo of a woman in the marketplace,
- F. he pays four hundred zuz.
- G. [90B] This is the governing principle: Everything is in accord with one's station.
- H. Said R. Aqiba, "Even the poorest Israelites do they regard as gentle folk who have lost their fortunes.
- I. "For they are the children of Abraham, Isaac, and Jacob."
- J. There was a case in which someone pulled apart the hairdo of a woman in the marketplace.



- K. She came before R. Aqiba, who required him to pay her four hundred zuz.
- L. He said to him, "Rabbi, give me time [to pay her off]."
- M. He gave him time.
- N. He caught her standing at the door of her courtyard and broke a jar of oil in front of her, containing no more than an issar's worth of oil. She let down her hair and mopped up the oil and put her hand [with the oil] on her hair [so making use of that small quantity of oil].
- O. Now he had set witnesses up against her. Then he came before R. Aqiba.
- P. He said to him, "Rabbi, to a woman such as this am I to pay off four hundred zuz?"
- Q. He said to him, "You have no claim whatsoever.
- R. "He who does injury to himself, even though he has no right to do so, is exempt.
- S. "But others who did injury to him are liable.
- T. "He who cuts down his own shoots, even though he has no right, is exempt.
- U. "Others who cut down his shoots are liable."

- I.1** A. *The question was raised: "Does the Mishnah speak of a Tyrian maneh [twenty-five selas] or only a local one [an eighth of the Tyrian one]?"*
- B. *Come and take note: somebody boxed someone else's ear. The case came before R. Judah the Patriarch. He said to him, "Here am I, here is R. Yosé the Galilean, so go and pay him a Tyrian maneh." That surely proves that the Mishnah spoke of a Tyrian maneh, doesn't it?*
- C. *Sure does.*

- I.2** A. *So what is the meaning of "Here am I, here is R. Yosé the Galilean"? Should I say, this is the sense of what he said to him: "Here am I, who saw you, and here is R. Yosé the Galilean, who says that the payment should be a Tyrian maneh, so go and pay him a Tyrian maneh," then that would be to say that a witness to a crime is eligible also to act as judge! But has it not been taught on Tannaite authority: "Members of a Sanhedrin that saw someone kill someone else — part of them serve as witnesses, and part of them serve as judges," the words of R. Tarfon. R. Aqiba says, "All of them are witnesses, and a witness cannot serve as a judge? And even R. Tarfon*

would agree that part of the group would serve as witnesses and part as judges, but would he maintain that a witness who actually gave evidence also could serve as a judge?

B. *That Tannaite formulation [that had the witnesses giving evidence but then not eligible to act as judges] referred to a situation in which they saw the murder take place at night, when they could not serve as judges anyhow.*

C. *Or if you prefer, what R. Judah the Patriarch said was, “Here am I, who agree with R. Yosé the Galilean, who has said, ‘The Tyrian maneh is what you pay; and since there also are witnesses that testify against you, go pay off the plaintiff in a Tyrian maneh.’”*

**I.3** A. *And does R. Aqiba really maintain that a witness cannot serve as a judge? And has it not been taught on Tannaite authority:*

B. **“And one smite another with a stone or with his fist” (Exo. 21:18) —**

C. **Simeon of Teman says, “Just as the fist that has served as the murder weapon may be known and examined by the congregation of judges and witnesses, so the stone (Num. 35:17) must be one that can be examined and known by the congregation of judges and witnesses, then excluding a case in which the stone was lost.”**

D. **Said to him R. Aqiba, “Even if the instrument came to court, did the killing take place before the judges of the court of law, that the court should know how many times he hit him, or where he hit him, on the thigh or the tip of the heart? And suppose the murderer had thrown the man down from the top of the roof or a mansion so the victim died, would the court go to the house or the house to the court? And if the house had collapsed, would it have to be rebuilt? So we have to say that just as the fist is an object that the witnesses saw when the murder was done, so all the other instruments would have to be available to the witnesses, excluding the case of an instrument that disappeared from the hand of the murderer, who goes free. [T.: I know only that that rule applies in a case in which the**

stone is lost. How do I know that even if the stone were there, hanging in the courtroom, or if the murder weapon were a staff, there in the courtyard, and the judges knew that he had hit him on the leg or on the top of the heart, or if he pushed him off the roof of a building and the victim dies — do we say, ‘Let the building come to court’? And if you say, ‘Let the court then come and see the building,’ what if it fell down? Do we say, let the owner come and rebuild it? But if so, concerning what are witnesses believed in such a matter? But concerning such a matter, also, in capital cases, judgment is based upon the witnesses’ testimony]” [T. [San. 12:3](#)].

E. *In any event, the language is used, Did the killing take place before the judges of the court of law, that the court should know how many times he hit him, which yields the inference that if he had killed him in their presence, they would have been witnesses but also judges!*

F. *He made his statement within the premises of the position of Simeon of Teman, but that was not his own opinion at all.*

**I.4** A. *Our rabbis have taught on Tannaite authority:*

B. An ox that was deemed harmless that killed someone and committed an injury — they judge the capital charge and do not judge the property charge at all. If it was an ox that was an attested danger that killed someone and committed an injury — they judge the property charge first and then judge the capital case. If they went ahead and tried the capital charge first, they do not then go and judge the property case at all.

C. *But even if they went ahead and tried the capital charge first, what difference does it make? Let them just go and judge the property case anyhow.*

D. *Said Raba, “I found the rabbis of the household of the master in session and stating in this regard, ‘Now who is the authority? It is R. Simeon of Teman, who has said, Just as the fist that has served as the murder weapon may be known and examined by the*

congregation of judges and witnesses, [91A] which yields the inference that we require an examination by the court before any liability can be imposed. But in this case, the sentence has already been decreed on the ox for stoning, so it would not be possible to keep the ox for inspection by the court, since we cannot delay execution of the judgment.' And I said to them, 'You may even say that it represents the position of R. Aqiba. For here, with what sort of a case do we deal? It is one in which the defendant ran away.'"

E. Well, if the defendant ran away, then, even in the case in which the capital charge had not yet been tried, how could you deal with the property case, if the defendant wasn't there?

F. It is a case in which they took the testimony and then he fled.

G. So anyhow, one way or the other, where would the money for the payment come from, without the defendant?

H. From the fees paid for ploughing work done by the ox.

I. If so, then even in the case of a beast that was deemed innocent, they should first of all judge the property case and pay off what is owing from the fees paid for the ploughing of the oxen, and then they can try the capital case.

J. Said R. Mari b. R. Kahana, "That is to say that the fee paid for ploughing belongs to the best possible estate of the master" [Kirzner: and thus could not become subject to be paid for damages in the case of the beast that was deemed harmless, where payment could only be made out of its own body].

## **I.5**

A. The question was raised: Is an inspection of the instrument that did the damage required in a case involving only damage, or is no such inspection required in such a case? Do we say that it is only in a murder

case that we have to inspect the weapon, since, by means of one such weapon, life could be taken, while by another it could not, but as to damage, any instrument can do damage? Or perhaps there is no difference?

B. *Come and take note:* **[He who digs a pit in public domain, and an ox or an ass fell into it and died, is liable. It is all the same whether one digs a pit, a trench, cavern, ditches, or channels — he is liable. If so, then why is it written in particular, “A pit” (Exo. 21:33)?]** Just as a pit under discussion is one which is sufficiently deep so as to cause death, namely, ten handbreadths in depth, so anything which is sufficiently deep so as to cause death will be at least ten handbreadths in depth. [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 **[M. B.Q. 5:3E-J]**. *Now is it not the case that the Tannaite authority is reckoning from the bottom to the top, so that this is the gist of his statement: a pit of a depth of from one to ten handbreadths would cause not death but only damage, therefore, so far as causing damages is concerned, any depth sufficed. That would then bear the implication that an inspection in the case of damages is not required.*

C. *Not at all. The framer of the passage is measuring from top to bottom, and this is the sense of his statement: at a depth of ten handbreadths death will result; if it is less than ten handbreadths deep, the pit could cause damage but not death, so in any event I must say to you that an inspection in the case of damages is required. In every case it is necessary to ascertain that the instrument is sufficient to cause the particular damage that has been done.*

D. *Come and take note:* If the master hit the slave on his eye and blinded him, on his ear and deafened him, the slave goes forth by that reason to freedom. If he hit

an object that was opposite the slave's eye, and the slave cannot see, or opposite his ear, so that he cannot hear, the slave does not go forth on that account to freedom. How come? Is it not because we require an assessment of the instrument that did the damage, which would then prove that an inspection in the case of damages is required?

E. *Not at all. The operative consideration here is that we say it was the slave who frightened himself, in line with that which has been taught on Tannaite authority: He who frightens his fellow to death is exempt under the laws of humanity but liable under the laws of heaven. How so? If he blew on the ear and deafened him, he is exempt. If he seized him and tore him on the ear and deafened him, he is liable. [In the latter case he did a deed of consequence.] [Cf. T. B.Q. 9:26.]*

F. *Come and take note:* In the case of the five categories of compensation [(1) injury, (2) pain, (3) medical costs, (4) loss of income [lit.: loss of time], and (5) indignity] they make an estimate of the damages and pay him off right away; in the case of the doctor's bills and time lost from work, they make an estimate for the whole period only after the victim has completely recovered. If the victim continued to limp along, they nonetheless give him only the amount of the original estimate. If they made an estimate and he got better, they still pay him everything that they had originally estimated. Now surely that yields the conclusion that an inspection in the case of damages is required?

G. *There was never any argument about making an estimate of the man to reckon the length of the illness that would result from the injury, for it is certain that we do have to make such an estimate. What is subject to doubt is whether or not it is required to estimate*

*whether the instrument that was used is one that was likely to do that much damage!*

H. *Come and take note: Simeon of Teman says, “Just as the fist that has served as the murder weapon may be known and examined by the congregation of judges and witnesses, so the stone (Num. 35:17) must be one that can be examined and known by the congregation of judges and witnesses, then excluding a case in which the stone was lost.” Now surely that yields the conclusion that an inspection in the case of damages is required?*

I. *Sure does.*

**I.6** A. The master has said, “If they made an estimate and he got better, they still pay him everything that they had originally estimated”:

B. *Now does this not support the position of Raba, for said Raba, “In the case of someone whom they estimated would be sick for a whole day but who got better in the middle of the day and did his usual work, he would still be given compensation for the whole day, since it was from Heaven that he was shown mercy.”*

**II.1** A. **...spit, and the spit hit him...he pays four hundred zuz:**

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

C. *But why not treat it as equivalent to an insult delivered in words?*

D. *They said in the West in the name of R. Yosé bar Abin, “The rule at hand then bears the implication that if one merely insulted him in words, he is exempt from all sorts of indemnities.”*

**III.1** A. **Everything is in accord with one’s station:**

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

- C. *Come and take note, since said R. Aqiba, “Even the poorest Israelites do they regard as gentle folk who have lost their fortunes. For they are the children of Abraham, Isaac, and Jacob,” it must follow that the intent of the Tannaite authority was to make the penalty lighter.*
- D. *That is decisive.*

**IV.1 A. M'SH B:** Someone pulled apart the hairdo of a woman in the marketplace. She came before R. Aqiba, who required him to pay her four hundred zuz. He said to him, “Rabbi, give me time [to pay her off].” **He gave him time:**

- B. *But do we allow for such a continuance? And did not R. Hanina say, “They do not give extra time in cases of personal injury”?*
- C. *Where we do not give extra time in cases of personal injury, that is where there is a loss of money; but in a case of humiliation, where there is no actual loss of money is involved, extra time [to execute the judgment] is allowed.*

**V.1 A. He caught her standing at the door of her courtyard and broke a jar of oil in front of her, containing no more than an issar’s worth of oil. She let down her hair and mopped up the oil and put her hand [with the oil] on her hair [so making use of that small quantity of oil]. Now he had set witnesses up against her. Then he came before R. Aqiba. He said to him, “Rabbi, to a woman such as this am I to pay off four hundred zuz?” He said to him, “You have no claim whatsoever”:**

- B. *But was it not taught on Tannaite authority:*
- C. *Said to him R. Aqiba, “You have dived into deep waters and have come up with a piece of potsherd. Someone has the right to do injury to himself.”*
- D. *Said Raba, “There is no contradiction. In the one case, we deal with personal injury, in the other, with humiliation.”*
- E. *Yeah, well, the case in our Mishnah paragraph involves humiliation, [91B] and yet, it states explicitly, He who does injury to himself, even though he has no right to do so, is exempt.*
- F. *This is the sense of his statement to him: “There is no issue concerning degradation, for someone has every right to embarrass himself. But even as to the matter of injury, while someone has not got the right to do injury to himself, others who did injury to him are liable.”*

**V.2 A.** *And is it the fact that one has not got the right to do injury to himself? And has it not been taught on Tannaite authority:*



- B. **Is it possible then that one who takes an oath to do injury to himself but did not do so should be exempt [from the provisions of this offering]?**
- C. **Scripture says, “To bad or good purpose,”**
- D. **just as the good purpose is an optional one, so the bad purpose is an optional one.**
- E. **So I exclude one who takes an oath to do injury to others but did not do so, for he has not got the option to do so.**
- F. **Or might I then exclude from the provisions of the oath at hand the one who takes an oath to do good for others?**
- G. **When Scripture says, “Or good purpose,” it encompasses even doing good for others [Sifra LV:I.5].**
- H. Said Samuel, “The oath involved that he would sit in a fast” [Kirzner: but in other ways a man may not injure himself].
- I. *Then would it follow that, so far as doing harm to others, it would mean that he was going to make them keep a fast? And just how was he supposed to do that?*
- J. *He could do it by locking them in a room.*
- K. *But has it not been taught on Tannaite authority: What is the definition of doing injury to others? If he said, “I will hit So-and-so and split his skull”?*
- L. *So what we have in hand is a conflict among Tannaite statements on this matter, for there is an authority who maintains that a person has not got the right to injure himself, and there is an authority who maintains that a person has got the right to injure himself.*
- M. *And who is the Tannaite authority who maintains that a person has not got the right to injure himself? Surely we cannot say that it is the Tannaite authority of the following: “And surely your blood of your lives will I require” (Gen. 9: 5), in connection with which R. Eleazar says, “I will require your blood even if it is shed by your own hands.” But perhaps for murder it is different.*
- N. *How about the Tannaite authority of the following: One may tear clothing for a dead person, and this is not forbidden by reason of its being in imitation of the ways of the Amorites. Said R. Eleazar, “I have heard that one who tears his clothing too much on the occasion of a death is flogged on grounds of ‘you shall not destroy’” (Deu. 20:19) — and all the more so who injures his own body.*

- O. *But perhaps the case of clothing is exceptional, since the loss is permanent. That is in line with R. Yohanan's calling his clothing, "My honor." So, too, when R. Hisda had to walk among thorns and thistles, he would lift up his garments: "If the body is injured, it will get better; but if the clothes are torn, they don't get better."*
- P. *Rather, it is in accord with the following Tannaite authority:*
- Q. Said R. Eleazar Haqqappar of the household of Rabbi, "What is the meaning of the verse, 'And make an atonement for him, for he has sinned regarding the soul' (Num. 6:11)? Now against what soul has this one sinned? But he has caused himself pain by abstaining from wine. And does this not yield an argument a fortiori: if this one, who has caused himself pain only by abstaining from wine, is called a sinner, he who causes himself pain by abstaining from anything at all [that is a gift of God] all the more so!"

**VI.1 A. He who cuts down his own shoots, even though he has no right, is exempt. Others who cut down his shoots are liable:**

- B. *Rabbah bar bar Hannah repeated as a Tannaite version in the presence of Rab: "You killed my ox, you cut down my plants' — and the other says, 'You told me to kill it, you told me to cut it down' — the accused is exempt from having to pay compensation."*
- C. *He said to him, "If so, you have taken away people's opportunity to live, does someone have the power to make such a claim and have it accepted?"*
- D. *He said to him, "Shall I suppress it?"*
- E. *He said to him, "No, interpret your Tannaite teaching to pertain to a case of an ox that was going to be put to death or a tree that was going to be chopped down."*
- F. *"If so, where's the beef?"*
- G. *"He may say to him, 'I was the one who wanted to carry out this religious duty.'"*
- H. *That is in line with what has been taught on Tannaite authority: "He shall pour it out and cover it" (Lev. 17:13) — he who poured it out has to cover it up. There was the case of someone who did the slaughter, and then someone else came along and covered the blood, and R. Gamaliel required him to pay the other ten gold coins.*

**VI.2 A. Said Rab, "It is forbidden to cut down a palm tree that produces a qab of dates."**

- B. *An objection was raised*: What is the volume of olives that must be on a tree so that it is not to be cut down? A quarter of a qab.
- C. Olives are exceptional, being more valuable than dates.
  - D. Said R. Hanina, “Shibhat, my son, died only because he cut down a fig tree before its time.”
- E. *Said Rabina, “But if it was more valuable for other purposes, than it is permitted to do so.”*
- F. *So, too, it has been taught on Tannaite authority*:
- G. “Only the trees that you know” (Deu. 20:20) — this refers to a fruit-bearing tree.
- H. “That they are not trees bearing fruit” — this refers to a wild tree.
- I. Well, since in the end everything will be covered by the rule, what is the point of the phrase, “That they are not trees bearing fruit”?
- J. It is to give priority, when chopping down trees, to wild trees that bear fruit.
- K. **[92A]** Might one then suppose that that is so even where the value of the wood for other purposes is greater than the value of the produce?
- L. Scripture says, “Only.”

**VI.3** A. *Samuel’s sharecropper brought him dates. He took them and tasted wine in them. He said to him, “What’s this?”*

B. *He said to him, “They are located among vines.”*

C. *He said to him, “Since they are weakening the vines all that much, bring me the roots tomorrow.”*

**VI.4** A. *R. Hisda saw some palms among vines. He said to his sharecropper, “Pull up the palms with the roots, vines can buy palms, but palms cannot buy vines.”*

**I.1** glosses the Mishnah’s language, and No. 2, with its own talmud at No. 3, amplifies a point in No. 1. No. 4 then expands No. 3, and No. 5, with its appendix at No. 6, continues that same expansion of No. 3, thus, overall, a rather run-on composite. **II.1** glosses the Mishnah’s rule. **III.1** carries forward the clarification of the Mishnah’s language. **IV.1** harmonizes our rule with an intersecting one. **V.1+2** expands on the discussion of the Mishnah, clarifying the issues. **VI.1** amplifies the rule of the Mishnah. Nos. 2+3-4 then focus upon what would apparently be the theme of the Mishnah’s rule about cutting down one’s plants; but I do not see the relevance of the passage to our Mishnah’s rule.

## 8:7

- A. Even though [the defendant] pays off [the plaintiff], he is not forgiven until he seeks [forgiveness] from [the plaintiff],
- B. since it is said, “Now restore the man’s wife...and he will pray for you” (Gen. 20: 7).
- C. And how do we know that the one who is supposed to forgive should not be churlish?
- D. Since it is said, “And Abraham prayed to God, and God healed Abimelekh” (Gen. 20:17).
- E. He who says, “Blind my eye,”
- F. “Cut off my hand,”
- G. “Break my leg” —
- H. [the one who does so] is liable.
- I. [If he added,] “...on condition of being exempt,” [the one who does so] is liable [anyhow].
- J. “Tear my cloak,”
- K. “Break my jar” —
- L. [the one who does so] is liable.
- M. [If he added,] “...on condition of being exempt,” [the one who does so] is exempt.
- N. “Do it to Mr. So-and-so, on condition of being exempt,”
- O. he [who does so] is liable, whether this is to his person or to his property.

### I.1

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

### I.2

A. *So then one would have to return the wife of a prophet, but one would not have to return someone else’s wife?*

B. Said R. Samuel bar Nahmani said R. Jonathan, “‘Return the man’s wife’ pertains to all cases. And as to what you said, ‘Will you slay even a righteous nation? Did he not say to me, She is my sister, and she, too, said, He is my brother’ (Gen. 20: 4-5), ‘He is a prophet, and he has

already taught that when a guest comes to a town, it is proper to ask him about matters of food and drink, but it surely is not proper to ask him whether a woman is his wife or his sister!”

C. “On the basis of this incident it is clear that a gentile may be put to death in such a matter, for he had every opportunity to learn and did not learn.”

**I.3** A. “For to close the Lord had closed up all the wombs of the house of Abimelech” (Gen. 20:18) —

B. Said R. Eleazar, “To what do these two references to ‘closing up’ refer? One referred to the man, having to do with ejaculation, two to the woman, having to do with ejaculation and giving birth.”

C. *In a Tannaite formulation it was repeated:* two referred to the man, ejaculation and urination, three to the woman, ejaculation, urination, and giving birth.

D. Rabina said, “Three to the man, ejaculation, urination, and defecation, four in the women, ejaculation, giving birth, urinating, and defecation.”

E. “All the wombs of the house of Abimelech”:

F. The household of R. Yannai say, “Even the chickens of the household of Abimelech didn’t lay eggs.”

### **Sayings attributed to Raba before Rabbah bar Mari**

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

B. He said to him, “‘And the Lord changed the fortune of Job. when he prayed for his friends’ (Job. 42:10).”

C. *He said to him, “You maintain it derives from that verse, but I say it derives from this one: ‘And Abraham prayed to God and God healed Abimelech and his wife and maidservants’ (Gen. 20:17), followed by, ‘And the Lord remembered Sarah as he had said...’ (Gen. 22: 1) — as Abraham had prayed and said regarding Abimelech.”*

**I.5** A. *Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘The cabbage is smitten along with the thorn’?”*

- B. He said to him, “Wherefore will you contend with me, you all have transgressed against me, says the Lord’ (Jer. 2:29).”
- C. *He said to him, “You maintain it derives from that verse, but I say it derives from this one: ‘How long will you refuse to keep my commandments and my laws’ (Exo. 16:28).”*

- I.6**
- A. *Said Raba to Rabbah bar Mari, “It is written, ‘And from among his brothers he took five men’ (Gen. 47: 2). Who were these five?”*
  - B. *He said to him, “This is what R. Yohanan said: ‘They were those whose names were repeated [in Moses’s farewell address].”*
  - C. *“But wasn’t Judah’s name included in the repetitions there?”*
  - D. *He said to him, “It was for another purpose, in line with what R. Samuel bar Nahmani said R. Jonathan said, ‘What is the meaning of the verse, “Let Reuben live and not die, in that his men become few, and this is for Judah” (Deu. 33:6-7)? All those forty years that the Israelites were in the wilderness, the bones of Judah were bouncing around in the coffin, until Moses came and sought mercy. He said before him, “Lord of the world, who made Reuben confess? It was Judah.” Forthwith: “Hear therefore Lord the voice of Judah.” Then each limb fit into its original place. He was not allowed to ascend to the session in heaven [until Moses said], “and bring him into his people” (Deu. 33: 7). But he couldn’t understand what the rabbis were saying up there and could not participate in the debates with rabbis on matters of law, until Moses said, “His hands shall contend for him” (Deu. 33: 7).”*

- I.7**
- A. *Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘Poverty follows the poor’?”*
  - B. *He said to him, “It is in line with what we have learned in the Mishnah: **The rich bring their first fruits [to the Temple] in baskets of silver and gold. But the poor bring them in baskets made of peeled willow branches. And [both] the baskets and the first fruits are given to the priests [M. Bik. 3:8].**”*
  - C. *He said to him, “You maintain it derives from that passage, but I say it derives from this one: **[92B]** ‘And he shall cry, unclean, unclean’ (Lev. 13:45).”*

- I.8**
- A. *Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which our rabbis have said, ‘Get up early in the morning to eat breakfast, in the summer because of the heat, and in the winter because of the cold; and*

*people say, even sixty men may chase him who has early meals in the mornings but they will not overtake him'?"*

- B. *He said to him, "‘They shall not hunger nor thirst, neither shall the heat nor sun smite them’ (Isa. 49:10)."*
- C. *He said to him, "You maintain it derives from that verse, but I say it derives from this one: ‘And you shall serve the Lord your God,’ this refers to the reading of the Shema and the Prayer; ‘and he will bless your bread and your water’ (Exo. 23:25) — this refers to bread dipped in salt and a pitcher of water [that is, the breakfast meal]; and afterward: ‘I will take sickness away from the midst of you’ (Exo. 23:25)."*
- D. *So, too, it has been taught on Tannaite authority:*
- E. *“Mahalah” means gall, and why is it called so? Because eighty-three types of illnesses may come from it [the letters of the Hebrew word bearing the numerical value of eighty-three]. But all of them are counteracted by having bread dipped in salt and a pitcher of water in the morning.*

**I.9** A. *Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘If your neighbor calls you an ass, put a saddle on your back’?”*

- B. *He said to him, "‘And he said, Hagar, Sarai’s handmaid, whence did you come and whither to you go? And she said, I flee from the face of my mistress, Sarai’ (Gen. 16: 8)."*

**I.10** A. *Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘If you have any fault, be the first to tell it’?”*

- B. *He said to him, "‘And he said, I am Abraham’s servant’ (Gen. 24:34)."*

**I.11** A. *Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘Though the duck keeps its head down while it walks, its eyes look out into the distance’?”*

- B. *He said to him, "‘And when the Lord will have dealt well with my lord, then remember your handmaiden’ (1Sa. 25:31)."*

**I.12** A. *Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘Sixty pains torture the teeth of him who hears the noise made by someone else eating, while he has nothing to eat’?”*

- B. *He said to him, "But me, even me, your servant, and Zadok the priest, and Benaiah, son of Jehoiada, and your servant Solomon, he has not called’ (1Ki. 1:26)."*

- C. *He said to him, "You maintain it derives from that verse, but I say it derives from this one: 'And Isaac brought her into his mother Sarah's tent and took Rebekkah and she became his wife and he loved her; and Isaac was comforted for his mother' (Gen. 24:67), 'And again Abraham took another wife and her name was Keturah' (Gen. 25: 1)."*

**I.13** A. *Said Raba to Rabbah bar Mari, "How on the basis of Scripture do we know that which people say, 'Though the wine belongs to the householder, the thanks go to the butler'?"*

- B. He said to him, "And you shall put of your honor upon him, that all the congregation of the children of Israel may hearken' (Num. 27:18-20); 'And Joshua the son of Nun was full of the spirit of wisdom, for Moses had laid his hands upon him and the children of Israel listened to him' (Deu. 34: 9)."

**I.14** A. *Said Raba to Rabbah bar Mari, "How on the basis of Scripture do we know that which people say, 'When a dog is hungry, it will eat its own shit'?"*

- B. He said to him, "The full soul loathes the honeycomb, but the hungry soul finds every bitter thing sweet' (Pro. 27: 7)."

**I.15** A. *Said Raba to Rabbah bar Mari, "How on the basis of Scripture do we know that which people say, 'A bad palm will usually find its way to a grove of barren trees'?"*

- B. He said to him, "It is written in the Torah, repeated in the prophets, and mentioned a third time in the Writings, and it is also learned in a Mishnah paragraph and repeated as a Tannaite statement as well.

C. "It is written in the Torah: 'So Esau went to Ishmael' (Gen. 28: 9).

D. "Repeated in the prophets: 'And there gathered themselves to Jephthah idle men and they went out with him' (Jud. 11: 3).

E. "Mentioned a third time in the Writings: 'Every fowl dwells near its kind and man near his equal' (Ben Sira 13:15).

F. *"It is also learned in a Mishnah paragraph: **This is the general rule: Any [hook] that is connected to the unclean [utensil] is unclean, and [one] that is connected to the clean [utensil] is clean. And all of them by themselves are clean [M. Kel. 12:2H].***

G. *"Repeated as a Tannaite statement as well: R. Eliezer says, 'Not for nothing did the starling follow the raven, but because it is of its species.'"*



- I.16** A. *Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘If you get someone’s attention to warn him [and he pays no attention], you can push a big wall and throw it at him’?”*
- B. He said to him, “‘Because I have purged you and you were not purged, you shall not be purged from your filthiness any more’ (Eze. 24:13).”
- I.17** A. *Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘Into the well from which you have drunk do not throw clods’?”*
- B. He said to him, “‘You shall not abhor an Edomite, for he is your brother, you shall not abhor an Egyptian, because you were a stranger in his land’ (Deu. 23: 8).”
- I.18** A. *Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘If you will join me in lifting the burden I will carry it, and if not, not’?”*
- B. He said to him, “‘And Barak said to her, if you will go with me, I will go, but if not, I will not go’ (Jud. 4: 8).”
- I.19** A. *Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘When we were young, we were treated like men, now that we are old, we are treated like babies’?”*
- B. He said to him, “First: ‘And the Lord went before them by day in a pillar of cloud to lead them by the way and by night in a pillar of fire to give them light’ (Exo. 13:21); and later: **[93A]** ‘Behold I send an angel before you to keep you by the way’ (Exo. 24:20).”
- I.20** A. *Said Raba to Rabbah bar Mari, “How on the basis of Scripture do we know that which people say, ‘Behind an owner of wealth, chips are dragged along’?”*
- B. He said to him, “‘And Lot also who went with Abram had flocks and herds and tents’ (Gen. 13: 5).”

### **Reverting to the Topic of Abimelech, Abram and Sarai**

- I.21** A. Said R. Hanan, “He who brings a suit against his fellow is the one who is punished first: ‘And Sarai said to Abram, My wrong be upon you’ (Gen. 16: 5), and then, ‘And Abraham came to mourn for Sarah and to weep for her’ (Gen. 23: 2).”

- B. *"But that is so only if there was the possibility of getting justice in a this-worldly court."*

**I.22** A. Said R. Isaac, "Woe to the one who cries out more than to the one against whom the cry is made."

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

C. All the same are the one who cries out to heaven and the one against whom the cry is made, but they deal first with the one who cries out rather than with the one against whom the cry is made."

**I.23** A. And said R. Isaac, "Do not ever treat the curse of a common person lightly, for lo, Abimelech cursed Sarah, and the curse was carried out in her seed: 'Behold it is for thee a covering of the eyes' (Gen. 20:16). He said to her, 'Since you have dissembled from me and not revealed that he is your husband and caused me all this trouble, may it be pleasing to God that you should have children who are blind.' And this was fulfilled in her seed: 'And it came to pass that when Isaac was old and his eyes were dim so he could not see...' (Gen. 27: 1)."

**I.24** A. Said R. Abbahu, "A person should be among those who are pursued, never among the pursuers, for you have among birds none that is more hunted than doves and pigeons, and yet Scripture has declared them alone to be valid for the altar."

**II.1** A. **He who says, "Blind my eye," "Cut off my hand," "Break my leg" — [the one who does so] is liable. [If he added,] "...on condition of being exempt," [the one who does so] is liable [anyhow]. "Tear my cloak," "Break my jar," [the one who does so] is liable. [If he added,] "...on condition of being exempt," [the one who does so] is exempt:**

- B. *Said R. Assi bar Hama to Rabbah, "What is the difference between the former and the latter case?"*
- C. *He said to him, "As to the former, it is because no one can ever really pardon damage done to the principal limbs."*
- D. *He said to him, "So does someone pardon pain that is given to him? And has it not been taught on Tannaite authority: If he said, 'Smite me and wound me on the stipulation that you will be exempt,' the other is exempt?"*
- E. *The other remained silent. He said, "Have you heard anything on this matter?"*

- F. *He said to him, "This is what R. Sheshet said: 'The liability is on account of the shame to the family of the victim.'"*

**II.2** A. *It has been stated:*

- B. R. Oshaia said, "The liability is on account of the shame to the family of the victim."  
C. Raba said, "It is because a person never really pardons damage done to his principal limbs."  
D. R. Yohanan said, "There is a yes that is really a no and a no that is really a yes."

**II.3** A. *So, too, it has been taught on Tannaite authority:*

- B. "Hit me, split my skull" —  
C. "On the stipulation that I am exempt from any claim for damages" —  
D. "Yes" —  
E. Lo, that is a no that is really a yes.

**III.1** A. **"Tear my cloak," "Break my jar" — [the one who does so] is liable:**

- B. *And an objection was raised: "To keep" (Exo. 22: 6) — but not to destroy.*  
C. "To keep" — but not to tear.  
D. "To keep" — but not to give out to the poor. [Kirzner: In these cases, liability of bailees would not apply; why the liability in the Mishnah, where he gave him the pitcher to break and the garment to tear?]  
E. *Said R. Huna, "There is no contradiction. Here [in the Mishnah] the object came to hand, there [in Scripture] it did not come to hand."*  
F. *Said to him Rabbah, "Well, does not the language, 'to keep,' mean that the object has come to hand?"*  
G. *Rather, said Rabbah, "Both the Mishnah's rule and the Scripture's statement refer to the object's having come to hand, but there still is no contradiction. In the one case the object has come to hand under the torah of bailments, and in the other, it has come to hand under the torah of objects that are to be torn."*

**III.2** A. *There was a money purse set aside for charity which was coming to Pumbedita. R. Joseph deposited it with someone who was negligent, so thieves came and stole it. R. Joseph held him liable for the funds.*

- B. *Said to him Abbaye, "But lo, it has been taught on Tannaite authority: 'To keep' — but not to give out to the poor?"*

*C. He said to him, “The poor of Pumbedita have a regular allowance, and the money therefore falls into the classification of ‘To keep’ — but not to give out to the poor.”*

**I.1**, bearing its talmud at No. 2, expands on the Mishnah’s opening statement. Nos. 3-20, 21-24 are tacked on to the composite, which goes off in its own direction, partly continuing the exegetical work of Nos. 1, 2, partly appealing for the principle of agglutination to the repeated attributional formula. **II.1** explains the rule of the Mishnah. Nos. 2, 3 carry forward the same problem. **III.1** concludes with a clarification of the Mishnah’s rule.