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Bavli Baba Qamma Chapter Four

Folios 36A-46A

4:1

- A. [36A] “An ox [deemed harmless] which gored four or five oxen one after the other,
- B. “[first] pays compensation to the last among them.
- C. “If there is excess [value received from the proceeds of the ox which has done the goring], one goes on to the one before it.
- D. “If there still is excess value, one goes on to the one which is before that one.
- E. “The last [of the claim thus] is the one which is given the advantage,” the words of R. Meir.
- F. R. Simeon says, “An ox [deemed harmless] worth two hundred [zuz] which gored an ox which was worth two hundred [zuz],
- G. “and the carcass [of the gored ox] is worth nothing —
- H. “this one takes a maneh [a hundred zuz], and that one takes a maneh.
- I. “[If] it gored another ox, worth two hundred [zuz], the last one takes a hundred zuz and as to the one before it — this one takes fifty zuz, and that one takes fifty zuz.
- J. “[If] it gored yet another ox worth two hundred, the last one takes a hundred zuz,

K. “and the one before it, fifty zuz, and the first two [each] take a golden denar [twenty-five zuz].”

- I.1 A. *Who can possibly stand as the authority behind our Mishnah’s rule? For it is not in accord with the principle of R. Ishmael, nor is it in accord with the principle of R. Aqiba. It is not in accord with R. Ishmael, who has said that the injured party is in the status merely of a creditor, and he has a claim merely of money against the defendant, so how can the rule be, **The last [of the claims thus] is the one which is given the advantage**, when it should be the first of the claims is the one that is given the advantage. Nor can the rule accord with the position of R. Aqiba, who has said that both parties become joint owners of the ox responsible for the damage. So how is it possible that **If there is excess [value received from the proceeds of the ox which has done the goring], [36B] one goes on to the one before it?** What it should say is, it should be paid proportionately for each offense.*
- B. *Said Raba, “In point of fact the passage accords with the position of R. Ishmael, who has said that the injured party is in the status merely of a creditor, and he has a claim merely of money against the defendant, and as to your challenge to that thesis, how can the rule be, **The last [of the claims thus] is the one which is given the advantage**, when it should be the first of the claims is the one that is given the advantage — with what sort of a case do we deal here? It is one in which the injured party [each in sequence] has seized the ox to collect damages from it, so that each is then treated as a paid bailee as to subsequent damages done by the ox.”*
- C. *If so, instead of framing matters as, **If there is excess [value received from the proceeds of the ox which has done the goring], one goes on to the one before it**, what is required is, **If there is excess [value received from the proceeds of the ox which has done the goring]**, it goes to the owner.*
- D. *Said Rabina, “This is the sense of the Mishnah passage: ‘If there is an excess in the damages done to him [Kirzner: the penultimate plaintiff], over that done to the subsequent plaintiff, the amount of the difference will revert to the plaintiff in respect of the preceding damage [following Kirzner].” [Kirzner: Where an ox of the value of a hundred zuz gored successively the ox of A, of B, and of C, and the damages amount to fifty, thirty, and twenty zuz respectively, C will be paid twenty, B, ten, which is the difference between the compensation due to him and that due from him to C, and A will get twenty, which is the difference between the compensation due to him from the owner*

of the ox that did the damage and that owing from him to B. All the payments together, which are twenty to A, ten to B, and twenty to C, make only fifty, so that the balance of the value of the ox will go to its owner.]

- E. *So too, when Rabina said, he said R. Yohanan [said], “It is the negligence of the bailees that has affected the case.” [Kirzner: It was for the failure to carry out their duty as bailees that liability was incurred by the earlier plaintiffs to the later.]”*

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

B. *I should say so! For said Samuel to R. Judah, “Sharp-wit! Abandoned our Mishnah paragraph and go along with my explanation of it, specifically, the opening clause accords with R. Ishmael and the closing one with R. Aqiba.”*

I.3 A. *There we have learned in the Mishnah: He who boxes the ear of his fellow pays him a sela. R. Judah says in the name of R. Yosé the Galilean, “A maneh” [M. B.Q. 8:6A-B].*

B. *Someone boxed the ear of someone else. R. Tobiah bar Mattenah sent word to R. Joseph, “Have we learned that what is paid is a Tyrian sela or a local sela?”*

C. *He sent word, “You have learned in the Mishnah: This one takes fifty zuz, and that one takes fifty zuz. Now if you take the view that the Tannaite authority has in mind a calculation based on the local sela, then he should split up the matter and introduce a further case where the amount left for the first two*

will be twelve zuz and one sela.” [Kirzner: The last claimant will have a maneh, the next fifty zuz, the rest one gold denar, and the first claimant and the owner twelve zuz and one sela each.]

D. *He said to him, “Is the Tannaite authority something like a pedlar who spreads out all his wares?”*

E. *What’s the upshot?*

F. *They worked matters out on the basis of that which said R. Judah said Rab, “Every reference in the Torah to silver in connection with a specified payment means, in Tyrian currency, and that mentioned in the words of the sages means, in the circulating currency of the province.”*

G. *When the injured party heard that, he said, “Since it adds up to scarcely half a zuz, I don’t want it. Give it to the poor.” But then he said, “Let him give it to me, and I’ll go and get a cure with it.”*

H. *Said to him R. Joseph, “The poor have already acquired title to the money, and even though there are no poor here at hand, we serve as the agent of the poor.”*

I. For said R. Judah said Samuel, “Orphans [37A] do not require a prosbol [to prevent the remission of debts owing to them, the court acting as their agency],” and so did Rammi bar Hama repeat as a Tannaite rule, “Orphans do not require a prosbol [to prevent the remission of debts owing to them, the court acting as their agency].”

J. Rabban Gamaliel and his court serve as the fathers of all orphans.

I.4 A. *Hanan the bully boxed someone else’s ear. The case came before R. Huna. He said to him, “Go, give him half a zuz.”*

B. *He had only a zuz in hand. From that he wanted to pay him, but no one had a half-zuz. So he give him another box on the ear and paid the whole coin to him.*

I.1 deals with the authority behind the Mishnah. No. 2 then carries forward and criticizes the theory of No. 1. No. 3 with its odd footnote at No. 4 then provides a different complement to the Mishnah paragraph.

4:2

A. **An ox which is an attested danger as to its own species, but not an attested danger as to what is not its own species —**

B. **[or] an attested danger as to man, but not an attested danger as to beast,**

- C. [or] an attested danger to small [beasts] but not an attested danger as to large ones —
- D. for injuries done to that for which it is an attested danger, [the owner] pays full damages,
- E. and for injuries done to that for which it is not an attested danger, he pays half-damages.
- F. They said before R. Judah, “Lo, what if it was an attested danger for Sabbaths but not an attested danger for ordinary days?”
- G. He said to them, “For damage done on Sabbaths [the owner] pays full damages,
- H. “and for damage done on ordinary days [the owner] pays half-damages.”
- I. When is it then deemed to be harmless? When it refrains [from doing damages] for three successive Sabbaths.

I.1

- A. *It has been stated:*
- B. *R. Zebid said, “We have learned as the formulation of the Mishnah, **but [was] not an attested danger.**”*
- C. *R. Pappa said, “We have learned as the formulation of the Mishnah, **it is therefore not an attested danger.**”*
- D. *R. Zebid, who said, “We have learned as the formulation of the Mishnah, **but [was] not an attested danger,**” maintains that an otherwise unspecified beast is assumed to be an attested danger for all purposes.*
- E. *R. Pappa, who said, “We have learned as the formulation of the Mishnah, **it is therefore not an attested danger,**” maintains that an otherwise unspecified beast is not assumed to be an attested danger for all purposes.*
- F. *R. Zebid derives his ruling from a close reading of the concluding language of the Mishnah paragraph, and R. Pappa derives his ruling from a close reading of the opening language of the Mishnah paragraph.*
- G. *R. Zebid derives his ruling from a close reading of the concluding language of the Mishnah paragraph: **[or] an attested danger to small [beasts] but not an attested danger as to large ones.** Now, if you maintain, as I do, that the correct reading of the Mishnah paragraph is, **but [was] not an attested danger,** then, it would follow, an otherwise unspecified beast is assumed to be an attested danger for all purposes. And thus we are informed that even where the ox was an attested danger to small beasts, if we do not know otherwise, we deem it an attested danger to big ones too. But if you take the*

view that the correct reading of the Mishnah paragraph is, **it is therefore not an attested danger**, so that, if we have no information to the contrary, the ox would not be regarded as an attested danger, then one could say as follows: if, in general, the ox was an attested danger to injure small beasts of one species, on that account it would not be regarded as an attested danger to damage small beasts of another species, even if we have no clear evidence to the contrary. Then why bother to specify that, if it was an attested danger to small cattle, it would not be deemed an attested danger to big cattle?

- H. And R. Pappa will say to you, "It still is necessary to make just that point. For it might have entered your mind to suppose that, since the beast has begun to attack a given species, there will be no differentiating between big and small beasts of that particular species. So we are informed that he is not deemed an attested danger under such circumstances."
- I. R. Pappa derives his ruling from a close reading of the opening language of the Mishnah paragraph: **[or] an attested danger as to man, but not an attested danger as to beast**. Now if you take the view that the language of the Mishnah is, **it is therefore not an attested danger**," meaning that an otherwise unspecified beast is not assumed to be an attested danger for all purposes, then with the cited language we are informed that even where there is no contrary evidence, there is no regarding the beast as an attested danger to some other species, and it was therefore required to inform us that if there is no contrary evidence, then even though the beast is held to be an attested danger to man, he is still not regarded as an attested danger to animals. But if you hold that the correct reading is, **[or] an attested danger to small [beasts] but not an attested danger as to large ones**, then since without any other evidence whatsoever, the beast is regarded as an attested danger, one may then state, "Since the beast is deemed an attested danger, without further evidence, to any other beast, is it necessary to specify that if it is an attested danger to man, it is also an attested danger to a beast?"
- J. And R. Zebid will say to you, "The opening clause speaks of a case in which the beast has reverted to the status of being deemed harmless, for instance, a beast that had been an attested danger to man and an attested danger to a beast, and then it reverted to the status of being an attested danger to a beast, for it had stood near other cattle on three different occasions and done no goring. Now what might you have thought? Since it has not reverted from the status of being an attested danger to man, therefore the reversion from being an attested danger to beasts is of no effect? So we are informed that, in any

event, the reversion from being an attested danger to a beast is entirely valid."

- K. *An objection was raised: Sumekhosh says, "A beast that is an attested danger to man is an attested danger to a beast, on the basis of an argument a fortiori: If it is an attested danger to attack a man, how much more so will it be an attested danger to attack a beast!" Now does this not bear the implication that the Tannaite position contrary to that expressed here is that it is not deemed an attested danger [without contrary evidence]?*
- L. *R. Zebid will say to you, "Sumekhosh refers to the case of reversion from the prior status of being an attested danger [just as I have just now explained], and this is the substance of what he said to the contrary authority: 'As to your position that reverting from the goring of other animals is a solid reversion, I take the view that reverting from goring other beasts is not solid, and I can prove that case through this argument a fortiori of mine based on the case of man: Since it has not refrained from attacking human beings, will it not continue attacking beasts?'"*

M. *Said R. Ashi, "Come and take note: They said before R. Judah, "Lo, what if it was an attested danger for Sabbaths but not an attested danger for ordinary days?" He said to them, "For damage done on Sabbaths [the owner] pays full damages, and for damage done on ordinary days [the owner] pays half-damages." Now, if you maintain that the language of the Mishnah is but [was] not an attested danger, then the disciples addressed a question to him and he was responding properly. But if you maintain that the correct reading is it is therefore not an attested danger, then the questioners are in the position of teaching him [and not asking a question]. And, further, what is the sense of his reply [Kirzner: after they had already decided the question in the wording of the problem]?"*

N. *Said R. Yannai, "One may also find the same point through a close reading of the language of the opening clause of the Mishnah: For injuries done to that for which it is an attested danger, [the owner] pays full damages, and for injuries done to that for which it is not an attested danger, he pays half-damages. Now, if you take the view that the language that is used in the Mishnah is but [was] not an attested danger, the language at hand is spelling matters out. But if you take the view that the correct reading of the Mishnah paragraph is it is therefore not an attested danger, then since the matter is settled,*

why go on with the language, for injuries done to that for which it is an attested danger, [the owner] pays full damages, and for injuries done to that for which it is not an attested danger, he pays half-damages? For since we have now been told that in the case of an animal deemed harmless, the payment is half-damages, and for an animal that is an attested danger, the payment is in full, why go over that ground? And even if you take the position of R. Pappa [an animal is assumed to be innocent until proven otherwise], if an animal gored an ox, ass, and camel in sequence, it would in any event become an attested danger to all species of beast."

- I.2** A. *Our rabbis have taught on Tannaite authority:*
 B. If the ox sees another ox and gores it, another and does not gore it, another and gores it, another and does not gore it, another and gores it, another and does not gore it, it is deemed an ox that is an attested danger alternately to gore other oxen.
- I.3** A. *Our rabbis have taught on Tannaite authority:*
 B. If the ox sees another ox and gores it, an ass and does not gore it, a horse and gores it, a camel and does not gore it, a mule and gores it, a wild ass and does not gore it, it is deemed an ox that is an attested danger alternately to gore other species.
- I.4** A. *The question was raised: If it gored [37B] an ox, then another, then a third, then an ass, then a camel, what is the law? Do we assign the third ox to the class of the first two, in which case while he is deemed an attested danger to other oxen, he is not an attested danger to any other species? Or do we assign the final ox to the class of the ass and the camel, with the result that he is deemed an attested danger to all of them?*
 B. *If an ox gored an ass, a camel, an ox, another ox, and a third ox, what is the law? Is this first ox in the sequence of oxen assigned to the consecutive gorings of ass and camel, with the result that he is deemed an attested danger to all species, or perhaps it is assigned to the sequence of the other oxen, and while he is deemed an attested danger to other oxen, he is not deemed an attested danger to other species?*
 C. *If it gored on one Sabbath, then the next, then the third, then on Sunday, and then on Monday, what is the law? Do we assign the third Sabbath to the sequence of other Sabbaths, in which case, while he is*

deemed an attested danger to gore on Sabbaths, he is not deemed an attested danger to gore on weekdays? Or perhaps we assign the Sabbath that has come at the end to the first and the second, with the result that he is an attested danger to gore on any day of the week?

D. If it gored on a Thursday, Friday, and Friday, then the next Saturday and the Saturday beyond and the one beyond that, what is the law? Do we assign the first Sabbath to the sequence begun with Thursday and Friday, with the result that the ox is deemed an attested danger to gore on any day of the week, or perhaps the first Sabbath is assigned to the sequence of the second and third, in which case the ox is an attested danger to gore on Sabbaths alone?

E. *So who knows!*

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

B. If a woman produced menstrual blood on the fifteenth of this month, the sixteenth of the next, and the seventeenth of the month beyond,

C. Rab said, "The woman has thereby established for herself a regular point in the month for her period, on which she may then rely."

D. And Samuel said, "This is so only after she will have repeated the process of skipping for a third time [the eighteenth of the month beyond]."

I.6 A. Said Raba, "If an ox heard the sound of the ram's horn and gored, the sound of a ram's horn and gored, the sound of a ram['s horn and gored, it is deemed an attested danger in respect to the sound of the ram's horn."

B. *So what else is new?*

C. *What might you have imagined? When the ox gored at first hearing the sound of the ram's horn, it was because of sudden fright. So we are informed that that is not so* [Kirzner: and full compensation will commence with the fourth goring at the sound of a trumpet].

I.1 commences with attention to the correct reading of the Mishnah paragraph. But the issues prove deeper and more substantive than the surface debate would suggest at the outset. Nos. 2, 3 then present Tannaite complements to our rule. Nos. 4-6 provide a talmud to the foregoing; the first two look suspiciously like filler, since, after all, the question that is demanded — *so what else is new?* — is not asked.

4:3

- A. An ox of an Israelite which gored an ox belonging to the sanctuary —
- B. or an ox belonging to the sanctuary which gored an ox belonging to an Israelite [M. 1:2] —
- C. [the owner] is exempt,
- D. since it is said, “The ox belonging to his neighbor” (Exo. 21:35) — and not an ox belonging to the sanctuary.
- E. An ox belonging to an Israelite which gored an ox belonging to a gentile —
- F. [the Israelite owner] is exempt.
- G. And one of a gentile which gored one of an Israelite —
- H. whether it is harmless or an attested danger, [the gentile owner] pays full damages.

- I.1**
- A. *Our Mishnah paragraph's rule is not in accord with the position of R. Simeon b. Menassayya, for it has been taught on Tannaite authority:*
 - B. **An ox of an Israelite which gored an ox belonging to the sanctuary — or an ox belonging to the sanctuary which gored an ox belonging to an Israelite [M. 1:2] — [the owner] is exempt, since it is said, “The ox belonging to his neighbor” (Exo. 21:35) — and not an ox belonging to the sanctuary.**
 - C. R. Simeon b. Menassayya says, “An ox belonging to the sanctuary that gored an ox of a common person — the sanctuary is exempt from paying damages. An ox of a common person that gored an ox belonging to the sanctuary, whether the ox was assumed harmless or an attested danger — the owner pays full damages.”

D. *Say: now what is the theory of R. Simeon? If he takes literally the language of the verse, “The ox belonging to his neighbor” (Exo. 21:35), then even if an ox belonging to an individual gored an ox belonging to the Temple, there should be no exemption from liability. And if he does not take literally the language of the verse,*

“The ox belonging to his neighbor” (Exo. 21:35), *then why is there no liability when the ox belonging to the Temple gored an ox belonging to a private party?*

E. *And if you should say that in point of fact, he does take literally the language of the verse, “The ox belonging to his neighbor” (Exo. 21:35), but in the case of the ox belonging to a private person that has gored an ox belonging to the sanctuary, this is the reason that liability is incurred, because he produces evidence on the strength of an argument a fortiori — if an ox belonging to a private party has gored an ox belonging to another private party, liability is incurred, then all the more so should there be liability if it gored a consecrated cow — then I must ask: Why has he not invoked the principle of sufficiency, namely, It is sufficient for the inferred law to be as strict as that from which it is inferred? Just as the case of a beast that is deemed harmless that gored imposes on the owner the liability of paying only half of the damages that it has caused, so here, too, the requirement should be payment of only half-damages!*

F. Rather, said R. Simeon b. Laqish, “All types of cases had been covered by the requirement that full compensation for damages be paid. *When Scripture stated in particular that ‘his neighbor’ pays only half-damage in the case of a beast held to be innocent, the sense was that only where the damage was done to a neighbor would the beast deemed innocent pay only half-damages, but if the damage was done to what belongs to the Temple, whether the beast was deemed innocent or an attested danger, full damages must be paid. [38A] For otherwise, Scripture should have used the language ‘his neighbor’ in the context of discussing the beast deemed an attested danger.*”

- II.1** A. **An ox belonging to an Israelite which gored an ox belonging to a gentile — [the Israelite owner] is exempt:**
- B. *Say: how do you want it? If the meaning of “neighbor” is to be read literally, then if a Canaanite’s ox gored an Israelite’s, there also should be no liability. But if the meaning of “neighbor” is not to be read literally, then even if the ox of an Israelite gored the ox of a Canaanite, liability should be incurred!*
- C. Said R. Abbahu, “Said Scripture, ‘He stood and measured the earth, he beheld and drove asunder the nations’ (Hab. 3: 6) — he saw the fate of the seven religious duties that the children of Noah accepted as incumbent on themselves.

Since they did not carry them out, he went and declared their resources available to Israel.”

- D. R. Yohanan said, “‘He shined forth from Mount Paran’ (Deu. 33: 2) — from Paran he exposed their resources to Israel.”

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

F. **An ox belonging to an Israelite which gored an ox belonging to a gentile — [the Israelite owner] is exempt. And one of a gentile which gored one of an Israelite — whether it is harmless or an attested danger, [the gentile owner] pays full damages,** as it is said, “He stood and measured the earth, he beheld and drove asunder the nations” (Hab. 3: 6), and, further, “He shined forth from Mount Paran” (Deu. 33: 2).

G. *What’s the point of,* and, further, “He shined forth from Mount Paran” (Deu. 33: 2)?

H. *If you should say that the verse, “He stood and measured the earth, he beheld and drove asunder the nations” (Hab. 3: 6), is required for the purposes of what R. Mattenah said and R. Joseph said, well, then, come and take note of the following:* “He shined forth from Mount Paran’ (Deu. 33: 2) — from Paran he exposed their resources to Israel.”

II.2 A. *What is it that R. Mattenah said?*

B. *For* said R. Mattenah, “‘He stood and measured the earth, he beheld and drove asunder the nations’ (Hab. 3: 6) — What did he see? he saw the fate of the seven religious duties that the children of Noah accepted as incumbent on themselves. Since they did not carry them out, he went and sent them into exile from off their homeland.”

C. *And how do we know that the language translated “drove asunder” bears the meaning of exile?*

D. *Here we find the language, drove asunder the nations, and elsewhere, ‘drove asunder upon the earth,’ which is given in Aramaic translation as, [Kirzner:] to leap withal upon the earth.”*

II.3 A. *What is it that R. Joseph said?*

B. *For* said R. Joseph, “‘He stands and shakes the earth, he sees and makes the nations tremble’ (Hab. 3: 6): What did he see? He saw the seven religious duties that the children of Noah accepted upon themselves as obligations but never actually carried them out. Since they did not carry out those obligations, he went and remitted their obligation.”

C. *But then they benefited — so it pays to sin!*

D. Said Mar b. Rabina, “What this really proves is that even they they carry out those religious duties, they get no reward on that account.”

E. *And they don't, don't they? But has it not been taught on Tannaite authority:* R. Meir would say, “How on the basis of Scripture do we know that, even if it is a gentile, if he goes and takes up the study of the Torah as his occupation, he is equivalent to the high priest? Scripture states, ‘You shall therefore keep my statutes and my ordinances, which, if a human being does them, one shall gain life through them’ (Lev. 18: 5). What is written is not ‘priests’ or ‘Levites’ or ‘Israelites,’ but rather, ‘a human being.’ So you have learned the fact that, even if it is a gentile, if he goes and takes up the study of the Torah as his occupation, he is equivalent to the high priest.”

F. Rather, what you learn from this is that they will not receive that reward that is coming to those who are commanded to do them and who carry them out, but rather, the reward that they receive will be like that coming to the one who is not commanded to do them and who carries them out anyhow.

G. *For* said R. Hanina, “Greater is the one who is commanded and who carries out the religious obligations than the one who is not commanded but nonetheless carries out religious obligations.”

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

B. The Government of Rome sent two commissioners to the sages of Israel: “Teach us your Torah.” They recited it, repeated, and did it a third time. When leaving, they said, “We have paid close attention to the whole of your Torah, and it is certainly true, except for this one thing that you say, namely:

An ox belonging to an Israelite which gored an ox belonging to a gentile — [the Israelite owner] is exempt. And one of a gentile which gored one of an Israelite — whether it is harmless or an attested danger, [the gentile owner] pays full damages. *Well, how do you want it? If the meaning of “neighbor” is to be read literally, then if a Canaanite’s ox gored an Israelite’s, there also should be no liability. But if the meaning of “neighbor” is not to be read literally, then even if the ox of an Israelite gored the ox of a Canaanite, liability should be incurred! So this one thing we shall not report to the government.”*

Appendix on Gentiles and the Effect of their Carrying out Religious Duties

- II.5** A. *When the daughter of R. Samuel bar Judah died, rabbis said to Ulla, “Come on, let’s go and comfort him.”*
- B. *He said to them, “How can I get involved with comforting a Babylonian? This is really blasphemy! For they say, ‘So what is it possible to do anyhow?’ That bears the sense that if it were possible to do something, they would have done it.”*
- C. *He went on his own to him. He said to him, “‘And the Lord spoke to me, Do not distress the Moabites, neither contend with them in battle’ (Deu. 2: 9). So would it have entered Moses’ mind to go into battle without divine permission? But Moses on his own proposed the following argument a fortiori: If in regard to the Midianites, who came only to help the Moabites [Num. 22:4], the Torah has said, ‘Pursue the Midianites and smite them’ (Num. 25:17), [38B] the Moabites should surely be subject to the same commandment! Said to him the Holy One, blessed be He, ‘What has entered your mind has not entered my mind. I have two beautiful doves to bring forth from them: Ruth the Moabite and Naamah the Ammonite.’”*
- II.6** A. Said R. Hiyya bar Abba said R. Yohanan, “The Holy One, blessed be He, does not hold back from any creature the reward that is coming to it, even the reward for a few appropriate words, for in the case of the elder daughter of Lot, who named her son Moab [= from father] [Gen. 19:30-38], said the Holy One, blessed be He, to Moses, ‘Do not distress the Moabites, neither contend with them in battle’ (Deu. 2: 9). *The sense then is, it is war in particular that one is not to make against them, but one may well exact taxes from them.* But in the case of the younger daughter of Lot, who named her son Ben Ammi [son of my people], the Holy One, blessed be He, said to Moses, ‘And when you

come near against the children of Ammon, do not distress them or meddle with them at all' (Deu. 2:19) — *not even exacting taxes from them.*"

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

The Special Case of the Samaritan

- II.8** A. *Our rabbis have taught on Tannaite authority:*
- B. An ox of an Israelite that gored an ox of a Samaritan — the Israelite is exempt from having to pay damages. But in the case of a Samaritan's ox that gored an Israelite's ox, the Samaritan will pay half-damages in the case of an ox that was deemed harmless, but full damages in the case of an ox that was deemed an attested danger.
- C. R. Meir says, "An ox of an Israelite that gored an ox of a Samaritan — the Israelite is exempt from having to pay damages. But in the case of a Samaritan's ox that gored an Israelite's ox, the Samaritan, whether the ox was deemed harmless or an attested danger, the Samaritan must pay full damages."

D. *Does this then bear the implication that in R. Meir's opinion the Samaritans are classified as converts by reason of fear of lions [having settled in the land, they feared the wild animals, so adopted the religion of the land so as to get the protection of the god of the land]? [That is why he classifies them as gentiles.] But an objection may be raised on the basis of the following: All the bloodstains which come from Reqem are clean. R. Judah declares unclean, because they are converts and err. Those which come from among the gentiles are clean. Those which come from among Israelites and as to those that come from among Samaritans — R. Meir declares unclean. And sages declare clean, because they are not suspect in regard to their bloodstains [M. Nid. 7:3]. It thus is implicit that R. Meir takes the view that the Samaritans are faithful proselytes [and not insincere ones].*

E. *Said R. Abbahu, "It was an extrajudicial sanction that R. Meir imposed on them, as a precaution so that Israelites would not intermarry with them."*

F. *Objected R. Zira:* “These are the girls [invalid for marriage to an Israelite] who [nonetheless] receive a fine [from the man who seduces them]: He who has sexual relations with (1) a mamzer girl, (2) a Netin girl, or (3) a Samaritan girl; he who has sexual relations with (4) a convert girl, and with (5) a girl taken captive, and (6) a slave girl who was redeemed, who converted, or who was freed [respectively] when she was at an age of less than three years and one day [and who remains in the status of virgin]; he who has sexual relations with (7) his sister, and with (8) the sister of his father, and with (9) the sister of his mother, and with (10) his wife’s sister, and with (11) the wife of his brother, and with (12) the wife of the brother of his father, and with (13) the menstruating woman — they receive a fine [from the man who seduces them]. Even though [sexual relations with] them are subject to extirpation, one does not incur through them the death penalty at the hands of an earthly court [M. **Ket. 3:1**]. Now if, as you say, it was an extrajudicial sanction that R. Meir imposed on them, as a precaution so that Israelites would not intermarry with them, here, too, there should be such a sanction, so that Israelites should not intermarry with them.”

G. *Said Abbaye,* “[No exception was made here] so that **[39A]** the sinner should not profit. [The seducer has to pay something even here.]”

H. *So let him give the money to the poor?*

I. *Said R. Mari,* “Then it would be a monetary obligation that no particular persons could claim [and the man would then never have paid it].”

I.1 begins with an inquiry into the authority behind the rule of the Mishnah. **II.1** goes through the process of finding the scriptural or logical basis for the rule of the Mishnah. Nos. 2, 3 footnote **I.1H**. No. 4 then provides a Tannaite complement on the theme at hand, going over the materials of the opening unit. No. 5 is certainly an odd insertion, and I cannot explain why it should have been included, except for the general theme of Israel’s relationship to various gentile nations. Nos. 6, 7, form a loose conglomerate with the foregoing. No. 8 then reverts to the Tannaite complement of the Mishnah paragraph. But it stands at the end of the prior unit, moving from gentiles to half-breeds.

4:4

- A. An ox of a person of sound senses which gored an ox belonging to a deaf-mute, an idiot, or a minor —
- B. [the owner] is liable.
- C. But one of a deaf-mute, idiot, or minor which gored an ox belonging to a person of sound senses — [the owner] is exempt.
- D. [As to] the ox of a deaf-mute, idiot, or minor, the court appoints a guardian for them, and they bring testimony against [the ox, to have it declared an attested danger] to the guardian.
- E. [If] the deaf-mute gained capacity to hear, the idiot regained his senses, or the minor reached maturity,
- F. “[an ox belonging to one of them which had been declared an attested danger] has returned to its status of being deemed harmless,” the words of R. Meir.
- G. R. Yosé says, “Lo, it remains in its established status.”
- H. An ox belonging to the stadium [trained to fight other oxen or men] is not liable to the death penalty,
- I. since it is said, “When it will gore,” (Exo. 21:28) and not, “When others will cause it to gore.”

- I.1** A. *Now there is a contradiction in the body of the formulation of the passage before us. First you say, **But one of a deaf-mute, idiot, or minor which gored an ox belonging to a person of sound senses — [the owner] is exempt.** Then it follows that a guardian is not appointed over an ox deemed harmless, so that half-damages may be collected out of the corpus. But then look what comes later: [As to] the ox of a deaf-mute, idiot, or minor, the court appoints a guardian for them, and they bring testimony against [the ox, to have it declared an attested danger] to the guardian. Then it follows that a guardian is appointed over an ox deemed harmless, so that half-damages may be collected out of the corpus.*
- B. *Said Raba, “This is the sense of the passage: If the ox belonging to a deaf-mute, idiot, or minor, is confirmed as an attested danger to gore, then **the court appoints a guardian for them, and they bring testimony against [the ox, to have it declared an attested danger] to the guardian,** so that if the beast is declared an attested danger and then goes and gores again, payment will be made from real property of the highest quality.”*

I.2 A. *Property of the highest quality belonging to what party to this transaction?*

B. R. Yohanan said, "From the property of the highest quality that belongs to the estate of the orphans."

C. R. Yosé bar Hanina said, "It is from property of the highest quality belonging to the guardian."

D. *But did R. Yohanan really make such a statement? And lo,* said R. Judah said R. Assi, "The property of orphans is seized for sale [to cover a debt] only in a case in which interest charges were eating up the estate." And R. Yohanan says, "Either to pay off a bond that entails interest payments or to pay off the marriage settlement owing to a woman, on account of the requirement that, until the settlement is made, the estate has to support the woman [and hence the unpaid settlement constitutes a long-term charge]."

E. *So reverse the attributions:*

F. R. Yohanan said, "It is from property of the highest quality belonging to the guardian."

G. R. Yosé bar Hanina said, "From the property of the highest quality that belongs to the estate of the orphans."

H. *Said Raba, "Hey! Just because there's a contradiction between two sayings attributed to R. Yohanan, are you going to assign to R. Yosé bar Hanina an error [about collecting from the estate of orphans]? And lo, R. Yosé bar Hanina was a judge who penetrated into the depths of the law. So in point of fact, don't reverse the attributions. But the case of damages should be regarded as exceptional [since there is a public interest here to pay off right away and not wait for the orphans to come of age (Kirzner)]. R. Yohanan said, 'From the property of the highest quality that belongs to the estate of the orphans,' since if you say that it is from the property of the highest quality that belongs to the guardian, [39B] people will shy away and not agree to take the office and would do nothing. R. Yosé bar Hanina said, 'From the property of the highest quality that belongs to the guardian,' but they will be*

reimbursed out of the estate of the orphans *when the orphans come of age.*”

I.3 A. *Whether or not guardians are appointed in the case of a beast deemed harmless, so as to collect damages out of the corpus of the beast, is subject to dispute in the following Tannaite formulation:*

B. An ox, the owner of which went deaf or went bonkers or went abroad —

C. Judah b. Neqosa said Sumekhosh [said], “Lo, it remains in the status of being deemed harmless until witnesses give evidence in the presence of the owner.”

D. But sages say, “They appoint a guardian for them and testimony is given before the guardian.”

E. If the deaf-mute recovered his senses or the idiot his wits, a minor grew up, or the owner came back from abroad,

F. Judah b. Neqosa said Sumekhosh [said], “Lo, it reverts to the status of being deemed harmless until witnesses give evidence in the presence of the owner.”

G. But R. Yosé says, “Lo, it remains in its established status.”

I.4 A. *They said, “What is the sense of the language of Sumekhosh, ‘Lo, it remains in the status of being deemed harmless’? If we say that it is not subject to be declared an attested danger at all, lo, since the latter phrase states, ‘Lo, it reverts to the status of being deemed harmless until witnesses give evidence in the presence of the owner,’ it must follow that it has been declared an attested danger. So what is the sense of, ‘Lo, it remains in the status of being deemed harmless’? It must mean, it would remain in the status of being deemed harmless, for we do not do anything that would diminish its value. This would then show that Sumekhosh maintains that guardians are not appointed in*

the case of a beast deemed harmless, so as to collect damages out of the corpus of the beast. But sages say, ‘Guardians are appointed in the case of a beast deemed harmless, and testimony is given before them, so as to collect damages out of the corpus of the beast.’”

B. And as to the concluding clause, what is at issue?

C. At issue is whether or not a change in ownership involves also a change in the status of the ox. Sumekhosh takes the view that a change in ownership involves also a change in the status of the ox. R. Yosef maintains that a change in ownership does not involve also a change in the status of the ox.

I.5 A. *Our rabbis have taught on Tannaite authority:*

B. *An ox belonging to a deaf-mute, an idiot, or a minor, that gored —*

C. *R. Jacob pays.*

D. *[The ox gored.] What the hell did R. Jacob do?!*

E. *Read: R. Jacob says, “The owner pays half-damages.”*

F. In this rule, what sort of situation confronts us? If it is an animal deemed harmless, then it is obvious that that is the case, for all parties are going to have to pay half-damages. If we are dealing with an attested danger, then, if the management took proper precautions with the beast, he should not have to pay a thing! And if he did not take proper precautions to guard the beast, he is going to have to pay full damages.

G. Said Raba, “In point of fact we are dealing with a beast that was an attested danger. And in this case, what is our problem? It is a case in which the management provided a rather inferior sort of precaution but not a precaution of the highest order. And R. Jacob concurs with R. Judah, who has said, ‘[Where a beast that is an attested danger does damages, so that payment is required,] the part of the payment that would be paid even if the beast were not an attested danger remains in place’ [that is, is always subject to the law covering the beast that is deemed harmless (Kirzner)]. He furthermore concurred with R. Judah,

who has said, 'A beast that was an attested danger is still sufficiently taken care of with a rather minimal sort of precaution.' And he concurs with rabbis, who have said, 'Guardians are appointed in the case of a beast deemed harmless...so as to collect damages out of the corpus of the beast.'"

H. *Said to him Abbayye, "Do [Jacob and Judah] in point of fact not differ? But has it not been taught on Tannaite authority: The ox of a deaf-mute, idiot, or minor, that gored — R. Judah declares the owner liable. And R. Jacob says, 'It is half-damages that one pays'?"*

I. *Said Rabbah bar Ulla, "It is that for which R. Judah declares the owner liable that R. Jacob sets forth by way of explanation."*

J. *But from the perspective of Abbayye, who maintains that they differ, what was at issue between them?*

K. *He will say to you, "With what sort of a case do we deal here? It is one in which there was an ox that was an attested danger but not given any sort of precautionary care at all. R. Jacob concurs with R. Judah in one aspect of the case, but he dissents in another. He concurs with R. Judah that [where a beast that is an attested danger does damages, so that payment is required,] the part of the payment that would be paid even if the beast were not an attested danger remains in place. But he differs from him in another point, for, while R. Judah maintains that guardians are appointed in the case of a beast deemed harmless...so as to collect damages out of the corpus of the beast, R. Jacob takes the position that they do not appoint such persons and the owner pays only half of the damages, which would be the part that is subject to the category of damages payable by an ox that is an attested danger."*

L. *Said R. Aha bar Abbayye to Rabina, "Now, from the perspective of Abbayye, who has said that there is a difference, there is no difficulty in explaining R. Jacob's statement to pertain only to a beast that was an attested danger [and no precaution has been taken to control the beast (Kirzner)], but from the perspective of Raba, who holds that there is no disagreement, why refer the prior statement only to an attested danger? Why not refer it also to a beast that was deemed harmless, [40A] if he accords with the position of R. Judah [Kirzner: that an inferior degree of precaution is insufficient for*

a beast that was deemed harmless], *in a case in which the guardianship of the beast was inferior and inadequate* [Kirzner: hence the liability to pay half-damages, a guardian being appointed to collect payment out of the body of the beast deemed harmless]; *or — no precautions having been taken at all — then in accord with the view of R. Eliezer b. Jacob, as has been taught on Tannaite authority: R. Eliezer b. Jacob says, ‘All the same are the ox deemed harmless and one that was an attested danger, which one has guarded in only a limited manner; the owner is exempt in either case.’ And in his ruling, R. Jacob then would have informed us that guardians are appointed in the case of a beast deemed harmless...so as to collect damages out of the corpus of the beast.”* [Kirzner: Why then did Raba explain the former statement of Jacob to refer only to the beast that was an attested danger? Why did he not explain it to refer to the beast assumed harmless as well?]

M. *He said to him, “This is the sense of his statement: It was a single statement meant to contain two principles.”* [Kirzner: By explaining Jacob’s earlier statement as referring to the beast that was an attested danger, he informs us that he shares the view of Judah both in regard to the question of precaution and that of the part due from an innocent beast in case of a beast that was an attested danger, while incidentally we also learn that guardians are appointed etc.]

N. *Rabina said, “At issue between them is whether or not change of ownership constitutes a change as to the classification of the beast, for instance, if the beast was an attested danger and the deaf-mute regained his senses, the idiot regained his reason, and the minor grew up. R. Judah takes the view that it remains in its established status. R. Jacob holds that the change of ownership changes the status of the beast.”*

- I.6** A. *Our rabbis have taught on Tannaite authority:*
B. As to guardians, they pay for damages out of real estate of the highest quality, but they are not required to pay a ransom [for manslaughter by the beast].

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

B. *Said R. Hisda, "It is R. Ishmael the son of R. Yohanan b. Beroqah, for it has been taught on Tannaite authority: 'Then he shall give for the redemption of his life whatever is laid upon him' (Exo. 21:30) — compensation for the life of the one who has been injured. R. Ishmael son of R. Yohanan b. Beroqah says, 'It is compensation for the life of the one who did the injury.' Now is this not what is at issue between them? Rabbis take the view that the ransom is simply an ordinary civil obligation, while R. Ishmael the son of R. Yohanan b. Beroqah holds that it falls into the classification of a mode of atonement?"*

C. *Said R. Pappa, "Not at all. All parties concur that it falls into the classification of a mode of atonement. But here, what is at issue? Rabbis maintain that compensation is assessed in accord with the value of the life of the one who has been injured, and R. Ishmael son of R. Yohanan b. Beroqah holds that compensation is assessed in accord with the value of the life of the one who did the injury. And what is the scriptural basis for the position of rabbis? They find reference to 'laying upon' used in a later setting, and they find reference to 'laying upon' used in an earlier one. Just as elsewhere it speaks of the injured party, so here it speaks of the injured party. But R. Ishmael son of R. Yohanan b. Beroqah points out that Scripture states, 'And he shall give for the ransom of his life' [meaning the defendant's life]. And from rabbi's perspective, while conceding that Scripture does say, 'And he shall give for the ransom of his life' [meaning the defendant's life], nonetheless, the amount to be paid must be determined in accord with the value of the life of the person who was killed."*

I.8 A. *Raba praised R. Aha bar Jacob to R. Nahman, calling him an eminent authority. He said to him, "So when he comes to hand, bring him to me." When he came to him, he said to him, "Ask me a question."*

B. *He asked him, "In the case of an ox belonging to two partners, how do they pay ransom? Does this one pay a ransom and that as well? But Scripture has spoken of one ransom, and not two ransoms. Then does one party pay a half-*

ransom and the other pay a half-ransom? But Scripture has spoken of a complete ransom, and not of a half-ransom.”

- C. *While [Aha] was thinking about the question, [Nahman] asked him another one: “We have learned in the Mishnah: **Those who owe Valuations [to the Temple] — they exact pledges from them. Those who owe sin-sufferings or guilt-offerings — they do not exact pledges from them. Those who owe burnt-offerings or peace-offerings — they exact pledges from them [M. Ar. 5:6A-C].** Now what would be the law for those who owe ransom? Since it is a form of atonement, it falls into the category of a sin-offering and a guilt-offering, in which case it is a weighty matter to the person who owes it, so it is not necessary to exact a pledge from him? Or perhaps, since he has to give the ransom to another mortal, it is in the class of what is merely money and not something owing to the Most High, so it is not such a big deal to him, on account of which they exact a pledge to make sure he will pay what is owing. Or, maybe, since he did not sin, and it is his chattel that has done the damage, it is not such a weighty matter to him, and so he has to provide a pledge.”*

- D. *He said to him, “Leave me alone, I’m still wrapped up in the first question.”*

I.9

- A. *Our rabbis have taught on Tannaite authority:*
- B. *If someone borrowed an ox assuming that it was harmless but it turned out an attested danger, the owner would have to pay half-damages, and the one who borrowed it would pay half-damages. If the beast was declared an attested danger while in the household of the borrower and he returned it to the owner, the owner would then have to pay half-damage and the owner would be exempt from any payment whatsoever.*

I.10 A. *A master has said: “If someone borrowed an ox assuming that it was harmless but it turned out an attested danger, the owner would have to pay half-damages, and the one who borrowed it would pay half-damages.”*

B. *Now why should this be the case? Why can’t the one who borrowed the ox say, “So I borrowed an ox, not a lion!”*

C. *Said Rab, “With what sort of a case do we deal here? It is a case in which the one who borrowed the ox realized that it was a gorer.”*

D. *Well, can’t the one who borrowed the ox say, “I borrowed an ox that was assumed harmless, not one that was an attested danger!”*

E. *It is because one may say to him, "So in the end if it had been an ox that was deemed harmless, you would have had to pay half-damages, so now too, go pay half-damages."*

F. *Well, can't the one who borrowed the ox say, "If it had been an ox deemed innocent, then I would have been able to pay from the corpus of the beast itself."*

G. *It is because one may say to him, "So in the end you don't have to reimburse me to the full extent of the value of the ox [Kirzner: in payment of the ox you borrowed from me]?"*

H. *Well, can't the one who borrowed the ox say, [40B] "If the ox had been assumed harmless, then I would have admitted the act of goring and exempted myself from having to pay" [since confession by the defendant in this case would have nullified the obligation (Kirzner)].*

I. *And even from the perspective of him who maintains that payment for half-damages is not an extrajudicial fine [to be avoided by confessing the facts up front] but a mere civil liability, why cannot the borrower nonetheless argue, "If the ox had been assumed harmless, then I would have had it escape into the pasture [and so evaded compensation out of the corpus of the beast]."*

J. *So here with what situation do we really deal? It is one in which the beast was seized by the court first of all.*

K. *Then why does the owner have to pay half-damages? Why can't he plead against the borrower, "You have allowed my ox to fall into the control of someone against whom I cannot bring action"?*

L. *Because the borrower would be able to reply, "Even if I had returned the ox to you, would not the court have seized it from you?"*

M. *The owner, however, can respond, "Well, if you had returned the ox to me, then I would have had it escape into the pasture [and so evade compensation out of the corpus of the beast]."*

N. *It is because he could say to him, "One way or the other, would the damages not have been paid out of the best of your real estate?" [Kirzner: For in fact the ox had already been declared an attested danger while the owner had it.]*

O. *Well, that would work if the owner of the beast had real estate, but if he had no real estate, what is to be said?*

P. *It is because the borrower can always say to the owner, "Just as I am indentured to you, so I am indentured to the other party [who is your creditor]."*

Q. *That is in line with what R. Nathan said, as has been taught on Tannaite authority: R. Nathan says, "How on the basis of Scripture do we know that if someone claims a maneh from someone else, and the other party claims the same amount of money from a third party, the money is collected from the third party and paid out directly to the original claimant? 'And give it to him against whom he has trespassed' (Num. 5: 7)."*

- I.11** A. If the beast was declared an attested danger while in the household of the borrower and he returned it to the owner, the owner would then have to pay half-damage and the owner would be exempt from any payment whatsoever:
- B. *The premise of the latter clause of the formulation, therefore, is that a change of ownership of the ox likewise causes a change in its status, but the prior clause takes as its premise that change in the control of the beast in no way changes its status!*
- C. *Said R. Yohanan, "Break it up. The one who formulated the former clause is not responsible for the formulation of the latter."*
- D. *Rabbah said, "Since the opening clause maintains that change in ownership does not change the status of the beast, the closing one should likewise be consistent that change of ownership does not change the status of the beast. But the operative consideration in the latter clause, accounting for its position, is that the owner may say to the borrower, 'You had no right to allow my ox to be declared an attested danger.'"*
- E. *R. Pappa said, "Since the concluding clause takes as its premise that a change in the ownership of the beast also changes its status, the opening clause also should take as its premise that a change in ownership changes the status of the beast. And the operative consideration behind the opening rule is that wherever the beast goes, it remains subject to the name of its owner [who will get it back]."*

- II.1** A. **An ox belonging to the stadium [trained to fight other oxen or men] is not liable to the death penalty, since it is said, "When it will gore," (Exo. 21:28) and not, "When others will cause it to gore":**
- B. *This question was raised: "What is the rule as to offering such a beast on the altar?"*

- C. Rab said, "It is suitable."
- D. Samuel said, "It is invalid."
- E. Rab said, "It is suitable" — it killed under constraint.
- F. Samuel said, "It is invalid" — lo, a transgression has been carried out with it.
- G. *An objection was raised:* "When any man of you brings an offering to the Lord, you shall bring your offering of cattle] from the herd [or from the flock]" (Lev. 1:32) — thus excluding the one which has sexual relations with a human being and the one with whom a human being has sexual relations. "When any man of you brings an offering to the Lord, you shall bring your offering of cattle from the herd or from the flock" (Lev. 1:32) — "from the flock" — this serves to exclude from use on the altar the one which is set aside [for idolatrous worship]. "From the flock" — this serves to exclude from use on the altar a goring ox [that killed a man, where the evidence derives only from a single witness; this beast is not stoned to death]. Said R. Simeon, "If the rule was stated with reference to the animal that has had sexual relations with a human being, why is it stated with reference to a goring ox, and if it is made with reference to a goring ox, why with reference to an ox that has had sexual relations with a human being? It is because there are indicative traits pertaining to the animal that has had sexual relations with a human being but not to an animal that has gored, and there are indicative traits pertaining to an animal that has gored that do not pertain to an animal that has had sexual relations with a human being. With respect to an animal that has had sexual relations with a human being, the law has treated the case of one who does so under constraint as equivalent to one who has done so willingly, but the law has not treated as equivalent the ox that has gored under constraint as the same as one who has done so willfully. The goring ox's owner has to pay a ransom, but the owner of the beast that has had sexual relations with a human being does not have to pay ransom. Therefore it was necessary for Scripture to make explicit reference to the ox that has committed sexual relations with a human being and also to make explicit reference to the goring ox. *Now in any event, we find the rule:* With respect to an animal that has had sexual relations with a human being, the law has treated the case of one who does so under constraint as equivalent to one who has done so willingly, but the law has not treated as equivalent the ox that has gored under constraint as the same as one who has done so willfully. *And for what purpose is this rule specified? Is it not with regard to whether or not such an animal may be offered on the altar?'*

- H. *No, it has to do with putting the beast to death through stoning. And that stands to reason. For if you maintain that it is in regard to whether or not such an animal may be offered on the altar that the law does not distinguish between a case in which the act is done under constraint as much as the act that is done willingly, it is not with respect to the will of the beast that Scripture deals in any event. So does it not pertain to putting the beast to death through stoning?*

II.2 A. The master has said: “The goring ox’s owner has to pay a ransom, but the owner of the beast that has had sexual relations with a human being does not have to pay ransom.”

B. *What circumstances can be in mind? If we say that it was through the act of sexual relations that the beast brought about the death, then what difference does it make to me whether the death came about through goring or through sexual relations? And if the act of sex did not result in death, then surely the exemption from having to pay a ransom is simply because there was no act of manslaughter anyhow!*

C. Said Abbaye, “In point of fact it was that sexual relations took place, but there was no manslaughter thereby. But they brought the beast to court and the court ordered it put to death. Now what might you have supposed? **[41A]** It is comparable to manslaughter on the part of the animal; so we are told that that is not the case.”

D. Raba said, “In point of fact it is indeed a case in which there was an act of sexual relations resulting in death. And as to your question, what difference does it make to me whether the death came about through goring or through sexual relations? In the case of the act of the horn, the intention of the beast is to do damage, but in this case, the intention was for the animal’s own sexual pleasure.”

E. *What is at issue between these two authorities?*

F. *At issue is the case in which an ox’s foot trampled on an infant and killed it in the courtyard of the injured party. From Abbaye’s perspective, the owner pays ransom, and from Raba’s perspective he does not pay ransom [there being no intention to produce any such result].*

II.3 A. *So, too, it has been taught on Tannaite authority in accord with the position of Rab:*

- B. An ox belonging to the stadium [that killed a human being] is not subject to be stoned to death and it may be offered on the altar, for it acted under compulsion.

I.1, glossed at Nos. 2, 3-4, engages in an analytical reading of our Mishnah paragraph. Nos. 5, 6 proceed to Tannaite complements to the Mishnah's rule as worked out in the foregoing discussions. No. 7 provides a talmud to No. 6. No. 8 is an appendix to No. 7. No. 9, with a talmud at Nos. 10, 11, moves on to yet another Tannaite complement. **II.1** then pursues a theoretical question pertinent in a general way to the Mishnah paragraph at hand. No. 2 footnotes the foregoing, and No. 3 concludes II.1.

4:5

- A. An ox which gored a man, who died —
B. [if it was] an attested danger, [the owner] pays a ransom price [of the value of the deceased].
C. But [if it was deemed] harmless, he is exempt from paying the ransom price.
D. And in this case and in that case, [the oxen] are liable to the death penalty.
E. And so is the rule [if it killed] a little boy or girl [son, daughter: Exo. 21:31].
F. [If] it gored a boy slave or a girl slave, [the owner] pays thirty selas [Exo. 21:32],
G. whether [the slave] was worth a maneh or a single denar.

- I.1** A. *Since even when an ox is deemed harmless, should it kill a person it is put to death, how shall we ever find a case in which an ox that was an attested danger would be covered by this law [there being no possibility of such an ox that has killed three times and so been declared an attested danger]?*
B. *Said Rabbah, "Here with what sort of a case do we deal? It is one in which the court estimated that it had killed three persons."*
C. *R. Ashi said, "Guesses are worthless. Rather, with what sort of a situation do we deal? It is one in which the beast [gored and] endangered the lives of three persons."*
D. *R. Zebid said, "It is for example one in which it killed three oxen."*
E. *But is a beast that is an attested danger for oxen deemed automatically to be an attested danger to man?*
F. *Rather, said R. Dimi, "It is for instance a case in which it killed three gentiles."*

- G. But is a beast that is an attested danger for gentiles automatically to be an attested danger to Israelites?
- H. Rather, said R. Simeon b. Laqish, "It is for instance a case in which it killed three human beings that were already dying."
- I. But is a beast that is an attested danger for dying persons automatically to be an attested danger for healthy ones?
- J. *Rather, said R. Pappa, "It is a case in which the beast killed and fled to the marshes, then killed again and fled to the marshes."*
- K. R. Aha b. R. Iqa said, "It is a case in which [Kirzner:] two witnesses alleged in every case an alibi against the three pairs of witnesses who had testified to the first three occasions of goring, and so it happened that after evidence had been given regarding the fourth time of goring, the accusation of the alibi with reference to the first three times of goring fell to the ground, as] a new pair of witnesses gave evidence of an alibi against the same two witnesses who alleged the alibi against the three sets of witnesses who had testified in the first three occasions of goring."
- L. [Following Kirzner:] *Well, that poses no problem if, when reference is made to three days on each of which the beast is subject to the declaration of being an attested danger, it involves the goring of the ox. But if the three days pertain to warning the owner, then why should he not plead, "I didn't know that the evidence of the first three gorings was valid"?*
- M. *It would involve a case, for instance, in which the last pair of witnesses maintained that, whenever the ox gored and killed, the owner had been present.*
- N. *Rabina said, "It would involve a case in which the witnesses can identify the owner of the ox, but not the ox too."*
- O. *So what could the owner have done?*
- P. *The court can say to him, "You have a goring ox in your herd. You have to keep close watch on the whole of the herd."*

- II.1 A. And in this case and in that case, [the oxen] are liable to the death penalty:**
- B. *Our rabbis have taught on Tannaite authority:*
 - C. Since Scripture is explicit, "The ox will certainly be stoned" (Exo. 21:28), do I not know that the carcass is carrion, and it is forbidden to eat carrion? So why

in the world does Scripture find it necessary to state explicitly, “And its meat shall not be eaten” (Exo. 21:28)?

- D. Scripture thereby informs you that if after the court decree has been issued, the beast was properly slaughtered [rather than stoned], it is forbidden to eat it.
- E. I know only that the prohibition extends to eating it; how do I know that it is prohibited also to derive benefit from the carcass [for example, by selling it as dog food]?
- F. Scripture states, “But the owner of the ox shall be clean” (Exo. 21:28).
 - G. *How does that prove the point?*
 - H. Simeon b. Zoma says, “It is like someone saying to another, ‘So-and-so has gone forth clear of all his property and can get no benefit from anything.’”

II.2 A. *And how do we know that “And its meat shall not be eaten” (Exo. 21:28) refers to a case in which, after the court decree has been issued, the beast was properly slaughtered [rather than stoned], indicating that it is forbidden to eat the meat? Maybe if the beast was slaughtered after the court decree was issued, it is permitted to eat the meat, and this verse, “And its meat shall not be eaten” (Exo. 21:28), refers to a case in which after the beast was stoned, yielding the rule that once it has been stoned, it is forbidden for benefit of any kind?*

B. *That would be in accord with R. Abbahu, for said R. Abbahu said R. Eleazar, “Any passage in which the language occurs, ‘it shall not be eaten,’ ‘you shall not eat,’ ‘you [pl.] shall not eat,’ the prohibition pertains to eating the meat and deriving any other benefit from it, unless Scripture explicitly specifies an exception, as in the case of what dies on its own, which carrion may be given to an outsider or sold to a gentile.”*

C. *Well, maybe this statement of his applies where the prohibition of eating and deriving any other sort of benefit is set forth in a single verse of Scripture, for example, when it says, “You shall not eat.” But here, where the prohibition of eating is derived from the language that refers to stoning, if you should imagine that the prohibition against eating the meat involves also a prohibition against deriving benefit as well, then Scripture should have written simply, “It will not be a source of benefit,” or also, “You shall not eat.” What need do I have also for*

“its meat”? *It is to indicate that even though it was made the way meat is, properly slaughtered, it still is forbidden.*

D. *Objected Mar Zutra, “Might I not say, this ruling pertains [41B] to a case in which the slaughterer checked the flint and then slaughtered the animal, in which case the beast was handled as though it were stoned, but if it had been slaughtered by a knife, the prohibition should not apply?”*

E. *Is the use of a knife in a proper act of slaughter specified by Scripture? Have we not learned in the Mishnah: **He who slaughters with [the smooth edge of] a hand sickle, with a flint, or with a reed — his act of slaughtering is valid [M. Hul. 1:2A]**?*

II.3

A. *Now that the prohibition of the beast for both food and any other use has been shown to derive from “its meat shall not be eaten,” then what more do I learn when Scripture says, “The owner of the ox shall be clean”?*

B. *It serves to prohibit use of the hide. For it might have entered your mind to suppose that it is the meat of the beast in particular, enjoyment of which is prohibited, but its hide should be permitted as to benefit. So we are informed to the contrary by the language, “The owner of the ox shall be clean.”*

C. *But what about those Tannaite formulations, which draw upon the verse, “The owner of the ox shall be clean,” for other exegetical purposes, as we shall see presently? How do they know that it is prohibited to utilize the hide?*

D. *They derive it from the appearance of the accusative particle, et, in the verse, “et the meat,” bearing the augmentative sense, together with what is joined to the meat, meaning, the hide.*

E. *But the Tannaite authority [who utilizes the verse to prohibit the hide] does not maintain that the appearance of the accusative particle serves the purpose of exegetical augmentation, as has been taught on Tannaite authority:*

F. *Simeon the Imsonite — some say, Nehemiah the Imsonite — would derive a lesson from the use of every accusative particle that is in the Torah. When he reached the verse that places the accusative particle before the word “Lord,” namely,*

“the Lord your God you shall fear” (Deu. 10:20), he refrained from doing so [since he did not wish to suggest there was more than one God]. His disciples said to him, “My lord, what then will be the fate of all the other accusative particles from which you have drawn lessons [if you pick and choose among them]?”

G. He said to them, “Just as I have received a reward for the lessons that I have derived, so I shall receive a word for refraining from deriving a lesson.”

H. [And that was the situation that prevailed] until R. Aqiba came along and taught concerning the verse that places the accusative particle before the word “Lord,” namely, “the Lord your God you shall fear” (Deu. 10:20), “The accusative particle serves to encompass within the commandment the disciples of sages themselves.”

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

B. “The owner of the ox shall be clean” —

C. R. Eliezer says, “He is free from having to pay half-ransom [if the beast was deemed harmless].”

D. Said to him R. Aqiba, “But is it not the fact that any liability in the case of an ox that is deemed harmless is paid only out of the corpus of the beast? So the owner can say to the injured party, ‘Bring it to court and get your money out of it!’” [But that is of course impossible, since the corpus cannot be used, so if there was a beast deemed harmless, how could payment be made anyhow? Hence, the question at hand is, why should Scripture have to say what is obvious? (Kirzner)].

E. Said to him R. Eliezer, “Do you really think I’m such a simpleton that I should be referring to a beast that is liable to be put to death? My argument pertains to one that killed a human being but in the presence of only one witness or in the presence of the owner [and so will not be stoned].”

F. *Well, if it was in the presence of the owner, would that not constitute admission of an obligation to pay an extrajudicial fine [and if the owner admits it, it does not have to be paid]!*

G. *R. Eliezer takes the position that the ransom is classified as a mode of atonement [and not an extrajudicial fine].*

H. *Another Tannaite formulation:*

- I. Said to him R. Eliezer, “Aqiba, do you really think I’m such a simpleton that I should be referring to a beast that is liable to be put to death? My argument pertains to one that intended to kill a beast but killed a man, an “Egyptian but killed an Israelite, an abortion but killed a viable foetus.”

- II.5** A. *Which one of the two arguments did he say first?*
B. *R. Kahana in the name of Raba said, “The [second] one, concerning intentionality did he say first.”*
C. *R. Tabyumi in the name of Raba said, “The one concerning killing [in the presence of only one witness] did he say first.”*
D. *R. Kahana in the name of Raba said, “The [second] one, concerning intentionality did he say first”: it is comparable to the case of a fisherman who was catching fish in the sea. [42A] When he found big ones, he took them, and when he found little ones, he took them too. [This was the better of the two answers.]*
E. *R. Tabyumi in the name of Raba said, “The one concerning killing [in the presence of only one witness] did he say first”: It is comparable to the case of a fisherman who was catching fish in the sea. If he found little ones, he took them; if he found big ones, he took the little ones and threw them back, and then took the big ones.*

- II.6** A. *A further Tannaite formulation:*
B. *“The owner of the ox shall be clean” —*
C. *R. Yosé the Galilean says, “He is clean of having to pay compensation if a beast deemed harmless killed an embryo.”*
D. *Said to him R. Aqiba, “Lo, Scripture states, ‘If two men strive together and hurt a woman with child’ (Exo. 21:22) — men, not oxen [so from that verse, we derive the rule that he is clean of having to pay compensation if a beast deemed harmless killed an embryo].”*

- II.7** A. *Was this a good challenge on R. Aqiba’s part?*
B. *R. Ulla b. R. Idi: “[Yosé’s form of proof for the stated proposition] is required in any event. For it might have entered your mind that the implication is to be drawn, ‘Men and not oxen comparable to men. Just as men are always deemed attested dangers, so the oxen to which that verse of Scripture makes reference are those that are attested dangers. Lo, a beast that was deemed innocent would be liable, so it was necessary for Scripture to state, ‘The owner of the*

ox shall be clean' to indicate: he is clean of having to pay compensation if a beast deemed harmless killed an embryo."

C. *Said Raba, "Is the homeborn to be lowdown on earth, but the convert in the upper heavens? [Will the animal that is an attested danger be exempt but the animal deemed harmless liable?]"*

D. *Rather, said Raba, "[Yosé's form of proof for the stated proposition] is required in any event. For it might have entered your mind that the implication is to be drawn, 'Men and not oxen comparable to men. Just as men are always deemed attested dangers, so the oxen to which that verse of Scripture makes reference are those that are attested dangers — and all the more so, beasts deemed innocent likewise would be exempted.' So it was necessary for Scripture to state, 'The owner of the ox shall be clean' to indicate: He is clean of having to pay compensation if a beast deemed harmless killed an embryo, so that only in the case of the beast deemed innocent is the owner exempt, but in the case of an animal that was an attested danger, there will be liability."*

E. *Said to him Abbaye, "What about the following then with respect to paying compensation for humiliation, along the same lines: 'Men and not oxen comparable to men. Just as men are always deemed attested dangers, so the oxen to which that verse of Scripture makes reference are those that are attested dangers — and all the more so, beasts deemed innocent likewise would be exempted.' So it was necessary for Scripture to state, 'The owner of the ox shall be clean' to indicate: He is clean of having to pay compensation if a beast deemed harmless killed an embryo, so that only in the case of the beast deemed innocent is the owner exempt, but in the case of an animal that was an attested danger, there will be liability. And should you say, yes indeed! then the formulation should be as follows: 'The owner of the ox will be clean' means from the perspective of R. Yosé the Galilean, 'free from having to pay compensation for the abortion and also from having to pay for the humiliation of the experience.'"*

F. *Rather, both Abbaye and Raba say, "[One might have imagined,] 'men' means, it is only where there has been no damage [death for the woman] that there is liability to pay for the embryo, but if accidental death came to the woman, there is no civil liability at all, and that is not the case with oxen, for, even if there would have been accidental death*

for the woman, liability to pay is imposed. [Kirzner: Civil liability of the owner is unaffected by the ox's being put to death.] So Scripture went and stated instead, 'The owner of the ox shall be clean' to indicate: He is clean of having to pay compensation."

G. *Objected R. Adda bar Ahbah, "So does the matter depend on whether or not there has been an accidental death? What is decisive is the issue of intentionality!"* [Kirzner: Where the beast intended to kill another person and it was only by accident that the woman and her embryo were killed, then there would be no capital charge but a civil liability.]

H. Rather, said R. Adda bar Ahbah, "In the case of men, [— so one might have reasoned —] when they intended to kill one another, even though a woman is accidentally killed, they are subject to civil penalty; if they wanted to kill the woman herself and she was killed, there is no civil penalty. In the case of oxen, even when they wanted to kill the woman and did so, a civil liability is imposed on account of the embryo. So Scripture stated, 'The owner of the ox shall be clean' *to indicate that he is exempt from having to pay compensation*"

I. *So, too, when R. Haggai came from the south, he came and produced a Tannaite formulation in hand along the lines of that of R. Adda bar Ahbah.*

II.8 A. *A further Tannaite formulation:*

B. "The owner of the ox shall be clean" —

C. R. Aqiba says, "He is clean of having to pay compensation for a slave."

II.9 A. **[42B]** *Now, [as at 4.D], why should R. Aqiba not argue against his own proposition: But is it not the fact that any liability in the case of an ox that is deemed harmless is paid only out of the corpus of the beast? So the owner can say to the injured party, 'Bring it to court and get your money out of it!'*" [But that is of course impossible, since the corpus cannot be used, so if there was a beast deemed harmless, how could payment be made anyhow?]

B. Said R. Samuel bar R. Isaac, "It is a case in which the owner went ahead and slaughtered the beast [before the court had passed sentence]. *What might you then have said? Let the owner be compensated for the corpus in this case? So we are informed that since the beast is subject*

to stoning, even though it has been properly slaughtered, compensation is not paid from the corpus.”

C. If so, then why not from R. Eliezer’s viewpoint do we not deal with a case in which the owner went ahead and slaughtered the beast prior to the passing of sentence?

D. True enough, but he supposed that R. Eliezer had some sort of other explanation, better than this one.

E. So why did R. Eliezer not say to him that he spoke of a case in which the owner went ahead and slaughtered the beast prior to the passing of sentence?

F. He will say to you, “In a case in particular in which the ox wanted to kill a beast but killed a man, in which instance the ox is not subject to the death penalty by stoning, so you might have supposed that there is liability for a ransom, that Scripture had to state explicitly that there is no such liability. But here, where the ox was, to begin with, liable to the death penalty, there is no need for a scriptural indication to exempt the owner from such liability even if in the interim the animal has been slaughtered.” [Kirzner: This is the reason that Eliezer answered as he did, and not, as suggested here, that the ox was slaughtered before sentence had been passed on it.]

G. Well, certainly the same argument can be used against the statement of R. Aqiba at hand [and the original issue recurs as well, so as above, why should R. Aqiba not argue against his own proposition: But is it not the fact that any liability in the case of an ox that is deemed harmless is paid only out of the corpus of the beast? So the owner can say to the injured party, ‘Bring it to court and get your money out of it’!]” But that is of course impossible, since the corpus cannot be used, so if there was a beast deemed harmless, how could payment be made anyhow?]

*H. Rather, said R. Assi, “I heard the explanation from a very great authority, specifically, R. Yosé b. R. Hanina: ‘You might have imagined that since R. Aqiba has said, **Also: An ox deemed harmless [which injured] a man — [the owner] pays full damages for the excess [M. 3:8K]**, the payment also should be made for killing a slave out of the finest quality of real estate that the owner has. Therefore the All-Merciful has said, ‘The owner of the ox shall be clean.’”*

- II.10** A. *Said R. Zira to R. Assi, “But lo, R. Aqiba himself [Kirzner:] qualified this liability.” For it has been taught on Tannaite authority:*
 B. [“According to this judgment shall be done to it” (Exo. 21:31) — as is the judgment of an ox that has injured an ox, so is the judgment of the ox that has injured a man. Just as when an ox injures an ox, an ox that is deemed harmless pays only half-damages, but one that is an attested danger pays full damages, so when an ox injures a man, the ox that is deemed harmless pays only half-damages, but one that is an attested danger pays full damages. R. Aqiba says, “According to this judgment shall be done to it’ (Exo. 21:31) — this speaks of the ruling that pertains in the latter verse, Exo. 21:29, dealing with the ox that is an attested danger, and now in accord with the former verse, Exo. 21:28, dealing with an ox that was deemed harmless.] Might one then suppose that the owner must pay from real estate of the highest quality? Scripture says, ‘...shall be done to it’ (Exo. 21:31), meaning, the owner pays through the carcass of the ox, and he does not pay by handing over his real estate of the highest quality.”
- II.11** A. *Rather, said Raba, “The verse is necessary, for you might otherwise have imagined that, since I impose a more strict rule in the case of killing a slave than in the case of killing a free person, for in the case of killing a free person worth a sela, payment is a sela, and in the case of killing a free person worth thirty, payment is for thirty, while in the case of the slave, even if he were worth one sela, payment will have to be thirty, it must follow that compensation for the killing of a slave [in the case of a beast deemed harmless] should be paid out of the best quality of real estate that the person owns. Scripture accordingly states, “The owner of the ox shall be clean.””*
 B. *There is a Tannaite formulation along the lines of the position of Raba:*
 C. “The owner of the ox shall be clean”:
 D. R. Aqiba says, “He is ‘clean’ of having to pay compensation for the killing of the slave.”
 E. But is this not a matter of mere logic? Since one is liable for the killing of a slave and one is liable for the killing of a free person, just as, when one has incurred liability for a free person, there is a distinction between the compensation paid by the owner of an ox deemed harmless

and one that is an attested danger, so when one is liable for the killing of a slave, we should make a distinction between the compensation paid by the owner of an ox deemed harmless and one that is an attested danger. And there is another argument a fortiori, namely: if in the case of a free person, in which instance one pays the entire value of the person, there is a distinction between the compensation paid by the owner of an ox deemed harmless and one that is an attested danger, in the case of a slave, where one would pay, without regard to the actual value of the person, only thirty selas under all circumstances, should we not make a distinction between the compensation paid by the owner of an ox deemed harmless and one that is an attested danger?

F. Not at all. I impose a more strict rule in the case of killing a slave than in the case of killing a free person, for in the case of killing a free person worth a sela, payment is a sela, and in the case of killing a free person worth thirty, payment is for thirty, while in the case of the slave, even if he were worth one sela, payment will have to be thirty.

G. So Scripture is required to settle matters, when it says, “The owner of the ox shall be clean”: — ‘clean’ of having to pay compensation for the killing of the slave.

II.12 A. *Our rabbis have taught on Tannaite authority:*

B. “But it has killed a man or a woman” (Exo. 21:29) —

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

II.13 A. *But does R. Aqiba then maintain that her husband does not inherit from her [that he speaks of ‘her heirs’]? And has it not been taught on Tannaite authority:*

B. “‘And he shall inherit from her’ (Num. 27:11) — this proves that the husband has every right to inherit his wife’s estate,” the words of R. Aqiba.

C. Said R. Simeon b. Laqish, “R. Aqiba made his statement [here, that the husband does not inherit from the wife] only with regard to the ransom that is paid in the present case, since it is collected only after

death, and it therefore falls into the category of what is going to be inherited but has not yet been actually inherited, and a husband is not entitled to inherit property that is going to be inherited but has not actually come into the wife's domain.'

D. *What is the operative verse of Scripture [that indicates that the ransom is paid only after death]? "But it has killed a man or a woman; the ox shall be stoned, and also its own shall be put to death. If there be laid on him a ransom..." (Exo. 21:29).*

II.14 A. *But does R. Aqiba then maintain that damages [for injury also are not inherited by the husband]? And has it not been taught on Tannaite authority:*

B. If someone hit a woman so she lost her foetus, he pays the compensation for the injury and pain to the woman, the compensation for the foetus to the husband. If the husband is not alive, what is going to him is paid to his heirs. If the woman is not alive, her compensation is given to her heirs. If the woman was a slave and was freed, or **[43A]** a convert, the defendant has acquired title to what he owes. [Kirzner: The husband is in the same category as the proselyte; the defendant does not have to pay him; the husband does not inherit her claim for damages.]

C. Said Rabbah, "We deal with a case of a divorced woman" [but otherwise the husband would inherit the damages owing to her].

D. So said R. Nahman, "We deal with a case of a divorced woman."

E. *But then, if she was a divorced woman, shouldn't she also get her share of the compensation for the embryo?*

F. Said R. Pappa, "The Torah has assigned the compensation for the embryo to the husband, even if it came about because he had sexual relations with her as an act of prostitution. *What is the basis in Scripture?* Scripture has said, 'According as the cohabitant of the woman shall lay upon him' (Exo. 21:22)."

II.15 A. *Why should Rabbah not assign the rule to a case in which the compensation for the damages was collected in money, and R. Nahman to a case in which it had been collected in real estate?*

B. For said Rabbah, "If the outstanding debt had been collected out of real estate, the firstborn would take a double portion in

it. If it had been collected in cash, the firstborn son would not take a double portion.” [Kirzner: The debt collected after the death of the father was not something in the possession of the father in the lifetime of the father creditor, and the firstborn takes a double portion of all that the father possesses at the time of death; the husband is in a similar position, having the right to inherit only what is in the possession of the wife in her lifetime.]

C. And R. Nahman said, “If the outstanding debt had been collected in cash, the firstborn would take a double portion in it. If it had been collected in real estate, he does not.” [Kirzner: Money collected is considered money that was lent by the father to the debtor.]

D. *These matters were made by the sages of the West within the premises of rabbis, but in the case here, involving Rabbah and Nahman, they set the law forth on the premise of the view of rabbi* [which is, so Kirzner, that debts collected after the death of a creditor, whether in species or land, will be subject to the law of double portion in the case of a firstborn, and similarly the husband does the same.]

- II.16 A.** Said R. Simeon b. Laqish, “If an ox killed a slave unintentionally, the owner is exempt from having to pay thirty sheqels, since Scripture says, ‘He shall give to the master thirty sheqels of silver, and the ox shall be stoned’ (Exo. 21:32) — in any case in which the ox is subject to stoning, the owner pays the thirty sheqels. If the ox is not subject to stoning, the master does not have to pay thirty sheqels.”
- B. Said Rabbah, “If an ox killed a slave unintentionally, the owner is exempt from having to pay the ransom, since Scripture says, ‘The ox will be stoned, and also the owner shall be put to death. If there be laid on him a ransom,’ meaning, in any case in which the ox is subject to stoning, the owner pays the ransom. If the ox is not subject to stoning, the master does not have to pay the ransom.”
- C. *Objected Abbaye*, “[If he says], **“My ox killed So-and-so,” or “the ox of So-and-so,”** lo, this one pays on the basis of his own testimony. [If he says, **“My ox killed So-and-so’s slave,”** he does not pay on the basis of his own evidence. **This is the general principle: Whoever pays compensation greater than the damage he has actually done does not pay said damages**

on the basis of his own testimony alone and cannot be assessed for such damages] [M. Ket. 3:9]. Does not payment in the first case mean a ransom [Kirzner: though the ox would not become liable to be stoned through the owner's admission]?

- D. *No, it refers to monetary compensation.*
- E. *Well, if it refers to monetary compensation, then look at what follows: **If he says, "My ox killed So-and-so's slave," he does not pay on the basis of his own evidence.** Now, if it refers to monetary compensation, why doesn't he have to pay?*
- F. *He said to him, "Well, I could have answered you on the strength of the view that the opening clause speaks of the actual value of the person that was killed, and the closing clause speaks to the fixed fine of thirty sheqels. But since I don't really want to reply to you through such rather convoluted answers, I will maintain that both clauses speak of the actual value of the person who was killed. [43B] But it is only in the case of a free person in which a ransom may be paid on the strength even of one's own confession. For example, witnesses came and testified that an ox killed a free person, but they did not know whether it was one that was deemed harmless or was already an attested danger, and the owner admits that it was an attested danger. In this case, the ransom is paid on the strength of his own admission. Then we would say, where witnesses are not available at all, that payment is for the actual value of the loss. In the case of the slave, where the fixed fine would never be paid if the defendant admitted the matter, for even if witnesses were to come and were to testify that an ox killed a slave, but they did not know whether it was one that was deemed harmless or was already an attested danger, and the owner admits that it was an attested danger, no fine would be collected. Then we say, where no witnesses at all are available, there will be no payment, even for the amount of the value of the loss at all."*
- G. *Objected R. Samuel bar R. Isaac, "It is the established rule that in any case in which one is liable in the case of a free person, one is liable in the case of a slave, for both ransom and stoning. Now is there going to be ransom in the case of a slave? [Surely not!] So the statement must mean payment for the amount of the value of the loss." [Kirzner: This shows that pecuniary loss is paid in the case of a slave on the master's own admission, even as in the case of a freeman.]*

- H. *There are those who say that he raised this question and he answered it, and there are those who say that it was Rabbah who said to him: "This is the sense of the cited statement: In any case in which one is liable in the case of a free person, that is, when the ox deliberately killed a free person, and this was attested by witnesses, so there is liability to a ransom, one is liable in the case of a slave for an extrajudicial penalty, and in any case in which one is liable in the case of a free person, when the ox did not deliberately kill the free person or when this was attested by witnesses, in which case one is liable to pay compensation, one is liable in the case of a slave, likewise for compensation for the value of the loss, here, too, there being a slave that was killed unintentionally, and this was attested by witnesses"* [Kirzner: though in the case of self-admission there will still be a distinction between the death of a freeman and that of a slave in regard to the payment of pecuniary loss.]
- I. *Said to him Raba, "If so [that is, if it is the fact that there is payment of pecuniary loss even when the ransom is not payable (Kirzner)], then in the case in which one's fire burned a human being to death, not with the intention of the person who set the fire, and this was attested by witnesses, would not one also be liable to pay for the value of the loss?"*

J. *And how did Raba know that one would not have to pay? Shall we say that he derived that fact from the following paragraph of the Mishnah: [If] a kid was tied up to [a barn], and a slave boy was nearby, and [they] got burned along with [the barn], he is liable [for the kid]. [If] a slave boy was tied up to it, and a kid was nearby, and [these] got burned along with it, he is exempt [for the slave boy] [M. 6:5A-E]? [Kirzner: But how could Raba prove his point from the case here, by not extending the ruling in the second clause to refer also to the barn, but confining it to the goat which should have run away, and to the slave, on the alleged ground that no compensation should be paid for the value of the loss occasioned by fire burning a human being to death?] Did not R. Simeon b. Laqish state, "This case would involve one in which the defendant put the fire onto the body of the slave, so that only the principal punishment is going to be inflicted"?*

K. *Rather, he derived his point from the following, which has been taught on Tannaite authority: A more strict trait pertains to fire than to pit, for fire ordinarily will go along and consume things that are fit for it and also things that are not for it, and that is not the case with pit. But*

it does not say, For in the case of fire, if a human being has been burned to death, if this was unintentional, then the responsible party has to pay damages, and that is not the case for the pit.

- L. *But maybe the formulation of the Tannaite rule lists some things and leaves out others?*
- M. *Well, then, it was Raba himself who was raising this question on his own account: “If one’s fire should burn a human being to death, and this was not the intention of the person who set the fire, would the responsible party have to pay the value of the loss, or would he not? Do we say that it is only in the case of cattle, in which case if the manslaughter were an act of intentionality, a ransom would be paid, and if the act is not intentional, the value of the loss is to be paid; but in the case of fire, where if the manslaughter were intentional, there would be no ransom, that there should be no payment of the value of the loss for unintentional manslaughter? Or maybe, since in the case of an ox who unintentionally killed a person, no ransom is paid, but the value of the loss still is paid, so in the case of fire, no ransom would be paid for unintentional manslaughter, but the value of loss caused by unintentional manslaughter should be paid.”*
- N. *But we don’t know the answer, so the question stands.*

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

B. *Said to him Abbayye, “Well, then, what about the case of a slave, that is: ‘If a slave’ (Exo. 21:30) — serves to encompass the case of a slave who killed unintentionally under the law governing the case of a slave who killed intentionally. But if you should say, indeed so, well, has not R. Simeon b. Laqish stated, ‘An ox that killed a slave not intending to do so — the owner is exempt from having to pay the thirty sheqels’?”*

C. *He said to him, “Well, are you simply showing that eminent authorities disagree? [That does not tell us what the law is.]”*

II.18 A. *When Rabin came, he said R. Yohanan [said], “As to the word slave, what is the sense of ‘if a slave...’? It is to cover the case of a*

slave that was killed unintentionally, making that case subject to the same rule as the one covering an ox that intentionally killed a slave.”

B. *And with regard to R. Simeon b. Laqish, too, may we suppose that, just as he drew no conclusions from the use of “if a slave,” so he drew no conclusions from the use of “if ransom...”?*

C. *I may say that that is not the case. While he draws no conclusions from the use of “if a slave...,” nonetheless he did draw a conclusion from the use of “if ransom....”*

D. *So what’s the difference?*

E. *The usage “if a slave” is not specified in a context in which payment is brought up [so it has no bearing on the issue of payment (Kirzner)], while the usage “if a ransom” does occur in a context in which payment is involved.*

- III.1 A. [If] it gored a boy slave or a girl slave, [the owner] pays thirty selas (Exo. 21:32), whether [the slave] was worth a maneh or a single denar:**
- B. *Our rabbis have taught on Tannaite authority:*
 - C. *“Whether it gore a son or a daughter” (Exo. 21:31) —*
 - D. *This proves that one is liable in the case of minors just as in the case of adults.*
 - E. *But is that proposition not merely a matter of logic [so why should Scripture be invoked to make the point]? Specifically, since Scripture has imposed liability in the case of a man’s killing a man, there is also liability in the case of cattle killing man; just as where man has killed man, no distinction is made between minor and adult victims, so also where cattle killed man, there should be no distinction between minor and adult victims.*
 - F. *There is, moreover, an argument a fortiori to the same effect, namely: If when a man killed a man, in which case the law did not make minor murderers liable as adult murderers are, still, the law imposed the same liability for killing a minor as for killing an adult, [44A] in the case of cattle killing a man, where the law treated small cattle as it treated big ones, should it not stand to reason that there should be liability for minors as for adults? [It follows that a verse of Scripture is hardly required to make this point.]*
 - G. *Not at all, if you have invoked that rule where a man kills a man, in which instance there is liability on the Four Counts, will you say the same of an ox, in which there is no liability on the Four Counts?*

- H. Accordingly, Scripture has stated, “Whether it gore a son or a daughter” (Exo. 21:31) —
- I. This proves that one is liable in the case of minors just as in the case of adults.
- J. I know only that that is the case in the instance of cows that are attested dangers. How do I know that the same rule applies to oxen that are deemed harmless?
- K. It is a matter of logic. Since Scripture has imposed liability for killing a man or a woman and imposed liability for killing a minor male or a minor female, just as, when Scripture has imposed liability for killing a man or a woman, there is no differentiating between the ox that is deemed innocent and one that is an attested danger, so too, when Scripture has imposed liability for killing a boy or a girl, there should be no differentiation between the action of an ox deemed harmless and one that is an attested danger.
- L. And there is yet an argument a fortiori: If in the case of a man or a woman, who are in a weak position when it comes to damages done by them [in that they have to pay for what they do], you have made no distinction between the action of an ox that was deemed harmless and one that was an attested danger, then when it comes to a boy or a girl, who are in a strong position when it comes to damages done by them [in that they do not have to pay damages], is it not reasonable that there should be no distinction in their instances between the action of an ox that was deemed harmless and one that was an attested danger?
- M. But you must say the following: Can an argument be constructed from a lesser to a weightier case so as to impose a more stringent ruling? If the law is stringent in the case of the ox that is an attested danger, which is the weightier case, can you argue that it should be equally strict in the case of the ox that is deemed harmless, which is the less stringent case?
- N. If, moreover, you have invoked the case of the man or the woman who are obligated to keep religious duties, will you say the same of a boy or a girl, who are exempt from having to keep the religious duties?
- O. Accordingly, Scripture has stated, “Whether it gore a son or a daughter” (Exo. 21:31) —
- P. this proves that the same rule pertains to goring by an ox that was deemed harmless and one that was an attested danger, or between a goring that led to death and one that produced damages.

I.1 amplifies the rule of the Mishnah. **II.1** provides a Tannaite complement. Nos. 2, 3 then form a talmud to No. 1. No. 4, with its talmud at No. 5, continues the interests of No. 3. That also is what we have at No. 6 with its talmud at No. 7, No. 8 with its talmud at Nos. 9-11, and No. 12 with its talmud at Nos. 13-15. No. 16 then commences a secondary formulation of issues precipitated by the foregoing. Nos. 17-18 present a formal pair, which pursue the same line of thought. **III.1** then complements its Mishnah clause with a Tannaite formulation linking the rule to Scripture.

4:6

- A. An ox which was rubbing itself against a wall,
- B. and [the wall] fell on a man,
- C. [if] it had intended to kill (1) another beast, but killed a man,
- D. (2) a gentile but killed an Israelite,
- E. (3) an untimely birth but killed a viable infant —
- F. [the ox] is exempt.

- I.1**
- A. Said Samuel, “[The ox] is exempt from the death penalty, but the owner is liable to pay the ransom.”
 - B. And Rab said, “The exemption is both from the death penalty and from the ransom.”
 - C. *But why not pay the ransom [in the case in which an ox was rubbing itself against a wall, and the wall fell on a man]?*
 - D. Lo, the ox is deemed harmless [and no ransom is exacted in that case].
 - E. *It is in line with what Rab said, “An ox is deemed an attested danger to fall on human beings who are located in pits.” Here, too, it is an ox that is deemed an attested danger to rub itself against walls, which then fall on people.*
 - F. *If that is the case, then the ox is subject to the death penalty.*
 - G. *Well, that would pose no problem in the case of the pit, the ox having seen some vegetables and having fallen into the pit [but never intended to kill the man in the pit]. But here what is there to say?*
 - H. *Here, too, it was rubbing itself against the wall for its own gratification.*
 - I. *Well, how would we know that?*
 - J. *Because even after the wall fell, it continued to rub itself against it.*

K. **[44B]** *Still, doesn't this kind of damage [done by something set in motion by the ox, not by the corpus of the ox itself] fall into the class with damage done by pebbles?*

L. *Said R. Mari b. R. Kahana, "It is a wall that was gradually pushed down by the ox's constant pushing" [Kirzner: and was thus the whole time as if it were a part of the body of the ox].*

I.2 A. *It has been taught on Tannaite authority in accord with the position of Samuel and in opposition to the position of Rab:*

B. **There is the beast that is liable to a ransom payment and liable to death, liable to the death penalty but exempt from the ransom payment, liable to the ransom payment but exempt from the death penalty, exempt from the death penalty and exempt from the ransom payment. How so? An ox deemed an attested danger that intentionally killed someone — the owner is liable to the ransom payment and the ox is liable to be put to death. An ox deemed an attested danger that unintentionally killed somebody — the owner is liable to the ransom, but the ox is not liable to the death penalty. An ox deemed harmless that unintentionally killed somebody, the owner is exempt, and the ox is exempt, from any penalty. [Tosefta's version: An ox belonging to a deaf-mute or an idiot that killed, and an ox that killed a proselyte or a freed slave — the ox is liable to the death penalty, but the owner is exempt from the ransom payment, there being no heirs. An ox that was rubbing itself against a wall and the wall fell on a man, if it had intended to kill another beast but killed a man, a gentile but killed an Israelite, an untimely birth but killed a viable infant, the owner is liable to the ransom payment, but the beast is exempt from the death penalty.]**

C. **And as to payment for damages when the incident took place unintentionally —**

D. **R. Judah declares liable, and R. Simeon declares the owner exempt, [T.: since it is said, "When an ox will bore," meaning, it is liable only if it intentionally gores] [T. **B.Q. 4:6A-O**].**

E. *What is the operative consideration behind the position of R. Judah?*

F. *He derives the rule for damages from that for the ransom: Just as in the case of the ransom, one is liable even when the beast did not intend to kill the person, so for damages for injuries, the owner is liable even when the beast did not intend to accomplish the injury.*

G. *What is the operative consideration behind the position of R. Simeon?*

H. *He derives the rule for damages from that for the killing of the ox: Just as stoning the ox is not imposed when there is no intention to kill, so damages are not collected where there was no intention to injure.*

I. *And as to R. Judah, why does he not draw the analogy from the rule governing killing the ox?*

J. *It is appropriate to derive the rule for payment of compensation from another rule on payment of compensation, but it is not appropriate to draw an analogy for payment from a rule governing killing.*

K. *And as to R. Simeon, then should he not derive the ruling from the law applying to ransom?*

L. *It is appropriate to derive the rule governing the liability of an ox from a rule governing a liability that likewise concerns an ox, excluding the ransom, which pertains to not the ox but the owner.*

II.1 A. **[If] it had intended to kill (1) another beast, but killed a man... [the ox] is exempt:**

B. *Lo, if the ox had intended to kill one person but accidentally killed another, then he would have been liable. It follows that our Mishnah paragraph is not in accord with the position of R. Simeon. For it has been taught on Tannaite authority:*

C. R. Simeon says, “Even if the ox aimed at killing one person but unintentionally killed someone else, there would be no liability.”

D. *What is the scriptural foundation for R. Simeon’s position?*

E. Scripture said, “The ox shall be stoned and its owner also shall be put to death” (Exo. 21:29) — as is the rule governing the death of the owner, so is the rule governing the death of the ox. *Just as the owner is put to death only if he intends to kill the particular person who was killed, so in the case of the ox, liability to the death penalty is incurred only when the ox was intentionally aiming at the person who was killed.*

F. *And how do we know the rule covering the owner himself?*

G. Scripture says, “And lie in wait for him and rise up against him” (Deu. 19:11) — liability is incurred only if he intended to kill the particular person who was killed.

H. *And rabbis — how do they deal with the language, “And lie in wait for him”?*

I. Scripture has said, “[But if any man hates his neighbor] and lies in wait for him and rises up against him” (Deu. 19:11) meaning that [one is liable only if the killer] has hostile intentions against him in particular.

J. And rabbis [view of the language, “for him” and “against him”?]

K. Members of the household of R. Yannai say, “[The language, ‘for him’ or ‘against him’ serves] to exclude one who throws a stone into the midst [of Israelites and gentiles].”

L. *Now what sort of case is at hand? Should we say that there were nine Canaanites and only one Israelite among them? Then you should conclude that the majority of those [among whom he threw the stone] were Canaanites.*

M. *Or again, if half were of one group and half of the other group, you have a case of doubt, and in a case of doubt as to capital crimes, one must impose the more lenient ruling.*

N. *The matter is made pressing by the case in which there were one Canaanite and nine Israelites, in which case the Canaanite is a settled fact [as one of those present], and where there is a settled fact, it counts as one half of the facts at hand [where there is a case of doubt], and in a case of doubt as to capital crimes, one must impose the more lenient ruling. [The verse at hand applies to this case and tells us that in such a case, one is not liable; in the other possible cases, it is self-evident that he is not liable, and no proof-text is required].*

I.1+2 provide a gloss to an ambiguity in the Mishnah's rule. II.1 continues the clarification of the Mishnah's rule, here identifying the authority who accords with the implications of the law.

4:7

- A. (1) An ox belonging to a woman, (2) an ox belonging to orphans, (3) an ox belonging to a guardian, (4) an ox of the wilderness, (5) an ox belonging to the sanctuary, (6) an ox belonging to a proselyte who died lacking heirs —
- B. Lo, these [oxen] are liable to the death penalty.
- C. R. Judah says, "(4) An ox of the wilderness, (5) an ox belonging to the sanctuary, and (6) the ox of a proselyte who died are exempt from liability to the death penalty,
- D. "for they are not subject to a particular owner."

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

- II.1 A. [R. Judah says, "(4) An ox of the wilderness, (5) an ox belonging to the sanctuary, and (6) the ox of a proselyte who died are exempt from liability to the death penalty, for they are not subject to a particular owner:"] Said R. Huna, "R. Judah declares an exemption even if the ox gored and only then was declared consecrated, or the ox gored and was only then declared ownerless. *On what basis do we know this? Since he specifies both an ox of the wilderness [wild and abandoned], and the ox of a proselyte who died. But what is "an ox of a proselyte who died"? Since the proselyte by definition has no heirs, it is none other than an ox that was ownerless, that is to say, an ox of the wilderness, which is the same thing as the ox of a proselyte who died without heirs. So why bother with all this repetition? In this way he informs us that even if the ox gored and only then was declared consecrated, or the ox gored and was only then declared ownerless, he is exempt.*"

- B. *That is decisive.*
- C. *So, too, it has been taught on Tannaite authority:*
- D. **More than this did R. Judah say: “Even if the ox gored and only then was declared consecrated, or the ox gored and was only then declared ownerless, he is exempt, as is said, ‘And it has been testified to his owner, and he has not kept him in, but he has killed a man or a woman, the ox shall be stoned’ (Exo. 21:29). That is the case only when the condition prevailing between the death and the court appearance are the same” [T. B.Q. 4:6S-X].**
 - E. *And what about the final verdict? [What if the condition of the beast changes prior to that point?] Does not the language, “the ox shall be stoned” (Exo. 21:29) address that point in the process?*
 - F. *Read: That is the case only when the condition prevailing between the death and the court appearance and the pronouncement of the verdict of the court are the same.*

I.1 complements the Mishnah with a Tannaite amplification. **II.1** then clarifies the implications of a ruling in the Mishnah.

4:8

- A. **An ox which goes forth to be stoned, and which the owner [then] declared to be sanctified**
- B. **is not deemed to have been sanctified.**
- C. **[If] one has slaughtered it, its meat is prohibited (Exo. 21:28).**
- D. **But if before the court process had been completed the owner declared it sanctified, it is deemed sanctified.**
- E. **And [if] one had slaughtered it, its meat is permitted.**

4:9A-F

- A. **[If] one had handed it over to an unpaid bailee,**
- B. **or to a borrower,**
- C. **to a paid bailee,**
- D. **or to a renter,**
- E. **they take the place [and assume the liabilities] of the owner.**
- F. **[For an ox deemed an] attested danger [one of these] pays full damages, and [for one] deemed harmless [he] pays half-damages.**

I.1 A. *Our rabbis have taught on Tannaite authority:*

- B. An ox that killed someone — if the owner sold it before the court decree was issued, [45A] it is deemed to have been validly sold. If the owner sanctified it to the Temple, it is validly sanctified. If he slaughtered it, its meat is permitted. If the bailee returned it to the household of the owner, it is validly returned [and the bailee has no further obligation].
- C. If after the court decree was issued, the owner sold it, it is deemed not to have been validly sold. If the owner sanctified it to the Temple, it is not validly sanctified. If he slaughtered it, its meat is not permitted. If the bailee returned it to the household of the owner, it is not validly returned.
- D. R. Jacob says, “Even after the court decree has been issued, if the bailee returned it to the household of the owner, it is validly returned.”

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

B. *Said Rabbah, “All parties concur that in matters that have become prohibited for any use or benefit, it is permitted to say, ‘Here is yours before you.’ For if it is so that they differ, then they should also differ on the matter of leaven [stolen before Passover] on Passover. [May it be returned by the thief when, at Passover, it may not be used in any way?] But what is at issue here is a different matter, namely, whether or not the sentence over an ox may be pronounced if it is not present. Rabbis maintain that the sentence over an ox may not be pronounced if it is not present, for the owner may say to the bailee, ‘If you had returned it to me before sentence was passed, I would have sent it off to the refuge of the marshes, while you have allowed my ox to fall under the control of the court, against which I cannot bring any action.’ R. Jacob takes the view that the sentence over an ox may be pronounced if it is not present. For the bailee may reply to the owner, ‘In the end the sentence would certainly have been passed against the ox.’”*

C. *Now what is the scriptural basis for the position of rabbis?*

D. “The ox shall be stoned and its owner also shall be put to death” (Exo. 21:29) — as is the rule governing the death of the owner, so is the rule governing the death of the ox. Just as the

owner is ordered to be put to death only in the court's presence, so the ox is subject to the verdict of the court only if it is present in court.

E. And R. Jacob?

F. *Well, there is no problem understanding why that is the rule for the owner, who can, after all, submit a further plea, but is the ox going to be able to enter any further plea?*

- II.1** A. **[If] one had handed it over to an unpaid bailee, or to a borrower, to a paid bailee, or to a renter, they take the place [and assume the liabilities] of the owner:**
- B. *Our rabbis have taught on Tannaite authority:*
- C. There are four classes of persons that **take the place and assume the liabilities of the owner**, and these are they: **An unpaid bailee, or a borrower, a paid bailee, or a renter**. [If cattle subject to their bailment] that were deemed harmless went and killed, the cattle are put to death, and persons in these classifications are exempt from having to pay a ransom. If the cattle were attested dangers, then the cattle are put to death and persons in these classifications pay the ransom and are moreover liable to repay the owner for the value of the ox,
- D. except in the case of the unpaid bailee.
- E. *Say: now what might one say is the case under discussion here? If the oxen were properly taken care of, then even all of them should be exempt from having to do so? And if proper care were not taken, then even the unpaid bailee should be liable to have to restore the value of the ox?*
- F. *It may be said, here, with what sort of a case do we deal? It is one in which the guardianship of the beast was of a limited character, and it was not of a truly excellent character. In the case of the unpaid bailee, the sort of guardianship he provided was sufficient to his obligation, but in the case of the others, the sort of guardianship they provided was not sufficient to their obligation.*
- G. *Say: in accord with what authority is this view set forth? If it is in accord with R. Meir, [45B] who has said, "The one who rents a beast is in the status of an unpaid bailee," then the passage should read, except in the case of the unpaid bailee and the renter. And if this is in accord with R. Judah [who maintains that even a less than ideal form of guardianship in the case of a beast that was an attested danger exempts the responsible party from having to compensate*

for damages (Kirzner)], *who takes the view* that the one who hires is subject to the same rule as the paid bailee, *then why is it not taught*, except in the case of the unpaid bailee, but if the oxen were attested dangers, all of them would be exempt from having to pay the ransom?

- H. *Said R. Huna bar Hinena, "Lo, who is the authority behind this formulation? It is R. Eliezer, who has said, 'The only appropriate "keeping in" for such an animal [as is an attested danger] is the knife.' Now, so far as the situation of the renter, he takes the view of R. Judah, who holds that the one who hires is subject to the same law as the paid bailee."*
- I. *Abbaye said, "Not at all. In point of fact the passage accords with R. Meir, but it is in accord with the reversal of attributions that Rabbah bar Abbuha assigned, as has been taught as a Tannaite version:"*
- J. "One who rents a beast — under what classification does he pay restitution [if the beast is damaged or lost]?"
- K. "R. Meir says, 'He is in the status of an paid bailee.' [Since the man pays for the benefit he receives, he is taking care of the beast gratuitously.]
- L. "R. Judah says, 'He is in the status of an unpaid bailee.'" [The beast benefits the man, he is a paid bailee, even though he is paying for the benefit.]

- II.2** A. *Said R. Eleazar, "If one handed over one's ox to an unpaid bailee and the ox did damage, the bailee is responsible, but if the ox was damaged, he is exempt from paying compensation."*
- B. *State: What sort of a situation is contemplated here? If the bailee had accepted responsibility to watch out for any damages involving the ox, then why if the ox was injured is he exempt from having to pay compensation? And if he had not undertaken to protect the ox as to damages, then even if the ox did damage, why should the bailee not be exempt?*
- C. *Said Raba, "In point of fact, the bailee has indeed accepted responsibility for watching out for damages affecting the beast. But here with what sort of case do we deal? It is one in which it was understood that the ox was a gorer. It was quite routine that what he did was prevent the ox from going to do damage to others, but it never entered his mind that others would come and do damage to this ox."*

I.1 commences with a Tannaite complement to the Mishnah's rule, and No. 2 provides a talmud to No. 1. **II.1** follows suit. No. 2 develops the theme of the foregoing.

4:9G-O

- G. [If] the owner tied it up with a halter,
- H. or locked it up in a proper way,
- I. and it went out and did damage —
- J. “All the same are an animal deemed harmless and one which is an attested danger —
- K. “[the owner] is liable,” the words of R. Meir.
- L. R. Judah says, “[The owner of an animal deemed] harmless is liable, but one regarded as an attested danger is exempt,
- M. “since it is said, ‘And it has been testified to its owner, but he did not keep him in’ (Exo. 21:29) —
- N. “but this one has been kept in.”
- O. R. Eliezer says, “The only appropriate ‘keeping in’ for such an animal [as is an attested danger] is the knife.”

- I.1**
- A. *What is the operative consideration behind the position of R. Meir?*
 - B. *He maintains that oxen under ordinary circumstances are assumed not to be properly guarded. So it is the All-Merciful that has required that injuries done by a beast that is assumed harmless should be compensated, so prove that some sort of minimal guardianship is required. Then, further, Scripture went and said, “His owner has not kept him in” (Exo. 21:36), so as to show that, for a beast in this category, absolutely foolproof safeguards are required. Then the goring that is alluded to in the case of a beast deemed harmless is then treated as equivalent to the goring spoken of in the case of a beast that was an attested danger. [Kirkner: That is, the half added on account of the ox having been declared an attested danger.]*
 - C. R. Judah?
 - D. *He maintains that oxen under ordinary circumstances are assumed to be properly guarded. So it is the All-Merciful that has required that injuries done by a beast that is assumed harmless should be compensated, so prove that foolproof guardianship is required. Then, further, Scripture went and said, “His owner has not kept him in” (Exo. 21:36), with respect to the beast that was an attested danger, so as to show that, for a beast in this category, absolutely foolproof safeguards are required. But this would stand for an extension of the law following another such amplification, and the rule is that if there is an extension of the law following another, the upshot is to limit the*

rule. So Scripture has placed a limitation on the matter of the foolproof guardianship. And should you say by way of objection that since goring that is alluded to in the case of a beast deemed harmless and goring is alluded to in the case of a beast that is an attested danger, [Kirzner: so that in the case of a beast that was deemed harmless, some sort of minimal precaution would suffice,] the All-Merciful has imposed this explicit restriction: “His owner has not kept him in” (Exo. 21:36). The emphasis on “him” then means, one in this classification, but not in another classification.

- E. *But surely the language was required simply to deliver its own simple meaning [that is, to say that he is liable because he did not take proper precautions (Kirzner)]!*
- F. *If that were so, then the All-Merciful should say, “has not kept in.” Why use the formulation, “His owner has not kept him in”? It is to indicate that the rule applies to one in this classification, but not in another classification.*

I.2 A. *It has been taught on Tannaite authority:*

- B. R. Eliezer b. Jacob says, “All the same are the cases of an ox that was deemed harmless and one that was an attested danger, which were given a rather minimal form of guardianship — the guardian is exempt from having to pay any sort of damages.”
- C. *How come?*
- D. *He concurs with the view of R. Judah that, in the case of a beast that was an attested danger, any sort of minimal precautions is acceptable. He then extends this position from the beast that was an attested danger to one that was deemed innocent by appeal to the comparability of the two affected by the reference in respect to each classification to the matter of goring.*

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

I.4 A. Said Rab, “A beast that was an attested danger to gore with the right horn is not an attested danger to gore with the left horn.”

- B. *Say: in accord with whose position is this statement made? If it is within the framework of the position of R. Meir, has he not said, “All the same are the beast deemed harmless and one that was an attested danger, in both cases, an*

absolutely foolproof precaution must be taken” [so what difference does this distinction make here]? And if it is within the framework of the position of R. Judah, what difference does the goring by the left horn make? Even if it was by the right horn, in any event, the portion of the payment that would be owing because the beast was deemed harmless, and the portion of the payment that would be owing because the beast was an attested danger likewise would pertain.

- C. *Say: in point of fact it is made in accord with the position of R. Judah. But [Rab] does not concur with the allegation as to the position of R. Judah which has been made by R. Adda bar Ahbah, and Rab’s statement was intended to mean that it is only in such an instance as specified [A beast that was an attested danger to gore with the right horn is not an attested danger to gore with the left horn], that you find that there is an aspect in which the beast is deemed harmless and an aspect in which it is an attested danger. [46A] But a beast that is wholly an attested danger would not have any component that was yet in the status of being deemed harmless whatsoever.*

- II.1** A. **R. Eliezer says, “The only appropriate ‘keeping in’ for such an animal [as is an attested danger] is the knife”:**
- B. Said Rabbah, “What is the scriptural basis here? Said Scripture, ‘And his owner has not kept him in’ (Exo. 21:29) — this one can never again be subject to any sort of guardianship [but must die].”
- C. *Said to him Abbaye, “If so, what about this: ‘And not cover it’ (Exo. 21:33) — does this mean that never again can this pit be properly tended to merely by covering it [but must be filled in]? And should you say, yes indeed! have we not learned in the Mishnah: [If] he covered it up in a proper way, and an ox or an ass fell into it and died, he is exempt [M. 5:6G]?”*
- D. *Rather, said Abbaye, “This is the scriptural basis for the position of R. Eliezer, as has been taught on Tannaite authority: R. Nathan says, ‘How on the basis of Scripture do we know that someone should not raise a vicious dog in his house or maintain a shaky ladder in his house? “You shall not bring blood upon your house’ (Deu. 22: 8).”*

I.1 explains the positions, reasoning, and scriptural evidence for the disputing parties’ positions in the Mishnah. No. 2 then goes on to a Tannaite complement. Nos. 3, 4 proceed to a secondary expansion of a detail of the foregoing. **II.1** provides the scriptural basis for the rule of the Mishnah.