

מתני' המניח את הכד ברשות הרבים, ובא אחר ונתקל בה ושברה – פטור, ואם הניח בה – בעל החבית חייב בנזקו.

גמ' פתח בכד וסיים בחבית!

ותנן נמי: זה בא בחביתו וזה בא בקורתו, נשברה כדו של זה בקורתו של זה – פטור; פתח בחבית וסיים בכד!

ותנן נמי: זה בא בחביתו של יין וזה בא בכדו של דבש, נסדקה חבית של דבש ושפך זה יינו והזיל את הדבש לתוכו – אין לו אלא שכרו; פתח בכד וסיים בחבית!

אמר רב פפא: היינו כד היינו חבית. למאי נפקא מינה? למקח וממכר.

היכי דמי? אילימא באתרא דכדא לא קרו חבית, וחבית לא קרו כדא, הא לא קרו לה!

לא צריכא, דרובא קרו לה לכדא כדא ולחביתא חביתא, ואיכא נמי דקרו לחביתא כדא ולכדא חביתא; מהו דתימא: זיל בתר רובא.

MISHNA In the case of one who places a *kad*,^H a type of vessel, in the public domain and another person comes and stumbles on it and breaks it, the other person is exempt from paying for what he broke. And if the one who stumbled incurred damaged by it, the owner of the *havit*,^B a type of vessel, is liable to pay restitution for his damage.

GEMARA The mishna began its presentation of the case in reference to a *kad*, stating: In the case of one who places a *kad*, and ended it in reference to a *havit*, stating: The owner of the *havit* is liable.

And we learned this interchanging of the words *kad* and *havit* in a mishna (31b) as well: If two people were walking down the street, this one coming with his *havit* and that one coming with his cross beam, and this one's *kad* was broken by that one's cross beam, the one holding the beam is exempt. Here too the mishna changed its wording, as it began its statement in reference to a *havit* and ended it in reference to a *kad*.

And we learned this in another mishna (115a) as well: If this person came with his *havit* of wine^{HN} and that person came with his *kad* of honey, and the *havit* of honey, which is more valuable, cracked,^H and this person poured out his wine and saved the honey by collecting it into his vessel, he receives reimbursement only for his trouble, and he cannot claim the value of the wine that he poured out since the owner of the honey did not tell him to do so. Here too the mishna changed its wording, as it began its statement in reference to a *kad* of honey and ended it in reference to a *havit* of honey.

Rav Pappa said: These examples show that a *kad* is the same as a *havit*, and the two words are used interchangeably. With regard to what does this make a difference? This makes a difference for buying and selling.^N If a customer asks for a *havit*, intending a large vessel, and the seller gives him a *kad*, which is a smaller vessel, the buyer cannot claim that he did not receive the item he asked for.

The Gemara asks: What are the circumstances where this is relevant? If we say that it is with regard to a locale where people do not refer to a *kad* as a *havit*, nor do they refer to a *havit* as a *kad*, and a *havit* is understood to be referring to a larger vessel, clearly one who asks for a *havit* does not wish to buy a *kad*, as people do not call it that.

The Gemara answers: No, it is necessary to teach that they are equivalent terms with regard to a locale where most people call a *kad* a *kad* and a *havit* a *havit*, i.e., most people use the term *kad* for the smaller vessel and the term *havit* for the larger one, and there are also those who call a *havit* a *kad* and a *kad* a *havit*, not distinguishing between the two terms. Lest you say that the *halakha* follows the majority and the seller and the buyer must accept this distinction,

NOTES

זה בא בחביתו של יין – This person came with his *havit* of wine – The Meiri writes that although the Sages instituted an ordinance requiring one to pour out his wine to save another's honey (see 81b), this ordinance applies only in a case where the owner of the honey requests of the owner of the wine to do so. In a case where the owner of the wine saved the honey on his own initiative, the owner of the honey is obligated to reimburse him only for his effort, unless the owner of the wine specifically asked him ahead of time whether he would compensate him for the wine and he consented.

למקח וממכר – *Tosafot* explain that since the terms are not unequivocal, whoever has possession of the money has the upper hand. Accordingly, if the buyer has paid for the vessel, the seller can force him to take the smaller one, but if the buyer has not yet paid, the buyer can insist upon receiving the larger one before paying. They also raise the following question: Since the dispute between the buyer and seller is with regard to whether the agreement was concerning a larger or smaller vessel, why not evaluate if the agreed-upon price accords with the market value of a larger or smaller vessel? The early commentaries answer that market prices have a range, and the difference in price between the two types of vessels is not significant enough to clearly establish what the agreement had been.

HALAKHA

One who places a *kad* – המניח את הכד – If one places a jug in the public domain, and another person stumbles on it and breaks it, the other person is exempt. If the one who stumbled is damaged by it, the one who placed the jug there is liable to pay compensation (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 13:5; *Shulhan Arukh, Hoshen Mishpat* 412:1).

זה בא בחביתו – If this person came with his *havit* of wine – If two people are walking in the public domain, one with a barrel and one with a cross beam, and they collide with one another, breaking the barrel, the owner of the cross beam is exempt from paying for the cost of the wine-filled barrel since they both have the right to walk in the public domain (*Shulhan Arukh, Hoshen Mishpat* 379:1, and see *Sma*).

נסדקה חבית של דבש – The *havit* of honey cracked – If two people are walking along the road, one carrying a barrel of wine and the other carrying a jug of honey, and the jug of honey cracks, if the owner of the wine pours out his wine to save the honey in the other man's barrel, he is entitled to be reimbursed only for his trouble. If he stipulates with him in advance that if he saves the honey he will be compensated for the value of the wine, or if had stipulated this before the court, the owner of the honey must compensate him (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 12:5; *Shulhan Arukh, Hoshen Mishpat* 264:5).

BACKGROUND

A *kad* and a *havit* – כדר וחבית – As elaborated in the Gemara, the terms *kad* and *havit* were not completely distinct from each other and at times were interchanged. These words were used for large clay vessels ordinarily used to hold liquids such as wine or oil. Still, wherever a distinction was made between the two, a *kad* was generally a smaller vessel and a *havit* a larger one.

HALAKHA

ואם – אם And if he incurred damage due to the vessel **הזיק בה**: If one fills the road with barrels in a manner that makes it impossible to pass and a pedestrian breaks a barrel while trying to traverse the road, he is exempt. If the pedestrian is injured in the process, the owner of the barrel is exempt, since the pedestrian caused the damage to himself (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 13:6; *Shulhan Arukh, Hoshen Mishpat* 412:2).

Because the typical manner of people is not, etc. – **לפי שאין דרכן של בני אדם וכו'**: If one places his barrel in the public domain and another person stumbles on it and breaks it, that person is exempt. Moreover, if the pedestrian is injured, the owner of the barrel is liable to pay damages, since it is not the typical manner of people to look down at the road while walking. This applies during the day as well, in accordance with the opinion of Rabbi Abba in the name of Ulla (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 13:5; *Shulhan Arukh, Hoshen Mishpat* 412:1).

קא משמע לן דאין הולכין בממוץ
אחר הרוב.

”ובא אחר ונתקל בה ושברה פטור.”
אמאי פטור? איבעי ליה לעייני ומיזל!

אמרי דבי רב משמיה דרב: בממלא
רשות הרבים כולה חביות; שמואל
אמר: באפילה שנו; רבי יוחנן אמר:
בקרון וזית.

אמר רב פפא: לא דיקא מתניתין אלא
או בשמואל או ברבי יוחנן, דאי ברב,
מאי אריא נתקל? אפילו שבר נמי!

אמר רב וביד משמיה דרבא: הוא הדין
דאפילו שבר. והאי דקתני ”נתקל” –
אידי דבעי למתני סיפא: ואם הזיק
בה בעל חבית חייב בנקו, דדוקא
נתקל, אבל שבר לא, מאי טעמא?
הוא דאזיק אנפשיה – קתני רישא
”נתקל”.

אמר ליה רבי אבא לרב אשי, הכי
אמרי במערבא משמיה דרבי עולא:
לפי שאין דרכן של בני אדם להתבונן
בדרכים.

הוה עובדא בנהרדעא וחיוב שמואל,
בפומבדיתא – וחיוב רבא.

בשלמא שמואל – בשמעתיה. אלא
רבא, לימא בשמואל סבירא ליה?

the mishna teaches us that the court does not follow the majority with regard to monetary matters, and in cases of uncertainty the burden of proof rests upon the claimant.

S The mishna teaches concerning the vessel placed in the public domain: If another person came and stumbled on it and broke it, he is exempt. The Gemara asks: Why is he exempt? Although this happened in the public domain, he should examine the road and then continue walking.

The Sages of the school of Rav said in the name of Rav: The ruling of the mishna is taught with regard to one who placed not just one barrel in the road, but rather filled the entire public domain with barrels, blocking the path. Since the public domain belongs to everyone, a pedestrian is entitled to traverse the road even if it necessitates breaking the vessels. **Shmuel says:** The ruling of the mishna is taught with regard to a case where he broke it in the dark. Therefore, he could not have avoided breaking the barrel by examining the road in front of him. **Rabbi Yohanan says:** The ruling of the mishna is taught with regard to a case where the barrel was placed at the corner of the road, and so the pedestrian could not have seen it, as he rounded the corner, before stumbling on it.

Rav Pappa said: The mishna is precise only according to either the explanation of **Shmuel** or that of **Rabbi Yohanan**, but not that of Rav. As, if the mishna is explained in accordance with the explanation of Rav, what is the reason it refers specifically to a case where one stumbled on the barrel? Even if he broke the barrel intentionally he should not be liable to pay, as the owner of the barrel had no right to block the public road.

Rav Zevid said in the name of Rava in defense of Rav’s explanation: The same is true even if he broke the barrel intentionally. And as for this fact, that the *tanna* of the mishna teaches a case where he stumbled, it is because he wants to teach in the last clause: And if he incurred damage due to the vessel,⁴ the owner of the *havit* is liable to pay for his damage. As this ruling applies specifically when he stumbled, but if he broke the barrel intentionally and incurred damage in the process, the owner of the barrel is not required to compensate him. What is the reason for this? Although the pedestrian had the right to break the barrel, it is he who damaged himself, by not being careful while breaking it. Therefore, in the first clause the mishna teaches a case where he stumbled. Accordingly, the mishna’s wording is precise according to Rav’s explanation as well.

Rabbi Abba said to Rav Ashi that this is what they say in the West, Eretz Yisrael, in the name of **Rabbi Ulla**, in explanation of the mishna: Even if the barrel is clearly visible, one who stumbles on it is exempt from liability because the typical manner of people is not⁴ to examine the roads, as they assume that the road is unobstructed. Therefore, one who breaks an item placed in the road as a result of not watching is not liable to pay restitution.

The Gemara relates: There was an incident in Neharde’a where a pedestrian stumbled on a jug in an open area and broke it, and **Shmuel** deemed him liable to pay for the damage. A similar incident took place in Pumbedita, and **Rava** deemed the person liable to pay.

The Gemara asks: Granted, **Shmuel** ruled in accordance with his halakhic opinion that the exemption stated in the mishna refers specifically to a case where one stumbles in the dark, as otherwise he is liable for breaking the barrel, since he should have examined the road. But with regard to **Rava**, shall we say that he holds in accordance with **Shmuel**’s opinion that one who breaks an item in the public domain is exempt from paying for it only if it was dark?

The corner where there was an olive press [*karna de'atzera*] – קרנא דעצרא: An *atzera* is a place where fruit is squeezed. Rashi explains that is referring to an oil press, whereas the Aramaic translations of this word in the Bible (see Numbers 18:27) use the term in reference to a place where grapes are squeezed. Customers would bring their jugs to the *atzera* to carry the wine or oil home.

Kneeing [*rekhuva*] – רכובה: This word, which also appears as *arkuva*, is a cognate form of the Hebrew *berekh*, or knee.

Punching [*senokeret*] – סנוקרת: This term is possibly associated with the Assyrian *snak*, which means to apply pressure or inflict pain. The verb *senak* is also used in the meaning of throwing or removing. Some suggest that *senokeret* is a part of the body.

Hoe [*mara*] – מרָא: From the Latin *marra*, meaning hoe.

Top [*kofina*] – קופינא: Apparently, this is a diminutive form of the word *kof*, which means the hole in a utensil facilitating its use, e.g., the eye of a needle. Accordingly, here it would denote the hole at the top of a hoe that allows the insertion of the handle. Some associate it with the Greek *σκαπάνη*, *skapane*, meaning a tool used for hoeing.

NOTES

Punching [*senokeret*] – סנוקרת: According to Rashi *senokeret* is referring to striking someone with a donkey's saddle, similar to the explanation of *Halakhot Gedolot* that it is referring to striking someone with a wooden fixture placed on an animal for carrying a load. Others explain it to mean kicking someone in the buttocks (*Ge'onim*), punching with a fist (Rabbeinu Hananel), striking with an elbow, or slapping with the back of one's hand, which results in greater humiliation than a regular slap.

Of a hoe [*demara*] – דמרָא: Rashi explains that this is the handle of a hoe, while others explain it to mean a handle for utensils (*Ge'onim*).

Are you collecting a fine – קנסא קא מנבית: Indemnity for humiliating someone is not a fine. Yet, the Sages of Babylonia were not ordained by the ordained Sages in Eretz Yisrael, and therefore could impose payment of an indemnity only for cases of damage that they were empowered to judge as agents of the Sages in Eretz Yisrael. They were not empowered to impose payment of fines. Since humiliation involves no financial loss, it is akin to the category of fines (*Tosafot*).

אמר רב פפא: קרנא דעצרא הוי, דבין דברשות קעבדי – איבעי ליה לעיוני ומייל.

שלח ליה רב חסדא לרב נחמן, הרי אמרו: לרכובה – שלש, ולבעיטה – חמש, ולסנוקרת – שלש עשרה: לפנדא דמרָא ולקופינא דמרָא מאי?

שלח ליה: חסדא, חסדא, קנסא קא מנבית בבבל? אימא לי גופא דעובדא היכי הוה?

שלח ליה: דההוא גרנותא דבי תרי דכל יומא הוה דלי חד מניהו, אתא חד קא דלי ביומא דלא דיליה, אמר ליה: יומא דידי הוה! לא אשגח ביה, שקל פנדא דמרָא מניה.

אמר ליה: מאה פנדי בפנדא למחיה! אפילו למאן דאמר לא עביד איניש דינא לנפשיה, במקום פסידא עביד איניש דינא לנפשיה.

דאתמר, רב יהודה אמר: לא עביד איניש דינא לנפשיה, רב נחמן אמר: עביד איניש דינא לנפשיה.

Rav Pappa said: That inference is not necessary, as this incident was at the corner where there was an olive press [*de'atzera*],^{1H} where it is known that people put their jugs down while waiting for oil. Consequently, since they were acting with permission, a pedestrian should examine the road and then continue walking.

Rav Hisda sent the following question to Rav Nahman: The Sages said that when one strikes another, humiliating him, the judges determine liability according to the following formula: For kneeling [*rekhuva*]^L him, he must pay three^H sela; for kicking, five; and for punching [*velisnokeret*]^{LN} him, thirteen. The Gemara asks: For hitting him with the handle of a hoe [*demara*]^{LN} and for hitting him with the top [*ulkofina*]^L of a hoe, what amount is one liable to pay him?

Rav Nahman sent him the following response: Hisda, Hisda, are you collecting a fine^N for humiliation in Babylonia,^H where judges are not authorized to collect fines? Tell me how the incident itself transpired.

Rav Hisda sent him in response: There is a certain cistern belonging to two people whose arrangement was to alternate its use so that every day one of them would draw from it in turn. It happened that one of them came and was drawing water on a day that was not his turn. His co-owner said to him: This is my day to draw, not yours. His colleague did not pay attention to him. The person whose turn it was therefore took the handle of a hoe and struck the person who was stealing his water, who then sued for damages.

Rav Nahman said to him: In that case, he was right to do so, and he should have hit him even a hundred times with the hoe. Even according to the one who says that a person may not take justice into his own hands but should go to court, in a case where there would be a loss involved if no immediate action is taken, a person may take justice into his own hands.^H

This is as it was stated, that Rav Yehuda says: A person may not take justice into his own hands, whereas Rav Nahman says: A person may take justice into his own hands.

HALAKHA

קרנא – קרנא: It was at the corner where there was an olive press [*de'atzera*]: If one places his jug in a place where it is permitted for him to do so, such as an open area in front of an olive press, and another stumbles on it and breaks it, the one who stumbled is liable to pay for it. If the pedestrian is injured, the owner of the jug is exempt from liability. If this occurred in darkness, such as at night, or if the owner of the jug filled the entire public thoroughfare with jugs, the pedestrian is exempt from paying for breaking it, and if he is injured, the owner of the jug is liable to pay for the damage (Rambam *Sefer Nezikin*, *Hilkhot Nizkei Mamon* 13:6; *Shulhan Arukh*, *Hoshen Mishpat* 412:2).

For kneeling three, etc. – לרכובה שלש וכו': There are certain manners of striking that do not cause pain or injury but do humiliate, and the Sages determined fixed amounts that an attacker is required to pay his victim in these cases. If one kicks another person he is required to pay five sela; if he kneels him, three sela; and if he punches him he must pay thirteen. These specific amounts refer to a case where the individual who was struck is a person of stature; for an ordinary person the judges deduct from this amount at their discretion. The Rema writes that there are authorities who maintain that this payment is for humiliation only. If the victim requires medical treatment or loses work as a result of his injury, these must be paid for separately

by an amount corresponding to the situation (Rambam *Sefer Nezikin*, *Hilkhot Hovel UMazik* 3:9; *Shulhan Arukh*, *Hoshen Mishpat* 420:41, 43).

קנסא קא מנבית בבבל – קנסא קא מנבית בבבל: All fines that were instituted by the Sages, e.g., the fine for slapping someone, may be imposed only by the ordained judges of Eretz Yisrael. Therefore, they do not apply nowadays at all, even in Eretz Yisrael (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 5:9; *Shulhan Arukh*, *Hoshen Mishpat* 1:1, 1:5).

עביד איניש דינא – לנפשיה: A person may take justice into his own hands – לנפשיה: If one sees something that belongs to him in another's possession, he may take justice into his own hands and take what is rightfully his, even by the use of force, e.g., striking the other person if he stands in his way. This applies even if he would not incur a loss were he to wait to bring the case to court, on condition that he can prove his claim in court. This is in accordance with the opinion of Rav Nahman, as the *halakha* is ruled in accordance with Rav Nahman's opinion in monetary issues. The Rema writes, citing the *Tur*, that it is permitted to use violence only when there is no other means available at the time to retrieve his property (Rambam *Sefer Nezikin*, *Hilkhot Hovel UMazik* 2:12; *Shulhan Arukh*, *Hoshen Mishpat* 4:1).

Ben Bag Bag – בֶּן בָּג בָּג: The full name of this Sage was Rabbi Yoḥanan ben Bag Bag. He is commonly thought to be a *tanna* who lived in the generation of the destruction of the Second Temple. Some commentaries maintain that he was a contemporary of Hillel and Shammai, who lived several generations earlier. Although only a few statements of Rabbi Yoḥanan ben Bag Bag are recorded in the Talmud and in *midrashim*, it appears that he was highly regarded by the Sages of his generation. Indeed, Rabbi Yehuda ben Beteira wrote to him: I know that you are expert in the chambers of Torah.

Some commentaries state that he was a son of converts and that ben Bag Bag was a nickname. *Tosafot* maintain that the name alludes to the Patriarch Abraham, the first convert. The letter *heh* was added by God (Genesis 17:5) to Abram, which was Abraham's original name, and the numerical value of the letters comprising *bag*, *beit* and *gimmel*, is five, corresponding to the numerical value of the letter *heh*. Others explain that the name Bag Bag is an acronym for the son of both a male convert, *ben ger*, and a female convert, *ben giyoret*.

הֵיכָא דְאִיכָא פְּסִידָא – כּוֹלִי עֲלֵמָא
לֹא פְּלִיגִי דְעֵבִיד אִינִישׁ דִּינָא לְנִפְשֵׁיהּ,
כִּי פְּלִיגִי – הֵיכָא דְלִיכָא פְּסִידָא. רַב
יְהוּדָה אָמַר: לֹא עֵבִיד אִינִישׁ דִּינָא
לְנִפְשֵׁיהּ, דְּכֵינּוּ דְלִיכָא פְּסִידָא לְיוֹזֵל
קִמְיָה דִּינָא; רַב נַחֲמָן אָמַר: עֵבִיד
אִינִישׁ דִּינָא לְנִפְשֵׁיהּ, דְּכֵינּוּ דְבִדִּין
עֵבִיד לֹא טָרַח.

מְתִיב רַב כְּהָנָא, בֶּן בָּג בָּג אָמַר: אֵל
תִּכְנֶס לְחֶצֶר חֲבֵרְךָ לִטּוֹל אֶת שְׁלֶךְ
שְׁלָא בְּרִשּׁוֹת, שְׁמָא תִּרְאֶה עָלָיו כְּגֹנֵב,
אֶלָּא שְׁבוֹר אֶת שִׁנָּיו וְאָמַר לוֹ: שְׁלִי
אֲנִי נוֹטֵל!

אָמַר לֵיהּ:

Where there is an imminent loss that will be suffered if the injured party does not take action, **everyone agrees that a person may take justice into his own hands. They disagree only when there is no imminent loss that will be suffered.** Rav Yehuda says that a person may not take justice into his own hands, because since there is no loss, he should go before the judge to have him enforce the law. Rav Nahman says that a person may take justice into his own hands. Since he is acting lawfully, as he is clearly in the right, he need not trouble himself to go before the judge to have him enforce the law.

Rav Kahana raises an objection to Rav Yehuda's opinion based on a *baraita*: Ben Bag Bag^p says: **Do not enter another person's courtyard secretly to take what is rightfully yours without permission, lest you appear to him as a thief trying to steal his property. Rather, break his teeth, i.e., take it by force, and say to him: I am taking what is mine.** Evidently one may take justice into his own hands.

Rav Yehuda said to him:

Perek III

Daf 28 Amud a

עֲמֵךְ! בֶּן בָּג בָּג יְחִידָאָה הוּא, וּפְלִיגִי
רַבְנָן עָלֵיהּ.

רַבִּי יֵנְאִי אָמַר: מָאִי "שְׁבוֹר אֶת שִׁנָּיו" –
בִּדְיָן.

אִי הָכִי, וְאָמַר לוֹ – "וְאֹמְרִים לוֹ"
מִיבְעֵי לֵיהּ! "שְׁלִי אֲנִי נוֹטֵל" – "שְׁלִי
הוּא נוֹטֵל" מִיבְעֵי לֵיהּ! קִשְׁיָא.

תָּא שְׁמַע: שׁוֹר שְׁעָלָה עַל גְּבִי חֲבִירוֹ
לְהֹרְגוֹ, וּבֹא בַעַל הַתַּחְתּוֹן וְשָׂמַט אֶת
שְׁלוֹ, וְנָפַל עָלָיו וּמָת – פְּטוֹר; מָאִי לָא
בְּמוֹעֵד, דְּלִיכָא פְּסִידָא?

You can keep this question **to yourself**, as it poses no difficulty at all. Ben Bag Bag states an individual opinion in this regard, **and the Rabbis disagree with him.**

Rabbi Yannai says an alternative response to Rav Kahana's objection: **What does the *baraita* mean by the phrase: Break his teeth?** It means sue him in judgment.

The Gemara asks: **If so**, the subsequent statement in the *baraita*: **And say to him**, is inaccurate. It should have stated: **And they**, the court, **say to him**. Likewise, the wording: **I am taking what is mine**, is inaccurate. Since it is the court who makes this statement, the *baraita* should have stated: **He is taking what is his**. The Gemara concludes: Indeed, this poses a difficulty for Rav Yehuda's version of the response.

The Gemara suggests: **Come and hear** an alternative proof for Rav Nahman's opinion. It is stated in a *baraita*: With regard to an ox that climbed on the back of another ox^h to kill it, and the owner of the ox on the bottom came and removed his ox, and the ox on top consequently fell and died, the owner of the ox on the bottom is exempt from paying for the dead ox. **What**, is this ruling not stated with regard to a case where the attacker is a forewarned ox, where there is no loss to the owner of the bottom ox, since even if the owner of the ox on the bottom does not remove his ox, he will eventually receive full restitution from the owner of the belligerent ox? Yet he is exempt from paying restitution for causing the death of the belligerent ox. Evidently, he had the right to take justice into his own hands.

HALAKHA

An ox that climbed on the back of another ox – שׁוֹר שְׁעָלָה עַל – גְּבִי חֲבִירוֹ: If an ox, whether innocuous or forewarned, climbs on top of another ox belonging to a different owner, on the property of the other owner and with the intention of killing the other ox, and the owner of the attacked animal pulls his ox away to save it, causing the ox on top to fall and die, the owner of the ox on the bottom is exempt from liability for the death of

the ox. If he pushes the belligerent ox off when he could have saved the ox underneath by pulling it away, and the belligerent ox consequently dies, the owner of the attacked animal is liable for the death of the ox. If the option to pull his ox away is not available, he is exempt (Rambam *Sefer Nezikin*, *Hilkhot Hovel UMazik* 6:6–7; *Shulḥan Arukh*, *Hoshen Mishpat* 383:2).

לֹא, בָּתֵּם, דְּאִיכָא פְּסִידָא.

The Gemara rejects this proof: No, the ruling is with regard to a case where the attacker is an **innocuous ox**,⁸ where there is a loss for the owner of the ox on the bottom if he does not save it, since the owner of an innocuous ox pays for only half the damages resulting from his ox's attack.

אִי הָבִי, אִימָא סִיפָא: דְּחָפּוּ לְעֵלּוֹן וְיָמָת – חָיִיב; וְאִי בָּתֵּם, אִמָּאִי חָיִיב?

The Gemara asks: **If so, say the latter clause of that *baraita*:** If, instead of removing his own ox, the owner of the ox on the bottom **pushed the one on top and it died, he is liable. And if it is referring to an innocuous ox, why is he liable?**⁹ He is defending his property so as not to incur a loss.

שְׁהִיָּה לֹו לְשִׁמְטוֹ וְלֹא שִׁמְטוֹ.

The Gemara answers: He is liable **because he should have removed his ox from underneath the belligerent ox, and he did not remove it.** Instead, he pushed the belligerent ox and caused it to die. Although one may take justice into his own hands, if he damages another person's property when he could have protected his own property in a harmless manner he is liable.

תָּא שְׁמַע: הַמְּמַלֵּא חֲצֵר חֲבִירוֹ כְּדִי זֵין וְכְדִי שָׁמֹן – בְּעַל הַחֲצֵר מְשַׁבֵּר וְיוֹצֵא מְשַׁבֵּר וְנִכְנָס!

The Gemara suggests: **Come and hear a proof for Rav Nahman's opinion from a *baraita*:** With regard to **one who fills another's courtyard¹⁰ with jugs of wine and jugs of oil, the owner of the courtyard may break his way through them and exit his courtyard or he may break his way through them and enter his courtyard.** Since the one who put the jugs there had no right to do so, the owner of the courtyard may take justice into his own hands. This is apparently the ruling even where there is no loss involved to the owner of the courtyard.

אָמַר רַב נַחֲמָן בַּר יִצְחָק: מְשַׁבֵּר וְיוֹצֵא – לְבֵית דִּין, מְשַׁבֵּר וְנִכְנָס – לְהִבְיָא זְכוּתָיו.

Rav Nahman bar Yitzhak said in response that the *baraita* can be explained as follows: The owner of the courtyard **may break the jugs and exit to court**, and he **may break the jugs and enter his house to bring proof of his rights**, i.e., documents proving that the courtyard belongs to him. Since by refraining from doing so he would sustain a loss, he may break the jugs when exiting and entering. He may not take justice into his own hands beyond this extent. Therefore, no proof for Rav Nahman's opinion can be inferred from this *baraita*.

תָּא שְׁמַע: מִנֵּיין לְנִרְצַע שְׁכָלּוֹ לֹו יָמִיו וְכֹוּ מְסָרְהָ בֹו לְצֵאתָ, וְחָבַל וְעָשָׂה בֹו חֲבוּרָה, שְׁהוּא פְטוּר?

The Gemara suggests: **Come and hear an alternative proof from a *baraita*:** **From where** is it derived with regard to a **Hebrew slave who had his ear pierced with an awl to extend his tenure as a slave, but whose days of servitude have now ended¹¹ with the arrival of the Jubilee Year; and his master is urging [*mesarhev*]¹² him to leave but he insists on remaining; and the master injured the slave and inflicted an injury on him in the process of forcing him out, that the master is exempt from paying for this injury?**

HALAKHA

One who fills another's courtyard – הַמְּמַלֵּא חֲצֵר חֲבִירוֹ: If one fills another's courtyard with jugs of wine and oil, the owner may go in and out in his usual manner, and he is exempt from any damage caused to the jugs on account of his actions.

The Ra'avad and the *Tur* maintain that this applies only if one places the jugs there without permission, whereas the Rambam holds that the owner of the property is exempt even if he gave the owner of the jugs permission to place them there, as long as he did not accept responsibility for safeguarding them (see *Sma* and *Gra*).

If the owner of the courtyard broke the jugs intentionally, the owner of the courtyard is liable to pay damages, even if the owner of the jugs put them there without permission (Rambam *Sefer Nezikin, Hilkhot Hovel UMazik* 6:5; *Shulhan Arukh, Hoshen Mishpat* 379:4).

A Hebrew slave who had his ear pierced but whose days of servitude have ended – לְנִרְצַע שְׁכָלּוֹ לֹו יָמִיו: Several authorities derive from here that if one enters another's courtyard without permission, and when the owner of the courtyard tells him to leave he refuses, the owner may use even violent means to force him to leave. This is because the interpretations suggested by the Gemara relate only to Rav Yehuda's opinion that one may not take justice into his own hands, whereas Rav Nahman's opinion is the accepted *halakha* (*Shulhan Arukh, Hoshen Mishpat* 421:6).

BACKGROUND

Innocuous ox, forewarned ox – שׁוֹר מוּעַד: An innocuous ox is an animal that is not known to cause damage with the intent to injure. The first three times an animal causes damage of this nature, its owner is required to pay only half the damage it has caused. Afterward, it becomes a forewarned animal, an animal with a history of causing injury. The owner of a forewarned animal is required to pay for all the damage it causes. An animal can be considered innocuous with regard to certain kinds of damage and forewarned with regard to others. For example, an ox that has a history of goring other oxen is still considered innocuous with regard to goring humans. Similarly, if it is established that the animal causes injury only on certain days, for example, on Shabbat and Festivals, it may be considered forewarned on those days alone and innocuous during the rest of the week. An animal that is forewarned can regain status as innocuous if, on three separate occasions, animals that it was accustomed to attacking passed by and it refrained from attacking them.

NOTES

וְאִי בָּתֵּם – If it is referring to an innocuous ox why is he liable: *Tosafot* explain that if the *baraita* is referring to a forewarned ox, the distinction between the cases in the two clauses is clearer. Since the owner was not in danger of incurring a financial loss, he should have considered the possibility of saving his ox by removing it from underneath the other one, thereby causing less danger to the belligerent ox. By contrast, if the *baraita* is referring to an innocuous ox, its owner should not be held liable, as he was presumably frenzied and could not have been expected to take all options into account.

This teaches the principle that even when one is permitted to take justice into his own hands and even to use force to do so, he still must not use force beyond what is necessary, and if he does he is liable to pay damages.

LANGUAGE

Urging [*mesarhev*] – מְסָרְהָב: Ostensibly an expanded form of the Hebrew *serev*, refuse, this Aramaic word carries a similar meaning of urging, imploring, or rushing someone not to refuse to perform an act.

With a slave who is a thief – **בְּעֶבְדָּא גִנְבָא**: One who is concerned that his slave will steal from him may dismiss the slave before the end of his tenure. Moreover, if the slave refuses to leave, the master may use forceful means to evict him (*Shulḥan Arukh, Hoshen Mishpat* 421:6, and in the comment of Rema, and *Pithei Teshuva* there).

To a slave whose master provided a Canaanite maid-servant to him – **בְּעֶבְדֵי שְׂמִסְרָא לִי רַבּוֹ שִׁפְחָה כְּנַעֲנִית**: With regard to a slave who had his ear pierced with an awl and was provided a Canaanite maidservant as a wife by his master, when the Jubilee Year arrives, if his master urges him to go free and he refuses, and the master wounds him in the process of forcing him out, the master is exempt from liability, as he is preventing the slave from violating a prohibition (Rambam *Sefer Kinyan, Hilkhot Avadim* 3:5).

NOTES

עד – Until now the awe of his master was upon him – **הָאֵידֶנָּא הָוָה אִימְתִּיָּה דְרַבִּיָּה עֲלֵיהּ**: Based on this explanation it is clear why the master has to use such extraordinary measures to evict the slave from his house. Since the slave no longer fears his master and also knows the location of all of the master's possessions, as he lived in his master's house, he might take advantage of his master's absence if the master were to go to court to notify the courts of the situation. Therefore, the master is compelled to act on his own, and to use force to evict him.

תלמוד לומר: "לא תקחו כֶּפֶר... לְשׁוֹב",
לֹא תִקְחוּ כּוֹפֶר לְשׁוֹב!

הָכָא בְּמֵאֵי עֲסָקִין – בְּעֶבְדָּא גִנְבָא.

עַד הָאֵידֶנָּא לֹא גִנְבַּ, וְהִשְׁתָּא גִנְבַּ? עַד
הָאֵידֶנָּא הָוָה אִימְתִּיָּה דְרַבִּיָּה עֲלֵיהּ,
הִשְׁתָּא לִית לֵיהּ אִימְתָּא דְרַבִּיָּה עֲלֵיהּ.

רַב נַחֲמָן בַּר יִצְחָק אָמַר: בְּעֶבְדֵי שְׂמִסְרָא
לִי רַבּוֹ שִׁפְחָה כְּנַעֲנִית, עַד הָאֵידֶנָּא
הִתִּירָא, וְהִשְׁתָּא אִיסוּרָא.

תָּא שְׁמַע: הַמְנִיחַ אֶת הַכֹּד בְּרִשּׁוֹת
הָרִבִּים, וְבָא אַחֵר וְנִתְקַל בָּהּ וְשִׁבְרָה –
פְּטוּר. טַעְמָא דְנִתְקַל בָּהּ, הָא שִׁבְרָה –
חַיִּיב!

אָמַר רַב זְבִיד מִשְׁמִיָּה דְרַבָּא: הוּא הָדִין
אֶפְילוּ שִׁבְרָה, וְהָאֵי דִקְתָּנִי "נִתְקַל" –
אֵינְדִי דִקְבָּעִי לְמִיתָנִי סִיפָא: אִם הוּוֹק –
בְּעַל חֲבִית חַיִּיב בְּנוֹק, דְּדוֹקָא נִתְקַל,
אֲבָל שִׁבְרָה לֹא, דְּהוּא אֵינְק נִפְשִׁיָּה –
קְתָנִי רִישָׁא "נִתְקַל".

תָּא שְׁמַע: "וְקָצְתָה אֶת כַּףּ" – מָמוֹן.
מֵאֵי לֹא בְּשִׂאִינָה יְכוּלָה לְהַצִּיל עַל
יְדֵי דְבַר אַחֵר? לֹא, שִׁיכּוּלָה לְהַצִּיל עַל
יְדֵי דְבַר אַחֵר.

To counter this, the verse states: "You shall take no ransom... that he should return" (Numbers 35:32). Although this verse is referring to the prohibition against an unintentional killer paying a ransom instead of going to a city of refuge, this verse is also interpreted to mean that **you shall take no ransom** for a Hebrew slave who is obligated to **return** to his family. In other words, if the slave refuses to return to his family and is injured in the process of his eviction, he does not receive compensation. This seems to indicate that the master may take justice into his own hands even for a matter that involves no loss to him.

The Gemara responds to this proof: **With what are we dealing here? We are dealing with a slave who is a thief,^h** and consequently, if he remains a slave, his master will sustain a loss. Therefore, it is permitted for the master to take justice into his own hands and evict the slave by force.

The Gemara questions this explanation: **Until now he did not steal, and now he will begin to steal?** Why would the master be worried about this just when the slave's tenure ends? The Gemara answers: **Until now**, while he was still a slave, **the awe of his master was upon him,ⁿ** so he did not steal from him. **Now** that he may go free **he does not have the awe of his master upon him**, and the master is therefore worried that he might steal from him.

Rav Nahman bar Yitzhak said an alternative explanation: The *baraita* is referring to a slave whose master provided a Canaanite maidservant to him^h as a wife and he wishes to remain with her. **Until now**, it was **permitted** for him to engage in sexual intercourse with her, **but now** that he is free, it is **prohibited** for him to do so. In this case, his master may evict him forcefully, assuming the role of an emissary of the court, to prevent him from violating the prohibition. Therefore, this is not considered taking justice into his own hands.

The Gemara suggests a proof for Rav Yehuda's opinion from the mishna. **Come and hear:** In the case of **one who places a jug in the public domain and another person comes and stumbles on it and breaks it**, he is exempt. It may be inferred that **the reason** he is exempt is **that he stumbled on it**. **But if he broke it intentionally**, he is **liable**. This indicates that one may not take justice into his own hands.

Rav Zevid said in the name of Rava: That is not a proof, as the same is true even if he broke the barrel intentionally. **And** as for this fact that the *tanna* of the mishna teaches a case where he stumbled, it is because he wants to teach in the last clause: **And if he incurred damage due to the vessel, the owner of the havit is liable to pay for his damages.** As this ruling applies specifically **when he stumbled**, but if he broke the barrel intentionally and incurred damage in the process, the owner of the barrel is **not** required to compensate him. Although the pedestrian had the right to break the barrel, **it is he who damaged himself**, by not being careful while breaking it. Therefore, in the **first clause** the mishna teaches a case where **he stumbled**.

The Gemara suggests: **Come and hear** a proof from a *baraita*, which relates to the case of a woman who, during a fight between her husband and another man, grabs the other man's genitals: The verse that states: "**Then you shall cut off her hand**" (Deuteronomy 25:12), should not be taken literally; rather, it is referring to **monetary restitution**. **What, is it not** referring to a case **where she cannot save her husband from his attacker by a means other than grabbing the attacker's genitals**, and nevertheless she is punished? This indicates that one may not take justice into his own hands. The Gemara answers: **No**, the verse is referring to a case **where she can save him by other means**. Otherwise she is exempt from paying restitution.

פֶּרֶט לְשָׁלִיחַ בֵּית דִּין – Excludes an emissary of the court – An emissary of the court who is harassed in the presence of witnesses by the person to whom he was sent may use forceful means toward him, in the same manner as is permitted to the judges. The emissary is exempt from liability if he causes that person injury or damage. It is added in the *Sma* that this is the *halakha* even if he could have achieved his objective in another manner (*Shulhan Arukh, Hoshen Mishpat* 421:6, and in the comment of Rema).

In a case where a public thoroughfare would pass through one's field – **הָרִי שֶׁהֵיטָה דֶּרֶךְ הָרִבִּים עֹבֶרֶת בְּתוֹךְ – שְׂדֵהוּ**: With regard to one whose field has a public thoroughfare passing through it, and he appropriated it for his own use, providing an alternative route for the public, the original route does not become his own. Rather, both routes become public property (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 13:27; *Shulhan Arukh, Hoshen Mishpat* 377:1).

LANGUAGE

Stick [pazra] – פִּזְרָא: This is referring to a stick or staff. According to the *Arukh*, the cantillation note *pazer* owes its name to its form, which resembles a staff.

אֲבָל אֵינָהּ יוֹכֵלָה לְהַצִּיל עַל יְדֵי דָבָר אֲחֵר – פְּטוּרָהּ? אִי הָכִי, אֲדַתְנִי סִיפָא: "וְשָׁלַחָה יָדָהּ" פֶּרֶט לְשָׁלִיחַ בֵּית דִּין – לְפָלוֹג וְלִתְנִי בְּיָדָהּ: בְּמָה דְּבָרִים אֲמֹרִים – בְּשִׁיכּוּלָה לְהַצִּיל עַל יְדֵי דָבָר אֲחֵר, אֲבָל אֵינָהּ יוֹכֵלָה לְהַצִּיל עַל יְדֵי דָבָר אֲחֵר – פְּטוּרָהּ!

The Gemara asks: **But if she cannot save him by other means, is it possible that she is exempt? If so, instead of teaching in the latter clause of that *baraita* that the expression mentioned in the previous verse: "And extended her hand" (Deuteronomy 25:11), excludes an emissary of the court,^h who is authorized to act in this manner and is therefore exempt from paying restitution, let the *baraita* distinguish and teach within the case under discussion in the verse itself, as follows: In what case is this statement that the wife is liable said? It is in a case where she can save her husband by another means. But if she cannot save him by other means, she is exempt.**

הָכִי נִמִּי קֹאמֵר: בְּמָה דְּבָרִים אֲמֹרִים – בְּשִׁיכּוּלָה לְהַצִּיל עַל יְדֵי דָבָר אֲחֵר, אֲבָל אֵינָהּ יוֹכֵלָה לְהַצִּיל עַל יְדֵי דָבָר אֲחֵר – נַעֲשֶׂה יָדָהּ כְּשָׁלִיחַ בֵּית דִּין, וּפְטוּרָהּ.

The Gemara answers: **That is also what the *baraita* is saying: In what case is this statement said? It is said in a case where she can save him by other means. But if she cannot save him by other means, her hand is rendered like an emissary of the court, and she is exempt.**

תָּא שְׁמַע: הָרִי שֶׁהֵיטָה דֶּרֶךְ הָרִבִּים עֹבֶרֶת בְּתוֹךְ שְׂדֵהוּ, נִטְלָה וְנָתַן לָהֶם מִן הַצֵּד – מֶה שֶׁנָּתַן נָתַן, וְשָׁלוּ לֹא הִגִּיעוּ.

The Gemara suggests: **Come and hear a proof for Rav Yehuda's opinion from a mishna (Bava Batra 99b): In a case where a public thoroughfare would pass through one's field,^h and he appropriated it and instead gave the public an alternative route on the side of his property, the *halakha* is that the route that he has given is the route that he gave them, and they may use it. But his property, which he appropriated, has not reached him, i.e., he cannot appropriate it for his personal use since it was already in public use.**

וְאִי אֲמַרְתָּ עֲבִיד אֵינִישׁ דִּינָא לְנַפְשֵׁיהּ, לְנִקּוּט פִּזְרָא וְלִיתֵיב!

And if you say that a person may take justice into his own hands, why does the owner of the field not have the right to close the thoroughfare? Since it is his property and he gave the public an alternative route, let him take a stick [pazra]^l in his hand and sit by the side of the road, preventing the public from passing through.

אָמַר רַב זְעִיד בְּשֵׁם רַבָּא: גְּזִירָה שְׂמָא יִתֵּן לָהֶם דֶּרֶךְ עֲקֻלָּתוֹן.

Rav Zevid^p said in the name of Rava: It is a rabbinic decree, lest he give them a circuitous route. Since the public has the right to pass through his field, as the Gemara will soon explain, the owner cannot appropriate their thoroughfare without giving the public a similar alternative route. Therefore, the Sages decreed that he cannot appropriate it without their consent, lest he provide an inadequate route.

רַב מֶשְׁרִישַׁיָּא אָמַר: בְּנִיתוֹן לָהֶם דֶּרֶךְ עֲקֻלָּתוֹן.

Rav Mesharshiyya said: The mishna is referring to a case where he actually gave them a circuitous route. If one in fact gives the public a straight path, he need not surrender his rights, and he may take justice into his own hands by blocking the original thoroughfare.

רַב אֲשִׁי אָמַר: כָּל מִן הַצֵּד דֶּרֶךְ עֲקֻלָּתוֹן הוּא, קְרוּבָה לָזֶה וְרַחוּקָה לָזֶה.

Rav Ashi said: Any route on the side that the property owner might give them is necessarily considered a circuitous route, as it is close for this person, and it is far for that person. While some will benefit from the change, it will be detrimental for others.

אִי הָכִי, אֲמַאי שָׁלוּ לֹא הִגִּיעוּ? לִימָא לָהּ: שְׁקוּלוּ דִּידְכוּ וְהָבּוּ לִי דִּידִי!

The Gemara asks: **If so, why has his property not reached him? If he cannot make the change, why can he not reclaim the path that he intended to turn over to the public? Let him say to them: Take your original route and give me back my property, so that he will not lose both pieces of land.**

PERSONALITIES

Rav Zevid – רַב זְעִיד: A fifth-generation Babylonian *amora*, Rav Zevid was a close disciple of Abaye and Rava, and would often cite their statements for discussion among the great *amora'im* of his generation. It appears that Rav Zevid also devoted considerable time to explaining *baraitot* taught in Rabbi Oshaya's academy.

After Rava's death, his academy was continued in two locations, and after Rav Hama, Rav Zevid took over the Pumbedita branch, which he headed for about ten years. It is recorded that he was poisoned by servants of the Exilarch who were upset about a stringent halakhic decision of his.

מיצר שהחזיקו בו רבים – A path that the masses established – It is prohibited to impair the public's usage of a certain path that they established with the owner's permission. Moreover, with regard to any space of which the public has established usage, it is assumed that they did so with the permission of the owner (Rambam *Sefer Nezikin, Hilkhhot Nizkei Mamon* 13:24; *Shulhan Arukh, Hoshen Mishpat* 417:2 and *Sma* there).

בעל הבית שהניח פאה – The owner of a field who left *pe'a* – If the owner of a field left *pe'a* for the poor on one side of the field, and poor people came and requested *pe'a* from the other side and he allowed them to take it, both portions are considered *pe'a* (Rambam *Sefer Zera'im, Hilkhhot Mattenot Aniyyim* 2:13).

המפקיר את כרמו – One who renounces ownership of his vineyard but arises early the next day to harvest the grapes, he is obligated to observe the *halakhot* of *peret*, *olelot*, forgotten clusters of grapes left for the poor, and *pe'a* but is exempt from tithing the grapes of the vineyard (Rambam *Sefer Zera'im, Hilkhhot Mattenot Aniyyim* 5:27).

משום דרב יהודה, דאמר רב יהודה: מיצר שהחזיקו בו רבים – אסור לקלקלו.

תא שמע: בעל הבית שהניח פאה מצד אחד, ובאו עניים ונטלו מצד אחר – זה וזה פאה. ואי אמרת עבד איניש דינא לנפשיה, אמאי זה וזה פאה? לנקוט פורא וליתבי!

אמר רבא: מאי "זה וזה פאה" – לפטור מן המעשר,

בדתינא: המפקיר את כרמו, והשבים בבקר ובצור – חייב בפרט ובעוללות ובשכחה ובפאה, ופטור מן המעשר.

The Gemara answers that he cannot reclaim it due to Rav Yehuda's statement, as Rav Yehuda says: With regard to a path that the masses established^h as a public thoroughfare, it is prohibited to destroy it for them. Therefore, since the public already began using the alternative route, the owner cannot appropriate it from them.

The Gemara suggests: Come and hear an alternative proof from a *baraita*: With regard to the owner of a field who left produce in the corner of the field, which is given to the poor [*pe'a*],^{hb} on one side of the field, and poor people came and took from another side, this produce and that produce are both considered *pe'a*. And if you say that a person may take justice into his own hands, why are this and that both considered *pe'a*? Let him take a stick and sit in his field on the side from which the poor people are taking produce without his permission, and let him warn them to take only from the side that he allocated.

Rava said: In terms of monetary law he can prevent them from taking *pe'a* from the side that he did not allocate. What is meant by the ruling of: This produce and that produce are both considered *pe'a*? It means that they are considered *pe'a* with regard to exempting both portions of produce from tithes. Just as the portion that the poor people took is exempt from tithes, so is the portion that he allocated initially.

This is as it is taught in a *baraita*: In the case of one who renounces ownership of his vineyard^h and arose early in the morning before anyone else took possession of it and harvested it, the one who renounces ownership is obligated in the mitzva of individual fallen grapes left for the poor [*peret*],^{bn} and in the mitzva of incompletely formed clusters of grapes left for the poor [*olelot*],^b and in the mitzva of forgotten clusters of grapes^b left for the poor, and in the mitzva of *pe'a*, the four gifts to the poor that the Torah requires one to give from a vineyard (see Leviticus 19:9–10). But he is exempt from the mitzva to titheⁿ his produce, because this requirement does not apply to an ownerless field. Likewise, in the above case the portion of the field that was allocated for *pe'a* is exempt from tithes even after the owner reclaims it, as *pe'a* is considered ownerless property in this regard.

BACKGROUND

Produce in the corner of the field which is given to the poor [*pe'a*] – פאה: The Torah states that it is prohibited for a farmer to harvest the produce in a corner of his field. He must allow the poor to collect this produce themselves. The Sages decreed that the area of the corner must be at least one-sixtieth of the field. This mitzva appears in the Torah (Leviticus 19:9 and 23:22), and tractate *Pe'a* is devoted to the details of this mitzva. By Torah law, fields, vineyards, and olive groves are included in this mitzva.

Individual fallen grapes [*peret*] – פרט: It is prohibited for the owner of a vineyard to collect individual fallen grapes at the time of the harvest. Such grapes must be left for the poor.

Incompletely formed clusters of grapes [*olelot*] – עוללות: *Olelot* are clusters of grapes lacking a central stalk, or ones in which the grapes do not hang down one upon the other. The Torah prohibits gathering such incompletely formed clusters of grapes (Leviticus 19:10; see Deuteronomy 24:21). They must be left for the poor. There is a dispute among the Sages as to whether this *halakha* applies if one's entire vineyard grew in this manner.

Forgotten clusters of grapes – שכחה: This is one of the agricultural gifts to the poor. A farmer who forgot a cluster of grapes in the vineyard while harvesting them may not return to collect it. It must instead be left for the poor (Deuteronomy 24:19).

NOTES

Obligated in individual fallen grapes left for the poor, etc. – חייב בפרט וכו': Rashi explains, based on the Gemara later (94a), that although ownerless fruits are exempt from the mitzvot of obligatory gifts for the poor, in a case where one renders his fruit ownerless without actually enabling others to take it, he is obligated to observe these mitzvot. This is derived from the fact that the expression "You shall leave them" is mentioned twice with regard to these mitzvot (Leviticus 19:10, 23:22).

But he is exempt from the mitzva to tithe – ופטור מן המעשר: Rashi explains that *pe'a* is exempt from tithes because it is considered a form of ownerless property. *Tosafot* maintain that since *pe'a* is reserved for the poor, it cannot be considered ownerless property, which is by definition free for all. Rather, it is exempt because poor Levites have equal rights to *pe'a* (see Deuteronomy 14:29), so the mitzva of separating tithes, which are designated for the Levites, no longer applies to it.

מתני' נשברה כדו ברשות הרבים, והוחלק אחד במים או שלקה בחרסית – חייב. רבי יהודה אומר: במתכוין – חייב, באינו מתכוין – פטור.

MISHNA If one's jug broke in the public domain and another person slipped in the water from the jug and was injured from the fall, or if he was injured by the shards of the broken jug, the owner of the jug is liable. Rabbi Yehuda says: In a case where the owner of the jug acted with intent, he is liable, and in a case where he acted without intent, he is exempt.

גמ' אמר רב יהודה אמר רב: לא שנו אלא שטינפו כליו במים,

GEMARA Rav Yehuda says that Rav says: They taught that the owner of the jug is liable only when the clothes of the one who slipped were soiled by the dirty water.

Perek III
Daf 28 Amud b

אבל הוא עצמו – פטור, קרקע עולם היקתו.

But if the person himself was injured, the owner of the jug is exempt, as it is the ground that caused his injury, not the jug or the water.

כי אמריתיה קמיה דשמואל, אומר לי: מבדי אבנו וסכינו ומשאוי מבורו למדנו, וכולן אני קורא בהן: "שור" – ולא אדם, "חמור" – ולא כלים.

Rav Yehuda continued: When I stated this ruling of Rav before Shmuel, he said to me: After all, we derive the cases of damage caused by leaving one's stone, one's knife, or one's load^h in the public domain from the case of one's pit, and I therefore read, i.e., apply, with regard to all of them the inference of the Sages from the verse: "And an ox or a donkey fall therein" (Exodus 21:33), that the one who dug the pit is liable only if what incurred damage is an ox, but not a person,^h or a donkey, but not vessels.

והני מילי לענן קטלא, אבל לענן נזקין – אדם חייב, וכלים פטורין.

And this statement applies with regard to a situation where the person is killed, i.e., if one fell into a pit and was killed, the person who dug it is exempt from paying restitution, since the verse refers exclusively to an animal that was killed. But with regard to damage, the digger of the pit is liable to pay restitution for injury to a person, but exempt from paying restitution for damage to vessels,^h for which no distinction between death and injury can be applied. Therefore, the ruling in the case of the jug that broke in the public domain should be the opposite. The owner of the jug is liable to pay restitution for injury caused to another, as Shmuel holds that he is liable even if the injury is caused by the impact with the ground, but that he is exempt from paying restitution for the damage done to the clothes of the one who slipped.

ורב? הני מילי היכא דאפקרינהו, אבל היכא דלא אפקרינהו – ממונו הוא.

The Gemara asks: And how would Rav answer this difficulty? The Gemara answers: This presumption that liability for damage caused by one's stone, knife, or load is derived from the category of Pit, thereby exempting him from payment for damage to vessels, applies only in a case where he renounced ownership of them. But in a case where he did not renounce ownership of them, it is considered to be like any other case where his property causes damage.ⁿ Therefore, he is liable to pay for damage caused to the vessels.

מתיב רב אושעיא: "ונפל שמה שור או חמור," "שור" – ולא אדם, "חמור" – ולא כלים. מכאן אומר: נפל לתוכו שור וכליו ונשתברו, חמור וכליו ונתקרעו – חייב על הבהמה ופטור על הכלים, הא למה זה דומה? לאבנו וסכינו ומשאוי שהניחן ברשות הרבים והזיקו.

Rav Oshaya raises an objection from a *baraita* discussing Pit: It is derived from the verse: "And if a man shall open a pit, or if a man shall dig a pit and not cover it, and an ox or a donkey fall therein" (Exodus 21:33), that the digger is liable to pay restitution only if what incurred damage is an ox but not a person, or a donkey but not vessels. From here the Sages stated that if an ox with its equipment fell into a pit, and the ox was wounded and the equipment broke; or if a donkey with its equipment fell in, and the donkey was wounded and the equipment tore, then the one who dug the pit is liable to pay restitution for any injury sustained by the animal but exempt from paying restitution for the damaged equipment. To what case is this similar? It is similar to the case of his stone, or his knife, or his load that he left in the public domain, and they caused damage.

HALAKHA

אבנו וסכינו – ולא אדם וכו' – If damage was caused because of one's stone, knife, or load that he left in the public domain, then whether he renounced ownership of that item or not, the *halakhot* of a pit apply. Specifically, he is liable to pay if an animal is injured or killed by that property, or if a person is injured. This is also the *halakha* in a case where one leaves hazardous items on property that he had previously owned but later renounced while he retained ownership of the objects. This is in accordance with Shmuel's opinion, as the *halakha* is ruled in accordance with his opinion in monetary matters (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 13:3–4; *Shulhan Arukh, Hoshen Mishpat* 412:1).

שור ולא אדם וכו' – If one falls into a pit, the person who dug the pit is liable to pay restitution for his injury but is not liable to pay restitution if he dies. He is exempt from liability for damage caused to vessels, whether they break completely or are just damaged (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 13:1; *Shulhan Arukh, Hoshen Mishpat* 410:21).

Liable for injury to a person but exempt for damage to vessels – אדם חייב וכלים פטורין – If one pours water in the public domain, and the clothes of another are soiled by it, he is exempt, whether or not he renounced ownership of the water. If another person slips in the water and is injured, the one who poured the water is liable, in accordance with Shmuel's opinion (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 13:12; *Shulhan Arukh, Hoshen Mishpat* 412:5).

NOTES

Where he did not renounce ownership of them it is like his property causes damage – היכא דלא אפקרינהו – Into what category does this liability fall? Rashi explains that if one's item causes damage, he is liable due to the category of Ox. Ra'avad deems it as having the same *halakhot* as a forewarned ox. Since an item left in the public domain is an obvious hazard, as it is very likely to cause injury or damage, it is therefore analogous to a forewarned ox. He adds that it is also analogous to the case of a forewarned ox in that there is an element of negligence in leaving out an item in the public domain, as its owner should have guarded it more carefully.

נתקל באבן – The pedestrian stumbled on the stone:
If a stone is left in the public domain, and a pedestrian stumbles on it and is injured by it, or if he stumbles on the ground and is injured by the stone, the owner of the stone is liable, in accordance with the second version of Rabbi Elazar's statement. If he stumbles on the stone and is injured by his impact with the ground, the owner of the stone is exempt from liability, as even Rabbi Elazar and Shmuel agree with Rav in this case (Rambam *Sefer Nezikin*, *Hilkhot Nizkei Mamot* 13:3 and *Lehem Mishne* there; *Shulhan Arukh*, *Hoshen Mishpat* 411:1 and *Beur HaGra* there).

אדרבה, "מה דומה לזה" מבני ליה!
אלא: מאי דומה לזה? אבנו וסבינו
ומשאוי שהניחו ברשות הרבים והזיקו.

לפיכך אם הטיח צלוחיתו באבן –
חייב.

רישא קשיא לרב, וסיפא קשיא
לשמואל!

ולטעמך, תיקשי לך היא גופא:
(קשיא) רישא פטור, וסיפא חייב!

אלא, רב מתיר לטעמיה, ושמואל
מתיר לטעמיה.

רב מתיר לטעמיה: במה דברים
אמורים – בשתפקידו, אבל לא
הפקידו – חייב, לפיכך הטיח צלוחיתו
באבן – חייב.

ושמואל מתיר לטעמיה: השתא
דאמרת אבנו סבינו ומשאוי בבור
דמי, לרבי יהודה דמחייב על נקי
כלים בבור, לפיכך הטיח צלוחיתו
באבן – חייב.

אמר רבי אלעזר: לא שנו אלא שנתקל
באבן ונשוף באבן, אבל נתקל בקרקע
ונשוף באבן – פטור.

כמאן? דלא ברבי נתן.

איכא דאמרי, אמר רבי אלעזר: לא
תימא בנתקל באבן ונשוף באבן הוא
דמחייב, אבל נתקל בקרקע ונשוף
באבן – פטור. אלא אפילו נתקל
בקרקע ונשוף באבן – חייב. כמאן?
ברבי נתן.

The Gemara questions the wording of the *baraita*: **On the contrary, it should have stated: What is similar to this**, since the cases of one's stone, knife, or load are not mentioned in the Torah, but are derived from the case of Pit. **Rather**, the wording should be emended as follows: **What is similar to this? It is the case of his stone, or his knife, or his load that he left in the public domain, and they caused damage.**

The *baraita* continues: **Therefore**, if one **dropped his flask on a stone** that was left in the public domain, breaking the flask, the owner of the stone is **liable**.

The first clause of this *baraita* is **difficult according to** the opinion of Rav, since it compares the cases of a stone, a knife, and a load to the case of Pit, and it does not distinguish between a situation in which he renounced ownership of them or one where he did not. **And the last clause** of the *baraita*, which deems the owner of a stone in the public domain liable to pay restitution for the damage to the broken flask, is **difficult according to** the opinion of Shmuel. According to him, the owner should be liable only for causing injury and not for damaging vessels.

The Gemara responds to this objection: **And according to your reasoning**, the *baraita* itself should pose a difficulty for you, since the first clause states that one is **exempt** from liability for damage to vessels, and the last clause states that he is **liable**.

Rather, Rav resolves the contradiction according to his line of reasoning, and Shmuel resolves it according to his line of reasoning.

Rav resolves it according to his line of reasoning as follows: **In what case is this statement said?** Concerning what case does the *baraita* rule that a stone, a knife, and a load are analogous to Pit, exempting their owner from liability for breakage to vessels caused by them? It is **where he renounced ownership of them**. But if he did not renounce ownership of them he is **liable**. **Therefore**, if one **dropped his flask on a stone** belonging to another person in the public domain, the owner of the stone is **liable** to pay for the damage to the flask.

And Shmuel resolves the contradiction according to his line of reasoning: Now that you said that the cases of one's stone, one's knife, and one's load are similar to one's pit, then according to Rabbi Yehuda, who deems one liable to pay for damage caused to vessels by falling into a pit that he dug, one is **therefore liable** in a case where someone dropped his flask on a stone belonging to him, and the flask broke.

§ Rabbi Elazar says: They taught that the owner of the stone is liable only in a case where the pedestrian stumbled on the stone and the flask scraped against the stone and broke. But if he stumbled on the ground, not the stone, and the flask consequently fell and scraped against the stone, causing the flask to break, the owner of the stone is exempt from liability for the damage.

In accordance with whose opinion is this statement? It is **not in accordance** with the opinion of Rabbi Natan, who maintains that if damage is caused by two people and one of them is exempt from paying compensation, the other must pay the entire amount. Similarly here, since there is no liability for damage caused by stumbling on the ground, compensation should be collected from the owner of the stone.

There are those who say an alternative version of this discourse: Rabbi Elazar says: Do not say that it is only in a case where the pedestrian stumbled on the stone^h and the flask scraped against the stone, causing the flask to break, that he is deemed liable, but that if he stumbled on the ground and the flask scraped against the stone, causing the flask to break, he is **exempt**. Rather, even if the pedestrian stumbled on the ground and the flask scraped against the stone, causing the flask to break, he is **liable**. In accordance with whose opinion is this statement? It is in accordance with the opinion of Rabbi Natan.

רבי יהודה אומר: במתכוין – חייב וכו'.
היכי דמי מתכוין?

אמר רבה: במתכוין להורידה למטה
מכתפו. אמר ליה אביי: מכיל דמחייב
רבי מאיר אפילו נפשה? אמר ליה: אין,
מחייב היה רבי מאיר אפילו אנה בידו.

אמאי? אנוס הוא, ואנוס רחמנא פטריה,
דכתיב: "ולנער לא תעשה דבר!"

וכי תמא, הני מילי לענין קטלא. אבל
לענין נזקין חייב – והתנא: נשברה בידו
ולא סלקו, נפל גמלו ולא העמידו – רבי
מאיר מחייב בהויקו, וחכמים אומרים:

S The mishna teaches that if someone's jug broke in the public domain and one slipped in the water from the jug and was injured from the fall, or if he was injured by the shards of the broken jug, the owner of the jug is liable. Rabbi Yehuda says: In a case where the owner of the jug acted **with intent**, he is liable, and in a case where he acted without intent, he is exempt. The Gemara asks: **What are the circumstances in which it is considered that he acted with intent?**

Rabba says: Even where he just intends to lower the jug off his shoulder and accidentally breaks it, he is liable to pay for the damage he causes, according to Rabbi Yehuda. Abaye said to him: By inference, does Rabbi Meir, who is the anonymous first tanna of the mishna, deem him liable even if the jug cracked by itself? Rabba said to him: Indeed, Rabbi Meir would deem him liable even if he were holding the handle of the jug in his hand, the optimal manner for holding it, and the handle snapped, causing the jug to fall and break, an accident clearly beyond his control.

The Gemara asks: **Why is this so? Isn't he the victim of circumstances beyond his control? And the Merciful One exempts a victim of circumstances beyond his control^{NH} from punishment, as it is written with regard to a betrothed young woman who is raped: "But to the young woman you shall do nothing"** (Deuteronomy 22:26).

And if you would say that this matter applies only with regard to exemption from the death penalty, but with regard to damages one is liable even for circumstances beyond his control, but isn't it taught in a *baraita*: If one's jug broke and he did not remove its shards, or if his camel fell and he did not stand it up, Rabbi Meir deems him liable to pay for any damage they cause, and the Rabbis say that

NOTES

The Merciful One exempts a victim of circumstances beyond his control – אנוס רחמנא פטריה – The early commentaries draw a contrast between this statement and the Gemara elsewhere (26b), where it is derived from the verse: "A burn for a burn" (Exodus 21:25), that one is liable to pay for damage he causes, whether he does so willfully or due to circumstances beyond his control. *Tosafot* explain that while one is liable if circumstances are partially beyond his control, if they are completely beyond his control he is exempt. Rabbeinu Hananel and the Ra'avad write that one is liable to pay for damage he causes with his body even if it was completely unavoidable, but that it stands to reason that one should be exempt from paying for damage caused by his property.

HALAKHA

And the Merciful One exempts a victim of circumstances beyond his control – אנוס רחמנא פטריה – When one acts under circumstances beyond his control, he is exempt from any consequences, including lashes or an obligation to bring a sacrifice, and certainly from capital punishment (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 1:9).

Perek III

Daf 29 Amud a

פטור מדיני אדם וחייב בדיני שמים.

ומודים חכמים לרבי מאיר באבנו סבינו
ומשאוי שהניחן בראש גגו ונפלו ברוח
מצויה והויקו – שהוא חייב. ומודה רבי
מאיר לרבנן במעלה קנקנין על הגג על
מנת לנגבן ונפלו ברוח שאינה מצויה
והויקו – שהוא פטור!

אלא אמר אביי: בתרתי פליגי, פליגי
בשעת נפילה, ופליגי לאחר נפילה.

he is exempt according to human laws but liable according to the laws of Heaven.

The Gemara comments: And the Rabbis concede to the opinion of Rabbi Meir in the cases of one's stone, one's knife, or one's load, that if he placed them on top of his roof and they fell as a result of being blown off by a typical wind, i.e., one of ordinary force, and they caused damage, that he is liable. And Rabbi Meir concedes to the opinion of the Rabbis in the case of one who puts pitchers [*kankanin*]⁴ on the roof in order to dry them, and they fell as a result of being blown off by an atypical wind, i.e., one of unusual force, and they caused damage, that he is exempt. Evidently, even Rabbi Meir concedes that if one's property causes damage due to circumstances completely beyond his control, he is exempt.

Accordingly, Abaye rejects Rabba's explanation of Rabbi Yehuda's statement, that he deems the owner of the jug liable even if he merely attempted to take it off his shoulder and it broke, and offers another explanation. Rather, Abaye said that Rabbi Meir and Rabbi Yehuda disagree with regard to two different situations. They disagree with regard to a situation where the damage was caused at the time of the person's fall,ⁿ and they disagree with regard to a situation where the damage was caused after the person's fall.

LANGUAGE

Pitchers [*kankanin*] – קנקנין – Apparently from the Assyrian and Ugaritic *kankan*, which means vessel or container. In the context here it is referring to a clay pitcher.

NOTES

At the time of the person's fall – בשעת נפילה – *Tosafot* maintain that this does not refer to damage caused during the fall, as that would be considered damage caused by one's body, which would render the owner of the jug liable even if it was beyond his control. Rather, it is referring to damage caused shortly after the fall, when the owner of the barrel did not yet have the chance to clear away the broken pieces.

By contrast, the Ra'avad maintains that it is referring to damage caused during the fall. He explains that Rabbi Yehuda holds that the owner of the jug is exempt because he considers stumbling completely beyond one's control, and one is not liable in such a case even for damage caused by his body. In addition, since the person stumbled on a stone or a bump in the road, he is not the direct cause of the damage, similar to a case where one pushes another. The Ramban adds that even according to Rabbi Meir, the one who stumbled is not considered to have caused the damage directly; rather, Rabbi Meir holds him liable to pay for damage resulting from negligence.

NOTES

One who stumbles is considered negligent – נִתְקַל פּוֹשֵׁעַ – **הוא**: The *Tosefot Rid* explains that Rabbi Meir holds that one should look out for obstacles and if he does not notice them, he is responsible for damage caused as a result, whereas Rabbi Yehuda maintains that one is not expected to look at the ground while he walks and therefore would not be considered negligent if he stumbled and caused damage.

With regard to one who renounces ownership of his hazardous property – בְּמִפְקִיר נִזְקֵיוֹ: This dispute is not only with regard to the case mentioned here, where the items fell due to one's negligence and he renounced ownership of them. Even if he is not the cause of their falling in the public domain, Rabbi Meir holds that he incurs liability for failing to remove them. According to Rabbi Yehuda, no one is liable to pay for damage caused by an ownerless pit or other obstacle in the public domain and one is liable to pay only for damage caused by a pit that belongs to him. For example, one is liable to pay for damage caused by a pit when he digs the pit on his own property and subsequently renounces ownership of the property but not of the pit.

HALAKHA

One who stumbles is not considered negligent – נִתְקַל לֹא – **פּוֹשֵׁעַ**: If one carrying his jug in his hand stumbles, causing the jug to break, he is exempt from any damage caused as a result, as stumbling is not deemed negligence. Nevertheless, if he could have cleared the shards and did not, he is liable by the laws of Heaven. This is in accordance with the opinion of the Rabbis (Rambam *Sefer Nezikin*, *Hilkhot Nizkei Mamon* 13:7; *Shulḥan Arukh*, *Hoshen Mishpat* 412:4).

פְּלִיגִי בְּשַׁעַת נְפִילָה – בְּנִתְקַל פּוֹשֵׁעַ, מֵרָסָבֶר: נִתְקַל פּוֹשֵׁעַ הוּא, וְיָמָר סָבֶר: נִתְקַל לֹא פּוֹשֵׁעַ הוּא.

פְּלִיגִי לְאַחַר נְפִילָה – בְּמִפְקִיר נִזְקֵיוֹ, מֵרָסָבֶר: מִפְקִיר נִזְקֵיוֹ – חַיִּיב, וְיָמָר סָבֶר: פָּטוּר.

וּמִמָּמַי? מִדִּקְתָּנִי תִרְתִּי: הוֹחֵלֵק אֶחָד בְּמִים אוֹ שֶׁלֶקָה בְּחִרְסִית. הֵינּוּ הֵךְ! אֶלֶּא לֹא הֵךְ קֹאֵמֶר: הוֹחֵלֵק אֶחָד בְּמִים בְּשַׁעַת נְפִילָה, אוֹ שֶׁלֶקָה בְּחִרְסִית לְאַחַר נְפִילָה.

וּמִדְמַתְנִינִן בְּתִרְתִּי, בְּרִייתָא נִמִּי בְּתִרְתִּי.

בְּשִׁלְמָא בְּדוֹ מִשְׁבַּחַת לָהּ אוֹ בְּשַׁעַת נְפִילָה אוֹ לְאַחַר נְפִילָה. אֶלֶּא גְמִלוֹ, בְּשִׁלְמָא לְאַחַר נְפִילָה מִשְׁבַּחַת לָהּ בְּמִפְקִיר נְבִלְתוֹ, אֶלֶּא בְּשַׁעַת נְפִילָה הֵיכִי מִשְׁבַּחַת לָהּ?

אָמַר רַב אֲחָא: כְּגוֹן דְּעֵבְרָה בְּמִיָּא דְּרִיךְ שְׂרַעְתָּא דְּנִהְרָא.

הֵיכִי דְמִי? אִי דְאִיכָּא דְרָכָא אַחֲרִינָא – פּוֹשֵׁעַ הוּא, וְאִי דְלִיכָּא דְרָכָא אַחֲרִינָא – אָנוּס הוּא!

They disagree in a situation where the damage was caused at the time of the person's fall, with regard to whether or not one who stumbles, thereby causing his jug to break, is considered negligent. One Sage, Rabbi Meir, holds that one who stumbles is considered negligent,^N as his carelessness caused him to stumble. Therefore, he is liable to pay for damage caused by the shards of the jug, which broke as result of his stumbling. And one Sage, Rabbi Yehuda, holds that one who stumbles is not considered negligent.^H

They disagree in a situation where the damage was caused after the person's fall, with regard to one who renounces ownership of his hazardous property.^N Presumably, the owner of the jug has no interest in keeping the shards, and it is considered as though he renounced his ownership of them. One Sage, Rabbi Meir, holds that one who renounces ownership of his hazardous property is liable to pay restitution for damage caused by it, despite the fact that it no longer belongs to him. And one Sage, Rabbi Yehuda, holds that he is exempt from paying restitution, as it does not belong to him anymore.

And from where is this interpretation derived? It is derived from the fact that the mishna teaches two possible cases of damage, stating: Another person slipped in the water or was injured by the shards. This case, slipping in the water, is seemingly identical to that case, injured by the shards. Rather, is it not necessary to explain that this is what the mishna is saying: Another person slipped in the water at the time of the person's fall, or was injured by the shards after the person's fall?

The Gemara infers: And since the dispute in the mishna is with regard to two situations, the dispute in the *baraita* between Rabbi Meir and the Rabbis must also relate to two situations, as there too, two cases are mentioned, a case where one's jug broke and a case where one's camel fell. Apparently, the dispute is with regard to damage caused both at the time of the fall and after the fall. Rabbi Meir holds that one who stumbles and breaks his jug, causing damage to others, is considered negligent and that one who renounces ownership of his hazardous property is liable, and the Rabbis disagree with regard to both issues.

The Gemara asks: Granted, with regard to the case where one's jug broke, you find these circumstances either at the time of the fall or after the fall. But with regard to the case where his camel fell, granted, you find this circumstance after the fall, when he renounces his ownership of the carcass, not considering it worth keeping, but how can you find these circumstances at the time of the fall? How can the camel's falling be considered to be due to the owner's negligence, possibly rendering him liable to pay for injuries caused by it?

Rav Aḥa said: For example, in a case where the camel crossed through water, through the inundation [*serata*]^L of a river that overflowed its banks, and it stumbled there, the owner was negligent, as he should not have gone this way.

The Gemara asks: What are the circumstances? If there was another route, and he nevertheless chose this one, he is clearly negligent according to all opinions. And if there was no other route, he is a victim of circumstances beyond his control, and he is exempt from liability according to all opinions.

LANGUAGE

Inundation [*serata*] – שְׂרַעְתָּא: Possibly from the biblical root *shin, reish, ayin*, meaning wide, indicating here the widening or swelling of the river, where it overflows its banks. Syriac has

a similar word that is used in *Targum Yonatan*, *sorata*, meaning slippery. Accordingly, the word here would mean a place where one could slip into the river.

בְּמִתְכוּוֹן – Where he intends to acquire the shards – **לְזִכּוֹת בְּחִרְסָהּ**: If one's jug broke, even if it was due to circumstances beyond his control, and he intended to retain possession of the broken pieces, he is liable to pay for any damage caused by them (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 13:7; *Shulḥan Arukh, Hoshen Mishpat* 412:4).

אֵלָּא מִשְׁבַּחַת לָהּ, דְּאִתְקִיל וְאִתְקִילָהּ בֵּיהּ גְּמֵלָא.

Rather, you find this circumstance in a case **where** the owner **stumbled and the camel then stumbled on him**. In this case, the Sages engage in a dispute whether or not one who stumbles is considered negligent.

מִפְקִיד נִזְקֵי מַאי מִתְכוּוֹן אִיבָא?

The Gemara asks: According to Abaye's explanation that the dispute between Rabbi Meir and Rabbi Yehuda is with regard to a situation where the owner of the jug **renounces ownership of his hazardous property** after it falls, **what** is the meaning of Rabbi Yehuda's statement that if the owner of the jug acted **with intent** he is liable? What intention is **there** after the jug fell and broke?

אָמַר רַב יוֹסֵף: בְּמִתְכוּוֹן לְזִכּוֹת בְּחִרְסָהּ. וְכֵן
אָמַר רַב אֲשִׁי: בְּמִתְכוּוֹן לְזִכּוֹת בְּחִרְסָהּ.

Rav Yosef said: It is a situation **where he intends to acquire the shards**⁴ of the broken jug, and he does not renounce his ownership of them. It is specifically in that case that Rabbi Yehuda holds him liable to pay for damage caused by the shards. **And similarly**, Rav Ashi said: It is a situation **where he intends to acquire the shards**.

רַבִּי אֶלְעָזָר אָמַר: בְּשַׁעֲת נִפְלָה מִחֲלוּקָתָא.

§ Rabbi Elazar says: The dispute in the *baraita* is with regard to a situation where the damage occurred **at the time** of the person's fall.

אָבֵל לְאַחַר נִפְלָה מַאי – דְּבָרֵי הַכֵּל פְּטוּר?
וְהָא אִיבָא רַבִּי מֵאִיר דְּמַחֲיִיב! אֵלָּא מַאי –
דְּבָרֵי הַכֵּל חַיִּיב? וְהָא אִיבָא רַבֵּנּוּ דְּפִטְרִי!

The Gemara asks: **But after the fall**, according to this statement, **what** is the *halakha*? Does **everyone** agree that the owner of the jug is **exempt** from liability? **But isn't there Rabbi Meir, who deems him liable**, since he did not remove the shards? **Rather**, what is the *halakha*? Does **everyone** agree that **he is liable**? **But aren't there the Rabbis, who deem him exempt**?

אֵלָּא מַאי בְּשַׁעֲת נִפְלָה – אִף בְּשַׁעֲת
נִפְלָה, וְקָמְשַׁמַּע לָן כְּדָאבֵי.

The Gemara answers: **Rather**, what is the explanation of the phrase: **At the time of the person's fall**? It means **even at the time of the person's fall**, and it **teaches us** that the dispute is referring to a situation where the damage occurred after the fall and also to a situation where it occurred at the time of the fall, **in accordance with Abaye's explanation of the mishna**.

Perek III

Daf 29 Amud b

וְרַבִּי יוֹחָנָן אָמַר: לְאַחַר נִפְלָה מִחֲלוּקָתָא.

And Rabbi Yoḥanan says: The dispute is with regard to a situation where the damage occurred **after the fall**.

אָבֵל בְּשַׁעֲת נִפְלָה מַאי – דְּבָרֵי הַכֵּל פְּטוּר?
וְהָא מִדְּקָאמַר רַבִּי יוֹחָנָן לְקַמְזָן: לֹא תִימָא
מִתְנִיתִין רַבִּי מֵאִיר הֵיא דְאָמַר נִתְקַל פּוֹשֵׁעַ
הוּא, מִכְּלָל דְּרַבִּי מֵאִיר מַחֲיִיב!

The Gemara asks: **But at the time of the person's fall**, according to this statement, **what** is the *halakha*? Does **everyone** agree that the owner of the jug is **exempt** from liability? **But from the fact that Rabbi Yoḥanan says later** (31a), with regard to another mishna in this chapter: **Do not say that the mishna is the opinion of Rabbi Meir, who says that one who stumbles is considered negligent**, by inference it is clear that he holds that **Rabbi Meir deems one who stumbles liable** to pay damages. Evidently, it is not unanimously agreed upon that he is exempt.

אֵלָּא מַאי, דְּבָרֵי הַכֵּל חַיִּיב? וְהָא מִדְּקָאמַר
רַבִּי יוֹחָנָן לְקַמְזָן: לֹא תִימָא מִתְנִיתִין רַבִּי
מֵאִיר הֵיא דְאָמַר נִתְקַל פּוֹשֵׁעַ הוּא, מִכְּלָל
דְּפִטְרִי רַבֵּנּוּ!

Rather, what is the *halakha* in this case? Does he say that **everyone** agrees that **he is liable**? **But from the fact that Rabbi Yoḥanan says later: Do not say that the mishna is the opinion of Rabbi Meir, who says that one who stumbles is considered negligent**, by inference it is clear that he holds that **the Rabbis deem him exempt**.

אֵלָּא הָא קָא מְשַׁמַּע לָן, דְּמִפְקִיד נִזְקֵי
דְּהָכָא הוּא דְּפִטְרִי רַבֵּנּוּ, דְּאָנוּס הוּא. אָבֵל
מִפְקִיד נִזְקֵי דְּעֵלְמָא – מַחֲיִיב.

The Gemara answers: **Rather**, this is what Rabbi Yoḥanan teaches us: That the circumstance in which the Rabbis deem one who renounces ownership of his hazardous property⁴ exempt is only the situation stated **here**,⁵ i.e., where he stumbled, as he is the victim of circumstances beyond his control. **But in the general case of one who renounces ownership of his hazardous property, they deem him liable** to pay for damage caused by it.

HALAKHA

One who renounces ownership of his hazardous property – **מִפְקִיד נִזְקֵי פְטוּר**: If one's jug broke due to circumstances beyond his control, and he did not intend to retain possession of the shards, he is exempt from damage caused by them. If it fell and broke due to his negligence, he is liable to pay for damage caused by the shards, whether during the fall itself or afterward, even if he renounces ownership of the shards, in accordance with the opinion of Rabbi Yoḥanan (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 13:5; *Shulḥan Arukh, Hoshen Mishpat* 412:4).

NOTES

One who renounces ownership of his hazardous property is exempt – **מִפְקִיד נִזְקֵי פְטוּר**: In the Jerusalem Talmud it is noted that this exemption applies only to a pit and the like. By contrast, if one renounces ownership of his ox and leaves it in the public domain knowing it is likely to cause damage, then, since an ox walks and causes damage on its own, he is liable to pay for the damage it causes.

A pit in the public domain – בור ברשות הרבים: If one digs a pit in the public domain, although it does not belong to him, he is liable to pay for any damage caused by it, since he is the one who created it (Rambam *Sefer Nezikin, Hilkhoh Nizkei Mammon* 12:2; *Shulhan Arukh, Hoshen Mishpat* 410:6).

And leavened bread from six hours onward – חמץ משש שעות ולמעלה: It is prohibited to derive benefit from leavened bread that is in the possession of a Jew after the sixth hour, i.e., noon, of the eve of Passover, since the owner violated the mitzva to destroy his leavened bread. Rashi holds that he also transgressed the prohibition of: It shall not be seen and it shall not be found (Rambam *Sefer Zemanim, Hilkhoh Hametz Umatza* 1:9; *Shulhan Arukh, Orach Hayyim* 443:1).

One who finds an uncovered pit and covers it, etc. – מוציא בור מגולה וכסוה וכו': If one finds an uncovered pit, covers it, and then uncovers it again, the one who dug the pit in the first place is liable to pay for the damage it causes, and the one who covered and uncovered it is exempt, since he merely restored it to its prior state. By contrast, if one finds a pit, fills it with dirt, and then removes the dirt again, he is liable, since by filling it he reverses the initial act of digging it (Rambam *Sefer Nezikin, Hilkhoh Nizkei Mammon* 12:6; *Shulhan Arukh, Hoshen Mishpat* 410:3).

NOTES

חמץ משש שעות – Leavened bread from six hours onward – **חמץ משש שעות ולמעלה**: It is forbidden to derive benefit from leavened bread from the sixth hour of the day on the eve of Passover. Since this prohibition includes deriving any benefit, not just eating, the leavened bread is rendered useless and no longer has any monetary value. Since an item that has no value cannot be owned, it is not considered its owner's property.

An uncovered pit in the public domain and covers it, and then uncovers it again – בור מגולה וכסוה וחזר וגילהו: Even if the one who dug a pit saw it being covered by someone else, he is not exempt from responsibility for it, since he must take into account the possibility that someone may uncover it.

איתמר: מפקיר נזקיו – רבי יוחנן ורבי אלעזר, חד אמר: חייב, וחד אמר: פטור.

לימא, מאן דמחייב – רבבי מאיר, ומאן דפטור – רבבנ?

אליבא דרבבי מאיר כולי עלמא לא פליגי. בי פליגי – אליבא דרבנן. מאן דפטור – רבבנ, ומאן דמחייב – אמר לך: אנא דאמרי אפילו לרבנן, עד כאן לא פטרי רבנן אלא במפקיר נזקיו דהכא. משום דאנוס הוא, אבל מפקיר נזקיו דעלמא – מחייבי.

הסתמיים דרבי אלעזר הוא דאמר חייב, דאמר רבי אלעזר משום רבי ישמעאל: שני דברים אינן ברשותו של אדם ועשאו הכתוב כאילו הן ברשותו, ואילו הן: בור ברשות הרבים, וחמץ משש שעות ולמעלה. תסתמיים.

ומי אמר רבי אלעזר הכי? והא אמר רבי אלעזר איפכא! דתנן: ההופך את הגלל ברשות הרבים והזיק בהן אחר – חייב בנזקו, ואמר רבי אלעזר: לא שנו אלא שנתכוין לזכות בהן, אבל לא נתכוין לזכות בהן – פטור. אלמא, מפקיר נזקיו – פטור!

אמר רב אדא בר אבהו: שהתורה למקומה. אמר רבינא: משל דרב אדא בר אבהו למה הדבר דומה? למוציא בור מגולה וכסוה, וחזר וגילהו.

אמר ליה מר זוטרא בריה דרב מרי לרבינא: מי דמי? התם לא אסתלק להו מעשה ראשון, הכא אסתלק להו מעשה ראשון!

It was stated: With regard to one who renounces ownership of his hazardous property that he left in the public domain, there is a dispute between the *amora'im* Rabbi Yohanan and Rabbi Elazar. One said that he is liable, and one said that he is exempt.

The Gemara suggests: Shall we say that the one who deems him liable holds in accordance with the opinion of Rabbi Meir, and the one who deems him exempt holds in accordance with the opinion of the Rabbis?

The Gemara responds: No; in accordance with the opinion of Rabbi Meir, everyone agrees that one who renounces ownership over his hazardous property is liable. Rather, when they disagree it is in accordance with the opinion of the Rabbis. They disagree as to what the opinion of the Rabbis is. The one who deems him exempt holds that his opinion is in accordance with the opinion of the Rabbis. And the one who deems him liable could have said to you: I maintain that what I say is correct even according to the opinion of the Rabbis; the Rabbis deem one who renounces ownership over his hazardous property exempt only in the situation here, because he is a victim of circumstances beyond his control. But in a general case of one who renounces ownership of his hazardous property, they deem him liable.

The Gemara suggests: It may be concluded that Rabbi Elazar is the one who says that he is liable, as Rabbi Elazar says in the name of Rabbi Yishmael: There are two entities that are not in a person's legal possession and nevertheless the verse rendered them as though they were in his possession with regard to certain halakhic responsibilities. And these are: A pit that he dug in the public domain^h and leavened bread remaining in his possession on the eve of Passover from six hours, i.e., noon, onward.^{hn} Although deriving any benefit from the bread is prohibited, and it is therefore no longer in its owner's legal possession, nevertheless he is commanded to destroy it. The Gemara concludes: It may be concluded that Rabbi Elazar is the one who says that he is liable.

The Gemara asks: And did Rabbi Elazar actually say this, that one who renounces ownership of his hazardous objects is liable? But didn't Rabbi Elazar say the opposite? As we learned in a mishna (30a): In the case of one who turns over dung in the public domain and another person incurred damage due to it, he is liable to pay for his damage. And Rabbi Elazar says: They taught this ruling only in a case where the one who turned over the dung intended to acquire it, but in a case where he did not intend to acquire it he is exempt. Apparently, according to Rabbi Elazar, one who renounces ownership of his hazardous property is exempt, since he is liable only if he intends to take possession of the dung, even if he moved it significantly.

Rav Adda bar Ahava said: Rabbi Elazar was referring to a case where he returned the dung to its prior place. Therefore, he is exempt unless he intended to acquire it. Ravina said: This can be explained by means of a parable: To what is the statement of Rav Adda bar Ahava comparable? To one who finds an uncovered pit in the public domain and covers it,^h and then uncovers it again.ⁿ Since he left the pit as he found it, he is exempt from paying damages, and the liability lies with the one who dug the pit.

Mar Zutra, son of Rav Mari, said to Ravina: Is this comparable? There, in the case of the pit, the result of the initial act of digging the pit was not removed, since even when he covered the pit, the pit itself still existed. But here, the result of the initial act was removed, since once the dung was moved from its prior place, there was no longer any hazardous object there. Therefore, by returning it to its place, the hazard is created anew.

במצמצם – In a case where he restricts them, etc. – **זכור**: If one makes a fence of thorns that protrude into the public domain, causing injury, he is liable to pay full restitution for damage it causes. If he confines the thorns to his own property, he is exempt from liability, as it is uncommon for people to rub against walls. This is in accordance with the opinion of Rabbi Yohanan and Rav Aha, son of Rav Ika (*Shulhan Arukh, Hoshen Mishpat* 415:1).

אפיון על דברו – **בבור**: If one digs a pit in the public domain or he digs a pit on his own property but opens it to the public domain, he is liable to pay for the damage it causes (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 12:2; *Shulhan Arukh, Hoshen Mishpat* 410:6).

NOTES

Because it is not the typical manner of people to rub against walls – **לפי שאין דרכן של בני אדם להתחבך** – **בבתלים**: The later commentaries state a possible practical difference between the two reasons for exemption in a case where he restricted the thorns to his own property: In a case where an animal is injured by the thorns, then according to the reason that it is not the typical manner of people to rub against walls, perhaps he is liable, as this does not apply to animals. If the reason one is exempt is that it is a pit in his own property, he is exempt in this case as well (*Ayyelet HaShahar*). See the Meiri on the mishna on 30a, and *Yam shel Shlomo*.

הא לא דמי אלא למוציא בור מגולה ומטמאה וחוץ וחרפה, דאסתלקו להו מעשה ראשון וקיימא לה ברשותו!

אלא אמר רב אשי: כשהפכה לפחות משלשה.

ומאי דוחקיה דרבי אלעזר לאוקמיה בגון שהפכה לפחות משלשה, וטעמא דכי נתבטל לזכות בה, הא אין מתבטל לזכות בה – לא? לוקמה למעלה משלשה, ואף על גב דלא נתבטל לזכות בה – חייב!

אמר רבא: מתניתין קשייתה; מאי אריא דפך? לתני "הגביה"! אלא שמע מינה, כל דפך – למטה משלשה הוא.

ומדרבי אלעזר אמר חייב, רבי יוחנן אמר פטור.

ומי אמר רבי יוחנן הכי? והתני: המצמצם את הקוץ ואת הזכוכית, והגודר גדרו בקוצים, וגדר שנפל לרשות הרבים, והזיק בהן אחר – חייב בנזקו.

ואמר רבי יוחנן: לא שנו אלא במפרית, אבל במצמצם – פטור; מצמצם מאי טעמא פטור – לאו משום דהויא ליה בור ברשותו? מכלל דחייבא דבור ברשות הרבים הוא. אלמא מפיק נזקיו – חייב!

לא, לעולם אימא לך: מפיק נזקיו – פטור, ומצמצם מאי טעמא פטור? משום דאיתמר עלה, אמר רב אחא בריה דרב איקא: לפי שאין דרכן של בני אדם להתחבך בבתלים.

Rather, it is comparable only to one who finds an uncovered pit and fills it with dirt and then digs it up again, as in this case the result of the initial act is removed, and the new pit therefore exists in his possession and he is liable. Likewise, one who moves dung in the public domain and then restores it to its prior place is deemed liable whether or not he intends to acquire it.

Rather, Rav Ashi said that Rabbi Elazar was referring to a case when he turned it over at a height of less than three handbreadths, which is not considered removal of the dung from its place.

The Gemara asks: But according to this explanation, what forced Rabbi Elazar to interpret the mishna as referring specifically to the unique case where he turned over the dung at a height of less than three handbreadths, and consequently the reason he is liable is that he intended to acquire it, but if he does not intend to acquire it he is not liable? Let him interpret the mishna as referring to a case where he turned over the dung at a height above three handbreadths, in which case even if he did not intend to acquire it, he is liable.

Rava said: What forced him was that the mishna was difficult for him. Why does it state specifically that he turned over the dung? Let it teach that he lifted the dung. Rather, learn from the fact that the mishna does not use the term: Lifted, which generally is referring to the act of lifting an object three handbreadths for the purpose of acquisition, that whenever the term turned over is used, it is referring to an act in which the object is lifted to a height of under three handbreadths from the ground.

The Gemara concludes: And from the fact that Rabbi Elazar was evidently the one who said that one who renounces ownership of his hazardous object in the public domain is still liable to pay for any damage it causes, Rabbi Yohanan is clearly the one who said he is exempt.

The Gemara asks: And did Rabbi Yohanan actually say this, that if one renounces ownership of his object he is exempt from liability for any damage it causes? But didn't we learn in a mishna (30a): With regard to one who conceals a thorn or a piece of glass, or who puts up a fence of thorns, or who puts up a fence that subsequently fell into the public domain, and another person incurred damage due to any of these, he is liable to pay for this person's damage.

And Rabbi Yohanan says: With regard to one who puts up a fence of thorns, they taught that he is liable only in a case where he projects the thorns out into the public domain, but in a case where he restricts them^h to his own property, he is exempt. The Gemara infers: In a case where he restricts them, what is the reason that he is exempt? Is it not because it is considered a pit on his own property?^h By inference, the liability in the category of Pit, according to Rabbi Yohanan, is in the public domain, where a pit generally does not belong to the one who dug it. Apparently, Rabbi Yohanan holds that one who renounces ownership of his hazardous property is liable.

The Gemara answers: No, actually I could say to you that in principle, one who renounces ownership of his hazardous property is exempt. Nevertheless, one who puts up a fence of thorns is liable, because he does not renounce ownership of the thorns that protrude into the public domain. And in a case where he restricts the thorns to his own property, what is the reason he is exempt? The reason is not that he is not liable to pay for the damage of a pit in his own property, but rather because it was stated about this case that Rav Aha, son of Rav Ika, said: He is exempt because it is not the typical manner of people to rub against walls,ⁿ but to keep a small distance from them. Therefore, if a pedestrian is injured by the thorns, it is considered an unusual accident, for which the owner of the fence is not liable.

NOTES

Rather, Rabbi Yohanan is actually the one who said he is liable – אֵלָּא לְעוֹלָם רַבִּי יוֹחָנָן אָמַר חַיִּיב – If Rabbi Yohanan is the one who said he is liable, why was it necessary for Rav Aha, son of Rav Ika, to explain Rabbi Yohanan's statement with regard to a fence of thorns based on the reasoning that it is not the typical manner of people to rub against walls? *Tosafot* answer that Rabbi Yohanan could have held that one is liable both for a pit that he placed in the public domain and for one on his own property.

וְיָמֵי אָמַר רַבִּי יוֹחָנָן הֲכִי? וְהָאָמַר רַבִּי יוֹחָנָן: הֲלָכָה בְּסֵתֵם מִשְׁנָה, וְתַנְּן: הַחוּפֵּר בּוֹר בְּרִשּׁוֹת הָרִבִּים, וְנִפְלַל לְתוֹכוֹ שׁוֹר אֹו חֲמוֹר וּמֵת – חַיִּיב!

אֵלָּא, לְעוֹלָם רַבִּי יוֹחָנָן אָמַר חַיִּיב.

וּמִדְרַבִּי יוֹחָנָן אָמַר חַיִּיב, רַבִּי אֶלְעָזָר אָמַר פָּטוּר? וְהָאָמַר רַבִּי אֶלְעָזָר

The Gemara asks: And did Rabbi Yohanan actually say that one who renounces ownership of his hazardous objects is exempt? But didn't Rabbi Yohanan say that in general, the *halakha* is in accordance with an unattributed mishna, and we learned in an unattributed mishna (50b): In the case of one who digs a pit in the public domain and an ox or a donkey fell into it and died, he is liable. This mishna is referring to one who digs a pit in the public domain, where it is not owned by the one who dug it, yet the mishna deems him liable.

The Gemara concludes: Rather, Rabbi Yohanan is actually the one who said that one who renounces ownership of his hazardous objects is liable.ⁿ

The Gemara asks: And from the fact that Rabbi Yohanan said that he is liable, is it evident that Rabbi Elazar said that he is exempt? But doesn't Rabbi Elazar say

Perek III

Daf 30 Amud a

HALAKHA

הַשּׁוֹפֵךְ מַיִם – One who pours water in the public domain – בְּרִשּׁוֹת הָרִבִּים: If one pours water in the public domain, and another person is physically injured, even if it is by impact with the ground, he is liable, in accordance with Shmuel's opinion that one is liable to pay for injury caused by a pit even if the injury is caused by impact with the ground. This is the *halakha* even if one poured the water during the period when it is permitted for him to do so, and even if he renounced ownership of the water. If another's items are damaged, e.g., if his clothes get soiled from the water, he is exempt, in accordance with the *halakhot* of a pit (Rambam *Sefer Nezikin*, *Hilkhot Nizkei Mamon* 13:12–13; *Shulḥan Arukh*, *Hoshen Mishpat* 412:5).

וְהַגּוֹדֵר אֶת גִּדְרוֹ – Or one who puts up a fence of thorns – בְּקוֹצִים: If one conceals thorns or pieces of glass in his wall or fences in his field with thorns, if they protrude into the public domain and a passerby is thereby injured, he is liable. If he confines the thorns to his own property, he is exempt, as it is not the typical manner of people to rub against walls. This is in accordance with the mishna and the statement of Rabbi Yohanan (Rambam *Sefer Nezikin*, *Hilkhot Nizkei Mamon* 13:20; *Shulḥan Arukh*, *Hoshen Mishpat* 415:1).

NOTES

Like his filth – כְּרַפְּשׁוֹ: The assumption is that as long as the water did not dry up, the owner still wants to retain ownership of it, and he owns the mud formed by the water and the dirt. Therefore, he should be liable to pay for injury it causes to another, as it is his property causing the damage. If he does not own the resultant mud, it has the status of a pit, for which one is not liable, in Rav's opinion, for damage to vessels (see Jerusalem Talmud).

מִשּׁוֹם רַבִּי יִשְׁמַעְיָאֵל כּו'!

לֹא קִשְׁיָא, הָא דִּידֵיהּ, הָא דְרַבִּי.

מִתְנִי' הַשּׁוֹפֵךְ מַיִם בְּרִשּׁוֹת הָרִבִּים וְהוֹזֵק בְּהֵן אַחֵר – חַיִּיב בְּנִזְקוֹ. הַמַּצְנִיעַ אֶת הַקּוֹץ וְאֶת הַזּוֹכֵכִית, וְהַגּוֹדֵר אֶת גִּדְרוֹ בְּקוֹצִים, וְגִדְרוֹ שֶׁנִּפְלַל לְרִשּׁוֹת הָרִבִּים, וְהוֹזֵקוֹ בְּהֵן אַחֵרִים – חַיִּיב בְּנִזְקוֹ.

גַּמ' אָמַר רַב: לֹא שָׁנוּ אֵלָּא דְנִטְנְפוּ בְּלִיּוֹ בְּמַיִם, אֲבָל הוּא עֲצֻמוֹ – פָּטוּר, קִרְקַע עוֹלָם הוֹיָקְתוּ.

אָמַר לֵיהּ רַב הוּנָא לְרַב: לֹא יֵהָא אֵלָּא כְּרַפְּשׁוֹ!

מִי סְבֵרַת דְּלֹא תִּמּוּ מִיָּא? בְּדִתְמוּ מִיָּא.

וְתִרְתִּי לְמָה לִּי?

חֲדָא בִּימּוֹת הַחֹמָה, וְחֲדָא בִּימּוֹת הַגִּשְׁמִים.

in the name of Rabbi Yishmael that one is liable to pay for damage caused by a pit that he dug in the public domain, even if it is not his personal property?

The Gemara answers: This is not difficult. This ruling, that he is exempt, is his own opinion, whereas that ruling, that he is liable, is the opinion of his teacher Rabbi Yishmael, and he disagrees with it.

MISHNA In the case of one who pours water in the public domain,ⁿ and another person incurred damage due to it, the one who poured water is liable to pay for his damage. In the case of one who conceals a thorn or a piece of glass in his wall adjacent to the public domain, or one who puts up a fence of thorns,ⁿ or one who puts up a fence that subsequently fell into the public domain, and others incurred damage due to any of these, he is liable to pay for their damage.

GEMARA With regard to the case of one who pours water in the public domain, Rav says: They taught that he is liable only when the clothes of one who slipped were soiled by the dirty water, but if the one who slipped himself was injured, the one who poured the water is exempt, as it is the impact with the ground that injured him, not the water.

Rav Huna said to Rav: Why should he be exempt from paying restitution for the injury? Even if the water that he poured is considered only like his filthⁿ that he tossed in the public domain, he should be liable. Since the muddy ground caused the injury, and the mud belongs to him, as it results from the addition of his water to the dirt, he should be liable.

Rav responded: Do you maintain that this is a case where the water was not absorbed into the ground? It is a case where the water was absorbed, leaving only moist dirt. Since there is no mud there that can be deemed as belonging to the one who spilled the water, he is exempt from liability.

The Gemara asks: But if the mishna's ruling refers only to the soiling of the pedestrian's clothes, why do I need two *mishnayot* to state this *halakha*? According to Rav, this *halakha* was already addressed in the previous mishna, with regard to a jug that broke, causing a pedestrian to fall and his clothes to become soiled.

The Gemara answers: One *halakha* was stated with regard to a case where this occurred in the summer, the dry season, and one with regard to a case where it occurred in the rainy season.

Open [*potkin*] – פותקין: This word comes from the root *peh, tav, kuf* and is closely related to the Hebrew *petah*, meaning an opening. It generally refers to the opening of a dam or a barrier to allow for the passage of water.

BACKGROUND

Those who flush out the water from their caves – גורפין מערותיהן: The word cave refers here to a cistern with a roof, where water was stored for use in the house or the garden. During the rainy season people would flush out the old water, which often became putrid over the course of the summer, and replace it with fresh, clean rainwater.

HALAKHA

One who conceals his thorns or his pieces of glass in another's wall – המצניע קוצותיו וזכוכיותיו לתוך כותל – של חבירו: If one conceals thorns or pieces of glass in another's wall and the wall falls, and a passerby is subsequently injured by the thorns, if the wall was unstable then the one who concealed his items is liable. If it was stable, the owner of the wall is liable (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 13:21; *Shulhan Arukh, Hoshen Mishpat* 415:2).

One who covers his pit with another's bucket – המכסה בורו בדליו של חבירו: If one covers his pit with another's bucket, and the owner of the bucket removes it, and the pit subsequently causes injury or damage, the owner of the pit is liable (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 12:9; *Shulhan Arukh, Hoshen Mishpat* 410:29).

Would conceal their thorns – יהיו מציניעים קוצותיהם: It is praiseworthy to conceal his thorns or other hazardous items or discard them in a place where they cannot cause harm (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 13:22; *Shulhan Arukh, Hoshen Mishpat* 415:3).

NOTES

Teaches us – קא משמע לן: Rabbeinu Hananel and Rashi offer different explanations for the ruling that the owner of the bucket is not responsible for informing the owner of the pit that he removed the bucket. Rabbeinu Hananel explains that since the owner of the bucket is taking what is his, he has no responsibility with regard to the pit. By contrast, Rashi explains that the possibility of informing the owner of the pit does not have any bearing on the latter's liability. There may be a practical difference between these explanations with regard to a case where another person, other than the bucket's owner, took it (see Meiri; *Nimmukei Yosef*, citing Ramah).

דתניא, כל אלו שאמרו: פותקין ביבותיהן וגורפין מערותיהן, בימות החמה אין להן רשות, ובימות הגשמים יש להם רשות, ואף על פי שברשות, אם היוקו – חייבין לשלם.

As it is taught in a *baraita*: With regard to all those people who engage in activities that the Sages stated are permitted, i.e., those who open [*potkin*]¹ their gutters and drain the sewage from their houses into the public domain, and those who flush out the water from their caves,² where foul-smelling water was stored, into the public domain, during the summer they do not have permission to do so, while during the rainy season they have permission to do so, since the street is rained upon in any event and thereby washed. And although all these people perform their actions with permission, if they cause damage they are liable to pay for it. Because of the difference between the summer and the rainy season with regard to whether it is permitted for one to pour water into the public domain, both *mishnayot* are necessary, one for each season. This is in order to teach that even in the rainy season, when it is permitted to pour water into the public domain, one is nevertheless liable to pay for damage resulting from the water.

”המצניע את הקוץ” [וכו']. אמר רבי יוחנן: לא שנו אלא מפריח, אבל מצמצים לא. מאי טעמא פטור? אמר רב אחא בריה דרב איקא: לפי שאין דרכן של בני אדם להתחכך בכתלים.

It is stated in the mishna that one who conceals a thorn or a piece of glass, or one who puts up a fence of thorns, is liable to pay for damage resulting from them. Rabbi Yohanan says: They taught that he is liable only in a case where he projects these obstacles into the public domain, but if he restricts them to his own property, he is not liable. The Gemara asks: What is the reason that he is exempt? Rav Aha, son of Rav Ika, says: It is because it is not the typical manner of people to rub against walls, but to keep a certain distance from them. Therefore, if a pedestrian is wounded by the thorns, it is considered an unusual accident, for which the owner of the fence is not liable.

תנו רבנן: המצניע קוצותיו וזכוכיותיו לתוך כותל של חבירו, ובא בעל כותל וסתר כותלו ונפל לרשות הרבים, והיוקו – חייב המצניע.

The Sages taught (*Tosefta* 2:6): With regard to one who conceals his thorns or his pieces of glass in another's wall,³ and the owner of the wall came and demolished his wall and it fell into the public domain, and the thorns or glass caused damage, the one who concealed them is liable.

אמר רבי יוחנן: לא שנו אלא בכותל רעוע, אבל בכותל בריא – המצניע פטור, וחייב בעל הכותל.

Rabbi Yohanan says: They taught this only in the case of an unstable wall, since the one who concealed his items should have anticipated that the owner of the wall would soon demolish it, but in the case of a stable wall, the one who concealed his items is exempt, and the owner of the wall is liable.

אמר רבינא, זאת אומרת: המכסה בורו בדליו של חבירו, ובא בעל דליו ונטל דליו – חייב בעל הבור.

Ravina says: That is to say that in the case of one who covers his pit with another's bucket,⁴ and the owner of the bucket came and took his bucket, and the pit causes damage, the owner of the pit is liable.

פשיטא!

The Gemara asks: Isn't this obvious? This is exactly the same *halakha* as Rabbi Yohanan's statement with regard to one who conceals thorns in an unstable wall, i.e., that the hazardous item was likely to be revealed from the moment that it was concealed, and therefore its owner is liable to pay for any damage that it causes. What is the novel element in Ravina's statement?

מהו דתימא, התם הוא דלא הוי ידע ליה דלודעיה, אבל הכא דידע ליה – הוה ליה לאודועיה, קא משמע לן.

The Gemara answers: It is necessary. Lest you say: It is only there, in the case of the thorns, that the owner of the wall is exempt, since he did not know who concealed the hazardous item in order to inform him that he should remove them, but here, since the owner of the bucket knew who dug the pit, he should have informed him that he was taking his bucket and is consequently liable to pay for damage caused by the pit, Ravina therefore, teaches us⁵ that he is not required to inform the owner of the pit, and he bears no responsibility for any damage caused.

תנו רבנן: חסידים הראשונים היו מצניעים קוצותיהם וזכוכיותיהם בתוך שדותיהן, ומעמיקים להן שלשה טפחים, כדי שלא יעכב המחרשה.

The Sages taught: The early pious people would conceal their thorns⁶ and their pieces of glass in their fields, and would dig to the depth of at least three handbreadths in order to bury them, so that they would not obstruct the plow.

LANGUAGE

Tigris [Diglat] – דִּגְלַת: The Tigris River is called *Diglat* in Aramaic and *Diklat* in Syriac. The name derives from the Babylonian-Assyrian name *Idiklat*, from which its Hebrew name *Hiddekel* is also derived.

NOTES

One who wants to be pious – **הָאִי מֵאֵן דְּבַעֵי לְמַהוּי חֲסִידָא**: The Rashba and Rabbeinu Yehonatan of Lunel explain that these three tractates are cited because in each of them there are statements stating how a pious person should behave. Rabbeinu Yehonatan of Lunel notes that to be considered a pious person one must go beyond the letter of the law and must therefore be meticulous in the matters mentioned in all three of these tractates. He concludes that these Sages do not disagree with each other, but rather each Sage provides a different example. The Maharsha adds that these three tractates correspond to the three aspects of moral perfection: One must act exemplarily toward Heaven by observing the matters of *Berakhot*, exemplarily toward other people by observing the matters of *Nezikin*, and exemplarily toward himself by observing the matters of tractate *Avot*, which teaches how to attain perfection of soul.

Rabbeinu Hananel writes that the term: Matters of tractate *Nezikin*, refers to going beyond the letter of the law to avoid causing damage, even where one does not bear legal responsibility, and *Berakhot* is referring to the prohibition against benefiting from this world without a blessing.

The matters of tractate *Nezikin* – **מִיְלֵי דְנִזְקִין**: The first three tractates of order *Nezikin*, i.e., *Bava Kamma*, *Bava Metziah*, and *Bava Batra*, were originally a single tractate called *Nezikin*.

BACKGROUND

His straw and his hay – **תְּבַנּוּ וְקָשׁוּ**: To serve as good fertilizer, straw and hay should be broken down and ground as much as possible. Otherwise, they will not decay quickly and will consequently be of little benefit to the soil. If they are trampled upon together with mud, the straw and hay will be better suited to serve as fertilizer.

רב ששת שדי להו בנורא. רבא שדי להו בדגלת.

אמר רב יהודה: האי מאן דבעי למהוי חסידא. לקיים מילי דנזיקין; רבא אמר: מילי דאבות; ואמרי לה: מילי דברכות.

מתני' המוציא את תבנו וקשו לרשות הרבים לזבלים, והוזק בהן אחר – חייב בנזקו, וכל הקודם בהן זכה; רבן שמעון בן גמליאל אומר: כל המקלקלן ברשות הרבים והזיקו – חייבין לשלם, וכל הקודם בהן זכה.

ההופך את הגלל ברשות הרבים והוזק בהן אחר – חייב בנזקו.

גמ' לימא מתניתין דלא כרבי יהודה.

דתנא, רבי יהודה אומר: בשעת הוצאת זבלים, אדם מוציא זבלו לרשות הרבים וצוברו כל שלשים יום, כדי שיהא נישוף בגליו אדם וברגליו בהמה, שעל מנת כן הנחיל יהושע את הארץ?

אפילו תימא רבי יהודה, מודה רבי יהודה שאם הזיק – משלם מה שהזיק.

והתנן, רבי יהודה אומר: בנר חנוכה – פטור, מפני שהוא ברשות; מאי לאו משום רשות בית דין?

The Gemara relates: Rav Sheshet would toss his thorns into fire, so they would not cause damage to others. Rava would toss them into the Tigris [*Diglat*]¹ River.

Rav Yehuda says: One who wants to be pious^N should observe the matters of tractate *Nezikin*,^N so as to avoid causing damage to others. Rava said he should observe the matters of tractate *Avot*. And some say he should observe the matters of tractate *Berakhot*.

MISHNA In the case of one who takes out his straw [*teven*] and his hay [*kash*]^{BH} to the public domain to use afterward as fertilizer and another person incurred damage due to them, he is liable to pay for his damage, and whoever takes possession of the hay and straw first acquires them for himself. Rabban Shimon ben Gamliel says: With regard to anyone who places obstacles in the public domain and they cause damage, he is liable to pay damages, and whoever takes possession of them first acquires them.

In the case of one who turns over dung in the public domain and another person incurred damage due to it, the former is liable to pay for his damage.

GEMARA Let us say that the ruling in the mishna that one is liable to pay for damage caused by straw or hay that he put in the public domain is not in accordance with the opinion of Rabbi Yehuda.

As it is taught in a *baraita* that Rabbi Yehuda says: During the period when fertilizer is taken out,^a a person may take his fertilizer out to the public domain and let it accumulate there for a full thirty days, so that it gets trampled by people's feet and by animals' feet, as it was on this condition that Joshua bequeathed Eretz Yisrael to the Jewish people (see 80b). In other words, people do not have the right to prevent someone from taking out his straw to the public domain, since they received their portion of Eretz Yisrael following Joshua's conquest on this condition. Apparently, since one has the right to take out his straw, he is not held liable to pay for damage caused by it.

The Gemara rejects this suggestion: You can even say that the mishna is in accordance with the opinion of Rabbi Yehuda, since Rabbi Yehuda possibly concedes that if the fertilizer caused damage, he is liable to pay for the damage it caused, although he acted within his rights.

The Gemara asks: But didn't we learn in a *baraita* that Rabbi Yehuda says: If a pile of straw on the back of an animal that was passing through the public domain catches fire from a Hanukkah lamp that was placed outside a store, the owner of the lamp is exempt, since he put it there with permission (see 62b)? What, is it not because he put it there with the permission of the court and is therefore exempt from paying for damage caused by it?

HALAKHA

המוציא את – **אֶת**: One who takes out his straw and his hay, etc. – **תְּבַנּוּ וְקָשׁוּ וכו'**: One may not put his straw or hay in the public domain to be trampled upon and become fertilizer. The Sages instituted that if one does so, the straw or hay is rendered ownerless. Nevertheless, if a person or an animal is injured as a result, the owner of the straw is liable (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 13:14; *Shulhan Arukh, Hoshen Mishpat* 414:1).

בשעת הוצאת – **זְבָלִים**: One may place fertilizer and dung in the public domain during the designated period and let it accumulate there for thirty days so that it gets trampled on by pedestrians and animals. Nevertheless, if it causes damage, the owner of the fertilizer is liable to pay, in accordance with the opinion of the Rabbis, who disagreed with Rabbi Yehuda (Rambam *Sefer Nezikin, Hilkhot Nizkei Mamon* 13:15; *Shulhan Arukh, Hoshen Mishpat* 414:2).