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Three Post-Talmudic Codes: A Look at the Laws of Personal Injury

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DIGEST

The chapter "Hahovel" in Bava Qamma reflects interesting developments in the law of personal injury within the Jewish legal tradition. The purpose of this project is to examine the way this legal tradition was represented in three post-Talmudic codes, Isaac ben Jacob Alfasi's Sefer Hahalakhot, chapter "Hahovel", Moses ben Maimon's Mishneh Torah, "Hilkhot Hovel Umaziq" and "Hilkhot Rotseah Ushemirat Nefesh," and Joseph Caro's Shulhan 'Arukh, "Hoshen Mishpat" chapters 420-427. It draws on the chapter "Hahovel" in Bava Qamma, commentaries relevant to the Talmud and the three codes, and modern writers which help illuminate the sources of the authors' positions.

This thesis includes an annotated translation of the Mishneh Torah and the Shulhan 'Arukh, juxtaposed, which reveals points of agreement and disagreement between the two authors. On issues of special significance, Alfasi's code was consulted. The thesis also examines the codificatory style of these three codes. It focuses and analyzes the resources used, organizational style, qualitative and quantitative aspects, stylistic features, and innovations that characterize each text.

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INTRODUCTION

In the course of the history of Jewish Law, rules were established to provide equitable remedies between two or more persons when a grevious injury or homicide had been committed against one of the persons. There was a time when injuries to another person were punished by retaliation. The words of the legal formula from Leviticus 24:19, "As he had done so shall it be done to him" represents this type of law. While in a much later period, a law states: "If one inflicts serious bodily injury to another, the injurer is to be liable to indemnify the injured person on five counts" (Mishnah Bava Qamma 8:1). This type of law grants pecuniary compensation to the injured person instead of permitting some physical act of retaliation against the injurer.

Laws which governed such situations as mentioned above were known as laws of Torts. They had as their basis the need of a society to protect the interests of personality, property, and relations against physical, appropriational, and defamatory harms of many types. As can be seen from the latter law mentioned above, the chief remedy for such an offense was usually monetary compensation, though in some cases rabbinic courts used punitive measures such as lashes or excommunication to punish an offender. In tort cases, the convicted offender was generally held liable for any willful injury unless he could excuse his conduct on the basis of some equal or superior interests.

From the terse biblical provisions, the law of Torts kept expanding and becoming more elaborate over the centuries. This development seemed to occur for quite pragmatic reasons even though the Torah states, "You shall not add anything to what I command you or take anything away from it" (Deut. 4:2). Granted this accumulation of halakhot occurred, the

determining factor in this development was continuity. The validity of every rule added to the existing corpus of halakhot was based on the rule taking its authority from the Written Law.[1] In the context of Jewish history, the practical reality of an ever expanding halakhah and other, uncontrollable external events rendered some form of codification of the body of halakhic rules imperative. Codification of the halakhic system confronted those who undertook the task with a search for suitable ways of overcoming the substantive problems involved with such an undertaking.

As a result of this need to codify the halakhah different literary forms evolved which could be reconciled with the halakhic system. Due to the scope of this thesis, only Sefer HaHalakhot of R. Isaac al-Fasi, the Mishneh Torah of Moses ben Maimon, and the Shulhan 'Arukh of Joseph Caro will be discussed. These works were a response to the need to make a systematic collection of the status or bodies of laws, though each differed dramatically from the others.

The closing of the geonic period brought on by the historical factor that Babylonia had ceased to be the dominant center of the Jewish Diaspora and the increasing proliferation of different customs and rules in different halakhic fields prompted Alfasi, a cognomen derived from the fact that he was born near Fez, to write his epitome to the Talmud. In general form, this work is arranged along the lines of the Halakhot Gedolot although differing from it in several ways. The major difference lies in the fact that Alfasi does more than just state the final decision in a terse statement like Halakhot Gedolot.[2] He also writes the principle on which the law is based even though he does not provide all the arguments. Therefore, since he gives the laws' reasons, the laws do

not have the terseness of a decree-style found in Halakhot Gedolot.[3] Like earlier halakhic works, Sefer HaHalakhot is arranged in the order of the talmudic tractates. Alfasi does not tamper with the order of the chapters in the Talmud or the Mishnah but in regards to the order of the sugyot he acted freely to remove any confusion in the Gemara. If there is a confusing element, he will first rearrange the topics and the sugyot which are intimately connected with the Mishnah and state the halakhah.[4] Secondly, if there is an interpolation of another topic in the Gemara, Alfasi often will make a note in his text that this subject will be dealt with at length elsewhere and then removes the subject to its proper place.[5]

The strength of Alfasi's work does not lie in the form of his book, though he was innovative in rearranging certain topics into a more logical format. His real strength comes from the content of his book. In the area of content he makes several innovations which make the laws of the Talmud much more accessible. The major labor of Alfasi was to dissect the Talmud into its basic parts in order to extract from the masa' umatan (discussion) the halakhah. In doing this he uses the original language of the Talmud unless it was very complicated and then he uses his own language in order to simplify the text. He basically follows his own rules to determine which opinions are authoritative.[5] Alfasi exercises this prerogative, especially in a case in which two different opinions are expressed and no unanimous decision was reached.[6] He also deletes from his book decisions he considers invalid. And finally, sometimes the decisions he deduces are at odds with the accepted halakhah of the Talmud.[7]

Alfasi uses many ways to arrive at a decision. He was one of the first codifiers to use the Yerushalmi as a check on the Babylonian

Talmud.[8] But in cases of dispute between the Yerushalmi and the Babylonian Talmud, he decides according to the latter, following the rule that the law is according to the later scholars. Of course, in cases where the Babylonian Talmud was indecisive about an issue so that no halakhic decision was reached, tequ, Alfasi follows the halakhic precedent of the Yerushalmi in deciding the halakhah.[9] Alfasi was selective in which kinds of halakhot he thought were essential to include in his book. He chose only to include those halakhot which were relevant in his time. This led him to delete many of the laws found in Qodashim and Tohorot. The remaining laws in these books he arranged in a special work called Halakhot Ketanot.

Alfasi's eleventh-century book was accepted by later generations as decisive and binding. Maimonides was careful not to criticize it and noted that he differed from it in only ten cases.[10] Joseph Caro described Alfasi as "one of the three pillars of halakhic decisions supporting the House of Israel," and in this way part of Alfasi's conclusions found their way into Caro's code. Alfasi made a very important contribution to the systematization of Jewish Law. His work was one of the first major efforts in this direction.

Alfasi's work was followed in the twelfth century by Maimonides' Mishneh Torah. Maimonides, like his predecessor, Alfasi, felt compelled to undertake his monumental work because of the adversity of the times and circumstances. His lament that the times are "pressing back everything" seems to indicate that the study of the Torah had to be neglected because of a general preoccupation with more pressing material needs, and subsequently, a once well educated public had become immersed in the daily vicissitudes of existence.[11] While this may have been true among

the preponderance of the population there was still a thriving scholarly class to sustain the study of Torah. Instead, Maimonides' lament focused on the dispersion of the Jewish people which brought about a state in which "every court established in post-talmudic times in the various countries made rules and regulations and provisions for the people in those respective countries." These laws were not uniform for all Jewry and were often not even communicated to or published by outside communities, being only valid in the place of their promulgation.[12] These different and autonomous local laws were endangering the supremacy of the consensus reached by scholars in the Talmud as to what the halakhah is. It was this danger that prompted Maimonides to compile his code.

While his book was never purported to be the source of authority of the halakhah, it nevertheless was designed as the authoritative compilation in accordance with which the halakhah should be decided. To obtain this goal, Maimonides employed four criteria. The first criterion pertained to the sources on which he drew his material from. In the introduction to his work Maimonides makes note of certain halakhic Midrashim besides the Talmudim, Tosefta, and geonic literature which he uses as his sources. He also includes non-halakhic and scientific materials relevant to the elucidation of the halakhah. Because he drew on so many sources, the code has an encyclopedic character.

The second criterion is the way Maimonides chose to subdivide and classify the material of his book. As a model for his work Maimonides took the Mishnah in as much as it provided the idea of dividing his work into large sections, like the tractates of the Mishnah, each devoted to one general topic, with internal subdivisions.[13] It is clear that Maimonides did not follow the sequence (seder) of the Mishnah, or its exact arrangement of the laws. Rather, he produced a topical-conceptual

arrangement.[14] The book exemplifies an attempt to link conceptually related matters in the same treatises. This was done with the intent of preventing an open-ended proliferation of books and subsections.[15] The end product has fourteen books which are each subdivided into several parts called halakhot, or in the construct form, hilkhot, which total eighty-three in all. These parts were further subdivided into a total of one-thousand chapters, peraqim, consisting of some fifteen-thousand paragraphs, each called a halakhah.

Maimonides' third criterion pertains to the method of deciding upon and the designation of a single halakhic rule, without reference to disputing opinions or designation of sources. This problem had to be tackled because of the prima facie inconsistency between the anonymity and uniformity a code requires, and the individualistic and pluralistic orientation of Jewish Law. Maimonides needed to purge the law of its disputatiousness and of all individualistic and pluralistic imprints. By preferring to state most of the laws anonymously, Maimonides was lending subliminal reinforcement to the claim that the views of the Mishneh Torah are identical with those of the sources.[16] It must be noted that Maimonides, not withstanding all his protestors, does mention names and attributes halakhot to their original authorities.[17] There are in the Mishneh Torah references such as: my teachers, hakhamim or hasidim, i.e., the Tannaim and Amoraim, and the early sages to name a few. But the meer citing of names or sources, he avers, has no connection with providing proof that a law is correct.[18] Overall, his purpose in doing this was eminently practical and utilitarian.

One of the reasons given by Maimonides in his Introduction to the Mishneh Torah for the general ignorance of Oral Law is that the Talmud is written in "Aramaic mixed with other languages." He also noted that

the law was plagued by digressions and indeterminate debate which confused what the halakhah was. As his fourth criterion, Maimonides chose to write his code in mishnaic Hebrew, which is "easily readable for most people," and in a brief, concise style to compliment his codificatory goals. His goal of brevity was in part aided by the characteristic feature of mishnaic Hebrew which is brief and concise.[19] Apart from his terse style, Maimonides used additional codificatory techniques with a view of economizing space, such as systematic abridgements, compounding and synthesizing homogenous norms, and the anachronistic fusion of legal norms from various periods.[20] He also divested the often digressive and ominous talmudic sentences of all hyperbolical and portentous ballast. The desideratum of brevity had to yield sometimes to ethical and theological explanations interspersed into the text in order to fortify or explain a legal norm. Ultimately, his style leads to clarity and precision, and minimizes confusion and misinterpretation of the halakhah. And on a broader scale it gives a sense of proportion and symmetry to the work as a whole.[21]

For all of Maimonides' hopes for crowning Jewish legal history with his work, he in fact seems to have started a new phase of Jewish legal history. Far from becoming the only Code to be used by judges, the Mishneh Torah became in actual judicial practice overshadowed by later codes. While there were several intermediate codes, there was none like the Shulhan 'Arukh by Joseph Caro. This code became the definitive and final seal of Jewish Law up to this day.

Like the other codes previously mentioned, the Shulhan 'Arukh was written in a time of great confusion in the Jewish community. The expulsion of the Jews from Spain and Portugal brought old customs and

practices followed by Spanish Jewry into conflict with the existing customs of the countries in which they settled. This state of affairs was further compounded by the proliferation of responsa literature with which the rabbinic judges could not easily keep abreast.[22] These factors created a need for a new synthesis of halakhah which would assemble and summarize the existing laws.

Joseph Caro succeeded in bringing together and reducing the halakhah by the compilation of a single work consisting of two parts, differing from each other in form and content but supplementing each other in their common purpose. One of the two parts to his Code is the Bet Yosef which was fashioned after the Arba'ah Turim of R. Jacob b. Asher. Caro decided to use the format employed by this work because of its practicability in facilitating the understanding of the operative law and guiding the people in translating concepts into rules of conduct.[23] The Bet Yosef was a massive work, but it could not answer the main requirement of a code to be in a summarized form. Therefore, Caro compiled the Shulhan 'Arukh in which the conclusions of the Bet Yosef were stated "briefly in clear language... so that every rule shall be clear in practice" (Introduction to the Shulhan 'Arukh, "Hoshen Mishpat").

The structure of the Shulhan 'Arukh as a whole resembles the format of the Arba'ah Turim though there are differences in Caro's approach of subdividing the larger units into smaller units. Caro provides each chapter (siman) with a heading at times shortening the names of the halakhot when they were unduly long or adding to them when they were inadequate descriptions of their contents.[24] At times Caro added an entire topic which does not appear in the Arba'ah Turim at all, and occasionally deletes some halakhot.[25] Even though the format of the

Shulhan 'Arukh is not like the Mishneh Torah, Maimonides' effect is pervasive. Maimonidean imprints on the Shulhan 'Arukh are found in the brevity of its style, in certain formulations, and in the deletion of the halakhic sources and the names of scholars from its text. These effects in conjunction with the influence of R. Jacob's code make the Shulhan 'Arukh a hybrid.

Another unique feature of the Shulhan 'Arukh is that it follows the pattern of a Bet Din (court). Its halakhic opinion is based on the prevailing opinions of three great halakhists, Maimonides, Alfasi, and Asher b. Yehiel. The opinion of any one of these scholars is disregarded when the other two are opposed to it.[26] Caro also made use of responsa when these three principle authorities did not provide him with either an unanimous opinion or a majority opinion for a concise statement of the law.[27] He also included decisions either deduced independently from the Talmud or decided according to talmudic principles without considering the different opinions of the great authorities.[28] From this standpoint the Shulhan 'Arukh is supreme in contributing to the acceptance of one code as the guidepost for Jewish Law. This is especially true after the halakhot of Eastern European Jewry were incorporated in the form of glosses into the text by Moses Isserles.

This study of the codificatory style in these three codes, mentioned in the preceding paragraphs, will focus on the laws of personal injury. It will analyze the resources used, organizational style, qualitative and quantitative aspects, stylistic features, and innovations that characterize each text. The text of the Shulhan 'Arukh, "Hoshen Mishpat" 420-427 will be compared to the corresponding sections of the Mishneh Torah, "Hilkhot Hovel Umaziq" and "Hilkhot Rotseah Ushemirat Nefesh." And

finally, on issues of special significance, chapter "Hahovel" in Alfasi's work will be contrasted to the other two texts.

A NOTE ON THE TRANSLATION

In rendering the Shulhan 'Arukh and the Sefer Hahalakhot of Alfasi into English, I have endeavored to remain faithful to the literal meaning and the syntax of the original. However, infelicities of style and conciseness of language have led me to alter sentence structure and make numerous interpolations in order to avoid ambiguities. These latter are indicated by parentheses. For all other glosses or notes in the text brackets have been used.

Talmudic references, unless otherwise indicated, are to specific tractates of the Babylonian Talmud. Biblical quotes are generally based on the Jewish Publication Society translation. Untranslated Hebrew terms are discussed in the glossary. The Yale University Press English translation of the Mishneh Torah was used unaltered for all passages translated in the Mishneh Torah.

The body of the text is arranged so that the Shulhan 'Arukh and the Mishneh Torah are juxtaposed to each other with any corresponding passages from the Sefer Hahalakhot of Alfasi placed underneath them before the brief summary of the other two codes. Several texts from Alfasi's work are located in the Appendix because they did not parallel any of the texts in the other two codes.

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420 In this chapter there are forty-four paragraphs which deal with one who physically injures another person liability for five counts, how the court is to estimate (a pecuniary compensation for these counts), and the case of one who humiliates a learned or unlearned person with words.

1. It is prohibited for a person to strike another person,[2] and if a person strikes another person, the injurer transgresses a negative commandment, as was stated, "...lest, he should exceed..." (Duet. 25:3).[6] If (the court) applies the Torah strictly in the case of a wicked person who struck (someone) so that the court should not (inflict the punishment of lashes)[7] more because of his wickedness how much the less in the case of a righteous person who struck (someone). And a person who (threatens to strike another person),[8] even though he does not

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"Hilkhot Hovel Umaziq"

5:1. One is forbidden to wound either himself[1] or another.[2] Not only one who wounds another[3] but even one who strikes[4] a law-observing Israelite in the course of a quarrel,[5] whether an adult or a minor, whether a man or a woman, transgresses a negative commandment contained in the verse, "He shall not exceed... to smite him" (Deut. 25:3).[6] For if Scripture here warns against excess in lashing an offender,[7] how much does this warning apply to smiting an innocent person.

5:2. It is forbidden even to lift a hand[8] against another, and if one

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strike him, the person is called wicked. Note. Below, chapter 421 paragraph 13 and the law concerning a husband striking his wife, see in "Even Ha'ezer" chapter 154. There are those authorities who say that there is a ban by early authorities on a person who strikes another person. And if it is necessary to annul (the ban) for the injurer in order that he can join a minyan, (this is possible) if the injurer immediately accepts upon himself the ruling of the court. (Then) the court annuls the ban on him even though the injured person may not be appeased [Rabbi Meir of Rezbork and Hagahot Maimuni chapter "Hahovel"].

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does lift a hand against another, he is deemed wicked even if he does not actually strike him.

Joshua Falk Cohen states that Maimonides understands the negative commandment to be derived from "lo yosif" (do not exceed) and Joseph Caro derived it from "pen yosif" (lest, he should exceed). Maimonides adds certain details not found in Caro's code, such as examples of who it is prohibited to strike. He also states it is forbidden to injure oneself, an opinion deleted in Caro's code.

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2. In the case of a person who struck[9] another person which resulted in damages equalling only a perutah,[15] (the injurer is sentenced to receive) thirty-nine lashes[10] since there is no liability for pecuniary compensation.[11] Even if he struck a (non-Jewish) slave, the injurer is sentenced to receive thirty-nine lashes because the slave is obligated to perform (certain) commandments.[13]

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5:3 If one gives another a blow[9] which does not injure him to the extent of a perutah,[15] he incurs flogging,[10] for there is no compensation in this case (to exempt him on the grounds) that the negative commandment is rectified by monetary compensation.[11] Even if one inflicts a blow on another's slave which does not result in injury valued at a perutah,[12] he must be flogged, for a slave is subject to certain commandments.[13] If a heathen strikes an Israelite, he is liable for the penalty of death, for Scripture says, "He turned this way and that and, seeing no one about, he struck down the Egyptian..." (Ex. 2:12).[14]

Maimonides does not make the distinction of a non-Jewish slave which is specifically mentioned in Caro's code. Maimonides also adds the opinion concerning the punishment to be administered to a non-Jew who struck a Jew.

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3. One who physically injures another person is held liable on five counts:[16] damages, pain, medical treatment, time lost from gainful employment, and shame. If the injuries were inflicted in such a manner which involves these five counts (the injurer has to pay). Note. There are some authorities who say that the injurer must also supply necessary supplemental food during his sickness beyond what the injured person was used to eating when he was healthy [chapter "Hahovel" -- Nimuqe Yosef] and it seems to me that this (additional food) is considered as being in the category of medical treatment. And if not (five counts) but (only) four of the damages are present, the injurer must make pecuniary compensation for four,[19] and if (there are only) three (the injurer must compensate for those) three, and if (there are only) two (the injurer must compensate for those) two, and if (there is only) one (the injurer must compensate for

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1:1. If one wounds another, he must pay compensation to him for five effects[16] of the injury, namely, damages, pain, medical treatment, enforced idleness, and humiliation. These five effects are all payable from the injurer's best property,[17] as is the law for all who do wrongful damage.[18]

2:1. If one inflicts on another a wound for which compensation for all five effects is due, he must pay for the five. If one causes another an injury with only four effects, he must pay for the four;[19] if there are three, he must pay three; if two, he must pay two; if one, he must pay one.[20]

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this) one.[20]

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Sefer Halakhot chapter "Hahovel" -- Yerushalmi, it was taught in a baraita that a person who physically injures another (will be explained further down), (if) five counts, the injurer should pay (the injured person) five counts, (if) four counts, the injurer should pay him four counts, (if) three counts, the injurer should pay him three counts, (if) two counts, the injurer should pay him two counts, and (if) one count, the injurer should pay one count. How is this to be understood? In the case of a person who struck another on the hand and cut it off, the injurer should pay him for five counts: damages, pain, medical treatment, time lost from gainful employment, and shaming. (If) a person struck another on his hand and smashed it, the injurer should pay him four counts: pain, medical treatment, time lost from gainful employment, and shaming. (If) a person struck another on his head and it swelled up, the injurer should pay him three counts: pain, medical treatment, and shaming. (If) a person struck another on an unexposed spot (of the body), the injurer should pay him two counts: pain and medical treatment. (If) a person struck another with a document which was in the injurer's hand, the injurer should pay one count: shaming (30a).

Maimonides' code includes the opinion that the damages must be paid from the injurer's best property. This opinion is deleted from Caro's code here.

4. How is the above law applied? If[21] a person cuts off another's hand, or foot, or one finger, or cuts off one of another person's

2:2. Thus, if[21] one cuts off another's hand, or his foot, or a finger, or a toe, or blinds his eye, he must pay for five effects,

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limbs, the injurer makes pecuniary compensation to the injured person for all five counts (mentioned in paragraph 3).	namely, damages, pain, medical treatment, enforced idleness, and humiliation....
ibid.	

Maimonides specifies the eye as also being considered one of the limbs.

5. In the case of a person striking another person on his hand resulting in the hand becoming swollen[22] but will eventually recover, or a person striking another person's eye (resulting in the eye) becoming inflamed but will eventually recover, in these cases since there is no permanent damage the injurer must make pecuniary compensation to the injured person on the remaining four counts.[23]	2:2. ...If, however, one strikes another on the hand so that it swells[22] but will eventually return to normal size, or on his eye so that it becomes inflamed but will eventually heal, he must pay for four effects, namely, pain, medical treatment, enforced idleness, and humiliation....[23]
ibid.	

The two codes are almost exactly alike except for slight and insignificant changes in wording.

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6. In the case of a person striking another person on his head (resulting in the head) becoming swollen, (if) there is no permanent damage or time lost from gainful employment, the injurer must make a pecuniary compensation to the injured person on the remaining three counts.[24]	2:2. ...If one strikes another on the head so that it swells, he must pay for three effects, namely, pain, medical treatment, and humiliation....[24]

ibid.

The two codes are alike except for a few changes in wording.

7. In the case of a person striking another person in an unobvious location which is not visible[25] and no one saw the injury, the injurer only has to make pecuniary compensation (for any claim) for pain and medical treatment.[26]	2:2. ...If one strikes another on a spot that is not exposed,[25] for example, if he strikes him on the knee or on the back, he must pay for two effects, namely, pain and medical treatment....[26]

ibid.

Joseph Caro answers the criticism of R. Abraham b. David to Maimonides' code by inserting "the injury was not seen by anyone," which would automatically exclude any claim for shaming. Unlike Caro, Maimonides specifies where such an injury could have occurred on the body.

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8. In the case of a person striking another person with a piece of cloth that was in his hand or a document, or the like,[27] the injurer is only liable for shaming. [And there are some authorities who say that this refers only if the blow was delivered in a public place] [Rabbi Abraham b. David].	2:2. ...If one strikes another with his handkerchief or with a document or the like,[27] in such a case he must pay for only one effect, namely, humiliation.
ibid.	
The two codes are exactly alike.	
9. In the case in which a person burnt[28] another person with a spit on his fingernail, which is a place that no wound[29] will appear, and the injury does not prevent the injured person from working, the injurer is only held liable for any claim for pain.[30] [If (the injury occurred) in a public place, the injurer is held liable (also) for (a claim) for shaming] [ibid. Magid Mishneh].	2:3. If one burns[28] another on the fingernail with a spit or a nail at a spot where he neither causes a bruise[29] nor interferes with his employment, he must pay for the pain alone....[30]

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Joseph Caro's code is more specific on what spot of the body is being referred to, while Maimonides states his opinion more generally. Except for this feature the codes are very much alike.

10. In the case of a person who gave another person a poisonous drug to drink or smeared (a poisonous salve)[31] on him so that the drug changed the person's complexion,[32] the injurer only has to make pecuniary compensation for medical treatment.[33]

Maimonides' code makes the stipulation that medical treatment must be maintained until the injured person's skin returns to its natural color. This is omitted by Caro.

11. In the case of a person who incarcerated[34] another person, thereby preventing him from working, the injurer only has to make pecuniary compensation for time lost from gainful employment. But if the person was already in the room, and the other person locked him in so that he could not leave, this is causation in damages. The injurer is still exempt from a claim for damages by human law.

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2:3. ...If one gives another a drug to drink, or smears him with an ointment[31] and changes the color of his skin,[32] he must pay him for medical treatment[33] alone until such time as its appearance returns to normal....

2:3. ...If one imprisons[34] another in a room, he must give him compensation for his enforced idleness alone. The same rules apply in all similar cases.

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Joseph Caro includes the case if someone was already in the room unbeknown to the person who incarcerated him. This opinion is taken from Sanhedrin 7a.

12. In the case of a person who shaved off[35] the hair on another person's head, the injurer must make pecuniary compensation only (to the injured person) for a claim for shaming. If a person smeared a poisonous salve on another person until his hair will not grow back, the injurer is held liable for the five counts (mentioned in paragraph 3), for surely the injured person suffered pain on account of the salve, and time lost from gainful employment for (previously) he was able to dance[38] (in a wine house) a routine which required the dancer to shake his hair[39] and consequently is now prevented from doing this type of work.[40]

2:4. If one shaves off[35] the hair of another's head, he must compensate him for his humiliation alone, since the hair will eventually grow again. However, if he shaves him with a depilatory or burns him in such a way that the hair will not grow again, he is liable for all five effects: for damages,[36] pain, and medical treatment, because the burning or the depilatory will have caused his head to be inflamed and give him a headache;[37] for the enforced idleness, because he was previously able to dance[38] and toss the locks[39] of his head during the dance and is now barred from this employment;[40] and for humiliation, because there can be no humiliation greater than this.[41]

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Maimonides specifies that the injurer must compensate for shaming because the injured person's hair will grow back eventually. This is deleted in Caro's code, a fact Joshua Falk Cohen notes Caro should have included. Maimonides also includes more details for the reasons why different counts were paid. He concludes this halakhah with a statement about the extent of this kind of shaming which is absent in Caro's code.

13. In a case of a person who removes[42] another person's limb which cannot grow back, the injurer is held liable for the five counts (mentioned in paragraph 3). Even if the person knocks out another person's tooth,[43] the injurer is held liable for all five counts for it is impossible that his mouth will not hurt at least one hour,[44] for even though the tooth needs no medical treatment the gum still requires medical attention.

2:5. We thus learn that if one deprives[42] another of any part of the body that will not grow again, he is liable for all five effects. Even if one knocks out another's tooth,[43] he is liable for all five effects, since the mouth is certain to be sore for a time,[44] and although the tooth itself is beyond treatment, the gums do require treatment.

The two codes are very much alike with only slight changes in wording marking any differences between the two.

14. Even if a person causes the loss of another person's piece of skin[45] the size of a

2:6. Even if one deprives another of skin[45] no larger than a grain of barley he is liable for

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barley-corn, the injurer is held liable on five counts (mentioned in paragraph 3) because it will not grow back[46] and there will be a scar[47] (the explanation is a trace of a wound after it is healed). Therefore, a person who physically injures another person and lacerates[48] the skin drawing blood is held liable on five counts.

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all five effects since the skin does not grow again[46] but leaves a scar.[47] Consequently, if one wounds another and tears[48] the skin so that blood flows, he is liable for all five effects.

Joseph Caro follows the halakhah found in the Mishneh Torah exactly.

15. How is the court to estimate the five counts (if there were) damages, (for instance) if the injurer removed a limb, or maimed a limb so that it will ultimately not heal? The court should estimate the injured person as if he was a slave[51] who was to be sold in a market, how much he was worth prior (to such injury) and how much his value was reduced after the injury, and that difference should be paid to

1:2. How are the damages determined? If one cuts off another's hand or foot, we determine as if he were a slave being sold in the market, how much the injured man was worth previously and how much he is worth now. The offender must then pay the amount by which he has diminished the other's value, for when Scripture says, "An eye for an eye" (Ex. 21: 24; Lev. 24:20), it is known from tradition[49] that the word trans-

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him. Note. If the injured person was a craftsperson,[52] for example, he makes holes in pearls and the injurer cut off that person's hand the court estimates his loss whatever it may be. But if the injurer cut off that person's leg, an injury which does not cause him so much loss then the court should estimate his loss as if he was not a skilled craftsperson [Tur in the name of Rabbi Asher b. Yehiel].

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lated "for" signifies payment[50] of monetary compensation.

(The case of) a certain ox that chewed the hand of a child was brought before Rava. He said to the (clerks), "Go and assess the child as if he were a slave." They said to him, "Behold, you are the one who said every case where a person is assessed like a slave, (the court) does not collect compensation in Babylonia." He replied to their objection, "The matter is of importance so if he seized compensation (he can keep it)." Rava follows his own reasoning (in) that he said, "Damages to an ox by an ox and damages to an ox by a person (the court) collects compensation (for these cases) in Babylonia. But damages to a person by a person and damages to a person by an ox are not collected." Do we not require ordained judges and there are not any in Babylonia (for the latter cases)? Do we not also require (in the cases of) damages to an ox by an ox and

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damages to an ox by a person ordained judges and there are not any in Babylonia? In these cases surely we serve as their agents as in the cases that are admissions that someone received a loan or loans. In a case of damages to a person by a person do we not also serve as their agents? In a matter which is frequent and there is a monetary loss, but a matter which is frequent and there is no monetary loss or also there is monetary loss but it is not frequent we do not serve as their agents. Therefore, the case of damages to a person by a person even though there is a monetary loss since it is not of frequent occurrence we do not serve as their agents (30a-30b)

Maimonides still needs to prove that Biblical talio is not to be taken literally, but really means that pecuniary compensation should be made to the injured person. This halakhah was so firmly established by Caro's time that he does not need to mention the argumentation found in the Gemara. Caro includes the case of wounding so severe that the useage of the limb would not be restored which is not found in the Mishneh Torah here.

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16. Pain: How should the court estimate this count? (In the case that) a person cuts off another person's finger,[53] the court should estimate how much a person would want to pay the difference between having his limb cut off with a sword or by a drug,[54]

2:10. How is pain assessed in a case where one has deprived another of a limb?[53] If one cuts off another's hand or his finger, we estimate how much more a person of his status would be willing to pay for having his limb removed by means of a drug[54] than

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respectively, in a case in which the government decrees it to be cut off by a sword. That difference should be paid to the injured person. Note. In a situation where there was just pain, the court should estimate (as) if a governmental edict had decreed to burn a person with a spit on his fingernail or the like, how much the person would be willing to pay in order to be spared from this pain [Tur in the name of Rabbi Asher b. Yeniel].

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for having it cut off with a sword, should the king decree that his hand or his foot be cut off. The difference thus estimated is what the offender must pay for the pain.

How much is a person willing to take (to be paid), etc.? How do we assess for the pain in a case where there is also damages? The father of Samuel said, "How much is a person willing to be paid to cut off his hand." (An objection was raised) to cut off his hand? (In this case) there is not pain alone but are there not all five counts (involved) in it? I conclude (the halakhic conclusion is) rather that (the court) assesses how much a person is willing to pay to cut off his hand either by a sword or a drug (when it is to be cut off) by the decree (order) of the government (30b).

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Joseph Caro follows the halakhah of the Mishneh Torah except that he fails to make the distinction that the estimation should be based on a person of a similar status, which is explicit in Maimonides' code.

17. How is the court to estimate time lost from gainful employment? If in the case the injurer did not cause a permanent loss of a limb, only the injured person was (sick and became bedridden) or the injured person's hand was swollen but would eventually recover,[55] the injurer must compensate[56] the injured person for each day of idleness as an idle worker of the same vocation, who is idle from work. But if the injurer caused a loss of a limb,[57] for example, he cut off another person's hand (then), the injurer must pay the injured person for the value of his hand, which is called damages, and (concerning) idleness, the court should consider him as if the injured person was a guard in a cucumber field.[58] The

2:11. How is enforced idleness estimated? If one is not deprived of a limb but becomes ill and bedridden due to injury, or if his hand becomes swollen but will eventually return[55] to normal size, the offender must pay[56] the amount of each day's enforced idleness at the rate that would be paid a laborer in his particular trade to refrain from work. However, if one is deprived of a limb[57] or has his hand cut off, the offender must pay the compensation (1) for his hand, this being the damages, and (2) for the enforced idleness, that is, the amount he would receive if he were a cucumber watchman.[58] That is to say, we find out what the daily wage of a cucumber watchman is and calculate the total for all the days that he is ill,[59] and the

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court should (first) estimate how much a guard in a cucumber field earns everyday and then (secondly) make a calculation of all the days of the sickness[59] of this person due to his injury so that the injurer should compensate him (for the estimated wages possibly earned during this time period). And likewise in the case if a person cut off[60] another person's leg, the court should consider the injured person as if he was a doorguard,[61] or if a person blinded[62] another person, the court should consider the injured person as if he were a miller. And all other cases should be adjudicated in a similar way. Note. This refers only to people in general who are not craftspersons, but if the person is a skilled craftsperson who can return to his vocation after his illness, the court should estimate his time

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offender must give him this amount. Similarly, if one's leg is cut off,[60] we determine the amount as if he were a doorkeeper;[61] if his eye is blinded,[62] we determine the amount as if he were a mill grinder. These rules apply in all similar cases.

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lost from gainful employment according to work which he had to neglect [Tur chapter 9 in the name of Rabbi Asher b. Yehiel].

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Joseph Caro follows the halakhah of the Mishneh Torah exactly.

18. How should the court estimate medical expenses?[63] The court should estimate[64] for how many days the injured person should take to recover from (his type) of injury and how much money he will require for medical expenses. This total sum should be paid to the injured person immediately,[65] and the court does not obligate the injurer to pay for whatever the injured person needs daily. This matter is considered a law (rabbinic ordinance), favoring the person who caused the injury.[66] And thus (concerning) compensation for idling, the court should estimate[67] how much the idling is worth in money and the injurer

2:14. How is the payment for medical treatment determined?[63] We estimate[64] the number of days it will take the injured person to recover from his illness and the amount of money he will require. The offender may pay this to him forthwith[65] and is not compelled to pay in daily installments. This method of payment was instituted for the benefit of the injurer.[66]

2:15. Enforced idleness is estimated[67] in the same manner, and the total amount is paid at once.[68] If one is slow to recover from his illness and it is protracted beyond the estimated time, the injurer need add nothing.[69] Similarly, if one recovers

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should make pecuniary compensation immediately.[68] If the injured person's sickness drags on and on and his illness is protracted for longer than the court's initial estimate, the injurer is (not held liable) to make additional compensatory payments to the injured person.[69] And also if the injured person recovers immediately, the injurer has no right to reduce the compensatory payment that was assessed by the court.

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immediately, nothing may be subtracted from the estimated sum.

Joseph Caro follows the halakhah found in the Mishneh Torah exactly.

19. (In the case) the injurer announced that he will not adhere[71] to the rabbinic ordinance (mentioned above in paragraph 18) but will provide medical treatment day by day, if the court accepts the offer[72] and if no decision[73] was made to pay a lump sum but instead the injured person was treated day by day, and subsequ-

2:16. The above rule[70] applies only if the injurer agrees, seeing that it is intended for his benefit. If, however, he says that he does not desire[71] this advantage but that he would rather provide the daily medical expenses, his request must be granted.[72]

2:19. If the total amount is not fixed in advance[73] but medical

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ently boils[74] develop on account of the wound or the wound re-opens after it was healed,[75] the injurer is held liable to continue (the injured person's) medical treatment and compensate him for his idleness.[76] If boils develop that were not a result of the wound, the injurer is not held liable to provide for further medical treatment or compensate him for his idleness.	expense is provided daily, and ulcers[74] appear as a result of the wound or the wound re-opens after it has healed,[75] the rule is that the injurer is obliged to pay for further medical treatment and for continued enforced idleness.[76] If ulcers do appear but not as a result of the wound, he must pay for the medical treatment[77] but need not pay for continued enforced idleness....

There is a major divergence between the two codes. Maimonides holds that there is liability for medical treatment for an infection not caused by the wound. Caro holds there is no liability at all, and his commentary on the Mishneh Torah states there must have been a scribal error in order to produce the present halakhah in the Mishneh Torah.

20. (In the case of) a person who ignores[78] the instructions of a doctor (thereby) aggravating his infirmary, the injurer is not held liable to provide further medical treatment.[79]	2:19. If the patient disobeys[78] the physician and his illness worsens, the injurer need not pay for further medical treatment.[79]

Joseph Caro follows the halakhah found in the Mishneh Torah exactly.

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21. (If) the injurer[80] declares to the injured person, "I will treat you,[81] or I have a doctor who will treat you for nothing," the injured person does not accept the offer.[82] Rather, the injurer should bring a competent physician who treats him for a fee.	2:18. If the injurer[80] says, "I will cure you myself,"[81] or, "I have a doctor who will cure you free of charge," his suggestion is not heeded;[82] rather he must bring a skilled physician to effect a cure for a fee.

Joseph Caro follows the halakhah found in the Mishneh Torah exactly.

22. If the injurer declares,[83] "I will bring to you a physician from a distant place, who will charge a lesser fee," the injured person may declare to the injurer, "The physician who (lives) in the same place as the injured person (will be) more thorough so he should not harm his practice (reputation).

This halakhah is not found in the Mishneh Torah.

23. (If) the injured person says,[84] "Pay me the doctor's fee and I will treat myself," the injurer has the right to declare	2:17. If the injured person says[84] to the offender, "Fix a definite sum in agreement with me and give it to me and I will see to my own

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the following to him, "Perhaps you will not treat yourself satisfactorily, and (the people of the community) will call me a (malicious) injurer forever."

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cure," his request is not granted, for the offender can reply, "Possibly you will not cure yourself and I shall be looked upon as a wrongdoer." He must therefore either give him the amount required daily or settle for a lump sum and give him the cost of the medical treatment through the court.

Maimonides provides a little more detail which reiterates the method of payment specified in 420:19, above.

24. How should the court estimate shaming? In all cases (assessment) should be based on[85] the person who shames and the person who is shamed. The case of a person who is shamed by a minor is not similar to the case of a person who is shamed by an adult and an esteemed person. For the one who is shamed by a lowly person, his shame is greater.[86]
Note. And thus a person's shame is directly related to his status, for example, a great person's

3:1. How is humiliation assessed? It depends[85] upon the relative status of the one who causes the humiliation and the one who is humiliated. Humiliation caused by an insignificant person cannot be compared with humiliation caused by a great and eminent person.[86] The humiliation caused by the lesser individual is greater.

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shame is greater [Tur]. And a person who insults a Kohen,[87] the Kohen's shame is greater than another person's [Rabbi Isaac b. Sheset chapter 54].

Joseph Caro includes the case of a minor which is not found in Maimonides' code.

25. (In the case of) a person who shouts in another person's ear and causes him to become deaf, is exempt from prosecution by a court,[89] but is held liable by divine laws. If the injurer grabs[91] another person and blows in his ear, causing him to become deaf, or strikes him on his ear causing him to become deaf,[93] the injurer must make a pecuniary compensation for the complete value[94] of the injured person. If the injured person is not a craftsperson and he is still able (to continue working) in the same vocation, the court assesses how much his value has been decreased,

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2:7. If one frightens[88] another, he is legally exempt,[89] although morally liable, even if the other is made ill[90] by the fright, provided that he does not touch him, as for example, if he shouts behind him or suddenly confronts him in the dark, or does something similar. Also, if one shouts into another's ear and deafens him, he is legally exempt but morally liable. If, however, one grabs[91] another and blows into his ear and deafens him, or if he takes hold of his clothes, or does something similar, he is liable and must pay compensation.

2:12. If one boxes another's ear,

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and (orders) the injurer to pay to him (that sum).

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or seizes him[92] and blows into his ear, and thereby deafens him,[93] he must pay him his whole value,[94] seeing that he is now unfit for any work whatsoever.[95]

Maimonides includes the case of someone who is frightened which is deleted in Caro's code. Joseph Caro includes the halakhah regarding a crafts-person who was caused to loose his hearing, which is not found in the Mishneh Torah here.

26. If[96] the injurer blinds another person and the court has not made an assessment,[97] and then the injurer cuts off (the same person's) hand and the court has not made an assessment, and then he cuts off his foot and the court has not an assessment, and afterwards the injurer causes him to become deaf, since the court never made an assessment of each damage the injurer has to make pecuniary compensation to the injured person for his total value.[98] Note. The injurer is held liable to make pecuniary compensation for pain,

2:13. If[96] one blinds another's eye and no assessment[97] is made, then cuts off his hand and no assessment is made, then cuts off his leg and no assessment is made, and then deafens him, the rule is that inasmuch as no assessment was made for each injury separately, the offender need pay him only his whole value.[98] If[99] an assessment is first made for each injury separately, and then[100] an assessment is made of his whole value, only the whole value may be collected from the offender.[101] If, however, the injured person

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medical treatment, and shaming for each act of maiming, only (if) the court estimates all damages together [Tur chapter 20 in the name of Rabbi Asher b. Yehiel]. If[99] the court has rendered an estimate for the damages for each injury, and afterwards[100] renders an estimate for all of them, the injured person can only collect the value of all of his total worth from the injurer.[101] But if the injured person seizes (compensation) for damages for each limb and in addition the value of his total worth,[102] the court cannot reclaim this compensation from him.[103] Note. And it was already made clear in chapter 388 that there are those who differ and hold that seizure (grabbing) has no validity [Rabbi Asher b. Yehiel and the Tur].

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seizes the damages for each limb, together with his whole value,[102] this cannot be reclaimed from him.[103]

Joseph Caro follows the halakhah found in the Mishneh Torah.

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27. When the court is caused to collect for the injured person on four categories of damages, the court does not allow[105] the injurer any extension of the time (to pay) for them, but if the injurer only shamed[107] the plaintiff, the court allows the injurer an extension of the time (to pay) since the injurer did not cause the plaintiff to suffer a loss of money.	2:20. When the court fixes a definite sum to be paid by the injurer and requires him to pay it, the court must collect the whole sum[104] from him immediately[105] and may not set a time[106] during which he shall pay. If, however, he is required to pay for humiliation only,[107] the court must give him time to pay, seeing that he did not deprive the other of money.

Joseph Caro follows the halakhah found in the Mishneh Torah.

28. The same procedure used to estimate the death penalty[108] is also used in a (case of damages)[109] to a person. How is this law applied? In the case that a person struck another person with a small object, which is not capable of harming (anyone) or with a small chip of a tree and physically injured him, (because) this kind of object does not normally have the potential to do (the damage) the injurer would be	1:18. Just as an appraisal of the capacity to harm must be made in the case of death,[108] so must such an appraisal be made in cases of injury.[109] Thus, if one strikes another with a small pebble not large enough to cause injury, or with a small splinter of wood, and it inflicts a wound that an object of this kind would not be expected to inflict, he is exempt.[110] For when Scripture says, "With a stone or with his fist" (Ex. 21:28),[111]

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exempt[110] from legal consequences, i.e., payment. For the Torah states, "With a stone or a fist" (Ex. 21:18),[111] these objects are suitable to physically injure (someone). But in such a case, the defendant is held liable only for a claim for shaming.[114] Therefore, the court requires witnesses[115] to testify with what object the injury was committed, and to bring the object that the defendant injured the plaintiff with to the court, so that the court can estimate the evidence and rule about it.[116] If the object is lost and the injurer declares that the object was not capable of causing the injury but the injured person declares that it was capable of inflicting the injury, then if the plaintiff takes an oath[118] (that the object was capable of inflicting the injury) he collects.

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it refers to an object that is apt to cause injury. He is, however, liable for the humiliation caused,[112] for even if one merely spits[113] upon another's person, he is held liable[114] for humiliation. The witnesses[115] must therefore know by what means the injury was caused, and the object with which the injury was inflicted must be brought before the court for the court to appraise it and adjudicate upon it.[116] If the object is lost and the offender says, "It was not large enough to cause injury and it is as if I were party to a mishap,"[117] while the wounded man says, "It was large enough to inflict injury," the latter may take an oath[118] and then receive compensation, as will be explained.

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Maimonides includes the detail that the injurer may use as his defence that the injury was a mishap which would exempt him from paying compensation. This is deleted in Caro's code.

29. Concerning iron, there is no requirement for the court to assess it for even a small needle[119] is suitable to kill and how much the more so to cause injury. This refers to (something) like a needle which is very sharp but does not cause damage because of its weight.[120] Concerning the needle which is not sharp at all, the court should assess it as any other object.

1:19. In the case of iron, no appraisal is necessary, for even a small needle[119] can potentially kill, let alone injure a person....

Caro includes much more detail concerning the characteristics of a needle.

30. In the case of a person who throws a rock[121] and after it leaves his hand the person's head emerges from a window and is struck, the defendant is exempt[122] from all claims against him, for the biblical text states, "And it hit another person" (Deut. 19:5). This exempts someone because the

1:19. If one throws a stone,[121] and after it leaves his hand someone puts his head out of a window and is struck by the stone, the thrower is completely exempt.[122] For when Scripture says, "And it lights upon his neighbor" (Deut. 19:5), it excludes any case where the neighbor subsequently places

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plaintiff made himself available (to receive the blow).[123]	himself within range.[123]

Joseph Caro follows the halakhah found in the Mishneh Torah exactly.

31. (In the case of) a person who injures himself even though it is prohibited[124] to do so, he is exempt[130] (from any court action). But others who physically harm[126] another person are held liable.	5:1. One is forbidden to wound either himself[124] or another.[125] Not only one who wounds another[126] but even one who strikes[127] a law-observing Israelite in the course of a quarrel, whether an adult or a minor, whether a man or a woman, transgresses a negative commandment contained in the verse, "He shall not exceed... to smite him" (Deut. 25:3).[128] For if Scripture here warns against excess in lashing an offender,[129] how much more does this warning apply to smiting an innocent person.

Joseph Caro specifies that in the case of self-inflicted injury a person is exempt from any action by the court. Maimonides does not make this corollary in his code.

32. A person who frightens[88] another person even to the extent the person becomes sick[90] from the scare, is exempt[89] from any legal	2:7. If one frightens[88] another, he is legally exempt,[89] although morally liable, even if the other is made ill[90] by the fright, pro-

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action but is held liable by divine law. Provided that he did not touch the other person, for example, that he shouted at him from behind him or appeared suddenly in the dark, or a similar action, or also if he shouted in his ear so that the person became deaf, the injurer is exempt from any legal action but is held liable by divine law. (But if) a person grabs[91] another person and blows in his ear causing him to become deaf or that he touches him or pushes him (so that he grabs his clothes) at the time he frightens him, or grabbed his clothes, the injurer is held liable to make pecuniary compensation.

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vided that he does not touch him, as for example, if he shouts behind him or suddenly confronts him in the dark, or does something similar. Also, if one shouts into another's ear and deafens him, he is legally exempt but morally liable. If, however, one grabs[91] another and blows into his ear and deafens him, or if he touches and pushes him when he frightens him, or if he takes hold of his clothes, or does something similar, he is liable and must pay compensation.

Joseph Caro follows the halakhah found in the Mishneh Torah.

33. If the injured person declares, "I lost my hearing, my eye was blinded or I cannot see or I cannot hear," he is not to be

2:8. It appears to me[131] that if the person assaulted says, "I have become deaf and cannot hear" or "My eye is blinded and I cannot see,"

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believed for the court does not recognize[132] the matter for perhaps he is acting deceitfully. The plaintiff will not receive pecuniary compensation until he has been blind a long time. But if it became substantiated that the eye had no vision or the injured person was deaf then afterwards the injurer must make pecuniary compensation.

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he is not believed immediately,[132] since we do not know the facts and he may be pretending. Thus, he may not receive compensation for damages until he has been examined over a long period of time and it is confirmed that he has lost the sight of his eyes or has become deaf. Only then need the injurer pay him compensation.

Maimonides begins this halakhah with the expression, "It appears to me." This formula usually represents an innovative principle based on a source which only Maimonides apparently knew. Caro's code reflects the correctness of Maimonides' opinion by giving it as the halakhah. Maimonides' code style is more concise and less wordy than Caro's code. This is particularly evident in the redundancy of the next to the last and last sentence in Caro's code. Maimonides' code does not have this problem, but moves from observation over an extended period of time to the two cases previously referred to at the beginning of the paragraph.

34. A person who shames[133] a naked person[134] or a person in a bath house[135] is exempt (from any claim for shaming). If a gust of wind lifts up[136] a person's garment so

3:2. If one humiliates[133] another who is naked[134] or is in a bath,[135] he is exempt. If the wind blows up[136] the hem of one's garment over his face so that he becomes

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that he appears naked and then another person comes and increases his exposure,[137] that person is held liable (for shaming).[138] In any case, there is no compensation for shaming of this person as great as the case of a person who embarrasses a person who is not at all naked. And also if a person lifts up his garment to descend into a river[139] or while emerging from a river, and another person embarrasses[140] him, that person is held liable for shaming.[141] In every case, compensation for shame is not as substantial as the one who shames a clothed person.[142]

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exposed, and another uncovers[137] him still more, the offender is liable for humiliation.[138] But one who humiliates another who is already exposed cannot be compared with one who humiliates another who is not exposed at all. Similarly, if one lifts up his clothes to go down into a river,[139] or is coming up from a river, and another humiliates him,[140] the offender is liable.[141] But one who humiliates such a person cannot be compared with one who humiliates another who is properly clothed.[142]

Joseph Caro follows the halakhah found in the Mishneh Torah exactly.

35. (In the case of) a person who shames another person while he is sleeping,[143] and the person dies in his sleep so that he does not feel any embarrassment, (his family) cannot collect[144] compensation for shaming. But if his

3:3. If one humiliates another who is sleeping,[143] he is liable for humiliation. If the person dies without waking up from his sleep and without feeling that the other humiliated him, we may not exact[144] compensation for this humiliation

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heirs seize (a compensation), the court does not reclaim it from them.[145] [There are some authorities who say the injurer is exempt from any claim for shaming in this case] [Tur chapter 51 in the name of Asher b. Yehiel].	from the offender. If, however, there is seizure by the heirs, it cannot be reclaimed from them.[145]

Maimonides specifies liability for shaming a sleeping person and then states the second halakhah concerning a sleeping person that dies. Caro deletes the first case in his code here.

36. One who is sleeping who shames another person is exempt from a claim for shaming.[146]	1:11. ...The rule that one who does injury while asleep must pay compensation applies only when two lie down at the same time to sleep and one turns over in his sleep and injures the other or tears his clothing. However, if one is asleep and another comes and lies beside him, the one who comes last is deemed the forewarned one, and if the sleeper injures him, he is exempt....[146]

Maimonides is referring the broader case of a person sleeping causing damages, while Caro specifies the case of a person sleeping causing shame. Caro in "Hoshen Mishpat" 421:3-4 follows the halakhah of the Mishneh Torah stated here.

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37. One who shames an insane person[147] is exempt[148] from any claim for shaming. (One who shames) the deaf-mute, or the proselyte, or the slave,[150] or a minor[151] so that when they feel they are shamed, the injurer is held liable.[149] In any case the person who shames a minor is not like the person who shames an adult, or the person who shames the slave is not like the person who shames a free person,[152] or the person who shames a deaf-mute is not like a person who shames a person who can hear.

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3:4. If one humiliates an imbecile,[147] he is exempt,[148] but if one humiliates a deaf-mute, he is liable.[149] If one humiliates a proselyte or a slave,[150] he is liable. If one humiliates a minor,[151] the rule is as follows: If the minor feels ashamed when insulted, the offender is liable; if not, he is exempt. Nevertheless, there is no comparison between one who humiliates a minor and one who humiliates an adult, or between one who humiliates a slave and one who humiliates a freeman,[152] or between one who humiliates a deaf-mute and one who humiliates a normal person.

And the halakhah is: A slave is unfit to give testimony but has the feeling of being shamed (and therefore is entitled to a claim for shame); a proselyte is fit to give testimony and has the feeling of being shamed; the deaf-mute has the feeling of being shamed; the insane person does not have the feeling of being shamed; and a minor if others shame him and he feels shame (his father collects compensation) but if (he does not feel shame) he does not collect compensation for shaming (31b).

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Caro's style is more succinct in stating the halakhah than Maimonides' even though Caro concurs with Maimonides.

38. (The case of) a person who spits on another person, that person is held liable[158] (for a claim for shaming) but a person who spits on another person's clothes or embarrasses him with words is exempt[154] from any claim for shaming. In every place and time the court should take preventative action as it sees fit. There are some authorities[159] who say that the court should excommunicate a person until he appeases the person who was shames. Note. There are some authorities who say the court beats him (with rabbinical stripes) [Bet Yosef the end of tractate 8 in the name of Mordecai b. Hillel, chapter "HaZahav"]. person who slanders another person is in the category of a person who shames (someone) with words [Pisque Israel b. Petahiah Isserlein chapter 212 and Terumat Hadeshen chapter 67]. A person who vexes another person and

3:5. If one insults another in speech[153] or spits on another's clothes, he is exempt[154] from paying compensation, but the court should institute preventative measures in this matter everywhere and at all times, as it sees fit. If one humiliates a scholar,[155] the offender must pay him full compensation for humiliation, even if he humiliates him merely in speech. There is already a well-established decision that if one humiliates a scholar, even in speech, he is to be fined and made to pay thirty-five denar in gold,[156] which is equal in weight to nine sel'a less a quarter; and we have a tradition that this fine may be enforced everywhere, both inside and outside the Land of Israel.[157]

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says to him, "I am not an apostate" or, "I am not a transgressor," even though the person did not say "as you," it is as if he had said explicitly "like you" [Bet Yosef an anonymous source and Morenu HaRav Rabbi Jacob Weil chapter 157]. A person who says to another person, "You acted like a mamzer or you are like a mamzer," there is no liability for shaming [Morenu HaRav Rabbi Jacob Weil chapter 59]. And there are those who differ and hold that if a person says, "You are like a mamzer," it is as though he called him a mamzer [Pisqe Morenu HaRav Rabbi Jacob Weil chapter 127 and "Agudah" chapter 2 of Yoma]. But if a person says, "You are lying like a mamzer," then until this matter is proven or similarly he is connected with a condition, there is no liability [Pisqe Morenu HaRav Rabbi Abraham Isserlin chapter 135]. A person who says to another person, "You are unfit,"[160] there are some authorities who say the person is able to explain (his words) for surely he meant to say that the

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other person was unfit because of kinship relations, this is not a matter of shaming [Morenu HaRav Rabbi Jacob Weil chapter 59]. And there are those authorities who are of a different opinion [Morenu HaRav Rabbi Meir of Rezbork]. A person who slanders a deceased person obligates himself to fast and repent and is fined (punished monetarily) as the court sees fit [Mordecai b. Hillel chapter "Hahovel"]. And if the persons who he slandered are buried where he lives, he should go to their graves and seek pardon from them, and if they are buried far away, he should send his agent there [Mordecai b. Hillel of Rezbork]. If the one who is accused of shaming the dead denies that it was (a case of) shaming, (in those cases) the court excommunicates the person on the basis of testimony, but not in a case of other types of shaming

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[Mordecai b. Hillel who was mentioned above, Morenu HaRav Rabbi Jacob Weil chapter 28]. And it appears that all procedures are according to the discretion of the court and see above chapter 87 paragraph 55. One who calls another person a slander the son of a slander, if he is only a slander then he is exempt (from any claim for shaming). And also if he calls (another person) a wicked one the son of a righteous person, (or) a wicked one the son of a wicked one [Hagahot Mordecai] (he is exempt). One who calls another person a slave or mamzer and it is a true statement, the defendant is exempt (from a claim of shaming), but if the defendant is not able to clarify (his statement) even though he heard others say this, he is not exempt from an accusation for shaming [Nimuqe Morenu HaRav Rabbi Meir] see below chapter 221 para-

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graph 3.

(In the case of) a person who spits on another person and the spittle (hits) his person, Rav Papa said, "This does not apply unless it (hits) his person but (only) on his clothes there is not liability." They said in Palestine in the name of Rabbi Yose bar Haninah, "This would indeed prove that a person who shames (a common) person with words is exempt from all claims (32b).

It is a custom in two yeshivot (Sura and Pumbedita) that even though (the court) does not collect fines in Babylonia, the court excommunicates an injurer until he has appeased the litigant. And when he pays him the proper amount which was to be given him, the court immediately annulled (the ban) whether or not the plaintiff was appeased (satisfied with the settlement) (30b).

Joseph Caro includes the Mishnah on page 90a in Bava Qamma which states if the spittle hits the person's body there is liability for shame. Maimonides does not state this here, but nonetheless holds there is liability as can be seen by "Hilkhot Hovel Umaziq" 3:9 in which there is a fine for spitting on a person's body. Maimonides also provides more details about insults to scholars which are not in Caro's code.

39. Even though a person shames another person with words, the injurer is not (held liable) to pay (damages), still it is a grave

3:7. Although if one humiliates ordinary persons by using derogatory speech he need not pay compensation, such action is

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transgression.[161] A person who would insult, defame, and shame others is nothing but a wicked fool and a haughty person. And the soul of all who shame an Israelite[163] with words do not have a portion in the world to come.	considered a grave sin.[161] Only a foolish scoundrel blasphemes and curses people, and the Sages of old[162] have said, "If one makes an honorable Israelite[163] blanch by his words, he will have no share in the world to come."

Joseph Caro deletes the reference attributing this halakhah to the sages which is found in the Mishneh Torah.

40. The law for the person who shames a learned person with words is made clear in Tur "Yoreh De'ah" chapter 243 paragraph 7.[164]	3:5. ...If one humiliates a scholar,[155] the offender must pay him full compensation for humiliation, even if he humiliates him merely in speech. There is already a well-established decision that if one humiliates a scholar, even in speech, he is to be fined and made to pay thirty-five denar in gold,[156] which is equal in weight to nine sel'a less a quarter; and we have a tradition that this fine may be enforced everywhere, both inside and outside the Land of Israel. 3:6. Cases of this kind occurred

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regularly in Spain. Some scholars used to forgo their right to claim, which was commendable of them, but at times one would claim and a compromise would be reached. The judges, however, used to say to the offender, "You are really obliged to give him a pound of gold."

The halakhah in "Yoreh De'ah" 243:7 states the punishment for such an offense is excommunication and not a fine as stated here in the Mishneh Torah.

41. There are many instances of beatings that involve degradation and a little pain but no damages.[165] And already the sages[166] have decided fixed sums (as fines).[167] And anyone who[168] strikes another person (with such a blow), he will pay the injured person the fixed sum, for all these are fines.[169] And that fixed sum is (the compensation for) the value of the pain, the shame, the medical treatment, and

3:8. There are many types of blows which cause humiliation and a little pain but no permanent damage,[165] and the Sages[166] have long since fixed definite amounts[167] of compensation for them. If one[168] strikes another a blow of this kind, he must pay the corresponding fixed sum. All are regarded as fines;[169] and the fixed sum covers the pain, the humiliation, the medical treatment, and the enforced idleness.

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the time lost from gainful employment. Whether the injured person requires medical treatment or not, the injurer must pay.[170] How much must he pay? In the case of a person who kicks[171] another person on his leg, the injurer must pay five selahs. (If) he struck him on his knee, the injurer must pay three selahs. (If) he made a fist and struck him with his fist, the injurer must pay thirteen selahs.[172] (If) he slapped another person with his palm,[173] the injurer must pay a selah.[174] (If) he slapped him on his face,[175] the injurer must pay fifty selahs. If he slapped him with the back of his hand, the injurer must pay one hundred selahs.[176] And thus (if) he hurts his ear[177] or plucked out his hair, or spit and the spit reached him[178] the injurer must pay one hundred selahs. And in this manner the injurer must pay for

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This is the amount the offender must pay, whether or not medical treatment and enforced idleness are necessary.[170]

3:9. How much need he pay? For kicking[171] another, the offender must pay five sel'a; for knocking him with his knee, he must pay three sel'a; for tightening his fingers as though into a bunch and striking the other person with his fist tight, he must pay thirteen sel'a;[172] for slapping another with the palm of his hand,[173] he must pay one sel'a;[174] for slapping the other's face,[175] he must pay fifty sel'a; for slapping him with the back of his hand, he must pay one hundred sel'a.[176] Similarly, if he gives another a stinging blow on the ear,[177] or pulls off another's cloak, or uncovers a woman's head, he must pay a hundred sel'a. This is the amount one must pay for each act. Thus, if one kicks

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each and every (base) action. How is the above assessed? For example, that a person kicks another person four times even if it is consecutively, the injurer must pay twenty selahs. (If) he slaps another person on his face two times, the injurer must pay one hundred selahs, and so on for the rest (of the cases). Note. There are some authorities that say even though there is in the Gemara (the ruling concerning) a person who calls another person a mamzer should receive forty lashes, at any rate, there are localities which do not practice this and follow the custom of the place [Rabbi Asher b. Yehiel section 101 chapter 1]. And it seems to me that the same law applies for the cases which were mentioned.

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another four times, even one after the other, he must pay twenty sel'a; if he slaps his face twice, he must pay a hundred sel'a. The same rule applies in the case of the other offensive acts.

Yerushalmi: Ray Karni taught, for kicking (the injurer must pay) one selah; for kicking with the knee (the injurer must pay) three selah; and

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for a severe blow with (a saddle of an ass or with a fist or the back of the hand) (the injurer must pay) fifteen selah. One said in the name of Resh Lakish, "A person who shames an old person should pay him (for) his complete shame." A person shamed Rabbi Judah bar Haninah. The case came before Resh Lakish and he fined (the injurer) a pound of gold (32b).

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Maimonides includes two more cases, pulling off a cloak and uncovering a woman's head, in his code which are not found in the Shulhan 'Arukh here.

42. All the selahs (mentioned in the above paragraphs) are (based) on the monetary system (coins) of Israel.[179] There is only an eighth part silver in them. The selah has three maahs, for every maah weighs sixteen barleycorns of pure silver, which is one Ottoman.

3:10. The sel'a mentioned is a coin of the Land of Israel[179] current at the time when each sel'a contained half a denar of silver[180] and three and a half denar of bronze. Therefore, if one is required to pay a hundred sel'a for inflicting blows of this kind, he must pay twelve and a half sel'a of pure silver.[181]

Joseph Caro in his code returns to the words found in the Gemara, kesef medinah (money or coins of the country, i.e. Israel), while Maimonides uses the term, kesef erets Yisra'el (money or coins of the Land of Israel). Also, the two codes exhibit that changes in monetary units occurred, of which Maimonides gives more precise details.

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43. (The above paragraphs) apply only to an esteemed person but a person who is inferior and does not care for all these matters[182] of shaming and the like, the fine is only according to the discretion of the judges, as they decide[184] how much he should receive. Note. There are some authorities who say that these matters refer only to shaming and pain. But as to medical treatment and time lost from gainful employment, every case is (decided) according to its (particular) character [Tur chapter 34 in the name of Alfasi and also Rabbi Asher b. Yehiel].

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3:11. The above amounts apply only in the case of a respectable person, but a common person who remains indifferent to these[182] and similar insults may receive only an amount commensurate with his status,[183] as the court might deem proper[184] for him to take. For there do exist contemptible individuals who are indifferent to humiliation and degrade themselves all day long in every possible way out of mere sport and frivolity or to earn a copper from low persons seeking amusement.

Maimonides provides more details about the persons in question in the halakhah.

44. How the court makes a person pay these compensations and fines now-a-days is explained in chapter 1.

These procedures are not discussed in either code.

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421 In this chapter there are fourteen paragraphs which deal with a person who unintentionally shames another person and a person who unintentionally physically injures another person.

1. A person is not held liable for shaming unless he intends to shame (another person).[1] And a person who unintentionally shames another person is exempt (from a claim for shaming). Therefore, a person who is sleeping, who shames (another person) is exempt. Note. And thus, one who complains against another person who informed on him or stole from him, or a similar thing, even though he was unable to clarify the matter about him at any rate he is exempt, for he did not intentionally shame him Morenu HaRav Rabbi Jacob Weil chapter 168 .

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"Hilkhot Hovel Umaziq"

1:10. If one causes humiliation, he is not obligated to pay compensation unless he acts with intent,[1] for Scripture says, "And put forth her hand" (Deut. 25:11-12).[2] However, if one unintentionally puts another to shame, he is exempt. Consequently, if one who is asleep or in a similar state causes humiliation, he is exempt.

Maimonides includes the proof text in his code which is deleted from Caro's code.

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2. A person who intends[3] to shame a minor but embarrassed an adult must make pecuniary compensation of the value[4] of the minor's shame[5] to the adult. A person who intends to shame a slave[6] but embarrassed a free person must pay the value of the slave's shame to the free person.[7]	1:14. If one intends[3] to humiliate a minor and instead humiliates an adult, he must pay the adult the compensation due[4] for the humiliation of a minor.[5] If one intends to humiliate a slave[6] and instead humiliates a freeman, he must give the freeman the compensation due for the humiliation of a slave.[7]

Joseph Caro follows the halakhah in the Mishneh Torah exactly.

3. There are those authorities who say that (concerning) pain, medical treatment, and time lost from gainful employment a person is held liable (for these) even if (he acted) unintentionally unless he acted under force only unintentionally, which happens to be close to a deliberate act. But concerning damages, the injurer is held liable[8] even if he acted under duress[10] (for) a person is (considered) warned (not to cause damages and therefore always res-	1:11. A person is always deemed forewarned[8] whether he acts inadvertently or deliberately, whether he is awake, asleep,[9] or intoxicated,[10] and if he wounds another person or causes damage to another's property, he must pay compensation from the best of his own property....

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ponsible) whether unintentionally or deliberate or awake or asleep.[9]

Joseph Caro includes more detail concerning the different counts, a distinction which is not made by Maimonides. Maimonides includes the case of an intoxicated person which is deleted in Caro's code but replaced by the case of acting under duress.

4. (The following case) applies only to a person who is sleeping. A sleeping person is held liable when two people are sleeping very close together and one of them turns over on the other person and injures him or tears his clothes. But if a person was already sleeping and another person came and laid down beside him, the person who came last is held liable if he injured the (first) person but if the (first) person injured him, the injurer is exempt.[11] [The same law (applies) in every case of major duress, the injurer is exempt] [Rabbi Isaac paragraph 31 part 2]. And thus if he left his vessels beside a sleeping person,

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1;11. ...The rule that one who does injury while asleep must pay compensation applies only when two lie down at the same time to sleep and one turns over in his sleep and injures the other or tears his clothing. However, if one is asleep and another comes and lies beside him, the one who comes last is deemed the forewarned one, and if the sleeper injures him, he is exempt.[11] Similarly, if one places an article alongside a person who is asleep and the latter breaks it, he is exempt, seeing that the one who put it down is deemed forewarned and commits an act of negligence.

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who turned over on them and broke them, the sleeping person, who turned over on them and broke them is exempt, because the one who placed them by his side acted improperly by placing the object next to the sleeper.

Joseph Caro's style is not as clear as Maimonides' in establishing in the first case that the two sleepers laid down at the same time. This must be inferred from what follows.

5. In the case of two people wrestling[12] together and one person caused the other person to fall to the ground and in falling he blinded his eye, the injurer would be exempt (from any claim for damages).[13]

This halakhah is not found in Maimonides' code.

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6. In every case that a person intentionally[14] physically injured another person, the injurer is held liable for the five counts (mentioned in 420:3). Even if the other person entered his property

1:16. If one intentionally[14] injures another, he is liable for the five effects wherever the injury occurs.[15] Even if one enters another's premise without permission and the owner injures

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without permission and the owner physically injured him[16] and (then) removed him (from his property), the injurer is held liable. For granted that he has the right to remove him,[17] he does not have the right to harm him. But if he urges him (to leave) but he does not want to leave, there are some authorities who say that he has the right even (if it means hurting him) in order to remove him.[18] Note. And thus, a person who has a servant and fears that he will steal from him, is able to make him leave before the period of hiring expires. But if he refuses, the owner can strike him until he leaves [Mordecai b. Hillel chapter "Hamenih"].

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him,[16] the latter is held liable, for although he has the right to expel a trespasser,[17] he has no right to injure him....

Caro includes the case of the right of the owner to remove even by force a person unwilling to leave the owner's property. This is missing in Maimonides' code.

7. (In the case of) a person who entered another person's courtyard

1:16. ...If, however, the trespasser suffers accidental injury

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without permission and without the owner knowing that he entered, (then if) the owner injures him unintentionally,[19] the owner is exempt.[20] If the owner was injured by (the intruder), the intruder is held liable since he entered (the premises)[21] without permission. And only when the intruder knew about the owner's presence and did not see him but the owner saw the intruder, (then) the intruder is exempt (from any claim for damages) for (the owner) injures himself.

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due to the owner,[19] the owner is exempt.[20] If the owner suffers accidental injury due to the trespasser, the trespasser is held liable because he entered[21] without permission....

Joseph Caro includes two qualifiers in his code that are missing in the Mishneh Torah. First, he specifies that the owner must not know that the intruder entered his premise. And secondly, if the owner saw the intruder but did not take ample care and is injured by the intruder, the intruder is exempt from any liability.

8. (In the case of) two persons who had permission or did not have permission (to be on a premise) and (subsequently), injured each other, both are exempt.[22] [(If)

1:16. ...If both have authority to enter the premises or neither has, and each is accidentally injured by the other, both are exempt.[22]

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they intentionally injured each other, both are held liable (for any claims for damages)] [Tur chapter 9, see above chapter 378].

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Caro clarifies that if the two persons intentionally injure each other there is liability. This is implicit in the Mishneh Torah because at the beginning of 1:16 Maimonides states for any intentional injury there is liability.

9. A person who chops wood[23] in a public place and (while chopping) a chip flies off from (the wood) and injures (a person standing on) private property,[24] or a person who chops wood on private property and injures (someone standing) on another person's private property,[26] or a person who enters a carpenter's shop,[27] whether with or without permission, if a splinter flies off and strikes him on his face, (the rule in each of these cases is that) the injurer is held liable[28] for four counts and exempt from any claim for shaming.[29]

1:17. If one is chopping wood[23] in a public domain and a piece of wood flies off and causes injury in a private domain,[24] or if one is chopping in a private domain and causes injury in a public domain,[25] or if one is chopping in a private domain,[26] or if one enters a carpenter's shop,[27] with or without permission, and a chip of wood flies up and strikes him in the face, the rule in each of these cases is that the one causing the injury is liable[28] for four effects but is exempt from paying compensation for humiliation.[29]

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The Mishneh Torah contains the case of chopping on private property and striking someone with a chip who is standing on public property. This is missing in Caro's code.

10. (In the case of) a stone that was resting in a person's lap,[30] whether the person was aware of it or knew it and forgot, and (subsequently), the person stood up and the stone fell off and causes damage,[32] (or similarly) if he intended to throw (a stone) two cubits but (instead) threw it four and causes damage, or if a person causes damage while asleep,[35] the injurer is held liable for the damage[33] but is exempt from (paying compensation for) the remaining four counts.[34]

1:15. If one has a stone in his lap[30] no matter whether he was never aware of it[31] or whether he once knew of it but subsequently forgot, and when he gets up it falls and causes damage,[32] he is held liable for the damage alone[33] but is exempt from the remaining four effects.[34] Similarly, if one intends to throw a stone two cubits and instead throws it four and causes damage, or if one causes damage while asleep,[35] he is liable for the damage but is exempt from (paying compensation for) the remaining four effects.[34]

The Mishneh Torah contains the case that someone could have placed a stone in the person's lap and therefore he was never aware of it. This is missing in Caro's code.

11. (In the case of) a person who fell from a roof during normal wind conditions[36] and causes

1:12. If one is blown from a roof by an ordinary wind[36] and causes damage, he must pay for four

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damage, the injurer is held liable (to pay compensation for) four counts[37] but is exempt (from paying compensation for) shaming.[38] However, (in the case of) a person who fell (off a roof) during abnormal wind conditions[39] (i.e., especially strong winds) (and causes damage), the injurer is held liable only (to pay compensation for) damage[40] and is exempt (from paying compensation) for the remaining four counts[41] [and see above chapter 418 paragraph 13]. If (the falling person) turns over[42] his body in such a way that he would strike another person in order (to break his fall), the injurer is held liable for all (five) counts, including shaming, because if a person intends to do damage, even though he did not intend to shame he is held liable (to pay compensation for) shaming.[43]

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effects[37] but is exempt from paying for humiliation.[38] If, however, he is blown off by an unusual wind,[39] he is liable for damage only[40] and is exempt from payment for the four other effects.[41] If he turns over to break his fall,[42] he is liable for all five effects, including humiliation, because if one has intent to do damage, he is deemed liable for the humiliation caused even though he does not intend to humiliate.[43]

Caro's code follows the halakhah in the Mishneh Torah exactly.

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12. (In the case of) a man who injures[44] his wife during sexual intercourse,[45] he is held liable for her injuries.[46] In the case of a person who says to another person, "Cut off my hand or blind my eye,[47] with the understanding that you will be exempt," the injurer is (nevertheless) held liable for the five counts since it is well known that a person does not desire such treatment.[48]

Note. There are some authorities who say that if a person (explicitly) said to another person on the condition that you will be exempt, he would be exempt. But if he did not say to him explicitly words whose only meaning is understood as this, the court interprets (legal interpretation) his statement so that the injured person does not exempt him. For example, a person said to another person, "Cut off my hand or blind my eye." Then the would-be injurer said, "On

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4:17. If one injures[44] his wife during marital intercourse,[45] he is liable for the injury done to her.[46]

5:11. There is another difference between personal injury and damage to property. If one says to another, "Blind my eye,[47] or cut off my hand, with the understanding that you are to be exempt," he is nevertheless liable for the five effects since it is quite certain that a person does not really consent to such treatment.[48] But if one says to another, "Tear my coat, or break my jar, with the understanding that you are to be exempt," he is exempt. If one fails to say, "With the understanding that you are to be exempt,"[49] the offender is deemed liable even though the injured person permits him to be destructive.

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the condition of an exemption,"
and the person to be injured
replies, "Yes." The court
interprets this like he meant it
to be a question, he meant to say
(it as a question that means)
really. And therefore the
injurer is held liable [Tur chapter
1 in the name of Rabbi Asher b.
Yehiel].

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(In the case of) a person who says, "Blind my eye, etc.," Rav Yosi bar Hamah said to Rava, "What is the difference between the first and the last clause (in the Mishnah)?" I conclude (the halakhic conclusion) (that) Rabbi Yohanah said, "There is a no that is like a yes, and there is a yes that is like a no." It was taught in a baraita even if a person said, "Strike me and wound me on the condition (that he would be) exempt (from liability)." He said, "Yes." This is a yes that is like a no. And there is a no that is like a yes: "Break my vessel; tear my garment on the condition (that he would be) exempt (from liability)." And he said, "No." Behold this is a no which is like a yes. A contradiction (between two passages of equal value) was raised, "To guard and not to destroy" (Ex. 22:6), to guard and not to tear, to guard and "not to distribute to the poor" (ibid.). Rabbah said, "There is no difficulty, surely this one came for the purpose of tearing (do with it what you want) and that one came for the purpose of guarding (33a).

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Maimonides includes the case of damage to property in his code. This is consistent with what subject is being addressed in the Mishneh Torah. It is not so clear why Caro included this halakhah in this chapter.

13. (In the case in which) two persons physically injure each other,[50] if person A injures person B more than person B injures him, person A must pay person B for the balance of the full damages.[51] This refers only to the above cases that both of them began (fighting) at the same time or after person A physically injures person B, person B immediately struck back and injured person A. But if one person began (the fight), the second person is exempt, for then this person has the right to physically injure the other person in order to defend himself. The same law applies to matters of cursing and shaming, that the one who begins pays the fine [Hagahot Maymuni on Qedushin]. Reuben struck Shimon and Shimon recoiled and came to strike Reuben. And Reuben's wife came and grabbed (Shimon). But he tore away his hands and struck her, he would be exempt

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[Morenu HaRav Rabbi Jacob Weil chapter 28] see below the end of chapter 424, a man and a woman who physically injured each other. However, it is necessary to estimate whether he would have been able to defend himself by inflicting a minor injury, but if he inflicts extensive injury he is held liable. [This refers only to a case of injury that the injurer has to pay compensation to the injured person for four counts which is like a person who injures inadvertantly and is exempt from (paying compensation for) shaming, for surely he did not intend to shame. And therefore, a person who strikes another person because the other person called him a mamzer, (then) he is exempt as it is written in Scripture, "And it was that his heart was angered, etc." (Deut. 19:6). And likewise if one calls his friend a thief and answers him, you are lying like a mamzer or called him just a mamzer he is exempt for the same reason] [Morenu HaRav Rabbi Jacob Weil chapter 28

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paragraph 60 . And thus is the rule for a person who sees a Jew striking another person: (If) he is not able to save him without striking the attacker, he can strike he attacker to separate him from a prohibition. Note. And thus a person who is under his authority (an employee of his) and he sees that he is committing a transgression, it is permitted to strike him and chastise him in order that he will keep away from a prohibition. And one does not have to bring him to court Terumat HaDesen chapter 18 .

This halakhah is not found in Maimonides' code.

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14. (In the case of) two persons who tegether physically injured another person, both of them are held liable.[52] The two split[53] the fine between them. If one person intended[54] (to injure) and the other person did not intend to injure (the other person), (the

1:13. If two persons wound a third at the same time, they are both held liable[52] and the liability is apportioned[53] between them. If one acts with intent[54] and the other without intent, the one who acts without intent is exempt from paying compensation

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latter) person is exempt from paying compensation for shaming.	for the humiliation.

Caro follows the halakhah found in the Mishneh Torah exactly.

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422 In this chapter there are two paragraphs which deal with how the injurer must conciliate the injured person so that he will forgive (the injurer).

1. A person who physically injures another person, even though he compensated him for the five counts (mentioned in 420:3), he will receive no atonement until he asks him for (forgiveness), and then (the injured person) will forgive him. But it is prohibited[4] for the injured person to be merciless in granting forgiveness, because this is not the way a Jew should act. Rather, since the injurer sought (forgiveness) from him, and begged[5] him one or two times,[6] and it becomes known that the injurer has repented his transgression and regretted his wrongdoing, the injured person should forgive him. For everyone who is quick to forgive is surely a person laudable and sages are pleased with him.

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5:9. If one inflicts a personal injury on another, he may not be compared to one who damages another's property.[1] For if one damages another's property, atonement[2] is effected for him as soon as he pays whatever is required. But if one wounds another, atonement is not effected for him even if he has paid for all the five effects, or even if he has sacrificed all the rams of Nebaioth,[3] for his sin is not forgiven until he begs forgiveness of the injured person and is pardoned.

5:10. The injured person, however, is forbidden[4] to be harsh and to withhold forgiveness, for such behavior does not become a descendant of Israel. But once the

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Note. And see in "Orah Hayyim" chapter 606. It is prohibited for a person to seek divine intervention against another person who did him some wrong. This refers only (to a case) which is governed by human law, for all who cry out (for justice) against another person, are punished first [Gemara chapter "Hahoyel"]. And there are some authorities who say that even though a case is not governed by human law, it is prohibited to cry out (for justice against another person unless it was made known to him in the beginning [Rabbenu Nisim, first chapter of Rosh HaShanah].

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offender has asked forgiveness and entreated[5] him a first and a second time,[6] and he knows that the offender has repented of his sin and regrets his evil deed, he should forgive him. Whoever forgives quickly is praiseworthy and his behavior meets with the approval of the sages.

Maimonides draws a distinction between damage to person verses damage to property as to what measures must be taken in order for the injurer to be forgiven by the injured person. Caro makes no reference to this distinction here. Maimonides uses some hyperbole to stress the gravity for the need of the injurer to seek the forgiveness of the injured person. This use of language is missing in Caro's code.

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2. The law[15] (pertaining to) the injured person (who) swears and collects (his compensation) is explained in chapter 90.[16]

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5:4. The sages have penalized[7] strong-armed fools by ruling that the injured person should be held trustworthy and should swear holding a sacred object[8] that the person in question did inflict a specific wound upon him and then receive[9] the compensation due to him, provided that witnesses were present.[10] Thus, if two witnesses testify concerning one that he came into another's hands un-wounded[11] and emerged wounded, but they did not see him being wounded, and the accused says, "I did not wound you," while the injured person replies, "You did wound me," the latter takes an oath and then receives compensation.

5:5. The above rule applies[12] only if the wound is so located that it could be self-inflicted,[13] or if there was present a third individual whom the wounded person could have asked to inflict a wound on him so that he could

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accuse the other. But if no one else was present, and the wound is so located that it could not be self-inflicted, such as a bite between the shoulder blades or the like, the wounded person may exact compensation without an oath.[14]

The halakhah of Caro's found in chapter 90:16 includes one more case in which the injured party does not have to swear an oath. This case is not found in Maimonides' code. Maimonides specifies several elements not found in Caro's code, for example, the number of witnesses, the need to hold a sacred object while taking the oath, and more details of the character and location of possible self-inflicted wounds.

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423 In this chapter there are four paragraphs which deal with a person who pushes a (pregnant) woman and she loses her children. How is the court to assess the value of the fetus?

1. In the case of a person who pushes a (pregnant) woman and she loses her children, even though the injurer did not intend[1] (the damage), he is held liable to make pecuniary compensation for the value of the fetus[2] to her husband but for damages[3] and pain[4] (he directly compensates) the woman.[5] How is the court to estimate the value of the fetus? The court will estimate how much the woman was worth[6] before she gave birth[7] and how much she was worth after giving birth,[8] and (the difference) is given to the husband. (Concerning) damages and pain, the court will estimate how much the woman's (value) is reduced and (how much the woman) weakens when

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4:1. If one assaults a woman even unintentionally,[1] and her child is born prematurely, he must pay the value of the child[2] to the husband and the compensation for injury[3] and pain[4] to the woman.[5]

4:2. How is the value of the child determined? We estimate how much the woman was worth[6] before she gave birth[7] and how much she is worth after giving birth,[8] and the difference is given to the husband. If the husband dies, it is given to his heirs.[9] If, however, one assaults a woman after the husband's death,[10] the woman is given the value of the child as well.[11]

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she aborts on account of the blow, compared to if she had given birth normally. And likewise, time lost from gainful employment[12] and medical treatment[13] (are compensated for) if she requires them] [Tur chapter 4] [and see in "Even Ha'ezer" chapter 83]. If the husband dies, (the compensation) is paid to his heirs.[9] [ibid. Moses ben Maimon, law 2]. If, however, a person pushes her after the husband's death,[10] the value of the fetus is also paid to the woman.[11] [There are some authorities who say the compensation is given to his heirs] [Tur in the name of Rabbi Abraham b. David and Rabbi Asher b. Yehiel].

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Joseph Caro introduces a section which defines the procedure for assessing pain, damages, medical treatment, and time lost from gainful employment. This procedure is defined more vaguely by Maimonides in "Hilkot Hovel Umaziq" 4:15.

2. If the woman is married to a proselyte,[14] and a person injures

4:3. If the woman is married to a proselyte[14] and one injures her

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her while the proselyte is alive, the injurer must compensate the husband for the value of the fetus.[15] If the proselyte dies, (the injurer) is exempt (from any claim for compensation for the value of the fetus).[16] If, however, a person injures the woman after the death of the proselyte, the woman is entitled to (compensation) for the value of the fetus.[17] [And there are some authorities who say he is exempt] [Tur chapter 3 in the name of Rabbi Asher b. Yehiel].

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during the proselyte's lifetime, the offender must give the value of the child[15] to the husband. If the proselyte dies, the offender is exempt.[16] If, however, one injures her after the proselyte's death, she herself becomes entitled to the value of the child.[17]

Joseph Caro reiterates the halakhah found in the Mishneh Torah.

3. (If) the woman who was pushed is an indentured woman servant,[18] or a non-Jewish woman at the time of the conception[19] but at the time of the battery she had been manumitted or become a proselyte, then (the compensation) for the value of the fetus is hers.[20] [And there are some authorities

4:4. If the woman was a bondwoman[18] or a heathen at the time of conception[19] but had been set free or had become a proselyte at the time of the assault, the value of the child belongs to her.[20]

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who say if her husband is alive, the compensation is his, and if not the injurer is exempt] [Tur chapter 4 in the name of Rabbi Asher b. Yehiel].

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Joseph Caro reiterates the halakah found in the Mishneh Torah.

4. In the case of a person pushing a (pregnant) woman, so that she loses her children, and she dies, even though he acted inadvertently, the injurer is exempt from any[21] claim for compensation.[22] The injurer does not have to pay anything for Scripture states, "...and yet no harm[23] follow he shall surely be fined"[24] (Ex. 21:22). Scripture does not distinguish between acting inadvertently and acting deliberately in a case where the death penalty by the court is prescribed with respect to exempting the transgressor from making compensation. (The above rule) applies only (in a case) in which the injurer intended[25] (to physi-

4:5. If one assaults a woman so that her child is born prematurely and she herself dies, he is exempt[21] from paying compensation[22] even if he acted inadvertently, and he need pay nothing at all. For Scripture says, "And yet no harm follow[23] he shall be surely fined"[24] (Ex. 21:22). Thus Scripture does not distinguish between one acting inadvertently and one acting deliberately in a case in which the death penalty is incurred, in so far as exemption from the payment of compensation is in question.

4:6. The above rule applies only if one intended[25] to assault the woman.[26] If, however, one

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cally injure) the woman.[26] But if he intended (to physically injure) another person and (mistakenly) struck the woman,[27] even if she dies, since her killing was unintentional (it is considered) a case in which the death penalty is not prescribed.[28] And the attacker must make pecuniary compensation for the value of the fetus.[29] [And there are some authorities who say that if the injurer unintentionally injured the woman, he is exempt from making pecuniary compensation] [Tur chapter 9 in the name of Rabbi Abraham b. David].

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intends to assault another man but assaults the woman,[22] then even if she dies it is regarded as a case to which the death penalty is not applicable,[28] seeing that the death was not intended, and the offender must pay the value of the child.[29]

Joseph Caro reiterates the halakhah found in the Mishneh Torah.

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424 This chapter has eleven paragraphs which deal with a person who physically injures his father or mother, a person who physically injures his children, and a person who physically injures another person on Shabbat.

1. (In the case) of a person who physically injures his father or mother[1] and does not draw blood,[2] he is held liable for the five counts (mentioned in 420:3), but if he does draw blood he is liable for capital punishment. Therefore he is exempt from making pecuniary compensation even if he acted inadvertently.[3] Consequently, a son shall not draw blood from[4] his father, nor shall he remove a thorn from his flesh, nor shall he open an abscess on his body for perhaps he will cause blood to be drawn. This was explained in Tur (section) "Yoreh De'ah" chapter 241.

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4:7. If one strikes his father or his mother[1] without bruising,[2] he must pay for the five effects. If, however, he does bruise, or if one wounds another on the Sabbath, even though inadvertently,[3] he is exempt from paying compensation. For this is a crime to which the penalty of death is applicable, and we have already explained that Scripture does not distinguish between one acting inadvertently and one acting deliberately in a case where the death penalty is applicable, in so far as exemption from the payment of compensation is in question.

A minor stylistic difference arises between the two codes because Maimonides chooses to use the technical term haburah (bruise) which means

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to draw blood. Caro prefers to delete this technical term and just employs its definition. Caro also includes several situations which should be avoided in order that a capital offense will not be committed.

2. (In the case) of a person who physically injures another person on the Shabbat, the injurer is exempt from making pecuniary compensation even if he acted inadvertantly since a capital offense may be involved.[8] But a person who physically injures another person[9] on Yom Kippur, even deliberately,[10] is held liable to make pecuniary compensation.

4:8. Now if one inflicts a wound on another, he is doing a destructive act, and anyone who performs a destructive act[5] on the Sabbath is exempt from the death penalty.[6] Why then should we consider the person who wounds another as committing a crime for which the death penalty is applicable? Because it is deemed a constructive act, since he affords his evil inclination satisfaction at the moment that he is wounding the other person.[7] The crime is thus one for which the death penalty is applicable, and so he is exempt from paying compensation.[8]

4:9. If one wounds[9] another on the Day of Atonement, even deliberately,[10] he must pay compensation even though he transgresses a prohibition for which he is liable to a flogging.[11] But should not

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one who is liable to both a flogging and monetary penalty be flogged only and be exempt from the monetary penalty[12] on the grounds that no one who is condemned to a flogging need pay a monetary penalty? This principle is indeed true in every case[13] except that of one who wounds another, in which case he must pay compensation,[14] because Scripture explicitly includes[15] one who wounds another among those who must pay compensation, saying, "Only he shall pay for the loss of his time" (Ex. 21;19).

Maimonides' code provides much more detail concerning why the death penalty is applied in the case of a person striking another person on the Shabbat, and why compensation is paid for striking another person on Yom Kippur.

3. In the case of a person who physically injures[16] his non-Jewish slave, the injurer is exempt.[17] (If) others physically injure the slave, his owner can claim pecuni-

4;10. If one wounds[16] his Canaanite slave, he is exempt.[17] If one wounds his Hebrew slave, he is liable, for all the effects[18] except enforced idleness.[19] If

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ary compensation for the five counts (mentioned in 420:3). Even if he causes him pain with a drug and he recovers quickly, the full compensation for medical treatment belongs to the owner.[20]	one wounds another's Canaanite slave, the slave's master may take compensation for the five effects. Even if the slave is treated with a (special) painful drug so that he recovers quickly, the full compensation for (normal) medical treatment belongs to the master.[20]

Yerushalmi: R. Yohanan said, "The one who cuts off the hand of another's (non-Jewish) slave, the slave's owner is to be paid (for) the five counts, and the slave is provided for from charity. The Jews are commanded to provide for slaves who are amputees but not for unhandicapped (slaves). But behold R. Yohanan would eat a piece of meat and give (some of it) to his slave, (and) drink wine and give (some of it) to his slave. It is read concerning this, "Did not He that made me in the womb make him?" (Job 31:15). In the latter case R. Yohanan applies the quality of mercy and the former case applies the quality of strict law (31a).

Maimonides' code includes the case of a Hebrew slave which Caro deletes.

4. (In the case) of a person who is half slave[21] and half manumitted, whom a person struck or an ox gores, this law was explained in Tur (section) "Yoreh De'ah" chapter	4:12. If one insults another who is half slave and half free,[21] or causes him pain, or if an ox gores him, or something similar happens, the rule is as follows:

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267 paragraph 62.[23]	If it occurs on his master's day, the compensation belongs to the master;[22] if, however, it happens on his own day, the compensation belongs to him.

Caro's code found in "Yoreh De'ah" 267:62 includes the cases of maiming and the murder of a half slave and half manumitted person. These cases are not found in Maimonides' code here.

5. A slave who is manumitted but has not yet received a document of manumission, and others physically injure him, they are exempt.[24 25 30]	4:11. A fine is not payable[24] with respect to any slave who has been set free but has not yet received his document of manumission. If others wound him, he himself cannot exact compensation[25] from them because his manumission has not yet been completed, while his master cannot exact compensation from them because he has no ownership in the slave remaining. Consequently, if one knocks out his slave's tooth and then blinds his eye,[26] the slave goes free because of the tooth but the master need not pay[27] him the value of his eye.

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However, if the slave seizes its value,[28] it cannot be reclaimed from him.[29]

Maimonides includes much more detail concerning the case of a manumitted slave who does not possess his document of manumission, who is injured. His code also includes the case of a slave who is injured by his owner, which is deleted in Caro's code.

6. (In the case) of a person who physically injures[31] a minor daughter of another person, the (compensation for the) damages which diminish her value[32] belong to her father, and likewise (the compensation for) her time lost from gainful employment belongs to her father, for surely the work of her hands[33] and the money from her sale value[34] belong to her father. [There are some authorities who say this refers only (if) she is supported by him but if she is not supported by him (then) the compensation is hers [Tur in the name of Moses b. Maimon]. There are some authorities who say even if she is supported by him, the

4:14. If one wounds[31] another's minor daughter, the compensation for an injury which diminishes her value[32] belongs to her father, and similarly compensation for her enforced idleness belongs to her father, seeing that the work of her hands[33] and her sale value[34] both belong to her father. Compensation for pain, humiliation, and medical treatment, however, belong to her. Similarly, compensation for an injury which does not diminish her value[35] belongs to her. So, too, if one wounds his own daughter, he must pay for the pain, the medical treatment, and the humiliation.[36]

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compensation is hers, if others physically injure her] [ibid., in the name of Rabbi Asher b. Yehiel]. But (compensation) for pain, medical treatment, and shaming belongs to her. Likewise, (compensation) for damages which do not diminish her value[35] belong to her. So too, a person who physically injures his own daughter, he must make pecuniary compensation for pain, medical treatment, and shaming.[36] Note. It appears to me that this refers only to (if) she is not supported by him, [see Darke Moses] but if she is supported by him there are those authorities who say he is exempt [HaRav of the Magid Mishneh in interpreting Moses b. Maimon] as it will be explained soon.

Joseph Caro follows the halakhah of Maimonides' code exactly.

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4:19. If one wounds[37] his grown sons, the rule is as follows: If they do not receive support at

7. (In the case of) a person who physically injures[37] his adult sons, if they are not supported by

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him,[38] he must pay them (compensation) immediately. And (if) they are minors,[39] he will buy land[40] (with the compensation) for the damages. [And there are some authorities who say (he should buy) a sefer Torah] [Tur chapter 1 in the name of Rabbi Asher b. Yehiel]. But they (the parents) eat the fruits[41] (the income belongs to the parents). Likewise, others who physically injure them, if they are supported by their (father and a person wounds) them, the injurer is exempt[43] whether they are adults or minors. If others physically wound them, concerning adults, the injurers must pay them (compensation) immediately,[44] and concerning minors, land should be bought (with the compensation) and the parents eat the fruits until they reach the age of majority.[45] Note. There are some authorities who say that the injurer is exempt only from a

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his table,[38] he must pay them immediately. And if they are minors,[39] land[40] must be bought with the compensation for their injuries and they may enjoy its fruits.[41] The same rule applies if others wound them.[42] However, if they do receive support at their father's table and he wounds them, he is exempt[43] whether they are adult or minors. If others wound them, the rule is as follows: If the injured are adult, the offender must pay them the compensation immediately,[44] but if they are minors, land must be bought with the compensation and they may enjoy the fruits until they reach the age of majority.[45]

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claim for time lost from gainful employment if the children are supported by their (father) but the injurer is liable for the rest of the four counts. And the rule applied to the father is as if others physically injured them [Tur in the name of Asher b. Yehiel].

Joseph Caro follows the halakhah of Maimonides' code exactly.

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8. (In the case of) a person who physically injures a deaf-mute, an insane person, or a minor,[46] the injurer is held liable[47] (to make pecuniary compensation). (Whereas, if) they physically injure others, they are exempt. Even if a deaf-mute regains his hearing, or an insane person becomes sane, or a minor reaches the age of majority, they are not held liable to make pecuniary compensation for at the time they physically injured them, they did not have a normal mind, i.e., did not know what they were doing.[48]

4:20. To clash with a deaf-mute, an imbecile, or a minor[46] is bad, seeing that if one wounds one of these, he is liable,[47] whereas if they wound others, they are exempt. Even if a deaf-mute becomes normal, or an imbecile becomes sane, or a minor reaches majority, they are not liable for payment inasmuch as they were legally irresponsible when they caused the wound.[48]

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Joseph Caro follows the halakhah of Maimonides' code exactly.

9. (In the case of) a person who physically injures a slave[49] or a married woman, the injurer is held liable[50] (to make pecuniary compensation). (Whereas, if) they injure others, they are exempt.[51] But they must pay pecuniary compensation at a later date if the woman is divorced[52] or is widowed and (if) the slave is emancipated. Note. She has her nikhse melog[54] or nikhse ts'on barzel[55] and she can sell these properties to others for the possible benefit[56] in order that she can make pecuniary compensation to the injured person Tur chapter 21 .

4:21. To clash with a slave[49] or a married woman is bad, seeing that if one wounds one of these, he is liable,[50] whereas if they wound others, they are exempt.[51] They must, however, pay at a later date -- the woman must pay if she is divorced,[52] or if her husband dies, and the slave must pay if he is freed -- for they are legally responsible[53] and their status is deemed that of a debtor who has no means but who must pay when he acquires property.

Rabbi Yosi bar Haninah said, "In Usha (the rabbis) made a rabbinic ordinance that a woman who sold the nikhse melog during her husband's life and (subsequently) dies, the husband can reclaim it from the purchasers." And this is the halakhah (31b).

Maimonides draws the comparison between a debtor who has no financial means and the two persons mentioned in this paragraph. This comparison to their legal status is not mentioned in Caro's code.

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10. (In the case of) a woman who physically injures[57] her husband, (the law is as follows): If there is a supplementary amount[58] entered into her marriage contract, or if she had (in addition to her marriage contract) nikhse melog, or nikhse ts'on barzel the court compels her to sell them for the sake of her husband[59] for the speculative value,[60] and (the husband) collects from that. But if the husband desires to divorce her and to collect from her (the compensation) from the entire marriage settlement,[61] (then) he can collect. However, if she does not have (any of the above), she cannot sell him the principle item in the marriage contract[62] for it is prohibited for a man to live with his wife one hour without a marriage contract.[63] But if the husband is willing, he may draw up a document[64] against her for the value of his damages,[65] or (else)

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4:18. If a woman wounds[57] her husband, the rule is as follows: If there is a supplement to her marriage settlement[58] and the husband is willing, we compel her to sell the supplement to her husband[59] at its present market value,[60] and he may then collect the compensation from her. If he wishes to divorce her and collect the compensation from the entire marriage settlement,[61] he may do so. However, if she has no supplement, she cannot sell him the principle item in the marriage settlement[62] for a man is forbidden to keep his wife with him for a single hour without a marriage settlement,[63] lest it be an easy matter to divorce her. But if the husband is willing, he may draw up a document[64] recording the compensation for his wound[65] due him from her, or else he may divorce her and take the amount due him from the marriage

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he may divorce (her), and take the amount due him from the marriage contract. Note. And thus if the injury is (as much as the amount in her marriage contract) she can sell her marriage contract to her husband[66] and make pecuniary compensation to her husband. And the court is not afraid that perhaps it will be easy in his eyes (easy for him) to divorce her, for surely if he wants, he is able to divorce her and collect (compensation for)[67] his injury [Tur paragraph 13].

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settlement.

Joseph Caro further defines a supplement to a marriage contract to include nikhse melog and nikhse ts'on barzel. This precise of definition is missing in Maimonides' code.

11. The law for a married woman is as follows: (If) others physically injure her or her husband is explained in section "Even Ha'ezer" chapter 83.[77] Note. A man and a married woman who physically injure each other, the court cannot rule

4:15. If one wounds[68] a married woman, compensation for enforced idleness[69] and medical treatment belongs to her husband,[70] and compensation for the pain belongs to her. With regard to compensation for humiliation and injury,

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that they will pay full damages of the differences (between the injuries) because part (of the compensation) to be paid for the injury afflicted on the woman belongs to her husband.[78] Therefore, the one who physically injures her should pay to her husband what is due him and that (part) which is due to the woman they take off for her husband as much as her injurying the other man is worth [Teshuvot, Rabbi Solomon b. Adret chapter 848].

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the rule is as follows: If this is visible[71] for example, if one strikes her on the face or neck or hands or arms, one-third[72] belongs to her and two-thirds to her husband; if, however, the injury is concealed,[73] one-third belongs to her husband and two-thirds to the woman. The husband's share must be given to him at once. With regard to the wife's share, land must be bought[74] and the husband may enjoy its fruits.[75] 4:16. The above rule applies only if others wound her. If, however, a husband wounds his wife, he must pay her immediately for the whole of the injury, and the whole of the humiliation and the pain. The entire compensation belongs to her,[76] and her husband has no right to the fruits. If she wishes to give the money away to another, she may do so. The Geonim, also, have ruled in this manner. The husband must also

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pay for medical treatment in the same manner he pays for treatment of any of her ailments.

Joseph Caro in the section in "Even Ha'ezer" includes some details pertaining to the way the injurer receives pardon from the injured persons, i.e., the husband and the wife. Caro also specifies the husband cannot claim any part of the compensation due her without her prior authorization. These elements are deleted from Maimonides' code. Maimonides includes the source of his opinion which comes from the Geonim, which is deleted from Caro's code.

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425 In this chapter there are five paragraphs which deal with how you adjudicate in our day those who are guilty of the death penalty.

Note. All who are liable for the death penalty at this time by the court, it is not in our power to flog them, or to banish them, or to kill them, or to strike them but the court can excommunicate them and expel them from the community [Tur chapter 8 in the name of Rav Natronai Gaon] according to the law. But if the court assesses that there is an emergency (that the circumstances) compel us to do something about the matter (a preventive measure), the court is able to punish how it wishes [ibid., and in the name of Tshuvah HaGaon] as it was explained, see above chapter 2. This refers only to capital cases which require a trial by a court but those who can be killed without a court, they can be punished now as it will be explained [Tur ibid.].

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"Hilkhot Rotseah Ushe'mirat Nefesh"

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1. In the case of a person who pursues[1] after another person to kill him, and they forewarn[4] him while he pursues after him, even if the pursuer was a minor,[2] all Israel is commanded to save the person by injurying one of the limbs of the pursuer. And if they are not able to aim (to just injure a limb) and they cannot save him (by injuring one of his limbs) except by killing the pursuer, surely they kill him even though he has not yet murdered.[3]

Note. Tur chapter 7 a person who comes breaking in (in the night) to steal (also the law that applies to him is that of a pursuer). But if it is known the thief did not only come for a money matter and even if the owner of the property would oppose the thief, the thief would still not kill the owner, it is prohibited to kill the thief.[5] And see in the words of the Tur in this chapter. A Jewish person who

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1:6. The above rule applies when the offender has already transgressed and committed the crime for which he is liable for the death penalty at the hands of the court. But if one person is pursuing[1] another person with the intention of killing him, even if the pursuer is a minor,[2] it is the duty of every Israelite to save the pursued, even at the cost of the pursuer's life.

1:7. Thus, if one has been warned[4] but still pursues the other person, he may be killed even if he does not accept the warning, seeing that he continues to pursue. If it is possible to rescue the pursued at the cost of one of the pursuer's limbs, such as by striking him with an arrow or a stone or a sword and cutting off his hand or breaking his leg or blinding his eye, this should be done. If, however, it is impossible to judge exactly and the

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endangers many Jews, for example, that he is engaged in forgery in a place where the government is strict about forgery. The law applies to him as if he were a pursuer and it is permitted to deliver him to the government [Nimuqe Morenu HaRav Rabbi Meir from Rezbork], which was explained see chapter 388 paragraph 2.

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pursued can be rescued only if the pursuer is killed, he may be killed even though he has not yet killed anyone,[3] for Scripture says, "Then you shall cut off her hand, your eye shall have no pity" (Deut. 25:12).

Joseph Caro's style is much more concise in summarizing the halakhah. Maimonides on the other hand provides more detail on the ways to stop a pursuer without having to resort to taking the pursuer's life. Maimonides also supplies a proof text for the reason for not having mercy on the pursuer.

2. Therefore a pregnant woman who is having difficulties giving birth, it is permitted to cut out the embryo in her womb either with a drug or by hand (with a knife), because the embryo is considered as one who pursues after her to kill her. But if the fetus's head emerges (from the body of the mother), (they) cannot

1:9. This is, moreover, a negative commandment, that we have no pity on the life of the pursuer. Consequently, the Sages have ruled that if a woman with child is having difficulty in giving birth, the child inside her may be taken out, either by drugs or by surgery, because it is regarded as one pursuing her

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injure (kill)[6] it for one life does not (push away) another life (do not kill one person in order to save another person). And here, this is the nature of the world.[7]

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and trying to kill her. But once its head has appeared,[6] it must not be touched, for we may not set aside one human life to save another human life, and what is happening is the course of nature.[7]

Maimonides adds, that is a negative commandment not to have pity on the life of a pursuer. He also attributes this halakhah to the Sages.

3. And thus, a person who pursues after a male or after anyone of the persons prohibited by incest prohibitions[8] (or other serious sex prohibitions) to rape her except for animals,[9] they must save that person even by taking the life of the pursuer. If a person chases a person prohibited by incest prohibitions (a close relative) and grabs her and has intercourse with her, since the person touches her (his organ touches her corresponding sex organ)[10] even though he did not complete his intercourse (rape), the court cannot execute him[11]

1:11. The same rule applies to all other forbidden sexual contacts,[8] apart from offenses with animals.[9] In the case of homosexuality, however, the one pursued should be saved (even) at the cost of the pursuer's life, as is the rule concerning all other sexual offenses. If, however, one pursues an animal to lie with it, or is bent on doing prohibited work on the Sabbath, or on committing an act of idolatry--although the laws concerning the Sabbath and those concerning idolatry involve basic principles in the religion of

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until there is a trial.	Israel--he may not be killed until he has committed the transgression, whereupon he must be brought to court and duly tried and then put to death.
	1:12. If one pursues a woman forbidden to him, seizes her, lies down with her, and commences coition,[10] he may not be killed until after his trial,[11] even though he has not completed the act....

Joseph Caro's style is much more concise in summarizing the halakhah. Maimonides categorizes a person who is doing prohibited work on the Sabbath and committing an act of idolatry with a person who is pursuing others who are sexually prohibited to him. All the above are included in the laws concerning a pursuer.

4. In the case of a person who pursues after a female relative and others were chasing after that person in order to save the woman, but she says to them, "Leave him alone so that he will not kill me."[12] They do not listen to her,[13] rather they frighten him	1:12. ...If one is pursuing a woman forbidden to him, and others are pursuing him to save her, and she says to them, "Let him alone so that he will not kill me,"[12] they may not grant her request[13] but should confound him and prevent him from coition by injuring

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and restrain him by striking (injuring) his limbs and if they are not able to restrain him by his limbs (they may save her) even by his life. Note. A person wants to have sex with a non-Jewish woman in the presence of ten Jews (i.e., publically). Zealous people can attack him and they are permitted to kill him. And this refers only to the time of the sex act but if he withdraws, it is prohibited to kill him. And this refers only that they warned him and he did not withdraw. And this refers only that a zealous person came out of his own initiative to kill him. But if he inquires from the court, the court does not give him such a halachic decision.

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his limbs, or if they cannot do this at the cost of his limbs, then even at the cost of his life, as we have explained.

Joseph Caro almost takes exactly word for word what Maimonides wrote in his code.

5. In the case of an epikoros[14] from Judaism, they are idolators

4:10. It was at one time deemed meritorious to kill apostates[14]--

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or deliberately provoke (Jews) by his transgressive actions, even if he eats non-Kosher meat,[15] or wears sha'atnez[16] in order to provoke--he is an apostate. Those (Jews) who deny the Torah and prophecy, and it is a commandment (a proper deed) to kill them.[17] If it is in his power to kill them publicly,[18] he does so and if not he should seek[19] something that causes their death. How do we understand the above? If a person saw one of them had fallen into a well in which there is a ladder, he would quickly remove the ladder and say, "Behold I am anxious to bring my son down from the roof. And I will return the ladder to you," or do something similar. But as to a non-Jew,[20] when there is no war between us and them,[21] or a Jewish shepard who is herding small animals (like sheep or goats) in a place owned by (other) Jews, or in a similar case, you do

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by this are meant Israelites who worship idols or who provocatively do other sinful things, for even one who provocatively eats carrion[15] or wears clothes made of mingled stuffs[16] is deemed an apostate--and sectarians, who deny the authenticity of the Torah or of prophecy. If one had the power to slay them publicly[18] by the sword, he would do so. If not, one would plot[19] against them in such a way as to bring about their death. Thus, if a person saw that such a one had fallen into a well containing a ladder, he would remove the ladder, giving the excuse that he wanted it to get his son down from the roof, and would bring it back afterward, and do similar acts.

4:11. But one may not procure the death of a heathen[20] against whom we are not at war,[21] or of Israelite raisers of small cattle, or of similar people. It is, however,

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not strive to do something that would cause their death but it is prohibited to save them [ibid., there are some authorities who say see above chapter 34 paragraph 3 and chapter 409]. This applies to a Jew who is a transgressor and is rooted in his wickedness[23] (does not repent) and repeats (the transgressive acts) constantly. For example, a herdsman who herds small animals, who disregards the principle of robbery and continues to go in his foolishness. But if a Jewish transgressor, who is not constantly rooted in his wickedness, commits transgressions for his own pleasure, for example, he eats non-Kosher meat to gratify his appetite, it is a commandment to save him,[24] but it is prohibited to stand idly by when his life is in danger[25] [ibid., there is a tradition] [see in "Yoreh De'ah" chapter 158].

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forbidden to save them from dying--for example, if any of them falls into the sea, one may not rescue him--for Scripture says, "You shall not stand idly by the blood of your neighbor" (Lev. 19:16), and none of these is "your neighbor."

4:12. This rule applies only to a sinful Israelite who persistently does evil deeds[23] and repeats them continually, such as rearers of small cattle who rob licentiously and persist in their wrongdoing. But if a sinful Israelite does not do wrong persistently but only does so out of self-indulgence--for example, if one eats the meat of carrion out of gluttony--it is a duty to rescue him,[24] and it is forbidden to "stand idly" by his blood.[25]

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Maimonides provides more examples of cases in which a person should not save a non-Jew or a Jewish transgressor, and the proof text upon which this halakhah is based. Maimonides also uses clearer terms, such as, to kill (laharog) instead of the vaguer term used by Caro, to cause to pass (from the world) (ha'avartan).

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426 This chapter has one paragraph which specifies that a person is obligated to save another person either in person or with his money.

1. In the case of a person who sees another person drowning in the sea[1] or robbers attacking him or a wild animal attacking him and he is able to save him in person or that he is able to hire others[2] to save him, but he did not save (him). Or he hears non-Jews or informers devising evil (about) another person or they are placing a trap for him and he did not reveal it to his friend and make it known to him.[3] Or that he knew about non-Jews or a violent Jew who is planning to attack his friend, if he is able to appease him on behalf of his friend and to dissuade him but he did not appease him, or in similar cases, he transgresses (the commandment) not to stand idly by the blood of your friend (Lev. 19:16).

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"Hilkhot Rotseah Ushemirat Nefesh"

1:14. If one person is able to save another and does not save him, he transgresses the commandment, "Neither shall you stand idly by the blood of your neighbor" (Lev. 19:16). Similarly, if one person sees another drowning in the sea,[1] or being attacked by bandits, or being attacked by wild animals, and although able to rescue him either alone or by hiring others[2] does not rescue him; or if one hears a heathen or informers plotting evil against another or laying a trap for him and he does not call it to the other's attention and let him know;[3] or if one knows that a heathen or a violent person is going to attack another and although able to appease him on behalf of the other and make him

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	change his mind, he does not do so; or if one acts in any similar way--he transgresses in each case the injunction, "Neither shall you stand idly by the blood of your neighbor" (ibid.).

Joseph Caro's style is much more logical in this case. It progresses from case examples to the halachic principle, while Maimonides states the principle first and then gives case examples and finally concluding with a restatement of the principle based on the appropriate proof text.

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427 This chapter has ten paragraphs which deal with the positive commandment to remove all obstacles which are dangerous to life and you should make a fence (a parapet) for (your) roof.	"Hiklhot Rotseah Ushemirat Nefesh"
1. It is a positive commandment for a person to make a fence for his roof for it is stated in the Torah, "And you shall make a fence for your roof" (Deut. 22:8), provided that it is a dwelling for humans. But (if) it is a storehouse or a barn or a similar structure, a fence is not needed for it.[1]	11:1. Making a parapet on one's roof is a positive commandment, for Scripture says, "Then you shall make a parapet for your roof" (Deut. 22:8), provided that it is the roof of a dwelling. One is not enjoined to do so, however, for his storehouse or stables....[1]
Joseph Caro follows Maimonides' code word for word.	
2. Every house that is not four by four cubits is exempt from (having) a fence.[2]	11:1. ...Furthermore, any house less than four cubits square does not require a parapet.[2]
Joseph Caro follows Maimonides' code word for word.	
3. In a case of a house owned by two partners, they are obligated[3] (to build) a fence for it since it	11:2. If a house belongs to two persons in partnership, they must provide[3] a parapet, for Scripture

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is stated in the Torah, "If any person fall from it" (Deut. 22:8). The Torah conditioned it only because of the danger that someone might fall down,[4] if so, why did the Torah say, "your roof," to exclude synagogues and schools because they are not made to live in.[5]

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says, "If any man fall from it" (Deut. 22;8), making the obligation depend only on the possibility of a person falling.[4] Why then is the pronoun in "your roof" expressed in the singular? To exclude the roofs of synagogues and lecture rooms, which are exempt because these are not made for dwelling in....[5]

Joseph Caro follows Maimonides' code word for word.

4. If there is public domain higher than his room,[6] the property owner does not need (to build) a fence, for it is stated in the Torah, "If any person fall from it"[7] (Deut. 22:8).

11:2. ...If the street is higher than the roof,[6] one need not make a parapet, for Scripture says, "If any man fall from it"[7] (Deut. 22;8), and not 'fall thereon.'

Maimonides quotes the Gemara "and not fall on it" (Bava Qamma 51a) to clarify the biblical law in this case. Joseph Caro leaves this out of his code.

5. A person must construct the height[8] of the fence (so that) it cannot be less than one-hundred handbreadths[9] in order that a

11;3. The height[8] of the parapet must be not less than ten handbreadths[9] in order that "no man fall from it" (ibid.). And the

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person will not fall from the roof. And the partition must be strong in order that a person can lean against it and it will not fall.	barrier must be strong enough for a person to lean against without its falling....

There is a major difference in the number of handbreadths which are required for a minimum height of the fence. Caro's opinion is different than the opinion held by R. Abraham b. David and R. Moses's in Sefer Mitsvot Gadol.

6. Any person who leaves his roof without a fence, neglects a positive commandment and transgresses a negative commandment[10] for it was stated in the Torah, "You shall not bring blood upon your house"[11] (Deut. 22:8).	11:3. ...If one leaves his roof without a parapet, he disregards a positive commandment and transgresses a negative one,[10] namely, "That you may not bring blood upon your house"[11] (Deut. 22:8). But there is no flogging for breach of this prohibition, since it involves no action.

Joseph Caro follows Maimonides' code word for word, except that Maimonides includes the details of the punishment for such an offense.

7. Either in the case of the roof or anything[12] that is life-threatening, and which is suitable for a person to stumble into it and die,[13] for example, that a person	11:4. It makes no difference whether it be one's roof or anything else[12] that is dangerous and might possibly be a stumbling block to someone and cause his

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had a well or pit in his courtyard, whether or not there was water in it,[14] he is obligated to make a ten-handbreadth-high[15] fence-like[16] structure (holya) or to make for it a cover[17] in order that a person will not fall in it and die.	death[13]--for example, if one has a well or a pit, with or without water,[14] in his yard--the owner is obliged to build an enclosing wall[16] ten handbreadths high,[15] or else to put a cover[17] over it lest someone fall into it and be killed....

Joseph Caro follows Maimonides' code word for word.

8. And likewise, all[18] stumbling blocks that are life-threatening, it is a positive commandment to remove it, and to guard yourself from it and be very cautious about the matter since it is stated in the Torah, "Take utmost care and watch yourselves scrupulously"[19] (Deut. 4:9). And if a person does not remove it and leaves the stumbling blocks which cause danger, he neglects a positive commandment and transgresses (the negative commandment) "You shall not bring blood..." (Deut. 22:8).[20]	11:4. ...Similarly, regarding any obstacle which is dangerous to life,[18] there is a positive commandment to remove it and beware of it, and to be particularly careful in this matter, for Scripture says, "Take heed to yourself and take care of your life"[19] (Deut. 4:9). If one does not remove dangerous obstacles and allows them to remain, he disregards a positive commandment and transgresses the prohibition: "You shall not bring blood..." (Deut. 22:8).[20]

Joseph Caro follows Maimonides' code word for word.

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9. The sages prohibited many things because they are life-threatening[21] and some of them were explained in the Tur "Yoreh De'ah" chapter 116. Moreover there are other matters and these are them: one should not place his mouth on a pipe flowing with water and drink,[22] nor a person should not drink at night[23] from wells or from lakes for perhaps he will swallow a leech because he cannot see. Note. I already wrote about these matters in chapter 116 in "Yoreh De'ah" and see there.

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11:5. Many things were forbidden by the sages because they are dangerous to life.[21] If one disregards any of these and says, "If I want to put myself in danger, what concern is it to others?" Or "I am not particular about such things," disciplinary flogging is inflicted upon him.

11:6. The following are the acts prohibited: one may not put his mouth to a flowing pipe of water and drink from it,[22] or drink at night[23] from rivers or ponds, lest he swallow a leech while unable to see. Nor may one drink water that has been left uncovered, lest he drink from it after a snake or other poisonous reptile has drunk from it, and die.

Joseph Caro only quotes the first sentence in halakhah 5 and the rest of the material from Maimonides' code is found in 427:10. Caro also leaves out some details mentioned in halakhah 6, i.e., the poisonous reptile material.

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10. All who transgress these things or other similar things, and say, "Behold I endanger myself and what objections can others raise about me in this matter, or I do not care for this matter (observant in these things)," the court orders rabbinic stripes (for chastisement or rebellion[24]). And a person is careful about these things, a good blessing will come to him.

MISHNEH TORAH

11:5. Many things were forbidden by the sages because they are dangerous to life. It one disregards any of these and says, "If I want to put myself in danger, what concern is it to others?" Or "I am not particular about such things," disciplinary flogging[24] is inflicted upon him.

Joseph Caro follows Maimonides' code and also adds an appropriate closing sentence for this section on personal injury.

CONCLUSION: A COMPARATIVE ANALYSIS OF THREE CODES

In the preceding translation of the three post-talmudic codes, I have concentrated on differences between the Shulhan 'Arukh and the Mishneh Torah. The materials of Alfasi which were juxtaposed to these codes reveal that the halakhic opinions of Alfasi do have an influence on the other two codifiers, but there is little if any comparison to be made with its form to the other codes. There are, though, certain stylistic features of Alfasi's work that are also found in the other two codes. These literary aspects will be pointed out in conjunction with their occurrences in the other codes. It is impossible to ascertain if Alfasi's use of these literary features had any effect on the other two codifiers. This is in part the case since these features do not occur in corresponding halakhot shared by the other codes, but occur randomly throughout the codes. Furthermore, as has been previously mentioned, Alfasi's work follows the style of the Talmudim while Caro and Maimonides created a style more appropriate to their codificatory goals. The meer use of a literary feature by one of the later codifiers could be attributed to an infinite variety of sources, both Jewish and non-Jewish alike, and not just to Alfasi's work.

While anonymity of the sources generally was of strategic significance to Maimonides and Caro in their codes, it was not to Alfasi. All but one of the passages cited in Alfasi's work provide references to a person or a book from which the particular halakhah was derived. At times Maimonides goes as far as to mention and attribute certain halakhot directly to their original authorities without mentioning their names. This can be seen for instance, in "The sages of old have said..." ("Hilkhot Hoyel Umaziq" 3:7) which acts as a temporal reference to the opinions which

follows it. This reference is entirely absent in "Hoshen Mishpat" 420:39 even though this paragraph in its other aspects is totally like the Mishneh Torah. This pattern of Maimonides citing a source, though in a general way, while the corresponding paragraph in Caro's code deleted it, is a recurring phenomenon throughout the sections that have been translated.

Even though sources are for the most part deleted from the Mishneh Torah and the Shulhan 'Arukh there are references in these works to certain practices of a particular region. The Sefer Hahalakhot also contains such references. In the corresponding halakhot to "Hoshen Mishpat" 420:38 there is an example of all three codes making some reference to the local practices pertaining to cases of slander. Caro's remarks reflect exactly what Alfasi points out are novel minhagim practiced in the Babylonian Yeshivot of Sura and Pumbedita. The glosses of Isserles on the other hand point out practices in vogue among the Jews of Europe. And Maimonides in "Hilkhot Hovel Umaziq" 3:5-6 makes references to a "tradition" and the way the scholars in Spain use to apply it. This aspect of citing practices in all three codes was directly related to the codificatory goal of unifying Jewish religious and legal practice, or at least in being a guidepost for the Jewish people's daily lives.

Another variant use of sources is the utilization of the Written Law in the codes. In all three codes biblical texts are integrated into the halakhot for a variety of reasons. In the Alfasi material corresponding to "Hoshen Mishpat" 429:9 a quote from the Book of Job is used to augment a moralistic statement made by R. Yohanan. In Caro's code in these chapters one does not find Scriptural texts used unless the paragraph in which they are used copies the halakhah of the Mishneh Torah. An example

of this is found in "Hoshen Mishpat" 423;4 which copies almost word for word "Hilkhot Hovel Umaziq" 4:5, in which the verse from Exodus 21:22 is used as a proof text for the halakhah.

Maimonides employs biblical texts in a variety of forms. There are Scriptural references which in the halakhic context resolve well known discrepancies or interpretative problems. For example, in "Hilkhot Hovel Umaziq" 4:9, "Only he shall pay for the loss of his time" (Ex. 21:19) is used to clarify if an injurer can be held liable for both flogging and monetary penalty. Other times a verse from Scripture is used to state the general law such as in "Hilkhot Rotseah Ushemirat Nefesh" 1:14 where the commandment, "Neither shall you stand idly by the blood of your neighbor" (Lev. 19:16) is the basis for several corollary cases that require a person to save another's life. Another variation of this same technique is the use of a verse from Scripture as a precedent or analogy for a law. This is found in "Hilkhot Hovel Umaziq" 1:19, where the verse "And it lights upon his neighbor" (Deut. 19:5) in the biblical context absolves a chopper of wood from any liability if perchance his ax head would fly off the handle, is applied by Maimonides to a different case of someone's exemption from liability if he throws a stone and someone comes into the flight path of the stone. Sometimes the Scriptural interpolation is quite brief and inconspicuous, flowing smoothly and naturally with the halakhic formulation: "The height of the parapet must be not less than ten handbreadths in order that 'no man fall from it' (Deut. 22;8)" (Hilkhot Rotseah Ushemirat Nefesh 11:3). And finally, Maimonides will interpret a Scriptural incident and make it the precedent for a law as can be seen in "Hilkhot Hovel Umaziq" 5:3. In this halakhah, the

incident of Moses killing the Egyptian is used as the paradigm for the rule that gives a Jewish court the right to kill a non-Jew who struck a Jew.

In the above paragraphs, different uses of Scriptural texts were mentioned. Perhaps the main point about the codifiers' use of texts is the way they worked them into their texts to supply proofs and reasoning for their halakhic formulations. This stylistic feature is quite apparent in Alfasi and Maimonides' works and less so in Caro's Shulhan 'Arukh. For example, "Hilkhot Hovel Umaziq" 1:2 gives a brief explanation based on rabbinic tradition of why the biblical text, "An eye for an eye" (Ex. 21:24, Lev. 24:20) means pecuniary compensation and not actual retaliation. In the corresponding paragraph in Caro's code, "Hoshen Mishpat" 420:5, no mention is made of this proof for pecuniary compensation, but rather just the halakhah is given in a concise form. Even in "Hoshen Mishpat" 427:4 where Caro almost follows word for word the Mishneh Torah, he deletes "and not fall thereon" which in this context reveals Maimonides' predilection for proofs. It is reasonable to assume that the absence of this stylistic feature in Caro's code is partially due to the style of the code and partially due to the fact that such proofs and reasons were found in the Bet Yosef.

Each of the codes used certain pedogogic devices to aid the reader in understanding the halakhah. In Alfasi's work the most distinctive device is before he gives the halakhah, he begins the sentence with "I conclude (the halakhic conclusion is), seleqna'. In the other two codes certain techniques are used to loosen the tautness of the codificatory style. One technique alerts the reader to the need for association, for carry-overs, or for reflective review. This can be seen in "Hoshen

Mishpat" 420:19 and the corresponding halakhah in the Mishneh Torah, which reminds the reader that he must apply the preceding halakhah to what will be written in the immediate paragraph.

There are other pedogogic techniques such as a technique which instructs the reader in the way generalizations and rules can be concretized and shown the full range of their application. Often this is done, for example, in "Hoshen Mishpat" 420:17 and the corresponding Mishneh Torah paragraph, by the word ketsad ("how is this?" or "in what way is this to be understood?") which is followed by an illustration of the rule. Sometimes an analogy to another kind of law or case is used to clarify a rule. An example of this technique is found in "Hoshen Mishpat" 420:28 and the corresponding halakhah in the Mishneh Torah where the same procedure used to estimate the death penalty is applied to a case of injury. Maimonides at times uses direct speech, for example, in "Hilkhot Hovel Umaziq" 2:11 to help the reader through a technical presentation. And finally, both Caro and Maimonides frequently reveal the open-endedness of a rule by stating "or something similar." Of all these techniques which were designed to guide and educate the reader, none serves better than Caro's brief introduction at the beginning of each chapter which summarizes the contents of the chapter.

A particular stylistic feature unique to Alfasi and Maimonides is the interpolation of ethical and moralistic statements into halakhic contexts. Several examples found in the Sefer Hahalakhot can be found in the appendix. While Alfasi usually makes these statements distinct from a halakhic statement, Maimonides tends to weave them into the very fabric of the halakhah. This can be seen in "Hilkhot Rotseah Ushemirat

Nefesh" 4:10 or "Hilkhot Hovel Umaziq" 5:9 in which certain moral-ethical views are impressed upon the reader while stating the halakhah.

One of the most important elements which is essential for a codificatory style is brevity. The unfaltering awareness of the virtues of brevity served as a safeguard against digressions. While a sentence or even a paragraph may on occasion be digressive or parenthetical like the slight digression "sacrificing the Rams of Nebaioth" ("Hilkhot Hovel Umaziq" 5:9), it is not without reason. In the above example Maimonides inserts this reference because of the ideological weightiness of the subject. Unfortunately, brevity does not always mean clarity. There are several examples where a codifier because of the desire to be brief deleted important material from his code. For example, in "Hoshen Mishpat" 421:4 compared with "Hilkhot Hovel Umaziq" 1:11, Caro is not as clear as Maimonides pertaining to the requirement in the first case cited that the two sleepers laid down at the same time. But in general, one must say that all three codifiers reduced the bulk of the halakhic material and maintained clarity.

In conjunction with the desire to produce a brief and concise code, each codifier had to consider how much material needed to be inserted in each halakhah in order that the law would be explicitly clear. Presumably one would expect that Caro's code would have far more detail in it than Maimonides' code just because Caro had many more resources to rely on than Maimonides had. There are many examples that seem to conform to this pattern, for instance, "Hoshen Mishpat" 421:6 includes the case of an owner's right to remove by force a trespasser unwilling to leave his premise, which is not found in "Hilkhot Hovel Umaziq" 1:16. On the other hand, Maimonides includes certain details which are totally

neglected in the Shulhan 'Arukh even though the halakhah in both codes is very much alike in other respects. For example, "Hilkhot Hovel Umaziq" 5:4-5 provides more details about holding a sacred object while swearing an oath, and the interpretation of the character and location of different types of wounds, all of which are missing in Caro's code. In summary, the extent of a deletion of a detail in these two codes could range from leaving out an explicitive phrase, or another illustrative case to a deletion of even a whole halakhah.

As was stated previously, economy of language was an essential ingredient to the codifier's goals. The language of a code required that lucid and precise expressions be used. Any hybridizations or unlcear terms could corrupt the clarity of the text. There are several examples that reveal at times mistakes in word choice were made by the codifiers. For example, in "Hilkhot Rotseah Ushemirat Nefesh" 4:10, Maimonides uses the word laharog (to kill) which is clearer than the corresponding term ha'avartan to pass from the world) found in "Hoshen Mishpat" 425:5. In another example, Maimonides uses the technical term haburah, which literally means bruise but legally has the connotation of a wound that draws blood. Caro in the corresponding paragraph, "Hoshen Mishpat" 424:1, uses the definition of this technical term making his code more wordy. Such slight differences tend to make a certain halakhah in one code more easily understandable than its corresponding halakhah in another code.

In Avot de R. Nathan the rabbinical appreciation of systematic arrangement is expressed in regard to R. Akiba's erudite collection, classification, and generic systematization of certain principles. The ability to arrange material in a logical and systematic way was at the

very heart of each codifiers' intentions as was mentioned in the Introduction. There are some differences between the Shulhan 'Arukh and the Mishneh Torah in regards to the organization of material. There is nothing surprising about this fact since Caro followed the Turim's arrangement scheme while Maimonides developed his own system. Still, there are three categories of divergence in organizational patterns between the two codes which need to be mentioned.

The first category pertains to the location of material in one section or chapter rather than another. In three cases Caro classifies laws in a different section of the Shulhan 'Arukh. In "Hoshen Mishpat" 424:4, the law which Maimonides considers a tort is moved to "Yoreh De'ah", because Caro uses it as an analogy for other rules pertaining to laws concerning the right of a person who is half slave and half free to marry. This is also the case in chapter 424:11, where a cross-reference directs the reader to "Even Ha'ezer" 283:1 because all marital matters are classified there. And the third example concerns chapter 420:40, where Caro moves this material to "Yoreh De'ah" 243:7 because the material in this chapter has to do with scholars. Caro also makes several cross-reference notes, for example, chapters 422:2 and 420:44. These notes refer the reader to another chapter within "Hoshen Mishpat" that pertains directly to the subject of procedural law that is needed to be known before any proper restitution for a damage can be made.

On the other hand, Maimonides classifies the halakhot corresponding to chapters 425, 426, and 427 in the treatise "Hilkhot Rotseah Ushemirat Nefesh" which follows "Hilkhot Hovel Umaziq." In the context of the Mishneh Torah, this arrangement pattern follows Maimonides' schemata of

placing the less common material last.[1] Therefore, laws concerning assault, battery, and mayhem would naturally come before laws concerning murder.

The second category of divergence between the two codes pertains to internal arrangements. The main difference in this category arises from the way the halakhot are grouped. For instance, "Hoshen Mishpat" 420:11 encompasses two separate halakhot from the Mishneh Torah, while at other times one halakhah in the Mishneh Torah is broken up into several paragraphs in the Shulhan 'Arukh, for example, 420:4-8. There are also cases, for example, "Hoshen Mishpat" 427:9-10, in which Caro rearranges the materials of several halakhot in the Mishneh Torah to fit his own order. This is often done in order to consolidate material into much smaller chapters that deal with just one subject while Maimonides will include the same material in a chapter which is more diverse in its content. Finally, there are cases--for example, "Hoshen Mishpat" 425:5--in which Caro takes a halakhah from one chapter in the Mishneh Torah and combines it with material from another chapter in order to construct his own unique arrangement.

The third category exemplifies the way the halakhot were presented to the reader. This organizational feature is as much a literary characteristic as it is a methodology for arrangement. Maimonides often starts a halakhah with a general, abstract statement as to what the law is, which is followed by the concretization of the law in the form of cases, which is then followed by a restatement of the abstract law. Caro, on the other hand, usually presents different cases first and then gives the general, abstract principle that the preceding cases are categorized under. An example of this is found in "Hoshen Mishpat" 426:1 and the

corresponding halakhah in the Mishneh Torah. There are likenesses in arrangement though, for example, as in "Hoshen Mishpat" 425;3 and the corresponding halakhah in the Mishneh Torah, both codes use the form if A happens then B law is applied in the arrangement of the material for a particular law.

In both the Mishneh Torah and Shulhan 'Arukh there are the knotty problems of internal contradictions. As was shown in the notes to the translation, these contradictions have aroused commentators throughout the ages to try to resolve these inconsistencies. These contradictions can be classified into certain categories as a way of trying to understand them. The first case pertaining to what structure requires a mezuzah occurred in "Hoshen Mishpat" 427:1 which is contradicted by what is found in "Yoreh De'ah" 286:2. While footnote 1 to chapter 427 clearly indicates Caro might have had a change of mind for several reasons pointed out there, another suggested way of understanding this discrepancy is to understand the context.[2] In "Hoshen Mishpat" the concern is much more with constructing a fence as a preventative measure than with the laws of fixing a mezuzah. Since the "Yoreh De'ah" section has to do with the laws of fixing a mezuzah in particular, it must be taken as authoritative. Therefore, the section that pertains directly to a certain law is taken as the authoritative position while other cases are taken as only incidental.

Maimonides also has problems with internal contradictions even though he stated that he was very careful and cautious in his conceptual classification of the laws. In "Hilkhot Hoyel Umaziq" 4:11 a slave is not compensated for the loss of his eye by his owner while in "Hilkhot 'Avadim" 5:14 he is compensated in such a case. The context rule is not

easily applied in this case. Rather, in the context of "Hilkhot 'Avadim" chapter 4 it would appear the normative rule is that the slave goes free without compensation. In fact, a slave might consider his manumission to be the compensation for his eye. So in order to understand this contradiction, the reader must understand the first of chapter 4 as giving the normative principle while the law in 5:14 is illustrative and not the normative principle.[3]

So far it has been shown that there are many likenesses and differences in the stylistic and organizational aspects of the codes. Similarly, there are also likenesses and differences in the contents of their halakhot. For the most part, as has been mentioned earlier, the two later codes follow the halakhah found in Alfasi's Sefer Hahalakhot. There are some striking differences between the later two codes though. This in a way is quite surprising since out of the ninety-one paragraphs translated from the Shulhan 'Arukh, thirty-two are exactly like the halakhah found in the Mishneh Torah and many more are just slightly different due to minor details either being added or deleted by Caro. This fact convincingly shows the influence Maimonides must have had on Caro. Still, there are three examples where the two codifiers express divergent opinions. The first example occurs in "Hoshen Mishpat" 420:19 and "Hilkhot Hovel Umaziq" 2:19. Caro explains in his commentary on the Mishneh Torah, Kesef Mishneh, the divergence of opinion may in part be due to a scribal error (see footnote 77 for chapter 420). The second and third examples are much clearer cases of difference. In "Hoshen Mishpat" 420:31 Caro states, "A person who injures himself is exempt..." while Maimonides does not grant an exemption ("Hilkhot Hovel Umaziq" 5:1). And finally, the minimal number of handbreadths high a roof fence must be differs in "Hoshen Mishpat" 427:5 and "Hilkhot Rotseah Ushemirat Nefesh" 11:3.

The final feature which must be discussed are the innovations the codifiers made. As was pointed out in the Introduction, Alfasi included opinions from the Yerushalmi in his code, some of which are found in the translated material. In the Shulhan 'Arukh there are three paragraphs in "Hoshen Mishpat," 420:22 and 421:13 and 15, which are not based on an opinion in the other two codes but are derived directly from the Talmudim. In each paragraph Caro either paraphrased the particular talmudic discussion or interpreted the talmudic passage in order to extract the halakhah for his code. In one other case, Caro following the criticism of R. Abraham b. David on "Hilkhot Hovel Umaziq" 2:2 changed the halakhah, so that "Hoshen Mishpat" 420:7 gives a different opinion from the Mishneh Torah when a person can claim shame.

While the other two codifiers' sources for any new material introduced in their codes are easily located, Maimonides makes innovations that mystify both classical and modern commentators on his code. Jacob Levinger has attributed some of these cases to the fact that Maimonides may have had sources which are no longer extant and therefore unknown to later commentators.[4] An example of such a halakhah is "Hilkhot Hovel Umaziq" 1:14. Even though Caro later accepted Maimonides' opinion and inserted it in his code, Abraham di Boton felt that Maimonides had incorrectly deduced this halakhah from a principle that did not govern this case at all (see footnote 7 for chapter 421). The other example of an innovation or at least Maimonides expressing his own opinion is found in "Hilkhot Hovel Umaziq" 2:8. This halakhah is introduced with the introductory phrase "it seems to me." Levinger feels when Maimonides draws such a conclusion it is only a private opinion, against which a contrary view could be reasonably held.[6] But wherever Maimonides deduced

this principle from, HaRav HaMagid and Caro accept it as the correct halakhah. In light of the above examples, Maimonides' exergesis represents beyond all doubt an addition to talmudic halakhah.

The above paragraphs have shown the way three great halakhists attempted to codify Jewish Law concerning certain kinds of Torts. Their interpretations, elucidations, and deductions became the backbone for the further study of Jewish Law in these areas. In as much as they all sought to finalize the halakhah none in fact did so. This could never have been accomplished because of the traditional Jewish virtue attached to study. To study means to understand and this involves questioning, criticizing, doubting, and only once convinced, accepting any conclusion. The actual process of study is against dogmatization, against acceptance of things as final.

APPENDIX

Passages from the Sefer Hahalakhot, chapter "Hahovel"

R. Abahu said, "A person should always be from the pursued (persecuted) and not from the pursuers, for there are no (creatures) pursued more in the world than turtle doves and pigeons. And Scripture made them fit for the altar sacrifices (33a).

We have a tradition in chapter "Sho'el adam mehavero" (Shabbat 149b) (that) R. Jacob the son of the daughter of Jacob said, "All persons whose friend is punished because of them, will not enter into the boundaries of the Holy One Blessed Be He." Where do we learn this from? From here, "Also it is not good for the righteous to punish," (Proverbs 17:26) "not good" is interpreted as "evil" (bad). And it was written (in Scripture), "You are not a God who likes wickedness and wickedness does not dwell with you," (Psalm 5:5) which is interpreted to mean that wickedness does not dwell in your dwelling (33a).

There was the case of a bag of money that came to Pumbedita which Rav Joseph deposited with a certain person who did something wrong with it. Thieves came and stole it. Rav Joseph held him liable. Abaye said to him (Rav Joseph), "Behold it was taught in a bariata, 'to guard' and not 'to distribute to the poor.'" He said to him, "The poor of Pumbedita have a precisely assigned amount for them, and therefore he was to watch it" (33a).

Additional passages from Alfasi's Halakhot are found on the following pages in their appropriate context:

17, 18, 19, 20, 25-26, 27, 46, 51, 55-56, 68, 85, 91.

FOOTNOTES TO THE INTRODUCTION

[1]M.D.A. Freeman, "The Concept of Codification," The Jewish Law Annual, vol. 2 (Leiden: E.J. Brill, 1979), p. 169.

[2]Chaim Tchernowitz, Toledoth Ha-Poskim, vol. 1 (New York: Jubilee Committee, 1946), p. 135.

[3]ibid., p. 135.

[4]ibid., p. 136.

[5]ibid., p. 135.

[6]Harry Gersh, The Sacred Books of the Jews (New York: Stein and Day, 1968), p. 161.

[7]George Horowitz, The Spirit of Jewish Law (New York: Central Book Company, 1963), p. 50.

[8]Gersh, The Sacred Books of the Jews, p. 161.

[9]Louis Ginzberg, On Jewish Law and Lore (Philadelphia: The Jewish Publication Society of America, 1955), p. 168.

[10]Nachum Rabinovitch, "Mishneh Torah-Code and Commentary," The Jewish Law Annual, vol. 1 (Leiden: E.J. Brill, 1978), p. 63.

[11]Haim Cohn, "Maimonidean Theories of Codification," The Jewish Law Annual, vol. 1 (Leiden: E.J. Brill, 1978), p. 16.

[12]ibid., p. 18.

[13]Shamma Friedman, "The Organizational Pattern of the Mishneh Torah," The Jewish Law Annual, vol. 2 (Leiden: E.J. Brill, 1979), p. 38.

[14]Isadore Twersky, Introduction to the Code of Maimonides (New Haven: Yale University Press, 1980), p. 241.

[15]ibid., p. 269.

[16]ibid., p. 50.

[17]ibid., p. 109.

[18]ibid., p. 109.

[19]Cohn, "Maimonidean Theories of Codification," p. 22.

[20]ibid., p. 22.

[21]Twersky, Introduction to the Code of Maimonides, p. 337.

[22]Menachem Elon, "Codification of Law," Encyclopedia Judaica, 1974, V, 647.

[23]Twersky, Introduction to the Code of Maimonides, p. 534.

[24]Menachem Elon, "Codification of Law," Encyclopedia Judaica, 1974, V, 650.

[25]ibid., p. 650.

[26]M. Chigier, "Codification of Jewish Law," The Jewish Law Annual, vol. 2 (Leiden: E.J. Brill, 1979), p. 17.

[27]S.M. Passamaneck, "A Companion Index to Responsa in Shulḥan 'Arukh, Ḥoshen Mishpat," The Jewish Law Annual, vol. 2 (Leiden: E.J. Brill, 1979), p. 57.

[28]Ginzberg, On Jewish Law and Lore, p. 182.

FOOTNOTES TO CHAPTER 420 AND THE MISHNEH TORAH

[1]See Bava Qamma 90b and 91a (no person is permitted to injure himself).

[2]See Sanhedrin 85a.

[3]Wounds or maims another person, see Mishneh Torah "Hilkhot Hovel Umaziq" 2:1-7.

[4]Even though the battery may cause no damage, the explanation is found in several places, see Ketubot 35.

[5]The use of the word quarrel, nitsayon, comes from "ki yinatsu anashim" (Ex. 21:22).

[6]If the executioner exceeds the assigned number of stripes, he transgresses a negative commandment, see Sifre "Ki Tetse" 286 and also the explanation of Rashi in Ketubot 33a.

[7]"Forty stripes he should give him..." (Deut. 25:3). Forty stripes may be administered according to biblical law and only thirty-nine according to the rabbinic modification of biblical law.

[8]See San. 58b. This halakhah is based on a statement made by Resh Lakish concerning the biblical verse, "And he said to the offender, 'Why do you strike your fellow?'" (Ex. 2:13). The verse did not use the verb to strike in the past tense but in future tense showing that the assailant had not struck the other person yet. But because he had threatened to strike the other person he was called wicked.

[9]See Ketubot 35a.

[10]A person who transgresses a negative commandment by an action is liable to receive lashes unless another punishment is prescribed such as death or kaŕet.

[11]If a person struck another person so that the damages resulting from the blow were equal to a perutah, he would be held liable to make pecuniary compensation and would not receive lashes.

[12]See Bava Qamma 88a, which concerned the case in which a person struck another person's slave and there is a difference of whether the damages equalled a perutah or not. But if a person struck his own slave there is no difference if the damages equalled a perutah or not, because in neither situation would the owner be held liable to pay (see Makkot 8b).

[13]All the commandments a woman is obligated to do, a slave is obligated to do also.

[14]See San. 58b. This is based on the statement of R. Haninah who inferred from Ex. 2:12 that Moses slew the Egyptian for striking an Israelite.

[15]See in glossary.

[16]See in Bava Qamma 83a.

[17]From his real estate if the injurer has no other movable property.

[18]Exodus 22:4 states, "...from the best of his field and the best of his vineyard he shall make restitution." Also see "Hilkhot Nizqe Mamon" 8:10.

[19]In the Tosefta to Bava Qamma chapter 9 and the Yerushalmi ibid., 8:1 the point is made that just because the injurer is not held liable for damages does not mean the injurer is also exempt from the rest of the counts.

[20]In the above passages it is made clear that all injures are not the same, so that each individually must be assessed by a court.

[21]The question as to what will have to be compensated for is raised in Tosefta to Bava Qamma chapter 9 and Yerushalmi ibid., 8:1.

[22]ibid., and also chapter "Haḥovel" 85b and 86a--the argument of Rabbah.

[23]See "Hilkhot Ḥovel Umaziq" 2:5, the injurer is only held liable for damages in a case of maiming.

[24]There is no compensation for lost time from gainful employment since the injured person can conceivably continue to work.

[25]This rule was extracted from Yerushalmi Bava Qamma 8:1 by Maimonides. R. Abraham b. David disagrees with Maimonides' interpretation of this halakhah. He feels the Yerushalmi is referring to a case in which the act of injuring another was not observed rather than to the injury of an unexposed part of the body as Maimonides reasoned. This argument seems to be made mute, for Maimonides held if the act of injury is observed by others the injurer is held liable for any claim for shaming. R. Abraham b. David does not make this stipulation for he considers the injurer responsible for any claim for shaming even if the act of injury was not seen by witnesses but could be recognized by the injured person.

[26]There can be no shaming in this case because the section of the body is not ever exposed nor did anyone see the injury.

[27]An object that could not hurt someone, but only shame the person (Yerushalmi Bava Qamma 8:1), or incite someone into a physical confrontation (Elijah of Vilna).

[28]Bava Qamma 83b and in the Gemara on 84b.

[29]Because there is no bruise, there can be no claim for medical treatment or damages.

[30]In the Magid Mishneh it is made clear there can be no claim for shaming unless the battery takes place in public.

[31]Bava Qamma 82b.

[32]If this is an unexposed part of the body there can be no claim for damages, pain, or shaming.

[33]Doctor fees plus treatment costs.

[34]Bava Qamma 82b.

[35]With a razor (see Bava Qamma 86a).

[36]Because the injured person's hair will not grow back.

[37]Which requires medical treatment.

[38]The injured person's employment. Joshua Falk Cohen feels there must be a stipulation that the injured person knew how to dance.

[39]This expression "delet roshkha" comes from Song of Songs 7:6. It is interpreted there to mean "Hair of your head." Maimonides does not seem to have intended "delet" to mean hair, because in this statement he is addressing compensation for time lost from gainful employment.

[40]Because of the headache.

[41]Paraphrase of the language used in the Gemara (Bava Qamma 86a).

[42]The principle focuses on the fact the limb or part of the body injured cannot grow back (regenerate).

[43]See Qedushin 24a.

[44]This could prevent the injured person from going to work.

[45]See the end of Yerushalmi Sanhedrin 11:1 and also Bava Qamma 86.

[46]The exact wording of the text is the flesh (skin) will not regenerate unblemished; therefore, this makes the case analogous to a limb that has been cut off.

[47]Even though the wound will heal there is a permanent mark (see Shabbat 107b). HaRav HaMagid holds that an injurer only has to pay for the count of damage (nezeq) if there is a visible damage, for example, a scar on the face.

[48]See Mekhilta chapter 8 ("Mishpatim").

[49]Maimonides learned this principle from a rabbinic tradition and not from the informal logic of the phrase "Lo tiqhu kofer" in the Gemara (see Magid Mishneh).

[50]See "Hilkhot Hovel Umaziq" 1:5.

[51]Rashi and Yosef ibn Habiba hold that he is a Hebrew slave, but R. Asher b. Yehiel holds that he is a non-Jewish slave since a Jewish slave would have to be assessed for the six years of service instead of just one assessment. This kind of assessment would make the compensation greater and therefore place an unfair burden on the injurer. Joshua Falk Cohen states that the above opinions are superfluous because he holds all assessment for damages is the same.

[52]R. Solomon Luria decided there is no difference among humans when it comes to an assessment for damages. All damages are to be assessed as if the person was an unskilled slave.

[53]The price of the limb has already been assessed (see Bava Qamma 85a and the Gemara on 85b). It was clarified in "Hilkhot Hovel Umaziq" 2:3 that compensation for pain is not a substitute for damages.

[54]A painless way.

[55]There is no payment for damages even though the injured person could have lost some blood.

[56]Magid Mishneh refers to an earlier opinion found in "Hilkhot Gezelah Wa'avedah" 12:4 which establishes the injured person should be paid the full wage lost. A different opinion is found in Bava Metsi'a 76b, "Traveling with a load is not the same as traveling empty-handed, nor is working the same as being unemployed." In this opinion the injured person receives only a part of his initial wage before his injury occurred. Another consideration is not the potential of the injured person but what another person of the same occupation would accept for a daily wage. In the Tosefta to Bava Qamma 9 and in the Yerushalmi Bava Qamma 8:3 point out if the injured person normally received a large salary, he should receive a lot less than his normal wage as compensation, but if the injured person received a small salary he should get a little less as compensation.

[57]See Bava Qamma 83b and 85b.

[58]Very simple work that can be done without a hand. The compensation the injured person receives is not based upon his wage-earning potential prior to his injury since he has already been compensated for the damages of his injury (see Mekhilta of Shimon b. Yohay, "Mishpatim" 21:19).

[59]See "Hilkhot Hovel Umaziq" 2:14.

[60]This refers to a double amputee because a person missing only one leg can still perform the tasks of a cucumber watchman (see the Mishnah Bava Qamma 83b).

[61]Simple work which can be done without the need for legs.

[62]The intention of this rule is that the injured person totally lost his sight, otherwise the person could continue working at his former occupation after he felt well enough to work. The compensation in the latter case for time lost from gainful employment would be that he would receive his usual wage during convalescence.

[63]See Bava Qamma 91a.

[64]"All that the court assesses, they must pay to him immediately" (see Tosefta to Bava Qamma 91a).

[65]The injured person could continue medical treatment indefinitely.

[66]Even if medical treatment costs are more than the initial estimate, the injurer is exempt from paying the overcost.

[67]See "Hilkhot Hovel Umaziq" 2:11 and "Hoshen Mishpat" 420:17.

[68]See Bava Qamma 91a.

[69]This rabbinical ordinance (taqanah) was mentioned in the preceding halakhah, 2:14.

[70]To pay for the count in one payment.

[71]The injurer is taking a gamble, hoping the injured person will heal quickly thus costing him less. The injurer may also want to prevent the injured person from making a profit from the compensation if he was to heal quickly.

[72]According to the biblical law, the injurer is only liable to provide for two counts, time lost from gainful employment and medical treatment (Bava Qamma 85a).

[73]If the amount was determined by the court then the injurer does not have to cover any additional medical expenses or further time lost from gainful employment (see "Hilkhot Hovel Umaziq" 2:14-15).

[74]Boils or blisters (Bava Qamma 83b).

[75]Though not completely.

[76]This is the opinion of the first tanna on op cit. 85a.

[77]This should state the injurer is not held liable for medical expenses. This is made clear in Bava Qamma 85a and also in Magid Mishneh and by R. Abraham b. David. Joseph Caro in Kesef Mishneh confirms that this may be a scribal error as was pointed out by other commentators. But he also raises the possibility that the language would seem to indicate Maimonides may have been referring to the injured person taking something that unbeknown to him or without his doctor's warning would impede the healing process and may create boils.

[78]See Bava Qamma 85a.

[79]Because of the injured person's negligence.

[80]See Bava Qamma 85a.

[81]The injurer was a doctor.

[82]First, the injured person may not want the person who injured him to be responsible also for his medical treatment. And secondly, any doctor who would provide medical treatment gratuitously cannot be as well qualified as other doctors.

[83]The halakhah here is slightly different from the Gemara Bava Qamma 85a. In the Gemara there is a reference to a "distant physician with a blind eye," followed by the injured person's response, "If the physician is a long way off the eye will be blind before he arrives." Rashi explains this to mean if the doctor is from far away he might blind the eye. Other commentators explain it to mean that a physician from far away has a blind eye, i.e., he has little interest in the fate of his patient.

[84]See Bava Qamma 85a.

[85]ibid., 83b.

[86]"A person who is shamed by an esteemed person is not like a person who is shamed by a lowly person" (Tosefta Bava Qamma chapter 9). Abraham di Boton in his commentary questions why Maimonides uses Rabbi Judah as his source, who said, "An esteemed person according to his greatness and a lowly person according to his lowliness," instead of the other more likely position of R. Shimon as expressed in the Mishnah. Rashi in chapter "Elu Na'arot" in Ketubot holds that an average person's shame is greater than an esteemed or disrespected person's shame. This is true except as R. Nisim points out in a case of rape or seduction in which a lowly person's shame is greater.

[87]See glossary.

[88]See Bava Qamma 91a.

[89]Since the assailant did not touch the injured person's body. The literal translation from the texts indicate that such an assailant while not coming under the jurisdiction of a human legal system is culpable for his offense to God.

[90]So that he needs medical treatment and is incapable of working.

[91]By touching the other person's body the assailant becomes liable for any claim for pecuniary compensation.

[92]This is the same as the preceding halakhah, 2:7 in the Mishneh Torah. Mordecai states even if he did not strike him directly on the ear but struck a wall that was opposite his ear, which caused the person to become deaf, the injurer is held liable as if he grabbed him.

[93]There is no cure.

[94]This tradition was stated by Rava in Bava Qamma 85b.

[95]If there is work similar in nature to work that others do who are deaf, then the injured person is not compensated for his whole value (see Tosefot to Bava Qamma 85b - "hersi"). Lehem Mishneh points out that if the injured person is a craftsman, who can still continue with his occupation after his injury, he is only compensated for the diminution of his value. This tradition was held by R. Asher b. Yehiel.

[96]See Bava Qamma 85b. This issue was dealt with unsuccessfully by Rava who reached no conclusion on what should be done.

[97]The court did not reach a verdict and therefore had not yet informed the defendant of his liability.

[98]This rule is based upon the case of a person who is caused to become deaf. Maimonides bases this halakhah on the opinion in the Gemara Bava Qamma 85b, "If, however you find it more correct to say that since no appraisement had been made yet the injurer can pay him for the value of the whole of him altogether." The injurer does not have to compensate him for time lost from gainful employment, pain, shame, medical treatment for each case of maiming but is liable for these counts in one sum. This ruling is based on the fact that the injured person is considered as a slave who could be bought in the marketplace.

[99]This section remained undecided in the Gemara Bava Qamma 85b.

[100]The injured person lost his hearing.

[101]The Posqim considered that this would be to the advantage of the injurer so that person would not be sued for an outrageous sum of money. Therefore, the injurer is not held liable for pain, medical treatment, time lost from gainful employment, and shame for the previous incidents of maiming, but this decision does not reduce the fair value the injured person should receive.

[102]The value of the counts: pain, medical treatment, and shame, but not time lost from gainful employment since that was included in the whole worth value.

[103]The Posqim in this case decided in favor of the one who was injured.

[104]For all five counts: damages, pain, time lost from gainful employment, medical treatment, and shame.

[105]"All are assessed and they must pay him immediately" (Tosefta to Bava Qamma).

[106]According to his request. R. Ḥaninah said, "No time is granted in the case of injury (where there is a loss of money, but shaming where there is no loss of money-time is granted.)" (Bava Qamma 91a).

[107]Shabbathai Kohen remarked that this is when the verdict has already been reached, but if before the verdict has been reached the injurer can request an extension of the trial in order to find witnesses for his defense.

[108]There is no liability in a murder case until ample proof can be brought to verify the intentions of the defendant. This is based on the biblical text which states, "If a person struck another person with a stone tool that could cause death..." (Nu. 35:17).

[109]See Bava Qamma 91a.

[110]This is by reason of the frailty of the object by which the person was injured, and therefore the injury is considered a mishap (accidental). This is clarified in the commentary Magid Mishneh to "Hilkhot Ḥovel Umaziq" 6:4.

[111]The injured person did not die.

[112]Because the injurer intended to commit the act, which causes the other person shame.

[113]See Bava Qamma 90a.

[114]A person who spits on another's clothes is exempt from paying damages (Bava Qamma 91a, "Ḥoshen Mishpat" 420:38, and "Hilkhot Ḥovel Umaziq" 3:5).

[115]They make the appraisal.

[116]It does not depend only on the witnesses' advice. See the argument of R. Simeon the Temanite in Bava Qamma 90b.

[117]In an accidental mishap the injurer is exempt from any liability.

[118]The oath verifies the object could cause injury. This is an exception to the general law that the person who would have to pay swears an oath and then does not have to pay (Mishnah Shevu'ot 7:3).

[119]Any iron object that can potentially pierce the body. But in the case of an iron bar or any other iron object where the injury was a result of the weight of the object the court must appraise the injury from this object as it would an injury caused by a stone or wood object ("Hilkhot Rotseaḥ Weshemirat Nefesh" 3:4). This rule is derived from the biblical verse, "Anyone, however, who strikes another with an iron object so that death results is a murderer" (Nu. 35:16). The connection of a blunt iron instrument to a wood object or a stone tool is because reference is made to them in Numbers 35:17-18. This opinion can also be found in Yerushalmi Bava Qamma 9:2 which Maimonides seems to use.

[120]Joshua Falk Cohen explains that it would seem that even if the needle was sharp but the murder was not caused by its sharpness but by the weight of the object, then there is an exemption because the murder did not intend to use this method to kill the other person.

[121]See Bava Qamma 33a.

[122]This is based on the arguments of Rav Papa in the name of Rava. Alfasi argued the same thing, and Tur says the injurer is held liable for damages.

[123]From the biblical text, it is made explicit in the case where an ax head strikes another person while someone is chopping wood, the injurer is exempt.

[124]See Bava Qamma 90b and 91b.

[125]See Sanhedrin 85a.

[126]Wounds or maims another person ("Hilkhot Ḥovel Umaziq" 2:1-7).

[127]Even though the battery may cause no damage. This explanation is found in several places, see Ketubot 35.

[128]If the executioner exceeds the assigned number of stripes, he transgresses a negative commandment (Sifre Deuteronomy "Ki Tetse" 286 and also the explanation of Rashi in Ketubot 33a).

[129]"Forty stripes he may give him" (Deut. 25:3). Forty stripes may be administered to an offender according to biblical law and only thirty-nine according to rabbinical modification of the biblical law.

[130]See Alfasi's Sefer HaHalakhot and Pisqe R. Asher b. Yehiel, both hold the same position.

[131]This opinion of Maimonides is substantiated in the Magid Mishneh, but no source is given.

[132]This principle is similar to the law concerning a thief in Shevu'ot 44b. The law there states the claimant's words or his visual appearance are not immediately believed except if there were witnesses to the crime. See also HaGaon R. Eliyahu of Vilna in "Ḥoshen Mishpat" 420:33 who reiterates this point.

[133]Shame could be caused by spitting on another person or a similar embarrassment.

[134]The individual was walking about naked.

[135]Because in a bath house it is customary to be naked (Rashi to Bava Qamma 86b). But there is some problem with this as pointed out in Tosefot (ibid.). It would appear that if a person slapped or spat upon another person in a bath house they would be exempt from any claim for shaming. This matter was not clarified which led the Tosofot commentators to speculate why a person would be exempt from two actions which in other places would cause shaming but in a bath house do not cause shame (R. Isaac of Dampiere). R. Isaac held that such a person was liable.

[136]See Bava Qamma 86b.

[137]Not willingly.

[138]Even though the person was naked (exposed), the individual was in this state unwillingly, and therefore the offender is subject to any claim for shaming.

[139]See Bava Qamma 86b.

[140]By exposing him further.

[141]Even though the person intentionally partially exposed himself in order not to get his garment wet.

[142]There are three types of nakedness discussed in this halakhah: 1) when one willingly totally exposes himself, the offender is not held liable for any claim of shaming, 2) when one unwillingly becomes partially exposed, e.g., by a strong wind, the offender is held liable for any claim of shaming though the case is not as serious as the one in which a clothed person is shamed, and 3) an intentional partial nakedness, e.g., emerging from a stream, the offender in this case is held liable for any claim for shaming, though the case is not as serious as the one in which a clothed person is shamed.

[143]This person does not immediately feel the insult, though after waking up he might realize that he has been shamed (Bava Qamma 86b).

[144]The offender is exempt from a charge brought on behalf of the deceased for the shame the deceased suffered, but the offender could be held liable for any claim for shame suffered by the deceased's heirs on account of this incident. HaRav HaMagid points out there is another tradition given by Rav Sheshet in Sanhedrin 85a that "If one shames a sleeping person and he died in his sleep, he is nevertheless liable." This tradition is in direct contradiction to the Mishnah Bava Qamma 86b.

[145]Because the onus of proof is on the claimant.

[146]See Mishnah Bava Qamma 86b.

[147]See "Hilkhot 'Edut" chapter 9 halakhah 9 and "Ḥagigah" 3:4 for a further description of a shoteh.

[148]This person cannot be shamed (Bava Qamma 86b).

[149]This is problematic since the law concerning a deaf-mute is generally like the law concerning a mentally incompetant person. Joshua Falk Cohen understands Caro to mean there is liability for shaming a proselyte, slave, and a deaf-mute because these three are obligated to do certain mitsvot.

[150]See Mishnah Bava Qamma 87a. There is a difference in the liability between the shame of a Hebrew slave and that of a non-Hebrew slave. Rabbi Judah claims that there is no shame in either case based on the fact that Scripture states, "When men strive together one with another" (Deut. 25:11). The key word in this verse is ahi. R. Judah claims a slave cannot be considered an ahi (brother), and therefore is not entitled to claim shame.

[151]This is the law even though a minor has the same legal status as someone who is mentally incompetant.

[152]Their shame is not the same since it depends on the personality of each individual who is shamed ("Hilkhot Ḥovel Umaziq" 3:1).

[153]See Bava Qamma 91a.

[154]The reason for this exemption from liability is based on Deuteronomy 25:11 which states, "...and she reached out her hand and grabs him by the genitals," which implies liability is based on body contact. Maimonides' opinion is in agreement with the opinion of R. Asher b. Yehiel who states the offender who slanders or spits on another is exempt from any claim for shaming.

[155]See Yerushalmi Bava Qamma 8:6. This is an exception to the earlier principle that exempted a slanderer from liability.

[156]ibid., this was considered a pound of gold.

[157]Even though in Bava Qamma 27b it states the court cannot impose fines outside of Israel.

[158]See Bava Qamma 90a.

[159]Also the opinion of Asher b. Yehiel at the end of "Ḥoshen Mishpat" chapter 1.

[160]With respect to family purity and testimony because of a sin or problem in descent.

[161]See "Hilkhot De'ot" 6:8.

[162]"And put to shame another person publicly... has no portion in the world to come" (Avot 3:11).

[163]"But he who publicly puts his neighbor to shame has no portion in the world to come" (Baya Metsi'a 59a).

[164]The person who is testified against that he shamed a scholar even with words (even if not to his face), the court excommunicates him. The court cannot lift the excommunication until he satisfies the scholar because of whom they excommunicated him. If a person insults a scholar after his death, the court excommunicates him and they (the court) lift the ban (of excommunication) on him (if) he will make repentance ("Yoreh De'ah" 243:7).

[165]Sometimes medical treatment and unemployment benefits are required.

[166]In the Talmud and Mishnah.

[167]See "Hilkhot Hovel Umaziq" 3:9.

[168]ibid., 3:11.

[169]See Baya Qamma 27b.

[170]Rashi's opinion (ibid.) on this point is that only shame is compensated for in such cases while the other counts must be considered individually for each case.

[171]ibid.

[172]Maimonides takes senokeret (punch) to be done with a closed fist while Rashi takes it to mean a blow with a donkey's saddle (ibid.)

[173]See Mishnah Baya Qamma 90a. Rashi expresses two opinions: 1) the opinion of his teacher who claims that the slap really is a loud scream in the ear; 2) it is really a slap. Other opinions state that it is a blow beside the ear, or R. Asher b. Yehiel states, that it is a blow with the palm of the hand. Abraham di Boton holds that Maimonides is correct since the other two types of battery mentioned in Bava Qamma 27b were done with the body.

[174]The opinion of R. Judah states that this fine is a mane not a selah as R. Yosi HaGalili states.

[175]Rashi's opinion is the cheek (Baya Qamma 90a).

[176]This kind of blow is even more humiliating.

[177]It was squeezed so hard the blood leaves, which renders it defective (Rashi to Bava Qamma 90a).

[178]The spit has to strike the body of the person and not his clothes for there to be any liability.

[179]The Gemara uses the phrase kesef medinah instead of what Maimonides uses, kesef erets Yisra'el.

[180]In each selah there are four denarim. A selah as a monetary unit of Israel was one-eighth of a selah of pure silver, or one-half denar of pure silver.

[181]In other words, one-hundred selah of Israel equals twelve and one-half selah of pure silver. Therefore in order to make the proper restitution one must always know what the silver content is in a selah (see "Hoshen Mishpat" 420:42).

[182]Those mentioned in "Hilkhot Hovel Umaziq" 3:9 are found in the Mishnah Bava Qamma 90a and the Gemara Bava Qamma 27b.

[183]According to the first Tanna (Bava Qamma 90b). This is the general principle that everyone is judged according to his status. Maimonides applies this principle to this halakhah.

[184]Not according to the claim of the injured person or injurer but strictly the status of the injured person.

FOOTNOTES TO CHAPTER 421 AND THE MISHNEH TORAH

[1]This principle is distinct from the case of damage, for a person is always held liable for damages whether he acted intentionally or not (see "Hilkhot Ḥovel Umaziq" 1:11).

[2]See Bava Qamma 86b.

[3]ibid., 86a.

[4]Even though the injurer did not intend to shame this person.

[5]The claim in this case has a smaller monetary value than for an adult's claim.

[6]See Bava Qamma 86a.

[7]Maimonides follows the opinion of R. Shimon, which as Rashi explains was only supposed to apply to a case of murder, to derive this principle. Abraham di Boton points out that Maimonides' premise is based on the wrong assumption and therefore is incorrect, or at least he manipulates the halakhah to derive this principle.

[8]From the Mishnah in Bava Qamma 26a.

[9]The injurer's action in this case is considered as if it was an unavoidable accident.

[10]Surely the intoxicated person is awake, but he is still considered an ones. In the Gemara in Bava Qamma 26b it states, "Wound for wound," to indicate that a person is held liable for physical damages in the case of an inadvertent act just as he is held liable in a case of a deliberate act, in the case of an unavoidable accident just as in the case of intended harm.

[11]"When the two of them are sleeping, but if A was (already) sleeping and B came and slept beside A, B is considered forewarned" (Yerushalmi Bava Qamma 2:8).

[12]See Yerushalmi Bava Qamma 27.

[13]Joshua Falk Cohen holds that since the injurer did not intend to physically injure the other person, he is exempt. This case is similar to two people who were running in a public place and injured each other, neither person would be at fault.

[14]See Bava Qamma 48a, the owner could have used other means to eject the trespasser from his property.

[15]Whether on public or private property.

[16]The courtyard or house of another.

[17]See Bava Qamma 48a, the position of Rava which was cited by Rav Papa.

[18]See Tur "Hoshen Mishpat" chapter 4 and 64.

[19]The owner accidently stumbles into the intruder.

[20]Because the intruder entered the premise without the owner's permission.

[21]In a common courtyard or by permission of the owner of the premise.

[22]Of course if both persons knew that the other person would be there and one person physically injured the other person, the injurer would be liable.

[23]See Bava Qamma 32b.

[24]The injured person has to be standing on the private property of another person besides the injurer's. It is illegal to chop wood on public property.

[25]Even if this occurred in a courtyard where it is permissible to chop wood, the injurer is held liable because it is his responsibility to be careful not to hurt someone.

[26]Because wood chips regularly fly far away from the place where the chopping is taken place.

[27]Because many people enter such a shop.

[28]See Bava Qamma 32b. This is the position of R. Yosi b. Ḥaninah.

[29]Because the injurer in this case did not intend to cause shame or damage to the injured person.

[30]See Bava Qamma 26b.

[31]For instance another person placed it in his lap.

[32]To a person or property.

[33]Even though he has committed the act under duress, it is as though the injurer did it by his own free will, and if he did it by accident it is considered as if he acted deliberately if the injured person was not negligent.

[34]There is no liability for these counts unless there is intent or possible intent.

[35]In "Hilkhot Ḥovel Umaziq" 1:11 Maimonides explains the law concerning one who is asleep is only liable for damages. This halakhah reveals that this person is exempt from any claim on the other four counts mentioned in ibid., 1:1 or "Ḥoshen Mishpat" 420:3.

[36]The law here comes from Bava Qamma 27a. The injurer is held responsible to make himself aware of any condition that could potentially be dangerous to others.

[37]Damages, medical treatment, time lost from gainful employment, and pain.

[38]The reason for this law is found in "Hilkhot Ḥovel Umaziq" 1:10. The injurer is exempt because even though he may have caused the injured person shame, he did so unintentionally.

[39]The wind in this case is considered like a manipulative force (ones).

[40]See "Hilkhot Ḥovel Umaziq" 1:11 for the reason.

[41]The injurer is not liable unless he acted willfully or with possible intention, which was made clear in the explanation of Ex. 21:18 found in ibid., 1:10.

[42]See Rashi's footnote to Bava Qamma 27a for the reference to the case of intending to fall on another person.

[43]Even though the injurer did not intend to shame the person he is held liable, because he intended to do something which would cause shame for the injured person.

[44]See Bava Qamma 32a.

[45]Even though it is his right to have sexual intercourse with her, he still must be careful not to injure her.

[46]For the four counts: damage, pain, time lost from gainful employment, and medical treatment, but shaming is not considered in this case.

[47]See Bava Qamma 92b.

[48]In the Gemara (ibid.) there are different opinions which indicate anyone who made this request would have done only in a jesting manner. Or as Rashi points out that the would-be injurer could misinterpret the intentions of the person requesting such action. But the most critical point is that when a person says, "Strike me, wound me," it can never be referring to the principle limbs for which a person is always held liable for. There is only one exception, when the person who requests such action is referring to something besides the principle limbs and explicitly states, "On the condition the action will be exempt from any legal action" (see Magid Mishneh).

[49]The owner could say, "On the condition that you will pay me, you may have permission to destroy the object." Therefore the owner's statement has to be explicit and not equivocal.

[50]See Mishnah Bava Qamma 33a.

[51]This law is derived from the case of one ox doing damage to another ox in which the same method of compensation is employed.

[52]Both are held liable to make pecuniary compensation, but if the injured person dies both persons are exempt from being charged with murder (see Bava Qamma 26b).

[53]Each person has to pay no more than half the cost of the value of the damages.

[54]This person is held liable for the five counts mentioned in "Hilkhot Hoyel Umaziq" 1:1 or "Hoshen Mishpat" 420:3.

FOOTNOTES TO CHAPTER 422 AND THE MISHNEH TORAH

[1]See Bava Qamma 92a.

[2]By divine law.

[3]A paraphrase of the Gemara in Baya Qamma 92a. In Isaiah 60:7 it states that these particular rams were the choicest in the world to sacrifice.

[4]See Baya Qamma 92b. This was like Abraham who pardoned and then prayed for Abimelech (Genesis 20:7f).

[5]Supplication is more serious than just a request.

[6]The first time the injurer asked for forgiveness the injured person ignored the request.

[7]The sages have made a rabbinical ordinance which favors the injured person, who takes an oath that the injury occurred and therefore can receive compensation from the injurer. There are three cases concerning a Pentateuchal oath where the defendant can take an oath and be exempt from making compensation, for example, a person who makes a partial admission of a claim for touching movable property (see Mishneh Torah "Hiklhot To'en Wenit'an" ("Laws Concerning Pleading") 1:2).

[8]An object which is holy, for instance, a Sefer Torah or tefilin (see Shevu'ot 38b). This oath was instituted by the Rabbis.

[9]See Shevu'ot 44b.

[10]If there were no witnesses (see "Hilkhot Ḥovel Umaziq" 5:6).

[11]From the same Gemara above it states, "And that he says another, he did (this) to him." But perhaps one could argue that maybe the injured person just said this when in fact another person or something else injured him. Alfasi, who Maimonides agrees with, interprets the Gemara to mean, "And that he says to another who said," which includes a third party who may have been the injurer but is not being sued because the injured person is suing falsely another person instead. This is reflected in "Hilkhot Ḥovel Umaziq" 5:5.

[12]The injured person is required to take an oath (see Shevu'ot 46b).

[13]Because the wound could be self-inflicted, the court makes the injured person take an oath that it was not.

[14]An injury in an unusual spot on the body indicates that another person with high probability inflicted the wound.

[15]See Mishnah Shevu'ot 7:3.

[16]In the case of an injured person, how is compensation to be assessed? If witnesses saw him, (that) he entered under another's hand unwounded, and emerged wounded, but they did not see him at the time the injurer physically injured him. And the claimant said, "He physically injured me." And the defendant said, "I did not physically injure him." Behold the injured person swears (an oath) and takes (collects compensation). If there is indication that the defendant physically injured him, for example, the injury was in a place which was impossible for him to injure himself, for example, that it was between his shoulders or the like, and no one else was with them, behold he takes (collects compensation) without swearing (an oath). And even if there is another person with them, if it is clear to the witnesses that the third person did not physically injure the claimant it is as if the third person was not there at all. (Then) the injured person takes (collects compensation) without swearing (an oath) ("Ḥoshen Mishpat" chapter 90:16).

FOOTNOTES TO CHAPTER 423 AND THE MISHNEH TORAH

[1]This refers to the case found in Ex. 21:22, "When men fight and one of them pushes a pregnant woman and she loses her children (a miscarriage results)." The injurer in this case did not intentionally try to batter the woman.

[2]In the same verse as above it states, "...the one who is responsible shall be fined according as the woman's husband may exact from him." This is the proof text for allowing the husband to recover his losses, i.e., the fetus in this case. For further discussion of whether or not the judges or the plaintiff's husband has jurisdiction to set this value see Bava Qamma 42b.

[3]Her value might have been reduced by any injury she might have sustained. Rashi explains that the physical injuries due to battery are like other injuries, and the law is that this kind of injury reduces her ketubah i.e., in the case of divorcee or widow. Also, not only does she lose the fetus but she may have weakened herself in some way (see Bava Qamma 49a).

[4]The pain might be considerably more under these circumstances than in natural childbirth.

[5]See Bava Qamma 42b. Rashi holds that the plaintiff's husband has a share in the count for physical damages, so that it is not exclusively the woman's. This ruling seems to be further explained in "Hilkot Ḥovel Umaziq" 4:15. But the addition in 4:15 of the counts for medical treatment and time lost from gainful employment does not seem essential here, because in general, there would be no need for any medical treatment nor would the plaintiff be absent from work any longer than if she bore the child naturally. As to any claim for shaming, Maimonides states there is liability (see 4:15) even though R. Shimon states in a baraita, "In the case of a person who intended to shame one person but in fact shames another person, the injurer is not liable for any claim for shaming." In Tosefta to Bava Qamma chapter 9 it is stated, "One who strikes a pregnant woman so that she has a miscarriage, the injurer is held liable to compensate the plaintiff on five counts: damages, pain, medical treatment, time lost from gainful employment, and shame, and the value of the fetus to the plaintiff's husband. Abraham di Boton holds that if the damages would be divided into two parts, the loss of the fetus as well as any weakening the woman might have suffered belongs to the husband, but if this is considered all together, it belongs to her.

[6]If she were sold in the market as a slave.

[7]If her fertility is proven, she could get a higher price because then she is worth more to an owner.

[8]See Mishnah Bava Qamma 48b, Damages to her capacity to bear children may have been caused by the miscarriage.

[9]See Mishnah Bava Qamma 49a.

[10]This compensation is not transferred to the husband's heirs since he himself never could claim it.

[11]See Bava Qamma 43a. In a situation in which the husband cannot claim the value of the fetus, then his wife should claim its value. Vidal of Tolossa points out the unclarity of what source Maimonides based this position on. He holds that it must have been based on the Biblical verse, "...and the woman's husband may exact compensation" (Ex. 21:22). Caro in the commentary Kesef Mishnah holds that Maimonides agreed with Rabbah in the bariata, "The husband cannot give to his heirs what he never possessed." Caro also points out the critical use of "yeladeha" in the biblical text instead of yeladim which makes it evident that if the plaintiff's husband is dead she could receive compensation for the fetus.

[12]Paid to her husband because the work of her hands are his.

[13]To the doctor.

[14]See Bava Qamma 49a and 48b.

[15]The halakhic principle involved is that the laws for a proselyte are the same as the laws for a born Jew.

[16]There is an exemption only if the proselyte has no children who are qualified to inherit this money, i.e., children born from a halakhicly sanctioned marriage. But any children he had prior to becoming a Jew cannot inherit his estate.

[17]This is the opinion of Rabbah (see above) that a Jewess is entitled to the compensation for the value of the fetus after her husband's death.

[18]See Bava Qamma 42b. This woman has to observe certain commandments which are the same as a Jewish woman. This slave is also owned by a Jew.

[19]See Tosefot for this section on the above page.

[20]This case is determined by the fact of the plaintiff's conversion or manumission. This is crucial because an indentured servant or non-Jew cannot enter into a halakhic marriage. Therefore, the plaintiff's husband could not claim her as his wife or their offspring as his children. But if she has converted, then she has the right to claim the compensation for the value of the fetus as stated above in 4:3. This is Rav's opinion which is found in Bava Qamma 43. This halakhah also excludes any case where conception occurred during an act of prostitution.

[21]"Any" implies not for the miscarried fetus nor for a ransom for the woman's life.

[22]Even though the defendant may be exempt from capital punishment due to the circumstances of the case, the injurer is nevertheless exempt from any claim for pecuniary compensation. This exemption is based on the nature of the case which is a capital offense. The halakhic principle applicable in this case is that if a person is liable for two different punishments for one transgression, the court only applies the most severe. Also in regards to capital offenses, there is no difference between whether or not the act was inadvertent or not, since the injurer is exempt from any claim for pecuniary compensation. This is the opinion of Rav found in Ketubot 34b. See also Bava Qamma 35a. According to HaRav HaMagid, the law in this case implies a case of intentional injury.

[23]The woman is not killed.

[24]The injurer will make pecuniary compensation. From Bava Qamma 42b we also learn that if there is harf, i.e., the woman is killed, the injurer will not pay. Maimonides based this case on the opinion of R. Shimon even though there are inconsistencies with other halakhot, e.g., the treatise on "Murder" chapter 4. Maimonides does not concur with R. Judah and Hezekiah that there should be an exemption from pecuniary compensation as well.

[25]The intent here is to strike but not to kill.

[26]If the injurer acted inadvertently, he would be exempt from any claim for pecuniary compensation.

[27]The injurer did not intend to do anything to the woman.

[28]The opinion of R. Shimon in Sanhedrin 19a, "One who intended to kill one person but killed another is exempt from a charge for a capital offense."

[29]This is the opinion of Rav Eda b. Ahavah who drew his opinion from Ex. 21:22 which decreed a pecuniary compensation for the value of the fetus (Bava Qamma 42a). Also, even though Maimonides accepts Hezekiah's opinion that there is no liability in the case of an unintentional murder, he rejects his opinion that there is no liability for damages if the act was unintentional as is the case here.

FOOTNOTES TO CHAPTER 424 AND THE MISHNEH TORAH

[1]See Bava Qamma 87a.

[2]Then, if no blood is drawn the act is not a capital offense. Maimonides uses the term bruising, which in its legal definition means to draw blood.

[3]This would exempt the injurer from being charged with a capital offense.

[4]See Sanhedrin 84b.

[5]As an exemple, tearing or burning clothes.

[6]See Shabbat 105b, on which Maimonides bases his opinion.

[7]See "Hilkhot Shabbat" 8:8.

[8]See Bava Qamma 87a.

[9]This is not a capital offense, though the punishment is considered karet.

[10]The offense requires flogging.

[11]See Ketubot 32a. If the person is able to bear the flogging, he is flogged for this offense.

[12]As R. Yoḥanan in the above Gemara.

[13]Where there is both flogging and a pecuniary penalty.

[14]There is no flogging penalty for this offense.

[15]From the opinion of R. 'Ull'a based on R. Yoḥanan on Ketubot 32a.

[16]See Bava Qamma 87a.

[17]Since the slave belongs to the owner, any compensation for injuries would go directly to the owner.

[18]The Hebrew slave owns his or her own body.

[19]The Hebrew slave's owner owns his working potential.

[20]If the court assesses that the slave should for instance take seven days to recover, but his owner employs a drug that will shorten the recovery time, the owner is still entitled to the full amount of compensation (see "Hilkhot Hovel Umaziq" 2:15). The reasoning behind the owner's right to complete ownership is found in Gitin 12b, "For all that a slave owns, his master owns it."

[21]Like a slave who is owned by two partners, one of whom has emancipated his part of the property, i.e., the slave (see Gitin 41a).

[22]See Gitin 42a. Maimonides concurs with Bet Hillel in the first Mishnah on page 41b in that a person who is half slave and half free works for his owner one day and himself the next day. Both Bet Hillel and Bet Shamai concur that the court must compel an owner in this case to emancipate his half slave, but Maimonides does not ascribe to this opinion here. Rather Maimonides states that there is a ruling concerning a female slave, that the court cannot compel the owner to emancipate her because a woman is not commanded the duty of propagating the human race. Therefore, Maimonides may have thought that all who are not emancipated should be governed by this rule. R. Abraham b. David points out the confusion between the first and second Mishnah mentioned above. He notes the second Mishnah does not make the distinction of time that belongs to the half slave and time that belongs to his owner. Therefore, R. Abraham holds that the half slave either gets the full compensation or nothing.

[23]...If a person strikes her hand and smashes it but it recovers, if he struck her on the day she served her master, the damages belong to her master, but if on her day, the damages belong to her. But if her hand was cut off, and likewise all other (injuries) that do not recover one-half of the damages belong to her and one-half belong to her master. If she dies, one-half of the fine belongs to her master and one-half of the fine for the ransom the injurer is exempt (from paying) ("Yoreh De'ah" 267:62).

[24]The fine here refers to a case in Ex. 21:32, "If the ox gores a (male or female) slave, the owner shall give to the slave's master thirty shekels of silver, and the ox shall be stoned." The Talmudic discussion in Gitin 42b questions if the owner in the case of a slave whose manumission papers have been momentarily withheld from him, has the right to this compensation. This problem was not resolved and therefore no compensation can be legally exacted by any of the concerned parties.

[25]In a court of law.

[26]Even though the circumstance compels the master to set free his slave, the critical issue is that the slave must also receive a document of manumission to be totally emancipated.

[27]Since he has no document of manumission.

[28]From others who physically injured him, or the value of his eye from his former owner.

[29]In "Hilkhot 'Avadim" 5:14 Maimonides states the owner is held liable to pay for the eye. The harmonization between what is written here and there is found in the ability of the former slave to seize compensation. This seized compensation cannot be reclaimed from the slave. This apparent resolution is further complicated by Maimonides' position in "Hilkhot Nizqe Mamon" 11:2 in which an ox kills a half slave and half emancipated person. In this case the slave's owner receives one-half of the fine, fifteen shekels, even though he delayed the person's complete emancipation. But according to the Mishnah, the court must compel the owner to emancipate him. See "Hilkhot 'Avadim" for further discussion concerning emancipation.

[30]Joshua Falk Cohen points out that this is a matter of authorization. If both the half slave and his former owner give power of attorney to each other, then they jointly can collect compensation. In a manner of speaking, by this agreement they become one person.

[31]See Baya Qamma 87a.

[32]Her value may be reduced when the father goes to sell her for a handmaid or to marry her, for example, because her face was wounded or her hand was cut off.

[33]Until she reaches womanhood at the age of twelve-and-a-half. Because she has yet to reach this age her time lost from gainful employment still belongs to her father (Baya Qamma) 87b).

[34]The reason the damage done to her belongs to her father is, "...if a man will sell his daughter to become a maidservant..." (Ex. 21:7).

[35]Which kind of damage that would not reduce her value was not made clear. It is possible that the intention was to wound her but the wound did not reduce her value immediately, but only after she grows up does the wound create some problems with her ability to work. At that time the father would have no right to collect compensation.

[36]The injurer is exempt from paying compensation for damages and time lost from gainful employment because these damages are considered his own. It was explained in detail in Ketubot 36b that when a father has intercourse with his daughter he is exempt completely. The reason is not on account of if he wants to marry her off to an ugly person or a person smitten with scars but because he is liable for the death penalty. In this case the daughter receives no compensation. Rav HaMagid holds that Maimonides intended the halakhah to say that when he had intercourse with another's daughter the compensation belongs to the father. R. Abraham b. David concurs with the above opinion. He holds that the shame that results from an injury belongs to the daughter while the shame that results from a rape belongs to the father. His opinion excludes the case of the father raping his daughter.

[37]See Bava Qamma 87b.

[38]Their father does not provide them with any livelihood.

[39]Their father does not have any prerogative or right, because he does not support them. So the value of the damages belongs to them.

[40]This is the opinion of Rava bar Rav Huna in Bava Qamma 87b. The pecuniary compensation is not paid directly to them because they are minors and will not know what to do with it.

[41]Because the value of the damages belongs to the child.

[42]See Bava Qamma 87b.

[43]Since their father still supports them and he is meticulous in making sure he does not lose his money. This rule is in conjunction with the ruling in the Gemara that a father who physically injures his daughter, who is still supported by him, is exempt from making pecuniary compensation. This halakhah seems to contradict what is written in "Hilkhot Hovel Umaziq" 4:14. But Maimonides in this paragraph is referring to a daughter who is not supported by her father. Even in this case the father is exempt from making pecuniary compensation for damages, since he has the right to sell her and is obligated to supply her with food during her absence from work. He is also exempt from paying for her time lost from gainful employment since he benefits from her work.

[44]Even though he may still support them, he does not have an interest in the money that the injurer will pay his children since they are the ones who suffer from the damage and he does not lose anything. But this is not similar to a matter considered a windfall, for this thing belongs to the father regardless if it was his child's discovery for the child would not suffer without it.

[45]When the child reaches the age of majority the property automatically becomes his.

[46]See Bava Qamma 87a.

[47]All five counts mentioned in "Hilkhot Ḥovel Umaziq" 1:1 and "Hoshen Mishpat" 420:3, or some of them depending on the damages. For a deaf-mute, the injurer must compensate for all five counts; for an insane person, damages, pain, medical treatment, and time lost from gainful employment, but not shaming for the insane person is not capable of feeling shame; for the minor, damages, pain, and medical treatment, and not time lost from gainful employment which belongs to the child's father and shaming is judged by individual cases. Sometimes the child is mature and feels shame and other times not (see "Hilkhot Ḥovel Umaziq" 3:4).

[48]They are not legally liable for their actions.

[49]A non-Jewish slave, for everything the slave possesses is the property of the owner (see Bava Qamma 87a).

[50]For a non-Jewish slave all five counts are paid to the owner as was explained in "Hilkhot Ḥovel Umaziq" 4:10. For a married woman see ibid., 4:15 and 16.

[51]Because they own nothing which to make a pecuniary compensation with. For a married woman see ibid., 4:18.

[52]Because then she has property.

[53]Which makes them liable to make pecuniary compensation.

[54]See in Glossary.

[55]See in Glossary.

[56]See in Glossary.

[57]See Bava Qamma 89a.

[58]According to the law they bequeath to a virgin 200 denars and to a widow 100 denars, but if more than this sum was bequeathed to her, it is a supplement to the marriage contract.

[59]For if the court requires her to sell the supplement to others, she can delay the sale and try to appease her husband so that the potential buyers will lose the opportunity to purchase the supplement.

[60]If they are divorced, the supplement becomes his. And he does not have to pay except a small sum, for if she dies during his life whether he had or had not received compensation the supplement becomes his property.

[61]Also from the principle of the marriage contract, for example, the damage exceeds the supplement of the marriage contract.

[62]Two-hundred for a virgin and one-hundred for a widow.

[63]The opinion of R. Meir in Ketubot 57a.

[64]If he will divorce her and collect for damages from the value of the marriage contract, he is obligated to pay her what is rightfully hers.

[65]The five counts: pain, damages, medical treatment, time lost from gainful employment, and shaming.

[66]Instead of giving him two hundred zuz she can just sell him the financial value of the marriage contract.

[67]From the marriage contract.

[68]See Ketubot 65b.

[69]Because her productivity belongs to her husband.

[70]Her husband is held liable to make sure she gets proper medical treatment.

[71]If the wound is visible, there is also humiliation for her husband. And moreover she can become despised by him.

[72]This is the opinion of R. Judah b. Baterah expressed in Ketubot 65a.

[73]There is no shame for her husband. This could also mean that the injury occurred in private so that no one saw it happen.

[74]Like other property that she comes to possess.

[75]The principle belongs to the woman in the event of a divorce or her husband's death.

[76]If the husband injures her, he forfeits the right to claim a part of the compensation. In this case he has shamed himself and caused himself pain.

[77](If) a person injures a married woman (compensation for) time lost from gainful employment and medical treatment belong to her husband, and compensation for pain belong to her. But (compensation for) shame and damages, if (the damage) is visible, for example, that the injurer physically injured her face or on her neck, or on her hand, or her arms, one-third (of the compensation) belongs to her and two-thirds belongs to her husband. But if the damage is concealed, one-third belongs to her husband and two-thirds to the husband's wife. (The husband's compensation) must be paid to him immediately, and the woman's (compensation), the husband will take it and buy land and he will eat its fruits (the income belongs to the husband). She is not able to forgive (the injurer) not on his part nor on her part. If she forgives, it is not (considered) a pardon. And in every case he is not able to claim her part except by her authorization. The above rule applies only if others physically injure her. But (if) the husband physically injures his wife, he is held liable to make pecuniary compensation to her immediately for the whole of the damage, for the whole of the shame and pain. And the entire (compensation) is hers, and her husband has no (right) to its fruits. And if she wants to give the money to another, she may do so. But the husband must (pay for her medical treatment) in the same way he pays for the medical treatment for all her ailments.

[78]She has no assets until she is divorced or widowed.

FOOTNOTES TO CHAPTER 425 AND THE MISHNEH TORAH

[1]See Sanhedrin 73a.

[2]Even though a minor is not responsible for his acts, in the case of a "pursuer" a minor is considered as an adult, because the objective is to save the pursued person's life (see Sanhedrin 72b).

[3]The pursuer has not done anything that a court could find him liable for the death penalty.

[4]This is not a formal warning, which needs to be acknowledged, but rather it is just letting the pursuer know that if he continues his course of action he will be killed. Joshua Falk Cohen holds that even if a person did not forewarn the pursuer, that person still must save the life of the pursued person even if it means in the last resort taking the pursuer's life. The precedent for this is derived from a minor who has no understanding, but still a person must kill the minor if he is a pursuer.

[5]The theft referred to here occurred in a small town where everyone knew everyone else.

[6]See Mishnah Oholot 7:6.

[7]Once the child's head has emerged he is no longer considered a pursuer. In the words of the Gemara if the woman's life continues to be in danger it is as if "from heaven they are pursuing her" (Sanhedrin 72b). At this point the doctors have no legal right to kill the child in order to save the mother, for the child now has the designation of nefesh (person).

[8]Whether or not the pursuer would be liable for the death penalty or the punishment of karet, others must save the pursued person even by taking the life of the pursuer (see Sanhedrin 73a). See also in glossary, 'ervah.

[9]A person who pursues after an animal to copulate with it, even though this is similar to other sexual prohibitions and the death penalty is applicable, a person does not have to save the person about to commit sodomy with an animal like in other sexual prohibition cases. There is also no shame or loss of virtue to the creature pursued in this act. (San. 73a).

[10]Touch but does not completely enter the vaginal canal.

[11]A person cannot save the person from the sex act by killing the pursuer, because it is already as if she had sexual intercourse and had been sinned against (see San. 73a, b).

[12]Before they could reach the pursuer he would kill her, because they wanted to kill him on account of the woman (San. 73a).

[13]Because she is under duress and made the request out of fear.

[14]See in glossary.

[15]Either the meat was not slaughtered according to halachic principles or the animal died of natural causes. The punishment for eating such meat is rabbinical stripes.

[16]See in glossary.

[17]Caro follows Maimonides who uses the term epikoros instead of all the following: apostates (mumrim), informers (mosrim), and sectarians (minim) in this context. The Gemara in 'Avodah Zara 26b uses the three later terms, and so does Alfasi and Rabbenu Hananel. Most commentators feel the use of epikoros is an error, especially in the first line which should read 'sectarians from Judaism' and not epikoros from Judaism. If these three terms are normally categorized together as seems to be the case, it is important to note that in "Hilkot Hovel Umaziq" 8:10 Maimonides gives the halachic opinion that it is permissible to kill informers.

[18]In order that the people will do to them like their ancestors did to the ones who built the golden calf (Ex. 32:27).

[19]Without killing them directly, see 'Avodah Zara 26b.

[20]ibid., 26a.

[21]"During war it is good to kill non-Jews," see Mekhilta "Beshalah Pharoah" -- 1.

[22]This is a case of robbery ('Avodah Zara 26a).

[23]Even though he has been forewarned.

[24]See in 'Avodah Zara 26b.

[25]A person who does stand idly by transgresses a negative commandment.

FOOTNOTES TO CHAPTER 426 AND THE MISHNEH TORAH

[1]The potential life-saver knows how to swim and is able to save the person (San. 73a).

[2]The person who was saved is obligated to pay back the person who saved him what he spent. This opinion was stated by R. Asher b. Yehiel in Sanhedrin chapter 8 and is contingent on if the person saved has the money to pay back or not. This opinion was deleted from both codes.

[3]Even though the Torah prohibits telling secrets or spreading rumors about others, he is obligated to make this matter known because of the danger to the other person's life.

FOOTNOTES TO CHAPTER 427 AND THE MISHNEH TORAH

[1]Caro seems to follow Maimonides who derives this principle from Sifre "Weethanan" 36. In this paragraph dealing with the laws for fixing a mezuzah on a dwelling there is a distinction made between a house and a barn or storehouse, which do not require a mezuzah. See also Yoma 11a. Therefore, a structure without a mezuzah is not considered a dwelling and only dwellings require fences on their roofs. Caro contradicts this opinion in "Yoreh De'ah" 286:2 in which he says, following the precedent of Alfasi and R. Asher b. Yehiel, that these structures require mezuzot. The switch in his opinion is for two reasons pointed out by Joshua Falk Cohen. First, Caro, unlike Yoma 11a, feels that a barn or a similar structure are not used as bathrooms normally, and therefore should have a mezuzah. And secondly, if a person should choose to live in such a structure, the person is commanded to fix a mezuzah on its door lintel. Also, such a structure usually would not have a lot of human traffic on its roof, so it is very unlikely someone would fall from it.

[2]A structure this size is so small and therefore unsuitable for a human dwelling. See Sifre "Ki Tetse" 229. Also Joshua Falk Cohen holds, it is not suitable for a bathroom either.

[3]Even though the Torah states, "You shall make a fence for your roof" with you being stated in the singular, the house is neither one partner's nor the other's, but both of theirs. It is this partnership that has singularity and therefore they are required to build a fence.

[4]Caro follows Maimonides who rejects R. Ila'i's position that partners do not have to build a fence on their roof (Hullin 136). The only condition that is important is if there is a possibility a person could fall from the roof.

[5]And therefore their roofs are not used.

[6]The case here is referring to a subterranean dwelling in which there is a danger a person could fall from the street onto its roof (Bava Qamma 51a).

[7]From the roof to public domain and not vice-versa.

[8]See Sifre in several places and Tosefta to Bava Qamma chapter 6:4.

[9]From the roof upward and all sides. A handbreadth equals the width of four fingers.

[10]See Sifre "Ki Tetse" 229.

[11]The offense of killing in one's house.

[12]Even though Deut. 22:8 only mentions a roof, other things such as pits, wells, caves, and ditches which are frequently dangerous like a roof can be considered under the biblical commandment, "You shall not bring blood upon your house" (Deut. 22:8).

[13]This commandment concerns only the threat of death and not the threat of injury, because "You shall not bring blood upon your house" (ibid.) refers to death.

[14]See "Nizqe Mamon" 12:10.

[15]See Tosefta Bava Qamma chapter 6:4.

[16]See in glossary.

[17]Strong enough to hold a person's weight.

[18]See Bava Qamma 15b -- R. Nathan said, "From where is it derived that nobody should breed a bad dog in his house, or keep a faulty ladder in his house?" From the text, "You shall not bring blood upon your house."

[19]See Berakhot 32b.

[20]See Bava Qamma 15b.

[21]For the doer.

[22]See 'Avodah Zarah 12a.

[23]ibid., and also Pesahim 112a.

[24]See in glossary, makat mardut.

FOOTNOTES TO THE CONCLUSION

[1]Isadore Twersky, Introduction to the Code of Maimonides (New Haven: Yale University Press, 1980), p. 309.

[2]ibid., p. 315.

[3]ibid., p. 316.

[4]Jacob Levinger, Maimonides' Techniques of Codification: A Study in the Method of the Mishneh Torah (Jerusalem: Magnes Press, 1965), p. 89.

[5]Jacob Levinger, "Maimonides as Philosopher and Codifier," The Jewish Law Annual, vol. 1 (Leiden: E.J. Brill, 1978), p. 137.

GLOSSARY

'ervah A woman forbidden to a man (and vice-versa) on account of consanguinity.

epikoros This word has become to mean a heretic, sceptic, or disbeliever. The word's form and meaning is related to Epicuros, a Greek philosopher. A Jew who was an Epicurian denied the laws and tenets of Judaism.

holya' In this context, this is a fence-like structure which looks like a sand embankment or earthen enclosure.

Kohen Traditionally a male who is the descendant of Aaron. His status is derived from his father and not his mother.

makat mardut This can be translated as rabbinical stripes for chastisement if rdh (to chastise) is taken as the triconsonant root of mardut. Or it can be translated as rabbinical stripes for rebellion if mrd (to rebel) is taken as the triconsonant root of mardut.

nikhse melog This literally means "plucking ('milking') property." It is usufruct and reflects the idea that the husband "plucks" from his wife's property, i.e., eats its fruits. It is part of the dowry. The husband has the "dividends," income, of it, without responsibility for loss or waste, but if at the time the marriage ends, if the value of the property has gone up, it is she who profits. Since the legal status of usufruct property is that the capital is hers and the fruits are the husband's, if it is such (say, cash or food) that, after one use, it is gone, the husband is not permitted to use it but must buy something in its stead whose capital will be preserved intact while he can profit from its returns. Neither husband nor

wife may sell usufruct property, the husband absolutely not, since it is legally his wife's, but she may sell the capital without the usufruct, which would pass to the buyer only on the husband's death or her divorce.

nikhse tso'n barzel This literally means "property of the iron sheep." It is mortmaim property and reflects the idea that this, for the woman, is property which always remains hers. She is assured of its return in specie or at full value, and it is, therefore, as strong as iron. It is the part of the woman's dowry which she makes over to her husband on the condition that he will be responsible for its full money's worth, whether he gains or loses on it during their years of marriage; such property and its assessed value are recorded in the marriage contract. At the end of the couple's marriage the husband or his heirs can claim any rise in the value of this property, but also have to compensate for its diminished value, but the woman gets the property at the divorce or death of the husband.

perutah This is the smallest unit of money mentioned in the Mishnah and it is the only one with a name of distinctly Hebrew origin, from the root prt (to split). The perutah is an eighth of an Italian 'issar.

sha'atnez A web mixed of wool and linen. The commandment against wearing an article of clothing made of this mixture is found in Deuteronomy 22:11.

tovat hana'ah This is the value which a speculator would pay to purchase a married woman's property on the condition that: 1) if her husband dies or she is divorced he would acquire that property; 2) if the woman dies before her husband, then her husband acquires her property and the speculator would get nothing for his money.

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