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LAW AND ETHICS IN THE TALMUD:
AN INQUIRY INTO THE STRUCTURAL RELATIONSHIP
BETWEEN THE TWO

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Thesis Submitted in Partial Fulfillment of
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INTRODUCTION

My interest in this thesis topic began as a general interest in the relationship between law and ethics in halacha. Aaron Lichtenstein's article, "Does Jewish Tradition Recognize an Ethic Independent of Halakha?"¹ and Eugene B. Borowitz's response, "The Authority of the Ethical Impulse in 'Halakha'"² brought to my attention the controversy around the Talmud's usage of the phrase lifnim mishurat hadin. What kind of obligation did lifnim mishurat hadin carry? Did this term point to an ethical realm that was beyond legislated norms? If so, why would behaviors recognized as ethical not be legislated?

Lichtenstein's article dealt primarily with the Talmudic material as it was treated by the Rishonim and Acharonim. I decided to examine how the phrase lifnim mishurat hadin was used in the Talmud itself. I picked out certain other terms which I thought pointed in a similar way to a realm of ethical behavior which might or might not be actionable. These terms were 1) patur midinei adam v'chayav b'dinei shamayim, 2) mi shepara meanshei dor hamabul u-midor hapalaga etc., 3) the Talmud's treatment of Dt.6:18, v'asita hayashar v'hatov

b'einei Adonai, and 4) the Talmud's treatment of the phrase from Lev.25:17, v'yareita m'Elohecha.

I began my research with no assumptions about the Talmud's approach to ethics beyond a premise that the halachic system incorporates ethical concerns among others in its formulation of law. I began with the Talmudic passages in which the above-mentioned terms appear, and I attempted to understand these passages on their own terms. I wished to determine the context in which the terms were used and how the Rabbis understood and used the terms themselves.

At a later stage, I employed the critical/historical method in analysing the texts. In several of the categories, there appeared to be an overlay of material and I was not satisfied with the final redactor's organization and interpretation of this material. Perhaps the earlier material had been cast in a different light by later Rabbis and the stama, the anonymous voice of the Talmud.

I attempted to identify and date different traditions in the Talmudic passages. To establish the dates of particular amoraim, I referred to Introduction to the Talmud, Bavli and Yerushalmi by Chanoch Albeck.³ I also made use of the critical edition of the Talmud, Dikdukei Soferim⁴ in order to make comparisons between different Talmud manuscripts. In this manner, the texts were

studied both traditionally and in a contemporary, scientific way. The results of this study represent the body of this thesis.

CHAPTER I

LIFNIM MISHURAT HADIN -

BEYOND THE REQUIREMENTS OF THE LAW

The phrase לפני משורת הדין occurs twelve times in the Babylonian Talmud, in seven different passages. Despite this relatively small number of references, the phrase does not appear to have one consistent meaning. As we shall see, lifnim mishurat hadin means different things in different passages. Yet significant patterns in its usage emerge.

Although we do not find the phrase lifnim mishurat hadin in the Mishnah, the phrase shurat hadin appears in Gittin 4:4. This mishnah discusses the case of a slave whose master mortgaged him and then set him free.

...משורת הדין אין העבד חייב כלום. אלא מפני תקון העולם
כופין את רבו ועושה אותו בן ח' ין, וכותב שטר על גמ' ו'.

according to the strict requirements of the law the slave is not obligated in any way. But as a precaution for the general good, they force his master to make him a free man and write a document for his value.

Literally shurat hadin means "the line of the law" and it is used here with the meaning "strict law," or "the strict requirements of the law," The phrase, tikun haolam, is

used in a contrasting sense as an argument calling for additional action on the part of the slave owner.⁵

Aggadic Descriptions of God

Two of the Talmudic passages which use the phrase lifnim mishurat hadin do so in reference to God's behavior.

In Berachot 7a^{A-1} there is a discussion of how we know God prays and the content of God's prayers:

מא' מצא' ? אמר רב לויאל בר עובדיא אמר רב יהר' מאפי
ש'כחו רחמ' אר' כעס' ו'שולו רחמ' ע' מדות' וא'נה
ע' ב'ן' בא' רחמ' וא'כס' ע'ם' ע'פ'ן' מ'שור' הד'ן'.

What does God pray? Rav Zutra bar Tuvya said in the name of Rav: "May it be My will that My mercy rules over my anger and that My mercy is revealed over My other attributes; that I behave with My creatures according to My attribute of mercy and that ekanness lahem lifnim m'shurat hadin (lit: that I enter them within the line of the law).

A baraita quoted in the name of R. Ishmael ben Elisha reads similarly, except that the prayer is spoken by him about God. Here, ekanness lahem lifnim mishurat hadin has something to do with God acting in accordance with God's attribute of mercy. The meaning of this phrase is further elucidated by the following text.

In Avodah Zara 4b,^{A-2} Rav Joseph says that the Musaf prayers for Rosh Hashanah should not be said in private during the first three hours of the day, lest when judgment is decreed, the person be judged harshly. Previous and subsequent discussion reveals that the Rabbis

imagined that God engaged in Torah during the first three hours of the day, and sat and judged the world during the next three hours. This second three-hour period was considered a more auspicious time for prayer. Why? The gemara in Avodah Zara 4b says that during the first three-hour period God does not act lifnim mishurat hadin because this is the period during which God is occupied with Torah, and the Torah is connected with emet, truth (Pr.23:23). During the second three-hour period however, God is occupied with din, which is not described by the Bible in terms of emet, and during this time, God does act lifnim mishurat hadin.

From this passage we learn that for God, acting lifnim mishurat hadin is somehow inconsistent with the absolute truth of Torah. Because God does act lifnim mishurat hadin during the second three-hour period, that period is considered a more auspicious time for prayer and judgment. It appears that for God to act lifnim mishurat hadin means that God judges human beings leniently, exacting less than full justice.

This understanding of the phrase is supported by a comparison of this passage with one at Avodah Zara 3b, in which the second three-hour period is also discussed. During this period of time, in which God judges the world,

כיון שראוה שנתחייב עולם כע"ה עומד מכסא הדין ויש
 עס כסא רחמים.

when God sees that the whole world is liable
(for punishment) God rises from the Seat of
Justice and sits on the Seat of Mercy.

These parallel descriptions of the three-hour period tell us that for God to act lifnim mishurat hadin means that prior to issuing judgment, God moves from the Seat of Justice to the Seat of Mercy. This information is consistent with Berachot 7a, which used the phrase lifnim mishurat hadin in connection with God acting upon His/Her attribute of rachamim, or mercy. As it is used here, the phrase means that God does not exact full punishment from human beings as God would if judging according to strict justice. Rather, God extends a measure of mercy to human beings and judges them leniently.

Given this understanding, we still encounter difficulty in translating the phrase into English. Literally, lifnim mishurat hadin means "within the line of the law" or "within the line of justice," a meaning which is opposite to the contextual meaning of the phrase. Let us say then, that when God judges human beings lifnim mishurat hadin, God judges with less than the strict requirements of the law.

Aggadic Descriptions of Human Behavior

Several aggadic texts use the phrase lifnim mishurat hadin in discussing proper human behavior. The earliest of these passages is a baraita included in the

Mechilta de R.Yishmael, in reference to Ex.18:20. It states:

והודעתם להם את הדרך יעשו בה - לה מעמוד יורה. ואת
המעשה אשר יעשו - לה מעשה הטוב. דבר ר' יהושע.
ר' אלעזר המעבי אומר והודעתם להם - הודעתם להם ב' חייבים;
את הדרך - לה בקור חושים; יעשו - לו קבורת המתים; בה -
לו גמילות חסדים; ואת המעשה - לו שורת הדין; אשר יעשו -
לה עפנים משורת הדין.

"And you shall make known to them the way in which they should go"--this is the study of Torah. "And the action they should take"--this is the good deed, according to R.Joshua. R.Elazar the Modai said "and you shall make known to them"--you shall make known to them their (eventual) grave; "the way"--this is visiting the sick; "they should go"--this is burying the dead; "in"--this is righteous behavior; "the action"--this is shurat hadin--the strict requirements of the law; "they should take"--this is lifnim mishurat hadin--[behavior that is] beyond the strict requirements of the law.⁶

Both shurat hadin and lifnim mishurat hadin are used here to point to general categories of desired human behavior. They appear to be used as complementary categories. If shurat hadin means the "strict requirements of the law" and the second phrase, lifnim mishurat hadin, points to a related, positively seen category of behavior, we might best render the phrase "beyond the strict requirements of the law." We would understand this midrash as saying that, ideally, a person should fulfill his or her obligations as the law requires and beyond. This rendering of the phrase is problematic because it moves in the opposite direction of the literal translation, "within the line of the law." If however we consider the law as defining

a person's rights and others' obligations toward him or her, then we can translate the phrase literally. To act "within the line of the law" is not to demand from another person what one is legally entitled to demand. This reading of the phrase is parallel to the phrase's meaning in the midrashim about God. There, God acts lifnim mishurat hadin when God does not demand from human beings all that God is entitled to demand according to the rules of justice, and instead God judges us leniently.

A parallel midrash appears twice in the Babylonian Talmud, in Baba Kama 100a^{A-3} and Baba Mezia 30b.^{A-4} In both cases the midrash is attributed to R. Joseph and in both cases v'et hama-aseh is interpreted as hadin and asher ya-asun is interpreted as lifnim mishurat hadin. This version of the midrash is so similar to the Mechilta version that it is safe to say it is based on the Tannaitic tradition.

There is one more midrash cited in the Talmud which uses the phrase lifnim mishurat hadin in discussing a general category of desirable human behavior, and that is also in Baba Mezia 30b.^{A-4} This passage, in the name of R. Yochanan, proposes that the sole reason Jerusalem was destroyed was that her judges based their judgments on din Torah instead of acting lifnim mishurat hadin. From this text alone it is not clear what is objectionable about basing judgments on din Torah or what lifnim

mishurat hadin means. Were the judges at fault for judging too leniently or too strictly? For God to act lifnim mishurat hadin means God judges us more leniently.

Perhaps a judge acts lifnim mishurat hadin when he, like God, judges human beings leniently. However, according to the previous passage, for a person to act lifnim mishurat hadin means for that person to do more than he or she is legally required to do, extending more benefit to the other person involved. Let us argue then, that a judge acts lifnim mishurat hadin when he rules that a person should do more than the law requires.

Baba Mezia 24b

Let us turn now to particular cases recorded in the gemara which are labelled as lifnim mishurat hadin. There is one case in which an early Amora uses the term lifnim mishurat hadin himself.

This first case appears in Baba Mezia 24b,^{A-5} in the context of a discussion about when a person who finds a object is obligated to search for its original owner and when he is permitted to claim ownership of the item. Our passage begins

ר' יהודה היה שק"ץ וא"י' בתרין שנים בשוקא
 דבי דמא. א"ע מצא כן אונק' - מהו? א"ע ה"י
 אלו שמו. בא ישראל ונתן ה' סמך - מהו? א"ע ח"י
 דחז"ל. א"ע? א"ע שנים שנים ידון.

Rav Judah once followed Mar Samuel in a grain market. Rav Judah said to Samuel "If one finds

a purse here what should he do?" He said to him "It belongs to him [the finder]." "If an Israelite comes and can point to an identifying mark, what should he do?" He answered, "He is obligated to return it." "Both things [are true]?" He answered "Lifnim mishurat hadin--he should do more than the law itself requires."

According to Rabbinic law, there are situations in which one who finds another person's belongings is obligated to try to locate the owner by publicly announcing his find for a specified period of time. In other circumstances, a person is entitled to keep what he finds. In the above case, Samuel first rules that the person is entitled to keep the purse because this is a situation in which the owner would be expected to give up the hope of finding what he had lost, presumably because most people had similar purses, and he lost the purse in a busy market. In such a case, the object falls into the legal category of hefker, abandoned property, and it belongs to the next person who picks it up. With the added information that a Jew comes along who can identify the purse as his, Samuel says the person who found the purse is obligated to return it. Rav Judah challenges him, "How can both be true?" If, because of the initial circumstances, the purse fell into the legal category of hefker, how can the original owner make any legal claim to it? The answer Samuel gives is "Lifnim mishurat hadin--he should do more than the law requires him to do." Samuel apparently agrees that because of general legal principles operative in this

case, the owner cannot make any legal claim to the purse. Yet he rules that the person is chayav l'hachzir, obligated to return the purse to its owner, extending more to the owner than the law requires him to do, because the particulars of this case "demand" such a response. For Samuel, lifnim mishurat hadin carries the weight of obligation--not obligation based on the requirements of the legal system, but obligation based on ethical considerations and the particulars of the situation. It is not clear whether or not Samuel's pronouncement chayav l'hachzir is actionable, that is, whether or not it would be upheld in a bet din. Perhaps in his time, Samuel could have expected a court to impose its authority behind such a decision in an exceptional case. However, it is more likely that Samuel's pronouncement is a heavy obligation, but not actionable in court, because of the impossibility of making such a decision legally binding without calling into question the general laws governing this area.

The case we have been considering is repeated in the gemara with several factors changed. The text reads as follows:

הבא היה שק"ס ואליף בתרה דר"ג בשוקא דזעזא' -
ואמר' עה בשוקא דרבנן - אי' מצא כאל ארנק' - מהו?
א"ע הר' אע"פ שאלו. בא ישרא' ונתן בה סימן - מהו? אלא עה
הר' אע"פ שאלו.

Raba once followed R.Nachman into a market of skimmers--some say a market of scholars--and asked him, "If a person finds a purse here, what should he do?" He answered "It belongs to him [the finder]." "If an Israelite comes and can point to an identifying mark what should he do?" He [R.Nachman] answered him "It would [still] belong to him [the finder]."

The Rabbis involved this time are Raba and R.Nachman, fourth and third generation Babylonian Amoraim respectively, as opposed to the second and first generation Babylonian Amoraim in the preceding account. The case presented for judgment is the same. In response to the first question, R.Nachman rules, like Samuel, that the purse belongs to the person who found it. In response to the second question, R.Nachman ruled differently than Samuel. Samuel treated this case as one of exceptional circumstances not adequately covered by the general laws governing this area, and took the prerogative of pronouncing an obligation beyond the requirements of the legal system. R.Nachman, on the other hand, pronounced no such obligation; he applied the general laws governing lost objects to this case, without treating this case as an exception. Either R.Nachman saw no need to pronounce an obligation beyond the requirements of the law, or he did not feel he had the prerogative to make such a pronouncement. It is possible that Samuel and R.Nachman approached this case differently simply as two different individuals. But it is also possible that the time factor is important and that from the time of Samuel to the time of

R.Nachman, the understanding of lifnim mishurat hadin had changed, so that R.Nachman no longer felt he had the prerogative to rule that a person had obligations beyond the requirements of the law.

The Stama's Use of Lifnim M'shurat Hadin

Did the understanding and usage of lifnim mishurat hadin in fact change during this period of rabbinic activity? In order to answer this question, let us turn to the other cases which are labelled as lifnim mishurat hadin. In all of these cases, the label is a descriptive rather than a prescriptive one, and it is spoken by the stama, the anonymous voice. While we cannot accurately date the stama material, scholars are virtually unanimous in their dating of this material as late.⁷

Let us begin by looking at an additional incident recounted on Baba Mezia 24b.^{A-5} After the discussion between R.Judah and Samuel, the stama continues:

כי הא באבוי בשמאל אשכח הנה חמרי באבוי
ואבדתינהו עשר ימי עבדתי ימי ימי - עבדים
משורר הדין.

. . . as this case of Samuel's father who found asses in the desert and returned them to their master after a year of twelve months--[he was acting] lifnim mishurat hadin--beyond the requirements of the law.

By the time of the stama, the law covering such a case required that a person attempt to find the animals' original owner for a period up to a year. After the year, the

finder would be recognized as the animals' owner. By returning the animals to their original owner after the year had passed, according to the stama, Samuel had acted beyond his legal obligations. It is possible that when Samuel's father returned the asses he was acting under the requirements of the law of his day, and that because of subsequent legal developments, the stama regarded Samuel's father as having acted beyond his legal obligations.

It is instructive for us to see this sugya as a whole, as organized by the stama. First we have an account of the discussion between R. Judah and Samuel, in which Samuel says the person is obligated to return the purse, with the explanation, lifnim mishurat hadin--he should act beyond the requirements of the law. The stama then adds a story about Samuel's father which he labels as lifnim mishurat hadin. This account of Samuel's father serves the stama's purpose as an illustration of the concept, lifnim mishurat hadin, as the stama understands it. We move on to an account of the discussion between Raba and R. Nachman and the decision that the finder is not obligated to return the purse. To this the stama adds an explanation:

והיא עומד וכוונתו ונעשה ככוונתו עם ב"מ שכתב וכו'
 סב"ל שכתב ב"מ.

for him [the original owner] to stand and protest is like a person protesting on account of his house falling or his boat sinking into the sea.

According to the stama, R.Nachman's ruling is based on the view that the original owner's claim is futile. When he first lost his purse, his hopes for getting it back were as unreasonable as such hope would be in the above case of a person protesting the loss of his house or boat. For this reason the purse fell into the legal category of hefker, abandoned property, when the original owner first lost it, and the original owner now has no legal claim to it.

From the organization of this sugya we learn something about the stama's understanding of the material. He presents the accounts of R.Judah and Samuel, and Raba and R.Nachman, as two different contemporaneous approaches to the same problem. He attaches to each some illustration or explanation of the principles involved in the decision rendered. However, as we have noted, the fact that R.Nachman lived two generations after Samuel may be a critical factor in understanding their different approaches to the same case.

Most important to us, Samuel and the stama use the phrase, lifnim mishurat hadin differently. Samuel uses it prescriptively, pointing to desirable behavior which carries an element of obligation for any Jew. The stama uses the phrase descriptively and applies it to an

individual's behavior, saying that this person acted beyond the obligations generally incumbent upon Jews.

The Wood Carrier: Baba Mezia 30b

The next passage we shall consider occurs on Baba Mezie 30b,^{A-4} in the context of a discussion of the last line of the preceding mishnah on the previous page:

מִי שֶׁנִּמְצָא אֵלָיו קוֹפֶה וְכֵּן בָּרַח מֵאֵין בְּרִיחַ עֲלָיו הֵרִי נֶה עַל יָדָיו.

If one finds a sack or a basket, or any object which it is not his custom to carry, he need not carry it.

In the gemara, the Rabbis question what circumstances exempt a person from the general obligation to aid his neighbor by picking up an item he has lost or needs help carrying. One exemption they consider is that of age, reasoning that it might be considered undignified for an elder to carry something. In the midst of this discussion we read an anecdote about R.Ishmael, son of R.Jose, who met a man carrying wood. The man asked him for help, and in response, R.Ishmael son of R.Jose bought the wood and declared it hefker. The man picked up the wood, thus reacquiring it, and again asked for help. Again, R.Ishmael son of R.Jose bought the wood and declared it hefker. When it appeared that the sequence was about to begin again, R.Ishmael son of R.Jose declared the wood hefker for everyone but the man in front of him. The gemara goes on to discuss whether or not it was valid to

make something hefker for certain people and not for others. Then another consideration is raised:

והא רבי ישמעאל ברבי יוסי לקן - ואינו עבדו.
הוא ר' ישמעאל ברבי יוסי עבדו משורת הדין הוא
בצדק.

Yet was not R.Ishmael son of R.Jose an elder and was it not undignified for him [to carry a load of wood]? R.Ishmael son of R.Jose was acting beyond the requirements of the law.

This story is about a Tanna and describes an incident that occurred several generations before the stama discussions which precede and follow this passage could have taken place. What we have here is an account of an early Rabbi, interpreted centuries later as an example of someone acting lifnim mishurat hadin. This passage is followed by midrashim which use the phrase lifnim mishurat hadin, passages which we looked at earlier: the interpretations of Ex.18:20 and the midrash about the destruction of Jerusalem. It is possible that these earlier sources which use the phrase are brought in by the stama to authenticate his application of the term to an early incident.

It is interesting to note that while in all these passages on Baba Mezia 30b, lifnim mishurat hadin can be understood as "acting beyond the requirements of the law," there is not a consistent understanding of the strength of the obligation to act lifnim mishurat hadin. The passage about Jerusalem indicates that it is desirable

for judges to go beyond the requirements of the law in making their judgments. Such behavior on the part of judges would create a strong obligation for the general population to act lifnim mishurat hadin in their own behavior. The midrash in the name of R. Joseph is not clear on the strength of the obligation to act lifnim mishurat hadin, but it is desirable behavior for the general population. The case of R. Ishmael son of R. Jose, as it is understood by the stama, is a case of one individual--a well-known Rabbi--who took upon himself an obligation which the law did not require of him. As the stama uses the term, lifnim mishurat hadin does not carry the weight of obligation for the general population.

R. Hiyya the Coin Evaluator

The next case we will consider occurs in Baba Kamma 100a.^{A-3} According to the Mishnah in Baba Kamma 99b, if a worker damaged his customer's property he was liable to pay compensation. Our sugya discusses the liability of a coin evaluator who makes an incorrect valuation of someone's coins. Three baraita passages which distinguish between expert and amateur coin evaluators are noted. There is conflicting opinion on whether or not an expert coin evaluator is liable. The third baraita, which says an expert is exempt, is mentioned by Rav Papa. Rav Papa then proceeds to give an example of two experts,

Danchu and Issur, who were exempt from having to pay compensation for an error they made.

Our sugya continues with an anecdote about R.Hiyya, a first generation Amora:

היה איתא דאחז'א דיןרא עמי חייא. אמר ע' מעליא
הוא. אמר אימי עקמיה ואמה ע' אחז'יה ואמרו ע' ב'ש
הוא ועל קא נבין ע' אמר ע' ע' - ל' חעב'יה ניהע' וכתב
אכנס' דין עסק ב'ש.

A certain woman showed a dinar to R.Hiyya [for evaluation]. He said to her "It is good." The next day she came to him and said "I showed this to others and they told me it is a bad [coin], and they would not take it from me." R.Hiyya said to Rav, "Go exchange it for her and write in my register that this was a bad business judgment."

The passage continues with a discussion in the anonymous voice, questioning the difference between this case and a previously mentioned case of Danchu and Issur, who were exempt from having to pay compensation for a poor business judgment, because they were experts in their field. Was not R.Hiyya also an expert, they asked. The response was that R.Hiyya had acted lifnim mishurat hadin, beyond the requirements of the law.

This response is spoken by the stama and reflects his interpretation of R.Hiyya's behavior. The baraita passages cited above differed with regard to the liability of an expert. R.Hiyya may well have followed the school of thought represented by the baraita that read "whether an expert or an amateur--he is liable." He may have paid

the woman because, according to his understanding, he was legally obligated to do so.

Once again, the label lifnim mishurat hadin is here applied to an early incident by the stama, who then continues by citing a midrash which uses the same phrase. The midrash is one we already looked at, R. Joseph's interpretation of Ex.18:20.

Later Cases Labelled Lifnim Mishurat Hadin

We have to cases in which Rav Papa, a fifth generation Babylonian amora, is described by the stama as acting lifnim mishurat hadin. The first case we will examine is in Berachot 45b.^{A-6} The passage reads:

אמר רבא הא משהא אחריתא אלא ואיתמר משהיה דרב
 בירא כוותי: שפיר שאכיל כאחד - ארז מבסוק עינים ואין
 שנים מבסקין עאלה, ועל?! והא - רב בבא אבסקי עי
 עאלא מר בר רב איהו וחד. שאני רב בבא דעלמא משור
 הדין הוא דעבד.

Raba said, "This statement was made by me independently and a similar statement was made in the name of R. Zera: 'If three people ate together, one should interrupt [his eating in order to say the mzummin] for the other two, but two should not interrupt [their eating] for the other one.'" "Is that so?! Rav Papa and another person with him interrupted [his eating to say the mzummin] with Abba Mar his son." "Rav Papa is different because he acted beyond the requirements of the law."

In this case, a rule governing certain behavior is stated, and then an example is brought in of a Rabbi who did not act in accordance with the rule. This example is

posed by an anonymous speaker as a challenge to the rule, but the challenge is dismissed, also anonymously, with the statement "Rav Papa is different--he was acting beyond the requirements of the law." Unlike the previous cases, the anecdote which is cited as a challenge to the rule is one which occurred after the rule was established. Raba and R. Zera, those stating the law, were fourth and third generation Amoraim in Babylonia and Palestine, respectively, while Rav Papa was a fifth generation Amora in Babylonia. Unlike the previous cases, it is certain that in this case, Rav Papa acted with cognizance of the law as stated by Raba, his teacher,⁸ and that he knew he was acting beyond his legal obligations, as enunciated by Raba. It is not clear what his motivations were--whether he disagreed with his teacher and felt that one person generally should interrupt his eating to accommodate the other two with whom he is eating, or whether he agreed with the law as stated by Raba as a general standard of behavior, but felt that this case was an exception because he wanted to show respect for his son. Either is possible. What we do learn from this passage is the stama's interpretation of Rav Papa's behavior. He dismisses Rav Papa's behavior as a challenge to the law as stated by Raba, by saying Rav Papa is "different"--he acted beyond the requirements of the law. He uses the label lifnim mishurat hadin to indicate that the example of Rav Papa cannot be used as

a legal precedent for establishing or upgrading standards for the general population.

The other case involving Rav Papa is in Ketubot

97a.^{A-7} The sugya begins with a question:

[Q] איבעראן אהו-לכין ואלא אצטריכו איה לול-הדר' לבנין או
אל הדר' לבנין? [A] תא שמע: דההוא גברא דלכין ארעא ארע
פבא דאצטריכו איה לול' אמי' עבן ימרי' אסוף אל אצטריכו איה ואחרת
ניהיה רה פבא. [Q] רה פבא אפני' משוית' דין כמא דעבד [A] ימ'
דההוא בצוריתא דהיה בנהרדעא...

[Q] The question was raised to them: If a person sells [his land] and [subsequently] he does not need the money--can he withdraw the sale or not: [A] Come and hear: A certain man sold land to Rav Papa because he needed money to buy oxen. In the end he did not need the money and Rav Papa returned his land to him. [Q] This is not proof [one way or the other--perhaps] Rav Papa was acting beyond the requirements of the law. [A] Come and hear: There was a famine in Nehardea . . .

The example of Rav Papa is cited here as evidence that the law maintains that the seller can withdraw a land sale if he learns he does not need the money he thought he did. This example is challenged as insufficient proof of the law, because Rav Papa may in fact have been acting beyond his legal obligations. In response, another case is brought in as evidence of the legal practice. This second case cites an incident in which R. Nachman rendered a legal decision about the issue in question.

The situation described is that there was a famine in Nehardea and everyone sold their mansions. In

the end, wheat arrived and R.Nachman told the Nehardeans

" - "ב'נא הא דהר' אפרין אחר' (ה')

"The law is that everyone must return the mansions to their (original) owners." R.Nachman was challenged by Rami son of Samuel, that if he made such a ruling he would bring suffering upon people in the future. Rami son of Samuel apparently felt that while such a ruling was equitable in this particular situation, it would not be so under normal circumstances, and that R.Nachman's decision was therefore a dangerous legal precedent. R.Nachman asked him whether or not famine was a normal occurrence in Nehardea. Rami son of Samuel answered that famine indeed was a common occurrence, thus establishing that this situation was not an exceptional case. R.Nachman stood by his ruling. The sugya concludes with a statement by the stama:

" - "והאמת לבין ולא א'צטריכו איה לול' - הר' נב'נ' "The law is that if a person sells (his land) and (consequently) he does not need the money, the sale may be withdrawn."

Once again, the phrase lifnim mishurat hadin is used to dismiss a case as a legal precedent. Because the anecdote about Rav Papa described behavior and not a legal decision, it would have been possible that Rav Papa's behavior was not indicative of legal practice, and that he had been acting lifnim mishurat hadin, beyond his legal obligations. Therefore this example was dismissed as evidence of legal practice, although in retrospect, we

see that Rav Papa's behavior was actually consistent with R.Nachman's ruling and the law as stated by the stama.

Finally let us consider a passage which is labelled by Tosfot and Rashi as a case of lifnim mishurat hadin, although the phrase does not appear in the gemara itself. The passage occurs in both the Babylonian and Palestinian Talmuds. We will look first at the Palestinian version (PT, Baba Mezia 6:6)^{A-8} which is in the form of a baraita. The text reads:

מנ' ר' נחמיה קבר חסר קבריו אבר נש יברין ארס גועתיה. ארס
גב' רב יוסי בר חנינה אבר ע' אלפי' אמור ע' עמען תאק בדרב
טובים. אלס וא"ס ויהב גועתיה א"ס יהב עק אדרק ? ארס א"ס
ז'ס ואמור ע' ואמור צדיקים ישמור. אלס וא"ס ויהב ע'
אגריה.

We learn [ina baraita] from R.Nachamia: A potter was carrying someone's pots and broke them and [the person] seized his cloak. He went before R. Jose bar Hanina who said to him "Go and say to him 'So that you may walk in the way of good people [Pr.2:20].'" He went and told him and he gave him back his cloak. He [R. Jose bar Hanina] said to him "Did he give you your wages?" He answered no. He said to him "Go and tell him 'And you shall follow the paths of the righteous.'" He went and told him and he gave him his wages.

This case is very similar to others we have looked at. R. Jose bar Hanina is pointing to a standard of behavior beyond the requirements of the law. It is clear why the commentaries would label this incident as lifnim mishurat hadin. The baraita itself does not use such a label because the term did not have this usage in Tannaitic times. In the previous passages, the phrase lifnim mishurat hadin

recorded. With the Palestinian Talmud's record of the baraita it appears that this tale was an earlier tradition which was changed and attributed, perhaps unwittingly, to different people.

The most significant change in the text is that Rav, when challenged "is this the law?" answers "Yes." It is unusual for a Rabbi to offer a proof-text from the wisdom literature, as is the case here, instead of quoting from Torah or a legal precedent. But this unusual detail is explained by the preexisting tradition we have in the baraita version, where the same verse is used.

This passage, like the Palestinian version, is described by the commentaries as a case of lifnim mishurat hadin. While in the Palestinian version we said the label was applicable but not used because the text was Tannaitic, and neither the Tannaim nor the Palestinian stama seemed to use the phrase this way, in the Babylonian version of the tradition the label is not used because this is not in fact a case of someone acting lifnim mishurat hadin. Because Rav claims his ruling is the law, this case is removed from the category of someone acting beyond the requirements of the law.

Conclusions

As we have seen, the phrase lifnim mishurat hadin has several different usages in the Talmud. In Tannaitic passages, the phrase is used in midrashim about God and

in one case, it is used with reference to desirable human behavior. According to these midrashim, God acts lifnim mishurat hadin when God judges human beings with less than the strict requirements of the law, extending mercy to us and not exacting from us the punishment we deserve. As a description of human behavior in Tannaitic material we have only the Mechilta passage which contrasts shurat hadin with lifnim mishurat hadin, which we translated as fulfilling "the requirements of the law" and "going beyond the requirements of the law" in relation to another person. A person acting lifnim mishurat hadin extends benefits to the other person beyond his own obligation to do so, parallel to God acting lifnim mishurat hadin.

Our primary question is how did the Rabbis apply this concept to particular situations? How did they understand the obligation to act lifnim mishurat hadin? Why does this phrase point to a standard of behavior which is not actionable? Does it point to a standard of behavior for all people or only for certain people?

There is only one passage in which lifnim mishurat hadin is used by a Rabbi as the explanation for his ruling in favor of certain behavior. This is the case in Baba Mezia 24b, of Samuel ruling that a person chayav l'hachzir--obligated to return a lost purse to a Jew who can identify it as his own. Of all our cases, the concept of lifnim mishurat hadin carries the strongest weight of

obligation here, although it is not actionable in court. This is also the earliest passage we have in which the phrase lifnim mishurat hadin is used as a label for specific human behavior.

In all the other passages in which lifnim mishurat hadin is used to label particular behavior, the label is applied by the stama. In three cases, the stama is commenting on the behavior of a Tanna; in two cases he is commenting on the behavior of an Amora. In all of these cases, the stama uses the phrase to describe an individual's behavior as exemplary, beyond the person's legal obligations. The stama dismisses these cases as legal precedents for a general standard of behavior.

Why does the stama reject these cases as precedents for a general standard of law? All of our cases describe situations in which two parties have conflicting claims. With their legislation, the rabbis attempted to balance both parties' claims in such areas of life. If in the cases under consideration, the standard of behavior labelled as lifnim mishurat hadin had been established as law, the result would have been to undermine some more general law and to generate more inequity rather than less. There are two basic reasons for this. First, several of our cases cover exceptional circumstances, which cannot be used as the basis for general law. Second, in other cases, the person in question forfeits his rights in order to benefit someone else, but to generalize such practice

into law would be to inflict hardship on the one person to benefit his neighbor.

Let us look first at those cases which cover exceptional circumstances. One such example is the case of Rav Papa and another person interrupting their meal to say *mzummin* with Rav Papa's son. Such behavior is exemplary, but to make such behavior obligatory is not justifiable. Why, as a rule, should two people be inconvenienced to benefit one? The law as it stands, requires one to inconvenience himself for the sake of two, and is the more equitable of the two choices.

The case in Baba Mezia 24b is another example of *lifnim mishurat hadin* being applied to behavior in exceptional circumstances, although, as noted before, this is the one case in which the label is not applied by the *stama*. The general law governing this area of behavior is that when a person loses a purse in the market, the purse falls into the legal category of *hefker*, based on the unlikelihood of the owner finding the purse. To rule that in this case, the original owner had any legal claim of ownership after someone else had picked up the purse, would undermine the law applying *hefker* to such cases in general. Therefore the obligation to return the purse voiced by Samuel is based on the concept of *lifnim mishurat hadin* and not *shurat hadin*, the requirements of the law as it stands. Samuel does not establish his ruling as law

because to do so would be to generalize from the exception, promoting more rather than less inequity.

In Ketubot 97a we find an excellent presentation of the arguments against behavior in exceptional cases being established as general behavior. In this case, R.Nachman ruled that after a famine in Nehardea, the people were obligated by law to return their mansions to the original owners; because they did not need the money for food as they had first thought, the original owners were allowed to withdraw the sales. R.Nachman was challenged with the argument that with his ruling he was inflicting suffering on people in the future. R.Nachman asked if famine was a common occurrence in Nehardea. The answer was yes, and R.Nachman stood by his ruling. The implication of the challenge was that R.Nachman was ruling in an exceptional case and that to generalize from the exception would result in inequitable practice--there would always be uncertainty in land sales, for no justifiable reason. When it was established that this case was not in fact an exception, R.Nachman stood by his ruling. Presumably if he had recognized the case as an exception he would not have pronounced his ruling as "the law."

The other cases to which the label lifnim mishurat hadin is applied all involve people who are acting beyond their legal obligations to benefit another. While such behavior is certainly praiseworthy, to establish such

behavior as legally obligatory would be to undermine general law intended to balance conflicting claims, and to inflict hardship on one party in order to extend benefit to the other.

One example is the case of R.Hiyya's error in evaluating a coin, in B.K. 100a.^{A-3} The law maintained that an expert who erred in coin evaluation was exempt from liability. The reasoning implicit in the example of Danchu and Issur is that even experts, in making the best judgments they are capable of, are not in full control of the market and will sometimes err because of lack of knowledge. Such errors in the case of an expert are not considered negligence, and do not incur liability. If the law was otherwise, no one would offer business advice for fear of being in error. The stama labels R.Hiyya's behavior as lifnim mishurat hadin because he does not recognize this behavior as precedent for general law, for the above reasons.

Another example is the case of Samuel's father, who returned someone's asses after a year had gone by. In this case there are two parties whose claims must be balanced: the original owner and the person who finds the animals. The Rabbis ruled to protect the rights of the original owner, that someone who finds a lost animal is required to maintain it for a certain period of time, while trying to locate the owner. To require someone to

maintain another person's animals indefinitely without at some point being able to assume ownership would be unfair to the person who finds the animals. The Rabbis therefore decided on a year as the period of time required, as a way of balancing the needs of the original owner and the finder. In our case, the stama rejects Samuel's father's behavior--returning the asses to their original owner after a year had passed--as a precedent for a general standard of behavior, although he recognizes such behavior as exemplary.

Lifnim mishurat hadin is used to label behavior which is beyond a person's legal obligations. One of our primary questions has been to determine why such standards, which are seen as exemplary, are not made into actionable law. We see that in all our cases, existing law achieved some kind of balance between two parties' claims. If the behavior in question had been established as general legal practice, it would have undermined existing law, and generated more inequity than the already existing standards, benefitting one party at the expense of the other. Such behavior was praiseworthy if freely chosen, but in most of the cases could not justifiably be made mandatory.

While it was not a category of actionable behavior, how strong an obligation did the Rabbis attach to the concept of lifnim mishurat hadin? It appears that in

the Tannaitic-early Amoraic period, lifnim mishurat hadin was a category of behavior seen as desirable for the general population. While we have few sources from this period, the Mechilta passage and the ruling by Samuel in BM 24b are both prescriptive usages of the term and address the obligation to the general Jewish public. The midrash on Ex.18:20 quoted in the Talmud in the name of an Amora, which uses the term in the same way, is clearly a restatement of the Tannaitic tradition cited in the Mechilta. The really Amoraic midrash about the destruction of Jerusalem¹⁰ uses the phrase prescriptively for the general population of judges.

Our other cases are all later; they are all cases of the stama attaching the label descriptively to the behavior of well-known individuals. For the stama, lifnim mishurat hadin points to a high standard of behavior suitable for certain, especially pious individuals who want to go beyond their legal obligations in serving others' interests, but not a standard for the general public. This later usage attaches less generalized obligation to the category of behavior labelled lifnim mishurat hadin, "beyond the requirements of the law."

CHAPTER II

PATUR MIDINEI ADAM V'CHAYAV B'DINEI SHAMAYIM -

EXEMPT ACCORDING TO HUMAN JUSTICE BUT LIABLE

ACCORDING TO DIVINE JUSTICE

Introduction

All of the cases in which the judgment delivered in the Talmud is "פטור מדין אדם וחייב מדין שמים" - "exempt according to human justice but liable according to divine justice," are cases involving damages. Therefore it will be useful to set out at the beginning the general halachic principles regarding damages and liability which are relevant to our discussion.

The commission or omission of an act which resulted in damages to another's person or property could be grounds for liability to pay compensation. Several factors were involved in determining whether or not the wrongdoer was in fact liable. In general, a person could be held liable for damages only when it could be demonstrated that he or she had acted with intent to do harm, or unintentionally but negligently, that is, irresponsibly. Specific intent to do harm was only considered a major factor in matters affecting ritual observance. In most cases, the primary issue was determining whether or not the person had acted negligently.¹¹

The Rabbis distinguished between damages caused by the person of the wrongdoer (גזל) and by the wrongdoer's property (אונס). In the latter category, negligence in guarding something or some condition for which the person was responsible. In the Talmud, factors determining negligence included where the damage was done, i.e. a public or private place, and whether or not the person could have reasonably foreseen the damage. In this category of mamon, only physical contact or forces acting directly on the person or property damaged resulted in liability.¹² In the category of guf, acts otherwise legal but done negligently generally resulted in liability.¹³ In this category one could be held liable only for negligent acts of commission. In the category of mamon, one could be held liable for negligent acts of omission or commission.¹⁴

The Rabbis considered action that was אונס , or compelled, either by another person or by forces of nature, as a special category, not involving negligence. The Mishnah holds a person liable for damages even in cases of ones, but in the Talmud, the later Rabbis limit the situations in which a person acting under ones is in fact liable.¹⁵

In the guf category, the Rabbis required that there be a physical link between the wrongdoer's action and the subsequent injury to another person or his

property in order for the wrongdoer to be held liable for damages. The Rabbis distinguished between actions involving physical contact of the wrongdoer which directly caused damage, for example striking another person, in which case the wrongdoer was liable to pay compensation, and actions of the wrongdoer, the effects of which caused harm to another person or property. An example of this category of indirect cause known as *לנרע*,¹⁶ is scaring another person, a case in which there is no physical contact between the two parties. One person makes a noise and the second person is frightened. Whatever the damage done, with no physical link between the first person's action and the subsequent damage, the wrongdoer's act is only an indirect cause of damage and not grounds for liability for the Tannaim. All of the cases in the Talmud for which the ruling "exempt according to human justice but liable according to divine justice" is applied, are cases which fall under this category of *gerama*. As we shall see, these requirements for liability in damages cases undergo some change through the period of Talmudic development and the terms of *gerama* are slightly altered.

All of the passages in the Talmud in which the ruling " *עליון חייב וארץ פטור* " -- "exempt according to human justice but liable according to divine justice" appears, revolve around Tannaitic passages which use the phrase. In one case the ruling appears in the

Mishnah (Baba Kamma 6:4). In all other cases, the Tannaitic material discussed in the gemara is baraita material. All but one of the baraita fragments mentioned in the Talmud can be found in parallel passages in the Tosefta. We will examine the Tannaitic material which appears in the Talmud along with the parallel passages in the Tosefta. We will then look at how this Tannaitic material is treated in the gemara.

R. Joshua's Baraita

In Baba Kamma 55b, A-10 a baraita is cited in the name of R. Joshua:

תנא אחר ר' יהושע ארבע דברים העושה אדם פטור מדן
אדם וחיה בדני שמים. ואלו הן:
(1) הבורח גדר בפני בהמת חבירו;
(2) הכופף קמח של חבירו בפני הדליקה;
(3) השוכר עדי שקר להעיד;
(4) והיו בעצמו עומד על חבירו ואינו מעיד לו.

It was taught in a baraita by R. Joshua, "One who does any of these four things is exempt according to human justice but liable according to divine justice:

(1) one who breaks down a fence in front of his neighbor's animal; (2) one who bends over his neighbor's standing corn before a fire; (3) one who hires false witnesses to give testimony; and (4) one who knows evidence in favor of his neighbor and does not testify on his behalf.

Why is the ruling "exempt according to human justice but liable according to divine justice" applied to these four

cases? We see that in each case, a person commits some action which does not in itself directly cause damage, but which indirectly contributes to damage. The person who breaks down a fence in front of his neighbor's animal is directly responsible for the damage done to the fence but only indirectly responsible for the implied loss of his neighbor's animal. He did not drive the animal away, and it was not inevitable that the animal walk away. There was no tangible link between the person's act and the damage in question. Similarly, the person who bends his neighbor's corn towards a fire does not cause damage directly. If he placed the corn in a fire he would be liable for damages, because his act would be a direct cause of the damage. In this case, however, there is no immediate link between the action taken and the subsequent damage.

In the third case, a person hires others to present false testimony in court. He does not testify falsely in court himself; he merely talks to other people outside of court and pays them some money. His action does not directly cause damage to anyone. As in the previous cases, the action described here is an indirect cause of damage. In the fourth case, a person does not present testimony on behalf of another. Again, the person is not giving false testimony in court, for which he would be liable. He is not going to court at all. The effects of

his action lead to another person being given an erroneous ruling by the judge. Once again, the damages are an indirect result of the person's action. With no direct or immediate link between the person's action and the subsequent damage, the person is not held liable for damages.

In each of these cases, the person is judged "exempt according to human justice, but liable according to divine justice." Because there is no immediate link between the person's action and the subsequent damage, the terms of the Rabbis' legal requirements for liability are not met and a bet din cannot rule the person liable to pay compensation. Yet apparently the Rabbis saw these persons as guilty of wrongdoing and as partially responsible for the damage in question. Therefore, they rule these persons "exempt according to human justice but liable according to divine justice." While the Rabbis themselves will not impose any punishment upon these persons, perhaps God will. With this nonactionable measure, the Rabbis express their condemnation of certain behavior their existing legal system does not permit them to punish.

The baraita quoted in Baba Kamma 55b appears in Tosefta Shebuot 3:2.¹⁷ The four cases listed are the same though they appear in a different order. More significantly, the ruling applied to these four categories is worded differently:

ר' יהושע אומר ארבעה אין חייבין לשלם מן הדין ואין
מן השמים מוחלים עהן עד שישלמו.

R.Joshua said "There are four cases in which a person is not obligated to pay [compensation] according to the law, but God does not pardon them until they do pay [compensation]."

As in the Talmudic wording of the ruling, there is a distinction between the bet din's demands and God's demands. The bet din rules the person exempt from having to pay compensation, but the person is not exempt before God. The key difference between the Tosefta and Talmudic versions is that the Talmudic version is unclear as to what kind of punishment God imposes on the person. According to the Tosefta passage God demands monetary compensation, the exact penalty we would expect a bet din to impose. Here, even more clearly than in the Talmudic version of the ruling, the Rabbis transfer to God the role of issuing a judgment they apparently see as justified at the same time that they do not feel they can impose the judgment themselves.

The Talmudic passage which mentions this baraita by R.Joshua and discusses it at length, on BK 56a^{A-11} also mentions five other cases in which the Rabbis ruled the wrongdoer "exempt according to human justice but liable according to divine justice":

- וְעַכְשָׁא וְהָאֵלֶּכָּא (ס"ח) הַצֹּדֵק בְּסֵם וְשִׁלֵּיחַ חֲבֵירוֹ (שֶׁבֶר)
- (1) הַצֹּדֵק שֶׁאֵלֶכָּה בִּמְיָ חֲטָא וּבִפְרִיחֵי חֲטָא פֶּסַח עַבְדֵּי אֲבִים וְחֵב
בְּבִין שְׁמִים
- (2) וְהָאֵלֶּכָּא הַנִּזְכָּר סֵם חֲמִיץ בִּפְנֵי הַרְחֵק חֲבֵירוֹ פֶּסַח עַבְדֵּי אֲבִים וְחֵב
בְּבִין שְׁמִים
- (3) וְהָאֵלֶּכָּא הַשֹּׁמֵחַ אֶת הַבְּעִיר בַּד חֵרֶץ שֶׁהָאֵלֶּכָּה וְקָטָן פֶּסַח עַבְדֵּי אֲבִים
וְחֵיב בְּבִין שְׁמִים
- (4) וְהָאֵלֶּכָּא הַמַּעֲצֵם אֶת חֲבֵירוֹ פֶּסַח עַבְדֵּי אֲבִים וְחֵיב בְּבִין שְׁמִים
- (5) וְהָאֵלֶּכָּא נִשְׁבֵּרָה כְּבוֹ בְּרֵחַ וְעַל סֵקָה - נִפְסָה זֵמָן וְעַל
הַצֹּדֵק - רָחַם מַחֲיִים בְּהִנָּקֵן וְחֵיבָא פֶּסַח עַבְדֵּי אֲבִים וְחֵיב בְּבִין שְׁמִים

And furthermore are there no more [cases in the same category]? There is this: mnemonic--He who does, Poison, Entrusts, His Neighbor, Broken (1) One who does work with waters of purification or a heifer of purification is exempt according to human justice but liable according to divine justice. And there is this--(2) one who puts deadly poison before his neighbor's animal is exempt etc. And there is this--(3) one who entrusts fire in the hands of a deaf-mute, one who is mentally incompetent, or a minor is exempt etc. And there is this--(4) one who frightens his neighbor is exempt etc. And there is this--(5) one whose jar broke in a public place and he did not remove the shards--or one whose camel fell and he did not raise him up--R.Meir says he is liable for damages, but the [other] Rabbis say he is exempt according to human justice but liable according to divine justice.

Each of these five cases is discussed elsewhere in the Talmud. We will consider the five cases as they are treated in the Tannaitic literature before turning to their treatment in the gemara.

Fire in the Hands of Incompetent Persons

The case of one who entrusts a burning object to a deaf-mute or otherwise incompetent person is the only example of the ruling "exempt according to human justice but

liable according to divine justice," mentioned in the Mishnah. The first part of Baba Kamma 6:4 reads:

השוטח את העצה ביד חסד שוטח וקטן פטור מבני אדם
וחייב בבני שמים שלא ביד פקח הפקח חייב אחר הביא
את האור ואחר הביא את העצם-המביא את העצם חייב.
אחר הביא את העצם ואחר הביא את האור-המביא את
האור חייב. בא אחר וסיבה המעלה - חייב. עי' במד
הרוח - כולן פטורין.

One who sends something burning in the hands of a deaf-mute, one who is mentally incompetent or a minor--he is exempt according to human justice but liable according to divine justice. If he sends it in the hands of a hearing [or otherwise competent] person, that person is liable. If one person brings the fire and then another person brings the wood, the latter is liable. If one person brings the wood and then another brings the fire, the latter is liable. If one comes later and fans the flame he is liable. If a wind fans the flame all are exempt.

According to the Mishnah, under normal circumstances, the person who is responsible for the final action causing a fire is liable for damages resulting from that fire. If the final cause of the fire is a wind, no person is held liable. If someone entrusts a burning object to a shaliach, a messenger, the shaliach is liable for damages resulting from his actions and the first person is exempt. Each person is responsible for his own actions and one is not held accountable for the actions of his messenger. If, however, the shaliach is deemed an incompetent person, the shaliach cannot be held responsible

for his actions or liable for damages.

The question then arises, is the first person who entrusted the burning object to an incompetent person guilty of having acted irresponsibly and held liable for damages? The person who entrusts the burning object to a deaf-mute (or minor etc.) does not, by his action cause the fire directly. There is no direct, immediate link between his act and the resulting fire, and the fire is not the inevitable result of his action. He is not held fully responsible for the fire or liable for damages, because with no immediate link between the act and the subsequent fire and damage, as we saw in the previous cases, the terms of the Rabbis' legal definition of negligence have not been met. Yet, as was also the case previously, the Rabbis apparently judged that entrusting a burning object to an incompetent person was an irresponsible act and that the person's act had contributed to the damage albeit indirectly. Therefore the Mishnah ruled that the person was "exempt according to human justice but liable according to divine justice."

Damage by Fright

The case of one person who scares another is discussed in the Talmud in Baba Kamma 91a^{A-13} and Kiddushin 24b^{A-14} and in Tosefta Baba Kamma 6:5. The baraita, as it appears in both Talmudic passages, defines the case as involving no physical contact between the wrongdoer and

the victim. If a person yells in another's ear and deafens him he is exempt, while if he grabs the person and yells in his ear he is liable. In the case of a person grabbing another, presumably, the victim could not move away. The wrongdoer's act is visibly the direct cause of damage. In the case with no physical contact, one could argue that the wrongdoer should not be held fully responsible for damages since the victim could have walked away or at least turned his head away from the person yelling. In this case, the person's act indirectly contributes to the damage, but is not the only factor causing it.

The Tosefta passage defines the case in the same manner. Tosefta 6:5 reads:

המבצר את רעהו פאור מבין אלם ודין מסור עשום. וזו
באלן ודירן פאור. אכלו וזוה באלן ודירן-ח'ה. המבצר
המבצר את רעהו פאור מבין אלם ודין מסור עשום.

One who scares his neighbor is exempt according to human justice and his judgment is turned over to God. One who yells in another's ear and deafens him is exempt. One who grabs another and yells in his ear and deafens him is liable. One who scares his neighbor's animal is exempt according to human justice and his judgment is turned over to God.

In both the Tosefta and Talmudic versions of the baraita, then, the case of one person scaring another is defined as one in which there is no physical contact between the two parties and no direct, immediate link between the first person's action and the subsequent injury of the

second person. The Tosefta notes an additional case to which our ruling applies. If a person scares his neighbor's animal without physical contact and causes him harm, the bet din rules the person exempt from having to pay compensation, but the person's judgment is turned over to God.

In both the Talmudic and Tosefta versions of the baraita, the Rabbis rule the person exempt from having to pay compensation according to their human legal system and, at the same time, they make reference to God's judgment. The ruling is worded differently in the two texts. The Talmud says the person is "liable according to divine justice" while the Tosefta says "the person's judgment is turned over to God," without presuming to say what God's judgment is. In both cases the intent is the same: the Rabbis turn over to God judgment of a case in which they feel legally constrained to judge equitably themselves.

Damage to Sanctified Things

The Talmud in Baba Kamma 98a^{A-5} and Gittin 53a^{A-6} cites a baraita to the effect that one who does work with waters of purification or a heifer of purification, thereby rendering the objects unfit for ritual use, is exempt according to human justice but liable according to divine justice. This appears to be the only case in our category in which there is no human party that is wronged. There

is no one to whom the person could be forced to pay compensation. We might think that this is the "purest" application of the ruling "exempt according to human justice but liable according to divine justice," since God appears to be the party wronged.

The parallel passage in the Tosefta is very enlightening. Tosefta Baba Kamma 6:6 states:

... הַצֹּמֵחַ מֵעֵלֶיךָ בְּמֵי חַטָּאת וּבְמֵי חַטָּאת שֶׁל חֲבֵירוֹ פָּטוֹר
 עֲבִי' אֵלֶיךָ וְרִי' מִסּוֹר עָלֶיךָ.

. . . One who does work with his neighbor's waters of purification or heifer of purification is exempt according to human justice and his judgment is turned over to God.

The Tosefta text refers to a person who renders unfit for ritual purposes waters or a heifer belonging to his neighbor and intended for ritual purposes. The Tosefta version is probably the more complete and accurate text since it frames the issue in a form parallel to all the others, as a transgression against another person, involving some kind of damage to another person or his property.

This case is still unique however as one involving objects intended for ritual use. The "victim" does not suffer physical harm himself, nor does his property suffer physical damage. Presumably he suffers no monetary loss since he can use the water or heifer for other purposes, or sell the heifer at full market value and

purchase another. In this case monetary compensation seems a less appropriate penalty than in the other areas. Here, as in the previous case, the Tosefta words the ruling differently than the Talmud: the person is exempt according to human justice and his judgment is transferred to God.

Deadly Poison Placed in Proximity
of an Animal

In Baba Kamma 47b, ^{A-18} the Talmud cites a baraita which says that one who places deadly poison in front of his neighbor's animal is exempt according to human justice but liable according to divine justice. This case is mentioned in Tosefta Baba Kamma 6:6. The passage begins:

הַעֲצֵה חֵלְטִית הַרְדּוֹפִין וּסֵם הַחַיִּית וְצֹאֵר מִרְעֵי
פֶּטֶר מִדֵּינִי אֲדָם וּבֵינוּ מִסֵּר עֲלֵמָם.

One who feeds into the mouth of his neighbor's animal medicinal food [too] quickly, or deadly poison, or the excrement of rosters, is exempt [from having to pay compensation] according to human justice and his judgment is transferred to God.

In this version of the baraita, the case of deadly poison is considered along with two other cases. These three cases involve feeding something directly into an animal's mouth--either with improper food or in an improper manner. According to the Talmudic version of the baraita, the person places deadly poison in front of the animal,

without touching the animal. Despite the significant differences, both versions of the baraita describe cases in which damage results indirectly as an effect of a person's action, as opposed to damage which results directly from a person's action. In both cases there is a two-step process. First the person feeds the animal or places the poison in front of the animal. Second, the animal swallows the food or poison and as a result gets sick or dies. Both these cases are cases in which the damage is caused indirectly by the person's action, cases of gerama. Therefore the Tannaim rule the person exempt according to human justice. Again, the rest of the ruling is worded differently in the two cases. In the Talmud's version, the person is liable according to divine justice; in the Tosefta version, the person's judgment is turned over to God.

The Tosefta passage continues:

...העושה מעשה בא חטאת וברית חטאת של חבירו פטור מבני
 אדם ובני חסור עשמים. שניה בית דין שהכה ברשות בית דין והילך
 פטור מבני אדם ובני חסור עשמים. ה מחזיק את העבד במעי אשה
 ברשות בית דין והילך פטור מבני אדם ובני חסור עשמים. רופא
 אונן שריבא ברשות בית דין והילך פטור מבני אדם ובני
 חסור עשמים.

... One who does work with his neighbor's waters of purification or heifer of purification is exempt according to human justice and his judgment is transferred to God. A messenger of a bet din who strikes another with permission of the bet din and causes injury is exempt according to human justice and his judgment is transferred to God. One who aborts a

fetus from a woman's womb with permission of a bet din and causes injury is exempt according to human justice and his judgment is transferred to God. An expert doctor who practices medicine with the permission of a bet din and causes injury is exempt according to human justice and his judgment is transferred to God.

The reference to waters of purification and a heifer of purification has already been discussed. What is of interest to us here are the three cases cited which do not appear in the Talmud. In these three cases, someone acts with permission of the bet din, and causes injury by his action. In these cases there is a direct link between the person's action and the resulting damage. However, the action itself cannot be condemned as a violation of law because it was taken with the express permission of the bet din. In one case the person is the bet din's representative. Instructed to deliver makot, he strikes another person as punishment for some wrongdoing. The other cases refer to people performing medical procedures with the permission of the bet din. If the act itself was permitted, on what grounds could the bet din rule the person liable for damages? The Rabbis are forced to rule the person exempt, and say the person's judgment is in God's hands.

Damage by an Object in a Public Place:
A Dispute between R.Meir and the Sages

The last of the five cases cited in Baba Kamma 56a involves a person whose jar broke or whose camel fell in a

public place. The owner failed to pick up the potshards or the camel. In this case there is a dispute between R.Meir and the Sages. R.Meir holds the person liable for damages, while the Sages rule the person exempt according to human justice but liable according to divine justice. This is the only case in which a Tannaitic passage cited at Baba Kamma 56a has no Mishnah or Tosefta parallel. The baraita does appear in two other places in the Talmud-- Baba Kamma 28b-29a^{A-19;A-20} and Baba Mezia 82b^{A-29}--in the same form as at Baba Kamma 56a.

How do we understand the dispute between R.Meir and the other Rabbis? Perhaps R.Meir saw this case as one covered by the ruling in Mishnah Baba Kamma 3:1,

...נשברה כדו ברזל והוחלק אדם במה או שלקו בחרסין ח"ו...

. . . If a person's jar broke in a public place and someone slipped in the water or was injured by the potshards [the owner] is liable [to pay compensation] . . .

Whatever R.Meir's reasoning, we can assume, with no evidence to the contrary, that since the Sages apply the same ruling here as in the previous cases, they do so for the same reasons as in the previous cases. Here, as before, there is no direct, physical link between the act of leaving the potshards or camel, and the subsequent damage. Therefore the Sages rule the person exempt from having to pay compensation. Still, the Sages recognize the person's act as negligent and declare the person liable before God. Thus they express condemnation of

the behavior of the jar's or camel's owner.

The Tannaitic Material: Conclusions

Of the Tannaitic fragments noted in Baba Kamma 55b-56a, we saw parallel passages in the Mishnah or Tosefta for all but the last case. The Tosefta passages worded the Rabbis' ruling differently than did the Mishnah and Talmud. In Tosefta Shevuot 3:2, the ruling was: "אין חיובין עלהם מן הדין ואין מן השמים מחלין להן עד שיעלו" "The person is not obligated to pay [compensation] according to the Law, but God does not pardon the person until he does pay [compensation]." In Tosefta Baba Kamma 6:5-6, the ruling was "פטא מבני אדם ודין מבורא עולם" "exempt according to human justice and his judgment is transferred to God." In all three versions, the person is exempt according to the Rabbis' human legal system. In Tosefta Baba Kamma 6:5-6, the Rabbis leave open God's judgment of the individual. In the Mishnah's and Talmud's version of the ruling, the Rabbis say that God judges the person liable, but no details are given about the punishment God imposes. In Tosefta Shevuot, the ruling indicates that God does not pardon the person until he pays compensation, the penalty we would expect of the human legal system if it judged the person liable.

In spite of these differences, the three versions of the ruling are similar in that the person is ruled

exempt by a bet din and the judgment is turned over to God. In all three cases, the ruling, though not actionable, shows that the Rabbis recognized the condemned act as a wrongdoing and censured the behavior.

Three of the cases described in Tosefta Baba Kamma 6:6 are not mentioned in the Talmud at all. These cases refer to actions which were the direct cause of damage. The Rabbis ruled the person exempt because the actions had been expressly permitted by the bet din. Since the Rabbis could not condemn the actions which caused the damage as wrongful acts, they ruled the person exempt and said judgment was God's.

All of the other cases as they are described in the Tannaitic passages, are cases of gerama, i.e., cases in which damage results from the effects of a person's action and not directly from the action itself. In all but one of the cases, there is no physical link between the person's act and the subsequent damages. The exception is the case of pouring deadly poison into an animal's mouth (Tosefta Baba Kamma 6:6). We see that in all these cases, the Tannaim ruled the person exempt from having to pay compensation even though they judged the person guilty of a misdeed. Apparently, even though the Rabbis recognized the person as a wrongdoer whose acts contributed to a subsequent damage, the cases did not meet the Rabbis' requirements for imposing legal obligations. The Tannaim required a direct, immediate link between the person's

act and the subsequent damage in order for the person to be held liable.

The Talmudic Treatment of R. Joshua's Baraita

Let us turn now to the Talmud's treatment of the Tannaitic material. In Baba Kamma 55b-56a,^{Al0-11} the four cases cited by R. Joshua are discussed. After citing the baraita in the name of R. Joshua, the gemara continues:

- (1) ואמר ר' הורף ארבעה בפני בהמה חבירו-ה' ? אימיא בכוף
ה'א בדני ארבע נמי נחיה. אלא בכוף רעוע.
- (2) אמר ר' הכופל קומץ של חבירו בפני הדעיקה ה' ? אימיא
במטא ע'ה ברוח מזויה בדני ארבע נמי נחיה. אלא המטא ברוח
שאנה מזויה. ור' אשי אמר טמן ארבער משום דשור טמן באש.
- (3) אמר ר' השור עדי שקר ה' ? אימיא ענכסיה ממנא בעי
שמוי ודני ארבע נמי נחיה. אלא בחברה.
- (4) והיו ע'ה ע'ה ואלו מע'ה ע'ה במאי עסקין ? אימיא
ה' ת' פשיטא באורייתא הוא ארבע נחיה ונחיה ע'ה אלא בה.

(1) The Master said "'One who breaks down a fence in front of his neighbor's animal'--what are the circumstances referred to? If you were to say it was a sound wall, he would be liable also according to human justice. Rather, [this baraita refers to the case of] an unsound wall."

(2) The Master said "'One who bends down his corn before a fire'--what are the circumstances referred to? If you were to say he did this under normal wind [conditions] he would be liable also according to human justice. Rather [the baraita refers to the case of] an unusual wind." And Rav Ashi said "This refers to corn that was hidden in a pile, and the pile was put in the fire."

(3) The Master said "'One who hires false witnesses'--what are the circumstances referred to? If you were

to say [he hired them to give false testimony on his own behalf] and he received money [as a result], he would be liable also according to human justice. Rather [the baraita refers to the case of a person who hires false witnesses to testify on behalf of] his neighbor.

(4) "'One who knows evidence on behalf of one's neighbor and does not testify'--with what are we dealing? If you were to say there were two [witnesses] [the case would be] simple--according to the Torah [Lev.5:1] 'if he does not speak then he shall bear his iniquity.' but this is one person."

First let us note that the only named speaker is Rav Ashi. The rest of the discussion is carried on in the anonymous voice of the stama and is therefore to be considered as the latest layer of the Talmud, probably dating after the Amoraim.¹⁷

In each of the four cases which appear in the baraita of R. Joshua, the stama narrows the application of the ruling "exempt according to human justice and liable according to divine justice." The stama accomplishes this by pointing to two possible interpretations of each of the baraita cases, and rejecting the first set of interpretations as involving full liability. In the first three cases, the interpretations rejected are those based on the plain sense of the baraita text. The interpretations deemed acceptable by the stama include information not provided in the baraita material itself. In the first case, the baraita says nothing about the condition of the wall. In the second case, there is no mention of wind conditions. The third case says nothing about what party will benefit by the false witnesses' testimony.

The fourth case is a bit different. The baraita does only speak of one person and the stama emphasizes that. Yet this interpretation is not the only one possible. As we noted before, not testifying in court is not the same as presenting false testimony in court. The Torah does say that such a person shall bear his iniquity and indicates that one must bring a guilt offering (Lev 5:6), but indeed, that is "obliged by the laws of Heaven."

The stama interprets three of the four cases in such a way that the person's action is one of two factors contributing to the damage. In the first case, an additional factor contributing to the damage is the fact that the fence itself is in poor condition. In the second case, an unusual wind contributes to the damage. In the fourth case, the need for two witnesses is noted; if the person had testified, that in itself would not necessarily have led to a different verdict.

The stama distinguishes between cases of inevitable damage which is the result of a person's indirect action and cases in which damages result from a combination of forces including human action. If the damages were the inevitable result of even indirect human action, the person would be judged liable according to the stama. On the other hand, if human action was one of several factors contributing to a damage then the stama ruled the person involved "exempt according to human justice, but liable

according to divine justice."

The stama interprets the baraita as he does, because in his day, in the cases described as they are in the baraita, the person would be judged liable to pay compensation by a bet din. Apparently, by the time the stama organized this material, the Rabbis did not require a direct, immediate link between the person's act and subsequent damage to impose a sentence of liability. The later Rabbis had taken the category of gerama, for which the Tannaim ruled "exempt according to human justice," and divided it into two categories. If it could be demonstrated that the damage was the inevitable consequence of the person's action and of that action alone, the person was liable to pay compensation. This category was called 'N)ט , garma.¹⁸ Cases in which damages were not the inevitable result of the action taken were still considered gerama.

Why would the Rabbis have made such a change? The Tannaim required a direct, immediate link between the person's action and the subsequent damage in order for the person to be held liable to pay compensation for those damages. Such a requirement protected the defendant. The Tannaim may have been willing to rule liability in a case where witnesses could testify with sureness that a given act caused damage. In the case of indirect, non-immediate actions vis-a-vis a victim, how could one know

with certainty that the act caused damage? Therefore, the Tannaim turned such judgments over to God or proclaimed them wrong in God's eyes, but they would not adjudicate what could not be surely attested.

Later Rabbis apparently viewed the category of gerama as defined by the Tannaim, as weighted too heavily in favor of the defendant. After all, a plaintiff had suffered bodily injury or damage to his property. They therefore created the category of garmi, i.e., an indirect action which represented the only possible cause of damage. Thus, by the time of the stama, some actions which led inevitably, or at least with foreseeable probability, to the resulting damage were grounds for liability, even if there was no immediate link between the act and the subsequent damage.

At Baba Kamma 56a, the gemara indicates the R. Joshua listed all the cases he did to indicate that those who did these things were not entirely exonerated. Simply because other factors besides human action caused a damage, the human being involved still should not have contributed to the damage himself. Hence, culpability exists before God, though not in court. In short, the rule of פסוק גזל ואכל וזבן applies to persons who are not fully culpable nor completely innocent. As such, פסוק גזל ואכל וזבן is not a ruling of exemption from obligation. Rather it is the

cutting edge between legal guilt and legal impunity.

Let us turn now to the other Talmudic discussions of the five cases added to those of R. Joshua's baraita.

Work with Waters of Purification of
a Heifer of Purification: Baba Kamma 98a

The case of "one who does work with waters of purification or a heifer of purification is exempt according to human justice but liable according to divine justice," cited at Baba Kamma 56a, is also cited at Baba Kamma 98a^{A-15} and Gittin 53a.^{A-16} In both passages, a key underlying issue is whether or not damage which is not visible is accounted as damage. In Baba Kamma 98a, the immediate question under discussion is whether or not one who splits the ear of his neighbor's heifer is exempt from having to pay compensation. The neighbor had intended to use the heifer for ritual purposes, a purpose for which it is now unfit. However, the market value of the heifer is not affected by the damage, and the person is ruled exempt from having to pay compensation. Raba brings our baraita into the discussion. He notes that in its case where there was no visible damage, the person was "liable according to divine justice." He rules, therefore, that in this case which involves visible damage, the wrongdoer should be ruled liable according to human justice. The stama continues:

אמר ר' הוה רבין דאבא' צורם פסור והא קא משמע אן דאבא'ו
משאכה דאן מ'נכר ה'לך ח'ב' דבין שמש.

They said "This is the law--that even one who splits [the heifer's ear] is exempt. And this [baraita quoted by Raba] comes to teach us that even for work where there is no visible damage one is liable according to divine justice.

According to the stama, these two cases point to the edges of the halechic system. The border for culpability in court is the ability for someone to see that damage has been done. The law cannot adjudicate what witnesses cannot point out. On the other hand, if someone has in fact damaged something, but intangibly, that person must answer for his/her wrongdoing. The One who can see what no person can see, judges such cases.

Gittin 53a

In Gittin 53a,^{A-16} one of the underlying issues is also whether invisible damage constitutes damage. Our baraita is brought by R. Elazar to support the view that invisible damage does not constitute damage. Along with this, a second issue arises in this sugya. Is intent a factor in determining liability in cases of damage to ritual objects? Our baraita is reinterpreted in the course of this discussion as applying to a case in which either the person intended to work but did not actually work with the heifer, or, the person inadvertently worked with the water. The general rule assumed here is that invisible damage is not accounted as damage, but that a person who causes invisible damage to another's sanctified things with malicious intent is in fact liable.

Accordingly, the sugya asserts that the baraita present cases in which action is not accompanied by intent. The result is that the person is exempt from having to pay compensation. Once again, we see סוגר מנן אדם וחיה דגן שמים as intermediary between the categories of full exemption and full liability, pointing to cases on the edges of the legal system, even as that legal system undergoes change.

Deadly Poison Placed in
Proximity of an Animal

The second case mentioned in the list of five in Baba Kamma 56a is that of a person who puts deadly poison in front of his neighbor's animal. This section of the baraita is cited in Baba Kamma 47b^{A-17} in the context of a discussion of a Mishnah which appears at Baba Kamma 47a-b. The Mishnah discusses the case of one who brings his produce into his neighbor's courtyard without permission. According to the Mishnah, if the property owner's animal is injured on account of the produce, the produce-owner is liable. In the gemara, Rav says this Mishnaic ruling only applies to the case of the animal slipping on the produce; if the animal suffers injury as a result of eating the produce, the produce owner is not liable.

R. Sheshet challenges Rav's position by bringing in our baraita. He argues that if one puts deadly poison (which is inedible) before his neighbor's animal and he is liable according to divine justice, then surely one who brings produce (which is edible) before his neighbor's

animal should be liable even according to human justice.

The stama resolves the problem:

אמרי הוא הדין אפילו פדיו נמי פסור מבין אלם. קמ"ז
באפילו סם המות נמי דלא עשהו באכילה חיה קבני למס.

They said "This is the law. Even in the case of produce he is exempt according to human justice. And this [baraita] comes to teach us that even in the case of deadly poison which is not commonly used as food, he is liable according to divine justice.

In the first case, one would expect an animal to eat produce but not suffer injury as a result. For this reason, the "damager" is exempt from having to pay compensation for damages. In the second case, one would expect the animal not to eat the poison, but one would expect the animal to suffer harm if it did eat. In the latter case, the person is still ruled exempt according to human justice but he/she is liable before God. This is a qualified exemption. In the second case, unlike the first, the person is seen as guilty of a wrongdoing, presumably because he could have foreseen that the animal would suffer harm if it ate the poison.

The stama uses the same logical construction here as in the case of a person who split the ear of his neighbor's heifer.¹⁹ Each of the examples is treated as an exception, pointing to the edges of the legal system. The law in general exempts a person from culpability where he/she contributed to a "damage" which

under normal circumstances never would have or should have occurred. In such a case, the "damaged" object is presumed to be faulty in some way. The baraita as viewed by the sugya presents a case where the unlikely happened--an animal ate poison left nearby--and then the likely occurred: the animal died. Such a case lies on the border between "not culpable" because of the remote possibility of an animal eating what it usually refuses, and "culpable" because poison inevitably kills. Such a case is adjudicated by calling forth אמר ר' חייא בר אבא דאמר ר' יוחנן כיון דאמר ר' יוחנן

The Talmudic and Toseftan Versions of the Damage by Poison Case

We noted earlier that different versions of the baraita appear in the Talmud and the Tosefta.²⁰ In the Tosefta version, the person feeds the poison directly into the animal's mouth. In the Talmud's version of the baraita, the person places the poison in front of the animal. We noted that in both versions of the baraita, the Tannaim recognized the case as one of gerama, and ruled the person exempt according to human justice and liable according to divine law/subject to God's judgment.

In the gemara in Baba Kamma 47b, it is noted that if food or poison is placed in front of an animal, the animal is not forced to eat it. Damage to the animal is

Resh Lekesh said in the name of Hezekiah that if the person dispatched something already in flames he was liable. R.Yochanan said he was exempt. The stama explains Rash Lekesh's reasoning that in such a case,

" 18 מ"ק א"ל " -- "his action caused the damage."

The stama explains R.Yochanan's reasoning that even in such a case, the deaf-mute's handling of the flame caused the subsequent fire. The stama continues:

וְאֵל מִיָּד אֵשׁ שִׁמְשֹׁר עַל עֵצִים וְשֵׁרָא בְּהֵטָא וְדָא
מֵעַל בְּיָדוֹ עָרָא.

And he would not be liable unless he sent chopped wood, chips and a light, for then it would be obvious that the damage was caused by his act.

Even in the situation described by the stama, the first person does not actually light the fire. The stama does not require a direct physical link between the person's act and the subsequent fire in order for the person to be liable for damages. If the person supplies the incompetent person with all the ingredients necessary for a fire then he is held liable. Presumably, this is because all the necessary items were collected by his own hands, and also because a subsequent fire is foreseeable as a highly probably result, if not an inevitable one, of the first person's action.

For the Tannaim, the critical factor was whether or not there was a tangible link between the person's action and the subsequent damage. For the Amoraim there

was a difference of opinion on this subject. For the stama, even if there was no tangible link between the wrongdoer's action and the subsequent damage by fire, if the fire could be seen as the inevitable result, or even a highly probably one, of the wrongdoer's action, the damage was considered the damager's responsibility. Consequently, he pays.

If One Person Scares Another

This section of the baraita concerning damage caused by fright is cited at Baba Kamma 91a^{A-13} and Kiddushin 24b.^{A-14} In both cases, the context of the discussion is the ruling regarding injurious treatment of slaves. If one struck a slave on his eye and blinded him or on his ear and deafened him, one had to free the slave. If he struck the slave near his eye or ear and there was subsequent loss of sight or hearing, the person was not liable and did not have to free the slave. In Baba Kamma 91a, the stama explains this ruling by remarking that a person can scare himself, and by making reference to our baraita as evidence of his opinion. In Kiddushin 24b, the same explanation is given by Rav Ashi: human beings (unlike animals) have intelligence and can scare themselves. Rav Ashi also turns to our baraita as evidence for this opinion.

As we saw from Tosefta,²³ the person could not be held liable for scaring his neighbor if there was no

physical contact, i.e., no direct link between the act and the subsequent injury. For Rav Ashi and the stama, the lack of a direct link was also a factor. They, however, defined the issue more completely than the Tannaitic sources, by pointing to the victim's own reaction of fear as a factor contributing to the damage. Thus the "damager's" action may not have been the ultimate or only cause of damage. This interpretation of the baraita is similar to the stama's interpretation of the four cases mentioned by R. Joshua, in that it emphasizes the wrongdoer's act as one of two factors contributing to the damage. Such situations call for the ruling "exempt according to human justice," etc. Again we see evidence that for the stama (and Rav Ashi) the lack of a physical link between a person's action and subsequent damage does not necessarily mean the person is exempt from liability.

The Dispute Between R. Meir and the Sages

This section of the baraita appears in two places in the Talmud besides Baba Kamma 56a. These are at Baba Kamma 28b-29a^{A-19-20} and Baba Mezia.^{A-21} The discussion in these two passages does not affect the ruling פטור מדני אדם וחיה ברצ'א לשם.

Conclusions

In all the Talmudic passages we have examined in this the ruling, "פטור מדני אדם וחיה ברצ'א לשם" -

"exempt according to human justice but liable according to divine justice" is applied, the person in question is considered guilty of having committed a wrong as reflected by the second clause of the ruling. Yet at the same time, he is ruled exempt from having to pay compensation. In each case, the person is ruled "exempt according to human justice" because in some way the person's action falls short of the current legal definition of what constitutes negligence and grounds for liability. This statement is used by the Tannaim to indicate disapproval of an act as wrongdoing while declaring the act not subject to bet din legal processes.

With regard to the grounds for application of the ruling, the gemara's treatment of the Tannaitic passages reveals a changed understanding of the earlier material by the Amoraim and the stama. In several cases, the gemara narrows the application of the baraita ruling. We saw this in the stama's treatment of the four cases in the baraita of R. Joshua. In three of the four cases, the stama redefined the circumstances in such a way that the person's act was one of two factors contributing to the subsequent damage. The other case which involved the hiring of false witnesses already involved an additional factor--whether or not the judge would believe the false testimony. The stama notes that in all these cases, if the person's act was the single albeit indirect cause of

of the subsequent damage, the person would be liable to pay compensation.

In other cases, the gemara makes reference to the Tannaitic passages within discussions of other issues. In some cases, the Tannaitic material is only handled superficially. In other cases, the context of the discussion contributes to a rereading of the Tannaitic material. For example, the case of one who does work with another person's water of purification or heifer of purification is referred to in two different passages concerned with the question of whether or not invisible damage constitutes damage, and the baraita is discussed as a case involving invisible damage. In Gittin 53a^{A-16} the question of intent is also considered and the baraita is reread in light of this factor, as describing a case in which intent was not carried out in action or action was not accompanied by intention.

The major change we find in אמר ר' יוחנן כל המעשה שאין לו קשר depends on the refinement of the actionability of gerama. According to the Tannaim, if there was no physical link between the person's action and the subsequent damage, this was a case of gerama and the person could not be ruled liable to pay compensation. The person was אמר ר' יוחנן כל המעשה שאין לו קשר. On the other hand, the post-Tannaitic sources divided the category of gerama into two categories, garmi and gerama. Inevitable damage or

even highly probable and foreseeable damage which resulted from one's action was garmi. The later Rabbis hold garmi-damagers liable to pay compensation even where there is no direct, immediate link between act and damage. If, on the other hand, the damage was not the inevitable or highly probable and foreseeable result of the person's action, this was gerama. According to post-Tannaitic teaching, a gerama-damager was not liable to pay damages. As in the Tannaitic period, gerama-damagers were אין אדם נשבע על דבריו according to the new, post-Tannaitic definition.

A comparison of the Tannaitic material with its later treatment thus reveals that by the time our Amoraic and anonymous discussions of the Tannaitic passage took place, significant legal change had occurred which demanded a redefinition of the earlier cases of אין אדם נשבע על דבריו in order to harmonize them with later legal positions.

CHAPTER III

MI SHEPARA - MAY THE ONE WHO PUNISHED

The Tannaim determined that in buying and selling, meshichah, the actual transfer of property, was what established kinyan, the right of possession. The exchange of money itself did not effect transfer of legal title to property.

However, the Rabbis of the Tannaitic period also recognized the exchange of money and words expressing the intent to conclude the business transaction, as establishing some degree of obligation upon the buyer and seller. We learn in the Mishnah and in a baraita, that the Rabbis instituted a curse which applied to the person who retracted a sale after a verbal commitment and the exchange of money had taken place.

Chapter 4 of Baba Mezia begins with a Mishnah establishing that meshichah and not the exchange of money establishes the transfer of legal title to property. The Mishnah concludes:

כיצד? משק הימנו פירות ואם נמך לו מעות אנו יכולים לחזור בו.
נמך לו מעות ואם משק הימנו פירות יכולים לחזור בו. אבל אחר מ'
שכרם מאנשי דור המבול ומדור הפלגה הוא צריך להפריש ממ'
שאנו עומד בהבורו. דה' שמעון אומר כל שרכסם בדור ידו על העליונה.

In what respect? If [the buyer] took produce from [the seller] but did not [yet] give him the money, one cannot retract the sale. If [the buyer] gave him money but did not take the produce from him, one can retract the sale. But [in such a case] the Rabbis "May the One who punished the people in the Generation of the Flood and the Generation of the Dispersion, may He in the future punish this one who does not stand by his word." R. Shimon said "Whoever has the money in his hand has the upper hand [in court]."24

Even after money had been exchanged, a person could legally retract the sale, but was subject to the curse, mi sh'parah etc. for not having stood by his words. Through the curse, he or she was subject not to the bet din's punishment, but to God's punishment.

The Mishnah concludes with a statement by R. Shimon which appears to indicate that money determines acquisition. The gemara discusses the dispute between R. Shimon and the other Rabbis as to whether money or meshichah effects transfer of legal title, and explores the legal basis for meshichah as the determinant of legal transfer of title. In Baba Mezia 47b^{A-23} the question is raised, why, since the law is that meshichah determines acquisition, is a person subject to the curse for retracting a sale after only money was exchanged?

א' אחר בשלח מעות קונים חסר קא' באלה"א
א' אחר מעות אין קונים אלא קא' באלה"א ? חסר
חב"ד.

If you say that money effects transfer of title, because of that one stands under a curse. But if you say money does not effect transfer of title, why does one stand cursed? Because of words [and money].

The reason cited for subjection to the curse is the exchange of words accompanying the exchange of money. The phrasing of the curse itself points to the importance of the verbal commitment: the person is subject to the curse for not standing by his words. The Rabbis appear to have been concerned that buyer and seller be able to rely on each other's expression of intent to conclude an already initiated sale.

Case of Mi Shepara: Baba Mezia 48b-49a

The next issue raised in the gemara at Baba Mezia 48b^{A-24} is the purpose and power of the words mi shepara etc. Abbaye regarded the words as a warning, while Raba viewed them as a curse, citing as evidence an incident in which R.Yochanan told R.Hiyya bar Joseph to turn over the flax for which he had received payment, or he would be forced to submit to the curse, mi shepara. Here and through the gemara, the words used are " םיִּשְׁפָּרָא ןִי " --"You must submit to mi shepara." The words are understood as a curse to which one was forced to submit if he retracted a sale after monetary payment had been made.

According to the stama, the story cited by Raba involved the issue of a deposit, and the gemara now turns to the question of whether a deposit and a verbal commitment constitute a commitment to the whole intended purchase or only the goods actually covered by the money exchanged. If a seller retracted a sale for all the goods

not actually paid for by the deposit, was he subjected to the curse, mi shepara? A case is cited in Baba Mezia 49a, A-25 pointing to a disagreement between Rav and

R. Yochanan:

ר' כהנא יהוה ליה לזוזי אביהא. אלוף איקד כיתמא אלא
 אקמיה דר' אר ליה במא' בנק' לזוזי הב' אלו. ואידך
 דבר' - נ'הו. ודבר' אין בהן משום מחוסר' אמת' דאיתמ'
 דבר' - ר' אר אין בהן משום מחוסר' אמת' ור' יוחנן
 אר יש בהם משום מחוסר' אמת'.

Rav Kahana was given zuzim [in advance payment] for flax. In the end the price rose and he came before Rav. Rav told him "For the amount you were paid, give them the flax. For the amount covered only by words, you need not [give them the flax]. There is nothing binding about words because they are not to be depended on." For about a verbal transaction it is said: Rav said "[Breaking a verbal transaction] involves no breach of faith." But R. Yochanan said "[Breaking a verbal transaction] does involve a breach of faith."

According to Rav, a deposit only established a commitment for the goods actually paid for because words alone had no binding stature. Thus a person who retracted the sale of goods beyond the value of the deposit itself, was not subject to the curse. R. Yochanan disagreed. He maintained that words were binding and that the deposit and a verbal commitment established a commitment to the full purchase intended, carrying the penalty of the curse for anyone who retracted the sale. Once again, the emphasis is placed on the importance of the verbal expression of intent.

The ensuing discussion expresses support for R.Yochanan's view. R.Josi in the name of R.Yehuda points to the first part of Lev.19:36 as a proof-text for the commitment carried by words:

"נאכלין צדק אלן צדק א'בן צדק וה'ן צדק יה' עכמ" -- "You shall have an honest balance, honest weights, an honest ephah and an honest hin." R.Josi comments that the notion of hin is included in ephah, since both are measures, and that the word hin appears in the text for another reason. He makes a play on words, treating "ה'ן" as "ה'ן", "yes":

אלא עומר עק שיהא ה'ן שעק צדק ועאלו שעק צדק.

This is to teach you that your "yes" should be honest and your "no" should be honest.

Abbaye adas a further comment:

אמר אבא"ה הוהא שאל יחד אמר בבה ואמר בעל.

Abbaye said "This means that a person should not say one thing with his mouth and another with his hear."

While verbal commitments were not legally binding, the rabbis clearly were concerned that they not be taken lightly. In the case of R.Yochanan ben Matia's son who hired workers with a verbal promise to feed them, and in a discussion about whether or not the promise to give someone a gift was binding, we see the Rabbis' concern centered around whether or not the words spoken created real expectation in the other person's mind (Baba

that he is relying on the sale. If he did not do this the seller could [later] say 'I thought you found produce better than mine and bought it.'" R.Ashi said, "Now that you say the reasons [he must appear at the granary] is to demonstrate that; he is relying on the sale, [I say that] even if the buyer meets him in the market and says to him 'I am relying [on this sale]', that is sufficient to subject the seller to the curse."

According to this passage, the exchange of money alone did not subject the seller to the curse mi shepara if it was at all ambiguous whether or not the buyer was relying on the sale to be completed. The apparent concern of the Rabbis was that even though legal title was only transferred with the actual transfer of goods, it was important that with the payment of money and verbal exchange, buyer and seller could rely on each other's expression of intent to complete the transaction. That expression of intent had to be clear in order for the curse to be imposed.

In two very different cases, the Rabbis make reference to the curse mi shepara in their efforts to determine the edges of their legal system requiring meshichah for the transfer of legal title and the finalization of a sale. In Baba Mezia 49a^{A-25} we learn of a case in which Raba affirms the buyer's and seller's legal right to retract a sale before meshichah takes place, even though the person would have to submit to the curse. In this case, one person pays in advance for poppyseeds. The price of poppyseeds goes up and the

sellers say to the buyer, "Take back your money." The buyer refuses. Subsequently the money is stolen. Raba ruled that the sellers were not responsible for the loss since they had had the legal right to retract the sale and they had told the buyer to take back his money. The Rabbis challenge Raba, "Wouldn't the seller have had to submit to the curse?" Raba agrees but maintains his ruling that the sellers would not have been further penalized, since they had legally retracted the sale.

Baba Mezia 74a

A case cited in Baba Mezia 74a^{A-37} describes a situation in which a person paid for wine and affixed his mark to the wine bottles, leaving them for the time being in the seller's wine cellar. While reference is made to the curse mi shepara, the real question being addressed is whether or not such behavior effected legal transfer of title even though meshicha had not actually taken place. R.Haviva ruled that in such a case the buyer actually acquired the wine. The Rabbis disagreed. Without meshichah, legal title was not transferred. The case was treated as parallel to one in which a verbal expression of intent to complete the sale had been made along with monetary payment; affixing one's mark effected acquisition only in that it subjected a person to the curse in the event that he retracted the sale. The gemara notes in conclusion that where it was already existing

practice, the Rabbis recognized affixing one's mark as effecting full acquisition.

The curse mi shepara could be imposed on either the buyer or seller. In all the previous cases cited, the gemara focuses on the seller as subject to the curse. If a buyer retracted a sale after having made a monetary payment, he was subject to the curse. One of the reasons he might want to retract a sale was if the item he was interested in purchasing went down in price. Such a situation is described in Baba Mezia 74b.^{A-28}

The Mishnah on Baba Mezia 72b addresses situations in which advanced payment for goods was made at a fixed price and the price changed before the goods were transferred. The Mishnah ends:

ובוסק עמו בשעה השבוע. רבי יהודה אומר אע"פ שלא בסק
עמו בשעה השבוע יבוס עומד עי ככה אומר עי את המזון.

One may also stipulate for the lowest price. R. Judah said "Even if [the buyer] did not previously stipulate [that he wanted] the lowest price, he can still say 'Give me the goods at this [new, lower] price or give me back my money.'"

The Mishnah makes no mention of the curse mi shepara.

According to R. Judah would the buyer in such a case be subject to the curse?

The case discussed in Baba Mezia 74b^{A-28} is one in which a man paid money in advance for his father-in-law's dowry. Subsequently, the dowry fell in value. Rav Papa ruled that if the son-in-law had stipulated that he

wanted the lowest price, he could demand the dowry at its present value. If not, he had to pay the original price.

The Rabbis challenged Rav Papa for ruling as he had:

אמח עיה רבן ערב פבא. וא' עא פסק שקיע' כמע' קרא !?
מעות נערי ומעות עא קנ !

The Rabbis said to Rav Papa, "And if he did not stipulate [he wanted the lowest price] he must take it at the original price?! [Only] money [had been exchanged] between them, and [the exchange of] money does not effect acquisition!

The Rabbis reasoned that since meshichah had not taken place, the sale had not been finalized and the buyer legally could retract the sale.

The gemara continues with Rav Papa explaining that he had spoken only with reference to the curse; he too recognized that before meshichah took place, either the buyer, or the seller could legally retract the sale.

אמר עהו אנא נמי עקבוע' עעיה מ' שברע. קא אמנא א'
פסק כעסד העצה מוכר קא הבר היה מקבוע' עעיה מוכר
מ' שברע. א' עא כר' עוקח קא הבר היה מקבוע' עעיה
עוקח מ' שברע.

[Rav Papa] said to them, "I also spoke only in reference to submission to the curse mi shepara. I should have said 'If he stipulated [he wanted] the lowest price and the seller wishes to retract, [the seller] must submit to the curse mi shepara. If the buyer did not stipulate [he wanted the lowest price] and he wants to retract the sale, the buyer must submit to the curse mi shepara.'"

Thus we see that according to Rav Papa, the curse could apply to either the buyer or the seller. After a discussion about how R. Shimon would approach the case given his

opinion that money acquires, the sugya draws toward conclusion by citing the baraita in which R.Shimon mentions the curse:

מכא מקום כך הענה. אלא אמר חכמים מ' שרץ כו'
מא' מכא מקום? עאז דאז שני עסקה ודא שני מכר עא אמר?

In every case such is the law. But the Rabbis said mi shepara etc. What is the meaning of "in every case?" Is it not that there is no difference whether it is the seller or buyer who retracts, he must submit to the curse?

The stama's interpretation of the baraita is that it imposes the curse on either the buyer or seller, whoever retracts a sale after money has been exchanged.

Conclusions

From both the Mishnah and a baraita in the name of R.Shimon, we learn that while the Rabbis required meshichah for the transfer of legal title, they also desired that the exchange of money with the expression of intent to conclude the sale not be taken lightly. A person who retracted a sale after money had been exchanged could not be prosecuted in a bet din because, without meshichah having taken place, the sale was not legally closed and binding. The Rabbis created the institution of the curse mi shepara so that a person who retracted a sale after monetary payment had been made was subject to God's punishment.

The Rabbis thus established a hierarchy of binding commitments in business transactions. The actual

transfer of goods was legally binding as a transfer of title. The exchange of money with the verbal expression of intent to finalize the sale, while it did not effect legal transfer of title. However, it subjected someone to God's punishment if he retracted the agreement.

Why such a hierarchy? The Rabbis could not make the exchange of money or words legally binding upon buyer or seller without undermining the general law that meshichah was required to effect legal transfer of title. The Rabbis apparently recognized it as in the interest of both buyer and seller that a business transaction not be finalized until the goods had actually been transferred.²⁵ Yet at the same time they recognized the need of both buyer and seller to be able to rely on each other's expressions of intent to conclude a business transaction which had already been initiated. The Rabbis were concerned about the creation of false expectations by either a buyer or seller. They emphasize the importance of the verbal exchange accompanying the exchange of money. Thus for example, in Baba Mezia 63b, they rule that a person paying the early market price had to verbally indicate that he was relying on that sale, in order to subject the seller to the curse.

Yet at the same time, words alone did not carry the same weight as words accompanying monetary payment. The exchange of money, unlike a verbal exchange, was a

tangible transaction and an important indication of one's intention to buy another's goods. Once the seller had received the buyer's money he was under a heavier obligation to conclude the already initiated sale than was the case if only a verbal commitment had been made.

The institution of a curse which subjected someone to God's punishment enabled the Tannaim and later Rabbis to condemn and discourage a category of behavior without legislating additional laws. The curse was not an actionable measure: a person who had to submit to the curse was punished not by a bet din but by God. Such a curse may well have been less of a discouragement than an actionable prohibition against retracting a sale after monetary payment. Such law could not have been put into effect without undermining the general accepted and useful practice of meshichah. With the institution of the curse, the Rabbis were able to maintain meshichah as the single legal determinant of transfer of title, and at the same time, establish the principle that both buyer and seller had to stand by their word and conclude sales where intention to enter a transaction in good faith had been shown. Trust and the significance of human expectation were, thus, given Rabbinic consideration and support.

CHAPTER IV

HAYASHAR V'HATOV--WHAT IS RIGHT AND GOOD

There are three cases in Baba Mezia which point to the first part of Deuteronomy 6:18 as the basis for a legal decision. The first part of Deuteronomy 6:18 reads:

וְעָשִׂיתָ ה'שֵׁר וְהַטּוֹב בְּעֵינֵי ה' אֱלֹהֶיךָ עִם.

Do what is right and good in the sight of the Lord that it may go well with you.

Our three passages are found at Baba Mezia 16b, 35a, and 108a.

The Right of Pre-emption

We will first examine Baba Mezia 108a,^{A-29} which is the source for the other two passages. Yehuda says in the name of Rav, that if a person takes possession of land located between the plots of two brothers or two partners, he is considered arrogant but he cannot be forced off the land. Rav Nachman disagrees:

וְהָיָה נֶחֱמָן אִם נָחַ אֶת הַמַּסְקִין. וְאִי מִשּׁוֹם דִּינָא בִּדְרֵי מִצְוָה
 עַל מַסְקִין עִי. נִירְדֵּי אַחֲרֵי אֲבִי'וּ מִשּׁוֹם דִּינָא בִּדְרֵי מִצְוָה
 מַסְקִין עִי מִשּׁוֹם שְׂמֵאל וְעִי ה'שֵׁר וְהַטּוֹב בְּעֵינֵי ה'.

Rav Nachman said "Indeed, we can force him off the land. But if it was [an ordinary case of] the law

of pre-emption, we could not force him [off the land]." The Nehardeans say "Even [when only] the law of pre-emption [applies] we can force him [off the land] because it is written 'Do what is right and good in the sight of the Lord.'" (Deut.6:18)

According to the law of pre-emption, if land is being put up for sale, the persons who own adjacent property should be granted the first opportunity to buy the land in question. While Rav Nachman ruled that one could force a person off the land he seized if the land was located between the plots of two brothers or partners, he ruled that the person could not be forced off the land based upon the claim of an adjacent neighbor. For Rav Nachman, dina d'bar metsra, the law of pre-emption, was not actionable. The Nehardeans, on the other hand, said that even in a case where the claim was brought by an adjacent neighbor, the person could be forced off the land on the basis of the law of pre-emption. According to the Nehardenas, dina d'bar metsra, the law of pre-emption, was based on Dt.6:18, and it was therefore actionable.

Baba Mezia 16b

In Baba Mezia 12, the Mishnah introduces the issue under discussion: when lost documents of indebtedness should and should not be returned to the creditor. Within our sugya at Baba Mezia 16b,^{A-30} different types of documents related to indebtedness are discussed.

Samuel notes that the law rules that a שטר הקנאה,
 a document of acquisition, should be returned to its owners
 even though such a document might be one of indebtedness
 and might lead to a bet din forcing a second repayment in
 error. Samuel argues that if such were the case it
 would be the debtor's responsibility since he should have
 torn up the document.

The general rule, cited in the Mishnah in Baba
 Mezia 20a²⁷ is then noted, that all documents issued
 by the bet din should be returned to their owners. R. Zera
 comments that this refers to שטר' חטא וקניא,
 documents issued by the bet din when a debtor cannot pay
 his debts. These documents give the creditor title to
 property seized from the debtor and entitle the creditor
 title to property seized from the debtor and entitle the
 creditor to search for and seize the debtor's belongings
 wherever they may be found.²⁸ R. Zera claims that in
 these cases there is the possibility of future repayment.
 He cites the example of the Nehardeans:

אמר רבא והני עאן בני ברסון ננהו? דא אמר'
 נהרדע שומא דהר עב תיכסר ימי' מא. ואמר אמ'מר
 אלא מנהרדעא אלא וסבירא ע' בשומא דהר עסעס.

Raba said "Are they not concerned with repayment?
 Did not the Nehardeans say that shuma--property
 granted to the creditor in value of an outstanding
 loan--returns to the debtor for a full year? And
 Amemar said 'I am from Nehardea and it is my
 opinion that shuma returns to the debtor forever.'"

Having established that in the case of שטר' חשטאקא ואריכטא there is also the possibility of repayment, Raba returns to the Mishnah's rule that all lost documents issued by a bet din should be returned to their owners. Raba gives his own explanation in support of the Mishnah, even as it applies to שטר' חשטאקא ואריכטא :

אלא אר רבא דמי היין טעמא באר' איהו הוא
באבס' אפס' דבב' דנא דבר' אב' ע' ע' אקד' ע'
ע' אר' אר' ע' אר' אר' אר' אר' אר' אר' אר' אר'
ע' אר' אר' אר' אר' אר' אר' אר' אר' אר' אר'
הוא באר' אר' אר' אר' אר' אר' אר' אר' אר' אר'
א' א' ע' אר' אר' אר' אר' אר' אר' אר' אר' אר'

But Raba said "There [in the Mishnah] the reason [documents should be returned to their owners] is that we say he [the debtor] himself is to blame for the loss because when he paid his debt he should have torn up the document [of indebtedness] or alternatively he should have requested that another document [of entitlement] be written. For according to the law, [the creditor] was not required to return the land at all, and it is only because of the verse "And you shall do what is right and good in the sight of the Lord" that the Rabbis said [the land] should be returned. Therefore from the beginning he is like one who is purchasing land and he should request that a deed of purchase be written for him in place of the note of indebtedness.

Raba explains that שטר' חשטאקא ואריכטא are returned to their owner even though the debtor may have already paid his debts and may be forced to cede his property again

by mistake. Raba argues that if such is the case, it is the debtor's own fault.

The last section is of greatest interest to us. The text says that according to the law, the creditor was not obligated to return the land to the debtor if he came forth with the money, presumably because in such cases the creditor had already been granted title to the property as payment for the outstanding loan. According to the gemara, the Rabbis' ruling that land should be returned in such cases was based on Dt.6:18. It was not actionable, but it was strongly recommended.

It is not clear from the gemara whether these last words (underlined in our passage) are the words of Raba or the stama. Interestingly, the Vatican I manuscript²⁹ reads:

פ' במבין ארעא עא בעיא עמיהר ומסוק ואין
ה'ר והטוב בעי' ה' הוא באחור רבן מהר

An explanation--For according to the law, [the creditor] was not required to return the land at all, etc.

This clause was originally a note of explanation on the Amoraic material by a later commentator. From the Vatican I manuscript then, we see that it is the stama who says that according to the law, in cases involving אברהם the creditor was not obligated to return the land to the debtor and that in spite of the law, the Rabbis ruled that he should return the land

based on Dt.618. According to the stama, אע"פ ה"ל " " אע"פ ה"ל was a meta-legal principle which provided a base for the development of rabbinic law.

Baba Mezia 35a

Our final case is at Baba Mezia 35a.^{A-31} This sugya begins with the case of person A who gave his jewels to person B for safekeeping. When A later asked for his jewels, B told him he could not find them. A brought his case before Rav Nachman, who ruled that B had to pay him for the jewels. B refused and Rav Nachman seized his house as payment. In the end, B found the jewels and Rav Nachman rules that the house and the jewels should each be returned to their original owners.

The passage asks: Was Rav Nachman's ruling based on the principle that shuma--property granted to the creditor in value of an outstanding loan--would be returned to the debtor if he is later able to pay? The text says that this is not so because this case is different from shuma. Here, the shuma was granted in error, since the jewels had been in the house all along.

At this juncture the case of Nehardean practice is mentioned again:

אמר ר' יוחנן שומא דאורייתא
אמר אבהו אלא מהדדא אלא וסגרא ע"ש
הב' אע"פ ה"ל שומא דאורייתא
אע"פ ה"ל ויהאב.

The Nehardeans say "Shuma is returnable for up to a year." Amemar said "I am from Nehardea and it is my opinion that shuma always [returns to the debtor]. And the law is that shuma always returns [to the debtor] as it is written, 'And you shall do what is right and good.'"

The example of the Nehardeans is cited just as before: the Nehardeans said shuma should be returned up to a year and Amemar's opinion was that it should be returned forever.

It is the last sentence which is of most interest to us, since it is here that reference is made to Dt.6:18. The term שטמה, indicates that this is stama material.³⁰ Once again it is the stama telling us something about the Rabbis--namely that the Rabbis ruled that shuma should always be returned to the debtor, and that the Rabbis based this ruling on Dt.6:18.

Conclusions

In Baba Mezia 108a, we saw that the Nehardeans established dina d'bar metsra, the law of pre-emption as an actionable law based upon Dt.6:18, "Do what is right and good in the sight of the Lord." In the other two passages, Baba Mezia 16b and 35a, it is the stama who makes the reference to the verse Dt.6:18, noting that the verse was the basis for a Rabbinic decision. In both passages the example of Nehardean practice is cited before the Nehardeans based the law of pre-emption on Dt.6:18, in these other cases, the stama made a connection between the Nehardean practice and Dt.6:18.

In Baba Mezia 16b, the Rabbis ruled that even if a קצת חוב had already been issued, land should be returned to the debtor at such time as he was able to pay his debts in cash. The stama notes, however, that the law did not require the creditor to return the land to the debtor, and that the Rabbis said that the land should be returned based upon Dt.6:18. In this case, the stama's view is that the Rabbinic ruling was contrary to existing law and that the Rabbis were asking for something beyond the merely legal requirements affecting this case.

In Baba Mezia 35a, we have a similar, yet significantly different case. Here, as in Baba Mezia 16b, reference is made to the Nehardean practice of returning shuma. While in Baba Mezia 16b, Raba's and the stama's comments were addressed to the issue of returning land after a קצת חוב had been issued, here in Baba Mezia 35a the stama comments on the practice of returning shuma. The stama remarks, " כאשר " -- "the law is" that shuma always returns to the debtor, because of what is said in Dt.6:18. Here as in Baba Mezia 108a, Dt.6:18 is used as the basis for law.

In conclusion, we see that Dt.6:18, "Do what is right and good in the sight of the Lord," was used by the Rabbis as the basis for establishing actionable halacha law as well as a supralegal "requirement." In Baba

Mezia 16b, the Rabbis' ruling was contrary to legal precedent and therefore had no legal standing but carried the weight of a Rabbinic directive. Use of the verse as the basis for this supralegal injunction was noted by the stama. In Baba Mezia 108a and 35a, we see that both the Nehardeans and the stama made reference to the verse as the basis for particular Rabbinic laws.

CHAPTER V

V'YAREITA M'ELOHECHA--YOU SHALL FEAR YOUR GOD

A Mishnah in Baba Mezia 58b^{A-32} reads:

כסם שאנאך במקו וממכר כק אנאך בבררם
 עא יאר עו בכד חפץ לה והוא אינו רוצה עיקר
 אם היה כסם תשדה עא יאר עו לכור מעט
 הראשונים. אם הוא בן ערם עא יאר עו לכור מעט
 אבותיך שנאמר וצר לא מנה ואל תעחצנו.

Just as there is [wrong done by] overreaching in buying and selling, so is there wrong done by words. One must not ask another "How much are you asking for this?" if he has no desire to buy it. If a person was a repentant sinner one must not say to him "Remember your earlier deeds." If someone was a child of a proselyte, one must not say to him "Remember the deeds of your ancestors," as it is written "You shall not wrong a stranger or oppress him." (Ex.22:20)

The Mishnah indicates that just as there are monetary wrongs there are wrongs committed by speech. It points to two categories of verbal wrongs: (1) words which will mislead the listener as to one's business intentions and (2) words spoken maliciously which shame the listener and cause pain.

The gemara explores both these categories of verbal wrongs, but first cites the Torah in order to show that such verbal wrongs are, indeed, wrongs. The passage cited is Lev.25:17:

וְלֹא תִנּוּ אִישׁ אֶת עֲמִיתוֹ וְיִרְאַת אֱלֹהֶיךָ כִּי אֲנִי אֱלֹהִים

Do not wrong one another, but fear your God for
I the Lord am your God.

The Rabbis interpret this verse as prohibiting verbal wrongs since the Torah has already prohibited monetary wrongs at Lev.25:14. There it states:

וְכִי תִמְכֹּר אֶת עַמְּךָ אֶת עַמְּךָ אֶת עַמְּךָ אֶת עַמְּךָ אֶת עַמְּךָ

When you sell property to your neighbor or buy anything from your neighbor you shall not wrong one another.

In order to define אֶת עַמְּךָ wrongs done by words, the gemara returns to the Mishnah's two examples of ways in which a person might speak maliciously to another, shaming him and causing him pain. The gemara then adds two cases to this category. If a proselyte comes to study Torah one must not say to him "shall the mouth that ate unclean and forbidden food, abominable and creeping things [now] come to study the Torah which was uttered by the mouth of the Almighty." Similarly, if a person is suffering some ailment or has buried his children one must not speak to him as Job's companions spoke to him implying that his suffering must be due to sinfulness. Later the gemara turns to the verbal wrong of shaming someone publicly. This subcategory of verbal wrongs involves maliciously causing shame and emotional pain to another

person by one's words. The Rabbis ruled that if one person caused another shame by some physical act the person was liable to pay damages.³¹ However, verbal wrongs which did not involve physical contact with the victim's body were not grounds for liability as there was no direct link between the wrongdoer's act and the resulting damage, nor was there tangible, visible damage.

The gemara moves on to the category of verbal wrongs first mentioned in the Mishnah, that of creating a false impression by one's words.

אם ה'ו חרם מקטין יבואה ממנו ע"א יאמר ע"ה
ע"ו אצ"ל כע"ו ש"ה מוכר יבואה ו"ז ע"ב ג"ל מוכר
ע"ו ע"ה.

If ass-drivers sought grain from someone he must not tell them "Go to so and so who sells grain" if he knows that the person never sold grain.

In this case the person spoke words creating an impression he himself knew was false. R.Judah continues along similar lines:

ר"י אומר א"ל ע"א יאמר ע"ו ע"ה המקד בשעה ש"ו
דמ"ה ש"ה ידבר מוכר ע"ה וכו' בבר שמו"ר ע"ה נאמר
ו"ז א"ל מוכר ע"ה

R.Judah said "One must not raise his eyes toward a purchase if he has no money at the time for such a thing is known only to the heart. And about all that is known only to the heart it is written 'You shall fear your God.'"

The examples cited, cases in which a person speaks or acts creating what he knows is a false impression, are all business-related cases. Given the

business-related context of our mishnah, it appears natural that one of the primary foci would be the area of verbal wrongs committed within a business context.

One might think from R.Judah's words "for such a thing is known only to the heart, and of everything known only to the heart it is said 'You shall fear your God,'" that he is referring to all evil thoughts and feelings. Perhaps any evil feelings and thoughts which are known to God although they are not known to other human beings subject a person to God's punishment. Such a concept, however, would be antithetical to the halachic system, which judges people for their actions. How could a system which would not impose liability on a person for indirectly causing physical damage to another, impose a bet din's or God's judgment on a person for evil intentions not reflected in action? R.Judah's words about intentions, "things known only to the heart" are to be understood as intentions related to particular actions taken or words spoken. The example he cited was of a person who feigned interest in a purchase. The previous examples cited were similar--they were cases in which words were spoken which created a false impression. If such things were done intentionally, the doer was guilty of a verbal wrong.

R.Judah's words about "things known only to the heart" are similar to the statement by Abbaye in Baba Mezia 49a, a passage we examined in the previous chapter.

The Rabbis here are emphasizing the seriousness of the category of verbal wrongs. Because such wrongdoings were not punishable by a bet din, the Rabbis apparently felt a special need to underline their gravity.

Conclusions

The Rabbis used Lev.25:17 as the basis for a non-actionable ruling against ona'at devarim, verbal wrongs. In both the Mishnah and the Talmud, the Rabbis discussed two categories of verbal wrongs--causing shame and raising false expectations. In relation to the latter category, R.Judah explained the problem as one of wrongful intention accompanying action, a matter known only to the heart (masur l'lev).

The Rabbis emphasized the gravity of verbal wrongs in relation to monetary wrongs which were actionable. We see, then, that in spite of their evaluation of the seriousness of verbal wrongs, the rabbis did not create actionable legislation in this area. They did not do so because no bet din could render decisions in such areas involving intentions, since these were not open to witnessing. To legislate action against "wrong intentions" would undermine the Torah's requirement of witnesses for adjudicating cases and would make anyone open to accusations. No less seriously, such laws would make kinds of thinking a crime, stripping society as a whole of any individual rights or privacy.

The non-actionable rule which referred such issues to God's judgment is employed in this situation because actionable law is not feasible. Nevertheless, the Rabbis emphasized the importance of their injunction against verbal wrongs to the extent that it was possible to do so.

CHAPTER VI

CONCLUSIONS

A close analysis of the Talmudic usage of certain phrases lead us to several conclusions:

1) We note that the understanding and usage of particular halachic terms evolved over time. For example, lifnim mishurat hadin carried a different type of obligation for the Amoraim and the stama than it did for the Tannaim.

2) In certain instances, halachic practice actually changed. For example, in Baba Mezia 24b we saw that Samuel ruled that a person was obligated to return a purse because of the principle lifnim mishurat hadin, and that several generations later, R.Nachman ruled that the person was entitled to keep the purse. In several of the passages employing use of the phrase lifnim mishurat hadin, the phrase was applied to an account of much earlier behavior, possibly pointing to a change in normative law. For example, Samuel's father may have considered himself legally obligated to return lost asses to their owners after a full year had passed, while the stama did not consider him legally obligated to do so.³²

3) In some cases, halachic terms and rulings changed. A comparison of Tosefta and Talmudic material

revealed that the ruling פטור מבני אדם וחיה ברצח למס
 had two other formulations: פטור מבני אדם ודיו מסור למס and
 אין חיובין למס מן הדיו ואין מן המס מוחלין עהן ער למס .

Each of these three rulings speaks with varying amounts of detail about God's judgment. Yet all three employ the ruling as a non-actionable condemnation of behavior.

4) We also saw changes in the application of the ruling. The Tannaim applied the above ruling to cases of damages which resulted indirectly from a person's actions. All such cases were considered as a single category called gerama. Later Rabbis divided this category into two categories. They distinguished between cases in which it could be demonstrated that the damage was an inevitable or at least highly probable and foreseeable result of the person's action and cases in which the damage was not the foreseeable result of the person's action. The former were considered in the category of garma and the wrongdoer was declared liable. The latter were still considered cases of gerama with the same ruling as had been made by the Tannaim.

5) We see that halacha does not remain static, and that therefore halacha cannot be a source of unchanging ethics. The treatment of gerama by the Amoraim and Tannaim, for example, reflects a reappraisal of the claims of the two parties involved in damage suits, a reinterpretation and expansion of the definition of direct cause

of damages. This may mean that there has been some ethical reconsideration of the issues involved in a defendant's rights to a fair trial vs. the rights of one who has suffered pain or loss.

6) Our analysis of the text demonstrates that in certain instances the Tannaim, Amoraim and the stama all made reference to certain behavior as ethical but not actionable. They did not legislate these behaviors into legally enforceable norms. The Rabbis employed several non-actionable measures in the treatment of these categories of ethical behavior:

6a) The Rabbis referred to certain kinds of behavior as lifnim mishurat hadin, beyond the requirements of the law. The Tannaim used the phrase to make positive reference to the effort on the part of God and people to extend benefits to others beyond their legal obligation to do so. The stama used the phrase to refer to certain meritorious deeds of particular individuals. In so doing, they indicated that they attached a lesser degree of general obligation to lifnim mishurat hadin than did the Tannaim.

6b) In some cases, the Tannaim subjected a person to God's judgment and punishment. This was true both of the ruling "exempt according to human justice but liable according to divine justice" (and its variants) and the pronouncement of the curse, mi shepara.

6c) A method we saw employed by the Amoraim and the stama was that of making reference to some highly generalized pronouncement in Torah as the basis for ethical injunctions, sometimes actionable, sometimes not. We saw Dt.6:18 "Do what is right and good in the sight of the Lord" and Lev.25:17 ". . . fear your God" used in this manner. Both these Toraitic verses refer to God's judgment. In the Rabbinic treatment of both verses, and particularly the latter one, a person was called upon to recognize that in certain cases God would punish or reward although no human court could.

7) In all the cases we looked at, with the exception of two cases involving legislated norms based on Dt.6:18, the Rabbis chose not to create new legislation to enforce certain behavior. Why, in these cases, did the Rabbis not legislate behavior which they thought was right and good?

Part of the answer lies in the fact that some of our cases involved exceptional circumstances which could not be used as the basis for normative legislation. Rav Papa and the person with him interrupted their eating to say m'zummin with Rav Papa's son, presumably out of special consideration. This case could not be used to justify a legal requirement that two people should always be discomfited for the sake of one.

In most of the cases we examined, the Rabbis could not have legislated the behavior in question without undermining overarching legal principles of the halachic system. For example, the requirement of meshichah for the legal transfer of title and finalization of a business transaction was one of the most basic laws governing business practice in the halacha. It protected both parties because both knew exactly when a given object was the responsibility of one of them. No claim of negligence could be brought by one against the other since the object was always fully in the domain of its owner. Had the Rabbis prohibited buyer and seller from retracting a sale after an exchange of money, they would have undermined the standing of meshichah and would have established monetary payment as the determinant of legal transfer of title. Instead, they enacted mi shepara to indicate their concern that people conduct business transactions honestly and in good faith.

Other cases we looked at involved behavior which could not be judged by human beings because the cases involved the determination of intent. Thus, for example, the Rabbis said that a person should not use words to create a false impression in business dealings. A bet din could not rule a person guilty in such cases because it could not determine through witnesses what the person's intent had been when he spoke. The Rabbis could not

create actionable legislation in this area without undermining the law of witnesses. Therefore, they said that the person should know he stood before God's judgment and that he should fear the consequences of wrongdoing known only to himself.

8) While the focus of this study was not an examination of the question "did the Rabbis recognize an ethic outside of the halacha," let us turn for a moment to this question. From the Rabbis' use of these non-actionable measures we see that at times they recognized that they could not legislate an ethical norm without undermining entire legal structures. They recognized that at times there might be a gap between the demands of the law and the demands of ethics. Non-actionable, ethical injunctions were precisely an attempt to bridge that gap.

These injunctions did not carry the weight of law, and clearly the Rabbis put a higher value on preserving the halachic system as a whole than they did on legislating for particular occurrences in an actionable way. Yet they did not just shrug their shoulders at the sometimes inequitable results of their legal system. They tried through ethical injunctions to encourage and press people to act rightly, at least as they understood "the right and the good."

In sum, then, we see that when the Rabbis realized that certain legislation would undermine useful halachic

structures which served well most of the time, they turned to purely ethical claims to try to persuade people to act as they ought. For the most part these ethical claims were not actionable. Nevertheless, they show the fine-tuned sense of right which guided rabbinic law. When the halacha could no longer serve the cause of right without bringing the entire sensibility and coherence of law into question, the Rabbis, realizing the limits of any human system, extended the system into the realm of pure ethics. They could enforce only what could be made humanly reasonable or provable. God, the ultimate source of discernment, adjudicated the rest.

FOOTNOTES

¹Aaron Lichtenstein, "Does Jewish Tradition Recognize an Ethic Independent of the Halakha?" Contemporary Jewish Ethics, ed. Menachem Marc Kellner (New York: Sanhedrin, 1978), pp. 102-123.

²Euguen B. Borowitz, "The Authority of the Ethical Impulse in 'Halakha'" (1981). Unpublished manuscript.

³Chanoch Albeck, Introduction to the Talmud, Bavli and Yerushalmi (Tel Aviv: Dvir Co., 1964). (Hebrew)

⁴R. N. Rabbinovicz, מ'רבי' רבין, (New York: M. P. Press, 1976).

⁵Here and in other Mishnayot in Gittin, tikun haolam can be understood as "a precaution for the general good." See for example Herbert Danby, The Mishnah (New York: Oxford Univ. Press, 1933), pp. 311-312. The relevant passages are Gittin 4:2, 3, 6, 7, 9 and 5:3.

⁶Mechilta de-Rabbi Yishmael, Yitro 2.

⁷Shama Friedman, "ברוך ה' אלהינו, שכל המצוות נמשכות אחריהן", Texts and Studies; Analecta Judaica, vol. 1, ed. H.Z. Dimitrovsky (New York: JTS, 1977), pp. 277-321; Meyer S. Feldblum, "Professor Abraham Weiss: His Approach and Contributions to Talmudic Scholarship," The Abraham Weiss Jubilee Volume, The Abraham Weiss Jubilee Committee (New York: Yeshiva Univ., 1964), pp. 15-16.

⁸Chanoch Albeck, op. cit., p. 417.

⁹According to the ג'ר and the ע"ר, the text should read .

¹⁰B.M.30b. The midrash is cited in the name of R.Yochanan, a second generation Palestinian Amora.

¹¹George Horowitz, The Spirit of Judaism (New York: Central Book Co., 1963), p. 572.

¹²Ibid., p. 573.

¹³Ibid.

¹⁴Encyclopedia Judaica, 1972, ed., s.v. "Torts" by Shalom Albeck, p. 1276.

¹⁵Horowitz, op. cit., p. 574.

¹⁶Ibid., pp. 618-619.

¹⁷Shama Friedman, "פרק שאר רבה בבבלי, בצירוף מבט כללי על", Texts and Studies; Analecta Judaica, vol. 1, ed. H. Z. Dimitrovsky (New York: Jewish Theological Seminary, 1977), pp. 277-321.

¹⁸See for example B.K. 98b, 100a, and 117b.

¹⁹B.K. 98a (A-15)

²⁰See pp. 44-45.

²¹David Pardo (חסד' דוד), the seventeenth century commentator, notes this transition in the understanding of the categories of gerama and garmi in his commentary to Tosefta Baba Kamma 6:5.

²²See p. 36.

²³See pp. 40-41.

²⁴Baba Mezia 4:1.

²⁵Baba Mezia 46b-- ואפני מה אחרו מעשה קונה גזירה
שמה יאמר לו נשפוט חט"ק בעצ"ה.

²⁶Baba Mezia 1:6-- מצא שטר' חוב אם יש בהן אחריות
נכסם לא יחזיר שטר' דין נפרעין מהן אין בהן אחריות
נכסים חזיר שאין בהן דין נפרעין מהן דבר' רבי מאיר
וחכמים אומרים אין בהן כח ואין להם כח לא יחזיר שטר' דין נפרעין מהן.

²⁷Baba Mezia 1:8-- מצא אחרות שום ואחרות מלון שטר'
חזירה ומאונן שטר' בירורין וגם מעשה ב"ה לה חזיר ...

²⁸Marcus Jastrow, A Dictionary of the Targumim, Babli and Yerushalmi, and the Midrashic Literature (London: Luzac, 1903), p. 467: "חט"ק" -- "final decision, adjudication"; "שטר' חט"ק אמת" -- "legal documents" giving the claimant the title for the seized property"; Also p. 19: "אברכתא" -- "legal permission to a creditor to trace the debtor's property for the purpose of having it seized."

²⁹Rabbinovicz, op. cit., on Baba Mezia 16b,
note 40.

³⁰Comment by משנה כ"א' on משאבת שלמה
פרק ט' מ"ח, Vilna ed.:

ובתוה בספר'ם והעמק'א כתר לוטרא מדאבק'נהו רחמנא
בחד עיטא ול' הרמב"ם ז"ל בפ' המענה באינו מעשון השמש
אלא בסך משם גאון וכן מצ'נו בעמ' ברכות כ"ה והעמק'א
בפ' כיצד מברכין ואינו מעקר הנוסחאות אלא כה המכ"ם
הראשונים והאחרונים גרס' ע'.

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Rabbinic Texts

Mechilta de-Rabbi Yishmael

Mishnah

Tosefta

Palestinian Talmud

Babylonian Talmud, Vilna edition

APPENDIX

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שיטת כיון להקדים קיומא לה ברעויותא לבית... כסויותא
לחולה יחיד מהני' כדמיון לה ברעויותא ואל"ה
נגלה דקיומא ברעויותא אפי' להחייב על מה כחל מוקד לחשב
ו' דהני ו' חללה וסויה לזכא לחשב דפ' יחיד דהני' לחשב

בין דאָס - אַזאַ מַסָּס וועט דאָס קאַפּט לל מילי -
דאָס נאָכאַ - אַזאַ מַסָּס אַזאַ עמדה בנפיה לל דר שאל תאָ
אזא וואָס אַזאַ לִקְחָ לִקְחָ - מעמדה - משמע שולחם ביד
ומועדה לִקְחָ - סכסס - במקל חרס לן כהרדא דהמעמדה ומסס

פשיטא כיון דאפקיה קיימא לה ברושתיהו
לכל מילי לא צריכא דקמו לה באפה כי הא
דאמר רבה אמר רב מרנה אמר רב "המעמד
בהמת תבור על קפת תבור דייב ממעמד
פשיטא לא צריכא דקם לה באפה אמר לה
אבי לרב יוסף דביישא אמת לן ולסמים
נמי דביישא: מסה לרעה נגס דרעה
במי: אמר תתנו דסאן אילומא תתנו
דבעל בתסה תנינא הוא זמנא *סמח
לשימ' הנה ולשואל לנושא שבר ולשימ'
כולן נגסו תרת הבעלים אלא תתנו
דשימ' ושימ' קמא אפטר לה לגמי לימא
תודי תזבחת דרבא *דאמר רבא שמי
שמי' לשימ' דייב אמר לך רבא *סמח
דמי לרעה לברכותיה דאורחיה דרעה

בחקל ואתשטען מתני' הרבשה
בחקל ו היה משיב: הלא החתיו
דשומר וכו' משמע משה שומר
לדעה נכונה הרעה החתיו וחלו
בעלם ומשמע דנה בדי שני
ויראשין משלוק: שומר שומר
למדת חיים - חפץ בלשון ודמה
ליה מפקיד את חיותו לי בשטעה
חיה לא חיותו לי בשטעה שואבה

למיל מדי:

כפי' המפקד (כ"ט טה) : לבריות
לתלמידו : שומר אצדו : הכנים
אצדו חזירו לביתו בדמיו ואשפתו
אל תוך ביותו (דברים נג) : דלא
כפי' לחיות רפואה נעלה : דעשוק
במחש פתור מן המחש כחולק
בדרך נפקא לן במש' (ד' נב) :
החזירה

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למיספר לבריוליה איבא דאמרי מוקתני מסיה לרועה ולא קתני מסיה
לארד שיש מאי מסיה לרועה מסר רועה לבריוליה דאורחה דרועה למיספר
לבריוליה אבל לארד לא לימא מסייע ליה לרבא דאמר רבא ישומר שמסר
לשומר חייב אמר לא דלמא אורחא דמילתא קתני והוא הדין לארד : איתמר
*שימא איתיה רבה אמר כשומר תגם דמי רב יוסף אמר כשיש דמי
רבה אמר כשימא תגם דמי מאי הנאה קא מסר ליה רב יוסף אמר כשיש דמי
יבההיא הנאה דלא בעיא למיתבי ליה דפחא לעניא הוי כשיש איבא דמפשי
היורב יוסף אמר כשיש דמי כיון דהנמא שעבדיה בעל כורחה הלכך כשיש
דמי (סיקן) התורה לעולם השב חייא אמר תגשבר (שבר) אית תרבי וסף לרבה
דמורח

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החוק דן בעל הדין. כללית חלק חבירו מרשותו. מן גוף ושלד כיון דהגון קרה ליה בדרשותיה גם לענין חובותיו ים (לחבר) בעלים יותר מרשותו וזה משום (לפני דהנה בדרשותיה לכל מלי ים (ה) מה שחבר בדרשותיו לכל מלי ים לו לבעול מלי :

ומעמיד הצדק על קצה הכדור הלבן - והט"ס שחן הצהלה של דייב מעטס בן הרגל דלע"צ דמייב בעידה מדירה כחול וסוף עשה כעו מדויק פקטו של הצדק בנרו של הצדק אבל חן לפרט דמייב מעטס אש דברי הדיקא

[illegible]

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בבבל שאלוהו בניהו לא יפטר מלחיות רפואה לעמיה מן שיטל לקיים שחיסם כדמותם בבשרם (דף סז ע"ב) ולא נפקא לן מחוקה
במקום במהם פסוק מן המטה [א] הלא חזקא וסבא האלט יטול לקיים שחיסם וסבארו הוא דלאו חזקא שום ט' תפילין ברחשו וזעיהו כבדו
וזהו בפסוקי יפטר מן המטה ועוד דכפרה חין בין הערוד (דברים נב) חזק דרפוינה דרב יוסף לא שכיח ולי פסדה ליה כל זמן שהאפידה
יפוטו שמה ופסחה ופסק ר"ח ה"ג הדלסה כרב יוסף משום האחרין בחין פ' החודר (שם) דכ"ט חזק לכו פרושה דרב יוסף
בפסוק ולי דר' ליה לחדר לאפידה לא שרי הלא יוסף פרושה דרב יוסף לא שכיח ולי דר' חזק לכו פרושה דרב יוסף
פסק הרשב"א במטה פסוק מן המטה חזק דר' ליה נפשה שומר שרי דר' חזק לכו פרושה דרב יוסף לא שכיח ולי דר' חזק לכו פרושה דרב יוסף
מן לוקחך ממי בדרשין הדלסה כרב יוסף דרשני רב יוסף לעולם בעיניהו המסתמרה וקצ"ל דלא בעיין דמה בעלים כדברי אלפז
י"ט שרי לא שכיח דלאו מליצות (פ"ד ג' ע"ב) כי דר' חזק לכו פרושה דרב יוסף דר' חזק לכו פרושה דרב יוסף דר' חזק לכו פרושה דרב יוסף
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(b) (5) DPP

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מסרתי לכם את המלך
ביום הזה

1999

החבל

פרק י"ג בבא קמא

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running away took all available funds with him. (12) Even in the case where the capital matter has not yet been adjudicated. (13) With all his available funds. (14) And could thus not become subject to be paid for damages in the case of [Tana, where payment could only be made out of its own body; cf. supra 16b. [The plaintiff, however, could not take the ox itself in payment as it is to be mortgaged. V. Tosaf.]] (2) Cf. Num. XXXV. 17, 18 and 23. (3) V. supra 50b. (4) I.e., it is fit to cause. (5) Cf. Ex. XXI. 26-27. (2) Kid. 24b; supra 88a. (3) And the act of the master in the second case is not considered a cause of damage to effect such a result.

(4) Kid. ibid., and cf. supra 56a. (5) Enumerated Mishnah supra 83b. (6) Lit. 'how long he is likely to suffer ... and how long he will not.' (7) Supra 90b. (8) [This usually represents R. Jeremiah.] Cf. Sanh. 17b. (9) [And yet R. Akiba does not impose more than four hundred zuz, the same amount as mentioned by the first Tanna.] (10) [The figure 400 mentioned by him being a maximum whereas R. Akiba would award this amount to all alike.] (11) For the execution of a judgment. (12) Sustained by the plaintiff. (13) I.e., you have gone to a great amount of trouble which could however be of no practical avail.

32.6 5.0
 32.6 5.0

DATE OF Q
E A.2

[illegible]

1. $2x + 3y = 12$
 2. $x - y = 4$
 3. $3x + 2y = 10$
 4. $x + y = 6$
 5. $2x - y = 3$
 6. $x + 2y = 8$
 7. $3x - y = 5$
 8. $x + y = 7$
 9. $2x + y = 9$
 10. $x - 2y = 1$
 11. $3x + y = 11$
 12. $x + y = 5$
 13. $2x + y = 7$
 14. $x - y = 3$
 15. $3x + 2y = 12$
 16. $x + y = 4$
 17. $2x + y = 6$
 18. $x - y = 2$
 19. $3x + y = 9$
 20. $x + y = 3$
 21. $2x + y = 5$
 22. $x - y = 1$
 23. $3x + y = 7$
 24. $x + y = 2$
 25. $2x + y = 4$
 26. $x - y = 0$
 27. $3x + y = 5$
 28. $x + y = 1$
 29. $2x + y = 3$
 30. $x - y = -1$
 31. $3x + y = 3$
 32. $x + y = 0$
 33. $2x + y = 1$
 34. $x - y = -2$
 35. $3x + y = 1$
 36. $x + y = -1$
 37. $2x + y = -1$
 38. $x - y = -3$
 39. $3x + y = -1$
 40. $x + y = -2$
 41. $2x + y = -2$
 42. $x - y = -4$
 43. $3x + y = -3$
 44. $x + y = -4$
 45. $2x + y = -4$
 46. $x - y = -5$
 47. $3x + y = -5$
 48. $x + y = -5$
 49. $2x + y = -5$
 50. $x - y = -6$
 51. $3x + y = -6$
 52. $x + y = -6$
 53. $2x + y = -6$
 54. $x - y = -7$
 55. $3x + y = -7$
 56. $x + y = -7$
 57. $2x + y = -7$
 58. $x - y = -8$
 59. $3x + y = -8$
 60. $x + y = -8$
 61. $2x + y = -8$
 62. $x - y = -9$
 63. $3x + y = -9$
 64. $x + y = -9$
 65. $2x + y = -9$
 66. $x - y = -10$
 67. $3x + y = -10$
 68. $x + y = -10$
 69. $2x + y = -10$
 70. $x - y = -11$
 71. $3x + y = -11$
 72. $x + y = -11$
 73. $2x + y = -11$
 74. $x - y = -12$
 75. $3x + y = -12$
 76. $x + y = -12$
 77. $2x + y = -12$
 78. $x - y = -13$
 79. $3x + y = -13$
 80. $x + y = -13$
 81. $2x + y = -13$
 82. $x - y = -14$
 83. $3x + y = -14$
 84. $x + y = -14$
 85. $2x + y = -14$
 86. $x - y = -15$
 87. $3x + y = -15$
 88. $x + y = -15$
 89. $2x + y = -15$
 90. $x - y = -16$
 91. $3x + y = -16$
 92. $x + y = -16$
 93. $2x + y = -16$
 94. $x - y = -17$
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 103. $3x + y = -19$
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 105. $2x + y = -19$
 106. $x - y = -20$
 107. $3x + y = -20$
 108. $x + y = -20$
 109. $2x + y = -20$
 110. $x - y = -21$
 111. $3x + y = -21$
 112. $x + y = -21$
 113. $2x + y = -21$
 114. $x - y = -22$
 115. $3x + y = -22$
 116. $x + y = -22$
 117. $2x + y = -22$
 118. $x - y = -23$
 119. $3x + y = -23$
 120. $x + y = -23$
 121. $2x + y = -23$
 122. $x - y = -24$
 123. $3x + y = -24$
 124. $x + y = -24$
 125. $2x + y = -24$
 126. $x - y = -25$
 127. $3x + y = -25$
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 129. $2x + y = -25$
 130. $x - y = -26$
 131. $3x + y = -26$
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 133. $2x + y = -26$
 134. $x - y = -27$
 135. $3x + y = -27$
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 147. $3x + y = -30$
 148. $x + y = -30$
 149. $2x + y = -30$
 150. $x - y = -31$
 151. $3x + y = -31$
 152. $x + y = -31$
 153. $2x + y = -31$
 154. $x - y = -32$
 155. $3x + y = -32$
 156. $x + y = -32$
 157. $2x + y = -32$
 158. $x - y = -33$
 159. $3x + y = -33$
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 161. $2x + y = -33$
 162. $x - y = -34$
 163. $3x + y = -34$
 164. $x + y = -34$
 165. $2x + y = -34$
 166. $x - y = -35$
 167. $3x + y = -35$
 168. $x + y = -35$
 169. $2x + y = -35$
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 173. $2x + y = -36$
 174. $x - y = -37$
 175. $3x + y = -37$
 176. $x + y = -37$
 177. $2x + y = -37$
 178. $x - y = -38$
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 188. $x + y = -40$
 189. $2x + y = -40$
 190. $x - y = -41$
 191. $3x + y = -41$
 192. $x + y = -41$
 193. $2x + y = -41$
 194

