

TIME 4 MISHNA



Summaries

בְּבֵרָא קַמָּא

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בבא קמא

מסכת בבא קמא in Key terms, concepts and rules:

Rules:

דיו לבא מן הדין להיות כנדון - When making a קל וחומר the law learnt cannot be stricter than the law from where it is learnt

קיים ליה בדרבה מיניה - If one is חייב 2 punishments for 1 act, he only receives the harsher one

המוציא מחברו עליו הראיה - One who is trying to take something from someone else must prove that he is entitled to it.

ממון המוטל בספק חולקים - if it's a doubt as to who is entitled to some money, they must split it

אין שלים לדבר עבירה - a messenger who sins on behalf of someone else is חייב himself

Concepts and Terms

- **נזק שלם** - Payment for the entire damage
- **חצי נזק** - Payment for half the damage
- **מועד** - An animal which damages regularly
- **תם** - An animal which doesn't damage regularly
- **מזיק** - The one who is responsible for the damage
- **ניזק** - The one whose property is damaged
- **שמירה מעולה** - A high-level prevention of damage
- **שמירה פחותה** - A low-level prevention of damage
- **תשלומי כפל** - Payment of an item plus its value
- **תשלומי ארבעה וחמשה** - Payment of 4 (for a sheep/goat) or 5 (for an ox) times its value if you steal then slaughter/sell it
- **קרן וחומש** - Something's value plus a 5th
- **עדים זוממים** - Witnesses about whom it is testified that they couldn't have witnessed what they claim, since they were elsewhere at the time

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- **משיחה** - Pulling something / making it move in order to acquire it
- **הגבהה** - Lifting something up in order to acquire it

שוה פרוטה - The smallest significant value

שומר חנם - one who watches over someone's possession for no charge

→ **טוען טענת גנב** - When the שומר חנם claims that someone else stole the item, but really he did

יאוש - When the owner of something gives up hope of retrieving it

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- **The 4 נזקים אבות – categories of damage:**

- 1) **שור** – caused by one's animal

→ **קרן** – goring or damaging in an unusual way

- If it's a '**מועד**' – one which gores **regularly** – he must pay '**נזק שלם**' – payment for the **entire damage**; if it's a '**תם**' – one which **doesn't gore regularly** – he must pay '**חצי נזק**' – for **half the damage**, unless the animal which gored is worth less than that.

- An animal is considered a **תם** the first 3 times that it **gores, pushes, bites, lies down** on something or **kicks**, unless it's a wild animal who is prone to do this, e.g. a bear.

→ **ר' אליעזר**: A domesticated wild animal is considered a **תם**, except for a snake since it can't be domesticated.

→ **שן** – eating or benefitting the owner in another way

- The animal is a **מועד** to eat food fit for an animal

→ **רגל** – walking or damaging in a usual way

- The animal is a **מועד** because it's common and expected

- 2) **בור** – caused by one's digging or uncovering of a pit in a public domain or anything which is prone to cause damage from the moment it's made

- 3) **אש** – caused by fire or anything carried by the wind

- 4) **אדם המזיק** – caused directly by a person; he is always a **מועד**.

- Laws of one category can't be learnt from another.

- If one compensates for damage with land, he must give his **best quality land**.

- One is **חייב** to pay for damage caused **by a lack of protection**, e.g. giving his animal to a child to look after.

- Whoever performs the act which makes something into something which can do damage is **חייב** for damages caused, e.g. digging the **10th טפה of a pit**.

- One is **פטור** if the thing damaged belonged to **הקדש** (בית המקדש property), a **non-Jew** or **הפקר** at the time of damage.

- One is **פטור** if it occurred in the **domain of the 'מזיק'** – one responsible for the damage – even if it was shared with the '**ניזק**' – person damaged – unless the **מזיק** did the damage himself.

- If 2 people **do damage to each other's property**, the one who did more damage must still **pay the difference**.

- One who is owed money because of **damages caused by somebody who then dies** may collect it from his land.

- Cases of damage require a **בית דין** of 3 experts, and **witnesses**.

- The laws of damages apply to both **men & women**.

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- **When an animal is considered a מועד:**

- **רגל:** damages caused by an animal walking in the **ניזק's domain**, or by something it's carrying or is entangled in its hair.
 - It is **הלכה למשה מסיני** that one is **חייב חצי נזק** for **indirect damage**, e.g. stones flying from where the animal treads.
 - **שן:** eating things fit for an animal in the **ניזק's domain** or on the side of a public domain **where animals don't usually go**.
 - If it eats in a public domain and its owner thereby **gains by not having to feed it**, he must pay the **ניזק** the **value of the food he would've fed it**.
 - **קרן:** ר' יהודה: If it gores/pushes etc. on **3 different days**; it reverts to being a **תם** if it **doesn't gore for 3 days** despite opportunity to do so.
 - ר' מאיר: If it gores **3 times** even on the same day; it reverts to being a **תם** only if children are able to **play with it** without it goring.
 - If a **תם** gores in a **public domain: חצי נזק**.
 - ר' טרפון: If it gores in the **ניזק's domain: נזק שלם**, since **קרן** is more strict than **שן** & **רגל** in a public domain, and even **שן** & **רגל** require **נזק שלם** in the **ניזק's domain** (קל וחומר).
- חכמים:** **חצי נזק**, since **'דין לבא מן הדין להיות כנדון'** – when making a **חומר** the law learnt cannot be stricter than the law from where it is learnt, so just like **קרן** in a public domain is **חצי נזק** so too in the **ניזק's domain**.

- **אדם המזיק:** He's a **מועד** if he could've avoided the damage.

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• בור: Placing things in a public domain:

- **חכמים**: If one puts a **jug** down and it breaks and someone gets injured: The owner is **חייב** to pay for the injury, even if the victim broke it.
ר' יהודה: If the breakage was **out of the owner's control** and he left it there without intending to take it back then he's **פטור** since he's made it **הפקר**, which exempts one from paying for damages in cases out of his control.
- **Water, thorns** or **glass**: **חייב**.
- One's **fence** which fell into a public domain and he had time to remove it: **חייב**.
- **Straw** left to become fertiliser: **חייב** and as a punishment **anyone can take it**.
רבן שמעון בן גמליאל: Even during the time of year that people put out fertiliser so it's **מותר** to do this, he's still **חייב** if it causes injury.
- If one lifts up **הפקר dung** and puts it back down, he's **חייב** for any injuries because he acquired it by lifting it up.

• אדם המזיק: Causing damage in a public domain directly:

- One who **falls down** and someone else trips over him: **חייב** if he had time to get up.
- If someone carrying a **beam breaks a jug** being carried by someone else, he's **פטור** since the jug carrier should've avoided the collision.
 - If one is behind the other, the **person at the back is responsible** for colliding, unless the person at the front stops suddenly without warning him.
- 2 people **approaching one another** who injure each other unintentionally are **פטור** if they were both walking/running or one was running on **ערב שבת** when it's **מותר** to run.
- One who injures someone via his **wood-chopping**, even in a **רשות**, is **חייב**.

• שור - קרן - goring/injuring:

- If 2 animals/people **injure each other**, the owner of the one who did more damage must **pay for the extra damage** - **חצי נזק** if his animal is a **תם**; **נזק שלם** if it's a **מועד**.
- **ר' עקיבא**: If a **תם** animal injures a person, its owner is **חייב** to pay **נזק שלם** because the **תורה** says the law of a **מועד** applies if a person is injured.
- If the animal which gores & kills is a **תם**, the **ניזק** - person damaged - takes ownership of part of the living animal, so if it's **worth exactly half the damage** then he **takes it all**.
- **ר' מאיר**: The law of **splitting the value of the live animal** applies to a case where it's **worth the same** as the dead one, which means the **מזיק** - damager - pays **חצי נזק**.
ר' יהודה: The **תורה** says the law includes **splitting the value of the dead animal too**, so it must apply to a case where the **dead animal is worth something**, e.g. if the dead animal decreased in value from **200 זוז** to **50 זוז** and the live animal is worth **200 זוז**, then splitting each one will result in the **מזיק** paying **חצי נזק** - **150 זוז**.

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- **ר' מאיר**: If an animal **gores multiple animals** one after the other, and after each time the ניזק picks up the animal in order to collect part of its value from the owner, they are now responsible for damages. So the owner is only **חייב to pay for the first goring**, and he gives it to the last ניזק, and if that damage is less than the first damage then the 2nd last ניזק takes how much he is owed, etc.
ר' שמעון: The מזיק and ניזק always **become partners** in the מזיק's animal, so the owner is still partly responsible for all the damages and he pays for part of them.
- An animal can be a **מועד for specific scenarios**, e.g. goring only the **same kind** of animals, **small animals** or **people**.
ר' יהודה: Even just for **שבת**, because it sees bright clothes so is more prone to gore then.
 → It becomes a תם after not goring for 3 שבתות.

Different types of owners:

- 1) A **הקדש** animal is not included in the laws of goring, because the תורה says it applies only to "the ox of one's friend".
 - 2) If a Jew's animal gores a **non-Jew's** animal, he is **פטור** because they themselves don't have punishments for these things. If it's vice-versa, the non-Jew is **חייב to pay שלם** always, in order that guard their animals and not be careless.
 - 3) If the animal of a **חרש** – deaf mute, **שוטה** – mad person, or **child** gores, he is **פטור** since he can't be expected to watch over it.
 → If it continuously gores, the בית דין appoint a **guardian** to watch over it and if it gores they warn him to guard it and then it can become a מועד.
 - **ר' מאיר**: If the **owner becomes normal**, the animal **returns to being a תם** since had he been watching over it, it may not have gored.
ר' יוסי: It **remains a מועד**, since its owner didn't change and it's still prone to do damage.
 - 4) The owner of an animal which is **trained to gore** is **פטור**, since the תורה says one is **חייב** "when it gores", not when it is made to gore by others.
- If an animal **gores and kills a person**, it is **stoned to death**.
 → If it becomes a **מועד to kill** and hasn't been put to death yet, its owner must **pay** 'כופר' – the victim's value – to his inheritors if it gores again.
 → If the victim is a **non-Jewish slave**, he must pay the inheritors **30 סלע**.
 → The animal is only put to death if it intended to kill someone for whom it would be **חייב מיתה** for killing.
 → Even the animal of a **woman/orphan/guardian** who looks after the orphans' property/**הפקר/הקדש/הפקר/convert** who has no relatives to inherit from him, **is killed** if it kills a person, since the תורה says the word "שור" 7 times when talking about this, 1 of which is necessary to teach the law and 6 others to include these 6 cases.

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- If a תם animal gores another animal which is found next to its dead new-born child and its unknown whether it was **born and killed because of the goring**, the מזיק must pay **חצי נזק** for the mother, and **a quarter of the damage** done to the child, since 'ממון המוטל' – **בספק חולקים** – if it's a doubt as to who is entitled to some money, they must split it, which in this case means paying half **חצי נזק**.
- The owner of a תם which gores pays no more than the תם's worth, and if it's unknown whether the animal which gores **gave birth before or after it gores**, a **quarter of the child's value** is considered part of the mother's worth.
- **חכמים**: If ראוּבן's possessions are **in שמעון's property without permission** and get damaged by שמעון's property, שמעון is **פטור**.
רבי: Even if ראוּבן had permission but שמעון **didn't explicitly accept to watch over it**, שמעון is **פטור**.
- **חכמים**: If someone intends to hit someone but hits a pregnant woman instead and **causes her to miscarry**, he must pay her **husband** 'דמי ולדות' – the value of the foetus – and 'שבח ולדות' – the amount that her value increases by being pregnant and fatter.
רבי: If this was her **first time giving birth**, he is **פטור** from שבח ולדות since her value decreases when she's pregnant because she may not survive the birth. In a case where there is שבח ולדות, it is split between the **woman and her husband**.
 → If her **husband is dead** so can't receive the money, he must give it to his inheritors; if he was a convert and **has no relatives** to inherit it, he is **פטור**.
- **בור**: **Placing things in a public domain**:
 - If someone digs a pit in a private domain and **makes his domain הפקר** for people to walk through, he is **חייב** to pay for damages caused by it.
 - Even though one can't own something in a public domain, the תורה considers it **as if you own a pit** which you dig there, so that you're **חייב** to pay for damages caused.
 - If one digs a **10 טפחים deep** hole in the ground – even if it's not a normal pit – he is **חייב** to pay if someone **dies** by falling into it.
 → If it's not that deep, one is only **חייב** if someone **gets damaged** by falling.
 - If **2 people dig a pit together** and 1 of them gives the cover to the other to put over it in order to prevent people from falling in, the **2nd one is חייב** to pay for damages if he doesn't do so.
 → If the 1st one covers it and the 2nd sees that it's been uncovered yet doesn't cover it, the **2nd one is חייב**.
 - If one covers his בור with a **cover strong enough** to hold the animals which usually walk there, he is **פטור** if something falls into it.
 - If an **animal falls down outside of the pit** as a result of someone digging in the pit, he is **פטור** since it didn't fall into it.
 - One is only **חייב** to pay for an **animal** which falls into his pit, but not **objects/people**.

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• שור – eating – and רגל – walking:

- Because an animal is always a מועד for שן/רגל, even a שמירה פחותה – low-level guarding, e.g. a door which can stand in a normal wind – is enough to exempt you from paying for damages.
 - If a hole in the door/wall of the enclosure is made at night and his animal escapes before he discovers the hole and it does damage, he's פטור.
 - If thieves take the animals out, they become חייב to watch over it and therefore must pay for damages.
 - If one puts it out in the sun and as a result it gets agitated and breaks through the door, he's חייב.
- One who gives it to somebody incompetent to guard it is חייב.
- If one's shepherd gives it to another shepherd to watch over, the one watching over it is חייב.
- If it falls into a garden, he's פטור to pay for the damage since it's out of his control, but חייב to pay for what the owner gained by not having to feed it.
- חכמים: If it walks into the garden normally and does damage, he's חייב to pay for the damage, which is calculated based on how much the area of a בית סאה in that field decreased in value because of the damage.

רבי שמעון: If the fruit which it ate/damaged are ripe and no longer require the ground, then he must pay the value of the fruit and not calculate it based on the rest of the field.
- One who puts a stack of grain in someone else's property is חייב for damages it causes, and if the property owner's possessions does damage to it, the owner is פטור.

• אש – fire:

- One who gives a glowing coal to an incompetent person is פטור but is considered liable by Hashem.
- If one gives to a normal person, that person is חייב since 'אין שליח לדבר עבירה' – a messenger who sins on behalf of someone else is חייב himself.
- Whoever does the last thing to cause the fire to grow and cause damage is חייב.
 - If it's an unusually strong wind which does it, he is פטור.
- One who singes someone else's field, causing it to need another ploughing, is חייב.
- חכמים: If one's fire crosses past a 4-אמות tall fence or 8-אמות wide river, he's פטור.

ר' אלעזר בן עזריה: Even any distance of about 137 אמות.

ר' אליעזר: Even a distance of 16 אמות, the standard width of a public domain.

ר' עקיבא: 50 אמות.

ר' שמעון: It depends on how large his fire is.
- ר' יהודה: One who sets a stack of grain in which things are hidden on fire must pay for those contents too.

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• The laws of a גנב – one who steals secretly:

- One who steals from someone else must pay back 'תשלומי כפל' – the item plus its value, so that he loses the amount that he tried to make the other person lose.
- If he steals an **ox** or **sheep** and **slaughters** or **sells** it, he must pay back 'תשלומי ארבעה וחמשה' – 4 (for a sheep/goat) or 5 (for an ox) times its value.
- One who steals **an already stolen item** from someone is **פטור** to pay these fines, since the תורה says it applies only if it was stolen "from the man's house".
- If 2 witnesses testify that someone **stole** an animal and 2 others testify that he **slaughtered/sold** it, and they're both found to be 'עדים זוממים' – meaning other witnesses say they were with these witnesses at the time so they couldn't have witnessed this: the 1st pair pays him **double** the value of what they said he stole and the 2nd pair pays **2 or 3 times** the value, which is what they tried to make him pay.
 - If 1 of the 2 witnesses is invalidated, their whole testimony is **invalid**.
 - If the **1st testimony is invalid, so is the 2nd**, since that liability is reliant on the fact that he stole it.
- If he **slaughters** it **on שבת** or **for עבודה זרה** so is **חייב מיתה**; slaughters/sells it after his father died and he therefore **partly inherited it**; or after he **made it הקדש** so it no longer belongs to the original owner, he is **פטור from תשלומי ארבעה וחמשה**.
- **חכמים**: If one **steals** an **animal designated for הקדש**, he's **פטור** from the fines since the תורה says it applies only if it was stolen "from the man's house/property".
 - ר' שמעון**: If the owner **didn't specify which animal** he'd give in his designation, then the thief is **חייב** since the owner would need to replace the animal with another animal if it got lost so it's as if it was stolen from *his* property.
- If he leaves any edible part of the animal unsold; he originally owned part of it; or his slaughtering was invalid, he is **פטור from תשלומי ארבעה וחמשה**.
- A thief is only **חייב** to pay the fines if he **acquires the item**/animal, which can be done via 'משיכה' – pulling/dragging it – whilst it isn't in the owner's domain, or 'הגבהה' – lifting it up – even in the owner's domain.
 - So if the **animal dies** before he acquires it, he's **פטור** from paying anything.
 - If he **gives it to someone else** to watch/keep and only the receiver acquires it and then it dies, the **thief is חייב** even though 'אין שליח לדבר עבירה' – a messenger who sins on behalf of someone else is **חייב** himself – since they didn't know that it was stolen.

• Which animals may not be owned:

- 1) **Sheep** and **goats** in inhabited parts of **ארץ ישראל**, since they destroy the **vegetation**.
 - 2) **Chickens** in **ירושלים**/for a **כהן** in **ארץ ישראל**, as they spread **טומאה** from dead insects.
 - 3) **Pigs**, because of when the **earth shook** as a result of a pig being sent into **ירושלים**.
 - 4) **Violent dogs** not tied by a chain, in case a pregnant woman **miscarries from fear**.
- It's **אסור** to spread traps for **doves** near to inhabitancy, as it's stealing.

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- **What one must pay for injuring somebody:**

- 1) 'נזק' – how much his **market value** was reduced
 - This is the only payment which applies to an **animal** which damages too.
 - Another exemption of an animal's damage is paying דמי ולדות for causing a woman to miscarry.
 - 2) 'צער' – how much the victim would pay not to feel that **pain**
 - 3) 'רפוי' – **medical** costs
 - Either he can pay the entire estimated payment in one go, or each day for that day's costs, in which case he must pay to cure further resulting health problems, e.g. blisters.
 - 4) 'שבת' – what he **would earn** by working during his healing period as an injured man.
 - One who injures his **Jewish slave** is פטור from paying שבת.
 - 5) 'בשת' – **embarrassment**
 - The more **lowly** the person who **embarrasses** and the more **important** the person who **is embarrassed**, the higher the payment.
 - The most one has to pay for a **punch**: **חכמים**: A סלע (½ זוז)
 - ר' יהודה משום ר' יוסי הגלילי: **זוז 100**
 - For a **slap** on the cheek: **זוז 200**
 - For a **back-slap** on the cheek: **זוז 400**
 - If he **pulls his ear**; pulls out his **hair**; **spits** onto him; takes off his outer **garment**; uncovers a **woman's hair** in public: **זוז 400**
 - ר' עקיבא: These payments are for everyone, since it's impossible to measure the embarrassment based on the person, and anyway every Jew has important ancestors.
 - Even if one embarrasses **someone who isn't particular** about their embarrassment, he is still **חייב**.
 - One who embarrasses an **unclothed** person is **חייב**, since he adds to his embarrassment.
 - One who embarrasses a **blind** person or someone who is **asleep** who realises when he wakes up what happened is **חייב**.
 - One is only **חייב** for בשת if it's **intentional**, because the example the תורה gives is an intentional case.
 - ר' יהודה: One who injures a non-Jewish slave is פטור from בשת, since the תורה says this only applies to someone embarrassing "his brother", i.e. a fellow Jew.
 - חכמים**: He's **חייב**.
- One who injures his **parents** without making a wound or injures someone on **כיפור** – which is punishable by כרת - is **חייב** to pay, but if he did wound his parents or injured someone on **שבת**, he's פטור because he receives the death penalty of בית דין and 'קים' – ליה בדרכה מיניה – one only receives the harsher punishment.
 - A **חפש** – deaf mute, **שוטה** – mad person, or **child** who injures is פטור.

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• The laws of a גזלן - one who steals forcefully:

- One who forcefully steals from someone must **return the item**, unless it has undergone an irreversible change in which case he has acquired it so must **pay back the value** that it was worth **at the time of stealing**.
 - One who steals an animal which then **gives birth** or **is sheared** must return the **actual animal** since it hasn't changed, and must pay the **value that the foetus or wool** was worth at the time of stealing.
 - **Aging** is considered a change for **servants** and **animals**.
 - ר' מאיר: He must give back the **actual servant**, since servants have the same status as land, which always remain in the possession of their original owner and can't be acquired by the thief.
 - A **coin** cracking, **fruit** rotting and **wine** turning sour are considered changes.
 - A **coin** becoming invalidated in that region; **תרומה** food becoming טמא; **חמץ** being owned by him during פסח; an **animal** being used for **relations** or **idolatry**, **developing a blemish** which invalidates it from being brought as a קרבן, or being **sentenced to death** for killing somebody, isn't considered a recognisable change, so he must return whatever he stole.

The laws of one who damages something they're working on:

- 1) A **craftsman** who breaks something which he tries to improve must **pay the owner the value** it was worth **when it broke**, since unlike a thief he doesn't intend to acquire it.
- 2) A **builder** who damages stones of a wall which he is demolishing is **חייב** to pay.
- 3) A **dyer** who burns somebody's wool by dyeing it for too long is **חייב** to pay for it.
 - If he uses **bad-quality dyes**, the owner only needs to pay him either the increase in the wool's value or the cost of the dye – whichever is less.
 - ר' מאיר: If he dyes it in a **different colour** to what the owner specified, the **dyer must pay** him the value of his wool, like a גזלן.
 - ר' יהודה: The **owner must pay** him either the increase in the wool's value or the cost of the dye, since the dyer doesn't intend to keep the wool like a גזלן.

The laws of someone who falsely swears that he didn't steal something:

- One who falsely swears that he didn't steal something worth at least a 'שוה פרוטה' – the smallest significant value – and then admits that he did must find and pay the 'נגזל' (person from whom he stole) 'קרן וחומש' – its value plus a fifth – since he gave up retrieving it from the גזלן because of his oath.
 - He/his messenger may not give it to the **נגזל's messenger**, rather to him.
 - If the **נגזל dies**, he must return it to his inheritors.
 - If he later **only owes him the חומש**, he doesn't need to look for the נגזל.
 - If he **swears falsely that he paid the חומש**, he must pay קרן וחומש for that חומש, as long as the חומש itself is worth a שוה פרוטה.

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Benefitting from a stolen item:

- A **גזלן's inheritors** are **פטור** from paying back the item if (a) it's undergone an irreversible change, and (b) the גזלן has had **'יאוש'** – given up hope of getting it back, unless they also inherited land, since that can be taken as payment.
- It's **אסור** to exchange money for tax-money which may have been collected dishonestly, or take charity from it, since one **may not benefit** from **stolen money**.
 - It's **מותר** to benefit from the **tax-collector's personal money**.
- If a **Jewish tax-collector steals** something from someone and replaces it with someone else's thing, it's **מותר** to keep it since its owner has had **יאוש** because בית דין would require witnesses' testimony of the stealing so the thief is unlikely to pay back.
 - If the thief **isn't Jewish**, it **needs to be determined** whether he has had **יאוש**.
- Even something which **can only be acquired מדרבנן**, e.g. bees, may not be kept by the owner of the property into which they enter unless the owner has had **יאוש**.
 - Even though a **woman** or **child** is an invalid witness, they are believed to say from whose property bees came.
 - It's **מותר** to **trespass through someone's field** in order to retrieve one's bees, but he's **חייב** to pay for any damage he causes.
 - **ר' יוחנן בן ברוקא**: It's **אסור** to **cut his branch** in order to take his bees back, since this damage is more serious and permanent.
 - **ר' ישמעאל his son**: It's **מותר** if he pays for the damage, because this was one of the laws established upon entering ארץ ישראל.
- If it's widely known **that ראוּבן's item had been stolen and he finds it in שמעון's possession**, if witnesses testify that this is that item and שמעון claims that he bought it from someone else then and swears how much he bought it for then ראוּבן **can force him to sell it to him** for that amount.
- If **2 people's items are in danger of being lost**, e.g. swept away by a river, and the owner of the less valuable one abandons his in order to save the other person's, he is only entitled to payment for his **service**, unless he made a condition with the other person first that he'd pay him for **the loss of his animal**.
- It's **אסור** to buy something being **watched over by an employee**, e.g. sheep.
- It's **מותר** to buy **clothes** from married women who assumedly make and sell them with their husband's consent, **eggs** and **chickens**, unless the seller tells him to hide them.

Returning a stolen item:

- If **stolen land is damaged or snatched**, the גזלן is **פטור** if it would have happened even if he wouldn't have stolen it, since land can't be acquired by stealing.
- If one **steals, borrows** or takes someone's item to **watch over** in an inhabited area, the owner may force him to return it to him there and not in the desert, unless he mentioned when he gave it to him that he was going to the desert.

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PEREK 3:

- If one's animal **blinds the owner's servant**, he is **פטור** from paying or freeing his slave, because the תורה says this applies only when the master does that.
- Whereas one is **חייב** to pay if his animal **injures his parents** or starts a **fire on שבת**, he is **פטור** if he does it himself since 'קים ליה בדרכה מיניה' – if one is **חייב** 2 punishments for 1 act, he only receives the harsher one, in this case the death penalty.
- Unless **witnesses** see the actual goring and know whose animal did it, the owner is **פטור** from paying because 'המוציא מחברו עליו הראיה' – whoever is taking the money must prove that he's entitled to it.
 - If witnesses see that **1 of someone's תם animals** gored but they don't know which one, the owner is **חייב** to pay from the cheaper one, so if it's worth less than half the damage then he gains by not paying as much.
 - If it's unknown whether a big/small or **תם/מועד** animal gored, he pays the lesser amount.

PEREK 4:

- ר' יהודה**: In the last 3 cases, the animal **isn't killed** because it has no owner.
- The owner can't make his animal **הקדש** or **benefit** from it **after** its sentence has been passed to be stoned.
 - If he makes it **הקדש** **before** the sentence is passed, it's valid so he must redeem it onto money and the animal is stoned.
 - If one gives his animal to someone to watch over/borrow, that person becomes responsible and liable to pay for the damages.
 - **ר' מאיר**: A 'שמירה מעולה' – high-level prevention of damage – is necessary to **exempt one from paying** for damages.

ר' יהודה: A 'שמירה פחותה' – low-level prevention of damage – is enough to exempt one from **נזק שלם**, since the תורה says one is **חייב** only "if its owner didn't guard it" at all.

ר' אליעזר: **No prevention** can exempt one from paying for the damages of a **מועד**.

PEREK 5:

- If a **normal adult animal** falls into one's pit during the day, he is **פטור** since it usually watches where it's going.
- Even though the תורה mentions an **ox/goat/domesticated animal** in regards to the following things, **all animals** are implied, and it only mentions those because they're common:

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- 1) Paying if it falls into your **pit**
- 2) The Jews **distancing it from הר סיני** before they got the תורה
- 3) Paying back **תשלומי כפל** – double the value – for stealing it
- 4) Returning it to its owner **if it's lost**
- 5) Helping it's owner to **unload it**
- 6) **Not muzzling it whilst it works** in one's field
- 7) Not making 2 different species **plough together**
- 8) Not allowing it to **work on שבת**

PEREK 6:

חכמים: We look at it as if it's **all grain**, since the תורה compares a haystack to standing grain, which is visible.

→ One who sets fire to a **house** must pay for its **contents too**.

- If a **slave was tied** to the stack and unable to escape, he is **פטור** from paying, because 'קים ליה בדרכה מיניה' – if one is **חייב** 2 punishments he only receives the harsher one, in this case the death penalty.
- One is **חייב** for causing damage by a **spark** from a hammer
- One whose **camel's load of flax** enters a shop as it passes by is **חייב** if it catches fire, since he put too much on its back, unless the shopkeeper put his candle outside.
ר' יהודה: If it was a **חנוכה candle**, it's **מותר** so he's **פטור**.

PEREK 9:

→ He must also **bring a קרבן אשם** for swearing falsely.

- A '**שומר חנם**' – one who watches over someone's possession for no charge – who is accused of stealing it and is '**טוען טענת גנב**' – falsely claims that someone else stole it – is **חייב to pay כפל תשלומי כפל** if **witnesses testify** that he stole it, which is the punishment the thief he lied about would have received.
→ If he **confesses** before witnesses testify, he's only **חייב to pay the קרן** – actual value – since '**מודה בקנס פטור**' – one who confesses to owing a fine is exempt.
- If one swears after stealing from his **father** who then dies, he is **חייב to pay קרן וחומש** to the **father's other inheritors**, even though he should inherit part of it, in order to atone.
→ If he **can't afford to lose out** in the inheritance, **he may borrow money** to pay the other inheritors and the lender can collect it from them since the borrower is unable to pay him back.
 - If one's father makes a '**נדר**' – vow – **prohibiting his son's benefit from him** even after his death, he can borrow money to support himself and the lender can collect the debt from the other inheritors.

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- One who swears after stealing from a **convert** who then dies without any relatives is **חייב to pay the קרן וחומש** to the **כהנים** who are working at the **בית המקדש** when he arrives there.
 - If the **גזלן dies** before doing this, his **inheritors are פטור** since the only reason for him giving the money is to atone, but since the animal has been designated for a **קרבן it should be sold** once it develops a blemish and its value given to the **בית המקדש**.
 - If he **dies after the money has been given** but before the **קרבן** has been brought, the **כהנים may keep the money**.
 - If the **קרבן is brought before the קרן** is given, another **קרבן** must be brought.

PEREK 10:

- If someone accused of stealing/borrowing/taking something to watch over admits that he did so but says that he is unsure whether he paid back, he is **חייב** to pay for it since 'ברי ושמא ברי עדיף' - a definite claim (the accuser's) is stronger than an unsure claim (the accused's).
 - If the accused says he's not sure if did steal/borrow/take it, he's **פטור** since 'המוציא מחברו עליו הראיה' - One who is trying to take something from someone else must prove that he is entitled to it.
- If the **owner is unaware** that his animal was stolen and returned and he then counts his full herd, the **גזלן is פטור** if the animal dies.
 - If he is aware of the stealing, it's only considered returned once he finds out.

What workers must return to their employer:

- **Small threads** which come out when clothes are washed may be kept by the launderer, as well as **3 threads at the edge** of the garment which keep it together when being washed, or more than 3 if they are black on white material.
 - The threads which come out when it's **combed** belong to the owner, since it's a substantial amount so he's particular about it.
- If a tailor **leaves over from the thread** enough to sew something or a **3-by-3 fingerbreadths piece of material** taken from the garment, he must give it to the owner.
- The **pieces of wood** which come off when a carpenter is **smoothing** belong to him, but not those which come off when he **chops** the sides.
- If one works in the owner's property, everything belong to the owner.