

thorns, for the embryo has already been moved [from its place].

IT IS NOT RIGHT TO PLACE NETS FOR DOVES UNLESS AT A DISTANCE OF THIRTY RIS FROM INHABITED SETTLEMENTS. But do they proceed so far? Did we not learn that a dove-cote must be kept at a distance from the town of fifty cubits?¹—Abaye said: They certainly fly much further than that, but they eat their fill within fifty cubits.² But do they fly only thirty ris and no more? Was it not taught: 'Where there is an inhabited settlement no net must be spread even for a distance of a hundred *mil*'?—R. Joseph said: The latter statement refers to a settlement of vineyards;³ Rabbah said that it refers to a settlement of dove-cotes.³ But why not lay down the prohibition to spread nets on account of the dove-cotes themselves?⁴—If you like I can say that they belong to Cutheans,⁵ or if you like I can say that they are ownerless, or if you again like I can say that they are his own.

(1) So that the doves should not consume the produce of the town. (B.B. II, 5.)
 (2) On account of which a dove-cote need not be kept away from the town for more than fifty cubits. (3) Where the doves could thus take rest and fly on to great distances. (4) Why then base the prohibition upon the proximity of a settlement? (5) Who did not recognise the necessity of being scrupulous to such an extent and should therefore not be treated better than they treated others; cf. *supra* p. 211, n. 6. [For a full discussion of the regulations laid down in our Mishnah and developed in the Gemara, as well as their application in the practical life of the Jewish communities in Talmudic times, v. Kraus, *REF*, LIII, 14-55.]

CHAPTER VIII

MISHNAH. [83^b] ONE WHO INJURES A FELLOW MAN BECOMES LIABLE TO HIM FOR FIVE ITEMS: FOR DEPRECIATION, FOR PAIN, FOR HEALING, FOR LOSS OF TIME AND FOR DEGRADATION. HOW IS IT WITH 'DEPRECIATION'? IF HE PUT OUT HIS EYE, CUT OFF HIS ARM OR BROKE HIS LEG, THE INJURED PERSON IS CONSIDERED AS IF HE WERE A SLAVE BEING SOLD IN THE MARKET PLACE, AND A VALUATION IS MADE AS TO HOW MUCH HE WAS WORTH [PREVIOUSLY], AND HOW MUCH HE IS WORTH [NOW]. 'PAIN'—IF HE BURNT HIM EITHER WITH A SPIT OR WITH A NAIL, EVEN THOUGH ON HIS [FINGER] NAIL WHICH IS A PLACE WHERE NO BRUISE COULD BE MADE, IT HAS TO BE CALCULATED HOW MUCH A MAN OF EQUAL STANDING WOULD REQUIRE TO BE PAID TO UNDERGO SUCH PAIN. 'HEALING'—IF HE HAS STRUCK HIM, HE IS UNDER OBLIGATION TO PAY MEDICAL EXPENSES. SHOULD ULCERS [MEANWHILE] ARISE ON HIS BODY, IF AS A RESULT OF THE WOUND, THE OFFENDER WOULD BE LIABLE, BUT IF NOT AS A RESULT OF THE WOUND, HE WOULD BE EXEMPT. WHERE THE WOUND WAS HEALED BUT REOPENED, HEALED AGAIN BUT REOPENED, HE WOULD STILL BE UNDER OBLIGATION TO HEAL HIM. IF, HOWEVER, IT HAD COMPLETELY HEALED [BUT HAD SUBSEQUENTLY REOPENED] HE WOULD NO MORE BE UNDER OBLIGATION TO HEAL HIM. 'LOSS OF TIME'—THE INJURED PERSON IS CONSIDERED AS IF HE WERE A WATCHMAN OF CUCUMBER BEDS¹ [SO THAT THE LOSS OF SUCH WAGES² SUSTAINED BY HIM DURING THE PERIOD OF ILLNESS MAY BE REIMBURSED TO

(1) As even a lame or one-armed person could be employed in this capacity. (2) But not of the previous employment on account of the reason which follows.

HIM], FOR THERE HAS ALREADY BEEN PAID TO HIM THE VALUE OF HIS HAND OR THE VALUE OF HIS LEG [THROUGH WHICH DEPRIVATION HE WOULD NO MORE BE ABLE TO CARRY ON HIS PREVIOUS EMPLOYMENT]. 'DEGRADATION'—ALL TO BE ESTIMATED IN ACCORDANCE WITH THE STATUS OF THE OFFENDER AND THE OFFENDED.

GEMARA. Why [pay compensation]? Does the Divine Law not say 'Eye for eye'? Why not take this literally to mean [putting out] the eye [of the offender]?—Let not this enter your mind, since it has been taught: You might think that where he put out his eye, the offender's eye should be put out, or where he cut off his arm, the offender's arm should be cut off, or again where he broke his leg, the offender's leg should be broken. [Not so; for] it is laid down, 'He that smiteth any man . . . ' And he that smiteth a beast . . . ' just as in the case of smiting a beast compensation is to be paid, so also in the case of smiting a man compensation is to be paid. And should this [reason] not satisfy you,⁴ note that it is stated, 'Moreover ye shall take no ransom for the life of a murderer, that is guilty of death',⁵ implying that it is only for the life of a murderer that you may not take 'satisfaction',⁶ whereas you may take 'satisfaction' [even] for the principal limbs, though these cannot be restored.' To what case of 'smiting' does it refer? If to [the verse] 'And he that killeth a beast, shall make it good: and he that killeth a man, shall be put to death',⁷ does not this verse refer to murder?⁸—The quotation was therefore made from this text: *And he that smiteth a beast mortally shall make it good: life for life,*⁹ which comes next: *and if a man maim his neighbour: as he hath done so shall it be done to him.*¹⁰ But is [the term] 'smiting' mentioned in the latter text?¹⁰—We speak of the effect of smiting implied in this text and of the effect of smiting implied in the other text: just as smiting mentioned

(1) Ex. XXI, 24. (2) Lev. XXIV; for the exact verse see the discussion that follows. (3) But no resort to Retaliation. (4) Lit., 'If it is your desire to say (otherwise)'. (5) Num. XXXV, 31. (6) I.e., ransom, and thus release him from capital punishment. (7) Lev. XXIV, 21. (8) Where retaliation actually applies. (9) Ibid. 18. (10) Ibid. 19.

in the case of beast refers to the payment of compensation, so also does smiting in the case of man refer to the payment of compensation. But is it not written: *And he that smiteth¹ any man mortally shall surely be put to death²* [which, on account of the fact that the law of murder is not being dealt with here,³ surely refers to cases of mere injury and means Retaliation]?⁴—[Even this refers to the payment of] pecuniary compensation. How [do you know that it refers] to pecuniary compensation? Why not say that it really means capital punishment?⁵—Let not this enter your mind; first, because it is compared to the case dealt with in the text, '*He that smiteth¹ a beast mortally shall make it good*', and furthermore, because it is written soon after, '*as he hath done so shall it be done to him,*⁶ thus proving that it means pecuniary compensation. But what is meant by the statement, 'If this reason does not satisfy you'? [Why should it not satisfy you?]⁷—The difficulty which further occurred to the Tanna was as follows: What is your reason for deriving the law of Man injuring man from the law of smiting a beast and not from the law governing the case of killing a man [where Retaliation is the rule]? I would answer: It is proper to derive [the law of] injury⁶ from [the law governing another case of] injury,⁷ and not to derive [the law of] injury⁶ from [the law governing the case of] murder. It could, however, be argued to the contrary; [that it is proper] to derive [the law of injury inflicted upon] man from [another case of] man but not to derive [the law of injury inflicted upon] man from [the case of] beast. This was the point of the statement 'If, however, this reason does not satisfy you.' [The answer is as follows:] 'It is stated: *Moreover ye shall take no ransom for the life of a murderer that is guilty of death; but he shall surely be put to death*, implying that it was only 'for the life of a murderer' that you may not take ransom whereas you may take ransom [even] for principal limbs though these cannot be restored.' But was the purpose of this [verse],

(1) E.V., 'killeth'. (2) Ibid. 17. (3) As follows in the text, '*Breach for breach, eye for eye*' etc. (4) The phrase, '*be put to death*', would thus refer exclusively to the limb which has to be sacrificed in retaliation. (5) As indeed appears from the literal meaning of the text. (6) Lev. XXIV, 19. (7) I.e., where Man injured beast.

Moreover ye shall take no ransom for the life of a murderer, to exclude the case of principal limbs? Was it not requisite that the Divine Law should state that you should not make him¹ subject to two punishments, i.e. that you should not take from him pecuniary compensation as well as kill him?—This, however, could be derived from the verse, *According to his crime*,² [which implies that] you can make him liable for one crime but cannot make him liable for two crimes.³ But still was it not requisite that the Divine Law should state that you should not take pecuniary compensation from him and release him from the capital punishment?—If so the Divine Law would have written, 'Moreover ye shall take no satisfaction for him who is guilty [and deserving] of death'; why then write 'for the life of a murderer' unless to prove from it that it is only 'for the life of a murderer' that you may not take ransom, whereas you may take ransom [even] for principal limbs though these could not be restored? But since it was written, *Moreover ye shall take no ransom* [implying the law of pecuniary compensation in the case of mere injury], why do I require [the analogy made between] 'smiting' [in the case of injuring man and] 'smiting' [in the case of injuring beast]?—It may be answered that if [the law would have had to be derived only] from the former text, I might have said that the offender has the option, so that if he wishes he may pay with the loss of his eye or if he desires otherwise he may pay the value of the eye; we are therefore told [that the inference is] from smiting a beast: just as in the case of smiting a beast the offender is liable for pecuniary compensation so also in the case of injuring a man he is liable for pecuniary compensation.

It was taught: R. Dosthai b. Judah says: *Eye for eye* means pecuniary compensation. You say pecuniary compensation, but perhaps it is not so, but actual retaliation [by putting out an eye] is meant? What then will you say where the eye of one was big and the eye of the other little, for how can I in this case apply the principle of eye for eye? If, however, you say that in such a case

(1) The murderer. (2) Deut. XXV, 2. (3) Cf. Mak. 4b and 13b.

pecuniary compensation will have to be taken, did not the Torah state, *Ye shall have one manner of law*,¹ implying that the manner of law should be the same in all cases? I might rejoin: What is the difficulty even in that case? Why not perhaps say that for eyesight taken away the Divine Law ordered eyesight to be taken away from the offender?² For if you will not say this, [84a] how could capital punishment be applied in the case of a dwarf killing a giant or a giant killing a dwarf,³ seeing that the Torah says, *Ye shall have one manner of law*, implying that the manner of law should be the same in all cases, unless you say that for a life taken away the Divine Law ordered the life of the murderer to be taken away?⁴ Why then not similarly say here too that for eyesight taken away the Divine Law ordered eyesight to be taken away from the offender?

•Another [Baraita] taught: R. Simon b. Yoḥai says: '*Eye for eye*' means pecuniary compensation. You say pecuniary compensation, but perhaps it is not so, but actual retaliation [by putting out an eye] is meant? What then will you say where a blind man put out the eye of another man, or where a cripple cut off the hand of another, or where a lame person broke the leg of another? How can I carry out in this case [the principle of retaliation of] '*eye for eye*', seeing that the Torah says, *Ye shall have one manner of law*, implying that the manner of law should be the same in all cases?—I might rejoin: What is the difficulty even in this case? Why not perhaps say that it is only where it is possible [to carry out the principle of retaliation that] it is to be carried out, whereas where it is impossible, it is impossible, and the offender will have to be released altogether? For if you will not say this, what could be done in the case of a person afflicted with a fatal organic disease killing a healthy person?⁵ You must therefore admit that it is only where it is possible [to resort to the law of retaliation] that it is

(1) Lev. XXIV, 22. (2) Without taking into consideration the sizes of the respective eyes. (3) Where the bodies of the murderer and the murdered are not alike. (4) Without considering the weights and sizes of the respective bodies. (5) In which case the murderer could not be convicted by the testimony of witnesses; v. Sanh. 78a.

resorted to, whereas where it is impossible, it is impossible, and the offender will have to be released.

The School of R. Ishmael taught: Scripture says: *So shall it be given to him again.*¹ The word 'giving' can apply only to pecuniary compensation. But if so, would the words, *As he hath [given a blow that] caused a blemish,*¹ similarly refer to money?²—It may be replied that at the School of R. Ishmael this text was expounded as a superfluous verse; since it has already been written, *And if a man maim his neighbour; as he hath done so shall it be done to him.*³ Why after this do we require the words, *so shall it be given to him again?* It must, therefore refer to pecuniary compensation. [But still,] why the words, *as he hath [given a blow that] caused a blemish in a man?* Since it was necessary to write, *so shall it be given to him again,*⁴ the text also writes, *as he hath [given a blow that] caused a blemish in a man.*

The School of R. Hiyya taught: Scripture says, *Hand in hand,*⁵ meaning an article which is given from hand to hand, which is of course money. But could you also say the same regarding the [next] words, *foot in foot?*—It may be replied that at the School of R. Hiyya this text was expounded as a superfluous verse, for it has already been written: *Then shall ye do unto him as he had purposed to do unto his brother.*⁶ If then you assume actual retaliation [for injury], why do I require the words, *hand in hand?* This shows that it means pecuniary compensation. But still, why the words, *foot in foot?*—Having written '*hand in hand*', the text also wrote '*foot in foot*'.⁵

Abbaye said: [The principle of pecuniary compensation] could be derived from the teaching of the School of Hezekiah. For the School of Hezekiah taught: *Eye for eye, life for life,*⁷ but not 'life and eye for eye'. Now if you assume that actual retaliation is meant, it could sometimes happen that eye and life would be taken for eye, as while the offender is being blinded, his soul might depart from him. But what difficulty is this? Perhaps what it means is that

(1) Lev. XXIV, 20. (2) Which could of course not be maintained. (3) Ibid. 19. (4) To indicate that pecuniary compensation is to be paid. (5) Deut. XIX, 21. (E.V.: *Hand for hand, foot for foot.*) (6) Ibid. 19. (7) Ex. XXI, 24.

we have to form an estimate,¹ and only if the offender will be able to stand it will retaliation be adopted, but if he will not be able to stand it, retaliation will not be adopted? And if after we estimate that he would be able to stand it and execute retaliation it so happens that his spirit departs from him, [there is nobody to blame,] as if he dies, let him die. For have we not learnt regarding lashes: 'Where according to estimation he² should be able to stand them, but it happened that he died under the hand of the officer of the court, there is exemption [from any blame of manslaughter]'.³

R. Zebid said in the name of Raba: Scripture says, *Wound for wound.*⁴ This means that compensation is to be made for Pain even where Depreciation [is separately compensated].⁵ Now, if you assume that actual Retaliation is meant, would it not be that just as the plaintiff suffered pain [through the wound], the offender too would suffer pain through the mere act of retaliation?⁶ But what difficulty is this? Why, perhaps, not say that a person who is delicate suffers more pain whereas a person who is not delicate does not suffer [so much] pain, so that the practical result [of the Scriptural inference] would be to pay for the difference [in the pain sustained]!

R. Papa in the name of Raba said: Scripture says, *To heal, shall he heal;*⁷ this means that compensation is to be made for Healing even where Depreciation [is compensated separately]. Now, if you assume that Retaliation is meant, would it not be that just as the plaintiff needed medical attention, the defendant also would surely need medical attention [through the act of retaliation]? But what difficulty is this? Why perhaps not say that there are people whose flesh heals speedily while there are others whose flesh does not heal speedily, so that the practical result [of the Scriptural inference] would be to require payment for the difference in the medical expenses!

(1) Whether the offender would stand the operation or not. (2) Who is subject to the thirty-nine lashes for having transgressed a negative commandment. (3) Mak. III, 14. (4) Ex. XXI, 25. (5) V. *supra* 26b. (6) How then could there be extra compensation for Pain? (7) Ex. XXI, 19. (E.V.: *shall cause him to be thoroughly healed.*)

R. Ashi said: [The principle of pecuniary compensation] could be derived from [the analogy of the term] 'for' [occurring in connection with Man] with the term 'for' occurring in connection with Cattle. It is written here, 'Eye for eye,' and it is also written there, *he shall surely pay ox for ox.*¹ [This indicates that] just as in the latter case it is pecuniary compensation that is meant, so also in the former case it means pecuniary compensation. But what ground have you for comparing the term 'for' with 'for' [mentioned in connection] with Cattle, rather than with the 'for' [mentioned in connection] with [the killing of] man, as it is written, *thou shalt give life for life.*² so that, just as in the case of murder it is actual Retaliation, so also here it means actual Retaliation?—It may be answered that it is more logical to infer [the law governing] injury from [the law governing another case of] injury¹ than to derive [the law of] injury from [the law applicable in the case of] murder.² But why not say on the contrary, that it is more logical to derive [the law applying to] Man from [a law which similarly applies to] Man² than to derive [the law applying to] Man from [that applying to] Cattle?—R. Ashi therefore said: It is from the words, *for he hath humbled her,*³ that [the legal implication of 'eye for eye'] could be derived by analogy, as [the law in the case of] Man is thus derived from [a law which is similarly applicable to] Man, and the case of injury from [a similar case of] injury.

It was taught: R. Eliezer said: *Eye for eye* literally refers to the eye [of the offender]. Literally, you say? Could R. Eliezer be against all those Tannaim [enumerated above]?⁴—Raba thereupon said: It only means to say that the injured person would not be valued as if he were a slave.⁵ Said Abaye to him: How else could he be valued? As a freeman? Could the bodily value of a freeman be ascertained by itself?—R. Ashi therefore said: It means to say that the valuation will be made not of [the eye of] the injured person but of [that of] the offender.⁶

An ass once bit off the hand of a child. When the case was

(1) Ibid. 36. (2) Ibid. 23. (3) Deut. XXII, 29. (4) Proving against Retaliation. (5) In the manner described *supra* p. 473. (6) As the pecuniary compensation in this case is a substitution for Retaliation.

brought before R. Papa b. Samuel he said [to the sheriffs of the court], 'Go forth and ascertain the value of the Four Items.'¹ Said Raba to him: Have we not learnt Five [Items]?—He replied: I did not include Depreciation. Said Abaye to him: Was not the damage in this case done by an ass, and in the case of an ass [injuring even man] there is no payment except for Depreciation?²—He therefore ordered [the sheriffs], 'Go forth and make valuation of the Depreciation.' But has not the injured person to be valued as if he were a slave?—He therefore said to them, 'Go forth and value the child as if it were a slave.' But the father of the child thereupon said, 'I do not want [this method of valuation], as this procedure is degrading.' They, however, said to him, 'What right have you to deprive the child of the payment which would belong to it?'³ He replied, 'When it comes of age I will reimburse it out of my own.'

An ox once chewed the hand of a child. When the case was brought before Raba, he said [to the sheriffs of the court], 'Go forth and value the child as if it were a slave.' They, however, said to him, 'Did not the Master [himself] say that payment for which the injured party would have to be valued as if he were a slave,⁴ cannot be collected in Babylon?'⁵—He replied, 'My order would surely have no application except in case of the plaintiff becoming possessed of property belonging to the defendant.'⁶ Raba thus follows his own principle, for Raba said: Payment for damage done to chattel by Cattle⁷ or for damage done to chattel by Man can be collected even in Babylon,⁸ whereas payment for injuries done to man by Man or for injuries done to man by Cattle cannot be collected in Babylon. Now what special reason is there why payment for injuries done to man by Cattle cannot [be collected in

(1) Enumerated *supra* p. 473. (2) *V. supra* 26a. (3) Cf. *infra* 87b. (4) I.e., where the damages could otherwise not be ascertained. (5) Because the judges there have not been ordained as *Mumhe* (v. Glos.) who alone were referred to by the Scriptural term *Elohim* standing for 'judges' as in Ex. XXI, 6 and XXII, 7-8, and who alone were qualified to administer penal justice; cf. Sanh. 2b, 5a, and 14a and *supra* p. 144. (6) Cf. *supra* p. 67. (7) Lit., 'ox'. (8) As these matters are of a purely civil nature and of frequent occurrence, as brought out by the discussion which follows.

Babylon] if not because it is requisite [in these cases that the judges be termed] *Elohim*,¹ [a designation] which is lacking [in Babylon]? Why then should the same not be also regarding payment for [damage done] to chattel by Cattle or to chattel by Man, where there is similarly [84b] required the designation of *Elohim* which is lacking [in Babylon]? But if on the other hand the difference in the case of chattel [damaged] by Cattle or chattel [damaged] by Man is because we [in Babylon] are acting merely as the agents [of the *mumhin*² judges in Eretz Yisrael] as is the practice with matters of admittances and loans,³ why then in the case of man [injured] by Man or man [injured] by Cattle should we similarly not act as their agents as is indeed the practice with matters of admittances and loans?³—It may, however, be said that we act as their agents only in regard to a matter of payment which we can fix definitely, whereas in a matter of payment which we are not able to fix definitely [but which requires valuation] we do not act as their agents. But I might object that [payment for damage done] to chattel by Cattle or to chattel by Man we are similarly not able to fix definitely, but we have to say, 'Go out and see at what price an ox is sold on the market place.' Why then in the case of man [injured] by Man, or man [injured] by Cattle should you not similarly say, 'Go out and see at what price slaves are sold on the market place'? Moreover, why in the case of double payment⁴ and four-fold or five-fold payment⁵ which can be fixed precisely should we not act as their agents?⁶—It may, however, be said that we may act as their agents only in matters of civil liability, whereas in matters of a penal nature⁷ we cannot act as their agents. But why then regarding payment [for an injury done] to man by Man which is of a civil nature should we not act as their agents?—We can act as their agents only in a matter of frequent occurrence, whereas in the case of man injured by Man which is not of frequent occurrence we

(1) As in Ex. XXI, 6 and XXII, 7-8. (2) V. Glos. s.v. *Mumhe*. (3) For which cf. Sanh. (Sonc. ed.) p. 4, n. 3. (4) For theft. (5) For having slaughtered or sold the stolen sheep and ox respectively. (6) Why then should these not be adjudicated and collected in Babylon? (7) As is the case with double payment and four-fold or five-fold payment.

cannot act as their agents. But why regarding Degradation,¹ which is of frequent occurrence, should we not act as their agents?—It may indeed be said that this is really the case, for R. Papa ordered four hundred *zuz* to be paid for Degradation. But this order of R. Papa is no precedent, for when R. Hisda sent to consult R. Nahman [in a certain case] did not the latter send back word, 'Hisda, Hisda, are you really prepared to order payment of fines in Babylon?'²—It must therefore be said that we can act as their agents only in a matter which is of frequent occurrence and where actual monetary loss is involved,³ whereas in a matter of frequent occurrence but where no actual monetary loss is involved, or again in a matter not of frequent occurrence though where monetary loss is involved we cannot act as their agents. It thus follows that in the case of man [injured] by Man, though there is there actual monetary loss, yet since it is not of frequent occurrence we cannot act as their agents, and similarly in respect of Degradation, though it is of frequent occurrence, since it involves no actual monetary loss, we cannot act as their agents.

Is payment for damage done to chattel by Cattle really recoverable in Babylon? Has not Raba said: 'If Cattle does damage, no payment will be collected in Babylon?'⁴ Now, to whom was damage done [in this case stated by Raba]? If we say to man, why then only in the case of Cattle injuring man?⁵ Is it not the fact that even in the case of Man injuring man⁶ payment will not be collected in Babylon? It must therefore surely refer to a case where damage was done to chattel and it was nevertheless laid down that no payment would be collected in Babylon!⁷—It may, however, be said that that statement referred to *Tam*,⁸ whereas this statement

(1) [Omitting with MS.M. 'blemish' paid in case of rape, and occurring in cur. edd.] (2) Cf. *supra* 27b. (3) Excluding thus a loss of mere prospective profits. (4) V. *supra* p. 481, n. 5. (5) Which is of no frequent occurrence at all. (6) Which is of slightly more frequent occurrence. (7) This contradicts the statement made by the same Raba (*supra* p. 481) that payment for damage done to chattel by Cattle will be collected even in Babylon. (8) In which case the payment is of a penal nature (as decided *supra* p. 67), which cannot be collected in Babylon.

deals with *Mu'ad*.¹ But did Raba not say that there could be no case of *Mu'ad*² in Babylon?—It may, however, be said that where an ox was declared *Mu'ad* there [in Eretz Yisrael] and brought over here [in Babylon, there could be a case of *Mu'ad* even in Babylon]. But surely this³ is a matter of no frequent occurrence, and have you not stated that in a matter not of frequent occurrence we cannot act as their agents?—[A case of *Mu'ad* could arise even in Babylon] where the Rabbis of Eretz Yisrael came to Babylon and declared the ox *Mu'ad* here. But still, this also is surely a matter of no frequent occurrence,⁴ and have you not stated that in a matter not of frequent occurrence we cannot act as their agents?—Raba must therefore have made his statement [that payment will be collected even in Babylon where chattel was damaged by Cattle] with reference to Tooth and Foot which are *Mu'ad ab initio*.

'PAIN:'—IF HE BURNT HIM EITHER WITH A SPIT OR WITH A NAIL, EVEN THOUGH ON HIS [FINGER] NAIL WHICH IS A PLACE WHERE NO BRUISE COULD BE MADE etc. Would Pain be compensated even in a case where no depreciation was thereby caused? Who was the Tanna [that maintains such a view]?—Raba replied: He was Ben 'Azzai, as taught: Rabbi said that 'burning'⁶ without bruising is mentioned at the outset, whereas Ben 'Azzai said that [it is with] bruising [that it] is mentioned at the outset. What is the point at issue between them? Rabbi holds that as 'burning' implies even without a bruise, the Divine Law had to insert 'bruise',⁷ to indicate that it is only where the burning caused a bruise that there would be liability,⁸ but if otherwise this would not be so,⁹ whereas Ben 'Azzai maintained that as 'burning' [by itself] implied a bruise, the Divine Law had to insert 'bruise' to indicate that

(1) Where the payment is of a strictly civil nature, and accordingly collected even in Babylon. (2) Regarding damage done by Horn, for since for the first three times of goring no penalty could be imposed in Babylon, the ox could never be declared *Mu'ad*. (3) Where the judges are *Mumhin* and thus qualified to administer also penal justice. (4) I.e., to bring over an ox already declared *Mu'ad* in Eretz Yisrael to Babylon. (5) Cf. Keth. 110b. (6) Ex. XXI, 25. (7) Ibid. (8) For the payment of Pain. (9) I.e., Pain would not be compensated since no depreciation was thereby caused.

'burning' meant even without a bruise.¹ R. Papa demurred: On the contrary, it is surely the reverse that stands to reason:² Rabbi who said that 'burning' [without bruising] is mentioned at the outset holds that as 'burning' implies also a bruise, the Divine Law inserted 'bruise' to indicate that 'burning' meant even without a bruise,³ whereas Ben 'Azzai who said that [it was] with bruising [that it] was mentioned at the outset maintains that as 'burning' implies even without a bruise, the Divine Law purposely inserted 'bruise' to indicate that it was only where the 'burning' has caused a bruise that there will be liability, but if otherwise this would not be so; for in this way they⁴ would have referred in their statements to the law as it stands now in its final form. Or, alternatively, it may be said that both held that 'burning' implies both with a bruise and without a bruise, and here [85a] they⁴ were differing on the question of a generalisation and a specification placed at a distance from each other,⁵ Rabbi maintaining that in such a case the principle of a generalisation followed by a specification does not apply,⁶ whereas Ben 'Azzai maintained that the principle of a generalisation followed by a specification does apply.⁷ And should you ask why, according to Rabbi, was it necessary to insert 'bruise',⁸ [the answer would be that it was necessary to impose the payment of] additional money.⁹

(1) Pain would therefore even in this case be compensated in accordance with Ben 'Azzai who could thus be considered to have been the Tanna of the Mishnaic ruling. (2) That the Tanna of the Mishnaic ruling was most probably Rabbi and not his opponent, and moreover the statements made by Rabbi and Ben 'Azzai should be taken to give the final implication of the law and not as it would have been on first thoughts. (3) So that Pain will be paid even in this case according to Rabbi who was the Tanna of the Mishnaic ruling. (4) I.e., Rabbi and Ben 'Azzai. (5) Such as here the term 'burning' which is a generalisation as it implies all kinds of burning whether with a bruise or without a bruise, and the term 'bruise' which specifies an injury with a bruise, are separated from each other by the intervening clause 'wound for wound'. (6) To render the generalisation altogether ineffective; cf. *supra* p. 371. (7) Even in such a case. (8) Since the term 'burning' is a generalisation and by itself implies both with a bruise and without a bruise. (9) I.e., for Depreciation as explained by Rashi, or for the Pain where the burning left a mark and thus aggravated the ill feeling (Tosaf.).