HALAKHA

One who says: I seduced, etc. – הָאוֹמֵר פִּתִּיתִי וכו׳: One who confesses: I seduced or raped so-and-so's daughter, is exempt from payment of the fine, but is obligated to pay compensation for humiliation and degradation (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 2:12).

One who says, I stole, etc. – הָאוֹמֵר גָּנַבְתִּי וכו׳: One who confesses to stealing and slaughtering or selling is liable to pay only the principal, but is exempt from payment of double or four or five times the principal (Rambam *Sefer Nezikim*, *Hilkhot Geneiva* 3:9; *Tur*, *Ḥoshen Mishpat* 348).

My ox killed so-and-so, etc. – הֵמִית שׁוֹרִי אֶת פְּלוֹנִי וכו׳: One who confesses that his ox killed so-and-so, or in the case of a forewarned ox, that it killed so-and-so's ox, pays based on his confession (Rambam *Sefer Hafla'a*, *Hilkhot Shevuot* 8:4; *Sefer Shofetim*, *Hilkhot Sanhedrin* 4:14).

My ox killed a slave belonging to so-and-so, etc. – הֵמִית שׁוֹרִי עַבְדּוֹ שֶׁל פְּלוֹנִי וכו׳: One who confesses that his ox killed another person's slave is exempt from paying the thirty *sela*, as it is a fine (Rambam *Sefer Hafla'a*, *Hilkhot Shevuot* 8:2).

מתני׳ הָאוֹמֵר: ״פִּתִּיתִי אֶת בִּתּוֹ שֶׁל פְּלוֹנִי״ – מְשַׁלֵּם בּוּשֶׁת וּפְגָם עַל פִּי עַצְמוֹ, וְאֵין מְשַׁלֵּם קְנָס. הָאוֹמֵר ״גָּנַבְתִּי״ – מְשַׁלֵּם אֶת הַקֶּרֶן עַל פִּי עַצְמוֹ, וְאֵין מְשַׁלֵּם תַּשְׁלוּמֵי כֶּפֶל וְתַשְׁלוּמֵי אַרְבָּעָה וַחֲמִשָּׁה. ״הֵמִית שׁוֹרִי אֶת פְּלוֹנִי״ אוֹ ״שׁוֹרוֹ שֶׁל פְּלוֹנִי״ – הֲרֵי זֶה מְשַׁלֵּם עַל פִּי עַצְמוֹ. ״הֵמִית שׁוֹרִי עַבְדּוֹ שֶׁל פְּלוֹנִי״ – אֵין מְשַׁלֵּם עַל פִּי עַצְמוֹ. זֶה הַכְּלָל: כָּל הַמְשַׁלֵּם יָתֵר עַל מַה שֶּׁהִזִּיק – אֵינוֹ מְשַׁלֵּם עַל פִּי עַצְמוֹ.

MISHNA **One who says:**[N] **I seduced**[H] **the daughter of so-and-so, pays** compensation for **humiliation and degradation** based **on his own** admission, **but does not pay** the **fine.** Similarly, **one who says: I stole,**[H] **pays the principal,** the value of the stolen goods, **based on his own** admission, **but does not pay** the **double payment and** the **payment four and five** times the principal for the slaughter or sale of the sheep or ox that he stole. Likewise if he confessed: **My ox killed so-and-so,**[H] **or:** My ox killed **an ox** belonging to **so-and-so, this** owner **pays** based **on his own** admission. However, if he said: **My ox killed a slave** belonging to **so-and-so,**[HN] **he does not pay** based **on his own** admission as that payment is a fine. **This is the principle:**[N] **Anyone who pays more than what he damaged,**[N] the payments are fines and therefore **he does not pay** based **on his own** admission. He pays only based on the testimony of others.

גמ׳ וְלִיתְנֵי ״אָנַסְתִּי״! לָא מִבָּעְיָא קָאָמַר; לָא מִבָּעְיָא ״אָנַסְתִּי״ דְּלָא קָא פָּגִים לָהּ, דִּמְשַׁלֵּם בּוּשֶׁת וּפְגָם עַל פִּי עַצְמוֹ, אֲבָל ״פִּתִּיתִי״ דְּקָא פָּגִים לָהּ – אֵימָא לָא מְשַׁלֵּם עַל פִּי עַצְמוֹ – קָא מַשְׁמַע לָן.

GEMARA The Gemara asks: **And let** the *tanna* **teach** this *halakha* with regard to one who said: **I raped**[N] the daughter of so-and-so. Why did the mishna cite the case of seduction? The Gemara answers: The *tanna* **is speaking** employing the style: **It is not necessary. It is not necessary** for the mishna to cite the case of one who says: **I raped** her,[N] **where he does not tarnish her** reputation and merely incriminates himself, as it is obvious that **he pays** compensation for **humiliation and degradation** based **on his own** admission. **However,** in the case of one who says: **I seduced** her, **where he tarnishes her** reputation as he testifies that she willingly engaged in relations with him, and he is not deemed credible to do so, **say** that **he does not pay** based **on his own** admission. Therefore, the mishna **teaches us** that even in the case of seduction he pays compensation for humiliation and degradation based on his own admission.

מַתְנִיתִין דְּלָא כִּי הַאי תַּנָּא; דְּתַנְיָא, רַבִּי שִׁמְעוֹן בֶּן יְהוּדָה אוֹמֵר מִשּׁוּם רַבִּי שִׁמְעוֹן: אַף בּוּשֶׁת וּפְגָם אֵינוֹ מְשַׁלֵּם עַל פִּי עַצְמוֹ, לֹא כָּל הֵימֶנּוּ שֶׁיְּפַגֵּם בִּתּוֹ שֶׁל פְּלוֹנִי.

The Gemara comments: **The mishna is not in accordance with** the opinion of **this *tanna*, as it is taught** in a *baraita*: **Rabbi Shimon ben Yehuda says in the name of Rabbi Shimon: Even** the payments of **humiliation and degradation, he does not pay** them based **on his own** admission as **it is not within his power to tarnish** the reputation of **the daughter of so-and-so** based merely on his confession. Consequently, unless his account is corroborated by the testimony of others, his admission that she was complicit in her seduction is rejected.

NOTES

The order of the mishna – סִדְרָהּ שֶׁל הַמִּשְׁנָה: The commentaries explain that the mishna employs the style: Not only this but also that. In other words, there is a novel element in each succeeding case. The principle here is that one who admits that he is liable to pay a fine is exempt. The mishna teaches that not only is one exempt in a case where he confesses that he raped or seduced a girl, where the exemption could be attributed to the fact that his admission casts aspersions on the girl, but one who confesses that he stole is also exempt from the double payment, although his testimony casts no aspersions. Furthermore, this *halakha* applies not only to a thief, who although he is exempt from the fine, is obligated to pay the principal; it applies even to a case where one confesses that his ox killed a slave, in which case his confession exempts him from any payment. There is a Torah decree that one whose incrimination is based exclusively on his own confession is exempt from the fine (*Melekhet Shlomo*; see *Tosefot Yom Tov*).

My ox killed a slave belonging to so-and-so – הֵמִית שׁוֹרִי עַבְדּוֹ שֶׁל פְּלוֹנִי: In the Jerusalem Talmud, the question is raised with regard to a slave worth less than thirty *sela*: Is part of the sum considered a monetary payment and the rest a fine, or is the entire amount deemed a fine? The *Yam shel Shlomo* explains that the phrase: Anyone who pays more than what he damaged, should not be taken literally, as it is possible that the slave is worth exactly thirty *sela*, in which case he would pay precisely the sum of the damage he caused. Rather, since the sum is fixed and is not always equal to the value of the slave, it is a fine.

This is the principle – זֶה הַכְּלָל: Based on *Tosafot* the commentaries on the mishna explain that the phrase: This is the principle: Anyone who pays more than what he damaged does not pay based on his own admission, comes to include other fines omitted here: The one hundred silver coins that a slanderer pays the father of his wife, and the obligation to free one's slave if he severed one of his extremities, i.e., he is freed with extraction of a tooth or an eye.

Anyone who pays more than what he damaged – כָּל הַמְשַׁלֵּם יָתֵר עַל מַה שֶּׁהִזִּיק: This principle, which establishes the difference between fines and payments of money, is problematic in the case of the ransom paid by one whose forewarned ox kills a person, as the *tanna'im* disagree about the meaning of the verse "If a ransom is placed upon him, then he shall give the redemption of his soul" (Exodus 21:30). Is this assessment of ransom based on the value of the victim or the value of the owner of the ox? According to the opinion that he pays his own value, in certain cases he pays more than the damage he caused, and therefore the payment should be considered a fine. *Tosafot*, and in greater detail *Tosefot HaRosh* and other commentaries, explain that since he pays the assessment of his own value, it is considered a monetary payment, as he is essentially redeeming himself from death at the hand of Heaven.

And let the *tanna* teach with regard to one who said: I raped – וְלִיתְנֵי אָנַסְתִּי וכו׳: According to *Tosafot* the question is: Why didn't the *tanna* cite a case of rape rather than one of seduction? The later commentaries add that had the mishna cited the case of rape, there would have been an additional novel element according to the Rambam's opinion that one pays for her pain based on his own admission. However, the Ritva and others claim that the Gemara is merely asking why the *tanna* did not teach both rape and seduction as he did in the other *mishnayot*. See *Tosafot* for a discussion of the novel element in the case of rape.

It is not necessary for the mishna to cite the case of one who says: I raped her, etc. – לָא מִבָּעְיָא אָנַסְתִּי וכו׳: The *ge'onim* had a variant reading of the Gemara, according to which the case of a rapist is unnecessary, as he did not significantly tarnish her reputation, whereas a seducer severely tarnishes her reputation, and therefore one might think that he pays based on his own confession (see also *Shita Mekubbetzet*).

אֲמַר לֵיהּ רַב פַּפָּא לְאַבַּיֵי: נִיחָא לָהּ לְדִידָהּ מַאי? דְּלָמָא לָא נִיחָא לֵיהּ לְאָבִיהָ. נִיחָא לֵיהּ לְאָבִיהָ מַאי? דְּלָמָא לָא נִיחָא לְהוּ לִבְנֵי מִשְׁפָּחָה. נִיחָא לְהוּ לִבְנֵי מִשְׁפָּחָה מַאי? אִי אֶפְשָׁר דְּלֵיכָּא חַד בְּמְדִינַת הַיָּם דְּלָא נִיחָא לֵיהּ.

Rav Pappa said to Abaye: According to Rabbi Shimon, if **she herself is amenable** to his claim, and admits that his version of the events is accurate, **what** is the *halakha*? Is he exempt from payments of humiliation and degradation in that case as well? Abaye responded: **Perhaps her father is not amenable** to his daughter's reputation being tarnished. We therefore do not rely on his statement even in this case. Rav Pappa continued: If **her father is** also **amenable** to his claim, **what** is the *halakha*? Abaye responded: **Perhaps her** other **family members are not amenable,** as the reputation of the entire family would be tarnished. Rav Pappa asked: If the **family members** too are **amenable, what** is the *halakha*? Abaye answered: Even if all the local relatives are amenable, **it is impossible that there** will **not** be at least **one** relative **in a country overseas**[N] **who is not amenable** to his claim.

״הָאוֹמֵר גָּנַבְתִּי מְשַׁלֵּם אֶת הַקֶּרֶן״ וכו׳. אִיתְּמַר, פַּלְגָּא נִיזְקָא; רַב פַּפָּא אָמַר: פַּלְגָּא נִיזְקָא מָמוֹנָא, רַב הוּנָא בְּרֵיהּ דְּרַב יְהוֹשֻׁעַ אָמַר: פַּלְגָּא נִיזְקָא קְנָסָא.

The mishna continues. **One who says: I stole, pays the principal,** but does not pay the double payment and the payment four and five times the principal. **It is stated** that *amora'im* disagreed with regard to the payment of **half the damage** that the owner of an innocuous ox, which was not yet witnessed goring a person or an ox three times, must pay to the owner of the ox that he gored. **Rav Pappa said: Half the damage** is considered a payment of **money,** compensation for the damage caused. **Rav Huna, son of Rav Yehoshua, said** that **half the damage** is considered payment of a **fine.**

רַב פַּפָּא אָמַר: פַּלְגָּא נִיזְקָא מָמוֹנָא, קָסָבַר: סְתָם שְׁוָורִים לָאו בְּחֶזְקַת שְׁמִירִין קָיְימֵי, וּבְדִין הוּא דְּמְשַׁלֵּם כּוּלֵּיהּ, וְרַחֲמָנָא הוּא דְּחָיֵיס עֲלָוֵיהּ, דְּאַכַּתִּי לָא אִיַּעַד תּוֹרָא. רַב הוּנָא בְּרֵיהּ דְּרַב יְהוֹשֻׁעַ אָמַר: פַּלְגָּא נִיזְקָא קְנָסָא. קָסָבַר: סְתָם שְׁוָורִים בְּחֶזְקַת שְׁמִירִין קָיְימֵי, וּבְדִין הוּא דְּלָא לְיַשְׁלֵם כְּלָל, וְרַחֲמָנָא הוּא דְּקָנְסֵיהּ, כִּי הֵיכִי דְּנִינְטְרֵיהּ לְתוֹרֵיהּ.

The Gemara elaborates. **Rav Pappa said: Half the damage** is considered a payment of **money,** as **he maintains: Standard oxen do not exist in the presumptive status of safety,**[N] and therefore are likely to cause damage. **And by right,** the owner **should pay the entire** damage caused by his animal, **and it is the Merciful One that has compassion on him, as his ox is not yet forewarned** until it has gored a person or an animal three times. Fundamentally, the payment is for damage that the animal caused. **Rav Huna, son of Rav Yehoshua, said** that **half the damage** is payment of a **fine,** as **he maintains: Standard oxen exist in the presumptive status of safety,** and are not dangerous. **And by right,** the owner **should not pay at all,** as the ox goring could not have been anticipated, and therefore the owner bears no responsibility. **And it is the Merciful One that penalized him so that he would guard his ox.** The sum that he pays is a fine.

סִימָן: הַיּוֹזֵק מַה וְהַמִּית כְּלָל. תְּנַן: הַנִּיזָּק וְהַמַּזִּיק בְּתַשְׁלוּמִין. בִּשְׁלָמָא לְמַאן דַּאֲמַר פַּלְגָּא נִיזְקָא מָמוֹנָא – הַיְינוּ דְּשַׁיָּיךְ נִיזָּק בְּתַשְׁלוּמִין. אֶלָּא לְמַאן דְּאָמַר פַּלְגָּא נִיזְקָא קְנָסָא – הָשְׁתָּא, דְּלָאו דִּידֵיהּ קָא שָׁקֵיל, בְּתַשְׁלוּמִין אִיתֵּיהּ?!

The Gemara provides **a mnemonic**[B] for the proofs cited with regard to this dispute: **Damaged; what; and killed; principle. We learned** in a mishna that if an innocuous ox gored and killed another's ox, both **the damaged and the damager** share **in the payments. Granted, according to the one who said** that **half the damage** is a payment of **money; that** is how the **damaged party shares in the payments.** By right, the owner of the dead ox should be compensated for his entire loss. However, since the ox that gored his ox was innocuous, the owner of the gored ox bears half the costs. The mishna characterizes him as sharing in the payments. **However, according to he who said** that **half the damage** is payment of **a fine,** by right, the injured party himself is entitled to nothing. **Now,** the owner **takes** half the damage **that** by right **is not his;** can **he** be characterized as sharing **in the payments?**

לָא נִצְרְכָא אֶלָּא לְפַחַת נְבֵילָה. פַּחַת נְבֵילָה תְּנֵינָא: תַּשְׁלוּמֵי נֶזֶק מְלַמֵּד שֶׁהַבְּעָלִים מְטַפְּלִין בַּנְּבֵילָה.

The Gemara answers: This *halakha* is **necessary only for the degradation of the carcass.** Initially, half the damage is assessed by calculating the difference between the value of a living ox and the value of its carcass when the owner of the ox that gored the other ox stands trial. The degradation in the value of the carcass from when it was gored until the owner is able to sell it is borne by the owner of the carcass. The owner thereby shares in the payment, as he loses that sum. The Gemara asks: **We** already **learned** the *halakha* with regard to **the degradation of the carcass** in a *baraita* in *Bava Kamma* (10b) in which it is taught that the passage in the mishna: I have become liable to pay **payments of damage,**[N] **teaches that the owners tend to the carcass**[H] and bear the costs of its degradation.

NOTES

Family members in a country overseas – בְּנֵי מִשְׁפָּחָה בִּמְדִינַת הַיָּם: Although her family, certainly those living overseas, have no monetary claim, the issue here is not their monetary or legal rights. Rather, the question is whether the statement that he seduced the daughter constitutes degradation. In this regard, the fact that she has relatives who would be displeased is enough to establish the claim. Consequently, that confession would not be accepted, as it tarnishes the reputation of the family (Rabbi Aharon HaLevi).

Do not exist in the presumptive status of safety – לָאו בְּחֶזְקַת שְׁמִירִין קָיְימֵי: The Ritva and others explain that this does not mean that the assumption is that every ox will gore a person. It means that even those oxen that do not typically gore people must be guarded. Consequently, one who fails to guard them is liable to pay; he cannot be seen as the victim of unavoidable circumstances.

Payments of damage etc. – תַּשְׁלוּמֵי נֶזֶק וכו׳: The inference is as follows: Had it stated simply damage, the understanding would have been that the owner of the ox that gored another ox must pay the victim the entire damage or half the damage in the case of an innocuous ox. In contrast, the phrase: Payments of damage, indicates that he is liable to payment determined when he stands trial, deducting degradation from the sum that he is liable to pay, but not payment to cover all the damage he caused (Rabbeinu Crescas Vidal).

BACKGROUND

A mnemonic – סִימָן: Because the Talmud was studied orally for many generations, mnemonic devices were necessary to facilitate memorizing a series of *halakhot* and the order in which they were taught.

HALAKHA

That the owners tend to the carcass – שֶׁהַבְּעָלִים מְטַפְּלִין בַּנְּבֵילָה: The owner of the ox that was gored bears the cost of the degradation of the carcass. How so? Consider the case of an ox worth two hundred dinars that was gored and killed, and its carcass, which was worth one hundred dinars at the time of its death, was worth only eighty dinars at trial. If the ox that gored a person or animal was forewarned, its owner pays one hundred dinars; if it was innocuous, the owner pays fifty dinars. The owner of the dead ox is not compensated for the twenty dinars of degradation of the carcass. The Rema writes that this *halakha* applies only if the owner of the ox that was gored is immediately apprised of his loss. However, if he was not apprised, and therefore could not have tended to the carcass and sold it immediately, the owner of the ox that gored a person or animal must pay for the degradation in its value. The *Tur* claims that this *halakha* applies also if the market price of the carcass decreased, whereas others contend that the owner of the ox that was gored bears the cost of the decrease in the market price of the carcass (Rambam *Sefer Nezikim*, *Hilkhot Nizkei Mamon* 7:8; *Shulḥan Arukh*, *Ḥoshen Mishpat* 403:20).

חֲדָא בְּתָם וַחֲדָא בְּמוּעָד. וּצְרִיכָא, דְּאִי אַשְׁמוּעִינַן תָּם – מִשּׁוּם דְּאַכַּתִּי לָא אִיעַדּ, אֲבָל מוּעָד דְּאִיעַדּ – אֵימָא לָא. וְאִי אַשְׁמוּעִינַן מוּעָד – מִשּׁוּם דְּקָא מְשַׁלֵּם כּוּלֵּיהּ, אֲבָל תָּם – אֵימָא לָא, צְרִיכָא.

The Gemara answers: **One** of these *halakhot* is **with regard to an innocuous** ox **and one** is **with regard to a forewarned** ox. The Gemara adds: **And** it is **necessary** to teach both *halakhot*, **as if** the mishna **had taught us** only with regard to **an innocuous** ox, one would understand that its owner is treated with leniency and the owner of the carcass bears the cost of degradation **due to** the fact **that** the ox **has not yet been forewarned; however,** with regard to **a forewarned** ox, **that was forewarned, say no,** the owner of the carcass does not bear the cost of degradation. **And if** the mishna **had taught us** only with regard to **a forewarned** ox, one would understand that its owner is treated with leniency and the owner of the carcass bears the cost of degradation **due to** the fact **that he pays** for the **entire damage,** and therefore, the relatively insignificant cost of degradation is overlooked. **However,** with regard to **an innocuous** ox, **say no,** since the owner pays only half the damage, he must bear the cost of degradation. Therefore, it was **necessary** to state the *halakha* in both cases. Therefore, there is no proof from this mishna whether half the damage is payment of a money or payment of a fine.

תָּא שְׁמַע: מַה בֵּין תָּם לְמוּעָד? שֶׁהַתָּם מְשַׁלֵּם חֲצִי נֶזֶק מִגּוּפוֹ, וּמוּעָד מְשַׁלֵּם נֶזֶק שָׁלֵם מִן הָעַלְיָיה. וְלָא קָתָנֵי שֶׁהַתָּם אֵינוֹ מְשַׁלֵּם עַל פִּי עַצְמוֹ וּמוּעָד מְשַׁלֵּם עַל פִּי עַצְמוֹ!

The Gemara continues. **Come** and **hear** an additional proof from a *baraita*: **What is** the difference **between an innocuous and a forewarned** ox? The difference is **that** the owner of **an innocuous** ox **pays half** of the **damage from its body.** Compensation for the damage may be collected only from the body of the ox that gored another ox. If the ox that gored another ox is worth less than half the damage, e.g., if an inexpensive ox killed an expensive one, the injured party receives less than half the damage. **And** the owner of **a forewarned** ox **pays the entire damage from the** owner's **property,** and the value of the ox that gored another ox has no effect on the payment. The *tanna* **did not teach** an additional difference that the owner of **an innocuous** ox **does not pay** based **on his own** admission **and** the owner of **a forewarned** ox **pays** based **on his own** admission.[H] Apparently, the half damage is a payment of money and not a fine.

תָּנָא וְשִׁייֵר. מַאי שִׁייֵר דְּהַאי שִׁייֵר? שִׁייֵר חֲצִי כּוֹפֶר. אִי מִשּׁוּם חֲצִי כּוֹפֶר – לָאו שִׁיּוּרָא הוּא,

The Gemara refutes this claim: This *baraita* is no proof, as the *tanna* **taught** some cases **and omitted** others[N] and did not list all the differences between innocuous and forewarned oxen. The Gemara asks: **What** else **did he omit that he omitted this?** The failure to include an item in a list can be deemed insignificant only if it is one of at least two omissions. If there is only one omission, apparently it was omitted advisedly. The Gemara replies: **He omitted** the *halakha* of the **half ransom**[H] as well. If a forewarned ox killed a person, its owner pays a ransom, and if an innocuous ox killed a person, the owner does not pay even half the ransom. The Gemara rejects this claim: **If** it is **due to** the **half ransom** that the failure to list the difference with regard to payment based on one's own admission is insignificant, it **is not an omission.**

HALAKHA

Innocuous and forewarned – תָּם וּמוּעָד: The owner of a forewarned ox pays full damages from his highest quality property. The same applies to any damage caused by an animal in the course of its typical conduct and which therefore is considered forewarned. If an innocuous ox caused damage its owner pays half of the damage, paid from the body of the ox itself (Rambam *Sefer Nezikim*, *Hilkhot Nizkei Mamon* 1:2–3; *Shulḥan Arukh*, *Ḥoshen Mishpat* 389:2, 9).

Half ransom – חֲצִי כּוֹפֶר: The owner of an innocuous ox that killed a person pays nothing, not even half the ransom, as explicitly stated in *Bava Kamma* (Rambam *Sefer Nezikim*, *Hilkhot Nizkei Mamon* 10:2).

NOTES

The *tanna* taught some cases and omitted others – תָּנָא וְשִׁייֵר: This is a standard response to an attempted inference from an omission in a mishna. The idea is that an omission of a case from a mishna is not significant if the *tanna* did not list all of the possible cases. An alternative manner of expressing the same concept is the phrase: Is that to say that the *tanna* should have continued reckoning cases like a peddler? The immediate rejoinder to this answer, as here, is for the Gemara to inquire: What else did he omit that he omitted this? In other words, in order to assert that the *tanna* did not list all possible cases, it must be proven that the *tanna* omitted additional examples.

הָא מַנִּי – רַבִּי יוֹסֵי הַגְּלִילִי הִיא, דְּאָמַר: תָּם מְשַׁלֵּם חֲצִי כּוֹפֶר.

As it can be explained: According to **whose** opinion **is this** *baraita* taught? **It is** according to the opinion of **Rabbi Yosei**[N] **HaGelili,**[N] **who said:** The owner of **an innocuous** ox **pays half** the **ransom.** According to his opinion, the only differences between innocuous and forewarned oxen are those specified in the mishna.

תָּא שְׁמַע: ״הֵמִית שׁוֹרִי אֶת פְּלוֹנִי״, אוֹ ״שׁוֹרוֹ שֶׁל פְּלוֹנִי״ – הֲרֵי זֶה מְשַׁלֵּם עַל פִּי עַצְמוֹ. מַאי לָאו בְּתָם? לָא, בְּמוּעָד.

The Gemara suggests: **Come** and **hear** an additional proof from the mishna. One who said: **My ox killed so-and-so, or:** My ox killed **an ox** belonging to **so-and-so, this** owner **pays** based **on his own** admission. **What, is** this **not** referring **to an innocuous** ox, for which he pays half the damage, proving that it is a payment of money and not a fine? The Gemara rejects the proof: **No,** the *tanna* is referring **to a forewarned** animal.

אֲבָל בְּתָם מַאי – אֵינוֹ מְשַׁלֵּם עַל פִּי עַצְמוֹ. אַדְּתָנֵי סֵיפָא: ״עַבְדּוֹ שֶׁל פְּלוֹנִי״ אֵינוֹ מְשַׁלֵּם עַל פִּי עַצְמוֹ – נֵיפְלוֹג וְנֵיתְנֵי בְּדִידָהּ: בַּמֶּה דְּבָרִים אֲמוּרִים – בְּמוּעָד, אֲבָל תָּם אֵינוֹ מְשַׁלֵּם עַל פִּי עַצְמוֹ! כּוּלָּהּ בְּמוּעָד קָמַיְירִי.

The Gemara asks: **However,** in the case **of an innocuous** ox, **what** is the *halakha*? If it is that **he does not pay** based **on his own** admission, then, **rather than teaching the latter clause** of the mishna: One whose ox **killed a slave** belonging to **so-and-so does not pay** based **on his own** admission, **let him distinguish and teach** the distinction **within the case itself: In what** case **is this statement said?** It is **with regard to a forewarned** ox; **however,** the owner of **an innocuous** ox **does not pay** based **on his own** admission. The Gemara rejects this proof: The **entire** mishna **is speaking of a forewarned** ox, and does not address the *halakha* of an innocuous ox at all. Therefore, no proof can be cited with regard to the nature of half the payment.

תָּא שְׁמַע, זֶה הַכְּלָל: כָּל הַמְשַׁלֵּם יָתֵר עַל מַה שֶּׁהִזִּיק אֵינוֹ מְשַׁלֵּם עַל פִּי עַצְמוֹ. הָא פָּחוֹת מִמַּה שֶּׁהִזִּיק – מְשַׁלֵּם עַל פִּי עַצְמוֹ! לָא תֵּימָא: הָא פָּחוֹת מִמַּה שֶּׁהִזִּיק, אֶלָּא אֵימָא: הָא כְּמַה שֶּׁהִזִּיק – מְשַׁלֵּם עַל פִּי עַצְמוֹ.

The Gemara suggests: **Come** and **hear** an additional proof from the mishna: **This is the principle: Anyone who pays more than what he damaged,** the payments are fines, and therefore **he does not pay** based **on his own** admission. The Gemara infers: If he pays **less than what he damaged, he pays** based **on his own** admission. Apparently, payment of half the damage is a payment of money, not a fine. The Gemara rejects this proof: **Do not** infer and **say:** If he pays **less than what he damaged,** he pays based on his own admission. Infer and **say:** If he pays precisely **what he damaged, he pays** based **on his own** admission.

אֲבָל פָּחוֹת מַאי – אֵינוֹ מְשַׁלֵּם עַל פִּי עַצְמוֹ. לֵיתְנֵי: זֶה הַכְּלָל: כָּל שֶׁאֵינוֹ מְשַׁלֵּם כְּמַה שֶּׁהִזִּיק – אֵינוֹ מְשַׁלֵּם עַל פִּי עַצְמוֹ, דְּמַשְׁמַע פָּחוֹת וּמַשְׁמַע יָתֵר! תִּיּוּבְתָּא.

The Gemara asks: **But** according to that explanation, if he pays **less** than the damage he caused, **what** is the *halakha*? If it is that **he does not pay** based **on his own** admission, **let** the *tanna* **teach** a more general principle: **This is the principle: Anyone who does not pay** the amount **that he damaged does not pay** based **on his own** admission, **as** that formulation both **indicates** one who pays **less and indicates** one who pays **more** than the damage he inflicted. The Gemara concludes: This is **a conclusive refutation** of the opinion of Rav Huna, son of Rav Yehoshua, that payment of half the damage is a fine.

NOTES

According to whose opinion is this *baraita* taught? It is according to Rabbi Yosei, etc. – הָא מַנִּי רַבִּי יוֹסֵי וכו׳: The structure of the Gemara appears to indicate the following: The Gemara attempts to prove that apparently the payment of half the damage is a monetary payment and not a fine, from the fact that the distinction between a forewarned ox, whose owner pays based on his confession, and an innocuous ox, whose owner does not pay based on his confession, was omitted from the mishna. The Gemara answers: The *tanna* taught some cases and omitted others. The Gemara asks: What else did he omit that he omitted this? The Gemara answers: He omitted payment of half the ransom, as there is no payment of ransom at all for an innocuous ox. The Gemara notes: That is not an omission, as the mishna is in accordance with the opinion of Rabbi Yosei HaGelili, who holds that there is a payment of half the ransom in the case of an innocuous ox. Indeed, Rabbeinu Simḥa, cited in *Tosefot HaRosh*, explains the Gemara in this manner. However, that explanation is difficult. The entire difficulty raised by the Gemara is based on establishing that the mishna is according to the individual opinion of Rabbi Yosei HaGelili, which is by no means the most obvious possibility.

The Ra'avad explains in the name of one of his teachers that the contention that the *tanna* included some cases and omitted others is far-fetched, and therefore, the Gemara prefers an explanation of the mishna that does not rely on that contention, even if it requires adoption of a minority opinion. However, some difficulty remains, and therefore, most early commentaries explain the exchange in the Gemara differently. The Gemara is saying that once it was established that the *tanna* omitted the difference between the forewarned and innocuous oxen with regard to ransom, apparently there is another difference that he omitted. It must be that he omitted the difference with regard to liability to pay half the damage based on one's own confession. This proves that the payment of half the damage is a fine and poses a difficulty to the one who holds that it is a monetary payment. The Gemara responds that it is not an absolute proof as it could be established that the mishna is according to the opinion of Rabbi Yosei HaGelili, in which case there is no difference between them with regard to ransom, and therefore there is no need to search for an additional difference with regard to payment based on confession (Ra'avad; Rosh; Ritva).

Rabbi Yosei HaGelili – רַבִּי יוֹסֵי הַגְּלִילִי: *Tosafot* discuss at length why the Gemara attributes this opinion to Rabbi Yosei HaGelili, as there is no source where he is cited expressing this opinion, and it is merely inferred from his statements. Furthermore, if we are willing to ascribe this opinion based on inference, it could be attributed to Rabbi Akiva and to other Sages as well. The Ritva claims that in cases of this kind, the Gemara is not particular about the precise identity of the *tanna*, but is satisfied with the fact that there is a tannaitic opinion to this effect, even if there are other Sages who might also concur with this opinion.

וְהִלְכְתָא: פַּלְגָּא נִיזְקָא קְנָסָא. תִּיוּבְתָּא וְהִלְכְתָא?! אֵין, טַעֲמָא מַאי אִיתּוֹתַב – מִשּׁוּם דְּלָא קָתָנֵי כְּמַה שֶׁהַזִּיק. לָא פְּסִיקָא לֵיהּ, כֵּיוָן דְּאִיכָּא חֲצִי נֵזֶק צְרוֹרוֹת דְּהִלְכְתָא גְּמִירִי לָהּ דְּמָמוֹנָא הוּא – מִשּׁוּם הָכִי לָא קָתָנֵי.

The Gemara further concludes: **And the *halakha*** is that payment of **half the damage**[H] is **a fine.** The Gemara asks: Is there **a conclusive refutation** of the opinion of Rav Huna, son of Rav Yehoshua, **and** the ***halakha***[N] is in accordance with that opinion? The Gemara responds: **Yes,** the *halakha* is in accordance with his opinion, as, **what is the reason** that his opinion **was conclusively refuted?** It is **because** the *tanna* **does not teach:** This is the principle: Anyone who does not pay the amount **that he damaged.** However, the reason the *tanna* did not employ that formulation **is not clear-cut for him, since there is** the payment of **half** the **damage** caused by **pebbles**[H] dispersed by an animal proceeding in its usual manner. **As it is a *halakha* transmitted** to Moses from Sinai **that** the payment for pebbles **is a monetary** payment, not a fine; it is **due to that** fact that the *tanna* **did not teach** the principle: Anyone who does not pay the amount that he damaged does not pay based on his own admission. In the case of pebbles, although he does not pay the amount that he damaged, he pays based on his own admission.

וְהָשְׁתָּא דְּאָמְרַתְּ פַּלְגָּא נִיזְקָא קְנָסָא, הַאי כַּלְבָּא דַּאֲכַל אִימְּרֵי, וְשׁוּנְרָא דְּאָכֵיל תַּרְנְגוֹלֵי רַבְרְבֵי – מְשׁוּנֶּה הוּא, וְלָא מַגְבִּינַן בְּבָבֶל. אֲבָל זוּטְרֵי – אוֹרְחֵיהּ הוּא, וּמַגְבִּינַן.

Based on that ruling, the Gemara concludes: **And now that you said** that payment of **half the damage** is **a fine,**[N] **this dog that ate lambs,**[H] **and a cat that ate large roosters,**[N] **is unusual**[N] damage, for which the owner is liable to pay only half the damage if the animal was innocuous, **and** therefore, **we do not collect** it **in Babylonia.** The payment for unusual damage is a fine, and fines cannot be collected in Babylonia, as there are no ordained judges authorized to adjudicate cases involving fines. **However,** if the cat ate **small** roosters, that **is its usual manner, and we collect** the damages in Babylonia, as it is a payment of money.

HALAKHA

Half the damage – פַּלְגָּא נִיזְקָא: The payment of anyone obligated to pay a sum equivalent to the amount of damage caused is considered a monetary payment, whereas the payment of anyone obligated to pay either more or less than the amount of damage caused is a fine. A person is liable to pay a fine based only on the testimony of witnesses (Rambam *Sefer Nezikim*, *Hilkhot Nizkei Mamon* 2:8).

Half the damage caused by pebbles – חֲצִי נֵזֶק צְרוֹרוֹת: If an animal dispersed pebbles from under its feet in the course of walking, and those pebbles caused damage, it is a sub-category of the primary category of damage of foot, which includes any damage caused by the animal in the course of its standard conduct, and the animal's owner is obligated to remit a monetary payment to the person whose property was damaged, from his highest quality property. However, there is a *halakha* transmitted to Moses from Sinai that he pays only half of the damages (Rambam *Sefer Nezikim*, *Hilkhot Nizkei Mamon* 2:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 390:3).

A dog that ate lambs, etc. – כַּלְבָּא דַּאֲכַל אִימְּרֵי וכו': If an undomesticated animal killed and ate an animal or ate raw meat, this is typical conduct, and its owner must pay the complete amount of the damage caused. However, in the case of a dog that killed a lamb or in the case of a cat that killed a large rooster and ate it, that is atypical conduct and therefore the owner of the cat or dog is liable to pay only half the damage. A person liable to pay half the damage pays only based on the ruling of judges ordained in Eretz Yisrael (Rambam *Sefer Nezikim*, *Hilkhot Nizkei Mamon* 3:7; *Sefer Shofetim*, *Hilkhot Sanhedrin* 5:9; *Shulḥan Arukh*, *Ḥoshen Mishpat* 391:6; 1:5).

NOTES

A conclusive refutation and *halakha* – תִּיוּבְתָּא וְהִלְכְתָא: There is a difference between the Gemara's use of the expressions conclusive refutation and difficulty. If the opinion of a Sage is characterized as difficult, his opinion was not completely rejected. The Gemara is merely noting that there is a difficulty with that opinion. There is a tradition among the early commentaries that there is an answer to each of those difficulties. Indeed, several books, e.g., Rabbi Yeshaya Berlin's *Kashot Meyushav*, are devoted to providing answers in all of the places where the Gemara concludes that it is difficult. In contrast, when the Gemara concludes that there is a conclusive refutation of an opinion, the difficulty is significant to the extent that the opinion of that Sage is rejected. That explains the astonishment expressed by the Gemara: A conclusive refutation and *halakha*?

And now that you said that payment of half the damage is a fine – וְהָשְׁתָּא דְּאָמְרַתְּ פַּלְגָּא נִיזְקָא קְנָסָא: Even though fundamentally, ordained judges are required to adjudicate monetary cases as well as cases of fines, the Sages instituted that in this regard the Sages in each place are the agents of the original ordained Sages. Although they said that this principle is implemented only in common cases, damage caused by animals is deemed a frequent occurrence and is therefore within the jurisdiction of Babylonian judges when the payment for damages is a monetary payment and not a fine (Ritva).

Large roosters – תַּרְנְגוֹלֵי רַבְרְבֵי: The early commentaries state that this distinction between large and small animals applies only to a cat that killed roosters. However, with regard to the case of a dog that ate lambs, it is unusual for a dog to eat even undersized lambs, and therefore those cases may not be adjudicated in Babylonia (Rashi and Meiri on *Bava Kamma*).

It is unusual – מְשׁוּנֶּה הוּא: As explained by Rashi, any damage caused to an object by a domesticated or undomesticated animal eating it falls into the primary category of damage of tooth, which includes any damage caused by the animal by eating an item that it typically eats. However, if the animal ate an item that it does not typically eat, it no longer falls into the category of tooth. Instead, the animal is considered to have acted with the intention to cause damage, which places it in the category of horn, which includes any damage that the animal causes intentionally. Consequently, as long as it was not forewarned, that act has the legal status of goring by an innocuous ox, and the owner only pays half the damage from the animal itself.

וְאִי תָּפַס – לָא מַפְקִינַן מִינֵּיהּ. וְאִי אֲמַר: אַקְבְּעוּ לִי זִימְנָא לְאֶרֶץ יִשְׂרָאֵל, מַקְבְּעִינַן לֵיהּ, וְאִי לָא אָזֵיל, מְשַׁמְּתִינַן לֵיהּ.

And if the injured party **seized**[NH] property from the offender in the amount of the fine, even in Babylonia **we do not repossess it from him,** as according to the letter of the law he is entitled to that payment, and the party from whom he seized the property cannot claim that he does not owe that payment. **And if** the injured party **said: Set me a time** to go **to** a court **in Eretz Yisrael,** where cases of fines are adjudicated, **we set** a time **for him, and if** the other disputant **does not go** to Israel as demanded, **we excommunicate him.**

בֵּין כָּךְ וּבֵין כָּךְ מְשַׁמְּתִינַן לֵיהּ. דְּאָמְרִינַן לֵיהּ: סָלֵיק הֶזֵּיקָךְ, מִדְּרַבִּי נָתָן. דְּתַנְיָא, רַבִּי נָתָן אוֹמֵר: מִנַּיִן שֶׁלֹּא יְגַדֵּל אָדָם כֶּלֶב רַע בְּתוֹךְ בֵּיתוֹ וְלֹא יַעֲמִיד סוּלָּם רָעוּעַ בְּתוֹךְ בֵּיתוֹ – שֶׁנֶּאֱמַר ״וְלֹא תָשִׂים דָּמִים בְּבֵיתֶךָ״.

The Gemara adds: **Either way,** whether or not he agrees to go to Eretz Yisrael, if he keeps the cause of the damage, **we** in Babylonia **excommunicate him, as we say to him: Remove your** cause of **damage,**[N] in accordance with the opinion of **Rabbi Natan. As it is taught** in a *baraita* that **Rabbi Natan says: From where** is it derived **that a person may not raise a vicious dog**[HB] **in his house, and may not place an unsteady ladder**[H] **in his house?** It is **as it is stated:** "And you shall make a parapet for your roof **that you shall not place blood in your house"** (Deuteronomy 22:8). It is prohibited to leave a potentially dangerous object in one's house, and one who refuses to remove it is excommunicated.

הדרן עלך אלו נערות

HALAKHA

And if he seized – וְאִי תָּפַס: Even though courts do not collect fines outside Eretz Yisrael, where the judges are not ordained, the person liable to pay the fine is ostracized until he attempts to appease the person who incurred the damage and pays him an appropriate sum. If he does so, the ostracism is repealed, even if the one who incurred the damage refuses to be placated. Similarly, if the victim seizes the property of the person liable to pay the fine equal to the value of the fine, the court does not repossess it from him. The Rema states in the name of the Rosh that although the court does not assess the damage *ab initio* so that if he chooses to do so the victim will know how much to seize, if the victim seized the other's property, the court assesses the damage and informs him whether he is allowed to keep the entire sum that he seized. All these limitations apply to fines fixed by Torah or rabbinic law. However, Sages located in each place have the authority to institute ordinances and collect fines from those who violate their ordinances (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 5:17; *Shulḥan Arukh*, *Ḥoshen Mishpat* 1:5).

A vicious dog – כֶּלֶב רַע: It is prohibited to raise a vicious dog unless it is tied with iron chains. In a border town one may raise a vicious dog, but he must tie it by day and release it at night. The Rema cites an opinion that if Jews are living among gentiles and require protection they may raise dogs for that purpose; however, if the dog is so vicious that it poses a real danger to people beyond the need for protection, the owner must tie it with chains, as stated here and in *Bava Kamma* 83b (Rambam *Sefer Nezikim*, *Hilkhot Nizkei Mamon* 5:9; *Shulḥan Arukh*, *Ḥoshen Mishpat* 409:3).

An unsteady ladder – סוּלָּם רָעוּעַ: It is a mitzva to remove any potential danger from one's property. One who keeps a dangerous item in his house has failed to fulfill the positive mitzva of making a parapet and has violated the prohibition: You shall not place blood in your house (Rambam *Sefer Nezikim*, *Hilkhot Rotze'aḥ UShmirat HaNefesh* 11:4; *Shulḥan Arukh*, *Ḥoshen Mishpat* 427:8).

NOTES

And if he seized – וְאִי תָּפַס: Rabbeinu Tam maintains that seized in this context means that he seized the animal that caused the damage, as, if the legal status of this situation is like that of the damage caused by the horn of an innocuous ox, payment may be collected only from the animal itself, not from the rest of the owner's property. The Meiri agrees. Many early commentaries, however, maintain that since he is not collecting the damages through the legal system but is seizing compensation for the damage he suffered, the above distinction does not apply. As a result, even if the owner of the rooster or the lamb seized other assets of the owner of the dog and the cat, the courts do not repossess them. The Rivan attributes this explanation to Rashi in *Bava Kamma*. This explanation also stands to reason, as it is unlikely that the value of a cat would be sufficient to offset half the damage to a large rooster.

Remove your cause of damage – סָלֵיק הֶזֵּיקָךְ: The Ritva writes, and the *Nimmukei Yosef* cites in his name, that this principle applies only to a nuisance like a dog, when the owner can be ostracized until he kills it or removes it by some other means. If, however, it was an ox that he utilizes for his work, the court does not compel the owner to remove it from his possession. He is forced to upgrade his supervision over it. In the Jerusalem Talmud, there is an opinion cited by the authorities that even though the party that suffered the damage has the right to seize the possessions of the one whose animal caused the damage, and despite the fact that the latter is required to remove the source of damage from his possession, the owner of the animal that caused the damage is under no obligation, not even by the laws of Heaven, to pay a fine if the court lacks the authority to force him to do so (see *Nimmukei Yosef*).

BACKGROUND

Damages of cats and dogs – נִזְקֵי כֶּלֶב וְחָתוּל: Apparently, based on the Gemara, cats were not completely domesticated and trained in those times. However, some people kept cats in their houses in order to battle snakes, mice, and other small vermin. However, in many cases, the cat would pounce on birds or even on the children of the house.

Most of the dogs in that period were either shepherd dogs or guard dogs. Later in this tractate (61b), it is clear that raising a dog in one's home as a pet was uncommon. Moreover, there were those who kept a vicious dog, a savage guard dog trained to attack and even kill people. It was no wonder that a dog of that kind could pounce on domesticated animals and kill them.

מתני׳ נַעֲרָה שֶׁנִּתְפַּתְּתָה – בּוֹשְׁתָּהּ וּפְגָמָהּ וְקְנָסָהּ שֶׁל אָבִיהָ, וְהַצַּעַר בְּתְפוּסָה. עָמְדָה בַּדִּין עַד שֶׁלֹּא מֵת הָאָב – הֲרֵי הֵן שֶׁל אָב. מֵת הָאָב – הֲרֵי הֵן שֶׁל אַחִין.

MISHNA In the case of **a young woman who was seduced,**[H] the compensation for **her humiliation and her degradation and her fine** belong **to her father. And** the same applies to the compensation for **pain in** the case of a woman who was **raped.** If the young woman **stood trial**[N] against the seducer or rapist **before the father died,**[H] **these** payments belong **to her father,** as stated above. If **the father died** before he collected the money from the offender, the payments belong **to** her **brothers.** As the father's heirs, they inherit the money to which he was entitled before he passed away.

לֹא הִסְפִּיקָה לַעֲמוֹד בַּדִּין עַד שֶׁמֵּת הָאָב – הֲרֵי הֵן שֶׁל עַצְמָהּ, עָמְדָה בַּדִּין עַד שֶׁלֹּא בָּגְרָה – הֲרֵי הֵן שֶׁל אָב. מֵת הָאָב – הֲרֵי הֵן שֶׁל אַחִין. לֹא הִסְפִּיקָה לַעֲמוֹד בַּדִּין עַד שֶׁבָּגְרָה – הֲרֵי הֵן שֶׁל עַצְמָהּ. רַבִּי שִׁמְעוֹן אוֹמֵר: אִם לֹא הִסְפִּיקָה לִגְבּוֹת עַד שֶׁמֵּת הָאָב – הֲרֵי הֵן שֶׁל עַצְמָהּ.

However, if **she did not manage to stand in judgment before the father died,** and she was subsequently awarded the money, the compensation belongs **to her,**[N] as she is now under her own jurisdiction due to the fact that she no longer has a father. If **she stood trial before she reached majority,** the payments belong **to her father,** and if **the father died, they** belong **to** her **brothers,** who inherit the money notwithstanding the fact that she has become a grown woman since the trial. If **she did not manage to stand in judgment before she reached majority,** the money belongs **to her. Rabbi Shimon says:** Even **if** she stood trial in her father's lifetime but **did not manage to collect** the payments **before the father died,** the brothers do not inherit this money, as it belongs **to her.**

HALAKHA

A young woman who was seduced, etc. – נַעֲרָה שֶׁנִּתְפַּתְּתָה וכו׳: The fine and the compensation for the humiliation and degradation of a seduced young woman and the pain of a raped young woman all belong to her father. If she has no father, she herself is entitled to the money (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 2:14).

If she stood trial before the father died, etc. – עָמְדָה בַּדִּין עַד שֶׁלֹּא מֵת הָאָב וכו׳: In the case of a seduced or raped young woman who sued only after she reached majority or married, or after her father's death, the fine and the compensation for humiliation, degradation, and, in a case of rape, the pain, all belong to the woman. If she stood trial when she was under her father's authority, the money belongs to her father. If she subsequently reached majority or married, or her father passed away, her brothers collect the money as his heirs, as the father is entitled to them as soon as the court delivers its verdict (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 2:15).

NOTES

She stood trial, etc. – עָמְדָה בַּדִּין וכו׳: Some commentaries note that the phrase: She stood trial, does not prove that the father himself cannot sue the offender. Rather, the *tanna* formulates his statement in this manner because the young woman is the sole claimant in the case that follows in the mishna, where the father already died (*Shita Mekubbetzet*). In fact, some early authorities claim the very opposite, that she cannot pursue this claim on her own, as the fact that the money will go to her father indicates that he is the appropriate litigant (Ra'avad; see Rambam).

Belongs to her – הֲרֵי הֵן שֶׁל עַצְמָהּ: Some authorities rule that in this case all of the compensation belongs to her (Rambam; *Tosafot*). Others maintain that with regard to the payments for humiliation and degradation, which are compensation for actual damage caused, the obligation is created automatically at the time of the rape or seduction, which was before the father died. Consequently, the sum belongs to the father even after he has passed away, and the brothers are entitled to this payment as his heirs. It is only the fixed monetary fine that comes into effect due to the court ruling and therefore belongs to the woman (Ramban).

מַעֲשֶׂה יָדֶיהָ וּמְצִיאָתָהּ, אַף עַל פִּי שֶׁלֹּא גָבְתָה, מֵת הָאָב – הֲרֵי הֵן שֶׁל אַחִין.

By contrast, with regard to **her earnings and** the lost **items** that **she** has **found, although she has not collected** them,[N] e.g., she had yet to receive her wages, if **the father died they** belong **to** her **brothers.** These payments are considered the property of their father, as he was entitled to them before he passed away.

גמ׳ מַאי קָא מַשְׁמַע לָן? תָּנֵינָא: הַמְפַתֶּה נוֹתֵן שְׁלֹשָׁה דְּבָרִים, וְהָאוֹנֵס אַרְבָּעָה, הַמְפַתֶּה נוֹתֵן בּוֹשֶׁת וּפְגָם וְקְנָס, מוֹסִיף עָלָיו אוֹנֵס שְׁנוֹתֵן אֶת הַצַּעַר! לְאָבִיהָ אִיצְטְרִיךְ לֵיהּ. לְאָבִיהָ נַמִי פְּשִׁיטָא, מִדְּקָא יָהֵיב מְפַתֶּה. דְּאִי לְעַצְמָהּ – אַמַּאי יָהֵיב מְפַתֶּה? מִדַּעְתָּהּ עֲבַד!

GEMARA The Gemara asks: **What is** the mishna **teaching us? We** already **learned** this in a mishna (*Ketubot* 39a): **The seducer pays three types of indemnity and the rapist** pays **four. The seducer pays** compensation for his victim's **humiliation and degradation and** for the **fine** the Torah imposes on a seducer. **A rapist adds an additional** payment, **as he pays** compensation for **the pain** she suffered. The Gemara answers: It **is necessary for** the mishna to teach that the money is given **to her father.** The Gemara asks: It **is also obvious** that the money goes **to her father, from** the fact **that a seducer pays** these types of indemnity, **as, if** one claims that the money goes **to her, why does a seducer pay** her at all? After all, **he acted with her consent,**[N] how can she then claim compensation?

NOTES

Although she has not collected them – אַף עַל פִּי שֶׁלֹּא גָבְתָה: The Gemara will inquire into the suitability of the use of the term collected, with regard to a lost object she found. As for the reason why the mishna employs this term, some commentaries write that typically there is no need for a trial in order for someone to collect wages owed to them, whereas in the cases of a rapist and a seducer, the sum due for humiliation and degradation must be determined by the court (*Baḥ* on Rif).

He acted with her consent – מִדַּעְתָּהּ עֲבַד: The commentaries point out that this cannot be speaking of the seduction of a minor. She is not considered to have acted with consent because she is not legally competent to make these decisions.