

[the corner, a thread]. He must enunciate the letter *zayin* of *tizk'iru* [you will remember]. He must stretch out the letter *dalet* of *echad* [one], long enough to concentrate on the idea that God is King over the heavens and the earth and the four directions. He must not say the letter *chet* of *echad* too quickly, so that it does not sound as though he is saying

ey-chad. (2) A person may recite the *Shema* in any language that he understands. But if he says it in some other language, he must be careful about the possibilities of mispronunciation that exist in that language and must enunciate carefully in that language just as he must do in the holy language.

MISHPATIM FOR THURSDAY NIGHT

משפטים ליל ששי

צירוף יהוה

כז ואם שָׁנָא דְעַבְדִּיהּ אוּ שְׁנָא
דְאַמְתִּיהּ יִפְּל לְבַר חוֹרִין
יִפְטָרְנֶיהּ חֻלְף שְׁנִיָּה: כח וְאֵרִי
יִגַח תּוֹרָא יֵת גְּבָרָא אוּ יֵת
אַתְתָּא וַיְמוֹת אַתְרַגְמָא יִתְרַגְּם

כז וְאִם-שָׁנָן עַבְדּוֹ אוּ-שָׁנָן אֲמָתוֹ יִפְּלֵל
לְחַפְּשֵׁי יִשְׁלַחְנוּ תַּחַת שְׁנֹו: פ כח וְכִי-יִגַּח
שׂוֹר אֶת-אִישׁ אוּ אֶת-אִשָּׁה וַיִּמָּת סָקוּל

(27) And if he knocks out his slave's tooth or his handmaid's tooth — he must send him off to freedom [as compensation] for his tooth. (28) And if an ox gores a man or a woman and [causes the victim to] die — then the ox must surely be

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(28) **And if an ox gores** — [This law applies] whether it is an ox or any domestic animal, wild beast or bird. Scripture, however, [uses an ox as the example, for it] speaks in terms of a usual case (Mekhilta; Bava Kamma 54b). **And its flesh must not be eaten** — But surely from our verse

stating, “the ox must surely be stoned,” do I not know then that the ox becomes a נבלה [an animal which died without being ritually slaughtered (see Deuteronomy 14:21)]?! And a נבלה is prohibited to be eaten! So why does Scripture state here, “and its flesh must not be eaten?” [By stating this, Scripture teaches us] that even if [the ox's owner unlawfully] slaughtered it immediately after the sentence was pronounced [for it to be stoned, in an attempt to allow its flesh to be eaten], it is nevertheless prohibited to be eaten. And how do we know [that not only may its flesh not be eaten, but that furthermore, no] benefit [whatsoever may be derived from the ox]? Because Scripture continues here, נקי השור נקי [literally, “the owner of the ox is

וַיִּזְן שֶׁל תּוֹכְרוֹ וְצָרִיף לְהֶאֱרִיף בְּדִלְתָּ שֶׁל אֶחָד
כְּדִי שְׂיִמְלִיכֵהוּ בְּשָׁמַיִם וּבְאָרְץ וּבְד' רוּחוֹת,
וְצָרִיף שֶׁלֹּא יַחְטוּף בַּחַיִּית כְּדִי שֶׁלֹּא יִהְיֶה
כְּאוֹמֵר אֵי חָד: ב קוֹרָא אָדָם שְׁמַע בְּכָל לְשׁוֹן
שְׂיִהְיֶה מְבִינָה וְהַקּוֹרָא בְּכָל לְשׁוֹן צָרִיף לְהַזְהִיר
מִדְּבָרֵי שְׁבוּשׁ שֶׁבְּאוֹתָהּ הַלְשׁוֹן וּמִדְּקָדֵק
בְּאוֹתָהּ הַלְשׁוֹן כְּמוֹ שְׁמִדְּקָדֵק בְּלְשׁוֹן הַקּוֹדֵשׁ:

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(כח) וְכִי יִגַּח שׂוֹר. אֶחָד שׂוֹר וְאֶחָד כֹּל בְּהֵמָה וְחַיָּה
וְעוֹף אֶלָּא שְׂדֵבֵר הַכְּתוּב בְּהוֹוֵה: וְלֹא יֵאָכֵל אֶת
בְּשָׂרוֹ. מִמִּשְׁמַע שְׁנָא' סָקוּל יִסְקַל הַשׂוֹר אִינִי יוֹדֵעַ
שֶׁהוּא נִבְלָה וְנִבְלָה אֶסוּרָה בְּאֶכִילָה אֶלָּא מָה ת"ל
וְלֹא יֵאָכֵל אֶת בְּשָׂרוֹ שֶׁאֶפְלוּ שְׁחִטּוֹ לְאַחַר שְׁנִגְמָר
דֵּינּוֹ אֶסוּר בְּאֶכִילָה בְּהִנָּאָה מִנִּין ת"ל וּבַעַל הַשׂוֹר

תּוֹרָא וְלֹא יִתְאַכַּל יֵת בְּסַרְיָה
 וּמְרִיָּה דְתוֹרָא יְהִי זְכָאָה:
 כּט וְאִם תּוֹר נִגְחָה הוּא מֵאֲתַמְלִי
 וּמִדְקֻמוּהִי וַיִּתְסַהֵד בְּמְרִיָּה וְלֹא
 נִטְרִיָּה וַיִּקְטוֹל גְּבַרָא אִו
 אֲתַתָּא תּוֹרָא יִתְרַגַּם וְאַף מְרִיָּה

יִסְקַל הַשּׁוֹר וְלֹא יֵאָכַל אֶת־בְּשָׂרוֹ וּבֶעַל
 הַשּׁוֹר נָקִי: כּט וְאִם שּׁוֹר נִגְחָה הוּא מִתְמַלֵּ
 שְׁלֹשָׁם וְהוּעֵד בְּבַעְלָיו וְלֹא יִשְׁמְרָנוּ וְהַמִּית
 אִישׁ אִו אִשָּׁה הַשּׁוֹר יִסְקַל וְגַם־בְּעַלָיו

stoned and its flesh must not be eaten; the owner of the ox is innocent. (29) But if the ox was a gorer from yesterday and the day before yesterday, and its owner has been warned yet he did not guard it, and it killed a man or a woman —

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clean.” Here, our Rabbis expound this phrase midrashically as follows]: Just as someone would say to his friend [referring to a person who went bankrupt], “So-and-so has been left clean (נקי) of all his possessions — he has no benefit whatsoever from any of them!” [So, too, here, this phrase alludes to the fact that no benefit whatsoever may be derived from such a condemned animal]. This is the midrashic explanation of the phrase

[ובעל השור נקי]; the simple explanation is as it is plainly understood, i.e., since Scripture states regarding a מוּעֵד [an animal that had “gored” three times and whose owner is therefore required to guard it exceedingly carefully] (next verse), “and its owner must also die” — therefore Scripture finds it necessary in the case of a תּם [an animal that has not “gored” three times] to state, “the owner of the ox is innocent.” (29) [If the ox was a gorer] from yesterday and the day before yesterday — [Scripture teaches us here that the present goring, that of yesterday and that of the day before yesterday] amounts to three gorings altogether [to render the animal a מוּעֵד, and therefore, the owner of such an animal is liable to death by the hand of Heaven, only when the animal gores a fourth time (Siftei Chakhamim, Nachlat Yaakov)] (Mekhilta; Bava Kamma 23b). והוּעֵד בְּבַעְלָיו — [This term הוּעֵד signifies [that the owner was fore-] warned through [the testimony of] witnesses (עֵדִים) [in his presence, that his ox had gored three times (see Rashbam Bava Batra 28b)] (Mekhilta; Bava Kamma 24a); as in (Genesis 43:3), “The man clearly warned (הוּעֵד הַעֵד) us.” And it killed a man [or a woman ...] —[This phrase is seemingly superfluous, for the preceding verse already states it. However,] since Scripture stated (preceding verse), “And if an ox gores [a man or a woman ...],” I only understand [that this law applies to an animal] that kills its victim by goring; how do I know [that this law also applies] when it kills its victim by biting, shoving or kicking? Because Scripture states here, “And it killed ...” [i.e., through any method (Siftei Chakhamim)]. And its owner must also die — by the hand of Heaven. Now, one might think [that this refers to the death penalty] by the hand of man [i.e., by the Court]. Scripture, therefore, states

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נקי באדם האומר לחברו יצא פלוני נקי מנכסיו ואין לו בהם הנאה של בלום וזה מדרשו. ופשוטו במשמעו לפי שנאמר במועד וגם בעליו יומת הצרך לומר בתם ובעל השור נקי: (כט) מתמול שלשם. הרי שלש נגחות: והוּעֵד בְּבַעְלָיו. ל' התראה בעדים כמו העד העד בנו האיש: והמית איש וגו'. לפי שנאמר כי נגח אין לי אלא שהמיתו בנגיחה. המיתו בנשיכה דחיפה ובעיטה מנין ת"ל והמית: וגם בעליו יומת. בידי שמים. יכול בידי אדם ת"ל

יִתְקַטֵּל: לֹא אִם מְמוֹן יִשׁוּן
 עֲלוּהֵי וַיִּתֵּן פִּדְיוֹן נַפְשֵׁיהּ כֹּכֵל
 דֵּי יִשׁוּן עֲלוּהֵי: לֹא אוֹ לְבַר
 יִשְׂרָאֵל יִגַּח תּוֹרָא אוֹ לְבַת
 יִשְׂרָאֵל יִגַּח כְּדִינָא הַדִּין
 יִתְעַבֵּד לֵיהּ: לֹב אִם לְעַבְדָּא
 יִגַּח תּוֹרָא אוֹ לְאִמְתָּא כֶּסֶף
 תְּלָתִין סֻלְעִין יִתֵּן לְרַבּוּנֵיהּ

יּוֹמָת: לֹא אִם-כֶּפֶר יוֹשֶׁת עָלָיו וְנָתַן פְּדִיָן
 נַפְשׁוֹ כֹּכֵל אֲשֶׁר-יוֹשֶׁת עָלָיו: לֹא אוֹ-בֵן
 יִגַּח אוֹ-בַת יִגַּח כַּמִּשְׁפֵּט הַזֶּה יַעֲשֶׂה לוֹ:
 לֹב אִם-עֶבֶד יִגַּח הַשּׂוֹר אוֹ אִמָּה כֶּסֶף ו
 שְׁלֹשִׁים שֶׁקֶלִים יִתֵּן לְאֲדָנָיו וְהַשּׂוֹר יִסְקָל:

then the ox must be stoned and its owner must also die, [however,] (30) When an atonement amount is placed upon him, then he should pay whatever amount is placed upon him as a redemption for his life. (31) Whether it gores a boy or if it gores a girl, this same law applies to it. (32) If the ox gores a slave or a handmaid, then he must pay thirty shekel of silver to his master, and the ox must

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[regarding a murderer] (Numbers 35:21), “the one who struck must surely be put to death — he is a murderer” — [this teaches that] you are to put someone to death because of his murder, but you do not put someone to death if his ox kills someone (Sanhedrin 15b). (30) **אם כפר יושת עליו** — The word **אם** here is not conditional [i.e., does not mean “if,” but rather, it means “when”], and is similar to (Exodus 22:24),

מות יומת המכה רצח הוא על רציחתו אתה הורגו ואי אתה הורגו על רציחת שורו: (ל) **אם כפר יושת עליו**. אם זה אינו תלוי והרי הוא כמו אם כסף תלוה לשון אשר זה משפטו שישיתו עליו בית דין כופר: ונתן פדיון נפשו. דמי נזק דברי רבי שמעאל. רבי עקיבא אומר דמי מזיק: (לא) **או בן יגח**. בן שהוא קטן: **או בת**. שהיא קטנה לפי שנאמר והמית איש או אשה יכול אינו חייב אלא על הגדולים ת"ל או בן יגח וגו' לחייב על הקטנים בגדולים: (לב) **אם**

“When (**אם**) you lend money,” where [**אם**] has the meaning “when.” [Thus, Scripture is not giving us the option here to place an atonement payment, but rather, **אם** means here] that this is the obligatory law here, namely, that the Court must place an atonement amount upon him [so that he may save his life]. [See Mizrahi who explains why our verse is not included in Rabbi Yishma-eil’s list of three instances in the Torah where **אם** means “when” and not “if” (Rashi Exodus 20:22).] **As a redemption for his life** — [The amount must be] the value of the victim — so rules Rabbi Yishma-eil [who renders the atonement payment as compensation for the one who was killed]; and Rabbi Akiva rules [that the amount should be] the value of the owner of the damaging animal [where the atonement money is a symbolic replacement of the owner, who should have been put to death himself] (Mekhilta). (31) **Whether it gores a boy** — i.e., a boy who is a minor; **Or if it gores a girl** — who is a minor. Now, since Scripture states (verse 29), “and it killed a man or a woman,” [had it not also stated “a boy or ... a girl,”] one might have thought that liability is only incurred if [the victim is] an adult; Scripture, therefore, says here “[if it gores] a boy or... a girl,” in order to incur liability for minor victims as for adults (Mekhilta). (32) **If [the ox gores] a**

וְתוֹרָא יִתְּרָגֵם: לֵג וְאָרִי יִפְתַּח
גָּבֵר גּוֹב אוֹ אָרִי יִכְרֶה גָּבֵר
גּוֹב וְלֹא יִכְסֶּנִּיהּ וְיִפֹּל תַּמָּן

ס לֵג וְכִי-יִפְתַּח אִישׁ בּוֹר אֹו כִּי-יִכְרֶה אִישׁ
בַּר וְלֹא יִכְסֶּנּוּ וְנִפְל־שָׁמָּה שׁוֹר אֹו חֲמוֹר:

be stoned. (33) And if a man opens a pit or if a man digs a pit, and he does not cover it up, and then an ox or a donkey falls into it,

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slave or a handmaid — [*Here, Scripture is referring to*] non-Jewish [*slaves, where a standard fixed fine of thirty shekel of silver is imposed*] (Mekhilta). **Then he must pay thirty shekel of silver** — [*Why this amount?*] *This is a Scriptural decree, regardless of whether [the victim] was worth one thousand zuz or worth only one dinar. The weight of a shekel is equivalent to that of four gold coins, which equals a half an ounce, by the standard weight of Cologne.* (33) **And if a man opens a pit** — *i.e., it was covered, and he uncovered it. Or if a*

man digs [a pit] — *Why is this stated? Surely, if he is liable for merely having uncovered a pit [which another had dug], then how much more so would he be liable for digging one?! However, [it is stated,] in order to include the case of one who digs after someone else has dug, that he [i.e., the second has eliminated the act of the first, and] is liable (Bava Kamma 51a) [i.e., since a pit that is ten handbreadths deep is rendered capable of killing an animal that falls into it, if a person digs a pit nine handbreadths deep which is only capable of injuring an animal, and a second person digs an additional handbreadth, then it is the second person who is liable even if the animal was only injured when it falls into this pit (Sifteï Chakhamim)].* **And he does not cover it up** — *But if he does cover up the pit, then he is exempt [i.e., he need not fill up the hole with earth (Sifteï Chakhamim)]. And Scripture here is speaking about digging [a pit] in public property (Bava Kamma 55b) [or in any other place where the one who dug it cannot claim, “What right has your animal to be on my property?!” as in the digger’s own private property, where he is not liable (Bava Kamma 49b; Sifteï Chakhamim)].* **An ox or a donkey** — *Actually, this law applies to any domestic or wild animal. For wherever Scripture states the expression, “an ox or a donkey,” we learn that [this means any animal, through an Oral tradition that] the word “ox” is to be linked to [the same word] “ox” in the context of Shabbat, about which Scripture states (Exodus 23:12), “in order that your ox and your donkey may rest” [as follows]: Just as in that context [of Shabbat], any domestic or wild animal is equally referred to just as the ox, since in another place [in Scripture, also*

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עבד או אמה. כנעניים: שלשים שקלים יתן. גזרת הכתוב הוא בין שהוא שוה אלף זה בין שאינו שוה אלא דינר והשקל משקלו ד' זהובים שהם חצי אונקיא למשקל הישר של קלוניא"א: (לג) וכי יפתח איש בור. שהיה מכוסה וגלהו: או כי יכרה. למה נאמר אם על הפתיחה חייב על הכרייה לא כל שכן אלא להביא בורה אחר בורה שהוא חייב: ולא יכסנו. הא אם כסהו פטור ובחופר ברשות הרבים דבר הכתוב: שור או חמור. הוא הדין לכל בהמה וחייה שבכל מקום שנא' שור וחמור אנו למדין אותו שור שור משבת שנאמר למען ינוח שורך וחמרך מה להלן כל בהמה וחייה בשור שהרי נאמר במקום

תֹּרְאָא אִו חֲמָרָא: לֹד מְרִי דְגָבָא
 יְשִׁלֵּם כֶּסֶפָא יְתִיב לְמַרוּהִי
 וּמִיִּתְאָ יְהֵא דִילֵיהּ: לַה וְאַרְי
 יְגוּף תּוֹר דְגָבֵר יְת תּוֹרְא
 דְחֲבָרִיהּ וַיִּזְבְּנוּן יְת

לֹד בַּעַל הַבּוֹר יִשְׁלֵם כֶּסֶף יֹשִׁיב לְבַעְלֵיו
 וְהֵמָּת יִהְיֶה-לּוֹ: ס לַה וְכִי-יִגָּף שׁוֹר-אִישׁ
 אֶת-שׁוֹר רֵעֵהוּ וּמָת וּמָכְרוּ אֶת-הַשׁוֹר הַחַי

(34) Then the owner of the pit must pay money, restoring [its value] to its owner, and the carcass [also] goes to him. (35) And if a man's ox strikes the ox of his fellow and [causes it to] die, then they must sell the living ox and divide

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in the context of Shabbat,] it says (Deuteronomy 5:14), “[Do not do any work ... nor your ox, nor your donkey, nor] any of your livestock” — so, too, here, [one is liable for] any domestic or wild animal just as in the case of the ox. [Why then, does Scripture not simply say, “any animal?” Well,] “an ox or a donkey” is stated here for the exclusive purpose [of the following exposition] (Bava Kamma 10b): [One is liable here only if] an ox [(or other animal) fell into the pit], but not

a man; [and only if] a donkey [(or other animal) fell into the pit], but not [for any damage to] vessels [that had fallen into the pit. This law is a Scriptural decree (Siftei Chakhamim)].
(34) The owner of the pit — *i.e., the one who made the stumbling-block [that caused the damage, i.e., the pit]. And although the pit is not his, for he had dug it in public property (see Rashi on preceding verse), nevertheless, Scripture deems him “the owner of the pit,” for the purpose of rendering him liable for damages (Bava Kamma 29b).* **כסף ישיב לבעליו** — *[The verse could have simply said לבעליו כסף ישלם בעל הבור. The seemingly superfluous word] ישיב comes to include [the possibility that he may pay] the equivalent of money, and even with [a low quality item such as] bran [as long as it amounts to the total payment value owed. If paid with land, however, only the best quality must be used (see Rashi Exodus 22:4)] (Bava Kamma 7a).* **And the carcass [also] goes to him** — *i.e., to the one who suffered the damage. They estimate the value of the carcass and the one who suffered the damage takes the carcass, [receiving it as partial “payment” for the animal] at that estimated value. Then, as compensation for the damage caused by him, the one responsible must pay the remainder of the value of the animal [when it had been alive. This payment is what our verse refers to when stating “the owner of the pit must pay money, restoring (its value) to its owner”] (Mekhilta: Bava Kamma 10b).* **(35) וכי יגף** — *[means: If the ox] shoves, whether with its horns, whether with its body, whether with its legs or whether it bit with its teeth — all of these are*

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אחר וכל בהמתך אף כאן כל בהמה וחייה בשור
 ולא נאמר שור וחמור אלא שור ולא אדם חמור
 ולא כלים: (לד) בעל הבור. בעל התקלה אע"פ
 שאין הבור שלו שעשאו ברשות הרבים עשאו
 הכתוב בעליו להתחייב עליו בנזקיו: כסף ישיב
 לבעליו. ישיב לרבות שוה כסף ואפלו סבין: והמת
 יהיה לו. לנזק שמין את הנבלה ונוטלה בדמים
 ומשלם לו המזיק עליה תשלומי נזקו: (לה) וכי יגף.
 ידחוף בין בקרניו בין בגופו בין ברגליו בין שנשכו
 בשניו כלן בכלל נגיפה הם שאין נגיפה אלא לשון

תֹּרָא חַיָּא וַיִּפְלְגוּן יְת כֶּסֶפֶיהָ וַחֲצֵי אֶת־כֶּסֶּפוֹ וְגַם אֶת־הַמֵּת יַחֲצִיּוּן: לוֹ אִוֹ
 וַאֲף יֵת דְּמֵי מֵיתָא יִפְלְגוּן:

its money, and they should also divide the carcass. (36) Or, if the ox is known

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included in the term נגיפה, for נגיפה exclusively signifies striking (see Rashi on verse 22 above; Mekhilta). שור איש — [means:] A man's ox. Then they must sell the [living] ox ... — [When specifying this law of selling the living ox and the division of monies,] our verse is [exclusively] referring to the case where [both the damaging ox (a תם, i.e., an ox that had not gored three times) and the damaged ox] have exactly the same value [when alive. For example,] if an ox that was worth 200 zuz kills an ox that was [also] worth 200 zuz, then regardless of whether the carcass [of the killed animal] is worth a lot or whether it is worth only a little — when one party takes half the [value] of the live ox and half of the dead one, and the other party [also] takes half the [value] of the live ox and half of the dead one, the result is that each party bears half of the loss incurred by the animal's death. We learn from this, therefore, [the general rule,] that [the owner of] a תם must pay for half of the damage incurred [whatever each animal is worth], for from the case of [our verse,] where both animals have equal value, you extrapolate the case where their values are not the same, namely: That the law of the תם is to pay half of the damage — no less and no more. Now, one might [erroneously] suggest that maybe the verse is telling us to split their values [and share the money] even in the case where the two animals had unequal values [when alive]. But if you would so suggest, there would be occasions when the damaging party would actually profit greatly from this, namely, when the carcass [of the damaged animal] has a high value on the non-Jewish market and is worth more than the entire value of the damaging ox. [Thus, here, the damaging party will profit, even though his ox has killed his fellow's ox!] Surely it is impossible that Scripture would have the damaging party profit! Furthermore, there would also be occasions [through the erroneous suggestion above], when the damaged party would receive far more than even the full value of his damaged animal [let alone half of it!] [This would occur] when, e.g., half of the value of the damaging ox is worth more than the entire value of the damaged ox [and thus, the damaged party would receive more than the full value of his animal, in fact more than is awarded to someone whose animal had been killed by the more stringent case of a מועד, an animal that had already gored three times, while here, we are only dealing with a damaging תם!] Thus, if you would so suggest, you are [in effect]

מכה: שור איש. שור של איש: ומכרו את השור וגו'. בשוים הכתוב מדבר שור שוה ר' שהמית שור שוה ר' בין שהנבלה שוה הרבה בין שהיא שוה מעט בשנוטל זה חצי החי וחצי המת וזה חצי החי וחצי המת נמצא כל א' מפסיד חצי נזק שהזיקה המיתה למדנו שהתם משלם חצי נזק שזמן השוין אתה למד לשאינן שוין כי דין התם לשלם חצי נזק לא פחות ולא יותר או יכול אף בשאינן שוין בדמיהן כשהן חיים אמר הכתוב וחצו את שניהם אם אמרת בן פעמים שהמזיק משתכר הרבה כשהנבלה שוה למכר לעובר כוכבים הרבה יותר מדמי שור המזיק ואי אפשר שיאמר הכתוב שיהא המזיק נשכר או פעמים שהנזק נוטל הרבה יותר מדמי נזק שלם שחצי דמי שור המזיק שוה יותר מכל דמי שור הנזק ואם אמרת בן הרי תם חמור

לו או אֲתִידַע אָרִי תֹרֵר נִגְחָה
הוא מאתמלי ומדקמוהי
ולא נטרה מרה שלמא ישלם
תורא חלף תורא ומיתא יהא
דיליה: לו ארי יגנב גבר

נודע כִּי שׁוֹר נִגְחָה הוּא מִתְמוֹל שְׁלֹשׁ וְלֹא
יִשְׁמְרֵנוּ בְּעֵלָיו שְׁלֹשׁ יְשָׁלֵם שׁוֹר תַּחַת
הַשׁוֹר וְהֵמָּת יִהְיֶה-לּוֹ: ס לוּ כִּי יִגְנַב-אִישׁ

to be a gorer from yesterday and the day before yesterday, yet its owner had not guarded it, then he must surely pay [the value of the] ox [to compensate] for [the loss of] the ox, and the carcass will belong to him. (37) If a man steals

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deeming the case of תם more stringent than that of מועד [and this cannot be so]! Therefore, you must be forced to admit that our verse must be speaking only of the case where the two animals had equal value; and we learn [from this, the general rule, namely,] that תם pays half the damage; and from this case of [the animals having] equal value, we extrapolate to that of [the animals having] unequal value, namely, that we estimate the value of the carcass of the one who is due compensation for half of the

ממועד על כרחק לא דבר הכתוב אלא בשוין ולמדך שהתם משלם חצי נזק וגמון השוין תלמוד לשאינן שוין שהמשלם חצי נזקו שמין לו את הנבלה ומה שפחתו דמיו בשביל המיתה נוטל חצי הפחת והולך ולמה אמר הכתוב בלשון הזה ולא אמר ישלם חציו ולמד שאין התם משלם אלא מגופו ואם נגח ומת אין הנזק נוטל אלא הנבלה ואם אינה מגעת לחצי נזקו יפסיד. או שור שזה מנה שנגח שור שזה חמש מאות וזו אינו נוטל אלא את השור שלא נתחייב התם לחייב את בעליו לשלם מן העליה: (לו) או נודע. או לא היה תם אלא נודע כי שור נגח הוא

damage he incurred, and the decrease in his animal's value due to its death [i.e., the difference between the carcass value and the value of the animal when it was alive, represents the full damage incurred; thus,] he collects half of this full damage valuation and goes on his way [i.e., and that is all] (Bava Kamma 34a). Now, [if these are the general rules in the case of a תם,] why did Scripture express the law in such a way [as to involve valuations of even the damaging animal], rather than simply saying, “he must pay half?” In order to teach us [another principle, namely,] that [the owner of] a תם pays only to the extent of his animal's own body. [To illustrate this principle,] if the animal, [a תם,] gored [another animal to death] and then after this, [also] died, the damaged party may only collect the carcass [of the damaging animal] — and even if [the value of this carcass] does not reach half of the damage it caused, [the damaged party must nevertheless only collect that carcass and nothing more, even though by doing so] he loses out [on the balance of half of the damage]. Another illustration: If an ox worth 100 zuz gores [and kills] an ox worth 500 zuz, [the damaged party must] only collect the [value of the damaging] ox [and no more, even though the damage exceeds 100 zuz]. For a תם is not held culpable to the extent of having its owner liable to pay from any of his other property [i.e., other than the damaging animal itself] (Bava Kamma 16b). (36) או נודע — [The word או can mean “or” and can also mean “if” (see Rashi on Leviticus 4:23 quoting our verse as an example). With these two meanings, our verse is saying:] Or, if the ox was not a תם, but rather, the ox was known to be a gorer. [And it gored] (a) today, (b)

תֹּר אוֹ אִמֹר וַיִּכְסְנֶיהָ אוֹ
 וַיִּבְנֶיהָ חֲמִשָּׁא תוֹרִין יְשָׁלֵם
 חֲלֶף תוֹרָא וְאַרְבַּע עֲנָא חֲלֶף
 אִמְרָא: א אִם בְּמַחְתֶּרֶתָא
 יִשְׁתַּכַּח גִּבְבָּא וַיִּתְמַחֵי וַיָּמוּת

שׁוֹר אוֹ-שֶׁה וַיִּטְבְּחוּ אוֹ מִכְרוּ חֲמִשָּׁה בְּקָר
 יְשָׁלֵם תַּחַת הַשׁוֹר וְאַרְבַּע-צֶאֱנָן תַּחַת הַשֶּׁה:
 כב א אִם-בְּמַחְתֶּרֶת יִמָּצָא הַגִּבֵּב וְהִכָּה וּמָתָ

an ox or a sheep, and then slaughters it or sells it, then he must pay five cattle to replace [each] ox, and four flock-animals to replace [each] sheep. **22** (1) If a thief is discovered while tunnelling in [a house] and he is struck and dies,

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yesterday (מתמול) and (c) *the day before yesterday* (שלשם) — thus making up the [prerequisite] three goring occurrences [that render the animal a מועד (see Rashi on verse 29 above)] (Mekhilta 29). **Then he must surely pay [the value of the] ox** — [As opposed to the half-damage payment for a תם (see Rashi on preceding verse), here, the מועד must pay] full [compensation for the] damage. **And the carcass will belong to him** — [Even though the damaging party pays for full compensation and one might think that he should bother with the carcass

(Siftei Chakhamim), nevertheless, the carcass goes] to the damaged party, and then the damaging party must pay the remainder of the [original] value of the animal to the damaged party, so as to make up for full compensation for the damage he caused (Bava Kamma 53b).

(37) Five cattle [to replace (each) ox ...] — Says Rabban Yochanan Ben Zakai: The Omnipotent One is compassionate regarding the honor of people; an ox, when stolen, [is taken away while] walking on its own legs, and so the thief did not have to be demeaned by having to carry it away upon his shoulder — he has to pay fivefold; but a sheep, he carries away upon his shoulders, and therefore, since the thief is demeaned in this way, he is to pay only fourfold. [However] Rabbi Meir says, Come and see how great is the significance of work; an ox, which was kept away from doing its work [when stolen, its thief must] pay fivefold; while a sheep [that is stolen], is not kept away from any work, [and so, the thief is to pay only] fourfold (Mekhilta; Bava Kamma 79b). **To replace [each] ox ... to replace [each] sheep** — [The verse surely could have expressed this without repeating these specific animals. However,] Scripture specifies them again, in order to teach us that the law of fivefold and fourfold compensation applies only to an ox and sheep [respectively, and to no other animal — unlike that which we learned regarding a pit (see verse 33 above and Rashi there)] (Bava Kamma 67b). **22** (1) **אם במחותרת** — [means: If a thief is discovered] while tunnelling

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היום ומתמול שלשום הרי ג' נגיחות: שלם ישלם שור. נזק שלם: והמות יהיה לו. לנזק ועליו ישלים המזיק עד שישתלם נזק כל נזקו: (לו) חמשה בקר וגו'. אמר ר' יוחנן בן זכאי חס המקום על כבודן של בריות שור שהולך ברגליו ולא נתבזה בו הגבב לנושא על כתפו משלם ה' שה שנושא על כתפו משלם ד' הואיל ונתבזה בו. אמר ר' מאיר בא וראה כמה גדולה כחה של מלאכה שור שבטלו ממלאכתו ה' שה שלא בטלו ממלאכתו ד': תחת השור ... תחת השעה. שגאן הכתוב לומר שאין מדת תשלומי ד' וה' נוהגת אלא בשור ושה בלבד: (א) אם במחותרת. בשהיה חותר את הבית: אין לו

לית ליה דם: ב אם עינא
 דסהדיא נפלת עלוהי דמא
 ליה שלמא ישלם אם לית ליה
 וינדבן בגנבתיה: ג אם
 אשתכחא ושתכח בידיה

אין לו דמים: ב אם זרחה השמש עליו
 דמים לו שלם ישלם אם אין לו ונמכר
 בגנבתו: ג אם המצא תמצא בידו הגנבה

there is no guilt for his blood. (2) [But] if the sun shone upon him, then he has guilt for his blood. [The thief] must surely pay [and] if he has nothing, then he is to be sold for his theft. (3) If the stolen item is surely found in his possession,

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דמים — אין לו דמים — [literally, *in a house*. (חותר) “he does not have blood,” i.e.] this is not considered murder, for it is as though the thief had already died [by placing himself in that position]. Here, then, the Torah is teaching you that if someone comes to kill you, then preempt him and kill him first. Now, this thief certainly came [with the intention] to kill you, for he knew that no man can control himself while watching his property being taken away from him in front of his own eyes and remain silent. Therefore, he came [to your house] on the very understanding that if the owner of the property would stand up against him, he will kill him (Sanhedrin 72a). (2) **[But] if the sun shone upon him** — This is [not to be taken literally, but rather, is] only a figurative expression, meaning: If the matter

is clear to you that this thief comes to you in peace — just like the sun that represents peace to the world — so, too, if it is plain to you that he has not come [with the intention] to kill, even if the owner of the property would stand up against him. For instance, if a father would break in to steal his son's property, it is a known thing that the father has mercy on his son and he is not coming with intentions to take a life [so in this case.] **He has guilt for his blood** — for [unlike the previous case,] this thief is considered alive, and so, if the owner kills him, this is murder. **שלם ישלם** — i.e., the thief [must surely pay back] the money he stole, but he is not liable to the death penalty. Now, Onkelos, who translated our verse as: “If the eyes of witnesses fell upon him ...,” takes a different approach [to our verse, explaining it to be] saying: If witnesses discovered the thief before the owner returned [to his house], and when the owner came back and confronted the thief, these witnesses warned him not to kill him, then “he has [guilt for his] blood,” i.e., he is liable [to the death penalty] if he kills him, for since people are watching him, this thief will not come to take a life, and would

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דמים. אין זו רציחה הרי הוא במת מעקרו. כאן למדתך תורה אם בא להרגך השכם להרגו וזה להרגך בא שהרי יודע הוא שאין אדם מעמיד עצמו ורואה שנוטלין ממונו בפניו ושותק לפיכך על מנת כן בא שאם יעמוד בעל הממון כנגדו יהרגנו: (ב) **אם זרחה השמש עליו**. אין זה אלא במין משל אם ברור לך הדבר שיש לו שלום עמך בשמש הזה שהוא שלום בעולם כף פשוט לך שאינו בא להרוג אפלו יעמוד בעל הממון כנגדו כגון אב החותר לגנוב ממון הכן בידוע שרחמי האב על הכן ואינו בא על עסקי נפשות: **דמים לו**. כחי הוא חשוב ורציחה היא אם יהרגנו בעל הבית: **שלם ישלם**. הגנב ממון שגנב ואינו חייב מיתה. ואונקלוס שתרגם אם עינא דסהדיא נפלת עלוהי לקח לו שטה אחרת לומר שאם מצאווה עדים קודם שבא בעל הבית וכשבא בעל הבית נגדו התרו בו שלא יהרגו דמים לו חייב עליו אם הרגו שמתחר שיש רואים לו אין הגנב הזה בא על עסקי נפשות ולא

גִּנְבֹתָא מִתּוֹר עַד חֵמֶר עַד
אָמַר דְּאֵנוּן חֵיִין עַל חַד תְּרִין
יְשָׁלֵם: ד אַרְי יֵאכִיל גְּבַר חֲקַל
אוֹ כֶרֶם וְיִשְׁלַח יָת בְּעִירָהּ
וְיִיכֹל בְּחֲקַל אַחֲרָן שְׂפָר
חֲקָלֶיהָ וְשְׂפָר כְּרַמֶּיהָ יְשָׁלֵם:

מִשׁוֹר עַד־חֲמוֹר עַד־שֶׁה חַיִּים שְׁנַיִם
יְשָׁלֵם: ס שְׁלִישִׁי ד כִּי יִבְעַר־אִישׁ שָׂדֵה
אוֹ־כֶרֶם וְשָׁלַח אֶת־בְּעִירָהּ וּבְעַר בְּשָׂדֵה
אַחַר מֵיטֵב שָׂדֵהוּ וּמֵיטֵב כְּרָמוֹ יְשָׁלֵם: ס

whether it is [a live] ox, donkey or sheep — he must pay [back] live ones double [the value]. (4) If a man leads his livestock into a field or vineyard — and he set free his livestock or grazed them in another person's field — then he must pay with the best of his field and with the best of his vineyard.

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therefore not kill the property owner [while defending his property]. (3) **אם המצא תמצא** — [literally, “If the stolen item is surely found in his hand,” meaning,] in his possession, i.e., he had not slaughtered it or sold it. **Whether it is [a live] ox, donkey ...** — Any [stolen] item has this law of paying double applied to it, whether it is a live being or whether it is an inanimate object. For in another place in Scripture, it is stated [regarding stolen items] (verse 8 below), “[whether concerning an ox, a donkey,] a sheep, a garment — any lost item ... [whoever the court deems guilty,] must pay double to his fellow.” (Bava Kamma 62b) **He**

must pay [back] live ones double [the value] — [The mention of a “live” animal here, teaches us that] he must not pay him back with dead animals — rather, either with live animals or with the value of live animals [equivalent to double the original value of the stolen animals] (Mekhilta). (4) **כי יבער ... את בעירה ... ובער** — All these expressions signify livestock (בעירה), as in (Numbers 20:4), “we and our livestock (בעירנו).” **כי יבער** — [means: If a man] leads his livestock into his fellow's field or vineyard, and they damage it through one of the following two ways, namely, either through his setting his animals loose [and they damage the field by trampling on it (Siftei Chakhamim)], or through his grazing them [on the field and they devour it by eating it (Siftei Chakhamim)]. Thus, our Rabbis have explained the term **ושלח** to refer to damage caused by the trampling of the foot, while **ובער** refers to damage caused by the tooth, which eats and devours (מבערת) (Bava Kamma 2b). **בשדה אחר** — [literally, “in the field of another,” i.e.,] in the field of another person. **He must pay with the best of his field ...** — [How so?] The damage is estimated. And [he may pay him with any item worth this value, even low quality items, however,] if he chooses to pay him the value of the damage with land, then he must pay him [this value] from the best quality of his fields.

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יְהוּרוֹג אֶת בַּעַל הַמָּמוֹן: (ג) **אם המצא תמצא בידו**. בְּרִשְׁוֹתוֹ שְׁלֵא טִבַּח וְלֹא מָכַר: מִשׁוֹר עַד חֲמוֹר. כֵּן דָּבָר בְּכֻלָּל תְּשֻׁלוּמֵי כֶּפֶל בֵּין שְׁנַיִם בּוֹ רוּחַ חַיִּים בֵּין שְׂאִין בּוֹ רוּחַ חַיִּים שְׁהָרִי נֶאֱמַר בְּמָקוֹם אַחֵר עַל שֶׁהָ עַל שְׁלֵמָה עַל כֵּן אֲבָדָה וְגו' יְשָׁלֵם שְׁנַיִם לְרַעְיוֹהוּ: חַיִּים שְׁנַיִם יְשָׁלֵם. וְלֹא יְשָׁלֵם לוֹ מֵתִים אֲלֵא חַיִּים אוֹ דְּמֵי חַיִּים: (ד) **כי יבער**. אֶת בְּעִירָהּ: וּבְעַר. בְּלֶם לְשׁוֹן בְּהֵמָה כְּמוֹ אֲנַחְנוּ וּבְעִירָנוּ: **כי יבער**. יוֹלִיף בְּהֵמוֹתָיו בְּשָׂדֵה וְכֶרֶם שֶׁל חֶבְרוֹ וְיִזְיק אוֹתוֹ בְּאֶחָת מִשְׁתֵּי אֵלוֹ אוֹ בְּשֻׁלְחַן בְּעִירָהּ אוֹ בְּבַעוֹר. וּפְרָשׁוֹ רְבוּתֵינוּ וְשֻׁלְחַן הוּא נֶזְקִי מִדְּרָךְ כֶּף רִגְלֵ. וּבְעַר הוּא נֶזְקִי הַשָּׁן הָאוֹכֵלֶת וּמִבְעֵרָת: **בשדה אחר**. בְּשָׂדֵה שֶׁל אִישׁ אַחֵר: **מֵיטֵב שָׂדֵהוּ וְיְשָׁלֵם**. שְׁמִיךְ אֶת הַנֶּזֶק וְאִם בָּא לְשָׁלֵם לוֹ קֶרֶקַע דְּמֵי נֶזֶקוֹ יְשָׁלֵם לוֹ מִמֵּיטֵב

ה ארי תתפק נור וישכח כובין
וייכול גדישין או קמא או
חקלא שלמא ישלם דאדלק
ית דלקתא: ו ארי יתן גבר
לחבריה כסף או מנין למטר
ויתגבון מבית גברא אם
ישתכח גבא ישלם על חד
תרין: ז אם לא ישתכח גבא
ויתקרב מרי דביתא לקדם
דינא אם לא אושיט ידיה

ה פִּי־תֵצֵא אֵשׁ וּמִצָּאָה קִצִּים וְנֹאכַל גְּדִישׁ
אוּ הַקָּמָה אוּ הַשָּׂדֶה שְׁלֵם יִשְׁלֵם הַמְּבַעֵר
אֶת־הַבַּעֲרָה: ס ו פִּי־יִתֵּן אִישׁ אֶל־רֵעֵהוּ
כֶּסֶף אוֹ־כֵלִים לְשֹׁמֵר וְגֵנֵב מִבֵּית הָאִישׁ
אִם־יִמְצָא הַגֵּנֵב יִשְׁלֵם שְׁנַיִם: ז אִם־לֹא
יִמְצָא הַגֵּנֵב וְנִקְרַב בַּעַל־הַבַּיִת אֶל־

(5) If a fire breaks out and encounters thorns, and then stacked crop or still standing, or the field, becomes consumed — the one who lit the fire must surely pay [for the damage]. (6) If a man gives his fellow Jew money or vessels to guard, and the item is [allegedly] stolen from that man's house — if the thief is caught, then he must pay double; (7) But if the thief is not caught, then the householder will approach the court [to swear] that he had not laid his hand

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Thus, e.g., if the damage was one sela worth, then he must pay him a sela worth of his best quality land that he has. Scripture is teaching you here, that damages [if paid for by land,] are to be estimated from the best quality land [that is owned by the damaging party] (Mekhilta; Bava Kamma 6b). (5) If a fire breaks out — even of its own accord [i.e., if someone had lit a fire in his own private domain, and then it spread by itself, he is still liable (Mizrachi)] (Bava Kamma 22b). ומצאה וקצים — [The word קצים here is] chardons in

Old French [i.e., thorns]. And then stacked crop [or still standing ...] becomes consumed — i.e., first the fire licked the thorns, [spreading] until it reached a stack of crops, or crops that were standing, still connected to the ground, Or a field — [The damage in this case is that] the fire licked [and scorched] his plowed field, and he is therefore forced to plow it up a second time (Bava Kamma 60a). The one who lit the fire must surely pay [for the damage] — Even though he had kindled the fire within his own private property and it had subsequently spread by itself through the thorns it encountered, nevertheless, he is liable to pay, since he did not guard his burning embers from spreading out and causing damage. (6) וגנב מבית האיש — [literally, “and it is stolen from that man's house;” the verse is not stating fact here, but rather, is stating the alleged claim of the guard] according to his words. If the thief is caught [then he must pay double] — i.e., the thief must pay double to the owner of the item (Bava Kamma 63b). (7) But if the thief is not caught — then the

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שדוּתוֹ אִם הָיָה נִקּוּ סֵלַע יִתֵּן לוֹ שׂוֹה סֵלַע מֵעִידִית
שִׁישׁ לוֹ. לְמִדַּת הַכְּתוּב הַשְּׁהוּנֻקִּין שְׁמִין לָהֶם בְּעִידִית:
(ה) פִּי תֵצֵא אֵשׁ. אֶפְלוּ מֵעֲצָמָה: וּמִצָּאָה קִצִּים.
קִרְדוֹ נִשׁ בִּלְעָזָה: וְנֹאכַל גְּדִישׁ. שְׁלֵחָה בְּקוֹצִים עַד
שֶׁהִגִּיעָה לְגְדִישׁ אוּ לְקָמָה הַמְּחוּבֵּרֵת לְקֶרְקַע: אוּ
הַשָּׂדֶה. שְׁלֵחָה אֶת נִירוֹ וְצִרִיךְ לְנִיר אוֹתָהּ פְּעַם
שְׁנִיָּה: שְׁלֵם יִשְׁלֵם הַמְּבַעֵר. אֶעֱפֹ שְׁהַדְלִיק בְּתוֹךְ
שְׁלוֹ וְהִיא יִצָּאָה מֵעֲצָמָה עִי קוֹצִים שְׁמִצָּאָה חֵיב
לְשֵׁלם לְפִי שְׁלֵם שְׁמֵר אֶת גְּחָלָתוֹ שְׁלֵם תֵּצֵא וְתוֹזִיק:
(ו) וְגֵנֵב מִבֵּית הָאִישׁ. לְפִי דְבָרָיו: אִם יִמְצָא הַגֵּנֵב.
יִשְׁלֵם הַגֵּנֵב שְׁנַיִם לְבַעֲלָיו: (ז) אִם לֹא יִמְצָא הַגֵּנֵב.

בְּמָה דְמָסַר לִיָּה חֲבֵרִיהֶ: ח עַל
כָּל פְּתָגָם דְּחֹב עַל תּוֹר עַל
חֲמֹר עַל אֲמַר עַל כְּסוּ עַל כָּל
אֲבָדְתָא דִּי יִימַר אֲרִי הוּא דִּין
לְקָדָם דִּינִיָּא יִיעוּל דִּין
תְּרוּיָהוֹן דִּי יַחֲיָבוֹן דִּינִיָּא
יִשְׁלַם עַל חַד תְּרִין לְחֲבֵרִיהֶ:

הָאֱלֹהִים אִם-לֹא שָׁלַח יָדוֹ בְּמִלְאֲכַת
רְעֵהוּ: ח עַל-כָּל-דְּבַר-פֶּשַׁע עַל-שׂוֹר עַל-
חֲמֹר עַל-שֶׁה עַל-שְׁלֵמָה עַל-כָּל-אֲבֹדָה
אֲשֶׁר יֹאמַר כִּי-הוּא זֶה עַד הָאֱלֹהִים יָבֵא
דְּבַר-שְׁנֵיהֶם אֲשֶׁר יִרְשִׁיעַן אֱלֹהִים יִשְׁלַם

upon his fellow's property. (8) Regarding any matter of dishonesty, whether concerning an ox, a donkey, a sheep, a garment — any lost item about which it is testified [through witnesses] that this is it! — both their claims will come before the court, and whoever the court deems guilty, must pay double to his

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one who was to guard the item, namely, the “householder,” will come forward and

Approach — *the judges [of the court] to arbitrate between him and the owner, and to have him swear to him that “he had not laid his hand upon his ... property.”*

(8) **Regarding any matter of dishonesty** — *i.e., where [the one who was to guard the item] is discovered to have lied under oath, witnesses having testified that he himself stole the item and where the court thereby deemed him guilty, based on their testimony. אשר*

— *The simple meaning of this phrase is: About which the witness will say (כִּי) “that particular item (הוא זה) regarding which you swore [that you had not touched and was stolen] — is in fact in your possession!” Then, both the parties' claims will come before the judges [of the court]. The judges will then cross-examine the witnesses. If they are found to be truthful and the court deems the guard guilty [of having stolen the item himself], then the guard must pay double. And if the court deems the witnesses guilty of having conspired [to falsely accuse the watchman of misappropriation], then these witnesses must pay double to the watchman. [“Conspiring witnesses” are deemed guilty when other witnesses come forward and testify that they were never in the original place where they claimed to have seen the matter, and therefore, they must have been lying all along (see Deuteronomy 19:16-21). What they conspired to have falsely accuse their victim — they must suffer.] And our Rabbis, of blessed memory, have expounded this phrase, זה כי הוא זה [to have the meaning “I have only this!”] teaching us that the court has this guard make an oath only in*

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ובא השומר הזה שהוא בעל הבית: ונקרב. אל
הדינין לרדן עם זה ולשבע לו שלא שלח ידו בשלו:
(ח) על כל דבר פשע. שימצא שקרן בשבועתו
שיעירו עדים שהוא עצמו גנבו וירשיעוהו אלהים
על פי העדים: אשר יאמר כי הוא זה. לפי פשוטו
אשר יאמר העד כי הוא זה שנשבעת עליו הרי הוא
אצלך עד הדינין יבא דבר שניהם ויחקרו את
העדות אם כשרים הם וירשיעוהו לשומר זה ישלם
שנים ואם ירשיעו את העדים שנמצאו זוממין
ישלמו הם שנים לשומר. ורבותנו זכרונם לברכה
דרשו כי הוא זה ללמד שאין מחיבין אותו שבועה

ט ארי יתן גבר לחבריה חמור
או תור או אמר וכל בעיירא
למטר ומית או אתבר או

שְׁנַיִם לְרֵעֵהוּ: ס ט כִּי־יִתֵּן אִישׁ אֶל־רֵעֵהוּ
חֲמֹר או־שׁוֹר או־שֶׁה וְכָל־בְּהֵמָה לְשֹׁמֵר

fellow. (9) If a man gives his fellow a donkey, ox, sheep or any animal to guard,

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the case where he makes some partial admission (מוודה במקצת), saying, "I am liable such-and-such to you, but the rest was stolen from me!" (Bava Kamma 106b) Must pay double to his fellow — This verse teaches us that if a person who was left an item to safeguard, claims that it was stolen from him, and then it is discovered that he himself had stolen it — he must pay double restitution. Now, when is this the case? [Only] when he had made an oath [in court that he had not taken it,] and after this, witnesses came forward [and testified that he himself had stolen it]. For thus have our

Rabbis, of blessed memory, expounded (Bava Kamma 106b; Mekhilta): [When Scripture says (preceding verse),] "the householder will approach the court," this "approach" signifies that he must make an oath. [Rashi now refutes a suggestion to the contrary:] You say that [the "approach" in the verse] means [that he must make] an oath; maybe not — perhaps it simply means that he approaches the court with his claim [that it was stolen and that the law would apply even if he did not make an oath]? For as soon as he comes forward in court and denies [responsibility for the item], claiming [falsely] that it had been stolen — then he immediately becomes liable to pay double, if witnesses come forward to testify that the item is in his possession. [But this suggestion is incorrect, for our Rabbis have a tradition here, that links the laws of two passages through a common expression, as follows:] Here, the [preceding] verse employs the expression שליחות יד, "laying of the hand," and the same expression of שליחות יד is also employed below [concerning the case of a mishap out of his control, to an animal in his custody, as it says,] (verse 10), "an oath of God will be [uttered] between both parties, that he had not laid his hand [upon his fellow's property]" — just as in that latter context, [Scripture specifies that he must take] an oath, so, too, here, [the verse means that he must take] an oath. (9) If a man gives his fellow a donkey, ox ... — The previous passage (verses 6-8 above) is dealing with a שומר חנם, i.e., someone who is asked to watch an item for no pay. [Since a שומר חנם is not paid,] that is why Scripture exempts him [if that item is] stolen

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אָלָא אַם בֵּן הוֹדָה בְּמִקְצַת לּוֹמֵר כֶּךָ וְכֶךָ אֲנִי חַיֵּב לָךְ וְהַמּוֹתֵר נִגְנַב מִמֶּנִּי: יִשְׁלֵם שְׁנַיִם לְרֵעֵהוּ. לְמִדְרַךְ הַכְּתוּב שֶׁהִטּוּעַן בְּפִקְדוֹן לּוֹמֵר נִגְנַב הִימְנּוּ וְנִמְצָא שֶׁהוּא עֲצָמוֹ גִּנְבוּ מִשְׁלֵם תְּשֻׁלוּמֵי כֹפֶל וְאִימְתִי בְזִמְן שְׁנַשְׁבַּע וְאַחֲ"כ בָּאוּ עֲדִים. שֶׁכֶּךָ דְרָשׁוּ רַבּוֹתֵנוּ זְכוּרֵנוּם לְבִרְכָה וְנִקְרַב בְּעַל הַבַּיִת אֶל הָאֱלֹהִים. קְרִיבָה זֶה שְׁבוּעָה הִיא. אַתָּה אוֹמֵר לְשְׁבוּעָה אוֹ אֵינוֹ אָלָא לְדִין שְׁפִיּוֹן שְׁבָא לְדִין וְכֹפֵר לּוֹמֵר נִגְנַבְהָ מִיָּד יִתְחַיֵּב בְּכֹפֶל אִם בָּאוּ עֲדִים שֶׁהוּא בִּידּוֹ. נֹאמֵר כָּאֵן שְׁלִיחוֹת יָד וְנֹאמֵר לְמַטָּה שְׁלִיחוֹת יָד שְׁבוּעַת ה' תְּהִיָּה בֵּין שְׁנֵיהֶם אִם לֹא שָׁלַח יָדוֹ מִדָּה לְהִלָּן שְׁבוּעָה אִף כָּאֵן שְׁבוּעָה: (ט) כִּי יִתֵּן אִישׁ אֶל רֵעֵהוּ חֲמֹר אוֹ שׁוֹר. פְּרָשָׁה רִאשׁוֹנָה נֹאמְרָה בְּשׁוֹמֵר חָנָם לְפִיכֶךָ

אֲשֶׁתְּבִי לִית דְּחֹזִי: י מוֹמְתָא
 דִּי תְּהִי בֵּין תְּרוּוּהוֹן אַם לָא
 אוֹשִׁיט יְדִיה בְּמָה דְּמִסְר לִיה
 חֲבֵרִיה וְיִקְבֵּל מְרִיה מְנִיה
 מוֹמְתָא וְלָא יִשְׁלַם: יא וְאִם
 אֲתִגְנֵב אֲתִגְנֵב מֵעַמִּיה יִשְׁלַם
 לְמִרוּהִי: יב אִם אֲתִבְרָא יִתְּבֵר
 יִיתִי סְהַדִּין דְּתִבְרָא לָא

י שְׁבַעַת יְדוּה תְּהִיה בֵּין שְׁנֵיהֶם אִם-לָא
 שְׁלַח יְדוּ בְּמִלְאֶכֶת רַעְהוּ וְלִקַּח בְּעַלְיוּ וְלָא
 יִשְׁלַם: יא וְאִם-גָּנַב יִגְנַב מֵעַמּוֹ יִשְׁלַם
 לְבְעַלְיוֹ: יב אִם-טָרַף יִטָּרַף יִבְאֵהוּ עַד

and it dies, or it was broken, or was [forcibly] snatched away, without anyone seeing, (10) Then an oath of God will be [uttered] between both parties, that he had not laid his hand upon his fellow's property; the owner will accept this, and he need not pay [anything]. (11) And if it had surely been stolen from him, then he must pay to its owner. (12) If it had surely been torn apart, he must

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[under his custody], as it says (verses 6-7 above), “If ... the item is ... stolen from that man's house — if the thief is not caught, then the householder will approach the court,” in order to make an oath. You learn from this that with this oath, [the שוֹמֵר הַנֶּמֶס] exempts himself [from any liability in the matter]. Now, our passage here (verses 9-12) deals with a שוֹמֵר שָׂכָר, i.e., someone who is asked to watch an item for pay. [Since he accepts a fee,] that is why he is not exempt if the item was stolen [under his custody] (Bava Metzia 94b), as Scripture says (verse 11), “And if it

had surely been stolen from him, then he must pay;” however, if an accident occurred beyond his control, e.g., if it [an animal under his custody] died, or it was broken or it was forcibly snatched away by robbers, and there was no one who saw what had happened in order to testify in the matter, then: (10) **Then an oath of God will be [uttered]** — i.e., he must swear (a) that what he is claiming is the truth, and (b) that he did not lay his hand on the item to use it for himself. For if he did use the item for himself [without the owner's permission, rather than just guarding it, as he was commissioned to do], and then after that, an accident beyond his control occurred, then he is liable for that mishap. וְלִקַּח בְּעַלְיוּ — [literally, “the owner will take it,” meaning that he will accept] the oath (Bava Kamma 106a). וְלָא יִשְׁלַם — [means: Not only need he not pay double restitution (Sifte Chakhamim), but] this watchman [need not pay] the owner anything. (12) **If it had surely been torn apart** — by some wild beast. יִבְאֵהוּ עַד — [means:] He must bring [at least two] witnesses that the animal had been torn apart, out of his control, and then he is exempt [from liability in the matter].

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פטר בו את הגנבה כמו שכתוב וגונב מבית האישי אם לא ימצא הגנב ונקרב בעל הבית לשבועה למדת שפוטור עצמו בשבועה זו ופרשה זו אמורה בשומר שָׂכָר לפיכך אינו פטור אם נגנבה כמו שכתוב אם גנב יגנב מעמו ישלם אבל על האונס כמו מת מעצמו או נשבר או נשבה בחזקה ע"י לטטים: אין ראה. שיעיד בדבר: (י) שבעת ה' תהיה. ישבע שכן הוא דבריו והוא לא שלח בה יד להשתמש בה לעצמו שאם שלח בה יד ואחר כך נאנסה חייב באונסים: ולקח בעליו. השבועה: ולא ישלם. לו השומר כלום: (יב) אם טרף יטרף. ע"י חיה רעה: יבאהו עד. יביא עדים שנטרפה באונס ופטור:

יִשְׁלֹם: יג וְאִרִּי יִשְׁאֵל גְּבֵר מִן
חֲבֵרִיָּה וַיִּתְּבֵר אוֹ מִית מְרִיָּה
לִית עֲפִיָּה שְׁלָמָא יִשְׁלֹם:
יד אִם מְרִיָּה עֲפִיָּה לָא יִשְׁלֹם

הַטְּרָפָה לֹא יִשְׁלֹם: פ יג וְכִי־יִשְׁאֵל אִישׁ
מֵעַם רָעָהוּ וְנִשְׁבַּר אוֹ־מֵת בְּעֵלְיוֹ אֵין־עֲמוֹ
שְׁלֹם יִשְׁלֹם: יד אִם־בְּעֵלְיוֹ עֲמוֹ לֹא יִשְׁלֹם

bring witnesses — he need not pay [anything] for the animal that is torn apart. (13) And if a man borrows from his fellow and the item gets broken or dies — if its owner was not with it, then he must surely pay; (14) But if its owner

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He need not pay [anything] for the animal that is torn apart — *The verse does not say, “he need not pay [anything] for an animal that is torn apart,” but rather, it says, “for the animal that is torn-apart.” That is to say, there are certain torn apart animals for which he must pay, and there are certain torn-apart animals for which he need not pay, as follows: If the animal had been torn apart by a cat, fox or nemiah [all of which can be fended off by the shepherd] — then he must pay [because he could have prevented the mishap]. But if the*

*animal is torn apart by a wolf, a lion, a bear or a snake, [all of which are not expected to be fended off by the shepherd,] — then he need not pay. And who whispered to you [i.e., from where did you learn] that the law is such [as to distinguish between two different types of animals of prey]? [We learn this from] the fact that Scripture states [in this case of a שומר שכר, listing the types of accidents for which he is not liable] (verse 9 above), “If ... it dies, or it was broken, or was [forcibly] snatched away” — just as the shepherd cannot save the animal from dying [if it does], so, too, [he is not held liable for the type of] breakage or for it being snatched away, if it was done in such a way as to render him incapable of saving the animal (Mekhilta). [Likewise, therefore, he is not liable if the animal was torn apart by a wild beast that he cannot fend off.] (13) **And if a man borrows [... then he must surely pay]** — *This comes to teach you that a שואל, one who borrows an item, is liable [even] for accidents that are out of his control. **If its owner was not with it** — i.e., if the owner of the ox was not [working] together with the borrower in his work (Bava Metzia 95b). (14) **But if its owner was with it** — whether doing that work [for which the ox is being borrowed], or whether another work — [as long as] the owner is [working] with [or for] the borrower at the time of borrowing, he need not be [actually] together with the borrower when the animal broke [a limb] or died [in order to render the latter exempt] (Bava Metzia 95b and see 96a). אִם שְׂכִיר הוּא — [means:] If the ox was not borrowed, but rather, it was hired. [Rashi now**

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הַטְּרָפָה לֹא יִשְׁלֹם. אֵינוֹ אוֹמֵר טְרָפָה לֹא יִשְׁלֹם אֲלֵא הַטְּרָפָה יֵשׁ טְרָפָה שֶׁהוּא מְשֻׁלָּם וְיֵשׁ טְרָפָה שֶׁאֵינוֹ מְשֻׁלָּם. טְרַפְתָּ חֲתוּל וְשׁוּעַל וְנִמְיָה מְשֻׁלָּם. טְרַפְתָּ זָאב אָרִי וְדוֹב וְנָחֵשׁ אֵינוֹ מְשֻׁלָּם וְיֵשׁ לְחֻשְׁףָּ לְדוֹן בֶּן שְׁהֲרִי בְּתֵיב וּמֵת אוֹ נִשְׁבַּר אוֹ נִשְׁבָּה מֵהַ מִיתָה שְׂאִין יְכוּל לְהַצִּיל אֶף שֶׁבֶר וְשִׁבְיָה שְׂאִין יְכוּל לְהַצִּיל: (יג) וְכִי יִשְׁאֵל. בָּא לְלַמֵּד עַל הַשּׁוֹאֵל שֶׁחַיֵּב בְּאוֹנְסִין: בְּעֵלְיוֹ אֵין עֲמוֹ. אִם בְּעֵלְיוֹ שֶׁל שׁוֹר אֵינוֹ עִם הַשּׁוֹאֵל בְּמִלְאֲכָתוֹ: (יד) אִם בְּעֵלְיוֹ עֲמוֹ. בֵּין שְׁהוּא בְּאוֹתָהּ מְלָאכָה בֵּין שְׁהוּא בְּמִלְאֲכָה אַחֲרָתָּ. הִיא עֲמוֹ בְּשַׁעַת שְׂאֵלָה אֵינוֹ צָרִיךְ לְהִיֹּת עֲמוֹ בְּשַׁעַת שְׁבִירָה וּמִיתָה: אִם שְׂכִיר הוּא. אִם הַשּׁוֹר

אם אָגִירָא הוּא עַל בְּאִגְרִיָּה:
טו וְאָרִי יִשְׁדֵּל גָּבֵר בְּתִלְתָּא
דְּלָא מְאָרְסָא וְיִשְׁכּוּב עִמָּה
קָיְמָא יְקִימְנָה לִיהּ לְאַנְתּוּ:

אִם־שָׁכִיר הוּא בָּא בְּשִׁכְרוֹ: ס טו וְכִי־יִפְתָּה
אִישׁ בְּתוּלָה אֲשֶׁר לֹא־אֲרָשָׁה וְשָׁכַב עִמָּה
מִהָרָנָה לוֹ לְאַשָׁה:

was with it, then he need not pay [anything]. If it was hired, then [the loss] will be covered by the hiring fee. (15) If a man seduces a virgin who was not betrothed, and he lies with her, then he must surely provide her with a marriage contract as his wife.

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defines this case of שוכר, one who hires, in terms of the three categories described above, namely, שומר חנם — an unpaid guardian, שומר שכר — a hired guardian, and שואל — a borrower:] In this case, the item [here an animal,] comes into the hands of the hirer for the hiring fee (בא בשכרו), and is not borrowed, i.e., we do not say here that the entire benefit is enjoyed only by the one who received the animal [as in the case of a borrower], for the animal is used in exchange for a fee and [therefore, the owner is also

אינו שאול אלא שכור בא בשכרו ליד השוכר הזה ולא בשאלה ואין כל הנאה שלו שהרי על ידי שכרו נשתמש ואין לו משפט שואל להתחייב באונסין. ולא פרש מה דינו אם בשומר חנם או בשומר שכר לפיכך נחלקו בו חכמי ישראל שוכר כיצד משלם רבי מאיר אומר בשומר חנם רבי יהודה אומר בשומר שכר: (טו) וכי יפתה. מדבר על לבה עד ששומעת לו וכן תרגומו וארי ישדל. שדול בלשון ארמי פפתוי בלשון עברי: מהר ימהרנה. יפסוק לה מוהר כמשפט איש לאשתו שכותב לה כתובה ושאנה:

benefiting from the transaction. For this reason, this case of] a שוכר, a hirer, is not held liable for accidents out of his control, which is the law in the case of a שואל, a borrower. [However regarding other aspects, such as liability for theft or other losses,] Scripture does not explicitly specify what the law is in this case, i.e., whether [the שוכר] follows the law of a שומר חנם or a שומר שכר. And therefore, the Sages of Israel are in dispute regarding the liability of a שוכר for paying restitution: Rabbi Meir rules [that he must pay] as does a שומר חנם [i.e., as an unpaid guardian who is not liable for loss or theft], while Rabbi Yehudah rules [that he must pay for loss or theft] as does a hired guardian — שומר שכר (Bava Metzia 80b). (15) וכי יפתה — [means that] he speaks to her heart, [seducing her] until she consents. Likewise, this [phrase] is translated [by Onkelos] as: וארי ישדל, for the word שדול in the Aramaic language is equivalent to פתוי (“enticement”) in the Hebrew Language. מהר ימהרנה — [This expression is not derived from the word מהירות, “speed,” but rather, מוהר, meaning a settlement agreement. Thus, the meaning here is that] he must provide her with a settlement agreement, as is the law in marriage between husband and wife, i.e., he must write her a [כתובה,] marriage contract and marry her (Mekhilta).