



# Week 7: BM Chapter 8

Mishnah in Depth

מסכת בבא מציעא

Tractate Bava Metzia



Dr. Rachel Furst  
Drisha, Fall 2024

## Exodus 22:6–14

(6) When any party gives money or goods to another for safekeeping, and they are stolen from that other party's house: if caught, the thief shall pay double; (7) if the thief is not caught, the owner of the house shall depose before God and deny laying hands on the other's property. (8) (In all charges of misappropriation—pertaining to an ox, an ass, a sheep, a garment, or any other loss, whereof one party alleges, "This is it"—the case of both parties shall come before God: the one whom God declares guilty shall pay double to the other.) (9) When any party gives to another an ass, an ox, a sheep or any other animal to guard, and it dies or is injured or is carried off, with no witness about, (10) an oath before יהוה shall decide between the two of them that the one has not laid hands on the property of the other; the owner must acquiesce, and no restitution shall be made. (11) But if [the animal] was stolen from the guardian, restitution shall be made to its owner. (12) If it was torn by beasts, the guardian shall bring it as evidence—not needing to replace what has been torn by beasts.

(13) When any party borrows [an animal] from another and it dies or is injured, its owner not being with it, restitution must be made. (14) If its owner was with it, no restitution need be made; but if it was hired, that payment is due.

## שמות כב:ו-יד

(ו) כִּי־יִתֵּן אִישׁ אֶל־רֵעֵהוּ כֶּסֶף אֹזְכָלִים לְשֹׁמֵר וְגָנַב מִבֵּית הָאִישׁ אִם־יִמָּצָא הַגָּנֵב יִשְׁלַם שְׁנַיִם: (ז) אִם־לֹא יִמָּצָא הַגָּנֵב וְנִקְרַב בְּעַל־הַבַּיִת אֶל־הָאֱלֹהִים אִם־לֹא שָׁלַח יָדוֹ בְּמִלְאֲכַת רֵעֵהוּ: (ח) עַל־כָּל־דְּבַר־פְּשָׁע עַל־שׂוֹר עַל־חֲמוֹר עַל־שֶׁה עַל־שְׁלֵמָה עַל־כָּל־אֲבֹדָה אֲשֶׁר יֹאמֵר כִּי־הוּא זֶה עַד הָאֱלֹהִים יָבֹא דְבַר־שְׁנֵיהֶם אֲשֶׁר יִרְשִׁיעַן אֱלֹהִים יִשְׁלַם שְׁנַיִם לְרֵעֵהוּ: {ס} (ט) כִּי־יִתֵּן אִישׁ אֶל־רֵעֵהוּ חֲמוֹר אֹזְשׂוֹר אֹז־שֶׁה וְכָל־בְּהֵמָה לְשֹׁמֵר וּמֵת אֹז־נִשְׁבֵּר אֹז־נִשְׁבָּה אֵין רֹאֶה: (י) שְׁבַעַת יְהוָה תִּהְיֶה בֵּין שְׁנֵיהֶם אִם־לֹא שָׁלַח יָדוֹ בְּמִלְאֲכַת רֵעֵהוּ וְלָקַח בְּעַלְיוֹ וְלֹא יִשְׁלַם: (יא) וְאִם־גָּנַב יִגָּנַב מִמֶּנּוּ יִשְׁלַם לְבַעְלָיו: (יב) אִם־טָרַף יִטָּרַף יְבֹאֵהוּ עַד הַטָּרְפָה לֹא יִשְׁלַם: {פ}

(יג) וְכִי־יִשְׁאַל אִישׁ מֵעַם רֵעֵהוּ וְנִשְׁבֵּר אֹז־מֵת בְּעַלְיוֹ אֵין־עִמּוֹ שְׁלָם יִשְׁלַם: (יד) אִם־בְּעַלְיוֹ עִמּוֹ לֹא יִשְׁלַם אִם־שָׁכִיר הוּא בָּא בְּשֹׁכְרוֹ:

## Mishnah Bava Metzia 7:8

...There are four types of bailees, to whom different *halakhot* apply. They are as follows: **An unpaid bailee**, who receives no compensation for safeguarding the item; **and the borrower** of an item for his own use; **a paid bailee**, who is provided with a salary for watching over an item; **and a renter**, i.e., a bailee who pays a fee for the use of a vessel or animal. If the item was stolen, lost, or broken, or if the animal died in any manner, their *halakhot* are as follows: **An unpaid bailee takes an oath over every** outcome; whether the item was lost, stolen, or broken, or if the animal died, the unpaid bailee must take an oath that it happened as he described, and he is then exempt from payment. **The borrower** does not take an oath, but **pays** for **every** outcome, even in a circumstance beyond his control. **And** the *halakhot* of a **paid bailee and a renter** are the same: They **take an oath over an injured** animal, **over a captured** animal, **and over a dead** animal, attesting that the mishaps were caused by circumstances beyond their control, and they are exempt, **but they must pay for loss or theft.**

## משנה בבא מציעא ז:ח

...אַרְבַּעַה שׁוֹמְרֵי הֵן. שׁוֹמֵר חָנָם, וְהַשׂוֹאֵל,  
נוֹשֵׂא שְׂכָר, וְהַשׂוֹכֵר. שׁוֹמֵר חָנָם נִשְׁבַּע עַל  
הַכֹּל, וְהַשׂוֹאֵל מְשַׁלֵּם אֶת הַכֹּל, וְנוֹשֵׂא שְׂכָר  
וְהַשׂוֹכֵר נִשְׁבַּעִים עַל הַשְּׂבוּרָה וְעַל הַשְּׂבוּיָה וְעַל  
הַמֵּתָה, וּמְשַׁלְּמִין אֶת הָאֲבֵדָה וְאֶת הַגְּנוּבָה:

## Exodus 22:6–14

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(יג) וְכִי־יִשְׁאַל אִישׁ מֵעַם רֵעֵהוּ וְנִשְׁבֵּר אֹז־מֵת בְּעַלְיוֹ אֵין־עִמּוֹ שְׁלָם יִשְׁלַם: (יד) אִם־בְּעַלְיוֹ עִמּוֹ לֹא יִשְׁלַם אִם־שָׁכִיר הוּא בָּא בְּשֹׁכְרוֹ:

## Rashi on Exodus 22:14

BUT IF THE OWNER THEREOF BE WITH IT (lit., with “him”) — whether he be employed in the very kind of work for which the animal has been borrowed, or whether he be employed in any other work of the borrower — provided that he (the owner) was employed by the borrower when the loan was effected it is not necessary, in order to free him from restitution that he should be employed by the bailee at the time when the injury or death took place (Bava Metzia 95b).

IF IT BE HIRED — i. e. if the ox has not been borrowed but hired, THEN IT CAME FOR ITS HIRE into the hand of this hirer and not by way of loan. For he does not get the entire benefit of the transaction since he is using it only because he has paid hire for it and consequently the owner benefits also; therefore the law applicable to a borrower does not apply in his case — that he should be held liable for loss by accident. Scripture, however, does not state explicitly what his (the hirer’s) law actually is — whether he has to be treated as the gratuitous bailee (שומר חנם) or as the bailee for payment (שומר שכר) and therefore the Sages in Israel differ in their opinion as to how the hirer (שוכר) has to make restitution. R. Meir says he is responsible only as a gratuitous bailee, whilst R. Judah says, even as a bailee for payment (Bava Metzia 80b).

## רש"י על שמות כב:יד

אם בעליו עמו. בין שהוא באותה מלאכה בין שהוא במלאכה אחרת, היה עמו בשעת שאלה אינו צריך להיות עמו בשעת שבירה ומיתה (שם):

אם שכיר הוא. אם השור אינו שאול אלא שכור, בא בשכרו ליד השוכר הזה, ולא בשאלה, ואין כל הנאה שלו, שהרי ע"י שכרו נשתמש, ואין לו משפט שואל להתחייב באנסיו; ולא פרש מה דינו, אם כשומר חנם או כשומר שכר, לפיכך נחלקו בו חכמי ישראל שוכר כיצד משלם, רבי מאיר אומר כשומר חנם, ר' יהודה אומר כשומר שכר (בבא מציעא צ"ה):

## Mishnah Bava Metzia 8:1

In the case of **one who borrowed a cow and borrowed** the services of **its owner with it**, or he borrowed a cow and **hired its owner with it**, or he **borrowed** the services of **the owner or hired him and afterward borrowed the cow**; in all such cases, if the cow **died**, the borrower is **exempt** from liability. Although a borrower is generally liable to pay if a cow he borrowed dies, here he is exempt, **as it is stated: “If its owner is with him, he does not pay”** (Exodus 22:14). **But** if one first **borrowed the cow and only afterward borrowed** the services of **the owner or hired him**, and the cow **died**, he is **liable** to pay the owner for the cow. This is the *halakha* even if the owner was working for the borrower at the time, **as it is stated: “If its owner is not with him, he shall pay”** (Exodus 22:13).

## משנה בבא מציעא ח:א

השואל את הפרה ושאל בעליה עמה או שכר בעליה עמה. שאל הבעלים או שכרן, ולאחר כן שאל את הפרה, ומתה, פטור, שנאמר (שמות כב) אם בעליו עמו לא ישלם. אבל שאל את הפרה ואחר כן שאל את הבעלים או שכרן, ומתה, חיב, שנאמר (שם) בעליו אין עמו ישלם ישלם:



## Mishnah Bava Metzia, Chapter 8

- Mishnah 1**      Laws pertaining to borrowers (explication of the related verses in Exodus 22)
- Mishnah 2**      Laws pertaining to borrowers/renters
- Mishnah 3**      Laws pertaining to borrowers
- Mishnah 4**      Laws pertaining to buyers/sellers
- Mishnah 5**      Laws pertaining to buyers/sellers
- Mishnah 6**      Laws of renting out property
- Mishnah 7**      Laws of renting out property
- Mishnah 8**      Laws of renting out property
- Mishnah 9**      Laws of renting out property

## Mishnah Bava Metziah 8:2

There is **one who borrowed a cow. He borrowed it for half of the day and rented it** for the other **half of the day**; or **he borrowed it for today and rented it for tomorrow**; or **he rented one cow and borrowed another one** from the same person. **And** in one of the first two cases, the cow **died** and it is not clear during which period the cow died. Or in the last case, one of the cows died and it is not clear whether it had been the borrowed cow or the rented cow. If **the lender** then **says**: The **borrowed** cow is the one that **died**; or: **It died on the day that it was being borrowed**; or: **It died during the period in which it was being borrowed**, so that, according to his claim, the borrower is liable to pay for the cow, **and the other** one, the borrower, **says**: **I do not know** what happened, the borrower is **liable** to pay. If **the renter** **says**: The **rented** cow is the one that **died**; or: **It died on the day that it was being rented**; or: **It died during the period in which it was being rented**, **and the other** one, the owner of the cow, **says**: **I do not know** what happened, the renter is **exempt**. If **this** owner **says** with certitude: The **borrowed** cow is the one that died, **and that** renter **says** with certitude: The **rented** cow is the one that died, then **the renter takes an oath that the rented** cow is the one that **died**, and he is then exempt from liability. If **this** one **says**: **I do not know** what happened, **and that** one **says**: **I do not know** what happened, then **they divide** the disputed amount. The bailee is liable to pay for only half the value of the cow.

## משנה בבא מציעא ח:ב

השואל את הפרה, שאלה חצי היום ושכרה חצי היום, שאלה היום ושכרה למחר, שכר אחת ושאל אחת, ומתה, המשאיל אומר שאולה מתה, ביום שהיתה שאולה מתה, בשעה שהיתה שאולה מתה, והלה אומר איני יודע, ח"ב. השוכר אומר שכורה מתה, ביום שהיתה שכורה מתה, בשעה שהיתה שכורה מתה, והלה אומר איני יודע, פטור. זה אומר שאולה וזה אומר שכורה, ישבע השוכר ששכורה מתה. זה אומר איני יודע וזה אומר איני יודע, יחלקו:



## Mishnah Bava Metzia 8:4

With regard to **one who exchanges a cow for a donkey**, such that by virtue of the cow owner's act of acquisition on the donkey, the donkey's erstwhile owner simultaneously acquires the cow, wherever it happens to be located, **and** afterward the cow is found to have **calved**; **and similarly**, with regard to **one who sells his Canaanite maidservant**, with the acquisition effected by the buyer giving him money, **and** afterward **she** is found to have **given birth** to a child, who will be a slave belonging to his mother's master, at times it is uncertain whether the offspring was born before or after the transaction. If **this seller says**: The birth occurred **before I sold** the cow or maidservant, and so the offspring belongs to me, **and that buyer says**: The birth occurred **after I purchased** the cow or maidservant, and so the offspring belongs to me, **they divide** the value of the offspring between them. The mishna continues...

## משנה בבא מציעא ח:ד

המחליף פרה בחמור וילדה, וכן המוכר שפחתו וילדה, זה אומר עד שלא מכרתי, וזה אומר משלקחתי, יחלקו. היו לו שני עבדים, אחד גדול ואחד קטן, וכן שתי שדות, אחת גדולה ואחת קטנה, הלוקח אומר גדול לקחתי, והלה אומר איני יודע, זכה בגדול. המוכר אומר קטן מכרתי, והלה אומר איני יודע, אין לו אלא קטן. זה אומר גדול וזה אומר קטן, ישבע המוכר שהקטן מכר. זה אומר איני יודע וזה אומר איני יודע, יחלקו:

## Mishnah Bava Metzia 8:6

In the case of **one who rents out a house in a town to another in the rainy season**, the owner **cannot evict** the renter from the house **from the festival of Sukkot until Passover**. If the rental was **in the summer**, he must give **thirty days'** notice before he can evict him. **And for a house located in the cities [uvakerakim], both in the summer and in the rainy season** he must give **twelve months'** notice. **And for shops** that he rented out, **both in towns and in cities**, he must give **twelve months'** notice. **Rabban Shimon ben Gamliel says: For a baker's shop or a dyer's shop**, one must give **three years'** notice.

## משנה בבא מציעא ח:ו

המשכיר בית לחברו, בימות הגשמים, אינו יכול להוציאו מן החג ועד הפסח, בימות החמה, שלשים יום. ובכרכים, אחד ימות החמה ואחד ימות הגשמים, שנים עשר חדש. ובחנויות, אחד עירות ואחד כרכים, שנים עשר חדש. רבן שמעון בן גמליאל אומר, חנות של נחתומים ושל צבעים, שלש שנים: