

A GUIDE TO THE SOURCES OF JEWISH LAW

A GUIDE
TO
THE SOURCES
OF
JEWISH LAW

BY
Prof. Nahum Rakover

The Library of Jewish Law

Library of Jewish Law

Ministry of Justice
The Jewish Legal Heritage Society
Foundation for the Advancement
of Jewish Law

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The Jewish Legal Heritage Society
P.O. Box 7483 Jerusalem 91074

Printed in Israel 1994

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INTRODUCTION

A Guide to the Sources of Jewish Law is designed to assist anyone with a need to study or work with the main sources of Jewish law. Concentrating on the most fundamental works, the *Guide* introduces the sources, shows their internal structure, how they relate to one another, the type of material to be found in each source, and how such material is located and cited. As no modern research guide exists to introduce the novice to Jewish law, *A Guide to the Sources of Jewish Law* was conceived to fill the void.

In order to demonstrate how the fundamental works are used, the *Guide* follows the development of the laws of bailment (*shomerim*). The principles of bailment in Jewish law are found in the Bible, elucidated in the *Talmud*, and presented systematically in the codes. In this, they are typical and, therefore, instructive. The *Guide* traces this progression from Scripture through the *Talmud* and codes, demonstrating the interpretation of the biblical text in the exegetic literature, and the development and application of the laws of bailment in the responsa. With the help of *A Guide to the Sources of Jewish Law*, the interested reader can learn to find, for example, the halakhic ruling that emerges from a talmudic discussion or the talmudic sources for the rulings of the codes. Since the Israeli Bailees Law, 5727-1967, draws upon the concepts and principles of Jewish law, the study of bailment in Jewish sources has the added advantage of relevance to current legislation.¹

¹ For the text of the *Bailees Law, 5727-1967*, see Appendix I. See also N. Rakover, 'Shomerim,' *Encyclopedia Judaica*, 1971, XIV, 1455-1458.

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Wherever possible, the *Guide* directs the reader to the most recent editions of traditional sources, which are generally more accessible than older editions owing to improved graphics, the presence of introductions, notes and comments, and the translation of Aramaic passages. The *Guide* also explains the use of bibliographies, dictionaries, lexicons, and modern studies.

In 1980, the Israeli Knesset passed The Foundations of Law Act, thereby terminating the formal relationship between Israeli and English Law, and establishing in its place a connection to 'the principles of freedom, justice, equity, and peace of the Jewish heritage.' This change posed new challenges to the legal community and provided an impetus for lawyers, jurists, and legislators to delve into the *Talmud*, codes, responsa, and commentary.

At the same time, Jewish law has gained increasing recognition outside Israel. In the academic community, particularly in the United States, a number of special chairs in Jewish law have been established, and as a result, the demand for study materials in English has expanded rapidly. There is also a growing interest in non-Hebrew-speaking countries in the contribution Jewish law may offer to society at large.

These developments stimulated the publication of works designed to help the members of the legal and legislative communities, as well as scholars and interested laymen. In recent years, the Library of Jewish Law has published nearly twenty volumes, including works of original scholarship and aids to study and research.

In addition, the Library of Jewish Law has recently published several volumes in English: *Jewish Law and Current Legal Problems*, *Maimonides as Codifier of Jewish Law*, *Modern Applications of Jewish Law*, and *The Multi-Language Bibliography of Jewish Law* (see pp. 90, 106, 114).

A Guide to the Sources of Jewish Law, the Library of Jewish Law's newest publication in English, translates *Moreh Derekh biMekorot haMishpat haIvri*, prepared by the author in 1983 (with the assistance of Professor Aaron Kirschenbaum and Dr. David

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A. Frankel). It has been specially adapted, however, to the needs of the English reader. To the extent possible, sources are quoted in English, and each section records the names of the relevant English translations, studies, reference books, and periodicals. Thanks are due to Chaim Mayerson for his assistance in translation.

For full bibliographical information on works cited in the following pages as well as the names of additional books and articles on an extensive range of topics in Jewish law, and information on sources translated into languages other than English, the reader is encouraged to consult *The Multi-Language Bibliography of Jewish Law* (Jerusalem, 1990; see p. 106).

It is my sincere hope that the present work will assist not only lawyers, legislators, and jurists, but also anyone interested in questions of justice, morality, and the application of Jewish law in our time.

Jerusalem
January 1994

Nahum Rakover

Chapter One

SOURCES

I. SCRIPTURE

A. In General

The principles and rules of Jewish law are based on Scripture. While some rules are mentioned quite explicitly, others are only implied. All are elucidated in the teachings of the *Tanna'im* and *Amora'im* — the Rabbis of the *Mishnah* and *Talmud* — and presented systematically in the codes. Thus, over the generations, a comprehensive legal system has developed based on Scripture as elaborated by exegesis and amplification.

The Pentateuch is the foundation on which was built a comprehensive legal system that embraces every sphere that is of concern to any modern legal system.

As an example of the general method and development of Jewish law from its source in Scripture to its consolidation in the works of the Later Authorities, we will trace the development of the laws of bailment (*shomerim*). These are based on Exodus 22:6-14 (see Figure 1).

B. Biblical Commentary

The meaning and significance of the biblical text is discussed in the writings of the commentators. The earliest commentaries are actually translations from the original into Aramaic, a Semitic language widely spoken in ancient times. These translations, known as *targumim* (*targum* in the singular), were highly interpretive. The best known are *Targum Onkelos*, *Targum Yonatan ben Uziel*, and *Targum Yerushalmi*.

1. If a thief be found breaking in, and be smitten so that he dieth, there shall be no bloodguiltiness for him. 2. If the sun be risen upon him, there shall be bloodguiltiness for him—he shall make restitution; if he have nothing, then he shall be sold for his theft. 3. If the theft be found in his hand alive, whether it be ox, or ass, or sheep, he shall pay double. ¶ 4. If a man cause a field or vineyard to be eaten, and shall let his beast loose, and it feed in another man's field; of the best of his own field, and of the best of his own vineyard, shall he make restitution. ¶ 5. If fire break out, and catch in thorns, so that the shocks of corn, or the standing corn, or the field are consumed; he that kindled the fire shall surely make restitution. ¶ 6. If a man deliver unto his neighbour money or stuff to keep, and it be stolen out of the man's house; if the thief be found, he shall pay double. 7. If the thief be not found, then the master of the house shall come near unto God, to see whether he have not put his hand unto his neighbour's goods. 8. For every matter of trespass, whether it be for ox, for ass, for sheep, for raiment, or for any manner of lost thing, whereof one saith: 'This is it,' that cause of both parties shall come before God; he whom God shall condemn shall pay double unto his neighbour. ¶ 9. If a man deliver unto his neighbour an ass, or an ox, or a sheep, or any beast, to keep, and it die, or be hurt, or driven away, no man seeing it; 10. the oath of the LORD shall be between them both, to see whether he have not put his hand unto his neighbour's goods; and the owner thereof shall accept it, and he shall not make restitution. 11. But if it be stolen from him, he shall make restitution unto the owner thereof. 12. If it be torn in pieces, let him bring it for witness; he shall not make good that which was torn. ¶ 13. And if a man borrow aught of his neighbour, and it be hurt, or die, the owner thereof not being with it, he shall surely make restitution. 14. If the owner thereof be with it, he shall not make it good; if it be a hireling, he loseth his hire. ¶ 15. And if a man entice a virgin that is not betrothed, and lie with her, he shall surely

א אם במפתעת ימצא הגנב והכה ומת אין לו דמים;
 2 אם נקחה השמש עליו דמים לו שלם אסראן
 3 לו ונקבר בנגבתו: אסדמאצא חמאצא כדו הנגברה
 4 משור ערומור ערשה חיים שנים ישלם: ס כי
 יבער איש שדה אורכם ושלה אתה בעירה ובער בשדה
 ה אחר מיטב שדהו ומיטב פרמי ישלם: ס כרחצא
 אש ומצאה קצים ונאכל גליש או הקמה או השדה
 6 שלם ישלם המבער אתה בערה: ס כירחן איש
 אדרעו כסף ארכלים לשמר ונגב מבית האיש אם
 7 ימצא הגנב ישלם שנים: אם לא ימצא הגנב ונקרב
 בעל הבית אלהא להים אם לא שלח דו במלאכת
 8 רעו: על בלדבר פשע על שור על חמור על עשה
 על שלמה על כל אבדה אשר יאמר ביהוא זה עד
 האלהים יבא דבר שניהם אשר ירשיען אלהים ישלם
 9 שנים לרעו: ס כירחן איש אדרעו חמור או שור
 ארשה וכל בהמה לשמר ומת או נשבר או נשבה אין
 - ראה: שבעת ודחה תדחה בין שניהם אם לא שלח דו
 11 במלאכת רעו ולקח בעליו ולא ישלם: ואם נגב
 12 יגב מעמו ישלם לבעליו: אם טרף וטרף ובארו עד
 הטרף לא ישלם: פ
 13 וכירשאל איש מעם רעו ונשבר או מת בעליו איד
 14 עמו שלם ישלם: אם בעליו עמו לא ישלם אם שכר
 15 הוא בא בשכרו: ס וכירפתה איש בתולה אשר

Figure 1: Exodus 22:6-14, with commentary of Dr. J. H. Hertz, *The Pentateuch and Haftorahs* (London, reprinted frequently since 1937).

CHAPTER XXII

1. *breaking in*. lit. 'digging through.' The houses were built of clay and cross-beams, and the thief dug a hole in the wall.

no bloodguiltiness. The thief would only do this in the dead of night, and it could not be considered murder if the owner killed the intruder who, it is assumed in both ancient and modern codes of law, would not hesitate to take life.

2. *be risen upon him*. i.e. upon the thief. If the burglary takes place after daybreak (Ibn Ezra, Nachmanides), the slaying of the thief is murder, because it is not absolutely necessary to take his life.

for him. The murdered thief.

he shall make restitution. He who steals in the daytime; likewise, the thief in the night who is caught in the act and not slain (Herxheimer).

for his theft. The Rabbis add that if the value of the stolen animal was less than the price of a slave, the thief may not be sold. If the thief is sold, it can only be for the 'theft'; i.e. the price of the stolen article, and not for the four-fold or five-fold fine which is imposed.

3. *double*. He must return the stolen animal and give the owner another as a fine. This rule was extended to all stolen articles.

4. *eaten*. By cattle.

let his beast loose. Wilfully sending his cattle to graze in a field which did not belong to him. If they wandered there, without any culpable negligence on his part, he is not liable.

of the best. When estimating the damage, the best of the injured man's field is to be taken as the basis of calculation of the value of the whole.

5. *fire break out*. i.e. a man kindles a fire in his own field, and the wind carries sparks into a neighbouring field and a conflagration is caused.

6. *deliver*. A man asks his neighbour to take charge of valuables as a favour. He may wish to go on a journey, and in his own interest requests a person to safeguard his property.

it be stolen. i.e. the trustee affirms that there has been a theft.

7. *unto God*. As in xxi, 6. Having solemnly sworn that he had not embezzled what had been entrusted to him, the trustee is free from all obligation. In the event of his having perjured himself, his punishment would come from God Himself.

8. *trespass*. Here the equivalent of embezzlement.

whereof one saith. Either the owner or a witness comes forward and identifies something which is in the possession of the trustee or the thief as the lost property.

this is it. The thing lost.

condemn. Convict. If it is the trustee, he refunds the article and another of the same value. If the trustee is acquitted the witnesses who falsely accused him must pay him double the value of the lost article.

9. *be hurt*. By a fall, or an attack by another animal.

driven away. i.e. carried off by raiders.

10. *shall be between them both*. Shall decide between them. The trustee swears as to how the animal was hurt.

put his hand. To make an improper use of the animal, against the wishes of the owner, whereby it received its injury.

accept it. The oath, as fully acquitting the suspected trustee.

11. *stolen*. As distinct from its being carried off by a band of marauders, against whom he was powerless. In the case of theft, it was assumed that the trustee, who was paid to take care of the animal, had not done so sufficiently.

12. *bring it for witness*. Produce the torn flesh as evidence.

13. *aught*. An animal.

14. *be with it*. It is then the duty of the owner to take care of his animal.

he loseth his hire. Or, 'it is reckoned in its hire.' In accepting money for the use of the animal, the owner must take the risk.

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The more familiar form of biblical commentary developed during the Middle Ages. The best known of the medieval commentators are Rashi and Nahmanides (Ramban):

Rashi (1040-1105), R. Shelomoh Yitzhaki, lived in France and is considered the greatest of the biblical commentators. His commentary on the entire Bible is clear and concise and seeks to present the plain explicit meaning of the text (*peshat*). It is often based upon the *Midrashim* (early homiletical interpretations of Scripture), the *Talmud*, the *Targumim*, and philological analysis of the Hebrew language.

Nahmanides (1194-1270), R. Moshe ben Nahman, also known by the acronym Ramban,² lived in Spain. Unlike Rashi, Nahmanides does not restrict himself to a verse by verse interpretation of the text, but rather takes a more global approach to the subject matter. His commentary also includes reactions to the interpretations of his predecessors.

As an example of biblical commentary, we bring the comments of Rashi and Nahmanides on Exodus 22:6 (Rashi's comments appear in Figure 2, those of Nahmanides in Figure 3).

On verse six, 'And it was stolen from the house of the man,' Rashi notes, 'According to his statement.' By his short comment, Rashi explains that the verse describes not the establishment of fact but rather a claim made by the bailee. Accordingly, the sense of the verse is, 'When the bailee *claims* that it was stolen from his house....' On the verse's conclusion, '...if the thief be found, he shall pay double,' Rashi adds, 'to the owner,' to indicate that the fine is paid to the property's owner and not to the bailee.

Nahmanides relates to a difficulty within the passage. Whereas in verses 6-8, the bailee is not liable to pay for property entrusted

² The practice of referring to various authors, particularly medieval halakhic authorities and biblical commentators, by acronyms is quite widespread. Hundreds of such acronyms exist, and it is often difficult to know to whom they refer without referring to a lexicon of abbreviations. Among the most familiar acronyms are those mentioned here: **R a s h i** — R. Shelomoh Yitzhaki; **R a m b a n** — R. Moshe ben Nahman; and **R a m b a m** — R. Moshe ben Maimon, Maimonides.

Exodus XXII. 5—8.

רש"י

not extend and cause damage. (6) **וְגַנֵּב מִבֵּית הָאִישׁ** AND IT BE STOLEN OUT OF THE MAN'S HOUSE — *i. e.* according to his statement⁶), **אִם יִמְצָא הַגֵּנֵב יִשְׁלַם** IF THE THIEF BE FOUND HE—the thief—SHALL PAY **שְׁנַיִם** DOUBLE to the owner (to the bailor not to the bailee)⁶. (7) **אִם לֹא יִמְצָא הַגֵּנֵב** IF THE THIEF BE NOT FOUND then this bailee—who is **כַּעַל הַבַּיִת** "the owner of the house" for the time being (since the bailment is then in his possession although he is not really its owner)—shall come, **אֶל וְקָרַב אֵל** AND SHALL APPROACH UNTO THE **אֱלֹהִים**—the judges, to put his case against the other and to swear unto him that he has not put forth his hands against his property⁷). (8) **עַל כָּל רֶגֶב מַשַּׁע** FOR ALL

NOTES

⁶) Rashi means that **וְגַנֵּב מִבֵּית הָאִישׁ** is a statement made by the man: he says, "It has been stolen from me". The words cannot mean "if a man gives an article to another to mind and it has admittedly been stolen". For if this were so, there is no reason why, in the event of the thief not being discovered, Scripture should insist, in the next verse, that the bailee should take an oath that he has not converted it to his own use, since it is admitted that it has been stolen from him.

⁷) The Talmud divides bailees into four classes: (1) **שׂוֹמֵר דָּמָא** "gratuitous bailee" (vv. 6—8): one who keeps chattels on behalf of the bailor without receiving payment therefor. He himself may not use the articles entrusted to his charge. He tacitly agrees to guard the thing entrusted to him with reasonable care, and he is liable for the want of care which every prudent man would, under the circumstances, take of his own property. This want of due care is called **מְשִׁיעָה**. It is assumed that occurrences such as theft and loss (**גְּנוּבָה וְאֲבִירָה**) can be guarded against by the use of an average degree of diligence. If the bailee claims that the article entrusted to him was either stolen or lost and that it was not due to carelessness on his part, he must take an oath to substantiate his defence. (2) **שׂוֹמֵר שָׂבֵר** "bailee for payment" (vv. 9—12): one who tacitly undertakes to guard the bailment personally and continuously. He therefore has to protect the bailment with particular and personal care (cf. B. Metsia 93 b) and is liable in case of theft or loss. He is not, however, responsible for accidental loss (**אֲתַחְטִין**), against which he could not have guarded by the degree of diligence expected of him. (3) **שׂוֹאֵל** "borrower" (vv. 13—14 a): one to whom chattels are lent gratis for his own use. In this case, since the bailment is for the benefit of the bailee alone, he is held to be liable for loss from whatever cause, even from accident (**אֲתַחְטִין**). (Cf. M. Jung, *The Jewish Law of Theft*, p. 40 ff.). (4) **שׂוֹמֵר** "hirer" (v. 14 b): where the bailee hires the chattels for his own use. His liability is according to R. Meir the same as that of a **שׂוֹמֵר דָּמָא**; according to Rabbi Jehuda the same as that of a **שׂוֹמֵר שָׂבֵר** (cf. B. Metsia 80 b).

Figure 2: Rashi's commentary on Exodus 22:6-7, *The Pentateuch with Targum Onkelos, Haphtaroth and Prayers for Sabbath and Rashi's Commentary*, translated by M. Rosenbaum and A. M. Silberman (London, reprinted frequently since 1930).

RAMBAN

so, then – according to the opinion of the Sage who says²⁰⁵ that a thief who broke into a house and took some of its vessels and went out, is free from paying for them, because he acquired them with “blood”²⁰⁶ – we must say that the second half of the verse which states, *he shall make restitution; if he have nothing, then he shall be sold for his theft*, refers back to a previous verse [i.e., Verse 37 in the preceding chapter]: *if a man steal an ox* etc. A similar case is the verse, *And also unto thy bondwoman thou shalt do likewise*.²⁰⁷

The plain meaning of the verse is known to be as follows: If a thief dug through into a home at dark, and was found there at night, he may be killed; but if the sun shone upon the thief and someone saw him and recognized him, he may not be killed, but he must pay for what he stole and took from there at daytime. The meaning of the term *hashemesh* (the sun) is “in the sight of those who saw him.” Similarly, *in the sight of this sun*²⁰⁸ means “openly.” The reason for this law is as we have mentioned, that one who comes at night will kill the householder, [and therefore the householder may kill him], whilst one who comes at daytime will flee from him [once he is recognized].

6. IF A MAN DELIVER UNTO HIS NEIGHBOR MONEY OR VESSELS TO KEEP. This section [Verses 6-8] speaks of an unpaid guardian, therefore He has freed him from payment in case the money or vessels are lost or stolen, as is the Tradition of our Rabbis.²⁰⁹ Scripture mentioned it without specifying what the case is because those who guard money or vessels generally do so

(205) The opinion is that of Rav (Sanhedrin 72 a). (206) Had he been found by the householder while still in the house and he were killed by him, the householder would be free from punishment. (207) Deuteronomy 15:17. This is to be connected with Verse 14 there, which states that the master must present gifts to a manservant who goes out free, and here it states that the same must also be done to a maidservant. But it does not refer to the first half of that verse [17] which speaks of the piercing of the ear of a manservant, since that law does not apply to a woman. (208) II Samuel 12:11. (209) Baba Metzia 94 b.

Figure 3: Nahmanides' commentary on Exodus 22:6, *Ramban (Nachmanides) Commentary on the Torah*, translated by R. Charles Chavel (New York, 1973).

EXODUS XXII, MISHPATIM

without reward. The second section [Verses 9-12] speaking of a paid guardian mentions *an ass, or an ox, or a sheep, or any beast*,²¹⁰ because it is the customary way to give over cattle into the hands of shepherds who pasture them for payment.

AND IT BE STOLEN OUT OF THE MAN'S HOUSE. Rashi explained it as meaning that it was *stolen out of the man's house* "according to his statement," meaning that this is what the unpaid guardian claims.²¹¹ Scholars have brought parallel cases in Scripture [as proof to Rashi's explanation]. Thus: *If there arise in the midst of thee a prophet*;²¹² *Hananiah the son of Azzur the prophet*,²¹³ for he is not referred to by that epithet ["prophet"] as a true description, but only because he claimed to be so. But there is no need for this. For Scripture is stating that if it was really stolen out of the man's house and *the thief be found, he shall pay double*; and *if the thief be not found*,²¹⁴ they shall come to court and the guardian shall swear concerning the stolen article *whether he have not put his hand unto his neighbor's goods*,²¹⁴ and *he whom the court condemns as the thief of this article shall pay double*,²¹⁵ as the court will not convict anyone and make him pay double unless he stole it, since the law of twofold restitution applies only to a thief, as He said above, *If the theft be found in his hand alive... he shall pay double*.²¹⁶

7. WHETHER HE HAVE NOT PUT HIS HAND UNTO HIS NEIGHBOR'S GOODS. In the opinion of Rashi this means that the guardian is to come before the judges to swear that he has not put his hand to his fellow-man's goods [i.e., that he is not guilty

(210) Verse 9. (211) It cannot mean that it was *admittedly* stolen, for then how could Scripture say in the next verse that if the thief was not found, the guardian must swear, since it is admitted that it was stolen from him? Hence the verse must mean that he claims it was stolen.

(212) Deuteronomy 18:2. The case there speaks of a false prophet. The term "prophet" must therefore be understood as "one who claims to be a prophet." (213) Jeremiah 28:1. [The reasoning is as in the previous Note.]

(214) Verse 7. (215) Verse 8. (216) Verse 3.

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to him, the bailee of verses 9-12 is. Nahmanides, based upon the *Talmud* (*Baba Metzia* 94b), reconciles this seeming contradiction by noting that the first case is that of an gratuitous bailee (*shomer hinam*) while the second is that of a hired bailee (*shomer sakhar*). Since this is not readily apparent, Nahmanides explains that it may be inferred from the object of bailment in each case. Money and vessels (verses 6-8) are generally guarded for free, while cattle and sheep (verses 9-12) are usually entrusted to shepherds who pasture them for payment.

Reproduced below (Figure 4) is a page from the classical edition of the Hebrew Bible known as *Mikra'ot Gedolot*. It contains the commentaries of Rashi and Nahmanides as well as the Aramaic translation *Targum Onkelos*.

C. Translation of the Bible and Commentaries

The standard English translation of the Bible, *The Holy Scriptures* (Philadelphia, 1917), is that of the Jewish Publication Society. It employs the somewhat archaic style of the King James Version of 1611. *The Holy Scriptures* has been reprinted numerous times in various formats. A two volume version with Hebrew and English on facing pages was published for the first time in 1955.

In recent years, there have been a number of departures from the traditional style of the King James Version. The first of these was the Jewish Publication Society's new translation of the Pentateuch, *The Torah* (Philadelphia, 1962). This translation not only employs modern English, but also reflects recent advances in biblical scholarship. The Jewish Publication Society's new translation of the Prophets was published in 1978 and its new translation of the Writings (Hagiographa) in 1982. The three volumes were subsequently combined under the name *Tanakh* (Hebrew for Bible). Another modern English translation of the Pentateuch is *The Living Torah* (New York, 1981), by A. Kaplan. This translation reflects the traditional rabbinic interpretation of the text and contains brief explanations as well as maps, pictures, and diagrams.

I. Scripture

The commentaries of both Rashi and Nahmanides are available in English. *The Pentateuch with Targum Onkelos, Haphtaroth and Rashi's Commentary*, by M. Rosenbaum and A. M. Silberman contains a scholarly and thorough translation of Rashi's commentary, as well as extensive notes. For those interested in developing facility in reading Rashi's commentary in the original, there exists an inter-linear translation, *The Pentateuch and Rashi's Commentary* (Brooklyn, 1949), by A. Isaiah and B. Sharfman. Both translations of Rashi have been reprinted many times and remain readily accessible (The Rosenbaum-Silberman translation of Rashi is shown in Figure 2). *Ramban (Nachmanides) Commentary on the Torah* (New York, 1973) is C. Chavel's translation of Nahmanides (Figure 3 shows a sample of Chavel's translation).

Another useful, and extensive commentary on the Pentateuch is that of R. Samson Raphael Hirsch. R. Hirsch (1808-1888) wrote his commentary in German. *The Pentateuch* (New York, 1971) is Isaac Levy's translation to English.

There also exist a number of eclectic commentaries in English. *The Pentateuch and Haftorahs* (London, 1938), edited by the chief rabbi of Great Britain, J. H. Hertz, contains an extremely popular commentary along with useful essays on various biblical topics (an excerpt of the Pentateuch with Dr. Hertz's commentary is shown in Figure 1). *The Soncino Chumash*, by A. Cohen is part of *The Soncino Books of the Bible*. It collects and summarizes the interpretations of the classic Jewish biblical commentators, including Rashi, Nahmanides, Seforno, Rashbam, and others.

D. Halakhic *Midrashim*

The biblical commentaries of the Second Temple period are the halakhic³ *Midrashim* (sing. *Midrash*). These works seek to explain

³ Halakhic *Midrashim* are distinguished from aggadic *Midrashim* (see below). The word *halakhic* derives from the Hebrew *Halakhah*, a term used to refer to the entirety of Jewish law.

יונתן בן עוזיאל

תקמו

י מוֹמְתָא דְיִי תְהִי בֵּין תְּרֵוּהוֹם יוֹמֵי דְלָא אוֹשִׁיט דְיָדֵיהּ בְּעֵינֵיקָא דְחֻבְרִיהּ וַיִּקְבֵּל מֵאֲרִיהּ מִגְיָה מוֹמְתָא וְלָא יִשְׁלַם: יא וְאִין יִתְגַנְבָא יִתְגַנְבֵּי מִגְיָה דְהָהּ לֵיהּ עֲמִיהּ אַגְרֵי נְטִיר יִשְׁלַם לְמַרְוִי: יב אִין אֲתִבְרָא יִתְבַּד מִן חֵירוֹת בְּרָא מִיִּחֵי לֵיהּ סְהָרִין אוֹ יִמְטִינִיהּ עַד גּוּפָא דְחֻבְרִיד לֵג לָא יִשְׁלַם: יג וְאָרוֹם יִשְׁאֵל גְּבַר מְדַעַם מִן חֻבְרִיהּ וַיִּתְבַּד מִנָּא אוֹ מִית בְּעִירָא מְרִיהּ לִית עֲמִיהּ פִּירוּשׁ וּוְנָתַן לֵג מִיִּתִי לֵיהּ סְהָרִין אוֹ יִמְטִינִיהּ עַד גּוּפָא דְחֻבְרִיד: סְבִירָא לֵיהּ שְׂהוּא לִישְׁנָא דְמִשְׁתַּמַּע לַחֲרִין אֲנִפִין עַד בְּצִיר אוֹ כַּפְחָא, וְקָא אִמָּה דְלַפְנֵי וְאִמָּה דְלֵאחֲרֵיו, וְרוּצָה לְזַמְרָא שִׁבְיָא עֲרִים שְׂמֵן חֵירוֹת הַשְׂדֵה נְטִרְפָּה, וַיִּבְיֵאוּ עַד הַטְרִיפָּה וְקָל: תַּרְגוּם יְרוּשְׁלָמִי

יב אם יתקטלא ויתקטיל ייתי ליה מן אכריו סהר קטילא לא ישלם [6]:

פִּירוּשׁ יְרוּשְׁלָמִי [ז] אִם יִתְקַטְלָא וְיִתְקַטֵּל וְיִיָּתִי מִן אֲכָרֵי סְהָר קְטִילָא וְכוּ'. שְׂהוּא וּפְטוּר ע"ז נְעֵדִים, וְזֶה הַדָּרֵךְ נִלְמַד לוֹ יוֹמֵר כִּי קָרַב לְעַם יוֹמֵן וְהוּא הוּא. וְנִשְׁעִי נִלְמַד לִישׁן הַגִּירָא, וְרוּצָה שֶׁאֵם יִבְרָא אֲבִי אִי שְׂהוּא וְזֶה שְׂעִירָא ע"ז מִיָּה לֵא יִשְׁלַם, לְפִי שְׂאִין עֲרוֹת מִבְּנֵי שְׂעִירָא לֵבן כַּפְחָא שְׂדֵי לוֹ מִלְּנֵי, וְעִיִן בְּרַחֲמֵי עֵדִים וְכֵן בְּרַחֲמֵי דְעַם נְטִירִים מִנְּחָל, וְעִיִן בְּמִלְחָמָא:

רש"י

וּמִת. [מעלמו]. או נשכר, שטרפו ארי [אין] חיה רעה, ששקט שמת או נשנה מדבר שאלמה כל הנהמה, הוא הדין לנשכר שכל הנהמה והפסדה שהרגה ארי או חיה רעה, שכן מצינו נשכר שהרגו האריה, וממור והאריה עומדים אלל הנבילה ולא אלל האריה את הנבילה ולא שכן את הממור (מ"א יג נח): אין רואה. [אין עד דבר]: י שבועת ה' ונבין. ופטור נאונסים: י ולקח. נעליו השטעה: יב וביאהו עד. קצת מאיברי הטרפה לעדות, כדכתיב (עמוס ג י) כאשר יליל הרועה מפי הארי שתי כרעים או כלל אוזן: יג וכי

ספורנו

ט חמור או שור או שה, סחם אלה ישמרו אותם עניי עם בשכר: יב וביאהו עד. כבר אמרו (טושה ב) כל מקום שנאמר עד הרי כאן שנים. ואמר אם כן, אם טרוף יטרף על ידי חיה רעה, שסתמה יש רואה, כי יקרא עליה מלא רועים, הנה או יביא את הנטרף ואיזה זוג עדים שיעידו שזו היא שנטרפה באונס: הטרפה. באונס: יא ישלם. אבל אכלה חיות מחסרון שמירה ישלם, כאמרם ז"ל (ב"מ צג:) זאב אחד אינו אונס וכר שני כלבים אינו אונס, ואין צריך לומר חתול ונמיה ודומיהם שיכול להציל:

רמב"ן

(יב) אִם טָרַף יִטְרַף. על ידי חיה רעה. וביאהו עד. יביא עדים שנטרפה באונס ופטור. זה לשון רש"י. ויש לחמוה, למה הצריך הכתוב בכאן עדים, ולמעלה אמר שבועת ה' תהיה בין שניהם, והדין בהם שוה הוא, שאם יש לו עדים יפטר במת ונשכר ונשבה וכן בנטרף, ואם אין לו עדים נשבע על כלן ואינו משלם. ושמה כי דבר הכתוב בהווה שהשור כשימות כאבוס בעליו או יעלה לצוק ונשכר אין רואה כו, וכן הנשבה בליסטים מזויין שבא עליו ונטלו מן הערר והלך לו, אבל האריה והדוב כאשר יטרף יקרא עליו מלא רועים, ולכן יאמר שיביא אותם לכ"ד פטור: א ו שנפרש שבא הכתוב ללמד על דינו של איסי בן יהודה שאומר (ב"מ פג.) אין רואה (לעיל פסוק ט) פטור, הא יש רואה יביא עדים ופטור, ופירושו, שאם אירע האונס במקום שהאנשים מצויין שם כל היום אין סומכין על שבועתו וצריך להביא העדים. ודרך הטרפה שתהיה כן כאשר אמרנו, ולכן הצריך בה הכתוב שיביא העדים. ור"א אמר וביאהו עד, שיביא קצת הנטרף, שתי כרעים או כדל אוזן, להיות לו לעד. וכן דאיתי במכילתא דרבי שמעון בן יוחאי אבא שאול אומר יביא עדידה, שנאמר (עמוס ג יב) כה אמר ה' כאשר יציל הרועה מפי הארי שתי כרעים וגו':

חייב והמותר נגנב ממני. וזה הענין שכתבו הרב דכרי יחידים הוא ואינו כהלכה, שהשומרים אינן צריכין כפירה במקצת והוראה במקצת, ואפילו כשטוען טענת גנב בכל הפקדון חייב הוא לישבע שבועת השומרים. ועוד מתבאר בגמרא בראיות גמורות כי כשהוא כופר בעיקר הפקדון ואומר לא הפקדת אצלי, אם כופר בכל פטור, ואם מודה מקצת חייב שבועה, וזה לדרכי הכל, ואף על פי שהרב אינו אומר כן בפירושו בגמרא (ב"ק קז. ר"ה מע"ז):

ואם כן נאמר כי הכחוב הזה לפי מדרש חכמים הוא בטוען לא הפקיד אצלי מעולם, שאם כפר בכל פטור ואם הודה במקצת וכפר במקצת חייב שבועה. ויאמר אם לא ימצא הגנב יקרב בעל הבית אל האלהים על כל טענת פשע שיטען עליו פשעת בשמירה, או אשר יאמר השומר כי הוא זה פקדון שבידי ולא הפקדת לי יותר, הנפקד אשר ירשעונו אותו האלהים ישלם שנים לדעהו. והנה שניהם ישלמו, אבל אין תשלומי השנים אלא בטוען טענת גנב, וטענת מודה במקצת נוהגת בכל התביעות ואפילו בהלואה וגולה ושאר ענינים. ובאלה הדינים מקרא מועט והלכות מרובות, אין צורך לבאר מהם בכאן אלא בכדי ישוב המקראות:

אור החיים

י בין שניהם. ילנה, כי יש עונש לנשבע ולמשבע, אם ידע שהוא רוצה לישבע לסקר ומתקם כל הדבר:

ליקוטי ביאורי המצוות מהרמב"ם

בני המדינה להשחמש ברבר זה. (עשה רמב, הל' שכירות פ"א פ"ה): בבא קמא נו: סכ, בבא מציעא לה: עח. צג. ואילך, שבתות מט, שאלהות כ, רס"ג פרשה כד, סמ"ג עשין פט, חינוך נו, זכר הריקיע עשה נג, טושי"ע חרי"מ שג ואילך:

מפשיעה. אחד האיש ואחד האשה כרין השומרין. הדיגין האמורין כחודה בשומרין אינו אלא במטלטלין של ישראל ושל הרוט (כנזכר לעיל כו). אין השוכר רשאי להשכיר ואין השומר רשאי למסור לשומר אחר (וראה הל' שכירות פ"א הי"ד). אין השוכר רשאי לשנות ממה שהתנה עמו המשכיר בשעת שכירה לעשות ברבר ששוכר. או ממה שנהגו

Figure 4: Exodus 22:6-12, *Mikra'ot Gedolot*. Shown together with biblical text are the Aramaic translation of Onkelos, and the commentaries of Rashi and Nahmanides.

חקמו

שמות כב משפטים

אונקלוס

אֶל־רַעְהוּ חֲמוֹר אוֹ־שׁוֹר אוֹ־שָׁה
 וְכַל־בְּהֵמָה לְשֹׁמֵר וּמֵת אוֹ־נִשְׁבֵּר אוֹ־
 נִשְׁבָּה אֵין רֵאָה: שְׁבַעַת יְהוָה
 תְּהִיָּה בֵין שְׁנֵיהֶם אִם־לֹא שָׁלַח יָדוֹ
 בְּמַלְאכָת רַעְהוּ וְלָקַח בְּעַלְיוֹ וְלֹא
 יִשְׁלַם: יֵא וְאִם־גָּנַב יִגְנַב מֵעֵמוֹ
 יִשְׁלַם לְבַעְלָיו: יֵא אִם־טָרַף יִטָּרַף
 יִבְאֵהוּ עַד הַטָּרְפָה לֹא יִשְׁלַם: פִּי וְכִי־

ימומקא דיי תהי בין תרויהון
 אם לא אושיט ידה בקמא דמטר
 לה חברה ויקבל מרה מנה
 מומקא ולא ישלם: יא ואם
 אתגנבא ותגנב מעמה ישלם
 למרוהי: יב אם אתקרא יתבר
 יתי סהדין דתבירא לא ישלם:
 יג וארי ישאל גבר מן חברה

תולדות ובית אהרן והוספות

[א] ב"ק ק"ו, ב"מ מ"א: מג: מד: מנ, שטעות לה: לע:
 מה: מו: חמורה ג, ירושלמי שטעות פ"ו ה, פ"ו א
 פ"ח א, חופתה שטעות פ"ו א ג, [אל] ב"מ ד:
 ירושלמי שטעות פ"ח א, [יב] ב"ק י, ירושלמי ב"ק
 פ"ח א, [יג] ב"ק ו: ק"ו, ב"מ ד: ט"ה: ט"ו

שפתי חכמים

ג פירו'ש אבל ליכא למימר איפכא, שהרי מסתברא שכן הוא שלפיך כו'.
 [ואין לומר בשואל, מדכתיב להלן שבעת הי וגו' אם לא שלח ידו וגו']
 ובשואל אי אפשר לומר שישבע ויפטור בטענת נאנסו שהרי השואל חייב
 באונסין וא"כ למה לו לישבע שלא שלח בו יד ליפטר מאונסים, אלא
 בשומר שכן מיירי והשבועה על קיום טענתו ליפטר באונסים, ואימתי יפטור
 באונסים, בשלא שלח בו יד: ד ש"א תבין ולא ישלם הכפל הנוכר
 למעלה, אבל הקרן ישלם, לכך פירש פטור מכלום: ה יש מקשים למה
 לי שני עדים רהא עד אחד פוטר אהנו מן השבועה וממילא הוא פטור
 גם כן מן התשלומין, וי"ל דסבידא ליה לרש"י עד המסייע אינו פוטר
 ומשום הכי צריך שני עדים, עיין בח"מ סימן פ"ו (פעיף ו): ו פירו'ש
 מי לחש לך באונק לחלק בין ארי לחתול, הא סתמא כתיב אם טרף יטרף,
 ואף על גב דכתיב הטריפה בה"א שבהא לחלק, אכתי ליכא למשמע באיה
 מין טריפה חייב ובאיה מין טריפה פטור, לפיכך הוצרכו היקישא. (ר"א
 מזרחי):

שכר ג, לפיכך אינו פטור אם נגנבה, כמו שכמוז אם
 גנב יגנב מעמו ישלם (ב"מ ד:), אבל על האונס, כמו
 מת מעלמו או נשבר או נשבה בחזקה על ידי לטטים.
 ואין רואה שיעיד דבר: (י) שבועת ה' תהיה.
 יפצע שכן הוא כדבריו, והוא לא שלח בה יד להשתמש
 בה לעלמו, שאם שלח בה יד ואחר כך נאנסה חייב
 באונסים: ו לקח בעליו, השבועה (ב"ק קו):
 ו לא ישלם, לו השומר דכלום: (יב) אם טרף
 יטרף, על ידי מיה רעה: יבאיהו עד, ימא עדים ה
 שנטרפה באונס ופטור: הטרפה לא ישלם, אינו
 אומר טרפה לא ישלם אלא הטרפה, יש טרפה שהוא משלם ויש טרפה שאינו משלם. טרפת קמול ושועל וקמיה
 משלם. טרפת זאב, ארי ודוב ונחש, אינו משלם, ומי לקטף ו לדון כן, שהרי כתיב ומת או נשבר או נשבה מה
 מיתה שאין יכול להזיל, אף שגר ושניה שאין יכול להזיל (מכילה): (יג) וכי ישאל, צא ללמדך על השואל

מוסף רש"י

וכתיב במרויהו אם לא שלח, הא אם שלח נחייב דברים שהוא
 פטור עליהם, כגון שומר חנם בין נגנבה בין באונסין, דמדשלח בה
 יד קנאה וקמה נרשותו, ושומר שכר נזמ או נשבר או נשבה, דהיינו
 אונסין (סס מ"א): [יג] וכי ישאל, שאלה צמידי דהדר בעין,

[ן] שבועת ה' תהיה בין שניהם, דשומר שכר פטור
 באונסין (ב"מ מ"א): אם לא שלח ידו במלאכת רעהו,
 הא שלח נחייב שוב נמיתתה ובשמימה (סס מ"א), ואמרינן דהשואל
 (סס ד:), פרשה ראשונה נלמדה דשומר חנם, שניה דשומר שכר,

אבן עזרא

הנטרף להיות לו לעד, על דרך שכחוב כאשר יציל
 הרועה מפי הארי שתי כרעים או כדל און (עמסו ג יב):
 יג וכי ישאל, על דרך הפשט בעליו אין עמו, ויכול לטעון

כמו לרגל המלאכה אשר לפני
 ולא יקח ממנו רק השבועה:
 יבאיהו עד, יכיא קצת

אבי עזר

ט במלאכת רעהו, היינו ממון או כל דבר שיוכל אדם לעשות נכחו ונרשותו, וכן פירש הרב סס:

בעל המורים

ט וכ"כ בהמה ג', הכא, ואירך החיה וכל בהמה (ההלים קמח י).
 וכל בהמה מפרסת פרסה (דברים יד ו), לומר שהחיה בכלל בהמה

CHAPTER ONE: SOURCES

and define the biblical commandments and to find scriptural sources or support for those laws practiced on the basis of oral tradition and not mentioned explicitly in the text. Halakhic *Midrashim* exist on four of the five books of the Pentateuch. Genesis, containing almost no legal material, has no halakhic *Midrash*. Three of the best known halakhic *Midrashim* are *Mekhilta deRabbi Yishma'el* on Exodus, *Sifra* (also known as *Torat Kohanim*) on Leviticus, and *Sifrei* on Numbers and Deuteronomy.

Above, we saw verse 13 of our biblical passage, 'If a person borrows from a friend and it breaks or dies..., surely shall he pay.' From this verse, *Mekhilta deRabbi Yishma'el* concludes, based on the principle of inference from minor to major (*kal vahomer*), that a borrower is responsible to pay the cost not only of property that has broken or died, but also of property lost or stolen (see Figure 5).

A second type of *Midrash* is the aggadic *Midrash* (*Midrash aggadah*). Such collections are homiletic rather than legal and use the biblical text as a springboard for teaching wisdom and morality. The best known of these *Midrashim* are:

Midrash Rabbah. Collections of homiletical interpretations of the Pentateuch and the books of Esther, Ecclesiastes, Lamentations, Song of Songs, and Ruth (the five *megillot*). Each one is named for the book it interprets, e.g., *Bereshit Rabbah*, *Esther Rabbah*.

Midrash Tanhuma. A collection of homiletical interpretations of the Pentateuch attributed to R. Tanhuma, a fourth century *Amora* from Eretz Israel.

Yalkut Shimoni. A thirteenth century compilation of aggadic *Midrash* covering the entire Bible, assembled by R. Shimon *haDarshan* of Frankfurt.

E. Commandment Lists

According to an ancient tradition, the Pentateuch contains 613 commandments. Throughout Jewish history, various works have been written to catalogue and explain these commandments. Three such works are:

I. Scripture

Sefer haMitzvot, by Maimonides (R. Moshe ben Maimon), lists the commandments and divides them into positive and negative categories. Each commandment is briefly explained and its biblical source cited. (The excerpt reproduced in Figure 6 is from Positive Commandment 242: The Law of the Unpaid Bailee.)

Semag. The name *Semag* is an acronym for the words *Sefer Mitzvot Gadol (The Great Book of Commandments)*. *Semag* was written by R. Moshe of Coucy in the 13th century. It lists each commandment together with its biblical source and cites relevant teachings of the *Talmud*, *Midrashim*, *Geonim*, R. Alfasi, Rashi, Maimonides, and the *Tosafot*. *Semag* is one of the sources for halakhic rulings.

Sefer haHinnukh. Attributed to R. Aharon Halevi of Barcelona (13th century), *Sefer haHinnukh* lists commandments in their order of appearance in the Bible. The discussion of each commandment centers on four points: (1) biblical source and definition according to the *Talmud*; (2) rationale; (3) observance, as formulated by R. Alfasi, Maimonides, and Nahmanides; (4) application — when and where the commandment is operative and to whom it is addressed.

Sefer haHinnukh contains three commandments concerning bailees: commandments 57, 59 and 60, dealing with the obligation of the court (*beit din*) to adjudicate cases of gratuitous bailees, hirers, hired bailees, and borrowers (the excerpt in Figure 7 is from Commandment 60).

And If a Man Borrow Aught of His Neighbour. Scripture removes the borrower from the category of the bailee, treating his case as a subject by itself.

Of His Neighbour. This tells us that the borrower is not liable unless he takes it out of the owner's territory.

And It Be Hurt or Die. I thus know only about that which is injured or dies. How about that which is captured? Behold you must reason thus: Here "dying" is mentioned and there (v. 9) "dying" is mentioned. Just as there when "dying" is mentioned the law regards being injured or captured like dying, so also here when "dying" is mentioned we should regard being injured or captured like dying. How about theft and loss? You can reason by using the method of *kal vahomer*: If where one is not liable for death one is liable for theft and loss,⁹ is it not logical that here where one is liable for death one should surely be liable for loss and theft?

The Owner Thereof Not Being with It, He Shall Surely Make Restitution. If the Owner Thereof Be with It, He Shall Not Make It Good. Scripture here tells us that if when it went out from the territory of the lender into the territory of the borrower, the owner was with it, even if only for a little while, the borrower is not liable. But if the owner was not with it the borrower is liable.

⁹ In the case of a bailee for hire.

Figure 5: *Mekilta de-Rabbi Ishmael* on Exodus 22:13, translated by Jacob Lauterbach (Philadelphia, 1935).

וכי ישאל איש מעם דעהו נתק הכתוב
השואל מכלל השומר ואמרו ענין בפני עצמו. 85

מעם דעהו מגיד שאינו חייב עד שיוציאנו
חוץ לרשותו.

ונשבר או מת אין לי אלא שבורה ומתה
שבויה מגין הרי אתה דן נאמר כאן מיתה ונאמר
להלן מיתה מה מיתה האמורה להלן עשה שבורה 90
ושבויה כמיתה אף מיתה האמורה כאן נעשה שבויה
ושבורה כמיתה וגבה ואברה מגין אמרת קל וחומר
מה אם במקום שלא חייב על המיתה חייב על
האברה ועל הגנבה וכאן שחייב על המיתה דין
הוא שנחייב על האברה ועל הגנבה. 95

בעליו אין עמו שלם ישלם אם בעליו
עמו לא ישלם מגיד הכתוב שמכיון שיצאת
מרשות הנשאל לרשות השואל אפילו שעה אחת
בבעלים פטור שלא בבעלים חייב.

84-85 ש. שם. 86-87 ב"מ צ"ט, א'. 88-89 שם צ"ד, ב'-צ"ה,
א'. י' שבועות שם. 90-99 ב"מ צ"ה, ב'. י' שם ח', א' (11^{cd}).

90-92 מה מיתה האמורה-נעשה שבויה ושבורה כמיתה] ד. מה
מיתה האמורה להלן שבויה בכלל אף כאן כך. 96 שנחייב] מ.
ד. שנחייב. 96 אס] מ. ואם. 98 הנשאל] מ"ח. המשאיל.

242 The law of an unpaid bailee

By this injunction we are commanded concerning the law of an unpaid bailee. It is contained in His words (exalted be He), *If a man deliver unto his neighbour money or stuff to keep, etc.*¹

The details of this law are explained in the ninth chapter of Baba Kamma, in the third chapter of Baba Mezia, and in the eighth chapter of Shevuoth.

NOTE Speaking of the law regarding the four kinds of bailees, Maimonides says: 'The fairness of the law is evident. If one keeps the property of his neighbour for nothing, without deriving therefrom any benefit for himself, and is only obliging his neighbour, he is free from all responsibility, and if any injury is done to the property, the owner alone must bear the loss' (*Moreh Nebuchim III, 42*). However, to be quit of liability the bailee must take an oath in every case of loss or damage that the mishap to the goods or to the beasts entrusted to him was not caused by his neglect (*B.M. 93a*).

243 The law of a paid bailee

By this injunction we are commanded concerning the law of a paid bailee and of a hirer, one law being applicable to both, as explained by the Sages, who say that three rules govern the four kinds of bailee.² This injunction is contained in His words (exalted be He), *If a man deliver unto his neighbour an ass, or an ox, or a sheep, etc.*³

All the details of this law are explained in the sixth and ninth chapters of Baba Kamma, in the third and sixth chapters of Baba Mezia, and in the eighth chapter of Shevuoth.

¹ Ex. XXII, 6.

² Shev. 49b. 'There are four kinds of guardian: an unpaid guardian, a borrower, a paid guardian, and a hirer' (*ibid.*). One rule applies to the last two.

³ Ex. XXII, 9.

Figure 6: *The Commandments: Sefer Ha-Mitzvoth of Maimonides*, Commandment 242, translated by R. Charles Chavel, (London, 1967).

NOTE *'If one takes wages for keeping property or pays for using it, he as well as the owner profits thereby: the losses must therefore be divided between them. It is done in this manner: the bailee pays for any loss caused through want of care, namely, when the property is stolen or lost; for this happens only when the bailee does not take sufficient precaution. The owner, on the other hand, bears such losses as cannot be prevented, if by accident the animal falls and breaks its limbs, or is carried away by armed men as booty, or if it dies' (Moreh Nebuchim III, 42).*

244 The law of a borrower

By this injunction we are commanded concerning the law of a borrower. It is contained in His words (exalted be He), *If a man borrow aught of his neighbour, etc.*¹

The regulations of this law are explained in the eighth chapter of Baba Mezia and in the eighth chapter of Shevuoth.

NOTE *'He who borrows a thing keeps it only for his own advantage, whilst the owner lends it to him to oblige him; he is therefore responsible for everything; any loss in the property must be borne by the borrower' (Moreh Nebuchim III, 42).*

245 The law of buying and selling

By this injunction we are commanded concerning the law of buying and selling; that is to say, the procedure by which a sale is to be effected between the vendor and the vendee. This procedure has been learnt from His words (exalted be He), *And if thou sell aught unto thy neighbour, or buy of thy neighbour's hand, etc.*,² which the Sages interpret as referring to 'a commodity purchased from hand to hand, that is to say, [acquired by the purchaser's act of] "drawing" [to himself]'.³

CHAPTER ONE: SOURCES

[THE COURT'S OBLIGATION TO JUDGE CASES INVOLVING
A MAN WHO BORROWS AN OBJECT FOR USE]

60 to judge the case of a borrower, i.e. a man who borrowed from his fellow some object or domestic animal, the loan being without any payment at all, but merely because the other wished to act kindly toward him by doing him this favor. Afterward, if a quarrel occurs between them over the matter, we are to judge the case between them. For it is stated about this, as written in this *sidrah*, *And if a man borrows anything from his neighbor, etc. (Exodus 22: 13).*

In the law of the borrower, the Torah obligated [him] to pay even for accidents, because it is under his responsibility, since he borrowed it and spent nothing of his own for it.¹ Hence he is like a person who borrows money, where, if it is taken from him by force, he cannot be quit of the loan by the plea of accident.

Now, about borrowing something together with its owner (Exodus 22: 14), in which case he [the borrower] is free of obligation, we can say, according to the plain meaning [of the matter], that the Torah did not obligate the borrower inasmuch as the owner of the object or the animal is with him: For since he is there, let him watch his own property.² It is true, though, that the borrower is free of obligation even after the owner leaves, since he was there at the time it was borrowed. However, it can be said in explanation of this that the Torah did not wish to set limits in these matters and say: If the owner was there at length, the borrower is free of obligation; and if but a short time, he bears the obligation. Hence the Torah ordained generally that as long as the owner was there at the time of the borrowing, he is free of obligation.

This is the reason why our Sages of blessed memory said³ that if [the owner] was with him at the time of the borrowing, even if he was not with him when breakage [of the object] or death [of the animal] occurred, he remains free of any obligation. However, if [the owner] was with him at the time of breakage or death, but had not been with him at the time of the borrowing, he bears the obligation. For the matter depends on the beginning of the transaction. And this very reason will suffice us in regard to the hiring of the owner also, [to explain] why he is free of obligation.

Figure 7: *Sefer haHinnuch*, Commandment 60, translated by Charles Wengrou (Jerusalem, 1978).

II. MISHNAH AND TALMUD

A. Mishnah

The *Mishnah* is the first topical compilation of the Oral Law (*Torah shebe'al Peh*). It was completed around the year 200 C.E. by R. Yehudah haNasi. Although R. Yehudah haNasi's compilation was not the first of its type, it was his work that became recognized as authoritative, and was studied in the academies of Eretz Israel and Babylonia. The Sages quoted in the *Mishnah* are known as *Tanna'im*, a term derived from an Aramaic root word meaning both to study and to instruct. The *Mishnah* is written in Hebrew.

The *Mishnah* is divided, according to subject matter, into six large volumes known as orders (*sedarim*; sing. *seder*). *Shas*, a commonly used Hebrew acronym for the Mishna, stands for 'the six orders of the *Mishnah*' (*shishah sedarim*). The orders are subdivided into smaller books known as tractates (*masekhtot*; sing. *masekhet*). The tractates are further divided into chapters (*perakim*; sing. *perek*), and the chapters are divided into numbered paragraphs, each one known as one *mishnah* (pl. *mishnayot*). The chapters of the *Mishnah* also have names, usually the first phrase or word of the chapter. The six orders of the *Mishnah* are: *Zera'im* (Seeds), *Mo'ed* (Festivals), *Nashim* (Women), *Nezikin* (Damages), *Kodashim* (Holiness), and *Teharot* (Purity).

Two of these orders are of general legal interest. *Nashim* deals with personal status, marriage, and divorce. *Nezikin* deals with torts, other aspects of civil law, criminal law, jurisdiction of the courts, and judicial procedure. *Nashim* contains seven tractates and *Nezikin* ten (see Figure 8).

References to the *Mishnah* furnish the name of the tractate and the numbers of the chapter and *mishnah*. Since the *Mishnah* also appears as part of the *Talmud*, a particular *mishnah* may also be cited according to its location within a talmudic tractate. For

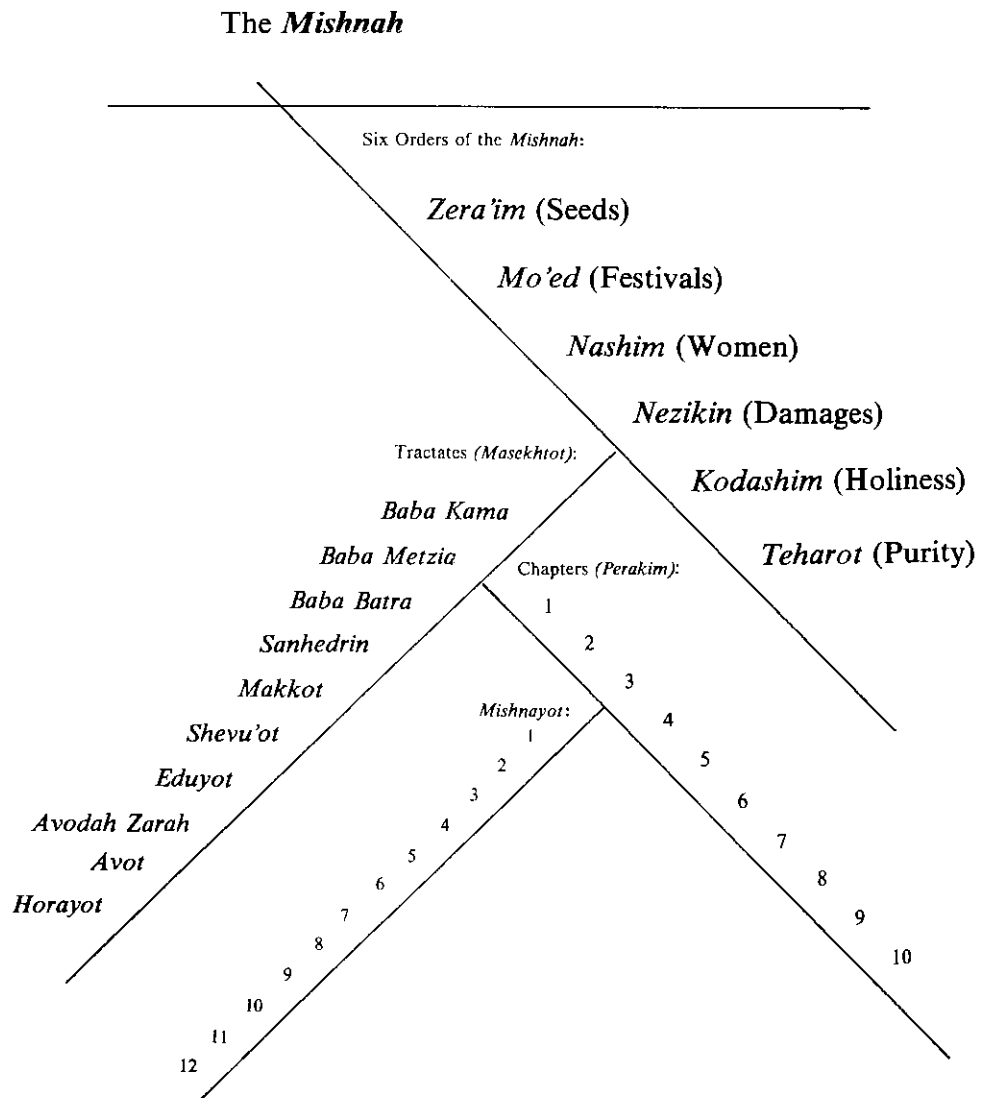


Figure 8: Diagram of the *Mishnah* showing division into tractates, orders, chapters, and *mishnayot*.

II. Mishnah and Talmud

example, the principle that bailee and bailor may stipulate the conditions of their relationship appears in the tenth *mishnah* of the seventh chapter of the tractate *Baba Metzia*. The same *mishnah* appears in the talmudic tractate *Baba Metzia* on the first side of the 94th folio, and thus may be cited: *Baba Metzia* 7:10, referring to the location within the *Mishnah*, or *Baba Metzia* 94a, referring to the location within the *Talmud*. Sometimes to avoid confusion, *M.* is placed before citations from the *Mishnah*. The title of each tractate may be abbreviated (see Appendix II). The standard abbreviation for *Baba Metzia* is BM.

The subject of bailees is found mainly in *seder Nezikin*, *masekhet Baba Metzia*, the third *perek*, known also by the name *haMafkid*—the first word of the first *mishnah*.

Two of the standard English translations of the *Mishnah* are: *The Mishnah*, by Herbert Danby, which contains explanatory notes and appendices, and *Mishnah*, by Philip Blackman, with punctuated and vocalized Hebrew text as well as commentary in English (see Figures 9 and 10).

B. Commentary on the *Mishnah*

Many commentaries have been written on the *Mishnah*. The best known of the classic commentaries are listed below:

Commentary of Maimonides on the Mishnah. This is the first commentary to cover the entire *Mishnah*. Maimonides (1135-1204) began writing his commentary while living in Spain and completed it in Egypt. It explains each *mishnah* and presents the halakhic ruling. The *Commentary on the Mishnah* was originally written in Arabic and translated to Hebrew not long after its publication. It is printed at the back of each volume in all standard editions of the *Talmud* and has been translated into modern Hebrew by R. Yosef Kapah.

Commentary of R. Ovadyah of Bertinoro. R. Ovadyah (1450-1510) was born in Bertinoro, Italy, and later settled in Eretz Israel. His commentary, perhaps the most widely used, is succinct and clear,

BABA METZIA

3. 1. If a man left a beast or utensils in his fellow's keeping⁸ and they were stolen or lost, and his fellow himself made restitution and would not take an oath (for they have taught: An unpaid guardian may take an oath and be quit of liability), the thief, if he is found, must make twofold restitution, and if he had killed or sold [the sheep or the ox] he must make fourfold or fivefold restitution. Whom does he repay? He with whom the property was deposited. If his fellow would not make restitution but took an oath, the thief, if he is found, must make twofold restitution, and if he had killed or sold [the sheep or the ox] he must make fourfold or fivefold restitution. Whom does he repay? The owner of the property deposited.

2. If a man hired a cow from his fellow and lent it to another, and it died a natural death, the hirer must swear that it died a natural death, and the borrower must repay [its value] to the hirer. R. Jose said: Why should that other traffick with his fellow's cow!—but, rather, the [value of the] cow is returned to the owner.

3. If a man said to two others, 'I have robbed one of you of 100 *zuz* and I do not know which of you it is', or 'The father of one of you left 100 *zuz* in my keeping, and I do not know whose father it was', he must give each of them 100 *zuz* since he himself admitted liability.

4. If two men deposited money with a third, the one 100 *zuz*, and the other 200 *zuz*, and one afterward said, 'The 200 *zuz* is mine', and the other said, 'The 100 *zuz* is mine', he should give 100 *zuz* to each of them, and the rest must be suffered to remain until Elijah comes. R. Jose said: But if so, what does the deceiver lose?—but, rather, the whole is suffered to remain until Elijah comes.

5. So, too, [if two men deposited] two things, one worth 100 *zuz* and the other 1,000 *zuz*, and one afterward said, 'The better one is mine', and the other said, 'The better one is mine', he should give the thing of lesser worth to the one, and to the other the value of the thing of lesser worth taken from [the value of] the thing of greater worth; and the rest must be suffered to remain until Elijah comes. R. Jose said: But if so, what does the deceiver lose?—but, rather, the whole is suffered to remain until Elijah comes.

6. If a man left produce in his fellow's keeping, his fellow may not touch it even if it perishes. Rabban Simeon b. Gamaliel says: He may sell it before a court of law; since he may be accounted one that restores lost property to its owner.¹

7. If a man left produce in his fellow's keeping, his fellow² may exact of him these reductions: for wheat and rice nine *kabs*³ and a half to the *kor*;³ for barley and durra nine *kabs* to the *kor*; for spelt and linseed⁴ three *seahs* to the *kor*—in proportion to the quantity and according to the length of time.⁵ R. Johanan b. Nuri said: But what concern have the mice [with quantity and time]⁶ will they not continue eating whether the quantity is large or small!—but, rather, he may exact of him a reduction only from a single *kor*. R. Judah says: If the quantity was great he may not exact of him any reduction, since the produce increases in bulk [such time as it is stored].

Figure 9: *Mishnah Baba Metzia 3:1-2, The Mishnah*, translated by Herbert Danby (London, 1933).

he no longer has it he pays twice its value. The thief is thus obliged himself to suffer the loss he intended to inflict on his neighbour. 3 Compare 71. Fourfold for a lamb and fivefold for an ox (the penalty for an ox being greater because its owner had been deprived of the value of its labour). *Exodus 21, 37.* 4 By paying for the bailment he acquires all rights in it and thus restitution for its theft is due to him. 5 Thus the original owner retains the ownership and restitution is due to him.

Mishnah 2

משנה ב

If one hired¹ a cow from his fellow and lent it to another, and it died a natural death, the hirer must swear that it died a natural death, and the borrower must repay [its worth] to the hirer.² R. Jose³ said, How can this be? Why should this man⁴ do business⁵ with his fellow's cow? [The value of] the cow must therefore be restored to the owner.

הַשׁוֹכֵר פָּרָה מִחֲבֵרוֹ וְהִשְׁאִילָהּ לְאַחֵר, וּמָתָה כְּדַרְכָּהּ, יִשְׁבַּע הַשׁוֹכֵר שְׂמֵתָהּ כְּדַרְכָּהּ, וְהַשּׂוֹאֵל יִשְׁלַם לְשׁוֹכֵרָהּ. אָמַר רַבִּי יוֹסֵי, כִּי־צַד? הֲלֵה עוֹשֶׂה יִסְחֹרְתָהּ בְּפִרְתוֹ שֶׁל חֲבֵרוֹ? אֵלָּא תַחֲזוֹר פָּרָה לְבָעָלֶיהָ.

1 A hirer is not liable for damage due to an unpreventable accident. 2 Compare 7⁸. A borrower is liable for loss or damage in all circumstances. 3 His view is accepted. 4 הַלֵּה (traditional pronunciation הַלֵּה) is a term mostly used in legal proceedings to designate *the person concerned*. 5 Make profit out of property which is not his own but his fellow's.

Mishnah 3

משנה ג

If one said to two persons, 'I have robbed one of you of a *maneh*,¹ but I do not know which one² of you,'³ or [if he said to them], 'The father of one of you has deposited a *maneh* in my keeping, but I do not know⁴ whose father', he must give a *maneh* to one and a *maneh* to the other, as he himself admitted the liability.⁵

אָמַר לְשְׁנַיִם גּוֹלְתִי לְאַחַד מִכֶּם מָנֶה, וְאֵינִי יוֹדֵעַ יְאִי זֶה יִמְכֶּם, אוֹ אָבִיו שֶׁל אֶחָד מִכֶּם הִפְקִיד לִי מָנֶה וְאֵינִי יוֹדֵעַ אִיזֶה הוּא, נוֹתֵן לְזֶה מָנֶה וְלְזֶה מָנֶה שֶׁהוֹדָה מִפִּי עֲצָמוֹ.

1 1 מָנֶה = 100 זָה (see נְרָעִים, Page 18f.). 2 אִי זֶה are often combined into one word אִיזֶה or אִיזֶה. 3 And these are also in doubt. 4 And he was also uncertain. 5 Strictly according to the law he is liable to pay one *maneh* only which the other two parties should divide, but here he wants to clear his conscience of any obligation.

Figure 10: *Mishnah Baba Metzia 3:2, Mishnayoth*, translated with notes by Philip Blackman (New York, 1963).

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explaining each *mishnah*, and in instances of dispute, noting which opinion is followed.

Tosefot Yom Tov. This commentary, by R. Yom Tov Lipman Heller of Prague (1579-1654) relates mainly to the commentary of R. Ovadyah of Bertinoro, enlarging upon it and examining the latter's conclusions. The two commentaries are usually printed together.

Tiferet Yisrael. The commentary of R. Yisrael Lipschuetz of Germany (1782-1860). It is divided into two parts, *Yakhin* and *Boaz* (the names given to the twin pillars of the Temple). *Yakhin* gives an explanation of the plain meaning of the text, while *Boaz* explores topics in depth. Relevant halakhic decisions are listed at the end of each chapter.

Mishnah Baba Metzia 3:2 (reproduced in Figure 11) deals with the case of one who hired a cow and lent it to another. Under normal circumstances, a hirer is exempt from damages for an animal that dies a natural death while in his possession. A borrower, on the other hand, is not. Thus, if the animal dies while in the borrower's possession, the question of compensation arises. Whom is the borrower obliged to compensate, the hirer or the owner? The question occasions a disagreement among the Sages of the *Mishnah*. R. Ovadyah of Bertinoro comments that the hirer's loan of the animal must have been with the consent of the owner, for had it not, the law would have been different. He also points out that Rabbi Yosi's is the accepted opinion, that is to say that restitution must be made to the owner (cf. section 5(b) and section 7 of Bailees Law, 5727-1967; see Appendix I).

Among contemporary Hebrew language commentaries to the *Mishnah*, the best known are Hanokh Albeck's ***Shishah Sidrei Mishnah*** and Pinhas Kehati's ***Mishnayot Mevo'arot***. Albeck's commentary, which is based on academic studies of the *Mishnah*, contains an introduction to each tractate, with reference to its biblical sources. Kehati's work, an extensive commentary based upon the *Talmud* and classical commentaries and written with exceptional clarity, has become extremely popular. It is also

רע מצרעה המפקד פרק ג בבא מציעא ורספת י"ט לז

אם נכנס שלא פגע בה ושלא שלח בה יד: למי שהפקדון אצלו. וכיון דשלם קאה כל השלמיה. ואפילו לא שלם. אלא כיון שאמר בבית דין הריני משלם. קנה כל השלמיה. לא שאל השלמיה כפל. ולא שאל השלמיה ארבעה וחמשה: ב השוכר פרה מחבירו. ועמד שוכר והשאלה לאחר כרשום המשכיר. שאל לא נתן לו המשכיר רבות. הוא קיימא לן שומר שמסר לבומר. חייב: ישבע השוכר. למשכיר. שמתה כדרכה ופסור שהוכר פסור מן האונסין: והשואל. שהוא חייב באונסין משלם לשוכר. כשנפעה שהוא נכנס למשכיר: אמר רבי יוחנן כיצד הלה עושה בחוריה וכו'. והלכה כרבי יוחנן: ג אמר לשנים גולתיה אחד מכם. והם אינם חונטים לו כלום. אלא הוא בא לאלת ידי שמים. עתה לזה מנה ולזה מנה. אבל שנים שחנשוה והודם שגול לאחר מהם ישכנס כל אחד מהם של אחד ז'א (ס) או אביו של אחד מכם. גולתיה מנה ולזה מנה שהודה מפי עצמי (י):

להאי פרה. כשנפעה. וימחא ליה משכיר לשוכר. דל אנה ודל שבעתה. ואחא משכירא דינא בהוי שאל. אמר ליה מי סברת שוכר כשנפעה הוא דקני לה. משפח מיתה הוא דקני. [מפני שהוא פסור מאונסין ג']. וכשנפעה כדי להפיק דעתו של בעל הבית. ופירש"י כשנפעה שהוא נכנס למשכיר. להפיק דעתו שלא יאמר שפסח בה. ע"כ. ושוכר אינו שומעא משכנתא נודמנה לו להר"ב בפירוש"י (א) ולא נפתח בה גמרא קודם דבור כשנפעה שהוא נכנס למשכיר והעתיקה הר"ב לפירוש המשנה [אונס בפירוש רש"י כשנפעה. ז'ל שבעתה]: אב"ר ר' יוחנן כ"ד הלה וכו'. טעמא דר"י משום דתשוב שוכר כאלו השאלו כשליח המשכיר. סלך דין המשכיר עם השואל. בראש"י: ג אמר לקרם גולתיה וכו'. כתב הר"ב אבל שנים שחנשוה וכו' ישכנס כל אחד וכו' שכלל גזל הוא לכל הטעמים שלא כדון. שאין טעמין אלא כשנפעה כאוהה שטיע בפרק כל הנשבעים [ג' מ"ח]. ג"י. ומ"ס אב"ב וכן ב' במבטו וכו' אבי הפקדן וכו' משום דמתעין חסן אביו וכו' נקט גמי בחבטו אביו. אבל ה"ס אינו חסדו אלא הפקדו וכו'. דהא במתעין דלקמן שפרש הר"ב דיהא מונח. שהוא דוקא כשהפקדון מרובה כי הדדי זה בפני זה. ועיין במשנה ז' פ' בתרא דב"ק. וח"ח ומח' שאל פקדון ממקום שכתבתי במשנה ז' פט"ו דיכחוח דמודה ר"ע שמינה דמי המקח ביניהן ומבטלן. תירץ ג"י דכאני מקח דעומד להפרש מיד. ולא איה ליה למידק. משא"כ בפקדון שהיה לאחר זמן הו' פגע כי לא דייק: או אביו של אחד מכם וכו'. אבל אחד (י) פ"י נזק הנכ"כ נחמה ז' פ"ח דפיקוחי סמיך ג"כ על כרע"ב כפי ה"א גזול.

יבין תפארת ישראל יבין יד, ושלא פגע, ושאלה כרשום [ז"ש פ"ד]: ח ר"ל ופסור מלשם: (א) הכי משלם וכו': דח' דלמריין בשעה שסברו להסותר מסתמ' ה' רעטו שכחאחד אפילו כששטתה וירלכ לבלם כפי שווי' בשעה שחאבד, יקנה משכטור הפקדון וכל שבתו דממ'מא ככפל וד' וכו' ויקרא, כל שיבול הרווח אחר החשומין [שך ד"ה ז' וסקיע], אבל לא כחא דמכוס, כגויה וולוח. וכו' כשלאמר כ"ד הריני משלם [פ"י ראש חות ב'. והא דנקט שילם משם. ה"ס, מדנטי למחוי ולא רלם לשכנס, ופיינו לא רלם לפסוד כשנפעה [כ"ה"ס חוס'], ור"ל דקמ"ל דלמי' נכנס ככ, אפי"כ כשנכנס משלם קנס ככפל, והרי כשנכנס ככ, דוקא כשילם משם קנס ככפל, והא דנקט חמיני' כ"ה"ס. היינו משום דמתני' סתמ' קתני ונכנס אפי"כ כפדים, ועל כרחין כנגננס כפדים מיידי, מדתלם כנגב, וכנגננס כפדים לא קנס השאל שכן כפאל כייטור, מדלל מני סקיר ופשי' ככלום.

Figure 11: Traditional text of Mishnah Baba Metzia 3:2 with the commentaries: R. Ovadyah of Bertinoro, Tosefot Yom Tov, and Yachin of Tiferet Yisrael.

available in pocket-sized soft cover volumes. Several tractates of *Mishnayot Mevo'arot* have been translated into English. So far, the whole of the order *Nezikin*, as well as several other tractates, have appeared. (Figure 11 reproduces the *mishnah*, *Baba Metzia* 3:2, mentioned above, printed together with the traditional commentaries. Figure 12 shows a translation of the same *mishnah* together with the commentary of Pinhas Kehati).

C. *Tosefta*

In the *Talmud*, there also appear tannaitic citations whose source is not the *Mishnah*. These citations are known as *baraitot* (sing. *baraita*). The word *baraita* is derived from the Aramaic for 'external.' Thus, a *baraita* remained external, outside the *Mishnah*. Shortly after redaction of the *Mishnah*, many *baraitot* were also assembled in various collections, the best known of which is the *Tosefta*. The arrangement of the *Tosefta* parallels that of the *Mishnah*; it is divided into the same six orders and generally into the same tractates.

The *baraitot* of the *Tosefta* shed additional light on the rules cited in the *Mishnah* and contain many regulations that the *Mishnah* omits. Thus, *Tosefta Baba Metzia* 3:1 prohibits a bailee from entrusting his charge (*pikadon*) to another bailee (see Figures 13 and 14). This regulation is absent from the *Mishnah*.

The *Tosefta* is printed in the back of each volume of standard editions of the *Talmud* and also in a one volume (critical) edition edited by M. S. Zuckerman (see Figure 13).

In recent years, the orders *Zera'im*, *Mo'ed*, *Nashim*, and the tractates *Baba Kamma*, *Baba Metzia*, and *Baba Batra*, of the order *Nezikin* of the *Tosefta* have appeared in critical editions with extensive commentary by Saul Lieberman. The work is divided into two parts. The text of the *Tosefta* is published in one volume along with variant readings, cross-references, and a short commentary. Lieberman's extensive commentary, entitled *Tosefta Ki-Fshutah* is printed in separate volumes but parallel to the text.

The entire *Tosefta* has been translated into English, by Jacob Neusner (see Figure 14).

BAVA METZIA

CHAPTER 3

MISHNAH 2

השוכר פנה מחברו והשאילה לאחר, ומתה כדרךה — ישבע
השוכר שמתה כדרךה, והשואל ישלם לשוכר. אמר רבי יוסי:
כיצד הלה עושה סחורה בפרתו של חברו? אלא תחזור הפרה
לבועלים.

If one hired a cow from his fellow and lent it to another, and it died a natural death, the hirer must take an oath that it died a natural death, and the borrower must repay to the hirer. Rabbi Yose said, How can this one do business with his fellow's cow? The cow must therefore be returned to the owner.

Kehati

פרה השוכר If one hired a cow from his fellow — in order to do work, in exchange for rental money, and the hirer — lent it — without payment — to another — to use during the rental period. The Gemara explains that the hirer lent it with the owner's permission; e.g., the owner of the cow told the hirer, "If you want to loan it during the period of your rental, I do not mind" (*Rashi*); if this were not the case, the law would be that of a custodian who gave it over to another custodian, who is obligated to pay.

ומתה And it died a natural death — while with the borrower; in such a case, the borrower is liable, and the hirer is exempt, the hirer must take an oath — to the owner of the cow — that it died a natural death — and is thereby exempt from paying, since the hirer is exempt from paying for damages caused by circumstances beyond his control, and the borrower — who is liable, even for damages caused by circumstances beyond his control (as has been explained in the introduction to this mishnah) — must repay to the hirer — the money for the cow, since, from the time that that it died, it left the possession of its owner, and entered the possession of the hirer (Gemara).

אמר רבי יוסי Rabbi Yose said, How can this one do business with his fellow's cow? — How is it possible that the hirer will profit, receiving the money for a cow which was not his? The cow must therefore be returned to the owner — i.e., the hirer must pay the price of the cow to its owner. *Rabbeinu Asher* explains Rabbi Yose's reasoning: it is as if the hirer was acting as the owner's agent when he lent the cow to the borrower; the owner of the cow therefore has a legal dispute with the borrower himself. The law is in accordance with Rabbi Yose's opinion.

Figure 12: *Mishnah Baba Metzia 3:2, The Mishnah — A New Translation with a Commentary*, by Pinhas Kehati (Jerusalem, 1987).

בבא מציעא ג

ג¹ אין השואל רשאי להשאיל ולא השוכר רשאי להשכיר ולא השואל רשאי להשכיר ולא השוכר רשאי להשאיל ולא זה המופקדין אצלו רשאי להפקידן אצל אחר אלא אם כן נחן לו בעל הבית רשות: ² השואל פרה מחבירו ונגנבה ונמצא גנב משלם חשלומו כפל ותשלומי ארבעה לראשון שולם ואחר כך נמצא הנגב משלם חשלומו כפל ותשלומי ארב' וחמ' לשיני: ³ המפקיד פרה אצל חבירו ונגנבה ואטר הלה הריני משלם לך בלא שביעה ואחר כך נמצא הנגב משלם חשל' כפל ותשלומי ארב' וחמ' לשיני: ⁴ המוכר פרה לחבירו ונגנבה זה אומ' ברשותך נגנבה וזה אומ' ברשותך נגנבה יתלוקו: ⁵ האומר מנה אני חייב ואיני יורע אם לפלוני אני חייב אם לפלוני אני חייב נוחן לזה מנה ולזה מנה שהודה מפי עצמו ואמ' לשנים נולחי את אחד מכס מנה ואח אחד מכס מאתים ואיני יורע איוה מכס נוחן לזה מאתים ולזה מאתים אם לא היה לו לשחוק זה אומ' מאתים שלי וזה אומ' מאתים שלי נוחן לזה מנה ולזה מנה והשאר לא יתן להם עד שיעשו פשרה ביניהם: ⁶ שנים שהפקידו אצל אחד זה מנה וזה מאתים בשעת החביעה זה אומ' מאתים שלי וזה אומ' מאתים שלי נוחן לזה מנה ולזה מנה והשאר יהא מונח עד שיבוא אליהו אמ' ר' יוסי אם כן מה הפסיד הרמאי אלא הכל יהא מונח עד שיבוא אליהו וכן שני הכלים אחד גדול ואחד קטון זה אומר יפה שלי וזה אומר יפה שלי נוחן את הקטון לאחד מהם ומתוך הגדול נוחן דמי קטן לשיני והשאר יהא מונח עד שיבוא אליהו אמר ר' יוסי אם כן מה הפסיד הרמאי אלא הכל יהא מונח עד שיבוא אליהו: ⁷ המפקיד פירות אצל חבירו ואפילו הן אובדין לא יגע בהם לפיכך בעל

Figure 13: *Tosefta Baba Metzia* 3:1, Zuckerman edition (first published 1881).

BABA MESIA

- 3:1 A. One who borrows has no right to lend out,
B. and one who hires has no right to rent out,
C. and one who borrows has no right to rent out,
D. and one who hires has no right to lend out,
E. And the one with whom these things are left as a bailment has no right to leave them as a bailment with someone else,
F. unless the householder [who owns the objects] has given him permission to do so.

Figure 14: *Tosefta Baba Metzia* 3:1, *The Tosefta: Neziqin*, translated by Jacob Neusner (New York, 1981).

II. Mishnah and Talmud

D. Talmud

For some 300 years — approximately 200-500 C.E. — after the *Mishnah's* redaction, Jewish scholarship was devoted primarily to the study, clarification, and application of this pivotal work. The scholars of this period are known as the *Amora'im* and the fruit of their labors is the *Talmud* (pl. *Talmudim*), also known by its Aramaic name *Gemara*. Although the *Talmud* is printed as a running commentary on the *Mishnah*, it is actually much more than a commentary. It is a wide ranging, in-depth discussion of every law of the *Mishnah*. The *Talmud* investigates the rationale and biblical sources for the laws of the *Mishnah*, discovers and reconciles contradictions, and settles residual legal problems by applying the principles of the *Mishnah* to cases not included. The *Talmud* also contains a fair amount of non-legal or 'aggadic' material.

The talmudic discussion incorporates the legal dialogue of the study halls of Eretz Israel and Babylonia, and for this reason often includes matter not directly connected to the *Mishnah*. Sometimes the discussion concludes with a decision. When it does not, decisions may often be found in the commentaries of R. Yitzhak Alfasi (*Rif*) and R. Asher ben Yehi'el (*Rosh*; on *Rosh* and *Rif*, see pp. 77, 79 below).

As mentioned, the *Mishnah* is printed together with the *Talmud*, each *mishnah* followed by the relevant discussions. Within the talmudic text, each individual *mishnah* is designated by the Hebrew **מתני'**, an abbreviation of the word *matnitin*, 'our *Mishnah*.' The text of the *Talmud* begins with the bold letters **גמ'**, an abbreviation of *Gemara*.

There are in fact two *Talmudim*, the *Jerusalem Talmud* or *Talmud Yerushalmi*, compiled in Eretz Israel, and the *Babylonian Talmud* or *Talmud Bavli*. The *Babylonian Talmud* was completed around the year 500, and is generally considered to be clearer, more complete, precise, and comprehensive than the *Jerusalem Talmud*. Babylonian Jewry of the period lived under a relatively

sympathetic regime at a time when the creative development of the Jews of Eretz Israel was severely hampered by the persecutions of the hostile Byzantine Christians. The *Jerusalem Talmud* was completed around the year 400, but remained essentially unknown outside Eretz Israel for the next 400 years. While numerous commentaries have been written on the *Babylonian Talmud*, no comprehensive commentary on the *Jerusalem Talmud* was written until the nineteenth century. Owing to the factors mentioned, the *Babylonian Talmud* was recognized as the authoritative source of Jewish law and continues to be the better known and more frequently studied of the two *Talmudim*. Decisions are based on the *Jerusalem Talmud* only in cases where it is not directly contradicted by the *Babylonian Talmud*.

Both *Talmudim* are written in Aramaic mixed with Hebrew. A number of tractates have been translated into modern Hebrew, and the entire *Babylonian Talmud* has been translated into English (see below, p. 50).

The pagination of the *Babylonian Talmud* may seem a bit strange at first to modern readers. Each leaf, or folio, i.e., two sides, is numbered, with the respective sides designated as *a* and *b*. Citations note the tractate name, folio number, and side. In all references to classical Jewish sources, numbers are indicated by Hebrew letters, each of which has a numerical equivalent. In some references, one dot following the folio number indicates side *a*, while two dots indicate side *b* (e.g., אא. means 41a and לב: means 32b).

To distinguish them from references to the *Babylonian Talmud*, references to the *Jerusalem Talmud* are preceded by one of several possible abbreviations: *J*, *TJ*, *Y*, or *TY*. Since pagination is not uniform, references to the *Jerusalem Talmud* cite the name of the tractate, the chapter, and the *mishnah* to which the passage in question is connected. Sometimes they include folio references to either the Venice or Vilna edition. In practice, the *mishnayot* of the *Jerusalem Talmud* are referred to as *halakhot* (sing. *halakhah*).

Reproduced here (Figure 15) is a page of the *Babylonian Talmud*. It is referred to as *Baba Metzia* 36a. This annotation means that it is the first side of the 36th folio of the tractate *Baba Metzia*. No

Figure 15: *Baba Metzia* 36a, *Babylonian Talmud* (Vilna edition). ►

preceding abbreviation is needed, since, unless otherwise noted, standard talmudic references are to the *Babylonian Talmud*. The passage discusses the liability of a bailee who entrusts his charge to another. Although the passage of the *Tosefta* cited above (Figures 13, 14) establishes that a bailee is not permitted to transfer property entrusted to him to another bailee, it does not detail the legal consequences of such an action. The *Talmud* examines this issue through a disagreement between Rav and Rabbi Yohanan as to whether a bailee who entrusts his charge to another is liable for damages: 'A bailee who entrusts his charge to another bailee: Rav holds that he is exempt. Rabbi Yohanan holds that he is liable.'

E. Talmudic Commentary

1. Commentary on the *Babylonian Talmud*

In all traditional editions of the *Babylonian Talmud*, the two main commentaries, Rashi and *Tosafot*, are printed on either side of the text.

Rashi. Rashi has become the standard commentary on the *Talmud*. It is a clear, succinct, and comprehensive work that covers almost the entire *Babylonian Talmud*.

Since Rashi's comments open with the word or phrase to be explained, they are cited first by tractate, folio, and side, and finally by the opening word, known in Hebrew as the *dibbur hamat'hil*, and abbreviated ם"ה, or in English, s.v. On *Baba Metzia* 36a (Figure 15), Rashi, s.v. *Rav amar patur* (Rav holds exempt), explains that according to Rav's opinion, the bailee who has entrusted his charge to another is exempt from liability for anything from which he would normally be exempt had he not entrusted the property to another. On the opinion of Rabbi Yohanan, Rashi, s.v. *Hayyav* (Liable), observes that according to Rabbi Yohanan, the bailee is liable even in cases of *force majeure*, although he would have been exempt had he not entrusted the object of bailment to another.

II. Mishnah and Talmud

Tosafot. The second gloss printed alongside the text of the *Talmud* is known as *Tosafot* — literally, additions — for although these comments are independent creations, they are considered to be additions to the commentary of Rashi. The scholars of 12th and 13th century France and Germany analyzed the *Talmud* using its own method of dialogue and discussion. The *Tosafot* record such discussions which focus not only on the *Talmud* itself but also on the comments of Rashi. As mentioned, the text of the *Talmud* is framed by the commentaries of Rashi and the *Tosafot*, Rashi forming the inside column of every page, the *Tosafot* the outside. Like the comments of Rashi, the *Tosafot* are cited by tractate, folio, page, and opening word or phrase.

The comment in *Tosafot*, *Baba Metzia* 36a, s.v. *Rav amar patur* (Figure 15) questions the opinion of Rav that the bailee is exempt, citing a *mishnah* from *Gittin* 29a, according to which it seems clear that a bailee is forbidden to entrust property to another. The *Tosafot* answer that the bailee's violation does not necessarily occasion liability.

A page of *Talmud* also contains three systems of cross reference, all of which were compiled by R. Yehoshua Boaz, a Spanish exile who settled in Italy in the 16th century:

Ein Mishpat—Ner Mitzvah is printed on the upper outside corner of the page. Since the codes written after the *Talmud* do not follow its order, *Ein Mishpat — Ner Mitzvah* refers the reader to the code of Maimonides (*Mishneh Torah*), *Semag*, *Tur*, and *Shulhan Arukh*, each one a legal work which may be consulted in order to determine the final ruling in the case being discussed. The *Ein Mishpat — Ner Mitzvah* is keyed to the *Talmud* by small superscript letters which are normally printed adjacent to any statement which has become accepted as authoritative. Thus, a rough indication of the final ruling is available even without consulting the codes. References to the code of Maimonides are preceded by the Hebrew letters מ"מ, an abbreviation of the epithet *Maimoni*. *Tur* and *Shulhan Arukh* are referred to jointly by the acronym טוש"ע. Since the codes and glosses referred to usually

explain the law in the context of the talmudic discussion and subsequent rulings, the *Ein Mishpat — Ner Mitzvah* is a primary tool for following the development of Jewish law on a given issue.

The references reproduced here (Figure 15) help us follow Rabbi Yohanan's assertion that the bailee who transfers his charge to another is liable. It refers the reader to Maimonides (*Mishneh Torah*), Laws of Hiring 1:6, and Laws of Property Damage 4:1, and further on, to *Tur* and *Shulhan Arukh, Hoshen Mishpat* 291:26.

Torah Or identifies verses from the Bible cited in the *Talmud* by chapter, though not by verse. It is printed on the margin of the talmudic text and referenced by a small superscript circle located just before the first word of the verse. On the page of *Talmud* reproduced above (Figure 15), we show a reference to the fifth chapter of Leviticus by highlighting the ויקרא ה printed in the margin that divides the text of the *Talmud* from Rashi's commentary. The reference is always located directly opposite the small circle.

Masoret haShas is printed on the inner-most margin of the page and refers to parallel discussions and similar statements elsewhere in the *Talmud*. These are indicated by a superscript asterisk in the body of the text, and printed directly opposite the asterisk. The passage of *Talmud* highlighted (in Figure 15) has parallels in *Baba Kamma* 11b and 56b. Note the superscripted asterisk in the text and the small print highlighted in the inner-most margin.

2. Commentary on the *Jerusalem Talmud*

Comprehensive commentaries on the *Jerusalem Talmud* were first written only in the eighteenth century. Here we note the two standard commentaries: *Korban haEdah*, by R. David Fraenkel of Germany, and *Penei Moshe*, by R. Moshe Margoliot of Lithuania. Here we show a page of the *Jerusalem Talmud, Gittin*, chapter 3, *halakhah* 5. The page (Figure 16) contains, *inter alia*, the opinion of Rabbi Yohanan that a bailee who has entrusted his charge to another is liable (see above, p. 46).

Figure 16: *Gittin* 3:4-5, *Jerusalem Talmud*, with commentaries of *Korban haEdah* and *Penei Moshe*.

F. English Editions of the *Talmud*

The Babylonian Talmud is an English translation edited by Isadore Epstein and published by Soncino Press (see Figure 17). It is also available in a Hebrew-English format. Of particular value is the last volume which contains an index by subject matter as well as indices of scriptural references and talmudic sages.

The El-Am Talmud. The *El-Am* edition of the *Talmud* is designed to enable the English reader who may know some Hebrew but has never studied the *Talmud* to comprehend not only the literal meaning of the text but also some of its depth, background, and implications. It presents a punctuated text of the *Talmud*, a clear English translation, a running commentary giving full explanation of the reasoning and concepts, as well as background notes on various topics and personalities mentioned. To date, only a few tractates of the *Babylonian Talmud* and even fewer of the *Jerusalem Talmud* have been published. Shown here (Figure 18) is an excerpt from *Baba Metzia* 36.

A critical translation of the *Jerusalem Talmud*, known as **The Talmud of the Land of Israel**, has been prepared by Jacob Neusner (see Figure 19). To date, eighteen volumes have appeared.

The Talmud, the Steinsaltz Edition. In this new edition of the *Talmud*, the text is vocalized, punctuated, explained, and translated into English by R. Adin Steinsaltz. A page of this edition is reproduced below (Figure 20). In the center of the page is the text of the *Talmud*, vocalized and punctuated. The right column contains a literal translation and Rashi's commentary in the original Hebrew. The left column contains an expanded translation and commentary, which renders the text more readable and comprehensible. The Notes section at the bottom of the page highlights points of interest in the text and expands the discussion by quoting various classical commentaries. The 'Halakhah' section provides the ruling on the issues under discussion. The far outside column presents notes on important concepts, realia, and the Sages quoted. To date, several chapters of the tractates *Baba Metzia* and *Ketubot* have appeared.

B A B A M E Z I A

It has been stated: If one bailee entrusted [his bailment] to another bailee—Rab said: He is not liable;⁴ R. Joḥanan maintained: He is liable.⁵ Abaye said: According to Rab's ruling, not only if a gratuitous bailee entrusted [the bailment] to a paid bailee, thereby enhancing its care; but even if a paid bailee entrusted [it] to an unpaid one, thus weakening its care, he is still not responsible. Why? Because he entrusted it to an understanding being.⁶ Whilst according to R. Joḥanan's view: not only if a paid bailee entrusted [it] to an unpaid one, thus weakening its care; but even if an unpaid bailee entrusted it to a paid one, thereby enhancing its care, he is still responsible. Why? Because he [the bailor] can say to him, 'It is not my desire that my bailment should be in charge of another person.'

R. Hiṣda said: This ruling of Rab was not stated explicitly, but by implication. For there were certain gardeners who used to deposit their spades every day with a particular old woman. But one day they deposited them with one of themselves. Hearing the sounds of a wedding, he went out and entrusted them to that old woman. Between his going and returning, their spades were stolen, and when he came before Rab, he declared him not liable. Now, those who saw this thought that it was because if a bailee entrusts [the bailment] to another bailee he is free [from liability]; but that is not so: there it was different, seeing that every day they themselves used to deposit [their spades] with that old woman.

Now, R. Ammi was sitting and recounting this discussion, whereupon R. Abba b. Memel raised an objection before him: IF A MAN HIRES A COW FROM HIS NEIGHBOUR, LENDS IT TO ANOTHER, AND IT DIES A NATURAL DEATH, THE HIRER MUST SWEAR THAT IT DIED NATURALLY, AND THE BORROWER MUST PAY THE HIRER. But if this [sc. R. Joḥanan's ruling] be correct, let him [the owner] say to him, 'It is not my desire that my bailment should be in the hands of another person!'—He replied: The circumstances here are that the owner authorised him to lend it. If so, he ought to pay the owner!—It means that he said to him, 'At your discretion'.

Figure 17: *Baba Metzia* 36a, *The Babylonian Talmud*, edited by Isadore Epstein, Soncino Press (London, 1935-48).

בבא מציעא ל"א-ב'
BAVA MEZIA 36a-b

אמר רבא: הלכתא: שומר שֶׁמָסַר לְשׁוֹמֵר – חָיִב;
לֹא מִבְּעֵצָא שׁוֹמֵר שֶׁכָּר שֶׁמָסַר לְשׁוֹמֵר חָנָם, דְּגִרּוּעֵי
גִרְעָה לְשִׁמְרָתוֹ, אֲלֵא אֶפְלוּ שׁוֹמֵר חָנָם שֶׁמָסַר לְשׁוֹמֵר
שֶׁכָּר – חָיִב, מֵאִי טַעְמָא? דְּאָמַר לִיה: אַתְּ מְהִימְנַת
לִי בְּשׁבוּעָה, הָאִיךְ לֹא מְהִימֵן לִי בְּשׁבוּעָה.

Rava said: the Halachah is, a bailee who transfers to another bailee is liable. Not only a paid bailee who transfers to an unpaid bailee, thereby diminishing its safe-keeping, but even an unpaid bailee who transfers to a paid bailee is liable. What is the reason: For he may say to him: You are worthy of trust to me, on oath; the other is not worthy of trust to me, on oath.

Rava is then reported as saying that the Halachah follows R. Johanan, and, like Abaye, he adds that it would make no difference whether the first bailee was a paid one and the other an unpaid one or *vice versa*; his mere transfer of the object to a person whom the bailor may not trust makes him absolutely liable. The final clause of Rava's reasoning is, however, different from Abaye's. With Rava, the bailor may say to the first bailee: You I believe on your oath but not another one. With Abaye, he says: I do not wish my object to be deposited with another one. On the face of it, both wordings convey the same idea, that the bailor is presumed to trust only the bailee of his own choice and the transfer therefore constitutes a breach of trust.

Figure 18: *Baba Metzia* 36b, *The El-Am Talmud*, edited by E.Z. Ehrman (Tel Aviv, 1969).

Yerushalmi Baba Mesia 3 : 1-2

3 : 2 [In Leiden MS and *editio princeps*: 3 : 3]

- [A] *He who rents a cow from his fellow, and then lent it to someone else,*
- [B] *and it died of natural causes—*
- [C] *let the one who rented it take an oath that it died of natural causes,*
- [D] *and the one who borrowed it then pays compensation to the one who rented it.*
- [E] *Said R. Yosé, “How should this one do business with his fellow’s cow?*
- [F] *“But [the funds paid for] the cow are to be returned to the owner.”*
- [I.A] **Now does the [one who rented the cow] have the right to lend it out [to someone else, without the owner’s knowledge and consent]?**
- [B] **And has not R. Hiyya taught as follows:**
- [C] **One who borrows has no right to lend out,**
- [D] **and one who rents has no right to rent out,**
- [E] **and one who borrows has no right to rent out,**
- [F] **and one who rents has no right to lend out,**
- [G] **And the one with whom these things are left as a bailment has no right to leave them as a bailment with someone else,**
- [H] **unless the householder [who owns the objects] has given him permission to do so [T. B.M. 3 : 1].**
- [I] **R. La in the name of R. Yannai: “[The present rule] applies to a case in which one has given him the right to rent it out.”**
- [J] **[What follows is pertinent only to M. Ket. 9 : 4:] And the present rule applies to a case in which one gave him the right to set up a guardian. [This matter is explained in its own context.]**

Figure 19: *Baba Mesia 3:2, The Talmud of the Land of Israel*, translated by Jacob Neusner (Chicago, 1984).

TRANSLATION AND COMMENTARY

Rami bar Hama raised another objection to Rabbi Yohanan's ruling from a Mishnah (below, 42a): "If someone deposited money with another person, and the bailee bundled it up and threw it over his shoulder, and on his way home the money was lost, or if the bailee gave the money to his minor son or daughter to look after, and locked the door in front of them inadequately, in either case the bailee is liable if the money was lost or stolen, since he was negligent and did not look after it in the manner expected of bailees." From the second case, Rami bar Hama makes the following deduction: The reason the bailee is liable is because he was negligent in entrusting the deposit to his children, and this negligence stems from the fact that they were minors. But if they had been adults, he would have been exempt - presumably because he fulfilled his duty by handing over the deposit to a competent person. But why? asks Rami bar Hama. Surely the depositor can say to him, in the words of Rabbi Yohanan: "I did not wish my deposit to be in the hands of another person. You acted negligently in entrusting the money to your adult children." Thus the inference drawn by Rami bar Hama from this Mishnah appears to contradict the ruling of Rabbi Yohanan, and it would seem that the Halakha is not in accordance with it. Rava said in reply: No objection can be raised from this case, as it is clear that whoever deposits something with a bailee does so on the assumption that the bailee may give the deposit to his wife and sons for safekeeping, rather than look after it himself the entire time. Thus, according to Rava, this Mishnah poses no contradiction to the ruling of Rabbi Yohanan, because even Rabbi Yohanan would agree that in circumstances such as those described in the Mishnah, a bailee who hands over a deposit to another bailee is exempt. The Neharde'ans say: Not only does the Mishnah not contradict the ruling of Rabbi Yohanan, it in fact supports him! A precise analysis of the language of the Mishnah shows that it corresponds completely

LITERAL TRANSLATION

Rami bar Hama raised an objection: "Someone who deposits money with his fellow, [if] he bundled it up and threw it behind him, [or] gave it to his minor son or daughter and locked [the door] in front of them inadequately, he is liable, since he did not safeguard it in the manner of bailees." The reason is that [they were] minors, but [if they were] adults, he is exempt. Why? Let him say to him: "I do not wish that my deposit should be in the hands of another [person]." Rava said: Whoever deposits, [36B] deposits on the assumption [that it may be given to] his [the bailee's] wife and sons. The Neharde'ans say: It is also precise.

BACKGROUND

אָרָן הַקְּשִׁילָן לְאַחוֹרָיו He bundled it up and threw it behind him. Coins were usually kept in a purse (סֵיס) or tied together in a cloth. The purse or pouch was generally hung from a person's belt in front of him, so that it could be kept in view. If the purse was allowed to hang over a person's shoulder, this indicated that it was not properly tended, for it might become detached from his belt, or thieves might snatch it.

קְטַנִּים Minors. Minor children (girls younger than twelve, boys younger than thirteen) are not regarded as mentally competent in most areas of the Halakha. Therefore, even according to the opinion that anyone mentally competent may be a bailee, children are not included.

וְנָעַל בְּתוֹרָתוֹ שֶׁלָּא קְרָאִי And he locked the door in front of them inadequately. There is a detailed discussion below (42a) of the proper way to look after money. If the money is kept in a closed building, the children cannot lose it while it is in the house. But this only obtains when the building is locked - when the children cannot leave or take the money out, and no one else can enter and steal it. But when the building is not properly locked, and the children can go out or open the doors, this means that the money has been left with someone who is not Halakhically competent, which is criminal negligence, and the bailee must pay if the money is lost or stolen.

עַל דַּעַת אֲשֶׁרוֹ וּבְנָיו On the assumption that it may be given to the bailee's wife and sons. Usually, when someone deposits an article with the head of a family, he assumes that the bailee will not conceal the article from his family and that they too will participate in looking after it. Hence it is as if he had entrusted the article to every member of the bailee's family, and he only demands that the bailee leave the article in the care of someone competent to look after it.

מִתִּיב רַמִּי בַר חָמָא: "הַמַּפְקִיד מַעוֹת אֶצֶל חֲבִירוֹ, צָרָךְ וְהַפְשִׁילָן לְאַחוֹרָיו, יִמְסַךְ לְבָנוּ וּבָתוֹ הַקְּטַנִּים וְנָעַל בְּתוֹרָתוֹ שֶׁלָּא קְרָאִי, יִתִּיב, שֶׁלָּא שָׁמַר בְּדַרְךְ הַשׁוֹמְרִים." יִטְעַמָּא רַקְטָנִים, הֵיא גְדוּלִים, פְּטוּר. אֵינְךָ אֲמַאי? יִימָא לִיה: "אֵין רְצוֹנִי שִׁיְהֵא פְקֻדוֹנִי בְּיַד אַחֵר." אָמַר רַבָּא: כָּל הַמַּפְקִיד [36B] עַל דַּעַת אֲשֶׁרוֹ וּבְנָיו הוּא מַפְקִיד. אָמַרִי בְהִרְדְּעִי: "דִּיקָא נְמִי,

RASHI

מִסוּךְ לְבָנוּ בַר - לו שִׁמְכִין לְבָנוּ וּלְנִסְיָהּ הַקְּטַנִּים. בְּמִנְהַג - נִסְיָה אִוָּם הַקְּטַנִּים, שֶׁלֹּא יִלְוִי לְמִתְּלֵי הַמַּעֲמָד. עַל דַּעַת אֲשֶׁרוֹ וּבְנָיו - עַל דַּעַת שֶׁהַמַּפְקִיד מְסַדֵּק לְאִשְׁתּוֹ וּבְנֵי הַגְּדוּלִים, וְלֹא יִסְלֵךְ לְמַר "לֵמֵן לְוֵנֵנוּ כִּי". דִּיקָא נְמִי - דִּהֲלִי דְגְדוּלִים פְּטוּרִין דִּיקָא נְמִי נִקְטָ, וְלֹא אַחֲרֵיס.

NOTES

Deposits on the assumption that it may be given to his wife and sons. The bailee undoubtedly gives his own property to his wife

and children for safekeeping. Hence, there is no reason to expect him to be stricter about the depositor's property than about his own (Rabbeinu Hananel).

HALAKHAH

if he bundled it up and threw it over his shoulder. "If a bailee has to take a deposit of money with him while traveling, he must bundle it up and hold it in his hands, or tie it in front of him where he can see it. If he does not do so, he is liable even if the money was lost under circumstances beyond his control, since the loss was caused by his initial negligence." (Shulhan Arukh, Hoshen Mishpat 292:20.) Depositing on the

assumption that the deposit may be given to the bailee's wife and children. "Anyone who deposits an object expects the bailee to give it to his wife or to other adult members of his household for safekeeping. But if the bailee gives it to a minor, even his own son, or to his non-Jewish (Smi) slave, or to family members who do not live with him and are not dependent on him for support, it is as though he gave it to a stranger. Hence, if the deposit is damaged in such circumstances, the bailee is liable." (Ibid., 291:21.)

II. Mishnah and Talmud

Talmud Bavli is the Artscroll translation of the *Babylonian Talmud*. The work contains the traditional talmudic folios with translation and notes on facing pages. To date, fourteen volumes have been published. Those of general legal interest are *Makkot*, *Kiddushin*, and *Baba Metzia* parts I and II.

G. New Hebrew Editions of the *Talmud*

Talmud Bavli, Steinsaltz Edition. In this monumental edition of the *Talmud*, the text is vocalized, punctuated, explained, and translated into modern Hebrew by R. Adin Steinsaltz. Although quite a few tractates have been published, to date, of the order *Nezikin*, only *Sanhedrin* and *Baba Metzia* have appeared.

A page of this edition is reproduced here (Figure 21). The talmudic discussion is divided into paragraphs. On the inside margin of each page, we find Rashi's commentary, and on the outside, a running translation and explanation of the text of the *Talmud*. The *Tosafot* appear on the inside margin under Rashi's commentary. The section *Iyyunim* (Excursus) found at the bottom of the page is a collection of additional explanations selected from talmudic commentators. *Orah haHalakhah* (The Way of the Law), the other section located at the bottom, lists relevant legal decisions culled from the codes. Unlike the *Ein Mishpat* of the standard edition of the *Talmud*, the *Orah haHalakhah* not only provides reference to rulings, but also quotes them.

There are several other editions of the *Talmud* with a Hebrew translation and explanations or commentary.

CHAPTER ONE: SOURCES

H. Sages of the *Mishnah* and *Talmud*

(arranged according to generations)

a. *Tanna'im*

(Sages of the *Mishnah*, 40-200 C.E.)

- 40-80 Rabban Yohanan ben Zakkai; Rabban Shimon ben Gamli'el; Rabban Gamli'el the Elder
- 80-110 Rabban Gamli'el of Yavneh; Rabbi Eliezer; Rabbi Yehoshua
- 110-135 Rabbi Akiva; Rabbi Tarfon; Rabbi Yishma'el; Rabbi Elazar ben Azariah; Rabbi Yosi haGelili
- 135-170 Rabbi Me'ir; Rabbi Yehudah; Rabbi Shimon; Rabban Shimon ben Gamli'el; Rabbi Shimon bar Yohai; Rabbi Yosi; Rabbi Elazar
- 170-200 Rabbi Yehudah haNasi (redactor of the *Mishnah*)

b. Transitional Period

(Sages active at the close of the mishnaic period and the opening of the talmudic period)

Rabbi Hiyya; Bar Kapara; Levi

c. *Amora'im*

(Sages of the *Talmud*, 220-500)

	Land of Israel	Babylonia
220-250	Rabbi Hanina; Rabbi Oshayah; Rabbi Yehoshua ben Levi	Rav; Shemu'el

II. Mishnah and Talmud

	Land of Israel	Babylonia
250-290	Rabbi Yohanan; Reish Lakish	Rav Huna; Rav Yehudah
290-320	Rabbi Ami; Rabbi Asi; Rabbi Zeira; Rabbi Elazar ben Pedat; Rabbi Avahu	Rabbah; Rav Yosef; Rav Hisda; Rav Sheshet; Rav Nahman bar Ya'akov; Ula
320-350	Rabbi Yonah; Rabbi Yosi; Rabbi Yirmiyah	Abayei; Rava; Rav Nahman bar Yitzhak; Rami bar Hama
350-375	Rabbi Mana; Rabbi Yosi beRabbi Bon	Rav Papa; Rav Huna bereih deRav Yehoshua; Rav Zevid
375-425		Rav Ashi; Ravina; Ameimar; Mar Zutra
425-460		Mar bar Rav Ashi; Rav Idi bar Avin
460-500		Ravina the latter; Rabbi Yosi

דאיגנבה גנב מאגם – שזכו דבר שהיה נשענה אלל יליאמה לאגם, אף על פי שסופה מתה כי גנב – מיכ, ולל אמר לי הוה כנית שומר נמי הוה מתה. מאי שעמא – משעת גניבה הוה אגודה מן הצעלים, ולי כתי שניה הללך המות – כי גנב הוה הימח, הלכך המיוז גל על טעם הנגיבה. הא דאזותיה ר' אבא

מאי שעמא – דהא הורא לה (מה טעם – שהרי חזרה לה) וליכא למימר הבלא דאגמא קטלה (ואין לומר שהבל האגם הרג אותה) שהרי רואים שכלה לחומר. מפד שני מדרי (חזרה) רבא כל היכא דאיגנבה גנב כאגם ומתה כדרכה כי גנב – דחייב (כל הינו) שאם נגבה הפרה כאגם ואמר כר חחה כדרכה נכית הגנב שהשומר

מאי שעמא – דהא הורא לה (מה טעם – שהרי חזרה לה) וליכא למימר הבלא דאגמא קטלה (ואין לומר שהבל האגם הרג אותה) שהרי רואים שכלה לחומר. מפד שני מדרי (חזרה) רבא כל היכא דאיגנבה גנב כאגם ומתה כדרכה כי גנב – דחייב (כל הינו) שאם נגבה הפרה כאגם ואמר כר חחה כדרכה נכית הגנב שהשומר חייב. ומאי שעמא (מה טעמו של דבר) דאי שיקה מלאך המות – בכיתיה רגנבא הוה קיימא (שאינו היה חזק) אחתה מלאך המות ולא היתה מתה. בביתו של הגנב היתה נמצאת (נמצא) ונסמא שבגלל רשלנותו נגבה הפרה ממנו. אמר ליה אביי לרבא: לדיך דאמרת (לשיתן) שאחה (אחור) מלאך המות מה לי הכא ומה לי התם (מה לי פה חת לי שם) שאם האי דאזותיה (אותה) קושיה שהקשה (ל) ר' אבא בר ממל לר' אמי בנינו שומר שסמר לשומר ושני ליה (והיה) (ל) בשנתו לו בעלים רשות להשאיל, וליכא ליה (ולישאר לו) טעם זה שאתה אומר: מלאך המות מה לי הכא ומה לי התם (מה לי פה חת לי שם) שאם אומר אני שהמות היה קורה בכל מקום, אין כל חשיבות אצל פי היתה מניחה אמר ליה: לדיכו דמתניתו (לשיתכן שאתם שונים) ומסבירים שם ששומר שסמר לשומר חייב מפני "אין רצוני שיהא פקדוני ביד אחרי" אג, איכא לאותבה להאי (יש חסות להקשות את הקושיה (היא) שהקשית, אולם לרדי דאמינא (לשתי) שאין אחר) שאין שומר רשאי למסור לשומר פו הטעם של אנת מהמתת לי בשבועה והאיר לא מהימנו לי בשבועה (אתה נאמן עלי רייבועה והוא אין נאמן עלי בגבועה) ליכא לאותבה כלל (אין חסות להקשותה כלל). מתיב (תקשה) דמי בר חמא על אביי סמא ששינו: העלה את הבהמה לראשי צוקין ונפלה – אין זה קרוי אגס, תתיב. (נדייק) הא (הרי) אילו מתה כדרכה הרי זה אגס, ופטור. ואמאי (חזרו?) לימא ליה אררא דהר קטלה (שאינו לו בעל הפרה לשומר: אתה אגס בדבר, כי איר הדר הרג אותה), אי נמי

מאי שעמא – דהא הורא לה, וליכא למימר הבלא דאגמא קטלה. ומדרי רבא כל היכא דאיגנבה גנב כאגם ומתה כדרכה כי גנב דחייב. מאי שעמא, דאי שיקה מלאך המות – בכיתיה רגנבא הוה קיימא. אמר ליה אביי לרבא: לדיך דאמרת מלאך המות, מה לי הכא ומה לי התם, האי דאזותיה רבי אבא בר ממל לרבי אמי, ושני ליה בשנתו לו בעלים רשות להשאיל, וליכא ליה: מלאך המות, מה לי הכא ומה לי התם – אמר ליה: לדיכו דמתניתו "אין רצוני שיהא פקדוני ביד אחר" – איכא לאותבה להאי, לדידי דאמינא "אנת מהימת לי בשבועה והאיר לא מהימנו לי בשבועה" – ליכא לאותבה כלל. מתיב דמי בר חמא: והעלה לראשי צוקין ונפלה – אין זה אגס, תתיב. הא מתה כדרכה – אי נמי איכא לאותבה דהר קטלה – הקא במאי עסקינו שהעלה למרעה שמו (טוב). אי הכי, נפלה נמי – שהיה לו לתקפה, ולא תקפה. אי הכי, אימא רישא: עלתה לראשי צוקין ונפלה – הרי זה אגס, איכא ליה למיתקפה! – לא צדיקא, שתקפתו (עלתה, תקפתו (נרד).

ב "אמר רבי יוסי כיצד הלה עושה סחורה בפתרו כו". אמר רב יהודה אמר שמואל: הלכה כרבי יוסי. אמר ליה רב שמואל בר יהודה לרב אקמרת לן משמיה דשמואל: תלוק היה רבי יוסי

אובצנא דהר קטלה (מרחת עיפות העלה להר היא שהרנה אותה) ודחיס: הכא במאי עסקינו (כאן בחה אנו טוסים) שהעלה את הבהמה למרעה שמו טוב, שאין לומר שמתה מפני איר ההרים או העייפות שבעליה לשם. ושואלים: אי הכי (אם כן) עשה, שלמקום מרעה שמו טוב הביאה, הרי לא היתה בכך רשלנות כלל, ואם נפלה נמי (אם כן) מדוע חייב עליה שהרי הביא אותה למקום טוב, ובאגס מהלך ומשיבים: שהיה לו לתקפה (להחזיקה) ולא תקפה (אם החזיקה), ובשל כך משלם ומקשים: אי הכי, איכא רישא (אם כן אמור את ראשה של הבריייתא): עלתה הבהמה בצמח לראשי צוקין ונפלה – הרי זה אגס, לפי הכסדר שנתת איכא ליה למיתקפה (היה צריך לחזק אותה) ומשיבים: לא צריכא (אם נצרכה) אלא שתקפתו ועלתה, תקפתו וירדה, הבהמה התגברה עליו, ולמרות שהחזיק בה עלתה על ראשי הצוקים, ואין שניסה לשמור אותה שלא תפול תקפתו וירדה, ושם נפלה.

ב שנינו במשנה שאמר ר' יוסי כיצד הלה עושה סחורה בפתרו של חבירו שהשוכר מקבל תמורת פרה שבצמח שייכת לבעלים אמר רב יהודה אמר שמואל: הלכה כר' יוסי. אמר לו רב שמואל בר יהודה לרב יהודה: אמרת לן משמיה דשמואל (אחזרת לנו חשמו של שמואל) תלוק היה ר' יוסי

ללחך, לוחא און לרזני כו'. ושני ליה בשנתו לו הבעלים רשות – תלוי דוחקיה לכווי הכי? ניתח ליה: אם ארבע זה אגס אחר, תלוינו לתומר אם היתה נכית לא נלכסה – הוה חייב, לא זו תמה כדרכה – מלאך המות נמי כנית שוכר קטול לה, ומלאך שני ליה הכי – שעתין למאן דלמח תחילתו נכטייה וזכינו כלונס חייב, לא שגל אגס מלאך המות משאר אונסין, לירדכו – דלמיתו טמחא דאזתי שסמר לכוני חייב השום "אין רצוני" – איכא לאחזובה להאי, והאי דניחא ליה לרבי אמי שני ליה, אגל לא כניחא לי לא אחקמחא ולא שכיחא, דלוינו דלמתי לעיל טמחא תמוס דלא תחיתו ליה נכסויה – לוכא לאחזובה כלל, שחי שוכר עלמו נכסע לו, כנתנן: ישכע השוכר שמתה כדרכה. העלה לראשי צוקין – שומר שהעלה לראשי הרים חסיד ומשופעים, ונפלה. אין זה אגס – אלא פשיעה, כדרכה ליתול. הא מתה כדרכה – נכאס הוק. פטור – דהוי סופו כלונס, איירא = אגס. אובצנא = עופות, טורח המעלה למרעה שמו ופוח – דלדך הויעים להטלות שם כהמות לעולם. לתופסה – להחזיק בה, שכן דרך הוועים. עלתה – חלילה, שתקפתו – על נכחו ועלתה, ולא יכול להחזיק בה, שזקה הימה ממנו.

תוספות

שהעלה למרעה שמו טוב – דהשאה לא הוי פשיעה בהעלאתה.

אי הכי עלתה נמי – בשלמא לרבא דאמר מלאך המות כו' – לא יצטרך להעמיד במרעה שמו טוב, ולכן העלה לראשי צוקין ונפלה – חייב משום העלאתה אף על פי שנפלה בעל ברחו שתקפתו וירדה, ורישא דקניתי אי עלתה פטור – מיירי שתקפתו ועלתה, וכן הופילה היתה בתקפתו וירדה כמו בסיפא. אבל אבוי, דאוקמה במרעה שמו טוב, ולא פשע בהעלאתה, חייב משום שפשע בוהילתה דמירד שהיה יכול לתקפה ולא תקפה – אם כן רישא נמי, אפילו תקפתו ועלתה אמאי פטור? ליתייב משום נפילה, שהיה לו לו לשומרה שלא תפול. דמסתמא נפלה דרישא הוי כמו נפלה דסיפא, שהיה יכול לתקפתו ופשע: נפלה דרישא מיירי שתקפתו וירדה דומיא דעלתה, דמירד דתקפתו ועלתה; ולא דמיה לנפלה דסיפא, ואם תאמר: אמאי נקט ברישה עלתה ובסיפא העלאתה ותלא אין חילוק בין העלה מדעתו לעלתה בעל ברחו, ובנפלה לבד חוח ליה למלוני, דתקפתו וירדה – הוה אונס, לא תקפתו – חייבו ויש לומר: דרישא נקט עלתה לנלתי דמלה הוי בעל ברחו, וסיפא נקט העלה לנלתי דמלה חיי שהיה בידו לתקפה ולא תקפה, דומיא דהעלה שהיה בידו, ואם תאמר: וסיפא, כיון דמירד שהיה יכול לתקפה אמאי אוקמה במרעה שמו טוב? אפילו לא היתה מרעה שמו טוב לא פשע בהעלאתה כיון שהיה יכול לשומרה מנפילתו ויש לומר: כיון דאין צורך להבהמה בהעלאתה זו – מושע הוא, שיש לו לחוש שסא ישכח ולא ישמרנה מילולו, ולכן אם מתה – היה חייב.

ע"ב

תנחומא תלית / מליש אלה לאברה איון תנחומא חוק שייכת לטון, ופרש דהאכיד שכתב שתקפתו תלוק חבירו שחנפח חוק ממנו, ולכן כממשנה וירדה שוב לא תחזיק בה בחתך, שפחד שסא טל דח קמך.

לדיכו דמתניתו דר' יוסי שפירש: אף ר' אמי בדאי טוב כמותו, אלא לוי שאחם התחלתם בקושיה פתור תחת סופיתם, הוי חייב לעתה לפי אותה חתה, אבל לשיטתו אין מקום לשאלת התוספתא ז"ל ודחא בר"ט.

אורח הלכה

העלה לראשי צוקים / העלה בהמה שבעשרות לראשי צוקים ונפלה – אין זה אגס, חייב. אלא אם היה שם כדרכה – פטור.

עלתה לראשי צוקים / עלתה הבהמה בצמח לראשי צוקים, אפילו לא תסתמו כמות – אם פתח ר"י מ' כניסה וצמח אחר חתה.

(שם עסקי ר"א)

III. GEONIC LITERATURE

Very few works remain from the period of the *Geonim* (sing. *Gaon*). The *Geonim* were heads of the Babylonian Academies from the seventh through the tenth centuries C.E. Most of the Geonic commentaries on the *Talmud* have been lost, while the works that have survived are primarily collections of laws and responsa.

Halakhot Pesukot of Rav Yehudai Gaon, one such collection of laws, follows the order of the *Talmud* but omits the talmudic dialogue.

She'iltot of Rav Ahai Gaon presents legal decisions arranged according to the order of the weekly Torah reading. So, for instance, the laws of bailees are treated in *She'ilta* (question) no. 20, which is keyed to Jacob's rejoinder to Laban in Genesis (31:40) regarding the manner of his guarding Laban's flock: 'Thus I was: in the day drought consumed me, and the frost by night; and my sleep fled from mine eyes.' Rav Ahai Gaon discusses the scope of the paid bailee's responsibilities against the background of this verse.

Legal compendiums arranged according to subject were also written during the Geonic period. Among these are the writings of Rav Shemu'el ben Hofni, head of the academy at Sura, and those of his son-in-law, Rav Hai, head of the academy at Pumpedita. Rav Shemu'el ben Hofni's legal writings include works on partnership, pledges, gifts, and guarantee law. Rav Hai's best known work is on commercial transactions.

Hundreds of Geonic responsa have been compiled in various collections (on responsa literature, see pp. 82 and 100 below), and Geonic commentaries to the *Talmud* as well as responsa have been collected and arranged according to the order of the *Talmud* by B. M. Levine in his *Otzar haGeonim* in twelve volumes (reaching to *Baba Metzia*). Many Geonic responsa were also discovered by Solomon

◀ Figure 21: *Baba Metzia* 36b, *Talmud Bavli*, edited by R. Adin Steinsaltz (Jerusalem, 1980).

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Schechter in the Cairo *Genizah* — a repository for disused sacred books and ritual articles — at the end of the last century. These formed the basis of Louis Ginzberg's important *Geonica* (see Figure 22).

GEONIC RESPONSA

5 [502]. An agent was sent to Egypt to purchase merchandise. On his journey he was attacked by brigands, who threatened his life. To save himself he showed the highwaymen where his employer's money was hidden. He now contended that he was not called upon to make good the loss, since, in any case, even if he had sacrificed his life, the money would have fallen into the hands of his assailants. The Gaon supports him in this contention, provided he can prove by means of witnesses, or will asseverate by means of an oath, that his supposition is correct, that the brigands would in any case have found the money.

6 [503]. The Gaon decides that a debtor may force his creditor, who holds a promissory note against him, to take an oath that he has not paid up his indebtedness, as he himself maintains he has done; and this right belongs to him even though the creditor is willing to waive his alleged claim, if only the debtor will take the oath. There can be no doubt that this Responsum is the same as that quoted in a Responsum addressed to Hai (חזקיה גאון, 136), where it is ascribed to Natronai Gaon.

7 [504]. To this very day, the Gaon says, priests are under the obligation to avoid defilement. It is very probable that this Responsum is merely an extract from a much longer one found in the collection חזקיה גאון, 55, also attributed to Natronai Gaon. Comp. ג"ק, 4.

Figure 22: Geonic responsum from the Cairo Genizah, Louis Ginzberg, *Geonica* (New York, 1909), Vol II, p. 144.

IV. HALAKHIC LITERATURE

Halakhic literature after the period of the *Talmud* and *Geonim* includes codes, halakhic glosses (*pesakim*), responsa literature, and court decisions (for information on halakhic *Midrash*, and commentaries on the *Mishnah* and *Talmud*, see pp. 23, 35, 46, above). These works are traditionally divided into two historical periods: those produced by the Earlier Authorities (*Rishonim*), prior to the expulsion from Spain at the end of the fifteenth century, and those by the Later Authorities (*Aharonim*), from then until the present.

A. Codes

1. *Mishneh Torah*

Mishneh Torah, by Maimonides (1135-1204, Spain and Egypt), is a comprehensive code covering all of Jewish law, including laws applicable only to the Temple, its sacrifices, and ritual purity. It is also known by the name *Yad haHazakah* (*The Strong Hand*). *Mishneh Torah* is written in extremely clear Hebrew, but cites no sources for its rulings.

Rather than following the order of the *Talmud*, the *Mishneh Torah* is organized by topic into fourteen volumes:

Volume 1: *Sefer haMada* (The Book of Knowledge) deals with the foundations of faith.

Volume 2: *Sefer Ahavah* (The Book of Love) deals with prayer.

Volume 3: *Sefer Zemanim* (The Book of Occasions) deals with the Sabbath and festivals.

Volume 4: *Sefer Nashim* (The Book of Women) deals with marriage, divorce, and personal status.

Volume 5: *Sefer Kedushah* (The Book of Holiness) deals with forbidden sexual relationships, dietary laws, and ritual slaughter.

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- Volume 6: *Sefer Hafla'ah* (The Book of Asseveration) deals with vows, oaths, and Nazirites.
- Volume 7: *Sefer Zera'im* (The Book of Agriculture) deals with tithes, sabbatical years, and jubilees.
- Volume 8: *Sefer Avodah* (The Book of Temple Service) deals with the laws of the Temple.
- Volume 9: *Sefer Korbanot* (The Book of Offerings) deals with the laws of sacrifices.
- Volume 10: *Sefer Taharah* (The Book of Cleanness) deals with the laws of ritual purity and ritual baths.
- Volume 11: *Sefer Nezikin* (The Book of Torts) deals with property damage, theft, and robbery.
- Volume 12: *Sefer Kinyan* (The Book of Acquisition) deals with partnerships and the transfer of property.
- Volume 13: *Sefer Mishpatim* (The Book of Civil Laws) deals with loans and leasing.
- Volume 14: *Sefer Shofetim* (The Book of Judges) deals with the judicial system.

Each book is divided into sections known as *Hilkhot...*, i.e., Laws of.... So, for instance, the Book of Torts contains, *inter alia*, Laws of Property Damage and Laws of Robbery and Loss. The sections are further subdivided into chapters and numbered paragraphs. Each paragraph is known as a *halakhah* or 'law,' and the work contains a total of 14,909 such *halakhot*.

Five of the *Mishneh Torah's* fourteen books are of general legal interest. These are the books of Women, Torts, Acquisition, Civil Laws, and Judges. Here we show a schematic representation of the arrangement of *Mishneh Torah*, listing the laws included in the five books of general legal interest (see Figure 23).

A page of the standard edition of *Mishneh Torah* is reproduced below (Figure 24). The passage shown deals with a bailee who has entrusted his charge to another (M.T., Laws of Leasing 1:4).

Mishneh Torah remained for many generations the final authority on Jewish law, and many communities accepted it as the sole guide

Mishneh Torah (Code of Maimonides)

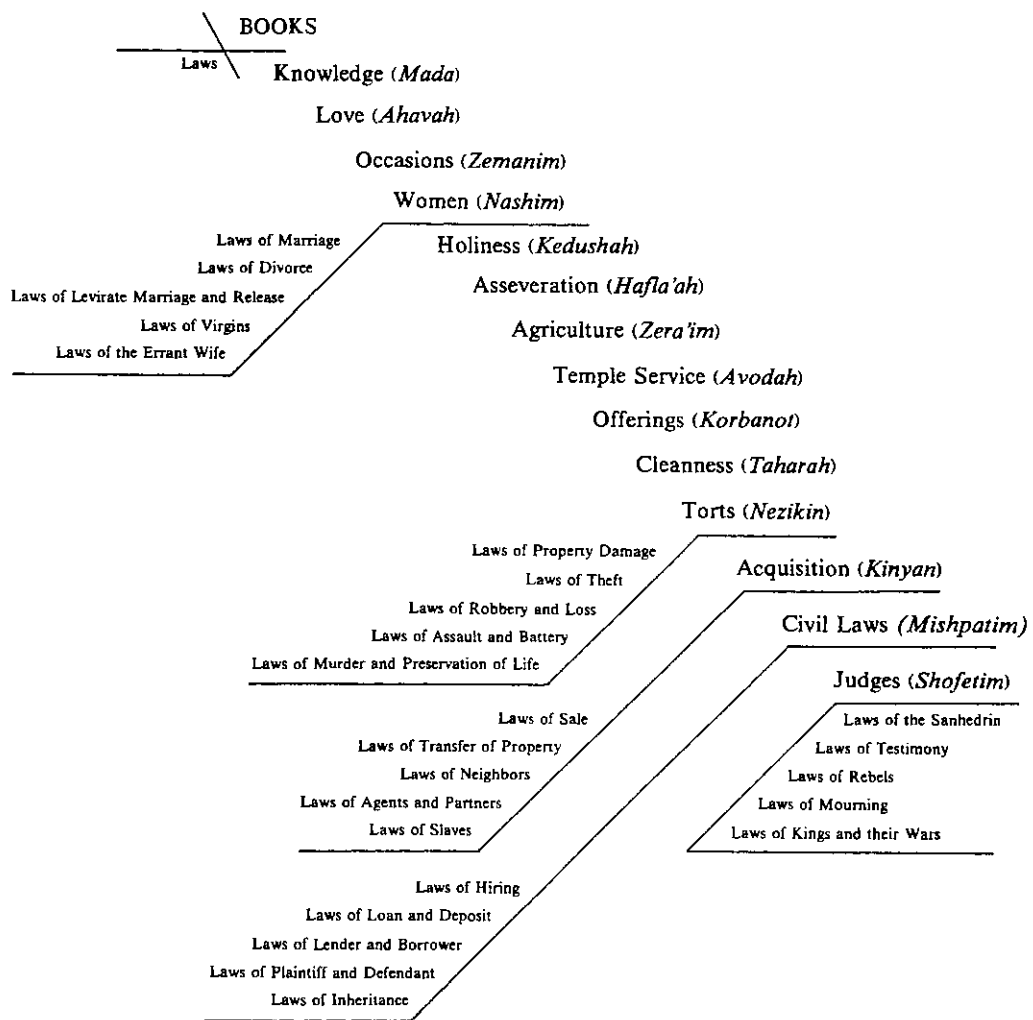


Figure 23: Diagram of *Mishneh Torah* showing division into books and *halakhot*.

IV. Halakhic Literature

for legal decisions. Even today, despite the existence of a number of more recent codes (see below), Maimonides' work remains the classic codex of Jewish law.

References to *Mishneh Torah* are typically introduced by the name Maimonides, by Maimonides' Hebrew acronym Rambam, or by the abbreviation M.T. The particular book of *Mishneh Torah* is normally omitted; thus the reference continues with the particular subsection — Laws of... in English, or *Hilkhot*... in Hebrew — followed by two numbers referring to the chapter and law. So, for instance, 'Maimonides, *Hilkhot Sekhirut* (Laws of Leasing), chapter 2, *halakhah* 1.' Both 'Maimonides' and the word *Hilkhot* (Laws of) may also be omitted when writing in English and replaced by the initials M.T. (*Mishneh Torah*). Hence, the shortest method of English annotation: M.T., *Sekhirut* 1:2. As we have seen (p. 47 above), *Ein Mishpat* would annotate the same reference as: 'Maimonides, chapter 1 of *Hilkhot Sekhirut*, *halakhah* 2.'

Encyclopedia Hilkhatait Hasdei David, by A. D. Slotki and M. Klapholtz, is an alphabetical index to both *Mishneh Torah* and *Shulhan Arukh* (on *Shulhan Arukh*, see below).

A new edition of *Mishneh Torah*, edited by Z. Preisler, also contains an alphabetical index.

Commentary on Mishneh Torah

Maimonides' *Mishneh Torah* stimulated an extensive range of commentary. Principally, Maimonides' decision not to cite the sources for his rulings led subsequent scholars to supply these and explain Maimonides' use of them. Others wrote of their reservations regarding certain of Maimonides' decisions. Some of these commentaries are printed, in standard editions of *Mishneh Torah*, alongside the ruling to which they apply. They are known by the colorful Hebrew expression *nose'ei kelim* — arms bearers (see Figure 24).

Hasagot haRabad. Most relentless of Maimonides' critics is R. Avraham ben David (1120-1198) of Posquieres, Provence, known by the acronym Rabad. Rabad was a contemporary of

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Maimonides. His gloss is printed as insets in the text of *Mishneh Torah*. These comments generally open with the abbreviation א"א, which stands for *Amar Avraham* (Avraham has said). Rabad does not comment on every *halakhah*, and where no comment appears, he is presumed to agree with the ruling of Maimonides.

Hagahot Maimoniot was written by R. Me'ir haKohen (late 13th-early 14th century) and appends to Maimonides' rulings those of the authorities of France and Germany.

Migdal Oz, by R. Shemtov ibn Gaon (14th century) of Spain, cites the talmudic sources for Maimonides' rulings.

Maggid Mishneh, by R. Vidal of Tolosa, Spain (14th century), covers only six of the fourteen books of *Mishneh Torah* (three of them, *Nezikin*, *Kinyan*, and *Mishpatim*, relate to civil law). It explains rulings, lists sources, and defends Maimonides' views against the objections of Rabad.

Kesef Mishneh was written by R. Yosef Karo (16th century) of Spain, Turkey, and Eretz Israel. R. Karo is best known as the author of the authoritative code *Shulhan Arukh* (see below). In his commentary on *Mishneh Torah*, he too cites sources and defends Maimonides' rulings.

Also of note are *Lehem Mishneh*, by R. Avraham di Boton (1545-1588) of Salonika, and *Mishneh laMelekh*, by R. Yehudah Rosanes (1657-1727) of Turkey.

These commentaries are cited according to the particular *halakhah* to which they refer, thus: *Maggid Mishneh*, *Sekhirut* (i.e., Laws of Hiring), chapter 12, *halakhah* 2 (or simply, 12:2); or Rabad, *Sekhirut*, 2:12.

Rambam laAm, published by Mossad Harav Kook, is a modern punctuated and vocalized edition of the *Mishneh Torah*. It contains extensive explanation and is the work of a team of scholars.

haRambam vohaHok biMedinat Yisrael (*Maimonides and the Law in Israel*) is a compendium of laws taken from Maimonides' *Mishneh Torah* and organized by Nahum Rakover, according to corresponding Israeli legislation.

IV. Halakhic Literature

English Translation

An English translation of *Mishneh Torah*, edited by Julian Obermann, has been published by Yale University Press under the title, *The Code of Maimonides*. Here we show a passage relevant to the law of bailees (see Figure 25). Volume 28 of the series is an introduction by Isadore Twersky (*Introduction to the Code of Maimonides*, 1980).

2. *Tur*

The *Tur*, by R. Ya'akov ben Asher (1270-1340, Spain), was written about a hundred years after the code of Maimonides. It differs from *Mishneh Torah* in four important respects:

- i. The organization of subjects is different.
- ii. It does not deal with laws applicable only to the Temple, sacrifices, and ritual purity.
- iii. The formulation of laws is not uniform, but rather follows the original sources.
- iv. It recounts disputes among authorities, and concludes with a ruling.

The work is divided into four volumes, each one known as a *tur* or column, the entire work being known as the *Arba'ah Turim*, the *Four Columns*:

Orah Hayim (OH) deals with the individual's ritual obligations on weekdays, sabbaths, and festivals.

Yoreh De'ah (YD) deals with the dietary laws, mourning, family purity, and a number of other areas.

Even haEzer (EH) deals with marriage, divorce, and personal status.

Hoshen Mishpat (HM) deals with commercial transactions, torts and court procedure.

Of the four *turim*, *Even haEzer*, *Hoshen Mishpat*, and a small portion of *Yoreh De'ah* deal with topics of general legal interest.

Each *tur* is divided into chapters (*simanim*; sing. *siman*) and paragraphs (*se'ifim*; sing. *sa'if*). The chapters are grouped topically

HIRING

4. Every bailee who was negligent at the beginning, though in the end a loss occurred through force, is liable, as hereinafter stated.

The commodatary is not permitted to lend to others the object lent to him. Even if he borrowed a scroll of the Law, the reading of which is a pious deed, he must not lend it to another. Similarly, the hirer is not permitted to let to another even if the object hired be a scroll of the Law, for the bailor may say to him, "I do not wish to have my property entrusted to another."

However, if the bailee in transgression of this precept delivered the object bailed to a second bailee, and witnesses testify that the second bailee kept the object after the manner of bailees but that it was lost through force, the first bailee is quit, since there is testimony that the loss occurred through force. But if there are no witnesses, the first bailee is liable to compensate the owner because it was he who delivered it over to the second bailee. He may, however, sue the second bailee.

Even if the first bailee kept the object gratuitously but delivered it over to a bailee for hire, he is liable, since the owner may say to him, "It is your oath that I relied on and not the oath of the other man." But if the owner was wont to entrust the said object to the keeping of the second bailee, the first bailee is quit since he may justly say to the owner, "This object, which you deposited with me, or lent to me, is one that you have recently been wont to deposit with the man with whom I deposited it"; provided, however, that the standard of care required by law was not lowered by the change of bailees.

What is meant by lowering the standard of care? Where the object had been bailed to him for hire and he bailed it to the second bailee gratuitously, or where it had been lent to him and he bailed it to the second bailee for hire. Since the standard of care was lowered, it is negligence per se, and he must pay.

Figure 25: Laws of Hiring, 1:4, Yale Judaica Series: *The Code of Maimonides, The Book of Civil Laws*, edited by Julian Oberman, et al. (New Haven, 1968).

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into sections such as Laws of Judges and Laws of Witnesses; section titles, however, are not used in citation. References are thus cited by the name *Tur* followed by the volume abbreviation and numbers noting chapter and paragraph (*siman* and *sa'if*). So, for example, '*Tur* HM 282:1,' refers to chapter 282, paragraph 1 of the volume entitled *Hoshen Mishpat* (for the sake of clarity it should be reiterated that the word *tur* is not only the commonly used name of the entire work, but is also used as the equivalent to the English word *volume*). The excerpt shown here (see Figure 26) is taken from the Laws of Bailees section of the *Tur Hoshen Mishpat*, 291:7. It deals with the duty of the bailee to exercise proper care for the deposit, and rules that a bailee who does not, assumes liability even in case of *force majeure* (*onsin*). The ruling is based upon the talmudic principle that negligence occasions liability for *forces majeures* — which are otherwise exempt (*tehilato bifshi'ah vesofa be'ones, hayyav; Baba Metzia 42a*).

No English translation of the *Tur* has yet been published.

Commentary on the Tur

The *Tur* also gave rise to an extensive literature of commentary. The classic commentaries were written during the sixteenth century. Best known among these are:

Beit Yosef, by R. Yosef Karo, author of *Kesef Mishneh* on *Mishneh Torah* (see above) and *Shulhan Arukh* (see below). *Beit Yosef* is a work of impressive dimensions that served as the basis for R. Karo's shorter and more accessible *Shulhan Arukh*. It goes beyond the bounds of commentary, citing and discussing a wide range of rulings by earlier halakhic authorities (*Rishonim*), and giving R. Karo's own ruling.

Darkhei Moshe, by R. Moshe Isserles (1525-1572; also known by the acronym Rema) of Poland. Rema later composed the *Mapah*, a gloss on *Shulhan Arukh* (see below). His *Darkhei Moshe* supplements the *Tur* with Ashkenazi (French, German, and Polish) decisions and customs, in accordance with which Rema makes his own ruling.

Bayit Hadash (also known by the acronym *Bah*), by R. Yo'el

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Sirkis of Poland. *Bah* analyzes each ruling of the *Tur* according to its sources.

Derishah and *Perishah*, by R. Yehoshua Falk haKohen (1555-1614) of Poland. This commentary consists of two parts. *Perishah* explains the laws of the *Tur*, and *Derishah* cites sources supporting these explanations.

All four commentaries appear in standard editions of the *Tur*. *Beit Yosef* and *Bayit Hadash* frame the text, *Beit Yosef* on the inner column and *Bayit Hadash* on the outer. *Darkhei Moshe* is printed below these, and *Derishah* and *Perishah* below *Darkhei Moshe*, *Derishah* on the outer side and *Perishah* on the inner.

In citing any of these, the name of the commentary is appended to the location in the *Tur*, thus, *Bayit Hadash* (or *Bah*), *Tur* HM 291:7 (since these commentaries are found only on the *Tur*, the name *Tur* is occasionally omitted: *Bayit Hadash*, HM 291:7).

3. *Shulhan Arukh*

Shulhan Arukh, (Set Table) was written in Safad (Eretz Israel) by R. Yosef Karo (1488-1575) some 200 years after publication of the *Tur*. It is universally accepted as the authoritative code of Jewish law. It follows the organizational scheme of the *Tur*, retaining the same four volumes and the same chapter headings and numbers. The style, by contrast, is similar to that of *Mishneh Torah*—concise authoritative summaries of the law with no citation of sources.

Since *Shulhan Arukh* is organized exactly like the *Tur*, citation is the same, except that the volume name, chapter, and paragraph numbers are preceded by the title *Shulhan Arukh* or the abbreviation Sh. Ar. (in Hebrew, ש"א). Thus: Sh. Ar. HM 391:17. When only the volume name is supplied (e.g., HM 391:17), reference is understood to be to *Shulhan Arukh*.

R. Moshe Isserles (Rema), author of *Darkhei Moshe* on the *Tur*, wrote a gloss on *Shulhan Arukh*, which he called *Mapah* (Table Cloth). It is also known as *Hagahot haRema*, *Comments of Rema*. Whereas the rulings of *Shulhan Arukh* reflect Jewish law mainly as practiced in Sefardi communities (Spain, North Africa), the

Mapah rules in accordance with the opinions of Ashkenazi (French, German, Polish) scholars, where they differ from R. Karo's conclusions. In standard editions, Rema's comments, printed in a special typeface known as Rashi script, are interspersed through the actual text of *Shulhan Arukh*, which is printed in regular block letters. The comments of Rema are often introduced by the word *hagah* (הגה"ה—note). Where Rema does not comment on R. Karo's formulation, it is presumed that he concurs. This combination of the rulings of the sages of both Ashkenazi and Sefardi schools has enabled *Shulhan Arukh* to become the authoritative code for the entire Jewish people (Figure 27 shows a page of *Shulhan Arukh* taken from HM 291:26).

A section of *Hoshen Mishpat* has been translated in *The Traditional Law of Sale*, by S. Passamaneck.

Commentary on Shulhan Arukh

Like the previous codes, *Shulhan Arukh* has generated a large body of commentary and criticism, some dealing systematically and in detail with the entire work, others covering only part. These commentaries too are referred to as *nose'ei kelim* (arms bearers).

Be'er haGolah, compiled by R. Moshe Rivkes (17th century), catalogues the sources of the *Shulhan Arukh's* rulings and is printed on the upper outside corner of each page. It is keyed to the text by small superscript letters that appear next to the relevant paragraph. The passage of *Be'er haGolah* reproduced here (Figure 27) explains that R. Karo's ruling in HM 291:26, that a bailee who has entrusted his charge to another becomes liable, is based upon the talmudic discussion found in *Baba Metzia* 36a (which appears in Figure 15). *Be'er hagolah* further explains that although, as we have seen, the question of liability in this case is subject to a disagreement in the passage cited, a final ruling on the matter is issued by Rava on *Baba Metzia* 36b. Rava rules according to the opinion of R. Yohanan.

Be'ur haGra, by R. Eliyahu of Vilna (known as the *Vilna Gaon*), is another work which cites sources for rulings of the *Shulhan Arukh*. Its extreme brevity and extensive use of abbreviations

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render it somewhat difficult for the uninitiated and have given rise in recent years to several super-commentaries.

The two most important commentaries on the portions of *Shulhan Arukh* of general legal interest are *Sefer Me'irat Einayim* and *Sifteï Kohen*. These two works frame the text of *Shulhan Arukh*, the former on the outside column, the latter on the inside.

Sefer Me'irat Einayim, commonly abbreviated as *Sma* (סמ"ע), was written by R. Yehoshua Falk haKohen, author of *Derishah* and *Perishah* on the *Tur* (see above, p. 69). *Sma* corrects errors in the text of *Shulhan Arukh* and explains differences of opinion between R. Karo and Rema.

Sifteï Kohen, abbreviated as *Shakh* (ש"ך), was written by R. Shabtai haKohen (1621-1662) of Poland and complements the commentary of *Sma*.

Turei Zahav, better known by the acronym *Taz* (ר"ט), by R. David haLevi of Poland (1586-67), is an extensive commentary on the entire *Shulhan Arukh* that seeks to clarify, expand, and finalize the rulings of *Shulhan Arukh* by referring to the works of later authorities.

Ba'er Heitev offers a concise summary of the work of the above commentators. It is actually two different commentaries. *Ba'er Heitev* on *Hoshen Mishpat* was written by R. Zekhariah Mandel (17th century), rabbi of Belz, Poland, while the commentary of the same name on *Even haEzer* was written by R. Yehudah Ashkenazi of Poland (18th century).

Two important glosses on *Even haEzer* are *Helkat Mehokek*, by R. Moshe Lima of Lithuania (1605-1658), and *Beit Shemu'el*, by R. Shemu'el ben Uri Shraga Faivel of Poland (17th century).

Pit'hei Teshuvah, by R. Avraham Tzvi Hirsch Eisenstadt (1813-1868), summarizes responsa relevant to the issues dealt with in *Shulhan Arukh*.

All the above commentaries appear in standard editions alongside the text of the *Shulhan Arukh* and are cited by noting the name of the commentary before the volume name, chapter and paragraph numbers of the passage to which they refer. Where the commentary

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is keyed by number to the text of the *Shulhan Arukh*, this number, known in Hebrew as *sa'if katan* and abbreviated פ"ט, may appear after the paragraph number or replace it.

Peri Megadim, an alphabetical index of topics in *Hoshen Mishpat* and its commentaries, compiled by R. Shemu'el Alexander, is printed at the front or back of *Hoshen Mishpat*.

Encyclopedia Hilkhatait Hasdei David is an alphabetical index to both *Shulhan Arukh* and *Mishneh Torah*. It also lists the chapters of *Shulhan Arukh* together with their parallels in *Mishneh Torah*.

A new one volume edition of *Shulhan Arukh*, without commentaries but with several indices, has been edited by Z. Preisler.

4. *Arukh haShulhan*

Arukh haShulhan, by R. Yehi'el Mikhel haLevi Epstein (Russia; late 19th century), is a recent code that follows the organization of the *Tur* and *Shulhan Arukh*; it is divided into the same volumes and uses the same chapter headings. It differs methodologically from *Shulhan Arukh*, completed some 350 years earlier, in that it explains the rationale and traces the development of rulings from earliest sources to final decisions. It quotes a wide range of authorities, considers rulings issued after the completion of *Shulhan Arukh*, and determines which are to be followed in cases of dispute. Citations are similar to those of the *Tur* or *Shulhan Arukh* but are introduced by the title *Arukh haShulhan*, thus *Arukh haShulhan* HM 291:12.

Arukh haShulhan HM 291:55 (see Figure 28) concerns a bailee who has entrusted his charge to his wife and family, informing them that it is a deposit delivered into his care. Should the family members not exercise proper care and the property be damaged as a result, the family members are liable. What, however, will be the liability of the original bailee if the members of his family are unable to pay the damages? Two opinions are cited, the first holding that the bailee is liable, the second that he is exempt from payment. *Arukh haShulhan* concludes that in practice the first opinion is binding.

ש"ה לש"ש [ט"ז ס"י ע"ב ס"ק ק"יז] ויש מחלקין וס"ל רש"ש צריך הוא לברך לשמור גד"ה] ואם מסר לבניו ובני ביתו הקטנים או לעבדיו הכנענים בין גדולים בין קטנים או לאחד מקרוביו שאינם עמו בבית ואין סמוכין על שולחנו וב"ש אם מסרו לאחר ה"ו פושע ואין אנו נוהגים נאמנית להשגי שיפסוד הוא ע"פ שבועתו של השני ולכן חייב לשלם אא"כ הביא השומר השני עדים שלא פשע ובשומר שבר שנאנסה או אם הראשון עצמו יכול ליטבע כמו שנהבאר בסעיף מ"ד וכן אם יודע שגם מעותיו אינו צורך לבני ביתו גם הם ריגב כאחרים וכן אם הניח אחרים ליכנס במקום שהפקדון מונח אע"פ שאינם כחוקת גנבים מ"ם הוי פשיעה וחייב לשלם בשנננה אבל כמי שירוע בודאי שאין דרכו לשמור בעצמו פקדונותיו ורגיל למסור ביד אחר שאינו שרוי בביתו ואינו מוסך על שולחנו ריגב כמסור לבני ביתו כמ"ש בסעיף ס"ח :

ג וכמו שהמפקיד מפקד על דעת אשתו ובניו של הנפקד כמו בן בשדנפקד החזיר הפקדון לאשת המפקד פסוד היה כהחזיר להמפקד עצמו ואע"פ רבשואל קי"ל רלא מהני אם החזיר לאשה המשאלת במ"ש במסן ש"ם והו רק כשואל מפני שכל הנאה שלו החמיר עליו אבל לא בשאר שומרים וי"א ראף בפקדון לא יצא אא"כ אשתו נושאת ונוהגת במסרו אבל בסתם נשים לא [ט"ז ס"ז] דעה כפרעון של הלואה במ" ק"ך ולפ"ו כשהחזיר הפקדון רבניו ובניו ביתו של המפקד ודאי דלא יצא ולא דמי חזרה לשמירה רבשמירה יודע המפקד שא"א להנפקד לשמור בעצמו יום ולילה ובהכרח למפקד על בני ביתו אבל בחזרה שהיא אך רגע מחייב להחזיר להמפקד בעצמו ואפשר דגם לדעה ראשונה לא מהני בחזרה רק לאשתו ראשונה כנופו ולא לבניו וב"ב [ז"ש הסמירה גס מעיף ל"א] ומה שבפרעון חוב לא מהני אף לאשתו בשאינה נושאת ונוהגת יש לחלק בין הלואה לפקדון לדעה ראשונה והלואה הוי בשאלה :

ג מעשה כאחד שהפקיד מעות אצל חבירו ונתנם השומר לאמו והביאה אותם ולא טמנתם בקרקע ונגנבו והוא היה ש"ח ואסרו חבמים דאין השומר חייב לשלם דהרי כל המפקד ע"ד בני ביתו הוא מפקד והרי מסרם לאמו ואף שלא אמר לה שהם מעות פקדון שהחזיר בהם אין זה פושע שיכול לומר שסבר שאם לא יגיד לה שהם של אחרים ותמכור ששלו הם תוהר ביותר ודוקא ש"ח פסוד אבל אם היה ש"ש חייב אף כשנאנסו מידה רלנבי ש"ש פשיעה היא במה שלא הודיע לה שהוא פקדון ונמל שבר והוה תחלתי בפשיעה והאונם יכול להיות שלא היה נאדע אם לא הפשיעה ככ"ל כסוגם הנמקי" סכסך מק"נ] ואסרו חבמים רגם אמו אינה חייבת לשלם שהרי לא אמר לה שהם פקדון וכיון שסברה ששל בנה הם אינה פושעת במה שלא טמנתם

בקרקע דמברה שבנה צריך המעות לעסק שירעה שהוא רגיל לעשות עסקים ולכן המטנתם בארגו שלה להיותם מוכנים כשירדשם [סא"ע] ואין המפקד יכול להשביעה שהבן לא אמר לה שהם פקדון שהרי זהו מענת שמא שהרי אינו יודע אם הבן אמר לה אם לא והיא אינה שימרת שלו שתהייב שביעה על מענת שמא אמנם אינה פסודה בשביעה וו אלא כשיש עדים על הנגיבה אכל אם היא צריכה ליטבע על הנגיבה רבזה בהכרח להשיבעה גם כשסא כרין השומרין דהא עכ"פ היא שומרת המסין יכול להשביעה, גם שביעה וו ע"י גלגול [ט"ז] ואע"פ המענת שמא אין משיבעין גם בגלגול בלא רגלים לרבר כמ"ש במסן צ"ד מ"ם בשבועת שומרים שעיקר שביעתם היא כשסא סגלגלין גם ככה"ג [נס"ת] וכן אם הבן טוען כרי שאמר לה שפקדון הוא צריכה ליטבע היסת נגד מענת הבן [ט"ז] ופסקו חבמים שהשומר יטבע שאינם המעות עצמן מסר לאמו ואמו תטבע שהחביאה אותם במקום ששומר כמו בארנו ונגנבו רק אם היחה יודעת שהו פקדון היחה מחויבת להטמינם בקרקע לפי זמן הנס' ואם תכיא עדים על הנגיבה פסודה משביעה ואו נפמרים שניהם וכשתטבע על הנגיבה צריכה ליטבע נ"כ שנתנם במקום המשומר אלא שלא טמנתם בקרקע ראל"כ שסא לא שברתם כלל וחייבת לכנה והוא ישלם להמפקד ואפילו נאנסו מידה חייבת כשלא שמרתם כלל דהוה תחלתו בפשיעה ודע לפי זמניו שאין מוכנים מעות בקרקע לא משכחת לה להאי ריקא כלל רמס"ג אם שסרה במקום שדרכם לשמור מעותהם פסוד גם בפקדון ואם לאו חייבה אף בשמכורה ששל בנה הם וגם לזמן הנס' אינו אלא במעות או בחפץ שאינו מסוים אבל בחפץ מסוים נטבעת אמו שחפץ זה מסר לי בני ושמתיו בראוי ונגנב או נאנס ואן אינו צריכין לשבועתו של הראשון [כ"ג] :

גה מבאן אחה למר שהשומר שמסר הפקדון לאשתו וב"ב הודיעם שהוא פקדון ולא שמרו כראוי שחייבים לשלם לבעל הפקדון והבעה"ב פסוד מפני שמפקד על דעת בני ביתו ואם אין להם לשלם חייב הוא לשלם ראל"כ כל פקדון שביד אדם יאכלוס בניו וב"ב ועי"פ רוב אין להם במה לשלם ואם גם הוא יפסוד דא שכבת חיי ובשדעו שהוא חייב לשלם יתרו בו ואף שלא הודיעם שהיא פקדון ואכלוס או אברום ואין להם לשלם חייב הבעה"ב לשלם [ט"ז] וי"א דבשאיין להם לשלם מ"ם הוא פסוד רכיון רמפקד על דעתם הוה כאלו א"ל מסור להם הפקדון ועמ"ש במעיף נ' בשומר שמסר לשומר ופשע השני ואין לו במה לשלם מה ריגו של הראשון וזראה דהמנהג פשוט ברעה ראשונה וכן רנים בכל בני ריגים :

גו מעשה כאחד שהפקיד כשות אצל אחד והיה להשומר גם כשות שלו ואמר השומר למשרתו השלך להשבר סוה הבשות שהיה שלו והלך המשרת והשליך לתוך השבר מהכשות

Figure 28: Arukh haShulhan, Hoshen Mishpat 291:53-55.

IV. Halakhic Literature

B. Halakhic Glosses Following the Order of the *Talmud*

The previous chapter reviewed codes that are topically arranged. Another type of halakhic literature consists of works which follow the order of the *Talmud*, summarize its discussion, and delete material not accepted as law, thereby furnishing a comprehensive halakhic digest of the text.

1. *Rif* and Commentaries.

One of the first works of this type is that of R. Yitzhak Alfasi (1013-1103), known by the acronym *Rif*, who lived in Fez, Morocco. *Rif* cites the conclusion of talmudic discussions in their original language, omitting the discussion itself. *Rif* often establishes the halakhic ruling on many questions unresolved by the Sages of the *Talmud*. He does not rule on matters applicable only to the Temple, sacrifices, and ritual purity.

Rif's broad use of the *Jerusalem Talmud* as a source for rulings, ensured a central role for that work in all subsequent discussion. The general principle which he established was to follow the ruling of the *Babylonian Talmud* in all cases where the two *Talmudim* conflict and to rely on the *Jerusalem Talmud* only in cases upon which the *Babylonian Talmud* does not rule.

In standard editions of the *Talmud*, *Rif* is printed at the back of each tractate. Since the text of *Rif* is also framed by commentaries and similarly paginated (i.e., numbered according to folio and side), it is easily confused with the text of the *Talmud*.

Rif is cited by reference to the relevant talmudic passage, or by specifying the folio and side references in the standard text of *Rif*. Thus, the same passage of *Rif* may be cited as *Rif* on *Baba Metzia* 38b or *Rif, Baba Metzia* 19b.

Reproduced here (Figure 29) is folio 19b of *Rif's* gloss on *Baba Metzia*. The passage contains *Rif's* ruling on the case of the bailee who has transferred his charge to another. The *Talmud* records two alternative reasons for the bailee's liability in such a case. The *Amora* Abayei attributes the bailee's liability to the owner's statement, 'It is my desire that my object not be in the hands of

IV. Halakhic Literature

another.' Rava, on the other hand, explains that liability stems from the owner's right to reject the oath of the third party: 'I trust your oath, I do not trust the second bailee's oath.' The oath mentioned is the 'Bailee's Oath,' to the effect that he was not negligent; the bailee is not exempt from liability unless he takes this oath. *Rif* does not quote both views, and omits the original dispute of Rav and Rabbi Yohanan on the liability of a bailee who transfers his charge. He quotes only the statement of Rava.

Rif further rules that when witnesses testify that the second bailee has exercised proper care and that the property was lost in consequence of a *force majeure*, the original bailee is not liable, since in this case, there is no need for an oath from either bailee to verify facts established by witnesses.

Rif stimulated much commentary, both explanatory and critical, and several such works are printed in the standard editions. *Rif's* earliest critic was R. Zerahiah haLevi Gerondi of Provence (12th century; abbreviated as Rezah) who entitled his work *Sefer haMa'or*. Rabad (R. Avraham ben David of Posquieres), who later recorded his differences with *Mishneh Torah* as well (see above), collected his objections to opinions of *Rif* in his *Hasagot haRabad*. Nahmanides (see above, p. 18) also produced two separate works, *Milhamot haShem* and *Sefer haZekhut*, on *Rif's* gloss.

Among the explanatory commentators on *Rif* are R. Nissim Gerondi (14th century), known by the acronym **Ran**, and R. Yosef Havivah (15th century), both of Spain. The commentary of Ran covers fourteen tractates and is printed with the text of *Rif*. R. Havivah's commentary, *Nimukei Yosef*, is printed with the text of *Rif* to seven tractates not covered by Ran. Most of these are from the order *Nezikin*.

2. *Rosh* and Commentaries

Another book of decisions that follows the order of the *Babylonian Talmud* was written by R. Asher ben Yehi'el (14th century) who was born in Germany and later moved to Spain. R. Asher is known by the acronym *Rosh*. His work, *Piskei haRosh* (*The Decisions of Rosh*), is based on *Rif* and was written about 200 years later.

CHAPTER ONE: SOURCES

Like *Rif*, *Rosh* omits laws applicable only to the Temple, sacrifices, and ritual purity. Unlike *Rif*, however, each decision of *Rosh* is preceded by a thorough analysis of the talmudic discussion and opinions of later authorities of both Ashkenazi and Sefardi schools. *Piskei haRosh* is also printed at the back of standard editions of the *Talmud*. It follows the chapters of the *Talmud* and is divided into paragraphs, so citations furnish the name of the tractate, the chapter of the tractate, and the paragraph number of *Piskei haRosh*, e.g., *Rosh, Baba Metzia 3:1*.

Three commentaries are printed together with *Piskei haRosh*:

Pilpula Harifta, by R. Yom Tov Lipman Heller (1579-1654) of Prague. R. Heller wrote a comprehensive commentary on the entire *Piskei haRosh*; *Pilpula Harifta* is the volume dealing with the order *Nezikin*. R. Heller is best known for his commentary *Tosefot Yom Tov* on the *Mishnah* (see above, p. 39).

Tiferet Shemu'el, a commentary on the entire *Piskei haRosh* by R. Aharon Shemu'el Koidonover of Poland (1624-1676).

Korban Netanel, a commentary on *Piskei haRosh* to the orders *Mo'ed* and *Nashim*, by R. Netanel Weil of Germany (1687-1769).

The passage of *Piskei haRosh* shown here (Figure 30) also deals with the case of a bailee who has entrusted his charge to another. *Rosh* comments that unless the third party is known to be trusted by the owner of the property — even if the third party is known to be more reliable and trustworthy than the original bailee — the owner retains the right to reject the oath of the second bailee and claim, 'I am not forced to trust the oath of any person with whom I have no direct dealings.' In other words, the test of reliability is subjective rather than objective.

C. Rabbinic Decisions

1. Responsa

Responsa literature constitutes one of the most important sources of Jewish law.

Throughout Jewish history, as halakhic problems — both public and private—arose, they were addressed to local rabbis. Questions on which local scholars did not feel qualified to rule would be referred to the leading scholars of the day. Such questions, published along with the rulings issued, comprise the responsa literature, known in Hebrew as *she'elot uteshuvot* (questions and answers) and abbreviated as *shut* (ש"ת).

There is no official procedure or format for addressing a question to an authority. Questions may consist of a short summary of the facts or a full review of all legal facets of the problem. The questioner may himself suggest a solution and seek confirmation. Replies will usually clarify the facts and the *halakhah*, and conclude with a decision.

The responsa literature has been central to the development of Jewish law. The need to address real life situations and issue practical rulings, forces respondents to establish the position of Jewish law on the most timely and concrete issues.

Responsa literature as a literary and historical phenomenon began in the middle of the Geonic period and continues to this day. More than three thousand works containing over 300,000 responsa are known.

Some books of responsa are named simply for their author and known by his full name or acronym. So, for instance, *Teshuvot haRambam*, *The Responsa of Maimonides*; and *Teshuvot haRema*, *The Responsa of R. Moshe Isserles* (Rema). Others are given formal titles such as *She'elot uTeshuvot Divrei Rivot*, by R. Yitzhak Adarbi, and *She'elot uTeshuvot Noda biYehudah*, by R. Yehezkel Landau of Prague.

A few works of responsa have been translated into English. An example is *R. Meir of Rothenburg*, by Irving Agus (see Figure 31).

IV. Halakhic Literature

RESPONSA, R. MEIR OF ROTHENBURG

A. A trustee appointed by the father of the orphans is not required to take an oath. However, some authorities (*Itur*) believe that when such a trustee has been removed by court, because of witnesses testifying to his mismanagement of the affairs of the orphans, he is required to take an oath.

SOURCES: Cr. 272; L. 239. Cf. Mord. Gitt. 389; Pr. 592; L. 240.

708 (D)

Q. B demanded that his mother return to him the books, silver, and gold, that had belonged to his father.

A. Until the widow take the required oath regarding her *ketubah*, all the possessions of her deceased husband belong to the orphans. The assurance by solemn hand-clasp that the widow gave B that she retained nothing which had belonged to her husband, is not sufficient. She must take the required oath over the Scroll of the Law.

SOURCES: Cr. 213.

709

Q. A deposited valuables with B for safekeeping. B, in turn, deposited them with C. Is B to be held responsible for them?

A. A bailee who redeposited with another, valuables that had been entrusted to him, is responsible for them. However, if A was in the habit of depositing valuables with C, B is not to be held responsible for the valuables.

SOURCES: Mord. B. M. 271. Cf. Am II, 221; Moses Minz, *Responsa* 92; *ibid.* 107.

Figure 31: Responsum of Rabbi Me'ir (Maharam) of Rothenburg, Irving Agus, *Rabbi Meir of Rothenburg* (Philadelphia, 1947), vol. II.

CHAPTER ONE: SOURCES

Most books of responsa are indexed, and many are indexed by topic. A comprehensive card-catalogue of responsa arranged according to the chapters of the *Shulhan Arukh* has been compiled by *Otzar haPosekim* in Jerusalem. The index contains approximately one million entries.

A most important aid to finding responsa on a given topic is the Responsa Project of Bar Ilan University. The project has computerized some 250 books of responsa which can be searched for information on every conceivable topic.

(For further details on data bases and indices of the responsa literature, see below, p. 100; concerning anthologies, see p. 113.)

2. Decisions of Israeli Rabbinic Courts

Parallel to current responsa literature, there is a growing body of decisions of Israeli rabbinic courts. The rabbinic courts adjudicate a variety of issues on the basis of Jewish law, and many of their decisions are collected in *Piskei Din Rabbaniyim*, abbreviated as PDR (פד"ר). To date, fourteen volumes of decisions have appeared on civil and administrative law, as well as on the law of personal status. Indices to volumes 1-10 have also been published. Decisions issued before the establishment of the State of Israel are collected in *Mivhar Piskei Din Rabbaniyim (Selected Rabbinic Legal Decisions)*, edited by Z. Warhaftig.

On page 178 of the first volume, there appears a decision of the Rabbinic Court of Tel Aviv which, *inter alia*, suggests alternative reasons for the opinion that the bailee who has entrusted his charge to another is not liable if the sub-bailee is one whom the bailor inherently authorizes.

Chapter Two

MODERN SCHOLARSHIP

I. BOOKS AND STUDIES

The past twenty to thirty years have seen a tremendous increase in the publication of works dealing with Jewish law. The following are among the most notable:

Yesodei haMishpat haIvri, by A. Gulak, deals with the main areas of Jewish law: acquisition of property and monetary affairs, legal obligations, laws of family and inheritance, and court procedure.

Dinei Mamonot, by R. Ezra Batzri, culls laws from *Shulhan Arukh* and responsa on matters of property and civil procedure. It is arranged according to subject matter.

haMishpat haIvri, by M. Elon, deals with the foundations and principles of Jewish law, the development of its legal institutions, and its literary sources.

Sidrat Mehkarim uSkirot baMishpat haIvri, treats specific issues in Jewish law as they have arisen in the process of drafting Israeli legislation. The monographs, published by the Israeli Ministry of Justice, were prepared by S. Warhaftig and N. Rakover, Deputy Attorney General of the State of Israel. To date, sixty monographs have appeared in this series. A List of the studies appears below.

Studies and Surveys in Jewish Law Published by the Israeli Ministry of Justice

1. Property Relations Between Spouses
2. Penalty for Acts Tainted with Illegality
3. Sources of the Principles of Copyright
4. Protection of Privacy
5. Rehabilitation of Criminals

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6. Mistake and Misrepresentation in Contracts
7. Rescission for Breach of Contract
8. Contract in Favor of Third Party
9. 'Approbations' of Books as a Source of Copyright
10. On the Rule of Law
11. A Chronological List of Sages of Halacha
12. Informal Agreements
13. Comments on the Labor Contract Bill
14. Fair Dealing
15. Restoration of Lost Property
16. Consumer Protection
17. Conditions in Contracts
18. Lottery and Gambling Contracts
19. Illegal Contracts
20. Duress and Undue Influence
21. Uniform Contracts
22. Offer and Acceptance in Contracts
23. Ostensible Contracts
24. Enforcement of Contracts
25. Market Overt
26. Ecology
27. Compensation for Breach of Contract
28. Principles of Interpretation of Contracts
29. Clerical Errors and Rectification
30. Time and Place in Performance of Contracts
31. Obligations of Joint Debtors
32. Contracts Requiring Registration
33. Contract for Services
34. Set-off of Obligations
35. Appropriation of Payments in the Case of Several Obligations
36. Unfair Competition
37. Bona Fides in Contracts
38. Unfair Competition and the Public Interest
39. Monopoly
40. Protection of Wildlife
41. Trade Practices
42. Change in Value of Currency in Contracts
43. Devaluation
44. Unjust Enrichment
45. Transacting Business with Another's Property
46. Agent who Receives Benefit in Consequence of Agency
47. Legalism and Compromise Upon Change in Value of Currency
48. Unforeseen Change in Value of Currency
49. Effect of Change in Value of Currency upon Compensation for Conversion
50. Indemnity for Salvage of Property
51. Indemnity for Rescue of a Person
52. Compensation for Withholding Another's Money
53. Restraint of Trade
54. Human Dignity
55. Coercion in Conjugal Relations
56. Testimony Under Oath
57. Ethical Standards for Public Servants
58. Law as a Universal Value — Law and the Noahides
59. Violence in the Judicial Process
60. State's Witness

I. Books and Studies

A variety of other studies on specific topics within the field of Jewish law have appeared recently. Subjects of interest include labor law, agency, the law of the state, contracts, commerce, and civil procedure.

The following are among the most notable works appearing in English:

The Main Institutions of Jewish Law, by the late Chief Rabbi of Israel, Isaac Herzog, concentrates on the laws of acquisition and obligation. Shown below (Figure 32) is a passage from chapter XIII, 'Bailees and Bailments,' which surveys the legal principles of bailment in Jewish law.

The Spirit of Jewish Law, by the American jurist G. Horowitz, is an English language survey of Jewish law.

The Principles of Jewish Law, edited by M. Elon, is a more recent collection of articles on Jewish law that appeared as entries in the *Encyclopedia Judaica*.

Jewish Law and Decision-Making: A Study Through Time, by A. Schreiber, analyzes the structures, operations, and decision-making processes of Jewish law.

A Living Tree, by E. N. Dorff and A. Rosett, is a systematic and thorough examination of the roots and growth of Jewish law.

Jewish Law: History, Sources, Principles, by M. Elon, a recently published translation of *haMishpat Halvri* (see above, p. 87), is a comprehensive overview of the origins and nature of Jewish law.

A number of English works compare Jewish law to other legal systems.

Three Great Systems of Jurisprudence, by K. Kahana Kagan, compares Jewish, Roman, and English law.

Jewish and Roman Law: A Comparative Study, by Boaz Cohen.

Jewish Jurisprudence: Its Sources and Modern Application, by E. Quint and N. Hecht, deals with the composition and jurisdiction of courts.

CLASSES OF BAILEES

The Mishnah distinguishes four classes or kinds of bailee: (a) the gratuitous bailee—*shomer hinam*; (b) the borrower—*shoel*; (c) the paid bailee—*nosé sakhar*; (d) the hirer—*sokher*. The division is rather formal for, from the standpoint of liability, (d) is identified by R. Meir with (a) and by R. Judah, the latter's contemporary and colleague, with (c). The final law is in accordance with R. Judah. The division into the three classes or types (a-c) is nowhere questioned or disputed, and this unanimity is sufficient evidence of its high antiquity: (b) is expressly stated in the law of Moses, while (a) and (d) are inferred from the Mosaic text.

Viewed from the aspect of the respective degrees of liability, the division in the ascending scale is: (1) the gratuitous bailee; (2) the paid bailee and the hirer; (3) the borrower; that is (a), (c) and (b-d). An old text cited in the Palestinian Talmud (*Shevuoth*, VIII, 1) explains the scale as follows: The borrower, because he takes from the lender but gives nothing in return, is burdened with the highest degree of liability. The paid bailee, since he not only takes from the bailor but he also renders a service to the latter, his liability is of a lower degree; the same applies to the hirer who, on the one hand, makes use of the property and, on the other, pays for the hiring. The gratuitous bailee who confers a benefit upon the bailor without any profit to himself is the least liable of the four.

The source of these three varying degrees of liability, to be presently defined, is traced to the Mosaic text, but there is a divergence of conception as to the root-idea. According to some post-Talmudic Authorities, the Mosaic law is based upon the psychological consideration that each kind of bailee, in view of the reasons stated above, tacitly contracts to be liable to that extent. Others seem to think that the divine law has laid down these rules because they are intrinsically just, regardless of any psychological probing of the respective intentions of the various bailees.

Figure 32: *The Main Institutions of Jewish Law*, by R. Isaac Herzog (London, 1936-1939).

II. JOURNALS AND COLLECTIONS

Articles on Jewish law appear in a variety of publications. The following are dedicated specifically to Jewish law.

Dinei Yisrael. An annual edited by A. Kirschenbaum and published by the law faculty of Tel Aviv University. It includes articles in both Hebrew and English.

The Jewish Law Annual. An annual of Jewish law edited by B. S. Jackson and published by the Jewish Law Association.

The National Jewish Law Review. The scholarly publication of the National Jewish Law Students Network, *The National Jewish Law Review* is devoted primarily to studies comparing Jewish law with the Anglo-American system.

Jewish Law and Current Legal Problems, edited by N. Rakover, records the proceedings of the First International Seminar on the Sources of Contemporary Law, incorporating twenty essays on topics of general legal interest.

The proceedings of the Second International Seminar on the Sources of Contemporary Law, on the theme, ***Maimonides as Codifier of Jewish Law*** have been edited by N. Rakover and published in a volume of the same title.

Jewish Law Association Studies records the proceedings of the Jewish Law Association's biennial conference. It contains scholarly papers on a wide range of topics in Jewish law.

Shenaton haMishpat halvri. An annual published in Hebrew by the Institute for Research in Jewish Law, Faculty of Law, Hebrew University, Jerusalem.

Additional publications that deal with issues in Jewish law include *Tarbiz*, *Sinai*, *Noam*, and *Tehumin* in Hebrew, and *Tradition*, *The Journal of Halacha and Contemporary Society*, and *The Israel Law Review* in English.

Chapter Three

REFERENCE BOOKS AND SERVICES

I. ENCYCLOPEDIAS

There are a number of reference books and indices available. There are also information services designed to aid in the location of source material in Jewish law. This chapter describes the most important of these.

Encyclopedia Talmudit contains topics of halakhah and Jewish law arranged alphabetically. To date, twenty one volumes reaching to the Hebrew letter ך have been published together with a detailed index of those volumes. Using the index, we would find that important areas of the law of bailees are treated in the first volume under the entry אומן (Artisan), which opens with a discussion of the artisan as bailee (see *Baba Metzia* 6:6).

To date, three volumes — reaching to the Hebrew letter כ — of an English translation of the *Encyclopedia Talmudit* entitled *Encyclopedia Talmudica* have been published. Reproduced below (Figure 33), is the passage dealing with the artisan's liability as a bailee.

Encyclopedia Judaica contains many entries relevant to Jewish law as well as its sages and sources. So, for instance, the law of bailees is discussed in the entry 'Bailment,' by N. Rakover. Entries relevant to Jewish law have been collected by M. Elon in *The Principles of Jewish Law*, mentioned above (p. 89). An excerpt from the entry on bailees is shown below (Figure 34).

The *Jewish Encyclopedia*, published by Funk and Wagnalls Co. at the beginning of the century also contains entries of relevance. Shown here (Figure 35) is an excerpt from the article 'Bailment' written by Louis Dembitz.

CHAPTER THREE: REFERENCE BOOKS AND SERVICES

Juedisches Lexikon contains entries in German on various topics. Those relevant to Jewish law were written by Marcus Cohn, and have been collected in *Woerterbuch des Juedischen Rechts*.

אומן ('Uman).

Artisan.

One who does either piece- or day-work, in his own or in his employer's premises.

1. *His Liability as a Bailee.*
2. *An Artisan Who Spoiled his Work.*
3. *Dismissal of Artisans.*
4. *The Rights of Artisans.*

1. *His Liability as a Bailee.*

An artisan who works on another's material in his own premises is classed as a *paid* bailee, and as such answerable for theft or loss, because, like a *paid* bailee, he benefits from the material in his keeping in that he earns money by it. This ruling holds good even on the view that a Hirer ranks as an *unpaid* bailee for the reason that he pays for the benefit he derives from the owner's property, a reasoning that could well be said to apply to an artisan who also pays for the benefit he obtains from the material entrusted to him, though not in actual money, yet with his labor. As against this stands the additional advantage enjoyed by the artisan in that he has the right to retain the finished article as a pledge until he is paid for his labor and is thus saved the trouble of having to go seeking for his money. This advantage is equivalent to receiving hire for safe keeping the article which, in turn, makes him a *paid* bailee in the eyes of the law (Mish. B.M. 80b; M. S'khirut 10, 3; E).

There are some later authorities who maintain that since in legal practice the hirer ranks as a *paid* bailee, the artisan is to be treated as such, even if he is not in actual possession of the article. Others, however, disagreeing, are of the opinion that notwithstanding the legal practice in regard to the hirer, the status

of the artisan is wholly determined by his said right of retention. For they argue, the case of the artisan is not completely analogous with that of the hirer. Whereas the hirer benefits from the very fact that the owner's property is in his keeping, the artisan does not, as he could have equally earned the money had he performed the work in the owner's premises.

Where the artisan is not paid for his work by piece, but by the day, he does not rank, according to some authorities, as a *paid* bailee, even if he works on his own premises, the argument being that the artisan is not likely to assume the responsibility of a *paid* bailee in regard to the material, in the absence of any guarantee that he will be engaged to do the work to the very end. Other authorities, however, do not admit such a distinction between an artisan who contracts to be paid for his work by piece, or by the day. In their opinion, it all depends on whether he does the work in his own premises, in which case he ranks as a *paid* bailee; or in the owner's premises, in which case he is not accounted even as an *unpaid* bailee, it being assumed that the owner in the latter case has not relegated to the artisan the responsibility for the care of the material. Others, again, hold that even if he works in the owner's premises he ranks as a *paid* bailee, by virtue of the benefit he derives in the form of earnings from his work (L).

If the owner has already paid the artisan for his work, some later authorities are of the opinion that since the latter can no longer retain the finished article as a pledge, he does not rank as a *paid* bailee. Some, however, maintain that he is still to be accounted as a *paid* bailee. For it is not the fact that he can retain the article that makes him answerable, but the benefit he derived from his labor; namely, his earnings.

Figure 33: 'Uman (Artisan),' *Encyclopedia Talmudica* (Jerusalem, from 1969).

CHAPTER THREE: REFERENCE BOOKS AND SERVICES

BAILMENT. The law relating to a bailee (i.e., one who is entrusted with the money or chattels of another) is first given in the Torah (Ex. 22:6–14) in several statements of principle from which have been deduced the three categories of bailee, known as the *shomer hinnam*; the *shomer sakhar*; and the *sho'el*.

The Shomer Hinnam. The *shomer hinnam* (שומר חנם , lit. “an unpaid bailee”) is based on the first case cited in the Torah of one who is given “money or stuff” to look after (Ex. 22:6–8). Such a bailee is not liable to the owner in the event of the goods being stolen (and the thief not apprehended), provided that he confirms on oath before the court that he had not embezzled or otherwise converted the goods to his own use (*lo shalah yado*, lit. “not put forth his hand”). In fact, his duty of care is minimal and his liability is limited only to cases where loss resulted from his own negligence (cf. BM 3:10; Sh. Ar., HM 291:1). Thus, in the absence of proven negligence and subject to his taking the prescribed judicial oath, he would also not be liable for loss caused by inevitable accident or unforeseeable damage (i.e., *ones*; Yad, Sekhirut, 1:2 and 3:1ff; Sh. Ar., HM 291:6 and 9). It was such leniency which led to this particular portion of the text being construed as relating to the *shomer hinnam* (Yad, loc cit. 1:2) compared with the higher duty of care imposed on the *shomer sakhar* (cf. Laws of Hammurapi, 125, 263–7). On the other hand, any bailee, even a *shomer hinnam*, who meddles with the deposited article without the owner's authority is considered guilty of theft (i.e., larceny by conversion; see Theft and Robbery) and is consequently liable for any subsequent loss. Indeed, according to Bet Shammai the mere formulation of his intent to “put forth his hand,” without his necessarily committing an actual act of conversion, suffices to render the bailee liable, but Bet Hillel does not extend the principle so far (BM 3:12; Yad, Gezelah, 3:11; Sh. Ar., HM 292).

The Shomer Sakhar. The *shomer sakhar* (שומר שכר , lit. “a paid bailee”) is derived from the second case in the Torah of one who is entrusted with “an ass, or an ox, or a sheep, or any beast, to keep, and it be hurt, or driven away . . .” (Ex. 22:9–12). The fact that this case refers only to animals, whereas the previous case mentions “money or stuff,” has been interpreted as drawing a distinction, not between the types of property deposited (cf. Philo, Spec. 4:35; Rashbam, Ex. 22:6), but between the types of bailment, since “the safekeeping of money or vessels is generally undertaken without payment [i.e., *shomer hinnam*], whereas that of animals is undertaken for reward [i.e., *shomer sakhar*]” (Nahmanides to Ex. 22:6). In this case the bailee is liable in the event of the goods being stolen or lost (which is further authority for the conclusion that Scripture is here referring to a *shomer sakhar*) and he cannot be absolved even by taking the

Figure 34: *The Principles of Jewish Law*, edited by Menahem Elon (Jerusalem, 1975).

I. Encyclopedias

BAILMENTS: Delivery of personal property for the purpose of a trust. A bailment arises when one person (the bailee) is lawfully put in the possession of goods belonging to another (the bailor) with the understanding that he will return them. The law of Bailments deals mainly with the duty of the bailee to return the things held in bailment and the grounds for not returning them in good condition.

I. The Scriptural law of Bailments is given in Ex. xxii. 6-14 (A. V. 7-15); and there is also a reference to deposits in Lev. v. 20-26 (A. V. vi. 1-7). In the former text the first paragraph (verses 6-8 [A. V. 7-9]) speaks of entrusting money or implements to the care of a neighbor; and as such deposits are

Classes. usually accepted without reward, this passage is understood as referring to the "gratuitous keeper" ("shomer hinnam"). The next paragraph (9-12) speaks of putting animals into the care of another; and as animals are placed every day in the care of a shepherd working for hire, this paragraph is understood to refer to a paid keeper or "receiver of hire" ("shomer sakar" or "nosé sakar"). Verses 13, 14 (A. V. 14, 15) speak of one who "borrows" some specific thing, known in Hebrew as "sho'el," while he who borrows money is known as "loweh." The sages, however, recognize a fourth kind of bailee: one who rents or hires an article ("sofer"), and they place him in a more favored position than the borrower, in analogy to the greater favor that is shown to the gratuitous keeper as compared with the receiver of hire. Thus the Mishnah (B. M. vii. 8; Shehuot viii. 1) enumerates four bailees ("shomerim"): (1) the borrower; (2) the gratuitous keeper; (3) the receiver of hire; and (4) the hirer. These classes are well known to the Roman jurisprudence and to the common law of England; but the special liability of common carriers, who are in our own time the most important of all bailees, is unknown to Bible and Talmud.

The same degree of care and extent of liability are placed upon the hirer as upon the receiver of hire: thus there are indeed four bailees; but, as the Talmud puts it, only three rules govern their liability (B. M. 93a). The "higher care," spoken of in the Talmud as resting upon the paid keeper as compared with the gratuitous one, bears in its counterpart some analogy to the *lexis culpa* and *lata culpa* of the Romans; and while the main distinction (in the Scripture the only distinction) lies between "compulsion" ("ones")—that is, overpowering force, the Roman *vis major*—on the one side, and "theft or loss," the result of the keeper's negligence, on the

Figure 35: 'Bailment,' *Jewish Encyclopedia* (New York/London, 1901-1905).

II. INDICES TO THE RESPONSA LITERATURE

As mentioned, most books of responsa contain topical indices. In addition, there exist a number of comprehensive indices:

Responsa Project of Bar Ilan University, mentioned above (p. 84), is one of the most important aids to locating responsa by subject. With the aid of a CD-ROM computer disk, responsa culled from some 250 basic works can be located quickly and easily. The disk also contains the text of the Bible, the *Mishnah*, the *Babylonian Talmud* with Rashi's commentary, the *Jerusalem Talmud*, Maimonides' *Mishneh Torah*, the *Tur*, and halakhic *Midrashim*. With the help of a computer, it is possible to obtain a listing of all sources within the data bank relating to the topic of interest, relevant passages in context, and the complete text of each responsum cited.

It is also possible to order a written summary and analysis of the sources located (see below, p. 117).

For the purposes of this guide, we located responsa containing the phrase 'a bailee who has entrusted his charge to another (*shomer shemasar leshomer*; שומר שמסר לשומר).' As it happens, the phrase appears in dozens of responsa. Shown is a list of appearances of our key phrase, in each responsum, in the context of the preceding and following words (see Figure 36).

Mafte'ah haShe'elot vohaTeshuvot shel Hakhmei Sefarad uTzefon Africa, edited by M. Elon, is published by the Institute for Research in Jewish Law of the Hebrew University. It covers responsa written by the authorities of Spain and North Africa prior to the Spanish expulsion in 1492. It comprises three parts, an index of sources, a topical index, and an historical index. The index of sources lists all references to Scripture, the *Mishnah*, *Tosefta*, *Midrashim*, and *Talmudim*. The historical index contains historical material included in the responsa and is arranged by topic. The legal index classifies the contents of the responsa according to the full range

II. Indices to the Responsa Literature

of topics in civil, criminal, administrative, public, and personal status law (see Figure 37).

The card file of *Otzar haPosekim* catalogues the great bulk of responsa literature (see above, p. 84). A summary of the responsa relating to *Even haEzer* of the *Shulhan Arukh* is being published; its eighteen volumes have reached chapter 69 of *Even HaEzer*. Indices to the responsa relating to *Hoshen Mishpat* are also being published. To date, one volume has appeared covering chapters 1-17 of *Hoshen Mishpat*.

Kuntres haTeshuvot, by Boaz Cohen. This is an important bibliographical index to responsa and includes a comprehensive introduction.

Mafte'ah liTeshuvot haGeonim, by Y. Miller, is a guide to Geonic responsa.

The *Saul Lieberman Institute for Talmudic Research* of the Jewish Theological Seminary in Jerusalem has compiled a topical card file index to 600 volumes ranging from writings of early halakhic authorities to works of modern scholarship. The index is currently being prepared for computerization.

In addition to *Pit'hei Teshuvah*, mentioned above (p. 74), there exist a number of other summaries of responsa.

Halakhah Pesukah follows the order of *Hoshen Mishpat* and summarizes the accepted rulings. It currently covers the first 27 chapters of *Hoshen Mishpat*.

Kovetz haPosekim is a comprehensive work covering the first 35 chapters of *Hoshen Mishpat*.

Knisset haGedolah, by R. Hayyim Benveniste (17th century), is a compilation of responsa following the order of the *Tur* and *Beit Yosef*.

Divrei Geonim is a summary of responsa arranged topically in alphabetical order.

מאגר: שו"ת ראשונים	החיפוש: שומר שמסר לשומר
<p>1. שו"ת הרשב"א חלק ב סימן שנא ד"ה תשובה: לאחר עור, אלא להניח ביד אחר, כעין <u>שומר שמסר לשומר</u>, אינו ראוי,</p> <p>2. שו"ת הרשב"א חלק א סימן אלף צו ד"ה תשובה אם דלא שייך למימר כהא <u>שומר שמסר לשומר</u> חייב.</p> <p>3. שו"ת הריב"ש סימן רכח ד"ה. עור יש כפי המפקיד (ל"ו), גבי <u>שומר שמסר לשומר</u>.</p> <p>4. שו"ת תשב"ץ חלק ב סימן צז ד"ה ידוע הוא ואפילו מן הסתם אינו נאמן כד"ן <u>שומר שמסר לשומר</u> א"כ חזרה</p> <p>5. שו"ת תשב"ץ חלק ב סימן קפט ד"ה אמנם כמה כגמרא כפי המפקיד (ל"ו ע"ב) <u>שומר שמסר לשומר</u> חייב משום דמצי</p> <p>6. שו"ת תשב"ץ חלק ד טור א (חוט המשולש) סימן יג ד"ה ואע"ג דאמרינן כמו שנתבאר למעלה כד"ן <u>שומר שמסר לשומר</u> עכ"ל.</p> <p>7. שו"ת תשב"ץ חלק ד טור ב (חוט המשולש) סימן טז ד"ה שאלה נשאלתי ליד אחר וק"ל (כ"מ ל"ו ע"ב) <u>שומר שמסר לשומר</u> אע"פ שריבה</p> <p>8. שו"ת תשב"ץ חלק ד טור ב (חוט המשולש) סימן טז ד"ה ועוד לעד"ג קמן דאע"ג דק"ל (כ"מ ל"ו ע"ב) <u>שומר שמסר לשומר</u> אפילו ש"ח</p> <p>9. שו"ת תשב"ץ חלק ד טור ב (חוט המשולש) סימן טז ד"ה ועתה שהוכחנ ג"כ שהוא פטור ואע"ג דק"ל <u>שומר שמסר לשומר</u> חייב מאחר</p> <p>10. שו"ת תשב"ץ חלק ד טור ב (חוט המשולש) סימן טז ד"ה ועתה שהוכח שמסר בידה ופטור דלא שייך כהא <u>שומר שמסר לשומר</u> דלא מבעיא</p> <p>11. שו"ת תשב"ץ חלק ד טור ב (חוט המשולש) סימן כד ד"ה וא"ת הן קמן אע"ג דק"ל (כ"מ ל"ו ע"ב) <u>שומר שמסר לשומר</u> וכי אפי" ש"ח</p> <p>12. שו"ת תשב"ץ חלק ד טור ג (חוט המשולש) סימן כא ד"ה תשובה לכאו נראה ששמעון חייב כד"ן כל <u>שומר שמסר לשומר</u> כדאיתא בפרק</p> <p>13. שו"ת תשב"ץ חלק ד טור ג (חוט המשולש) סימן כא ד"ה תשובה לכאו ואמר רבא (שם ע"ב) הילכתא <u>שומר שמסר לשומר</u> חייב ול"מ =לא</p> <p>14. שו"ת תשב"ץ חלק ד טור ג (חוט המשולש) סימן כא ד"ה תשובה לכאו כפורע לערב נמי לא גמדינן מדין <u>שומר שמסר לשומר</u> לענין פרעון</p>	

Figure 36: Page of printout produced by the Responsa Project of Bar Ilan University. The page lists appearances of the Hebrew phrase *shomer shemasar leshomer* in their immediate context and the precise location of each appearance.

II. Indices to the Responsa Literature

מפתח משפטי	
שומר שכר	
שומר אבידה רשבה ב , שלו; רשבה ג , נב; רשבה ה , קסו; רן , כ	דמי אבידה ר' גם אבידה , שמירת האבידה
רשבה א , אלף כט; רשבה ב , שלו; רשבש , שלה	אב המקבל סבלונות בתו
ריבש ח , כג	אומן ר' גם שומר משכון
תשבץ ב , קעד; רסו ; רשבש , תקעה	אפוטרופוס ר' גם אפוטרופוס
רשבה ד , קמו; רמב ; רשבה ה , ק	התחייבות לשמירה הודית
קא ; רשבש , שעח	שותפים
ליפסיא , קצא; רשבה ב , שלב; ראש , צג, א; ריבש , רעט; ריבש ח , ב	רשבה ב , שמ; ראש , פט, ד; ראש ו , צז; ריבש , שמו;
רשבש , שעח	בפשיעה — חייב רק זה שפשע
ליפסיא , קצא	מי שיש לו רשות להשתמש בפקדון
רמבן , מז; רשבה ב , שלו;	המקבל שכר תמורת שמירתו, בין בסופה ובין בתחילתה
ריבש ח , כג; רשבש , שלה	אלף ט; רשבה ג , נב; רשבה ה , קסו
רשבה ב , רז; רשבה ג , קלא	סרסור
רשבה ב , שפח	שואל — לאחר ימי השאלה
	שומר משכון ר' גם אומן; משכון
רף , ס; רי מיגאש , קכא;	
רשבה א , אלף ט; אלף כט; רשבה ב , שלו; רשבה ג , נב; רשבה ה , קסו; ראש , צ, ג; יא ; קח , כז; רן , כ; ריבש , שפא; תשבץ ב , קעט; רשבש , שז; תקעה	
כל תופס חפץ של חבירו ויש לו הנאה שמבטיח את מעותיו	
רשבה ה , קסו; רשבש , תקעה	ריבוי שומרים ר' אחריות השומר , ריבוי שומרים
	שומר שמסר לשומר — חייב ר' גם אחריות השומר; דרך השמירה ;
	השבת הפקדון
רף , ריז; רפב ; רמה , שג; רשבה ב , שנא; ראש , צז, א; תשבץ ב , קפט; תשבץ ג , פ; רשבש , שמו	
רף 1, תקג; רשבה ד , יב; ראש ו , כ;	השבת הפקדון על ידי שליח
ראש ו (92); ריבש , קכח (כח 3); רשבש , שלח	כשיש עדים שהחפץ אבד באופן שבו הוא פטור תשבץ ג , פ; רשבש , קיא
ריבש , רכח (ס 1)	מורשה רשאי למנות מורשה נוסף
רמה , שג;	כשמטרת ההפקדה מלמדת על הסכמה להעברת הפקדון
רשבש , שלח	כשהפקדון הוחזר לשומר הראשון — פטור
תשבץ ג , פ	כפשיעה
ראש ו , א	כשהשומר השני הוא כדרגת אחריות גבוהה יותר
תשבץ ב , צז;	
רשבש , שלה	

Figure 37: *Mafte'ah haShe'elot vaha Teshuvot shel Hakhmei Sefarad uTzefon Africa*, edited by M. Elon (Jerusalem, 1986).

III. BIOGRAPHY

Biographies contribute valuable insight into the life, times, and work of the authorities who have shaped the literature of Jewish law. Several biographical reference works are listed here.

Encyclopedia leToledot Gedolei Yisrael, edited by M. Margalioth, covers post-Geonic authorities who lived between the eleventh and eighteenth centuries.

Hakhmei Yisrael, by D. Halahmi, deals with authorities from the thirteenth century to the date of its publication.

Atlas Etz Hayyim, by R. Halperin, contains biographies as well as chronological and genealogical diagrams. Its scope is from the creation of the world to the present. An example is shown below (Figure 38).

haMishpat halvri, by Prof. M. Elon (see above, p. 87). Part III contains biographical information on the major halakhic figures.

A History of Jewish Literature, by M. Waxman, contains useful biographical material.

III. Biography

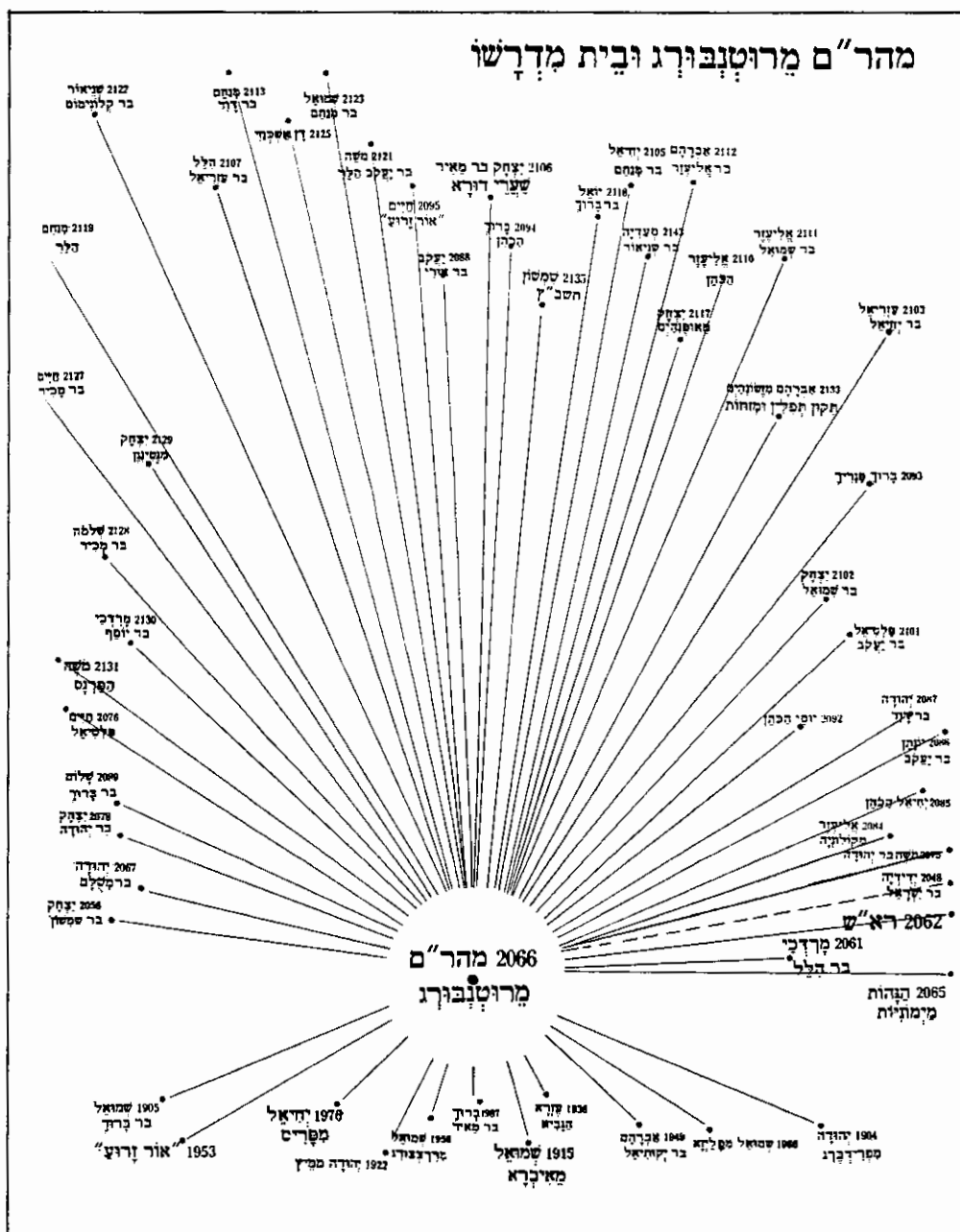


Figure 38: 'The School of R. Me'ir of Rothenburg,' Raphael Halperin, *Atlas Etz Hayyim* (Tel Aviv, from 1973).

IV. BIBLIOGRAPHY

There are three bibliographical reference works of note.

Otzar haMishpat, A Bibliographical Index to Jewish Law, by N. Rakover, is a comprehensive listing of books, articles, encyclopedia entries, essays, and unpublished doctoral dissertations, appearing in Hebrew. Volume one covers material published through 1973 and contains some 12,000 entries; volume two covers the years 1974 through 1989 and contains approximately 9,000 entries.

In volume one of *Otzar haMishpat*, the entry on bailees (*shomerim*) is located on page 414; it cites some fifty references. In volume two, the entry appears on page 421 and contains some sixty references.

The Multi-Language Bibliography of Jewish Law, by N. Rakover, is similar to *Otzar haMishpat*, and contains some 15,000 references to works published before 1989 in languages other than Hebrew. The subject of bailment is found on pages 690-691, entries 13703-13719 (see Figure 39).

Reshimat Ma'amarim beMada'ei haYahadut is an annually published listing of journal articles on Jewish topics appearing in Hebrew and other languages. It has appeared since 1966, and some volumes contain a section on Jewish law. A computer search of all volumes can be executed at the Jewish National and University Library in Jerusalem.

A selected bibliography of works published between 1925 and 1967 on the topics of Talmudic and Midrashic literature was prepared by A. Gutmann, and appears in the appendix (pp. 397-415) to the 1968 edition of *Introduction to the Talmud* by M. Mielziner.

IV. Bibliography

BAILMENTS	
שומרים	
13703	Amram, David Werner: Borrower (שואל). JE 3, p. 327-328
13704	Biberfeld, Ph.: Das Problem der שמירה בבעלים. NZ 2 (1931-32), p. 351-357; 3 (1932-33), p. 30-35
13705	Cohn, Marcus: Haftung der Verwahrer (שומרים). Jüd. Lex. 2, p. 1325-1328 = WJR, p. 52-53
13706	Cohn, Marcus: Leihe (שאלה). Jüd. Lex. 3, p. 1034-1035 = WJR, p. 57
13707	Cohn, Marcus: Verwahrung (פקרון). Jüd. Lex. 5, p. 1209-1210 = WJR, p. 70
13708	Daube, David: Negligence in the early talmudic law of contract (Peshiah). Jubilee vol. Schulz, vol. 1, 1951, p. 124-147
13709	Daube, David: Josephus on suicide and liability of deposit. JRe, N.S. 9 (1964), p. 212-224 = Jubilee vol. Belaunde, p. 213-243
13710	Dembitz, Lewis N.: Bailments. JE 2, p. 456-459
13711	Encyclopedia Talmudica: Artisan אומן. Vol. 1, p. 382-392
13712	Fensham, F. Charles: New light on Exodus 21,6 and 22,7 from the laws of Eshnunna. JBL 78 (1959), p. 160-161
13713	Finkelstein, Louis: An old Babylonian contract and Genesis 31,38 f. JAOS 88 (1968), p. 30-36
13714	Greenstone, Julius H.: Hiring and letting. JE 6, p. 406-408
13715	Holmes, Peter: Deposit. Kitto 1, p. 664-666
13716	Hurewitsch, Nathan: Die Haftung des Verwahrers nach talmudischem Recht. ZVR 27 (1912), p. 425-439
13717	Keyzer, Salomo: Dissertatio de tutela secundum jus Thalmudicum. Dissert. Leiden 1847, 4+38 p.
13718	Price, Ira M.: The laws of deposit in early Babylonia and the Old Testament. JAOS 47 (1927), p. 250-255
13719	Rakover, Nahum: Shomerim (bailees). EJ 14, p. 1455-1458 = PJJ (bailment), p. 256-260

Figure 39: *The Multi-Language Bibliography of Jewish Law*, edited by Nahum Rakover (Jerusalem, 1990).

V. REFERENCE

A. The *Talmud* and Rabbinic Decisions

Ein Mishpat — Ner Mitzvah (see above, p. 47) is printed on the page of the *Talmud* and indicates the decisions of *Mishneh Torah*, *Tur*, and *Shulhan Arukh* on the topic under discussion.

Einayim laMishpat, by Y. Ari'eli, in three volumes, supplements the *Ein Mishpat — Ner Mitzvah*. It is arranged according to the page order of the *Talmud* and refers the reader to additional decisions of *Mishneh Torah* and *Shulhan Arukh*.

While the above works furnish references from the *Talmud* to the codes, the following works refer the reader of the codes to the talmudic sources.

Be'er haGolah (see above, p. 72) appears on the page of *Shulhan Arukh* and refers the reader to talmudic and other sources of each law.

Be'ur haGra (see above, p. 72) adds to the sources cited by *Be'er haGolah*. It is also printed on the page of standard editions of *Shulhan Arukh*.

B. Parallel Passages Within the *Talmud*

Masoret haShas (see above, p. 48) is printed on the page of the *Talmud* and cites parallels within the *Babylonian Talmud*.

Yefeh Einayim is printed among the commentaries at the back of standard volumes of the *Talmud* and cites parallel passages in the *Jerusalem Talmud* and *Midrashim*.

V. Reference

C. Rabbinic Literature and the Bible

Torah haKetuvah vahaMesurah, by A. Hyman (2nd edition, revised by D. Hyman, Tel Aviv, 1979), lists for each verse in the Bible every reference in the *Talmudim*, *Midrashim*, and the writings of Maimonides.

Torah Temimah, by B. Epstein, assembles and explains rabbinic quotations from the *Talmudim* and *Midrashim* and keys them to the verses of the Pentateuch.

Torah Shelemah, by R. Menahem M. Kasher, is another work that follows the order of the Pentateuch collecting on each verse every passage from the *Talmudim*, *Midrashim*, *Geonim*, and Maimonides. *Torah Shelemah* also adds notes of explanation and supplementary excursuses. To date, forty-three volumes have been published reaching the latter part of the Book of Numbers. Nine volumes reaching *Parashat Beshalah* have been published in English.

VI. DICTIONARIES

A. Hebrew

heArukh, by R. Natan ben Yehi'el of Rome (11th century). The most recent edition was prepared by A. Kohut a century ago under the name *Arukh haShalem*, in nine volumes. *heArukh* is an alphabetically arranged dictionary of terms and phrases of the *Talmud*. An entry will usually include a translation and explanation of the word or phrase plus additional information of relevance.

Milon Talmudi, by B. Karu.

Otzar haTalmud, by J. Shechter, is a concise lexicon of talmudic terminology.

Milon Arami-Ivri leTalmud Bavli, by E. Z. Melamed.

B. English

A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature, by M. Jastrow, is a comprehensive dictionary that not only furnishes definitions of terms, but cites and explains many examples of their use in context. It is, thus, also a useful aid to finding frequently used terms and phrases (see Figure 40).

Introduction to the Talmud, by M. Mielziner, is a comprehensive introduction to talmudic literature and contains explanations of key talmudic terms and phrases. These may be located with the aid of the index.

C. German

Woerterbuch ueber die Talmudim und Midraschim, prepared by J. Levy in 1896.

VII. ABBREVIATIONS

Rabbinic literature routinely abbreviates not only words and names but entire phrases. Certain texts are nearly incomprehensible without a guide to abbreviations.

Otzar Rashei Tevot, edited by S. Ashkenazi and D. Yarden.

Eshnav haTalmud, by E.Z. Melamed, contains a listing of commonly used abbreviations.

Introduction to the Talmud, by M. Mielziner (see above, p. 110).

Aiding Talmud Study, by A. Carmel, contains a list of abbreviations and technical terms.

VIII. ANTHOLOGIES

A. Halakhic Dicta

For locating the source of a particular halakhic dictum, there are a number of useful anthologies. Some anthologies list halakhic dicta alphabetically; thus, if the precise wording is known, finding the dictum is quite simple.

Otzar Ma'amrei Halakhah, by Y. Hasidah.

Otzar Divrei Hakhamim uFitgameihem by A. Hyman.

Nivei Talmud, a new anthology of rabbinic dicta on matters of legal and judicial interest, recently published by N. Rakover and R. Ya'akobi.

Other anthologies list dicta according to subject matter:

Otzar haAggadah, by M.D. Gross, lists rabbinic sayings according to topic.

B. Responsa

Mishpat veHalakhah—Mivhar Teshuvot, by Y. Bazak, anthologizes responsa on property and penal law. The responsa are arranged according to author, the first volume containing material written prior to the Spanish expulsion in 1492, and the second volume, material from the period following the Spanish expulsion ending with the time of R. Yosef Karo.

IX. MODERN LAW

A. Jewish Law in Contemporary Legislation

Jewish Law in the Debates of the Knesset, by N. Rakover (2 vols., Hebrew), is a compilation of citations from Jewish law found in the record of the Knesset's legislative discussions. The work shows the connection between Jewish law and Israeli legislation.

Page 778, for example, cites the Israeli Bailees Law, 5727-1967 (see Appendix I). Subsections (b)—(d) of section 1 define the various types of bailee: gratuitous bailee, bailee for reward, and borrower. Section 2 establishes the extent of each bailee's liability. The Bailees Law incorporates many of the fundamentals of bailment in Jewish law.

In the explanatory notes to the original Bailees Law bill (quoted on p. 780), we read: 'With regard to the liability resulting from the different types of bailment, the law proposed herein follows the principles of Jewish law (*Mishnah Shevu'ot* 8:1: 'There are four bailees, the gratuitous bailee, the borrower, the bailee for hire, and the hirer...').'

Further on (pp. 780-790), we find the parallels between the Bailees Law and Jewish law cited by the Minister of Justice and Members of Knesset in the bill's first reading before the legislature.

B. Jewish Law in Contemporary Judicial Decisions

Modern Applications of Jewish Law — Resolution of Contemporary Problems According to Jewish Sources in Israeli Courts, by N. Rakover (2 vols.), is a compilation of hundreds of judicial decisions of the Israeli Supreme Court and district courts which are based upon or cite Jewish law. The section on bailment is found on pages 683-689 (see Figure 41). On page 685, we find the decision in *Ali v. Sasson*, (1982) 36(3) *P.D.* 281, 289-292, in which Judge E.

BAILEES

C.A. 341/80

ALI v. SASSON *et al.*

(1982) 36(3) P.D. 281, 289-292

A football pools coupon filled in by the appellant, having subsequently been found to be missing, was reported to the football pool organisers and consequently was not included in the weekly competition. The appellant claimed that his coupon had contained the winning forecast and he was entitled to the first prize. His action was dismissed in the District Court.

Sheinbaum J: The classification of bailees under the Bailees Law, 1967, follows Jewish law, as explained in the Explanatory Notes to the Bill of the Law. See also Z. Tzeltner, "The Law of Contracts in its Development During Twenty Years Since the Establishment of the State" (1975) 29 *haPraklit* 56, 71, and N. Rakover, "The Jewish Law Sources of the Bailees Law, 1967" (1968) 24 *haPraklit*, 208, 211. Since Jewish law was considered by the draftsmen of the Law, we may therefore be assisted by Jewish law in understanding the concepts employed by the statute (although not all its provisions follow the rules of Jewish law).

We learn from the *Mishnah, Shevuot* 8:1, that—

There are four bailees, the unpaid bailee, the borrower, the paid bailee and the hirer. The unpaid bailee takes an oath in all cases, the borrower pays in all cases, the paid bailee and the hirer take an oath in the case of injury, capture or death, but pay for loss or theft.

We also learn from *Baba Metzia* 3:11:

If a man deposits money with his neighbour who binds it up and slings it over his shoulders or entrusts it to his minor son or daughter and locks the door before them but not properly, he is liable because he

Figure 41: *Modern Applications of Jewish Law*, edited by Nahum Rakover (Jerusalem, 1992).

CHAPTER THREE: REFERENCE BOOKS AND SERVICES

Sheinbaum applies the principles of Jewish law in his interpretation of Israeli Legislation. In the following excerpt, Judge Sheinbaum explains his basis for doing so:

The classification of bailees under the Bailees Law, 1967, follows Jewish law, as explained in the Explanatory Notes to the Bill of the Law.

...Since Jewish law was considered by the draftsmen of the law, we may be assisted by Jewish law in understanding the concepts employed by the statute (although not all its provisions follow the rules of Jewish law).

X. SUPPORT SERVICES

Sherut Mishpat Ivri (Jewish Law Service) is a division of the Responsa Project (see above, p. 100) that provides information on Jewish law pertinent to issues adjudicated in Israeli courts. The service, in addition to locating relevant sources in the responsa literature, supplies a summary of them. The service may be reached through the offices of the Responsa Project, Bar Ilan University, Ramat Gan 52100, Israel.

Otzar haPosekim (see above, p. 84) provides summaries of topics found in its card index. Correspondence may be directed to *Otzar haPosekim*, 3 Torah miTzion Street, Jerusalem 94401, Israel. In addition, a computerized link providing indices of responsa relating to *Hoshen Mishpat* is now available.

Moreshet haMishpat beYisrael (The Jewish Legal Heritage Society). Passage of the Foundations of Law Act, 5740-1980 established an organic relationship between Israeli legislation and 'the principles of freedom, justice, equity, and peace of the Jewish heritage.' In response, the Jewish Legal Heritage Society was founded under the leadership of Prof. Nahum Rakover and the late Dr. Yitzhak Kister. The society acts, *inter alia*, as a center for dissemination of information to members of the Israeli legal community on matters related to implementation of the Foundations of Law Act. Interested parties may receive bibliographical and related assistance, and lawyers may receive Jewish legal opinions for use in litigation. Inquiries should be directed to *Moreshet haMishpat be Yisrael*, P.O.B. 7483, Jerusalem 91074, Israel.

APPENDICES

- I. Bailees Law, 5727–1967
- II. Tractate of the *Mishna* and *Talmud*
and Their Abbreviations

APPENDIX I

BAILEES LAW, 5727-1967*

1. (a) Holding property by way of bailment is the lawful possession thereof otherwise than by virtue of ownership. **Bailment and bailees.**
- (b) A bailee of property who himself derives no benefit from the bailment is a gratuitous bailee.
- (c) A bailee of property who receives consideration for or derives some other benefit from the bailment, and who is not a borrower, is a bailee for reward.
- (d) A bailee of property which he is to use or enjoy without giving consideration is a borrower.
2. (a) A gratuitous bailee is liable for loss of or damage to the property if it is caused through his negligence. **Liability of bailees.**
- (b) A bailee for reward is liable for loss of or damage to the property unless it is caused by circumstances which he need not have foreseen and the consequences of which he could not have averted: Provided that if the purpose of safekeeping is subordinate to the principal purpose of his possession, the bailee is exempt from liability if the loss or damage is caused otherwise than through his negligence.
- (c) A borrower is liable for loss of or damage to the property, whatever its cause: Provided that his liability shall not be more stringent than that of an unlawful possessor.

* Passed by the Knesset on the 2nd Nisan, 5727 (12th April, 1967) and published in *Sefer Ha-Chukkim* No. 496 of the 11th Nisan, 5727 (21st April, 1967), p. 52; the Bill and an Explanatory Note were published in *Hatza'ot Chok* No. 676 of 5726, p. 52.

I. Bailees law, 5727-1967

- (d) A bailee who knows that damage for which he is not liable under subsections (a) to (c) is likely to be caused to the property, and who does not notify the owner of the property to such effect within a reasonable time or take reasonable steps to notify him, shall be liable for that damage to the extent that the notification would have enabled the owner of the property to prevent it.
- More stringent liability.** 3. Where a gratuitous bailee or bailee for reward, having received any property for his personal safekeeping, delivers it to another person without being explicitly or implicitly authorised to do so, his liability for loss of or damage to the property shall be that of a borrower.
- Restriction on liability.** 4. A bailee is not liable for loss of or damage to the property caused by ordinary use thereof in accordance with the conditions of the bailment or by natural deterioration or by a defect existing therein at the commencement of the bailment, but nothing in this provision shall reduce his liability for negligence.
- Compensation and indemnification.** 5. (a) Where the bailee is liable for the loss of or damage to the property, the owner of the property shall be entitled to the compensation payable for breach of contract.
(b) Where the bailee is not liable for loss of or damage to the property but has a right to compensation or indemnification for such loss or damage against a third party, the owner of the property may claim his damage from the bailee out of the compensation or indemnification due to the bailee.
- Authority to act in an emergency.** 6. A bailee may do any urgent and unforeseen act reasonably required to prevent damage likely to be caused to the property, as if the owner of the property had authorised him to do so.
- Sub-bailee.** 7. (a) Where a bailee has delivered the property to a sub-bailee, the acts and omissions of the sub-bailee are deemed to be the acts and omissions of the bailee, and the sub-bailee is liable to the owner of the property to the same extent as he is liable to the bailee.
(b) The provisions of subsection (a) shall apply whether the property was delivered with or without the permission of the owner thereof: Provided that they shall not derogate from the liability of the bailee under section 3 or under any other law.
- Indemnification.** 8. (a) The owner of the property shall indemnify a gratuitous bailee, as well as the holder of a pledge or other security, for reasonable expenses

I. Bailees law, 5727-1967

incurred and liabilities reasonably contracted in consequence of the bailment.

(b) Every bailee is entitled to indemnification as provided in subsection (a) in consequence of an act done by him under section 6.

9. The bailee shall have a lien on the property to the extent of what is due to him from the owner of the property in consequence of the bailment. Lien.

10. The mutual debts of the owner of the property and the bailee in consequence of the bailment may be set off. Set-off.

11. Where a bailee is entitled to return the property to its owner and has done what he was bound to do in order to return it, but the owner has not accepted the property, the bailee may apply to the court for directions as to what to do with the property and shall be exempt from all liability if he acts in good faith in accordance with the directions of the court; and if he is a bailee for reward or a borrower, his liability for loss of or damage to the property and his right to indemnification shall be that of a gratuitous bailee, even if he has not applied to the court for directions. Property not taken back by owner.

12. (a) In this section — Provisions as to hotel proprietor.
“hotel” includes a boarding-house and any other guest-house;
“hotel proprietor” includes a person managing a hotel;
“guest” means a person who is given sleeping accommodation in a hotel.

(b) In respect of a guest’s property situated in the hotel, the hotel proprietor shall be treated as a bailee for reward.

(c) Where the property is moneys, securities or other valuables, subsection (b) shall not apply unless the guest has informed the hotel proprietor about them and, upon his request, delivered them into his possession.

(d) The hotel proprietor is exempt from liability under this section if he has not been notified of the loss of or damage to the property within a reasonable time after the guest knew or should have known about it.

I. Bailees law, 5727-1967

(e) The hotel proprietor shall have a lien on a guest's property situated in the hotel, or which has been delivered into his possession under subsection (c), to the extent of what is due to him both in consequence of the bailment and of the accommodation.

- Definition. 13. For the purposes of this Law, "owner of property", in relation to a bailee, means any person for whom the bailee holds the property.
- Scope of application. 14. The provisions of this Law shall apply to the bailment of property where no special provisions applicable to the matter exist in any other law and no different intention appears from the agreement between the parties.
- Repeal. 15. The Sixth Book of the Mejele, except section 770 thereof, is hereby repealed.
- Commencement and transitional provision. 16. This Law shall come into force on the 26th Elul, 5727 (1st October, 1967). A bailment of property which commenced before the coming into force of this Law shall continue to be governed by the previous law.

LEVI ESHKOL
Prime Minister

YAAKOV S. SHAPIRO
Minister of Justice

SHNEUR ZALMAN SHAZAR
President of the State

APPENDIX II

Tractates of the *Mishnah* and *Talmud* and Their Abbreviations

Tractate		Tractate	
<i>Arakhin</i>	Ar.	<i>Ma'aser Sheni</i>	MS
<i>Avodah Zarah</i>	A. Zar.	<i>Makhshirin</i>	Maksh.
<i>Avot</i>	Avot	<i>Makkot</i>	Mak.
<i>Baba Batra</i>	BB	<i>Megillah</i>	Meg.
<i>Baba Kama</i>	BK	<i>Me'ilah</i>	Meil.
<i>Baba Metzia</i>	BM	<i>Menahot</i>	Men.
<i>Beitzah</i>	Betz.	<i>Middot</i>	Mid.
<i>Bekhorot</i>	Bek.	<i>Mikva'ot</i>	Mik.
<i>Berakhot</i>	Ber.	<i>Mo'ed Katan</i>	MK
<i>Bikkurim</i>	Bik.	<i>Nazir</i>	Naz.
<i>Demai</i>	Dem.	<i>Nedarim</i>	Ned.
<i>Eduyyot</i>	Eduy.	<i>Nega'im</i>	Neg.
<i>Eruvin</i>	Er.	<i>Niddah</i>	Nid.
<i>Gittin</i>	Git.	<i>Oholot</i>	Oho.
<i>Hagigah</i>	Hag.	<i>Orlah</i>	Or.
<i>Hallah</i>	Hal.	<i>Parah</i>	Par.
<i>Horayot</i>	Hor.	<i>Pe'ah</i>	Pe'ah
<i>Hullin</i>	Hul.	<i>Pesahim</i>	Pes.
<i>Kelim</i>	Kel.	<i>Rosh haShanah</i>	RH
<i>Keritot</i>	Ker.	<i>Sanhedrin</i>	Sanh.
<i>Ketubot</i>	Ket.	<i>Shabbat</i>	Shab.
<i>Kiddushin</i>	Kid.	<i>Shekalim</i>	Shek.
<i>Kilayim</i>	Kil.	<i>Shevi'it</i>	Shevi.
<i>Kinnim</i>	Kin.	<i>Shevu'ot</i>	Shevu.
<i>Ma'aserot</i>	Maas.	<i>Sotah</i>	Sot.

Appendix II

Tractate

Sukkah
Ta'anit
Tamid
Temurah
Terumot
Tevul Yom
Tohorot

Suk.
Taan.
Tam.
Tem.
Ter.
TY
Toh.

Tractate

Uktzin
Yadayim
Yevamot
Yoma
Zavim
Zevahim

Uk.
Yad.
Yev.
Yom.
Zav.
Zev.

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