

Marks of Genius: Maimonides' Laws of Borrowing (Handout)

Source Sheet by Eli Brackman

Draft manuscript of *Mishneh Torah* (Repetition of the law) at the Bodleian Library.

Moses Maimonides (1135-1204) was the greatest Jewish scholar of the Middle Ages. As a rabbinic authority, his finest achievement was the *Mishneh Torah* or *Repetition of the Law*. Completed in 1180, it is a classification by subject matter of the entire talmudic and post-talmudic literature of Jewish law. This manuscript fragment contains drafts, in Maimonides' own hand, of parts of the *Mishneh Torah*: the end of the section on Laws of Hire and the beginning of the section on Laws of Borrowing and Deposit. It came to light in the 1890s with the discovery of the Cairo Genizah. A *genizah* is a special chamber attached to a synagogue where discarded pages containing the name of God were stored, to protect that name from profanation..

MS. Heb. d. 32, fols. 53b-54a

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Autograph

In Hebrew; ten leaves, 225 x 155 mm

Mishneh Torah, Borrowing and Deposit 1:1

When a person borrows utensils, an animal or other movable property from a colleague, and it is lost or stolen, or even if it is destroyed by factors beyond his control - e.g., an animal is injured, taken captive or dies - the borrower is required to make restitution for the entire worth of the article, as stated in Exodus 22:13: "If a person borrows an animal from a colleague and it will become injured or die, and the owner is not with him, he must make financial restitution."

When does the above apply? When the loss due to factors beyond his control does not take place while the borrower is working with the animal.

If, however, a person borrows a colleague's animal to plow, and it dies while plowing, the borrower is not liable.

If, however, the animal dies before he plowed with it or after he plowed with it, or he rode upon it or threshed with it and the animal died while he was threshing or riding, the borrower is liable to make financial restitution. Similar laws apply in all analogous situations.

Similarly, if a person borrows an animal to travel to a particular place and the animal dies under him on that journey, he borrows a bucket to fill water with it and it falls apart in the cistern while he is filling it, he borrows a hatchet to split wood and it breaks because of the chopping while he is splitting the wood, he is not liable. Similar laws apply in all analogous situations.

The rationale is that he borrowed the article solely to perform this task, and he did not deviate from his original request.

Bava Metzia 93a

There are four types of custodians: an unpaid custodian, the borrower, a paid custodian and a renter. An unpaid custodian swears with regard to everything and is exempt of liability. The borrower is liable for everything, (even unavoidable mishap, if it did not incur during the item's normal use). The paid custodian and the renter swear and are exempt of liability with regard to unavoidable mishap, like an animal that broke a limb, or was captured by armed brigands or died of natural causes and they pay for loss or theft.

Bava Metzia 96b

The Talmud discusses another law concerning a borrower. The sages enquired if an animal became weekend on the account of the work for which it was borrowed, what is the law? Is the borrower liable for damages?

The Talmud responds: One of the Rabbis said to the questioner and Rav Chilkiyah son of Rav Avya was the respondents name "it follows by implication from what you ask that if the animal the borrower would be obligated to pay. But even in such a case let the borrower say to the owner: 'I did not borrow your animal to place it permanently in an enclosure'?"

The Talmud concludes: Rather Rava said it is not necessary to state where an animal became weakened on account of its work that the borrower is exempted from liability but rather even when the animal died on account of its work the borrower is also exempted from liability for he can say to the owner: 'I did not borrow your animal to place it permanently in an enclosure'.

The Talmud discusses the concept of 'dying on account of work' as it relates to a borrowed tool. There was once a certain man who borrowed an axe from his friend while the borrower was using it for the stipulated purpose the axe broke. The borrower came before Rava for judgement. Rava told him: go and bring witnesses who can testify that you did not deviate from the stipulated work and you will be exempted from liability.

The Talmud mentions a case similar to the one that came before Rava: There was once a certain man who borrowed a bucket from his friend. While the borrower was using it for the stipulated purpose the bucket broke. The borrower came before Rav Pappa for a ruling. Rav Pappa told him: bring witnesses who can testify that you did not deviate from the stipulated work and you will be exempted from liability.

The Talmud further explores what constitutes a work related death. There was once a certain man who borrowed a cat from his friend to chase away mice. It happened, however, that the mice united against the cat and killed it. Rav Ashi sat and inquired: In such a case what is the law? Is it like the case of the animal that died on account of its work or not

Rav Mordechai who present said to Rav Ashi: Thus said Avimi from Hagronia in the name of Rava: Regarding a man whom women kill (by overindulgence in sexual activity) there is no judgement and no judge. The point of the metaphor is that the man's death was totally unexpected, similarly the borrower need not have anticipated that the cat would fall victim to its appetite for mice. Hence the cat's demise clearly qualifies as a work related death for which the borrower is exempt from liability.

Bava Metzia 93b

If the animal died of natural causes, it is considered an unavoidable mishap. However, if the custodian

afflicted it i.e. he starved it or made it stand in the sun during the summer or in the cold during the winter and it died, even if the death is attributable to another cause at a later time, it is not considered an unavoidable mishap and the custodian is liable, for perhaps it died as a delayed reaction to its mistreatment.
