

[Previous Folio](#) / [Baba Kamma Directory](#) / [Tractate List](#) / [Navigate Site](#)

## Babylonian Talmud: Tractate Baba Kamma

### Folio 113a

but if he was then in town this would not be so, as there is a possibility that they<sup>1</sup> might not transmit the summons to him, thinking that the usher of the Court of Law will himself surely find him and deliver it to him. Again, we do not apply this rule except where the party would not have to pass by the door of the Court of Law, but if he would have to pass by the door of the Court of Law this would not be so, as they<sup>2</sup> might say that at the Court of Law they will surely find him first and deliver him the summons. Again, we do not rule thus except where the party was to come home on the same day, but if he had not to come home on the same day this would not be so, for we might say they would surely forget it altogether.

Raba stated: Where a Pethiha was written upon a defaulter for not having appeared before the court, it will not be destroyed so long as he does not [actually] appear before the court.<sup>3</sup> [So also] if it was for not having obeyed the law, it will not be destroyed until he [actually] obeys the law;<sup>3</sup> this however is not correct: as soon as he declares his intention to obey, we have to destroy the Pethiha.

R. Hisda said: [In a legal summons] we cite the man to appear on Monday, [then] on Thursday and [then] on the next Monday, [i.e.] we fix one date and then another date after one more date, and on the morrow [of the last day] we write the Pethiha.

R. Assi<sup>4</sup> happened to be at R. Kahana's where he noticed that a certain woman had been summoned to appear before the court on the previous evening, [and as she failed to appear] a Pethiha was already written against her on the following morning. He thereupon said to R. Kahana: Does the Master not accept the view expressed by R. Hisda that [in a legal summons] we cite the defendant to appear on Monday, [then] on Thursday and [then] on the next Monday? He replied: This applies only to a man who might be unavoidably prevented, through being out of town, but a woman, being [always] in town and still failing to appear is considered contumacious [after the first act of disobedience].

Rab Judah said: We never cite a defendant to appear either during Nisan,<sup>5</sup> or during Tishri,<sup>5</sup> or on the eve of a holy day or on the eve of a Sabbath. We can, however, during Nisan cite him to appear after Nisan, and so also during Tishri we may cite him to appear after Tishri, but on the eve of the Sabbath we do not cite him to appear after Sabbath, the reason being that he might be busy<sup>6</sup> with preparations for Sabbath.<sup>7</sup> R. Nahman said: We never cite the participants of the Kallah<sup>8</sup> during the period of the Kallah or the participants of the Festival sessions<sup>9</sup> during the Festive Season.<sup>10</sup> When plaintiffs came before R. Nahman [and demanded summonses to be made out during this season] he used to say to them: Have I assembled them for your sake? But now that there are impostors,<sup>11</sup> there is a risk [that they purposely came to the assemblies to escape justice].<sup>12</sup>

BUT IF THERE WAS ANYTHING [LEFT] WHICH COULD SERVE AS SECURITY, THEY WOULD BE LIABLE TO PAY. Rabbi taught R. Simeon his son: The words 'ANYTHING WHICH COULD SERVE AS SECURITY' should not [be taken literally to] mean actual security, for even if he left a cow to plough with or an ass to drive after, they would be liable to restore it to save the good name of their father. R. Kahana thereupon asked Rab: What would be the law in the case of a bed upon which they sit, or a table at which they eat?<sup>13</sup> — He replied<sup>14</sup> [with the verse], Give instructions to a wise man and he will yet be wiser.<sup>15</sup>

**MISHNAH.** NO MONEY MAY BE TAKEN IN CHANGE EITHER FROM THE BOX OF THE CUSTOMS-COLLECTORS<sup>16</sup> OR FROM THE PURSE OF THE TAX-COLLECTORS;<sup>16</sup> NOR MAY CHARITY BE TAKEN FROM THEM, THOUGH IT MAY BE TAKEN FROM THEIR [OWN COINS WHICH THEY HAVE AT] HOME OR IN THE MARKET PLACE.

**GEMARA.** A Tanna taught: When he gives him<sup>17</sup> a *denar* he may receive back the balance [due to him].<sup>18</sup>

In the case of customs-collectors, why should the dictum of Samuel not apply that the law of the State is law?<sup>19</sup> — R. Hanina b. Kahana said that Samuel stated that a customs-collector who is bound by no limit [is surely not acting lawfully]. At the School of R. Jannai it was stated that we are dealing here with a customs-collector who acts on his own authority.<sup>20</sup> Some read these statements with reference to [the following]: No man may wear a garment in which wool and linen are mixed<sup>21</sup> even over ten other garments and even for the purpose of escaping the customs.<sup>22</sup> [And it was thereupon asked], Does not this Mishnaic ruling conflict with the view of R. Akiba, as taught: It is an



[unqualified] transgression to elude the customs;<sup>23</sup> R. Simeon however, said in the name of R. Akiba that customs may [sometimes] be eluded<sup>24</sup> [by putting on garments of linen and wool]. Now, regarding garments of linen and wool I can very well explain their difference<sup>25</sup> to consists in this, that while one master<sup>26</sup> maintained that an act done unintentionally could not be prohibited;<sup>27</sup> the other master maintained that an act done unintentionally should also be prohibited;<sup>28</sup> but is it not a definite transgression to elude the customs? Did Samuel not state that the law of the State is law? — R. Hanina b. Kahana said that Samuel stated that a customs-collector who is bound by no limit [is surely not acting lawfully]. At the School of R. Jannai it was stated that we were dealing here with a customs-collector who acted on his own authority.<sup>29</sup>

Still others read these statements with reference to the following: To [escape] murderers or robbers or customs-collectors one may confirm by a vow a statement that [e.g.] the grain is *terumah*<sup>30</sup> or belongs to the Royal Court, though it was not *terumah* and though it did not belong to the Royal Court.<sup>31</sup> But [why should] to customs-collectors [not] apply the statement made by Samuel that the law of the State has the force of law? R. Hanina b. Kahana said that a customs-collector who is bound by no limit [is surely not acting lawfully]. At the school of R. Jannai it was stated that we were dealing here with a customs-collector who acted on his own authority.<sup>32</sup> But R. Ashi said: We suppose the customs-collector<sup>33</sup> here to be a heathen publican<sup>34</sup> as it was taught: 'Where a suit arises between an Israelite and a heathen, if you can justify the former according to the laws of Israel, justify him and say: 'This is our law'; so also if you can justify him by the laws of the heathens justify him and say [to the other party:] 'This is your law'; but if this can not be done, we use subterfuges to circumvent him.<sup>34</sup> This is the view of R. Ishmael, but R. Akiba said that we should not attempt to circumvent him on account of the sanctification of the Name. Now according to R. Akiba the whole reason [appears to be,] because of the sanctification of the Name, but were there no infringement of the sanctification of the Name, we could circumvent him! Is then the robbery of a heathen permissible?<sup>35</sup> Has it not been taught<sup>36</sup> that R. Simeon stated that the following matter was expounded by R. Akiba when he arrived from Zifirin:<sup>37</sup> 'Whence can we learn that the robbery of a heathen is forbidden? From the significant words: *After that he is sold*<sup>38</sup> *he may be redeemed again*,<sup>39</sup>

### [To Part b](#)

Original footnotes renumbered. See [Structure of the Talmud Files](#)

1. I.e., the women or the neighbours.
2. V. p. 660, n. 13.
3. A mere promise to appear does not suffice.
4. More correctly 'R. Ashi'.
5. On account of urgent agricultural work; cf. Ber. 35b.
6. And take no notice of the summons.
7. Cf. Shab. 119a.
8. I.e., the Assembly of Babylonian scholars in the months of Elul and Adar; v. B.M. (Sonc. ed.) p. 560, n. 6 and B.B. (Sonc. ed.) p. 60, n. 7.
9. For otherwise they may abstain from coming to the Assemblies.
10. Which commences thirty days before the festival; v. Pes. 6a.
11. Abusing this privilege.
12. And we therefore issue a summons.
13. Which is not kept so much in the eye of the public as is the case with the cow or the ass.
14. The law is exactly the same.
15. Prov. IX, 9.
16. As these are considered to act ultra vires and thus unlawfully.
17. I.e., a customs-collector or a tax-collector.
18. For otherwise he would lose it altogether.
19. V. B.B. (Sonc. ed.) p. 222, n. 6. Why then are customs collectors considered as acting unlawfully.
20. Without the authority of the ruling power.
21. Cf. Lev. XIX, 19.
22. Kil. IX, 2.
23. Cf. Sem. 11, 9 and Tosef, B.K. X, 8.
24. Where the collectors are acting unlawfully, as will soon be explained.
25. I.e., the anonymous Tanna and R. Simeon in the name of R. Akiba.
26. R. Simeon in the name of R. Akiba; cf. Tos. Zeb. 91b.
27. As also maintained by R. Simeon in the case of other transgressions; v. Shab. 41b, Keth. 5b a.e.
28. As indeed maintained by R. Judah in Shab. 41b a.e.
29. Without the authority of the ruling power.
30. V. [Glos.](#)
31. Ned. III, 4.
32. V. p. 663, n. 13.
33. In all these cases referred to above.
34. V. *supra*, p. 211, n. 6.
35. [I.e., in withholding anything to which he is entitled; v. Sanh. (Sonc. ed.) p. 388, n. 6. Graetz *MGWJ*, 1881, p. 495. shows clearly that the whole controversy whether robbery of a heathen was permissible was directed against the iniquitous Fiscus Judaicus imposed by Vespasian and exacted with much rigor by Domitian.]
36. Cf. Sifra on Lev. XXV, 48.
37. Prob. the headland of Cyprus; Zephyrium (Jast.). [Graetz, *Geschichte*, IV, p. 135. connects R. Akiba's visit to Zifirin with his extensive travels for the purpose of rousing the Jews against the Roman tyranny.]
38. I.e., an Israelite to a Canaanite.
39. Lev. XXV, 48.

[Tractate List](#) / [Glossary](#) / [Search](#) / [Bible Reference](#)

## Baba Kamma 113b

which implies that he could not withdraw and leave him [without paying the redemption money]. You might then say that he<sup>1</sup> may demand an exorbitant sum for him? No, since it says *And he shall reckon with him that bought him*<sup>2</sup> to emphasise that he must be very precise in making the valuation



with him who had bought him.<sup>3</sup> — Said R. Joseph: There is no difficulty, here [where the exception is made it refers] only to a heathen, whereas there [is indeed no exception] in the case of a *Ger Toshab*.<sup>4</sup> But Abaye said to him: Are the two of them<sup>5</sup> not mentioned next to one another [so that neither forms an exception in the law],<sup>6</sup> as it says: *'Thy brother ... sell himself'*<sup>7</sup> [implying,] not to you but to a stranger, as it says: *'Unto the stranger'*, again, not to a *Ger zedek*<sup>8</sup> but to a mere *Ger Toshab*,<sup>4</sup> as it says *'unto a stranger-settler'*,<sup>9</sup> 'the family of a stranger': this denotes one who worships idols, and when it says or to an *'Eker'*<sup>10</sup> it means that the person in question sold himself for idolatrous practices!<sup>11</sup> — Raba therefore said: There is no difficulty, as regarding robbery there is indeed no exception, whereas regarding the cancellation of debts [a heathen might not have been included]. Abaye rejoined to him: Is not the purchase of a Hebrew slave<sup>12</sup> merely the cancellation of a debt, [and yet no distinction whatsoever is made as to the person of the master]? — Raba adheres to his own view as [elsewhere] stated by Raba, that a Hebrew slave is actually owned in his body by the master.<sup>13</sup>

R. Bibi b. Giddal said that R. Simeon the pious stated: The robbery of a heathen is prohibited,<sup>14</sup> though an article lost by him is permissible. His robbery is prohibited, for R. Huna said: Whence do we learn that the robbery of a heathen is prohibited? Because it says: *'And thou shalt consume all the peoples that the Lord thy God shall deliver unto thee'*,<sup>15</sup> only in the time [of war] when they were delivered in thy hand [as enemies] this is permitted, whereas this is not so in the time [of peace] when they are not delivered in thy hand [as enemies]. His lost article is permissible<sup>16</sup> for R. Hama b. Guria said that Rab stated: Whence can we learn that the lost article of a heathen is permissible?<sup>17</sup> Because it says: *'And with all lost thing of thy brother's'*<sup>18</sup> it is to your brother that you make restoration, but you need not make restoration to a heathen. But why not say that this applies only where the lost article has not yet come into the possession of the finder, in which case he is under no obligation to look round for it, whereas if it had already entered his possession, why not say that he should return it. — Said Rabina:<sup>19</sup> And thou hast found it<sup>18</sup> surely implies that the lost article has already come into his<sup>20</sup> possession.

It was taught: R. phinehas b. Yair said that where there was a danger of causing a profanation of the Name,<sup>21</sup> even the retaining of a lost article of a heathen is a crime. Samuel said: It is permissible, however, to benefit by his mistake as in the case when Samuel once bought of a heathen a golden bowl under the assumption of it being of copper<sup>22</sup> for four *zuz*, and also left him minus one *zuz*. R. Kahana once bought of a heathen a hundred and twenty barrels which were supposed to be a hundred while he similarly left him minus one *zuz*<sup>23</sup> and said to him: 'See that I am relying upon you.'<sup>24</sup> Rabina together with a heathen bought a palm-tree to chop up [and divide]. He thereupon said to his attendant: Quick, bring to me the parts near to the roots, for the heathen is interested only in the number [but not in the quality].<sup>25</sup> R. Ashi was once walking on the road when he noticed branches of vines outside<sup>26</sup> a vineyard upon which ripe clusters of grapes were hanging. He said to his attendant: 'Go and see, if they belong to a heathen bring them to me<sup>27</sup> but if to an Israelite do not bring them to me.' The heathen happened to be then sitting in the vineyard and thus overheard this conversation, so he said to him: 'If of a heathen would they be permitted?' — He replied: 'A heathen is usually prepared to [dispose of his grapes and] accept payment, whereas an Israelite is generally not prepared to [do so and] accept payment.

The above text [stated], 'Samuel said: The law of the State is law.' Said Raba: You can prove this from the fact that the authorities fell palm-trees [without the consent of the owners] and construct bridges [with them] and we nevertheless make use of them by passing over them.<sup>28</sup> But Abaye said to him: This is so perhaps because the proprietors have meanwhile abandoned their right in them.<sup>29</sup> He, however, said to him: If the rulings of the State had not the force of law, why should<sup>30</sup> the proprietors abandon their right? Still, as the officers do not fully carry out the instructions of the ruler,<sup>31</sup> since the ruler orders them to go and fell the trees from each valley [in equal proportion], and they come and fell them from one particular valley, [why then do we make use of the bridges which are thus constructed from misappropriated timber?] — The agent of the ruler is like the ruler himself<sup>32</sup> and can not be troubled [to arrange the felling in equal proportion], and it is the proprietors who bring this loss on themselves, since it was for them to have obtained contributions from the owners of all the valleys and handed over [the] money [to defray the public expenditure].

Raba said: He who is found in the barn must pay the king's share [for all the grain in the field].<sup>33</sup> This statement applies only to a partner, whereas an *aris*<sup>34</sup> has to pay no more than for the portion of his tenancy.<sup>35</sup>

Raba further said: One citizen may be pledged for another citizen [of the same town], provided however the arrears are due for follarar<sup>36</sup> and karga<sup>37</sup> of the current year, whereas if they are due for the year that has already passed [it would not be so], for since the king has already been pacified, the matter will be allowed to slide. Raba further said: In the case of those [heathens] who manure fields [for pay] and reside within the Sabbath limits<sup>38</sup> [round the town], it is prohibited to purchase any animal from them, the reason being that an animal from the town might have been mixed up with theirs;<sup>39</sup> but if they reside outside the Sabbath limits it is permitted to buy animals from them.<sup>40</sup> Rabina however said: If proprietors were pursuing them [for the restoration of misappropriated animals] it would be prohibited [to purchase an animal from them] even [were they to reside] outside the Sabbath limits.

Raba proclaimed or as others say, R. Huna: [Let it be known to those] who go up to the Land of Israel and who come down from Babylonia that if a son of Israel knows some evidence for the benefit of a heathen, and without being called upon [by him] goes into a heathen court of law and bears testimony against a fellow Israelite he deserves to have a Shamta<sup>41</sup> pronounced against him, the reason being that heathens adjudicate the payment of money

- To Next Folio -

2. The heathen master.
3. Ibid. 50.
4. Now does this not conclusively prove that the robbery of whomsoever, without any exception, is a crime?
5. [H], Lit., 'a stranger-settler,' a resident alien of a different race and of a different religion, since he respects the covenant of the law made by God with all the children of Noah, i.e., the Seven Commandments forming the elementary principles of civilised humanity, he is a citizen enjoying all the rights and privileges of civil law.
6. I.e., a *Ger Toshab* and a Canaanite.
7. Requiring a very accurate reckoning to repay the purchaser whether he was a *Ger Toshab* or a Canaanite.
8. Lev. XXV, 47.
9. Lit., 'a stranger (who embraced the faith) of righteousness, i.e., a proselyte for the sake of true religion.
10. E.V. 'Unto the stranger or sojourner.'
11. E.V. 'or to the stock of', but taken here literally to denote work of destruction and uprooting; cf. Gen. XLIX, 6; Josh. XI, 6 and 9 and Eccl. III, 2.
12. V. B.M. (Sonc. ed.) p. 71a and notes. Now, does this not prove that nobody whatsoever, whether a resident alien or a heathen, is excepted from being protected by the law of robbery?
13. Having to pay redemption money, as in Lev. XXV, 50.
14. Kid. 16a. [To withdraw therefore the slave without payment of redemption money amounts to actual robbery.]
15. Cf. B.M. 87b and Bk. 13b; v. also Tosef. B.K. X, 8 where it is stated that it is more criminal to rob a Canaanite than to rob an Israelite; cf. P.M. II, 5.
16. Deut. VII, 16.
17. I.e., it is not subject to the law of lost property; Deut. XXII, 1-3. V.B.M. (Sonc. ed.) p. 149, n. 6.
18. Deut. XXII, 1-3.
19. Ibid. XXII, 3.
20. B.M. 2a.
21. I.e., the finder's.
22. [Of Israel](#) and his God; V. The Chief Rabbi's commentary on Lev. XXII, 32.
23. Cf. however n. 9.
24. This clause is altogether missing in Alfasi and Asheri.
25. [As to the number of the barrels.](#)
26. Of the pieces.
27. According to the reading of MS.M.
28. Especially since the branches were outside the vineyard and thus probably overhanging a public road; cf. B.B. II, 14.
29. For if the rulings of the State were not binding by religious law, it would have been a sin to make use of the bridges constructed in such a way.
30. Cf. *supra* p. 382.
31. In accordance with the interpretation of Tosaf. a.l.; v. also *supra* 148; but according to Rashi read 'What effect could there be even if ... 'so long as no change in possession followed.
32. Lit., 'King'.
33. Cf. Shebu. 47b.
34. So that the payment exacted is not robbery but in accordance with law; the payer will again be entitled to compel the owners of the other grain to share proportionately the payment he had to make for all of them.
35. I.e., a farmer-tenant; a field labourer who tills the owner's ground for a certain share in the produce.
36. But not for the portion of the owner.
37. [H] = *burla*, i.e., a certain Roman land tax adopted by the Persians (Jast.).
38. I.e., capitation tax; the reading of Alfasi is *gizta*, i.e., fleece.
39. I.e., two thousand cubits.
40. And it is unlawful to possess or purchase a misappropriated article even if mixed with many others; cf. Bz. 38b.
41. For since they are so far away from the town it is not likely that an animal from the town has been mixed up with theirs.
42. Oral anathema; cf. [Glos.](#)

[Tractate List](#) / [Glossary](#) / [Search](#) / [Bible Reference](#)

