



After the Ten Commandments: The Laws of the Covenant Code

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The Goring Ox
**The Most Celebrated Animal in Legal
History**

Professor Elaine Goodfriend

Modern scholars suggest that the appearance of the goring ox in these ANE law collection reflects ancient jurists' fascination with the ambiguity of property which possesses will but not human intelligence. The same would be true of the biblical collection.

Professor Gary Rendsburg

Most ancient Near Eastern languages, Hebrew and Akkadian among them, do not distinguish between “bull” and “ox.” Accordingly, many scholars call this case ‘the goring ox.’ But oxen (who because they have been castrated, are quite docile) are much less likely to gore than bulls (whose strength and virility are well known).



Ox Gores Ox

Exodus 21:35-36

וְכִי יִגַּף שׂוֹר אִישׁ אֶת שׂוֹר
רֵעֵהוּ וָמֵת וּמָכְרוּ אֶת הַשׂוֹר
הַחַי וְחָצוּ אֶת כֶּסֶפוֹ וְגַם אֶת
הַמֵּת יִחָצוּן. אִם נֹדַע כִּי שׂוֹר
נִגָּח הוּא מִתְּמוֹל שְׁלֵשִׁים וְלֹא
יִשְׁמְרֵנוּ בְּעַלְיוֹ שְׁלֵם יִשְׁלַם
שׂוֹר תַּחַת הַשׂוֹר וְהַמֵּת יִהְיֶה
לּוֹ.

When a man's ox injures his neighbour's ox and it dies, they shall sell the live ox and divide its price; they shall also divide the dead animal. If, however, it is known that the ox was in the habit of goring, and its owner failed to guard it, he must restore ox for ox, but shall keep the dead animal.

What's the Logic of Half Damages?

Ketubbot 41a

רב פפא אמר . . . סתם שוורים
לאו בחזקת שימור קיימי ובדין
הוא דמשלם כוליה ורחמנא הוא
דחייס עלויה דאכתי לא איעד
תורא

רב הונא בריה דרב יהושע אמר .
. . . סתם שוורים בחזקת שימור
קיימי ובדין הוא דלא לישלם כלל
ורחמנא הוא דקנסיה כי היכי
דנינטריה לתוריה

Rav Papa said . . . Oxen in general are considered insufficiently guarded. Logically the owners should pay full damages. But God had compassion on owners who have never been warned.

Rav Huna said . . . Oxen in general are considered sufficiently guarded [tame?]. Logically the owners should pay nothing. But God fined them so that they would watch their oxen more carefully.

Compare to Rashbam on bailees

כי יתן איש אל רעהו כסף או כלים
לשמור – מטלטלין הם ולשומרם
בתוך ביתו כשאר חפציו נתנן לו.
לפי{כך} אם נגנבו בביתו פטור, כי
שמרן כשמירת חפציו. אבל . . . כי
יתן איש אל רעהו חמור או שור או
שה . . . ודרך בהמות לרעות בשדה,
ודאי כשהפקידם, על מנת לשומרם
מגנבים הפקידם לו, ולכן אם נגנבו
חייב.

. . . the guarding of removables that are commonly kept inside of one's house, and that were given to him so that he would guard them in the same way that he guards his own possessions. That is why, if they were stolen from his house, the bailee is not responsible, for he guarded them [in the expected manner,] as one guards one's own possessions. But "When a man gives to his neighbor an ass, an ox, . . .," since animals commonly graze outdoors it is to be assumed that when he entrusted them [to the bailee] he expected that the bailee would protect them from thieves. Accordingly, if they were stolen, the bailee is responsible.

Eshnunna and the Torah

Eshnunna paragraph 53

If an ox gores an(other) ox and causes (its) death, both ox owners shall divide (among themselves) the price of the live ox and also the meat of the dead ox.

שמות כא לה

וְכִי יִגְרֹף שׁוֹר אִישׁ אֶת שׁוֹר רֵעֵהוּ וּמָת וּמָכְרוּ
אֶת הַשׁוֹר הַחַי וְחָצוּ אֶת כֶּסֶפוֹ וְגַם אֶת הַבֶּהֱמָה
יִחְצוּן. לוֹ אִוּ נֹדַע כִּי שׁוֹר נִגַּח הוּא מִתְמוּל
שְׁלֵשָׁם וְלֹא יִשְׁמְרֵנוּ בְּעַלְיוֹ שְׁלֵם יִשְׁלֵם שׁוֹר
תַּחַת הַשׁוֹר וְהַבֶּהֱמָה יִהְיֶה לוֹ.

When a man's ox injures his neighbour's ox and it dies, they shall sell the live ox and divide its price; they shall also divide the dead animal. If, however, it is known that the ox was in the habit of goring, and its owner failed to guard it, he must restore ox for ox, but shall keep the dead animal.

How Does the
Arithmetic
Work?



Mishnah Bava Kama 3:9

שׁוֹר שְׁוֵה מִנְה שְׁנַיִם
שׁוֹר שְׁוֵה מֵאֵתַיִם, וְאִין
הַנְּבֵלָה יִפָּה כְּלוּם, נוֹטֵל
אֶת הַשׁוֹר.

An [unindicted] **ox worth one hundred dinars that gored an ox worth two hundred dinars, and the carcass of the dead ox is not worth anything**, its owner **takes the entire ox** that gored it, since it is worth half the value of the damage.

Mishnah Bava Kama (cont.)

שׁוֹר שְׁוֵה מֵאֲתִים שְׁנַיִם
שׁוֹר שְׁוֵה מֵאֲתִים, וְאִין
הַנְּבִלָה יִפָּה כְּלוּם, אָמַר
רַבִּי מֵאִיר, עַל זֶה נֶאֱמַר
(שְׁמוֹת כֹּא) וּמָכְרוּ אֶת
הַשׁוֹר הַחַי וְחָצוּ אֶת כֶּסְפוֹ.

With regard to the [unindicted] ox worth two hundred dinars that gored another ox worth two hundred, and the carcass is worth nothing, Rabbi Meir said: It is about this type of case that it is stated: “Then they shall sell the live ox, and divide its monetary value” (Exodus 21:35).

Mishnah Bava Kama (cont.)

אָמַר לוֹ רַבִּי יְהוּדָה, וְכֵן
הֵלְכָה, קִיַּמְתָּ וּמָכַרוּ אֶת
הַשּׂוֹר הַחַי וְחָצוּ אֶת
כִּסְפוֹ, וְלֹא קִיַּמְתָּ וְגַם
אֶת הַמֵּת יִחְצוּ,

Rabbi Yehuda said to him:
[True,] that is the halakha.
However, you have upheld
the clause: “they shall sell the
live ox and divide its price,”
but you have not upheld the
next clause of the verse, “they
shall also divide the dead
animal.”

Mishnah Bava Kama (cont.)

וְאִיזָהָּ? זֶה שׁוֹר שָׁוָה מְאֹתַיִם
שָׁנָיִם שׁוֹר שָׁוָה מְאֹתַיִם,
וְהַנְּבֵלָה יִפָּה חֲמִשִּׁים זֹז,
שְׁזָה נֹטֵל חֲצֵי הַחַי וְחֲצֵי
הַמֵּת, וְזֶה נֹטֵל חֲצֵי הַחַי וְחֲצֵי
הַמֵּת:

Rather, to which case is the verse referring? The case of an ox worth two hundred dinars that gored another ox worth two hundred dinars, and the carcass is worth fifty dinars. In this case, each party takes half the value of the living ox, and half the value of the dead ox.



Ox Gores Human Being

Laws of Hammurabi

250. If a bull, when passing through the street, gores a man and brings about his death, this case has no penalty.

251. If a man's bull was wont to gore and they made known to him his habit of goring, and he did not protect his horns or have him tied up, and that bull gores the son of a man and brings about his death, he shall pay one-half mana of silver.

252. If it be the slave of a man, he shall pay one-third mana of silver.

Exodus 21:28-32

כח וְכִי יִגַּח שׁוֹר אֶת אִישׁ אוֹ אֶת אִשָּׁה וָמֵת
סֹקֵל יִסְקַל הַשּׁוֹר וְלֹא יֵאָכַל אֶת בְּשָׂרוֹ וּבַעַל
הַשּׁוֹר נִקְיִי.

כט וְאִם שׁוֹר נִגַּח הוּא מִתְּמַל שְׁלִשָּׁם וְהוֹעֵד
בְּבַעְלָיו וְלֹא יִשְׁמְרֵנוּ וְהָמִית אִישׁ אוֹ אִשָּׁה
הַשּׁוֹר יִסְקַל וְגַם בְּעַלָּיו יוֹמֵת.

ל אִם כֹּפֶר יוֹשֵׁת עָלָיו וְנָתַן פְּדִין נַפְשׁוֹ כֹּכֵל
אֲשֶׁר יוֹשֵׁת עָלָיו.

לא אוֹ בֶן יִגַּח אוֹ בֵּית יִגַּח כַּמִּשְׁפָּט הַזֶּה יַעֲשֶׂה
לוֹ.

לב אִם עֶבֶד יִגַּח הַשּׁוֹר אוֹ אָמָה כֶּסֶף שְׁלִשִּׁים
שֶׁקֶלִים יִתֵּן לְאֲדֹנָיו וְהַשּׁוֹר יִסְקַל.

When an ox gores a man or a woman to death, the ox shall be stoned and its flesh shall not be eaten, but the owner of the ox is not to be punished.

If, however, that ox has been in the habit of goring, and its owner, though warned, has failed to guard it, and it kills a man or a woman—the ox shall be stoned and its owner, too, shall be put to death.

If ransom is laid upon him, he must pay whatever is laid upon him to redeem his life.

So, too, if it gores a minor, male or female, [the owner] shall be dealt with according to the same rule.

But if the ox gores a slave, male or female, he shall pay thirty shekels of silver to the master, and the ox shall be stoned.

Hammurabi

vs.

Torah

If a bull, when passing through the street, gores a man and brings about his death, this case has no penalty.

If a man's bull was wont to gore and they made known to him his habit of goring, and he did not protect his horns or have him tied up, and that bull gores the son of a man and brings about his death, he shall pay one-half mana of silver [= 30 shekels].

When an ox gores a man or a woman to death, the ox shall be stoned and its flesh shall not be eaten, but the owner of the ox is not to be punished.

If, however, that ox has been in the habit of goring, and its owner, though warned, has failed to guard it, and it kills a man or a woman—the ox shall be stoned and its owner, too, shall be put to death. . . . So, too, if it gores a minor, male or female, [the owner] shall be dealt with according to the same rule.

Hammurabi vs. Torah (cont.)

If it be the slave of a man, he shall pay one-third mana of silver [= 20 shekels].

But if the ox gores a slave, male or female, he shall pay thirty shekels of silver to the master, and the ox shall be stoned.

Why Kill the Ox? (Mishnah Sanhedrin 7:4)

אם אדם חטא בהמה מה
חטאה אלא לפי שבאה לאדם
תקלה על ידה לפיכך אמר
הכתוב תסקל

ד"א שלא תהא בהמה עוברת
בשוק ויאמרו זו היא שנסקל
פלוני על ידה

Granted the human being certainly sinned. But did the animal sin? But since a calamity came upon a person because of the animal it should be stoned.

Another explanation: so that people, when seeing the animal passing through the marketplace, not say, "There goes the animal that led to the death of so-and-so."

Why Kill the Ox? (Shadal)

והנה הריגת השור איננה
עונש לשור אלא לבעליו, כדי
שישמור בהמותיו; וכבר היה
אפשר שילקח ממנו שורו
מבלי שיסקל, אלא שסקילתו
תעשה רושם בכל העם וכל
העם יראו וישמעו וייראו,

The killing of the ox is not a punishment for the ox, but rather for the owner, so that he will properly guard his animals. It would have been possible for the ox to be taken from him without being stoned, but the stoning was for the purpose of making an impression on the entire people, that they should see, hear, and take fear.

Shadal (cont.)

ועוד כי עי"ז תתחזק בלב העם
שנאת הרציחה, ויתרשם בלבם
כי שופך דם האדם, יהיה
השופך מי שיהיה, באדם דמו
ישפך, וכענין שנאמר (בראשית
ט"ה') מיד כל חיה אדרשנו
ומיד האדם מיד איש אחיו
אדרוש את נפש האדם.

Furthermore, in this way an abhorrence of homicide would be reinforced in people's hearts, for it would be impressed upon them that "he who sheds a man's blood" — whoever [or whatever] the shedder may be — "will have his blood shed by a man" (Gen. 9:6), as it says, "From every animal I demand account of it [i.e., 'your blood']; and from man, from man his brother, will I demand account of the life of man" (9:5).

Shadal (cont.)

ולא יאכל את בשרו – כי עדיין לא
צוה על הנבלה, וגם יש במשמע
(כפירוש רשב"ם) לא לנכרי ולא
לכלב, כלומר שהוא אסור בהנאה

“And the meat of it will not be eaten”: For the prohibition of eating a nevelah [an animal that died by means other than sheḥitah] had not yet been given. It is to be further understood (as per Rashbam) that the meat may not be given to a non-Israelite or a dog; that is, it was forbidden to derive benefit from it.

Shadal (cont.)

ורז"ל (בבא קמא מ"א.) אמרו שאפי' שחטו קודם שיסקל (לאחר שנגמר דינו לסקילה) אסור בהנאה. והדין דין אמת, אע"פ שאינו פשוטו של מקרא.

The Rabbis said that even if the ox was slaughtered by means of sheḥitah before the stoning (after the sentence of stoning was pronounced), it was prohibited to derive benefit from it. This certainly is the law, even though it does not reflect the plain meaning of the verse.

Rabbi Avraham Yitzhak Kook

Letters, volume 1, # 90

עיקר שלילת הבחירה מבעלי חיים
לגמרי אין לה יסוד, ודאי אינם כ"כ
רחבים בבחירה כהאדם, אבל יש לכל
חי לפי מדת כשרונו ג"כ חלק בבחירה

. . . ומחקרי בעלי חיים שנתחדשו
מראים יותר את האמת הזו שכבר
אמרה תורה

The idea of saying that animals
have no free will at all is baseless.
Of course, their free will is more
limited than that of humans, but
every creature has a share of free
will appropriate to its abilities... . .

Recent studies about animals
show clearly this truth that the
Torah already taught.

וגם בעליו יומת: רש"י

וגם בעליו יומת – בידי שמים. יכול
בידי אדם? תלמוד לומר: מות יומת
המכה רוצח הוא (במדבר ל"ה:כ"א) –
על רציחתו אתה הורגו, ואי אתה
הורגו על רציחת שורו.

SHALL BE PUT TO DEATH by God.
Perhaps by a human court?
Scripture, however, states,
(Numbers 35:21) "the one who
smote is a murderer and should
be put to death" — i.e. for a
murder done by a person the
perpetrator is put to death, but
not for a murder committed by
the perpetrator's ox.

וגם בעליו יומת: רשב"ם

וגם בעליו יומת – בידי שמים ITS OWNER TOO SHALL BE PUT TO
DEATH: by the hand of God.

וגם בעליו יומת: רמב"ן

וגם בעליו יומת – קבלו חכמים שהיא
מיתה בידי שמים, וכמוהו: והזר
הקרוב יומת (במדבר י"ח:ז'), ומתו בו
כי יחללוהו (ויקרא כ"ב:ט'). וראיתי
שלא בא בתורה בחייבי מיתות בית
דין 'יומת' בלבד, אבל 'מות יומת'
נאמר בכולן.

[Ramban addresses exceptions to
his rule...]

Our Rabbis received by tradition
that this death means by the hand
of Heaven. Similar cases are these
verses: "any outsider who
encroaches יומת," and "lest they
incur guilt thereby and die for it."

I have noticed that where the
Torah speaks of those liable to be
put to death by the court, it does
not mention just יומת but always
says, מות יומת.

וגם בעליו יומת: שד"ל

וגם בעליו יומת – לפי הפשט
יומת בב"ד, אלא שהתירה
התורה לקחת כפרו הואיל ולא
הרג בידיים, והניחה ביד
השופטים לשפוט לפי ענין האיש
ולפי ענין המאורע, אם ראוי הוא
למיתה, ואם ראוי להנצל בכופר,
ומה יהיה שיעור הכופר; ורז"ל
אמרו (מכילתא משפטים י) יומת
בידי שמים.

Also its owner will be put to death. The plain meaning is that the court puts him to death, but the Torah permitted the taking of a ransom [for his life], since he did not kill the victim with his own hands. The Torah left it up to the judges to judge, according to the nature of the person and the incident, whether he was worthy of death or worthy of being saved by a ransom, and what the amount of the ransom should be. However, the Rabbis said that he was to be put to death "by the hand of Heaven" [and not by a human court].