

Fishing Rights in the Early Rabbinic Literature*

David Gheva, Bible Lands Museum Jerusalem

One of the Babylonian cuneiform tablets from the Murašû archive is a contract concluded by five fishermen from the town Titurru (“Bridgetown”), of whom at least three were Judeans, for a lease of five fishing nets, in order to fish in a river or a canal from the 25th of Elul onwards. The fishermen pledged to return the nets to the lender by the 15th of Tishre, along with a payment of 500 fish of standard quality. A certain Bēl-ibni son of Aplāya bore guarantee for the payment of 500 fish. The fishermen also reserved for themselves the option to extend their fishing operation, and to pay 500 more fish on the 20th of Tishre, in addition to the original amount of 500 fish (1000 fish total). The contract is dated to the fifth regnal year of the Achaemenid king Darius II (419 BCE).¹

This contract raises some more general questions. Did there exist a general right of free fishing in all the rivers, canals and lakes, for any person, regardless of where he came from and whence he went to fish (which would be based on a notion that fish in the wild was a public good)? Or was the right to fish from a certain shore reserved for the shore-owner whose land bordered on a specific river or canal, even though he did not own the fish in that particular waterway?

Furthermore, even if each person had a right to fish anywhere on the shore of a river or a canal, one still has to ask whether that right was dependent on the equipment used for fishing – fishing rods, nets, baskets, or some kind of heavier equipment. In other words: was a person who did not own land on the shore of a river or a canal limited in his choice of fishing tools, or was the right of free fishing comprehensive, so that anyone could use any kind of fishing equipment anywhere on the shore?² This, in turn, raises another question: did the commercially oriented fishermen who sold their catch on the market enjoy the same fishing rights as the general public, or were the general rights of fishing limited only to those who fished for their own needs (even if they occasionally sold a fish or two to someone)?

* Grateful thanks to Dr. Yigal Bloch for translating this article from Hebrew to English.

¹ For a new edition of this tablet, see W. Horowitz and D. Gheva, “Fish for the Jewish High Holidays in Fifth Century BCE Babylonia and some Further Thoughts on Al-Yahudu,” *BLER* 2017/S2.

² It is, at least theoretically, plausible that someone entering the land of another person on a shore in order to fish would be forbidden to use fishing equipment which could damage the property of the shore-owner, including the fishing equipment of the latter.

The contract from the Murašû archive mentioned above was concluded by professional fishermen. In the case of this contract, did the fishermen practice their craft on the basis of a general right of fishing, which applied in the same way to everyone else, or was that right limited to the owner of the land on the shore of a river or a canal, so that the fishermen had to purchase from the shore-owner the right to fish from his land? In other words, was the payment pledged by the fishermen in the contract only a rent for the five fishing nets, or was it also a compensation for ceding to them the right to come to the shore of a river or a canal and to fish from that shore?

The present author is not a specialist on the fishing rights in Babylonia in the Achaemenid period, and the contract does not provide any information which could directly help to answer the questions raised above. Hence, those questions will be addressed in the present study from another vantage point.³

³ Sources from Ptolemaic Egypt (3rd century BCE) indicate that fishermen paid ¼ of their catch as a regular tax to the state treasury. This means that fish in the wild were considered state property rather than public goods. In addition, fishermen who practiced their craft on lands belonging to temples or nobles paid high fees for the right to fish and for the use of fishing equipment leased to them by the landowners. In other words, bodies of water belonged to specific owners, as did the fish therein. A regular person did not have a right to fish freely for his needs, and had to purchase that right from the owners (M. Nun, "Fishing in Ancient Egypt," *Mahanayim* 105 [1966], 106-107 [Hebrew]: <http://www.daat.ac.il/daat/kitveyet/mahanaim/hadaig-2.htm>). A similar picture emerges from the Jerusalem Talmud, composed about half a millennium after the Ptolemaic period: some lakes and ponds were privately owned, and so were the fish living therein; hence, only the owner had a right to catch that fish. Thus we find in the Jerusalem Talmud, Bava Batra 4:7: "Rabban Simeon b. Gamaliel says: 'He who sells a town...he has not sold him outlying parts or suburbs, or the thickets which are set apart by themselves, or the vivarium for wild beasts, fowl and fish. 'Outlying parts' are valleys outside of town. 'Suburbs' are outlying villages. As to the parts of the sea or river, some Tannas teach that they are sold, and some, that they are not sold. Said R. Hisda: '[There is no dispute among the Tannas.] The one who said that they are sold refers to the area within the town limits, and the one who said they are not sold refers to the area beyond the town limits'" (translation, including the parenthetical addition, cited according to J. Neusner, *The Talmud of the Land of Israel: A Preliminary Translation and Explanation*, XXX: *Baba Batra*, Chicago 1984, p. 86). Thus, a person who sells a town keeps for himself the vivaria – enclosures for live game and ponds for fish – which are located outside the town, and to which the general public has no rights. It should be noted that when a town is sold, the adjacent shore is sold along with it. However, if the seller keeps for himself his share in the shore of a sea or a river located outside the town, the Jerusalem Talmud does not recognize the right of the buyer – and *a fortiori*, the right of general public – to use that shore for fishing. The shore of a sea or a river is recognized as part of a town if it is adjacent to the town, but not if it is somewhat distant from the town. Rav Hisda, who offered an explanation of what the sale of a town includes and what it does not include, is a sage of the post-Mishnaic period (*Amora*) from Babylonia, who was active in the 3rd and the early 4th centuries CE, and who probably

The destruction of the First Temple and the deportation of Judeans to Babylonia brought about a tremendous influence of the norms and customs of everyday life in Babylonia on the Judean, and later Jewish, tradition. That influence can be detected in the legal reasoning and discussions contained in the early rabbinic literature, especially those parts of it which were composed in Babylonia. Therefore, it is interesting to check how the early rabbinic literature treats the question of fishing rights.

The present study will survey the discussions of fishing rights in the Tosefta, both the Jerusalem and the Babylonian Talmud, and midrashic literature. We will consider whether a certain development can be observed in the discussions of fishing rights over time, and whether it is possible to find parallels between some of those discussions and the tablet from the Murašû archive. In part, we will ask whether and how the early rabbinic literature deals with the question of the fishing rights of the general public.

The earliest rabbinic law concerning fishing rights is found in the Tosefta, a collection of Tannaitic statements compiled in the Land of Israel, tractate Bava Qama 8:17: “At the outset, when the tribes were properly situated [on their own land], they said, ‘A man may not lay out his fishing net or set up his boat in the area of another person.’ But they permitted fishing with hooks and snares in any location.”⁴ In other words, in ancient times, when (at least from the perspective of the Tannaim) the Land of Israel was allotted to the tribes who occupied each its own portion of land, the tribes came to a sort of agreement to the effect that some parts of the public domain were considered common goods, which anyone could use regardless of his tribal affiliation. Since the ownership of those goods was not determined on a tribal basis, the access to them was free for all. In part, the fish in the bodies of water located in the public domain was considered a common good, and everyone could venture to catch it, even from a shore owned by a specific person (and hence also by a specific tribe), provided that he did not cause damage to the shore-owner and to his equipment.

Further along, the Tosefta points out that the Sea of Galilee was not considered part of the public domain, but rather as part of the tribe of Naphtali’s domain: “The [other] tribes do not fish in the sea of Tiberias, because it is the property of Naphtali” (Tosefta, Bava Qama 8:18). However, in the same discussion, Rabbi Simeon son of Eleazar – a fifth-generation Tanna (active around 200 CE) – acknowledged the general public’s right of free use of the

never lived for any considerable time in the Land of Israel. Hence, although his explanation is quoted in the Jerusalem Talmud, it is likely based on the Babylonian practice of the time.

⁴ Translation, including the parenthetical addition, cited according to J. Neusner, *The Tosefta, IV: Neziqin*, New York 1981, p. 49.

common goods: “R. Simeon b. Eleazar says, ‘The things which are harvested which are found in the wilderness – lo, they belong to all the tribes. And the ones which are attached to the ground, lo, they belong to that tribe [in whose property they are located].’”⁵ This recognition pertains to individual use of the common goods, whose ownership is not defined on a tribal basis.

With regard to fishing rights, it was held that the tribes had agreed to consider fish in the wild as a common good, and therefore, wherever fish was found, anyone could catch it with a fishing rod or a small fishing net.⁶ However, a person was forbidden to moor his boat near a shore owned by another person. He was also forbidden to cause damage to the shore-owner, to block the passage of the latter’s boats, and to fish in a close vicinity of the shore in a way which prevents access to it.⁷

⁵ Translation, including the parenthetical addition, cited according to Neusner, *ibid.*

⁶ “Said Rabbi: ‘Two men were fishing with traps in the Jordan’” (Jerusalem Talmud, Yevamot 16:4; translation cited according to J. Neusner, *The Talmud of the Land of Israel: A Preliminary Translation and Explanation*, XXI: *Yebamot*, Chicago 1987, p. 483). The Hebrew word *mikhmoret*, translated by Neusner as “trap,” signifies a small fishing net (M. Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature*, London – New York 1903, p. 783). Such nets were apparently spread in a sea or a river near the shore.

⁷ With regard to Tosefta, Bava Qama 8:17, cited above, Saul Lieberman mentioned that the conditions described there pertained before “the tribe of Judah became mixed up with Benjamin” (Jerusalem Talmud, Shevi’it 10:3) – in other words, the tribes agreed on free public use of common goods in such a way that each tribe would preserve its distinct identity, occupying its own allotment of the Land of Israel (S. Lieberman, *Tosefta ki-fshutah: Be’ur arokh le-Tosefta*, IX, New York 1988, p. 90, §§73-74 [Hebrew]). With regard to the fishing techniques, Lieberman quoted the commentary of Rashi to the Babylonian Talmud, Bava Qama 81a: “It is a way of the fishermen to stick pegs (in the bottom of a body of water) and to construct reed fences to trap the fish...which obstructs the passage of boats.” According to Lieberman, Rashi’s explanation was based on the techniques of fishing common in his own time, in the 11th century CE: “The fish was caught in rivers, lakes, etc. – i.e., in shallow bodies of water – by means of multiple reed fences, called in common usage *bibaria* (vivaria, i.e., *bibarin* in rabbinic terminology). However, I have not found any mention of this technique in the early rabbinic literature, and from the formulation of the Tosefta, which mentions that one is forbidden to ‘set up his boat in the area of another person,’ it is clear that the reference is to something different from the technique mentioned by Rashi... Moreover, the latter technique is not appropriate for fishing in a sea, whereas the Babylonian Talmud mentions also fishing in the Sea of Galilee.” (Lieberman, *Tosefta ki-fshutah*, IX, p. 90, §§73-74 [Hebrew]). R. Abraham son of David of Posquières (the *Ra’avad*), cited by Rabbi Yeruham son of Meshullam (14th century CE), argued that the fishing technique described in the Tosefta, Bava Qama 8:17, was as follows: “It was their way to spread out a sail on a boat and to moor the boat in one place when they were fishing” (R. Yeruham son of Meshullam, *Sefer Mesharim* [Venice 1553], path 31, p. 103a). The Tosefta

Furthermore, the tribes had restricted the fishing rights in the Sea of Galilee. The *Tosefta*, Bava Qama 8:18, cites the following statement in the name of Rabbi Yosé the Galilean, a Tanna of the third generation active in the mid-2nd century CE: “The [other] tribes do not fish in the sea of Tiberias, because it is the property of Naphtali. And not only so, but one has to assign to Naphtali a strip of land going to the south of the sea, since it is said, ‘O Naphtali, satisfied with favor and full of blessing of the Lord: possess the lake and the south’ (Deut. 33:23),’ the words of R. Yosé the Galilean.”⁸ The perception reflected here is that the right of the general public from other tribes to fish in the Sea of Galilee was limited in order to protect the rights of the tribe of Naphtali, which had become the shore-owner of the Sea of Galilee with the partition of the Land of Israel into tribal allotments. The tribes had agreed that fish in the Sea of Galilee is a public good, but the tribe of Naphtali had been granted special rights to that good. Thus, everyone could fish in the Sea of Galilee by means of a fishing rod. But the tribe of Naphtali received a strip of land on the southern shore of this fresh-water lake, where only the tribe’s members were entitled to spread fishing nets from the shore – e.g., nets moved in the water by means of ropes, or nets which a fisherman throws into the water in order to drag out the fish caught under the net.⁹

The Tannaitic Midrash *Sifre to Deuteronomy* describes the privileges of the tribe of Naphtali with regard to fishing in the seas and lakes in the territory of its tribal allotment, including a special portion of land south of the Sea of Galilee: “‘O Naphtali, sated with favor’: This teaches that the tribe of Naphtali was well satisfied with its lot, with seas, fish, ships. . . ‘take possession’: This teaches that he took the entire territory of his lot in the south” (*Sifre to Deuteronomy* 355, 10).¹⁰ This midrash, composed in the Land of Israel, mentions the privilege of the tribe of Naphtali with regards to fishing in the Sea of Galilee. It does not treat the fish as a public good, and does not discuss the fishing rights of the general public.

restricted the right of the general public to fish from a boat using fishing nets, because such nets covered a large surface and could hinder the boats of the shore-owner from reaching the shore.

⁸ Translation, including the parenthetical additions, cited according to Neusner, *Tosefta*, IV: *Neziqin*, p. 49.

⁹ Eshtori ha-Parḥi, *Kaftor wa-ferah*, chapter 7, gives the following explanation of the Hebrew term *hevel* “rope” in connection to fishing, in his description of the city of Tiberias: “As it says in the Talmud (Bava Qama 81b), ‘A full portion (lit., *hevel* “rope”) of net – as if it was speaking of a full length of a trapping-rope, by which one pulls his net, as it says, ‘snares and nets’ (Eccl. 7:26)” (cited according to M. Ben-Hayim Koenig et al. [eds.], *Sefer Kaftor wa-ferah le-Rabenu Eshtori ha-Parḥi*, Jerusalem 1997, I, p. 153 [Hebrew]).

¹⁰ Translation cited according to J. Neusner, *Sifre to Deuteronomy: An Analytical Translation*, II, Atlanta 1987, p. 445.

A discussion of the general public's rights with regard to the use of public goods appears in the Jerusalem Talmud. One of the four rights of this category, formulated by Rabbi Tanḥum of Kfar Gavan in the name of Rabbi Eleazar son of Rabbi Yosé, is cited with a reservation of Rabbi Yosé the Galilean: "R. Tanḥum of Kfar Gavan in the name of R. Eleazar b. R. Yosé: 'They are four [stipulations]: . . . And they may pasture a flock in forest, even a flock belonging to the tribe of Judah in the territory of the tribe of Naphtali.' 'And they assign to Naphtali a complete strip of land south of the lake, as it is said, "O Naphtali, satisfied with favor and full of the blessing of the Lord, possess the lake and the south" [Deut. 33:23], the words of R. Yosé the Galilean" (the Jerusalem Talmud, Bava Batra 5:1).¹¹ Thus, the Jerusalem Talmud recognizes the privilege of the tribe of Naphtali with regard to fishing in the Sea of Galilee, and does not consider the fish in that lake as a full-fledged public good. No discussion can be found in the Jerusalem Talmud on whether the fish in general is considered a public good, and what this implies for the fishing rights of the general public in other bodies of water where fish lives.¹²

The stipulations defining the rights of the general public to use public goods were attributed by the Rabbis to Joshua son of Nun, who reportedly made those stipulations with all the tribes of Israel when they received their land allotments, since the possession of land also requires a definition of the status of the public goods related to that land. According to the Babylonian Talmud, Joshua required all the tribes to accede to the rights of the general public, regardless of tribal affiliation, to use the public goods: "Since it was with the stipulation that people should deal with one another in a liberal spirit that Joshua gave Israel ownership of the Land individually."¹³

Joshua's stipulations are laid down in a list of ten items: "Our Rabbis have taught on Tannaite authority: There were ten stipulations that Joshua made when the Israelites entered

¹¹ Translation, including the parenthetical additions, cited according to Neusner, *The Talmud of the Land of Israel*, XXX: *Baba Batra*, pp. 96-97. The term "lake" in this translation (Hebrew *yam*) refers to the Sea of Galilee.

¹² Perhaps the Jerusalem Talmud's position on this issue can be deduced from the statement appearing right before the reservation of Rabbi Yosé the Galilean, which authorizes the general public to pasture flocks in all the forests. This means that the grazing lands in the forests are a public good available to everyone. However, no similar statement is made explicitly with regard to the fishing rights of the general public. Moreover, the Jerusalem Talmud recognizes the possibility of private possession of bodies of water and the fish living therein (see above, n. 3).

¹³ The Babylonian Talmud, Bava Qama 82a (translation cited according to J. Neusner, *The Talmud of Babylonia: An American Translation*, XX.B: *Tractate Baba Qamma*, Chapters 4-7, Atlanta 1992, p. 195).

the Land: that cattle may be allowed to pasture in forests...that it is permitted to fish at an angle in the Sea of Tiberias, so long as no sail is spread out, since this would detain the boats” (Babylonian Talmud, Bava Qama 80b-81a).¹⁴ Thus, according to the rabbinic tradition, when the Land of Israel was apportioned to the tribes, Joshua established some norms and rights to be respected by the entire people of Israel, including the general public’s rights of use of the common goods.¹⁵ This tradition does not present the rights of the use of the common goods as resulting from a mutual agreement of the tribes themselves, but rather as a norm enforced by Joshua. The reason for this may be that the rights of the use of common goods impair the position of the individual or the group who are the effective holders of those goods, and the tribes could not be realistically expected to have acceded to impairment of their rights.

Among the stipulations which Joshua made when the Israelites entered the Promised Land, the Babylonian Talmud mentions the fishing rights granted to the members of all the tribes.¹⁶ According to one of Joshua’s stipulations, each person, regardless of his tribal affiliation, had the right to fish “at an angle” – i.e., with a fishing rod – in any location, including the shore of the Sea of Galilee or any other shore which the relevant person did not own. The only limitation on this right arose from the concern that its exercise should not cause damage to the shore-owner. Effectively, this amounts to the recognition of each person’s right to catch a small number of fish by means of light equipment. In contrast, the shore-owner had the right to use heavier equipment for fishing, such as nets and boats.

Further along in the same discussion, the Babylonian Talmud reads: “That it is permitted to fish at an angle in the Sea of Tiberias, so long as no sail is spread out, since this would detain the boats: But one may fish with nets and traps. Our rabbis have taught on

¹⁴ Translation cited according to Neusner, *The Talmud of Babylonia, XX.B: Tractate Baba Qamma, Chapters 4-7*, pp. 190-191. In Neusner’s translation, “to fish at an angle” refers to fishing by means of the fishing rod, and the motive of the prohibition on spreading out the sail, “since this would detain the boats,” should be understood as reference to mooring the boat on which the sail is spread (see above, n. 7).

¹⁵ Joshua’s stipulations with the tribes are also discussed in the Jerusalem Talmud, but there no comprehensive list of those stipulations is given, and the general public’s fishing rights are not outlined as such.

¹⁶ The Babylonian Talmud ascribes the statement on Joshua’s stipulations to Rabbi Joshua son of Levi, a first-generation *Amora* of the Land of Israel, active in the early 3rd century CE, even though these stipulations are ascribed to a Tannaite authority: “So who is the Tannaite authority who listed ten stipulations that Joshua made? It must be R. Joshua b. Levi” (translation cited according to Neusner, *The Talmud of Babylonia, XX.B: Tractate Baba Qamma, Chapters 4-7*, p. 195). Thus, according to the Babylonian Talmud, the tradition concerning the establishment of the general public’s rights by Joshua originated in the Land of Israel.

Tannaite authority: The tribes made the collective stipulation to begin with that no one may spread a sail and detain boats, but one may fish with nets and traps. Our rabbis have taught on Tannaite authority: The Sea of Tiberias was included in the portion of Naphtali, and in addition, Naphtali got a rope's length of dry land on the southern side to keep nets on" (Babylonian Talmud, Bava Qama 81b).¹⁷

In these passages one can observe a certain development with regard to the general public's fishing rights. Initially, by Joshua's stipulation, everyone was granted a right to fish by means of a fishing rod or a small fishing net. Subsequently, by the tribes' collective stipulation, an additional right was granted to fish with heavier equipment – nets and traps, probably thrown from the shore. The granting of this right impaired the position of the shore-owners. In return, the tribe of Naphtali, which was considered the owner of the southern shore of the Sea of Galilee, received a monopoly on fishing near the southern shore of this fresh-water lake.

As can be seen from the sources cited above, the discussion of the right to use public goods in the early rabbinic literature deals specifically with the right to pasture flocks in forests and the right to fish in the Sea of Galilee. From this one can deduce that the water and the fish of the Sea of Galilee were considered a public good, even though the shores of this fresh-water lake were considered property of the tribe of Naphtali. The general public's right to fish in the Sea of Galilee was restricted to fishing with fishing rods and small fishing nets – probably nets in the form of a basket, thrown by a single fisherman from the shore.

Did the five fishermen mentioned in the Murašû archive tablet rent such basket-nets? According to the early rabbinic literature, the shore-owner had certain privileges with regard to fishing, and could also use heavier equipment for fishing, including large fishing nets and boats. Still, he was restricted with regard to the use of some kinds of equipment – for example, he was not allowed to fish from a boat with a sail. This concept of fishing rights is also reflected in the great medieval legal compilations of Maimonides and Rabbi Jacob son of Rabbi Asher.¹⁸ In contrast, the general public remained restricted to those kinds of equipment

¹⁷ Translation cited according to Neusner, *The Talmud of Babylonia*, XX.B: *Tractate Baba Qamma*, Chapters 4-7, p. 192. On the meaning of detaining boats, see above, n. 14.

¹⁸ Maimonides, *Mishneh Torah*, composed ca. 1180 CE: "He (viz., Joshua) also stipulated that each person be permitted to catch fish in the Sea of Tiberias, provided that he catches it with a fishing rod. But such a person should not spread a sail and set up a boat in one place; this can be done only by the members of the tribe to which that sea belongs" (Laws of Property Damage 5:3). Rabbi Jacob son of Rabbi Asher, *Sefer Arba'ah Turim* (*The Book of the Four Pillars*), composed ca. 1300 CE: "Each person is allowed to fish with a fishing rod, but

which did not cause damage to the shore-owner. It is important to point out that neither the early rabbinic literature nor the medieval rabbinic sources authorized the shore-owner to prevent another person from coming to his shore in order to fish with a fishing rod.

In the Babylonian context, the following discussion in the Babylonian Talmud, Bava Qama 81b, is of a special interest: “Samuel and R. Judah were once walking on the way, and Samuel turned aside to the private sidewalk. Said to him R. Judah, ‘So do the stipulations that were set forth by Joshua apply even in Babylonia?’ He said to him: ‘Well, I maintain that they apply even outside the Land.’”¹⁹ Samuel, a Babylonian *Amora* of the first generation (active in the early 3rd century CE), took the liberty to walk on a privately owned sidewalk on the basis of the stipulations which Joshua made with the tribes of Israel when he apportioned the Promised Land among them. When asked by R. Judah, another Babylonian *Amora* of the same period, whether he thought that Joshua’s stipulations applied in Babylonia; Samuel answered in the affirmative.

Of course, rabbinic regulations on public goods had no bearing on the legal norms practiced by the ancient empires which controlled Babylonia. If the legal norms with regard to the general public’s fishing rights in Achaemenid Babylonia differed from those prescribed by the rabbinic sources for the Land of Israel, there is no doubt that the legal norms of the state would apply in the case recorded in the Murašû archive tablet, in which five fishermen (of whom at least three were Judeans) leased five fishing nets in order to catch fish that could later be sold for the festivals of the month of Tishre. However, if the legal norms of the Achaemenid empire left the question of fishing rights moot, then it is possible that the perception of fish as a public good, and the resulting right of the general public to fish freely with light equipment, reflected in the early rabbinic literature, could apply in Babylonia already at the time of the Murašû archive. In such a case, this perception could be reflected in the activity of the five fishermen whose contract is recorded in the tablet. Unfortunately, the tablet itself provides no information on the legal norms concerning fishing rights which form the basis of the contract.

Furthermore, when we consider the question of the definition of fishing rights in the early rabbinic literature – the Tannaitic Midrashim, the Mishnah, the Tosefta, the Jerusalem and Babylonian Talmud – we can observe that the question is mostly addressed there in the

forbidden to fish with nets and snares, which can be done only by the owner of the sea. And even the owner of the sea is forbidden to spread a sail, so as not to obstruct the passage of the boats” (Ḥoshen mishpat 214:6).

¹⁹ Translation cited according to Neusner, *The Talmud of Babylonia*, XX.B: *Tractate Baba Qamma*, Chapters 4-7, p. 193.

context of the ownership of the shores of the Sea of Galilee by the tribe of Naphtali. The general public's right to fish in the Sea of Galilee came into a conflict with the rights of the tribe of Naphtali in its capacity as a collective shore-owner, and Joshua had to enforce on all the tribes of Israel stipulations pertaining to the treatment of the fish in the lake as a public good, accessible under some conditions to each individual, but assigned on a tribal level to the tribe of Naphtali (which was expressed in some fishing privileges granted to that tribe).

In the Tosefta one can see that each person has a right to fish in the Sea of Galilee, with limitations on the equipment he can use so as not to cause damage to the shore-owner. In the Babylonian Talmud, one can observe an extension of the fishing rights of the general public, which was now allowed to use different kinds of fishing nets, in addition to fishing rods, in order to fish from a shore owned by someone else. Importantly, the shore-owner was not allowed to prevent another person from entering his shore in order to fish with a fishing rod, and later, also with fishing nets or traps.

In the early rabbinic literature, one finds no discussion of a possible distinction between a person fishing for his own needs and a commercially oriented fisherman whose occupation was to catch fish in order to sell it in the market. The fish itself is considered a public good, even though the right of access to the shore may be limited depending on the kind of equipment used. A person fishing for his own needs would enter another person's or another tribe's shore with a fishing rod, or perhaps with a small fishing net. As such, he did not create a significant hindrance to the shore-owner, which is why he could come to the shore in the first place.

With regard to commercially oriented fishermen, it is reasonable to say that although the fish was considered a public good, their very intention to appropriate it for the purpose of selling in the market, as well as their need to use heavy fishing equipment, creating a greater hindrance to the shore-owner, would disqualify them from coming freely to a shore that belonged to someone else, and they would have to pay for the right to use that shore.²⁰ The Murašû archive tablet does not indicate whether the five fishermen also purchased fishing rights when renting the fishing nets, or whether they possessed fishing rights from the outset, like everyone else living in Achaemenid Babylonia, based on the common legal norms. Moreover, it is possible that the five fishermen mentioned in the tablet held a portion of the shore of some river or canal in ownership or in lease, so that the question of fishing rights did not rise with the conclusion of the contract.

²⁰ As was the case in Ptolemaic Egypt (see above, n. 3).

In light of all these uncertainties, the early rabbinic literature can throw no light on the question of fishing rights in Achaemenid Babylonia, including its Judean inhabitants, such as those mentioned in the Murašû archive tablet. Moreover, we cannot tell whether commercially oriented fishermen had the right to use nets for fishing on a par with individuals fishing for their own needs, or whether the market orientation of their activity distinguished them from the general public and required them to make additional payments to the person who leased them the fishing nets or to another shore-owner.

Postscript: Eating Fish on Jewish holidays

Although the result of our enquiry into the topic of fishing rights in Achaemenid Babylonia has been essentially negative, we can suggest a different point of similarity between the Murašû archive tablet recording the contract concluded by the five fishermen and the early rabbinic literature. This point of similarity concerns the custom of eating fish on Jewish holidays.

According to the Murašû archive tablet, the five fishermen rented five fishing nets in order to catch fish between the 25th of Elul and the 15th of Tishre. They also reserved for themselves an option to extend the lease of the nets until the 20th of Tishre. These dates are important in the Jewish calendar, because they include the holidays of Rosh Hashana (the first day, or two days, of Tishre), the Day of Atonement (the 10th of Tishre) and the first day of the festival of Sukkot (the 15th of Tishre). Moreover, the fact that the fishermen reserved the option to return the nets on the 20th of Tishre suggests that they anticipated a high demand for fish, which could last as long as five days after the beginning of Sukkot. In other words, the Murašû archive tablet suggests a high demand for fish at the time of the Jewish holidays in the month of Tishre.²¹

In the early rabbinic literature, we can find an explanation for this demand for fish and some clues to its development in Judean, and later Jewish, communities. The Babylonian Talmud considers eating fish as an appropriate manifestation of the enjoyment of the Sabbath

²¹ The Murašû archive tablet was written in the fifth regnal year of Darius II, 419 BCE. A celebration of Rosh Hashana and Sukkot in Jerusalem, in the seventh month (Tishre), in the reign of Artaxerxes I, the father and predecessor of Darius II on the throne, is mentioned in Nehemiah 8. Interestingly, that chapter does not mention the Day of Atonement, and Nehemiah 9:1 places a public ceremony of atonement on day 24 of the seventh month instead. In any event, the evidence of Nehemiah 8 suggests that, at least, Rosh Hashana and Sukkot were also celebrated in the Judean communities in Babylonia by the second half of the 5th century BCE.

(Hebrew *'oneg shabbat*).²² The enjoyment can be expressed by eating any kind of fish, be it large or small. The Talmudic story of Joseph the Sabbath Lover exemplifies the eagerness of the Jews to procure fish for the Sabbath.²³ The midrash about a Jewish tailor in Rome reflects the efforts invested in procuring fish for the final meal before the fast of the Day of Atonement.²⁴

In the Jerusalem Talmud we find that the fishermen of Tiberias pledged to abstain from work on the intermediate days (*Hol Hamoed*) of the Passover and Sukkot holidays, between the first and the last days of these festivals. However, due to the high demand for fish, a total abstinence from fishing proved impossible, so they had to return to fishing, albeit

²² “Said R. Judah, said Rab, ‘To anyone who makes the Sabbath a time of rejoicing they give whatever his heart desires: “Delight yourself also in the Lord and he will give you your heart’s desires” (Ps. 37:4). Now I don’t know what “delight” is, but when it says, “and you shall call the Sabbath a delight” (Isa. 58:13), you must say, that refers to the pleasure of the Sabbath.’ In what way does one show his delight in the Sabbath? R. Judah b. R. Samuel bar Shilat in the name of Rab said, ‘With a beet dish, a large fish, and plenty of garlic.’ R. Ḥiyya bar Ashi said, Rab said, ‘Even with any small thing that is meant for the honor of the Sabbath – lo, that constitutes a delight.’ What might that be? Said R. Pappa, ‘A fish hash’” (the Babylonian Talmud, Shabbat 118b; translation cited according to J. Neusner, *The Talmud of Babylonia: An American Translation*, II.D: *Shabbat, Chapters 11-17*, Atlanta 1993, p. 108).

²³ “Joseph the Sabbath Lover: There was a gentile in his neighborhood who had a lot of property. The Chaldeans told him, ‘Joseph the Sabbath Lover is going to consume all your property.’ He went and sold all his property and bought a jewel with the proceeds; this he put in his turban. As he was crossing a bridge, the wind blew off the turban and threw it into the water. A fish swallowed it. The fish was caught and brought to market on a Friday afternoon before sunset. They said, ‘Who will buy it now?’ They said to them, ‘Go show it to Joseph the Sabbath Lover, because he usually buys.’ They took it to him. He bought it, cut it open and found the jewel in it. He sold it for thirteen roomfuls of gold coins. A certain old man met him and said, ‘He who lends to the Sabbath – the Sabbath pays him back’” (the Babylonian Talmud, Shabbat 119a; translation cited according to Neusner, *The Talmud of Babylonia*, II.D: *Shabbat, Chapters 11-17*, Atlanta 1993, p. 111).

²⁴ “Said R. Tanḥuma, ‘There was a case in Rome that took place on the eve of the Great Fast [the Day of Atonement]. A certain tailor there went to buy himself a fish, and it happened that the governor’s bondman was bidding for it too, and one bid for such and so, and the other bid for such and so, until the price reached twelve denars. And the tailor got it. At the dinner the governor said to his servant, “Why did you not serve fish?” He said to him, “My lord, why should I keep the matter from you? Such and so a certain Jew did to me. Do you want me to bring you a fish that cost twelve denars?” He said to him, “Who is he?” He said to him, “Such and so, a Jew.” He sent for him and summoned him, and he came. He said, “Will a Jewish tailor eat fish for twelve denars?” He said to him, “My lord, we have a day which effects atonement for us for all of the sins of the year, and should we not treasure it?” He brought proof for his statement, and the governor let him go free’” (Midrash Genesis Rabbah, 11:4; translation cited according to J. Neusner, *Genesis Rabbah: The Judaic Commentary to the Book of Genesis. A New American Translation*, Atlanta 1985, I, pp. 113-114).

discretely—using lighter equipment than usual, and consequently catching a smaller amount of fish. The Jerusalem Talmud says that Rabbi Ami (alias Immi), a third-generation *Amora* of the Land of Israel active around 300 CE, treated them lightly (Aramaic *meqel lon*), which is understood in two different ways. Either Rabbi Ami permitted the fishermen to fish, even though only with lighter equipment, in order not to abate the joy of the festivals, or he cursed them as light-minded persons who abated the joy of the festivals by their failure to maintain a proper supply of fish to the market.²⁵ One way or another, the Jerusalem Talmud considered the consumption of fish as part of the joy of the festivals, including the festival of Sukkot.

Was the perception of eating fish as a proper way to celebrate the holidays an ancient tradition among the Jews? Was it widespread in the Judean communities in Babylonia, and elsewhere, already at the time of the Murašû archive (late 5th century BCE)? The tablet discussed above might reflect the culinary customs of Judeans going back to even earlier times, prior to the Babylonian exile. But even if the full-blown stage of the tradition of eating fish on the Sabbath and on Jewish holidays, reflected in the early rabbinic literature, postdates the Murašû archive tablet, the tablet can still be considered an important witness to the development of that tradition, linking the Judean communities in Achaemenid Babylonia with the norms and customs of later Rabbinic Judaism.

²⁵ According to the Mishnah, Mo'ed Qatan 2:5, “Hunters, goats-makers, and grist-millers do their work discretely, for the purposes of the festival” (translation cited according to J. Neusner, *The Mishnah: A New Translation*, New Haven 1988, p. 326). In connection with this ruling, the Jerusalem Talmud says: “The net-fishers of Tiberias, and the grist-makers of Sepphoris, [and] the grain crushers of Acco accepted upon themselves not to work on the intermediate days of the festival. . . It is understandable regarding the grist-makers of Sepphoris [and] the grain crushers of Acco. . . regarding the net-fishers of Tiberias. . . however, do they not diminish the joy of the festivals [by decreasing the availability of fish]? [The angler] fishes with a hook, [and] he fishes with a small net. Even thus, do they not diminish the joy of the festival [for their catch would be smaller than needed]? R. Ami cursed them because they diminished the joy of the holiday” (Jerusalem Talmud, *Pesaḥim* 4:1; translation, including the parenthetical additions, cited according to B. M. Boxer and L. H. Schiffman, *The Talmud of the Land of Israel: A Preliminary Translation and Explanation*, XIII: *Yerushalmi Pesaḥim*, Chicago 1994, p. 153). Whereas according to the translation of Boxer and Schiffman, R. Ami cursed the fishermen of Tiberias, the more recent German translation of Andreas Lehnardt reflects a different interpretation, according to which R. Ami treated the fishermen lightly in the sense of permitting them to do what they did: “Rabbi Immi (entschied) erleichternd für sie” (A. Lehnardt, *Pesaḥim – Pesachopfer* [Übersetzung des Talmud Yerushalmi II/3], Tübingen 2004, p. 126).