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**Daniel Greenberg**

**Script for BBC Thought for the Day**

**31 January 2019**

**The Etiquette of Accidents**

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Good morning.

Media discussion of Prince Philip’s car accident appears to have settled down, the last episode being a letter of good wishes from the Prince to both casualties.

When the news of the accident broke, some of us may have thought of standard insurance company instructions not to do anything at the scene that could later be construed as an acceptance of legal liability. The Compensation Act 2006, which I drafted, was amended during the Bill’s passage by a non-Government provision, now section 2, that an apology is not to be taken as an admission of liability. And that hasn’t changed much as a matter of law: the form and context of an apology will always determine whether it is or is not also an acceptance of liability. But it has sent an important signal about the importance of considering and expressing the human side of things that happen to us.

This week’s Sabbath Torah reading happens to include the Jewish law of accidents, in the course of which it describes a violent encounter between two large animals – your animal is a write-off and mine walks away. There is no question of fault on either side: my animal had no known propensity for violence, and it just happened to go for yours and came off best. In most cases Jewish law is fault or liability-based, like UK secular law: the general maxim is *hamotzi mechaveiro olov horayoh* – which means “the burden of proof is on the person who wants to be paid”. But in this case, Jewish law departs from a fault basis: both animals are sold, the dead loser and the live winner, and the value of each is shared.

This is counter-intuitive but fundamental. We can look at the world entirely in terms of fault and liability. Can you prove it was my fault? If not, I walk away. Or we can look at it sometimes in human terms and recognise that something has happened to both of us, through neither of our faults, and that by sharing the consequences we acknowledge a shared humanity and a concern for each other. That general principle, although not the detailed application, is as relevant to modern events as to the particular Biblical example.

The shared message of section 2 of the Compensation Act and the Biblical principles of accident law is that in a rule of law system there is room to recognise people’s compassionate and other human instincts and to leave them sufficient scope for expression.