Talmud - Mas. Baba Metzia 2a

C H A P T E R I

MISHNAH. TWO [PERSONS APPEARING BEFORE A COURT] HOLD A GARMENT.[1] ONE OF THEM SAYS, 'I FOUND IT', AND THE OTHER SAYS, 'I FOUND IT'; ONE OF THEM SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS, 'IT IS ALL MINE', THEN THE ONE SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, AND THE OTHER SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, AND [THE VALUE OF THE GARMENT] SHALL THEN BE DIVIDED BETWEEN THEM. IF ONE SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS, 'HALF OF IT IS MINE', HE WHO SAYS, 'IT IS ALL MINE' SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN THREE QUARTERS, AND HE WHO SAYS, 'HALF OF IT IS MINE' SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN A QUARTER. THE FORMER THEN RECEIVES THREE QUARTERS [OF THE VALUE OF THE GARMENT] AND THE LATTER RECEIVES ONE QUARTER. IF TWO RIDE ON AN ANIMAL, OR ONE RIDES AND THE OTHER LEADS IT, AND ONE OF THEM SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS, 'IT IS ALL MINE', THEN THE ONE SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, AND THE OTHER SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, AND [THE VALUE OF THE ANIMAL] SHALL THEN BE DIVIDED BETWEEN THEM. IF BOTH ADMIT [EACH OTHER'S CLAIMS] OR IF THEY HAVE WITNESSES [TO ESTABLISH THEIR CLAIMS] THEY RECEIVE THEIR SHARES WITHOUT AN OATH.

GEMARA. What need is there [for the Mishnah] to [give two pleas of the litigants and] state: ONE OF THEM SAYS, 'I FOUND IT', AND THE OTHER SAYS, 'I FOUND IT', ONE OF THEM SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS, 'IT IS ALL MINE'? Surely one plea would have been sufficient! — It is only one plea: One says 'I found it and [therefore] it is all mine', and the other says 'I found it, and [therefore] it is all mine'! But why not just state 'I found it', and it will be understood that the intention is to claim the whole garment? — The term 'I FOUND IT' might have been explained as denoting 'I saw it', the mere seeing [of the garment] entitling him to claim it as his possession.[2] Therefore the plea 'IT IS ALL MINE' is added, so as to make clear that seeing alone does not constitute a claim. But how could it be thought that one who has only seen [the garment] could plead 'I found it'? Does not Rabbannai[3] say that the phrase and thou hast found it[4] means 'thou hast taken hold of it'? — It is admitted that the Scriptural use of the term 'found' implies having taken hold, but the Tanna uses popular language, in which, on seeing something, one might use the term 'found it', [the belief being prevalent] that one acquires [a lost article] by sight alone. For this reason it was necessary to add the plea 'IT IS ALL MINE' and thus to indicate that the mere seeing [of an ownerless object] constitutes no claim to possession. But even so, would it not have been sufficient to state 'IT IS ALL MINE' without the plea of 'I FOUND IT'? — Had [the Mishnah] stated only the plea 'IT IS ALL MINE' I might have said that elsewhere [in the Talmud] the term 'found' is used to mean ['seen', and the conclusion would have been drawn] that mere sight constitutes a claim to possession. For this reason the Mishnah states first 'I FOUND IT' and then 'IT IS ALL MINE' so that we may gather from the additional clause that mere sight does not constitute a claim to possession.

But how could you say that the two pleas are really one? Is not each plea introduced by the words: ONE OF THEM SAYS and THE OTHER SAYS[5] , [viz.] ONE OF THEM SAYS 'I FOUND IT', AND THE OTHER SAYS 'I FOUND IT', ONE OF THEM SAYS 'IT IS ALL MINE', etc.? [To this] R. Papa. or R. Shimi b. Ashi, or, as some say, Kadi,[6] replied: The first plea applies to a case of finding, but the second plea applies to a case of buying and selling.[7] And it is necessary [to have the two cases].

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(1) So that they are both in actual possession — otherwise the one in actual possession would have the stronger claim.
(2) Though the other man has taken hold of it first.
(3) B.K. 113b; [MS. M.: Rabina. V. D.S. a. l.].
(4) Deut. XXII, 3.
(5) Which would show that they form alternative pleas.
(6) This word may also mean 'an unknown authority'.
(7) But not to a case where each one maintains that he has made the garment, for then one of them is bound to be lying.

Talmud - Mas. Baba Metzia 2b

For if the Tanna had dealt solely with the case of finding I might have said that only in such a case would the Rabbis impose an oath, because each disputant might permit himself [to claim the garment] by saying to himself, 'My neighbour loses nothing through my action [as it cost him nothing to acquire the garment]; I shall go and take hold of it and share it with him.'[1] But in the case of a bought article, where this argument does not apply,[2] it might be assumed that no oath was to be imposed. On the other hand, had the Tanna dealt solely with a case of buying and selling, it might be assumed that only in such a case would the Rabbis impose an oath, because each disputant might permit himself [to claim the garment] by saying to himself, 'My neighbour has paid the price and I am prepared to pay the price; seeing that I need it I shall take it, and let my neighbour take the trouble to go and buy another garment.' But in the case of a found article, where this argument does not apply, it might be assumed that no oath was to be imposed; therefore both cases are necessary.

But how could such a situation arise in the case of a bought article? One could surely ascertain from the seller as to which of the two paid him the money? — The case is one in which the seller took money from the two purchasers, willingly from one, and unwillingly, from the other, and we do not know from whom he took it willingly and from whom unwillingly.[3]

Shall it be said that our Mishnah is not in agreement with the view of Ben Nannus? For does not Ben Nannus[4] express surprise at the decision of the Sages to impose oaths on disputants one of whom is bound to swear falsely? — The Mishnah may well be in agreement with Ben Nannus. For in the case [where Ben Nannus objects to the oath] it is certain that if both parties take the oath one of them will commit perjury. But in our Mishnah it may well be assumed that no perjury will be committed [even if both parties swear], for it is possible that both of them picked up the garment simultaneously.[5]

Again, shall it be said that our Mishnah is not in agreement with the view of Symmachus? For does not Symmachus, [in another case,][6] maintain that disputed money of doubtful ownership should be divided among the disputants without an oath? But would not the same difficulty arise [if we compared the decision of our Mishnah] with that of the Rabbis[7] [who are opposed to Symmachus]? For have these Rabbis not declared that 'the claimant must bring evidence to substantiate his claim' [while in our Mishnah the disputed article is divided on oath]? — What a comparison! In the case in which the Rabbis apply the principle that 'the claimant must bring evidence' the contending parties had not taken hold of the disputed object, but here [in our Mishnah] since both disputants hold the garment[8] it is rightly divided, after both have taken the oath. But in regard to Symmachus the argument is the other way. For if he decided in the case referred to [where no party is in possession of the disputed property] that the amount should be divided among the litigants without an oath, how much more readily would he give this decision in a case like ours, where both disputants are equally in possession of the article in question; [and thus the query remains, 'Shall it be said that our Mishnah is not in agreement with Symmachus?'] It can still be maintained that the Mishnah is in agreement with Symmachus. For Symmachus expressed his view [that the property in dispute should be divided without an oath] only in a case where both litigants are uncertain as to the true facts [and it would therefore be wrong to make either of them swear] but where both parties assert their claims

with certainty [as in our Mishnah] he would take a different view.

But does not Rabbah the son of R. Huna maintain that Symmachus's decision applies also to a case where both parties are certain and definite in their claims?[9] — It can still be maintained that our Mishnah is in agreement with Symmachus. For Symmachus expressed the view [as quoted] only in a case where a verdict in favour of one would involve a loss to the other, but where no actual monetary loss is involved [as in our Mishnah] he would take a different view. But then again, can we not infer by means of a Kal wa-homer[10] [that Symmachus would disagree with our Mishnah]? For if even in the case where the party entitled to the verdict loses money by being awarded only half of the disputed amount,

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(1) The oath would then act as a deterrent, as even if he did not hesitate to put forward a wrong claim he would not be ready to commit perjury.

(2) Apart from the loss of the money paid, there is the loss of the garment which the man who went to the trouble of buying it evidently needed for his own use.

(3) The evidence of the seller, even if available, would not be trusted in such a case, as he is not likely to remember, after the two have left, from whom he took the money willingly (Rashi). [Tosaf. reads, he did not know, i.e., the seller does not recollect the matter; v. Kid. 73a.]

(4) V. Shebu. 43a. It is the case of a householder having instructed a shopkeeper to supply his employees with goods for the amount that he (the householder) owed them in wages. The shopkeeper asserts that he has supplied the goods, while the employees deny having received any. The decision of the Sages is that both the shopkeeper and the employees take an oath in confirmation of their statements, and the householder pays both parties, whereas Ben Nannus holds that both receive payment without taking an oath.

(5) In this case each finder would be entitled to swear that half of the garment belongs to him, in the belief that he was first in picking up the whole of it. The same applies to a bought article if the seller consented to sell it to both at the same time.

(6) v. B.K. 46a.

(7) V. ibid.

(8) And although each one claims the whole garment, and thus seeks to acquire the part that the other is holding, yet they are both in the same position, so that the above principle does not apply.

(9) Which makes the above distinction (between ‘certain’ and ‘uncertain’) invalid?

(10) An inference from a minor to a major premise; v. Glos.

and where it could be maintained that the whole amount is due solely to that party Symmachus abides by the principle that ‘Disputed money of doubtful ownership should be divided without an oath’, how much more readily would he abide by that principle in a case where [as in our Mishnah] it can be said that the disputed object belongs to both [and that therefore it should be divided between them without an oath]? It can still be maintained that our Mishnah is in agreement with Symmachus. For the oath imposed upon disputants in our Mishnah is only rabbinical [not Biblical].[1] This is expressly maintained by R. Johanan. For R. Johanan says: This oath is an institution of the Sages, intended to prevent anyone from going out and seizing a neighbour's garment, declaring it to be his own.

Shall it be assumed that our Mishnah is not in agreement with R. Jose? For does not R. Jose say:[2] If so, what loss does the fraudulent claimant incur? Therefore let the whole amount be retained [by the Court] until ‘the coming of Elijah’?[3] But [as a counter-question] would not the same difficulty arise in regard to the Rabbis [who are opposed to R. Jose]? For seeing that these Rabbis maintain that the balance[4] should be retained [by the Court] until ‘the coming of Elijah’. would they not accordingly give the same decision concerning the disputed garment [in our case], which is like the disputed balance [in the other case]? — What a comparison! In the other case, where it is certain that

the disputed balance belongs to one of the claimants only, those Rabbis rightly decided that the amount in question should be retained till 'the coming of Elijah'; whereas here [in our Mishnah], where it can be assumed that the garment belongs to both ,[5] the [same] Rabbis would agree that it should be divided among the two claimants when they have taken the oath. But in regard to R. Jose the argument is the other way. If R. Jose decided in his case, where each claimant is undoubtedly entitled to one hundred [zuz][6] , that the money should be retained till 'the coming of Elijah', how much more readily would he decide so in our case [where it can be assumed that only one of the disputants is entitled to have the garment]? — The Mishnah can still be in agreement with R. Jose. For in his case one of the disputants is bound to be a fraud,[7] whilst in our case no one can say for sure that one of the disputants is a fraud,[8] as it is possible that both picked up the garment simultaneously. If you wish it, I could argue thus: In his case, R. Jose penalised the fraudulent claimant [in making him forfeit his hundred] so that he may confess the truth, but in our case [where the dispute is about a found article] what real loss would the fraudulent incur [on the garment being forfeited] that could induce him to confess the truth?[9] [But the question arises:] Assuming this argument is right with regard to a found article, how can it apply to a bought article?[10] The first answer is hence the best.[11]

[Now the question arises:] According to the views of either the Sages or R. Jose [who agree that the fraudulent person should not be allowed to benefit by his fraud] how is it that in the case of the shopkeeper and his credit-book[12] the decision is that both take the oath and receive payment [from the householder] and we do not say that the money should be taken from the householder and retained [by the Court] until 'the coming of Elijah', since it is certain that one of the parties[13] is guilty of fraud? — In this case there is a special reason for the decision given. The shopkeeper can say to the householder: 'I carried out your instructions — what have I to do with your employee? Even if the employee swears — I do not believe his oath. You trusted him, in that you did not tell me to give him the goods in the presence of witnesses.' The employee, on the other hand, can say [to the householder]: 'I have done the work for you — what have I to do with the shopkeeper? Even if he swears — I do not believe him.'[14] Therefore they both swear and receive payment from the householder.

R. Hiyya taught: [If one says to another,] 'You have in your possession[15] a hundred zuz belonging to me', and the other replies, 'I have nothing belonging to you', while witnesses testify that the defendant has fifty zuz belonging to the plaintiff; the defendant pays the plaintiff fifty zuz, and takes an oath regarding the remainder,[16] for the admission of a defendant ought not to be more effective than the evidence of witnesses[17] , a rule which could be proved by a Kal wa-homer.[18] And our Tanna teaches this: WHEN TWO HOLD A GARMENT AND ONE OF THEM SAYS 'I FOUND IT' ETC. . . . [BOTH HAVE TO SWEAR]. Now this is just the same [as the case where there are witnesses], for when we see a person holding a garment we presume that it is his, and we are in the position of witnesses who can testify that each claimant is entitled to the half he is holding. And yet each claimant has to swear.

Now why is it necessary to prove by means of a Kal wa-homer that the admission of a defendant ought not to be more effective [in imposing an oath on the defendant] than the testimony of witnesses? — [It is necessary for this reason:] In the case of a [partial] admission [of a claim] you might say that the Divine Law[19] has imposed an oath upon him for the reason indicated by Rabbah.[20] For Rabbah said: The reason the Torah has declared that he who admits part of his opponent's claim must take an oath[21] is the presumption that nobody would take up such an impertinent attitude towards his creditor [as to give a complete denial to his claim]. The defendant [in this case] would have liked to give a complete denial, but he has not done so because he has not been able to take up such an impertinent attitude

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(1) Cf. Shebu. 41a.

(2) In the case where two persons have deposited money with a third person, one a hundred and the other two hundred zuz, and each depositor claims to have deposited the larger amount, v. 37a.
(3) Elijah the prophet, the herald of the Messianic era who is to make the truth known. The phrase is a technical term meaning 'indefinitely'.
(4) The disputed hundred.
(5) As they may have picked it up simultaneously.
(6) V. n. 1 supra.
(7) As they both claim to have deposited the 200 zuz, and it is only right to make the fraudulent person suffer.
(8) Therefore R. Jose would agree that the garment should be divided in accordance with the decision of the Mishnah.
(9) And since the forfeiture of the garment would serve no purpose, R. Jose would agree with our Mishnah.
(10) Where even the person that has no right to the garment would incur a real loss by its forfeiture (because, as explained above, he too had paid for it) and the fear of the loss would induce him to admit the truth (that the seller had taken the money from him unwillingly).
(11) Viz., that in the other case one claimant is certainly fraudulent, while in our case both may be honest.
(12) V. p. 4, n. 1.
(13) Either the shopkeeper or the employees.
(14) It would thus be wrong to make either party forfeit the amount claimed. As the shopkeeper and the employees have had no direct dealings with each other, and have entered into no mutual obligations, they may regard each other as entirely untrustworthy and refuse to believe each other even on oath.
(15) I.e., on loan.
(16) He swears that he does not owe the other fifty zuz. The evidence of the witness places the defendant in the same position as his own admission of part of the claim would have done. Shebu. 39b.
(17) If therefore the defendant's partial admission necessitates his taking an oath on the rest, the evidence of the witnesses regarding the partial debt should at least have a similar effect.
(18) v. Glos.
(19) Lit., 'The All- Merciful One', i.e. God, whose word Scripture reveals.
(20) B.K. 107a.
(21) While in the case of one who restores a lost article to its owner he is believed without an oath, even if the owner maintains that only part of the loss has been returned to him by the finder.

Talmud - Mas. Baba Metzia 3b

. On the other hand, it may be assumed that the defendant would have been ready to admit the whole claim,[1] and that he has not done so because of a desire to put the claimant off for a time, thinking: 'When I shall have money, I shall pay him.' Therefore the Divine Law imposes an oath upon him, so that he may admit the whole claim. But as regards the testimony of witnesses, where this argument does not apply,[2] I should have thought that no oath ought to be imposed. Therefore it is necessary to prove by a Kal wa-homer that in this case also an oath is to be imposed. And what is the Kal wa-homer? — [It is as follows:] If [the words of] his own mouth,[3] which do not oblige him to pay money, make it necessary for him to take an oath, how much more ought the evidence of witnesses, which obliges him to pay money, make it necessary for him to take an oath? But is it right to say that [the words of] his own mouth do not oblige him to pay money — in view of [the established principle] that the admission of a defendant is equal to the testimony of a hundred witnesses? — What is meant by the payment of money is the payment of a fine.[4] [And the Kal wa-homer is as follows:] If [the words of] his own mouth, which do not oblige him to pay a fine, make it necessary for him to take an oath, how much more ought the evidence of witnesses, which obliges him to pay a fine, make it necessary for him to take an oath? [But then it could be argued:] Does not a person's own mouth carry more weight [than the evidence of witnesses] in that it can oblige him to bring an offering,[5] while the evidence of witnesses does not oblige him to bring an offering?[6] — This objection is not valid: R. Hiyya is of the same opinion as R. Meir, who says that witnesses do make it necessary for the offender to bring an offering, [and he infers it] by means of a Kal wa-homer. For we learnt:[7] When two persons say to a third person: 'You have eaten forbidden fat [unawares]', but

he says: 'I have not eaten any'. R. Meir maintains that he is obliged to bring an offering, but the Sages[8] declare him free. R. Meir argues: If two [witnesses] can bring upon an offender such a severe penalty as death, should they not be able to bring upon him the light penalty of an offering? To this the Sages oppose the argument: Had he desired [to prevaricate] he could have said, 'I did it deliberately', and he would have been free [from bringing an offering].[9]

But [the argument continues]: Does not a person's own mouth carry more weight [than witnesses] in that it can oblige him [in a case of confession after denial on oath] to bring a guilt-offering?[10] But [it is immediately objected]: A guilt-offering is also an offering [and this argument has already been dealt with]! — Then [put it this way]: Does not a person's own mouth [in a case of confession after a denial on oath] carry more weight than witnesses, in that it can oblige him to pay a 'fifth'?[11] — This objection is not valid: R. Hiyya is of the same opinion as R. Meir, who says that just as witnesses oblige the offender to bring an offering — because of the Kal wa-homer inference — they also oblige him on the same ground to bring a 'fifth'. But [it can still be objected]: Does not a person's own mouth [in the case of the admission of a debt] carry more weight [than the evidence of witnesses] in that it cannot be refuted by a denial or an alibi proof[12] on the part of witnesses, while the evidence of witnesses can be refuted by a denial or an alibi proof on the part of other witnesses? — [The Kal wa-homer must] therefore be derived from 'one witness': If one witness, whose evidence does not oblige a defendant to pay money, obliges him to take an oath,[13] how much more should several witnesses, whose evidence does oblige a defendant to pay money, oblige him to take an oath. But [it can be objected]: The oath that is imposed by the evidence of one witness refers only to the part of the debt to which the witness testifies [and which the defendant denies],

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(1) His honesty, therefore, need not be doubted, and one need not suspect that he would swear falsely if given an oath.

(2) As the defendant denies the whole claim, and if he is dishonest he may also be ready to commit perjury.

(3) I.e., his own confession.

(4) The admission of an offence for which a fine is imposed renders the offender free from such a penalty by virtue of his confession. V. B. K. 75a.

(5) V. Lev. V, 9.

(6) If he contradicts the evidence. For it appears from Lev. IV, 28, that it is only his own admission of the wrong he has committed unawares that necessitates the bringing of an offering by him, but not the information given by witnesses. If this is so, then how does it follow that witnesses make it necessary for him to take an oath?

(7) Ker. 11b. Cf. Jeb. 87b.

(8) Anonymous opinion representing the majority of Rabbis.

(9) As an offering is brought only if the offence has been committed unawares, and had the offender no regard for the truth, he could have escaped the penalty of an offering by declaring that he had offended deliberately. It must therefore be assumed that in denying the witnesses' statement completely he told the truth. [In the case of a deliberate offence, the penalty is Kareth, extermination by the hand of God. Cf. Lev. VII, 25, and v. Glos.]

(10) Lev. V, 20-26.

(11) The guilt-offering accompanies the return of the misappropriated goods and the payment of a 'fifth', i.e., a fifth part of the value of the goods.

(12) V. Mak. ch. I, and v. Glos. Zomem.

(13) In confirmation of his denial of the witness's statement. V. Shebu. 40a.

while the oath that you would impose by the evidence of several witnesses refers to the remainder of the debt [not included in the evidence], which is denied by the defendant.[1] [In consequence of this refutation] R. Papa says: The inference is really drawn from an 'attached oath'[2] [caused by the evidence of] one witness. But [to this also it could be objected]: Is not the 'attached oath' of one witness more weighty, in that [in this case] one oath carries with it another oath,[3] while several witnesses only oblige the defendant to pay money?[4] — The case of 'his own mouth' will prove it.[5]

But [it is again objected]: is not 'his own mouth' more weighty in that it cannot be refuted by a denial [on the part of witnesses]? — The case of 'one witness' will prove it, in that he can be refuted [by other witnesses] and yet he obliges the defendant to take an oath. But [it is objected once more]: [The oath imposed by] one witness refers only to the part of the debt to which the witness testifies [and which the defendant denies], while [the oath that is imposed by] several witnesses refers to the remainder of the debt — [not included in the evidence and] denied by the defendant? — Again the case of 'his own mouth' will prove it.[6] But [it is again objected]: Is not 'his own mouth' [in a case of admission] more effective in that it cannot be refuted by a denial [on the part of witnesses]? — The case of one witness will prove it, in that he can be refuted by the denial [of other witnesses] and yet he obliges the defendant to take an oath. But [it is objected once more]: [The oath that is imposed by] several witnesses refers to the remainder of the debt denied by the defendant [and not included in the evidence]? — Again, the case of 'his own mouth' will prove it.[7] And the [former] argument resumes its force. [It is true that] the aspect of one case is not like the aspect of the other case; but both cases have the common characteristic that they arise through claim and denial, and therefore the defendant has to swear. So I adduce that also in the case of 'witnesses,' arising as it does through claim and denial, the defendant has to swear. But [it is again argued]: Have not the other analogous cases the common characteristic that the defendant is not presumed to be a liar, while in the case of 'witnesses' he is presumed to be a liar?[8] [The objection, however, is at once raised:] Is the defendant really presumed to be a liar when contradicted by witnesses? Has not R. Idi b. Abin said that R. Hisda said: He who denies a loan[9] can still be accepted as a witness, but he who denies a deposit cannot be accepted as a witness?[10] Therefore argue this way: Have not the other cases the common characteristic that they are not subject to the law of retaliation in case of an alibi,[11] while [several] witnesses are subject to the law of retaliation in case of an alibi? — This presents no difficulty: R. Hiyya attaches no importance to the argument from the law of retaliation in case of an alibi.[12]

There is, however, another difficulty: How could it be said that our Tanna teaches the same [as R. Hiyya] — are the two cases at all alike? There [viz., in the case of R. Hiyya] the creditor has witnesses [for half the amount claimed], but the debtor has no witnesses [regarding the other half] that he does not owe him it. For if the debtor had witnesses that he did not owe him anything [of the other half claimed], R. Hiyya would not require the debtor to swear [regarding the other half]. But here [in our Mishnah] we are witnesses for the one party as much as for the other [in regard to the right of either to one half of the garment], and yet both have to swear.[13]

It must therefore be assumed that the statement 'And our Tanna teaches the same' refers to another decision of R. Hiyya. For R. Hiyya says: [If one says to another,] 'You have in your possession a hundred zuz belonging to me,' and the other says, 'I have only got fifty' and [here they are],[14] he has to swear [concerning the disputed amount].[15] For what reason? Because [the offer implied in the words] 'Here they are' is like a 'partial admission' [which necessitates an oath]. And our Tanna teaches the same: TWO HOLD A GARMENT, etc., and although here each one holds [the garment], and we are witnesses that the part that each one holds is like the part of the debt which the defendant [in the other case] is ready to deliver, yet it says that he must swear! R. Shesheth, however, says that [the offer implied in the words] 'Here they are' relieves the debtor of the oath — For what reason? Because the declaration 'Here they are' made by the debtor enables us to regard those [fifty] zuz, which he has admitted to be owing, as if they were already in the hands of the creditor, while the remaining fifty [zuz] the debtor does not admit to be owing, and therefore there is no 'partial admission' [that necessitates an oath].

But according to R. Shesheth there is a difficulty about our Mishnah?[16] — R. Shesheth may reply: [The oath in] our Mishnah is an institution of the Rabbis.[17] And his opponent? [He will say:] Yes, it is an institution of the Rabbis: but if you maintain that according to Biblical Law the offer of 'Here they are' carries with it an oath, then it is right that the Rabbis imposed an oath upon the litigants [in our Mishnah], for they follow herein the principle underlying the Biblical Law. But if you say that

the offer of ‘Here they are’ exempts, according to Biblical Law, [the debtor who made it] from taking an oath, then how can the Rabbis [of our Mishnah] impose an oath which is unlike any Biblical oath?

An objection is now raised:

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(1) Therefore the inference from one witness to several witnesses does not hold good. As long as it can be shown that there is one aspect from which the case that it treated as the ‘minor’ for the purpose of the Kal wa-homer can be regarded as a ‘major’ the inference may be objected to as illogical.
(2) V. Kid. 27b. As the evidence of one witness causes an oath to be imposed upon the defendant, a second oath is also imposed upon this defendant if another claim not included in the evidence is raised against him in regard to which, if it stood alone, no oath would have been imposed.
(3) The oath imposed by one witness refers to the amount to which the witness testifies and which the defendant denies. It is thus the direct result of the evidence of that witness, and it is weighty enough to cause the ‘attached oath’ regarding another claim.
(4) The sum regarding which the witnesses give evidence has to be paid by the defendant, and thus there is no oath to carry with it another oath.
(5) The case of partial admission where the oath is taken though there is no oath to carry it.
(6) As above, the Kal wa-homer will be inferred from the case of admission, viz., if the words of his own mouth, which do not oblige him to pay money (a fine), make it necessary for him to take an oath, how much more ought the evidence of witnesses, which obliges him to pay money, make it necessary for him to take an oath.
(7) I.e. the case of a partial admission, where the oath is likewise taken regarding the remainder of the amount claimed.
(8) One witness cannot stamp the defendant as a liar, as it is just the word of one against that of another. But two or more witnesses are necessarily believed, and the defendant is presumed to have lied. Even if the witnesses refute only part of his statement he is not trusted any more, and should not be allowed to swear regarding the rest.
(9) And is refuted by witnesses before swearing. whether he denies the whole loan or only part of it.
(10) The reason for the distinction between a loan and a deposit is explained infra 5b.
(11) One witness may cause a fine to be imposed upon a defendant, but if the witness is refuted by other witnesses proving an alibi he is not liable to pay the fine.
(12) For even though one witness, on being refuted by an alibi, is not liable to suffer the penalty that he intended to impose upon the defendant, he is disbelieved as a result of the refutation, and his evidence is nullified, just as in the case of two witnesses who are refuted by an alibi.
(13) Which would show that the oath is not imposed because of a ‘partial admission’, but is merely an institution of the Rabbis, as indicated above, and is therefore quite different from the oath imposed by R. Hiyya.
(14) Hela4, הילך i.e., ‘I have not spent them, and they are yours, wherever they may be’ (Rashi).
(15) And we do not say that the virtual delivery of the amount admitted is tantamount to actual payment, so that the denial of the remainder would mean a denial of a whole separate claim, in which case no oath could be imposed.
(16) Which imposes an oath, although, as stated above, the position of the litigants is similar.
(17) Not a Biblical oath resulting from ‘partial admission’.

Talmud - Mas. Baba Metzia 4b

[When a plaintiff produces a promissory note for] sela's[1] or denarii[2] [without any figures], the creditor says, it is for five [sela's or denarii], and the debtor says, it is for three, R. Simeon b. Eleazar says: Seeing that [the debtor] has admitted part of the claim, he must take an oath [for the rest]. R. Akiba says: He is only like a restorer of lost [property],[3] and he is free [from taking an oath]. In any case we are told that R. Simeon b. Eleazar says, ‘Seeing that he has admitted part of the claim, he must take an oath’. Now the reason is presumably that [the debtor] said ‘three’, but [if he had said] ‘two’ he would have been free [from the oath], and seeing that the admission of ‘two’, for which the note is sufficient evidence, is like [the offer] ‘Here they are’,[4] it follows that ‘Here they are’ does not involve an oath? — No; I could quite well maintain that when he says ‘two’ he also has to take an oath, and the reason why ‘three’ is stated is to express disagreement with R. Akiba, who maintains

that the debtor [who says 'three'] is like a restorer of lost [property] and free [from taking an oath]. We are thus informed that he is like one who admits part of the claim, and that he has to take an oath.[5] But if this is so, [and 'two' also involves an oath,] should not R. Simeon b. Eleazar, who says, 'Seeing that he has admitted part of the claim he must take an oath,' have said instead: He also must swear?[6] — Therefore it must be assumed that 'two' is free, and 'Here they are' involves an oath, but our present case is different, because the written document supports him,[7] or because the written document has the effect of pledging the debtor's landed property [to the creditor,] and no oath is taken in a dispute connected with mortgaged land.[8]

Some construe the objection from the latter clause: 'R. Akiba says, he is only like the restorer of lost [property], and he is free [from taking an oath].' Now the reason is presumably that he said 'three', but [if he had said] 'two'[9] he would have had to swear; and seeing that the admission [of 'two'], for which the note is sufficient evidence, is like [the offer] 'Here they are', it follows that 'Here they are necessitates an oath? — No; I could quite well maintain that when he says 'two' he is also free [from taking an oath], and the reason why 'three' is stated is to express disagreement with R. Simeon b. Eleazar, who says that [the debtor] is like one who admits part of the claim, and he has to take an oath: We are thus informed that he is like the restorer of lost [property], and he is free [from taking an oath].

And, indeed, this stands to reason, for if we were to assume that 'two' necessitates an oath, how could R. Akiba dispense with the oath in the case of 'three': this [debtor] could surely employ a ruse, In that he might think: If I say 'two' I shall have to swear; I will say 'three', so that I shall be like a restorer of a loss, and I shall be free. Therefore we must conclude that [if he says] 'two' he is also free. But does not a difficulty arise as regards R. Hiyya?[10] — There[11] it is different, for the written document supports him,[12] or because the written document has the effect of pledging the debtor's landed property, and no oath is taken in a dispute connected with mortgaged land.

Mar Zutra, the son of R. Nahman, then asked: [We learnt:] If one claims vessels and land, and the claim in regard to the vessels is admitted, but the claim in regard to the land is disputed, or the claim in regard to the land is admitted, but the claim in regard to the vessels is disputed, the debtor is free [from taking an oath in regard to the disputed claim]. If he admits part of the claim in regard to the land, he is free [from taking an oath]; if he admits part of the claim in regard to the vessels he is obliged [to take an oath].[13] Now the reason why [he is free when the claim concerns both land and vessels] is [presumably] that an oath does not apply to land, but where the claim concerns two sets of vessels, in the same way as the claim regarding the land and the vessels,[14] he is obliged to [take an oath]: how is this to be understood? Is it not that the debtor said to the creditor, 'Here they are'? So it follows that 'Here they are' necessitates an oath![15] — No; I can quite well maintain that [when] two sets of vessels [are claimed] he is also free [from taking an oath], but the reason why 'vessels and land' are mentioned is to let us know that when [the debtor] admits part of the claim in regard to the vessels he is obliged [to take an oath] even as regards the land. What new information does he proffer us? The law of extension of obligation? We have learnt this already:[16] Chattels which do not offer security[17] are attached to chattels which offer security,[18] in regard to the imposition of an oath [upon the debtor]![19] — [The Mishnah quoted] here[20] is the principal place [for this law]; there[21] it is only mentioned incidentally.[22]

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(1) A sela' equalled in value our crown.

(2) A denar =one fourth of a sela'.

(3) For sela's would really mean two (the minimum number to which the plural could be applied) and if the debtor says 'three' he admits more than there is evidence for. The third sela' is therefore like a restored loss, in connection with which no oath can be imposed (cf. Git., 48b).

(4) [Since the note has the effect of a mortgage on the debtor's landed property, the admission places virtually that land at the disposal of the creditor.]

(5) For in the case of the debtor saying ‘two’, R. Akiba would not have differed, and there would have been no occasion for this comparison with the restoration of a lost object.
(6) If ‘two’ involves an oath, then it was wrong to give ‘partial admission’ as a reason for the oath, since in such a case there would be no admission apart from what is proved by the written document. On the other hand, it should have been emphasised that ‘three’ also involved an oath, in spite of the fact that the admission of the third sela’ is like the restoration of a lost object to its owner.
(7) The witnesses who signed the document support the statement of the debtor, as the document says only ‘sela's, which must be taken to mean two.
(8) Seeing that ‘two’ is corroborated by the written document, no oath can be imposed, either in a case of denial or in one of admission, because the document puts the debtor's landed property under a bond, and, as explained in Shebu. 42b, no oath is administered in connection with mortgaged property. But when the debtor says ‘three’, the dispute about the remainder as well as the admission of the third sela’ concern something that is not mentioned in the document, and which does not therefore affect the debtor's landed property.
(9) When the debtor could not be said to have restored a loss, as his admission did not go beyond the sum proved by the document.
(10) Who teaches that the offer ‘Here they are’ is like a ‘partial admission’ and therefore requires an oath. Then why should ‘two’ not require an oath?
(11) In the case of sela's etc.
(12) This is why he is free, not because of the similarity to ‘Here they are’.
(13) In regard to both vessels and land. V. Shebu. 38a.
(14) Viz., that the vessels which the debtor admitted to be rightly claimed are placed before the creditor with the offer ‘Here they are’.
(15) This would contradict the view of R. Shesheth, who says that ‘Here they are’ does not necessitate an oath.
(16) Kid. 26a.
(17) Movable belongings, which cannot be mortgaged.
(18) Immovable property, which can be mortgaged.
(19) When claims arise simultaneously in regard to both kinds of chattels, and an oath is due regarding the movable ones, it is extended also to the immovable ones. V. Kid. 26a.
(20) From Shebu. 38b.
(21) In Kid. 26a.
(22) As the law is stated there regarding the acquisition of movable chattels in conjunction with immovable ones by means of money, document, or actual possession, reference is also made to the extension of the oath from movable chattels to immovable ones.

Talmud - Mas. Baba Metzia 5a

Now according to him who says that ‘Here they are’ does not require an oath, why is it necessary to derive from a Scriptural verse the exemption of land from the law of oath,[1] , since all land [available to the creditor is as if the debtor said,] ‘Here they are’?[2] — He can answer you: The derivation from the Scriptural verse is necessary where [the debtor] has dug pits, ditches and caves [thereby destroying the value of the land], or where one claims vessels and land, and the claim in regard to the vessels is admitted, while the claim in regard to the land is disputed.[3]

Come and hear: Rami b. Hama teaches: Four kinds of bailees require to put forward a partial denial and a partial admission [in order to be liable to an oath]: the gratuitous bailee, the borrower, the paid bailee, and the hirer.[4] How is it to be understood? Is it not that the bailee says to the claimant, ‘Here it is’?[5] — No. [It refers to a case where] the owner says to the bailee, ‘I handed you over three cows, and they have all died through your negligence’, while the bailee says to the owner, ‘One I never received; one died through an accident, and one has died through my negligence, for which I am willing to pay you’, so that it is not like [an offer to return the animal by saying.] ‘Here it is.’

Come and hear what the father of R. Apotoriki taught, as a refutation of the first [law of] R. Hiyya: [If one says to another,] 'You have a hundred [zuz] in your possession belonging to me', and the other says, 'I have nothing belonging to you,' and witnesses testify that the defendant owes the plaintiff fifty [zuz] — I might think that the defendant ought to swear regarding the rest; therefore the Scriptural text tells us, for any manner of lost thing, whereof he saith that it is this,[6] [indicating thereby that] you impose [an oath] on him[7] in consequence of his own admission, but you do not impose [an oath] on him in consequence of the evidence of witnesses![8] — Do you wish to refute R. Hiyya by citing a Baraitha [that contradicts his view]? R. Hiyya is a Tanna, and he may disagree with it. But [the Baraitha] quotes a Scriptural text? — That [text] refers to one who admits part of the claim. And the father of R. Apotoriki?[9] — He will answer you: [The text] says, it, and it also says, this[10] — one term is [meant to apply] to him who admits part of the claim, and the other [is meant to indicate] that in the case of witnesses giving evidence [regarding part of the disputed claim] the defendant is free from taking an oath]. And the other?[11] — He applies one term to him who admits part of the claim, and the other [he utilises for the purpose of proving] that the admission [of part of the claim involves an oath only if the admission] refers to the same kind of object as is claimed [by the plaintiff]. And the other?[12] — He does not share the view that the admission has to refer to the same kind of object, for he is of the opinion of Rabban Gamaliel, as we have learned:[13] If the plaintiff claims wheat, and the defendant admits barley, the defendant is free [from taking an oath], but Rabban Gamaliel obliges [the defendant to take an oath].[14]

There was a shepherd to whom people entrusted cattle every day in the presence of witnesses. One day they handed it over to him without witnesses. Subsequently he gave a complete denial [of the receipt of the cattle]. But witnesses came and testified that he had eaten two of the cattle. Said R. Zera: If the first [law of] R. Hiyya is valid, [the shepherd] ought to swear regarding the remainder.[15] Abaye, however, answered him: If [the law were] valid, would [the shepherd be allowed to] swear? Is he not a robber?[16] — [R. Zera] replied: I mean, his opponent should swear.[17] But even if R. Hiyya's law is rejected, should we not impose an oath [upon the claimant] because of the view of R. Nahman, as we have learned:[18] [If one says to another,] 'You have in your possession a hundred [zuz] belonging to me,' and the other says, 'I have nothing belonging to you,' he is free [from taking an oath]; but R. Nahman adds: We make him take 'an oath of inducement'?[19] — R. Nahman's rule is [only a Rabbinical] provision, [made irrespective of the law],

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(1) V. Shebu. 42b; infra 57b.

(2) As land cannot be removed it is always at the disposal of the creditor.

(3) The admission as regards the vessels is not the equivalent of 'Here they are', and the conclusion drawn from the Scriptural verse is necessary to let us know that such a 'partial admission' cannot impose an oath on the disputed landed property, though forming part of the one claim.

(4) V. B.K 107a; infra 98a.

(5) The 'partial admission' can only refer to the animal which the bailee admits to have in his possession, and which he is ready to return to the owner. This is like saying, 'Here it is,' and yet the bailee has to swear.!

(6) Ex. XXII, 8. The term 'It is this' is construed as implying a partial admission. V. Shebu. 39b; B. K. 107a.

(7) V. infra 41b.

(8) This is a direct contradiction to the ruling of R. Hiyya, according to which the evidence of witnesses regarding part of a disputed claim causes an oath to be imposed on the defendant, as inferred by means of a Kal wa-homer from 'partial admission'. V. supra 3a-4a.

(9) How can he apply the text to exclude the case where witnesses give evidence?

(10) הוא זה one particle of which is superfluous.

(11) R. Hiyya.

(12) The father of R. Apotoriki.

(13) V. infra 100b; B. K. 35b; Shebu. 38b and 40a; cf. Keth. 108b.

(14) If the claim is for wheat, and the admission is for barley, it is not considered a 'partial admission' and does not involve an oath.

(15) For when the denial is partly contradicted by witnesses R. Hiyya imposes an oath.
(16) Who is likely to commit perjury, hence cannot be given an oath. R. Hiyya's law refers to a debt, or pledge, which the defendant denies, not because he has misappropriated it, or used it for himself, but because he does not find it convenient to repay or replace it just then, and intends to do so later. He therefore cannot be regarded as a robber.
(17) And receive payment. v. Shebu. 44b.
(18) Shebu. 38b.
(19) Although no oath is to be imposed on the defendant who denies the whole claim, a Rabbinical oath is put on him in order to induce him to admit the truth, as it is assumed that no one will sue a person without cause.

Talmud - Mas. Baba Metzia 5b

and we do not add one provision to another provision.[1] But why not consider the fact simply that he is a shepherd, and Rab Judah says that a shepherd [generally speaking] is unfit [to take an oath]?[2] — This presents no difficulty: That case [referred to by Rab Judah,] is one of [a shepherd who feeds] his own flock [and is therefore tempted to let them trespass], but this case [regarding which Abaye asks his question,] is one of [a hired shepherd who keeps] other people's flocks [and has no occasion to trespass]. For if this were not so, how could we entrust cattle to any shepherd? Is it not written, Thou shalt not put a stumbling block before the blind?[3] But the presumption is that a man will not commit a sin unless he stands to profit by it himself.[4]

HE SHALL THEN SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, etc. Does he swear regarding the part which is his, or regarding the part which is not his?[5] — R. Huna answers: He has to say, 'I swear that I have a share in it, and that it is not less than half.'[6] But let him say, 'I swear that it is all mine!'[7] — Do we give him all of it?[8] Then let him say, 'I swear that half of it is mine!'-He would impair his own words.[9] But does he not now also impair his own words?[10] — [No!] He says, 'It is all mine,' [and he adheres to his claim]. But [he adds]. 'According to you, [who do not accept my contention,] I swear that I have a share in it, and that it is not less than half.' But [it is again asked]: Since each one stands [before the Court] holding [the garment], what need is there for this oath? R. Johanan answered: This oath is an institution of the Sages, intended to prevent people from going out and seizing their fellow's garment, declaring it to be their own.[11] But should we not say that, since he is suspected of fraud in money matters, he ought also to be suspected of swearing falsely?[12] — We do not say that one who is suspected of fraud in money matters must also be suspected of swearing falsely.[13] For if you do not concede this, how could the Divine Law lay it down that one who admits part of a claim shall swear [regarding the rest]? We ought to say that, since he is suspected of fraud in money matters, he must also be suspected of swearing falsely? — There he just tries to put the claimant off for a time, according to the view of Rabbah.[14] You may infer this[15] from what R. Idi b. Abin says in the name of R. Hisda:[16] He who denies a loan[17] can still be accepted as a witness,[18] but he who denies a deposit cannot be accepted as a witness.[19] But there is [the law] which Rami b. Hama taught: Four kinds of bailees require to put forward a partial denial and a partial admission [in order to be liable to an oath]: the gratuitous bailee, the borrower, the paid bailee, and the hirer.[20] Why do we not say that, since he[21] is suspected of fraud in money matters,[22] he must also be suspected of swearing falsely?[23] — There also he merely tries to put off the claimant,[24] for he thinks: 'I shall find the thief and have him arrested,' or, 'I shall find [the animal] in the field and bring it to him.' But if this is so, why is one who denies a deposit unfit to be a witness? Let us say that he is only putting off the claimant, thinking to himself, 'I shall put him off until I may look for it and find it'? — We say that he who denies a deposit is unfit to be a witness only [if it is a case] where witnesses come and testify against him, saying that at that time the deposit was in the house, and that he knew it, or [if it is a case] where he is holding it in his hand.

But in the case in which R. Huna says, 'We make him swear that [the article] is not in his possession,'[25] why do we not say that since he is suspected of fraud in money matters he must also be suspected of swearing falsely? — There also he may permit himself [to keep the article] by saying

[to himself], ‘I am willing to pay him for it.’ Then R. Aha of Difti said to Rabina: Would he not even so transgress the commandment, Thou shalt not covet?[26] — ‘Thou shalt not covet’ is understood by people to apply only to that for which one is not prepared to pay.

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(1) The Rabbinical provision that when the defendant is likely to commit perjury the plaintiff swears and receives payment, cannot be added to the provision which imposes a Rabbinical ‘oath of inducement’ (where no Biblical oath is due). The ‘oath of inducement’ can only be given in cases where in ordinary circumstances a Biblical oath would be imposed.

(2) Because usually a shepherd allows his flock to graze on other people's fields, and thus commits robbery, and why need Abaye seek to disqualify him on the ground that he is actually proved to be a robber?

(3) Lev. XIX. 14. This, taken figuratively, implies that it is wrong to put temptation in the way of one who is likely to succumb to it.

(4) Therefore a hired shepherd, who does not profit by trespassing, will not commit the sin, and he need not generally be regarded as a robber.

(5) The implication is that the terms of the oath are ambiguous. By swearing that his share in it is lot ‘less than half’, the claimant might mean that it is not even a third or a fourth (which is ‘less than half’), and the negative way of putting it would justify such an interpretation. He could therefore take this oath even if he knew that he had no share in the garment at all, while he would be swearing falsely if he really had a share in the garment that is less than half, however small that share might be.

(6) The statement is not negative, but positive, and the claimant swears that his share is at least half.

(7) And thus corroborate his claim; and, although one of the claimants would then be bound to swear falsely, the oath could still be given, according to the majority of the Rabbis, who differ from Ben Nannus (Tosaf.; cf. supra 2b).

(8) It would appear inconsistent on the part of the Court, and to its discredit, to let a claimant swear that he owns the whole garment when he can be awarded only half of it.

(9) His plea that the whole garment is his would be contradicted by his oath that only half of it belonged to him.

(10) For the oath in the Mishnah also refers to half the garment.

(11) V. supra 3a.

(12) What purpose, then, is the oath instituted by the Rabbis to serve? If he is ready to rob his neighbour, he will also be ready to commit perjury.

(13) Perjury is regarded as a greater crime than robbery.

(14) V. supra 3a.

(15) Viz. that he is not suspected of attempted robbery, but of a desire to postpone payment.

(16) Cf. B.K. 105b; Shebu. 40b; supra 4a.

(17) And is refuted by witnesses (before swearing), so that he is proved a liar (but has not committed perjury).

(18) It is obviously assumed that he lied because he wished to postpone payment, and not because he wanted to rob the claimant of what was due to him.

(19) For it could not be said that he only intended to put the claimant off, as a deposit must not be spent, and must be produced intact when claimed, while borrowed money can be spent, and returned when due. If the deposit has been lost, he has only to put this forward as a plea and he is free. His denial therefore renders him unfit as a witness (in accordance with the implication of Ex. XXIII. 1).

(20) Cf. supra 5a.

(21) I.e. the bailee.

(22) In regard to the animal which he denies having received, and which must be regarded in the same light as a deposit — so that it cannot be said that he merely wishes to delay the return.

(23) How could he be given an oath in regard to that animal, if it should have been his intention to rob the owner by the denial?

(24) Whose animal he has lost.

(25) This refers to a bailee who offers to pay compensation for a lost bailment, rather than swear that it has been lost. As it is possible that he wishes to appropriate the article by paying for it, R. Huna says that he must swear that he has not got it. (V. infra 34b).

(26) Ex. XX, 14.

But then, in the case in which R. Nahman said, We make him take 'an oath of inducement',[1] — why do we not say that since he is suspected of fraud in money matters he must also be suspected of swearing falsely? Moreover, there is the case where R. Hiyya taught: Both of them swear, and receive payment from the employer,[2] — why do we not say that since he is suspected of fraud in money matters he must also be suspected of swearing falsely? And furthermore, there is the case where R. Shesheth said: We make him[3] take three oaths: 'I swear that I did not cause the loss wilfully; I swear that I did not use [the animal] for myself; I swear that it is not in my possession', — why do we not say that since he is suspected of fraud in money matters[4] he must also be suspected of swearing falsely? Therefore [we must conclude] that we do not say, 'Since he is suspected of fraud in money matters he must also be suspected of swearing falsely.'

Abaye says: We apprehend that he may be claiming the repayment of an old loan.[5] But if so, let him take it without an oath?[6] — Therefore say that we apprehend that he may be claiming the payment of a doubtful claim of an old loan. But do we not say that if he appropriates money on the strength of a doubtful claim he will also swear falsely in regard to a doubtful claim? — R. Shesheth, the son of R. Idi, said [in reply]: People will desist from taking an oath in regard to a doubtful claim, while they will not desist from appropriating money their right to which is doubtful. For what reason? — Money can be given back [later]; an oath cannot be taken back.

R. Zera asked: If one of the litigants seized [the garment] in our presence,[7] what is the law? But [it is immediately objected]: How could such a situation arise? If [the other litigant] remained silent, he really admitted [his opponent's claim]; and if he protested, what more could he do? — [R. Zera has in mind] a case where [the aggrieved litigant] was silent at first but protested later, and the question is: Do we say that since he was silent at first he really admitted [his opponent's claim], or [do we] perhaps [say] that, as he protests now, it has become apparent that the reason why he was silent at first is that he thought [it unnecessary to protest, because] the Rabbis [of the Court] saw [what happened]? — R. Nahman answered: Come and hear [a Baraitha]: The ruling [of our Mishnah] refers only to a case where both [litigants] hold [the garment], but if the garment is produced [in Court] by one of them only, then [we apply the principle that], 'the claimant must bring evidence to substantiate his claim.'[8] Now, [let us consider:] how could the case [of one litigant producing the garment] arise? If we say that it was just as stated,[9] then it is self-evident.[10] It must therefore be that one of them seized [the garment] in our presence?[11] — No. Here we deal with a case where both of them came before us holding [the garment], and we said to them, 'Go and divide it.' They went out, and when they came back one of them was holding it. One said, 'He really admitted [my claim],'[12] and the other said, 'I let him have it on condition that he pays me for it.'[13] Now we say to him: 'Hitherto you implied that he was a robber,[14] and now you dispose of the garment to him without witnesses!' If you prefer, I could also say that [the Baraitha deals with a case where], as stated, one of them was holding it, and the other was just hanging on to it. In such a case [it is necessary to inform us that] even Symmachus, who maintains[15] that disputed money of doubtful ownership should be divided among the disputants without an oath,[16] would agree,[17] for mere hanging on [to a disputed article] counts for nothing.[18]

If you deem it right to say that in the case of one [litigant] seizing it[19] in our presence, we take it away from him,[20] [it is clear that] if he dedicates it [to the Temple][21] the dedication does not take effect.[22] But if you will say that in the case of one [litigant] seizing it in our presence we do not take it away from him, what would be the law if he dedicated it without seizing it? Seeing that a Master says [elsewhere],[23] 'Dedication to the Most High by word of mouth is like delivery in a secular transaction', [do we say that the dedication of the garment] is like seizing it, or [do we say], 'After all, he has not seized it,' and it is written: And if a man shall sanctify his house to be holy, etc.,[24] [from which we might conclude that] just as his house is in his possession so must everything [that

he may wish to dedicate] be in his possession — which would exclude this case [of the garment which he has not seized and] is not in his possession? — Come and hear [the following]: There was

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(1) When he denies the whole claim; v. supra 5a.

(2) In the case of the shopkeeper and his creditbook. V. supra 2a, Shebu. 47b.

(3) The gratuitous bailee, who pleads that the animal has been lost.

(4) Since it is assumed that he may appropriate the plaintiff's article by putting forward a wrong plea, which amounts to fraud.

(5) According to Abaye the reason for the oath imposed by the Rabbis is not that given by R. Johanan (v. supra 3a), but that a litigant may deem himself entitled to an article found by his opponent, on the ground that the latter had borrowed money from him a long time ago and had forgotten about it. Such a litigant would not hesitate to plead that he had found the garment, or that it was all his, in the hope that at least half the value of the garment would be awarded to him. Hence the need for an oath.

(6) If it is assumed that he is claiming the garment in payment of an old debt due to him, why should he have to swear?

(7) I.e., in the presence of the Court.

(8) Tosef. B.M. 1; v. supra 2b.

(9) That one of the litigants was in possession of the garment when both appeared in Court.

(10) That the other litigant must bring evidence to substantiate his claim.

(11) In Court, in the circumstances as described, which furnishes a solution to the problem propounded.

(12) 'And this is why he let me have the garment.'

(13) 'And now he refuses to pay.'

(14) 'As you pleaded that the garment was yours, and that he was trying to rob you of it.'

(15) V. supra 2b; B.K. 46a.

(16) And would thus let each litigant who holds the garment have a half without an oath.

(17) That the claimant is entitled to nothing, even if he is ready to swear.

(18) It constitutes no claim, and therefore the garment is not 'disputed money'.

(19) I.e., the garment.

(20) If R. Zera's question is to be answered in the sense that the litigant who has seized the garment must give up half the garment to the other claimant.

(21) Without seizing it.

(22) For the act of dedication cannot be more effective than the act of seizing it.

(23) V. A.Z. 63a; cf. B.B. 133b.

(24) Lev. XXVII, 14.

a bath-house, about which two people had a dispute. One said, 'It is mine', and the other said 'It is mine'; then one of them rose up and dedicated it [to the Temple],[1] [in consequence of which] R. Hananiah and R. Oshaia and the rest of the Rabbis kept away from it. R. Oshaia then said to Rabbah: When you go to Kafri[2] to see R. Hisda ask him [for his opinion on this matter]. When [Rabbah] came to Sura [on his way to Kafri][3] R. Hamnuna said to him: This is [made clear in] a Mishnah:[4] [As regards] doubtful first-born,[5] whether a human first-born or an animal first-born, [and, as regards the latter,] whether of clean or unclean[6] animals, [the principle holds good that] the claimant must bring evidence [to substantiate his claim].[7] And in regard to this a Baraitha teaches: [Such animals] must not be shorn nor worked.[8] Now, it is obviously assumed here that if a priest seizes the firstling we do not take it away from him, for it is laid down that [we must apply the principle that] the claimant must bring evidence [to substantiate his claim];[9] and [thus] if the priest has not seized it, [the Baraitha teaches] that it must not be shorn or worked.[10] But Rabbah answered him: You speak of the sanctity of a firstling — [this proves nothing]. I could well maintain that even if the priest has seized it we take it away from him, and still it would be forbidden to shear or to work [this animal], because the sanctity that comes of itself is different.[11]

R. Hananiah said to Rabbah: There is [a Baraitha][12] taught supporting your view:[13] The [sheep with which the] doubtful [firstlings of asses have been redeemed] enter the stall to be tithed.[14] Now, if the view were held that when the priest has seized [a doubtful firstling] we do not take it away from him, why [does the Baraitha teach that sheep with which doubtful firstlings of asses have been redeemed] enter the stall [to be tithed]? Would not the result be that this [Israelite, who owns the stall] would relieve himself of his liability [involved in the tithe] with the property of the priest, [who has a claim on it]?[15] — Abaye answered him: There is really nothing in that [Baraitha] to support the Master [Rabbah], For it deals with a case where [the Israelite] has only nine sheep, and this [makes the tenth], so that in any case [the Israelite is justified]: if he is obliged [to tithe the sheep] he has tithed them rightly,[16] but if he is not obliged [to tithe them because the tenth sheep is not really his], then [he has had no advantage, as he only owned nine sheep, and] nine are not subject to tithe.[17]

Later Abaye said: My objection is really groundless.[18] For in [a case where the liability of an animal to be tithed is in] doubt, tithing does not take place,[19] as we have learnt: If one of the sheep which were being counted [for the purpose of tithing] jumped back into the stall, the whole flock is free [from tithing].[20] Now, if the view were held that doubtful cases are subject to tithe,[21] [the owner] ought to tithe [the remaining sheep] in any case: if he is obliged [to tithe them][22] he will have tithed them rightly,[23] but if he is not obliged to tithe them, those already counted will be free because they were properly numbered,[24] for Raba said: Proper numbering frees [the sheep from being tithed].

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(1) On dedication to Temple after the Destruction, v. A.Z. 13a.

(2) [S. of Sura, v. n. 3.]

(3) [Rabbah, whose seat was at Pumbeditha in the North, had to pass Sura on his journey to the South.]

(4) Toh. IV, 12.

(5) I.e., first-born whose primogeniture is in doubt because, in the case of an animal, it is not known whether its mother has borne before, or, in the case of a human mother who had previously miscarried, it is doubtful whether it was a real miscarriage or not. According to Biblical law the first-born belong to the priest. (Num. XVIII, 15-16.)

(6) E.g., an ass, the first-born of which has to be redeemed with a lamb. (Ex. XIII, 13.)

(7) If the Israelite is still in possession of the first-born, the priest is regarded as the claimant, who has to bring evidence to clear up the doubt. But if the priest has acquired possession, and the Israelite, though silent at first, protests later, denying the primogeniture, then it is for the Israelite, as the claimant, to prove his claim.

(8) Because of the prevailing doubt as to whether the young animal is ‘holy’ or not (cf. Deut. XV, 19).

(9) Which is obviously meant to apply to either claimant, either the Israelite or the priest.

(10) The animal is thus regarded as ‘holy’ even when the Israelite is in possession, which would show that the sanctification by the litigant without seizing it takes effect, if we say that the seizing of the disputed articles entitles him to keep it.

(11) The sanctity of the firstling is independent of any action on the part of the priest, as it is sacred from birth, in accordance with the Biblical Law. It cannot therefore be compared with the sanctity of an object that has been consecrated by a human being.

(12) The principal place where this law is taught is a Mishnah, Bek. 9a; cf. also ibid. 11a.

(13) Viz., that if a priest has seized a doubtful firstling he has to return it.

(14) The sheep that is used to redeem the doubtful firstling of an ass may be kept by the Israelite. He is under no obligation to give it to the priest, for the latter is in the position of a claimant who has to prove his claim, i.e. if the priest claims the sheep from the Israelite, he has to prove that the doubtful firstling is a real firstling. Such sheep, however, are liable to be tithed, if there are ten of them. (V. infra p. 28.) It follows that, in the same way, if in the Israelite's possession, they go into the stall with other sheep to be tithed, and if one of them comes out tenth it is offered as the tithe.

(15) If the priest has any kind of claim on the sheep, the Israelite should not be entitled to utilise this animal as the tithe.

(16) If the redeemed ass is not a real firstling, then the lamb belongs entirely to the Israelite, and if there are nine other sheep belonging to him he is obliged to tithe them, and there is nothing wrong in his action.

(17) Therefore he has not relieved himself in any way, and in either case, not with anything belonging to the priest.

(18) I.e., the Baraitha quoted by R. Hananiah does support the view of Rabbah that the priest has no right to a doubtful

firstling or its substitute.

(19) I.e., the argument used by Abaye, that in any case the tithing could be proceeded with, is invalid, for doubtful cases are exempt from tithing, even when it could be said that in any case the owner could do no wrong, as the following Mishnah proves.

(20) Bek. 58b. If during the process of tithing, while the sheep were being led one by one out of the stall, so that the tenth one might be marked and offered to the priest, one of the counted sheep jumped back into the stall and disappeared among the uncounted sheep, and it cannot be recognised, the whole flock is exempt from tithing. The sheep that left the stall on being counted are exempt because they have already been numbered, and there are sufficient sheep left in the stall to make up the required number of ten. The sheep that remained behind in the stall are also exempt because each one of them may be the one that jumped back after being counted. V. Bek. 59b.

(21) I.e. that the sheep are liable to be tithed on the assumption that the owner will either have acted according to the law or have done nothing wrong.

(22) I.e. if the tenth sheep that is taken when those left behind in the stall are numbered is not the one that jumped back after being counted.

(23) As that sheep will be subject to tithe.

(24) As long as there are sufficient sheep left in the stall to make up the ten, when added to those already counted, the counted sheep are free from tithing. V. Bek., loc. cit.

Talmud - Mas. Baba Metzia 7a

You must therefore conclude that [the decision of the Mishnah is prompted by another consideration, viz..] that the Divine Law states 'the tenth', [which means] the certain [tenth] but not the doubtful tenth,[1] the same consideration applies here;[2] the Divine Law states the certain tenth, but not the doubtful tenth.[3]

R. Aha of Difti said to Rabina: What kind of doubtful cases [does the above Baraitha refer to]? If it refers to doubtful firstlings, the Divine Law says, [The tenth] shall be holy,[4] excluding the animal which is already holy.[5] — It must therefore refer to [the lamb which has been used for] the redemption of the doubtful firstling of an ass, and in accordance with [the view of] R. Nahman, for R. Nahman said in the name of Rabbah b. Abbuha: If an Israelite has ten doubtful firstlings of asses in his house, he sets apart ten lambs as substitutes for them,[6] and he tithes these [lambs], and they belong to him.[7]

What was [the ultimate decision concerning] the bath-house? — Come and hear what R. Hiyya b. Abin said: A similar case came before R. Hisda, and R. Hisda brought it before R. Huna, and he gave his decision on the ground of what R. Nahman said: Property that cannot be reclaimed by legal proceedings [cannot be dedicated to the Temple.[8] and] if it has been dedicated, the dedication is invalid.[9] But [it is asked], would the dedication be valid if the property could be reclaimed by legal proceedings, even though [the rightful owner] has not obtained possession of it? Does not R. Johanan say [that] property which has been acquired by robbery, and which the rightful owners have not given up as lost, cannot be dedicated either by the robbers or by the owners: the former [cannot do it] because it is not theirs, and the latter because it is not in their possession?[10] — You evidently think that the case under discussion is of a bath that is movable. [No.] The discussion concerns a bath-house which is immovable property, and therefore, where it can be reclaimed by legal proceedings, it is [regarded as being] in the possession of [the claimant].[11]

R. Tahlifa, the Palestinian, recited in the presence of R. Abbahu: Two [people] cling to a garment; [the decision is that] one takes as much of it as his grasp reaches, and the other takes as much of it as his grasp reaches, and the rest is divided equally between them. R. Abbahu pointed [heavenward and said:] But with an oath! But, [if so] our Mishnah, which teaches that [the value of the garment] shall be divided between [the two litigants], and which does not teach that each takes as much of it as his grasp reaches — to what particular case does it refer? — R. Papa said: [It refers to a case] where

[both litigants] hold the fringes [of either end of the garment]. Said R. Mesharsheya: Hence we deduce: [If a seller] grasps the kerchief[12] by a piece measuring three by three fingers, [he has rendered the sale valid, as] we apply to it [the Scriptural term]: 'And he gave it to his neighbour'. [The part that he holds] is considered as if cut off, and by this means [the buyer] acquires [the article sold to him].[13] And why is [this case] different from that of R. Hisda? For R. Hisda says: When the bill of divorcement is in her hand,[14] and the cord [to which it is tied] is in his hand,[15] then if he is able to snatch [the bill of divorcement out of her hand by means of the cord] and to pull it to himself, she is not divorced,[16] but if not she is divorced! — There separation is necessary, and there is none,[17] but here it is the act of giving that is necessary, and this has taken place.[18]

Rabbah said: If the garment was embroidered with gold, it is divided [between the two litigants].[19] But is not this self-understood? — It is necessary [to state this] when the gold is in the centre [of the cloth]. But is not this also self-understood? — It is necessary [to state this] when [the gold] is nearer to one side. You might assume that one could say to the other. 'Divide it this way;'[20] therefore we are informed that the other may say to him, 'What makes you think of dividing it this way? Divide it the other way.'[21]

Our Rabbis taught:[22] Two [people] cling to a bill, the lender saying, 'It is mine; I dropped it and found it again,' and the borrower saying, '[True.] it was yours, but I paid you;'[23] [the validity of] the bill has to be established by its signatories [verifying their signatures][24] — this is the view of Rabbi. Rabban Simeon b. Gamaliel says: They shall divide [the amount], If it [the bill] fell into the hand of a judge, it must never be produced again. R. Jose says: It retains its validity.[25]

The Master said above: '[The validity of] the bill has to be established by its signatories'. Does he mean that the creditor may demand payment of the whole amount, and does he disapprove of the Mishnah, TWO HOLD A GARMENT etc.? — Raba replied in the name of R. Nahman: If the document has been endorsed [in Court].[26] all are agreed that [the litigants] divide [the amount between them].[27] The difference of opinion only arises in the case of an unendorsed [document]. Rabbi is of the opinion that even when one [i.e., a debtor] acknowledges the writing of a bill, it still requires endorsement [at Court], and if it is endorsed, [the amount] is divided, but if it is not endorsed [the amount] is not divided. For what reason? It is merely a potsherd.[28] Who renders the document valid? [Only] the borrower.[29] But he says, 'It is paid!'[30] Rabban Simeon b. Gamaliel, however, is of the opinion that when one acknowledges the writing of a bill, it does not require endorsement [at Court] , and therefore even if it is not endorsed , [the litigants] divide the amount.[31]

'If it [the bill] fell into the hands of a judge, it must never be produced again.'

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(1) Seeing that the animal that jumped back after being counted cannot be numbered again, and it cannot be identified, there is a doubt regarding each tenth whether it is really the tenth, as, if the disqualified animal is among the previous nine, the tenth is really the ninth.

(2) In the Baraitha which R. Hananiah quoted in support of Rabbah.

(3) Accordingly, had the priest a right to a doubtful firstling it could not be admitted to the stall for tithing.

(4) Lev. XXVII, 32.

(5) A firstling is in itself 'holy', even if it is a doubtful firstling. It cannot therefore be used as tithe.

(6) For the purpose of redeeming the asses, so that he may use them for work.

(7) They are not 'holy', and as the priest has no absolute right to them (on account of the doubt as to the primogeniture of the asses) the Israelite may retain possession of them.

(8) If the claimant cannot prove his title to the property by legal evidence, he has no right to dedicate it.

(9) For the same reason the dedication of the bath-house would be invalid. This conclusion is based on the assumption that neither of the claimants of the bath-house could produce evidence in support of his claim.

(10) Which would prove that in order to be able to dedicate property one has not only to own it legally but also to be in actual possession of it.

(11) The question of being in possession does not arise in the case of a bath-house, which is immovable property, and as regards legal ownership — it is vested in the claimant who dedicated it, if he can produce evidence to substantiate his claim.
(12) [This was a recognised or legal manner of confirming a transaction, known as Kinyan Sudar, קנין סודר , (cp. lat. sudarium) and derived from Ruth IV, 7: . . . to confirm all things a man plucked off his shoe and gave it to his neighbour. Any article can be used in the same way as the shoe if it measures three by three fingers.]
(13) [The seller establishes his claim to the part of the kerchief which he holds, and thus proclaims himself the owner of the entire kerchief. By this symbolic action the seller confirms the sale of any article which is to become the property of the buyer. See, however, infra 47a.]
(14) In the hand of the wife who is to be divorced.
(15) In the hand of the husband who is divorcing her.
(16) According to this view the bill of divorcement is not regarded as having been given to the wife as long as the husband holds one end of the cord attached to the bill. In the same way we ought to say that when the seller holds one end of the kerchief he does not transfer the purchase to the buyer.
(17) In the case of a husband divorcing his wife the ceremony is to indicate the separation of the couple, the severance of the marriage tie. The cord in the hand of the husband, if it is strong enough to pull the bill of divorcement out of the hand of the wife, contradicts this idea.
(18) In the case of a seller grasping the kerchief with his hand, the significance of the act lies in the giving of the kerchief by the one to the other.
(19) I.e., even if the garment is embroidered with gold it has to be divided equally.
(20) Lengthwise.
(21) Widthwise, so that each may get half of the gold.
(22) V. B.B. 170a.
(23) 'And on being paid you returned the bill to me and I lost it.' This is the version given by Rashi in accordance with the wording of our text. Other texts have, 'It is mine' as the plea of the borrower (i.e. שלי instead of שלך) which is much simpler.
(24) And when the validity of the document has been thus endorsed, the creditor is entitled to demand payment.
(25) And the creditor could demand the return of the document and enforce payment.
(26) I.e., if the document has been produced in Court and the witnesses have verified their signatures, the judges certifying the endorsement.
(27) If the document is properly endorsed, and therefore quite valid, the litigants are in the same position as those who found the garment and were holding on to it. They therefore divide the amount of the debt recorded in the bill.
(28) I.e., the document is without any value.
(29) By admitting its genuineness.
(30) Since the unendorsed document becomes valid only as a result of the admission of its genuineness by the borrower, he is to be believed when he says that he has paid the debt.
(31) Even if the bill is not endorsed, the borrower cannot, when the document is produced by the lender, plead that he has paid the debt. The validity of the document does not, to that extent, depend on the plea of the borrower. Hence it is right that they should divide the amount.

Talmud - Mas. Baba Metzia 7b

Why is it different [if the bill fell] into the hands of a judge?[1] — Raba says: The meaning [of the clause] is this: If a third person finds a bill which has already been in the hands of a judge, that is, when it bears a legal endorsement,[2] it must never be produced again.[3] And [thus we learn that a found bill] must not be returned [to the claimant] not only when it bears no legal endorsement, so that it can be assumed that it was written for the purpose of securing a loan but the loan did not take place, but even when it bears a legal endorsement, as when it has been verified [in Court], because we apprehend that payment may have been made.[4] But R. Jose says: It retains its validity — and we do not apprehend that payment may have been made.

But does not R. Jose really apprehend that payment may have been made? Has it not been taught

[in a Baraitha]: In the case of a marriage-contract[5] found in the street, if the husband admits [that he has not paid her the amount specified in the contract] it shall be returned to the wife, but if the husband does not admit it, it must not be returned either to him or to her; R. Jose says that if the wife is still with the husband it shall be returned to her,[6] but if she has become a widow or has been divorced, it must not be returned either to him or to her?[7] — Reverse [the Baraitha and read it this way]: If [a bill] fell into the hands of a judge, it must never be produced again; this is the view of R. Jose. And the Sages say that it retains its validity.[8] But if so, the two opinions of the Rabbis contradict each other![9] — [The Baraitha which deals with] the [lost] marriage-contract [conveys] in its entirety [the view of] R. Jose, but a clause is omitted, and [the Baraitha] should read thus: If the husband does not admit [that he has not paid the wife the amount specified in the contract] it must not be returned either to him or to her. This, however, only applies to [the case of] a widow or a divorced woman, but [in the case of a wife] who is still with her husband it shall be returned to the wife; this is the view of R. Jose; for R. Jose says: If the wife is still with the husband, it shall be returned to her; but if she has become a widow or has been divorced, it must not be returned either to him or to her. R. Papa says: There is really no need to reverse [the Baraitha];[10] R. Jose only states the case in accordance with the views of the Rabbis [and he says to them:] According to me we do not apprehend that payment may have been made even in the case of a widow or a divorced woman, but according to you — admit at least that when the wife is still with the husband [the marriage-contract] should be returned to her, as she is not entitled to receive payment [as long as she is his wife]. But the Rabbis answered him: Say, he handed her over bundles [of valuables] as security [and she has retained them]![11] Rabina says: By all means reverse the first [Baraitha],[12] and the reason why the Rabbis decide here [that if the husband does not admit liability, the marriage-contract must not be returned either to him or to her] is that we apprehend [lest the wife had] two marriage-contracts.[13] And as to R. Jose — he does not apprehend [lest the wife had] two marriage-contracts.

R. Eleazar says: The division[14] [takes place] when both [claimants] cling either to the form[15] [of the bill] or to the operative part[16] [thereof], but if one [claimant] clings to the form, and the other clings to the operative part, one takes the form and the other takes the operative part. And R. Johanan says: They always divide equally. [What!] Even if one clings to the form and the other to the operative part? Was it not taught: Each one takes as much as his hand grasps?[17] — [Yes.] But it is necessary [to have R. Johanan's decision] in a case where the operative part is contained in the middle [of the document].[18] But if so, what need is there to state it?[19] — It is necessary [to state it that it may be applied to a case] where [the operative part] is nearer to one [of the claimants].[20] You might assume that one could say to the other, 'Divide it this way', therefore we are informed that the other may say to him: 'What makes you think of dividing it this way? Divide it the other way.' R. Aha of Difti said to Rabina: According to R. Eleazar, who says. 'One takes the form [of the bill] and the other takes the operative part.' — of what use are [the parts] to either of them? Does one need them to use as a stopper for one's bottle?[21] — He [Rabina] answered him: [It is] the estimated value thereof [that has to be considered]. We estimate how much a dated document is worth as compared with one undated: with a dated document a debt may be collected from mortgaged property, but with the other [document] no debt can be collected from mortgaged property[22] — and one gives the other the difference [in the value of the two documents].

Also [the decision previously given in the words], 'They shall divide,' as quoted,[23] refers to the value [of the bill]. For if you do not assume this, [how explain:] 'TWO HOLD A GARMENT' [etc.]? Would you say that here also they divide [the garment] in halves? They would surely render it useless! — This presents no difficulty,

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(1) Why should the law be different when the bill falls into the hands of a judge than when it falls into the hands of any other person?

(2) The endorsement of the Court before which the witnesses verified their signatures, and which established the validity

of the document.
(3) It must not be given either to the creditor or to the debtor, unless the ownership of the document is cleared up by evidence.
(4) I.e. if the debtor pleads that the debt has been paid, we take this plea into consideration.
(5) 'Kethubah', v. Keth. 10b and Glos.
(6) For a man does not ordinarily pay his wife her Kethubah while she is still with him.
(7) This shows that according to R. Jose we do apprehend that payment may have been made.
(8) And it must be returned to the claimant who can prove his claim.
(9) The view of the majority of the Rabbis in the case of the lost Kethubah, which the husband claims to have paid, and which the Rabbis say must not be returned either to the husband or to the wife, contradicts their view with reference to the lost bill which has been legally endorsed, as according to the new ('reversed') rendering of the Baraitha the Rabbis (i.e., the Sages) say that 'it retains its validity' and must be returned to the claimant.
(10) The original version being correct.
(11) In order to save his wife the trouble of litigation after his death the husband gave her money or valuables while he was still with her to be appropriated by her when the Kethubah becomes due.
(12) The revised version is really the correct one, and there is no contradiction between the views of the majority of the sages. For their decision in the case of the lost Kethubah, the validity of which the husband contests, and which the Rabbis say must not be returned, is due to the apprehension that the husband may have given the wife a duplicate after the loss of the original document. The meaning of the words 'when the husband does not admit' would thus be that the husband pleads that the lost document should not be returned to her because he had given her another document, and she could, when she becomes a widow, produce both documents in succession to claim payment from his heirs. But so far as actual payment by the husband is concerned, the Rabbis would ignore such a plea, because when a bill is paid it is usually taken back and torn up.
(13) The original one and a duplicate, as explained in the previous note.
(14) I.e. the decision of R. Simeon b. Gamaliel that the two litigants who cling to a bill shall divide it between them.
(15) The טופס , **, 'form', the general part, which may be written out in advance and does not contain the names of the contracting parties or the particulars of date, place, sum involved, etc.
(16) The תורף (probably = **), the characteristic or essential part of a document, giving the names of the contracting parties, date, place, sum involved, etc.
(17) So here also each claimant should receive the part which he holds, irrespective of its value or importance.
(18) There is really no difference between the views of R. Johanan and R. Eleazar, as the words of R. Johanan are only intended to make clear that if the operative part happens to be in the middle of the document the litigants receive half each.
(19) As it is in full accord with the view of R. Eleazar, and it would be self-understood.
(20) R. Johanan deems it necessary to emphasise that 'they always divide equally' so as to include a case where the operative part is nearer to the grasp of one of the claimants, though not actually held by him.
(21) A familiar expression used in connection with a document which has no value and can only be used as paper.
(22) The absence of a date makes it impossible for a Court to say whether the debt recorded in the document was contracted before or after the mortgage was taken on the property. As the date is given in the operative part only, it enhances the value of that part.
(23) The decision of R. Simeon b. Gamaliel; v. supra p. 32.

Talmud - Mas. Baba Metzia 8a

as it would [still] be suitable for children. But what of the case of Raba, who said that [even] if the garment was embroidered with gold it should be divided?[1] Could they here also divide [the garment] in halves? They would surely render it useless! — This presents no difficulty [either], as it would still be suitable for royal children.[2] But [there is] the clause in our Mishnah: IF TWO RIDE ON AN ANIMAL [etc.]. Would you say that here also they divide [the animal] in halves? They would surely render it useless! Although it may be granted that in the case of a clean animal [its carcase] may be [cut up and] used for food — what if it is an unclean animal? They would surely render it useless [by slaying it and cutting it up]? It must therefore be said that it is the value [of the animal] that is

divided. So here also: it is the value [of the bill that is divided].

Rami b. Hama said: This [decision of our Mishnah] enables [us] to conclude that when one picks up a found object for his neighbour, the neighbour acquires it.[3] For if you were to say that the neighbour does not acquire it, this [garment] ought to be regarded as if one half of it were [still] lying on the ground, and [also] as if the other [half] were [still] lying on the ground, so that neither the one [claimant] nor the other should acquire it.[4] It must therefore follow that when one picks up a found object for his neighbour, the neighbour acquires it.[5] Said Raba: I could still maintain that when one picks up a found object for his neighbour, the neighbour does not acquire it.[6] But here [in our Mishnah] the reason [why he does acquire it] is that we say, 'Since he takes possession for himself he may also take possession for his neighbour.'[7] You may learn it from [the law] that if one said to a messenger, Go and steal something for me', and he [went and] stole it, he is free,[8] but if partners stole [for each other][9] they are guilty. For what reason? Is it not because we say, 'Since he takes possession for himself, he may also take possession for his neighbour'? This proves it!

Said Raba: Now that it has been proved that we base our decisions on the Since argument.[10] [it must be assumed that] when a deaf-mute[11] and a normal person have picked up a found object, the normal person acquires it by reason of the fact that the deaf-mute has acquired it. [But it is at once objected:] We may grant that the deaf-mute acquires it because a rational person has lifted it up for him,[12] but how does the normal person acquire it? — I must therefore say: The deaf-mute acquires it; the normal person does not acquire it.[13] And how does the Since [argument] come in here?[14] — Since two other deaf-mute persons would acquire [a found object by lifting it up], this [deaf-mute] also acquires it.[15] But how is this? Even if you say that when one lifts up a found object for his neighbour the neighbour acquires it, this is [true] only when one lifts it up on behalf of his neighbour. But [in this case] that [normal person] lifted it up on his own behalf; now, if he himself does not acquire it,[16] how can he enable others to acquire it? — But say: Seeing that the normal person does not acquire it, the deaf-mute does not acquire it [either]. And if you will argue: In what way does this case differ from that of the two other deaf-mute persons [previously referred to, I will answer you:] There our Rabbis made this provision[17] in order that [the deaf-mutes] may not have to quarrel [with persons who may be ready to snatch the object from them], but here [the deaf-mute] will say [to himself]: 'The normal person does not acquire it, how should I acquire it?'[18]

R. Aha, the son of R. Adda, said to R. Ashi: Whence does Rami b. Hama derive his conclusion?[19] If we say [that he derives it] from the first clause [of our Mishnah]. TWO HOLD A GARMENT etc., [the objection would arise that] there one pleads [to the effect]. 'It is all mine, and I lifted up the whole of it,' and the other pleads [to the same effect], 'It is all mine and I lifted up the whole of it!'[20] — Therefore [we must say that he derives it] from the clause which reads: ONE OF THEM SAYS IT IS ALL MINE,' AND THE OTHER SAYS, 'IT IS ALL MINE': what need is there again for this? It must therefore be that we are to learn from the additional clause that if one lifts up a found object for his neighbour, the neighbour acquires It —[21] But did we not come to the conclusion that the first clause deals with a case of finding, and that the subsequent clause deals with a case of buying and selling? — We must therefore say that [he derives it] from the second part [of the Mishnah]: IF ONE SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS 'HALF OF IT IS MINE': what need is there again for this? It must therefore be that we are to learn from the additional clause that if one lifts up a found object for his neighbour, the neighbour acquires it. And how do you know that this clause deals with a case of finding? Maybe it deals with a case of buying and selling? And if you will say: If it deals with a case of buying and selling what need is there [for the case] to be stated? [I will answer:] There is a need. For I might have formed the opinion that the one who says, HALF OF IT IS MINE should be considered as the restorer of a lost object,[22] and should be free [from taking an oath]. We are thus informed that [he has to swear, as] he may be employing a ruse, in that he might think: If I say 'It is all mine,' I shall have to swear; I will say thus,[23] so that I shall be like a restorer of a lost object, and I shall be free [from taking an oath]. Therefore [we must say

that he derives it] from this clause: IF TWO RIDE ON AN ANIMAL etc.: what need is there again for this? It must therefore be that we are to learn from the additional clause that if one lifts up a found object for his neighbour, the neighbour acquires it. But perhaps [this clause] is to let us know that a rider also acquires [found property]?[24] Therefore [we must say that he derives it] from the last clause: IF BOTH ADMIT [EACH OTHER'S CLAIMS], OR IF THEY HAVE WITNESSES [TO ESTABLISH THEIR CLAIMS], THEY RECEIVE THEIR SHARES WITHOUT AN OATH. To which case does it refer? If it refers to [a case of] buying and selling — is it necessary to state it?[25] It must therefore refer to [a case of] finding.[26] and this proves that if one lifts up a found object for his neighbour, the neighbour acquires it. And Raba?[27] — He will explain [the decision in the last clause of our Mishnah] by the principle [adopted by him]: Since he takes possession of it for himself, he may take possession of it also for his neighbour.[28]

IF TWO RIDE [etc.]. R. Joseph said: Rab Judah told me,

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(1) Supra 7a.

(2) Although a gold-embroidered garment when reduced in size by division could not be worn by ordinary children, it would still retain its value, as it could be worn by children of the aristocracy, to whom the wearing of a gold-embroidered garment would be nothing unusual.

(3) The decision that if two people have picked up an ownerless object they are entitled to keep it, each one taking half of its value and enabling his partner to claim the other half, must rest on the assumption that one may acquire an object for someone else by lifting up, i.e., by the same means as one acquires it for himself.

(4) From the point of view of each claimant the other person's half would have to be regarded as if it were still lying on the ground. But such an acquisition does not constitute legal possession because the law demands that we must acquire possession of the whole article in order to obtain title thereto. Consequently if a third person came and snatched the garment, neither of the two could dispute his right to claim at least half. V. infra p. 39 for further elucidation of the argument.

(5) And it is assumed that in our Mishnah each person, when picking up the garment, intended that the other person should have half of it, and in this way the two acquired the garment.

(6) V. infra 10a.

(7) Although one cannot acquire a found object entirely for his neighbour, one can acquire part of it for a neighbour if one acquires part of it for himself.

(8) From the penalty of making double restitution, as the responsibility for the wrong done rests upon the one that does it, not upon the instigator.

(9) V. B. K. 78b.

(10) Heb. Miggo, מגו ; v. Glos. 'Since he acquires it for himself he may also acquire if for his neighbour' is the argument used in the previous paragraph.

(11) A deaf-mute is not a responsible person, and, like a minor and an imbecile, he cannot acquire property, but 'for practical reasons' the Rabbis laid it down that to deprive them of anything they possess is robbery (cf. Git. 59b). Applying the Miggo argument to the deaf-mute, Raba holds that 'Since he acquires it (according to rabbinic ruling) for himself, he also acquires it for his neighbour'.

(12) The end which the normal person has picked up for himself and for the deaf-mute has been rightly acquired, so far as the deaf-mute is concerned, for the latter benefits by the right of the rational person to acquire the garment and by his own right, conceded to him by the Rabbis, to claim his own possessions 'for practical reasons'. But the normal person suffers from the disability of the deaf-mute, in so far as the right conceded to the deaf-mute to own property extends only to his own person, and does not include the right to acquire property for someone else. Therefore the end which the deaf-mute has picked up, when considered in relation to the normal person, must be regarded as if it had not been picked up at all. Thus the question arises: How does the normal person acquire the garment?

(13) The Miggo argument employed by Raba would therefore apply to the deaf-mute himself.

(14) It would be impossible to argue that since the normal person acquires it for himself he also acquires it for the deaf-mute, as the normal person does not acquire it at all.

(15) The Miggo argument would thus be derived from another case, not hitherto considered.

(16) For the reason explained in note 2.

(17) The claim of the two deaf-mutes is granted only because of a provision of the Rabbis 'for practical reasons' but is not based on law.
(18) It would not be proper to make a concession to the deaf-mute which could exceed the right of a normal person.
(19) From which clause of our Mishnah does Rami b. Hama derive the conclusion that if one lifts up a found object for his neighbour, the neighbour acquires it.
(20) [A paraphrase of 'I FOUND IT'.] Each of the two claimants maintains that he lifted up the whole garment for himself and thus acquired it all, so that none of them can be said to have lifted up part of the garment for his neighbour and acquired it for him. The two claimants share the garment between them, not because one acquired it for the other, but because they both hold the garment and no third person can claim any part of it.
(21) The additional plea, which seems to be a mere repetition of what is conveyed by the first plea of 'I FOUND IT', is really intended to indicate that in a case where both claimants lifted up the garment with the intention of acquiring it for each other, they do acquire it, and this is why the garment is divided between them. The two clauses therefore differ from each other in that, in the second clause, it is assumed that both claimants really picked up the garment, and thus one acquired it for the other, while in the final clause the garment is divided between the two claimants because we do not know who tells the truth, and the oath is given for the reason stated in a previous discussion (2b-3a).
(22) As he could have pleaded 'It is all mine' and he would have been entitled to half the garment.
(23) I.e. 'Half of it is mine'.
(24) That one may take possession of an animal by riding on it.
(25) If the two claimants admit having bought the garment simultaneously, it stands to reason that they should be awarded equal shares without having to swear.
(26) And it is necessary to state the law, in order to let us know that both have acquired the garment, and no one has a right to snatch it away from them, on the principle that 'if one lifts up a found object for his neighbour, the neighbour acquires it.'
(27) Since he does not admit the above-mentioned principle, how does he explain the last clause of our Mishnah?
(28) Although Raba denies that one may acquire an ownerless object for a neighbour by lifting it up for him, he admits that when one lifts up an object for himself and his neighbour, the neighbour also acquires it, as explained above, and the last clause of our Mishnah is needed in order to establish this law.

Talmud - Mas. Baba Metzia 8b

'I heard two [laws] from Mar Samuel: If one rides [on an animal] and another leads [it], one of them acquires [the animal], and the other does not acquire it,[1] but I do not know [to] which of the two [either decision was meant to apply].' But how is this to be understood?[2] If it refers to [two cases, in one of which there was] a man riding [on an animal] by himself and [in the other] there was a man leading [an animal] by himself[3] — is there anyone who would say that he who leads an animal by himself does not acquire it?[4] If, therefore, it is to be said that one does not acquire [the animal], it can only be said of the one that rides on it![5] — Thus [it must be assumed that] the doubt [expressed] by Rab Judah concerns a case where one rides on an animal, and simultaneously someone else leads it.[6] The question then is: Is the rider to be given prefer — ence because he holds it,[7] or is perhaps the leader to be given preference because it moves through his action?[8] R. Joseph [then] said: Rab Judah said to me, Let us look [into the matter] ourselves.[9] For we learnt: He who leads [a team composed of an ox an and ass][10] receives forty lashes,[11] and [likewise] he who sits in the waggon [drawn by such a team] receives forty lashes. R. Meir declares him who sits in the waggon free.[12] And since Samuel reverses [the Mishnah] and reads: 'And the Sages declare him who sits in the waggon free'[13] it follows that [according to Samuel] he who rides [on an animal] by himself does not acquire it, and this would apply with even greater force to one who rides on an animal while someone else leads it!

Said Abaye to R. Joseph: Have you not told us many times [the argument headed by the words]: 'Let us look [into the matter],' and yet you never told us it in the name of Rab Judah?[14] [R. Joseph] answered him: Truly, [it is Rab Judah's argument]: I even remember saying to him, 'How can you, Sir, derive the decision regarding [the case of] One who rides [on an animal] from [the case of] one who sits [in the waggon], seeing that he who sits [in the waggon] does not hold the reins, while he

who rides [on the animal] does hold the reins?' And he answered me: 'Both Rab and Samuel agree that one does not acquire [an animal] by holding the reins.'[15]

Some give another version:[16] Abaye said to R. Joseph: How do you, Sir, derive the law regarding one who rides [on an animal] from that concerning one who sits [in a waggon pulled by an animal], [seeing that] he who sits [in the waggon] does not hold the reins, [while] he who rides does hold the reins? — [R.Joseph] answered him: Thus Idi learned: One does not acquire [an animal] by holding its reins. It has also been reported: R. Helbo said in the name of R. Huna: One [who buys an animal] may acquire it by taking over the reins from the neighbour [who sells it], but one who finds [an animal] and [one who seizes an animal which was] the property of a proselyte [who died without heirs][17] does not acquire it [in this way]. What is the derivation of the term 'Mosirah' [used for reins]? — Raba said: Idi explained it to me: [It is derived from 'masar', to hand over, and it indicates] the handing over of the reins by one person to another. [Such action] rightly [enables a person who buys an animal] from his neighbour to acquire it, as the neighbour transfers to him in this way [the possession of the animal]. But in the case of a found [animal] and [in that of an animal that was] the property of a proselyte [who died without heirs] — who transferred it to him that he should have a right to acquire it?

An objection was raised: IF TWO RIDE ON AN ANIMAL etc. — whose opinion is that? If I should say that it is R. Meir's,[18] [the question presents itself:] If the 'sitter' acquires it, need I be told that the 'rider' acquires it? It must therefore be [said that it is the opinion of the majority of] the Rabbis[19] — which would prove that the 'rider' acquires it?[20] — Here we deal with one who drives [the animal] with his feet.[21] But if so, then it is the same as 'leading'.[22] There are two ways of 'leading':[23] you might say that the 'rider' has a preference, because he drives it and holds it [at the same time], therefore we are informed [that leading is the same as riding].

Come and hear: If two persons were pulling a camel or leading an ass, or if one was pulling and one was leading,

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(1) Rab Judah remembered that Mar Samuel had stated the two cases, and had given his decision regarding each case, but he did not remember what Samuel's decision was in each case.

(2) The question is at once asked how such a doubt could have arisen in R. Joseph's mind.

(3) If Samuel gave his decisions regarding two separate cases, in one of which a man claimed to have acquired an animal by riding on it, and in the other a man claimed to have acquired an animal by leading (or pulling) it, and in each case another person came along and pulled the animal away in order to acquire it for himself, the expression of doubt by Rab Judah as to which of the two cases either decision was meant to apply to, would accordingly have implied that he was not certain whether leading (or pulling) an animal is a legitimate way of acquiring it.

(4) Rab Judah could not have been in doubt on this point, as all are agreed that leading (or pulling) an animal is the legitimate way of acquiring it. Cf. Kid. 22b.

(5) Riding on an animal may just mean sitting on it without making it move, in which case it may not be a legitimate way of taking possession of it. Cf. Kid. ibid.

(6) And both claim the animal.

(7) And although pulling is the recognised way of taking possession of an animal, this may only be so when there is no one riding on it.

(8) And causing the animal to move is the correct method of acquiring it.

(9) Rab Judah thought that it would be possible to reconstruct Samuel's decision from the view expressed by Samuel in the following passage.

(10) And thus transgresses the Biblical prohibition of Deut. XXII, 9-11.

(11) Really 39 lashes — the penalty inflicted upon one who deliberately transgresses a Biblical prohibition. Cf. Deut. XXV, 3, and Mak. 13 and 22.

(12) As he is not guilty of any action in regard to the driving of the animals, v. Kil. VIII, 3.

(13) As the decision of the majority of the Sages must be accepted, Samuel ascribes the decision which he favours, viz.,

that sitting in the waggon is of no consequence, to the anonymous Sages, not to R. Meir. Riding an animal (without moving it) would be the same as sitting in the waggon attached to the animal (without driving it).

(14) R. Joseph spoke as if he himself had advanced the argument that removed the doubt regarding Samuel's decision.

(15) I.e., in the case of a found animal. It is only by pulling the animal and causing it to move (even if it only moves one fore-leg and one hind-leg) that the finder can take possession of the animal. It is different with a bought animal. Cf. Kid., 22b and 25b.

(16) Of the argument advanced by R. Joseph, of Abaye's reply, and of R. Joseph's rejoinder. According to this version R. Joseph did not speak in the name of Rab Judah when he said, 'Let us look into the matter,' etc., but gave his own view, which Abaye challenged.

(17) The property of a proselyte who dies without jewish issue is regarded in Jewish law as ownerless, which anyone may acquire.

(18) Who is of the opinion that even a person that sits in a waggon drawn by an ox and an ass has committed an offence, and who would thus regard 'sitting' as a legitimate way of acquiring an animal. The Mishnah would thus express the view of our Tanna only, and, as a minority decision, it would not be accepted.

(19) Who attach no importance to 'sitting' but who nevertheless attach importance to 'riding', and they let us know in the Mishnah that 'riding' is a legitimate way of acquiring an animal.

(20) Then how could Rab Judah derive a decision regarding the validity of 'riding' from the decision regarding 'sitting'?

(21) He spurs it on with his feet and makes it move, so that apart from 'riding' there is the recognised method of acquiring an animal by making it move.

(22) Then why does the Mishnah say: 'or one rides, and the other leads it'? As this distinction would have no significance, why not say 'or if both lead it'?

(23) Although 'riding' is a form of 'leading' it was necessary to say 'or one rides, and the other leads it' and thus to indicate that the two actions are equally good, as otherwise one might regard 'riding' as more important and award the animal to him who claims to have acquired it by riding on it.

Talmud - Mas. Baba Metzia 9a

they acquired it by this method. R. Judah says: One never acquires a camel except by pulling it, and [one never acquires] an ass [except by] leading it.[1] In any case it is taught [here]: 'or if one was pulling, and the other was leading,' [from which we may infer that] pulling and leading are [legitimate methods of acquiring an animal], but not riding? — The same law applies also to riding, but the reason why 'pulling' and 'leading' is given here is [that it was desired] to exclude the view of R. Judah, who says, 'one never acquires a camel except by pulling it, and [one never acquires] an ass [except by] leading it.' We are thus informed that even if [the methods are] reversed they [the animals] are also legitimately acquired.[2] But if so,[3] let [the Tanna] combine them and teach: 'If two persons were pulling and leading either a camel or an ass'? — There is one side which [prevents the combination, as one of the two actions mentioned] is invalid [in the case of one of the animals]:[4] some say, it is [the act of] pulling [in the case of] an ass, and others say, it is [the act of] leading [in the case of] a camel.[5] There are some who construe the objection [to the validity of riding as a means of acquiring an animal] from the conclusion [of the quoted passage]: 'They acquire it by this method.'[6] What are [the words] 'by this method' intended to exclude? [Are they] not [intended] to exclude riding? — No. [They are intended] to exclude the reversed [methods].[7] But if so, this view is identical with that of R. Judah? — There is a difference between them [in so far as according to the first Tanna] there is only one side which is invalid:[8] some say, it is [the act of] pulling [in the case of] an ass, and others say, it is [the act of] leading [in the case of] a camel.

Come and hear: If one rides on an ass, and another holds the reins,[9] one acquires the ass, and the other acquires the reins. This proves that one acquires [an animal] by means of riding? — Here also [it is understood that the rider] drives it with his feet. But if so let the rider also acquire the reins?[10] — Say: one acquires the ass and half of the reins, and the other acquires half of the reins. But [it is argued] the rider rightly acquires [his part] seeing that a rational person lifted up for him [the other end of the reins from the ground], but he who holds the reins — how does he acquire [his part]?[11] —

Say: One acquires the ass and [nearly] all of the reins, and the other acquires what he holds in his hand.[12] But how is this? Even if you say that if a man lifts up a found object for his neighbour the neighbour acquires it,it could only apply to [a case] where he lifted it up on behalf of his neighbour, but this one lifted up [one end of the reins] on his own behalf: if he himself does not acquire it [by this action], how is he to enable others to acquire it? — Said R. Ashi: The one acquires the ass with the halter, and the other acquires what he holds in his hand, but the rest [of the reins] neither of them acquires.[13] R. Abbahu said: In reality we may leave it as taught [at first].[14] [and] the reason is that he [who holds the reins] can pull them violently and bring [the other end also] to himself.[15] But R. Abbahu's view is a mistake: for if you do not say so, [how would you decide in a case where] one half of the garment lies on the ground and the other half [rests] upon a pillar, and one person comes and lifts up the half from the ground, while another person comes and lifts up the half from the pillar — will you maintain here also that the first one acquires it but the last one does not acquire it, for the reason that [the first one] can pull it violently and bring [the other half also] to himself?[16] [We must] therefore [say that] the view of R. Abbahu is a mistake.[17]

Come and hear: R. Eliezer says: One who rides [on a found animal] in the country, or one who leads [a found animal] in the city, acquires it![18] — Here also the rider drives [the animal] with his feet.[19] But if so, it is the same as 'leading'? — There are two ways of 'leading'.[20] But if so, why does not he who rides [on an animal] in the city acquire it? — R. Kahana said: It is because people are not in the habit of riding in a city.[21] R. Ashi then said to R. Kahana: According to this, he who picks Up a purse on a Sabbath should not acquire it either, seeing that people are not in the habit of picking up a purse on a Sabbath?[22] But in fact he does acquire [the purse] because [we say:] What he has done is done;[23] so here also [we ought to say]: What he has done is done, and he acquires [the animal by riding on it in the city]! — It must therefore be that we deal here with [a case of] buying and selling, where he says to him:[24] 'Acquire it in the way people usually acquire [a bought article]',[25]

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(1) [Camels are usually tugged at the halter; asses are driven from behind.]

(2) I.e., that leading is valid even in the case of a camel, and that pulling is valid also in the case of an ass.

(3) If there is no distinction between the mode of acquiring a camel and that of acquiring an ass, there is no need to state the two cases separately.

(4) Therefore the Tanna could not adopt the phrasing first suggested, and he had to say: 'If two persons were pulling a camel or leading an ass, or if one was pulling and one was leading,' viz., the animal which can be acquired by either method, — but this would not apply to the other animal, which could only be acquired by one of the methods.

(5) Some of the Rabbis thought that an ass could not be acquired by pulling (while a camel could be acquired either by pulling or by leading), and others thought that a camel could not be acquired by leading (while an ass could be acquired either by leading or by pulling).

(6) This was at first understood to mean that both the camel and the ass could be acquired by either method.

(7) I.e., pulling in the case of an ass, and leading, in the case of a camel.

(8) According to R. Judah pulling is applicable to a camel only, and leading is applicable to an ass only, while according to the first Tanna one of the animals can be acquired by either method.

(9) But does not lead or drive the animal.

(10) If the rider has acquired the ass legitimately, the reins should also go to him, as they are attached to the ass and are intended to serve as an ornament for the animal.

(11) Seeing that the other end is attached to the ass and has not been lifted up by the person to whom the reins are awarded, and seeing also that an ownerless object can be acquired only by one who removes the whole of it, how can the person that holds the reins attached to the ass be said to have acquired them?

(12) For the part that he holds in his hand has been entirely lifted by him.

(13) And if a third person were to come and appropriate it, it would be his.

(14) Viz., one acquires the ass, and the other the reins, including the halter.

(15) The person that holds the other end of the reins could, by violent pulling, remove also the end that is attached to the head of the ass, as owing to the elevated position of the ass's head it would be easy to pull off the halter with the reins by

one sharp tug.

(16) If a distinction were to be made between cases on the ground that the position of the other end, or the other half, of the found object might facilitate its removal by the person that holds the first end or first half, then if a garment is found one half of which rests on a pillar, or on some other elevation that would facilitate the removal of the whole garment by one strong pull on the part of the person that has seized the low-lying end, the law of our Mishnah which divides the garment between the two claimants should not apply, and the first claimant (who seized the low-lying end of the garment) should receive the whole garment. But the law recognises no such distinction. Hence R. Abbahu is mistaken in the view he advances

(17) The word used in describing R. Abbahu's error occurs in several places in the Talmud. It is regarded as a courteous substitute for other terms which might be used in refuting wrong decisions, but which would appear derogatory to the dignity of the Rabbis who committed the error. The term is associated with the word ברותא , meaning something external, which does not fit in, and which is therefore rejected. In other places, however, (such as Pes. 11a; B.B. 145a) the rendering is בדותא , an invention, an unfounded assertion.

(18) This would at least prove that riding is a legitimate method of acquiring an animal, even though riding in a city is excluded (for the reason given below).

(19) V. supra p. 44, n. 3.

(20) V. ibid. n. 5.

(21) It is regarded as unbecoming to ride in the streets of a town.

(22) As it is improper to pick it up and carry it away on a Sabbath.

(23) Even if the action is improper, it has legal validity.

(24) I.e., the seller to the buyer.

(25) And as long as the buyer takes possession of the animal in a manner which is not unusual, he acquires it legally.

Talmud - Mas. Baba Metzia 9b

so that if [the buyer rides on the animal in] the open street[1] he acquires it, or if he is an important personage he acquires it,[2] or if [the buyer] is a woman she acquires it,[3] or if [the buyer] is a mean person[4] he acquires it.

R. Eleazar inquired: If one says to another, 'Pull this animal along so that you may acquire the vessels that are [placed] upon it,'[5] what is the law? [But, it is at once objected, by saying], 'so that you may acquire;' does he really tell him, 'Acquire'?[6] [The question must] therefore [be put this way]: [If one says to another,] 'Pull this animal along and acquire the vessels that are [placed] upon it,' what is [the law]? Does the pulling of the animal enable him to acquire the vessels or not? — Said Raba: [Even] if he says to him, 'Acquire the animal and the vessels [at the same time],' does he then acquire the vessels?[7] Is not the animal like a moving courtyard? And a moving courtyard does not enable [its owner] to acquire [the objects placed in it]![8] And if you should say [that he acquires them] when it stands still,[9] [then it would be objected:] Is it not [the law] that whatever does not acquire while in motion, does not acquire even while standing still or at rest? [It must be admitted, however, that] the [above] law obtains when [the animal] is tied.[10]

R. Papa and R. Huna said to Raba: According to this,[11] if one sails on a boat, and fish jump and fall into the boat, [do we] then also [say] that [the boat] is [like] a 'moving courtyard' and it does not enable [its owner] to acquire [the objects placed in it]? — He [Raba] answered them: The boat is really at rest, only the water moves it along.

Rabina said to R. Ashi: According to this, if a married woman walks in a public street, and the husband throws a bill of divorcement into her lap or into her basket,[12] [do we] then also [say] that she is not divorced?[13] — He answered him: The basket is really at rest, and she walks underneath.[14]

MISHNAH. IF A MAN, RIDING ON AN ANIMAL, SEES A LOST ARTICLE AND SAYS TO HIS NEIGHBOUR: 'GIVE IT TO ME'; THE LATTER] TAKES IT UP AND SAYS: 'I

ACQUIRED IT [FOR MYSELF].' — [THEN] IT IS HIS. [BUT] IF AFTER GIVING IT TO HIM, THAT PERSON SAYS: 'I ACQUIRED IT FIRST', THERE IS NOTHING IN WHAT HE SAYS.[15]

GEMARA. We have learned elsewhere:[16] If one gleaned the corner of a field[17] and said, 'This is for that poor person.' R. Eliezer says: he conferred possession [of the gleaning] on that person.[18] But the Sages say: He must give it to the first poor person that comes along. 'Ulla said in the name of R. Joshua b. Levi: The difference of opinion [between R. Eliezer and the Sages] concerns [a case where] a rich person [gleaned] for a poor person. R. Eliezer is of the opinion [that] [i] since, if he had wished, he could have declared his possessions public property, so that he would have become a poor man [himself] and would have been entitled [to the gleanings of the corner], he is entitled [to them] even now, and [ii] since he might thus take possession [of them] for himself,[19] he could also confer possession [of them] upon his neighbour. But [the Sages] are of the opinion [that] we can use the Since argument once but not twice.[20] But [in a case where] a poor person [gleaned] for [another] poor person all are of the opinion that he could confer possession [of the gleanings] upon that person, for since he could take possession [of them] for himself he could also confer possession [of them] upon his neighbour.[21]

R. Nahman said to 'Ulla: And why not say, Master, that the difference of opinion [between R. Eliezer and the Rabbis] concerns [even a case where] a poor person [gleaned] for a poor person. — seeing that in regard to a found object all are [in the same legal position as the] poor are in regard [to the corner of the field]?[22] And we learned: IF ONE, RIDING ON AN ANIMAL, SEES A LOST ARTICLE AND SAYS TO HIS NEIGHBOUR: 'GIVE IT TO ME'; THE LATTER TAKES IT UP AND SAYS: 'I ACQUIRED IT [FOR MYSELF].' — [THEN] IT IS HIS. Now, it is all correct if you say that the difference of opinion [between R. Eliezer and the Rabbis] concerns [even a case where] a poor person [gleaned] for a poor person.[23] [for]

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(1) Where it is usual to ride on a bought animal, instead of leading it, in view of the possibility of passers-by intervening between the animal and the person that leads it.

(2) For it is usual for an important person to ride on an animal even in a side-street where there are no people about, as leading an animal by the reins is undignified.

(3) A woman is, as a rule, not strong enough to prevent the animal from breaking loose. She does not, therefore, usually lead it.

(4) A person that has no dignity will ride on an animal in any circumstances, whether it is regarded as proper for him to do so or not, but the ordinary person, whose standing is neither too high nor too low, will not, as a rule, ride on an animal in town in a quiet street. In such circumstances, riding would not be a legitimate way of acquiring the animal if the buyer has been told to acquire it 'in the usual manner'.

(5) The speaker has sold the vessels to the other, but he has not sold him the animal.

(6) I.e., the words 'so that you may acquire', spoken by the seller, do not convey the direct authorisation which the buyer must receive before he can really acquire the vessels.

(7) Raba assumes that R. Eleazar asks his question regarding the vessels placed on the animal because he has in mind a case where the animal itself has not been sold, and he concludes from this that, where the animal has been sold with the vessels, R. Eleazar would be sure that the buyer would acquire the vessels simultaneously with the animal, as he pulls it along, because the animal would then be regarded in the same light as his courtyard, which enables the owner to acquire whatever is placed in it. Raba then objects that the moving animal, like anything else on the move, does not convey to the owner possession of the articles placed upon it.

(8) The original law regarding the utilisation of a person's premises for the purpose of acquiring the objects placed within them only applies to fixed premises; cf. Git. 77a.

(9) I.e., after it has been pulled along by the buyer, and has thus been acquired by him, the animal comes to a standstill, and it may then be regarded as a 'fixed courtyard'.

(10) As the animal is then unable to move, it is rightly regarded as a 'fixed courtyard'.

(11) I.e., according to your view that a 'moving courtyard' does not enable its owner to acquire the objects placed therin,

(12) The basket which women used to carry on their heads, and which served the purpose of a work-basket.

(13) The Mishnah in Git, 77a makes it clear that in such circumstances the wife is divorced.
(14) The basket is therefore like a 'fixed courtyard'.
(15) For as soon as he handed over the found object to that person it became the latter's property, no matter whether the former first acquired it for himself or not, and his subsequent declaration is of no avail.
(16) Pe'ah. IV, 9; Cf. Git. 113.
(17) V. Lev. XIX, 9.
(18) The gleaner of the corner of the field, who according to R. Eliezer may confer possession of the gleanings upon a poor individual, would have to be a stranger, not the owner of the field. For the owner, even if he is poor himself, has no right to the gleanings of the corners of his field (cf. Hul., 131a), and he could not therefore acquire it for others. As the argument 'Since (Miggo) he can take possession of it for himself he may also confer possession of it upon someone else' could not in this case be used, R. Eliezer would also say that the other poor person is not entitled to the gleanings to the exclusion of anyone else.
(19) I.e., if he had, in the stated circumstances, desired to acquire the gleanings, he could have legally made them his own.
(20) Only one miggo can be applied to a case, but not two miggos. In this case we would first have to say: miggo (since) a poor man can acquire the gleanings for himself he can also acquire them for a poor neighbour; and then we would have to say: miggo (since) if he wished to renounce his property he could acquire the status of a poor man, he may be given such status even if he is rich.
(21) The one miggo would be accepted by all.
(22) Just as every poor person has a right to glean the corners of a field, so every person who finds an object has a right to pick it up and acquire it.
(23) And the Rabbis who differ from R. Eliezer would hold the view that although we may say, in the case of two persons picking up together a found object that each one acquires it for the other at the same time as he acquires it for himself (v. supra p. 37), yet in this case they would say that one poor man cannot acquire the gleanings for the other poor man. For in the case of the found object the argument is: 'Since (Miggo) he takes possession of it for himself, he may also take possession of it for his neighbour.' But in the case of the gleanings the argument would have to be: 'Since (Miggo), if he had wished, he could have taken possession of it for himself, he may also take possession of it for his neighbour' — and such an argument the Rabbis would not adopt. It would only be a potential miggo, which the Rabbis would not regard as valid.

Talmud - Mas. Baba Metzia 10a

our Mishnah would then be in accord with the Rabbis.[1] But if you say that the difference of opinion concerns [a case where] a rich person [gleaned] for a poor person, but that all agree [in the case] of a poor person [gleaning] for a poor person that one transfers possession upon the other, with whose view is our Mishnah in accord? It agrees neither [with the view of the Rabbis nor with [that of] R. Eliezer![2] — He ['Ulla] answered him: Our Mishnah speaks of [a case] where [the person who picked up the article] said: [I took possession of it] first.[3] This also stands to reason! Since the second clause teaches: IF AFTER GIVING IT TO HIM, THAT PERSON SAYS: 'I ACQUIRED IT FIRST,' THERE IS NOTHING IN WHAT HE SAYS, what need is there to state FIRST in this second clause? Surely even if he did not say FIRST [it would be assumed that] he meant 'FIRST'?[4] It must therefore be concluded that it was intended to let us know that in the first clause also he stated 'first'.[5] And the other?[6] The wording of the second clause is intended to throw light on the first: In the second case he said 'FIRST' but in the first case he did not say 'first'.[7]

Both R. Nahman and R. Hisda Say: If a man lifts up a found object for his neighbour, the neighbour does not acquire it.[8] For what reason? Because it is like one who seizes [a debtor's property] on behalf of a creditor, thereby causing loss to [the debtor's] other [creditors],[9] and one who seizes [a debtor's property] in behalf of a creditor, causing loss thereby to [the debtor's] other [creditors], does not acquire [the property].[10] Raba asked R. Nahman: [A Baraitha teaches:][11] A labourer's find belongs to himself. This decision only applies to a case where the employer said to the labourer: 'Weed for me to-day', [or] 'Hoe for me to-day.'[12] But if he said to him: 'Do work for

me to-day.' the labourer's find belongs to the employer![13] — He [R. Nahman] answered him: A labourer is different, as his hand is like the hand of his employer.[14] But does not Rab say: 'The labourer may retract even in the middle of the day? — He [R. Nahman] answered him [again]: Yes, but as long as he does not retract [and he continues in the employment] he is like the hand of the employer. When he does retract [he can withdraw from the employment] for another reason,[15] for it is written: For unto me the children of Israel are servants; they are My servants[16] — but not servants to servants.[17]

R. Hiyya b. Abba said in the name of R. Johanan: If one lifts up a found object for his neighbour, the neighbour acquires it. And if you will say: Our Mishnah [differs]![18] — [it is because our Mishnah deals with a case] in which he said, 'Give me it,' and did not say, 'Acquire it for me.'[19]

MISHNAH. IF ONE SEES AN OWNERLESS OBJECT AND FALLS UPON IT, AND ANOTHER PERSON COMES AND SEIZES IT, HE WHO HAS SEIZED IT IS ENTITLED TO ITS POSSESSION.

GEMARA. Resh Lakish said in the name of Abba Kohen Bardala: A man's four cubits acquire [property] for him everywhere. For what reason? — The Rabbis instituted [this law] in order that people might not be led to quarrelling.

Abaye said: R. Hiyya b. Joseph raised an objection from [the tractate of] Pe'ah. Raba said: R. Jacob b. Idi raised an objection from the [tractate of] Nezikin.[20] Abaye said: R. Hiyya b. Joseph raised an objection from [the tractate of] Pe'ah:[21] If he [a poor man] takes part [of the gleanings] of the corner [of a field] and throws it over the rest [of the gleanings],[22] he cannot claim anything. If he falls Upon it, [or if] he spreads his garment upon it, he may be removed from it. And the same [law applies] to a forgotten sheaf.[23] Now if you say that a man's four cubits acquire [property] for him everywhere, let the four cubits [of the poor man] acquire for him [the gleanings on which he fell]! — Here we deal with a case where the man did not say. 'I wish to acquire it.' But if the Rabbis instituted [this law], what does it matter if he did not say, ['I wish to acquire it']? — Since he fell [upon it], he made it clear that he wished to acquire it by falling [upon it][24] but did not wish to acquire it by means of [his four cubits].

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(1) [Who disregard the potential miggo and do not admit the argument. 'Since the person who picked up the article for the rider could, if he had wished, have picked it up for himself, he may also confer possession of it upon his neighbour.' The latter therefore can rightly retain the article if he wishes to do so. At this stage the Gemara presumes that he had originally picked up the article for the rider, but that he subsequently refused to hand it over to him.]

(2) For it would appear from our Mishnah that one cannot ordinarily acquire an object for someone else, and the only way in which one can confer upon the other the right of possession is by handing the object over to him.

(3) The reason why the rider cannot claim the found object unless it has been handed over to him is that the other person claims to have picked it up straight away for himself. But if the other person had picked it up for the rider it would have belonged to the latter straight away, for we say that since, if he had wished, he could have taken possession of it for himself, he may also take possession of it for his neighbour.

(4) When he claims the article after handing it over, he must surely mean that he acquired it first for himself. There would be no sense in his claim that he acquired it for himself after he disposed of it to the rider,

(5) I.e., that the person who picked it up maintained that he took possession of it for himself right at the beginning. And the last clause teaches us that even if he claims to have picked it up for himself straightaway, his plea is not accepted, for by handing over the article to the rider he made it clear that he originally meant to acquire it for that person.

(6) R. Nahman — what is his view regarding the use of the word FIRST in the second clause?

(7) The use of the word FIRST in the second clause makes it clear that it was intentionally excluded from the first clause. [For there, even if he did not say 'first', but picked it up for the rider, the rider would still have no claim to it until it had been delivered to him.]

(8) Cf. Bezah, 39b.

(9) The person who lifts up a found object for someone else does not benefit himself, and he deprives other people of the chance of finding and acquiring the object. He is therefore like a person who comes and seizes a debtor's property for the benefit of a creditor, thus depriving other creditors of the chance of recovering their debt.
(10) As the creditor in whose behalf he seized the property had not authorised this man to act on his (the creditor's) behalf his intervention is illegal and constitutes an infringement of the rights of the other creditors (Rashi). [According to Tosaf, the same law would apply even where he had been authorized by the creditor. V. Keth. 84b; Git., 113.]
(11) V. infra 12b; 118a,
(12) As the work which the labourer is to do for the employer is specified it cannot include anything else, not even finding and acquiring an ownerless object. If the labourer has spent any time in finding and acquiring the object, the employer may deduct payment for the time lost, but he cannot claim the object.
(13) Since the work is not specified it includes anything that the labourer may do during the time of his employment, so that the object that he finds and acquires during that time belongs to the employer. This would show that when one lifts up a found object for his neighbour the neighbour acquires it — in contradiction to R. Nahman and R. Hisda.
(14) The employer's right to the object found by his employee has nothing to do with the question whether one may acquire an object for a neighbour, as in the case of the employer the reason why he is entitled to the object found by his employee is that during the time of the employment the employee belongs to the employer, and anything that the former acquires during that time belongs to the latter.
(15) The fact that the labourer may terminate the employment any time he likes does not imply that he does not belong to the employer while the engagement lasts and that he can acquire a found object for himself during that time. There is another reason for the right conceded to the employee to terminate his engagement whenever he likes.
(16) Lev, XXV, 55.
(17) The freedom of the individual ought not to be jeopardised by an engagement which is to bind the employee to work for the employer against his own inclination, as if he were the employer's chattel, Cf. B.K. 116b.
(18) In that it says that the person who picked up the object and said, ‘I took possession of it,’ acquired it for himself, even though he acted for the rider who told him to give it to him.
(19) Had the rider said: ‘Acquire it for me by picking it up on my behalf’ the object would have belonged to the rider. By saying: ‘Give it to me,’ the rider made it clear that the found object was to become his only when it was handed over to him. The other person is therefore entitled to keep the object.
(20) The three ‘Babas’ (‘Gates’: Baba Kamma, Baba Mezia, and Baba Bathra), formed originally one tractate, which was called ‘Nezikin’.
(21) Ch. IV, Mishnah 3.
(22) In order to acquire it by this act.
(23) V. Deut. XXIV, 19.
(24) He preferred to acquire the gleanings by the act of falling upon them, believing that this would be legally more effective than the claims of the four cubits sanctioned by the Rabbis, And as he did not intend to exercise the right afforded him as regards the four cubits, the right lapsed, and there was nothing in his action of throwing himself upon the gleanings to entitle him to claim their possession.

Talmud - Mas. Baba Metzia 10b

R. Papa said: The Rabbis instituted [the law of the] four cubits only in a public place.[1] but the Rabbis did not institute [such a law] in a private person's field.[2] And although the Divine Law gave [the poor person] a right therein, it gave him the right to walk in it and glean its corners, but the Divine Law did not give him the right to regard it as his ground.[3] Raba said: R. Jacob b. Idi raised an objection from [the tractate of] Nezikin: IF ONE SEES AN OWNERLESS OBJECT AND FALLS UPON IT, AND ANOTHER PERSON COMES AND SEIZES IT, HE WHO SEIZED IT IS ENTITLED TO ITS POSSESSION — now if you will say [that] the four cubits of a person acquire for him [an ownerless object] everywhere, let his four cubits acquire it for him [in this case also]? — Here we deal [with a case] where he did not say, ‘I wish to acquire it.’ But if the Rabbis instituted [the right of the four cubits], what does it matter if he did not say it? — As he fell [upon the object] he made it clear that he wished to acquire it by falling [on it] but did not wish to acquire it by means of the four cubits. R. Shesheth said: The Rabbis instituted [the law of the four cubits] in regard to a

side-street, which is not crowded, [but] in regard to a high road, which may be crowded, the Rabbis did not institute [this law]. But does it not say 'everywhere'? — [The term] 'everywhere' is to include the [ground on both] sides of the high road.[4]

Resh Lakish said further in the name of Abba Kohen Bardala: A girl who is [still] a minor[5] has neither the right [to acquire, an object by means] of her 'ground'[6] nor the right [to acquire an object by means] of her 'four cubits'.[7] But R. Johanan said in the name of R. Jannai: She has the right, both in regard to her ground and in regard to her four cubits. Wherein do they differ? — One[8] is of the opinion that [the scriptural term] 'ground'[9] is included in her 'hand'; just as her 'hand' acts for her, so her 'ground' also acts for her. But the other[10] is of the opinion that 'ground' [acts] In the capacity of 'agent';[11] and as she has not the power [while she is a minor] to appoint an agent to act for her[12] neither can her 'ground' act for her. But is there anyone who says that 'ground' is regarded as 'agent'? Was it not taught: [If the theft be found at all] in his hand [alive];[13] — [from this] I would gather [that the law applies] only [when it is found in] 'his hand': how do we know that the same law applies [when the theft is found on] his roof, in his court-yard and in his enclosure?[14] Because we are told: [If the theft] 'be found at all',[15] [which means]: 'wherever [it may be found].'[16] Now if your view is that 'ground' [acts] because it is regarded as agent, then we must conclude [that there] is an agent for a sinful act,[17] whereas it is held by us[18] that there is no agent for a sinful act?[19] — Rabina answered: We say 'there is no agent for a sinful act' only when the agent is subject to the law prohibiting the act, but in regard to [a thief's] 'ground', which cannot be said to be subject to the law prohibiting the act [of stealing] the responsibility [does not lie with the agent, but it] lies with the originator [of the deed]. But if so — what if one says to a woman or a slave: 'Go and steal for me,' seeing that they are not subject to the law prohibiting the act [of stealing].[20] does the responsibility in this case also lie with the originator [of the deed]? — I will tell you: A woman and a slave are subject to the law prohibiting [theft], only they are temporarily unable to pay,[21] as we learnt: When the woman has been divorced and the slave set free, they are obliged to pay.[22] R. Sama said: When do we say, 'there is no agent for a sinful act'? — [Only in a case] where [the agent is at liberty to choose: to] do it if he wishes, and not do it if he does not wish. But in regard to a 'ground' [where. e.g., a stolen animal is found], seeing that it has no will but must receive [what is deposited therein, the responsibility lies with the originator [e.g., of the theft]. Wherein do they differ?[23] — They differ [in the case where] a priest says to an Israelite: 'Go and betroth for me a divorced woman'[24] or [where] a man says to a woman:[25] 'Cut around the corners of the hair of a minor:'[26] according to the version which says that whenever [the agent has the choice to] do it if he wishes, and not to do it if he does not wish, the responsibility does not lie with the originator; here also he has the choice to do if he wishes and not to do it if he does not wish, [and therefore] the responsibility does not lie with the originator. But according to the version which says that whenever the agent is not subject to the law prohibiting the act, the responsibility lies with the originator, in these [cases] also, seeing that [the agents] are not subject to the laws prohibiting the acts, the responsibility lies with the originators. But is there anyone who says that 'ground' is not included in [the term] 'hand'? Has it not been taught: [And he shall give it] in her hand[27] — from this I would learn only that 'her hand' acts for her. How do we know [that] her roof, her courtyard and her enclosed space [also act for her]? Because the Scriptural verse emphasises, 'And he shall give', [which implies that he may give it to her] anywhere.?[28] With regard to a divorce there is no difference of opinion [and all agree] that 'ground' is included in her 'hand'. The difference of opinion exists only as regards a found object: One[29] is of the opinion that

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(1) Such as a high road, a public thoroughfare, or a lane, a side-street and an alley adjoining an open space — places that are open to everybody.

(2) Where, having regard to the limited space, it is impossible to assign to each person four cubits.

(3) For the purpose of acquiring an object situate on that ground.

(4) But not side-streets and alleys.

(5) Cf. Keth. 39a.

(6) Lit. 'Court'.
(7) Therefore, if she is married, the husband cannot divorce her by throwing the bill of divorcement into her court or into the space constituting her four cubits in a public place, although in the case of a wife who has attained her majority (cf. Keth. 39a) this would be a valid way of effecting her divorce (cf. Git. 78a).
(8) R. Johanan.
(9) Used in Deut, XXIV, 1: that he writeth her a bill of divorcement, and giveth it in her hand. cf. Git. 77b. That the term 'hand' means also 'possession' may be gathered from Num, XXI, 26.
(10) Resh Lakish.
(11) Not because it is like her 'hand' and thus 'acts' automatically, but because the ground stands to her in the relation of a messenger to the sender, or of an agent to the originator of a deed, for which a free will or a sense of legal responsibility is required. A minor cannot therefore be represented by such an agent. The right of an adult person, whether man or woman, to act through a messenger, or agent, as regards marriage and divorce, is derived from Deut, XXIV, 1. v. Kid. 41a.
(12) Only a 'man' and a 'woman' can appoint agents to act for them, but not a minor. Cf. Kid. 42a.
(13) Ex, XXII, 3.
(14) I.e., that one is guilty of theft if an animal walks into an enclosed space belonging to him, and he locks it in.
(15) The emphatic term המצא תמצא is taken to indicate: 'wherever it may be found'.
(16) Cf. infra 56b; B.K. 65a; Git, 77a.
(17) That the responsibility for the act rest upon the principal originator, who instructed the agent, and not upon the agent who carried out the instruction. The sinful act in this case is the act of stealing the animal.
(18) V. Kid. 42b.
(19) I.e., if one commits an illegal act on the instruction of someone else the guilt rests upon the performer of the act, and not upon the one who gave the instruction, as each person is bound to obey the law given by the Supreme Master, and one has no right to carry out the instruction of another person if it is contrary to the divine Law.
(20) At least so far as the penalties involved are concerned, as they are unable to pay. Cf. B.K. 87a.
(21) The married woman cannot pay because she cannot dispose of her property without her husband's consent, and the slave because everything he has belongs to his master,
(22) For an injury they caused in their previous state, while they were unable to pay (B.K. 87a).
(23) What practical difference is there in the views expressed by Rabina and R. Sama?
(24) A priest may not take to wife a divorced woman. (Lev. XXI, 7.) Betrothal marks the two parties concerned husband and wife.
(25) A woman is not subject to the prohibition of rounding the corners of the head (Lev. XIX, 27) as she is not subject to the prohibition contained in the second half of the same Biblical verse, neither shalt thou mar the corners of thy beard. Cf. Kid. 35b; Naz. 57b.
(26) A minor is mentioned for the reason that an adult will not allow anyone to round the corners of his head, as the Biblical prohibition applies to 'rounding' as well as to 'being rounded'.
(27) Deut. XXIV, 3.
(28) The term ונתן , 'and he shall give' is taken as having no exclusive reference to the following word בידה ('in her hand'). Had the emphasis been restricted to 'in her hand' the term used would have been ובידה יתנהו (Rashi). The inference therefore is that any place belonging to her, i.e. her 'ground', is as good as her 'hand', and not because the place is her 'agent', for the fact that the woman can appoint an agent in connection with either marriage or divorce is already indicated in this verse by the word ושלחה 'he shall send her' (cf. Kid., 41a), and need not be indicated again by ונתן . Git. 77a.
(29) R. Johanan.

Talmud - Mas. Baba Metzia 11a

we derive [the law regarding] a found object from [the law regarding] divorce,[1] and the other[2] is of the opinion that we do not derive [the law regarding] a found object from [the law regarding] divorce.[3] And if you wish I will say: As regards a female minor there is no difference of opinion [and all agree] that we derive [the law regarding] a found object from [the law regarding] divorce, but here they differ regarding a male minor: One[4] says: We derive [the law regarding] a male minor[5]

from [the law regarding] a female minor, and the other[6] says: We do not derive [the law regarding] a male minor from [the law regarding a female minor]. And if you wish I will say: One deals with one case[7] and the other deals with another case, and they do not really differ [as regards the law].

MISHNAH. IF A MAN SEES PEOPLE RUNNING AFTER A LOST ARTICLE [E.G.,] AFTER AN INJURED STAG [OR] AFTER UNFLEDGED PIGEONS,[8] AND SAYS: 'MY FIELD ACQUIRES POSSESSION FOR ME',[9] IT DOES ACQUIRE POSSESSION FOR HIM.[10] BUT IF THE STAG RUNS NORMALLY, OR THE PIGEONS FLY [NATURALLY], AND HE SAYS: 'MY FIELD ACQUIRES POSSESSION FOR ME,' THERE IS NOTHING IN WHAT HE SAYS.[11]

GEMARA. Rab Judah said in the name of Samuel: This[12] is, provided he is present by the side of his field. But ought not his field to acquire it for him [in any case], seeing that R. Jose, son of R. Hanina, said:[13] A man's 'ground' acquires [property] for him [even] without his knowledge? — These words apply only to a [piece of] 'ground' that is guarded,[14] but when [the piece] of 'ground' is not guarded, [then the law is that] if [the owner] is present by the side of his field he does [acquire the property], [but] if [he is] not [present] he does not [acquire it]. And whence do you derive that when [the piece of] 'ground' is not guarded [the owner] does [acquire the property] if he is present by the side of the field, [but that he] does not [acquire it] if [he is] not [present]? — From what was taught: If one stands in town and says, 'I know that the sheaf which I have in the field has been forgotten by the labourers,[15] [and it is my wish that the sheaf] shall not be regarded as forgotten',[16] I might think that it shall not [in any circumstances][17] be regarded as forgotten: the scriptural verse therefore tells us: And thou hast forgot a sheaf in the field [etc.][18] implying 'only if thou hast forgotten it [while thou wast] in the field [does the law of the forgotten sheaf apply] and not [if thou hast forgotten it when thou hast returned] to town.' Now, this seems self-contradictory. First you say: 'I might think that it shall not be regarded as forgotten' — from which it would appear that [in fact] it is regarded as forgotten; and then the Gemara[19] concludes: 'Only if thou hast forgotten it [while thou wast] in the field [does the law of the forgotten sheaf apply] but not [if thou hast forgotten it when thou hast returned] to town' — from which it would appear that [in the case discussed] it is not regarded as a forgotten [sheaf]. It must therefore be assumed that what is meant is this: In the field, [i.e.,] if it was forgotten at the outset, [while the owner was still in the field,] it must be regarded as [a] forgotten [sheaf], [but] if it was remembered [by the owner in the field] and was subsequently forgotten [by the labourers] it is not regarded as [a] forgotten [sheaf]. For what reason? Since he was standing near it [in the field, the field] acquires it for him. But [when the owner is again] in town, even if [the sheaf] was at first remembered [by him] and was forgotten later [by the labourers in the field], it must be regarded as [a] forgotten [sheaf].[20] For what reason? Because he is not there beside it, so that [the field] does not require possession [of the sheaf] for him. But how does it follow?[21] Perhaps it is a Biblical decree that [only that which is forgotten by the owner while he is] in the field shall be subject to the law of the forgotten sheaf, but that [when the owner is] in town [again] the sheaf is no more subject to that law?[22] The Scriptural verse says [further]: Thou shalt not go back to fetch it — this is to include the sheaf which has been forgotten [by the owner on his return] to town. But is not this needed to indicate that disregard of the law involves the transgression of a negative command?[23] — If that were so, the Scriptural verse would only have to say 'Thou shalt not fetch it'. Why does it say: 'Thou shalt not go back'? [Obviously] in order to include the sheaf which has been forgotten [by the owner on his return] to town. But is not this [additional phrase] still required for [the rule] which we have learned: That which is in front of him [who is engaged in reaping] is not [subject to the law of the] forgotten [sheaf]; that which is behind him is [subject to the law of the] forgotten [sheaf], as it is included in the prohibition: 'Thou shalt not go back [to fetch it]'.[24] This is the general rule: All that can be included in the prohibition 'Thou shalt not go back [to fetch it]' is [subject to the law of the] forgotten [sheaf]; all that cannot be included in the prohibition 'Thou shalt not go back [to fetch it]' is not [subject to the law of the] forgotten [sheaf]?[25] — R. Ashi said: The Scriptural verse says: It shall be [for the stranger][26] etc., so as to include that which has been forgotten [by the owner when he is back] in town.

'Ulla also said:[27] 'This is, provided that he is present by the side of his field'. And Rabbah b. Bar Hanah said likewise: 'This is, provided that he is present by the side of his field'. R. Abba placed before 'Ulla the following objection: It happened once that Rabban Gamaliel and some elders were going in a ship.[28] Rabban Gamaliel then said: The tithe which I shall measure off [when I come home] is given [by me] to Joshua.[29]

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(1) That just as her 'ground' acts for her as regards a bill of divorcement it also acts for her as regards a found object.

(2) Resh Lakish.

(3) Divorce is a matter that has to do with the ritual part of the Law, while the claim to a found object is only a matter of money. In regard to the latter the deduction from Ex. XXII, 3, dealing with theft, to include 'ground' may be explained as an extension of the law of agency, i.e., the thief's 'ground' is treated as his, agent and it may be applied to other 'money matters'. The Scriptural indication is however necessary in the case of theft, as otherwise we might have thought that a thief's premises do not act for him, because of the principle that 'there is no agent for a sinful act'.

(4) R. Johanan.

(5) Which is not indicated anywhere in the Bible.

(6) Resh Lakish.

(7) Resh Lakish states the law regarding a found object — that it is not acquired by means of one's 'ground' — and R. Johanan states the law regarding a bill of divorcement — that it is acquired by means of one's ground. Or alternatively it could be said that one deals with the case of a male minor, and the other deals with the case of a female minor, and this accounts for the difference in their decision. It may thus be assumed that R. Johanan and Resh Lakish do not differ at all as regards the law as it applies to each case, and that they would both uphold each other's decision.

(8) The injured stag and the unfledged pigeon cannot move out of the field in which they are found, and will therefore remain there, unless someone takes them away. The field, in these circumstances, acts for the owner and acquires the animal or the birds for him, if the owner expresses his wish in this respect before the others have taken hold of these finds. (V. however, Tosaf a.l.)

(9) V. supra. 10b.

(10) They become his property, and the others have no right to take them away.

(11) As the animals or birds are not staying in the field his 'ground' cannot acquire them for him.

(12) The Mishnaic law that the field acquires for its owner the injured stag and the unfledged birds that are found there.

(13) B.K.. 493; infra 102a, 118a; Hul. 141b.

(14) As when it is surrounded by a fence.

(15) I placed the sheaf there so that the labourers might see it and bring it home.

(16) It shall not he subject to the law regarding a sheaf which has been forgotten in the field — the law given in Deut. XXIV, 19: When thou reapest thy harvest in thy field, and hast forgot a sheaf in the field, thou shalt not go back to fetch it etc.

(17) I.e., even if the owner himself forgot it subsequently.

(18) Deut. XXIV, 19.

(19) [MS.M. 'Talmud', v. infra p. 206, n. 6.]

(20) The argument of the Gemara would then be as follows: 'I might think that it shall not be regarded as a forgotten sheaf, The Scriptural verse therefore tells us: And thou hast forgot a sheaf in the field etc., meaning thereby: Only when thou art in the field it is necessary that thou thyself shalt forget the sheaf in order to make it available for the stranger etc., but when thou hast returned to town it is not necessary that thou thyself shalt forget the sheaf: the forgetfulness of the labourers in the field has the same effect as thine own.

(21) That the meaning of the verse is as stated, and that the conclusion of the Baraitha is correct (Tosaf.).

(22) The emphasis in the verse would then be that the law of the forgotten sheaf only applies to בשדה ('in the field') but never to בעיר ('in the town').

(23) Carrying with it the penalty of thirty-nine lashes.

(24) This phrase is superfluous and thus serves as a basis for this deduction.

(25) Pe'ah VI, 4.

(26) Deut. ibid.

(27) 'Ulla expressed the same view as Rab Judah expressed in the name of Samuel (v. p. 59. n. 9).

(28) Cf. Hor. (Sonc. ed) pp. 70f.

(29) Joshua b. Hananiah, who was a Levite and was entitled to receive the first tithe. (Cf. 'Ar. 11b.) Rabban Gamaliel was afraid that if he waited till he returned home he would be too late to perform the duty of tithing for that year. [Or that the members of his household might make use of the produce on the assumption that he had set the tithe aside before his departure, incurring thereby the guilt of eating untithed produce]. According to the view of Rabbenu Tam (Tosaf. a.l. and Kid. 26b) this happened on the eve of the Passover festival of the fourth year, when all the tithe offerings had to be 'put away' (cf. Deut. XXVI, 12ff.)

Talmud - Mas. Baba Metzia 11b

and the place [where it lies] is leased to him [by me].[1] And the other tithe[2] which I shall measure off is given [by me] to Akiba b. Joseph[3] that he may acquire possession of it for the poor, and the place [where it lies] is leased to him [by me].[4] Now, were R. Joshua and R. Akiba standing by the side of the field of Rabban Gamaliel [when the latter made that declaration]?[5] — He ['Ulla] then said to him [R. Abba]: This student seems to imagine that people do not study the law.[6] When he [R. Abba] came to Sura[7] he related to those [at the College]: This is what 'Ulla said, and this is the objection that I placed before him. One of the Rabbis then answered him: Rabban Gamaliel made them acquire the movable property through the immovable property.[8] R. Zera accepted it. R. Abba did not accept it . Said Raba: He [R. Abba] did right in not accepting it: for had they not a 'cloth' by which to acquire from him [the tithes] as 'exchange'?[9] [It must] therefore [be said that] the enjoyment of the right [to give the tithes to whom one likes][10] is not [regarded as something that has a] money [value] by which one could acquire [goods] as 'exchange'. In the same way [it must be said that] the enjoyment of this right is not [regarded as something that has a] money [value] for the purpose of being acquired through immovable property.[11] But this is not so: In regard to the priestly perquisites[12] [the term] 'giving' is used in Scripture:[13] 'Exchange' is a commercial transaction; [whereas the acquisition of] movable property through immovable property is [a transaction to which] 'giving' [may be] legitimately [applied].[14] R. Papa says:[15] [In a case where there is] a person bestowing [upon the recipient] the right [to the property] it is different.[16] And whence do you derive this? From what we have learned [in our Mishnah]: 'IF A MAN SEES PEOPLE RUNNING AFTER A LOST OBJECT' etc. And [in regard to this] R. Jeremiah said in the name of R. Johanan: 'This is, provided that [if] he runs after them and can overtake them.'[17] R. Jeremiah then asked: What is the law regarding a gift?[18] R. Abba b. Kahana approved [of the distinction implied in] this question, [and he answered: If the objects are given to the owner of the field, they become his] even if he runs after them, and cannot overtake them. For what reason? Is it not because [where there is] a person bestowing [upon the recipient] the right [to the property] it is different!

Said R. Shimi to R. Papa: Behold there is [the case of] a bill of divorcement [thrown by the husband into the wife's house or court-yard],[19] where there is a person bestowing upon the recipient the right to its possession[20] — and yet 'Ulla said: 'That is, provided that she is present in the vicinity of her house or her court-yard'! — [The case of] a bill of divorcement is different, as it may be given even against her will. But can it not be concluded [the other way] by means of a Kal wa-homer: If [in the case of] a bill of divorcement, which may be given against [the wife's] will, it is valid if she is standing by the side of her house or her court-yard, but not otherwise, how much more should this be so in the case of a gift, for which [the recipient's] consent [is necessary]? — Therefore R. Ashi said:[21]

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(1) This enabled Joshua to acquire the tithe without actually taking possession of it, as movable property may be acquired either by pulling it or having it placed within one's premises (v. supra 9b). According to Ma'as. Sh. V, 9 the leasing of the premises was confirmed by the immediate payment of a nominal rental by Joshua to R. Gamaliel.

(2) The tithe which had to be given to the poor in the third and sixth year after the Sabbatical year.

(3) Who held the office of almoner.

(4) Ma'as. Sh. V, 9.

(5) It is obvious that in this case the condition laid down by ‘Ulla and the other Rabbis could not have been fulfilled. The conclusion must therefore be drawn that a person's premises may acquire for him the objects placed therein even if he is not standing by the side of the premises.
(6) B.B. 84b.
(7) Cf. supra 6b.
(8) The leasing of the ground on which the tithes were lying enabled Joshua and Akiba to acquire the tithes, not because the ground acted for them as their ‘hand’ or ‘agent’, but because of the principle that ‘movable property, which cannot be pledged as security to a lender, may be acquired together with immovable property, which can be pledged as security to a lender,’ by means of the payment of the purchase price of the immovable property (v. Kid 26a). Rabban Gamaliel could therefore have leased to Joshua and Akiba any other piece of ground, with the same effect so far as the acquisition of the tithes is concerned. Even movable property which is received as a gift can be acquired in the same way. (Cf. loc. cit.)
(9) Heb. חליפין halipin; cf. Ruth. IV, 7. What need was there then for Joshua and Akiba to pay R. Gamaliel for the lease of the ground? Cf. supra p. 30. n. 3.
(10) The tithe offered by R. Gamaliel to Joshua and Akiba was not really the former's property as it belonged by law to the Levite poor. R. Gamaliel's right was limited to the choice of the person to whom the tithe was to be handed over. This right has no money value in the sense indicated to enable the recipient of the tithe to acquire it in association with a transaction of ‘exchange’.
(11) In the same way, and for the same reason, the tithe could not be acquired by means of the payment of the purchase price for immovable property. But it could be acquired in the way in which an ownerless object is acquired by one in whose premises it is placed, and for this reason the method employed by R. Gamaliel, as originally interpreted (by leasing his ground on which the tithe was lying), was correct.
(12) Including the portions due to the Levites and to the poor.
(13) Deut. XXVI, 12.
(14) ‘Giving’ precludes selling, and ‘exchange’ is a method of sale. But the acquisition of movable property, even when it is received as a gift in association with immovable property is legally valid, and it is not regarded as a sale. This method may therefore be employed in reference to tithes.
(15) R. Papa upholds the original version regarding R. Gamaliel's method of distributing the tithes by means of his ‘ground’.
(16) Literally: ‘Where another mind causes one to acquire them,’ i.e., where the recipient does not acquire (ownerless) goods by his own action, but has them conferred upon him by the owner, as in the case of R. Gamaliel. In such a case there is no need for the recipient to ‘be standing by the side of the field,’ as laid down by ‘Ulla and others in regard to the case in our Mishnah.
(17) The injured animal and immature birds are assumed to be able to move along slowly through the field, where they can be overtaken by the owner.
(18) If someone's animals or birds have landed in a strange field and their owner gives them to the owner of the field as a present, Must the owner be able to overtake them in order to be able to acquire them, or not?
(19) V. Git. 77b; and supra 10b.
(20) It is the husband's intention that the wife should take possession of the document, so that she may be divorced by it.
(21) R. Ashi acknowledges the validity of the arguments advanced by R. Shimi and R. Shesheth, and he gives a new reason for the distinction between a bill of divorcement and a gift. In both cases the ground on which the object is placed acts as the recipient's agent, whether the recipient is present or not. Where the recipient has no knowledge of the action, the agency is valid only if the action yields an advantage or benefit to the recipient. Where the action results in a disadvantage (loss or injury) to the recipient, it has no validity. Therefore, in the case of a gift, the recipient's ground acquires it for him, whether he is aware of it or not. But in the case of the bill of divorcement thrown into the wife's house or court-yard (against her will) the agency of the premises is not effective because the result would be a disadvantage to her, and in such a case the premises could only act for her if she is present and aware of what is happening, for then the premises would be regarded as ‘her hand’ (cf. supra 10b) and not merely as her agent. Therefore the divorce is not valid unless the woman was beside her premises when the bill was thrown.

Talmud - Mas. Baba Metzia 12a

[A person's] ‘ground’ [acts for him because] it is included in [the term] ‘hand’, and is no less effective than a [human] agency: In the case of a bill of divorcement, where the agency would work to her disadvantage, [we say that] one may not do anything to a person's disadvantage except when the person is present. But in the case of a gift, where the agency would work to the advantage [of the recipient, we say that] one may do something to a person's advantage when the person is absent.[1]

[To revert to] the above text: ‘IF A MAN SEES PEOPLE RUNNING AFTER A LOST ARTICLE etc. R. Jeremiah said in the name of R. Johanan: This is provided that if he runs after them he can reach them. R. Jeremiah asked: What [is the law] in [the case of] a gift? R. Abba b. Kahana approved of the [distinction implied in the] question [and answered]: ‘Even though if he runs after them and cannot reach them.’ Now, Raba asked:[2] If one throws [away] a purse through one door and it falls through another door,[3] what is the law? [Do we say that even] when a thing does not come to rest in the air it is regarded as being come to rest there,[4] or not? — R. Papa said to Raba, (and according to some R. Adda b. Mattena said to Raba, while according to others Rabina said to Raba): Is not this the same as [the case in] our Mishnah: IF A MAN SEES PEOPLE RUNNING AFTER A LOST ARTICLE [etc.]. and R. Jeremiah said in the name of R. Johanan: ‘This is, provided that if he runs after them he can reach them’, and R. Jeremiah asked: ‘What is the law in the case of a gift?’ and R. Abba b. Kahana approved of the [distinction implied in the] question [and answered]: ‘Even though if he runs after them and cannot reach them’?[5] [Raba] answered him: You speak of [a case where the objects were] moving [on the ground]: moving [on the ground] is different, as it is like resting.[6] MISHNAH. AN OBJECT FOUND BY A MAN'S SON OR DAUGHTER WHO ARE MINORS,[7] OR BY HIS CANAANITE BONDMAN OR BONDWOMAN,[8] OR BY HIS WIFE,[9] BELONGS TO HIMSELF. AN OBJECT FOUND BY HIS SON OR DAUGHTER WHO ARE MAJORS, OR BY HIS HEBREW MANSERVANT OR MAIDSERVANT, OR BY HIS WIFE WHOM HE HAS DIVORCED, ALTHOUGH HE HAS NOT PAID [HER THE AMOUNT DUE TO HER ACCORDING TO] HER MARRIAGE-CONTRACT, BELONGS TO THE FINDER.

GEMARA. Samuel said: For what reason has it been laid down that an object found by a minor belongs to his father? Because when he finds it he brings it hurriedly to his father[10] and does not retain it in his possession. Shall we then say that Samuel is of the opinion that a minor has no right to acquire anything for himself [and that this is] in accordance with Biblical law? Surely it was taught: If one hires a labourer [to work in his field] the son [of the labourer] may gather the gleaning behind [his father]?[11] [But if the labourer receives] a half or a third or a fourth [of the crops as wages] his son may not gather the gleaning behind him.[12] R. Jose says: In either case his son and his wife may gather the gleaning behind him.[13] And Samuel said: The halachah is like R. Jose. Now it is all well if you say that a minor has a right to acquire things for himself in accordance with Biblical Law. For then his son gathers the gleanings for himself, and the father acquires it from him. But if you say that a minor has no right to acquire anything for himself, then the son must gather the gleaning for his father; but his father is rich,[14] — why then may his wife and son gather the gleaning behind him? — Samuel merely gave the reason of the Tanna of our Mishnah, but he himself does not hold that view.[15] And does R. Jose hold the view that a minor has a right to acquire things for himself in accordance with Biblical law? Have we not learnt: An object found by a deaf-mute, an imbecile, and a minor [may not be taken away from them as the law of] robbery is applied to them out of consideration for the public good.[16] R. Jose says: It is actual robbery.[17] And R. Hisda says: It is actual robbery because of an enactment by the Rabbis; the difference is as regards reclaiming the object by law?[18] — Therefore Abaye said: [The field] is treated as if the last gleaners had passed through it,[19] so that the poor themselves dismiss it from their minds, thinking that the son of that [labourer] would gather the gleaning.[20] R. Adda b. Mattena then said to Abaye: Is it permissible for a man to cause a lion to lie down in his field in order that the poor may see it and run away?[21] — Therefore Raba said:

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(1) Cf. Kid. 23a and 32b; A person's ‘ground’ acquires for him the object given to him, if even he is not present and is

not aware of the gift, because it is assumed that he agrees that the 'ground' should act for him and receive on his behalf the gift from the donor, who wishes to bestow upon the recipient the right to the possession of the object. It is different, however, in the case of a found object, as there is no one to bestow upon the claimant the right to the property, and unless he is present, or the ground where the object is found is guarded (fenced in), the 'agency' cannot take effect nor can the principle of his 'hand' be applied when he is not present (Rashi).

(2) Cf. infra 102a.

(3) Through the door of a house belonging to another person.

(4) So that the owner of the first house could claim the purse on the ground that his premises had acquired it for him before it reached the other house. Cf. Git. 77a.

(5) In which case the animal or the birds are bound to get beyond his field and land on someone else's ground. And yet the law is that he acquires the animal or birds. The owner of the first house, through which the purse passed after being thrown (away), should therefore also acquire the purse.

(6) There is no comparison between the case of the purse thrown through the door of a house, and the animal or birds moving through a field, as moving on the ground is like resting on the ground, and the owner acquires the objects before they leave his field.

(7) Cf. Keth. 46b.

(8) Cf. Lev. XXV, 46.

(9) Cf. Keth. loc. cit.

(10) It is therefore assumed that when he picked up the object he did it in behalf of his father.

(11) Cf. Lev. XIX, 9.

(12) As he receives part of the crops he is no more poor, and he is in the same position as the owner of the field. His son is therefore not allowed to gather the gleaning for him.

(13) For although the labourer is no more poor, his son and wife may still be regarded as poor, and they may gather part of the crops.

(14) As he receives part of the crops.

(15) He himself does not hold that an object found by a minor belongs to his father.

(16) Lit. 'ways of peace'.

(17) Git. 59b.

(18) According to the view of R. Jose the robbed object can be reclaimed by legal proceedings. But even according to him it is not a Biblical law that a minor has a right to acquire things for himself. Consequently by gleaning after his father, and on behalf of his father (who is now rich) he robs the poor.

(19) Cf. Pe'ah VIII,1. Abaye admits that a minor has no right of possession, but he advances another reason why a minor may glean after his father: When the poor learn that the labourer in the field has a wife and children they give up hope of finding any gleanings there. The field is thus regarded as one through which the old people (נמושות) have passed (old people who come last and walk slowly and haltingly, so that they cannot miss anything still left on the ground) and in which everybody is allowed to take away the gleanings — even the rich — because of the assumption that the poor are satisfied that after these last gleaners have searched the field nothing worth taking is left.

(20) This is why the son may gather the gleanings for his father.

(21) If the only reason why the son is permitted to gather the gleaning is that his presence serves to keep the poor away, although he is not legally entitled to glean in the field, it is like placing a wild beast in the field in order to frighten the poor people away, which is, of course, wrong.

Talmud - Mas. Baba Metzia 12b

[In this case] the right to take possession has been conceded to one who really has no such right.[1] For what reason? — [Because] the poor themselves are pleased [with this concession], so that when they are hired [as labourers] their children may also be allowed to glean after them. Now this [Samuel's view][2] differs from that of R. Hiyya b. Abba. For R. Hiyya b. Abba said in the name of R. Johanan: [By] MAJOR [we do] not [mean one who is] legally a major, nor [do we mean by] MINOR [one who is] legally a minor, but a major who is maintained by his father is regarded as a minor, and a minor who is not maintained by his father is regarded as a major.[3]

AN OBJECT FOUND BY HIS HEBREW MANSERVANT OR MAIDSERVANT BELONGS TO THE FINDER. Why? Ought not [the servant] to be regarded as a [hired] labourer? And it has been taught: ‘An object found by a [hired] labourer belongs to himself. This is the law only when [the employer] said to him: "Weed for me today; hoe for me today," but if [the employer] said to him: "Do work for me today." the object found by him belongs to the employer’?[4] — R. Hiyya b. Abba said in the name of R. Johanan: The servant referred to here [in our Mishnah] is one [who does highly skilled work, such as] perforating pearls, so that his master does not wish to change him over to any other kind of work.[5] Raba says: We deal here with [a servant] who picked up a found object while doing his work.[6] R. papa says: [The object found by the hired labourer belongs to the employer] when [the employer] hired him to collect ownerless objects, as, for instance, when a meadow was flooded with fish.[7]

What kind of a MAIDSERVANT is it [that our Mishnah speaks of]? If it is one who has grown two hairs,[8] what business has she with him [who claims to be her master]?[9] And if she has not grown two hairs, then if she has a father the found object belongs to her father,[10] and if she has no father she should have been released on the death of the father.[11] For Resh Lakish said: The Hebrew maidservant gains her liberty from the master through the death of her father, which law may be derived by means of a Kal wa-homer![12] — But was not Resh Lakish refuted?[13] [Yes.] But does not this [law of our Mishnah] provide an additional refutation? — No. You may assume that [our Mishnah refers to a case where] the father is alive, but the words, IT BELONGS TO THE FINDER, mean [in her case] that the master is excluded.[14]

AN OBJECT FOUND BY HIS WIFE [WHOM HE HAS DIVORCED], etc. If he has divorced her it is self-evident [that the object found by her belongs to her]! — Here we deal with the case of a woman who has been divorced and yet is not divorced.[15] For R. Zera said in the name of Samuel: Wherever the Sages have said [that a woman is] ‘divorced and yet not divorced’ her husband is obliged to maintain her.[16] Now the reason why the Rabbis said that an object found by a wife belongs to her husband is that he may entertain no ill-feeling towards her. Here [it is obvious that the husband] entertains intense ill-feeling towards her.[17] MISHNAH. IF ONE FINDS NOTES OF INDEBTEDNESS CONTAINING A MORTGAGE CLAUSE PLEDGING [THE DEBTOR'S] PROPERTY, ONE SHALL NOT RETURN THEM,[18] BECAUSE THE COURT WILL ENFORCE PAYMENT ON THE STRENGTH OF THEM.[19] IF THEY CONTAIN NO SUCH MORTGAGE CLAUSE, ONE SHALL RETURN THEM, BECAUSE THE COURT WILL NOT ENFORCE PAYMENT[20] ON THE STRENGTH OF THEM. THIS IS THE VIEW OF R. MEIR. BUT THE SAGES SAY: ONE SHALL NOT RETURN THEM IN EITHER CASE, AS THE COURT WILL ENFORCE PAYMENT [IN BOTH CASES].

GEMARA. With what kind of circumstances do we deal here? If the debtor admits [that the debt is due], then, even if there is a mortgage clause [in the documents], why shall [the finder] not return them, seeing that the debtor admits [that he has not paid the debt]?[21] And if the debtor does not admit, why should [the finder] return [the documents where they do not contain a mortgage clause]? Granted that [the creditor] may not exact payment from encumbered property,[22] but he may certainly exact payment from unencumbered property![23] — Yes. [It is] indeed [a case] where the debtor admits his debt, but the reason [why the documents are not to be returned is this]: We apprehend that they might have been written to secure a loan [say] in Nisan[24] whereas the loan was not granted until Tishri,[25] so that [the lender] would come to seize unlawfully the property bought [by others from the borrower during that space of time]. But if so, we ought to entertain the same fear as regards all documents that come before us? — Ordinary documents are not suspect, but these are suspect.[26] Then [the question arises] regarding the law that we learnt [in a Mishnah]: A note of indebtedness may be written for the borrower even when the lender is not present.[27] How do we write it deliberately [seeing that] we ought to apprehend that the note might have been written with the intention of borrowing in Nisan, whereas the loan was not granted until Tishri, so that the lender

would seize unlawfully the property [which others will have] bought [from the borrower during that space of time]![28] — Said R. Assi:

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(1) The Rabbis have conceded the son the right to glean after his father, although legally he has no such right.
(2) That the reason why our Mishnah decides that the object found by a minor belongs to his father is that a minor has no right of possession.
(3) Therefore an object found by a son who is maintained by his father, even if he be an adult, belongs to his father (to avoid ill-feeling), and an object found by one who is not maintained by his father, even if he be a minor, belongs to himself. (Rashi.)
(4) Supra 10a; infra 118a. Thus we see that an object found by a hired labourer engaged to do general work belongs to the employer. The Hebrew servant ought to be treated in the same way, as his time is his master's, and anything he does is done for the master.
(5) The master would therefore not wish him to interrupt his work in order to lift up a found object, the value of which would seldom exceed the value of his work, so that if it does happen that the servant lifts up a valuable object the master can only claim compensation for the time in which he interrupted his work in order to acquire the object.
(6) The finding of the object involved no interruption in the servant's work. The object therefore belongs to the servant, and there is no compensation due to the master.
(7) When a meadow has been flooded, and the fish remained after the waters have receded.
(8) The sign of puberty.
(9) [A Hebrew maid-servant secures her freedom on attaining puberty. Cf. Kid. 14b.]
(10) As she is still a minor, v. supra 12a.
(11) The death of her father necessitates her release.
(12) Cf. Kid. 16a, and Keth. 43a.
(13) V. Kid. loc. cit.
(14) The words הרי אלו שלהן used in the Mishnah are meant to indicate that the found objects do not belong to the master but become the property of the children's father (who acquires them from the children).
(15) It is doubtful whether the divorce is valid, as when the husband has thrown to her a bill of divorcement in an open street, and it is not certain whether the document was nearer to him or to her when it fell to the ground.
(16) Keth. 97b; Git. 74a; B.B. 47b.
(17) Seeing that he tried to divorce her; consequently the husband forfeits all claim to whatever she finds.
(18) I.e., to either of the parties named therein.
(19) The Court will exact payment from the mortgaged property even if the debtor has sold it to others after incurring the debt. This may lead to injustice, as explained below in the Gemara.
(20) The court will not exact payment from the purchasers of the debtor's real property, and the possibility of injustice will not arise.
(21) And the creditor is legally entitled to exact payment from the mortgaged property even if the debtor has sold it, so there is no injustice.
(22) Which the debtor disposed of after incurring the debt.
(23) So that an injustice may still be done to the debtor, who may have paid the debt already, as he claims to have done.
(24) The first month of the year, corresponding mostly to April.
(25) The seventh month of the year, corresponding mostly to October.
(26) The fact that they were not properly taken care of, and were thus lost, would show that no importance was attached to them. There is thus a prima facie case against their validity.
(27) Cf. B.B. 167b.
(28) V. p. 71, n. 2.

Talmud - Mas. Baba Metzia 13a

[The Mishnah deals] with deeds of transfer,[1] in which case he pledged himself [that his property would be at the disposal of the lender from the date given in the note].

But if this is so, [how do we understand] our Mishnah, which teaches that, IF THERE IS A

CLAUSE IN THEM MORTGAGING THE DEBTOR'S PROPERTY, THEY SHALL NOT BE RETURNED, and which has been explained as dealing with a case where the debtor admits the debt, and for the reason that [the documents] might have been written to secure a loan in Nisan, while the loan was not granted until Tishri, and [the lender] would seize unlawfully the property bought [by others from the borrower during that space of time]? Why should not [the documents] be returned? We ought to see: If it is a case of a deed of transfer, then he has pledged himself [to let the lender have the property from the date of the deed]; if it is not a deed of transfer, there is nothing to apprehend,[2] for you have said that if the lender is not present with him[3] we do not write [the note of indebtedness]? — R. Assi answered: Although ordinarily we do not write notes which are not deeds of transfer, when the lender is not present, in our Mishnah, which [deals with a document that] has been dropped and has consequently become suspect, we do apprehend that by some chance it might have been written [in the absence of the lender]. Abaye says: The witnesses acquire for him[4] [the right to the property] by [affixing] their signatures [to the document], even if it is not a deed of transfer, [Abaye's reason for this explanation being] that he objected [to R. Assi's version]: If you say that notes which are not deeds of transfer are not written when the lender is not present, then there is no ground for the apprehension that by some chance they may have been written [in the absence of the lender]. But [it may be asked]: What of [the other Mishnah] which we learnt: If one has found bills of divorcement given to wives, deeds of liberation given to slaves, wills of dying persons, deeds of gifts and receipts, one need not return them, as they may have been written and then cancelled, without being handed over [to the persons mentioned in the deeds].[5] Now, even if they have been cancelled, what does it matter, in view of your statement that 'the witnesses acquire for him [the right to the property] by [affixing] their signatures [to the document]'? — This statement only applies to a case where [the documents] came to his [the creditor's] hand,[6] but in a case where they did not come to his hand it does not apply.[7]

[The question arises,] however: [As regards] our Mishnah, which teaches: IF ONE HAS FOUND NOTES OF INDEBTEDNESS, IF THEY CONTAIN A CLAUSE MORTGAGING [THE DEBTOR'S] PROPERTY, ONE SHALL NOT RETURN THEM, and we explained that [it refers to a case] where the debtor admits [the debt], and the reason why [the notes are not returned] is that they may have been written with a view to granting a loan in Nisan, while the loan may not actually have been granted until Tishri — it is right according to R. Assi, who says that [the first cited Mishnah] refers to deeds of transfer, as [this latter Mishnah can then be explained as] referring to [documents which are] not deeds of transfer,[8] as previously stated. But according to Abaye,. who says: The witnesses, by their signatures, acquire for him [the lender the right to the property]. how can it be explained?[9] — Abaye will answer you: The reason for the teaching of our Mishnah is the fear that the debt may have been already paid and that a fraudulent agreement[10] [may have been reached between the lender and the borrower].[11] But how could it be explained according to Samuel, who says[12] that we are not afraid that the debt may have been already paid and that a fraudulent agreement [may have been reached between the lender and the borrower]?[13] It would be right if he [Samuel] shared the view of R. Assi, who says that [the first cited Mishnah] is to be understood as referring to deeds of transfer, [as he could then explain our Mishnah as referring] to [documents which are] not deeds of transfer.[14] But if he [Samuel] shared the view of Abaye, who says: The witnesses, by their signatures, acquire for him [the right to the property],[15] — how can it be explained?[16] — Samuel explains the Mishnah as referring to a case where the debtor does not admit [the genuineness of the document].[17] But if so, why should [the document] be returned when it does not contain a clause mortgaging [the borrower's] property? Granted that he [the lender] may not exact payment from encumbered property, he may surely exact payment from unencumbered property! — Samuel has his own reason. For Samuel stated: R. Meir used to say: A note of indebtedness which has no clause mortgaging property does not [entitle the creditor to] exact payment from either encumbered or unencumbered property. But since it does not [entitle one] to exact payment, why should it be returned? — R. Nathan b. Oshaiah said: That the lender may use it as a stopper for his bottle. Then let us give it back to the borrower that he may use it as a stopper for

his bottle?[18] — It is the borrower

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(1) By which the borrower transfers to the lender his property from the date of the document, so that the lender is entitled to seize property sold by the borrower after that date, whether the loan has actually been granted or not; v. B. B. (Sone. ed.) p. 753, n. 1.
(2) We need not fear that he would have the document written before the actual date of the loan, as the Court would not allow such a document to be written.
(3) I.e., with the borrower, to hand him over the money.
(4) The lender. As soon as the witnesses have signed the document the borrower's property becomes legally liable to be seized by the lender, even if the money has not really been lent yet. There is therefore no fear of the lender seizing the borrower's sold property unlawfully, even if the document is an ordinary note of indebtedness.
(5) V. infra 18a; Git. 27a.
(6) Even if the creditor received the document at a later date, his right to the property is conceded from the date of the document. But if the document was cancelled and was never handed over to the creditor, the latter has no right to the debtor's property.
(7) Lit., 'We do not say (thus)'.
(8) Which are not to be returned because they may have been written illegally in the absence of the lender (before the date of the actual loan), and the fact that they were dropped by the owner would show that they were not deemed to be valid documents.
(9) Why should not the documents be returned, seeing that their validity from the date of the witnesses' signatures could not be questioned?
(10) Gr. **.
(11) The borrower may have dropped the document because he had already paid the debt, but he may subsequently have conspired with the lender to exact payment from the purchasers of the borrower's land (as if the debt had not been paid) with a view to sharing in the spoil.
(12) V. infra 16b.
(13) Samuel assumes that the borrower would tear up the note of indebtedness as soon as the debt is paid, and the conspiracy could not therefore arise. Cf. infra ibid.
(14) In which case the return of the lost documents might involve an injustice to the purchasers of the borrower's property, to which the lender would have no legal claim.
(15) V. p. 73, n. 1.
(16) Why should the document not be returned to the lender, seeing that it is valid from the date of writing?
(17) I.e., the borrower maintains that the document was forged, and his plea is accepted because the loss of the document tends to show that it was not properly taken care of, the reason for the negligence being, one had a right to assume, that the document was deemed to be invalid.
(18) Cf. supra 7b.

Talmud - Mas. Baba Metzia 13b

who denies the whole transaction.[1]

R. Eleazar says: The difference of opinion [in our Mishnah] concerns a case where the debtor does not admit [his indebtedness]. R. Meir being of the opinion that a document which contains no clause mortgaging [the debtor's] property does not entitle [the creditor] to exact payment either from encumbered property or from unencumbered property,[2] while the Rabbis[3] are of the opinion that it does not entitle [the creditor] to exact payment from encumbered property, but that it does entitle him to exact payment from unencumbered property.[4] But in a case where the debtor admits [the debt] all agree that [the document] should be returned, and that we are not afraid that the debt may have been already paid and a fraudulent agreement reached [between the lender and the borrower to exact payment from the purchasers of the borrower's property]. But R. Johanan says: The difference of opinion [in our Mishnah] concerns a case where the debtor admits [his indebtedness], R. Meir being of the opinion that a document which contains no clause mortgaging [the debtor's] property

does not entitle [the creditor] to exact payment from encumbered property, but it does entitle him to exact payment from unencumbered property. But in a case where the debtor does not admit [his indebtedness][5] all agree that [the document] should not be returned, because we are afraid that it may have been already paid.

It has been taught in support of R. Johanan, and in refutation of R. Eleazar in one point, and of Samuel in two points: If one has found notes of indebtedness in which there is a clause mortgaging [the debtor's] property, even if both [the debtor and creditor] admit [the genuineness of the documents], one should not return them either to the one or to the other. But if they contain no clause mortgaging [the debtor's] property, then as long as the borrower admits [the debt] they should be returned to the lender, but if the borrower does not admit the debt, they should not be returned either to the one or to the other. This is the view of R. Meir, for R. Meir maintained that notes of indebtedness which contain a clause mortgaging [the debtor's] property [entitle the lender to] exact payment from encumbered property,[6] and that those that contain no clause mortgaging [the debtor's] property [entitle the lender] to exact payment from unencumbered property [only]. But the Sages say: In either case does [the document entitle the lender to] exact payment from encumbered property. This is a refutation of R. Eleazar in one point, as he maintained that according to R. Meir a document that contains no clause mortgaging [the debtor's] property does not [entitle the lender to] exact payment either from encumbered or unencumbered property, and he [further] said that both R. Meir and the Rabbis agree that we are not afraid of a fraudulent agreement [between the lender and the borrower to exact payment from the purchasers of the borrower's property], while the Baraitha teaches that a document which contains no clause mortgaging [the debtor's] property [does not entitle the creditor to] exact payment from encumbered property but does [entitle him to exact] payment from unencumbered property, and it [further] proceeds to indicate that both R. Meir and the Rabbis agree that we are afraid of a 'fraudulent agreement', for it teaches that even if both parties admit [the debt] one must not return [the documents] either to the one or to the other, which shows that we are afraid of a fraudulent agreement [between the parties to rob the purchasers of the borrower's property]. But are not these two points?[7]

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(1) Lit., 'There was no such thing'. The borrower cannot claim the document as he maintains that it is forged.

(2) According to R. Meir every note of indebtedness must, in order to be valid, contain a clause mortgaging the borrower's property, otherwise the loan is treated as a verbal loan without witnesses, and the lender can only claim his money if the borrower admits the debt.

(3) The Sages in the Mishnah.

(4) The Rabbis recognise the validity of the document to the extent that they treat it as a verbal loan to which witnesses testify. The lender can therefore exact payment in ordinary cases from unencumbered property, even when the borrower denies the debt. But in the case of a lost document the borrower's denial is accepted (for the reason indicated above) and the document is therefore deemed to be forged and is not returned.

(5) Even if he admits that the document is genuine, but contends that the debt has been paid.

(6) Therefore they must not be returned, even if their genuineness is admitted, as we are afraid of a 'fraudulent agreement'.

(7) It was maintained before that the Baraitha refutes the view of R. Eleazar in one point only.

Talmud - Mas. Baba Metzia 14a

— They are really one, for there is one reason [for both views]. As it is because R. Eleazar says that the difference of opinion [in our Mishnah] concerns a case where the debtor does not admit [his indebtedness] that he interprets it thus.[1] The view of Samuel is refuted in two points. The one point [is the same] as [that which applies to] R. Eleazar, for he [also] interprets our Mishnah as referring to a case where the debtor does not admit [his indebtedness]. And the other point is that Samuel says:[2] If one finds a deed of transfer[3] in the street one should return it to the owners, and we are not afraid that [the debt] may have been already paid.[4] The refutation is that here [in the Baraitha] we are

taught that even if both parties admit [the genuineness of the documents] one should not return them either to the one or to the other, which shows that we are afraid that [the debt] may have been paid, and it follows with even greater certainty that in a case where[5] the borrower does not admit [the genuineness of the document] we are afraid that [the debt] may have been paid.[6]

Samuel said: What is the reason of the Rabbis [who maintain that a document which contains no clause mortgaging the debtor's property entitles the creditor to exact payment even from encumbered property]? They are of opinion that [the omission of the clause] mortgaging [the debtor's property] is due to an error of the scribe.[7]

Said Raba b. Ithi to R. Idi b. Abin: And has Samuel really said thus? Has not Samuel said: '[As regards] improvement [of the field], [the claim to] the best property, and mortgaging [the debtor's property] it is necessary for the scribe to consult [the seller of the field]'?[8] Shall we say that he who stated the one view [of Samuel] did not state the other?[9] — There is no contradiction [between the two views]. The first view [was stated] in connection with a note of indebtedness, [in which case it is assumed] that no man will advance money without adequate security.[10] The second view [was stated] in connection with buying and selling, [in which case it is assumed] that a man may buy land for a day,[11] as, for instance, Abbuha b. Ihi did, who bought a garret from his sister [and] a creditor came and took it away from him. He appeared before Mar Samuel [who] said to him: 'Did she write you a guarantee?' He answered, 'No.' [Whereupon Samuel] said to him: 'If so, go in peace.'[12] So he said to him: 'Is it not you, Sir, who said that [the omission of a clause] mortgaging [the debtor's property] is due to an error of the scribe?'[13] He [Samuel] answered him: 'This applies only to notes of indebtedness, but it does not apply to documents [drawn up in connection with] buying and selling, for a man may buy land for a day.'

Abaye said:[14] If Reuben sold a field to Simeon with a guarantee,[15] and Reuben's creditor came and took it away from him, the law is that Reuben may go and sue him [the creditor],[16] and he [the creditor] cannot say to him [Reuben]: 'I have nothing to do with you,'[17] for he [Reuben] may say to him [the creditor]: 'What you take away from him [Simeon] comes back on me.'[18] Some say that even [if the field has been sold] without a guarantee the law is the same, for he [Reuben] may say to him [the creditor]: 'I do not wish Simeon to have a grudge against me.'[19]

Abaye also said: If Reuben sold a field to Simeon without a guarantee, and claimants appeared [contesting Reuben's title to sell the land], he [Simeon]

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(1) The reason why R. Eleazar finds himself in disagreement with the Baraitha in the two points mentioned is that he interprets the Mishnah as referring to a case where the debtor does not admit the debt, and it therefore follows that the document, on the view of R. Meir, does not entitle the lender to exact payment even from unencumbered property, and when in consequence thereof R. Eleazar has to add, 'But when the debtor admits (the debt) all agree that (the document) should be returned,' he explains that 'we are not afraid that the debt may have been already paid and a fraudulent agreement reached,' etc. The two conclusions therefore result from the same premise.

(2) Cf. infra 16b.

(3) Which renders the debtor's property liable to legal seizure by the creditor irrespective of the date of the actual loan.

(4) Even when the debtor does not admit the debt, for it is assumed that if the debt had been paid the document would have been torn up.

(5) [V. D.S. a.l., printed editions read 'here'.]

(6) But according to R. Eleazar even a deed of transfer would not have to be returned if the debtor does not admit the debt, and the reason why R. Meir says that a document containing no mortgage clause should be returned is that it is of no use to the creditor, as he cannot enforce payment with such a document, and he may just have the paper for what it is worth.

(7) All notes of indebtedness must be assumed to contain the mortgage clause, as no one will lend money without adequate security, and if a note is produced which contains no mortgage clause it can only be due to an error on the part

of the scribe who, in writing the note, failed to carry out the instructions given to him by the creditor. Cf. infra 15b; Keth. 104b; B.B. 169b.

(8) The scribe must ask whether, in drawing up a deed of sale of land, he is to insert clauses dealing with the guarantees given to the buyer in case the land is seized by the seller's creditors, and making clear the buyer's claims to compensation for improvements made by him in the land; to the best portions of the seller's land (as indemnity to the buyer); and to the seller's property generally as security against loss through seizure by the seller's creditors. For all this the seller's consent is required, which would show that the omission of the mortgage clause in a document is not merely 'a scribe's error'.

(9) I.e., that there is a conflict of opinions between Amoraim as to what Samuel's view really was.

(10) In the case of a loan, where the lender derives no benefit from the transaction, one must assume that the lender will take no risks and will insist on adequate security. In such a case the omission of the mortgage clause could only be due to a mistake on the part of the scribe.

(11) The buyer will take risks, for even if the land is ultimately seized by the seller's creditors, he (the buyer) will in the meantime have profited by the produce of the land.

(12) I.e., you have no case, as you have not secured yourself by asking for a guarantee to be inserted in the deed of sale.

(13) I.e., that even if the guarantee is not inserted in the deed, the Court assumes that the omission is only a scribe's error, and that the guarantee must have been given.

(14) Cf. B.K. 8b; Keth. 92b; and Tosaf. a.l.

(15) Against seizure by the seller's creditors.

(16) Reuben may put up a counter-claim against the creditor, and thus prevent him from taking away the land bought by Simeon.

(17) The creditor cannot plead that Reuben's counter-claim does not affect his right to seize the land bought by Simeon, and that Simeon's claim should be dealt with by the Court as a separate action.

(18) I.e., I shall have to refund him the purchase money. I am thus directly concerned in your action against Simeon, and I have a right to stop you from seizing his land in virtue of my counter-claim.

(19) Although legally Simeon has no redress, as I did not offer him any guarantee against loss through the actions of my creditors, I do not wish him to feel that I have let him down by selling him property which was liable to be seized by my creditors.

Talmud - Mas. Baba Metzia 14b

may retract as long as he has not taken possession of it,[1] but if he has taken possession of it he cannot retract,[2] for he [Reuben] may say to him [Simeon]: 'You bought a bag sealed with knots, and you got it.'[3] When is he deemed to have 'taken possession'? When he has set his foot upon the landmarks.[4] But some say that even [when the field is sold] with a guarantee [the buyer may not retract][5] for he [the seller] may say to him [the buyer]: 'Show me your document [legalising the seizure of the field and entitling you to demand your money back] and I shall pay you.'[6]

It was stated: If one sells a field to his neighbour and it turns out not to be his own,[7] — Rab says: He [the buyer] is entitled to [the return of the money [which he paid for the field] and to [compensation from the seller for the] improvement [which he made in the field].[8] But Samuel says: He is entitled to the money [he paid] but not to [compensation for the] improvement.

R. Huna was asked: If he [the seller] expressly stated [that he would compensate the buyer for the] improvement [if the field were taken away], what is the law then? Is Samuel's reason [for withholding compensation] that [the seller] did not expressly state [that he would compensate the buyer for the] improvement? [Then it would not apply to this case, for] here [the seller] did state expressly [that he would compensate the buyer]. Or is Samuel's reason that, in view of the fact that he [the seller] really had no land [to sell, the money received by the buyer as compensation for the improvement] would appear like usury?[9] R. Huna answered: Yes and No, for he was hesitant.[10]

It was taught: R. Nahman said in the name of Samuel: He [the buyer] is entitled to [have returned to him] the money [paid for the field], but not to [compensation for] improvement, even if he [the

seller] stated expressly that [he would compensate the buyer for the] improvement, the reason being that, in view of the fact that he [the seller] really had no land to sell, he [the buyer] would be taking profit for his money.[9] Raba then asked R. Nahman [from the following Mishnah]: We may not collect from encumbered property for the purposes of usufruct, the improvement of land, the alimentation of wife and daughters, out of consideration for the public good.[11] [This would show that] it is only from encumbered property that we do not collect, but we do collect from unencumbered property, and it is stated [that this law applies] to the improvement of land. Now may it not be assumed that it refers to [land] bought from one who acquired it wrongfully?[12] — No, [it refers to land seized by] a creditor.[13] But note the first part: 'We may not collect [etc.] for the purpose of usufruct.' Now if it refers [to land seized by] a creditor, is the creditor entitled to the produce [of the land]? Has not Samuel said: 'A creditor collects [his debt from] an improved field,'[14] and does it not mean that [he] only [collects it from] an improved field but not from the produce [of the field]? It is therefore obvious that it refers to one who acquired [a field] wrongfully and to the one who has been deprived of it,[15] and seeing that the first part deals with one who acquired a field wrongfully and one who has been deprived of it, the second part [surely] also deals with such a case![16] — How does it follow? This [first part] deals with one case,[17] and this [second part] deals with another case.[18] But are we not taught differently [in a Baraitha relating to the above Mishnah]: How [does it happen that payment is exacted for] improvement of the land? If one has taken away a field by violence from a neighbour, and he has had to give it up again [in consequence of legal action], then the one that is entitled to compensation may collect the original value [of the field] from encumbered property, and the value of the improvement [may be collected] from unencumbered property.[19] Now, how is this to be understood? If we say that [it is to be understood] as stated,[20] what right has the person who acquired the field wrongfully to claim compensation from anybody? It must therefore be [understood as referring to a case] where a person wrongfully took away a field from a neighbour and sold it to another person, and [this other person] has improved it![21] — [R. Nahman] answered him: Had you not to remove the difficulty [in the Baraitha] by explaining [that it refers to an unlawfully acquired field]? You may as well remove the difficulty [by saying that it refers to a field seized] by a creditor [after it has been improved by the buyer].

Come and hear: How [does it happen that payment is exacted as compensation for] the use of the produce [of the field]? If one has wrongfully taken away a field from a neighbour, and he has had to give it up again [in consequence of legal action], then the one that is entitled to compensation may collect the capital [value of the field itself] from encumbered property, and the value of the produce [may be collected] from unencumbered property. Now, how is this to be understood? If we say that it is to be understood as stated,[22] what right has the person who has acquired [the field] wrongfully to claim compensation from anybody? It must therefore be [understood as referring to a case] where one wrongfully took away a field from a neighbour and sold it to another person, and [this other person] has enhanced its value [by producing fruit]![23] — Raba answered: We deal here with a case where one wrongfully took away from a neighbour a field full of fruit and ate the fruit, and then dug in it pits, ditches and hollows. When the robbed [neighbour] comes to demand the capital [value of the field itself] he may exact payment from encumbered property, but when he comes to demand [the value of] the fruit he may exact payment from unencumbered property [only]. Rabbah son of R. Huna said: [It refers to a case] where

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(1) And has not paid the purchase price. (Rashi.)

(2) Even if he has not paid yet, for the buyer acquires the land legally when he takes possession of it, and the purchase price, if not paid, becomes a debt due to the seller (Rashi).

(3) You agreed to buy the field without examining my title, and you have to stand the consequences.

(4) [To level them round (Rashi).]

(5) Although in the end the seller must make good the buyer's loss, the buyer has no right to withdraw from the transaction on the plea that in the end his money will have to be refunded.

(6) I need not refund your money until the Court has given its decision regarding the legality of the seizure and your title

to have the money refunded.

(7) The seller had acquired the field wrongfully and had no title to the property. The rightful owner then comes and seizes the field from the buyer.

(8) If during his tenure of the field the buyer improved it by manure or by erecting a fence round it, he may claim compensation from the seller. The obvious question why the original (rightful) owner, who regains possession of his field, is not made to pay for the improvement, may be answered by referring to a case where the seller allowed the field to deteriorate after taking it away from the rightful owner, and the buyer only restored it to its original condition so that the original owner derives no actual benefit from the change (Rashi).

(9) As the seller had no right to the field the transaction was entirely invalid, and there was no sale. The money handed over to the seller could therefore only be regarded as a loan, and when the seller returns to the buyer a larger sum than the purchase-price paid him, it appears like interest on the money.

(10) Lit., 'it was lax in his hand.' Similar expressions occur in Shab. 113; 115a; Kid. 65a.

(11) Cf. Git. 48b. The reason why one may not hold encumbered property liable for such purposes is that it would prevent people from buying land, as such obligations are so common that they would arise in nearly every case. [This is apart from the fact that the amount involved is not fixed; v. n. 1.]

(12) And has improved it before the original owner seized it again. The buyer may then collect the purchase price from the seller's encumbered property even if this property has been sold after the purchase of that field, for as long as the deed of sale contains a guarantee clause the claim involved has priority. The compensation for the improvement, however, can only be collected from unencumbered property — 'out of consideration for the public good' — as at the time when the deed of sale was written, and the guarantee clause inserted, no one knew what the compensation for improvements would amount to, and it is not in the interests of the public to allow such claims. In any case, this shows that the buyer is entitled to compensation from the seller, who had no title to the land, for the amount he spent on improvements.

(13) The seller was entitled to sell, but the seller's creditors were entitled to seize the property, in which case the buyer is certainly entitled to the return of the money he spent on improvements, and if he receives a larger amount than the price he paid for the field it does not appear like interest on a loan, as the original sale was valid, and the return of the field is a new transaction.

(14) Cf. B.K. 95b.

(15) The produce of the field or the improvement therein may be claimed by the original owner who was robbed of his property, no matter whether the produce was there when the field was first taken away, or not. The owner can always claim the land with all its improvements, except that the buyer may demand back his outlay which brought about the improved condition of the field, provided that the sum demanded by the buyer does not exceed the amount by which the value of the field was increased as a result of the improvements.

(16) Cf. p. 82, n. 4.

(17) Lit., 'as it is'.

(18) I.e.,.the first part deals with a person who has been robbed of his field, and the second part deals with a creditor who has seized the field from the buyer.

(19) V infra 72b; B.B. 157b.

(20) Viz., that the person who acquired the field unlawfully has not sold it, and it is he who is made to give it up, not a buyer.

(21) The Court compels the buyer to return the field to the rightful owner, who is also entitled to demand from the seller the value of the improvement. From this we would infer that the buyer collects the value of the improvement from the seller who had no title to the field — a contradiction to the view of R. Nahman.

(22) Viz., that the person who robbed the field did not sell it, and it is this person who is compelled by the Court to return it to the owner.

(23) The original (rightful) owner is not expected to pay for the produce of the field, with the exception of the buyer's outlay in looking after the field, as he is entitled to the produce of his own land. The buyer is therefore entitled to compensation from the person who sold him the field unlawfully, and from him the buyer can claim the value of the field as well as the value of the produce, which he may collect from unencumbered property — again a contradiction to the view of R. Nahman.

Talmud - Mas. Baba Metzia 15a

bandits took away [the field from the person who acquired it unlawfully].[1] When the [original owner who was] robbed [of his field] comes to demand the capital [value of the field] he may exact payment from encumbered property. But if he comes to demand the value of the fruit he may exact payment from unencumbered property [only]. Raba does not give the same explanation as Rabbah son of R. Huna because it says, 'He has had to give it up again,' which obviously means through the [intervention of the] Court.[2] And Rabbah son of R. Huna does not give the same explanation as Raba, because it says, 'He has had to give it up again,' which obviously means in its original condition [and not full of holes].[3] R. Ashi said: It refers partly to one and partly to the other,[4] viz., if one violently took away from a neighbour a field full of fruit, and ate the fruit and sold the field,[5] when the buyer comes to demand the capital [value of the field itself] he may exact payment from encumbered property; when the robbed [neighbour] comes to demand [the value of] the fruit he may exact payment from unencumbered property [only]. [The question now arises:] Both according to Raba and according to Rabbah son of R. Huna this is [like] a debt contracted verbally,[6] and a verbally contracted debt does not entitle [the creditor] to exact payment from encumbered property? — Here we deal with a case where [the robber first] stood his trial and then sold [the field].[7] But if so, the produce [of the field should] also [be recoverable from encumbered property]? — [The case is one where the robber] has stood his trial as regards the capital [value of the field itself] but has not stood his trial as regards the produce. But how can this be determined?[8] — It is the usual practice: When a person sues, he sues first for the principal.[9]

But does Samuel [really] hold the view that he who bought [a field] from a robber is not entitled to [compensation for the] improvement [he made in the field]? Did not Samuel say to R. Hinena b. Shilath [the scribe]:[10] Consult [the seller, when drawing up a deed of sale], and write, 'best property, improvement, and produce'?[11] Now, to what [kind of transaction does this apply]? If [it applies] to a creditor [claiming the field for his debt], is he entitled to the produce of the field? Has not Samuel said: The creditor exacts payment from the improvement, [which means] from the improvement only, but not from the produce? It must therefore [be said that it applies] to one who bought [a field] from a robber![12] — R. Joseph said: Here we deal with a case where [the robber] owns land.[13] Said Abaye to him: Is it permitted to borrow a measure [of corn and to repay the loan] with [the same] measure,[14] when [the borrower] has land? — He [R. Joseph] answered him: There [it is] a loan; here [it is] a sale.[15]

Some say: R. Joseph said: Here we deal with a case where there was a formal act of acquisition [whereby the seller pledged himself to be immediately responsible to the buyer for the improvement].[16] [But] Abaye said to him: Is it permitted to borrow a measure [of corn and to repay the loan] with [the same] measure, when there was a formal act of acquisition [whereby the borrower pledged himself to be immediately responsible to the lender for an increase in price]? — He [R. Joseph] answered him: There [it is] a loan; here [it is] a sale.

[To revert to] the above text: Samuel said: 'A creditor exacts payment from the improvement.' Said Raba: You may know [that this view is correct], for the seller writes [in the deed of sale] the following [guarantee] to the buyer: 'I shall confirm, satisfy, clear, and perfect these purchases[17] — them, the gains resulting from them, and the improvements to be made in them — and I shall stand [as surety] for you, and this purchaser agrees [to it] and accepts it.'[18] R. Hiyya b. Abin then said to Raba: If this is so, [would you say that] in the case of a gift, regarding which [the donor] writes no such [guarantee], [a creditor who has a previous claim to the property] may indeed not appropriate the improvement?[19] — He [Raba] answered him: Yes. But [R. Hiyya then asked]: Does a gift confer a greater right [on the recipient] than a sale [does on the buyer]?[20] — [The former] answered: Yes, it undoubtedly does.[21]

R. Nahman said: The following Baraitha corroborates the view of Mar Samuel, but our colleague

Huna explains it as referring to a different matter. For it was taught: If one has sold a field to a neighbour and then [the buyer] has to surrender it [to another claimant], he [the buyer] may, when seeking redress, exact repayment of the capital [value of the field itself] from encumbered property, and the [refund of the cost of the] improvement he collects from unencumbered property. But our colleague Huna explains it as referring to a different matter, [viz.], to that of one who has bought [a field] from a person who acquired it wrongfully.[22] Another [Baraitha] taught: If one has sold a field to his neighbour, and he [the buyer] has improved it, and then a creditor [of the seller] comes and seizes it, he [the buyer], when seeking redress,is entitled, in a case where [the value of] the improvement is greater than the cost [thereof], to collect [the value of] the improvement from the owner of the land and the cost thereof from the creditor.[23] But in a case where the cost [of the improvement] is greater than the [value of that] improvement, he [the buyer] is only entitled to collect from the [seller's] creditor the amount of the cost which corresponds to the [value of the] improvement.[24] Now, how does Samuel explain this [Baraitha]? If [he explains it as referring] to one who bought [the field] from a person who acquired it wrongfully, then the first part [of the Baraitha][25] contradicts him, for Samuel said [above]: 'He who buys [a field] from a person who acquired it wrongfully is not entitled to [compensation for] the improvement [he made in the field].' [And] if [he explains it as referring] to [the seller's] creditor [seizing the field], then both the first part and the second part [of the Baraitha] contradict him,[26] for Samuel said [above]: 'A creditor exacts payment from the improvement [made in the field by the buyer]'?If you like, I shall say [that Samuel will explain the Baraitha as referring] to one who bought [the field] from a person who acquired it wrongfully, and where the latter owns land,[27] or where there was a formal act of acquisition [whereby he pledged himself at the sale that he would pay for the improvement].[28] [And] if you like, I shall say [that Samuel will explain the Baraitha as referring] to [the seller's] creditor [seizing the field]. [Nevertheless] there is no contradiction [to Samuel's views]. [For] here [the reference is] to an improvement

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(1) The robber was robbed (by heathen men of violence, against whom there is no redress). In such a case the first (Jewish) robber is responsible to the rightful owner, and he is made to pay the owner for his loss. Cf. B.K. 116b.

(2) The term, 'He has had to give it up' (lit., 'It is made to go out from under his hand'), applied to the person who first robbed the field, indicates that this first robber is in possession of the field, and is made to give it up as a result of the intervention of the Court. It cannot therefore be assumed that bandits took it away.

(3) Rabbah son of R. Huna cannot accept the version that the robber dug pits etc. in the field, as the term 'It is made to go out etc.' implies that the field was intact when the court intervened to compel its return to the rightful owner.

(4) I.e., one part refers to the buyer of the field, and the other to the original owner. The former demands the cost of the field itself, and is entitled to exact payment from encumbered property, while the latter demands compensation for the produce of his field, and is entitled to exact payment from unencumbered property only.

(5) The Court then intervened and compelled the person who had bought the field to return it to the rightful owner, and it was given back in its original condition.

(6) As the claim of the robbed person is not based on any document, the payment which the robber has to make in compensation for the property he had seized is like the repayment of a loan granted without a note of indebtedness.

(7) The reason why encumbered property is liable to be seized by the seller's creditor who has written evidence as to his claim is that the writing of the document ensures publicity, which should prevent people from advancing money on such property. A trial in Court has the same effect as regards publicity and the consequent warning to would-be mortgagees.

(8) How could it be said with certainty that cases would arise where a person who acquired a field wrongfully would be tried for seizing the field itself but not for appropriating its produce?

(9) He first wants to make sure that he will recover the main loss, and subsequently he tries to regain the smaller losses.

(10) A highly respected friend of Samuel. Cf. Sanh. 72b; Shab. 58a.

(11) V. supra 14a. The guarantee given to the buyer in the deed of sale is to include a clause entitling the buyer to recover his loss, in the event of the property being claimed by creditors, by exacting payment from the seller's best property, as compensation for the original value of the field as well as for the improvements he made and for the produce of the field.

(12) [In which case the formula provides for compensation in respect of the improvement made by the buyer in the

field.] How then could Samuel have said that the person who has bought a field from a robber and has to return it to the rightful owner cannot claim compensation for the improvement he made in it?
(13) The robber repays with land, not with money, and therefore the additional amount paid for the improvement does not appear as usury given for borrowed money; cf. supra 24b.
(14) This is not permitted, as any advance in the price of corn would increase the value of the returned measure, and the increase would be usury.
(15) There is no usury in a sale.
(16) [The payment for the increase included in the guarantee becomes thus due from the moment of the sale and is no longer regarded as usury.]
(17) I.e., the seller undertakes to satisfy all claims against the property and to be responsible for any loss the buyer may sustain because of previous claims against the property or for any other reason. The guarantee refers to 'produce and improvement' as well as to the original value of the property sold.
(18) As the seller is thus responsible to the buyer, the creditor enforces his claim against the property acquired by the buyer and the produce it has yielded, and the latter then seeks redress from the seller.
(19) As there is no guarantee given by a donor as regards previous claims against the property given away, the recipient is not entitled to compensation from the donor, and if the former loses the improvements he has made in the property he has no redress. For this reason the creditor of the donor ought not to be entitled to the improvement made by the recipient, as the loss would be the latter's, not the debtor's.
(20) I.e., why should a person who receives a free gift be more protected against loss than a person who pays for what he gets?
(21) Lit., 'It is better and better.' The creditor has no right to inflict a loss upon the recipient of the gift by taking away the improvement made by the recipient. As the recipient cannot reclaim the loss from the donor, whose debt is the cause of the creditor's action against the recipient of the gift, there is no reason why the latter should lose more than the value of the gift itself, which was originally accepted by the creditor as security for his loan.
(22) According to R. Huna the rightful owner of the field has a right to claim the improvement, as the field, which was taken away from him wrongfully and sold illegally, never became the property of the buyer. But a creditor who seizes a field for a debt due to him from the seller has no right to claim the improvement made in it by the buyer, for the latter acquired the field legally, and, until the creditor seized it, it was his property.
(23) The buyer is entitled to compensation from the seller to the amount by which the value of the improvement exceeds the expense incurred in making the improvement, as the improvement helped to pay the seller's debt. But the cost of the improvement the creditor has to refund to the buyer, who spent his money on improving the field before the creditor seized it.
(24) The buyer cannot claim from the creditor the excess of his expenditure over the actual value of the improvement, and he loses this amount.
(25) According to which the rightful owner of the field, designated 'creditor', has to pay for the improvement.
(26) As it is laid down in both parts of the Baraitha that the creditor has to refund the cost of the improvement, while Samuel teaches that the creditor may collect his debt from the improvement, without repaying the cost incurred by the buyer.
(27) V. p. 86, n. 4.
(28) V. ibid. n. 7.

Talmud - Mas. Baba Metzia 15b

which [has matured and] is ready to be carried away,[1] [but] there [the reference is] to an improvement which [has not yet matured and] is not ready to be carried away. But do not cases occur daily[2] where Samuel allows [creditors] to collect [their debts] even from improvements which [have matured and] are ready to be carried away?[3] — There is no contradiction: These [are cases] where [the creditor] claims from him [the seller] an amount equal to [the combined value of] the land and the improvement;[4] the other is [a case] where [the creditor] claims from him [the seller] an amount equal to the value of the land alone, in which case the creditor compensates him [the buyer] for [the value of] his improvement and dismisses him. [But, it is asked:] This is right and proper according to the view of him who says[5] that when the buyer has money [to pay the seller's debt] he

cannot dismiss the creditor [by paying him the money].[6] But according to the view of him who says that when the buyer has money [to pay the seller's debt] he can dismiss the creditor [by paying him the money], let him[7] say unto him [the creditor]: 'If I had money I would have kept you away from the whole field [by paying the amount due to you] — now that I have no money give me a piece[8] of ground in the field corresponding to the value of my improvement'! — Here [in the Baraitha] we deal with a case where he [the seller] had made it [the field] an hypothec,[9] in that he said [to the creditor], 'You shall receive payment only from this.'

If [the buyer] knew that [the field] did not belong to him [who sold it], and [yet] he bought it, Rab says: He is entitled to the purchase-price[10] but not to the [value of the] improvement.[11] But Samuel says: He is not entitled even to the purchase-price. Wherein do they differ? Rab is of the opinion that a person, knowing that [the seller] has no land, will make up his mind and give him [the money] as a deposit.[12] But then he should say to him that it is to be regarded as a deposit? He is afraid that he [the seller] will not accept it [as such].[13] But Samuel is of the opinion that a person, knowing that [the seller] has no land, will make up his mind and give him [the money] as a present. But then he should say to him that it is to be regarded as a present? He [the recipient] might be bashful.[14] But has not this difference of opinion [between Rab and Samuel] been expressed once already? Has it not been stated:[15] 'If a man betrothed his sister to himself [by giving her money],[16] Rab says: The money has to be given back. But Samuel says: The money is to be regarded as a present. Rab says that the money has to be given back, [because he is of the opinion that] a person, knowing that one's betrothal to one's sister is not valid, will make up his mind and give [her the money] as a deposit. But then he should say to her that it is to be regarded as a deposit? He is afraid that she will not accept it [as such]. But Samuel says that the money is to be regarded as a present, [because he is of the opinion that] a person, knowing that one's betrothal to one's sister is not valid, will make up his mind and give [her the money] as a present. But then he should say to her that it is to be regarded as a present? She might feel bashful? — It is necessary [to have the difference of opinion recorded in both cases]. For if it were taught [only] in that case[17] [we might think that only] in such a case does Rab say [that the money is to be returned],[18] because people do not usually give presents to strangers, but as regards a sister [we might think that] he agrees with Samuel. And if it were taught [only] in this case,[19] [we might think that only] in such a case does Samuel say [that the money is not to be returned],[20] but as regards the other case[21] [we might think] that he agrees with Rab.[22] [Therefore] it is necessary [to state both cases].

[Now, behold,] both according to Rab, who says [that the money is to be regarded as] a deposit, and according to Samuel, who says [that the money is to be regarded as] a present — how does [the person who has given the money] go down [to the field] and how does he eat the fruit [thereof]?[23] He thinks, 'I shall go down to the field and work [in it] and shall eat [the fruit] thereof,[24] just as he [who acquired it wrongfully] would have done, and when the [rightful] owner of the field will come [and claim it] my money will be [treated] as a deposit, according to Rab, who says [that it is to be regarded as] a deposit, and as a gift, according to Samuel, who says [that it is to be regarded as] a gift.'

Said Raba: The law [in regard to the above controversy] is that he [the buyer] is entitled to the purchase-price as well as to the [value of the] improvement, even if the improvement was not mentioned [in the indemnity clause in the deed of sale].[25] If [the buyer] knew that [the field] did not belong to him [who sold it], he [the buyer] is entitled to the purchase-price but not to [the value of] the improvement, [and the omission of] the guarantee clause is [to be regarded as] an error of the scribe,[26] both in [the cases of] notes of indebtedness and in [the cases of] deeds of sale. Samuel asked Rab [the following question]: If [the robber who sold the field unlawfully] bought it subsequently from the original owners, what is the law [then]?[27] — [Rab] said to him [in reply]: What was it that the first person[28] sold to the second person?[29] [Surely the former sold to the latter in advance] every right that he [the former] might subsequently acquire![30] [And] for what reason?[31] —

Mar Zutra said: [Because] he wished that he [the buyer] should not call him a robber. R. Ashi said: [Because] he wished to vindicate his honesty. What is the difference between them?[32] — The difference would be seen [in a case] where the buyer died. According to the view [of Mar Zutra, viz.], 'he wished that he should not call him a robber,'

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(1) V. B.B. (Sonc. ed.) p. 569, n. 8. Our Baraitha deals with a case where the improved produce of the field is nearly ready to be harvested, so that, although it is still attached to the field and still needs the soil, it may be regarded as 'ripe fruit' whose cost of production the creditor has to refund.

(2) Cf. infra 110b; B.K. 95b.

(3) Samuel was known to have repeatedly allowed creditors to seize property sold by the debtors and to appropriate the improvement made in it by the buyers, without compensation for the expense incurred, even though the improved produce was near harvesting.

(4) In such cases Samuel does not award the buyer the expense of his improvement, as the creditor is entitled to the full repayment of the debt due to him from the seller.

(5) Cf. infra 110b; B.K. 96a.

(6) The creditor cannot be prevented from seizing the land, if he prefers it to the money offered him by the buyer in settlement of his debt, as the creditor has a prior claim to the land.

(7) Let the buyer, in the case dealt with in our Baraitha, say to the creditor, who claims the field with the improvement: 'As I am entitled to keep the land if I am able to repay your debt, I am surely entitled to retain part of the field as compensation for the amount which I have spent on the improvement, and which I am entitled to recover from you.'

(8) גרבא , in other places spelt גריוא , a measure of grain, or a piece of ground in which such an amount of grain can be sown.

(9) In which case all would agree that the buyer cannot put off the creditor by paying the seller's debt, and that the creditor is entitled to seize the field.

(10) The buyer is entitled to demand the return of the money he paid the seller for the field which the rightful owner has reclaimed. The fact that the buyer knew that the sale was illegal does not deprive him of the right to reclaim his money from the seller.

(11) As the sale of the field was illegal, the buyer never really acquired the field, and as he knew this to be the case he has only himself to blame for the loss he incurred in improving a field which was not his own.

(12) For safe keeping — to be demanded back in due course.

(13) He will not undertake to look after somebody else's money.

(14) It will make the recipient feel bashful of accepting the gift.

(15) Git. 45a; 'Ar. 30a; cf. Kid. 46b.

(16) Cf. Kid. 2a.

(17) Where the buyer knew that the field did not belong to the seller.

(18) In view of the fact that the money is regarded as a deposit, according to Rab.

(19) I.e., the case of a brother giving money to his sister for the purpose of betrothing her to him.

(20) In view of the fact that the money is regarded as a present, according to Samuel, and one is apt to give a present to a sister.

(21) Where a person pays money to a stranger for a field which he knows to have been wrongfully acquired.

(22) That the money is not to be regarded as a gift, and must be returned.

(23) How can it be said that the reason why Rab says that the money is to be returned is that it has to be regarded as a deposit, and that the reason why Samuel says that the money is not to be returned is that it has to be regarded as a gift, seeing that in either case the person who handed over the money would not have deemed himself entitled to take possession of the field and to use its produce. If he did so, it would show that he meant to buy the field with the money, and that, not being familiar with the law, he deemed the sale valid. Rab and Samuel must therefore have given their decisions for reasons other than those stated above.

(24) I.e., he knows that it is not a sale, and the money was not handed over as purchase-money. He only intended to take possession of the field and use its produce until the rightful owner reclaimed it, and the money was to be treated as a deposit (in the view of Rab) or as a gift (in the view of Samuel).

(25) Samuel's view that the scribe must consult the seller regarding the inclusion of 'improvement' in the indemnity clause, and that non-inclusion is not regarded as an accidental omission by the scribe, is thus rejected.

(26) So that in every case the buyer whose field is seized by the seller's creditors can claim indemnity from the seller's property, contrary to the view of Samuel.
(27) Is the robber entitled to take the field away from the person to whom he sold it unlawfully, just as any other person would have been who bought the field from the rightful owner?
(28) The robber.
(29) The person who bought the field from the robber.
(30) When the robber sold the field he made over to the buyer any right that he (the robber) might subsequently acquire in regard to the field, and therefore the robber has no right to claim the field from the person who bought it from him. It is assumed, indeed, that the robber only bought the field in order to legalise its sale to the first buyer.
(31) What was the motive that could have prompted the robber to secure the property for the buyer?
(32) What would be the effect of their difference in actual cases that may arise?

Talmud - Mas. Baba Metzia 16a

[it could not be applied to this case], as he [the buyer] is dead.[1] But according to the view [of R. Ashi, viz.,] 'he wished to vindicate his honesty,' [it could be applied even to this case], as he [the robber] would wish to vindicate his honesty before [the buyer's] children also. [But, it is argued,] would not the buyer's children call him [who sold the field to their father] a robber?[2] — Therefore [we must say that] the difference between them would appear [in a case] where the robber died.[3] According to the view [of Mar Zutra, viz.], 'he wished that he should not call him a robber,' [it could not be applied to this case,] as he [the robber] is dead.[4] But according to the view [of R. Ashi, viz.,] 'he wished to vindicate his honesty,' [it could be applied even to this case,] as he [the robber] would wish that his honesty should be vindicated even when he is dead. [But, it is argued,] would not his children after all be called the children of a robber?[5] — Therefore [we must say that] the difference between them would appear [in a case] where he [the robber] gave [the field] as a present: According to the view [of R. Ashi, viz.], 'he wished to vindicate his honesty,' [it could be applied even to] a present, [in regard to which] he would also wish to vindicate his honesty. But according to the view [of Mar Zutra, viz.], 'he wished that he should not call him 'a robber,' [it could not be applied to this case, for he could say [to the recipient of the gift], 'What have I taken away from you [that I should be called a robber]?'

It is obvious that if he [who robbed a field and sold it], subsequently sold it [to another person], or bequeathed it to his heirs, or gave it away as a present, [and then bought it from the original owner, we must assume that] he did not, [in buying the field,] intend to secure it thereby for the [first] buyer.[6] If it came to him as an inheritance[7] [we must assume this, too, for] an inheritance comes of itself, and he did not trouble himself to get it.[8] If he took it in payment of a debt [due to him from the original owner of the field],[9] then our attitude is [as follows]: if [the original owner] had other land, and [the robber] said, 'I want this,' [we assume that the robber, in acquiring the field,] intended to secure it thereby for the [first] buyer,[10] but if not,[11] [we assume] that he merely wanted to be paid [his] money.[12]

[In a case where the original owner] gave him [the robbed field] as a present, R. Abba and Rabina differ: One says, Gifted property is like inherited property, in that it [also] comes of itself.[13] But the other says, Gifted property is like bought property, for if the recipient had not exerted himself to win the favour [of the donor, the latter] would not have given him the present, and the reason why he [the recipient] exerted himself to win the favour [of the original owner of the field] was that he [the recipient who first robbed the field] might vindicate his honesty. And till when does he wish to vindicate his honesty?[14] — R. Huna says: Until [the buyer of the robbed field is] summoned to appear in court.[15] Hiyya b. Rab says: Until he [the buyer] receives the decree of the Court [entitling him to seize the robber's property].[16] R. papa says: Until the days of the announcement [of the public sale of the robber's property] begin.[17] To this Rami b. Hama demurred:[18] Seeing that this buyer acquired this land [from the robber] only by the deed of sale, [is not the sale invalid because] the

deed is a mere potsherd?[19] — Raba answered him: It is a case where [the buyer] believes him [the robber]: Because of the pleasure [it gives the robber] that he [the buyer] said nothing to him, but trusted him implicitly, he [the robber] exerts himself to acquire the field for him [the buyer], and determines to confer upon him the rightful ownership [of the field].[20] R. Shesheth then asked: [It has been taught:[21] If one says to another,] 'What I am to inherit from my father is sold to you,' [or,] 'What my net is to bring up[22] is sold to you,' [it is as if] he [had] said nothing.[23] [But if he says,] 'What I am to inherit from my father to-day is sold to you,' [or,] 'What my net is to bring up to-day is sold to you, his words are valid?[24] — Rami b. Hama said [to that]: 'There is a man and there is a question!'[25] Raba retorted: 'I see the man but I do not see [the force of] the question.'[26] Here[27] he [the buyer] relied on him [the seller]; there he did not rely on him: Here he relied on him that he would exert himself and acquire [the robbed field] for him [the buyer] so that he might not call him a robber; there he did not rely on him.[28] [The question of R. Shesheth] was then submitted to R. Abba b. Zabda, [and] he said: This [question] does not need [to be brought] inside [the College].[29] Raba said: It does need [to be brought] inside, and even to the innermost [part]:[30] Here he [the buyer] relied on him [the seller]; there he did not rely on him. A case occurred in Pumbeditha, and the question [of R. Shesheth] was asked. R. Joseph then said to them [who asked the question]: This does not need to be brought inside [the College]. But Abaye said to him [R. Joseph]: It does need to be brought inside, and even to the innermost part: Here[27] he [the buyer] relied on him [the seller]; there he did not rely on him. And wherein does the first part [of the teaching quoted by R. Shesheth] differ from the last part? R. Johanan said: The last part, [viz.] 'What I am to inherit from my father to-day' — because of his father's honour;[31] 'What my net is to bring up to-day'

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(1) And he cannot call the seller a robber any more.

(2) Even when the buyer is dead, the desire on the part of the seller to vindicate his honesty may still have been the motive for his action in buying the field from the rightful owner, as the children of the dead buyer would call him a robber when they discover that the field was sold to their father unlawfully, and that they could not retain possession of it.

(3) After he bought it from the original owner, and the question arises whether the robber's children inherit the field and are entitled to take it away from the person to whom their father sold it unlawfully.

(4) Even if the robber did buy the field from the original owner in order to vindicate his honesty he would only have been concerned about his reputation during his life-time.

(5) There is therefore a good reason why the robber should have wished that his honesty should be vindicated even after his death.

(6) If the robber sold the field a second time (to another person), or disposed of it in some other way after selling it to the first person, it is obvious that his subsequent action in buying the field from the original owner was not due to a desire to secure the field for the first buyer, and must have been prompted by a different motive. The first buyer would not then be entitled to keep the field, which would legally belong to the person to whom it was subsequently sold, given or bequeathed.

(7) If the person, from whom the field was taken away unlawfully, died, and the robber proved to be his heir, so that the latter became the rightful owner of the field.

(8) As the robber acquired the field merely as a result of the death of the owner, and not because of any steps or trouble he took to acquire it, it cannot be assumed that the robber, in acquiring the property, manifested a desire to secure its possession for the person to whom he sold it unlawfully.

(9) If, after appropriating the field illegally and selling it, the robber claimed it as payment of a debt due to him from the original owner.

(10) The fact that the robber insisted on getting this field as payment, while there were other fields owned by the debtor which he could have taken, would show that he was prompted by the motive of securing that field for the person to whom he sold it unlawfully.

(11) If the debtor had no other field to offer.

(12) He only took the field because he wanted payment, not because he wished to secure it for the buyer.

(13) I.e., without any effort on the part of the recipient.

(14) Up till what stage in the proceedings do we assume that the robber, in buying the field from the original owner,

intended to secure its possession for the person to whom he sold it unlawfully?

(15) Until legal steps are taken by the original owner to retrieve his property from the person who bought it from the robber. As the latter's reputation is thus lost it cannot be said that he bought the field from the original owner in order to 'vindicate his honesty'.

(16) אדרכתא (from דרך 'to pursue'), a document authorising a creditor to search for property belonging to the debtor and to seize it wherever it may be.

(17) I.e., when property belonging to the robber has been discovered and the Court has begun to advertise its public sale for the purpose of compensating the person to whom the robber sold the field unlawfully. The period of such advertising usually extended over thirty days. Cf. 'Ar. 21b.

(18) He raised an objection to Rab's decision that the robber, in buying the field from the original owner, intended to secure its possession for the person to whom he sold it unlawfully, and that therefore the latter's purchase became legal.

(19) The document is invalid because the robber did not own the field, and therefore had no right to sell it. 'A potsherd' is a common term for an invalid document, like the modern term 'a scrap of paper'.

(20) We assume that the robber bought the field from the original owner because he appreciated the confidence placed in him by the person to whom he sold it unlawfully and who did not question the robber's right to sell it. It was for this reason — we assume — that he wanted to legalise the sale.

(21) Tosef. Nedarim, Ch. VI end.

(22) I.e., any animals or birds or fishes that may be caught in the net (or snare).

(23) His words are of no consequence.

(24) The sale is legal. In the first instance the sale is not legal because at the time of selling the goods were not yet the property of the seller, and the sale does not become legalised by what took place after the sale. This contradicts the view of Rab who, in he case of the robber who bought the field after selling it unlawfully, says that he intended to sell his future rights, and thus this legalises the sale.

(25) It is a great question worthy of the great man who asked it.

(26) He admits that R. Shesheth is a great man, but he does not admit that the question is great.

(27) In Rab's case.

(28) In the case referred to by R. Shesheth, the person to whom the goods to be acquired were sold had no occasion to rely on the seller; it did not depend upon the seller whether he would ultimately acquire the goods or not.

(29) As no-one inside the College will be able to answer it (Rashi). In the תשובת הגאונים (cited by Rashi) this phrase is explained as meaning that the question is not good enough to be discussed in the College.

(30) Literally: 'into the inside of the inside,' the meaning being obviously that the question was so important that it ought to be discussed by the best men in the College.

(31) By saying, 'What I am to inherit from my father to-day is sold to you' the seller indicates that his father is dying, and that he requires the money for the purpose of giving his father a decent burial.

Talmud - Mas. Baba Metzia 16b

— because of the need to support himself.[1] R. Huna said in the name of Rab: If one says to his neighbour: 'The field which I am about to buy shall, when I have bought it, be sold to you from now,' [the neighbour] acquires it.[2] Raba said: It stands to reason that Rab's decision is right [when applied to a case where the seller refers] to a field in general, but in [a case where the seller points out the land sold by saying] 'this field' [it would] not [be right, for] who can say whether [the owner of that field] will sell it to him?[3] But — by God! Rab himself did maintain that even when [the seller says] 'this field' [the sale is valid], seeing that Rab stated his law in accordance with [the view of] R. Meir, who said that a man may convey [to another person] a thing which has not yet come into existence, as it has been taught: If one says to a woman: Be betrothed to me after I shall become a proselyte, [or,] after thou shalt become a proselyte, [or,] after I shall be set free, [or,] after thou shalt be set free, [or,] after thy husband will have died, [or,] after thy brother-in-law will have given thee halizah,[4] [or] after thy sister will have died, [the woman] is not betrothed.[5] R. Meir says: She is betrothed.[6] Now, the woman [in this case] is like 'this field,'[7] and [yet] R. Meir says that she is betrothed.[8]

Samuel said: If one finds a deed of transfer[9] in the street one shall return it to the owners.[10] For even if [this were objected to] on the ground that [the deed] may have been written for the purpose of a loan and the loan may [in fact] not have been granted [the objection would not be valid] because [the borrower] pledged himself.[11] And if [this were objected to] on the ground that [the loan] may [in the meantime] have been repaid [the objection would not be valid either] because we are not afraid of repayment [having taken place], as [we assume that] if [the borrower] had repaid [the loan] he would have torn up [the deed]. R. Nahman said: My father was among the scribes of Mar Samuel's court when I was about six or seven years old, and I remember that they used to proclaim: 'Deeds of transfer which are found in the street should be returned to their owners.' R. Amram said: We have also learned so [in a Mishnah]: All documents executed by a court of law shall be returned [when found],[12] which shows that we are not afraid of repayment. [But] R. Zera said to him: Our Mishnah treats of documents containing decrees of the Court which confirm the creditor's right to belongings appropriated from the debtor,[13] and of documents authorising a creditor to search for the debtor's belongings and to seize them wherever they may be found,[14] which [documents] are not concerned with repayment. Raba [then] said: And are not such [documents] concerned with repayment? Have not the Nehardeans[15] . said: [Property assigned in] valuation[16] returns [to the debtor] until [the end of] twelve months,[17] and Amemar said: I am from Nehardea and I am of the opinion that the [property assigned in] valuation always returns?[18] Therefore Raba said: There[19] the reason[20] is this: we say: He has himself to blame for the loss, for at the time when he paid [the debt] he should have torn up the document, or he should have [asked for] another document to be written [entitling him to claim the property], as according to law [the creditor] need not return the property], and it is only because [of the command], And thou shalt do that which is right and good in the sight of the Lord[21] that the Rabbis declared that it should be returned: therefore he [the debtor] is [in the position of one who is] buying [the property] anew, and he ought to ask for a deed of sale to be written [and given to him].[22] [But] in regard to a note of indebtedness,[23] what may be argued [in favour of the return thereof is] that if it had been paid he should have torn up the note?[24] [To this] I say: He [the creditor] may have given an excuse by telling him [the debtor], 'I shall give it to you to-morrow, as I have not got it with me just now,' or he [the creditor] may have kept it back until he is refunded the scribe's fee.[25]

R. Abbahu said in the name of R. Johanan: If one finds a note of indebtedness in the street, even if it contains the endorsement of the Court,[26] it shall not be returned to the owners: It is undoubtedly so when it does not contain the endorsement of the Court, as it may then be said that it was written for the purpose of a loan, and that [in fact] the loan was not granted. But even if it does contain the endorsement of the Court, which means that it is officially confirmed,[27] it shall not be returned, because we are afraid that [the loan] may [in the meantime] have been repaid. R. Jeremiah objected [to the ruling of] R. Abbahu [from the following Mishnah]: 'All documents executed by a Court of Law shall be returned [when found]'? [R. Abbahu] answered him: Jeremiah my son, not all documents executed by a court of law are alike! Indeed, [the Mishnah refers to a case where the debtor] has been found to be a liar.[28] Raba [then] said: And because he has been found to be lying once [must it be assumed] that he would not pay [his debts] any more?[28] — Therefore Raba said: Our Mishnah treats of a document containing a decree of the Court which confirms the creditor's right to belongings appropriated from the debtor, and of a document authorising a creditor to search for the debtor's belongings and to seize them wherever they may be found — and in accordance with [the interpretation of] R. Zera [given above].[29] As we have just dealt with the case of [one who was found to be] a liar, we shall say something [more] about it. For R. Joseph b. Manyumi said in the name of R. Nahman: If they [the members of the Court] said to him [the debtor], 'Go [and] give him [what you owe him];'

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(1) In the same way the word 'to-day' in the second case indicates that the seller depends for his livelihood on that day's catch. This is why the Rabbis decided in both these cases that the sale should be regarded as valid. But in the first part these reasons do not apply.

(2) The moment the seller has bought the field from the original owner it becomes the property of the buyer, and the seller ends the transaction.
(3) When a person sells or gives away a piece of land in general terms (without specifying it) the buyer, or the recipient, makes up his mind to acquire the land, as he knows that some land will be available for sale, and he believes that the person who offered the land to him will buy it and convey it to him. But when a person specifies the field he offers, the buyer or recipient will not take the offer seriously, as that field may not be in the market, and the person may not be able to realise his intention of buying that field and conveying it to his friend.
(4) V. Glos.
(5) The transaction is not valid, as the fulfilment of the conditions stipulated by the man is beyond the power or control of the woman.
(6) Yeb. 93b.
(7) Just as in the case of 'this field' the seller, or donor, is unable to compel the original owner to dispose of the field (to enable the former to convey it to his friend), in the case of the woman also the fulfilment of the condition necessary to render the transaction valid is beyond her power or control.
(8) Which shows that according to the view of R. Meir on which Rab based his ruling, no distinction is made between 'the field' and 'a field'.
(9) V. p. 72, n. 4.
(10) As there is every reason to believe that the deed is still valid.
(11) To let the lender have the property in any case. Cf. pp. 77-78.
(12) Infra 200. This would include a note of indebtedness endorsed by the court and excluding the possibility of the loan not having been granted (cf. B.K. 112b) which would show that as long as we are sure that the loan was granted we do not suspect its validity on the ground that the loan may have been repaid.
(13) שטר חלטאה (from חלט , to establish', make sure') = a document issued by the court authorising a creditor to keep certain properties allotted to him in payment of his debt.
(14) V. p. 95, n. 8.
(15) A famous town in Babylonia, near the junction of the Euphrates and 'Nahr Malka,' and the seat of the Academy rendered famous by Samuel and other great Rabbis. Among the natives of Nehardea was R. Nahman (v. Hul. 95b).
(16) I.e., to the creditor.
(17) If the debtor pays during that time.
(18) There is no time limit, and whenever the debtor pays he is entitled to reclaim his property. [This being the case, the question of repayment arises also in these deeds of assignment, there being a possibility that the debtor had had his property restored on paying his debt, and in returning the documents to the creditor we empower the latter to seize anew the debtor's property.]
(19) In the case of deeds of assignment dealt with in the Mishnah.
(20) Why the document is to be returned.
(21) Deut. VI, 18.
(22) As a deed of transfer entitles the creditor to keep the seized property even when the debtor offers to repay the loan, and as the Rabbis decided that the property should be returned merely on the grounds of equity, the debtor, on failing to get the deed of transfer back, ought to have asked for a new deed — a deed of sale — as if the property had then been sold to him by the creditor.
(23) Dealt with by Samuel.
(24) And they apply to a note of indebtedness the same reason that is given for the law that a lost 'deed of transfer' has to be returned, viz., that since it has not been torn up the debt must still be due and the document still valid.
(25) By the debtor in case the creditor laid it out for him, the scrivener's fee being charged to the debtor. The debt may thus have been paid even though for some reason or other the creditor did not return the note to the debtor, and this should preclude the return of the note to the creditor.]
(26) הנפק . V. p. 33, n. 1.
(27) Cf. supra, ibid.
(28) On another occasion it was established that he told a lie. Therefore he would not be believed if he pleaded in this case that he had paid the debt. This is why the documents must be returned.
(29) That these documents are not concerned with the payment of money, and therefore are to be returned.

and he [the debtor] said [later], 'I have paid [as ordered]', he is believed.[1] [If then] the lender comes [to the Court and asks for a decree] to be written,[2] [the decree] may not be written and given to him. [But if the Court said to the debtor,] 'You are obliged to give him [what you owe him],' and he [the debtor] said [later], 'I have paid,' he is not believed. [If[3] then] the lender comes [to the Court and asks for a decree] to be written, [the decree] may be written and given to him. R. Zebid said in the name of R. Nahman: Whether [the Court said], 'Go [and] give him' or [it said] 'You are obliged to give him,' if [the debtor subsequently comes and] says, 'I have paid,' he is believed. [If then] the lender comes [to the Court and asks for a decree] to be written, [the decree] may not be written and given to him. If, therefore, [the wording of the Court's decision] is to make a difference [at all], the difference can only apply to the following cases: If they [the members of the Court] said to him [the debtor], 'Go [and] give him [what you owe him],' and he [the debtor] said [later], 'I have paid [as ordered],' and witnesses testify that he did not pay him,[4] while he repeats his assertion that he did pay,[5] [then we say:] 'He has been found to be a liar in regard to this money.'[6] [But if the Court said to the debtor,] 'You are obliged to give him [what you owe him], and he [the debtor] said later, 'I have paid,' and witnesses testify that he did not pay,[7] while he repeats his assertion that he did pay,[6] [then we say:] 'He has not been found to be a liar in regard to this money.'[8] For what reason? — [We say that the debtor] was just trying to put him off, thinking to gain time until the Rabbis would consider their decision more carefully.[9]

Rabba b. Bar Hanah said in the name of R. Johanan: [If one says to another], 'You have in your possession[10] a hundred zuz belonging to me,' and the other replies, 'I have nothing belonging to you,' while witnesses testify that he [the defendant] has [the money], and he [the defendant] again pleads, 'I paid it,' [then we say], 'He has been found to be a liar in regard to this money.' Such was the case of Sabbathai, the son of R. Merinus: He assigned to his daughter-in-law in her Kethubah[11] a cloak of fine wool, and he pledged himself to it. Her Kethubah got lost, [whereupon] he [Sabbathai] said to her,[12] 'I deny altogether [having assigned to you the cloak].' [But] witnesses came and said, 'Yes, he did assign it to her.' In the end he said, 'I gave it to her.' He then appeared before R. Hiyya,[13] [and R. Hiyya] said to him: You have been found to be a liar in regard to this cloak.'[14]

R. Abin said in the name of R. Elai, who said in the name of R. Johanan: If one was due [to take] an oath [in regard] to [a claim of] his neighbour, and he said, 'I took the oath,' but witnesses testify that he did not take the oath, while he repeats the assertion, 'I did take the oath,' [we say:] 'He has been found to be a liar in regard to this oath.'[15] This [decision] was conveyed to R. Abbahu, [whereupon] he said: R. Abin's decision seems right [in a case where] the oath was imposed upon [the defendant] by a Court of Law,[16] but [in a case where the defendant] imposed an oath upon himself,[17] [he is believed,][18] for it happens that a person talks like this.[19] [When this observation] was conveyed back to R. Abin, he said: I also spoke of a court case. And it was also stated so [in another place]: R. Abin said in the name of R. Elai, who said in the name of R. Johanan: If one was due [to take] an oath in a Court of Law [in regard] to [a claim of] his neighbour, and he said, 'I took the oath,' but witnesses testify that he did not take the oath, while he repeats the assertion, 'I did take the oath', [we say:] He has been found a liar in regard to this oath.

R. Assi said in the name of R. Johanan: If one finds in the street a note of indebtedness which contains the endorsement of the Court[20] and the date of that very day,[21] it shall be returned to the owners. [For] if [the objection is raised that] it may have been written for the purpose of a loan, and the loan may [in fact] not have been granted, [the objection is not valid,] as [the note] contains the endorsement of the Court,[22] [and] if [the objection is raised] that [the loan] may have been repaid, [the objection is not valid,] as we are not afraid of a loan having been repaid on the day [on which it was granted]. R. Zera then said to R. Assi: Did R. Johanan really teach this? Did you not yourself teach in the name of R. Johanan [as follows]: A note which was given for a loan that was

[subsequently] repaid cannot be used for the purpose of another loan, because the obligation [incurred by the first loan] was cancelled [on it being repaid]?[23] Now, when [was the note to be used again]? If on the following day or on any date later [than that given in the note], why state as a reason the fact that the obligation [incurred by the first loan] was cancelled? [The invalidity of the note] follows from the fact that it is antedated,[24] for we have learned in a Mishnah: Antedated notes of indebtedness are invalid.[25] It must therefore be assumed that [the note was to be used a second time] on the same day [as that given in the note]: so we see that people do pay on the same day [as they borrow]? — R. Assi answered him: Did I say that one never pays [a debt on the day it is incurred]? I said: people do not usually pay on the same day.[26]

R. Kahana said: [The lost document is to be returned[27] to the owner] when the debtor admits [that he has not paid]. But if so, [it is asked,] why need we be told this? — [Because] you might say: This [debtor] has really paid, and the reason why he says he has not paid is that he wishes to have [the note] returned [to the creditor] so that he may borrow on it again and thus save the scribe's fees.[28] Therefore we are told [that we do not say this, the reason being] that in such circumstances the lender himself would not permit it, thinking the Rabbis may hear of it and make me lose [my money].[29] But why is this case different from the one we have learned.[30] IF ONE HAS FOUND NOTES OF INDEBTEDNESS WHICH CONTAIN A CLAUSE PLEDGING [THE DEBTOR'S] PROPERTY, ONE SHALL NOT RETURN THEM — and it is explained as referring to a case where the debtor admits [the debt], and [the note has not to be returned] for the reason that it may have been written for the purpose of a loan to be granted in Nisan, while in reality the loan may not have been granted till Tishri, with the result that the creditor may come unlawfully to seize property bought by people [from the debtor] between Nisan and Tishri. Now, why do we not say [there also] that in such circumstances the lender himself would not permit [the note to be used in Tishri] but would say to him [the borrower]: Write another note in Tishri, as otherwise the Rabbis may hear of it and make me lose [my money]? — It was said [in reply]: There [in the Mishnah], seeing that he [the lender] would profit by seizing property sold [by the debtor] between Nisan and Tishri, he [the lender] would be content and would say nothing. But here, seeing that he [the lender] would have no profit, as after all the note has only just been written,[31] what advantage is there in that note as regards seizing sold property?[32] [Therefore we may assume that the lender] will not permit [the renewed use of] a note, the obligation of which expired [when the first loan was paid].[33]

R. Hiyya b. Abba said in the name of R. Johanan: Whoever pleads after an act of the Court

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(1) After taking an ‘oath of inducement’. V. p. 20, n. 4.

(2) If the lender asks the Court to write a document authorising him to seize the debtor's property. Cf. supra P. 95, n. 8.

(3) Even if he is ready to take the ‘oath of inducement’ he is not allowed to do so, but the plaintiff may take the oath and receive payment (Rashi). The reason for this is that the defendant is not likely to have paid on the strength of the Court's verdict, which is merely a statement regarding his obligation to pay and is not an order to pay. Seeing that the defendant waited to be sued for payment it is not assumed that he would actually have paid without a definite order from the Court.

(4) Witnesses give evidence to the effect that following the order issued by the Court the plaintiff demanded payment from the defendant in their presence and was refused. As a consequence it is assumed that having defied the order of the Court in the presence of witnesses the defendant is not likely to have paid later in their absence, and he is not believed if he pleads subsequently ‘I have paid’.

(5) On a later date in the absence of witnesses.

(6) And his statement is not accepted.

(7) When called upon to pay in their presence.

(8) He is not believed except if there are witnesses to corroborate his statement.

(9) And may yet decide in his favour.

(10) I.e., on loan.

(11) Marriage contract, v. Glos.

(12) Var. lec. ‘to them’ (the judges).

(13) R. Isaac Alfasi and Asheri have a different version of this passage. According to that version the translation would be as follows: He appeared before R. Hiyya. Witnesses then came and said, 'Yes, he did assign it to her.' R. Hiyya then said: 'Go (and) give it to her.' In the end he (Sabbathai) said to her: 'I gave you (the cloak).' (Then R. Hiyya) said to him: 'You have been found to be a liar in regard to this cloak.'
(14) Sabbathai's plea was rejected, and he had to pay.
(15) And he is obliged to take the oath in Court.
(16) If he refused to take the oath imposed on him by the Court, although he was called upon by the plaintiff to do so in the presence of witnesses, he cannot be believed if he asserts that he took the oath later in the absence of witnesses.
(17) I.e., he offered to swear of his own accord but refused to take the oath when called upon by the plaintiff to do so in the presence of witnesses. Subsequently, however, he asserted that he did take the oath (privately), in spite of his previous refusal before witnesses.
(18) His plea that he has taken the oath is accepted by the Court.
(19) It is a common thing for a person to refuse when pressed to do something he had volunteered to do, although he may do it later of his own accord. This attitude is not so insolent or obstinate as that involved in the refusal to take a compulsory oath.
(20) V. supra p. 33, n. 1.
(21) I.e., the day on which it was found, which shows that the document was written on the same day.
(22) Which shows that the transaction recorded in the document must have taken place.
(23) As the loan to which the note referred, and which formed a lien on the borrower's property, was repaid, the borrower's indebtedness in regard to this loan ceased. If then a new loan is granted, without a new note of indebtedness, it must be regarded as a mere verbal transaction, which does not form a lien on the borrower's property and does not entitle the lender to seize goods sold by the borrower. If, however, the note used for the repaid loan is retained by the lender for the purpose of the second loan, the lender may, on the strength of it, seize property sold by the borrower — which would be illegal, as in reality the second loan was a mere verbal transaction.
(24) If the second loan was granted on a day after the date given in the note, or on any subsequent date, the note, if applied to the second loan, must be regarded as antedated, and therefore it is invalid.
(25) Sheb. X. V. infra 72a; Sanh. 32a; B.B. 157b and 171b.
(26) And as it is not usual for a loan to be repaid on the same day, we do not apprehend that this may have happened in the case of the lost document, which must consequently be returned to the creditor, but if it did happen that a loan was repaid on the same day, R. Johanan teaches that the note must not be used for a second loan — not even on the same day — for the reason given by him.
(27) According to R. Johanan.
(28) For writing another note, which is charged to the debtor, v. supra p. 200, n. 7.
(29) The lender would be afraid that the Rabbis, on learning that the note was antedated and therefore invalid, so far as the second loan was concerned, would prevent him from seizing the debtor's sold property.
(30) V. supra 12b.
(31) As it bears that day's date.
(32) As both loans were granted on the same day, the note for the second loan, even if written afresh, would have borne the same date and would have served the same purpose so far as the lender's right to seize the borrower's sold property is concerned.
(33) As legally the lender would not be entitled to seize sold property at all on the strength of such a note.

Talmud - Mas. Baba Metzia 17b

says nothing.[1] What is the reason? Every act of the Court is regarded as [if it constituted] a document placed in the hand [of the claimant].[2] R. Hiyya b. Abba then said to R. Johanan [himself]: And is not this [implied in] our Mishnah [which says]: If she produces a bill of divorcement unaccompanied by the Kethubah, she may exact payment of [the money due to her in accordance with] her Kethubah.[3] [R. Johanan then] answered him: If I had not lifted the sherd for you, you would not have found the pearl underneath.[4] Abaye asked: What pearl [has R. Hiyya b. Abba found]?[5] Maybe we deal [in the Mishnah] with a place where a marriage-contract is not [usually] written,[6] so that her bill of divorcement serves the purpose of a Kethubah, but in a place where a Kethubah is [usually] written

[the law would be that] if she produces her Kethubah she may exact payment, but that if [she does] not [produce it she may] not [exact payment]?[7] Later Abaye corrected himself: What I said[8] is really no argument; for if you were to assume that the reference [in the Mishnah] is to a place where a Kethubah is not [usually] written, but that in a place where a Kethubah is [usually] written [the law would be that] if she produces her Kethubah she may exact payment, but not if she does not — how would a woman who became a widow after erusin[9] exact payment?[10] If by [the evidence of] witnesses [testifying] to the death of the husband [the latter's heirs] could plead and say: 'She has been paid [already].' And if you will say, 'It is really so,'[11] then what have the Sages achieved by their provision?[12]

Mar Kashisha, the son of R. Hisda, then said to R. Ashi: And how do we know that a [woman who became a] widow after erusin is entitled to [payment of] the Kethubah?[13] If I should say [that we derive it] from the passage which we learnt: 'A woman who became a widow or was divorced, either after erusin or nesu'in, exacts payment of all [that is due her from her deceased husband]'[14] — perhaps [this refers to a case] where [the betrothed man or the husband] had written her [a Kethubah]. And if you will argue: 'What need is there to tell us this?' [I will answer]: In order [to let us know] that we must reject the view of R. Eleazar b. Azariah, who says that he did write her the Kethubah except on condition that he would wed her.[15] It is necessary [to let us know that this is not so].[16] It can also be proved [that the Mishnah really deals with a case where there is a written Kethubah], for it says, '[She] exacts payment of all [that is due to her]' — if you agree that [the case is one where the husband] wrote a Kethubah, there is an explanation why [the Mishnah] uses the term, '[She] exacts payment of all [that is due to her].'[17] But if you say that he did not write her [a Kethubah],

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(1) I.e., any legal provision which is based on a general enactment (מעשה בית דין) 'act of the Court'. Such as e.g., is made for a wife in her marriage-contract, or for the maintenance of wife and children (grown-up-daughters), is as binding as a properly attested obligation entered into in writing by contracting parties. The plea of a defendant in such an action that he has discharged his obligation cannot be accepted unless it is corroborated by witnesses or by other legal evidence.

(2) The onus of proving that he has discharged his obligations therefore rests on the defendant.

(3) V. Keth. 88b.

(4) I.e., 'If I had not stated the law regarding the validity of an act of Court you would not have discovered the reason for the law of the Mishnah cited by you.'

(5) I.e., is the law of the Mishnah cited by R. Hiyya b. Abba really based on the principle laid down by R. Johanan?

(6) And it is usual to depend on the provision of the Court, so that a husband who has divorced his wife is under an obligation to pay her Kethubah, even if it has not been put in writing, and the husband cannot plead, 'I have paid,' unless he produces a receipt or other legal evidence.

(7) The husband may plead that he has paid, or he may demand the production of the Kethubah on the ground that if she does not give up the document she may demand payment a second time by producing the document later.

(8) I.e., the distinction that Abaye made between places where the marriage-contract is usually written and the places where it is not written.

(9) אירוסין 'Betrothal', v. Glos. I.e., a woman whose betrothed died before the marriage proper (נישואין nesu'in) took place.

(10) Viz., of the Kethubah due to her, seeing that no Kethubah is written at erusin, even in the places where it is written at (nesu'in), although the man becomes liable to pay the Kethubah from the time of the erusin.

(11) I.e., that the heirs can put forward such a plea.

(12) What benefit have the Rabbis bestowed upon the woman by the provision that she is entitled to the Kethubah as soon as she becomes betrothed, seeing that the man's heirs would always he able to claim that she has been paid, without having to produce a receipt?

(13) Where is the law stated that erusin entitles a woman to claim the Kethubah just as marriage does?

(14) V. Keth. 54b.

(15) Since he however died before marriage she is not entitled to the Kethubah.

(16) I.e., that if a man writes a Kethubah at the time of erusin he does not make it dependent on the actual marriage taking place.
(17) I.e., both the legal amount for which the Kethubah is written, viz., one hundred zuz for a widow, and two hundred for a virgin, and the additional amount which a husband may settle on his wife, and which she could claim only if it is expressly written in the Kethubah, but not as a provision of the Rabbis.

Talmud - Mas. Baba Metzia 18a

what is the meaning of the term, '[She] exacts payment of all [that is due to her],' seeing that she is only entitled to a hundred or two hundred zuz[1] [and no more]? Again, if [you will say that we derive the law] from that which R. Hiyya b. Ammi learnt: 'If the betrothed wife [of a priest dies] he [the priest] is not deemed a mourner[2] nor is he allowed to defile himself.[3] In similar circumstances the woman is not deemed a mourner and is not obliged to defile herself[4] [if he dies]. [Also] if she dies he does not inherit her [property];[5] if he dies she exacts the payment of her Kethubah'[6] — [it could be objected]: perhaps [this refers to a case where the betrothed man] had written her [a Kethubah]. And if you will argue: If he wrote her a Kethubah what need is there to tell us [that she may exact payment]? [I will answer]: It is necessary [to let us know that] if she dies he does not inherit her [property]![7] — [It must therefore be said that Abaye corrected himself because of what the Mishnah[8] itself Says, [and he argued thus]: If you held the view that we deal here with a place where no Kethubah is [usually] written, the [production of the] bill of divorcement having [there] the same effect as [the production of] her Kethubah,[9] [it could be refuted by the question]: Does a bill of divorcement contain [the figures] 'one hundred zuz' or 'two hundred zuz'?[10] And if you will Say: seeing that the Rabbis have provided [that the production of the bill of divorcement entitles the woman] to exact payment it is just as if [the figures] were written in it, the objection could still be raised: Let him [the husband] plead and say, 'I have [already] paid up.' And if you will argue that we could say to him, 'If you paid you should have torn up [the bill of divorcement],' [the answer would be:] They could reply, 'She did not let me [tear it up], as she said: I wish to keep it [as evidence that I am free] to marry again.' And if you will argue [further]: 'We could say to him, You should have torn it[11] and have written on it: This bill of divorcement has been torn by us, not because it is an invalid bill, but to prevent it being used for the purpose of exacting payment a second time,' [the answer would be:] Do all who exact payment [of a debt] exact such payment in a Court of Law?[12]

MISHNAH. IF ONE FINDS BILLS OF DIVORCEMENT OF WIVES, [DEEDS OF] LIBERATION OF SLAVES, WILLS, DEEDS OF GIFT, AND RECEIPTS, ONE SHALL NOT RETURN THEM, FOR I SAY, THEY WERE WRITTEN, BUT HE [WHO ORDERED THEM TO BE WRITTEN] CHANGED HIS MIND [AND DECIDED] NOT TO HAND THEM OVER. GEMARA. [If] the reason why [bills of divorcement are not returned] is that [we say], HE CHANGED HIS MIND [AND DECIDED] NOT TO HAND THEM OVER, then [we must assume] that if he [who lost the document] says [to those who found it], 'Give it [to the wife]', it is given [to her][13] even after a long time, but the following contradicts it: If one has brought a bill of divorcement [in order to deliver it on behalf of the husband] and has lost it, [the law is that] if it is found immediately[14] it is valid, if not,[15] it is invalid![16] — Rabbah said :It is no contradiction: There [the reference is] to a place where caravans pass frequently;[17] here [in our Mishnah the reference is] to a place where caravans do not pass frequently. And[18] even in a place where caravans pass frequently this [law[19] only applies to a case] where two [persons called] 'Joseph ben Simeon'[20] are known to be in the same town.[21] For if you did not maintain this, there would be a contradiction in Rabbah's own words, [as the following incident shows:] A bill of divorcement was once found in R. Huna's court-house, and in it was written, 'At Shawire,[22] a place [situate] by the canal Rakis.' R. Huna said:

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(1) One hundred in the case of a widow, and two hundred in the case of a virgin, which become due when the husband divorces her or dies.

(2) אונן , the designation of a mourner between the time of the death of a relative and the burial (after which he becomes an אבל). During that period of mourning a priest is not allowed to partake of sacrificial meat or other holy food. But mere erusin does not constitute relationship to the extent that the death of the betrothed woman should render the laws of mourning applicable to the bereaved priest.
(3) Cf. Lev. XXI, 1-4. A wife is regarded as שארו ('his flesh', cf. Gen. II, 24) for whom a priest may defile himself, but not a betrothed woman.
(4) The laws of defilement do not apply to a woman, whether she be the wife or the daughter of a priest (as the text speaks of 'the sons of Aaron', not the daughters or wives). On the other hand it is the duty of both men and women, whether of priestly descent or not, to attend to the burial of their dead relations, but betrothal does not constitute relationship in this respect, and there is no obligation on the part of a woman (or a man) to attend to the burial of her (or his) betrothed.
(5) While a husband inherits his deceased wife's property (cf. B.B. 111b) he does not inherit the property of his betrothed.
(6) Yeb. 29b; Sanh. 28b.
(7) As this law had to be stated, the matter of the Kethubah is also mentioned.
(8) Of Keth. 88b cited above.
(9) So that it may be argued that the Kethubah is due to be paid, not because of the provision of the Rabbis, but because the bill of divorcement constitutes a written document, on the strength of which the money can be claimed.
(10) It cannot be maintained that the bill of divorcement constitutes a document by means of which the payment of the Kethubah can be exacted, as such a document, if used for the purpose of collecting a debt, would have to state the amount due to be collected, and a bill of divorcement contains no such statement.
(11) I.e., made a tear in it, without destroying it. This is usually done to a bill of divorcement after it has been handed to the woman.
(12) It is only when payment is made in a Court of Law that one can expect the document to be endorsed in the way suggested, but people do not always pay their debts in Court. So that even if it be admitted that the mere production of the bill of divorcement entitles the woman to demand payment of the amount of the Kethubah just as if the amount were stated in the bill, one could not maintain that the husband would not be believed if he pleaded 'I have paid already,' seeing that he has good reason for not having had destroyed the bill of divorcement on payment. It must therefore be assumed that the reason why payment of the Kethubah can be enforced against the plea of the husband is that it is based on an enactment of the Courts, and in accordance with the dictum of R. Johanan given above.
(13) And we do not apprehend that this is a different bill which another person has lost, and that the names in the document refer to other persons who happen to have had the same names as those given in the document which was lost and found.
(14) So that there is no interval during which someone else may have lost a similar document in the same place.
(15) If it is not found immediately, but after an interval, during which a caravan may have passed through the place and halted there for a meal.
(16) As a member of the caravan may have lost it, and by some coincidence the names in the two documents may have been identical (Mishnah Git. 27a).
(17) The reference in Git. is to a place where caravans often pass through, and there is a likelihood of the bill having been dropped by a member of one of these travelling companies, but our Mishnah here deals with a case where there is no such likelihood.
(18) [What follows is a Talmudic comment on Rabbah's statement.]
(19) Viz., that a bill of divorcement is invalid if found after a long time.
(20) A common name often given in the Talmud as one likely to be borne by two persons in the same town.
(21) I.e., in the town where the document was issued.
(22) [Near Sura, v. Obermeyer, Die Landschaft Babylonian, p. 299.]

Talmud - Mas. Baba Metzia 18b

We apprehend that there may be two places called Shawire.[1] R. Hisda then said to Rabbah: Go and consider it carefully, for in the evening R. Huna will ask you about it. So he went and examined it thoroughly, and he found that we had learnt [in a Mishnah]: Every document endorsed by the Court

shall be returned.[2] Now, R. Huna's court-house is surely like a place where caravans pass frequently,[3] and yet Rabbah decided that [the document] should be returned. We must therefore say that '[only] if two persons called 'Joseph ben Simeon' are known to be there it is so,[4] [but] if not, [it is] not [so]'.[5] Rabbah decided an actual case where a bill of divorcement was found among the flax in pumbeditha in accordance with his teaching.[6] Some say where flax was sold,[7] and it was [a case where two bearing the same name] were not known to be [in the place], although caravans were frequent there; others say [it was the place] where flax was steeped, and even though [two persons bearing the same name] were known to be [in the place, the bill had to be returned] because caravans were not frequent there.[8]

R. Zera pointed out a contradiction between our Mishnah and a Baraitha, and then explained it: We learnt [in the Mishnah]: If one has brought a bill of divorcement [in order to deliver it on behalf of the husband] and has lost it, [the law is that] if it is found immediately, it is valid, if not, it is invalid. This contradicts [the following Baraitha]: If one finds in the street a bill of divorcement it shall be returned to the woman when the [former] husband admits [its genuineness], but if the husband does not admit [its genuineness] it shall not be returned to either of them.[9] At all events it says, 'When the husband admits [its genuineness] it shall be returned to the woman' — [obviously] even after a long time! — And [R. Zera] explained it [by saying]: There[10] [the reference is] to a place where caravans pass frequently, but here[11] [the reference is] to a place where caravans do not pass frequently. Some say that it is only when [two persons bearing the same name] are known to be [in the place][12] that we do not return [the bill],[13] and this is [in accordance with] the view of Rabbah. Others say that even if [two persons bearing the same name] are not known to be in the place we do not return [the bill] — contrary to the view of Rabbah. Now, we can well understand why Rabbah did not argue like R. Zera,[14] as he [Rabbah] deemed it more important to point out the [apparent] contradiction between our Mishnah [and the other Mishnah],[15] but why did not R. Zera argue like Rabbah?[16] — He will answer you: Does our Mishnah teach [expressly], 'But if he says, Give it [to the wife], it is given to her, even after a long time'? It may be that the meaning is: If he says, 'Give it [to the wife]' it is given to her, but only immediately,[17] as we have assumed all along.[18] According to the version of him who says that the view of R. Zera is that in a place where caravans are frequent [the document shall not be returned] even if there are no [two persons] known to be [in the place where the document was issued], and that [R. Zera thus] differs with Rabbah — wherein do they differ? — Rabbah holds that when the Mishnah states that 'Every document endorsed by the Court shall be returned',[19] it deals with [a document] which was found in Court, and since a Court of law is like a place where caravans are frequent,[20] [we must conclude that] only if [two persons of the same name] are known to be [in the place where the document was issued the law is that] the document shall not be returned, but that if [two persons of the same name] are not known to be there [the law is that] it shall be returned. And R. Zera?[21] — He will answer you: Does [the Mishnah] state: 'Every document endorsed by the Court, which has been found in Court, shall be returned'? It only states: Every document endorsed by the court shall be returned, — but, in reality, it has been found outside [the Court].[22]

R. Jeremiah says: [The Baraitha deals with a case] where the witnesses say, 'We never signed more than one bill of divorcement [with the name] of Joseph ben Simeon.'[23] But if so — what need is there to tell us [that in such a case the document has to be returned]? — You might say that we ought to apprehend that by a peculiar coincidence the names [of the husband and wife] as well [as the names of] the witnesses were identical [in two bills of divorcement]; therefore we are told [that we do not apprehend such a coincidence]. R. Ashi says: [The Baraitha deals with a case] where [the husband][24] says, 'There is a hole near a certain letter,'[25] and provided [he states] definitely near which letter [the hole is to be found],[26] but if [he just says, 'There is] a hole [in the document,' without indicating the exact place, the document is] not [returned to the wife]: R. Ashi was in doubt whether [the validity of a claim to lost property put forward by one who describes the lost article's] distinguishing marks is [derived from] Biblical law or rabbinical law.[27]

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(1) Even when the messenger who lost the bill of divorcement appears before us and testifies that the husband who lives in Shawire sent him to deliver it, and there is no other man with the same name as the husband (and no other woman of the same name as the wife) known to be living in that place, we apprehend that there may be another place called Shawire where a man of the same name (and a woman of the same name) exists, and therefore we do not return the document. [This might better be rendered as a question: Do we apprehend that there may be two places called Shawire? v. Strashun, a.l.]

(2) Mishnah infra 20a. The endorsement of the Court shows that the transaction referred to in the document has been completed, so that the apprehension that the person who authorised the document to be written may have changed his mind and refused to complete the transaction, does not arise. As the bill of divorcement referred to by R. Huna was found in the Rabbi's court-house it must be assumed that it was lost after it was dealt with by the Court, and that therefore it must be treated like ‘a document endorsed by the Court’.

(3) As many people come to the Court with such documents.

(4) Only if two persons bearing the same name are known to live in the place where the document was issued is the document not returned.

(5) I.e., the document has to be returned.

(6) [In a case where a lost bill of divorcement was found in a place where only one of the two conditions was fulfilled, and Rabbah, following the principle he laid down, ruled that the bill should be returned for the benefit of the wife.]

(7) A market where many people come to buy flax. Although this is like the case where caravans are frequent, the document was returned because there were no two persons of the same name known to exist in the place of issue.

(8) [It was not the market where people came to buy flax and consequently could not be treated as a place where ‘caravans pass frequently,’ but it was a case where two persons bearing the same name were known to exist and yet Rabbah decided in accordance with his teaching above that the document should be returned. On the cultivation of flax in Pumbeditha, v. Obermeyer, op. cit., p. 239.]

(9) Either to the wife or to the husband (Git. 27a). The case cannot be decided until legal evidence is adduced in support of the plea of the one or the other.

(10) In the Mishnah, which says that if found after a long interval the bill of divorcement is invalid.

(11) In the Baraitha, which says that even if found after a long interval the bill should be returned when admitted by the husband to be genuine.

(12) Where the bill was issued.

(13) Where caravans pass frequently.

(14) I.e., why Rabbah did not point out the apparent contradiction between the Mishnah and the Baraitha, as R. Zera did.

(15) It is more important to reconcile two Mishnahs than a Mishnah and a Baraitha.

(16) And point out the apparent contradiction between the two Mishnahs (which have the same editor).

(17) But not if there has been an interval, in which case the bill is not returned. The Mishnah, however, may not have such a case in view at all, as it only says, IT SHALL NOT BE RETURNED, and in this respect an interval would make no difference. Had the Mishnah referred to a case where the bill had to be returned it would probably have made the distinction between ‘immediately’ and ‘after an interval’. It was only the Gemara that derived from the Mishnah, by implication, the law that if the husband wishes to maintain the validity of the bill by saying, ‘Give it to the wife,’ he may do so even ‘after a long time’.

(18) There is nothing in the Mishnah to contradict our view of the law as implied in the wording of the Baraitha, which says that the bill shall be returned, and makes no distinction between ‘immediately’ and ‘after a long time’.

(19) Infra 20b.

(20) [Read with MS.F. ‘and yet it states “it shall be returned,” hence we must conclude that even where caravans are frequent it is only if (two persons) are known to be, etc.’]

(21) How does he explain the reference in the Mishnah to a ‘Court of law’?

(22) Where ‘caravans are not frequent.’ [For where it was found in Court it would be returned having regard to the frequency of caravans there.]

(23) Only in such does the Baraitha say that the bill shall be returned.

(24) Who admits that the bill is genuine.

(25) The letter is named by the husband.

(26) This constitutes a 'precise, distinguishing mark', upon which one may rely even as regards a Biblical law. V. infra 27a.

(27) [If the validity of ordinary distinguishing marks is only of Rabbinic origin, such marks would not be relied upon in the case of a bill of divorcement in view of the grave implications involved.]

Talmud - Mas. Baba Metzia 19a

lost a bill of divorcement in the Beth Hamidrash.[1] [When it was found] he said [to the finders]: If you [attach importance to] a distinguishing mark, I have one on it; if, [however, you attach importance to] recognition by sight,[2] I am able to recognise it. [Whereupon the bill] was returned to him. He then said: l do not know whether it was returned to me because of the distinguishing mark[3] [I indicated], and the view was held that [the indication of] distinguishing marks [entitles the loser to recover his property] in accordance with Biblical law, or whether it was returned to me because of my ability to recognise it by sight, and [such recognition would be accepted from] a Rabbinic scholar only[4] but not from an ordinary person.

The above text [states]: 'If one finds in the street a bill of divorcement, [the law is that] when the [former] husband admits [its validity] it shall be returned to the woman, but if the husband does not admit [its validity] it shall not be returned to either of them.' At all events [we are taught that] when the husband admits, [the bill of divorcement] is to be returned to the woman — ought we not to apprehend that [the husband] may have written it with the intention of giving it [to the wife] in Nisan but [in reality] did not give it to her till Tishri[5] and the husband may have gone and sold the fruit [of his wife's property][6] between Nisan and Tishri, and she may then come, produce the bill of divorcement that was written in Nisan, and take away [the fruit] from the buyers unlawfully?[7] This would be right according to him who says that as soon as the husband has made up his mind to divorce her he is no more entitled to the fruit [of her property],[8] [and] it would be in order [for her to reclaim the sold fruit],[9] but according to him who says that the husband is entitled to the fruit [of her property] until the date on which he hands her [the bill of divorcement] — how is it to be explained? — When she comes to take away [the sold fruit] from the buyers we say to her: Bring proof when the bill of divorcement came to your hand. But why is [a bill of divorcement] different from notes of indebtedness, regarding which we have learnt: 'If one finds notes of indebtedness [the law is that] if they contain a clause pledging [the debtor's] property one shall not return them',[10] and this is interpreted [as applying to a case] where the debtor admits [the debt], and the reason [why the notes are not returned] is that they may have been written in Nisan and the loan may not have been granted till Tishri, so that [the creditor] may take away [the debtor's sold property][11] from the buyers unlawfully — [why do we not say] there also [that the documents] should be returned, and that when [the creditor] will come to take away [the debtor's sold property] from the buyers we shall tell him: Bring proof when the note of indebtedness came to your hand?[12] — The answer is: In the case of a bill of divorcement the person who bought [from the husband the fruit of the wife's property] will come and demand of her [the proof],[13] saying: The reason why the Rabbis gave her back the bill of divorcement is that she may not be condemned to permanent widowhood,[14] but now that she has come [with the bill] to take away [the fruit of her property which I bought from her husband] let her go and bring proof when the bill of divorcement came to her hand! But in the case of a note of indebtedness the buyer will not come to demand [proof]. He will say [to himself]: As the Rabbis gave him back the note of indebtedness it is obvious that the purpose for which they gave it to him was [to enable him] to take away [the debtor's sold property from the buyer, and] this shows that the Rabbis made sure of the matter,[15] and that the note of indebtedness came to the hand [of the creditor] before my [purchase].[16]

[DEEDS OF] LIBERATION OF SLAVES, etc. Our Rabbis taught: If one finds a deed of liberation in the street, [the law is that] when the master admits [its validity] one shall return it to the

slave, [but when] the master does not admit [its validity] one shall not return it to either of them. Thus [we are taught that] when the master admits, [the deed of liberation] is to be returned to the slave — why [is this so]? Ought we not to apprehend that [the master] may have written it with the intention of giving it [to the slave] in Nisan but [in reality] did not give it to him till Tishri, and the slave may have gone and bought property between Nisan and Tishri,[17] and the master may have gone and sold it, and [the slave] may then produce the [deed of] liberation which was written in Nisan, and take away [the property] from the buyers unlawfully? This would be right according to him who says[18] that it is an advantage to a slave to be liberated from his master,[19] regard being had to Abaye who says, 'the witnesses acquire it for him by affixing their signatures';[20] [and] it would be in order [for him to buy property as soon as the deed of liberation is signed]; but according to him who says that it is a disadvantage to a slave to be liberated from his master[21] — how is it to be explained?[22] — When [the slave] comes to take away [the property sold by the master] we say to him: 'Bring proof when the [deed of] liberation came to your hand.'

WILLS, DEEDS OF GIFT, etc. Our Rabbis taught: What is meant by WILLS?[23] — [Documents which contain the words:] 'This shall be established and executed,'[24] so that when [the author of the document] dies, his property becomes the possession of the person named [in the document!.[25] [What are] DEEDS OF GIFT?[26] — All [documents conferring a gift] which contain [the words]: 'From to-day — but after my death.'[27] But does this mean that only if it is written [in the document] 'From to-day — but after my death,' the person acquires [the gift], but if not, he does not acquire it!?[28] — Abaye answered: The meaning is this: 'Which gift of a healthy person is like the gift of a dying person in that [the person named] does not acquire it until after the death [of the donor]'? Every [gift regarding which] it is written [in the document conferring it]: 'From to-day — but after my death.'[29]

The reason why [the documents named in the Mishnah are not returned] is that [— as indicated in the Mishnah — the persons who lost them] did not say, 'Give them [to the persons named in the documents],' but if they said, 'Give them,' they would have to be given. Does not this contradict [the following Baraitha]: 'If one finds wills, mortgage deeds,[30] and deeds of gift, even if both [parties concerned] admit [their validity], one shall not return [the documents] to either of them'?[31] — R. Abba b. Memel answered: It is no contradiction:

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(1) The College, where the Rabbis and their disciples assemble for study.

(2) I.e., not by particular marks but by its general appearance when produced.

(3) [Though it was not a Precise mark.]

(4) Whose word can be trusted and may be regarded as clear and definite.

(5) The divorce would then have taken effect in Tishri, and up till then the husband would have been entitled to use, or to sell, the fruit of his wife's estate (נכסי מלוג).

(6) The wife's inherited estate (referred to in the previous note) of which the husband may use the income, without incurring any responsibility for loss or damage or deterioration affecting the estate itself. Cf. B.K. 89a.

(7) As the husband is entitled to the income of his wife's estate up to the day on which he hands her the bill of divorcement she would have no right to the income disposed of by the husband between Nisan and Tishri.

(8) Cf. Git. 17b.

(9) I.e., the fruit sold by the husband between Nisan and Tishri.

(10) V. supra 12b.

(11) I.e., the property sold by the debtor between Nisan and Tishri.

(12) I.e., when the debtor actually borrowed the money and handed over to the creditor the note of indebtedness.

(13) As to the actual date on which her divorce took effect.

(14) I.e., that she may not be prevented from marrying again by the lack of evidence as to her divorce from her previous husband.

(15) I.e., the Rabbis made sure that the creditor was legally entitled to seize the debtor's sold property.

(16) I.e., before the debtor sold his property he had already incurred his debt to the creditor and given him the note of

indebtedness.

(17) In which case the property would belong to the master, as everything acquired by a slave becomes the possession of his master.

(18) Git. 12b.

(19) As he becomes a member of the community of Israel. Anything that confers a benefit upon a person may be done for him in his absence, or without his knowledge, and for this reason a deed liberating a slave would take effect as soon as it is signed by the witnesses, even before it is handed to the slave.

(20) Cf. supra 13a; infra 35b.

(21) As it deprives him of certain privileges which a slave enjoys, and puts upon him new obligations.

(22) As the liberation, according to this view, is a disadvantage to the slave, and as nothing disadvantageous may be done to anyone in his absence, or without his knowledge, the deed of liberation cannot become effective until it is handed to the slave, and the signature of the witnesses cannot be said to acquire it for him before the date on which the document is received by him.

(23) דייתיקי = last will and testament (cf. Gr. **).

(24) דא תהא למיקם ולהיות This is no etymological derivation but a mere play on words.

(25) Without any further formality, as the words of a dying person have the legal validity of a document written and delivered.

(26) Of a healthy person.

(27) Indicating that the gift is to become from that date the property of the person named in the document but cannot be used by him until the death of the donor.

(28) The question is: Why should it be necessary for the donor to write in the deed of gift the words 'But after my death' in order to enable the person named in the deed to acquire the gift? In the case of a dying person it is natural that the gift should not become valid till after the donor's death, as this was obviously the donor's intention. But in the case of a healthy person there is no reason why such a condition should be included in the document. The donor ought to be able to make the gift absolute at once.

(29) I.e., in ordinary cases the gift of a healthy person does become absolute at once. But in the case quoted, the Rabbis wished to indicate that the gift of a healthy person may be conferred on the same condition as that of a dying person — by including in the deed the words, 'But after my death.'

(30) Referring to a second mortgage taken out on the same property.

(31) For the reason given below.

Talmud - Mas. Baba Metzia 19b

One law refers to [a gift made by] a healthy person, and the other law refers to [that of] a dying person:[1] Our Mishnah, which teaches [by implication] that if [the person who lost the document says,] 'Give it,' it is given, refers to [a gift made by] a dying person, who is in a position to retract.[2] For we say: What is there to apprehend? That he may originally have written the deed for this person[3] and then changed his mind and not given it to him, and that he may then have written a deed again for another person and given it to him, but now he has made up his mind not to let him have it![4] If he gave it to the latter as the gift of a healthy person the latter suffers no loss [as a result of the donor's present change of mind], for when the two [documents] are produced the later [document] confers possession, as he retracted from the former. If, however, he gave it also to the latter as the gift of a dying person, the latter suffers no loss either, as [in such a case] the last person acquires [the gift],[5] because [the donor] withdrew it from the former. But the Baraitha, which teaches that even if both parties admit [the validity of the found document] it shall not be returned to either party, deals with a healthy person, who cannot withdraw,[6] [and the reason why the document is not returned is] that we say: Maybe [the donor] wrote it originally for this person,[3] and then he changed his mind and did not give it to him; he then wrote another [document] for another person and gave it to him, but now he has made up his mind not to let him have it, and he argues [thus]: I cannot [legally] withdraw [the gift from him]. I will [therefore] tell them [the judges] that I gave it to this [person], so that they will return the document to him, and when he produces this earlier document he will be entitled [to the gift]. We therefore say to him [the donor]: We cannot give this document to this [person],[3] as it

may be that you did write it for him but did not give it to him, and that you gave it to a different person instead, and now you have changed your mind again. Now, if you have not really given it to a different person, and you now wish to give it to this person, write him now another document and give it to him — for if you [formerly] did give [a document] to another person he will suffer no loss [because of the document you will write now], as [the person who holds the document with] the earlier date will be entitled to the gift.[7] But, asked R. Zebid, do not both [the Mishnah and the Baraitha] deal with last wills?[8] — Therefore R. Zebid said: Both teachings deal with [a gift made by] a dying person, and there is no contradiction: One deals with [the donor] himself,[9] and the other deals with his son:[10] Our Mishnah, which implies that if [the person who lost the document] says, 'Give it [to the person named in the document],' it is given to him, refers to [the donor] himself, who is entitled to withdraw, [and the reason why the document is thus given is] that we say: Even if [the donor] had given it to another person,[11] that person would suffer no loss [as a result of the donor's change of mind], for if the first [document] and the last [are produced] the last is valid, as the first was withdrawn.[12] But the Baraitha, which teaches that even if both parties admit [the validity of the document] it shall not be returned to either party, refers to the son, [and the reason why the document is not returned is] that we say: Maybe the father wrote it for this person[13] and he changed his mind and did not give it to him, and that after the father's [death] he [the son] wrote another deed for another man and gave it to him, but now he has made up his mind not to let him have it, [and] he argues [thus]: 'I cannot legally withdraw [the gift from him]. I will [therefore] tell them [the judges] that my father gave it to this person,[13] so that they will give the document to him, and we shall go and take [the gift] away from this other person,[14] as he [this person][15] will be legally entitled to it,[16] and we shall both share [in the gain].'[17] We therefore say to him [the son]: We cannot give this document to this person,[15] as it may be that your father did write it [for him] but did not give it to him, and that you gave it to a different person instead, and have now changed your mind. Now, if you speak the truth [in saying] that your father gave it to him, go now and write him another deed, for then, even if your father did not give it to him, and you wrote it for a different person, that other person will suffer no loss, for if the first document and the last are produced, the first is valid.[18]

Our Rabbis taught: If one finds a receipt[19] [the law is that] when the wife admits [its genuineness] one shall return it to the husband, [and that] when the wife does not admit [its genuineness] one shall not return it to either party. It is thus taught that when the wife admits, [the document] shall be returned to the husband: Ought we not to apprehend that she may have written it with the intention of giving it [to the husband] in Nisan, and that [in reality] she did not give it [to him] until Tishri,[20] and that in the interval between Nisan and Tishri she went and sold [the value of] her Kethubah for a consideration,[21] while the husband may produce the receipt, [showing] that it was written in Nisan,[22] and he will thus be able to deprive unlawfully those who bought [the value of the Kethubah of what is due to them]? — Raba answered:

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(1) The deeds of gift are written differently in the two cases, the dying person's deed containing the formula: 'As he was ill and confined to his bed.'

(2) I.e., he may yet change his mind and write a second deed, conferring the gift upon another person, and then the latter acquires it.

(3) To whom he says the document should be returned.

(4) Lit., 'he retracts from the one to whom he gave it.'

(5) As it is always the last word of a dying person that has legal validity. [So that in any case the person to whom the deed was actually given stands to lose nothing by the return of the earlier dated deed to the one in whose name the found deed is made out.]

(6) He cannot change his mind after he has made a gift to a person and handed him the document conferring the gift.

(7) As a healthy person cannot invalidate a document by a later document.

(8) How then could it be said that the Baraitha deals with the gift made by a healthy person?

(9) I.e., the dying person, who is still alive when the document is found, and who orders the document to be given to the person named therein.

(10) After the death of the father, and the son claims the document.
(11) And then decided not to let him have it.
(12) And a dying person is entitled to change his mind, and he who produces the document with the later date is legally entitled to the gift.
(13) I.e., the person named in the found document to whom the son says the deed should be returned.
(14) To whom the son gave it.
(15) V. p. 121, n. 7.
(16) Because of the son's statement that his father had given it to that person.
(17) This indicates the motive which would prompt the son to make the false statement — a conspiracy between him and that person to obtain possession of the gift and to divide it.
(18) As when the two documents have been written by the son, who is a healthy person, the owner of the first document will be entitled to the gift, and the writing of the second document will make no difference.
(19) In which a wife acknowledged having received payment of her Kethubah while she was still living with her husband.
(20) When she received payment.
(21) Lit., 'for the benefit of a pleasure'; for a trifle, as in view of the possibility of the wife's death preceding that of her husband the buyer of the Kethubah stands to lose the price he pays, and this reduces the value of the Kethubah if sold before it becomes due.
(22) So that the date of the receipt produced by the husband will be taken as proof that it preceded the sale of the Kethubah by the wife, and the buyer will lose his claim.

Talmud - Mas. Baba Metzia 20a

From this[1] we may infer that Samuel's [law] holds good, for Samuel said: If one sells a note of indebtedness to one's neighbour and then renounces [the debt], it is renounced,[2] and even the heir [of the lender] may renounce it. Abaye maintained: You may even say that Samuel's [law] does not hold good, [for] here we deal with a case where the deed of the Kethubah marriage is produced by her.[3] Raba, however, says that the production of the deed of the Kethubah makes no difference, for we apprehend that she may have had two copies of the Kethubah.[4] Abaye again says [in reply]: Firstly, we do not apprehend that she may have had two copies of the Kethubah, and secondly, a receipt has validity from its date.[5] This is consistent with Abaye's view, for he says: 'The witnesses acquire it for him by their signatures.'[6]

MISHNAH. IF ONE FINDS DEEDS OF VALUATION,[7] DEEDS OF MAINTENANCE,[8] DOCUMENTS OF HALIZAH[9] OR REFUSAL,[10] DOCUMENTS OF BERURIN,[11] OR ANY OTHER DOCUMENT ISSUED BY A COURT OF LAW, ONE SHALL RETURN THEM.[12] IF ONE FINDS [DOCUMENTS] IN A SMALL BAG OR IN A CASE,[13] [OR IF ONE FINDS] A ROLL OR A BUNDLE[14] OF DOCUMENTS, ONE SHALL RETURN THEM.[15] AND HOW MANY DOCUMENTS CONSTITUTE 'A BUNDLE'? THREE FASTENED TOGETHER. RABBAN SIMEON B. GAMALIEL SAYS: [IF THEY BELONG TO] ONE PERSON WHO BORROWED FROM THREE [LENDERS] ONE SHALL RETURN THEM TO THE BORROWER;[16] [IF THEY BELONG TO] THREE PERSONS WHO BORROWED FROM ONE [LENDER] ONE SHALL RETURN THEM TO THE LENDER.[17] IF ONE FINDS A DOCUMENT AMONG ONE'S PAPERS AND DOES NOT KNOW HOW IT CAME THERE[18] IT SHALL REMAIN WITH HIM UNTIL ELIJAH COMES.[19] IF THERE ARE NOTES OF CANCELLATION AMONG THEM[20] ONE MUST ABIDE BY THE CONTENTS OF THE NOTES.[21] GEMARA. What are DOCUMENTS OF BERURIN? — Here [in Babylonia] it has been interpreted [as meaning] 'documents containing records of pleadings.'[22] R. Jeremiah said: [Documents stating:] 'This party chose one [judge], and that party chose another [judge].'[23]

OR ANY [OTHER] DEED ISSUED BY A COURT OF LAW, ONE SHALL RETURN. In the court of R. Huna there was once found a bill of divorcement[24] in which was written: 'In Shawire, the

town which is situate by the canal Rakis.' Said R. Huna:

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(1) I.e., from the fact that we do not apprehend the contingency referred to, and that consequently it must be assumed that the buyer would have no claim against the husband, even if the wife's receipt had in fact been written in Nisan.
(2) The borrower's debt is cancelled, and the person who bought the note of indebtedness from the lender loses his money: (Cf. B.K. 89a; B.B. 147b.) In the same way the person who bought the Kethubah from the wife while it was still unpaid loses his claim when the wife cancels the Kethubah on being paid by the husband in Tishri.
(3) Which shows that the wife has not sold it, as otherwise the buyer would have taken possession of it.
(4) [One of which she disposed of by selling, and were it not for the fact that Samuel's ruling is accepted there would be good reason for not returning the receipt to the husband.]
(5) I.e., from the date of writing, irrespective of the date of delivery, so that even if the debt had been sold in the interval the buyer has no claim, so that the Baraitha affords no support to Samuel's ruling.
(6) V. supra 13a; 19a. Cf. infra 35b.
(7) I.e., deeds in which the valuation of a debtor's property by a Court of Law, for the purpose of assigning it to the creditor, is recorded.
(8) I.e., deeds in which the Court records a man's undertaking to provide maintenance for his step-daughter.
(9) Documents testifying that the ceremony of 'pulling off the shoe' has been performed in the case, of a childless widow whose brother-in-law refuses to perform the levirate marriage. V. Deut. XXV, 5-10, and thus enabling the widow to re-marry.
(10) מיאון , the refusal of a fatherless girl, whose mother or brother gave her in marriage while still a minor, to accept the husband when she attains her majority. Her declaration before the Court that she does not desire the man as her husband sets her free, and the Court writes a document recording the refusal, which entitles her to marry another man.
(11) Relating to the selection of arbiters by contending parties, as explained in the Gemara below.
(12) in such cases there is no reason to apprehend that the writers of the documents may have changed their minds before handing them over, as the Court of Law would not have executed them unless the transactions were completed. Nor is there any ground to question the validity of the documents in case they have been 'paid'.
(13) Which form distinguishing marks. V. Gemara below.
(14) V. Gemara below.
(15) When they are identified by the loser. V. Gemara below.
(16) As it is obvious that the borrower had them in his possession and fastened them together before losing them. It may therefore be assumed that they were paid bills.
(17) As this makes it clear that it was the lender who had them in his possession and fastened them together before losing them. The assumption is therefore that they have not been paid.
(18) The reference is to a note of indebtedness found among other documents, the owner not being able to remember whether it was deposited with him by the borrower or the lender, or whether it was partly paid or not.
(19) For all time, or until the truth is ascertained. Cf. supra p. 6, n. 2.
(20) If there are any notes found attached to the documents showing that the debts referred to in the documents have been paid or cancelled.
(21) I.e., the debts referred to in the documents are assumed to have been paid, and although the notes of cancellation, or receipts, should have been held by the borrower, it is assumed that the lender had them merely as a result of neglect or forgetfulness.
(22) Of litigants in a court of law, from ברר 'to make clear'.
(23) I.e., documents recording the choice of judges by contending parties to decide their case, from ברר 'to select', 'to chose'. V. Sanh. 23a.
(24) Endorsed by the court. Cf. supra, 18a and b.

Talmud - Mas. Baba Metzia 20b

We apprehend that there may be two [towns called] Shawire. R. Hisda then said to Rabbah: Go and consider it carefully, for in the evening R. Huna will ask you about it. So he went and examined it, and he found that we learnt, ANY DEED ISSUED BY A COURT OF LAW ONE SHALL

RETURN.[1] R. Amram then said to Rabbah: How does the Master derive a law relating to a religious prohibition from a civil law?[2] — [Rabbah] answered him: Idle talker![3] The Mishnah taught [this law also] in regard to documents of 'halizah' and 'refusal'![4] Whereupon the cedar column of the College split in two.[5] One[6] said: 'It split because of my lot,'[7] and the other[8] said: 'It split because of my lot.'[9]

IF ONE FINDS [DOCUMENTS] IN A SMALL BAG OR IN A CASE. What is 'hafisah'?[10] Rabbah b. Bar Hanah said: A small bag. What is 'deluskama'?[11] Rabbah bar Samuel said: A case used by old people.

A ROLL OF DOCUMENTS OR A BUNDLE OF DOCUMENTS, etc. Our Rabbis taught: How many documents constitute A ROLL? Three rolled together.[12] And how many constitute A BUNDLE? Three tied together. Will you deduce from this that a knot is a distinguishing mark?[13] — [No] for behold R. Hiyya taught: Three rolled together.[14] But if so, this is the same as A ROLL?[15] — A ROLL is [made up of documents] placed end to end [and then rolled together]. A BUNDLE is [made up of documents] placed on the top of each other and then rolled together. What does [the finder] announce?[16] — The number [of documents found].[17] Then why [does the Mishnah] mention 'THREE', would not [the same law apply] also to two?[18] — But as Rabina says:[19] He announces [that he found] coins:[20] Here also — he announces [that he found] documents.[21]

RABBAN SIMEON B. GAMALIEL SAYS: [IF THEY BELONG TO] ONE PERSON WHO BORROWED FROM THREE, ONE SHALL RETURN [THEM] TO THE BORROWER, etc. For if you were to assume that they belonged to the lenders — how did they [the documents] come to be together? But may not [the lenders] have gone [with them to the Clerk of the Court] to have them endorsed?[22] — They were [already] endorsed. But may they not have been dropped by the Clerk [who endorsed them]? — people do not leave their endorsed documents with a clerk.

[IF THEY BELONG TO] THREE PERSONS WHO BORROWED FROM ONE [LENDER] ONE SHALL RETURN THEM TO THE LENDER, etc. For if you were to assume that they belonged to the borrowers[23] — how did they [the documents] come to be together? — But may not [the persons mentioned in the documents as borrowers] have gone [to the same Clerk] to have them written?[24] They were written in three different handwritings. But may not [the borrowers] have gone [with them to the Clerk of the Court] to have them endorsed? — The lender gets his document endorsed, but not the borrower.

IF THERE ARE NOTES OF CANCELLATION AMONG THEM ONE MUST ABIDE BY THE CONTENTS OF THE NOTES. R. Jeremiah b. Abba said in the name of Rab: A note of cancellation[25] that is produced by the lender[26] even if it is written in his own hand, is to be regarded merely as a prank, and is invalid. [This is so] not only when it is written by a scribe, in which case it may be said that the scribe happened to meet him [the lender] and wrote [the note],[27] but even if it is in his own handwriting[28] it is invalid, [for we assume that he wrote it] thinking, 'The borrower may come at dusk and pay me, and if I do not give him [the note of cancellation] he will not give me the money. I shall write [the note now], so that when he brings me the money I shall give it to him.' [But] we have learned [in the Mishnah]: IF NOTES OF CANCELLATION ARE FOUND AMONG THEM ONE SHALL ABIDE BY THE CONTENTS OF THE NOTES?[29] — As R. Safra said[30] it was found among torn documents, so here also it was found among torn documents.[31]

Come and hear: If one found among his documents [a note stating] that the note of indebtedness of Joseph b. Simeon was paid, [and there were two debtors bearing that name] the notes of both [debtors] are [deemed to have been paid]?[32] — As R. Safra said it was found among torn documents, so here also it was found among torn documents.

Come and hear: We swear that our father has not instructed us or said anything to us, and that we

have not found [any note] among his documents, to the effect that this note [of indebtedness] has been paid?[33] R. Safra answered: If it is found among his torn documents.[34]

Come and hear: A note of cancellation which bears the signatures of witnesses must be corroborated by the signatories?[35] Say: It must be corroborated through [the evidence of] the signatories:

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(1) V. supra loc cit. for notes.

(2) In the sentence quoted from the Mishnah the reference is obviously to documents regarding commercial transactions and similar matters falling within the scope of civil law, while the question of the validity of a divorce is one ultimately affecting a moral or religious issue, and one may not derive one from the other. Cf. Ber. 19b.

(3) תרדא , a person who talks foolishly. Cf. B.K. 105b.

(4) Which are matters of religious law, like marriage and divorce.

(5) This was regarded as a protest against the incident just described.

(6) R. Amram.

(7) I.e., because of the insulting remark addressed to him by Rabbah.

(8) Rabbah.

(9) Because of the way in which R. Amram tried to refute him in public.

(10) The word used in the Mishnah and translated here as 'small bag'.

(11) דלוסקמא The word used in the Mishnah and translated here as 'a case'. The word is also frequently spelt גלוסקמא probably from the Gr. ** = receptacle.

(12) This is regarded as a 'distinguishing mark' by which the loser may identify the documents when they are advertised by the finder. The finder would just announce that he had found certain documents, and the person who came forward to claim them would have to state their number and the manner in which they were rolled up.

(13) I.e., does the definition of a bundle as 'three fastened together' imply that the fastening, or knot, is regarded as a distinguishing mark.

(14) This definition implies the answer to the previous question. As R. Hiyya defined a bundle as 'three rolled together,' without being tied, it follows that the fastening or knot is not essential, and that being rolled together is in itself 'a distinguishing mark'.

(15) Mentioned separately in the Mishnah.

(16) When he advertises the find.

(17) He mentions the number of documents contained in the roll, and then he can claim the documents by merely stating the way in which they were rolled up.

(18) If the loser has not to state the number for the purpose of identification, there is no point in the Mishnah's reference to 'THREE' documents.

(19) Infra 25a.

(20) Without stating the number, which the loser has to state for the purpose of identification when he comes to claim the coins.

(21) Without stating the number, and the loser has to state how many documents there were. The Mishnah therefore says 'THREE' — for if there were only two documents, and the finder used the plural ('documents') in announcing them, which means at least two, the number might be guessed, and could not therefore be regarded as 'a distinguishing mark'.

(22) And the Clerk may have rolled them together and then lost them.

(23) Who received the documents back after paying their debts.

(24) And the clerk lost them after writing them, so that they were not used at all, and no money was lent.

(25) [סמפון , from Gr. **, an agreement, then the provision made for the cancellation of a contract under certain conditions.]

(26) Instead of being produced by the borrower.

(27) So that the lender might have it ready when the borrower would call to pay and would ask for a receipt.

(28) Showing that the lender was himself able to write, and there was no reason why he should have it written before the borrower paid the debt.

(29) And it is obvious that here it is the lender who produces the notes of cancellation, for it is he who found them among the notes of indebtedness in his possession.

(30) Below in our Gemara.
(31) [The bill to which the cancellation relates was found intact among torn documents, which shows that the cancellation is genuine, as otherwise the bill would not have been placed among the torn notes of indebtedness.] According to Rashi's second explanation the note of cancellation was found torn among the other torn documents held by the lender, and the fact that it was found among useless documents shows that the borrower just left it with the lender after paying him, and the latter discarded it and put it among his other useless papers. Had the lender written it for the purpose of having it ready when required he would not have put it among his useless papers.
(32) As each of them can claim to be the person named in the receipt. Cf. B.B. 172a. This proves that a note of cancellation in the possession of the lender is valid.
(33) V. Shebu. 45a. This oath has to be taken by orphans who wish to collect debts due to their father. From the text of this oath it appears that if a note of cancellation is found among the lender's documents it is valid, which contradicts the previous teaching that a note of cancellation produced by the lender is invalid.
(34) It is valid if it is found among the lender's torn documents. This is why the orphans have to swear that no such note has been found.
(35) V. Sanh. 31b. This refers to a note of cancellation in possession of the lender, who denies having been paid, as is proved by the fact that he did not surrender it to the lender. The lender is not believed if the witnesses who signed the note testify that they signed it though they are unable to testify whether the debt was paid. Otherwise the lender is believed. This proves in any case that a note of cancellation in the possession of the lender is considered valid.

Talmud - Mas. Baba Metzia 21a

We ask the witnesses whether [the debt] is paid or not.[1]

Come and hear: A note of cancellation which bears the signatures of witnesses is valid?[2] — The witnesses referred to are witnesses to the endorsement [of the note by the Court].[3] This is also conclusive, for the final clause teaches: ‘But if it does not bear the signatures of witnesses it is invalid.’ Now, what is the meaning of [the words], ‘It does not bear the signatures of witnesses’? If I should say that [it means that] there are no signatures of witnesses on it at all — is it necessary to say that is invalid? Therefore we must assume that they are witnesses to the endorsement [of the note by the Court].

The main text [states]: ‘A note of cancellation which bears the signatures of witnesses must be corroborated by the signatories.’[4] But if it does not bear the signatures of witnesses[5] and is produced by a third person,[6] or if it is found below the signatures of the notes [of indebtedness],[7] it is valid.’ If it is produced by a third person [it is valid] because the lender trusted the third person;[8] if it is found below the signatures of the notes [of indebtedness it is] also [valid], because if [the debt] had not been paid he [the lender] would not have invalidated the note.

C H A P T E R I I

MISHNAH. SOME FINDS BELONG TO THE FINDER; OTHERS MUST BE ANNOUNCED.[9] THE FOLLOWING ARTICLES BELONG TO THE FINDER: IF ONE FINDS SCATTERED FRUIT, SCATTERED MONEY,[10] SMALL SHEAVES IN A PUBLIC THOROUGHFARE,[11] ROUND CAKES OF PRESSED FIGS, A BAKER'S LOAVES,[12] STRINGS OF FISHES, PIECES OF MEAT, FLEECES OF WOOL WHICH HAVE BEEN BROUGHT FROM THE COUNTRY,[13] BUNDLES OF FLAX AND STRIPES OF PURPLE,[14] COLOURED WOOL; ALL THESE BELONG TO THE FINDER.[15] THIS IS THE VIEW OF R. MEIR.[16] R. JUDAH SAYS: WHATSOEVER HAS IN IT SOMETHING UNUSUAL MUST BE ANNOUNCED,[17] AS, FOR INSTANCE, IF ONE FINDS A ROUND [OF FIGS] CONTAINING A POTSHERD, OR A LOAF CONTAINING MONEY. R. SIMEON B. ELEAZAR SAYS: NEW MERCHANDISE[18] NEED NOT BE ANNOUNCED.

GEMARA. IF ONE FINDS SCATTERED FRUIT, etc. What quantity [of fruit in a given space] is meant? R. Isaac said: A kab[19] within four cubits. But what kind of a case is meant? If [the fruit appears to have been] dropped accidentally, then even if there is more than a kab [it should] also [belong to the finder].[20] And if it appears to have been [deliberately] put down, then even if there is a smaller quantity it should not [belong to the finder]?[21] — R. 'Ukba b. Hama answered: We deal here with [the remains of] what has been gathered on the threshing floor:[22] [To collect] a kab [scattered over a space] of four cubits is troublesome, and, as people do not trouble to come back and collect it, [the owner also] abandons it, but if it is [spread over] a smaller space [the owner] does come back and collect it, and he does not abandon it. R. Jeremiah enquired: How is it [if one finds] half a kab [scattered over the space] of two cubits? Is the reason why a kab within four cubits [belongs to the finder] that it is troublesome [to collect], and therefore half a kab within two cubits, which is not troublesome to collect, is not abandoned [and should not belong to the finder], or is the reason [in the case of a kab within four cubits] that it is not worth the trouble of collecting [when spread over such a space], and therefore half a kab within two cubits, which is still less worth the trouble of collecting, is abandoned [and should belong to the finder]? [Again,] how is it [if one finds] two kabs [scattered over the space] of eight cubits? Is the reason why a kab within four cubits [belongs to the finder] that it is troublesome to collect, and therefore two kabs within eight cubits, which are still more troublesome to collect, are even more readily abandoned [and should certainly belong to the finder], or is the reason [in the case of a kab within four cubits] that it is not worth the trouble [of collecting], and therefore two kabs within eight cubits, which are worth the trouble [of collecting] are not abandoned [and should not belong to the finder]? [Again,] how is it [if one finds] a kab of poppy-seed [scattered over a space] of four cubits? Is the reason why a kab [of fruit] within four cubits [belongs to the finder] that it is not worth the trouble [of collecting], and therefore poppy-seed, which is worth the trouble [of collecting] is not abandoned [and should not belong to the finder], or is the reason [in the case of a kab within four cubits] that it is troublesome [to collect], and therefore poppy-seed, which is even more troublesome [to collect], is abandoned [and should belong to the finder]? [Again], how is it [if one finds] a kab of dates within four cubits, or a kab of pomegranates within four cubits? Is the reason why a kab [of ordinary fruit] within four cubits [belongs to the finder] that it is not worth the trouble of collecting, and therefore a kab of dates within four cubits, or a kab of pomegranates within four cubits, which also is not worth the trouble [of collecting] is abandoned [and should belong to the finder], or is the reason [in the case of a kab within four cubits] that it is troublesome to collect, and therefore a kab of dates within four cubits or a kab of pomegranates within four cubits, which are not troublesome [to collect], are not abandoned [and should not belong to the finder]? — The questions remain unanswered.

It has been stated:

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(1) Thus there is no contradiction to the previous teaching. It is only if the witnesses testify that they saw the debt being paid that the lender is not believed, and the note is valid. Otherwise we believe the lender, and the note is invalid.

(2) Even if it is in the possession of the lender.

(3) They are not witnesses who signed the receipt, but witnesses who testify that it was endorsed by the Court, and as the Court would not endorse the receipt unless the debt has been paid, the receipt is valid even if produced by the lender.

(4) And it is valid, even if produced by the lender, as the witnesses testify that it has been endorsed by the Court.

(5) I.e., witnesses to the endorsement.

(6) Neither the lender nor the borrower produces it, but a third person, with whom the notes were deposited, and his statement is accepted.

(7) The cancellation is written on the note of indebtedness below the signatures.

(8) As the lender writes the notes of cancellation he must have handed the note to the third person and placed his trust in him. The third person is therefore believed.

(9) So that the owner may claim them.

(10) Which cannot be identified by the loser and are thus given up by him as beyond recovery. The fact of the loser resigning himself to his loss (יאוש) renders the article public property and gives the finder the right to acquire it.

(11) Where the traffic soon destroys any distinguishing mark by which the sheaves might be identified.
(12) Which are uniform in appearance and cannot be identified.
(13) In a raw state, and bear no mark by which they could be identified.
(14) Long strips of wool dyed purple, a common article in the days of the Mishnah.
(15) The person who finds these articles need not announce them because they bear no marks by which the loser could identify them, and he has a right to keep them because the owner has given up the hope of recovering them.
(16) [Var. lec. omit, 'This is . . . R. Meir;' v. also infra p. 143. n. 1.]
(17) v. infra 23a.
(18) V. infra 23b.
(19) A measure. V. Glos.
(20) As the loser would have no means of identifying them.
(21) As the owner evidently intended to come back for them and has not really lost them.
(22) After the harvest.

Talmud - Mas. Baba Metzia 21b

Anticipated abandonment [of the hope of recovering a lost article][1] is, Abaye maintains,no abandonment,[2] but Raba maintains, it is an abandonment.[3] [If the lost article is] a thing which has an identification mark, all agree that [the anticipation of its abandonment by the owner] is no abandonment, and even if in the end[4] we hear him [express regret at his loss in a way that makes it clear] that he has abandoned it, it is not [deemed to be an] abandonment, for when [the finder] took possession[5] of it he had no right to it[6] because [it is assumed that] when [the loser] becomes aware that he lost it he will not give up the hope [of recovering it] but says [to himself], 'I can recognise it by an identification mark; I shall indicate the identification mark and shall take it back.' [If the lost article is found] in the intertidal space of the seashore or on ground that is flooded by a river, then, even if it has an identification mark, the Divine Law permits [the finder to acquire it], as we shall explain further on.[7] They differ only where the article has no identification mark. Abaye says: It is no abandonment because [the loser] did not know that he lost it;[8] Raba says: It is an abandonment, because when he becomes aware that he lost it he gives up the hope [of recovering it] as he says [to himself], 'I cannot recognise it by an identification mark,' it is therefore as if he had given up hope from the moment [he lost it].[9]

(Mnemonic: PMGSH MMKGTY KKS'Z.)[10] Come and hear: SCATTERED FRUIT[11] — [is not this a case where the loser] did not know that he lost it? — R. 'Ukba b. Hama has already explained that we deal here with [the remains of] what has been gathered on the threshing floor, so that [the owner] is aware of his loss.

Come and hear: SCATTERED MONEY, [etc.] BELONG TO THE FINDER. Why? [Is it not a case where the loser] did not know that he lost it? — There also it is even as R. Isaac said: A man usually feels for his purse at frequent intervals.[12] So here, too, [we say,] 'A man usually feels for his purse at frequent intervals' [and soon discovers his loss].

Come and hear: ROUND CAKES OF PRESSED FIGS, A BAKER'S LOAVES, [etc.] BELONG TO THE FINDER. Why? [Is it not a case where the loser] did not know that he lost it? — There also he becomes aware of his loss, because [the lost articles] are heavy.

Come and hear: STRIPES OF PURPLE [etc.] — THEY BELONG TO THE FINDER. Why? [Is it not a case where the loser] did not know that he lost them? — There also [he becomes aware of his loss] because the articles are valuable, and he frequently feels for them, even as R. Isaac said.

Come and hear: If one finds money in a Synagogue or in a house of study, or in any other place where many people congregate, it belongs to him, because the owner has given up the hope of

recovering it. [Is not this a case where the loser] did not know that he lost it? — R. Isaac answered: people usually feel for their purse at frequent intervals.

Come and hear: From what time are people allowed to appropriate the gleanings [of a reaped field]?[13] After the 'gropers' have gone through it.[14] Whereupon we asked: What is meant by the 'gropers'? and R. Johanan answered: Old people who walk leaning on a stick,[15] while Resh Lakish answered: The last in the succession of gleaners.[16] Now why should this be so? Granted that the local poor give up hope [of finding any gleanings].[17] there are poor people in other places who do not give up hope?[18] — I will say: Seeing that there are local poor, those [in other places] give up hope straight away, as they say. 'The poor of that place have already gleaned it.'[19]

Come and hear: Cut figs [found] on the road, even if [found] beside a field [covered with] cut figs.[20] and also figs found under a fig-tree that overhangs the road, may be appropriated [by the finder] without him being guilty of robbery, and they are free from tithing,[21] but olives and carob-beans are forbidden.[22] Now, the first part [of the Mishnah] implies no contradiction to Abaye[23] because [cut figs], being valuable, are under constant observation;[24] [whole] figs also are known to drop.[25] But the last part [of the Mishnah]. which teaches that olives and carob-beans are forbidden, implies a contradiction to Raba![26] — R. Abbahu answered: Olives are different [from other fruit] because one can recognise them by their appearance, and although olives drop [to the ground] the place of each one is known.[27] But if so, the same should apply to [whole figs in] the first part [of the Mishnah]?[28] — R. papa answered: Figs become filthy when they [drop to the ground].[29]

Come and hear: If a thief takes from one and gives to another, or if a robber takes from one and gives to another,

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(1) Lit., 'unconscious abandonment.' I.e., if an article is found before the loser has become aware of his loss, and the circumstances are such that the loser would have abandoned the hope of recovering the article had he known that he lost it.

(2) And the finder has no right to keep the article.

(3) And the article belongs to the finder.

(4) After the article came into the hands of the finder.

(5) Before the owner has been heard to despair of it.

(6) As the article can be identified the finder cannot legally acquire it.

(7) Infra 22b.

(8) He could not therefore consciously have given up the hope of recovering it.

(9) The 'abandonment' is deemed to have a retrospective effect, and this entitles the finder to acquire the article.

(10) Mnemonic consisting of Hebrew initials of the teachings that follow.

(11) Quotation from our Mishnah.

(12) B.K. 118b. So that he is bound to miss the money very shortly after he has lost it.

(13) Which belong to the poor. V. Lev. XIX, 9.

(14) Pe'ah VIII, 1.

(15) Who walk slowly and examine the ground carefully while looking for the gleanings, and are not likely to miss a single ear of corn.

(16) So that no other poor can hope to find any more gleanings.

(17) As the local poor see the aged and feeble, or the successive groups, glean in the field, they come to the conclusion that there would be nothing more left to glean, and they 'give up hope'.

(18) The poor who live at a distance cannot be said to give up hope consciously as they do not see the local gleaners. It must therefore be assumed that the reason why people who are not poor are allowed to appropriate the gleanings which have escaped the attention of the local poor is that the distant poor will give up hope when they will have learned how thoroughly the field has been gleaned by the local poor. This would prove that 'anticipated abandonment' is valid — in contradiction to the view of Abaye.

(19) Thus the 'abandonment' is not 'anticipated' but real at the time when the people come and appropriate what is left

of the gleanings, and there is contradiction to the view of Abaye.

(20) I.e., beside a field on which cut figs have been spread out to dry, and it is obvious that the figs on the adjoining road belong to the same owner.

(21) They are treated as ownerless goods which need not be tithed, for although the owner may not have known of the loss, he will abandon hope when he gets to know.

(22) Ma'as. III, 4.

(23) Who says that 'anticipated abandonment' is not valid.

(24) And the owner discovers his loss as soon as it occurs and abandons it.

(25) [And the owners in the absence of an identification mark give up the hope of recovering them (Tosaf.).]

(26) The owners are not deemed to have given up the hope of recovering them, as olives and carob-beans do not usually drop, and the owner is not aware of his loss. And although the owner is bound to discover his loss later, and will then 'give up hope,' it is only 'anticipated abandonment' at the time when the lost goods are found and appropriated. Thus 'anticipated abandonment' is not valid — in contradiction to the view of Raba.

(27) I.e., it is known to whom they belong. The owner therefore feels sure that he will recover them, and there is not even 'anticipated abandonment'. There is thus no contradiction to Raba.

(28) As olives can also be identified by their colour and shape.

(29) This is why the owner abandons them at once and they become public property. According to another version the translation would be, 'Figs change colour when they drop, (and cannot therefore be identified).'

Talmud - Mas. Baba Metzia 22a

or if the Jordan[1] takes from one and gives to another, then what has been taken is taken, and what has been given is given.[2] Now, this is obviously right as regards [things taken] by a robber or by the Jordan, because [the owner] sees them [when they are taken][3] and he gives up hope, but as regards a thief — does the owner see him [steal] so that [we could say that] he has given up hope?[4] — Rab papa explained it as referring to armed bandits.[5] But then it is the same as 'robbers'?[6] — There are two kinds of robbers.

Come and hear: If a river has carried off someone's beams, timber, or stones, and has deposited them in a neighbour's field, they belong to the neighbour because the owner has given up hope.[7] So the reason [why they belong to the neighbour] is that the owner has given up hope, but ordinarily they would not [belong to the neighbour]?[8] Here we deal with a case where [the owner] is able to retrieve them.[9] But if so, I must refer you to the last part [of the quoted teaching]: 'If the owner was running after them, [the neighbour] must return them': Now if it is a case where [the owner] is able to retrieve them, why state that he is running after them? [They should belong to him] even if he does not run after them! — We deal here with a case where the owner is able to retrieve [the property] with difficulty: If he runs after it [we conclude] that he has not given up the hope [of recovery]; if he does not run after it [we conclude] that he has given up the hope [of recovery].

Come and hear: In what circumstances has it been said that if one sets apart the heave-offering[10] without the knowledge [of the owner] the offering is valid? If one goes down into a neighbour's field, collects [the produce] and sets apart the heave-offering, without permission, if [the owner objects to the action and] considers it robbery, the offering is not valid, but if not, it is valid. And how can one tell whether [the owner] considers it as robbery or not? If the owner, on arriving and finding the person [in the field], says to him: You should have gone and taken the better kind [of the produce for the heave-offering], the offering is valid if there is a better kind to be found [in the field], but if not, it is not valid. If the owner collected [more of the produce] and added it [to the offering] it is valid in any case.[11] Thus [we see that] if there is a better kind [in the field] the offering is valid. But [is this so?] surely at the time when the offering was set apart [the owner] did not know it?[12] — Raba explained it according to Abaye: [The owner] made him [who set apart the offering] his agent.[13] This is conclusive indeed. For if you were to assume that he did not make him his agent, how could the offering be valid? Did not the Divine Law[14] [instead of] 'Ye', say, 'ye also',[14] to

include ‘your agent’, [as much as to say:] As you [set apart your offerings] with your own knowledge so must your agent [set apart your offerings] with your knowledge?[15] Therefore we must deal here with a case where [the owner] made him his agent and said to him, ‘Go and set apart the heave-offering,’ but did not say to him, ‘Set it apart from this kind,’ and usually an owner sets apart the heave-offering from the medium kind, but that other person went and set it apart from a better kind, whereupon the owner arrived and, finding him [in the field], said to him, ‘You should have gone and taken it from a [still] better kind.’[In such a case the law is that] if a better kind can be found [in the field] the offering is valid, but if not, it is not valid.

Amemar, Mar zutra. and R. Ashi once entered the orchard of Mari b. Isak [whereupon] his factor brought dates and pomegranates and offered them [to the visitors]: Amemar and R. Ashi ate them, but Mar Zutra did not eat them. Meanwhile Mari b. Isak arrived and he found them. He then said to his factor: Why did you not bring for the Rabbis some of those better kinds [of fruit]? Whereupon Amemar and R. Ashi said to Mar Zutra: Why does the Master not eat now? Has it not been taught: ‘If better ones can be found, the offering is valid’?[16] [Mar Zutra] answered them: Thus said Raba: ‘You should have gone and taken better ones’ has been declared to be a valid observation[17] only in regard to a heave-offering, because it is [the fulfilment of] a divine command, and he really wishes [to offer better ones], but here he may have said it out of courtesy.[18]

Come and hear: ‘If the dew is still upon them,[19] and the owner is pleased,[20] then [the Scriptural term, If water] be put [upon the seed][21] applies to it.[22] If it turned dry,[23] then, even if [the owner] is pleased [that the dew came upon it at first,

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(1) Or any other river which carries away goods and lands them somewhere else.

(2) The recipient has a right to keep the goods. Cf. B.K., 114a.

(3) He sees them being carried off and he at once abandons them.

(4) As the owner does not become aware of his loss when it occurs he cannot be said to have consciously abandoned hope.

(5) Who commit open larceny, so that the owner becomes aware of his loss at once and abandons it.

(6) Cf. B.K. 57a.

(7) An event like the flooding of one's property soon becomes known, and the owner becomes aware of his loss and gives up hope. In the Tosef. Keth. VIII, the version is: ‘They belong to the neighbour if the owner has given up hope,’ so also R. Han. and Tosaf. a.l. (q.v.).

(8) In regard to an ordinary loss, of which the owner is not likely to have become aware at once, it would not be said that it belongs to the finder. This would contradict the view of Raba.

(9) So that ordinarily the owner never gives up hope and there is not even ‘anticipated abandonment’. Thus there is no contradiction to Raba.

(10) Cf. Num. XVIII, 8.

(11) V. Kid. 52b.

(12) It must therefore be concluded that ‘anticipated knowledge’ is as good as real knowledge. In the same way ‘anticipated abandonment’ should be deemed as valid as real abandonment, in contradiction to Abaye.

(13) So that he can act for his owner at any time, and his action is always valid.

(14) Num. XVIII, 28.

(15) The agent must have the owner's mandate to act for him. Cf. infra 71b; Kid. 41b.

(16) As the owner's suggestion to offer up better ones is taken as an expression of his consent to the agent's action in the case of the heave-offering, so here also Mari b. Isak's suggestion to his factor should be taken as an expression of his approval of the factor's action in offering the fruit to the Rabbis.

(17) Implying an expression of consent on the part of the owner.

(18) Lit., ‘bashfulness’; and may not really be an expression of consent.

(19) I.e., upon produce exposed to be dried, which by receiving moisture from water or other specified liquids (v. Mak. VI, 4) is rendered capable of becoming ritually unclean.

(20) It is only when the owner of the produce is pleased with the process of wetting which the produce undergoes that

the produce is by this process rendered capable of becoming ritually unclean.

(21) Lev. XI, 38.

(22) And it becomes capable of being rendered ritually unclean.

(23) I.e., if at the time when the owner heard that the dew had come upon the produce it was dry again.

Talmud - Mas. Baba Metzia 22b

the term If water] be put [upon the seed] does not apply to it.'[1] Is not the reason [for this ruling] that we do not say, 'because it appears that he is pleased now it is as if he had been pleased originally'?[2] — There it is different: It is written, 'If one puts',[3] [which means] only when he puts [the water on].[4] But if so, this should apply also to the first case?[5] That [can be explained] according to R. Papa. For R. papa pointed out a contradiction: It is written, 'If one puts'. and we read, 'If it be put'[6] — how is it to be explained? 'Being put must be like 'putting': As 'putting' can only be done with the knowledge [of him who puts] so 'being put' must happen with the' knowledge [of the person concerned].[7]

Come and hear: R. Johanan said in the name of R. Ishmael[8] b. Jehozadak: Whence [do we learn] that an article lost through the flooding of a river may be retained [by the finder]? It is written, And so shalt thou do with his ass; and so shalt thou do with his garment; and so shalt thou do with every lost thing of thy brother's, which he hath lost, and thou hast found.[9] [which means to say that only] if the object has been lost to him and may be found by any person [has it to be returned to him, and it follows that] a case like this[10] is exempt [from the Biblical law],[11] since it is lost to him and cannot be found by any person. Moreover, the object which is forbidden [to be kept by the finder] is like the object which is permitted [to be kept by the finder]: Just as the permitted object[12] may be kept irrespective of whether it has an identification mark or not, so the forbidden object[13] may not be kept irrespective of whether it has an identification mark or not.[14] [This is] a complete refutation of Raba. And the law is in accordance with Abaye in [the cases indicated by the initials] Y'AL KGM.[15]

R. Aha, the son of Raba, said to R. Ashi: Seeing that Raba has been refuted,[16] how is it that we eat dates that have been shaken down [from the tree] by the wind?[17] — [R. Ashi] answered him: [The owner] gives them up straight away because there are vermin and creeping creatures that eat them.[18] [But what if they belong to] orphans who [are minors and] cannot legally renounce [their possessions]? — [R. Ashi] answered him: We do not assume that every piece of ground is the property of orphans.[19] But what if it is known [to be the property of orphans]? Or if the tree is surrounded by a fence?[20] — [R. Ashi] answered him: Then they are forbidden.[21]

SMALL SHEAVES IN A PUBLIC THOROUGHFARE BELONG TO THE FINDER. Rabbah said: Even when they have an identification mark. Consequently [it must be assumed that] Rabbah is of the opinion that an identification mark which is liable to be trodden on[22] is not [deemed to be] an identification mark.[23] Raba said [on the other hand]: [The Mishnah] refers only to things which have no identification mark, but things which have an identification mark have to be announced.[24] Consequently [it must be assumed that] Raba is of the opinion that an identification mark that is liable to be trodden on is [deemed to be] an identification mark. Some teach this as an independent controversy.[25] In regard to an identification mark which is liable to be trodden on, Rabbah says that it is not [deemed to be] an identification mark, but Raba says that it is [deemed to be] an identification mark.

We have learnt: Small sheaves [which are found] in a public thoroughfare belong to the finder, [but if found] on private grounds[26] they have to be taken up and announced.[27] How is this to be understood? If [the sheaves] have no identification mark — what is there to be announced [if they are found] on private grounds? It must therefore be that they have an identification mark, and still it is stated that [if found] in a public thoroughfare they belong to the finder. Consequently [it must be

assumed that] an identification mark which is liable to be trodden on is not [deemed to be] an identification mark, which is a refutation of Raba! — Raba may answer you: In reality they have no identification mark; and as to your question, 'What is there to be announced [if they were found] on private grounds?', [the answer is:] The place [where they were found] is announced.[28] But Rabbah says that the place is no identification mark. For it has been stated: [In regard to] the place — Rabbah says, it is not considered an identification mark, but Raba says, it is an identification mark.

Come and hear: Small sheaves [which are found] in a public thoroughfare belong to the finder, but [if found] on private grounds they have to be taken up and announced. Big sheaves, however, whether [they are found] in a public thoroughfare or [are found] on private grounds, have to be taken up and announced. How does Rabbah explain it,[29] and how does Raba explain it?[30] — Rabbah explains it according to his view: By the identification mark.[31] Raba explains it according to his view: By the place.[32] Rabbah explains it according to his view — by the identification mark — [and the reason why] small sheaves [found] in a public thoroughfare belong to the finder [is] that

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(1) And the produce is not deemed capable of being rendered ritually unclean (Tosef. Mak. III).

(2) The feeling of pleasure is not deemed to have a retrospective effect. In the same way we ought to say that 'anticipated abandonment' has no retrospective effect, which would contradict the view of Raba.

(3) Lev. ibid.

(4) The spelling is יתן without a ו after the י, which may be read יִתֵּן 'he puts'. It is only the vowels that turn it into the passive יִתַּן 'it is put'.

(5) Where the owner becomes aware of the dew having come upon the produce while moisture is still there.

(6) V. p. 138. n. 12.

(7) And if the knowledge that dew descended upon the produce comes after the event, the produce is rendered capable of becoming ritually unclean if the owner is pleased with the event, provided the produce is still moist.

(8) Other versions have Simeon instead of Ishmael. Cf. infra 27a, where the version is 'Simeon b. Yohai'.

(9) Deut. XXII, 3.

(10) When the flooded river has carried off a person's goods.

(11) Regarding the restoration of lost property.

(12) Such as an article which has been carried off by a stream and cannot be retrieved by everybody.

(13) I.e., the object which has been lost in the ordinary way and may be found by anybody.

(14) If there is reason to believe that the owner was not aware of his loss at the time when it was lost, though on becoming aware he would abandon hope of its return.

(15) Cf. Sanh. (Sonc. ed.) p. 159, n. 3.

(16) And 'anticipated abandonment' is not deemed effective.

(17) Seeing that at the time when the dates are shaken down the owner is unaware of his loss and does not consciously give it up.

(18) The owner knows that some of the dates fall off the tree, and he gives them up in advance because vermin usually get at them and eat them.

(19) As the majority of the fields or gardens do not belong to orphans we do not reckon with the possibility of orphan ownership.

(20) Guarding it against ravage by vermin and creeping creatures.

(21) In such cases the finder is not allowed to keep the fruit.

(22) When the lost article is small and lies in a place where there is traffic, it is likely to be trodden on, so that the identification mark may disappear.

(23) The owner does not depend on the mark in such a case, and he gives up the article as soon as it is lost.

(24) And if the owner identifies them by the mark, he receives them back.

(25) I.e., not in connection with our Mishnah.

(26) As in a sown field which few people frequent.

(27) [Read with MS.M.: 'they have to be announced', this passage being, as the term תנן indicates, a composite of our Mishnah and the next Mishnah, 25a.]

(28) The owner then identifies the lost goods by indicating the place where he lost them.

(29) In what respect do big sheaves differ from small sheaves as regards being trodden on?

(30) In what respect do small sheaves differ from big sheaves as regards the absence of an identification mark?

(31) Which is retained in big sheaves but is lost in small sheaves.

(32) Big sheaves remain in the same place, but not small sheaves.

Talmud - Mas. Baba Metzia 23a

they are trodden on,[1] while on private grounds [the finder] has to take them up and announce them because there they are not trodden on. Big sheaves, however, whether [they are found] in a public thoroughfare or on private grounds, [the finder] has to take up and announce because, being raised, one does not tread on them. Raba, again, explains it according to his view — by the place — [and the reason why] small sheaves [found] in a public thoroughfare belong to the finder [is] that they are pushed along,[2] while on private grounds [the finder] has to announce them because they are not pushed along.[3] Big sheaves, however, whether [they are found] in a public thoroughfare or on private grounds, [the finder] has to take up and announce because being many they are not pushed along.

Come and hear: A BAKER'S LOAVES, [etc.] BELONG TO THE FINDER — but 'home-made loaves have to be announced,'[4] now what is the reason in the case of home-made loaves, obviously that they have an identification mark and one can tell that the bread belongs to this person or that person, and, no matter whether [they are found] in a public thoroughfare or on private grounds, [the finder] has to take them up and announce them. It therefore follows that an identification mark which is likely to be trodden on is a valid mark, — which is a refutation of Rabbah! — Rabbah will answer you: There[5] the reason is that one may not pass by eatables.[6] — But there are heathens?[7] Heathens [do not pass by eatables because they] are afraid of witchcraft.[8] But are there not cattle and dogs? — [The Mishnah speaks] of places where cattle and dogs are not frequent.

Are we to maintain that this [difference of opinion between Rabbah and Raba is the same] as [the following difference between] the Tannaim [of our Mishnah]: R. JUDAH SAYS: WHATSOEVER HAS IN IT SOMETHING UNUSUAL MUST BE ANNOUNCED, AS, FOR INSTANCE, IF ONE FINDS A ROUND [OF FIGS] CONTAINING A POTSHERD, OR A LOAF CONTAINING MONEY. This implies that the first Tanna [of the Mishnah] holds that these articles belong to the finder [in spite of their unusual feature].[9] Now the prevalent opinion was then that all would agree that an identification mark which might have come of itself[10] was a valid mark,[11] and that one might pass by eatables.[12] It must therefore be assumed that [the Tannaim] differ regarding an identification mark which is likely to be trodden on: One holds that it is not a valid mark, and the other holds that it is a valid mark![13] — R. Zebid replied in the name of Raba: If you assume that the first Tanna [of the Mishnah] is of the opinion that an identification mark which is likely to be trodden on is not a valid mark, and that one may pass by eatables, why should one have to announce [the finding of] home-made loaves? Therefore R. Zebid said in the name of Raba that all are of the opinion that an identification mark which is likely to be trodden on is a valid mark,[14] and that one may pass by eatables. but here [in our Mishnah the Tannaim] differ regarding an identification mark which may have, come of itself,[15] the first Tanna being of the opinion that a distinguishing mark which may have come of itself is not a valid mark, and R. Judah being of the opinion that it is a valid mark. Rabbah [on the other hand] will tell you that all agree that an identification mark which is likely to be trodden on is not a valid mark, and that one may not pass by eatables,[16] but that [the Tannaim] differ here regarding a mark which may have come of itself,[17] the first Tanna being of the opinion that it is not a valid mark, and R. Judah being of the opinion that it is a valid mark.

Some have another version.[18] The prevalent opinion was then that all would agree that an identification mark which might have come of itself was a valid mark, while an identification mark which was likely to be trodden on was not a valid mark. It must therefore be assumed that [the

Tannaim] differ as to whether one may walk on eatables or not, one holding that it is permitted, and the other holding it is not permitted?[19] — R. Zebid then replied in the name of Raba: If you assume that the first Tanna holds that an identification mark which is likely to be trodden on is not a valid mark, and that one may pass by eatables, why should one have to announce [the finding of] home-made loaves? Therefore R. Zebid said in the name of Raba that all are of the opinion that an identification mark which is likely to be trodden on is a valid mark, and that one may pass by eatables, but here [in our Mishnah the Tannaim] differ regarding an identification mark which may have come of itself, the first Tanna being of the opinion that an identification mark which may have come of itself is not a valid mark, and R. Judah being of the opinion that it is a valid mark. Rabbah [on the other hand] will tell you that all agree that an identification mark which is likely to be trodden on is not a valid mark, and that one may not pass by eatables, but that [the Tannaim] differ here regarding a mark which may have come of itself, the first Tanna being of the opinion that an identification mark which may have come of itself is not a valid mark, and R. Judah being of the opinion that it is a valid mark.

R. Zebid said in the name of Raba: The general principle in regard to a loss is: If [the loser] has said, 'Woe! I have sustained a monetary loss,' he has given it up.[20]

R. Zebid also said in the name of Raba: The law is: Small sheaves, [if found] in a public thoroughfare, belong to the finder; [if found] on private grounds they belong to the finder when [discovered in the position of things] dropped [accidentally], but [if found in the position of things] laid down [deliberately, the finder] has to take them up and announce them. Both [rulings] apply only to a [case where the lost] article has no identification mark, but in a [case where the lost] article has an identification mark it has to be announced irrespective of whether [it has been found in the position of things] dropped [accidentally] or whether [it has been found in the position of things] laid down [deliberately].

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(1) So that the identification mark disappears.

(2) They are moved about by the traffic and do not remain in the place where they were dropped.

(3) As there is very little traffic in private premises they remain in the same place.

(4) V. Mishnah, infra 25a.

(5) In the case of the loaves referred to in the Mishnah.

(6) Therefore loaves of bread will not be trodden on but will be picked up as soon as they are noticed. Cf. 'Er. 64b.

(7) Who are not likely to observe the rule laid down by the Rabbis.

(8) They are afraid to tread on eatables in case the eatables are bewitched.

(9) The first Tanna (R. Meir in our version of the Mishnah) says distinctly that rounds of figs belong to the finder, and he makes no distinction between those that contain something unusual and those that do not.

(10) As a potsherd in a round of figs — which may have got into the round accidentally or may have been put in deliberately.

(11) As it is assumed that it was done deliberately, for the purpose of identification.

(12) Therefore the first Tanna maintains that the mark is of no consequence, as if trodden on it will disappear.

(13) The first Tanna will say that as it is liable to be trodden on and to disappear it is not a valid mark, and R. Judah will say that as long as the mark is there it is valid.

(14) This accounts for the need of announcing home-made loaves.

(15) Such as money found in home-made loaves.

(16) Which explains the ruling of R. Judah in our Mishnah.

(17) V. p. 143. n. 7.

(18) According to which the difference of opinion between the Rabbis refers to the question whether one may pass by eatables or not.

(19) R. Meir would hold that it is permitted and therefore the mark is not valid, while R. Judah would hold the contrary view.

(20) And the finder is entitled to keep it.

Talmud - Mas. Baba Metzia 23b

AND STRINGS OF FISHES. Why [do they belong to the finder]? Should not the knot serve as an identification mark?[1] — [The Mishnah speaks] of a fisherman's knot which is tied so universally.[2] But should not the number of [fishes on the string] serve as a distinguishing mark? — [The Mishnah speaks] of a fixed number [of fishes].[3] R. Shesheth was asked: Is the number[4] a distinguishing mark or not? — R. Shesheth answered: You have learned it: If one finds a vessel of silver or copper or tin[5] of lead or any other kind of metal,[6] one shall not return it unless [the loser] indicates a mark, or unless he states accurately its weight. And seeing that weight is an identification mark measurement and number are also [to be deemed] identification marks.

AND PIECES OF MEAT, etc. Why [do they belong to the finder]? Should not the weight serve as a distinguishing mark? — [The Mishnah speaks] of a fixed weight.[7] But should not the piece itself, whether it be of the neck[8] or of the loin, serve as an identification mark? Has it not been taught: 'If one finds pieces of fish, or a fish which has been bitten into,[9] one has to announce [the find]; barrels of wine, oil, corn, dried figs, or olives belong to the finder'? — Here we deal with a case where there is an identification mark in the cut.[10] Thus Rabbah son of R. Huna used to cut [pieces of meat] in the shape of a triangle.[11] There is also a proof for this:[12] For he mentions [cut pieces as if they were] like the fish which has been bitten into.[13] This is conclusive.

The Master said [as quoted above]: 'Barrels of wine, oil, corn, dried figs, or olives belong to the finder.' But have we not learnt: Jars of wine and jars of oil have to be announced?[14] — R. Zera answered in the name of Rab: Our Mishnah deals with sealed [barrels].[15] 'It must thus be assumed that the Baraitha deals with open [barrels] — but open barrels constitute a deliberate loss![16] — R. Hosaia answered: [It deals with] barrels which have been stopped up.[17] Abaye says: You may even say that both [the Mishnah and the Baraitha] deal with sealed [barrels], yet there is no contradiction: Here[18] [the law refers to the time] before the opening of the cellars;[19] there [it refers to the time] after the opening of the cellars.[20] Thus R. Jacob b. Abba found a barrel of wine after the opening of the cellars, and when he appeared before Abaye the latter said to him: Go and take it for yourself.[21]

R. Bibi asked of R. Nahman: Is the place [where an article is found] an identification mark or not? — [R. Nahman] answered him: You have learned it: If one finds barrels of wine, or of oil, or of corn, or of dried figs, or of olives, they belong to him. Now if you were to assume that the place [where an article is found] is an identification mark [the finder] ought to announce the place![22] — R. Zebid answered: Here we deal with [barrels found] on the river-bank.[23] R. Mari said: For what reason did the Rabbis maintain that the river-bank does not constitute an identification mark? Because we say to him:[24] As it happened to you, so it may have happened to your neighbour.[25] Some have another version: R. Mari said: For what reason did the Rabbis maintain[26] that the place constitutes no identification mark? Because we say to him: As it happened to you in this place, so it may have happened to your neighbour in this [same] place.

Once a man found some pitch in a winepress. So he appeared before Rab, and the latter said to him: Go and take if for yourself. When [Rab] saw that he hesitated [to do so] he said to him: Go and share it with my son Hiyya. Shall we then say that Rab is of the opinion that the place [where an article is found] does not constitute an identification mark? — R. Abba answered: It was appropriated because it[27] was deemed to have been abandoned by the owners, as it was seen that weeds had grown upon it.[28]

R. SIMEON B. ELEAZAR SAYS, etc. What is meant by 'anfuria'?[29] Rab Judah said in the name of Samuel: New vessels which one's eye has not yet sufficiently noted.[30] — In what circumstances? If there is on them an identification mark — what does it matter if the eye has not yet sufficiently

noted them? If there is no identification mark on them-what does it matter if the eye has sufficiently noted them?[31] — Admittedly there is no identification mark on them. But the point [as explained by Rab Judah] is important in regard to the question whether the [lost vessels] should be returned to [a claimant who is] a learned man[32] [and who recognises the vessels] by sight:[33] If [it is a case where] the eye has sufficiently noted [the lost vessels] he is sure to know them, and we give them back to him. But [in a case] where the eye has not sufficiently noted them he cannot be sure to know them, and we do not give them back to him. For Rab Judah said in the name of Samuel: In the following three matters learned men do conceal the truth: In matters of a tractate,[34] bed,[35]

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(1) Cf. supra 20b; infra 25b.

(2) The kind of knot which fishermen use everywhere and which therefore cannot be regarded as an identification mark.

(3) The number of fishes which fishermen usually hang on the same string, so that there is nothing distinctive about it.

(4) Var. loc., weight instead of number. [This apparently is the correct reading, as is shown by what follows, unless we omit 'measurement' in the last sentence of this paragraph. There is however also a reading: 'Is the measurement, number and weight etc.?' v. D.S.]

(5) **

(6) [So MS.M., cur. edd.: 'vessels'.]

(7) The usual weight of pieces of meat cut by butchers for sale. Cf. p. 145. nn. 3-4.

(8) [Or, 'rib'.]

(9) This forms an identification mark.

(10) The pieces of fish referred to in the quoted Baraitha are distinguishable by reason of the peculiar shape into which they are cut.

(11) Which made them distinguishable so that they remained Kasher even when they were lost sight of.

(12) The context bears out the correctness of the assumption that the shape of the pieces was peculiar and served as an identification mark.

(13) Which is obviously recognisable because of the identification mark.

(14) Infra 25a.

(15) Barrels which had been opened for the purpose of taking a sample of the wine, and were sealed again by the vendor with his own (distinctive) seal before delivery.

(16) Barrels of wine which have been left open become unfit for use (cf. Ter. VIII, 4), and the person who leaves it open knows that he is incurring a loss.

(17) But not sealed — so that there is no identification mark, while the wine is fit to be used.

(18) In the Mishnah.

(19) Before the time when the sale and delivery of the barrels of wine begins, and when the barrels are still generally unsealed. If one vendor then sealed a barrel and sold it the seal constitutes an identification mark.

(20) When the sealing of the barrels has become general, and the seal no more constitutes an identification mark.

(21) He had a right to keep the found barrel as it was not deemed to have an identification mark.

(22) So that the loser could claim the articles by indicating the place where he lost them.

(23) The quay where barrels are unloaded from the boats. Such a place cannot be regarded as an identification mark, and the indication of the place would not entitle one to reclaim the lost barrel.

(24) To the loser.

(25) Other people may have left barrels of wine there by mistake.

(26) [Read preferably with some texts, 'What is the reason of the one who maintains, etc.?']

(27) Lit., 'they considered the fact that it, etc.'

(28) Which showed that the pitch had been there for a long time and had been given up by the owner.

(29) אנפוריא merchandise. [It is connected in dictionaries with the Gr. **]

(30) As they have not been sufficiently long in use, and they cannot be properly recognised when seen again.

(31) If there is nothing particular about them to distinguish them from other vessels the fact that they have been long in use, and that their shape etc. has been fully noted, should make no difference.

(32) Who is not likely to claim goods to which he is not entitled.

(33) Cf. supra 19a.

(34) If he asked whether he is familiar with a certain tractate of the Talmud he will modestly say 'no' — even though in

fact he is familiar with it.

(35) This is explained in various ways. According to Rashi it refers to a question which may be put to a scholar regarding the performance of his conjugal duties, and to which he may decline to give a correct answer because of a sense of delicacy.

Talmud - Mas. Baba Metzia 24a

hospitality.[1] What is the point [in this observation]? — Mar Zutra said: [It is important in regard to the question] of returning a lost article, [recognised] by sight: If we know that [the claimant] conceals the truth in those three matters only we give it back to him, but if he does not speak the truth also in other matters we do not give it back to him. Mar Zutra the pious once had a silver vessel stolen from him[2] in a hospice. When he saw a disciple wash his hands and dry them on someone else's garment he said, 'This is the person [who stole the vessel], as he has no consideration for the property of his neighbour.' [The disciple] was then bound, and he confessed.

It has been taught: 'R. Simeon b. Eleazar admits that new vessels which the eye has sufficiently noted have to be announced. And the following new vessels which the eye has not sufficiently noted have not to be announced: such as — poles of needles,[3] knitting needles, and bundles of axes. All these objects mentioned above are permitted[4] only if they are found singly, but if found in twos one must announce them.' What are badde ['poles']? Rods. And why are they called badde ['poles']? Because an object on which things hang is called 'bad'[5] — as is stated there:[6] One leaf on one branch ['bad']. 'R. Simeon b. Eleazar also said: If one rescues anything from a lion, a bear, a leopard, a panther, or from the tide of the sea, or from the flood of a river, or if one finds anything on the high road, or in a broad square, or in any place where crowds are frequent, it belongs to the finder — because the owner has given it up.[7]

The question was asked: Did R. Simeon b. Eleazar say this [with regard to things found in places] where the majority of the people are heathens,[8] but not where the majority are Israelites, or [did he say this] also [with regard to things found in places] where the majority are Israelites? And if you come to the conclusion that [he said this] also where the majority are Israelites do the Rabbis differ from him or not? And if you come to the conclusion that they differ from him — they would certainly differ where the majority are Israelites — do they differ where the majority are heathens, or not?[9] And if you come to the conclusion that they differ even where the majority are heathens, is the law in accordance with his view or not? And if you come to the conclusion that the law is in accordance with his view, does this apply only to the case where the majority are heathens, or also to the case where the majority are Israelites? — Come and hear: If one finds money in a Synagogue or a house of study, or in any other place where crowds are frequent, it belongs to the finder, because the owner has given it up.[10] Now, who is the authority that lays it down that we go according to the majority[11] if not R. Simeon b. Eleazar? You must therefore conclude that [he applies this principle] also to a case where the majority are Israelites![12] — Here we deal with [a case where the money found was] scattered.[13] But if [the money was] scattered, why refer to places where crowds are frequent? It would apply also to places where crowds are not frequent![14] — Admittedly, therefore, [the reference is to money found] in bundles,[15] but we deal here with Synagogues[16] of heathens. But how can this be applied to 'houses of study'?[17] — [The reference is to] our houses of study in which heathens stay.[18] Now that you have arrived at this conclusion [the reference to] 'Synagogues' [can] also [be explained as meaning] our Synagogues in which heathens stay.

Come and hear: If one finds therein[19] a lost object, then if the majority are Israelites it has to be announced, but if the majority are heathens it has not to be announced.[20] Now who is the authority that lays it down that we go according to the majority if not R. Simeon b. Eleazar? You must therefore conclude that R. Simeon b. Eleazar says this only where the majority are heathens, but not where the majority are Israelites! — [No.] This is the view of the Rabbis. But then you could

conclude therefrom that the Rabbis accept R. Simeon b. Eleazar's view in the case where the majority are heathens! — Admittedly, therefore, this[21] represents the view of R. Simeon b. Eleazar, and his ruling applies also to a case where the majority are Israelites, but here[21] we deal [with a case where the money was] concealed.[22] But if it was concealed, what has [the finder] to do with it? Have we not learnt: 'if one finds a vessel in a dungheap, if covered up he may not touch it; but if uncovered he must take it and announce it'?[23] — As R. papa explained:[24] [The reference is] to a dungheap which is not regularly cleared away, and which [the owner] unexpectedly decided to clear away — so here also [the reference is] to a dungheap which is not regularly cleared away, and which [the owner] unexpectedly decided to clear away.[25]

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(1) Regarding which a scholar may refuse to give correct information in order not to embarrass his host by inducing others to come and seek the latter's hospitality.

(2) [MS.M. omits 'from him'. The cup belonged accordingly to the hospice. (V. Rashi.) This version is supported by the fact that Mar Zutra acted in the case in a judicial capacity, and it is unlikely that he would act thus in a case affecting his own interests. V. Chajes. Z.H. Notes a.l.]

(3) Poles into which needles are stuck (Rashi). Some authorities leave out the word 'poles' and read 'needles' alone. Others regard the word 'poles' as separate from the word 'needles' (not as a construct but as an absolute plural form) and translate 'poles, needles,' etc.

(4) To be kept by the finder.

(5) בד the singular of בדי (poles).

(6) [So according to many texts; cur. edd., 'as we learnt' is evidently a copyist's error, as the passage cited (Suk. 44b) is not Mishnaic but Amoraic.]

(7) A.Z. 43a.

(8) [Heathens do not return lost articles (v. infra p. 152, n. 3), and consequently do not come within the provision of the law relating to the announcement of finds. Moreover, according to Tosaf., even if it were certain that the article belonged to an Israelite, there would be no need to return it because the owner, presuming that a heathen found it, would despair of recovering it. v. B.K. (Sonc. ed.) p. 666.]

(9) [In view of the principle that we do not follow the majority in money matters.]

(10) Cf. supra 21b.

(11) I.e., that in the question whether a found article is to be returned depends on considerations relating to the majority of the people that frequent the place where the article is found.

(12) As the majority of those congregating in a Synagogue are Israelites.

(13) In such a case the Rabbis also hold that the money belongs to the finder, as stated in the Mishnah, supra 21a.

(14) Scattered money has no identification mark and is given up by the owner as soon as it is lost, even if crowds do not frequent the place where it has been dropped.

(15) Which present an identification mark and are only given up when lost in a place which is frequented by crowds.

(16) כנסיות, lit., 'houses of assembly', or 'meeting places,' not Jewish houses of prayer. It is in this sense that the term is used here.

(17) Even if the term 'Synagogues' could be interpreted as meaning secular meeting places used by Gentiles, how could the term בית המדרש applied only to Colleges where Jewish law is studied and expounded, mean anything but Jewish Colleges frequented by Jews?

(18) Jewish Colleges situated outside the Jewish quarters and guarded by Gentile watchmen placed there for the purpose.

(19) In a city inhabited by Jews and heathens.

(20) Mak. II, 8.

(21) This cited Mishnah.

(22) In which case it was not lost at all, and if the majority were Israelites the finder would have to announce it.

(23) As the article may have been thrown on the dungheap accidentally (Mishnah, infra 25b).

(24) Ibid.

(25) In which case the finder must take the article away and announce it. (Cf. infra 25b.) Had the owner of the dungheap been in the habit of clearing it away regularly the person who placed the article there could not have claimed it, as the 'loss' would have been a deliberate one.

And if you wish I will say: Admittedly this is the view of the Rabbis,[1] but is it stated. 'They belong to the finder'? — It [merely] says 'He has not to announce them' [meaning that] he lets it lie,[2] and when an Israelite comes and indicates an identification mark in it he receives it.

Come and hear: R. Assi said: If one finds a barrel of wine in a town where the majority are heathens he is permitted [to keep it] as a find but he is forbidden to derive any benefit from it.[3] If an Israelite comes and indicates an identification mark in it the finder is permitted to drink it.[4] Now this is obviously in accordance with the view of R. Simeon b. Eleazar.[5] It therefore follows that R. Simeon b. Eleazar only Says this where the majority are heathens, but not where the majority are Israelites! — [No.] In reality, I will tell you. R. Simeon b. Eleazar says this also where the majority are Israelites, but R. Assi agrees with him in the one case[6] but differs from him in the other case.[7] But if [the finder] is forbidden to derive any benefit [from the barrel of wine], what purpose does the law serve [by permitting him to keep it]? — R. Ashi answered: In regard to the vessel.[8]

A certain man once found four zuz which had been tied up in a cloth and thrown into the river Biran. When he appeared before Rab Judah the latter said to him, 'Go and announce it.' But is not this [like retrieving an object from] the tide of the sea? — The river Biran is different. As it contains obstacles[9] the owner does not give up hope.[10] But does not the majority[11] consist of heathens? Hence it must be concluded that the halachah is not in accordance with R. Simeon b. Eleazar even where the majority are heathens! — [The position in regard to] the river Biran is different. For Israelites dam it up[12] and Israelites dredge it: As Israelites dam it up it may be assumed that an Israelite dropped [the coins], and as Israelites dredge it, [the loser] did not give them up.[13]

Rab Judah once followed Mar Samuel into a street of wholemeal vendors,[14] and he asked him: What if one found here a purse?[15] — [Mar Samuel] answered: It would belong to the finder. What if an Israelite came and indicated an identification mark? — [Mar Samuel] answered: He would have to return it. Both?[16] — [Mar Samuel] answered: [He should go] beyond the requirements of the law.[17] Thus the father of Samuel found some asses in a desert, and he returned them to their owner after a year of twelve months: [he went] beyond the requirements of the law.

Raba once followed R. Nahman into a street of skinners[18] — some say into a street of scholars — and he asked him: What if one found here a purse? — [R. Nahman] answered: It would belong to the finder. What if an Israelite came and indicated its identification mark? — [R. Nahman] answered: It would [still] belong to the finder. But that one keeps protesting! — It is as if one protested against his house collapsing or against his ship sinking in the sea.

Once a vulture seized a piece of meat in the market and dropped it among the palm-trees belonging to Bar Marion. When the latter appeared before Abaye he[19] said to him: Go and take it for yourself. Now, the majority [in that case] consisted of Israelites. Hence it must be concluded that the halachah is in accordance with R. Simeon b. Eleazar even where the majority are Israelites! — [The position in regard to] a vulture is different — for it is like the tide of the sea.[20] But did not Rab say that meat which has disappeared from sight is forbidden?[21] — He[22] stood by and watched it.[23]

R. Hanina once found a slaughtered kid between Tiberias and Sepphoris, and he was permitted [to appropriate] it. R. Ammi said: He was permitted [to appropriate] it as a find, according to R. Simeon b. Eleazar, and as regards the method of slaughter[24] — [it was deemed proper.] according to R. Hanania, the son of R. Jose the Galilean. For it has been taught[25] 'If one lost his kids or chickens and subsequently found them slaughtered — R. Judah forbids them, and R. Hanania the son of R. Jose the Galilean, permits them [to be eaten]. Rabbi said: The words of R. Judah seem right in a case where [the lost kids or chickens] were found on a dungheap while the words of R. Hanania, the son

of R. Jose the Galilean seem right when they were found in a house.[26] Now, seeing that they were permitted in regard to the method of slaughter, the majority must have consisted of Israelites.[27] Hence it must be concluded that the halachah is according to R. Simeon b. Eleazar even where the majority are Israelites! — Raba replied: [That was a case where] the majority [of the inhabitants were] heathens, and the majority of the slaughterers [were] Israelites.[28]

R. Ammi once found some slaughtered pigeons between Tiberias and Sepphoris. When he appeared before R. Assi — some say, before R. Johanan; others again say, in the house of study — he was told: 'Go and take them for yourself.'

R. Isaac the blacksmith once found some balls of string which were used for making nets. When he appeared before R. Johanan — some say. in the house of study — he was told: 'Go and take them for yourself.'

*MISHNAH. THE FOLLOWING OBJECTS HAVE TO BE PROCLAIMED: IF ONE FINDS FRUIT IN A VESSEL,[29] OR A VESSEL BY ITSELF, MONEY IN A PURSE,[30] OR A PURSE BY ITSELF; HEAPS OF FRUIT,[31] HEAPS OF COINS,

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(1) And it is not a case where the money was concealed. It is wrong, however, to conclude from this that the Rabbis agree with R. Simeon b. Eleazar where the majority are heathens, as their decision does not mean that the article belongs to the finder.

(2) [I.e., he retains it in his possession till an Israelite comes. V. Strashun a.l.] The fact that the majority are heathens does not, according to the Rabbis, entitle the finder to appropriate the article, v. supra. p. 151, n. 9.

(3) As the wine may have been used in connection with idol-worship and thus become יין נסך i.e., forbidden not only to be drunk by Jews but also to be utilised in any way that might yield profit or pleasure.

(4) As the owner proves to be a Jew the prohibition relating to wine used in connection with idol-worship does not arise, and as the majority of the inhabitants of the place are heathens who do not return lost articles, the owner must be assumed to have abandoned the hope of recovering the lost goods.

(5) Who maintains that in such a case the majority must be considered in deciding whether the finder is entitled to appropriate the article or not.

(6) Where the majority are heathens.

(7) Where the majority are Israelites.

(8) He may use the vessel in which the wine is contained, although he is forbidden to use the wine.

(9) Various kinds of network intended to catch the fish.

(10) As the network is likely to hold up the article floating in the river the owner hopes that the article will ultimately be recovered.

(11) Of the inhabitants of the territory through which the river Biran flows.

(12) By placing the network therein for the purpose of catching fish.

(13) He depended on the Israelites recovering the article during dredging operations and returning it to him.

(14) Where crowds congregate.

(15) Would he be entitled to keep it?

(16) Do not the two views contradict each other?

(17) I.e., in saying 'he would have to return it' R. Simeon b. Eleazar did not give a legal decision but indicated what he would regard as the proper action to take on the ground of morality. The term used (לפנים משורת הדין) means literally 'within the line of justice,' i.e. performing a good action even if one is not compelled to do so legally. Cf. B.K. (Sonc. ed.) p. 584, n. 2.

(18) Persons who deal in skins, leather and leather goods.

(19) Abaye.

(20) The owner is sure to have given up the hope of recovering the loss.

(21) As it may have been exchanged for, or replaced by, meat taken from an unclean animal or be otherwise unfit to be eaten by Jews.

(22) Bar Marion.

(23) From the time the vulture seized it until it dropped it.

(24) I.e., as regards the assumption that the kid had been slaughtered in accordance with the Jewish ritual and was therefore 'Kasher', or fit to be eaten by Jews.

(25) V. Hul. 12a.

(26) Which would show that they were unfit to be eaten.

(27) As otherwise it could not be assumed that the Jewish method of slaughter had been used.

(28) It could therefore be assumed that the Jewish method of slaughter was used, although the majority of the inhabitants were heathens. * The translation from here to the end of the tractate is by Rabbi Dr. H. Freedman.

(29) Which usually has some identification mark by which the owner may recognise it.

(30) Which also has an identification mark.

(31) Heaps of fruit or money also have identification marks, as explained in the Gemara below.

Talmud - Mas. Baba Metzia 25a

THREE COINS ON THE TOP OF EACH OTHER,[1] BUNDLES OF SHEAVES IN PRIVATE PREMISES, HOME-MADE LOAVES, FLEECES OF WOOL FROM THE CRAFTSMAN'S WORKSHOP, JARS OF WINE OR JARS OF OIL, THEY HAVE TO BE PROCLAIMED.

GEMARA. Obviously it is only when fruit is found in a vessel, or money in a purse. [that they have to be proclaimed]; but if the fruit is in front of the vessel, or the money in front of the purse, they belong to the finder. Our Mishnah thus teaches the same as our Rabbis taught [in another place]: If one finds fruit [lying] in front of a vessel, or money in front of a purse, they belong to the finder. If [the fruit is] partly in the vessel and partly on the ground, or if [the money is] partly in the purse and partly on the ground, they have to be proclaimed.

But the following contradicts it: If a man found an object lacking an identification mark at the side of an object possessing it, he is bound to proclaim [them];[2] if the identifier of the mark came and took his own,[3] the other [sc. the finder] is entitled to the object without a mark! — Said R. Zebid: There is no difficulty. The former [Baraitha] refers to a cask and flax; the latter, to a basket and fruit.[4] R. papa said: Both refer to a basket and fruit, yet there is no difficulty. The latter [Baraitha] holds good if something was still left therein; the former, if nothing was left therein.[5] Alternately, both [Baraithas] mean that nothing is left therein, yet there is no difficulty. In the latter, its [sc. the basket's] mouth is turned towards the fruit; in the former, it is not. Another alternative: in both its mouth faces the fruit, yet there is no difficulty. The former [Baraitha] treats of baskets with rims; the latter, of the baskets without.[6]

HEAPS OF FRUIT; HEAPS OF COINS. This proves that number is an identification mark![7] — [No.] Read: A heap of fruit.[8] Then it proves that place is a means of identification! [No.] Read: HEAPS OF FRUIT.[9]

THREE COINS ON TOP OF EACH OTHER. R. Isaac said: provided that they lie pyramid-wise.[10] It has been taught likewise: If a man finds scattered coins, they belong to him. If they are arranged pyramid-wise he is bound to proclaim them. Now is not this self-contradictory? [First] you state, 'If a man finds scattered coins they belong to him,' thus implying, but if they overlap,[11] he must proclaim them.[12] Then consider the latter clause: 'If they are arranged pyramid-wise, He is bound to proclaim them,' implying, however, that if they merely overlap, they are his? — All [coins] not arranged conically the Tanna designates scattered.

R. Hanina said: This was taught only of [coins of] three kings;[13] but if of one king, he need not proclaim them. How so? If they lie pyramid-wise, then even [if they are] of one king [the proclamation should be made]; if they do not lie pyramid-wise, even if they are of three kings there should be no need [to proclaim them]? — But if stated, it[14] was thus stated: 'This was taught only of

[coins of] one king, yet similar to those of three.'[15] How so? When they lie pyramidically, the broadest at the bottom, the medium-sized upon it, and the smallest on top of the middle one; in which case we assume that they were placed thus. If, however, they are of one king, all being of equal size, then even if they are lying upon each other they belong to him [the finder]: we assume that they fell thus together by mere chance. R. Johanan [however] maintained: Even if of the same king,[16] he must proclaim them.[17]

Now, what does he proclaim — the number?[18] Then why particularly three — even if two it should be the same? — Said Rabina: He announces 'coins'.[19]

R. Jeremiah propounded: What if they were disposed in a circle,[20] in a row, triangularly.[21] or ladderwise?[22] — Solve at least one [problem]. For R. Nahman said in Rabbah b. Abbuha's name: Wherever a chip can be inserted[23] whereby they [the coins] may be lifted simultaneously, a proclamation must be made.[24]

R. Ashi propounded:

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(1) V. Gemara below.

(2) E.g.. a purse and money; if the purse is identified, the money too belongs to its owner. This contradicts the Baraitha just quoted.

(3) But disclaimed ownership of the other object.

(4) The cask is identifiable, but not the flax; similarly the basket and the fruit. Now, had the flax fallen out of the cask, some would have remained therein; hence it is assumed that they were lying together by chance, and so the flax belongs to the finder. Fruit, however, can easily roll out of its basket entirely, and therefore both are assumed to belong to the same person.

(5) R. Papa would appear to reject R. Zebid's distinction. Rashi, however, observes that fruit baskets generally had an inside rim, which would prevent ail the fruit from rolling out. In that case, R. Papa and R. Zebid may agree, R. Papa referring to baskets with rims, R. Zebid to rimless ones. In point of fact, whereas Maimonides accepts R. Papa's explanation but rejects R. Zebid's, shewing that he holds them contradictory. Asheri and the Tur accept both.

(6) V. n. 3.

(7) Since fruit and.coins cannot be identified, the only possible distinguishing feature is the number of heaps.

(8) I.e., though the Mishnah employs the plural, that is only in a general way; yet the same holds good even of a single heap. In that case, of course, there is no number, the place where it was found being the mark of identification.

(9) I.e., though it has just been stated that the plural may be generic, on the other hand it may be particularly used, in which case number is the distinguishing feature. Hence the Mishnah merely proves that either number or place is an identification mark, but not both, and it cannot be shewn which.

(10) Conically, a large coin at the bottom, a smaller one above it, and so on. These must have been placed so, and the owner will be able to identify them by the manner of their disposal. — The reason of such disposal might have been that the owner found himself bearing the money on the Sabbath, or on Friday just before the commencement of the Sabbath; v. Shab. 153b.

(11) Lying partly on each other and partly on the ground. — Rashi. Jast: but if they lie irregularly, some of them piled, others scattered.

(12) Because they would not have fallen, but must have been placed thus.

(13) Each coin being of a different reign.

(14) The statement of R. Hanina.

(15) I.e., of different sizes.

(16) I.e., of equal size.

(17) Since they are arranged exactly on top of each other.

(18) That three coins were found, and the owner identifies them by their arrangement.

(19) Without stating a number; two being the smallest possible number of 'coins', it cannot be accepted as a mark of identification; hence the find is not proclaimed for less than three. The translation and explanation follows Asheri, who regards the question as bearing directly on the Mishnah and not on the views of R. Hanina and R. Johanan, as Rashi

appears to regard it.

(20) Lit., ‘like a bracelet’.

(21) Lit., ‘as a tripod.’

(22) The greater part of the middle coin lying on the bottom one, and the greater part of the top coin lying on the middle one.

(23) [Adopting reading of some texts; cur. edd.: ‘between them’.]

(24) For they must have been placed so. Hence a proclamation is necessary if they lay ladderwise.

Talmud - Mas. Baba Metzia 25b

What if they are arranged as the stones of a Merculis way-mark?[1] — Come and hear: For it has been taught: If one finds scattered coins, they belong to him; [but if they lay] as the stones of a Merculis way-mark, he must proclaim them. And thus are the stones of a Mercules way-mark arranged: one at each side, and a third on top of both.[2]

Our Rabbis taught: If one finds a sela’ in a market place, and then his neighbour accosts him and says. ‘It is mine; it is new, a Nero coin or of such and such an emperor’ — he is ignored.[3] Moreover, even if his name is written upon it, his claim is still rejected,[4] because an identification mark is of no avail in respect to a coin, for one can say, He may have expended it and someone else lost it.[5]

MISHNAH. IF A MAN FINDS FLEDGLINGS TIED TOGETHER BEHIND A FENCE OR WALL, OR IN THE PATHWAYS THROUGH FIELDS, HE MUST NOT TOUCH THEM.[6] IF A MAN FINDS A VESSEL IN A DUNGHEAP: IF COVERED UP, HE MUST NOT TOUCH IT;[7] IF UNCOVERED. HE MUST TAKE AND PROCLAIM IT.

GEMARA. What is the reason?[8] — Because we say, A person hid them here, and if he [the finder] takes them, their owner has no means of identifying them. Therefore he must leave them until their owner comes and takes them. But why? let the knot be a means of identification![9] — Said R. Abba b. Zabda in Rab's name: They were tied by their wings, everyone tying them thus. Then let the place [where they were found] be an identification mark. — Said R. ‘Ukba b. Hama: It refers to such that can hop. But if they hop, they may have come from elsewhere, and should be permitted![10] — One may surmise that they came from elsewhere, but one can also surmise that a person hid them there: hence it is a case of doubtful placing, and R. Abba b. Zabda said in Rab's name: Whenever it is doubtful if an article was left [in a certain spot], one must not take it in the first instance; but if he took, he need not return it.

IF A MAN FINDS A VESSEL ON A DUNG HEAP: IF COVERED UP, HE MUST NOT TOUCH IT; IF EXPOSED, HE MUST TAKE AND PROCLAIM IT. But the following contradicts it: If one finds an article hidden in a dungheap, he must take and proclaim it, because it is the nature of a dungheap to be cleared away![11] — Said R. Zebid: There is no difficulty. The one refers to casks and cups; the other to knives and forks: in the case of casks and cups, he must not touch them;[12] in the case of knives and forks, he must take and proclaim them.[13] R. papa said: Both refer to casks and cups, yet there is no difficulty. The one refers to a dungheap that is regularly cleared away; the other, to one that is not cleared away regularly.[14] ‘A dungheap which is regularly cleared away’! — But then it is a voluntary loss?[15] — But it refers to a dungheap which was not regularly cleared away, but he [its owner] decided to clear it out.[16] Now, as for R. papa, it is well; on that account[17] it is stated, ‘because it is the nature of a dunghill to be cleared away.’[18] But according to R. Zebid, what is meant by, ‘because it is the nature of a dunghill to be cleared away’? — [This:] Because it is the nature of a dunghill that small articles should be cleared therein.[19]

MISHNAH. IF HE FINDS [AN ARTICLE] AMIDST DEBRIS OR IN AN OLD WALL,[20] THEY BELONG TO HIM. IF HE FINDS AUGHT IN A NEW WALL: IF IN THE OUTER HALF

[THEREOF], IT IS HIS; IN THE INNER HALF, IT BELONGS TO THE OWNER OF THE HOUSE.[21] BUT IF IT [THE HOUSE] USED TO BE RENTED TO OTHERS, EVEN IF HE FINDS [ARTICLES] IN THE HOUSE ITSELF, THEY BELONG TO HIM.

GEMARA. A Tanna taught: Because he [the finder] can say to him;[22] They belonged to Amorites.[23] Do then only Amorites hide objects. and not Israelites?[24] — This holds good only

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(1) I.e., a way-mark dedicated to Merculis or Mercurius, a Roman divinity identified with the Greek Hermes. The Gemara states below how these were disposed. Our text actually reads 'Kulis', and Tosaf. conjectures that this was the true name of the deity, but the Hamburg MS. reads 'Merculis'.

(2) [The Baraitha has in mind the trilithon or dolmen erected in front of the image.]

(3) Lit., 'he has said nothing'.

(4) V. last note.

(5) Lit., 'it fell from another person.'

(6) These places are semi-guarded, and therefore the birds may have been placed there, as explained in the Gemara.

(7) Because the covering shews that it was placed there.

(8) For the first ruling in the case of the fledglings.

(9) The owner can say where they were tied together.

(10) Since the owner has no means of identifying them.

(11) And if he does not take it, a heathen or an unscrupulous Jew may do so when the heap is cleared and keep it for himself. — Now, 'hidden' means that it is covered up, yet it is stated that he must take and proclaim it.

(12) These are too large to have been thrown there inadvertently.

(13) Because they may have been thrown there by accident.

(14) In the former case the finder must take and proclaim them; in the latter, he must not touch them.

(15) Why then proclaim them?

(16) V. supra p. 151.

(17) Sc. the distinction he draws.

(18) I.e., at any time.

(19) Hence a knife or fork (v. p. 159 n. 8) must be taken and proclaimed.

(20) These had cavities in which the objects could be placed.

(21) The reference is to a wall fronting a public thorough. fare. If the find is in the 'outer half,' i.e., the part facing the street, it must have been placed there by a passer-by, who has forgotten it; therefore it belongs to the finder. If in the 'inner half,' i.e., the part facing the house it encloses, the owner of the house must have placed it there.

(22) The owner of the ruins or the old wall.

(23) I.e., to one of the races that formerly inhabited Palestine.

(24) Surely if the article is in the inner half of the cavity, nearer the house, it should belong to the owner of the house.

Talmud - Mas. Baba Metzia 26a

if it [the find] is exceedingly rusty.[1]

IN A NEW WALL: IF IN THE OUTER HALF [THEREOF], IT IS HIS; IN THE INNER HALF, IT BELONGS TO THE OWNER OF THE HOUSE. R. Ashi said: A knife follows its handle, and a purse its straps.[2] Then when our Mishnah states, IF IN THE OUTER HALF [THEREOF], IT IS HIS; IN THE INNER HALF, IT BELONGS TO THE OWNER OF THE HOUSE: let us see whether the handle or the straps point outwards or inwards? — The Mishnah refers to tow-cotton and bar metal.[3]

A Tanna taught: If the wall [cavity] was filled therewith, they divide.[4] But is that not obvious? — It is necessary [to state this] only when it [the cavity or the wall] slopes to one side: I might have thought that it [the article found there] had slid down.[5] Therefore we are taught [otherwise].

BUT IF IT [THE HOUSE] USED TO BE RENTED TO OTHERS, EVEN IF ONE FINDS

[ARTICLES] IN THE HOUSE ITSELF, THEY BELONG TO HIM. Why so: let it be assigned to the last [tenant]?[6] Did we not learn: Money found in front of cattle dealers at all times is [accounted as] tithe; on the Temple Mount, it is hullin; in [the rest of] Jerusalem, at any other part of the year, it is hullin; at the Festival season, it is tithe.[7] And R. Shemaia b. Ze'ira observed thereon: What is the reason? Because the streets of Jerusalem[8] were swept daily. This proves that we assume: the earlier [losses] have gone, and these [coins] are different ones. So here too, the earlier [deposits] have gone, and these belong to the last [tenant]?[9] — Said Resh Lakish on the authority of Bar Kappara: It means e.g., that he [the owner of the house] had let it as a temporary lodging to three people [simultaneously].[10] Then you may infer that the halachah agrees with R. Simeon b. Eleazar even in respect to a multitude of Israelites![11] — But, said R. Manassia b. Jacob, it means e.g., that he had let it as a temporary lodging to three gentiles. R. Nahman said in Rabbah b. Abbahu's name: It may even refer to three Jews.[12] What then is the reason? It is because the man who lost it despairs thereof, arguing thus: 'Let us see, no other person but these was with me. Now, I have many times mentioned it in their presence so that they should return it to me, but they did not do so. Will they now return it![13] Had they intended to return it, they would have returned it to me,[14] hence the reason of their not returning it to me is that they intend stealing it.'[15] Now, R. Nahman follows his general reasoning. For R. Nahman said: If a person sees a sela'

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(1) Shewing that it was left there long ago. [An anticipation of modern archaeological research, v. Krauss, S., Hasoker, I, p. 131.]

(2) If a knife is found in a wall cavity, if the handle points inwards, it belongs to the owner of the house; outwards, it is assumed to have been placed there by a passer-by; similarly with a purse and its straps or laces.

(3) I.e., to articles where this criterion is inapplicable.

(4) Half belongs to the house owner and half to the finder.

(5) But was originally at the upper portion of the cavity, and the ownership should be determined accordingly.

(6) I.e., let the last tenant be assumed the owner (Tosaf.).

(7) Shek. VII, 2. If money is found in Jerusalem, the question arises, what is its status — is it ordinary secular coins (hullin) or tithe money? This was because the second-tithe (v. infra p. 517. n. 5) had to be eaten in Jerusalem or its monetary equivalent expended there, which money likewise was governed by the law of second tithe. Now, most of the flesh eaten in Jerusalem was bought with second tithe money, and generally took the form of peace offerings; when one could not stay long enough in Jerusalem to expend all the tithe money there, he would distribute it amongst the poor, or give it to his friends in Jerusalem. Consequently. if money is found in front of cattle dealers, whatever the time of the year, it is assumed to be of the second tithe. On the other hand, if found on the Temple Mount, we assume it to be hullin, even at Festival time, when most of the money handled is tithe, because the greater part of the year is not Festival, and then ordinary hullin is in circulation, and this money might have been lost before the Festival. But if found in the other streets of Jerusalem, a distinction is drawn, as stated in the text.

(8) But not the Temple Mount.

(9) Because before a tenant leaves his house he makes a thorough search to see that he leaves nothing behind.

(10) In addition to the tenant (so it appears to be understood by Tosaf. a.l. s.v. לשלשה and אפילו). Therefore whichever tenant lost it would have abandoned it in despair of its being returned, in accordance with the view stated by R. Simeon b. Eleazar supra 24a: three constitute a multitude.

(11) V. supra 24a.

(12) And still it does not follow that the halachah rests with R. Simeon b. Eleazar.

(13) After a lapse of some time. Surely not!

(14) And not assumed that it was lost by a former tenant.

(15) Thus in these special circumstances the loser may despair of the return thereof. But normally we do not follow the ruling of R. Simeon in the case of the majority of Israelites.

fall from one of two people [who are together], he must return it. What is the reason? He who dropped it does not despair thereof, for he argues: 'Let us see, no other person but this one was with

me; then I will seize him and say to him, You did take it.' But in the case of three[1] he need not return it. What is the reason? — Because he who dropped it certainly abandons it, arguing to himself, 'Let us see: there were two with me; if I accuse the one he will deny it, and if I accuse the other, he will deny it.'

Raba said: As for your ruling that in the case of three he need not return it, that holds good only if it [the coin lost] lacks the value of a perutah[2] for each [of the three]; but if it contains the equivalent of a perutah for each person, he is bound to return it. What is the reason? They may be partners, and therefore do not abandon it.[3] Others state. Raba said: Even if it is worth only two perutahs, he must return it. What is the reason? They may have been partners, and one renounced his portion in the owner's favour.[4]

Raba also said: If a man sees a sela' fall, if he takes it before abandonment, intending to appropriate it,[5] he transgresses all [the following injunctions]: Thou shalt not rob;[6] thou shalt restore them;[7] and, thou mayest not hide thyself.[8] And even if he returns it after abandonment, he merely makes him [the loser] a gift, whilst the offence he has committed stands.[9] If he picks it up before abandonment, intending to return it, but after abandonment decides to appropriate it, he violates [the injunction,] thou shalt restore them.[10] If he waits until the owner despairs thereof and then takes it, he transgresses only, thou mayest not hide thyself.[11]

Raba also said: If a man sees his neighbour drop a zuz in sand, and then finds and takes it, he is not bound to return it. Why? He from whom it fell abandons it, and even if he is seen to bring a sieve and sift [the sand], he may merely be reasoning. 'Just as I dropped something, so may another have lost an article, and I will find it.'[12]

MISHNAH. IF A MAN FINDS [AN ARTICLE] IN A SHOP, IT BELONGS TO HIM.[13] BETWEEN THE COUNTER AND THE SHOPKEEPER ['S SEAT], TO THE SHOPKEEPER.[14] [IF HE FINDS IT] IN FRONT OF A MONEY-CHANGER, IT BELONGS TO HIM [THE FINDER]; BETWEEN THE STOOL[15] AND THE MONEY-CHANGER, TO THE MONEY-CHANGER. IF ONE BUYS PRODUCE FROM HIS NEIGHBOUR, OR IF HIS NEighbour SENDS HIM PRODUCE, AND HE FINDS MONEY THEREIN, IT IS HIS. BUT IF THEY [THE COINS] ARE TIED UP, HE MUST TAKE AND PROCLAIM THEM.[16]

GEMARA. R. Eleazar said: Even if they [the articles found] are lying on the [money-changer's] table [they belong to the finder]. We learnt: [IF HE FINDS IT] IN FRONT OF A MONEY-CHANGER, IT BELONGS TO HIM. [This implies,] but if it was on the table, it belongs to the money-changer.[17] Then consider the second clause: BETWEEN THE STOOL AND THE MONEY-CHANGER, TO THE MONEY-CHANGER; [implying,] but if on the table, it is his [the finder's], But [in truth] no inference can be drawn from this.[18] And whence does R. Eleazar know this? — Said Raba: Our Mishnah presented to him a difficulty. Why teach particularly, BETWEEN THE STOOL AND THE MONEY-CHANGER. IT BELONGS TO THE MONEY-CHANGER? Let it state. 'on the table,' or, 'If one finds [an article] in a money-changer's shop.' just as the first clause teaches, IF ONE FINDS [AN ARTICLE] IN A SHOP, IT BELONGS TO HIM. Hence it must follow that even if it lay on the table, it is his.[19]

IF ONE BUYS PRODUCE FROM HIs NEIGHBOUR etc. Resh Lakish said on R. Jannai's authority: This refers only

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(1) If it was dropped by one of three persons.

(2) Cf. Mishnah, infra 55a.

(3) When one discovers the coin gone, he thinks that his partner may have taken it as a practical joke. The stranger therefore picks it up before abandonment, and so must return it.

(4) Hence the two perutahs belong to two, i.e., a perutah for each, so that the article comes within the ambit of theft, if taken before abandonment.
(5) For it is regarded as theft if he picks it up then with the intention of keeping it.
(6) Lev. XIX, 13.
(7) Deut. XXII, 1.
(8) Ibid. 3-sc. from taking up and returning a lost article.
(9) Lit., 'he has committed it.'
(10) Because 'thou shalt not rob' is applicable only when the action itself is committed with that intention. [Nor is the injunction. 'thou mayest not hide thyself' applicable where the desire to appropriate it came to him after abandonment; v. Rashi and Tosaf.]
(11) Since he takes it after abandonment, he is not guilty of robbery, nor must he return it. But by waiting until then, he 'hid himself,' i.e., refrained from taking the find at the proper time.
(12) But he has no hopes of finding his own, which he has already abandoned. Therefore the finder need not return it.
(13) This refers to an article which cannot be identified. Since any customer might have dropped it, the shopkeeper has no particular claim to it; whilst the loser must have abandoned it, since it bears no mark of identification. Asheri, however, maintains that it refers even to an article which can be identified, because the loser argues to himself, 'In all probability the shopkeeper would have been the first to find it, and since I have complained of my loss in his presence and he has not responded, he evidently intends to keep it.' Therefore the loser abandons it, and so the finder may keep it. (V. supra 26a for a similar argument.)
(14) Customers having no access to that spot, the shopkeeper must have dropped it there.
(15) [The chest attached to the table in front of the money-changer, wherein the money was placed; v. Krauss, TA, II. 411.]
(16) The manner of tying, or the number of coins, can prove ownership.
(17) 'IN FRONT' denotes on the ground.
(18) It neither refutes nor supports R. Eleazar.
(19) I.e., these difficulties force him to translate 'IN FRONT OF A MONEY-CHANGER as meaning even on his table, though generally the phrase connotes on the ground.

Talmud - Mas. Baba Metzia 27a

to one who purchases from a merchant;[1] but if one buys from a private individual, he is bound to return [the coins].[2] And a tanna recited likewise before R. Nahman: This refers only to one who purchases from a merchant: but if from a private individual, he is bound to return [the coins]. Thereupon R. Nahman observed to him: 'Did then the private individual thresh [the grain] himself?'[3] 'Shall I then delete it?' he enquired. — 'No,' he replied; 'interpret the teaching of one who threshed [the grain] by his heathen slaves and bondswomen.[4]

MISHNAH. NOW, THE GARMENT TOO WAS INCLUDED IN ALL THESE: WHY THEN WAS IT SINGLED OUT?[5] THAT AN ANALOGY MIGHT BE DRAWN THEREWITH, TEACHING: JUST AS A GARMENT IS DISTINGUISHED IN THAT IT BEARS IDENTIFICATION MARKS AND IS CLAIMED, SO MUST EVERYTHING BE ANNOUNCED, IF IT BEARS IDENTIFICATION MARKS AND IS CLAIMED.[6]

GEMARA. What is meant by IN ALL THESE? — Said Raba: In the general phrase, [and in like manner shalt thou do] with every lost article of thy brother.[7]

Raba said: Why should the Divine Law have enumerated ox, ass, sheep and garment?[8] They are all necessary. For had the Divine Law mentioned 'garment' alone, I would have thought: That is only if the object itself can be attested, or the object itself bears marks of identification. But in the case of an ass, if its saddle is attested or its saddle bears marks of identification,[9] I might think that it is not returned to him. Therefore the Divine Law wrote 'ass,' to shew that even the ass [too is returned] in virtue of the identification of its saddle. For what purpose did the Divine Law mention

'ox' and 'sheep'?' — 'Ox', that even the shearing of its tail, and 'sheep', that even its shearings [must be returned].[10] Then the Divine Law should have mentioned 'ox', to shew that even the shearing of its tail [must be returned], from which the shearings of a sheep would follow a fortiori? — But, said Raba, 'ass,' mentioned in connection with a pit,[11] on R. Judah's view, and 'sheep' in connection with a lost article, on all views, are [unanswerable] difficulties.[12] But why not assume that it comes [to teach] that the dung [too must be returned]? — [The ownership of] dung is renounced.[13] But perhaps its purpose is to teach the law of identification marks? For it is a problem to us whether identification marks are Biblically valid [as a means of proving ownership] or only by Rabbinical law; therefore Scripture wrote 'sheep' to shew that it must be returned even on the strength of identification marks, thus proving that these are Biblically valid. — I will tell you: since the Tanna refers to identification marks in connection with 'garment', for he teaches, JUST AS A GARMENT IS DISTINGUISHED IN THAT IT BEARS IDENTIFICATION MARKS AND IS CLAIMED, SO MUST EVERYTHING BE ANNOUNCED, IF IT BEARS IDENTIFICATION MARKS AND IS CLAIMED, it follows that the purpose of 'sheep' is not to teach the validity of identification marks.[14]

Our Rabbis taught: [And so shalt thou do with all lost things of thy brother's] which shall be lost to him:[15] — this excludes a lost article worth less than a perutah. R. Judah said: And thou hast found it[16] — this excludes a lost article worth less than a perutah.[17] Wherein do they differ? — Said Abaye: They differ as to the texts from which the law is derived: one Master deduces it from, 'which shall be lost to him;' the other, from, 'and thou hast found it.'[18] Now, he who derives it from, 'which shall be lost to him,' how does he employ, 'and thou hast found it?' — He requires it for Rabbanai's dictum. For Rabbanai said: And thou hast found it implies even if it has come into his possession.[19] Now, he who deduces it from, 'and thou hast found it,' how does he utilize, 'which shall be lost to him?' — He needs it for R. Johanan's dictum. For R. Johanan said on the authority of R. Simeon b. Yohai:[20] Whence do we know that a lost article swept away by a river is permitted [to the finder]? From the verse, 'And so shalt thou do with all the lost things of thy brother which shall be lost to him and thou hast found it': [this implies.] that which is lost to him but is available[21] to others in general, thus excluding that which is lost to him and is not available to others. And the other, whence does he infer Rabbanai's dictum? — He derives it from, and thou hast found it.[22] And the other, whence does he know R. Johanan's dictum? — From, [which shall be lost] to him.[23] And the other?[24] — In his opinion, to him has no particular significance.

Raba said: They differ in respect of [a loss worth] a perutah, which [subsequently] depreciated.[25] On the view that it is derived from, 'which shall be lost to him,' there is [the loss of a perutah]; but according to him who deduces it from, 'and thou hast found it,' there is not [a find of a perutah]. Now, he who emphasizes, 'which shall be lost' — surely, 'and thou hast found it,' must also be applicable, which is not [the case here]! — But they differ in respect of [an article now worth] a perutah, having appreciated.[26] On the view that it is deduced from, 'and thou hast found it,' there is [the find of a perutah]; whereas according to him who deduces it from, 'which shall be lost,' there is not [the loss of a perutah]. Now, he who emphasizes, 'and thou host found it' — surely, 'which shall be lost,' must also be applicable, which is not [the case here]! — But they differ in respect of [an article worth] a perutah, which fell and then rose in value again.[27] On the view that it is derived from, 'which shall be lost.' there is [the loss of a perutah]; but according to the opinion that it is inferred from, 'and thou host found it,' it must have had the standard of a 'find' from the time of being lost until found.

The scholars propounded: Are identification marks [legally valid] by Biblical or merely by Rabbinical law? What is the practical difference? —

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(1) Who himself buys from many people, so that the original ownership cannot be traced.

(2) 'Private individual' means one who grows his own produce.

(3) The money might have been lost by one of his workmen.
(4) These have no rights of ownership, and even if they lost the money, it still belongs to their master.
(5) Lit., 'did it go forth.'
(6) Lit., 'it has claimants'. The last phrase excludes articles which the owner has abandoned. — The whole Mishnah is explained in the Gemara.
(7) Deut. XXII, 3. — The 'singling out' of a garment is in the same verse: and in like manner shalt thou do with his garment.
(8) Thou shalt not see thy brother's ox or his sheep go astray, and hide thyself from them: thou shalt in any case return them unto thy brother . . . . In like manner shalt thou do with his ass, and so shalt thou do with his garment. — Ibid. 1, 3.
(9) But not the ass itself.
(10) If the finder had occasion to shear these animals while in his Possession.
(11) Ex. XXI, 33: And if a man shall open a pit . . . and on ox or an ass fall therein.
(12) V. B.K. 54a. The Rabbis maintain that the maker of the pit is not responsible if a man or utensils fall therein, interpreting, 'ox,' but not man, 'ass,' but not utensils. R. Judah, however, maintains that he is responsible for utensils: hence the difficulty, why mention 'ass?'
(13) Hence it need not be returned.
(14) Though it is stated below that the Tanna may have mentioned identification marks in connection with 'garment' casually, yet that is sufficient to prove that in his opinion the purpose of 'sheep' is certainly not to prove their validity.
(15) Literal rendering of Deut. XXII, 3. (E.V.: which he hath lost.)
(16) Ibid.
(17) That which is not worth a perutah is neither a loss nor a find.
(18) But there is no difference in actual law.
(19) Lit., 'hand.' V: supra. p. 2.
(20) [Var. lec., 'b. Jehozadak,' v. supra p. 139. n. 4.]
(21) Lit., 'found.'
(22) [ומצאתה in the perfect following the imperfect אשר תאבד is taken to denote the pluperfect.]
(23) Whereas his own deduction that the law applies only to a loss worth a perutah, is from 'lost.'
(24) What does he derive from, 'to (from) him'?
(25) I.e., when lost it was worth a perutah, but not when found.
(26) When lost, it was not worth a perutah, but its value had increased to a perutah by the time it was found.
(27) When lost, it was worth a perutah; then its value fell, but when found it was again worth a perutah.

Talmud - Mas. Baba Metzia 27b

In respect of returning a woman's divorce on the strength of identification marks:[1] should you say that they are Biblically [valid], we return it; but if only by Rabbinical law the Rabbis enacted this measure for civil matters only, not for ritual prohibitions?[2] — Come and hear: NOW, THE GARMENT TOO WAS INCLUDED IN ALL THESE. WHY THEN WAS IT SINGLED OUT? THAT AN ANALOGY MIGHT BE DRAWN THEREWITH, TEACHING: JUST AS A GARMENT IS DISTINGUISHED IN THAT IT BEARS IDENTIFICATION MARKS AND IS CLAIMED, SO MUST EVERYTHING BE ANNOUNCED. IF IT BEARS IDENTIFICATION MARKS AND IS CLAIMED![3] — The Tanna really desires [to teach] that there must be a claimant; identification marks are mentioned only incidentally.[4]

Come and hear: [Therefore Scripture wrote 'ass,' to shew that even] the ass [too is returned] in virtue of the identification marks of its saddle![5] — Read: in virtue of the witnesses [attesting to the ownership] of its saddle.[6]

Come and hear: And it [sc. the article found] shall be with thee until thy brother seek after it [and thou shalt return it to him]:[7] now, would it then have occurred to thee that he should return it to him before he sought after it![8] But [it means this:] examine him [the claimant], whether he be a fraud or not.[9] Surely that is by means of identification marks![10] — No: by means of witnesses. Come and

hear: Testimony[11] may be given[12] only on proof [afforded by] the face with the nose, even if the body and the garment bear identification marks.[13] This proves that identification marks are not Biblically valid! — I will tell you: In respect to the body, [the proposed identification marks were] that it was short or long;[14] whilst those of his garments [are rejected] because we fear borrowing.[15] But if we fear borrowing, why is an ass returned because of the identification of the saddle? — I will tell you: people do not borrow a saddle, because it chafes the ass ['s back].[16] Alternatively, the garments [were identified] through being white or red.[17] Then what of that which was taught: If he found it tied up in a purse, money bag, or to a ring, or if he found it amongst his [household] utensils, even a long time afterwards, it is valid.[18] Now should you think, we fear borrowing: if he found it tied up in his purse [etc.], why is it valid? Let us fear borrowing! — I will tell you: A purse, wallet, and signet ring are not lent: a purse and a money bag, because people are superstitious about it;[19] a signet ring, because one can commit forgery therewith.[20]

Shall we say that this is disputed by Tannaim? [For it was taught:] Testimony may not be given[12] on the strength of a mole; but Eleazar b. Mahabai said: Testimony may be so given.[21] Surely then they differ in this: The first Tanna holds that identification marks are [only] Rabbinically valid,[22] whilst Eleazar b. Mahabai holds that they are Biblically valid? — Said Raba: All may agree that they are Biblically valid: they differ here as to whether a mole is to be found on one's affinity.[23] One Master maintains that a mole is [generally] found on a person's affinity;[24] whilst the other holds that it is not. Alternatively, all agree that it is not; they differ here as to whether identification marks[25] are liable to change after death. One Master maintains: Identification marks are liable to change after death;[26] the other, that they are not. Alternatively, all agree that a mole is not liable to change after death, and identification marks are valid only by Rabbinical law; they differ here as to whether a mole is a perfect mark of identification. One Master maintains that a mole is a perfect mark of identification,[27] whilst the other holds that it is not.[28]

Raba said: If you should resolve that identification marks are not Biblically valid, why do we return a lost article in reliance on these marks?[29] Because one who finds a lost article is pleased that it should be returned on the strength of identification marks, so that should he lose anything, it will likewise be returned to him through marks of identification. Said R. Safra to Raba: Can then one confer a benefit upon himself with money that does not belong to him! But [the reason is this:] the loser himself is pleased to offer identification marks and take it back.[30] He knows full well that he has no witnesses; therefore he argues to himself, 'Everyone does not know its perfect identification marks,[31] but I can state its perfect identification marks and take it back.' But what of that which we learnt: R. Simeon b. Gamaliel said: If it was one man who had borrowed from three, he [the finder] must return [them] to the debtor; if three had borrowed from one, he must return them to the creditor.[32] Is then the debtor pleased that it [the promissory note] is returned to the creditor? — In that instance, he replied to him, it is a matter of logic. If it was one man who had borrowed from three, he must return [them] to the debtor, because they are to be found [together] in the debtor's possession, but not in the creditor's:[33] hence the debtor must have dropped it. If three had borrowed from one, it must be returned to the creditor, because they are to be found in the creditor's possession, but not in the debtor's.

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(1) If a messenger was sent with a divorce but lost it before delivery. Subsequently a divorce was found, and the messenger identified it by means of certain marks therein.

(2) It is a general principle that the Rabbis could freely enact measures affecting civil matters, since they had the power to abrogate individual rights of property under certain conditions. But they could not nullify ritual prohibitions. Hence, if identification marks are Scripturally valid, the divorce is returned to the messenger, who proceeds to divorce the woman therewith. But if they have no Scriptural force, the Rabbis could not institute a measure to free her from her marriage bonds which was not sanctioned by the Bible.

(3) Thus it is explicitly stated that the validity of identification marks is deduced from Scripture, hence Biblical.

(4) I.e., it may be that 'garment' teaches only that ownership must be claimed. Since, however, it is a fact that it can be

claimed on the strength of identification marks, the Tanna mentions these too, even if their validity is only Rabbinical.
(5) Cf. p. 170, n. 6.
(6) Even if only the ownership of the saddle is attested, the ass too is returned: that is deduced from the verse.
(7) Ibid. 2.
(8) Surely not! Then why state it?
(9) Translating: until thy brother's examination — i.e., until thou hast examined thy brother — in respect thereof. — Darash, besides meaning 'to seek', also connotes 'to make judicial investigation'; cf. Deut. XIII, 15: Then shalt thou (judicially) enquire (we-darashta).
(10) Thus proving that they are Biblically valid.
(11) To free a widow for marriage.
(12) As to the identity of a corpse.
(13) Yeb. 120a.
(14) These are naturally rejected, since many people are short or long. But it may well be that others are accepted.
(15) Granted that the ownership of the garments is established, that does not prove the identity of the corpse, as they might have been borrowed.
(16) A saddle must fit its particular ass.
(17) Cf. n. 4, [MS.M. omits this passage, and rightly so, seeing that it assumes that we do not fear borrowing, which would make the question that follows closely on irrelevant; v. n. 10.]
(18) Git. 27b. If a messenger loses a bill of divorce, and then finds one in the places mentioned, it is valid, and we do not fear that it might be a different document written for another husband and wife with identical names. A bill of divorce had to be written specifically for the woman it was intended to free.
(19) Believing it unlucky to lend them(Jast.).
(20) [MS.M. adds here the passage it omits above, v. n. 7.]
(21) Yeb. 120a.
(22) Therefore they cannot establish identity to break the marriage bond. Cf. p. 169, n. 1.
(23) I.e., a person born at the same hour and under the same planetary influence.
(24) And therefore it cannot establish identity.
(25) In Yeb, 120a, where this discussion is repeated, the text reads 'mole'.
(26) Therefore they cannot establish identity.
(27) Which leaves no doubt whatsoever. Even if identification marks in general are only Rabbinically valid, that is when they are not absolutely perfect; but if they are, they certainly have Biblical force.
(28) Thus so far the problem remains unsolved.
(29) I.e., why did the Rabbis give them validity for this purpose?
(30) [The text is difficult and hardly intelligible as it stands. Read with some versions: 'The loser himself is pleased that it should be returned (to any claimant) on the strength of identification marks.']
(31) Even if others have seen and can generally describe it, they cannot give a minute and detailed description. [R. Safra employs the term 'perfect identification marks' (סימנין מובהקים) in a loose sense, as any identification mark in general is valid for the recovery of a lost article; cf. also infra p. 177. n. 4. V. R. Nissim, Hiddushim, a.l.]
(32) V. supra 20a, Mishnah.
(33) Since there are three separate creditors.

Talmud - Mas. Baba Metzia 28a

But what of that which we learnt: If one finds a roll of notes or a bundle of notes he must surrender [them]:[1] here too, [is then the reason] because the debtor is pleased that they should be returned to the creditor! — But, said Raba, identification marks are Biblically valid, because it is written, And it shall be with thee until thy brother seek after it. Now, would it then have occurred to you that he should return it to him before he sought it! But [it means this:] examine him [the claimant], whether he be a fraud or not.[2] Surely that is by means of identification marks! That proves it.

Raba said: Should you resolve that identification marks are Biblically valid . . . ('Should you

resolve!' — but he has proved that they are Biblically valid! — That is because it can be explained as was answered [above].)[3] If two sets of identification marks [are offered by two conflicting claimants], it [the lost article] must be left [in custody].[4] [If one states] identification marks and [another produces] witnesses, it [the lost article] must be surrendered to him who has witnesses.[5] [If one states] identification marks, and [another also states] identification marks and [produces] one witness — one witness is as non-existent, and so it must be left. [If one produces] witnesses of weaving,[6] and [another] witnesses of dropping,[7] it must be given to the latter, because we argue, He [the first] may have sold, and another lost it. [If one states] its length, and [another] its breadth,[8] it must be given to [him who states its] length; because it is possible to conjecture the breadth when its owner is standing and wearing it, whereas the length cannot be [well] conjectured.[9] [If one states] its length and breadth, and another its gums,[10] it must be surrendered to the former. If the length, breadth, and weight [are stated by different claimants], it must be given to [him who states] its weight.

If he [the husband] states the identification marks of a bill of divorce, and she does likewise,[11] it must be given to her.[12] Wherewith [is it identified]? Shall we say, by its length and breadth? perhaps she saw it whilst he was holding it![13] — But it had a perforation at the side of a certain letter. If he identifies the ribbon [with which the divorce was tied], and she does likewise, it must be given to her. Wherewith [is it identified]? Shall we say, by [its colour], white or red? perhaps she saw it whilst he was holding it! — Hence, by its length. If he states, [it was found] in a valise, and she states likewise, it must be surrendered to him. Why? She knows full well that he places whatever he has [of his documents] in a valise.[14] MISHNAH. NOW, UNTIL WHEN IS HE [THE FINDER] OBLIGED TO PROCLAIM IT? UNTIL HIS NEIGHBOURS MAY KNOW THEREOF: THIS IS R. MEIR'S VIEW. R. JUDAH MAINTAINED: [UNTIL] THREE FESTIVALS [HAVE PASSED], AND AN ADDITIONAL SEVEN DAYS AFTER THE LAST FESTIVAL, GIVING THREE DAYS FOR GOING HOME, THREE DAYS FOR RETURNING, AND ONE DAY FOR ANNOUNCING.[15]

GEMARA. A Tanna taught: The neighbours of the loss [are referred to in the Mishnah]. What is the meaning of 'the neighbours of the loss?' Shall we say, the neighbours of the loser? But if they know him [who lost it], let them go and return it to him! — But [it means] the neighbours of the vicinity wherein the lost article was found.[16]

R. JUDAH MAINTAINED etc. But the following contradicts this: On the third day of Marcheshvan[17] we [commence to] pray for rain.[18] R. Gamaliel said: On the seventh, which is fifteen days after the Festival,[19] so that the last [of the pilgrims] in Eretz Yisrael[20] can reach the river Euphrates![21] — Said R. Joseph: There is no difficulty. The latter refers to the days of the First Temple, the former [sc. our Mishnah] to the Second. During the First Temple, when the Israelites were extremely numerous, as it is written of them, Judah and Israel were many, as the sand which is by the sea in multitude,[22] such a long period was required.[23] But during the Second Temple, when the Israelites were not very numerous, as it is written of them, The whole congregation together was forty and two thousand three hundred and threescore,[24] such a long time was unnecessary. Thereupon Abaye protested to him: But is it not written, So the priests and the Levites, and the porters, and the singers, and some of the people and the Nethinims, and all Israel, dwelt in their cities?[25] and that being so, the logic is the reverse. During the first Temple, when the Israelites were very numerous, the people united [for travelling purposes], and caravan companies were to be found travelling day and night, so long a period was unnecessary, and three days were sufficient. But during the second Temple, when the Israelites were not very numerous, the people did not join together [for travelling], and caravan companies were not available for proceeding day and night, this long period was necessary! — Raba said: There is no difference between the first Temple and the Second: the Rabbis did not put one to unreasonable trouble in respect of a lost article.

Rabina said: This [sc. our Mishnah] proves that when the proclamation was made, [the loss of] a garment was announced.[26] For should you think, a lost article was proclaimed [unspecified], another day should have been added to enable one to examine his belongings! Hence it follows that [the loss of] a garment was proclaimed. This proves it. Raba said: You may even say that a mere loss was proclaimed: the Rabbis did not put one to unreasonable trouble in respect of a lost article.

Our Rabbis taught: At the first Festival [of proclamation] it was announced: 'This is the first Festival;' at the second Festival it was announced: 'This is the second Festival;' but at the third a simple announcement was made.[27] Why so; let him announce: 'It is the third Festival'? — So that it should not be mistaken for the second.[28] But the second, too,

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(1) To the creditor, if he states identification marks; v. supra 20a.

(2) V. supra p. 169 for notes.

(3) Supra p. 169.

(4) It cannot be returned to either. Cf. supra 20a: 'It must lie until Elijah comes.'

(5) Even if identification marks are Biblically valid, yet witnesses stand higher.

(6) That he wove it.

(7) That he dropped it.

(8) This refers to a garment, these measurements being offered as marks of identification.

(9) [The breadth of the cloth out of which a toga was made was worn lengthwise, and the length breadthwise.]

(10) [גמא , the sum total of its length and breadth. The term Gam has been identified with the Greek Gnomon, the carpenter's square, and is derived from the Hebrew gimel, which has the shape of an axe, or carpenter's square. V. B.B. (Sonc. ed.) p. 251, n. 4.]

(11) Each claims ownership, the husband maintaining that he lost it before delivering it to his wife, so that she is still married to him, and now he has changed his mind and no longer wishes to divorce her, whilst the wife insists that she lost it after receiving it, so that she is divorced.

(12) Because the husband's knowledge is no proof of ownership, since he certainly saw it before delivering it to her; but if she had not received it, she would not know its identification marks.

(13) And before delivering it he changed his mind.

(14) Though this does not prove his ownership either, it must nevertheless be surrendered to him, since she cannot be declared free after a valid doubt has arisen.

(15) The three Festivals referred to are Passover, Weeks, and Tabernacles, when Jerusalem was visited by all Israel. This was the practice whilst the Temple stood and some time after; but v. Gemara on this.

(16) And R. Meir's reason is that it is probably theirs.

(17) The eighth month of the year, generally corresponding to mid-October-mid-November.

(18) V. P.B. p. 47.

(19) 'The Festival' without any further designation, always means Tabernacles, which lasted from the 15th to the 22nd of Tishri inclusive, Tishri being the seventh month of the year.

(20) [MS.M.: 'The last of the Israelites (who had come from Babylon)].

(21) Before the rains commence, This shews that a far longer period than three days is necessary to enable every Jew to reach his house.

(22) I Kings IV, 20.

(23) [Owing to the communities being widely scattered.]

(24) Ezra II, 64.

(25) Neh. VII. 73. [So that they thus lived scattered 'in their (former) cities' despite their paucity in numbers.]

(26) I.e., the actual article lost, the claimant having to submit identification marks.

(27) Without stating that it was the third time of proclamation. But the first and second had to be specified, so that the loser should know that he still had a third, and not be compelled to hurry back home.

(28) Through faulty hearing.

one might mistake for the first! — In any case, the third is still to come.[1]

Our Rabbis taught: In former times, whoever found a lost article used to proclaim it during the three Festivals and an additional seven days after the last Festival, three days for going home, another three for returning, and one for announcing.[2] After the destruction of the Temple — may it be speedily rebuilt in our own days![3] — it was enacted that the proclamation should be made in the synagogues and schoolhouses. But when the oppressors increased, it was enacted that one's neighbours and acquaintances should be informed, and that sufficed. What is meant by 'when the oppressors increased'? — They insisted that lost property belonged to the king.[4]

R. Ammi found a purse of denarii. Now, a certain man saw him displaying fear, whereupon he reassured him, 'Go, take it for thyself: we are not persians who rule that lost property belongs to the king.'

Our Rabbis taught: There was a Stone of Claims[5] in Jerusalem: whoever lost an article repaired thither, and whoever found an article did likewise. The latter stood and proclaimed, and the former submitted his identification marks and received it back. And in reference to this we learnt: Go forth and see whether the Stone of Claims is covered.[6]

MISHNAH. IF HE [THE CLAIMANT] STATES THE ARTICLE LOST, BUT NOT ITS IDENTIFICATION MARKS, IT MUST NOT BE SURRENDERED TO HIM. BUT IF HE IS A CHEAT,[7] EVEN IF HE STATES ITS MARKS OF IDENTIFICATION, IT MUST NOT BE GIVEN UP TO HIM, BECAUSE IT IS WRITTEN [AND IT SHALL BE WITH THEE] UNTIL THE SEEKING OF THY BROTHER AFTER IT,[8] MEANING, UNTIL THOU HAST EXAMINED THY BROTHER WHETHER HE BE A CHEAT OR NOT.[9]

GEMARA. It has been stated: Rab Judah said: He proclaims. '[I have found] a lost article.' R. Nahman said: He proclaims, '[I have found] a garment'. 'Rab Judah said: He proclaims a lost article,' for should you say that he proclaims a garment, we are afraid of cheats. 'R. Nahman said: He proclaims. a garment'; for 'we do not fear cheats, as otherwise the matter is endless'.[10]

We learnt: IF HE STATES THE ARTICLE LOST, BUT NOT ITS IDENTIFICATION MARKS, IT MUST NOT BE SURRENDERED TO HIM. Now, if you say that he proclaims a loss, it is well; we are thus informed that though he states that it was a garment, yet since he does not submit its identification marks, it is not returned to him. But if you say that he proclaims a garment, then if one [the finder] states that it was a garment, and the other [the claimant] states likewise, a garment, is it necessary to teach that it is not returned to him unless he declares its marks of identification? — Said R. Safra: After all, he proclaims a garment. [The Mishnah means that] he [the finder] stated [that he had found] a garment, whilst the other [the claimant] submitted identification marks. What then is meant by 'HE DID NOT STATE ITS IDENTIFICATION MARKS'? — He did not state its perfect identification marks.[11]

BUT IF HE IS A CHEAT, IF HE STATES ITS IDENTIFICATION MARKS, IT MUST NOT BE GIVEN UP TO HIM. Our Rabbis taught: At first, whoever lost an article used to state its marks of identification and take it. When deceivers increased in number, it was enacted that he should be told, 'Go forth and bring witnesses that thou art not a deceiver; then take it'. Even as it once happened that R. papa's father lost an ass, which others found. When he came before Rabbah son of R. Huna, he directed him, 'Go and bring witnesses that you are not a fraud, and take it.' So he went and brought witnesses. Said he to them, 'Do you know him to be a deceiver?' — 'Yes', they replied. 'I, a deceiver!' he exclaimed to them. 'We meant that you are not a fraud,' they answered him. 'It stands to reason that one does not bring [witnesses] to his disadvantage.' said Rabbah son of R. Huna.[12]

MISHNAH. EVERYTHING [SC. AN ANIMAL] WHICH WORKS FOR ITS KEEP[13] MUST [BE KEPT BY THE FINDER AND] EARN ITS KEEP. BUT AN ANIMAL WHICH DOES NOT WORK FOR ITS KEEP MUST BE SOLD, FOR IT IS SAID, AND THOU SHALT RETURN IT UNTO HIM,[14] [WHICH MEANS], CONSIDER HOW TO RETURN IT UNTO HIM.[15] WHAT HAPPENS WITH THE MONEY? R. TARFON SAID: HE MAY USE IT; THEREFORE IF IT IS LOST, HE BEARS RESPONSIBILITY FOR IT.[16] R. AKIBA MAINTAINED: HE MUST NOT USE IT; THEREFORE IF IT IS LOST, HE BEARS NO RESPONSIBILITY.

GEMARA. For ever:[17] — Said R. Nahman in Samuel's name: Until twelve months [have elapsed]. It has been taught likewise: As for all animals which earn their keep. e.g., a cow or an ass, he [the finder] must take care of them for twelve months; after that he turns them into money, which he lays by. He must take care of calves and foals three months, sell them and lay the money by. He must look after geese and cocks for thirty days, sell them and put the money by. R. Nahman b. Isaac observed: A fowl ranks as large cattle.[18] It has been taught likewise: As for a fowl and large cattle.[19] he must take care of them twelve months, then sell them and put the money by. For calves and foals the period is[20] thirty days, after which he sells them and lays the money by. Geese and cocks, and all which demand more attention than their profit is worth, he must take care of for three days, after which he sells them and lays the money by. Now this ruling on calves and foals contradicts the former one, and likewise the rulings on geese and cocks are contradictory? — The rulings on calves and foals are not contradictory: the former refers to grazing animals; the latter to those that require feeding stuffs.[21] The rulings on geese and cocks are likewise not contradictory: the former refers to large ones, the latter to small.[22]

BUT AN ANIMAL WHICH DOES NOT WORK FOR ITS KEEP. Our Rabbis taught: And thou shalt return it unto him: deliberate how to return it unto him, so that a calf may not be given as food to other calves, a foal to other foals, a goose to other geese, or a cock to other cocks.[23]

WHAT HAPPENS WITH THE MONEY? R. TARFON SAID: HE MAY USE IT etc. Now. this dispute is

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(1) Even if a mistake is made, no harm is done.

(2) V. Mishnah.

(3) This phrase has become liturgical.

(4) That was Persian law, which the Jews felt justified in secretly resisting.

(5) [Var. lec., ‘Stone of the erring (losses).’ On the attempt to localize the stone, v. J. N. Sepp. ZDPV, II, 49.]

(6) So Rashi. Lit., ‘is dissolving.’ The story is related in Ta'an. 19a of a certain Honi who prayed for rain so successfully that he was asked to reverse his prayer, more than enough having fallen. To which he answered, ‘Go forth and see whether the Claimants’ Stone is already covered with water, in which case I will pray for the rain to cease.’

(7) I.e., where the claimant is known to be one in general, but v. Gemara on this.

(8) Deut. XXII, 2.

(9) V. p. 169, n. 6.

(10) Even if no particular article is announced, a fraud may claim a certain article at a venture.

(11) I.e., he gave general marks which would cover many garments. [The term ‘perfect’ is used by R. Safra in a loose sense, cf. supra p. 171. n. 9.]

(12) Therefore the witnesses can withdraw their testimony, though normally this is forbidden. But in this case it is evident that they thought that he had asked, ‘Do ye know that he is not a deceiver?’ which was the usual form of the question.

(13) Lit., ‘does and eats.’

(14) Ibid.

(15) But if the finder keeps it and then charges the loser with its keep, it may exceed its actual worth, and so the return will be a loss.

(16) The advantage that he enjoys in that he may use it makes him a paid bailee.

(17) Surely the finder need not keep the animal indefinitely, even if it does earn its keep!

(18) And must be kept a twelvemonth.

(19) I.e., cows and oxen.

(20) Lit., 'he must take care of them.'

(21) In spring and summer, when the animals graze on natural pasture, they are to be kept three months; but in winter, when feeding stuffs must be bought for them, thirty days are sufficient.

(22) Small ones need more attention, and therefore they are kept only three days. — The translation follows Maim. and R. Han., and is also adopted by the Codes; v. H.M. 267, 24. Rashi reverses it.

(23) I.e., if a number of these is found, it should not be necessary to sell one to provide food for the others, but as soon as they cease to earn their keep they must all be sold.

Talmud - Mas. Baba Metzia 29a

[apparently] only if he [the finder] did use it. But if not, [all would agree] that if it is lost he is free [from responsibility]. Shall we say that this refutes R. Joseph? For it has been stated. A bailee of lost property: Rabbah ruled, he ranks as an unpaid bailee; R. Joseph maintained. as a paid bailee![1] — R. Joseph can answer you. As for theft and loss, all agree that he is responsible. They differ only in respect to [unavoidable] accidents, for which a borrower [alone is responsible]. R. Tarfon holds: The Rabbis permitted him [the finder] to use it, therefore he is a borrower in respect thereto. Whilst R. Akiba holds that the Rabbis did not permit him to use it, therefore he is not a borrower in respect thereto. If so, why does R. Akiba say 'THEREFORE'? For if you agree that they differ concerning theft and loss, it is well; hence it is taught. R. AKIBA MAINTAINED, HE MUST NOT USE IT; THEREFORE IF IT IS LOST HE BEARS NO RESPONSIBILITY. For I might think he is a paid bailee, in accordance with R. Joseph's view, and responsible for theft and loss; hence we are informed, 'THEREFORE' [etc.] i.e., since you say that he may not use it, he is not a paid bailee, nor is he responsible for theft and loss. But if you say that all agree that he is responsible for theft and loss, whilst they differ only in respect of [unpreventable] accidents, for which a borrower [alone is responsible], what is the meaning of R. Akiba's 'THEREFORE'? Surely he [the Tanna] should have stated thus: R. AKIBA MAINTAINED, HE MUST NOT USE IT [and no more]; then I would have known myself that since he may not use it, he is not a borrower, hence not responsible. What then is the need of R. Akiba's 'THEREFORE'?[2] — On account of R. Tarfon's 'THEREFORE'.[3] And what is the purpose of R. Tarfon's 'THEREFORE'? — He means this: Since the Rabbis permitted him to use it, it is as though he had done so,[4] and he is [therefore] held responsible for it. But it is taught, [IF] IT IS LOST![5]

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(1) And since a paid bailee is liable for loss, our Mishnah appears to refute R. Joseph.

(2) The question is a straightforward one, though put with a good deal of unnecessary circumlocution. [Rabbinovicz, D.S. a.l. suggests this to be an interpolation of Jehudai Gaon.]

(3) I.e., for the sake of balancing the Mishnah.

(4) Even if he does not use it.

(5) How then can it refer to unpreventable accidents?

Talmud - Mas. Baba Metzia 29b

— It is in accordance with Rabbah; for Rabbah said [elsewhere]: They were stolen by armed robbers: whilst 'lost' means that his ship foundered at sea.[1]

Rab. Judah said in Samuel's name: The halachah is as R. Tarfon. Rehabah had in his charge an orphan's money. He went before R. Joseph and enquired. 'May I use it?' He replied, 'Thus did Rab Judah say in Samuel's name, The halachah is as R. Tarfon. Thereupon Abaye protested, But was it not stated thereon: R. Helbo said in R. Huna's name: This refers only to the purchase price of a lost article, since he took trouble therein,[2] but not to money which was itself lost property:[3] and these[4]

are likewise as lost money? — Go then,' said he to him;[5] 'they do not permit me to give you a favourable ruling.'

MISHNAH. IF ONE FINDS SCROLLS, HE MUST READ THEM EVERY THIRTY DAYS;[6] IF HE CANNOT READ, HE MUST ROLL THEM.[7] BUT HE MUST NOT STUDY [A SUBJECT] THEREIN FOR THE FIRST TIME.[8] NOR MAY ANOTHER PERSON READ WITH HIM.[9] IF ONE FINDS A CLOTH, HE MUST GIVE IT A SHAKING EVERY THIRTY DAYS, AND SPREAD IT OUT FOR ITS OWN BENEFIT [TO BE AIRED], BUT NOT FOR HIS HONOUR.[10] SILVER AND COPPER VESSELS MAY BE USED FOR THEIR OWN BENEFIT, BUT NOT [SO MUCH AS] TO WEAR THEM OUT. GOLD AND GLASSWARE MAY NOT BE TOUCHED UNTIL ELIJAH COMES.[11] IF ONE FINDS A SACK OR A BASKET, OR ANY OBJECT WHICH IT IS UNDIGNIFIED FOR HIM TO TAKE,[12] HE NEED NOT TAKE IT.

GEMARA. Samuel said: If one finds phylacteries in a sack, he must immediately turn them into money [i.e., sell them] and lay the money by. Rabina objected: IF ONE FIND SCROLLS, HE MUST READ THEM EVERY THIRTY DAYS; IF HE CANNOT READ, HE MUST ROLL THEM. Thus, he may only roll, but not sell them and lay the money by! — Said Abaye: phylacteries are obtainable at Bar Habu;[13] whereas scrolls are rare.[14]

Our Rabbis taught: If one borrows a Scroll of the Torah from his neighbour, he may not lend it to another. He may open and read it, providing, however, that he does not study [a subject] therein for the first time; nor may another person read it together with him. Likewise, if one deposits a Scroll of the Torah with his neighbour, he [the latter] must roll it once every twelve months, and may open and read it; but if he opens it in his own interest, it is forbidden. Symmachus said: In the case of a new one, every thirty days; in the case of an old one, every twelve months. R. Eliezer b. Jacob said: In both cases, every twelve months.

The Master said: 'If one borrows a Scroll of the Torah from his neighbour, he may not lend it to another.' Why particularly a Scroll of the Torah: surely the same applies to any article? For R. Simeon b. Lakish said: Here Rabbi has taught that a borrower may not lend [the article he borrowed], nor may a hirer re-hire [to another person]![15] — It is necessary to state it in reference to a Scroll of the Torah. I might have said, One is pleased that a precept be fulfilled by means of his property: therefore we are informed [otherwise].[16]

'He may open and read it.' But that is obvious! Why else then did he borrow it from him? — He desires to state the second clause: providing, however, that he does not study [a subject] therein for the first time.'

'Likewise, if one deposits a Scroll of the Torah with his neighbour, he [the latter] must roll it once every twelve months, and may open and read it.' What business has he with it?[17] Moreover, 'if he opens it in his own interests, It is forbidden; 'but have you not said, 'He may open and read it'! — It means this: If when rolling it he opens and reads it, that is permitted; but if he opens it in his own interests, it is forbidden.

'Symmachus said: In the case of a new one, every thirty days; in the case of an old one, every twelve months. R. Eliezer b. Jacob said: In both cases, every twelve months.' But R. Eliezer b. Jacob is identical with the first Tanna! — But say thus: R. Eliezer b. Jacob said: In both cases, every thirty days.

BUT HE MUST NOT STUDY [A SUBJECT] THEREIN FOR THE FIRST TIME, NOR MAY ANOTHER PERSON READ WITH HIM. But the following contradicts it. He may not read a section therein and revise it, nor read a section therein and translate it.[18] He may also not have more

than three columns open [simultaneously], nor may three read out of the same volume. Hence two may read! — Said Abaye: There is no difficulty: here the reference is to one subject; there, to two.[19]

IF ONE FINDS A CLOTH, HE MUST GIVE IT A SHAKING EVERY THIRTY DAYS: Are we to say that a shaking benefits it? But R. Johanan said, He who has a skilled weaver in his house[20] has to shake his garment every day![21] — I will tell you: [shaking] every day is injurious, once in thirty days is beneficial thereto. Alternatively, there is no difficulty: this [our Mishnah] refers to [shaking] by one person; the other [R. Johanan's dictum], by two persons.[22] Another alternative: this [the Mishnah] refers to [a shaking, i.e., beating] by hand; the other, with a stick.[23] Or again, one refers to wool, the other to flax.[24]

R. Johanan said: A cupful of witchcraft, but not a cupful of tepid water.[25] Yet that applies only to a metal utensil, but there is no objection to an earthenware one. And even of a metal utensil, this holds good only if it [the water] is unboiled; but if it is boiled, it does not matter. Moreover, that is only if he throws no spice wood therein; but if he does, there is no objection.

R. Johanan said: If one is left a fortune[26] by his parents, and wishes to lose it, let him wear linen garments, use glassware, and engage workers and not be with them. 'Let him wear linen garments' — this refers to Roman linen;[27] 'use glassware' — Viz., white glass;[28] 'and engage workers and not be with them' — refer this

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(1) These are unpreventable. v. infra 43a.

(2) Before selling it he had to look after it for a certain time; therefore he is now privileged to use the money.

(3) If one finds money, so disposed that he is bound to announce it (v. supra 24b) he may not use it whilst waiting for the owner to claim it, since it needs neither care nor attention.

(4) Sc. the orphan's coins.

(5) R. Joseph to the disciple.

(6) If left unused longer, they become mouldy and moth eaten.

(7) To give them an airing.

(8) The long poring over the scroll and its consequent handling injured it.

(9) Since each unconsciously pulls the scroll to himself, the scroll is injured.

(10) To use as a tablecloth or bedspread.

(11) I.e., the finder must not use them at all, since they do not deteriorate.

(12) Lit., 'which it is not his way to take.'

(13) Pr. n. a writer of phylacteries and mezuzoth, also mentioned in Ber. 53b. and Meg. 18b. — I.e., they are easily bought, and so their owner loses nothing when the finder sells them.

(14) Lit., 'not found.'

(15) 'Here' refers to a Mishnah in Git. (29a) from which Resh Lakish deduced this.

(16) But the same certainly applies even with greater force to other articles.

(17) It was assumed that he may open and read it for his own purpose, since it was already taught once that he rolls it every twelve months for its own benefit; but how may one use a bailment in his own interests?

(18) Into the vernacular, which, in the case of Palestinian Jewry, was probably Aramaic; v. J.E. VI, 308.

(19) Rashi: two people may not read the same subject, because each pulls the Scroll to himself; but they may read two different subjects (in different columns), as each concentrates on his own; Maim. reverses it.

(20) Regularly engaged in weaving.

(21) Because of the fluff caused by the weaver. This shews that one shakes his garment only when he must.

(22) In which case each pulls it and strains the material.

(23) That is harmful.

(24) Rashi: a beating harms woollen garments, as it stretches them, but not linen garments. — But the order of the Gemara would seem to reverse it, 'the one . . . the other' referring to the Mishnah and R. Johanan respectively, and Maim. and others do in fact reverse it. Possibly linen garments or cloths were more delicately made in those days, or were otherwise weaker than woolens.

(25) One had better drink the former than the latter.

(26) Lit., 'much money.'

(27) [I.e., manufactured, not grown, in Rome; v. Krauss, op. cit. I, 537.]

(28) Which was rare and costly. [On the difficulty of the process for producing colourless glass among the ancients, v. Krauss, op. cit. II, 286.]

Talmud - Mas. Baba Metzia 30a

to [workers with] oxen, who can cause much loss.[1]

AND SPREAD IT OUT FOR ITS OWN BENEFIT, BUT NOT FOR HIS HONOUR. The scholars propounded: What if it is for their mutual benefit?[2] — Come and hear: HE MAY SPREAD IT FOR ITS OWN BENEFIT; this proves, only for its own benefit, but not for their mutual benefit! — Then consider the second clause: BUT NOT FOR HIS HONOUR; thus, it is forbidden only for his own honour, but permitted for their mutual benefit! Hence no inference can be drawn from this.

Come and hear: He may not spread it [a lost article] upon a couch or a frame for his needs, but may do so in its own interests. If he was visited by guests, he may not spread it over a bed or a frame, whether in his interests or in its own![3] — There it is different, because he may thereby destroy it,[4] either through an [evil] eye or through thieves.

Come and hear: If he took it [the heifer] into the team[5] and it [accidentally] did some threshing, it is fit;[6] [but if it was] in order that it should suck and thresh, it is unfit.[7] But here it is for their mutual benefit, and yet it is taught that it is unfit! — There it is different, because Scripture wrote, which hath not beets wrought with — under any condition. If so, the same should apply to the first clause too?[8] This [then] can only be compared to what we learnt: If a bird rested upon it [the red heifer] — it remains fit;[9] but if it copulated with a male, it becomes unfit.[10] Why so? — In accordance with R. Papa's dictum. For R. papa said: Had Scripture written 'ubad,[11] and we read it 'ubad, I would have said [that the law holds good] even if it were of itself;[12] whilst if it were written 'abad,[13] and we read it 'abad, I would have said, [it becomes unfit] only if he himself wrought with it. Since, however, it is written 'abad [active], whilst read 'ubad [passive],[14] we require that 'it was wrought with' shall be similar to 'he wrought with it';[15] just as 'he wrought [with it]' must mean that he approved of it, so also 'it was wrought with' refers only to what he approved.[16]

SILVER AND COPPER VESSELS MAY BE USED, etc. Our Rabbis taught: If one finds wooden utensils he may use them — to prevent them from rotting; copper vessels — he may use them with hot [matter], but not over the fire, because that wears them out; silver vessels, with cold [matter], but not with hot, because that tarnishes them; trowels and spades, on soft [matter], but not on hard, for that injures them; gold and glassware, [however], he may not touch until Elijah comes. Just as they [the Sages] ruled in respect of lost property, so also with reference to a bailment. What business has one with a bailment?[17] — Said R. Adda b. Hama in R. Shesheth's name: This treats of a bailment the owner of which has gone overseas.

IF ONE FINDS A SACK OR A BASKET, OR ANY OBJECT WHICH IT IS NOT DIGNIFIED FOR HIM TO TAKE, HE NEED NOT TAKE IT. How do we know this? — For our Rabbis taught: And thou shalt hide thyself:[18] sometimes thou mayest hide thyself, and sometimes not. E.g., if one was a priest, whilst it [the lost animal] was in a cemetery; or an old man, and it was inconsistent with his dignity [to lead the animal home]; or if his own [work] was more valuable than his neighbour's[19] — therefore it is said, and thou shalt hide thyself.[20] In respect of which [of these instances] is the verse required? Shall we say, in respect of a priest when it [the lost animal] is in a cemetery? — but that is obvious: one is a positive, whereas the other is a negative and a positive injunction, and a positive injunction cannot set aside a negative together with a positive injunction?[21] Moreover, a

ritual prohibition cannot be abrogated on account of money![22] If, again, [it is required] where 'his own [work] was more valuable than his neighbour's' — that may be inferred from Rab Judah's dictum in Rab's name, for Rab Judah said in the name of Rab: Save that

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(1) Either by failing to plough up the land properly, so that the subsequent crop is a poor one (Tosaf.), or through carelessly driving the ox carts over the crops when engaged in reaping or vintaging, and so causing damage both to oxen and plants (Rashi).
(2) Lit., 'for its purpose and for his purpose?'
(3) Pes. 26b. Thus proving that he may not use it for their mutual benefit.
(4) Lit., 'burn it.'
(5) Of three or four cows used for threshing; his purpose was that it should suck.
(6) To be used to make atonement for a murder by an unknown person. V. Deut. XXI, 1-9. The heifer had to be one 'which hath not been wrought with, and which hath not drawn in the yoke' (v. 3). Though this heifer had done some threshing, it remains fit, because it had been taken into the team to feed, not to thresh.
(7) Pes. 26b.
(8) Though not intending that it should thresh, it nevertheless ought to become disqualified.
(9) And is not disqualified on the score that it has been put to some use.
(10) Parah II, 4.
(11) עובד passive. 'was wrought with.'
(12) I.e., even if it 'was wrought with' entirely without its owners volition.
(13) עבד active, 'with which he (the owner) had not wrought.'
(14) [==M.T. עבד The form is thus taken as passive Kal not Pu'al, v. Ges. K. ¤ 52e.]
(15) I.e., though it may have been put to work without the knowledge of its master, it shall nevertheless be only such work as its master would have approved.
(16) Now, if a bird rests on it, the master does not approve, since he derives no benefit; but he does derive benefit from its copulation. Similarly, if he takes it into the team and it accidentally does some threshing, he does not benefit thereby, as the team itself would have sufficed. Therefore it is not invalidated, unless that was his express purpose.
(17) How can there be a question of using a bailment? Let its owner come and use it to prevent it from rotting or otherwise being injured through disuse!
(18) Deut. XXII, 2. The beginning of the verse reads, Thou shalt not see thy brother's ox or his sheep go astray. In the exegesis that follows, it is assumed that the 'not' may or may not refer to 'and thou shalt hide thyself' according to circumstances.
(19) I.e., the value of the time he would lose in returning it exceeded that of the lost animal.
(20) Sanh. 18b.
(21) It is a positive command to return lost property, viz., thou shalt restore them unto thy brother; whereas a priest is forbidden to defile himself through the dead both by a positive command — They shall be holy unto their God (Lev. XXI, 6) — and a negative one — Speak unto the priests the sons of Aaron and say unto them, There shall none be defiled for the dead among his people (ibid. 1).
(22) The returning of lost property is after all only a monetary matter.

Talmud - Mas. Baba Metzia 30b

there shall be no poor among you:[1] [this teaches,] thine takes precedence over all others![2] — Hence [it is needed] in respect of an old man for whom it is undignified [to return the lost article].

Rabbah said: If he [the old man] smote it [the lost animal], he is [henceforth] under an obligation in respect thereof.[3] Abaye was sitting before Rabbah when he saw some [lost] goats standing. whereupon he took a clod and threw it at them. Said he [Rabbah] to him, 'You have thereby become bound in respect of them. Arise and return them.'

The scholars propounded: What if it is dignified for one to return [a lost animal] in the field, but not in town? Do we say, a complete return is required, and since it is undignified for him to return it

in town, he has no obligation at all; or perhaps, in the field at least he is bound to return it, and since he incurs the obligation in the field, he is likewise obligated in town?[4] The question stands.

Raba said: Where one would lead back his own, he must lead back his neighbour's too. And where one would unload and load his own, he must do so for his neighbour's.[5]

R. Ishmael son of R. Jose was walking on a road when he met a man carrying a load of faggots. The latter put them down, rested, and then said to him, 'Help me to take them up.' 'What is it worth?' he enquired. 'Half a zuz,' was the answer. So he gave him the half zuz and declared it hefker.[6] Thereupon he [the carrier] re-acquired it.[7] He gave him another half zuz and again declared it hefker. Seeing that he was again about to re-acquire it, he said to him, 'I have declared it hefker for all but you.' But is it then hefker in that case? Have we not learnt: Beth Shammai maintain, hefker for the poor [only] is valid hefker; whilst Beth Hillel rule, It is valid only if declared hefker for the poor and the rich, as the year of release.[8] — But R. Ishmael son of R. Jose did in fact render it hefker for all; and he stopped the other [from taking possession again] by mere words. Yet was not R. Ishmael son of R. Jose an elder for whom it was undignified [to help one to take up a load]?[9] — He acted beyond the requirements of the law. For R. Joseph learnt: And thou shalt shew them[10] — this refers to their house of life;[11] the way — that means the practice of loving deeds;[12] they must walk — to sick visiting; therein — to burial;[13] and the work — to strict law; that they shall do — to [acts] beyond the requirements of the law.[14]

The Master said: 'they must walk — this refers to sick visiting.' But that is the practice of loving deeds! — That is necessary only in respect of one's affinity.[15] For a Master said: A man's affinity takes away a sixtieth of his illness: yet even so, he must visit him 'Therein to burial.' But that [too] is identical with the practice of loving deeds? — That is necessary only in respect of an old man for whom it is undignified.[16] 'That they shall do — this means [acts] beyond the requirements of the law.' For R. Johanan said: Jerusalem was destroyed only because they gave judgments therein in accordance with Biblical law. Were they then to have judged in accordance with untrained arbitrators?[17] — But say thus: because they based their judgments [strictly] upon Biblical law, and did not go beyond the requirements of the law.

MISHNAH. WHAT IS LOST PROPERTY? IF ONE FINDS AN ASS OR A COW FEEDING BY THE WAY, THAT IS NOT CONSIDERED A LOST PROPERTY; [BUT IF HE FINDS] AN ASS WITH ITS TRAPPINGS OVERTURNED, OR A COW RUNNING AMONG THE VINEYARDS, THEY ARE CONSIDERED LOST. IF HE RETURNED IT AND IT RAN AWAY, RETURNED IT AND IT RAN AWAY, EVEN FOUR OR FIVE TIMES, HE IS STILL BOUND TO RESTORE IT, FOR IT IS WRITTEN, THOU SHALT SURELY RESTORE THEM.[18] IF HIS LOST TIME IS WORTH S SELA', HE MUST NOT DEMAND, GIVE ME A SELA',' BUT IS PAID AS A LABOURER. IF A BETH DIN IS PRESENT, HE MAY STIPULATE IN THEIR PRESENCE;[19] BUT IF THERE IS NO BETH DIN BEFORE WHOM TO STIPULATE, HIS OWN TAKES PRECEDENCE.[20]

GEMARA. And all these that were mentioned already — are they then not lost property?[21] — Said Rab Judah: It means this: What is the general principle of lost property for which one is responsible?[22] IF ONE FINDS AN ASS OR A COW FEEDING BY THE WAY, THAT IS NOT CONSIDERED LOST PROPERTY, and he bears no responsibility toward it: [BUT IF HE FINDS] AN ASS WITH ITS TRAPPINGS OVERTURNED, OR A COW RUNNING AMONG THE VINEYARDS, THEY ARE CONSIDERED LOST, and he is bound [to return it]. And for ever?[23] — Said Rab Judah in Rab's name: Up to three days.[24] How so? If [he sees it] at night, even a single hour [shews that it is lost]; if by day, even if it is there longer, it is still [not proof it is lost]! — This arises only if it was seen either before daybreak or at twilight; now, for three days we assume that it is mere chance that it went forth [at these unusual hours]; but if more, it is certainly lost.

It has been taught likewise: If one finds a garment or a spade

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(1) Deut, XV, 4.
(2) Regarding the verse as an exhortation against bringing oneself to poverty.
(3) To return it. By smiting it to make it go in a certain direction he commences the work of returning it, and therefore must complete it.
(4) On the principle of the preceding dictum.
(5) V. Deut. XXII, 4, which is interpreted as meaning that one must help his neighbour to load or unload his animals. Here too he is exempt if it is inconsistent with his dignity, and Raba observes that the test is whether he would do this for his own.
(6) 'Ownerless.'
(7) And again asked R. Ishmael to help him.
(8) Pe'ah VI, 1; 'Ed. IV. 3. Produce acquired from hefker was exempt from tithes. If, however, it was only partially declared hefker i.e., for the poor alone, Beth Shammai and Beth Hillel dispute whether that is valid. Since in all cases of dispute between these two academies the halachah was according to Beth Hillel, we see that partial hefker is invalid; hence R. Ishmael's declaration was illegal. — The seventh year was called the year of release (shemittah), and its crops were free to all; v. Lev. XXV, 1-7.
(9) Why then pay him off?
(10) Ex. XVIII, 20.
(11) Rashi: i.e., industry and trade, the means of a livelihood. In B.K. 100a Rashi refers it to study, the life of the Jew.
(12) This is the literal translation of the phrase, gemiluth hasadim. It is sometimes translated, 'the practice of charity,' but that is inexact. Every act of kindness is regarded as done out of one's love for his fellow beings. [V. Abrahams, I., C.P.B. p. XIII. The inner meaning of the phrase is, 'making good.' 'requiting' — a making good to man for goodness of God, and it is connected with tenderness and mercy to all men and all classes; cf. J. Pe'ah IV.]
(13) To give burial to the poor who cannot pay for it. Directly arising out of this teaching, the Burial Societies (chevra kaddisha — 'holy society') have always formed an important part of Jewish communal organization.
(14) Lit., 'within the line of judgment;' v. B.K. (Sonc. ed.) p. 584, n. 2.
(15) V. p. 171. n. 1.
(16) Yet even he must take part in burial.
(17) [מגיזתא from גוז , 'to cut,' 'to decide;' so Jast. Cf. however B.K. (Sonc. ed.) p. 671, n. 10.]
(18) Deut. XXII, 1. השב תשיבם; the doubling of the verb — the usual idiom for emphasis — intimates that one is bound to return the same article many times, if necessary.
(19) Any three people constitute a Beth din, and the finder may stipulate before them that if he returns the article he shall be paid for lost time according to what he himself could earn; then he can claim his loss in full.
(20) And he is not bound to return the article at all and involve himself in loss.
(21) The article mentioned in the previous Mishnahs were all examples of lost property; why then state here 'WHAT IS LOST PROPERTY? as though the previous ones were not?
(22) I.e., how may one recognise whether a particular article is lost or intentionally placed there by its owner?
(23) Can one say that no matter how long an animal is seen grazing by the way it was intentionally placed there?
(24) But if there longer, it must be assumed lost.

Talmud - Mas. Baba Metzia 31a

on a road, or a cow running among the vineyards it is lost property. [But if he finds] a garment at the side of a wall, or a spade at the side of a wall, or a cow grazing among the vineyards, it is not considered lost; yet [if he sees it] three consecutive days, it is lost. If one sees water overflowing [its banks] and proceeding [onwards], he must put up a wall[1] before it.[2]

Raba[3] said: [And so shalt thou do] with all lost things of thy brother's:[4] this is to include the loss of real estate. R. Hananiah observed to Raba:[5] It has been taught in support of you: If one sees water overflowing [its banks] and proceeding [onwards], he must put up a wall before it.[6] As for that, he

replied, it does not support [me]: What are the circumstances here? When there are sheaves [on the field].[7] But if it contains sheaves, why state it?[8] — It is necessary [to state it only] when it contains sheaves which [still] need the soil. I might think, since they need the soil, they are as the soil itself:[9] therefore we are informed [otherwise].

IF ONE FINDS AN ASS OR A COW, etc. This is self-contradictory. You say. IF ONE FINDS AN ASS OR A COW FEEDING BY THE WAY, IT IS NOT CONSIDERED LOST PROPERTY: hence, only when feeding by the way are they not [regarded as] lost; but if running on a road, or feeding among the vineyards, they are considered lost! Then consider the second clause: [BUT IF HE FINDS] AN ASS WITH ITS TRAPPINGS OVERTURNED, OR A COW RUNNING AMONG THE VINEYARDS, THEY ARE CONSIDERED LOST; hence, only if running among the vineyards are they lost; but if running on the road, or feeding among the vineyards. they are not lost! — Said Abaye: His companion telleth it concerning him:[10] he [the Tanna] mentions feeding by the way, that it is not a lost animal, and the same applies to [a cow] feeding among the vineyards. He states that if running among the vineyards, it is lost, and the same holds good if it was running on the road. Raba said to him, if 'his companion telleth it of him,' let the lighter aspects be taught, from which the graver ones would follow a fortiori. [Thus:] Let him [the Tanna] teach that if it was running on the road it is considered lost; how much more so if running among the vineyards! And let him teach that when feeding among the vineyards it is not considered lost; how much more so when feeding by the way! — But. said Raba, the two statements on 'running'[11] are not contradictory: in the one case its face is towards the field; in the other, towards the town.[12] The two statements on 'feeding' are likewise not contradictory: the one treats of the loss of itself;[13] the other of the loss of the soil. [Thus:] when he [the Tanna] teaches that if it is FEEDING BY THE WAY. THAT IS NOT CONSIDERED LOST PROPERTY, implying that if it is feeding among the vineyards there is a loss, the reference is to the loss of the soil.[14] And when he teaches that if it is running among the vineyards there is a case of loss, implying that if it is feeding among the vineyard there is none, the reference is to the loss of itself;[13] for when running among the vineyard it becomes lacerated, but not when feeding among the vineyards.[15] Now, if it is feeding among the vineyards, granted that it does not become lacerated, yet it should be necessary [to expel it] on account of the loss of the soil! — This refers to a heathen's[16] [vineyard]. Yet should it be necessary [to drive it out] on account of its own loss, lest they [the heathens] kill it? — This refers to a place where a warning is first given,[17] and only then is it slain. But perhaps a warning has already been given on its account? — If they gave warning, and care was not taken thereof [to prevent it from trespassing], it certainly ranks as a self-inflicted loss.[18]

IF HE RETURNED IT AND IT RAN AWAY, RETURNED IT AND IT RAN AWAY, etc. One of the Rabbis said to Raba, Perhaps 'hasheb'[19] indicates once; 'teshibem'[20] denotes twice? — He replied. 'hasheb' implies even a hundred times. As for 'teshibem', I know only [that he must return them] to his [the owner's] house; how do I know [that he can return them to] his garden or his ruins? Therefore Scripture writes, 'teshibem', implying, in all circumstances. How so? If they [the garden or ruins] are guarded, is it not obvious? Whilst if not, why [can one return them thither]? — In truth, it means that they are guarded, but we are informed this, viz., that the owner's knowledge is not required.[21] In accordance with R. Eleazar, who said: All require the owner's knowledge,[22] excepting in the case of the return of lost property, since Scripture extended the law to many forms of return.[23]

[If a bird's nest chance to be before thee in the way in any tree, on the ground, whether they be young ones, or eggs, and the dam sitting upon the young, or upon the eggs, thou shalt not take the dam with the young:] But shaleah teshalah [thou shalt surely let go] the dam etc.:[24] let us say that shaleah means once, teshalah twice?[25] — He replied, shaleah implies even a hundred times. As for teshalah: I know [this law] only [when the bird is required] for a permissive purpose;[26] how do I know it when it is required for the fulfilment of a precept?[27] Therefore Scripture writes,'teshalah', implying under all circumstances.

One of the Rabbis said to Raba: [Thou shalt not hate thy brother in thine heart:] hokeah tokiah [thou shalt surely rebuke] thy neighbour.[28] Perhaps hokeah means once, tokiah twice? — He replied, hokeah implies even a hundred times. As for tokiah: I know only that the master [must rebuke] the disciple: whence do we know that the disciple [must rebuke] his master? From the phrase. 'hokeah tokiah', implying under all circumstances.

[If thou see the ass of him that hateth thee lying under its burden and wouldst forbear to help him,] thou shalt surely[29] help with him.[30] [From this] I know it only if the owner is with it; whence do I know [the law] if its owner is not with it? From the verse, 'thou shalt surely help with him' — in all circumstances.

[Thou shalt not see thy brother's ass or his ox fall down by the way, and hide thyself from them:] thou shalt surely help him to lift them up again:[31] [From this] I know it only if the owner is with it; whence do I know [this law] if the owner is not with it? From the verse, 'thou shalt surely help him to lift them up again'.

Now, why must both unloading and loading be stated? — Both are necessary. For had Scripture mentioned unloading [only], I would have thought, that is because it entails suffering of dumb animals and financial loss;[32] but as for loading, where neither suffering of dumb animals nor financial loss is involved,[33] I might have thought that one need not [help], Whilst had we been informed in respect of loading, [I would have thought, that is] because it is remunerated;[34] but unloading, which is unremunerated,[35] I would have thought one need not [help]. Thus both are required. But on R. Simeon's view that loading too is without remuneration, what can you say? — In R. Simeon's view the verses are not explicit.[36]

Why need these two be written and also [the return of] the lost [animal]? — They are all needed. For had Scripture written these two [only]. [I would think it was] because they entail the suffering of both the owner and itself [sc. the animal]; but as for a lost [animal], which causes grief to the owner but not to itself, [the law] would not apply.[37] And if we were informed this of a lost animal, [I would think it was] because the owner is not with it;[38]

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(1) I.e., any obstacle to hinder its progress.

(2) That too falls within the category of restoring lost property — i.e., one must take the necessary steps to prevent loss.

(3) [MS.M. 'Rabbah.']

(4) Ibid, 3,

(5) [MS.M.: 'Rabbah,' cf. supra 6b.]

(6) He assumed that its purpose was that the soil should not become waterlogged.

(7) Hence they must be saved, but it is possible, as far as the Baraitha is concerned, that one is not bound to save land.

(8) For it is then obvious.

(9) And therefore, on the hypothesis stated in n. 9, do not need saving.

(10) Job XXXVI, 33; (E.V.: the noise thereof sheweth concerning it), i.e., each clause illumines the other.

(11) I.e., the explicit ruling in the second clause, and the implicit ruling in the first.

(12) If running on the road townwards, it must have been set in that direction, and is therefore not lost. If running forestwards, it is lost.

(13) I.e., of the animal.

(14) I.e., an animal feeding in vineyards causes damage. and therefore must be expelled. — Abedah (אבידה) means both a lost article and a loss.

(15) Thus on Raba's interpretation the Mishnah does not give a definition of what animal is to be regarded as lost, but treats of losses which the onlooker must prevent.

(16) V. supra p. 149. n. 6.

(17) To the owners, that the animal is trespassing.

(18) The owner is himself responsible for his loss.
(19) Inf. of the verb, meaning ‘to restore.’
(20) ‘Thou shalt restore then.’
(21) When lost property is returned, it is unnecessary to inform the owner.
(22) A thief, robber, or bailee, when returning the article stolen or left in his charge, must inform the owner; otherwise he remains responsible in the case of mishap.
(23) I.e., providing it is returned, it does not matter how.
(24) Deut. XXII, 6, 7: the Heb. lit., ‘to let go thou shalt let go’; v. p. 192. n. 5.
(25) But if the dam returns after being sent away twice, one may take both it and the young.
(26) I.e., for food.
(27) E.g., as a leper's sacrifice (v. Lev. XIV. 4): how do I know that even then the dam must not be taken?
(28) Lev. XIX. 17; cf. n. 1.
(29) This is expressed in Hebrew by the inf.
(30) Ex. XXIII, 5; this is an exhortation to help to unload the animal.
(31) Deut. XXII. 4. Cf. n. 1.
(32) As a result of the depreciation of the animal if it is not unloaded.
(33) V. infra p. 20.
(34) Though the passer-by is bound to help in the loading, he must be paid for his services.
(35) V. infra 32a.
(36) It is not clear which refers to unloading and which to loading. Therefore, had there been only one verse, I would have taken it to refer to one or the other, but not to both.
(37) I.e., there is no need to trouble to return it.
(38) Hence, since it is quite helpless, the passer-by is called upon to render assistance by restoring it.

Talmud - Mas. Baba Metzia 31b

but as for these two, seeing that their master is with them, [the law would] not [apply]: thus both are necessary.

He that smote him shall surely be put to death:[1] I know only [that he is to be executed] by the mode of death prescribed in his case: whence do I know that if you cannot execute him with the death prescribed for him, you may slay him with any death you are able? From the verse, ‘He shall surely be put to death’, meaning under all circumstances.

Thou shalt surely smite [the inhabitants of that city with the edge of the sword]:[2] I know only [that you may execute them] with the death[3] that is prescribed in their case. Whence do I know that if you cannot slay them with the death that is prescribed in their case, you may smite them in any manner you are able? From the verse, ‘Thou shalt surely smite’, implying under all circumstances.

Thou shalt surely return [the pledge unto him when the sun goeth down]:[4] from this I know it [sc. that the pledge must be returned] only if he [the creditor] distrained with the sanction of the court;[5] whence do we know if of one who distrained without the sanction of the court? From the verse, Thou shalt surely return it — implying in all cases.

If thou at all[6] take to pledge [thy neighbour's raiment, thou shall deliver it to him by that the sun goeth down]:[7] from that I know it [sc. that the pledge must be returned] only if he [the creditor] distrained with sanction [of the court]; whence do we know it of one who distrained without sanction [of the court]? Because it is stated, If thou at all take to pledge, implying in all cases. And for what purpose are both of these verses necessary?[8] — One refers to day raiment, the other to night clothes.[9]

Thou shalt surely open [thy hand unto thy brother, to thy poor, etc.].[10] I know this only of the poor

of thine own city:[11] whence do I know it of the poor of another city? — From the expression, 'Thou shalt surely open', implying, in all cases.

Thou shalt surely give [him]:[12] I know only that a large sum must be given;[13] whence do I know that a small sum too must be given?[14] From the expression, Thou shalt surely give — in all circumstances.

Thou shalt furnish him liberally.[15] I know only that if the house [of the master] was blessed for his [the slave's] sake,[16] a present must be made. Whence do we know it even if the house was not blessed for his sake? Scripture teaches, 'Thou shalt furnish him liberally'[17] under all circumstances. But according to R. Eleazar b. 'Azariah, who maintained: If the house was blessed for his sake, a present is made to him, but not otherwise; what is the purpose of 'ta'anik'?[18] — The Torah employs[19] human phraseology.[20]

And thou shalt surely lend him [sufficient for his need].[21] I know this only of one [a poor man] who has nought and does not wish to maintain himself [at your expense];[22] then Scripture saith. Give him by way of a loan. Whence do I know it if he possesses his own but does not desire to maintain himself [at his own cost]? From the verse, 'Thou shalt surely lend him'.[23] But according to R. Simeon, who maintained: If he has his own but refuses to maintain himself [therewith], we are under no obligation toward him, why state 'surely?'[24] — The Torah employs human phraseology.

IF HIS LOST TIME IS WORTH A SELA', HE MUST NOT DEMAND, GIVE ME A SELA',' BUT IS PAID AS A LABOURER. A Tanna taught: He must pay him as an unemployed labourer. What is meant by 'an unemployed labourer?' — As a labourer unemployed in his particular occupation.[25]

'IF A BETH DIN IS PRESENT, HE MAY STIPULATE IN THEIR PRESENCE. Issur and R. Safra entered into a business partnership. Then R. Safra went and divided it [the stock] without Issur's knowledge in the presence of two people. When he came before Rabbah son of R. Huna,[26] he said to him, 'Go and produce the three people in whose presence you made the division; or else

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(1) Num. XXXV, 21.

(2) With reference to an idolatrous city. Deut. XIII, 16.

(3) Lit., 'smiting'.

(4) Ibid. XXIV, 13.

(5) V. infra 113a.

(6) This also is expressed in the Hebrew by the inf.

(7) Ex. XXII. 25.

(8) Since they both state the same law.

(9) Deut. XXIV, 13 to the former; Ex. XXII, 25 to the latter. Cf. infra 114b.

(10) Deut. XV, 11.

(11) As implied by thy poor.

(12) Ibid. 10. The reference is to money lent before the year of release.

(13) Maharsha: because 'give' connotes something of value

(14) If one cannot lend much.

(15) Ibid. 24; this refers to the parting gifts made to a slave on his attaining his freedom.

(16) Because the verse ends: as the Lord thy God hath blessed thee thou shalt give unto him.

(17) V. supra note 2.

(18) 'Thou shalt furnish', i.e., the repetition of the verb.

(19) Lit., 'speaks with'.

(20) And that repetition is normal.

(21) Ibid. 8: i.e., one must lend a poor man for his requirements.

(22) I.e., he does not want charity; hence Scripture orders that a loan shall be made to him.
(23) Even then one must lend, and claim the return of his money after the borrower's death. This is the explanation in Keth. 67b.
(24) v. p. 195. n. 2.
(25) Lit., ‘as a labourer unemployed in that work from which he was disturbed’ (by having to return the lost article) and willing to take less for the lighter task of restoring lost property than for his usual more arduous occupation; cf. p. 398. n. 2.
(26) For confirmation of his division, which was in order to dissolve their partnership.

two out of the three,[1] or else two witnesses that you did divide in the presence of three [others].'[2] 'How do you know this?' he asked him.[3] — He replied. 'Because we learnt. IF A BETH DIN IS PRESENT, HE MAY STIPULATE IN THEIR PRESENCE; BUT IF THERE IS NO BETH DIN BEFORE WHOM TO STIPULATE, HIS OWN TAKES PRECEDENCE.'[4] 'What comparison is there?' he retorted. 'In that case, Seeing that money is being taken from one and given to another, a Beth din is needed;[5] but here I took my own, and mere proof [is required that I shared fairly]; hence two are sufficient. In proof thereof we learnt: A widow may sell [of her deceased husband's estate] without the presence of Beth din!'[6] — Said Abaye to him, 'But was it not stated thereon: R. Joseph b. Manyumi said in R. Nahman's name: A widow does not need a Beth din of ordained scholars, but a Beth din of laymen is necessary?'

MISHNAH. IF HE FINDS IT [AN ANIMAL] IN A STABLE, HE HAS NO RESPONSIBILITY TOWARD IT [TO RETURN IT];[7] IN THE STREET, HE IS OBLIGED [TO RETURN IT]. BUT IF IT IS IN A CEMETERY, HE MUST NOT DEFILE HIMSELF FOR IT.[8] IF HIS FATHER ORDERS HIM TO DEFILE HIMSELF, OR SAYS TO HIM, 'DO NOT RETURN [IT].' HE MUST NOT OBEY HIM. IF ONE UNLOADS AND LOADS, UNLOADS AND LOADS, EVEN FOUR OR FIVE TIMES, HE IS [STILL] BOUND [TO DO IT AGAIN], BECAUSE IT IS WRITTEN, THOU SHALT SURELY HELP [WITH HIM].[9] IF HE [THE OWNER OF THE ANIMAL] WENT, SAT DOWN AND SAID [TO THE PASSER-BY], 'SINCE THE OBLIGATION RESTS UPON YOU, IF YOU DESIRE TO UNLOAD, UNLOAD:' HE [THE PASSER-BY] IS EXEMPT, BECAUSE IT IS SAID, 'WITH HIM'; YET IF HE [THE OWNER] WAS OLD OR INFIRM HE IS BOUND [TO DO IT HIMSELF]. THERE IS A BIBLICAL PRECEPT TO UNLOAD, BUT NOT TO LOAD. R. SIMEON SAID: TO LOAD UP TOO. R. JOSE THE GALILEAN SAID: IF IT [THE ANIMAL] BORE MORE THAN HIS PROPER BURDEN, HE [THE PASSER-BY] HAS NO OBLIGATION TOWARDS HIM [ITS OWNER], BECAUSE IT IS WRITTEN, [IF THOU SEE THE ASS OF HIM THAT HATETH THEE LYING] UNDER ITS BURDEN, WHICH MEANS, A BURDEN UNDER WHICH IT CAN STAND.

GEMARA. Raba said: The STABLE referred to is one which neither causes [the animal] to stray nor is it guarded.[10] It does not cause it to stray: since it is taught: HE HAS NO RESPONSIBILITY TOWARDS IT [TO RETURN IT]; nor is it guarded, since it is necessary to teach HE HAS NO RESPONSIBILITY TOWARD IT. For should you think that it is guarded: Seeing that if he finds it outside he takes it inside;[11] if he finds it inside, is it necessary to state [that he is not bound to return it]? But it must follow that it is unguarded. This proves it.

IF HE FINDS IT IN A STABLE, HE HAS NO RESPONSIBILITY TOWARD IT. R. Isaac said: Provided that it is standing within the tehum.[12] Hence it follows that [if he finds it] in the street, even within the tehum, he is still bound [to return it]. Others refer this to the second clause, IN THE STREET, HE IS OBLIGED [TO RETURN IT]. R. Isaac observed: Providing that it is standing within the tehum: hence it follows that [if he finds it] in a stable, even without the tehum, he is still under no obligation.

IF IT IS IN A CEMETERY, HE MUST NOT DEFILE HIMSELF FOR IT. Our Rabbis taught: Whence do we know that if his father said to him, 'Defile yourself', or 'Do not return it', he must disobey him? Because it is written, Ye shall fear every man his mother, and his father, and keep my Sabbaths: I am the Lord your God[13] — ye are all bound to honour Me.[14]

Thus, the reason is that Scripture wrote, ye shall keep my Sabbaths;[15] otherwise, however, I would have said that he has to obey him.[16] But why so? One is a positive command, and the other is both a positive and a negative command,[17] and a positive command cannot supersede [combined] positive

and negative commands! — It is necessary. I might think, Since the honour due to parents is equated to that due to the Omnipresent, for it is said, Honour thy father and thy mother;[18] whilst elsewhere it is said: Honour the Lord with thy substance;[19] therefore he must obey him. Hence we are informed that he must not obey him.

THERE IS A BIBLICAL PRECEPT TO UNLOAD, BUT NOT TO LOAD. What is meant by — 'BUT NOT TO LOAD'? Shall we say, not to load at all: wherein does unloading differ, because it is written, Thou shalt surely help him?[20] Yet in respect to loading, too, it is said, thou shalt surely help him to lift them up again![21] But [it means this:] It is a Biblical obligation to unload without remuneration, but not to load without payment, save only for remuneration. R. Simeon said: To load too without payment.

We have [thus] learnt here what our Rabbis taught: Unloading [must be done] without pay; unloading, for pay. R. Simeon said: Both without payment. What is the reason of the Rabbis? — For should you think it is as R. Simeon: let Scripture state loading, and unloading becomes unnecessary; for I would reason: If one is bound to load, though no suffering of dumb animals nor financial loss is involved;[22] how much more so unloading, seeing that both suffering of dumb animals and financial loss are involved![23] Then for what purpose is it written? To teach you that unloading must be performed without payment, but loading only for payment. And what is R. Simeon's reason? — Because the verses are not explicit.[24] And the Rabbis?[25] — Why [say,] The verses are not explicit? Here it is written, [If thou see the ass . . .] lying under his burden;[26] whilst there it is said, [Thou shalt not see thy brother's ass or his ox] fall down by the way, which implies, both they and their burdens are cast on the road.[27] And R. Simeon?[28] — 'Fall down by the way' implies they themselves [the animals], their load being still upon them.

Raba said:

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(1) Who shall testify that the division was made in the presence of three, including themselves.

(2) In each case the three would constitute a Beth din to ensure that the stock was rightly assessed and a fair division made.

(3) That three are necessary.

(4) And a Beth din implies three.

(5) It is so regarded because the Mishnah states that actually he is only entitled to the pay of an unemployed worker, hence, when he stipulates that he is to receive more, and the stipulation is allowed, it is the equivalent of taking money from one and giving it another. — The power of a Beth din to do this is based on the principle, hefker by Beth din is hefker, i.e., Beth din is empowered to abrogate a person's rights in his own property, and declare it ownerless; therefore the court can also take from one and give to another,

(6) For her alimony, and only two witnesses are required to see that she does not sell unreasonably below value.

(7) This is discussed in the Gemara.

(8) If he is a priest.

(9) Ex. XXIII, 5.

(10) I.e., it is in such a position that there is nothing to cause the animal to run away; on the other hand, it is unlocked, and there is nothing to prevent it from going.

(11) I.e., into a stable, and that is sufficient, as stated supra 31a, that he can simply take it into the owner's garden or ruins.

(12) A sabbath day's journey. i.e., 2000 cubits without the town boundary.

(13) Lev, XIX, 3.

(14) I.e., though every man must fear — i.e., reverence and obey his parents — his duty to God overrides his duty to them. The verse is therefore rendered thus: Ye shall fear every man his mother and his father; nevertheless (should they order you to desecrate the Sabbath), ye shall keep my Sabbaths, because I am the Lord your God.

(15) V. preceding note.

(16) His father, when he tells him not to return lost property.

(17) To obey one's parents is a positive command, as has just been quoted. To return lost property is a positive command — thou shalt surely restore it — and a negative injunction — thou mayest not hide thyself (Deut. XXII, 1, 3).
(18) Ex. XX, 12.
(19) Prov. III. 9: the fact that the same language is used of both shews that they are likened to each other.
(20) Ex. XXIII, 5.
(21) Deut. XXII, 4.
(22) V. supra p. 193.
(23) When the animal falls under its burden and help is needed to unload it.
(24) V. p. 194, n. 3.
(25) How do they rebut this argument?
(26) Ex. XXIII. 5: this certainly implies that the burden is still upon it, and help is required for unloading.
(27) And help is required to reload them.
(28) How can he maintain that the verses are not explicit?

Talmud - Mas. Baba Metzia 32b

From the arguments of both we may infer that [relieving] the suffering of an animal is a Biblical law. For even R. Simeon said [this][1] only because the verses are not clearly defined. But if they were, we would infer a minori.[2] On what grounds: Surely we infer it on the grounds of the suffering of dumb animals?[3] — [No.] Perhaps it is because financial loss is involved, and the argument runs thus: If one is obliged to load, though no financial loss is involved; how much more so to unload, seeing that financial loss is involved. But is there no financial loss involved when loading [is required]: may not the circumstances be that in the meanwhile he loses the market, or that thieves can come and rob him of all he has![4] Now, the proof[5] that [relieving] the suffering of an animal is Biblically enjoined is that the second clause states: R. JOSE THE GALILEAN SAID: IF IT [THE ANIMAL] BORE MORE THAN ITS PROPER BURDEN, HE [THE PASSER-BY] HAS NO OBLIGATION TOWARDS HIM [THE OWNER], BECAUSE IT IS WRITTEN, [IF THOU SEE THE ASS OF HIM THAT HATETH THEE LYING] UNDER ITS BURDEN, WHICH MEANS, A BURDEN UNDER WHICH IT CAN STAND: hence it follows that in the view of the first Tanna[6] he is obligated towards him [to help him]. Why so? Surely because relieving the suffering of an animal is Biblically enjoined![7] — [No] Perhaps they differ as to [the connotation of] 'under its burden,' R. Jose maintaining that we interpret 'under its burden,' a burden under which it can stand; whilst the Rabbis hold that we do not interpret 'under its burden' [thus.] [Moreover,] it may be proved that relieving the suffering of an animal is no Biblical [injunction], because the first clause states, IF HE [THE OWNER OF THE ANIMAL] WENT, SAT DOWN, AND SAID [TO THE PASSERBY], SINCE THE OBLIGATION RESTS UPON YOU TO UNLOAD, UNLOAD: HE [THE PASSER-BY] IS EXEMPT, BECAUSE IT IS SAID, 'WITH HIM'. Now, should you think that [relieving] the suffering of an animal is a Biblical injunction, what difference does it make[8] whether the owner joins him [in relieving the animal] or not? — In truth, [relieving] the suffering of an animal is Biblically enjoined; for do you think that 'EXEMPT' means entirely exempt? Perhaps he is exempt [from doing it] without payment, yet he is bound [to unload] for payment, Scripture ordering thus: When the owner joins him, he must serve him for nought; when the owner abstains, he must serve him for payment;[9] yet after all [relieving] the suffering of an animal is Biblically enjoined.

(Mnemonic: Animal, animal, Friend, enemy, habitually lying down.) Shall we say that the following supports him?[10] 'One must busy himself with an animal belonging to a heathen just as with one belonging to an Israelite'.[11] Now, if you say that [relieving] the suffering of an animal is a Biblical injunction, it is well; for that reason he must busy himself therewith as with one belonging to an Israelite. But if you say that [relieving] the suffering of an animal is not Biblically enjoined, why must he busy himself therewith as with an Israelite's animal? — There it is on account of enmity.[12] Logic too supports this. For it states: If it is laden with forbidden wine, he has no obligation towards it. Now if you say that [relieving the suffering of an animal is not Biblically

enjoined, it is well: therefore he has no obligation toward it. But if you say it is Biblically enjoined, why has he no obligation toward it? — It means this: but he has no obligation to load it with forbidden wine.

Come and hear: In the case of an animal belonging to a heathen bearing a burden belonging to an Israelite, thou mayest forbear.[13] But if you say that [relieving] the suffering of an animal is Biblically enjoined, why mayest thou forbear: surely 'thou shalt surely help with him' is applicable! — After all, [relieving] the suffering of an animal is Biblically [enjoined]: the reference there is to loading. If so, consider the second clause: In the case of an animal belonging to an Israelite and a load belonging to a heathen, 'thou shalt surely help.' But if this treats of loading, why [apply] 'thou shalt surely help him'? — On account of the inconvenience of the Israelite.[14] If so, the same applies in the first clause? — The first clause treats of a heathen driver, the second of an Israelite driver. How can you make a general assumption?[15] — As a rule, one goes after his ass.[16] But both 'and thou mayest forbear' and 'thou shalt surely help' refer to unloading! — Well [answer thus:] Who is the authority of this? R. Jose the Galilean, who maintained that [relieving the suffering of an animal is not Biblically [enjoined].[17]

Come and hear: If a friend requires unloading, and an enemy loading.[18] one's [first] obligation is towards his enemy, in order to subdue his evil inclinations.[19] Now if you should think that [relieving the suffering of an animal is Biblically [enjoined], [surely] the other is preferable! — Even so, [the motive] 'in order to subdue his evil inclination' is more compelling.[20]

Come and hear: The enemy spoken of is an Israelite enemy, but not a heathen enemy.[21] But if you say that [relieving] the suffering of an animal is Biblically [enjoined], what is the difference whether [the animal belongs to] an Israelite or a heathen enemy? — Do you think that this refers to 'enemy' mentioned in Scripture? It refers to 'enemy' spoken of in the Baraitha.[22]

Come and hear:

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(1) That unloading needs be explicitly commanded, besides loading.

(2) That one is bound to unload, as above, and the verse would be unnecessary.

(3) If one is bound to load, though no suffering is entailed, etc., as on 32a.

(4) Hence the argument must be based on the suffering of the animal, which proves that such suffering must be averted by Biblical law.

(5) Lit., 'thou mayest know.'

(6) R. Simeon included.

(7) It is now assumed that the first Tanna admits the feasibility of R. Jose's interpretation of 'its burden,' consequently the only possible reason of the first Tanna is that relieving the suffering of an animal is a Biblical law,

(8) Lit., 'what is it to me?'

(9) I.e., he must relieve the animal, but is entitled to demand payment.

(10) Raba.

(11) To relieve it from its burden.

(12) I.e., in order not to arouse the enmity of the heathen.

(13) This refers to Ex. XXIII, 5: If thou seest the ass of him that hateth thee lying under his burden, and wouldst forbear to help him, thou shalt surely help with him, The Talmud disjoins the two phrases 'and wouldst forbear' (one word in Heb. we-hadalta) and 'thou shalt surely help him,' teaching that sometimes the first applies, i.e., one is permitted to withhold his aid, and sometimes the second, viz., 'thou shalt surely help him.'

(14) Who is forced to stay with the animal until it is laden and able to proceed.

(15) On what grounds can one assume that the first clause treats of a heathen driver etc.?

(16) Therefore, seeing that the first clause refers to an ass belonging to a heathen, the driver too is a heathen — probably the owner; and the same holds good of the second clause.

(17) As may be seen from his view in the Mishnah; but Raba's dictum is based on the view of the Rabbis.

(18) I.e., one meets two asses: one, belonging to a friend, is tottering under its burden, and help is needed to unload it; the other, belonging to an enemy, has fallen, and assistance is wanted to reload it.
(19) Tosef. B.M. II.
(20) Lit., 'better'.
(21) Tosef. ibid. It is now assumed that this refers to Ex. XXIII, 5 ('him that hateth thee' == thine enemy).
(22) Quoted above: If a friend requires unloading, and an enemy loading etc.

Talmud - Mas. Baba Metzia 33a

[If thou seest the ass of him that hateth thee lying under its burden etc.:] 'lying' [just now], but not an animal that habitually lies down [under his burden]; 'lying,' but not standing;[1] 'under its burden', but not if it is unloaded;[2] 'under its burden' — a burden under which it can stand. Now, if you say that [relieving the suffering of an animal] is Biblically [enjoined], what does it matter whether it was lying [this once only], habitually lay down, or was standing? — The authority of this is R. Jose the Galilean, who maintained that [relieving] the suffering of an animal is [enjoined merely] by Rabbinical law. Reason supports this too. For it is taught: 'under its burden' — a burden under which it can stand. Now, whom do you know to hold this view? R. Jose the Galilean:[3] this proves it. But can you assign it to R. Jose the Galilean? Does not the second clause teach: 'under its burden' but not if it is unloaded. What is meant by 'not if it is unloaded?' Shall we say, if it is unloaded, there is no obligation at all?[4] But it is written, Thou shalt surely help to lift them up again![5] Hence it is obvious [that it means]. If unloaded, there is no obligation [to help to load it] without payment, but for remuneration. Now, whom do you know to hold this view? The Rabbis![6] — In truth, it is R. Jose the Galilean, yet in the matter of loading he agrees with the Rabbis.[7]

Our Rabbis taught: If thou see [the ass of him etc.]:[8] I might think; even in the distance;[9] therefore it is taught. If thou meet [thine enemy's ox or his ass going astray, thou shalt surely bring it back to him again].[10] If, 'when thou meet', I might think that meet is literally meant; therefore it is written. 'If thou seest', Now, what 'seeing' is the equivalent of 'meeting?' The Sages estimated this as two fifteenths[11] of a mil,[12] which is a ris.[13] A Tanna taught: And he must accompany it as far as a parsang.[14] Rabbah b. Bar Hana observed: Yet he receives payment [for this].

MISHNAH. IF [A MAN'S] OWN LOST ARTICLE AND HIS FATHER'S LOST ARTICLE [NEED ATTENTION], HIS OWN TAKES PRECEDENCE. HIS OWN AND HIS TEACHER'S — HIS OWN TAKES PRECEDENCE; HIS FATHER' S AND HIS TEACHER'S — HIS TEACHER'S TAKES PRECEDENCE, BECAUSE HIS FATHER BROUGHT HIM INTO THIS WORLD, WHEREAS HIS TEACHER. 'WHO INSTRUCTED HIM IN WISDOM, BRINGS HIM TO THE FUTURE WORLD. BUT IF HIS FATHER IS A SAGE,[15] HIS FATHER'S TAKES PRECEDENCE. IF HIS FATHER AND HIS TEACHER WERE [EACH] CARRYING A BURDEN, HE MUST [FIRST] ASSIST HIS TEACHER TO LAY IT DOWN,[16] AND THEN ASSIST HIS FATHER. IF HIS FATHER AND HIS TEACHER ARE IN CAPTIVITY, HE MUST [FIRST] REDEEM HIS TEACHER AND THEN HIS FATHER. BUT IF HIS FATHER IS A SAGE, HE MUST [FIRST] REDEEM HIS FATHER AND THEN HIS TEACHER.

GEMARA. Whence do we know this? — Rab Judah said in Rab's name: Scripture saith, Save that there shall be no poor among you[17] yours takes precedence over all others.[18] But Rab Judah also said in Rab's name: He who [strictly] observes this, will eventually be brought to it.[19]

IF HIS FATHER AND HIS TEACHER WERE [EACH] CARRYING A BURDEN etc. Our Rabbis taught: The teacher referred to is he who instructed him in wisdom, not he who taught him Bible and Mishnah:[20] this is R. Meir's view. R. Judah said: He from whom one has derived the greater part of his knowledge.[21] R. Jose said: Even if he enlightened his eyes in a single Mishnah only, he is his teacher. Said Raba: E.g., R. Sehora, who told me the meaning of zohama listron.[22]

Samuel rent his garment for one of the Rabbis who taught him the meaning of 'One was thrust into the duct as far as the arm pit.[23] and another [key] opened [the door] directly.'[24]

'Ulla said: The scholars in Babylon arise before and rend their garment for each other [in mourning]; but with respect to a [colleague's] lost article, when one has his father's [also to attend to,] he returns [a scholar's first] only in the case of his teacher put excellence.[25] R. Hisda asked R. Huna: 'What of a disciple whom his teacher needs?'[26] 'Hisda, Hisda,' he exclaimed; 'I do not need you, but you need me.' Forty years[27] they bore resentment against and did not visit each other. R. Hisda kept forty fasts because R. Huna had felt himself humiliated, whilst R. Huna kept forty fasts for having [unjustly] suspected R. Hisda.

It has been stated: R. Isaac b. Joseph said in R. Johanan's name: The halachah is as R. Judah. R. Aha son of R. Huna said in R. Shesheth's name: The halachah is as R. Jose.[28] Now, did R. Johanan really say this? But R. Johanan said, The halachah rests with an anonymous Mishnah, and we have learnt, HIS TEACHER, WHO INSTRUCTED HIM IN WISDOM![29] — What is meant by WISDOM? The greater part of one's knowledge.

Our Rabbis taught: They who occupy themselves with the Bible [alone] are but of indifferent merit;[30] with Mishnah, are indeed meritorious, and are rewarded for it; with Gemara[31] — there can be nothing more meritorious; yet run always to the Mishnah more than to the Gemara. Now, this is self-contradictory. You say, 'with Gemara — there can be nothing more meritorious;' and then you say, 'Yet run always to the Mishnah more than to the Gemara!' — Said R. Johanan:

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(1) I.e., one is obliged to help to unload an animal that has fallen under its load, but not one that still stands under it.

(2) One is not obliged to help in loading it up again. The Gemara objects further in that this is explicitly ordered in Deut. XXII, 4.

(3) In the Mishnah supra 32a.

(4) Lit., 'it is not unloaded at all'.

(5) Deut. XXII. 4: this is interpreted as referring to reloading.

(6) Mishnah supra 32a. as interpreted in the Gemara.

(7) That it must be remunerated.

(8) Ex. XXIII, 5.

(9) And one is bound to go there to help.

(10) Ibid. 4.

(11) Lit., 'one in seven and a half.'

(12) A mil == 1000 cubits.

(13) A Persian measure.

(14) The passer-by, having helped to raise up the animal and replace its burden, must accompany it for a parasang, in case it falls again.

(15) [MS.M. adds: 'equal (in wisdom) to his teacher.']

(16) Lit., 'put down his teacher's.'

(17) Deut. XV. 4.

(18) V. p. 187. n. 1.

(19) He who always takes the greatest care to safeguard his own first, so as not to become impoverished, will eventually be brought to poverty.

(20) 'Wisdom' means the intelligent understanding of the Mishnah, the grounds of its statements, which are frequently made without giving the reasons, and ability to reconcile opposing Mishnahs (Rashi).

(21) Whether Bible, Mishnah or Gemara.

(22) **. This is a utensil mentioned in Kel. XIII. 2, in reference to laws of ritual defilement, a soup-ladle with a spoon for removing the scum of soup on one side and a fork on the other.

(23) Jast.: 'the duct of the arm-pit.' a sewer in the Temple, so called from its shape.

(24) This is a Mishnah in Tam. 30b, treating of the clearing away of the ashes from the altar.
(25) Though they give each other the respect due to a teacher, e.g., rising and rending the garments, nevertheless, in a question of lost property, only he who has really taught them is regarded as such.
(26) Because he has traditions from other scholars of which his teacher is ignorant. — R. Hisda was R. Huna's disciple, and the latter regarded the question as having a personal sting.
(27) [R. Han. renders: You need me till the age of forty; cf. A.Z. 5a: 'A man cannot probe the mind of his master up to the age of forty.']
(28) V. Baraitha quoted above.
(29) This appears to agree with R. Meir, not R. Judah.
(30) Lit., 'it is meritorious and it is not meritorious.'
(31) V. p. 60, n. 7. [Read with all MSS. and older prints: 'Talmud' (the discussions based on the older traditions of the Mishnah), the term 'Gemara', occurring throughout this passage in cur. edd., and denoting the complete mastery of a subject (Bacher, HUCA., 1904, 26-36), or, a summary embodying conclusions arrived at in schools (Kaplan, Redaction of the Talmud, p. 195 ff), having been substituted by the censor.]

Talmud - Mas. Baba Metzia 33b

This teaching[1] was taught in the days of Rabbi; thereupon everyone forsook the Mishnah and went to the Gemara; hence he subsequently taught them, 'Yet run always to the Mishnah more than to the Gemara.'[2] How was that inferred?[3] — Even as R. Judah son of R. Ila'i expounded: What is the meaning of, Shew my people their transgression, and the house of Jacob their sins?[4] 'Shew my people their transgression' refers to scholars, whose unwitting errors[5] are accounted as intentional faults;[6] 'and the house of Israel their sins' — to the ignorant, whose intentional sins are accounted to them as unwitting errors. And that is the meaning of what we learnt: R. Judah said: Be heedful of the [Talmud],[7] for an error in Talmud is accounted as intentional.

R. Judah son of R. Ila'i taught: What is meant by the verse, Hear the word of the Lord, ye that tremble at his word?[8] — This refers to scholars; Your brethren said, to students of Scripture; that hate you — to students of the Mishnah;[9] that cast you out — to the ignorant.[10] [Yet] lest you say, their hope [of future joy] is destroyed, and their prospects frustrated, Scripture states , And we shall see your joy.[11] Lest you think, Israel shall be ashamed, — therefore it is stated, and they shall be ashamed: the idolaters shall be ashamed, whilst Israel shall rejoice.

C H A P T E R I I I

MISHNAH. IF A MAN ENTRUSTS AN ANIMAL OR UTENSILS TO HIS NEIGHBOUR, AND THEY ARE STOLEN OR LOST, AND HE [THE BAILEE] PAYS [FOR THEM], DECLINING TO SWEAR (SINCE IT WAS RULED THAT A GRATUITOUS BAILEE MAY SWEAR AND BE QUIT); THE THIEF, IF HE IS FOUND, MUST RENDER DOUBLE, AND IF HE HAS SLAUGHTERED OR SOLD [THE ANIMAL], HE MUST REPAY FOURFOLD OR FIVEFOLD.[12] TO WHOM MUST HE PAY IT? TO HIM WITH WHOM THE BAILMENT WAS DEPOSITED.[13] IF HE SWEARS, NOT WISHING TO PAY, THE THIEF, IF FOUND, MUST REPAY DOUBLE, AND IF HE HAS SLAUGHTERED OR SOLD [THE ANIMAL], MUST REPAY FOURFOLD OR FIVEFOLD. TO WHOM MUST HE PAY IT? TO THE BAILOR.

GEMARA. Why must he state both ANIMAL and UTENSILS? — They are necessary. For if ANIMAL [alone] were stated, I might have said that only in the case of an animal does he [the bailor] make over the double repayment to him,[14] because it requires considerable attention, to be led in and out [of its stable]. But as for utensils, which do not require much attention, I might think that he does not make over the twofold repayment to him.[15] And if UTENSILS [alone] were stated, I might have argued that only in the case of utensils does he [the bailor] make over the twofold repayment to him, because their multiplication is not great.[16] But in the case of an animal, for which,

if slaughtered or sold, he [the thief] must repay fourfold or fivefold, I might think that he [the bailor] does not make over the multiplied principal to him. Hence both are necessary.

Rami b. Hama objected: But one cannot transfer that which is non-existent![17] And even according to R. Meir, who maintained, One can transfer that which is non-existent, — that is only in the case of, e.g.. the fruit of a palm tree, which will naturally come [into existence].[18] But here,

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(1) That Gemara is higher than Mishnah.

(2) The two are not really in opposition. The Mishnah itself needs full discussion (Gemara) before it can be intelligently understood; on the other hand, discussion cannot be profitable unless it takes the Mishnah as its basis. It would appear that when Gemara was praised, number of disciples eagerly applied themselves thereto, forgetting however that the Mishnah is the foundation; and therefore the new statement was made, which is not so much a new statement as a fuller explanation of the old. — It is noteworthy that Gemara, i.e., discussion on the Mishnah, was already rife in the days of Rabbi (i.e.. R. Judah the Prince c. first half of third century C.E.); cf. Weiss, Dor II, p. 209.

(3) [That the study of Talmud is the more meritorious.]

(4) Isa. LVIII, I.

(5) [Through inadequate application to the study of the Talmud.]

(6) Sins through ignorance, in the case of scholars, are accounted as intentional, since had they studied more thoroughly they would not have erred. — 'Transgression' (פשע) really means rebellion, and refers to intentional sin, whilst 'sin' (חטא) often refers to sinning through ignorance, the root idea of חטא being 'to be defective, to miss'.

(7) V. p. 206, n. 6.

(8) Ibid. LXVI, 5.

(9) There was a rivalry (perhaps amounting to enmity) between those who confined themselves exclusively to the Mishnah and those who developed a Gemara — i.e., discussion — upon it; cf. Sot. 22a.

(10) Maharsha: who 'cast you out' in that they have no desire to become partners with scholars in learning.

(11) 'We', plural. i.e., all classes of Israel.

(12) In accordance with Ex. XXI, 37.

(13) I.e., the bailee: since he paid for the bailment, all rights thereof vest in him; hence the thief must make restitution to him.

(14) When he receives payment for his bailment.

(15) It should be observed that the double payment is not regarded as becoming the bailee's automatically on account of the compensation he makes. That is because the liability is incurred on account of the theft, and the animal then belonged to the bailor.

(16) The thief can never be required to pay more than twofold.

(17) Lit., 'which has not come into the world.' — How then can the bailor make over the twofold repayment to the bailee?

(18) Hence we can sell his future crop.

who can say that it [the bailment] will be stolen? And should you assume that it will be stolen, who can say that the thief will be found? And even if the thief be found, who can say that he will repay [double]: perhaps he will confess [before his guilt is attested]. and thus be exempt?[1] — Said Raba: It becomes as though he [the bailor] had said to him, 'If it be stolen, and you are willing to pay me [for it], then my cow be yours from this moment [of delivery]'[2] If so, even its shearings and offsprings too [should belong to the bailee].[3] Why has it been taught: Excepting its shearings and offsprings? — But. said R. Zera, it is as though he had said to him, 'Except its shearings and offsprings.' And why make this an absolute assumption? It may be taken for granted that one gives over those improvements which come from elsewhere, but not those which come from the stock itself.

Others state, Raba said: It becomes as though he said to him, 'If it is stolen, and you are willing to reimburse me, then it is yours from just before the theft.' Wherein do they [sc. the two versions of

Raba's reply] differ? — They differ in respect of the difficulty posited by R. Zera;[4] or if it was standing in the meadow.[5]

AND HE [THE BAILEE] PAYS [FOR THEM], DECLINING TO SWEAR etc. R. Hiyya b. Abba said in R. Johanan's name: HE PAYS is not literally meant, but once he said, 'I will pay,' even if he has not done so, [the law of the Mishnah holds good].[6]

We learnt: AND HE PAYS, DECLINING TO SWEAR; [this implies,] only if he actually pays, but not otherwise? But consider the second clause: IF HE SWEARS, NOT WISHING TO PAY; [which implies] only if he did not consent, but if he consented, even if he had not actually paid [the double repayment is his]! Hence no inference can be drawn from this.[7]

It has been taught in accordance with R. Johanan: If one hires a cow from his neighbour and it is stolen, and he declares, 'I will pay and not swear,'[8] and then the thief is discovered, he must pay double to the hirer.[9]

R. Papa said: If a gratuitous bailee merely says, 'I was negligent,' he [the bailor] assigns the twofold repayment to him, since he could have freed himself by [the plea of] theft. If a paid bailee merely says, 'It was stolen', the twofold repayment is made over to him, since he could, if he wished, have freed himself by pleading that it was hurt or had died. But if a borrower says, 'I will pay,' he [the bailor] does not assign him the twofold repayment; for how could he have freed himself? By [the plea], it died on account of its work? That is a rare occurrence.[10]

Others state, R. Papa said: A borrower too, once he says 'I will pay,' the double repayment becomes his, since he could, if he wished, free himself by [the plea], 'It died on account of its work.' Thereupon R. Zebid observed to him, Thus did Abaye say: As for a borrower, [the twofold repayment is not his] unless he has actually paid. Why? — Since all the benefit [of the loan] is his, he [the lender] does not make over the double repayment to him on the strength of mere words.

It has been taught in accordance with R. Zebid. If one borrows a cow from his neighbour and it is stolen, and the borrower hastens and pays for it, and then the thief is found, he must repay double to the borrower. Now, on the first version of R. Papa's dictum,[11] this is certainly not a refutation;[12] but must we say that it is a refutation of the second version?[13] — R. Papa can answer you: Is this stronger than our Mishnah, which states, HE PAYS, yet we interpreted it as meaning, he declares [that he will pay]; so here too, it means that he says [that he will pay]. How compare? There [in our Mishnah] it is not stated that 'he hastens', whilst here it says, 'he hastens'! — What is the meaning of 'he hastens'? He hastens to promise. But since [the teaching] in respect of a hirer is stated, 'and he says' [that he will pay], whilst [that] in respect of a borrower is stated, 'and he hastens'; this proves that it is stated advisedly [so]! — Were they then taught together?[14] The tannaim of the schools of R. Hiyya and R. Oshaia[15] were asked, and they affirmed that they were taught together.

Now it is obvious that if he [the bailee] declared, 'I will not pay,' and then said, 'I will pay' — then he has said, 'I will pay'.[16] But what if he [first] declared, 'I will pay.'

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(1) One who confesses before his guilt is attested is exempt from the money fine attaching to his crime; v. B.K. 75a.

(2) For it may be taken as axiomatic that one is willing to forego a possible twofold repayment in return for the safety of the principal.

(3) Since the ownership of the bailee is assumed to be retrospective, the shearings and offsprings from the time of its delivery as a bailment should be his.

(4) It arises on the first version, but not the second.

(5) just before the theft. Since this does not belong to the bailee, he cannot acquire it just then (for in order to acquire it, either he must perform meshikah (v. Glos.) or it must be standing within his domain); consequently the additional

repayment made by the thief over and above the principal will belong to the bailor.

(6) This refutes the ruling reported in the name of R. Johanan.

(7) Only one clause is stated exactly, so that no particular inference can be drawn.

(8) Though a hirer is liable for theft, he could swear that an unpreventable accident had occurred, in which case he is free from responsibility.

(9) The Baraitha does not state that he actually paid, but merely declared his willingness to pay, yet the twofold repayment thereby becomes his.

(10) Hence a palpable lie, which one does not care to state.

(11) According to which the borrower does not acquire the double payment by his mere promise to pay.

(12) Since the Baraitha expressly states that the borrower actually paid.

(13) Which states that the borrower is entitled to the double payment on his mere promise to pay.

(14) They are separate Baraithas, and therefore the phraseology of one does not illumine the other.

(15) These were the principal authorities for the Baraitha.

(16) Hence the double repayment of the thief belongs to him.

Talmud - Mas. Baba Metzia 34b

and then declared, 'I will not pay': do we say, he has retracted; or perhaps, he intended keeping his word, and was merely repulsing him [the bailor]?[1] [Again,] if he declared, 'I will pay,' and died, whilst his sons declared, 'We will not pay,' what then? Do we say, they have retracted: or perhaps, they are keeping to their father's word, but merely repulsed him? [Again,] what if the sons did pay? Can he [the bailor] say to them, 'I made over the [right of receiving] double repayment to your father only, because he did me a favour,[2] but not to you': or perhaps, there is no difference? What if he [the bailee] paid to the sons?[3] Can they say to him, 'Our father made over the double repayment to you because you did him a favour; but as for ourselves, you have done nothing for us'; or perhaps, there is no difference? What if the heirs [of the bailee] paid to the heirs [of the bailor]? What if he paid a half?[4] What if he borrowed two cows and paid for one of them?[5] What if he borrowed from partners and paid one of them?[6] What if partners borrowed and one of them paid?[7] What if one borrowed from a woman and paid her husband?[8] What if a woman borrowed and her husband paid? The questions stand.

R. Huna said: He [the bailee] is made to swear that it is not in his possession.[9] Why? We fear that he may have cast his eyes upon it.[10]

An objection is raised: If one lends his neighbour on a pledge and the pledge is lost, and he [the lender] says to him [the debtor], 'I lent you a sela' on it, and it was [only] worth a shekel';[11] whilst the other maintains, 'Not so; you did lend me a sela' upon it and it was worth a sela':' he is free [from an oath].[12] 'I lent you a sela' on it and it was worth a shekel, whilst the other maintains, 'Not so; you did lend me a sela' on it, and it was worth three denarii;'[13] he is liable [to an oath].[14] [If the debtor pleads,] 'You did lend me a sela' on it, whilst it was worth two;' and the other replies, 'Not so: I lent you a sela' on it and it was worth a sela';' he is free [from an oath].[15] 'You did lend me a sela' on it and it was worth two,' whilst the other replies, 'Not so: I lent you a sela' on it and it was worth five denarii,' he is liable [to an oath]. Now, who must swear? He who has the bailment [i.e., the creditor], lest the other swear and then this one produce the bailment.[16] To what does this[17] refer? Shall we say, to the second clause; but that [the oath rests upon the creditor] follows from the fact that it is he who makes partial admission![18] — But, said Samuel, it refers to the first clause. How can it refer to the first clause?[19] — He means the second subsection of the first clause, [viz.,] 'I lent you a sela' on it and it was worth a shekel,' whilst the other maintains, 'Not so: you did lend me a sela' on it, and it was worth three denarii:' he is liable [to an oath]. Now, the onus of the oath lies upon the debtor,[20] yet the Rabbis ordered that the creditor should swear, lest this one [sc. the debtor] swear and then the other produce the pledge. But if

(1) Perhaps he was importuning him for the money, which he could not pay just then. Nevertheless, he might have intended to pay, and therefore the twofold repayment should belong to him.
(2) By taking care of the bailment.
(3) The bailor having died.
(4) I.e., he consented to pay half: does he acquire half of the double repayment?
(5) If it be assumed that when one consents to pay half only he does not acquire half of the double repayment, what if he consents to pay for one cow out of two: can this be regarded as a separate transaction altogether?
(6) His share: is he entitled to his half of the twofold repayment? Do we regard it as though he had paid the whole of one particular person's bailment, or must he have paid for the whole bailment itself?
(7) Has he a right to his half of the double repayment, since he paid for the whole of his share; or must the whole bailment be paid for?
(8) The reference is to 'property of plucking', q.v. p. 234. n. 10. Do we say, since the principal does not belong to the husband, restitution to him does not entitle the bailee to the double repayment; or perhaps, since the husband enjoys the usufruct, it does?
(9) This refers to the Mishnah. Though he offers to pay, he must nevertheless swear.
(10) I.e., coveted it, and so trumped up a story that it was stolen.
(11) Half a sela'.
(12) Since he maintains that he owes him nothing at all, there is no partial admission of the claims.
(13) One sela' = 4 denarii.
(14) Since there is partial admission of indebtedness. The Gemara discusses below the meaning of 'he.'
(15) V. n. 2 which applies here too, though the debtor is now the claimant.
(16) Because it is derogatory to the institution of the oath to swear when a matter may be practically proved (Tosaf.); Mishnah, Shebu. 43a.
(17) The last passage in the cited Mishnah.
(18) Why then state a different reason?
(19) Seeing that there no oath is taken.
(20) Since he is the defendant who makes partial admission.

Talmud - Mas. Baba Metzia 35a

R. Huna's dictum be correct, since the creditor must swear that it is not in his possession, how can he produce it? — Said Raba:[1] There are witnesses that it was burnt.[2] If so, whence can he produce it? — But, said, R. Joseph, there are witnesses that it was stolen. Yet after all, whence can he produce it? He may exert himself and bring it. If so, when the creditor swears, the debtor may take pains and bring it! — [No.] As for the creditor['s producing it], it is well: he knows who enters and leaves his house, and so he can go, exert himself, and produce it. But does the debtor know who enters and leaves the creditor's house?

Abaye said: We fear lest he plead, saying to him, 'I found it after the oath.' R. Ashi said: Both must swear: one [sc. the creditor] that it is not in his possession; and the other, how much it was worth — And this is its meaning: Who swears first? The creditor must swear first [that the pledge is not in his possession], lest the other swear and then he produce the bailment.

R. Huna b. Tahlifa said in Raba's name: The first paragraph of the second clause refutes R. Huna. '"You did lend me a sela' on it, whilst it was worth two," and the other replies, "Not so: I lent you a sela' on it and it was [only] worth a sela'," he is free [from an oath.]' But if R. Huna's dictum is correct, since the creditor must swear that it is not in his possession, let him also swear, in virtue of a superimposed oath, how much it was worth![3] — Said R. Ashi: I repeated this discussion before R. Kahana, whereupon he observed to me: Let this apply where he believes him.[4] Then let the debtor believe the creditor in this too [viz.,] how much it was worth! — [The debtor reasons,] he [the creditor] did not fully ascertain it [sc. the value]. Then let the creditor believe the debtor, since he does fully know it? — [Nevertheless,] he does not believe him. Wherein lies the difference, that the

debtor believes the creditor, but not vice versa? — The debtor applies to the creditor, The integrity of the upright shall guide them:[5] whereas the creditor applies to the debtor, but the perverseness of transgressors shall destroy them.[6]

A man once deposited jewels with his neighbour. When he demanded, 'Give me my jewels,' he replied, 'I do not know where I put them.' So he came before R. Nahman, Who said to him: Every [plea of] 'I do not know' is negligence; go and pay. Yet he did not pay, so R. Nahman went and had his house seized. Subsequently the jewels were found, [by which time] they had appreciated. Said R. Nahman: Let the jewels be returned to their [first] owner, and the house to its owner. Raba observed: I was sitting [then] before R. Nahman and it [the subject of our study] was the chapter, 'IF ONE ENTRUSTS [etc.];[7] so I quoted to him, IF HE [THE BAILEE] PAYS, DECLINING TO SWEAR [etc.],[8] but he did not answer me.[9] And he did well not to answer me. Why? — There he did not trouble him to go to court,[10] whereas here he troubled him.

Shall we say that in R. Nahman's opinion a valuation is returnable?[11] — [No.] There it is different, because it was a valuation made in error, since the jewels were in existence from the first.[12] The Nehardeans said: A valuation is returnable until twelve months. Amemar said: Though I am of Nehardea, I hold that a valuation is always returnable. None the less, the law is that a valuation is always returnable, because it is said, And thou shalt do that which is right and good.[13]

Now it is obvious,if a valuation was made on behalf of a creditor,[14] and he went and valued it for his own creditor: we say to him [the second creditor], You are no better than the man in whose power you come.[15] If he sold, bequeathed or gifted it, these [the recipients] certainly entered it [the distrained estate] originally with the intention of [possessing] the land, not the money.[16] If it was appraised in favour of a woman [creditor], and she married:[17] or if a valuation was made of a woman's [estate] and she married, and then died: the husband ranks as a purchaser in respect to a wife's property: he neither returns [the estate to the debtor], nor is it returned to him.[18] For R. Jose b. Hanina said: In Usha it was enacted:[19] If a woman sells of her 'property of plucking' in her husband's lifetime and then dies, her husband [as heir] can claim it from the purchasers.[20]

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(1) [MS.: R. Joseph.]

(2) Consequently no oath is imposed.

(3) For superimposed oaths, v. supra 3a

(4) This clause means that the debtor believes the creditor that the pledge is lost and does not demand that he swear thereto. Hence there is no superimposed oath either.

(5) Prov. XI, 3; i.e., he assumes that the creditor's prosperity proves his trustworthiness.

(6) Ibid. This is a natural reasoning when the belief in material reward and punishment is strong.

(7) I.e., we were then studying the present chapter.

(8) The Mishnah proceeds to state that the double repayment belongs to the bailee, thus proving that once he pays he is entitled to all rights therein. So here too, since he had paid, albeit against his will, the increased value of the jewels should be his.

(9) Disdaining to reply.

(10) Hence he willingly gives over his rights to the bailee, in consideration of having received payment.

(11) V. supra, p. 99.

(12) But if an article is distrained because a debtor cannot repay, it may be that it is not returnable even if he subsequently acquires money.

(13) Deut. VI, 18.

(14) I.e., the debtor's goods were assessed, distrained, and given to the creditor.

(15) Just as he would have had to return the goods if the debtor could repay the loan, so must you too.

(16) Therefore it is not returnable to the debtor. The creditor himself would have had to return it on account of the verse quoted, for it is applicable to him, since in the first place he demanded money, not land. But it is inapplicable to these recipients, seeing that their thought was land, not money.

(17) And this seized estate became either the husband's, as ‘property of iron flock,’ or remained the wife's, the husband enjoying its usufruct, as ‘property of plucking.’

(18) If he wishes to settle his wife's debts.

(19) V. p. 558, n. 2.

(20) For he ranks as a previous purchaser.

Talmud - Mas. Baba Metzia 35b

Where, however, he [the debtor] himself gave it to him [the creditor] for his debt,[1] R. Aha and Rabina differ thereon: one maintains, It is returnable: the other, It is not. He who rules that it is not returnable holds that it is a true sale, since he voluntarily gave it in payment . But he who rules that it is returnable holds that it is not a true sale, and as for his giving it to him voluntarily and not going to court, — he gave it to him [merely] through shame.

And from what time can he [the creditor] enjoy the usufruct?[2] Rabbah said: As soon as he receives the adrakta.[3] Abaye said: The witnesses [to the adrakta], by their signatures, acquire the right for him.[4] Raba said: When the days of public announcement are ended.[5]

MISHNAH. IF A MAN HIRES A COW FROM HIS NEIGHBOUR, LENDS IT TO ANOTHER, AND IT DIES A NATURAL DEATH, THE HIRER MUST SWEAR THAT IT DIED NATURALLY, AND THE BORROWER MUST PAY THE HIRER.[6] SAID R. JOSE: HOW SHALL ONE DO BUSINESS WITH HIS NEIGHBOUR'S COW?[7] HENCE THE [VALUE OF THE] COW MUST BE RETURNED TO ITS OWNER.

GEMARA. R. Idi b. Abin said to Abaye: Let us see: how does the hirer acquire the cow?[8] By his oath![9] Then let the owner say to the hirer, ‘Take yourself off with your oath, whilst I bring an action[10] against the borrower!’ — Do you think, he replied to him, that the hirer acquires it through his oath! He acquires it from the time of its death, the oath being only to placate the owner.[11]

R. Zera said: It may sometimes happen [on the basis of this Mishnah] that the owner must render many cows to the hirer. How so? — If A hired it [an animal] from him [B] for one hundred days, and then B re-borrowed it from him for ninety days;[12] then A rehired it from B for eighty days [out of the ninety], and B. re-borrowed it from A for seventy days, and it died within the period of borrowing. Now on account of each separate borrowing he becomes liable for one cow.[13] R. Aha of Difti said to Rabina: Let us see, only one animal is involved, which was brought into [a certain state] and taken out [thence]: it was taken out of hiring and brought into borrowing, taken out of borrowing and brought into hiring! — Is the cow then still in existence, he replied, that we should say thus to him?[14] Mar son of R. Ashi said: He has a claim only in respect of two cows, one in respect of borrowing and one in respect of hiring, [for] there is one designation of borrowing and one designation of hiring.[15] That in respect of borrowing belongs entirely to him [the hirer],[16] whilst as for that of hiring, he must work therewith for the period of hiring and return it to its owner.[17]

R. Jeremiah said: Sometimes both [the hirer and the borrower] are liable to a sin-offering,

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(1) I.e., without waiting for a court order of distraint, to which all the previous rulings apply.

(2) When the court makes an order for distraint.

(3) V. Glos.

(4) Even before he receives the document.

(5) The estate to be distrained was announced for public sale, to go to the highest bidder; after the period of announcing is passed (the period is discussed in ‘Ar. 21b seq.) without its being sold, the creditor has a right to the usufruct.

(6) A hirer is free from liability in the case of natural death, but not a borrower.

(7) Surely it is inequitable that the hirer shall be paid for an animal that never belonged to him!

(8) I.e.,the freedom from responsibility for it, and the right to be paid by the borrower.
(9) By swearing that it died a natural death.
(10) Lit., 'will talk in an action.'
(11) That it had actually died a natural death.
(12) Out of the hundred, so that at their expiration A would have another ten days.
(13) For the Mishnah states that the hirer owes nothing to the owner, but the borrower is liable to the hirer. This is a general rule, and holds good even if the borrower is actually the owner, for the principle is the same. Furthermore, each borrowing is a separate transaction, notwithstanding that the borrowings run concurrently, and each imposes a separate liability. Hence the owner may have to pay several animals to the hirer.
(14) Since the cow is dead, that argument cannot be used, and each borrowing and hiring is a separate transaction.
(15) He agrees with R. Aha of Difti. Notwithstanding that there were two borrowings, they are regarded as one in the final analysis.
(16) Therefore the borrower, here the actual owner, must pay for it.
(17) I.e., the owner must supply him with an animal for the remaining period of hiring — in this case, ten days.

Talmud - Mas. Baba Metzia 36a

Sometimes both are liable to a guilt-offering, sometimes the hirer is liable to a sin-offering and the borrower to a guilt-offering, and sometimes the hirer is liable to a guilt-offering and the borrower to a sin-offering.[1] How so? For denying monetary liability [on oath] a guilt-offering is incurred; for a false statement,[2] a sin-offering.[3] 'Sometimes both are liable to a sin-offering.' E.g., if it died a natural death, and they maintained that an accident had befallen it. Thus, the hirer, who is free [from responsibility] in both cases,[4] is liable to a sin-offering, and the borrower, who is responsible in both cases, is [likewise] liable to a sin-offering. 'Sometimes both are liable to a guilt-offering.' E.g., if it was stolen, and they maintained that it had died of its work. Thus both deny monetary liability, since in fact they are responsible [for theft], whilst they free themselves. 'The hirer is liable to a sin-offering and the borrower to a guilt-offering.' E.g., if it died a natural death, and they maintained that it had died of its work. The hirer, who is free [from responsibility] in both cases, is liable to a sin-offering; the borrower, who is liable if it dies a natural death but frees himself with [the plea that] it died of its work, to a guilt-offering. 'The hirer is liable to a guilt-offering, and the borrower to a sin-offering.' E.g., if it was Stolen, and they maintained that it had died naturally. The hirer, who is liable for theft and loss but frees himself with [the plea,] it died naturally, incurs a guilt-offering; the borrower, who is responsible in both cases, a sin-offering.

Now, what does he [R. Jeremiah] thereby inform us?[5] — [His purpose is] to oppose R. Ammi's dictum, viz., For every oath which the judges impose no liability is incurred on account of an 'oath of utterance' because it is said, Or if a soul swear, uttering with his lips [etc.],[6] which implies a voluntary oath.[7] Therefore he informs us that it is not as R. Ammi.

It has been stated: If one bailee entrusted [his bailment] to another bailee — Rab said: He is not liable;[8] R. Johanan maintained: He is liable.[9] Abaye said: According to Rab's ruling, not only if a gratuitous bailee entrusted [the bailment] to a paid bailee, thereby enhancing its care; but even if a paid bailee entrusted [it] to an unpaid one, thus weakening its care, he is still not responsible. Why? Because he entrusted it to an understanding being.[10] Whilst according to R. Johanan's view: not only if a paid bailee entrusted [it] to an unpaid one, thus weakening its care; but even if an unpaid bailee entrusted it to a paid one, thereby enhancing its care, he is still responsible. Why? Because he [the bailor] can say to him, 'It is not my desire that my bailment should be in charge of another person.'

R. Hisda said: This ruling of Rab was not stated explicitly, but by implication. For there were certain gardeners who used to deposit their spades every day with a particular old woman. But one day they deposited them with one of themselves. Hearing the sounds of a wedding, he went out and entrusted them to that old woman. Between his going and returning, their spades were stolen, and

when he came before Rab, he declared him not liable. Now, those who saw this thought that it was because if a bailee entrusts [the bailment] to another bailee he is free [from liability]; but that is not so: there it was different, Seeing that every day they themselves used to deposit [their spades] with that old woman.

Now, R. Ammi was sitting and recounting this discussion, whereupon R. Abba b. Memel raised an objection before him: IF A MAN HIRES A COW FROM HIS NEIGHBOUR, LENDS IT TO ANOTHER, AND IT DIES A NATURAL DEATH, THE HIRER MUST SWEAR THAT IT DIED NATURALLY, AND THE BORROWER MUST PAY THE HIRER. But if this [sc. R. Johanan's ruling] be correct, let him [the owner] say to him, 'It is not my desire that my bailment should be in the hands of another person'! — He replied: The circumstances here are that the owner authorised him to lend it. If so, he ought to pay the owner![11] — It means that he said to him, 'At your discretion'.[12]

Rami b. Hama objected [from the following Mishnah]: If one deposited money with his neighbour, who bound it up and slung it over his shoulder[13] [or] entrusted it to his minor son or daughter and locked [the door] before them, but not properly,[14] he is responsible, because he did not guard [it] in the manner of bailees.[15] Hence, it is only because they were minors; but if they were adults, he would be free [from liability]. Yet why so? Let him say to him, 'It is not my desire that my bailment should be in the hands of another person'! — Said Raba: He who makes a deposit

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(1) The reference is to the Mishnah, where the hirer of an animal then lends it to another.

(2) Lit., 'utterance of lips.' V. Shebu. 32b.

(3) If one swears falsely, profiting thereby, he is liable to a guilt-offering; if he does not profit thereby, thus taking an 'oath of utterance', to a sin-offering] This is deduced from Lev. V, 4 f, 21, 25.

(4) Whether it dies a natural death or is the victim of a mishap.

(5) All these follow from well established principles in the last Mishnah, in Shebu. 49b, and R. Jeremiah adds nothing new.

(6) Lev. V, 4.

(7) I.e., in his opinion an 'oath of utterance' is only one taken quite voluntarily; but if imposed by a court, even if nothing is gained thereby, it is not an 'oath of utterance'.

(8) For whatever he would not have been liable had he kept it himself.

(9) Even for unpreventable accidents, for which he would not have been liable had he kept it himself.

(10) I.e., who is capable of giving due care.

(11) The assumption is that he permitted him to lend it to that particular person; but in that case, it is as though he himself had lent it, and therefore he ought to receive the compensation.

(12) I.e., he gave him a general authorisation; hence the hirer is regarded as the lender and payment is made to him.

(13) Lit., 'behind him.'

(14) I.e., he shut them in the house, so that they could not go out with the money, but did not close the door properly.

(15) V. infra 42a.

does so with the understanding that his [the bailee's] wife and children [may be put in charge thereof]. The Nehardeans said: This may be deduced too [from the Mishnah quoted] , for it states, 'or entrusted it to his minor son or daughter . . . he is responsible'; hence, [if] to his adult son or daughter, he is not responsible, whence it follows that if [he entrusts it] to strangers, whether adults or minors, he is liable. For if otherwise, he [the Tanna] should have simply taught 'minors' : this proves it.

Raba said: The law is, If one bailee entrusts [the bailment] to another, he is responsible. Not only if a paid bailee entrusts [it] to an unpaid one, so weakening its care; but even if an unpaid bailee

entrusts to a paid one, he is [still] responsible. Why? Because he [the bailor] can say to him, 'You I believe on oath: the other I do not.'[1]

It has been stated: If he [the bailee] was negligent thereof,[2] and it went out into a meadow[3] and died naturally:[4] Abaye in Rabbah's name ruled that he is liable; Raba in Rabbah's name ruled that he is not liable. 'Abaye in Rabbah's name ruled that he is liable.' Any judge who does not give such a verdict is not a judge: not only is he liable on the view that , if the beginning is through negligence, and the end through an accident, one is liable;[5] but even on the view that one is not liable, in this case he is. Why? Because we say, The air[6] of the meadow land killed it.[7] 'Raba in Rabbah's name ruled that he is not liable.' Any judge who does not give such a verdict is not a judge: not only is he not liable on the view that, if the beginning is through negligence, and the end through an accident , one is not liable; but even on the view that he is liable, in this case he is not. Why? Because we Say, What difference does one place or another[8] make to the Angel of Death?[9] Now, Abaye admits that if it returned to its owner [sc. the bailee] and then died, he is free. Why? Because it had returned, and it could not be said that the air of the meadow killed it. Whilst Raba admits that if it was stolen from the meadow and died naturally in the thief's house, he [the bailee] is responsible. Why? Had the Angel of Death left it alone, it still would have been in the thief's house.[10]

Abaye said to Raba: According to you, who maintain, what difference does this place or that make to the Angel of Death: when R. Abba b. Memel raised an objection before R. Ammi, and he answered him, It means that the owner authorised the hirer to lend it,[11] — he should rather have answered him, What difference does this place or another make to the Angel of Death?[12] — He replied, According to you, who teach [the reason of R. Johanan's ruling[13] as being that the bailor can say,] 'I do not wish my bailment to be in the hands of another', that objection [of R. Abba b. Memel] can be raised.[14] But according to myself, who [maintain that it is because he can say,] 'You I believe on oath, whilst the other I do not believe on oath,' the objection cannot be raised at all.[15]

Rami b. Hama objected: If he [the bailee] took it up to the top of steep rocks and it fell and died, it is no accident.[16] Hence, if it died naturally, it is accounted an accident and he is not liable. Yet why so? Let him [the bailor] say to him, The [cold] mountain air killed it, or the exhaustion of [climbing] the mountain killed it! — The meaning there is that he took it up to a fertile and goodly pasture ground.[17] If so, it is the same even if it fell?[18] — He should have supported it [to prevent it from falling], but did not. If so, consider the first clause: If it ascended to the top of steep rocks and then fell down, it is an accident. Yet there too he should have supported it! — That holds good only if he supported it in its ascent, and supported it when it fell.[19]

SAID R. JOSE: HOW SHALL ONE DO BUSINESS WITH HIS NEIGHBOUR'S COW etc. Rab Judah said in Samuel's name: The halachah is as R. Jose. R. Samuel b. Judah asked Rab Judah: You have told us in Samuel's name that R. Jose disputed

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(1) And it is not within the bailee's power to put the bailor in such a position that he shall be forced to believe the other person on oath; hence he is responsible.

(2) Sc. the animal entrusted to his care, placing it in a stable improperly closed.

(3) Where it might have been stolen or killed by wild beasts.

(4) Thus the bailee was negligent, but the actual death per se was one for which a bailee is not responsible.

(5) V. infra 42a.

(6) Lit., 'heat'.

(7) Hence his death is directly the result of his negligence.

(8) Lit., 'here or there.'

(9) Therefore the initial negligence had absolutely nothing to do with the animal's death. But in the case discussed supra 42a (q.v.) it did have some slight bearing upon it.

(10) And lost, as far as the owner was concerned. Since this is directly the result of the bailee's negligence, he is

responsible

(11) V. supra 36a.

(12) This answer is preferable, for then the Mishnah on 35a is not limited to a particular instance.

(13) Supra 36a.

(14) And having raised it, R. Ammi replied as he thought fit.

(15) Since in the Mishnah the hirer himself swears.

(16) Infra 93b.

(17) Which is a natural thing for shepherds: hence he is not liable on the score of cold air or exhaustion.

(18) Since, on the present hypothesis, he merely did his duty in taking it up.

(19) The animal's weight, however, being too much for him.

Talmud - Mas. Baba Metzia 37a

in the first [Mishnah][1] too: now, is the halachah as his view [there too] or not? — He replied: R. Jose did indeed dispute in the first too, and the halachah agrees with him in the first too. It has been stated likewise: R. Eleazar said: R. Jose differed in the first too, and the halachah agrees with him there also. But R. Johanan maintained: R. Jose agreed in the first [Mishnah], seeing that he [the bailee] had already paid for it.[2] [What!] only if he actually paid, but not otherwise? Yet did not R. Hiyya b. Abba say in R. Johanan's name: 'HE PAID' is not literally meant , but once he says, 'I will pay' , even if he has not done so [the ruling of the Mishnah holds good]? — Say thus: R. Jose agreed in the first [Mishnah], seeing that he had already declared, 'I will pay for it'.

MISHNAH. IF A MAN SAYS TO TWO [OTHERS] I ROBBED ONE OF YOU OF A MANEH, BUT DO NOT KNOW WHICH OF YOU, OR THE FATHER OF ONE OF YOU DEPOSITED A MANEH WITH ME, AND I DO NOT KNOW WHOSE: HE MUST GIVE EACH A MANEH, SINCE HE HIMSELF CONFESSED.[3] IF TWO MADE A DEPOSIT WITH ONE PERSON, ONE A MANEH[4] AND THE OTHER TWO HUNDRED [ZUZ]: — THIS ONE SAID, THE TWO HUNDRED IS MINE, AND THE OTHER SAID LIKEWISE, THE TWO HUNDRED IS MINE: HE MUST GIVE A MANEH TO EACH, WHILST THE REST LIES UNTIL ELIJAH COMES.[5] SAID R. JOSE: IF SO, WHAT WILL THE DECEIVER LOSE?[6] BUT THE WHOLE MUST LIE UNTIL ELIJAH COMES. LIKEWISE, IF TWO UTENSILS [ARE DEPOSITED], ONE WORTH A MANEH AND THE OTHER ONE THOUSAND [ZUZ]: THIS ONE CLAIMS, THE BETTER ONE IS MINE, THE OTHER CLAIMS, THE BETTER ONE IS MINE: THE INFERIOR ONE MUST BE GIVEN TO ONE OF THEM, AND OUT OF THE SUPERIOR THE VALUE OF THE INFERIOR IS GIVEN TO THE SECOND, THE REST REMAINING UNTIL ELIJAH COMES. SAID R. JOSE: IF SO, WHAT WILL THE DECEIVER LOSE? BUT THE WHOLE MUST LIE UNTIL ELIJAH COMES.

GEMARA. This proves that money is collected as a result of doubt, and we do not say, Let the money stand in the presumptive ownership of its possessor. But this is contradicted by the following: IF TWO MADE A DEPOSIT WITH ONE PERSON, ONE A MANEH AND THE OTHER TWO HUNDRED [ZUZ], THIS ONE SAID, THE TWO HUNDRED IS MINE, AND THE OTHER SAID LIKEWISE, THE TWO HUNDRED IS MINE: HE MUST GIVE A MANEH TO EACH, WHILST THE REST LIES UNTIL ELIJAH COMES! — Said he to him:[7] Would you oppose a bailment to robbery! In the case of robbery, since he committed a transgression, the Rabbis penalised him;[8] whereas in the case of a bailment, where no wrong was committed by him, the Rabbis did not penalise him. But bailment may be opposed to bailment, and robbery to robbery. 'Bailment may be opposed to bailment'. For the first clause teaches, OR, THE FATHER OF ONE OF YOU DEPOSITED A MANEH WITH ME, AND I DO NOT KNOW WHOSE; HE MUST GIVE EACH A MANEH. Now this is contradicted by [the Baraitha just quoted,] 'If two made a deposit, etc.' — Said Raba: In the first clause[9] it is regarded as though they had entrusted [their money] to him in two separate packages, so that he should have paid particular attention;[10] but in the second clause it is

regarded as though they had made their deposits with him in a single package, so that he was not bound to take particular attention.[11] [How so?] Both made their deposits with him simultaneously,[12] so that he [the bailee] can say to them, You yourselves were not particular with each other:[13] should I then have been particular?

'And robbery may be opposed to robbery'. Here we learn IF A MAN SAYS TO TWO OTHERS, I ROBBED ONE OF YOU OF A MANEH, BUT I DO NOT KNOW WHICH OF YOU, OR, THE FATHER OF ONE OF YOU DEPOSITED A MANEH WITH ME, AND I DO NOT KNOW WHOSE: HE MUST GIVE EACH A MANEH. But the following is opposed thereto: If a man robbed one out of five, and does not know which one he robbed, and each claims, 'It was me he robbed': he may place the stolen article among them and depart: this is R. Tarfon's view.[14] This proves that money is not collected as a result of doubt, but we say, Let the money stand in the presumptive ownership of its possessor![15] And whence [does it follow] that our Mishnah here agrees with R. Tarfon?[16] Because It was taught thereon:[17] R. Tarfon admits that if one says to two people, 'I robbed one of you of a maneh, but do not know which of you,' he must give each a maneh![18] — There they were claiming from him; here it means that he came to fulfil his duty in the sight of Heaven.[19] This may be proved too, for it is stated SINCE HE HIMSELF CONFESSED.[20] This proves It.

The Master said: 'There they were claiming from him.' And what does he plead? — Rab Judah said in Rab's name: He is silent. R. Mattena said in Rab's name: He

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(1) Supra 34b, R. Jose maintaining: How can the bailee pocket the double repayment due on account of the theft of the bailor's property?

(2) And thereby acquired all rights in it.

(3) This is discussed in the Gemara.

(4) = 100 Zuz.

(5) V. p. 6, n. 2.

(6) There is nothing to induce him to confess.

(7) The answerer to the questioner, though their names are unmentioned. [This is, however, omitted in several MSS, v. D.S. a.l.]

(8) Therefore the first clause of the Mishnah rules that he must pay both.

(9) Where only one person deposited money with him.

(10) Who gave him the money; just as had two people made deposits at different times, hence in different packages, it would have been the bailee's duty to see which package belonged to each. Since he did not pay close attention, he must satisfy both claimants.

(11) What part of the package belonged to each other.

(12) Each in the other's presence.

(13) To prevent the other from seeing how much he deposited, lest he claim it as his own.

(14) B.K. 103b.

(15) And the robber is not bound to repay each, as in our Mishnah.

(16) Perhaps it reflects R. Akiba's views, who differs from R. Tarfon, v. B.K. ibid.

(17) If a man robbed one out of five etc.

(18) In agreement with our Mishnah.

(19) Legally he is not bound to pay all claimants, and the second Mishnah quoted treats of this aspect. But morally he can atone for his sin only by repaying all, so that none shall have suffered through his theft.

(20) Which shews that he was not being dunned, but wished to clear himself.

protests.[1] On the view that he protests — but silence is as admission.[2] But on the view that he is silent — this silence here[3] is not an admission, because he can say, 'The reason that I was silent

before each is that I thought, Perhaps it was this one.'

The Master said: 'He may place the stolen article among them and depart.' And can all of them take it and go! Did not R. Abba b. Zabda say in Rab's name: Whenever he is doubtful if an article was left [in a certain spot], he must not take it in the first instance; but if he took, must not return it?[4] — Said R. Safra: It is laid by.[5]

Abaye said to Raba: Did then R. Akiba Say,[6] 'That is not the way to clear him of his crime, but he must restore the theft to each one;' thus proving that money is collected as a result of doubt, and we do not say, Let the money stand in the presumptive ownership of its possessor? But the following is opposed thereto: If a house collapsed on a person and his mother:[7] the son's heirs maintain, 'The mother died first;'[8] whilst the mother's heirs maintain, 'The son died first:'[9] both[10] agree that they must divide. And R. Akiba said thereon: I agree in this case that the property remains in its presumptive ownership![11] — There, he replied to him, both [heirs] plead 'perhaps';[12] but in the case of a person robbing one man of five, there is certainty against doubt.[13] But our Mishnah here, IF A MAN SAYS TO TWO [OTHERS], 'I ROBBED ONE OF YOU OF A MANEH,' which is a case of 'perhaps' on both sides, nevertheless states HE MUST GIVE EACH A MANEH! (Whence do you know that it agrees with R. Akiba? — Because it is taught thereon:[14] R. Tarfon admits that if one says to two people, 'I robbed one of you of a maneh, but do not know which,' [he must give each a maneh]. Now, to whom does he admit? [Surely] to R. Akiba, his opponent? And whence do you know that both sides plead 'perhaps?' Firstly, because it is not stated, They demand of him; and secondly, R. Hiyya taught: Each replies, 'I do not know!')[15] — But we have already interpreted it of one who wishes to fulfil his duty in the sight of heaven!

Rabina said to R. Ashi: Did then Raba say that whenever [deposits are made] in two separate packages, he [the bailee] should have paid particular attention?[16] But Raba — others state, R. Papa — said: All admit in the case of two people who entrusted [their lambs] to a shepherd, that the shepherd places [them] between them and is quit![17] — He replied: The circumstances there are that they deposited [the lambs] in the shepherd's fold without his knowledge.

LIKEWISE, IF TWO UTENSILS [ARE DEPOSITED], ONE WORTH A MANEH AND THE OTHER ONE THOUSAND [ZUZ] etc. And both [instances] are necessary. For if the first alone were stated, I might argue, Only there [sc. in the case of money] do the Rabbis rule [thus], because no loss is caused; but in the latter case, where great loss is involved [in the breaking of the larger utensil], they agree with R. Jose. And if the latter case [alone] were stated, I might argue, Only here does R. Jose rule [thus], but in the former, he agrees with the Rabbis.[18] Thus both are necessary.

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(1) To each claimant, 'I do not know you', thus denying the claim.

(2) Therefore he would have to pay each.

(3) [Despite the generally accepted principle that silence is treated as admission (Yeb. 87b).]

(4) This refers to an object bearing no mark of identification, found in a place where it is somewhat guarded, so that it is doubtful whether it was lost or intentionally put there. (V. Supra 25b.) Now, 'he must not return it' means that it must not be given to a claimant who cannot prove his ownership, for the true owner may come later and prove, by means of witnesses, that he deposited it there. Hence here too, if the money is left among the five, and all take it, the true victim suffers a permanent loss.

(5) The phrase means, he places the stolen article before them at court, and departs, i.e., he is now clear in the eyes of the law. Nevertheless, the money is kept until ownership is proved.

(6) In reference to R. Tarfon's ruling where one of five persons was robbed.

(7) And it is not known who predeceased whom, whilst the mother possessed property in her own rights.

(8) Hence her son inherited her property; and on his death, we inherit it.

(9) Hence we are the mother's direct heirs in his absence.

(10) Beth Shammai and Beth Hillel, who dispute in other cases.

(11) B.B. 155b. It is disputed by Amoraim a.l. whose presumptive ownership is meant. But whosoever Is meant, we see that R. Akiba admits that money cannot be collected when doubt arises.

(12) Neither can really pretend to know with certainty which died first.

(13) Whereas the thief himself is doubtful, each of the five declares positively that he was the victim.

(14) Sc. the other Mishnah.

(15) And R. Hiyya's Baraithas were authoritative expositions of the Mishnah. Hence the difficulty remains: the two rulings of R. Akiba are contradictory.

(16) V. supra 37a.

(17) This too refers to a controversy between R. Akiba and R. Tarfon. A and B: one deposited one lamb with a shepherd, and the other two, each subsequently maintaining that the two were his; then the shepherd merely puts the three lambs before them. Now, lambs are certainly as deposits in separate packages, yet the shepherd is not required to return two lambs to each. This contradicts Raba's former statement.

(18) Inverting the reasoning.

Talmud - Mas. Baba Metzia 38a

But R. Jose's reason is that the deceiver may suffer loss![1] — Hence both are necessary on the view of the Rabbis, and he [the Tanna] teaches a case of 'not only this, but this too.'[2]

MISHNAH. IF A MAN DEPOSITS PRODUCE WITH HIS NEIGHBOUR, EVEN IF IT IS SUFFERING LOSS,[3] HE MUST NOT TOUCH IT. R. SIMEON B. GAMALIEL SAID: HE MUST SELL IT BY ORDER OF THE COURT, BECAUSE IT IS LIKE RETURNING LOST PROPERTY TO ITS OWNER.

GEMARA. What is the reason?[4] — Said R. Kahana: A man prefers a kab of his own to nine of his neighbour's.[5] But R. Nahman b. Isaac said: We fear lest the bailor had declared it terumah and tithe for other produce.[6]

An objection is raised: If one deposits produce with his neighbour, he must not touch it . Therefore its owner may declare it terumah and tithe for other produce. Now, on R. Kahana's explanation, it is well: hence he states, 'therefore'. But on the view of R. Nahman b. Isaac, how state 'therefore'?[7] — It means this: now that the Rabbis have ruled that it may not be sold because we fear [that the owner may have declared, etc.], therefore the owner may declare it terumah and tithe for other produce.

Rabbah b. Bar Hanah said in R. Johanan's name: The dispute is only when there is the normal rate of decrease; but when [the loss] exceeds the normal rate of decrease, all agree that it must be sold by a court order. Now, he certainly disagrees with R. Nahman b. Isaac;[8] but must we say that he differs from R. Kahana [too]? — [No.] R. Kahana referred only to the normal decrease. But did he not Say, A man prefers a kab of his own to nine of his neighbour's![9] — That was a mere exaggeration.

An objection is raised: 'therefore its owner may declare it terumah and tithe for other produce;' but let him fear lest [the loss] exceeded the normal decrease, so that it was sold , hence he [the bailor] eats tebel![10] — [A loss] above the normal decrease is rare.[11] But what if it does happen — we sell it? But let us fear lest the owner might have declared it terumah and tithe for other produce![12] — It is, in fact , sold to priests [only] at the price of terumah.[13] Then according to R. Nahman b. Isaac too, let it be sold to priests at the price of terumah! — They differ in this: viz., Rabbah b. Bar Hanah holds that [loss] above the normal decrease is altogether rare, and when it does happen, it exceeds the usual rate only after a considerable time.[14] Hence, if the owner declared it terumah and tithe for other produce, he would have done so before its loss exceeded the normal;[15] therefore, when it does exceed it we can sell it to priests at the price of terumah. R. Nahman b. Isaac, however, maintains that a greater decrease than normal is quite frequent, and when it happens, it may happen immediately.[16] Therefore, should you say that it is sold, it may happen that it is sold early, and when

the owner declares it terumah and tithe for other produce he is unaware that it is [already] sold , and so eats tebel.

An objection is raised: If one deposits fruit with his neighbour, and it rots; wine, and it sours; oil, and it putrefies, or honey, and it turns rancid, he [the bailee] may not touch it: this is R. Meir's ruling. But the Sages maintain: He effects a remedy for them by selling them on the instructions of the court; and when he sells, he must sell to strangers, not to himself. Similarly, when the charity overseers have no poor to whom to distribute [their funds], they must change [the copper coins] with others, not themselves.[17] The overseers of the soup kitchen,[18] when they have no poor to whom to make a distribution, must sell to others, not themselves. Now, incidentally he [the Tanna] states, 'fruit . . . and it rots': surely that means, even more than the normal decrease?[19] — No: [it means] within the normal deterioration. But 'wine, and it sours, oil and it putrefies, or honey, and it turns rancid' are more than normal deterioration! — These are different: having arrived at that stage, they remain so.[20] Now, when oil putrefies, or honey becomes rancid,

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(1) And that obviously applies to both cases equally: how then could it be argued that if the second clause alone were taught, I might think that he agrees with the Rabbis in the first?

(2) I.e., having first taught the instance of money, he proceeds to state, Not only do the Rabbis rule thus where it involves no loss, but even in a dispute about utensils, where definite loss is caused.

(3) Through mildew or rodents.

(4) Of the first view.

(5) He would rather have a smaller quantity grown by himself than a larger quantity produced by another.

(6) Lit., 'for another place.' Produce may be declared Terumah (v. Glos.) or tithe for other produce lying elsewhere. If the bailor had done this, it obviously may not be sold.

(7) Seeing that the reason that he may not touch it is precisely because the bailor may have declared it terumah or tithe for other produce.

(8) If we fear that it was declared terumah or tithe, it certainly may not be sold under any circumstances.

(9) Which is certainly more than normal.

(10) V. Glos.; the plural is used here. — The produce might have been sold before it was declared tithe, in which case the bailor now eats untithed produce.

(11) Lit., 'is not found.'

(12) In which case the buyer, though possibly a zar, (q.v. Glos.) eats terumah, which is forbidden.

(13) Which is less than that of ordinary produce: firstly, because only priests may eat it; and secondly, because it may not be eaten at all if it becomes defiled.

(14) Lit., 'at a time ahead.'

(15) So that the produce is properly tithed.

(16) Before the lapse of a considerable time.

(17) Copper coins were unsuitable for keeping a long time, being liable to tarnish and mould. Therefore they would be exchanged for silver ones.

(18) תמחוי ; actual food was collected for this purpose, not money, and it was distributed to those in immediate need of a meal. V. B.B. 8b.

(19) Yet R. Meir rules that it must not be touched, which contradicts R. Johanan.

(20) And do not deteriorate any further; therefore nothing is gained by selling them. But produce goes on rotting more and more.

Talmud - Mas. Baba Metzia 38b

for what is it fit?[1] — Oil is of use to leather merchants;[2] honey, for the soreness of camels.[3]

'But the Sages maintain, he must effect a remedy for them by selling them on the instructions of the court.' But what remedy does he effect?[4] — Said R. Ashi: In respect of the gourds.[5] Wherein do they differ?[6] — One master holds, We care about a great loss, but not about a small one;[7] whilst the

other master [sc. the Rabbis] holds that we care even for a small loss.[8]

R. SIMEON B. GAMALIEL SAID: HE MUST SELL IT BY ORDER OF THE COURT, BECAUSE IT IS LIKE RETURNING LOST PROPERTY TO ITS OWNER. It has been stated: R. Abba son of R. Jacob said in R. Johanan's name: The halachah agrees with the Sages. But R. Johanan has already said that once. For Rabbah b. Bar Hana said in R. Johanan's name: Wherever R. Gamaliel taught in our Mishnah, the halachah agrees with him, excepting in respect to 'Surety', 'Zidon', 'And the second [ruling] on Proof'![9] — There is a dispute of Amoraim on R. Johanan's views.[10]

Now from R. Simeon b. Gamaliel we may deduce that a relative is authorised to enter upon a captive's estate; whilst from the Rabbis we may infer that a relative is not permitted to enter upon a captive's estate.[11] How so? Perhaps R. Simeon b. Gamaliel ruled thus only in this case, since the stock itself is consumed, but there he too may hold that we do not authorise possession.[12] Whilst [on the other hand] the Rabbis rule thus only here, in accordance with either R. Kahana['s reason] or R. Nahman b. Isaac['s]; but there, it may indeed be that entry is permitted. Are we to say that these are two opinions [independent of each other]? But Rab Judah said in Samuel's name: The halachah agrees with R. Simeon b. Gamaliel; whilst Samuel ruled; A relative is permitted to enter upon a captive's estate. Surely that is because it is one ruling?[13] — No. They are two rulings.[14] Reason too supports this. For Raba said in R. Nahman's name: The halachah agrees with the Sages; nevertheless R. Nahman ruled: A relative is authorised to enter a captive's estate. Hence this proves that they are two different rulings. This proves it.

It has been stated: If a man is taken captive, Rab said: His next of kin is not authorised to enter upon his estate; Samuel said: His next of kin is authorised to enter into his estate. Now, if it was heard that he was dead, all agree that he is authorised to enter.[15] They differ where it was not heard that he had died: Rab said: We do not authorise him to enter, lest he cause them [the estates] to deteriorate;[16] but Samuel said: We authorise him to take possession, for since a Master said, 'We value it for them as for an aris',[17] he will not permit deterioration.

An objection is raised: R. Eliezer said: From the implication of the verse, And my wrath shall wax hot, and I will kill you with the sword,[18] I know that their wives shall be widows and their children fatherless; why then is it stated, and your wives shall be [widows, and your children fatherless]?[19] This teaches that their wives will seek to remarry and not be permitted, and their children desire to enter upon their father's estate and not be allowed![20] — Said Raba: What we learnt[21] is [that they are not permitted] to take possession and sell.[22] Now, this happened in Nehardea, and R. Shesheth decided the matter by reference to this Baraitha.[23] Said R. Amram to him: But perhaps what we learnt[24] was, to enter and sell? — Perhaps you are from Pumbeditha, he retorted, where they draw an elephant through the eye of a needle.[25] For these are[26] taught side by side with [the widowhood of] the wives: just as these are not permitted to [remarry] at all, so here too, they [sc. the heirs] are not [allowed to take possession] at all.

Now, whether the next of kin is permitted to enter upon a captive's estate is disputed by Tannaim. For it has been taught: If one enters upon a captive's estate, he is not ejected thence.[27] Moreover, even if he [the heir] heard that they [the owners] were making ready to come [to reclaim the land], and he anticipated it by reaping and consuming [the produce], he is a zealous man who profits thereby.[28] Now, the following are [included in the term], a 'captive's estates': If one's father, brother, or one of his legators went overseas, and it was reported that he had died.[29] If a man enters into abandoned estate, he is ejected therefrom. And the following are abandoned[30] estates: If one's father, brother, or one of his legators went overseas, and it was not reported that he had died. R. Simeon b. Gamaliel observed: I have heard that abandoned are as captive['s estates].[31] If a man enters into forsaken property[32] he is ejected thence. And the following are forsaken estates: If one's father,

brother, or one of his legators is here [sc. in the country], but it is not known whither he has gone. Now, wherein do the former differ [from the latter], that the former are designated ‘abandoned,’ and the latter ‘forsaken’?

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(1) That R. Meir rules that it is sold.

(2) To make the leather supple.

(3) To rub the sore spots on the camel's back, caused by the chafing of the saddle.

(4) Since deterioration, in the case of oil and honey, does not go further, whilst its value has already dropped, how is the matter remedied by the sale?

(5) In which they are contained. These at least are saved, whereas if the honey or oil is kept therein they too are affected.

(6) Sc. R. Meir and the Rabbis, since on the present hypothesis R. Meir agrees that produce must be sold if the deterioration exceeds normal.

(7) Therefore when produce suffers its normal decrease, or oil and honey become rancid, and only their containers can be saved — in both cases a small loss — they must not be sold.

(8) To prevent it if possible.

(9) ‘Surety’, v. B.B. 173b; ‘Zidon’, v. Git. 74a; ‘Second (ruling) on Proof’, Sanh. 31a. Thus R. Johanan had already stated that in all cases, excepting these three, the halachah is as R. Simeon b. Gamaliel: why then state it again specifically in respect of our Mishnah?

(10) Rabbah b. Bar Hana held that he had stated a general rule, whilst R. Abba son of R. Jacob disputed it.

(11) If a man is taken captive, leaving his estate untended, it is disputed below whether a relative, sc. his next of kin, may take temporary possession of it, so as to save it from loss. Now, since R. Simeon b. Gamaliel holds that produce may be sold by the bailee to save it from loss, by the same reasoning the next of kin is permitted to enter a captive's estate, the Rabbis holding the reverse.

(12) The produce may entirely rot away, but real estate, even if it suffers loss through neglect, can never be destroyed entirely.

(13) I.e., the two cases are interdependent.

(14) Samuel's two views being coincidental.

(15) Tosaf.: ‘heard’ means that there was a rumour substantiated by one witness only. — Now, if the rumour is proved false, the owner returning before the usufruct of the estate has been enjoyed by the next of kin, the latter receives pay as a farmer-tenant, aris (v. Glos.); whilst if the rumour is true, he is the heir. Hence he may enter, and there is nothing to fear.

(16) Thinking that the owner may return, he will only be anxious to get as much out of the land as possible, neglecting to fertilise it and so exhausting the soil.

(17) Should the owner return, the relative is given a share in the produce as though he were an aris.

(18) Ex. XXII, 23.

(19) Ibid.

(20) Thus they will remain permanently widows and fatherless (in the sense that they cannot set up their own estate). This condition can come about when the fathers are taken captive and their death is not proved, R. Eliezer's dictum shows that in such a case the children are not permitted to enter their father's estate.

(21) [Render with MS.M.: ‘(What is meant is that . . .) to take, etc.,’ deleting ‘What we learnt,’ as this citation is not a Mishnah.]

(22) But they are permitted to take possession.

(23) That the heir should not enter the captive's estate.

(24) [Or, ‘What was meant was . . . . cf. p. 232, n. 9.]

(25) The scholars of the Pumbeditha academy were extremely subtle.

(26) The children who are not permitted to enter upon their father's estate.

(27) Lit., ‘we do not withdraw it from his hand.’

(28) I.e., his action is not blameworthy.

(29) V. p. 232. n. 3.

(30) נטושים .

(31) Viz., that the heirs are not ejected.

(32) רטושים ; the Gemara states below that this implies voluntary abandonment.

'Abandoned' implies against their will, as is is written, But the seventh year thou shalt let it rest and abandon it,[1] [i.e.,] by royal dispensation;[2] whereas 'forsaken' implies voluntarily, as it is written, The mother shall be forsaken[3] of her children.[4]

A Tanna taught: And for all these a valuation is made as for an aris.[5] To what does this refer? Shall we say, To captives: if he is considered 'a zealous man who profits thereby,'[6] can there be a question concerning his own improvements![7] But if to forsaken property — surely it is taught that they are ejected therefrom! — Hence It must refer to abandoned [property]. [Then] according to whom? Shall we say, according to the Rabbis: but they rule that he is ejected therefrom. If R. Simeon b. Gamaliel, surely he observed, 'I have heard that abandoned are as captives' [estates]! — 'They are as those of captives', but not altogether so:[8] 'as those of captives,'in that they are not ejected therefrom; 'but not altogether so,' for there [sc. in the case of captives' estate] he is considered a zealous man who profits thereby, whereas here a valuation is made for him as for an aris.[9]

Now, wherein does it differ from what we learnt: If a man incurs expenditure on his wife's property, [whether] he expended much and enjoyed little [usufruct] or the reverse, what he expended he expended, and what he enjoyed he enjoyed![10] This is analogous only to what we learnt:[11] If a man incurs expenditure for the property of his wife, a minor, he is regarded as though he had incurred it for that of a stranger.[12] This shows that since he [her husband] could not place full reliance,[13] the Rabbis enacted a measure on his behalf,[14] in order that he might not cause them [the wife's estates] to deteriorate;[15] so here too, the Rabbis enacted a measure on his behalf, so that he might not cause them [the abandoned estates] to deteriorate.

'And for all of these a valuation is made as for an aris.' What does 'all of these' include? — It includes R. Nahman's dictum in Samuel's name: If a man is taken captive, his next of kin is authorised to enter into his estates. If he leaves voluntarily, his next of kin is not permitted to enter upon his estates.[16] Now R. Nahman, giving his own opinion, said: A fugitive is as a captive. Why does he flee? Shall we say, on account of poll-tax? But that is voluntary![17] — But [he means] one who flees on account of political offences.[18]

Rab Judah said in Samuel's name: If a man is taken captive, and leaves standing corn to be reaped, grapes to be vintaged, dates to be harvested, or olives to be gathered, Beth din enter his estate and appoint a steward who reaps, vintages, harvests and gathers; after that the next of kin is permitted to take possession.[19] Then let a permanent steward be appointed![20] — A steward is not appointed for bearded men.[21]

R. Huna said: A minor is not permitted to enter upon a captive's estates, nor the next of kin upon a minor's estates, nor a next of kin of a next of kin upon a minor's estates.[22] 'A minor is not permitted to enter upon a captive's estates,' lest he injure them. 'Nor a next of kin of a next of kin upon a minor's estates' — this refers to a brother on the mother's side.[23] 'Nor a next of kin upon a minor s estates:' since he [the minor] cannot protest, he may take presumptive possession thereof.[24] Said Raba: It follows from R. Huna's dictum that one cannot claim presumptive ownership of a minor s estate,[25]

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(1) ונטשת Ex. XXIII, 11; the reference is to the seventh year, in which land and its produce must be 'abandoned' — i.e., left free for all.

(2) By Scriptural command; hence against the owner's desire.

(3) רטשה .

(4) Hos. X, 14; Rashi explains that the reference is to voluntary flight, for fear of the ensuing war.
(5) V. Glos.
(6) And takes the whole of the produce (Rashi).
(7) Surely they belong entirely to him, not merely a third or quarter, as in the case of an aris.
(8) Lit., 'as captives and not as captives.'
(9) For since it was not reported that the owner had died, the heir is assumed to have entered into his estates on the tacit understanding that he should be paid as an aris.
(10) Keth. 79b. The reference is to 'property of plucking,' the usufruct of which belongs to the husband, whilst the principal remains the wife's, reverting to her on the husband's death or if he divorces her. — In this case then the husband or his heirs cannot strike a balance between expenditure and revenue, and the question is raised, Why not give the same ruling in the case of abandoned property, instead of regarding the next of kin as an aris.
(11) In Keth. 80a the reading is: to what R. Jacob said in R. Hisda's name.
(12) The wife referred to is a fatherless child, who had not attained her majority. By Biblical law, only a father could contract a marriage on behalf of his daughter, a minor, but the Rabbis extended the privilege to her mother or brothers, in the absence of a father. (She herself cannot contract a marriage, her actions, as a minor, having no legal validity.) This marriage having only Rabbinical force, she could annul it, on attaining her majority, by declaring that she did not want her husband (mi'un), whereon she became free without the formality of a divorce.
(13) That the estate would remain in his possession, as she might annul the marriage.
(14) Sc. that he should be paid as an aris if his wife annulled the marriage.
(15) Through his neglect.
(16) [Had he approved of his next of kin, he himself would have appointed him over his estate before he left.]
(17) Surely he himself could have managed to appoint some one before he left, as there was no reason for the hasty flight.
(18) Others: 'murder'. The penalty being a very heavy one, his flight is not voluntary. This case of R. Nahman is included in the term, 'all of these.'
(19) And is paid as an aris. But he cannot take that which is completely grown without his toil.
(20) Rashi: who will receive nothing for his stewardship.
(21) No one is prepared to work for nothing on behalf of grown men. Stewards are indeed appointed on behalf of minors left fatherless, because stewardship then is regarded as a good deed.
(22) E.g., A is the brother of B, a minor, by the same father, whilst C is A's half brother by his mother, hence no blood-relation of B at all.
(23) As explained in n. 1.
(24) If one enjoys three consecutive years' possession of an estate, without its owner formally protesting that it is not his, he is assumed to have bought or otherwise acquired it. Now, a minor cannot protest, and so the relative may claim it as his after three years, on the ground that he, and not the minor, had inherited them; the same applies to the relative's relative (as explained in n. 1), who may claim it as heir of the first next of kin.
(25) A cannot claim that he bought the estate from B, the minor's father, on the strength of three years' undisturbed possession. This follows from the fact that R. Huna merely forbade a relative to enter upon a minor's estates, but not a stranger, which shows that a stranger's claim of presumptive ownership is ignored.

Talmud - Mas. Baba Metzia 39b

even if he attained his majority.[1] Now, this applies only to a brother by his father,[2] but there is no objection to a brother by his mother. And even of a brother by his father, this applies only to land; but there is no objection in respect of houses.[3] And even in respect of land, this holds good only if no deed of partition was drawn up.[4] But if a deed of partition had been drawn up, it is generally known.[5] This, however, is not so. It makes no difference whether a brother by his father or a brother by his mother,[6] whether land or houses, whether a deed of partition had been drawn up or not — we do not authorize them to take possession.

A certain old woman had three daughters; she and one daughter were taken captive, and of the other two daughters, one died, leaving a child behind. Said Abaye: What shall we do? Shall we

[temporarily] assign the estates to the [third] Sister: but perhaps the old woman is dead, and a relative is not permitted to enter upon a minor's estates?[7] Shall we assign the estates to the child, but perhaps the woman is not dead, and a minor is not permitted to enter a captive's estate? — Said Abaye: Therefore half is given to the [last] sister, and a steward is appointed in respect of the other half on behalf of the child. Raba said: Since a steward is appointed for one half, a steward is appointed for the other half too. Subsequently it was heard that the old woman was dead.[8] Thereupon Abaye ruled: A third is given to the sister, a third to the child, and as for the remaining third,[9] a sixth is given to the sister, and a steward is appointed for the other sixth on behalf of the child. Raba said: Since a steward is appointed for one sixth, a steward is appointed for the other sixth.

There came a brother to Mari b. Isak from Be Hozai,[10] saying to him, 'Divide [my father's estates] with me.' 'I do not know you,' he replied. So they went before R. Hisda. Said he to him, 'He [Mari] speaks truly to you, for it is written, And Joseph knew his brethren, but they knew him not,[11] which teaches that he had gone forth without the stamp of a beard and came [before them] with one.[12] Go then,' he continued, 'and produce witnesses that you are his brother.' 'I have witnesses,' he replied, 'but they are afraid of him, because he is a powerful man.' Thereupon he said to the other [Mari], 'Go you, and bring witnesses that he is not your brother.' 'Is that justice!' he exclaimed, 'the onus of proof lies on the claimant!' 'Thus do I judge in your case,' he retorted, 'and for all who are powerful men of your like'. 'But after all,' he argued, 'witnesses will come and not testify [the truth]'.[13] 'They will not commit two [wrongs],' he rejoined.[14] Subsequently witnesses came [who testified] that he was his brother. 'Let him share with me the vineyards and gardens which he planted,' demanded he. 'He speaks rightly to you,' said he [R. Hisda], 'For we learnt: If one leaves sons, adults and minors, and the adults improve the property, they improve it for both equally;[15]

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(1) After which the stranger had it in his possession three years. But this does not establish a claim, since he took possession whilst the orphan was a minor, who on attaining his majority may not have known that the estates were his father's, and hence did not protest.

(2) Who may claim that he inherited the estates.

(3) Since the neighbours can testify to their rightful ownership.

(4) Distinctly setting forth the portion of each.

(5) Lit. 'it has a voice'. Hence there is no fear of a false claim.

(6) [As he can still claim it to be property belonging to his mother in her own right, to which he is entitled as heir.]

(7) For if she had died, part of her estates belonged to the grandchild.

(8) But nothing was known of the daughter.

(9) The share of the captive daughters.

(10) V. p. 508, n. 2.

(11) Gen. XLII, 8.

(12) So Mari may not recognise you too, even if you are his brother.

(13) If they are afraid of me, they will certainly testify in my favour whether it be the truth or not.

(14) Witnesses who can testify to your disadvantage may repress their evidence through fear of you, which is one wrong. But they will certainly not commit another by testifying falsely in your favour.

(15) Lit., 'in the middle'. (V. B.B. 143b.) I.e., the minors take an equal share of the improvements.

Talmud - Mas. Baba Metzia 40a

and thus did Rabbah rule likewise, They improve it for both equally.'[1] Said Abaye to him:[2] How compare? There the adults are aware of the [existence of the] minors, and forego [their labour on their behalf]; but here, was he [Mari] aware [of him], that he should forego! Now, the matter travelled about[3] until it reached R. Ammi. Said he to them [his disciples]: Even a greater thing has been said, [viz.,] A valuation is made for them as for an aris:[4] shall he then not be paid [likewise] in his own![5] This [observation] was brought back to R. Hisda. Said he to them: How compare? There [in the case of a captive's estates] he entered with authority [of the court]; here he entered without

authority.[6] Moreover, he [the claimant] was a minor [when Mari first took possession], and a relative is not permitted to enter into a minor's estates. When this [reply] was taken back to R. Ammi, he said to them: They did not complete it [sc. the narrative of this lawsuit] before me [by informing me] that he was a minor.

MISHNAH. IF A MAN ENTRUSTS PRODUCE TO HIS NEIGHBOUR, HE [THE BAILEE] MAY [WHEN RETURNING IT] MAKE A DEDUCTION FOR DECREASES [AS FOLLOWS]: FOR WHEAT AND RICE, NINE HALF KABS PER KOR;[7] FOR BARLEY AND MILLET, NINE KABS PER KOR; FOR SPELT AND LINSEED, THREE SE'AHS PER KOR: ALL DEPENDS ON THE QUANTITY AND THE TIME.[8] SAID R. JOHANAN B. NURI: WHAT DO THE MICE CARE; THEY EAT [THE SAME] WHETHER THE QUANTITY BE LARGE OR SMALL! HENCE HE MAY MAKE DEDUCTIONS ONLY FOR ONE KOR. R. JUDAH SAID: IF IT IS A LARGE QUANTITY HE CANNOT DEDUCT DECREASES AT ALL, BECAUSE IT INCREASES.[9]

GEMARA. But rice decreases by much more! — Said Rabbah b. Bar Hanah in R. Johanan's name: This refers to peeled rice.

FOR SPELT AND LINSEED, THREE SE'AHS PER KOR etc. R. Johanan said in R. Hiyya's name: This refers to linseed in its calyxes.[10] It has been taught likewise: For spelt and linseed in its calyxes and unpeeled rice, three se'ahs per kor.

ALL DEPENDS ON THE QUANTITY etc. A Tanna taught: It is thus per kor per annum.

SAID R. JOHANAN B. NURI etc. It has been taught: They [the Sages] said to R. Johanan, Much of it deteriorates and much is scattered.[11]

A Tanna taught: This holds good only if he [the bailee] mixed it with his own produce. But if he assigned him a special corner he can say to him, 'Behold, here is yours before you.'[12] But what if he did mix it with his crops: let him see how much his own was![13] — It refers to one who drew his supplies therefrom. Then let us see how much he drew? — He does not know.

R. JUDAH SAID: IF IT IS etc. What constitutes a LARGE QUANTITY? — Said Rabbah b. Bar Hanah in R. Johanan's name: Ten kors. It has been taught likewise: What constitutes a large quantity? Ten kors.

A tanna recited before R. Nahman: When was this said? If he measured [the corn] for him out of the granary and returned [it] to him out of the granary. But if he measured [it] for him out of the granary and returned it to him out of the house, he may make no deduction for decreases, because it [the quantity] increases.[14] Are we dealing with imbeciles, he retorted, who give with a large measure and take back with a small! Perhaps you mean the season of the granary.[15] [Thus:] When is this said? If he measures it out to him at the harvest season and returns it to him in the harvest season. But if he measures it out to him at the harvest season and returns it to him in the rainy season [winter], he may make no deduction for decreases, because it increases.[16] Said R. Papa to Abaye: If so, the barrel [containing produce] ought to burst! — It did once happen that the barrel [did in fact] burst. Alternatively, it [the reason that the barrel does not generally burst] is on account of the tightness [of the crops].[17] MISHNAH. HE MAY DEDUCT A SIXTH IN THE CASE OF WINE. R. JUDAH SAID: A FIFTH. HE MAY DEDUCT THREE LOGS OF OIL PER HUNDRED, WHICH IS A LOG AND A HALF FOR LEES, AND ONE AND A HALF FOR ABSORPTION.[18] BUT IF IT WAS REFINED OIL, HE MAY MAKE NO DEDUCTION FOR LEES. IF THEY [THE CONTAINERS] WERE OLD BARRELS, HE MAY MAKE NO DEDUCTION FOR ABSORPTION.[19] R. JUDAH SAID: EVEN IF HE SELLS REFINED OIL TO HIS NEIGHBOUR DURING THE WHOLE

YEAR, THE LATTER MUST ACCEPT A LOG AND A HALF OF LEES PER CENT.[20]

GEMARA. But there is no dispute; each master rules in accordance with his region. In the locality of the first master they covered [the inside of the wine barrels] with wax, so there was not much absorption;[21] whilst in that of the other [sc. R. Judah] they covered [them] with pitch; hence they absorbed more.[22] Alternatively, it is on account of the clay [used in making the barrels]; the one quality absorbed more, the other less.

In Rab Judah's locality forty-eight jugfuls went to the [standard] barrel, a barrel being sold at six zuz, and Rab Judah retailed six [jugfuls] per zuz.

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(1) Rashi, regarding this last phrase, 'and thus etc.', as a continuation of R. Hisda's statement, substitutes Rab for Rabbah; firstly, because Rabbah was R. Hisda's pupil, and he would not quote his pupil's views in support of his own; and secondly, because an Amora is never adduced in support of a Mishnah. But Rab was his teacher, and he is cited not in support of the Mishnah, but in explanation thereof; as there is a view that this Mishnah refers only to a natural improvement, he quoted Rab as holding that it refers even to improvements directly effected by the brothers. Tosaf. retains our reading, explaining that this is not a continuation of R. Hisda's speech, but an observation by the Talmudic redactor that Rab once gave a similar ruling.

(2) [To Rabbah (according to Tosaf.).]

(3) Lit., 'the matter rolled on'.

(4) V. supra 39a, in reference to a next of kin who enters into a captive's estates; on the latter's return, the former is paid for his improvements as an aris, receiving a half, third or a quarter, in accordance with local usage, though, of course, the land was not his at all.

(5) Even if the claimant is entitled to half of the improvement, surely Mari is entitled to a fraction of that half, as though he were an aris! R. Hisda, however, had not allowed for this.

(6) On his father's death he took possession without a court order.

(7) 1 Kor = 30 se'ahs = 180 kabs.

(8) I.e., these pro rata decreases hold good whatever the quantity; also, they are dependent on the time the produce is stored — the Gemara states that these are per annum.

(9) This is discussed below.

(10) Since they dry up and are blown away by the wind, the decrease is so large. But pure linseed does not suffer so great a loss.

(11) Besides the depredations of mice; therefore it does depend on quantity.

(12) Whatever the decrease.

(13) And knowing the combined quantity and by how much the whole has decreased, make a proportionate deduction.

(14) The measures used in the granary were larger than house measures, hence the same quantity shows a larger figure when measured by the latter; this increase counterbalances the normal decrease.

(15) I.e., summer, when the corn is harvested into the granary.

(16) In winter the crops swell up, the resultant increase counterbalancing the normal loss.

(17) Tightly pressed together in the barrel, they have no room to expand and cause it to burst.

(18) The barrels absorb that quantity.

(19) Old barrels have already absorbed as much as they can contain.

(20) I.e., if the vendor sells a quantity of oil but keeps it in his own barrels, supplying it in smaller quantities to the vendee as and when desired. Having received 98 1/2 logs of pure oil without sediment, the vendee must now accept 1 1/2 of lees.

(21) Not more than a sixth.

(22) Sc. a fifth.

Talmud - Mas. Baba Metzia 40b

Now, deduct thirty-six [from the forty-eight] for six [zuz],leaves twelve; deduct eight, which is the sixth [allowed for absorption], leaves four.[1] But Samuel said: He who profits must not profit more

than a sixth?[2] — There are the barrels and the lees.[3] If so, it exceeds one sixth. — There is his trouble, and the cost of the crier.[4]

IF IT WAS REFINED OIL, HE MAY MAKE NO DEDUCTION FOR LEES etc. But it is impossible that it [the barrel] shall not absorb![5] — Said R. Nahman: This refers to [barrels] lined with pitch.[6] Abaye said: You may even say that they are not pitch lined: being laden, they are laden.[7]

R. JUDAH SAID: EVEN IF HE SELLS REFINED OIL TO HIS NEIGHBOUR DURING THE WHOLE YEAR, THE LATTER MUST ACCEPT A LOG AND A HALF OF LEES PER CENT. Abaye said: When you examine the matter, [you will conclude that] in R. Judah's opinion lees may be mixed [with the oil]; whilst on the Rabbis' view lees may not be mixed. 'In R. Judah's opinion lees may be mixed,' and that is the reason that he [the vendee] must accept [the lees],[8] because he [the vendor] can say to him, 'Had I desired to mix it up for you, could I not have done so? therefore now too, accept it.'[9] But let him answer, 'Had you mixed it up for me, it could have been sold [together with the rest]: but what am I to do with it now? I cannot sell it separately!' — This refers to a private individual, who prefers clear [oil].[10] But let him say to him, 'Since you did not mix it up for me, you have renounced it in my favour?'[11] — R. Judah follows his general reasoning, not accepting [the theory of] renunciation. For we learnt: If one sells the yoke, he has not sold the oxen; if he sells the oxen, he has not sold the yoke. R. Judah said: The price decides [the matter]. E.g., if one says to another, Sell me your yoke for two hundred zuz, it is well known that a yoke is not priced at two hundred zuz.[12] But the Sages say: The price is no proof.[13]

'Whilst on the Rabbis' view lees may not be mixed,' and that is the reason that he [the vendee] need not accept [the lees], because he can say to him [the vendor], 'Had you desired to mix it up,[14] would it then have been permitted to you? Now too, [therefore,] I will not accept it.'

R. Papa objected to Abaye: On the contrary, the logic is the reverse. On the view of the Sages lees may be mixed up, and that is the reason that he need not accept it, because he can say, 'Since you did not mix it up for me, you have renounced it in my favour. Whilst in the opinion of R. Judah lees may not be mixed up, and this is the reason that he must accept it, because he can say to him, 'Had I desired to mix it up, it would not have been permitted to me, whilst you also refuse to accept it [separately]: if one buys and sells [at the same price] — do you call him a merchant!'[15]

A Tanna taught: The vendee and the depositor are both alike in respect of the scum.[16] What is meant by 'in respect of the scum?' Shall we say, Just as the vendee does not accept the scum, so does the depositor likewise not accept it?[17] But let him [the bailee] say to him, 'What am I to do with your scum?' But [on the contrary], just as the depositor must accept the scum, so must the purchaser likewise. Yet must the vendee accept the scum: but it has been taught: R. Judah said: [The loss due to] the muddy oil was assigned to the vendor alone, since the vendee accepts a log and a half of sediment without the scum![18] — There is no difficulty: The former treats of one who pays his money in Tishri and received [the wine or oil] in Nisan at Tishri prices;[19] the latter treats of one who pays his money in Nisan and receives [the oil] in Nisan at Nisan prices.[20] MISHNAH. IF A MAN DEPOSITS A BARREL WITH HIS NEIGHBOUR, ITS OWNER NOT DESIGNATING A PLACE FOR IT, AND HE [THE BAILEE] MOVES IT AND IT IS BROKEN, IF IT IS BROKEN WHILST IN HIS HAND,[21] — [IF HE MOVED IT] FOR HIS PURPOSES, HE IS RESPONSIBLE; FOR ITS OWN NEED, HE IS NOT RESPONSIBLE. IF IT IS BROKEN AFTER HE PUTS IT DOWN, WHETHER [HE MOVED IT] FOR HIS NEED OR FOR ITS OWN, HE IS NOT LIABLE. IF THE OWNER DESIGNATES A PLACE FOR IT, AND HE MOVES IT AND IT IS BROKEN, WHETHER WHILST IN HIS HAND OR AFTER HE PUTS IT DOWN, — [IF HE MOVED IT] FOR HIS PURPOSES, HE IS RESPONSIBLE; IF FOR ITS OWN NEED, HE IS NOT LIABLE.

GEMARA. Who is the authority of the Mishnah? — It is R. Ishmael, who ruled: The owner's

knowledge is unnecessary.[22] For it has been taught: If one steals a lamb from a fold or a sela' from a purse, he must return it whence he stole it:[23] this is R. Ishmael's view. R. Akiba said:

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(1) This then was his profit — 4 in 48 = 1/12 th.

(2) Yet 1/6 th is permissible: why then did Rab Judah content himself with 1/12 th?

(3) Which augment his profits.

(4) Who announced the wares. Others: the cost of piercing the bung.

(5) Even if old.

(6) These, if old, do not absorb.

(7) And cannot absorb more.

(8) As stated in the Mishnah.

(9) I.e., having received the refined oil in small quantities without lees, you must now accept one and a half logs of sediment separately.

(10) He bought it for his own use, not to resell, and therefore is glad that pure oil was delivered him; consequently he must accept the sediment separately.

(11) I.e., your right to mingle the lees with the oil.

(12) Hence he must have meant the yoke and the oxen.

(13) B.B. 77b. The vendee may have chosen this method of renouncing his money, i.e., gifting it, to the vendor. Since R. Judah rules that the price does prove the meaning of the terms used, he evidently rejects this plea of renunciation.

(14) After it had settled at the bottom.

(15) I.e., unless I am permitted to make a deduction from the quantity on account of the lees, I cannot make a living.

(16) Of the wine or oil. So translated by Rashi. In H.M. 228, 20 it is translated: 'the muddy oil which ascends to the top' (באר הגולה a.l.). Jast. translates: 'the foam or froth of the wine or oil'; this, however, seems unsuited to the context.

(17) The measure bought by the vendee is calculated without the scum; and when the wine or oil is returned to the depositor, he too may insist that the measure due to him shall be calculated without it.

(18) Since 1 1/2 per cent is sediment (v. supra 40a) he is entitled that the rest shall be quite clear, without scum.

(19) In Tishri the oil is generally turbid with a scum on top, the price being correspondingly low. Hence in this case he must accept it.

(20) Which are higher, because by then the oil is clear and free from scum; hence he can refuse it.

(21) Lit., 'out of his hand'.

(22) The first clause states that if he moves it for his own purpose, puts it down, and then it is broken, he is not responsible. Now, when he moves it for his own purpose, he is regarded as having stolen it, since a bailee must not make any use of a bailment, and there is a view, expressed immediately in the Gemara, that when a person steals an object he is responsible for it until he returns it and informs its owner that he has returned it. R. Ishmael holds that the owner's knowledge is unnecessary. Now, when the bailee puts the barrel down, he returns it to its owner, of course, without the owner's knowledge, and since the Mishnah rules that he is not responsible then, it must agree with R. Ishmael.

(23) After which he ceases to bear responsibility for it.

Talmud - Mas. Baba Metzia 41a

The owner's knowledge is required.[1] If R. Ishmael, why particularly if he designated [a place]: even if he did not, it is still the same! — This is a case of 'it goes without saying.' [Thus:] It goes without saying that if he designated [a place for it, the owner's knowledge of its return is not required,] since it is its place:[2] but even if no designation was made, so that it is not its place,[3] yet the owner's knowledge is not required. Then consider the second clause: IF THE OWNER DESIGNATES A PLACE FOR IT, AND HE MOVES IT AND IT IS BROKEN, WHETHER IN HIS HAND OR AFTER HE PUTS IT DOWN, — [IF HE MOVED IT] FOR HIS PURPOSE, HE IS RESPONSIBLE; IF FOR ITS OWN NEED, HE IS NOT LIABLE. That agrees with R. Akiba, who ruled, The owner's knowledge is required. If R. Akiba, why particularly if designation is made: even if not,it is likewise so?[4] — This is a case of 'it goes without saying.' [Thus:] It goes without saying that if he did not designate [a place for it, the owner's knowledge of its return is required,] since it is

not its place;[5] but even if designation was made, so that it is its place,[6] the owner's knowledge is still required. Then the first clause agrees with R. Ishmael, and the second with R. Akiba? — Even so, for R. Johanan said: He who will explain me [the Mishnah of] BARREL so as to agree with one Tanna, I will carry his attire after him to the baths.[7] R. Jacob b. Abba interpreted it before Rab as meaning that he took it with the intention of stealing it; R. Nathan b. Abba interpreted it before Rab as meaning that he took it with the intention of using it.[8] Wherein do they [sc. R. Jacob b. Abba and R. Nathan b. Abba] differ? — In whether [unlawful] use must be accompanied by damage.[9] He who says, [He must have taken it] in order to steal it, holds that [unlawful] use must result in damage;[10] whilst he who maintains that it was in order to use it, is of the opinion that [unlawful] use need not result in damage.[11] R. Shesheth raised an objection: Does he [the Tanna] State 'he took it?' he actually Says, HE MOVES IT![12] But, said R. Shesheth, this treats of one who took it in order to reach down birds [whilst standing] upon it,[13] and he [the Tanna of the Mishnah] holds that a borrower without permission is regarded as a robber. Thus the whole of it [sc. the Mishnah] agrees with R. Ishmael, the second clause meaning that he did not return it to its place.[14] And R. Johanan?[15] — 'HE PUTS IT DOWN' implies in its own place.[16]

It has been stated: Rab and Levi: One maintained, [Unlawful] use [by the bailee] must involve damage; and the other maintained, It need not.[17] It may be proved that it was Rab who ruled that [unlawful] use need not involve damage. For it has been taught: If a shepherd who was guarding his flock left it and entered the town: then a wolf came and destroyed a sheep, or a lion, and tore it to pieces, he is free from liability. If he put his staff or wallet upon it, he is liable.[18] Now we pondered thereon: because he put his staff or wallet upon it, he is liable: but he [also] took them away![19] Whereupon R. Nahman said in the name of Rabbah b. Abbuha in Rab's name: It means that it is still upon it. Yet even if it was still upon it, what of that? but he had not taken possession of it![20] R. Samuel son of R. Isaac answered in Rab's name: It means that he smote it with his staff and it ran before him.[21] But he had inflicted no damage upon it! Hence this Surely proves that he [Rab] holds that [unlawful] use need not involve damage! — [No.] Say thus: He had weakened it with his staff.[22] This follows too from the fact that he states, He smote it with his staff.[23] This proves it. Now, since Rab holds that [unlawful] use must involve damage, it follows that Levi maintains that it does not: what is Levi's reason?[24] — Said R. Johanan on the authority of R. Jose b. Nehorai: [Unlawful] use stated in connection with a paid bailee differs from that stated in connection with a gratuitous bailee;[25]

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(1) V. n. 2.

(2) To which he returns it.

(3) Sc. that to which he returns it, since it has no fixed place which can be called its own.

(4) Tosaf.: the assumption that R. Ishmael and R. Akiba maintain their views in both cases, whether a particular place was assigned for the misappropriated article or not, is based on the fact that the two instances given are a lamb and a coin: a lamb has no particular place, going from pasture to pasture, whilst a coin has one, viz., the purse, and the purse too generally has a particular place.

(5) To which he returns it, so that it is not a perfect restoration.

(6) V. n. 1.

(7) I will act as his servant.

(8) Lit., 'to put forth his hand' — the language is Biblical; v. Ex. XXII, 7. These two Amoraim explain the Mishnah so that the whole may agree with one Tanna. R. Jacob b. Abba: The first clause means that he returned it to its place, since no particular place having been assigned to it, wherever he puts it is its place. Therefore, if it is broken, he is free from responsibility, the author of the Mishnah being R. Ishmael, who maintains that the owner's knowledge of the article's return is unnecessary. But in the second clause the meaning is that it is not returned to its place: therefore he is liable. For though R. Ishmael holds that the owner's knowledge is unnecessary, yet it must be put back into its place before the purloiner is freed of his responsibility. This, however, holds good only if he takes the barrel in the first place intending to steal it; if he merely desires to borrow it, we are not so strict, and wherever he put it back, even not in the place assigned to it, suffices to free him. R. Nathan b. Abba: He explains it likewise, but holds that even if the depositary takes it with

the mere intention of using some of its contents, he forthwith becomes responsible (though he does not carry out his intention) for the whole of it (v. infra 44a), and remains so until he returns it to its own place. The assumption that the second clause means that he does not return it to its own place is implicit on both explanations, but these are interrupted whilst certain objections are raised.

(9) V. Ex. XXII, 9f: If a man deliver unto his neighbour . . . any beast to keep, and it die, or be hurt (i.e., suffer through an unpreventable accident) . . . Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbour's goods — i.e., made use of them, which, being a bailee, he had no right to do. Thus Scripture teaches that if the depositary misappropriates the bailment to his own use, he is responsible for subsequent accidents. These two Amoraim differ as to whether that holds good always, or only if his use thereof resulted in damage.

(10) But otherwise it throws no responsibility upon the bailee. Hence, if he takes it merely to use it and did not use it, he is not liable, seeing that no damage was done.

(11) Hence the mere taking to use it is sufficient.

(12) Which certainly indicates that he took it for use, not to steal.

(13) I.e., he borrowed it without intending to steal it. (V. infra p. 257.)

(14) As explained on p. 245, n. 5; the last passage 'the second clause meaning etc.' applies to the three answers.

(15) Why does he find it so difficult to make the Mishnah reflect the view of one Tanna only?

(16) Therefore he could not accept that explanation.

(17) V. n. 1.

(18) V. infra 93b.

(19) Before the animal was attacked.

(20) Lit., 'pulled'. And a bailee does not become responsible on account of (unlawful) use unless he takes possession of the bailment by means of 'pulling' meshikah, (v. Glos.) as appears from the Mishnah infra 43b, q.v.

(21) Which is the equivalent of meshikah. Thus there had been (unlawful) use (by putting his staff or wallet upon it) and meshikah.

(22) He had smitten it so hard as to weaken it; this is damage.

(23) Which would inflict a heavy blow. Otherwise he should simply have stated, He smote it and it ran before him (Rashi), or perhaps 'smote' too is unnecessary, since he could have said, He made it go by shouting at it. (R. Han. and Tosaf.).

(24) Rab's reason is not asked, for it stands to reason that no liability should be imposed unless his (unlawful) use causes loss, as otherwise it can hardly be called so.

(25) For the former v. p. 246, n. 1, to whom the verses quoted refer. An unpaid bailee: Ibid. 6f: If a man shall deliver unto his neighbour money or stuff to keep, and it be stolen out of the man's house; if the thief be found, let him pay double. If the thief be not found, then the master of the house shall he brought unto the judges, to see whether he have put his hand unto his neighbour's goods (i.e., made use thereof).

Talmud - Mas. Baba Metzia 41b

but I say,[1] It is not different. Wherein [and why] is it different? — For [unlawful] use should not have been stated in connection with a paid bailee, and it would have been inferred from a gratuitous bailee: if an unpaid bailee, who is not responsible for theft or loss, is nevertheless liable if he puts it [the bailment] to use; then a paid bailee, who is responsible for theft or loss, is surely [liable if he puts it to use]. Why then did Scripture state them [both]? To teach you that [unlawful] use need not involve damage.[2] 'But I Say, It is not different,' in accordance with R. Eleazar, who maintained: Both have the same purpose. How Say, 'both have the same purpose'?[3] — Because one can refute [that argument]. As for a gratuitous bailee, [he may be liable if he used it] because he must repay double on a [false] plea of theft.[4] And he who does not refute [it thus] is of the opinion that [liability to] the principal without [the option of] an oath[5] is a greater responsibility than [having to pay] double after a [false] oath.[6]

Raba said: [Unlawful] use need not have been mentioned in connection with either an unpaid or a paid bailee, and it could have been inferred from a borrower.[7] If a borrower, who in using it acts with its owner's permission, is [nevertheless] responsible [for unpreventable accidents]; surely the same

applies to unpaid and paid bailees! Then why is it stated [in connection with these two]? Once, to teach you that [unlawful] use need not involve damage.[8] And the other: that you should not say: It is sufficient that that which is deduced a minori shall be as that from which it is deduced: just as a borrower is exempt if the owner [is in his service],[9] so also are unpaid and paid bailees exempt, if the owner [is in their service.][10]

Now, on the view that [unlawful] use must involve damage, what is the purpose of these two [statements] on [unlawful] use?[11] — One, that you should not say, It is sufficient that that which is deduced a minori shall be as that from which it is deduced. And the other, for what was taught: [If a man shall deliver unto his neighbour money or stuff to keep, and it be stolen . . . If the thief be not found,] then the master of the house shall be brought unto the judges[12] — for an oath.[13] You say, 'for an oath'. But perhaps it is not so, the meaning being for judgment?[14] [Unlawful] use is stated below;[15] and [unlawful] use is stated above:[16] just as there, [the reference is] to an oath, so here too, for an oath [is meant].

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(1) R. Johanan stating his own opinion.

(2) That is the meaning of 'it differs' — i.e., not that its actual definition differs, but that its purpose in being stated is different. Thus: its mention in the section on a gratuitous bailee is to shew the actual law, whilst it is stated in the section on a paid bailee for the purpose of definition.

(3) In view of the above argument.

(4) In this respect his responsibility exceeds that of a paid bailee (v. B.K. 63b); therefore it might also have been regarded as greater in respect of misappropriation. Consequently it must be mentioned in connection with a paid bailee too, for its own purpose, and not for mere definition; hence it must involve damage.

(5) As in the case of a paid bailee.

(6) As in the case of a gratuitous bailee.

(7) A borrower is responsible for accidents, and when a bailee makes use of his bailment, he automatically becomes in a sense a borrower, but without permission.

(8) [The bailee consequently becomes liable for the whole bailment as soon as he takes it with the intention of putting to use a mere part thereof. This distinguishes him from a borrower authorised or unauthorised, whose liability is limited to the part actually borrowed. V. R. Nissim, Hiddushim, a.l.]

(9) Ibid. 13f: And if a man borrow aught of his neighbour, and it be hurt or die, the owner thereof being not with it, he shall surely make it good. But if the owner thereof be with it, he shall not make it good. The Rabbis interpret this as meaning that if the owner is in the borrower's service when the article is borrowed and/or when the accident occurs (v. 94a and 95b) he is not liable.

(10) Therefore (unlawful) use is mentioned in their case to show that even then they are responsible.

(11) As Raba observed.

(12) Ibid. 6, with reference to a gratuitous bailee.

(13) I.e., to swear that it was stolen. The verse is accordingly translated thus: If it be not found (that he spoke the truth, but) he himself is the thief, and the mister of the house has already been brought unto the judges, i.e., has already sworn that it was stolen, then, whom (sc. the bailee) the judges shall condemn, he shall pay double unto his neighbour. Hence a bailee must pay double only if he actually swore that it was stolen, but not on his mere plea.

(14) To plead that it was stolen, and the plea itself is sufficient to impose the penalty of twofold repayment.

(15) In connection with a paid bailee: Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbour's goods; ibid. 10.

(16) In connection with an unpaid bailee: Then the mister of the house should be brought unto the judges, to see whether he have put his hands unto his neighbour's goods. (Ibid. 7.)

Talmud - Mas. Baba Metzia 42a

MISHNAH. IF A MAN DEPOSITED MONEY WITH HIS NEIGHBOUR, WHO BOUND IT UP AND SLUNG IT OVER HIS SHOULDER[1] [OR] ENTRUSTED IT TO HIS MINOR SON OR DAUGHTER AND LOCKED [THE DOOR] BEFORE THEM, BUT NOT PROPERLY, HE IS

LIABLE, BECAUSE HE DID NOT GUARD [IT] IN THE MANNER OF BAILEES. BUT IF HE GUARDED IT IN THE MANNER OF BAILEES, HE IS EXEMPT.

GEMARA. As for all, it is well, since indeed he did not guard it in the manner of bailees: but if HE BOUND IT UP AND SLUNG IT OVER HIS SHOULDER — what else should he have done? — Said Raba in R. Isaac's name: Scripture saith, and thou shalt bind up the money in thine hand[2] — even if bound up, it should be in thy hand.[3]

R. Isaac also said: One's money should always be ready to hand,[4] for it is written, and thou shalt bind up the money in thy hand.

R. Isaac also said: One should always divide his wealth into three parts: [investing] a third in land, a third in merchandise, and [keeping] a third ready to hand.

R. Isaac also said: A blessing is found only in what is hidden from the eye,[5] for it is written, The Lord shall command the blessing upon thee in thy hidden things.[6] The School of R. Ishmael taught: A blessing comes only to[7] that over which the eye has no power,[8] for it is said, The Lord shall command the blessing upon thee in thy hidden things.

Our Rabbis taught: When one goes to measure [the corn in] his granary, he should pray, 'May it be Thy will, O Lord our God, to send a blessing upon the work of our hands.' Having started to measure, he prays, 'Blessed is He who sendeth a blessing on this pile.' But if he measured and then prayed,[9] it is a vain prayer, because a blessing is not found in that which is [already] weighed, measured, or counted, but only in that which is hidden from the eye, for it is said, The Lord shall command the blessing upon thee in thy hidden things.

Samuel said: Money can only be guarded [by placing it] in the earth.[10] Said Raba: Yet Samuel admits that on Sabbath eve at twilight the Rabbis did not put one to that trouble.[11] Yet if he tarried after the conclusion of the Sabbath long enough to bury it [the money] but omitted to do so, he is responsible [if it is stolen]. But if he [the depositor] was a scholar, he [the bailee] might have thought, He may require the money for habdalah.[12] But nowadays[13] that there are money-diviners,[14] it can be properly guarded only [by placing it] under the roof beams. But nowadays that there are house breakers,[15] it can be guarded only [within the void spaces] between bricks. Raba said: Yet Samuel admits [that it may be] hidden] in the wall. But nowadays that there are rappers,[16] It can be guarded only in the handbreadth nearest to the earth or to the uppermost beams.[17]

R. Aha, son of R. Joseph, said to R. Ashi: We learnt elsewhere: If ruins collapsed on leaven, it is regarded as removed.[18] R. Simeon b. Gamaliel said: Provided that[19] a dog cannot search it out.[20] And it was taught [thereon]: How far is the searching of a dog? Three handbreadths.[21] How is it here?[22] Do we require [that it shall be covered by] three handbreadths or not? — There, he replied, we require three handbreadths on account of the smell [of the leaven];[23] but here [it is put into the earth] in order to cover it from the eye; therefore three handbreadths are not required. And how much [is necessary]? — Said Rafram of Sikkara:[24] one handbreadth.

A certain man deposited money with his neighbour, who placed it in a cot of bulrushes.[25] Then it was stolen. Said R. Joseph: Though it was proper care in respect to thieves,[26] yet it was negligence in respect to fire: hence the beginning [of the trusteeship] was with negligence though its end was through an accident, [and therefore] he is liable. Others Say: Though it was negligence in respect to fire, it was due care in respect to thieves, and when its beginning is with negligence and its end through an accident, he [the bailee] is not liable.[27] And the law is that when the beginning thereof is with negligence and the end through an accident, he is responsible.

A certain man deposited money with his neighbour. On his demanding, ‘Give me my money,’ he replied, ‘I do not know where I put it.’ So he went before Raba, [who] said to him: Every [plea of] ‘I do not know’ constitutes negligence: go and pay him.

A certain man deposited money with his neighbour, who entrusted it to his mother; she put it in her work basket and it was stolen. Said Raba: What ruling shall judges give in this case? Shall we say to him, ‘Go and repay’?[28] Then he can reply,

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(1) Lit., ‘behind him’.

(2) Deut. XIV, 25.

(3) Not over the shoulder, so that it can be properly guarded.

(4) And not in another man's keeping, so that advantage can immediately be taken of a trading bargain that is available.

(5) I.e., the exact quantity of which the owner does not know.

(6) Ibid. XXVIII, 8. (E.V. ‘storehouses’.)

(7) Lit., ‘is found only in’.

(8) I.e., hidden, and so not subject to the evil eye.

(9) Lit., ‘uttered a benediction’.

(10) Otherwise the bailee is guilty of negligence — In ancient days there was probably no other place as safe. [Cf. Josephus, Wars, V. 7, 2, ‘. . . which the owners had treasured up under ground against the uncertain fortunes of war.’]

(11) If one receives a bailment then, he cannot be expected to place it in the earth, and his not doing so does not constitute negligence. [Some texts rightly omit ‘at twilight’, all manner of work being then in any case prohibited.]

(12) Lit., ‘separation’, a short blessing recited as a rule over wine, thanking God for the distinction between the Sabbath and week-days. — In that case, the bailee was justified in not burying the money, as the scholar might require same for wine. The practice of reciting habdalah at home was not widespread; v. Ber. 331.

(13) [In the third century, when Babylonia entered upon its bitter struggles with the Romans for the possession of the rich lands of the Euphrates; v. Krauss, op. cit., p. 415.]

(14) Lit., ‘sounders’, who can sound the earth to discover cavities where money may be hidden.

(15) Who break through the beams.

(16) Who by rapping at the wall can discover its cavities and treasures.

(17) Asheri a.l. observes that all this held good only in the days of Samuel and his successors, when rappers, diviners, etc. were to be feared. Nowadays, however, we do not fear all this, and it is sufficient if a bailee puts the money entrusted to his charge in the place where he keeps his own.

(18) All leaven had to be removed from the house before Passover (Ex. XII, 15); if ruins fell on leaven, the leaven is regarded as removed, since it is inaccessible.

(19) Lit., ‘whatever’.

(20) Pes. 31b.

(21) I.e., the leaven must be covered by not less than three handbreadths of debris; otherwise a dog can search it out, and it would therefore be necessary to remove the debris and destroy the leaven.

(22) In respect to placing money in the earth.

(23) If the leaven is covered by less, a dog can smell it.

(24) A town S. of Mahuza.

(25) So Jast. Rashi: in a fowler's trap.

(26) Who would normally not think of looking there for it.

(27) V. supra 36b.

(28) Because if a bailee entrusts the deposit to another he is responsible.

Talmud - Mas. Baba Metzia 42b

‘All who deposit do so with the understanding that the wife and children [of the depositary may be entrusted with the bailment].’ Shall we say to his mother, ‘Go and pay:’ she can plead, ‘He did not tell me that it [the money] was not his own, that I should bury it.’ Shall we say to him, ‘Why did you not tell her?’[1] he can argue, ‘If I told her it was mine, she was the more likely to guard it well.’ But,

said Raba, he must swear that he had entrusted that money to his mother, and his mother must swear that she had placed that money in her work basket, and it was stolen. Then he [the bailee] is free.

A certain steward for orphans[2] bought an ox on their behalf and entrusted it to a herdsman. Having no molars or [front] teeth to eat with, it died.[3] Said Rami b. Hama: What verdict shall judges give in this case? Shall we say to the steward, 'Go and pay:' he can reply, 'I entrusted it to the herdsman.'[4] Shall we say to the herdsman, 'Go and pay:' he can plead, I put it together with the other oxen and placed food before it: I could not know that it was not eating! [But, why not] consider [the fact that] the herdsman was a paid keeper of the orphans, and as such should have made careful observation? — Had the orphans suffered loss, it would be even so. But we treat here of a case where the orphans suffered no loss, because the [first] owner of the ox was found and they received their money back from him.[5] Then who is the plaintiff? — The owner of the ox, who pleads that he [the steward] should have informed him. But what was he to inform him? He knew full well that it was a sale under false pretences! — He [the owner of the ox] was a middleman, who buys here and sells there.[6] Therefore [rules Rami] he [the middleman] must swear that he did not know [of the animal's toothless condition], and the herdsman must pay at the cheap price of meat.[7]

A certain man deposited hops with his neighbour, who himself also had a pile thereof. Now, he instructed his brewer, 'Take[8] from this pile;' but he went and took from the other. Said R. Amram: What verdict shall the judges give in this case? Shall they say to him, 'Go and pay:' he can plead. 'I said to him, "Take from this [pile]."' Shall we say to the brewer, 'Go and pay'? He can argue, 'He did not say to me, "Take from this [pile] but not from that."' But if he [the brewer] tarried sufficient time to bring him [his own hops], yet did not do so,[9] then he [the bailee] revealed his mind that he was pleased therewith![10] — There was no tarrying. Yet after all, what loss is there: did he [the depositary] not benefit thereby?[11] — Said R. Samma, son of Raba: The beer turned into vinegar.[12] R. Ashi said: The reference is to thorns,[13]

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(1) And therefore you are responsible.

(2) Appointed by the court to administer their estate until they attained their majority.

(3) This loss could have been avoided had it been slaughtered and rendered fit for food.

(4) And thus fulfilled my obligations.

(5) On the grounds that it was bargain under false pretences.

(6) I.e., who does not keep the animal in his possession for any length of time, and need not have been aware of the animal's condition.

(7) Which is two thirds of the usual price. Rashi explains that this was a compromise, since the cowherd had a semi-valid plea, viz., 'I put it together with other oxen, etc.' Tosaf., however, holds that the verdict was strictly in accordance with the law, for since the animal could not live long, it would have had to be slaughtered before market day, when flesh does not fetch its proper price.

(8) Lit., 'cast (into the beer)'.

(9) The deposited hops being further away.

(10) For he must have known that the brewer was taking the deposited hops, and yet did not stop him.

(11) When the hops were put in his beer. Then he must pay in any case.

(12) And so the bailee did not benefit thereby.

(13) I.e., not hops were deposited, but the thorns on which the hops hang, and this yielded an inferior brew (so Jast.). Rashi translates: inferior hops, mixed with thorns.

Talmud - Mas. Baba Metzia 43a

and he must pay him the value of the thorns.[1]

MISHNAH. IF A MAN DEPOSITS MONEY WITH A MONEY-CHANGER, IF BOUND UP, HE MUST NOT USE IT: THEREFORE IF IT IS LOST, HE DOES NOT BEAR THE RISKS

THEREOF;[2] IF LOOSE, HE MAY USE IT; THEREFORE IF IT IS LOST, HE BEARS THE RISKS.[3] [BUT IF HE DEPOSITS IT] WITH A PRIVATE INDIVIDUAL, WHETHER IT IS BOUND UP OR LOOSE, HE MAY NOT USE IT; THEREFORE IF IT IS LOST, HE DOES NOT BEAR THE RISKS THEREOF. A SHOPKEEPER IS AS A PRIVATE INDIVIDUAL: THIS IS R. MEIR'S VIEW. R. JUDAH SAID: A SHOPKEEPER IS AS A MONEY-CHANGER.

GEMARA. Because it is bound up he may not use it![4] — Said R. Assi in Rab Judah's name: This was taught of [money] bound up and sealed.[5] R. Mari said: [It means that it was tied] with an unusual knot.[6] Others say, R. Mari propounded: What if [it was tied with] an unusual knot? — The question stands.

IF LOOSE, HE MAY USE IT, etc. R. Huna said: Even if an [unpreventable] accident happened thereto [he is responsible]. But he [the Tanna] states, [IF] LOST![7] — It is as Rabbah [said]. For Rabbah said [elsewhere]: 'Stolen' means by armed robbers; 'lost,' that his ship foundered at sea.[8] R. Nahman [however] said: If an [unpreventable] accident happened thereto, [he is] not [responsible].[9] Raba objected to R. Nahman: According to you, who maintain that [he is] not [responsible] if an unpreventable accident happened to it, thus showing that he is not [accounted] a borrower in respect of it: but if not a borrower, he is not a paid bailee either![10] — He replied to him: In this I agree with you, but since he may benefit therefrom, he must confer benefit;[11] in return for the benefit [he enjoys] that should he come across a purchase shewing profit he can buy it therewith, he becomes a paid bailee in respect thereto,[12]

R. Nahman raised an objection to R. Huna's ruling: If he [the treasurer of the Sanctuary] deposits money[13] with a money-changer, if bound up, he may not use it; therefore if he expends it, the treasurer is not liable to a trespass offering.[14] If loose, he may use it; therefore if he expends it, the treasurer is liable to a trespass offering.[15] But if you Say, even if an [unpreventable] accident befalls it [the money changer is responsible], why particularly if he expends it? Even if he does not expend it, he should likewise be [liable]![16] — He replied: The same law holds good even if he does not expend it; but since the first clause states [if he expends it],[17] the second clause teaches likewise, [if] he expends it.

MISHNAH. IF A MAN MAKES [UNLAWFUL] USE OF A BAILMENT: BETH SHAMMAI MAINTAIN: HE IS PUNISHED IN RESPECT OF DECREASE AND INCREASE.[18] BETH HILLEL RULE: [HE MUST PAY ITS VALUE] AS WHEN IT IS WITHDRAWN.[19] R. AKIBA SAID: AS WHEN THE CLAIM IS MADE.

GEMARA. Rabbah[20] said: If one steals a barrel of wine from his neighbour, originally [i.e., at the time of theft] worth a zuz, but now [when he disposes thereof] worth four [zuz], if he breaks or drinks it, he must pay four; if it is broken of itself, he must pay a zuz. Why? Since if it were in existence, it would be returnable to its owner as it is, it is precisely when he drinks or breaks it that he robs him thereof, and we learnt: All robbers pay according to the time of robbery.[21] 'If it is broken of itself, he must pay a zuz.' Why? He does nothing at all to it then: for what do you declare him liable? For the time of the robbery![22] But then it was worth [only] a zuz.

We learnt: BETH HILLEL RULE: [HE MUST PAY ITS VALUE] AS WHEN IT IS WITHDRAWN. What is the meaning of AS WHEN IT IS WITHDRAWN? Shall we Say, as when it is withdrawn from the world:[23] and in what [case do Beth Hillel differ]? If in the case of depreciation,[24] — but is there any such opinion? Did we not learn, All robbers pay as at the time of robbery? And if in the case of appreciation, then it is identical with Beth Shammai['s ruling]!

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(1) Whereby these had benefited the beer.

(2) A gratuitous bailee not being responsible for loss.

(3) The fact that he may use it makes him a paid trustee.
(4) Surely the depositor may have bound it up for safety, not to shew that the money-changer was not to use it!
(5) Which was not necessary for mere safety, but to intimate that it was not to be used.
(6) Which he must have made to prevent the money-changer from opening the package.
(7) Which implies that he is not responsible for (unpreventable) accidents.
(8) Which are unpreventable accidents. 'Lost' in our Mishnah has the same meaning.
(9) Regarding him as a paid bailee, who is not responsible for unpreventable accidents, whereas R. Huna accounts him a borrower.
(10) For his only payment is his right to use it, but that makes him a borrower, who uses his bailment, and if that right is disregarded, he receives nothing to turn him into a paid bailee.
(11) By accepting the risks of a paid bailee.
(12) I.e., when he actually uses it, he does indeed become a borrower. But until then his benefit is only potential, and it is sufficient that this potential benefit shall render him a paid bailee, and not a borrower.
(13) Of the Sanctuary, in error thinking it his own.
(14) In accordance with Lev. V, 15, for putting money dedicated to the Sanctuary to secular use. Since it was bound up, the treasurer had not authorised him to use it, and therefore the money-changer is liable.
(15) Tosef. Me'il. II.
(16) For since the money-changer is responsible for unpreventable accidents, he is evidently regarded as a borrower from the moment it reaches his hand, even before he actually uses it. But in that case the treasurer has already withdrawn it from the possession of the Sanctuary, and that alone involves a trespass offering.
(17) And there it is necessary to show that even then the treasurer is not liable.
(18) If the bailment itself cannot be returned for any reason, being destroyed or otherwise disposed of. The meaning of this is discussed in the Gemara.
(19) V. Gemara.
(20) Alfasi reads: Raba.
(21) B.K. 93b, i.e., what its value was then.
(22) I.e., for the act of taking it.
(23) I.e., when destroyed or otherwise disposed of.
(24) After he had taken it; Beth Hillel maintaining that he must pay its depreciated value.

Talmud - Mas. Baba Metzia 43b

Hence it is obvious [that it means] as when it is withdrawn from its owner's possession.[1] Shall we [then] say that Rabbah rules in accordance with Beth Shammai?[2] — Rabbah can answer you: In the case of appreciation, none dispute.[3] When do they dispute? In the case of depreciation:[4] Beth Shammai maintain, [unlawful] use need involve no loss,[5] and when it depreciates it is in his possession that it does so;[6] whereas Beth Hillel maintain that [unlawful] use must involve loss,[7] and when it depreciates, it does so in the possession of its owner.[8] If so, when Raba said, [Unlawful] use need not involve damage,[9] , are we to say that Raba ruled as Beth Shammai? — But we treat here of, e.g., one who moves it in order to fetch down birds [whilst standing] upon it, and they differ in respect to an unauthorised borrower. Beth Shammai maintain: An unauthorised borrower is a robber, and therefore, when it depreciates, it does so in his possession. Whereas Beth Hillel hold that an unauthorised borrower is not a robber, and when it depreciates, it does so in the owner's possession. If so, when Raba said, An unauthorised borrower, in the view of the Rabbis, is accounted a robber,[10] are we to say that Raba ruled as Beth Shammai? — But there they differ in respect of the increments of a stolen article.[11] Beth Shammai maintain: The increments in the stolen article belong to the robbed person;[12] whereas Beth Hillel hold that they belong to the robber.[13] And [they differ] in the [same] controversy as the following Tannaim. For it has been taught: If one steals a ewe and shears it, or it bears young, he must pay for that itself, its shearings, and its young: this is R. Meir's view. R. Judah said: The stolen article returns in its original state.[14] This [interpretation] may also be inferred, because it is stated, BETH SHAMMAI MAINTAIN, HE IS PUNISHED IN RESPECT OF DECREASE AND INCREASE. BETH HILLEL RULE: [HE MUST PAY] AS WHEN IT IS

WITHDRAWN.[15] This proves it.

R. AKIBA SAID: AS WHEN THE CLAIM IS MADE. Rab Judah said in Samuel's name: The halachah agrees with R. Akiba. Yet R. Akiba admits in a case where there are witnesses.[16] Why? Because Scripture saith, He shall give it unto him to whom it appertaineth, in the day of his trespass offering,[17] and since there are witnesses, he incurs a trespass offering at that very moment. R. Oshaia said to Rab Judah: Rabbi, you say so. But R. Jose said in R. Johanan's name thus: R. Akiba differed even in a case where there are witnesses. Why? Because Scripture saith, He shall give it unto him to whom it appertaineth, in the day of his trespass offering,[18] and it is the court that declares him liable to a trespass offering.[19] R. Zera said to R. Abba b. Papa: When you go there [sc. to Palestine], take a circuitous route by the promontory of Tyre and make your way up to R. Jacob b. Idi and ask him if he had heard from R. Johanan whether the halachah is as R. Akiba or not. He answered him: Thus did R. Johanan say, The halachah is as R. Akiba in every case.[20] What is meant by 'in every case?' — Said R. Ashi: That you should not say, That is only if there are no witnesses, but not if there are. Alternatively, it may also refer to the case where he [the thief] returned it to its place and it was injured, [and 'in every case' was said] in opposition to R. Ishmael, who maintained: The owner's knowledge is unnecessary;[21] therefore we are informed that the owner's knowledge is required.[22] But Raba said: The halachah is as Beth Hillel.

MISHNAH. IF A MAN INTENDS TO MAKE USE OF A BAILMENT:[23] BETH SHAMMAI MAINTAIN, HE IS [FORTHWITH] RESPONSIBLE [FOR ALL ACCIDENTS]; BUT BETH HILLEL RULE, HE IS NOT RESPONSIBLE UNTIL HE [ACTUALLY] MAKES USE THEREOF, FOR IT IS SAID, [THEN THE MASTER OF THE HOUSE SHALL BE BROUGHT UNTO THE JUDGES, TO SEE] WHETHER HE HAD PUT HIS HAND UNTO HIS NEIGHBOUR'S GOODS.[24] IF HE [THE BAILEE] INCLINES THE BARREL [GIVEN INTO HIS KEEPING] AND TAKES A REBI'ITH[25] [OF WINE] THEREFROM, AND [LATER ON] IT IS BROKEN, HE MUST PAY ONLY FOR THE REBI'ITH. BUT IF HE LIFTS IT AND TAKES A REBI'ITH FROM IT AND IT IS BROKEN [AFTER A TIME], HE MUST PAY ITS ENTIRE VALUE.[26] [

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(1) Lit., 'house'. And they dispute the case if it subsequently appreciated. Beth Shammai maintain that he must pay its value as when he disposes thereof, whilst Beth Hillel hold that he must pay its value at the time of the theft.

(2) Whereas it is a fixed principle that the halachah always agrees with Beth Hillel.

(3) That it must be paid for as at the time of disposal, 'AS WHEN IT IS WITHDRAWN,' meaning when it is withdrawn from the world.

(4) And as for the general rule, all robbers pay as at the time of robbery — that is only in the case of real robbery; here, however, it did not come into his hands at the outset through robbery but as a bailment.

(5) Therefore the bailee is accounted a robber from the time he takes it, when it immediately passes into his ownership, in the sense that he is henceforth responsible for it.

(6) Therefore he must pay its worth at the time of taking.

(7) But mere taking it for use does not make the trustee a thief.

(8) And he therefore pays according to the value at the time he disposes of it.

(9) Supra 41b.

(10) B.B. 88a.

(11) When the Mishnah speaks of increase and decrease, it does not refer to a rise or fall in the market price of the article, but to profit and loss attached thereto. E.g., a sheep is stolen, bearing a certain quantity of wool, and after it has grown more, the thief shears it; shorn, it shews a decrease on its state when stolen. Likewise, if the sheep conceives whilst in the thief's possession and lambs, thus shewing an increase.

(12) Therefore when repayment is made, the shearings and lamb must also be paid for.

(13) Hence he must pay the animal's worth at the time of the theft.

(14) I.e., he is only responsible for its value at the time of the robbery.

(15) But it does not state, He is punished in respect of depreciation and appreciation, which would connote a fall or rise in market price.

(16) Of the theft. Then he must pay its value at the time of the theft.
(17) Lev. V, 24. This is interpreted: he shall give it (i.e., pay for it) . . . as on the day he incurs a trespass offering.
(18) Interpreting as before.
(19) Hence he must pay its value at the time of the trial.
(20) Lit., 'always'.
(21) Having returned it whole, though not informing the owner, he ceases to be responsible for it.
(22) Hence he remains responsible for its injury, since he did not inform the owner of its return, in accordance with the view of R. Akiba, supra 40b-41a.
(23) I.e., expresses his intention in the presence of witnesses.
(24) Ex. XXII, 7, 10; the first verse refers to a gratuitous bailee; the second to a paid trustee: Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbour's goods.
(25) A quarter log.
(26) A depositary is not responsible for accidents after putting a bailment to use unless he takes possession of it by drawing it to himself or lifting it up. Hence, if he merely inclines the barrel, it does not pass into his possession to render him responsible, and he must pay only for the actual amount he took. But if he lifts it up, it becomes his, and he is responsible for the whole of it.

Talmud - Mas. Baba Metzia 44a

GEMARA. How do we know it? — For our Rabbis taught: [Then the master of the house shall be brought unto the judges . . .] For all manner of trespass:[1] Beth Shammai maintain: This teaches that he is liable on account of [unlawful] intention just as for an [unlawful] act. But Beth Hillel say: He is not liable until he actually puts it to use, for it is said, [to see] whether he have put his hand unto his neighbour's goods. Said Beth Shammai to Beth Hillel: But it is already stated, For any word[2] of trespass! Whereupon Beth Hillel retorted to Beth Shammai: But it is already stated, [to see] whether he have put his hand unto his neighbour's goods! If so, what is the teaching of, for any word of trespass? For I might have thought: I know it only of himself;[3] whence do I know [that he is liable if] he instructed his servant or his agent [to use it]? From the teaching, For any word of trespass.[4]

IF HE INCLINES THE BARREL, etc. Rabbah said: This was taught only if it is broken: if, however, it soured, he must pay for the whole of it. Why? It was his arrows that affected it.[5]

BUT IF HE LIFTS IT, AND TAKES [A REBI'ITH] FROM IT, etc. Samuel said: 'TAKES' is not meant literally, but once he lifts it up in order to take [he is henceforth responsible] even if he does not take it. Shall we say that in Samuel's opinion [unlawful] use need not involve loss?[6] — I will tell you: That is not so, but here it is different, because he desires that the whole barrel shall be subservient to this rebi'ith.[7]

R. Ashi propounded: What then if he lifts up a purse in order to take a denar therefrom? Is it wine alone that can be guarded only by means of other wine,[8] whereas a zuz can be guarded [by itself]; or perhaps, the care given to a purse is not the same as that of a [single] denar?[9] The question stands.

C H A P T E R I V

MISHNAH. GOLD ACQUIRES SILVER, BUT SILVER DOES NOT ACQUIRE GOLD; COPPER ACQUIRES SILVER, BUT SILVER DOES NOT ACQUIRE COPPER; CANCELLED COINS ACQUIRE CURRENT ONES, BUT CURRENT COINS DO NOT ACQUIRE CANCELLED COINS; UNCOINED METAL ACQUIRES COINED, BUT COINED METAL DOES NOT ACQUIRE UNCOINED METAL; MOVABLES ACQUIRE COINS, BUT COINS DO NOT ACQUIRE MOVABLES. THIS IS THE GENERAL PRINCIPLE:[10] ALL MOVABLES ACQUIRE EACH OTHER. E.G., IF [A] DREW INTO HIS POSSESSION [B'S] PRODUCE WITHOUT PAYING HIM THE MONEY, HE CANNOT RETRACT. IF HE PAID HIM THE

MONEY BUT DID NOT DRAW INTO HIS POSSESSION HIS PRODUCE, HE CAN WITHDRAW. BUT THEY [SC. THE SAGES] SAID: HE WHO PUNISHED THE GENERATION OF THE FLOOD AND THE GENERATION OF THE DISPERSION,[11] HE WILL TAKE VENGEANCE OF HIM WHO DOES NOT STAND BY HIS WORD. R. SIMEON SAID: HE WHO HAS THE MONEY IN HIS HAND HAS THE ADVANTAGE.[12] GEMARA — Rabbi[13] taught his son R. Simeon: Gold acquires silver. Said he to him: Master, in your youth you did teach us, Silver acquires gold; now, advanced in age, you reverse it and teach, Gold acquires silver. Now, how did he reason in his youth, and how did he reason in his old age? — In his youth he reasoned: Since gold is more valuable, it ranks as money; whilst silver, which is of lesser value, is regarded as produce: hence [the delivery of] produce effects a title to the money. But at a later age he reasoned: Since silver [coin]

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(1) Ibid. 8.

(2) E.V., 'all manner'.

(3) I.e., if the trustee himself puts the deposit to use.

(4) [He is liable for a mere verbal order (R. Han.).]

(5) By taking a small quantity he helped it to sour, because a full barrel does not sour as quickly as one that is not full (R. Han.).

(6) For there is no loss if he merely lifts it up.

(7) When he lifts the barrel up to take a quantity, he is regarded as having already taken it and put it back, because being in a full barrel it is less likely to sour; thus he makes the whole of the rest subservient to the quantity he desired, and is using the rest in that capacity. This renders him responsible for the whole.

(8) As explained on p. 260, n. 7.

(9) He knows that he will give greater care to a whole purse than to one coin, and therefore here too he may be regarded as having actually taken the coin and replaced it, so that it should be better kept, in which case the whole purse is made subservient to the denar.

(10) This is rightly omitted in Alfasi and Asheri, since the passage that follows does not summarize the principle upon which the foregoing is based.

(11) V. Gen. XI, 1-10.

(12) Lit., 'his hand is uppermost'. The general principle of this Mishnah is this: When one makes a purchase, the delivery of the money does not complete the transaction, and either party can withdraw from the bargain; on the other hand, once the goods are taken, the transaction is absolute and irrevocable, and neither party can withdraw, the purchase price being regarded henceforth as an ordinary debt caused by a loan. Now, in ancient days. when the value of coins depended on their weight and general condition, coins of one metal or denomination might themselves be purchased with other coins. Consequently, in such a transaction, it becomes necessary to determine which is to be regarded as the money and which as the goods. The Mishnah proceeds on the principle that those coins which have greater currency than others rank as money vis a vis the others, which are then regarded merely as movables. Now, silver coin had greater currency than gold coin — probably because the latter represented an unusually large sum of money in an agricultural community where money is generally scarce. Consequently, if one purchase gold denarii for silver denarii, as soon as he takes possession of the gold, the bargain is irrevocable and he is bound to render the silver coins to the vendor, i.e., the gold of the vendor gives him a legal title to the silver. On the other hand, if he first takes possession of the silver, the bargain is not concluded; hence revocable. On the same lines, copper coin rank as money vis a vis silver, so that when the former is taken, the transaction is legally closed; but not the reverse. The same principle operates in the other clauses of the Mishnah dealing with the purchase of money. In the case of barter, however, as soon as one party takes possession of the article that is bartered, the transaction is consummated, and neither party may withdraw.

(13) I.e., R. Judah the Prince, who compiled the Mishnah.

is current, it ranks as money; whilst gold, which is not current, is accounted as produce, and so the produce effects a title to the money.

R. Ashi said: Reason supports the opinion held in his youth, since it [the Mishnah] teaches: COPPER ACQUIRES SILVER. Now, should you agree that silver ranks as produce vis a vis gold, it is well: hence it states, COPPER ACQUIRES SILVER, to show that though it is accounted as produce in relation to gold, it ranks as money in respect of copper; but should you maintain that silver ranks as money in respect of gold, then [the question arises:] If in relation to gold, which is more valuable, you say that it ranks as money, is it necessary [to state so] in relation to copper, seeing that it is both more valuable and also current?[1] — It is necessary:[2] I might have thought that the [copper] coins,[3] where they do circulate, have greater currency than silver:[4] therefore we are taught that since there is a place where they have no circulation,[5] they rank as produce.

Now, R. Hiyya too regards gold [coin] as money. For Rab once borrowed [gold] denarii from R. Hiyya's daughter. Subsequently, denarii having appreciated, he went before R. Hiyya.[6] 'Go and repay her current and full-weight coin,' he ordered. Now, if you agree that gold ranks as money, it is well.[7] But should you maintain that it is produce, it is the equivalent of [borrowing] a se'ah for a se'ah [to be repaid later], which is forbidden?[8] -[That does not prove it, for] Rab himself possessed [gold] denarii [when he incurred the debt], and that being so, it is just as though he had said to her, 'Lend me until my son comes', or 'until I find the key.'[9]

Raba said: The following Tanna is of the opinion that gold is money. For it has been taught: The perutah which they [the Sages] spoke of is an eighth of an Italian issar.[10] What is the practical bearing thereof? In respect of a woman's kiddushin.[11] The issar is a twenty-fourth of a silver denar. What is the practical bearing thereof? In respect to buying and selling.[12] A silver denar is a twenty-fifth of a gold denar. What is the practical bearing thereof? In respect to the redemption of the firstborn.[13] Now, if you agree that it [gold] is accounted as money, it is well: the Tanna thus assesses [the coins] on something of fixed value.[14] But should you say that it ranks as produce; can the Tanna give an assessment on the basis of that which rises and falls in value? Sometimes the priest may have to give him change.[15] whilst at others he [the father] will have to give an additional sum to the priest![16] Hence it is proved that it ranks as money. This proof is conclusive.

We learnt elsewhere: Beth Shammai say: One must not turn [silver] sela's into gold denarii; but Beth Hillel permit it.[17] Now, R. Johanan and Resh Lakish [differ thereon]: One maintains that the dispute concerns exchanging sela's for denarii. Beth Shammai holds that silver [coin] ranks as money, whereas gold counts as produce, and money may not be redeemed by produce.[18] Whilst In the opinion of Beth Hillel, silver [coin] ranks as produce and gold as money, and produce may be redeemed by money. But all agree that [actual] produce may be redeemed by [gold] denarii. Why so? By analogy with silver [coin] on the view of Beth Hillel. [Thus: consider] silver according to Beth Hillel, though ranking as produce vis a vis gold, it nevertheless counts as money in respect to [real] produce. So is gold too according to Beth Shammai; though accounted as produce vis a vis silver, it ranks as money in respect to [real] produce. But the other maintains: The dispute concerns the exchanging of [real] produce for [gold] denarii too,[19]

Now, on the view that the dispute concerns the exchanging of [real] produce for [gold] denarii too, [then] instead of stating their dispute in reference to the exchange of sela's for denarii, let them state it with reference to [actual] produce for denarii!-If the dispute were thus taught, I might have thought that it applies only to the exchange of produce for denarii; but as for exchanging sela'im for denarii, Beth Hillel concede to Beth Shammai that gold vis a vis silver ranks as produce and that [silver] may consequently not be redeemed [by gold]: therefore we are informed [that it is not so].

It may be proved that it is R. Johanan who holds that it may not be redeemed thus.[20] For R. Johanan said:

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(1) R. Ashi thus attempts to prove that the second clause of the Mishnah is more in consonance with the first clause on

Rabbi's early view, since on his subsequent opinion the whole of the second clause would be superfluous. Rashi observes that the second clause will be in the form taught to Rabbi by R. Meir his teacher, it being a Talmudic principle that an anonymous Mishnah agrees with R. Meir. Cf. however, Weiss, Dor II, ch. 22.

(2) I.e., even if silver coin be accounted as money in respect to gold, the second clause of the Mishnah must be stated.

(3) פריטי , the plural of the more familiar פרוטה .

(4) Cf. p. 262, n. 3, on currency of coins of small value.

(5) The actual place is not given.

(6) To consult him what to do, so as not to infringe the prohibition of interest.

(7) Notwithstanding its appreciation, he would be returning money of the same nominal value as that which he borrowed.

(8) Lest it appreciates in the meantime; v. infra 75a.

(9) V. infra 75a.

(10) The Roman assarius.

(11) V. Glos. This kiddushin must not be less than a perutah or its equivalent (Kid. 2a); hence it must be defined.

(12) Rashi: If one sold a denar for more than twenty-four issars, the vendee was cheated, and if the overcharge amounted to a sixth (v. infra 49b), it is returnable. Tosaf. rejects this, because in Kid. 12a it is stated that the issar was variable sometimes rising in value and sometimes falling, and therefore explains: If one sold an article for 24 issars, when these were worth a denar, and subsequently, before payment was made, the issar depreciated to 32 to the denar, the buyer must pay the full denar or 32 issars.

(13) Which, according to the Bible, is five shekels=30 silver denarii. So that if the father gave the priest a gold denar, he must return him five silver denarii.

(14) I.e., the gold denar is always theoretically reckoned at 25 silver denarii, and the redemption is assessed accordingly. So that even if the gold denar was actually worth 20 denarii, we do not regard the gold as having depreciated, but the silver as having appreciated; therefore, if the father gave a gold denar, he is still entitled to a proportionate return, which is now four denarii, notwithstanding that the gold denar is now nominally valued at 20 silver denarii, the exact sum required for redemption.

(15) Of a gold denar, sc. when it stands at more than twenty silver denarii.

(16) How then can the Tanna state that in respect of redemption the gold denar is always valued at 25 silver denarii?

(17) M. Sh. II, 7. A sela'= 4 denarii. The reference is to the second tithe, which had to be consumed in Jerusalem; if however, it was too burdensome to carry thither, it might be redeemed by money, which was to be expended there (Deut. XIV, 22-26). Now, if the produce had been thus exchanged for silver sela's, Beth Shammai rule that these silver coins may not be re-exchanged for gold denarii to lighten the burden still further. Beth Hillel, however, permit this, and the Talmud proceeds to discuss this difference of opinion.

(18) Since the Bible only authorises the reverse (ibid. 25).

(19) I.e., Beth Shammai regard gold as produce absolutely, even without reference to any other commodity, and therefore one may not redeem other produce therewith.

(20) I.e., that in the opinion of Beth Shammai not even real produce may be redeemed by gold denarii.

Talmud - Mas. Baba Metzia 45a

A denar may not be lent for a denar [to be returned].[1] Now, which denar is meant? Shall we say, a silver denar for a silver denar [to be repaid]: but is there any view that it does not rank as money even in relation to itself?[2] Hence it must obviously mean a gold denar for a gold denar. Now, with whom [does this ruling agree]? If with Beth Hillel — but they maintain that it ranks as coin! Therefore it must surely be in accordance with Beth Shammai, thus proving that it was R. Johanan who held that such redemption is not permissible! — No. In truth, I may assert that R. Johanan ruled that such redemption may be made, but a loan is different. For since the Rabbis treated it as produce in reference to buying and selling,[3] as we say that it is that [sc. gold] which appreciates or depreciates,[4] it ranks as produce in reference to loans too. This is reasonable too. For when Rabin came,[5] he said in R. Johanan s name: Though it was ruled that a denar may not be lent for a denar [to be repaid], yet the second tithe may be redeemed therewith. This proves it.[6]

Come and hear: If one changes[7] a sela''s worth of second tithe [copper] coins, Beth Shammai rule: the full sela''s worth of coins must be changed.[8] But Beth Hillel rule: [He may change] only a shekel's worth into silver, and retain a shekel's worth of coins.[9] Now, if in Beth Shammai's opinion redemption may be made with [copper] perutahs,[10] can there be a doubt that it may be redeemed with gold? — Copper coins are different, for where they circulate, they have greater currency.[11]

Another version puts is thus: R. Johanan and Resh Lakish [differ thereon]: One maintains that the dispute concerns changing sela's for [gold] denarii. Beth Shammai hold that 'the money' implies the first money, but not the second;[12] whereas Beth Hillel argue, 'the money . . . money' implies extension,[13] thus including even a second [redemption of] money. But all agree that [actual] produce may be redeemed by [gold] denarii, since it [sc. the gold denarii] is, after all still the first money. Whilst the other maintains: The dispute concerns the exchanging of [real] produce for [gold] denarii too.[14] Now, on the view that the dispute refers only to the exchange of sela's for denarii, instead of stating the dispute in reference to the exchange of sela's for denarii, let it be stated in reference to the exchange of sela's for sela's![15] — If the dispute were stated thus, I might have thought that it applies only thereto, but as for exchanging sela's for [gold] denarii, Beth Hillel concede to Beth Shammai that gold ranks as produce in respect to silver, and therefore such redemption is not permissible. Hence we are taught otherwise.

Come and hear: If one exchanges a sela' of second tithe in Jerusalem,[16] Beth Shammai say: He must exchange the whole sela' for [copper] coins.[17] But Beth Hillel rule: He must change it into a silver shekel, and [retain] a shekel's worth of [copper] coins.[18] Now, if silver may be redeemed with [copper] Perutahs, and we do not say. [It may be exchanged into] money once, but not twice: are we to say it in respect of gold, which is more valuable?[19] — Said Raba: Do you raise an objection from Jerusalem! Jerusalem is different, since it is written thereof, And thou shalt bestow that money [sc. in Jerusalem] for whatsoever thy soul lusteth after, for oxen, for sheep, [etc.].[20]

Come and hear: 'If one changes a sela''s worth of second tithe [copper] coins, Beth Shammai rule: the full sela''s worth of coins must be changed.[21] But Beth Hillel rule: He must change only a shekel's worth into silver, and retain a shekel's worth of coins'?[22] — Hence [we must assume that] all agree, that 'the silver . . . silver' is an extension, including even a second redemption of money.[23] But if a dispute between R. Johanan and Resh Lakish was stated, It was stated thus: One maintains: Their dispute concerns the changing of sela's into [gold] denarii only. Beth Shammai hold: We forbid this as a precautionary measure,

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(1) Lest it appreciates in the interval, and so the injunction of usury be violated.

(2) Since the aforementioned injunction applies only to produce, not coin.

(3) v. Mishnah: GOLD ACQUIRES SILVER.

(4) I.e., when the rate of exchange between silver and gold varies, we regard the change as having taken place in the value of the gold, the value of the silver remaining unaltered. That follows from the Mishnaic ruling. GOLD ACQUIRES SILVER, and it is axiomatic that variation is to be attributed to the produce, not the money.

(5) From Palestine to Babylon.

(6) The distinction between redemption and loan.

(7) Heb. פרט denotes to break up, hence primarily to change coins into others of smaller denomination. By extension, however, it came to mean any changing of coin, even for those of a larger denomination, and is thus used here.

(8) I.e., if one has that amount of coins for changing, he must change it all for a single sela'. Beth Shammai insist that the whole of the exchange must be done at once, not in two or three times, because the banker takes his commission on every single transaction, and so there is less left for spending in Jerusalem (Tosaf.); v. next note. But from Rashi it would appear that Beth Shammai's ruling is merely permissive, and is in contradistinction to the view of Beth Hillel. In that case, the passage should be translated: the full sel'a's worth of coins may be changed.

(9) For as soon as he enters Jerusalem, he needs small change-perutahs-to buy food. This will cause a general rush on the

banker, the rate of exchange will advance, and the purchasing power of the money will be diminished, with the consequent reduction in the quantity of comestibles to be purchased and consumed as second tithe; v. ‘Ed. I, 9.
(10) Since Beth Shammai discuss the changing of copper coins of the second tithe into silver, they must admit that in the first place the produce was redeemed by these copper coins.
(11) So that though it may be redeemed for copper, it is nevertheless possible that it may not be redeemed with gold, in accordance with one of the views stated above.
(12) The reference is to Deut. XIV. 25: Then thou shalt turn it into money and bind up the money in thine hand, and shalt go unto the place which the Lord thy God shall choose. ‘The Money’, in the opinion of Beth Shammai, implies that the first money for which the second tithe was redeemed must be carried to Jerusalem, but not the second: i.e., once it was redeemed, the redemption money may not be exchanged for other coins.
(13) ‘Money’ is stated several times in the passage: Thou shalt turn it into money and bind up the money . . . And thou shalt bestow that money. . .; this repetition implies an extension of changing. I.e., that the money may be changed or redeemed more than once.
(14) Beth Shammai regard gold as produce, for which the agricultural products cannot be redeemed.
(15) Since here too it is a second redemption of money, which, according to Beth Shammai, is forbidden.
(16) Having brought sela's to Jerusalem, he now proceeds to change them into smaller coins for current use.
(17) v. p. 267. n. 4, which applies here too.
(18) For he may not stay long enough in Jerusalem to expend it all, in which case he must leave the rest there until his next visit. But copper coins are liable to corrosion, and therefore unsuitable for preserving; whilst should he wish to change them back into silver at the end of his stay, he must pay commission again (‘Ed. 1,10); v. p. 267, n. 4.
(19) And consequently has a greater claim to be regarded as produce (v. p. 262, n. 3). Tosaf. observes: It is obvious even to the questioner that a distinction must be drawn between Jerusalem and elsewhere. Outside Jerusalem, the main form of exchange is that of produce for perutahs or sela's, to lighten the burden of carrying, whereas in Jerusalem it is the reverse: the sela's being exchanged either for foodstuffs direct or into perutahs, for day-to-day purchases. Consequently, this cannot be urged as an objection against the first version of the difference between Resh Lakish and R. Johanan, or against the view expressed in the second version that Beth Shammai and Beth Hillel differ even in respect of the exchange of produce for gold denarii, the dispute centering on the question whether gold ranks as produce or coin. But it is raised as an objection against the view that Beth Shammai permit only one exchange into money, but not a further exchange; this difficulty is urged on the hypothesis that in that respect there is no difference between Jerusalem and elsewhere, to which Raba replies (v. text) that here too a distinction is drawn.
(20) Deut. XIV, 26: i.e., every form of exchange is permitted, even into coins of smaller denominations, for greater convenience.
(21) v. p. 267. n. 4.
(22) Though this does not refer to Jerusalem, both Beth Shammai and Beth Hillel agree that a second money change is permissible.
(23) v. p. 268, n. 2.

Talmud - Mas. Baba Metzia 45b

lest one postpone his pilgrimages [to Jerusalem], for he may not have the full number of silver coins[1] required for a [gold] denar, and so will not take them up [thither];[2] whilst Beth Hillel are of the opinion that we do not fear that he may postpone his pilgrimages, for even if they are insufficient to change into a denar, he will still take them up.[3] But all agree that produce may be redeemed with [gold] denarii, for since it rots [if kept long], he will certainly not keep it back. But the other maintains: The dispute refers even to the exchange of produce for denarii.[4]

Now, according to the version that by Biblical law it [the exchange] is indeed permitted, but that the Rabbis forbade it, it is well: hence he [the Tanna] teaches ‘he may turn’ ... ‘he may not turn.’[5] But according to the version that they differ in Scriptural law, he should have stated, ‘One can redeem’ ... ‘one cannot redeem!’[6] This difficulty remains.

It has been stated: Rab and Levi-one maintains: Coins can effect a barter; the other rules that they

cannot —[7] Said R. Papa: What is his reason who maintains that a coin cannot effect a barter? Because his [the recipient's] mind is set on the legend thereof,[8] and the legend is liable to cancellation.[9]

We learnt: GOLD ACQUIRES SILVER. Does that not mean, even in virtue of barter, thus proving that a coin may effect a barter? — No; only in virtue of payment.[10] If so, instead of stating, GOLD ACQUIRES SILVER, he should have said, 'Gold sets up a liability for silver'![11] -Learn: 'Gold sets up a liability for [etc.]'[12] . Reason supports this too;[13] since the second clause states. SILVER DOES NOT ACQUIRE GOLD. Now, should you agree that it means, 'in virtue of payment.' it is well: thus we say, gold ranks as produce, silver as money, and money cannot effect a title in respect of produce. But should you maintain that the reference is to barter — let each acquire the other![14] Moreover, it has been taught: Silver does not acquire gold: E.g.. If one sells twenty-five silver denarii for a gold denar, even if the other party takes possession of the silver, he does not acquire it until he [the first] takes possession of the gold. Now, should you agree that the reference is to payment, it is well: therefore he gains no title thereto. But if you maintain that this treats of barter, let him acquire it! — What then: as payment? If so, consider the first clause: Gold acquires silver: e.g. If one sold a gold denar for twenty-five silver denarii, immediately the other party takes possession of the gold, the ownership of the silver vests [in the first] wherever it be. Now, should you agree that the reference is to barter, it is well: hence it is taught, the ownership of the silver vests [in the first] wherever it be.[15] But should you maintain that it treats of payment, instead of saying thus, he [the Tanna] should have taught: The man [the recipient of the gold] becomes liable [for the silver]![16] — Said R. Ashi: After all, it refers to payment, and what is meant by 'wherever it be', is 'just as it is,' viz., as he stipulated. [Thus:] If he had stated. 'I will give you [coins] out of a new purse',[17] he cannot give him [coins] out of an old purse,[18] even If they are superior.[19] Why? Because he can say, 'I need them to store away.'[20]

R. Papa said: Even on the view that a coin cannot effect a barter, — though indeed it cannot effect a barter, it can nevertheless be acquired through barter.[21] For this may be compared to produce, according to R. Nahman's view. Thus, though in R. Nahman's view produce cannot effect a barter,[22] yet it can surely be acquired through barter; so coin too is not [in any way] different.

An objection is raised: If one is standing in a granary and has no money with him, he may say to his friend, 'Behold, this produce is given to you as a gift;'

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(1) Lit., 'zuzim'.

(2) A gold denar was a large sum of money, and might exceed the whole value of the second tithe. Hence, if one were permitted to change the silver sela's into gold, he might postpone the pilgrimage altogether until another harvest.

(3) The weight of these silver coins will certainly not prevent anyone from going to Jerusalem.

(4) Even there the fear of postponement is entertained.

(5) Supra 44b.

(6) One may turn, etc., (lit., 'do') implies that such redemption is possible, and the only question is whether it is permitted (by the Rabbis) or not. But if it is a question of Biblical law, then the dispute is whether such a redemption is effective or not, for if e.g.. sela's cannot be redeemed by denarii, they still retain their sanctity even if so redeemed.

(7) Halifin = barter, exchange. It is a technical term, connoting delivery of a small object representing a larger one which is being bartered. Upon this delivery, the recipient becomes liable for the object he is to give in exchange, though he has not yet received the real object of barter, the transaction having been consummated by this delivery. Now, as was stated in the Mishnah, in a purchase the delivery of the money does not effect the transaction. That, however, may be only if it is delivered in payment. But what if the transaction is made as barter instead of purchase, i.e.. money is bartered for goods: can a coin received by one party in exchange for goods, or as a mere token of delivery, consummate the transaction? This is disputed by Rab and Levi.

(8) I.e., the figure which is stamped on the coin, and which gives it its value. Now, when an ordinary object is used as halifin, the recipient accepts its own intrinsic value as symbolical of the whole. But when a man receives a coin, he does

not think of the intrinsic value of the metal, but merely of its worth on account of the legend it bears.
(9) The State may cancel that particular coin. In that case, nothing of value has been given at all, since, as stated in the previous note, the value of the metal is disregarded. Symbolical delivery, however, can be effected only by an article that has some intrinsic value.
(10) I.e., when it is delivered as actual payment for the silver coin, but not as a mere symbolical delivery of barter.
(11) GOLD ACQUIRES SILVER implies that immediately after the gold coin is delivered, the recipient's silver coin vests in the other party, wherever it be; and that indeed is the effect of a transaction consummated as barter. If, however, the gold coin is legally regarded as payment for the article, its effect is merely to create an obligation upon the recipient of an agreed amount of silver, which then ranks as an ordinary debt. In that case, the Mishnah should have stated, GOLD SETS UP A LIABILITY FOR SILVER.
(12) Though this type of answer frequently means that the text of the Mishnah actually needs emending (v. Weiss, Dor. 111,6 n. 14) that is probably not so here. The answer simply states that the Mishnaic phrase GOLD ACQUIRES SILVER means, 'Gold sets up a liability for silver.'
(13) Sc. that the Mishnah refers to the delivery of gold coin as payment, not as barter.
(14) Since they are not regarded as coins at all, what is the difference between gold and silver?
(15) V. p. 271, n. 2.
(16) V. n. 2.
(17) I.e., new coins.
(18) I.e., old coins.
(19) E.g. better cast or weightier.
(20) Hence I require new coins, as old ones may become mouldy. According to this interpretation, the Baraitha does in fact refer to the recipient's liability.
(21) I.e., once the owner of the coin takes possession of an object either delivered to him symbolically or in exchange against it, the ownership of the money vests in the other party.
(22) I.e., one cannot make a symbolical delivery of fruit and thereby acquire the object that is being bartered. — For this view of R. Nahman, and the opposing view of R. Shesheth v. infra 47a.

Talmud - Mas. Baba Metzia 46a

then he may say. 'Let it [sc. the produce] be redeemed for the money I have at home.'[1] Hence it is because he has no money with him;[2] but if he had money in his hand he should rather give possession thereof to his friend through meshikah,[3] who would then redeem [the tithe], which is a preferable [procedure], since he would then be a [real] stranger.[4] But if you say that coin may be acquired through barter, let him [the tithe-owner] give possession of the money [he has at home] to his friend by means of a scarf, and then let the latter redeem it![5] — The latter has no scarf. Then let him give possession thereof through soil![6] — He has no soil. But it is stated, 'If one is standing in a granary!' — It means in a granary not belonging to him.[7] And does the Tanna take the trouble of teaching us about a naked man, who possesses nought![8] Hence it must surely be that coin cannot be acquired by barter.[9] This proves it.

And R. Papa himself — retracted, as we find that R. Papa had thirteen thousand denarii at Be-Huzae,[10] which he transferred to R. Samuel b. Aha along with the threshold of his house.[11] When he [R. Samuel b. Aha] came [with the money], he [R. Papa] went forth to meet him up to Tauak.[12]

[To revert to the original discussion:] And 'Ulla said likewise: Coin cannot effect a barter; and R. Assi said likewise: Coin cannot effect a barter; and Rabbah b. Bar Hanah said likewise in R. Johanan's name: Coin cannot effect a barter. R. Abba raised an objection against 'Ulla: If his carters or labourers demanded [their wages] from a man in the market place, and he said to a money-changer, 'Give me copper coins for a denar, and I will pay them,[13] whilst I will return you a denar's worth[14] and a tressis[15] Out of the coins which I have at home:' then if he has money at home, it is permitted; otherwise, it is forbidden.[16] Now, should you think that coin cannot effect a barter, it is a loan, and hence forbidden![17] Thereupon he was silent. Said he to him: Perhaps both[18] refer to

uncoined metal which bear no imprint.[19] so that they rank as produce, and therefore may be acquired by barter? — Even so, he replied. This too follows from the fact that he [the Tanna] states, a denar's worth and a tressis, but does not state. a current denar[20] and a tressis. This proves it. R. Ashi said: After all, [the return may be] in the character of repayment, though the reference indeed is to uncoined metal: since he has them [at home], it is as though he said, 'Lend me until my son comes, or until I find the key.'[21]

Come and hear: Whatever can be used as payment for another object, as soon as one party takes possession thereof, the other assumes liability, for what is given in exchange.[22] 'Whatever can be used as payment for another object' — what is that? Coins: which proves that coins can effect a barter![23] -Said Rab Judah: It means this:

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(1) M. Sh. IV. 5. The reference is to second tithe produce, which, as stated above, might be redeemed instead of being taken to Jerusalem. Now, when a man redeemed his own second tithe produce, he had to add a fifth of its value, but not if he redeemed produce belonging to another. Cf. Lev. XXVII, 31: And if a man will at all redeem ought of his tithes, he shall add thereto a fifth part thereof. But, in order to evade this addition, a legal fiction might be resorted to: one gave his Produce to another and then redeemed it, thus redeeming the produce of another-then received it back. The Mishnah quoted gives an instance of such an evasion, which, as may be seen from the phraseology, was recognised and sanctioned by law.

(2) That is why the Tanna recommends that particular procedure, explicitly stating that it is to be followed when the tithe owner has no money with him.

(3) V. Glos.

(4) I.e, if he gave the money to his neighbour, whilst retaining the produce himself, his friend would actually be redeeming a tithe that is not his own! That is not such a glaring evasion as when a person gives the produce to his neighbour and then redeems it himself, and therefore is preferable; and the Tanna obviously permits the other procedure only because the latter is impossible, since the tithe owner has not the money with him.

(5) Instead of his gifting the produce to him, let his friend give him a scarf or handkerchief as halifin (v. supra p. 30. n. 3), for the money, and then redeem the tithe with this money (which need not actually be in his hand for the purpose of redemption), since the Tanna prefers this procedure. Hence it follows that money cannot be acquired through barter.

(6) I.e., the tithe owner should have given him a piece of soil, in virtue of which his friend could acquire the money too, it being a general principle that movables may be acquired by dint of real estate (Kid. 26a). — This is not an objection against the view that money can be acquired through barter, but is a difficulty that arises in this Mishnah itself. Rashi recognises it as such, and though Tosaf. attempts to shew that it is indeed an objection against the opinion just mentioned, the reasoning is not very plausible. It is quite possible that this passage bearing on the acquisition of money by dint of real estate is a later editorial interpolation. V. Kaplan. Redaction of the Talmud. Ch. XIII.

(7) But merely rented.

(8) This reverts to the objection that his friend should have acquired the money through barter, to which the answer was given that he had no scarf wherewith to effect the barter. This of course must mean that he had nothing at all, since any object can be used for the purpose, and so the Talmud objects further: surely the Tanna did not take the pains of stating such an exceptional case!

(9) Therefore the tithe owner has no other alternative but that stated in the Mishnah.

(10) V. p. 508. n. 2. — R. Papa was a very wealthy man, Cf. infra 65a.

(11) V. p. 273. n. 5. Since he had recourse to this mode, and did not employ the simple means of barter, he must have withdrawn from the view that coin can be acquired by means of barter. His purpose in transferring the money was that R Samuel b. Aba should bring it to him from Be-Huzae; without such transference, the bailee might have refused to let it out of his possession, as he would then have to bear the risks of the road.

(12) V.B.B. (Sonc. ed.) p. 310 and nn.

(13) Lit., 'supply them'.

(14) The Heb. expression is very peculiar, יפה דינר At this stage, this was thought to be the equivalent of דינר יפה a good, I.e., current denar.

(15) A coin worth three issars. The text has טריסית , an incorrect form of טריסין (Jast.).

(16) It was assumed that the reason is this: If he has money at home, immediately he takes possession of the coins the

money-changer acquires the ownership of the money at home by the process of barter; hence there is no usury, since theoretically the banker does not wait for his money. But this cannot operate if he has no money, in which case it is a pure loan upon which the tressis is interest.

(17) V. preceding note; the reasoning there is possible only on the assumption that coin can effect a barter.

(18) Sc. that which is given by the banker, and that which is returned.

(19) Uncoined pieces of metal were used as small change.

(20) V. p. 274. n. 6.

(21) V. infra 75a. The preceding discussion has assumed that the only basis upon which the transaction is permissible is barter. R. Ashi, however, points out that since it has been explained that the reference is to uncoined metal, the transaction may be viewed and carried out as a loan, the return being actually in the nature of repayment thereof; nevertheless it is permitted for the reason stated.

(22) l.e., for the halifin, or barter thereof. When A takes possession of the first, B automatically accepts the risks of the barter; e.g., if an ox is being given in exchange, the full risks of anything happening to it are now borne by B, though it has not actually reached his hand.

(23) For if the coins are given in the character of payment, they do not consummate the sale to render the purchaser responsible for all risks. Hence they are used as barter, as the passage stated.

Talmud - Mas. Baba Metzia 46b

Whatever is assessed as the value of another object,[1] as soon as one party takes possession thereof, the other assumes liability for what is given in exchange. Reason too supports this — For the second clause teaches: How so? If one bartered an ox for a cow, or an ass for an ox. This proves it. Now, on the original hypothesis that coin [is referred to], what is meant by 'How so?'[2] — 'It means this: And produce[3] too can effect a barter. How so? If one bartered an ox for a cow, or an ass for an ox. Now, that is well on the view of R. Shesheth, who maintained that produce can be employed for barter. But according to R. Nahman, who said: Only a utensil, but not produce, can effect a barter, what is meant by 'How so'?-It means this: Money sometimes ranks as [an object of] barter. How so? If one bartered the money of an ox for a cow, or the money of an ass for an ox.[4] What is R. Nahman's reason?[5] He agrees with R. Johanan, who said: Biblically Speaking, [the delivery of] money effects a title. Why then was it said that only meshikah gives possession? As a precautionary measure, lest he say to him, 'Your wheat was burnt in the loft.'[6] Now, the Rabbis enacted a preventive measure only for a usual occurrence, but not for an unusual occurrence.[7] Now, according to Resh Lakish, who maintains that meshikah is explicitly required by Biblical law: it is well if he agrees with R. Shesheth: then he can explain[8] it as R. Shesheth. But if he holds with R. Nahman, that produce cannot effect a barter, whilst money does not effect a title [at all], how can he explain it?[9] -You are forced to assume that he explains it as R. Shesheth.

We learnt: ALL MOVABLES ACQUIRE EACH OTHER, whereon Resh Lakish said: Even a purse full of money [when bartered] for a purse full of money.[10] -R. Aha interpreted it as referring to the Bithynian and Ancyrean[11] denarii, one of which was cancelled by the State, and one by local authorities.[12] And both are necessary. For if we were taught this of State cancellation,[13] that is because such coins have no [official] currency at all; but in the case of local repeal, since these coins circulate in another province, I might regard them as money, which cannot be acquired through barter. Whilst if it were stated in connection with local repeal, that is because they have neither a secret nor an open circulation [within that province]; but when cancelled by the State, since they circulate clandestinely, I might still regard them as coin, which cannot be acquired through barter. Thus both are necessary.[14]

Rabbah said in R. Huna's name: [If A said to B,] 'Sell [it] me for these [coins],' he acquires title thereto,[15]

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(1) I.e., anything but money. which needs no assessment.

(2) I.e., why is an instance given which does not illustrate the use of money as barter?
(3) Heb. פירי whilst this term is generally applicable only to objects of the vegetable kingdom, it may also be used, as here, to denote the animal kingdom too, in contradistinction to כלים, articles or utensils of use.
(4) E.g. A sold an ox to B for a certain sum of money, and B took possession, thereby becoming indebted to A for the purchase price. Then B said, 'I have a cow which I can give you for the purchase price of the ox,' to which A agreed. Now, notwithstanding that this is theoretically a fresh transaction, viz., B sells a cow to A, the money owing by B for the ox being regarded as though delivered to him by A for the cow, and it is a principle that the delivery of money alone does not consummate a purchase, it does so in this case, and neither can retract; i.e., it is barter, not payment.
(5) Why in fact should it be regarded as barter here, though normally money does not effect a title?
(6) V. infra 47b.
(7) I.e., such a transaction as the one under discussion is unusual; consequently, the Biblical law operates. Hence the delivery of the money effects a title, and neither can withdraw.
(8) The Mishnah under discussion.
(9) For, as we have seen, it involves either that produce can effect a barter, or that money should effect a title.
(10) This proves that money can effect a barter.
(11) Bithynia, a district in Asia Minor; Ancyra, a city of Galatia in Asia Minor (Jast.). [Zuckermann, Munzen, p. 33, on basis of variant נייקי for אנקא renders: victory (Gr. **) and Nigerian denarii, the former referring to coins of conquered countries recalled by the victorious state; the latter to the coins struck by Pescennius Niger, the rival of Septimius Severus, the currency of which was strictly limited to the province over which he ruled.]
(12) The exchange consisted of these coins which, being cancelled, are just the same as any other produce. — Coins repealed by the State might still have a clandestine circulation within a particular province: on the other hand, those cancelled by a local authority would have no currency at all within that province, but a full currency without.
(13) That these coins rank as produce.
(14) It may be observed that this type of reasoning is generally applied to two Tannaitic statements, as found in a Mishnah or a Baraitha. Here, however, it is applied to an Amoraic (R. Aha's) interpretation of what is itself an Amoraic (Resh Lakish's) comment on a Mishnah.
(15) If A was holding an undetermined number of coins in his hand, and suggested that B should sell him an article for them, without stating their value, and B agreed, immediately B takes possession of the coins the transaction is consummated, and neither can retract, though normally the delivery of money does not effect a title. The Talmud proceeds to discuss the reason for this.

but [the vendor] nevertheless has a claim of fraud against him.[1] 'He acquires a title thereto,' — even though he did not take possession thereof [sc. of the article]: since he [the other party] was not particular [as to the exact amount of money], he [the former] acquires it, for it partakes of the nature of barter. 'Nevertheless, he has a claim of fraud against him,' — because he had said to him, 'Sell it me for these coins.'[2] R. Abba said in R. Hunas name: [If A said to B.] 'Sell [it] me for these coins,' he acquires a title thereto, and he [the vendor] has no claim of fraud against him.[3]

Now, it is certain [if money or an article is delivered as] payment, but he [the recipient] is not particular [that the value shall correspond] — then we have just said that he [the giver] acquires title, for it partakes of the nature of barter. But what if it[4] is delivered as barter, and he [the recipient] is particular?[5] -Said R. Adda b. Ahaba: Come and hear: If one was standing with his cow [in a market], and his neighbour came and asked him, 'Why [have you brought] your cow [hither]?' — 'I need an ass,'[he replied]. 'I have an ass which I can give you [in return for your cow].' 'What is the value of your cow?' 'So much.' 'What is the value of your ass?' 'So much.'[6] If the ass-owner drew the cow into his possession, but before the cow-owner had time to draw the ass into his possession it [the ass] died, he [the ass-owner] acquires no title thereto [the cow]. This proves that in the case of barter, where each is particular, no title is gained [unless both take possession]. Said Raba: Does then [the general law of] barter apply only to imbeciles, who are not particular? But indeed in all cases of barter they are certainly particular; nevertheless, title is acquired [when only one party takes possession].[7] Here however it means that one said, '[I give you] my ass in return for a cow and a lamb,' and he drew the cow into his possession but not the lamb,[8] in which case the meshikah was not completed.[9]

The Master said: '"Sell it me for these [coins]." he acquires title thereto, yet he [the vendor] has a claim of fraud against him.' Shall we say that in R. Huna's opinion coin may effect a barter?-No. R. Huna agrees with R. Johanan, who ruled: Biblically speaking, [the payment of] money effects a title. Why then was it said that only meshikah gives possession? As a precautionary measure, lest he say to him, 'Your wheat was burnt in the loft.' Now, the Rabbis enacted a preventive measure only for a usual occurrence, but not for an unusual occurrence.[10]

Mar Huna, the son of R. Nahman, said to R. Ashi: You have had it reported so.[11] But we had it reported thus: And R. Huna said likewise, Coin cannot effect a barter.[12]

Wherewith is a title effected?[13] -Rab said: With the utensil of the receiver; for the receiver wishes the bestower to take possession,[14] so that he [the latter] in his turn may determine to give him possession. Whilst Levi said: With the utensil of the bestower, as will be explained anon. R. Huna of Diskarta[15] said to Raba: Now, according to Levi, who maintained that it is with the utensil of the bestower, one will be able to acquire land in virtue of a garment, which is tantamount to secured property being acquired along with unsecured, whereas we learnt the reverse: Unsecured chattels may be acquired along with secured chattels![16] -Said he to him: Were Levi here, he would have smitten you[17] with fiery lashes! Do you really think that the garment gives him possession? [Surely not! but] in consideration of the pleasure he [the bestower] experiences in that the receiver accepts it from him, he wholeheartedly transfers it to him.[18]

This[19] is disputed by Tannaim: Now this was the manner in former times in Israel concerning redeeming and concerning changing, For to confirm all things; a man drew off his shoe, and gave it to his neighbour;[20] 'redeeming' means selling, and thus it is written, It shall not be redeemed;[21] 'changing' refers to barter, and thus it is written, He shall not alter it, nor change it;[22] for to confirm all things; a man drew off his shoe, and gave it to his neighbour. Who gave whom? Boaz gave to the kinsman. R. Judah said: The kinsman gave to Boaz.[23]

It has been taught: Acquisition may be made by means of a utensil, even if it is worth less than a perutah. Said R. Nahman: This applies only to a utensil, but not to produce.[24] R. Shesheth said: [It may be done] even with produce. What is R. Nahman's reason? — Scripture saith, 'his shoe': implying, only 'his shoe' [i.e., a utensil], but nothing else. What is R. Shesheth's reason? Scripture saith, for to confirm all things.[25] But according to R. Nahman too, is it not written, to confirm all things?-That means, to confirm all things the title to which is to be effected by means of a shoe.[26] And R. Shesheth too: is it not written, 'his shoe'?- R. Shesheth can answer you: [That is to teach,] just as his shoe is a clearly defined object, so must everything [used in this connection] be a clearly defined object, thus invalidating half a pomegranate or half a nut, which may not be [employed].[27]

R. Shesheth, the son of R. Iddi, said: In accordance with whom do we write nowadays, 'with a utensil that is fit for acquiring possession therewith'?[28] 'With a utensil' — that rejects the view of R. Shesheth, who maintains: A title may be effected by means of produce. 'That is valid' — this excludes Samuel's dictum, viz.: Possession can be obtained

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(1) If the money is less than the value of the article by a sixth, the vendor can claim the cancellation of the transaction (v. infra 49b).

(2) 'Sell' would imply to the vendor that the coins approximated to the value of the object.

(3) R. Abba holds that no particular significance attaches to the word 'sell' in such circumstances.

(4) Any other object except money.

(5) That the object given in symbolical delivery shall have a certain value. Is it still regarded as barter, and therefore the transaction is consummated by this symbolical delivery: or perhaps, since he insists that it shall have a certain value, it is the equivalent of money, and therefore does not effect a title?

(6) And the values tallied.

(7) Although it may be regarded as the equivalent of money.

(8) When the ass died.

(9) Lit., 'proper'.

(10) V. p. 276. n. 4. the transaction under discussion is likewise most unusual.

(11) As above. I.e., you are in doubt whether R. Huna holds that coin may effect a barter, but merely answered that his dictum does not compel us to assume that in his opinion it is so.

(12) As a definite statement.

(13) When A wishes to gain possession of an article belonging to B by means of a symbolical delivery of an object, Does A have to provide the article for effecting the title, the article he delivers being a symbolical exchange for that which he is to acquire; or B, the object he delivers being symbolical of that which he really intends giving?

(14) The object of symbolical recovery.

(15) [Deskarah, sixteen parasangs N.E. of Bagdad, Obermeyer, op. cit. p. 246.]

(16) Unsecured chattels==movables; secured chattels==real estate. The point of R. Huna's observation is this. Since Levi maintains that Possession is effected by means of the bestower's utensil, it follows that if the object transferred is land, the receiver gains Possession thereof in virtue of having taken the bestower's utensil, i.e., the former becomes an appendix to the latter, as it were. But the Mishnah has taught the reverse, viz., when one acquires real estate, he may likewise effect a title to movables that go with it, but not vice versa.

(17) Lit., 'he would have brought before you fiery lashes.' He would have threatened you with the ban for having imputed to him a wrong opinion (Rashi).

(18) So that when the bestower gives his garment, it is regarded as though he were actually receiving something.

(19) The controversy between Rab and Levi.

(20) Ruth IV, 7.

(21) Lev. XXVII, 33. The reference is to the redemption of a consecrated animal. Evidently, such redemption, if permitted, would be by means of money, i.e., buying the animal back (since substitution is separately dealt with, as the Talmud proceeds to shew); thus here too, by 'redeeming' selling for money is meant.

(22) Ibid. 10.

(23) Thus we see the same dispute here as between Rab and Levi.

(24) I.e., produce cannot be employed as a symbol of acquisition.

(25) Which he translates, for to confirm with all things — i.e., any article can confirm a transaction.

(26) I.e., both purchase and barter are consummated by the symbolical delivery of a shoe.

(27) Half a pomegranate has no distinctive individuality, which is the idea connoted here by 'clearly defined'.

(28) In a document recording a transaction by means of halifin. This phrase is also used in a woman's marriage settlement (kethubah).

Talmud - Mas. Baba Metzia 47b

by means of maroka.[1] 'For gaining possession' — this rejects Levi's view, that the utensils of the bestower [are required]:[2] therefore it teaches us: to obtain possession, but not to confer possession.[3] 'Therewith' — R. Papa said: It is to exclude coins. R. Zebid — others state, R. Ashi — said: It is to exclude objects the benefit of which is forbidden.

Others state: 'Therewith' excludes coins.[4] 'That is fit'; R. Zebid — others state, R. Ashi — said: That excludes objects whose use is forbidden.[5] But as for maroka, It Is unnecessary [to exclude that].[6]

UNCOINED METAL [ASIMON][7] ACQUIRES COINED. What IS ASIMON? — Said Rab: Coins that are presented as tokens[8] at the baths.[9] An objection is raised: The second tithe may not be redeemed by asimon, nor by coins that are presented as tokens at the baths; proving that ASIMON is not coins that are presented as tokens at the baths.[10] And should you answer that it is a definition,[11] surely the Tanna does not teach thus; [for we learnt:] The second tithe may be redeemed by 'asimon', this is R. Dosa's view. The Sages maintain: It may not. Yet both agree that it may not be redeemed with coins that are presented as tokens at the baths.[12] But, said R. Johanan. What is 'asimon'? A disk.[13] Now, R. Johanan follows his views [expressed elsewhere]. For R. Johanan said: R. Dosa and R. Ishmael both taught the same thing. R. Dosa: the statement just quoted. And what is R. Ishmael's dictum? — That which has been taught: And thou shalt bind up the money in thine hand;[14] this is to include everything that can be bound up in one's hand — that is R. Ishmael's view. R. Akiba said: It is to include everything which bears a figure.[15]

E. G., IF [A] DREW INTO HIS POSSESSION [B' s] PRODUCE, WITHOUT PAYING HIM THE MONEY, HE CANNOT RETRACT, etc. R. Johanan said: By Biblical law, [the delivery of] money effects possession. Why then was it said meshikah effects possession? Lest he [the vendor] say to him [the vendee]. 'Your wheat was burnt In the loft.'[16] But after all, whoever causes[17] the fire must make compensation! — But [for fear] lest a fire accidentally break out. Now, if the ownership is [still] vested in him [the vendor],[18] he will wholeheartedly take pains[19] to save it; if not, he will not do so. Resh Lakish said: Meshikah is explicitly provided for by Biblical law. What is Resh Lakish's reason? — Scripture saith, And if thou sell aught unto thy neighbour, or acquire aught of thy neighbour's hand[20] — i.e., a thing 'acquired' [by passing it] from hand to hand.[21] But R. Johanan maintains.'of [thy neighbour's] hand' is to exclude real estate from the law of fraud.[22] And Resh Lakish?[23] — If so,[24] Scripture should have written, 'And if thou sell aught unto thy neighbour's hand, ye shall not defraud:' why state, 'or acquire aught'? This proves that its purpose is to teach the need of meshikah. And R. Johanan: how does he utilise 'or buy'? — He employs it. even as was taught: 'And if thou sell aught . . . ye shall not defraud:' from this I know the law[25] only if the purchaser was defrauded. Whence do I know it if the vendor was cheated? From the phrase. 'or acquire aught... ye shall not defraud.' And Resh Lakish?[26] — He learns both therefrom.[27]

We learnt, R. SIMEON SAID: HE WHO HAS THE MONEY IN HIS HAND HAS THE ADVANTAGE. [This means,] only the vendor can retract, but not the purchaser.[28] Now, should you say that [by Biblical law the delivery of] money effects possession, it is well; therefore the vendor can retract, but not the vendee.[29] But if you say that [the delivery of] money does not effect a title

[even by Biblical law], then the purchaser too should be able to retract![30] — Resh Lakish can answer you: I [certainly] did not state [my view] on the basis of R. Simeon's opinion, but according to the Rabbis.

Now, as for Resh Lakish, it is well: for precisely therein do R. Simeon and the Rabbis differ.[31] But according to R. Johanan, wherein do R. Simeon and the Rabbis differ? — In respect to R. Hisda's dictum, viz.: Just as they [sc. the Rabbis] enacted the law of meshikah in respect of the vendor, so did they institute it in respect to the vendee.[32] Thus, R. Simeon rejects this dictum of R. Hisda, whilst the Rabbis agree therewith.

We learnt: BUT THEY [SC. THE SAGES] SAID: HE WHO PUNISHED THE GENERATION OF THE FLOOD AND THE GENERATION OF THE DISPERSION, HE WILL TAKE VENGEANCE OF HIM WHO DOES NOT STAND BY HIS WORD. Now, if you say that the delivery of money effects a title, it is well: hence he is subject to the 'BUT etc.'. If, however, you maintain that money does not effect a title, why is he subject to 'BUT'?[33] — On account of his words.[34] But is one subject to 'BUT' on account of [mere] words? Has it not been taught:

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(1) This word is variously translated. Rashi and Asheri: a vessel made of baked ordure; Tosaf. and R. Han.: date-stones used for smoothing parchment, 'fit' implying a wider practicability than the strictly limited use of maroka.

(2) In which case they would confer possession.

(3) [למקניא the Pe'al, and not לקנויי the Af'el, causative.]

(4) 'Therewith' implies limitation.

(5) 'Fit', Heb. כשר , generally connotes fit for use, and is a term frequently employed in connection with dietary laws.

(6) Because It is too unsubstantial even to be thought fit for this purpose.

(7) GR. **.

(8) Heb. סימן Siman: perhaps this interpretation suggested itself to Rab on account of the similarity of the words.

(9) Rashi: The bath attendant received checks or tokens from intending patrons, so as to know how many would frequent them and what preparations to make. [According to Krauss, T.A., I, 225, these were received by visitors who in turn presented them to the bath-attendant, the olearius, as token payment.] For this purpose cancelled or defaced coins were used.

(10) M. Sh. I,2.

(11) I.e., 'coins that are presented etc.' is not a separate clause, but a definition of 'asimon'. Tosaf. observes that on this hypothesis 'or' (coins etc.) would have to be deleted.

(12) 'Ed. III, 2.

(13) פולמא Jast: circular plate or ring used as weight and as uncoined money.

(14) Deut. XIV, 25.

(15) I.e., a stamped image; וצרת is connected with צור , 'to form a figure'. By contrast then, R. Ishmael must refer to metal not bearing this figure: and R. Johanan equates that with R. Dosa's dictum. This then agrees with his interpretation of 'asimon' as an (uncoined) disk.

(16) If the delivery of coin should transfer ownership to the vendee even whilst the purchase is in the vendor's possession, the latter will be remiss in attempting to save it, should a fire break out on his premises; therefore actual meshikah was instituted. On the other hand, if it were ruled that both meshikah and payment were necessary, if the purchaser took it into his possession without paying and a fire broke out on his premises, he would be remiss in saving it. Therefore the Rabbis enacted that the entire transfer of ownership depends on meshikah alone (Tosaf.). On meshikah, v. Glos.

(17) Lit., 'throws'.

(18) Lit., 'if you place it in his ownership.'

(19) Lit., 'he will trouble himself.'

(20) Lit. rend. of Lev. XXV, 14.

(21) I.e., Scripture shows that the mode of acquisition is by taking the purchase from the vendor's hand, which is meshikah.

(22) The verse ends, ye shall not defraud one another. As stated infra 49b, a certain percentage of fraud or overcharging annuls the sale; but the word 'hand' implies that the reference is to something that can pass from hand to hand, sc. movables, but not land.
(23) Does he not admit this: and if he does, where is the reference to meshikah?
(24) That the only purpose of the verse is that stated by R. Johanan.
(25) That fraud annuls the purchase.
(26) Seeing that the verse is required for this purpose, how can it teach meshikah?
(27) 'Or acquirest' shows that the law of overreaching holds good when the vendor is the victim, and since 'hand' is written in conjunction with 'acquirest' rather than with 'sell', we learn that the acquisition is made by passing the purchase from hand to hand.
(28) I.e., when the purchaser has paid the money, the vendor, who holds it, has the advantage of being able to retract, but not the vendee.
(29) For, when the vendee delivers the money, ownership rests in him according to Biblical law, and it is only to safeguard his interests in case of accidental fire that the vendor is made to bear the risks until the delivery of the goods. Consequently, since the vendor is put at a disadvantage by the Rabbinical measure, in that he must bear the risks of fire or damage, it is equitable that he shall be compensated by being given the power to retract too. The vendee, on the other hand, is the gainer by the Rabbinical enactment of meshikah; therefore there is no need to increase his advantage still farther by permitting him to retract even if no accident befalls the goods. — This explanation follows R. Hananel; Rashi and R. Tam differ somewhat.
(30) Since the sale has been consummated neither by Biblical nor by Rabbinic law.
(31) R. Simeon maintaining that the delivery of money consummates the sale by Biblical law, and therefore the vendee cannot retract, whilst in the view of the Rabbis meshikah is a Scriptural requisite, and therefore both the vendor and the vendee can retract.
(32) Probably on the score of equitableness. For, notwithstanding the reasoning stated on p. 283. n. II (q.v.), there would be a distinct feeling of unfairness if only one could retract and not the other, e.g. if the price rose or fell.
(33) How is this action in retracting in any way reprehensible, seeing that the sale is not complete at all?
(34) I.e., it is morally wrong to withdraw from an agreement even if it lacks legal force.

Talmud - Mas. Baba Metzia 48a

R. Simeon said: Though they [sc. the Sages] ruled, [The delivery of] a garment acquires the gold denar,[1] but not vice versa: that however, is only the halachah[2] but they [also] said, He who punished the generations of the Flood, and of the Dispersion, the inhabitants of Sodom and Gomorrah, and the Egyptians at the [Red] Sea, He will exact vengeance of him who does not stand by his word; and he who enters into a verbal transaction effects no title, yet he who retracts therefrom, the spirit of the Sages is displeased with him. Whereon Raba observed: We have no other [condemnation] than that the spirit of the Sages is displeased with him![3] For words accompanied by [the passage of] money one is subject to 'BUT'; for words unaccompanied thereby one is not subject to 'BUT'.

Raba said: Both Scripture and a Baraitha[4] support Resh Lakish, 'Scripture', — for it is written, [If a soul sin . . .] and lie unto his neighbor in that which vas delivered him to keep or in the putting forth of the hand[5] or in a thing taken away by violence, or hath oppressed his neighbour:[6] 'the putting forth of the hand' — said R. Hisda: E.g., if he [the debtor] assigned a utensil to him for [the payment of] his debt[7] 'Or hath oppressed' — said R. Hisda: E.g., if he assigned him a utensil for that in respect of which he oppressed him.[8] Yet when Scripture repeated it,[9] it is written, Then it shall be, because he hath sinned, and is guilty, that he shall restore that which he took away, or the thing that he withheld by oppression, or that which was delivered him to keep; but 'the putting forth of the hand'[10] is not repeated. Why so? surely because it lacked meshikah![11] Said R. Papa to Raba: But perhaps that follows from 'oppression', which Scripture did repeat?[12] — The circumstances here[13] are, e.g. that he [the employee] took it [the utensil] from him and then entrusted it to his keeping.[14] [But] this is identical with 'bailment'! — There are two kinds of bailments —[15] If so, 'the putting forth of the hand' [i.e.. loan] should also be repeated, and it could [likewise] be applied to the case

where, e.g.,he [the creditor] had taken it [the utensil assigned for repayment] from him [the debtor], and then re-deposited it with him?[16] — Had Scripture repeated it, it would have been neither a refutation nor a support:[17] since, however, Scripture did not repeat it, it supports him [Resh Lakish].[18]

Yet did not Scripture repeat, 'the putting forth of the hand'? But it was taught: R. Simeon said: Whence do we know that what was stated above[19] is to be applied to what is stated below?[20] Because it is written, Or all that about which he hath sworn falsely.[21] And R. Nahman said in the name of Rabbah b. Abbuha in Rab's name: That is to extend the law of restoration to 'the putting forth of the hand'! — Even so, Scripture did not explicitly repeat it —[22]

Where have we a Baraitha?[23] — For it has been taught:[24] If he gave it to a bath-attendant, he is liable to a trespass offering.[25] And Raba said thereon: This holds good only of a bath-attendant, since no meshikah is lacking.[26] But [if he gave it for] any other object, which requires meshikah,[27] he is not liable to a trespass offering until he does draw it into his possession.[28] But has it not been taught: If he gave it to a hairdresser, he is liable to a trespass offering. Now in the case of the hairdresser, must he [the treasurer] not draw the shears into his possession?[29] — The reference here is to a heathen barber, to whom the law of meshikah does not apply.[30] It has been taught likewise: If he [the treasurer] gave it [the perutah of hekdesh] to a hairdresser, a ship's captain,[31] or to any artisan, he is not liable to a trespass offering until he takes Possession.[32] Now these are self-contradictory![33] But this must surely prove that one refers to a heathen and the other to an Israelite hairdresser. This proves it.

R. Nahman ruled likewise: By Biblical law, [the delivery of] money effects a title, and Levi sought [the source of this ruling] in his Baraitha [collection] and found it; [Viz.,] If he [the treasurer] gave it to a wholesale provision merchant,[34] he is liable to a trespass offering.[35]

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(1) When one is bought for the other.

(2) The strict application of the law.

(3) I.e., the Baraitha does not mean that he is subjected to the curse, 'He who punished etc.,' but quite literally, that he who would retract is told that his action displeases the Rabbis, but nothing more. This proves that no curse is pronounced on account of mere words, and so contradicts the previous statement.

(4) [Or, 'a Mishnah' v. p. 287. n. 6.]

(5) E.V.: 'in fellowship'.

(6) Lev. V, 21.

(7) The putting forth of the hand was understood to refer to a monetary loan. Now, if a debtor swears falsely in denying his debt, he is not liable to a sacrifice. Since, however, that passage states that he is liable to one (vv. 24-25: Or all that about which he hath sworn falsely . . . then he shall bring his trespass offering unto the Lord), R. Hisda explains that this refers to a false denial of a debt for the payment of which a utensil had been assigned by the debtor, for then the loan is equivalent to a bailment ('in that which was delivered to him to keep' — i.e., a bailment).

(8) Sc. his wages, the reference being to one who withholds his employee's wages (cf. Deut. XXIV, 14-15: Thou shalt not oppress an hired servant . . . At his day thou shalt give him his hire). Here too, a sacrifice for false denial of liability is incurred only if the employer had assigned an article for payment.

(9) In the passage dealing with restoration to be made by the repentant sinner.

(10) I.e., when he repents, he is not bound to restore the particular utensil assigned by him for the repayment of the loan.

(11) And therefore never really belonged to the creditor. This proves that by Biblical law meshikah is necessary for effecting ownership.

(12) For in the case of 'oppression' too, as interpreted in the text, there was a meshikah, and yet Scripture orders that the utensil shall be returned. So the same holds good of a loan. In fact, since 'oppression' is mentioned, viz., that the utensil assigned for the employee's wages must be returned in spite of the lack of meshikah, it follows that on the contrary meahikah is unnecessary, and thus the verse refutes Resh Lakish. This difficulty, though not explicitly raised by R. Papa, is implied, and the Talmud proceeds to answer it.

(13) Where the Torah provides for the return of the utensil assigned to the employee.
(14) Therefore it must be returned, since the employee had originally acquired the ownership thereof through meshikah.
(15) One, where the bailment belonged entirely to the bailor; and two, where it originally belonged to the bailee, as in the case under discussion.
(16) So that meshikah is not lacking.
(17) Of R. Johanan or Resh Lakish. For the former would explain it as meaning even if no meshikah had taken place, i.e., a utensil was assigned for the debt, but the creditor had never performed meshikah thereon; and still the debtor is liable to a sacrifice, because meshikah is unnecessary by Biblical law; whilst Resh Lakish would maintain that meshikah must have taken place for the law to operate.
(18) [For the only reason that can be given for the repetition by the Torah of 'oppression' and not of 'the putting forth of the hand', is that in the former it provides only for the case where meshikah had been performed, whilst in the case where it was absent, such as is indicated by the omission of the latter, there is no liability to a sacrifice.]
(19) Sc. Lev. V, 21.
(20) Ibid. 23: I.e., every detail enumerated in v. 21 must be understood in v. 23 et seq. too, even if Scripture does not repeat it.
(21) Ibid. 24: 'all' is a general term embracing every antecedent.
(22) Therefore the inference drawn on p. 286, n.1 holds good, whilst the extension of the law will apply to a loan which is exactly similar to 'oppression'. viz., where meshikah was performed.
(23) Resuming Raba's statement that both Scripture and a Baraitha support Resh Lakish.
(24) Me'il. 20a. There, however, it is a Mishnah. [Several MSS texts in fact read דתנן 'we have learnt'. This will involve the further emendation of 'a Baraitha' into 'a Mishnah'. V. Strashun, a.l.]
(25) V. 99b. So here too (this is a continuation of the passage quoted there), if the Temple treasurer unwittingly gave a perutah of hekdesh to a bath-attendant for admission, he (the treasurer) is liable to a trespass offering.
(26) I.e., immediately the treasurer pays the perutah, he receives his return, the baths being open for him to enter, so that he need not perform meshikah with any object to receive his quid pro quo. Consequently, the bath-attendant in his turn becomes the legal owner of the perutah immediately it is given him, and for that the treasurer is liable to a sacrifice.
(27) I.e., with which the treasurer must perform meshikah in order to acquire it.
(28) For only then does the recipient of the perutah obtain a legal title thereto. This proves that meshikah is required by Biblical law. For if it were only a Rabbinic measure, whilst by Scriptural law the recipient of the perutah immediately acquires a title thereto, the treasurer would always be liable to a trespass offering, no matter for what he gave the perutah, since a Rabbinical enactment cannot free a person from an obligation that lies upon him pursuant to Scriptural law.
(29) It would appear that when one paid a hairdresser in advance, he signified his liability to trim the customer's hair by handing him the shears. But in any case, some form of meshikah is necessary, and yet the treasurer incurs a liability immediately he gives the money, which shews that meshikah is only a Rabbinical requirement.
(30) In a transaction with a heathen the delivery of money is certainly sufficient.
(31) For freight charges.
(32) Symbolically performing meshikah with an object connected with his payment.
(33) Sc. the two views on his liability in connection with a hairdresser, the first Baraitha stating that he is liable immediately he gives the money, whilst the Baraitha teaches that meshikah must first be performed.
(34) As a deposit for an order of provisions.
(35) Though he did not take possession of the goods, thus proving that meshikah is unnecessary by Biblical law.

Talmud - Mas. Baba Metzia 48b

But this refutes Resh Lakish!-Resh Lakish can answer you: That is on the basis of R. Simeon's ruling.[1]

BUT THEY [SC. THE SAGES] SAID, HE WHO PUNISHED, etc. It has been stated: Abaye said: He is [merely] told this.[2] Raba said: He is anathematised.[3] 'Abaye said: He is [merely] told this,' because it is written, And thou shalt not curse the ruler of thy people.[4] 'Raba said: He is anathematised.' because it is written, of thy people, implying [only] when he acts as is fitting for 'thy

people'.[5]

Raba said: Whence do I know[6] it? For [it once happened that] money was given to R. Hiyya b. Joseph [in advance payment] For salt. Subsequently[7] salt rose in price. On his appearing before R. Johanan,[8] he ordered him, 'Go and deliver [it] to him[9] [the purchaser], and if not, you must submit to [the curse]: He who punished.' Now if you say that one is merely informed — did R. Hiyya b. Joseph require to be told?[10] — What then: he is anathematised? Did R. Hiyya b. Joseph come to submit to a curse of the Rabbis?[11] But [what happened was that] only a deposit had been paid to R. Hiyya b. Joseph. He thought that he [the purchaser] was [morally] entitled only to the value thereof, whereupon R. Johanan told him that he was entitled to the whole [of the purchase].

It has been stated: A deposit — Rab said: It effects a title [only] to the extent of the value thereof.[12] R. Johanan ruled: It effects a title to the whole purchase. An objection is raised: If one gives a pledge[13] to his neighbour and says to him, 'If I retract; my pledge be forfeit to you;' and the other stipulates, 'If I retract, I will double your pledge';[14] the conditions are binding:[15] this is R. Jose's view, R. Jose following in this his general ruling that asmakta[16] acquires title. R. Judah [however] maintained: It is sufficient that it effects a title to the value thereof.[17] Said R. Simeon b. Gamaliel: When is that? If he [the depositor] said to him, 'Let my pledge effect the purchase'.[18] But if one sold a house or field for a thousand zuz, of which he [the vendee] paid him five hundred, he acquires title [to the whole], and must repay the balance even after many years.[19] Now surely. the same ruling applies to movables, viz., [if a deposit is given] without specifying [its purpose],[20] possession is gained of the whole![21] — No. As for movables, an unspecified deposit does not effect possession [of the whole]. And wherein do they differ?[22] — Real estate, which is actually acquired by [the delivery of] money,[23] is entirely acquired;[24] movables, which are acquired [by the delivery of money] only in respect of submission to [the curse] 'He who punished,' are not acquired entirely.[25]

Shall we say that this is disputed by Tannaim? [For it has been taught:] If one makes a loan to his neighbour against a pledge. and the year of release arrived, even if it [the pledge] is worth only half [the loan], it [the year of release] does not cancel [the loan]: this is the ruling of R. Simeon b. Gamaliel. R. Judah ha-Nasi said: If the pledge corresponds to [the value of] the loan, it does not cancel it; otherwise, it does.[26] What is meant by R. Gamaliel's statement, 'It does not cancel [the loan]'? Shall we say, To the value thereof? Hence it follows that in the opinion of R. Judah ha-Nasi even that half too is cancelled![27]

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(1) V. supra 47b and p. 284, n. 2.

(2) I.e., he is warned that God punishes those who do not keep their word.

(3) A formal curse is pronounced against him.

(4) Ex. XXII, 27. In Sanh. 85a it is shewn that this applies to all, not particularly a ruler.

(5) I.e., only then does the injunction hold good. But it is not fitting for an Israelite to break his word; cf. Zeph. III.13.

(6) Lit., 'say'.

(7) When the sale was to be delivered.

(8) To ask whether he could withdraw from the transaction.

(9) The original is in the plural. but the context shews that the singular is required, the plural to be understood indefinitely.

(10) That retraction would involve him in a curse.

(11) Surely he knew that he could not retract!

(12) In the case of movables only in respect of provoking the curse.

(13) ערבון Though this is the same word as used to indicate 'deposit', it means here a pledge, to be forfeited in certain conditions.

(14) I.e., 'I will return double Its value.'

(15) Lit., 'are fulfilled'.

(16) V. Glos.

(17) In case of retraction, the one does not forfeit his pledge, nor is the other bound to double it. But the transaction is absolute in respect of goods to the value of the deposit, and to that extent neither can withdraw.
(18) Of the whole, i.e., it was not merely given as a deposit payment, but with the intention of consummating the whole purchase. That, however, is impossible, and therefore R. Judah ruled that the transaction is completed only to the extent of the value of the pledge.
(19) The balance ranks as a loan, and the vendor cannot cancel the sale on its account. V. infra 77b.
(20) That it should act as a pledge or forfeit, but given without any purpose being stated.
(21) In respect of the curse. This refutes Rab's ruling.
(22) What is the essential difference between real estate and movables, to permit this distinction to be drawn?
(23) Though the delivery of money alone does not effect a title to movables, it does in respect to land.
(24) By the deposit.
(25) By the deposit, but only to the extent of the value of that deposit, and even that, only in respect of submitting to the curse.
(26) V. Deut. XV. 1-2: At the end of every seven years thou shalt make a release. And this is the manner of the release: Every creditor that lendeth aught unto his neighbour shall release it; he shall not exact it of his neighbour, or of his brother; because it is called the Lord's release. The Rabbis deduced from the phrase 'he shall not exact it' that the law of release does not apply to a loan for which the creditor holds a pledge, for he is then regarded as having already exacted it beforehand (Shebu. 44b).
(27) But surely that is impossible, since it is generally agreed that the law of release does not apply to what the creditor already has in hand!

Talmud - Mas. Baba Metzia 49a

For what purpose then does he hold the pledge? Surely then this proves that by 'it does not cancel it' R. Simeon b. Gamaliel means that it does not cancel it at all, whilst by 'It does cancel it' R. Judah refers to the half against which he holds no pledge. and they differ in this: R. Simeon b. Gamaliel holds that it [the pledge] effects a title to the whole [of the loan].[1] whilst R. Judah ha-Nasi holds that it effects a title only to the value thereof![2] — No. By 'It does not cancel [the loan]' R. Simeon b. Gamaliel means that half against which he holds a pledge. Then it follows that in R. Judah's opinion even the half against which he holds a pledge is also cancelled! But [if so,] what is the purpose of the pledge? — As a mere record of fact.[3]

R. Kahana was given money [in advance payment] for flax. subsequently flax appreciated, so he came before Rab. 'Deliver [the goods] to the value of the money you received,' said he to him; 'but as for the rest, it is a mere verbal transaction, and a verbal transaction does not involve a breach of faith.'[4] For it has been stated: A verbal transaction: Rab said: It involves no breach of faith; R. Johanan ruled: It does involve a breach of faith.

An objection is raised: R. Jose son of R. Judah said: What is taught by the verse, A just hin [shall ye have]:[5] surely 'hin' is included in 'ephah'?[6] But it is to teach you that your 'yes' [hen] should be just and your 'no' should be just![7] — Abaye said: That means that one must not speak one thing with the mouth and another with the heart.[8]

An objection is raised: R. Simeon said: Though they [sc. the Sages] ruled: [The delivery of] a garment acquires the gold denar, but not vice versa: that, however is only the halachah, but they [also] said: He who punished the generations of the Flood and of Dispersion, the inhabitants of Sodom and Gomorrah,and the Egyptians at the [Red] Sea, He will exact vengeance of him who does not stand by his word; [and he who makes a verbal transaction effects no title, yet he who retracts therefrom, the spirit of the Sages is displeased with him]![9] — It is a dispute of the Tannaim, for we learnt: It once happened that R. Johanan b. Mathia said to his son, 'Go out and engage labourers.' He went, and agreed to supply them with food. But on his returning to his father, the latter said, 'My son, should you even prepare for them a banquet like Solomon's when in his glory. you cannot fulfil

your Undertaking, for they are children of Abraham, Isaac and Jacob. But, before they commence work, go out and tell them, "[I engage you] on condition that you have no claim upon me other than bread and beans."'[10] Now, if you should think that words involve a breach of faith, how could he say to him, 'Go and withdraw'? — There it is different, for the labourers themselves did not rely [upon him]. Why? Because they knew full well that he himself was dependent upon his father.[11] If so, even if they had [already] commenced work, it is also thus![12] -Once they have commenced work, they certainly rely [upon him], for they reason: He must have reported to his father, who agreed thereto.

Now, did R. Johanan say thus?[13] But Rabbah b. Bar Hanah said in R. Johanan's name: If one says to his neighbour. 'I will make you a gift'. he can retract therefrom. 'He can [retract]' — but that is obvious![14] Hence [he must have meant], He is permitted to withdraw![15] — R. Papa replied: R. Johanan admits[16] in the case of a small gift,[17] because he [the recipient] relies thereon.[18] That is logical too. For R. Abbahu said in R. Johanan's name: If an Israelite says to a Levite, 'You have a kor of tithe in my Possession',[19] he [the Levite] may declare[20] it the terumah of the tithe for other produce.[21] Now, if you agree that he [the Israelite] cannot [morally] withdraw, it is well: therefore he [the Levite] is permitted [to declare this as the terumah of the tithe]. But if you say that he [the Israelite] can retract, why is he [the Levite] permitted [to declare etc.], seeing that it may thereby transpire that he eats tebel?[22] — The reference here is to a case where, e.g., he [the Levite] had already received it and then re-entrusted it to him [the Israelite] —[23] If so, consider the second clause: If he gave it to another Levite, he [the Levite] has nothing but resentment against him.[24] But if you should think that it means, e.g., that he took it from him and then re-entrusted it to him: why has he nothing but resentment against him? Since he took possession thereof, he has a monetary claim upon him! Hence it must certainly mean that he did not [first] take it from him. Which proves it.[25]

A certain man gave money for poppy seed. Subsequently poppy seed advanced in price, so he [the vendor] retracted and said, 'I have no poppy seed: take back your money.' But he would not take his money, and it was stolen. When they came before Raba, he said he him: Since he said to you, 'Take back your money,' and you would not, not only is he not accounted a paid bailee.[26] but he is not even a gratuitous bailee. Thereupon the Rabbis protested before Raba: But he [the vendor] would have had to submit to [the curse] 'He who punished'![27] — He replied: That is even so.[28]

R. Papi said: Rabina told me, 'One of the Rabbis, named R. Tabuth — others state, R. Samuel b. Zutra — who, if he were given all the underground treasures of the world[29] would not break his word, told me: That incident happened with me.[30] That day was Sabbath eve, and I was sitting when a certain man came, stood at the threshold, and asked me, "Have you poppy seed for sale?"

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(1) I.e., when the creditor receives a pledge for a portion of the loan, it is as though he were already actually in possession of goods to the value of the whole loan. Therefore it is unaffected by the law of release.

(2) And in the same way, when a deposit is given on goods in a sale, it effects possession of the whole or of its own value, according to these two Tannaim respectively.

(3) I.e., to prove the fact of the debt — presumably this refers to a verbal loan.

(4) Though the Mishnah states that he who does not stand by his word will be punished, that is only when his word is substantiated by the payment of money, which, though not legally, is morally binding. But where no money has been paid, a transaction can be cancelled without any scruples.

(5) Lev. XIX. 36.

(6) The preceding phrase is, a just ephah... (shall ye have).

(7) This is a play on words, 'hin', a measure being connected with hen, Aramaic for 'yes'. This shews that even a mere verbal transaction must not be violated, and so contradicts Rab.

(8) I.e., it is a general exhortation against deceitful speech, but does not refer to an actual transaction. Rashi: Whilst arranging a transaction, one must not there and then have the intention of withdrawing. But if a verbal bargain is made in good faith, there is nothing wrong in withdrawing from it subsequently if the market price changes.

(9) The refutation is contained in the bracketed passage, though it is not cited in the text. Thus we see that the breaking even of a mere verbal transaction is reprehensible.
(10) Infra 83a.
(11) I.e., that the terms he offered were subject to his father's ratification.
(12) He could still withdraw: why then was he particular that this stipulation should be made before they began?
(13) That a verbal transaction involves a breach of faith.
(14) Since there had been no meshikah, Why state it then?
(15) I.e., even morally, which contradicts R. Johanan's previous ruling.
(16) This is Rashi's reading. Our text reads: And R. Johanan admits.
(17) That the mere promise involves a breach of faith.
(18) That he will certainly fulfil his promise; hence he cannot retract without a breach of faith. But if one promises a large gift, the beneficiary himself does not have full confidence in the promise, and therefore withdrawal is permitted. In the case of a business transaction, each party naturally looks to the other to fulfil his undertaking, and therefore a breach of faith is involved (R. Han.).
(19) I have separated a kor of my produce as tithe, and will give it to you.
(20) Lit., 'make'.
(21) Lit., 'for another place'. The Levite himself had to give a tithe of the tithe he received to the priests; this was known as the terumah (separation) of the tithe תרומת מעשר . Now, R. Johanan states that when an Israelite promises a kor of tithe to a Levite, who himself possesses tithes for which he is bound to separate terumah, he may declare this kor to be the terumah thereof, even before it reaches his hand.
(22) Untithed produce. v. Glos. Immediately the Levite makes his declaration, he proceeds to eat of the tithes he possesses; but should the Israelite withdraw, the Levite's declaration is retrospectively invalid, and thus he has eaten tebel. This proves that the Israelite cannot retract without breach of faith, and therefore the Levite may make his declaration on the assumption that he will certainly not do so. — Though a kor is a large quantity, it is considered a small gift from the point of view of the Israelite, who must give it away in any case (Rashi).
(23) Hence it certainly belongs to the Levite, who acquired it by meshikah.
(24) But no legal claim.
(25) That in the case of a small gift one cannot retract.
(26) Who is responsible for theft.
(27) And possibly he would not have submitted, in which case it was his money that was lost.
(28) He must either submit thereto, in which case he is free from further responsibility, or deliver the goods.
(29) חללא cavern.
(30) This is told by R. Tabuth. He was the vendor referred to in the story of the poppy seed.

Talmud - Mas. Baba Metzia 49b

"No," I answered. "Then let me entrust this money to you", he replied, "as it is growing dark,"[1] "The house lies before you." I replied; so he deposited it in the house, and it was stolen. When he came before Raba, he ruled: In every case of "The house lies before you," not only is one not a paid bailee,[2] he is not even a gratuitous trustee.' Thereupon I observed to him ,[3] 'But the Rabbis protested to Raba: He would have to submit to [the curse] "He who punished";[4] and he answered,"That is a pure fiction".'[5]

R. SIMEON SAID: HE WHO HAS THE MONEY IN HIS HAND HAS THE ADVANTAGE. It has been taught: R. Simeon said: When is that?[6] If the vendor has both the money and the produce. But if the money is in the vendor's hand, and the goods in the vendee's, he [the vendee] cannot retract, since the money is in his hand. [You say,] 'in his hand'![7] but it is in the vendor's! — Say then, because his money's worth is in his hand.[8] .But that is obvious![9] — Said Raba: The circumstances here are, e.g., where the vendee's loft was rented to the vendor.[10] Now, why did the Rabbis institute meshikah? For fear lest he say to him, 'Your wheat was burnt in the loft'.[11] But here it is [already] in the vendee's ownership; should fire accidentally break out, he will take the trouble to save it —[12]

A certain man gave money [in advance payment] for wine. Subsequently he learnt that one of the men of the Field-marshal[13] Parzak intended to seize it — Thereupon he said to him, 'Return me my money:I do not want the wine' — So he went before R. Hisda, who said to him, Just as meshikah was instituted in favour of the vendor,[14] so was it instituted in favour of the vendee too.

MISHNAH. FRAUD IS CONSTITUTED BY [AN OVERCHARGE OF] FOUR SILVER [MA'AHs] IN TWENTY FOUR. WHICH IS A SELA', [HENCE] A SIXTH OF THE PURCHASE.[15] UNTIL WHAT TIME IS ONE PERMITTED TO REVOKE [THE SALE]?[16] UNTIL HE CAN SHEW [THE ARTICLE] TO A MERCHANT OR A RELATIVE.[17] R. TARFON RULED IN LYDDA THAT FRAUD IS CONSTITUTED BY EIGHT SILVER [MA'AHS] IN TWENTY-FOUR, WHICH IS A SELA', [HENCE] A THIRD OF THE PURCHASE, WHEREAT THE LYDDAN MERCHANTS REJOICED. BUT, SAID HE TO THEM, ONE MAY RETRACT THE WHOLE DAY. THEN LET R. TARFON LEAVE US IN STATUS QUO, THEY REQUESTED; AND SO THEY REVERTED TO THE RULING OF THE SAGES.

GEMARA. It has been stated: Rab said: We learnt, A sixth of the [true] purchase price. Samuel said: A sixth of the money [actually] paid was also taught. Now, if that which is worth six [ma'ahs] was sold for five or seven, all agree that we follow the purchase price.[18] Wherein do they differ? If something worth five or seven [ma'ahs] was sold for six. According to Samuel, who maintained that we follow the money paid [too], both cases constitute fraud. But according to Rab, viz., that we follow only the purchase price, if something worth five is sold for six, the sale is null;[19] but if what is worth seven is sold for six, it is renunciation.[20] But Samuel maintained: When do we say that there is renunciation or annulment of the sale? Only if there is not a sixth on either side;[21] but if there is a sixth on one side, it is fraud.[22]

We learnt: FRAUD IS CONSTITUTED BY [AN OVERCHARGE OF] FOUR SILVER [MA'AHS] IN TWENTY FOUR, WHICH IS A SELA', [HENCE] A SIXTH OF THE PURCHASE. Surely that means that one sold something worth twenty [ma'ahs] for twenty-four. which proves that a sixth of the money paid was also taught? No; It means that twenty-four [ma'ahs] worth was sold for twenty. Then who was overreached? The vendor! But consider the second clause: UNTIL WHAT TIME IS ONE PERMITTED TO REVOKE [THE SALE]? UNTIL HE CAN SHEW [THE ARTICLE] TO A MERCHANT OR A RELATIVE. Now, R. Nahman observed [thereon]: This was taught only of the purchaser; the vendor, however, can always withdraw![23] — But it means that one sold something worth twenty-four [ma'ahs] for twenty-eight.

We learnt: R. TARFON RULED IN LYDDA THAT FRAUD IS CONSTITUTED BY EIGHT SILVER [MA'AHS] IN TWENTY-FOUR, WHICH IS A SELA', [HENCE] A THIRD OF THE PURCHASE. Surely that means that one sold something worth sixteen [ma'ahs] for twenty four, which proves that a third of the money paid was also taught?[24] — No: it means that what was worth twenty-four was sold for sixteen. Then who was overreached? the vendor! But consider the next clause; BUT, SAID HE TO THEM, ONE MAY RETRACT THE WHOLE DAY, whereon R. Nahman observed: This was taught only of the purchaser; the vendor, however, can always withdraw! But it means that one sold the value of twenty-four [ma'ahs] for thirty-two.[25]

It has been taught in accordance with Samuel: He who was deceived has the upper hand. E.g., if one sold an article worth five [ma'ahs] for six — who was defrauded? The vendee . Therefore the vendee has the upper hand, [and] he can demand of him [the vendor] either, 'Return me my money', or, 'Return me the overcharge'.[26] If he sold him

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(1) The Sabbath was about to commence.

(2) To be responsible for theft.

(3) Rabina to the Rabbi who related this story.
(4) Which shows that a sale was in question.
(5) Lit., 'the thing never happened'.
(6) That one can withdraw.
(7) Which grammatically refers to the vendee.
(8) I.e., he has already received the goods.
(9) That the sale cannot be revoked once the purchaser has taken possession, and even the Rabbis admit it.
(10) And the goods were stored therein.
(11) V. p. 282, n. 7. This assumes that by Biblical law the delivery of money alone consummates the sale.
(12) This is the reading of Alfasi. Our text: he will take the trouble to remove it. — The Rabbis who oppose R. Simeon presumably hold that even in these circumstances, seeing that the purchaser performed no meshikah, the sale is revocable.
(13) [Rufulus, a Persian high official; v. A.Z. (Sonc. ed.) pp. 163 n. 7 and 301, n. 3.]
(14) That he can withdraw before meshikah is performed.
(15) If the vendor overcharged by one sixth, he is considered to have defrauded the vendee, and the overcharge is recoverable; or the sale may be revoked.
(16) In the case of overcharge. Since he was imposed upon, the vendee is not only legally, but also morally entitled to cancel the bargain; hence the Mishnah states 'permitted'. Opposing views are expressed in the Talmud (infra 50b) whether the vendee can retract from the bargain even if the vendor is prepared to make a refund.
(17) But after that the sale is absolute, notwithstanding the overcharge.
(18) Hence there was overreaching by one-sixth, and the law of the Mishnah operates.
(19) For the overreaching is more than one-sixth; in this case, the bargain is altogether null, and even if the vendor is prepared to make amends, the vendee is morally entitled to retract: even the defrauding party too can declare the sale null in these circumstances (infra 50b).
(20) Since it is only a seventh of the true purchase price, the vendor is regarded as having foregone part of his due.
(21) I.e., whether we regard the true purchase price or the money paid.
(22) Which is returnable, whilst the sale is valid.
(23) Since the article is no longer in his hand, he can retract whenever he finds that he was defrauded. This proves that the Mishnah treats of the vendee's being overreached.
(24) And therefore the same applies to the definition of 'one-sixth', and thus refutes Rab.
(25) I.e., a sixth in the purchase price.
(26) Lit., 'what you deceived me.'

Talmud - Mas. Baba Metzia 50a

six [ma'ahs] worth for five — who was overreached? The vendor. Therefore the vendor has the upper hand!He can either say, 'Return me the purchase', Or, 'Return me the sum underpaid'.[1]

The scholars propounded; On the view of the Rabbis, does [an overcharge of] less than a sixth immediately constitute renunciation, or only when he has had time to shew [the purchase] to a merchant or relative?[2] And should you object, [If it is] only when he has had time to shew [the purchase] to a merchant or a relative, wherein do a sixth and less than a sixth differ? [Yet] there is a difference, for in the case of a sixth, he has the upper hand, and can either withdraw or retain the ownership but have the overcharge returned; whereas in the case of less than a sixth, he must retain ownership and have the overcharge refunded. What then is our ruling? — Come and hear: [AND SO] THEY REVERTED TO THE RULING OF THE SAGES. Now, it was thought that less than a third on R. Tarfon's view is identical [in law] with less than a sixth on the view of the Rabbis. Now, should you say that [an overcharge of] less than a sixth, in the view of the Rabbis, [constitutes renunciation only] when he has had time to shew [the purchase] to a merchant or a relative, whereas according to R. Tarfon, the whole day [must pass before he loses the rights of redress], it is well: on that account they [the merchants] reverted [to the ruling of the Sages]. But if you say that less than a sixth, in the view of the Rabbis, immediately constitutes renunciation,

(1) The figures given agree with Samuel.

(2) E.g., if eleven ma'ahs was paid for an article worth ten, is the vendee regarded as having there and then renounced the eleventh ma'ah, and so, even if he immediately demands its return, he has no redress; or perhaps it is accounted renunciation only if sufficient time elapsed to shew it to a merchant, but before that he can claim a refund?

Talmud - Mas. Baba Metzia 50b

whilst in R. Tarfon's view too [less than a third] immediately constitutes renunciation, why did they revert [etc.]? R. Tarfon's ruling was [surely] more advantageous to them, for what the Rabbis declared overreaching, R. Tarfon regarded as renunciation! — Do you really think that less than a third, according to R. Tarfon, is identical with less than a sixth on the view of the Rabbis? That is not so: from a sixth to a third, according to R. Tarfon, is as a sixth itself on the view of the Rabbis.[1] If so, whereat did they rejoice [in the first place]? Hence you may deduce that in the view of the Rabbis, in a case of annulment of the sale, one can always withdraw; they thus rejoiced when R. Tarfon told them that it [an overcharge up to a third] constitutes overreaching.[2] whilst they reverted [to the ruling of the Rabbis] when he told them [that the time for withdrawing is] all day. For if you should think that in the view of the Rabbis the annulment of the sale[3] is only within the time that he can shew it to a merchant or to a relative, whereat did they rejoice?[4] — They rejoiced in respect of a sixth itself.[5]

The scholars propounded: In the case of annulment of Sale, on the view of the Rabbis,[6] can one always retract, or perhaps only within the time necessary to shew [the purchase] to a dealer or a relative? And should you answer, [if only] within the time necessary to shew it to a dealer or a relative, wherein do a sixth and more than a sixth differ? There is a difference: for in the case of a sixth, [only] the defrauded party can retract, whereas in the case of more than a sixth both can retract.[7] What is the ruling? — Come and hear: THEY REVERTED TO THE RULING OF THE SAGES. Now, if you say that annulment of the sale, on the view of the Rabbis, is only within the time necessary to shew [the purchase] to a dealer or a relative, whereas on R. Tarfon's view it is all day, it is well: on that account they reverted [etc.][8] But if you say that in the case of annulment of sale, on the view of the Rabbis, one can always retract, why did they revert [etc.]? Surely R. Tarfon's ruling was more advantageous to them, since he declared overreaching [returnable] the whole day, but no more! — Annulment of sale is rare.[9]

Raba said: The law is: In the case of less than a sixth, the sale is valid;[10] more than a sixth, it is null; [exactly] a sixth, it is valid, but the overcharge is returnable;[11] and in both cases it is within the time necessary to shew [the purchase] to a merchant or a relative.

It has been taught in support of Raba: In the case of overreaching of less than a sixth, the sale is valid; more than a sixth, the sale is null; [exactly] a sixth, he [the defrauded party] retains ownership whilst the overcharge must be refunded: this is R. Nathan's view. R. Judah ha-Nasi said: The vendor has the upper hand;[12] if he wishes he can say, ‘Return me the Purchase,’ or, ‘Pay up the sum wherein you defrauded me.’ And in both cases, it is within the time necessary to shew [the purchase] to a merchant or a relative.[13]

UNTIL WHAT TIME IS ONE PERMITTED TO REVOKE [THE SALE] etc. R. Nahman said: This was taught only of the purchaser; but the vendor can always retract.[14] Shall we say that he is supported [by the Mishnah]? THEY REVERTED TO THE RULING OF THE SAGES. Now, if you agree that the vendor can always retract, it is well:

(1) And in both cases the overcharge is returnable. But whereas the Rabbis maintain that an overcharge of more than a sixth entirely annuls the sale, R. Tarfon held that up to a third the defrauded party has the upper hand, and the sale may stand.

(2) Whereas on the ruling of the Rabbis, if it is more than one-sixth, the transaction is altogether cancelled.
(3) For an overcharge of more than a sixth.
(4) The problem of the time within which the sale may be annulled is raised immediately after this passage. Here the Talmud anticipates it by pointing out that since the dealers originally rejoiced at R. Tarfon's ruling, which, ex hypathesi, means that from a sixth up to a third constitutes overreaching, it must be assumed that annulment in the view of the Rabbis is not limited by time. For otherwise, there was no reason to rejoice in the first place. The argument is this: There is very little practical difference between a whole day and always, because a day is quite ample for finding out that one was overreached; but there is a great difference between a day and the short time necessary for shewing one's purchase to a merchant, which may easily pass before the defrauded party discovers his loss. Furthermore, it is rare to overreach by more than a sixth (presumably buyers were very keen in those days!). Consequently, when R. Tarfon told them that a returnable overcharge is up to a third, which, as they thought, meant within the shorter period only, after which there was no redress, whilst in the view of the Rabbis the purchase could be annulled at any time if the overcharge was more than a sixth, R. Tarfon's ruling was naturally to their advantage. But if the annulment of the sale according to the Rabbis is only within the shorter period, why did they rejoice? On the contrary. R. Tarfon's ruling that up to a third constitutes overreaching as against the Rabbis' view that over a sixth annuls the sale was manifestly to their disadvantage: since according to the Rabbis both parties could withdraw, whilst on the view of R. Tarfon only the defrauded party had that right.
(5) For when we say that according to R. Tarfon from a sixth up to a third constitutes overreaching, a sixth itself is excluded, and not recoverable. Hence they might well rejoice, quite irrespective of the time within which the sale is revocable in the opinion of the Rabbis.
(6) Viz., for an overcharge of more than one-sixth.
(7) That is only if the defrauded party demands a refund. Otherwise, it is altogether illogical to give the defrauder a greater power of withdrawal than he would have enjoyed had the fraud amounted only to a sixth. (Tosaf. a.l. and B.B. 84a s.v. אי לאו)
(8) For their disadvantage in that the defrauded party had a longer time within which to retract outweighed their advantage that fraud of exactly one-sixth was not recoverable, as stated above.
(9) Therefore they did not regard the shorter period of R. Tarfon as particularly advantageous to them, the more so since a whole day is ample time for the defrauded party to discover that he was overreached. On the other hand, in respect of overreaching as distinct from annulment the longer period given by R. Tarfon (a whole day, as against the Rabbis', 'within the time necessary to shew the purchase to a merchant') was definitely to their disadvantage, and therefore they reverted to the ruling of the Rabbis.
(10) Immediately, and the defrauded party has no redress.
(11) Thus Raba disagrees with the view formerly stated that in the case of a sixth the defrauded party can either demand a refund or cancel the sale.
(12) If he was defrauded; of course, if the vendee was defrauded, he has the upper hand.
(13) Notwithstanding that the vendor no longer has the article. This is discussed below.
(14) If he was defrauded, since he is no longer in possession of the article to be able to shew it to an expert, and he discovers the fraud only when he sees a similar article sold at a higher price; hence no limit can be set in his case, v. infra.

Talmud - Mas. Baba Metzia 51a

therefore they reverted. But if you say that the vendor is as the vendee, what difference did it make to them?[1] Just as the Rabbis[2] ameliorated [the position of] the vendee, so did they likewise that of the vendor! — The merchants of Lydda very seldom erred.[3]

Rami b. Hama's host[4] sold some wine,[5] and erred. Finding him depressed, he [Rami] asked him, 'Why are you sad?' 'I sold wine,' he replied, 'and erred — , 'Then go and retract ,'he counselled — 'But I have tarried more time than is necessary to shew it to a dealer or a relative,' said he. Thereupon he sent him to R. Nahman, who said to him: This was taught only of the vendee; but the vendor can always retract. Why? The vendee has the purchase in his hand; wherever he goes he shews it and is told whether he erred or not. But the vendor, who has not the purchase in his hand,

[must wait] until he comes across an article like his, and only then can he know whether he erred or not.

A man had silk skeins[6] for sale. He demanded[7] Six [zuz], whilst they were worth five, yet if five and a half were offered, he would have accepted. Then a man came and said [to himself]. 'If I pay him five and a half, it is [immediate] renunciation;[8] therefore I will pay him six and then sue him at law.' When he went before Raba, he said to him: This was taught only of one who buys from a merchant; but when one buys from a private person,[9] he has no claim of fraud upon him.[10]

A man had jewellery for sale. He demanded sixty [zuz], whilst it was worth fifty; yet had he been offered fifty-five, he would have accepted. Then a man came and argued. 'If I give him fifty-five, it will constitute renunciation: therefore I will give him sixty and then sue him at law.' When he came before R. Hisda, he said to him: This was taught only of one who buys from a merchant; but when one buys from a Private individual, he has no claim of fraud against him. Said R. Dimi to him: 'Well spoken!'[11] and R. Eleazar said likewise, 'Well spoken!' But did we not learn, Just as the law of overreaching holds good in the case of a layman, so it holds good in the case of a merchant. Now, who is meant by 'a layman?' Surely a Private individual! — Said R. Hisda:[12] That applies to rough cloth garments..[13] But garments of personal use, which are dear to him, he would not sell but at an enhanced price.

MISHNAH. BOTH THE VENDEE AND THE VENDOR CAN CLAIM FOR OVERREACHING. JUST AS THE LAW OF OVERREACHING HOLDS GOOD IN THE CASE OF A LAYMAN, SO IT HOLDS GOOD IN THE CASE OF A MERCHANT. R. JUDAH SAID: THERE IS NO OVERREACHING FOR A MERCHANT.[14] HE WHO WAS DECEIVED HAS THE UPPER HAND; IF HE WISHES, HE CAN EITHER SAY, GIVE ME BACK MY MONEY,' OR, 'RETURN WHAT YOU OVERCHARGED ME.

GEMARA. Whence do we know this? — For our Rabbis taught: And if thou sell aught unto thy neighbour . . . ye shall not deceive.[15] From this I know it[16] only if the purchaser was defrauded; how do I know it if the vendor was overreached? Because Scripture states,' ... acquirest... ye shall not deceive' — Now, both vendee and vendor must be written, for had the Divine Law stated [the law only of] the vendor — that is because he knows his purchase;[17] but as for the purchaser, who is not experienced in the purchase,[18] I might think that the Divine Law did not apply the injunction of 'ye shall not defraud' to him. And had Scripture mentioned the vendee [only], that might be because he acquires [an article], for it is proverbial, 'When you buy, you gain'. But as for the vendor, who indeed loses thereby, as it is said, 'He who sells, loses,'[19] I might think that the Divine Law did not exhort him, 'ye shall not defraud;' hence both are necessary.

R. JUDAH SAID, THERE IS NO OVERREACHING FOR A MERCHANT. Because he is a merchant, has he no claim for overreaching? — Said R. Nahman in Rab's name: This was taught of a speculator.[20] Why? Because he well knows the value of what he sells, but foregoes [part thereof] to him [the vendee], the reason that he sells thus [cheaply] being that he has chanced upon another purchase;[21] nevertheless now he wishes to retract.[22] R. Ashi said: What is meant by 'THERE IS NO OVERREACHING FOR A MERCHANT? He is not subject to the law of overreaching. i.e., he can withdraw even for less than the [recoverable] standard of overreaching.[23]

It has been taught in accordance with R. Nahman: R. Judah said: There is no overreaching for a merchant, because he is an expert.[24]

HE WHO WAS DECEIVED HAS THE UPPER HAND. Who is the authority of our Mishnah, [seeing that] it is neither R. Nathan nor R. Judah ha-Nasi? For if R. Nathan — our Mishnah teaches, IF HE WISHES,[25] whereas the Baraitha[26] does not state, If he wishes;[27] whilst if it is R. Judah —

our Mishnah refers to the Vendee [only],[28] whereas the Baraitha refers to the Vendor.[29] (Mnemonic: Zab Rash.)[30] Said R. Eleazar: I do not know who taught this [Mishnah of] overreaching. Rabbah said: In truth, its authority is R. Nathan, but read in the Baraitha too, [If] he wishes [etc.]. Raba said: In truth, it is R. Judah ha-Nasi, but what the Mishnah omits is explained in the Baraitha.[31] Said R. Ashi: This too follows from the fact that it states. BOTH THE VENDEE AND THE VENDOR, yet proceeds to explain [the law of] the vendee [only]; this proves that the case of the vendor is merely left over. This proves it.

It has been stated: If one says to his neighbour, 'I agree to this sale on condition that you have no claim of overreaching against me — Rab said: He [nevertheless] has a claim of overreaching against him. Whereas Samuel said: He has no claim of overreaching against him. Shall we say that Rab ruled in accordance with R. Meir, and Samuel in accordance with R. Judah? For it has been taught: If one says to a woman, 'Behold thou art betrothed[32] unto me on condition that thou hast no claims upon me of sustenance, raiment and conjugal rights' — she is betrothed, but the condition is null: this is R. Meir's view. But R. Judah said: In respect of civil matters, his condition is binding! — Rab can answer you: My ruling agrees even with R. Judah. R. Judah states his view there only in that case, because she knew [of her rights], and renounced them;

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(1) The longer period given by R. Tarfon.

(2) Here referring to R. Tarfon's ruling.

(3) Therefore the longer period within which they might recover the fraud was of little benefit to them, whilst on the other hand the longer period given to the vendee was definitely to their disadvantage.

(4) The word means 'innkeeper'.

(5) חמרא , the word may also mean 'ass'.

(6) Others: 'beads', 'frontlets'. [Krauss T.A. I, 174. 'girdles'.]

(7) Lit., 'called'.

(8) The overcharge being less than a sixth.

(9) Lit., 'householder'.

(10) A private person may attach a sentimental value to an object, which is naturally greater than the market price, and the vendee must be aware of this.

(11) Lit., (with כחך , 'thy strength', understood) 'thy strength be firm'.

(12) Other versions: R. Papa.

(13) Which a private individual does not mind selling.

(14) This is explained below.

(15) Lev. XXV, 14.

(16) That an overcharge is returnable.

(17) Hence, if he overreaches, he does it wantonly. and therefore the overcharge is returnable.

(18) And if he underpays, it is unwittingly.

(19) Money goes, and he who sells loses the article and probably the money too later on; but he who buys has a permanent gain — sentiments natural to a private individual as well as to a noncommercial, agricultural community.

(20) So Jast. Rashi: a merchant who is a middleman, buying and selling from hand to hand.

(21) For which he needs immediate ready money.

(22) Possibly because his intended bargain did not mature.

(23) If he was deceived even by less than a sixth he can withdraw from the bargain, since that is his livelihood.

(24) This proves that he has no redress, not, as R. Ashi said, that he is put in an advantageous position.

(25) I.e., he has the choice of confirming the sale and recovering the fraud or cancelling the sale entirely.

(26) Supra 50b.

(27) But only enables him to recover the Fraud but not cancel the transaction.

(28) As being able to cancel the sale, since it states, GIVE ME BACK MY MONEY.

(29) V. supra 50b.

(30) V. p. 398, n. 5. Z for Eleazar; B for Rabbah; R for Raba; R for ASHi.

(31) V. p. 492. n. 2, and cf. p. 227. n 2.

(32) Lit., ‘sanctified’.

Talmud - Mas. Baba Metzia 51b

but here, did he know [that he was defrauded], that he should make renunciation! Whilst Samuel can say: My ruling agrees even with R. Meir. Only there does R. Meir state that view, in so far as he certainly rejects[1] [a Biblical law];[2] but here, who can say that he disregards[3] anything at all?[4]

R. ‘Anan said: I was told on Samuel's authority: If one says to his neighbour. ‘[I agree to this sale] on condition that you have no claim of overreaching against me,’ then he can prefer no claim of overreaching against him. [But if he stipulates,] ‘on condition that there is no overreaching therein’ , then [in case of deceit] a charge of imposition can be preferred.[5]

An objection is raised: If one trades on trust,[6] or if one says to his neighbour. ‘[This sale is] on condition that you have no claim of overreaching against me,’ then he has no claim of overreaching against him.[7] Now, according to Rab, who maintained, ‘My ruling agrees even with R. Judah.’[8] who is the authority for this? — Said Abaye: It is clear [therefore] that Rab's ruling agrees with R. Meir [only], and Samuel's with R. Judah.[9] Raba said: There is no difficulty; one refers to a general [condition]; the other to a particular [stipulation]. As it has been taught: When is this said?[10] Of a general [condition].[11] But if one explicitly states [that he is overcharging], [e.g.,] if the vendor said to the vendee, ‘I know that this article, which I sell you for two hundred zuz, is only worth one hundred, but I sell it to you on condition that you have no claim of overreaching against me,’ then he has no claim of overreaching. And likewise, if the Purchaser said to the seller, ‘I know that this article which I buy from you for one hundred [zuz] is worth two hundred, [yet I do so] on condition that you have no claim of overreaching against me,’ then he has no claim of overreaching against him.

Our Rabbis taught: If one buys and sells on trust, he must not compute the inferior goods on trust and the superior at par, but either both on trust or both at par.[12] And he must pay him the cost of porterage, transport,[13] and storing;[14] but he does not receive payment for his own trouble, since he has already been paid in full. Whence was his payment in full given him? — Said R. Papa: This refers to cloth manufacturers, who give [a discount of] four per cent.[15]

MISHNAH. BY HOW MUCH MAY THE SELA’ BE DEFICIENT AND YET INVOLVE NO OVERREACHING?[16] R. MEIR SAID: FOUR ISSARS, WHICH IS AN ISSAR PER DENAR[17] R. JUDAH SAID: FOUR PUNDIONS, WHICH IS A PUNDION PER DENAR.[18] R. SIMEON SAID:

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(1) Lit., ‘eradicates’.

(2) I.e., if his condition is kept, he is certainly flouting the provisions of Scripture, therefore the condition is null.

(3) V. n. 1.

(4) Notwithstanding his stipulation, he may not actually overreach; therefore it is valid.

(5) Lit., ‘there is overreaching therein.’ I.e., the condition was not fulfilled, and therefore the sale is invalid.

(6) אמנה Rashi: A gives goods to B to sell at whatever price he can, to render him the money at a fixed date, whilst he pays him for his labour, i.e., he appoints him his salaried agent. [Tosaf.: The buyer (B) trusts the seller (A) as to the price he paid for the goods, and is willing to allow him a certain percentage for profit. This interpretation of the term אמנה is followed in the rendering of the next paragraph.]

(7) The first clause means, A cannot say to B, ‘You sold below the market value and must therefore make it up. ‘ [According to Tosaf. (v. n. 6), B cannot prefer a charge of overreaching against A since he agreed to accept the goods at the price A originally paid for them (plus a percentage) irrespective of the market value.]

(8) V. supra 51a.

(9) Even as the first hypothesis.

(10) That notwithstanding a condition, each can prefer a claim of fraud against the other.

(11) I.e., if it was simply stipulated that there should be no claim for overreaching, without an explicit statement that a known overcharge was to be permitted in a certain transaction. In that case, Rab maintains that a claim can be preferred.
(12) Tosaf.: E.g.. A buys 10 articles for 10 zuz, 5 of which are worth 1 1/2 zuz each, whilst the other 5 are only worth 1/2 zuz each, and then sells them to B, who states that he is prepared to trust A as to what he paid for them and is willing to give him a certain percentage of profit: then A must not reckon the inferior goods at the average price of one zuz apiece, whilst quoting the better at 1 1/2 each, but must either strike an average for all, if he sells all together, or estimate each at its own value, if he sells them separately.
(13) Lit., 'the hire of a camel.'
(14) I.e., the seller is entitled to add his expenses to the cost.
(15) The cost price (10 zuz, as stated in the example in n. 3) is subject to a further manufacturer's discount; but the seller, in estimating his profits, bases it on the cost price before the discount is subtracted. That discount is regarded as full payment for his personal trouble (v. S. Strashun a.l.).
(16) Coins being valued by weight they depreciate in value after being in use for some time. The Mishnah discusses how far they may thus be underweight or defaced and yet, if tendered at their nominal value, involve no overreaching.
(17) A sela' == 4 denorii == 12 pundions; 1 pundion= 2 issars (assarius); i.e., 1/24 of Its value.
(18) I.e., 1/12.

Talmud - Mas. Baba Metzia 52a

EIGHT PUNDIONS, WHICH IS TWO PUNDIONS PER DENAR.[1] UNTIL WHAT TIME IS HE [THE DEFRAUDED PARTY] PERMITTED[2] TO RETRACT? IN TOWNS, UNTIL HE CAN SHEW [THE COINS] TO A MONEY-CHANGER; IN VILLAGES,[3] UNTIL [THE FOLLOWING] SABBATH EVE.[4] IF HE RECOGNISED IT, HE MUST ACCEPT IT BACK FROM HIM EVEN AFTER A TWELVE MONTH; AND HE HAS NOTHING BUT RESENTMENT AGAINST HIM.[5] AND ONE MAY REDEEM[6] THE SECOND TITHE THEREWITH AND HAVE NO FEAR,[7] BECAUSE IT IS MERE CHURLISHNESS.[8]

GEMARA. Now, the following is opposed [to the Mishnah]: To what extent is the sela' to be deficient to involve overreaching?[9] — Said R. Papa. There is no difficulty: Our Tanna reckons in an ascending fashion,[10] whilst the Tanna of the Baraitha reckons in a descending fashion.[11] Wherein do a sela' and a garment differ, that there is a dispute on the former but not the latter?[12] — Said Raba: Which Tanna is the authority for [one-sixth in the case of] a garment? R. Simeon.[13] Abaye said: In the case of a garment, one forgives [overreaching] up to a sixth, because people say, 'overpay for your back, but [give] only the exact worth for your stomach.'[14] But as for a sela', since it does not [readily] circulate,[15] one does not forgive [a deficiency].

[To turn] to the main text: To what extent is the sela' to be deficient to involve overreaching? R. Meir said, Four issars, which is one issur per denar; R. Judah said: Four pundions, which is one pundion per denar; R. Simeon said: Eight pundions, which is two pundions per denar. Above that, it may be sold at its [intrinsic] worth — By how much may it depreciate that it shall still be permissible to keep it? In the case of a sela', [it can depreciate] as far as a shekel;[16] in the case of a denar, as far as a quarter.[17] If it is an issar less, it is forbidden.[18] One may not sell it to a merchant, highwayman, or murderer,[19] because they cheat others with it, but should pierce and suspend it around the neck of his son or daughter.[20] The Master said: 'In the case of a sela', as far as a shekel; in the case of a denar, as far as a quarter.' Wherein does a sela' differ from a denar, that [the permitted deficiency of] a sela' is [only] as far as a shekel [i.e., half its value], whereas [that of] a denar is 'as far as a quarter? — Said Abaye: What is meant by 'a quarter?' A quarter shekel.[21] Said Raba: This may be proved too, since he [the Tanna] teaches. 'as far as a quarter',[22] and not a fourth part;[23] this proves it. But why should the denar be correlated to the shekel?[24] — He [the Tanna] thereby incidentally informs us that there is a kind of denar which is derived from a shekel.[25] This supports R. Ammi. For R. Ammi said: A denar which is derived from a shekel may be kept; from a sela', it may not be kept.[26]

'If it is an issar less, it is forbidden.' What does this mean? — Abaye said, It means this: if the sela' depreciated by an issar more than the standard for overreaching,[27] it may not be [expended].[28] Raba demurred: If so, even [if the depreciation exceeds it but] slightly, it is likewise so![29] But, said Raba, if the sela' depreciated an issar to the denar, it is forbidden [to offer it as a sela'], this anonymous ruling agreeing with R. Meir.

We learnt elsewhere: If a sela' became unfit,[30] and it was prepared[31] for use as a weight, it is [liable to become] unclean.[32] How much may it depreciate that it shall still be permissible to keep it? In the case of a sela', up to two denarii.[33] [When it is worth] less than this, it must be cut up.[34] What if [it is worth] more than this? R. Huna said: if worth less, it must be cut up, and if worth more than this, it must [also] be cut up.[35] R. Ammi said: If worth less, it must be cut up; but if worth more than this, it may be kept [as it is].

An objection is raised:

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(1) I.e., 1/6; thus R. Simeon assimilates this to overreaching in general.

(2) V. P. 295 , n. 11.

(3) Which contain no money-changers.

(4) When he goes shopping for the Sabbath, and so learns their value.

(5) This is discussed in the Gemara.

(6) Lit., 'give it for'.

(7) Of invalid redemption.

(8) To refuse a coin as unfit on account of a slight depreciation.

(9) And the Baraitha then gives the same figures as in the Mishnah, which shews that these cases do constitute overreaching.

(10) Thus the Mishnah states, How far can it go on increasing its deficiency without involving overreaching? Until four issars etc., but when that point is reached, overreaching is involved. Whilst the Baraitha means, How far can the deficiency of a sela' go on decreasing and still involve overreaching? Until four issars etc. Hence, in the Mishnah 'until' is exclusive, whereas in the Baraitha it is inclusive.

(11) Lit., 'from bottom to top.'

(12) In the case of goods, here expressed by 'a garment', all agree (with the exception of R. Tarfon) that one-sixth constitutes overreaching, whereas the percentage for money is disputed.

(13) Who gives one-sixth for money too. Though the Mishnah on 49b states one-sixth as a general opinion, it is actually only R. Simeon's view.

(14) If one needs a garment, he should even overpay for it, clothing being virtually necessary to uphold one's dignity. For food, however, one should not pay more than its worth.

(15) When it becomes very deficient — the exact percentage of deficiency needed to impede circulation is disputed in the Mishnah.

(16) A shekel is half a sela'. Now, as the sela' depreciates, there is no fear that it may be passed off as a full sela', because its decreased thickness is obvious. But when it is reduced to less than a shekel, there is the danger that it may be passed off as a shekel, the extent of the depreciation not being so noticeable in view of the larger size in width which it would still retain as a depreciated sela', and which would appear to compensate for its reduction in thickness. (The size of the sela' was larger than that of the shekel, both in width and thickness.) Therefore it may not be kept at all. The Baraitha states further on what is to be done with it.

(17) A quarter denar was a separate coin, and the depreciated denar might likewise be passed off as a quarter.

(18) This is discussed infra.

(19) A robber who is prepared to commit murder.

(20) Tosef. B. M. III.

(21) Which is half a denar.

(22) רובע , the specific name of a coin, value a quarter shekel.

(23) רביע

(24) In speaking of a denar, why not say half a denar instead of a quarter of a shekel?

(25) I.e., if the shekel becomes deficient to half its value, it is legal tender for a denar.

(26) Because owing to its large size it may be passed off as a shekel.

(27) According to the respective opinions stated in the Mishnah.

(28) As a sela'.

(29) Since the limit of overreaching is passed, no matter by how little, it may surely not be offered as a full weight sela'.

(30) To be used as such, owing to its depreciation.

(31) By mutilation, so that it could not pass as an ordinary coin.

(32) As a coin, it is not subject to uncleanliness; but when employed as a weight, it is regarded as any other article of use, which is liable to become unclean.

(33) ==a shekel, as stated above.

(34) As it might be passed off as a shekel, Kel. XII, 7.

(35) I.e. , once it depreciates so much that overreaching is involved, even if its value exceeds a shekel, it must be mutilated, so that it shall not be offered as a sela'.

Talmud - Mas. Baba Metzia 52b

Above that,it may be sold at its [intrinsic] worth.[1] Surely that means that it depreciated by more than the limit for overreaching?[2] — No; 'above that' [means it is worth more] not yet having depreciated to an extent involving overreaching: then it may be sold at its intrinsic value.

An objection is raised: By how much may it depreciate that it shall still be permissible to keep it? In the case of a sela', [it can depreciate] as far as a shekel. Surely that means that it depreciated little by little?[3] — No; it means that it fell into a fire and so lost in value all at once.

The Master said: 'He should pierce and suspend it around the neck of his son or daughter.' But the following contradicts it: One must not employ it[4] as a weight,[5] cast it amongst his scrap-metal nor pierce and suspend it around the neck of his son or daughter; but must either pound it [to dust], melt it down, mutilate or cast it into the salt sea! — Said R. Eleazar — others state, R. Huna in R. Eleazar's name: There is no difficulty; the former refers to the middle [of the coins], the latter to its edge.[6]

UNTIL WHAT TIME IS HE [THE DEFRAUDED PARTY] PERMITTED TO RETRACT? IN TOWNS, UNTIL HE CAN SHEW [THE COINS] TO A MONEY-CHANGER; IN VILLAGES, UNTIL [THE FOLLOWING] SABBATH EVE. Why is a distinction [between towns and villages] made in respect to a sela' but not to a garment? — Abaye answered: Our Mishnah too, when it treats of a garment, refers to towns — Raba said: As for a garment, everyone has expert knowledge therein;[7] whereas in regard to a sela', since not every man can value it save a money-changer alone, it follows that in towns, where a money-changer is available, [he can retract] only until he shews it to a money-changer; whereas in villages, where none is available, [the period is] until Sabbath eve, when they [the villagers] go up to market.[8]

IF HE RECOGNISED IT, HE MUST ACCEPT IT BACK FROM HIM EVEN AFTER A TWELVEMONTH etc. Where [is this]? If in towns? But you have said, UNTIL HE CAN SHEW [THE COINS] TO A MONEY-CHANGER! Again, if in villages? But you have said, UNTIL [THE FOLLOWING] SABBATH EVE! — Said R. Hisda: Here a measure of piety was taught.[9] If so, consider the second clause: AND HE HAS NOTHING BUT RESENTMENT AGAINST HIM. To whom does this refer? If to the pious man,[10] let him neither accept it nor bear resentment against him![11] But if to the one from whom he accepted it, then after having had it accepted from him, should he bear resentment? — It means thus: but as for another person,[12] even if he does not re-accept it from him, he [to whom it was given as a full coin] HAS NOTHING BUT RESENTMENT AGAINST HIM. AND ONE MAY REDEEM THE SECOND TITHE THEREWITH AND HAVE NO FEAR, BECAUSE IT IS MERE CHURLISHNESS. R. Papa said:

This proves that he who is exacting in respect to coins[13] is dubbed a churl;[14] providing, however, that they [still] circulate. This [the Mishnah] supports Hezekiah, for Hezekiah said: When he comes to exchange it, he must exchange it as its intrinsic value; if he comes to redeem therewith, he estimates it at a proper [coin].[15] What does he mean?[16] -He means this: Though when he comes to exchange it, he exchanges it at its present value,[17] yet when he redeems [second tithe] therewith, he may estimate it as a good [coin].[18] Shall we say that Hezekiah holds that the second tithe may be treated disparagingly?[19] But did not Hezekiah say: With respect to second tithe [produce] worth less than a perutah, one may declare, 'It, together with its fifth,[20] is redeemed with the first money [of redemption];'[21] because it is impossible for a person to calculate his money exactly![22] — What is meant by 'a proper [coin]'? On the basis of the proper value [of the coin], because it [the second tithe] may not be lightly treated in two respects.[23]

The [above] text stated: 'Hezekiah said: With respect to second tithe [produce] worth less than a perutah, one may declare, "It, together with its fifth, is redeemed by the first money [of redemption];" because it is impossible for a person to calculate his money exactly.' An objection is raised: For terumah and the first fruits[24] one is liable to death and [the addition of] a fifth;[25]

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(1) Quoted from the Baraitha cited supra.

(2) Which proves that it may be kept.

(3) In which case it passes the standard of overreaching long before it drops to a shekel, thus refuting R. Huna.

(4) Sc. the worn coin which may no longer be kept owing to its deficient value.

(5) Lit., 'must not make it a weight amongst his (other) weights.'

(6) When the coin is pierced in the middle, it cannot be circulated; hence this is permissible. But if it is pierced at the edge, one may file it round until the hole is gone and then use it as a coin: hence it is forbidden.

(7) Therefore even in a village one can readily find a person to value it.

(8) In the town.

(9) I.e., though he is not legally bound to take it back, yet as a measure of piety he should do so.

(10) I.e., who does not insist upon the letter of the law, but is guided by piety.

(11) v.p. 437, n. 1.

(12) One who insists upon his legal right not to take it back.

(13) Refusing to accept them even if slightly worn.

(14) Lit., 'a malevolent soul.'

(15) If one exchanges a worn sela' for perutahs, he must estimate it at its metallic, intrinsic value. If, however, he redeems second tithe produce with such coins, he gives the coins their nominal value, as though unworn.

(16) 'When he comes... intrinsic value:' but surely that is already stated in the Mishnah, that, when a coin depreciates to the extent that overreaching is involved, it may not be passed off at full value!

(17) When coming to change a sela', which has depreciated, though not to the extent involving overreaching with which the second tithe was redeemed, into perutahs in Jerusalem, he naturally receives from money-changers perutahs only for its depreciated value (cf. Tosaf.).

(18) Thus Hezekiah informs us that when the Mishnah states that the second tithe may be redeemed therewith, it means that the coin is reckoned at its full nominal value, because to be exacting in regard to coins that are slightly worn is a mark of churlishness.

(19) As above, estimating the deficient sela' at its full value, thus minimising that of the second tithe.

(20) V. p. 272, n. 9.

(21) I.e., money which has already been used in redeeming other second tithe produce.

(22) When one redeems the second tithe, he does not calculate its exact value, lest he underestimate it, and so redeems it at slightly more than its true worth. This slight excess may now be regarded as the redemption money of second tithe produce worth less than a Perutah, the smallest possible coin. This proves that in the first place it is liberally calculated, which contradicts his former statement that even deficient coins may be reckoned at their full value for this purpose.

(23) The defective coin is computed only at the proper value it possesses now, i.e., not only is full allowance made for its deficiency, but its valuation is slightly lowered even beyond that, so as to make quite certain that it does possess the value attributed to it. On this interpretation, Hezekiah asserts that we are stricter in respect to the redemption of the

second tithe than in ordinary secular transactions. And the reason is, 'because it may not be lightly treated in two respects' — for the mere fact that it may be redeemed with a defective coin, which some might refuse as a coin at all, is considered a light treatment of the second tithe; we may certainly not subject it to the further indignity, as it were, of computing the value of this coin in a liberal spirit (Rashi). The statement in the Mishnah that the second tithe can be redeemed with it means, accordingly, 'at its present intrinsic value,' for to refuse to accept it thus is a mark of churlishness.

(24) V. Num. XXVIII. 26; Deut. XXVI, 1-4.

(25) If a zar (q.v. Glos.) or an unclean priest wantonly eats them, he is liable to 'death at the hands of Heaven'; whilst If a zar eats them in ignorance of their true character, he must make restoration, adding a fifth to their value (Lev. XXII, 14). These laws were stated primarily with respect to terumah, but by Biblical exegesis they were extended to the first fruits too.

Talmud - Mas. Baba Metzia 53a

they are forbidden to zarim,[1] accounted as the priest's [personal] property,[2] are neutralised by one hundred and one [times their quantity].[3] and require washing of the hands[4] and the setting of the sun.[5] These provisions hold good of terumah and first fruits, which is not so in the case of [second] tithes.[6] Now, what is meant by 'which is not so in the case of [second] tithes?' Surely one may deduce that a tithe is neutralised by a greater quantity [than itself]:[7] but if Hezekiah's ruling is correct, it [the tithe] is an article which can become [otherwise] permitted, and whatever can become [otherwise] permitted is not neutralised even in a thousand [times its quantity]![8] — But how do you know that 'which is not so in the case of the [second] tithe' means that it is neutralised by a greater quantity [than itself]; perhaps it means that it cannot be neutralised at all?[9] — You cannot say thus, because in respect of terumah only the stringencies of terumah are taught, not its leniencies.[10] But he teaches '[they] are accounted the priest's property![11] — You cannot think so,[12] because it was distinctly taught: The second tithe is neutralized by a greater quantity [than itself]. And of which second tithe was this said? Of a tithe which is not worth a perutah[13] or which has once entered Jerusalem and gone forth again.[14] But if Hezekiah's ruling is correct, let Hezekiah's [remedy] be employed by redeeming it with the earlier money![15] — It means that he has not [yet] redeemed [any other].[16] Then let him bring the other tithe [produce] which he has and combine them?[17] — That [which is tithe] by Biblical law and that which is [so] only by Rabbinic law cannot be combined.[18] Then let him bring demai![19] — [We fear] lest he thereby bring certain [tithe].[20] Then let him bring two Perutahs, redeeming the tithe [that he brings] with a perutah and a half, and this [the intermixed tithe] with the rest?[21] — Do you think that one and a half perutah's worth of tithe consecrates[22] two perutahs? That is not so; one perutah['s worth] consecrates one Perutah, whilst the half perutah['s worth] does not consecrate [anything]; so again there is [tithe by] Biblical law[23] and [tithe by] Rabbinic law,[24] , and these two cannot be combined. Then let an issar be brought?[25] — [That is forbidden,] lest he bring perutahs [for that purpose].

'Or which has once entered Jerusalem and gone forth again.' But why so?[26] Let it be taken back again! — It refers to defiled [tithe]. Then let it be redeemed.[27] For R. Eleazar said: Whence do we know if second tithe [produce] became defiled, that it is to be redeemed

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(1) Zar (q.v.) pl. zarim. — This would appear obvious after the previous statement. Rashi observes that it is in fact unnecessary per se, but that its purpose is to mark the contrast with tithes, which, as the Mishnah proceeds to teach, is permitted to zarim. Tosaf., following J. Bik. II, explains: even half the minimum quantity, which involves no penalty of death or the addition of a fifth, is forbidden to zarim.

(2) In that he can employ them as kiddushin (q.v. Glos.) for betrothing a woman; v. infra n. 8.

(3) If a quantity of terumah or first fruits fell into hundred times as much hullin (common food) and cannot be distinguished therefrom, it is neutralised or annulled, and the whole is permitted to a zar.

(4) That is in respect of fruit. One's hands are normally said to be unclean with what is known as the second degree of uncleanliness — a low degree. This is insufficient to render the fruit of hullin or tithes unclean, and therefore these may

be eaten with unwashed hands. But a stricter purity was demanded of terumah and first fruits; consequently it was enacted that the touch of ritually unclean hands imposes upon them third degree uncleanliness; therefore the hands must be washed before partaking of them. — This impurity is only Rabbinical, and therefore the washing of the hands alone was sufficient: for Biblical uncleanliness the immersion of the whole body in a ritual bath (mikweh) was necessary.

(5) If a priest became Biblically unclean, he required Immersion (v. n. 6) and then had to wait until sunset before he might eat of terumah or the first fruits (Lev. XXII, 7).

(6) (i) The (second) tithe may be eaten by a zar — consequently, of course, no penalty is involved therein; (ii) it is not the priest's property, as explained in n. 4., but sacred property given to the priests; hence it cannot be employed as kiddushin. — This is R. Meir's view (Kid. 52b); (iii) it does not require a hundred times its own quantity for neutralisation; (iv) the fruit may be eaten with unwashed hands; (v) when one becomes Biblically unclean, he may eat thereof immediately after immersion, without waiting for sunset (v. Hal. I, 9).

(7) If a quantity of the second tithe fell into a greater quantity of hullin it is neutralised and the whole ranks as hullin, 100 times the amount being unnecessary.

(8) This is a Talmudic principle with respect to the neutralisation of an object when intermixed with permitted commodities. Though normally a certain proportion of the latter is sufficient to neutralise the former, that does not operate if the former is destined to become permitted without recourse to neutralisation. E.g., if an egg is laid on a Festival, it is forbidden on that day, but not after. Now, if this egg was mixed up with no matter how many others on the day that it was laid, it is not neutralised, and all are forbidden on that day. For since it will be permitted on the morrow in any case, the principle of neutralisation is abandoned. Now, with respect to the second tithe, which is under discussion, since, as deduced, it can be annulled by a lesser quantity than is necessary for terumah, or indeed, since it can be annulled at all, it must refer to produce that cannot be otherwise made fit. Now, the remedy for ordinary second tithe that is mixed up with hullin is either to take the whole to Jerusalem, which can be easily done, as one has to eat the rest of the second tithe there in any case, and consume it there, or redeem the quantity that was intermixed. The only case in which these remedies cannot be employed is when the second tithe was unclean, so that the whole mixture may not be eaten, and is worth less than a perutah, and so not subject to redemption. But if Hezekiah's ruling that second tithe worth less than a Perutah can be redeemed by retrospectively including it in other redeemed produce is correct, the law of neutralisation cannot operate!

(9) In contradistinction to terumah, which is neutralised by 100 times its quantity.

(10) v. p. 313, n. 8. An examination of the various points shews that the object of the Tanna is to teach wherein terumah is more stringent than the tithe, not wherein it is lighter.

(11) Which is a leniency compared with the second tithe,

(12) That the second tithe cannot be neutralised at all,

(13) V, n. 2.

(14) This is explained below.

(15) This is a repetition, with a little more explanatory detail, of the difficulty already raised.

(16) So that he has no money with which it may be retrospectively redeemed.

(17) I.e., the tithe which is intermixed and that which he brings, and then redeem both.

(18) By Biblical law the tithe is certainly neutralised by a greater quantity than itself. Consequently, when it is thus intermixed, it is tithe only by Rabbinic law, whereas what is brought now is tithe according to Biblical law, and the two cannot be combined for the purpose of joint redemption, with the result that the tithe which he brings will remain unredeemed. But the retrospective combination permitted by Hezekiah is with produce that is already redeemed: hence it does not matter that the first was tithe by Biblical law and the second, sc. the mixed produce, only by Rabbinic law.

(19) V. Glos. This too is tithe only by Rabbinic law, and could be combined with the mixed produce.

(20) If he is permitted the remedy of demai, he may think that it is just the same if he brings certain tithe.

(21) I,e., let him first bring the other produce which he has to the value of a perutah and a half and redeem it all with the two perutahs; then declare that the half perutah's worth mixed up with hullin is redeemed by the two perutahs already used, in accordance with Hezekiah's teaching. — In the whole of this discussion, every suggestion that the mixed tithe should be capable of redemption on the basis of Hezekiah's ruling is a refutation of his views.

(22) Lit., ‘seizes hold of.’

(23) Sc. this half.

(24) The mixed produce.

(25) And tithe produce to a lesser value be redeemed therewith, the excess being used for the redemption of the mixed

tithe. For though one and a half perutahs' worth cannot consecrate two perutahs, that is because they are two separate coins, hence divisible, and so one can become consecrated whilst the other remains hullin. If a single larger coin, however, is employed, the whole becomes consecrated, whilst the excess can retrospectively redeem the mixed tithe.

(26) Why may the intermixed tithe be neutralised?

(27) It being assumed that this refers even to produce worth a perutah.

Talmud - Mas. Baba Metzia 53b

even in Jerusalem?[1] From the verse, When thou art not able se'etho ['to bear it'].[2] Now, 'se'eth'[3] can only refer to eating, as it is written, And he took and sent mase'oth ['messes'] unto them from before him![4] — But this refers to [commodities] purchased with the [redemption]money of the second tithe.[5] But let that also, which is bought with the [redemption] money of the second tithe, be redeemed, for we learnt: If what was redeemed with the [redemption-]money of the second tithe became defiled, it is [itself] to be redeemed![6] — This agrees with R. Judah, who ruled: It must be buried. If so, why particularly if it has gone forth [again]: the same applies even if it has not gone forth? — But after all, this refers to undefiled [tithe]: and what is meant by 'gone forth'? That the walls [of Jerusalem] had fallen.[7] But did not Raba say: The law of the walls [of Jerusalem], in that it [the second tithe] must be eaten within them, is Biblical; but that they have retaining power[8] is merely Rabbinical: and [consequently] when would the Rabbis enact thus: only as long as the walls were standing, but not when they no longer existed [having fallen]![9] — The Rabbis drew no distinction whether the barriers were standing or not.[10]

R. Huna b. Judah said in R. Shesheth's name: A single clause is taught, [viz.,] Second tithe [produce] worth less than a perutah which has entered Jerusalem and gone forth [again].[11] But why so? Let it be taken back and eaten! — It means that the walls had fallen. Then let it be redeemed, for Raba said: The law of the walls [of Jerusalem], in that it [the second tithe] must be eaten within them, is Biblical; but that they have retaining power is merely Rabbinical; and [consequently, ought we not to say] when would the Rabbis enact thus: only as long as the walls were standing, but not when they no longer existed [having fallen]! — The Rabbis drew no distinction. If so,[12] why particularly if worth less than a perutah; even if worth a perutah, it is the same? — He [the Tanna] [implicitly] proceeds to a climax.[13] [Thus:] If it contains [a perutah's worth], it is unnecessary to state that the walls retain it.[14] But where it does not contain [a Perutah's worth], I might think that the walls do not retain it:[15] therefore we are taught [otherwise].

Our Rabbis taught: And if a man will at all redeem aught of his tithes [he shall add thereto the fifth part thereof]:[16] 'of his tithes,' but not all his tithes,[17] thus excluding second tithe [produce] worth less than a perutah.[18]

It has been stated: R. Ammi said, [This means] that [the tithe] itself is not [worth a perutah]; R. Assi maintained, Its fifth [is less than a perutah];[19] R. Johanan said, That [the tithe] itself is not [etc.]; R. Simeon b. Lakish said, Its fifth is less [etc.]. An objection is raised. For second tithe worth less than a perutah it is sufficient to declare, 'That itself and its fifth are redeemed with the first money.'[20] Now, on the view that [it does not require redemption even if] its fifth is worth less [than a perutah], it is correct; hence he [the Tanna] states 'it is sufficient,' viz., though that itself contains [the value of a perutah], yet since its fifth does not, it is well. But on the view that [the tithe] itself is worth less, what is [the appropriateness of] 'it is sufficient?'[21] This is indeed a difficulty.

The scholars propounded: Is the fifth calculated on the inner sum [sc. the principal] or on the outer [sc. the principal plus the addition]?[22] — Said Rabina: Come and hear: If the owners value it at twenty [sela's], the owners have priority, since they add a fifth. If a stranger declared, 'I accept it for twenty-one,'

(1) Where undefiled tithe cannot be redeemed.
(2) Deut. XIV, 24; The next verse says: Then thou shalt turn it into money..
(3) שאת , 'to bear'.
(4) Gen. XLIII, 34. Thus he translates the first verse: If thou art not able to eat it — being defiled — then thou shalt turn it into money — i.e., redeem it.
(5) The original second tithe having been redeemed, the money was expended in Jerusalem upon commodities, which in turn became defiled. At this stage it is assumed that only the original tithe can be redeemed if defiled, but not that purchased with the redemption money.
(6) M. Sh. III. 10.
(7) After the second tithe was taken into Jerusalem. Now, the second tithe cannot be eaten there when the walls have fallen; on the other hand, having been brought there whilst the walls were standing, it is 'retained', i.e.,it cannot be redeemed.
(8) V. previous note.
(9) Hence the barriers having fallen, let the tithe be redeemed.
(10) But enacted a general measure that the walls have retaining power.
(11) This answers the objection against Hezekiah from the cited Baraitha (q.v. supra), the reason no resort can be had to Hezekiah's device being that the tithe has been 'retained' by the barriers, when redemption is no longer possible. — The Talmud proceeds to raise the same objections against this answer as against the previous explanation.
(12) That the reason of non-redemption is the 'retaining' power of the walls of Jerusalem.
(13) Lit., 'he teaches a case of it is unnecessary to state it.'
(14) And it cannot be redeemed. For since it is of sufficient value to require redemption, the barriers sanctify it.
(15) Since it is not subject to the law of redemption.
(16) Lev. XXVII, 31.
(17) I.e., of is a limitation, implying that in certain cases there can be no redemption.
(18) Such a small quantity cannot be redeemed, and if one does declare it redeemed with a perutah, that perutah does not receive the sanctity of the second tithe to have to be expended in Jerusalem.
(19) Even if the produce is worth more than a perutah, no redemption is possible if the fifth to be added is less than a perutah.
(20) In accordance with Hezekiah's ruling, q.v. supra 52b and notes. It need not be taken to Jerusalem, nor is it necessary to combine it with other produce and redeem the whole.
(21) Since I could not think that redemption is necessary in such a case. But 'it is sufficient' implies that a concession is made when the law might have been stricter.
(22) E.g., if the principal is worth 20 zuz, must one add 4 zuz, a fifth of the principal, or 5, a fifth of the total?

Talmud - Mas. Baba Metzia 54a

the owners must give twenty-six; 'for twenty-two,' the owners must give twenty-seven; 'for twenty-three,' the owners must pay twenty-eight; 'for twenty-four,' the owners must pay twenty-nine; 'for twenty-five,' the owners must pay thirty; because a fifth is not added on this man's higher valuation.[1] This proves that the fifth is calculated on the outer sum.[2] This proves it. This is disputed by Tannaim: Then he shall add a fifth part of it thereto[3] — i.e., it [sc. the principal] plus its fifth shall amount to five:[4] this is the view of R. Josia. R. Jonathan said: 'A fifth part of it' means a fifth of the principal. The scholars propounded: Does the fifth restrain or not?[5] [Thus:] do four [zuz] redeem four [zuz's worth of second tithes], whilst a fifth is independently added,[6] so that the fifth is no bar [to the validity of the redemption]: or perhaps, four [zuz's worth] must be redeemed by five,[7] the fifth being [thus] a bar? — Said Rabina: Come and hear: demai[8] is not subject to the law of a 'fifth' or to the law of removal.[9] [This implies,] but the law of the principal does apply to it.[10] Why so?[11] [Surely because] the principal, which is indispensable for [tithe by] Biblical law, is required in the case of [tithe by] Rabbinic law; whereas the fifth, which is not a bar in [tithe by] Biblical law, is not required in the case of Rabbinic [tithe]![12] Shall we say that this is disputed by Tannaim? [It has been taught:] If one gave the principal but not the fifth: R. Eliezer ruled: It [the redeemed tithe] may be eaten [outside Jerusalem]; R. Joshua said: It may not be eaten. Said Rabbi: I approve of R.

Eliezer's view for the Sabbath, and R. Joshua's view for week-days.[13] Now, since he said 'I approve of R. Eliezer's view for the Sabbath,' it follows that their dispute applies even to week-days; and since he said, 'I approve of R. Joshua's view for week-days,' it follows that their dispute applies even to the Sabbath. Surely then, they differ in this reasoning, viz., R. Eliezer holds that the fifth is no bar, whilst R. Joshua holds that it is! — Said R. papa: That is not so. All agree that the fifth is no bar, but here they differ as to whether we fear culpable omission. One Master holds that we fear culpable omission;[14] whilst the other Master maintains that we do not fear this.

R. Johanan said: All agree in the case of hekdesh[15] that it is redeemed,[16] since the treasurers demand it in the market place.[17] Now, do they really not differ in respect to hekdesh? Surely it has been taught: If one gave the principal but did not give him [sc. the treasurer] the fifth: R. Eliezer said: He has redeemed it; whilst the Sages say: He has not redeemed it. Said Rabbi: I approve of R. Eliezer's view in respect to hekdesh,[18] and that of the Sages in respect to tithes. Now, since he said 'I approve of R. Eliezer's view In respect to hekdesh,' it follows that he himself [R. Eliezer] differs even in reference to the tithe; and since he said, 'I approve of the view of the Sages in respect to tithes,' it follows that they differ even on hekdesh! — But if it [R. Johanan's dictum] was stated, it was stated thus: R. Johanan said: All agree in respect to the Sabbath and hekdesh, that it is redeemed. Firstly, because it is written, And thou shalt call the Sabbath a delight;[19] and furthermore, since the treasurers demand it in the market place.

Rami b. Hama said: Now, it has been said that hekdesh cannot be redeemed by land, for the Divine Law ordered, Then he shall give the money, and it shall be assured to him;[20] but can its fifth be 'redeemed by' [i,e., rendered in] land? [Again,] terumah can be repaid only by hullin,[21] for the Divine Law saith, Then he shall give unto the priest the holy thing,[22] implying, that which is eligible to be holy:[23] can its fifth[24] be rendered out of what is not hullin? [Further, the second] tithe cannot be redeemed by asimon,[25] because the Divine Law said, And thou shalt bind up the money in thy hand,[26] thus including everything which has a figure:[27] can its [additional] fifth be exchanged for uncoined metal? Now, it eventually transpired[28] that it [these questions] reached Raba. Thereupon he said to them: Scripture saith, [Then he shall add the fifth part of the money of thine estimation] unto it,[29] [which is] to include its fifth as equal to itself [sc. the principal].[30]

Rabina said: We have learnt likewise: If one stole terumah but did not eat it, he must repay double the value of the terumah.[31] If he ate it,[32] he must repay two principals and a fifth, one principal and a fifth out of hullin,[33] and the other principal as the value of terumah.[34]

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(1) If a man consecrated an inherited field when the Jubilee laws were in force, the redemption was according to a fixed scale, as stated in Lev. XXVII, 16-19. If, however, he consecrated it when the Jubilee laws had fallen into desuetude, he had to value it for the purpose of redemption, whilst at the same time others too might redeem it and keep the field for themselves. Now, the owner had to add a fifth to his valuation, but not strangers. Consequently, if both he and strangers valued it equally, it was for him to redeem it, since he would add thereto. But if strangers made a higher offer, the owner had to redeem it at their assessment, adding a fifth on the basis of his own, as stated in the Mishnah quoted. In order that the price might not be unduly forced up, the Mishnah concludes that if the owner valued it at 20, whilst another valued it at 26, i.e., more than the owner's offer plus a fifth, the latter offer was accepted. Thus both the Temple treasury and the owner were safeguarded.

(2) Five on twenty.

(3) Lev. XXVII, 27.

(4) If the principal is four the total shall be five, the addition thus being a fifth of the total — an 'outer' fifth.

(5) If one redeems the second tithe without adding a fifth, does this omission restrain him from eating that produce outside Jerusalem, it being regarded as unredeemed, or not?

(6) But not as part of the actual redemption.

(7) It being a scriptural decree that the addition forms an integral part of the redemption.

(8) V. Glos.

(9) If one redeems second tithe of demai, he need not add a fifth. Again, ordinary (Biblical) tithes had (in accordance with Deut. XIV, 28ff.) to be removed from the house in the third year after the year of Release, but not demai (Dem. I, 2).
(10) I.e., unless redeemed at par it may not be eaten outside Jerusalem.
(11) Why this distinction?
(12) This proves therefore that the omission of the fifth does not invalidate redemption.
(13) On the Sabbath the redeemed tithe may be eaten, for otherwise the cheerfulness of the Sabbath might be destroyed, as one might not have anything else to eat. But on week-days it may not be eaten unless the necessary fifth has been added.
(14) If we permit eating the tithe even before the fifth has been added, one may intentionally omit his addition.
(15) V. Glos.
(16) Even before the necessary fifth is added, and it may then be eaten.
(17) There is no fear that the additional fifth will be intentionally omitted, since the treasurers enforce payment. [The treasurers are apparently not allowed to enter the premises of the donor to take a pledge; cf. Deut. XXIV, 11 (v. Strashun a. l.).]
(18) For the reason stated, cf. n. 5.
(19) Isa. LVIII, 13; v. n. 1.
(20) Actually there is no such verse. Rashi and Tosaf. here and in Pes. 35b s.v. שחילל , without pointing to the non-existence of this verse, quotes, Then he shall add the fifth part of the money of thy estimation unto it, and it shall be assured to him (Lev. XXVII, 19) as the source of this law, implying money, but not land. But in that case the obvious difficulty arises, to which Tosaf. draws attention in Pes. loc. cit., since the verse primarily refers to the fifth, how can one question whether the implication of 'money' as excluding land refers to the fifth too, besides the principal? In Bek. 51a s.v. אימא , however, Tosaf. states on the authority of the Sifra that the deduction is really based upon, and all thy estimations shall be according to the shekel of the sanctuary (v. 25), 'shekel' excluding land.
(21) If a zar (v. Glos.) eats it unwittingly, he must make restoration to the priest, and the repayment must be with money of hullin.
(22) Lev. XXII, 14.
(23) I.e., it becomes holy only when he gives it to the priest; hence he cannot repay him with what is already holy.
(24) Which had to be added to the principal: then he shall put the fifth part thereof unto it, ibid.
(25) Uncoined metal; v. supra 47b.
(26) Deut. XIV, 25.
(27) V. p. 282, n. 6. I.e., only a stamped coin can redeem, but not bullion or uncoined metal.
(28) Lit., 'The thing was rolled on.'
(29) Lev. XXVII, 19, also in every place where the addition of a fifth is mentioned; v. XXII, 14; XXVII. 31 (E.V. 'thereto').
(30) I.e., the fifth must be redeemed in the same way as the principal; hence the answer to all the questions is in the negative.
(31) The usual punishment of a thief. V. Ex. XXII, 3. As terumah, its value is less than hullin, since it can be sold only to priests, and may not be eaten if defiled.
(32) Not knowing that it was terumah.
(33) I.e., in actual produce, notwithstanding that the value of terumah is less, for since he ate it, he derived the same benefit from it as though it were hullin.
(34) I.e., money to that value. For the second principal is a fine for theft; therefore it is rendered in money, and based on the actual market value of the article stolen (Ter. VI, 4).

Talmud - Mas. Baba Metzia 54b

This proves that the fifth is as the principal.[1]

Raba said: With respect to robbery it is written, [he shall even restore it in the principal,] and shall add the fifth part more thereto;[2] and we learnt: If he restored the principal and then swore [falsely] concerning the fifth,[3] he must then add[4] a fifth upon the fifth,[5] [and so on,] until the principal is less

than a perutah's worth .[6] With respect to terumah, it is written, And if a man eat of the holy thing unwittingly, then he shall add the fifth part thereof unto it.[7] And we learnt: If one eats terumah unwittingly, he must restore the principal and a fifth; whether he eats, drinks or anoints [therewith]; whether it was undefiled or defiled terumah, he must pay a fifth and a fifth of the fifth.[8] With respect to [the second] tithe it is neither written[9] nor taught,[10] nor do we regard it at all as a problem.[11] With respect to hekdesh it is written, And if he that sanctified it will redeem his house, then he shall add the fifth part of the money of thy estimation unto it.[12] And we learnt: He who redeems his hekdesh adds a fifth.[13] Now, only a fifth was thus taught, but not a fifth of the fifth.[14] What then [is the law]? [The problem arises for this reason:] With respect to terumah it is written, and he shall add [we-yasaf];[15] then with respect to hekdesh too it is likewise written, and he shall add [weyasaf]:[16] or perhaps, with respect to terumah it is written he shall add [we-yasaf], and if you remove the waw from we-yasaf and add it to hamishito [the fifth part thereof] it becomes hamishithaw [the fifth parts thereof];[17] whereas in respect to hekdesh is written, and he shall add the fifth part [we-yasaf hamishith], and even if you remove the waw from we-yasaf and add it to hamishith, after all it only becomes hamishitho.[18] But cannot this [sc. the answer to the problem] be deduced from the fact that it [the fifth] is a second hekdesh, and R. Joshua b. Levi said: A fifth is added to first [i.e., original] hekdesh [in redemption], but not to second hekdesh.[19] — Said R. papa to Rabina: Thus did Raba say: The fifth ranks as original hekdesh.[20]

What is our decision in the matter? — R. Tabyomi said in Abaye's name: Scripture saith, Then he shall add the fifth part of the money of thy estimation [unto it]: thus its fifth is assimilated to its assessed value:[21] just as a fifth is added to the assessed value, so is a fifth added to the fifth of its value.[22]

The [above] text states: 'R. Joshua b. Levi said: A fifth is added to first [i.e., original] hekdesh [in redemption], but not to second hekdesh' Said Raba: What is R. Joshua b. Levi's reason? — Scripture says, And if he that sanctified it will redeem his house, [then he shall add the fifth part]: implying, only he who sanctified, but not he who transferred [its sanctity].[23]

A tanna recited before R. Eleazar: And if it be of the unclean beast,[24] then he shall redeem it according to thine estimation [, and shall add a fifth part of it thereto]:[25] just as an unclean beast is distinguished in that it is the original dedication,[26] belongs entirely to Heaven,[27] and it involves trespass;[28] so everything which is original hekdesh and belongs entirely to Heaven involves one in trespass. Thereupon R. Eleazar observed to the tanna: As for [the stipulation] that it must belong entirely to Heaven, it is well: that excludes sacrifices of secondary sanctity;[29] since its owners enjoy part thereof,[30] they involve no trespass offering. But what is 'original dedication' intended to exclude? [Do you mean that] only original hekdesh involves a trespass offering, but not final hekdesh![31] perhaps you said it in reference to the fifth, and in agreement with R. Joshua b. Levi?[32] — Even so, he replied, that is what I meant.

R. Ashi said to Rabina: Is an unclean animal capable only of original hekdesh,

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(1) Lit., 'as itself.' — It follows from the fact that the fifth has to be paid in produce, just as the principal.

(2) Lev. V, 24. This fifth is payable if the culprit first denied the robbery and swore falsely, and then repented. The Heb. for 'the fifth part' is וחמישיתיו , which is plural in form, lit., 'and its fifth parts'. This justifies the ruling that the fifth itself becomes the principal and a fifth is payable upon that — i.e., there may be many fifth parts.

(3) Regretting his repentance before giving the fifth, he falsely swore that he had already paid it.

(4) If he repents again.

(5) I.e., the fifth is regarded as a new principal, and he is liable to a fifth of that on account of his false oath.

(6) 'The principal' refers to the fifth in respect of which he took a false oath (v. B.K. 103a).

(7) Ibid. XXII, 14. Here the Heb. reads חמישתו , sing.; nevertheless it is shewn further on that there is a Biblical allusion that there may be many fifths, as in the case of robbery.

(8) This fifth becomes the same as the original terumah, and if he ate it, he must restore that fifth and a fifth thereof, just as in the case of robbery (Ter. VI, 4).

(9) There is no allusion to the payment of many fifths.

(10) To that effect, e.g., if one redeems the second tithe, duly adding a fifth, and then wishes to redeem that fifth with other coins, it was not taught that he must add a fifth thereof.

(11) I.e., another fifth need certainly not be added, since there is not the slightest indication in the Bible to that effect.

(12) Lev. XXVII, 15.

(13) Infra 55b.

(14) I.e., it is not stated that if he wishes to redeem that fifth, which is now consecrated, that he must add a fifth thereof unto it.

(15) The and (we-) is interpreted as an extending particle, and therefore teaches that this fifth may be added more than once, i.e., on repeated redemption a fifth of the added fifth is required.

(16) Hence hekdesh too may require many fifths.

(17) On the plural form v. 322, nn. 5' 10. It is one of the principles of exegesis that a letter may be taken from one word and added to another, and interpreted in the transposed form. Such removal and addition is permissible only at the beginning or end of a word, hut not in the middle; so here יסף חמישיתיו (חמישיתיו)ין ויסף חמישיתו

(18) I.e., sing., יסף חמישיתו ין ויסף חמישית thus giving no hint that a second fifth may be required. Though the insertion of the waw in the middle of the word would turn it into plural viz., חמישיות 'fifths', such insertion is not permissible, as stated on previous note.

(19) This fifth is not the object originally dedicated, but a substitute for it through redemption, the second hekdesh. According to R. Joshua b. Levi's dictum, which is deduced from Scripture further on, hence authentic, no addition is necessary when redeeming the substitute; so that even if he redeemed the principal with which the original hekdesh had been redeemed, no fifth thereof would be necessary: surely then no fifth of the fifth is required!

(20) And not as a substitute at all. Thus: the original is redeemed at par, and that principal ranks as a substitute. The added fifth, however, is not a substitute, but in the nature of money now consecrated for the first time in obedience to the Scriptural law that when one redeems hekdesh he must consecrate something (viz., a fifth) in addition. Hence, though no fifth is added when the principal is redeemed, it may be necessary for the fifth.

(21) Lit., 'the money of his estimation'.

(22) In point of fact the analogy appears defective, since a fifth is not added when the assessed value is itself redeemed, as has just been stated. But the argument is somewhat like this: the fifth is regarded in exactly the same light as the principal assessment: just as when the principal assessment is made, a fifth is to be added, so is a fifth of the fifth to be added likewise, and that is possible only in another redemption (Strashun, a. l.)

(23) Lit., 'who caused to seize,' i.e., who by means of redemption transferred sanctity from one object to another. The deduction is that a fifth is to be added only in the case of that which was sanctified itself, but not for that which received its sanctity through redemption.

(24) I.e., if an unclean animal was consecrated. The E.V. is 'and if it be of an unclean beast,' the def. art. being understood generically. But as the Talmud bases a particular conclusion upon it (55a), the literal translation has been given here.

(25) Ibid. 27.

(26) Its sanctity was not received through transference from another animal. The Talmud objects further on that it is possible for an unclean beast to possess transferred sanctity.

(27) I.e., its value goes entirely to the Temple, and nothing to the owner. But a clean animal is sacrificed, and the owner enjoys a portion thereof.

(28) It is now assumed that this means that if one makes use of it he must bring a trespass offering, just as for benefiting from any other form of hekdesh.

(29) קדשים קלים Sacrifices are divided into two grades of sanctity, the higher, which includes the burnt offering and sin offering, and the secondary or lower, e.g., the peace offering and thanks offering.

(30) The fat of these lower grade sacrifices was burnt on the altar, the breast and shoulder were the priests portions, and the rest was consumed by the owner.

(31) For the term 'final hekdesh' v.n.5. Surely 'final hekdesh' too involves trespass!

(32) By 'trespass', not the trespass offering for making use of hekdesh is meant, but the fifth which must be added on redemption, the fifth being called 'trespass' because there too (sc. when hekdesh is secularly used) a fifth must be added,

as stated above, Lev. XXII, 14; thus he asked the Tanna whether he meant that no fifth was to be added in redeeming substitute hekdesh.

Talmud - Mas. Baba Metzia 55a

but not of intermediary hekdesh![1] — He replied, Because it is incapable of final hekdesh.[2] But R. Aha of Difti objected to Rabina: Yet it is capable of 'intermediary hekdesh:' then let a fifth be added too![3] — He replied: It is as final hekdesh: just as a fifth is not added for final hekdesh,[4] so for intermediary hekdesh no fifth is added. R. Zutra, son of R. Mari, said to Rabina: On what grounds[5] do you liken it to final hekdesh? Liken it [rather] to original hekdesh! — He replied: It is logical to liken it to final hekdesh, since thereby transferred [sanctity is deduced] from transferred [sanctity]. On the contrary, it should rather be compared with original hekdesh, [deducing] that which may be followed by sanctity from that which may be followed by sanctity![6] — It is as Raba said, [viz.,] [And the fire upon the altar shall be burning in it; it shall not be put out: and the priest shall burn wood on it every morning, and lay] the burnt offering [in order upon it; and he shall burn thereon the fat of the peace offering][7] implies 'the first burnt offering;[8] so here too, [and if it be of] the unclean [beast] denotes the first uncleanliness [to which it may be subject].[9]

It has been taught in accordance with R. Joshua b. Levi: [If one declared,] 'This cow is a substitute for this cow of hekdesh';[10] 'this garment be instead of this other garment of hekdesh', his consecrated object is redeemed, whilst hekdesh has the upper hand.[11] [Even if he declares,] 'This cow, which is worth five sela's be a substitute for this other cow of hekdesh', or 'this garment, worth five sela's, be instead of this other garment of hekdesh', his consecrated object is redeemed.[12] For the first hekdesh he must add a fifth, but not for the second.[13]

MISHNAH. OVERREACHING IS CONSTITUTED BY FOUR SILVER [MA'AHS].[14] THE [MINIMUM] CLAIM IS TWO SILVER [MA'AHS],[15] AND ADMISSION IS [AT LEAST] THE VALUE OF A PERUTAH.'[16] A PERUTAH WAS SPECIFIED IN FIVE INSTANCES: [i] ADMISSION MUST BE [AT LEAST] THE EQUIVALENT OF A PERUTAH; [ii] A WOMAN IS BETROTHED BY THE VALUE OF A PERUTAH;[17] [iii] HE WHO BENEFITS FROM HEKDESH TO THE VALUE OF A PERUTAH IS LIABLE TO A TRESPASS OFFERING; [iv] HE WHO FINDS [AN ARTICLE] WORTH A PERUTAH IS BOUND TO PROCLAIM IT, AND [v] HE WHO ROBS HIS NEIGHBOUR OF THE VALUE OF A PERUTAH AND SWEARS [FALSELY] TO HIM [CONCERNING IT],[18] MUST FOLLOW HIM TO RETURN IT[19] EVEN AS FAR AS MEDIA.[20]

GEMARA. But we have already learnt it once: fraud is constituted by [an overcharge of] four silver [ma'ahs] in twenty four, which is a sela', [hence] a sixth of the purchase![21] — He [the Tanna] desires [to state], THE [MINIMUM] CLAIM IS TWO SILVER [MA'AHs], AND ADMISSION IS [AT LEAST] THE VALUE OF A PERUTAH.[22] But that too we have [already] learnt: The judicial oath is [imposed] for a claim of two silver [ma'ahs] and an admission of a perutah! — The last clause is necessary, viz., A PERUTAH IS SPECIFIED IN FIVE INSTANCES.

A PERUTAH IS SPECIFIED IN FIVE INSTANCES etc. But let him [the Tanna] teach also, [The minimum] overreaching is a perutah![23] — Said R. Kahana: This proves that the law of overreaching does not apply to perutahs.[24] But Levi maintained: The law of overreaching does apply to perutahs. And thus did Levi read in his Baraitha [collection]:[25] A perutah was specified in five instances: [i] [Minimum] overreaching is a perutah; [ii] Admission is a perutah; [iii] The kiddushin of a woman is with a perutah; [iv] Robbery [imposes its obligations] on account of a perutah; and [v] The court session is on account of a perutah.[26] Now, why does our Tanna not include the court session? — He includes it under robbery.[27] Yet does he not teach both robbery and loss?[28] — Those are [both] necessary. 'Robbery', [to teach that] HE WHO ROBS HIS NEIGHBOUR OF THE VALUE OF A

PERUTAH AND SWEARS [FALSELY] TO HIM [CONCERNING IT], MUST FOLLOW HIM TO RETURN IT EVEN AS FAR AS MEDIA 'A loss:' [thus] HE WHO FINDS [AN ARTICLE] WORTH A PERUTAH IS BOUND TO PROCLAIM IT, even if it depreciated [after being found].[29] Now, why does Levi not teach that a loss [in the sense of the Mishnah] is [at least] a perutah? — He teaches robbery. But does he not teach both robbery and the court session?[30] — He needs [to teach that] in order to reject the view of R. Kattina, who said, The court sits[31] even for less than a perutah's worth. Now, why does Levi omit hekdesh? — He deals with hullin, not sacred objects. Then since our Tanna does treat of sacred objects, let him teach, The [minimum of second] tithe [to be eligible for redemption] is a perutah.[32] — [The omission is] in accordance with the view that if its fifth is less than a perutah [it cannot be redeemed]. Then let him state, The [added] fifth of the [second] tithe must be [not less than] a perutah. — He treats of principals, not fifths.[33]

The [above text] states: 'R. Kattina said: The court sits even for less than a perutah's worth.' Raba objected: And he shall make amends for the harm that he hath done in the holy thing:[34]

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(1) Three categories are distinguished: (i) original hekdesh, i.e., that which is itself consecrated in the first place, though it cannot be directly employed in the temple; (ii) intermediary hekdesh, viz., that which is consecrated instead of another, which required redemption — referred to above as 'transferred hekdesh;' (iii) 'final hekdesh,' that which is itself finally used as hekdesh, e.g., a clean beast, which is sacrificed, or a wood beam, which, if dedicated to Temple use, may be directly built into the Temple or similarly employed. — Now, R. Ashi observes that an unclean animal is capable of this intermediary or transferred sanctity, viz., if it is substituted for another. Another two expressions are used in this discussion, viz., 'first hekdesh' and 'second hekdesh.' 'First hekdesh' would appear to be synonymous with 'original hekdesh;' 'second hekdesh,' like 'intermediary hekdesh,' refers to transferred sanctity, but whereas the latter term is used in contrast to 'final hekdesh' to denote that which cannot itself be finally employed as hekdesh, 'second hekdesh' refers to that which can be finally used so.

(2) It cannot be used itself as hekdesh, not being eligible for the altar, nor can it be built into the Temple.

(3) If this unclean animal is redeemed as intermediary hekdesh.

(4) Since there is no fifth for final hekdesh, in accordance with the teaching reported by the tanna, apart from the fact that there can be no room for the addition of a fifth, since it is finally disposed of as hekdesh and not redeemed.

(5) Lit., 'what do you see?'

(6) 'Original' and 'intermediary' hekdesh, (v. p, 325, n. 5), can be redeemed and thus 'followed' by the sanctity of the article wherewith it is redeemed. But this of course cannot apply to 'final' hekdesh.

(7) Lev. VI, 5.

(8) The definite article points to some particular sacrifice, and Raba observes that it denotes that the first, i.e., the burnt offering, must be the first thing to ascend the altar every day, and nothing else may take precedence over it. Tosaf. offers some other explanations.

(9) I.e., that it applies to original hekdesh only.

(10) [E.g., where the originally consecrated cow was dedicated for temple repairs, no redemption being possible in the case of a clean animal dedicated as an offering; cf. Lev. XXVI, 10; v. Tosaf.]

(11) If hekdesh is redeemed by an object of far less value than itself, the redemption is valid and the consecrated article loses its sanctity; nevertheless, the treasurers collect its full value. On the other hand, if the object substituted is worth more, there is no refund. So here too, if the second cow or garment is worth less than the original, the deficiency must be made good, whilst if it exceeds it, hekdesh gains. This is the meaning of 'hekdesh has the upper hand.' — In this clause, no actual value is ascribed to the substitute.

(12) Though he ascribes a certain value to the substitute, which it lacks. I might have thought that his declaration is therefore invalid, since it contains a misstatement. We are therefore taught otherwise.

(13) Should he desire to redeem the substitute, which is now sanctified in its turn, no addition is required. This agrees with R. Joshua b. Levi.

(14) In a purchase worth a sela', i.e., a sixth, v. p. 295, n. 10.

(15) This is the smallest claim which can involve the imposition of an oath.

(16) As stated supra 3a, no oath is required by Biblical law unless part of one's claim is admitted. This admission must be for at least a perutah or its equivalent.

(17) The smallest sum of money or its equivalent whereby a woman can be betrothed is a perutah.
(18) Denying the theft.
(19) Lit., 'must carry it after him.'
(20) If he repents, he does not obtain forgiveness unless he returns it to him personally, and he must go even so far.
(21) Supra 49b.
(22) V. p. 327, n. 5.
(23) That if the overreaching is less there is neither compensation nor cancellation of the sale.
(24) Which are copper coins. I.e., the minimum sum to which it applies is an issar, which is a silver coin.
(25) [Levi had a compilation of Baraithas similar to that of R. Hiyya and R. Hoshaia, v. B.B. (Sonc. ed.) p. 216, n. 5.]
(26) If liability is admitted or proved by witnesses, yet payment is refused, a court session orders measures of compulsion against the recalcitrant debtor. The smallest sum to be involved for this step to be taken is a perutah.
(27) For the same principle operates in both.
(28) HE WHO FINDS AN ARTICLE WORTH A PERUTAH IS BOUND TO PROCLAIM IT. The principles here too are identical, viz., that perutah is 'money', to the return of which the owner has a right, even if it involves considerable trouble. (9)Thus apart from the fact that the minimum which constitutes robbery is perutah, we are further informed that even such a small sum must be returned to the robbed man personally, though the expenses of such return far exceed the actual sum involved.
(29) So that by the time it is announced it is not worth a perutah; yet the announcement must be made.
(30) And in both these cases too the same principle is at stake.
(31) Lit., 'meets'.
(32) But a lesser quantity must be consumed in Jerusalem.
(33) In all cases stated in the Mishnah the principal itself must be not less than a perutah.
(34) Lev. V, 16.

Talmud - Mas. Baba Metzia 55b

this ['and'] extends the law of restoration even to less than a perutah's worth. Thus, it applies to hekdesh, but not to hullin![1] — But if stated, it was stated thus: R. Kattina said, if the court met for [a claim of] the equivalent of a perutah, they conclude [the hearing] even for less,[2] [because] at the beginning of a trial a perutah must be involved, but at the end a [claim of a] perutah is unnecessary.

MISHNAH. [THE ADDITION OF] A FIFTH [TO THE PRINCIPAL] IS PRESCRIBED IN FIVE CASES: [i] ONE WHO EATS TERUMAH, THE TERUMAH OF THE TITHE,[3] THE TERUMAH OF THE TITHE OF DEMAI, HALLAH,[4] AND THE FIRST FRUITS,[5] MUST ADD A FIFTH;[6] [ii] HE WHO REDEEMS THE FOURTH YEAR PLANTING[7] AND HIS OWN SECOND TITHE[8] ADDS A FIFTH; [iii] HE WHO REDEEMS HIS SACRED OBJECTS[9] ADDS A FIFTH; [iv] HE WHO BENEFITS FROM HEKDESH TO THE VALUE OF A PERUTAH ADDS A FIFTH;[10] AND [V] HE WHO ROBS HIS NEIGHBOUR OF A PERUTAH'S WORTH AND SWEARS [FALSELY] TO HIM [CONCERNING IT] MUST ADD A FIFTH.

GEMARA. Raba said: The terumah of the tithe of demai presented a difficulty to R. Eleazar: Did then the Sages set up protective measures for their enactments as for those of the Torah?[11] — Said R. Nahman in Samuel's name: The author of this [Mishnah] is R. Meir, who maintained: The Sages did set up protective measures for their enactments as for those of the Torah. For it has been taught: If one brought a divorce from countries overseas and delivered it to her [the wife] without declaring, 'It was written in my presence and signed in my presence,' he [her next husband] must divorce her [too], and their offspring is a bastard: this is R. Meir's view. But the Sages Say: Their offspring is not a bastard. What then shall he [the messenger] do? He must take it [the divorce] back from her, give it to her again in the presence of two witnesses and declare, 'It was written in my presence and signed in presence.'[12] But according to R. Meir, [merely] because he did not declare to her, 'It was written in my presence and signed in my presence,' he must divorce her, and the child is a bastard! — Even so: R. Meir is consistent with his view. For R. Hamnuna said on 'Ulla's authority: R. Meir used to

say, Whenever one departs from the fixed procedure ordained by the Sages[13] in case of divorce, he [her next husband] must give a divorce, whilst the offspring is a bastard.

R. Shesheth objected: It [sc. the second tithe demai] is redeemed [by exchanging] silver for silver, copper for copper, silver for copper and copper for produce;[14] then he may redeem the produce: this is R. Meir's opinion. But the Sages say: He must carry the produce to Jerusalem and eat it there.[15] Now, is it permissible to redeem silver with copper?[16] Surely we learnt: If a sela' of the second tithe was intermixed with one of hullin,[17] he brings a sela''s worth of copper coins and declares: 'Wherever the sela' of the second tithe may be, it is redeemed with these coins.' Then he selects the best of them[18] and redeems them [the copper coins] therewith;[19]

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(1) I.e., no legal compulsion can be exerted to effect the restoration of something worth less than a perutah in the case of hullin; this follows from the fact that the Baraitha deduces the necessity of such restoration only in the case of sacred objects.

(2) If the claim of the plaintiff was reduced in the course of the trial.

(3) V. p. 293, n. 8.

(4) V. Glos.

(5) Which was to be given to the priest.

(6) If he eats any of these in ignorance of their true nature. These count as one, 'terumah' being a generic designation for all.

(7) When trees were planted, their fruit was forbidden during the first three years. The produce of the fourth was permitted, but on the same terms as the second tithe, viz., it either had to be taken to Jerusalem for consumption or redeemed without Jerusalem and the money expended there; v. Lev. XIX, 24ff.

(8) On 'his own' v. supra, p. 272 n. 9.

(9) Here too 'his' is emphatic.

(10) Lev. V, 16.

(11) By ruling that one who eats the terumah of the tithe of demai must make restitution and add a fifth, though the law of demai is altogether only Rabbinical.

(12) It was a Rabbinic law that when a divorce was brought from overseas the messenger had to make this declaration, though by Biblical law this is unnecessary. We see from the above that in R. Meir's opinion the Sages enacted their laws with such stringency that if this formality was omitted the divorcee's subsequent marriage is null, even to the extent that the offspring is a bastard, as the child of a married woman who conceived in adultery.

(13) Lit., 'from the coin struck by the Sages.'

(14) In each case the former of the pair is redeemed by the latter. Hence the last clause means that in the case of demai copper coins may be redeemed outside Jerusalem by substituting produce (not of the second tithe) for them, which produce in turn becomes sanctified.

(15) Dem. II, 6. The translation follows Tosaf. R. Meir permits the produce to be redeemed, though that itself was formerly employed for redeeming the money; whilst the Sages maintain that in these circumstances the produce itself must be taken to Jerusalem. Hence R. Meir is more lenient here in respect to demai than the Sages, which contradicts Samuel's assertion above that in this R. Meir is particularly stringent (more so than the Rabbis).

(16) According to Tosaf., this is adduced to shew further that R. Meir is more lenient than the Sages. In Rashi's view, however, this is part of the reasoning leading up to R. Shesheth's objection.

(17) And the owner wishes to spend the hullin money outside of Jerusalem.

(18) I.e., the best sela' of the two; these are now both hullin.

(19) With the finer sela' which now becomes second tithe.

Talmud - Mas. Baba Metzia 56a

because It was said, It [sc. the second tithe] may be redeemed [by substituting] copper for silver in case of emergency; not, however, that it should remain so, but that it should itself be redeemed in turn with silver.[1] Thus it is nevertheless stated that it [silver] may be exchanged in case of emergency, proving that only in an emergency is it done, but not otherwise![2] — R. Joseph replied:

Though R. Meir is more lenient in regard to its redemption, he is stricter in regard to the eating thereof.[3] For it has been taught: Only the wholesaler was permitted to sell demai,[4] but a private individual must tithe it in all cases:[5] this is R. Meir's view. But the Sages say: Both a wholesaler and a private individual may sell or send [produce] to his neighbour or give it to him as a gift without fear.[6] Rabina raised an objection: If one buys [loaves] from a baker,[7] he may tithe from the freshly baked for the stale, and vice versa, and even if they are of many moulds:[8] this is R. Meir's view.[9] Now, as for [giving tithe] from the stale [loaves] for the freshly baked, that is well, being in accordance with R. Elai. For R. Elai said: Whence do we know that if one separates [terumah] from inferior for better [produce] the terumah is terumah?[10] — Because it is written. And ye shall bear no sin by reason of it, when ye have heaved from it the best of it.[11] Now, if it is not sanctified,[12] why should one bear sin? Hence it follows that if one separates [terumah] from inferior [produce] for better, the terumah is terumah. But [when you say,] even if they are of many moulds, let us fear lest he come to separate from what is liable for what is [now] exempt,[13] and vice versa![14] — Said Abaye: R. Eleazar was right in his objection,[15] but Samuel did not answer it correctly. For R. Eleazar's difficulty referred to [a law involving] death at the hands of Heaven; whilst Samuel answered him [from a case involving] death by the Court: the latter may be different, since it is severer.[16] Again, R. Shesheth's refutation was not well grounded, for he [Samuel] referred to a law involving death, whilst R. Shesheth raised an objection from what is merely a negative injunction, for it is written, Thou mayest not eat within thy gates [the tithe of thy corn etc.].[17] Yet the objection R. Shesheth does raise is well answered by R. Joseph. But as for Rabina, instead of raising an objection from a baker, let him support him from the case of a wholesale bread merchant. For we learnt: If one buys [bread] from a breadseller,[18] he must give tithes on [the loaves of] each mould separately: this is R. Meir's view.[19] What then must you answer?[20] A breadseller buys from two or three. Hence in the case of a baker too, [you must say that] he buys from one man [only].[21] Raba said: Samuel answered well: The designation of death exists.[22] MISHNAH. THE FOLLOWING ARE NOT SUBJECT TO [THE LAW OF] OVERREACHING: [THE PURCHASE OF] SLAVES, BILLS,[23] REAL ESTATE AND SACRED OBJECTS.[24] THERE IS NEITHER DOUBLE REPAYMENT NOR FOURFOLD AND FIVEFOLD REPAYMENT IN THEIR CASE.[25] A GRATUITOUS BAILEE DOES NOT SWEAR [ON THEIR ACCOUNT], NOR DOES A PAID BAILEE[26] MAKE IT GOOD.[27] R. SIMEON SAID:

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(1) M.Sh. II, 6. This states the reason of this cumbersome procedure. For one might have thought a much simpler procedure possible, viz., one of the sela's could be taken and the following declaration made: 'If this is the second tithe sela', it is well; but if not, let this redeem the other.' — Therefore the Mishnah states that even the substitution of copper coin for silver was permitted only in an emergency, but silver can in no circumstance be used for redeeming other silver, since it cannot be regarded as substitution when both are of the same metal. Nevertheless, it was not desirable that the second tithe should remain in the form of copper, because it was liable to corrosion, and moreover, silver was a more dignified and worthier form of exchange than copper. Therefore the copper coins had to be redeemed in turn with the best of the two sela's.

(2) Whereas in the case of demai it was stated on R. Meir's authority that even silver may be freely employed in redeeming silver and copper may redeem silver even without any emergency, thus proving that demai is treated more leniently than certain tithe. This contradicts R. Meir's previous statement that demai was enacted with the same stringency as certain tithe. Though, of course, a Mishnah cannot be employed to prove R. Meir wrong, since R. Meir, as a Tanna, could disagree, the point here is that this Mishnah is anonymous, and it is a Talmudic principle (Sanh. 86a) that an anonymous Mishnah agrees with R. Meir. — Rashi. For Tosaf.'s interpretation, which differs considerably from this, v. p. 331, nn. 2, 3.

(3) Either he is stricter than the Rabbis (Tosaf.); or he is as strict in regard to demai as in respect of certain tithe. — Our Mishnah treats of the eating thereof.

(4) Without first tithing it, for since it is known that a wholesaler buys from many people, including those who are lax in tithing, no person who is particular will eat of what the wholesaler sells without first tithing it. But a retailer must tithe demai before he sells it.

(5) If a private individual buys produce from an ignorant person, who is suspected of neglecting to tithe, and then resells, he must first tithe it, whether he sells large quantities, like a wholesaler, or small, like a retailer, because it will be

assumed that he has in fact tithed it.
(6) I.e., in large measure, because it is a general presumption that whenever corn is sold or given in large quantities it has not been tithed; therefore we have no fear that the recipient will omit to tithe it. This dispute shews that in respect to the actual tithing, i.e., the eating of demai, R. Meir is more stringent than the Rabbis.
(7) The baker referred to is an 'am-ha-aretz (q.v. Glos.) suspected of omitting the necessary tithes.
(8) It is a principle that one may separate tithe from one lot of commodities for another, but only when both are liable. Now, as the bread is of different moulds, it might be suggested that the baker bought the wheat from which he made his bread from different merchants, some of whom may have tithed their wheat whilst others had not, and it is forbidden to separate tithe from bread (or corn) already tithed for untithed produce. Nevertheless, since the tithe of demai is Rabbinical only, we assume that the baker had purchased all his wheat from the same merchant, and therefore they had been either all tithed or all untithed.
(9) Dem. v, 3.
(10) I.e., that the separation is valid.
(11) Num. XVIII, 32. This implies that one bears sin if he does not heave — i.e., separate — terumah from the best.
(12) When one separates terumah from inferior grain.
(13) Having been tithed already.
(14) V. note 2. Since this fear is not entertained, it follows that even R. Meir did not hold that the law of demai was enacted with the same stringency as Biblical tithes.
(15) v. supra 53b, the beginning of the Gemara immediately after the Mishnah.
(16) R. Eleazar objected to the law of the Mishnah that a fifth must be added in making restoration for the terumah of the tithe of demai, just as though it were Biblical. Now, even Biblical terumah is forbidden to a zar only on pain of death at the hand of Heaven, yet Samuel in his answer draws an analogy with divorce; but adultery, which ensues if an invalid divorce is pronounced valid, is punishable by death imposed by court; hence it is natural that every Rabbinical enactment in reference to divorce should have been given the same strictness as a Biblical requirement. But the same does not necessarily follow in the case of terumah.
(17) Deut. XII, 17. This is interpreted as referring to improperly redeemed tithes, such as with coins that may not be employed for the purpose, as appears in the discussion above. Now, whereas Samuel's assertion that the Rabbis enacted protective measures for their own enactments referred to a zar's eating the terumah of the tithe of demai, which, as already stated, involves death at the hands of Heaven, R. Shesheth objected to it on the grounds that in the case of redemption this is not so. But improper redemption is forbidden only by a negative injunction; therefore it is natural that a Rabbinical enactment in reference thereto should not be as strict as one In reference to the former law.
(18) Dem. v, 4. An am-ha-aretz (v. p. 333, n. 1), who buys bread from various bakers, which he in turn retails.
(19) Thus proving that R. Meir does fear lest one tithe from what is exempt for what is liable, though the law of demai is only Rabbinical, in agreement with Samuel's answer that Rabbinical measures, in R. Meir's opinion, were enacted with the same strictness as Biblical.
(20) Why does R. Meir draw a distinction between a baker and a breadseller?
(21) The use of 'too' is thus meant; just as one is bound to find a reason for his ruling on a breadseller, so can one also reconcile his ruling on a baker.
(22) Lit., 'is in the world.' I.e., in both cases there is a death penalty, and the fact that one is at the hand of Heaven only whilst the other is imposed by court does not vitiate the argument.
(23) Bills of debt which are purchased at a reduced price, the purchaser then collecting the debts for himself.
(24) Which the Temple treasurer sells on behalf of the Treasury; or when a private individual sells an animal dedicated as a sacrifice but rendered unfit by a blemish.
(25) The penalties in case of theft, cf. Ex. XXII, 3; XXI, 37. These penalties did not apply if the stolen property was hekdesh.
(26) Lit., 'one who receives payment.
(27) In ordinary cases, if a bailment is stolen, the bailee, if gratuitous, swears that it was stolen through no negligence of his own, and is free from further responsibility; whilst a paid bailee is liable for theft. This however, is not so in the case of hekdesh.

Talmud - Mas. Baba Metzia 56b

SACRIFICES[1] FOR WHICH ONE [THE OWNER] BEARS RESPONSIBILITY ARE SUBJECT TO [THE LAW OF] OVERREACHING; THOSE FOR WHICH ONE BEARS NO RESPONSIBILITY ARE NOT SUBJECT THERETO.[2] R. JUDAH SAID: ALSO WHEN ONE SELLS A SCROLL OF THE TORAH, AN ANIMAL, OR A PEARL, THERE IS NO LAW OF OVERREACHING. THEREUPON THEY [SC. THE SAGES] SAID TO HIM: IT [THE LAW OF OVERREACHING] WAS ENACTED ONLY IN REFERENCE TO THESE.[3]

GEMARA. How do we know this? — For our Rabbis taught: And if thou sell a sale unto thy neighbour, or acquirest aught of thy neighbor's hand[4] — this applies to that which is 'acquired' [by being passed] from hand to hand, thus excluding land, which is not movable;[5] slaves, which are assimilated to landed estates;[6] and bills, for it is written, 'And if thou sell a sale,' implying, that which is intrinsically sold and intrinsically bought, excluding bills which are not intrinsically sold or bought, and exist only as evidence.[7] Hence it was said: If one sells his bills to a perfume dealer[8] they are subject to the law of overreaching. But surely that is obvious! — It is to reject R. Kahana's view, that overreaching does not apply to [a purchase involving only] perutahs; therefore we are taught that overreaching does apply to perutahs.[9]

SACRED OBJECTS-Scripture saith, One man shall not defraud his brother:[10] his brother, but not hekdesh.

Rabbah b. Mammel objected: Wherever 'his hand' is written, is it then literal! If so, when it is stated, And he took all his land out of his hand,[11] does that too mean that he held all his land in his hand! But it must mean, out of his possession, so here too, it means out of his possession! — Then wherever 'his hand' is written, is it not literal? But it has been taught: If the theft be certainly found in his hand [. . . he shall restore double].[12] From this I know [the law] only [if it is found] in his hand: whence do I know it of his roof, courtyard, or enclosure? From the phrase, If it certainly be found, implying in all circumstances. Hence this is only because the Divine Law wrote, 'If it certainly be found;' but otherwise I would have said that wherever 'his hand' is written, 'hand' is meant literally. Again, it has been taught: [Then let him write her a bill of divorcement] and he shall give it in her hand.[13] Thus I know only [that he can place it in] her hand; whence do I know it of her roof, court, or enclosure? Because it is written, and he shall give it, implying, in any manner.[14] Hence this is only because Scripture wrote 'and he shall give it'; but otherwise I would have said that wherever Scripture writes 'hand' it is meant literally! — But [in truth] 'his hand' is always meant literally; there, however,[15] it is different, because it cannot possibly be translated thus, but [must mean] 'his possession.'[16]

R. Zera propounded: Does the law of overreaching apply to hiring or not? The Divine Law said, '[and if thou sell] a sale', implying but not hire; or perhaps there is no difference? — Said Abaye: is it then written, a permanent sale? An undefined 'sale' is stated, and this too[17] for its day is a sale.[18]

Raba propounded: [What of] wheat which was sown in the soil:[19] does the law of overreaching apply thereto or not? Is it just as though he had placed it in a pitcher, hence subject to the law of overreaching: or perhaps he has assimilated it[20] to the soil?[21] [But] what are the circumstances? Shall we say that he declared, 'I cast six [measures] therein'; and then witnesses came and testified that he sowed five only? But Raba[22] said: [On account of] any fraud[23] in measure, weight or number, even if less than the standard of overreaching, one can withdraw![24] -But [the question arises] where he declared, 'I cast as much into it as was necessary; whilst it was subsequently revealed that he had not sown with it as much as was required: is it subject to the law of overreaching or not? Is it as though he had placed it in a pitcher, and hence subject to overreaching; or perhaps he assimilated it to the soil? Further, is an oath taken concerning it or not?[25] Is it as though he had placed it [the seed] in a pitcher, and therefore an oath must be taken; or perhaps, he assimilated it to the soil, and so no oath is taken?[26] [Again,] does the 'omer[27] permit it [for food] or not?[28] But how is this meant? If it

took root, then we have learnt it; and if not, we have also learnt it. For we learnt: If they [the seeds] took root before the [bringing of the] ‘omer, the ‘omer permits them;[29] if not, they are forbidden until the bringing of the next ‘omer![30] — This arises only if he reaped and resowed it before the ‘omer,[31] then the ‘omer came and went,[32] whilst it did not take root before the [bringing of the] ‘omer.

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(1) Lit., ‘sacred objects.’

(2) If one declares, ‘Behold, I vow to offer a sacrifice’, and then dedicates an animal in fulfilment of his vow, he is responsible for it, and should it receive a blemish or be stolen he must replace it by another, since his vow did not specify that particular animal. R. Simeon therefore regards it as his, i.e., secular property, hence subject to the law of overreaching. But if he declares, ‘I vow to sacrifice this animal,’ and it is subsequently lost or stolen, he has no further responsibility in the matter. Consequently it is already sacred property, and as such not subject to the law of overreaching.

(3) This is explained in the Gemara.

(4) Lev. XXV, 14.

(5) And therefore incapable of being passed from hand to hand.

(6) V. p. 342, n. 4.

(7) Of a loan.

(8) For use as wrappers, stoppers, etc., I.e., for the value of the paper.

(9) For normally the value of the paper of a person's bills could only be a matter of perutahs, and would not amount to an issar.

(10) Ibid. 14: this is the literal translation.

(11) Num. XXI, 26.

(12) Ex. XXII, 3.

(13) Deut. XXIV, 1.

(14) V. supra p. 56 and notes.

(15) Sc. the verse quoted by Rabbah b. Mammel.

(16) I.e., ‘hand’ is always to be interpreted literally, save where the context forbids it.

(17) Sc. hiring.

(18) I.e., hiring an article is the equivalent of a temporary sale, and therefore subject to the law of fraud.

(19) A man was engaged to sow a field with wheat, the wheat being his (the employee's).

(20) Lit., ‘made it as nought.’

(21) And as the law of fraud does not apply to the soil, it neither applies to the wheat.

(22) In Kid. 42b the reading is ‘Rabbah.’

(23) Lit., ‘thing’.

(24) If the goods are not as specified, being short in measure, weight, or number, one can withdraw. It is unnecessary that the fraud shall he a sixth, for a sixth is required only when the goods are as specified. Otherwise it is altogether an erroneous bargain, and hence revocable. This being so, it will obviously apply to real estate too, so that even if the wheat be accounted part of the soil, the vendee can insist upon compensation or revoke the sale.

(25) E.g., if A maintained that B had undertaken to sow his soil with six measures of grain, with which he had supplied him, but had only used five, whilst B pleaded that he had used five and a half.

(26) No oath is imposed for a claim of land.

(27) V. Glos.

(28) The produce of each year was not permitted for food until the ‘omer (sheaf of corn) was brought to the Temple and waved before the Lord. (Lev. XXIII, 10-14); until then it was called hadash, ‘new.’

(29) The resultant crop, though maturing after the ‘omer, is nevertheless permitted for use.

(30) Men. 70a .

(31) I.e., he resowed that years grain, the ‘new’ crop, before the ‘omer. Had he not resown it, the ‘omer of course would have permitted it.

(32) The ‘omer was brought, and its time — the sixteenth of Nissan passed by.

Now, may one remove and eat it? Is it as though lying in a pitcher, and therefore made permissible by the ‘omer; or perhaps, he assimilated it to the soil?[1] The question stands.

Raba said in R. Hasa's name: R. Ammi propounded: Now these[2] are not subject to the law of overreaching. But are they subject to cancellation of sale or not?[3] — Said R. Nahman: R. Hasa subsequently said that R. Ammi solved it [thus:] They are not subject to the law overreaching, but are subject to cancellation of sale.

Now, R. Jonah said [the following] in respect to sacred objects, whilst R. Jeremiah said [it] in respect to real estate, both in R. Johanan's name, viz.: The law of overreaching does not apply thereto, but cancellation of sale does. He who said this in reference to sacred objects, would certainly [say it] in reference to real estate [too].[4] But he who referred this to land, would not [admit] sacred objects too, in accordance with Samuel. For Samuel said: If hekdesh worth a maneh was redeemed with the equivalent of a perutah, it is redeemed.[5]

We learnt elsewhere: If the consecrated [animal] was blemished, it becomes hullin, but its value must be assessed.[6] R. Johanan said: It becomes hullin by Biblical law, but its value must be assessed by Rabbinic law. But Resh Lakish maintained: That its value, must be assessed is also Biblical. What are the circumstances? Shall we say, that it is within the limit of overreaching?[7] In such a case, could Resh Lakish maintain that its value is assessed by Biblical law? Did we not learn, THE FOLLOWING ARE NOT SUBJECT TO [THE LAW OF] OVERREACHING: [THE PURCHASE OF] SLAVES, BILLS, REAL ESTATE AND SACRED OBJECTS? But if it refers to [a difference involving] cancellation of sale — could R. Johanan in that case say that its value must be made up by Rabbinical law [only]? Did not R. Jonah say in respect to sacred objects, and R. Jeremiah say in reference to real estate, yet both in R. Johanan's name: The law of overreaching does not apply thereto, but cancellation of sale does![8] — In truth, it refers to [a difference involving] cancellation of sale, but reverse it, [ascribing] R. Johanan's views to Resh Lakish and Resh Lakish's to R. Johanan.

Wherein do they[9] differ? — In respect to Samuel's dictum, viz., If hekdesh worth a maneh was redeemed with the equivalent of a perutah, it is redeemed. One Master[10] accepts Samuel's ruling, the other rejects it. Alternatively, all agree with Samuel; but here they differ in this: one Master maintains, [Only] if it was redeemed, but not in the first place;[11] whilst the other holds that it is permissible even at the very outset.[12] An alternative answer is this: In truth it refers to [a difference] within the limit of overreaching, and you must not reverse it. But they differ on R. Hisda's dictum, who said: What is meant by, they ARE NOT SUBJECT TO [THE LAW OF] OVERREACHING, is that they are not subject to the provisions of overreaching,

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(1) And therefore it is forbidden until the next ‘omer.

(2) That are enumerated in the Mishnah.

(3) If the fraud was more than a sixth. Though the law of overreaching in the case of a sixth, viz., that refund must be made, does not operate, yet the law of complete cancellation for more than a sixth may do.

(4) For since cancellation of sale applies to sacred objects, it proves that this does not come within the category of overreaching but of erroneous bargains. Now, if this applies to sacred objects which belong to Heaven, though technically speaking Heaven cannot err (cf. the principle of the British Constitution: The King can do no wrong), it surely holds good in respect to real estate. For since it is agreed that cancellation of sale is not the same as overreaching, we have no verse to exclude land therefrom.

(5) Thus in his opinion there can be no question of cancellation in respect of hekdesh: but v. infra.

(6) The first clause states that if a substitute is offered for an unblemished animal the latter retains its sanctity, because an unblemished animal cannot be redeemed. But if it was blemished, it becomes hullin, i.e., loses its sanctity, which the substitute assumes. Nevertheless, if the latter is not worth as much as the original it must be made up in money, which becomes hekdesh too. Tem. 27b.

(7) The substitute is worth less than the original only by an amount that constitutes overreaching, not cancellation.

(8) And this implies by Biblical law. Hence according to R. Jonah, R. Johanan is self-contradictory.

(9) R. Johanan and Resh Lakish.

(10) The one who holds that hekdesh is not subject even to cancellation of sale.

(11) And this is Biblical law, for when Scripture writes, then he shall redeem it according to thine estimation (Lev. XXVII, 27), it implies at its full value. Therefore, if redeemed with less, the deficiency must be made good.

(12) 'According to thine estimation' in his opinion means any value arbitrarily set upon it. Nevertheless, in order to safeguard the Temple treasury from loss, the Rabbis ordered the deficiency to be made good.

Talmud - Mas. Baba Metzia 57b

viz., that even less than the standard of overreaching [a sixth] is returnable.[1]

An objection is raised: [The prohibitions of] usury and overreaching apply to a layman, but not to hekdesh? — Is this then stronger than our Mishnah, which we interpreted as referring to the provisions of overreaching! So here too, [the prohibition of] usury and the provisions of overreaching apply to a layman, but not hekdesh.[2] If so, how can the second clause state, In this respect the case of a layman is more stringent than that of hekdesh?[3] — That refers to usury. Then it should also teach: In this respect the case of hekdesh is more stringent than that of a layman, viz., overreaching? — How compare? As for saying, 'In this respect the case of a layman is more stringent than that of hekdesh,' it is well, for there are no other [instances].[4] But [with respect to] hekdesh: is this [the only] stringency, and are there not others?[5]

How is usury by hekdesh possible? Shall we say that the treasurer [of hekdesh] lent one hundred zuz for one hundred and twenty? But he thereby committed a trespass,[6] and that being so, the money passes out into hullin and is a layman's![7] — Said R. Hoshaia: What is meant here is, e.g., if one [a layman] contracted to supply flour[8] at four se'ahs per sela', whilst it subsequently stood at three se'ahs per sela']. As we learnt: If one contracts to supply flour at four [se'ahs per sela'], and it [subsequently] stood at three, he must supply it at four; at three, and it [subsequently] stood at four, he must supply it at four, because hekdesh [always] has the upper hand.[9] R. papa said: This refers to bricks for building entrusted to the treasurer, in accordance with Samuel's dictum. For Samuel said: We build with unconsecrated material, and then consecrate it.[10]

NEITHER THERE IS DOUBLE REPAYMENT etc. Whence do we know this? — For our Rabbis taught: For all manners of trespass[11] — this is a general proposition: for ox, for ass, for sheep, for raiment[12] — this is a specialization; for every manner of lost thing which another challengeth [etc.][13] — this is another general proposition. Now, in a general proposition followed by a specialization followed again by a general proposition, you must be guided by the specialization alone: just as the specialization is clearly defined as a movable article which is intrinsically valuable, so everything movable which is intrinsically valuable [is included]; thus real estate is excluded, not being movable; slaves are excluded, being assimilated to real estate;[14] bills [too] are excluded, for though movables, they are not Intrinsically valuable. As for sacred objects, Scripture saith, [he shall pay double to] his neighbour: his neighbour, but not [to] hekdesh.

NOR FOURFOLD OR FIVEFOLD REPAYMENT etc. Why so? — The Divine Law decreed fourfold and fivefold, not threefold and fourfold repayment.[15]

[FURTHERMORE] A GRATUITOUS BAILEE DOES NOT SWEAR etc. How do we know this? — For our Rabbis taught: If a man shall deliver unto his neighbour — this is a general proposition;[16] money or stuff — that is a specialization; and it be stolen out of the man's house[17] is again a general statement: now in a general proposition followed by a specialization and again by a general proposition you must be guided by the peculiarities of the specialization. Just as the specialization is

clearly defined as something movable and of value in itself, so everything movable and intrinsically valuable [is included]. Thus real estate is excluded, not being movable; slaves are excluded, being assimilated to real estate; bills [too] are excluded, for though movables, they are not intrinsically valuable. As for sacred objects, Scripture writes, [and if a man shall deliver unto] his neighbour,[18] but not hekdesh.[19]

NOR DOES A PAID BAILEE MAKE IT GOOD [etc.]. How do we know this? — For our Rabbis taught: If a man deliver unto his neighbour[20] — that is a general proposition; an ass, or an ox, or a sheep — that is a specialization; or any beast to keep — that is again a general proposition. Now, in a general proposition followed by a specialization followed again by a general proposition you must be guided solely by the specialization. Just as the specialization is clearly defined as a movable article which is intrinsically valuable, so everything movable which is intrinsically valuable [is included]. Thus real estate is excluded, not being movable; slaves are excluded, being assimilated to real estate; bills [too] are excluded, for though movables, they are not intrinsically valuable. As for sacred objects, Scripture saith, [If a man deliver unto] his neighbour; 'his neighbour', but not hekdesh.

[FURTHERMORE,] A GRATUITOUS BAILEE DOES NOT SWEAR etc. But the following contradicts this: If townspeople sent their shekels[21] and they were stolen or lost,[22] — if [this happened] after the separation of the funds,[23]

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(1) Thus R. Johanan disagrees with this, and therefore maintains that it must he made good only by Rabbinical law; whereas Resh Lakish accepts this view.

(2) As previously explained by R. Hisda.

(3) On the contrary, hekdesh is more stringent, since even less than a sixth constitutes overreaching.

(4) [Tosaf. and MS.M. omit 'for there are no other,' since the Mishnah in fact mentions several other instances where greater stringency applies to ordinary property than to that of hekdesh; the reading and argument run accordingly as follows: 'As for saying, "In this respect the case of a layman is more stringent than that of hekdesh", it is well! But (with respect to) hekdesh, (what means) this is a stringency?' Whilst, that is to say, there is a point in informing us of any additional instance where ordinary property is treated with greater stringency than hekdesh, there is none in teaching the reverse, as it is obvious that there is greater stringency in regard to hekdesh than to ordinary property.]

(5) Hence the proposed clause is inadmissible.

(6) By giving money of hekdesh and receiving nothing in immediate return, which is forbidden. The treasurer, of course, acted in ignorance, thinking it permissible on account of the benefit to be reaped by hekdesh.

(7) V. p. 566, n. 5, hence the prohibition of usury applies to it after all.

(8) For the Temple use in meal offerings.

(9) Shek. IV, 9. The contractor received payment in advance, and fixed the price before the market price was out. Now, if the purchaser were a laymen, this would be forbidden as usury, (infra 62b); as, however, the bargain is with hekdesh, it is permitted. According to this, the passage does not refer to a loan at all.

(10) When building was necessary in the Temple, the materials were not bought with sacred funds, for this would immediately consecrate them, and the workmen by sitting on them would be trespassing. Therefore the materials were bought on credit, and paid for out of the Temple funds only when built up, whereby they became sanctified. Similarly, if one donated these building materials, he did not formally consecrate them until built in. Now, in reference to our discussion, the meaning is that the treasurer lent some of these unconsecrated materials for a higher return. No trespass is involved, since they were unconsecrated; on the other hand, since they were lent on behalf of hekdesh, the prohibition of usury does not apply.

(11) Ex. XXII, 8.

(12) Ibid.

(13) Ibid. The verse continues . . . to be his, the cause of both parties shall come before the judges; and whom the judges shall condemn, he shall pay double unto his neighbour.

(14) As it is written, And ye shall take them (sc. non-Jewish slaves) as an inheritance for your children after you, to inherit them for a possession. (Lev. XXV, 46) 'Inheritance' and 'inherit' are terms applicable to landed estate, and by

employing them for slaves Scripture assimilates slaves to real estate.

(15) For the larger includes the double repayment on account of theft. But since that double repayment does not operate here, as shewn above, one is left with a threefold and fourfold repayment, for which there is no Scriptural warrant.

(16) Implying, whatever he delivers.

(17) In Shebu. 43a 'to keep' is quoted instead of this phrase.

(18) Ex. XXII, 6.

(19) V. infra 94b, where it is stated that this passage, viz., Ex. XXII, 6-8, refers to a gratuitous bailee.

(20) Ibid. 9. V. infra 94b, where this is said to refer to a paid bailee.

(21) A capitation tax of one shekel was levied for the expenses of the communal sacrifices. Shek. 2a.

(22) From the hands of the messengers.

(23) The shekels were arranged in three baskets at different periods of the year. The translation follows Tosaf. Rashi: If the court proceedings took place after etc.

Talmud - Mas. Baba Metzia 58a

they [the messengers] swear to the treasurers.[1] But if not,[2] they must swear to the townspeople, who substitute other shekels in their stead. If they [the shekels] were [subsequently] found or returned by the thieves, both[3] are [sacred] shekels,[4] yet they are not credited to them for the following year![5] — Said Samuel: This refers to paid bailees; and they swear in order to receive their fees.[6] If so, 'they swear to the treasurers'? Surely they should swear to the townspeople![7] — Said Rabbah: [It means this:] They swear to the townspeople in the presence of the treasurers, so that they should not be suspected[8] or stigmatised as culpable negligents. But it is taught, 'and they were stolen or lost,' whereas a paid bailee is responsible for loss or theft! And here too, granted that they do not make it good,[9] yet they must surely lose their wages![10] — Rabbah replied: 'Stolen' means by armed robbers; 'lost', that their ship foundered at sea.[11]

R. Johanan said:[12] Who is the author of this? R. Simeon, who maintained: Sacred objects for which one [the owner] bears responsibility are subject to overreaching, and oaths are taken on their account.[13] Now, that is well before the dividing of the funds; but after that they [the lost shekels] are sacred objects for which no responsibility is borne [by their owners]. For it has been taught: The division is made in respect of what is lost, collected, and yet to be collected![14] — But, said R. Eleazar, this oath was [in pursuance of] a rabbinical enactment, that people might not treat sacred objects lightly.[15]

NOR DOES A PAID BAILEE MAKE IT GOOD. R. Joseph b. Hama pointed out a contradiction to Rabbah. We learnt, NOR DOES A PAID BAILEE MAKE IT GOOD. But the following contradicts it: If one [sc: the Temple treasurer] engages a [day] worker to look after the heifer,[16] or a child,[17] or to watch over the crops,[18] he is not paid for the Sabbath;[19] therefore he is not responsible for the Sabbath.[20] But if he was engaged by the week, year, or septennate, he is paid for the Sabbath;[21] consequently, he bears the risks of the Sabbath.[22] Surely that means in respect to payment?[23] No; [it means] that he loses his wage.[24] If so, when the first clause states, 'he is not responsible for the Sabbath,' does that too refer to loss of wages? Is he then paid for the Sabbath? But it is stated, 'he is not paid for the Sabbath!' Thereupon he was silent. Said he to him, 'Have you heard aught in this matter?' — He replied: 'Thus did R. Shesheth say: [We deal with the case] where he [the treasurer] acquired it from his hand.[25] And thus did R. Johanan say too: It means that he acquired it from his hand.'

R. SIMEON SAID: SACRIFICES FOR WHICH ONE [THE OWNER] BEARS RESPONSIBILITY ARE SUBJECT TO OVERREACHING, THOSE FOR WHICH HE BEARS NO RESPONSIBILITY ARE NOT SUBJECT THERETO. A tanna recited before R. Isaac b. Abba: For sacrifices for which he [the owner] bears responsibility he [a bailee] is liable,[26] because I can apply to them the verse, [If a soul sin, and commit a trespass] against the Lord and lie;[27] but for

those [sacrifices] for which no responsibility is borne, he [a bailee] is not liable, because I read in respect to them, [If a soul sin.. .] against his neighbour, and lie.[28] — Said he to him, 'Whither do you turn?[29]

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(1) That the loss was not due to their own culpable negligence. Once the funds were divided, the Temple treasury bore the risks of the monies not yet received, the dividing being held to cover money lost in transit. Therefore the oath had to be taken before the treasurers.

(2) I.e., that the theft or loss occurred before the dividing, in which case the senders are responsible and have to replace the monies.

(3) Sc. the first and the second shekels.

(4) Having been consecrated, they remain so.

(5) It is assumed that the messengers were unpaid, i.e., gratuitous bailees. Though the money was sacred, they had to swear, which contradicts our Mishnah.

(6) The oath was not imposed in order to free them from further responsibility, there being no responsibility in the case of hekdesh on the part of a paid bailee for theft. They had to swear that the money was not in their possession, and so receive their wages.

(7) The treasurers were not liable for their wages — why swear to them?

(8) The treasurers should not entertain suspicions that the whole matter had been arranged between the messengers and the townspeople acting in collusion to defraud the Temple funds.

(9) In accordance with our Mishnah that paid bailees are not responsible for hekdesh.

(10) Seeing that they had failed in their trust. Then what is the purpose of swearing?

(11) These are unpreventable accidents for which even paid bailees are not responsible, and hence they are entitled to their wages.

(12) In reconciling the two Mishnahs.

(13) Shebu. 42b.

(14) I.e., for him who sent his shekel but it was lost en route, or had entrusted it to a messenger who was still on the road, or was unavoidably prevented from remitting his shekel at the proper time — Adar; v. supra p. 343, n. 7. If one's shekel was not received until after the third division, it was assigned to the fund for repairing the Temple walls, etc. Thus we see that after the division the owners bear no further responsibility. Hence the objection to R. Johanan's answer: why an oath even then?

(15) Which would be the case if the mere statement that the shekels had been lost or stolen sufficed. But our Mishnah which teaches that there is no oath refers to the Biblical law.

(16) The red heifer (Num. XIX). The guardian was to take care that no yoke came upon it (ibid. 2).

(17) To prevent him from ritually defiling himself. The water for mixing with the ashes of the red heifer was drawn by a child, who had to be ritually clean.

(18) This refers to the barley specially sown seventy days before Passover (Men. 85a) for the ceremony of 'sheaf waving' (Lev. XXIII, 11) and to the wheat of which the two 'wave loaves' were made on Pentecost (ibid. 17). These crops were specially guarded.

(19) Since he is a day worker, each day is separately paid for, and payment for the Sabbath per se is forbidden.

(20) If harm came to his charges on that day.

(21) Because it is included in the rest, and not explicitly given for that day.

(22) Tosef. Shab. XVIII.

(23) Thus proving that a paid bailee of hekdesh must make good any loss.

(24) For having failed in their trust.

(25) I.e., the worker accepted responsibility, though by Biblical law he is exempt, and performed one of the acts whereby possession is effected.

(26) If one entrusts a consecrated animal to another, who denies having received it, and then repents and confesses, he is liable to a guilt offering, as prescribed in Lev. V, 21-25.

(27) Ibid. 21. By punctuating it thus, it appears that a sacrifice is due when one lies in respect of what is the Lord's, and it was now assumed that the Tanna meant that he is liable because this sacrifice, in respect of which he lied, is regarded as the Lord's property.

(28) Transposing the order of the text. I.e., those for which the owner bears no responsibility are secular property ('his

neighbour's'), whereas it has been shewn that this sacrifice is incurred only on account of God's.
(29) I.e., your ruling is not in the right direction. Jast.: towards the tail (connecting לייא with אליה) i.e., reverse it!

Talmud - Mas. Baba Metzia 58b

The logic is the reverse.'[1] 'Then shall I delete it?' he asked? 'No,' he replied, 'It means this: For sacrifices for which he [the owner] bears responsibility he [a bailee] is liable, for these are included in [If a soul sin . . .] against the Lord, and lie:[2] but for those for which he [the owner] bears no responsibility he [a bailee] is not liable, because they are excluded by . . . against his neighbour and lie.'[3]

R. JUDAH SAID: ALSO WHEN ONE SELLS A SCROLL OF THE TORAH, AN ANIMAL, OR A PEARL, THERE IS NO LAW OF OVERREACHING. It has been taught: R. Judah said, The sale of a scroll of the law too is not subject to overreaching, because its value is unassessable;[4] an animal or a pearl is not subject to overreaching, because one desires to match them.[5] Said they [the sages] to him, But one wishes to match up everything![6] And R. Judah?[7] — These are particularly important to him [the purchaser]; others are not. And to what extent?[8] — Said Amemar: Up to their value.[9]

It has been taught, R. Judah b. Bathyra said: The sale of a horse, sword, and buckler on [the field of] battle are not subject to overreaching, because one's very life is dependent upon them.[10]

MISHNAH. JUST AS THERE IS OVERREACHING IN BUYING AND SELLING, SO IS THERE WRONG DONE BY WORDS. [THUS:] ONE MUST NOT ASK ANOTHER, 'WHAT IS THE PRICE OF THIS ARTICLE?' IF HE HAS NO INTENTION OF BUYING. IF A MAN WAS A REPENTANT [SINNER], ONE MUST NOT SAY TO HIM, 'REMEMBER YOUR FORMER DEEDS.' IF HE WAS A SON OF PROSELYTES ONE MUST NOT TAUNT HIM, 'REMEMBER THE DEEDS OF YOUR ANCESTORS,' BECAUSE IT IS WRITTEN, THOU SHALT NEITHER WRONG A STRANGER, NOR OPPRESS HIM.[11]

GEMARA. Our Rabbis taught: Ye shall not therefore wrong one another;[12] Scripture refers to verbal wrongs. You say, 'verbal wrongs'; but perhaps that is not so, monetary wrongs being meant? When it is said, And if thou sell aught unto thy neighbour, or acquirest aught of thy neighbour [ye shall not wrong one another],[13] monetary wrongs are already dealt with. Then to what can I refer, ye shall not therefore wrong each other? To verbal wrongs. E.g., If a man is a penitent, one must not say to him, 'Remember your former deeds.' If he is the son of proselytes he must not be taunted with, 'Remember the deeds of your ancestors. If he is a proselyte and comes to study the Torah, one must not say to him, 'Shall the mouth that ate unclean and forbidden food,[14] abominable and creeping things, come to study the Torah which was uttered by the mouth of Omnipotence!' If he is visited by suffering, afflicted with disease, or has buried his children, one must not speak to him as his companions spoke to Job, is not thy fear [of God] thy confidence, And thy hope the integrity of thy ways? Remember, I pray thee, who ever perished, being innocent?[15] If assdrivers sought grain from a person, he must not say to them, 'Go to so and so who sells grain,' whilst knowing that he has never sold any. R. Judah said: One may also not feign interest in[16] a purchase when he has no money, since this is known to the heart only[17] , and of everything known only to the heart it is written, and thou shalt fear thy God.[18]

R. Johanan said on the authority of R. Simeon b. Yohai: Verbal wrong is more heinous than monetary wrong, because of the first it is written, 'and thou shalt fear thy God,' but not of the second. R. Eleazar said: The one affects his [the victim's] person, the other [only] his money. R. Samuel b. Nahmani said: For the former restoration is possible, but not for the latter.

A tanna recited before R. Nahman b. Isaac: He who publicly shames[19] his neighbour is as though he shed blood. Whereupon he remarked to him, 'You say well, because I have seen it [sc. such shaming], the ruddiness departing and paleness supervening.'[20]

Abaye asked R. Dimi: What do people [most] carefully avoid in the West [sc. palestine]? — He replied: putting others to shame.[21] For R. Hanina said: All descend into Gehenna, excepting three. 'All' — can you really think so! But say thus: All who descend into Gehenna [subsequently] reascend, excepting three, who descend but do not reascend, viz., He who commits adultery with a married woman, publicly shames his neighbour, or fastens an evil epithet [nickname] upon his neighbour. 'Fastens an epithet' — but that is putting to shame! — [It means], Even when he is accustomed to the name.[22]

Rabbah b. Bar Hanah said in R. Johanan's name:

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(1) Sacrifices for which one bears responsibility are the property of their owner, whilst those for which no responsibility is borne are rather to be regarded as that of God (v. p. 335, n. 7).

(2) The real reason of liability is the fact that these are secular property. But to meet the objection that after all, having been sanctified, they are sacred property, the phrase 'against the Lord and lie' is adduced, to shew that even when there is an element of sacredness a guilt offering is still due.

(3) But since the owner is not responsible for them, they are entirely God's, not 'his neighbour's.'

(4) Lit., 'unlimited.'

(5) When a man possesses one ox, he may be very anxious to procure another of equal strength, because it is inconvenient to plough with two animals of dissimilar capacities. Therefore he may knowingly overpay, hence the law of overreaching does not apply. So with a pearl, if it exactly matches others in his possession.

(6) Whatever one buys may be needed to match something else, or is particularly suitable for the buyer's purpose, in which case the same argument holds good.

(7) Why does he draw a distinction between these articles and others?

(8) Can one overcharge without committing fraud? — it being assumed that R. Judah could not mean that there was no redress under any circumstances.

(9) I.e., if double is charged there is no redress; above that, however, involves overreaching.

(10) Hence the soldier needing them will knowingly overpay.

(11) Ex. XXII, 20.

(12) Lev. XXV, 17.

(13) Ibid. 14.

(14) Heb. nebeloth, terefoth, q.v. GIos.

(15) Job IV, 6f.

(16) Lit., 'look up to.

(17) מסור ללב Lit., 'entrusted to the heart.'

(18) Lev. XXV, 17. Man cannot know whether one's intentions are legitimate or not, since they are concealed, but God knows (Rashi). [This beautiful phrase מסור ללב which, were certain critics of Pharisaism right, ought never to have been on Pharisaic lips (Abrahams, I. Studies on Pharisaism, Second Series, p. 116), may also denote matters left to ethical research and conviction, which cannot be mastered, weighed or determined by will, but by a delicate perception, fine tact and a sensitiveness of nature. V. Lazarus, The Ethics of Judaism, I, 122 and 292.]

(19) Lit., 'makes pale'.

(20) Thus the blood is drained from the victim's face, which is the equivalent of shedding his blood. [V. Wiesner, J. Mag. f. Jud. Gesch. u. Lit. 1875, p. 11.]

(21) Lit., 'making faces white.'

(22) So that he experiences no humiliation, nevertheless it is very reprehensible when the intention is evil. — It is noteworthy that apart from these three — which are obviously stated in a heightened form for the sake of emphasis (V. Tosaf.) the idea of endless Gehenna is rejected. Cf. M. Joseph, Judaism as Creed and Lie, pp. 145 seq. 'Nor do we believe in hell or in everlasting punishment . . . If suffering there is to be, it is terminable. The idea of eternal punishment is repugnant to the genius of Judaism.'

Talmud - Mas. Baba Metzia 59a

Better it is for man to cohabit with a doubtful married woman[1] rather than that he should publicly shame his neighbour. Whence do we know this? — From what Raba expounded, viz., What is meant by the verse, But in mine adversity they rejoiced and gathered themselves together... they did tear me, and ceased not?[2] David exclaimed before the Holy One, blessed be He, 'Sovereign of the Universe! Thou knowest full well that had they torn my flesh, my blood would not have poured forth to the earth.[3] Moreover, when they are engaged in studying "Leprosies" and "Tents"[4] they jeer at me, saying, "David! what is the death penalty of him who seduces a married woman?" I reply to them, "He is executed by strangulation, yet has he a portion in the world to come. But he who publicly puts his neighbour to shame has no portion in the world to come."'[5]

Mar Zutra b. Tobiah said in Rab's name — others state, R. Hana[6] b. Bizna said in the name of R. Simeon the pious — others again state, R. Johanan said on the authority of R. Simeon b. Yohai: Better had a man throw himself into a fiery furnace than publicly put his neighbour to shame. Whence do we know it? — From Tamar.[7] For it is written, when she was brought forth, she sent to her father-in-law [etc].[8]

R. Hanina, son of R. Idi, said: What is meant by the verse, Ye shall not wrong one another ['amitho]? — Wrong not a people that is with you in learning and good deeds .[9]

Rab said: One should always be heedful of wronging his wife, for since her tears are frequent she is quickly hurt.[10]

R. Eleazar said:[11] Since the destruction of the Temple, the gates of prayer are locked, for it is written, Also when I cry out, he shutteth out my prayer.[12] Yet though the gates of prayer are locked, the gates of tears are not, for it is written, Hear my prayer, O Lord, and give ear unto my cry; hold not thy peace at my tears.[13]

Rab also said: He who follows his wife's counsel will descend[14] into Gehenna, for it is written, But there was none like unto Ahab [which did sell himself to work wickedness in the sight of the Lord, whom Jezebel his wife stirred up].[15] R. papa objected to Abaye: But people say, If your wife is short, bend down and hear her whisper! — There is no difficulty: the one refers to general matters; the other to household affairs.[16] Another version: the one refers to religious matters, the other to secular questions.

R. Hisda said: All gates are locked, excepting the gates [through which pass the cries of] wrong [ona'ah], for it is written, Behold the Lord stood by a wall of wrongs, and in his hand were the wrongs.[17] R.Eleazar said: All [evil] is punished through an agent, excepting wrong, for it is written, And in his hand were the wrongs.[18] R. Abbahu said: There are three [evils] before which the Curtain[19] is not closed: overreaching, robbery and idolatry. Overreaching, for it is written, and in his hand was the overreaching. Robbery, because it is written, Robbery and spoil are heard in her; they are before me continually.[20] Idolatry, for it is written, A people that provoketh me to anger continually before my face; [that sacrificeth — sc. to idols — in gardens, and burneth incense upon altars of brick].[21]

Rab Judah said: One should always take heed that there be corn in his house; for strife is prevalent in a house only on account of corn [food], for it is written, He maketh peace in thy borders: he filleth thee with the finest of the wheat.[22] Said R. papa, Hence the proverb: When the barley is quite gone from the pitcher, strife comes knocking at the door[23] , R. Hinena b. papa said: One should always take heed that there be corn in his house, because Israel were called poor only on account of [the

lack of] corn, for it is said, And so it was when Israel had sown etc., and it is further written, And they [sc. the Midianites and the Amalekites] encamped against them, [and destroyed the increase of the earth], whilst this is followed by, And Israel was greatly impoverished because of the Midianites.[24]

R. Helbo said: One must always observe the honour due to his wife, because blessings rest on a man's home only on account of his wife, for it is written, And he treated Abram well for her sake.[25] And thus did Raba say to the townspeople of Mahuza,[26] Honour your wives, that ye may be enriched.[27]

We learnt elsewhere: If he cut it into separate tiles, placing sand between each tile: R. Eliezer declared it clean, and the Sages declared it unclean;

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(1) E.g., one who was freed with a divorce, as to the validity of which doubts arose.

(2) Ps. XXXV, 15.

(3) Because of the many insults I am made to bear, which as stated above, drain the flesh of its blood.

(4) Two tractates in the sixth order of the Talmud, called 'Purity.' These are tractates of extreme difficulty and complexity, and have no bearing upon adultery or the death penalty. Thus David complained that even when engaged on totally different matters which required all their thought, they yet diverted their attention in order to humiliate him (Tosaf.). In Sanh. 107a, the reading is: 'when they are engaged in the study of the four modes of death imposed by the Court, etc.

(5) Now Bath Sheba was a doubtful married woman, because every soldier of David's army gave his wife a conditional divorce before he left for the front, to take retrospective effect from the time of delivery in case he was lost in battle. So that when David took Bath Sheba it was doubtful whether she would prove a married woman at the time or not; and David maintained that his offence was not so grave as that of his companions.

(6) Var. lec.: Huna.

(7) Judah's daughter-in-law, with whom he unwittingly cohabited. Subsequently, on her breach of chastity being discovered, he ordered her to be burnt, and only rescinded the order when she privately sent proof to him of his own complicity; v. Gen. XXXVIII.

(8) Ibid. 25. She left it to him to confess but did not openly accuse him, choosing death rather than publicly putting him to shame.

(9) This is a play of words on עמיתו ('his fellowman') reading it as two words, עם אתו , the 'people that is with him.'

(10) Lit., 'her wronging is near;' — a woman is very sensitive, and therefore quick to feel and resent a hurt.

(11) [MS.M. 'For R. Eleazar said,' the statement of R. Eleazar being thus added in elucidation of Rab's dictum.]

(12) Lam. III, 8.

(13) Ps. XXXIX, 13; the idea is that the destruction of the Temple may have made it more difficult to commune with God, yet earnest prayer from the depths of the heart is always accepted.

(14) Lit., 'fall'.

(15) I Kings, XXI, 25; thus Ahab's downfall is ascribed to his action in allowing himself to be led astray by Jezebel.

(16) A man should certainly consult his wife on the latter, but not on the former, — not a disparagement of woman; her activities lying mainly in the home.

(17) אנך Amos VII, 7(E.V. 'plumbline') is here connected with אונאה , 'overreaching', 'wronging', i.e., God is always ready to plead the cause of one who has been wronged.

(18) I.e., God in person punishes these.

(19) The Curtain of Heaven. [Hiding. so to speak, human failings from the Divine gaze.]

(20) Jer. VI, 7.

(21) Isa. LXV, 3.

(22) Ps. CXLVII, 14: the two halves of the verse are parallel to each other.

(23) Lit., 'house'.

(24) Jud. VI, 3, 4, 6.

(25) Gen. XII, 16.

(26) A large Jewish commercial town, situate on the Tigris. Raba had his academy there.
(27) The foregoing passages are Instructive on the Talmudic attitude to women. Though recognising the evil influence a bad woman can wield upon her husband, as evidenced by Ahab and Jezebel, these sayings breathe a spirit of tenderness and honour. As she is highly sensitive, the greatest care must be taken not to wound her feelings, and a husband must adapt himself to his wife; whilst it is emphatically asserted that prosperity in the home, as well as the blessings of home life, are to a great extent dependent upon her.

Talmud - Mas. Baba Metzia 59b

and this was the oven of 'Aknai.[1] Why [the oven of] 'Aknai? — Said Rab Judah in Samuel's name: [It means] that they encompassed it with arguments[2] as a snake, and proved it unclean. It has been taught: On that day R. Eliezer brought forward every imaginable argument ,[3] but they did not accept them. Said he to them: 'If the halachah agrees with me, let this carob-tree prove it!' Thereupon the carob-tree was torn a hundred cubits out of its place — others affirm, four hundred cubits. 'No proof can be brought from a carob-tree,' they retorted. Again he said to them: 'If the halachah agrees with me, let the stream of water prove it!' Whereupon the stream of water flowed backwards — 'No proof can be brought from a stream of water,' they rejoined. Again he urged: 'If the halachah agrees with me, let the walls of the schoolhouse prove it,' whereupon the walls inclined to fall. But R. Joshua rebuked them, saying: 'When scholars are engaged in a halachic dispute, what have ye to interfere?' Hence they did not fall, in honour of R. Joshua, nor did they resume the upright, in honour of R. Eliezer; and they are still standing thus inclined. Again he said to them: 'If the halachah agrees with me, let it be proved from Heaven!' Whereupon a Heavenly Voice cried out: 'Why do ye dispute with R. Eliezer, seeing that in all matters the halachah agrees with him!' But R. Joshua arose and exclaimed: 'It is not in heaven.'[4] What did he mean by this? — Said R. Jeremiah: That the Torah had already been given at Mount Sinai; we pay no attention to a Heavenly Voice, because Thou hast long since written in the Torah at Mount Sinai, After the majority must one incline.[5]

R. Nathan met Elijah[6] and asked him: What did the Holy One, Blessed be He, do in that hour? — He laughed [with joy], he replied, saying, 'My sons have defeated Me, My sons have defeated Me.' It was said: On that day all objects which R. Eliezer had declared clean were brought and burnt in fire.[7] Then they took a vote and excommunicated him.[8] Said they, 'Who shall go and inform him?' 'I will go,' answered R. Akiba, 'lest an unsuitable person go and inform him, and thus destroy the whole world.'[9] What did R. Akiba do? He donned black garments and wrapped himself in black,[10] and sat at a distance of four cubits from him. 'Akiba,' said R. Eliezer to him, 'what has particularly happened to-day?'[11] 'Master,' he replied, 'it appears to me that thy companions hold aloof from thee.' Thereupon he too rent his garments, put off his shoes, removed [his seat] and sat on the earth, whilst tears streamed from his eyes.[12] The world was then smitten: a third of the olive crop, a third of the wheat, and a third of the barley crop. Some say, the dough in women's hands swelled up.

A Tanna taught: Great was the calamity that befell that day, for everything at which R. Eliezer cast his eyes was burned up. R. Gamaliel[13] too was travelling in a ship, when a huge wave arose to drown him. 'It appears to me,' he reflected, 'that this is on account of none other but R. Eliezer b. Hyrcanus.' Thereupon he arose and exclaimed, 'Sovereign of the Universe! Thou knowest full well that I have not acted for my honour, nor for the honour of my paternal house, but for Thine, so that strife may not multiply in Israel! 'At that the raging sea subsided.

Ima Shalom was R. Eliezer's wife, and sister to R. Gamaliel. From the time of this incident onwards she did not permit him to fall upon his face.[14] Now a certain day happened to be New Moon, but she mistook a full month for a defective one.[15] Others say, a poor man came and stood at the door, and she took out some bread to him.[16] [On her return] she found him fallen on his face. 'Arise,' she cried out to him, 'thou hast slain my brother.' In the meanwhile an announcement was made from the house of Rabban Gamaliel that he had died. 'Whence dost thou know it?' he

questioned her. ‘I have this tradition from my father's house: All gates are locked, excepting the gates of wounded feelings.’[17]

Our Rabbis taught: He who wounds the feelings of a proselyte transgresses three negative injunctions, and he who oppresses him infringes two. Wherein does wronging differ? Because three negative injunctions are stated: Viz., Thou shalt not wrong a stranger [i.e., a proselyte],[18] And if a stranger sojourn with thee in your land, ye shall not wrong him,[19] and ye shall not therefore wrong each his fellowman,[20] a proselyte being included in ‘fellowman.’ But for ‘oppression’ also three are written, viz., and thou shalt not oppress him,[21] Also thou shalt not oppress a stranger,[22] and [If thou lend money to any of my people that is poor by thee,] thou shalt not be to him as a usurer[23] which includes a proselyte! — But [say] both [are forbidden] by three [injunctions].

It has been taught: R. Eliezer the Great said: Why did the Torah warn against [the wronging of] a proselyte in thirty-six, or as others say, in forty-six, places? Because he has a strong inclination to evil.[24] What is the meaning of the verse, Thou shalt neither wrong a stranger, nor oppress him; for ye were strangers in the land of Egypt? It has been taught: R. Nathan said: Do not taunt your neighbour with the blemish you yourself have.[25] And thus the proverb runs:[26] If there is a case of hanging in a man's family record, say not to him,[27] ‘Hang this fish up for me.’

MISHNAH. PRODUCE MAY NOT BE MIXED WITH OTHER PRODUCE, EVEN NEW WITH NEW,

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(1) This refers to an oven, which, instead of being made in one piece, was made in a series of separate portions with a layer of sand between each. R. Eliezer maintains that since each portion in itself is not a utensil, the sand between prevents the whole structure from being regarded as a single utensil, and therefore it is not liable to uncleanness. The Sages however hold that the outer coating of mortar or cement unifies the whole, and it is therefore liable to uncleanness. (This is the explanation given by Maimonides on the Mishnah, Kel. V, 10. Rashi a.l. adopts a different reasoning). ‘Aknai is a proper noun, probably the name of a master, but it also means ‘snake’. (Gr. **) which meaning the Talmud proceeds to discuss.

(2) Lit., ‘words’.

(3) Lit., ‘all the arguments in the world’.

(4) Deut. XXX,12.

(5) Ex. XXIII,2; though the story is told in a legendary form, this is a remarkable assertion of the independence of human reasoning.

(6) It was believed that Elijah, who had never died, often appeared to the Rabbis.

(7) As unclean.

(8) Lit., ‘blessed him,’ a euphemism for excommunication.

(9) I.e., commit a great wrong by informing him tactlessly and brutally.

(10) As a sign of mourning, which a person under the ban had to observe.

(11) Lit., ‘what is this day (different) from yesterday (or to-morrow)?’

(12) Rending the garments etc. were all mourning observances. (In ancient times mourners sat actually upon the earth, not, as nowadays, upon low stools.) — The character of R. Eliezer is hotly contested by Weiss and Halevi. The former, mainly on the basis of this story (though adducing some other proof too), severely castigates him as a man of extreme stubbornness and conceit, who would brook no disagreement, a bitter controversialist from his youth until death, and ever seeking quarrels (Dor. II, 82). Halevy (Doroth 1, 5, pp. 374 et seqq.) energetically defends him, pointing out that this is the only instance recorded in the whole Talmud of R. Eliezer's maintaining his view against the majority. He further contends that the meekness with which he accepted his sentence, though he was sufficiently great to have disputed and fought it, is a powerful testimony to his humility and peace-loving nature.

(13) The Nasi and the prime mover in the ban against R. Eliezer.

(14) After the Eighteen Benedictions there follows a short interval for private prayer, during which each person offered up his own individual supplications to God. These were called supplications (תחנון), and the suppliant prostrated himself upon his face; they were omitted on New Moons and Festivals. — Elbogen, Der judische Gottesdienst, pp. 73 et

seqq. Ima Shalom feared that her husband might pour out his grief and feeling of injury in these prayers, and that God, listening to them, would punish R. Gamaliel, her brother.

(15) Jewish months consist of either 30 days (full) or 29 (defective). Thinking that the previous month had consisted of 29 days, and that the 30th would be New Moon, she believed that R. Eliezer could not engage in these private prayers in any case, and relaxed her watch over him. But actually it was a full month, so that the 30th was an ordinary day, when these prayers are permitted.

(16) I.e., she did not mistake the day, but was momentarily forced to leave her husband in order to give bread to a beggar.

(17) Lit., 'wrong', v. p. 354, n. 4. She felt sure that R. Eliezer had seized the opportunity of her absence or error to cry out to God about the ban.

(18) Ex. XXII, 20.

(19) Lev. XIX, 33.

(20) Lev. XXV, 17.

(21) Ex. XXII, 20.

(22) Ex. XXIII, 9.

(23) Ex. XXII, 24

(24) So Rashi in Hor. 13a. Jast.: because his original character is bad — into which evil treatment might cause him to relapse.

(25) Thus be translates the verse: Do not wrong a proselyte by taunting him with being a stranger to the jewish people seeing that ye yourselves were strangers in Egypt.

(26) Lit., 'people say.'

(27) [So MS.M.; cur. edd. read, 'to his fellow'.]

Talmud - Mas. Baba Metzia 60a

HOW MUCH MORE SO NEW WITH OLD![1] YET IN TRUTH IT WAS SAID THAT STRONG WINE MAY BE MIXED WITH MILD, BECAUSE IT IMPROVES IT.[2] A MAN MUST NOT MIX THE LEES OF WINE WITH WINE, BUT HE [THE VENDOR] MAY GIVE HIM [THE VENDEE] ITS LEES.[3] IF HIS WINE WAS DILUTED WITH WATER HE MUST NOT SELL IT IN HIS SHOP [IN SMALL QUANTITIES] UNLESS HE INFORMS HIM [THE CUSTOMER], NOR TO A MERCHANT, EVEN IF HE INFORMS HIM, BECAUSE [THE LATTER BUYS IT] ONLY IN ORDER TO CHEAT THEREWITH. WHERE IT IS THE PRACTICE TO ADULTERATE WINE WITH WATER, IT IS PERMISSIBLE.[4] A MERCHANT MAY PURCHASE [GRAIN] FROM FIVE GRANARIES AND PUT IT INTO ONE STORE-ROOM,[5] OR [WINE] FROM FIVE PRESSES AND PUT IT INTO THE SAME CASK, PROVIDING THAT IT IS NOT HIS INTENTION TO MIX THEM.[6]

GEMARA. Our Rabbis taught: it goes without saying, when new [produce] stands at four [se'ahs per sela'], whilst old is priced at three, that they may not be intermixed; but even when new is at three and old at four, they may still not be mixed, because [the higher price of the new corn is due to the fact that] one wishes to store them until old.[7]

YET IN TRUTH IT WAS SAID THAT STRONG WINE MAY BE MIXED WITH MILD, BECAUSE IT IMPROVES IT. R. Eleazar said: From this it may be concluded that wherever it is stated 'in truth it was said', that is the halachah.[8] Said R. Nahman: This was taught only when they [the wines] are in the Presses.[9] But nowadays [wines] are mixed [even] after they have left the presses.[10] — Said R. Papa: It is known and forgiven. R. Aha son of R. Ika said: That is in accordance with R. Aha. For it has been taught: R. Aha permits [mixing] in a commodity that is [first] tasted.[11]

A MAN MUST NOT MIX THE LEES OF WINE WITH WINE, BUT HE [THE VENDOR] MAY GIVE HIM [THE VENDEE] ITS LEES. But you have ruled in the first clause that they may not be mixed at all? And should you reply that what is meant by, BUT HE MAY GIVE HIM ITS

LEES, is that he informs him thereof; since the subsequent clause states, HE MUST NOT SELL IT IN HIS SHOP UNLESS HE INFORMS HIM [THE CUSTOMER], NOR TO A MERCHANT, EVEN IF HE INFORMS HIM, it follows that this clause means even if he does not inform him! — Said Rab Judah: It means this: A MAN MUST NOT MIX THE LEES OF yesterday's WINE with that of to-day's, nor vice versa, BUT HE [THE VENDOR] MAY GIVE HIM [THE VENDEE] ITS OWN LEES. It has been taught likewise: R. Judah said: When a man pours out[12] wine for his neighbour [selling it to him], he must not mix [the lees] of yesterday's wine with that of to-day's, nor vice versa, but may mix yesterday's with yesterday's and to-day's with to-day's.[13]

IF HIS WINE WAS DILUTED WITH WATER HE MUST NOT SELL IT IN HIS SHOP [IN SMALL QUANTITIES] UNLESS HE INFORMS HIM, etc. Raba once brought wine from a shop. After diluting it he tasted it, and on finding that it was not good he returned it to the shop.[14] Thereupon Abaye protested: But we learnt, NOR TO A MERCHANT, EVEN IF HE INFORMS Him![15] — He replied: My mixing is well known.[16] And should you object, He may add [wine thereto], thus strengthening it, and then sell it [as pure wine] — if so, the matter is endless![17]

WHERE IT IS THE PRACTICE TO ADULTERATE WINE WITH WATER, IT IS PERMISSIBLE, etc. A Tanna taught: In proportions of a half, a third or a quarter.[18] Said Rab: And this [sc. the Mishnah] was stated in the time of the presses.[19]

MISHNAH. R. JUDAH SAID: A SHOPKEEPER MUST NOT DISTRIBUTE PARCHED CORN OR NUTS TO CHILDREN, BECAUSE HE THEREBY ACCUSTOMS THEM TO COME TO HIM;[20] THE SAGES PERMIT IT. NOR MAY HE REDUCE THE PRICE; BUT THE SAGES SAY, HE IS TO BE REMEMBERED FOR GOOD. ONE MUST NOT SIFT POUNDED BEANS:[21] THIS IS THE VIEW OF ABBA SAUL. BUT THE SAGES PERMIT IT. YET THEY ADMIT THAT HE MUST NOT PICK OUT [THE REFUSE] FROM THE TOP OF THE BIN,[22] BECAUSE ITS ONLY PURPOSE IS TO DECEIVE THE EYE. MEN, CATTLE, AND UTENSILS MAY NOT BE PAINTED.[23]

GEMARA. What is the Rabbis' reason? — Because he [this shopkeeper] can say to him [another shopkeeper], 'I distribute nuts; you distribute plums.

NOR MAY HE REDUCE THE PRICE; BUT THE SAGES SAY, HE IS TO BE REMEMBERED FOR GOOD, etc. What is the Rabbis' reason? —

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(1) If one undertakes to supply the produce of a particular field, he may not intermix it with the produce of another, even of the same year. If he undertakes to supply last year's grain, he may certainly not intermix the current year's the former being more suitable for milling.

(2) But not vice versa; having agreed to supply full-bodied wine, one must not mix it with light wine.

(3) This is discussed in the Gemara.

(4) Because there is no cheating then, the practice being known and taken into account.

(5) For selling from the whole indiscriminately.

(6) I.e., he must not represent that he bought all from the same source, which is known for providing superior merchandise.

(7) The higher price of the new corn is not due to its superiority, but to the fact that there is no sale that year and merchants are buying ahead for the following, whereas if they store last year's grain, it may be too old when they need it. Hence when one stipulates that he wants old corn, it is evident that he requires it for immediate use, and therefore it may not be mixed with new, though this is dearer.

(8) Since the reason given is that it improves it, leaving no room for doubt on the matter, and this is introduced by the phrase, 'in truth etc.,' it follows that this phrase indicates the absolute certainty of the law. [Adopting this principle, the Tanna of our Mishnah will permit the mixing of old produce with new, contrary to the view of the Tanna in Tosef. B.M. III, v. Rosenthal, F., Hoffmann's Festschrift, p. 34ff.]

(9) The mixing is then advantageous. But after each has acquired its own taste and bouquet, mixing of different wines has a deleterious effect.
(10) Lit., 'not among the presses.'
(11) Since the customer tastes the wine before buying it, there is no fraud.
(12) The Heb. השופה denotes 'to pour out slowly,' so as to leave the sediment behind.
(13) The lees of a different day's wine have an injurious effect, but not those of the same day's. Rashi, however observes that this is not meant literally, but that wine when sold may contain its own sediment, but not that of a different wine. 'To-day's' and 'yesterday's' are merely employed a convenient expressions of different wines.
(14) For sale there.
(15) And this shopkeeper too will sell it as unadulterated wine.
(16) It was generally known that Raba diluted the wine with very much water. So that a prospective customer, in tasting it beforehand, would know what proportion of wine it contained, and pay accordingly.
(17) It would be forbidden to sell even water to a wine-merchant, lest he mix it with wine and sell the whole as pure. But that is obviously absurd. Therefore the Mishnah forbids only a sale of those commodities which lend themselves to immediate deceit.
(18) I.e., whatever proportions are permitted by custom, but not more.
(19) The wine may be diluted whilst it is yet in the press, but not after.
(20) When sent by mothers to make a purchase; this is unfair competition.
(21) To remove the refuse. Owing to the better appearance of the beans he advances the price by more than the value of the refuse removed, and therefore this Tanna forbids it as fraud.
(22) Leaving the refuse underneath.
(23) To give them a younger or newer appearance, and thus make them realise a higher price. 'Men' refers to slaves.

Talmud - Mas. Baba Metzia 60b

Because he eases the market.[1]

ONE MUST NOT SIFT POUNDED BEANS: THIS IS THE VIEW OF ABBA SAUL. BUT THE SAGES PERMIT IT, etc. Who are the Sages? — R. Aha. For it has been taught: R. Aha permitted it in a commodity that may be seen.[2]

MEN, CATTLE, AND UTENSILS MAY NOT BE PAINTED. Our Rabbis taught: An animal may not be given an appearance of stiffness, entrails may not be inflated,[3] nor may meat be soaked in water.[4] What is meant by 'one may not give an appearance of stiffness'? — Here [in Babylon] it is explained as referring to branbroth.[5] Ze'iri said in R. Kahana's name: Brushing up [an animal's hair].[6] Samuel permitted fringes to be put on a cloak.[7] Rab Judah permitted a gloss to be put on fine cloths.[8] Rabbah permitted hemp-cloths to be beaten.[9] Raba permitted arrows to be painted. R. Pappa b. Samuel allowed baskets to be painted. But did we not learn, MEN, CATTLE, AND UTENSILS MAY NOT BE PAINTED? — There is no difficulty; one refers to new, the other to old.[10]

What is the purpose of painting men? — As in the case of a certain aged slave who went and had his head and beard dyed ,[11] and came before Raba, saying to him, 'Buy me.' 'Let the poor be the children of thy house,'[12] he replied. So he went to R. Papa b. Samuel, who bought him. One day he said to him, 'Give me some water to drink.' Thereupon he went, washed his head and beard white again, and said to him, 'See, I am older than your father.'[13] At that he applied to himself the verse, 'The righteous is delivered out of trouble, and another cometh in his stead.[14]

C H A P T E R V

MISHNAH. WHAT IS NESHEK AND WHAT IS TARBITH?[15] WHAT IS NESHEK? ONE WHO LENDS A SELA' [FOUR DENARII] FOR FIVE DENARII, OR TWO SE'AHS[16] OF WHEAT FOR THREE; THAT IS FORBIDDEN,[17] BECAUSE HE [THEREBY] 'BITES' [THE

DEBTOR]. AND WHAT IS TARBITH? THE TAKING OF INTEREST ON PRODUCE, E. G., IF A MAN PURCHASED WHEAT AT A GOLD DENAR [TWENTY-FIVE SILVER DENARII] PER KOR,[18] WHICH WAS THE CURRENT PRICE,[19] AND [SUBSEQUENTLY] WHEAT APPRECIATED TO THIRTY DENARII PER KOR. THEN [THE PURCHASER] SAID TO HIM, 'GIVE ME MY WHEAT, AS I WISH TO SELL IT AND BUY WINE WITH THE PROCEEDS;' TO WHICH [THE VENDOR] REPLIED, 'LET THE WHEAT BE CHARGED TO ME AS A DEBT OF THIRTY DENARII [PER KOR]. AND YOU HAVE A CLAIM OF WINE UPON ME FOR ITS VALUE;'[20] BUT HE ACTUALLY HAS NO WINE [AT THE TIME].

GEMARA. Now, since he [the Tanna] disregards[21] the Biblical [meaning of] interest[22] and defines its Rabbinical [connotation][23] . it follows that Biblically speaking neshek and tarbith are Synonymous: whereas [in fact] there are Scriptural expressions, neshek of money, and ribbith of food![24] — Do you think then that there can be neshek [loss to the debtor] without tarbith [profits to the creditor], or tarbith without neshek? How might there be neshek without tarbith? If he lent him a hundred [perutahs] for one hundred and twenty [perutahs], at first [when the loan is made] a danka[25] being valued at a hundred [perutahs], and subsequently [when the loan was repaid] at a hundred and twenty,[26] there is neshek, for he 'bites' him [the debtor] by taking from him something which he [the creditor] did not give; yet there is no tarbith [to the creditor], for there is no profit, since he lent him a danka and received back a danka! But, after all, if the original rate is the determining factor,[27] there is both neshek and tarbith; if the subsequent rate, there is neither neshek nor tarbith? Furthermore, how is tarbith [profit to the creditor] conceivable without neshek [loss to the debtor]? If he lent him a hundred [perutahs] for a hundred, the hundred being worth a danka at first, and now a fifth:[28] if you regard the first rate, there is neither neshek nor tarbith; if the final rate, there is both neshek and tarbith! — But, said Raba, you can find neither neshek without tarbith nor tarbith without neshek, and the only purpose of Scripture in stating them separately[29] is [to teach] that one transgresses two prohibitions [by taking interest].[30]

Our Rabbis taught: [Thou shalt not give him thy money upon neshek [usury], nor lend him thy victuals for marbith [interest];[31] [from this] I only know that the prohibition of neshek applies to money, and that of ribbith to provisions:[32] whence do we know that [the prohibition] neshek applies to provisions [too]? From the verse, [Thou shalt not lend upon usury to thy brother neshek of money], neshek of victuals.[33] Whence do we know that the prohibition of ribbith applies to money? From the verse, neshek of money:

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(1) Competition is healthy, and prevents a 'hold up.'

(2) The purchaser sees what he buys, and therefore there is no fraud.

(3) In a shop, where they are displayed for sale, to make them look larger.

(4) To make it look fat.

(5) Which bloats the animal fed on it.

(6) For the same purpose.

(7) To make it look more valuable.

(8) By rubbing it with a certain substance.

(9) To make it appear thinner and of finer texture.

(10) Old utensils may not be painted, as the purpose is to deceive and make them look new. But new ones may be painted to improve their appearance.

(11) Black, making him look a young man.

(12) This is a Mishnah in Aboth I, 5. Raba, by emphasizing the 'thy', gave it the meaning — 'I had rather give my hospitality to the poor of my own people.'

(13) And it is not meet that you should impose menial tasks upon me. — It is noteworthy that the slave knew that he could rely upon the decency of the Jew to respect his age, though a slave, and one, moreover, who had practised deceit. This is in marked contrast to the treatment meted out to slaves amongst other people, both in ancient and in comparatively recent times.

(14) Prov. XI, 8; the verse actually reads, 'and the wicked etc.' 'Another' was probably substituted by R. Papa intentionally: 'Raba — the righteous — was delivered from trouble, but I had the misfortune to buy you.
(15) Neshek, from נשך 'to bite', denotes usury, 'bitten out', as it were, from the debtor, something received for nothing given. Tarbith, marbith, and ribbith from רבי , 'to increase', denotes increase, profits. The question of the Mishnah is posited on Lev. XXV, 36: Take thou no neshek from him, nor tarbith.
(16) Se'ah == six kabs, or 13,184.44 cu. cm. J.E. XII, 488.
(17) [Rightly omitted in most texts.]
(18) Kor is a measure of capacity, equal to thirty se'ahs. B.B. 86b, 105a.
(19) One may purchase 'futures' in wheat at the current price, paying for it at the time of purchase and receiving it later, even if the price advances, without infringing the prohibition of usury.
(20) Pricing the wine too at current rates.
(21) In his explanation of marbith.
(22) Which is usury on a loan transaction.
(23) [The illustration of marbith by way of purchase in the Mishnah being a Rabbinical extension of the law.]
(24) Thou shalt not give him any money upon neshek, nor lend him thy victuals for marbith. Lev. XXV, 37.
(25) Pers. dankh; **, a small Persian coin, the sixth of a denar, in general, one-sixth.
(26) So Rashi. Tosaf., however, points out that the current value of a sixth of a denar was 32 perutahs, and it is inconceivable that the perutah should depreciate to such an extent. Tosaf, therefore renders: a hundred ma'ahs (ma'ah==a sixth of the denar==a danka) for a sixth of a maneh (maneh == 100 common shekels or zuz); or 100 issars (issar == 8 perutahs) for a sixth of a gold denar.
(27) Lit., 'if you go according to the beginning'.
(28) Of a denar, or, as stated above in n. 3.
(29) V. Lev. XXV, 37, quoted in n. 1.
(30) Each involving the penalty of lashes.
(31) Lev. XXV, 37.
(32) I.e., that in lending money on interest, the prohibition of neshek, and in lending provisions on interest, the prohibitions of ribbith, are violated.
(33) Deut. XXIII, 20.

Talmud - Mas. Baba Metzia 61a

now, since this is redundant in respect of money neshek, as it is already written, Thou shalt not lend upon usury to thy brother,[1] utilise the subject [to teach that the prohibition of] ribbith [applies to] money.[2] [From this] I know it only of the borrower:[3] whence do we know it of the lender? Neshek is stated in reference to the borrower; also in reference to the lender:[4] just as with respect of the neshek written in reference to the borrower, no distinction is drawn between money and provisions, neshek and ribbith,[5] so also, in respect to neshek written in reference to the lender, you must draw no distinction between money and provisions, neshek and ribbith. Whence do we know to extend [the law] to everything?[6] From the verse, neshek of anything that is lent upon usury.

Rabina said: There is no need of any verse [to teach] either that the prohibition neshek in respect of victuals, or of ribbith in respect of money, [applies to the lender]. For were it written, 'Thy money thou shalt not give him upon neshek, and thy food upon marbith,' [it would be] even as you say.[7] Since, however, it is written, Thy money thou shalt not give him upon neshek and upon marbith thou shalt not lend thy victuals,[8] read it thus: 'Thy money thou shalt not give him upon neshek and upon marbith, and upon neshek and upon marbith thou shalt not give thy victuals.'[9] But does not the Tanna state, 'it is said...it is said'?[10] — He means this: if the verse were not written [in such a way], I should have adduced a gezerah shawah: now, however, that the verse is couched [thus], the gezerah shawah is unnecessary. Then for what purpose do I need the gezerah shawah? — In respect of neshek of anything for which usury may be given, which is not written in connection with the lender.[11]

Raba said: Why did the Divine Law write an injunction against ribbith, an injunction against robbery, and an injunction against overreaching?[12] — They are necessary. For had the Divine Law stated an injunction against ribbith [only], [no other prohibition could be deduced therefrom] because it is anomalous,[13] the prohibition lying even upon the debtor.[14] Again, had the Divine Law written an interdict against robbery [I might argue that] that is because it is against his [the victim's] wish,[15] but as for overreaching, I might maintain [that it is] not [forbidden].[16] And were there a prohibition in the Divine Law against overreaching only, [I might reason,] that is because he [the defrauded] does not know [of his loss], to be able to pardon.[17]

Now one could not be deduced from another: but cannot one be derived from the other two? — Which could be [thus] deduced? Should the Divine Law omit the prohibition of usury, that it might follow from these [robbery and fraud]? [But I would argue,] The reason why these are [forbidden] is because they lack [the victim's] consent:[18] will you say [the same] of usury, which is [taken] with his [the debtor's] consent? And if the Divine Law omitted the injunction against overreaching, that it might be deduced from the others, [I would argue:] The reason why the others are [forbidden] is because commerce[19] is not carried on thus![20] — But the Divine Law should not have stated the prohibition of robbery, and it would have followed from the others. For what objections will you raise: as for interest, that it is an anomaly? Then let overreaching prove it.[21] [Should you argue,] As for fraud, [the reason of the prohibition] is that he [the victim] is in ignorance thereof, and cannot pardon: then let interest prove it.[22] And thus the argument revolves: the distinguishing feature of one is not the distinguishing feature of the other, and vice versa. The characteristic common to both is that he robs him. So also may I adduce [actual] robbery [as prohibited]! — I will tell you: That indeed is so. Then what is the need of an injunction against robbery? In respect of withholding the payment of a hired worker. But [the prohibition against the] withholding of such payment is explicitly stated: Thou shalt not oppress an hired servant that is poor and needy! . . . at his day thou shalt give him his hire![23] — To teach that he [who withholds payment] transgresses two negative precepts.[24] Then let it[25] be referred to interest or fraud, that [in their case] two negative commands are transgressed?[26] — It is a matter deduced from its context,

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(1) The object of the loan being unspecified, it must include money, particularly as the verse ends, neshek of anything for which there can be neshek.

(2) It is one of the methods of the Talmudic exegesis that if a verse is redundant in respect of its own subject, it is applied to some other.

(3) This verse is assumed to refer to the debtor, and thus translated: Thou shalt not cause thy brother to take neshek, neshek of money etc. This follows because תשיך is hif'il, causative; were the lender referred to, Scripture should have written תשוך, kal. Hence it teaches that if a borrower repays more than he receives, whether money or provisions, he transgresses two injunctions.

(4) Lev. XXV,37.

(5) I.e., the prohibitions under neshek and ribbith apply to both money and food.

(6) To things which are neither money nor food.

(7) For then the two clauses would be distinctly separated, neshek being related to money, and marbith to provisions.

(8) Literal translation with disregard of the accents.

(9) I.e., since neshek and marbith are coupled in the middle of the verse, they are both read with the first half of the verse, which treats of money, and with the second half, dealing with provisions.

(10) V. supra. Since the Tanna deduces its applicability to the lender by a gezerah shawah, how can Rabina, an Amora, maintain that it is inherent in the verse itself, it being axiomatic that an Amora cannot disagree with a Tanna?

(11) V. p. 364. n. 4. Therefore the gezerah shawah teaches that the lender violates these injunctions, whatever he lends upon usury.

(12) Since the essence of all three is the taking of money (or goods) to which one is not entitled, had one been prohibited, the others would have followed as a matter of course.

(13) Lit., ‘novel’.

(14) It is a principle of exegesis that an anomaly cannot provide a basis of analogy for other laws.

(15) The thing stolen is taken against the desire of its owner.
(16) Since the money of which the victim is defrauded is given of his own free will.
(17) So the injury remains permanently. But in robbery and usury the victim's forgiveness may wipe it out.
(18) Even in fraud, though the money is given of one's free will, still he does not consent to be defrauded.
(19) Lit., 'buying and selling'.
(20) I.e., by robbery or usury. But overcharging is sometimes a normal incident in trade, i.e., when one is particularly in need of an article, he may knowingly overpay.
(21) That robbery is prohibited, the prohibition against overreaching not being anomalous.
(22) The interest charge is known to the debtor and yet is forbidden.
(23) Deut. XXIV, 14f.
(24) The one quoted and the one against robbery making the offender liable to a twofold penalty of lashes. [The same answer could not apply to robbery itself, as robbery does not carry with it the penalty of flogging. V. Mak. 17a (Tosaf).]
(25) The superfluous injunction against robbery.
(26) I.e., instead of saying that it intimates an additional injunction against withholding the wage of a hired worker.

Talmud - Mas. Baba Metzia 61b

and it [the injunction against robbery] is written in connection with a hired worker.[1]

What is the need of the injunction, Ye shall not steal,[2] which the Divine Law wrote? — For that which was taught: 'Ye shall not steal,'[3] [even] in order to grieve;[4] 'ye shall not steal,' [even] in order to repay double.[5]

R. Yemar said to R. Ashi: For what purpose did the Divine Law state [separately] the prohibition against [false] weights?[6] — He replied: [To forbid] the steeping of weights in salt.[7] But that is pure robbery! — [To teach] that one transgresses at the very moment that this is done.[8]

Our Rabbis taught: Ye shall do no unrighteousness in judgment, in meteyard, and in weight, or in measure:[9] 'meteyard' means land measurement, [and] it forbids measuring for one in summer and for another in winter.[10] 'In weight', prohibits the steeping of weights in salt; and 'in measure' [teaches] that one must not cause [the liquid] to foam.[11] Now surely, you can reason a minori: if the Torah objected to a [false] mesurah, which is but a thirty-sixth of a log, how much more so a hin, half a hin, a third of a hin, and a quarter of a hin; a log, half a log or quarter log.[12]

Raba said: Why did the Divine Law mention the exodus from Egypt in connection with interest, fringes and weights?[13] The Holy One, blessed be He, declared, 'It is I who distinguished in Egypt between the first-born and one who was not a first-born;[14] even so, it is I who will exact vengeance from him who ascribes his money to a Gentile and lends it to an Israelite on interest,[15] or who steeps his weights in salt, or who [attaches to his garment threads dyed with] vegetable blue[16] and maintains that it is [real] blue.'[17]

Rabina happened to be in Sura on the Euphrates.[18] Said R. Hanina of Sura on the Euphrates: Why did Scripture mention the exodus from Egypt in connection with [forbidden] reptiles?[19] — He replied: The Holy One, blessed be He, said, I who distinguished between the first-born and one who was not a first-born, [even] I will mete out punishment to him who mingles the entrails of unclean fish with those of clean fish and sells them to an Israelite.[20] Said he: My difficulty is 'that bringeth you up'! Why did the Divine Law write 'that bringeth you up' here?[21] — [To intimate] the teaching of the School of R. Ishmael, he replied. Viz., The Holy One, blessed be He, declared, 'Had I brought up Israel from Egypt for no other purpose but this, that they should not defile themselves with reptiles, it would be sufficient for me.'[22] But, he objected, is their reward [for abstaining from them] greater than [the reward for obeying the precepts on] interest, fringes and weights?[23] — Though their reward is no greater, he rejoined, it is more loathsome to eat them [than to engage in the other

malpractices].[24]

AND WHAT IS TARBITH? THE TAKING OF INTEREST ON PRODUCE. E.G., IF ONE PURCHASES WHEAT AT A GOLD DENAR, etc. Is then the preceding example[25] not interest? — R. Abbahu said: Hitherto it [i.e., the first instance] is interest in the Biblical sense, but from here onward by Rabbinical law.[26] And Raba said likewise: Hitherto it is interest in the Biblical sense, but from here onward in the Rabbinical sense. So far,[27] He [sc. the wicked] shall prepare it, and the just shall put it on.[28] 'So far' and no further?[29] — But, [say] even thus far, 'He shall prepare it, and the just put it on.' Thus far it is direct[30] interest, from here onward it is indirect interest.[31]

R. Eleazar said: Direct interest can be reclaimed in court,[32] but not indirect interest. R. Johanan ruled: Even direct interest cannot be reclaimed in court. R. Isaac said: What is R. Johanan's reason?[33] The Writ saith, He hath given forth upon usury, and hath taken increase: shall he then live? he shall not live: he hath done all these abominations:[34] For it [this transgression] death is prescribed, but not return [of the money]. R. Adda b. Ahaba said: Scripture saith, Take thou no usury of him, or increase: but fear thy God:[35] fear is prescribed, but not return. Raba said: It follows from the essential meaning of the verse, He shall surely die: his blood shall be upon him;[36] thus those who lend upon usury are compared to shedders of blood:[37] just as those who shed blood can make no restitution, so those who lend upon interest can make no restitution.

R. Nahman b. Isaac said: What is R. Eleazar's reason?[38] Scripture saith,

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(1) Lev. XIX, 13: Thou shalt not oppress thy neighbour, neither rob him: the wages of him that is hired shall not abide with thee all night until the morning — and is by preference to be applied to the latter.

(2) Ibid. II.

(3) Adopting the reading as amended by Asheri and others. [The verse 'Thou shalt not steal', Ex. XX, 13, given in cur. edd. is explained as an injunction against abduction; v. Sanh. 86a.]

(4) I.e., even if the intention is merely to cause the owner temporary grief at his loss, and then return it.

(5) One may not stage a theft in order to repay double and thus make a gift to his fellow.

(6) Seeing that it is tantamount to robbery.

(7) Which naturally makes them heavier, and then using them when buying.

(8) I.e., merely steeping is forbidden, even without subsequent use.

(9) Lev. XIX, 35, מדה 'meteyard', is lineal measure; משורה 'measure', means liquid measure of capacity.

(10) Rashi: when brothers divide a landed legacy, one's portion must not be measured off in summer and another's in winter, because the measuring cord gives in winter and shrinks in summer.

(11) The foam subsiding, the measure is found to be short.

(12) I hin == 12 logs == 6.072 lit.; 1 log == 0.506 lit. J.E. XII, 484.

(13) Interest: Take thou no usury from him, nor increase . . . I am the Lord your God, which brought you forth out of the land of Egypt (Lev. XXV, 36,38); fringes: Speak unto the children of Israel, and bid them that they make fringes in the borders of their garments . . . I am the Lord your God, which brought you out of the land of Egypt (Num. XV, 38, 41); weights: Just balances, just weights, a just ephah, and a just hin, shall ye have: I am the Lord your God which brought you out of the land of Egypt (Lev. XIX, 36).

(14) Though this, particularly where the child is a first-born on the father's and not on the mother's side, is not always known to man but only to God.

(15) Gentiles being permitted to take interest, Jews pretended that their money belonged to them, and then lent it upon interest.

(16) [Probably indigo blue, an imitation of the genuine blue; תכלת , obtained from the blood of a mollusc, is enjoined in Scripture; Num. XV, 38.]

(17) These fraudulent actions may escape the notice of man, but not of God, who can distinguish what to man is indistinguishable.

(18) [Not the Sura of academy fame, but a town on the right bank of the Euphrates, 45 parasangs N. of Circesium; v. Obermeyer, op. cit. p. 38.]

(19) Lev. XI, 44, 45: Neither shall ye defile yourselves with any manner of creeping thing that creepeth upon the earth. For I am the Lord that bringeth you up out of the land of Egypt.
(20) In a wider sense, שרצים (reptiles) is used of all forbidden creatures, as here.
(21) Whereas in connection with interest etc. the expression is 'who brought you out of'; v. p. 366, n. 13.
(22) I.e., I elevated them above such baseness, 'who brought you up' being understood in a spiritual sense.
(23) This being implied by his answer.
(24) So that 'brought you up', i.e., elevated you above such repulsiveness, is more appropriate to this than to the other laws.
(25) [Lit., 'is that stated' according to MS.M.; cur. edd. 'Are all these stated'.] Viz., lending a sela' that five denarii should be returned.
(26) Lit., 'according to these words'. Lending a sum of money for a larger return is Biblically forbidden; but buying ahead, as illustrated in the Mishnah, was prohibited by the Rabbis.
(27) I.e., usury as defined in the first clause.
(28) Job XXVII, 17: i.e., if a man received interest, his heirs ('the just') are under no obligation to return it, but may put it to their own use.
(29) Surely not! If interest that is Biblically forbidden is not returnable by the heirs, surely that which is only forbidden by the Rabbis need not be returned!
(30) Lit., 'fixed'.
(31) Lit., 'dust of interest' אבק רבית. Lending a sela' for five denarii is direct interest: speculating on 'futures' is only indirect interest, for it is not certain that the wine will appreciate in value.
(32) Lit., 'through the Judges'.
(33) For it is logical that that which is taken illegally should be returnable.
(34) Ezek. XVIII, 13.
(35) Lev. XXV, 36.
(36) Ezek. ibid.
(37) Translating the last phrase: 'his blood', i.e., the blood shed by taking usury, shall be upon him.
(38) That direct interest can be recovered in court.

[Take thou no usury of him, or increase: but fear thy God;] that thy brother may live with thee; [implying] return it to him, that he may be able to live with thee.

Now how does R. Johanan interpret, 'that thy brother may live with thee?' — He utilises it for that which was taught: If two are travelling on a journey [far from civilisation], and one has a pitcher of water, if both drink, they will [both] die, but if one only drinks, he can reach civilisation, — The Son of Patura taught: It is better that both should drink and die, rather than that one should behold his companion's death. Until R. Akiba came and taught: 'that thy brother may live with thee:' thy life takes precedence over his life.[1]

An objection was raised: If their father left them usury money, though they know it to be usury, they are not bound to return it. [This implies,] But their father is bound to return it![2] — In truth, their father too is not bound to return it: but because the second clause desires to state, 'If their father left them a cow, or a garment, or any distinguishable object [received as interest], they must return it for the sake of their father's honour,' the first clause too is taught with reference to them.[3] But are they then bound to make restitution for the sake of their father's honour? [Why not] apply here, Thou shalt not curse a ruler of thy people,[4] [which means], only if he acts as is fitting for 'thy people'?[5] — It is as R. Phinehas [in another connection] said in Raba's name: If he repented; so here too, [we deal with a case] where he repented. But if he repented, how came it [the money] to be still in his possession?[6] — He died before he had time to return it.

An objection was raised: Robbers, and those who lend on usury, even when they have exacted it, must make restitution. Now, how can 'even when they have exacted it' apply to robbers? If it is robbed, it is robbed; and if not, can you call them robbers? But say thus: Robbers; and those meant thereby are those who lend upon usury, even when they have exacted it, must make restitution! — It is a dispute of Tannaim. For it was taught: R. Nehemiah and R. Eliezer b. Jacob exempt the lender and the surety [from punishment],[7] because they have a positive duty.[8] Now, what is meant by a 'positive duty'? Surely that we bid them, 'Arise and return [the usury];' from which it follows that the first Tanna[9] maintains that they are not bound to make a return.[10] No! By 'positive duty' is meant [that they are bid] to tear up the bond [of indebtedness].[11] But what is his[12] opinion? If he maintains: A bond, which is destined to be exacted, is as though it were already exacted,[13] they have [already] committed their transgression![14] Whilst if it is not as already collected, they have committed no wrong![15] — In truth, in his view a bond, destined to be exacted, is not as though already exacted, and what he teaches us is that the [mere] 'putting on' [of usury] is a transgression.[16] This also stands to reason. For we learnt: The following transgress the negative injunction: the lender, the borrower, the surety and the witnesses.[17] Now, with respect to all, it is well, [since] they commit an action. But what have the witnesses done? Hence it surely must be that the [mere] 'putting on' [of usury] is a substantial act [and in this case, a transgression]. This proves it.

R. Safra said: Wherever by their law [i.e., non-Jewish law] exaction is made from the debtor for the creditor, restoration is made by our law from the creditor to the debtor; wherever by their law there is no exaction from the debtor to the creditor, there is no restoration by our law from the creditor to the debtor. Said Abaye to R. Joseph: Now, is this a general rule? Behold, there is the case of a se'ah [lent] for a se'ah which, by their law, the debtor is forced to repay the creditor, yet by ours it is not returnable from the creditor to the debtor![18] He replied, They [regard it] as having come into his possession merely as a trust.[19] Rabina said to R. Ashi: But mortgages without deduction,[20] which by their law is exacted from the debtor for the creditor,[21]

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(1) With thee implies that thy life takes first place, but that he too has a right to life after thine is assured. [For an excellent exposition of R. Akiba's dictum, v. Simon, Leon, Essays on Zionism and Judaism by Achad Ha-am (1922), pp.

236ff.]

(2) Thus contradicting R. Johanan's ruling.

(3) But the father himself cannot be compelled to make restitution.

(4) Ex. XXII, 27: this is interpreted as a general injunction to safeguard another Jew's honour.

(5) I.e., righteously. But if a man took usury, his children are under no obligation to safeguard his honour.

(6) For true repentance necessitates the restoration of that which was wrongfully taken.

(7) The penalty of lashes attached to the injunction against interest.

(8) Lit., 'because there is "arise and do" in their case.' The transgression of a negative command is punished by flagellation, but not if it can be remedied by a subsequent positive action.

(9) The existence of another Tanna who disputes this is assumed, since this is stated in the name of particular teachers, instead of anonymously.

(10) [And consequently the wrong they had committed cannot be remedied.]

(11) I.e., having lent money upon interest, and drawn up a bond, it is the lender's duty to tear it up, thus rendering it invalid. [Where, however, payment was exacted, restitution effects no remedy of the offence.]

(12) I.e., R. Nehemiah's and R. Eliezer b. Jacob's.

(13) So that tearing up the bond is the equivalent of returning the interest.

(14) [And if the tearing up of the bond is considered a remedial action, why should the return of the interest, where actually exacted, not be considered so?]

(15) Who then can dispute that they are exempt from punishment?

(16) Cf. Ex. XXII, 24. For which, in the view of the first Tanna, punishment is incurred, whilst R. Eliezer b. Jacob and R. Nehemiah exempt them therefrom, because it may be followed by a positive action remedying it.

(17) Infra 75b.

(18) Jewish law prohibits the lending of a measure of wheat for the return of a similar measure, as the wheat may at the time of repayment stand at a higher price (v. infra 75a); by Gentile law, this transaction is permissible, and the debtor must repay it to the creditor. Yet though Jewish law forbids it, the debtor cannot demand its return after repayment, since it is only indirect interest.

(19) I.e., in their view, it is not interest at all. A entrusts a se'ah to B, and then B returns it. But R. Safra referred to what the Gentiles recognised as interest, which by their code is permissible.

(20) I.e., the debtor mortgages a field of which the creditor takes possession and enjoys the usufruct without deducting its value from the principal. This is prohibited; v. 67b.

(21) I.e., if the debtor retained the produce for himself the creditor can claim it from him at law.

Talmud - Mas. Baba Metzia 62b

yet by our law is not restored from the creditor to the debtor?[1] — He replied: They [regard it] as having come into his hand by the law of purchase.[2] Then, when R. Safra said, 'Wherever by their law, etc.', what did he mean to tell us?[3] — [This]: 'Wherever by their law exaction is made from the debtor for the creditor, restoration is made by our law from the creditor to the debtor;' this refers to[4] direct interest, and in accordance with R. Eleazar.[5] 'Wherever by their law there is no exaction from the debtor to the creditor, there is by our law no restoration from the creditor to the debtor;' this refers to prepaid and postpaid interest.[6]

E. G., IF ONE PURCHASED WHEAT AT A GOLD DENAR PER KOR, WHICH WAS THE CURRENT PRICE etc. But what does it matter if he has no wine? Did we not learn:[7] One must not fix a price [for produce] until the market price is known;[8] once the market price is established, a fixed price may be agreed upon, for even if this [vendor] has no stock, another has?[9] — Rabbah replied: Our Mishnah refers to the creating of a debt for the value thereof.[10] And as it has been taught: If one was his neighbour's creditor for a maneh, and he went and stood at his [the debtor's] granary and demanded, 'Give me my money, as I wish to purchase wheat therewith;' to which he answered, 'I have wheat with which to supply you; go and calculate [the amount] at the current price, and I will furnish you with it, [spreading it over] the whole year,' — that is forbidden, because it is not as though the issar[11] had come to his hand.[12] Abaye said to him: If the reason [in the

Mishnah is that] it is not 'as though the issar had come to his hand,' why particularly [state the case] where he has no wine? Even if he has, it is also [forbidden]![13] But, said Abaye, our Mishnah is as R. Safra learnt in the collection of Baraithas on interest of the college of R. Hiyya. For R. Safra learnt in the collection of Baraithas on interest of the college of R. Hiyya: Some things are [essentially] permitted, yet forbidden as [constituting] an evasion of usury. How so? If A requested B, 'Lend me a maneh;' to which he replied, 'I have no maneh, but wheat to the value thereof, which I will give you;' and thereupon he gave him a maneh's worth of wheat, [calculated on the current price] and repurchased it for twenty-four sela's;[14] now, this is [essentially] permitted, yet may not be done on account of evasion of usury. So here [in the Mishnah] too: e.g., A said to B, 'Lend me thirty denarii,' to which he replied, 'I have not thirty denarii, but wheat for the same, which I can give you.' He then gave him thirty denarii's worth of wheat [calculated at the current price] and repurchased it for a gold denar.[15] Now,[16] if the debtor has wine, which he gives him against the thirty denarii, he [the creditor] merely receives provisions from him, and there is no objection; but, if not, since he has no wine, to receive money certainly smacks of usury.[17] Raba said to him: If so [instead of], GIVE ME MY WHEAT, the Tanna should state, 'Give me the money for my wheat'![18] — Read: 'the money for my wheat.' [Instead of,] AS I WISH TO SELL IT, he should state, 'Which I sold you.' Read: 'which I sold you.' THE WHEAT SHALL BE ACCOUNTED AS A DEBT TO ME OF THIRTY DENARII — but from the very beginning, had it not been fixed thus against him?[19] — He said thus to him, 'For the value of your wheat which you have accounted against me at thirty denarii, you have a claim of wine upon me', whereas he [the debtor] has no wine. But it is stated, [IF A MAN PURCHASED WHEAT] AT A GOLD DENAR PER KOR, WHICH WAS THE MARKET PRICE![20] But, said Raba,[21] when I die, R. Oshaia will come to meet me,[22]

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(1) Because it is not accounted as direct interest, since the crop may fail.

(2) I.e., theoretically a mortgaged field is sold to the creditor, which the debtor redeems by repaying the loan. Hence, if the debtor seizes its produce, he seizes something that belongs to the creditor by right of purchase, not as interest.

(3) To what case does this actually apply?

(4) Lit., 'and what is it?'

(5) Supra 61b.

(6) V. infra 75b. Such interest is not actionable in Gentile law, and therefore, if paid, is not returnable by Jewish law.

(7) Infra 72a.

(8) I.e., A must not buy ahead from B at a fixed price, paying him now.

(9) I.e., B may undertake to supply A at the current price, even if he has no produce and may have to buy it himself later for delivery at a higher price; yet since B could immediately purchase it from some other merchant, it is not interest. Why then is this forbidden in the Mishnah?

(10) The vendor did not return to the purchaser the money he had received from him for the wheat, but indebted himself for it on the basis of the present advanced price, and undertook to supply him with wine to its value.

(11) I.e., the payment for the wheat.

(12) Now, had he actually received money, it would not be forbidden as interest despite the possible rise in the price, as on p. 372, n. 8, but as he receives no money, should he have to pay more later, the excess is usury; and it is likewise so in the Mishnah.

(13) For in the Baraitha quoted, he actually has wheat, yet it is forbidden.

(14) A maneh contains 100 zuz, and a sela'== 4 zuz; hence 24 sela' == 96 zuz. The debtor, being in urgent need of the money, had to sell it for less than its real worth.

(15) I.e., 25 denarii, so that the debtor has to make, in addition to the gold denar which he received in cash, a return for their remaining five denarii, — a total of 30 denarii.

(16) [When the creditor asks for the thirty denarii for the purpose of buying wine and the debtor offers to supply it.]

(17) For the debtor actually received only 25 denarii, which the creditor paid him in cash for the wheat, whilst he repaid him 30 denarii. On this explanation, IF A MAN PURCHASED WHEAT AT A GOLD DENAR PER KOR, refers to the creditor as purchaser and the debtor as vendor. The rest of the Mishnah does not agree with this interpretation, and Raba proceeds to raise this objection.

(18) Since the creditor had previously given the wheat to the debtor, and was now demanding payment.

(19) I.e., this involves no new arrangement, as is implied in the Mishnah.

(20) Whereas on this interpretation it is obvious that the creditor repurchased it at 25 when the current price was 30.

(21) The reading of R. Han. and Alfasi is: This refers to a case where he wishes to create a debt for its value, and as R. Oshaia taught; v. p. 372, n. 9.

(22) I.e., pay honour to me in the Great Beyond.

Talmud - Mas. Baba Metzia 63a

for I interpret the Mishnayoth in accordance with his views. For R. Oshaia taught: If a man was his neighbour's creditor for a maneh, and he went and stood at his granary and said, 'Repay me my money, as I wish to purchase wheat therewith,' and he [the debtor] replied, 'I have wheat which I will supply you; go and charge me therewith against my debt at the current price.' The time came for selling,[1] and he said to him, 'Give me the wheat,[2] which I wish to sell and purchase wine with the proceeds;' to which he replied, 'I have wine; go and assess it for me at the current price.' Then the time came for selling wine, and he said to him, 'Give me my wine, for I wish to sell it and purchase oil for it;' to which he replied, 'I have oil to supply you; go and assess it for me at the current price:' in all these cases, if he possesses [these commodities] it is permitted; if not, it is forbidden.[3] [So in the Mishnah.] And what is meant by 'IF A MAN PURCHASED'? He purchased against his debt.[4] Raba said: Three deductions follow from R. Oshaia: [i] the debt may be offset against provisions, and we do not say, it is not as if the issar had come to his hand;[5] [ii] but only if he [the debtor] possesses [these commodities]; and [iii] R. Jannai's view is correct, viz., what is the difference between them themselves [sc. the provisions] and the value thereof?[6] For it was stated: Rab said: One may buy on trust against [future delivery of] crops, but not against [repayment of] money at [future prices].[7] But R. Jannai said: What is the difference between them themselves [sc. the crops] and the value thereof?[8]

An objection was raised: In all these cases, if he possesses [these commodities], it is permitted.[9] — R. Huna answered in Rab's name: This means that he drew [the produce into his possession].[10] If he drew it into his possession, need it be taught?[11] — But, e.g., he assigned a corner [of the granary] to him.[12] Samuel said: This is taught in accordance with R. Judah, who ruled: One-sided usury is permitted.[13] For it has been taught: If a man was his neighbour's creditor for a maneh, for which he [conditionally] sold him his field;[14] if the vendor enjoys the usufruct, it is permitted; if the purchaser, it is forbidden.[15] R. Judah ruled: Even if the purchaser has the usufruct, it is permitted.[16] R. Judah said to them: It once happened that Boethus b. Zunin [conditionally] sold his field, with the approval of R. Eleazar b. Azariah, and the purchaser took the usufruct. Said they to him: [Would you adduce] proof from thence? The vendor enjoyed its usufruct, not the purchaser. Wherein do they[17] differ? — Abaye said: They differ with respect to one-sided interest.[18] Raba said: They differ with respect to interest [received] on condition that it shall be returned.[19]

Raba said: Now that R. Jannai ruled:

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(1) There was a time when wheat was generally sold, when it generally appreciated in value.

(2) He had not given it to him before.

(3) If the debtor actually possesses these commodities, as soon as he agrees to furnish him with a certain quantity thereof, that quantity belongs to the creditor, even if he does not actually take it; and if it appreciates, his own appreciates, and there is no suggestion of usury, even if the transaction is made several times, each time at an enhanced value. But if the debtor lacks them, and when the bargain is struck, actually receives no money, it has the appearance of a ruse to increase his indebtedness (v. p. 373, nn. 4, 6), and is thus like usury, and consequently forbidden.

(4) Thus: A owing a gold denar to B, credited him with a kor of wheat for it, which was the current price; then the kor appreciated to 30 denarii, and A credited B with wine to the value of 30 denarii. Actually Raba's explanation coincides with Rabbah's (supra 62b); this is particularly evident from the reading of R. Han. and Alfasi, given p. 374, n. 4, in which Raba uses the same words as Rabbah; Raba merely quotes R. Oshaia's dictum to dispose of the difficulties urged

against Rabbah's explanation, as is seen in the deductions he makes: v. n. 2.
(5) This disposes of the criticism levelled on 62b against Rabbah's explanation on the strength of the Baraitha quoted there . . . R. Oshaia's dictum differs from that Baraitha, and Rabbah's interpretation, with which Raba's is identical (v. preceding note), agrees with R. Oshaia.
(6) The Talmud proceeds to explain this.
(7) I.e., a man may buy crops at present prices, paying immediately, for delivery at some future date, even though they may have appreciated in the meanwhile. But he may not arrange to receive the future value of the crops, for since he may thus receive in actual money more than he gave, it has the appearance of usury.
(8) Since he may receive the crops, though they represent more than was paid, he may also receive money in lieu thereof. R. Oshaia's ruling, that the creditor may be credited with wine calculated on the low price and according to the appreciated value of the wheat, supports this view, that the crops owing to him may be deemed as actual money.
(9) Quoted from the Baraitha of R. Oshaia cited above; as this supports R. Jannai (v. preceding note), it refutes Rab.
(10) Hence it is actually his own, and not merely a debt, and therefore the subsequent transactions are permitted; v. p. 374, n. 8.
(11) It is then obvious!
(12) Declaring, 'The wheat in this corner be yours for my debt.' R. Oshaia thus teaches that mere assignation has legal validity to render it his, and no longer a debt.
(13) I.e., that which might result in an appearance of usury, as in the case under discussion. For he may give him the crops, in which case there is no suspicion of usury: only when he gives money in lieu thereof, does it appear as such.
(14) 'If I do not repay by a certain date, the field is sold to you from now;' v. infra 65b.
(15) For should the money be repaid, he will have received usury thereon.
(16) For it is not certain that the field will be redeemed, in which case there is no usury. Hence it is regarded as 'one-sided' usury', which R. Judah permits.
(17) R. Judah and the Rabbis who oppose him.
(18) As explained above.
(19) I.e., even R. Judah admits that if the purchaser retains the crops after repayment, it is forbidden. But they differ where it is stipulated that if the loan is repaid, the creditor must return the value of the crops he has taken. R. Judah permits this arrangement, since thereby an infringement of usury is precluded, whilst the Rabbis maintain that even this is forbidden, for when he enjoys the usufruct it is actually interest on money lent (Rashi). Tosaf. explains that there is a real possibility of interest. Thus: should he fail to repay the entire loan, the creditor retains the whole value of the crops, even if it exceeds the deficit.

Talmud - Mas. Baba Metzia 63b

We reason, 'What is the difference between them themselves [sc. the crops] and their value?' we argue [conversely] too, 'What is the difference between their value and them themselves?' and [consequently] one may contract to supply [provisions] at the current market price even if he has none.[1] R. papa and R. Huna the son of R. Joshua objected to Raba's [statement]: In all these cases, if he possesses [these commodities], it is permitted; if not, it is forbidden![2] — He answered them: There [the reference is to] a loan, here to a sale.

Rabbah and R. Joseph both said: Why did the Rabbis rule, A man may contract to supply [provisions] at the current market price, even if he has none? Because he [the purchaser] can say to him [the vendor], 'Take your favours and throw them in the bush! How do you benefit me? Had I money, I could have bought cheaply in Hini and Shili.'[3] Abaye said to R. Joseph: If so, should it not be permitted to lend a se'ah for a se'ah, since he [the borrower] could say, Take your favours and throw them in the bush! For,' he could argue, 'would my wheat have gone to ruin in my granary?' — He replied: There it is a loan, here a purchase. R. Adda b. Abba said to Raba: But he would have to pay money to a broker![4] — He replied: He [the purchaser] must give that too to him. R. Ashi said: people's money is their broker.[5]

Rabbah and R. Joseph both said: He who advances money at the early market price[6] must

[personally] appear at the granary. For what purpose? If to acquire it — but he does not thereby acquire it![7] If that he [the vendor] may have to submit to [the curse], 'He who punished, etc.,'[8] — even without his appearing there, he must submit thereto! — In truth, it is that he may submit to the curse; but he who advances money on an early market generally gives it to two or three people:[9] hence, if he appears before him, [he shews] that he relies upon him [for supplies]; but if not, he [the vendor] can plead, 'I thought that you found better produce than mine, and bought it [intending that I should return your money].' R. Ashi said: Now that you say it is because of his relying upon him, then even if he met him in the market and said to him, ['I rely upon you',] he relies upon him.[10]

R. Nahman said: The general principle of usury is: All payment for waiting [for one's money] is forbidden. R. Nahman also said: If one gives money to a wax merchant, when it is priced at four [standard measures per zuz], and he [the vendor] proposes,'I will supply you five [per zuz];'[11] if he possesses it, it is permitted; if not, it is forbidden. But this is obvious![12] — It is necessary [to teach this] only when he has [wax] credits in town:[13] I might think that in such a case it is as though [he had said, 'Lend me] until my son comes, or until I find the key:'[14] therefore he teaches, since it must yet be collected, it is as non-existent.

R. Nahman also said: If one borrows money from his neighbour and found a surplus therein, if it is an amount about which there could be an error, he must return it; otherwise, it is simply a gift. When is it 'an amount about which there could be an error'? — R. Abba, the son of R. Joseph said:

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(1) For, just as it is certainly permissible if he has the stock, so also when he has the money furnished by the purchaser to buy it, for there is no essential difference between stock and money. — In such passages the reference is to contracting ahead, when the crops are probably dearer.

(2) Quoted from R. Oshaia's Baraitha. Whereas Raba permits it even if he has none.

(3) [On Hini and Shili, v. B.B. (Sonc. ed.) p. 753, n. 6. There was the central corn market, which supplied corn throughout Northern Babylon, and where wheat was procurable at lower prices (v. Obermeyer, op. cit. p. 32). I.e., 'I could buy it there before the rise in prices,' and thus the purchaser derives no benefit by advancing the money to the seller. The question of usury consequently does not arise.]

(4) By paying for the wheat beforehand the buyer saves the broker's fee, which he would have had to pay each time he wanted to make a purchase. This saving constitutes interest on his money.

(5) I.e., if he can pay cash, he needs no intermediary.

(6) Soon after the harvest, before trade commences in earnest and a general price is fixed, there is some desultory selling at a low price. Buying ahead at this price is also permitted if the vendor has supplies.

(7) Merely by appearing there, but must draw it into his possession — perform meshika.

(8) V. supra 44a. So here too: the vendor should be morally bound, though the purchaser has not formally acquired it.

(9) Presumably because the vendor would not accept a large order.

(10) And thereby submits himself to the curse.

(11) If you accept it later, though paying the money now.

(12) As various Baraithas have already stated.

(13) I.e., he has already paid for stocks, which are now due to him.

(14) v. infra 75a; here too, I might regard it as being already in his possession, though temporarily inaccessible.

Talmud - Mas. Baba Metzia 64a

In [denominations of] tens or fives.[1] R. Aha the son of Raba asked R. Ashi: But what if he [the lender] is a hard man, who never gives presents? — He replied: He may have robbed him [on a previous occasion], and now included it in the total sum. For it has been taught: If one robbed his neighbour, and then included it in the account, he is quit [of his obligation]. But what if he [the lender] had come from elsewhere, and had never had business dealings with him? — He replied: He [the borrower] might have been robbed by some other person, and might say to him [the lender], 'When so and so borrows money from you, include this in the sum.'

R. Kahana said: I was sitting at the end of Rab's sessions,[2] and heard him repeatedly mention 'gourds',[3] but did not know what he meant. After Rab arose [and departed], I asked them [sc. the students], To what did Rab refer in his repeated mention of gourds'? — They answered me, Thus did Rab say: If a man gives money to a gardener for gourds, ten gourds of a span's length being priced [at a zuz], and says to him, 'I will give you [gourds] a cubit in length [for the money];' if he actually has them, it is permitted; but if not,[4] it is forbidden.[5] Is this not obvious? — I might think, since they naturally grow large [without requiring labour], it is in order. He therefore taught [otherwise]. With whom does this agree? — With the following Tanna. For it has been taught: If one is going to milk his goats, shear his sheep, or remove the honey from the combs, and meeting his neighbour, says to him, 'The milk which my goats will yield is sold to you; the wool sheared from my sheep is sold to you; the honey to be removed from my combs is sold to you;' it is permitted.[6] But if he said to him, 'So much of my goats' milk yield is sold to you; so much of my sheep's shearings is sold to you; or so much of the honey which will be removed from the honeycombs is sold to you,'[7] it is forbidden.[8] Now, though such yield comes naturally,[9] yet since it is non-existent just then [when the transaction is made], it is forbidden.[10] Others Say, Raba ruled [in reference to the gourds]: Since they grow naturally, it is permitted. But it has been taught that 'so much and so much'[11] is forbidden! — There, the increase is not in [the product] itself, for the present yield is taken and other comes in its stead;[12] here, however, that itself [the produce he has in his garden] increases [in size], for if that is taken away, others do not grow in its place.[13]

Abaye said: A man may say to his neighbour, 'Here are four zuz for a barrel of wine; if it turns sour, it is in your ownership;[14] but if it appreciates or depreciates [in value], it is in mine.' Said R. Sherabia to Abaye:

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(1) They used to count in fives and tens (Tosaf.). Now, if the amount should have been e.g., fifty, and it was fifty-five or sixty, the lender may have mistakenly counted eleven fives instead of ten, or six tens instead of five; but if it were fifty-two or-three etc., it is impossible that it should have been an error.

(2) שלהי פרקי ; the phrase seems to be a technical term denoting a special session at the end of a series of lectures devoted to the reviewing of the conclusions reached during the course. Kaplan J. op. cit. p. 257.]

(3) [As a kind of mnemonic, loc. cit.]

(4) His gourds being small, and the purchaser must wait until they grow.

(5) For he gives him larger gourds in return for waiting, which looks like usury.

(6) For it is a speculation: though the buyer may receive more than his money's worth (the price being fixed and paid in advance), the yield might also be poor, in which case he would lose.

(7) And in each case giving him a particular low quotation in return for advance payment.

(8) Since a definite quantity must be supplied, the lower quotation is usury.

(9) Should there not be an immediate sufficiency, the goats etc. will yield again.

(10) Thus Rab's dictum is in accordance with this Baraitha.

(11) Viz., the dealings stated above.

(12) Hence it is forbidden.

(13) Without replanting, since he supplies the gourds actually in his garden, it is not usury to keep them in the soil until they grow larger and then supply them.

(14) So that another must be supplied.

Talmud - Mas. Baba Metzia 64b

But that is near to profit [if it appreciates] and remote from loss.[1] — He replied: Since he accepts the risk of depreciation, it is near to both [profit and loss].

MISHNAH. IF A MAN LENDS [MONEY] TO HIS NEIGHBOUR, HE MUST NOT LIVE RENT-FREE IN HIS COURT, NOR AT A LOW RENT, BECAUSE THAT CONSTITUTES

USURY.

GEMARA. R. Joseph b. Minyomi said in R. Nahman's name: Though it has been ruled, if one dwells in his neighbour's court without his knowledge, he need not pay him rent, yet if he lent him [money] and then dwelt in his court, he must pay him rent. What does he teach us? We have [already] learnt: IF A MAN LENDS [MONEY] TO HIS NEIGHBOUR, HE MUST NOT LIVE RENT-FREE IN HIS COURT, NOR AT A LOW RENT, BECAUSE THAT CONSTITUTES USURY? — If from the Mishnah, I might have thought that that holds good only of a court which exists for letting, and a man [sc. the creditor] who generally rents. But if it is a court which is not for letting, and a person who does not generally rent,[2] I would say, It is not so:[3] therefore he teaches us [otherwise].

Others say: R. Joseph b. Minyomi said in R. Nahman's name: Though it has been ruled, If a man dwells in his neighbour's court without his knowledge, he is not bound to pay him rent, [yet if he proposes to him,] 'Lend me money, and live in my court,' he [the creditor] must pay rent. Now, he who rules, [Even] if he had [already] lent him, [he must pay rent], will certainly hold the same if he proposed, 'Lend me [etc.].' But he who rules, [if he says,] 'Lend me,' [he must pay him rent], will, in the case where he has already lent him, hold that it is unnecessary. Why so? Since he did not originally lend the money for this purpose, there is no objection to it.[4]

R. Joseph b. Hama seized the slaves of people who owed him money and put them to service. Said his son Raba to him: Why does the Master do thus? — He replied: I agree with R. Nahman. For R. Nahman said: A slave['s labour] is not worth the bread he eats.[5] Said he to him: perhaps R. Nahman said this only of such as his servant Daru, who went about dancing in taverns; but did he say this of other servants! — He replied: I am of the same opinion as R. Daniel son of R. Kattina, who said in Rab's name: If one seizes his neighbour's slave and puts him to service, he is free [from payment],

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(1) Since he is safeguarded if it turns sour. Such an arrangement is forbidden infra 70a.

(2) Because he has his own property (Rashi).

(3) He is not bound to pay the rent.

(4) I.e., having lived there, he is not bound to pay the rent. The Mishnah then which says that he must not live rent free means that no condition to that effect is permissible.

(5) Hence, having to provide them with food, I gain nothing by their labour, and receive no interest.

because he [the owner] is pleased that his slave does not become demoralized [through idleness]. But, he urged, that is only if one has no monetary claim upon him; since you, Sir, have a monetary claim upon them, it looks like usury. For R. Joseph b. Minyomi said in R. Nahman's name: Though it has been ruled, if one dwells in his neighbour's court without his knowledge, he is not bound to pay him rent; yet if he lent him [money] and then dwelt in his court, he must. He replied: Then I repent thereof.

Abaye said: If a man had a claim of usury upon his neighbour, and the market price of wheat was four grivas[1] a zuz, whilst he [the debtor] gave him five; when we reclaim it from him,[2] we only reclaim four, but as for the other, he merely favoured him with a cheap rate.[3] Raba said: We reclaim five, because from the very outset he acquired it all as interest.

Abaye also said: If a man had a claim of four zuz in interest upon his neighbour, and he gave him a garment for it, when we compel repayment, we make him repay four zuz, but not the garment.[4] Raba said: We compel him to return the garment. Why so? That people may not say, 'The garment he wears is a garment of usury.' Raba said: He who has a usury claim of twelve zuz upon his

neighbour, and he [the debtor] rented him his court-yard, such as is generally let at ten zuz, for twelve; when we make him disgorge, we force him to repay twelve. R. Aha of Difti said to Rabina: But cannot he protest, 'When I rented it thus [at such a high rent], it was because I profited thereby;[5] now, however, that I do not profit, just at [the same rate] as all rent it, so will I'?[6] — Because he [the debtor] can say to him, 'You understood [its value] and accepted it [at twelve zuz].'

MISHNAH. RENT MAY BE INCREASED, BUT NOT THE PURCHASE PRICE. E.G., IF A MAN RENTS HIS COURT, AND SAYS TO HIM [THE TENANT], 'IF YOU PAY ME NOW [FOR THE YEAR], YOU CAN HAVE IT FOR TEN SELA'S PER ANNUM; IF MONTHLY, AT A SELA' PER MONTH — THAT IS PERMITTED. IF HE SELLS HIS FIELD, AND SAYS TO HIM [THE PURCHASER], 'IF YOU PAY ME NOW, IT IS YOURS FOR A THOUSAND ZUZ; BUT IF AT HARVEST TIME, FOR TWELVE MANEHS'[7] — THAT IS FORBIDDEN.

GEMARA. What is the difference between the first clause and the second? — Rabbah and R. Joseph both said: Rent is payable at the end [of the year]; hence, since it is not yet time to claim, it is not payment for waiting,[8] but this [a sela' per month] is its actual value; and as for his proposition, IF YOU PAY ME NOW [FOR THE YEAR], YOU CAN HAVE IT FOR TEN SELA' PER ANNUM, he is favouring him with a cheaper rent [than normal]. But in the second clause, the reference is to purchase, where the money is immediately due; therefore [the higher price] is payment for waiting, which is forbidden. Raba said: The Rabbis scrutinised this ruling, and based it on Scripture: As the hiring of a year in a year,[9] [which intimates,] the hire of one year is not payable until the next.[10]

BUT IF AT HARVEST TIME, FOR TWELVE MANEHS — THAT IS FORBIDDEN. R. Nahman said: An increased credit price[11] is permitted. Rami b. Hama, others Say, R. 'Ukba b. Hama, refuted R. Nahman: BUT IF AT HARVEST TIME, FOR TWELVE MANEHS — THAT IS FORBIDDEN? — He replied: There [the increase] was stipulated; here no stipulation is made. R. papa said: The increased credit price which I take is permitted.[12] Why? Because my beer will not deteriorate [if I keep it until Nisan], [and] I am in no need of money;[13] hence, I merely confer a benefit upon the purchaser [by letting him have it earlier]. But R. Shesheth the son of R. Idi said to R. papa: Why should you merely consider yourself? Consider them [the purchasers]: had they money, they would purchase at present prices; lacking it, they must buy it at the higher future prices.[14] R. Hama said: My increased credit price is certainly permitted.[15] Why? They are pleased that it shall remain in my ownership, so that wherever they go they are released from taxation and the market is held up for them.[16]

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(1) A dry measure. Jast. and J.E. XII, 488, identify it with a se'ah, on the strength of a passage in 'Er. 14b.

(2) Direct interest can be reclaimed, infra 656.

(3) Hence, it is not part of the interest.

(4) The garment is regarded as a sale, and hence not returnable.

(5) Receiving it as interest due.

(6) I.e., only ten zuz should be reckoned for it.

(7) == 1200 zuz.

(8) I.e., the higher price for the monthly arrangement cannot be regarded as such, since the money is not yet due.

(9) Lev. XXV, 53.

(10) I.e., at the end of the year. This is a mere support, not the actual source of the law.

(11) Tarsha, lit., 'deaf or silent usury' (Jast.); i.e., selling goods on credit at more than cash price but without stipulating that the addition is on account of credit.

(12) R. Papa was a manufacturer of beer. He sold it in Tishri, when prices are low, to be paid for in Nisan at Nisan prices, which are higher.

(13) To have to sell it earlier — he was a wealthy man.

(14) So that it is usury from their point of view.

(15) R. Hama sold goods where they were cheap at the higher cost of some other place. The purchaser then conveyed the goods there at R. Hama's risk. Since R. Hama bore the risk, the goods were his until brought there, therefore they really sold his wares, and so he was entitled to the prices of that place.
(16) No one being permitted to sell until they had sold out, which was the scholar's privilege.

Talmud - Mas. Baba Metzia 65b

Now, the law is as R. Hama;[1] and the law is as R. Eleazar;[2] and the law is as R. Jannai, who said: What is the difference between them themselves [sc. the provisions] and the value thereof?[3]

MISHNAH. IF A MAN SOLD A FIELD, AND HE [THE BUYER] HAVING PAID PART OF THE PURCHASE PRICE, THE VENDOR PROPOSED, 'WHENEVER YOU DESIRE, BRING ME THE BALANCE AND TAKE YOUR OWN' [SC. THE FIELD], THAT IS FORBIDDEN.[4] IF HE LENT MONEY ON A FIELD AND SAID TO HIM [THE DEBTOR], 'IF YOU DO NOT REPAY ME WITHIN THREE YEARS, IT [THE FIELD] IS MINE' — IT BECOMES HIS; AND THUS DID BOETHUS B. ZUNIN DO, [ACTING] WITH THE APPROVAL OF THE SAGES.

GEMARA. Who enjoys the usufruct? — R. Huna said: The vendor; R. 'Anan said: It is entrusted to a third party.[5] But there is no dispute: the former is the case if he stipulated, 'When you bring it [the balance], [then] acquire it;'[6] the latter if he stipulated, 'When you bring it, acquire it from now.'[7]

R. Safra learnt in the [collection of Baraithas on] usury of the School of R. Hiyya: Sometimes both [the vendor and the purchaser] are permitted [to enjoy the usufruct]; sometimes both are forbidden; sometimes the vendor is permitted and the purchaser forbidden; and sometimes the purchaser is permitted and the vendor forbidden.[8] Thereupon Raba explained: 'Sometimes both are permitted,' viz., if he stipulates, 'Acquire [forthwith] in proportion to your deposit;'[9] 'sometimes both are forbidden,' if he stipulates, 'When you bring it [the balance], let it be yours from now;[10] 'sometimes the vendor is permitted but the purchaser forbidden,' if he stipulates, 'When you bring it, [then] acquire it;' 'and sometimes the purchaser is permitted and the vendor forbidden,' if he states, 'Let it be yours from now, and the balance be a loan [from me to you].'

Which Tanna holds that both are forbidden? — R. Huna the son of R. Joshua said: It does not agree with R. Judah; for were it in accordance with R. Judah — surely, he maintained that one-sided interest is permitted.[11]

If a man mortgages a house or a field, and he [the creditor] says to him, 'Should you wish to sell it, you must let me have it at this price [less than its value],' — that is forbidden: 'at its real value,' — that is permitted. Which Tanna maintains that [if he stipulates] 'at this price,' it is forbidden — R. Huna the son of R. Joshua said: It does not agree with R. Judah; for were it in accordance with him — surely he holds that one-sided interest is permitted.[12]

If he sells a house or a field, and says to the purchaser, 'When I have money, resell it to me,' — that is forbidden. [If the buyer says], 'When you have money, I will resell it to you,' — that is permitted.[13] With which Tanna does this agree? — R. Huna the son of R. Joshua said: Not with R. Judah; for if it agreed with him — surely he ruled that one-sided interest is permitted.[14] What is the difference between the first clause and the second? — Raba answered: In the second clause, he [the buyer] stipulated that it [the re-sale] should be voluntary.[15]

A man once sold an estate to his neighbour without surety.[16] Seeing that he [the purchaser] was disquieted, he said to him, 'Why are you disquieted? Should it be seized from you [for a debt of mine], I will repay you out of the best of my estate, [even] for your improvements and the crops.' Said Amemar:

(1) With reference to this form of interest.
(2) Supra 61b, that direct interest is legally reclaimable.
(3) Supra 63a.
(4) Rashi: When the balance is paid, the field shall have belonged to the buyer from the time of purchase. Now, should the vendor take the usufruct, when the balance is paid, he has enjoyed that which really belonged to the purchaser, and it looks like interest on the balance, for which he waited. On the other hand, should the purchaser take its profits from the time of the deposit and never complete the transaction, the deposit being returned, he has thus received interest on it.
(5) Who retains them for one or the other, as the case may be.
(6) Hence in the meanwhile the profit is the vendor's.
(7) Therefore neither the vendor nor the purchaser can take the profit, and hence it is entrusted to a third party.
(8) Without stating the conditions of each.
(9) Then they share the profit on a pro rata basis.
(10) As explained on p. 384, n. 5.
(11) V. p. 384, n. 7. Here too, should the vendor take the usufruct and the sale remain uncompleted, there is no interest, and therefore on R. Judah's view, it is permitted.
(12) V. supra 63a. Here too, there is no certainty that the mortgagee will sell his field at all.
(13) The first is forbidden, as it looks like evasion of usury: the purchaser gives a sum of money to the vendor, in return for which he uses the field until the former repays him.
(14) V. supra 63a. Here too, it may be that the field will not be repurchased, in which case there is no interest.
(15) At the option of the buyer; therefore it is purely a business deal. But when the vendor stipulates that the buyer must re-sell, it is a disguised loan.
(16) V. supra 14a.

Talmud - Mas. Baba Metzia 66a

They are merely words of good cheer[1] R. Ashi said to him: Why so? [Is it] because the buyer should have stipulated, whilst here the vendor did so, and therefore you maintain that they were merely words of good cheer? But [what of] the Baraitha wherein it is taught: [If the purchaser says,] 'When you have money, I will resell it to you,' that is permitted? Now, surely [there too] though the vendor should have made this stipulation,[2] the vendor did not stipulate but the buyer; and yet when we asked,[3] What is the difference between the first clause and the second, Raba answered: In the second clause he [the purchaser] stipulates that it [the resale] should be voluntary, thus implying that if he does not stipulate that it should be voluntary [the transaction would be forbidden], and we do not assume that [his offer] was merely words of good cheer![4] — He replied: What was said was that it is accounted as though he had stipulated that it [the re-sale] should be voluntary.[5]

A certain sick man[6] wrote a get[7] for his wife.[8] He then groaned and sighed, whereupon she [his wife] said to him, 'Why do you sigh? should you recover, I am yours.' Said R. Zebid: These were mere words of consolation. R. Aha of Difti asked Rabina: And what if they were not mere words of consolation? Does it lie within her power to insert a condition in the get? Surely it rests only with him to give the get on a condition! — I might think, he himself meant to give the get in accordance with her desires.[9] Hence he teaches otherwise.[10]

IF HE LENT MONEY ON A FIELD. R. Huna said: [If he stipulated thus] when lending the money, it becomes completely his;[11] if after, he acquires [of the field] only in proportion to the money owing. R. Nahman said: [Even if the stipulation was made] after lending the money, it becomes completely his. Now, R. Nahman gave a practical decision at the Resh Galutha's [court][12] in accordance with his ruling. Rab Judah [however] tore up the document [embodying his decision]. Said the Resh Galutha to him: Rab Judah has torn up your document. He replied: Did then a child tear it up? It was a great man who tore it up. He must have seen some reason therein [to invalidate it], and hence tore it up. Others say: He [R. Nahman] replied: A child has torn it up, for in civil law

everyone is a child compared to me.

Subsequently R. Nahman ruled: Even [if the stipulation was made] when the money was being handed over, he [the creditor] acquires no rights therein at all. Raba objected to R. Nahman: IF YOU DO NOT REPAY ME WITHIN THREE YEARS, IT [THE FIELD] IS MINE,' — IT BECOMES HIS! — He replied: I used to rule that an asmakta[13] is binding, but Minyomi ruled that it is not.[14] But [then] according to Minyomi, is not our Mishnah difficult? — If you wish, I can answer that the Mishnah agrees with R. Jose, who ruled that an asmakta is legally valid;

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(1) I.e., to tranquillise the buyer, but not seriously meant, and therefore of no legal consequence.

(2) The attachment to one's soil is very strong, and when a man sells his estate through financial exigencies, it may be assumed that he would like the option of repurchasing.

(3) Supra.

(4) But binding, though it is to the purchaser's disadvantage.

(5) Since it is a stipulation which would come most naturally from the vendor, whereas it was actually made by the purchaser, its voluntary character is inherent. On this interpretation Raba's dictum supports Amemar.

(6) שכיב מרע , a man expecting to die.

(7) v. Glos.

(8) He was childless, and the divorce was to free her from the tie of his brother (v. Deut. XXV 5ff), but he did not stipulate that it should be valid only if he died.

(9) Therefore the stipulation should be regarded as his, and so valid.

(10) That her words were not meant to be binding at all.

(11) If the loan is not repaid.

(12) Resh Galutha, exilarch, was the official title of the head of Babylonian Jewry, whose son-in-law R. Nahman was.

(13) V. Glos.

(14) And he persuaded me to his ruling.

alternatively, it means that he said to him: 'Let it be yours from now.'[1]

Mar Yanuka and Mar Kashisha, the sons of R. Hisda,[2] said to R. Ashi: Thus did the Nehardeans say in R. Nahman's name: An asmakta, in its time, is binding; out of its time, it is not binding.[3] Said he to them: Every agreement [not merely an asmakta] is binding only when it matures, but not otherwise! perhaps you mean thus: If he [the debtor] meets him [the creditor] within the period [of repayment] and says to him, 'Take possession,'[4] he acquires it; if after the time [fixed for repayment] and he says to him, 'Take possession,' he does not acquire it. Why? He spoke thus [merely] through shame.[5] Yet that is incorrect:[6] even if within the period, he obtains no legal right, and as for his saying, 'Take possession,' he intends [thereby] that when the time comes he shall not trouble him.[7]

R. papa said: An asmakta is sometimes legally binding and sometimes not. If he [the creditor] found him [the debtor] drinking beer [at the expiration of the period], it is binding; if he was endeavouring to procure money, it is not binding.[8] R. Aha of Difti said to Rabina: perhaps he was drinking to drown his anxiety, or else someone had assured him of the money? But, said Rabina, if he insists on its full value, it [his offer to the creditor to take the field] is certainly valid.[9] Said R. Aha of Difti to Rabina: perhaps that is due to fear lest his land lose its worth?[10] But, said R. Papa, if he is particular about his land, it [his offer to the creditor] is certainly binding.[11]

R. Papa also said: Although the Rabbis ruled that an asmakta gives no legal title, yet it creates a mortgage from which payment may be exacted.[12] Said R. Huna the son of Nathan to R. Papa: Did he then say to him, 'Let it be yours for the exaction of your debt'? Mar Zutra, the son of R. Mari, objected before Rabina: But even if he had said, 'Let it be yours for the exaction of your debt' — has

he a legal title? After all, it is an asmakta, and an asmakta is not binding. But when did R. Papa rule that it creates a mortgage? — If he stipulated, 'You shall receive payment only out of this.'[13]

A man once sold land to his neighbour with security. Said he [the purchaser] to him, 'Should this be seized from me, will you repay me out of your "very best"?' — He replied, 'I will not repay you out of the "very best", as I want them for myself, but out of other "best" which I possess.'[14] Subsequently it was seized from him. Then there came an inundation and swamped the very best [land]. R. Papa thought to rule: He promised him of 'the best', which is intact. Said R. Aha of Difti to him: But he [the vendor] can plead, 'When I promised to repay you from the "best", the very best" was existent; but now the "best" has replaced the "very best".'[15]

Rab b. Shaba owed money to R. Kahana. 'If I do not repay you by a certain date', said he to him, 'you may exact your debt out of this wine.'[16] Now, R. papa thought to argue, Where do we rule that an asmakta is not binding, only in respect of land, which is not for sale;[17] but as for wine, since its purpose is to be sold, it is just the same as money. But R. Huna, the son of R. Joshua, said to R. Papa: Thus is it stated in Rabbah's name: No 'if' is binding.[18]

R. Nahman said: Now that the Rabbis have ruled, An asmakta gives no claim, both the land and its produce are returnable.[19] Shall we say that R. Nahman holds that renunciation in error is invalid?[20] Surely it has been stated: If one sells his neighbour the fruit of a palm tree — R. Huna said: As long as it is non-existent [the fruit not having grown yet], he can retract;[21] but when it is [already] come into existence, he cannot. R. Nahman said: Even when it has come into existence, he can retract. Yet R. Nahman said: I admit that if he [the purchaser] snatched and consumed it, he [the vendor] has no claim upon him![22] — There it is a sale; here it is a loan.[23]

Raba said:

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(1) In which case it is not an asmakta at all. For the money is given as the purchase price, not as a loan, save that the vendor has the option of repurchase.

(2) Yanuka is derived from a root meaning youth, Kashisha, age. Accordingly, Rashi in Keth. 89b says that Mar Yanuka was the younger, and Mar Kashisha the older. Tosaf. in B.B. 7b, s.v. מר ינוקא , reverses it: Mar Yanuka means a son born in R. Hisda's youth, Mar Kashisha, in his old age.

(3) R. Ashi assumed this to mean: when the obligation matures, it is binding, and the creditor can foreclose; but not before.

(4) I.e., I have no intention of redeeming it when the time comes.

(5) At not having repaid the loan, yet was not in earnest; therefore it is an asmakta and non-binding.

(6) Granted that this is your meaning, the ruling is incorrect.

(7) By demanding repayment.

(8) If repayment was due, and the debtor told him to take the field, at the same time engaging in frivolous pursuits, it is evident that he does not care about it and is in earnest. But if he was attempting to find the money, he was obviously anxious to retain his estate, and therefore his offer was not really meant and is not binding.

(9) Rashi: if when selling some of his articles he insists on obtaining their full value, he is not anxious for the field, as otherwise he would sell for less and repay. Tosaf:. If, when he borrowed, he was mindful of borrowing to the full value of the field, he must have borne in mind the possibility of nonredemption, and therefore means the creditor to have it now.

(10) If he were seen selling articles (on Rashi's interpretation) or mortgaging a field (Tosaf.) at less than their value, his financial straits would be known, with the result that his property would drop in price. Yet he really may wish to retain the field

(11) Rashi: if he is particular not to sell any land, even for its full value, he is obviously not anxious to retain the mortgaged estate, as otherwise he would have sold off some other field. (Presumably this assumption is made because he could not have obtained on a mortgage the same money as by a sale in the open market) Tosaf.: If, when borrowing, he was insistent that the mortgage should be on that particular field, he evidently anticipated the possibility of

non-redemption, and was reconciled to it.

(12) I.e., though the creditor cannot seize the whole field, which is probably worth more than the debt, he can claim payment from that particular field, and refuse to be fobbed off with another.

(13) Since he assigned the field for repayment in all circumstances, it is no longer asmakta as far as the amount of the debt is concerned.

(14) 'Very best', עידי עידית , and 'best', עידית , denote two grades of soil.

(15) So that he must be indemnified out of medium quality soil.

(16) And a valuation was made, but it subsequently appreciated.

(17) V. p. 386, n. 6; therefore the offer to give land is not genuine.

(18) A stipulation, '"if" I do not repay, take so and so,' is not binding.

(19) The reference is to the case stated in the Mishnah on 65b. If the creditor after three years returns the field and enjoys the usufruct, he must return both. [Maim. Yad., Laweh. VI, 4, and Alfasi, include in the return also the usufruct enjoyed by the creditor during the three years.]

(20) The debtor, in permitting the creditor to possess its usufruct, has obviously renounced his own rights; but erroneously, not knowing that the creditor's title is invalid, and R. Nahman rules that the produce is returnable.

(21) Because one cannot give possession of that which is non-existent.

(22) Though the vendor permitted him only because he was unaware that he could retract, hence in error; thus proving that an erroneous renunciation is valid.

(23) And in a loan it looks like interest.

Talmud - Mas. Baba Metzia 67a

I was sitting before R. Nahman,[1] and wished to refute him from the law of 'overreaching';[2] but observing [my intentions] he drew my attention to the case of a barren woman.[3] [Raba proceeds to explain.] Now 'overreaching', being as it is [the result] of renunciation in error,[4] [we find that it] is not a [legal] renunciation! 'But observing [my intention], he drew my attention to a barren woman,' for a barren woman [makes] renunciation in error, and yet it is valid. For we learnt:[5] An objecting woman,[6] a consanguineous relation in the second degree,[7] and a constitutionally barren woman can claim no kethubah,[8] usufruct,[9] alimony,[10] or worn out raiment.[11] But it is not so: neither [the law of] 'overreaching' refutes him, nor [that of] a 'barren woman' supports him. [Thus: the law of] overreaching does not refute him, for he [the victim did not know that he was defrauded at all, that he should forego it.[12] Nor does [the law of] a 'barren woman' support him, because she is satisfied to be designated a married woman.[13]

A woman once instructed a man, 'Go and buy me land from my relatives,' and he went and did so. Said he [the vendor] to him [her agent], 'If I have money, will she return it to me?' 'You and Nawla,'[14] he replied, 'are relatives.'[15] Rabbah son of R. Huna said: Whenever one says, 'You and Nawla are relatives,' he [the vendor] relies upon it, and does not completely transfer it [the object of sale].[16] Now, the land is [certainly] returnable; but what of the crops?[17] Is it as direct usury, which can be legally reclaimed;[18] or perhaps it is only indirect[19] usury, and cannot be reclaimed? — Rabbah b. Rab said: It stands to reason that it is considered indirect usury and cannot be reclaimed in court. And thus did Raba say, It is considered indirect usury and cannot be reclaimed in court.

Abaye inquired of Rabbah: What of a mortgage?[20] Is the reason there [in the previous case] that he made no stipulation? Then here too there was no stipulation![21] Or, perhaps, there it is a sale, but here a loan? — He replied: The reason there is that no stipulation was made; so here too there was no stipulation. R. papi said: Rabina gave a practical decision, calculated [the value of] the crops, and ordered it to be returned, thus disagreeing with Rabbah son of R. Huna.

Mar,[22] the son of R. Joseph, said in Raba's name: With reference to a mortgage: Where it is customary to make [the creditor] quit [whenever the loan is repaid],[23] if he took the usufruct to the amount of the loan, he must quit it;[24] but if in excess thereof, [the surplus] is not returnable;[25] nor is

one loan[26] balanced against another.[27] But when it [the mortgaged estate] belongs to orphans, if he [the creditor] enjoyed its usufruct to the amount of the loan, he must quit it; if it [the usufruct] exceeded it, [the surplus] is returnable, and one loan is balanced against another. R. Ashi said: Now that you rule, If the usufruct exceeded the loan, [the balance] is not returnable; then even if it [merely] equalled it, he must not be dismissed without payment. Why? Because to dismiss him without payment is tantamount to making him return [what he has already had]; whereas it is only indirect interest, which is not reclaimable at law. R. Ashi gave a practical decision in reference to orphans [minors],

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(1) When be said, 'I admit that if he removed, etc.'

(2) Supra 51a: though given voluntarily, and hence an erroneous abandonment, it is nevertheless returnable.

(3) איילונית , a woman constitutionally incapable of child-birth.

(4) Since the money fraudently taken is given under the mistaken impression that it is due.

(5) Keth. 100b.

(6) ממאנת , lit., 'a woman who refuses'. If a girl, a minor, was married by her mother or elder brothers, who by Rabbinical law were empowered to marry her, on attaining her majority she could annul the marriage merely by objecting to it.

(7) Lit., 'a second'. E.g., the Bible interdicts marriage with one's mother; the Rabbis add, one's grandmother; this is called forbidden relationship in the second degree.

(8) V. Glos.

(9) The Rabbis enacted that the usufruct of the wife's melog property (v. Glos.) belongs to the husband, in return for which he must ransom her, should she ever be taken captive. These are not entitled to this consideration, and yet if divorced cannot demand repayment of the usufruct seized by the husband.

(10) The conditions depriving maintenance rights, in respect of an objector, are stated in Keth. 107b thus: If she borrows money in the husband's absence for her maintenance, and then, on his return, she objects, her creditor cannot obtain repayment from him. Tosaf. here states that similar conditions apply to the constitutionally barren woman, her borrowings having been made before she was certified as such. With respect to a 'secondary relation', Tosaf. maintains that the reference is to her widowhood; after her husband's death, she cannot demand maintenance from his estate.

(11) If raiment formed part of the dowry she brought her husband, and it became worn out, so that it is no longer in existence, she cannot claim payment for it (Tosaf.). Rashi: She cannot demand even her worn out raiment which is still fit for some use. Now, with respect to a barren woman, though her renunciation of ownership rights in her dowry in favour of her husband was in error, for when marrying him, she did not foresee that she would prove incapable of childbirth, that renunciation is valid, and she cannot demand their return.

(12) So that there is no renunciation at all, even in error, and therefore it must be returned.

(13) And in return for that she knowingly, not in error, brings in a dowry to her husband, even if she should have to forfeit it eventually.

(14) [A proper noun; others: 'and so-and-so,' 'and she'.]

(15) She will certainly permit you to repurchase the land when you are able.

(16) Hence the sale is conditional, and the field can always be redeemed.

(17) Raised after the sale.

(18) Since such a sale is really a loan (v. Mishnah on 65b), the crops which the purchaser enjoys are in the nature of direct interest.

(19) V. supra, 61b.

(20) If a field was mortgaged and no stipulation made about its crops, and the creditor took them.

(21) Hence it is not returnable.

(22) Var. lec.: Raba.

(23) And until then, he is in possession and enjoys its usufruct.

(24) I.e., if the debtor makes the claim, the usufruct is counted as repayment, and the creditor has no further title.

(25) Because it is not direct interest.

(26) Lit., 'bond.'

(27) I.e., if the debtor owes him more money on another bond, the excess cannot be deducted from it.

just as though they were adults.[1]

Raba, the son of R. Joseph, said in Raba's name: With reference to a mortgage, where it is the usage to make [the creditor] quit [whenever] the loan is repaid],[2] one must not enjoy the usufruct without making a [fixed annual] deduction.[3] But a scholar must not enjoy the usufruct even at a [fixed] allowance. How else shall he take them? — By a stipulated time limit.[4] Now, this is well on the view that a stipulated time limit is permitted; but on the view that it is forbidden, what can you say? For it has been stated: As for a stipulated time limit, R. Aha and Rabina differ therein: one maintained that it is permitted — the other that it is forbidden. What is meant by a 'stipulated time limit'? — If he [the creditor said], 'For the first five years, the usufruct is mine without deduction; thereafter, I will make you a full allowance for the crops.' Others maintain: Any arrangement involving no deduction is forbidden. What then is meant by a 'stipulated time limit'? — If he [the creditor] said to him, 'For the first five years the usufruct is mine at a [fixed] deduction;[5] thereafter, I will make you a full allowance for the crops.' Now, he who forbids the first arrangement will permit the second; but he who forbids [even] the second, on what condition may he [a scholar] have the usufruct? — When it is as the mortgage bonds arranged in Sura, in which it was written, 'On the expiry of a certain number of years this estate reverts [to the debtor] without any payment.[6]

R. Papa and R. Huna, the sons of R. Joshua, said: As for a mortgage, where it is the practice to make [the creditor] quit [whenever the loan is repaid], the [creditor's] creditor cannot exact his debt from it,[7] the first-born receives no double portion therein,[8] and the seventh year cancels it [the privilege of usufruct].[9] But where the creditor is not obliged to give up possession [whenever the loan is repaid], his creditor can exact his debt from it, the first-born receives a double portion, and the seventh year does not cancel it.[10]

Mar Zutra also said in R. Papa's name: With reference to mortgaged property, where it is the usage to make [the creditor] quit, he must give up possession [absolutely], even of the dates on the mattings;[11] but if he has already picked them up [and placed them] in baskets, they are his.[12] But on the view that the purchaser's utensils effect ownership for him even in the domain of the vendor,[13] even if they have not been gathered into baskets, they are his.[14]

Now, it is obvious, where the usage is that the creditor must quit, but he stipulated [when making the loan], 'I will not quit it [before a certain time]' — then surely he has so stipulated [and it is binding]. But what if he promised to quit [immediately on repayment] where the usage does not compel him to go: is it necessary to submit him to a binding act[15] or not?[16] — R. Papa said: It is unnecessary; R. Shesheth the son of R. Idi ruled: It is necessary. And the law is that he must perform a binding act.

Now, if he [the debtor] states, 'I am about to bring you the money,'[17] he [the creditor] may not take the usufruct [in the meanwhile].[18] [Where he however states] 'I will go, make earnest effort [to obtain it], and bring the money' — Rabina ruled: He may take the usufruct; Mar Zutra, the son of R. Mari, said: He may not. And the law is that he may not take the usufruct.

R. Kahana, R. Papa and R. Ashi did not take usufruct with deduction; Rabina did. Mar Zutra said: What is the reason of him who takes it with deduction? — Because it is analogous to 'a field of possession';[19] with respect to this, did not the Divine Law order, even though there may be greater usufruct therefrom,

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(1) And did not allow the dismissal of the creditors without payment in spite of the discrimination above in their favour.

(2) V. supra n. 2.

(3) For every year of possession the creditor must allow a fixed deduction from the debt, even if the usufruct in a particular year amounts to less. This removes it from the category of loans and turns it into a temporary sale, so that even when the usufruct exceeds the allowance it is not interest.
(4) This is explained below.
(5) Less than the average value of the crops.
(6) Converting it into a sale.
(7) If the creditor dies, and the usufruct of the estate passes on to his children, his creditor cannot demand repayment out of the usufruct of the field. For since it must be returned whenever the loan is repaid, the heirs have no possible title to the land itself, but to its usufruct, which, regarded as movable property, cannot be distrained upon from the heirs for debt.
(8) On the view that a first-born receives no double portion of debts (v. B.B. 124b), and since the creditor may have to quit the land at any moment, this is merely a debt.
(9) Like any other loan on a written bond. Though a loan against a pledge consisting of movable property is not cancelled by the seventh year, this is not regarded as such.
(10) For in these circumstances he is regarded as having bought the land for the period arranged.
(11) Spread on the ground to receive the dates falling 'at gleaning'. He must quit immediately on receiving his money, and may take nothing whatsoever.
(12) For the 'lifting up' from the mats effects possession.
(13) V. B.B. 85a and b.
(14) Because the mats spread by the creditor are his utensils, and the dates falling upon them, become his.
(15) I.e., that he shall perform a symbolical act(kinyan q.v. Glos.) to bind him to his undertaking.
(16) Since usage is otherwise, his mere word may not be binding.
(17) Where usage forced the creditor to quit immediately.
(18) Since the debtor has the money ready, it is accounted as though he had already repaid him.
(19) שדה אחוזה , Lev. XXVII, 16-18: if one sanctified 'a field of his inheritance' from the year of jubilee, it was to be redeemed at a fixed price, as stated; and if he sanctified it some years after the jubilee, the redemption price was proportionate to the number of years left until the next jubilee.

Talmud - Mas. Baba Metzia 68a

that it should be redeemed at four zuz?[1] So here too, it is in no way different.[2] But he who holds it forbidden argues thus: 'a field of possession' is a matter of sanctification, which the Divine Law based upon [a fixed] redemption;[3] here, however, it is a loan, and so it looks like interest.

R. Ashi said: The elders of the town Mehasia told me that an unconditional mortgagє[4] is for a year. What is the practical outcome [of this fact]? That, if he [the creditor] has enjoyed the usufruct for a year he can be forced to quit, but not otherwise.

R. Ashi also said: The elders of the town of Mehasia told me, What is the meaning of mashkanta [a pledge]? That it abides with him [the mortagee].[5] In respect to what has this a practical bearing? — In respect to [the right of] pre-emption.[6]

Raba said: The law permits neither the credit interests of R. papa, nor the bonds of the Mahuzeans, nor the Narshean tenancies. The credit interests of R. Papa means the credit sales arranged by R. Papa.[7] 'The bonds of the Mahuzeans' they add the [estimated] profit to the principal and record it [the whole] in a bond;[8] for who knows that there will be profit?[9] Mar, the son of Amemar, said to R. Ashi: My father does so, but when they [his agents] come before him [and declare that they have earned no profit], he believes them. He replied: That is well whilst he is alive: but what if he dies and the notes are transferred to his heirs?[10] (This [supposition] was 'an unwitting order which proceedeth from the ruler',[11] and Amemar died.)

'Narshean tenancies': — for they wrote thus: A mortgaged his field to B, and then he [the debtor]

rented it from him.[12] But when did he [the creditor] acquire it, to transfer it to the debtor?[13] Nowadays, however, that the note is drawn up thus: He [the creditor] hath acquired it from him, hath been in possession such and such a time,[14] and then re-rented it to him, so as not to shut the door in the borrowers' faces;[15] it is well. But, still this is no justification.[16]

MISHNAH. A MAN MAY NOT COMMISSION A TRADESMAN ON A HALF PROFIT BASIS,[17] NOR ADVANCE MONEY FOR PROVISIONS [TO BE SOLD] ON HALF PROFITS, UNLESS HE PAYS HIM A WAGE AS A WORKER. FOWLS MAY NOT BE SET TO BROOD ON HALF PROFITS,[18] NOR MAY CALVES OR FOALS BE ASSESSED THUS,[19] UNLESS HE PAYS HIM FOR HIS LABOUR AND FOODSTUFFS. BUT CALVES AND FOALS MAY BE ACCEPTED [WITHOUT ASSESSING THEIR VALUE AT ALL] ON HALF PROFITS;[20] AND THEY ARE BRED UNTIL A THIRD GROWN; WHILST AN ASS IS BRED UNTIL IT CAN BEAR BURDENS.[21] GEMARA. It has been taught: [Unless he is paid] as an unemployed worker.[22] What is meant by, 'as an unemployed worker'? —

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(1) That is the redemption price per annum of a field that requires a homer of barley seed. Shekel (Biblical)==sela'==4 zuz.

(2) I. e., the fixed deduction may be less than the average value of the crops.

(3) I.e., to sanctify an inherited field is equivalent to dedicating a certain sum fixed by Scripture.

(4) I.e., where no conditions were stipulated as to its length.

(5) משכנתא is derived from שכן , 'to abide.'

(6) When a person sells a field, the adjoining neighbour (of this field) has the first option to buy it.

(7) V. supra 65a.

(8) I.e., they supplied goods to their agents for sale on a profit-sharing basis, calculated their share, and then drew up a note against the agent for the entire amount.

(9) Hence they appear to be taking interest.

(10) They would simply see the debt, and might not believe the agents.

(11) Eccl. X, 5: such an order is nevertheless obeyed.

(12) At a fixed rental, paid in produce.

(13) Hence it is direct interest thinly disguised.

(14) Taking the usufruct at a fixed allowance on the debt.

(15) A proverbial expression. Unless the creditor received certain privileges, no man could ever borrow.

(16) Hence even this practice is forbidden.

(17) I.e., give him goods to sell in his shop and take half a share of the profits. Under this arrangement the retailer generally accepted complete responsibility for half the stock, and even if it depreciated, rendered payment in full. Consequently, the half is a loan, since its owner takes no risk whatsoever therein, and the labour of selling the second half for the owner's benefit is interest on the first, and hence forbidden. V. infra 104b.

(18) I.e., one may not give eggs to a fowl keeper for hatching, the latter to receive half the profits, but on the other hand, take full responsibility for half the eggs.

(19) As before, one may not commission a farmer to breed them, to receive half the profits, whilst bearing full responsibility for the present value of half the stock.

(20) No value was attached to them at all, but when grown, the breeder received half their worth for his labour. On the other hand, when they perished, he bore no responsibility: consequently it did not come within the category of a loan.

(21) It was customary to breed them to that stage before the profits were shared.

(22) Referring to the Mishnah.

Talmud - Mas. Baba Metzia 68b

Abaye said: As a labourer unemployed in his craft.[1] Now they [the first two clauses of the Mishnah] are [both] necessary. For if the case of a tradesman were taught, I would think that only a storekeeper is it sufficient to pay as an unemployed worker, seeing that his efforts are not great;[2] but [when one is advanced] money for buying provisions, his toil being great,[3] I would think it

insufficient to pay him [merely] as an unemployed artisan. Whilst if [the case of advancing] money to buy provisions were taught, I would think that only there must he be paid as an unemployed worker, since much work is involved; but for a shopkeeper, who makes very little effort, I would think a mere trifle sufficient, e.g., even if he just dipped [his bread] into his vinegar, or ate a dried fig of his, it is enough. Therefore both are necessary.

(Mnemonic:[4] How much are goats and fowls assessed?) Our Rabbis taught: How much must he be paid?[5] Whether much or little [it matters not]: this is R. Meir's view. R. Judah said: Even if he merely dipped [his bread] into his vinegar, or joined him in a dried fig, that is his pay. R. Simeon b. Yohai said: He must remunerate him in full.

Our Rabbis taught: Neither goats, sheep, nor anything which does not toil for its food[6] may be assessed on halfprofits.[7] R. Jose, son of R. Judah, said: Goats may be assessed, because they yield milk; and sheep, because they yield wool by being shorn, by passing through water[8] and by being plucked;[9] and fowls, because they lay [eggs] for their food. But [what of] the first Tanna: are the shearings and milk insufficient to pay for his labour and food?[10] — As for the shearings and milk, all agree [that they are adequate]. The conflict refers to whey and wool refuse:[11] the first Tanna is of R. Simeon b. Yohai's opinion, who maintained that he must remunerate him in full;[12] whilst R. Jose son of R. Judah agrees with his father, who ruled that even if he merely dipped [his bread] into his vinegar, or joined him in a dried fig, that is adequate payment.

Our Rabbis taught: A woman may hire a fowl to her neighbour in return for two fledglings.[13] If a woman proposes to her neighbour, 'I have a fowl, and you have eggs: let us equally share the fledglings,'[14] — R. Judah permits, whilst R. Simeon forbids it. But [what of] R. Judah: does he not require payment to be made for labour and food? — There are the addled eggs.[15]

Our Rabbis taught: Where it is the usage to make a payment for shouldering beasts,[16] such payment may be made, and general custom must not be abrogated. R. Simeon b. Gamaliel said: A calf may be assessed with its mother, and a foal with its mother, and even where it is customary to make a monetary payment for shouldering.[17] But R. Simeon b. Gamaliel! Does he not require payment for his labour and food?[18] — There is the dung.[19] But the other?[20] — The ownership of dung is renounced.[21]

R. Nahman said: The halachah is as R. Judah; the halachah is as R. Jose son of R. Judah; and the halachah is as R. Simeon b. Gamaliel.

A bond was issued against the children of R. 'Ilish, stipulating half profits and half loss.[22] Said Raba: R. 'Ilish was a great man, and he would not have fed [another person] with forbidden food.[23] It must be taken to mean:[24] either half profit and two thirds loss;

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(1) E.g., if he was originally a carpenter, who works very hard, and accepted a commission to sell provisions instead on half profits, he must be paid in addition as much as the average man would demand for changing over from strenuous labour to work of a lighter nature.

(2) The goods being given him.

(3) As in addition to selling he has the work of buying too.

(4) A few words or letters, each being the catchword of a subject, strung together and generally forming a simple phrase, as an aid to the memory.

(5) Referring to the Mishnah.

(6) Lit, 'and eats'.

(7) I.e., on an arrangement such as is forbidden in the Mishnah; v. p. 397, n. 6. But if it toils for its food, e.g., an ox that ploughs or an ass that bears burdens, the breeder has the profit of its work in return for its food and his own labour, and therefore it does not fall under the ban of usury.

(8) Subjected to a vigorous washing, which removed their wool; v. Hul. 137a.
(9) In passing through bushes, etc. (Jast.)
(10) Surely not!
(11) [Where the breeder is allowed only these.]
(12) Hence whey and wool refuse are insufficient.
(13) I.e., she may receive the eggs from her neighbour, set her own fowl to brood upon them, and receive two fledglings for her trouble.
(14) [In this case, the owner of the fowl, while assuming full responsibility for half the eggs, receives no extra compensation for her trouble.]
(15) These cannot be hatched, and the egg-owner receives them in return for her labour. This, of course, is very little, but R. Judah has already stated above that even the smallest payment is sufficient. — Addled eggs may be eaten, and hence are of some slight value.
(16) I.e., where calves and foals are given to breed at half profits, but the breeder is paid for having to carry them on his shoulder whilst they are very small.
(17) If both the mother and the young are given to breed on a profit sharing basis, the profit which the breeder receives from the work of the mother is adequate compensation for both, and no further payment is necessary.
(18) The objection is raised on the hypothesis that unless the breeder receives some separate payment for the young, the arrangement amounts to usury; v. p. Mishnah 68a.
(19) Which has a monetary value.
(20) The first Tanna, who insists upon payment.
(21) The owner does not want it in any case, and so it constitutes no payment.
(22) I.e., a bond whereby R. 'Ilish had undertaken to trade on these terms: this arrangement is forbidden as usury; v. infra 104b.
(23) He would not have made an arrangement whereby another should enjoy the illegitimate profits of usury.
(24) Lit., 'whatever be your opinion.'

Talmud - Mas. Baba Metzia 69a

or half loss and two thirds profit.[1] R. Kahana said: I repeated this ruling before R. Zebid of Nehardea, whereupon he suggested to me: But perhaps R. 'Ilish had dipped his bread into his vinegar, and R. Nahman has ruled, The halachah is as R. Judah?[2] — He replied: It was not stated that such is the halachah, but that [all three proceed on the same] principle. That is logical too; for should you not agree thereto, why enumerate the halachah [of every case]? He should have stated, The halachah is as R. Judah, who is the most lenient of all.[3]

Rab said: [If one stipulates, 'Receive] the excess above a third as your remuneration,' it is permitted.[4] But Samuel said: And if there was no excess above a third, shall he go home empty handed?[5] Hence, said Samuel, he must stipulate a denar [for his labour]. Now, is it Rab's opinion that a denar need not be fixed? But Rab said: The calf's head is the breeder's.[6] Surely that means that he said to him, 'Receive the excess above a third as your payment'?[7] — No. It means that he said to him,[8] 'Either the excess above a third, or the calf's head for the breeder.'[9] Alternatively, when did Rab rule that [a stipulation], 'Receive the excess above a third as your payment,' is permitted, when he [the breeder] has a cow of his own, for people say, 'It is the same whether one mixes fodder for an ox or for oxen.[10]

R. Eleazar of Hagrunia[11] bought a cow and gave it to his aris.[12] The latter fattened it, and received the head in payment and also half the profit.[13] Said his [the aris's] wife to him, 'Had you been in partnership with him, he would have given you the tail too [as your share].' So he went and bought [a cow] in partnership with him, but he [R. Eleazar] divided the tail, and then said: 'Come, let us divide the head too.' 'What! Shall I not receive even as much as before?' exclaimed he. 'Until now', he [R. Eleazar] replied, 'the money was [altogether] mine; had I not given you a little more [than half], It would have looked like usury. Now, however, we are partners: what will you plead? I have

worked rather more? But people say 'The average aris binds himself to the landowner to find him pasture.'[14]

Our Rabbis taught: If one entrusts his neighbour with cattle on a valuation,[15] how long is he bound to attend thereto? Symmachus said: In the case of asses, eighteen months; small cattle,[16] twenty-four months. Should he wish to divide [the profits] within this period, his partner can prevent it, but the attention of the first year cannot be compared with that of the second.[17] Why say 'but'?[18] — Therefore [say thus]: Because the attention necessary in the first year cannot be compared with that of the second.[19]

Another [Baraitha] taught: If one entrusts his neighbour with cattle on valuation, how long is he bound to attend to the young?[20] In the case of small cattle, thirty days; large cattle, fifty days. R. Jose said: In the case of small cattle, three months, because they need much attention. How [do they need] much attention? Because their teeth are very small.[21] Thereafter, he [the breeder] receives his own half [of the young] and a half of his neighbour's half.[22] R. Menashia b. Gada took his own half and half of his partner's half. Then he came before Abaye. Said he to him: Who divided for you?[23] Moreover, the local usage here is to breed [until fully grown], and we learnt: Where it is the usage to breed, they [the young] must be fully bred.[24]

Two Cutheans[25] entered on a share partnership.[26] Then one went and divided the money without his partner's knowledge. So they came before R. Papa.[27] Said he to him [the plaintiff]: What difference does it make? Thus did R. Nahman rule: Monies are held to be already divided. The following year they bought wine in partnership. Thereupon the other arose and divided it without his partner's knowledge. Again they came before R. Papa. Said he to him: Who divided it for you? — I see, he replied, that you are biassed in my partner's favour.[28] Said R. Papa:

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(1) I.e., the man on whose behalf R. 'Ilish had traded must be content with this arrangement, either to receive half the profits but to bear two-thirds of the loss, or if R. 'Ilish were to stand half the loss, he must receive two-thirds of the profit. That interpretation had to be put upon the bond.

(2) That this is sufficient to remove a 50% profit and loss arrangement from the category of usury.

(3) Then the rest would have followed automatically. Hence, in fact, such small remuneration is inadequate, and therefore Raba was justified in his assumption.

(4) If one gives calves or foals to a breeder on a half profit half loss basis, which, as stated above, is forbidden, but adds that should it appreciate by more than a third of its present value, the excess belongs to the breeder, that constitutes payment, though such appreciation is uncertain.

(5) I.e., such a speculation does not obliterate the character of usury.

(6) If one accepts a calf for fattening on a fifty-fifty basis, he must receive its head in return for his labour, and the rest is shared.

(7) But as there was no excess, he must receive the calf's head instead, proving that Rab admits that the breeder must receive a definite payment that is independent of speculative appreciation.

(8) [MS.M. rightly omits 'that he said to him.']

(9) [MS.M. rightly omits 'for the breeder.']

(10) No additional labour is entailed, and therefore a speculative arrangement is permitted.

(11) [A suburb of Nehardea, Obermeyer, op. cit., p. 265ff.]

(12) V. Glos.

(13) The arrangement having been on a fifty-fifty basis of profit or loss.

(14) I.e., the slight additional work done by the aris is really an unexpressed part of his contract.

(15) For breeding. V. Mishnah 68a, and notes a.l.

(16) E.g., sheep, goats.

(17) Which involves greater expenditure in food.

(18) On the contrary, this states the reason.

(19) Therefore the owner can insist on his keeping it for two years.

(20) The young too are shared as part of the profit. Now, the breeder would naturally wish to divide immediately on birth, since he has no profit in the owner's half.

(21) And it is a tacit understanding that the breeder should attend to it until it needs only normal attention.

(22) The original arrangement to share in the profits extends to the increased value of the young which he must continue to look after as stated above, and he takes his own half complete, plus half the increased value of the owner's half.

(23) Who checked your assessment of the value of half a share?

(24) Hence he is only entitled to his own half, and no more.

(25) Samaritans.

(26) As in the case of breeding, one investing the money, and the other trading with it.

(27) This shews that though by this time Jews regarded them as Gentiles, they nevertheless submitted to Jewish jurisdiction.

(28) For last year you upheld his dividing without my knowledge, but now disallow mine without his.

Talmud - Mas. Baba Metzia 69b

In such a case[1] it is certainly necessary to inform him [of the grounds of my verdicts]: As for coins, would he take good coins and leave short-weight ones [for you]? But in the case of wine, everybody knows that some wine is sweet and some is not.[2]

The above text states: 'R. Nahman said: Monies are held to be already divided.' But that is only if they are all good or of full weight, but not if some are good, and others of full weight.[3]

R. Hama used to hire out a zuz for a peshita per day.[4] [As a result] his money evaporated.[5] Now he argued, [Wherein does it differ] from a spade?[6] But the analogy is false: the self-same spade is returned, and its depreciation is assessable; whereas the self-same coins are not returned, nor can their depreciation be estimated.[7]

Raba said: One may say to his neighbour, 'Take these four zuz and lend money to so-and-so,'[8] [because] the Torah forbade only usury which comes from the borrower to the lender. Raba also said: One may say to his neighbour, 'Here are four zuz, and persuade so-and-so to lend me money.' Why so? He merely receives a fee for his talking; just as Abba Mar, the son of R. Papa, used to take balls of wax from wax dealers, and then persuade his father to lend them money. But the Rabbis protested to R. papa: Your son enjoys usury. He replied: Such interest we may enjoy: the Torah forbade only interest that comes from the borrower [direct] to the lender; but here he receives a fee for his talking, which is permitted.

MISHNAH. ONE MAY ASSESS COWS, ASSES, AND ALL ANIMALS WHICH TOIL FOR THEIR FOOD ON HALF [PROFIT AND LOSS].[9] WHERE IT IS THE USAGE TO DIVIDE THE YOUNG IMMEDIATELY [ON BIRTH], THEY MUST DIVIDE; WHERE IT IS CUSTOMARY TO BREED THEM, THEY MUST BE BRED. R. SIMEON B. GAMALIEL SAID: A CALF MAY BE ASSESSED WITH ITS MOTHER, AND A FOAL WITH ITS MOTHER.[10] AND ONE MAY OFFER AN INCREASED LAND RENTAL WITHOUT FEAR OF USURY.[11]

GEMARA. Our Rabbis taught: One may offer an increased land rental without fear of usury. E.g., If one rents a field from his neighbour for ten kor annually, and proposes, 'Give me two hundred zuz to expend thereon [sc. in improving the land], and I will pay you twelve kor annually,' it is permitted. But an increased rental may not be offered for a shop or a ship.[12] R. Nahman said in the name of Rabbah b. Abbuhah: Sometimes an increased rental may be offered for a shop, [e.g., in consideration of a loan] for decorations; or for a ship, to build a sail-yard therein. For a shop, in return for decorations, that it may be attractive for customers and thus earn more profit; and for a ship, to build a sail-yard therein; for the more beautiful its sail-yard, the greater is the hire.[13]

As for a ship, Rab said: Both hire and loss [is permitted].[14] Said R. Kahana and R. Assi to Rab: If hire, no loss; if loss, no hire.[15] Thereupon Rab was silent [being unable to answer]. R. Shesheth observed: Why was Rab silent? Had he never heard what was taught: 'Though it was ruled that one must not accept from an Israelite "iron flock" [investment with absolute immunity for the investor],[16] yet such may be accepted from heathens![17] It was, nevertheless, ruled that if one assesses a cow for his neighbour, and says to him, "Your cow is charged to me at thirty denarii,[18] and I will pay you a sela' per month," — it is permitted, because he did not assess it as money.' But did he not? — R. Shesheth said: He did not assess it as money whilst alive, but only in case of death.[19] R. papa said: The law is: For a ship, both hire and loss [is allowed],

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(1) That the litigant doubts my impartiality.

(2) Hence there can be no question of unfair division of money, as there may be in respect of wine.

(3) Some coins of particular mint were preferred to any others for current use; they were considered 'good'; on the other hand, money-changers, who assessed them by weight, preferred those of full weight. Now, if all are 'good' or of full weight, one partner himself may make the division; but if some are 'good' and the others of full weight, they are not accounted as already divided, since some prefer the first and others the second.

(4) I.e., instead of calling it lending, he hired out money, as one hires any other commodity. [Such an arrangement was not without advantage to the borrower, as it exempted him, in the same way as any other hirer, from responsibility in case of an unpreventable accident befalling the money, v. infra 93b (cf. Tosaf.)].

(5) V. infra 71a; the penalty for usury is that one's wealth disappears.

(6) One may charge for hiring a spade; why not for hiring out money?

(7) Even if by chance the same coins should be returned.

(8) Though the lender thus receives interest.

(9) V. supra p. 398, n. 7.

(10) V. p. 399, n. 10.

(11) This is discussed in the Gemara.

(12) In consideration of a loan for stock. In the first case, the money is expended on the field itself and therefore it is the equivalent of renting a better field, and hence worth more, notwithstanding that the 200 zuz must be separately repaid. But here the capital value of the shop and ship is not increased; therefore the money advanced for stock is an ordinary loan, and the higher rental constitutes interest.

(13) In each case the money is expended in the shop or ship itself and therefore permitted.

(14) I.e., one may hire a ship at the lessee's risk in case it is damaged or sunk.

(15) I.e., the two together should be forbidden. For if the ship be assessed and the lessee accepts all responsibility, it is as though he had borrowed money to its value, and the rent is usury.

(16) צאן ברזל (V. B.B. Sonc. ed. p. 206, n. 3) I.e., one may not accept a business on a profit sharing basis, whilst guaranteeing the investor absolute safety of his money, like 'iron sheep', which cannot come to harm. For if the investor's money is secured, it is a loan, on which he receives half profit as interest.

(17) Because one may receive from or give interest to a heathen.

(18) Should it perish or come to harm.

(19) I.e., only if it perishes is he responsible for it; but should there be a price-drop whilst it is alive, the hirer is not responsible, and this saves it from being considered a loan. Hence in the case of the ship too, since the lessee is responsible only for shipwreck, but not for a drop in its market value, it is not an ordinary loan, and therefore a hiring fee is permissible.

Talmud - Mas. Baba Metzia 70a

and the practice of shipowners[1] is [to receive] the hire at the time of meshikah[2] and the [payment for] loss when it is shipwrecked. But does such a thing depend upon custom?[3] — The usage arose as the result of the Baraitha which was taught.[4]

R. 'Anan said in Samuel's name: Orphan's money may be lent out at interest.[5] R. Nahman objected: Because they are orphans we are to feed them with forbidden food! Orphans who eat what

is not rightfully theirs may follow their testator! Now tell me, said he, what actually transpired?[6] — He replied: A cauldron, belonging to the children of Mar 'Ukba [who were orphans], was in Samuel's care, and he weighed it before hiring it out and weighed it when receiving it back, charging for its hire and for its loss of weight: but if a fee for hiring, there should be no charge for depreciation, and if a charge for depreciation, there should be no fee for hiring.[7] He replied: Such a transaction is permitted even to bearded men, since he [the owner] stands the loss of wear and tear, for the more the copper is burnt, the greater is its depreciation.[8]

Rabbah b. Shilah said in R. Hisdah's name — others state, Rabbah b. Joseph b. Hama said in R. Shesheth's name: Money belonging to orphans may be lent on terms that are near to profit and far from loss.[9]

Our Rabbis taught: [One who invests money on terms] near to profit but far from loss is a wicked man; near to loss but far from profit is a pious man; near to both or far from both — that is the arrangement of the man in the street.[10] Rabbah asked R. Joseph: What is done with orphan's money? — He replied: It is entrusted to Court, and paid out to them in instalments.[11] But surely the principal will disappear! he urged. What then would you do? he asked. — He replied: We seek out a man who possesses broken pieces of gold,[12] take the gold from him,[13] and entrust to him the orphan's money on terms that are near to profit and far from loss. But an object which bears an identification mark[14] cannot [be taken as a security][15] , lest it was [merely] entrusted to him, and its owner may come, state the mark [which proves his ownership] and take it away. R. Ashi demurred: That is well if you find a man who possesses broken gold; but if you do not, is the orphan's money to be frittered away? — But, said R. Ashi, we seek out a man whose property is secure,[16] who is trustworthy, obedient to the law of the Bible,[17] and will not suffer a ban of the Rabbis,[18] and the money is given to him in the presence of a Beth din.[19]

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(1) Lit., 'the pitchers', those who pitch their boats.

(2) V. Glos.

(3) It depends upon whether it is permissible or not, for were the latter the case, such usage would have to be abrogated.

(4) Supra 69b end.

(5) I.e., if they are minors.

(6) R. Nahman assumed that R. 'Anan had not actually heard such a law from Samuel, but must have deduced it from some incident.

(7) V. p. 405, n. 2; the same reasoning applies here, and therefore he concluded that interest may be taken on orphan's money.

(8) Though the hirer pays for actual loss of weight, yet even the rest loses in value the more often it is placed upon the fire, and therefore the hiring fee is not interest.

(9) I.e., the orphans taking a share of the profit, but none of the loss. Though this is forbidden to adults as indirect interest, the Rabbis permitted it in the case of orphans who, being unable to earn money themselves, might soon be reduced to penury if not permitted to put out their money on advantageous terms.

(10) 'Near to both' — taking more than half the profit, and standing more than half the loss; 'far from both' — less than half the profit or loss.

(11) Lit., 'coin by coin.'

(12) Then they are certainly his, for when money is given into the safe-keeping of others, only proper coins are given — i.e., a wealthy person is sought.

(13) [Omitted in some texts, v. Rashal and D.S.]

(14) I.e., any object which a person may claim as his own on the strength of identification marks.

(15) [Or, as proof of wealth.]

(16) I.e., whose ownership thereof is universally acknowledged.

(17) [MS.M. rightly omits 'of the Bible', there being no distinction between Rabbinic and Biblical law in regard to the obedience expected of a man to be entrusted with orphan's money.]

(18) Who will obey them rather than come under their ban.

(19) That he may be duly impressed with the solemnity of his obligations (Asheri).

Talmud - Mas. Baba Metzia 70b

MISHNAH. ONE MAY NOT ACCEPT FROM AN ISRAELITE AN 'IRON FLOCK' [INVESTMENT WITH COMPLETE IMMUNITY FOR THE INVESTOR], BECAUSE THAT IS USURY. BUT SUCH MAY BE ACCEPTED FROM HEATHENS.[1] AND ONE MAY BORROW FROM AND LEND TO THEM ON INTEREST. THE SAME APPLIES TO A RESIDENT ALIEN.[2] AN ISRAELITE MAY LEND A GENTILES MONEY [ON INTEREST] WITH THE KNOWLEDGE OF THE GENTILE, BUT NOT OF THE ISRAELITE.[3]

GEMARA. Shall we say that it stands under the ownership of the contractor?[4] But the following is opposed thereto: If one undertakes [to breed sheep] on 'iron flock' terms for a heathen,[5] the young are exempt from [the law of] firstlings![6] — Abaye answered: There is no difficulty; in the one case, he [the owner] accepted [the risk of] unpreventable accident and depreciation; in the other, he did not.[7] Said Raba to him: If the owner accepts the risk of depreciation and [unpreventable] accidents, do you designate it 'iron flock'? Moreover, instead of the second clause teaching, BUT SUCH MAY BE ACCEPTED FROM GENTILES, let a distinction be drawn and taught in that [sc. the first clause] itself, [thus:] When does this hold good [that 'iron flock' may not be accepted from a Jew], only if he [the investor] does not bear the risk of unpreventable accidents or depreciation; but if the investor accepts these risks, it is permissible? — But, said Raba, in both cases [viz., as taught in our Mishnah and with reference to firstlings] he [the investor] does not accept the risk of accidental damage or depreciation; but with respect to the firstlings, this is the reason that the young are exempt thereof: since if he [the breeder] did not render the money,[8] the heathen would come and seize the cow [entrusted to the breeder in the first place], and should he not find the cow, seize the young, it is a case of 'the hand of a heathen coming in the middle',[9] and wherever that is so, there is exemption from the law of firstlings:

He that by usury and unjust gain increaseth his substance, he shall gather it for him that pitieth the poor.[10] Who is meant by, for him that pitieth the poor? — Rab said: e.g., King Shapur.[11] R. Nahman observed: Huna told me that [this verse] is needed to show that usury [taken] even from a heathen [leads to loss of one's wealth]. Raba objected to R. Nahman: Unto a stranger tashshik:[12] now, what is meant by 'tashshik': surely that 'thou mayest receive usury'? — No: 'thou mayest give usury.'[13] [What!] Cannot one do without?[14] — It is to exclude 'thy brother,' [to whom thou mayest] not [give usury].[15] As for thy brother, is it not explicitly stated, but unto thy brother thou shalt not give usury?[16] — [To intimate] that both a positive and negative injunction are violated.[17] He [further] raised an objection: ONE MAY BORROW FROM AND LEND MONEY TO THEM ON INTEREST, AND THE SAME APPLIES TO A RESIDENT ALIEN![18] — R. Hiyya, the son of R. Huna, said: This [permission] is granted only [up to]

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(1) V. p. 405, n. 3.

(2) Heb. גר תושב , one who, for the sake of acquiring citizenship in Palestine, renounced idolatry and undertook to observe the Seven Noachian laws, the laws binding upon all mankind. [For a full discussion of the term v. Moore, G. F., Judaism I. 338ff.]

(3) The meaning of this is discussed in the Gemara.

(4) Since it is regarded as interest.

(5) I.e., to divide the profit, whilst guaranteeing the heathen full security against loss.

(6) As stated above (Mishnah, 69b), the young are equally divided between the investor and breeder. Now, if the young themselves calved, though half of them belong to the Jew, the obligation of firstlings does not apply to them. This proves that they are regarded as the property of the investor, not the contractor.

(7) If the investor accepts these risks (אונסא וזולא), the property stands under his ownership, and hence the law of firstlings does not apply. If the contractor accepts full risks, there is usury, which in the case of a Jewish investor is

forbidden. [Gulak, Tarbiz. III, p. 140, suggests that the phrase אונסא וזולא means accident due to fall in the market price. Abaye accordingly was referring to the original type of 'iron flock' investment in which the responsibility assumed by the contractor was limited to injuries to the 'body of the investment itself.']

(8) Due pursuant to the agreement.

(9) I.e., the heathen retains certain rights therein.

(10) Prov. XXVIII, 8.

(11) Shapur I, King of Persia, and a contemporary of Samuel (third century), with whom he was on terms of intimacy. He took money from the Jews and made grants thereof to poor heathens. (Rashi: To heathens, who are poor in that they have no fulfilment of precepts and good deeds to their credit.)

(12) Deut. XXIII, 21.

(13) V. p. 363, n. 4.

(14) This objection is based on the hypothesis that the verse cannot be merely permissive, 'thou mayest give usury to heathens', since there was never any reason for supposing otherwise. Hence it can only mean (on R. Nahman's interpretation), 'thou must give usury to a Gentile', which is absurd.

(15) I.e., the law is only permissive, but stated in order to exclude a Jew, by implication.

(16) So rendered on R. Nahman's views.

(17) By giving usury to a Jew. For the negative implication of 'unto the Gentile thou mayest give usury' is technically a positive command, since cast in that form.

(18) Thus distinctly stating that it is permitted.

Talmud - Mas. Baba Metzia 71a

the [minimum] requirements of a livelihood.[1] Rabina said: Here [in the Mishnah] the reference is to scholars. For why did the Rabbis enact this precautionary measure?[2] Lest he learn of his ways.[3] But being a scholar, he will [certainly] not learn of his ways.

Others referred this statement of R. Huna to [the teaching] which R. Joseph learnt: If thou lend money to any of my people that is poor by thee:[4] [this teaches, if the choice lies between] my people and a heathen, 'my people' has preference; the poor or the rich — the 'poor' takes precedence; thy poor [sc. thy relatives] and the [general] poor of thy town — thy poor come first; the poor of thy city and the poor of another town — the poor of thine own town have prior rights. The Master said: '[If the choice lies between] my people and a heathen — "my people" has preference.' But is it not obvious? — R. Nahman answered: Huna told me it means that even if [money is lent] to the heathen on interest, and to the Israelite without [the latter should take precedence].

It has been taught: R. Jose said: Come and see the blindness of usurers. If a man calls his neighbour wicked, he cherishes a deep-seated animosity against him;[5] whilst they bring witnesses, a notary, pen and ink, and record and attest, 'So-and-so has denied the God of Israel.'[6]

It has been taught: R. Simeon b. Eleazar said: He who has money and lends it without interest, of him Scripture writes. He that putteth not out his money to usury, nor taketh reward against the innocent. He that doeth these things shall never be moved;[7] thus you learn that he who does lend on interest, his wealth[8] dissolves.[9] But do we not see [people] who do not lend on interest, yet their wealth dissolves? — R. Eleazar said: The latter sink [into poverty] but re-ascend, whereas the former sink but do not re-ascend.[10]

Wherefore lookest thou upon them that deal treacherously, and holdest thy tongue when the wicked devoureth the man that is more righteous than he?[11] R. Huna said: 'the man that is [merely] more righteous than he,' he devoureth: but the man that is completely righteous, he cannot devour.

It has been taught: Rabbi said: The righteous proselyte[12] who is mentioned in connection with the sale [of oneself for a slave], and the resident alien who is mentioned with reference to usury — I

know not their purpose. 'The righteous proselyte who is mentioned in connection with a sale' — as it is written, And if thy brother that dwelleth with thee be waxen poor, and be sold unto thee;[13] and not only 'unto thee' [a Hebrew], but even to a proselyte, as it is written, [and sell himself] unto a proselyte;[14] and not alone to a righteous proselyte, but even to a resident alien, as it is written, to a proselyte [and] a settler;[15] or to a family of the proselyte — i.e., to a heathen; hence, when it is said, or to the stock etc. it must refer to one who sells himself to the service of the idol itself.[16]

Now,[17] the Master said: 'And not only unto thee, but even unto a proselyte,' as it is written, [and sell himself] unto a proselyte.' Are we to say that a proselyte may acquire a Hebrew slave? But the following contradicts it: A proselyte cannot be acquired as a Hebrew slave, nor may a woman or a proselyte acquire a Hebrew slave. 'A proselyte cannot be acquired as a Hebrew slave', for the verse, and he shall return unto his own family, must be applicable. which it is not [in the case of a proselyte];[18] 'nor may a woman or a proselyte acquire a Hebrew slave' — a woman, because it is not seemly;[19] a proselyte, because it is a tradition that he who can be acquired can himself acquire, but he who cannot be acquired, cannot himself acquire! — R. Nahman b. Isaac said: He cannot acquire [him] under the provisions of an Israelite [owner], but may acquire [him] as a non-Israelite [master]. For it has been taught: He [sc. a Hebrew slave] whose ear is bored,[20] and he who is sold to a heathen, serve neither the son nor the daughter.[21]

The Master said: 'Nor may a woman or a proselyte acquire a Hebrew slave.' Must we assume that this disagrees with R. Simeon b. Gamaliel? For it has been taught: A woman may acquire female but not male slaves. R. Simeon b. Gamaliel ruled: She may acquire even male slaves! — It may agree even with R. Simeon b. Gamaliel, yet there is no difficulty: the former applies to a Hebrew slave, the latter to a Canaanite slave. A Hebrew slave she deems to be self-respecting;[22] whereas a Canaanite slave she deems unreservedly dissolute.[23] But what of that which R. Joseph learned: A widow may not breed dogs,[24] nor permit a scholar to live with her as a boarder? Now, [the prohibition] of a scholar is intelligible, since she deems him self-respecting; but as for a dog since it will follow her [if she commits bestiality], she will surely be afraid![25] — I will tell you: since it follows her even if she merely throws it a piece of meat, that will be assumed the cause of its attachment.[26]

'The resident alien who is mentioned with reference to usury:' — What is it? — For it is written, And if thy brother be waxen poor, and fallen in decay with thee; then thou shalt relieve him; yea, though he be a proselyte or a settler, that he may live with thee. Take thou no usury of him nor increase: but fear thy God; that thy brother may live with thee.[27] But the following opposes it: ONE MAY BORROW FROM AND LEND TO THEM ON INTEREST; THE SAME APPLIES TO A RESIDENT ALIEN! — R. Nahman b. Isaac replied: Is it then written, 'Take thou no usury of them'?[28] 'of him' is written, [meaning] of an Israelite.[29]

Our Rabbis taught: Take thou no usury of him, or increase, but thou mayest become a surety for him.[30]

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(1) But one may not take usury from a Gentile in order to accumulate wealth.

(2) Of forbidding usury from a heathen, on R. Nahman's view. Though R. Nahman based his opinion on a verse of Proverbs, it is obvious that it is only a Rabbinical, not a Biblical interdict.

(3) Rashi: Through business intercourse with him.

(4) Ex. XXII, 24.

(5) Lit., 'descends (in his rage) against his life'.

(6) To exact usury in defiance of the Biblical precept is tantamount to rejection of God — the highest degree of wickedness.

(7) Ps. XV, 5.

(8) Lit., 'his possessions.'

(9) I.e., he is 'moved'.

(10) Translating, he that doeth these things shall not for ever be moved, i.e., shall not sink into penury for good.
(11) Hab. I, 13.
(12) [גר צדק 'Righteous' in the sense of 'upright', 'genuine', 'real'. V. Moore, op. cit. I, 338.]
(13) Lev. XXV, 39.
(14) Ibid. 47.
(15) Ibid. This deduction is arrived at by treating גר , (proselyte) and תושב (settler, citizen) as two separate substantives, thus: and sell himself unto a proselyte and unto a resident alien. i. e., even as they are treated at the beginning of the verse: and if a proselyte (גר) or a settler (ושב) wax rich etc. (Rashal).
(16) To hew wood and draw water in its service. This Baraitha is quoted more fully in 'Ar. 20b; the successive depths of degradation are the fate of him who trades in the commodities of the seventh year, this being deduced from the fact that these laws of sale follow those of the seventh year prohibitions.
(17) He now proceeds to explain Rabbi's difficulty.
(18) V. Lev. XXV, 10. Because a proselyte loses all relationship with his former kin, hence has no family.
(19) Lest she be suspected of immoral designs.
(20) V. Ex. XXI, 5f.
(21) As heirs. Thus, a proselyte can acquire a Hebrew slave under the laws applicable to a heathen owner, so that if he dies his children do not inherit him (the slave), but not as an Israelite, who is able to transmit him as a legacy.
(22) I.e., he has a feeling of shame and regard for appearances. Therefore she may be emboldened to an illicit relationship, in the certainty that he will not disclose the fact: hence she may not purchase him.
(23) Feeling no shame therein; therefore she fears intimacy with him, lest he boast thereof, and so may buy him.
(24) For fear of malicious slander, but not because she is actually suspected of bestiality (Tosaf.).
(25) Why is she then forbidden to breed dogs?
(26) Hence she does not fear to commit bestiality, and though, as stated in n. 3, she is not suspected thereof, yet the mere fact that she can indulge without fear of discovery gives tongue to slander.
(27) Lev. XXV, 35f; this implies that usury may not be taken from a citizen proselyte.
(28) Which would apply to all the antecedents.
(29) ['Proselyte' being mentioned only with reference to assisting him in his need.]
(30) I.e., for one who is borrowing money on interest.

Talmud - Mas. Baba Metzia 71b

A surety to whom? Shall we say to an Israelite?[1] But we learnt: The following violate the negative precept: The lender, the borrower, the surety, and the witnesses![2] Again if it means to a heathen:[3] since, however, it is the law of the heathen[4] to claim direct from the surety, it is he [the surety] who borrows from him![5] — R. Shesheth answered: It means that he engaged himself to bring his actions in accordance with Jewish law.[6] But if he engaged to abide by Jewish law, he should not take usury either! — R. Shesheth replied: He pledged himself for the one but not for the other.

AN ISRAELITE MAY LEND A HEATHEN'S MONEY [ON INTEREST] WITH THE KNOWLEDGE OF THE HEATHEN, BUT NOT OF THE ISRAELITE. Our Rabbis taught: An Israelite may lend a heathen's money [on interest] with the knowledge of the heathen, but not of the Israelite. E.g., if an Israelite borrowed money from a heathen on interest, and was about to repay it, when another Israelite met him and proposed. 'Give it to me and I will pay you as you pay him' — that is forbidden; but if he presented him to the heathen,[7] it is permitted.[8] Similarly, if a heathen borrowed money from an Israelite on interest, and was about to repay it, when another Israelite met him and proposed. 'Give it to me, and I will pay you as you pay him,' it is permitted; but if he presented him to the Israelite, it is forbidden.[9] Now, the second clause is well, for there the ruling is in the direction of greater stringency; but as for the first clause, since the law of agency does not apply to a heathen, it is he [the Israelite] who takes interest from him [his fellow-Israelite]![10] — R. Huna b. Manoah said in the name of R. Aha, the son of R. Ika: Here it is meant that he [the heathen] said to him [the Israelite], 'put it [the money] on the ground and you may go.'[11] If so, why state it? — But, said R. Papa, it means, e.g., that he [the heathen] took it [from the first creditor] and

personally gave it [to the second]. Yet even so, why state it? — I might think that the heathen himself, in acting so, transfers the money pursuant to the wish of the Israelite,[12] therefore it is taught otherwise. R. Ashi said: When do we maintain that agency cannot be vested in a heathen, only in reference to terumah;[13] but in all other Biblical matters the principle of agency holds good in the case of a heathen. This [distinction], however, of R. Ashi must be rejected.[14] For why does terumah differ, that [agency] is not [allowed to a heathen]? Because it is written, [Thus] ye, ye also [shall offer an heave offering etc.],[15] [teaching], just as ye are members of the Covenant, so also must your deputies be members of the Covenant! But [is not] the principle of agency, as applied to all Biblical matters, derived from terumah![16] Hence R. Ashi's distinction is to be rejected.

Others state: R. Ashi said: In what sense do we maintain that agency cannot be vested in a heathen, only that they cannot be agents for us; but we can be agents for them.[17] But this [distinction] of R. Ashi is to be rejected. For why the difference, that they cannot be agents for us? Because it is written, 'Ye, ye also', which teaches the inclusion of your agents; just as 'ye' are members of the Covenant, so must your agents be members of the Covenant? But with reference to ourselves being agents to them, does not the same [exegesis] apply: by 'just as "ye" [who appoint agents],' members of Covenant are meant.[18] Hence R. Ashi's distinction is non-acceptable.

Rabina said: Though a heathen has no power of agency, yet, by Rabbinical law, one can obtain possession on his behalf. For this is similar to a minor: surely, a minor, though excluded from the principle of agency,

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(1) I.e., on behalf of a Jew borrowing from a Jew.

(2) Infra 75b.

(3) I.e., a surety on behalf of a Jewish borrower to a Gentile lender.

(4) [I.e., according to Persian law, v. B.B. 173b.]

(5) From the point of view of Jewish law there are two transactions in this loan: the surety borrows money from the Gentile and pays interest thereon, and lends money to the Jew, upon which he receives interest. Hence it should be forbidden.

(6) Should the debtor fail to repay, he would bring an action against him first.

(7) I.e., obtained the Gentile's authority for the transaction.

(8) For then the Jew is merely the agent of the Gentile, and it is the latter who makes the loan, not the former.

(9) For then the Gentile is merely the agent of the Jew.

(10) There is a well-defined principle in Jewish law that a man's agent is legally as himself. But this does not hold good between a Jew and a heathen. Now, in the second clause, where the heathen presents the Jewish borrower to the Jewish lender, yet actually gives his own money, the transaction should be permitted, because he cannot be legally regarded as the Jew's agent. Nevertheless, since the transaction does appear as between two Jews, the heathen acting merely as a vehicle of delivery, the Rabbis recognised the principle of agency, and forbade it. But in the first clause, where the Jew actually gives the money to his fellow-Jew, why should he be regarded as an agent of the heathen, and the transaction rendered legal?

(11) So that the second Jew does not receive it from the first.

(12) I.e., that he is merely the means of the actual loan from one Jew to another.

(13) V. Glos. A Jew cannot appoint a heathen to separate his terumah for him.

(14) בדותא V. Supra, p 47, n. 1 .

(15) Num. XVIII, 28. It would have been sufficient to state, 'Thus ye shall offer etc.'; it is a general principle of exegesis that 'also' (גם) denotes extension; hence 'ye also' implies that someone besides yourselves may separate your terumah. At the same time, since the extension is directly applied to 'ye', those whom it includes must be similar to 'ye'.

(16) In Kid. 41b; hence just as a heathen cannot be deputed to separate terumah, so he is invalid in all other matters.

(17) Hence in the first clause under discussion the loan is permissible, if the second Jew was presented to the heathen, even if the money passed directly from one Jew to another.

(18) I.e., the same exegesis which shows that the agents must be Jews, also shews that the principals must be Jews.

is nevertheless, by Rabbinical law, eligible to [vicarious] possession;[1] so here too, there is no difference.[2] But the analogy is false; an Israelite [minor] comes [eventually] within the principle of agency, but a heathen never does.[3]

Our Rabbis taught: If an Israelite borrowed money on interest from a heathen and then recorded them [Viz., the principal and the interest] against him as a loan,[4] and he [the creditor] became a proselyte: if this settlement preceded his conversion, he may exact both the principal and the interest; if it followed his conversion, he may collect the principal, but not the interest.[5] Similarly, if a heathen borrowed money on interest from an Israelite, and then recorded them [the principal and the interest] against him as a loan, and became a proselyte: if the settlement preceded his conversion, he [the Israelite] may exact both the principal and the interest; if it followed his conversion, he may exact the principal but not the interest. R. Jose ruled: If a heathen borrowed money from an Israelite on interest, then in both cases [whether conversion preceded the settlement or the reverse] he may collect both the principal and the interest. Raba said in the name of R. Hisda in the name of R. Huna: The halachah is as R. Jose. Raba said: What is the reason of R. Jose? That it should not be said that he turned a proselyte for the sake of money.[6]

Our Rabbis taught: If a bond contains interest written therein, he [the note-holder] is penalised and can collect neither the principal nor the interest; this is R. Meir's view. The Sages maintain: He may exact the principal, but not the interest. Wherein do they differ? — R. Meir is of the opinion that we inflict the forfeiture of what is permissible on account of what is forbidden; whilst the Sages hold that we do not inflict the forfeiture of the permissible on account of the forbidden.

We learnt elsewhere: Ante-dated bonds are invalid; post-dated bonds are valid.[7] But why invalid? Though a seizure cannot be made by means of them as from the earlier [incorrect] date, why not seize [estate for repayment] as from the later [correct] date?[8] — R. Simeon b. Lakish said: This was taught as a matter of dispute, and agrees with R. Meir.[9] R. Johanan said: It may agree even with the Rabbis; but it is a precautionary measure, lest he exact [his debt from sold property] as from the earlier date.[10]

A man once pledged an orchard to his neighbour for ten years.[11] After he [the creditor] had taken its usufruct for three years, he proposed to him [the debtor], 'If you sell it to me, it is well; if not, I will hide the mortgage deed and claim that I have bought it.'[12] Thereupon he [the debtor] went, arose, transferred it to his young son [a minor], and then sold it to him. Now, the sale is certainly no sale;[13] but is the [purchase-]money accounted as a written debt, and collectable from [sold] mortgaged property, or perhaps it is [only] as a verbal debt, which cannot be collected from mortgaged property?[14] Said Abaye: Is this not covered by R. Assi's dictum? Viz.,

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(1) I.e., an adult may take possession on behalf of a minor.

(2) Hence in the first clause, where the second borrower is presented to the heathen, the first Jew takes possession of the money which he was about to repay on behalf of the heathen, and therefore it is the latter's money that is lent on interest, and hence permissible.

(3) For to take possession on another man's behalf is akin to becoming his agent. Thus the Rabbis conferred upon a minor the privilege of being so benefited, because he is potentially an agent or a principal, but a heathen is not even potentially so. [Levinthal, I.H., JQR, (N.S.) XIII, p. 150, suggests the principal reason swaying the Rabbis in their decision barring the heathen from acting as agent to have been the fact that the agent in Jewish law is frequently compelled to take an oath, and the oath being considered a most sacred role in the life of the people there was no desire to force a heathen to comply with the strictness of that act.]

(4) I.e., drew up a bond in which the combined principal and interest figured as the principal.

(5) Since the bond was drawn up when he was forbidden usury.

(6) To evade the payment of interest.
(7) Sheb. X, 5; v. supra 17a.
(8) Though it is only right that the creditor should not seize land sold after the date of the bond but prior to the actual loan, why should he not seize land sold after the loan was made?
(9) Who maintains that we inflict the forfeiture of what is permissible on account of what is forbidden. So here too.
(10) To prevent this, such a bond was declared entirely invalid.
(11) [So according to some texts; v. D.S.]
(12) Three years' possession of an estate establishes a presumptive title thereto, even without a deed of sale, the onus of disproof lying upon the first owner.
(13) Because it no longer belonged to the debtor (Rashi).
(14) When one sold land, he indemnified the purchaser against its possible seizure for the vendor's debt by mortgaging his other property to him, which he could in turn seize even if subsequently sold. Similarly, in a written loan the debtor's estates were held to be pledged, even if subsequently sold; but if the loan was merely verbal, the debt could be exacted only from the free estate. Now the question arises whether the purchase money in this case, which of course, the vendor must return, ranks as a written debt, or only as a verbal one.

Talmud - Mas. Baba Metzia 72b

If he [the debtor] admits the genuineness of a bond, he [the creditor] need not confirm it'[1] and can collect [his debt] from mortgaged property [sold after the debt was contracted]![2] Thereupon Raba said to him: How compare? There it is permissible to write it, but here it is not permissible to write it at all![3] Now, Meremar sat and recited this discussion, whereupon Rabina said to Meremar: If so, when R. Johanan said;[4] It is a precautionary measure, lest he exact his debt as from the earlier date, — let us say that it was not permissible to write it at all! — Said he: Is there the least analogy? There, granted that it was not permissible to write it from the earlier date, it was permissible to write it from the later date; but here it was not permissible to write it at all. But surely with respect to that which has been taught: As to claims for land improvement,[5] e.g., if one took away unlawfully a field from his neighbour and sold it to another, who effected improvements therein, and then it was seized from him [by the first owner], when he [the buyer] exacts [his due from the robber], he may collect the principal [even] from mortgaged property [that has since been sold], but the improvements only from the free [i.e., unsold] property[6] — let us say that it [the deed of sale] was not permissible to be written at all![7] — How now? There, whether on the view that he [the vendor] is anxious not to be called a robber, or on the view that he is desirous of retaining his [the purchaser's] trust,[8] he seeks to pacify the first owner, so as to validate the deed.[9] Here, however, it was his purpose to save it from his clutches, shall he then validate the deed?[10]

MISHNAH. A MAN MUST NOT FIX A PRICE FOR PRODUCE UNTIL THE MARKET PRICE IS KNOWN; ONCE THE MARKET IS ESTABLISHED, A FIXED PRICE MAY BE AGREED UPON, FOR EVEN IF ONE HAS NO STOCK, ANOTHER HAS. IF HE WAS OF THE FIRST HARVESTERS, HE [THE BUYER] MAY ENTER INTO A CONTRACT FOR [THE CROPS IN] THE STACK,[11] THE BASKET OF GRAPES,[12] THE VAT OF OLIVES,[13] POTTERS' LUMPS OF CLAY,[14] AND FOR LIME WHEN IT HAS ALREADY BEEN PLACED IN THE KILN.[15] ONE MAY ALSO MAKE A FIXED CONTRACT FOR MANURE FOR THE WHOLE YEAR. R. JOSE MAINTAINED: NO CONTRACT FOR MANURE MAY BE ENTERED INTO UNLESS HE [THE VENDOR] HAS THE MANURE IN DUNG PITS; BUT THE SAGES PERMIT IT. AND ONE MAY ALSO BARGAIN FOR THE LOWEST PRICE.[16] R. JUDAH SAID: EVEN IF HE DID NOT STIPULATE FOR THE LOWEST PRICE, HE MAY DEMAND, 'SUPPLY ME AT THIS PRICE, OR RETURN MY MONEY.'[17]

GEMARA. R. Assi said in R. Johanan's name: One may not fix a contract at market prices.[18] R. Zera questioned R. Assi: Did R. Johanan rule thus even of a great fair?[19] He replied: R. Johanan referred only to town markets, where values fluctuate.[20] Now, on the original hypothesis that R.

Johanan referred even to a great fair, how is our Mishnah conceivable, which teaches, A MAN MUST NOT FIX A PRICE FOR PRODUCE UNTIL THE MARKET PRICE IS KNOWN; ONCE THE MARKET PRICE IS ESTABLISHED, A FIXED PRICE MAY BE AGREED UPON? — Our Mishnah relates to wheat in granaries and ships, whose fixed price extends over a long period.[21]

Our Rabbis taught: One may not contract for commodities until the market price is out; once the market price is established, a contract may be entered into, for even if one [the vendor] has no stock, another has. If the new supplies were at four [se'ahs per sela'] and the old at three, a contract may not be made until the price has been equalised for the new and old.[22] If the gleaned grains[23] were [priced] at four [se'ahs and upward per sela'], whilst ordinary stock[24] at three, a contract must not be entered into [at a fixed maximum price] until the same market price has been established for the gleaner[25] and the merchant.

R. Nahman said: One may contract for gleanings at the price of gleanings.[26] Said Raba to R. Nahman: Why does the gleaner differ?[27] Because if he lacks stock, he will borrow from his fellow gleaner? Then even a merchant[28] can borrow from a gleaner![29] — He replied: A merchant deems it undignified to borrow from a gleaner. Alternatively, he who pays money to a merchant expects to receive best quality produce.[30]

R. Shesheth said in R. Huna's name: One may not borrow upon the market price.[31] Thereupon R. Joseph b. Hama said to R. Shesheth — others say, R. Jose b. Abba said to R. Shesheth: Did R. Huna actually rule thus? But a problem was propounded of R. Huna: The students who borrow in Tishri and repay in Tebeth — is it permitted or forbidden?[32] He replied: Wheat may be procured in Hini and Shili:[33] if they wish, they can buy [in Tishri] and repay![34] — At first R. Huna held that one must not borrow, but on hearing that R. Samuel b. Hiyya said in R. Eleazar's name that one may, he too ruled likewise.

Our Rabbis taught: If a man was transporting a load from place to place,[35] when his neighbour met him and proposed: 'Let me have it, and I will pay you for it the price you would obtain there,'

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(1) For if the debtor asserts that it is forged, the signatories thereto must attest their signatures.

(2) [V. supra 7a. Similarly here, since he admits having written the deed, the money liability involved ought to rank as a written debt!]

(3) [Since the sale was invalid.]

(4) With reference to an ante-dated bond of indebtedness.

(5) V. supra 14b.

(6) He is empowered to collect the principal even from sold property in virtue of the deed of sale, which guarantees to indemnify the purchaser in the event of its being seized and mortgages the vendor's estates for that purpose.

(7) Hence should be invalid.

(8) V. supra 15b.

(9) I.e., when selling the field, it is his intention to compensate the first owner, so that the deed drawn up for the second may be valid. Consequently, it is genuine, and the purchaser can act thereon.

(10) Surely not! Hence its writing was unwarranted, and therefore it may be regarded as invalid.

(11) I.e., for the grain already in stacks, though no market price has been established.

(12) A basket used for carrying grapes during the vintage; the meaning is that one may fix a price for the wine to be manufactured from grapes already vintaged in baskets.

(13) As in the preceding note.

(14) I.e., for the earthenware to be manufactured thereof.

(15) In all these cases the vendor is held to be in possession of the articles he is selling, though they are not completely manufactured. Consequently, a price may be agreed upon and paid, and though delivery will not be effected until later, by which time the market price may have advanced (for in all these cases the reference is to a sale before a market price has been established at all), it is nevertheless permissible, the lower pre-payment not ranking as interest.

(16) Lit., 'the high price', i.e., the price at the height of the market when the commodity is cheap. After fixing a price, the vendor may contract to supply stock throughout the year at the lowest price prevailing at the time of each delivery. Thus, the first price fixed is only to be regarded as a maximum, not to be exceeded if the market price advances.
(17) In the whole Mishnah the reference is to advance payment at a fixed rate. R. Judah maintains that even without a definite stipulation it is always implied, therefore the purchaser can insist upon the advantage of a price-drop or rescind the sale, without being deemed dishonourable and subject to the curse. (V. supra 44a.)
(18) I.e., to supply for a certain period at the market price prevailing at the time of the contract. This prohibition naturally refers only to the case where the vendor himself lacks supplies when making the contract.
(19) That one may not contract at the market price ruling in great fairs, though such are generally stable, and a fair indication of value. — Durmos, the word in the text, is a disguise of '**, or Mercurius, the divinity of commerce to whom a great annual fair, probably of Tyre, was dedicated (Jast.). [Krauss, Lehnworter, connects it with the Gr. **, race-course, which was also the market-place.]
(20) Lit., 'are not fixed.'
(21) When the wheat has been stored, or sufficient has been imported, its price is stabilised and there is no fear of appreciation, which may result in an appearance of interest.
(22) New supplies were cheaper, because they were not yet fully dried. Now the purchaser, though paying early, does not receive the wheat until that too becomes old, and if he contracts for the whole at the price of new, he receives interest. Therefore he must wait until the same market price is fixed for both.
(23) I.e., grains gleaned in small quantities from many fields, and consequently of inferior quality and cheaper.
(24) Lit., 'of all men'.
(25) I.e., the petty trader in gleanings.
(26) Though a contract may not be made until the prices are equalised, that is only if the vendor may supply gleanings or ordinary stock; but if the vendor is a gleaner, supplying only gleanings, the transaction is permitted.
(27) That you permit it.
(28) Lit., 'a householder', 'landlord'.
(29) Hence the transaction should be universally permitted, for even an ordinary factor may obtain supplies of gleanings when his own stock is exhausted.
(30) Hence, if he pays the lower price of gleanings, he receives interest for advancing the money.
(31) Rashi: One may not borrow money with the stipulation that if it is not repaid by a certain date, provisions will be supplied in its stead at the market price prevailing at the time of the loan, which is lower than that which will prevail later. Others: One may not borrow a se'ah of corn to repay a se'ah later, when its value will have advanced, in reliance upon the fact that the corn has a fixed market price, and it is possible for the borrower to obtain a se'ah now or at any time that the price remains unaltered, either by cash or on credit, and keep it until repayment is due.
(32) Tishri is the seventh month of the Jewish year, Tebeth the tenth. If they borrow money in Tishri and repay in kind in Tebeth at the prices of Tishri; or (taking the second interpretation, p. 420, n. 11) if they borrow provisions in Tishri and return the same quantity in Tebeth, is the transaction permitted?
(33) V. p 377, n. 3.
(34) Hence the transaction is not usurious. This contradicts R. Huna's former ruling.
(35) To sell, its value there being greater.

Talmud - Mas. Baba Metzia 73a

if the vendor retains the title thereto, it is permitted; if the vendee, it is forbidden.[1] If he was transporting provisions from place to place, when his neighbour met him and proposed, 'Let me have them, and I will supply you [later] with provisions that I have there,' if he actually possesses provisions there, it is permitted;[2] if not, it is forbidden. But carriers[3] supply in the dearer place at the prices of the cheaper,[4] without fear [of incurring the guilt of usury]. Why? — R. Papa said: They are satisfied by being informed of the market price.[5] R. Aha the son of R. Ika said: They are satisfied with the extra discount they receive.[6] Wherein do they differ? — In respect of a new trader.[7]

In Sura four [se'ahs] went [to the zuz]; in Kafri,[8] six. So Rab gave money to the carrier,[9] accepted himself the risks of carriage, and received five [se'ahs per zuz]. But why not take six?[10] — For a man

of great repute it is different.[11]

R. Assi propounded of R. Johanan: May this be done with small ware?[12] — He replied: R. Ishmael son of R. Jose wished to do so with linen garments, but was not allowed by Rabbi. Others say, Rabbi wished to do so with small ware, but R. Ishmael son of R. Jose did not allow him.

An orchard:[13] Rab forbade it; Samuel permitted it. Rab forbade it: Since it is worth more later on, it looks like payment for waiting.[14] Samuel permitted it: Since there may be cause for regret,[15] it does not look like payment for waiting.[16] R. Shimi b. Hiyya said: But Rab agrees [where the ploughing is done] with [the aid of] oxen, since great loss is caused.[17]

Samuel said to those who advance seed grain to be returned in new grain:[18] Busy yourselves[19] in the field, that ye may have a title to the soil itself;[20] for if not, it will be accounted as a loan to you, and forbidden.

Raba advised those who keep watch over the cornfields: Go out and find some occupation[21] in the barn, that your wages may not be payable until then;[22] since wages are not payable until the end [of one's task], and it is only then that they make you the gift.[23]

The Rabbis protested to Raba: You enjoy usury. For everyone [who leases a farm] accepts four [kor as annual rent] and dismisses the tenant in Nisan;[24] whilst you wait until Iyar[25] and receive six.[26] He retorted: It is you who act contrary to the law; the land is in bond to the tenant;[27] if you make him quit in Nisan [before the crops are ripened], you cause him much loss. Whereas I wait until Iyar, thus greatly enhancing his profits.[28]

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(1) I.e., if the vendor bears the risk of carriage thither, it is not a loan, the vendee really selling it there on his behalf, and hence permitted. But if the vendee assumes responsibility, it immediately passes into his possession, and he is indebted for its value as a loan. Hence, since he repays more than it is worth where he receives it, it is usury.

(2) For it is as though they were immediately transferred to the lender, and if they appreciate, it is the lender's which appreciates.

(3) Lit., ‘ass drivers.’

(4) They receive money in the dearer place to supply provisions at a later date at the lower price of elsewhere.

(5) For through the ready money they thus have in hand they are recognised as traders and receive credit, and this is ample repayment for their labour of bringing the provisions at their risk from one place to another (Rashi). Tosaf. in name of R. Han.: They are satisfied by being kept informed, by those who advance them money, of any rise in the market price in the dearer place during their absence, and thus aided in their sales.

(6) [In consideration of the fact that they supply the produce in the dearer place at cheap rates.]

(7) I.e., if the carrier has only just begun to trade thus. On the first view, that it is permitted because they are satisfied to be known as merchants and receive credit, it is permitted here too, since the same reason operates; (according to Tosaf., being new traders and inexperienced in price fluctuations, they are sufficiently compensated by being informed thereon). But on the second view, being new, they lack the farmer's confidence, who may not believe that they are supplying the produce in the dear place at cheap rates, and hence receive no additional discount. Therefore the transaction is forbidden, for his labour of carriage is merely on account of the money advanced, and thus partakes of the nature of usury.

(8) [South of Sura, Obermeyer, op. cit., p. 316.]

(9) To bring the produce from Kafri.

(10) As above; the more so in that since he accepted the risks of the road, it was an ordinary purchase.

(11) He must be more considerate.

(12) Does the above law of carriers hold good for all merchandise, or only for wheat? For it may be argued that the two reasons stated apply only to wheat, in which there are frequent price fluctuations and a constant demand. But in other merchandise the prices are more stable, which disposes of the first reason as explained by Tosaf., and the demand is less constant, and hence he is not likely to receive a greater discount, for the demand having been satisfied, it will not recur for a considerable time; nor is he, for the same reason, likely to receive recognition as a trader.

(13) Rashi: 'vineyard'. I.e., to advance money at a fixed price for the fruits of the orchard before they are ripe, to be delivered when ripe. The fixed price is naturally less than that of ripe fruit.
(14) V. supra 63b.
(15) If the orchard is smitten with hail, or the plants with disease, the risks of which are borne by the purchaser. [Others: 'a mishap may befall it.]
(16) But as a speculation. He may (and probably will) receive more than his money's worth, but on the other hand he may lose it.
(17) V. supra 30a top. Hence there is a greater element of risk which converts it into a speculation. [Tosaf.: Cattle breeders (who buy the offspring before it is born) since the risks are great.]
(18) Rashi and Jast. Tosaf.: who advance money for loads of faggots, to be delivered at vintage time. Lit., 'who cut grapes or branches.'
(19) Lit., 'turn over.'
(20) On which the grain grows; hence the grain, or, as Tosaf. interprets, the growing faggots are already yours. To do some work in a field was a method of obtaining a title thereto.
(21) Lit., 'turn over.'
(22) I.e., until you have finished those self-imposed tasks.
(23) Lit., 'remit in your favour' (what they pay you over and above the stipulated wage). These watchers were not paid until the corn was winnowed, though wages were due to them immediately after harvesting; but in consideration thereof they were given something above their due. Now this has the appearance of interest, therefore Raba advised them to find some small tasks in the barn, so that their wages should not be legally payable until they actually received them, in which case the 'tip' would be a gift, not interest. [So according to some texts; cur. edd.: 'They reduce the price in your favour. According to this reading the watchers received payment in kind at a cheaper rate in compensation for waiting for their wages; hence Raba's advice.]
(24) The first month of the Jewish Year. They insist that he shall reap then and quit the field. [This haste in harvesting the corn before it was quite ripe was due to the unsettled state of the country during the Persian — Roman wars. Funk, S., Die Juden in Babylonian, II, p. 85.]
(25) The second month.
(26) The protest was based on the assumption that the additional two was payment for waiting the extra month.
(27) I.e., he has a title thereto until the crops are fully ripe.
(28) Hence I am entitled to a greater rental in return for the greater value they receive [Raba's prominence assured his property of government protections and he could safely 'allow his crops to remain in the field until they ripened fully. Funk, loc. cit.]

Talmud - Mas. Baba Metzia 73b

A certain heathen gave a house in pledge[1] to R. Mari b. Rachel,[2] and then sold it to Raba. Thereupon he [R. Mari] waited a full year, took the rent, and offered it to Raba.[3] Said he to him: 'The reason that I have not offered you rent before this is that an unspecified pledge is a year. Had the heathen wished to make me quit [within the year], he would have been unable;[4] but now you must take rent for the house'. He replied: 'Had I known that it was pledged to you, I should not have bought it. Now I will treat you according to their laws; for until they redeem the pledge[5] they receive no rent; so I will take no rent from you until you are paid out'.[6]

Raba of Barnesh[7] said to R. Ashi: See, Sir, the Rabbis enjoy[8] usury. For they advance money for wine in Tishri, and receive choice quality in Tebeth![9] He replied: They too pay their money for wine, not vinegar, and from the very beginning, wine is wine, and vinegar, vinegar;[10] it is then [when they pay] that they select choice wine.[11]

Rabina gave money [for wine] to the residents of Akra dishanwatha,[12] and they supplied[13] a liberal addition.[14] So he went to R. Ashi and asked him: Is it permitted?[15] Yes, he replied; they but forego [their rights] in your favour.[16] But, said he, the land is not theirs![17] — The land is pledged for the land tax, he replied, and the king has decreed: He who pays the land tax is entitled to the

usufruct.

R. Papa said to Raba: See, there are some scholars who advance money for people's poll tax and then put them to much service! — He replied: I might have died, without telling you this thing. Thus said R. Shesheth: The surety[18] of these people lies in the king's archives, and the king has decreed that he who does not pay his poll tax is made the servant of him who pays it [on his behalf].

R. Se'oram, Raba's brother, used to seize people of disrepute and make them draw Raba's litter. Said Raba 'to him: You have done well. For it has been taught:[19] If you see a man who does not behave in a seemly fashion, whence do we know that you may make him your servant? From the verse, They [sc. Canaanite slaves] shall be your bondmen for ever and your brethren the children of Israel [likewise].[20] I might think that this is so even of one who behaves in a seemly fashion; therefore it is taught, but over your brethren, the children of Israel, ye shall not rule one over another with rigour.[21]

R. Hama said: If a man gives his neighbour money to buy wine for him, and he negligently fails to do so, he must compensate him as it is sold in the market of Belshafat.[22] Amemar said: I repeated this ruling before R. Zebid of Nehardea, whereupon he observed: R. Hama's dictum applies only to unspecified wine, but not to a particular wine, [for] who knows that he could have obtained it for him?[23] R. Ashi said: Even for unspecified wine it is also not [correct]. Why? Because it is an asmakta, and an asmakta establishes no legal claim.[24] But in R. Ashi's view, how does this differ from what we learnt: [If the tenant-farmer declares], 'If I let it lie waste without cultivating it, I will pay with the best [of produce,'[25] he is bound to do so]? — There it is in his power [to cultivate it];[26]

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(1) V. supra 67b.

(2) He was the son of a Jewess and a proselyte, conceived before conversion and born after, and was therefore called by his mother's name.

(3) For the coming year, but not for the past.

(4) Therefore I was entitled to live rent-free in the house. V. supra 67b.

(5) Lit., 'make (the creditor) quit.

(6) Lit., 'until I cause you to quit by (payment of) money,' i.e., until I compel the heathen to repay you. This was not forbidden as usury, since not Raba but the heathen owed him money (Rashi).

(7) [Near Matha Mahasia, a suburb of Sura, Obermeyer, op. cit. p. 297.]

(8) Lit., 'devour'.

(9) Whereas had they taken it in Tishri, it might have turned sour by Tebeth. Thus in return for their advancing the money before the receipt of the goods the vendor takes the risk of deterioration, which is usury. Now, though it was stated, supra 72b, that one may buy wheat ahead if the buyer has stock when the money is paid, Raba of Barnesh thought that wine is different, because it is liable to turn sour. (Rashi).

(10) I.e., good wine remains good; if it turns now, it was poor from the very beginning, already containing the germs of deterioration, as it were, but its faultiness was not then discernible.

(11) And they insist on receiving it, because only if it is sound now was it sound then.

(12) [Fort of Shanutha, 4 parasangs west of Bagdad, and identical with Be-Kufai; v. B.B. (Sonc. ed.) p. 120, n. 8, the former being the Arabic, the latter the Aramaic name of the Fort, Obermeyer, op. cit., p. 268.]

(13) Lit., 'they poured'.

(14) [So Jast. Others: an additional jug, measure.]

(15) Or is it usury for having paid the money in advance?

(16) The right of giving you exactly the stipulated quantity.

(17) By paying the land tax on behalf of the original owners, who, being unable to pay it, had fled, they had become possessed thereof, and it is questionable whether they have the right to dispose of the wine.

(18) So Jast. Rashi: the service-warrant.

(19) [So according to some texts; cur. edd.: 'we learnt'. The quotation however is not from a Mishnah.]

(20) Lev. XXV, 46.

(21) Ibid. The verse, of course, is not actually thus interpreted, but merely cited in support of his practice, with the caveat that men of good standing must not be molested.
(22) Walshafat, v. B.B. (Sonc. ed.) p. 409, n. 6. Having neglected to buy a vintage, when wine is cheap, so that it must now be bought at ordinary market prices, he must duly compensate him. [Obermeyer, op. cit. p. 185, renders: he pays him (the agent) only in accordance with the (low) price current in the wine market of Balash-Abad.]
(23) Even had he not been negligent, he might have failed to obtain the particular wine ordered.
(24) V. Glos. Even if the agent undertook to forfeit the loss, should he not buy the wine, his pledge is invalid, not having been meant seriously.
(25) V. infra 104a.
(26) Therefore his undertaking is not an asmakta, but seriously meant.

Talmud - Mas. Baba Metzia 74a

here it does not rest with him.[1]

Raba said: If three men gave money to one person to purchase something for them, and he purchased on behalf of one only, he has purchased [it] for all three.[2] This is so only if he [the agent] did not make up a separate sealed package of each man's money; but if he did, then for whom he has bought, he has bought, and for whom he has not bought, he has not bought.

R. papi said in Raba's name: The mark [on the wine-barrels][3] gives possession. In respect of what [does it effect a title]? — R. Habiba said: In respect of actual possession.[4] The Rabbis said: For the acceptance of the curse.[5] And the law is that [it gives possession only] in respect of submission to the curse. But where it is the usage that this gives actual possession, it does so [with full legal recognition].[6]

IF HE WAS OF THE FIRST HARVESTERS. Rab said: If [only] two [processes] are wanting [before the crops are ready for delivery] a contract may be made; if three, no contract may be made. Samuel said: [If they are to be done] by man, even if a hundred [are lacking] an agreement may be effected; if by Heaven,[7] even when one [is lacking] no contract may be made. We learnt: HE MAY ENTER INTO A CONTRACT FOR [THE CROPS IN] THE STACK. But it still wants spreading out in the sun to dry, threshing, and winnowing?[8] — It means that it had already been spread out [and dried] in the sun. But on Samuel's view, that if dependent on Heaven, even when one [process is lacking] no contract may be made, does it not need winnowing, which is in the power of Heaven?[9] — It can be done with a fan.

AND FOR THE BASKET OF GRAPES. But they yet need heating,[10] placing in the press, treading, and being drawn [into the pit]![11] As R. Hiyya learnt: [A contract may be made] in respect of the heated mass of olives; so here too, it is for the heated mass of grapes. But three processes are still wanting! — [It refers] to a place where the buyer draws [the wine into the pit].[12]

AND FOR THE VAT OF OLIVES. But it must yet be heated, placed between the boards [of the olive press], pressed, and conducted [into the oil pit]! — As R. Hiyya taught: [The contract may be made] in respect of the heated mass of olives. [So here too.] But three processes are still wanting! — [It refers] to a place where the buyer draws [the oil into the pit].

AND FOR POTTERS' LUMPS OF CLAY. But why? Surely it requires moulding, drying, placing in the oven, burning, and taking out! — [It means,] when they have been moulded and dried. But there are still three [processes wanting]! — [It refers] to a place where the buyer removes [the earthenware from the oven.]

AND FOR LIME, WHEN IT HAS ALREADY BEEN PLACED IN THE KILN. But it requires to

be burnt, removed [from the kiln], and crushed![13] — [It refers] to a place where the purchaser crushes it. But on the view of Samuel, who maintained that if they are to be done by man, even when a hundred [processes are wanting] a contract may be made, why must it have 'BEEN PLACED IN THE KILN? — Say thus: when it is ready for placing in the kiln.[14]

AND FOR POTTERS' LUMPS OF CLAY. Our Rabbis taught: Contracts may not be entered into for potters' lumps of clay until they are kneaded [into lumps]: this is R. Meir's view. R. Jose said: This refers only to white earth;[15] but for black earth, such as that of Kfar Hanania and its environs, Kfar Sihin[16] and its environs, an agreement may be concluded, for even if one [merchant] has none, another has.

Amemar paid money [for earthenware] when he [the manufacturer] had stocked himself with the earth. In accordance with whom [did he do this]? If in accordance with R. Meir? Surely R. Meir ruled [that no contract may be made] until they are kneaded [into clay]![17] If with R. Jose, surely he said, Even if one has none, another has?[18] — In truth, it was In accordance with R. Jose, but in Amemar's locality earth [for this purpose] was rare; hence, if he is stocked therewith, each places full reliance;[19] if not, they place no reliance.[20]

ONE MAY ALSO MAKE A FIXED CONTRACT FOR MANURE FOR THE WHOLE YEAR. But are not the Sages identical with the first Tanna?[21] — Raba said:

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(1) For he might have failed to procure the wine at the stipulated price in any case. Hence his undertaking was an asmakta.

(2) All three must share it.

(3) סיטומתא . When merchants bought wine, they left it in the cellars of the growers, taking out barrel by barrel according to need, and affixed a mark on each that they had bought. [Asheri in name of R. Han. explains it as 'handshake', a recognised method among traders of closing a deal.]

(4) That by affixing a mark it passes completely into the possession of the merchant, as though meshikah (v. Glos.) had taken place, and henceforth he must bear all risks.

(5) Lit., 'He who punished etc.'; v. supra 44a. It still belongs to the wine-grower (the payment of money not effecting a change of ownership), but should he desire to rescind the sale, as he may legally do, he must submit to the curse.

(6) I.e., a method of acquisition based on local usage receives full legal recognition.

(7) I.e., processes not dependent on man.

(8) This refutes both Rab and Samuel, for three processes are wanting, one of which, at least, sc. drying by the sun, is not in man's power.

(9) This was done by throwing the corn to the wind, which separated the grain from the chaff.

(10) prior to manufacture the grapes were heated and caused to shrink by exposure to the sun.

(11) This too refutes Rab and Samuel.

(12) Hence only two processes are wanting.

(13) Before it is fit for use.

(14) I.e., when he has the materials for making the lime, the fuel, etc., with which the kiln was fired.

(15) Which is rare and difficult to obtain.

(16) Both in Galilee.

(17) But not while it is still earth.

(18) So that Amemar could have given money even sooner.

(19) Upon the transaction, which cannot be rescinded without submission to a curse.

(20) And each may retract.

(21) V. Mishnah, 72b.

Talmud - Mas. Baba Metzia 74b

They differ with respect to winter.[1]

AND ONE MAY ALSO BARGAIN FOR THE LOWEST PRICE. A man once paid money [in advance] for his father-in-law's dowry,[2] [i.e., the trousseau comprised therein.] Subsequently the dowry fell in price.[3] So they came before R. Papa. Said he to him [the purchaser]: If you have contracted for the lowest price, you can take at present prices; if not, you must accept at the original price. But the Rabbis protested to R. Papa: Yet if he did not stipulate [thus], must he accept at previous prices? Surely it is only money [that has passed between them], and money gives no title! — He replied: I too spoke only with reference to submission to the curse. If he stipulated for the lowest price, and the vendor wishes to retract, the vendor must submit to the curse; if no stipulation has been made, and the purchaser wishes to retract, the purchaser must submit to the curse. Rabina said to R. Papa: Whence do you know that it [our Mishnah under discussion] accords even with the Rabbis who disagree with R. Simeon and maintain that money does not effect possession;[4] and yet even so, [only] if he stipulated for the lowest price does he receive at the present value, but if not, he must accept it at the previous price?[5] Perhaps it accords [only] with R. Simeon, who maintained that money effects possession,[6] so that, if he stipulated for the lowest price, he receives it at current values, but if not, he must accept it at previous prices, because his money has effected possession for him; whereas in the opinion of the Rabbis, whether he stipulated or not, he can take it at present prices, for a man's intention is for the lowest price?[7] — He replied: You must assume that R. Simeon ruled [that the purchaser is morally in possession after paying money] only if the price remained uniform; but did he rule thus when there were two prices?[8] For should you not admit this, does R. Simeon maintain that the provision of the curse never applies to the purchaser?[9] And should you rejoin, That indeed is so — surely it has been taught: At all events, such is [merely] the halachah; but the Sages said, He who punished etc.[10] What is meant by ‘at all events’? Surely that it matters not whether the vendor or the purchaser [retracts], he must submit to the curse? Hence R. Simeon gave his ruling [that the vendee cannot legally cancel the sale] only if the price remained uniform, but if not there were two prices.

R. Aha, the son of Raba, said to Raba: But does it not follow [that there is no curse in the case under discussion], since in the first place he [the father-in-law] had only appointed him [the son-in-law] as his agent?[11] — He replied: This refers to a merchant who buys and sells.[12] MISHNAH. A MAN MAY LEND HIS TENANTS[13] GRAIN FOR [AN EQUAL QUANTITY OF] GRAIN [TO BE RETURNED] FOR SOWING PURPOSES, BUT NOT FOR FOOD. FOR RABBAN GAMALIEL USED TO LEND HIS FARMER-TENANTS GRAIN FOR GRAIN FOR SOWING; AND IF IT WAS DEAR AND BECAME CHEAP, OR CHEAP AND BECAME DEAR, HE WOULD ACCEPT [A RETURN] ONLY AT THE LOWER PRICE;[14] NOT BECAUSE THE HALACHAH IS SO, BUT BECAUSE RABBAN GAMALIEL DESIRED TO SUBMIT HIMSELF TO GREATER STRINGENCY.[15]

GEMARA. Our Rabbis taught: A MAN MAY LEND HIS TENANTS GRAIN FOR GRAIN FOR SOWING. That is only if he [the tenant] has not entered therein;[16] but if he has entered therein, it is forbidden. Why does our Tanna draw no distinction whether he has entered therein or not, whereas the Tanna of the Baraitha does?Raba replied: R. Idi explained the matter to me: In the locality of our Tanna the aris provided the seed, and whether he has yet entered therein or not, as long as he has not provided the seed he [the landlord] can make him quit;[17] hence, when he enters therein [and the owner provided the seed] it is [straightway] for a lower return.[18] But in the locality of the Tanna of the Baraitha the landowner provided the seed;[19] hence, if he [the aris] has not yet entered therein, so that he [the landlord] can make him quit, when he does enter, it is for a lower return; but if he has already[20] entered, so that he cannot force him to quit, it is forbidden.[21]

Our Rabbis taught: A man may propose to his neighbour,

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(1) When very little dried manure for fertilising is available. The first Tanna permits a contract even for winter (‘FOR

THE WHOLE YEAR'); but the Sages, who permit the transaction because even if one has none another may have it, refer only to summer, when it is plentiful, but not to winter, when there may be a shortage amongst all merchants.
(2) Which the father in-law was to provide, the father-in-law having made him his agent.
(3) Before delivery.
(4) In respect of both the vendor and purchaser; v. supra 44a.
(5) Or rescind the sale only on submission to a curse.
(6) In respect of the purchaser, viz., that he cannot rescind the bargain at all, even on pain of submission to the curse.
(7) Since the Rabbis maintain that the vendee may rescind the sale even without a drop in price, but that he is subject to the curse, it may be that if the price falls, he is even morally entitled to retract, for a 'most favoured-sale' is implicit in every such transaction.
(8) I.e., if the price fell.
(9) For if the sale is always legally binding upon the purchaser there is no possibility of his ever having to submit to the curse.
(10) V. supra 48a; this was said by R. Simeon.
(11) Since the father-in-law provides the dowry, the son-in-law merely acted on his behalf in placing the order. The latter is not subject to the curse, since he does not retract, whilst the former may repudiate his agent for not having fulfilled his task in a proper manner by making the necessary stipulation.
(12) The son-in-law did not act as an agent, but bought on his own account, to sell to his father-in-law.
(13) Aris, a tenant who pays a percentage of the crops as rent.
(14) I.e., if he lent them grain when it was cheap, and then it advanced, he would only accept current value, hence a smaller quantity.
(15) Therefore the Tanna finds it necessary to state the true halachah.
(16) I.e., has not commenced any work in the field.
(17) Even if he has ploughed the field, he can be forced to quit.
(18) Since he could have been forced to leave the field altogether, the seed which the owner provides is not regarded as a loan but as an addition, as it were, to the land he leases him; and in consideration thereof the aris is to pay him the same quantity over and above what he would otherwise have to pay him. Therefore, even if the seed advances in price, there is no interest on a loan.
(19) I.e., normally; but in this case, owing to the superior quality of the soil, the owner had stipulated that the aris was to provide it.
(20) And then agreed to provide the seed himself, contrary to local usage, and then the owner advanced it, the same quantity to be repaid later.
(21) For in that case, the land already having been leased, it cannot be maintained that the seed advanced is an addition to the field.

Talmud - Mas. Baba Metzia 75a

'Lend me a kor of wheat,' and stipulate a monetary return:[1] if it depreciates, he returns wheat; if it advances, he repays its value [as at the time of borrowing]. But did he not stipulate?[2] — R. Shesheth answered: It is thus meant: if no stipulation is made, and it depreciates, he takes wheat; if it advances, he repays its [original] value.

MISHNAH. A MAN MAY NOT SAY TO HIS NEIGHBOUR, 'LEND ME A KOR OF WHEAT AND I WILL REPAY YOU AT HARVEST TIME;'[3] BUT HE MAY SAY, 'LEND ME UNTIL MY SON COMES, OR UNTIL I FIND THE KEY.'[4] HILLEL, HOWEVER, FORBADE [EVEN THIS.] AND THUS HILLEL USED TO SAY: A WOMAN MUST NOT LEND A LOAF TO HER NEIGHBOUR WITHOUT FIRST VALUING IT, LEST WHEAT ADVANCES AND THUS THEY [THE LENDER AND BORROWER] COME TO [TRANSGRESS THE PROHIBITION OF] USURY.

GEMARA. R. Huna said: If he possesses a se'ah, he may borrow a se'ah; two se'ahs, he may borrow two se'ahs.[5] R. Isaac said: Even if he has only a se'ah, he may borrow many kors against it.[6]

R. Hiyya taught the following, which is in support of R. Isaac: [One may not borrow wine or oil for the same quantity to be returned, because] he has not a drop of wine or oil.[7] Surely then, if he has, he may borrow a large quantity against it.[8]

HILLEL, HOWEVER, FORBADE [EVEN THIS]. R. Nahman said in Samuel's name: The halachah agrees with Hillel's ruling. The law is nevertheless not in accordance with him.[9]

AND THUS HILLEL USED TO SAY, A WOMAN MUST NOT LEND, etc. Rab Judah said in Samuel's name: This is Hillel's view, but the Sages maintain, One may borrow and repay unconditionally.

Rab Judah also said in Samuel's name: The members of a company who are particular with each other[10] transgress [the prohibition of] measure, weight, number, borrowing and repaying on the Festival,[11] and, according to Hillel, usury too.[12]

Rab Judah also said in Samuel's name: Scholars may borrow from each other on interest. Why? Fully knowing that usury is forbidden, they merely present gifts to each other.[13] Samuel said to Abbuha b. Ihi: Lend me a hundred peppercorns for a hundred and twenty. And this is well.[14]

Ran Judah said in Rab's name: One may lend to his sons and household on interest, in order to give them experience thereof.[15] This, nevertheless, is incorrect, because he will come to cling thereto.[16]

MISHNAH. A MAN MAY SAY TO HIS NEIGHBOUR, 'HELP ME TO WEED, AND I WILL HELP YOU; ASSIST ME TO HOE, AND I WILL ASSIST YOU.'[17] BUT HE MAY NOT SUGGEST, 'DO YOU WEED WITH ME, AND I WILL HOE WITH YOU; DO YOU HOE WITH ME, AND I WILL WEED WITH YOU.'[18]

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(1) Viz., its value when borrowing.

(2) To return money; why then repay wheat if its value falls?

(3) Lest it become dearer.

(4) I.e., he has it, but it is temporarily inaccessible. Since the prohibition of lending a se'ah for a se'ah is only Rabbinical, it was not enacted when the borrower actually possesses the grain.

(5) The reference is to 'LEND ME UNTIL MY SON COMES etc.'

(6) For in point of fact, the se'ah that he has does not pass into the lender's possession, and he could, if he wished, dispose of it and then purchase a se'ah for repayment, even at a higher price. Thus, having borrowed one se'ah, he is at liberty to dispose of the first and remain in debt for what he borrowed: this se'ah (the borrowed one) then serves as a standby for another, and the second for a third, and so on.

(7) Hence, if the price of wine or oil advances, there is usury.

(8) Lit., 'many drops'.

(9) Sc., R. Nahman in Samuel's name.

(10) I.e., members of a company at one table, each of whom has his own provisions, and when one borrows from another, are particular to weigh, measure, or count, that the exact quantity may be returned.

(11) On a Festival one may borrow from his neighbour, but not by weight, measure or number. Likewise, he may not use the terms 'lend' and 'repay', for these belong to monetary transactions. Now Rab Judah observes, when members of a company are particular with each other, they are likely to be led into the transgression of these prohibitions.

(12) When members of a company are not particular with each other, and one borrows and returns the same amount after it has advanced, there is no usury, since neither cares whether the exact amount is returned or not. But if they are particular, every change in value is scrupulously noted, and therefore, if it advances, there is usury. This does not refer particularly to Festivals. Since Rab Judah maintains that Hillel's ruling applies only to members who are particular with each other, it follows that neighbours, in respect of whom Hillel stated his view, are always so regarded. (Tosaf.)

(13) This refers only to a trifling matter, such as might be given in any case. (Tosaf.) [They are not as petty and niggardly in their relations to one another as those whose only common bond of interest is the dining table; v. Rappaport, J.H., Das Darlehen, p. 135.]
(14) I.e., it is not usury.
(15) Lit., 'to let them know the taste of usury'; i.e., that they should know the bitterness and cankering cares of having to return more than is borrowed.
(16) In teaching his children the dark side of interest, he himself will be impressed with its happy side-for the lender-and engage in it.
(17) Though by the time he comes to reciprocate labour costs may have advanced.
(18) One may be more difficult than the other, and so there may be an appearance of usury.

Talmud - Mas. Baba Metzia 75b

ALL THE DAYS OF THE DRY SEASON ARE EQUAL,[1] AND LIKEWISE OF THE RAINY SEASON.[2] [BUT] ONE MAY NOT SAY, 'PLOUGH WITH ME IN THE DRY SEASON, AND I WILL PLOUGH WITH YOU IN THE RAINY SEASON'.[3] RABBAN GAMALIEL SAID: THERE IS [A FORM OF] PREPAID INTEREST AND ONE OF POSTPAID INTEREST. E. G., IF ONE MADE UP HIS MIND TO BORROW FROM HIS NEIGHBOUR AND SENT HIM [A GIFT], SAYING, 'IT IS IN ORDER THAT YOU SHOULD LEND ME' — THAT IS INTEREST IN ADVANCE. IF HE BORROWED FROM HIM, REPAID HIS MONEY, AND THEN SENT HIM [A GIFT], SAYING, 'IT IS ON ACCOUNT OF YOUR MONEY WHICH, [AS FAR AS YOU WERE CONCERNED], LAY IDLE WITH ME' — THAT IS POSTPAID INTEREST. R. SIMEON SAID: THERE IS A FORM OF VERBAL INTEREST. [THUS:] HE [THE BORROWER] MAY NOT SAY TO HIM [THE LENDER], 'KNOW THAT SO-AND-SO HAS COME FROM SUCH AND SUCH A PLACE.'[4]

THE FOLLOWING TRANSGRESS NEGATIVE INJUNCTIONS: THE LENDER, THE BORROWER, THE SURETY, AND THE WITNESSES; THE SAGES ADD, THE NOTARY TOO. THEY VIOLATE: THOU SHALT NOT GIVE [HIM THY MONEY UPON USURY],[5] TAKE THOU [NO USURY] OF HIM,[6] THOU SHALT NOT BE TO HIM AS AN USURER,[7] NEITHER SHALL YE LAY UPON HIM USURY,[8] AND THOU SHALT NOT PUT A STUMBLING BLOCK BEFORE THE BLIND, BUT SHALT FEAR THY GOD: I AM THE LORD.[9]

GEMARA. It has been taught: R. Simeon b. Yohai said: Whence do we know that if a man is his neighbour's creditor for a maneh, the latter must not extend a greeting to him, if that is not his usual practice? From the verse, Usury of any word which may be usury, [teaching] that even speech is forbidden.

THE FOLLOWING TRANSGRESS. Abaye said: The lender infringes all;[10] the borrower: Thou shalt not cause thy brother to take usury,[11] but unto thy brother thou shalt offer no usury,[12] and thou shalt not put a stumbling block before the blind. The Surety and the witness: only, neither shall ye lay upon him usury.[13]

It has been taught: R. Simeon said: Those who lend on interest lose more than they gain.[14] Moreover, they impute wisdom[15] to Moses, our Teacher, and to his Torah, and say, 'Had Moses our Teacher known that there is profit in this thing [sc. usury], he would not have prohibited it.'[16]

When R. Dimi came,[17] he said: Whence do we know that if one is his neighbour's creditor for a maneh and knows that he has nought [for repayment], he may not even pass in front of him? From the verse, Thou shalt not be to him as an usurer.[18] R. Ammi and R. Assi say: It is as though he subjected him to a twofold trial,[19] for it is written, Thou hast caused man to ride over our heads,' we went through fire and through water.[20]

Rab Judah said in Rab's name: He who has money and lends it without witnesses infringes, and thou shalt not put a stumbling block before the blind.[21] Resh Lakish said: He brings a curse upon himself, as it is written, Let the lying lips be put to silence; which speak grievous things proudly and contemptuously against the righteous.[22]

The Rabbis observed to R. Ashi: Rabina fulfils all the Rabbinical requirements. He [R. Ashi] sent word to him [Rabina] on the eve of the Sabbath: 'Please, let me have [a loan of] ten zuz, as I just have the opportunity of buying a small parcel of land.' He replied, 'Bring witnesses and we will draw up a bond.' 'Even for me too!' he sent back. 'You in particular,' he retorted, 'being immersed in your studies, you may forget, and so bring a curse upon me.

Our Rabbis taught: Three cry out[23] and are not answered. Viz., he who has money and lends it without witnesses; he who acquires a master for himself; and a henpecked husband. 'He who acquires a master for himself;' what does this mean? — Some say: He who attributes his wealth to a Gentile;[24] others: He who transfers his property to his children in his lifetime; others: He who is badly-off in one town and does not go [to seek his fortune] elsewhere.

C H A P T E R V I

MISHNAH. IF A MAN ENGAGES ARTISANS AND THEY DECEIVE EACH OTHER, THEY CAN ONLY CHERISH RESENTMENT AGAINST EACH OTHER.[25] IF HE HIRES AN ASS-DRIVER OR A WAGGONER[26] TO BRING LITTER-CARRIERS AND PIPERS FOR A BRIDE OR FOR THE DEAD,[27] OR LABOURERS TO REMOVE HIS FLAX FROM THE WATER OF STEEPING, OR ANYTHING WHICH WOULD BE IRRETRIEVABLY LOST,[28] AND THEY [THE WORKERS] BREAK THEIR ENGAGEMENT;[29] IF IT IS A PLACE WHERE NO OTHERS ARE AVAILABLE AT THE SAME WAGE, HE MAY HIRE [WORKERS] AGAINST THEM[30] OR DECEIVE THEM.[31] IF HE ENGAGES ARTISANS AND THEY RETRACT [AFTER DOING SOME WORK]. THEY ARE AT A DISADVANTAGE;

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(1) Lit., 'one.'

(2) I.e., there is no fear that one day may be longer than another or more difficult for working, so that the value of labour on one is greater than on the other.

(3) In different seasons the work is of unequal difficulty.

(4) The mere giving of information which he would otherwise not have given, is interest. But the text in J. a.l. is, 'Know that if so-and-so has come, etc.' On this reading, it is the lender who speaks thus to the borrower, and to make the sense complete, Maim. Yad, Loweh, 13, adds, 'and when he comes, shew him hospitality.' Now, though the borrower would probably have done this in any case, his doing it at the lender's behest becomes interest, and is forbidden. The passage then must be translated: R. Simeon said, There is a form of interest arising through (the creditor's) words (orders). (V.J.D. CLX, 12 ט ז a.l. ¤ 5 and ביאור הגר א a.l. ¤ 21.)

(5) Lev. XXV, 37.

(6) Ibid. 36.

(7) Ex. XXII, 24.

(8) Ibid.

(9) Lev. XIX, 14. The borrower, by offering interest and appealing to the creditor's avarice, places a stumbling block before him.

(10) The injunctions enumerated in the Mishnah.

(11) Deut. XXIII, 20. For this translation v. p. 363, n. 4.

(12) Ibid. 21. Alfasi and the Asheri Omit this, and Maim.'s text likewise appears to have omitted it.

(13) I.e., take no part in a transaction which imposes usury.

(14) V. supra 71a: He who lends on interest, his wealth dissolves . . . and he sinks into poverty, never to rise again.

(15) A euphemism for folly.

(16) Lit., ‘written it’.
(17) From Palestine to Babylon.
(18) I.e., do not emphasize that he is in your debt: and so put him to shame.
(19) Lit., ‘judged him with two verdicts.’
(20) Ps. LXVI, 12; v. Ber. 6b.
(21) Lev. XIX, 14.
(22) Ps. XXXI, 19; when the creditor demands repayment, and the debtor denies the loan, he is reviled for preferring unjust claims.
(23) I.e., vent their grievances at law.
(24) V. p. 367, n. 2; the Gentile may learn of this, and demand its return.
(25) But have no legal redress. In the view of the Rabbis, even for resentment there must be some justifiable cause; otherwise it is morally wrong.
(26) The Karlsruhe MS. and Tosaf. read קרר , (קרר to roll, drag; cf. גרר a waggoner). Our editions read קדר , which, according to Jast., is a dialect form of קרר . Tosaf. suggests that קדר , (a potter) may be used in the Mishnah, because potters generally have waggons (for conveying their wares).
(27) It was a custom to have professional mourners and pipers, who played sad music at funerals. The numbers varied according to wealth and social position, but even the poorest had at least one professional mourner and two pipers.
(28) If postponed. The bringing of pipers for a funeral or marriage is included in this category, because they are required for a particular time, and without them the ceremony suffers (Tosaf.).
(29) Lit., ‘withdrew’ in the middle of their work.
(30) I.e., at a higher wage. and claim the difference from the first.
(31) This is discussed in the Gemara.

Talmud - Mas. Baba Metzia 76a

IF THE EMPLOYER RETRACTS, HE IS AT A DISADVANTAGE.[1] HE WHO ALTERS [THE CONTRACT] IS AT A DISADVANTAGE,[2] AND HE WHO RETRACTS IS AT A DISADVANTAGE.

GEMARA. It is not stated, One or the other retracts. but THEY DECEIVE EACH OTHER, implying the artisans deceive each other:[3] viz., the employer instructed him [sc. his employee]. ‘Go and hire me workers;’ whereupon he went and deceived them. How so? If the employer's instructions were at four [zuz per day], and he went and engaged them for three, what cause have they for resentment? They understood and agreed! Whilst if the employer's instructions were for three, and he went and engaged them at four, what then were the conditions? If he [who engaged them] said to them, ‘I am responsible for your wages.’ he must pay them out of his [pocket]. For it has been taught: If one engages an artisan to labour on his [work], but directs him to his neighbour's, he must pay him in full, and receive from the owner [of the work actually done] the value whereby he benefitted him![4] — It is necessary to teach this only if he said to them, ‘The employer is responsible for your pay.’ But let us see at what rate workers are engaged?[5] — It is necessary [to teach this] only when some [workmen] engage themselves for four [zuz] and others for three. Hence they can say to him, ‘Had you not told us that it is for four zuz, we would have taken the trouble to find employment at four.’[6] Alternatively, this may refer to a householder.[7] Hence he can say to him, ‘Had you not promised me four, it would have been beneath my dignity to accept employment.’ Or again, it may refer, after all, to [normal] employees. Yet they can say to him [the foreman], ‘Since you told us it was for four, we took the trouble of doing the work particularly well.’ But then let us examine the work?[8] — This refers to a dyke.[9] But even [in] a dyke, it [superior workmanship] may be distinguished! — It means that it is filled with water, and so not noticeable. Another possibility is this: In truth, it means that the employer gave instructions for four, and he went and engaged them for three; but as to your objection, ‘They understood and accepted!’ — they can remonstrate with him. ‘Do you not believe in, Withhold not good from them to whom it is due?’[10]

It is obvious, if the employer instructed him [to engage labourers] for three [zuz per day], and he went and promised them four, but they stipulated, 'According to the employer's instructions', that their reliance was upon him [who engaged them],[11] But what if the employer instructed him [to engage them] at four, and he went and promised them three, and they said, 'Be it as the employer instructed'? Did they rely on his [the agent's] words, saying to him, 'We believe you that the employer has instructed you thus'; or perhaps they relied upon the words of the employer?[12] — Come and hear: [If a woman said to a man.] 'Bring me my divorce,' and [he went and stated to her husband,] 'Your wife authorised me to accept the divorce on her behalf;' [to which] he replied. 'Take it, in accordance with her instructions,' — R. Nahman said in the name of Rabbah b. Abbuhah in Rab's name: Even when the divorce reaches her hand, she is not divorced. This proves that he [the husband] relies upon his [the agent's] statement. For should you maintain that he relies upon hers, then at least when the divorce reaches her hand, let her be divorced![13] Said R. Ashi:

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(1) Thus, in the first instance, if labour costs increased after they retracted, the employer may deduct the increase that he will have to pay from the wages due for the work already done. If, on the other hand, they decrease, the profit is the employer's, and the workers cannot demand the whole sum originally agreed upon less the (diminished) cost of completing the work. In the second instance, the employer must pay his workmen for what they have already done pro rata even if labour costs advance, and he must pay more for the rest. Should they decrease, however, he is bound to pay the whole sum originally agreed upon less only the diminished cost of the rest.

(2) E.g., if a dyer was ordered to dye wool red, and dyed it black, he can only demand either his own expenses for dyeing or the increased value of the wool, whichever is less.

(3) Because to denote that the employer and employees deceived each other, the Mishnaic idiom requires the first phrase.

(4) And when an employer instructs a foreman to engage labourers at three sins, and he engages them at four, it is as though he had engaged them for himself but directed them to his employer's work.

(5) For if four zuz is the usual wage. the foreman has a right to claim that sum from the employer, as stated in the Baraitha just cited, he receives the value whereby he benefitted him. If, on the other hand, three is the usual wage, the workers must accept this without any resentment, since he explicitly stipulated that the responsibility for their wages rested on the employer.

(6) Hence they have righteous cause for resentment. Yet, since he stipulated that the employer was responsible for their wages, they have no legal redress.

(7) I.e., who works for himself, but if offered a high wage, is willing to work for another.

(8) To see if it is really worth the higher wage, in which case the employer must pay four, notwithstanding his instructions. This, however, is only when some receive four zuz for superior work, but if none do, they have no legal claim. (H.M. CXXXII, 1 and באר היטב , a.l.)

(9) They were engaged to dig a dyke.

(10) Prov. III, 27. Though they undertook to work for three they are justified in resenting that the employer's agent offered them less than he might have done.

(11) I.e., they certainly did not stipulate for less.

(12) I.e., by saying, 'Be it as the employer instructed', they meant to stipulate that if he had stated more than three, they were to receive the higher wage.

(13) A woman is not divorced until the divorce actually reaches her hand or the hand of an agent appointed by her for the express purpose of accepting it on her behalf: further, an agent's powers are strictly limited to the terms of his appointment, and he may not exceed them in the least. Now, in this case, the wife merely authorised the agent to bring it to her, whereas the agent stated to the husband that he was delegated to accept it on her behalf; whilst the husband, in handing him the divorce, asserted that he was giving it in accordance with her instructions. Now, no man can take a divorce to a woman on her husband's behalf, unless her husband appoints him for that purpose; and a husband cannot authorise a man to accept a divorce on his wife's behalf, i.e., that by his acceptance she shall be divorced, for such appointment is the wife's prerogative. Hence, when the husband said, 'Take it in accordance with her instructions', he must have meant, 'I believe that she appointed you to accept it on her behalf, that by your acceptance she should become divorced'; consequently he did not appoint him as agent to take it to his wife. (For though the wife had appointed him as her agent to bring it to her, the husband too must appoint him as his agent to take it to her; otherwise the divorce is invalid. But in this case, the husband, believing that he was agent for acceptance, would naturally not instruct him to take

it to her.) Therefore, she is not divorced at all, neither by his acceptance, since she did not authorise him to accept it for her, nor even by her own, since he had not been authorised by the husband to take it to her. Now, this holds good on the hypothesis that the husband relied on the agent's statement only. But, if it be assumed that he meant, 'I give it to you exactly in accordance with her instructions, and not merely in accordance with your word,' that is tantamount to saying, 'As she has instructed you to be her agent to bring it to her, so do I instruct you to be my agent to carry it to her'; and therefore, when it reaches her hand, she should certainly be divorced. This proves that the husband relied on the agent's statement only, and by analogy, the workers rely upon the employer's delegate.

Talmud - Mas. Baba Metzia 76b

How now! That were well, had the reverse been taught, thus: [If a woman said to a man,] 'Accept the divorce on my behalf;' and he [went and stated to her husband.] 'Your wife instructed me, Bring me my divorce,' [to which] he replied. 'Take it, in accordance with her instructions: and had R. Nahman ruled [thereon] in the name of Rabbah b. Abbuha in Rab's name that immediately the divorce comes into his [the agent's] hands, she is divorced; that would have proved that he [the husband] relied upon her word.[1] Again had he ruled that [only] when the divorce reaches her hand, is she divorced; that would shew that he relied upon the agent's statement.[2] But there [where R. Nahman did state his ruling], it is because the agent himself entirely cancelled[3] his appointment, by declaring, 'I am willing to be an agent for acceptance, but not for delivery.'[4]

[Reverting to the Mishnah:] If you prefer I can say, this Tanna designates retracting too, 'deceiving'.[5] For it has been taught: If one hires labourers and they deceive the employer, or the employer deceives them, they have nothing but resentment against each other [but no legal redress]. Now, this holds good only if they have not gone [to the scene of their labour]; but if ass-drivers [are engaged to convey a load of grain from a certain place and] go [there] and find no grain, or labourers [hired to plough a field] go and find the field a swamp [unfit for ploughing], he must pay them in full; yet travelling with a load is not the same as travelling empty-handed, nor is working the same as sitting idle.[6] [Moreover,] this holds good only if they have not commenced work; but if they have commenced work, the portion done is assessed for them.[7] E.g., if they contract to harvest [a field of] standing corn for two sela's and they harvest half, and leave half; or to weave a garment for two sela's, and they weave half and leave half, the portion done is assessed: if it is worth six denarii, he must pay them a sela' [Four denarii], or they can complete the work and receive two sela's;[8] if it is worth a sela', he must pay them a sela'.[9] R. Dosa said: That which still remains to be done is assessed. [Thus:] if it is worth six denarii, he pays them a shekel [two denarii], or they can complete their work and receive two sela's[10] if a sela', he must pay them a sela'. Now, this holds good only if there is no irretrievable loss [if the work is postponed until fresh labourers are found]; but if there is, he can engage [workers] at their cost, or deceive them. How does he deceive them? He says to them, 'I have promised you a sela'; come and receive two.' To what extent may he engage [workers] against them? Even to forty or fifty zuz.[11] But when is this said, [only] if no artisans are available for hiring;[12] but if there are, and he [the first worker] says to him, 'Go out and engage one of these,' he has nothing but resentment against him.[13]

A tanna recited before Rab:[14] He must pay them in full. Whereupon he [Rab] observed: My uncle [R. Hiyya] said, 'Were it I, I would have paid them only as unemployed labourers:'[15] yet you say. 'he must pay them in full'! But surely, it is taught thereon: But travelling with a load is not the same as travelling empty-handed, nor is working the same as idling! — Now it [the Baraitha] had not been completed before him [Rab].[16] Others say, it had been completed before him,[17] and he [Rab] observed thus: My uncle said, 'Were it I, I would not have paid him at all';[18] yet you say [he must pay him] as an unemployed labourer! But this [Baraitha] opposes it! — There is no difficulty: the latter ruling is if he viewed the field the previous evening; the former, if he did not.[19] Just as Raba said: If one engaged labourers to cut dykes, and rain fell and rendered it [the land] waterlogged [making work impossible], if he inspected it the previous evening,

(1) Since the divorce takes effect immediately the agent accepts it.
(2) And thus himself appointing him an agent to take the divorce to his wife.
(3) Lit., 'uprooted'.
(4) By claiming that he was an agent for acceptance when in fact he was merely authorized to bring her the divorce, he shewed unwillingness to take all that trouble, and so ipso facto cancelled his own authority. Therefore, even if the husband's assertion meant that he relied upon his wife, and the agent, moreover, subsequently changed his mind and did deliver it, the delivery is invalid, since he himself had destroyed his authority. But in the hypothetical reverse case posited by R. Ashi, the agent's statement that he was empowered only to bring it to the wife, when in fact he was authorised to accept it, did not annul his powers; if he was willing to go so far as to deliver it, he was certainly prepared for the lesser service of accepting it on the wife's behalf.
(5) I.e., the Mishnah means that the deceit was between the employer and the labourers, one side having retracted from the agreement, and this too is called 'deceiving'.
(6) I.e., though the labourers can claim for the loss of the day's work, and the ass-drivers likewise, a man is always prepared to accept somewhat less than a full day's wages if he is permitted to be idle that day, and it is only to that lesser sum that they are entitled.
(7) In the first clause the reference is to time workers: here, to workers who contracted for the whole task, e.g., to plough a field for a fixed remuneration.
(8) I.e., if the half done is now worth six denarii, labour costs having advanced, so that the employer must pay six denarii for the other half, he must nevertheless give them the sela' (four denarii) for their half, although he thereby loses on the whole: for this Tanna rejects the view of our Mishnah that he who breaks the agreement is at a disadvantage, as explained on p. 437. n. 8.
(9) v. infra 77a.
(10) R. Dosa agreeing with the Tanna of our Mishnah.
(11) I.e., he may even pay fresh workers for the remainder much more then the first were to receive for the whole, and recoup himself from the first batch.
(12) Hence he must pay far above the normal.
(13) In any case the term 'deceiving' is employed in this Baraitha to denote 'retracting' and so likewise in our Mishnah.
(14) In connection with the above: 'if the ass-drivers went and found no grain etc.'
(15) As explained on p. 441, n. 6; cf. also p. 398, n. 2.
(16) I.e., when the tanna recited the Baraitha and said 'he must pay in full', he went no further, whereupon Rab observed that his uncle's view differed.
(17) I.e., the Tanna had added, 'but travelling with a load etc.', and yet Rab observed that his uncle differed.
(18) It was their misfortune that the field proved to be a marsh.
(19) Rashi: if the labourer inspected the field the previous evening, he has no claim now, since when he undertook to plough it, he saw the condition of the field. Maim: If the land owner inspected it the previous evening, found it fit, and engaged workers, but overnight heavy rains turned it into a swamp, the labourers have no redress, since it was not the employer's fault.

the loss is the workers; if not, the loss is the employer's, and he must pay them as unemployed workers.[1]

Raba also said: If one engaged labourers for irrigation, and there fell rain [rendering it unnecessary], the loss is theirs.[2] But if the river overflowed[3] , the loss is the employer's,[4] and he must pay them as unemployed labourers.

Rab also said: If one engaged labourers for irrigation, and the river [whence the water was drawn] failed at midday; if such failure is unusual, the loss is theirs;[5] if usual: if [the labourers] are of that town [and so would know about it] the loss is theirs; if not, the loss is the employer's.[6]

Raba also said: If one engaged labourers for a piece of work, and they completed it in the middle of the day;[7] if he has some [other] work easier than the first, he can give it to them, or even if of equal difficulty, he can charge them [with it]; but if it is more difficult, he cannot order them to do it, and must pay them in full. But why? Let him pay them as unemployed workers! — Raba referred to the workers[8] of Mahuza, who, if they do not work, feel faint.[9]

The Master said: 'The portion done is assessed for them. E.g., if it is worth six denarii, he must pay them a sela'.[10] The Rabbis hold that the workers [always] have the advantage.

'Or they can complete the work and receive two sela's.' Is this not obvious? — This is necessary only when labour costs advanced, and the workers retracted. Thereupon the employer went and persuaded them [to return]. I might think that they can say to him, 'When we allowed ourselves to be persuaded, it was on the understanding that you would increase our remuneration.' Therefore we are informed that he [the employer] can answer them, 'It was on the understanding that I should take particular pains over your food and drink.'[11]

'If it is worth a sela', he must pay them a sela'.' Is this not obvious? — This is necessary only if labour was cheap originally [when he hired them], whilst he engaged them for a zuz above [the usual cost], but subsequently[12] labour appreciated and stood at more than a zuz; I might think that they can plead. 'You promised us a zuz above [the usual price]; give us a zuz more [than was stipulated, since that is now the usual wage].' We are therefore told that he [the employer] may answer them,' When did I promise you an extra zuz, only when you did not agree;[13] but now you have agreed.'[14]

'R. Dosa said: That which still remains to be done is assessed [thus]: if it be worth six denarii, he pays them a shekel.' In his opinion, the labourer is at a disadvantage.[15]

'Or they can complete their work and receive two sela's.' Is this not obvious? — This is necessary only when labour costs diminished, and the employer retracted; whereupon the labourers went and persuaded him. I might think, he can say to them, '[I re-engaged you] on the understanding that you allow a rebate on your wages': therefore we are taught that they can answer him, 'It was on the understanding that we perform our work particularly well.'

'If a sela', he must pay them a sela'.' Is this not obvious? — R. Huna. the son of R. Nathan, said: It is necessary only in a case where they [the labourers] contracted for a zuz below [the usual wage] in the first place, and subsequently labour costs fell. I might think that [the employer can plead.] 'You agreed with me for a zuz less [than usual], hence I will give you a zuz less;'[16] so we are taught that they can reply. 'We agreed upon a zuz less only when you would not agree [to pay the full price]; but now you have agreed.'

Rab said: The halachah is as R. Dosa. But did Rab really rule thus? Did not Rab say: A worker can retract even in the middle of the day? And should you answer, R. Dosa draws a distinction between time work and piece work,[17] [I can rejoin,] Did he really admit a distinction? Has it not been taught: If one engages a labourer, and in the middle of the day he [the labourer] learns that he has suffered a bereavement,[18] or is smitten with fever: then if he is a time worker,

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(1) If the labourer had not inspected the land beforehand, he can plead. 'You know the nature of your soil and that work is impossible upon it after a heavy rain, and so should have informed me in time to find other work'; therefore the employer must bear the loss. If the labourer had seen it he should have known himself, therefore the loss is his. (So one interpretation of Asheri.) It may also refer to the employer's inspection, as in the previous note. (The weight of authority is in favour of referring the inspection to the employer himself. V. H.M. CCCXXX, 1 and באר הגולה , a.l.)

(2) Since rain is bound to obviate the need of irrigation, it is an implied condition that the employer may dispense with their services on account thereof.

(3) Lit., 'came'.

(4) Because the worker cannot know that the field is so situated, by means of canals leading thereto, that the river's overflow irrigates it.

(5) The employer not being responsible for an unforeseen event.

(6) It is a general principle that if something happens which might be foreseen by both employer and employee, the latter bears the loss of time. H.M. CCCXXXIV, 1

(7) Having been engaged for the whole day.

(8) Jast.: public labourers: Maim.: field diggers: Rashi: navvies accustomed to continual portering. [Mahoza. where Raba had his school, was an important loading centre on the Tigris near Ktesiffon. V. Obermeyer. op. cit. p. 173.]

(9) Idleness is a trial to them; therefore they are entitled to full pay.

(10) v. p. 442, n. 2.

(11) But not pay you more.

(12) I.e., by the time they had done half the work.

(13) To work for less than a sela'.

(14) To receive it. I cannot pay more, as that is my maximum.

(15) v. p. 437. n. 8.

(16) Than the present price, hence, a zuz below the agreed figure.

(17) If a labourer engages himself by the day or week, he can retract and lose nothing; but if he contracts to do a particular piece, he is thereby at a disadvantage; for the reason of the first (stated supra 10a, q.v.) does not apply to a contractor, since not being tied he is his own master.

(18) Lit., 'one had died unto him', viz., one of the relatives for whom a week of mourning must be observed, during which all labour is forbidden.

he must pay him his wages;[1] if a contract worker, he must pay him his contract price. Now, with whom does this agree? If with the Rabbis, why particularly if he learns that he has suffered a bereavement or is smitten with fever and so unfortunately compelled [to break the agreement]? Even if he is not compelled, surely the Rabbis maintain that the labourer has the advantage! Hence it must agree with R. Dosa, thus proving that he allows no distinction between time work and contract work! — Said R. Nahman b. Isaac: Here the reference is to a thing of irretrievable loss, and therefore it agrees with all.[2]

We learnt: HE WHO ALTERS [HIS CONTRACT] IS AT A DISADVANTAGE, AND HE WHO RETRACTS IS AT A DISADVANTAGE. Now, it is well [to state]. HE WHO ALTERS [HIS CONTRACT] IS AT A DISADVANTAGE, as thereby R. Judah's opinion is given as a general view;[3] but what is added by, HE WHO RETRACTS IS AT A DISADVANTAGE?[4] Surely [its purpose is] to extend the law to a [time] worker, and in accordance with R. Dosa?[5] — But R. Dosa refers to both cases [alike], whereas Rab agrees with him in one and disagrees in the other.

Alternatively, HE WHO RETRACTS IS AT A DISADVANTAGE [is stated] for this purpose. Viz., It has been taught: He who retracts — how is that? If A sold a field to B for a thousand zuz, and B paid a deposit of two hundred zuz, if the vendor retracts, the purchaser has the advantage; if he desires, he can demand, 'Either return me my money or give me land to the value thereof.' And from what part [of the estate] must he satisfy his claim? From the best. But if the purchaser retracts, the vendor has the advantage; if he desires, he can say to him, 'Here is your money.' Alternatively, he can say. 'Here is land for your money.' And what [part of the field] may he offer him? The worst.[6] R. Simeon b. Gamaliel said: They are instructed [so to act as] to make it impossible [for either] to withdraw. How so? He [the vendor] must draw up a deed, stating. 'I [so-and-so] have sold such and such a field to so-and-so for a thousand zuz, upon which he has paid me two hundred zuz, and now I am his creditor for eight hundred zuz.' Thus he [the vendee] acquires the title thereto, and must repay him the rest, even after many years.[7]

The Master said: 'And from what part [of the estate] must he satisfy his claim? From the best.' Now, this was assumed to mean, 'from the best part of his estate.'[8] But let him [the buyer] be even as an ordinary creditor! And we learnt: A creditor is entitled to medium quality![9] Moreover, here is the land for which he paid money! — R. Nahman b. Isaac said: [It means,] From the best therein [sc. the field bought] and[10] the worst therein. R. Aha, the son of R. Ika. said: It may even mean the best part of his estate; yet the average person, when buying a field for a thousand zuz, must sell off his other property cheaply.[11] and hence he is as one who has sustained damage.[12] And we learnt: For damages[13] we assess [and collect] the best [of the offender's estate].

'R. Simeon b. Gamaliel said: They are instructed [so to act as] to make it impossible [for either] to withdraw. How so? He [the vendor] must draw up a deed, stating. "I [so-and-so have sold such and such a field to so-and-so for a thousand zuz, etc."' Hence, it is only because he writes thus;[14] but if not, he [the purchaser] does not acquire it. But has it not been taught: If a man gives a deposit to his neighbour and stipulates. 'If I retract, this deposit be forfeited to you.' and the other stipulates. 'If I retract, I will double you your deposit.' the conditions are effective: this is R. Jose's view, R. Jose [ruling here] in accordance with his general opinion that an asmakta is valid. R. Judah said: It is sufficient that he [the purchaser] shall gain possession [of the object sold] in proportion to his deposit. Said R. Simeon b. Gamaliel: This holds good only if he stipulates, 'Let my deposit effect possession'; but if he sells him a field for a thousand zuz, of which he pays him five hundred, he acquires [it all], and must repay him the balance even after many years?[15] — There is no difficulty: The former refers to a case where he [the vendor] repeatedly dunned[16] [the buyer] for his money;[17] the latter, where he did not repeatedly demand his money. For Raba said: If one sold an article to his neighbour, and repeatedly demanded payment, it does not become his [the purchaser's];[18] but if not, he [the buyer] acquires it.[19]

Raba also said: If one lent a hundred zuz to his neighbour, who repaid him a zuz at a time, it is [valid] repayment, but he may bear resentment against him, for he can complain, 'You have destroyed it for me.'[20]

A man once sold an ass[21] to his neighbour, and one zuz [of the purchase price] being left [unpaid], he [the vendor] made repeated calls for it. Now, R. Ashi sat and cogitated thereon: What [is the law] in such a case? Does he [the purchaser] acquire it or not?[22] Said R. Mordecai to R. Ashi: Thus did Abimi of Hagronia say in Rab's name: One zuz is as [many] zuz, and he does not acquire it. R. Aha, the son of R. Joseph, protested to R. Ashi: But we have stated in Raba's name that he does acquire it! — He replied: You must interpret your teaching [as referring] to one who sells his field

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(1) I.e., pro rata, according to the time worked, but without making any further deduction on account of his breaking the agreement. For since he is unable to continue, he is not penalised and put at a disadvantage, as are others.

(2) All agree that the labourer is in this case at a disadvantage, unless he is unavoidably prevented from adhering to his bargain.
(3) Lit., 'The Tanna of the Mishnah states anonymously the view of R. Judah,' indicating that he agrees with it, teaching it as the general opinion. For the reference v. infra 78b.
(4) Since that is implied in the whole Mishnah. It is axiomatic that if a Mishnah states a general principle after the detailed case in which it is embodied, its purpose is extension.
(5) For the first clause of the Mishnah would appear to refer to a contract worker; therefore the general principle is added to shew that the same holds good of a time worker too. And that can agree with none but R. Dosa, since the Rabbis maintain that the advantage is on the side of the labourers. Thus it is proved that R. Dosa draws no distinction between a time worker and a contractor.
(6) The reasons are discussed below.
(7) The point is that the other 800 zuz are described on this bond not as the balance due but as an ordinary debt, and therefore does not affect the ownership of the field, which passes to the buyer on payment of money.
(8) I.e., not particularly of the field sold, but the best of any land that the vendor might own.
(9) If the debtor does not repay, the creditor can exact payment only from his medium quality fields, not from the best. And even that is a special privilege.
(10) Referring to the second case where the buyer retracts.
(11) Very few people possessed such large sums in actual cash; hence the purchaser would have to sell off much of his own estate to raise it, and, as is natural under the circumstances, below its value.
(12) If the vendor subsequently retracts, the purchaser has sold his own estate cheaply for no purpose.
(13) Lit., 'those who suffer damage.'
(14) I.e., describing the balance as an ordinary debt.
(15) V. supra 48b. This shews that the transaction is binding though the balance was not arranged as an ordinary debt.
(16) Lit., 'was going in and out.'
(17) Lit., 'comes in and out for money'. This proves that he sold his field through financial pressure, and therefore, unless he explicitly arranged for the balance to be treated as an ordinary loan, he can cancel the sale if full payment is delayed.
(18) [Even if there was meshikah (v. Glos.); so according to the majority of authorities. Cf. Tosaf. and H.M., CXC. 11.]
(19) And the purchase money is regarded as an ordinary debt.
(20) A hundred zuz in a lump sum can be put to business use; one zuz at a time is spent as received, with no visible or tangible advantage.
(21) The text is חמרא , which may mean 'ass' or 'wine', and Rashi translates 'ass'. The reason is that in Rashi's opinion, this assumption, viz. that the vendor's repeated demand for money proves that he sold the article only because he was hard pressed, applies only to land or such articles which are not normally sold, such as an ass which is kept for work on the land; but in the case of wine, which is a normal article of sale, it proves nothing, and hence the consequences drawn from it do not hold good (Maharam). [Alternatively: In the case of wine there would be no reason for cancelling the whole sale for the sake of the single zuz, the buyer surely being entitled to retain wine for the amount he had paid up; Maharsha, מהדורא בתרא .]
(22) Since the balance is so small.

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because of its poor quality.[1]

Now if a man wished to sell [a small field] for a hundred zuz, but finding [no purchaser for so small a field in spite of much seeking] he sold [a larger one] for two hundred [zuz] and made repeated calls for his money, it is obvious that he [the purchaser] does not acquire it.[2] But what if he wished to sell for a hundred, did not find [a purchaser], though had he taken pains he could have found one; but he took no trouble and sold a field for two hundred, and now he makes repeated calls for his money? Is he as one who sells a field because of its poor quality, or not?[3] — This problem remains unsolved.

IF HE HIRES AN ASS-DRIVER OR A WAGGONER . . . HE MAY HIRE [LABOURERS] AGAINST THEM, OR DECEIVE THEM. How far may he hire [labourers] against them? — R. Nahman said: Up to their wages.[4] Raba raised an objection to R. Nahman: Even to forty or fifty zuz.[5] — He replied: That was taught only if the bundle [of the workers, tools, etc.] had come into his possession.[6]

MISHNAH. IF ONE HIRES AN ASS TO DRIVE IT ON THE MOUNTAIN [TOP]. BUT DRIVES IT ON THE PLAIN, OR TO DRIVE IT ON THE PLAIN BUT DRIVES IT ON THE MOUNTAIN. EVEN IF BOTH ARE TEN MILS,[7] AND IT PERISHES, HE IS LIABLE [FOR DAMAGES]. IF HE HIRES AN ASS TO DRIVE IT ON THE MOUNTAIN [TOP], BUT DRIVES IT ON THE PLAIN, IF IT SLIPS [AND SUSTAINS INJURIES], HE IS EXEMPT;[8] BUT IF IT IS [INJURIOUSLY] AFFECTED BY THE HEAT, HE IS LIABLE.[9] [IF HE HIRES IT] TO DRIVE ON THE PLAIN, BUT DRIVES IT ON THE MOUNTAIN, IF IT SLIPS, HE IS LIABLE; IF AFFECTED BY THE HEAT, HE IS NOT; YET IF IT IS ON ACCOUNT OF THE ASCENT,[10] HE IS LIABLE. IF ONE HIRES AN ASS, AND IT IS STRUCK BY LIGHTNING,[11] OR SEIZED AS A [ROYAL] LEVY:[12] HE [THE OWNER] CAN SAY TO HIM, 'BEHOLD, HERE IS YOUR [HIRED] PROPERTY BEFORE YOU.'[13] BUT IF IT PERISHES OR IS INJURED, HE [THE OWNER] MUST SUPPLY HIM WITH A SUBSTITUTE.

GEMARA. Why is no distinction drawn in the first clause [between the causes of death], whilst it is in the second? — The School of R. Jannai said: In the first clause it means that it died on account of the air, and so we say, The mountain air killed it, [or] the air of the plain killed it.[14] R. Jose b. Hanina said: It means, e.g., that it died through fatigue.[15] Rabbah said: It means that it was bitten by a serpent.[16] R. Hiyya b. Abba said in R. Johanan's name: This [the first clause] agrees with R. Meir, who ruled: Whoever disregards the owner's stipulation

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(1) Then we may assume that he willingly sold it, and his repeated demands for payment are due not to financial need, but to fear that the purchaser might retract.

(2) For it is certain that he sold only under pressure, though a hundred would have sufficed him, and now he presses for money to buy a smaller field with the surplus.

(3) Since he took but little trouble to find a purchaser for a small field, it may well be that he was not altogether displeased with selling the larger one.

(4) If the first labourers had done part of the work, but received no wages yet, he may offer the whole sum agreed upon to fresh workers, and pay the first nothing.

(5) V. p. 442. n. 5.

(6) Only if actually in possession of property belonging to the workers may he engage fresh ones at their expense up to the value thereof, even if it exceeds the original amount; but not otherwise.

(7) A mil==2000 cubits.

(8) Because there is less likelihood of slipping on the plain than on the mountain top, therefore he has minimised the risk.

(9) Because it is warmer on the plain than on the mountain top.

(10) The ascent to the top of the mountain heating and affecting it.

(11) This is the literal meaning of והבריקה ; but it is discussed in the Gemara (78b), and other meanings are suggested.

(12) אנגריא , **, forced labour, to which man or beast were liable.

(13) I.e., he is not bound to supply another in its stead.

(14) I.e., the climate of either of these places did not suit it.

(15) Thus, if it was driven on the mountain instead of on the plain, the owner can plead that the ascent had overtaxed its strength. Contrariwise, if driven through the plain instead of on the mountain, it can be urged that the bracing air of the mountain, which is lacking on the plain, would have revived it.

(16) And the owner can plead, 'Had you kept to the place agreed upon, that fate would not have met it.'

is treated as a robber.[1] Which [ruling of] R. Meir [shews this opinion]? Shall we say, R. Meir's [view] in respect to a dyer? For we learnt: If one gives wool to a dyer to be dyed red, but he dyed it black, or to dye it black and he dyed it red, R. Meir said: He must pay him for his wool. R. Judah said: If its increased value exceeds the cost [of dyeing], he [the wool owner] must pay him the cost: if the cost [of dyeing] exceeds the increase in value, he must pay him for the increase.[2] But how do you deduce this? perhaps there it is different, for he gained possession thereof by the change [wrought by his] act![3] But it is R. Meir's ruling on Purim[4] collections. For it has been taught: The Purim collections must be distributed for purim;[5] local collections belong to the town,[6] and no scrutiny is made in the matter,[7] but calves are bought therewith [in abundance], slaughtered, and eaten, and the surplus goes to the charity fund.[8] R. Eliezer said: The purim collections must be utilised for purim [only],[9] and the poor may not buy [even] shoestraps therewith, unless it was stipulated in the presence of the members of the community [that such shall be permitted]: this is the ruling of R. Jacob, stated on R. Meir's authority; but R. Simeon b. Gamaliel is lenient [in the matter].[10] But perhaps there too, the reason is that he [the donor] gave it only [that it be used] for purim and not for any other purpose?[11] But it is this dictum of R. Meir. For it has been taught: R. Simeon b. Eleazar said on R. Meir's authority: If one gives a denar to a poor man to buy a shirt, he may not buy a cloak therewith; to buy a cloak, he must not buy a shirt, because he disregards the donor's desire.[12] But perhaps there it is different, because he may fall under suspicion. For people may say. 'So-andso promised to buy a shirt for that poor man, and has not bought it;' or, 'so-and-so promised to buy a cloak for that poor man, and has not bought it!' — If so, it should state, 'because he may be suspected': why state 'because he disregards the donor's desire?' This proves that it is [essentially] because he makes a change, and he who disregards the owner's desire is called a robber.

IF ONE HIRES AN ASS, AND IT IS STRUCK BY LIGHTNING [WE-HIBRIKAH]. What is meant by we-hibrikah? — Here [in Babylon] it is translated, nehorita.[13] Raba said: paralysis of the feet.[14] A man once said, '[I saw] vermin in the royal garments.' Said they to him, 'In which: in linen[15] or in wool[16] garments?' Some say: He replied. 'In linen garments;' whereupon he was executed.[17] Others maintain: He replied. 'In wool garments;' so he was set free.

OR SEIZED AS A [ROYAL] LEVY, HE CAN SAY TO HIM, 'BEHOLD, HERE IS YOUR PROPERTY BEFORE YOU.' Rab said: This was taught only in respect of a levy that is returned;[18] but if it is a nonreturnable levy, he [the owner] must provide him with [another] ass [in its stead].[19] Samuel said: Whether it is a returnable levy or not, if it is taken on the route of its journey, he [the owner] can say to him, 'Behold, here is yours before you;' but if it is not taken on its route, he is bound to supply him [with another] ass in its stead.[20]

An objection is raised: If one hires an ass, and it is struck by lightning or turns rabid, he [the owner] can say to him, 'There is yours before you.'[21] If it perished or was seized as a levy, he must supply him with [another] ass.[22] Now, on Rab's view, it is well, and there is no difficulty: there [in the Mishnah] the reference is to a levy that is returned; here [in the Baraitha], to one that is not. But on Samuel's view, is there not a difficulty? And should you answer, On Samuel's view too there is no difficulty: there [in the Mishnah] it means that it was seized on the route of its journey, whilst here [in the Baraitha] that it was not; yet surely, since the second clause states, R. Simeon b. Eleazar said: If it was taken on the route of its journey, he [the owner] can say to him, 'Behold here is yours before you.' but if not, he must supply him with [another] ass-does it not follow that according to the first Tanna there is no difference? — Samuel can answer you: Is there not R. Simeon b. Eleazar who agrees with me? Then my ruling is based on his. Alternatively, the whole [Baraitha] is based on R. Simeon b. Eleazar, but its text is defective, and was thus taught: If one hires an ass, and it is struck by lightning, or becomes rabid, he [the owner] can say unto him, 'Behold, here is yours before you.' If it perished, or was seized as a levy, he must supply him with [another] ass. This holds good [only]

if it was not seized on the route of its journey; but if it was, he can say to him, ‘Behold, here is yours before you.’

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(1) Who is responsible for whatever happens; hence no distinction is drawn: whereas the second clause agrees with the Rabbis.

(2) B.K. 100b. And it is assumed that R. Meir's ruling is because he regards the dyer as a robber, since he disobeyed the owner's instructions, and therefore he must pay for the wool.

(3) V. B.K. loc. cit.; an opinion is there stated that if one steals an article and makes some change in it, it becomes his, in that he must pay for it but cannot be compelled to return the article itself. So here too, having changed the wool from white to black or red, it becomes the dyer's, who must therefore pay for the wool. But in the Mishnah no change is wrought in the ass itself before death; how do we know that here too R. Meir regards the mere change of locality as a theft, to render him responsible for whatever happens?

(4) The minor festival on the fourteenth of Adar, instituted in memory of Haman's downfall and the rescinding of the decree of destruction against the Jews. Est. IX, 21, 26.

(5) It was customary to make collections for distribution to the poor for Purim. These must be entirely devoted to this purpose, and even if the collection is very large none of it may be diverted to any other charity.

(6) As before: collections for local relief may not be diverted, even if they exceed the need.

(7) Whether the poor really need it all.

(8) I.e., calves must be bought with the entire sum, and that which cannot be eaten by the poor on Purim is resold, the money going to the general charity fund.

(9) [Some texts omit ‘but calves . . . (only)’. Cf. text, infra 106b.]

(10) It is assumed that the reason of R. Meir's stringency is that the poor, by disregarding the donor's wish, become robbers, and therefore all such diversions are forbidden.

(11) Consequently, when the poor man wishes to divert it to some other use, it is not a case of robbery, but simply that it is not his for that purpose, and is deemed never to have come into his possession.

(12) The reasoning is as above. But the same refutation cannot be given as there, for in that case, why should R. Meir state two laws which are both based on exactly the same principle? Maharsha מהדורא בתרא

(13) Affection of the eye-sight occasioned by lightning (ברק). prob. Gutta Serena (Jast.).

(14) Caused by vermin.

(15) Lit., ‘silver covering’. i.e., white.

(16) Lit., gold covering’, i.e., woollen garments dyed golden.

(17) Because these worms do not attack linen garments; therefore it was said merely to disgrace the king.

(18) Hence the owner can say. ‘It is your misfortune that it was seized, and you must wait until it is returned.’

(19) For it is just as though it had perished.

(20) When an animal was seized as a levy, it was driven along until another was overtaken, when the first was returned (even in the case of nonreturnable seizure, which means nonreturnable unless replaced by another). Hence, if driven in the direction for which it was hired, the owner can say, ‘Go along with it, until another replaces it.’ But otherwise he must replace it himself, as he cannot expect the hirer to go out of his way until it is returned (Rashi). Tosaf.: If the levy is made haphazardly, whatever is met with on the road being taken (i.e., if it is taken as it goes along), the owner can say, ‘Your misfortune is responsible, for had I kept it at home, it would not have been seized.’ But if there is systematic searching in people's houses and fields, so that it cannot be regarded as the ill-luck of the hirer, the owner must replace it.

(21) Because it is still fit to bear loads.

(22) This ruling contradicts the Mishnah.

Talmud - Mas. Baba Metzia 79a

This is the view of R. Simeon b. Eleazar; for he used to maintain: If it was taken on the route of its journey, he can say to him, ‘Here is yours before you;’ if not, he is bound to replace it. But can you possibly assign it [all] to R. Simeon b. Eleazar? Surely, the first clause states, ‘If one hires an ass, and it is struck by lightning or turns rabid, he [the owner] can say to him, "Here is yours before you:"’ whereas R. Simeon b. Eleazar ruled: If one hires an ass to ride upon it, and it is struck by lightning or turns rabid, he [the owner] must furnish him with another! — Said Rabbah son of R.

Huna: If for riding, the case is different.[1] R. papa said: [And to carry] glassware is the same as for riding.[2]

Rabbah son of R. Huna said in Rab's name: If one hires an ass for riding and it perishes midway, he must pay him his hire for half the journey, and can only bear resentment against him.[3] How so? If another can be obtained for hire, what cause is there for resentment? If not, is he then bound to render him his hire?[4] — In truth, it means that another is not obtainable [here] for hiring, [yet he is bound to pay for half the journey,] because he [the owner] can say to him, 'Had you desired to go as far as this [where it died], would you not have had to pay its hire?' Now, what are the circumstances? If he simply promised him an ass, without specifying which, then surely he is bound to replace it;[5] whilst if he promised him this ass: if its value [sc. of the carcase] is sufficient to buy another, let him buy one.[6] — This [ruling] holds good only when its value is insufficient to purchase [another]. Yet if its value is sufficient for hiring, let him hire another![7] — Rab follows his view [expressed elsewhere], for Rab said: The principal must not be destroyed.[8] For it has been stated: If a man hires an ass and it perishes midway — Rab said: If its value [sc. of the carcase] is sufficient to buy [another], he must buy one; [if only] to hire, he [who engaged it] may not hire. But Samuel said: Even if only to hire, he may do so. Wherein do they differ? — Rab maintained: The principal may not be destroyed; Samuel maintained: The principal may be destroyed.

An objection is raised: If the tree withered or was broken down, both are forbidden to use it. What then shall be done? Land must be bought therewith, and he takes the usufruct.[9] Now here, immediately on the advent of the Jubilee year, the land reverts to its [first] owner,[10] and thus the principal is destroyed![11] — Here the reference is to a sixty years' purchase. For R. Hisda said in R. Kattina's name: Whence do we learn that if one sells his field for sixty years, it does not return [to the first owner] in the year of Jubilee? From the verse, The land shall not be sold in perpetuity.[12] [shewing that it refers to a sale] which, in the absence of the law of Jubilee,[13] would be for ever; hence, when the law of Jubilee supervenes, it is not in perpetuity; thus excluding this [sale. viz., for sixty years], which, even in the absence of the law of Jubilee, is not for ever.[14] But after all, on the expiration of the sixty years the land returns to its [first] owner, and thus [the debtor's] principal is destroyed! — But here the reference is to the time when the law of Jubilee is not in force. Reason too supports this. For should you assume that it refers to the time when the law of Jubilee is in force, and that we destroy the principal, let him [the creditor] cut up the wood and take it![15] — As for that, it is no difficulty: the period of mortgage might expire before the Jubilee, or he [the debtor] might obtain money and redeem it four or five years before the Jubilee.[16]

Our Rabbis taught: If one hires a ship, and it sinks in mid-journey; R. Nathan said: If he has paid [the hire], he cannot take [it back]; but if not, he need not pay it [now]. How so? Shall we say [that the agreement was for] this particular ship and an unspecified [cargo of] wine [as freight],[17] then [even] if he has already paid, why cannot he claim it back? Let him say, 'Provide me with that ship, and I will bring the wine.'[18] But if it refers to an unspecified ship and a particular cargo of wine, even if he has not yet paid, why must he not pay now?

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(1) A blind or rabid animal is fit to carry burdens, but not to be ridden upon.

(2) Owing to is fragile nature it must be carried smoothly; but an ass so affected will jolt it violently and break it.

(3) For having given him a feeble ass; but he has no legal redress.

(4) Surely not, seeing that he probably suffers loss through not reaching his destination.

(5) As stated above.

(6) Since he hired him this particular ass, it is pledged for the journey, and therefore, if with the value of the carcase one can buy another, even such a poor one that it is fit only to complete the journey, the purchase should be made.

(7) Since, as stated above, in the case of the animal's death another must be provided; and when a particular animal was hired, whatever can be procured for its carcase is part of the original.

(8) I.e., when an animal is hired for a certain task, e.g., to take a man on a journey, one cannot demand that the whole

capital value of the animal shall be lost in order to fulfil the engagement. Hence, when the Mishnah states that if it died another must be provided in its place, it means that more money must be added to that realised by the carcase and another bought, so that the value of the carcase ultimately remains with the owner. But he is not bound to hire an animal for the money realised by the carcase for the completion of the task, the whole principal thus being lost to the owner.

(9) The reference is to a mortgage. If a tree was mortgaged, it being agreed that the creditor should enjoy its usufruct for a number of years, after which it would revert to the debtor without any further payment, and then it withered, ceasing to yield, or was overthrown by a storm, neither the creditor nor the debtor may use up the wood thereof, because each thereby wholly destroys the other's interest therein. Therefore the wood must be sold and land bought with the proceeds, of which the creditor takes the usufruct in accordance with the original agreement.

(10) Lev. XXV, 13, 23.

(11) Nothing whatever being left of the tree by the time it has to revert to the debtor, in case Jubilee precedes it.

(12) Ibid. 23.

(13) I.e., if it is for no specified period.

(14) Hence Jubilee does not affect it, and when the mortgage expires, it reverts to the debtor, and his principal is not destroyed.

(15) For the years of usufruct still due to him. Why then trouble to buy a field?

(16) So that, even if Jubilee is in force and the principal may be destroyed, it is still preferable to buy a field.

(17) I.e., the shipowner engaged to provide this particular ship to carry any cargo of wine a certain distance.

(18) Since you undertook to carry any cargo of wine in this particular ship, I can bring another, the first having sunk, but you must furnish the same ship for the entire journey: as you cannot, you must return the hire.

Talmud - Mas. Baba Metzia 79b

Let him [the shipowner] say, 'Bring me that wine, and I will provide a ship!' — Said R. Papa: It is possible only in the case of 'This ship' and 'This wine'.[1] But in the case of an unspecified ship and unspecified wine, they must divide.[2]

Our Rabbis taught: If one hires a ship and unloads it in mid-route, he must pay him for half the journey, and he [the owner] has nothing but resentment against him. What are the circumstances? Shall we say, that he can find someone to whom to hire it? Why bear resentment?[3] Whilst if he can find no one to whom to hire it, he must surely pay him the whole hiring-fee! — In truth, it means that he can find someone to whom to hire it; and the reason that he has cause for resentment is because of the trampling of the ship.[4] If so, it is a just complaint, and he is entitled to financial compensation! — But what is meant by 'he unloaded it' is that he unloaded [more of] his cargo within it.[5] Then what ground has he for complaint? — Because his intentions were thwarted;[6] or on account of the additional cordage necessary.[7]

Our Rabbis taught: If one hires an ass for riding, the hirer may put upon it his clothing,[8] water bottle, and provisions for that journey; beyond that, the ass-driver[9] can prevent him.[10] The ass-owner can place upon it the fodder, straw and provisions for one day; but beyond that, the hirer can prevent him.[11] How is it meant? If [food] can be purchased, let the ass-driver too prevent him;[12] whilst [if provisions] are not obtainable [on the road], the hirer too should not be able to prevent him! — R. Papa answered: This arises when it is indeed possible to procure it, after some trouble, from stage to stage. Now, for the ass-driver it is a normal matter to take trouble and purchase [his stores at various places],[13] but not for the hirer.

Our Rabbis taught: If one hires an ass for a man to ride upon it, It may not be ridden by a woman; if for a woman, it may be ridden by a man; and a woman [includes] both large and small, and even if pregnant or one giving suck.[14] Seeing that you permit a woman giving suck,[15] is it necessary to state a pregnant woman? — R. Papa said: It means, even a pregnant woman who is at the same time feeding [another infant]. Abaye said: This proves that the weight of a fish depends on the size of its belly.[16] What does this matter? — In respect of buying and selling.[17]

(1) So that neither can fulfil his contract; therefore the plaintiff is at a disadvantage.
(2) Only half the fee is payable, whether it has been delivered or not, since each is theoretically in a position to fulfil his part of the agreement.
(3) Since he loses nothing.
(4) I.e., the damage done by trampling upon it in loading and unloading.
(5) Rashi: he loaded it with a great cargo, i.e., though he is bound to pay the shipowner extra, the agreement being based on the freightage, yet the latter has cause for resentment, in that the journey occupies a longer time than he expected. Tosaf. rejects the interpretation and substitutes: he unloaded it from himself, and reloaded it (upon another) within the ship. i.e., in the middle of the journey he sold the cargo to another; the shipowner has cause for complaint, because he may find the second awkward to deal with. This interpretation is accepted by Asheri a.l. and in H.M. CCCXI, 6.
(6) V. preceding note. Either his intentions to return quickly (Rashi). or to have this man particularly as the hirer.
(7) For the extra load (which the second may wish to add, according to Tosaf., or quite simply, on Rashi's interpretation). The shipowner having failed to provide himself with additional cordage, may have to pay a higher price for the cordage on his voyage than in the ship's home port, and therefore he has cause for resentment.
(8) Var. lec.: his pillow for sleeping.
(9) The owner.
(10) He can object to a greater burden being placed upon the ass, seeing that it was hired only for riding, but these being neccesities are included therein.
(11) It appears that the ass-driver had to provide the ass's food for the journey. The ass-driver can therefore place upon it the food for one day only. But the latter cannot insist on loading it at the outset with all the necessary provisions, for such a heavy load might retard the rate of progress.
(12) Sc. the hirer, from loading it with the whole of the provisions required for the journey.
(13) That being part of his work.
(14) I.e., if an ass is hired for a woman, any woman may ride upon it.
(15) Which means with the child she is feeding (Rashi).
(16) Since it is mentioned that a pregnant woman is heavier than another.
(17) If one buys a fish by weight, he should first have the belly removed.

Talmud - Mas. Baba Metzia 80a

MISHNAH. IF A MAN HIRES A COW FOR PLOUGHING ON THE MOUNTAIN AND PLOUGHS [THEREWITH] ON THE PLAIN, IF THE COULTER BROKE, HE IS NOT LIABLE; FOR PLOUGHING ON THE PLAIN, BUT PLOUGHS ON THE MOUNTAIN, IF THE COULTER BROKE, HE IS LIABLE.[1] [IF HE HIRES IT] TO THRESH PULSE, BUT THRESHES GRAIN, HE IS NOT LIABLE;[2] BUT IF TO THRESH PULSE AND HE THRESHES GRAIN, HE IS LIABLE, BECAUSE PULSE IS SLIPPERY.

GEMARA. But if he did not change [the conditions of the contract], who must pay?[3] — R. Papa said: He who handles the share; R. Shisha the son of R. Idi said: He who handles the coulter; and the law is that he who handles the coulter must pay.[4] But if the place was known to abound in stony clods, both are responsible.[5]

R. Johanan said: If one sold a cow to his neighbour and informed him, 'This cow is a butter, a biter, a habitual kicker, and prone to break down [under a load],' and it possessed one of these defects, which he inserted amongst the other blemishes [of which it was free], it is a sale in error.[6] [But if the vendor said.] 'It has this defect,' [which it actually had] 'and another too,' [not specifying which,] it is not a sale in error.[7]

It has been taught likewise: If one sold a maidservant to his neighbour. and informed him, 'This maidservant is an idiot, an epileptic, and a dullard;' and she possessed one of these defects, which he inserted amongst the others [which she did not have]; it is a sale in error. [But if the vendor said,

'She has] this defect' [which she actually possessed], 'and another too' [not specifying which], it is not a sale in error. Said R. Aha the son of Raba to R. Ashi: What if she had all these defects? — R. Mordecai observed to R. Ashi: Thus do we say in Raba's name: If she had all these defects, it is not a sale in error.[8]

MISHNAH. IF A MAN HIRES AN ASS FOR BRINGING [A CERTAIN QUANTITY OF] WHEAT, AND HE BRINGS WITH IT [AN EQUAL WEIGHT OF] BARLEY INSTEAD, HE IS RESPONSIBLE.[9] [FOR CARRYING] CORN, AND HE BRINGS WITH IT STRAW, HE IS LIABLE [FOR DAMAGE]. BECAUSE BULK IS [AS GREAT] A STRAIN AS WEIGHT;[10] TO BRING A LETHECH[11] OF WHEAT, AND HE BRINGS WITH IT A LETHECH OF BARLEY, HE IS EXEMPT.[12] BUT IF HE INCREASES THE WEIGHT, HE IS LIABLE. BY HOW MUCH MUST HE INCREASE IT IN ORDER TO BE LIABLE? SYMMACHUS SAID ON R. MEIR'S AUTHORITY: BY A SEAH IN THE CASE OF A CAMEL, AND THREE KABS IN THE CASE OF AN ASS. GEMARA. It has been stated: Abaye said: We learnt, IS [AS GREAT] A STRAIN AS WEIGHT; Raba said: We learnt, IS A STRAIN [WHEN ADDED TO] WEIGHT. [Thus:] 'Abaye said: We learnt, IS [AS GREAT] A STRAIN AS WEIGHT:' bulk is equal to weight; therefore if he added three kabs [the bulk being equal], he is liable. 'Raba said: We learnt, IS A STRAIN [WHEN ADDED TO] WEIGHT: i.e., the weight being equal, the [greater] bulk is an additional strain.[13] We learnt: TO BRING A LETHECH OF WHEAT, AND HE BRINGS A LETHECH OF BARLEY, HE IS EXEMPT. BUT IF HE INCREASES THE WEIGHT, HE IS LIABLE. Surely that means, by three kabs?[14] — No. It means by a se'ah.[15] But thereon it is stated, BY HOW MUCH MUST HE INCREASE IT, IN ORDER TO BE LIABLE? — SYMMACHUS SAID ON R. MEIR'S AUTHORITY: A SE'AH IN THE CASE OF A CAMEL, AND THREE KABS IN THE CASE OF AN ASS! — It is thus meant: But if he did not alter [the terms of hiring]. I.e., [he engaged to] bring wheat, and brought wheat; barley, and brought barley: BY HOW MUCH MUST HE INCREASE IT [SC. THE WHEAT], IN ORDER TO BE LIABLE? — SYMMACHUS SAID ON R. MEIR'S AUTHORITY: BY A SE'AH IN THE CASE OF A CAMEL, AND THREE KABS IN THE CASE OF AN ASS.

Come and hear: [It has been taught: If he hired an ass] to bring a lethech of wheat, and he brought

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(1) Because mountain soil is rockier and harder. — The implements were supplied by the owner of the cow.

(2) If the animal slipped and was injured.

(3) Two labourers were needed for the ploughing; one who used the goad to direct the animal, and one who forced the coulter into the earth. These workers were furnished by the owner. Now, the Talmud asks, if the agreement was not broken, so that the hirer is free from liability, which of these two workers is liable?

(4) For even if the other had directed the plough badly, yet had not the coulter been forced too deeply into the soil, it would not have broken.

(5) For then the slightest deviation from the right course endangers the plough.

(6) Which the purchaser can cancel. For the vendor, in enumerating a string of defects, which the buyer himself sees are absent, wishes him to assume that the one it actually has is also absent.

(7) For since he actually mentioned the defect by name, and no other specifically, the buyer should have examined the animal.

(8) For the buyer cannot plead that he thought that the vendor was enumerating many fictitious defects in order to deceive him about a real one.

(9) If the ass breaks down or is injured by the load. Barley is lighter than wheat, therefore an equal weight of barley is bulkier, and that imposes a greater strain on the ass.

(10) Therefore a greater bulk imposes a greater strain.

(11) Half a kor.

(12) The bulk being the same, and the weight less.

(13) [Where however the bulk is equal, an additional weight of three kabs of barley involves no liability.]

(14) Though even there, the total weight is less. This refutes Raba.

(15) Whereby the weights are equalised.

Talmud - Mas. Baba Metzia 80b

sixteen [se'ahs] of barley,[1] he is liable. This implies, [if he merely added] three kabs, he is exempt![2] — Abaye interpreted it [as referring] to levelled measures [of corn].[3]

Our Rabbis taught: A kab [is a culpable overload] for a porter:[4] an artaba[5] for a canoe;[6] a kor for a ship; and three kors for a large liburna.[7]

The Master said: 'A kab [is a culpable overload] for a porter.' But if it is too heavy for him, is he not an intelligent being? Let him throw it down! — Said Abaye: It means that it [the weight] struck him down immediately.[8] Raba said: You may even say that it did not strike him down immediately, but this is taught only with regard to extra pay.[9] R. Ashi said: He might have thought that he had been seized with weakness.[10]

'A kor for a ship, and three kors for a large liburna'. R. Papa said: From this it follows that the average ship takes a load of thirty kors.[11] What practical difference does it make? — In respect of buying and selling.[12]

MISHNAH. ALL ARTISANS ARE REGARDED AS PAID BAILEES;[13] BUT IF THEY DECLARE,[14] 'TAKE YOUR PROPERTY AND THEN BRING US MONEY, THEY RANK AS UNPAID BAILEES.[15] [IF A MAN SAID TO ANOTHER] 'KEEP THIS ARTICLE [FOR ME], AND I WILL KEEP [ANOTHER] FOR YOU,' HE RANKS AS A PAID BAILEE. [IF HE REQUESTED,] 'KEEP [THIS] FOR ME,' AND HE REPLIED, 'PUT IT DOWN BEFORE ME,' HE IS AN UNPAID BAILEE. IF A MAN LENDS ANOTHER ON A PLEDGE,[16] HE RANKS AS A PAID TRUSTEE. R. JUDAH SAID: IF HE LENDS HIM MONEY [ON A PLEDGE], HE IS AN UNPAID TRUSTEE; IF PROVISIONS, HE IS A PAID BAILEE. ABBA SAUL SAID: ONE MAY HIRE OUT A PLEDGE TAKEN FROM A POOR MAN, FIXING A HIRING FEE AND PROGRESSIVELY DIMINISHING THE DEBT, BECAUSE IT IS LIKE RETURNING A LOST ARTICLE.[17]

GEMARA. Must we say that our Mishnah does not accord with R. Meir? For it has been taught: One who hires [e.g., an animal], how does he pay [if it comes to harm]? R. Meir said: As an unpaid trustee; R. Judah said: As a paid trustee.[18] — You may assume [it to agree] even with R. Meir: in return for that benefit, that he [the employer] forsakes everyone else and engages him, he becomes a paid bailee in respect thereof. If so, the same applies to a hirer: in return for that benefit, in that he forsakes everyone else and hires [it] to him, he becomes a paid trustee in respect thereof! But [say thus:] You may assume [it to agree] even with R. Meir: in return for that benefit, that he pays him somewhat more [than his due], he becomes a paid bailee in respect thereof.[19] If so, the same applies to a hirer; may one not be referring to a case where he gives him slightly better value?[20] But [say thus]: You may assume [it to agree] even with R. Meir: in return for that benefit, that he holds it against his remuneration and is not forced to go seeking for money, he ranks as a paid bailee in respect thereof. Alternatively, it is as Rabbah b. Abbuha reversed [the Baraitha] and learnt: How does a hirer pay? R. Meir said: As a paid bailee; R. Judah said: As an unpaid bailee.[21]

BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY.' THEY RANK AS UNPAID BAILEES. We learnt elsewhere: If the borrower instructed him [sc. the lender] to send [the animal], and he sent it, and it died [on the road, before reaching him], he is liable for it. The same holds good when he returns it.[22] Rafram b. Papa said in R. Hisda's name: This was stated only if he returned it within the period for which he borrowed it; but if after, he is not liable.[23]

R. Nahman b. Papa raised an objection: BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY,' THEY RANK AS UNPAID BAILEES:

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(1) I.e., an additional se'ah.

(2) This contradicts Abaye.

(3) [Instead of a load of 15 se'ahs of wheat liberally measured, he brought one consisting of barley counted by levelled measures, in which case there is no liability unless the addition was a se'ah (Rashi); others: reduced in weight by being worm-eaten.]

(4) Lit., 'the shoulder', I.e., if a man is engaged to carry a certain burden, which is increased by a kab, and he breaks down, his employer is liable.

(5) Persian measure. [Rashi: a lethech.]

(6) A small boat.

(7) **; a light, fast-sailing vessel (Jast.).

(8) As soon as he took it up, and before realising that it was too heavy for him, fell under it.

(9) If the load exceeds the weight agreed upon by a kab, he is entitled to additional remuneration.

(10) I.e., actually it means that he broke down under the additional weight, yet, though an intelligent being, he did not throw it away, thinking that the fault was in his own weakness, and being unaware that the weight was greater than stipulated.

(11) Because the overload is assessed at a thirtieth of the legitimate freight.

(12) If one sells a ship, without specifying its capacity, it must be at least thirty kors, and otherwise the sale is invalid.

(13) I.e., contractors who accept material for manufacture, e.g., a carpenter who receives wood for making up into a table, rank as a paid trustee thereof, in that, if it is stolen, they are held responsible.

(14) After the work is completed.

(15) Who are responsible only for negligence, but not for theft.

(16) Which the lender takes into his own keeping.

(17) The grounds for the various rulings of this Mishnah are discussed in the Gemara.

(18) R. Meir maintains: since he pays for the benefit he receives, he is taking care of it gratuitously; whilst in R. Judah's view, since it comes into his hands for his benefit, he is a paid trustee, notwithstanding that he pays for that benefit. Superficially, the same reasoning applies to an artisan: the object comes into his keeping for his own benefit, viz., that he may earn money thereby; but at the same time, he gives his labour for that benefit.

(19) Rashi: it is impossible to assess exactly in the case of a contractor the value of the actual labour involved, and therefore he is assumed to be slightly overpaid. Tosaf., observes that this answer might have been refuted by a reference to those who do not overpay, but that it is refuted in another way.

(20) I.e., the dispute between R. Meir and R. Judah does not differentiate between normal and better value, e.g., if the owner accepts less than the usual hire; but there too R. Meir should say: In return for the benefit received by the remission of part of the hiring fee he becomes a paid bailee.

(21) The insistent attempts to prove that the Mishnah does agree with R. Meir, even though, as in the last reply, it is only at the cost of assuming that it does not agree with R. Judah, are due to the fact that our Mishnah was taught anonymously, and it is a general rule that an anonymous Mishnah must agree with R. Meir.

(22) Infra 98b. A gratuitous borrower is liable for every mishap. Now, if he explicitly instructs the lender to send it to him, he is responsible for it immediately the lender entrusts it to a person for delivery, and therefore if it perishes on the road, he must make it good. Likewise, if the borrower entrusts it to his agent for return, without receiving explicit instructions to that effect from the lender, he remains responsible for it until it is actually returned.

(23) For when that period has expired, he ceases to bear the responsibilities of a borrower.

surely this implies, [if they inform him.] 'I have completed it,' they rank as paid bailees.[1] — No. [Deduce thus:] But if they say. 'Bring money and then take your property,' they are paid bailees.[2] But what if they declare, 'I have completed it.'[3] [do] they rank as unpaid bailees? If so, instead of teaching. BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY,' THEY RANK AS UNPAID BAILEES; let it teach the case of 'I have completed it',[4]

from which 'take your property follows a fortiori![5] — It is particularly necessary to state the case of 'Take your property,' for I might think that he is not even an unpaid bailee;[6] hence we are told [that he is].

Others say, R. Nahman b. Papa said: We too have learnt likewise: BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY'. THEY RANK AS UNPAID BAILEES. Surely the same holds good if he says. 'I have completed it'![7] — No. The case of 'Take your property' is different.

Huna Mar, the son of Meremar, [sitting] before Rabina, opposed two Mishnahs to each other and reconciled them. We learnt, BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY,' THEY RANK AS UNPAID BAILEES, and [presumably], the same holds good if he informs him, 'I have finished it.' But the following contradicts it: If the borrower instructs him [Sc. the lender] to send [the animal], and he does so, and it dies [on the road before reaching him], he is responsible for it. The same holds good when he returns it! — And he reconciled them by the dictum of Rafram b. Papa in R. Hisda's name: This was stated only if he returned it within the period of the loan; but if after, he is not liable.

The scholars propounded: [Does it mean,] He is not liable as a borrower, yet liable as a paid bailee; or perhaps, he is not even a paid bailee? — Said Amemar: Logically it means that he is exempt from the liabilities of a borrower, but is responsible as a paid bailee; for since he has benefited, he must give benefit in return.[8]

It has been taught in accordance with Amemar: If one takes goods from a tradesman [on approval] to send them [as a gift] to his father-in-law, and stipulates. 'If they are accepted, I will pay you their value, but if not, I will pay you its goodwill benefit;'[9] if they are accidentally damaged on the outward journey, he is liable;[10] but exempt if on the return journey, because he is regarded as a paid bailee.[11]

A man once sold an ass to his neighbour. Said the latter, 'I will take it to that place, if it is sold, it is well; if not, I will return it to you.' He went, but it was not sold, and on his way back it was accidentally injured. On his going before R. Nahman, he held him liable. Thereupon Raba raised an objection to R. Nahman: If they are damaged on the outward journey, he is liable; but exempt if on the return journey, because he is regarded as a paid bailee! — He answered: The return journey of this person is an outward journey. Why so? — It is common-sense. For if he found a purchaser on his return, would he not sell it?

'KEEP [THIS ARTICLE] FOR ME, AND I WILL KEEP [ANOTHER] FOR YOU.' HE RANKS AS A PAID BAILEE. But why so? Is it not a trusteeship wherein the owner [is pledged to the service of the bailee]?[12] — R. Papa said: It means that he proposed to him, 'KEEP [THIS ARTICLE] FOR ME to-day, AND I WILL KEEP [ANOTHER] FOR YOU to-morrow.'[13]

Our Rabbis taught: [If A proposes to B,] 'Keep [this article] for me and I will keep [an article] for you'; 'lend me, and I will lend you'; 'keep [this article] for me, and I will lend you [another]'; 'lend me, and I will keep [an article] for you' — in all these cases they rank as paid trustees. But why so? Is it not a trusteeship wherein the owner [is pledged to the service of the bailee]? — Said R. Papa: it means that he proposed to him, 'Keep [this article] for me to-day, and I will keep [an article] for you to-morrow.'

There was a company of perfume sellers[14] of whom each day a [different] one baked for all. One day they said to one of them, 'Go and bake for us.' 'Then guard my robe,' he rejoined. Before his return it was stolen through their negligence; so they went before R. Papa, who held them

responsible. Said the Rabbis to R. Papa: But why? Is it not a trusteeship wherein the owner [is pledged to the service of the bailee]? Thereupon he was ashamed. Subsequently it was discovered that just then he [the owner] had been drinking beer.[15] Now, on the view that he [sc. the bailee] is not liable for negligence when the owner [is pledged to the service of the bailee], it is well: on that account he was ashamed. But on the view that he is,[16] why was he ashamed? — But [it happened thus:] That day was not his [for baking], yet they requested him 'Go bake for us,' to which he rejoined, 'In return for my baking for you guard my robe.'[17]

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(1) Though the owner knows that it is ready for removal, the artisan remains as responsible as before. Then by analogy, in the case of a borrower, even when the period of the loan expires he remains just as responsible as within the period.

(2) Because they benefit by holding the article until the money is paid.

(3) Without stating that they hold it against payment.

(4) Viz., that even then he ranks as an unpaid bailee.

(5) If he ranks as an unpaid bailee even when he merely informs him that he has completed it. without stating that he relinquishes his hold upon it, surely the same holds good when he explicitly informs the owner that he can take it1.

(6) For 'Take your property' may imply that he refuses all further responsibility — an unpaid bailee is liable for negligence.

(7) V. supra p. 464 and notes.

(8) And hold himself responsible until it reaches the owner.

(9) I.e., for the benefit I derive from my father-in-law's knowledge that I desired to make him a present.

(10) Having undertaken to pay for them in case they are accepted, they are accounted in the meantime his property.

(11) [Since he has no longer any intention of buying them, the goods cannot be accounted any more his property, and his liability can arise only in consequence of the goodwill he enjoyed, which makes him rank as a paid bailee, even though the tradesman had actually received payment for this benefit. How much more should this be the case with a gratuitous borrower.]

(12) V. infra 94a; so here too: whilst the bailee has the article in his care, the owner is, under the conditions of trusteeship agreed upon, in the service of the bailee.

(13) So that the trusteeship and the owner's reciprocal service are not contemporaneous.

(14) Lit., 'dealers in aloe'.

(15) I.e., he had not yet commenced baking, so was not in their service. Thus R. Papa's verdict was just, after all.

(16) V. infra 95a.

(17) Hence they became paid trustees.

Talmud - Mas. Baba Metzia 81b

Before he returned, it was stolen,[1] and they went before R. Papa, who held them responsible.[2] The Rabbis protested to R. Papa: Why so? Is it not a trusteeship wherein the owners [are pledged to the service of the bailee]? So he was ashamed. But subsequently it was discovered that just then he had been drinking beer. Two men were travelling together on a road, one [of whom] was tall, and the other short. The tall one was riding an ass, and had a [linen] sheet, whilst the short one was wearing a [woollen] cloak, and walked on foot. On coming to a river, he took his cloak, placed it upon the ass, and took the other man's linen and covered himself therewith.[3] Then the water swept the sheet away: so they came before Raba, who ruled him [the short man] liable. But the Rabbis protested to Raba: Why so? Is it not a case of borrowing wherein the owner [is pledged to service]?[4] So he was ashamed, subsequently it was learnt that he had taken it [the linen sheet] and put [his own on the ass] without his knowledge.[5]

A man hired an ass to his neighbour and said to him, 'See that you do not go by way of Nehar Pekod,[6] where there is water,[7] but by the way of Naresh,[8] where there is none.' But he did go by way of Nehar Pekod, and the ass died. When he returned, he pleaded. 'True, I took the route of the Nehar Pekod, but there was no water.'[9] Said Rabbah to him [the owner]: Why should he have lied? Had he wished, he could have said, 'I went by way of Naresh.' But Abaye observed: We do not reason,

'What is the purpose of lying,' if there are witnesses [to the contrary].[10]

[IF HE REQUESTS,] 'KEEP [THIS] FOR ME,' AND HE REPLIES, 'PUT IT DOWN BEFORE ME.' HE IS AN UNPAID BAILEE. R. Huna said: If he replies. 'Put it down before you,' he is neither an unpaid nor a paid bailee.[11]

The scholars propounded: What if he simply said, 'Put it down'? — Come and hear: [IF HE REQUESTS,] 'KEEP [THIS] FOR ME' AND HE REPLIES, 'PUT IT DOWN BEFORE ME,' HE IS AN UNPAID BAILEE. From which it follows that if he does not particularise at all there is no obligation at all. On the contrary, since R. Huna said: If he replied. 'Put it down before you' — it is [only] then that he is neither an unpaid nor a paid bailee; it follows that if he does not particularise he is a paid bailee. But no conclusions are to be drawn from this.

Shall we say that this is disputed by Tannaim? [For we learnt:] If he brought them in with [the owner's] permission, the courtyard owner is liable. Rabbi said: In all these cases he is not liable unless he explicitly undertook to guard.[12] But how does this follow? Perhaps the Rabbis rule [that he becomes a bailee] only there, in the case of a courtyard, which is a guarded place. so that when he [the owner] said to him, 'Bring it in', he meant, 'Bring it in, and I will take care of it for you'; but here, in a market place, which is unguarded, he may have meant, 'Put it down, take a seat, and guard it. Contrariwise, perhaps Rabbi rules [that he does not become a bailee] only there, in the case of a [private] courtyard, to enter wherein permission is necessary, so that when he gave him permission to enter, he meant, '[Come in,] sit down, and guard it.' But here, he must have meant, 'Put it down and I will guard it;' for should you think, he meant, 'Put it down, take a seat, and guard it' — does he require his permission to put it down?

IF A MAN LENDS ANOTHER ON A PLEDGE, HE RANKS AS A PAID TRUSTEE. Shall we say that our Mishnah does not agree with R. Eliezer? For it has been taught: If one lends his neighbour [money] against a pledge and the pledge is lost, he must swear [that it was not due to his negligence], and then be repaid:[13] this is R. Eliezer's opinion. R. Akiba ruled: He [the debtor] can say to him: 'Did you lend me against aught but the pledge? the pledge being lost, your money [too] is lost.' But if he lends him a thousand zuz against a note and a pledge is deposited for it, all agree that if the pledge is lost, the money is lost![14] — You may say that it agrees even with R. Eliezer, yet there is no difficulty: in the latter case he took the pledge when the loan was made;[15] in the former, he did not take the pledge at the time of the loan.[16] But in both cases,

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(1) Not through their negligence.

(2) Because a paid trustee is responsible for theft even if not due to negligence.

(3) Because wool is more absorbent than linen, therefore much heavier when saturated.

(4) For whilst the short man had the sheet, the tall man was pledged to guard his cloak.

(5) In which case he is certainly liable.

(6) [West of Mahuza, identical with Nehar Malka, situated on the canal of the same name on the west bank of the Tigris. Obermeyer. op cit., pp. 273. 275.]

(7) [The canal might overflow its banks, with dangerous consequences for the ass; Obermeyer. p. 275.]

(8) Identical with Nahras or Nahr-sar, on the canal of the same name, on the East bank of the Euphrates. Obermeyer. p. 307.

(9) It was summer, and the river bed was dried up.

(10) For it is well known that that road is never free of water.

(11) Because that is simply a refusal to take care of it.

(12) V. B.K. 47b. If a potter brought his pots into a stranger's courtyard, and the latter's ox trampled upon and broke them, or if a man brought his ox or provisions into another's court, and an ox belonging to the latter killed it or consumed them, — the Rabbis rule, if the courtyard owner had given him permission to enter, it is regarded as though he had undertaken to guard them, and therefore he is responsible. Rabbi, however, maintained that he must explicitly undertake

to guard it; otherwise he bears no liability. Hence, by analogy, in the case under discussion, in the view of the Rabbis, when he says 'Put it down', he becomes an unpaid bailee, but not in the view of Rabbi.

(13) Lit., 'take his money'.

(14) Shebu. 43b. A paid bailee is responsible for loss, but not an unpaid bailee, who is liable only for negligence. Now, R. Eliezer maintains that when money is lent on a pledge without a written bond, it is not meant as a security for the money in case the debtor defaults, but merely as a proof of loan; but should the debtor fail, some other property might be seized by the creditor. Consequently the creditor is merely a bailee, and since R. Eliezer does not hold him responsible for loss, he obviously regards him as an unpaid bailee, and thus disagrees with the Mishnah. R. Akiba, on the other hand, holds that the pledge is a security for the money; hence, if that is lost, the money is lost too. If, however, a bond is indited, it cannot be asserted that the pledge was intended merely as proof, therefore all agree that if lost, the money is lost too.

(15) Then R. Eliezer regards it as merely a proof of loan.

(16) But afterwards, payment falling due and the debtor being unable to repay, the creditor obtained a court order to take a pledge. That pledge is certainly a security for the money, and the benefit of being thereby certain of repayment renders the creditor a paid bailee.

Talmud - Mas. Baba Metzia 82a

IF A MAN LENDS ANOTHER ON A PLEDGE is taught![1] — But [say thus:] There is no difficulty: in the latter case, he lent him money; in the former [sc. our Mishnah], provisions.[2] But since the following clause states, R. JUDAH SAID: IF HE LENDS HIM MONEY ON A PLEDGE, HE IS AN UNPAID TRUSTEE; IF PROVISIONS, HE IS A PAID BAILEE; that proves that the first Tanna admits no distinction! — The whole [Mishnah] is according to R. Judah, but it is defective, and should read thus: IF A MAN LENDS ANOTHER ON A PLEDGE, HE RANKS AS A PAID TRUSTEE; this holds good only if he lends him provisions; but if money, he is an unpaid trustee. For R. JUDAH SAID: IF HE LENDS HIM MONEY ON A PLEDGE, HE IS AN UNPAID TRUSTEE; IF PROVISIONS, HE IS A PAID BAILEE. But if so, does not the Mishnah disagree with R. Akiba?[3] Hence it is perfectly clear that our Mishnah does not agree with R. Eliezer.[4]

Shall we say [that the dispute arises] when the pledge is not worth the money lent, and that they differ in regard to Samuel's dictum? For Samuel said: If a man lends his neighbour a thousand zuz, and the latter deposits the handle of a saw against it, If the saw handle is lost, the thousand zuz is lost.[5] — [No!] When the pledge is worth less than the loan, all reject Samuel's ruling.[6] But here [the dispute arises] only if it is worth the loan, and they differ with respect to R. Isaac's dictum. For R. Isaac said: Whence do we know that the creditor acquires a title to the pledge?[7] From the verse, [In any case thou shalt deliver him the pledge again when the sun goeth down. . .] and it shall be righteousness unto thee:[8] if he has no title thereto, whence is his 'righteousness'?[9] Hence it follows that the creditor acquires a title to the pledge.[10] But is this reasonable? Verily, R. Isaac's dictum refers to a pledge, not taken when the loan was made;[11] but did he say it with reference to a pledge taken at the time of the loan? — Hence where the pledge was not taken when the loan was made, all agree with R. Isaac. But here the reference is to a pledge taken at the time of the loan, and they differ as to the guardian of lost property. For it has been stated: He who is in charge of lost property — Rabbah said: He ranks as an unpaid bailee; R. Joseph maintained: As a paid bailee.[12] Shall we say that R. Joseph's view is disputed by Tannaim? — No. With respect to one who guards lost property, all agree with R. Joseph. But here

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(1) Which implies that it was given at the time of the loan.

(2) Since provisions deteriorate, the creditor derives a benefit from lending them, as he will have fresh provisions returned, and consequently he ranks as a paid bailee.

(3) Since R. Akiba maintains that if the pledge is lost the money too is lost, he treats him as a paid bailee even in the case of money. Whereas it is a general principle that an anonymous Mishnah is R. Meir's, and taught on the basis of R. Akiba's view; V. Sanh. 86a.

(4) I.e., the distinction between money and provisions cannot be maintained, the text of the Mishnah being correct, and therefore it definitely does not agree with R. Eliezer.
(5) Shebu. 43b. Thus, R. Akiba agrees with it; whilst R. Eliezer maintains, since the pledge is not worth the loan, it must have been meant merely as evidence of the loan. But if the pledge is worth the loan, all agree that it is a security, and therefore, if lost, the loan too is lost.
(6) According to R. Eliezer he bears no responsibility at all, according to R. Akiba his responsibility is limited to the value of the pledge.
(7) That whilst it is in his possession it is his, and hence he is responsible for all accidents.
(8) Deut. XXIV, 13.
(9) There is no particular righteousness in returning what does not belong to one.
(10) R. Eliezer disagrees. R. Akiba agrees with this.
(11) V. infra 113a, where the verse is interpreted as relating to such a case; the pledge then is obviously a surety for the money.
(12) V. supra 29a. R. Akiba, reasoning on the same lines as R. Joseph, regards the creditor as a paid bailee, since it is a positive duty to assist a fellow-man with a loan (cf. Lev. XXV, 35), whilst R. Eliezer regards him as an unpaid bailee.

Talmud - Mas. Baba Metzia 82b

they differ where the creditor needs the pledge;[1] one Master [sc. R. Akiba] maintaining that he fulfils a religious precept in making the loan, and therefore ranks as a paid bailee; whereas the other Master [sc. R. Eliezer] holds that he fulfils no religious precept thereby, since he desires his own benefit; therefore he is an unpaid bailee.[2]

ABBA SAUL SAID: ONE MAY HIRE OUT THE PLEDGE OF A POOR MAN, FIXING A PRICE AND PROGRESSIVELY DIMINISHING THE DEBT. R. Hanan b. Ammi said in Samuel's name: The halachah is as Abba Saul. But even Abba Saul ruled thus only in respect of a hoe, mattock, and axe, since their hiring fee is large whilst their depreciation is small.

MISHNAH. IF A MAN [A BAILEE] MOVED A BARREL FROM ONE PLACE TO ANOTHER AND BROKE IT, WHETHER HE IS A PAID OR AN UNPAID BAILEE, HE MUST SWEAR.[3] R. ELIEZER SAID: [I TOO HAVE LEARNT THAT] BOTH MUST SWEAR, YET I AM ASTONISHED THAT BOTH CAN SWEAR.[4]

GEMARA. Our Rabbis taught: If a man moved a barrel for his neighbour[5] from one place to another and [in doing so] broke it, whether a paid or an unpaid bailee, he must swear; this is R. Meir's view. R. Judah ruled: An unpaid bailee must swear; whereas a paid trustee is responsible.[6]

R. ELIEZER SAID: [I TOO HAVE LEARNT THAT] BOTH MUST SWEAR, YET I AM ASTONISHED THAT BOTH CAN SWEAR. Shall we say that in R. Meir's opinion one who stumbles [and thereby does damage] is not regarded as [culpably] negligent?[7] But it has been taught: If his pitcher was broken, and he did not remove it; or if his camel fell down, and he did not raise it up — R. Meir holds him liable for any damage they may cause; whilst the Sages rule: He is exempt by laws of man, but liable by the laws of Heaven;[8] and it is an established fact that they differ on the question whether stumbling amounts to negligence![9] — Said R. Eleazar: Separate them! The two [Baraithas] are not both by the same teacher.[10] And R. Judah comes to teach that an unpaid bailee must swear, whilst a paid bailee must make it [sc. the damage] good, each in accordance with his own peculiar law.[11] Whereupon R. Eliezer observes: Verily, I have a tradition in accordance with R. Meir; nevertheless I am astonished that both should swear. As for an unpaid bailee, it is well; he swears that he was guilty of no negligence. But why should a paid bailee swear? Even if not negligent, he is still bound to pay![12] And even with respect to an unpaid bailee it [the ruling] is correct [only] if [the accident happened] on sloping ground; but if not on sloping ground, can he possibly swear that he was not negligent![13]

(1) For use of which he remits a portion of the debt.

(2) Nor does his use of it make him a paid bailee, since he makes an allowance on the debt in return.

(3) That it was due to negligence.

(4) To be freed from responsibility. The grounds for his astonishment are discussed below,

(5) [MS.M. omits 'for his neighbour'.]

(6) Even if it was not caused by his negligence.

(7) For if the barrel was broken in the course of being moved, at the very least it is as though it were damaged through his stumbling; and since R. Meir rules that he must swear that he had not been negligent, it follows that stumbling is not negligence.

(8) V. B.K. 29a.

(9) R. Meir maintains that it does; consequently, if his pitcher broke — due to his stumbling or any other similar cause — he is culpably negligent. and therefore liable for damages. Thus this contradicts his ruling in the Mishnah!

(10) Lit., 'he who taught this one did not teach the other.' They are irreconcilable and reflect two opposing views on R. Meir's opinion.

(11) On the assumption of the first Baraitha that R. Meir does not regard stumbling as negligence. R. Judah agrees with R. Meir. Consequently the unpaid bailee must swear that there was no negligence; but the paid bailee is responsible for damage caused by stumbling even though it is not accounted as negligence; hence he does not agree with R. Meir that both bailees must swear.

(12) As explained in n. 2.

(13) For stumbling on level ground is certainly negligence.

Talmud - Mas. Baba Metzia 83a

And even on sloping ground, it is reasonable [that the bailee swears] where no evidence is possible;[1] but where evidence is possible, let him adduce evidence and [only] then be free from liability! For it has been taught: Issi b. Judah said: [If a man deliver unto his neighbour an ass . . . to keep; and it die, or be hurt, or driven away,] no man seeing it: Then shall an oath of the Lord be between them both;[2] hence it follows, if there be a spectator, he must bring evidence and then be free.[3]

But R. Hiyya b. Abba said in R. Johanan's name: This oath is a Rabbinical institution. For should you not rule thus, no man would move a barrel for his neighbour[4] from one place to another.[5] What does he swear?[6] — Raba said: 'I swear that I broke it unintentionally.' And R. Judah comes to teach that an unpaid bailee must swear, whilst a paid bailee must make it good, each in accordance with his own peculiar law.[7] Whereupon R. Eliezer observes: Verily, I have a tradition in accordance With R. Meir; nevertheless, I am astonished that both should swear. As for an unpaid bailee, it is well: he swears that he was guilty of no negligence. But why should a paid bailee swear? Even if not negligent, he is still bound to pay! And even with respect to an unpaid bailee, it [sc. the ruling] is correct [if the accident happened] on sloping ground; but if not on sloping ground, can he possibly swear that he was not negligent! And even on sloping ground, it is reasonable [that the bailee swears] where no evidence is possible; but where it is, let him adduce evidence and [only] then be freed from liability! For it has been taught: Issi b. Judah said: [If a man deliver unto his neighbour an ass . . . to keep: and it die, or be hurt, or driven away,] no man seeing it: Then shall an oath of the Lord be between them both;[8] hence it follows, if there be a spectator, he must bring evidence and then be free.

A man was once moving a barrel of wine in the manor of Mahuza,[9] and broke it on a projection[10] of Mahuza: so he came before Raba. Said he to him: The manor of Mahuza is a frequented place: go and bring evidence;[11] then you are free from liability. Thereupon R. Joseph, his son, said to him: In accordance with whom [is your verdict]? With Issi?[12] — Yes, said he, in accordance with Issi; and we agree with him.

A man instructed his neighbour. 'Go and buy me four hundred barrels of wine.' So he went and bought [them] for him; subsequently, however, he came before him and said, 'I bought you the four hundred barrels of wine, but they turned sour.' So he came before Raba. 'When four hundred barrels of wine turn sour,' said he to him, 'the facts should be widely known.[13] Go and bring proof that originally, when bought, the wine was sound, then will you be free from liability.' R. Joseph. his son, observed to him: In accordance with whom [is your verdict]? With Issi? — Yes, said he, in accordance with Issi; and we agree with him.

R. Hiyya b. Joseph instituted a measure in Sikara.[14] Viz., those who carry burdens on a yoke, and they break, must pay half. Why? Because it [the burden] is too much for one, yet too little for two:[15] therefore it lies midway between accident and negligence.[16] Those who carry on a pole must pay all.[17]

Some porters [negligently] broke a barrel of wine belonging to Rabbah son of R. Huna.[18] Thereupon he seized their garments; so they went and complained to Rab.[19] 'Return them their garments,' he ordered. 'Is that the law?' he enquired. 'Even so,' he rejoined: 'That thou mayest walk in the way of good men.'[20] Their garments having been returned, they observed. 'We are poor men, have worked all day, and are in need: are we to get nothing?' 'Go and pay them,' he ordered. 'Is that the law?' he asked. 'Even so,' was his reply: 'and keep the path of the righteous.'[21]

CHAPTER VII

MISHNAH. ONE WHO ENGAGES LABOURERS AND DEMANDS THAT THEY COMMENCE EARLY OR WORK LATE — WHERE LOCAL USAGE IS NOT TO COMMENCE EARLY OR WORK LATE HE MAY NOT COMPEL THEM. WHERE IT IS THE PRACTICE TO SUPPLY FOOD [TO ONE'S LABOURERS], HE MUST SUPPLY THEM THEREWITH; TO PROVIDE A RELISH, HE MUST PROVIDE IT. EVERYTHING DEPENDS ON LOCAL CUSTOM. IT ONCE HAPPENED THAT R. JOHANAN B. MATHIA SAID TO HIS SON, 'GO OUT AND ENGAGE LABOURERS.' HE WENT AND AGREED TO SUPPLY THEM WITH FOOD. BUT ON HIS RETURNING TO HIS FATHER, THE LATTER SAID, MY SON, SHOULD YOU EVEN PREPARE FOR THEM A BANQUET LIKE SOLOMON'S WHEN IN HIS GLORY,[22] YOU CANNOT FULFIL YOUR UNDERTAKING, FOR THEY ARE CHILDREN OF ABRAHAM, ISAAC AND JACOB. BUT, BEFORE THEY START WORK, GO OUT AND TELL THEM, ''[I ENGAGE YOU] ON CONDITION THAT YOU HAVE NO CLAIM UPON ME OTHER THAN BREAD AND PULSE.'' R. SIMEON B. GAMALIEL SAID: IT WAS UNNECESSARY [TO STIPULATE THUS]; EVERYTHING DEPENDS ON LOCAL CUSTOM.

GEMARA. Is it not obvious? — It is necessary [to teach it] only when he [the employer] pays them a higher wage [than usual]: I might think that he can plead, 'I pay you a higher wage in order that you may start earlier and work for me until nightfall;' we are therefore taught that they can reply, 'The higher remuneration is [only] for better work [but not longer hours].'

Resh Lakish said:

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(1) I.e., if it was an unfrequented place.

(2) Ex. XXII, 9f.

(3) But an oath is insufficient.

(4) [MS.M. omits 'for his neighbour'.]

(5) R. Hiyya does not answer the foregoing difficulties, but reverts to the alleged contradiction in R. Meir's views, and harmonises them. Thus: Both Baraithas have the same author, and, as appears from the second, stumbling is certainly accounted as negligence. Nevertheless, R. Meir holds that in this case the Rabbis freed him from liability, as a measure necessary for the common good. Hence he need only take an oath.

(6) He cannot swear that he was guiltless of negligence, since on the present hypothesis stumbling itself is negligence.
(7) This passage and the following have already been given above. There it was all R. Eliezer's explanation of the Baraitha and the Mishnah; here it is R. Hiyya's. But on R. Hiyya's version, the sentence just given does not bear quite the same interpretation as before (q.v.) Thus: R. Judah disagrees with R. Meir, and holds that stumbling is not negligence but midway between negligence and an accident, and thus analogous to theft and loss, for which an unpaid bailee is not responsible, whereas a paid bailee is. Therefore the paid bailee must make good the damage, whilst the unpaid bailee swears that he was not otherwise negligent and is thereby freed from liability. Hence, there is no particular Rabbinical measure in this case, but each is dealt with in accordance with his own law.
(8) Ibid.
(9) V. B.B. (Sonc. ed.) p. 60, n. 4.
(10) E.g., a moulding, or perhaps a balcony or a bay window projecting from the wall (Jast. s.v. זיז and זיזא).
(11) Some texts add 'That there was no culpable negligence'.
(12) That in a frequented locality an oath is not accepted.
(13) I.e., where you bought them, where you stored them, when they turned sour etc.
(14) Near Mahoza.
(15) Consequently, one person would carry it.
(16) Lit., 'it is near to accident and near to negligence.'
(17) Rashi explains that it was a pole made for a two-man burden. Therefore, when one carries it alone, it is culpable negligence, for which he bears full responsibility.
(18) [So according to Alfasi; cur. edd.: 'b. Bar Hanan,' MS.M.: 'b. Bar Hanah.' v. next note.]
(19) [Other texts: 'Raba', according to which preference is to be given to reading: Rabbah. b. R. Hanan, v. D.S.]
(20) Prov. II, 20.
(21) Ibid. Actually they were responsible, but Rab told him that in such a case one should not insist on the letter of the law.
(22) Lit., 'in his time'.

Talmud - Mas. Baba Metzia 83b

A labourer's entry [to town] is in his own time, and his going forth [to the fields] is in his employer's;[1] as it is written, The sun ariseth, they [sc. the animals] gather themselves together, and lay them down in their dens. Man goeth forth unto his work and to his labour until the evening.[2] But let us see what is the usage? — This refers to a new town. Then let us see whence they come? — It refers to a conglomeration.[3] Alternatively. it means that he said to them, 'You are engaged to me as labourers [whose conditions of work are set forth] in the Bible.'[4]

R. Zera lectured — others say. R. Joseph learnt: What is meant by, Thou makest darkness, and it is night: wherein all the beasts of the forest do creep forth?[5] Thou makest darkness, and it is night — this refers to this world, which is comparable to night; wherein all the beasts of the forest do creep forth — to the wicked therein, who are like the beasts of the forest. The sun ariseth — for the righteous;[6] the wicked are gathered in — for Gehenna; and lay them down in their habitations — not a single righteous man lacks a habitation as befits his honour. Man goeth forth unto his work — i.e., the righteous go forth to receive their reward;[7] and to his labour until the evening — as one who has worked fully until the very evening.[8]

R. Eleazar, son of R. Simeon, once met an officer of the [Roman] Government who had been sent to arrest thieves,[9] 'How can you detect them?' he said. 'Are they not compared to wild beasts, of whom it is written, Therein [in the darkness] all the beasts of the forest creep forth?'[10] (Others say, he referred him to the verse, He lieth in wait secretly as a lion in his den.)[11] 'Maybe,' [he continued,] 'you take the innocent and allow the guilty to escape?' The officer answered, 'What shall I do? It is the King's command.' Said the Rabbi, 'Let me tell you what to do. Go into a tavern at the fourth hour of the day.[12] If you see a man dozing with a cup of wine in his hand, ask what he is. If he is a learned man, [you may assume that] he has risen early to pursue his studies; if he is a day labourer he must

have been up early to do his work; if his work is of the kind that is done at night, he might have been rolling thin metal.[13] If he is none of these, he is a thief; arrest him.' The report [of this conversation] was brought to the Court, and the order was given: 'Let the reader of the letter become the messenger.'[14] R. Eleazar, son of R. Simeon, was accordingly sent for, and he proceeded to arrest the thieves. Thereupon R. Joshua, son of Karhah, sent word to him, 'Vinegar, son of wine![15] How long will you deliver up the people of our God for slaughter!' Back came the reply: 'I weed out thorns from the vineyard.' Whereupon R. Joshua retorted: 'Let the owner of the vineyard himself [God] come and weed out the thorns.'

One day a fuller met him, and dubbed him: 'Vinegar, son of wine.' Said the Rabbi to himself, 'Since he is so insolent, he is certainly a culprit.' So he gave the order to his attendant: 'Arrest him! Arrest him!' When his anger cooled, he went after him in order to secure his release, but did not succeed. Thereupon he applied to him, [the fuller] the verse: Whoso keepeth his mouth and his tongue, keepeth his soul from troubles.[16] Then they hanged him, and he [R. Eleazar son of R. Simeon] stood under the gallows and wept. Said they [his disciples] to him: 'Master, do not grieve; for he and his son seduced a betrothed maiden on the Day of Atonement.' [On hearing this,] he laid his hand upon his heart[17] and exclaimed: 'Rejoice, my heart! If matters on which thou [sc. the heart] art doubtful are thus,[18] how much more so those on which thou art certain! I am well assured that neither worms nor decay will have power over thee.' Yet in spite of this, his conscience disquieted him. Thereupon he was given a sleeping draught, taken into a marble chamber,[19] and had his abdomen opened, and basketsful of fat removed from him and placed in the sun during Tammuz and Ab,[20] and yet it did not putrefy.[21] But no fat putrefies![22] — [True,] no fat putrefies; nevertheless, if it contains red streaks,[23] it does. But here, though it contained red streaks, it did not. Thereupon he applied to himself the verse, My flesh too shall dwell in safety.[24]

A similar thing[25] befell R. Ishmael son of R. Jose.

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(1) The working day on the field extended from sunrise until the stars appear. The labourer returns home in his own time, i.e., after the stars appear, but goes to work in the time of the employer, starting from home at sunrise. [Tosaf. reverses the explanation.]

(2) Ps. CIV, 22f. This is interpreted: Man goeth forth when the sun ariseth — hence in his employer's time — and is bound to his labour until the evening — returning home in his own time.

(3) I.e., a town made up of inhabitants from various other places, and so lacking uniformity in this matter.

(4) In that case local custom is overridden.

(5) Ibid. 20.

(6) In the Hereafter.

(7) פעל , the word used in the text, often means not 'work', but its reward: Cf. Lev. XIX, 13: The wages (פעולת) of him that is hired etc.

(8) I.e., until his death.

(9) [(a) Freebooters (latrones) who overran Judea during the war between the Emperor Severus and his rival Pescennius Niger (193-4 C.E.) (Graetz, Geschichte der Juden, IV, p. 207); or (b) ordinary robbers (Krauss. MGWJ, 1894. p. 151).]

(10) Ps. CIV, 20.

(11) Ps. X, 9.

(12) 10 a.m., the usual breakfast hour.

(13) Without using a hammer, so that he did not attract attention.

(14) Let him who gave the advice carry it out.

(15) Degenerate son of a righteous father.

(16) Prov. XXI, 23.

(17) Lit., 'his inwards'.

(18) Seen to be just. He was doubtful whether the man had really merited hanging. But now he saw that he was, for the seduction of a betrothed maiden is punished by stoning, and all who are stoned are hung.

(19) An operating theatre(?)

(20) The summer months, corresponding to about June and July.
(21) This was taken as a sign that he had acted rightly and would be proof against decay.
(22) Rashi: unless flesh adheres to it.
(23) Which are a fleshy substance.
(24) Ps. XVI, 9.
(25) Viz., that he became an informer to the State.

Talmud - Mas. Baba Metzia 84a

[One day] Elijah met him and remonstrated with him: 'How long will you deliver the people of our God to execution!' — 'What can I do', he replied, 'it is the royal decree.' 'Your father fled to Asia,'[1] he retorted, 'do you flee to Laodicea!'

When R. Ishmael son of R. Jose and R. Eleazar son of R. Simeon met, one could pass through with a yoke of oxen under them and not touch them.[2] Said a certain [Roman] matron to them, 'Your children are not yours!' They replied, 'Theirs [sc. our wives'] is greater than ours.' '[But this proves my allegation] all the more!' [She observed]. Some say, they answered thus: 'For as a man is, so is his strength.'[3] Others say, they answered her thus: 'Love suppresses the flesh.' But why should they have answered her at all; is it not written, Answer not a fool according to his folly?[4] — To permit no stigma upon their children.

R. Johanan said: The waist of R. Ishmael son of R. Jose was as a bottle of nine kabs capacity. R. papa said: R. Johanan's waist was as a bottle containing five kabs; others say, three kabs. That of R. papa himself was as [large as] the wicker-work baskets of Harpania.[5]

R. Johanan said: I am the only one remaining of Jerusalem's men of outstanding beauty. He who desires to see R. Johanan's beauty, let him take a silver goblet as it emerges from the crucible,[6] fill it with the seeds of red pomegranate, encircle its brim with a chaplet of red roses, and set it between the sun and the shade: its lustrous glow is akin to R. Johanan's beauty.

But that is not so; for did not a Master say: R. Kahana's beauty is a reflection of R. Abbahu's; R. Abbahu's is a reflection of our Father Jacob's; our Father Jacob's was a reflection of Adam's; whereas R. Johanan is omitted! — R. Johanan is different, because he lacked a beard.[7]

R. Johanan used to go and sit at the gates of the mikweh.[8] 'When the daughters of Israel ascend from the bath',said he, 'let them look upon[9] me, that they may bear sons as beautiful and as learned as I.' Said the Rabbis to him: 'Do you not fear an evil eye?' — 'I am of the seed of Joseph', he replied, 'against whom an evil eye is powerless.' For it is written, Joseph is a fruitful bough, even a fruitful bough by a well:[10] whereon R. Abbahu observed: Render not [by a well] but, 'above the power of the eye.'[11] R. Jose son of R. Hanina deduced it from the following: and let them multiply abundantly like fish in the midst of the earth:[12] just as fish in the seas are covered by water and the eye has no power over them, so also are the seed of Joseph — the eye has no power over them.

One day R. Johanan was bathing in the Jordan, when Resh Lakish saw him and leapt into the Jordan after him. Said he [R. Johanan] to him, 'Your strength should be for the Torah.'[13] — 'Your beauty,' he replied, 'should be for women.' 'If you will repent,' said he, 'I will give you my sister [in marriage], who is more beautiful than I.' He undertook [to repent]; then he wished to return and collect his weapons, but could not.[14] Subsequently, [R. Johanan] taught him Bible and Mishnah, and made him into a great man. Now, one day there was a dispute in the schoolhouse [with respect to the following. Viz.,] a sword, knife, dagger, spear, hand-saw and a scythe — at what stage [of their manufacture] can they become unclean? When their manufacture is finished.[15] And when is their manufacture finished? — R. Johanan ruled: When they are tempered in a furnace. Resh Lakish

maintained: When they have been furbished in water. Said he to him: 'A robber understands his trade.'[16] Said he to him, 'And wherewith have you benefited me: there [as a robber] I was called Master, and here I am called Master.'[17] 'By bringing you under the wings of the Shechinah,' he retorted. R. Johanan therefore felt himself deeply hurt,[18] [as a result of which] Resh Lakish fell ill. His sister [sc. R. Johanan's, the wife of Resh Lakish] came and wept before him: 'Forgive him[19] for the sake of my son,' she pleaded. He replied: 'Leave thy fatherless children. I will preserve them alive.'[20] 'For the sake of my widowhood then!' 'And let thy widows trust in me,'[21] he assured her. Resh Lakish died, and R. Johanan was plunged into deep grief. Said the Rabbis, 'Who shall go to ease his mind? Let R. Eleazar b. Pedath go, whose disquisitions are very subtle.' So he went and sat before him; and on every dictum uttered by R. Johanan he observed: 'There is a Baraitha which Supports you.' 'Are you as the son of Lakisha?'[22] he complained: 'when I stated a law, the son of Lakisha used to raise twenty-four objections, to which I gave twenty-four answers, which consequently led to a fuller comprehension of the law; whilst you say, "A Baraitha has been taught which supports you:" do I not know myself that my dicta are right?' Thus he went on rending his garments and weeping, 'Where are you, O son of Lakisha, where are you, O son of Lakisha;' and he cried thus until his mind was turned. Thereupon the Rabbis prayed for him, and he died.

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(1) Jose b. Halafta fled to Asia Minor in consequence of his having been ordained by Judah b. Baba (Sanh. 14a) in defiance of the Hadrianic edict.

(2) Their waists were so large that as they stood waist to waist there was room for a yoke of oxen to pass beneath them!

(3) Judges VIII, 21.

(4) Prov. XXVI, 4.

(5) [A rich agricultural town in the Mesene district S. of Babylon, famous for its manufacture of baskets made of fibres of palm leaves. V. Obermeyer, op. cit. p. 200. This humourous and exaggerated description of the figures of these Rabbis has been stated to prevent any stigma being attached to the offspring of people of large contour, Tosaf.]

(6) I.e., immediately it leaves the silversmith's hands, whilst it is still glowing with heat.

(7) Lit., 'facial glory'.

(8) V. Glos.

(9) Lit., 'meet'.

(10) Gen. XLIX, 22.

(11) עולי עין , a play on עולי עין .

(12) Ibid. XLVIII, 16.

(13) I.e., devoted to study.

(14) His mere decision to turn to the study of the Torah had so weakened him that he lacked the strength to don his heavy equipment.

(15) Before that they are not complete articles or utensils, and only such can become unclean.

(16) This was quoted only proverbially, though in later times it was taken literally, and Resh Lakish was held to have been a robber. Actually, he had been a circus attendant, to which his necessitous circumstances had reduced him, and these weapons were used in the course of that calling. (Graetz, Geschichte, IV, 238, n. 6). Weiss, Dor, III, p. 83, n. 2, understands the phrase literally, but translates לסתאה as 'thief-catcher.' If that be correct, Resh Lakish at one time helped the Roman government, just as R. Eleazar b. R. Simeon and R. Ishmael b. R. Jose had done

(17) Heb. רבי is equally applicable to a captain of a gang and a Rabbi (Rashi).

(18) By the remark of Resh Lakish that he had not benefited him.

(19) Lit., 'do'.

(20) Jer. XLIX, 11.

(21) Ibid.

(22) The full name of Resh Lakish was R. Simeon b. Lakish. Weiss, Dor, II, 71 deduces from the use of Lakisha here that Lakish was not a patronym but the name of a town, בן or בר meaning 'a citizen of,' i.e., R. Simeon, a townsman of Lakish. But Bacher, Ag. der Pal. Am. I, 340, 1 defends Lakish as a patronym.

[Reverting to the story of R. Eleazar son of R. Simeon] yet even so,[1] R. Eleazar son of R. Simeon's fears were not allayed,[2] and so he undertook a penance. Every evening they spread sixty sheets for him, and every morning sixty basins of blood and discharge were removed from under him. In the mornings his wife prepared him sixty kinds of pap,[3] which he ate, and then recovered. Yet his wife did not permit him to go to the schoolhouse, lest the Rabbis discomfort him. Every evening he would exhort them,[4] 'Come, my brethren and familiars!' whilst every morning he exclaimed, 'Depart, because ye disturb my studies!' One day his wife, hearing him, cried out, 'You yourself bring them upon you; you have [already] squandered the money of my father's house!'[5] So she left him[6] and returned to her paternal home.[7] Then there came sixty seamen who presented him with sixty slaves, bearing sixty purses.[8] They too prepared sixty kinds of pap for him, which he ate. One day she [his wife] said to her daughter, 'Go and see how your father is faring now.' She went, [and on her arrival] her father said to her, 'Go, tell your mother that our [wealth] is greater than theirs' [sc. of his father-in-law's house]. He then applied to himself the verse, She is like the merchant's ships; she bringeth her food from afar.[9] He ate, drank, and recovered, and went to the schoolhouse. Sixty specimens of blood were brought before him, and he declared them all clean. But the Rabbis criticised him, saying, 'Is it possible that there was not [at least] one about which there was some doubt!' He retorted, 'If it be as I [said], let them all be males; if not, let there be one female amongst them.'[10] They were all males, and were named 'Eleazar', after him.

It has been taught: Rabbi said: How much procreation did this wicked [state] prevent in Israel.[11]

On his death-bed he said to his wife, 'I know that the Rabbis are angry with me, and will not properly attend to me. Let me lie in an upper chamber,[12] and do you not be afraid of me.' R. Samuel b. Nahmani said: R. Jonathan's mother told me that she was informed by the wife of R. Eleazar son of R. Simeon: 'I kept him lying in that upper chamber not less than eighteen nor more than twenty-two years. Whenever I ascended there, I examined his hair, and [even] if a single hair had fallen out, the blood would well forth. One day, I saw a worm issue from his ear, whereat I was much grieved, but he appeared to me in my dream and told me that it was nothing. ["This has happened," said he,] "because I once heard a scholar insulted and did not protest, as I should have done." Whenever two people came before him [in a lawsuit], they stood near the door, each stated his case, and then a voice issued from that upper chamber, proclaiming, "So-and-so, you are liable; soand-so, you are free."' Now, one day his wife was quarrelling with a neighbour, when the latter reviled [her, saying,] 'Let her be like her husband, who was not worthy of burial!' Said the Rabbis: 'When things have gone thus far,[13] it is certainly not meet.'[14] Others say: R. Simeon b. Yohai appeared to them in a dream, and complained: 'I have a pigeon amongst you which you refuse to bring to me.' Then the Rabbis went to attend to him [for burial], but the townspeople of Akabaria[15] did not let them; because during all the years R. Eleazar son of R. Simeon slept in his upper chamber no evil beast came to their town. But one day — it was the eve of the Day of Atonement, when they were busily occupied, the Rabbis sent [word] to the townspeople of Biri,[16] and they brought up his bier, and carried it to his father's vault, which they found encircled by a serpent. Said they to it, 'O snake, O snake, open thy mouth, and let the son enter to his father.' Thereupon it opened [its mouth] for them. Then Rabbi sent [messengers] to propose [marriage] to his wife. She sent back: 'Shall a utensil, in which holy food has been used, be used for profane purposes!' There [sc. in Palestine] the proverb runs: Where the master hung up his weapons, there the shepherd hung up his wallet. He sent back word, 'Granted that he outstripped me in learning, was he [also] my superior in good deeds?' She returned, 'Yet at least he outstripped you in learning, though I did not know it. But I do know [that he exceeded you] in [virtuous] practice, since he submitted himself to mortification.'

'In learning'. To what is the reference? — When Rabban Simeon b. Gamaliel and R. Joshua b. Karhah sat on benches, R. Eleazar son of R. Simeon and Rabbi sat in front of them on the ground,[17] raising objections and answering them. Said they, 'We drink their water [i.e., benefit from their learning], yet they sit upon the ground; let seats be placed for them!' Thus were they promoted. But

R. Simeon b. Gamaliel protested: 'I have a pigeon amongst you, and ye wish to destroy it!'[18] So Rabbi was put down. Thereupon R. Joshua b. Karhah said: 'Shall he, who has a father, live, whilst he who has no father[19] die!' So R. Eleazar son of R. Simeon too was put down, whereat he felt hurt saying, 'Ye have made him equal to me!'[20] Now, until that day, whenever Rabbi made a statement, R. Eleazar son of R. Simeon supported him. But from then onward, when Rabbi said, 'I have an objection,' R. Eleazar son of R. Simeon retorted, 'If you have such and such an objection, this is your answer; now have you encompassed us with loads of answers in which there is no substance.'[21] Rabbi, being thus humiliated, went and complained to his father. 'Let it not grieve you,' he answered, 'for he is a lion, and the son of a lion, whereas you are a lion, the son of a fox.'[22] To this Rabbi alluded when he said, Three were humble; viz., my father,

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(1) Notwithstanding that his fat did not putrefy; v. supra 83b.

(2) Lit., 'his mind was not at rest', that he had not ensnared innocent men too.

(3) Made of figs (Rashi).

(4) His pains and sores personified.

(5) By illness.

(6) Lit., 'rebelled'.

(7) The Heb. expression means her father's house after his death.

(8) These seamen had encountered a violent storm at sea, and had prayed to be delivered for the sake of R. Eleazar son of R. Simeon. This gift then was a thanksgiving offering to him (Tosaf.).

(9) Prov. XXXI, 14. 'she' is referred to the Torah; for the sake of his learning, in the merit of which the seamen had been delivered, his 'food' — i.e. wealth — had been brought to him from afar.

(10) I.e., the children of those women whose blood he had declared clean.

(11) R. Eleazar son of R. Simeon having been appointed by the state to track down malefactors, could not come to the school, where, by his wide knowledge of what is clean or unclean he would have permitted many women to their husbands.

(12) Instead of being buried.

(13) I.e., that people know that he is dead yet unburied.

(14) It dishonours him.

(15) Josephus (Wars, II, XX, 6) mentions that he fortified a place of that name in Upper Galilee; it was probably identical with Akhbura, a town to the south of Safed. Neubauer p. 226f.

(16) A neighbouring town. [Either Bira, S.E., or Kfar Bir'im, N.W. of Gush Halab; Klein, Neue Beitrage, p. 39.]

(17) This was the usual way of study, the master sitting on a seat, the disciples on the ground.

(18) He feared that his son's promotion — he was Rabbi's father — would excite the evil eye and react to his injury.

(19) R. Simeon b. Yohai, the father of R. Eleazar son of R. Simeon, was dead.

(20) Whilst he thought himself higher. — This proves the point that he was a greater scholar than Rabbi; v. also further.

(21) I.e., R. Eleazar anticipated all his objections and answered them by shewing that there was no reality in the proposed difficulties and consequently in the answer given, and thus he accused Rabbi of being the cause of many answers which are quite unimportant.

(22) He has a greater scholastic ancestry than you, R. Simeon b. Yohai, his father, having been more learned than I.

Talmud - Mas. Baba Metzia 85a

the Bene Bathyra, and Jonathan, the son of Saul. 'R. Simeon b. Gamaliel,'[1] as has been said, 'The Bene Bathyra,' as a Master said: They placed him at the head and appointed him Nasi[2] over them.[3] 'Jonathan, the son of Saul,' for he said to David, And thou shalt be king over Israel, and I shall be next unto thee.[4] But how does this prove it: perhaps Jonathan the son of Saul [spoke thus] because he saw that the people were flocking to David? The Bene Bathyra too, because they saw that Hillel was their superior [in learning]? But R. Simeon b. Gamaliel was certainly very modest.[5]

Rabbi observed: Suffering is precious.[6] Thereupon he undertook [to suffer likewise] for thirteen years, six through stones in the kidneys[7] and seven through scurvy: others reverse it. Rabbi's

house-steward was wealthier than King Shapur.[8] When he placed fodder for the beasts, their cries could be heard for three miles, and he aimed at casting it [before them] just then when Rabbi entered his privy closet, yet even so, his voice [lifted in pain] was louder than theirs, and was heard [even] by sea-farers. Nevertheless, the sufferings of R. Eleazar son of R. Simeon were superior [in virtue] to those of Rabbi. For whereas those of R. Eleazar son of R. Simeon came to him through love, and departed in love,[9] those of Rabbi came to him through a certain incident, and departed likewise.

'They came to him through a certain incident.' What is it? — A calf was being taken to the slaughter, when it broke away, hid his head under Rabbi's skirts, and lowed [in terror]. 'Go', said he, 'for this wast thou created.' Thereupon they said [in Heaven], 'Since he has no pity, let us bring suffering upon him.'

'And departed likewise.' How so? — One day Rabbi's maidservant was sweeping the house; [seeing] some young weasels lying there, she made to sweep them away. 'Let them be,' said he to her; 'It is written, and his tender mercies are over all his works.'[10] Said they [in Heaven], 'Since he is compassionate, let us be compassionate to him.'

During all the years that R. Eleazar suffered, no man died prematurely. During all those of Rabbi the world needed no rain;[11] for Rabbah son of R. Shilah said: The day of rain is as hard [to bear][12] as the day of judgment. And Amemar said: But that it is necessary to the world, the Rabbis would have prayed that it might cease to be. Nevertheless,[13] when a radish was pulled out of its bed, there remained a cavity full of water.

Rabbi chanced to visit the town of R. Eleazar son of R. Simeon.[14] 'Did that righteous man leave a son?' he inquired. 'Yes,' they replied; 'and every harlot whose hire is two [zuz], hires him for eight.'[15] So he had him brought [before him], ordained him a Rabbi,[16] and entrusted him to R. Simeon b. Issi b. Lakonia, his mother's brother [to be educated]. Every day he would say, 'I am going to my town; to which he [his instructor] replied, 'They have made you a Sage, spread over you a gold trimmed cloak [at the ceremony of ordination] and designated you "Rabbi", and yet you say, I am going back to my town!' Said he, 'I swear that this [my desire] has been abandoned.' When he became a great [scholar], he went and sat in Rabbi's academy. On hearing his voice, he [Rabbi] observed: 'This voice is similar to that of R. Eleazar son of R. Simeon.' 'He is his son,' they [his disciples] told him. Thereupon he applied to him the verse, The fruit of the righteous is a tree of life; and he that winneth souls is wise.[17] [Thus:] 'The fruit of the righteous is a tree of life' — this refers to R. Jose, the son of R. Eleazar, the son of R. Simeon;[18] 'And he that winneth souls is wise' — to R. Simeon b. Issi b. Lakonia. When he died, he was carried to his father's burial vault, which was encompassed by a snake. 'O snake, O snake,' they adjured it, 'open thy mouth and let the son enter to his father;' but it would not uncoil for them. Now, the people thought that one was greater than the other,[19] but there issued a Heavenly Voice, proclaiming: 'It is not because one is greater than the other, but because one underwent the suffering of the cave, and the other did not.'[20]

Rabbi chanced to visit the town of R. Tarfon. Said he to them: 'Has that righteous man, who used to swear by the life of his children,[21] left a son?' They replied: 'He has left no son, but a daughter's son remains, and every harlot who is hired for two [zuz] hires him for eight.' So he had him brought before him and said to him: 'Should you repent, I will give you my daughter.' He repented. Some say, he married her [Rabbi's daughter] and divorced her; others, that he did not marry her at all, lest it be said that his repentance was on her account. And why did he [Rabbi] take such [extreme] measures? — Because, [as] Rab Judah said in Rab's name — others Say, R. Hiyya b. Abba said in R. Johanan's name — others say, R. Samuel b. Nahmani said in R. Jonathan's name: He who teaches Torah to his neighbour's son will be privileged to sit in the Heavenly Academy, for it is written, If thou [sc. Jeremiah] wilt cause [Israel] to repent, then will I bring thee again, and thou shalt stand before me.[22] And he who teaches Torah to the son of an 'am ha-arez,[23] even if the Holy One, blessed

be He, makes a decree, He annuls it for his sake, as it is written, and if thou shalt take forth the precious from the vile, thou shalt be as my mouth.[24]

R. Parnak said in R. Johanan's name: He who is himself a scholar, and his son is a scholar, and his son's son too, the Torah will nevermore cease from his seed, as it is written, As for me, this is my covenant with them, saith the Lord; My spirit is upon thee, and my words which I have put in thy mouth, shall not depart out of thy mouth, nor out of the mouth of thy seed, nor out of the mouth of thy seed's seed, saith the Lord, from henceforth and for ever.[25] What is meant by 'saith the Lord'? — The Holy one, blessed be He, said, I am surety for thee in this matter. What is the meaning of 'from henceforth and for ever'? — R. Jeremiah said: From henceforth [i.e., after three generations] the Torah seeks its home.[26]

R. Joseph fasted forty fasts,[27] when he was made to read [in his dream], 'They shall not depart out of thy mouth.' He fasted another forty, and was made to read, 'They shall not depart out of thy mouth, nor out of the mouth of thy seed.' He fasted another forty, and was made to read, 'They shall not depart out of thy mouth, nor out of the mouth of thy seed, nor out of the mouth of thy seed's seed.' Henceforth, said he, I have no need [to fast]; the Torah seeks its home.

When R. Zera emigrated to Palestine, he fasted a hundred fasts to forget the Babylonian Gemara, that it should not trouble him.[28] He also fasted a hundred times that R. Eleazar might not die in his lifetime, so that the communal cares[29] should not fall upon him. And yet another hundred, that the fire of Gehenna might be powerless against him. Every thirty days he used to examine himself [to see if he were fireproof]. He would heat the oven, ascend, and sit therein, but the fire had no power against him. One day, however, the Rabbis cast an [envious] eye upon him, and his legs were singed, whereafter he was called, 'Short and leg-singed.'[30]

Rab Judah said in Rab's name: What is meant by, Who is the wise man, that may understand this? and who is he to whom the mouth of the Lord hath spoken, that he may declare it, why the land perisheth?[31] This question[32]

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(1) The father of Rabbi.

(2) The Patriarch, head of Palestinian Jewry.

(3) The story is given in full in Pes. 66a. On one occasion the eve of Passover fell on the Sabbath, and none knew whether the Paschal sacrifice might be offered or not. Thereupon Hillel proved by argument and tradition that it was permissible, upon which the Bene Bathyra, the then heads of Palestinian Jewry, voluntarily resigned their leadership in his favour.

(4) I Sam. XXIII, 17.

(5) I.e., though the action of the other two might be explained away as not due to humility, that of R. Simeon b. Gamaliel could not.

(6) Because he saw that as a reward for the suffering to which R. Eleazar son of R. Simeon had submitted his body remained intact, defying decomposition and decay for many years.

(7) Or, in the bladder, Jast.

(8) V. p. 408, n. 5.

(9) V. supra 84a bottom: he summoned his sufferings, loving them as a means of ennoblement and likewise dismissed them, that he might be free to study.

(10) Ps. CXLV, 9.

(11) Everything growing without rain.

(12) Owing to the inconvenience and discomfort to which people are put.

(13) Though no rain fell.

(14) After his death.

(15) On account of his beauty.

(16) That the honour and the title might turn him to the Torah.

(17) Prov. XI, 30.
(18) I.e., a line of righteous men.
(19) I.e., the father was greater than the son, who was therefore unworthy to he buried with him.
(20) R. Simeon b. Yohai and his son Eleazar were hidden in a cave from the Roman authorities for thirteen years, Shab. 33b.
(21) [He frequently used the oath 'May I bury my children' — e.g. Oh. XVI, 1]
(22) Jer. XV, 19.
(23) V. Glos.
(24) Ibid.
(25) Isa. LIX, 21: thus, once the Torah has been in thy own mouth, thy seed's, and thy seed's seed — i.e., three generations — it shall not depart for ever.
(26) I.e., it becomes hereditary in that family.
(27) That the Torah should always remain with him.
(28) The Palestinian method of study was far simpler than the Babylonian, and R. Zera was anxious that his keen dialectic method acquired in Babylon should not interfere with the clearer course adopted in Palestine. Cf. Sanh. (Sonc. ed.) p. 138, n. 11. [On the term 'Gemara' v. supra p. 206, n. 6. Kaplan, op. cit., pp. 258ff., on the basis of his definition, explains that Gemara texts as recorded by different schools frequently presented variations in substance, style and phraseology to the confusion of the student, and it was for freedom from this handicap that R. Zera prayed when he decided to join the school in Palestine.]
(29) [Of Tiberias, where R. Zera was a communal leader and finally became the head of the School.]
(30) He was of short stature.
(31) Jer. IX, 11.
(32) Lit., 'thing'.

Talmud - Mas. Baba Metzia 85b

was put by the Sages, but they could not answer it; by the prophets, but they [too] could not answer it, until the Holy One, blessed be He, Himself resolved as it is written, And the Lord said, Because they have forsaken my law which I set before them.[1] Rab Judah said in Rab's name: [That means] that they did not first utter a benediction over the Torah [before studying it].[2]

R. Hama said: What is meant by, Wisdom resteth in the heart of him that hath understanding; but that which is in the midst of fools is made known?[3] 'Wisdom resteth in the heart of him that hath understanding' — this refers to a scholar, the son of a scholar; 'but that which is in the midst of fools is made known' — to a scholar, the son of an 'am ha-arez.[4] Said 'Ulla: Thus it is proverbial, One stone in a pitcher cries out 'rattle, rattle.'[5]

R. Jeremiah questioned R. Zera: What is meant by, The small and great are there [sc. the next world]; and the servant is free from his master?[6] Do we then not know that 'the small and great are there'? — But [it means that] he who humbles himself for the sake of the Torah in this world is magnified in the next; and he who makes himself a servant to the [study of the] Torah in this world becomes free in the next.

Resh Lakish was marking the burial vaults of the Rabbis.[7] But when he came to the grave of R. Hiyya, it was hidden from him,[8] whereat he experienced a sense of humiliation. 'Sovereign of the Universe!' he exclaimed, 'did I not debate on the Torah as he did?' Thereupon a Heavenly Voice cried out in reply: 'You did indeed debate on the Torah as he did, but did not spread the Torah as he did.' Whenever R. Hanina and R. Hiyya were in a dispute, R. Hanina said to R. Hiyya: 'Would you dispute with me? If, Heaven forfend! the Torah were forgotten in Israel, I would restore it by my argumentative powers.' To which R. Hiyya rejoined: 'Would you dispute with me, who achieved that the Torah should not be forgotten in Israel? What did I do? I went and sowed flax, made nets [from the flax cords], trapped deers, whose flesh I gave to orphans, and prepared scrolls [from their

skins], upon which I wrote the five books [of Moses]. Then I went to a town [which contained no teachers] and taught the five books to five children, and the six orders [of the Talmud] to six children[9] And I bade them: "Until I return, teach each other the Pentateuch and the Mishnah;" and thus I preserved the Torah from being forgotten in Israel.'[10] This is what Rabbi [meant when he] said, 'How great are the works of Hiyya!' Said R. Ishmael son of R. Jose to him, '[Are they] even [greater] than yours?' 'Yes,' he replied, 'And even than my father's.' 'Heaven forfend!' he rejoined, 'Let not such a thing be [heard] in Israel!'

R. Zera said: Last night R. Jose son of R. Hanina appeared to me [in a dream], and I asked him, 'Near whom art thou seated [in the Heavenly Academy]?' — 'Near R. Johanan.' 'And R. Johanan near whom?' — 'R. Jannai.' 'And R. Jannai?' — 'Near R. Hanina.' 'And R. Hanina?' — 'Near R. Hiyya.' Said I to him, 'And is not R. Johanan [worthy of a seat] near R. Hiyya?' — He replied, 'In the region of fiery sparks and flaming tongues, who will let the smith's son enter?[11]

R. Habiba said: R. Habiba b. Surmakia told me: I saw one of the Rabbis whom Elijah used to frequent, whose eyes were clear in the morning, but in the evening they looked as though burnt in fire. I questioned him, 'What is the meaning of this?' And he answered me [thus]: 'I requested Elijah to shew me the [departed] Rabbis as they ascend to the Heavenly Academy. He replied: "Thou canst look upon all, excepting the carriage of R. Hiyya: upon it thou shalt not look." "What is their sign?"[12] "All are accompanied by angels when they ascend and descend, excepting R. Hiyya's carriage, who ascends and descends of his own accord."[13] But unable to control my desire, I gazed upon it, whereat two fiery streams issued forth, smote and blinded me in one eye. The following day I went and prostrated myself upon his grave, crying out, "It is thy Baraitha that I study!"[14] and I was healed.'[15]

Elijah used to frequent Rabbi's academy. One day — it was New Moon — he was waiting for him, but he failed to come. Said he to him [the next day]: 'Why didst thou delay?' — He replied: '[I had to wait] until I awoke Abraham, washed his hands, and he prayed and I put him to rest again; likewise to Isaac and Jacob.' 'But why not awake them together?' — 'I feared that they would wax strong in prayer[16] and bring the Messiah before his time.' 'And is their like to be found in this world?' he asked. — 'There is R. Hiyya and his sons', he replied. Thereupon Rabbi proclaimed a fast, and R. Hiyya and his sons were bidden to descend [to the reading desk].[17] As he [R. Hiyya] exclaimed, 'He causeth the wind to blow', a wind blew; he proceeded, 'he causeth the rain to descend', whereat the rain descended. When he was about to say, 'He quickeneth the dead'[18] , the universe trembled, [and] in Heaven it was asked, 'Who hath revealed our secret to the world?'[19] 'Elijah', they replied. Elijah was therefore brought and smitten with sixty flaming lashes; so he went, disguised himself as a fiery bear, entered amongst and scattered them.

Samuel Yarhina'ai.[20] was Rabbi's physician. Now, Rabbi having contracted an eye disease, Samuel offered to bathe it with a lotion, but he said, 'I cannot bear it.' 'Then I will apply an ointment to it,' he said. 'This too I cannot bear,' he objected. So he placed a phial of chemicals under his pillow, and he was healed.[21] Rabbi was most anxious[22] to ordain him, but the opportunity was lacking.[23] Let it not grieve thee, he said; I have seen the Book of Adam,[24] in which is written, 'Samuel Yarhina'ah

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(1) Ibid. 12.

(2) The Ran in Ned. 81a explains that it is assumed that the Torah was studied; for otherwise, the question would easily have been answered by the Sages and Prophets. Yet it was studied not for its own sake but only for the preferment it might give. This is expressed by saying that they recited no benediction before studying it, i.e., it was not in itself dear to them. The selfish motive could be known to none but God.

(3) Prov. XIV, 33.

(4) V. Glos. His scholarship then stands out, and 'is made known'.

(5) But when the Pitcher is filled with stones they have no room for rattling. So also, one scholar in a family of fools achieves fame, whilst a whole family of scholars are taken for granted.
(6) Job III, 19.
(7) That priests should not go there and become defiled, thus transgressing the law through the instrumentality of righteous men.
(8) He could not find its exact spot.
(9) The Talmud is divided into six 'orders', viz.: Seeds, Festivals, Women, Damages, Sacred Objects and Purity.
(10) Scholars dispute whether Rabbi wrote down the Mishnah after compiling it. It is perhaps noteworthy in this connection that, whereas in this story it is stated that R. Hiyya wrote the five books of Moses, nothing is said about his writing the Mishnah for his pupils. [Though possibly these activities of R. Hiyya cover a period before the final compilation of the Mishnah by Rabbi.]
(11) R. Johanan's cognomen was Bar Nappaha, lit., 'the smith's son'.
(12) By which I may distinguish between the carriages of the other Rabbis and R. Hiyya's.
(13) His merit being so great, he is not in need of the angel's assistance.
(14) There were several sets of Baraithas — laws not included by Rabbi in his compilation of the Mishnah — the most important and authentic of which were those by R. Hiyya and R. Oshaia.
(15) Yet the redness of the burning was still perceptible.
(16) If they prayed simultaneously.
(17) In the synagogue of Talmudic times the reading-desk was on a lower level than the rest of the building. On fast days, according to the Midrash Tanhuma on בשלח , three men led the congregation in prayer, instead of one, as usual.
(18) V. P. B. p. 44.
(19) That R. Hiyya's prayers are so efficacious.
(20) ירחינאה , the Lunar Expert or Astronomer. The word is an epithet of Samuel, the Babylonian amora, on account of his great astronomical skill, v. R.H. 20b.
(21) The vapour being sufficiently powerful to penetrate to the eye, though not applied directly.
(22) Lit., 'grieved'.
(23) Possibly he could not assemble the Ordination Board.
(24) [Cf. Gen. V, 1. This is not to be confused with the Apocryphal Book of Adam known in many versions (v. J. E. I, 179f), but a book which God showed to Adam containing the genealogy of the whole human race, and which is the Jewish form of the view prevalent among Babylonians (v. Ginszberg, Legends, VI, p. 82), though this does not mean to imply that there was no Jewish version of the Book of Adam current in the days of Rabbi. Funk, Monumenta, I, p. 324, however, on the basis of Babylonian parallels, where the stars are described as the 'writing of Heaven', renders the statement of Rabbi simply to mean, 'I have seen it written in the stars'.]

Talmud - Mas. Baba Metzia 86a

shall be called "Sage'', but not "Rabbi'', and Rabbi's healing shall come through him. Rabbi and R. Nathan conclude the Mishnah, R. Ashi and Rabina[1] conclude [authentic] teaching,[2] and a sign thereof is the verse, Until I went to the sanctuary of God; then understood I their end.'[3]

R. Kahana said: R. Hama, the son of the daughter of Hassa,[4] related to me [that] Rabbah b. Nahmani died through persecution,[5] information having been laid against him to the State. Said they [the informers]: There is an Israelite who keeps back twelve thousand Israelites from the payment of the royal poll-tax one month in summer and one in winter.[6] Thereupon a royal officer was sent for him, but did not find him. He [Rabbah] then fled from Pumbeditha to Akra, from Akra to Agama,[7] from Agama to Sahin, from Sahin to Zarifa, from Zarifa to 'Ena Damim,[8] and thence back to Pumbeditha. In Pumbeditha he found him; for the royal officer chanced to visit the same inn where Rabbah [was hiding]. Now, they placed a tray before him [the royal officer], gave him two glasses of liquor, and then removed the tray;[9] whereupon his face was turned backward [by demons]. 'What shall we do with him?' said they [the inn attendants] to him [Rabbah]; 'he is a royal officer.' 'Offer him the tray again,' he replied, 'and let him drink another goblet; then remove the tray, and he will

recover.' They did so, and he recovered. 'I know,' said he, 'that the man whom I require is here;' he searched for and found him. He then said, 'I will depart from here; if I am slain, I will not disclose [his whereabouts]; but if tortured, I will.' He was then brought before him, and he led him into a chamber and locked the door upon him [to keep him there as a prisoner]. But he [Rabbah] prayed, whereupon the wall fell down, and he fled to Agama; there he sat upon the trunk of a [fallen] palm and studied. Now, they were disputing in the Heavenly Academy thus: If the bright spot preceded the white hair, he is unclean; if the reverse, he is clean.[10] If [the order is] in doubt — the Holy One, blessed be He, ruled, He is clean; whilst the entire Heavenly Academy maintained, He is unclean.[11] Who shall decide[12] it? said they. — Rabbah b. Nahmani; for he said, I am pre-eminent[13] in the laws of leprosy and tents.[14] A messenger was sent for him, but the Angel of Death could not approach him, because he[15] did not interrupt his studies [even for a moment]. In the meantime, a wind blew and caused a rustling in the bushes, when he imagined it to be a troop of soldiers. 'Let me die,' he exclaimed, 'rather than be delivered into the hands of the State. As he was dying, he exclaimed, 'Clean, clean!'[16] when a Heavenly Voice cried out, 'Happy art thou, O Rabbah b. Nahmani, whose body is pure and whose soul had departed in purity!' A missive fell from Heaven in Pumbeditha, [upon which was written,] 'Rabbah b. Nahmani has been summoned[17] by the Heavenly Academy. So Abaye and Raba and all the scholars went forth to attend on him [at his burial], but they did not know his whereabouts. They went to Agama and saw birds stationed there and overshadowing it [to give protection]. 'This', said they, 'proves that he is there. They bewailed him for three days and three nights; but there fell a missive from Heaven, 'He who [will now] hold aloof [from the lamentations] shall be under a ban.' So they bewailed him for seven days, and then there fell a missive from Heaven, 'Return in peace to your homes.' On the day that he died a hurricane lifted an Arab who was riding a camel, and transported him from one bank of the River Papa[18] to the other. 'What does this portend?' he exclaimed. — 'Rabbah b. Nahmani has died,' he was told. 'Sovereign of the Universe!' he cried out. 'The whole world is Thine, and Rabbah b. Nahmani too is Thine. Thou art [the Friend] of Rabbah, and Rabbah is Thine; why dost Thou destroy the world on his account!' Thereupon the storm subsided.

R. Simeon b. Halafta was a fat man.[19] One day, feeling hot, he climbed up, sat on a mountain boulder, and said to his daughter, 'Daughter, fan me with a fan, and I will give you bundles of spikenard.' Just then, however, a breeze arose, whereat he observed, 'How many bundles of spikenard [do I owe] to the Master of the [breeze]?'

EVERYTHING DEPENDS ON LOCAL CUSTOM. What does EVERYTHING add?[20] — The case where it is customary to break bread[21] and drink a small measure [of liquor];[22] if he [the employer] demanded of them, 'Come early, that I may bring it to you,'[23] they can answer, 'You have no power [to demand this].'

IT ONCE HAPPENED THAT R. JOHANAN B. MATHIA SAID TO HIS SON, 'GO OUT AND ENGAGE' etc. A story [is quoted] contradicting [the stated law]![24] — The text is defective, and should read thus: But if he stipulates to provide them with food,

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(1) [According to Sherira Gaon, Letter, p. 95, (ed. Lewin) the reference is to Rabina II, son of R. Huna.]

(2) Rashi: Before Rabbi, the Mishnah was in no systematic order, each Tanna teaching in which order he desired. Rabbi compiled and arranged these teachings in a systematized order, admitting those which he considered authentic and rejecting others. This compilation formed the basic code of Jewish law (though Weiss, Dor. II, p. 183, maintains that he never intended it to be authoritative); subsequently scholars might define and explain it, and deduce new laws from it, but not dispute with it. In the course of time the discussions on the Mishnah grew to very large dimensions, and it was the work of Rabina and R. Ashi to compile the huge mass of accumulated material and give it an orderly arrangement. This is expressed by saying that they were at the end of authentic teaching (hora'ah), i.e., they edited the Talmud. [The signification of the term hora'ah is obscure and has been variously explained: (a) transmission of the oral Law; (b) the insertion by scholars of halachic matter in the Talmud; (c) the right to change the Talmud whether in substance or form;

(d) legislative activity, v. Kaplan, op. cit., pp. 34 and 289ff.]
(3) Ps. LXXIII, 17; מקדשי ('sanctuary') bears a slight resemblance to אשי (Ashi), and אבינה ('understood') to רבינא (Rabina): thus R. Ashi and Rabina are 'their end', sc. of the Talmud.
(4) Var. lec.: Hama.
(5) [Sherira, letter, P. 87: 'persecution of the Law'.]
(6) They used to flock to the academy in Nisan and Tishri, the months of popular lectures, and in consequence the tax-collectors could not obtain their taxes for these months. So Rashi. [The Karasa (poll-tax) appears to have been payable monthly, and the absence of so many tax-payers during these two months in the year (according to Sherira, Adar and Elul, litter, p. 87) was responsible for a drop in the monthly royal revenue. There was, however, no question of evading the tax, as the arrears could in any case be collected with subsequent payments. Obermeyer, op. cit., p. 237. For another explanation connecting it with the exemption of scholars from taxes, (cf. B.B. 8a) v. J. Kaplan. Horeb (New York 1934), I. ;1, pp. 42ff. 1.]
(7) There is only an אקרא דאגמא (Akra di Agama) mentioned elsewhere in the Talmud (v. B.B. (Sonc. ed.) p. 529, n. 11), and Neubauer p. 368, n. 2, suggests that the same should be read here too.
(8) [All these places appear to be in the neighbourhood of Pumbeditha. 'Ena Damim is probably to be identified with the village Dimima on the canal Nahr 'Isa on the Euphrates; Sahin and Zarifa cannot be exactly located. Obermeyer, loc. cit. n. 3.]
(9) To drink an even number of glasses would excite the ill-will of certain demons; he had thus been unintentionally placed in danger.
(10) V. Lev. XIII, 1-3. As stated here, the bright spot must appear first, and then the white hair.
(11) It is a daring fancy to picture the Almighty disputing with the Heavenly Academy on one of His own laws, but is in keeping with the spirit of Talmudic inquiry that the Law once having been given, it is for man to interpret it. Cf. supra 59b.
(12) Lit., 'prove it'.
(13) Lit., 'unique'.
(14) I.e., uncleanliness caused by the dead.
(15) Lit., 'his mouth'.
(16) As though the subject of the Heavenly controversy had already been communicated to him.
(17) Lit., 'sought for'.
(18) [The canal passing through Pumbeditha. Obermeyer, op. cit., p. 237.]
(19) Because the beginning of this narrative portion (aggadah) deals with R. Eleazar b. Simeon, who was very fat, a story is related about another fat man (Rashi).
(20) When a particular law is followed by a general proposition in this form, it is axiomatic that its purpose is to extend the law to a case that does not obviously follow from the first.
(21) [Lit., 'to wrap the bread', to break a piece of bread and place some relish in between. For a discussion of the phrase, v. Krauss, T.A. III, 51.]
(22) אנפק = 1 log.
(23) That the workmen should eat and drink before their day starts.
(24) After stating that everything depends on local custom, the Tanna narrates a story which contradicts this, for custom certainly fixed the limits of the meals.

Talmud - Mas. Baba Metzia 86b

he thereby increases [his obligations] to them.[1] And IT ONCE HAPPENED LIKEWISE THAT R. JOHANAN B. MATHIA SAID TO HIS SON, 'GO OUT AND ENGAGE LABOURERS.' HE WENT, AND AGREED TO SUPPLY THEM WITH FOOD. BUT WHEN HE RETURNED TO HIS FATHER, HE SAID TO HIM, 'MY SON, SHOULD YOU EVEN PREPARE A BANQUET FOR THEM LIKE SOLOMON'S, WHEN IN HIS GLORY, YOU CANNOT FULFIL YOUR DUTY, FOR THEY ARE THE CHILDREN OF ABRAHAM, ISAAC AND JACOB.'

Shall we say that the meals of Abraham, the Patriarch, were superior to those of Solomon; but is it not written, And Solomon's provisions for one day were thirty measures of fine flour and three score

measures of meal. Ten fat oxen, and twenty oxen out of the pastures, and an hundred sheep, besides harts, and roebucks, and fallowdeer, and fatted fowl:[2] whereon Gorion b. Astion said in Rab's name: These were for the cook's dough;[3] and R. Isaac said: These [animals] were but for the [mincemeat] puddings. Moreover, said R. Isaac, Solomon had a thousand wives, and each prepared this quantity in her own house. Why? Each reasoned, 'He may dine in my house to-day.' Whereas of Abraham it is said, And Abraham ran unto the herd, and fetched a calf tender and good:[4] whereon Rab observed: 'A calf,' means one; 'tender' — two; and 'good' — three![5] — There the three calves were for three men, whereas here [the provisions enumerated] were for all Israel and Judah, as it is written, Judah and Israel were many, as the sand which is by the sea in multitude.[6]

What is meant by 'fatted fowl'? — Rab said: [Fowls] fed against their will. Samuel said: [Fowls] naturally fat. R. Johanan said: Oxen which had never toiled[7] were brought from the pastures, and likewise fowls [that had never toiled][8] from their dungheaps.[9]

R. Johanan said: The best of cattle is the ox; the best of birds is the fowl. Amemar said: A fattened black hen[10] which moves about the vats, and which cannot step over a stick.[11]

And Abraham ran unto the herd and fetched a calf, tender and good. Rab said: 'A calf', means one; 'tender' — two; and 'good' — three. But perhaps it [all means] one, as people say, a tender and good [calf]? — If so, Scripture should have written, [a calf] tender, good; why 'and' good? This proves that it is for exegesis.[12] Then perhaps it means two?[13] — Since 'good' is for exegesis, 'tender' [too] is for the same purpose. Rabbah b. 'Ulla — others say, R. Hoshaia — and others again Say, R. Nathan son of R. Hoshaia objected: And he gave unto a young man; and he hasted to dress it?[14] — He gave each to one young man. [But is it not written] And he took butter and milk, and the calf which he had dressed, and set it before them?[15] — [This means,] each, as soon as it was ready, was brought before them. But why three? Would not one have sufficed? — R. Hanan b. Raba said: In order to offer them three tongues with mustard.[16]

R. Tanhum b. Hanilai said: One should never break away from custom. For behold, Moses ascended on High and ate no bread, whereas the Ministering Angels descended below and ate bread.[17] 'And ate' — can you really think so! — But say, appeared to eat and drink.

Rab Judah said in Rab's name: Everything which Abraham personally did for the Ministering Angels, the Holy One, blessed be He, did in person for his sons; and whatever Abraham did through a messenger,[18] the Holy One, blessed be He, did for his sons through a messenger. [Thus:] And Abraham ran unto the herd — And there went forth a wind from the Lord;[19] and he took butter, and milk[15] — Behold, I will rain bread from heaven for you;[20] and he stood by them under the tree — Behold, I will stand before thee there upon the rock, etc.;[21] And Abraham went with them to bring them on the way[22] — And the Lord went before them by day;[23] Let a little water, I pray you, be fetched[24] — and thou shalt smite the rock, and there shall come water out of it, that the people may drink.[25] But he is thus in conflict with R. Hama son of R. Hanina. For R. Hama son of R. Hanina said, and the School of Ishmael taught likewise: As a reward for three things [done by Abraham] they [his descendants] obtained three things. Thus: As a reward for, [and he took] butter and milk, they received the manna; as a reward for, And he stood by them, they received the pillar of cloud;[26] as a reward for, Let a little water, I pray you, be fetched, they were granted Miriam's well.[27]

Let a little water, I pray you, be fetched, and wash your feet:[28] R. Jannai son of R. Ishmael said: They [the travellers] protested to him [Abraham], 'Dost thou suspect us of being Arabs, who worship the dust on their feet? Ishmael has already issued from thee.'[29]

And the Lord appeared unto him in the plains of Mamre: and he sat in the tent door in the heat of the day.[30] What is meant by 'in the heat of the day'? — R. Hama son of R. Hanina said: It was the

third day from Abraham's circumcision,[31] and the Holy One, blessed be He, came to enquire after Abraham's health; [moreover,] he drew the sun out of its sheath,[32] so that the righteous man [sc. Abraham] should not be troubled with wayfarers. He sent Eliezer out [to seek travellers], but he found none. Said he, 'I do not believe thee'. (Hence they say there — sc. in Palestine — slaves are not to be believed.) So he himself went out, and saw the Holy One, blessed be He, standing at the door; thus it is written, Pass not away, I pray thee, from thy servant.[33] But on seeing him tying and untying [the bandages of his circumcision], He said, 'It is not well that I stand here'; hence it is written, And he lifted up his eyes and looked, and lo, three men stood by him, and when he saw them, he ran to meet them:[34] at first they came and stood over him, but when they saw him in pain, they said, 'It is not seemly to stand here.'[35]

Who were the three men? — Michael, Gabriel, and Raphael. Michael came to bring the tidings to Sarah [of Isaac's birth]; Raphael, to heal Abraham;[36] and Gabriel, to overturn Sodom.[37] But is it not written, And there came the two angels to Sodom at even?[38] — Michael accompanied him to rescue Lot. [The Writ] supports this too, for it is written, And he overthrew those cities,[39] not, and they overthrew: this proves it.

Why is it written in the case of Abraham, [And they said,] So do, as thou hast said;[40] whereas of Lot it is written,

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(1) I.e., where local usage is to give food, no stipulation need be made. Hence, if it was, it can only mean that he was to give them more than usual.

(2) I Kings V, 2f.

(3) Cooks used to place dough above the pot, to absorb the steam and vapour.

(4) Gen. XVIII, 7.

(5) I.e., each adjective denotes another. Hence the two passages prove that Solomon's meals were infinitely larger than Abraham's.

(6) I Kings IV, 20.

(7) The idleness made them extra fat.

(8) I.e., had no brood.

(9) R. Johanan treats the adj. 'fatted' as referring to all the animals enumerated.

(10) Be Botni; so Rashi. Jast. conjectures this to be a geographical term.

(11) Through fatness. This is Amemar's explanation of 'fatted fowl'.

(12) I.e., implying another.

(13) Since the first adjective has no copulative.

(14) Gen. XVIII, 7; thus the singular is used.

(15) Ibid. 8; thus there was only one young man.

(16) This was esteemed as a great delicacy.

(17) Thus conforming to, 'When in Rome, do as Rome does'.

(18) Lit., 'a servant'.

(19) Num. XI, 31.

(20) Ex. XVI, 4.

(21) Ibid. XVII, 6.

(22) Gen. XVIII, 16.

(23) Ex. XIII, 21.

(24) Gen. XVIII, 4; this implies an order to a servant.

(25) Ex. XVII, 6.

(26) עמוד הענן , lit., 'the standing (column) of cloud.'

(27) Miriam's well corresponds to the verse quoted above: and thou shalt smite the rock, etc. The dispute is in respect of 'and he stood by them': according to Rab, his reward was the promise contained in 'behold, I will stand before thee there by the rock'; whereas in R. Hama b. R. Hanina's opinion, it was the 'pillar of cloud'. [This is an illustration of the principle 'measure for measure', which is God's guiding rule for reward and punishment.]

(28) Gen. XVIII, 4;
(29) I.e., thine own son does so.
(30) Gen. XVIII, 1.
(31) When one is particularly weak. Cf. Gen. XXXIV, 25.
(32) I.e., He made it pour forth all its heat.
(33) Gen. XVIII, 3. He called himself 'thy servant', because he was speaking to God.
(34) Ibid. 2.
(35) So they removed to a distance; hence it is first said that they 'stood by him', and then that 'he ran to meet them'.
(36) Heb. רפאל means 'healer of God'.
(37) Gabriel means 'strength of God'.
(38) Gen. XIX, 1.
(39) Ibid. 25.
(40) Ibid. XVIII, 5: they immediately accepted the invitation.

Talmud - Mas. Baba Metzia 87a

And he pressed upon them greatly?[1] — R. Eleazar said: This teaches that one may shew unwillingness to an inferior person,[2] but not to a great man.

It is written, And I will fetch a morsel of bread;[3] but it is also written, And Abraham ran unto the herd:[4] Said R. Eleazar: This teaches that righteous men promise little and perform much; whereas the wicked promise much and do not perform even little. Whence do we know [the latter half]? — From Ephron. At first it is written, The land is worth four hundred shekels of silver;[5] but subsequently, And Abraham hearkened unto Ephron; and Abraham weighed to Ephron the silver, which he had named in the audience of the sons of Heth, four hundred shekels of silver, current money with the merchant;[6] indicating that he refused to accept anything but centenaria,[7] for there is a place where shekels are called centenaria.[8]

Scripture writes, [ordinary] meal, and [it is then written], fine meal![9] — Said R. Isaac: This shews that a woman looks with a more grudging eye upon guests than a man.[10]

It is written, Knead it, and make cakes upon the hearth;[11] but it is also written, And he took butter and milk, and the calf;[12] yet he brought no bread before them! — Ephraim Maksha'ah,[13] a disciple of R. Meir, said in his teacher's name: Our Patriarch Abraham ate hullin[14] only when undefiled,[15] and that day our mother Sarah had her menstrual period.[16]

And they said unto him, Where is Sarah thy wife? And he said, Behold, She is in the tent:[17] this is to inform us that she was modest.[18] Rab Judah said in Rab's name: The Ministering Angels knew that our mother Sarah was in the tent, but why [bring out the fact that she was] in her tent? In order to make her beloved to her husband.[19] R. Jose son of R. Hanina said: In order to send her the wine-cup of Benediction.[20]

It has been taught on the authority of R. Jose: Why are the letters ejw in elajw dotted?[21] The Torah thereby taught etiquette, that a man must enquire of his hostess [about his host].[22] But did not Samuel say: One must not inquire at all after a woman's well-being?[23] — [When enquiry is made] through her husband, it is different [and permitted].

After I have waxed old, I have had youth.[24] R. Hisda said: After the flesh is worn and the wrinkles have multiplied, the flesh was rejuvenated, the wrinkles were smoothed out, and beauty returned to its place.

It is written, And my lord is old;[25] but it is also written, [And the Lord said unto Abraham,

Wherefore did Sarah laugh, saying, Shall I of a surety bear a child,] seeing that I am old?[26] the Holy One, blessed be He, not putting the question in her words! — The School of Ishmael taught: Peace is a precious thing, for even the Holy One, blessed be He, made a variation for its sake, as it is written, Therefore Sarah laughed within herself, saying, After I am waxed old, shall I have pleasure, my Lord being old also; whereas it is further written, And the Lord said unto Abraham etc. . . seeing that I am old.[27]

And she said, Who would have said unto Abraham, that Sarah should have given children suck?[28] How many children then did Sarah suckle?[29] — R. Levi said: On the day that Abraham weaned his son Isaac, he made a great banquet, and all the peoples of the world derided him, saying, 'Have you seen that old man and woman, who brought a foundling from the street, and now claim him as their son! And what is more, they make a great banquet to establish their claim!' What did our father Abraham do? — He went and invited all the great men of the age, and our mother Sarah invited their wives. Each one brought her child with her, but not the wetnurse, and a miracle happened unto our mother Sarah, her breasts opened like two fountains, and she suckled them all. Yet they still scoffed, saying, 'Granted that Sarah could give birth at the age of ninety, could Abraham beget [child] at the age of a hundred?' Immediately the lineaments of Isaac's visage changed and became like Abraham's, whereupon they all cried out, Abraham begat Isaac.[30]

Until Abraham there was no old age;[31] whoever wished to speak to Abraham would speak to Isaac, and the reverse.[32] Thereupon he prayed, and old age came into existence, as it is written, And Abraham was old and well-stricken in age.[33] Until Jacob there was no illness:[34] then Jacob came and prayed, and illness came into being, as it is written, And one told Joseph, Behold, thy father is sick.[35] Until Elisha no sick man ever recovered, but Elijah came and prayed, and he recovered, for it is written, Now Elisha was fallen sick of his sickness whereof he died,'[36] thus proving that he had been sick on previous occasions too[37] , [but had recovered].

Our Rabbis taught: On three occasions did Elisha fall sick: once when he repulsed Gehazi with both hands;[38] a second time when he incited bears against children;[39] and a third with the sickness whereof he died, as it is written, Now Elisha was fallen sick of his sickness whereof he died.[36]

BUT, BEFORE THEY BEGIN WORK, GO OUT AND TELL THEM, '[I ENGAGE YOU] ON CONDITION THAT YOU HAVE NO OTHER CLAIM UPON ME BUT BREAD AND PULSE' etc.

R. Aha, the son of R. Joseph, said to R. Hisda: Did we learn, 'Bread [made] of pulse,' or 'bread and pulse'? — He replied: In very truth, a waw ['and'] is necessary[40] as large as a rudder on the Libruth.[41]

R. SIMEON B. GAMALIEL SAID: IT WAS UNNECESSARY [TO STIPULATE THUS]: EVERYTHING DEPENDS ON LOCAL CUSTOM. What does EVERYTHING add?[42] — It adds that which has been taught: If one engages a labourer, and stipulates, '[I will pay you] as one or two townspeople [are paid],' he must remunerate him with the lowest wage [paid]: this is R. Joshua's view. But the Sages say: An average must be struck.[43] MISHNAH. NOW, THE FOLLOWING [LABOURERS] MAY EAT [OF THAT UPON WHICH THEY ARE EMPLOYED] ACCORDING TO SCRIPTURAL LAW: HE WHO IS ENGAGED UPON THAT WHICH IS ATTACHED TO THE SOIL WHEN ITS LABOUR IS FINISHED,[44] AND UPON THAT WHICH IS DETACHED FROM THE SOIL BEFORE ITS LABOUR IS COMPLETED,[45] PROVIDING THAT IT IS SOMETHING THAT GROWS FROM THE EARTH. BUT THE FOLLOWING MAY NOT EAT: HE WHO IS ENGAGED UPON THAT WHICH IS ATTACHED TO THE SOIL

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(1) Ibid. XIX, 3.

(2) In declining his invitation.
(3) Ibid. XVIII, 5.
(4) Ibid. 7 — very much more than he offered.
(5) Ibid. XXIII, 15.
(6) Ibid. 16.
(7) Centenarius = 100 manehs; a maneh = 100 zuz = 25 shekels.
(8) Hence he gave him 400 centenaria, instead of ordinary shekels as he demanded at first: this is deduced from the phrase 'current money with the merchant', implying that it was recognised everywhere as a shekel.
(9) Ibid. XVIII, 6: And Abraham hastened into the tent unto Sarah, and said, Make ready quickly three measures of קמח סלת ; the two words being apparently mutually exclusive.
(10) [Thus Abraham had to give her clear and specific instructions to provide fine meal; v. Meklenburg, J.Z. הכתב והקבלה a.l.]
(11) Ibid.
(12) Ibid. 8.
(13) Probably the disputant. [Or perhaps name of a place; v. Klein, MGWJ, 1920, P. 192.]
(14) V. Glos.
(15) I.e., he treated hullin as consecrated food, which may not he eaten when defiled.
(16) And so defiled the bread she had baked. As she was already old, the phenomenon was an earnest of the rejuvenation which was to make the birth of Isaac possible.
(17) Ibid. 9.
(18) And therefore kept herself secluded.
(19) By impressing him with her modesty.
(20) [The wine-cup over which the Grace after meals is recited and which is partaken by all the guests. V. Ber. 51a.]
(21) And they said unto him, אליו , is written איו ; איו means, 'where is he?'
(22) Thus they asked Sarah, Where is he (sc. Abraham)' just as they asked him about her (Tosaf.). [Rashi interprets: that a man should enquire (of the host) about the hostess. On dotted letters, v. Sanh. (Sonc. ed.) p. 285, n. 3.]
(23) According to Tosaf.'s interpretation of the preceding dictum, this question cannot refer to it, but to the literal meaning of the verse, that they enquired after Sarah.
(24) Ibid. 12.
(25) Ibid. 12.
(26) Ibid. 13.
(27) [I.e., God did not report that part of her statement which referred to Abraham's old age, דעת זקנים , a.l.]
(28) Ibid. XXI, 7.
(29) Seeing that she had only one.
(30) Ibid. XXV, 19.
(31) I.e., old age did not mark a Person.
(32) Because they looked exactly alike.
(33) Gen. XXIV, 1. He is the first mentioned to have been ill.
(34) One lived his allotted years in full health and then died suddenly.
(35) Ibid. XLVIII, 1; v. preceding note.
(36) II Kings XIII, 14.
(37) Lit., 'with a different sickness'.
(38) V. Sanh. 107b.
(39) V. II Kings II, 23f.
(40) I.e., bread and beans.
(41) Libruth, a river or canal, unidentified. [For various attempts to explain the phrase. v. Perles, J. Beitrage z. rab. Sprach u. Alter., 1893, p. 6.]
(42) V. p. 496, n. 3.
(43) And R. Simeon b. Gamaliel's principle teaches the view of the Sages.
(44) I.e., when it is removed from the soil.
(45) I.e., before it reaches the stage of being liable to tithes or the 'separation of dough'.

Talmud - Mas. Baba Metzia 87b

BEFORE ITS LABOUR IS COMPLETED, UPON THAT WHICH IS DETACHED FROM THE SOIL AFTER ITS LABOUR IS COMPLETED,[1] AND UPON THAT WHICH DOES NOT GROW FROM THE SOIL.[2]

GEMARA. Whence do we know these things? — It is written, When thou comest into thy neighbour's vineyard, then thou mayest eat.[3] We have found [this law to be true of] a vineyard: whence do we know it of all [other] things? We infer [them] from the vineyard: just as the vineyard is peculiar in that it [sc. its products] grow from the earth, and at the completion of its labour[4] the labourer may eat thereof; so everything which grows from the soil, the labourer may eat thereof at the completion of its work. [But, might it not be argued:] As for a vineyard, [the worker's privilege may be due to the fact] that it is liable to [the law of] gleanings, [which other cereals are not]? — We, deduce it[5] from the standing corn. But how do we know it of standing corn itself? — Because it is written, When thou comest into the kamath [standing corn] of thy neighbour, then thou mayest pluck the ears with thine hand.[6] But [may you not argue:] as for standing corn, that is because it is liable to hallah?[7] (And how do you know that this kamah means [only] such standing crops as are liable to hallah: perhaps Scripture means all standing crops?[8] — That is derived from the use of kamah in two places. Here it is written, When thou comest into the kamath [standing corn of] thy neighbour; whilst elsewhere it is written, from such time as thou beginnest to put the sickle to the kamah [corn]:[9] just as there, a kamah which is liable to hallah is meant, so here too.) [Hence, repeating the difficulty] one may refute [the analogy drawn from standing corn]: as for standing corn, that is because it is liable to hallah! — Then let the vineyard prove it. As for a vineyards that is because it is liable to [the law of] gleanings! — Let the standing corn prove it. And thus the argument revolves: the peculiarity of one is not that of the other, and vice versa. The feature common to both is, they grow from the soil, and the worker may [thus] eat of them when their labour is being finished; so also, everything which grows from the soil, when at the completion of its labour, the worker may eat of it. [No, this does not follow, as it might be argued that] their common feature is that both are used in connection with the altar;[10] and so olives will be inferred too, since they also are thus used?[11] (But are olives inferred through [partaking of] a common feature? They themselves are designated kerem,[12] as it is written, And he burnt up both the shocks and the standing corn, and also the olive kerem.[13] — R. Papa said: It is designated olive kerem, but not simply kerem.) But still, the difficulty remains![14] — Samuel answered: Scripture saith, and a sickle [thou shalt not move unto thy neighbour's standing corn], which [i.e., the 'and'] extends the law to everything which requires a sickle. But this word 'sickle' is needed [to intimate that] when the sickle [is used] you may eat, but not otherwise![15] — That follows from, but thou shalt not put any in thy vessel.[16] Now, this [deduction] is satisfactory in respect of that which requires the sickle, but what of that which does not?[17] — But, said R. Isaac, the Writ says, kamah,[18] to extend the law to everything which stands upright [from the soil].[19] But have you not employed the analogy of kamah, written twice, to shew that it means [only] such standing crops as are liable to hallah?[20] — That was only before the word 'sickle' was adduced: now, however, that 'sickle' has been quoted, everything which needs a sickle is embraced, even if not liable to hallah; hence, what is the purpose of kamah? To include everything which stands upright.

But now that we infer [these laws] from 'sickle' and kamah, what is the need of, 'When thou comest into thy neighbour's vineyard'?[21] — To teach its [detailed] laws, replied Raba. As it has been taught: When thou comest — 'coming' is mentioned here; and elsewhere too it is said, [Thou shalt not oppress a hired servant . . . . At this day thou shalt give him his hire,] neither shall the sun come down upon it:[22] just as there Scripture refers to an employee, so here too. 'Into thy neighbour's vineyard', but not into a heathen's vineyard.[23] Now, on the view that the robbery of a heathen is forbidden, it is well: but if it be held permitted — does an employee need [a verse to grant him permission]![24] — He interprets 'into thy neighbour's vineyard', as excluding a vineyard of

hekdesh.[25]

'Then thou mayest eat', but not suck out [the juice]; 'grapes', but not grapes and something else;[26] 'as thine own person', as the person of the employers, so the person of the employee: just as thou thyself[27] mayest eat [thereof] and art exempt [from tithes], so the employee too may eat and is exempt.[28] 'To thy satisfaction': but not gluttonously; 'but thou shalt not put any in thy vessel': [only] when thou canst put it into thine employer's baskets, thou mayest eat, but not otherwise.[29]

R. Jannai said: Tebel[30] is not liable to tithes

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(1) In the sense stated in n. 2.

(2) E.g., one who milks cows or makes cheeses may not partake of the milk or cheese.

(3) Deut. XXIII, 25. Further on it is explained that the verse refers to a labourer.

(4) I.e., when the grapes are vintaged.

(5) That the law applies to other products too.

(6) Ibid. 26.

(7) V. Glos.

(8) E.g., crops of beans, which are not liable to hallah.

(9) Ibid. XVI, 9. The reference is to the 'omer of barley brought on the second day of Passover. cf. Lev. XXIII, 10: barley is liable to hallah.

(10) Wine for libations and meal for meal offerings.

(11) Most of the meal offerings were mingled with oil.

(12) The word translated 'vineyard' in Deut. XXIII, 25.

(13) Judg. XV, 5.

(14) That the common feature is that they are employed in connection with the altar.

(15) I.e., when the cereals are ready to be cut off with the sickle.

(16) Deut. XXIII, 25. This shews that the reference is to those which can be put in a vessel. sc. removed from the soil.

(17) E.g., the harvesting of dates. How do we know that the labourer may eat of them?

(18) Lit., 'standing', E.V.: standing corn.

(19) I.e., all crops.

(20) V. supra.

(21) For the vineyard too may be deduced thus.

(22) Ibid. XXIV, 14, 15.

(23) The text has כותי , Cuthean, but under the influence of the censorship this word was frequently substituted for Gentile. The deduction is, only in an Israelite's vineyard is the labourer enjoined, but thou shalt not put any in thy vessel, but not in a Gentile's.

(24) The robbery of a heathen, even if permitted, is only so in theory, but in fact it is forbidden as constituting a 'hillul hashem', profanation of the Divine Name. But the consensus of opinion is that it is Biblically forbidden too, i.e., even in theory; v. H.M. 348, 2, and commentaries a.l.; Yad, Genebah, 1, 2; 6, 8; v. however, n. 9.

(25) V. Glos. The labourer is not permitted to pluck and eat grapes from a vineyard belonging to the sanctuary. [The interpretation of the passage follows Rashi, who was driven to adopt it, having regard to the text he had before him. The difficulty of this interpretation is, however, evident. It not only involves a difference in the explanation of the same deduction as applying to a heathen (v. n. 7) and as applying to hekdesh, but it runs counter to the passage in Sanh. (v. Sonc. ed. pp. 388f), which makes it clear that robbery of a heathen was never condoned, hut always regarded as an offence, though it was non-actionable. Moreover, the condemnation of taking usury from a heathen (supra 70b) should be sufficient to dispel all doubt as to the Rabbinic attitude on the matter. A solution to the Problem is supplied by the variant (v. D.S. a.l.): 'Now on the view that the robbery of a heathen is forbidden, it is well; but if it is held to be permitted, what can be said?' The argument would accordingly run as follows: 'If it is held that the robbery of a heathen is forbidden (to be kept) and is then on all fours with that of an Israelite, it is understood that the Law has permitted the employee to pluck and eat the grapes only in an Israelite's vineyard, but not if the vineyard belonged to a heathen; but if the robbery of a heathen is permitted, i.e., to be kept, is it possible that the Law, whilst allowing a delinquent to enjoy the property stolen from a heathen, should forbid the employee to pluck the grapes from the employer's vineyard?']

(26) I.e., the labourer must not make a meal of bread and grapes.
(27) To whom the grapes belong.
(28) Until the grapes have been turned into wine and conducted into the pit, whither the expressed juice runs, their owner may eat of them without tithing. Should he, however, sell them before that, they are immediately subject to tithes, which must be rendered by the purchaser before eating. Now, I might think that since the employee eats them in part remuneration for his labour, they are as bought with his labour, and therefore may not be eaten without tithing. Therefore this word כנפשך (lit., 'as thy own soul,' 'person') intimates that he is on the same footing in this respect as the owner.
(29) V. supra p. 505, n. 9.
(30) V. Glos.

Talmud - Mas. Baba Metzia 88a

until it sees the front of the house,[1] for it is written, I have brought away the hallowed things out of mine house.[2] R. Johanan said: Even a courtyard establishes liability to tithes, for it is written, that they may eat at thy gates and be filled.[3] But according to R. Johanan, is it not written, out of mine house? — He can answer you: [It teaches that] the court yard must be similar to the house [in order to impose liability]: just as a house is guarded, so also must the courtyard be guarded.[4] But R. Jannai! Is it not written, 'in thy gates'? — That is required [to shew] that it must be brought into [the house] through the gates, but not over the roof or through [back] enclosures, when no liability is established.

R. Hanina of Be-Hozae[5] raised an objection: As thine own person: as the person of the employer, so the person of the employee; just as thou thyself mayest eat [thereof] and art exempt [from tithes], so also the employee may eat, and is exempt. This thus implies that a purchaser is liable:[6] and does it not mean even in the field?[7] — R. Papa said: This refers to a fig tree growing in a garden, but with its branches inclining to the court-yard,[8] or, to the house, on the view that [it must see the front of] the house. If so, even the [first] owner should be liable![9] — The owner's eyes are upon the [whole] fig-tree, whereas the buyer has eyes only for his purchase.[10] But is a purchaser at all liable by Biblical law? Has it not been taught: Why were the bazaars of Beth Hini[11] destroyed? Because they based their actions upon Scripture.[12] They used to say,

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(1) I.e., unless it is taken into the house through the front door, not through the roof or backyard.
(2) Ibid. XXVI, 13: the deduction presumably is thus: as it is openly brought out of the house through the front, so it must have been taken in, in order to become 'hallowed', i.e., tithed.
(3) Ibid. 22: 'they' refers to the Levite etc., who eat the tithes 'at thy gates', which implies that the crops had not entered the house but remained at 'thy gate', i.e., in the courtyard.
(4) But if free and open to all, it establishes no liability.
(5) [The Modern Khuzistan, province S. W. Persia, Obermeyer, op. cit. pp. 204ff.]
(6) V. P. 507, n. 3.
(7) For just as the employee eats it on the field, by implication, if a purchaser desires to eat thereof on the field, he is liable, though it has not yet seen the front of the house or the courtyard.
(8) So that immediately the fruit is plucked it sees the front thereof.
(9) For immediately it is plucked it fulfils the conditions of liability by seeing the front of the house or court.
(10) I.e., the owner does not regard a single branch; therefore, since the whole tree does not face the house, he is exempt. But the purchaser is interested only in his purchase; hence, if the branch from which his figs are gathered faces the house or courtyard, he is liable.
(11) Bethania, a place near Jerusalem; Jast. [The parallel passage in J. Pe'ah I, has the bazaars of Beth Hanan, v. Sanh. (Sonc. ed.) p. 267, n. 4. These were stores set up on the Mount of Olives for the supply of pigeons and other commodities required for sacrifices, and owned by the powerful priestly family, to whom they proved a source of wealth. They were destroyed three years before the fall of Jerusalem; v. Derenbourg, Essai, p. 468, and Buchler, Priester und Cultus, p. 189.]

(12) Disregarding Rabbinical law.

Talmud - Mas. Baba Metzia 88b

Thou shalt truly tithe . . . And thou shalt eat, [implies] but not if thou sellest it; the increase of thy seed, but not if it is purchased![1] — But [the liability of a purchaser] is only by Rabbinic law, and the verse[2] is a mere support. Then what is the purpose of, 'as thine own person?[3] — As has been taught: 'As thine own person': just as if thou muzzlest thine own [mouth], thou art guiltless, so also, if thou muzzlest [the mouth of] thy labourer, thou art free [from transgression].[4]

Mar Zutra raised an objection: What is their harvesting time for [liability to] tithes? In the case of cucumbers and gourds, when they are blossomed.[5] And R. Assi interpreted this: As soon as their blossoms are shed. Now, does that not mean, as soon as their blossoms are shed even in the field?[6] — No, only in the house. If so, instead of saying, 'as soon as', etc., he [the Tanna] should state [they are not liable] 'until their blossoms are shed'.[7] Had he stated 'until etc.', I would think that it means until the shedding of their blossom is complete; therefore we are taught, by stating 'as soon as' etc., that it means as soon as the shedding commences.

Mar Zutra, the son of R. Nahman, raised an objection: Its harvesting time in respect of tithes, in that the prohibition of tebel is transgressed,[8] is when its work is finished. And what is the finishing of its work? When it is brought in. Now, surely, 'when it is brought in' means, even in the field?[9] — No; when it is brought into the house, that is the completion of its work. Alternatively, R. Jannai's dictum[10] refers only to olives and grapes, which are not gathered into a threshing floor;[11] but in the case of wheat and barley, the threshing floor is distinctly stated.[12]

We now know that man [may eat when employed upon] what is attached to the soil, and an ox of what is detached;[13] whence do we know that man may eat of what is detached?[14] — It follows a minori, from an ox: if an ox, which does not eat of what is attached,[15] may nevertheless eat of what is detached; then a man, who may eat of what is attached,[16] may surely eat of what is detached! As for an ox, [it may be argued] that [sc. the privilege mentioned] is because you are forbidden to muzzle him; can you assume the same of man, whom you are not forbidden to muzzle?[17] (But then let the muzzling of man be interdicted, a fortiori, from an ox: if you must not muzzle an ox, whose life you are not bidden to preserve, then man, whose life you are bidden to preserve,[18] you must surely not muzzle him! — Scripture teacheth, 'As thine own person', so is the person of the labourer: just as 'thine own person', if you muzzle [yourself], you are free [from penalty], so also, if you muzzle the labourer, you are free.) Then [the question remains], whence do we know that man [may eat when engaged upon] what is attached? — Scripture saith, '[When thou comest into] the standing corn . . . [but thou shalt not move a sickle unto thy neighbour's] standing corn,' — twice: since its purpose is not to teach that man may eat of what is attached,[19] apply it to man, in respect of what is detached. R. Ammi said: That man may eat of what is detached, no [redundant] verse is necessary. For it is written, 'When thou contest into thy neighbour's vineyard': does this not hold good even if he was hired for porterage?[20] And yet the Torah states that he may eat [of the grapes].

Whence do we know than an ox [may eat] of what is attached? — It follows, a minori, from man: if man, who does not eat of what is detached,[21] may eat of what is attached; then an ox, which may eat of what is detached, may surely eat of what is attached! — As for man, [may it not be argued,] that [sc., the privilege mentioned] is because you are bidden to preserve his life; will you say the same of an ox, whose life you are not bidden to preserve? (But then infer a duty to preserve the life of an ox,[22] a minori: if man, though you are not forbidden to muzzle him, you are commanded to preserve his life; then an ox, which you may not muzzle, you are surely commanded to keep it alive!? — Scripture saith, That thy brother may live with thee, — thy brother, but not an ox.) Then [the question remains,] whence do we know that an ox may eat of what is attached? — Scripture

saith, '[When thou contest into] thy neighbour's [vineyard] . . . [When thou comest into the standing corn of] thy neighbour' — twice: since it[23] is unnecessary for man in respect of what is attached, apply it to an ox in respect of what is attached.

Rabina said: Neither for a man, in respect of what is detached, nor for an ox, in respect of what is attached, are the [above] verses necessary; because it is written, Thou shalt not muzzle the ox, when he treadeth out the corn.[24]

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(1) V. Deut. XIV, 22f. Hence, only when the farmer consumes his crops himself must he tithe it, but not if he sells it; likewise, only the increase of one's own seed is liable, but not bought grain. And this is designated Biblical law.

(2) Sc. כנפשך , exempting the labourer.

(3) V. p. 507, n, 3 end. Since, however, a purchaser is exempt by Biblical law, it follows, even without a verse, that a labourer is exempt.

(4) I.e., although the labourer is entitled to eat, yet if the employer stipulates that he shall not, or forcibly prevents him — metaphorically referred to as muzzling, cf. Deut. XXV, 4: Thou shalt not muzzle the ox when he treadeth out the corn — he is not punished for transgressing the injunction just quoted.

(5) Ma'as. I, 5.

(6) Though they have not yet faced the courtyard or the house.

(7) 'As soon as etc.,' implies that wherever they are the shedding renders them liable. The suggested emendation, however, would imply, even when brought into the house, they are still not liable until, etc.

(8) Sc. if one eats anything thereof without tithing it. Before it becomes liable to tithes it is permissible to make a light meal of it, without transgressing the prohibition of tebel.

(9) 'Brought in' being understood in the sense of 'collected into a stack'.

(10) Supra 87b, bottom.

(11) Hence the liability to tithes is established only when they 'see the face of the house.'

(12) Num. XVIII, 30: Then it shall be counted unto the Levites as the increase of the threshing floor. This shews that in the case of cereals the threshing floor establishes the Levite's right to the tithe.

(13) Deut. XXV, 4. Threshing follows reaping, when the crops are no longer in the earth.

(14) As stated in the Mishnah.

(15) I.e., which Scripture does not explicitly permit to do so, though it is inferred below.

(16) I.e., permission is explicitly granted: Deut. XXIII, 25f.

(17) V. supra p. 509, n. 5.

(18) V. Lev. XXV, 36.

(19) It being unnecessary to state 'standing corn' twice for that purpose.

(20) I.e., for carrying the cut-off grapes to the press or elsewhere; for Scripture does not specify the nature of the work.

(21) V. p. 510, n. 7.

(22) I.e., until it is actually needed for food, one should be bidden to keep it in good health and save it from an unnecessary death.

(23) The repetition of 'thy neighbor'.

(24) Deut. XXV, 4.

Talmud - Mas. Baba Metzia 89a

Now consider: everything is included in this prohibition of muzzling, because we employ the analogy of 'ox' written here and in the case of the Sabbath:[1] then Scripture should have written, 'Thou shalt not thresh with muzzled [animals]:' why write, 'ox'? To assimilate the muzzler [sc. man] to the muzzled [sc. ox and animals in general], and vice versa. Just as the muzzler [man] may eat of what is attached, so the muzzled may eat of what is attached; and just as the muzzled may eat of what is detached, so the muzzler may eat of what is detached.

Our Rabbis taught: 'Threshing':[2] just as threshing is peculiar in that it applies to what is grown in the earth, and the labourer may eat whilst employed thereon; so also, of everything which is grown

in the earth, the labourer may eat. Hence milking, pressing thick milk,[3] and cheese-making are excluded: since they are not earth-grown, the labourer may not partake thereof. But why is this needed? Does it not follow from, 'When thou comest into thy neighbour's vineyard'? — It is necessary: I might think, since 'kamah' is written to include everything that stands upright,[4] it also embraces what is not earth-grown; therefore we are taught otherwise.

Another [Baraitha] teaches: 'Threshing': just as threshing is peculiar in that it is an employment at the completion of its labour,[5] and the worker may eat whilst engaged thereon; so during every thing which is done at the completion of its labour, the worker may eat. Hence weeding amongst garlic and onions is excluded: as it is not the completion of the work,[6] the labourer may not eat. But why is this necessary?[7] Does it not follow from, but thou shalt not put any in thy vessel?[8] — It is necessary, [to intimate that he may not eat] even when removing small onions from amongst large ones.[9]

Another [Baraitha] taught: 'Threshing': just as threshing is peculiar as being a process which does not complete its work [to render it liable] to tithes, and the labourer may eat thereof; so also during everything which does not complete the work [to subject it] to tithes, the labourer may eat. Hence separating dates and dried figs [sticking together] is excluded: since its work is finished in respect of tithes, the worker may not eat. But has it not been taught: When separating dates and dried figs, the worker may partake thereof? — R. Papa replied: That refers to half-ripe dates.[10]

Another [Baraitha] taught: 'Threshing': just as threshing is peculiar in that it is a process which does not finish its work for hallah,[11] and the labourer may eat whilst engaged thereon; so during every process which does not finish its work in respect of hallah, the labourer may eat. Thus kneading, shaping [the dough] and baking are excluded; since its work is completed in respect of hallah, the worker may not eat whilst engaged thereon. But its work is complete in respect of tithes![12] — There is no difficulty: the reference is to the Diaspora,[13] where there are no tithes. If so, hallah too is not practised![14] — But after all, this refers to Palestine, yet there is no difficulty. For the reference is to the seven years of conquest and seven years of division.[15] For a Master said: In the seven years of conquest and the seven of division there was a liability to hallah, but not to tithes. But is it the tithing that is responsible? It is the finishing of the work that is responsible![16] — But, said Rabina, combine [the two Baraithas] and read [thus]: 'Threshing': just as threshing is peculiar in that its work is not complete in respect of tithes and hallah, and the worker may eat whilst engaged thereon, so during everything, the work of which is not complete in respect of tithes and hallah, the labourer may eat.[17]

The scholars propounded: Is the labourer permitted to parch [the ears of corn] at a fire and eat them? Is it the equivalent of [eating] grapes together with something else,[18] or not?[19] — Come and hear: An employer may give his employees wine to drink, that they should not eat many grapes; [on the other hand,] the labourers may dip their bread in brine, that they should eat many grapes![20]

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(1) V. B.K. 54b. Just as 'ox' is singled out in connection with the Sabbath, yet at the same time Scripture adds that all animals must rest (Deut. V. 14), so by 'ox' here all animals are meant.

(2) I.e., the law forbidding the muzzling of an ox during 'threshing', 'treading out the corn', from which it was deduced that both man and beast may eat of that upon which they labour.

(3) In the process of making a certain kind of cheese,

(4) V. supra.

(5) Sc. of harvesting.

(6) Of producing these vegetables.

(7) Sc. the analogy from threshing.

(8) Deut. XXIII, 25. V. p. 505, n. 9.

(9) I.e., onions which never grow to a large size. These were removed to give the others room for more vigorous growth. Now, although these are 'Put into the employer's basket,' the labourer may not eat, not being engaged upon the

completion of the work.

(10) I.e., a kind of date and fig which does not fully ripen on the tree but only in the house. The 'separating' spoken of here means before they have ripened in the house, and so are not finished in respect of tithes.

(11) V. Glos.

(12) And, as stated above, that alone forbids the worker to eat; why then base the ruling upon hallah?

(13) Lit., 'outside the land,' sc. Palestine.

(14) Though a small Portion of dough is separated and burnt even in the Diaspora, that is only symbolical; but the real law of hallah requires that a definite portion be given to the priests, and that is not practised outside Palestine.

(15) I.e., the Baraitha treats of the fourteen years during which Palestine was conquered and allotted to the tribes by Joshua.

(16) As deduced by analogy from 'threshing'. And therefore, whether the law of tithes is in force or not, once the stage of threshing or its equivalent is reached, when there would be a liability to tithes if the law were in force, the labourer may not eat. And so the difficulty remains: why exclude kneading on the grounds of liability to hallah, seeing that threshing preceded it?

(17) Hence, if it is a process which completes the work for tithes, and there is no further stage to subject it to hallah, e.g., the separating of dates, the labourer may not eat. If, however, its final stage is liability to hallah, e.g., wheat, the last stage of which is the kneading, when it is subject to hallah, if the worker is engaged upon an earlier stage, though it is already liable to tithes, he may eat. Rashi and Tosaf.

(18) Which is forbidden. Supra.

(19) For it may be argued that since grapes may not be eaten with bread, because thereby an unreasonably large quantity is consumed, the same holds good of parched corn, which is more palatable than unparched.

(20) The moistened bread creating an appetite. So, by analogy, a labourer may parch the corn.

Talmud - Mas. Baba Metzia 89b

— As for making the man fit [to eat more], of that there is no question: our problem is only whether the food may be rendered more appetising?[1] What is the ruling? — Come and hear: Labourers may eat the top most grapes of the [vine-] rows,[2] but must not parch them at the fire! — There it [the prohibition] is on account of loss of time:[3] but our problem arises when he has his wife or children with him; what then?[4] — Come and hear: He [the labourer] may not parch [the crops] at the fire and eat, nor warm them in the earth,[5] nor crush them on a rock; but he may crush them between his hands and eat them! — There [too] it is on account of loss of time. That too is logical: for should you think it[6] is because he [thereby] makes the fruit tasteful, what tastefulness is there [acquired by crushing them] on a rock? — [No; the reasoning is incorrect,] because it is impossible for it not to become slightly [more] tasteful.

Come and hear: Workers engaged in picking figs, harvesting dates, vintaging grape, or gathering olives, may eat, and are exempt [from tithes],[7] because the Torah privileged them. But they must not eat these with their bread, unless they obtain permission from the owner, nor dip them in salt and eat![8] — Salt is certainly the same as grapes and something else.[9]

[It has just been stated:] 'Nor dip them in salt and eat.' But the following contradicts it: if one engages a labourer to hoe and to cover up the roots of olive trees, he may not eat.[10] But if he engages him to vintage [grapes], pluck [olives], or gather [fruit], he may eat, and is exempt [from tithes], because the Torah privileged him. If he [the labourer] stipulates [that he is to eat], he may eat then, singly, but not two at a time.[11] And be may dip them in salt and eat. Now, to what [does this refer]? Shall we say, to the last clause? But having stipulated, he can [obviously] eat just as he wishes! Surely then it must refer to the first clause![12] — Abaye answered: There is no difficulty: here it [the second Baraitha] refers to Palestine; there [the first] to the Diaspora. In Palestine, dipping [in salt] establishes [a liability to tithes]; in the Diaspora, it does not.[13] Raba demurred: Is there aught for which dipping establishes [a liability] in Palestine, but not in the Diaspora, so that it is permitted from the very outset?[14] But, said Raba, both in palestine and without, for one [fig] salting does not

establish [liability],[15] but for two it does. But if he [sc. the labourer] stipulates [that he is to eat], whether he salts or not, he may eat [them] one by one, but not in twos. [Hence:] If he neither stipulates nor salts them, he may eat them two by two; if he salts them, he may eat them one by one, but not two by two, even if he obtained the employer's permission,[16] because they become tebel in respect of tithes, the salting establishing [that liability].[17] And whence do we know that salting establishes [liability only for] two? — Said R. Mattena: Scripture saith, For he hath gathered them as the sheaves to the threshing floor.[18]

Our Rabbis taught: When cows stamp [hullin] grain[19]

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(1) Lit., 'fit'.

(2) They may conserve their appetite till they reach these, which being more exposed to the sun than the lower ones, are sweeter (Rashi).

(3) Lit., 'cessation of work'.

(4) There is no loss of time, as they can singe it.

(5) By placing them in warm soil.

(6) I.e., the Prohibition referred to.

(7) V. p. 507, n.3.

(8) Now, it was assumed that dipping in salt is forbidden because it renders it more appetising, and therefore parching too will be forbidden.

(9) I.e., no deduction may be drawn from this, for salt is an addition. Yet it may be permissible to parch corn, since nothing is added.

(10) Of the olives, because it is not the finish of the work.

(11) Two together count as a store, therefore are subject to tithes. Since the labourer stipulates that he is to eat, it is part of his payments and hence ranks as bought, and therefore he may not eat them; v. supra 88a.

(12) Where no stipulation was made: hence it contradicts the first Baraitha.

(13) When one dips an olive in salt he shews that he attaches value to it, which renders it completely ready for eating, and precludes further storing. Hence, in Palestine, where tithing is Biblical, the dipping imposes a liability. But in the Diaspora, where it is only Rabbinical and consequently less stringent, it does not.

(14) Sc. to partake thereof without having rendered the tithes. Though tithes in the Diaspora are only Rabbinical, the Rabbis formulated the law on the same conditions as in Palestine, and therefore, whatever establishes a liability there establishes it in the Diaspora too.

(15) Being of insufficient value.

(16) For otherwise, not having stipulated, he may not salt them at all, as stated above.

(17) V. p. 515, n. 7. Only when the stage of liability is reached it is called tebel. — Thus the first Baraitha refers to eating two at a time; no stipulation having been made, they may not be dipped in salt, But the second refers to a case where a stipulation was made; since the mere stipulation establishes a liability for two, it follows that he must eat the fruit singly, and that being so, the Tanna can state in general terms that he may salt them.

(18) Mic. IV, 12. Thus there can be no threshing floor, i.e., storage, the final stage of which imposes liability, without gathering, and there cannot be gathering of less than two (actually, the Heb. has עמיר sing., but the plural must be understood).

(19) V. Glos. Barley grain was soaked in water, dried in an oven, and threshed by the treading of cows, which removed the husks.

Talmud - Mas. Baba Metzia 90a

or thresh terumah and tithes,[1] there is no prohibition of, Thou shalt not muzzle [the ox when he treadeth out — i.e., threshes — his corn];[2] but for the sake of appearances[3] he must bring a handful of that species and hang it on the nosebag at its mouth. R. Simeon b. Yohai said: He must bring vetches and hang them up for it, because these are better for it than anything else. Now the following contradicts it: When cows are stamping on grain, there is no prohibition of, Thou shalt not muzzle; but when they thresh terumah or tithes, there is. When a heathen threshes with an Israelite's cow, that

prohibition is not transgressed;[4] but if an Israelite threshes with a heathen's beast, he does. Thus the rulings on terumah are contradictory, and likewise those on tithes. Now, as for the rulings on terumah, it is well, and there is no difficulty: the one refers to terumah [itself]; the other to the produce of terumah;[5] but as for the rulings on tithes, these are certainly difficult. And should you answer, there is no contradiction in the rulings on tithes either, one referring to tithes and the other to the produce of tithes[6] — as for the produce of terumah, the answer is fitting, since it is terumah;[7] but the produce of tithes is hullin. For we learnt: The produce of tebel and the produce of the second tithe[8] are hullin![9] — But there is no difficulty: the one refers to the first tithe; the other to the second.[10] Alternatively, both refer to the second tithe, yet there is no difficulty: the one [sc. the first Baraitha] agrees with R. Meir; the other with R. Judah. [Thus:] The one agrees with R. Meir, who maintained that the second tithe is sacred property;[11] the other with R. Judah, who held it secular property.[12] [And] how is it conceivable?[13] — E.g., if he [the owner] anticipated [the tithing] whilst it was yet in ear. But [even] on R. Judah's view, does it not require the wall [of Jerusalem]?[14] — He threshed it within the walls of Beth Pagi.[15] Another alternative is this: there is no difficulty: one refers to a certain tithe, the other to a doubtful tithe.[16] Now that you have arrived at this [solution], there is no contradiction between the two rulings on terumah too: the one refers to certain terumah, the other to doubtful terumah. Now, that is well with respect to a doubtful tithe, which exists. But is there a doubtful terumah? Has it not been taught: He[17] also abolished the widuy[18] and enacted the law of demai. Because he sent [messengers] throughout the territory of Israel, and saw that only the great terumah was rendered![19] — But there is no difficulty: the one refers to terumah of the certain tithe; the other to terumah of the doubtful tithe.

The scholars put a problem to R. Shesheth: What if it ate and excreted?[20] Is it [sc. the prohibition of muzzling] because it [the crops] benefits her, whereas here it does not; or because it sees and is distressed [through inability to eat], and here too it is distressed [if muzzled]? — R. Shesheth replied: We have learnt it: R. Simeon b. Yohai said: He must bring vetches and hang them up for her, because these are better for her than anything else. This proves that the reason is that it benefits her. This proves it.

The scholars propounded: May one say to a heathen, ‘Muzzle my cow and thresh therewith’? Do we say, the principle that an instruction to a heathen is a shebuth[21] applies only to the Sabbath, [work] being forbidden on pain of stoning;[22] but not to muzzling, which is prohibited merely by a negative precept: or perhaps there is no difference? — Come and hear: If a heathen threshes with the cow of an Israelite, he [the Israelite] does not infringe the precept, Thou shalt not muzzle! [This implies,] He merely does not infringe it,[23] yet it is forbidden![24] — Actually, it is not even forbidden; but because the second clause states that if an Israelite threshes with a heathen's cow, he does infringe;[25] the first clause too teaches that he does not infringe.

Come and hear: For they [the scholars] sent to Samuel's father: What of those oxen

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(1) Though stated above that at the stage of threshing there is no liability of tithes, yet the owner can separate the terumah and the tithes, if he wishes, whilst the grain is in the ear; in that case the cows thresh ears of corn that are actually terumah or tithes.

(2) Deut. XXV, 4; stamping, because that is a later stage. With respect to terumah, (v. Glos.) etc., two reasons are given: (i) Since threshing of terumah is not usual, the injunction could not have applied to it (Rashi); (ii) . . . when he treadeth out his corn, excludes terumah, which is entirely prohibited to an Israelite (i.e., not a priest), and tithes, which are considered as sacred property, though not forbidden, and therefore not ‘his’ (Tosaf.).

(3) That one who sees it should not think he is transgressing.

(4) I.e., the Jew does not transgress by permitting the Gentile to muzzle his cow.

(5) With respect to the former there is no prohibitions as explained on p. 516, n. 7. But if it were sown and produced a further crop, Biblically speaking it is not terumah at all, but ordinary hullin, though by a Rabbinical enactment it ranks as such. Since the Rabbis cannot nullify a Scriptural prohibition, the injunction, Thou shalt not muzzle, remains in force.

The reason for this Rabbinical measure was that otherwise the Israelite might evade his obligations by separating terumah and then resowing it. Also, should a priest possess defiled terumah, which may not be eaten, he might keep it for resowing, when likewise it reverts to hullin by Scriptural law; but whilst keeping it he might forget its defiled nature and eat it.

(6) As in the case of terumah.

(7) I.e., by Rabbinical law, and therefore it is necessary to teach that in this respect the Scriptural law applies.

(8) Two tithes were separated; the first, given to the Levite, and the second, which was retained by the Israelite and eaten in Jerusalem, v. Deut. XIV, 22ff.

(9) As stated above, p. 516, n. 3, the crops are called tebel only when the stage of liability to this has been reached. Before that it is permissible to make a light meal thereof even without tithing, but not after. Now, if the stage of liability was reached, so that it became tebel, and it was resown, the produce is not tebel but hullin, and one may enjoy a light meal thereof before tithing. As for the second tithe, the Rabbis did not enact that its produce shall be second tithe too, as in the case of terumah, because there was no fear that the Israelite would keep and resow it, in order to evade his obligations, since the second tithe might be redeemed and eaten outside palestine, v. Ter. IX. 4.

(10) The first tithe is regarded as his corn, since an Israelite may eat it too, and without restriction of place, hence the prohibition of muzzling applies. But the second tithe, since it must be eaten in Jerusalem, is regarded as sacred property, and so not included in the prohibition (Tosaf.).

(11) Lit., 'property of the (Most) High.'

(12) Kid. 24a.

(13) That it should be a tithe before threshing: — The bracketed 'and' (וְ) is absent from our text and Rashi's, but given in Tosaf.

(14) I.e., since he tithed the crops in ear, nothing thereof is to be consumed — not even by beasts — outside the walls of Jerusalem. How then may the animal thresh it unmuzzled?

(15) The outer wall of Jerusalem, added to the original limits of the town; v. Sanh. (Sonc. ed.) p. 67, n. 9.

(16) Heb. דמאי . Corn purchased from the ignorant peasants, who were very lax in their rendering of tithes, had to be tithed by the purchaser, for fear that the vendor had not done so. This was called a doubtful tithe, and required only by Rabbinical law; therefore the prohibition of muzzling applies; v. p. 517, n. 2.

(17) Sc. John Hyrcanus.

(18) Lit., 'confession'; v. Deut. XXVI, 1-15. The declaration referred to is called widuy. But John Hyrcanus abolished it, because of the verse, I have brought away the hallowed things out of mine house, and also have given them unto the Levite, 'Them' refers to the first tithe, but according to the Talmud, after the return from Babylon Ezra enacted that it should be given to the priests, as a punishment to the Levites for their reluctance to return to the Holy Land. Since one could not truthfully say, I have given them unto the Levite, the recital was abolished.

(19) Because of the dread of the penalty involved — death at the hands of Heaven. The separation of terumah made by the Israelites and given to the priests was called 'the great terumah', to distinguish it from 'the terumah of the tithe', i.e., a tenth part given by the Levite, of the tithe he received, to the priest, and which had the higher sanctity of terumah. Since, then, even the irreligious rendered the great terumah, the law of demai would not have been enacted in respect thereto.

(20) Through suffering with diarrhoea.

(21) Lit., 'rest, abstention from work', and is mainly applied to types of work which, though not falling within the definition of labour forbidden on the Sabbath, are nevertheless prohibited as being out of keeping with its sacredness. To instruct a Gentile to work on the Sabbath is a shebuth, i.e., not actual labour, yet interdicted as not harmonising with the Sabbath. This is an instance where one may not instruct a Gentile to do what is forbidden to oneself, and the problem here is whether this prohibition applies to all forbidden acts.

(22) Hence it is unseemly to bid a Gentile do it.

(23) In the sense that he incurs punishment.

(24) For an Israelite to bid him to do this.

(25) And is punished.

Talmud - Mas. Baba Metzia 90b

which Arameans[1] steal [at the instance of the owners] and castrate?[2] He replied: Since an evasion

was committed with them, turn the evasion upon them [their owners], and let them be sold![3] — R. Papa replied: The Palestinian scholars[4] hold with R. Hidka, viz., that the Noachides are themselves forbidden to practise castration, and hence he [the Israelite, in instructing the heathen to do it,] violates, Ye shall not put a stumbling block before the blind.[5] Now, Raba thought to interpret: They must be sold for slaughter.[6] Thereupon Abaye said to him: It is sufficient that you have penalised them to sell.[7]

Now, it is obvious that an adult son is as a stranger;[8] but what of a minor son? — R. Ahi forbade it;[9] whilst R. Ashi permitted it. Meremar and Mar Zutra — others state, certain two hasidim —[10] interchanged with each other.[11]

Rami b. Hama propounded: What if one put a thorn in its [sc. the animal's] mouth?[12] [You ask, What] if one put [a thorn in its mouth]? Surely that is real muzzling![13] — But [the problem is], what if a thorn stuck in its mouth?[14] [Similarly,] What if one caused a lion to lie down outside [the field in which the ox was threshing]?[15] 'What if one caused a lion to lie down?' Surely that is actual muzzling! — But [the problem is], What if a lion lay down outside [of its own accord]?[16] What if one placed its [sc. the animal's] young outside the field?[17] What if it thirsted for water [and so could not eat]? What if he spread a leather cover over the grain to be threshed?[18] — Solve one of these problems from the following [Baraitha]. For it has been taught: The owner of the cow[19] may let it go hungry, that it should eat much of the grain it threshes; whilst on the other hand, the landowner may untie a bundle of [trodden] sheaves before the cow, that it should not eat much of the threshing![20] — There it is different, because it does eat nevertheless. Alternatively [it means], the field owner may untie a bundle of [trodden] sheaves in front of the cow before the commencement [of the threshing], so that it should not eat much of the corn that is threshed.[21]

R. Jonathan asked R. Simai: What if he muzzled it outside?[22] Does Scripture mean, [Thou shalt not muzzle] an ox when [i.e., at the time that] it thresheth,[23] whilst this is not [done] when it thresheth? Or perhaps Scripture meant, Thou shalt not thresh with a muzzled ox? — He replied: You may learn from your father's house.[24] Do not drink wine or strong drink, thou, nor thy sons with thee, when ye enter [into the tabernacle etc.].[25] Now, is it forbidden only when ye enter, yet one may drink before and then enter? But Scripture saith, And that ye may put difference between holy and unholy![26] Hence, just as there, when the priest has entered there must be no drunkenness, so here too: when threshing, the ox must not be in a muzzled state.

Our Rabbis taught: He who muzzles an ox or harnesses together [two] heterogeneous animals[27] is exempt [from punishment], and only he who threshes or drives them is flagellated.[28]

It has been stated: If one frightened it off[29] with his voice, or drove them [sc. the yoke of heterogeneous animals] with his voice: R. Johanan held him liable to punishment, the movement of the lips being an action; Resh Lakish ruled that he is not, because [the use of] the voice is not an action.[30] R. Johanan raised an objection to Resh Lakish:

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(1) [From the third century onward the Babylonian heathens, the Mandeans or Sabeans, were designated Arameans, v. Obermeyer, op. cit. p. 75.]

(2) [This was a device resorted to by Jewish owners in order to evade the relevant prohibition; Lev. XXII, 24.]

(3) This proves that one may not even instruct a heathen to perform that which is forbidden merely by a negative precept, as castration.

(4) Lit., 'children of the West'.

(5) Lev. XIX, 14. But muzzling is not forbidden to heathens.

(6) Which brings less than when sold for work.

(7) Without insisting that they lose part of their value.

(8) To whom it may be sold.

(9) To sell them to him.
(10) Lit., 'pious men', a designation of men known for their extreme piety.
(11) I.e., their oxen having been castrated without their knowledge (Tosaf.).
(12) To prevent it from eating; is it the equivalent of muzzling or not?
(13) Surely there can be no doubt that it is forbidden.
(14) Is the owner bound to remove it or not?
(15) Thereby frightening off the animal from eating.
(16) Is the owner bound to chase it away or not?
(17) And the mother in her yearning toward it could not eat. Here the Talmud does not object that this is actual muzzling, because yearning is not as strong a preventive as terror. But other texts read: what if its young stationed itself, etc.? (Tosaf.)
(18) So that it might not see the grain.
(19) Who hires it out.
(20) Thus, one may do something to prevent the cow from eating, and it is assumed that this is analogous to spreading a leather over the grain.
(21) Whereas the problem is whether a leather may be spread when it is threshing.
(22) I.e., before it entered the field.
(23) I.e., the muzzling must be done then.
(24) I.e., from the law appertaining to priests, R. Jonathan being one. [The reference is to R. Jonathan b. Joseph, the Tanna, a disciple of R. Ishmael, and not to R. Jonathan. the disciple of R. Hiyya, who certainly was no priest; v. Sanh. 71a. The question he put to R. Simai who, as a younger contemporary of Rabbi was considerably his junior, would then be merely to test him. It is, however, preferable to read with MS. Venice, 'R. Simeon (b. Yohai)' instead of 'R. Simai'; v. Hyman Toledoth, II. p. 698.]
(25) Lev. X, 9.
(26) Ibid. 20; and for that it does not signify whether one drinks before entering or after.
(27) But leaves them for another to plough with.
(28) Tosef. Kel. V.
(29) Lit., 'muzzled it'.
(30) Punishment is incurred for the violation of a negative precept only when it entails a positive action, and R. Johanan and Resh Lakish dispute whether speech is such.

Talmud - Mas. Baba Metzia 91a

Not that one is permitted to make an exchange, but that if he did the exchange is valid, and he receives forty [lashes]![1] He replied: That accords with R. Judah, who maintained that one is flagellated for [violating] a negative precept which involves no action.[2] But can you make this agree with R. Judah? Does not the first clause state: All have power to exchange, both men and women. Now, we pondered thereon, what is 'all' intended to add?[3] [And we answered,] An heir.[4] And this does not agree with R. Judah: for if it did, surely he maintained that an heir can neither exchange nor lay hands?[5] — This Tanna agrees with R. Judah in one ruling,[6] and disagrees in another.[7]

Our Rabbis taught: If one muzzles a beast and threshes therewith, he is flagellated, and pays [to the owner of the cow] four kabs in the case of a cow, and three kabs for an ass.[8] But [is it not a principle], one is not flagellated and executed; nor is one flagellated and made to pay? — Abaye replied: This is in accordance with R. Meir, who maintained, One is flagellated and also made to pay.[9] Raba said:[10] The Torah forbade the hire [of a harlot], even if one had relations with his mother.[11] R. Papa said: He becomes liable for its food from the moment of meshikah,[12] whereas flagellation is not incurred until muzzling.[13]

R. Papa said: The following problems were propounded to me by the disciples of R. Papa b. Abba, and I gave stringent rulings,[14] one in accordance with the law, the other not in accordance with the law.[15] They asked of me: May dough be kneaded with milk? And I ruled that it was forbidden, this

being in accordance with the law. For it has been taught: Dough may not be kneaded with milk, and if it is, the whole loaf is forbidden, because it may lead to transgression.[16] Likewise, an oven may not be greased with tail fat,[17] and if it is, the whole loaf [baked therein] is forbidden, until the oven is heated through.[18] The other problem they propounded of me was: May two heterogeneous animals [of opposite sexes] be led into a stable?[19] And I answered them that it is forbidden, this not being in accordance with the law. For Samuel said: In the case of adulterers, they [sc. the witnesses] must have seen them in the posture of adulterers;[20] but in respect to diverse species, they must have seen him assisting [the copulation] even as [one places the] painting stick in the tube.[21]

R. Ahadboi b. Ammi raised an objection: Had Scripture stated, Thou shalt not cause thy cattle to gender,[22] I might have thought [it to mean], One must not hold a beast when the male [even of its own kind] copulates with it; therefore it is said, with a diverse kind. Surely then this proves that in the case of different species one may not even hold [the female]!? — By 'holding', 'assisting' is meant, and why is it designated 'holding'? As a more delicate term.

Rab Judah said: In animals of the same species, one may 'assist' [at copulation] even as [one places the painting] stick in the tube, and it is not even forbidden on account of obscenity. Why? Because he is engaged in his work.[23] R. Ahadboi b. Ammi raised an objection:

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(1) Tem. 2a. This refers to Lev. XXVII, 33; neither shall he change it (sc. the consecrated animal): and if he change it at all, then both it and the change thereof shall be holy. The first clause of the passage states that all have power to exchange, and then it goes on to say that that does not mean that one may exchange, but merely that his action is valid, the substitute too becoming holy, and that his action is punished by flagellation. Now, this offence consists only of speech, and hence this Mishnah refutes Resh Lakish's view that speech is an unsubstantial action.

(2) But those who require an action do not consider speech sufficient.

(3) V. p. 496, n.3.

(4) I.e., if the heir exchanged the animal consecrated by his deceased father, the substitute is valid.

(5) Upon certain sacrifices the owner laid his hands prior to its slaughter. If the owner died, R. Judah maintained that the heir could not perform this ceremony.

(6) Viz., that a person is flagellated for a negative precept involving no action.

(7) Maintaining against R. Judah that the heir can exchange.

(8) That is the estimated quantity they eat per day. V. H.M. 338. 4. Isserles.

(9) V. B.K 71a.

(10) [MS. Rome inserts: 'It may even be in accordance with the Rabbis, but this is stated if he wishes to appear justified before Heaven (lit., 'at the hands of Heaven'), even as is the case with the hire, for the Torah forbade, etc.' This renders clearer the argument that follows, v. Tosaf.]

(11) V. Deut. XXIII, 19: Thou shalt not bring the hire of a whore . . . into the house of the Lord thy God for any vow. Now, 'hire' and 'whore' are quite unspecified, even if the latter is his own mother, in which case he is liable to death for incest. This proves that notwithstanding his liability to death, in which the money payment is merged, he strictly speaking (should he wish 'to appear justified before Heaven') must pay her the fee. For if she has no claim upon him at all, then even if he does pay her, it is not the hire of a harlot, but an ordinary gift to her which is not forbidden as a vow. Again, since it is recognised as a debt, if the harlot forcibly seized it from him, he cannot demand its return. So here too: though he is flagellated for threshing with a muzzled ox, he is morally indebted to its owner, and that is the meaning of the Baraitha, 'and pays.' etc. Or, if the owner seized it from him, he need not return it.

(12) V. Glos.

(13) Though two penalties cannot be imposed, that is only when incurred simultaneously. But these two are not, the one preceding the other.

(14) Lit., 'I answered them in the direction of prohibition.'

(15) But merely with an extra degree of stringency.

(16) The bread may not be eaten with meat, consequently it is altogether forbidden, even with non-meat foods.

(17) Which is forbidden fat.

(18) To glow heat to remove all traces of the fat.

(19) The question is whether this is a transgression of Lev. XIX, 19: Thou shalt not cause thy cattle to gender with a diverse kind. Does 'cause' mean to give the opportunity only, as here, or actually to make the two copulate?
(20) I.e., when witnesses testify to adultery, it is not necessary for them to witness fornication in order to impose punishment.
(21) Only then is Lev. XIX, 19, quoted in n. 4 infringed; hence, R. Papa's ruling that they may not even be led into one stable was merely a matter of additional stringency, not the Biblical law.
(22) Without adding 'with a diverse kind'.
(23) Therefore it will not lead to impure thoughts. But one may not look upon the animals copulating, because the spectacle may excite evil passions.

Talmud - Mas. Baba Metzia 91b

Had Scripture stated, Thou shalt not cause thy cattle to gender, I should have thought [it to mean], One must not hold a beast for the male to copulate with it; therefore it is said, with a diverse kind. Hence, only in regard to different species is it forbidden; but in the same species,it is permitted. Yet even there, only holding is permitted — but not 'assisting'. — What is meant by 'holding'? 'Assisting'. And why is it called 'holding'? As a delicate term.

R. Ashi said: This question was put to me by the scholars of Rabbana[1] Nehemiah, the Resh Galutha:[2] May an animal be led into a stable together with one of its own species and another heterogeneous to it? [Do we argue,] Having its own kind, it will be attracted thereto; or perhaps, even so, it is not [permitted]? And I answered them that it is forbidden; not because the law is so, but on account of the licentiousness of slaves.[3]

MISHNAH. IF HE [THE LABOURER] WORKS WITH HIS HANDS BUT NOT WITH HIS FEET, OR WITH HIS FEET BUT NOT WITH HIS HANDS; [AND] EVEN IF HE WORKS WITH HIS SHOULDERS [ONLY], HE MAY EAT. R. JOSE SON OF R. JUDAH SAID: [HE MAY NOT EAT] UNLESS HE WORKS WITH HIS HANDS AND FEET.

GEMARA. What is the reason [of the first Tanna]? — When thou comest into they neighbour's vineyard[4] implies, for whatever work he may do.

R. JOSE SON OF R. JUDAH SAID: [HE MAY NOT EAT] UNLESS HE WORKS WITH HIS HANDS AND FEET. What is the reason of R. Jose son of R. Judah? — He [the labourer] is likened to the ox:[5] just as the ox [does not eat unless] it works with its hands and feet,[6] so the labourer too must work with his hands and feet.

Rabbah son of R. Huna propounded: According to R. Jose son of R. Judah, what if one threshes with geese and fowls?[7] Is it necessary that [the work shall be done] with all its [sc. the creature that threshes] strength, which provision is complied with? Or perhaps, it must work with its fore-feet and hind-feet, which is here absent? — The problem remains unsolved.

R. Nahman said in Rabbah b. Abbuha's name: Labourers, before they walk both lengthwise and crosswise in the winepress, may eat grapes but drink no wine. Having walked lengthwise and crosswise in the winepress, they may eat grapes and drink wine.[8]

MISHNAH. WHEN HE [THE LABOURER] IS WORKING AMONG FIGS, HE MUST NOT EAT OF GRAPES; AMONG GRAPES, HE MUST NOT EAT OF FIGS. YET HE MAY RESTRAIN HIMSELF UNTIL HE COMES TO THE CHOICE QUALITY [FRUIT] AND THEN EAT.[9] NOW, WITH RESPECT TO ALL OF THEM [SC. THE LABOURERS], PERMISSION WAS GIVEN ONLY WHEN THEY ARE ACTUALLY AT WORK;[10] BUT IN ORDER TO SAVE THE EMPLOYER'S TIME,[11] THEY[12] RULED, LABOURERS MAY EAT AS THEY WALK

FROM ROW TO ROW,[13] AND WHEN RETURNING FROM THE WINEPRESS. AND AS FOR AN ASS, [IT MAY EAT] WHILST BEING UNLADEN.[14]

GEMARA. The scholars propounded: Whilst working on one vine, may he [the labourer] eat of another?[15] Is it merely necessary [that thou shalt eat only] of the kind which thou puttest into the employer's baskets,[16] which [requirement] is fulfilled; or is it stipulated that [thou shalt eat only] that [i.e., the tree from] which thou puttest into the employer's baskets, which is here lacking? [But] should you say, when working on one vine he may not eat of another, how can an ox eat of what is attached to the soil?[17] — R. Shisha the son of R. Idi replied: It is possible in the case of a straggling branch.[18] Come and hear: IF HE [THE LABOURER] IS WORKING AMONG FIGS, HE MUST NOT EAT OF GRAPES. This implies that he may eat of figs [when working] on figs, on the same conditions that [he may not eat of] figs [when working] on grapes:[19] but should you say, If he works on one vine he may not eat of another, how is this possible? — R. Shisha, the son of R. Idi said: It is possible in the case of an overhanging branch.[20]

Come and hear: BUT HE MAY RESTRAIN HIMSELF UNTIL HE COMES TO THE CHOICE QUALITY [FRUIT], AND THEN EAT. But should you say: Whilst employed on one vine he may eat of another, let him go, bring [the choice fruit] and eat it [and why restrain himself]? — There it is [forbidden] because of loss of time; [in that case,] there is no question.[21] Our problem arises only if he has his wife and children with him:[22] what then? — Come and hear: NOW, WITH RESPECT TO ALL OF THEM [SC. THE LABOURERS], PERMISSION WAS GIVEN ONLY WHEN THEY ARE ACTUALLY AT WORK, BUT IN ORDER TO SAVE THE EMPLOYER'S TIME, THEY RULED, LABOURERS MAY EAT AS THEY WALK FROM ROW TO ROW, AND WHEN RETURNING FROM THE WINE-PRESS. Now, it was assumed that walking [from vine to vine] is regarded as actual work [it being necessary thereto], yet he may eat only in order to save the employer's time, but not by Scriptural law; thus proving that whilst engaged on one vine he may not eat of another! — No. In truth I may assert that whilst engaged on one vine he may eat of another; but walking is not regarded as actual work. Others say, it was assumed that walking is not regarded as actual work, and only on that account may he not eat by Scriptural law, because he is not doing work; but if he were doing actual work, he might eat even by Biblical law, thus proving that whilst engaged on one vine he may eat of another! — No; in truth I may assert that whilst engaged on one vine he may not eat of another;

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(1) So the text as emended by Rashal: Rabbana was a Babylonian title.

(2) V. p. 387, n. 8.

(3) Which might receive an impetus by such an act.

(4) Deut. XXIII, 25.

(5) V. top of 89a.

(6) I.e., with its fore and hind-feet, both of course, being employed in threshing.

(7) May their beaks be muzzled or not?

(8) Labourers trod out the wine from the grapes by walking upon them lengthwise and crosswise. Now, when they have walked only in one direction, the wine is not yet visible, therefore they must confine themselves to the grapes, since the labourer may eat only of that upon which he is engaged. But when they have walked in both directions, the expressed wine is visible, and therefore they may drink thereof.

(9) I.e., he is not bound to eat as soon as he feels hungry, but may wait until he reaches the best.

(10) But not to finish their work and then eat.

(11) Lit., ‘to restore lost property to the owners.’

(12) The Rabbis.

(13) Though they are not actually working then.

(14) This is discussed in the Gemara.

(15) I.e., cut a cluster of grapes from one vine of choicer quality and then come and work upon another.

(16) The phraseology is based upon Deut. XXIII, 25: but thou shalt not put any in thy vessel, which implies that the

labourer may eat only of that which he does put into the employer's vessel.

(17) For, as stated supra 89a, the same conditions govern both man and beast. Now, as the ox stands in front of the cart into which the grapes are laden the labourers naturally gather the grapes not from the vine in front of the ox, but behind it, which is level with the cart. Hence, the ox cannot possibly eat of the vine upon which it is employed (Rashi). Tosaf.: When the ox is threshing grain attached to the soil, its mouth cannot reach the ears upon which it actually treads. Now, in the case of detached corn, that does not matter, because the whole is regarded as one bundle; but in the case of growing corn, each little tuft is regarded as separate.

(18) A vine which stretches from behind the ox to in front of it, so Rashi. Tosaf.: A luxuriant growth, i.e., long ears of corn which reach from the feet of the ox to its mouth. Hence, the Talmudic objection being answered, the problem remains.

(19) I.e., on a different tree.

(20) I.e., when one vine overhangs another, and when a vine overhangs a fig-tree. Actually, he has to work upon both, since one must be disentangled from the other. In that case he may eat of the overhanging vine whilst working on the other, but not of the overhanging fig-tree.

(21) It is certainly forbidden.

(22) There is no loss of time, as they can bring it.

and walking is regarded as actual work.[1]

AND AS FOR AN ASS, [IT MAY EAT] WHILST BEING UNLADEN. But when it is unladen, whence can it eat?[2] Say until it is unladen.[3] We have [thus] learnt [here] what our Rabbis taught: An ass and a camel can eat of the load on their backs, providing that he [the driver] does not personally take thereof and feed them.

MISHNAH. A LABOURER MAY EAT CUCUMBERS, EVEN TO THE VALUE OF A DENAR, OR DATES, EVEN TO THE VALUE OF A DENAR. R. ELEAZAR HISMA SAID: A LABOURER MUST NOT EAT MORE THAN HIS WAGE. BUT THE SAGES PERMIT IT; YET ONE IS ADVISED NOT TO BE GREEDY, AND THUS SHUT THE DOOR IN HIS FACE.[4]

GEMARA. Are not the Sages identical with the first Tanna? — They differ as to whether [the labourer] is advised [not to be greedy]. The first Tanna holds that he is not advised; whilst the Rabbis[5] maintain that he is. Alternatively, they differ in respect of R. Assi's dictum. For R. Assi said: Even if engaged merely to gather a single cluster, he may eat it.[6] R. Assi also said: Even if he [as yet] vintaged only one cluster, [having been engaged for the day,] he may eat it. Now, both [dicta] are necessary. For if the first [only] were stated,I would think that that is so, since there is nothing [else] to put into the employer's vessels;[7] but when there is something to put into the employer's vessels, I would think that he must first put [some there] and then eat. Whilst if the second statement [only] were made, I would think that the reason is that it can be eventually fulfilled;[8] but where it cannot be eventually fulfilled,[9] I might think that he may not eat. Hence both are necessary.

[Reverting to the Mishnah:] Alternatively, I can say, they differ in respect of Rab's dictum. For Rab said: I found a secret scroll of the School of R. Hiyya[10] wherein it was written, Issi b. Judah said: When thou comest into thy neighbour's vineyard[11] Scripture refers to the coming in of any man.[12] Whereon Rab commented: Issi makes life impossible for any one.[13]

R. Ashi said: I repeated the [above] teaching before R. Kahana. [Thereupon] he observed:[14] Perhaps [Issi b. Judah referred] to those who labour for their food, working and eating.[15] And Rab?[16] — Even then, a man prefers to engage labourers to vintage his vineyard, rather than that any one should enter.

The scholars propounded: Does the labourer eat his own [sc. when partaking of the fruit upon which he is engaged], or does he eat of Heaven's [gift]?[17] What practical difference does this make? If he said, ‘Give it [the fruit that I might have eaten] to my wife and children.’ Now, should you say that he eats his own, we must give it to them. But if he eats of Heaven's [gift], then upon him Scripture conferred this privilege, but not upon his wife and children. What is our ruling? — Come and hear: A LABOURER MAY EAT CUCUMBERS, EVEN TO THE VALUE OF A DENAR, OR DATES, EVEN TO THE VALUE OF A DENAR. Now, should you say that he eats of his own, when he is engaged for a danka,[18] shall he eat for a denar?[19] — What then: he eats of Heaven's [gift]? Yet after all, being engaged for a danka, shall he eat for a denar![20] Hence, what must you reply? That the All-Merciful privileged him;[21] so here too,[22] the All-Merciful conferred that privilege upon him.[23]

Come and hear: R. ELEAZAR HISMA SAID: A LABOURER MUST NOT EAT MORE THAN HIS WAGE. BUT THE SAGES PERMIT IT. Now, surely they differ in respect of this: one [sc. R. Eleazar Hisma] maintains that he eats his own,[24] whilst the other holds that he eats the [gift] of Heaven! — No. All agree that he eats his own, but here they differ with respect to the interpretation of [then thou mayest eat grapes thy fill] according to thy soul. One Master[25] maintains, ‘according to

thy soul' means that for which thou riskest thy life;[26] whilst the other Master [R. Eleazar] interprets, 'As thyself': just as if thou muzzlest thyself thou art exempt [from punishment], so the labourer, if thou muzzlest him,[27] thou art exempt.[28]

Come and hear: If a nazir[29] said, 'Give [the grapes I might have eaten] to my wife and children,' he is not heeded. Now should you say, he eats his own, why is he disregarded? — There it is because, 'Go, go, thou nazirite,' say we, 'take the most devious route, but approach not the vineyard.'[30]

Come and hear: If a labourer said, 'Give [the grapes] to my wife and children,' we do not heed him. Now should you say, he eats his own, why not? — What is meant by 'a labourer'? A nazir. But the case of a nazir has been taught, and also that of a labourer! — Were they then taught together?[31]

Come and hear: Whence do we know that if a labourer said, 'Give [the fruit] to my wife and children,' he is not heeded? From the verse, But thou shalt not put any in thy vessel.[32] And should you reply, This too refers to a nazir; if so, is it on account of 'but thou shalt not put any in thy vessel': surely it is because, 'Go, go, thou nazirite', we say, etc.! — That is indeed so, but since he is referred to as a labourer, the verse relating to a labourer is cited.[33]

Come and hear: If one engages a labourer to dry figs,[34]

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(1) And yet were it not for the consideration of the employer's time, he would not be permitted to eat.

(2) Its whole burden is removed at once, and then it is led away.

(3) I.e., as long as it is laden, it may eat of its burden.

(4) I.e., he will be unable to obtain employment, if he eats too greedily.

(5) The Sages.

(6) The first Tanna accepts this, and means thus: A labourer may eat cucumbers even if he was engaged only to work on these which he actually eats, whilst the Sages permit him to eat more than his wage (for which reason the Rabbis make mention of his wage, whilst the first Tanna omits all reference thereto), but not all that for which he was engaged.

(7) And Scripture having permitted the labourer to eat, he cannot be bidden to refrain.

(8) Viz., the putting into the employer's utensils.

(9) I.e., if he was engaged only for that cluster, and he eats it.

(10) מגילת סתרים : Oral law being unwritten, when one particularly desired to remember a halachah, he recorded it but kept it secret (Rashi). [Kaplan, J. op. cit., p. 277, argues with great plausibility that the concealment of the scroll had nothing to do with the interdict of writing halachah records, but was due to its contents which, as will be seen, were not well adapted to unrestricted publicity. The same scroll contained another teaching by the same Tanna, which likewise was liable to abuse. Shab. 6b; 96b.]

(11) Deut. XXIII,25.

(12) Not only a labourer.

(13) Social life is impossible if any person may enter and eat of one's crops. — Now, the first Tanna agrees with Rab, and hence says, only A LABOURER MAY EAT etc.; but the Sages maintain that any person may enter; hence they say that the labourer may eat more than his wage, since even if no wage is due at all — i.e., if he is not an employee he may still eat.

(14) [Following reading of Alfasi and Asheri. Cur. edd. omit 'he observed'. Render accordingly: 'R. Ashi said, I put the (following) question (lit., 'discussion') to R. Kahana. Perhaps etc.' Cf. B.B. 114a; v. Strashun, S.]

(15) I.e., any man, even when not engaged by the owner, may enter a vineyard, assist in the vintaging, and eat. But it is unreasonable to suppose that Issi b. Judah permitted all and sundry to enter any man's vineyard, eat his fill, and make no return.

(16) If that be the correct interpretation, why does Rab object?

(17) I.e., is it actually part of his salary, and in the nature of a bonus, or a special Divine favour bestowed upon the labourer?

(18) V. Glos.

(19) Surely it is unreasonable that the additional bonus shall far exceed the wage actually stipulated.
(20) For it is likewise unreasonable that the privilege conferred by Scripture shall exceed his actual due.
(21) Notwithstanding that it exceeds his wage.
(22) I.e., even if he is assumed to eat his own.
(23) To eat even more than his wages, and still it is an addition thereto.
(24) And therefore the bonus cannot exceed the principal.
(25) I,e., the Sages.
(26) Lit., 'soul'. I.e., in return for ascending the tree to gather the fruit, thereby endangering his life, the labourer may eat, That being so, there is no limit to the quantity.
(27) V. p. 509, n. 5.
(28) There thus being no warrant for the labourer to eat more than his wage.
(29) V. Glos. The reference is to a labourer, a nazirite, engaged on vintaging. A nazirite is forbidden to eat grapes.
(30) This was proverbial: a man must not venture into temptation. Hence while it may be that the labourer eats of his own, here he is penalised for having accepted employment in a vineyard at all.
(31) Both refer to the same, but were not taught together. V. supra 34a.
(32) I.e., only he may eat, but none on his behalf.
(33) But merely as a support, the law itself being Rabbinical, as stated in n. 7.
(34) Figs were dried in the field and then pressed into cakes, the labourer being engaged for this purpose.

Talmud - Mas. Baba Metzia 92b

he [the labourer] may eat and is exempt from tithes.[1] [But if he stipulates, 'I accept the work] on condition that I and my son eat, or, 'that my son eat for my wage:'[2] he may eat, and is exempt; and his son may eat, but is liable.[3] Now should you say, he eats his own, why is his son liable?[4] — Said Rabina: Because it looks like purchase.[5]

Come and hear: If one engages labourers to work upon his fourth year plantings,[6] they may not eat;[7] but if he [the employer] did not inform them [that they were of the fourth year], he must redeem [the fruit][8] and let them eat it.[9] Now should you Say, he eats of Heaven's [gift], why must he redeem [the fruit] and let them eat it? Surely the All-Merciful conferred no privilege upon them in respect of that which is forbidden! — There it is because it looks like an erroneous bargain. [If so,] consider the second clause: If his figs cakes were broken,[10] or if his barrels of wine burst open,[11] they may not eat.[12] But if he did not inform them,[13] he must tithe [the fruit and wine] and let them partake [thereof].[14] Now should you say, He eats of Heaven's [gift], why must he tithe and let them eat: surely the All-Merciful conferred no privilege upon him in respect of what is forbidden! And should you reply, Here too it is because [otherwise] it looks like an erroneous bargain, [I can rejoin,] now as for the breaking of his fig-cakes, it is well, since it does look like an erroneous bargain; but if his barrels burst, where is the erroneous bargain? Surely he [the labourer] knew that they were tebel in respect of tithes! — R. Shesheth replied: It means that his barrels burst open into the tank.[15] But has it not been taught: Wine [is subject to tithes] when it descends into the tank?[16] — This agrees with R. Akiba, who ruled [it is not liable] until the scum is removed; so that they [the labourers] can say to him, 'We did not know [thereof].' But can he not retort, 'The possibility of its having been skimmed should have occurred to you'? — It refers to a locality where the same person who draws [the wine from the tank into barrels first] skims it. And now that R. zebid learned out of the Baraitha of R. Oshaia:[17] Wine [is subject to tithes] when it is run into the tank and skimmed. R. Akiba said: When it is skimmed in barrels:[18] you may even say that the barrels did not burst open into the tank; yet they can say, 'We did not know that it had been skimmed.' But can he not say to them, 'The possibility of its having been skimmed should have occurred to you'? — It refers to a place where the same person who closes it[19] also skims it.

Come and hear: A man may stipulate [to receive payment instead of eating] for himself, his son or daughter that are of age, his manservant and maidservant that are of age, and his wife; because they

have understanding.[20] But he may not stipulate [thus] for his son or daughter that are minors, his manservant or maidservant that are minors, nor in respect of his beasts; because they have no understanding.[21] Now it is being assumed that he[22] provides them with food, should you then say that he [the labourer] eats of Heaven's [gift], it is well: consequently, one may not stipulate [to deprive them of their rights]. But if you maintain that he eats of his own, let him stipulate [thus] even for minors![23] — In this case it means that he does not provide them with food.[24] If so, [for] adults too [he cannot stipulate thus]! — Adults know [their rights] and forego them. But R. Hoshaia taught: A man may stipulate [as above] for himself and his wife, but not in respect of his beast;[25] for his son and daughter, if adults, but not if minors; for his Canaanite manservant and maidservant, whether adults or minors. Now presumably, both[26] mean that he provides them with food, and they differ in the following: one Master [sc. that of the Baraitha] maintains that he [the labourer] eats of his own;[27] whereas the other holds that he eats of Heaven's! — No; all hold that he eats his own, yet there is no difficulty: here [in the Mishnah] he does not provide them with food,[28] whereas in the Baraitha he does. How do you explain it: that he provides them with food? If so, let him stipulate for [his son and daughter if] minors too? — The All-Merciful did not privilege him to cause distress to his son and daughter.[29] Now, how do you explain the Mishnah? That he does not provide them with food!

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(1) Having yet to be dried, their work is not finished, v. supra 87a.

(2) Rashi: for the wage stipulated, so that he would draw no pay. Tosaf: instead of me.

(3) For it is as though he bought them (Ma'as. II, 7). V. supra 88a-b; cf. p. 507, n. 3.

(4) For then it is part of his wage, still the Bible exempted him, though eating fruit as part of one's wage is akin to purchase. Then surely the same should hold good of his son!

(5) More so than when he himself eats, regard being had to the stipulation he made.

(6) The fruit of a tree in the fourth year of its planting was to be eaten in Jerusalem, like the second tithe; v. Lev. XIX, 24.

(7) Whilst working, since it must be taken to Jerusalem.

(8) These fruits, just as those of the second tithe, could be redeemed, the redemption money to be expended in Jerusalem, whilst the fruit could then be eaten anywhere as ordinary hullin (v. Glos.).

(9) V. infra 93a.

(10) I.e., after having been pressed into cakes, the cakes were accidentally broken up, and labourers were engaged to re-press them.

(11) And he hired labourers to re-fill them.

(12) Since, as stated supra 89a, when fruit is already liable to tithes, the labourers may not eat.

(13) That they had been pressed once, and so were liable to tithes.

(14) V. infra 93a.

(15) In which wine is stored, so that the labourer might have thought that it had not been barrelled yet.

(16) And the labourers could have then known that they were liable to tithing.

(17) [Var. lec.: R. Zebid son of R. Hoshaia. V. A. Z, (Sonc. ed.) p. 27, n. 4.]

(18) Rashi: When it has been skimmed in the barrels; after being filled in the barrels it ferments again and more scum settles on top, which must be removed.

(19) By pasting in the bung.

(20) They know that they are entitled to eat, but forego their rights.

(21) V. infra 93a. The understanding of a minor is not legally recognised.

(22) The father or owner who hires them out.

(23) Since all their rights belong to him, and just as he receives their wages, so he can receive the food due to them as part wages.

(24) So that he has no right even to their wages. This is on the assumption that when the master provides no food, he is not entitled to their work. This is a subject of dispute; v. infra 93a top.

(25) Because of the prohibition of muzzling.

(26) The Mishnah first quoted, which states that this stipulation may not be made for one's servants, if minors; and the Baraitha, which permits it.

(27) Therefore his master may stipulate this, v, n. 1.

(28) Hence he cannot stipulate.
(29) Though entitled to their work, and providing them with food, he causes them to suffer by not eating of that upon which they are actually engaged.

Talmud - Mas. Baba Metzia 93a

That agrees with the view that the master cannot say to his slave, 'Work for me, yet I will not feed you.' But on the view that he can say so, what can you answer?[1] — Both [teachings] therefore deal with a case where he does not provide them with food, but they differ on this very matter: one Master[2] maintains that he can [demand their work and refuse their food]; and the other[3] holds that he cannot. Then what of R. Johanan, who ruled that the master can say this: does he forsake the Mishnah and follow the Baraitha?[4] — But all agree that he eats of Heaven's [gift), and he [certainly) cannot stipulate.[5] In what sense then did R. Hoshaia teach that he can stipulate? — [In regard to] food.[6] Then by analogy, in respect of an animal [a similar arrangement is that the hirer should feed it with) straw;[7] then let him stipulate! Hence they must differ therein: one Master [sc. of the Baraitha] maintains that he eats his own; whereas the other holds that he eats of Heaven's [gift].

MISHNAH. A MAN MAY STIPULATE [TO RECEIVE PAYMENT INSTEAD OF EATING] FOR HIMSELF, HIS SON OR DAUGHTER THAT ARE OF AGE, HIS MANSERVANT AND MAIDSERVANT THAT ARE OF AGE, AND HIS WIFE; BECAUSE THEY HAVE UNDERSTANDING. BUT HE MAY NOT STIPULATE [THUS] FOR HIS SON OR DAUGHTER THAT ARE MINORS, HIS MANSERVANT OR MAIDSERVANT THAT ARE MINORS, NOR IN RESPECT OF HIS BEASTS; BECAUSE THEY HAVE NO UNDERSTANDING.[8] IF ONE ENGAGES LABOURERS TO WORK UPON HIS FOURTH YEAR PLANTINGS, THEY MAY NOT EAT; BUT IF HE DID NOT INFORM THEM [THAT THEY WERE OF THE FOURTH YEAR], HE MUST REDEEM [THE FRUIT] AND LET THEM EAT IT. IF HIS FIG-CAKES WERE BROKEN, OR HIS BARRELS OF WINE BURST OPEN, THEY MAY NOT EAT. BUT IF HE DID NOT INFORM THEM, HE MUST TITHE [THE FRUIT OR WINE] AND LET THEM PARTAKE [THEREOF].[9] THOSE WHO GUARD FRUITS MAY EAT THEREOF, IN ACCORDANCE WITH GENERAL CUSTOM,[10] BUT NOT BY SCRIPTURAL LAW. GEMARA. THOSE WHO GUARD FRUITS [etc.] Rab said: This was stated only of those who look after gardens and orchards;[11] but those who guard wine-vats and [grain] stocks may eat [even] by Biblical law.[12] In his [Rab's] opinion guarding is counted as labour. But Samuel said: This was stated only of those who guard wine-vats and [grain] stocks; but those who look after gardens and orchards may eat neither by Biblical law nor by general custom. In his view, guarding is not considered labour.[13]

R. Aha son of R. Huna raised an objection. He who guards the [red] heifer defiles his garments.[14] Now should you maintain, Guarding is not considered labour, why does he defile his garments?[15] — Rabbah b. 'Ulla said: As a precautionary measure, lest he move a limb thereof.[16]

R. Kahana raised an objection: He who guards four or five cucumber beds[17] must not eat his fill of one of them, but proportionately of each. Now if guarding is not considered labour, why eat at all?[18] — R. Shimi b. Ashi replied: This refers to those which are removed [from the plant].[19] But then this work is finished for tithes![20] — Their blossom had not yet been cut off.[21]

R. Ashi said: Reason supports Samuel. For we learnt: Now, the following [labourers] may eat by Scriptural law: he who is engaged upon what is attached to the soil, when the labour thereof is completed; and upon what is detached,[22] etc. This implies that some eat not by Scriptural law but in accordance with general custom. Then consider the second clause: But the following do not eat. What is meant by 'do not eat'? Shall we say, they do not eat by Scriptural law, yet eat in accordance with general custom — then is it not identical with the first clause? Hence it must surely mean that they eat neither by Scriptural nor by unwritten law. And who are they? 'He who is engaged upon that

which is attached to the soil before its labour is completed.'[23] How much more so then they who look after gardens and orchards!

MISHNAH. THERE ARE FOUR BAILEES: A GRATUITOUS BAILEE, A BORROWER, A PAID BAILEE AND A HIRER. A GRATUITOUS BAILEE MUST SWEAR FOR EVERYTHING.[24] A BORROWER MUST PAY FOR EVERYTHING.[25] A PAID BAILEE OR A HIRER MUST SWEAR CONCERNING AN ANIMAL THAT WAS INJURED,[26] CAPTURED [IN A RAID] OR THAT PERISHED;[27] BUT MUST PAY FOR LOSS OR THEFT.

GEMARA. Which Tanna [maintains that there are] four bailees? — R. Nahman said in Rabbah b. Abbuha's name: It is R. Meir. Said Raba to R. Nahman: Does any Tanna dispute that there are four bailees?[28] — He replied: I mean this: Which Tanna holds that a hirer ranks as a paid bailee? R. Meir. But we know R. Meir to hold the reverse? For it has been taught: How does a hirer pay? R. Meir said, As an unpaid bailee. R. Judah ruled, As a paid one! Rabbah b. Abbuha learnt it reversed.[29] If so, are there four? Surely there are only three! — R. Nahman b. Isaac replied: There are indeed four bailees, but they fall into three classes.[30]

A shepherd was once pasturing his beasts by the banks of the River Papa,[31] when one slipped and fell into the water [and was drowned]. He then came before Rabbah, who exempted him [from liability], with the remark, 'What could he have done?

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(1) On the hypothesis that he eats his own. According to the latter view the slave is supported by charity.

(2) The Baraitha.

(3) The Mishnah.

(4) Surely not, since the former is more authentic than the latter.

(5) That the slaves shall not eat.

(6) I.e., he may arrange for the owner of the vineyard to feed the slave before he starts work, so that he has no appetite for the grapes.

(7) Before it starts threshing the more valuable grain.

(8) V. supra p. 533, n.7.

(9) V. supra p. 532.

(10) Lit., 'the laws of the land'.

(11) Their fruits being attached to the soil, and they do not remove them; hence they may not eat by Scriptural law.

(12) Since these are detached.

(13) Hence, when it is exercised upon detached fruits, the guardian may eat by general custom; but if they are attached, he may not eat at all.

(14) V. Num. XIX. All who take part in the preparation of the red heifer, from the slaughter onwards, defile their garments.

(15) Since it is not an occupation in the legal sense.

(16) Which would really render him unclean through contact. Thus the defilement of the guardian is only by Rabbinical law, in contradistinction to those who perform a positive action, whose defilement is Scriptural.

(17) Belonging to as many persons.

(18) Since on this view he may not eat of what is attached, even by general custom.

(19) I.e., they are detached.

(20) V. supra p. 89a.

(21) V. supra 88b.

(22) Supra 504.

(23) V. p. 504.

(24) I.e., if the bailment is lost or destroyed through any cause, excepting negligence, the unpaid trustee must swear to the occurrence, and is free from liability.

(25) Whatever the mishap, he is liable to pay.

(26) Lit., 'broken'.

(27) A paid bailee is exempt from liability in these cases; therefore he must swear that it really was so.
(28) Surely not! The four bailees enumerated in the Mishnah must exist.
(29) I,e., according to his reading of the Baraitha, R. Meir ruled that he ranked as a paid trustee, and R. Judah as an unpaid one. (8) Since the hirer ranks as a paid bailee. This difficulty arises in any case, and the phrase 'if so' does not imply here that if the hirer ranked as an unpaid bailee there is no difficulty, but is merely introductory (Tosaf.). But in the parallel passage of Shebu. 49a the phrase is absent from Rashi's version.
(30) Lit., 'their laws are three', a hirer and a paid bailee being in the same category.
(31) V. supra, p. 496, n. 1.

Talmud - Mas. Baba Metzia 93b

He guarded [them] as people guard.'[1] Abaye protested, 'If so, had he entered the town when people generally enter it [leaving his charges alone], would he still be exempt?' — 'Yes', he replied. 'Then had he slept a little when other people sleep, would he also be exempt?' — 'Even so,' was his answer. Thereupon he raised an objection: The following are the accidents for which a paid bailee is not responsible: E.g., And the Sabeans fell upon them [sc. the oxen and asses], and took them away; yea, they have slain the servants with the edge of the sword![2] — He replied, 'There the reference is to city watchmen.'[3]

He further raised an objection: To what extent is a paid bailee bound to guard? Even as far as, Thus I was; in the day the drought consumed me, and the frost by night?[4] — There too, he answered, the reference is to the city watchman. Was then our father Jacob a city watchman? he asked. — [No.] He merely said to Laban, 'I guarded for you with super-vigilance, as though I were a city watchman.'

He raised another objection: If a shepherd, who was guarding his flock, left it and entered the town, and a wolf came and destroyed [a sheep]; or a lion, and tore it to pieces, we do not say, 'Had he been there, he could have saved them;' but estimate his strength: if he could have saved them, he is responsible; if not, he is exempt.[5] Surely it means that he entered [the town] when other people generally do? — No. He entered when people do not generally enter. If so, why is he not responsible? Where there is negligence in the beginning, though subsequently an accident supervenes, he is liable![6] — It means that he heard the voice of a lion, and so entered. If so, why judge his strength? What could he then have done? — He should have met it with [the assistance of other] shepherds and staves. If so, why particularly a paid bailee? The same applies even to an unpaid one. For you yourself, Master, did say: If an unpaid bailee could have met [the destroyer, e.g., a lion] with other shepherds and staves, but did not, he is responsible! — An unpaid bailee [must obtain their help only when he can procure them] gratuitously; whereas a paid bailee must even [engage them] for payment. And to what extent?[7] — Up to their value.[8] But where do we find that a paid trustee is responsible for accidents?[9] — Subsequently he collects the money from the owner. Said R. Papa to Abaye: If so, how does he benefit him? — It makes a difference on account of the attachment of the animals[10] or the additional trouble.[11]

R. Hisda and Rabbah son of R. Huna disagree with Rabbah's dictum, for they maintain: [The owner can say], 'I paid you wages precisely in order that you should guard with greater care.'

Bar Adda, the carrier, was leading beasts across the bridge of Naresh,[12] when one beast pushed another and threw it into the water. On his appearing before R. Papa, the latter held him responsible. 'But what was I to do?' he protested. — 'You should have led them across one by one,' he replied. 'Do you know of your sister's son[13] that he could have led them across one by one?' he asked.[14] — 'Your predecessors before you have already complained, but none pay heed to them,' he replied.

Aibu entrusted flax to Ronia. Then Shabu[15] came and stole it from him;[16] but subsequently the

thief's identity became known. Then he [the trustee] came before R. Nahman, who ruled him liable.[17] Shall we say that he disagrees with R. Huna b. Abin. For R. Huna b. Abin sent word:[18] If it [the bailment] was stolen through an accident, and then the thief's identity became known, if he was a gratuitous bailee, he can either swear [that he had not been negligent] or settle with him;[19] if a paid trustee, he must settle with him, and cannot swear! — Said Raba: There,[20] officers were about, and had he [Ronia] cried out, they would have come and protected him.[21]

MISHNAH. [IF] ONE WOLF [ATTACKS], IT IS NOT AN UNAVOIDABLE ACCIDENT;[22] IF TWO [ATTACK], IT IS AN UNAVOIDABLE ACCIDENT. R. JUDAH SAID: WHEN THERE IS A GENERAL VISITATION OF WOLVES, EVEN [THE ATTACK OF] ONE IS AN UNAVOIDABLE ACCIDENT.[23] [THE ATTACK OF] TWO DOGS IS NOT AN UNAVOIDABLE ACCIDENT. JADDUA THE BABYLONIAN SAID ON R. MEIR'S AUTHORITY: IF THEY ATTACK FROM THE SAME SIDE, IT IS NOT AN UNAVOIDABLE ACCIDENT; FROM TWO DIFFERENT DIRECTIONS, IT IS. A ROBBER'S [ATTACK] IS AN UNAVOIDABLE ACCIDENT. [DAMAGE DONE BY] A LION, BEAR, LEOPARD, PANTHER AND SNAKE RANKS AS AN UNAVOIDABLE ACCIDENT. WHEN IS THIS? IF THEY CAME [AND ATTACKED] OF THEIR OWN ACCORD: BUT IF HE [THE SHEPHERD] LED THEM TO A PLACE INFESTED BY WILD BEASTS AND ROBBERS, IT IS NO UNAVOIDABLE ACCIDENT. IF IT DIED A NATURAL DEATH, IT IS AN UNAVOIDABLE ACCIDENT: [BUT] IF HE MALTREATED IT[24] AND IT DIED, IT IS NO UNAVOIDABLE ACCIDENT. IF IT ASCENDED TO THE TOP OF STEEP ROCKS AND THEN FELL DOWN, IT IS AN UNAVOIDABLE ACCIDENT; BUT IF HE TOOK IT UP TO THE TOP OF STEEP ROCKS AND IT FELL AND DIED, IT IS NO UNAVOIDABLE ACCIDENT.

GEMARA. But has it not been taught: [The attack of] one wolf is an accident? — R. Nahman b. Isaac replied: That is when there is a visitation of wolves, and is R. Judah's view.

[THE ATTACK OF] A ROBBER IS AN UNAVOIDABLE ACCIDENT. But why so: let man stand against man — Said Rab: This refers to an armed robber.

The scholars propounded: What of an armed robber and an armed shepherd? Do we say, man must stand against man; or perhaps, the former is prepared to risk his life, but this cannot be expected of the latter? — Reason teaches that the one risks his life, but not the other.[25] Abaye asked Raba: What if the shepherd met him [sc. the robber] and said to him, 'Thou vile thief! We are stationed in such and such a place;

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(1) Therefore it is not like any ordinary loss, for which a paid trustee is responsible, but like an accident, for which he is exempt.

(2) Job I, 15: this proves that they are free from liability only for exceptional and unpreventable mishaps.

(3) Appointed to watch at night, and upon whose vigilance the safety of the town depends; greater care is demanded from them.

(4) Gen. XXXI, 40.

(5) V. supra 41a.

(6) V. supra, 42a. Thus here too, he might have averted some slight mishap, had he been at his post; and therefore by deserting it he displayed negligence and should be liable, notwithstanding that subsequently the damage was unpreventable.

(7) Is he bound to hire helpers?

(8) Sc. of his charges.

(9) Unless he engages helpers at his own cost; it being assumed that this is the meaning of obtaining assistance for payment.

(10) Their owner prefers these to be saved, because he knows them, even if the cost of saving is as much as buying different ones.

(11) Of procuring other animals.
(12) [Supra p. 468, n. 3. It was situated on the canal Nars, a tributary of the Euphrates, Obermeyer, op. cit. p. 307.]
(13) I.e., your co-religionist.
(14) How can you assume that this would have been possible or convenient?
(15) A certain armed robber (Rashi).
(16) The theft being carried out in such a way that it could be regarded as an unpreventable accident from the point of view of the trustee.
(17) Though it was an accident; yet since the thief was known, it was for the trustee — an unpaid one — to sue him. This was the assumed reason for his liability.
(18) From Palestine to Babylon.
(19) I.e., pay him. But he is given the option of freeing himself by an oath, and in this he disagrees with R. Nahman.
(20) in the case of Ronia.
(21) Therefore the theft was due to negligence, and his liability was due to that, and not to the fact that the thief's identity was eventually discovered.
(22) The shepherd could have warded him off, and therefore, being a paid bailee, he is responsible.
(23) For then they are particularly fierce.
(24) E.g., by starvation or exposure.
(25) Hence it is an unavoidable accident.

Talmud - Mas. Baba Metzia 94a

we have this number of men, this number of dogs, so many sharp-shooters are assigned to us;' and he came and robbed him of them? — He replied: Then he has led them to the place of wild beasts and robbers.[1]

MISHNAH. A GRATUITOUS BAILEE MAY STIPULATE TO BE FREE FROM AN OATH;[2] A BORROWER, FROM PAYMENT; A PAID BAILEE AND A HIRER, FROM AN OATH[3] OR PAYMENT.[4] A STIPULATION CONTRARY TO A SCRIPTURAL ENACTMENT IS NULL; ALSO, EVERY STIPULATION WHICH IS PRECEDED BY THE ACTION[5] IS NULL; AND WHATEVER CAN BE FULFILLED EVENTUALLY, AND IT IS STIPULATED AT THE OUTSET, THE STIPULATION IS VALID.

GEMARA. But why so? Is it not a stipulation contrary to Scriptural law, which is null?[6] This agrees with R. Judah, who maintained: In civil matters[7] the stipulation is valid. For it has been taught: If one says to a woman, 'Behold, thou art betrothed unto me on condition that thou hast upon me no claims of sustenance, raiment and conjugal rights', she is betrothed, but the condition is null; this is R. Meir's view. R. Judah said: In respect of money matters, his condition is valid.[8]

But can you assign it to R. Judah? Then consider the second clause: A STIPULATION CONTRARY TO A SCRIPTURAL ENACTMENT is NULL: does not this agree with R. Meir? — That is no difficulty; in truth, it is R. Judah's view, but this second clause does not refer to civil matters. Then consider the latter clause: EVERY STIPULATION WHICH IS PRECEDED BY AN ACTION IS NULL. Now, whom do you know to hold this view? R. Meir. For it has been taught: Abba Halafta, of Kefar Hananiah,[9] said on R. Meir's authority: If the condition [is stated] before the act, it is valid; if the reverse, it is not! — But it is all in accordance with R. Meir: yet here it is different, because at the very outset he accepted no liability.[10]

It has been taught: And a paid bailee may stipulate to be [liable] as a borrower: How: with [mere] words?[11] — Said Samuel: If he acquires it from his hand.[12] R. Johanan said: You may even say that he does not acquire it from his hand; yet in return for the benefit he receives in that he achieves thereby a reputation for being trustworthy, he renders himself fully responsible.

AND WHATEVER CAN BE FULFILLED EVENTUALLY etc. R. Tabla said in Rab's name: This is the view of R. Judah b. Tema. But the Sages say: Even if it is impossible to fulfil it eventually, and one stipulates it at the beginning, the stipulation is valid. For it has been taught: [If one says,] Here is thy divorce, on condition that thou ascendest to Heaven or descendest to the deep, on condition that thou swallowest a hundred cubit cane or crossest the great sea on foot; if the condition is fulfilled, the divorce is valid, but not otherwise.[13] R. Judah b. Tema said: In such a case it is a [valid] divorce. R. Judah b. Tema stated a general rule: That which can never be fulfilled, and he [the husband] stipulates it at the beginning, it is only to repel her,[14] and is valid.

R. Nahman said in Rab's name: The halachah is as R. Judah b. Tema. R. Nahman b. Isaac said: Our Mishnah too proves it,[15] for it states: WHATEVER CAN BE FULFILLED EVENTUALLY, AND IT IS STIPULATED AT THE OUTSET, THE STIPULATION IS VALID. Hence, if it is impossible of fulfilment, the stipulation is null. This proves it.[16]

CHAPTER VIII

MISHNAH. IF A MAN BORROWS A COW AND BORROWS OR HIRES ITS OWNER WITH IT,[17] OR IF HE FIRST HIRES THE OWNER AND THEN BORROWS THE COW, AND IT DIES, HE IS NOT RESPONSIBLE, FOR IT IS WRITTEN, BUT IF THE OWNER THEREOF BE WITH IT, HE SHALL NOT MAKE IT GOOD.[18]

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(1) To provoke robbers and challenge them to attack is the equivalent of going into danger.

(2) In case he pleads that it was stolen or lost.

(3) If they plead an unavoidable accident.

(4) For loss or theft.

(5) E.g., if A arranges that B shall perform a certain action on a certain condition, but states the action before the condition, the stipulation is invalid. The law of stipulation is based on that made by Moses in respect to the request of the Gaddites and Reubenites, q.v.; And Moses said unto them, If ye will do this thing, if ye will go armed before the Lord (Num. XXXII, 20-22). Just as the condition was mentioned there first, so must it be in all cases (Rashi). [Maim. Yad, Ishshuth VI, 2, explains simply, 'If the condition was made after the action had already taken place.']

(6) The degrees of liability of the different bailees are stated explicitly, and also partly deduced from Scripture.

(7) Lit., 'in a monetary matter'.

(8) Hence she has no claims of sustenance and raiment, but is entitled to conjugal rights.

(9) [A village in Galilee, v. Klein, S., NB, p. 28.]

(10) Before the bailment came into his hand, he explicitly stated the extent of liability he was prepared to accept; hence, when he receives his charge, his responsibility is already limited. But one cannot be only partly married; therefore, notwithstanding his stipulation, he must hear the full liability involved in marriage.

(11) Surely one cannot assume additional responsibilities, over and above the normal, by mere words!

(12) I.e., performed one of the acts whereby possession is effected. These acts were also valid to legalise a liability which one wished to assume.

(13) I.e., it is assumed that he meant the act to be invalid.

(14) I.e., to distress and make her think that he is not divorcing her.

(15) That the halachah is so.

(16) Since it is taught anonymously.

(17) I.e., the owner lending his personal service.

(18) Ex. XXII, 14.

Talmud - Mas. Baba Metzia 94b

BUT IF HE FIRST BORROWS THE COW, AND ONLY SUBSEQUENTLY BORROWS OR HIRES ITS OWNER, AND IT DIES, HE IS LIABLE, AS IT IS WRITTEN, THE OWNER THEREOF NOT BEING WITH IT,[1] HE SHALL SURELY MAKE IT GOOD.[2]

GEMARA. Since the second clause states, AND THEN BORROWS THE COW, it follows that when the first clause reads, WITH IT, it is literally meant.[3] But is it possible that it shall be literally WITH IT; the cow is acquired only by meshikah, whereas its owner is acquired by his promise?[4] — I can answer either that the cow was standing in the borrower's courtyard, so that meshikah is not wanting;[5] or alternatively, that he [the borrower] said to him, 'You yourself are not lent [to me] until I perform meshikah on your cow.'

We have learnt elsewhere: There are four bailees: a gratuitous bailee, a borrower, a paid bailee, and a hirer. A gratuitous bailee swears for everything. A borrower pays for everything. A paid bailee or a hirer swears concerning an animal that was injured, captured, or that perished; but pays for loss or theft.[6] Whence do we know these things? — For our Rabbis taught: The first section refers to a gratuitous bailee, the second to a paid one, and the third to a borrower.[7] Now, as for the third referring to a borrower, it is well, for it is explicit: And if a man borrow aught of his neighbour, and it be hurt, or die, the owner thereof being not with it, he shall surely make it good.[8] But as for the first treating of an unpaid bailee and the second of a paid one, perhaps it is the reverse? — It is reasonable [to assume] that the second refers to a paid bailee, since he is responsible for theft and loss. On the contrary, [is it not more logical that] the first refers to a paid bailee, since he is liable to restitution of twice the principal in a [false] plea of theft?[9] — Even so [to pay] the principal without the option of an oath is a heavier liability than to pay double after a [false] oath, the proof being that the borrower, though all the benefit is his, yet pays only the principal.[10] But is it so, that in the case of a borrower all the benefit is his? But does it [sc. the animal borrowed] not require food? — [It is all his,] when it [the animal] is standing on a common.[11] But it needs [special] guarding![12] — Where there is a town watch. Alternatively, do not say, all the benefit is his, but, most of the benefit is his.[13] Or again, [refer it] to the borrowing of utensils.[14]

'A paid bailee or a hirer swears concerning an animal that was injured, captured, or perished; but pays for loss or theft.' Now, as for theft, it is well, for it is written, And if it indeed be stolen from him, he shall make restitution unto the owner thereof;[15] but whence do we know it of loss? — For it has been taught: 'And if it indeed be stolen';[16] from this I know only theft: whence do I know loss? From the expression, 'And if it indeed be stolen', implying no matter how [it disappears].[17] Now, that agrees with the view that we do not say that the Torah employs human phraseology; but on the view that we do say that the Torah employs human phraseology, what can you say?[18] — In the West[19] they said, It follows a fortiori: if he must pay for theft, which is near to accident, then surely he is liable for loss, which is more akin to negligence. And the other?[20] — That which is derived by an a fortiori argument, Scripture [often] takes the trouble to write.

'And a borrower pays for everything.' Now, as for the animal that is injured, or perishes, it is well, for it is written, 'And if a man borrow aught of his neighbour, and it be hurt or die'; but whence do we know that a borrower is responsible for capture? And should you say, Let us derive it from the case of injury and death: [it may be rejoined,] as for these, [he is responsible] because they are accidents which may be foreseen; but can you say that capture [is the same], Seeing that it is an unforseeable accident? — But [deduce it thus:] Injury and death are stated [as cause of liability] in the case of a borrower, and they are likewise enumerated in the case of a paid bailee: just as there, capture falls within the same category,[21] so here too, capture is included. But this may be refuted: as for a paid bailee, [it is mentioned] as a cause of exemption; but can you say the same of a borrower, [for whom you would include it] as a cause of liability? — But [it may be derived] in accordance with R. Nathan's teaching. For it has been taught: R. Nathan said: ['And if a man borrow aught of his neighbour, and it be hurt,] or [die]': 'or' extends the law to capture.[22] But is not this 'or' needed as a disjunctive? For I might think that he is responsible only if it is injured and also dies; therefore Scripture states otherwise. Now, on R. Jonathan's view, it is well; but on R. Joshia's, what can you say? For it has been taught: For any man that curseth his father and his mother [shall surely be put to

death]:[23] from this I know only [that he is punished for cursing] his father and his mother; whence do I know [the same] if he cursed his father without his mother, or his mother without his father? From the passage, his father and his mother he hath cursed; his blood shall be upon him: implying a man that cursed his father; a man that cursed his mother:[24] this is R. Joshia's opinion. R. Jonathan said: The [beginning of the] verse implies either the two together or each separately,

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(1) Or 'with him' (the bailee).

(2) Ibid. 13.

(3) I.e., they are both borrowed simultaneously.

(4) When the owner says. 'I lend you my personal services and my cow', he himself is immediately at the service of the borrower, whereas the cow does not pass into his possession, to bear responsibility for it, until he actually performs meshikah (v. Glos.).

(5) Since it is already in his possession, whilst meshikah is only an expedient for bringing it into his possession.

(6) V. supra Mishnah 93a for notes.

(7) The reference is to Ex. XXII, 6-8; 9-12; and 13f. The first states that the bailee is exempt from responsibility in the case of theft: the second, only in the case of the animal dying etc., but not for theft. The third explicitly deals with borrowing.

(8) Ibid. 13.

(9) V. Ibid. 7, 8. This is interpreted in B.K. 63b as referring to the payment due by the bailee for a false plea of theft.

(10) Though undoubtedly his liabilities are the greatest of all bailees.

(11) The borrower living on a common, and since Scripture does not specify the locality of the borrower, even such is meant.

(12) Which involves extra cost.

(13) And still the argument holds good.

(14) Requiring neither food nor a special watch.

(15) Ibid. 11.

(16) The emphasis of 'indeed' is expressed, as usual, by the double form of the verb, גנב יגנב , the infinitive followed by the imperfect.

(17) This is deduced from the emphatic form.

(18) For this emphasis is a normal idiom, and on the latter view, its purpose is not to extend the law.

(19) Palestine.

(20) He who maintains that we do not say that the Torah employs human phraseology, and interprets emphatic forms to include loss; but surely this follows from an a fortiori reasoning!

(21) Since it is explicitly mentioned in v. 9.

(22) V. B.K. 43b.

(23) Lev. XX, 9.

(24) At the beginning of the sentence that curseth is in immediate proximity to his father: at the end, cursing is mentioned nearest to his mother, shewing that each is separate.

Talmud - Mas. Baba Metzia 95a

unless the verse had explicitly stated 'together'![1] — You may say so even according to R. Joshia: it [sc. 'or'] is unnecessary here for the purpose of separation. Why? It is a matter of logic: what is the difference whether it is wholly killed or only partly?[2]

Whence do we know that a borrower is responsible for theft and loss? And should you say, It follows from injury and death: [I would rejoin,] as for these, [he is responsible] because it is impossible to take the trouble of finding it again;[3] will you then say [the same] in the case of theft and loss, seeing that with trouble it may be found?[4] — But [it may be derived] even as it has been taught: [And if a man borrow aught of his neighbour,] and it be hurt, or die — from this I know [the law] only for injury and death: whence do I know it for theft and loss? — You can reason a minori: if a paid bailee, who is not responsible for injury and death, is nevertheless liable for theft and loss;

then a borrower, who is liable for the former, is surely liable for the latter too! And this is an a minori argument which cannot be refuted. Why state that it 'cannot be refuted'?[5] — For should you object, It may be refuted, thus: as for a paid bailee, [he is responsible for theft and loss] because he must make restitution of twice the principal [if discovered] in a [false] plea of [loss through] an armed robber,[6] [I would reply,] yet notwithstanding, the fact that the borrower is responsible for the principal[7] is a greater severity. Alternatively, he maintains that an armed robber is a gazlan.[8]

We have thus learned[9] responsibility;[10] whence do we know freedom from liability?[11] And should you say, It is deduced from injury and death: [it might be argued,] as for these, [he is free] because they are unavoidable accidents? — But it follows from a paid bailee. And whence do we know it of a paid bailee himself? — The liability of a paid bailee is equated to that of a borrower: just as there, when the owner is lent for personal service, he [sc. the borrower] is free thereof, so here too [in the case of a paid bailee], when the owner is lent for personal service, he is free thereof. How is this deduced? If by analogy,[12] that may be refuted, as [in fact] we have refuted it, since they [sc. injury etc.] are accidents![13] — But Scripture saith, 'And if a man borrow': the waw [copulative 'and'] indicates conjunction with[14] the preceding subject, and the upper section is determined by the lower.[15] But even so, [the law of] a borrower cannot be deduced from [that of] a paid bailee, since it [the similarity] may be refuted. As for a paid bailee, that [sc. his non-liability for theft when the owner is in his service] is because he is exempt in the case of injury and death: will you say the same of a borrower, who is liable for these? — But [reason this]: Whence do we know that a borrower is liable for theft and loss [at all]? [Is it not] because we deduce it from a paid bailee?[16] Then it is sufficient that the conclusion of an a minori proposition shall be as its premise: just as theft and loss in the case of a paid bailee, when the owner is in his service, impose no liability; so also with respect to theft and loss in the case of a borrower, when the owner is in his service there is no responsibility. Now, that is well on the view that we accept this limitation;[17] but on the view that rejects it, what can you say? — But [answer thus]: Scripture saith, 'And if a man borrow': the 'waw' indicates conjunction with the preceding subject, and so the lower section illumines the upper and is itself illumined thereby.[18]

It has been stated: When there is culpable negligence [on the part of an unpaid bailee], and the owner is in [his service] — R. Aha and Rabina dispute therein: One maintains that he is liable; the other that he is exempt. He who rules that he is liable maintains that a Scriptural verse may be interpreted [as applying] to the immediately preceding subject, but not to the one anterior thereto: consequently, But if the owner thereof be with it, etc.,[19] does not refer to a gratuitous bailee;[20] on the other hand, negligence [as a cause of liability] is not stated in connection with a paid bailee and a borrower. Therefore, liability [for negligence] in the case of the paid bailee and borrower too follows a minori from a gratuitous bailee. But that there should be no liability for it, when the owner is in their service, that cannot be maintained even in respect of a paid bailee and a borrower.[21] Why so? Because when Scripture states in respect of a borrower and a paid bailee,[22] But if the owner thereof be with it, he shall not make it good, it refers only to those cases of liability which are explicitly stated.[23] Whilst he who maintains that he is not responsible, is of the opinion that the verse may be interpreted as bearing upon the preceding subject and the one anterior thereto; hence, when it is stated, But if the owner thereof [etc.], it refers to a gratuitous bailee too.

We learnt: IF A MAN BORROWS A COW AND BORROWS ITS OWNER WITH IT, OR BORROWS A COW[24] AND HIRES THE OWNER WITH IT, OR IF HE FIRST BORROWS OR HIRES THE OWNER AND THEN BORROWS THE COW, AND IT DIES, HE IS NOT RESPONSIBLE. But a gratuitous bailee is not mentioned![25] — But even on your reasoning, is then a paid bailee mentioned?[26] Hence [it must be said,] the Tanna states [only] what

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(1) I.e., the waw implies both conjunction and separation, and in the absence of an explicit statement to the contrary it is assumed to connote separation. v. Sanh. 85b. Hence, in his view the 'or' is unnecessary, and may teach the inclusion of

capture; but in R. Joshia's view it is necessary, and so the question remains.
(2) For an injury is the equivalent of partial death, with respect to the value of the animal.
(3) I.e., the loss is absolute.
(4) Hence it may be argued that the owner must seek them, and the borrower is free from liability.
(5) The emphatic assertion suggests that the Tanna has a particular refutation in mind, but maintains that it is false.
(6) V. supra. The same holds good here.
(7) When he really is attacked by an armed robber.
(8) Lit., 'robber', who robs by open violence and is not subject to the twofold payment (v. B.K. 79b), as distinct from gannab, a thief who steals in secret. Consequently, the punishment of twofold payment does not apply to a paid bailee who falsely pleads an attack by an armed robber.
(9) Lit., 'found'.
(10) I.e., that a borrower is responsible for theft and loss.
(11) In the case of theft or loss, when the owner of the bailment has lent his personal service too.
(12) מה מצינו Lit., 'what (do) we find?' i.e., as we find a paid bailee and a borrower responsible for certain mishaps, and we also find that the former ceases to be responsible when the owner of the bailment is personally in his service, so the same is assumed of the latter.
(13) Whereas theft is not so unpreventable.
(14) Lit., 'adds to'.
(15) וכי . I.e., the waw indicates that the provisions of each section, in part at least, apply to the other. Hence, since the lower states that a borrower is exempt when the owner lends his personal service, the same holds good in the upper section dealing with a paid trustee.
(16) As stated supra.
(17) Lit., 'that agrees (that we say), Dayyo, it is sufficient.' v. B.K. 25a.
(18) Hence, just as a borrower is free from responsibility when the owner is in his service, where he would otherwise be liable, sc. for injury and death, so the paid bailee is free in similar circumstances where he would otherwise be liable, viz., for theft and loss. And just as a paid bailee is not responsible in these cases, so likewise a borrower. Now, since the whole is thus deduced by analogy, it is not subject to refutation. But above, only the first half was deduced by analogy (hekkesh, v. Glos.), the second half being derived a minori; and an a minori reasoning (Kal wa-homer, v. Glos.) is subject to refutation.
(19) Mentioned in the case of borrower.
(20) Which is two sections remote from the borrower.
(21) Notwithstanding that in cases of mishaps this fact does free them from liability.
(22) The first explicitly, and the second by exegesis.
(23) But not for negligence, the liability for which is derived a minori.
(24) [This phrase does not occur in our Mishnah but is introduced by the Talmud in the text to exclude the possible assumption that the reference here is to the hiring of the cow. V. Strashun, a.l.]
(25) Which proves that the service of the owner does not free him where he would otherwise be responsible, viz., in the case of culpable negligence, thus refuting the contrary view.
(26) Though all agree that he is exempt from his liabilities if the owner is in his service.

Talmud - Mas. Baba Metzia 95b

is explicitly written, and not what is exegetically derived.

Come and hear: If he borrows it [sc. the animal], and borrows its owner along with it; if he hires it and hires the owner with it; if he borrows it, and hires the owner along with it; or if he hires it and borrow its owner with it; even if the owner is working elsewhere,[1] and it dies, he is not liable. Now, it was assumed that this Tanna agrees with R. Judah that a hirer ranks as a paid bailee: thus we see that this Tanna includes what is derived exegetically, yet omits an unpaid trustee! — This agrees with R. Meir, who maintains that a hirer ranks as a gratuitous trustee; and so he states [the law] of an unpaid bailee, and the same applies to a paid bailee. If you wish,[2] I can say it is as Rabbah b. Abbuha reversed [the dispute] and taught: How does a hirer pay? R. Meir said, As a paid bailee; R. Judah

said, As an unpaid bailee.[3]

R. Hamnuna said: He is always responsible unless it [the bailment] be a cow, and he [its owner] ploughs therewith [in the bailee's service], or an ass, and he drives it along, and unless the owner is in the bailee's service from the time the loan is made until it is injured or dies. Thus we see that in his view, 'But if the owner thereof be with it,' refers to the whole transaction.[4]

Raba raised an objection: If he borrows it [sc. the animal], and borrows its owner along with it; if he hires it and hires the owner with it; if he hires it and borrows its owner with it; or if he borrows it and hires the owner along with it; even if the owner is working elsewhere, and it dies, he is not liable. Surely, that means on different work![5] — No; it means on the same work [as the animal was doing]. Then how can it be elsewhere? — [It means] that he went along breaking up [the ground] ahead of it. But since the second clause refers to [working] near it, it follows that the first clause means [actually] a different work! For the second clause states: If he [first] borrows it [sc. the animal] and then borrows its owner; if he hires it and then hires its owner with it, even if the owner is ploughing at its side, and it perishes, he [the borrower or hirer] is responsible! — I will tell you: Both the first clause and the last refer to the same work; and the first clause teaches something of noteworthy interest, and the second likewise. The first clause teaches something of noteworthy interest: though he [the owner] is actually by its side, but yet engaged on the same work, since the owner was in his service from the time the loan was made, he [the bailee] is not responsible. And the second likewise teaches us something of noteworthy interest: though he [the owner] is by its side, yet since the owner was not in his service from the time of the loan, he is responsible. How so? Now, if you concede that the first clause refers to different work and the second to the same, it is well: that very fact is remarkable.[6] But if you suggest that both the first clause and the second refer to the same work, what is there remarkable? Both[7] are on the same work![8] And moreover it has been taught:[9] From the verse, But if the owner thereof be with it, he shall not make it good, do I not know, by implication, that if the owner thereof is not with it, that he must make it good? Why then is it [explicitly] stated, And the owner thereof not being with it, [he shall surely make it good]? To teach you: if he is in his service when the loan is made, he need not be so at the time of injury or death; but though in his service at the time of injury or death, he must also have been so with him at the time of loan.[10] And another [Baraitha] further taught:[8] From the verse, The owner thereof being not with it, he shall surely make it good, do I not know by implication, that if the owner thereof is in his service, that he is free from liability? Why then is it stated, But if the owner thereof be with it [etc.]? To teach you: Once it [the animal] has left the lender's possession, its owner being [simultaneously] in his service, even for a single hour, and it dies, he [the borrower] is free from liability.[11] The [complete] refutation of R. Hamnuna is indeed unanswerable.[12]

Abaye, holding with R. Joshia, explains the verses in accordance with him; Raba, agreeing with R. Jonathan, interprets them on the basis of his views.[13] [Thus:] 'Abaye, holding with R. Joshia, explains the verses in accordance with him,' 'The owner thereof being not with it, he shall surely make it good': hence, it is only because he was not with him on both occasions;[14] but if he were with him on one occasion but not on the other, he would be free from responsibility.[15] But [on the Other hand], it is written, 'But if the owner thereof be with it he shall not make it good': hence, it is only because he was with him on both occasions, but if he was with him on one occasion but not on the other, he is responsible. [This contradiction is] to teach you: If he was with him at the time of the loan, he need not have been with him at the time of the injury or death; but though he were with him at the time of the injury or death he must also have been with him when the loan was made.[16]

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(1) I.e., not in the same place as the animal, yet in the service of the borrower or hirer.

(2) [Should you for some reason prefer to ascribe this anonymous Baraitha to R. Judah (Rashi).]

(3) According to this, the Baraitha is taught on the basis of R. Judah's views.

(4) I.e., the owner must be in the borrower's service all the time, and employed on the labour done with the borrowed ox

or ass.

(5) This refutes R. Hamnuna.

(6) That though he is free from responsibility when the owner is in his service even for different work, he is nevertheless liable if he is not in service from the very beginning, even if engaged on the same work at the time of death.

(7) Whether he breaks up the ground before it, or guards it from behind.

(8) And thus there stands Raba's cited objection to R. Hamnuna.

(9) In refutation of R. Hamnuna's ruling.

(10) This proves that 'and the owner thereof not being with it' refers directly to the time of the loan, and not as R. Hamnuna holds, to the whole time of the transaction.

(11) This Baraitha is identical with the preceding and differs only in form.

(12) The first part of his statement from the first teaching, and the latter from the last two Baraithas cited.

(13) For the dispute of R. Joshia and R. Jonathan, v. supra 94b. The Talmud now explains how the Tannaim deduce that the owner must be pledged to the borrower's service at the time of the loan, but not when the injury or death occurs.

(14) Of the loan and the injury or death.

(15) Since the beginning of the verse mentions both the loan and the mishap, the second half, the owner thereof etc., must refer to both likewise, i.e., the owner was not with him when he borrowed, nor when it died. That is the natural interpretation according to R. Joshia's view that the waw is definitely conjunctive, so that (and it die) links the whole verse.

(16) It is explained below why this is assumed, and not the reverse.

Talmud - Mas. Baba Metzia 96a

'Raba, agreeing with R. Jonathan, interprets them on the basis of his views': 'The owner thereof being not with it, he shall surely make it good': this may imply that he is in his service either on both occasions or on one; in both cases he is free from responsibility. On the other hand, it is also written, 'But if the owner thereof be with it, he shall not make it good'; this too implies whether he is not with him on both occasions or only on one, he is liable. [Hence this contradiction is] to teach you: If he was with him at the time of the loan, he need not have been with him at the time of the injury or death; but though he were with him at the time of the injury or death he must also have been with him when the loan was made.

But may I not reverse it? — It is logical that the time of the loan is stronger [in remitting liability], in that it brings it [the animal] into his possession. On the contrary, are not injury and death more likely [to cancel responsibility], since he then becomes [actually] liable for accidents? — Were there no loan, what would injury and death effect?[1] But if not for injury and death, what liability is imposed by borrowing?[2] — Even so, [the responsibility imposed by] borrowing is greater, since he thereby becomes responsible for his food.[3]

R. Ashi said: Scripture saith, 'And if a man borrow aught of his neighbour,' [implying, aught of his neighbour,] but not his neighbour with it [sc. the animal], then, 'he shall surely make it good:' hence, if his neighbour is with him [when he borrows], he is free from liability.[4] If so, what is the need of, 'the owner thereof being not with . . . But if the owner thereof be with it'?[5] — But for these, I should have thought that this [sc. aught of his neighbour] is the ordinary Scriptural idiom.[6]

Rami b. Hama propounded: What [is the law] if he borrows it in order to commit bestiality therewith? Must the loan be as people generally borrow, whereas people do not borrow for such a purpose?[7] Or perhaps the reason is because of the pleasure [he derives from the loan]: in which case here too he has pleasure?[8] What [again, is the law] if he borrows it for appearance's sake?[9] Is it necessary that something of monetary value shall be lent,[10] which [condition is fulfilled] here? Or perhaps, something of monetary value, by which he [the borrower] directly benefits, is required — which is not [the case here]? What if he borrows it for work worth less than a perutah: must there be monetary value, and there is some? Or perhaps less than a perutah is of no account? What if he

borrows two cows for a perutah's value of work? Do we say, consider[11] the borrower and lender, and there is [monetary value]? Or perhaps, the criterion is [the work of] the cows, and in [that of] each there is none?[12] What if he borrows from partners, one of whom lends himself to him? Must all its owners [be in the bailee's service], which condition is absent here? Or perhaps, he after all bears no liability for his half?[13] What if partners borrow, and he [the animal's owner] lends himself to one of them? Must there be [a pledge of service] to all the borrowers, which, however, is absent here? Or perhaps, for that half [of the partnership] to which he is pledged there is no responsibility? What if he borrows from a woman, and her husband pledges his service? Or what if a woman borrows, and he [the owner] lends himself to her husband?[14] Is a title to usufruct as a title in the principal itself,[15] or is it not?

Rabina asked R. Ashi: What if one says to his agent, 'Go and loan yourself [for service] on my account, together with my cow;' must there actually be its [sc. the bailment's] owner, which is absent here? Or perhaps, 'a man's agent is as himself;' hence the condition is fulfilled? — Said R. Aha, the son of R. Awia, to R. Ashi: As for the husband,[16] that is disputed by R. Johanan and Resh Lakish; with reference to an agent, that is disputed by R. Jonathan and R. Joshia.

'As for the husband, that is disputed by R. Johanan and Resh Lakish.' For it has been stated: If one sells his field to his neighbour for its usufruct, R. Johanan said: He must bring [the first fruits] and recite [the confession];[17] Resh Lakish maintained: He brings [the first fruits], but does not recite [the confession]. 'R. Johanan said: He must bring [the first fruits] and recite [the confession]' because he holds that a title to usufruct is equal to a title to the principal itself. 'Resh Lakish maintained: He brings [the first fruits] but does not recite,' — a title to usufruct is not as a title to the principal itself.[18]

'With reference to an agent, that is disputed by R. Jonathan and R. Joshia.' For it has been taught: If one says to his epitropos,[19] 'All vows which my wife may vow from now until I return from such a place, annul for her,' and he does so, I might think that they are annulled, therefore Scripture writes, Her husband may establish it, or her husband may make it void:[20] this is R. Joshia's view. R. Jonathan said: We find in the whole Torah that a man's agent is [legally] as himself.[21]

R. 'Ilish asked Raba: What [is the law] if one says to his slave, 'Go and loan yourself together with my cow'? The problem arises whether it be maintained that a man's agent is as himself or not. [Thus:] The problem arises on the view that a man's agent is as himself, for that may apply only to an agent who is subject to [Scriptural] commands, but not to a slave, who is not subject thereto.[22] Or, on the other hand, even on the view that a man's agent is not as himself, that may hold good of an [independent] agent, but as for a slave, 'the hand of a slave is as the hand of his master'?[23] — He replied: It is logical that 'the hand of a slave is as the hand of his master.'[24]

Rami b. Hama propounded: Does the husband rank as a borrower in his wife's property,

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(1) I.e., though the actual payment must be made on account of these, it is the fact of loan which conditions it.

(2) Surely, none at all!

(3) The point of the discussion is this. It is evident that Scripture remits liability when the owner is in the bailee's service. Hence the question is, what actually imposes that liability which is to be remitted? And the Talmud answers that it is the act borrowing, rather than injury or death, which imposes it, since borrowing certainly imposes another liability, viz., that of food.

(4) Thus, the verse itself intimates that the owner must not be with him, i.e., in his service, at the time of borrowing.

(5) Since, according to R. Ashi, it is intimated in the words he quotes.

(6) So that no deduction could be made from the 'of' with respect to of non-liability when owner is in the service of the bailee. Now, however, that such is explicitly stated, and, moreover, the apparent contradiction intimates that the owner must be in his service at a particular time, the beginning of the verse, cited by R. Ashi, shews that the time of borrowing

is meant.
(7) Hence he is not liable for accidents.
(8) That the borrower is usually responsible for accidents.
(9) I.e., that he should be thought wealthy, and so obtain credit.
(10) In order to impose liability.
(11) Lit., 'go' according to'.
(12) This problem, of course, arises only on the supposition that a cow must do a perutah's worth of work.
(13) Sc. of the partner who pledged his service.
(14) The reference is to the class of property designated נכסי מלוג 'goods of plucking' — of which the husband enjoys the usufruct, whilst the principal belongs to the wife.
(15) In which case the husband and wife are partners, and so this will depend on the previous problem.
(16) I.e., the problem concerning him.
(17) V. supra, p. 518, n. 9. Though the usufruct only belongs to him, he can nevertheless say, And now, behold, I have brought the first fruits of the land, which thou, O Lord, hast given me (Deut. XXVI, 10).
(18) V. B.B. 136b.
(19) His general steward, appointed in loco domini.
(20) Num. XXX, 14.
(21) Hence the vows are annulled. The same reasoning applies to the problem under discussion.
(22) V. supra, 71b and 72a.
(23) I.e., having no independent existence, his actions are certainly like those of his master.
(24) Hence it is accounted as though the owner is in the borrowers service.

Talmud - Mas. Baba Metzia 96b

or as a hirer?[1] — Said Raba: His very subtlety has led him into error; what will you? If he ranks as a borrower, it is a loan when the owner is in his service; if a hirer, it is a hiring in similar circumstances?[2] — But when does Rami b. Hama's problem arise? If he hired a cow from her and then married her[3] — what [is the law] then? Does he rank as a borrower or as a hirer? Does he rank as a borrower, and so the [present] loan, when the owner is in his service,[4] abrogates hiring effected when the owner was not in his service? Or, perhaps, he ranks as a hirer, and the status of a hirer remains unchanged? But wherefore this differentiation? [If it is maintained that] should he rank as borrower, the borrowing effected when the owner is in his service cancels the hiring effected without the owner being engaged in his service, why not apply the same principle even if he is considered a hirer, and say that the [new] hiring effected with the owner in his service abrogates the [old] hiring effected without the owner's being in his service? — But when does Rami b. Hama's problem arise? E.g., if she hired a cow from a stranger[5] and then was married [not to the owner]. Now, on the view of the Rabbis, who maintain that the borrower must pay the hirer, there is no problem, for it is certainly a case of a loan plus the owner's service. Where the problem arises is on the view of R. Jose, who ruled, the cow must be returned to its first owner. [Hence the question,] what [is the law] then? Does he rank as a borrower or as a hirer?[6] — Said Raba: The husband ranks neither as a borrower nor as a hirer, but as a purchaser.[7] This follows from the dictum of R. Jose son of R. Hanina. For R. Jose son of R. Hanina said: In Usha it was enacted:[8] If a woman sells of her 'property of plucking' in her husband's lifetime, and then dies, her husband [as her heir] can claim it from the purchaser.[9]

Rami b. Hama propounded: When the husband [obtains the privilege of usufruct] in his wife's property [which belonged to hekdesh], who is liable to a trespass offering?[10] Raba [thereupon] observed: Who then should be liable to a trespass offering? The husband? He is willing to acquire a right in what is permitted, but not in what is forbidden! The wife?[11] But she [herself] does not [particularly] wish him [the husband] to acquire even what is permitted![12] The Beth din?[13] When did the Rabbis enact that the husband ranks as a purchaser, only in respect of what is permitted, not in respect of what is forbidden! — But, said Raba, the husband is liable to a trespass offering when he

actually expends it, just as in general, when one withdraws money of hekdesh [and converts it] into hullin.

The scholars propounded: What if it [the borrowed animal] became emaciated through its work?[14] Said one of the Rabbis, R. Helkiah the son of R. Awia by name:[15] Then it follows that if it died through the work, he is certainly responsible. But let him say to him [the lender], 'I did not borrow for exhibition in a show case!'[16] — But, said Raba, not only is it unnecessary to state that if it became emaciated through work he is not responsible, but even if it died through work, he is still not liable, because he can say, 'I did not borrow it that it should stand in a showcase.'

A man once borrowed an axe from his neighbour, and it broke. When he came before Raba, he said to him, 'Go and bring witnesses that you did not put it to foreign use, and you are free from liability.' But what if there are no witnesses? — Come and hear: For a man once borrowed an axe from his neighbour, and it broke. When he came before Rab, he said to him, 'Go and return him a good axe.' Said R. Kahana and R. Assi to Rab:

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(1) It is assumed that the question is whether he is responsible for accidents when working with his wife's, 'property of plucking,' (q.v., p. 555, n. 4) or not, as a borrower or as a hirer respectively.

(2) Since the wife is pledged to her husband's service from the time of marriage.

(3) Or if he borrowed, etc., hiring being mentioned as the more usual (Tosaf.).

(4) As explained in n. 2.

(5) Lit., 'from the world.'

(6) For this dispute of the Rabbis and R. Jose v. supra 35b Now, since the Rabbis maintain that the borrower is concerned only with the lender, not with the first owner, then in this case we consider only the husband's relationship to his wife, and therefore he is not responsible for accidents. But on R. Jose's view that the borrower is referred direct to the first owner, who, of course, is not in his service, the question is whether he ranks as a borrower, and is responsible for accidents, or as a hirer, who is not. In return for the usufruct the husband is bound to ransom his wife if captured, and that liability may give him the rank of a hirer in relation to his wife.

(7) Hence he is not liable

(8) Usha was a city of Galilee, near Shefar'am, Tiberias and Sepphoris, where an important Rabbinical synod was held on the cessation of the Hadrianic religious persecution, about the middle of the second century; v. B.B. (Sonc. ed.) p. 207, n. 3.

(9) Which proves that the husband is accounted a previous purchaser.

(10) E.g., if she inherited property after marriage, which included, unknown to her husband, money belonging to hekdesh (v. Glos.). By a Rabbinical enactment, the husband becomes a beneficiary in respect of the usufruct of anything inherited by his wife after marriage. Now, it was assumed that the very fact that the husband is empowered to spend this money for its usufruct is as though it were already removed from the possession of hekdesh, even if it has not been actually expended. Since such removal, if done unintentionally, imposes a liability to a trespass offering, Rami b. Hama asked upon whom it falls.

(11) For conferring the right upon her husband.

(12) The privilege was conferred upon him by a Rabbinical enactment, not by her desire.

(13) For conferring that privilege.

(14) Is the borrower liable for the loss in value or not?

(15) [This is the only instance where his name occurs.]

(16) Lit., to 'be placed under a bridal canopy.'

is that the law?[1] Thereupon Rab was silent. And [indeed] the law agrees with R. Kahana and R. Assi, that he returns him the broken axe and makes up its full value.

A man borrowed a bucket from his neighbour, and it broke. When he came before R. Papa, he said

to him, ‘Go and bring witnesses that you did not put it to foreign use, and you will be free from liability.’

A man borrowed a cat from his neighbour; the mice then formed a united party and killed it. Now, R. Ashi sat and pondered thereon: How is it in such a case? Is it as though it had died through its work, or not? Thereupon R. Mordecai said to R. Ashi: Thus did Abimi of Hagronia say in Raba's name: A man whom woman killed — [for him] there is no judgment nor judge![2] Others say: It ate many mice, whereby it sickened and died. Now, R. Ashi sat and cogitated thereon: How is it in this case? — Said R. Mordechai to R. Ashi: Thus did Abimi of Hagronia say: A man whom women killed[3] — for him there is no judgment nor judge.

Raba said: If a man wishes to borrow something from his neighbour and yet be free from responsibility, he should say to him, ‘Give me a drink of water,’ so that it constitutes a loan together with the owner's service. But if he [the lender] is wise, he should answer him, ‘[First] borrow it by threshing with it, and then I will give you a drink.’

Raba said: A teacher of children, a gardener,[4] a butcher, a cupper and a town barber[5] — all [if they lend something] whilst at work, are treated in regard to the loan as being in the service [of the borrower].

The scholars said to Raba: ‘You, Master, are loaned to us.’[6] This enraged him: ‘You wish to deprive me of my possessions!’[7] he exclaimed. ‘On the contrary, you are loaned to me! For I can change you over from one tractate to another, whilst you cannot!’[8] But neither was entirely correct. He was lent to them during the Kallah days,[9] whilst they were loaned to him for the rest of the year.

Meremar b. Hanina hired a mule to inhabitants of Be Hozae[10] and went forth to assist them in loading it, but through a negligent act on their part it died. When they came before Raba, he held them liable. His disciples objected: But it is negligence with the owner [in service]! So he was ashamed. Subsequently it was ascertained that he had gone forth to supervise the loading.[11] Now, on the view that for negligence with the owner in service there is no responsibility, it is well; for that reason he was ashamed. But on the view that one is liable, why was he ashamed? — They were not negligent with respect thereto, but it was stolen, and it died a natural death in the thief's possession; and they came before Raba, who ruled them responsible. Thereupon the Rabbis protested to Raba: But it was theft whilst the owner was in their service! But subsequently it was ascertained that he had gone out to supervise its loading.

MISHNAH. IF ONE BORROWS A COW, BORROWING IT FOR HALF A DAY AND HIRING IT FOR HALF A DAY; OR IF HE BORROWS IT FOR ONE DAY AND HIRES IT FOR THE NEXT; OR IF HE HIRES ONE AND BORROWS ANOTHER, AND ONE COW DIES, THE LENDER ASSERTING THAT THE BORROWED ONE DIED, OR IT DIED ON THE DAY WHEN IT WAS BORROWED,

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(1) Is not the law rather that the broken axe is returned and the loss made up? v. B.K. 10b.

(2) I.e., no redress. He is not worthy of being called a man! The same applies to a cat that is eaten by mice.

(3) Through excessive gratification.

(4) Who plants gardens for others on a percentage.

(5) [ספר others: a notary ספר cf. B.B. (Sonc. ed.) p. 106, n. 7.]

(6) I.e., ‘you are pledged to our service, to teach us.’

(7) I.e., ‘to borrow from me and be exempt from liability.’

(8) I.e., ‘I can select for subject of study any tractate I fancy, and you have not the right to protest.’

(9) Kallah, general assembly, refers to the months of Adar and Ellul, before Passover and the High Festivals respectively, when popular lectures were given on the coming Festivals. During this time the teacher was restricted to

those particular subjects, and therefore stood in the service of his disciples. On Kallah v. B.B. (Sonc. ed.) p. 60, n. 7.
(10) V. p. 508, n. 2.
(11) To see that it was not overloaded. Hence he was not in their service at all, and so Raba's verdict was just.

Talmud - Mas. Baba Metzia 97b

OR DURING THE HOUR FOR WHICH IT WAS BORROWED; AND THE OTHER REPLIES, 'I DO NOT KNOW', HE MUST PAY. IF THE HIRER ASSERTS: THE HIRED ONE DIED, [OR], IT DIED ON THE DAY WHEN IT WAS HIRED, OR IT DIED DURING THE HOUR FOR WHICH IT WAS HIRED, AND THE OTHER REPLIES, 'I DO NOT KNOW,' HE IS NOT LIABLE. BUT IF ONE ASSERTS THAT IT WAS THE BORROWED ONE AND THE OTHER THAT IT WAS THE HIRED ONE, THE HIRER MUST SWEAR THAT THE HIRED ONE DIED [WHICH FREES HIM FROM LIABILITY]. IF THE ONE SAYS, 'I DO NOT KNOW,' AND THE OTHER SAYS, 'I DO NOT KNOW,' THEY MUST DIVIDE.[1]

GEMARA. Hence it follows, [that if A says to B,] 'You owe me a maneh,' and B pleads, 'I do not know,' he is bound to pay. Shall we say that this refutes R. Nahman? For it has been taught: [If A says to B,] 'You owe me a maneh,' and B pleads, 'I do not know,' R. Huna and Rab Judah rule that he must pay; R. Nahman and R. Johanan say: He is not liable! — It is as R. Nahman answered [elsewhere], e.g., there is a dispute between them involving an oath; so here too, it means that there is a dispute between them involving an oath.[2] What is meant by a dispute involving an oath? — As Raba's [dictum].

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(1) I.e., share the loss.
(2) I.e., his plea was such that he should have taken an oath, and being unable, since he said, 'I do not know', he must pay instead, but when A claims a maneh, and B simply answers, 'I do not know', he is not thereby liable to an oath, and hence is free altogether.

Talmud - Mas. Baba Metzia 98a

For Raba said: [If A says to B,] 'You owe me a maneh,' to which he replies, 'I [certainly] owe you fifty [zuz], and as for the rest, I do not know,' since he cannot swear,[1] he must pay [all]. [On these lines,] the first clause [of our Mishnah] is conceivable when two, and the second, when three [cows are involved]. [Thus:] 'The first clause, when two [are involved].' A said to B, 'I gave you two cows, loaned for half a day and hired for half (or, [he says: they were] loaned for one day, and hired for another) and both died during the time they were borrowed.' To which B replied, 'One indeed did die then, but as for the other, I do not know whether it was during the time it was borrowed or the period of hire,' — since he cannot swear, he must pay.

'And the second clause, where three [cows are involved].' [Thus:] A said to B, 'I gave you three cows, two loaned and one hired, and the two loaned ones died.' To which the borrower replied, 'Tis true that one borrowed animal died; but as for the other, I do not know whether the borrowed one died and the one alive is the hired one, or the hired one died and the one alive is the borrowed;' since he cannot swear, he must pay.

And according to Rami b. Hama, who maintained that the four bailees must partially deny and partially admit [liability],[2] the first clause is possible only when three, and the second when four [animals are involved]. 'The first clause when three [are involved]': A said to B, 'I gave you three cows, half a day on loan and half on hire, (or, [he says, I gave you them] one day, on loan and one on hire,) and the three died, all in the period when they were borrowed.' To which the borrower replied, 'As for one, the claim is entirely unfounded [I never received it]; the second did die in the period when it was borrowed; of the third, I do not know whether it died during the time it was borrowed or

the period when it was hired.' Since he cannot swear, he must pay.

'And the second clause, where four [animals are involved].' A said to B, 'I gave you four cows, three loaned and one hired, and the three loaned ones died.' To which the borrower replied,

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(1) As one who partly admits and partly denies liability; supra 3a.

(2) V. supra 5a; in his view, 'I do not know' does not constitute denial; only a plea such as 'I have returned that particular animal,' or 'I never received it.'

'As for one, the claim is entirely unfounded; with respect to the second, it is true that a borrowed one died; and as to the others, I do not know whether it was the hired one that died and the one alive is the borrowed one, or whether it was the borrowed one that died and the one alive is the hired one;' and since he cannot swear he must pay.

BUT IF ONE ASSERTS THAT IT WAS THE LOANED ONE, AND THE OTHER THAT IT WAS THE HIRED ONE, THE HIRER MUST SWEAR THAT THE HIRED ONE DIED. But why so? What he claims from him he does not admit; and what he admits he does not claim?[1] — Said 'Ulla: [He swears] through the superimposition [of an oath]. For he [the lender] can demand, 'You must at least swear that it died of natural causes; and since you must swear thus, swear also that the hired one died.'[2]

IF BOTH SAY, 'I DO NOT KNOW,' THEY MUST DIVIDE. Who is the author of this? — Symmachus, who ruled: When money lies in doubt, it is divided.[3]

R. Abba b. Mammel propounded: What [is the ruling] if the borrowing was made together with the owner's [service], but subsequently it [the bailment] was hired without the owner?[4] Do we say, the borrowing stands alone, and the hiring stands alone? Or perhaps the hiring is a continuation of the loan, since he is responsible for theft and loss?[5] And should you rule that hiring is a continuation of the loan, what if he hired it together with the owner's [service], and then borrowed it without the owner? Shall we say that borrowing is certainly not included in hiring?[6] Or perhaps, being partly related thereto, it is wholly related thereto. And should you rule that we do maintain that partial relationship is regarded as complete relationship, what if one borrowed it with the owners [service], hired it without the owner's, and borrowed it again [without the owner]? Does the borrowing revert to its former status? Or perhaps, the hiring breaks the connection? [Likewise,] if it was hired with the owner's [service], then borrowed, and then hired again [the last two without] — do we Say, the hiring reverts to its former status? Or perhaps, the intermediate borrowing breaks the connection? These problems remain unsolved.

MISHNAH. IF A MAN BORROWS A COW, AND HE [THE LENDER] SENDS IT TO HIM BY HIS SON, SERVANT OR AGENT; OR BY THE SON, SERVANT OR AGENT OF THE BORROWER, AND IT DIES [ON THE ROAD], HE IS NOT LIABLE. BUT IF THE BORROWER SAID TO HIM, 'SEND IT TO ME BY MY SON, SERVANT, OR AGENT,' OR 'BY YOUR SON, SERVANT OR AGENT, OR IF THE LENDER SAID TO HIM, 'I AM SENDING IT TO YOU BY MY SON, SERVANT OR AGENT,' OR 'BY YOUR SON, SERVANT OR AGENT, AND THE BORROWER REPLIED, 'SEND IT,' AND HE SENT IT, AND IT DIED [ON THE ROAD], HE IS RESPONSIBLE. AND THE SAME HOLDS GOOD WHEN HE RETURNS IT.[7]

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(1) Though the Mishnah was made to refer to a number of animals, that was only according to R. Nahman; whereas on the view of R. Huna and Rab Judah the Mishnah is literally understood. But in that case, there is no partial admission and partial rejection of the claim, the admission being in respect of something not claimed at all.

(2) גלגול שבועה , lit., 'rolling oath,' v. supra 3a. Thus, here, the lender can plead, 'Even on your own plea, you must still swear that it died naturally, not through your negligence.' (This answer rejects Rami b. Hama's ruling that no oath is imposed at all upon bailees, even when they plead loss, theft, death, etc., unless there is also partial rejection of the claim, as above.) Since the bailee is thus bound to swear, another oath, viz., that the hired one and not the borrowed one died, is administered. The superimposed oath is Biblical, v. Sot. 18a.
(3) v. supra 2b.
(4) I.e., whilst the animal was yet in the borrower's possession, he hired it for a further period; at the time of hiring, its owner was not in his service, though he was when the loan was made.
(5) I.e., by becoming a hirer, he adds nothing to the liabilities of a borrower, and since he bears this responsibility on account of the first meshikah as a borrower, his present responsibility is but a continuation of the first.
(6) Since there is greater responsibility in the former than in the latter.
(7) If the lender instructs him to send it back, the borrower is free from the risks of the road, but not otherwise.

Talmud - Mas. Baba Metzia 99a

GEMARA. If he sends it by his [sc. the lender's] servant, [why does the Mishnah state that] he is liable?[1] Is not the hand of the servant as the hand of his master?[2] — Said Samuel: This refers to a Hebrew servant, whose body does not belong to him [his master]. Rab said: It may refer even to a heathen servant, yet it is considered as though he [the borrower] said to him, 'Strike it with a stick and it will come [to me].'[3]

An objection is raised: If one borrows a cow, and sends it to him [the borrower] by his son or agent, he is liable [for accidents on the road]; by his servant, he is not. Now, on Samuel's view it is well: our Mishnah refers to a Hebrew servant; the Baraitha to a heathen servant. But according to Rab, is there not a difficulty? — Rab can answer you: Do not answer [above], it is considered as though he said to him etc.; it means that he had [actually] said to him, 'Strike it with a stick, and it will come.'[4] For it has been stated: [If A said to B,] 'Lend me your cow;' and he asked him, 'By whose hand shall [I send it]?' to which he replied, 'Strike it with a stick, and it will come,' said R. Nahman, in the name of Rabbah b. Abbuha in Rab's name: Once it leaves the lender's possession and it dies, he [the borrower] is responsible.

Shall we say that the following [Baraitha] supports him:[5] [If A said to B,] 'Lend me your cow, and he asked him, 'By whose hand [shall I send it]?' to which he replied, 'Hit it with a stick, and it will come:' once it leaves the lender's possessions and it dies, he [the borrower] is responsible? — R. Ashi said: [No. For] we deal here with a case where the borrower's court was within the lender's, so that when he sends it, it will certainly go there.[6] If so, why state it? — It is necessary to state it only when there are narrow passages [in various directions in the courtyard]. I might think that he [the borrower] does not place full reliance [on its coming to him, for] perhaps it may stand there [sc. in a by-path] and not come to him: therefore we are taught that he places full reliance [that it will come].

R. Huna said: If a man borrows an axe from his neighbour and he cleaves [wood] therewith, he acquires it; if he does not cleave [wood] therewith, he does not acquire it. In what respect? Shall we say, in respect of [unavoidable] accidents?[7] But wherein does it differ from a cow, [for which he is responsible] from the time of the loan?[8] — Hence in respect of returning it. Once he cleaves [wood] therewith, the lender cannot retract;[9] if not, the lender can retract.

Now, he [R. Huna] is in conflict with R. Ammi. For R. Ammi said: If a man lends an axe belonging to the Sanctuary, he is liable for trespass in respect of its goodwill value, and his neighbour may use it[10] forthwith.[11] Now, if he [the borrower] does not acquire it [until he actually uses it], why is he [the lender] liable for trespass, and why may his neighbour use it forthwith? Let him return it, gain no title thereto, and so not be liable for trespass![12]

He [R. Huna] is also in conflict with R. Eleazar. For R. Eleazar said: Just as they [the Rabbis] instituted meshikah for purchasers,[13] so did they institute meshikah for bailees. It has been taught likewise: Just as they instituted meshikah for purchasers, so did they institute meshikah for bailees. And just as

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(1) If the borrower instructed him to send it.

(2) So that it is as though it had never left the lender's possession.

(3) And as soon as it leaves the domain of the owner, the responsibility rests on the borrower.

(4) I.e., in the Mishnah the borrower did instruct the lender to let it come of istelf, whereby he immediately assumed the risks of the road; and he is not freed of the liability merely because the lender sent his servant to accompany it.

(5) Rab.

(6) The borrower's courtyard led into the lender's; in that case he assumes responsibility. But if part of the highway is to be traversed, he would not assume responsibility. The Baraitha accordingly affords no support to Rab.

(7) I.e., he gains title thereto to be liable for unavoidable accidents.

(8) Even before use.

(9) But it belongs to the borrower for the whole period of the loan.

(10) Lit., 'cleave therewith.'

(11) For unwittingly removing an article from the possession of the Sanctuary one had to pay thereto the principal plus a fifth of the value of the benefit of such removal. In this case, his benefit is only the goodwill of the borrower to whom he lent it, upon which a monetary value is placed. Further, having thus removed it from the possession of hekdesh, it becomes hullin (v. Glos.), and therefore the borrower may freely use it, at the very outset, as soon as it comes into his hand.

(12) Hence it follows that in R. Ammi's opinion it becomes the borrower's by the act of meshikah (v. Glos.), even before he uses it.

(13) As the means of gaining legal possession.

Talmud - Mas. Baba Metzia 99b

real estate is acquired by means of money, a deed, or hazakah,[1] so is hiring effected by the same means. But what has hiring to do [with these]?[2] — R. Hisda said: It refers to the renting[3] of real estate.

Samuel said: If a man robbed his neighbour of a cake of pressed dates containing fifty dates, which, sold together, bring fifty [perutahs] less one; whilst, sold separately, realise fifty perutahs, — in the case of secular property,[4] he must repay forty nine [perutahs]; in the case of hekdesh[5] he must pay fifty, plus the fifth thereof. This, however, is not so in the case of one who injures [property belonging to] hekdesh, for such a one does not add a fifth. For a Master stated: And if a man eat of the holy thing [unwittingly, then he shall put the fifth part thereof unto it etc.]:[6] this excludes one who injures [the holy thing]. To this R. Bibi b. Abaye demurred: In the case of secular property, why must he pay [only] fifty less one? Can he not say, 'I would have sold them singly'? — R. Huna the son of R. Joshua replied: We learnt, The area of a se'ah[7] in that field is assessed.[8]

Shall we say that in Samuel's opinion the law appertaining to secular property is not the same as that of the [Most] High?[9] But we learnt: If he [the steward in charge of the sanctuary] took a stone or beam of hekdesh,[10] he is not guilty of trespass. If he gave it to his neighbour, he [the steward] is guilty of trespass, but not the latter.[11] If he built it into his house, he is not liable for trespass unless he dwells in [and enjoys the use of] it to the value of a perutah.[12] Now, R. Abbahu sat before R. Johanan and said in Samuel's name: This proves that if a man dwells in his neighbour's courtyard without his permission, he must pay him rent![13] — Did not R. Johanan observe to him,[14] Samuel retracted from that [inference]? But how do you know that he retracted from the latter; perhaps he retracted from the former?[15] — No: [he must have retracted from the latter,] in accordance with Raba's[16] dictum; for Raba said: Hekdesh without [its owner's] knowledge is as secular property with

[its owner's] knowledge.[17]

Raba said: If carriers broke a shopkeeper's barrel of wine, which on a market day is sold for five [zuz], but on other days for four, if they make a return on the market day, they return a barrel of wine; but if on other days,[18] they must return five [zuz].[19] That, however, holds good only if he had no [other] wine for sale; but if he had [some left after the market], then he should have sold that. And they deduct the payment for his trouble and the value of the tapping.[20]

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(1) V. Glos.

(2) It was assumed that it refers to the hiring of movable property, in respect of which money, etc., does not effect possession.

(3) Lit., 'hiring.'

(4) Lit., 'to an ordinary man.'

(5) V. Glos. I.e., if he stole them from the sanctuary.

(6) Lev. XXII, 14.

(7) V. Glos.

(8) v. B.K. 55b. If an animal enters a field and eats part of the crops, the value of the crops themselves are not assessed for the purpose of damages, but the decrease in the sale value of the se'ah area in which the damage was done, — an assessment which is obviously less than the former. This shews that in respect to repayment a lenient attitude is taken, and the same applies here.

(9) I.e., hekdesh.

(10) Intending to put it to secular use.

(11) The steward is guilty of having removed it from the possession of hekdesh; for which very reason his neighbour is not guilty, since it is no longer hekdesh. Cf. p. 566, n. 5.

(12) Me'ii. 19b; v. B.K. 20b.

(13) Just as one is guilty of trespass in living under that beam, though the beam is so built in as to leave it unaltered, which shews that there is a debt due to hekdesh for this. Now, this inference of Samuel proves that he regards hekdesh and secular property on a par.

(14) [This is the reading of Bah; cur. edd.: 'R. Johanan said to him,' which Rashi omits; cf. B.K. 20b.]

(15) I.e., the law of stealing dates.

(16) Var. lec.: Rabbah's.

(17) I.e., if one makes use of hekdesh, even if the steward is ignorant thereof, he is just as liable as when one makes use of secular property and its owner knows and demands repayment. The reason is that the real owner of hekdesh is God, Who always knows. This proves that the two are not equal, and therefore Samuel is more likely to have retracted from the latter.

(18) After the market day.

(19) But he can refuse a barrel of wine, since he could have obtained a higher price on market day.

(20) The cost of making a bung hole for the wine to be drawn. According to another reading, the crier's fee, who announced that he had wine for sale, v. supra 40b.

Talmud - Mas. Baba Metzia 100a

MISHNAH. IF A MAN EXCHANGED A COW FOR AN ASS, AND IT CALVED; AND LIKEWISE IF HE SOLD HIS MAIDSERVANT, AND SHE BORE A CHILD, THE ONE MAINTAINING, 'IT WAS BEFORE I SOLD HER,' WHILST THE OTHER SAID, 'IT WAS AFTER I BOUGHT HER' — THEY MUST DIVIDE.[1] IF HE [THE VENDOR] HAD TWO SERVANTS, ONE AN ADULT AND THE OTHER A CHILD; OR LIKEWISE TWO FIELDS, ONE LARGE AND ONE SMALL, THE PURCHASER MAINTAINING, 'I BOUGHT THE LARGE ONE,' WHILST THE OTHER SAYS, 'I DO NOT KNOW,' HE ACQUIRES THE LARGE ONE. IF THE VENDOR SAYS, 'I SOLD THE SMALL ONE,' AND THE OTHER SAYS, 'I DO NOT KNOW,' HE RECEIVES ONLY THE SMALL ONE. IF ONE [THE VENDEE] CLAIMS THAT IT WAS THE LARGE ONE, AND THE OTHER THAT IT WAS THE SMALL ONE, THE

VENDOR MUST SWEAR THAT HE HAD SOLD THE SMALL ONE. IF THIS ONE SAYS, 'I DO NOT KNOW,' AND THE OTHER SAYS, 'I DO NOT KNOW,' THEY MUST DIVIDE.

GEMARA. Why should they divide? Let us see in whose possession it [sc. the calf or child] is, and then apply to the other the principle, He who claims from his neighbour has the onus of bringing proof? — R. Hiyya b. Abin said in Samuel's name: It means that it [the calf] was standing in a meadow; the maidservant, too, was in the market-stand.[2] Then let us presume the ownership of the first master, and apply to the other the principle, He who claims from his neighbour bears the onus of proof?[3] — This agrees with Symmachus, who ruled: When the ownership of property is in doubt, it is divided [among the claimants] without an oath. Now, when did Symmachus rule thus? Where [each] claimant pleads, 'Perhaps [it is mine];' but did he maintain it likewise when each states, '[I am] certain'?[4] — Said Rabbah son of R. Huna: Even so: Symmachus ruled thus even when each states '[I am] certain.' Raba said: In truth, Symmachus ruled thus only when each pleads, 'perhaps,' but not when each states, '[I am] certain:' but read [in the Mishnah]: The vendor maintains, 'Perhaps it was before I sold [her],' and the vendee, 'Perhaps it was after I bought [her].'

We learnt: IF THIS ONE SAYS, 'I DO NOT KNOW, AND THE OTHER SAYS, 'I DO NOT KNOW,' THEY MUST DIVIDE. Now, on Raba's view, it is well; since the last clause refers to when both state 'perhaps', the first may likewise refer to a case where both plead 'perhaps'. But according to Rabbah son of R. Huna, who maintained: Indeed, Symmachus ruled thus even when both plead 'certain' — if they divide even on certain claims,[5] is it necessary to teach it when their claims are uncertain? — As for that, it is no argument. The last clause is stated in order to throw light on the first: [viz.,] that you should not say that the first clause refers [only] to a doubtful plea on both sides, but where both contend with certainty, it is not so;[6] therefore the last clause teaches the case of 'perhaps', on the part of both, from which it follows that the first refers to a plea of certainty by both;[7] and even then, they must divide.

We learnt: IF ONE [THE VENDEE] CLAIMS THAT IT WAS THE LARGE ONE, AND THE OTHER [THE VENDOR] THAT IT WAS THE SMALL ONE, THE VENDOR MUST SWEAR THAT HE HAD SOLD THE SMALL ONE. Now, on Raba's view, that Symmachus gave his ruling only where each [claimant] is uncertain, but not when they are both positive, it is well: hence he must swear.[8] But according to Rabbah son of R. Huna, who maintained that the ruling of Symmachus does indeed hold good even when both are positive, why should the vendor swear? Let them divide! — Symmachus admits [that one must swear] where an oath is necessary by Biblical law, as we interpret this below.

IF HE HAD TWO SERVANTS, ONE AN ADULT AND THE OTHER A CHILD, etc. Why should he swear? What he claims he does not admit, and what he admits he does not claim?[9] Moreover, it is a case of 'Here it is'?[10] Moreover, an oath is not taken with respect to slaves?[11] — Rab said: It means that he demands money: [the vendee claims] the price of an adult slave, whilst [the vendor offers] the value of a child slave; similarly, the value of a large field and that of a small one [are involved].[12] Samuel said: It means that he [the purchaser] claims raiment for an adult slave, and the vendor offers raiment for a child slave;[13] or [the dispute concerns] the sheaves of a large field and those of a small one.

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(1) When a man buys an animal, it does not become his even after payment, until he performs meshikah. Hence there is no possibility of conflict, since it must be known whether it had calved before or after meshikah. But when an exchange is made, as soon as meshikah is performed on one animal the complete exchange is effected on both. Hence the dispute could arise with respect to the cow only in the case of an exchange. But in respect of the maidservant the dispute is possible even in the case of a sale, because possession of her is effected by paying the purchase price.

(2) A narrow path adjoining the open road where slaves, cattle, etc., are sold. Thus they were in neither's possession. The Talmud could have answered that they were standing in the street, but, it is unusual to be in the street for a lengthy time

(Tosaf.).

(3) For when the ownership of an object is in dispute, one may presume that it has not changed hands, unless there is proof to the contrary.

(4) As in the Mishnah, v. supra 3b, and B.K. 38b.

(5) Since, on his view, the first part of the Mishnah refers to such.

(6) I.e., they do not divide.

(7) As it is superfluous to state two identical clauses.

(8) Since they were both positive.

(9) V. supra pp. 19 and 563, n. 1.

(10) Helak, v. supra p. 13. n. 5. When the vendor admits the sale of the child, he offers it immediately to the claimant, and there is a view that in such case there is no oath.

(11) V. Shebu. 42b.

(12) Hence all three difficulties are removed: with respect to the second, the vendor admits that he owes the value of a child slave, etc., but does not immediately offer it.

(13) Where the purchase of raiment for a slave is in dispute.

Talmud - Mas. Baba Metzia 100b

. [You say] 'Raiment', but [surely] what he claims he does not admit, and what he admits he does not claim! — Even as R. papa said [below], when it is on the roll; so here too, when it is on the roll.[1] Now, this presented a difficulty to R. Hoshaia:[2] does then the Mishnah state 'raiment'? It states 'a slave'! — But, said R. Hoshaia, it means, e.g., that he claimed a slave together with his raiment, or a field with its sheaves. But still the difficulty remains: With respect to raiment, what he claims he does not admit; and what he admits he does not claim! — Said R. papa: It refers to cloth on the roll.[3] This presented a difficulty to R. Shesheth: Does he [the Tanna] wish to teach us that [movable property] binds [immovable]? But we have already learnt it: Unsecured chattels bind secured property in respect of an oath![4] — But, said R. Shesheth, [the Tanna of the Mishnah] is R. Meir, who maintained that a slave ranks as movable chattels. But the difficulty still remains: what he claims he does not admit; what he admits he does not claim. — He [the Tanna] is of R. Gamaliel's opinion. For we learnt: If he [the plaintiff] claims wheat, whilst the other [the defendant] admits [owing] barley, he is free [from an oath]. R. Gamaliel held him liable. Yet even so, it is still a case of 'Here it is!' — Said Raba: In the case of the slave [which he admitted], he [the seller] had cut off his hand; and in the case of the field, he had dug in its pits, ditches, and cavities.[5]

But are we not informed that R. Meir holds the reverse? For we learnt: If a man took by violence a cow, and it aged, or slaves, and they aged, he must pay their value at the time of the robbery.[6] R. Meir said: In the case of slaves he can say to him [the owner], 'Behold, here is yours before you!'[7] — That is no difficulty. It is as Rabbah b. Abbuha[8] reversed [the Mishnah] and read: R. Meir said: He must pay their value at the time of the robbery; but the Sages ruled: In the case of slaves he can say to him [the owner], 'Behold, here is yours before you.' But [there is this difficulty]: How do we know that R. Meir holds that real estate is equated to slaves: just as an oath is taken for slaves, so also is an oath taken for real estate? Perhaps [in his opinion] there is an oath only in respect of slaves, but not for immovable property?[9] — You cannot think so. For it has been taught : If a cow is exchanged for an ass, and it calved; likewise, if one sells his maidservant, and she bore a child, one says, 'It happened in my possession,' and the other is silent, the former acquires it. If each says, 'I do not know,' they divide; if each pleads, 'It happened in my ownership,' the vendor must swear that she bore whilst in his possession, because all who take an oath in accordance with Scriptural law, swear to be freed from liability:[10] this is R. Meir's view. But the Sages rule: No oath is taken in respect of slaves or lands.[11] Surely then it follows that in R. Meir's opinion an oath is taken [even on lands]. But how is this to be inferred? perhaps they argue by analogy:[12] Just as you admit to us in the matter of lands [that there is no oath], so should you admit in respect to slaves? The proof[13] is this: We learnt, R. Meir said: Some things are similar to real estate, yet do not rank as such; but the Sages

dispute it. E.g., [If A claims from B,] ‘I delivered you ten laden vines,’ and B replies, ‘There were only five,’ — R. Meir makes him liable; but the Sages say: That which is attached to the soil is as the soil.[14] Whereon R. Jose son of R. Hanina said: They differ with respect to grapes which are ready for vintaging: one Master [sc. R. Meir] regards them as already vintaged;[15] whilst the other maintains that they are not as already vintaged! But after all, it must be explained as R. Hoshaia:[16] and as to your difficulty, ‘[does the Tanna wish to teach that movable property] binds [immovable]?’ It is necessary. For I might think that a slave's garment is as the slave himself; likewise the sheaves of a field are as the field itself:[17] therefore we are taught [otherwise].

‘If each says, "I do not know," they must divide.[18] With whom does this agree? With Symmachus, who ruled: When the ownership of property is in doubt, it is divided. Then consider the latter clause: ‘If each pleads, "It happened in my ownership," the vendor must swear that she bore whilst in his possession.’ Now according to Rabbah son of R. Huna, who maintained: Indeed, Symmachus gave his ruling even where both make positive statements; why should he swear? Surely they ought to divide! — Symmachus admits [that one must swear] when an oath is required by Biblical law; [the circumstances being] that he [the owner] had cut off her [sc. the slave's] hand, and in accordance with Raba's explanation.[19]

MISHNAH. IF ONE SELLS HIS OLIVE TREES FOR THEIR WOOD,[20] AND THEY YIELD LESS THAN A QUARTER LOG [OF] OIL] PER SE'AH [OF OLIVES],[21] IT IS THE PURCHASER'S.[22] BUT IF THEY PRODUCED [OLIVES YIELDING] A QUARTER LOG [OF OIL] PER SE'AH, ONE [THE PURCHASER] CLAIMING, ‘MY OLIVE TREES PRODUCED THEM;’ AND THE OTHER [THE VENDOR] MAINTAINING, ‘IT WAS MY LAND WHICH CAUSED THE YIELD,’ THEY MUST DIVIDE. IF THE RIVER SWEPT AWAY A MAN'S OLIVE TREES AND DEPOSITED THEM IN HIS NEIGHBOUR'S FIELD [AND THERE THEY PRODUCED OLIVES] [AND] ONE MAINTAINS, ‘MY OLIVE TREES PRODUCED THEM,’ WHEREAS THE OTHER CLAIMS, ‘MY LAND CAUSED THE YIELD,’ THEY DIVIDE.

GEMARA. How is it meant? If he stipulated, ‘Cut [them] down immediately,’ then even [if the oil yield is] less than a quarter log [per se'ah], it should belong to the landowner; whilst if he stipulated, ‘Cut [them] down whenever you desire,’ even when it is a quarter log, it ought to be the purchaser's? — It is necessary to state this only when he made no stipulation: [in which case] when there is less than a quarter log, one is not particular;[23] when [however] there is a quarter log, people are particular. R. Simeon b. Pazzi[24] said: The quarter log that was stated

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(1) I.e., not the actual garment is in dispute, but the amount of cloth; one says it was for an adult slave; the other, that it was for a child slave.

(2) [Read with MSS.: Rab Hoshaia; Cur. edd.: R(abbi) Hoshaia.]

(3) Though no oath is administered on real estate and slaves, yet where an oath is due on account of movable property, one is administered for the former too (v. p. 11, n. 3).

(4) ‘Unsecured’ and ‘secured’ refer to movable and immovable property respectively. V. preceding note.

(5) Subsequent to the transaction, so that he does not offer immediately all he has admitted, as he would have to make the damage good.

(6) B.K. 95a. Because when he committed the theft, they passed into his possession, and there and then the liability for repayment fell upon him.

(7) Because slaves, like real estate, cannot be stolen, i.e., they never quit the original ownership through theft, and are considered to be, and grow old, in the legal possession of their rightful owner. This contradicts what has been stated, namely, that R. Meir treats slaves as movables.

(8) [Read with MSS.: Rab; v. B.k,. 96b.]

(9) Whilst our Mishnah states that an oath is administered when it is disputed which field was sold, so that our Mishnah cannot after all represent the view of R. Meir.

(10) I.e., the plaintiff is not permitted to swear to sustain his claim, but only the defendant, in order to refute it.

(11) B.K. 96b.
(12) Lit., ‘perhaps they say to him, "just as".’
(13) That R. Meir agrees that there is no oath for lands.
(14) Shebu. 44b.
(15) Hence he says, they are similar to land, in that they are attached thereto, yet do not rank as such, being regarded as already vintaged hence detached, and subject to the laws of oaths. — This shews that for land itself there is no oath, in R. Meir's opinion.
(16) [V. supra p. 571, n. 6. The reading,’Rab Hoshaia’ is confirmed here by MSS.M.]
(17) Hence there should be no oath.
(18) The quotation is from the Baraitha, not the Mishnah, as is seen from the second clause quoted, which is absent in the Mishnah.
(19) Supra p. 572.
(20) I.e., that the purchaser should cut them down for wood.
(21) I,e., they were left in the soil for some time, and produced very inferior olives, in a se'ah of which there was less than a quarter log of oil.
(22) Lit., ‘they belong to the owner of the olive trees.’
(23) About the benefit derived by the purchaser from his soil.
(24) Var. lec.: b. Lakish.

Talmud - Mas. Baba Metzia 101a

is exclusive of expenses.[1]

IF THE RIVER SWEPT AWAY A MAN'S OLIVE-TREES. ‘Ulla said in the name of Resh Lakish: This was stated only if they were uprooted together with their clods of earth, and after three years [of having been swept away]; but within the three years, it all belongs to the owner of the olive trees, for he can say to him [the landowner]: ‘Had you planted them, could you have eaten of them within three years?’[2] But cannot he answer: ‘Had I planted them, I would have enjoyed the whole of their usufruct after three years; whereas now you share it with me?’[3] But, when Rabin came,[4] he said in the name of Resh Lakish: This holds good only if they were uprooted together with their clods, and within three years; but after three years, it all belongs to the field-owner. For he can say to him, ‘Had I planted them myself, would I not have enjoyed their entire usufruct after three years?’[5] But let him answer: ‘Had you planted them, you could not have enjoyed anything at all within three years, whereas as it is, you share half with me!’ — Because he can retort, ‘Had I planted, they would have been small, and I could have sown beets and vegetables under them.’[6]

A Tanna taught: If he said, ‘I wish to take my olive trees,’ he is not heeded. Why? — R. Johanan said: That Palestine may be well cultivated. Said R. Jeremiah: For such an answer a master is necessary.[7]

We learnt elsewhere: R. Judah said: If one leases a field of his father's from a heathen,[8] he must tithe [all the crops] and then give him [the heathen] his share.[9] Now, the scholars understood it thus: What is meant by ‘a field of his fathers’ is Palestine. And the reason it is called the ‘field of his fathers’ is because it is a field of Abraham, Isaac and Jacob. And he [R. Judah] holds: A heathen cannot acquire a title in Palestine to free [the crops] from tithes; also, one who leases [on a percentage] is as a renter [at a fixed rent]: just as a renter must tithe crops and pay him, whether the field produces or not,[10] because it is as repaying a debt: so also, he who leases a field is as though he were settling a debt: and therefore must first tithe the crops and then pay him. R. Kahana said to R. Papi — others state, to R. Zebid: But what of [the Baraitha] that was taught: R. Judah said: If one leases a field of his fathers from a heathen oppressor,[11] he must tithe [the crops] and pay him [his percentage] — why particularly from an oppressor? Does not the same hold good even if he is not an oppressor? — But in truth, a heathen can acquire a title in Palestine to free [crops] from tithes, whilst

a lessee is not as a renter, and 'a field of his fathers' is meant quite literally.[12] But him [the son] the Rabbis penalised,[13] because since it is more precious to him [than to others], he will go and lease it [on such disadvantageous terms]; whereas others would not [accept it on such terms].[14] But why did the Rabbis penalise him? — R. Johanan said: In order that it might come absolutely into his possession.[15] Said R. Jeremiah: For such an answer a master is needed. It has been stated: If one enters his neighbour's field and plants it without permission, Rab said: An assessment is made, and he is at a disadvantage.[16] Samuel said: We estimate what one would pay to have such a field planted. Said R. Papa: There is no conflict. The latter [Samuel] refers to a field suitable for planting;[17] the former [Rab] to a field unsuitable for planting.

Now, this ruling of Rab was not explicitly stated, but inferred from a general ruling. For a man came before Rab.[18] 'Go and assess it for him,' said he.[19] He demurred, 'But I do not desire it.'[20] Said he to him, 'Go and assess it for him, and he shall be at a disadvantage.' 'But I do not desire it,' he reiterated. Subsequently he saw that he had fenced and was guarding it, whereupon he said to him, 'You have revealed your mind that you desire it. Go and assess it for him, and he [the planter] shall be at an advantage.'

It has been stated: If one enters his neighbour's ruins and rebuilds them without permission, and then says to him, 'I want my timber and stones back' — R. Nahman said: His request is granted. R. Shesheth said: His request is not granted.

An objection is raised: R. Simeon b. Gamaliel said: Beth Shammai maintain, His request is granted; Beth Hillel hold, It is not granted. Shall we then say that R. Nahman ruled in accordance with Beth Shammai![21] — He agrees with the following Tanna. For it has been taught: His request is acceded to: this is the opinion of R. Simeon b. Eleazar. R. Simeon b. Gamaliel said: Beth Shammai maintain, His request is granted; Beth Hillel, It is not.[22]

What is our decision on the matter? — R. Jacob said in R. Johanan's name:

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(1) I,e., after deducting the cost of gathering and pressing, there remains the value of a quarter log of oil per se'ah of olives.

(2) The fruit of a tree may not be eaten within the first three years of planting (v. Lev. XIX, 23). Further, if an old tree is swept away together with the clods of earth in which it grew, and deposited elsewhere and takes root; if these clods were sufficient for its subsequent growth, it still ranks as an old tree, and the three-year prohibition does not apply (v. 'Orl. I, 3); otherwise it does, the trees being regarded as newly planted. Hence Resh Lakish observes on the Mishnah: Only when the trees are swept away with their clods, and three years have passed, is the field-owner entitled to half; because had he planted them, when first swept away, with their clods, the three year prohibition would already have ended, and he can consequently claim that the tree-owner benefits from his soil. But within three years he has no claim at all, since it is only in virtue of their own clods that the fruit is permissible, and so no benefit at all is derived from the new soil.

(3) And in virtue of this, he is entitled to half within three years too.

(4) From Palestine to Babylon.

(5) Whilst the cost of buying young olive trees for planting is trifling, and insufficient to justify half of the present usufruct going to the owner of the olive trees (Tosaf.). — The same applies above.

(6) 'But with your olive trees being large, with spreading roots, I lost the entire use of the soil.'

(7) Without R. Johanan one would not have conjectured it.

(8) On a fixed percentage.

(9) Dem. VI, 2.

(10) The rent being paid in crops.

(11) [מציק , As a result of the Roman War Vespasian had declared fields in Judea his private property and distributed them among his soldiers from whom the original owners had finally to lease them. V. Buchler, Der gal. 'Amh. p. 35, and Klein, S. NB p. 12ff.]

(12) And it means that the Gentile had stolen it from his ancestral field.

(13) That he must tithe the whole field, and then give the Gentile his percentage of the whole harvest, as before tithing.
(14) Therefore, others were not required to tithe the whole.
(15) Finding the terms so onerous, he will be induced to buy it back.
(16) He is paid for the cost of planting or for the improvements, whichever is less.
(17) Trees, rather than for sowing.
(18) In a case similar to the foregoing.
(19) I.e., go and assess the value of the trees he planted.
(20) 'I wish to grow cereals, not plant trees.'
(21) It is a general principle that in every dispute between Beth Shammai and Beth Hillel, the halachah is as the latter.
(22) But according to R. Simeon b. Eleazar there is no dispute, and R. Nahman agrees with him.

Talmud - Mas. Baba Metzia 101b

In the case of a house, his demands are ignored; in the case of a field,[1] they are granted. Why so in the case of a field? — For the sake of the cultivation of Palestine. Others say: Because of the impoverishment of the soil.[2] Wherein do they differ?[3] — In respect to the Diaspora.[4]

MISHNAH. IF ONE RENTS A HOUSE TO HIS NEIGHBOUR IN WINTER, HE CANNOT EVICT HIM FROM THE FESTIVAL[5] UNTIL PASSOVER. IN SUMMER, [HE CANNOT EVICT HIM FOR] THIRTY DAYS. IN LARGE CITIES, WHETHER IN SUMMER OR IN WINTER, [THE PERIOD IS] TWELVE MONTHS. BUT WITH RESPECT TO SHOPS, WHETHER IN TOWNS OR IN LARGE CITIES, [HE NEED NOT QUIT FOR] TWELVE MONTHS.[6] R. SIMEON B. GAMALIEL SAID: A BAKER'S SHOP AND A DYER'S SHOP ARE FOR THREE YEARS.

GEMARA. Why is it different in winter? Because when one rents a house in winter it is for the whole of the winter![7] Then does not the same apply to summer, for when one rents a house it is for the whole summer? — But as for winter, this is the reason, because houses are not available for renting.[8] Then consider the second clause: BUT IN LARGE CITIES, WHETHER IN SUMMER OR IN WINTER, [THE PERIOD IS] TWELVE MONTHS. Hence, if this period expires in winter, he can evict him — but why, seeing that no house is available for renting? — Said Rab Judah: This refers to the notice that must be given. And this is what it [the Mishnah] teaches: If one rents his house to his neighbour for an unspecified period, he cannot evict him in winter [if the year expires then] between the Festival and Passover, unless he gave him notice [in the summer] thirty days before. It has been taught likewise: When they [the Sages] said thirty days or twelve months, it was only in respect of notice. And just as the landlord must inform him [that he will not renew the lease], so must the tenant give notice [that he will not re-rent it]. For otherwise he can say to him, 'Had you notified me, I would have taken the trouble to find a good tenant for it.'[9]

R. Assi said: If it [the lease] entered one day into winter, he cannot evict him from the Festival until Passover.[10] But we learnt: THIRTY DAYS! — He means thus: If one of these thirty days fell in winter, he cannot evict him from the Festival until Passover.[11] R. Huna said: Yet if he wishes to increase the rent, he can do so.[12] R. Nahman demurred: This is like holding him by the secrets to force him to give up his cloak![13] But this [that he can raise the rent] holds good only if house rents advanced [in general].

Now, it is obvious that if his own [sc. the landlord's] house fell in, [and no notice to quit had been given,] he can say to him, 'You are no better than I.'[14] If he sold, rented, or gifted it [to another], he [the tenant] can say to him [the new owner], 'You are no better than the man whence you derive your rights.'[15] If he appointed it a home for his son after marriage,[16] we consider [the matter], if it were possible for him [the landlord] to have informed him [that it would be needed for his son], then he should have informed him.[17] But if not, he can say to him, 'You are no better than I.'[18]

A man once bought a boat-load of wine. Having nowhere to store it, he asked a certain woman, 'Have you a place for renting?' She replied, 'No.' So he went and married her, whereupon she gave him a place for storage. He then went home, wrote a divorce, and sent it to her. So she went, hired carriers against that itself,[19] and had it put out in the road. Said R. Huna, son of R. Joshua: As he did, so shall be done unto him, his requital shall recoil upon his head. Not only if it is not a courtyard that stands to be rented; but even if it is a courtyard that is for renting, she can say to him, 'To anybody else I am willing to rent it, but not to you, because you appear to me like a lion in ambush.'

R. SIMON B. GAMALIEL SAID: A BAKER'S SHOP AND A DYER'S SHOP ARE FOR THREE YEARS. It has been taught: Because they give very much credit.

MISHNAH. IF ONE RENTS A HOUSE TO HIS NEIGHBOUR, THE LANDLORD MUST PROVIDE THE DOOR, DOOR-BOLT, LOCK, AND EVERYTHING WHICH REQUIRES A SKILLED WORKER. BUT WHAT DOES NOT REQUIRE A SKILLED WORKER MUST BE DONE BY THE TENANT. THE DUNG BELONGS TO THE LANDLORD, AND THE TENANT IS ENTITLED ONLY TO THAT WHICH ISSUES FROM THE OVEN OR THE POT RANGE.[20]

GEMARA. Our Rabbis taught: If a man rents a house to his neighbour, the landlord must erect doors, make the windows, strengthen the ceiling, and support the joists.[21] The tenant must provide the ladder [for ascending to the loft] parapet,[22] fix a gutterspout,[23] and plaster his roof.

R. Shesheth was asked: Who must provide the mezuzah?[24] Is then the mezuzah a problem? Did not R. Mesharsheya Say: The obligation of the mezuzah lies upon the inhabitant? But [the question is,] who must provide the place for the mezuzah?[25] — Said R. Shesheth to them: We have learnt it: BUT WHAT DOES NOT REQUIRE A SKILLED WORKER, MUST BE DONE BY THE TENANT; and this too requires no skill, [for] it can be [placed]

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(1) I.e., if one plants his neighbour's field without permission, and then desires to remove the plants.

(2) The plants, in drawing their sustenance from the soil, have impoverished it, and the owner of the field is entitled to some compensation.

(3) These two answers.

(4) The first reason does not hold good there, and so his request is acceded to; the second does, hence it is ignored.

(5) 'The Festival', without a qualifying epithet, always means the Festival of Tabernacles.

(6) Because the shopkeeper gives credit, and he may lose it if he moves frequently.

(7) It being assumed at this stage that 'in winter' means 'for winter.'

(8) I.e., 'in winter' and 'in summer' are meant literally, as the time of renting, the period being unspecified.

(9) Therefore he must pay him damages.

(10) This was assumed to mean, if the year expired even one day in winter, he cannot be evicted the whole winter, irrespective of any notice given.

(11) I.e., the whole of the thirty days' notice must fall in summer.

(12) Though he cannot evict him without due notice, he can nevertheless raise the rent at the expiration of the year without it.

(13) To permit him to raise the rent is the same as permitting him to evict.

(14) The tenant must quit the house at the end of the year, because the fact that no houses are available operates now just as strongly in the landlord's favour, for he too could not have known that his house would fall in.

(15) Lit., 'come'. I.e., just as he could not have evicted me, so you cannot either.

(16) So Rashi; Jast.: he gave it to his son as a bridal room,

(17) Otherwise, he cannot evict him.

(18) So he must quit.

(19) To pay them out of that very wine,

(20) I.e., the ashes, which, like the dung, were valuable as manure. This is discussed in the Gemara.

(21) If these became damaged.
(22) Round the roof of the house; v. Deut. XXII, 8.
(23) Rashi: a board that was placed near the eaves to carry off the water. Jast.: a detachable tube for that purpose. It was a simple affair, for the fixing of which no skill was required.
(24) V. Glos.
(25) It was fixed on the doorpost, in which, if of stone, a cavity was made to contain it. Now, who must make this cavity?

Talmud - Mas. Baba Metzia 102a

in a woodentube.[1]

Our Rabbis taught: If one rents a house to his neighbor, the tenant must provide a mezuzah. But when he quits it, he must not take it with him, excepting if it be leased from a Gentile, in which case he must remove it when he quits. And it once happened that a man took it away with him, and he lost[2] his wife and two children. A story is quoted in contradiction![3] — Said R. Shesheth: It refers to the first clause.[4]

THE DUNG BELONGS TO THE LANDLORD, AND THE TENANT IS ENTITLED ONLY TO THAT WHICH ISSUES FROM THE OVEN OR THE POT RANGE. To what does this refer? Shall we say, to a courtyard which was rented to the tenant, and to oxen belonging to the tenant, then why is it [the dung] the landlord's? But if a courtyard which was not leased to the tenant,[5] and the landlord's oxen are meant, is it not obvious? — It is necessary to teach this only in respect of a courtyard belonging to the landlord and oxen that had strayed thither from elsewhere.[6] Now, this supports R. Jose son of R. Hanina, who said: A man's courtyard effects a title on his behalf even without his knowledge.[7]

An objection is raised: If a man declared, 'Any lost property that may enter therein to-day, let my courtyard effect possession thereof on my behalf,' his declaration is valueless. Now if R. Jose son of R. Hanina's ruling, that a man's courtyard effects a title on his behalf even without his knowledge, is correct, why is his declaration valueless? — The reference here is to an unguarded courtyard.[8] If so, consider the second clause: If a rumour was spread in town that he had found something,[9] his declaration holds good. Now if it is an unguarded courtyard, what if such a rumour did spread? — Since a rumour was spread, people keep aloof from it [in recognition of his ownership], and so it becomes as a guarded courtyard.

An objection is raised: The manure [i.e., the ashes] which comes forth from the oven and the pot-range, and that which is caught from the air,[10] belong to him [the tenant]; but that of the stable and the courtyard, to the landlord.[11] Now if R. Jose son of R. Hanina's dictum is correct, [viz.,] that a man's courtyard effects a title for him even without his knowledge, then when he [the tenant] catches it up from the air, why does it belong to him? Is it not the air of his [the landlord's] courtyard?[12] — Abaye answered: It means that he fastened a utensil to the body of the cow.[13] Raba answered: [An object in] the air, in which it is not destined to come to rest, is not regarded as at rest.[14] But does Raba regard this as certain? Did he not propound: What if one threw a purse by one door and it issued from another — is [an object in] the air, in which it is not destined to come to rest, regarded as at rest, or not?[15] — In that case, there is nothing whatsoever to stop it;[16] but here a utensil is interposed.

'But that of the stable and the courtyard [belongs] to the landlord.' Need both be taught?[17] — Abaye said: It means thus: But that of the stable in the courtyard belongs to the landlord.[18] Said R. Ashi: From this it follows that he who rents his courtyard in general terms does not rent the stable therein.

An objection is raised: [Wild] doves of the dovecote, and doves of the loft,[19] are subject to the laws of sending away,[20] and are forbidden as robbery, [but only] for the sake of peace.[21] Now if R. Jose son of R. Hanina's dictum, that a man's courtyard effects a title on his behalf without his knowledge, is correct, then apply here the verse, If a bird's nest chance to be before thee,[22] excluding that which is [always] at thy disposal![23] — Raba explained: As for the egg, when the greater part of it has issued [from the body of the fowl], it is subject to the law of sending away,[24] whilst he [the owner of the court] does not acquire it until it falls into the courtyard; and when it is stated, 'They are subject to the law of sending away,' [it means] before it falls into the court. If so, why are they forbidden as robbery?[25] [That refers] to the dam. Alternatively it may refer to the eggs, after all: but when the greater part thereof has issued, his intention is set thereon.[26] But now that Rab Judah said in Rab's name: The eggs must not be taken as long as the dam is sitting upon them, for it is written, But thou shalt in any wise let the dam go [first, and only then] take the young to thee,[27] you may say that it holds good even if it [the egg] fell into his courtyard: [nevertheless it is subject to the law of sending away, because] wherever he himself might acquire it, his courtyard acquires it for him; but where he himself might not acquire it,[28] his courtyard cannot acquire it for him either. If so, are they forbidden as robbery [only] for the sake of peace? If he [the stranger] sends the dam away, it is real robbery;[29] whilst if not, she is to be sent away![30] — This refers to a minor, who is not obliged to send her away.[31] But is a minor subject to provisions enacted for the sake of peace?[32] — It means thus: The father of the minor must return them for the sake of peace.

MISHNAH. IF ONE RENTS A HOUSE TO HIS FELLOW FOR A YEAR, AND THE YEAR WAS INTERCALATED,[33] THE INTERCALATION IS IN THE TENANT'S FAVOUR.[34] IF HE LET IT TO HIM BY THE MONTH, AND THE YEAR WAS INTERCALATED, THE INTERCALATION IS IN THE OWNER'S FAVOUR.[35] IT HAPPENED IN SEPPHORIS THAT ONE RENTED A BATHHOUSE FROM HIS NEIGHBOUR FOR TWELVE GOLD DENARII PER ANNUM, AT A GOLD DENAR PER MONTH;

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(1) Lit., 'the tube of a reed.' And attached to the doorpost; i.e., it is not essential to have a cavity at all.

(2) Lit., 'buried'.

(3) Assuming that it referred to a Gentile landlord.

(4) Where he had rented it from an Israelite.

(5) I.e., he had rented the house only.

(6) And it may be assumed that the owner of the oxen renounces his rights to the dung, and so the courtyard gives the landlord a title thereto.

(7) V. supra 11a. Just as here, though the landlord is ignorant that dung is being deposited in his courtyard, it immediately becomes his.

(8) Which cannot effect possession; v. supra loc. cit.

(9) E.g., that a hind with a broken leg had entered his field and could go no further, or that the river's overflow had deposited fish in his land.

(10) I.e., if the tenant placed a utensil to catch the manure as it falls, before it reaches the ground.

(11) This was understood to refer to a courtyard not rented to the tenant.

(12) I.e., before it even falls into the tenant's utensil, it must have entered the air of the landlord, and is therefore his.

(13) So that the dung is immediately received by it, without going through the air at all.

(14) The air above one's ground is accounted as the ground itself, in respect of an object that may enter it, only if it will eventually come to rest on that ground. Here, however, though the dung passes through the air of the landlord's courtyard, it will not come to rest there on account of the tenant's utensils, and therefore the air does not effect possession for him.

(15) V. supra 12a.

(16) From coming to rest — excepting, of course, its own momentum.

(17) Surely one is sufficient, since the same principle operates in both cases.

(18) Even if the courtyard is rented to the tenant.

(19) In both cases they seek their food abroad, but come to nest in the dovecote or the loft.
(20) I.e., when they are sitting on eggs, one must not take both them and the eggs, but must send the dam away, Deut. XXII, 6f.
(21) I.e., strictly speaking, they are ownerless, being semi-wild; nevertheless, for the sake of peace, the Rabbis recognised the title of the owner of the dovecote, and so another must not take them.
(22) Deut. XXII, 6.
(23) I.e., the law applies only to wild doves, under no ownership, but not when they are thine and in thy courtyard.
(24) In the case of a wild bird, if one wished to take the egg at that moment, he would have to send the dam away.
(25) Since the courtyard has not yet effected possession for him.
(26) Therefore, though in strict law they are not yet his, for the sake of peace a stranger may not take them.
(27) Ibid. 'The young' is understood to mean the eggs too.
(28) Since the dam is sitting upon it.
(29) Since, on the dam being sent away, the eggs immediately become the property of the courtyard owner.
(30) Before the eggs can be taken, so that they are forbidden in any case.
(31) Not being of an age when precepts are incumbent upon him.
(32) Surely not!
(33) The Jewish year is partly lunar, partly solar. I.e., it consists of twelve months, which give 355 or 356 days. But at the same time, the Festivals must fall in the proper seasons, Passover in the vernal equinox and Tabernacles in the autumnal equinox. Since this depends on the solar year, which consists of 365 days, the deficiency was made good by the addition periodically of an extra month to the year; v. Sanh. 11a.
(34) He cannot be charged rent for the extra month.
(35) Though a lease for an unspecified period is for a year, the lessee must pay rent for the extra month.

Talmud - Mas. Baba Metzia 102b

AND THE MATTER CAME BEFORE RABBAN SIMEON B. GAMALIEL AND R. JOSE, WHO ORDERED THEM TO DIVIDE THE INTERCALATED MONTH.

GEMARA. A story is quoted in contradiction [of the ruling given]! — The text is defective, and is thus meant: But if he said to him, '[I let it to you] for twelve golden denarii per annum, at a golden denar per month,' they must share. And IT HAPPENED IN SEPPHORIS THAT ONE RENTED A BATHHOUSE FROM HIS NEIGHBOUR FOR TWELVE GOLD DENARII PER ANNUM, AT A GOLD DENAR PER MONTH, AND THE MATTER CAME BEFORE RABBAN SIMEON B. GAMALIEL AND R. JOSE, WHO ORDERED THEM TO DIVIDE THE INTERCALATED MONTH.

Rab said: Were I there, I would have awarded the whole of it to the owner. Now, what does this teach us — that the last expression alone is regarded?[1] But Rab has already said it once. For R. Huna said in the name of the college of Rab:[2] [If the agreed price is] an istera, a hundred ma'ahs, then a hundred ma'ahs [are due];[3] if a hundred ma'ahs, an istera [are arranged], an istera [is meant]?[4] — If from there, I might have thought that [the second term] defines the first;[5] therefore we are informed otherwise.[6]

Samuel said: We refer to a case where he [the landlord] comes [to claim rent] in the middle of the month. But if he comes at the beginning, it is all the landlord's; at the end, it is all the tenant's.[7] Now, did Samuel reject the principle that the last term only is regarded? But Rab and Samuel both said: [If A says to B,] 'I sell you a kor for thirty [sela'im],' he can retract even at the last se'ah.[8] [But if he says,] 'I sell you a kor for thirty, a sela' per se'ah,' then as he [the vendee] takes each, he acquires it![9] — The reason there is that he has taken possession;[10] so here too, has he not taken possession?[11]

But R. Nahman ruled: Land remains in the presumptive possession of its owner.[12] Now, what does this teach us — that the last term is decisive? But that is Rab's teaching![13] [He informs us that it is

thus] even if the terms were reversed.[14]

R. Jannai was asked: If the tenant maintains, 'I have paid [rent],' and the landlord pleads, 'I have not received [it],' upon whom rests the onus of proof? But when [does the dispute take place]? If within the term, we have learnt it; if after, we have [likewise] learnt it! For we learnt: If the father died within the thirty days, the presumption is that he [the firstborn] has not been redeemed, unless proof is adduced to the contrary; after thirty days, he is presumed to have been redeemed, unless told that he was not![15] The question is only [when the dispute arises] on the day that completes the term: does one pay on the day which completes the term, or not? — R. Jannai replied: We have learnt it:

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(1) I.e., if an agreement is made, of which the two terms are contradictory, as here, the latter alone counts.

(2) Though the expression be Rab may simply mean 'the schoolmen', without any particular reference to Rab (cf. Weiss, Dor. III. 141, and Bacher, Ag. der Bab. Am. 2), it is here understood as the college of Rab, the dictum being assigned actually to him.

(3) An istera is half a zuz = 96 Perutahs or ma'ahs.

(4) Which shews that in all cases the second expression is decisive.

(5) I.e., an istera, for which I will accept 100 light-weight ma'ahs, so that they are only worth an istera. In that case, the second term is binding because it defines the first.

(6) That the two terms are indeed contradictory, both there and here, and that the second is decisive.

(7) Reverting to the Mishnah, which states that R. Simeon b. Gamaliel and R. Jose ruled that the intercalated month is divided, he applies to it the principle that possession establishes a title. Hence, if the landlord comes to demand the rent for the extra month in the middle of the month, the tenant retains the half month which he has already enjoyed, but must pay for the second half, since the house undoubtedly belongs to the landlord, whilst the ownership of it for the next half month is disputed. The rest of Samuel's dictum is based on the same principle.

(8) If the vendee begins to carry it away, the possession is not effected until meshikah is performed upon the whole, which ranks as a single purchase, and even when only a se'ah remains, both parties can cancel the bargain.

(9) Each se'ah counting as a separate transaction, which is completed when meshikah is performed thereon, v. B.B. 105a. This shews that the second expression, 'a sela' per se'ah,' is the decisive one, not the first, and so contradicts Samuel's previous dictim.

(10) Actually, it is doubtful whether the first or the last term is binding, and on that account the vendee acquires each se'ah as he takes it, since he is then in possession.

(11) Therefore the tenant does not pay for what he has already enjoyed.

(12) Hence the intercalated month belongs to the landowner, and he may demand rent even at the end of the month.

(13) Why then should R. Nahman state it?

(14) Because it does not depend on order, but on presumption.

(15) Bek. 49a. This refers to the redemption of the firstborn. Cf. Num. XVIII, 16: And those that are to be redeemed from a month old shalt thou redeem. Hence, if the father died within the month, it is assumed that he had not redeemed the child before the obligation matured; on the other hand, if he died after, it is assumed that he had redeemed him at the proper time. Now, rent is payable at the end of the year, and the same principle holds good.

Talmud - Mas. Baba Metzia 103a

A hired labourer [engaged for a period], on the expiration of his term swears and is paid.[1] Thus,it is only the employee whom the Rabbis subjected to an oath, because the employer is occupied with his labourers. But here, the tenant is believed on oath.[2]

Raba said in R. Nahman's name: If one leased a house to his neighbour for ten years, and wrote a deed to that effect [but without dating it,] and then alleged, 'You have held it for five years,' he is believed.[3] Said R. Aha of Difti to Rabina: If so, if A lent B one hundred zuz against a bond, and then B said, 'I have repaid you half,' is he also believed?[4] — He replied: What comparison is there? In that case, the purpose of the bond is to ensure repayment. Had he really repaid him, he should have written the fact on it, or obtained a receipt. But here he can say, 'The reason I wrote you a deed was

that you should not claim ownership through unbroken possession.'[5]

R. Nahman said: One can borrow [an article] 'in its good state' for ever.[6] Said R. Mari the son of Samuel's daughter:[7] Providing, however, that he formally acquired it from him.[8] R. Mari son of R. Ashi observed: He must return him the handle.[9]

Raba said: If one asks his neighbour, 'Lend me a hoe for hoeing this garden,' he may hoe [only] that garden; 'for hoeing a garden,' he may hoe any garden; 'for hoeing gardens', he may hoe all his gardens[10] and return him the handle.

R. Papa said: If one says to his neighbour, 'Lend me this well [for irrigation],' and it falls in, he cannot rebuild it.[11] '[Lend me] a well,' and it falls in, he can rebuild it,[12] [But if he Says: 'Lend me] the place for a well,' he can go on sinking shafts in his land until he chances upon [a water supply]. It is also necessary that he shall have formally acquired it from him.[13]

MISHNAH. IF ONE RENTS A HOUSE TO HIS NEIGHBOUR, AND IT FALLS IN [WITHIN THE PERIOD OF LEASE], HE MUST PROVIDE[14] HIM WITH ANOTHER. IF IT WAS A SMALL ONE, HE CANNOT FURNISH HIM WITH A LARGE ONE, OR VICE VERSA. NOR CAN HE OFFER HIM TWO INSTEAD OF ONE, OR ONE INSTEAD OF TWO. HE MAY NEITHER DIMINISH NOR INCREASE THE NUMBER OF WINDOWS, EXCEPTING BY COMMON AGREEMENT.

GEMARA. What are the circumstances? If he stipulated, 'This house', then if it falls, he is quit [of any further obligation]. Whilst if he said, 'A house,' without specifying which, why cannot he provide two instead of one, or a large house instead of a small? — Said Resh Lakish: It means that he had said to him, 'The house which I let to you is of this length.' If so, why teach it?[15] — But when Rabin came,[16] he said in the name of Resh Lakish: It means that he said, 'I let you a house like this one.' But still [the difficulty remains,] Why state it? — It is necessary to teach it only if it [the house shewn as a model] stood on the river bank. I might think, what is meant by 'like this'? One situated on the river bank.[17] Therefore we are taught [otherwise]. [

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(1) Shebu. 45b; infra 111a. If there is a dispute between him and the employer on the last day, the latter alleging that he has already paid him, the former swears that he was not paid, and receives his wages. Though it is a general rule that the defendant swears to be free from payment (v. p. 572, n. 6), the Rabbis made an exception in this case, because an employer, busy with his workers, may very easily imagine that he has paid one instead of another.

(2) As is usually the case, though it is the day on which the term expires.

(3) On the same principle as R. Nahman's dictum on 102b, q.v.

(4) Surely not: yet the cases are analogous.

(5) V, B.B. III, 1. But not to shew how long the tenancy had lasted. [According to this interpretation, which follows Rashi, it is assumed that the deed, although in the possession of the tenant, served to give the matter publicity and thus preclude the possibility of the tenant claiming ownership on the strength of undisturbed occupation over a number of years. Tosaf., however, in the name of R. Han., preserves a preferable reading to the effect that the deed was drafted by the tenant in favour of the owner and recorded that he had hired the house for ten years from a certain date at so much per year. After five years the tenant says to the landowner, 'You hold already rent for five years,' whereas the landowner maintains, 'I hold rent for three years only;' in that case the tenant is believed on oath, because the tenant can say to the landowner, 'The reason I wrote you a deed was that I should not claim ownership through unbroken possession.']

(6) I.e., if the lender states, 'I lend it to you in its good state,' it means as long as it is fit for its purpose, and so, even if he returns it, he can take it again whenever he needs it.

(7) He was begotten by a Gentile, who turned proselyte by the time of his birth; and is therefore called by his maternal grandfather, not by his own father.

(8) I.e., had performed an act effecting possession, or, as in this case, a right to the use of an article.

(9) If the article is broken or damaged and unfit for its purpose, he must return the remains, since it was not a gift but

only a loan (Rashi). [Wilna Gaon: He may not repair it and retain it for further use.]

(10) And we do not say that he may have only two.

(11) The borrower cannot rebuild and claim that it is lent to him as long as he needs it, since he specified, 'This well,' and it is no longer the same when rebuilt.

(12) And retain it until he has irrigated all his fields.

(13) V. note 3.

(14) Lit., 'set up'.

(15) It is obvious.

(16) From Palestine to Babylon.

(17) I.e., the locality.

Talmud - Mas. Baba Metzia 103b

C H A P T E R I X

MISHNAH. IF ONE LEASES A FIELD FROM HIS NEIGHBOUR,[1] WHERE IT IS THE USAGE TO CUT [THE CROPS], HE MUST CUT; TO UPROOT [THEM], HE MUST UPROOT [THEM]; TO PLOUGH AFTER IT,[2] HE MUST PLOUGH AFTER IT. IT IS ALL DETERMINED BY LOCAL CUSTOM. AND JUST AS THEY DIVIDE THE GRAIN.[3] SO THEY ALSO SHARE IN THE STRAW AND STUBBLE. AND JUST AS THEY DIVIDE THE WINE, SO DO THEY SHARE

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(1) Paying either an agreed percentage of the crops or a fixed measure of the grain in rent.

(2) After reaping and weeding, to turn its soil, so that weeds should not grow again.

(3) When the rent is a percentage of the produce.

Talmud - Mas. Baba Metzia 103b

IN THE BRANCHES [CUT FROM THE VINE] AND THE CANES [USED FOR SUPPORTING THE VINES]. AND BOTH SUPPLY THE CANES.[1]

GEMARA. It has been taught: Where it is the usage to cut [off the crops], he must not uproot; to uproot, he must not cut. And each can restrain the other [from varying the usual procedure]. 'To cut, he must not uproot:' the one [the lessor] can say. 'I want my field manured with stubble;'[2] and the other may say, 'It is too much labour[3] [to uproot thus]' .[4] 'To uproot, he must not cut.' The one [the lessor] can say, 'I wish my field to be cleared [of stubble];' and the other, 'I need the stubble.'[5] 'And each can restrain the other [from varying the usual procedure].' Why state this?[6] — This gives the reason. [Thus:] Why may he not uproot when the usage is to cut, and vice versa? Because each can restrain the other.

TO PLOUGH AFTER IT, HE MUST PLOUGH AFTER IT. Is this not obvious? — It is necessary only for a place where weeding is not done [whilst the corn is standing]; and he [the lessee] went and weeded it. I might think that he can plead, 'I weeded it in order to be exempt from [subsequent] ploughing.' Therefore we are taught that he should have distinctly stated this [beforehand].

IT IS ALL DETERMINED BY LOCAL CUSTOM. What does ALL include?[7] — It includes that which our Rabbis taught: Where it is customary to lease the trees together with the field, they are leased;[8] where it is not customary to do so, they are not leased. 'Where it is customary to lease the trees together with the field, they are leased.' But is this not obvious? — It must be taught only where [fields] are generally leased for a third [share to be the owner's]; and he went and leased it for a quarter share. I might think that he can plead. 'I gave it to you at a lower rental on the understanding that you would receive no share of the trees.' Therefore we are informed that he

should have distinctly stated this [beforehand].

'Where it is not customary to do so, they are not leased.' But is it not obvious? — It must be taught only where it is generally rented for a quarter share, and he [the lessee] went and rented it for a third [to be received by the lessor]. I might think that he can plead. 'I offered you a higher rental on the understanding that I would receive a share of the trees.' We are therefore informed that he should have distinctly stated this.

JUST AS THEY DIVIDE THE GRAIN, SO THEY ALSO SHARE IN THE STRAW AND STUBBLE. R. Joseph said: In Babylon it is the practice not to give [a share of the] straw to the aris.[9] What is the practical bearing of this? — That if there is a person who does give, it is his generosity, and he creates no precedent.[10]

R. Joseph said: The lowest, the middle and the uppermost layers[11] and the thorn stakes[12] must be furnished by the landowner; the shrubs themselves, by the tenant. This is the general principle: whatever is essential for guarding the boundary line [of the field] must be provided by the landlord; that which is required for additional protection, by the aris.

R. Joseph said: The mattock, shovel, [irrigation] bucket and hose must be furnished by the lessor; whilst the tenant must cut the dykes.[13]

AND JUST AS THEY DIVIDE THE WINE, SO DO THEY SHARE IN THE BRANCHES AND CANES. What is the purpose of canes? The School of R. Jannai said: [The reference is to] smooth canes, used for propping up the vines.

AND BOTH SUPPLY THE CANES. Why state this?[14] — This gives a reason. Why do they both share the canes? Because they BOTH SUPPLY THE CANES.

MISHNAH. IF ONE LEASES A FIELD FROM HIS NEIGHBOUR,[15] WHICH IS DEPENDENT ON IRRIGATION, OR IS STOCKED WITH TREES, AND THE SPRING [WHICH IRRIGATED THE FIELD] DRIES UP, OR THE TREES ARE FELLED, HE CANNOT REDUCE THE RENTAL. BUT IF HE SAYS, 'LEASE ME THIS FIELD WHICH REQUIRES IRRIGATION,' OR 'THIS FIELD, WHICH CONTAINS TREES,' AND THE SPRING DRIES UP OR THE TREES ARE FELLED, HE MAY MAKE A DEDUCTION FROM THE RENTAL.

GEMARA. How is it meant? Shall we say. the main river[16] dried up; then why cannot he reduce the rent? Let him say. 'It is a universal blow!'[17] — Said R. Papa: It means that the tributary dried up, [by which the water was brought to the field,] so that he [the lessor] can say to him,

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(1) Necessary each year for the vines.

(2) Therefore! want the grain cut, which leaves the stalks in the earth.

(3) Lit., 'I am not able.'

(4) If the lessor wishes it to be plucked. Therefore neither can demand a variation of the local usage.

(5) For my cattle, and so I do not wish it to remain in the soil.

(6) It is included in the first clause.

(7) V. p. 496, n. 3.

(8) I.e., if a field is leased for sowing grain, and it contains some trees too, though the lessee has no work in connection with the latter, he receives his share thereof, if such is the local usage.

(9) v. Glos.

(10) Lit.,'It is a benevolent eye and we learn nothing from him.'

(11) An earthen rampart was erected round the field. One layer of earth was placed first (בוכרא < בכור cf. ביכורים , the first fruits); this being trodden in, another was added (טפתא < טפי more, additional), and

then these were surmounted (ארכבתא < רכב riding upon) by a third.

(12) A fence was made round the field by placing stakes and drawing thorny shrubs across them.

(13) Through which the water is conducted from the river to the field.

(14) It is obvious, since it is taught that they share in them.

(15) At a fixed rental in crops.

(16) Which supplied the spring.

(17) In which all must share the loss; v. infra 105b.

Talmud - Mas. Baba Metzia 104a

'You should have brought up the water in buckets.'

R. Papa said: These first two Mishnahs [of this chapter] hold good in the cases of both a fixed rental lease and a percentage lease;[1] but in the subsequent [Mishnahs] those which apply to a percentage lease do not apply to a fixed rental, and those that apply to a fixed rental do not apply to a percentage lease.[2]

BUT IF HE SAID, 'LEASE ME THIS FIELD WHICH REQUIRES IRRIGATION,' etc. But why so? Let him [the lessor] say to him, 'I merely defined it for you by name.'[3] Has it not been taught: If one says to his neighbour, 'I sell you a beth kor[4] of land'; even if it contains only a lethech,[5] it [the bargain] is fulfilled, because he sold him only a place by name; providing, however, that it is called beth kor. 'I sell you a vineyard,' even if it contains no vines, it is a valid sale, because he sold him only a name; providing, however, that it is called vineyard. 'I sell you an orchard,' even if it contains no pomegranates it becomes his, because he sold him only a name; providing that it was called orchard.[6] Thus we see that he can plead, 'I merely defined it by name:' so here too, let him plead, 'I merely defined it for you by name'! — Samuel replied: There is no difficulty. In the latter case the lessor stated this to the lessee; In the former, [i.e., the Mishnah] the lessee spoke thus to the lessor. If the lessor stated it to the lessee, it is mere name; if the lessee says it to the lessor, it particularizes.[7] Rabina said: In both cases it means that the lessor stated this to the lessee. [Nevertheless,] since he states, 'THIS FIELD,' it follows that we are dealing with a case where he is standing therein; then why tell him that it is dependent on irrigation?[8] Hence he must have meant, 'A field dependent on irrigation as now situated.'[9]

MISHNAH. IF ONE LEASES A FIELD [AT A PERCENTAGE] FROM HIS NEIGHBOUR AND NEGLECTS IT, WE ASSESS IT HOW MUCH IT OUGHT TO PRODUCE, AND HE MUST PAY HIM [THE AGREED PERCENTAGE]. FOR THUS HE WRITES HIM, 'SHOULD I NEGLECT AND NOT TILL IT, I WILL PAY OF THE BEST.'[10]

GEMARA.R. Meir used to interpret common terms [of speech or writing]. For it has been taught: R. Meir said: 'If I neglect and do not till it, I will pay of the best.[11] R. Judah used to interpret common terms. For it has been taught: R. Judah said: A husband must bring a sacrifice of the rich for his wife, and likewise for every obligatory sacrifice of hers; because he writes thus for her [in the kethubah: 'I undertake] your liabilities incurred by you hitherto.'[12]

Hillel the Elder[13] used to interpret common speech. For it has been taught: The men of Alexandria used to betroth[14] their wives, and when they were about to take them for the huppah[15] ceremony, strangers would come and tear them away. Thereupon the Sages wished to declare their children bastards.[16] Said Hillel the Elder to them, 'Bring me your mother's kethubahs.' When they brought them, he found written therein, 'When thou art taken for the huppah, be thou my wife.' And on the strength of this they did not declare their children bastards.[17]

R. Joshua b. Karhah interpreted common speech. For it has been taught: R. Joshua b. Karhah said:

If a man makes a loan to his neighbour, he must not seize from him a pledge that is worth more than the debt;[18] because he writes thus unto him:[19] 'The repayment which is due to you from me shall be to the full value of this [pledge]'.[20] Now, the reason [that he may claim the value of the pledge] is [only] because he wrote thus; hence, had he not written thus, he would have no title thereto. But did not R Johanan say: If he [the creditor] took a pledge from him, returned it to him, and then he [the debtor] died, the former may distrain it from his children?[21]

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(1) I.e., the statements that where it is customary to cut the grain, it may not be uprooted (IX, I), and that no allowance is made for the failing of a spring (IX, 2), are independent of whether the leaseholder pays a fixed rent or a percentage of the crops.

(2) This is explained on each Mishnah.

(3) But did not guarantee the source of irrigation.

(4) Lit., 'an area requiring a kor of seed,' fifty cubits square taking a se'ah of seed (1 kor ==30 se'ahs).

(5) Half a kor.

(6) B.B. 7a.

(7) I.e., it must be a field that contains these amenities of irrigation.

(8) Surely the lessee sees that for himself!

(9) I.e., the water flowing direct to the field without the labour of transport.

(10) This can obviously refer only to a lease on a percentage rental. If the rent is fixed, there is no room for computation.

(11) I.e., though it is not a Rabbinical enactment that this clause be stated in the conveyance, yet since it was a common practice to insert it, R. Meir paid heed to it, and gave his rulings accordingly.

(12) Certain sacrifices were variable, depending on their owner's financial position (v. Lev. V, 1 — 13; XII, 1-8). Now, in a strictly legal sense, every married woman is poor, since she has no proprietary rights. Nevertheless, if he is wealthy, he must bring the sacrifice of a rich person. This rendering is according to the text in our editions, and means: The husband undertakes to settle her liabilities, in respect of sacrifices (Tosaf.) incurred before marriage, e.g., for leprosy. And presumably he is certainly liable for sacrifices which she incurs after marriage, e.g., for childbirth. Rashi, quoting the Sifra, gives this reading. R. Judah said: Therefore, if he divorces her, he is free from this liability; for thus she writes (in the receipt for the settlement of her kethubah), '(I free you) from all the liabilities hitherto borne by you in respect of myself.'

(13) I.e., the famous Hillel, head of the great school, Beth Hillel. So called to distinguish him from R. Hillel, an amora of the fourth century.

(14) מקדשין the first stage of marriage, v. Glos. s.v. Kiddushin.

(15) V. Glos.

(16) Being born in adultery.

(17) Though normally the kiddushin effected marriage, in that the woman became forbidden to strangers as a married person. yet since the kethubahs distinctly stated that it was to be valid only when the huppah was performed, Hillel recognised the children of those unions as legitimate. V. Halevy. Doroth, I, 3, p. 103. This is an interesting foreshadowing of the modern practice which combines the kiddushin and the huppah. [It is suggested that the clause inserted by the Alexandrian Jews was mainly designed to free the husband from all obligations until actual marriage. v. Epstein. M. Jewish Marriage Contract, p. 295.]

(18) This refers to a pledge taken after the loan, when repayment is due.

(19) I.e., if the creditor returns the pledge for an appreciable length of time, it is first assessed and this statement written.

(20) Hence, if it exceeded the debt, he would be receiving interest.

(21) And it is not regarded as movable property of orphans on which the creditor cannot distrain. This proves that he has a title to it even without that proviso.

Talmud - Mas. Baba Metzia 104b

— The writing [of that clause] serves to countervail depreciation.[1] R. Jose interpreted common terms. For it has been taught: R. Jose said: Where it is the practice to treat the kethubah as an ordinary debt,[2] he [the husband] can collect it [from her father] likewise as a debt.[3] [When it is the local usage] to double [the dowry],[4] he [the husband] can collect [from her father] only half [the

Written sum]. The Neharbeleans[5] used to collect a third.[6] Meremar used to empower [the husband] to collect even the addition. Said Rabina to Meremar: But has it not been taught: [Where it is the usage] to double, he can collect only half? — There is no difficulty: In the one case, possession was formally effected;[7] in the other, it was not.

Rabina was writing a large amount for [the dowry of] his daughter [more than he was actually giving]. Said they [the other side] to him, 'Let us effect a formal possession from you.' To which he replied, 'If a formal possession, then no doubling; if doubling, no formal possession.

A certain man once said, 'Give my daughter four hundred zuz as her kethubah.' R. Aba, son of R. Awia, sent an enquiry to R. Ashi: Does it mean, four hundred zuz [as the actual dowry], hence eight hundred [to be written]; or four hundred zuz [as the sum to be recorded], the equivalent of two hundred zuz [the real dowry].[8] R. Ashi replied: We see: if he said, 'Give her four hundred zuz,' eight hundred [are to be recorded]; but if he said, 'Write her four hundred zuz', he meant two hundred actual. Others state: R. Ashi replied, We see: if he said, 'For her kethubah,' it is four hundred actual, and eight hundred [written]; if he said, 'In her kethubah,' it means four hundred [written], which is two hundred actual. Yet that is incorrect: whether he said, 'For her kethubah,' or, 'In her kethubah,' it means four hundred [written], which is two hundred [actual]. Unless he says, 'Give her', without further qualifications.

A certain man once leased a field from his neighbour and stated: 'If I do not cultivate it, I will give you a thousand zuz.'[9] Now, he left a third uncultivated. Said the Nehardeans: It is but just that he should pay him three hundred thirty-three one-third zuz. But Raba said: It is an asmakta,[10] and an asmakta effects no title. But in Raba's view, wherein does it differ from what we learnt: 'SHOULD I NEGLECT AND NOT TILL IT, I WILL PAY OF THE BEST?'[11] — In that case, there was no exaggeration; but here, since he stated such a large sum, it was a mere exaggeration [not to be taken seriously].

A certain man once leased a field[12] for sesame. He sowed wheat instead, but the wheat appreciated to the value of sesame.[13] Now, R. Kahana thought to rule: He [the tenant] can make a deduction [from the percentage due] on account of the [diminished] impoverishment of the soil. But R. Ashi said to R. Kahana: People say, 'Let the soil become impoverished rather than its owner.'[14]

A certain man once leased a field for sesame. He sowed wheat, however, but the wheat subsequently exceeded the sesame in value. Now, Rabina thought to rule that he [the lessor] must give him [the tenant] the increased value.[15] Said R. Aha of Difti to Rabina: Was he [the tenant] the only cause of the higher value, and the earth not at all?[16] The Nehardenas said: An 'iska[17] is a semi loan and a semi trust, the Rabbis having made an enactment which is satisfactory to both the debtor and the creditor.[18] Now that we say that it is a semi loan and a semi trust, if he [the trader] wishes to drink beer therewith [i.e., for the loan part] he can do so.[19] Raba said: [No.] It is therefore called 'iska [business] because he can say to him, 'I gave it to you for trading, not for drinking beer.' R. Idi b. Abin said: And if he [the trader] dies,it ranks as movable property in the hands of his children.[20] Raba said: It is therefore called 'iska, that if he dies, it shall not rank as movable property in the hands of his heirs.[21]

Raba said: If there is one 'iska and two bonds, it is to the investor's disadvantage.[22]

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(1) If the pledge depreciated in value, the creditor would lose, but for that clause, which assures him that he will receive its full value as at the time he returns it, and in virtue of which he is empowered to seize other objects of the debtor's.

(2) I.e., if a woman is widowed, she is empowered to sue for her marriage settlement, part of which had formed in the first place the dowry given to her husband by her father or family, just as for an ordinary debt.

(3) Since it will he subsequently reclaimed from him, he can legally claim it from the father at the time of marriage, or

subsequently.
(4) l.e., to state double the amount for the actual dowry in the kethubah to make it appear greater, whilst actually only half the stated amount is payable on widowhood or divorce. [This was inserted as a mark of honour to the bridal couple. v. Epstein. M. ap. cit., p. 104.]
(5) Nehar Bil, E. of Bagdad. v. Sanh. (Sonc. ed.) p. 89, n. 1].
(6) They used to state in the kethubah treble the actual amount.
(7) By means of a kinyan (v. Glos.). The husband then acquires a title to the whole.
(8) It was in a place where the amount was doubled.
(9) A percentage lease is referred to.
(10) V. Glos.
(11) And, as seen from the Mishnah, the statement is binding.
(12) V. n. I.
(13) A sesame crop is more valuable than a wheat crop; on the other hand, it exhausts the soil more. But in this case, owing to an advance in the price of wheat, the crop lost nothing through the change, and there was the further profit that the soil was less exhausted than it would otherwise have been.
(14) I.e., he should have carried out his contract and not jeopardised the owner's receipts. He therefore cannot make a deduction now.
(15) I.e., that the lessor receives his percentage only on the potential sesame crop.
(16) Both contributed, hence both share.
(17) V. Glos.
(18) I.e., half the capital value of the stock is a pure loan for which the trader bears full responsibility; the other half is a bailment, so that the investor bears all risks of depreciation. To avoid the charge of usury, however, the trader generally received two — thirds of the profit. V. supra 68b.
(19) I.e., he need not use it for business at all.
(20) The half which is a loan is counted as movable chattels, which are not subject to seizure for debt from the heirs. Hence the investor loses it.
(21) I.e., it is permanent trading stock, and therefore always available for the satisfaction of the investor's claims.
(22) As stated supra 68b, the investor generally received a third of the profits, but stood half the losses. Now, if he invests two bales of goods and draws up one bond: if there is a loss upon one and a profit upon the other, it is all counted as one investment, and he receives a third of the net profit upon both. But if he draws up a separate instrument for each, he bears half of the loss incurred on one, and receives only a third of the profit earned on the other, and so is at a disadvantage.

Talmud - Mas. Baba Metzia 105a

If two 'iskas were arranged but only one bond drawn up, it is to the debtor's disadvantage.[1]

Raba also said: If a man accepted an 'iska from his fellow, and lost thereon; but then made it good by an effort, yet had not informed him [the investor of the loss], he cannot [then] say to him, 'Deduct the previous loss incurred;'[2] because he can retort, 'You took the trouble of making it good to avoid the odium of inefficiency.'[3]

Raba also said: If two men accept[4] an 'iska and make a profit, and one says to the other, 'Come, let us divide now' [before the time for winding up]: then if the other objects [saying], 'Let us earn more profits,' he can legally restrain him [from closing the transaction]. [For] if he claims, 'Give me half the profits,' he can reply, 'The profit is mortgaged for the principal.'[5] Whilst if he proposes, 'Give me half the profits and half of the principal,'[6] he can answer, '[The parts of the] 'iska are interdependent.'[7] Whilst if he proposes, 'Let us divide the profit and the principal, and should you incur a loss I will bear it with you:' he can answer, 'No. The fortune of two is better than that of one.'

MISHNAH. IF A MAN LEASES A FIELD FROM HIS NEIGHBOUR AND REFUSES TO

WEED IT, SAYING, WHAT DOES IT MATTER TO YOU, SEEING THAT I PAY YOU YOUR RENTAL?' HIS PLEA IS NOT HEEDED, BECAUSE HE [THE LESSOR] CAN REPLY, 'TOMORROW YOU MAY LEASE IT, AND IT WILL BE OVERGROWN WITH WEEDS.'[8]

GEMARA. And should he [the tenant] say, 'I will plough it afterwards,'[9] he can reply, 'I want good wheat.'[10] And should he say, 'I will buy for you wheat from the market,' he can answer, 'I want wheat from my own soil.' Should he reply, 'Then I will weed for you the area necessary for your portion,' he can retort, 'You will bring my land unto disrepute.'[11] But we learnt, because IT WILL BE OVERGROWN WITH WEEDS![12] — But [he is not heeded] because he can answer him, 'Once a bung falls out, it is fallen.'[13]

MISHNAH. IF A MAN LEASES A FIELD TO HIS NEIGHBOUR, AND IT DOES NOT YIELD [A SATISFACTORY CROP]: IF THERE IS ENOUGH TO MAKE A STACK, HE [THE TENANT] IS BOUND TO GO ON WORKING THEREIN.[14] SAID R. JUDAH: WHAT STANDARD IS A STACK?[15] BUT [THE STANDARD IS] IF THERE IS ENOUGH FOR RESOWING.[16]

GEMARA. Our Rabbis taught: If a man leases a field from his neighbour, and it does not yield [a satisfactory crop], and there is enough to make a stack, he [the tenant] is bound to go on working therein, because he writes him thus:[17] 'I will stand, plough, sow, cut, bind, thresh, winnow, and set up a stack before you, and you will come and receive half; whilst I will receive half in return for my labour and expenses.' And how much is meant by, 'enough to make a stack'? — R. Jose son of R. Hanina said: Sufficient for the winnowing fan to stand therein .[18] The scholars propounded: What if the winnowing fan protrudes from both sides?[19] — Come and hear: R. Abbahu said: I received an explanation thereof from R. Jose son of R. Hanina: Providing that the receiver does not see the sun.[20]

It has been stated: Levi said: Three se'ahs; the School of R. Jannai said: Two; Resh Lakish said: The two se'ahs mentioned are exclusive of expenses.[21]

We learnt elsewhere: Wild olives and grapes — Beth Shammai declare them unclean; Beth Hillel, Clean.[22] What is meant by 'wild [perize] olives?' — Said R. Huna: Wicked olives [i.e., which yield very little oil]. R. Joseph said: And what verse [warrants this interpretation]? — Also the robbers [perize] of thy people shall exalt themselves to establish the vision; but they shall fail.[23] R. Nahman b. Isaac said: It is from this verse: If he beget a son that is a robber [pariz] a shedder of blood.[24] And what is the standard of wild olives?[25] — R. Eleazar said: Four kabs per loading.[26] The School of R. Janna said: Two se'ahs. But there is no dispute: the former treats of a place when one kor is put into the press at a time; the latter, where three kors are put into the press.[27]

Our Rabbis taught:

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(1) If two 'iskas were arranged on different dates, but recorded in one note, the result is the converse of the preceding, and hence to the trader's disadvantage.

(2) I.e., bear half of that loss, whilst receiving only a third of the profits earned subsequently.

(3) Lit., 'Not to be called, one who causes losses in investments.'

(4) From an investor, a period being fixed for its winding up.

(5) In case there are subsequent losses.

(6) For the return of which the trader is personally responsible to the investor.

(7) 'You might profit on your half, and I lose on mine; but both halves are security for each other.'

(8) This can apply only to a fixed rental lease, for in the case of a percentage lease the tenant obviously cannot argue thus.

(9) The Gemara continues the argument of the Mishnah. should the tenant say, 'I will plough the field after the harvest.' (V. supra).

(10) The rental being a fixed measure of the wheat grown by the tenant. But if the field is not weeded, the crop is of poor

quality.
(11) If it is seen overgrown with weeds.
(12) Which shews that that is an all-sufficing reply.
(13) And the wine that gushes out cannot be replaced. So here too, even if the tenant offers to plough the field after the harvest, he can reply, 'Once weeds have taken root, they cannot be entirely eradicated.'
(14) Though he wishes to cease work, the yield being in, sufficient reward for his labour.
(15) Surely the same limit cannot apply to all fields, irrespective of size!
(16) I.e., if the yield is at least sufficient to resow the field the following year.
(17) In the tenancy agreement.
(18) If put into the pile, it will stand upright.
(19) Whilst the stack is sufficient to maintain it upright, the whole breadth of the fan is not covered in, but protrudes from both sides of the pile. Does the law of the Mishnah and Baraitha apply in this case or not?
(20) The receiver is the lower part of the shovel which receives the grain; this must be entirely covered in by the pile, i.e., 'not see the sun,' and the sides of the shovel are part of the receiver.
(21) This quantity must be left clear, in order for the tenant to be bound to go on cultivating the field.
(22) Beth Shammai regard them as fit to be eaten, hence they are subject to the uncleanness of food; Beth Hillel maintain that they are not fit, and therefore exempt from that law.
(23) Dan. XI, 14.
(24) Ezek. XVIII, 10.
(25) How little oil must they produce to be put in this category?
(26) קורה , the beam of the olive press. If when that is fully laden with olives there is not more than four kabs yield, they are designated 'wild olives.'
(27) The presses varied in size, which explains the varying definitions. One se'ah ==6 kabs, hence 2 se'ahs ==3 times 4 kabs.

Talmud - Mas. Baba Metzia 105b

If they ascended a tree of feeble strength, or a feeble branch, he is unclean.[1] How is 'a tree of feeble strength' defined? — The School of R. Jannai said: If its roots lack sufficient breadth for a quarter [kab] to be hollowed out of it.[2] What is the definition of a feeble branch? — Resh Lakish said: That which is hidden in the grip of the hand.[3]

We learnt elsewhere: If a man travels through grave area[4] over [loose] stones that can be moved, if he travels upon a man or beast of feeble strength, he is unclean.[5] What is meant by 'a man of feeble strength'? — Resh Lakish said: One whose knees knock together because of the rider upon him. What is meant by 'a beast of feeble strength'? — The School of R. Jannai 'said: If the rider causes it to excrete [through the strain].

The School of R. Jannai said: In respect of prayer and phylacteries [the limit of a burden is] four kabs. What is the reference in respect of prayer? — As it has been taught: If a man bears a burden on his shoulder, and the time for prayer arrives, if it is less than four kabs,he slings it over his back, and prays; if four kabs, he must place it on the ground, and then pray. What is the reference in respect of phylacteries? — As it has been taught: If a man is carrying a load on his head, and phylacteries are on his head [at the same time],[6] if the phylacteries are crushed under it, it is forbidden; otherwise, it is permitted. Of what burden was this said? — A burden of four kabs.

R. Hiyya taught: If a man carries out manure on his head, and has phylacteries on his head [at the same time], he must not remove them to the side, nor fasten them to his loins, because such is a contemptuous treatment; but must bind then, on his arm in the place of phylacteries.[7] On the authority of the school of R. Shila it was said: Even their wrapper[8] may not be placed on the head [as a burden] whilst the phylacteries are being worn. And how much?[9] — Said Abaye: Even a sixteenth of a Pumbedithean weight.[10]

SAID R. JUDAH: WHAT STANDARD IS A STACK? BUT [THE STANDARD IS] IF THERE IS ENOUGH FOR RESOWING. And how much is needed for resowing? — R. Ammi said in R. Johanan's name: Four se'ahs per kor.[11] — R. Ammi, giving his own opinion, said: Eight se'ahs per kor. An old man said to R. Mama, son of Rabbah b. Abbuha: I will explain it to you. During R. Johanan's lifetime the land was fertile;[12] during that of R. Ammi it was poor.

We learnt elsewhere: If the wind scattered the sheaves,[13] we compute how much gleanings it [that field] was likely to provide, and so much must be given to the poor. R. Simeon b. Gamaliel said: The poor must be given the measure for resowing.[14] And how much is that? — When R. Dimi came,[15] he said in the name of R. Eleazar — others state, in the name of R. Johanan: Four kabs per kor.

R. Jeremiah propounded: Does that mean, for a kor that is sown, or for a kor that is harvested?[16] [Further, if it means for a kor that is sown,] is it for hand sowing or by oxen?[17] — Come and hear: For when Rabin came, he said in the name of R. Abbahu in the name of R. Eleazar — others say, in the name of R. Johanan: Four kabs for a kor of seed. But the question still remains: for hand sowing or by oxen? The problem remains unsolved.

MISHNAH. IF A MAN LEASES A FIELD FROM HIS NEIGHBOUR, AND IT [THE CROP] IS EATEN BY GRASSHOPPERS, OR BLASTED [BY TEMPEST], IF IT WAS A WIDESPREAD EPIDEMIC,[18] HE CAN DEDUCT FROM THE RENTAL; IF IT WAS NOT A WIDESPREAD EPIDEMIC, HE MAY NOT DEDUCT FROM THE RENTAL. R. JUDAH SAID: IF HE LEASED IT ON A MONEY RENTAL,[19] THEN IN BOTH CASES HE MAY MAKE NO DEDUCTIONS FROM THE RENTAL.[20]

GEMARA. How far must it extend to be called a widespread epidemic? — Rab Judah said: E.g., if the greater part of the plain [in which this field lay] was blasted.[21] 'Ulla said: If four fields, on the four sides thereof, were blasted. 'Ulla said: They propounded in the West [sc. the academies of Palestine]: What if one furrow over the entire length was blasted? What if one furrow was left [unblasted] over their entire length?[22] What if pits lay between?[23] What if they were separated by a field of fodder?[24]

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(1) Zab. III, 1. This refers to a person who suffers from issue and a clean person. Now, if the two sit on an object in such a manner that one causes the other to move, e.g., on the two ends of a see-saw, on a rickety branch, whether the unclean person supports the weight of the clean person or vice versa, even if they do not come into actual contact, the clean person is defiled. Now, when they both ascend a feeble tree, which bends under their weight, or a feeble branch, even if the tree itself is strong. the same result ensues, one bending over — technically called 'leaning' — through the other, hence the clean person is defiled.

(2) The measures were in standard shapes, so that a certain minimum breadth would be required for this.

(3) I.e.,it is so thin that the hand entirely encircles it (Rashi). Jast.: when it is hidden under (fully covered with) moss.

(4) בית הפרס Lit., 'a field of a Peras square.' Peras=half (the length of a furrow of 100 cubits), and it is a term applied to a field declared unclean on account of a grave that was ploughed therein. Maim. and Asheri on Oh. XVII, 1 translate פרס as derived from פרס to extend, i.e., the area over which the bones may extend. Others derive it from פרס to break, i.e., an area of splintered bones; v. Jast.

(5) The person who actually walks on this field becomes unclean, even if it contains no loose stones. But if one rides upon a man or beast, without himself coming into contact with the field, he becomes unclean only if he causes loose stones to be moved. Hence two conditions are necessary for his defilement: (i) that the field shall contain loose stones; (ii) that the man or beast ridden upon shall be weak and bowed down by the weight of the rider, so that he disturbs the stones more than he would otherwise have done. But if the bearers are so strong that the rider makes no difference to their gait, the latter is clean.

(6) In Talmudic times the phylacteries were worn during the day even whilst one was engaged in his ordinary Pursuits.

(7) I..e, the upper half, above the elbow.

(8) I.e., in which the phylacteries are put away when not in use, as at night.
(9) Must he the weight of a burden, to be forbidden on the head when the phylacteries are being worn.
(10) I.e., even the smallest weight is forbidden.
(11) I.e., in an area where a kor ought to grow only four se'ahs grew, which is the quantity needed for sowing such an area.
(12) Hence the lesser quantity sufficed.
(13) Over the field, and so they became mingled with the gleanings that must be left for the poor, and it is not known which is which.
(14) Pe'ah V, 1.
(15) From Palestine to Babylon.
(16) I.e., is it for an area that requires a kor of seed that four kabs are estimated as gleanings, or for an area that produces a kor?
(17) Sowing was done either by hand, a man walking along and scattering the seed, or by oxen drawing a cart with a perforated bottom, in which the seed was placed. The latter method was more wasteful, and required a greater quantity of seed for a given area than the former.
(18) Lit., 'a regional mishap'.
(19) Generally the rental was paid in crops.
(20) [This Mishnah applies only to a fixed rental, for with a percentage rental there can be no deduction, both sharing whatever the yield may be.]
(21) [Maim. and Asheri (on basis of slightly different reading): 'most of the fields in that city', v. Wilna Gaon's Glosses.]
(22) Must the whole of the four fields have suffered, or is it sufficient that a furrow over the whole length of each shall have been affected? And if that is insufficient, what if the entire fields were affected with the exception of a furrow in each?
(23) There were no fields immediately contiguous, but the field was surrounded by pits, on the outer edges of which lay other fields, which were affected. Does this come within the scope of the definition or not?
(24) Which was unaffected, whilst the fields beyond were.

Talmud - Mas. Baba Metzia 106a

What if they were separated by a different cereal?[1] Further, is wheat as different seed in relation to barley, or not?[2] What if others were smitten by blasting, and his by mildew, or others were smitten by mildew and his by blasting? The problems remain unsolved.

What if he [the lessor] said to him [the lessee], 'Sow it with wheat,' and he went and sowed it with barley, and then the greater part of the plain was blasted, and his barley too was blasted: do we say that he can argue, 'Had I sown wheat, it also would have been blasted'; or perhaps he can answer him, 'Had you sown it with wheat, [the Scriptural promise,] Thou shalt also decree a thing, and it shall be established for thee,[3] would have been fulfilled unto me?'[4] — It is reasonable that he can in fact answer him, 'Had you sown it with wheat, [the promise,] 'Thou shalt also decree a thing, and it shall be established for thee: and the light shall shine upon thy ways' would have been fulfilled unto me.

What if all the lessor's fields were blasted, and this one was blasted, yet the greater part of the plain was unaffected? Do we say, Since the greater part of the plain was unaffected, he can make him no deduction? Or perhaps, since all his lands were blasted, he can say to him, 'This transpired on account of your evil fate,[5] the proof being that all your fields have been blasted'? — It is reasonable that he can answer him, 'Had it been on account of my bad luck, a little would have remained [unaffected], as it is written, For we are left but few of many.'[6]

What if all the lessee's fields were blasted, and the greater part of the plain too, and this field also was blasted along with them? Do we say, Since the greater part of the plain was affected, he can deduct his? Or perhaps, since all his fields were blasted, he [the lessor] can say to him, 'It is due to

your misfortune, the proof being that all your fields have been smitten'? — It is logical that he can indeed say to him, 'It is due to your misfortune.' Why so? Here too let him answer, 'Had it been on account of my ill-luck, a little would have remained to me, in fulfilment of the verse, For we are left few of many'? — Because he can retort, 'Were you worthy that aught should remain to you, something of your own would have escaped.'[7]

An objection is raised: If it was a year of blasting or mildew, or the seventh year, or years like those of Elijah,[8] they are not included in the count.[9] Now blasting and mildew are stated as analogous to years like those of Elijah: just as during the years of Elijah there was no produce at all, so in the former too. But if there were some harvests [elsewhere], it is accounted to him,[10] and we do not term it an epidemic![11] — Said R. Nahman b. Isaac: There it is different, because Scripture says, According to the number of years of the harvests, he shall sell into thee,[12] [meaning], years in which the world enjoys harvests.[13] R. Ashi objected before R. Kahana: If so, the seventh should be included in the count, since there are harvests outside Palestine! — The seventh year, replied he, is excluded by royal decree.[14] Mar Zutra, the son of R. Mari, said to Rabina: If so, the seventh year should not rank for rebate; why then did we learn, He must pay a sela' and a pundion per annum?[15] — He replied, There it is different, because it [the seventh year] is fit for fruits to be spread out therein.[16]

Samuel said: This [sc. that a deduction may be made when there is a widespread epidemic] was taught only if he [the lessee] sowed it [the field], it [the crop] grew and was eaten by grasshoppers;[17] but not if he failed to sow it altogether, because he can say to him, 'Had you sown it, the promise, They shall not be ashamed in the evil time,' anid in the days of famine they shall be satisfied,[18] would have been fulfilled for me.'[19] R. Shesheth raised an objection: If a shepherd, who was guarding his flock,left it and entered the town; and then a wolf came and killed [a sheep], or a lion [came], and tore it to pieces, we do not say, 'Had he been there, he could have saved them,' but judge his strength: if he could have saved them, he is responsible; if not, he is exempt.[20] But why so? Let him say to him, 'Had you been there, the verse, Thy servant slew both the lion and the bear,[21] would have been fulfilled for me!' — Because he can answer, 'Had you been worthy that a miracle should happen on your behalf, it would have happened, as in the case of R. Hanina b. Dosa, whose goats brought in bears by their horns.'[22] But cannot he reply, 'Granted that I am not worthy of a great miracle,[23] yet am I worthy of a minor one!'[24]

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(1) If it be resolved that fodder is not a separation, what if it was surrounded by fields of different cereals, but still for human beings; these being unaffected, whilst those beyond, which were the same, being affected?

(2) If it be answered that fields of different seed break the continuity and are disregarded, what if a wheat field was surrounded by fields of barley?

(3) Job XXII, 28.

(4) I.e.,the promise that my hopes and prayers would be fulfilled; but these were for wheat, not barley.

(5) [לתא , lit., 'cause'; Ginsberg, L. MGWJ, LXXVIII, p. 19.]

(6) Jer. XLII, 2. When misfortune is decreed upon a person, it is not absolute. That itself proves that in this case it was not due to the lessor's bad fortune, but was a natural phenomenon.

(7) Where all the lessor's fields have been affected, he can argue, 'Something has in fact been left to me, viz., the rent I receive, even though reduced. This proves that it is my fate that something should be left to me, and therefore if this blasting were due to my evil fortune, some of my fields would have escaped, in accordance with the verse. But nothing at all has been left to you, which shews that you are excluded from that promise; so that after all it may be your peculiar fate that is responsible' (Tosaf.).

(8) I.e., of drought.

(9) 'Ar. 29b. This refers to a sale of land when the law of Jubilee was in force. The vendor always retained the option of repurchase, but not before the estate had been in the vendee's possession for at least two years. But if one of these was a year of blasting, etc., it was not counted.

(10) The vendee is regarded as having enjoyed a year's harvest, to be taken into account in assessing the redemption

price, which was calculated on a pro-rata basis, according to the number of years to the Jubilee and the length of time the vendee had been in possession.

(11) To be charged to the first owner. This contradicts the Mishnah.

(12) Lev. XXV. 15.

(13) And this is the verse from which pro rata redemption after two years is deduced (‘Ar. 29b). Hence, even if there is a widespread blight in which the whole plain is smitten, yet since some harvests are reaped elsewhere, the year is taken into account.

(14) I.e., since Scripture forbade sowing in the seventh year, it was specifically excluded from the years of produce; hence is regarded as non-existent.

(15) ‘Ar. 25a. The reference is to Lev. XXVII, 16-19: And if a Man shall sanctify unto the Lord a field of his possession, then thy estimation shall be according to the seed thereof an homer of barley seed shall be valued at fifty shekels of silver. If he sanctify his field from the year of jubilee, accordingly to thy estimation it shall stand. But if he sanctify the field after the jubilee, then the priest shall reckon unto him the money according to the years that remain, even unto the year of jubilee, and it shall be abated from thy estimation. Now, the Mishnah states that according to this reckoning, for every year that remains a sela’ and a pundion, which is 1/48th of a sela’, is due. This shews that the fifty shekels are divided into 49, the number of years in a jubilee (excluding the jubilee itself). But if the Sabbatical years, not being years of seed, are excluded, there are only 42 years of seed into which the fifty must he divided, which gives almost a sela’ and a denar per annum.

(16) I.e., some use can be made of the seventh year, and the Bible did not specify ‘years of harvests’ in this connection.

(17) I.e., blighted.

(18) Ps. XXXVII, 19.

(19) Therefore no deduction can he made, notwithstanding the widespread epidemic.

(20) Supra 41a.

(21) I Sam. XVII, 36.

(22) Complaints being made that his goats were damaging the crops, he exclaimed, ‘If it be so, let bears devour them; if not, let them capture bears and bring them in by their horns.’ In the evening his goats came in, drawing the bears by their horns! V. Ta'an. 25a.

(23) That my flock should be saved even in your absence.

(24) That it should be saved through your presence.

— This indeed is a difficulty.

One [Baraitha] teaches: He [the tenant] must sow it [the field] the first and second time, but not the third.[1] But another [Baraitha] teaches: He must resow it a third time, but not a fourth! — There is no difficulty: the former is according to Rabbi; the latter, R. Simeon b. Gamaliel. The former is according to Rabbi, who maintained that a presumption is established by an occurrence happening twice. The latter, R. Simeon b. Gamaliel, who held that a presumption is established only when it occurs three times.[2]

Resh Lakish said: This was taught only if he sowed it, it grew, and was devoured by locusts. But if he sowed it, and it did not grow at all, the lessor can say to him, 'Go on repeatedly sowing [the field] during the extra period of sowing.' And until when is that? — Said R. Papa: Until the aris[3] comes from the field and kimah is situated overhead.[4]

An objection is raised: R. Simeon b. Gamaliel said on the authority of R. Meir, and R. Simeon b. Menasya said likewise: [The second] half of Tishri, Marcheshvan, and the first half of Kislev is seed-time; [the second] half of Kislev, Tebeth, and half Shebat are the winter months; [the second] half of Shebat, Adar, and [the first] half of Nisan, cold months; [the second] half of Nisan, Iyar, and [the first] half of Sivan is the period of harvests; [the second] half of Sivan, Tammuz, and the first half of Ab are summer; the second half of Ab, Ellul and the first half of Tishri, hot months. R. Judah counted [these periods] from [the beginning of] Tishri; R. Simeon, from Marcheshvan.[5] Now, who gives the most lenient interpretation?[6] R. Simeon [who counts from Marcheshvan]; and yet he does not extend the [sowing] season so far! — There is no difficulty. The latter refers to a field leased for early sowing;[7] the former, to one leased for late sowing.[8]

R. JUDAH SAID: IF HE LEASES IT ON A MONEY RENTAL. A certain man leased a field by the bank of the River Malka Saba[9] on a money rental, for sowing garlic. But the River Malka Saba became dammed up.[10] When he came before Raba, he said to him, 'It is unusual for the River Malka Saba to become dammed; this is a widespread blow; [therefore] go and deduct.' But the Rabbis protested to Raba, did we not learn, R. JUDAH SAID: IF HE LEASED IT ON A MONEY RENTAL, THEN IN BOTH CASES HE MAY MAKE NO DEDUCTION? — He replied: None pay heed to this ruling of R. Judah.

MISHNAH. IF A MAN LEASED A FIELD AT AN ANNUAL RENTAL OF TEN KORS WHEAT, AND IT [THE FIELD] WAS SMITTEN,[11] HE CAN PAY HIM THEREOF.[12] IF, [ON THE OTHER HAND,] THE WHEAT GROWN WAS OF CHOICE QUALITY, HE [THE TENANT] CANNOT SAY, 'I WILL PURCHASE WHEAT IN THE MARKET [FOR YOUR RENTAL],' BUT MUST PAY HIM THEREOF.[13] GEMARA. A man leased a field to grow fodder for [several] kors of barley. [The field] having produced a crop of fodder,[14] he ploughed and resowed it with barley, which was, however, blighted. So R. Habiba, of Sura on the Euphrates,[15] sent to Rabina: How is it in such a case? Is it analogous to the law, IF IT WAS SMITTEN, HE CAN PAY HIM THEREOF, or not? — He replied: How compare? In that case the soil had not performed the owner's behest; but here it had.[16] A certain man leased a vineyard from his fellow for ten barrels of wine: but that wine[17] turned sour. Now, R. Nahman thought to rule, This is the same as our Mishnah: IF IT WAS SMITTEN, HE CAN PAY HIM THEREOF. But R. Ashi said to him: What analogy is there? There the soil had not performed its duty, whilst here it had.[18] Yet R. Ashi admits in the case of grapes that had become wormy, or a field whose sheaves were smitten.[19]

MISHNAH. IF ONE LEASES A FIELD FROM HIS NEIGHBOUR TO SOW BARLEY, HE MUST NOT SOW WHEAT;[20] [TO SOW] WHEAT, HE MAY SOW BARLEY. BUT R. SIMEON

B. GAMALIEL FORBIDS IT. [IF RENTED FOR] CEREALS, HE MAY NOT SOW PULSE; BUT IF [FOR] PULSE HE MAY SOW CEREALS.[21] R. SIMEON B. GAMALIEL FORBIDS IT. GEMARA. R. Hisda said: What is R. Simeon b. Gamaliel's reason? — Because it is written, The remnant of Israel shall not do iniquity nor speak lies; neither shall a deceitful tongue be found in their mouth.[22]

An objection is raised: The Purim collections must be utilized for Purim only, and no scrutiny is made in the matter. The poor may not even buy shoestraps therewith, unless this was stipulated in the presence of members of the community: this is the ruling of R. Jacob, who stated it in the name of R. Meir; but R. Simeon b. Gamaliel

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(1) Having sown the field once, and it was blighted, he must resow it; otherwise he can make no deduction even if the epidemic was widespread. But if it was smitten again, he need not sow it a third time.

(2) V. Sanh. 81b. Hence, the crops having been twice blighted, there is a presumption that they will be smitten a third time too, according to Rabbi; and therefore without sowing a third time, he may deduct. But in the view of R. Simeon b. Gamaliel, they must be blighted three times before he may presume thus.

(3) V. Glos.

(4) Kimah is the name of a constellation, conjectured by Jast. to be Daco, not the Pleiades. In the month of Adar, corresponding to mid-February to March, the kimah appears to be overhead at the time the peasant finishes his work, viz., about four in the afternoon. Thus R. Papa states that the seed time is up to Adar.

(5) The passage is an explanation of the terms mentioned in Gen. VIII, 22: While the earth remaineth, seed-time (זרע) and harvest (קציר), and cold (וקר) and heat (וחם), summer (וקיץ) and winter (וחרף), and day and night shall not cease.

(6) Who starts the seasons latest, and so gives the latest period for seed-time.

(7) E.g., Wheat and rye.

(8) Barley and pulse, which are sown in Adar.

(9) [The large canal in the district of Mahuza; v. Obermeyer, op. cit. p. 170.]

(10) At a higher point than the field, so that it was insufficiently watered for garlic to grow.

(11) The crops being blasted or mildewed.

(12) Of the crops grown in that field, notwithstanding their poor quality.

(13) [This Mishnah, too, obviously deals with a fixed rental.]

(14) This requires only thirty days.

(15) [Whilst the town of Sura lay on the Sura canal, its west side was situated on the Euphrates, Obermeyer, op. cit. 293.]

(16) I.e., in the Mishnah it had been leased for barley, and the barley had been smitten. Therefore the lessor must accept his rent out of the crop. Here, however, the fodder, for which it had been rented, had not been affected, and it had never been leased for barley; consequently, he must supply him with sound barley, as the original understanding had been.

(17) Viz., which was manufactured from the grapes of that vineyard.

(18) The grapes were sound; therefore he must buy him good wine.

(19) Then the lessor must accept payment out of the crop. Though the sheaves were already detached from the soil, yet since they had to be spread out on the field for drying, they still needed the soil, and therefore it is as though they were smitten whilst growing.

(20) Because wheat exhausts the soil more than barley. This can refer only to a fixed rental; for in the case of a percentage rental, since a wheat crop is of greater value than a barley crop, he may sow wheat, as stated supra 104a: Let the field be impoverished, rather than its owner.

(21) The reasoning is the same as in the case of barley and wheat. [MS.M. reverses the position of cereals and pulse, a reading adopted by Maim. and Alfasi, cf. n. 5 below.]

(22) Zeph. III, 13.

is lenient in the matter.[1] — Said Abaye: R. Simeon b. Gamaliel's reason is in accordance With you,

Master.[2] For the Master said: If one wishes his land to become sterile, let him sow it one year with wheat and the following with barley, one year lengthwise and the following crosswise.[3] Yet that is only if he does not plough it [after the harvest] and repeat [before sowing]; but if he does, no harm is done.

[IF RENTED FOR] CEREALS, HE MAY NOT SOW PULSE, etc. Rab Judah taught Rabin: [If rented for] cereals, he may sow pulse. Said he to him: But did we not learn, [IF RENTED FOR] CEREALS, HE MAY NOT SOW PULSEE? — He replied: There is no difficulty; this [sc. my ruling] refers to ourselves; the other, to them [the Palestinians].[4]

Rab Judah said to Rabin son of R. Nahman: My brother Rabin! The cress that grows among flax is not forbidden [to strangers] as robbery;[5] but that which grows on the borders [of the field] is so forbidden. Yet if it has become hardened for sowing,[6] even that which grows among the flax is forbidden as robbery. Why? — Because the damage is already done.[7]

Rab Judah said to Rabin son of R. Nahman: [Some of] these [fruits] of mine are really yours; and some of yours are really mine.[8] And the practice of abutting neighbours is to regard a tree as belonging to the field whither its roots tend. For it has been stated: If a tree stands by the boundary line [between two fields]: Rab said: Whither each is inclined, there it belongs; Samuel said: They share [therein].[9]

An objection is raised: If a tree stands by the boundary, they [the owners of the adjacent fields] share therein. This refutes Rab's ruling! — Samuel interpreted this on Rab's views as meaning that it takes up the whole [breadth of] the boundary.[10] If so, why state it? — It is necessary [to teach it] only when its weight overhangs in one direction.[11] But even so, why state it? — I might think that he [one field owner] can say, 'Divide thus.'[12] Therefore we are informed that he can reply, 'What reason is there for dividing in this manner? Divide it otherwise!'[13]

Rab Judah said to Rabin son of R. Nahman: My brother Rabin, do not buy a field that is near a town; for R. Abbahu said in the name of R. Huna in Rab's name: One may not stand over his neighbour's field when its crop is full grown.[14] But that is not so! For when R. Abba met Rab's disciples, and asked them: what comments did Rab make upon these verses: Blessed shalt thou be in the city, and blessed shalt thou be in the field. Blessed shalt thou be when thou comest in, and blessed shalt thou be when thou goest out?[15] They answered him: Thus did Rab say: 'Blessed shalt thou be in the city' — that thy house shall be near a synagogue; 'and blessed shalt thou be in the field' — that thy property shall be near the city; 'Blessed shalt thou be when thou comest in' — that thou shalt not find thy wife in doubt of niddah[16] on returning home from thy travels; 'and blessed shalt thou be when thou goest out' — that thine offsprings shall be as thee.[17] Whereupon he observed: R. Johanan did not interpret thus, but: 'Blessed shalt thou be in the city' — that the privy closet shall be near to thy table,[18] but not the synagogue.[19] R. Johanan's interpretation is in accordance with his opinion, viz., One is rewarded for walking [to a synagogue]. 'And blessed shalt thou be in the field' — that thy estate shall be divided in three [equal] portions of cereals, Olives, and vines. 'Blessed shalt thou be when thou comest in, and blessed shalt thou be when thou goest out' — that thine exit from the world shall be as thine entry therein: just as thou enterest it without sin, so mayest thou leave it without![20]

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(1) V. supra 78b. This proves that R. Simeon b. Gamaliel does not forbid a change of this description, where the original owner suffers no loss.

(2) Viz., Rabbah b. Nahmani; Abaye having been brought up in his house, he addressed him 'Mar', 'Master', 'Sir'.

(3) I.e., sowing in such succession injures the fertility of the soil. Therefore, if he leased it for wheat, he may not sow it with barley, in the opinion of R. Simeon b. Gamaliel, lest wheat had been sown there the previous year.

(4) Palestine is not so well watered, and the impoverishment of the soil is a real danger; hence, if rented for cereals, pulse

must not be sown, as they are a greater drain upon the soil. But Babylonian soil being more marshy and humid, there is no such danger. [According to Maim. Yad, Sekiroth, VIII, 7, the position of cereals and pulse is reversed throughout the passages, cf. p. 610, n. 8.]

(5) Because the injury it does to the flax is greater than its value, and the owner is pleased when people tear it out.

(6) I.e., fully grown.

(7) And it causes no further damage now.

(8) Their fields were contiguous, and each had trees planted near the intervening border. Rab Judah observed that some of his trees, though planted in his own soil, extended their roots into that of his neighbour and drew nourishment thence. Therefore those fruits really belonged to Rabin, and vice versa.

(9) Rashi translates: The tree stands near the boundary, whereon Rab rules that its ownership is fixed by the direction of its roots. Tosaf.: The tree stands actually on the boundary line, the roots spreading equally into both fields, and Rab rules that the ownership is fixed by its branches: it belongs to the field over which they preponderate.

(10) Rashi: The roots tending equally in both directions. Tosaf.: The branches overspread the whole boundary.

(11) Rashi: The weight of its branches and fruit are toward one side. Tosaf:. Though the branches are confined to the boundary, the fruit facing one field exceeds that which fronts the other.

(12) I.e., you take the fruit facing your field, and I will take that facing mine.

(13) E.g., instead of dividing the tree parallel to the length of the boundary, which gives one more than the other, divide it along its breadth.

(14) Lit., 'when it is with its standing crop'. The reason is that he might injure it through the evil eye.

(15) Deut. XXVIII, 3,6.

(16) V. Glos.

(17) Translating the Heb. בצאתך 'in respect of that which goeth forth from thee.'

(18) Metaphorically: there shall be adequate and readily accessible sanitation.

(19) I.e., in his opinion it is not desirable that the synagogue shall be near at hand, because, as stated in the Gemara, one is rewarded for walking to the synagogue.

(20) Reverting to the interpretation given in the name of Rab, the second passage contradicts Rab Judah's remark.

Talmud - Mas. Baba Metzia 107b

— There is no difficulty: the latter dictum is meant when it [the field] is surrounded by a wall and a hedge;[1] the former, when it is not so surrounded.

And the Lord shall take away from thee all sickness.[2] Said Rab: By this, the [evil] eye is meant.[3] This is in accordance with his opinion [expressed elsewhere]. For Rab went up to a cemetery, performed certain charms,[4] and then said: Ninety-nine [have died] through an evil eye, and one through natural causes. Samuel said: This refers to the wind. Samuel follows his views, for he said: All [illness] is caused by the wind. But according to Samuel, what of those executed by the State? — Those, too, but for the wind [which enters and plays upon the wound], an ointment could be compounded for them [which would cause the severed parts to grow together], and they would recover. R. Hanina said: This refers to the cold.[5] For R. Hanina said: Everything is from Heaven, excepting cold draughts, as it is written, Cold draughts are in the way of the froward: he that doth keep his soul shall be far from them.[6] R. Jose b. Hanina said: This refers to the excretions, for a Master said: The nasal and aural excretions are injurious when in great quantities, but beneficial in small. R. Eleazar said: This refers to [diseases of the] gall. It has been taught likewise: By mahala ['sickness',[7] illness caused by the] gall is meant; and why is it called 'mahala'? Because it sickens the whole human frame. Alternatively, because eighty-three illnesses are dependent upon the gall,[8] and all of them may be rendered nugatory by eating one's morning bread with salt and drinking a jugful of water.

Our Rabbis taught: Thirteen things were said of the morning bread: It is an antidote against heat and cold, winds and demons; instils wisdom into the simple, causes one to triumph in a lawsuit,[9] enables one to study and teach the Torah, to have his words heeded, and retain scholarship;[10] he

[who partakes thereof] does not perspire, lives with his wife and does not lust after other women; and it kills the worms in one's intestines. Some say, it also expels jealousy and induces love.[11] Rabbah asked Raba b. Mari: Whence comes the proverbial expression, 'Sixty runners speed along, but cannot overtake him who breaks bread in the morning;' also the Rabbinical dictum, 'Arise early and eat — in summer, on account of the heat, in winter, on account of the cold'? — He replied: Because it is written, They shall not hunger nor thirst; neither shall the cold nor sun smite them.[12] Thus, 'the cold or sun shall not smite them', because 'they shall not hunger nor thirst.' Said he to him: You deduce it from that verse; but I, from this: And ye shall serve the Lord your God, and he shall bless thy bread, and thy water:[13] 'And ye shall serve the Lord your God' — this refers to the reading of the shema'[14] and prayer; 'and he shall bless thy bread, and thy water' — to bread and salt and a jug of water. Thenceforth: And I will take sickness away front the midst of thee.[15]

Rab Judah said to R. Adda the surveyor: Do not treat surveying lightly. because every bit [of ground] is fit for garden saffron.[16] Rab Judah [also] said to R. Adda the surveyor: The four cubits on the canal banks you may treat lightly, but those on the river banks do not measure at all.[17] Rab Judah is in harmony with his views, for Rab' Judah said: Four cubits on the banks of a canal belong to the estate owners it serves; but those on the banks of a river are common property.[18]

R. Ammi announced: Cut down [all vegetation] in the shoulderbreadth of bargees on both sides of the river.[19] R. Nathan b. Hoshia had sixteen cubits thus cut down. Thereupon the people of Mashrunia[20] came and smote him. He thought that it is as a public thoroughfare.[21] But that is incorrect; only there [for a public road] is so much necessary, but here it [the clear space] is required for hauling the ropes; therefore the full shoulderwidth of the bargees is enough.

Rabbah son of R. Huna possessed a forest by the river bank. Being requested to make a clearing [by the water's edge], he replied, 'Let the owners above and below me first clear [their portion], and then I will cut down mine.' But how might he act so? Is it not written, Gather yourselves together, yea, gather:[22] which Resh Lakish translated, First adorn yourself, and then adorn others?[23] — In that Instance the [neighbouring] forests belonged to Parzak, the Field-marshal.[24] Therefore he [Rabbah] said: 'If they cut down [their forests], I will do so likewise; but if not, why should I? For if they can still haul their ropes,[25] they have room for walking;

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(1) Which shut it out from sight; then it is advantageous to have it near the town, for convenience of transport, whilst at the same time it is not subject to the evil eye.

(2) Ibid. VII, 15.

(3) Rab translates: will take away from thee the cause of all sickness, which in his view is the evil eye.

(4) Lit., 'did what he did,' and so translated by Rashi. By means of whispering certain charms over the graves he learnt what had caused the death of their occupants.

(5) Deriving פחים from נפח to blow; others: cold and heat, connecting פחים with פחם, a glowing coal. V. A.Z. (Sonc. ed.) p.11, n. 2.

(6) Prov. XXII, 5; i.e., sickness brought about through these causes are avoidable, but through all others are not.

(7) With reference to Ex. XXIII, 25.

(8) The numerical value of מחלה is 83. V. B.K. (Sonc. ed.) p. 535, nn. 6-7

(9) The contentedness and tranquility which result from it enables the litigant to make the best of his plea.

(10) All these as in preceding note.

(11) Rashi: when man's mind is confused, be is easily angered — hence. 'feed the brute.'

(12) Isa. XLIX. 10.

(13) Ex. XXIII. 25.

(14) V. Glos.

(15) Ibid.

(16) A particularly choice quality of saffron. As a surveyor, he measured out land in business transactions, divided inheritances, etc.

(17) No sowing was permitted within four cubits of the border of a canal so as not to damage its banks. These four cubits were marked off, and Rab Judah told R. Adda that he was not to be particular to measure them exactly. The four cubits on river banks were similarly treated, and Rab Judah observed that these need not be measured at all, but simply guessed.
(18) Therefore they must be given very liberally, hence he told him merely to guess the measurement.
(19) The bargees pulled the laden boats whilst they walked on the river bank. They naturally walked in a slanting fashion, bearing away from the river, and the full breadth that they might need had to be kept clear.
(20) To whom the forest belonged.
(21) For which sixteen cubits are given; B.B. 99b.
(22) Zeph. II, I.
(23) By connecting קשש , the root of התקששו , with קשט , 'to adorn.' Be just yourself, before demanding it of others.
(24) V. supra p. 295, n. 8.
(25) Notwithstanding that the noble's forests are not cleared.

Talmud - Mas. Baba Metzia 108a

if not, they cannot walk there [in any case]'.[1]

Rabbah son of R. Nahman was travelling in a boat, when he saw a forest on the river bank. Said he: 'To whom does this belong?' — 'To Rabbah son of R. Huna', he was informed. He thereupon quoted, 'Yea, the hand of the princes and rulers hath been chief in this trespass.[2] Cut it down, cut it down', he ordered. Then Rabbah son of R. Huna came and found it cut down. 'Whoever cut it down',he exclaimed, 'may his branches be cut down!'[3] It was related that during the whole lifetime of Rabbah son of R. Huna none of Rabbah son of R. Nahman's children remained alive.

Rab Judah said: All must contribute to the repair of the breaches in the wall,[4] even orphans; but not the Rabbis. Why? — The Rabbis need no protection.[5] But for the digging of wells [for drinking purposes] even the Rabbis are liable. But that is only if they [the townspeople] do not go out in bands;[6] if however, they do, [the Rabbis] are not [liable], because it is not In keeping with their dignity.[7]

Rab Judah said: When the river needs dredging,[8] those dwelling on the lower reaches must aid the upper inhabitants, but not vice versa.[9] But it is the reverse in respect to rain water.[10]

It has been taught likewise: If five gardens draw their water from the same well, and the well is damaged, all must assist the upper field; hence the lowest must aid all the rest, yet must repair by himself.[11] Likewise, if five courts run off their [surplus] water into one dyke, and the dyke is damaged, all must assist the lowest in the repairs;[12] hence the highest must assist all in repairing, yet must repair by himself [receiving no aid from the others.]

Samuel said: He who takes possession of the wharfage of a river is an impudent person, but cannot be [legally] removed.[13] But nowadays that the Persian authorities write [in the warrant of ownership], 'Possess it [sc. the field on the river bank] as far as the depth of water reaching up to the horse's neck', he is removed.[14]

Rab Judah said in Rab's name: If one takes possession[15] [of an estate lying] between [the fields belonging to] brothers or partners, he is an impudent man, yet cannot be removed. R. Nahman said: He can even be removed too; but if it is only on account of the right of pre-emption, he cannot be evicted.[16] The Nehardeans said: He is removed even on the score of the right of pre-emption, for it is written, And thou shalt do that which is right and good in the sight of the Lord.[17]

What if one came to take counsel of him [sc. the neighbour who enjoys the right of pre-emption] and asked, 'Shall I go and buy it?' and he replied, 'Go and buy it': is formal acquisition from him necessary,[18] or not? — Rabina[19] ruled: No formal acquisition is necessary; the Nehardeans maintained: It is. And the law is that a formal acquisition is needed.[20] Now that you say that a formal acquisition is necessary, — if he did not acquire it of him [and bought the field], it advances or falls in his [the abutting neighbour's] ownership.[21] Now, if he bought it for a hundred [zuz], whereas it is worth two hundred, we see: if he [the original vendor] would have sold it to any one at a reduced figure, he [the abutting neighbour] pays him [the vendee] a hundred [zuz] and takes it. But if not [and it was a special favour to the vendee], he must pay him two hundred and only then take it. But if he bought it for two hundred, its value being only one hundred, — it was [at first] thought that he [the abutting neighbour] can say to him, 'I sent you for my benefit, not for my hurt.'[22] But Mar Kashisha, the son of R. Hisda,[23] said to R. Ashi: Thus did the Nehardeans say in R. Nahman's name: There is no law of fraudulent purchase in respect to real estate.[24]

If one sold a griwa[25] of land in the middle of his estate, we see: if it is of the choicest or of the most inferior quality, the sale is valid;

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(1) Since the noble could not be compelled to clear his forest, Rabbah's clearing would serve no purpose.

(2) Ezra IX, 2.

(3) I.e., may his children die!

(4) As a measure of defence.

(5) The merit of their learning protects them.

(6) To dig it personally, but merely furnish the money for it.

(7) On the whole passage v. B.B. (Sonc. ed.) p. 33.

(8) Of mud and refuse which impede the free flow of the water.

(9) If there are obstacles on the upper parts of the river, the water flow is adversely affected for the lower too. But on the other hand, there is no profit for the upper inhabitants to clear the lower portions, for the greater the ease with which the water runs downwards, the less water is left for them.

(10) Where the rainfall has to be drained away because it injures the roads etc., those on the upper reaches must aid the lower, because if the lower water is not carried off the upper cannot be either. But those living below have no profit in the drainage of the town situated by the upper reaches of the river.

(11) As before, it is in the interest of each that the water from above shall flow freely to his own field, but not that it shall continue after it has passed his estate. Therefore the lowest of all must assist in the repairing if the course is blocked above, but none need help him if it is blocked at his own estate.

(12) If it was damaged at his court.

(13) As stated above, p. 425, under Persian law, he who paid the land tax on a plot of land was entitled to it. A large clear space on the river bank was left for the purpose of unloading. It would appear that originally no one had a particular claim to it, and the revenue suffered accordingly. Hence, if one paid the land tax and seized it, he could not be legally removed; nevertheless, since this would cause considerable public inconvenience, he was stigmatised as an impudent man, lacking in civic responsibility.

(14) Though the owners fence off their fields at some distance from the water's edge, the land actually belongs to them, and therefore none can legally seize it.

(15) By paying the land tax thereon.

(16) I.e., if the two fields on either side do not belong to brothers or partners, yet the owners allege that they had a prior right to pay the tax and take the land, and had intended doing so, in accordance with the right of pre-emption (v. p. 396, n. 6), their plea is unavailing.

(17) Deut. VI, 18. This is regarded as an exhortation to the purchaser: 'Why buy a field just here, where it is more useful to its neighbour than another field not adjacent to his, when you can as easily buy a similar field elsewhere, seeing that it makes no difference to you?'

(18) [The performance of a kinyan confirming the surrender of the abutting neighbour's right of pre-emption.]

(19) Alfasi reads: R. Nahman.

(20) Otherwise the neighbouring estate owner can say, 'I merely stood aside whilst you established its price, as I knew

that I would be charged more, being particularly anxious to obtain it.'

(21) I.e., the purchase is legally invalid, the abutting neighbour retaining his option on it. Therefore if it appreciates after the purchase, he can insist on taking it over from the vendee at its value at the time of purchase, and the profit of the advance is his. Contrariwise, if it loses in value, he must pay the vendee its full original value.

(22) For the vendee has in fact involuntarily become the neighbour's agent for purchase. Hence the latter can repudiate his act and insist on receiving it at its market value.

(23) V. p. 388, n. 4.

(24) Hence the neighbour must render the price paid by the vendee.

(25) V. Glos.

Talmud - Mas. Baba Metzia 108b

otherwise it is mere evasion.[1]

A gift is not subject to the law of pre-emption. Said Amemar: But if he [the donor] promised[2] security of tenure,[3] it is subject thereto.[4] When one sells all his property to one person, the law of pre-emption does not apply.[5] [Likewise, if it is sold] to its original owner, it is not subject to the law of pre-emption. If one purchases from or sells to a heathen, there is no law of pre-emption. 'If one purchases from a heathen' — because he [the purchaser] can say to him [the abutting neighbour], 'I have driven away a lion from your boundaries.' 'If he sells to a heathen' — because a heathen is certainly not subject to [the exhortation], 'And thou shalt do that which is right and good in the sight of the Lord.' Nevertheless, he [the vendor] is placed under a ban, until he accepts responsibility for any injury that might ensue through him [the heathen]. A mortgage is not subject to the law of pre-emption. For R. Ashi said: The elders of Matha Mehasia told me, What is the meaning of mashkanta [a pledge, mortgage]? That it abides with him [the mortgagee].[6] What is its practical bearing? In respect to pre-emption. When one sells [an estate] that is far [from the vendor's domicile] in order to buy one that is near, or an inferior property to repurchase a better, the law of pre-emption does not apply.[7] [When an estate is sold] for polltax, alimony [of a widow and her daughters] and funeral expenses, the law of pre-emption does not apply, for the Nehardeans said: For poll-tax, alimony, and funeral expenses an estate is sold without public announcement.[8] [A sale] to a woman, orphans, or a partner is not subject to the law of pre-emption.[9]

Of urban neighbours and rural neighbours, the former have priority;[10] of a neighbour [but not of the field to be sold] and a scholar, the latter takes precedence; of a relative and a scholar, the latter has priority. The scholars propounded: What of a neighbour and a relative? — Come and hear: Better is a neighbour that is near that a brother that is far off.[11]

If one offers well-formed coins, and the other full — weight coins,[12] the law of pre-emption does not apply. If these [the coins of the abutting neighbour] are bound up, and those [of the purchaser] unsealed, there is no pre-emption.[13] If he [the neighbour] says, 'I will go, take trouble, and bring money;' we do not wait for him. But if he says, 'I will go and bring money;' we consider: if he is a man of substance, who can go and bring the money [without delay], we wait for him; if not, we do not wait for him.

If the land belongs to one and the buildings [upon it] to another, the former can restrain the latter,[14] but the latter cannot restrain the former.[15] If the land belongs to one and the palm-trees [upon it] to another, the former can restrain the latter, but the latter cannot restrain the former. [If a stranger wishes to purchase] the land for building houses, and [the abutting neighbour wants] the land for sowing, habitation is more important; and there is no law of pre-emption. If a rocky ridge or a plantation of young palm trees lay between [the fields], we consider: If he [the abutting neighbour] can enter therein even with a single furrow,[16] it is subject to the law of pre-emption, but not otherwise.[17] If one of four neighbours [on the four sides of a field] forestalled the others, the sale is

valid; but if they all come together, it [the field] is divided diagonally.[18]

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(1) If A buys a small piece of land in the middle of B's estate, he immediately becomes a neighbour to the surrounding estate, just as C, the original neighbour on the outer side. Now, if the land bought by A is distinctly inferior or superior to the rest, it is natural that it should be sold separately, and the sale is genuine. But if it is just the same, it is obviously a mere fiction to make A the neighbour of B, and therefore C retains his rights of pre-emption.

(2) Lit., 'wrote'.

(3) I.e., in case it is seized for the donor's debt, another will be supplied.

(4) Because it must have been a disguised sale, no person promising security for a gift.

(5) Because the purchaser might refuse to buy the rest if he must give up any portion thereof.

(6) [משכנתא from שכן 'to rest', 'abide'. The mortgagee is considered the nearest abutting neighbour,. v. B.M. (Sonc. ed.) p. 396, n. 6.]

(7) Since the vendor may suffer through the delay, and no privilege is given to one which entails a disadvantage to another.

(8) In other cases of forced sale by order of the court, it was publicly announced so as to attract bidders. But these were regarded as matters of urgency, and therefore the announcement was dispensed with. For the same reason, one cannot wait for the neighbouring estate-owner to avail himself of his privilege.

(9) It was not held seemly that a woman should go about in search of land to buy; therefore the first purchase she makes is valid, even though it infringes upon the rights of pre-emption. The same privilege is accorded to orphans, on account of their generally defenceless state. With respect to partners, there are different interpretations. Rashi: If A and B are partners in a field, and C is their neighbour, A can sell his portion to B, and C cannot plead, 'Since I am a neighbour, I am entitled to buy half that portion, as in the case of two neighbours.' Tosaf. and R. Hai (quoted in Asheri a.l.): If A and B are partners in general, in land, or in business, A can sell a field to B (in which they are not partners) notwithstanding that C is a neighbour. In actual law, both interpretations are accepted; v. H.M. 175, 12 and 49.

(10) If A is selling a field, and B is his neighbour in town, having a house next to his, whilst C is a neighbour of a field belonging to A, but not of that which is for sale, so that neither is a neighbour of the field to be sold, priority must be given to B, the urban neighbour. Thus, this does not refer to pre-emption at all. So Rashi, who bases his interpretation on the following arguments: (i) Whereas the whole of the preceding passage uses the phrase 'the law of neighbourly pre-emption' (דינא דבר מצרא), this passage speaks of priority, in quite a different phrase (קודמין); (ii) Had the reference been to pre-emption, the previous passage should have included it, reading, (A sale) to a woman, orphans, a partner, and urban neighbour, and a scholar (as this passage continues) is not subject to pre-emption; (iii) Surely a scholar cannot infringe upon the pre-emption rights of an ignoramus! Tosaf. holds that the passage does refer to pre-emption, but treats of two neighbours. The weight of authority supports Rashi's view; v. H.M. 175, 50.

(11) Prov. XXVII, 10.

(12) V. p. 403, n. 4. If the neighbour offers the former and the purchaser the latter, or vice versa, the vendor can insist upon a particular preference.

(13) If a neighbour and a stranger send money for the field, the former's coins being bound up and sealed in a package, whilst the latter's are open to view, and the vendor maintains that he is afraid to open the package, lest the sender claim that it contained more, he can sell to the stranger.

(14) From selling them to a stranger, if he wishes to buy himself.

(15) The landowner is regarded as permanent on the land, hence he can restrain the house-owner; not so the latter, who is held to have no permanent stake in the land.

(16) I.e., the separation is not continuous.

(17) Because the main reason of the right of pre-emption is that it is cheaper to cultivate two adjoining fields than two separate ones, as a long continuous furrow can be ploughed and sown in a single operation.

(18) v. figure.

Talmud - Mas. Baba Metzia 109a

MISHNAH. IF A MAN LEASES A FIELD FOR BUT A FEW YEARS,[1] HE MUST NOT SOW IT WITH FLAX,[2] NOR HAS HE A RIGHT TO THE SYCAMORE BEAMS.[3] BUT IF HE LEASED IT FOR SEVEN YEARS, HE MAY IN THE FIRST YEAR SOW IT WITH FLAX, AND HAS A

RIGHT TO THE SYCAMORE BEAMS.

GEMARA. Abaye said: He has no rights to the sycamore beams, but is entitled to the improvement in the sycamores themselves,[4] Raba said: He is not even entitled to the improvement.

An objection is raised: If one leases a field, when his lease expires[5] an assessment is made for him. Surely that means that the improvement in the sycamores are assessed for him! — No. The vegetables and beets are assessed for him. The vegetables and beets! Let him uproot and take them away! — It was before market day.[6]

Come and hear: If one leases a field, and the seventh year [i.e., the year of release] intervenes, an assessment is made for him. Does then the seventh year withdraw the land [from the lessee]?[7] — But read thus: If one leases a field, and the Jubilee arrives, an assessment is made for him. Yet even so, does then the Jubilee cancel a leasehold: Scripture [merely] forbade a sale in perpetuity![8] — But read thus: If one buys a field from his neighbour, and the Jubilee arrives, an assessment is made for him! And should you answer: Here too, the vegetables and beets are assessed for him, [I would reply] these are free to all in the Jubilee! Hence It must surely refer to the improvement of the sycamores![9] — Abaye explained the cited Baraitha on the basis of Raba's views: There it is different, because the Writ saith, Then the house that was sold shall go out [in the year of Jubilee]:[8] [only] that which was sold is returnable [to the first owner], but not the improvements. Then let us learn from it![10] — There it is a true sale, and Jubilee is a royal revocation.[11]

R. Papa leased a field for growing fodder. Now, some young trees sprouted up therein. When he [R. Papa] was about to quit, he said to them [the original owners]: Give me the improvement,[12] Said R. Shisha the son of R. Idi to R. Papa: If so, [had you leased] palm-trees, and these grew thicker [during the period of lease], would you then, Master, also demand the improvement? — He replied: There, I should not have taken possession for that purpose; but here I leased it[13] for that.[14] With whom does this agree? With Abaye, who maintained that he is entitled to the improvement In the sycamores? — It may agree even with Raba. There he [the lessee] suffers no loss [through the improvement of the sycamores]; here there is a loss. But he [the lessor] said to him, 'Wherein did I cause you to suffer loss? Through the [diminished] area for fodder. Then take the value of the fodder [that would have grown] in their place, and go.' He replied, 'I would have sown it with garden saffron,'[15] Said he to hini, 'You have [thus] shown that your intention was to remove [what you did sow] and depart:[16] then take your saffron and go. You are entitled only to the value of the wood.'[17]

R. Bibi b. Abaye leased a field and surrounded it with a ridge, from which there sprung forth sorb bushes. When he left the field [on the expiration of the lease], he said to them, 'Give me the improvements I effected.'[18] Said R. Papi: 'Because you come from Mamla, you speak words of no substance.[19] Even R. Papa claimed [improvements] only because he suffered loss; but here, what loss have you sustained?'

R. Joseph had a gardener.[20] Now, he died and left five sons-in-law. Said R. Joseph: Hitherto there was one, and now there are five; hitherto they did not rely on each other [to do the work] and so caused me no loss, whilst now they will, and cause me loss. [Therefore] he said to them: If you accept the improvements due to you and quit, it is well; if not,I will evict you without [giving you] the improvements. For Rab Judah — others state, R. Huna — others state, R. Nahman — said: If a gardener dies, his heirs may be evicted without [receiving] the improvements . — But [nevertheless] that is incorrect.

A certain gardener said to his employers, 'Should I cause loss, I will quit.' He did [then] cause loss, Said Rab Judah: He must quit without [receiving] the improvements. R. Kahana said: He must quit, but receives the improvements [he effected]. Yet R. Kahana admits that if he said, 'I will quit

without the improvements,' he is evicted without [receiving] improvements. Raba said: [Even then,] It is an asmakta,[21] which is not binding. But according to Raba, wherein does it differ from what we learnt: 'Should I neglect and not till it, I will pay with the best [crops]?'[22] — There he merely pays for the loss he caused;[23] here [it is sufficient that] we make a deduction on account of what he spoiled — whilst the rest must be given him.[24]

Ronia was Rabina's gardener. Having spoiled it, he was dismissed. Thereupon he went before Raba, complaining — 'See, Sir, how he has treated me.' 'He has acted within his rights,' he informed him. 'But he gave me no warning,' protested he. 'No warning was necessary,' he retorted. This is in accordance with Raba's views. For Raba said: Elementary teachers, a gardeners butcher, a cupper[25]

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(1) Less than seven years.

(2) Because it greatly impoverishes the soil, which does not regain its fertility until after seven years. This can apply only to a lease on a fixed rental, for if on a percentage basis, the lessor himself profits thereby (Rashi); v. p. 597.

(3) The branches of sycamore trees were lopped off and fashioned into beams for building purposes. But as they required seven years to grow again, a lessee for a short term has no right to them.

(4) If the sycamores improved during his lease, the improvement is assessed, and the lessee is entitled thereto.

(5) Lit., 'his time came to quit.'

(6) And if they are stored, their value depreciates. Hence they are assessed, but left in the field.

(7) This is an interjection.

(8) Cf. Lev. XXV, 33.

(9) This contradicts Raba.

(10) In reference to a lease: Just as there, the vendee is entitled to improvements, so here too.

(11) Of the sale. Hence, only what Scripture distinctly states is to return, sc. the purchase, is returnable, but not the improvements. But in the case of a lease the return is pursuant to a human agreement; hence, in Raba's view, it goes back just as it is, including the improvements.

(12) The value of the trees.

(13) Lit., 'descended therein.'

(14) When leasing palm-trees, the lessee thinks only of the fruit, but when leasing a field for fodder, his mind is set upon anything that may grow there.

(15) Which is much more valuable.

(16) By answering, 'I would have sown it with saffron,' you have shewn that you would have planted something which could be entirely removed when grown, and not that which, whilst the stock remained, would show you a profit on its improvement, e.g., young palm-trees.

(17) I.e., you must regard these trees as though they were saffron and you had to remove them entirely, and thus you have no other claim but for the value of the timber.

(18) The value of these bushes.

(19) The Aruch holds Mamla to be a place name, whose inhabitants were short-lived. Because you come from such a place, you speak words that are short-lived i.e., use untenable arguments. Rashi: Because you are descendants of Eli (who were likewise short-lived, v I Sam. II, 31ff.) you speak etc. [For another interpretation v. B.B. (Sonc. ed.) p. 582, n. 6.]

(20) Who worked for half profit.

(21) V. Glos.

(22) Supra 104a. It is there stated that their condition is binding.

(23) Since he neglects the whole field, he involves its owner in considerable loss, and there are no profits to offset it,

(24) But he must not be deprived of all his share in the improvements, which exceeds the loss.

(25) So translated by Rashi supra 97a. Here he translates: a circumciser.

Talmud - Mas. Baba Metzia 109b

and the town scribe,[1] are all regarded as being permanently warned.[2] The general principle is this:

for every loss that is irrecoverable, [the workers] are regarded as being permanently warned.

A certain gardener said, 'Give me my improvements, as I wish to emigrate to Palestine.' When he came before R. Papa b. Samuel he ordered: 'Give him the improvements'.But Raba protested: 'Has only he effected the increased value, and not the soil?'[3] He replied, 'I meant half thereof.' 'But,' he protested, 'hitherto the owner took half and the gardener half; whereas now he must give a share to an aris!'[4] He replied , 'I meant a quarter of the improvement .' Now R. Ashi thought this to mean a quarter [of the residue],[5] which is a sixth [of the whole]. For R. Minyomi, the son of R. Nehumi, said: Where it is the practice for a gardener to receive half profits and an aris one third,[6] and a gardener wishes to quit, he is given [his share of the] profits and dismissed, [a share being computed in such a way] that the employer sustains no loss [through having to engage an arts]. Now, should you assume that he meant a quarter [of the residue after paying the aris his share], which is a sixth of the whole, it is well; but if you say that it means a literal quarter, the employer loses a twelfth![7] R. Aha, the son of R. Joseph, said to R. Ashi: But cannot he [the gardener] say to him, 'Do entrust your own portion to the aris; whilst as for me, I can do what I wish with my own share'?[8] — He replied: When you arrive at 'The slaughter of consecrated animals,' come and place your difficulties before me.[9]

The [above] text states: 'R. Minyomi, son of R. Nehumi said: Where it is the practice for a gardener to receive half profits and an arts one third, and a gardener wishes to quit, he is given [his share of] the profits and then dismissed, [a share being computed in such a way] that the employer sustains no loss.' R. Minyomi, son of R. Nehumi [also] said: Of an old [vine] trunk [the gardener receives] half;[10] but if the river inundated it,[11] he receives a quarter.[12]

A certain man pledged a vineyard with his fellow for ten years,[13] but it aged after five.[14] Abaye said: They [the aged trunks] rank as produce;[15] Raba ruled: As principal; therefore land must be bought therewith, of which he [the mortagee] enjoys the usufruct.

An objection is raised: If the tree withered or was cut down, both are forbidden to use it. What then shall be done? It must be sold for timber, land bought with the proceeds, and he [the mortgagee] takes the usufruct.[16] Surely 'withered' is similar to 'cut down': just as the latter means, in its due time, so the former too; and yet it is taught, 'It must be sold for timber, land bought with the proceeds, and he [the mortagee] takes the usufruct': thus proving that it ranks as principal? — No; 'cut down' is similar to 'withered:'just as the latter [implies] before its time,[17] so the former too.

Come and hear: If aged vines and olive trees fell to her [as an inheritance],[18]

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(1) [Or 'barber', v. B.B. (Sonc. ed.) p. 106, n. 7.]

(2) Of dismissal, should their work be unsatisfactory.

(3) Surely the owner of the soil is entitled to at least half.

(4) The gardener having left the work unfinished, an aris (v. Glos.) must be engaged, who will also demand his share, and so the owner loses thereby. .

(5) After allowing for the share of the aris, v. n. 9.

(6) A gardener plants the vineyard, whereas an aris comes to a vineyard already in existence, hence he receives a smaller portion.

(7) E.g., if the profits are six denarii, the gardener and the employer would each have received three. But now an aris must be engaged, who receives a third of the net profits, i.e., two denarii. Hence, if the gardener receives a quarter of the whole, i.e., 1 1/2 denarii, the employer is left with 2 1/2, a twelfth of the whole less than his due; but if he is allotted only a quarter of the residue, i.e. , of 7 denarii, the employer is still left with his full share.

(8) [Even if the gardener should receive a quarter, not a sixth, the employer stands to lose nothing, for the gardener can tell him to entrust the remaining three quarters to an aris, who will receive a third of it for his labour, and a half of the whole will still be left for the owner. Thus: 1/3 x 3/4 x 6 = 1 1/2 (share of the aris); 3/4 x 6 — 1 1/2 = 3, half of the

whole (share of the employer).]

(9) 'The slaughter of consecrated animals' is in the name of a tractate of the Talmud, now called 'Sacrifices' (זבחים), of great subtlety. I.e., 'I see from the question that you have a keen subtle mind — it will be particularly interesting to hear your comments on that Tractate.' Rashi gives two views on this remark. One, that he accepted its reasoning, and complimented him thereon; another, that he merely evaded it by a sarcastic reference to its oversubtlety.

(10) When it no longer bears fruit and is cut down for its wood.

(11) Either uprooting it entirely, or waterlogging the soil and making the vine unfit for fruit, at least for a long time,

(12) As a gardener who wishes to quit in the middle. In the first instance, the ageing of a vine is natural, and therefore it is tacitly understood that when no longer fruit-bearing it shall be treated as the rest. But an inundation is unnatural; hence it is considered as though the gardener had suddenly quitted it,

(13) On a time mortgage. V. supra p. 394.

(14) And was unable to produce. This was when it was expected to age.

(15) Therefore they belong to the mortgagee.

(16) V. supra 79a.

(17) Because the ordinary withering due to age is expressed by 'aged', though that too may imply untimely withering, but 'withered' can only mean prematurely, Tosaf.

(18) The reference is to a married woman, of whose inheritance the husband enjoys the usufruct, v. Keth. 79b.

Talmud - Mas. Baba Metzia 110a

they are sold for timber and land bought with the proceeds, whereof he [the husband] enjoys the usufruct![1] — Read: 'and they aged.'[2] Alternatively: have we not explained it that, e.g., they fell to her in another field [not belonging to her]? so that the [entire] principal is destroyed.[3]

A certain note[4] stated an unspecified number of years. Now, the creditor maintained that it meant three; whilst the debtor insisted upon two. Thereupon the creditor anticipated [the findings of the court] and enjoyed the usufruct. Now, whom do we believe? — Rab Judah said: The land stands in the presumptive possession of its owner.[5] R. Kahana said: The usufruct is in the presumptive possession of him who enjoyed it.[6] And [indeed], the law is in accordance with R. Kahana, who maintained that the usufruct is in the presumptive possession of those who enjoyed it. But have we not an established principle that the law is in accordance with R. Nahman [in civil law], and he [himself][7] ruled that the land is in the presumptive possession of its owner?[8] — There it is in a matter that is not destined to be cleared up; here, however, it is a matter [the truth of which] may be finally revealed,[9] and a Court is not to be troubled twice.[10]

If the creditor maintains that it [the mortgage] was for five years, whilst the debtor says that it was for three: and when he challenges him, 'Bring forth your note,' he pleads, 'The note is lost,' — Rab Judah ruled: We believe the creditor, since he could have pleaded, 'I have bought it [outright].'[11] Said R. Papa to R. Ashi: R. Zebid and R. 'Awira disagree with Rab Judah's ruling. Why? — Since this document is for the purpose of collection,[12] he [the creditor] must have taken great care of it, and [now] he is actually Suppressing the document, thinking, 'I will enjoy its usufruct for an additional two years.' Rabina said to R. Assi: If so, a mortgage after the fashion of Sura, which was drawn up thus: 'On the completion of this number of years, this estate shall go out [of the mortgagee's possession] without further payment:' if he suppresses the mortgage deed and pleads, 'I have bought it' — is he then believed: would then the Rabbis have enacted a measure which may lead to loss? — He replied: There the Rabbis enacted that the mortgager should pay the land-tax and repair ditches.[13] But what of an estate that has no ditches and is not subject to land-tax? Then he should have made a formal protest,[14] he answered. But what if he did not protest? — Then he brought the loss upon himself.

If the aris claims, 'I entered [the field] on half profits'; whilst the landlord maintains, 'I engaged him on a third profits'; who is believed? — Rab Judah said: The owner is believed; R, Nahman

ruled: It all depends on local usage. Now, it was assumed that there is no dispute, the latter ruling[15] refers to a place where an aris receives half; the former, where he receives a third. But R. Mari, son of Samuel's daughter,[16] said to them [the scholars]: Thus did Abaye say: Even in places where the aris receives a half, there is still a dispute; Rab Judah ruling that the landlord is believed, since he could have pleaded, 'He is my hired labourer' or 'my gleaner.'[17]

If orphans maintain, 'We have created the improvements;' whilst the creditor contends, 'Your father created them:'[18] upon whom lies the onus of proof?

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(1) This proves that they rank as principal; for if as fruit, the husband might enjoy them direct.

(2) Prematurely. Even Abaye admits that in such a case it does not count as produce, since it was unexpected.

(3) If the husband uses it direct, whereas the principal of the legacy must remain the wife's. But if she inherited them in her own field or vineyard, the husband could sell them for timber and utilise the proceeds direct, since the soil is still left for the wife. The dispute of Abaye and Raba refers to a similar case, viz,, where land and its trees were pledged. But if only trees, the field not belonging to the debtor, presumably Raba agrees that they rank as principal, not produce.

(4) Concerning a mortgage in the fashion of Sura, (v. p. 394) which was that the land reverted to the debtor after an agreed period without further payment.

(5) V. supra 102b, Thus, since there is a dispute about the third year, we presume that it belongs to the debtor, since he is its known owner, unless there is proof to the contrary; and therefore the creditor is forced to repay.

(6) It being a general rule that the onus of proof lies on the plaintiff, who in this case is the debtor, since the creditor has already taken it.

(7) So the text according to Rashi and Rashal.

(8) V. supra 102b.

(9) By the signatories to the note, who can attest the intended period.

(10) If the return of the usufruct is ordered, witnesses may attest that the intended period was three years, and the matter will have to come before Court a second time.

(11) For three years establish a presumption of ownership, in the absence of a deed of a sale; v, B.B. III. 1.

(12) I.e., of the debt, in the form of usufruct; without it, the debtor could have evicted the creditor at the very outset.

(13) Round about the field, for irrigation. Hence the true ownership is known.

(14) I,e., a declaration that the land was not purchased by the creditor. This of course had to be done before three years.

(15) That it depends on local usage, and since this was said in contradistinction to Rab Judah's dictum, it must mean that the aris is believed

(16) V. p. 588, n. 2.

(17) I.e., 'I have only hired him for a few days, and thus could have dismissed him with a small wage'; לקיט , here translated 'gleaner', was a sort of client or retainer (Jast.).

(18) A creditor of the deceased has no claim upon the increased value of an estate effected by the heirs; but v. p. 630, n. 5.

Talmud - Mas. Baba Metzia 110b

Now, R. Hanina thought to rule: The land stands in the presumptive ownership of the orphans; therefore the creditor must adduce proof. But a certain old man observed to him, Thus did R. Johanan rule: It is for the orphans to adduce proof. Why? — Since land stands to be seized [for debt] it is as though it were already seized;[1] hence the onus of proof lies upon the orphans.

Abaye said: We have learnt likewise: If it is doubtful which came first, he must cut it down without compensation.[2] This proves, since it stands to be cut down,[3] we say to him, 'Bring proof [that the tree was here first] and then receive [compensation];' so here too, since the note[4] is for the purpose of collection,[5] it is as though already collected, and therefore the orphans must prove [their contention]. [Subsequently] the orphans brought proof that they had effected the improvements. Now, R. Hanina thought to rule that when their claims are being satisfied,[6] it is done with land.[7] But that is incorrect: their claims are satisfied with money. This follows from R. Nahman's dictum. For

R. Nahman said in Samuel's name: In three cases the improvements are assessed and payment made in money, viz., [In the settlement of the debt of] the first born to the ordinary son; of the creditor or of the widow[8] who collected her kethubah to orphans; and of the creditors to the vendees.[9] Rabina objected before R. Ashi: Shall we say that in Samuel's opinion the creditor must return the improvement to the vendees?[10] Has then the vendee any title to the improvement: Surely Samuel said: A creditor collects the improvements! And should you reply, There is no difficulty, the one refers to an improvement touching the carriers; the other to an improvement not touching the carriers.[11] Surely cases arose daily where Samuel ordered distraint even of the improvement touching the carriers! — There is no difficulty: in one case, the value of the land and its improvement is claimed; in the other, the value of the land and its improvement is not claimed. But where the value of the land and its improvement is not claimed, [you say that] he must pay the vendee money [for his improvements] and can dismiss him. Now, that agrees well with the view that [even] if the vendee has money, he cannot pay off the creditor. But on the view that he can,[12] let him say to him, 'Had I money, I would have paid you off from the whole estate; now that I have no money, give me a griwa of land in any field, to the value of my improvements'? — The circumstances here are that he [the original debtor] had created it [the field] an hypothec,[13] declaring to him, 'Your payment shall come Only out of this.'[14] MISHNAH. IF ONE LEASES A FIELD FOR A SEPTENNATE FOR SEVEN HUNDRED ZUZ, THE SABBATICAL YEAR IS INCLUDED. BUT IF HE LEASES IT FOR SEVEN YEARS FOR SEVEN HUNDRED ZUZ, IT IS NOT INCLUDED. A WORKER ENGAGED BY THE DAY CAN COLLECT [HIS WAGES] THE WHOLE OF THE [FOLLOWING] NIGHT; IF ENGAGED BY THE NIGHT, HE CAN COLLECT IT THE WHOLE OF THE [FOLLOWING] DAY.[15] IF ENGAGED BY THE HOUR, HE CAN COLLECT IT THE WHOLE DAY AND NIGHT.[16] IF ENGAGED BY THE WEEK, MONTH, YEAR, OR SEPTENNATE, IF HIS TIME EXPIRES BY DAY, HE CAN COLLECT [HIS WAGES] THE WHOLE OF THAT DAY; IF BY NIGHT, HE CAN COLLECT IT ALL NIGHT AND THE [FOLLOWING] DAY.

GEMARA. Our Rabbis taught: Whence do we know that a worker hired by day collects [his wages] all night? From the verse, the wages of him that is hired shall not abide with thee all night until the morning.[17] And whence do we know that a worker hired by the night collects it the whole of the [following] day? Because it is written, At his day shalt thou give him his hire.[18] But let us say the reverse?[19] — Wages are payable only at the end [of the engagement].[20]

Our Rabbis taught: From the implication of, The wages of him that is hired shall not abide with thee all night, do I not know that it means, until the morning? Why then is it written, until the morning? To teach that he [the employer] violates [the injunction] only until the first morning. But thereafter? — Said Rab: He transgresses, Thou shalt not delay [payment]. R, Joseph said: What verse [shews this]?[21] — Say not unto thy neighbour, Go, and come again, and to-morrow I will give; when thou hast it by thee.[22]

Our Rabbis taught: If one instructs his neighbour, 'Go out and engage for me workers,' neither transgresses the injunction, Thou shalt not keep [the wages] all night. The former, because he did not engage them;

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(1) And is in the theoretical possession of the creditor.

(2) V. B.B. 24b. A space of fifty cubits around a city had to be left entirely free for the beauty of the town, If one had a tree within fifty cubits, which he had planted after the town-boundaries had been fixed there, he must remove it without compensation. If it had originally been planted outside fifty cubits, but then, owing to the town's extension, it came within the prohibited area, he receives compensation, but is still bound to cut it down. If, however, it is unknown which was there first, there is no compensation.

(3) In any case.

(4) [Read with some texts 'the land.']

(5) The creditor can seize the land for his debt, including the improvements, save that, if effected by the heirs, he must pay for them.
(6) For the return of the increased value. The literal rendering of the text is, 'Where we dismiss them' — by satisfying their claims.
(7) They are given a portion of the land equal to the increase in value of the whole.
(8) Lit., 'wife.'
(9) (i) A firstborn receives a double share of the estate left by the deceased (Deut. XXI, 17), but not of the improvements effected after death. Now, if the division was not made immediately but some time after death, and both the firstborn and the ordinary son had effected improvements upon the whole estate in the interval: when the firstborn subsequently takes his double share, it contains part of the joint improvements to which he is not entitled. An assessment is therefore made, and he must pay the ordinary sum for it, not by allotting him an additional piece of ground, but in money. Similarly (ii) when a widow or a creditor seizes the estate in satisfaction of their claim, which was improved by the heirs after the deceased's death, to which improvements they are not entitled. (iii) If a debtor sells land after contracting a written debt, the creditor can seize the land from the vendee, if the unsold estate is insufficient; but he must compensate the vendee for his improvements. This too is done with money, not land, but v. text on iii.
(10) [So according to MS.M.; text incur. edd. is somewhat defective.]
(11) Jast.: an improvement touching the carriers, i.e., an increase in the value of the crop, opp. to an increase in the value of the land; v. supra p. 89, n. 4.
(12) Just as the original debtor.
(13) V. supra p. 90 n. 5.
(14) In that case all agree that the vendee cannot retain a portion of the land against his improvements.
(15) In the sense that if he is paid any time during that day or night, his employer does not violate the injunctions against delaying payment. Lev. XIX, 13 and Deut. XXIV, 15.
(16) V. infra Gemara.
(17) Lev. XIX, 13; hence, if paid before morning, it is well.
(18) Deut. ibid.
(19) That the night worker must be paid during the night for which he is engaged, the first verse quoted being so interpreted: similarly the day worker.
(20) Deduced from a verse supra 65a, q.v.
(21) Actually there is no such injunction.
(22) prov. III, 28.

Talmud - Mas. Baba Metzia 111a

the latter, because the wages [i.e., the labour for which wages are due] are not with him. How so? If he [the agent] assured them, 'I am responsible for your wages,' then he is responsible.[1] For it has been taught: If one engages a workman to labour on his [work], but directs him to that of his neighbour, he must pay him in full, and receive in turn from the owner [of the work actually done] the value whereby he benefited him! — It holds good only if he said to them, 'The employer is responsible for your wages.[2]

Judah b. Meremar used to instruct his attendant, 'Go and engage labourers for me, and say to them, Your employer is responsible for your wages.' Meremar and Mar Zutra used to engage [labourers] on each other's behalf.

Rabbah son of R. Huna said: The market traders of Sura do not transgress [the injunction], The wages of him that is hired shall not abide all night [etc,], because It is well known that they rely upon the market day.[3]

IF ENGAGED BY THE HOUR, HE CAN COLLECT IT ALL DAY AND NIGHT. Rab said: A man engaged by the hour for day work can collect [his wages] all day;[4] for night work, can collect [it] all night. Samuel maintained: A man engaged by the hour for day work can collect it all day; for

night work, all night and the following day.

We learnt: IF ENGAGED BY THE HOUR, HE CAN COLLECT IT ALL DAY AND NIGHT, this refutes Rab![5] — Rab can answer you: It is meant disjunctively. [Thus:] If engaged by the hour for day work, he can collect his wages all day; for night work, he can collect it all night.

We learnt: IF ENGAGED BY THE WEEK, MONTH, YEAR OR SEPTENNATE, IF THE TIME EXPIRES BY DAY, HE CAN COLLECT HIS WAGE THE WHOLE OF THAT DAY; IF BY NIGHT, HE CAN COLLECT [IT] ALL NIGHT AND THE FOLLOWING DAy![6] — Rab can answer you: It is a dispute of Tannaim. For it has been taught: A man engaged by the hour for day work collects his wage all day; for night work, all night: this is R. Judah's opinion. R. Simeon said: A man engaged by the hour for day work collects all day; for night work, all night and the [following] day. Hence it was said: Whoever witholds[7] the wages of a hired labourer transgresses these five prohibitions of five denominations and one affirmative precept as follows:[8] Thou shalt not oppress thy neighbour;[9] neither rob him;[10] Thou shalt not oppress an hired servant that is poor;[11] The wages of him that is hired shall not abide all night with thee;[12] At his day shalt thou give him his hire;[13] and, neither shall the sun go down upon it.[14] But Surely those that apply at day[15] do not apply at night, and those that apply at night do not apply at day! — Said R. Hisda: It refers to hiring in general.[16]

What is meant by ‘oppression’ and ‘robbery’? — R. Hisda said: ‘Go, and come again,[17] go and come again’ — that is ‘oppression’;[18] ‘You have indeed a charge upon me, but I will not pay it’ — that is ‘robbery’. To this R. Shesheth demurred:[19] For what form of ‘oppression’ did Scripture impose a sacrifice?[20] For that which is analogous to a bailment,[21] where one [falsely] repudiates a debt of money [or its equivalent]! — But, said R. Shesheth, ‘I have paid you’ — that is ‘oppression’; ‘You have indeed a charge upon me but I will not pay you’ — that is ‘robbery’. To this Abaye demurred:[22] What is ‘robbery’ for which Scripture imposed a sacrifice? — That which is analogous to a bailment, where one falsely repudiates a [debt of] money [or its equivalent]![23] — But, said Abaye, ‘I never engaged you’ — that is ‘oppression’ ; ‘I paid you’ — that is ‘robbery’. Now, as for R. Shesheth, how does ‘oppression’ differ from ‘robbery’, that he objected to the former, but not the latter?[24] — He can answer you: ‘Robbery’ implies that he first robs him and then repudiates [liability].[25] If so, may not ‘oppression’ too refer to subsequent repudiation?[26] — What comparison is there? As for the other [sc. ‘robbery’], it is well, for it is written [And lie unto his neighbour] . . . Or in a thing taken away by violence,[27] which implies that he originally made admission to him. But with respect to ‘oppression’ , is it then written, Or in a thing of oppression?[28] — or hath oppressed his neighbour is stated, implying that he had already oppressed him.[29] Raba said: ‘Oppression’ and ‘robbery’ are identical. Why then did Scripture divide them? — [To teach] that two negative precepts are infringed. MISHNAH. WHETHER IT BE THE HIRE OF MAN, BEAST, OR UTENSILS, IT IS SUBJECT TO [THE LAW], AT HIS DAY THOU SHALT GIVE HIM HIS HIRE,[30] AND, THE WAGES OF HIM THAT IS HIRED SHALL NOT ABIDE WITH THEE UNTIL THE MORNING.[31] WHEN IS THAT? ONLY IF HE DEMANDED [IT] OF HIM; BUT OTHERWISE, THERE IS NO INFRINGEMENT. IF HE GAVE HIM AN ORDER TO A SHOPKEEPER OR A MONEY-CHANGER,[32] HE IS NOT GUILTY OF INFRINGEMENT. A HIRED LABOURER, WITHIN THE SET TIME,[33] SWEARS AND IS PAID.[34] BUT IF HIS SET TIME PASSED,[35] HE CANNOT SWEAR AND RECEIVE PAYMENT; YET IF HE HAS WITNESSES THAT HE DEMANDED PAYMENT (WITHIN THE SET TIME),[36] HE CAN [STILL] SWEAR AND RECEIVE IT. ONE IS SUBJECT TO [THE LAW], AT HIS DAY THOU SHALT GIVE HIM HIS HIRE, IN RESPECT OF A RESIDENT ALIEN,[37] BUT NOT TO THAT OF, THE WAGES OF HIM THAT IS HIRED SHALL NOT ABIDE WITH THEE UNTIL THE MORNING.

GEMARA. Who is the authority for our Mishnah? [For] it is neither the first Tanna who

interpreted ‘of thy brethren’, or R. Jose son of R. Judah. To what is the reference? — It has been taught:

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(1) And therefore subject to the injunction.
(2) Nevertheless, the employer is not subject to the prohibition, because he did not hire the workers himself.
(3) Therefore it is implicitly understood and stipulated, as it were, that the worker is not to be paid before.
(4) E.g., if he was engaged until midday, he must be paid during the rest of the day; otherwise the employer transgresses the injunctions quoted above; similarly the rest of the passage.
(5) For Samuel can say that it applies to a night worker, but on Rab's view it can apply to
(6) And finishing during the day or the night is the same as the case of an hour worker, and thus refutes Rab,
(7) Lit., ‘suppresses’.
(8) שמות lit., ‘names’, i.e., designations of negative precepts, the designation being by the characteristic word of the injunction.
(9) Lev. XIX, 13.
(10) Ibid.
(11) Deut.XXIV, 14.
(12) Lev. ibid.
(13) Deut. XXIV, 15 — these are affirmative precepts.
(14) Ibid.
(15) I.e., to a worker hired by the day.
(16) I.e., these injunctions were written in connection with hiring workers, though it is indeed true that in no single instance are they all infringed together.
(17) Prov. III, 28.
(18) I.e., continually deferring payment, though intending to pay eventually.
(19) [It is clear from Rashi that what follows is not a citation from a Baraitha, but a piece of R. Shesheth's own Biblical exegesis.]
(20) V. Lev. V, 20, 25: If a soul sin, and commit a trespass against the Lord, and lie unto his neighbour in that which was delivered to him to keep (פקדון), or in fellowship, or in a thing taken away by violence (עשק) or hath oppressed his neighbour (עשק) . . . he shall bring his trespass offering unto the Lord.
(21) ‘In that which was delivered to him to keep.’
(22) [Cf. p.634,n. 14].
(23) But admitting liability whilst refusing to pay is not repudiation.
(24) For the same Baraitha [or ‘exegesis’, v. p. 634, n. 14] which refutes R. Hisda's definition of ‘oppression,’ refutes his own of ‘robbery’ too.
(25) privately he admitted liability, but refused to pay, thereby robbing him; but when sued at court, he repudiated lability altogether. Thus his definition is not opposed to the other, which is based on Biblical exegesis.
(26) I.e., R. Hisda's definition of oppression may be correct. Privately, he put him off repeatedly, but when sued, denied liability.
(27) Ibid. This implies, the thing having already been taken away by violence, i.e., he refused to settle an admitted liability, he now lies concerning it and denies liability altogether, in accordance with R. Shesheth's amended definition.
(28) Which would likewise imply having first oppressed him, he now denies liability.
(29) Denying liability as soon as the worker asked for pay.
(30) Deut.XXIV 15.
(31) Lev.XIX 13.
(32) To supply him to the extent of his wages.
(33) When payment is due, as defined in preceding Mishnah.
(34) V. p. 587, n. I.
(35) I.e. if the set time has lapsed.
(36) [Some texts rightly omit bracketed words, v. infra P. 113a.]
(37) v, p. 407, n. 8.

[Thou shalt not oppress an hired servant that is poor and needy. whether he be] of thy brethren — this excludes idolaters;[1] or of thy strangers — this means a righteous proselyte;[2] that are in thy gates — i.e., an alien who eats unclean food.[3] From this I know [the law only in respect off man's hire; whence do I know to extend it to animals and utensils? From, that are in thy land,[4] implying, all that are in thy land. And in respect of all[5] these injunctions,[6] all are transgressed. Hence it was said: The hire of man, animal, and utensils are identical in that they are subject to [the laws], At his day shalt thou give him his hire, and, the wages of him that is hired shall not abide with thee all night until the morning. R. Jose son of R. Judah said: In respect to a resident alien one is subject to [the law], At his day thou shalt give him his hire; but not to that of, Thou shalt not keep all night [the wages of him that is hired, etc.]. In respect of [the hire of] animals and utensils, only the injunction, Thou shalt not oppress [etc.],[7] is applicable. Now, who is [the authority for our Mishnah]? If the first Tanna, who interpreted 'of thy brethren,' the resident alien presents a difficulty.[8] If R. Jose. [the hire of] animals and utensils presents a difficulty![9] — Said Raba: This Tanna [of our Mishnah] is a Tanna of the School of R. Ishmael, who taught: Whether it be the hire of man, beast, or utensil, it is subject [to the laws], At his day thou shalt give him his hire, and, The wages of him that is hired shall not abide with thee. In respect of a resident alien one is subject to [the law]. At his day thou shalt give him his hire, but not to, Thou shalt not keep. [etc.].

What is the reason of the first Tanna who interprets [the verse] 'of thy brethren'? — He deduces [identity of law] from the word 'hire' written twice.[10] R. Jose son of R. Judah, however, does not accept this deduction. But granted that he does not, yet one should be liable to [the law]. At his day thou shalt give him his hire, in respect of animals and utensils too![11] — R. Hanania learnt: Scripture saith, Neither shall the sun go down upon it, for he is poor;[12] [hence it applies only to] those who are subject to poverty or wealth, and so excludes animals and utensils, which are not subject to poverty and wealth. And the first Tanna, how does he interpret this [verse], 'for he is poor'? — It is necessary to shew that the poor receive precedence over the wealthy.[13] And R. Jose son of R. Judah?[14] — That follows from, Thou shalt not oppress an hired servant that is poor and needy. And the first Tanna?[15] — One teaches the priority of the poor man over the rich; the other, the priority of the poor, over the needy.[16] And both are necessary. For if we were [merely] informed [of the poor man's priority over] the needy, [I would think that it is] because he [the needy] is not ashamed to demand it [his wage] from him. But as for the wealthy, who is ashamed to demand it from him, I might say that it is not so [viz., that the poor takes no precedence over him]. Whilst if we learnt this in respect to the wealthy, I would think that it is because he is not in need thereof; but as for the needy, who needs it [more], I might argue that it is not so.[17] Hence both are necessary.

Now as to our Tanna, in either case, [it is difficult]: if he accepts the deduction of 'hired' written twice, then even a resident alien should also be included;[18] if he rejects it, whence does he know [the inclusion of] animals and utensils? — In truth, he does not accept this deduction. Yet there[19] it is different, because Scripture writes, The wages of him that is hired shall not abide with thee all night until the morning: implying, whosoever's hire is with thee.[20] If so, then even a resident alien too [is meant]! — The Writ saith, [Thou shalt not oppress] thy neighbour: 'thy neighbour' [is specified], but not a resident alien. If so, then even animals and utensils too should be excluded! — But Surely 'with thee' is written![21] What reason have you to include animals and utensils and exclude a resident alien?[22] — It is logical that animals and utensils are to be included , since they come within the category of the property of 'thy neighbour', whereas [the hire of] a resident alien is not within this category.

Now the first Tanna, who interpreted 'of thy brethren,' what is his exegesis on 'thy neighbour'?[23] — He needs this, even as it has been taught: [Thou shalt not oppress] thy neighbour, but not an Amalekite.[24] An Amalekite? But that follows from 'of thy brethren! — One gives permission in regard to his 'oppression' ;[25] the other, in regard to [the retention] of his 'robbery'[26] And both are

necessary. For if we were informed that [the retention] of his 'robbery' is permitted, that may be because he [the Amalekite] has not worked for him. But as for oppressing him [by withholding his wages] — I would think that that is not [permitted]. Whilst if we were taught thus about oppressing him, that may be because it [his wage] has not yet reached his [the Amalekite's] hand .[27] But as to his 'robbery' — I would think [the retention thereof] is not [allowed]. Hence both are necessary.

And R. Jose son of R. Judah, how does he interpret this verse, The wages of him that is hired shall not abide with thee all night until the morning?[28] — He needs it to teach the law stated by R. Assi, viz., even if he [the employer] engaged him only to vintage a single cluster of grapes, he is subject to, [It] shall not abide, . . . all night, etc.[29] And the other?[30] — That follows from the verse, And setteth his soul [i.e.,life] upon it, implying, anything for which he risks his life.[31]

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(1) Lit., 'others', the several injunctions insisting on prompt payment do not apply in regard to them.

(2) V. supra p. 410, n. 8.

(3) Lit., 'carcases' i.e.,a resident alien.

(4) Deut. XXIV, 14.

(5) Viz., the hire of an Israelite, proselyte, animal, utensil.

(6) Viz., those of Deut. and Lev.

(7) Deut. XXIV, 14.

(8) According to the first Tanna all injunctions apply to a resident alien, in opposition to our Mishnah.

(9) For R. Jose does not apply to them the injunction enumerated in our Mishnah.

(10) Deut. XXIV, 14: Thou shalt not oppress an hired servant (שכיר) that is poor and needy, whether he be of thy brethren, or of thy strangers that are in thy land within thy gates. — The latter part of the verse has been interpreted above as extending the injunction to the hire of a resident alien, animal, and utensils. Lev. XIX. 13 : The wages of him that is hired (שכיר) shall not abide with thee until the morning. Just as the first verse refers to an Israelite, resident alien, animals and utensils, so the latter too.

(11) Since, by exegesis. Deut. XXIV, 14, the preceding verse, extends the law to these; v. n. 4.

(12) Ibid. 15.

(13) If he owes both their hire, or the hire of their animals, or utensils — and has sufficient for one only, the poor must be paid first.

(14) Whence does he learn this?

(15) Surely he agrees that this last verse teaches the priority of the poor man!

(16) Heb. אביון (needy) < אבי , denotes a desirous person who, in his utter destitution, which is greater than that of a עני (a 'poor man'), longs for everything. In his longing he is not ashamed to ask, which a poor man is too proud to do.

(17) That the poor has no priority over him.

(18) In Deut, and Lev.

(19) I.e., in respect to Deut. XXIV, 15: at his day etc. Lev. XIX. 13 : The wages of him etc.

(20) I.e., even of animals and utensils. And since the subject matter of this injunction is identical with that of Deut. XXIV, 15, that too is included.

(21) Interpreted as above.

(22) Perhaps it is the reverse.

(23) Since the inclusion of animals, etc., is deduced from the use of 'hired' twice.

(24) A substitution by the censor for original 'heathen'.

(25) I.e., the withholding of his wages beyond the set time.

(26) V. p. 506, n. 8.

(27) Hence he takes nothing away from him that is actually in his possession.

(28) Since he does not agree that 'with thee' extends the law to the hiring of animals and utensils,

(29) I.e., not even the smallest sum due to a labourer may be withheld all that time.

(30) The first Tanna, who interprets 'with thee' differently, — whence does he learn R. Assi's dictum?

(31) V. p. 531, n. 3; hence, even the vintaging of a single cluster is included.

And the other? — That is needed, even as it has been taught: And he setteth[1] his soul [i.e., life] upon it: why did this man [the labourer] ascend the ladder, suspend himself from the tree, and risk death itself; was it not that you should pay him his wages?[2] Another interpretation: And he setteth his soul upon it [teaches]: he who withholds an employee's wages is as though he deprived him of his life. R. Huna and R. Hisda [differ on this]: one says. The life of the robber [is meant];[3] the other, The life of the robbed. The view that the life of the robber is meant is based on the verse, Rob not the poor, because he is poor: neither oppress the afflicted in the gate:[4] which is followed by, For the Lord will plead their cause, and spoil the soul of those that spoiled them.[5] Whilst the opinion that it means the life of the robbed follows from, So are the ways of every one that is greedy of gain; he taketh away the life of its [rightful] owner.[6] And the other too: is it not written, he taketh away the life of its [rightful] owner? — It means, of its present owner.[7] And the other too: is it not written, and spoil the soul of those that spoiled them? — That states a reason. Thus: Why shall he spoil those that spoiled them? — Because they took their lives.[8]

WHEN IS THAT? ONLY IF HE DEMANDED IT OF HIM; BUT OTHERWISE, THERE IS NO INFRINGEMENT. Our Rabbis taught: The wages of him that is hired shall not abide all night. I might think this holds good even if he did not demand it . Therefore Scripture writes, ‘with thee,’ meaning., by thy desire.[9] I might think that even if he lacks it , he is still guilty: but Scripture states , ‘with thee,’ meaning, only when it [the hire] is with thee. I might think that it [the prohibition] is in force even if he gave him an order to a trader or a money-changer in his favour; but Scripture teaches, ‘with thee’,[10] but not if he gave him an order to a trader or a money-changer on his behalf.

IF HE GAVE HIM AN ORDER TO A SHOPKEEPER OR A MONEYCHANGER ON HIS BEHALF, HE IS NOT GUILTY OF INFRINGEMENT. The scholars propounded: Can he [the employee] return [to the employer] or not?[11] — R. Shesheth ruled: He cannot return [to him]; Rabbah held: He can return. Rabbah said: Whence do I infer this? — Since it is taught: HE IS NOT GUILTY OF INFRINGEMENT, it is implied, there is only no infringement, yet he can return to him [for payment].[12] But R. Shesheth explained: What is meant by, HE IS NOT GUILTY OF INFRINGEMENT? He is no longer within the ambit of infringement.[13]

R. Shesheth was asked: Does the injunction. ‘The wages of him that is hired shall not abide all night’ hold good in respect of a contract or not?[14] Does the artisan obtain a title in return for the improvement [he effected] in the article, so that it [his wages] rank as a loan, or does he not, and hence it is considered wages?[15] — R. Shesheth replied: One does transgress [the law]. But has it not been taught: There is no transgression [in this case]? — There it means that he gave him an order to a shopkeeper or a money-changer.

Shall we say that the following supports him: If one gave his garment to an artisan [i.e., cloth, to make a garment, which he completed and then informed him [that it was ready], even after ten days he does not transgress [the law], ‘Thou shalt not keep all night’. But if he delivered it to him [even] at midday, as soon as the sun sets upon it he is guilty of the transgression. Now, should you say that the artisan obtains a title in return for the improvement [he effects upon] the article, why is he guilty [of that transgression]? — R. Mari son of R. Kahana said: This refers to the removal of the woolly surface of a thick coat.[16] But why did he give it to him [to do this]? [Surely] to soften it! Then that is its improvement?[17] — But this holds good only if he engaged him for stamping,[18] every stamping manipulation for a ma'ah.[19]

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(1) Lit., ‘lifteth up.’

(2) So that for withholding it one is punished as for taking life.

(3) I.e., he brings death upon himself,

(4) prov, XXII, 22.
(5) Ibid. 23.
(6) Ibid, I, 19.
(7) Translating as the E.V.: which taketh away the life of the owners thereof.
(8) Translating: and spoil those that spoiled (i.e., deprived them of) their lives.
(9) But not by his, i.e., he claimed his wages immediately.
(10) I.e., when the charge remains upon thee.
(11) If the shopkeeper did not supply him. Do the employer's obligations in respect of him still continue, or is the employee considered to have transferred them to another? [Tosaf. rightly points out that the problem under consideration is only in reference to the injunctions relating to the payment within the set time, should the workman return to the employer and ask for his wages; for it is evident that the employer cannot relieve himself of his obligations by merely giving the workman a draft on a shopkeeper.]
(12) For the passage implies that there is still a debt upon the employer, though that particular injunction is no longer applicable. [Tosaf.: The passage implies that there is no infringement as long as the workman relies on the trader for payment.]
(13) Because there is no longer any charge upon him. [Or, because he is no longer under any obligation to pay within the set time. Tosaf.]
(14) I.e., if the employee was not engaged by the day, but contracted to do a piece of work.
(15) This question is discussed in B.K. 98b, et seq. One view is that when, e.g., wood is given to an artisan and he makes a box, it becomes legally his, on account of his improvements; and when he returns it to his employer it is in the nature of a sale. Hence, with respect to our subject, if the employer does not pay him, he owes him an ordinary debt, as a loan, and so the injunction is inapplicable. If, however, this view be rejected, it remains subject to the law of wages, and the prohibition holds good.
(16) Which is not considered an improvement.
(17) And so the difficulty remains.
(18) A process of flattening cloth.
(19) I.e., he did not contract for the whole piece of work at all, but was paid according to the amount done.

Talmud - Mas. Baba Metzia 112b

A HIRED LABOURER, WITHIN THE SET TIME, SWEARS AND IS PAID. Why did the Rabbis enact that a hired labourer should swear and receive [payment]?[1] — Rab Judah said in Samuel's name: Great laws were taught here.[2] Are these then [traditional] 'laws'?[3] They are surely merely [Rabbinical] measures! — But said Rab Judah in Samuel's name: Important enactments were taught here. 'Important'? Does that imply the existence of unimportant ones?[4] — But, said R. Nahman in Samuel's name: Fixed[5] measures were taught here. Thus: The oath is the employer's privilege, but the Rabbis took it away from the employer and imposed it upon the employee, for the sake of his livelihood. And on account of the employee's livelihood, are we to cause loss to the employer?[6] — The employer himself is pleased that the employee should swear and be paid, so that workers should engage themselves to him. [On the contrary], the employee himself is pleased that the employer should take an oath and be exempt, so that he should engage him! — The employer is bound to engage [labourers] . But the employee too is forced to seek employment! — But [the reason is that] the employer is busily occupied with his labourers.[7] If so, let us award it [the wages] to him without an oath! — [The oath is] in order to appease the employer. Then let him pay him in the presence of witnesses.[8] — It is too much trouble. Then let him pay him in advance![9] — Both prefer credit.[10] If so,[11] even if the dispute concerns a stipulated amount,[12] it should be likewise so. Why then has it been taught: If the labourer maintains, 'You arranged with me for two [zuz].' and the other [sc. the employer] pleads, 'I arranged only for one,' the plaintiff must furnish proof?[13] — The stipulated wage is certainly well remembered. [Again] if so, even if the set time passed, he should also be believed. Why did we learn: BUT IF HIS SET TIME PASSED, HE CANNOT SWEAR AND RECEIVE PAYMENT? — It is a presumption that the employer will not transgress [the law]. The wages of him that is hired etc. But have you not said that he is busy with his employees? —

That is only before his obligation matures;

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(1) The general principle being the reverse; v. p. 572. n. 6. ,

(2) I.e., of great importance, as the Talmud proceeds to explain.

(3) Heb. הלכות , i.e., Scriptural, or traditionally ascribed to Moses.

(4) I.e., worthy to be perpetuated.

(5) Surely not!

(6) Since legally it is his privilege to swear to be free from payment.

(7) V. p. 587. n. 1.

(8) The Rabbis should have enacted that workers must be paid in the presence of witnesses, with the result that if the employer pleads that he paid him without witnesses, the employee could then receive payment without swearing.

(9) Let this be a Rabbinical measure, with the result that if the worker subsequently claims that he has not been paid, he will be disbelieved.

(10) The employer, because he may not yet have the money; the employee, because he may lose it whilst working in the field.

(11) Reverting to the final reason. If we assume that the employer, being busily engaged, might have forgotten the exact facts.

(12) Lit., 'even if he stipulated.'

(13) Shebu. 46a.

Talmud - Mas. Baba Metzia 113a

but when it matures, he charges himself therewith and remembers it . But is the employee then likely to transgress [the law, Thou shalt not rob?[1] — There [in the case of the employer] we have two presumptions [in his favour]; whilst here there is only one. Thus: In respect to the employer there are two presumptions. Firstly, that he will not transgress [the law] . [It] shall not abide all night, etc.; and secondly, that the employee will not permit delay of his payment. But in favour of the employee there is only the one presumption [stated above]. YET IF HE HAS WITNESSES THAT HE DEMANDED PAYMENT, HE CAN STILL SWEAR AND RECEIVE IT, But he [still] demands it now! Said R. Assi: It means that he demanded payment within the set time. But perhaps he paid him subsequently! — Abaye answered: He demanded it all the set time.[2] And [does this hold good] for ever![3] — Said R. Hama b. 'Ukba: [He is thus privileged only] for the period following[4] the day of his claim.[5]

MISHNAH. IF A MAN LENDS [MONEY] TO HIS FELLOW, HE MAY TAKE A PLEDGE OF HIM [WHEN THE DEBT MATURES] ONLY THROUGH THE COURT, AND HE MAY NOT ENTER HIS HOUSE TO TAKE THE PLEDGE, FOR IT IS WRITTEN, THOU SHALT STAND WITHOUT.[6] IF HE POSSESSED TWO ARTICLES, HE MUST TAKE ONE AND LEAVE ONE, RETURNING THE PILLOW AT NIGHT AND THE PLOUGH BY DAY. BUT IF HE [THE DEBTOR] DIES, HE NEED NOT RETURN [THE PLEDGE] TO HIS HEIRS. R. SIMEON B. GAMALIEL SAID: EVEN TO HIM HIMSELF [THE DEBTOR] HE MUST RETURN IT ONLY UP TO THIRTY DAYS; AFTER THAT, HE MAY SELL IT ON THE INSTRUCTIONS OF THE COURT.

GEMARA. Samuel said: Even the court officer[7] may only forcibly seize [it], but not [enter to] take a pledge.[8] But did we not learn: IF A MAN LENDS MONEY TO HIS FELLOW, HE MAY TAKE A PLEDGE OF HIM ONLY THROUGH THE COURT, which proves that a pledge may be taken by the court? — Samuel can answer you: Say, He may forcibly seize [outside the house] only through the court. That interpretation too is logical. For the second clause States: AND HE MAY NOT ENTER HIS HOUSE TO TAKE THE PLEDGE. To whom does this refer? Shall we say, to the creditor?[9] But that is known from the first clause! Hence it must surely refer to the court officer.[10] As for that, it is not proof. For[11] this is its meaning: IF A MAN LENDS MONEY TO HIS

FELLOW, HE MAY TAKE A PLEDGE OF HIM ONLY THROUGH THE COURT, from which it follows that a pledge may be taken through the court. But the creditor himself may not even seize forcibly [outside], so that HE MIGHT NOT ENTER HIS HOUSE TO TAKE THE PLEDGE.[12]

R. Joseph raised an objection: No man shall take the nether or the upper millstone to pledge;[13] hence, other things may be taken to pledge. Thou shalt not take a widow's raiment to pledge:[14] implying, if it belongs to others, it may be taken in pledge.[15] By whom? Shall we Say, the creditor? But it is written, Thou shalt not go into the house to fetch his pledge.[16] Hence it must surely mean the court officer![17] — R. Papa, the son of R. Nahman, explained it before R. Joseph — others state, R. Papa, the son of R. Joseph, before R. Joseph: In truth, the creditor is meant , and it is to intimate that he violates two prohibitions.[18]

Come and hear: From the implication of the verse, Thou shalt stand without,[19] do I not know that the man of whom you claim shall bring it out? Then what is taught by, And the man? The inclusion of the court officer. Surely that means that he is like the debtor![20]

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(1) Surely not! Just as it is assumed that the employer must have paid him, because he would not transgress a Biblical injunction, so the same should be assumed of the employee, and therefore he should be believed,

(2) Until the set time lapsed, the employer thus transgressing the Biblical prohibition.

(3) Can we really say that whenever the labourer demands payment, even years after, he is believed on oath, since he has witnesses that he once demanded it of him during all the set time? Surely that is most inequitable!

(4) Lit., 'against.'

(5) E.g., if he was a day worker, engaged for Monday, he must be paid between Monday evening and Tuesday morning. If he has witnesses that he claimed his money during the whole of that period, he is believed on oath from Tuesday morning until evening, but not later. (So explained in H.M. 89, 3.)

(6) Deut. XXIV. 11.

(7) Lit., 'agent'.

(8) נתח denotes to take by force; משכן , to enter the house and take a pledge. Thus, he may only seize an article from him in the street, but not enter the house and distrain.

(9) That he may not enter without the Permission of the Court.

(10) Which supports Samuel's ruling.

(11) [MS.M. and Tosaf. insert: There is a lacuna (in the text of the Mishnah).]

(12) But as for the court officer, he may enter the house.

(13) Ibid, 6.

(14) Ibid. 17.

(15) [The term חבל , 'take to pledge', occurring here, as with the millstone, is taken to denote entering the house for the purpose.]

(16) Ibid. 10.

(17) Which proves that he may enter, and so refutes Samuel.

(18) I.e., no man shall take the nether, etc., and, Thou shalt not take a widow's, etc., refers to the creditor himself; but these injunctions do not teach that other articles may be distrained, or that one may distrain upon any but a widow, for these two are forbidden in the verse, Thou shalt not go into his house, etc. Their purpose is to intimate that in respect of these, two injunctions are transgressed, viz., the general one last cited, and the specific one.

(19) Ibid. 11.

(20) That he and the debtor enter the house to take the pledge, translating, and the man — sc. the court officer — and he of whom thou dost claim, etc. This refutes Samuel.

Talmud - Mas. Baba Metzia 113b

— No. It means that the court officer is like the creditor.[1]

Come and hear: If thou at all take thy neighbour's raiment to pledge:[2] this refers to the court

officer. You say it refers to the court officer, but perhaps it is not so, the reference being to the creditor? When Scripture writes, Thou shalt not go into his house to fetch his pledge. it obviously speaks of the creditor.[3] Hence, to whom can I refer, if thou at all take thy neighbour's raiment to pledge? Surely to none but the court officer?[4] — It is a controversy of Tannaim. For it has been taught: When the court officer comes to take a pledge of him, he must not enter the house, but stand without, whilst he [the debtor] takes the pledge out to him; for it is written, Thou shalt stand without, and also the man.[5] Whereas another [Baraitha] taught: When the creditor comes to take a pledge of him, he must not enter the house, but stand without, whilst he [the debtor] enters, and brings him out his pledge. But when the court officer comes to take a pledge of him, he may enter the house and take it.[6] And he must not take in pledge articles used in the preparation of food. Further,a couch, a couch and a mattress must be left in the case of a wealthy man, and a couch,a couch and a matting for a poor man. Only for himself [the debtor] must these be left, but not for his wife, sons, and daughters. Just as an assessment is made in favour of a debtor,[7] so also is it made in the case of 'valuations'.[8] On the contrary! The main law of assessment is written in reference to 'valuations'. — But say: just as an assessment is made in the case of 'valuations', so also in favour of a debtor.

The Master said: 'Further, a couch, a couch and a mattress must be left to a wealthy man, and a couch, a couch and a matting for a poor man.' For whom [is the second couch]? Shall we say, For his wife, sons, and daughters? But you say, 'but not for his wife, sons and daughters'! Hence both are for himself. Then why two? — One at which he eats and the other on which he sleeps. Even as Samuel said, viz.: For all things I know the cure, except the following three: [i] eating bitter dates on an empty stomach; [ii] girding one's loins with a damp flaxen cord; and [iii] eating bread and not walking four cubits after it.[9]

A tanna recited before R. Nahman: Just as assessment is made in the case of 'valuations', so is it also made for debtors. Said he to him: If we even sell [his property], shall we make an assessment for him![10] But do we really sell [his property]? Did we not learn: AND HE MUST RETURN THE PILLOW AT NIGHT, AND THE PLOUGH BY DAY? — The tanna recited the view of R. Simeon b. Gamaliel before him, whereupon he observed: Seeing that according to R. Simeon b. Gamaliel we even sell [his property], shall we make an assessment for him! For we learnt: R. SIMEON B. GAMALIEL SAID: EVEN TO HIM HIMSELF [THE DEBTOR] HE MUST RETURN IT ONLY UP TO THIRTY DAYS; AFTER THAT, HE MAY SELL IT ON THE INSTRUCTIONS OF THE COURT. But how do you know that R. Simeon b. Gamaliel means an outright sale: perhaps he means this: until thirty days he must return it as it is; after that, only what is fitting for him [the debtor] is returned, whilst what is not fitting for him is sold![11] — Should you think that R. Simeon b. Gamaliel accepts this view, there is nothing that is unfitting for him. For Abaye said: R. Simeon b. Gamaliel, R. Simeon,[12] R. Ishmael and R. Akiba, all maintain that all Israelites are princes. R. Simeon b. Gamaliel — for we learnt: Neither lof[13] nor the mustard plant [may be moved on the Sabbath].[14] R. Simeon b. Gamaliel gave permission in the case of lof, because it is food for ravens.[15] R. Simeon: For we learnt: Princes may anoint their wounds with rose oil on the Sabbath, since it is their practice to anoint themselves on week-days.[16] R. Simeon said: All Israel are princes.[17] R. Ishmael and R. Akiba: For we learnt: If one was a debtor for a thousand zuz, and wore a robe a hundred manehs in value, he is stripped thereof and robed with a garment that is fitting for him. But therein a Tanna taught on the authority of R. Ishmael and R. Akiba: All Israel are worthy of that robe.[18]

Now, on the original assumption that he [the debtor] was allowed what was fitting for him, whilst that which was unfitting for him was sold, [it may be asked:] as for a pillow and bolster, articles of inferior quality may suffice for him;[19] but in respect of a plough, what is there available?[20] — Raba b. Rabbah replied: [The Mishnah refers to] a silver strigil.[21] To this R. Haga demurred: But let him [the creditor] say to him: you are not thrown upon me![22] — Abaye answered him:

(1) Translating: thou — sc. the creditor — shalt stand without together with the man, i.e., the court officer; whilst he of whom thou dost claim etc.
(2) Ex. XXII. 25.
(3) Who is forbidden to enter.
(4) Thus the two are placed in opposition, shewing that the court officer may enter the house. This definitely refutes Samuel.
(5) Sc. the court messenger; v, n. 2.
(6) Thus the two Baraithas differ on Samuel's dictum.
(7) He must be left sufficient to be able to earn a livelihood.
(8) Vows whereby one's own value is promised to the Temple. Scripture set a fixed value, depending on the age and sex of the vower (Lev. XXVII. 1-8). But if he was poor, his means were assessed and the valuation reduced. Cf. ibid, 8: But if he be poorer than thy estimation, then he shall present himself before the priest, and the priest shall value him: according to the means of him that vowed shall the priest value him.
(9) Before retiring. Rashi: hence one must have a couch for dining placed four cubits distant from the sleeping couch, so that he will be bound to take the necessary exercise!
(10) To leave him sufficient money to buy these articles! — (Tosaf.).
(11) E.g., if silk nightwear was seized, it is sold, and out of the proceeds cheaper nightwear is bought for the debtor, and the residue goes to the creditor. Thus even R. Simeon b, Gamaliel may agree that some exemption is made.
(12) I.e., R. Simeon b. Yohai.
(13) A plant similar to colocasia, with edible leaves and root, and bearing beans. It is classified with onions and garlic (Jast.). The beans are edible when boiled, but not raw.
(14) It is a general principle that only those foodstuffs which are fit for consumption on the Sabbath may be moved on that day. Since, however, the lof beans may not be boiled, nor may the mustard grains be ground. on the Sabbath, they are not fit for food, and therefore must not be handled.
(15) And since it was a royal practice to keep ravens — for sport or adornment — it is fitting that Jews too should keep them; (v. Shab. 126b) hence the lof has its uses on the Sabbath, and therefore may be moved from one place to another.
(16) Even when they have no bruises, but merely for suppleness. Therefore it does not appear as a healing ointment, and so is permitted on the Sabbath (v. Shab. 111a). (Healing in general is forbidden on the Sabbath, excepting in cases of urgency.)
(17) Hence it is permitted for all.
(18) Because they are of princely descent.
(19) Lit., 'the difference (between these lower priced articles) is available for him (the creditor).'
(20) Nothing inferior can be substituted, yet in respect of that too R. Simeon b. Gamaliel ruled that it was to be sold after thirty days.
(21) A flesh scraper or brush, used for exciting the action of the skin, This too is called מהרישה , and R. Simeon b. Gamaliel rules that after thirty days it must be sold, an inferior one bought, and the creditor pockets the difference.
(22) 'I have no particular responsibility toward you.'

Talmud - Mas. Baba Metzia 114a

Precisely so: He is indeed thrown upon him, because it is written, and thine shall be the righteousness.[1]

The scholars propounded: Is an assessment made for a debtor? Do we adduce [the law of] 'poverty' [written here] from that of 'valuations'[2] or not? — Come and hear: For Rabin sent word in his letter:[3] I asked this thing of all my teachers, and they gave me no answer thereon. But in truth, the following problem was raised:[4] If one Says. 'I vow a maneh for Temple purposes.'[5] is he assessed?[6] R. Jacob, on the authority of Bar Pada, and R. Jeremiah, on the authority of Ilfa, said: [It follows] a minori from an ordinary debtor: if no assessment is made even for a debtor, to whom [the p]edge] is returned;[7] then in regard to hekdesh,[8] where it [the pledge] is not returned, Surely, there is no assessment! But R. Johanan ruled: It is written, [When a person shall make] a vow by thy valuation [shall the persons be for the Lord]:[9] just as a means test is applied for 'valuations', so also

for a vow to hekdesh. And the other?[10] — That is to teach the judgment [of a limb] according to its importance: just as in 'valuations' [a limb] is judged according to its importance, so in a vow to hekdesh too.[11]

But let there be an assessment for a debtor, a minori from 'valuations': If an assessment is made in the case of 'valuations', where [the pledge] is not returned: then surely there should be an assessment for a debtor, where [the pledge] is returned: — Scripture writes, But if he be poorer than thy estimation: 'he', but not a debtor. And the other?[12] — This teaches that he must remain in his poverty from beginning to end.[13]

Now, in the case of [a vow to] hekdesh, let it [the pledge] be returned,[14] a minori from a debtor: If it [the pledge] is returned to a debtor, for whom there is no means test, surely it is returned in the case of [a vow to] hekdesh, seeing that an assessment is made there! — The Writ saith, That he may sleep in his own raiment, and bless thee.[15] thus excluding hekdesh, which needs no blessing. Does it not? But it is written, When thou hast eaten and art full, then thou shalt bless the Lord thy God![16] But Scripture saith, And it shall be accounted as righteousness [i.e.,a charitable act] unto thee:[17] hence it [the law of returning] holds good only for him [the creditor] for whom the act of righteousness is necessary.[18] thus excluding hekdesh [as a creditor], which does not require [the merit of] righteousness.

Rabbah b. Abbuha met Elijah[19] standing in a non-Jewish cemetery. Said he to him: Is a means test to be applied in favour of a debtor? — He replied: We deduce [the law of] poverty [written here] from that of 'valuations'. In respect of 'valuations' it is written, But if he be poorer than thy valuation [. . . according to the means of him that vowed shall the priest value him]. Whilst of a debtor it is written, And if thy brother be waxen poor [' . . then thou shalt relieve him].

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(1) Deut. XXIV, 13; i.e., the creditor bears a peculiar responsibility towards the debtor, more so than other persons.

(2) Debt: And if thy brother be waxen poor (ימוך) . . . then thou shalt relieve him; Lev. XXV, 35. Valuations: But if he be poorer (מך) than thy estimation . . . according to the means of him that vowed shall the priest value him; Ibid, XXVII, 8. Hence, just as the means test is applied in the latter case, exempting the vower from his full obligations, so in the former too,

(3) From Palestine.

(4) At a session, and its answer is also an answer to the one under discussion.

(5) Lit., 'Temple repair.' It is the technical term for anything needed in the Temple, except sacrifices.

(6) If he could not pay it, and the Temple officers came to distrain for it, must his means be assessed, to exempt from sale such things as he needs?

(7) A day article by day, and a night article by night, until the pledge is sold.

(8) I.e., when we distrain for the payment of a vow to hekdesh (v. Glos.).

(9) Ibid. 2. Now, 'vow' (נדר) applies to any vow, whilst 'valuation' (ערכך) to the dedication of one's own value (to sacred purposes). Since the two are written in conjunction, it follows that the same law applies to both.

(10) R. Jacob, etc., who holds that there is no assessment for hekdesh. How do they interpret the juxtaposition of these two words?

(11) If one said, 'I vow the valuation of my ''head," heart, liver or any vital organ, he must give his entire value, since his whole life depends upon it. Hence, similarly. if one said, 'I vow the price of my heart etc., to hekdesh' (not using the word ערך), he must give his entire value. — In a vow of 'valuations' ערכין , the amount is fixed according to age and sex, irrespective of the man's actual worth; whereas in an ordinary vow he is assessed at his value if sold as a slave. — In any case, from this discussion it clearly emerges that no assessment is made for a debtor.

(12) The first Tanna of our Mishnah, who states: BUT IF HE (THE DEBTOR) DIED, HE NEED NOT RETURN THE PLEDGE TO HIS HEIRS, which implies that it is always returned to the debtor himself, shewing that certain objects are assessed as vital and exempted from seizure.

(13) If he vowed his 'valuation' whilst a poor man, but became wealthy before being assessed, he must pay in full. That is deduced from the emphatic 'he', i.e., at assessment too he must be too poor for the fixed valuation.

(14) Day attire by day, and night attire by night. (Cf. p. 320. n. 5.)
(15) Deut. XXIV, 13.
(16) Ibid. VIII, 10, Thus, even God demands of man a blessing!
(17) Ibid. XXIV, 13.
(18) To be worthy of being deemed righteous before God.
(19) It was believed that Elijah often appeared to saintly men.

Talmud - Mas. Baba Metzia 114b

[He asked him further:] Whence do we know that a naked man must not separate [terumah]? — From the verse, That He see no unclean thing in thee.[1] Said he [Rabbah] to him: Art thou not a priest:[2] why then dost thou stand in a cemetery?[3] — He replied: Has the Master not studied the laws of purity?[4] For it has been taught: R. Simeon b. Yohai said: The graves of Gentiles do not defile, for it is written, And ye my flock, the flock of my pastures, are men;[5] only ye are designated 'men'.[6] — He replied: I cannot even adequately study the four [orders]; can I then study six?[7] And why? he inquired. — I am too hard — pressed[8] , he answered. He then led him into Paradise and said to him: Remove thy robe and collect and take away some of these leaves. So he gathered them and carried them off. As he was coming out, he heard a remark, 'Who would so consume his [portion in] the world [to come] as Rabbah b. Abbuha has done?' Thereupon he scattered and threw them away. Yet even so, since he had carried them in his robe, it had absorbed their fragrance, and so he sold it for twelve thousand denarii, which he distributed among his sons-in-law.

Our Rabbis taught: And if the man be poor, thou shalt not sleep in his pledge:[9] hence, if he is wealthy, thou mayest sleep thus. What does this mean?[10] — Said R. Shesheth: This is the meaning: And if the man be poor, thou shalt not sleep whilst his pledge is in thy possession; but if he is wealthy, thou mayest do so.[11]

Our Rabbis taught: If a man lends [money] to his fellow, he may not take a pledge of him, nor is he bound to return it to him, and he transgresses all these injunctions.[12] What does this mean? — R. Shesheth said: This: If a man lends [money] to his fellow, he may not [himself] take a pledge of him; and if he did take a pledge of him [by means of a court officer], he is bound to return it;[13] whilst 'he transgresses all these injunctions' refers to the last clause.[14] Raba said: It is thus meant: If a man lends money to his neighbour, he may not take a pledge of him [himself], and if he took a pledge of him [through the court], he must return it.[15] Now, when is this? If the pledge was not taken at the time of the loan.[16] But if it was taken at the time of the loan,[17] he is not bound to return it to him.[18] Whilst 'and he transgresses all these injunctions' refers to the first clause.[19]

R. Shizebi recited before Raba: Thou shalt return it unto him until the sun goeth down[20] — this refers to night attire; in any case thou shalt deliver him the pledge again when the sun goeth down — to an object of day attire. Said he to him: Of what use is an article of day attire by night,[21] and a night attire by day? Shall I then delete it? he asked. — No, was his reply. It reads thus: Thou shalt return it unto him until the sun goeth down — this refers to an article of day attire, which may be taken in pledge by night; in any case thou shalt deliver him the pledge again when the sun goeth down — to a night attire, which may be taken in pledge by day. R. Johanan said: If he took a pledge of him, [returned it,] and then he [the debtor] died, he may distrain it from his children. An objection is raised: R. Meir said: Now, since a pledge is taken, why is it returned?[22] 'Why is it returned?' [you ask.][23] — Surely Scripture ordered, Return it! But [say thus]: Since it is returned,

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(1) Ibid. XXIII, 15; man must not appear before God in an unclean state, which includes a state of nudity. When one separated terumah, he had to utter a benediction, and this is regarded as appearing before God.
(2) According to legend, Elijah and Phinehas (Aaron's grandson) were identical.
(3) A priest must not defile himself through the dead. Standing in or near a grave effects such defilement.

(4) טהרות ; this is also the name of the sixth order of the Talmud, treating of these laws. From Rabbah's answer, that he has had no time to study the six orders, it appears that he was referring to the actual order, though he proceeds to quote a Baraitha and not a Mishnah from that order.
(5) Ezek. XXXIV, 31.
(6) Cf. Num. XIX, 14: This is the law, when a man dieth in a tent; all that come into the tent, and all that is in the tent, shall be unclean seven days.
(7) The four orders referred to are 'Festivals,' 'Women,' 'Damages,' and 'Consecrated Objects.' These were considered of permanent and practical importance. , even the last named, though sacrifices were not practised outside Palestine, because the study thereof was held to be the equivalent of actually offering them; Men. 110a. But the other two, viz., 'Seeds' and 'Purity,' were of no practical importance outside Palestine, and therefore not studied intensively (Rashi). Tosaf. a.l. however, observes that it is evident from the Talmud that they were well — versed in these two, and therefore conjectures that the reference is to the Tosefta (i.e., the additional Baraithas, excluded by Rabbi from his Mishnah compilation). In point of fact, the dictum quoted by Elijah here is not found in any Mishnah. It does not form part of our Tosefta either, but our Tosefta is not identical with that mentioned in the Talmud. V. also Weiss, Dor, lii, p. 186-7.
(8) He was poor and had to eke out a living.
(9) Deut. XXIV, 12. E.V.; 'with his pledge'.
(10) Surely the pledge, even of a wealthy man, may not be used by the creditor, since that constitutes interest!
(11) Only in the case of a poor debtor must a night article be returned for the night, and a day one by day, but not in the case of a wealthy debtor.
(12) Viz., Thou shalt not sleep in his pledge: In any case, thou shalt deliver him the pledge when the sun goeth down (Ibid. 12f); Thou shalt deliver it unto him by that the sun goeth down (Ex. XXII, 25). On ppv, lit., 'names', v. p. 634. n, 3.
(13) V. p. 650, n. 4,
(14) If he does not return them, R. Shesheth thus assumes the text to be corrupt, and emends it considerably.
(15) As before.
(16) And is therefore in the nature of distraint.
(17) As a security.
(18) Every morning or evening, as the case may be, even if the debtor is in need of it.
(19) Sc. distraint. Thus Raba does not emend any part of the existing text, but adds to it.
(20) E.V.: 'Thou shalt deliver it unto him by that the sun goeth down,' Deut, XXIV, 13.
(21) [Raba explains the phrases 'night attire' and 'day attire' as denoting attires taken in pledge respectively by night and day.]
(22) How can the creditor's claims be satisfied?
(23) This is an interjection.

Talmud - Mas. Baba Metzia 115a

why is it again taken in pledge?[1] — So that the Sabbatical year should not cancel it [the debt].[2] and that it [the pledge] should not be accounted as movable property in the hands of his children.[3] Now, the reason is only that he took the pledge again;[4] but had he not taken the pledge again, it would not be so![5] — R. Adda b. Mattena replied: Are you not bound in any case to emend it? Then emend it thus: Since it is returned, why is it taken in pledge in the first place? That the Sabbatical year should not cancel it, and that it should not rank as movable property in the hands of his children.[6]

Our Rabbis taught: Thou shalt not go into his house to fetch his pledge: his [the debtor's] house thou mayest not enter, but thou mayest enter the house of the surety [to distrain]; and thus it is written, Take his garment that is surety for a stranger;[7] also, My son, if thou be surety for thy friend, If thou hast stricken thy hand with a stranger, thou art snared with the words of thy mouth. Do this now, my son, and deliver thyself when thou art come into the hand of thy friend; go, humble thyself and make sure thy friend:[8] thus, if thou owest him money, untie thy hand to him [i.e., pay him]; if not[9] bring many [of thy] friends round him.[10] Another interpretation:[11] His house thou mayest not enter, but thou mayest enter [to distrain] for porterage fees, payment for hiring asses, the hotel[12] bill,

or artists' fees.[13] I might think that this holds good even if it[14] was converted into a loan: therefore Scripture writes, When thou dost lend thy brother anything.[15]

MISHNAH. A MAN MAY NOT TAKE A PLEDGE FROM A WIDOW, WHETHER SHE BE RICH OR POOR, FOR IT IS WRITTEN, THOU SHALT NOT TAKE A WIDOW'S RAIMENT TO PLEDGE.[16] GEMARA. Our Rabbis taught: Whether a widow be rich or poor, no pledge may be taken from her: this is R. Judah's opinion. R. Simeon said: A wealthy widow is subject to distraint, but not a poor one, for you are bound to return [the pledge] to her, and you bring her into disrepute among her neighbours. Now, shall we say that R. Judah does not interpret the reason of the Writ, whilst R. Simeon does?[17] But we know their opinions to be the reverse. For we learnt: Neither shall he multiply wives to himself, [that his heart turn not away];[18] R. Judah said: He may multiply [wives], providing that they do not turn his heart away. R. Simeon said: He may not take to wife even a single one who is likely to turn his heart away; what then is taught by the verse, Neither shall he multiply wives to himself? Even such as Abigail![19] — In truth, R. Judah does not Interpret the reason of Scripture; but here it is different, because Scripture itself states the reason: Neither shall he multiply wives to himself, and his heart shall not turn away. Thus, why 'shall he not multiply wives to himself'? So 'that his heart turn not away.' And R. Simeon [argues thus]: Let us consider. As a general rule, we interpret the Scriptural reason:[20] then Scripture should have written, 'Neither shall he multiply [etc.].' whilst 'and his heart shall not turn away' is superfluous, for I would know myself that the reason why he must not multiply is that his heart may not turn away. Why then is 'shall not turn away' [explicitly] stated? To teach that he must not marry even a single one who may turn his heart.

MISHNAH. HE WHO TAKES A MILL IN PLEDGE TRANSGRESSES A NEGATIVE COMMANDMENT AND IS GUILTY ON ACCOUNT OF TWO [FORBIDDEN] ARTICLES, FOR IT IS WRITTEN, NO MAN SHALL TAKE THE NETHER OR THE UPPER MILLSTONE TO PLEDGE.[21] AND NOT THE NETHER AND THE UPPER MILLSTONES ONLY WERE DECLARED FORBIDDEN, BUT EVERYTHING EMPLOYED IN THE PREPARATION OF FOOD FOR HUMAN CONSUMPTION,[22] FOR IT IS WRITTEN, FOR HE TAKETH A MAN'S LIFE TO PLEDGE.[23]

GEMARA. R. Huna said: If a man takes to pledge the nether millstone, he is twice flagellated, [once] on account of the [injunction against] the nether millstone, and [once] on account of, 'for he taketh a man's life to pledge,' for the nether and the upper millstones, he is thrice flagellated: (twice) on account of the nether and the upper millstones, and (once) on account of, 'for he taketh a man's life to pledge.' But Rab Judah maintained: For taking to pledge the nether millstone, he is flagellated once; for the upper millstone he is likewise flagellated once; for the nether and upper millstones he is flagellated twice; and as for, 'for he taketh a man's life to pledge'

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(1) Since it must be returned again the following day, what is the creditor's advantage?

(2) When the creditor holds a pledge against his debt, it is not cancelled by the Sabbatical year. v. Shebu. 48b .

(3) After death, v. p. 598.

(4) And it was in the creditor's hands when the debtor died.

(5) But would rank as any other legacy of movable property. which cannot be seized for the testator's debts, which refutes R. Johanan.

(6) [Once the creditor takes it in pledge, it becomes his property. and when he returns it for the debtor's use, it is considered as a bailment.]

(7) Prov. XX, 16.

(8) Ibid. VI. 1-3.

(9) But hast wronged him in some other way, slander, or an affront to his pride.

(10) To apologise in their presence. This is a play on words and a comment on the last phrase: התרפם (E.V. 'humble thyself') is read, התר פם 'unloose the wrist (of thy hand)', רהב רעיך , is translated, 'make thy

neighbour proud' — by a public apology.
(11) Lit., 'in a second direction.'
(12) Lit., 'inn'.
(13) I.e., for any debt incurred on account of service.
(14) The payment due for service.
(15) Deut. XXIV, 10.
(16) Ibid. 17.
(17) I.e., R. Judah applies the law to all, whilst R. Simeon seeks the reason of any Scriptural law, and having found it, exempts from the scope of the law those to whom it is inapplicable.
(18) Ibid. XVII, 17.
(19) The most righteous. This shews that R. Judah interpreted the Scriptural reason, whilst R. Simeon did not; v, Sanh. 21a.
(20) On his view, i.e., where it is not stated.
(21) Deut. XXIV, 6; hence, in taking the mill, which consists of both, he seizes two forbidden articles.
(22) Lit., 'food of the soul.'
(23) Ibid.

Talmud - Mas. Baba Metzia 115b

— this refers to other articles.

Shall we say that Abaye and Raba differ in the same controversy as R. Huna and Rab Judah? For Raba said: If one ate it [the Paschal sacrifice] half roasted, he is flagellated twice: once on account of [the injunction against] half-roast [flesh]. and again because of the verse, [Eat not. . .] but roast with fire. [If he ate it] boiled, he is flagellated twice: once because of the prohibition against boiled [flesh], and again because of the Verse, [Eat not. . .] but roast with fire. For both half-roast and boiled, he is flagellated thrice, on account of [the injunction against] half-roast, boiled, and the injunction, Eat not . . . but roast with fire.[1] Abaye said: One is not flagellated on account of an implied prohibition.[2] Shall we assume that Abaye agrees with Rab Judah, Raba with R. Huna?[3] — Raba can answer you: My ruling agrees even with Rab Judah's. It is only there that Rab Judah maintains [his view], because, 'for he taketh a man's life,' does not [necessarily] imply the nether and the upper millstones; hence it must refer to other things: But here, what is the purpose of 'save roast with the fire'?[4] Hence it must be for [the addition of] a negative precept. Abaye can argue likewise: My ruling agrees even with R. Huna's. It is only there that R. Huna maintains [his view], because 'for he taketh a man's life'

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(1) This refers to: Eat not of it raw, nor sodden (i.e., boiled) at all with water, but roast with fire, Ex. XII, 9.
(2) Thou shalt not eat it save roast with the fire: this is not a direct prohibition of a particular method of preparation, but includes everything that is not 'roast with the fire.'
(3) On the hypothesis that the phrase, for he taketh a man's life to pledge, which specifies no article, is likewise a general or implied prohibition, and R. Huna rules that it involves flagellation, whereas Rab Judah holds that it does not.
(4) For semi-roasting and boiling includes every manner of preparation except roasting, and these are explicitly forbidden.

Talmud - Mas. Baba Metzia 116a

is [an] additional [injunction],[1] and that being so, relate it to the nether and upper millstones [too].[2] But here, 'save roast with fire' is not [an] additional [prohibition], for it is needed for what has been taught: When one is subject to [the command], Arise and eat 'roast', one is [also] subject to, 'Eat not of it raw;' when he is not subject to the former, he is not subject to the latter.[3]

It has been taught in accordance with Rab Judah: If one takes in pledge a pair of barber's shears or

a yoke of oxen, he incurs a double penalty.[4] But if he takes in pledge each part separately, he incurs only one penalty. And another [Baraitha] taught [likewise:] If one took a pair of barber's shears or a yoke of oxen in pledge. I might think that he incurs only one penalty, therefore Scripture teaches, No man shall take the nether or the user millstone to pledge; just as the nether and the upper millstones are distinguished in that they are two objects which [together] perform one operation, and a penalty is incurred for each separately, so all things which are two objects used [together] for one operation, a penalty is incurred for each separately.[5]

A certain man took a butcher's knife in pledge. On his coming before Abaye, he ordered him: Go and return it, because it is a utensil used in the preparation of food, and then come to stand at judgment for it [the debt].[6] Raba said: He need not stand at judgment for it, but can claim [the debt] up to its [sc. the pledge's] value.[7] Now, does not Abaye accept that logic? Wherein does it differ from the case of the goats which ate some husked barley, whereupon their owner came, seized them, and preferred a large claim [for damages]; and Samuel's father ruled that he can claim up to their value?[8] — In that case, It was not an object that is generally lent or hired, whereas in this case it is.[9] For R. Huna b. Abin sent word:[10] With respect to objects that are generally lent or hired, if a man claims, 'I have purchased them,' he is not believed.[11] Now, does then Raba disagree with this reasoning? But Raba himself ordered orphans to surrender scissors for woollen cloth and a book of aggada,[12] which are objects that are generally loaned or hired![13] — [No.] These too, since they depreciate in value, people are particular not to loan. [

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(1) I.e., this is certainly required as an additional injunction against seizing any article employed in the preparation of food.

(2) For once it is recognised as a separate injunction, there is no reason for excluding the millstones from its scope, notwithstanding that they are already mentioned; hence in respect of the millstones we have an additional prohibition.

(3) I.e., the prohibition of half-roast meat holds good only on the evening of the fifteenth, when one is bidden to eat the roast of the passover sacrifice, but not on the day of the fourteenth, before the obligation commences.

(4) Barber's shears were so made that each half could be used separately. 'The yoke of oxen' is translated by Rashi: (i) a pair of oxen for ploughing together with their yoke; (ii) the yoke alone, which he conjectures to have been jointed. Tosaf. on 113a s.v. ואת , on the grounds that only objects directly used in the preparation of food are forbidden, translates (with a slightly different reading): a pair of vegetable scissors for trimming vegetables, and a pair of oxen that stamped out the corn. According to both interpretations, the scissors and the oxen (or their yoke) were divisible, and therefore rank as two distinct objects, thus involving a double penalty for the infringement of, 'for he taketh a man's life to pledge.'

(5) It is not altogether clear how these Baraithas support Rab Judah, nor whether they support him singly or only in conjunction with each other. Rashi maintains that the proof is adduced from the combination of the two. The mere fact that he is flagellated twice only, not three times, does not support him, since there is no verse to imply three in this case even on R. Huna's view, which is limited to the nether and upper millstones. The proof, however, lies in the fact that the verse, 'no man shall take, etc.' is extended to all articles and quoted to shew double flagellation, whilst no reference is made to threefold punishment. Tosaf. maintains that the proof does follow from the first Baraitha alone (so that the second teaching is introduced by 'Another Baraitha, etc.' not, 'And another Baraitha etc.').

(6) Bring proof that he is in your debt.

(7) Even without witnesses or an I.O.U.; since he could have pleaded in the first place that he had bought the pledge, he is now believed, up to the value of the pledge.

(8) Since he could have pleaded that he had bought them from their first owner.

(9) Hence the Possession of the butcher's knife did not prove ownership; therefore Abaye held that the debt itself had to be proved.

(10) From Palestine to Babylon.

(11) V. B.B. 36a.

(12) V. B.B. (Sonc. ed.) p. 215. n. 1,

(13) Their first owners, who were known, pleaded that they had lent these objects to the deceased, and Raba accepted their plea. But if a counter.plea of 'I bought them' is valid in such cases, it should have been advanced on their behalf, it

being a general rule that the court itself assumes what the deceased might legally have pleaded, when the orphans themselves are ignorant of the true facts.

Talmud - Mas. Baba Metzia 116b

C H A P T E R X

MISHNAH. IF A HOUSE [I.E.. THE GROUND FLOOR] AND AN UPPER STOREY, BELONGING TO TWO,[1] COLLAPSED, BOTH MUST SHARE [PROPORTIONATELY] IN THE TIMBER, STONES, AND EARTH.[2] WE ALSO SEE WHICH STONES [I.E., BRICKS] ARE MORE LIKELY TO HAVE BEEN BROKEN.[3] IF ONE [OF THEM] RECOGNISED SOME OF HIS STONES, HE CAN TAKE THEM, BUT THEY ARE COUNTED IN [HIS SHARE].

GEMARA. Since it is stated, WE SEE [etc.], it follows that it is possible to gauge whether it fell through pressure or a shock. If so, in the first clause, why do they divide? Let us see: if it fell through a shock, then [the timber etc. of] the upper storey was broken; if through pressure, the lower portion was damaged![4] — It is meant that it collapsed at night. Then let us examine it in the morning![5] — It [the debris] had been cleared away. Then let us see who had cleared it away, and ask them! — Public [workers] had cleared it away, and departed. Then let us see in whose possession they are [now] situated, so that the other becomes the claimant, upon whom the onus of proof will lie! — They [the materials] are now in a courtyard belonging to both, or in the street. Alternatively, partners in such matters are not particular with each other.[6]

IF ONE RECOGNISED etc. Now, what does the other plead. If he agrees, then it is obvious. If not, why should this one take them? Hence it must mean that he replied. ‘I do not know.’ Shall we say that this refutes R. Nahman? For it has been stated: [If A says to B.] ‘You owe me a maneh,’ and B pleads. ‘I do not know’: R. Huna and Rab Judah rule that he must pay; R. Nahman and R. Johanan say: He is not liable! — It is as R. Nahman answered [elsewhere]: E.g., there is a dispute between them involving an oath; so here too, there is a dispute between them involving an oath. What is meant by a dispute involving an oath? — As Raba's dictum. For Raba said: [If A says to B,] ‘You owe me a maneh,’ to which he replies. ‘I [certainly] owe you fifty zuz, but as for the rest, I do not know,’ since he cannot swear, he must pay [all].[7]

BUT THEY ARE COUNTED IN HIS SHARE. Raba thought this meant in his share of broken materials,[8] thus proving that since he says. ‘I do not know,’ his position is considerably worsened. Said Abaye to him: On the contrary, the position of the other should be much worse; for since he knows only of these, but of no more, he should be entitled to no more, and the other should receive all the rest! — But, said Abaye, it means in his share of whole materials. if so, what does it [his knowledge] profit him? — In respect of extra wide bricks, or well — kneaded clay.[9]

MISHNAH. [IN THE CASE OF] A HOUSE AND AN UPPER STOREY, IF THE UPPER STOREY WAS BROKEN THROUGH, AND THE LANDLORD REFUSES TO MEND IT, THE INHABITANT OF THE UPPER STOREY CAN DESCEND AND DWELL BELOW, UNTIL HE REPAIRS THE TOP. R. JOSE SAID: THE LOWER ONE MUST PROVIDE THE TIKRAH[10] AND THE UPPER ONE THE PLASTERING.[11]

GEMARA. ‘BROKEN THROUGH:’ over what area?[12] — Rab said: The greater part; Samuel said: Four [handbreadths]. ‘Rab said: The greater part.’ but not only four [handbreadths],[13] because one can dwell partly below and partly above.[14] ‘Samuel said: Four [handbreadths]:’ one cannot dwell partly below and partly above. How is it meant? If he [the landlord] had said to him, ‘[I rent you] this storey, it is gone.[15] But if he simply stated, ‘A storey,’ then let him rent him another! — Raba said: It arises only if he stated, ‘This garret, which I rent you, as long as it stands, go up thither; and when it

comes down [through the weather],descend you too [to the ground floor].' If so, why state it? — But, said R. Ashi, it means that he said to him, 'This storey which is upon this house, I rent to you;' thus he pledged the house for the storey. And this is in accordance with what Rabin son of R. Adda related in R. Isaac's name: It once happened that a man said to his neighbour. 'I sell you a hanging vine which is over this peach tree,' and the peach tree was later uprooted.[16] When the matter came before R. Hiyya, he said to him: You are bound to put up a peach tree for him, as long as the vine is in existence.

R. Abba b. Memel propounded:

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(1) E.g., legatees who had thus divided their legacy.

(2) I.e., proportionally to the respective heights of each, they must divide the whole beams, bricks, etc., and likewise the broken ones.

(3) E.g., if the lower part of the house received a shock like that of a battering ram, it may be assumed that the broken stones are of that portion. If, on the other hand, the shock was evenly distributed, as that of a hurricane, it is most probable that the broken stones are of the upper storey, since they had a greater distance to fall.

(4) V. n. 5.

(5) For if it fell through pressure, it will be on its site, whereas if a shock overthrew it, the materials will be strewn at a distance.

(6) Since the house belongs to both, even if they have separate courtyards, neither objects to the other making use of his. Possession in such a case does not prove ownership.

(7) V. supra 97b and 98a for notes. So here too, A claims that he recognises a certain quantity of materials, and B admits part of it and pleads ignorance with respect to the rest.

(8) I.e., A taking a certain quantity of unbroken materials, B receives an equal (or proportionate) quantity of broken ones, and they share in the rest.

(9) I.e., the whole materials which he recognises as his own may be superior to the other whole ones.

(10) Explained in the Gemara.

(11) The cement or plaster above the ceiling.

(12) Lit., 'how much?'

(13) In that case he cannot take possession of the ground floor.

(14) I.e., when only four handbreadths are broken through, he lacks the space required for one utensil, and so he can only claim that in the lower dwelling; this is referred to as living partly below and partly above.

(15) It is the tenant's misfortune, and he has no claim.

(16) The vine thus losing its support.

Talmud - Mas. Baba Metzia 117a

When he [the tenant] dwells there [downstairs], does he dwell there alone, as formerly, or do both dwell there, because he [the landlord] can say to him, 'I did not rent it to you that you should evict me.' Now, should you say, both dwell therein, does he, when he makes use thereof, use it by way of the [lower] doors, or through the roof?[1] Do we say, It must be as originally: just as it was then by way of the roof, so now likewise. Or perhaps, he can say to him, 'I undertook to ascend, but not to ascend and descend.' Now, should you rule that he can say to him, 'I did not undertake to ascend and descend,' what of two storeys, one on top of the other? Now, if the upper one was broken through, he can certainly descend and dwell in the lower one; but if the lower one was broken through, can he ascend and dwell[2] in the upper?[3] Do we say, that he [the landlord] can say to him, 'You undertook whatever is designated ascending [whether a greater or a lesser height]'? Or perhaps, he undertook one ascent, but not two? — These problems remain unsolved.

R. JOSE SAID: THE LOWER ONE MUST PROVIDE THE TIKRAH AND THE UPPER ONE THE PLASTERING. What is the TIKRAH? — R. Jose b. Hanina said: The reeds, thorns[4] and clay.[5] R. Simeon b. Lakish said: Boards. But there is no dispute; each [speaks] in accordance with local

usage.

Two dwelt [in a house], one above and one below. Now, the plaster [on the ceiling between the two] became broke, so that when the one above washed with water, it dripped down, causing damage to the one below.[6] Now, who must repair? — R. Hiyya b. Abba said: The upper dweller; R. Elai said on the authority of R. Hiyya son of R. Jose: The lower one. Now, the sign thereof is, And Joseph was brought down to Egypt.[7] Shall we say that R. Hiyya b. Abba and R. Elai dispute on the same lines as R. Jose and the Rabbis [in the Mishnah]?[8] [Thus:] The ruling that the upper one must repair it is based on the view that he who inflicts the damage must remove himself from him who sustains it; whilst the opinion that the lower one must repair it agrees with the view that the injured party must remove himself from him who inflicts the injury![9] — Is it then reasonable [to maintain] that R. Jose and the Rabbis dispute with reference to damages? Surely we know them to hold the reverse! For we learnt: A tree must be removed [at least] twenty-five cubits from a pit.[10] and in the case of the carob and the sycamore trees, fifty cubits;[11] whether it be above[12] or level therewith. If the pit was there first, he must cut down [the tree], but [the pit owner] must compensate him. If the tree was there first, he need not cut it down. If it is doubtful which came first, he need not cut it down. R. Jose said: Even if the pit was there prior to the tree, he need not cut it down, for the one digs in his own, and the other plants in his own.[13] This proves that in R. Jose's opinion the injured party must remove himself; whilst the Rabbis hold that he who inflicts the injury must remove! — But if it can be said that they [R. Hiyya b. Abba and R. Elai] dispute on the same lines as R. Jose and the Rabbis, it is on their opinions as displayed there. Then wherein do R. Jose and the Rabbis, of the present Mishnah, differ? — In the strengthening of the ceiling. The Rabbis maintain: the plaster strengthens the ceiling, and that is the duty of the lower dweller. Whilst R. Jose maintains that the plaster is for the purpose of levelling the depressions,[14] and that must be done by the upper tenant. But that is not so. For R. Ashi said: When I was at R. Kahana's college, we said, R. Jose agrees in the case of his arrows![15] — It means that the water was interrupted, and only subsequently fell down.[16]

MISHNAH. IF A HOUSE AND AN UPPER STOREY, BELONGING TO TWO,[17] COLLAPSED, AND THE OWNER OF THE UPPER STOREY PROPOSED TO THE HOUSE OWNER TO REBUILD, WHILST THE LATTER DECLINED, THE FORMER MAY BUILD THE HOUSE [i.e., THE LOWER STOREY] AND DWELL THEREIN, UNTIL HE [THE LATTER] REIMBURSES HIM FOR HIS EXPENDITURE. R. JUDAH SAID: THEN THIS MAN INDEED SHALL HAVE DWELT IN HIS NEIGHBOUR'S HOUSE, AND SO MUST PAY HIM RENT.[18] BUT THE OWNER OF THE UPPER STOREY MUST BUILD UP THE HOUSE AND THE UPPER STOREY AND ROOF IT OVER, AND THEN DWELL IN THE HOUSE UNTIL HE IS REIMBURSED.[19] [

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(1) I.e., reaching as hitherto the upper storey by means of the specially provided ladder and thence descending into the house.

(2) [Cf. Tosaf. Cur. edd. read instead ‘entirely’, which is rightly omitted in most texts.]

(3) Where one of the two had been rented.

(4) The thorns were presumably for binding the other materials by becoming entangled in them.

(5) [So Aruch, reading וסטיני . According to Rashi, who preserves וטינא of cur. edd., the word is a name of a Sage and is to be connected with what follows: ‘Justinian in the name of Resh Lakish said.’]

(6) The ceiling itself, i.e., the planks, was unaffected, and the water dripped down through the cracks in the plaster. This was not a case of renting, but of two owners.

(7) Gen. XXXIX. 1. This is a sign given to aid to memory: thus: Joseph (Jose) was brought down — rules that the lower one must repair.

(8) For it was assumed that when R. Jose ruled that the tenant above must provide the plastering, it is in order that his water should inflict no damage upon the tenant below, it being the duty of the person who inflicts damage to remove himself from him who sustains it; on the other hand, the tenant below must furnish (i.e., repair) the ceiling itself, which is the floor of the upper storey, since that is an essential part of the storey which he rented to him. Whilst the first Tanna

holds that the injured party must remove himself: therefore he, i.e, the lower dweller, must repair the whole ceiling, including the plastering.

(9) As the Rabbis.

(10) Because its roots undermine the earth, and if nearer, ultimately cause it to collapse.

(11) Their roots are longer.

(12) I.e., whether the pit is on higher ground than the tree, so that the roots go below it.

(13) V. B.B. 25b and supra p. 630.

(14) I.e., the ceiling of wood beams forms an unequal surface for the man above to walk upon, and therefore it is overlaid by a dressing of concrete chippings, which forms a smooth and level pavement.

(15) Though R. Jose holds that the injured person has to remove, that is only where the injury does not come immediately and directly, as in the case of the pit and the tree. When the tree is planted, no damage at all is done; only later, when it is grown and its roots have spread, is injury caused. But when one washes his hands and the water falls through the crevices in the flooring upon the dweller below, the injury proceeds directly from above, as when a man shoots arrows, in which case R. Jose admits that the man who causes the injury must remove himself. How then can R. Hiyya b. Jose rule that the dweller below must repair the ceiling?

(16) The place for washing was not directly over the broken portion but in some other part of the room, whence it trickled to the cracks, and only then dropped down. That is not direct and immediate injury.

(17) v. p. 660, n. 1.

(18) When the house-owner reimburses him, the house becomes retrospectively his. Now, in R. Judah's opinion, if A benefits from an article belonging to B, though B does not lose thereby, he must pay him. So here too, the owner of the upper storey has dwelt in the other's house, and though the latter lost nothing thereby, since had not the former built it he would have had no house in any case, the owner of the upper storey must nevertheless pay rent.

(19) In this case, the house-owner sustains no loss, as explained in the previous note, but the owner of the upper storey does not benefit either, since he could live in his own garret; here R. Judah admits that no rent is payable. So Rashi. Tosaf., however, points out that he benefits by not having to climb stairs. Therefore, on a slightly different reading, Tosaf. translates: and then dwell in his upper storey, not permitting the other to enter the house until he is reimbursed.

Talmud - Mas. Baba Metzia 117b

GEMARA. R. Johanan said: In three places has R. Judah taught us that one may not benefit from his neighbour's property. One, what we learnt [in the Mishnah]. What is the second? — We learnt: If one gives a dyer wool to be dyed red, but he dyed it black, or to dye it black and he dyed it red; R. Meir said: He [the dyer] must pay him for the wool.[1] R. Judah said: If the increased value exceeds the cost [of dyeing], he [the wool owner] must pay him the cost; if the cost exceeds the increased value, he must pay him for the latter.[2] And what is the third? — That which we learnt: If a man repaid a portion of his debt, and then placed the bond in the hands of a third party, declaring. 'If I do not repay the balance within thirty days, return the note to the creditor:'[3] and the time arrived, and he did not repay. R. Jose maintained: The third party must surrender [the bond to the creditor]. R. Judah ruled: He must not return it .[4] But whence [does it follow]? Maybe R. Judah states his ruling here,[5] only because there is blackening [of the walls].[6] Or, [in the second case] 'to be dyed red, but he dyed it black,' the reason is that he did otherwise [than he was instructed], and we learnt: He who alters [the contract] is at a disadvantage. Again, in the case of one who repaid a portion of his debt, it [the order to the third party] is an asmakta,[7] and we thus learn that R. Judah holds that an asmakta gives no title.[8] R. Aha b. Adda said on 'Ulla's authority: If the owner of the lower storey wishes to alter [the building materials from hewn] to unhewn stones, he is permitted; [from unhewn stones] to hewn stones, he is forbidden;[9] [from whole bricks] to half-bricks,[10] he is permitted; [from half-bricks] to whole bricks, he is forbidden; to ceil it with cedars,[11] he is permitted; with sycamores.[12] he is forbidden; to diminish the number of windows, he is permitted; to increase them, he is forbidden; to elevate [the storey], he is forbidden; to decrease its height, he is permitted.[13] Whereas if the owner of the upper storey wishes to alter to hewn stones, he is permitted; to unhewn stones, he is not permitted; to half-bricks, he is not permitted; to whole bricks, he is permitted; to ceil it with cedars, he is not permitted; with sycamores, he is permitted; to increase the number of windows, he is

permitted; to diminish them, he is not permitted; to elevate the [upper storey], he is not permitted; to decrease its height, he is permitted.[14]]

What if neither possesses [the wherewithal for rebuilding]?[15] (It has been taught: When neither possesses [money for rebuilding]. the garret owner has no claim at all upon the land.)[16] It has been taught: R. Nathan said: The owner of the lower portion receives two-thirds [of the land], and the owner of the upper, one-third. Others say, The owner of the lower portion receives three-quarters, and that of the upper, one-quarter. Rabbah said: Hold fast to R. Nathan's ruling, because he is a judge, and has penetrated to the depths of civil law. By how much does the loft impair the value of the house [i.e., the lower storey]? — By a third.[17] Therefore he is entitled to a third.

MISHNAH. SIMILARLY, IF AN OLIVE PRESS[18] WAS BUILT IN A ROCK AND ABOVE IT WAS A GARDEN, AND THE ROOF OF THE PRESS WAS BROKEN THROUGH,[19] THE OWNER OF THE GARDEN CAN DESCEND AND SOW BELOW [ON THE FLOOR OF THE PRESS], UNTIL THE PRESS-OWNER REPAIRS THE VAULTING [TO PROVIDE A SUPPORT FOR THE GARDEN ABOVE]. IF A WALL OR A TREE FELL INTO A PUBLIC THOROUGHFARE AND CAUSED DAMAGE, HE [ITS OWNER] IS FREE FROM LIABILITY. BUT IF HE WAS GIVEN A [FIXED] TIME TO CUT DOWN THE TREE OR PULL DOWN THE WALL, AND THEY FELL: IF WITHIN THE PERIOD, HE IS NOT LIABLE; AFTER THAT PERIOD HE IS LIABLE. IF A MAN'S WALL WAS NEAR HIS NEIGHBOUR'S GARDEN AND IT COLLAPSED [INTO THE GARDEN], AND WHEN HE DEMANDED, ‘REMOVE YOUR STONES’, HE REPLIED,

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(1) I.e., the wool becomes the dyer's, and he must pay the original owner for it.

(2) For if the dyer should retain the wool, as R. Meir rules, he profits in that the wool-owner has brought him wool, thus saving him the labour of procuring it himself; V.B.K. 100b.

(3) Who will thus be enabled to demand the full amount.

(4) And it is assumed that the reason is because the creditor thereby derives benefit from the debtor's money, which is forbidden (v. B.B. 168a).

(5) That the upper tenant would have to pay rent.

(6) I.e., it loses its newness through his dwelling therein, hence the house-owner actually sustains a loss, and therefore the other must pay him rent.

(7) v. Glos.

(8) But all three do not prove that normally one may derive no benefit from his neighbour's property where the latter suffers no loss thereby.

(9) [Unhewn stones are wider by one handbreadth then hewn stones, v. B.B. Mishnah 2a.]

(10) Between which there was a filling of rubble. This made the wall stronger than if built with whole bricks, which allowed for no filling. v. ibid.

(11) In the place of the former sycamores.

(12) In the place of the former cedars.

(13) שומעין לו and אין שומעין לו, here translated ‘he is permitted’ and ‘he is forbidden’ respectively, are literally, ‘we hearken to him,’ ‘we do not hearken to him.’ The general principle is: if he wishes to make an alteration which strengthens the lower storey and adds to its weight, so that it can the better bear the burden of the upper portion, he is permitted. But he may not weaken it.

(14) He may weaken the upper portion, thereby giving the lower a lesser burden, but not strengthen it through increasing the burden.

(15) So that the owner of the lower portion wishes to turn it to agricultural purposes, whilst the owner of the upper storey demands a share in it (Tosaf.).

(16) Rashal deletes the whole of the bracketed passage. on the authority of Asheri. Alfasi retains it.

(17) The duration of the lower portion is lessened by one-third on account of the weight of the upper. Thus it may be held that the owner of the upper storey has a right to a third of the ground.

(18) The Heb. בית הבד, denotes the building in which the olive press, the tank, and all other objects required for

pressing olives are housed.
(19) Thus undermining the soil above and rendering it unfit for sowing.

Talmud - Mas. Baba Metzia 118a

THEY ARE BECOME YOURS,[1] HE IS NOT HEEDED. [ON THE OTHER HAND,] IF AFTER THE LATTER AGREED [TO THE PROPOSAL [AND REMOVED THEM] HE SAID, 'HERE ARE YOUR [REMOVAL] EXPENSES, AND I WILL TAKE BACK MINE [THE STONES].' HE IS [LIKEWISE] NOT HEEDED. IF A MAN ENGAGES A LABOURER TO WORK FOR HIM ON STRAW OR STRUBBLE,[2] AND WHEN HE DEMANDS HIS WAGES, SAYS TO HIM, 'TAKE THE RESULTS OF YOUR LABOUR FOR YOUR WAGE, HE IS NOT HEEDED. IF AFTER HE AGREED [TO THE PROPOSAL] HE SAID TO HIM, 'HERE IS YOUR PAYMENT, AND I WILL TAKE MY PROPERTY,' HE IS [LIKEWISE] NOT HEEDED.

GEMARA. BROKEN THROUGH: Rab said, The greater part thereof; Samuel ruled, Four [handbreadths]. 'Rab said, The greater part thereof;' but if only four [handbreadths,] one can sow partly above and partly below.[3] 'Samuel said, Four [handbreadths]:' one cannot [be expected to] sow partly above and partly below. Now, both [disputes] are necessary.[4] For if we taught [it] in connection with a dwelling, [it might be said that] only there does Samuel state his ruling, because it is unusual for a man to dwell partly in one place and partly in another; but with respect to sowing, where it is quite usual for a man to sow here a little and there a little, I might say that he agrees with Rab. Whilst if only the present dispute were stated, [I might argue that] only here does Rab hold this view; but in the other case, he agrees with Samuel. Hence both are necessary.

IF HE WAS GIVEN A [FIXED] TIME. And what time is given by the Court? — Said R. Johanan: Thirty days.

IF A MAN'S WALL etc. But since the last clause teaches, 'HERE ARE YOUR [REMOVAL] EXPENSES,' it follows that he [the garden owner] has removed them. Thus, it is only because he removed them;[5] but why so? Let his field effect possession for him! For R. Jose son of R. Hanina said: A man's courtyard effects possession for him even without his knowledge! — That is only where he [the original owner] desires to grant him possession; but here he merely seeks to evade him.[6]

IF A MAN ENGAGES A LABOURER TO WORK WITH HIM ON STRAW etc. Now, both are necessary. For if only the first were stated, that when he proposes, 'LET THEM BE YOURS', HE IS NOT HEEDED, [it might be said that] that is because he [the garden owner] has no wage claim upon him; here, however, that he [the labourer] has a wage claim, I might argue that he [the employer] is listened to, because it is proverbial, 'From your debtor accept [even] bran in payment.' Whilst if this clause [alone] were taught, [it might be that] only in this case, once he [the worker] accepts the proposal, is he [the employer] not heeded,[7] because he has a wage claim upon him;[8] but in the former case, where he has no wage claim upon him, I might think that he is heeded:[9] hence both are necessary.

HE IS NOT HEEDED.[10] But has it not been taught. He is heeded? — Said R. Nahman: There is no difficulty: here [in the Mishnah] the reference is to his own work, there [in the Baraitha], to his neighbour's.[11] Raba said to R. Nahman: [When he is employed] on his own, what is the reason [that he is not heeded]? Because he [the labourer] can say to him, 'You are responsible for my wages'? [But when employed] by his neighbour he can also say to him, 'You are responsible for my hire'! For it has been taught: If one engaged an artisan to labour on his [work], but directed him to his neighbour's, he must pay him in full, and receive from the owner [of the work actually done] the value of the labour whereby he benefited! — But, said R. Nahman, there is no difficulty: here it

refers to his own; there, to that of hefker.[12] Raba raised an objection against R. Nahman: That which is found by a labourer [whilst working for another] belongs to himself. When is that? If the employer had instructed him, 'Weed or dig for me to — day.' But if he said to him. 'Work for me to-day' [without specifying the nature of the work], his findings belong to the employer![13] — But, said R. Nahman, there is no difficulty: here [in the Mishnah] the reference is to lifting up; there, to watching.[14]

Rabbah said: [Whether] 'watching' [effects possession] in the case of hefker is disputed by Tannaim. For we learnt: Those who keep guard over the aftergrowth of the Sabbatical year are paid out of Temple funds.[15] R. Jose said: He who wishes can donate [his work] and be an unpaid watcher. Said they [the Sages] to him: You say so, [but then] they are not provided by the public.[16] Now, surely, the dispute is on this question: the first Tanna holds that 'watching' hefker effects possession;[17] hence, if he is paid, it is well,[18] but not otherwise. Whilst R. Jose maintains that 'watching' does not effect possession of hefker; hence, only when the community go and fetch it is possession effected. And what is meant by. 'You say [etc.]'?[19] They said thus to him: From your statement[20] [and] on the basis of our ruling,[21] [it transpires that] the omer[22] and the two loaves[23] are not provided by the public![24] — Said Raba: That is not so. All agree that 'watching' effects possession of hefker; but they differ here as to whether we fear that he will not deliver it whole-heartedly. Thus, the Rabbis hold that he must be paid, for otherwise there is the fear lest he does not deliver it wholeheartedly,[25] whilst R. Jose holds that this fear is not entertained. And what is meant by 'You say'? — They say thus to him: From your statement, [and] on the basis of our ruling that we fear that it will not be surrendered whole-heartedly, the 'omer and the two loaves are not provided by the public.

Others say, Raba said: All agree that 'watching' does not effect possession in the case of hefker; but they dispute here whether we entertain a fear of violent men. The first Tanna holds that the Rabbis enacted that he shall be paid four zuz, so that violent men may hear thereof[26] and hold aloof;[27] whilst R. Jose holds that they did not enact [thus].[28]

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(1) 'Remove them yourself, and keep them for your trouble.'

(2) E.g., to collect or tie it into bundles.

(3) I.e., the garden-owner can only demand an equivalent space in the press, but not transplant his whole garden thither.

(4) V. supra 116b, where Rab and Samuel dispute likewise with reference to a house.

(5) That they belong to the garden owner.

(6) He does not really wish the garden owner to have the bricks, but seeks to evade his responsibilities by telling him to clear them away and keep them for himself, thinking, however, to claim them subsequently. Therefore, unless the latter actually takes advantage of the offer, the bricks remain his.

(7) When he desires to go back upon it.

(8) And therefore has a strong title to the materials, since they were offered in lieu of wages.

(9) When desiring to cancel his accepted proposal.

(10) When he offers the workman the material in lieu of wages.

(11) If the labourer was employed to work for a third party, he can be forced to accept the materials in lieu of wages.

(12) V. Glos. R. Nahman maintains (supra 10a) that if a person lifts up an object of hefker on his neighbour's behalf, it belongs to himself. Hence, when a worker collects sheaves of hefker for an employer, they belong to himself, and therefore the offer must be accepted.

(13) V. supra 10a.

(14) Lit., 'looking'. In both instances the reference is to hefker. But if the labourer was engaged to tie sheaves, thus having to lift them up, his employer acquires title to them, and therefore must pay him. But if his work was to keep guard, the mere watching does not effect possession, and therefore his employer can force him to accept them as his wages.

(15) Lit., 'the terumah of the Chamber', i.e., the funds contributed by shekel payers.

(16) A sheaf of the earliest barley crop was brought as a heave offering in the Temple; likewise two loaves made of the

first wheat to ripen (Lev. XXIII. 10f. 17). These had to be public property, and not that of any individual, and men were engaged and paid out of public funds to watch over a field of corn to see which sheaves ripened the earliest. As there was no sowing in the seventh year, there could only be a crop spontaneously grown from seed that had fallen the previous year. This crop was hefker, as all seventh year crops were, and the Tannaim dispute whether the watchman had to accept payment or not.

(17) The aftergrowth thus belong to the watchman.

(18) For then possession is effected on behalf of the public.

(19) Seeing that according to R. Jose the sheaves are not the property of the watcher.

(20) That he may forego payment.

(21) That watching gives a title to hefker.

(22) Sheaf of barley. Lev. XXIII. 9ff.

(23) Made of the new wheat, ibid. 16ff.

(24) We thus see that the question whether 'watching' effects possession in hefker is a point of issue between Tannaim.

(25) And if it is not surrendered whole-heartedly, it belongs to the watchman, and is thus not provided by the public.

(26) That it is being watched on behalf of hekdesh.

(27) Otherwise, they may think that he is watching it on his own behalf and seize it themselves; for though they respect the rights of hekdesh, they will not respect those of a private individual.

(28) The fear being groundless.

Talmud - Mas. Baba Metzia 118b

And what is meant by 'You say'? They say thus to him: From your statement,[and] on the basis of our opinion, [it follows that] they are not provided by the public.[1] And when Rabin came,[2] he likewise said in R. Johanan's name: They differ as to whether we fear [the action of] men of violence.

MISHNAH. IF A MAN TAKES OUT MANURE INTO A PUBLIC THOROUGHFARE, IT MUST BE APPLIED [TO THE SOIL] IMMEDIATELY AFTER BEING TAKEN OUT.[3] MORTAR MUST NOT BE STEEPED IN THE STREET, NOR MAY BRICKS BE FORMED THERE.[4] CLAY MAY BE KNEADED IN THE STREET.[5] BUT BRICKS MAY NOT BE [MOULDED]. WHEN ONE IS BUILDING IN A PUBLIC ROAD,[6] THE BRICKS MUST BE LAID IMMEDIATELY THEY ARE BROUGHT.[7] IF HE CAUSES DAMAGE, HE MUST MAKE IT GOOD. RABBAN SIMEON B. GAMALIEL SAID: ONE MAY PREPARE HIS MATERIALS EVEN THIRTY DAYS BEFOREHAND.[8]

GEMARA. Shall we say that our Mishnah does not agree with R. Judah? For it has been taught: R. Judah said: When it is the time for manure to be taken out, a man may put his manure out into the street and leave it heaped up for full thirty days, that it should be trodden down by the foot of man and beast for on this condition did Joshua allot the Land to Israel![9] — It may even agree with R. Judah, for he admits that if he thereby causes damage, he must make it good.[10] But have we not learned: R. Judah said: In the case of a Chanukah[11] lamp he is not liable, because this was done under authority.[12] Surely that means, under authority of the Court?[13] — No. It means the authority of a precept.[14] But it has been taught: All those whom the Rabbis permitted to commit a nuisance on the public thoroughfare,[15] if they cause damage, they are bound to pay; whilst R. Judah exempts them! Hence it is clear that our Mishnah does not agree with R. Judah.

Abaye said: R. Judah, Rabban Simeon b. Gamaliel, and R. Simeon[16] all maintain that wherever the Sages gave permission [to do a certain thing] and damage was thereby caused, there is no liability. 'R. Judah', as stated. 'Rabban Simeon b. Gamaliel', — for we learnt: ONE MAY PREPARE HIS MATERIALS EVEN THIRTY DAYS BEFOREHAND.[17] 'R. Simeon', — for we learnt: If he placed it [a stove] in an upper storey, there must be a flooring[18] of three handbreadths deep under it;[19] but for a small stove,[20] one handbreadth.[21] Nevertheless, if he causes damage, he

must make it good. R. Simeon said: All these measurements were stated only so that if he causes damage he is free from liability.[22]

Our Rabbis taught: Once the quarryman has delivered [the stones for building] to the chiseller [for polishing and smoothing], the latter is responsible [for any damage caused by them]; the chiseller having delivered them to the haulier, the latter is responsible; the haulier having delivered them to the porter,[23] the latter is responsible; the porter having delivered them to the bricklayer, the latter is responsible; the bricklayer having handed them over to the foreman,[24] the foreman is liable. But if after he had [exactly][25] laid the stone upon the row, it caused damage, all are responsible. But has it not been taught: Only the last is responsible, whilst all the others are exempt? — There is no difficulty: the latter refers to time-work;[26] the former, to contracting.[27] MISHNAH. IF TWO GARDENS ARE SITUATED ONE ABOVE THE OTHER, AND VEGETABLES GROW BETWEEN THEM,[28] R. MEIR SAID: THEY BELONG TO THE UPPER GARDEN; R. JUDAH MAINTAINED, TO THE LOWER GARDEN. SAID R. MEIR: SHOULD THE OWNER OF THE UPPER GARDEN WISH TO REMOVE HIS GARDEN [I.E., TAKE AWAY THE EARTH], THERE WOULD BE NO VEGETABLES. SAID R. JUDAH: SHOULD THE LOWER ONE WISH TO FILL UP HIS GARDEN [WITH SOIL],[29] THERE WOULD BE NO VEGETABLES. THEN, SAID R. MEIR, SINCE BOTH CAN PREVENT EACH OTHER [FROM HAVING VEGETABLES AT ALL], WE CONSIDER WHENCE THE VEGETABLES DRAW THEIR SUSTENANCE.[30] R. SIMEON SAID: AS FAR AS [THE OWNER OF] THE UPPER GARDEN CAN STRETCH OUT HIS HAND AND TAKE BELONGS TO HIM, WHILST THE REST BELONGS TO [THE OWNER OF] THE LOWER GARDEN.

GEMARA. Raba said: As for the roots, all agree that they belong to the upper owner. They disagree only with respect to the leaves:[31] R. Meir maintains: The leaves are counted with[32] the roots; whilst R. Judah holds that they are not. Now, they follow their views [expressed elsewhere]. For it has been taught: That which issues from the trunk and the roots belongs to the landowner: this is R. Meir's opinion. R. Judah said: [That which grows] out of the trunk belongs to the tree-owner; out of the roots, to the land-owner.[33]

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(1) On this version this phrase has not the same meaning as above. The ‘omer and the two loaves certainly come from the public, since it is now assumed that watching over hefker does not effect a title. But the Rabbis objected that since it was enacted that the watcher must receive four zuz, if he foregoes it and it goes into the public funds, these now include four zuz of private money, and when later on animals are bought therewith for communal sacrifices, such as the daily burnt offerings and the Sabbath and Festival Additional offerings, instead of being paid for by public funds, as they should be, they are partly paid for by private money (Rashi.)

(2) From Palestine to Babylon.

(3) Lit., ‘the carrier carries it out, and he who applies it must apply it’ — i.e., it may not be left in the street for any length of time, but must be taken straight to the fields.

(4) Rashi: the clay was run into moulds and allowed to dry and harden into bricks. This may not be done in a public thoroughfare.

(5) For immediate use.

(6) I.e.; a building coming up to the street, so that the materials etc. must be in the street.

(7) Lit., ‘the brick hauler brings them and the builder builds them (into the wall)’ — i.e., they must not lie in the street longer than is absolutely necessary.

(8) I.e., deposit them on the site, in readiness for building; and during this time he is not responsible for any damage that may ensue.

(9) V. B.K. 30a and 81b.

(10) Notwithstanding that he was entitled to have it there.

(11) V. Glos.

(12) If one placed a light outside his house and a camel passed by laden with flax, which caught fire from the light, he is liable for the damage. But if it was a Chanukah lamp, he is exempt; V. B.K. 30a, and 62b.

(13) Thus shewing that one is not responsible for damage caused by his property in a public thoroughfare, if it is there by permission of the Court.
(14) Which stands higher, but not that of the court or general authorities, which is insufficient to exempt him from his liabilities.
(15) E.g., to put out the manure, as here, or discharge foul water in winter.
(16) b. Yohai.
(17) V. p. 673. n. 5.
(18) מעזיבה , v. p. 662, n. 2.
(19) Otherwise it can cause damage to the lower storey.
(20) just large enough for two pots.
(21) Because it does not give out so much heat.
(22) B.B. 20b.
(23) Who handed them to the bricklayer.
(24) For exact setting. After the stones were placed in a row, there was a foreman or supervisor who saw that they were correctly placed, and remedied faulty placing (Rashi).
(25) [The text is uncertain (v. D.S.). but this seems to be the correct interpretation according to the reading in cur. edd.; on variants in the parallel passages. V. Krauss, TA. I, 302.]
(26) Lit., 'hiring'. i.e., men engaged by the week, day or hour. In that case, each is quit of responsibility as soon as it leaves his hand, and so the final responsibility is left with the last.
(27) If they jointly contracted for the building. In that case, each is severally responsible whilst the stone is in his hand; but when it is laid, the joint responsibility is reassumed.
(28) I.e., they are contiguous, but one is on a higher level than the other, and vegetables grow on the connecting bank.
(29) To make it level with the higher one.
(30) And this determines their ownership.
(31) Which are suspended in the air-space above the lower garden.
(32) Lit., 'thrown after'.
(33) The reference is to the offshoots of a tree which does not belong to the same owner as the field in which it is situated, v. B.B. 81a.

Talmud - Mas. Baba Metzia 119a

And we learnt[1] similarly in the case of 'orlah:[2] A tree which issues from the trunk or from the roots is subject to 'orlah: this is the opinion of R. Meir.[3] R. Judah said: That which grows out of the trunk is not subject thereto;[4] but out of the roots, is subject. And both are necessary. For if the first were taught, [I would argue,] only there does R. Judah rule so, because it is [a question of] civil law.[5] But with respect to 'orlah, which is a ritual prohibition[6] I might think that he agrees with R. Meir. And if the latter were taught, I might argue, only here does R. Meir rule so, but in the former case he agrees with R. Judah. Hence both are necessary. R. SIMEON SAID: AS FAR AS THE OWNER OF THE UPPER GARDEN CAN STRETCH OUT HIS HAND, etc. The disciples of R. Jannai said: providing, however, that he does not strain himself. R. 'Anan — or according to others, R. Jeremiah — propounded: What if he can reach its leaves but not the roots, or he can reach the roots but not the leaves?[7] The problem remains unsolved.

Ephraim the Scribe, a disciple of Resh Lakish, said on the authority of the latter: The halachah agrees with R. Simeon. When this was told to King Shapur.[8] he observed, 'Let a palanquin be put up for R. Simeon.'[9]

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(1) [Var. lec.: 'It has been taught.' the citation that follows not being from a Mishnah but from Tosef. 'Orl.]
(2) V. Glos.
(3) In both cases he regards it as a new growth from the earth.
(4) It being regarded as part of the old tree.
(5) Lit., 'money'.

(6) And where such is in doubt, the more stringent ruling is adopted.
(7) [Omitted in some texts, there being no question that in this case it is considered to be within his reach; v. Wilna Gaon, Glosses.]
(8) King Shapur I,a contemporary of Samuel and a close friend of his. Rashi argues that he is actually meant, as he was well versed in Jewish civil law, and dismisses the theory of other commentators that this is an allusion to Samuel, who was frequently so designated. [On the interest of King Shapur I in Jewish customs and practices, prompted probably by his desire to win Jewish support in his struggle with the Romans, cf. Suk. 53a and A.Z. 76b; v. Funk, op. cit., p. 72.]
(9) He deserves a triumphal procession for his acuteness in civil law.