

V

BAVLI TRACTATE BEKHOROT CHAPTER FIVE

FOLIOS 31A-37A

5:1

- A. [31A] All invalidated Holy Things [after they have been redeemed] — their advantage falls to the sanctuary, and they are sold in the marketplace,
- B. and are slaughtered in the marketplace,
- C. and are weighed by the litra,
- D. except for the [blemished] firstling and tithe of cattle.
- E. For the advantage [of selling them in the market, where demand is higher, would fall] to the owner.
- F. Invalidated Holy Things — their advantage [falls] to the sanctuary.
- G. But: they weigh a maneh against a maneh in the case of the meat of the firstling.

I.1 A. [31B] Invalidated Holy Things — their advantage [falls] to the sanctuary: *when is this the case? If I should say that this is after one has redeemed the invalidated Holy Things, then how come the Mishnah states that the profit goes to the sanctuary, when, in point of fact, the profit on them now goes to the owner? And if you maintain that the rule speaks of the period before the invalidated Holy Things have been redeemed, then why does the Mishnah state, **and are slaughtered in the marketplace?** Lo, there are still the requirements of presentation to the priest and evaluation by the priest [prior to any such procedure]!*

- B. *Now there is no problem to him who has said, “Holy Things consecrated for the altar were not covered by the requirement of being presented before the priest and evaluated by the priest.” But from the viewpoint of him who has said, “Holy Things consecrated for the altar were not covered by the requirement of being presented before the priest and evaluated by the priest,” what is to be said?*
- C. *In point of fact, the Mishnah speaks of the period after the beasts have been redeemed, and what is the sense of the language, **their advantage [falls] to the sanctuary?** It means, to begin with [that is, when the owner redeems the beast from the sanctuary to begin with, the sanctuary benefits, if, after the redemption, the meat can be sold as unconsecrated meat (Miller & Simon). Since the master here permits **the meat to be sold in the market, slaughtered in the market, and weighed out by the pound,** the evaluation of the beast for redemption to begin with will be much higher.*

II.1 A. ...except for the [blemished] firstling and tithe of cattle. For the advantage [of selling them in the market, where demand is higher, would fall] to the owner

- B. *Now there is no problem with regard to the firstling, which, while not to be sold in the market, may be sold within the household. But is it permitted to sell animals designated as tithe even within the household? Has it not been taught on Tannaite authority [that selling the meat of an animal designated as tithe is forbidden altogether]:*
- C. *With respect to the firstling, it is stated, “But the firstling of an ox...you shall not redeem” (Num. 18:17) — so it may be sold alive [once the priest takes possession of it].*
- D. *With respect to the animal designated as tithe, it is stated, “It shall not be redeemed” (Lev. 27:33) — it is forbidden to sell it either alive or properly slaughtered, whether unblemished or blemished.*
- E. *This matter presented a problem to R. Sheshet by night, but the next morning he had resolved the problem by reference to a Tannaite teaching [given presently], specifically: “We deal here with a [blemished] animal designated as tithe that belongs to an orphan [who cannot consume the whole beast, so the beast would go to waste and we therefore permit private disposal], and it is on the grounds of restoring a lost object that we deal with this case [and permit the sale, though in general, e.g., with a firstling belonging to an adult, even private sale is not to be done].”*

- F. *R. Idi, attendant of R. Sheshet, heard this from him and went and repeated it in the house of study without stating it in his name. R. Sheshet heard about it and was furious. He said, "Let a scorpion bite him who has bitten me."*
- G. *What difference could this possibly have made to R. Sheshet?*
- H. The answer is in accord with what R. Judah said Rab said, "What is the meaning of the verse, 'I will dwell in your tent in both worlds' (Psa. 61: 5)? Now is it possible for someone to dwell in both worlds? But what David meant to say is this: 'Lord of the world, let people say a tradition in my authority in this world.'"
- I. For said R. Yohanan in the name of R. Simeon b. Yohai, "Every disciple of a sage in whose authority people state a tradition in this world — his lips murmur in the grave."
- J. And said R. Isaac bar Zeiri, "What is the meaning of the verse, 'And the roof of your mouth like the best wine that glides smoothly for my beloved, moving gently the lips of those that are asleep' (Song 7:10)? It is to be compared to a heated mass of grapes. Just as a heated mass of grapes drips as soon as you put the weight of your finger to it, so the lips of disciples of sages in the grave murmur when someone states a tradition in their authority."

II.2. A. *What is the Tannaite version to which reference has been made above [at 1.E]?*

- B. *It is as has been taught on Tannaite authority:*
- C. As to a beast designated as tithe that belongs to orphans — they may sell it.
- D. And as to a beast designated as tithe that has been slaughtered, they may sell it along with its skin, fat, tendons, and bones.
- E. *What is the sense of this statement?*
- F. Said Abbaye, "*This is the sense of the statement:* As to a beast designated as tithe that belongs to orphans — they may sell it. [And how is it to be sold?] In conjunction with its skin, fat, tendons, and horns."
- G. *Does this then bear the implication that one belonging to an adult may not be sold in conjunction with its skin, fat, tendons, and horns? But how is this different from that which we have learned in the Mishnah: He who buys a lulab [palm branch, myrtle branch, willow branch] from his fellow in the Seventh Year — [the seller] gives him a citron as a gift. For one is not permitted to buy [the citron] in the Seventh Year [M. Suk.*

3:12A-C]. *And we reflected on that matter in the following way: if one did not wish to give it to him as a gift [what do we do]? And said R. Huna, “One swallows up the price of the etrog within the cost of the lulab” [and that same procedure should be followed here, so why specify that only a beast sold in behalf of a minor may be treated in this way]?*

- H. *There [in the cited passage of the Mishnah], the matter is not going to prove blatant [since the price of the etrog is negligible, so it will not be obvious that one is paying for it along with the lulab], but here the matter is going to prove quite blatant.”*
- I. *Said Raba, “If so, then why do I require two references to a beast designated as a tithe [Miller & Simon: thus implying that the passage deals with two separate cases and does not merely consist of one clause dealing with a single case]?”*
- J. *Rather, said Raba, “This is the sense of the statement: As to a beast designated as tithe that belongs to orphans — they may sell it in an ordinary way. And as to a beast designated as tithe that belongs to adults which one has slaughtered, they may sell it along with its skin, fat, tendons, and bones.”*
- K. *Said Raba, “How on the basis of Scripture do I come to such a conclusion? Since it is written, ‘Then both it and that for which it is changed shall be holy, it shall not be redeemed’ (Lev. 27:33). Now when does the law of substitution apply? When the beast is alive. And, by analogy, when is an animal that has been designated as tithe not to be redeemed? When it is alive. Lo, after it has been slaughtered, it may be redeemed. But it is rabbis who have made a decree against redeeming it after it has been slaughtered, on account of the possibility that that remission of the law may be extended to the period before it is slaughtered. So too when an object has been evaluated when it is alive, rabbis have made a decree against redeeming it after it has been slaughtered, on account of the possibility that that remission of the law may be extended to the period before it is slaughtered. [32A] But when an object has not been evaluated when it is alive, rabbis have not made a decree against redeeming it after it has been slaughtered, on account of the possibility that that remission of the law may be extended to the period before it is slaughtered. And in the case of a beast belonging to orphans, rabbis have left the law within its status as defined by the Torah [so that*

after slaughter, an animal designated as tithe may be sold even in the ordinary way].”

- L. *And so too R. Samuel b. R. Isaac takes the same position as Raba [that according to the law of the Torah, an animal designated as tithe may be sold after it has been slaughtered] for said R. Samuel b. R. Isaac, “How do we know on the basis of Scripture that as to a beast designated as tithe that belongs to orphans — they may sell it in an ordinary way? As it is said, ‘Notwithstanding, you may kill and eat meat within all your gates after all the desire of your soul according to the blessing of the Lord your God’ (Deu. 12:15) [a verse that refers to consecrated animals that have been blemished]. What is the definition of something that yields no blessing while it is alive but only after it is slaughtered? One has to say, it is a beast that has been designated as tithe.”*

II.3. A. *The question was raised:* What is the law as to selling the meat [of a beast belonging to an adult that has been designated as tithe] in conjunction with the bones?

B. R. Hiyya and R. Simeon b. Ribbi —

C. one said, “One sells the one in conjunction with the other.”

D. The other said, “One does not sell the one in conjunction with the other.”

E. *But they do not disagree. The one speaks of a small beast, the other, a large one.*

F. *If you prefer, I shall say, in both cases we speak of large beasts, but they still do not differ, for one speaks of the custom prevailing in his locale, and the other, of that prevailing in his locale.*

II.4. A. *Reverting to the text cited above:*

- B. With respect to a firstling, Scripture states, “You shall not redeem” (Num. 18:17), bearing the implication that it may be sold [if the animal is blemished, the owner may sell it as a firstling to a priest, since Scripture only forbids redeeming it but not selling it]. Scripture states with respect to an animal that has been designated as tithe, “You shall not redeem” (Lev. 27:28), that that means, it may not be sold alive or dead, unblemished or blemished [and the analogy governs the animal designated as tithe and the animal that has been dedicated. Just as in the latter case, redemption and selling the beast are forbidden, so is the rule in the case of the former].

- C. *How do we know [that an animal designated as tithe may not be sold, and “redeem” also refers to selling]?*
- D. Said R. Hinena said Rab, and so said R. Dimi said R. Yohanan, “We find a reference to ‘it shall not be redeemed’ with regard to tithe, and we find a reference to ‘it shall not be redeemed’ (Lev. 27:28) with respect to what has been declared herem. Just as the latter bears the implication that it may not be sold, so the former bears the implication that it may not be sold.”
- E. *Said R. Nahman bar Isaac to R. Huna b. R. Joshua, “[Miller & Simon:] “The text, ‘it shall not be redeemed’ is free for interpretation, for if it were not free for interpretation, one might object to this analogy: the distinctive trait of what has been declared herem is that that status affects all things [even Holy Things, while the status of tithe affects only unconsecrated beasts; the status of herem applies to the entire herd, while that of a tithed beast applies to only every tenth animal, so the analogy is invalid]. But the verse is indeed open for interpretation. For if Scripture had not said, ‘it shall not be redeemed’ in the context of that which what has been declared herem, one could have derived the rule from the case of beasts that have been declared tithe, specifically, just as a beast that has been declared tithe is holy and may not be redeemed, so what has been declared herem is holy and may not be redeemed. So what is the use of Scripture’s saying, ‘it shall not be redeemed’? It is left free for interpretation [as has just now been set forth].”*
- F. *[But the proof that has just now been given by analogy is shaky, in consequence of which the cited language is not free for the interpretation that has been offered, for] one may object as follows: what distinguishes a beast that has been designated as tithe is that the animals that precede and that follow the tenth in the counting all are holy [in that should the farmer call the ninth tenth or the eleventh tenth, all three are holy].*
- G. Rather: if Scripture had not stated, “It shall not be redeemed” [in the context of the animal declared to be tithe], one could have inferred the rule from the case of the firstling. Just as the firstling is holy and cannot be redeemed, so that which has been declared herem is holy and cannot be redeemed. Why did Scripture have to state, “It shall not be redeemed”? *It is left free for interpretation [as has just now been set forth].”*
- H. *[But the proof that has just now been given by analogy is shaky, in consequence of which the cited language is not free for the interpretation that has been offered, for] one may object as follows: what distinguishes a firstling is that it is sanctified from birth.*

- I. Rather: if Scripture had not stated, "It shall not be redeemed" in connection with the beast that is declared a tithe, one may derive the shared rule from the reference to "passing" stated both here and with reference to the firstling: just as a firstling is holy and is not redeemed, so an animal declared to be tithe is holy and is not to be redeemed. Why did Scripture have to state, "It shall not be redeemed"? *It is left free for interpretation [as has just now been set forth].*"
- J. *Still, the expression in connection with an animal declared to be tithed is not left free for the present purpose, since one can refute the analogy just as we did earlier [since it is sanctified from birth].*
- K. "You shall cause to pass" still is superfluous [Miller & Simon: it would have sufficed if Scripture had stated, "All that opens the womb is the Lord's." The term "cause to pass" here is therefore free for the deduction of an analogy between it and the term used in connection with tithing, and we compare it with a similar text in connection with haramim, deducing that tithes must not be sold and may not be redeemed].
- L. *But why not draw a comparison between the text "You shall not redeem" used in the context of the firstling, and the statement, "It shall not be redeemed" stated with respect to things that have been declared herem [thus the firstling must not be sold]?*
- M. *The reference to "redemption" mentioned in connection with tithing is available for interpretation [Miller & Simon: therefore we make the analogy of firstling and that which has been declared herem], while the use of "redemption" in connection with a firstling is not [Miller & Simon: it is required for its own sake, to show that the animal cannot be redeemed, and, further, for the analogy between the two appearances of the word "passing"].*
- N. *And how come the reference to "redemption" stated in connection with a firstling is required for its own sake [and for the analogy with tithing], while that mentioned with regard to the beast declared tithe is free for interpretation [showing that, like that which has been declared herem, it may not be sold]? Might I not say that that usage with respect to the beast declared to be tithed is the one that is needed for its own sake, and the reference to firstling is the one that is left free for interpretation?*
- O. The reference to "redemption" is treated as comparable to the further reference to "redemption" [the one with regard to the beast declared tithe, the other with respect to what has been declared herem], and we do not treat as comparable a verse that refers to redemption using the word *pediyah*, that is, in connection with

the first born, and a verse that refers to redemption using the word *geulah*, as in the case of what has been declared herem [even though the words *pediyah*, and *geulah* mean the same thing].

- P. *What difference does it make [for both words bear the same meaning]? Did not the Tannaite authority of the household of R. Ishmael [state], “And the priest shall come again’ (Lev. 14:44), ‘Then the priest shall come’ (Lev. 14:39) — the same rule pertains to his coming the second time as to his entering after a week”? [The words are not the same, but since they mean the same thing, the rule is the same].*
- Q. *That is the rule where no identical words are there for comparison, but where we have identical words available for comparison, we prefer to establish analogies through the use of exactly the same words.*
- R. *So why not establish the analogy by appeal to the duplicated reference to the same word, “passing” which pertain to the animal that has been designated as tithe and also to the firstling, for, to forbid the sale of the animal designated as tithe, we have drawn a comparison between the word “redemption” which occurs in connection with that which has been declared herem anyhow?*
- S. The All-Merciful itself has eliminated that possibility in the context of that which has been declared herem, when it says, “It is most holy,” (Lev. 27:28), with the meaning, “it is most holy,” but a firstling is not [subject to the same rule applying here].
- T. But might I then say, “It...,” and not a beast declared tithe?
- U. *The word “redemption” is used in connection with the beast declared as tithe, and the same word is used with reference to that which has been declared herem, so as to permit the one to be compared to the other [Miller & Simon: as regards the prohibition of selling, and to exclude the case of a firstling, since the word for redemption used there is different, namely, *pediyah*].*
- V. Raba said, “‘It shall not be redeemed’ stated in the context of that which has been declared herem is in point of fact superfluous. For where were these things that have been declared herem? If they are in the possession of the owner, they are holy [and cannot be redeemed unless they are blemished]. If they are in the possession of the priest, they are unconsecrated [and may be sold]. For it has been taught on Tannaite authority: As to things declared herem, so long as they are in the household of the owner, lo, they are in the status of Holy Things in all aspects, for it is said, ‘Every devoted thing is most holy unto the Lord’ (Lev. 27:28). If the householder handed them over to the priests, they are

classified as unconsecrated in all aspects, for it is said, 'Everything declared herem in Israel will belong to you' (Num. 18:14). [32B] 'It will not be redeemed' — what purpose is served by that statement? If it does not pertain to the matter of that which has been declared herem, then apply it to the matter of the beast declared as a tithe [in respect to selling the beast]."

- W. *But why not say, "then apply it to the matter of the firstling"?*
- Y. The word "redemption" used in connection with that which has been declared herem applies to the beast declared as tithe, since that same word is used with respect to the beast declared to be tithe.
- Z. R. Ashi said, "'It shall not be redeemed' *stated in the context of the beast that has been declared tithe means that the beast may not be sold.*"
- AA. *Said R. Ashi, "How do I know it? For it is written, 'Then both it and that for which it is exchanged shall be holy; it shall not be redeemed' (Lev. 27:33) — Now when does the law of substitution pertain? When the animal is alive. When, therefore, may it not be redeemed? When the beast is alive — lo, after it has been slaughtered, then, it may be redeemed. But lo, the beast requires presentation to the priest and evaluation by the priest! The upshot is that when the verse says, 'it shall not be redeemed,' the meaning is, 'it shall not be sold.'"*
- BB. *That proof poses no problems to him who maintains that things that have been consecrated for the altar have to be presented to the priest and evaluated by the priest. But in the view of him who holds that things that have been sanctified for the altar do not have to be presented to the priest and evaluated by the priest, what is there to be said?*
- CC. *[Replied R. Ashi,] "This is what we mean to say: is there anything that cannot be redeemed when it is alive, but can be redeemed after it is slaughtered? And why not? If an object is alive, with the sanctification being powerful, the thing cannot be redeemed, but once the beast is slaughtered, with its sanctification therefore diminished, it can be redeemed! And is it not an argument a fortiori: if when the animal is alive, in which case it is qualified to be redeemed, Scripture says that it cannot be redeemed, after it has been slaughtered, when it is not in a position to effect redemption, how much the more so is it the fact that it cannot be redeemed? So it follows that the verse, 'it shall not be redeemed,' means, it shall not be sold."*
- DD. *But let the All-Merciful write, "It shall not be sold" [— explicitly!]*
- EE. *If Scripture had written, "It shall not be sold," I might have thought that while it cannot be sold, since he has performed an action of a secular character with the beast, it still can be redeemed, because the money that is paid for redeeming the*

beast will go to the sanctuary. So the Torah had to use the language, “It shall not be redeemed,” to teach that it may not be sold nor may it be redeemed.

I.1 interprets the implications of our Mishnah in such a way that holds of two sides of an intersecting problem can accommodate our Mishnah’s rule to their positions. As usual in the Bavli, the upshot is to show the underlying connections between one rule and some other. II.1 clarifies the Mishnah’s rule by explaining how it is possible, in the face of contrary opinion based upon Scripture, to sell the tithe of cattle at all. No. 2 is a footnote to No. 1. Nos. 3, 4 serve as appendices to No. 2.

5:2A-C

- A. **The House of Shammai say, “An Israelite is not numbered with a priest [for eating] a firstling.”**
 - B. **And the House of Hillel permit,**
 - C. **And even in the case of a gentile.**
- I.1** A. *Who is the authority of this passage? It represents the view of R. Aqiba. For it has been taught on Tannaite authority: “As to a firstling, only an association formed for the purpose of eating the beast made up solely of priests is numbered with [those who eat] firstlings,” the words of the House of Shammai.*
- B. **And the House of Hillel say, “Even non-priests [=Israelites]” [M. Bekh. 5:2A-B].**
 - C. **R. Aqiba permits even a gentile, as it is said, ‘As of the gazelle and as of the hart’ (Deu. 15:22)” [T. Bekh. 3:15].**
 - D. *What is the scriptural basis for the position of the House of Shammai?*
 - E. *“And the flesh of them shall be yours, as the breast that is waved and as the right shoulder are yours” (Num. 18:18). Just as in that case [the breast that is waved and the shoulder] priests may eat of the meat, but non-priests may not, so here too, priests may eat, but non-priests may not.*
 - F. **[33A] And as to the House of Hillel?**
 - G. *That applies to eating an unblemished firstling alone, but as to a blemished one, it is written, “The unclean and the clean person alike shall eat it” (Deu. 15:22). Now if an unclean person, who may not eat even Lesser Holy Things, may eat a firstling, a non-priest, who may eat [parts of] Lesser Holy Things, surely should be able to eat the meat of a firstling.*

- H. *But one may object as follows: the distinctive trait of an unclean priest is that he may be released from the prohibitions brought about by his uncleanness so as to participate in the Temple liturgy in behalf of the community [Miller & Simon: if there was no priest who was cultically clean in that division on duty, an unclean person may do it].*
- I. *And as to the House of Hillel?*
- J. Is performing the liturgy subject to discussion? We are talking about eating the meat of the firstling, and as to eating, a non-priest has a preferable right to do so [more than an unclean priest, for no case exists in which an unclean priest is permitted to eat of a Holy Thing while a non-priest may not do so].
- I.2. A. R. Aqiba permits even a gentile, as it is said, ‘As of the gazelle and as of the hart’ (Deu. 15:22)” [T. Bekh. 3:15]:**
- B. *What is the scriptural basis for the position of R. Aqiba?*
- C. “As of the gazelle and as of the hart” (Deu. 15:22) — just as a gentile is permitted to eat a gazelle and a hart, so a gentile is permitted to eat a firstling.
- D. *And the other party?*
- E. *There are three references [in the book of Deuteronomy] to the gazelle and the hart, one in accord with that which R. Isaac and R. Oshaia taught, another in connection with what R. Eleazar Haqqappar taught, and the first was for the following purpose:*
- F. Just as the gazelle and the hart are exempt from the law of the firstling, so Holy Things that have become invalidated are exempt from the law of the firstling.

Houses Dispute on the disposition of a firstling

- I.3. A. Our rabbis have taught on Tannaite authority:**
- B. “As to a firstling, people do not feed it to menstruating women,” the words of the House of Shammai.
- C. And the House of Hillel say, “They do feed it to menstruating women.”
- D. *What is the scriptural basis for the position of the House of Shammai?*
- E. It is written, “And the flesh of them shall be yours as the breast that is waved and as the right shoulder” (Num. 18:18) — *just as in that case, menstruating women are not to eat the meat, so here too, menstruating women are not to eat the meat.*

- F. *And the House of Hillel?*
- G. *That rule pertains to an unblemished firstling, but as to a blemished one, “the unclean and the clean alike may eat it.”*
- H. *And the House of Shammai?*
- I. *That rule pertains to a case in which the uncleanness does not exude from one’s body, but in a case in which the uncleanness actually exudes from one’s body, that is not the rule.*
- J. *For we find that the All-Merciful distinguishes between uncleanness that exudes from one’s body and that which does not exude from one’s body, for we have learned in the Mishnah: **A Passover offering which was offered in uncleanness — male Zabs, female Zabs, menstruating women and women unclean by reason of childbirth should not eat from it. [But if they ate from it, they are exempt from the punishment of extirpation. R. Eliezer declares them exempt from extirpation even on account of coming into the sanctuary] [M. Pes. 9:4-E].***
- K. *And the House of Hillel?*
- L. *In that particular context the All-Merciful has explicitly stated the matter when it says, “[unclean] by reason of a corpse” (Num. 9:10), while in the present context, what is written is simply “unclean,” without further specification, meaning, there is no distinction as to the types or sources of uncleanness.*
- I.4.** A. [1] On a festival day people are not to flay an animal from the feet [since the purpose of doing so is to make a bellows, and on a festival day meat may be prepared only for eating]; [2] along these same lines people are not to flay a firstling or Holy Things that have been made unfit [even though the animal has been redeemed and slaughtered properly].
- B. *Now not doing so on the festival poses no problems, for by doing so, one undertakes a form of labor that is inappropriate on that day. But as to the rule on the firstling, what authority stands behind it [and hence, what principle is at stake]?*
- C. Said R. Hisda, “It is the House of Shammai, which hold, ‘As to a firstling, people do not feed it to menstruating women.’”
- D. *“...people are not to flay a firstling or Holy Things that have been made unfit:” what authority stands behind it [and hence, what principle is at stake]?*

- E. Said R. Hisda, “It is R. Eleazar b. R. Simeon, *for it has been taught on Tannaite authority*: If before the priest were two animals designated as sin-offerings, one unblemished and the other blemished, the one that is unblemished is to be offered, and the one that is blemished is to be redeemed. If the one that is blemished was slaughtered, if this was before the blood of the unblemished one was tossed, it may be eaten; if this was after the blood of the unblemished one was tossed, it may not be eaten [for it is now in the classification of a sin-offering the owner of which has already attained atonement and is left to die]. R. Eleazar b. R. Simeon says, ‘Even if the meat is in the pot, if the blood of the unblemished one has been sprinkled, it is forbidden to be eaten’ even if the animal was slaughtered before the blood of the unblemished animal was sprinkled, for the other meat retains the status of sin-offering even after the beast has been slaughtered].” [Cf. **M. Tem. 4:4A-D: He who separates his sin offering, and lo, it [turns out] to be blemished sells it and purchases another with its proceeds. R. Eleazar b. R. Simeon says, “If the second is offered before the first is slaughtered, it is left to die. For the owner already has effected atonement”]**].
- F. *[Assuming that just as the House of Shammai takes a strict position on the firstling, so they do on the disposition of animals designated as sacrifices that were unfit and were slaughtered,] why does R. Hisda not assign the whole of the cited passage to the House of Shammai?*
- G. *Perhaps the House of Shammai take a strict position only with respect to the firstling, which is sanctified from the womb, but as to animals designated as Holy Things that became unfit, which are not sanctified from the womb, they may not take such a view.*
- H. **[33B]** *Then why not assign the whole of the cited passage to R. Eleazar b. R. Simeon [Miller & Simon: as he holds that unfit sacrifices retain holiness even after having been slaughtered, the same will be so for the blemished firstling]?*
- I. *Perhaps R. Eleazar b. R. Simeon takes a stringent position only with respect to animals designated as Holy Things that have become unfit, for they are subject to redemption, but as to a firstling, which is not subject to redemption, he may take a different position [and one may be permitted to flay the firstling from the feet].*

- J. *But does R. Eleazar b. R. Simeon not affirm the rule: All invalidated Holy Things [after they have been redeemed] are sold in the marketplace, and are slaughtered in the marketplace, and are weighed by the *litra*, except for the [blemished] firstling and tithe of cattle. For the advantage [of selling them in the market, where demand is higher, would fall] to the owner (M. 5: 1)]? Therefore since there will be profit to the sanctuary, rabbis have permitted such a practice. Here too, since the sanctuary makes a profit, let rabbis permit the flaying.*
- K. Said R. Mari b. R. Kahana, “What he gains through selling the hide, he loses by spoiling the meat.”
- L. In the West, kin the name of Rabina, they say, “It appears to be doing work with Holy Things [Miller & Simon: preparing the skin for a bellows when it is still on the sacrificial animal].”
- M. R. Yosé b. R. Abin says, “It is a decree to take account of the possibility that one may raise herds of beast from unfit sacrifices [Miller & Simon: since if one permits flaying the skin from the feet of unfit sacrifices, the farmer may delay killing the animals until he finds somebody who wants the whole skins, meanwhile rearing stocks from these disqualified sacrificial animals].”

I.1 opens with a familiar question. No. 2 proceeds to the exposition of the next component of the Tosefta's complement. No. 3 pursues the same issue as is raised in the Mishnah, now with reference to other cases. No. 4 is intruded because it utilizes a component of the foregoing, an appendix that is predictable, if tedious, in the Bavli.

5:2D-J

- D. A firstling which suffered from a congestion of blood, even though [if one does not let blood] it [may] die —
- E. “they do not draw blood from it,” the words of R. Judah.
- F. And sages say, “one draws blood from it,
- G. “on condition that one not make a blemish in it.
- H. “And if he made a blemish in it, lo, this one should not be slaughtered on that account.”
- I. R. Simeon says, “One draws blood from it,
- J. “even though one make a blemish in it thereby.”

I.1 A. *Our rabbis have taught on Tannaite authority:*

- B. **A firstling which suffered from congestion of blood [M. Bekh. 5:2D] —**
- C. **“They do not draw blood from it in a place on which one makes a blemish.**
- D. **“But they draw blood from it in a place on which one does not make a blemish,” the words of R. Meir.**
- E. **And sages say, “Also: They draw blood from it in a place on which one makes a blemish, on condition that it may not be slaughtered on account of that blemish, but on account of some other blemish.”**
- F. **R. Simeon says, “Also: It is slaughtered on account of that blemish.”**
- G. **R. Judah says, “Even if it is on the point of death, they do not draw blood from it.”**
- H. *R. Eliezer repeated this version to his son, and some say, R. Hiyya to his son, “As is the dispute in the present matter, so there is a dispute with regard to a jug of wine that has been designated as heave-offering, for we have learned in the Mishnah: A jug of [wine in the status of] heave offering concerning which there arose a suspicion of uncleanness — R. Eliezer says, “If it was lying in an exposed place, he should place it in a concealed place. And if it was uncovered, he should cover it.” R. Joshua says, “If it was lying in a concealed place, he should place it in an exposed place. And if it was covered, he should uncover it.” Rabban Gamaliel says, “Let him not do anything new with it” [M. Ter. 8:8A-E]. Now R. Meir concurs with R. Eliezer, rabbis with R. Joshua, and R. Judah with Rabban Gamaliel.”*
- I. *Why so? Perhaps R. Meir takes the position that he does there because the farmer actually carries out an affirmative action [making a blemish on the beast, and, rather than do this, he must let the animal die], but here, where the cause is indirect, he would take the position of R. Joshua. And perhaps in the case just now introduced, R. Eliezer takes up the position that he does only because of the possibility that Elijah may come and declare the matter of doubt to be, in fact, clean. But here, where, if we neglect to do a thing, the animal will die, he will take the position of rabbis. And, further, rabbis take the position that they do here, for if they neglect to take action, the best will die, but in the case just now introduced, Elijah after all may come and clarify the matter of doubt and declare the jug’s wine to be cultically clean, so they may concur with the position of R. Eliezer. And, further, in the present case, R. Judah takes the position that he does because the farmer does the deed with his own hand, but in that other case, in which the cause is not what he does but the natural course of events, he may*

concur with R. Joshua. And here, Rabban Gamaliel may take the position that he does in that other case, for it is possible that Elijah may come and clarify the matter of doubt and declare the jug to be clean, but here, since it is clear that, if he fails to take action, the animal will die, he will concur with rabbis.

- J. *Here, moreover, there is a dispute as to the reading of verses of Scripture, and there also, there is a dispute as to the reading of verses of Scripture.*
- K. For said R. Hiyya b. Abba said R. Yohanan, “All concur that one who adds leavening after another has leavened dough is liable for having violated the prohibition concerning preparing unleavened meal offering, for it is written, ‘It shall not be baked with leaven.’ ‘No meal offering...shall be made with leaven’ (Lev. 6:10, 2:11). All further concur in the case of one who mutilates a beast that has already been mutilated that he is liable, for Scripture states, ‘that which has its stones bruised or crushed or torn or cut off you shall not offer to the Lord’ (Lev. 22:24). If one is guilty for cutting off the testicles, how much the more so for merely tearing them! So the point of the verse is to indicate that one who tears after another person has cut the testicles is liable. The dispute concerns only one who blemishes an already-blemished animal. *R. Meir takes the view*, ‘There shall be no blemish therein’ (Lev. 22:21 [even a blemished animal may not be further blemished], *and sages theorize*, ‘It shall be perfect to be accepted’ (Lev. 22:21) [one should not blemish an unblemished animal, but an already blemished one is not at issue].”
- L. *And how does R. Meir interpret the language*, “It shall be perfect to be accepted”?
- M. *He requires that language to exclude from the altar a beast that to begin with is blemished.*
- N. *A beast that to begin with is blemished obviously is excluded from the altar — it is no more than a palm-tree!*
- O. *Rather, it is to exclude Holy Things that have been rendered unfit for the altar after they were redeemed. You might have thought that, since it is forbidden to shear or work them, they also may not be blemished. Scripture so informs us that that is not the case.*
- P. *And how do rabbis deal with the verse*, “There shall be no blemish therein”?
- Q. *That forbids even indirectly causing a blemish.*
- R. *For it has been taught on Tannaite authority:*
- S. “There shall be no blemish therein” —

- T. Thus I am informed [34A] only that one must not cause a blemish by what one does oneself. How do I know that one may not bring a case of pressed figs or dough and put it on the ear of the beast, so that a dog will come and chew on it [and cause a blemish]?
- U. Scripture says, “There shall be no blemish....”
- V. *Here, again, there is a dispute as to the meaning of verses of Scripture, for* said R. Judah said Samuel, and so said R. Simeon b. Laqish, and so said R. Nahman said Rabbah b. Abbuha:
- W. “‘And I, behold, I have given you the charge of my heave-offerings’ (Num. 18: 8) — R. Eliezer takes the view that Scripture speaks of heave-offering in two classifications, that which is clean and that which is held in suspense [not eaten nor burned], *and Scripture has said, ‘Carry on a work of guardianship for it [not making it unclean].’* And R. Joshua? In his view, Scripture is so written that one may read it as ‘my heave-offering’ in the singular.”
- X. *Does this then imply that R. Eliezer takes the view that the reading supplied by the vowels dictates the sense of Scripture? And the following contradicts that assumption:*
- Y. “‘...since he has dealt deceitfully with her’ (Exo. 21: 8) — since he spread his cloth over her [reading the letters that yield ‘dealt deceitfully’ as though they bore the vowels to yield ‘his cloth’], he may not again sell her,” the words of R. Aqiba.
- Z. R. Eliezer says, “‘...since he has dealt deceitfully with her’ (Exo. 21: 8) — he may not again sell her.” [Clearly, therefore Eliezer rejects the view the reading supplied by the vowels dictates the sense of Scripture.]
- AA. *Rather, what is at issue here?* R. Joshua takes the view that heave-offering that is suitable to be eaten by you is to be protected from further uncleanness, while that which is not suitable to be eaten by you [being unclean] is not to be protected from further uncleanness.
- BB. *And R. Eliezer?*
- CC. *Food designated as heave offering the status of which is uncertain also falls into the category of that which is suitable to be eaten by you, since Elijah may come and declare it to be clean.*
- I.2.** A. Said R. Judah said Samuel, “The decided law accords with the position of R. Simeon.”

- B. *R. Nahman b. R. Isaac objected, “Which position of R. Simeon? If I should say that it is the R. Simeon of the Mishnah [One draws blood from it, even though one make a blemish in it thereby], has not Samuel already informed us that it is permitted to perform a forbidden act if the act is done unintentionally? For lo, [in the context, b. Bekh. 25A, of what R. Hananiah bar Shelamayya said in the name of Rab, “It is permitted to act in a corresponding manner on the festival day [since there is no intent to violate the law], and said R. Hiyya bar Ashi in the name of Rab, “It is forbidden to squeeze the stopper of the brewery boiler on a festival day”], said R. Hiyya bar Ashi in the name of Rab, “The decided law accords with R. Judah.” And R. Hanan bar Ammi said Samuel said, “The decided law is in accord with R. Simeon.” And R. Hiyya bar Abin repeated the Tannaite version without naming an authority: “The decided law accords with R., Judah, and Samuel said, the decided law accords with R. Simeon.”*
- C. *Rather, it is R. Simeon of the cited Tannaite formulation [of the Tosefta].*
- D. *And R. Shisa b. R. Idi repeated the passage explicitly in this language: “Said R. Judah said Samuel, ‘The decided law accords with the statement of R. Simeon in the cited Tannaite formulation [of the Tosefta].’”*

We commence, I.1, with the analysis of the Tosefta’s contribution to the amplification of the law of the Mishnah. No. 2 completes the discussion of the same Toseftan passage.

5:3A-C

- A. **He who slit the ear of the firstling —**
- B. **“Lo, this should never be slaughtered [by reason of a blemish,” the words of R. Eliezer.**
- C. **And sages say, “When another blemish will appear in it, it is slaughtered on its account.”**
- I.1** A. *Does R. Eliezer impose an extrajudicial sanction for all time [without time limit]? And in contradiction to that view is the following: He on whom was a bright spot [34B] and it was cut off — it is clean. He intentionally cut it off — R. Eliezer says, “When another plague is born on him, and he becomes clean of it [then he will be clean of this one as well].” And sages say, “Until it spreads over him or diminishes to less than the size of a bean” [M. **Negaim 7:4A-D**].*
- B. *Both Rabbah and R. Joseph say, “When R. Eliezer imposes such an extra-judicial sanction [without limit of time], it pertains to his property, but he imposes no such unlimited sanction to offenses committed as to his person. As to his property*

[the case of the firstling] one may say that he may do it one way or the other [for the only way to keep him from blemishing the beast is to say he may never slaughter it, any lesser penalty being subject to evasion, e.g., by simply waiting for another blemish to appear]. But in respect to his person, may one say that he may do it one way or the other?] [Miller & Simon: If we do not make him unclean for all time, he will cut off the mark and put himself in a doubtful condition and wait for another mark; he will not do so, in fact, first, because if another mark does not appear, he will never be clean; further, even if another mark appears, what benefit is it to him, since he is afflicted as before. So it is better for him not to cut off the mark and to wait in case it heals.]

- C. *Said Raba, "There is a contradiction here only between R. Eliezer's view here and that in connection with tractate Negaim? Is there not also a contradiction between rabbis' position here and that in the same tractate?"*
- D. *In point of fact, the contradiction between the two positions of R. Eliezer represents no contradiction, as we have already explained. And as to the rabbis, there is no contradiction either between their position here and that represented in the other tractate: in the one case sages inflict a sanction for what the man has done, and in the other case, the sages inflicted a sanction proportionate to what the man has done. In the case of the firstling, we inflict a sanction for what the man has done, for how did he intend to render the beast permitted? It was by this blemish. So rabbis took the position that he would not allow the firstling to be permitted on account of this blemish. And in the other case, likewise, we inflict a sanction for what the man has done. For how did he intend to render himself clean? By cutting off this mark. So rabbis inflicted a sanction upon him in terms of that very action [so regarding him as though he had never cut off the mark at all, so that even if he becomes clean from another mark, he is not clean from the first, until the second mark covers his entire body (Miller & Simon)].*

- I.2. A. *[With reference to the statement of Eliezer, "**When another plague is born on him, and he becomes clean of it [then he will be clean of this one as well]**"], R. Pappa raised the question, "Do we learn in the Mishnah, **he becomes clean?** or is the sense of the passage, **and then he becomes clean?** [Miller & Simon: Is the meaning that as soon as a second mark appears, he is clean from the first, or only after he is pronounced clean of the second is he clean of the first?]]*
- B. *What difference does it make anyhow?*
- C. *A bridegroom on whom appeared a second spot, for we have learned in the Mishnah: **A bridegroom on whom a plague appeared — they give him the***

seven days of the marriage feast [before inspecting him] — him, and his house, and his garment. And so with respect to the festival: they give him all the days of the festival [M. Neg. 3:2]. *Now if you say that the meaning is, he becomes clean, as soon as a second mark appears, he is clean from the first. But if you say that the sense is, and then he becomes clean, then only after he is pronounced clean of the second is he clean of the first, then what use is it to him that he is not unclean from the second mark, since he remains unclean by reason of the first one anyhow? What is the answer?*

D. *The question stands.*

I.3. A. R. Jeremiah ask R. Zira, “If one slit the ear of a firstling and then died, what is the rule as to imposing an extrajudicial sanction on his son after him? *If you cite the rule, He who sells his slave to gentiles and then died, sages have imposed a sanction on his son after him [and likewise here], it is because day by day the slave is kept from carrying out his religious duties. And if you should invoke as the pertinent parallel the rule that, if someone planned to do some work during the intermediate days of the festival [e.g., cut the grapes of his vineyard, since if he did not work on the intermediate days, he would suffer a loss, so the work is permitted, but if he deliberately planned for the work to be done during those days though he could have done it earlier, the work is forbidden], and then he died, sages did not impose a sanction on his son after him, the reason is that it was not the son who performed a forbidden action. Here what is the rule? The man himself did sages subject to a sanction, and lo, he is no longer alive, or perhaps it was the man’s property that was subjected to the sanction by rabbis, and lo, it is there to be penalized?*”

B. *He said to him, , “You have learned it in the Mishnah: A field which was cleared of thorns [during the Sabbatical year] may be sown during the year following the Sabbatical, [for removing thorns is not a forbidden act of cultivation]. [But a field] which was improved [by the removal of stones during the Sabbatical year] or which was used as a fold [for animals during the Sabbatical year, such that it was fertilized by the dung which the animals left on the ground] may not be sown during the year following the Sabbatical, [since these activities have effect of preparing land for cultivation] [M. Sheb. 4:2A-E]. And said R. Yosé b. R. Hanina, ‘We hold as a tradition that if he improved the field and died, his son may sow the field.’ It follows that the man himself did sages subject to a sanction, but not his son; here too, the man himself, but not the son, has been subjected to a sanction.*”

- C. *Said Abbaye, “We hold it as a tradition that if a person imparted uncleanness [35A] to food that had been prepared in accord with the rules of cultic cleanness and then died, sages did not impose a sanction upon his son after him. What is the operative consideration? We are dealing with intangible damage, and intangible damage is not treated as tantamount to tangible damage. It is a penalty only on the authority of rabbis, and while rabbis imposed a sanction on the man himself, they did not impose a sanction also upon his son.”*

I.1 analyzes the premise of Eliezer’s position and contrasts it with the premise of a position he takes elsewhere; the two passages are satisfactorily harmonized. No. 2 then forms a footnote to the foregoing. No. 3 then proceeds to investigate refinements of the Mishnah’s rule.

5:3D-O

- D. There was the case of an old ram, with its hair dangling. A Roman detective saw it.
- E. He said, “What sort of thing is this?”
- F. They said to him, “It is a firstling. And it is slaughtered only if there is a blemish on it.”
- G. He took a dagger and slit its ear.
- H. And the case came before sages, and they declared it permitted.
- I. He saw that they permitted [it] and went and tore the ears of other firstlings.
- J. And they declared [them] prohibited.
- K. Another time children were playing in the field, and they tied the tails of lambs to one another. And the tail of one of them split off. And lo, it was a firstling.
- L. And the case came before sages, and they declared it permitted.
- M. They saw that they declared it permitted, and they went and tied together the tails of other firstlings.
- N. And they declared [them] prohibited.
- O. This is the general principle: Anything [done] deliberately — it is prohibited. And anything [done] unintentionally — it is permitted.
- I.1** A. Another time children were playing in the field, and they tied the tails of lambs to one another. And the tail of one of them split off. And lo, it was a firstling. And the case came before sages, and they declared it permitted:

- B. *This case too was required. For had the Mishnah given us only the first case, involving a gentile, I might have thought that if we permit it, there is no danger that the gentile will go sour, but an Israelite child, who might go sour, I should say that the beast should not be permitted.*
- C. *And had the Mishnah given us only the case of the child, I might have thought that there would be no possibility of confusing him with an adult, but a gentile might be confused with an adult Israelite [so people might suppose it is permitted to blemish firstlings deliberately]. It was therefore necessary to give us both cases.*

I.2. A. Said R. Hisda said R. Qattina, “This rule [that a gentile’s action may permit the use of the firstling] applies only if they used the language, ‘Until it has a blemish.’ But if they used the language, ‘Until it has been made blemished,’ *it is as though they had instructed him, ‘Go and blemish it.’*”

- B. *Said Raba, “But does this not come about on its own? So what difference does it make to me whether someone used the language ‘has’ or ‘has been made’? But the language, ‘has been made’ also signifies that the thing has come about on its own, and there is no such distinction to be made.”*

II.1 A. **This is the general principle: Anything [done] deliberately — it is prohibited:**

- B. *What does the general principle add?*
- C. *It encompasses a case in which the blemish came about indirectly.*

III.1 A. **And anything [done] unintentionally — it is permitted:**

- B. *What does the general principle add?*
- C. *It encompasses a case in which one spoke in all innocence.*

I.1 explains why the Mishnah has to give us two examples of the same conception. No. 2 clarifies the law of the Mishnah, stressing the exemplary character of the language of the story. II.1 and III.1 go through another familiar exercise, asking what is left unstated but implied.

5:4A-B

- A. **[If] a firstling was running after him, and he kicked it and made a blemish in it —**
- B. **lo, this is slaughtered on that account.**

I.1 A. Said R. Pappa, “This rule [permitting the beast under these circumstances] was taught to apply only if one kicked the beast while it was running after him, but if it was after the pursuit was over, that is not the case.”

- B. *That's obvious!*
- C. *What might you have thought? That the reason he kicked the beast was that he remembered his anguish [but he did not intend to cause a blemish].*
- D. *So we are informed that that is not a valid consideration.*
- E. *Some say, said R. Pappa, "You need not say that this applies only while the pursuit was going on but not after it had stopped, but even if the man kicked the beast after the pursuit had stopped, the same rule applies, since he did so because he remembered his anguish."*

I.2. A. Said R. Judah, "It is permitted to cause a blemish to a firstling before it has been born."

- B. *Said Raba, "For example, a kid in its ears, a lamb in its lips."*
- C. *There are those who say, "Also a lamb in its ears, for once can say the animal emerged with its temples first."*

I.3. A. Said R. Pappa, "If the beast eats and the defect is not visible, but when it bleats, the defect is visible, that is regarded as a blemish."

- B. *So what? We have already learned that rule in the Mishnah: **Its front teeth [incisors] which are damaged, or worn down; and the back ones [molars] which are uprooted [M. Bekh. 6:4C]!** Now what is the operative consideration here? Is it not because, when the animal bleats, the defect is visible?*
- C. *Said Raba, "What R. Pappa is doing is spelling out the reason behind the rule of the Mishnah. What is the reason that if they were torn out, they are considered a blemish? Because, when the animal bleats, the defect is visible."*

I.1 clarifies the application of the Mishnah's rule. No. 2 presents the result of the principle that the sanctification of the first-born takes effect only upon birth, not prior. I cannot say I know why No. 2 has been inserted.

5:4C-G

- C. **Any blemishes which are likely to happen at the hands of man —**
- D. **Israelite-cast shepherds are believed [to testify that the blemishes came about unintentionally].**
- E. **But priestly-cast shepherds are not believed.**
- F. **Rabban Simeon b. Gamaliel says, "He [a priest] is believed concerning another's [firstling] but is not believed concerning his own."**
- G. **R. Meir says, "He who is suspect in a given matter neither judges nor bears witness in that matter."**

- I.1** A. [In reference to the rule, **Israelite-cast shepherds are believed [to testify that the blemishes came about unintentionally]. But priestly-cast shepherds are not believed**], R. Yohanan and R. Eleazar —
- B. One said, “**Israelite-cast shepherds** in the household of priestly-caste shepherds **are believed [to testify that the blemishes came about unintentionally]**. *We do not take account of the possibility that their testimony is on account of their living. But priestly-cast shepherds* in the household of Israelite-caste householders **are not believed**. *The shepherd might say, ‘Since I work for him, he will not pass me by and give it to someone else. And the same applies to a priest employed by another priest, for we take account of the possibility of their favoring one another. And Rabban Simeon b. Gamaliel comes to say, ‘He [a priest] is believed concerning another’s [firstling] but is not believed concerning his own.’ And R. Meir comes along to say, ‘He who is suspect in a given matter neither judges nor bears witness in that matter.’”*
- C. The other said, “**Shepherds** for Israelites, who are themselves priests **[35B] are believed [to testify that the blemishes came about unintentionally]**. *The shepherd will say, ‘My employe will not bypass a priest who is a disciple of rabbis to give the firstling to me. But priestly-cast sheep — meaning, animals belonging to priests, and even if the shepherds are Israelites, are not believed. We take account of the possibility that they may give testimony under the influence of the need to make a living. And all the more so is this the rule when a shepherd of the priestly caste is working for an employer of the priestly caste, for we take account of the possibility of their favoring one another as well as of the possibility that they are concerned about making a living. And Rabban Simeon b. Gamaliel comes to say, ‘He [a priest] is believed concerning another’s [firstling] but is not believed concerning his own.’ And R. Meir comes along to say, ‘He who is suspect in a given matter neither judges nor bears witness in that matter.’”*
- D. Now from the perspective of him who says, “**Shepherds** for Israelites, who are themselves priests **are believed [to testify that the blemishes came about unintentionally]**,” that is pertinent to R. Meir’s statement, for he comes along to say, **He who is suspect in a given matter neither judges nor bears witness in that matter.**” But in the view of him who maintains, **But priestly-cast shepherds** in the household of Israelite-caste householders **are not believed**, what does R. Meir contribute? Is his opinion not the same as that of the initial Tannaite authority here?

- E. *At issue between [Meir and the initial authority] is the ruling of R. Joshua b. Qapusai. For it has been taught on Tannaite authority:*
- F. **R. Joshua b. Qepusai says, “They slaughter the firstling only on the testimony of two [independent witnesses].” R. Simeon b. Gamaliel says, “Even his son and even his daughter.” Rabbi Yosé says, “Even ten in the household are not believed [T. 3:19].** [The initial Tannaite authority agrees with Joshua, since shepherds who are priests are not trustworthy, but independent priests are trustworthy even in respect to firstlings of priests; Meir says even an independent priest is suspect, against Joshua’s view (Miller & Simon)].
- I.2.** A. *In accord with whose position is that which R. Hisda said R. Qattina said, “A firstling the status of which is unclear [e.g., a ewe gave birth to two males, and one belongs to a priest, the other not, since we do not know which was born first] which is born in the domain of an Israelite —it is necessary for two outsiders to give testimony as to its status [that, once it has been blemished and so may be eaten, the blemish was natural and not deliberate]”?*
- B. *According to whom? According to R. Joshua b. Qepusai, of course!*
- C. R. Nahman said, “The owner may give testimony concerning a firstling the status of which is unclear [e.g., a ewe gave birth to two males, and one belongs to a priest, the other not, since we do not know which was born first]. *For if you do not take that position, then according to the position of R. Meir [who says that if one is suspect of disregarding a given law, one may not give testimony even with reference to the cases involving others], who will ever be able to give testimony with regard to an animal that has been declared as tithe [that it is blemished]?”*
- D. *Surely the owner among others would be believed to give testimony concerning a blemish on an animal declared as tithe, since, if he had wanted to, he could have maimed the entire herd before tithing it! Rather, the question must be as follows: “Concerning a firstling the status of which is unclear [e.g., a ewe gave birth to two males, and one belongs to a priest, the other not, since we do not know which was born first], from R. Meir’s perspective, who can ever give testimony? And if you say, it is as a matter of fact a problem for which there is no remedy, have we not learned in the Mishnah: R. Yosé did rule: “Any [animal] the exchange of which is in the hand of a priest is free of the obligation to priestly gifts.” R. Meir declares liable. It must follow, therefore, that the owner can give testimony concerning the firstling that is subject to doubt, since priests alone are suspect in regard to blemishes, while Israelites are not suspect in regard to blemishes.*

I.3. A. *It has been stated:*

- B. R. Nahman said, “The decided law accords with the position of Rabban Simeon b. Gamaliel [**“Even his son and even his daughter”**].”
- C. Raba said, “The decided law accords with the position of Rabbi [**Even ten in the household are not believed**].”
- D. *Did Raba make such a statement? And has not Raba said, “If the owner was standing with us outside, and the animal went in whole and came out injured, the owner may give testimony concerning the blemish.”*
- E. I should say, “if all of the owners were standing, then we do not take account [of the possibility of self-interested testimony].”
- F. *If so, why bother to say it at all?*
- G. *What might you have said? That we should take account of the possibility that one might be subject to suspicion of having caused the blemish himself? So we are informed that that is not the case.*
- H. And the decided law accords with the position of Rabban Simeon b. Gamaliel [**“Even his son and even his daughter”**].
- I. *But specifically the testimony of the son and the daughter is accepted, but not that of his wife. Why not? His wife is equivalent to himself.*

- I.4.** A. Said R. Pappa to Abbaye, “In the opinion of R. Meir, who has said, ‘**He who is suspect in a given matter neither judges nor bears witness in that matter,**’ and who holds that one who is suspect concerning one matter is suspect concerning the entire Torah, *then a priest should never be able to take the role of a judge at all. But has it not been written, ‘And by their word shall every controversy and every stroke be’ (Deu. 21: 5)”?*
- B. **[36A]** *I may say that R. Meir’s meaning is that we take account of the possibilities, but did he actually confirm the presumption that he was to be suspected?*

- I.5.** A. *The question was raised: what is the law concerning the testimony of one witness reporting what another witness has said [hearsay, which normally is not accepted] in regard to testimony having to do with the status of a firstling [that the blemish was not intentionally caused]?*
- B. *R. Assi forbade such evidence.*
- C. *R. Ashi permitted such evidence.*
- D. *Said R. Assi to R. Ashi, “And lo, the Tannaite authority of the household of Manasseh stated, ‘the hearsay evidence is accepted only with regard to a woman [stating that one has heard the woman’s husband has died, so she may remarry on the strength of hearsay evidence].”*”

- E. *Repeat the Tannaite version in this way: only so far as the testimony given by a woman is valid [and a woman may testify that a blemish was not made deliberately].*
- F. *R. Yemar declared valid a firstling on the basis of hearsay evidence.*
- G. *Maremar called him, "Yemar, who permits firstlings."*
- H. *And the decided law is that hearsay evidence is acceptable in connection with a firstling.*
- I.6.** A. Said R. Ilaa, "If people did not assume that an animal was a firstling, and someone came and said that it was a firstling with a blemish on it, he is believed."
- B. *What is it that he proposes to tell us? That testimony that forbids what was formerly thought permitted but then remits the prohibition is accepted? That we have learned in the Mishnah: **The woman who said, "I was married, and I am divorced" is believed. For the mouth which prohibited is the mouth which permitted. But if there are witnesses that she was married, and she says, "I am divorced," she is not believed. [If] she said "I was taken captive, but I am pure," she is believed. For the mouth which prohibited is the mouth which permitted. But if there are witnesses to the fact that she was taken captive, and she says, "I am pure," she is not believed. But if the witnesses appeared [to testify that she was taken captive] after she was remarried, lo, this one should not go forth [M. Ket. 2:5A-F].***
- C. *What might you have thought? There the woman is believed, because, had she wanted, she need not have said anything at all, but here, since it would have not inform an expert [that the animal was a firstborn, so the expert might tell him whether the blemish was permanent or transitory] — for Holy Things outside of the wall would never have been eaten by a priest — I might not maintain that the mouth that prohibited indeed is the mouth that permitted. So we are informed that if it were so [and the priest has caused the blemish] he would have blemished it with a perfectly obvious blemish [without consulting an expert at all, since everyone will have known that the beast was permanently blemished] and gone ahead and eaten it.*
- D. *Mar b. R. Ashi objected, "How is this matter different from the case of the one who hired out an ass to his fellow and said to him, 'Do not go by the way of Nehar Peqod, where there is water; go by way of Nersh, where there is no water.' But he went by the way of Nehar Peqod, and the ass died. He came before Raba and claimed, 'I went by the way of Nehar Peqod, true enough, but there was no water there.' Raba ruled, 'Why should he lie? If he had wanted, he could have said, "I*

went by the way of Nersh.” And Abbayye explained, “We do not invoke the principle, ‘why should he lie,’ if there are witnesses.””

- E. *How now! [The cases really are not parallel.] In that case there certainly was water, but here, is it so sure that he caused the blemish? It is merely a possibility, and where there is a possibility, we do invoke the consideration, “Why should he lie?”*
- F. *In session Rabina stated this tradition without naming the authority responsible for it. Said Raba Junior to Rabina, “We have repeated this tradition in the name of R. Ilaa.”*
- I.7.** A. *R. Sadoq [who was a priest] had a firstling. He set barley for it in wicker baskets of peeled willow twigs. In eating, its lip was slit. He came before R. Joshua, and said to him, “Have we made a distinction between [a priest] who is classified with those who meticulously observes the law and one who is classified with those who do not?”*
- B. *Said to him R. Joshua, “Yes [and since you are in the former category, you are not suspect of deliberately maiming your firstling].”*
- C. *He then came before Rabban Gamaliel. He said to him, “Have we made a distinction between [a priest] who is classified with those who meticulously observes the law and one who is classified with those who do not?”*
- D. *Rabban Gamaliel said to him, “No.”*
- E. *He said to him, “But lo, R. Joshua said to me, ‘Yes.’”*
- F. *He said to him, “Wait until the shield-bearers [great warriors in debate] come into the school house. Once they had come into the school house, the one who presented the question arose and asked: “Have we made a distinction between [a priest] who is classified with those who meticulously observes the law and one who is classified with those who do not?”*
- G. *Said to him R. Joshua, “No.”*
- H. *Said to him Rabban Gamaliel, “And is it not the fact that, in your name, they have told me, Yes’? Joshua, stand up and let them give evidence against you!”*
- I. *R. Joshua stood up and he said, “What should I do? If I were the one who is alive, and he were dead, the living could contradict the dead. But since both he and I are living, how can the living contradict the living?”*
- J. *Rabban Gamaliel continued standing and giving an exposition, with R. Joshua standing on his feet, until everybody made an uproar and said to Huspit the*

Interpreter, “Stop.” And he stopped [repeating in a loud voice what Gamaliel was saying and the session ended].

I.1 clarifies the case to which the Mishnah’s rule refers. No. 2 then forms an appendix to the foregoing. No. 3 then extends the on-going discussion. No. 4 moves on to clarify Meir’s opinion in its own right. No. 5 then reverts to the theme of the Mishnah and asks a secondary question. No. 6 continues the theme, but not the topic, introduced at No. 5, that is, the rules of evidence concerning firstlings. No. 7, finally, provides a case pertinent, in a general way, to the rule of the Mishnah; it is tacked on, having no bearing on the prior materials. The story is formed around its own tension, using our subject only tangentially.

5:5A

- A. **A priest is believed to state, “I showed this firstling [to an expert] and [he ruled that] it is blemished.”**
- I.1** A. Said R. Judah said Rab, “A priest is believed to testify, ‘An Israelite gave me this firstling, with a blemish on it.’ *What is the operative consideration? In regard to any matter which is going to come out in the end, people don’t lie anyhow.*”
- B. *Said R. Ashi, “We too have learned that principle in the Mishnah: **A priest is believed to state, ‘I showed this firstling [to an expert] and [he ruled that] it is blemished.’** What is the operative consideration? Is it not that we invoke the rule, In regard to any matter which is going to come out in the end, people don’t lie anyhow’?”*
- C. *There, the main point is that priests are not going to eat Holy Things outside of the walls of the Temple, but here, if the man is suspect, he is suspect.*
- D. R. Shizbi objected, “**He who says to one who is not [deemed] trustworthy in the matter of tithing, ‘Purchase for me from someone who is trustworthy, or from someone who separates tithes,’ he [viz., the agent] is not believed. If the sender says, “Purchase for me from so-and-so,” behold, this one [the agent] is believed. [If] he went to purchase from him, and [subsequently returned and] said to him [the sender], “I did not find him, but I purchased for you from someone else who is trustworthy,” he is not believed [M. Demai 4:5A-E].** Now why should this be the rule? Rather, why not invoke the conception, ‘In regard to any matter which is going to come out in the end, people don’t lie anyhow’?”
- E. *That case is exceptional, [36B] because one can make excuses [Miller & Simon: that although the seller may not be trustworthy in the sender’s opinion, he is*

regarded as trustworthy by his agent, so the agent has no fear of being found out]. *But the second clause of the cited passage [If the sender says, “Purchase for me from so-and-so,” behold, this one [the agent] is believed] certainly sustains [Judah’s] view, for it says, from so-and-so,” behold, this one [the agent] is believed.*

F. *No, here too, since someone is asking questions, the agent takes heed.*

I.2. A. *Said R. Jeremiah bar Abba, “How does Judah know this [A priest is believed to testify, ‘An Israelite gave me this firstling, with a blemish on it’]? Lo, I am the one who set it forth to Giddul, and Giddul set it forth to [Judah]. And this is the form in which I set it forth to Giddul: ‘An Israelite is believed to testify, “I handed this firstling over to a priest, together with its blemish.”””*

B. *An Israelite?! So what’s new?*

C. *Plenty’s new! It covers the case in which the animal was small when he handed it over to the priest, and the animal grew. You might have supposed that the Israelite cannot now serve to identify the animal. Therefore the teaching indicates that that is not the case [and he may do so].*

D. *In Sura they repeated this rule in the latter verse, in Pumbedita, in the former. The decided law accords with the formulation even of the former version.*

I.3. A. *Rafram of Pumbedita had a firstling, which he handed over, unblemished, to a priest. The priest had it blemished. One day Rafram’s eyes grew weak. The priest brought the animal back to him and said to him, “This firstling was given to me by an Israelite, already blemished.”*

B. *He forced his eyes open wide and saw the fraud. He said to him, “Am I not the one who gave it to you?”*

C. *Still, Rafram did not then become suspicious in general, because he held, this priest happened to have huspah, but not everybody has huspah.”*

I.4. A. *There was the case of a firstling with one big eye and one little eye that came before R. Ashi. He said, “Why should we be suspicious? For whether the owner is a priest or a commoner, this is a firstling with its own blemish.”*

B. *Said Rabina to R. Ashi, “But perhaps it comes from an Israelite, and said R. Judah, ‘People are not to examine the status of a firstling that belongs to an Israelite unless a priest is present’?”*

C. *He said to him, “How are the matters parallel? In that case [of which Judah spoke], while the priest will not eat Holy Things outside of the Temple, the priest will still be suspect with regard to his own property, while here, he knew that the*

blemish was readily discerned, so why did he bring it for inspection by rabbis? It was out of respect for the sage. If he was not going to neglect showing respect to the sage, then will such a person violate a prohibition?"

I.1 amplifies the Mishnah's law. No. 2 reverts to the exposition of the opening point of No. 1. Nos. 3, 4, then tack on cases illustrative of the rule at hand.

5:5B

B. All are believed [to testify] concerning blemishes of tithe of cattle [that they were not deliberately caused].

I.1 A. *What is the operative consideration here?*

B. *If the farmer had wanted, to begin with he could have inflicted blemishes on it.*

C. *But does he know which ones are going to go out the corral gate to be tithed [that he should blemish that one in particular]? And if you say, he brings out that animal as the tenth and blemishes it, does not the All-Merciful say, "He shall not examine whether it be good or bad" (Lev. 27:33)?*

D. *If he had wanted, he could have made blemishes on the whole herd.*

I.1 explains the principle of the Mishnah's rule.

5:5C-G

C. A firstling, the eye of which is blinded,

D. the hoof of which is cut off,

E. the hind-leg of which is broken —

F. lo, this is slaughtered on the advice of three members of the assembly [M. Zeb. 3:2].

G. R. Yosé says, "Even if there are twenty-three there, he is to be slaughtered only on the advice of an expert."

I.1 A. *Both R. Simlai and R. Judah Nesiah in the name of R. Joshua b. Levi said — and others say, both R. Simlai and R. Joshua b. Levi in the name of R. Judah Nesiah said, "Overseas, permitting a firstling [as blemished and hence edible] is done by three members of the assembly."*

B. *Said Raba, "This is so even in the case of a blemish that is blatant."*

C. *What does he propose to tell us that we didn't already know? We have learned in the Mishnah: A firstling, the eye of which is blinded, the hoof of which is cut off, the hind-leg of which is broken — lo, this is slaughtered on the advice of three members of the assembly!*

D. *If I had to depend on the Mishnah's rule alone, I might have thought that blemishes that are not blatant are also going to be permitted overseas, and the reason that the Mishnah speaks of blatant ones is only to show the extent of R. Yosé's insistence that an expert is required. So we are informed that that is not the operative consideration.*

I.2. A. Said R. Judah said R. Jeremiah bar Abba, — perhaps in the name of Rab or perhaps in the name of Samuel: “In a place in which there is no expert, three ordinary men may permit the slaughter of a firstling by reason of blemishes.”

B. *What does he propose to tell us that we didn't already know? We have learned in the Mishnah: lo, this is slaughtered on the advice of three members of the assembly!*

C. *If I had to depend on the Mishnah's rule alone, I might have thought that is available [three ordinary men may release the firstling]. So we are informed that it is in particular in a place in which there is no expert that the rule applies, but where there is an expert, that is not the case.*

I.3. A. Said R. Hiyya bar Amram, “In a place in which there is no expert, three ordinary men may permit the slaughter of a firstling by reason of blemishes. In a place in which there is no sage, three ordinary men may release vows.”

B. “In a place in which there is no expert, three ordinary men may permit the slaughter of a firstling by reason of blemishes:” — **[37A]** *this serves to exclude the position of R. Yosé [Even if there are twenty-three there, he is to be slaughtered only on the advice of an expert].*

C. “In a place in which there is no sage, three ordinary men may release vows:” *this serves to exclude the position of R. Judah, for it has been taught on Tannaite authority:*

D. Releasing vows requires the judgment of three men. R. Judah says, “One of them must be a sage.”

E. “In a place in which there is no sage:” *like whom, for instance?*

F. *Said R. Nahman, “Like me.”*

G. “R. Judah says, ‘One of them must be a sage:’” *does it follow that the others may be of any sort at all?*

H. *Said Rabina, “They must be of the sort who will understand when the rules and regulations are explained to them.”*

II.1 A. R. Yosé says, “Even if there are twenty-three there, he is to be slaughtered only on the advice of an expert:”

- B. Said R. Hananel said Rab, “The law does not accord with the position of R. Yosé.”
- C. *So what else is new!* Where you have an individual as against the anonymous majority, the law always follows the anonymous majority!
- D. *What might you have supposed in this case? In the case of this authority, he has a good reason for his ruling [and therefore we should accept it]? So we are informed that that is not the case.*
- E. *You may infer this ruling of R. Hananel from the fact that the former ruling [Judah’s provided by Jeremiah] was stated in the name of Samuel; had it been in the name of Rab, why repeat it?* [Miller & Simon: saying in the name of Rab that the law is not in accord with the ruling of Yosé, Hananel indicates that three persons are required, and therefore if the former statement had been reported in the name of Rab, there would be two similar rulings by the same authority; hence we can solve the doubt whether Jeremiah reported in the name of Rab or Samuel; it must have been in the name of Samuel.]
- F. *One derived by implication, the other was explicitly stated [and both can have been Rab’s.]*

I.1 amplifies the Mishnah’s rule by accommodating it to the circumstances of the Diaspora. No. 2, 3 go through the same process. II.1 provides a familiar gloss.

5:6

- A. **He who slaughters the firstling and sold it, and it becomes known that he did not show it [to an expert] —**
- B. **that which they [the purchasers] have eaten, they have eaten.**
- C. **And he returns to them the cost [of the meat].**
- D. **And [as to] what they have not eaten —**
- E. **the meat is to be buried.**
- F. **And he returns to them the cost [what they paid for it]..**
- G. **And so: He who slaughters a cow and sold it and it becomes known that it is terefah —**
- H. **What they have eaten, they have eaten.**
- I. **And [as a penalty] he returns to them the cost.**
- J. **And [as to] what they have not eaten —**
- K. **they return the meat.**
- L. **And he returns their money.**

M. [If] they sold it to gentiles or tossed it to the dogs, they return to him the value of the terefah [meat, which is cheap, and he repays the difference between what they paid and what they received].

I.1 A. *Our rabbis have taught on Tannaite authority:*

- B. He who sells meat to his fellow and it turns out to be the meat of an unblemished firstling,
- C. produce and it turns out to have been liable to tithing but wholly untithed,
- D. wine and it turns out to have been libation wine —
- E. what they have eaten they have eaten, and he returns the money.
- F. R. Simeon b. Eleazar says, “If they turned out to be things that are repulsive, he has to return the money to them [for they got nothing out of what they ate after learning it was repulsive], but if it was something that is not repulsive to people, then he may deduct the value of what they have consumed.”
- G. And what are things that people find repulsive? Carrion, terefah-meat, prohibited animals, dead creeping things.
- H. And what are things that people do not find repulsive? Meat from firstlings, produce liable to tithing that has not been tithed, and libation-wine.
- I. As to a firstling, *let the buyer not say to the seller, “What loss did I cause you anyhow [that I should pay at all]? [If you had the animal, you still would have had to bury it, since it was slaughtered without a blemish.]”*
- J. *No, the law covers a case in which he sold them the meat from the place where the blemish was located, and he then can claim, “If you had not eaten it, I could have shown it to a sage, and he might have permitted the beast,” in accord with R. Judah [He who slaughters a firstling and then shows its blemish to an expert — R. Judah permits (M. 4:3A-B)].*
- K. As to produce liable to tithing that has not been tithed: *“I might have properly separated the required tithes and eaten the produce.”*
- L. As to libation-wine: it might have been made available for benefit through neutralization, in accord with the ruling of Rabban Simeon b. Gamaliel, *for we have learned in the Mishnah: Libation wine that fell into a vat — all of it is prohibited for any sort of benefit whatever. Rabban Simeon b. Gamaliel says, “He may sell the whole of it to a gentile, keeping the proceeds except for the cost of the libation wine that is mixed into the lot” [M. A. Z. 5:10].*

I.1 commences with a complement on Tannaite authority, and proceeds to gloss its several parts.