

V.

BAVLI TEMURAH CHAPTER FIVE

FOLIOS 24B-27B

5:1

- A. How do they [legitimately] practice deception in connection with the firstling [thereby evading the law and using the animal for another sacrifice which one owes]?
- B. [Concerning] a beast which had not given birth which was pregnant, one says, “What is in the womb of this, if it is male, is a burnt offering.”
- C. [If] it gave birth to a male, it is to be offered as a burnt offering,
- D. “And if it is female, it is sacrifices of peace offerings.”
- E. [If] it gave birth to a female, it is to be offered as peace offerings.
- F. If one says, “If it is male, it is a burnt offering. If it is female, it is sacrifices of peace offerings,”
- G. [if] it gave birth to a male and a female, the male is to be offered as a burnt offering, and the female is to be offered as peace offerings.

5:2

- A. [If in the case of B/F] it gave birth to two males, one of them is to be offered as a burnt offering. And the second is to be sold to those who owe a burnt offering. But its proceeds are unconsecrated.
 - B. [If in the case of C/F] it gave birth to two females, one of them is to be offered as peace offerings, and the second is to be sold to those who owe peace offerings. But its proceeds are unconsecrated.
 - C. [If] it gave birth to an offspring whose sexual traits cannot be discerned or to one bearing the traits of both sexes —
 - D. Rabban Simeon b. Gamaliel says, “Sanctity does not apply to them [at all].”
- I.1** A. Said R. Judah, “It is permitted to inflict a disqualifying blemish on a firstling before it comes forth into the air.”
- B. *We have learned in the Mishnah:* How do they [legitimately] practice deception in connection with the firstling [thereby evading the law and using the animal for another sacrifice which one owes]? [Concerning] a beast

which had not given birth which was pregnant, one says, “What is in the womb of this, if it is male, is a burnt offering.”

- C. *That is to say, a burnt offering, but not a peace offering, and yet you say that one can release [the firstling] entirely from its condition of consecration? [Miller: since it is burnt wholly on the altar, it is permissible to change the holiness of a firstling to this status. But since the state of consecration is of a less stringent character, it is forbidden to practice deception so as to change the holiness of a firstling. How much more so then must it be forbidden to maim a firstling deliberately and so deprive it entirely of the standing of consecration!]*
- D. *R. Judah can say to you, “That statement [of the Tannaite authority] refers to the time when the house of the sanctuary was standing, while my statement refers to this time, in which, in any case, a firstling is not fit to be offered.”*
- E. *Well, now, if you refer to the present age, then what purpose can there be in your statement?*
- F. *What might you have supposed? That we should make a decree covering the case in which the greater part of the head emerges [at which point the beast is deemed holy], and then the farmer makes a blemish in it? [Miller: Judah therefore informs us that we do not prohibit inflicting a blemish, since he will be careful to cause the blemish only when a small part of the head has emerged but before the greater part comes forth.]*
- G. *But might I maintain that that is, in fact, the rule [and we do make such a decree]?*
- H. *Even so, this is the better rule, since otherwise the farmer may end up shearing and working with the beast.*

II.1 A. “And if it is female, it is sacrifices of peace offerings.”

- B. *But will the female offspring be deemed consecrated as a firstling anyhow? [Obviously not! Only the male enters the status of a firstling.]*
- C. *This latter clause refers to an animal that has been consecrated [a sin offering, and became pregnant; the farmer wants to avoid having the offspring condemned to death. He can change the status of the embryo and dedicate it for another purpose, since the offspring is consecrated only at birth, but not prior; now the offspring is peace offerings, and these can be eaten by the farmer and his family.]*

III.1 A. [If in the case of B/F] it gave birth to two males, one of them is to be offered as a burnt offering. And the second is to be sold to those who owe a burnt offering. But its proceeds are unconsecrated:

- B. *The question was stated: if the animal was consecrated, then let the offspring that was consecrated as a burnt offering serve as a burnt offering, and the other offspring retain the condition of consecration of the mother [so why is the second male sold for a burnt offering]?*
- C. *The latter clause [the birth of two males] speaks of an animal that was unconsecrated altogether.*

IV.1 A. [If] it gave birth to an offspring whose sexual traits cannot be discerned or to one bearing the traits of both sexes — Rabban Simeon b. Gamaliel says, “Sanctity does not apply to them [at all]:”

- B. **[25A]** *Why is it the case that sanctity does not apply to them [at all]?*
- C. *R. Simeon b. Gamaliel takes the position, “The offspring of Holy Things become consecrated only at the moment of their birth.” For if you maintain that they are consecrated while yet in the mother’s womb, then why is it that sanctity does not apply to them [at all]? Lo, they should be subject to the status as to consecration that pertains to their mother. Rather, one must conclude, “The offspring of Holy Things become consecrated only at the moment of their birth.”*
- D. *And the following Tannaite authority takes the view that the offspring of Holy Things are consecrated right from the womb.*
- E. *For our rabbis have taught on Tannaite authority:*
- F. [With reference to, “But a firstling of animals, which as a firstling belongs to the Lord, no man may dedicate; whether ox or sheep, it is the Lord’s; and if it is an unclean animal, then he shall buy it back at your valuation and add a fifth; or if it is not redeemed, it shall be sold at your valuation” (Lev. 27:26-27),] if Scripture had not said, “a firstling of animals, which as a firstling belongs to the Lord, no man may dedicate,” I might have said that the firstborn of a human being is not supposed to make dedications. So the verse adds, “no man shall dedicate it,” meaning, the firstling animal — it he must not consecrate [for some other purpose of consecration], but the firstborn of man may indeed consecrate [whatever he likes].
- G. Still, I might have said, “He may not consecrate a firstling for some other consecrated purpose, but others may do so.”
- H. The verse states, “But a firstling of animals” — it is with beasts that I am occupied here.
- I. Might one suppose that while the firstling is in the womb, one may not consecrate it for some other purpose than that of the firstling?
- J. Scripture is explicit, “which as a firstling belongs to the Lord,” meaning, once the animal has been born as a firstling to the Lord, you may not consecrate it for any other purpose, but you may consecrate it for some other purpose when it is in the womb.
- K. Might one suppose that the same rule applies to the offspring of all other Holy Things?
- L. Scripture states, “...but...,” which serves as a partitive [applying the law only to the matter at hand].
- M. *Thus, it is clear, the Tannaite authority before us takes the view, “The offspring of Holy Things are consecrated right from the womb.*

The various simple exegetical initiatives now give way to a speculative question that builds on the facts of the Mishnah-rule.

- I.2.** A. Said R. Amram to R. Sheshet, “If when the greater part of a firstling has come forth, one says, ‘It is a burnt offering,’ is it a burnt offering or a firstling? *Is it a burnt offering, because as each part came forth from the womb is wholly burnt on the offering, or is it a firstling, in that every portion that came forth from the womb retains its initial status as to consecration?*”
- B. *Another version:*

- C. *“Is it a burnt offering, since this is a more stringent form of consecration and therefore takes effect, or is it a firstling, since its status as to consecration takes effect from the womb?”*
- D. *He said to him, “What is it that you are asking? Is this not the same as the question of Ilfa:*
- E. *“If one has said concerning gleanings of a field that are owing to the poor at the point that the greater part of the produce has been plucked [so the gleanings now are in the stated classification and should belong to the poor], “Let it be ownerless property,” is it in the status of gleanings of the field owing to the poor, or is it in the status of ownerless property?*
- F. *“Is it in the status of gleanings of the field owing to the poor, for the sanctification of that produce is in the hand of Heaven? Or perhaps is it in the status of ownerless property, since both poor and rich have the right of acquiring possession of that produce anyhow?”*
- G. *“And in this connection Abbayye explained, ‘What question is raised here [since the more important classification of consecration pertains to the gleanings of the field owing to the poor (Miller)]? As between the teaching of the master and the teaching of the disciple, which teaching do we obey?’ [Clearly, God has assigned the produce to the category of gleanings, and that is what it is.] Here too, to whom do we listen? [Clearly, the status of the beast remains that of the firstling.]”*
 I.1 utilizes, but does not amplify, our Mishnah-paragraph. II.1 and III.1 by contrast clarify an important question raised by the formulation before us. IV.1 raises a question important to our Mishnah, but in doing so, it shows the premise on which our rule rests and permits us to move from the case to an encompassing principle, namely, the point at which the firstling becomes consecrated, and, by extension, the still more abstract and encompassing question of the point at which we deem the potential to be actual. No. 2 depends on the upshot of No. 1 but of course is a free-standing item.

5:3

- A. **“He who says, ‘The offspring of this beast will be a burnt offering, and it [itself] is peace offerings’ — his words are confirmed.**
- B. **“[He who says], ‘It is peace offerings and its offspring is a burnt offering,’ lo, this is the offspring of peace offerings [and in the same status (M. 3:1A)],” the words of R. Meir.**
- C. **Said R. Yosé, “If to begin with he intended thus, since it is not possible to designate [them] by two names at once, his words are confirmed.**
- D. **“But if after he said, ‘Lo, this is peace offerings,’ he changed his mind and said, ‘his offspring is a burnt offering,’ lo, this is the offspring of peace offerings.”**

A thesis is now tested against the facts of the Mishnah-rule at hand. The basic issue, running through the disputes, is how we interpret a sequence of declarations affecting the status of the beast.

- I.1** A. Said R. Yohanan, “[If] one has designated as a sin offering a pregnant beast and it gave birth, if he wanted, with the beast itself he attains atonement, if he wants,

with its offspring he attains atonement.” [Both are in the status of a sin-offering, the offspring bearing the status of the mother.]

- B. *What is the operative consideration here?*
- C. R. Yohanan takes the view that if one has omitted reference to the offspring [Miller: where he says that the offspring shall be unconsecrated, but the mother a sin offering] it is a valid action [Miller: therefore even where he did not omit reference to the embryo, that is, did not declare it to be unconsecrated, its holiness is still not derived through its mother], and, further, that the embryo is not deemed equivalent to the mother's thigh. So the farmer is as though he had designated two beasts to serve as sin offerings, for security's sake. If he wants, he attains atonement with one, if he wants, he attains atonement with its fellow.
- D. R. Eleazar objected on the basis of the following: **“[He who says], ‘It is peace offerings and its offspring is a burnt offering,’ lo, this is the offspring of peace offerings [and in the same status (M. 3:1A)],” the words of R. Meir. Now if you should imagine that** if one has omitted reference to the offspring, it is a valid action, then rather than saying, **lo, this is the offspring of peace offerings**, what the passage should say is simply, ‘lo, this is itself peace offerings.’”
- E. *Said R. Tabela, “This is an exception, for Rab said to the Tannaite authority, ‘Repeat, ‘lo, this is itself peace offerings.’”*
- F. *An objection was raised:* He who says to his slave-girl, “Lo, while you are a slave-girl, your offspring will be free,” — if she was pregnant, she acquires freedom in behalf of the offspring.
- G. *Now if, to be sure, you take the position that,* if one has omitted reference to the offspring, it is not a valid action, and, further, that the embryo is not deemed equivalent to the mother's thigh, it is on that account that she acquires freedom in behalf of the offspring, so the owner is in the position of having freed a half of his slave [the slave acquires possession of that half, and here the woman secures the freedom of her offspring], *and who is the authority? It is R. Meir, in accord with that which we have learned on Tannaite authority:* **[25B]** He who frees half his slave — the slave goes forth to freedom, since his letter of manumission and his right to effect possession [thereof] come at one and the same time.
- H. *But if you take the position that,* if one has omitted reference to the offspring, it is a valid action, and, further, that the embryo is not deemed equivalent to the mother's thigh, *then on what basis* does the woman acquire freedom in behalf of the offspring? *Has it not been taught on Tannaite authority:* We approve the position that a slave can receive a letter of manumission in behalf of his fellow from the hand of one who is not his own master, but not from the hand of one who is his own master?
- I. *So is it not to be inferred that* if one has omitted reference to the offspring, it is not a valid action, *and is that not a refutation of the position of R. Yohanan?*
- J. *It is indeed a refutation of the position of R. Yohanan.*
- I.2.** A. *May we say that the question of whether or not, if one has omitted reference to the offspring, it is a valid action represents a dispute among Tannaite authorities? For it has been taught on Tannaite authority:*

- B. “He who says to his slave-girl, ‘Lo, you are free, but your offspring is a slave,’ — her offspring is in her own status,” the words of R. Yosé the Galilean.
- C. And sages say, “His statement is valid, since it is said, ‘The wife and her children shall be her master’s’ (Exo. 21: 4).”
- D. *Now how is the verse of Scripture to be read in support of the position of rabbis [since it seems to confirm the view of Yosé]?*
- E. *Said Raba, “The verse of Scripture serves, in fact, to sustain the view of R. Yosé the Galilean, who has said, ‘her offspring is in her own status,’ since it is said, ‘The wife and her children shall be her master’s’ (Exo. 21: 4). When the woman belongs to her master, the offspring belongs to her master.”*
- F. *Now is this not what is at issue between them: R. Yosé takes the view that if one has omitted reference to the offspring, it is not a valid action, while rabbis maintain that if one has omitted reference to the offspring, it is a valid action?*
- G. *R. Yohanan will say to you, “All authorities concur that if one has omitted reference to the offspring, it is a valid action, but here the operative consideration is that Scripture has said, ‘The wife and her children shall be her master’s’ (Exo. 21: 4).”*
- H. *But certainly we must say that the question of whether or not, if one has omitted reference to the offspring, it is a valid action represents a dispute among the following Tannaite authorities. For it has been taught on Tannaite authority:*
- I. *He who slaughters a sin-offering and found in it an embryo four months old that is alive — one Tannaite authority states, “It is to be eaten only by male priests, and it is to be eaten only within the Temple veils, and it is to be eaten only on a single day.” And another Tannaite authority states, “It may be eaten by anybody, and it may be eaten anywhere, and it may not be eaten in the Temple court.”*
- J. *Is this not a dispute among Tannaite authorities, and the initial authority takes the view that if one has omitted reference to the offspring, it is not a valid action, while the other maintains that if one has omitted reference to the offspring, it is a valid action?*
- K. *R. Yohanan will say to you, “All parties concur that if one has omitted reference to the offspring, it is a valid action, but these Tannaite authorities differ on the following matter: one master takes the view that the offspring of Holy Things are consecrated as of birth, and the other authority holds that the offspring of Holy Things are consecrated even in the womb. And if you prefer, I shall explain in this way: there is no contradiction at all, but one of the versions deals with a case in which one consecrates a beast that then becomes pregnant, while the other deals with a case in which one dedicates it when it is already pregnant. [In the latter case the beast is consecrated at birth.]”*
- I.3.** A. To this [refutation of Yohanan, I:1.F-J, deriving from the case, “He who says to his slave-girl, ‘Lo, while you are a slave-girl, your offspring will be free,’ — if she was pregnant, she acquires freedom in behalf of the offspring,” from which it is to be inferred that if one has omitted reference to the offspring, it is not a valid action, and that refutes the position of R. Yohanan] *Raba objected, “How do we know that the operative consideration of R. Yohanan is the principle, if one has omitted reference to the offspring, it is a valid action? Perhaps this is the*

operative consideration in our case for the position of R. Yohanan is as follows: A person can gain atonement with the added value of a consecrated animal. [Miller: although its sanctity is derived from the mother, the offspring of a sin offering is not condemned to die, since one may obtain atonement with the added value of a consecrated animal, as here, where the offspring is an increment to the consecrated animal; so the law that the offspring of a sin offering is put to death applies only where the farmer accepts atonement only through the mother].”

- B. *Said to him R. Hamnuna, “R. Eleazar, a disciple of R. Yohanan, was in session before R. Yohanan, and the master did not give him that answer, and yet you maintain that the operative consideration in our case for the position of R. Yohanan is as follows: A person can gain atonement with the added value of a consecrated animal?” [Miller: if the reason of Yohanan’s ruling was as you say, why did not Yohanan reply that his reason was that a person can gain atonement with the added value of a consecrated animal?]*

II.1 A. “But if after he said, ‘Lo, this is peace offerings,’ he changed his mind and said, ‘her offspring is a burnt offering,’ lo, this [nonetheless] is the offspring of peace offerings.”

- B. *This is self-evident, for the offspring falls into the classification of the offspring of a peace offering. For can someone change his mind whenever he wants? [Miller: surely one cannot be allowed to change his dedications at will.]*
- C. *Said R. Pappa, “The statement at hand is required only for a case in which the declaration was made without interruption. What might you have said? A statement made in sequence without interruption is deemed a single statement, and the man was simply muttering as he reflected. So we are taught that that is not the rule.”*

The issue introduced as the principle of I.1 is fully worked out in three closely related compositions, No. 2 being wholly worked out in its own terms and joined to the others, fore and aft, for very solid reason. The real principle under discussion, however, is Yohanan’s conception that if one has omitted reference to the offspring, it is a valid action. He treats the offspring as distinct from the mother. The entire composite is beautifully articulated. II.1 provides a minor clarification.

5:4

- A. “[He who with peace offerings and burnt offerings before him says], ‘Lo, this [unconsecrated beast] is the substitute of a burnt offering and the substitute of peace offerings,’ lo, this is the substitute of a burnt offering,” the words of R. Meir.
- B. Said R. Yosé, “If to begin with he intended thus, since it is not possible to designate [them] by two names at once, his words are confirmed.
- C. “But if after he said, ‘It is the substitute of a burnt offering,’ he changed his mind and said, ‘It is the substitute of peace offerings,’ lo, this is the substitute of a burnt offering.”

- I.1 A. [26A]** Said R. Isaac b. R. Yosé said R. Yohanan, “All parties concur that if he said, ‘Let this take effect’ [that is, the exchange of the secular beast for the beast designated as a burnt offering], and then he said, ‘Let this take effect’ [the

exchange for the peace offering], all parties maintain that the language that he has stated to begin with is the language that applies. If he said, 'Let this take effect only if that takes effect,' *both beasts are deemed consecrated*.

- B. "The dispute concerns only that case given by our Mishnah, in which one has said, **'Lo, this [unconsecrated beast] is the substitute of a burnt offering and the substitute of peace offerings.'** Here R. Meir takes the view that since he ought to have said, 'the exchange of a burnt offering and peace offerings,' but he has said, 'the exchange of a burnt offering, the exchange of peace offerings,' it is as though he had said, 'Let this take effect' [that is, the exchange of the secular beast for the beast designated as a burnt offering], and then he said, 'Let this take effect' [the exchange for the peace offering]. And R. Yosé takes the view that if he had said, 'the exchange of a burnt offering and peace offerings,' I should have concluded that while the beast is indeed consecrated, it is not offered up [because of the contradictory rites that each of the designations would require]. So we are informed [that his words are confirmed] [Miller: since he really intended that both should be an exchange, this being on a par with a case where one says, This should not take effect without the other taking effect]."

I.2. A. *Our rabbis have taught on Tannaite authority:*

- B. "He who says, **'This beast — half of it is consecrated as a burnt offering and half of it is peace offerings,'** and he effected an act of substitution in its regard, the whole of it is offered as a burnt offering," the words of R. Meir.
- C. And sages say, **"It is put out to pasture until it is blemished, and then sold, and with half of the proceeds, one brings the exchange for a burnt offering and with half of the proceeds the exchange for peace offerings."**
- D. Said R. Yosé, **"If that was his intention to begin with, since it is not possible to express two distinct classifications of offering at one and the same time, his statement is confirmed"** [Compare T. [Tem. 3:8](#)].
- E. *But then the position of R. Yosé is the same as that of rabbis* [C].
- F. *The whole of the passage is as taught on Tannaite authority by R. Yosé.*
- G. *There is another Tannaite formulation:*
- H. **"This beast — half of it will be a burnt offering and half of it a sin offering" — the whole of it is to be offered as a burnt offering,** the words of R. Meir.
- I. R. Yosé says, "It is left to die" [following the second of the two statements, and treating the beast as a sin offering the owner of which has attained atonement through some other animal, since the owner is not required to bring a sin offering].
- J. But both parties concur that he who says, "Half of it is a sin offering and half of it a burnt offering" — the beast is left to die.
- K. *Who is the one who concurs? It is R. Meir.*
- L. *That is self-evident* [as at I, the owner does not require a sin offering; that was the first language used, so the beast is a sin offering that is unneeded and so is left to die]!
- M. *What might you have supposed? Had we not been so informed, I should have concluded that the operative consideration of R. Meir is not on the grounds that the language that is first expressed is the operative language, but this, I should have supposed, was the reasoning of R. Meir: a sin offering that is subject to a*

confusion of statements in respect to its status as to consecration nonetheless is offered [Miller: that is, where two distinct acts of consecration are confused in a single beast, although both take effect on it, since there is joined in the animal a dedication that makes the beast fit to be offered, we ignore the declaration of consecration that makes the beast unfit to be offered]. *And, further, I might have thought that even if one has said, "half of it is a sin offering," and then he said, "half of it is a burnt offering," it nonetheless will be offered. So we are informed that that is not the case.*

- N. *There is another Tannaite formulation:*
- O. [If] one said, "As to this beast, half of it is a burnt offering and half of it is peace offerings," while the beast is deemed consecrated, it is not offered up. Still, it has the power to effect an act of substitution [with a secular beast with which it is exchanged], and the beast that is exchanged for it is in the same status.
- P. *Now who is the authority behind this Tannaite rule?*
- Q. *But it is perfectly self-evident that from his perspective, it is holy but is not offered up!*
- R. *What was necessary, in his view, was to state the rule governing the beast that was exchanged for it. For what might you have supposed? Granting that it is not offered up, let the beast offered in exchange for it be offered up. So we are informed that that is not the case.*
- S. *What differentiates the beast itself, that it is not offered up? Because it is a case in which you have consecration that is held in suspense [since there are two distinct classifications of consecration that have been invoked in connection with this beast]. And the beast that is exchanged for it also is a case in which you have consecration that is held in suspense.*

I.3. A. Said R. Yohanan, "In the case of a beast that belongs to two partners, if one of them consecrated his own half, and then he went and bought the half belonging to the other party and consecrated that part, it is indeed deemed consecrated, but it is not offered up. Still, it has the power to effect an act of substitution [with a secular beast with which it is exchanged], and the beast that is exchanged for it **[26B]** is in the same status.

- B. *Three rules are to be derived from this ruling.*
- C. One may deduce, first of all, that a beast that is consecrated can be removed forever from sacred use [and even though later on the beast became fit to be offered, it cannot be offered, since it has earlier been suspended from use on the altar for some reason].
- D. And one may deduce, second, that the consecration of animals that have been dedicated solely as to their value [and not as to their person] can be removed.
- E. And you may deduce, third, that if to begin with [at the point of its consecration] an animal is removed from sacred use, then the suspension remains valid forever.

I.4. A. Said Abbaye, "All parties [inclusive of Yosé] concur that in a case in which one has said, 'Half of it will be a burnt offering and half of it tithe,' the opinion of all authorities is that it is a burnt offering.

- B. "In a case in which one has said, 'Half of the beast will be a substitute and half of it will be tithe, what is the disposition of the beast? Is the animal offered as a

substitute, since the rule of substitution applies to all consecrations, or is it offered as an animal that has been declared tithe, since the beast before the tenth and the one after the tenth are consecrated?"

C. *The question stands.*

The issue is not particular to our case. It concerns how we interpret a confused formulation. The amplification of the Mishnah at I.1 shows with great clarity what is at stake. No. 2 then goes over parallel cases, drawn from Tannaite materials, and asks which authorities, in line with positions taken in the Mishnah, stand behind the several rulings. No. 3 is introduced, which is free-standing and does not seem to me to clarify the foregoing, is introduced because its case, from which its independent rules derive, runs parallel to the problem of the cases before us, that is, an ambiguous declaration on the status of a beast, this time, the ambiguity deriving from not what is said but the right of one of the partners to declare the status of the entire beast. No. 4, by contrast, is clearly related to Nos. 1, 2.

5:5

A. **[He who says], "Lo, this is instead of that," "...the substitute of that" "... the exchange of that" — lo, this is a substitute.**

B. **[He who says, "Lo,] this is unconsecrated through that," — it is not a substitute.**

C. **And if it was a blemished consecrated animal, it goes forth for unconsecrated purposes.**

D. **But still one must make good its full value.**

The language of substitution is precise and is here spelled out. We immediately examine the implications of the rule.

I.1 A. *Does this then contain the implication that when we say "instead," we mean, "taking the place of"?*

B. *An objection was raised from the following:*

C. *If in respect to things that have been consecrated for the upkeep of the Temple house, one has said, [1] "in exchange for that," "in substitution for that," he has said nothing, [but if he said,] [2] "instead of that," "unconsecrated through this," his words are confirmed.*

D. *Now if you maintain that when we say "instead," we mean, "taking the place of," how can we differentiate the first from the second rule [at C]?*

E. *Said Abbaye, "The word 'instead' bears the meaning of 'take the place of' and it also bears the sense of 'redeeming.' It bears the sense of 'take the place of,' as it is written, [27A] 'But if the bright spot stay in its place' (Lev. 13:23). The word 'instead' bears the meaning of 'redeeming,' as it is written, 'In redemption of brass I will bring gold' (Isa. 60:17). Therefore when we speak of things that have been consecrated for use on the altar, in which case the law of exchange, the sense of the word is, 'take the place of.' And in regard to that which is consecrated for the upkeep of the house, in which case the law of substitution does not apply, the sense of 'redeem' is operative."*

F. *Said Raba, "Sometimes even with reference to things that have been consecrated for the altar, the word bears the sense of redeeming, for example the following:*

- G. **“And if it was a blemished consecrated animal, it goes forth for unconsecrated purposes.** [Miller: Raba explains as referring also to the first clause in the Mishnah the language, and if the consecrated animal was blemished, it becomes unconsecrated.]”
- H. *Said R. Ashi, “Even with reference to a blemished animal, both the sense of the word as ‘redeeming’ can be found, and the sense of ‘in place of’ may be found.*
- I. *“If he placed his hand on a consecrated but blemished animal [and says, ‘This animal that is unconsecrated shall be instead of this dedicated animal’], the animal becomes unconsecrated, but if he placed his hand on an animal that was unconsecrated, it becomes consecrated.”*
- I.2.** A. *Abbaye raised the following question: “If before the farmer were two consecrated, blemished beasts, and two unconsecrated, unblemished beasts, and he said, ‘Lo, these are in place of those,’ what is the law? Did he use that language to make his statement so as to put the latter in the place of the former [as an act of substitution], in which case he is flogged, or perhaps [the intent was only to redeem the former with the latter and he is not flogged] since in any circumstance in which there is an act that is permitted, someone will not dismiss the act that is permitted and commit an act that is prohibited [so in the present case, the language can only mean that he intended to redeem the blemished, consecrated beasts with the unblemished, unconsecrated ones]?”*
- B. *“And if you take the view that in any circumstance in which there is an act that is permitted, someone will not dismiss the act that is permitted and commit an act that is prohibited, then, [here is another conundrum:] If before the farmer were two consecrated beasts, and one of them was blemished, and two unconsecrated beasts, one of which was blemished, and he said, ‘Lo, these are in place of those, what is the law? Was his intent to say that the unblemished one is in place of the unblemished one, so as to substitute the one for the other, and the blemished is in place of the blemished, so as to redeem [the one by the proceeds of the other]?’ Or perhaps was his intent to indicate that the unblemished unconsecrated beast should be instead of the blemished consecrated beast, and the unconsecrated, blemished beast in place of the unblemished, consecrated beasts, on which count he will be flogged for two violations?”*
- C. *“And if you take the view that in any circumstance in which there is an act that is permitted, someone will not dismiss the act that is permitted and commit an act that is prohibited, so that the intent was to redeem the one with the other and there would be no flogging, then, [here is another conundrum:] if there were before him three beasts that were consecrated, one of them blemished, and three unconsecrated unblemished beasts, and he said, ‘Lo, these are in place of those,’ do we rule that the unblemished ones are in place of the unblemished ones, so as to effect an exchange, with the result that when he says the unblemished animal that is unconsecrated will be in place of the blemished one, the meaning also is that they are to be substituted? Or perhaps here too, we invoke the principle that in any circumstance in which there is an act that is permitted, someone will not dismiss the act that is permitted and commit an act that is prohibited? The consequence then is that in that last case, his intention was also to redeem [where*

he says 'the unblemished animal will be instead of the blemished dedicated animal' he means to redeem the latter with the former]?

- D. *"And if you wish to say here also that here too, since the man is not subject to the presumption that he will violate a prohibition, he will certainly not dismiss a deed that is licit so as to perform a deed that is illicit?"*
- E. *R. Ashi raised the question, "If before the farmer were four beasts that were consecrated, one of them blemished, and four beasts that were unconsecrated, and one said, 'Lo, these are in stead of those,' what is the law? Here, since the man certainly may be presumed to have violated the law, he is flogged on four counts, or perhaps, even though he is presumed to have violated the law, still n any circumstance in which there is an act that is permitted, someone will not dismiss the act that is permitted and commit an act that is prohibited, on which account the last animal was meant to be redeemed?"*
- F. *The question stands.*

II.1 A. And if it was a blemished consecrated animal, it goes forth for unconsecrated purposes. But still one must make good its full value.

- B. Said R. Yohanan, "It is as a matter of the law of the Torah that **it goes forth for unconsecrated purposes**. But it is only on the authority of scribes that **still one must make good its full value**." [Miller: since Scripture says, "You shall not wrong one another," (Lev. 25:14), implying, one another but not what is consecrated, the laws of overreaching do not apply to what is consecrated.]
- C. R. Simeon b. Laqish said, "It is even a matter of the law of the Torah that **still one must make good its full value**."
- D. *What is at issue between them?*
- E. *If we say that at issue is the matter of overreaching [where the difference in the value between the unconsecrated beast and the consecrated beast must be returned, even though the overcharge favoring the consecrated side was only by a sixth], then will R. Simeon b. Laqish maintain in such a case that one must make up the value of the consecrated animal as a matter of a ruling of the Torah? But have we not learned in the Mishnah:*
- F. **These are matters that are not subject to a claim of fraud on account of overcharge: slaves, bills of indebtedness that are discounted and sold, real estate, and that which has been consecrated [M. B.M. 4:9A-B]?**
- G. *Then shall we say that reference is made to the nullification of the sale [where overreaching is more than a sixth off of true value]? Then in such a case will R. Yohanan maintain that it is only by reason of the ruling of sages that one must make up the value of what has been consecrated? [27B] But has not R. Jeremiah said with respect to real estate that is not consecrated, and R. Jonah said with reference to what is consecrated, both in the name of R. Yohanan, while the law of overreaching does not apply, the law of the nullification of the sale does apply [so that if there is overreaching to more than a sixth, the sale is nullified].*
- H. *In point of fact what is under discussion indeed is the nullification of a sale [Miller: where overreaching of what had been consecrated was more than a sixth], and the names to which attribution is made are to be reversed [so that Yohanan*

holds one has to make up the value by reason of the authority of the Torah, while Simeon b. Laqish says it is only by reason of the authority of sages].

- I. *But can you really say that the attributions are to be reversed? That poses no problem to him who maintains that at issue are things that have been consecrated, and all the more so does the rule pertain to real estate. But in the view of him who holds that [Yohanan] speaks only of real estate, but that the nullification of the sale does not apply to what has been consecrated, how can you make such a reversal [Miller: and maintain that Yohanan holds that the money must be made up to the value of the dedication by reason of the authority of the Torah, since now there will be a contradiction between the two opinions assigned to Yohanan]?*
- J. Said R. Jeremiah, "They are not to be reversed"
- K. *May one say that at issue between R. Jonah and R. Jeremiah is the statement of Samuel?*
- L. For Samuel has said, "If one has redeemed consecrated property that is valued at a maneh [a hundred sheqels] for property in the value of a perutah [penny], it is validly redeemed."
- M. *[May we then maintain that] R. Jonah would then reject the position of Samuel [since here we have fraud with reference to consecrated property and its redemption], while R. Jeremiah concurs?*
- N. *Lo, both authorities concur with the judgment of Samuel. R. Jonah maintains that when Samuel made that statement, it concerned a deed already done, but to begin with, such a procedure may not be followed, while R. Jeremiah takes the position that even to begin with one may do so.*
- O. *And if you prefer, I shall say that one need not reverse the names anyhow. And as to your objection drawn from the Mishnah-law, **These are matters that are not subject to a claim of fraud on account of overcharge: slaves, bills of indebtedness that are discounted and sold, real estate, and that which has been consecrated [M. B.M. 4:9A-B]**, this will accord with the view of R. Hisda.*
- P. For R. Hisda has said, "The sense of, '**These are matters that are not subject to a claim of fraud on account of overcharge**' is that in cases such as these a charge of even less than the amount that would constitute overreaching has still to be refunded."

III.1 A. [But still one must make good its full value:] Said Ulla, "[The law that the individual must repay to the sanctuary whatever loss is incurred in redeemed the beast, that is, **But still one must make good its full value**] speaks of a case in which only two people made the assessment of true value, but if three persons made the assessment, then even if later on a hundred people come and give a different assessment, one does not have to make up the difference."

- B. *Is that so? But has not R. Safra stated, "As to the principle that a hundred persons are equivalent to two, and two to one hundred, pertains to testimony, but as to making assessments of true value, we go by the opinions that are expressed [if it is in favor of the sanctuary], and, furthermore, if there were three against three, do we not follow the latter, since we always give preference to the sanctuary?"*

- C. *Ulla takes the view that the sense of the language, **But still one must make good its full value**, means, in accord with the authority of rabbis, and in applying any law that depends solely on the authority of rabbis, rabbis have taken the lenient position.*

The reason for the inclusion of I.1 is clear from 1.G. Otherwise the composition could have been deposited in any other passage of the Mishnah or anywhere else in the Talmud itself in which the issue of the meaning of the word at hand is raised. No. 2 then uses the case at hand to build a set of mental experiments that clarify a quite distinct principle, namely, “In any circumstance in which there is an act that is permitted, someone will not dismiss the act that is permitted and commit an act that is prohibited.” The clarification of our Mishnah-paragraph is not the focus. Along these same lines, it seems to me that II.1 introduces an issue that is hardly primary to the amplification of our Mishnah-paragraph. While the upshot is to clarify what is before us, the main point is to determine the level of the authority behind the rule of the Mishnah. III.1 continues the clarification of the principle of the Mishnah.

5:6

- A. [He who says,] “Lo, this is instead of a sin offering,” “... instead of a burnt offering,” — he has said nothing.
- B. [If he said], “...instead of this sin offering,” “...instead of this burnt offering” “...instead of a sin offering,” or “instead of a burnt offering, which I have in the house,” [if] he had them,
- C. his words are confirmed.
- D. If he said concerning an unclean beast or concerning a blemished beast, “Lo, these are a burnt offering” he has said nothing.
- E. [If he said], “Lo, these are for a burnt offering,” let them be sold, and let him bring a burnt offering with their proceeds.
- I.1** A. *Said R. Judah said Rab, “The Mishnah-paragraph does not accord with the opinion of R. Meir, for if it were R. Meir, lo, he has said, ‘People do not talk merely to babble.’” [Miller: Where, for instance, someone dedicated the value of a child less than a month old, he knows that there is no such fixed valuation for a child of that age, so he must have meant that it would be the value of a child of that age sold in the marketplace, for people do not make statements without meaning something. The same applies here too; he means the animal he has in the house.]*
- II.1** A. [If he said], “Lo, these are for a burnt offering,” let them be sold, and let him bring a burnt offering with their proceeds:
- B. *The operative consideration is that it is an unclean or a blemished animal, since such as these are unfit for the altar, and therefore they can be sold without their having a blemish.*
- C. *But if one had designated a female animal for a guilt offering or a burnt offering, it would have to be blemished before it could be sold [since beasts such as these can be offered as peace offerings].*

- D. Said R. Judah said Rab, “Our Mishnah-paragraph is not in accord with R. Simeon, for we have learned in the Mishnah: **He who sets aside a female beast as a guilt offering — [the beast] pastures until it is blemished, then it is to be sold, and [the owner] brings with its proceeds a guilt offering. If his guilt offering has been offered, then its proceeds fall [to the Temple treasury] as a freewill offering. R. Simeon says, “It is sold [even] without a blemish” [M 3:3].**

The clarification in both cases focuses upon identifying the authorities behind our Mishnah-paragraph and therefore the principle at stake in the law; there is no development.