

XI

THE STRUCTURE AND SYSTEM OF BABYLONIAN TALMUD BABA BATRA

Whether or not the Talmud of Babylonia is carefully organized in large-scale, recurrent structures and guided by a program that we may call systematic forms the principal question addressed by an academic commentary. The preceding chapters therefore have pointed toward the presentation set forth here. This same exercise pertains to all of the Bavli's thirty-seven tractates and is carried out in a uniform manner upon materials prepared in accord with consistent principles. Let us first consider the terms at hand and the issues that pertain.

By "structure" I mean, a clearly-articulated pattern that governs the location of fully-spelled out statements. By "system," I mean, a well-crafted and coherent set of ideas that explain the social order of the community addressed by the writers of a document, a social philosophy, a theory of the way of life, world view, and character of the social entity formed by a given social group. I see a collective, anonymous, and political document, such as the one before us, as a statement to, and about, the way in which people should organize their lives and govern their actions. At issue then in any document such as the remarkable one before us is simple: does this piece of writing present information or a program, facts to whom it may concern, or a philosophically and aesthetically cogent statement about how things should be?

The connection between structure and system is plain to see. From the way in which people consistently frame their thoughts, we move to the world that, in saying things one way rather than in some other, they wish to imagine the world in which they wish to live, to which they address these thoughts. For if the document exhibits structure and sets forth a system, then it is accessible to questions of rationality. We may ask about the statement that its framers or compilers wished to make by putting the document together as they did. But if we discern no structure and perceive no systematic inquiry or governing points of analysis, then all we find here is inert and miscellaneous information, facts but no propositions, arguments, viewpoints.

Now the Talmud commonly finds itself represented as lacking organization and exhibiting a certain episodic and notional character. That view moreover characterizes the reading and representation of the document by learned and experienced scholars, who have devoted their entire lives to Talmud study and exegesis. It must follow that upon the advocate of the contrary view — the one implicit in the representation of the document for academic analysis — rests the burden of proof. I set forth the allegation that the Talmud exhibits a structure and follows a system and therefore exhibits a commonly-intelligible rationality. The claim to write an academic commentary explicitly states that proposition. For the tractate before us, I have therefore to adduce evidence and argument.

I maintain that through the normal procedures of reasoned analysis we may discern in the tractate a well-crafted structure. I hold that the structure made manifest, we may further identify the purpose and perspective, the governing system of thought and argument, of those who collected and arranged the tractate's composites and put them together in the way in which we now have them. By "structure" I mean, how is a document organized? and by "system," what do the compilers of the document propose to accomplish in producing this complete, organized piece of writing? The answers to both questions derive from a simple outline of the tractate as a whole, underscoring the types of compositions and composites of which it is comprised. Such an outline tells us what is principal and what subordinate, and how each unit — composition formed into composites, composites formed into a complete statement — holds together and also fits with other units, fore and aft. The purpose of the outline then is to identify the character of each component of the whole, and to specify its purpose or statement. The former information permits us to describe the document's structure, the latter, its system.

While the idea of simply outlining a Talmud-tractate beginning to end may seem obvious, I have never made such an outline before, nor has anyone else.* Yet, as we shall now see, the character of the outline dictates all further analytical initiatives. Specifically, when we follow the layout of the whole, we readily see the principles of organization that govern. These same guidelines on organizing discourse point also to the character of what is organized: complete units of thought, with a beginning, middle, and end, often made up of smaller, equally complete units of thought. The former we know as composites, the latter as compositions.

*I have provided complete outlines for the Mishnah and for the Tosefta in relationship to the Mishnah, and, not always in outline form, for the Midrash-compilations of late antiquity as well.

Identifying and classifying the components of the tractate — the composites, the compositions of which they are made up — we see clearly how the document coheres: the plan and program worked out from beginning to end. When we define that plan and program, we identify the facts of a pattern that permit us to say in a specific and concrete way precisely what the compilers of the tractate intended to accomplish. The structure realizes the system, the program of analysis and thought that takes the form of the presentation we have before us. From what people do, meaning, the way in which they formulate their ideas and organized them into cogent statements, we discern what they proposed to do, meaning, the intellectual goals that they set for themselves.

These goals — the received document they wished to examine, the questions that they brought to that document — realized in the layout and construction of their writing, dictate the points of uniformity and persistence that throughout come to the surface. How people lay out their ideas guides us into what they wished to find out and set forth in their writing, and that constitutes the system that defined the work they set out to accomplish. We move from how people speak to the system that the mode of discourse means to express, in the theory that modes of speech or writing convey modes of thought and inquiry.

We move from the act of thought and its written result backward to the theory of thinking, which is, by definition, an act of social consequence. We therefore turn to the matter of intention that provokes reflection and produces a system of inquiry. That statement does not mean to imply I begin with the premise of order, which sustains the thesis of a prior

system that defines the order. To the contrary, the possibility of forming a coherent outline out of the data we have examined defines the first test of whether or not the document exhibits a structure and realizes a system. So everything depends upon the possibility of outlining the writing, from which all else flows. If we can see the order and demonstrate that the allegation of order rests on ample evidence, then we may proceed to describe the structure that gives expression to the order, and the system that the structure sustains.

The present work undertakes the exegesis of exegesis, for the Talmud of Babylonia, like its counterpart in the Land of Israel, is laid out as a commentary to the Mishnah. That obvious fact defined the character of my academic commentary, since we have already faced the reality that our Bavli-tractate is something other than a commentary, though it surely encompasses one. The problems that captured my attention derived from the deeper question of how people make connections and draw conclusions. To ask about how people make connections means that we identify a problem — otherwise we should not have to ask — and what precipitated the problem here has been how a composition or a composite fits into its context, when the context is defined by the tasks of Mishnah-commentary, and the composition or composite clearly does not comment on the Mishnah-passage that is subjected to comment.

The experience of analyzing the document with the question of cogency and coherence in mind therefore yields a simple recognition. Viewed whole, the tractate contains no gibberish but only completed units of thought, sentences formed into intelligible thought and self-contained in that we require no further information to understand those sentences, beginning to end. The tractate organizes these statements as commentary to the Mishnah. But large tracts of the writing do not comment on the Mishnah in the way in which other, still larger tracts do. Then how the former fit together with the latter frames the single most urgent question of structure and system that I can identify.

Since we have already examined enormous composites that find their cogency in an other than exegetical program, alongside composites that hold together by appeal to a common, prior, coherent statement — the Mishnah-sentences at hand — what justifies my insistence that an outline of the document, resting on the premise that we deal with a Mishnah-commentary, govern all further description? To begin with, the very possibility of outlining Babylonian Talmud tractate Sotah derives from the simple fact that the framers have given to their document the form of a commentary to the Mishnah. It is in the structure of the Mishnah-tractate that they locate everything together that they wished to compile. We know that is the fact because the Mishnah-tractate defines the order of topics and the sequence of problems.

Relationships to the Mishnah are readily discerned; a paragraph stands at the head of a unit of thought; even without the full citation of the paragraph, we should find our way back to the Mishnah because at the head of numerous compositions, laid out in sequence one to the next, clauses of the Mishnah-paragraph are cited in so many words or alluded to in an unmistakable way. So without printing the entire Mishnah-paragraph at the head, we should know that the received code formed the fundamental structure because so many compositions cite and gloss sentences of the Mishnah-paragraph and are set forth in sequence dictated by the order of sentences of said Mishnah-paragraph. Internal evidence alone suffices, then, to demonstrate that the structure of the tractate rests upon the Mishnah-tractate cited and discussed here. Not only so, but the sentences of the Mishnah-

paragraphs of our tractate are discussed in no other place in the entire Talmud of Babylonia in the sequence and systematic exegetical framework in which they are set forth here; elsewhere we may find bits or pieces, but only here, the entirety of the tractate.

That statement requires one qualification, and that further leads us to the analytical task of our outline. While the entire Mishnah-tractate of Sotah is cited in the Talmud, the framers of the Talmud by no means find themselves required to say something about every word, every sentence, every paragraph. On the contrary, they discuss only what they choose to discuss, and glide without comment by large stretches of the tractate. A process of selectivity, which requires description and analysis, has told the compilers of the Talmud's composites and the authors of its compositions* what demands attention, and what does not. Our outline has therefore to signal not only what passage of the Mishnah-tractate is discussed, but also what is not discussed, and we require a general theory to explain the principles of selection ("making connections, drawing conclusions" meaning, to begin with, making selections). For that purpose, in the outline, I reproduce the entirety of a Mishnah-paragraph that stands at the head of a Talmudic composite, and I underscore those sentences that are addressed, so highlighting also those that are not.

*This statement requires refinement. I do not know that all available compositions have been reproduced, and that the work of authors of compositions of Mishnah-exegesis intended for a talmud is fully exposed in the document as we have it. That is not only something we cannot demonstrate — we do not have compositions that were not used, only the ones that were — but something that we must regard as unlikely on the face of matters. All we may say is positive: the character of the compositions that address Mishnah-exegesis tells us about the concerns of the writers of those compositions, but we cannot claim to outline all of their concerns, on the one side, or to explain why they chose not to work on other Mishnah-sentences besides the ones treated here. But as to the program of the compositors, that is another matter: from the choices that they made (out of a corpus we cannot begin to imagine or invent for ourselves) we may describe with great accuracy the kinds of materials they wished to include and the shape and structure they set forth out of those materials. We know what they did, and that permits us to investigate why they did what they did. What we cannot know is what they did not do, or why they chose not to do what they did not do. People familiar with the character of speculation and criticism in Talmudic studies will understand why I have to spell out these rather commonplace observations. I lay out an argument based on evidence, not on the silences of evidence, or on the absence of evidence — that alone.

It follows that the same evidence that justifies identifying the Mishnah-tractate as the structure (therefore also the foundation of the system) of the Talmud-tractate before us also presents puzzles for considerable reflection. The exegesis of Mishnah-exegesis is only one of these. Another concerns the purpose of introducing into the document enormous compositions and composites that clearly hold together around a shared topic or proposition, e.g., my appendix on one theme or another, my elaborate footnote providing information that is not required but merely useful, and the like. My earlier characterization of composites as appendices and footnotes signalled the fact that the framers of the document chose a not-entirely satisfactory way of setting out the materials they wished to include here, for large components of the tractate do not contribute to Mishnah-exegesis in any way at all. If these intrusions of other-than-exegetical compositions were proportionately modest, or of topical composites negligible in size, we might dismiss them as appendages, not structural components that bear much of the weight of the edifice as a whole. Indeed, the language that I chose for identifying and defining these composites —

footnotes, appendices, and the like — bore the implication that what is not Mishnah-commentary also is extrinsic to the Talmud's structure and system.

But that language served only for the occasion. In fact, the outline before us will show that the compositions are large and ambitious, the composites formidable and defining. Any description of the tractate's structure that dismisses as mere accretions or intrusions so large a proportion of the whole misleads. Any notion that "footnotes" and "appendices" impede exposition and disrupt thought, contribute extraneous information or form tacked-on appendages — any such notion begs the question: then why fill up so much space with such purposeless information? The right way is to ask whether the document's topical composites play a role in the re-presentation of the Mishnah-tractate by the compilers of the Talmud. We have therefore to test two hypotheses:

1. the topical composites ("appendices," "footnotes") do belong and serve the compilers' purpose,

or

2. the topical composites do not participate in the re-presentation of the Mishnah-tractate by the Talmud and do not belong because they add nothing and change nothing.

The two hypotheses may be tested against the evidence framed in response to a single question: is this topical composite necessary? The answer to that question lies in our asking, what happens to the reading of the Mishnah-tractate in light of the topical composites that would not happen were we to read the same tractate without them? The outline that follows systematically raises that question, with results specified in due course. It suffices here to state the simple result of our reading of the tractate, start to finish: the question of structure, therefore also that of system, rests upon the position we identify for that massive component of the tractate that comprises not Mishnah-commentary but free-standing compositions and composites of compositions formed for a purpose other than Mishnah-commentary.

The principal rubrics are given in small caps. The outline takes as its principal rubrics two large-scale organizing principles.

The first is the divisions of the Mishnah-tractate to which the Talmud-tractate serves as a commentary. That simple fact validates the claim that the tractate exhibits a fully-articulated structure. But the outline must also underscore that the Mishnah-tractate provides both more and less than the paramount outline of the Talmud-tractate. It is more because sentences in the Mishnah-tractate are not analyzed at all. These untreated Mishnah-sentences are given in bold face lower case caps, like the rest of the Mishnah, but then are specified by underlining and enclosure in square brackets.

Second, it is less because the structure of the tractate accommodates large composites that address topics not defined by the Mishnah-tractate. That brings us to the second of the two large-scale modes of holding together both sustained analytical exercises and also large sets of compositions formed into cogent composites. These are treated also as major units and are indicated by Roman numerals, alongside the Mishnah-paragraphs themselves; they are also signified in small caps. But the principal rubrics that do not focus on Mishnah-commentary but on free-standing topics or propositions or problems are not given in boldface type. Consequently, for the purposes of a coherent outline we have to

identify as autonomous entries in our outline those important composites that treat themes or topics not contributed by the Mishnah-tractate.

I. Mishnah-Tractate Baba Batra 1:1-2

A. JOINT HOLDERS TO A COURTYARD WHO WANTED TO MAKE A PARTITION IN THE COURTYARD BUILD THE WALL IN THE MIDDLE:

1. They reasoned concerning the meaning of “partition:” What is the meaning of “partition”? It means a wall, in line with that which has been taught on Tannaite authority: The partition of a vineyard that was broken – the owner of an adjacent property containing grain may say to the owner of the vineyard, “Build the wall.” If the wall again was broken, he may say to him, “Rebuild the wall.” If the other party despaired and did not rebuild the wall, lo, he has imposed the status of sanctification on the grain of the neighbor by reason of violating the law against sowing grain in a vineyard, Deu. 22: 9 and so is liable for the loss. The operative consideration that both parties may be forced to provide the wall at M. 1:1A is that both parties have agreed. Lo, if they had not agreed, one party cannot be required to do so. It then follows that damage deriving from denying the right of investigating what the neighbor is doing in his half of a shared property is not classified as damages that are subject to redress.

B. ...BUILD THE WALL IN THE MIDDLE:

1. II:1: So what else is new! Not at all, it has to be spelled out to deal with a case in which one of the partners to the property had to persuade the other one to go along. You might have supposed that, in that case, the other may say to the first, “When I agreed to what you wanted, I was willing to give up my air rights but not my ground rights.” So we are informed that that is not the case.

2. II:2: Then is it the fact that damage deriving from denying the established right of investigating what the neighbor is doing in his half of a shared property is not classified as damages that are subject to redress?

a. II:3: Reformulation of the foregoing.

3. II:4: Now how have you finally situated the interpretation of our Mishnah passage? A case in which there is no established right of dividing the courtyard? Well, if there were no established right of dividing the courtyard, then even if they agreed to do so, what difference would it have made? They can in any event retract!

C. IN A PLACE IN WHICH THEY ARE ACCUSTOMED TO BUILD IT OF UNSHAPED STONES, HEWN STONES, HALF-BRICKS, OR WHOLE BRICKS, THEY BUILD IT OF THAT SORT OF MATERIAL:

1. III:1: Unshaped stones are those that are not trimmed. Hewn stones are those that are squared.

2. III:2: How do we know that unshaped stones are those that are not trimmed, and that the extra handbreadth is allowed to provide for the projection of the rough edges? Perhaps it is half of the thickness of a hewn stone, and the extra handbreadth provides for the mortar between the rows, just as we have defined the

latter items to be half-bricks and whole bricks, with the extra handbreadth allowing for the mortar between the rows?

3. III:3: From the fact that the untrimmed stones are assigned a handbreadth more than bricks, we derive the fact that the space between the layers in a wall should be a handbreadth. And that is the case only if it is filled with mortar, but if it is filled with rubble, then more space is required.

4. III:4: The Mishnah bears the implication that, if squared stones are used, then if for every cubits of height there is a breadth of five handbreadths, the wall will stand, but otherwise it will not. But then what about the cubit of the partition the wall separating the holy area from the inner sanctum in Solomon's temple, which was thirty cubits high but only six broad, and yet it stood perfectly well?

5. III:5: And as to the Second Temple, how come there was no partition of the same sort but only a curtain between the holy area from the inner sanctum?

6. III:6: Rab and Samuel, and some say, R. Yohanan and R. Eleazar — One said, "It was greater in size." And the other said, "It was greater in duration."

7. III:7: Why not build in the Second Temple a wall thirty cubits high as in the first Temple and then use a curtain for the remaining seventy cubits?

8. III:8: The question was raised: When the Mishnah provides measurements, do these apply to the material with the outside plaster, or to the materials not with the plaster for which there must be a further allowance?

D. THE RULES OF DISMANTLING SYNAGOGUE BUILDINGS

1. III:9: Someone should not tear down a synagogue before building another.

2. III:10: What if the money for a new synagogue building had been collected and is in hand? May one at that point tear down the old building?

3. III:11: The rule about not dismantling a synagogue applies only if no cracks have appeared in the walls, but if cracks have appeared in the walls, they may first demolish the old building and then build the new one.

E. THE TEMPLE THAT HEROD BUILT

a. III:12: Secondary development of foregoing. Well then how could Baba b. Buta have advised Herod to destroy the house of the sanctuary? And did not R. Hisda state, "Someone should not tear down a synagogue before building another"?

I. III:13: Story about Herod.

II. III:14: Story about Herod.

III. III:15: Story about Herod.

IV. III:16: They say that someone who never saw the building that Herod built has never seen a beautiful building in his life.

A. III:17: Of what was it built?

B. III:18: He considered gilding the building. Said rabbis to him, "Let it be, it's prettier looking like waves of the sea."

b. III:19: But how could Baba bar Buta have done such a thing?

A. III:20: And how do we know that Daniel was punished?

E. ALL ACCORDS WITH THE CUSTOM OF THE PROVINCE.

1. IV:1: To what case is the rule extended by reference to All accords...?

F. IF THEY MAKE IT OF UNHEWN STONES, THIS ONE CONTRIBUTES A SPACE OF THREE HANDBREADTHS OF HIS SHARE OF THE COURTYARD, AND THAT ONE SUPPLIES A SPACE OF THREE HANDBREADTHS. IF THEY BUILD IT OF HEWN STONES, THIS ONE SUPPLIES TWO HANDBREADTHS AND A HALF OF SPACE, AND THAT ONE SUPPLIES TWO HANDBREADTHS AND A HALF OF SPACE. IF THEY BUILD IT OF HALF-BRICKS, THIS ONE SUPPLIES TWO HANDBREADTHS OF SPACE, AND THAT ONE SUPPLIES TWO HANDBREADTHS OF SPACE. IF THEY BUILD IT OUT OF WHOLE BRICKS, THIS ONE SUPPLIES A HANDBREADTH AND A HALF, AND THAT ONE SUPPLIES A HANDBREADTH AND A HALF.

THEREFORE, IF THE WALL SHOULD FALL DOWN, THE LOCATION ON WHICH IT HAD STOOD AND THE STONES BELONG TO BOTH PARTIES.

1. V.1: So what else is new? Not at all, it was necessary to state the rule to deal with a case in which the wall fall down into the domain of one of the parties, or a case in which one of them had cleared all the stones over into his domain. You might have thought that, in such a case, the other party bears the burden of proof. So we are informed that that is not the case.

G. AND SO IS THE RULE IN THE CASE OF A GARDEN: IN A PLACE IN WHICH IT IS CUSTOMARY TO BUILD A FENCE, THEY REQUIRE A RECALCITRANT OWNER TO DO SO:

1. VI.1: Now there is a contradiction in the very body of this rule! First you say, And so is the rule in the case of a garden: in a place in which it is customary to build a fence, they require a recalcitrant owner to do so. Then under ordinary conditions they do not require him to do so. But then the passage goes on: But in a valley, in a place in which it is not customary to build a fence, they do not require him to do so. Then under ordinary conditions they do require him to do so! So if in the case of an ordinary orchard, you have said that they do not require him to do so, is it necessary to say that in an ordinary valley, he cannot be required to do so?

H. BUT IN A VALLEY, IN A PLACE IN WHICH IT IS NOT CUSTOMARY TO BUILD A FENCE, THEY DO NOT REQUIRE HIM TO DO SO.

BUT IF HE WANTS, HE MAY WITHDRAW INSIDE HIS OWN PORTION OF THE PROPERTY AND BUILD IT. AND HE PLACES THE FACING OF THE WALL OUTSIDE OF THE FENCE ON THE SIDE OF THE NEIGHBOR, INDICATING HIS OWNERSHIP.

THEREFORE, IF THE WALL SHOULD FALL DOWN, THE LOCATION ON WHICH IT HAD STOOD AND THE STONES ARE HIS.

1. VII:1: How does he make the facing?

2. VII:2: R. Yohanan said, "He should smear the wall with lime on the outer side to the extend of a handbreadth."

3. VII:3: In the case of a partition made of palm branches – said R. Nahman, "He points the points of the branches outside."

I. BUT IF THEY HAD MADE IT WITH THE CONSENT OF BOTH PARTIES, THEY BUILD THE WALL IN THE MIDDLE.

THEY PLACE THE FACING OF THE WALL ON THIS SIDE AND ON THAT SIDE. THEREFORE, IF THE FENCE SHOULD FALL DOWN, THE LOCATION ON WHICH IT HAD STOOD AND THE STONES BELONG TO BOTH PARTIES.

1. VIII:1: Why not let neither one of them make a mark at all?

II. Mishnah-Tractate Baba Batra 1:3

A. HE WHOSE LAND SURROUNDS THAT OF HIS FELLOW ON THREE SIDES, AND WHO MADE A FENCE ON THE FIRST, SECOND, AND THIRD SIDES — THEY DO NOT REQUIRE THE OTHER PARTY TO SHARE IN THE EXPENSE OF BUILDING THE WALLS. R. YOSÉ SAYS, “IF HE BUILT A FENCE ON THE FOURTH SIDE, THEY ASSIGN TO HIM HIS SHARE IN THE CASE OF ALL THREE OTHER FENCES.”

1. I:1: Said R. Judah said Samuel, “The decided law accords with the view of R. Yosé, who has said, ‘If he built a fence on the fourth side, they assign to him his share in the case of all three other fences,’ and we make no distinction as to whether it is the one who enclosed the field, or the one whose field is enclosed, who has made the fence.”

2. I:2: R. Huna said, “All is proportionate to the actual cost of building the fence Simon: which will vary according to the materials used by the one who builds the fence.” Hiyya bar Rab said, “All is proportionate to the cost of a cheap fence made of sticks since that is all that is absolutely necessary.”

a. I:3: Ronayya’s property was surrounded on all four sides by Rabina’s fields. Rabina fenced them and said, “Pay me your share of what I spent for the fence.” Ronayya declined to do so.

b. I:4: Another case.

III. Mishnah-Tractate Baba Batra 1:4

A. THE WALL OF A COURTYARD WHICH FELL DOWN — THEY REQUIRE EACH PARTNER IN THE COURTYARD TO HELP BUILD IT UP TO A HEIGHT OF FOUR CUBITS. EACH ONE IS ASSUMED TO HAVE GIVEN, UNTIL ONE BRINGS PROOF THAT THE OTHER HAS NOT CONTRIBUTED TO THE COST.

IF THE FENCE WAS BUILT FOUR CUBITS AND HIGHER, THEY DO NOT REQUIRE A JOINT HOLDER IN THE COURTYARD TO CONTRIBUTE TO THE EXPENSES.

1. I:1: Said R. Simeon b. Laqish, “If a lender specified a date for repaying a loan and the borrower claimed that when the date of payment came, he had already paid the debt before it fell due, he is not believed. For let him pay the loan only on the date on which it comes due.” Both Abbayye and Raba say, “People ordinarily pay a debt before it comes due, since he may happen to have the money and say, ‘I will go pay him off and get him off my back.’” The cited sentence of the Mishnah contributes to the analysis of this proposition.

i. I:2: Illustrative case.

2. I:3: The question was raised: If the creditor laid claim on the debtor only after some time had passed, and the debtor claims, "I paid it before it fell due," what is the law? Do we say that even where there is a presumption against the debtor someone will not pay before the due date, we claim, "Why should I lie?" Or perhaps where there is a presumption against the debtor someone will not pay before the due date, we do claim, "Why should I lie?"

B. IF THE ONE WHO DID NOT CONTRIBUTE BUILT ANOTHER WALL NEAR THE RESTORED ONE PLANNING TO ROOF OVER THE INTERVENING SPACE, EVEN THOUGH HE DID NOT ACTUALLY PUT A ROOF ON IT, THEY ASSIGN HIM HIS SHARE IN THE COST OF THE WHOLE OTHER WALL. HE IS NOW ASSUMED NOT TO HAVE CONTRIBUTED TO THE COST, UNTIL HE BRINGS PROOF THAT HE HAS CONTRIBUTED TO THE COST:

1. II:1: Said R. Huna, "If the second wall matches half of the first wall, it is as if it matched the whole of it." If it is built up to half the same length or height, it is as though it matched the whole, and he has to contribute to the cost of the whole, since in all probability he will finish it and make a roof. And R. Nahman said, "Where the wall that he built matches the other, it matches it, and where it does not match, it does not match" and payment is proportionate to what matches.

C. THE PRESUMPTIVE RIGHTS SIGNIFIED BY ESTABLISHED USAGE

1. II:2: Said R. Nahman, "If one has the right to rest small beams on his neighbor's wall, he still may not rest large beams on it, but if he has the right to rest large beams on it, he does have the right to rest small beams on it." Said R. Joseph, "If one has the right to rest small beams on his neighbor's wall, he does have the right to rest large beams on it."

2. II:3: Said R. Nahman, "If one has the presumptive right to let water drip from his roof onto his neighbor's courtyard, he has the right also to carry it off there through a gutter pipe, but if he has the right to run a gutter pipe, he still has not got the right to let the water merely drip from the roof." Said R. Joseph, "If he has the right also to carry it off there through a gutter pipe, but if he has the right to run a gutter pipe, he has got the right to let the water merely drip from the roof."

3. II:4: Said R. Nahman said Rabbah bar Abbuha, "He who rents out a house to his fellow in a big house — the lessee may make use of the projecting beams and holes in the walls up to a distance of four cubits from the room that he has rented, and also the thickness of the wall if the room is on the top story, if this accord with local custom, but he may not make use of the part of the wall facing the front garden."

4. II:5: Said Rabina, "If for a period of thirty days, someone permitted another to support the beam of his hut against his wall, that does not establish a presumptive right to continue to do so, but if the permission is granted for more than thirty days, it does. And if it was a tabernacle erected for a religious purpose, then for a period of seven days there is no result of a presumptive right to continue to do so, but if it is longer than that time, it does constitute such a presumptive right. And if on the spot the other fixes it with clay and the neighbor does not object, the presumptive right is acquired forthwith."

5. II:6: Said Abbaye, “In the case of two houses on two opposite sides of a public way, this one makes a parapet for half his roof, and the other makes a parapet for half of his roof, so that the parapets do not face one another, and each should extend the parapet a bit beyond the middle.”

a. II:7: Amplification of foregoing.

D. CONTINUATION OF B: ANALYSIS OF THE OBLIGATIONS OF JOINT HOLDERS TO A PROPERTY ON BUILDING PARTITIONS AND WALLS

1. II:8: Said R. Nahman said Samuel, “A roof that is adjacent to the courtyard of one’s fellow — one makes for it a parapet four cubits high, but between one roof and another it is not necessary to do so.”

2. II:9: Two courtyards, one above the other — said R. Huna, “The owner of the lower one has to build the party wall up from his level, and the owner of the higher one starts building from his level at which point he contributes to the cost of the wall.” And R. Hisda says, “The owner of the upper one still has to assist the owner of the lower one to build from his level.”

3. II:10: Two men living in the same house, one upstairs, the other downstairs. The lower room began to sink into the ground, so the owner of the lower room said to the owner of the upstairs room, “Let’s rebuild the house.” He said to him, “Well, I’m quite happy the way things are.” — Said R. Hama, “He had every right to stop him from rebuilding the house. But that ruling applies to a case in which the beams of the upper story did not sink lower than ten handbreadths from the ground, but if they sank more than that, the owner of the lower story can say to the other, ‘The space below ten handbreadths belongs to me and is not subject to your domain at all. Furthermore that ruling applies to a case in which they had made no agreement with one another, but if they had made a prior agreement with one another, they have to demolish the house and rebuild it.’”

a. II:11: Case illustrating the principle of the foregoing.

b. II:12: As above.

4. II:13: There was a bond that belonged to an estate, against which the borrower produced a receipt. Said R. Hama, “We do not let them collect on the bond, but we also do not tear up the bond. We do not let them collect on the bond, because, after all, a receipt has been produced, but we also do not tear up the bond, because it is possible that, when the heirs mature, they may produce evidence to invalidate the receipt.”

IV. Mishnah-Tractate Baba Batra 1:5

A. THEY FORCE A JOINT HOLDER IN THE COURTYARD TO CONTRIBUTE TO THE BUILDING OF A GATEHOUSE...:

1. I:1: Does this bear the implication that the gatehouse represents a genuine improvement? But lo, there was a certain pious man with whom Elijah was accustomed to converse. He made a gatehouse, and he didn’t spend any more time with him. The gatehouse represented an obstacle to beggars, and Elijah could not approve.

B. ...AND A DOOR FOR THE COURTYARD. RABBAN SIMEON B. GAMALIEL SAYS, "NOT ALL COURTYARDS ARE SUITABLE FOR A GATEHOUSE."

1. II:1: Rabban Simeon b. Gamaliel says, "Not all courtyards are suitable for a gatehouse, but a courtyard nearest to the public thoroughfare is the one that is suitable for a gatehouse, and one that is not located near the public thoroughfare is not suitable for a gatehouse."

C. THEY FORCE EACH JOINT HOLDER TO CONTRIBUTE TO THE BUILDING OF A WALL, GATES, AND A BOLT FOR THE TOWN. RABBAN SIMEON B. GAMALIEL SAYS, "NOT ALL TOWNS ARE SUITABLE FOR A WALL:"

1. III:1: Rabban Simeon b. Gamaliel says, "Not all towns are suitable for a wall, but a town near the frontier is the one that is suitable for a wall, and one that is not located near the frontier is not suitable for a wall."

2. III:2: R. Eleazar raised this question of R. Yohanan, "When they collect the funds, do they collect it as a poll tax, or do they collect according to one's means?"

D. RABBIS CANNOT BE FORCED TO SHARE IN THE COSTS OF THE COMMON DEFENSE

3. III:3: R. Judah the Patriarch applied the wall tax to the rabbis. Said R. Simeon b. Laqish, "Rabbis don't need protection...."

4. III:4: R. Nahman bar R. Hisda collected the head tax from rabbis. Said to him R. Nahman bar Isaac, "You have violated the rules of the Torah, the Prophets, and the Writings."

5. III:5: R. Pappa collected the tax for digging a new well from an estate. Said R. Shisha b. R. Idi to R. Pappa, "May be it'll be a dry well?"

6. III:6: Said R. Judah, "Everyone is obligated to share in the cost of building doors for the town gates, even estates, but not rabbis, who do not require protection."

7. III:7: Rabbi opened his storehouse in a year of famine, announcing, "Let all those come in and get food who are masters of Scripture, Mishnah, Gemara, law, lore, but let unlearned people not come in."

8. III:8: There was a crown tax that was assigned to the people of Tiberias. They came before Rabbi and said to him, "Let the rabbis contribute their share with us."

E. HOW LONG MUST ONE BE IN A TOWN TO BE DEEMED EQUIVALENT TO ALL OTHER TOWNSFOLK? TWELVE MONTHS.

1. IV:1: A contradiction was presented to this rule from the following: A caravan of asses or camels that is en route from place to place that spent the night in a city that had gone over to idolatry and that went astray with the locals — the members of the caravan are sentenced to death by stoning, but their property is untouched. If they stayed there thirty days, they are put to death by the sword and their property is destroyed as inhabitants of the city, which shows that thirty days suffice to include someone among the inhabitants.

2. IV:2: And for all taxes is a residence of twelve months required? Has it not been taught on Tannaite authority: It takes thirty days for one to become obligated

to contribute to the soup kitchen, three months for the charity box, six months for the clothing fund, nine months for the burial fund, twelve months for contribution to the repair of the town walls. Said R. Assi said R. Yohanan, "When our Mishnah passage made its statement, it referred in particular to twelve months for the obligation to help pay for repairing the town walls."

3. IV:3: And said R. Assi said R. Yohanan, "All are obligated to contribute to the upkeep of the town walls, even estates, but not rabbis, because rabbis don't need protection." This item is a continuation of the foregoing by reason of the shared attribution, and the set then serves as a prologue to what follows.

F. THE RULES OF PHILANTHROPY: WHO CONTRIBUTES? WHO RECEIVES?

1. IV:4: Rabbah collected charity funds from the estate of the household of Bar Marion. Said to him Abbaye, "But has not R. Samuel bar Judah taught as a Tannaite statement: Charity is not assigned to estates even for the redemption of captives?"

2. IV:5: Ifra Hormiz, mother of King Shapur, send a purse of money to R. Joseph, saying to him, "Let it be for some genuinely consequential religious duty."

a. IV:6: "What is the source of the statement of rabbis that the redemption of captives is a genuinely consequential religious duty?"

3. IV:7: Charity funds are collected by two people and divided by three **M. Pe. 8:7H**. It is collected by two, for any office that exercises authority over the community must be filled by at least two people. It must be passed out by three, on the analogy of property cases which are tried by a court of three persons.

a. IV:8: Gloss of the foregoing.

b. IV:9: As above.

4. IV:10: "And those who are wise shall shine as the brightness of the firmament" (Dan. 12: 3) — this refers to a judge who gives an honest judgment in every detail. "And they that turn many to righteousness charity will be as the stars for ever and ever" (Dan. 12: 3) — these are those who collect charity.

5. IV:11: Those who collect charity funds are not allowed to take their leave of one another, even though one may collect money at the gate while another stops at a shop in the same courtyard.

6. IV:12: If the charity-fund collectors run out of poor among whom to distribute the money, they change the small change into large coins to protect the money with outsiders, but not out of their own funds.

a. IV:13: Complement to the foregoing: Said Abbaye, "To begin with the master would not sit on the mats in the synagogue since they were bought from charity funds, but when he heard the teaching on Tannaite authority: 'the townspeople have the right to use the charity funds for any purpose of their choice,' he sat on them."

b. IV:14: As above: These two butchers had made an agreement with one another that if the one killed on the day assigned to the other, the hide of his beast should be ripped up. One of them did slaughter a beast on the day assigned to the other, and the other went and ripped up the hide. The ones

who did so were summoned to Raba's court, who required them to make restitution. Said R. Yemar bar Shelemayyah to Raba, "The townsfolk have the right to fix weights, measures, prices and wages, and to inflict penalties for violating their rules."

7. IV:15: The charity collectors are not required to make a reckoning of how they use the money entrusted to them for charity, and the Temple treasurers are not required to give a reckoning for the money given to them for the sanctuary.

a. IV:16: Supplement to the foregoing.

8. IV:17: Said R. Huna, "They examine the situation of those who need food, but they do not examine the situation of those who need clothing." But R. Judah said, "They examine the situation of those who need clothing, but they do not examine the situation of those who need food."

9. IV:18: We have learned there: They give to a poor man traveling from place to place no less than a loaf of bread worth a dupondion, made from wheat which costs at least one sela for four seahs. If such a poor person stayed overnight, they give him enough to pay for a night's lodging (M. **Pe. 8:7A-C**) What is the definition of enough to pay for a night's lodging?

10. IV:19: If one was making the rounds of the houses, people are not obligated to him from the charity fund (T. **Pe. 4:4:8K-L**).

11. IV:20: Said R. Assi, "A person should never refrain from giving a third of a sheqel for charity in any given year: 'Also we made ordinances for us, to charge ourselves yearly with the third part of a sheqel for the service of the house of our Lord' (Neh. 10:33)."

12. IV:21: Said R. Eleazar, "One who gets others to do the right thing is more important than the one who actually does it: 'And the work of righteousness shall be peace, and the effect of righteousness quiet and confidence forever' (Isa. 32:17)."

a. IV:22: Said Raba to the people of Mahoza, "By your leave! Take care of one another, so you will have peace with the government."

13. IV:23: And said R. Eleazar, "When the Temple stood, someone would pay off his sheqel-offering and achieve atonement. Now that the Temple is not standing, if people give to charity, well and good, but if not, the gentiles will come and take it by force. And even so, that is still regarded for them as an act of righteousness: 'I will make your exactors righteousness' (Isa. 60:17)."

14. IV:24: What is the meaning of this verse of Scripture: 'And he put on righteousness as a coat of mail' (Isa. 59:17)? It means that just as in a coat of mail every scale joins with the others to make up one piece of armor, so every coin given to charity joins with the rest to make up a large sum.

a. IV:25: Gloss of a tangential detail of the foregoing.

I. IV:26: Gloss of foregoing.

15. IV:27: Said R. Eleazar, "Greater is he who discreetly carries out an act of charity than was our lord, Moses, for of Moses it is written, 'for I was afraid

because of the anger and the wrath' (Deu. 9:19), but of one who gives charity in such a manner it is written, 'A gift in secret subdues anger' (Pro. 21:14)."

16. IV:28: And said R. Isaac, "Any one who gives a penny to the poor is blessed with six blessings, and anyone who speaks to him in a comforting manner is blessed with eleven..."

17. IV:29: And said R. Isaac, "What is the meaning of the verse: 'he who follows after righteousness charity and mercy finds life, righteousness, and honor' (Pro. 21:21)? Because a man has followed after righteousness shall he find righteousness that is, because one has given to charity, will he get charity when he needs it? Rather, the purpose is to indicate to you, whoever pursues righteousness — the Holy One, blessed be He, sees to the money that he needs with which to do acts of righteousness."

18. IV:30: R. Joshua b. Levi said, "Whoever is accustomed to do acts of charity gains the merit of having sons who are masters of wisdom, wealth, and lore..."

19. IV:31: R. Meir would say, "Someone arguing with you may reply to you, saying, 'If your God loves the poor, how come he does not provide for them?' And say to him, 'It is so that through them we ourselves may be saved from the judgment of Gehenna.'"

a. IV:32: The wicked Turnus Rufus asked R. Aqiba, "If your God loves the poor, how come he does not provide for them?" He said to him, "It is so that through them we ourselves may be saved from the judgment of Gehenna."

20. IV:33: R. Judah b. R. Shalom gave this exposition: "Just as the provisions of food for a person are determined from the New Year, so what he is going to lack likewise is determined from the New Year. If he has merit, then 'deal your bread to the hungry.' But if one did not have merit, then 'and bring the poor that are cast out to your house.'"

a. IV:34: It is in line with what happened to the children of Rabban Yohanan b. Zakkai. He saw in a dream that they would lose seven hundred dinars that year. He made them give him money for charity, so that they were left only seventeen dinars. On the eve of the Day of Atonement, the government sent and seized the money. Said to them Rabban Yohanan b. Zakkai, "Don't be afraid. You had seventeen dinars, and these are all they took."

b. IV:35: R. Pappa was climbing a ladder, his foot slipped, and he nearly fell. He said, "If that had happened, I would have been punished like those who violated the sanctity of the Sabbath or who worship idols." Said Hiyya bar Rab of Difti to R. Pappa, "So maybe a poor man came to you and you did not support him?"

21. IV:36: Said R. Eleazar b. R. Yosé, "Every act of charity and mercy that Israelites do in this world brings about peace and great reconciliation between Israel and their father in heaven: 'Thus says the Lord, do not enter into the house of mourning, nor go to lament, nor bemoan them, for I have taken away my peace

from this people...even loving kindness and tender mercies' (Jer. 16: 4) — loving kindness refers to acts of mercy, and 'tender mercies' to charity."

22. IV:37: R. Judah says, "Great is charity, for it draws redemption nearer: 'Thus says the Lord, keep judgment and do righteousness charity, for my salvation is near to come and my righteousness to be revealed' (Isa. 56: 1)."

23. IV:38: Expounded R. Dosetai b. R. Yannai, "Come and note that the trait of the Holy One, blessed be He, is not like the trait of a mortal. If someone brings a splendid gift to the king, it may or may not be accepted from him, and should it be accepted from him, he may or may not see the king. But the Holy One, blessed be He, is not that way. Someone gives a penny to a poor person, and he has the merit of receiving the face of the Presence of God: 'And I shall behold your face in righteousness, I shall be satisfied when I awake with your likeness' (Psa. 17:15)."

a. IV:39: Further exegesis of the same verse.

b. IV:40: As above.

24. IV:41: Said R. Yohanan, "What is the meaning of the clause, 'He who has pity on the poor lends to the Lord' (Pro. 19:17)?..."

25. IV:42: Said R. Hiyya bar Abba said R. Yohanan, "It is written, 'Riches do not profit in the day of wrath, but righteousness delivers from death' (Pro. 11: 4), and further, 'Treasures of wickedness profit nothing, but righteousness delivers from death' (Pro. 10: 2). Why make reference to righteousness two times? One delivers from an unnatural death, the other from punishment of Gehenna...."

26. IV:43: Said R. Abbahu, "Said Moses before the Holy One, blessed be He, 'Lord of the world, how will the horn of Israel be exalted?' 'He said to him, 'It is through taking their census by collecting a coin from each, and this was given to charity.'"

a. IV:44: Illustration of foregoing.

27. IV:45: Said Rabban Yohanan b. Zakkai to his disciples, "My sons, what is the meaning of Scripture: 'Righteousness exalts a nation but the kindness of the peoples is sin' (Pro. 14:34)?"

a. IV:46: Illustration of foregoing: Ifra Hormiz, mother of King Shapur, sent four hundred zuz to R. Ammi. He would not accept them.

28. IV:47: They said concerning Benjamin the Righteous that he was in charge of the charity fund. One time a woman came before him during years of famine. She said to him, "My lord, take care of me."

30. IV:48: There was the incident involving Munbaz the king, who emptied out his store houses and the store houses of his fathers during years of famine, and his brothers and the house of his father ganged up against him and said to him, "Your fathers have collected and added to what their fathers hoarded, but you spread it around."

G. IF ONE HAS PURCHASED A PERMANENT RESIDENCE, LO, HE IS EQUIVALENT TO ALL THE OTHER TOWNSFOLK FORTHWITH.

1. V:1: The Mishnah's statement does not accord with the position of Rabban Simeon b. Gamaliel.

V. Mishnah-Tractate Baba Batra 1:6

A. THEY DO NOT DIVIDE UP A COURTYARD UNLESS THERE WILL BE AN AREA OF FOUR CUBITS BY FOUR CUBITS FOR THIS ONE, AND FOUR CUBITS BY FOUR CUBITS FOR THAT ONE;

1. I:1: Said R. Assi said R. Yohanan, "The four cubits of which they have spoken is in addition to the space in front of the doors" four cubits for use in loading and unloading (Simon), yielding eight in all.

2. I:2: Said R. Huna, "A courtyard is subdivided proportionate to the number of its doorways." Each party takes his share in the courtyard proportionate to the number of his doors. But R. Hisda said, "They assign four cubits to each doorway, but the rest is divided equally."

3. I:3: Said Amemar, "A pit for holding date pits is assigned four cubits on all sides. But we apply that rule only in a case in which the owner has not indicated a special door from which he goes to the pit in which case he requires space to get behind the pit. If he has a special door for reaching it, it is assigned only four cubits in front of his door."

4. I:4: Said R. Huna, "A covered way open at the sides is not assigned four cubits. How come? The operative consideration for providing the space of four cubits is to allow for unloading animals, but here it is possible for the man to go outside the covered area and unload the animals there."

5. I:5: A gatehouse, a covered area open at the sides, and a balcony reached by a ladder or stair from the courtyard are assigned four cubits. If there were five rooms opening onto the balcony, however, they are assigned only the four cubits among all five of them.

6. I:6: A hen-coop — is it or is it not assigned four cubits?

7. I:7: A room half of which is roofed over and half not — is it assigned four cubits or is it not assigned four cubits?

8. I:8: One of the residents of an alleyway who wanted to open a door onto another alleyway — can the residents of the the alleyway validly object or can they not validly object?

9. I:9: One of the residents of an alleyway who wanted to fence in the space facing his door (the door of a courtyard opening on to an alleyway that leads to the public thoroughfare) — the other residents can validly object on the ground that he is forcing more bypassers to make use of their space.

a. I:10: Gloss of foregoing.

10. I:11: As to alleyways that open up onto another town and the inhabitants of the town want to close it off, the residents of that other town have the right validly to object to their doing so.

11. I:12: As to alleyways that open up onto the public way, and the people living in the alleyways wanted to set up doors at the entrance — the public has a valid right to object.

B. NOR DO THEY DIVIDE UP A FIELD, UNLESS THERE WILL BE NINE QABS' SPACE OF GROUND FOR THIS ONE, AND NINE QABS' SPACE FOR THAT ONE. R. JUDAH SAYS, "UNLESS THERE WILL BE NINE HALF-QABS OF SPACE FOR THIS ONE, AND NINE HALF-QABS OF SPACE FOR THAT ONE."

1. II:1: There really is no dispute here. The one authority refers to the conditions prevailing in his locale, and the other to conditions prevailing in his locale.

2. II:2: If a trench is divided, said R. Nahman, "There must be enough ground for each party to allow a day's work in watering the field."

3. II:3: In the case of a vineyard, Said the father of Samuel, "Each must have three qab's space left." So, too, it has been taught on Tannaite authority: He who says to his fellow, "A share in a vineyard I am willing to you" Sumkhos says, "He may not give him less than three qab's space." Said R. Yosé, "These represent nothing more than words of prophecy" and have no legal standing.

C. THE STATUS OF PROPHECY AND SAGACITY AFTER THE DESTRUCTION OF THE TEMPLE AMPLIFICATION OF A DETAIL IN II:3.

a. II:4: Said R. Abdimi of Haifa, "From the day on which the house of the sanctuary was destroyed, prophecy was taken away from prophets and given over to sages."

b. II:5: Said R. Yohanan, "When the house of the sanctuary was destroyed, prophecy was taken away from the prophets and handed over to idiots and children."

c. II:6: Before someone eats and drinks, he is of two minds not easily reaching a decision, but after he eats and drinks, he is of only one mind.

D. FURTHER RULES ON DIVIDING UP PROPERTY: SPECIAL PROBLEMS

1. II:7: It is obvious that the share of the firstborn and the ordinary share going to the same son must be adjacent. But what is the rule in the case of the levirate husband the deceased childless man's surviving brother, who has married the widow, and also gets a double portion, his own plus the deceased's?

a. II:8: Case illustrating the same principle: Somebody bought land near the estate of his father in law. When it came to divide up the estate, he said, "Give me mine next to my own field."

2. II:9: An estate consisting of two fields with two channels running by them and one brother wants the field adjacent to one he now owns....

3. II:10: In the case of two fields adjoining a single channel....

4. II:11: If there is a channel on one side and a river on the other, the field is to be divided diagonally.

E. NOR DO THEY DIVIDE UP A VEGETABLE PATCH UNLESS THERE WILL BE A HALF-QAB OF SPACE FOR THIS ONE AND A HALF-QAB OF SPACE FOR THAT ONE. R. AQIBA SAYS, "A QUARTER-QAB'S SPACE."

NOR DO THEY DIVIDE UP A BANQUET HALL, WATCHTOWER, DOVECOTE, CLOAK; BATHHOUSE, OR OLIVE PRESS, UNLESS THERE WILL BE SUFFICIENT SPACE FOR THIS ONE AND SUFFICIENT SPACE FOR THAT ONE TO MAKE SOME REASONABLE USE OF HIS SHARE. THIS IS THE OPERATIVE PRINCIPLE: WHATEVER MAY BE DIVIDED AND RETAIN ITS ORIGINAL DESIGNATION DO THEY DIVIDE. BUT IF NOT, THEY DO NOT DIVIDE SUCH AN OBJECT. UNDER WHAT CIRCUMSTANCES? WHEN BOTH PARTIES DO NOT CONCUR. BUT IF BOTH PARTIES CONCUR, EVEN IF THE MEASUREMENTS ARE LESS THAN SPECIFIED, THEY DIVIDE THE AREA.

1. III:1: If after dividing them up, there would not be sufficient space for this one and for that one, what is the law?

a. III:2: Gloss of foregoing.

b. III:3: As above. Said Amemar, "The decided law is, One partner has the right to say to the other, 'You name a price for my share, or I'll name a price for your share' holding the whole together."

F. BUT AS TO SACRED SCRIPTURES, EVEN THOUGH BOTH PARTIES CONCUR, THEY DO NOT DIVIDE THEM. THE MISHNAH-STATEMENT IS NOT CITED VERBATIM, AND THE FOLLOWING VAST APPENDIX ON DIVIDING UP A SCROLL OF THE TORAH BEGINS MERELY AS AN AMPLIFICATION OF A DETAIL IN III.3.

1. IV.1: "One fastens together on a single scroll the Torah, Prophets, and Writings," the words of R. Meir. R. Judah says, "The Torah must be kept by itself, the prophets by themselves, and the writings by themselves."

2. IV.2: He who wants to fasten together the Torah, Prophets, and Writings may do so. At the beginning he should leave sufficient space for winding around the cylinder, and at the end sufficient space for winding around the whole circumference of the scroll when the scroll is rolled up. If the scribe completes one book at the bottom of a column, he should in any event start the next at the top of the next column. And when he wants to divide, he may do so. He should take care that in case he decides to divide, one of the scrolls does not begin with an empty space of four lines.

3. IV.3: They do not make a scroll of the Torah so that its length is not greater than its circumference or that its circumference is greater than its length when it is rolled up.

a. IV.4: R. Huna wrote out seventy scrolls of the Torah and he reached the precise measurements only with one.

4. IV.5: Continuation of IV.3.

G. THE CORRECT ORDER OF BOOKS OF SCRIPTURE

1. IV.6: This is the correct order of the prophets: Joshua, Judges, Samuel, Kings, Jeremiah, Ezekiel, Isaiah, the twelve prophets.

a. IV.7: Continuation of the foregoing.

b. IV.8: As above.

2. IV.9: This is the correct order of the writings: Ruth, Psalms, Job, Proverbs, Qohelet, Song of Songs, Lamentations, Daniel, the scroll of Esther, Ezra, and Chronicles.

a. IV.10: From the perspective of him who says that Job. lived in the time of Moses, should not Job. come up at the first?

H. WHO WROTE VARIOUS BOOKS OF SCRIPTURE?

1. IV.11: Who wrote them? Moses wrote his own book and part of Balaam and Job. Joshua wrote the book that is called by his name and the last eight verses of the Torah.

a. IV.12: Gloss of foregoing.

l. IV.13: Secondary gloss.

b. IV.14: Continuation of gloss of IV.11.

c. IV.15: As above.

d. IV.16 : As above.

e. IV.17: As above.

f. IV.18: As above. Moses wrote his own book and part of Balaam and Job: That supports the view of R. Levi bar Lahma, for said R. Levi bar Lahma, "Job. lived in the time of Moses. Here it is written, 'O that my words were now written' (Job. 19:23) and elsewhere, 'For wherein now shall it be known' (Exo. 33:16)."

I. COMPOSITE ON JOB

1. IV.19: Raba said, "Job. lived in the time of the spies. Here it is written, 'There was a man in the land of Uz, Job. was his name' (Job. 1: 1), and elsewhere, 'Where there be wood therein' (Num. 13:20)."

2. IV.20: One of the rabbis was in session before R. Samuel bar Nahmani, and, in session, he stated, "Job. never lived, but was merely a metaphor!"

3. IV.21: Both R. Yohanan and R. Eleazar say, "Job. was among those who came up from the exile, and his house of study was located in Tiberias."

4. IV.22: Said R. Yohanan, "The generation of Job. was drowning in licentiousness: 'Behold all of you have seen it, why then are you become altogether vain' (in line with 'Return, return O Shulamite, return, return that we may look upon you' (Son. 6:13))."

a. IV.23: Gloss of the foregoing.

b. IV.24: As above.

5. IV.25: "Now there was a day when the sons of God came to stand before the Lord and Satan came also among them. And the Lord said to Satan, where do you come from? And Satan answered..." (Job. 1: 6-7).

6. IV.26: Said R. Yohanan, "What is said about Job. is more impressive than what is said about Abraham. For about Abraham it is written, 'For now I know that you fear God' (Job. 22:12), but of Job, 'That man was perfect and upright and one that feared God and avoided evil' (Job. 1: 1)."

7. IV.27: “That man was perfect and upright and one that feared God and avoided evil” (Job. 1: 1): What is the meaning of “avoided evil”?

8. IV.28: “And then Satan answered the Lord and said, Does Job. fear God for nothing? Have you not made a hedge about him and about his house” (Job. 1: 9-10).

9. IV.29: What is the meaning of “his cattle has increased in the land” (Job. 1:10)?

10. IV.30: What is the meaning of “the oxen were ploughing and the asses were feeding beside them” (Job. 1:14)?

11. IV.31: “And the Lord said, ‘Whence have you come?’ And Satan answered the Lord, ‘From going to and fro on the earth and from walking up and down on it’: He said before him, ‘Lord of the world, I have surveyed the whole world and found none so faithful as your servant, Abraham, for you said to him, ‘Rise, walk through the land to the length and breadth of it, for to you I will give it’ (Gen. 13:17), and still, he couldn’t find a place for burying Sarah until he bought one for four hundred sheqels of silver. And yet he did not complain against what you did.” “Then the Lord said to Satan, ‘Have you considered my servant Job? For there is none like him in the earth’ (Job. 1: 8).”

12. IV.32: “And the Lord said to Satan, ‘Have you considered my servant Job, that there is none like him on the earth, a blameless and upright man, who fears God and turns away from evil? He still holds fast his integrity, although you moved me against him to destroy him without cause’”: Said R. Yohanan, “Were it not written out in a verse of Scripture, it would not be possible to say it! God looks like someone who listens to the last person who talked to him.”

13. IV.33: Satan comes down and tempts, goes up and causes anger. He gets permission and takes a soul.

14. IV.34: “So Satan went forth from the presence of the Lord and afflicted Job. with loathsome sores from the sole of his foot to the crown of his head, and he took a potsherd with which to scrape himself and sat among the ashes” (Job. 2:4-8): Said R. Isaac, “The torment that afflicted Satan was greater than that of Job. It is like the case of a servant whose master says to him, ‘Go break open a cask and guard the wine from spilling.’”

15. IV.35: Said R. Simeon b. Laqish, “Satan, the impulse to do evil, and the angel of death are one and the same.”

16. IV.36: Said R. Levi, “Satan and Peninah did what they did for the sake of Heaven.

17. IV.37: “In all this Job. did not sin with his lips” (Job. 2:10): Said Raba, “With his lips he did not sin, but in his heart he sinned.”

18. IV.38: Said Raba, “Job. tried to overturn the dish.”

19. IV.39: “Although you know that I am not guilty and there is none to deliver out of your hand?” (Job. 10: 7): Said Raba, “Job. wanted to exculpate the entire world from judgment. He said before him, ‘Lord of the world, You have created the ox with cloven hoofs, and you have created the ass with sealed hoofs; you have created Paradise and you have created Gehenna; you have created the righteous

and you have created the wicked? So who can stop you from doing whatever you like!

20. IV.40: Expounded Raba, “What is the meaning of the verse of Scripture: ‘The blessing of him who was about to perish came upon me, and I caused the widow’s heart to sing for joy’ (Job. 29:13)? “‘The blessing of him who was about to perish came upon me’: this teaches that he would steal a field from an orphans’ estate and improve it and then give it back to them.

21. IV.41: “O that my vexation were weighed, and all my calamity laid in the balances” (Job. 6: 2-3): Said Rab, “Dirt should be put into Job’s mouth, because he makes himself the equal of Heaven!”

22. IV.42: “There is no umpire between us, who might lay his hand upon us both” (Job. 9:33): Said Rab, “Dirt should be put into Job’s mouth! Is there a servant who rebukes his master?”

23. IV.43: “I made a covenant with my eyes, how then could I look at a woman” (Job. 31: 1): Said Rab, “Dirt should be put into Job’s mouth. He avoided staring at other men’s wives, but Abraham didn’t even stare at his own: ‘Behold, now I know that you are a beautiful woman to look at’ (Gen. 12:11) — meaning, up to then he had not even stared at her.”

24. IV.44: “As the cloud is consumed and vanishes, so he who goes down to Sheol shall come up no more” (Job. 7: 9): Said Raba, “On the basis of this statement it is clear that Job. denied the resurrection of the dead.”

25. IV.45: “For he breaks me with a tempest and multiplies my wounds without cause” (Job. 9:17): Said Rabbah, “It was through a tempest that Job. blasphemed, so it was through a tempest that he was answered.

26. IV.46: “Job. speaks without knowledge, his words are without insight” (Job. 34:35): Said Raba, “On the basis of this statement we learn that a person is not held responsible for what is said under duress.”

27. IV.47: “Now when Job’s three friends heard of all this evil that had come upon him, they came each from his own place, Eliphaz the Temanite, Bildad the Shuhite, and Zophar the Naamathite. They made an appointment together to come to condole with him and comfort him...” (Job. 2:11-13): What is the meaning of “They made an appointment together”?

28. IV.48: Said R. Simeon b. Laqish to R. Yohanan, “From your perspective, that fecundity came into the world, how come the daughters of Job. were not doubled in number (as were his cattle, Job. 42:12)?” He said to them, “While they were not doubled in number, they were in beauty: ‘He also had seven sons and three daughters, and he called the first Jemimah, the second, Keziah, the third Keren Happuch’ (Job. 42:13-14).

a. IV.49: To R. Simeon b. Rabbi was born a daughter. He was disappointed. Said to him his father, “Fecundity has come into the world.” “And the Lord blessed Abraham in all things” (Gen. 24: 1): What is the meaning of “in all things”? R. Meir says, “He had no daughter.” R. Simeon says in the name of R. Judah, “He did have a daughter.” Another view of the meaning of “in all things”: Esau did not rebel so long as he was

alive. Another view of the meaning of “in all things”: Ishmael repented in his lifetime.

J. COMPOSITE ON HOW ABRAHAM WAS BLESSED

1. IV.50: How do we know that Esau did not rebel so long as he was alive? “And Esau came in from the field and he was faint” (Gen. 24:29). It was the day on which Abraham our father died, and our father Jacob prepared a broth of lentils to comfort his father Isaac.

I. IV.51: Said R. Yohanan, “On that day that wicked man committed five sins. He had sexual relations with a betrothed maiden, he killed someone, he denied God, he denied the resurrection of the dead, and he disposed of the birthright.”

a. IV.52: And how do we know that Ishmael repented in his lifetime?

2. IV.53: There were three persons whom the Holy One, blessed be He, gave a foretaste in this world of the life of the world to come: Abraham, Isaac, and Jacob. Abraham: “The Lord blessed Abraham in all” (Gen. 24: 1).

3. IV.54: There were six over whom the angel of death had no power: Abraham, Isaac, Jacob, Moses, Aaron, and Miriam.

4. IV.55: There were seven over whom the worm had no power: Abraham, Isaac, Jacob, Moses, Aaron, Miriam, and Benjamin son of Jacob.

a. IV.56: There were four who died through the advice of the snake to Eve, not through any sin they ever did: Benjamin son of Jacob, Amram father of Moses, Jesse father of David, and Kilab son of David.

VI. Mishnah-Tractate Baba Batra 2:1

A. ONE MAY NOT DIG A CISTERN NEAR THE CISTERN OF HIS FELLOW, NOR A DITCH, CAVE, WATER CHANNEL:

1. I:1: How come the Mishnah paragraph begins talking about a cistern but ends up by talking about his wall?

2. I:2: He who comes to dig a pit near the boundary between his field and the neighbor’s — Abbayye said, “He may juxtapose it to the boundary of the field.”

Raba said, “He may not juxtapose it to the boundary of the field.”

3. I:3: Continuation of foregoing.

B. OR LAUNDRY POOL, UNLESS ONE SET IT THREE HANDBREADTHS AWAY FROM THE WALL OF HIS FELLOW, AND PLASTERED IT WITH PLASTER TO RETAIN THE WATER.

1. II:1: Said R. Nahman said Rabbah bar Abbuha, “This rule on three handbreadths pertains only to a soaking pool, but a washing pool has to be kept four handbreadths from the wall” because of the splashing.

C. THEY SET OLIVE REFUSE, MANURE, SALT, LIME, OR STONES THREE HANDBREADTHS FROM THE WALL OF ONE’S FELLOW, AND PLASTER IT WITH PLASTER:

1. III:1: The question was raised: Are we to read the Mishnah to mean, “and plastered it with plaster” or perhaps, “or plastered it with plaster”?

D. AND THEY SET A HAND MILL THREE HANDBREADTHS FROM THE LOWER MILLSTONE, WHICH IS FOUR FROM THE UPPER MILLSTONE; AND THE OVEN SO THAT THE WALL IS THREE HANDBREADTHS FROM THE BELLY OF THE OVEN, OR FOUR FROM THE RIM.

1. IV:1: There we have learned: With what do they cover up food to keep it hot, and with what do they not cover up food to keep it hot? They do not cover with peat, compost, salt, lime, or sand, whether wet or dry, or with straw, grape skins, flocking rags, or grass, when wet. But they do cover up food to keep it hot with them when they are dry. They cover up food to keep it hot with cloth, produce, the wings of a dove, carpenters' sawdust, and soft hackled flax. R. Judah prohibits in the case of soft hackled flax and permits in the case of coarse hackled flax (M. **Shab. 4: 1**). How come in the present catalogue is listed stone but not sand, and in the other catalogue is listed sand but not stone?

E. THEY SET SEEDS, A PLOUGH:

1. V:1: Why not infer the rule on seeds from the one on plough furrows?

2. V:2: Is that to imply that the roots of seeds spread out? But lo, we have learned in the Mishnah: He who sinks a vine shoot into the ground — if the soil on top of it does not measure three handbreadths high, he shall not put seed on top of it the underground vine, even if he sank it in a gourd or pipe. If he sank it in stony ground — even though the soil on top of it measures only three fingerbreadths high — it is permitted to put seed on top of it the underground vine (M. **Kil. 7:1A-G**). And in this connection it was said in a Tannaite complement: But he may sow all around it so roots do not spread, for if they did, we would have a violation of the taboo against mixed seeds!

F. AND URINE THREE HANDBREADTHS FROM A WALL:

1. VI:1: Said Rabbah bar bar Hannah, “It is permitted to urinate against someone else's wall, in line with this verse: ‘And I will cut off from Ahab one that pisses against the wall and him who is shut up and him who is left at large in Israel’ (1Ki. 21:21).” But have we not learned in the Mishnah and urine three handbreadths from a wall?

G. INSERTED TALMUD SERVING M. OHALOT 6:2.

1. VI:2: Said R. Tobi bar Qisna said Samuel, “A thin wafer does not serve to diminish the space of a window.” Simon: If a dead body is in a room, and between that room and an adjoining room is an opening of a handbreadth square, the uncleanness of the corpse spreads to that other room, in line with Num. 19:1ff. But if the opening is reduced to less than a handbreadth by something that serves that purpose, being useless for any other purpose, then the uncleanness does not contaminate the other room. Reference to damaging a wall accounts for the insertion of the massive composite.

a. VI:3: Secondary supplement: Said Rab, “With any sort of material a partition against uncleanness is made except for salt and grease the former crumbles, the latter melts.”

H. AND THEY SET A HAND MILL THREE HANDBREADTHS FROM THE LOWER MILLSTONE, WHICH IS FOUR FROM THE UPPER MILLSTONE;

1. VII:1: How come? Because of the vibrations which would otherwise damage the wall.

I. AND THE OVEN SO THAT THE WALL IS THREE HANDBREADTHS FROM THE BELLY OF THE OVEN, OR FOUR FROM THE RIM.

1. VIII:1: Said Abbaye, "One may infer that the base of an oven projects one handbreadth, with a practical upshot being selling the oven which then would include a base that projects a handbreadth."

VII. Mishnah-Tractate Baba Batra 2:2, 2:3A-D

A. A PERSON SHOULD NOT SET UP AN OVEN IN A ROOM, UNLESS THERE IS A SPACE OF FOUR CUBITS ABOVE IT. IF HE WAS SETTING IT UP IN THE UPPER STORY, THERE HAS TO BE A LAYER OF PLASTER UNDER IT THREE HANDBREADTHS THICK, AND IN THE CASE OF A STOVE, A HANDBREADTH THICK. AND IF IT DID DAMAGE, THE OWNER OF THE OVEN HAS TO PAY FOR THE DAMAGE. R. SIMEON SAYS, "ALL OF THESE MEASURES HAVE BEEN STATED ONLY SO THAT IF THE OBJECT INFLECTED DAMAGE, THE OWNER IS EXEMPT FROM PAYING COMPENSATION IF THE STATED MEASURES HAVE BEEN OBSERVED."

1. I:1: But has it not been taught on Tannaite authority: In the case of an oven, four handbreadths, and in the case of a stove, three?

B. A PERSON SHOULD NOT OPEN A BAKE SHOP OR A DYER'S SHOP UNDER THE GRANARY OF HIS FELLOW, NOR A CATTLE STALL:

1. II:1: A Tannaite formulation: If the cow shed were there before the storehouse, it is permitted.

2. II:2: Abbaye raised these questions: "If the owner of the upper room cleaned out and swept the room to use it for a storehouse but had not yet put any produce there, what is the rule? If he opened a number of windows there, what is the rule? If he built a room over the roof, what is the rule?"

3. II:3: R. Huna b. R. Joshua raised this question: "If he stored figs and pomegranates there, what is the rule?"

C. TO BE SURE, IN THE CASE OF WINE THEY PERMITTED DOING SO, BUT NOT BUILDING A CATTLE STALL UNDER THE WINE CELLAR.

1. III:1: A Tannaite statement: In the case of wine, they permitted doing so, because it improves the wine; but not building a cattle stall under the wine cellar, because the smell stinks it up.

VIII. Mishnah-Tractate Baba Batra 2:3E-J

A. AS TO A SHOP IN THE COURTYARD, A PERSON MAY OBJECT AND TELL THE SHOPKEEPER, "I CANNOT SLEEP BECAUSE OF THE NOISE OF PEOPLE COMING IN AND THE NOISE OF PEOPLE GOING OUT." ONE MAY HOWEVER MAKE UTENSILS AND GO OUT AND SELL THEM IN THE MARKET.

TRULY ONE HAS NOT GOT THE POWER TO OBJECT AND TO SAY, “I CANNOT SLEEP BECAUSE OF THE NOISE OF THE HAMMER, “THE NOISE OF THE MILLSTONES, “OR THE NOISE OF THE CHILDREN.”

1. I:1: What is the distinction that accounts for the conflict between the former — Truly one has not got the power to object and to say, “I cannot sleep because of the noise of the hammer, the noise of the millstones — and latter clause — or the noise of the children? One may manufacture articles in the courtyard for sale in the market place, and the neighbor cannot object. But the reference to children involves noise they make coming to buy from the shop, and to this, the neighbor should be able to object. Hence the question.

a. I:2: Gloss to a detail of the foregoing.

2. I:3: Continuation of I:1’s main argument. This is integral to I:2’s topic.

a. I:4: Continuation of the glossing of the detail of I:1 addressed at I:2.

b. I:5: As above.

c. I:6: As above.

d. I:7: As above.

e. I:8: As above.

B. EXPOSITION OF RULES GOVERNING LIMITATION ON COMPETITION; PROTECTED LOCAL MARKETS

3. I:9: Said R. Huna, “A resident of an alley who sets up a handmill, and another resident of the alley wants to set up the same next to him — the former has the right to prevent him from doing so, for he may say to him, ‘You are interfering with my livelihood.’”

a. I:10: Secondary issue: Said Rabina to Raba, “May one propose that R. Huna’s statement accords with what R. Judah said, for we have learned in the Mishnah: R. Judah says, ‘A storekeeper should not hand out parched corn and nuts to little children, because in that way he makes it their habit to buy from him.’ But sages permit (M. **B.M. 4:12D-E**)?”

b. I:11: To Huna’s statement an objection was raised: One may set up a store next to someone else’s store, a bathhouse next to someone else’s bathhouse, and the other may not stop him, because he may say to him, “You work in yours, I in mine”!

c. I:12: Said R. Huna b. R. Joshua, “It is obvious to me that someone in a given town can stop someone from another town from setting up in competition in his own place. But if the other is subject to taxes in this town, he cannot stop him. So, too, the resident of an alleyway cannot stop another resident of the same alleyway from setting up in competition.”

d. I:13: Said R. Joseph, “But R. Huna concurs that an elementary teacher cannot prevent another from setting up in competition in the same alleyway, for a master has said, ‘the jealousy of scribes increases wisdom.’”

e. I:14: Said R. Nahman bar Isaac, “And R. Huna b. R. Joshua concurs in the case of itinerant peddlers who circulate among the villages that they

cannot prevent one another from doing so. For a master has said, ‘Ezra ordained for Israel that itinerant peddlers circulate among the villages so that Israelite women should have plenty of costume jewelry.’ But that rule means only that they can go from door to door but not that they may set up permanent shops. But if the itinerant was a neophyte rabbi, he may set up a permanent shop.”

I. I:15: Illustrative case.

II. I:16: As above.

III. I:17: As above.

IX. Mishnah-Tractate Baba Batra 2:4

A. HE WHOSE WALL WAS NEAR THE WALL OF HIS FELLOW MAY NOT BUILD ANOTHER WALL NEXT TO IT, UNLESS HE SETS IT FOUR CUBITS BACK. AND IF HE BUILDS A WALL OPPOSITE HIS FELLOW’S WINDOWS, WHETHER IT IS HIGHER, LOWER, OR OPPOSITE THEM, HE MUST SET IT BACK BY FOUR CUBITS.

1. I:1: May not build another wall next to it, unless he sets it four cubits back: How come even the first wall got that close and should not that have been located four cubits away from the existing wall?

2. I:2: Said Rab, “The rule pertains only to the wall of a garden patch, but if it is a courtyard wall, he may bring it as near as he wishes.” R. Oshaia says, “All the same are the wall of a garden patch and the wall of a courtyard. He may not bring it as near as he wishes but has to keep it four cubits away.”

a. I:3: Gloss of foregoing: And how much must the wall be kept back to protect the other’s light?

X. Mishnah-Tractate Baba Batra 2:5A-D

A. THEY SET ONE’S LADDER FOUR CUBITS AWAY FROM THE DOVECOTE OF ONE’S NEIGHBOR, SO THAT THE MARTEN WILL NOT JUMP IN TO THE DOVECOTE. AND THEY SET BACK A WALL FROM ONE’S NEIGHBOR’S ROOF GUTTER BY FOUR CUBITS, SO THAT THE NEIGHBOR WILL BE ABLE TO SET UP HIS LADDER TO CLEAN OUT HIS GUTTER.

1. I:1: May we say that our Mishnah paragraph is not in accord with the view of R. Yosé, for lo, R. Yosé says, “Even though the cistern was there before the tree, one may not cut down the tree, for this one has every right to dig within his domain, and that one has every right to plant a tree within his domain” (M. 2:11I)?

a. I:2: Illustrative case. R. Joseph had some small date trees. Under them cuppers would sit and draw blood. Ravens would come and suck up the blood and would fly onto the date trees and damage them. Said R. Joseph to the cuppers, “Take your croakers out of here.”

XI. Mishnah-Tractate Baba Batra 2:5E-K

A. THEY SET UP A DOVECOTE FIFTY CUBITS AWAY FROM A TOWN. AND ONE SHOULD NOT SET UP A DOVECOTE IN HIS OWN DOMAIN, UNLESS HE HAS FIFTY CUBITS OF SPACE IN EVERY DIRECTION.

1. I:1: Fifty cubits: and no more? But an objection may be raised: They spread traps for pigeons no closer than thirty ris from a settled area.

B. R. JUDAH SAYS, “FOUR KORS OF SPACE OF GROUND, THE LENGTH OF THE FLIGHT OF A PIGEON.”

1. II:1: Said R. Pappa, and some say R. Zebid, “That contains the implication that the court may lay claim in behalf of the purchaser of a property and in behalf of the heir of a property.” If a man inherits a property from his father and someone else claims it, if it is proved that the father occupied it for three years, the court can plead in behalf of the heir that the father originally bought it from the man, while they would not do so for the father himself if he did not put forward the plea on his own account. Similarly, with a man who has bought a field that is then claimed by a third party.

C. BUT IF HE HAD BOUGHT IT AND IT WAS BUILT IN THAT PLACE, EVEN IF IT WAS ONLY A QUARTER-QAB OF SPACE, LO, HE RETAINS HIS ESTABLISHED RIGHT.

1. III:1: And lo, said R. Nahman said Rabbah bar Abbuha, “There is no established right to cause damages”?

XII. Mishnah-Tractate Baba Batra 2:6

A. A FALLEN PIGEON WHICH IS FOUND WITHIN FIFTY CUBITS — LO, IT BELONGS TO THE OWNER OF THE DOVECOTE. IF IT IS FOUND OUTSIDE OF A FIFTY-CUBIT RANGE, LO, IT BELONGS TO THE ONE WHO FINDS IT. IF IT WAS FOUND BETWEEN TWO DOVECOTES, IF IT WAS NEARER TO THIS ONE, IT BELONGS TO HIM, AND IF IT WAS NEARER TO THE OTHER ONE, IT BELONGS TO HIM, AND IF IT WAS EXACTLY IN BETWEEN, THE TWO OF THEM DIVIDE IT UP.

1. I:1: Said R. Hanina, “If we have a choice, so that we may invoke the classification of either ‘a majority’ or the classification of ‘proximity,’ ‘to what class do most things like this belong’ vs. ‘where are the nearest examples of things of this kind’, we invoke the criterion of the majority. And that is the case even though the criterion of ‘a majority’ and the criterion of ‘proximity’ derives from the Torah; even so, the criterion of ‘a majority’ takes priority.” We have learned in the Mishnah: A fallen pigeon which is found within fifty cubits — lo, it belongs to the owner of the dovecote. And that is the case even though there may be a bigger cote nearby!

2. I:2: R. Jeremiah raised this question: “If one foot stands within fifty cubits and the other outside, what is the law?”

3. I:3: If it was found between two dovecotes, if it was nearer to this one, it belongs to him, and if it was nearer to the other one, it belongs to him. And that is

the case even though one may have more birds than the other thus proximity over majority!

4. I:4: Said Abbaye, “So we, too, have learned that the decisive criterion is ‘majority’ on the basis of the following statement in the Mishnah: The sages made a parable in connection with the woman: the room, the front hall, and the room upstairs. Blood in the room is unclean. If it is found in the front hall, a matter of doubt concerning it is deemed unclean, since it is assumed to come from the fountain uterus (M. **Nid. 2: 5**). And that is the case even though the ‘upper chamber’ is nearer.”

5. I:5: It was taught on Tannaite authority by R. Hiyya: Blood that is found in the front hall — on its account they burn heave-offering and are liable for contamination of the sanctuary and its holy things. As to blood that exudes from the room, if it is known that it is blood caused by a blow, it is clean, and if not, it is unclean. If it is in doubt whether it is blood of the room or blood caused by a blow, it is unclean (T. **Nid. 3:9A-D**). And said Raba, “On the basis of this statement of R. Hiyya, three inferences are to be drawn. Where you may invoke the principles of either ‘majority’ or ‘proximity,’ we assign priority to the principle of ‘majority.’ Further, the principle of being guided by the majority of instances derives from the Torah....”

a. I:6: Illustrative problem: A jug of wine that was found floating on the river — Said Rab, “If it was found opposite a town the majority of the population of which is Israelite, it is permitted as Israelite wine, for Jewish use. If it was found opposite a town the majority of the population of which was gentiles, it is forbidden.” and Samuel said, “Even if it was found opposite a town, the majority of the population of which was Israelite, it is forbidden. For I maintain that it came from the town of Hai Diqra where no Jews at all live.”

b. I:7: Illustrative case: There was a case of a stolen wine keg that turned up in a vineyard that was subject to the prohibition governing a vineyard planted within three years (Lev. 19:23). Rabina declared it permitted assuming that the wine was not from the grapes of that vineyard.

c. I:8: Some flasks of wine turned up among trunks of vines belonging to a Jew, and Raba permitted drinking the wine assuming it was of Jewish origin.

XIII. Mishnah-Tractate Baba Batra 2:7

A. THEY KEEP A TREE TWENTY-FIVE CUBITS FROM A TOWN, AND IN THE CASE OF A CAROB OR A SYCAMORE, FIFTY CUBITS. ABBA SAUL SAYS, “IN THE CASE OF ANY SORT OF TREE WHICH PRODUCES NO FRUIT, FIFTY CUBITS.” IF THE TOWN WAS THERE FIRST, ONE CUTS DOWN THE TREE AND PAYS NO COMPENSATION:

1. I:1: They keep a tree twenty-five cubits from a town: What is the operative consideration? Said Ulla, “Because of preserving the beauty of the town leaving a clear space outside of the wall to preserve a vision of the town.”

B. AND IF THE TREE CAME FIRST, ONE CUTS DOWN THE TREE BUT PAYS COMPENSATION:

1. II:1: How come in the case of the cistern it has been taught on Tannaite authority: If the cistern was there first, one cuts down the tree and pays the value M. 2:11? Here, by contrast, one cuts down the tree and pays no compensation!

C. IF IT IS A MATTER OF DOUBT WHETHER THIS CAME FIRST OR THAT CAME FIRST, ONE CUTS DOWN THE TREE AND PAYS NO COMPENSATION:

1. III:1: How come in the case of the pit the rule is that he should not cut the tree down?

XIV. Mishnah-Tractate Baba Batra 2:8

A. THEY SET A PERMANENT THRESHING FLOOR FIFTY CUBITS FROM A TOWN. A PERSON SHOULD NOT BUILD A PERMANENT THRESHING FLOOR ON HIS OWN PROPERTY, UNLESS HE OWNS FIFTY CUBITS OF SPACE IN ALL DIRECTIONS. AND HE SETS IT SOME DISTANCE AWAY FROM THE CROPS OF HIS FELLOW AND FROM HIS PLOUGHED LAND, SO THAT IT WILL NOT CAUSE DAMAGE.

1. I:1: What is the difference between the opening clause where we allow the threshing floor to be set up within fifty cubits of the town and the next clause we do not allow a threshing floor to be set up within fifty cubits of someone else's property?

a. I:2: Light gloss.

XV. Mishnah-Tractate Baba Batra 2:9-10

A. THEY PUT CARRION, GRAVES, AND TANNERIES AT LEAST FIFTY CUBITS AWAY FROM A TOWN.

THEY MAKE A TANNERY ONLY AT THE EAST SIDE OF A TOWN. R. AQIBA SAYS, "IN ANY SIDE OF IT ONE MAY SET IT UP, EXCEPT FOR THE WEST SIDE. BUT ONE MUST IN ANY EVENT SET IT FIFTY CUBITS AWAY FROM THE TOWN."

1. I:1: R. Aqiba says, "In any side of it one may set it up, except for the west side: The question was raised: What is the sense of R. Aqiba's ruling? Does he intend to say that the tannery may be set up In any side of it..., close to the city, except for the west side, where it may be set up, but only fifty cubits away? Or perhaps he means that In any side of it one may set it up, and he sets it up fifty cubits away from the town, except for the west side, where he may not set it up at all?

a. I:2: Gloss of a tangential detail of the foregoing. Said Raba to R. Nahman, "What is the meaning of constant? Shall we say that the wind is constant? And lo, said R. Hanan bar Abba said Rab, 'Four winds blow every day, and the north wind with all the others, for if it were not the case that it did so, the world could not stand for a moment. And the south wind is the harshest of them all, and if it were not that the son of the hawk an angel holds it back with its wings, it would destroy the world: "Does the hawk soar by the wisdom and stretch her wings towards the south"

(Job. 39:26).’ Rather, what is the meaning of ‘constant’? It is where the Presence of God is constant...”

B. THE PRESENCE OF GOD IS UBIQUITOUS

I. 1:3: Gloss of the gloss. And R. Oshaia takes the view that the Presence of God is in every place, for said R. Oshaia, “What is the meaning of the verse of Scripture, ‘You are the Lord, even you alone, you made heaven, the highest heaven’ (Neh. 9: 6)? Your messengers are not like mortal messengers. Mortal messengers come back and report to the place from which they are sent forth, but your messengers report to the place to which they are sent: ‘Can you send forth your lightnings that they may go and say to you, here we are’ (Job. 38:35). What is said is not, ‘that they may come and say,’ but, ‘that they may go and say,’ and that shows that the Presence of God is in every place.”

II. 1:4: Said R. Judah, “What is the meaning of this verse: ‘My doctrine shall drop as the rain’ (Deu. 32: 2)? This refers to the west wind, which comes from the back of the world. ‘My speech shall distill the dew’ refers to the north wind, which makes gold flow. So Scripture says, ‘who lavish gold from the purse’ (Isa. 46: 6) and the word for lavish uses consonants that occur in ‘distill’. ‘As the light rain upon the tender grass’ (Deu. 32: 2) refers to the east wind, which rages through the world like a demon the words for light rain and demon use the same consonants. ‘And as showers upon the herb’ refers to the south wind, which brings up showers and causes grass to grow.”

III. 1:5: R. Eliezer says, “The world is similar to an area closed on three sides and open on the fourth, and the north side is the side that is not enclosed. Now when the wind reaches the northwest corner, it bends back and returns eastward, above the firmament.”

IV. 1:6: Said R. Hisda, “What is the meaning of this verse: ‘Out of the north comes gold’ (Job. 37:22)? This speaks of the north wind, which makes gold flow: ‘who lavish gold from the purse’ (Isa. 46: 6).”

V. 1:7: Said Rafram bar Pappa said R. Hisda, “From the day on which the house of the sanctuary was destroyed, the south wind has not brought rain: ‘And he decreed on the right hand and there was hunger, and he consumed on the left, and they were not satisfied’ (Isa. 9:19), ‘North and right hand you have created them’ (Psa. 89:13).”

VI. 1:8: Said Rafram bar Pappa said R. Hisda, “From the day on which the house of the sanctuary was destroyed, rain does not come down from the storehouse of goodness: ‘The Lord shall open to you his good treasure’ (Deu. 28:12).”

VII. I:9: Said R. Isaac, “He who wants to become wise should face the south when praying, he who wants to get rich should face the north. Your mnemonic is that the table in the tabernacle was to the north of the altar, the candlestick to the south.”

VIII. I:10: Said R. Hanina to R. Ashi, “People like you who live in the north of the Land of Israel should turn to the south.”

B. THEY SET UP A POOL FOR STEEPING FLAX AWAY FROM A VEGETABLE PATCH, LEEKS AWAY FROM ONIONS, AND A MUSTARD PLANT AWAY FROM BEES. R. YOSÉ PERMITS IN THE CASE OF A MUSTARD PLANT.

1. II:1: It is because he can say to him, “Just as you can tell me to take my mustard away from your bees, so I can tell you to take your bees away from my mustard, because they come and eat the stalks of my mustard plants.”

XVI. Mishnah-Tractate Baba Batra 2:11

A. THEY SET UP A TREE TWENTY-FIVE CUBITS AWAY FROM A CISTERN, AND IN THE CASE OF A CAROB AND A SYCAMORE TREE, FIFTY CUBITS, WHETHER HIGHER THAN THE CISTERN OR ON THE SAME LEVEL.

1. I:1: Whether the tree is on higher ground than the cistern, or whether the cistern is higher than the tree.

B. IF THE CISTERN WAS THERE FIRST, ONE CUTS DOWN THE TREE AND PAYS THE VALUE. IF THE TREE WAS THERE FIRST, ONE MAY NOT CUT DOWN THE TREE. IF IT IS A MATTER OF DOUBT WHETHER THIS WAS THERE FIRST OR THAT WAS THERE FIRST ONE MAY NOT CUT IT DOWN. R. YOSÉ SAYS, “EVEN THOUGH THE CISTERN WAS THERE BEFORE THE TREE, ONE MAY NOT CUT DOWN THE TREE, FOR THIS ONE HAS EVERY RIGHT TO DIG WITHIN HIS DOMAIN, AND THAT ONE HAS EVERY RIGHT TO PLANT A TREE WITHIN HIS DOMAIN.”

1. II:1: Said R. Judah said Samuel, “The decided law accords with the position of R. Yosé.”

a. II:2: Pappi Yonaah was a poor man who got rich. He built a villa. In the neighborhood were some sesame oil makers. When they crushed the seeds, they would make his villa shake. He came before R. Ashi. He said to him, “When we were in the household of R. Kahana, he would say, ‘R. Yosé concurs that one is responsible for what his arrows do that is, even though he may shoot the arrows, he is responsible for damage they cause.’”

b. II:3: Members of the household of Bar Marion b. Rabin, when they would beat flax, the stalks would fly about and injure people. They came before Rabina. He said to them, “When we said, ‘R. Yosé concurs that one is responsible for what his arrows do that is, even though he may shoot the arrows, he is responsible for damage they cause,’ that is when the damages come through the man’s direct action. Here the wind carries the stalks about, so they are not liable.”

XVII. Mishnah-Tractate Baba Batra 2:12

A. A PERSON MAY NOT PLANT A TREE NEAR HIS FELLOW'S FIELD, UNLESS HE SET IT FOUR CUBITS AWAY FROM THE OTHER'S FIELD. ALL THE SAME ARE VINES OR ANY OTHER TREE.

1. I:1: The four cubits of which they have spoken is sufficient space for working a vineyard.

a. II:2: Raba bar R. Hana had some date trees near the vineyard of R. Joseph, and birds would roost on them and fly down and damage the vines. R. Joseph said to him, "Go, cut them down."

b. II:3: R. Pappa had some date trees close to the field of R. Huna b. R. Joshua. One day he went and found him digging and cutting out the roots. He said to him, "What's going on?"

B. IF THERE WAS A FENCE IN BETWEEN, THIS ONE PLANTS NEAR THE WALL ON ONE SIDE, AND THAT ONE PLANTS NEAR THE WALL ON THE OTHER SIDE. IF THE ROOTS OF ONE'S TREE EXTENDED INTO THE DOMAIN OF THE OTHER, ONE MAY CUT THEM AWAY DOWN TO THREE HANDBREADTHS, SO THAT THEY WILL NOT HINDER THE PLOUGH.

IF ONE WAS DIGGING A CISTERN, DITCH, OR CAVE, HE MAY CUT OFF THE ROOTS AS FAR AS HE DIGS DOWN, AND THE WOOD IS HIS.

1. II:1: R. Jacob of Adiabene asked R. Hisda, "Who gets the wood?"

2. II:2: Said Ulla, "A tree located closer to the boundary of a neighbor's field than sixteen cubits is classified as a robber in that it draws sustenance from the neighbor's field, and the farmer does not bring first fruits from that tree."

a. II:3: And must the tree be kept only sixteen cubits from the boundary and no greater distance? But lo, we have learned in the Mishnah: They set up a tree at least twenty-five cubits away from a cistern (M. 2:11)!

b. II:4: When R. Dimi came, he said, "R. Simeon b. Laqish addressed this question to R. Yohanan: 'What is the law on a tree located within sixteen cubits of the boundary of a field,' and he said to him, 'It is in the classification of a robber, and first fruits are not to be brought from it.'"

XVIII. Mishnah-Tractate Baba Batra 2:13

A. A TREE WHICH STRETCHES OVER INTO THE FIELD OF ONE'S FELLOW — ONE CUTS IT AWAY TO A HEIGHT MEASURED AS FAR AS ONE REACHES BY AN OX GOAD HELD OVER THE PLOUGH, AND, IN THE CASE OF A CAROB AND A SYCAMORE, ACCORDING TO THE MEASURE OF THE PLUMB LINE RIGHT AT THE BOUNDARY.

IN THE CASE OF AN IRRIGATED FIELD, HE MAY CUT AWAY ANY SORT OF TREE BY THE MEASURE OF THE PLUMB LINE RIGHT AT THE BOUNDARY. ABBA SAUL SAYS, "IN THE CASE OF ANY TREE WHICH YIELDS NO FRUIT, ONE MAY CUT AWAY BY THE MEASURE OF THE PLUMB LINE RIGHT AT THE BOUNDARY."

1. I:1: This question was raised: Does the statement of Abba Saul pertain to the opening clause of the Mishnah or the concluding one in the case of any tree which yields no fruit, (one may cut away) by the measure of the plumb line (right at the boundary) — does this mean that the branches of wild trees can be cut down in any fields, or that in an irrigated field only may the branches of the fruit trees, but not of other trees, be cut down?

XIX. Mishnah-Tractate Baba Batra 2:14

A. IN THE CASE OF A TREE WHICH EXTENDS INTO THE PUBLIC DOMAIN, ONE CUTS THE BRANCHES SO THAT A CAMEL MAY PASS UNDERNEATH WITH ITS RIDER:

1. 1:1: Who is the Tannaite authority who takes the position that, when we make rules to prevent damage, we take account only of how things are at present and not how they are likely to develop for the branches will grow again?

B. ONE CUTS THE BRANCHES SO THAT A CAMEL MAY PASS UNDERNEATH WITH ITS RIDER. R. JUDAH SAYS, “A CAMEL CARRYING FLAX OR BUNDLES OF BRANCHES OF VINE RODS.”

1. II:1: The question was raised: Who sets the higher limit, R. Judah or rabbis

C. R. SIMEON SAYS, “EVERY TREE IS TO BE CUT AWAY IN ACCORD WITH THE MEASURE OF A PLUMB LINE, BECAUSE OF THE POSSIBILITY OF OVERSHADOWING A PASSING CORPSE AND SPREADING UNCLEANNESS.”

1. III:1: Because of the possibility of spreading uncleanness through overshadowing corpse uncleanness.

XX. Mishnah-Tractate Baba Batra 3:1

A. TITLE BY USUCAPTION OF HOUSES, CISTERNS, TRENCHES, CAVES, DOVECOTES, BATHHOUSES, OLIVE PRESSES, IRRIGATED FIELDS, SLAVES, AND ANYTHING WHICH CONTINUALLY PRODUCES A YIELD — TITLE BY USUCAPTION APPLYING TO THEM IS THREE YEARS, FROM DAY TO DAY THAT IS, THREE FULL YEARS:

1. I:1: Said R. Yohanan, “I heard from those who went to Usha that they would say, ‘How on the basis of Scripture do we know that the title by usucaption is secured after three years? It rests on the analogy to be drawn from an ox that is an ox which is an attested danger. Just as in such a case, it is only after the ox has gored three times that it is removed from the classification of a harmless ox and declared to be an attested danger, so too, once the squatter has consumed the crop for three years is the field removed from the domain of the seller and assigned to the domain of the buyer.’”

2. I:2: Now from the perspective of R. Meir, who has said, “If there was a span of time between the gorings, the owner is liable, how much the more so if they are consecutive and simultaneous,” if someone enjoyed the usufruct of three crops on a single day, for example, figs that ripened in three distinct stages, would this not constitute a right of usucaption?

a. I:3: Continuation of foregoing: And how do rabbis who reject Ishmael's view that we derive the rule concerning usucaption from the analogy of the rule governing the ox that is an attested danger, how do they derive the rule that three years' usufruct confers ownership via usucaption? Said R. Joseph, "There is a verse of Scripture: 'Men shall buy fields for money and subscribe the deeds and seal them' (Jer. 32:44). Now lo, the prophet is speaking in the tenth year of the rule of Zedekiah, and he is warning the people that they will go into captivity in the eleventh so they will not use the fields for more than two years, so they'd better guard the title deeds."

3. I:4: Said R. Huna, "The time span of 'three years' of which they have spoken in the Mishnah refers to a case in which the squatter took the crops in all three years successively."

a. I:5: Continuation of the foregoing: We have learned in the Mishnah: Title by usucaption of houses...is three years: But lo, while during the day it will be known if someone is living there, by night no one will know if he is living there, and Huna maintains that the occupation must be continuous!

b. I:6: Continuation of foregoing. Said Mar Zutra, "If the claimant the one who wishes to evict the squatter says, let the other produce two witnesses to testify that the squatter lived in the house for three years, both day and night, his is a valid demand."

c. I:7: And R. Huna concedes in the case of a shop such as one in Mahoza that the three years, both day and night, of continuous residence is not required, because these are used by day and not by night.

I. I:8: Case. Rami bar Hama and R. Uqba bar Hama bought a slave girl in partnership. One master made use of her in the first, third, and fifth years, the other in the second, fourth, and sixth years. A claim against their title was issued. They came before Raba. He said to them, "How come you made such an arrangement? It was so that neither one of you would gain ownership by usufruct against the other? But just as you have no claim of usucaption against one another, so you also have established no claim of usucaption against the claim of outsiders to ownership of the slave!"

8. I:9: Said Raba, "If one has enjoyed the usufruct of an entire field except for the area required for sowing a mere quarter-qab of seeds, he acquires ownership after three years of usufruct of the entire field except for that area."

a. I:10: Illustrative case. Someone said to his neighbor, "What right do you have in this house?" He said to him, "I bought it from you and I have had the usufruct for the period required to establish ownership through usucaption." He said to him, "But the reason I never objected is that I was living in the inner room. The house was never fully yours during the three years anyhow."

a. I:11: Illustrative case. Somebody said to someone else, "What right do you have in this house?" He said to him, "I bought it from you, and I have had the usufruct for a sufficient number of years to establish ownership."

He said to him, "Well, I was overseas throughout that time, so I could not object." He said to him, "Well, I have witnesses to prove you would come here thirty days a year." "True enough, but on those thirty days, I was busy with my business."

b. I:12: Illustrative case. Somebody said to someone else, "What right do you have in this land?" He said to him, "I bought it from So-and so, who said to me that he had bought it from you." He said to him, "Don't you concede, then, that this land once was mine, and you did not buy it from me? Evacuate the property, you have no claim against me."

c. I:13: Illustrative case. Somebody said to someone else, "What right do you have in this land?" He said to him, "I bought it from So-and-so, and I have had the usufruct for a sufficient number of years to establish ownership. He said to him, "So-and-so is a robber." He said to him, "Lo, I have witnesses to prove that I came and took counsel with you, and you said to me, 'Go, buy it.'"

d. I:14: Illustrative case. Somebody said to someone else, "What right do you have in this land?" He said to him, "I bought it from So-and-so, and I have had the usufruct for a sufficient number of years to establish ownership." He said to him, "So-and-so is a robber." He said to him, "Lo, I have witnesses to prove that the prior evening, you came and said to me, 'Sell it to me!'" "What I was thinking was to buy the land that I already had a legal right to."

e. I:15: Illustrative case. He said to him, "I bought it from So-and-so, and I have had the usufruct for a sufficient number of years to establish ownership." He said to him, "Lo, I have a deed that I bought it from him four years ago." He said to him, "Do you imagine that when I claimed that I have held it for the period sufficient to establish ownership through usucaption, I meant it was only for three years. I meant it was for many, many years."

B. CASES AND PROBLEMS OF ESTABLISHING OWNERSHIP THROUGH USUCAPTION: VARIOUS CLAIMS AND HOW THE COURTS DISPOSE OF THEM

1. I:16: If one party says, "It belongs to my fathers," and the other, "This belongs to my fathers," this one presents witnesses to prove that it had belonged to his father, and that one did the same to prove that he had had the usufruct for a period sufficient to establish ownership through usucaption — Said Rabbah, "Why should the squatter lie? If he had wanted, he could have said, 'I bought it from you, and, furthermore, I have had the usufruct for a period sufficient to establish ownership through usucaption!'"

a. I:17: Amplification of a tangential detail of the foregoing. Is a litigant allowed to alter his plea in the course of a case, or is he not allowed to do so? Ulla said, "A litigant is allowed to alter his plea in the course of a case." The Nehardeans say, "A litigant is not allowed to alter his plea in the course of a case."

2. I:18: This one says, “It belongs to my father,” and that one says, “It belongs to my father” — this one brings witnesses that it belongs to his father, and that he had enjoyed the usufruct for a period sufficient to establish ownership through usucaption, and that one brings witnesses that he had enjoyed the usufruct for a period sufficient to establish ownership through usucaption, and that one — said R. Nahman, “The evidence concerning usufruct cancels out the contrary evidence to the same effect, and the land is assigned in accord with the evidence that the father had held title to the land.”

3. I:19: Somebody said to someone else, “What right do you have in this?” He said to him, “I bought it from you, and here is the deed.” He said to him, “It’s a forgery.” He leaned over and whispered to Rabbah, “Well, it is true that it’s a forgery, but I really did have a valid deed, but I lost it, so I thought it would be better to come to court with something rather than with nothing.”

4. I:20: Somebody said to someone else, “Pay me the hundred zuz that I claim from you, and here’s the bond.” He said to him, “It’s a forgery.” He leaned over and whispered to Rabbah, “Well, it is true that it’s a forgery, but I really did have a valid deed, but I lost it, so I thought it would be better to come to court with something rather than with nothing.”

a. I:21: Illustrative case. Somebody who had served as a surety for a borrower said to him, “Give me the hundred zuz that I paid the lender on your behalf, and here is your bond.” He said to him, “Hey, didn’t I pay you back?” He said to him, “Yeah, and didn’t you borrow the money from me again?” R. Idi who had to decide the case sent word to Abbaye, “What is the ruling in a case like this one?”

5. I:22: The rumor circulated concerning Raba b. Sharshom that he was enjoying the usufruct of an estate belonging to minors. Said to him Abbaye, “Tell me the facts of the case. He said to him, “It was real estate belonging to an orphans’ estate that was a mortgage for money the deceased owed to me that I have taken over. And he owed me more money than that in addition. Now when I had the usufruct of the land for the span of time covered by the mortgage, I said to myself, ‘Now if I give the real estate back to the orphans and tell them that I still have a claim on their father for more money, I shall be subject to the rule of the rabbis, ‘Anybody who claims to recover money from an estate belonging to orphans has to support the claim by taking an oath.’ Rather than doing that, I decided to hold on to the mortgage bond and continue to enjoy the usufruct of the land to the extent of the money that is still owed to me. Since, if I were to claim that I had bought the land, my claim would have been accepted, I am certainly going to be believed when I claim that they still owe me money.”

6. I:23: A relative of R. Idi bar Abin died, leaving a date tree. There was a dispute over ownership of the tree between Idi and someone else. Idi said, “I am the nearer relative,” and the other said, “I am the nearer relative.” The other seized the tree. But later on, he admitted that R. Idi was the nearer relative. So R. Hisda assigned to the other ownership of the tree. Idi claimed, “Then let him pay me back for the usufruct that he has had from the time he seized the tree.”

7. I:24: This one says, “It belongs to my father,” and the other, “This belongs to my father,” this one presents witnesses to prove that it had belonged to his father, and that one did the same to prove that he had had the usufruct for a period sufficient to establish ownership through usucaption — Said R. Hisda, “Why should the squatter lie? If he had wanted, he could have said, ‘I bought it from you, and, furthermore, I have had the usufruct for a period sufficient to establish ownership through usucaption!’”

8. I:25: Somebody said to someone else, “What are you doing on this land?” The other said, “I bought it from you, and, furthermore, I have had the usufruct of the real estate for a period of time sufficient to establish ownership through usucaption.” The defendant went and produced witnesses that he had enjoyed the usufruct for two years but had none for the third. Said R. Nahman, “The real estate reverts to the claimant and the produce as well.”

9. I:26: Somebody said to someone else, “What are you doing on this land?” The other said, “I bought it from you, and, furthermore, I have had the usufruct of the real estate for a period of time sufficient to establish ownership through usucaption.” The defendant went and produced a single witness that he had enjoyed the usufruct for three years. The rabbis before Abbaye considered ruling that this runs parallel to the case of the bar of metal that was settled by R. Abba. For somebody grabbed a bar of metal from his fellow. He came before R. Ammi. R. Abba was in session before him. The plaintiff brought one witness to prove that the man had grabbed the bar from him. The other responded, “Well, it is true that I grabbed it, but the fact is that it was my own property that I grabbed.”

10. I:27: There was a river boat about which two men were quarreling. This one says, “It is mine,” and that one, “It is mine.” One of them came to court and appealed to them, “Hold on to it until I produce witnesses that it is mine.” Do we attach the boat or not? R. Huna said, “We attach it.” R. Judah said, “We do not attach it.”

11. I:28: This one says, “It belonged to my father,” and that one says, “To my father” — Said R. Nahman, “Whoever is the stronger may grab it.”

C. TITLE BY USUCAPTION APPLYING TO THEM IS THREE YEARS, FROM DAY TO DAY THAT IS, THREE FULL YEARS:

1. II:1: Said R. Abba, “If the claimant of a piece of real estate should help the one who holds the land to lift a basket of produce onto his shoulders, that constitutes evidence in favor of the presumption that the land belongs to the squatter.” Said R. Zebid, “If he pleads, ‘I gave him use of the land as a share cropper with a right to the produce, but I did not assign him ownership of the land,’ he is believed. But that is the case only if the statement is made during three years of usufruct, but if it is afterward, that is not the case.”

2. II:2: Said R. Judah said Rab, “An Israelite who derives his title to land from a gentile, lo, he is classified as a gentile. Just as the gentile has a right to claim ownership only by producing a deed, so the Israelite who derives his title to land from a gentile likewise has a right to claim ownership only by producing a deed.”

3. II:3: And said R. Judah said Rab, "If somebody took a knife and a rope and said, 'I am going to collect the fruit from Mr. So-and-so's date tree, which I have bought from him,' he is believed, because someone does not have the gall to collect the fruit from a tree that does not belong to him."

4. II:4: And said R. Judah, "If somebody occupied the strip of someone else's field outside the fence erected against wild animals located near woods, which strip of land is planted so as to give the animals an area for grazing outside of the field, that does not constitute establishment of the right of ownership through usucaption, since the owner can say, 'The reason I did not object is that whatever he sowed was eaten by the wild animals.'"

5. II:5: And said R. Judah, "If one had the usufruct of the produce forbidden during the first three years after planting an orchard, that does not constitute a valid claim for usucaption."

6. II:6: Said R. Joseph, "If one had the usufruct of the stubble, this does not constitute the basis for a claim of ownership through usucaption."

D. SLAVES, AND ANYTHING WHICH CONTINUALLY PRODUCES A YIELD — TITLE BY USUCAPTION APPLYING TO THEM IS THREE YEARS, FROM DAY TO DAY THAT IS, THREE FULL YEARS:

1. III:1: But are slaves subject to acquisition by through usucaption at all? And has not R. Simeon b. Laqish said, "Ownership through usucaption does not pertain to living beings things that are kept in folds, young animals liable to stray at all?"

2. III:2: Said Raba, "If there was an infant slave in a cradle, transfer of ownership through usucaption takes place forthwith." The child could not have gotten into the house by itself; hence the presumption is that it was bought from the previous owner.

a. III:3: In Nehardea there were some goats that ate peeled barley they found in a field. The owner seized them and laid a heavy claim against the owner of the goats. Said the father of Samuel, "The owner of the barley may lay claim up to the value of the goats, since, if he wants, he can claim that the goats belong to him by purchase."

E. A FIELD WHICH RELIES ON RAIN — TITLE BY USUCAPTION FOR IT IS THREE YEARS, NOT FROM DAY TO DAY. R. ISHMAEL SAYS, "THREE MONTHS IN THE FIRST YEAR, THREE IN THE LAST, AND TWELVE MONTHS IN BETWEEN — LO, EIGHTEEN MONTHS SUFFICES." R. AQIBA SAYS, "A MONTH IN THE FIRST YEAR, A MONTH IN THE LAST, AND TWELVE MONTHS IN THE MIDDLE, LO, FOURTEEN MONTHS:"

1. IV:1: May one say that at issue between them is the status of ploughing without sowing a field? Then R. Ishmael takes the view that the act of ploughing does not fall into the category of usucaption, such as to transfer ownership, while R. Aqiba maintains that the act of ploughing does fall into the category of usucaption, such as to transfer ownership?

a. IV:2: Secondary expansion on the facts behind the rejected hypothesis.

b. IV:3: As above.

c. IV:4: As above.

F. SAID R. ISHMAEL, “UNDER WHAT CIRCUMSTANCES? IN THE CASE OF A GRAIN FIELD. BUT IN THE CASE OF A TREE-PLANTED FIELD, IF ONE HAS BROUGHT IN THE GRAPE CROP, COLLECTED THE OLIVES, AND GATHERED THE FIG HARVEST, LO, THESE THREE HARVESTS COUNT AS THREE YEARS.”

1. V:1: Said Abbaye, “On the basis of what R. Ishmael has said, we may infer that, from the viewpoint of rabbis, if someone has thirty trees in a field planted ten to a bet seah, if he enjoys the usufruct of ten in one year, ten in the next, and ten in the third, lo, this constitutes a valid claim to ownership through usucaption. For did not R. Ishmael say that usufruct of one kind of crop may confer ownership through usucaption to the entirety of the field? Then here, too, one set of ten trees can confer presumptive title to the others and vice versa.

2. V:2: If this party established ownership through usucaption of the trees, and that party established ownership through usucaption of the land — Said R. Zebid, “This one has acquired title to the trees, and that one has acquired title to the land.”

3. V:3: It is obvious that if one has sold the field but left the trees for himself, he has a right to a piece of ground for the trees. And even within the perspective of R. Aqiba, who has said, “One who sells does so in a liberal spirit,” that is the case with reference to the sale of a well or a cistern, which do not impair the soil. There is therefore no danger that he will at some future time be called upon by the purchaser of the field to remove the well, hence it does not occur to him to reserve the ground around it for himself, but in the case of trees, which do impair the soil, he would assuredly reserve the necessary soil around the trees for his own ownership. For if he did not do so, the owner of the ground can instruct him, ‘Cut down your tree and take it and be gone!’” There is, however, a dispute in the case of one who has sold the trees but left himself the ground, in which case R. Aqiba and rabbis differ. In the view of R. Aqiba, who has said, “One who sells does so in a liberal spirit,” the purchaser owns that ground; in the view of rabbis, he does not.

a. V:4: Secondary expansion of V.1.

b. V:5: Continuation of foregoing.

XXI. Mishnah-Tractate Baba Batra 3:2

A. THERE ARE THREE REGIONS SO FAR AS SECURING TITLE THROUGH USUCAPTION IS CONCERNED: JUDAH, TRANSJORDAN, AND GALILEE. IF ONE WAS LOCATED IN JUDEA, AND SOMEONE ELSE TOOK POSSESSION OF HIS PROPERTY IN GALILEE, OR WAS IN GALILEE, AND SOMEONE TOOK POSSESSION OF HIS PROPERTY IN JUDEA, IT IS NOT AN EFFECTIVE ACT OF SECURING TITLE THROUGH USUCAPTION — UNLESS THE OWNER IS WITH THE SQUATTER IN THE SAME PROVINCE. SAID R. JUDAH, “THEY SPECIFIED A PERIOD OF THREE YEARS ONLY SO THAT ONE MAY BE LOCATED IN ISPAMIA, AND ONE MAY HOLD POSSESSION FOR A YEAR, PEOPLE WILL GO AND INFORM THE OWNER OVER THE PERIOD OF A YEAR, AND HE MAY RETURN IN THE THIRD YEAR.”

1. I:1: What is the operative consideration of the first of the three Tannaite authorities who treats the three regions as free-standing? If he takes the view that

a protest registered by the owner not in the presence of the squatter is validly registered, then it should be valid even if the owner is in Judea and the squatter in Galilee, and if he takes the view that a protest registered by the owner not in the presence of the squatter is not a valid one, then it should be invalid even if both parties are located in Judea!

2. I:2: Said R. Judah said Rab, “The right of ownership through usucaption is not conferred upon the property of a fugitive....’

3. I:3: Said Raba, “The decided law is that the right of ownership through usucaption is conferred upon the property of a fugitive. An act of protest stated not in the presence of the squatter constitutes a valid act of protest.”

4. I:4: What is the valid formulation of a protest against usucaption?

5. I:5: Said Raba said R. Nahman, “A protest not in the presence of the squatter is classified as a protest.”

6. I:6: R. Yosé b. R. Hanina found the disciples of R. Yohanan. He said to them, “Did R. Yohanan state before how many persons a protest must be registered?” R. Hiyya bar Abba said, “R. Yohanan required a protest to be registered before two persons.”

a. I:7: Illustrative case.

7. I:8: Said R. Simeon b. Laqish in the name of Bar Qappara, “But he has to register his protest every three years.”

8. I:9: Bar Qappara repeated as a Tannaite statement: “If the owner protested, then did the same a second and a third time, if it is on the basis of his original claim that he made his protest, the usucaption does not transfer title, but if not, then it does.”

9. I:10: Said Raba said R. Nahman, “One registers the protest in the presence of two witnesses, and he does not have to instruct them, ‘write it down.’

10. I:11: Continuation of I:10: Said Raba, “If I have any problems with the foregoing, this is what is troubling me: as to the act of transfer of ownership by means of the exchange of a cloth, how is it to be classified? If it is equivalent to an action taken by a court, then there should be three present. If it is not equivalent to an action taken by a court, why is it that they are to write it down only if he instructs them, ‘write it down’?”

11. I:12: Rabbah and R. Joseph both say, “We put into writing notification that a gift or sale one is making is against his will and he intends to annul it when he can only in the case of a defendant who does not pay attention to the ruling of the court.”

12. I:13: The Nehardeans say, “Any notification that a gift or sale one is making is against his will and he intends to annul it when he can that does not have written in it, ‘we signatories are fully informed that Mr. So-and-so is acting under duress’ is not a valid notification.”

13. I:14: Said R. Judah, “On the strength of a deed of gift that is written privately we do not collect what is claimed.”

14. I:15: Said Raba, “One writ of notification that a gift or sale one is making is against his will and he intends to annul it when he can serve in regard to another,” even though not enforceable itself, it can render invalid a subsequent deed of gift of the same thing.

15. I:16: The question was raised: If the donor does not make articulate his wishes as to where the writ of notification that a gift or sale one is making is against his will and he intends to annul it when he can is to be written, what is the rule?

XXII. Mishnah-Tractate Baba Batra 3:3A-H

A. ANY ACT OF USUCAPTION ALONG WITH WHICH THERE IS NO CLAIM ON THE PROPERTY BEING UTILIZED IS NO ACT OF SECURING TITLE THROUGH USUCAPTION.

HOW SO? IF HE SAID TO HIM, “WHAT ARE YOU DOING ON MY PROPERTY,” AND THE OTHER PARTY ANSWERED HIM, “BUT NO ONE EVER SAID A THING TO ME!” — THIS IS NO ACT OF SECURING TITLE THROUGH USUCAPTION. IF HE ANSWERED, “FOR YOU SOLD IT TO ME,” “YOU GAVE IT TO ME AS A GIFT,” “YOUR FATHER SOLD IT TO ME,” “YOUR FATHER GAVE IT TO ME AS A GIFT” — LO, THIS IS A VALID ACT OF SECURING TITLE THROUGH USUCAPTION. HE WHO HOLDS POSSESSION BECAUSE OF AN INHERITANCE FROM THE PREVIOUS OWNER REQUIRES NO FURTHER CLAIM IN HIS OWN BEHALF.

1. I:1: so what else is new!

2. I:2: Illustrative case: A flood took away a field belonging to R. Anan, when a dam burst. He later on went and rebuilt the fence, but he did so on land that belonged to his neighbor. The neighbor came before R. Nahman, who ruled, “Go, restore the land.”

3. I:3: As above. A flood took away a field belonging to R. Kahana, when a dam burst. He later on went and rebuilt the fence, but he did so on land that did not belong to him.

4. I:4: Somebody in Kashta dwelt for four years in an upper room. The householder came and found him there. He said to him, “What in the world are you doing in this room?”

5. I:5: The question was raised: If the prior owner was seen on the property taking its measurements what is the rule? Does this constitute proof that he sold it?

6. I:6: Three successive purchasers of the field are treated as a single unit — if A occupies a field for one year and sells it to B, who holds it for a second year and sells it to C, who takes it for a third year; C at the end of the third year can claim to own the field by usucaption of three years.

7. I:7: If the father enjoyed the usufruct of the field having purchased it for one year, then the son as heir for two, the father for two years and the son for one, the father for one year, the son for one, and a later purchaser for one — lo, this constitutes a valid establishment of ownership through usucaption for three years.

XXIII. Mishnah-Tractate Baba Batra 3:3I-T

A. CRAFTSMEN, PARTNERS...ARE NOT ABLE TO SECURE TITLE THROUGH USUCAPTION:

1. I:1: The father of Samuel and Levi repeated as a Tannaite statement: “Partners...are not able to secure title through usucaption, and still less craftsmen.” Samuel repeated as a Tannaite statement: “Craftsmen are not able to secure title through usucaption, but partners are.”

a. I:2: Secondary amplification of a detail of the foregoing.

b. I:3: As above.

c. I:4: As above.

d. I:5: As above.

I. I:6: Secondary amplification of a detail of the foregoing.

II. I:7: Continuation of the foregoing.

B. CRAFTSMEN...ARE NOT ABLE TO SECURE TITLE THROUGH USUCAPTION

1. II:1: Said Rabbah, “That rule applies only where the owner handed over the objects to the craftsman in the presence of witnesses. But if he had handed over the materials not in the presence of witnesses, since he can say to him, ‘The transaction never took place anyhow,’ if he should say to him also, ‘It is in my possession by reason of purchase,’ he the craftsman is believed.”

a. II:2: Expansion of the problem analyzed in the foregoing.

b. II:3: As above.

C. SHARECROPPERS...ARE NOT ABLE TO SECURE TITLE THROUGH USUCAPTION

1. III:1: How come, since up to now he took only half the produce, but now, for the period of three years required for usucaption, he has taken all of it? Hence there really is evidence to be drawn from usucaption that he has acquired ownership of the field.

2. III:2: Said R. Nahman, “A sharecropper who brought onto the property other sharecroppers in his stead is able to secure title through usucaption. How come? Because it would not be common for someone to see sharecroppers descend on his field and say nothing.”

3. III:3: Said R. Yohanan, “A sharecropper who divided the field among other sharecroppers is not able to secure title through usucaption. How come? Because one may suppose that he got permission to do so and therefore the owner had no reason to object.”

4. III:4: Sent R. Nahman bar R. Hisda to R. Nahman bar Jacob, “May our lord instruct us: may a sharecropper testify to the title of his employer or may he not do so?”

a. III:5: Secondary exploration of the legal principle introduced in the foregoing, now in the context of other cases.

5. III:6: Said R. Yohanan, “While a craftsman cannot secure title through usucaption, the son of a craftsman may secure title through usucaption. While a sharecropper cannot secure title through usucaption, the son of a sharecropper may secure title through usucaption. Neither a robber nor the son of a robber may secure title through usucaption. But the son of the son of a robber may secure title through usucaption.”

a. III:7: Amplification of foregoing.

b. III:8: Gloss of foregoing.

6. III:9: A craftsman cannot secure title through usucaption. If he left off his craft, however, he then may secure title through usucaption. A sharecropper cannot secure title through usucaption. If he abandon his calling as a sharecropper, he may then secure title through usucaption. A son who took his share in his father’s estate, a woman who was divorced — lo, they are in the status of anybody else (T. **B.B. 2:5A-F**)

7. III:10: Said R. Nahman, “Said to me Huna, ‘In any of the above cases, if they brought proof for their claim, their proof is acceptable, and the possession of the field is confirmed for them. But as to a robber, if he brought proof, his proof is null, and possession of the field is not confirmed for him.’”

a. III:11: Secondary comment on the foregoing.

b. III:12: Continuation.

c. III:13: As above.

l. III:14: Expansion on a tangential point in the foregoing.

D. A HUSBAND HAS NO CLAIM OF USUCAPTION IN HIS WIFE’S PROPERTY :

1. IV:1: So what else is new! After all, since the husband has every right to the produce of the wife’s field, we maintain that he was merely enjoying the usufruct of the field and could not thereby establish ownership through usucaption anyhow!

a. IV:2: Gloss on foregoing.

2. IV:3: Since a husband cannot claim title through usucaption in the case of the property of his wife, it must follow that, if he has proof that she actually sold the property to him a document or witnesses to that effect, the sale is a valid one. But can’t she simply say here, too, “I really just wanted to humor my husband”? I never meant to sell the field. Have we not learned in the Mishnah: If a man purchased it from a man and then purchased it from a woman, his purchase is null. If he purchased it from a woman and then purchased it from a man, his purchase is confirmed (M. **Git. 5:6G-H**)? This shows that the woman can say, “I really just wanted to humor my husband,” so why in this case, too, can’t she say, “I really just wanted to humor my husband”?

E. NOR DOES A WIFE HAVE A CLAIM OF USUCAPTION IN HER HUSBAND’S PROPERTY:

1. V:1: But did not Rab state, “A married woman has to protest the usucaption of her property by a third party”? Now against the usucaption of what classification of person does she have the obligation to register her protest? Should I say that it is against a third party other than her husband? But did not Rab state, “One

cannot establish ownership through usucaption in the case of the property of a married woman”? So at issue must be against her husband! So from Rab’s perspective the husband does have a claim of usucaption in his wife’s property.

a. V:2: Gloss of a tangential detail of the foregoing.

2. V:3: Nor does a wife have a claim of usucaption in her husband’s property: Well, what’s so surprising about that! Since the husband has to maintain the wife, we take for granted that if she enjoys the usufruct of a field, she is merely deriving her maintenance from it!

3. V:4: Since a wife cannot claim title through usucaption in the case of the property of her husband, it must follow that, if she has proof that he actually sold the property to her a document or witnesses to that effect, the sale is a valid one. But can’t the husband claim that he just wanted to get the wife to show whether she had any other funds besides those of which he was informed? We may therefore infer from this rule the following: He who sells a field to his wife — she has acquired ownership of the field. And we do not invoke the argument that the husband may claim that he just wanted to get the wife to show whether she had any other funds besides those of which he was informed.

a. V:5: Expansion of the foregoing supposition.

b. V:6: Continuation of the foregoing.

b. V:7: Continuation of the foregoing.

b. V:8: Continuation of the foregoing.

b. V:9: Continuation of the foregoing.

8. V:10: Pledges are not to be taken from women, slaves, or children because there is a probability that they have stolen the articles that were pledged or deposited. If one has taken a pledge from a woman, he should give it back to the woman, and if she died, he should return it to her husband.

a. V:11: Illustrative case.

b. V:12: Expansion of the rule of V.10.

F. NOR A FATHER IN HIS SON’S PROPERTY, NOR A SON IN HIS FATHER’S PROPERTY:

1. VI:1: Said R. Joseph, “That is the case even if the son left the father’s roof.”

a. VI:2: Illustrative case: Said R. Jeremiah of Difti, “R. Pappa made a practical decision in a case in which the son left the father’s roof, not in accord with the ruling of Raba.”

3. VI:3: In a situation in which several half-brothers, sharing the same father but having different mothers, live together in the same household, and one of the brothers did business as major domo, if there were deeds and bonds in circulation in his name, and he said, “They are mine, having come to me from the estate of my mother’s father.”

4. VI:4: In a situation in which several half-brothers, sharing the same father but having different mothers, live together in the same household, and one of the brothers did business as major domo, if there were deeds and bonds in circulation in his name, and he said, “They are mine, having come to me from the estate of my

mother's father," said Rab, "The burden of proof is on him": said R. Hisda, "That is the case only if the brothers are not divided up as to their meals, but if they eat separately, the one who holds the document may say that he saved up money from his food allowance."

G. UNDER WHAT CIRCUMSTANCES? IN THE CASE OF ONE WHO EFFECTS POSSESSION THROUGH USUCAPTION. BUT IN THE CASE OF ONE WHO GIVES A GIFT, OR OF BROTHERS WHO DIVIDE AN ESTATE, AND OF ONE WHO SEIZES THE PROPERTY OF A PROSELYTE, IF ONE HAS LOCKED UP, WALLED IN, OR BROKEN DOWN IN ANY MEASURE AT ALL — LO, THIS CONSTITUTES SECURING A CLAIM THROUGH USUCAPTION:

1. VII:1: But are all these others whom we have mentioned also not in the classification of squatters who would effect ownership through usucaption?
2. VII:2: R. Hoshaia repeated as the Tannaite formulation with reference to the version of tractate Qiddushin of the household of Levi: "If the buyer does anything at all so as to set up a door or make a fence or an opening in the presence of the seller, this would constitute a valid action of acquiring title through usucaption."
3. VII:3: Rab raised the question, "As to a gift, what is the law?"

H. ...IN ANY MEASURE AT ALL — LO, THIS CONSTITUTES SECURING A CLAIM THROUGH USUCAPTION

1. VIII:1: How much is "in any measure at all"?

I. AND OF ONE WHO SEIZES THE PROPERTY OF A PROSELYTE:

1. IX:1: And of one who seizes the property of a proselyte: said R. Assi said R. Yohanan, "If in the estate of a deceased proselyte someone gained some advantage by putting a pebble there or by taking a pebble away, lo, this constitutes a sufficient act of usucaption."
2. IX:2: And said R. Assi said R. Yohanan, "If a deceased proselyte's estate is made up of two adjacent fields, with a boundary between them, if one has established title through usucaption of one of them, so intending to acquire title thereby, he has acquired title only to that field; but if he did so intending to acquire title to both of them, he has acquired title to that one but not the other; if he did so with the idea of becoming owner only of the other his action is null so he has not acquired title even of that one."
 - a. IX:3: Acts of Acquisition. Marginal case: R. Zira raised this question: "If one has performed an act of usucaption with the intention of acquiring title to that field, the boundary strip, and the other field, what is the law? Do we say that the boundary serves both this field and that, so forming the whole into one, in which case he acquires the entire property, or do we say that the boundary stands unto itself and the two fields themselves are distinct?"
 - b. IX:4: Acts of Acquisition. Marginal case: R. Eleazar raised this question: "If one has performed an act of usucaption with the intention of acquiring title to both fields, what is the law? Do we say that the boundary strip serves as the bridle to the land Simon: If someone buys ten horses and

takes hold of the bridle of one, he becomes owner of all ten, so if we compare the boundary to a bridle, possession of it should confer ownership of both fields, so he acquires title, or perhaps this is treated as distinct and that is treated as distinct?”

c. IX:5: Acts of Acquisition. Marginal case: Said R. Nahman said Rabbah bar Abbuha, “Two rooms, one inside the other, — if one performed an act of usucaption in the outer room intending to acquire title to that room, he has acquired that room; if the intent was to acquire that room and the inner room, the outer room has he acquired, but to the inner room he has not acquired title; if it was to acquire title to the inner room, then even the outer room he has not acquired....”

3. IX:6: Said R. Nahman said Rabbah bar Abbuha, “He who builds a big house on the estate of a deceased proselyte, and someone else comes and fixes the doors, the latter has acquired title to the house.”

4. IX:7: Said R. Dimi bar Joseph said R. Eleazar, “He who finds on the property of a deceased proselyte a big house and merely plastered it with a coat of plaster, or put on a mural decoration, acquires title to the house.”

5. IX:8: Said R. Amram, “This is something that R. Sheshet said to us, and he further presented us with proof for it from a Tannaite formulation, namely: He who spreads out mattresses on the floor of the estate of a proselyte and slept there acquires title to the property...”

6. IX:9: Said R. Simeon, “An act of usucaption of this kind should not be greater than an act of raising up, since raising up an object confers title under all circumstances”: What is the meaning of this statement?

7. IX:10: Said R. Jeremiah Biraah said R. Judah, “Someone who threw vegetable seeds into the crevices of the land of a proselyte — that action does not secure title through usucaption to the land.”

8. IX:11: Said Samuel, “Someone who stripped the branches off a date tree — if his intention was to improve the tree, he has acquired title, but if his intention was to get food for his cattle, he does not acquire title to the tree.”

9. IX:12: Said Samuel, “Someone who stripped the branches off a date tree — if his intention was to improve the tree, he has acquired title, but if his intention was to get food for his cattle, he does not acquire title to the tree.

10. IX:13: And said Samuel, “One who removed obstacles from a field — if his intention was to improve the soil, he acquires title to the field this being an act that confers title through usucaption (Simon), but if his intent was only to clear away a threshing floor, he does not acquire title through usucaption. So which is which? If he took earth from the high points and tossed it into the low points, then we know that he intended to prepare the soil, levelling the whole field. If he merely smoothed out the high points or leveled up the low points, we know that his intent was only to clear away a threshing floor.”

11. IX:14: And said Samuel, “One who brought water into a field, if he does so to irrigate the field, he acquires title through usucaption, but if it is only to bring in the fish that is in the water, he does not acquire title through usucaption of the

field. How do we know this? If he makes two sluices, one to let the water in, the other to let it flow out, we know that he wants the fish; but if he makes one sluice, then we know that his principal intent is to irrigate the field.”

a. IX:15: Illustrative case. A certain woman enjoyed the usufruct of a date tree to the degree that for thirteen years she chopped off the branches to feed her cattle. Somebody came and hoed a bit under the tree. He came before Levi, and some say, before Mar Uqba. The latter confirmed his title to the tree through his act of usucaption. The woman came and objected before him. He said to her, “What in the world can I do for you? For you did not acquire title through usucaption the way that people do it.”

12. IX:16: Said Rab, “He who draws a figure on the property of a deceased proselyte acquires title to it.”

13. IX:17: A field that has a boundary marked on all sides — Said R. Huna said Rab, “Once one has dug up one spadeful of it, he has acquired title to the whole of it.” And Samuel said, “He has acquired only the spot that he has turned up alone.”

14. IX:18: Said R. Judah said Samuel, “As to the real properties of a gentile, lo, they are in the classification of the wilderness. Whoever is the first to seize them through an act of usucaption has acquired title to them.”

a. IX:19: R. Huna bought some land from a gentile. Another Israelite came along and dug up a bit of it. He came before R. Nahman, who assigned ownership of the land to the latter party.

b. IX:20: R. Huna bar Abin sent word, “An Israelite who purchased a field from a gentile, and before the Israelite received the deed to the field, another Israelite came along and performed an act of usucaption — they do not dispossess the latter.”

I. IX:21: Said Rabbah, “These three matters were reported to me by Uqban bar Nehemiah, the exilarch, in the name of Samuel: The law of the government is valid, and the king has said that law is acquired only through a deed; the rule of the Persians concerning acquisition of a field through usucaption is that it takes forty years; and property that is purchased from rich landlords who buy up land by paying the tax on it, the sale is a valid one. But that is the case only when it comes to paying off the land tax on the field; but if they got the land by paying the poll tax levied on the owners, then buying it from the landowners who have acquired the land through paying the delinquent taxes is not a valid transfer of title, since the poll tax pertains to not the land but the person.”

II. IX:22: And said R. Ashi, “A person who has no occupation still has to help out the community to pay the poll taxes due from the community as a whole. And that is the case only if the community has covered him so that he is not taxed on his own. But if the tax collectors are the ones who have exempted him, then Heaven helped him and he owes nothing to anybody.”

15. IX:23: If a deceased proselyte's estate is made up of two adjacent fields, with a boundary between them...": said R. Assi said R. Yohanan, "A boundary and a cistus hedge serve as partitions in property belonging to a deceased proselyte, but not for purposes of setting aside the corner of the field or for determining the issue of uncleanness.

a. IX:24: A boundary and a cistus hedge serve as partitions in property belonging to a deceased proselyte, but not for purposes of setting aside the corner of the field or for determining the issue of uncleanness," with respect to the issue of uncleanness, if there is there no boundary or a cistus hedge, what is the rule?

I. IX:25: R. Aha bar Avayya in session before R. Assi stated in the name of R. Assi bar Hanina, "A cistus hedge serves as a partition in property belonging to a deceased proselyte."

II. IX:26: And said R. Judah said Rab, "At Joshua 15-19 Joshua enumerated only the towns that were on the borders."

III. IX:27: Said R. Judah said Samuel, "Everything that the Holy One, blessed be He, showed to Moses is subject to the requirement of setting aside tithe."

XXIV. Mishnah-Tractate Baba Batra 3:4

A. IF TWO WERE TESTIFYING FOR ANOTHER PARTY THAT HE HAS ENJOYED THE USUFRUCT OF THE PROPERTY FOR THREE YEARS, AND THEY TURN OUT TO BE FALSE WITNESSES, THEY MUST PAY TO THE ORIGINAL OWNER FULL RESTITUTION (DEU. 19:19).

1. I:1: The Mishnah paragraph does not accord with the view of R. Aqiba, for it has been taught on Tannaite authority:For R. Aqiba would say, "A matter shall be established by two witnesses" (Deu. 19:15) — and not half of a matter" (T. **B.B. 2:10A-C**).

2. I:2: And as to rabbis who take the contrary view, how do they interpret this same verse, namely, "A matter shall be established by two witnesses" (Deu. 19:15) — and not half of a matter?

3. I:3: Said R. Judah, "If one witness says, 'He enjoyed the usufruct of wheat,' and one witness says, 'He has enjoyed the usufruct of barley,' lo, that would be sufficient testimony to award title by reason of usucaption."

B. IF TWO WITNESSES TESTIFY CONCERNING THE FIRST YEAR, TWO CONCERNING THE SECOND, AND TWO CONCERNING THE THIRD — THEY DIVIDE UP THE COSTS OF RESTITUTION AMONG THEMSELVES.

THREE BROTHERS, AND ANOTHER PARTY JOINS TOGETHER WITH EACH OF THEM — LO, THESE CONSTITUTE THREE DISTINCT ACTS OF TESTIMONY, AND THEY COUNT AS A SINGLE ACT OF WITNESS WHEN THE EVIDENCE IS PROVED FALSE.

1. II:1: A document had signatures of two witnesses, one of them deceased. The brother of one who was still alive came with another witness to validate the signature of the deceased. Rabina thought of deciding that this case was covered

by the rule of the Mishnah paragraph concerning three brothers, each of them joined to the same witness.

XXV. Mishnah-Tractate Baba Batra 3:5

A. WHAT ARE USAGES THAT ARE EFFECTIVE IN THE SECURING OF TITLE THROUGH USUCAPTION, AND WHAT ARE USAGES THAT ARE NOT EFFECTIVE IN THE SECURING OF TITLE THROUGH USUCAPTION? IF ONE PUT CATTLE IN A COURTYARD, AN OVEN, DOUBLE STOVE, MILLSTONE, RAISED CHICKENS, OR PUT HIS MANURE, IN A COURTYARD — THIS IS NOT AN EFFECTIVE MODE OF SECURING TITLE THROUGH USUCAPTION.

BUT IF HE MADE A PARTITION FOR HIS BEAST TEN HANDBREADTHS HIGH, AND SO, TOO, FOR AN OVEN; SO, TOO, FOR A DOUBLE STOVE; SO, TOO, FOR A MILLSTONE — IF HE BROUGHT HIS CHICKENS INTO THE HOUSE, OR MADE A PLACE FOR HIS MANURE THREE HANDBREADTHS DEEP OR THREE HANDBREADTHS HIGH — LO, THIS IS AN EFFECTIVE MODE OF SECURING TITLE THROUGH USUCAPTION.

1. I:1: What differentiates the first from the second type of action that the former is not, and the latter is, an effective mode of securing title through usucaption?

B. COMPOSITE OF BENAAB-MATERIALS

a. I:2: Gloss of a detail of the foregoing: Said R. Yohanan in the name of R. Benaah, “In all matters jointholders in a courtyard may object to one another’s exception, except for their doing laundry in the courtyard, for it is not proper that Israelite women should suffer degradation by reason of doing laundry in public.”

I. I:3: Gloss of a tangential detail of the foregoing, as to doing laundry in public.

b. I:4: R. Yohanan asked R. Benaah, “As to the undergarment of the disciple of a sage, how long should it be?”

I. I:5: The table of an Israelite who is not a disciple of a sage is comparable to a hearth with pots all about.

d. I:6: Continuing I:4: How is the bed of a disciple of a sage to be set up?

e. I:7: R. Benaah would mark out caves containing corpses. When he came to the cave of Abraham, he found Eliezer, Abraham’s servant, standing before the entrance. He said to him, “What is Abraham doing?”

I. I:8: Complement to the foregoing.

II. I:9: As above.

f. I:10: Somebody said, “I leave a barrel of dust to one of my sons, a barrel of bones to the next, a barrel of fluff to the third.” They hadn’t the slightest idea what he meant, so they asked R. Benaah. He said to them, “Do you have any land?”

g. I:11: There was a man who heard his wife say to her daughter, “Why don’t you be more discrete about your love affairs? I have ten children, and only one of them is from your father.” When he was dying, he said to

them, “All of my property is to go to one son.” They didn’t know which one he meant, so they asked R. Benaah.

XXVI. Mishnah-Tractate Baba Batra 3:6A-F

A. THE RIGHT TO PLACE A GUTTER SPOUT DOES NOT IMPART TITLE THROUGH USUCAPTION SO THAT THE SPOUT STILL MAY BE MOVED, BUT THE PLACE ON WHICH IT DISCHARGES DOES IMPART TITLE THROUGH USUCAPTION SO THAT THE PLACE MUST BE LEFT FOR ITS PRESENT PURPOSE. A GUTTER DOES IMPART TITLE THROUGH USUCAPTION.

1. I:1: What is the meaning of the statement, The right to place a gutter spout does not impart title through usucaption so that the spout still may be moved, but the place on which it discharges does impart title through usucaption so that the place must be left for its present purpose?

2. I:2: We have learned in the Mishnah: A gutter does impart title through usucaption. Now from the perspective of those who maintain the first two views just now set forth, there are no problem, but from the perspective of him who maintains that the right to place a gutter spout does not impart title through usucaption means, There is no permanent right associated with the gutter, so that if the owner of the courtyard wants to build under it, he may do so, what difference does it make to the owner of the gutter, for why should the owner of the gutter have a permanent right to the extent that he should be able to object to the owner of the courtyard’s building under it, and why in any case should he raise such an objection?

3. I:3: Said R. Judah said Samuel, “A pipe on the roof from which water drips into the courtyard of the neighbor, and the owner of the roof where the pipe is located wants to stop it up — the owner of the courtyard can object, saying, ‘Just as you have property in the courtyard for pouring your water onto it, so I have property in the water that comes from your roof’ which he uses for his animals.”

4. I:4: R. Oshaia said, “The owner of the courtyard may object.” R. Hama said, “He may not object.”

B. AN EGYPTIAN LADDER DOES NOT IMPART TITLE THROUGH USUCAPTION, BUT A TYRIAN LADDER DOES IMPART TITLE THROUGH USUCAPTION.

1. II:1: What is the definition of an Egyptian ladder?

C. AN EGYPTIAN WINDOW DOES NOT IMPART TITLE THROUGH USUCAPTION, BUT A TYRIAN WINDOW DOES IMPART TITLE THROUGH USUCAPTION.

WHAT IS AN EGYPTIAN WINDOW? ANY THROUGH WHICH THE HEAD OF A HUMAN BEING CANNOT SQUEEZE. R. JUDAH SAYS, “IF IT HAS A FRAME, EVEN THOUGH A HUMAN BEING’S HEAD CANNOT SQUEEZE THROUGH, IT DOES IMPART TITLE THROUGH USUCAPTION.”

1. III:1: How come there is an explanation of what is an Egyptian window but not of what is an Egyptian ladder?

D. BUT A TYRIAN WINDOW DOES IMPART TITLE THROUGH USUCAPTION:

1. Said R. Zira, "If the window is lower than four cubits from the floor of the room, there is the possibility of gaining title through usucaption, and the owner of the courtyard may object to one's being made to begin with; but if it is more than four cubits above the floor, there is no possibility of securing title through usucaption for it, and the owner of the courtyard cannot object to having one made there."

2. IV:2: There was someone who came before R. Ammi. He sent him to R. Abba bar Mammel, saying to him, "Act in accord with the position of R. Ilai."

3. IV:3: Said Samuel, "For purpose of bringing in light, however small, there is a right of title to the window that is conferred through usucaption."

XXVII. Mishnah-Tractate Baba Batra 3:6G-J

A. A PROJECTION IF IT EXTENDS A HANDBREADTH OR MORE DOES IMPART TITLE THROUGH USUCAPTION, AND CONCOMITANTLY, ONE HAS THE POWER TO PROTEST ITS BEING MADE.

1. I:1: Said R. Assi said R. Mani, and some say, said R. Jacob said R. Mani, "If one through usucaption got title to a handbreadth, he gets the title to permanent use of four handbreadths."

B. IF IT PROJECTS LESS THAN A HANDBREADTH, IT IS NOT SUBJECT TO IMPARTING TITLE THROUGH USUCAPTION, AND ONE HAS NOT GOT THE POWER TO PROTEST ITS BEING MADE.

1. II:1: Said R. Huna, "This rule pertains only to the owner of the roof, indicating that he cannot prevent the owner of the courtyard from using it even though it is his property, because at any time the owner of the courtyard can tell him to remove it, but the owner of the courtyard can object to the owner of the roof's using the space."

XXVIII. Mishnah-Tractate Baba Batra 3:7A-G

A. A PERSON SHOULD NOT OPEN HIS WINDOWS INTO THE COURTYARD OF WHICH HE IS ONE OF THE JOINTHOLDERS.

1. I:1: Why specify that it is in particular a courtyard in which one is a jointholder that he may not open windows? Even into a courtyard belonging to his fellow he may not do so!

2. I:2: There was the case of someone who opened windows onto a courtyard of which he was a jointholder. The case came before R. Ishmael b. R. Yosé. He ruled, "My son, you have validly established title through usucaption, you have validly established title through usucaption and may keep the windows where they are."

3. I:3: Said R. Nahman, "For closing a window, if one does it and none protests, that is forthwith a right established through usucaption, for it would be quite extraordinary for someone to have his light shut off and keep silent."

B. IF HE PURCHASED A HOUSE IN ANOTHER COURTYARD WHICH ADJOINS THE ONE IN WHICH HE IS LIVING, HE MAY NOT MAKE AN OPENING INTO THE COURTYARD OF WHICH HE IS ONE OF THE JOINTHOLDERS.

IF HE BUILT AN UPPER STORY ON HIS HOUSE, HE SHOULD NOT MAKE AN OPENING FOR IT INTO A COURTYARD OF WHICH HE IS ONE OF THE JOINTHOLDERS. BUT IF HE WANTED, HE MAY BUILD A NEW ROOM INSIDE OF HIS HOUSE, OR HE BUILDS AN UPPER STORY ON TOP OF HIS HOUSE, AND HE MAKES AN OPENING FOR IT INTO HIS HOUSE.

1. II:1: How come?

XXIX. Mishnah-Tractate Baba Batra 3:7H-O

A. ONE SHOULD NOT OPEN UP IN A COURTYARD OF WHICH HE IS ONE OF THE JOINTHOLDERS A DOORWAY OPPOSITE THE DOORWAY OF ANOTHER RESIDENT, OR A WINDOW OPPOSITE ANOTHER'S WINDOW.

1. I:1: What is the basis in Scripture for these statements?

B. IF IT WAS SMALL, HE SHOULD NOT ENLARGE IT.

1. II:1: Rami bar Hama considered maintaining, "If the door is four cubits wide, he should not make it into one of eight cubits width, because that would give him the right to eight cubits in the courtyard, but he could divide a door of eight cubits into two of four cubits each for in the yard he would not increase his space by so doing."

C. IF IT WAS A SINGLE ONE, HE SHOULD NOT MAKE IT INTO TWO.

1. III:1: Rami bar Hama considered maintaining, "If the door is four cubits wide, he should not make it into two doors of two cubits width each, because that would give him the right to eight cubits in the courtyard, but he could divide a door of eight cubits into two of four cubits each for in the yard he would not increase his space by so doing."

D. BUT HE MAY OPEN INTO THE PUBLIC DOMAIN A DOORWAY OPPOSITE ANOTHER'S DOORWAY IN THE PUBLIC DOMAIN, OR A WINDOW OPPOSITE ANOTHER'S WINDOW IN THE PUBLIC DOMAIN. IF IT WAS SMALL, HE MAY ENLARGE IT. IF IT WAS A SINGLE ONE, HE MAY MAKE IT INTO TWO.

1. IV:1: He can say to him, "One way or the other you're going to have to preserve your privacy from passersby, so what difference does it make?"

XXX. Mishnah-Tractate Baba Batra 3:8

A. THEY DO NOT HOLLOW OUT A SPACE UNDER THE PUBLIC DOMAIN — CISTERNS, DITCHES, OR CAVES. R. ELIEZER PERMITS, IF IT IS SO STRONG THAT A WAGON CAN GO OVER IT CARRYING STONES.

1. I:1: And rabbis vs. Eliezer, who hold that one may not do so?

B. THEY DO NOT EXTEND PROJECTIONS AND BALCONIES OVER THE PUBLIC DOMAIN.

1. II:1: R. Ammi had a spar that protruded over an alleyway, and another had one projecting over a public way. The case of the latter projection came before R. Ammi, who said to him, “Go, cut it down.”

2. II:2: R. Yannai had a tree that overshadowed the public way. Somebody also had a tree that overshadowed the public way. Some passersby objected to the latter, and they objected to it. The case came before R. Yannai, who said to him, “Go away now but come back tomorrow.”

C. BUT IF ONE WANTED, HE BRINGS IN HIS WALL INTO HIS OWN PROPERTY AND THEN PROJECTS A BALCONY.

1. III:1: If one drew back his wall and does not let any beams project, what is the law about his projecting beams later on or has he given up his right to do so by drawing back into his property and at first not projecting beams outward to his property line?

D. IF ONE HAS PURCHASED A COURTYARD, AND IN IT ARE PROJECTIONS AND BALCONIES, LO, THIS ONE RETAINS HIS RIGHT TO KEEP THEM AS THEY ARE.

1. IV:1: Said R. Huna, “If the wall fell down, one may go and rebuild it.”

2. IV:2: A person should not stucco the front of his house with cement, but if he mixed dirt or straw in it, it is permitted.

E. THE DESTRUCTION AND RESTORATION OF THE TEMPLE

3. IV:3: When the Temple was destroyed a second time, there multiplied in Israel abstainers perushim/Pharisees, not eating meat or drinking wine. R. Joshua engaged with them, saying to them, “My children, how come you are not eating meat or drinking wine?” So this is what the sages have said: ‘one may stucco a house but should leave a bare spot.

4. IV:4: Whoever mourns for Zion will thereby gain the merit that will enable him to see her joy: “Rejoice with Jerusalem” (Isa. 61:20).

5. IV:5: Said R. Ishmael b. Elisha, “From the day on which the house of the sanctuary was destroyed, by rights we should decree for ourselves not to eat meat or drink wine. But a decree may not be made for the community at large unless the larger part of the community can endure it.”

XXXI. Mishnah-Tractate Baba Batra 4:1

A. HE WHO SELLS A HOUSE HAS NOT SOLD THE EXTENSION, EVEN THOUGH THE EXTENSION OPENS INTO THE HOUSE:

1. I:1: What is the definition of “the extension”?

2. I:2: R. Joseph repeated as a Tannaite formulation: “The extension has three names in Scripture, extension, side chamber, and lodge. Extension: ‘the nethermost extension was five cubits broad’ (1Ki. 6: 6); side chamber: ‘the side chambers were in three stories, one over another, and thirty in order’ (Eze. 41: 6); lodge, ‘And every lodge was one reed long and one reed broad, and the space between the lodges was five cubits’ (Eze. 40: 7).”

3. I:3: Said Mar Zutra, “The rule, He who sells a house has not sold the extension, applies only if the veranda is four cubits square in which case it is deemed a distinct structure.”

B. THE ROOM BEHIND THE HOUSE:

OR THE ROOF, IF IT HAS A PARAPET TEN HANDBREADTHS HIGH. R. JUDAH SAYS, “IF IT HAS THE SHAPE OF A DOOR, EVEN THOUGH IT IS NOT TEN HANDBREADTHS HIGH, IT IS NOT DEEMED TO HAVE BEEN SOLD.”

1. II:1: Well, if he has not sold the extension along with the living room, is there any case about the room behind the house?...That is in line with what R. Nahman said, for said R. Nahman said Rabbah bar Abbuha, “He who sells a house to someone in a big tenement house, even if he draws the boundaries outside the whole house, we say he only drew the boundaries wide even while selling only the apartment that he was offering on the market.”

C. THE MEANING OF LANGUAGE USED IN DESCRIBING REAL ESTATE FOR THE PURPOSE OF A SALE

a. II:2: Continuation of secondary component of the foregoing: And said R. Nahman said Rabbah bar Abbuha, “He who sells a field to his fellow in a stretch of fields, even though he draws the outer boundaries around the whole, only sells the field, because we say that he is exaggerating the boundaries.”

b. II:3: And it was necessary to make this point on both matters =II.1, II.2. For had we been told the rule concerning the apartment and the house, I might have supposed that, the reason that the tenement is not sold with the apartment is that each is used for its own purpose, while in the case of the stretch of fields, all the fields are used for the same purpose, so I might have thought that that is not the case.

I. II:4: In accord with which authority is that which R. Mari son of the daughter of Samuel bar Shilat said in the name of Abbaye, “One who sells something to his fellow has to incise in the deed, ‘I have left for myself nothing at all in this transfer of property’”?

II. II:5: Illustrative case.

c. II:6: If the seller drew one of the boundaries short and one of them long, assuming we have a parallelogram, said Rab, “The buyer has acquired only the width of the shorter line.” Said R. Kahana and R. Assi to Rab, “Why not let him acquire title to the space that is marked out by the oblique line?”

d. II:7: If the boundary of the field is marked by fields belong to Reuben on the east and west and Simeon to the north and south, he has to write in the deed, “The field is bounded by the fields of Reuben on two sides and Simeon on two sides.

I. II:8: The question was raised: If he merely marked the corners of the field, what is the law?

e. II:9: If the seller marked out the first, second, and third boundary lines, but the fourth boundary line he did not mark out — Said Rab, “The buyer has acquired title to the whole, except the fourth boundary one furrow alongside that boundary.” And Samuel said, “Even the fourth boundary.”

f. II:10: Said Rabbah, “If someone said, ‘The half of the field that I own in this land I am selling to you’ — he has sold him half the whole of the property. ‘Half of the land that I have’ — he is selling a quarter of the whole.”

g. II:11: And said Rabbah, “‘The boundary of the land is the land from which half has been cut off’ — he sells half. If the deed is written, ‘The boundary of the land is that from which a piece is cut off,’ he sells only nine qabs.”

h. II:12: It is obvious that if someone said, “Let So-and-so take a share in my property,” the other is to receive a half. If he said, “Give a share to So-and-so in my property” — what is the law?

i. II:13: A Levite who sold a field to an Israelite and said to him, “I am selling you this field on the stipulation that the first tithe produced by this field is to go to me,” the first tithe does belong to him.

j. II:14: Said R. Dimi of Nehardea, “If someone sold a room to someone else, even though he wrote in the deed, ‘I sell you the depth and the height,’ he still has to add the language, ‘Acquire for yourself title from the depth of the earth to the height of heaven.’ How come? It is because, otherwise, the space below and above is not transferred on its own. So the use of the language, ‘depth and height’ serve to transfer the space below and above, and the language, ‘from the depth of the earth to the height of heaven’ serve to transfer a well, cistern, and cavities in the ground.”

XXXII. Mishnah-Tractate Baba Batra 4:2

A. NOR HAS HE SOLD THE CISTERN, OR THE CELLAR, EVEN THOUGH HE WROTE HIM IN THE DEED, “THE DEPTH AND HEIGHT.”

1. I:1: In session Rabina raised this question: “Is not a well the same thing as a cistern?”

2. I:2: In session R. Ashi raised this question: “Is not a well the same thing as a cistern?”

B. “BUT THE SELLER HAS TO PURCHASE FROM THE BUYER A RIGHT-OF-WAY TO THE CISTERN OR THE CELLAR,” THE WORDS OF R. AQIBA. AND SAGES SAY, “HE DOES NOT HAVE TO PURCHASE A RIGHT-OF-WAY.” AND R. AQIBA CONCEDES THAT WHEN THE SELLER SAID, “EXCEPT FOR THESE,” HE DOES NOT HAVE TO PURCHASE A RIGHT-OF-WAY FOR HIMSELF.

IF THE SELLER SOLD THE CISTERN OR CELLAR TO SOMEONE ELSE, R. AQIBA SAYS, “THE NEW PURCHASER DOES NOT HAVE TO BUY A RIGHT-OF-WAY FOR HIMSELF.” AND SAGES SAY, “HE HAS TO BUY A RIGHT-OF-WAY FOR HIMSELF.”

1. II:1: Is this not what is at issue between them: R. Aqiba takes the view that the seller sells in a liberal spirit, and rabbis take the view that the seller sells in a niggardly spirit Simon: and he therefore reserves to himself the right-of-way? And further, when, in general it is stated, R. Aqiba is consistent with his prevailing principles, for he has said, “The seller sells in a liberal spirit,” isn’t it the fact that reference is made to this passage as the locus classicus for his view?

2. II:2: R. Huna said Rab said, “The decided law is in accord with the opinion of sages.” And R. Jeremiah bar Abba said Samuel said, “The decided law is in accord with the opinion of R. Aqiba.”

a. II:3: Said Rabina to R. Ashi, “May we say that Rab and Samuel are consistent with opinions expressed by them in the following: For said R. Nahman said Samuel, ‘Brothers who divided an estate — they do not have a claim of a right-of-way against one another, nor the right to set up ladders, nor the right to open windows, nor the right to control watercourses,’ and ‘Take note of these rulings for this are absolutely fixed rulings.’ And Rab said, ‘They have those rights?’” At issue is whether or not the division is interpreted strictly or liberally.

b. II:4: Said R. Nahman to R. Huna, “Is the decided law in accord with our position or is it in accord with yours?”

3. II:5: Two rooms, one inside the other, both of them transferred by sale or gift to third parties — neither has a right-of-way against the other being on an equal footing. All the more so if the outer room is given away and the inner one is sold is this the case, since the gift is in a liberal spirit, the sale not.

XXXIII. Mishnah-Tractate Baba Batra 4:3

A. HE WHO SELLS A HOUSE HAS SOLD THE DOOR BUT NOT THE KEY. HE HAS SOLD A PERMANENT MORTAR BUT NOT A MOVABLE ONE. HE HAS SOLD THE CONVEX MILLSTONE BUT NOT THE CONCAVE MILLSTONE, NOR THE OVEN OR THE DOUBLE STOVE. WHEN HE SAID TO HIM IN THE DEED, “IT AND EVERYTHING WHICH IS IN IT” — LO, ALL OF THEM ARE SOLD.

1. I:1: May we say that the Mishnah’s rule does not accord with the position with R. Meir, for if it did accord with R. Meir, has he not said, “He who sells a vineyard has also sold the implements that go along with the vineyard”? Hence we should expect that Meir would include with the house the movable mortar and the key.

2. I:2: Tannaite complement: He who sells a house has sold the door, the cross bar, and the lock, but not the key; the mortar that has been hollowed out of stone but not one that is fixed; the casing of the handmill but not the sieve; not the oven, the stove, or the handmill. Tannaite complement: A pipe that one has hollowed out and then fixed — water from it invalidates an immersion pool. Fixing the pipe to the soil does not make it part of the soil; it remains a utensil unto itself; but if it were hollowed out after being fixed to the ground, it is part of the ground, and hence water flowing through it remains in its natural, undrawn state, in the latter, but not in the former case.

a. I:3: R. Joseph raised the question: “As to rain water that fell on the casing of his handmill, to which one accorded the intentionality of willfully using such water to rinse off his handmill — what is the law as to regarding such rain water as in the category of liquid with the power of imparting susceptibility to uncleanness to seeds on which it falls in line with Lev. 11:34, 37?”

b. I:4: R. Nehemiah b. R. Joseph sent word to Rabbah b. R. Huna Zuti in Nehardea: “When this woman becomes before you, collect for her a tenth of her father’s estate, even from the casing of a handmill.”

XXXIV. Mishnah-Tractate Baba Batra 4:4

A. HE WHO SELLS A COURTYARD HAS SOLD THE HOUSES, CISTERNS, TRENCHES, AND CAVES, BUT NOT THE MOVABLES. IF HE SAID TO HIM, “IT AND EVERYTHING WHICH IS IN IT,” LO, ALL OF THEM ARE SOLD. ONE WAY OR THE OTHER, HE HAS NOT SOLD HIM THE BATHHOUSE OR THE OLIVE PRESS WHICH ARE IN IT.

1. I:1: He who sells the courtyard has sold the houses on the inside and the houses on the outside and the sand field in it. As to the shops those that open on to it are sold with it, and those that do not open on to it are not sold with it. Those that open on to both sides are sold with it.

a. I:1: Gloss of a detail of the foregoing.

B. R. ELIEZER SAYS, “HE WHO SELLS THE COURTYARD HAS SOLD ONLY THE OPEN SPACE OF THE COURTYARD.”

1. II:1: Said Raba, “If the seller says, ‘I sell you a residence,’ no one argues that he means the apartments. Where there is a dispute, it concerns a case in which he says, ‘the courtyard,’ for R. Eliezer says that in that case he means the open space only, and rabbis hold he means the apartments as well.”

1. II:2: And said Raba said R. Nahman, “If someone sold the other party the sand along the shore of the river and its bed, if the buyer took possession of the bed, he has not acquired title to the shore. If he took possession of the shore, he has not acquired title to the bed.”

XXXV. Mishnah-Tractate Baba Batra 4:5

A. HE WHO SELLS AN OLIVE PRESS HAS SOLD THE VAT, GRINDSTONE, AND POSTS. BUT HE HAS NOT SOLD THE PRESSING BOARDS, WHEEL, OR BEAM. IF HE SAID, “IT AND EVERYTHING WHICH IS IN IT,” ALL OF THEM ARE SOLD. R. ELIEZER SAYS, “HE WHO SELLS AN OLIVE PRESS HAS SOLD THE BEAM.”

1. I:1: “The vat” is called in Aramaic “the lentil.”

2. I:2: Tannaite complement: He who sells an olive press has sold the moulds, tanks, press-beams, and lower millstones. But he has not sold the upper millstones. But if he said to him, “It and everything that is in it I sell to you,” lo, all of them are sold

XXXVI. Mishnah-Tractate Baba Batra 4:6

A. HE WHO SELLS A BATHHOUSE HAS NOT SOLD THE BOARDS, BENCHES, OR HANGINGS. IF HE SAID, “IT AND EVERYTHING WHICH IS IN IT,” LO, ALL OF THEM ARE SOLD. ONE WAY OR THE OTHER, HE HAS NOT SOLD THE WATER JUGS OR WOODSHEDS.

1. I:1: Tannaite complement: He who sells a bathhouse has sold the inner rooms, outer rooms, kettle room, towel room, and dressing room. But he has not sold the kettles, towels, or cupboards that are in it.

a. I:2: Illustrative case. There was someone who said to his fellow, “The bathhouse and everything that is needed for using it do I sell to you.”

XXXVII. Mishnah-Tractate Baba Batra 4:7

A. HE WHO SELLS A TOWN HAS SOLD THE HOUSES, CISTERNS, DITCHES, CAVES, BATHHOUSES, DOVECOTES, OLIVE PRESSES, AND IRRIGATED FIELDS BUT NOT THE MOVABLES. IF HE SAID TO HIM, “IT AND EVERYTHING WHICH IS IN IT,”

EVEN THOUGH THERE ARE CATTLE AND SLAVES IN IT, LO, ALL OF THEM ARE SOLD.

1. I:1: Even though there are cattle and slaves in it: said R. Aha b. R. Hiyya to R. Ashi, “The passage implies that a slave is classified as movables, for if he were classified as real estate, he should be deemed to have been sold along with the place itself. So what must follow? It is that a slave is classified as movables. And why does the passage read, even though? It is so as to indicate, what can you say? That there is a difference between movable and immovable movables? The upshot is that, even if you hold that the slave is classified as real estate, there still is a difference between movable and immovable real estate.”

B. RABBAN SIMEON B. GAMALIEL SAYS, “HE WHO SELLS A TOWN HAS SOLD THE TOWN GUARD.”

1. I:1: What is the meaning of guard?

a. I:2: It was reasoned, “What is the meaning of irrigated fields? Tilled fields, as it is written, ‘And God sends waters upon the fields’ (Job. 5:10).”

b. I:3: He who sells a town — R. Judah says, “The town guard is not sold along with it, the town clerk is sold along with it” (T. **B.B. 3:5B-D**). Our version of the Tosefta has the verse, corrected to conform to the Bavli’s version for reasons that will appear presently. Now since the town clerk is a human being, surely the town guard is also a human being hence the definition, “he who shows” is the right one.

1. I:4: Gloss of a tangential detail in the foregoing: Or the vivarium for wild beasts, fowl, and fish — An objection was raised on the basis of the following: If the town had suburbs, they are not sold with it. If it had a part on an island and a part on the mainland, or if it had a vivarium for wild beasts, fowl, and fish, lo, these are sold with it.

XXXVIII. Mishnah-Tractate Baba Batra 4:8-9D

A. HE WHO SELLS A FIELD HAS SOLD THE STONES WHICH ARE NEEDED FOR IT SIMON: WHICH ARE USED IN IT:

1. I:1: Here in Babylonia it is translated as “stones used to weigh things down”
Simon: stones placed on sheaves to keep them from being blown about by the wind.

2. I:2: Here in Babylonia it is translated as “stones used to weigh things down”:

B. THE CANES IN THE VINEYARD WHICH ARE NEEDED FOR IT:

1. II:1: What do they do with these canes?

C. AND THE CROP WHICH IS YET UNPLUCKED UP FROM THE GROUND:

1. III:1: Even though it is ripe to be cut down.

D. HE ALSO HAS SOLD: A PARTITION OF REEDS WHICH COVERS LESS THAN A QUARTER-QAB OF SPACE OF GROUND:

1. IV:1: Even though they are thick.

E. THE WATCHMAN’S HOUSE WHICH IS NOT FASTENED DOWN WITH MORTAR:

1. V:1: Even though it is not fixed to the ground.

F. THE CAROB WHICH WAS NOT GRAFTED:

1. VI:1: Even though they are quite sizable.

G. AND THE YOUNG SYCAMORES:

1. VII:1: Now according to R. Meir, it means, “They are not ready for use,” and according to rabbis, “They have actually not been used.”

H. BUT HE HAS NOT SOLD THE STONES WHICH ARE NOT NEEDED FOR IT:

1. VIII:1: From the perspective of R. Meir, this is the rule if they have not been peeled, and from the perspective of rabbis, it means that that is the case even if they simply have not yet been fixed.

I. THE CANES IN THE VINEYARD WHICH ARE NOT NEEDED FOR IT:

1. IX:1: Even though it still needs to be left in the ground to ripen further.

J. THE CROP WHICH HAS ALREADY BEEN PLUCKED UP FROM THE GROUND:

1. X:1: Even though they are tiny.

K. IF HE HAD SAID TO HIM, “IT AND EVERYTHING WHICH IS IN IT,” LO, ALL OF THEM ARE SOLD. ONE WAY OR THE OTHER, HE HAS NOT SOLD TO HIM A PARTITION OF REEDS WHICH COVERS A QUARTER-QAB OF SPACE OF GROUND, A WATCHMAN’S HOUSE WHICH IS FASTENED DOWN WITH MORTAR:

1. XI:1: Even though it is fixed to the ground.

2. XI:2: R. Eleazar raised this question: “As to the frames of doors, what is the rule? Where they are fixed to the wall with mortar, there of course is no question that they are sold with the house, since they are firmly attached. The question comes up where the doors are only connected with hooks.”

3. XI:3: R. Zira raised this question: "As to window frames, what is the law? Do we say that they are put on merely for decoration, or perhaps, since they are attached, they really do form attachments to the house?"

4. XI:4: R. Jeremiah raised this question: "What is the law concerning the castors on the legs of beds? The question does not arise if they are moved along with the bed, since, because they go with it, they belong to it. The question is raised in a case in which they are not moved with it."

L. A CAROB WHICH WAS GRAFTED, AND CROPPED SYCAMORES:

1. XII:1: What is the source of this rule that these trees are not reckoned with the field?

2. XII:2: Said R. Judah, "Someone who sells a field ought to write in the deed, 'Acquire hereby the date trees, other big trees, small trees, and small date trees.' And even though it is the fact that even if he did not write that language in the deed, the buyer has acquired the specified items, nonetheless a well-drawn deed is more effective if such language is used..."

3. XII:3: Said Rab, "If the seller said, '...everything except those that have to be climbed by a rope ladder to pick the fruit,' this represents a reservation of all the trees that have to be climbed by a rope ladder to pick the fruit, but those that do not have to be climbed by a rope ladder to be harvested are not so reserved to the seller."

4. XII:4: R. Aha bar Huna asked R. Sheshet, "If the seller used the language, '...except for such-and-such a carob tree,' '...except for such-and-such a sycamore,' what is the law? That particular carob is the one that he has not acquired, but lo, the rest of the carobs he has acquired? Or perhaps all the other carob trees too he has not acquired?"

5. XII:5: R. Amram raised this question to R. Hisda: "He who leaves a bailment with his fellow and gets a written receipt for it, and then the other claims, 'I returned the things to you,' what is the law? Do we say that, since if he wanted, he could have claimed, 'they were lost on account of events beyond my control,' he would have been believed, now, too, he is believed? Or perhaps, since if the other says, 'How come you have your receipt in my possession,' so if you returned the object, how come I still have your receipt? we accept his claim, we reject the argument beginning 'since'?"

6. XII:6: R. Huna bar Abin sent word: "He who leaves a bailment with his fellow and gets a written receipt for it, and the other party then claimed, 'I returned the things to you,' the other party is believed in line with what R. Hisda has said. In the case of a claim against an estate on the strength of a bond given by a borrower for capital on the condition that the profit is shared equally between borrower and lender, which is produced in support of a claim against an estate, the plaintiff takes an oath and collects the whole of what he claims."

7. XII:7: Raba said, "The decided law is: He takes an oath and collects half of his claim."

XXXIX. Mishnah-Tractate Baba Batra 4:9E-V

A. A CISTERN, WINEPRESS, OR DOVECOTE, WHETHER THEY ARE LYING WASTE OR IN USE. “AND THE SELLER NEEDS TO PURCHASE FROM THE BUYER A RIGHT-OF-WAY,” THE WORDS OF R. AQIBA. AND SAGES SAY, “HE DOES NOT HAVE TO.” AND R. AQIBA CONCEDES THAT, WHEN THE SELLER SAID TO HIM, “EXCEPT FOR THESE,” HE DOES NOT HAVE TO BUY HIMSELF A RIGHT-OF-WAY. IF HE SOLD THEM TO SOMEONE ELSE, R. AQIBA SAYS, “THE NEW PURCHASER DOES NOT HAVE TO BUY A RIGHT-OF-WAY FOR HIMSELF.” AND SAGES SAY, “HE HAS TO BUY A RIGHT-OF-WAY FOR HIMSELF.”

UNDER WHAT CIRCUMSTANCES? IN THE CASE OF ONE WHO SELLS THE AFORELISTED PROPERTIES. BUT IN THE CASE OF ONE WHO GIVES THESE THINGS AS A GIFT, HE WILLINGLY HANDS OVER ALL OF THEM IN A LIBERAL SPIRIT.:

1. I:1: So what’s the difference between a sale and a gift?

a. Illustrative case: Somebody said to others, “Give Mr. So-and-so a room that holds a hundred barrels.” It turned out that the room could hold a hundred twenty barrels.

B. BROTHERS WHO DIVIDED AN ESTATE — ONCE THEY HAVE ACQUIRED POSSESSION OF A FIELD, THEY HAVE ACQUIRED POSSESSION OF ALL OF THEM AND NO LONGER MAY RETRACT — HE WHO LAYS HOLD THROUGH USUCAPTION, SEEKING TITLE OF THE PROPERTY OF A DECEASED PROSELYTE LACKING ISRAELITE HEIRS, ONCE HE HAS ACQUIRED POSSESSION OF A FIELD, HAS ACQUIRED POSSESSION OF ALL OF THEM.

HE WHO DECLARES A FIELD SANCTIFIED HAS DECLARED ALL OF THEM SANCTIFIED. R. SIMEON SAYS, “HE WHO DECLARES A FIELD SANCTIFIED HAS DECLARED SANCTIFIED ONLY THE CAROB WHICH IS GRAFTED, AND CROPPED SYCAMORES.”:

1. II:1: Said R. Huna, “Even though our rabbis have said, He who buys two trees in his fellow’s field, lo, this party has not bought the ground on which they are growing (M. **5:4A-B**), if he sold land and left two trees in the field for himself, he does possess some soil with him. And that would accord even with the position of R. Aqiba, who has said, ‘He who sells sells in a liberal spirit,’ that position pertains in particular to the cases of a well or a cistern, which do not exhaust the soil, but as to trees, which do exhaust the soil, if the seller did not reserve some dirt for himself, the buyer could say to him, ‘Pull up your tree and get out of here.’”

a. II:2: In accord them with whom have you interpreted this clause in the cited passage? To R. Simeon? Then look at what follows: “And furthermore, even if he sanctified the trees and afterward he sanctified the ground, when he redeems the lot, he redeems the trees in accord with their actual worth and then he goes and redeems the land at the rate of fifty sheqels of silver for every part of the field that suffices for the sowing of a homer of barley”! Now if this really did accord with R. Simeon, then the valuation should be determined at the time of redemption Simon: according to the character of the article to be redeemed at the time of redemption, not at the time of sanctification, and it would follow that the trees should be

redeemed along with, and as part of, the field Simon: and not separately, at their own value, as they would be, if we went by the value at the time of sanctification.

3. II:3: Said R. Huna, “A full-grown carob and a cropped sycamore fall under the law governing a tree and also under the law governing land.”

4. II:4: And said R. Huna, “A sheaf of two sheaves is partly subject to the law governing a sheaf and is partly subject to the law governing a shock.

5. II:5: Said Rabbah bar bar Hannah said R. Simeon b. Laqish, “As to a full-grown carob and a cropped sycamore, we come to the dispute between R. Menahem b. R. Yosé and rabbis” Simon: the former holding that they are not sanctified along with a field, the latter that they are.

XL. Mishnah-Tractate Baba Batra 5:1A-D

A. HE WHO SELLS A SHIP HAS SOLD THE MAST:

1. I:1: this refers to the mast, and so Scripture says, “They have taken cedars from Lebanon to make masts for you” (Eze. 27: 5).

B. SAIL:

1. II:1: bears that meaning in line with this verse: “Of fine linen with richly woven work from Egypt was your sail, that it might be for you for an ensign” (Eze. 27: 7).

C. AND ANCHOR:

1. III:1: Repeated R. Hiyya as a Tannaite statement: “This refers to the anchors, in line with this verse: ‘Would you tarry for them until they were grown? Would you shut yourselves off for them and have no husbands’ (Rut. 1:13).”

D. AND WHATEVER STEERS IT:

1. IV:1: What is the source in Scripture for that statement? Said R. Abba, “This speaks of the oars: ‘Of the oaks of Bashan have they made your oars’ (Eze. 27: 6).”

2. IV:2: He who sells a ship has sold the wooden implements and the water tank on it. R. Nathan says, “He who sells a ship has sold its rowboat.” Sumkhos says, “He who has sold a ship has sold its lighter” (T. **B.B. 4:1A-C**).

3. IV:3: Gloss of foregoing. Said Raba, “The rowboat and the lighter are pretty much the same thing. But R. Nathan, who was a Babylonian, uses the word familiar to him, as people use that word in Babylonia when referring to the rowboat that is used at the shallows, and Sumkhos, who was from the Land of Israel, used the word that is familiar to him, as people say in the verse, ‘And your residue shall be taken away in lighters’ (Amo. 4: 2).

E. COMPOSITE OF SEA-STORIES OF RABBAH BAR BAR HANNAH

1. IV:4: Said Rabbah, “Sailors told me, ‘The wave that sinks a ship appears with a white froth of fire at the crest, and when stricken with clubs on which is incised, ‘I am that I am, Yah, the Lord of Hosts, Amen, Amen, Selah,’ it will subside and not sink the ship.’”

2. IV:5: Said Rabbah, “Sailors told me, ‘Between one wave and another there is a distance of three hundred parasangs, and the height of the wave is the same three hundred parasangs...”

3. IV:6: Said Rabbah, “I personally saw Hormin, son of Lilith, running on the parapet of the wall of Mahoza, and a rider, galloping below on horseback, could not catch up with him...”

a. IV:7: Said Rabbah bar bar Hannah, “I personally saw a day-old antelope as big as Mount Tabor...”

b. IV:8: And said Rabbah bar bar Hannah, “I personally saw a frog as big as the Fort of Hagronia...”

4. IV:9: And said Rabbah bar bar Hannah, “Once we were traveling on a ship, and we saw a fish whale in the nostrils of which a mud eater had entered. The water cast up the fish and threw it on the shore...”

5. IV:10: And said Rabbah bar bar Hannah, “Once we were traveling on a ship, and we saw a fish the back of which was covered with sand out of which grass was growing...”

6. IV:11: And said Rabbah bar bar Hannah, “Once we were traveling on a ship, and the ship sailed between one fin of a fish and the other for three days and three nights; the fish was swimming upwards and we were floating downwards with the wind.”

7. IV:12: And said Rabbah bar bar Hannah, “Once we were traveling on a ship, and we saw a bird standing in the water only up to its ankles, with its head touching the sky.”

a. IV:13: And said Rabbah bar bar Hannah, “Once we were traveling in the desert, and we saw geese whose feathers fell out because they were so fat, and streams of fat flowed under them.”

b. IV:14: And said Rabbah bar bar Hannah, “Once we were traveling in the desert, and a Tai-Arab joined us, who could pick up sand and smell it and tell us which was the road to one place and which to another.”

F. OTHER TRAVELLERS’ TALES

1. IV:15: R. Yohanan told this story: “Once we were traveling along on a ship, and we saw a fish that raised its head from the sea. Its eyes were like two moons, and water streamed from its nostrils like the two rivers of Sura.”

2. IV:16: R. Safra told this story: “Once we were traveling along on a ship, and we saw a fish that raised its head from the sea. It had horns on which was engraved: ‘I am a lesser creature of the sea. I am three hundred parasangs long, and I am going into the mouth of Leviathan.”

3. IV:17: R. Yohanan told this story: “Once we were traveling along on a ship, and we saw a chest in which were set jewels and pearls, surrounded by a kind of fish called a Karisa-fish. A diver went down to bring up the chest, but the fish realized it and was about to wrench his thigh. He poured on it a bottle of vinegar, and it sank. An echo came forth, saying to us, ‘What in the world have you got to do

with the chest of the wife of R. Hanina b. Dosa, who is going to store in it the purple-blue for the righteous in the world to come.’

4. IV:18: R. Judah the Hindu told this story: “Once we were traveling along on a ship, and we saw a jewel with a snake wrapped around it. A diver went down to bring up the jewel. The snake drew near, to swallow the ship. A raven came and bit off its head. The waters turned to blood. Another snake and took the head of the snake and attached it to the body again, and it revived. The snake again came to swallow the ship. A bird again came and cut off its head. The diver seized the jewel and threw it into the ship. We had salted birds. We put the stone on them, and they took it up and flew away with it.”

5. IV:19: There was the case involving R. Eliezer and R. Joshua, who were traveling on a ship. R. Eliezer was sleeping, and R. Joshua was awake. R. Joshua shuddered and R. Eliezer woke up. He said to him, “What’s wrong, Joshua? How come you trembled?”

6. IV:20: Said R. Ashi, “Said to me Huna bar Nathan, ‘Once we were traveling in the desert, and we had taken with us a leg of meat. We cut it open, picked out what we are not allowed to eat and put it on the grass. While we were going to get some wood, the leg returned to its original form, and we roasted it. When we came back after twelve months, we saw the coals still glowing. When I presented the matter to Amemar, he said to me, “The grass was an herb that can unite severed parts, and the coals were broom which burns a long time inside, while the surface is extinguished.”’

G. LEVIATHAN

1. IV:21: “And God created the great sea monsters” (Gen. 1:21): Here this is interpreted, “the sea gazelles.”

2. IV:22: Said R. Judah said Rab, “Whatever the Holy One, blessed be He, created in his world did he create male and female, and so, too, Leviathan the slant serpent and Leviathan the tortuous serpent he created male and female, and if they had mated with one another, they would have destroyed the whole world...”

H. WATER: CHARACTER AND SOURCES

1. IV:23: And said R. Judah said Rab, “When the Holy One, blessed be He, proposed to create the world, he said to the prince of the sea, ‘Open your mouth, and swallow all the water in the world.’”

2. IV:24: And said R. Judah said Rab, “The Jordan issues from the cave of Paneas....And it goes through the Lake of Sibkay and the Lake of Tiberias and rolls down into the great sea, and from there it rolls onward until it rushes into the mouth of Leviathan: ‘He is confident because the Jordan rushes forth to his mouth’ (Job. 40:23).”

Objected Raba bar Ulla, “This verse speaks of Behemoth on a thousand hills.”

a. IV:25: When R. Dimi came, he said R. Yohanan said, “What is the meaning of the verse, ‘For he has founded it upon the seas and established it upon the floods’ (Psa. 24: 2)? This refers to the seven seas and four rivers that surround the land of Israel. And what are the seven seas? The

sea of Tiberias, the sea of Sodom, the sea of Helath, the sea of Hiltha, the sea of Sibkay, the sea of Aspamia, and the Great sea. And what are the four rivers? The Jordan, the Yarmuk, the Keramyhon, and the Pigah.”

I. LEVIATHAN AGAIN

1. IV:26: When R. Dimi came, he said R. Yohanan said, “Gabriel is destined to organize a hunt for Leviathan: ‘Can you draw out Leviathan with a fish hook, or press down his tongue with a cord’ (Job. 40:25). And if the Holy One, blessed be He, does not help him, he will never be able to prevail over him: ‘He only that made him can make his sword approach him’ (Job. 40:19).”

2. IV:27: When R. Dimi came, he said R. Yohanan said, “When Leviathan is hungry, he sends out fiery breath from his mouth and boils all the waters of the deep: ‘He makes the deep to boil like a pot’ (Job. 41:23). And if he did not put his head into the Garden of Eden, no creature could endure his stench: ‘He makes the sea like a spiced broth’ (Job. 41:23). And when he is thirsty, he makes the sea into furrows: ‘He makes a path to shine after him’ (Job. 41:24).”

3. IV:28: Rabbah said R. Yohanan said, “The Holy One, blessed be He, is destined to make a banquet for the righteous out of the meat of Leviathan: ‘Companions will make a banquet of it’ (Job. 40:30). The meaning of ‘banquet’ derives from the usage of the same word in the verse, ‘And he prepared for them a great banquet and they ate and drank’ (2Ki. 6:23).”

4. IV:29: Rabbah said R. Yohanan said, “The Holy One, blessed be He, is destined to make a tabernacle for the righteous out of the hide of Leviathan: ‘Can you fill tabernacles with his skin’ (Job. 40:31). If someone has sufficient merit, a tabernacle is made for him; if he does not have sufficient merit, a mere shade is made for him: ‘And his head with a fish covering’ (Job. 40:31). If someone has sufficient merit, a shade is made for him, if not, then a mere necklace is made for him: ‘And necklaces about your neck’ (Pro. 1: 9). If someone has sufficient merit, a necklace is made for him; if not, then an amulet: ‘And you will bind him for your maidens’ (Job. 40:29).

J. OTHER STATEMENTS CONCERNING THE TIME OF THE MESSIAH

1. IV:30: “And I will make your pinnacles of rubies” (Isa. 54:12).

2. IV:31: “And your gates of carbuncles” (Isa. 60: 3).

3. IV:32: Continuation of the foregoing.

4. IV:33: And said Rabbah said R. Yohanan, “The Holy One, blessed be He, is destined to make seven canopies for every righteous person: ‘And the Lord will create over the whole habitation of Mount Zion and over her assemblies a cloud of smoke by day and the shining of a flaming fire by night, for over all the glory shall be a canopy’ (Isa. 4: 5). This teaches that for every one will the Holy One create a canopy in accord with the honor that is due him.”

a. IV:34: Supplement to the foregoing.

5. IV:35: Said R. Hama bar Hanina, “Ten canopies did the Holy One, blessed be He, make for the First Man in the garden of Eden: ‘You were in Eden, the garden of God; every precious stone was your covering, the cornelian, the topaz, the

emerald, the beryl, the onyx, the jasper, the sapphire, the carbuncle, and the emerald and gold' (Eze. 28:13)."

a. IV:36: Exegesis of proof-text used in the foregoing.

6. IV:37: Said Rabbah said R. Yohanan, "Jerusalem in the age to come will not be like Jerusalem in this age. To Jerusalem in this age anyone who wants to go up may go up. But to Jerusalem in the age to come only those who are deemed worthy of coming will go up."

7. IV:38: And said Rabbah said R. Yohanan, "The righteous are destined to be called by the name of the Holy One, blessed be He: 'Every one that is called by my name, and whom I have created for my glory, I have formed him, yes, I have made him' (Isa. 43: 7)."

8. IV:39: Said R. Samuel bar Nahmani said R. Yohanan, "There are three who are called by the name of the Holy One, blessed be He, and these are they: the righteous, the Messiah, and Jerusalem."

9. IV:40: Said R. Eleazar, "The time will come when 'holy' will be said before the name of the righteous as it is said before the name of the Holy One, blessed be He: 'And it shall come to pass that he that is left in Zion and he that remains in Jerusalem shall be called holy' (Isa. 4: 3)."

10. IV:41: And said Rabbah said R. Yohanan, "The Holy One, blessed be He, is destined to lift up Jerusalem to a height of three parasangs: 'And she shall be lifted up and be settled in her place' (Isa. 4: 3). '...In her place' means 'like her place' Jerusalem will be lifted up to a height equal to the extent of the space it occupies."

a. IV:42: Further as to Jerusalem in time to come.

b. IV:43: As above.

c. IV:44: As above.

d. IV:45: As above.

l. IV:46: Footnote to foregoing.

e. IV:47: As above.

K. PURCHASE OF A SHIP: TRANSFER OF TITLE

1. IV:48: As to the transfer of title to a ship —

Rab said, "Once the purchaser has dragged it any distance at all, he has acquired title of possession to the ship."

a. IV:49: Said R. Pappa, "One who sells a bond to someone else has to give him the following document in writing in addition: 'Acquire it and everything that is indentured within its terms.'"

b. IV:50: Said Amemar, "The decided law is that letters are acquired by an act of delivery and there is no need to write a bill of sale as well, in accord therefore with the position of Rabbi."

L. BUT HE HAS NOT SOLD THE SLAVES, PACKING BAGS, OR LADING. AND IF THE SELLER HAD SAID TO THE BUYER "IT AND EVERYTHING WHICH IS IN IT," LO, ALL OF THEM ARE SOLD.:

1. V:1: What is the meaning of lading?

XLI. Mishnah-Tractate Baba Batra 5:1E-N

A. IF HE SOLD THE WAGON, HE HAS NOT SOLD THE MULES. IF HE SOLD THE MULES, HE HAS NOT SOLD THE WAGON.

1. I:1: R. Tahalipa the Westerner repeated before R. Abbahu the following Tannaite formulation: "If one has sold the wagon, he has sold the mules."

B. IF HE SOLD THE YOKE, HE HAS NOT SOLD THE OXEN. IF HE SOLD THE OXEN, HE HAS NOT SOLD THE YOKE.

R. JUDAH SAYS, "THE PRICE TELLS ALL." HOW SO? IF HE SAID TO HIM, "SELL ME YOUR YOKE FOR TWO HUNDRED ZUZ," THE FACTS ARE PERFECTLY CLEAR, FOR THERE IS NO YOKE WORTH TWO HUNDRED ZUZ. AND SAGES SAY, "THE PRICE PROVES NOTHING."

1. II:1: What sort of case can be contemplated here? If it is a situation in which the yoke is called a yoke and oxen, oxen, then obviously he sold the yoke but not the oxen so why would the matter depend, for instance, on the price that is paid? And if the oxen are called a yoke as well, then obviously everything is sold.

XLII. Mishnah-Tractate Baba Batra 5:2

A. HE WHO SELLS AN ASS HAS NOT SOLD ITS TRAPPINGS. NAHUM THE MEDE SAYS, "HE HAS SOLD ITS TRAPPINGS."

1. I:1: Said Ulla, "The dispute concerns the sack, saddle bag, and pallet. The initial Tannaite authority takes the view that an ass the use of which is otherwise not specified is meant for riding. And Nahum the Mede maintains that an ass the purpose of which is not otherwise specified is meant for carrying a burden..."

a. I:2: What is the pallet?

2. I:3: The question was raised: "Does the dispute pertain only to a case in which these appurtenances are still on the animal, but when they are not on the beast, Nahum the Mede concurs with rabbis, or perhaps the dispute pertains to a case in which the appurtenances are not on the beast, but if they are yet on the beast, rabbis concur with Nahum?"

3. I:4: Said Abbaye, "R. Eliezer, Rabban Simeon b. Gamaliel, R. Meir, R. Nathan, Sumkhos, and Nahum the Mede all take the position that when someone sells something, he sells it and all of the appurtenances that pertain to it."

B. R. JUDAH SAYS, "SOMETIMES THEY ARE SOLD, AND SOMETIMES THEY ARE NOT SOLD. HOW SO? IF THERE WAS AN ASS BEFORE HIM, WITH ITS TRAPPINGS ON IT, AND HE SAID TO HIM, 'SELL ME THIS ASS OF YOURS,' LO, ITS TRAPPINGS ARE SOLD. IF HE HAD SAID, 'SELL ME THAT ASS OF YOUR' ITS TRAPPINGS ARE NOT SOLD."

1. II:1: What differentiates the usage this ass of yours and that ass of yours?

XLIII. Mishnah-Tractate Baba Batra 5:3A-F

A. HE WHO SELLS AN ASS HAS SOLD THE FOAL. IF HE SOLD THE COW, HE HAS NOT SOLD ITS OFFSPRING:

1. I:1: How may we imagine the case to which the opening clause refers? If he said to him, "...and its offspring," then even in the case of the cow and the offspring, the same law should pertain and the calf goes with the cow. And if he did not say to him, "...it and its offspring," then even in the case of the ass, the foal should not be part of the transaction!

a. I:2: Why is the offspring of the ass called a foal? Because the Hebrew letters in the word for foal yield the word for "gentle talk," and a foal will obey mere words, while the adult ass must be driven by force.

l. I:3: Said R. Samuel bar Nahman said R. Yohanan, "What is the meaning of the verse, 'Wherefore those that speak in parables say' (Num. 21:27)? Those that speak in parables are those who govern their inclination to do evil the words for parables and govern using the same Hebrew letters.

II. I:4: Said R. Judah said Rab, "Whoever abandons words of Torah — fire consumes him: 'And I will set my face against them, out of the fire are they come forth, and the fire shall devour them' (Eze. 15: 7)."

III. I:5: When R. Dimi came, he said R. Jonathan said, "Whoever abandons words of Torah falls into Gehenna

B. IF HE SOLD A DUNG HEAP, HE HAS SOLD THE DUNG ON IT. IF HE SOLD A CISTERN, HE HAS SOLD ITS WATER. IF HE SOLD A BEEHIVE, HE HAS SOLD THE BEES. IF HE HAS SOLD THE DOVECOTE, HE HAS SOLD THE PIGEONS.

1. II:1: Systematic exegesis of M. **Me. 3:6A-K**, because reference is made to the consecration of a dung heap which afterward was filled with dung.

2. II:2: Continuation of foregoing. Here our Mishnah-paragraph makes a verbatim contribution to the theoretical problem focused elsewhere.

XLIV. Mishnah-Tractate Baba Batra 5:3G-J

A. HE WHO PURCHASES "THE FRUIT OF A DOVECOTE" FROM HIS FELLOW LETS GO THE FIRST PAIR THAT ARE HATCHED.

1. I:1: But has it not been taught on Tannaite authority: The buyer must leave both the first brood and the second brood?

B. IF HE BOUGHT "THE FRUIT OF A BEEHIVE," HE TAKES THREE SWARMS, AND THEN THE SELLER MAKES THE REST STERILE.

1. II:1: How does one sterilize them?

2. II:2: R. Yohanan said, "He takes the three swarms alternately."

C. IF HE BOUGHT HONEYCOMBS, HE LEAVES TWO HONEYCOMBS.

1. III:1: Said R. Kahana, “Honey in a beehive never ceases to be classified as food.” Therefore he takes the view that in order to subject honey to the laws governing uncleanness of food, it is not necessary to form the intention of regarding the honey as food. But an objection is to be raised from the following: Honey in the beehive is classified as neither food nor liquid. Hence intentionality is required to effect the classification; nothing is intrinsic.

a. III:2: Gloss on Kahana’s statement. To the statement of R. Kahana, “Honey in a beehive never ceases to be classified as food,” an objection was raised: Honey that exudes the beehive is classified as neither food nor liquid. Now that poses no problems to the position of Abbaye, for this may also speak of the two combs left for the bees in the winter, but from the perspective of Raba there is a problem even if honey in the beehive in Eliezer’s view is regarded as equivalent to the ground, honey that has exuded is obviously in a different category!

b. III:3: As above. To the statement of R. Kahana, “Honey in a beehive never ceases to be classified as food,” an objection was raised: Honey in a beehive is classified as neither food nor drink. If one gave thought to it to eat it, it imparts uncleanness in the classification of food; if one thought of drinking it, it imparts uncleanness in the classification of liquid.

D. IF HE BOUGHT OLIVE TREES TO CUT DOWN, HE LEAVES TWO SHOOTS.

1. IV:1: He who buys a tree from his fellow, intending to cut it down, must leave in the ground a handbreadth of the height of the tree and cut the rest. If it is a virgin sycamore, he must leave three handbreadths in the ground; if it is a sycamore trunk, two; if it is reeds and vines, the cut is to be made from the knot and above; in the case of palm trees and cedars, he may dig down and take them out with the roots, since the stumps will not grow again anyhow (T. B.B. 4:7P-Q).

a. IV:2: Gloss of foregoing.

XLV. Mishnah-Tractate Baba Batra 5:4

A. HE WHO BUYS TWO TREES IN HIS FELLOW’S FIELD, LO, THIS PARTY HAS NOT BOUGHT THE GROUND ON WHICH THEY ARE GROWING. R. MEIR SAYS, “HE HAS BOUGHT THE GROUND.”

1. I:1: There we have learned in the Mishnah: He who buys two trees that are growing on the property of his fellow brings first fruits from those trees but does not recite over them. R. Meir says, “He brings and recites” (M. Bik. 1:6A-C). Said R. Judah said Samuel, “R Meir would require even who one brought produce in the market to present first fruits and to make the required declaration over them.”

2. I:2: Continuation of foregoing: Said R. Simeon b. Eliaqim to R. Eleazar, “How come R. Meir takes the position that he does in the case of one tree, and how come rabbis take the position that they do in the case of the purchase of two trees?”

B. IF THEY GREW UP, THE LANDOWNER MAY NOT TRIM THEM.

1. II:1: What is the definition of what comes from the stem, and what is the definition of what comes from the roots?

C. WHAT SPROUTS FROM THE STEM BELONGS TO THE PURCHASER, BUT WHAT SPROUTS FROM THE ROOTS BELONGS TO THE OWNER OF THE LAND. AND IF THE TREES DIED, THE OWNER OF THE TREES HAS NO CLAIM ON THE LAND.

1. III:1: But should we not take account of the possibility that the ground might have covered up the knots of the lowest shoots, so the buyer could say to the landowner, “You sold me three trees, and so I have a share of the earth”?

a. III:2: Said R. Nahman, “We hold as a tradition: a palm tree has not got a stem.

D. IF HE BOUGHT THREE, HE HAS ALSO BOUGHT THE GROUND ON WHICH THEY ARE GROWING.

IF THEY GREW UP, THE LANDOWNER MAY TRIM THEM. AND WHAT SPROUTS BOTH FROM THE STEM AND FROM THE ROOTS BELONGS TO THE PURCHASER. AND IF THEY DIED, HE HAS A CLAIM ON THE LAND.

1. IV:1: How much ground does he acquire?

2. IV:2: Said R. Zira, “On the basis of what our master has said, we may draw the conclusion that if the buyer has purchased three trees, then he has no right of passage, but if he has purchased only two, he does have the right of passage, saying to the landowner, ‘They stand in your field, and since you sold me trees there, you also have to give me access to them.’”

3. IV:3: Said Abbaye to R. Joseph, “Who has the right to sow on the land that is reserved for the gatherer and his basket?”

4. IV:4: And how much space must there be between the trees for the buyer of three trees to acquire title to the ground among them? If they were too close to each other, they would be regarded as a forest, whose trees are for uprooting; if they are too scattered, they could not be regarded as a combination of trees.

5. IV:5: R. Jeremiah raised this question: “When someone takes the measurements of the distances among the trees, does he measure from the thin or the thick parts of the trees?”

6. IV:6: R. Jeremiah raised this question: “When someone sold three branches of one tree, four cubits distant from one another and covered with alluvium at the knots so that they appear as three trees, what is the law?”

7. IV:7: R. Pappa raised this question: “If he sold two trees within the field and one at the border, what is the law? If he sold two in his field and one in his fellow’s nearby field, what is the law?”

8. IV:8: R. Ashi raised this question: “With reference to the sale of three trees does a cistern located within the group of trees form a partition? Does a water course form a partition? Does the public domain form a partition? Does a nursery of young inoculated palm trees?”

9. IV:9: Hillel asked Rabbi, “If a cedar grew up between the three trees that one has sold, what is the law as to whether or not it forms a partition among them?”

10.IV:10: As to trees that are from four to sixteen cubits distant from one another, in which case the buyer of the trees has acquired real estate as well, how are the various trees laid out?

XLVI. Mishnah-Tractate Baba Batra 5:5-6

A. HE WHO SELLS THE HEAD IN THE CASE OF LARGE CATTLE HAS NOT SOLD THE FEET. IF HE SOLD THE FEET, HE HAS NOT SOLD THE HEAD. IF HE SOLD THE LUNGS, HE HAS NOT SOLD THE LIVER. IF HE SOLD THE LIVER, HE HAS NOT SOLD THE LUNGS. BUT IN THE CASE OF A SMALL BEAST, IF HE HAS SOLD THE HEAD, HE HAS SOLD THE FEET. IF HE HAS SOLD THE FEET, HE HAS NOT SOLD THE HEAD. IF HE HAS SOLD THE LUNGS, HE HAS SOLD THE LIVER. IF HE HAS SOLD THE LIVER, HE HAS NOT SOLD THE LUNGS. THERE ARE FOUR RULES IN THE CASE OF THOSE WHO SELL.

IF ONE HAS SOLD GOOD WHEAT AND IT TURNS OUT TO BE BAD, THE PURCHASER HAS THE POWER TO RETRACT. IF ONE HAS SOLD BAD WHEAT AND IT TURNS OUT TO BE GOOD, THE SELLER HAS THE POWER TO RETRACT. IF HE HAS CLAIMED TO SELL BAD WHEAT, AND IT TURNS OUT TO BE BAD, OR IF HE CLAIMED TO SELL GOOD WHEAT AND IT TURNS OUT TO BE GOOD, NEITHER ONE OF THEM HAS THE POWER TO RETRACT.

1. I:1: Said R. Hisda, “If someone sold to another party at six zuz what was really worth five so there was an overcharge of a sixth of the selling price, a fifth of the value of the object, but later on the price went up to eight, since it is the purchaser who has been gouged, the purchaser has the right to retract, but not the seller, since the buyer may say to him, ‘If you had not gouged me, you would have had no right to withdraw, so now are you going to have the right to withdraw having gouged me?’ And the Tannaite authority before us, who has said, If one has sold good wheat and it turns out to be bad, the purchaser has the power to retract, thus not the seller, concurs in that proposition.”

B. IF ONE SOLD IT AS DARK-COLORED, AND IT TURNS OUT TO BE WHITE, WHITE, AND IT TURNED OUT TO BE DARK, OLIVE WOOD, AND IT TURNED OUT TO BE SYCAMORE WOOD, SYCAMORE WOOD, AND IT TURNED OUT TO BE OLIVE WOOD:

1. II:1: Said R. Pappa, “Since the Mishnah paragraph contrasts white to the other specified color, it must follow that the sun is a deep red color. You may know that that is the fact, since at sunrise and sunset, the sun is red. The reason that through the day we don’t see it as red is that our eyes are not strong enough to perceive the redness of the color of the sun.”

C. WINE, AND IT TURNED OUT TO BE VINEGAR, VINEGAR, AND IT TURNED OUT TO BE WINE, BOTH PARTIES HAVE THE POWER TO RETRACT.

1. III:1: May we maintain that our Mishnah paragraph accords with the position of Rabbi and not with that of rabbis, for it has been taught on Tannaite authority: For the purpose of designating the priestly ration out of a set of kegs of wine and vinegar, wine and vinegar are the same species. Rabbi says, “They are two distinct species.” Our Mishnah allows both buyer and seller to retract so its framer must regard wine and vinegar as two distinct kinds, as Rabbi does.

XLVII. Mishnah-Tractate Baba Batra 5:7

A. HE WHO SELLS PRODUCE TO HIS FELLOW — IF THE BUYER DREW IT BUT DID NOT MEASURE IT, HE HAS ACQUIRED POSSESSION OF IT. IF HE MEASURED IT BUT DID NOT DRAW IT TO HIMSELF, HE HAS NOT ACQUIRED POSSESSION. IF HE WAS SMART, HE WILL RENT THE PLACE IN WHICH THE PRODUCE IS LOCATED.

1. I:1: Said R. Assi said R. Yohanan, “If the buyer measured the produce with the seller’s instruments and puts the produce in an alley, he acquires possession to the produce.”

2. I:2: Both Rab and Samuel say, “Someone’s utensils effect possession for him wherever they are located except for the public domain.” And R. Yohanan and R. Simeon b. Laqish say, “They do so even in public domain.”

3. I:3: R. Sheshet raised this question for R. Huna: “If the utensil of the buyer was located on the property of the seller, does the buyer effect possession or not?”

4. I:4: There we have learned: Property for which there is security is acquired through money, writ and usucaption. And that for which there is no security is acquired only by an act of drawing from one place to another (M. **Qid. 1:5A-B**). In Sura they repeated the following tradition in the name of R. Hisda, and in Pumbedita they repeated it in the name of R. Kahana, and some say it in the name of Raba, “They have taught this rule only with regard to things that are not ordinarily raised up, but as to things that are ordinarily raised up, if they are raised up, they are acquired, if they are drawn, they are not acquired.”

5. I:5: But if the measure belonged to one of them, then the one who owns the measure acquires possession of each single unit of what is poured into it as it is poured in in sequence: Both Rab and Samuel say, “‘A kor for thirty zuz I am selling you’ — he can retract even up to the delivery of the last seah. ‘A kor for thirty, a seah for a sela,’ the buyer acquires possession of every seah as it is measured out for him.”

B. HE WHO PURCHASES FLAX FROM HIS FELLOW — LO, THIS ONE HAS NOT ACQUIRED POSSESSION UNTIL HE WILL MOVE IT FROM ONE PLACE TO ANOTHER. BUT IF IT WAS ATTACHED TO THE GROUND AND HE HAS PLUCKED ANY SMALL QUANTITY OF IT, HE HAS ACQUIRED POSSESSION.

1. I:1: Merely because he has pulled up some of it, does he acquire possession of all of it?

XLVIII. Mishnah-Tractate Baba Batra 5:8

A. HE WHO SELLS WINE OR OIL TO HIS FELLOW, AND THE PRICE ROSE OR FELL, IF THIS TOOK PLACE BEFORE THE MEASURE HAD BEEN FILLED UP, THE PRICE ADVANTAGE GOES TO THE SELLER. IF THIS TOOK PLACE AFTER THE MEASURE HAD BEEN FILLED UP, THE PRICE ADVANTAGE GOES TO THE PURCHASER. AND IF THERE WAS A MIDDLEMAN BETWEEN THEM, AND THE JAR WAS BROKEN, IT IS BROKEN TO THE DISADVANTAGE OF THE MIDDLEMAN.

1. I:1: To whom does the measure belong? If we say that the measure belongs to the purchaser, then why should the benefit or loss go to the seller before the measure has been filled? Surely it is the measure belonging to the buyer and he should acquire ownership. If the measure belonged to the seller, then why should the benefit or loss be assigned to the buyer after the measure has been filled? Surely the measure belongs to the seller.

B. AFTER EMPTYING THE MEASURE, THE SELLER IS LIABLE TO LET THREE DROPS DRIP FURTHER INTO THE UTENSIL OF THE BUYER.

IF THEREAFTER HE TURNED THE MEASURE OVER AND DRAINED IT, LO WHAT IS DRAINED OFF GOES TO THE SELLER.

1. II:1: We have learned in the Mishnah: If thereafter he turned the measure over and drained it, lo what is drained off goes to the seller. But we also have learned in the Mishnah: If after three drops had fallen he placed the jar on its side and more oil or wine drained from it — lo, this wine or oil is in the status of heave-offering (M. **Ter. 11: 8**)! If in the former case the accumulation belongs to the seller not the buyer, in this case it should go to the farmer, not the priest.

C. BUT THE SHOPKEEPER IS NOT LIABLE TO LET THREE MORE DROPS DRIP. R. JUDAH SAYS, “IF IT IS THE EVE OF THE SABBATH AT DUSK, HE IS EXEMPT.”

1. III:1: The question was raised: “Does R. Judah make reference to the earlier clause After emptying the measure, the seller is liable to let three drops drip further into the utensil of the buyer, thus producing a lenient ruling it does not have to be done on Friday, when everyone is in a hurry, or does he make reference to the later clause But the shopkeeper is not liable to let three more drops drip, thus producing a strict ruling the shopkeeper is exempt only on Friday toward dusk?”

XLIX. Mishnah-Tractate Baba Batra 5:9

A. HE WHO SENDS HIS CHILD TO THE STOREKEEPER WITH A PONDION IN HIS HAND, AND THE STOREKEEPER MEASURED OUT FOR HIM AN ISSAR’S WORTH OF OIL HALF A PONDION AND GIVE HIM AN ISSAR IN CHANGE, AND THE CHILD BROKE THE FLASK OR LOST THE ISSAR OF CHANGE — THE STOREKEEPER IS LIABLE TO MAKE IT UP. R. JUDAH DECLARES HIM EXEMPT, FOR IT WAS WITH THE STIPULATION THAT THE FATHER WILL BEAR LIABILITY THAT HE HAD SENT HIM. BUT SAGES CONCUR WITH R. JUDAH, THAT WHEN THE FLASK WAS IN THE CHILD’S HAND, AND THE STOREKEEPER MEASURED OUT OIL INTO IT, THE STOREKEEPER IS EXEMPT.

1. I:1: Well, there is no problem in understanding the case of the issar and the oil — the storekeeper measured out for him an issar’s worth of oil, half a pondion, and give him an issar in change, and the child broke the flask or lost the issar of change — for this is what is at issue for rabbis: they hold the view that the father sent the child to the store only to tell the storekeeper what he needed but not to have him send the oil and change back with the child, and R. Judah takes the view that the father sent the child so that the shopkeeper would send him back with what he wanted. But as to the case in which the bottle broke and the child broke the flask or lost the issar of change, why in the world should rabbis hold the

shopkeeper responsible? It is a loss for which the owner, the father, should be prepared to take responsibility!

a. I:2: Reverting to the body of the prior text: Said Samuel, “He who takes a utensil from a worker so as to examine it and it broke in his hand is liable to pay for it”

b. I:3: There was a man who went into a butcher shop and lifted up a thigh of meat. While he was holding it up, a horseman came by and grabbed it from him. The case came before R. Yemar. He required him to pay the price of it. And that is the case when the price had already been determined.

c. I:4: There was a man who brought pumpkins to Puma Nahara. A crowd assembled, and everybody grabbed one. He yelled at them, “Lo, these are consecrated to heaven.”

d. I:5: He who is buying vegetables in the market place selects and leaves produce as he likes all day long and has not acquired ownership of anything nor does he become liable to the tithes for these vegetables. But if he determined to purchase a particular vegetable, he has acquired it and is liable to the tithes deriving from it, and it is not possible for him to return it, for he has already become liable to the tithes, and he cannot tithe it before returning it, since in that case he would reduce the value of the vegetable, by the amount of the tithe. What should he do? He tithes it and pays the seller the price of the tithe.

L. Mishnah-Tractate Baba Batra 5:10-11

A. A WHOLESALER MUST CLEAN OFF HIS MEASURES ONCE EVERY THIRTY DAYS, AND A HOUSEHOLDER ONCE EVERY TWELVE MONTHS. RABBAN SIMEON B. GAMALIEL SAYS, “MATTERS ARE JUST THE OPPOSITE.” THE STOREKEEPER CLEANS OFF HIS MEASURES TWICE A WEEK, POLISHES HIS WEIGHTS ONCE A WEEK, AND CLEANS HIS SCALES AFTER EACH AND EVERY WEIGHING. SAID RABBAN SIMEON B. GAMALIEL, “UNDER WHAT CIRCUMSTANCES? IN THE CASE OF LIQUID MEASURES. BUT IN THE CASE OF DRY MEASURES, IT IS NOT NECESSARY.”

AND A SHOPKEEPER IS LIABLE TO LET THE SCALES GO DOWN BY A HANDBREADTH TO THE BUYER’S ADVANTAGE.

1. I:1: What is the source of this law in Scripture? Said R. Simeon b. Laqish, “Said Scripture, ‘A perfect and just measure shall you have’ (Deu. 25:15) — justify your weight by giving something of your own.”

2. I:2: How much must be added to the weight?

B. IF HE WAS MEASURING OUT FOR HIM EXACTLY, HE HAS TO GIVE HIM AN OVERWEIGHT — ONE PART IN TEN FOR LIQUID MEASURE, ONE PART IN TWENTY FOR DRY MEASURE.

1. II:1: The question was raised, What is the sense of this statement? One part in ten for for every ten units of liquid measure, one part in twenty for every twenty

dry measure, or does it mean, one part in ten for every ten units of liquid and a tenth unit for every twenty units of dry?

C. THE PENALTY FOR FALSIFYING MEASURES COMPARED WITH PENALTIES FOR OTHER TRANSGRESSIONS

2. II:2: Said R. Levi, “The punishment for falsifying measures is more stringent than that for consanguineous relationships. In the latter case at Lev. 18:6 we find ‘this,’ while in the former, ‘these,’ with additional letters signifying additional penalty.

3. II:3: And said R. Levi, “Robbing a commoner is worse than robbing the Most High, for in the former case, ‘sin’ comes before ‘trespass’ ‘If any one sin and commit a trespass’ (Lev. 5:20) refers to robbing from a common person, while in the latter, trespass comes before sin ‘if one commit a trespass and sin through error,’ (Lev. 5:15) meaning one is guilty of sin only after he has committed the sacrilege.”

4. II:4: And said R. Levi, “Come and see that the quality of the Holy One, blessed be He, is not like the quality of a mortal. The Holy One, blessed be He, blessed Israel using twenty-two letters of the Hebrew alphabet, while he curses them only with eight.”

D. IN A PLACE IN WHICH THEY ARE ACCUSTOMED TO MEASURE WITH SMALL MEASURES, ONE MUST NOT MEASURE WITH LARGE MEASURES; WITH LARGE ONES, ONE MUST NOT MEASURE WITH SMALL; IN A PLACE IN WHICH IT IS CUSTOMARY TO SMOOTH DOWN WHAT IS IN THE MEASURE, ONE SHOULD NOT HEAP IT UP; TO HEAP IT UP, ONE SHOULD NOT SMOOTH IT DOWN.

1. III:1: How on the basis of Scripture do we know that in a place in which it is customary to smooth down what is in the measure, one should not heap it up; to heap it up, one should not smooth it down? Scripture says, “A perfect measure” (Deu. 25:15). Deviating from the usual practice the buyer or the seller may defraud or mislead others.

2. III:2: How on the basis of Scripture do we know that in a place where the practice is to allow an overweight, they do not give the exact weight, and in a place in which they give an exact weight, they do not give an overweight?

a. III:3: “You shall have...”: this teaches that they appoint market supervisors to oversee measures, but they do not appoint market supervisors to control prices.

b. III:4: The household of the patriarch appointed market supervisors to oversee measures and to control prices. Said Samuel to Qarna, “Go, repeat the Tannaite rule to them: They appoint market supervisors to oversee measures, but they do not appoint market supervisors to control prices.

3. III:5: If somebody ordered a litra, he should measure out a litra; if he ordered a half-litra, he should measure out for him a half-litra; a quarter-litra, he should measure out a quarter.

4. III:6: If someone ordered three-quarters of a litra, he should not say to him, “Weigh out for me three-quarters of a litra one by one,” but he should say to him, “Weight out a litra for me but leave out a quarter-litra with the meat” on the other scale.

5. III:7: If someone wanted to order ten litras, he should not say to him, “Weigh them out for me one by one and allow an overweight for each,” but all of them are weighed together, with one overweight covering the whole order cf. T. **B.B. 5:9B-I**.

E. THE CORRECT WEIGHTS AND MEASURES: DEFINITIONS

1. III:8: The hollow handle in which the tongue of the balance rests must be suspended in the air three handbreadths removed from the roof from which the balance hangs, and it must be three handbreadths above the ground.

2. III:9: Said R. Mani bar Patish, “Just as they have specified certain restrictions with regard to disqualifying balances for commercial purposes, so they have laid down disqualifications with regard to their constituting utensils for the purpose of receiving cultic uncleanness.”

3. III:10: They make weights out of neither tin or lead or alloy but of stone or glass.

4. III:11: They make the strike not out of a board, because it is light, nor out of metal, because it is heavy, but out of olive, nut, sycamore, or box wood.

5. III:12: They do not make the strike thick on one side and thin on the other.

a. III:13: Gloss of foregoing.

F. FALSIFYING WEIGHTS AND MEASURES

1. III:14: “You shall do no unrighteousness in judgment, in surveying, weight, or in measure” (Lev. 19:35): “In surveying”: these refers to surveying the real estate, meaning, one should not measure for one party in the dry season and another in the rainy season. “Weight”: one should not keep one’s weights in salt.

2. III:15: Said R. Judah said Rab, “It is forbidden for someone to keep in his house a measure that is either smaller or larger than the norm, even for the purpose of a piss pot.”

3. III:16: Said Samuel, “They may not increase the size of the measures whether or not people concur by more than a sixth, nor the coins by more than a sixth, and he who makes a profit must not profit by more than a sixth.”

a. III:17: R. Pappa bar Samuel ordained a measure of three qepizi. They said to him, “Lo, said Samuel, ‘They may not increase the size of the measures whether or not people concur by more than a sixth!’”

G. HOARDING; MANIPULATING THE MARKET PRICES

1. III:18: Concerning those who store up produce, lend money on usury, falsify measures, and price gouge, Scripture says, “Saying, when will the new moon be gone, that we may sell grain, and the Sabbath, that we may set forth grain? Making the ephah small and the sheqel great and falsifying the balances of deceit”

(Amos 8: 5). And in their regard, Scripture states, “The Lord has sworn by the pride of Jacob, surely I will never forget any of their works” (Amo. 8: 7).

a. III:19: The father of Samuel would sell produce at the early market price when the early market price prevailed that is, cheap, so keeping prices down through the year. Samuel his son held the produce back and sold it when the late market prices prevailed, but at the early market price.

2. III:20: Said Rab, “Someone may store up his own produce” but may not hoard for trading purposes.”

a. III:21: Said R. Yosé b. R. Hanina to Puga his servant, “Go, store up fruit for me for the next three years: the eve of the Sabbatical Year, the Sabbatical Year, and the year after the Sabbatical Year.”

3. III:22: They do not export from the Land of Israel to Syria things upon which life depends, for example, wine, oil, and fine flour.

4. III:23 They are not to make a profit in the Land of Israel from the necessities of life, for instance, wine, oil, and flour.

5. III:24: People are not to profit from eggs twice.

6. III:25: They sound the alarm on account of a collapse in the market in trading goods even on the Sabbath.

H. MIGRATION FROM THE LAND OF ISRAEL BY REASON OF FAMINE. THE CASE OF RUTH’S FAMILY

1. III:26: A person is not allowed to emigrate from the Land of Israel unless wheat goes at the price of two seahs for a sela.

2. III:27: “And when they came to Bethlehem, the whole town was stirred because of them, and the women said, ‘Is this Naomi’” (Rut. 1:19): What is the meaning of the phrase, “Is this Naomi”?

3. III:28: And said R. Isaac, “The day that Ruth the Moabite emigrated from the Land to a foreign land, the wife of Boaz died. That is in line with what people say: ‘Before a person dies, his successor as master of the house is appointed.’”

4. III:29: Said Rabbah bar R. Huna said Rab, “Isban is the same as Boaz.”

5. III:30: Said R. Hanan bar Raba said Rab, “Elimelech and Salmon and ‘such a one’ (Rut. 4: 1) and the father of Naomi were all sons of Nahshon b. Amminadab (Exo. 6:23, Num. 10:14).”

a. III:31: And said R. Hanan bar Raba said Rab, “The mother of Abraham was named Amathelai, daughter of Karnebo; the name of the mother of Haman was Amatehilai, daughter of Orabti; and the mnemonic will be, ‘unclean to the unclean, clean to the clean.’ The mother of David was Nizbeth daughter of Adael, the mother of Samson was Zlelponit, and his sister was Nasyan.”

b. III:32: And said R. Hanan bar Raba said Rab, “For ten years our father, Abraham, was kept in prison, three in Kuta, seven in Kardu.”

c. III:33: And said R. Hanan bar Raba said Rab, “The day on which our father, Abraham, died, all of the principal authorities of the nations of the

world formed a line and said, ‘Woe is the world that has lost its leader, woe to the ship that has lost its helmsman.’”

d. III:34: “And you are exalted as head above all” (1Ch. 29:11): Said R. Hanan bar Raba said Rab, “Even the superintendent of the water supply is appointed by Heaven.”

6. III:35: Said R. Hiyya bar Abin said R. Joshua b. Qorhah, “God forbid! Even if Elimelech and his family had found bran, they would never have emigrated. So why were they punished? Because they should have besought mercy for their generation but failed to do so: ‘When you cry, let them that you have gathered deliver you’ (Isa. 57:13).”

7. III:36: Said Rabbah bar bar Hannah said R. Yohanan, “This prohibition against emigration has been taught only when money is cheap and abundant and produce expensive, but when money is expensive and not to be found, there being no capital, even if four seahs cost only a sela, it is permitted to emigration.”

a. III:37: And said R. Yohanan, “I remember when a child would break open a carob pod and a line of honey would run over both his arms.”

8. III:38: It is written, “Mahlon and Chilion” (Rut. 1: 2) and it is written “Joash and Saraph” (1Ch. 4:22)! Rab and Samuel — One said, “Their names really were Mahlon and Chilion, and why were they called Joash? Because they despaired hope of redemption the words for Joash and despair using the same letters, and Saraph? Because they become liable by the decree of the Omnipresent to be burned.”

9. III:39: “These were the potters and those that dwelt among plantations and hedges; there they dwelt occupied in the king’s work” (1Ch. 4:23): “These were the potters”: this refers to the sons of Jonadab, son of Rahab, who kept the oath of their father (Jer. 35: 6).

I. THE BLESSINGS OF PLENTY

1. III:40: “And you shall eat of the produce, the old store” (Lev. 25:22) — without requiring preservatives.

2. III:41: “And you shall eat old store long kept” (Lev. 26:10) — whatever is of an older vintage than its fellow is better in quality than its fellow.

3. III:42: “And you shall bring forth the old from before the new” (Lev. 26:10) — This teaches that the storehouses will be full of last year’s crop, and the threshing floors, this year’s crop, and the Israelites will say, “How are we going to remove the one before the other?”

LI. Mishnah-Tractate Baba Batra 6:1

A. HE WHO SELLS PRODUCE CONSISTING OF GRAIN TO HIS FELLOW NOT SPECIFYING WHETHER IT IS FOR FOOD OR FOR SEED, AND THEY DID NOT SPROUT, AND EVEN IF IT WAS FLAX SEED, HE IS NOT LIABLE TO MAKE IT UP. RABBAN SIMEON B. GAMALIEL SAYS, “IF HE SOLD GARDEN SEED WHICH IS NOT SUITABLE FOR EATING, HE IS LIABLE TO MAKE IT UP.”

1. I:1: He who sells an ox to his fellow and it turned out to be a habitual gorer — Rab said, “Lo, this is a sale made in error and null, the seller returning the purchase money.” And Samuel said, “The seller can say to him, ‘I sold it to you for slaughter.’” There has been no misrepresentation of the merchandise; the sale is valid.

a. I:2: Secondary expansion of a detail of the foregoing.

b. I:3: Further exploration of the issue of I:2.

3. I:4: How much does one who sold garden seeds refund to the one who bought them and sowed them without getting a crop out of them?

a. I:5: Gloss of foregoing.

LII. Mishnah-Tractate Baba Batra 6:2

A. HE WHO SELLS PRODUCE TO HIS FELLOW — LO, THE BUYER MUST AGREE TO RECEIVE A QUARTER-QAB OF SPOILED PRODUCE PER SEAH. IF HE BOUGHT FIGS, HE MUST AGREE TO ACCEPT TEN MAGGOTY ONES PER HUNDRED.

1. I:1: R. Qattina repeated as a Tannaite formulation, “A quarter-qab of pulse per seah.”

2. I:2: Said R. Huna, “If the buyer proposes to sift the grain suspecting that the refuse amounts to more than a quarter of a qab for each seah, and the sample that he takes turns out to contain more than what is permitted, he has the right to sift it all, and the seller must pay for the refuse, even for the permitted quantities.”

B. IF HE BOUGHT A CELLAR OF WINE, HE MUST AGREE TO ACCEPT TEN SOUR JARS PER HUNDRED:

1. II:1: To what sort of a situation does this rule pertain? If the seller said to the buyer, “I am selling you a cellar of wine,” without further specification of what he was selling, there is a problem since the buyer is supposed to accept ten casks of bad wine per hundred, while, as we shall see in a moment, another opinion is that all the wine has to be good, and if the seller said to the buyer, “This cellar of wine I am selling to you,” there is a problem since the buyer is supposed to accept the whole cellar, as we shall see in a moment, in accord with another opinion.

2. II:2: The question was raised: If the seller said, “A cellar of wine” not using the language, “this,” and the buyer did not say, “for a dish,” so neither party to the transaction used language to his own advantage — what is the rule?

3. II:3: Said R. Judah, “Over wine that is sold in the shop, they say the blessing: ‘...who creates the fruit of the vine.’” But R. Hisda said, “As to wine that is turning sour, what need to I have of it and why should one say the blessing that applies to good wine? Rather say the blessing that applies to anything at all that one can eat!”

a. II:4: Ruling on the foregoing. Said Abbayye to R. Joseph, “Here you have the opinion of R. Judah, there you have the opinion of R. Hisda, so which one do you adopt?”

4. II:5: He who sells wine to his fellow and it turned sour — Said Rab, “During the first three days after the sale, it is regarded as still in the domain of the seller, after that, it is regarded as in the domain of the purchaser who now has no claim of compensation.” And Samuel said, “Wine jumps over the shoulder of the owner who has no claim on the seller.”

C. DEFINING WINE

1. II:6: All the same are beer made of dates, beer made of barley, and beer made of lees of wine, the proper benediction is, “...by whose word all things come into being.” Others say, “As to beer made from the lees that have the flavor of wine, the correct benediction is, ‘...who has created the fruit of the vine.’”

2. II:7: R. Nahman bar Isaac raised this question to R. Hiyya bar Abin, “Lees that have the taste of wine — what is the law?”

3. II:8: Lees of wine in the status of heave-offering that have been mixed with water — the mixture resulting from the first and the second infusions of water is forbidden to ordinary folk, but the third is permitted.

a. II:9: Continuation of foregoing: Said R. Yohanan in the name of R. Simeon b. Yehosedeq, “Just as they have stated the rule with regard to the prohibitions affecting such mixtures, so they have stated the rule with respect to their imparting fitness or: being made fit to receive uncleanness.”

4. II:10: Said R. Zutra bar Tobiah said Rab, “They recite the Sanctification of the Sabbath Day or Festival Day only over wine that is suitable for being used as a libation on the altar.”

5. II:11: R. Kahana, father in law of R. Mesharshayya, asked Raba, “What about white wine?”

D. IF HE BOUGHT JARS IN SHARON, HE MUST AGREE TO ACCEPT TEN FAULTY ONES PER HUNDRED.

1. III:1: The bad ones are thin and lined with pitch.

LIII. Mishnah-Tractate Baba Batra 6:3

A. HE WHO SELLS WINE TO HIS FELLOW THAT WENT SOUR IS NOT LIABLE TO MAKE IT UP.

BUT IF IT WAS KNOWN THAT HIS WINE WOULD TURN SOUR, LO, THIS IS DEEMED A PURCHASE MADE IN ERROR AND NULL. AND IF HE HAD SAID TO HIM, “I’M SELLING YOU SPICED WINE,” HE IS LIABLE TO GUARANTEE IT AND MAKE IT UP IF IT GOES SOUR UP TO PENTECOST. IF HE SAID IT IS OLD WINE, IT MUST BE LAST YEAR’S.

1. I:1: Said R. Yosé bar Hanina, “The law applies only where the wine is in the jugs of the buyer, but if it is in the jugs of the seller, he can say to you, ‘Take your wine and take your jugs.’” The buyer has no responsibility for what has happened.

a. I:2: Gloss on a tangential detail of the foregoing.

b. I:3: As above.

3. I:4: Said Raba, “Someone who sold a jug of wine to a shopkeeper to retail it, and while there was a half or a third of the jug, the wine turned sour — the law is that he has to take it back from him.”

4. I:5: And said Raba, “Some who accepted wine with the intent of taking it to the market of Belshafat, but by the time he got there, the price went down, the law is that the owner must accept it bearing the loss in value as compared with the price prevailing at the time that the wine was accepted, since all the time the wine remained in his ownership.”

B. IF HE SAID IT IS VINTAGE OLD IT MUST BE FROM THE YEAR BEFORE LAST.

1. II:1: Wine sold as “vintage” must last to Tabernacles three complete years.

LIV. Mishnah-Tractate Baba Batra 6:4

A. “HE WHO SELLS A PIECE OF PROPERTY TO HIS FELLOW FOR BUILDING A HOUSE, AND SO, HE WHO CONTRACTS WITH HIS FELLOW TO BUILD A NUPTIAL HOUSE FOR HIS SON OR A WIDOW’S MANSE FOR HIS DAUGHTER —

“THE CONTRACTOR BUILDS IT FOUR CUBITS BY SIX,” THE WORDS OF R. AQIBA.

1. I:1: what need do I have for the formulation, “and so, he who contracts with his fellow to build a nuptial house for his son or a widow’s manse for his daughter” and not “a nuptial house for his son or daughter or a manse for his son or daughter”?

B. R. ISHMAEL SAYS, “THAT WOULD BE LITTLE MORE THAN A CATTLE SHED!” HE WHO WANTS TO BUILD A CATTLE SHED BUILDS IT FOUR CUBITS BY SIX.

1. II:1: What authority stands behind the statement, He who wants to build a cattle shed builds it four cubits by six?

C. IF HE WANTS TO BUILD A SMALL HOUSE, IT IS SIX BY EIGHT. IF HE WANTS TO BUILD A LARGE HOUSE, IT IS EIGHT BY TEN. IF HE WANTS TO BUILD A HALL, IT IS TEN BY TEN.

1. III:1: What is the definition of a hall?

D. THE HEIGHT IS THE SUM OF HALF ITS LENGTH AND HALF ITS BREADTH. PROOF OF THE MATTER IS THE SANCTUARY 1KI. 6:17: 40 X 20 X 30. RABBAN SIMEON B. GAMALIEL SAYS, “IS EVERYTHING SUPPOSED TO BE IN ACCORD WITH THE WAY IN WHICH THE SANCTUARY IS BUILT?”

1. IV:1: As to, proof of the matter is the sanctuary, which authority stands behind that statement?

2. IV:2: Tannaite complement: Others say, “The height must be the same as the length of the beams laid across the width of the house.”

E. THE DIMENSIONS OF THE HOUSE OF THE SANCTUARY

1. IV:3: R. Hanina went out to the villages, where the following contradiction between Scripture verses was addressed to him: “It is written, ‘And the house that King Solomon built for the Lord, the length thereof was threescore cubits and the breadth twenty cubits and the height thirty cubits’ (1Ki. 6:2), and also, ‘And before the sanctuary which was twenty cubits in length and twenty cubits in

breadth and twenty cubits in the height thereof (1Ki. 6:20). So it was twenty, not thirty cubits high.”

a. IV:4: Gloss of foregoing.

2. IV:5: Said Rabbanai said Samuel, “The Cherubim that Solomon made stood by a miracle: ‘And five cubits was the one wing of the cherub and five the other, from the uttermost part of the one wing to the uttermost part of the other were ten cubits’ (1Ki. 6:24) — so where were the bodies standing? So it must follow that the Cherubim that Solomon made stood by a miracle.”

a. IV:6: How did the cherubim in the Holy of Holies stand?

LV. Mishnah-Tractate Baba Batra 6:5

A. HE WHO HAS A CISTERN BEHIND HIS FELLOW’S HOUSE GOES IN WHEN PEOPLE USUALLY GO IN AND GOES OUT WHEN PEOPLE USUALLY GO OUT. AND HE MAY NOT BRING HIS CATTLE IN AND WATER THEM FROM HIS CISTERN. BUT HE DRAWS WATER AND WATERS THEM OUTSIDE.

THIS PARTY MAKES HIMSELF A LOCK, AND THAT PARTY MAKES HIMSELF A LOCK.

1. I:1: This party makes himself a lock: as to the lock, where is it placed?

LVI. Mishnah-Tractate Baba Batra 6:6

A. HE WHO HAS A VEGETABLE PATCH BEHIND THE VEGETABLE PATCH OF HIS FELLOW GOES IN WHEN PEOPLE USUALLY GO IN AND GOES OUT WHEN PEOPLE USUALLY GO OUT. AND HE DOES NOT BRING IN MERCHANTS. AND HE MAY NOT GO IN TO IT THROUGH ANOTHER FIELD. AND THE OWNER OF THE OUTER PATCH SOWS SEEDS ON THE PATHWAY.

IF OTHERS HAVE GIVEN HIM A PATH ON THE SIDE WITH THE KNOWLEDGE AND CONSENT OF BOTH PARTIES, HE GOES IN WHENEVER HE WANTS AND GOES OUT WHENEVER HE WANTS AND BRINGS MERCHANTS IN WITH HIM. BUT HE MAY NOT GO IN THROUGH ANOTHER FIELD. AND NEITHER ONE OF THEM HAS THE RIGHT TO SOW SEED ON THE PATH.

1. I:1: Said R. Judah said Samuel, “‘Land the width of a cubit for an irrigation canal I am selling to you’ — he has to assign to him in addition to the cubit for the canal two cubits of land in the field itself, one on either side of the canal, for the banks. ‘Ground the width of one cubit I am selling to you for a pond’ — he must assign to him one cubit of ground in the courtyard itself, half on either side of the bond, for the banks.”

LVII. Mishnah-Tractate Baba Batra 6:7

A. HE WHO HAD A PUBLIC WAY PASSING THROUGH HIS FIELD, AND WHO TOOK IT AWAY AND GAVE THE PUBLIC ANOTHER PATH ALONG THE SIDE...:

1. I:1: He who had a public way passing through his field, and who took it away and gave the public another path along the side, what he has given he has given. But what is his does not pass to him: why not? Let him just go and take a whip

and sit down and guard the path! That then yields the inference that someone has not got the right to take the law into his own hands, even where he will suffer a loss. But we know as fact that one may do so.

B. WHAT HE HAS GIVEN HE HAS GIVEN. BUT WHAT IS HIS DOES NOT PASS TO HIM:

1. II:1: But why can't he say to them, "Take what's yours and give me back what's mine?"

2. II:2: And from the perspective of R. Eliezer, precisely how has the public effected title to the land?

3. II:3: Said R. Yosé bar Hanina, "Sages concur with R. Eliezer in the case of a path that runs through vineyards, since it was made only for walking, an appropriate act of usucaption is walking."

a. II:4: Illustrative case.

C. A PRIVATE WAY IS FOUR CUBITS WIDE.

1. III:1: Others say, "Enough so that an ass with its load may pass."

D. A PUBLIC WAY IS SIXTEEN CUBITS WIDE.

1. IV:1: A private path is four cubits wide. A path from town to town is eight cubits. A public path is sixteen. The path to the cities of refuge, thirty-two.

E. AN IMPERIAL ROAD IS WITHOUT LIMIT.

1. V:1: For the king may cut through a road and no one can stop him.

F. A PATH TO THE GRAVE IS WITHOUT LIMIT.

1. VI:1: This is on account of the honor owing to the dead.

G. A PLACE FOR HALTING AND MOURNING — THE JUDGES OF SEPPHORIS SAID, "IT SHOULD BE FOUR QABS OF SPACE."

1. VII:1: He who sells his grave plot and the road to his grave or the halting place where people stop for consolation on returning from a burial and the place in which the lamentation is to be said — the members of his family come and bury them by force, so as not to reflect badly on the family.

2. VII:2: They arrange no fewer than seven stoppings and sittings for a funeral cortege, corresponding to "Vanity of vanities, says Qohelet, vanity of vanities, all is vanity" (Qoh. 1: 2).

a. VII:3: Case showing how the law is observed.

LVIII. Mishnah-Tractate Baba Batra 6:8

A. HE WHO SELLS A PIECE OF PROPERTY TO HIS FELLOW FOR MAKING A [FAMILY] GRAVE — AND SO, HE WHO RECEIVES [A PIECE OF PROPERTY] FROM HIS FELLOW FOR MAKING A [FAMILY] GRAVE — [THE CONTRACTOR] MAKES THE CENTRAL SPACE OF THE VAULT FOUR CUBITS BY SIX, AND HE OPENS IN IT EIGHT NICHES, THREE ON ONE SIDE, THREE ON THE OTHER SIDE, AND TWO AT THE END. AND THE NICHES ARE TO BE FOUR CUBITS LONG, SEVEN CUBITS HIGH, AND SIX CUBITS BROAD.

R. SIMEON SAYS, “[THE CONTRACTOR] MAKES THE INSIDE OF THE VAULT SIX CUBITS BY EIGHT, AND HE OPENS IN IT THIRTEEN NICHES: FOUR ON ONE SIDE, FOUR ON THE OTHER SIDE, THREE AT THE END, AND ONE AT [FACING] THE RIGHT OF THE DOOR, AND ONE AT [FACING] THE LEFT OF THE DOOR:”

1. I:1: And one at facing the right of the door, and one at facing the left of the door: as to these two niches, where are they to project? If outwards Slotki: under the floor of the court, then people will walk on them, and furthermore, lo, we have learned in the Mishnah: The fore-court of the tomb vault — he who stands in its midst is clean, so long as there will be in it: “four cubits,” in accord with the words of the House of Shammai. The House of Hillel say, “Four handbreadths” (M. **Oh. 15:8A-D**). But if the graves were projecting into the court, he would become unclean on account of walking on these graves.

B. “R. SIMEON SAYS, “[THE CONTRACTOR] MAKES THE INSIDE OF THE VAULT SIX CUBITS BY EIGHT. AND [THE CONTRACTOR] MAKES A COURTYARD AT THE MOUTH OF THE VAULT, SIX BY SIX — SPACE FOR THE BIER AND THOSE WHO BEAR IT.”

AND HE OPENS IN [THE COURTYARD] TWO OTHER VAULTS, ONE ON ONE SIDE, AND ONE ON THE OTHER. R. SIMEON SAYS, “FOUR, IN ALL FOUR DIRECTIONS.” RABBAN SIMEON B. GAMALIEL SAYS, “ALL DEPENDS ON THE NATURE OF THE ROCK.”

1. II:1: Amplification of Simeon’s position: If there are four cubits between this and that one, and up to eight, about enough space for the bier and its bearers — lo, this is a graveyard”: lo, who is the authority behind this statement? It can hardly be rabbis, for lo, they have said, “The area of the grotto is four by six,” and it can hardly be R. Simeon, who has said, “The area is six by eight.”

2. II:2: Now we may note a contradiction between two statements assigned to rabbis, and we may note a contradiction between two statements assigned to R. Simeon. For we have learned in the Mishnah....

LIX. Mishnah-Tractate Baba Batra 7:1

A. HE WHO SAYS TO HIS FELLOW, “I AM SELLING YOU A KOR’S AREA OF ARABLE LAND — IF THERE WERE THERE CREVICES TEN HANDBREADTHS DEEP, OR ROCKS TEN HANDBREADTHS HIGH, THEY ARE NOT MEASURED WITH THE AREA. IF THEY WERE LESS THAN THE STATED MEASUREMENTS, THEY ARE MEASURED WITH THE AREA. AND IF HE SAID TO HIM, “APPROXIMATELY A KOR’S AREA OF ARABLE LAND I AM SELLING TO YOU,” EVEN IF THERE WERE THERE CREVICES MORE THAN TEN HANDBREADTHS DEEP, OR ROCKS MORE THAN TEN HANDBREADTHS HIGH, LO, THEY ARE MEASURED WITH THE AREA.

1. I:1: There we have learned in the Mishnah: He who sanctifies his field at the time of the Jubilee’s being in effect pays the fifty sheqels of silver for every part of a field that suffices for the sowing of a homer of barley. If there were there crevices ten handbreadths deep or rocks ten handbreadths high, 103A they are not measured with it. If they were in height less than this, they are measured with it M. **Ar. 7:1E-H**. But why should that be the case? Let them be considered as sanctified as autonomous areas of the field, since they are not regarded as part of

the arable field for purposes of redemption, and let them be redeemed on their own.

2. I:2: Here what is the law in the case of a sale?

3. I:3: The clefts of less than ten handbreadths of which they have spoken must not all together cover an area more than would require four qab of seed.

a. I:4: Subsidiary question: If the greater part of the corks is distributed over the smaller part of the field and the smaller part of the rocks over the greater part of the field, what is the law?"

b. I:5: Subsidiary question: If the rocks are arranged like a ring, a straight line, in the shape of a stadium, or in the shape of a crooked road, what is the law?

4. I:6: Tannaite complement: If there was a free-standing rock, it is not measured with the field, however small the rock is; and even if it was in the field but near the boundary, it still is not measured with the field, however small the rock may be."

a. I:7: Theoretical question: If earth intervened between the rock and the boundary, what is the law?

b. I:8: If there was earth below the rock near the border and rock above, or earth above and rock below, what is the law?

LX. Mishnah-Tractate Baba Batra 7:2

A. IF HE SAID TO HIM, "A KOR'S AREA OF ARABLE LAND I AM SELLING TO YOU, AS MEASURED BY A ROPE," IF HE GAVE HIM ANY LESS, THE PURCHASER MAY DEDUCT THE DIFFERENCE. IF HE GAVE HIM ANY MORE, THE PURCHASER MUST RETURN CASH OR ADDITIONAL LAND. IF HE SAID, "WHETHER LESS OR MORE," EVEN IF HE GAVE HIM A QUARTER-QAB'S SPACE LESS FOR A SEAH'S AREA, OR A QUARTER QAB'S SPACE MORE FOR A SEAH'S AREA, IT BELONGS TO THE PURCHASER. IF IT WAS MORE THAN THIS, LET HIM MAKE A RECKONING.

1. I:1: The question was raised: What is the law if the seller said only, "I sell you an area requiring a kor of seeds" not using the language, as measured by a rope?

B. WHAT DOES HE PAY BACK TO HIM? CASH. BUT IF HE WANTED, HE GIVES HIM BACK LAND. AND WHY HAVE THEY SAID, "HE PAYS BACK CASH"? TO IMPROVE THE CLAIM OF THE SELLER.

1. II:1: So is our concern only to improve the claim of the seller, and not also to improve the claim of the buyer?!

C. FOR IF HE LEFT IN A FIELD OF A KOR'S SPACE NINE QABS OF SPACE, OR IN A VEGETABLE PATCH, AN AREA OF A HALF-QAB — (IN THE OPINION OF R. AQIBA, A QUARTER-QAB —) THE BUYER WILL PAY HIM BACK IN LAND AND NOT MONEY:

1. III:1: Said R. Huna, "The specified measure of nine qabs of which they spoke pertains even to a large valley." And R. Nahman said, "He allows him seven and a half qab for every kor."

2. III:2: If it was a field and was converted into a garden, or a garden that was converted into a field, what is the law?

3. III:3: Tannaite complement: If the field that was sold was adjacent to another field of the seller's, even if the surplus was miniscule, the land must be returned not cash, since the seller can use the land better than the buyer; the buyer cannot be required to buy the tiny strip of land.

D. AND NOT ONLY THE QUARTER-QAB OF AREA ALONE DOES HE RETURN, BUT ALL THE EXTRA LAND.

1. IV:1: Since the language, not only..., implies that the prior law stated, 'the quarter had to be returned and not the surplus above it, we point out that the prior law was that the quarter did not have to be returned, so we ask: isn't it ass-end backward?

LXI. Mishnah-Tractate Baba Batra 7:3A-D

A. "IF HE SAID, 'I AM SELLING YOU A KOR'S SPACE OF GROUND MEASURED BY A ROPE, WHETHER IT IS LESS OR MORE,' THE USE OF THE EXPRESSION LESS OR MORE NULLIFIES THE REFERENCE TO MEASURING BY A ROPE. IF HE SAID, 'I AM SELLING YOU A KOR'S SPACE OF GROUND, MORE OR LESS, MEASURED BY A ROPE,' THE USE OF THE EXPRESSION MEASURED BY A ROPE NULLIFIES THE REFERENCE TO LESS OR MORE," THE WORDS OF BEN NANNOS.

1. I:1: Said R. Abba bar Mammal said Rab, "Ben Nannos's colleagues disagreed with him." What of consequence does he propose to tell us, since we have a Tannaite statement to the same effect.

2. I:2: Said R. Judah said Samuel, "This represents the position of Ben Nannos — but sages say, 'The language that confers the least advantage upon the buyer is what governs.'"

3. I:3: Said R. Huna, "They say in the household of Rab, 'If one said he would sell something for 'an istira (=96 copper maahs) a hundred maah,' he gets a hundred maah; if he says, 'a hundred maah, an istira' he gets an istira.'"

LXII. Mishnah-Tractate Baba Batra 7:3E-F

A. IF HE SAID, "I WILL SELL YOU A KOR'S AREA OF GROUND AS MEASURED BY ITS MARKS AND BOUNDARIES," AND THE DIFFERENCE BETWEEN THE SPACE THUS MEASURED AND A KOR WAS LESS THAN A SIXTH, IT BELONGS TO THE PURCHASER. IF IT WAS MORE THAN A SIXTH, THE PURCHASER DEDUCTS THE DIFFERENCE FROM THE PRICE.

1. I:1: R. Huna said, "If the difference was exactly a sixth, it is equivalent to a difference of less than a sixth." R. Judah said, "If the difference was exactly a sixth, it is equivalent to a difference of more than a sixth."

2. I:2: Case illustrating the application of the Mishnah's rule. R. Pappa bought a field from someone, who stated, "It contains an area of twenty griva," but it encompassed only fifteen. But have we not learned in the Mishnah: the difference between the space thus measured and a kor was less than a sixth, it belongs to the purchaser = the sale is confirmed. If it was more than a sixth, the purchaser deducts the difference from the price?

B. TOPICAL APPENDIX: THE PROCESS OF THE DISPOSITION AND TRANSFER OF PROPERTY

1. I:3: Tannaite complement: R. Yosé says, “Brothers who divided an estate — once the lot for one of them has been cast, all of them have acquired title to their shares.”
2. I:4: Two brothers who divided up an inherited estate, and a third brother later on came from overseas — Rab said, “The division is annulled.” And Samuel said, “The two brothers give up each one third of his share and give it to the third brother.”
3. I:5: Two brothers who divided an estate, and a creditor came and attached the share of one of them — Rab said, “The original division of the estate is null.” And Samuel said, “He has waived his share.”
4. I:6: Three experts who under court assignment went to the estate of male orphans to assess it for funds to maintain the widow and daughters of the deceased — one says, “It is worth a maneh one hundred zuz,” and the other two say, “It is worth two hundred,” or one says, “It is worth two hundred zuz,” and two say, “It is worth a maneh,” the opinion of the minority is overridden. If one says, “It is worth a maneh,” and one says, “It is worth twenty,” and one says, “It is worth thirty,” it is valued at a maneh. R. Eliezer b. R. Sadoq says, “It is valued at ninety.” Others say, “They make a calculation of the difference and divided by three.”

LXIII. Mishnah-Tractate Baba Batra 7:4

A. HE WHO SAYS TO HIS FELLOW, “HALF A FIELD I AM SELLING TO YOU” — THEY DIVIDE THE FIELD BETWEEN THEM INTO PORTIONS OF EQUAL VALUE, AND THE PURCHASER TAKES A HALF OF HIS FIELD. IF HE SAID, “THE HALF OF IT IN THE SOUTH I AM SELLING TO YOU,” THEY DIVIDE BETWEEN THEM THE FIELD INTO PORTIONS OF EQUAL VALUE, AND THE PURCHASER TAKES THE HALF AT THE SOUTH.

1. I:1: The buyer takes the poorer side of the field and the prior owner chooses the fertile side.

B. AND HE ACCEPTS RESPONSIBILITY FOR PROVIDING GROUND FOR THE PLACE IN WHICH THE FENCE IS TO BE LOCATED, AND FOR LARGE AND SMALL DITCHES. HOW LARGE IS A LARGE DITCH? SIX HANDBREADTHS. AND A SMALL DITCH? THREE.

1. II:1: Tannaite complement: The larger ditch is outside and the smaller ditch is inside, and both are made behind the wall on the outer side, of a breadth such that an animal can't jump over the wall.

LXIV. Mishnah-Tractate Baba Batra 8:1

A. THERE ARE THOSE WHO INHERIT AND BEQUEATH, THERE ARE THOSE WHO INHERIT BUT DO NOT BEQUEATH, BEQUEATH BUT DO NOT INHERIT, DO NOT

INHERIT AND DO NOT BEQUEATH. THESE INHERIT AND BEQUEATH: THE FATHER AS TO THE SONS,

1. I:1: How come the Tannaite formulation places up front, the father as to the sons? Let the Tannaite formulation state first, the sons as to the father! The Tannaite framer of the passage begins with the case of the father who inherits the son because the law covering that eventuality has been attained through exegesis of Scripture.

a. I:2: A further Tannaite proof of a subsidiary proposition, namely, that the father takes precedence over the deceased's brothers.

b. I:3: Continuation of the problem of the foregoing.

I. I:4: Secondary clarification of the basis for a fact taken for granted at I:2.

B. TOPICAL APPENDIX ON THE PRINCIPLE THAT CORRUPTION IS BLAMED ON THE CORRUPT

A. I:5: Said R. Eleazar, "A person should always associate with good people, for lo, from Moses, who married the daughter of Jethro, came forth Jonathan a priest of an idol, while from Aaron, who married the daughter of Amminadab, came forth Phineas (Num. 25:11)."

B. I:6: He who marries a woman should first inspect the character of her brothers.

II. I:7: Further exegesis of the program of the proof-text at I:4

C. THE SONS AS TO THE FATHER:

1. II:1: How on the basis of Scripture do we know that the sons take precedence over the daughters in inheriting from the father?

2. II:2: Said R. Pappa to Abbayye, "Why not say, if there is a son, the son inherits; if there is a daughter, the daughter inherits; if there are both a son and a daughter, neither this one inherits nor does that one inherit?"

3. II:3: R. Aha bar Jacob said, "That the son takes precedence in inheritance over the daughter derives from the following: 'Why should the name of our father be done away from among his family because he had no son' (Num. 27: 4). It therefore follows that the operative consideration is that he has no son. But if he has a son, the son takes precedence."

4. II:4: Rabina said, "That the son takes precedence in inheritance over the daughter derives from the following: 'That is next to him' (Num. 27:11) — the one that is nearest takes precedence in inheritance."

5. II:5: But if you prefer, I shall say, "That the son takes precedence in inheritance over the daughter derives from the following: 'And you may pass them on as an inheritance for your sons after you' (Lev. 25:46) — your sons, not your daughters."

D. AND BROTHERS FROM THE SAME FATHER BUT A DIFFERENT MOTHER, AS TO ONE ANOTHER INHERIT FROM AND BEQUEATH TO ONE ANOTHER:

1. III:1: How on the basis of Scripture do we know this fact?

a. III:2: R. Nittai considered making a practical decision in accord with the ruling of R. Zechariah b. Haqqassab.

b. III:3: As above.

c. III:4: As above.

2. III:5: Proof on the basis of Scripture that the son takes precedence over the daughter in inheriting the mother's estate, continuation of the issue of III:1.

E. THE MAN AS TO HIS MOTHER:

1. IV:1: How on the basis of Scripture do we know this fact?

a. IV:2: Clarification of a detail of the foregoing.

2. IV:3: How on the basis of Scripture do we know that a husband is not entitled to inherit property that is going to be inherited but has not actually come into the wife's domain along with property that is already in hand?

F. THE MAN AS TO HIS WIFE:

1. V:1: How on the basis of Scripture do we know this fact?

a. Clarification of a detail of the foregoing: It has been taught on Tannaite authority that the daughter who inherits an estate must marry one of her father's tribe so as to prevent transfer of estates from tribe to tribe through the son, and it also has been taught on Tannaite authority that the purpose is to prevent transfer through the husband.

2. V:3: How on the basis of Scripture do we know that a husband is not entitled to inherit property that is going to be inherited but has not actually come into the wife's domain along with property that is already in hand?

G. AND THE SONS OF SISTERS INHERIT FROM, BUT DO NOT BEQUEATH TO, ONE ANOTHER:

1. VI:1: Tannaite complement: the sons of the sister, but not the daughters of the sister.

2. VI:2: "...and he shall possess it" (Num. 27:11) — the inheritance that is mentioned second or later in the order of succession is comparable to the one mentioned first: just as in the case of an inheritance mentioned first, the son takes precedence over the daughter, so in the case of an inheritance mentioned second or later on the list, the son takes precedence over the daughter.

H. APPENDIX ON THE TRANSFER OF PROPERTY

1. VI:3: "And it shall be to the children of Israel a statute of judgment" (Num. 27:11) — the entire section of inheritance laws is thereby classified as judicial in character therefore public, and judicial proceedings take place by day.

2. VI:4: As to an act of acquisition, until what point may a party retract?

I. THE WOMAN AS TO HER SONS: THE WOMAN AS TO HER HUSBAND, AND THE BROTHERS OF THE MOTHER BEQUEATH TO, BUT DO NOT INHERIT FROM ONE ANOTHER. BROTHERS FROM THE SAME MOTHER DO NOT INHERIT FROM, AND DO NOT BEQUEATH TO ONE ANOTHER.

1. VII:1: What need do we have for this statement to be articulated, since an earlier clause has already told us, The man as to his mother, the man as to his wife?
2. VII:2: As a matter of the law of the Torah, the father inherits the estate of his son, and the woman inherits the estate of her son, for it is said, ‘tribes’ (Num. 36: 9), meaning, there is an analogy drawn between the tribe of the mother and the tribe of the father; just as in the case of the tribe of the father, the father inherits the estate of his son, so in the case of the tribe of the mother, the woman inherits the estate of her son.

LXV. Mishnah-Tractate Baba Batra 8:2

A. THE ORDER OF THE PASSING OF AN INHERITANCE IS THUS: IF A MAN DIES AND HAD NO SON, THEN YOU SHALL CAUSE HIS INHERITANCE TO PASS TO HIS DAUGHTER (NUM. 27: 8) — THE SON TAKES PRECEDENCE OVER THE DAUGHTER:

1. I:1: Tannaite complement: “and had no son” — I know only that the son has a prior claim to inherit. How do we know that a son of the son or a daughter of the son or a son of the daughter of the son has the same claim? Scripture says, “...he does not have...,” and the letters can be read to yield, “look into the matter concerning him.”

B. AND ALL THE OFFSPRING OF THE SON TAKE PRECEDENCE OVER THE DAUGHTER. THE DAUGHTER TAKES PRECEDENCE OVER SURVIVING BROTHERS. THE OFFSPRING OF THE DAUGHTER TAKE PRECEDENCE OVER THE BROTHERS. THE DECEDENT’S BROTHERS TAKE PRECEDENCE OVER THE FATHER’S BROTHERS. THE OFFSPRING OF THE BROTHERS TAKE PRECEDENCE OVER THE FATHER’S BROTHERS.

1. II:1: Whoever says that the daughter inherits with the daughter of the son, even if he is the patriarch of Israel — they do not obey him. For these represent only the deeds of the Sadducees.

2. II:2: “And they said, They that have escaped must be as an inheritance for Benjamin, so that a tribe is not blotted out from Israel” (Jud. 21:17): Said R. Isaac of the household of R. Ammi, “This teaches that they made the stipulation regarding the tribe of Benjamin that the daughter of the son is not to inherit the estate together with his brothers.”

C. APPENDIX ON DYING WITHOUT SONS

a. II:3: Whoever does not leave a son to inherit his estate — the Holy One, blessed be he, is full of anger against him.

b. II:4: “Such as have no changes and do not fear God” (Psa. 55:20) — R. Yohanan and R. Joshua b. Levi — One said, “This refers to one who leaves no son.” And the other said, “This refers to one who leaves no disciple.”

c. II:5: R. Phineas b. Hama expounded, “What is the meaning of the verse of Scripture, ‘And when Hadad heard in Egypt that David slept with his fathers and that Joab the captain of the host was dead’ (1Ki. 11:21)? Why refer to David as ‘sleeping’ but refer to Joab as ‘dead’? Of David, who left a son, ‘sleeping’ is said, of Joab, who left no son, ‘death’ is said.”

I. II:6: Further exposition of the same authority: Expounded R. Phineas b. Hama, “Poverty in one’s own home is harder to take than fifty lashes: ‘Have pity on me, have pity upon me, O you, my friends, for the hand of God has touched me’ (Job. 19:21). And note what his friends say to him: ‘Take heed, regard not iniquity, for this have you chosen rather than poverty’ (Job. 36:21).”

II. II:7: Further exposition of the same authority: Expounded R. Phineas b. Hama, “Whoever has a sick person in his house should go to a sage to seek mercy: ‘The wrath of a king is as messengers of death, but a sage will pacify it’ (Pro. 16:14).”

D. THIS IS THE GOVERNING PRINCIPLE: WHOEVER TAKES PRECEDENCE IN INHERITANCE — HIS OFFSPRING ALSO TAKE PRECEDENCE. THE FATHER TAKES PRECEDENCE OVER ALL THE FATHER’S OFFSPRING IF NONE IS A DIRECT OFFSPRING OF THE DECEASED.

1. III:1: With respect to the claim of the father or the father and the brother of the father, for example, Abraham and Ishmael on the estate of Esau, who takes precedence?

2. III:2: With respect to the claim of the father of the father of the deceased and his brothers, for example, Abraham and Jacob, with regard to the estate of Esau, who takes precedence?

LXVI. Mishnah-Tractate Baba Batra 8:3

A. THE DAUGHTERS OF ZELOPHEHAD TOOK THREE PORTIONS OF THE INHERITANCE: THE PORTION OF THEIR FATHER NUM. 27: 7, WHO WAS AMONG THOSE WHO HAD GONE FORTH FROM EGYPT, AND (2-3) HIS SHARE ALONG WITH HIS BROTHERS FROM THE PROPERTY OF HEPHER THEIR FATHER’S FATHER:

1. I:1: We have learned this Mishnah-passage in accord with the opinion of him who has said, “The land of Canaan was divided according to those who came out of Egypt.”

a. I:2: Secondary expansion: amplification concerning a proof-text used in the foregoing.

b. I:3: As above.

c. I:4: As above.

d. I:5: As above.

e. I:6: As above.

I. I:7: Gloss on the foregoing.

f. I:8: Continuation of prior amplification.

g. I:9: As above.

h. I:10: As above.

B. FOR ZELOPHEHAD WAS A FIRSTBORN, RECEIVING TWO PORTIONS.

1. II:1: But why is this the case? The estates of Hephher were only prospective since he did not then possess those estates, they were only prospectively his, and would become his when he entered Canaan and acquired title to them, and it is the established fact that the firstborn does not take a double share in what is prospectively part of the estate as he does in what is now in the possession of the estate.

2. II:2: Exegesis of the passage on the daughters of Zelophehad: “And they stood before Moses and before Eleazar the priest and before the princes and all the congregation” (Num. 27: 2). “And they stood before Moses and before Eleazar the priest and before the princes and all the congregation” (Num. 27: 2): “Is it possible that they stood before Moses and before Eleazar the priest, and they said nothing to them, so that they stood before the princes and all the congregation? Rather, reverse the verse and explain it they came to the congregation, then the princes, then Eleazar, then Moses,” the words of R. Josiah.

3. II:3: Tannaite complement: The daughters of Zelophehad were sages, exegetes, and righteous women.

a. II:4: Secondary expansion of an exegesis introduced as a subsidiary detail in the foregoing.

4. II:5: Further on Scripture enumerated the daughters of Zelophehad according to their age at Num. 36:11 but here at Num. 37: 1, on the right of inheritance it was according to their wisdom.

5. II:6: The daughters of Zelophehad were alike.

6. II:7: The daughters of Zelophahad were permitted to marry among all of the tribes.

a. II:8: Gloss of a subordinate statement in the foregoing. The master has said, In the case of the fathers Scripture says, ‘And every daughter who possesses an inheritance’ (Num. 36: 8) — what indicates that this applies to the fathers but not to the sons?

l. II:9: Gloss of a tangential detail in the foregoing.

C. THE CELEBRATION OF THE FIFTEENTH OF AB

1. II:10: Explaining this holiday, it is identified, inter alia, as the point at which the tribes were permitted to intermarry.

a. II:11: Gloss of a tangential detail of the foregoing.

i. II:12: A tangential remark of the foregoing introduces a theme that is now developed in its own terms, namely, long lives.

D. THE DIVISION OF THE LAND OF ISRAEL AMONG THE TRIBES AND THEIR MEMBERS

1. II:13: The question was raised: Was the land of Israel divided according to the number of tribes each getting a twelfth and subdividing it among its male members, or was it divided according to the number of the heads of men as many shares as there were male adults?

a. II:14: Gloss of a detail of the foregoing.

b. II:15: As above.

c. II:16: As above.

LXVII. Mishnah-Tractate Baba Batra 8:4

A. ALL THE SAME ARE THE SON AND THE DAUGHTER AS TO MATTERS OF INHERITANCE.

1. I:1: What is the meaning of the statement, All the same are the son and the daughter as to matters of inheritance?

B. EXCEPT THAT THE SON TAKES A DOUBLE PORTION IN THE ESTATE OF THE FATHER THE SON DOES NOT TAKE A DOUBLE PORTION IN THE ESTATE OF THE MOTHER. THE DAUGHTERS ARE SUPPORTED BY THE FATHER'S ESTATE AND ARE NOT SUPPORTED BY THE MOTHER'S ESTATE.

1. II:1: Tannaite proof of this proposition: "Giving the firstborn son a double portion" (Deu. 21:17) — twice as much as any one of the others receives.

a. II:2: Secondary gloss of foregoing: why include many verses of Scripture in the demonstration?

C. COMPOSITE ON JACOB AND HIS SONS

I. II:3: How come Jacob took the birthright of the firstborn away from Reuben and gave it to Joseph? Secondary clarification of a verse cited in the foregoing composition.

2. II:4: When the summary-figure of those who entered Egypt with Jacob is given, they are counted as seventy, but when they are named one by one Gen. 46:8ff., they number seventy minus one!

3. II:5: R. Helbo asked R. Samuel bar Nahmani, "It is written, 'And it came to pass when Rachel had born Joseph' (Gen. 30:25) — why at the moment in particular that Joseph was born?"

D. THE SPECIAL CLAIM OF THE FIRSTBORN OF A PRIEST; OF THE FIRSTBORN TO A DOUBLE SHARE OF THE PROPERTY ACCRUING TO THE ESTATE AFTER THE FATHER HAS DIED

1. II:6: The firstborn son of a priest takes a double portion in the priestly gifts of the shoulder, the two cheeks, and the maw Deu. 18:3, in things that have been consecrated, and in the appreciation of an estate that accrues after the father's death. How so? How so? If he had a beast which was let out to a sharecropper or hired out to others or a cow that was rented out to others or hired out or feeding in the meadow, and it gave birth to a firstling, he takes a double portion in it. But if the father built houses or planted a vineyard, the firstborn does not take a double portion since the appreciation was not part of the original estate

a. II:7: In accord with which authority is the view that the firstborn son takes a double portion in the natural appreciation of the bequeathed estate?

I. II:8: Clarification of the terms of the foregoing dispute.

II. II:9: Practical decision on the issue of the foregoing dispute.

b. II:10: Further exegesis in support of Rabbi's position.

c. II:11: Further exegesis in support of rabbis' position.

d. II:12: A further special problem and its relation to the dispute outlined above.

I. II:13: Amplification of a detail tangential to the foregoing.

II. II:14: Same issue as above.

A. II:15: Secondary analysis of a subsidiary statement in the foregoing.

AA. II:16: The case to which reference is made in the foregoing.

2. II:17: A firstborn son who objected to proposed improvements in an estate that has been bequeathed, demanding the distribution of the property prior to the introduction of the improvements, and the other heirs did them against his wishes has made a valid protest and he gets a double portion even of the appreciation produced by the improvements.

3. II:18: A firstborn son who took a share as though he were an ordinary son has renounced his claim.

a. II:19: Illustrative case.

LXVIII. Mishnah-Tractate Baba Batra 8:5A-J

A. HE WHO SAYS, "SO-AND-SO, MY FIRSTBORN SON, IS NOT TO RECEIVE A DOUBLE PORTION," "SO-AND-SO, MY SON, IS NOT TO INHERIT ALONG WITH HIS BROTHERS," HAS SAID ABSOLUTELY NOTHING. FOR HE HAS MADE A STIPULATION CONTRARY TO WHAT IS WRITTEN IN THE TORAH.

1. I:1: May we say that our Mishnah-paragraph is not in accord with the view of R. Judah, for R. Judah has said, "When it comes to a monetary matter, his stipulation is valid."

2. I:2: Said R. Joseph, "If someone said, 'Mr. So-and-so is my firstborn son,' he takes a double share. ...'Mr. So-and-so is a firstborn son,' he does not take a double share. For perhaps what he meant was, firstborn to his mother."

a. I:3: Illustrative case.

b. I:4: As above.

B. COMPOSITE ON THE OFFSPRING OF INDETERMINATE GENDER-TRAITS AND HIS OR HER STATUS AS TO THE LAW OF THE FIRSTBORN AND OTHER RULES

1. I:5: As to an offspring of indeterminate gender who was operated on and turned out to be male — he does not get the double portion of the firstborn.

2. I:6: Continuation of the exposition of the foregoing. With secondary exposition.

C. EXPOSITION OF THE POWER OF THE FATHER TO DECLARE ONE OR ANOTHER OF HIS SONS TO BE FIRSTBORN

a. I:7: Exposition of the rule governing a tangential detail in the foregoing. If it was generally assumed of one offspring that he was firstborn, but his

father said concerning another of the sons, 'he is the firstborn,' what is the law?

I. I:8: Clarification of a reference in the analytical portion of the foregoing.

b. I:9: Continuation of the exposition of I:8: If it was generally assumed that a given son was firstborn, and his father said concerning another son that he was the first born, the father is believed. If it was generally assumed that he was not the first born and his father said, "He is the firstborn," the father is not believed.

c. I:10: If the father said, "This is my son," but then he went and said, "He is my slave," he is not believed. If he said, "He is my slave," and then he went and said, "He is my son," he is believed.

D. COMPOSITE IN THE FORM: R. ABBA SENT WORD TO R. JOSEPH BAR HAMA. RELEVANCE AT I:13: THE ELIGIBILITY TO GIVE TESTIMONY IN REGARD TO PERSONS WHO ARE RELATED IN VARIOUS DEGREES

1. I:11: "He who says to his fellow, 'You have stolen my slave,' and the other says, 'I didn't steal him,' and the first party says, 'Then what's he doing with you?' and the other says, 'You sold him to me, you gave him to me as a gift, if you want, take an oath and you will get him back,' and the first party took the oath, the second party may not then retract."

2. I:12: R. Abba sent word to R. Joseph bar Hama, "The decided law is, slaves may be seized from the estate to pay a debt of the deceased."

3. I:13: R. Abba sent word to R. Joseph bar Hama, "The decided law is, a relative in the third remove may give valid testimony against a relative in the second remove."

4. I:14: R. Abba sent word to R. Joseph bar Hama, "If one had testimony to present concerning real estate before he went blind, and then he went blind, he is invalid to testify."

5. I:15: R. Abba sent word to R. Joseph bar Hama, "'He who made a statement concerning a son among his children is believed.'"

6. I:16: R. Abba sent word to R. Joseph bar Hama, "He who says, 'Let my wife receive a share in my estate along with one of my sons,' she is to receive a share like any of the sons."

7. I:17: R. Abba sent word to R. Joseph bar Hama, "He who produced a bond of indebtedness against someone, and the lender says, 'I received no payment at all,' but the borrower pleads, 'I paid half,' and witnesses testify that the whole debt was paid — the borrower takes an oath, and the lender collects the other half from the borrower's unencumbered property but not from that which is encumbered, for the buyers or creditors can claim, 'We rely upon the witness.'"

8. I:18: Mar Zutra expounded in the name of R. Shimi bar Ashi, "The decided law for all of these traditions is as R. Abba sent word to R. Joseph bar Hama."

E. HE WHO DIVIDES HIS ESTATE AMONG HIS SONS BY A VERBAL DONATION, AND GAVE A LARGER PORTION TO ONE AND A SMALLER PORTION TO ANOTHER, OR

TREATED THE FIRSTBORN AS EQUIVALENT TO ALL THE OTHERS — HIS STATEMENT IS VALID. BUT IF HE HAD SAID, “BY REASON OF AN INHERITANCE THE AFORESTATED ARRANGEMENTS ARE MADE,” HE HAS SAID NOTHING WHATSOEVER. IF HE HAD WRITTEN, WHETHER AT THE BEGINNING, MIDDLE, OR END, THAT THESE THINGS ARE HANDED OVER AS A GIFT, HIS STATEMENT IS VALID.

1. II:1: With special reference to the statement, whether at the beginning, middle, or end, how shall we define giving a gift at the beginning, middle, or end?

LXIX. Mishnah-Tractate Baba Batra 8:5K-P

A. HE WHO SAYS, “MR. SO-AND-SO WILL INHERIT ME,” IN A CASE IN WHICH HE HAS A DAUGHTER, “MY DAUGHTER WILL INHERIT ME,” IN A CASE IN WHICH HE HAS A SON, HAS SAID NOTHING WHATSOEVER. FOR HE HAS MADE A STIPULATION CONTRARY TO WHAT IS WRITTEN IN THE TORAH.

R. YOHANAN B. BEROQAH SAYS, “IF HE MADE SUCH A STATEMENT CONCERNING SOMEONE WHO IS SUITABLE FOR RECEIVING AN INHERITANCE FROM HIM, HIS STATEMENT IS VALID. BUT IF HE MADE SUCH A STATEMENT CONCERNING SOMEONE WHO IS NOT SUITABLE FOR RECEIVING AN INHERITANCE FROM HIM, HIS STATEMENT IS NULL.”

1. I:1: Analysis of the implications of the Mishnah-rule: The operative consideration here is that he entitled another legal heir where there was a daughter, or a daughter where there was a son, so it must follow, if it was a case of one son among other sons or one daughter among other daughters, his statement is valid.

2. I:2: The decided law accords with the position of R. Yohanan b. Beroqah.

3. I:3: What is the scriptural basis for the position of R. Yohanan b. Beroqah?

4. I:4: Said R. Zeriqa said R. Ammi said R. Hanina said Rabbi, “The decided law accords with the position of R. Yohanan b. Beroqah. Said to him R. Abba, “The language that was used was, ‘...made a practical decision...in accord with his opinion.’” The former authority takes the view that a statement of the decided law takes priority, and the other authority maintains that the record of a concrete precedent takes priority.

a. I:5: Amplification of the principle subject to dispute in the foregoing.

I. I:6: Continuation of the amplification of the foregoing. People derive the decided law neither on the basis of a theoretical process of reasoning nor on the basis of a concrete decision, unless they tell you, It is a decided law for concrete practice.

II. I:7: Continuation of the foregoing inquiry. Said Raba to R. Pappa and to R. Huna b. R. Joshua, “When a decision of mind comes to you in writing, if you see a problem in it, don’t rip it up before you have come to me...”

5. I:8: Raba raised this question: “What is the rule in the case of a person in good health? When R. Yohanan b. Beroqah made his ruling, it concerned only a gift in contemplation of death, who has the power to appoint his heir on the spot, but not

in the case of one who is in good health, or does he make his ruling even in the case of one in good health?”

a. I:9: Secondary implications of the conclusion reached in connection with a tangential detail of the foregoing.

B. IF HE MADE SUCH A STATEMENT CONCERNING SOMEONE WHO IS SUITABLE FOR RECEIVING AN INHERITANCE FROM HIM, HIS STATEMENT IS VALID. BUT IF HE MADE SUCH A STATEMENT CONCERNING SOMEONE WHO IS NOT SUITABLE FOR RECEIVING AN INHERITANCE FROM HIM, HIS STATEMENT IS NULL:

1. II:1: there are brothers, or to a wife where there are sons of the husband?

a. II:2: Raba raised the question, “What is the law in the case of a person in good health? Might we say, it is in the case of a gift in contemplation of death that that is the rule, since the husband wants to provide for respect for his widow; but it does not apply to one in good health, for he himself is alive and can accomplish that goal? Or perhaps the same rule applies to a healthy man’s statement, since he wants due respect to be paid to the wife from now on in any event?”

I. II:3: Amplification of a secondary detail of the foregoing.

A. II:4: Secondary amplification of a detail of the foregoing.

B. II:5: As above.

C. II:6: As above.

D. II:7: As above.

E. II:8: As above.

AA. II:9: Illustrative case.

BB. II:10: Illustrative case.

CC. II:11: Illustrative case.

2. II:12: 12. A. Said R. Huna, “In line with the rule, If he made such a statement concerning someone who is suitable for receiving an inheritance from him, his statement is valid, a person who in contemplation of death wrote over all his property to someone — they examine the case. If that person is eligible to inherit the deceased, he receives the estate in the category of an inheritance, and if not, he receives the property in the category of a gift.”

a. II:13: Illustrative case.

LXX. Mishnah-Tractate Baba Batra 8:5Q-T

A. HE WHO WRITES OVER HIS PROPERTY TO OTHERS AND LEFT OUT HIS SONS — WHAT HE HAS DONE IS DONE. BUT SAGES ARE NOT PLEASED WITH HIM. RABBAN SIMEON B. GAMALIEL SAYS, “IF HIS SONS WERE NOT BEHAVING PROPERLY, HIS MEMORY IS FOR A BLESSING.”

1. I:1: The question was raised: do rabbis behind the Mishnah-ruling actually disagree with Rabban Simeon b. Gamaliel or do they not?

2. I:2: Illustration of the position of Simeon b. Gamaliel: There was the case of a man who did not have sons that behaved properly. He went and assigned his estate in writing to Jonathan b. Uzziel.

a. I:3: Hillel the Elder had eighty disciples, thirty of whom were worthy that the Presence of God should rest upon them as upon Moses, our master, thirty of whom who were worthy that the sun stand still for them as it did for Joshua b. Nun, and twenty of whom were of middle rank. The greatest among them all was Jonathan b. Uzziel, and the least among them was Rabban Yohanan ben Zakkai.

LXXI. Mishnah-Tractate Baba Batra 8:6A-E

A. HE WHO SAYS, “THIS IS MY SON,” IS BELIEVED.

1. I:1: For what practical purpose is this law set forth?

2. I:2: Said R. Joseph said R. Judah said Samuel, “On what account did they say, He who says, “This is my son,” is believed? It is because a husband who says, ‘I divorced my wife,’ is believed.”

a. I:3: Analysis of the facticity of the reason given in the foregoing.

l. I:4: Analysis of the distinction made to solve a contradiction that is subsidiary in the foregoing.

A. I:5: Illustrative case.

AA. I:6: A case building upon the result of the above.

B. IF HE SAID, “THIS IS MY BROTHER,” HE IS NOT BELIEVED, AND THE LATTER SHARES WITH HIM IN HIS PORTION OF THE FATHER’S ESTATE:

1. II:1: And as to the other brothers, what do they say here? If they say, “He is our brother,” why should he only take a share with the other in his portion but no more? Let him get an equal share. And if they say, “He is not our brother,” how explain the latter clause: If he received property from some other source, his brothers are to inherit with him? Why should they inherit with him when they themselves said, “He is not our brother”?

C. IF THE BROTHER WHOSE STATUS IS IN DOUBT DIED, THE PROPERTY IS TO GO BACK TO ITS ORIGINAL SOURCE. IF HE RECEIVED PROPERTY FROM SOME OTHER SOURCE, HIS BROTHERS ARE TO INHERIT WITH HIM.

1. III:1: Raba raised the question, “As to the natural increase of the property that has come about on its own, what is the rule? As to the natural increase that comes about because of hard work, there is no problem for you, it is in the category of from some other source. The question arises for you in the case of natural increase that does not come about because of hard work, for instance, if the estate had a palm tree and it grew stronger or land that yielded alluvial soil.”

LXXII. Mishnah-Tractate Baba Batra 8:6F-J

A. HE WHO DIED, AND A WILL WAS FOUND TIED TO HIS THIGH —

1. I:1: What is the formula of a will? “This shall be established and executed” so that, if when the writer dies, his property is going to go to Mr. So-and-so. What is the formula of deeds of gift? A document in which it is written, “As of this date, but taking effect when I die.”

B. ...LO, THIS IS NOTHING WHATSOEVER.

IF HE HAD DELIVERED IT AND GRANTED POSSESSION THROUGH IT TO ANOTHER PERSON, WHETHER THIS IS ONE OF HIS HEIRS OR NOT ONE OF HIS HEIRS, HIS STATEMENT IS CONFIRMED.

1. II:1: “A dying man who said, ‘Write down and give a maneh to Mr. So-and-so’ and then died — his words are not written down as a deed, and a gift is not handed over, since it is possible that he intended to make the gift only through the medium of the deed, and a document does not transfer title after the death of the author.”

LXXIII. Mishnah-Tractate Baba Batra 8:7

A. “HE WHO WRITES OVER HIS PROPERTY TO HIS SONS HAS TO WRITE, ‘FROM TODAY AND AFTER DEATH,’” THE WORDS OF R. JUDAH.

1. I:1: So if he wrote, From today and after death, what difference does that make? Lo, we have learned in the Mishnah: If he said, “Lo, this is your writ of divorce effective now and after death,” it is a writ of divorce and not a writ of divorce. If he dies, the widow performs the rite of removing the shoe but does not enter into levirate marriage (M. [Git. 7:3F-G](#)).

B. R. YOSÉ SAYS, “HE DOES NOT HAVE TO DO SO.”

1. II:1: The operative consideration behind the position of R. Yosé is this: he took the position, “The date on the document provides ample evidence.”

a. II:2: Refinement: What is the law in the case of a deed of transfer?

C. HE WHO WRITES OVER HIS PROPERTY TO HIS SON TO TAKE EFFECT AFTER HIS DEATH — THE FATHER CANNOT SELL THE PROPERTY, BECAUSE IT IS WRITTEN OVER TO THE SON, AND THE SON CANNOT SELL THE PROPERTY, BECAUSE IT IS YET IN THE DOMAIN OF THE FATHER.

IF THE FATHER SOLD IT, THE PROPERTY IS SOLD UNTIL HE DIES. IF THE SON SOLD THE PROPERTY, THE PURCHASER HAS NO RIGHT WHATEVER IN THE PROPERTY UNTIL THE FATHER DIES.

1. III:1: If the son sold the property in the lifetime of the father and also died in the lifetime of the father — said R. Yohanan, “The purchaser has not acquired title to the property.” And R. Simeon b. Laqish said, “The purchaser has acquired title to the property.”

a. III:2: Secondary case appended to subsidiary amplifications of the foregoing.

I. III:3: Amplification of a tangential detail of the foregoing.

II. III:4: As above.

b. III:5: Continuation of the analysis of III:2.

c. III:6: The same point as at III:5.

2. III:7: Said R. Judah said Samuel, “He who writes over his property as a gift to a third party, and the other said, ‘I don’t want it,’ the other still have acquired possession of the title to the property. And that is the rule even if he is standing there and protesting.” And R. Yohanan said, “He has not acquired title.”

a. III:8: Refinement of the foregoing.

D. COMPOSITE OF RULES ON GIFTS IN CONTEMPLATION OF DEATH

1. III:9: Tannaite complement: A dying man who said, “Give two hundred zuz to Mr. So-and-so, and three hundred to Mr. Such-and-such, and four hundred to Mr. So-and-such,” they do not say, “The first named party in the deed takes precedence.” Therefore, if a bond is produced against the donor after he died, the claimant can collect from all of those named.

2. III:10: Tannaite complement: A dying man who said, “Give two hundred zuz to Mr. So-and-so, my firstborn son, as is fitting for him,” he collects them and also collects the double portion of his birthright.

3. III:11: Tannaite complement: A dying man who said, “Give two hundred zuz to Mr. So-and-so, my creditor, as is fitting for him,” he collects the money and also collects the debt that is owing to him. If he said, “...my creditor,” he collects the money and also collects the debt that is owing to him. If he said, “...in payment of the debt that is owing to him,” he collects the money in payment of his debt.

4. III:12: Tannaite complement: “A dying man who said, ‘A maneh of mine is in the hands of Mr. So-and-so’ — the witnesses write the words down, even though they don’t know the facts of the matter. But, it follows, when the debt is to be collected, proof has to be supplied,” the words of R. Meir.

LXXIV. Mishnah-tractate Baba Batra 8:7H-I

A. THE FATHER HARVESTS THE CROPS AND GIVES THE USUFRUCT TO ANYONE WHOM HE WANTS. AND WHATEVER HE LEFT ALREADY HARVESTED — LO, IT BELONGS TO HIS HEIRS.

1. I:1: So the rule applies to what is harvested but not what is still attached to the ground. But lo, it has been taught on Tannaite authority to the contrary.

LXXV. Mishnah-tractate Baba Batra 8:7J-P, 8:8

A. IF HE LEFT ADULT AND MINOR SONS, THE ADULTS MAY NOT TAKE CARE OF THEMSELVES FROM THE ESTATE AT THE EXPENSE OF THE MINOR SONS, NOR MAY THE MINOR SONS SUPPORT THEMSELVES OUT OF THE ESTATE AT THE EXPENSE OF THE ADULT SONS. BUT THEY DIVIDE THE ESTATE EQUALLY.

1. I:1: Said Raba, “If the oldest of the brothers managing the estate took general funds of the estate for his clothing and accoutrements, what he has done is done and beyond dispute.”

B. IF THE ADULT SONS GOT MARRIED AT THE EXPENSE OF THE ESTATE, THE MINOR SONS IN DUE COURSE MAY MARRY AT THE EXPENSE OF THE ESTATE. BUT IF THE

MINOR SONS SAID, “LO, WE ARE GOING TO GET MARRIED JUST AS YOU DID WHILE FATHER WAS STILL ALIVE” — THEY PAY NO HEED TO THEM. BUT WHAT THE FATHER GAVE TO THEM HE HAS GIVEN.

1. II:1: What’s the sense of this statement in line with what follows: But if the minor sons said, “Lo, we are going to get married just as you did while father was still alive” — they pay no heed to them. But what the father gave to them he has given?

C. IF HE LEFT ADULT AND MINOR DAUGHTERS, THE ADULTS MAY NOT TAKE CARE OF THEMSELVES FROM THE ESTATE AT THE EXPENSE OF THE MINOR DAUGHTERS, NOR MAY THE MINORS SUPPORT THEMSELVES FROM THE ESTATE AT THE EXPENSE OF THE ADULT DAUGHTERS. BUT THEY DIVIDE THE ESTATE EQUALLY.

IF THE ADULT DAUGHTERS GOT MARRIED AT THE EXPENSE OF THE ESTATE, THE MINOR DAUGHTERS MAY GET MARRIED AT THE EXPENSE OF THE ESTATE — AND IF THE MINOR DAUGHTERS SAID, “LO, WE ARE GOING TO GET MARRIED JUST AS YOU GOT MARRIED WHILE FATHER WAS STILL ALIVE,” THEY PAY NO HEED TO THEM.

THIS RULE IS MORE STRICT IN REGARD TO DAUGHTERS THAN TO SONS. FOR THE DAUGHTERS ARE SUPPORTED AT THE DISADVANTAGE OF THE SONS, BUT THEY ARE NOT SUPPORTED AT THE DISADVANTAGE OF OTHER DAUGHTERS.

1. III:1: if the woman took a loan and spent it and then got married, is the husband in the status of a purchaser or that of an heir?

LXXVI. Mishnah-Tractate Baba Batra 9:1

A. HE WHO DIED AND LEFT SONS AND DAUGHTERS — WHEN THE ESTATE IS LARGE, THE SONS INHERIT, AND THE DAUGHTERS ARE SUPPORTED BY THE ESTATE. IF THE ESTATE IS SMALL, THE DAUGHTERS ARE SUPPORTED, AND SONS GO BEGGING AT PEOPLE’S DOORS.

1. I:1: And what is the definition of a large estate?

2. I:2: It is obvious that if the estate was a big one but depreciated, the heirs have already acquired ownership at the moment of the father’s death, when there was a surplus. But if the estate was small but then grew in value, what is the law?

3. I:3: In session before R. Abbahu, R. Jeremiah asked this question: “What is the law as to the widow’s reducing the value of the estate?” Is the amount due to the widow for her maintenance deducted from the value of the estate, which is thus reduced from a larger to a smaller estate, from which, if it just suffices for the maintenance of the daughters, the sons will receive nothing?

B. ADMON SAYS, “MERELY BECAUSE I AM MALE, DO I HAVE TO LOSE OUT?” SAID RABBAN GAMALIEL, “I CONCUR IN THE OPINION OF ADMON.”

1. I:1: What’s the point of the statement?

LXXVII. Mishnah-Tractate Baba Batra 9:2

A. IF HE LEFT SONS AND DAUGHTERS AND ONE WHOSE SEXUAL TRAITS WERE NOT CLEARLY DEFINED, WHEN THE ESTATE IS LARGE, THE MALES PUSH HIM OVER

ONTO THE FEMALES, IF THE ESTATE IS SMALL, THE FEMALES PUSH HIM OVER ONTO THE MALES.

1. I:1: ...the males push him over onto the females and he collects the portion of a daughter? But note the later part of the same Tannaite formulation: If she bore a child whose sexual traits were not clearly defined, he gets nothing.

B. HE WHO SAYS, “IF MY WIFE BEARS A MALE, HE WILL GET A MANEH,” — IF SHE BORE A MALE, HE GETS A MANEH. IF HE SAID, “IF SHE BEARS A FEMALE, SHE WILL GET TWO HUNDRED ZUZ:”

IF SHE BORE A FEMALE, SHE GETS TWO HUNDRED ZUZ. IF HE SAID, “IF SHE BEARS A MALE, HE WILL GET A MANEH, IF SHE BEARS A FEMALE, SHE WILL GET TWO HUNDRED ZUZ,” IF SHE BORE A MALE AND A FEMALE, THE MALE GETS A MANEH, AND THE FEMALE GETS TWO HUNDRED ZUZ. IF SHE BORE A CHILD WHOSE SEXUAL TRAITS WERE NOT CLEARLY DEFINED, HE GETS NOTHING. IF HE SAID, “WHATEVER MY WIFE BEARS WILL GET A MANEH,” LO, THIS ONE GETS A MANEH. AND IF THERE IS NO HEIR BUT THAT CHILD LACKING DEFINED SEXUAL TRAITS, HE INHERITS THE ENTIRE ESTATE.

1. II:1: Does this statement bear the implication that he’d rather have a daughter than a son? Lo, said R. Yohanan in the name of R. Simeon b. Yohai, “Whoever does not leave a son to inherit his estate — the Holy One, blessed be he, is full of anger against him.”

2. II:2: Continuation of the foregoing question: And if you wish, I shall say, lo, who is the authority behind this Mishnah-statement? It is R. Judah.

3. II:3: Then what about the following, which has been taught on Tannaite authority: If she produced a male and a female, the male takes six denars, and the female, two denars. Shouldn’t the daughter get more?

4. I:4: As to the following, which has been taught on Tannaite authority: If she gave birth to a male and female, he only gets a maneh.” Since this statement bears the implication that he might have been supposed to get more than that sum, under what circumstances can he have gotten any more anyhow?

C. ASSIGNING TITLE TO A FOETUS

1. I:5: There was a man who said to his wife, “My estate will go to him with whom you are pregnant.” Said R. Huna, “This is a case of assigning title to a foetus, and one who assigns title to a foetus — the foetus does not acquire title.”

a. I:6: Gloss to a tangential detail in a subsidiary component of the foregoing.

2. I:7: Said R. Isaac said R. Yohanan, “He who assigns title to an embryo — the embryo does not acquire possession of the title. And if you cite our Mishnah-passage, that is because a person’s intentionality is devoted toward his son, so he wholeheartedly transfers ownership to the embryo but a stranger cannot do so.

3. I:8: Said Samuel to R. Hana of Baghdad, “Go, assemble ten men for me, and I shall state to you in their presence: he who assigns title to an embryo — the latter has acquired title.” But the decided law is, he who assigns title to an embryo — the latter has not acquired title.

4. I:9: There was someone who said to his wife, “My estate will go to the children that I shall have from you.” His eldest son came and said to him, “What will become of me?” He said to him, “Go and acquire your share as one of the other sons” born from the second wife.} Those future children, not then in existence cannot acquire title to any possessions, not being in existence. But does this child the eldest son get an additional share beside the other sons when they inherit the estate would he in addition to getting what is coming as one of the sons also get a share by the special assignment made to him by the father, or has he no additional share besides what is coming to the other sons?

5. I:10: Someone said to his wife, “My estate will belong to you and your children.” Said R. Joseph, “She has acquired half of the estate.”

D. OTHER RULINGS ON INHERITANCES DIRECTED TOWARD SONS AND DAUGHTERS

1. I:11: There was a man who sent pieces of silk to his household. Said R. Ammi, “Those that are suitable for use by the sons are assigned to the sons, and those suitable for use by the daughters are assigned to the daughters...”

2. I:12: There was a man who said to them, “My estate is for my sons.” He had both a son and a daughter. Do people refer to the son as “sons,” or perhaps they don’t call a son “songs,” so he really intended to include the daughter in the gift?

3. I:13: There was a man who said to them, “My estate is going to my sons.” He had a son and a grandson. Do people call “grandson” son, or do they not?

LXXVIII. Mishnah-Tractate Baba Batra 9:3

A. IF HE LEFT ADULT AND MINOR SONS — IF THE ADULTS IMPROVED THE VALUE OF THE ESTATE, THE INCREASE IN VALUE IS IN THE MIDDLE SHARED BY ALL HEIRS.

1. I:1: Said R. Habiba b. R. Joseph b. Raba in the name of Raba, “This rule, the increase in value is in the middle shared by all heirs, applies only where the improvement of the estate was carried out through the estate’s own resources, but if the improvement was at the expense of the elder brothers, the improvement is assigned to them.”

B. IF THEY HAD SAID, “SEE WHAT FATHER HAS LEFT US. LO, WE ARE GOING TO WORK IT AND FROM THAT WE SHALL ENJOY THE USUFRUCT,” THE INCREASE IN VALUE IS THEIRS

1. II:1: R. Safra’s father left money. He took it and invested it. His brothers came and sued him before Raba for a share in the proceeds. He said to him, “R. Safra is a major authority; he is not going to abandon his studies to work for others” and can keep the money.

C. AND SO IN THE CASE OF A WOMAN WHO IMPROVED THE VALUE OF THE ESTATE — THE INCREASE IN VALUE IS IN THE MIDDLE.

1. III:1: What does the widow have to do with the property of the estate anyhow for she can collect her marriage settlement, but then has no further claim; or she keeps up the property of the estate in return for support. So what claim does she have for profits?

D. IF SHE HAD SAID, “SEE WHAT MY HUSBAND HAS LEFT ME! LO, I AM GOING TO WORK AND ENJOY THE USUFRUCT ““ THE INCREASE IN VALUE IS HERS.

1. IV:1: Since when people say that she is working for the benefit of the estate, she gets credit, here one might suppose that she would forego her claim even if she declared that she would work solely in her own interest. So we are informed that that is not the rule.

2. IV:2: He who marries off his adult son in a house built for the purpose of the celebration — the son has acquired title to that house.

LXXIX. Mishnah-Tractate Baba Batra 9:4A-C

A. BROTHERS WHO WERE JOINTHOLDERS IN AN INHERITED ESTATE, ONE OF WHOM FELL INTO PUBLIC OFFICE — THE CHARGE OR BENEFIT FELL TO THE COMMON FUND.

1. I:1: A Tannaite statement: the public office of which the Mishnah speaks is in the royal government.

2. I:2: Tannaite complement: In the case of one of the brothers who was appointed tax collector or overseer, if the appointment was on account of the brothers, that is, if such appointment are made from every family in turn, the income belongs to the brothers, and if the appointment was on account of the man himself and his own merits, the income belongs to himself.

3. I:3: Tannaite complement: In the case of one of the brothers who took two hundred zuz for the purpose of going to study the Torah or going to study a trade — the brothers have the right to say to him, “If you abide with us, you have a claim on maintenance, but if you do not abide with us, you have no claim on maintenance.”

B. IF HE BECAME ILL AND WAS HEALED, THE HEALING IS AT HIS OWN EXPENSE:

1. II:1: This rule applies only if he became ill through his own negligence, but if it was by accident, the medical bills come from the common fund.

LXXX. Mishnah-Tractate Baba Batra 9:4D-J

A. BROTHERS, SOME OF WHOM MADE A PRESENT AS GROOMSMEN AT THEIR FATHER’S EXPENSE WHILE THEIR FATHER WAS ALIVE, AND AFTER THE FATHER’S DEATH THE GROOMSMEN’S GIFT RETURNED TO THEM, IT HAS RETURNED TO THE COMMON FUND.

1. I:1: An objection was raised: if his father sent through the son who was a groomsman a wedding gift, the reciprocated gift sent after the father’s death, when the groomsman is married falls to him. But if the wedding gift was sent by a groomsman to the father, the reciprocated gift sent after the father has died, when that groomsman gets married falls to the charge against the common fund, for the reciprocated wedding gift is regarded as a loan; the estate repays it as any other of the debts of their father.

2. I:2: Another solution to the same problem.

3. I:3: As above.

a. I:4: Amplification of a tangential detail of the foregoing.

b. I:5: Continuation of the foregoing issue.

B. FOR THE GROOMSMEN'S GIFT IS DEEMED A LOAN AND IS RECOVERABLE IN COURT.

BUT HE WHO SENDS HIS FELLOW JUGS OF WINE AND OIL IN HIS FATHER'S LIFETIME — THEY ARE NOT RECOVERABLE IN COURT, BECAUSE THEY COUNT AS A CHARITABLE DEED.

1. II:1: Tannaite complement: Five statements have been made with reference to the reciprocation of wedding gifts: it may be claimed in a court of law; it is reciprocated at the right time when the groomsmen is married, not before; it is not subject to considerations of usury and the Sabbatical year does not release the debt which remains valid even afterward; and the firstborn does not take a double share in it.

a. II:2: Said R. Kahana, "The governing rule covering the groomsmanship is this: if the one who has to reciprocate the wedding gift is in town, he has to come. If he could hear the sound of the bells, he has to come. If he couldn't hear the sound of the bells, the other should have told him. So he has a grievance against him but he still has to repay him." How much is called for in repayment through the reciprocated gift; if the giver didn't participate in the wedding right, how much may he deduct from the value of the gift in lieu of food and drink he would have had had he attended the party?

2. II:3: Tannaite complement: If someone rendered a service to a bridegroom at a public wedding bringing the required gifts, and that person now wants the other to reciprocate his services at a private wedding, the latter may say to him, "I shall perform my services for you in public as you did for me." A person need only reciprocate under conditions similar to those under which service was rendered to him. If he is asked to act under different conditions, he may refuse, and there is no obligation on his part either to reciprocate the gifts or to come to the wedding.

C. APPENDIX ON WEALTH AND ITS CLASSIFICATIONS

1. II:4: Tannaite complement: Rich in property, rich in pomp — this is a master of lore. Rich in cash, rich in oil — that is a master of analytical reasoning.

2. II:5: What is the meaning of the verse of Scripture, 'All the days of the afflicted are evil' (Pro. 15:15)?

LXXXI. Mishnah-Tractate Baba Batra 9:5

A. HE WHO SENDS GIFTS TO HIS FATHER-IN-LAW'S HOUSEHOLD — IF HE SENT GIFTS WORTH A HUNDRED MANEH'S AND THERE ATE A WEDDING FEAST OF EVEN A DENAR — IF HE DIVORCED HIS WIFE, THE GIFTS ARE NOT RECOVERABLE. IF HE DID NOT EAT A WEDDING FEAST AT ALL, LO, THEY ARE RECOVERABLE.

1. I:1: Said Raba, “The rule concerning the meal that the bridegroom had in the house of his father-in-law applies only if the meal was worth a denar, but if the meal was worth less than that, that is not the case.”

2. I:2: Since the formulation of our Mishnah refers to eating and he there ate a wedding feast of even a denar, what is the rule as to drinking? Since our Mishnah is framed to refer to his eating in particular, what is the law in regard to his representative? Since the Mishnah refers to his eating a meal there, what is the rule if the meal was sent to him?

3. I:3: The question was raised: What is the law as to the groom who consumes a meal of less than a denar in value’s having to pay, when the gifts are reclaimed, in proportion to the value of the meal in relationship to the denar? What is the law as to his being entitled to the appreciation of the gifts during the time that they were with the bride? Since the gifts are returned to him, the appreciation took place while they were in his domain? Or perhaps since if they were lost or stolen, the bride has to compensate for them, the appreciation also took place in her domain?

4. I:4: Raba raised the question, “In the case of gifts that are made to be consumed but did not get consumed, what is the law?”

5. I:5: Said R. Judah said Rab, “There was the case of someone who set to his father-in-law’s house new wine, new oil, new linen garments, at Pentecost.”

a. I:6: Case attached for only formal reasons.

B. IF THE HUSBAND HAD SENT MANY GIFTS, WHICH WERE TO BE RETURNED WITH HER TO HER HUSBAND’S HOUSE, LO, THEY ARE RECOVERABLE. IF HE HAD SENT FEW GIFTS, WHICH SHE WAS TO USE IN HER FATHER’S HOUSE, THEY ARE NOT RECOVERABLE.

1. II:1: In session before R. Pappa, Rabin the Elder made the statement, “Whether she is the one who died, or he is the one who died, or whether he retracted, the wedding gifts are to be returned. Food and drink are not returned. But if she retracted, then even a bundle of vegetables has to be returned.”

LXXXII. Mishnah-Tractate Baba Batra 9:6A-D

A. A DYING MAN WHO WROTE OVER ALL HIS PROPERTY TO OTHERS AS A GIFT BUT LEFT HIMSELF A PIECE OF LAND OF ANY SIZE WHATEVER — HIS GIFT IS VALID.

1. I:1: Who is the Tannaite authority who takes the view that the governing criterion is supplied by an assumption of the intent behind what is done?

a. I:2: Secondary analysis of the results of the foregoing, primary inquiry.

B. TOPICAL COMPOSITE ON THE RULES GOVERNING THE GIFT OF A DYING MAN (GIFTS IN CONTEMPLATION OF DEATH)

1. I:3: Said R. Zira said Rab, “How on the basis of Scripture do we know that the gift in contemplation of death is valid by the law of the Torah?”

2. I:4: As above.

3. I:5: As above.

a. I:6: Gloss on the topic of the proof-text of the foregoing.

I. I:7: Topical gloss to a tangential detail of the gloss.

II. I:8: Continuation of foregoing topic.

III. I:9: Continuation of foregoing topic.

4. I:10: And Raba said R. Nahman said, “The validity of the verbal instructions in contemplation of death derives from the authority of rabbis, lest his mind be distracted.”

C. ...AS A GIFT BUT LEFT HIMSELF A PIECE OF LAND OF ANY SIZE WHATEVER — HIS GIFT IS VALID.

1. II:1: Said Raba said R. Nahman, “A dying man who said, ‘Let So-and-so live in this house,’ ‘let So-and-so enjoy the usufruct of this palm-tree,’ has said nothing at all, unless he adds the language, ‘Give,’ thus: ‘Give So-and-so the right to live in this house,’ ‘Give So-and-so the usufruct of this palm-tree.’”

a. II:2: The question was raised: if a dying man said, “The palm tree is to go to one party, and the usufruct to another,” what is the law? Has the man in this case reserved for himself the place of the produce on the branches, which are attached to the tree, so therefore are part of the ground, and he therefore has left for himself some ground and cannot withdraw the gift even if he recovers? Or did he not leave it? And if it is concluded that if the usufruct is given to a third party, the dying man has not left its place, we ask, what is the law if he said, except for its fruit?

2. II:3: Reversion to the problem of II:1.

3. II:4: Said R. Joseph bar Minyumi said R. Nahman, “A man in contemplation of death who wrote over all his property to others — they examine the case: if he did it so as to distribute the estate among them, then if he died, all of them acquire title; if he recovered, he may retract in the case of all of them having left nothing for himself. If he did it after consideration not intending to give away the whole estate, but only after giving a portion to one does he then proceed to make gifts to others, then if he died, all of them acquire title; if he recovered, he may withdraw only in the case of the last.”

4. II:5: Said R. Aha bar Minyumi said R. Nahman, “A man who in contemplation of death wrote his entire estate to others but then got well may not withdraw the gifts. We take account of the possibility that he has property in some other city and is not destitute.”

5. II:6: The question was raised: Is the withdrawal of part of a gift deemed tantamount to the withdrawal of the whole of the gift that has been made or not? The question is whether it is assumed that by his withdrawal of that part, presenting it to the second person, he also indicated the complete withdrawal of the entire gift that he made to the first, and that, therefore, when he made the gift to the second, he was in possession of the rest of his estate, so that if he recovered, he cannot withdraw the gift from the second, while if he died, his heirs may claim from the first the return of the gift.

6. II:7: The question was raised: If the testator sanctified his entire estate but then got better from the illness from which he thought he was dying, what is the law?

Do we invoke the principle, in any matter having to do with consecrating property, the donor has determined to transfer possession of the property, or perhaps, in anything to do with himself, he does not reach a firm decision to transfer title? If he declared all his estate to be ownerless, what is the law? Do we say that, since it is as much for the poor as for the rich, he has definitively decided to transfer title, or perhaps, in anything to do with himself, he does not reach a firm decision to transfer title? If he divided up all his possessions among the poor, what is the rule? Do we say, in the case of giving charity he most certainly has decided to transfer possession, or perhaps, in anything to do with himself, he does not reach a firm decision to transfer title?

7. II:8: Said R. Sheshet, “The language, ‘take,’ ‘acquire,’ ‘occupy, or ‘own,’ when used in contemplation of death all serve to denote a gift.”

8. II:9: The question was raised: If he said, “Let him have the benefit of them” what is the law? Is the sense that they should all be classified as a gift, or perhaps he meant that he should have some benefit from them?

9. II:10: The question was raised: If he sold all his possessions in contemplation of death, what is the law?

10. II:11: The question was raised: If a dying man conceded a debt, what is the law?

D. ...AS A GIFT BUT LEFT HIMSELF A PIECE OF LAND OF ANY SIZE WHATEVER — HIS GIFT IS VALID. IF HE DID NOT LEAVE HIMSELF A PIECE OF LAND OF ANY SIZE WHATEVER, HIS GIFT IS NOT VALID.

1. III:1: How much is “any size whatever”?

2. III:2: And is it a fixed rule of Tannaite formulation that wherever the language, is used, “any size whatever,” the meaning is, there is no minimum size whatsoever?

E. APPENDIX ON THE STATUS OF A SLAVE: MOVABLES OR REAL ESTATE?

a. III:3: It is obvious that if someone said, “My movables are given to Mr. So-and-so,” the donee acquires title to everything that he used except for wheat and barley. If he said, “All my movables are for Mr. So-and-so,” the latter acquires title even to wheat and barley and the upper millstone, leaving out only the lower millstone. If he said, “All that can be moved,” the donee acquires title even to the lower millstone. But is a slave regarded as real estate or as movables?

b. III:4: Said Raba said R. Nahman, “There are five cases in which it is required that one write over all one’s property for the donation to be valid and these are they...”

c. III:5: If someone said, “My property is assigned to Mr. So-and-so,” slaves are classified as real estate. For we have learned in the Mishnah: He who consigns all his property to his slave — the slave goes free (M. **Pe. 3:8A-E**). Freeman are classified as real estate, for we have learned in the Mishnah: Property for which there is security is acquired through money, writ, and usucaption (M. **Qid. 1:5A**). A cloak is classified as real estate, for we have learned in the Mishnah: And that for which there is no security

is acquired only by an act of drawing (from one place to another) (M. **Qid. 1:5A**).

I. III:6: The question was raised: As to a scroll of the Torah, what is its standing in regard to classification as real estate?

F. COMPOSITE OF RULINGS IN RESPECT TO GIFTS OF PROPERTY IN WRITING

1. III:7: R. Zutra bar Tobiah's mother consigned her property to R. Zutra bar Tobiah, since she wanted to marry R. Zebid. She married him but was divorced. She appeared before R. Bib bar Abbaye to get her property back. He ruled, "Lo, she made the gift because she was getting married, and lo, she got married."

2. III:8: R. Ammi bar Hama's mother wrote over her property to R. Ammi bar Hama in the morning, in the evening she wrote it over to Mar Uqba bar Hama. R. Ammi bar Hama came before R. Sheshet, who confirmed his title to the property. Mar Uqba appeared before R. Nahman, who confirmed his title to the property. R. Sheshet came before R. Nahman. He said to him, "How come you did this?"

3. III:9: The mother of R. Amram the Pious had a chest full of notes of indebtedness that were owing to her. When she lay dying, she said, "Let them go to Amram, my son." His brothers came before R. Nahman and said to him, "Now Amram did not make acquisition by drawing of the chest of documents!"

4. III:10: The sister of R. Tobi bar R. Mattenah consigned her property to R. Tobi bar R. Mattenah in the morning. In the evening Ahadeboi, son of R. Mattenah, came and wept in her presence, saying, "Now they'll say that he's a neophyte rabbi and I'm not a neophyte rabbi!"

5. III:11: The sister of R. Dimi bar Joseph had a parcel in an orchard. Whenever she got sick, he consigned ownership to him, but when she got better, she retracted. Once she felt sick. She sent word to him, "Come, acquire title." He sent word to her, "I don't feel like it." She sent word to him, "Come and take possession in whatever way you want." He went, left her a portion, and made symbolic acquisition from her.

6. III:12: In a case in which a dying man gave a gift of part of his estate — it is tantamount to the gift of a healthy person, and lo, it also is tantamount to a gift in contemplation of death.

7. III:13: As to a gift in contemplation of death, in which a deed was recorded containing a clause involving the transfer of title — the household of Rab in the name of Rab say, "In doing so, the testator has saddled the donee on two harnessed horses" That is, his claim has double force: that of the gift of a dying man, that of legal acquisition.

8. III:14: It's obvious that if a dying man wrote over his property to one party and then wrote it over to another, the law is the one that was stated by R. Dimi when he came, namely, the one will annuls the prior will. If he wrote over his property in a deed of gift to one party and handed it to him, and then wrote a deed of gift to another and handed it to him — Rab said, "The first has acquired possession of the property." And Samuel said, "The second has acquired possession of the property."

a. III:15: Someone from whom symbolic acquisition was taken came before R. Huna

9. III:16: A deed of gift in which there was entered, “In life and in death” — Rab said, “Lo, it is in the status of a gift of a dying man.” And Samuel said, “Lo, it is in the status of a gift of a healthy man which cannot be retracted.”

a. III:17: There was someone who came with an inquiry to R. Nahman in Nehardea. He sent him to R. Jeremiah bar Abba in Shum Matya. He said, “This is Samuel’s locale, so how could we act in accord with the law as enunciated by Rab?”

b. III:18: There was a woman who came before Raba to ask for his ruling. He decided her case in accord with his tradition. She bothered him wanting a written document that she was entitled to withdraw the gift, as Rab had maintained.

LXXXIII. Mishnah-Tractate Baba Batra 9:6E-I

A. IF HE DID NOT WRITE IN THE DEED OF GIFT, “WHO LIES DYING,” AND IF, AFTER RECOVERY, HE WISHES TO RECLAIM HIS PROPERTY, SO HE SAYS HE HAD BEEN DYING, AND THE RECIPIENTS SAY, “HE HAD BEEN HEALTHY” — “HE HAS TO BRING PROOF THAT HE HAD BEEN DYING,” THE WORDS OF R. MEIR.

1. I:1: There was a deed of gift that had the formula, “as he was lying sick in bed,” but lacked, “and as a result of his illness, he left this world.” Said Raba, “Lo, he indeed has died, and lo, his grave attests in his behalf.” Since there is no evidence that the testator recovered from the illness during which he made the gift, the fact that he is dead suffices.

B. AND SAGES SAY, “HE WHO LAYS CLAIM AGAINST HIS FELLOW BEARS THE BURDEN OF PROOF.”

1. II:1: How is proof to be adduced? R. Huna said, “Proof presented by actual witnesses” who testify to the state of the health of the donor when he made the gift. R. Hisda and Rabbah bar R. Huna say, “Proof that attests the validity of the deed.”

2. II:2: Answering the same question, so stated Rabbah, “Proof presented by actual witnesses” who testify to the state of the health of the donor when he made the gift.

3. II:3: Further dispute on the same question as is treated in the foregoing: R. Yohanan said, “Proof must be presented through witnesses.” R. Simeon b. Laqish said, “Proof must be presented only by confirming the validity of the document.”

a. II:4: Gloss of a detail tangential in the foregoing.

i. II:5: Gloss of a detail tangential in the foregoing.

A. II:6: As above.

B. II:7: Continuation of the foregoing.

AA. II:8: Case illustrative of the foregoing.

BB. II:9: More of the same.

CC. II:10: More of the same.

DD. II:11: More of the same.

LXXXIV. Mishnah-Tractate Baba Batra 9:7A-F

A. HE WHO VERBALLY DIVIDES HIS PROPERTY “BY WORD OF MOUTH” — R. ELIEZER SAYS, “ALL THE SAME ARE A HEALTHY MAN AND A MAN WHOSE LIFE IS ENDANGERED — PROPERTY FOR WHICH THERE IS SECURITY IS ACQUIRED THROUGH MONEY, A DOCUMENT, AND USUCAPTION. AND THAT FOR WHICH THERE IS NO SECURITY IS ACQUIRED ONLY THROUGH BEING DRAWN INTO THE POSSESSION OF THE ONE WHO ACQUIRES IT.” THEY SAID TO HIM, “M’S H B: THE MOTHER OF THE SONS OF ROKHEL WAS SICK AND SAID, ‘GIVE MY VEIL TO MY DAUGHTER,’ AND IT WAS WORTH TWELVE MANEH. AND SHE DIED, AND THEY CARRIED OUT HER STATEMENT.” HE SAID TO THEM, “AS TO THE SONS OF ROKHEL, MAY THEIR MOTHER BURY THEM.”

1. I:1: Tannaite complement: Said R. Eliezer to sages, “There was a case of a certain man of Meron who was in Jerusalem, who had a large volume of movables that he wanted to give away. They told him that he had no remedy except to transfer title along with a piece of real estate. What did he do? He went and he bought a land no bigger than a sela coin near Jerusalem, and he said, ‘The north of this property belongs to Mr. So-and-so, and along with it go a hundred sheep and a hundred barrels of wine.’ And the same for the other directions. When he died, the court confirmed his instructions.”

B. HE SAID TO THEM, “AS TO THE SONS OF ROKHEL, MAY THEIR MOTHER BURY THEM.”

1. II:1: How come he cursed them?

2. II:2: Said R. Levi, “They effect a symbolic act of acquisition from a dying man even on the Sabbath, but this is not to take account of the position of R. Eliezer. Rather, it is to take account of the possibility that not arranging for legal acquisition might upset the patient since failure to arrange the act would tell him that he really was dying.”

LXXXV. Mishnah-Tractate Baba Batra 9:7G-M

A. R. ELIEZER SAYS, “IF HE GAVE VERBAL INSTRUCTIONS ON THE SABBATH, HIS STATEMENT IS CONFIRMED, BECAUSE HE IS NOT ABLE TO WRITE DOWN HIS WILL. BUT NOT IF IT TOOK PLACE ON A WEEKDAY.” R. JOSHUA SAYS, “IF THEY HAVE STATED THIS RULE FOR THE SABBATH, ALL THE MORE SO THAT IT APPLIES ON A WEEKDAY.” SIMILARLY: OTHERS MAY EFFECT POSSESSION FOR A MINOR, BUT THEY DO NOT EFFECT POSSESSION FOR AN ADULT,” THE WORDS OF R. ELIEZER. R. JOSHUA SAYS, “IF THEY HAVE SAID SO OF A MINOR, ALL THE MORE SO DOES THE RULE APPLY TO AN ADULT.”

1. I:1: Who is the authority behind our anonymous Mishnah-rule?

LXXXVI. Mishnah-Tractate Baba Batra 9:8

A. IF THE HOUSE FELL ON HIM AND ON HIS FATHER, OR ON HIM AND ON THOSE WHOM HE INHERITS, AND HE WAS LIABLE FOR THE SETTLEMENT OF HIS WIFE'S MARRIAGE CONTRACT AND FOR PAYMENT OF A DEBT — THE HEIRS OF THE FATHER CLAIM, "THE SON DIED FIRST, AND AFTERWARD THE FATHER DIED," — THE CREDITORS CLAIM, "THE FATHER DIED FIRST, AND THEN THE SON" — THE HOUSE OF SHAMMAI SAY, "LET THEM SHARE THE SON'S ESTATE." AND THE HOUSE OF HILLEL SAY, "THE PROPERTY REMAINS IN ITS FORMER STATUS IN THE HANDS OF THOSE WHO INHERIT THE FATHER."

1. I:1: This Mishnah-paragraph figures in the solution of a problem on another subject entirely.

LXXXVII. Mishnah-Tractate Baba Batra 9:9

A. IF THE HOUSE FELL ON HIM AND ON HIS WIFE, THE HEIRS OF THE HUSBAND SAY, "THE WIFE DIED FIRST, AND AFTERWARD THE HUSBAND DIED" — THE HEIRS OF THE WIFE SAY, "THE HUSBAND DIED FIRST, AND AFTERWARD THE WIFE DIED" — THE HOUSE OF SHAMMAI SAY, "LET THEM DIVIDE." AND THE HOUSE OF HILLEL SAY, "THE PROPERTY REMAINS IN ITS FORMER STATUS. THE MONEY FOR THE MARRIAGE SETTLEMENT REMAINS IN THE HANDS OF THE HEIRS OF THE HUSBAND. BUT THE PROPERTY WHICH GOES INTO THE MARRIAGE WITH HER AND GOES OUT OF THE MARRIAGE WITH HER AT THE VALUE AT WHICH IT WAS ASSESSED TO BEGIN WITH IS ASSIGNED TO THE POSSESSION OF THE HEIRS OF THE FATHER OF THE WIFE."

1. I:1: The property remains in its former status: in whose presumed ownership?

LXXXVIII. Mishnah-Tractate Baba Batra 9:10

A. IF THE HOUSE FELL ON HIM AND ON HIS MOTHER — THESE AND THOSE PARTIES AGREE THAT THEY DIVIDE IT. SAID R. AQIBA, "I CONCUR IN THIS CASE THAT THE PROPERTY REMAINS IN ITS FORMER STATUS."

1. I:1: Said R. Aqiba, "I concur in this case that the property remains in its former status": in whose presumed ownership?

B. BEN AZZAI SAID TO HIM, "CONCERNING THE POINTS OF DIFFERENCE WE ARE DISTRESSED. WILL YOU NOW COME TO BRING DISAGREEMENT ON THE POINTS ON WHICH THEY ARE IN AGREEMENT?"

1. II:1: Said R. Simlai, "That is to say that Ben Azzai was a comrade-disciple of R. Aqiba, since he said to him such language as, Will you now come."

C. COMPOSITION ON A SON'S SELLING THE ESTATE OF HIS FATHER DURING THE FATHER'S LIFETIME MEANING, HIS SHARE OF THE INHERITANCE

1. II:2: "A son who borrowed on the security of his father's estate during the lifetime of his father and who died — his son may seize the property from the buyers, and this is what presents a difficulty in commercial law."

a. II:3: Problem subsidiary to the foregoing.

b. II:4: Cases that illustrate the basic principle: the burden of proof rests on the plaintiff.

LXXXIX. Mishnah-Tractate Baba Batra 10:1, 10:2A-E

A. AN UNFOLDED DOCUMENT HAS THE SIGNATURES WITHIN AT THE BOTTOM OF A SINGLE PAGE OF WRITING. AND ONE WHICH IS FOLDED HAS THE SIGNATURES BEHIND EACH FOLD. AN UNFOLDED DOCUMENT, ON WHICH ITS WITNESSES SIGNED AT THE BACK, OR A FOLDED DOCUMENT, ON WHICH ITS WITNESSES SIGNED ON THE INSIDE — BOTH OF THEM ARE INVALID.

1. I:1: What is the source in Scripture for the fact that there are two different kinds of deeds that are differentiated from each other by the number of witnesses and the manner of folding the document.

2. I:2: And how come rabbis ordained the folded document?

3. I:3: Where, exactly, do the witnesses incise their signatures? R. Huna said, “Between one fold and the next on the blank spaces between the written lines on the obverse of the deed.” And R. Jeremiah bar Abba said, “On the back of the writing at the corresponding place to the written part, on the reverse side of the deed.”

4. I:4: Said R. Isaac bar Jacob said R. Yohanan, “In the case of all erasures, there has to be confirmation at the conclusion of the text of the deed, before the formula, “firm...,” and the erasures must be enumerated. And the last line of the deed must contain a repetition of the subject matter of the deed.”

a. I:5: Secondary refinement of a tangential detail of the foregoing: The question was raised: what is the rule if the signatures of the witnesses were located a line and a half away from the body of the text?

I. I:6: Tertiary refinement of a detail tangential in the foregoing.

II. I:7: Continuation of foregoing.

III. I:8: As above.

IV. I:9: As above.

A. I:10: Reversion to the analysis of an item in the preceding.

B. R. HANANIAH B. GAMALIEL SAYS, “ONE WHICH IS FOLDED, ON THE INSIDE OF WHICH ITS WITNESSES SIGNED THEIR NAMES, IS VALID, BECAUSE ONE CAN UNFOLD IT.”

1. II:1: Rabbi replied to the statement of R. Hananiah b. Gamaliel, “But isn’t it the fact that the date of one type of deed is not the same as the date of the other? For in the case of a plain deed, the first completed year of a king’s reign counts as his first year, and the second completed year is counted as his second; but in the case of a folded deed, the first year of a king’s reign is counted as his second year, and the second as his third. Now, sometimes, it can happen, someone may borrow money from someone else on a folded deed, and in the interim, may get the money to repay him, but when asking for the return of the bond, the creditor might say, ‘I

lost it,' and then would write out a receipt for him; but when the time for paying the original bond came, he might then turn it into a plain deed and say to him, 'You borrowed from me now after the date written into the receipt' and this is a new debt?"

a. II:2: And was Rabbi so expert in the matter of dating a folded deed? A case.

b. II:3: Another case illustrative of the foregoing issue.

I. II:4: Tannaite complement on the subject of enumeration of years in an ordinal system. Sumkhos says, "If he said, 'Lo, I am a Nazir tetragon,' lo, this one is a Nazir for four spells; '...digon,' lo, three Nazirite-spells are incumbent on him; '...drigon,' lo, two Nazirite-spells are incumbent on him."

2. II:5: Illustrative case: A folded document came before Rabbi, and Rabbi said, "There is no date on this deed." Said to him R. Simeon b. Rabbi to Rabbi, "Maybe it's hidden between the folds."

I. II:6: Story that recapitulates a narrative detail of the foregoing.

A. II:7: Gloss on the set of two stories.

C. RABBAN SIMEON B. GAMALIEL SAYS, "EVERYTHING IS IN ACCORD WITH LOCAL CUSTOM:"

1. III:1: In a place in which it is customary to use plain deeds and someone said to the scribe, 'Prepare me a plain deed,' and the scribe made up a folded one, it is a valid objection, since the instruction was for the preparation of a deed in accord with local custom, the scribe's deviation renders the deed invalid. If the local custom is to use a folded deed, and he said to him, 'Make me a folded one,' and the scribe went and made him a flat one, it is a valid objection. Where there is a substantive dispute, it is in a place in which the custom is to prepare deeds that may be flat or folded, and the man said to the scribe, 'Make me a flat one,' but the scribe went and made him a folded one. The one authority maintains, 'A valid objection may be entered,' and the other master holds, 'The instructions were simply advisory so no valid objection may be entered.'"

D. AN UNFOLDED DOCUMENT — ITS WITNESSES ARE TWO. AND A FOLDED ONE — ITS WITNESSES ARE THREE. AN UNFOLDED ONE IN WHICH THERE IS A SINGLE WITNESS, AND A FOLDED ONE IN WHICH THERE ARE TWO WITNESSES — BOTH OF THEM ARE INVALID.

1. IV:1: Now there is no problem understanding why it was necessary to spell out the rule that a folded one in which there are two witnesses is invalid. For it might have entered your mind to suppose that, since in general such a document, bearing two witnesses, would be valid, here too it is valid. So we are informed that it is invalid. But why was it necessary to make it explicit that an unfolded one in which there is a single witness is invalid? Surely that is self-evident!

a. IV:2: Illustrative case, developing the solution to the foregoing problem.

XC. Mishnah-Tractate Baba Batra 10:2F-P

A. IF THERE WAS WRITTEN IN A BOND OF INDEBTEDNESS, “A HUNDRED ZUZ, WHICH ARE TWENTY SELAS,” THE CREDITOR) HAS A CLAIM ON ONLY TWENTY SELAS EVEN THOUGH A HUNDRED ZUZ ARE TWENTY-FIVE SELAS. IF IT IS WRITTEN, “A HUNDRED ZUZ WHICH ARE THIRTY SELAS,” HE HAS A CLAIM ONLY ON A MANEH A HUNDRED ZUZ, SINCE A HUNDRED ZUZ ARE TWENTY-FIVE SELAS.

“SILVER ZUZIM WHICH ARE...,” AND THE REST WAS BLOTTED OUT — THERE IS A CLAIM FOR NO LESS THAN TWO.

“SILVER SELAS WHICH ARE...,” AND THE REST WAS BLOTTED OUT — THERE IS A CLAIM OF NO LESS THAN TWO.

“DARICS WHICH ARE...,” AND THE REST WAS BLOTTED OUT — THERE IS A CLAIM FOR NO LESS THAN TWO.

1. I:1: Tannaite complement: If the document said, “...silver,” it signifies no less than a silver denar. “Silver denars” or “denars of silver” — these signify no less than two silver denars. “Silver for denars” means silver for no less than two gold denars.

a. I:2: Amplification of the foregoing.

2. I:3: Tannaite complement: If the document said, “Gold,” it means, no less than a golden dinar. “Gold denars” or “denars of gold” — no less than two gold denars. “Gold for denars” means gold the value of no less than two silver denars.

a. I:4: Amplification of the foregoing.

b. I:5: As above.

I. I:6: Gloss on the foregoing.

B. IF WRITTEN AT THE TOP IS, “A MANEH,” AND AT THE BOTTOM, “TWO HUNDRED ZUZ,” OR AT THE TOP, “TWO HUNDRED ZUZ,” AND AT THE BOTTOM, “MANEH” — ALL FOLLOWS WHAT IS WRITTEN AT THE BOTTOM. IF SO, WHY DO THEY WRITE THE UPPER FIGURE AT ALL? SO THAT IF ONE LETTER FROM THE LOWER FIGURE IS BLOTTED OUT, ONE MAY LEARN INFER FROM THE UPPER FIGURE:

1. II:1: Tannaite complement: The intent of the lower section is derived from the upper section where one letter is missing, but not where two letters are missing.

2. II:2: Said R. Pappa, “It is quite clear to me that if the word *sepel* occurs on top, and *qepel* occurs on the bottom, everything is governed by what appears on the bottom. If *qepel* appears on top and *sepel* on the bottom, what is the rule? Do we take account of the possibility that a fly has messed up the ink? Or do we not take account of that possibility.”

3. II:3: Illustrative case. There was a bond in which it was written, “six hundred and a zuz.” R. Sherabayya sent word to Abbayye, “Does this mean, ‘six hundred *istiras* =half a zuz and a zuz,’ or perhaps it means, ‘six hundred *perutot* 1/92 part of a zuz and a zuz?”

4. II:4: Said Abbayye, “Someone who has to present his signature in a court of law to show the court his signature on a separate scroll for confirmation of his

signature on a bond shouldn't show it at the bottom of a document, since someone might find it and write above the signature a claim of money against the man."

5. II:5: Said Abbayye, "Numbers from three to ten shouldn't be written at the end of a line, since one might forge these by adding letters to them, and if it did happen, then the sentence should be repeated two or three times, so that it would not come about that the numbers should not at least once occur in the middle of the line."

a. II:6: Further illustrative case.

b. II:7: As above.

c. II:8: As above.

XCI. Mishnah-Tractate Baba Batra 10:3-4

A. THEY WRITE OUT A WRIT OF DIVORCE FOR A MAN, EVEN THOUGH HIS WIFE IS NOT WITH HIM. AND A QUITTANCE FOR THE WIFE, EVEN THOUGH HER HUSBAND IS NOT WITH HER, ON CONDITION THAT THE SCRIBE KNOWS THEM.

1. I:1: What is the meaning of the statement, on condition that the scribe knows them?

2. I:2: Why is the rule that it is on condition that the scribe knows the name of the man but not the woman, in the case of a writ of divorce, or the name of the woman but not of the man, in the case of a receipt for payment of a marriage-settlement?

a. I:3: Illustrative case.

b. I:4: Illustrative case.

B. AND THE HUSBAND PAYS THE FEE.

1. II:1: How come?

C. THEY WRITE A WRIT OF INDEBTEDNESS FOR THE BORROWER, EVEN THOUGH THE LENDER IS NOT WITH HIM, BUT THEY DO NOT WRITE A WRIT FOR THE LENDER, UNLESS THE BORROWER IS WITH HIM. THE BORROWER PAYS THE SCRIBE'S FEE.

1. III:1: That's obvious.

D. THEY WRITE A WRIT OF SALE TO THE SELLER, EVEN THOUGH THE BUYER IS NOT WITH HIM. BUT THEY DO NOT WRITE A WRIT OF SALE FOR THE PURCHASER, UNLESS THE SELLER IS WITH HIM. AND THE PURCHASER PAYS THE SCRIBE'S FEE.

1. IV:1: That's obvious.

E. THEY WRITE THE DOCUMENTS OF BETROTHAL AND MARRIAGE ONLY WITH THE KNOWLEDGE AND CONSENT OF BOTH PARTIES. AND THE HUSBAND PAYS THE SCRIBE'S FEE.

1. V:1: That's obvious.

F. THEY WRITE DOCUMENTS OF TENANCY AND SHARECROPPING ONLY WITH THE KNOWLEDGE AND CONSENT OF BOTH PARTIES. AND THE TENANT PAYS THE SCRIBE'S FEE.

1. VI:1: That's obvious.

G. THEY WRITE DOCUMENTS OF ARBITRATION OR ANY DOCUMENT DRAWN UP BEFORE A COURT ONLY WITH THE KNOWLEDGE AND CONSENT OF BOTH LITIGANTS. AND BOTH LITIGANTS PAY THE SCRIBE’S FEE.

1. VII:1: What are “documents of Arbitration”?

H. RABBAN SIMEON B. GAMALIEL SAYS, “THEY WRITE TWO FOR THE TWO PARTIES, ONE COPY FOR EACH.”

1. VIII:1: What is the point of the disagreement? May we say that what is at issue between them is whether or not they impose on someone the rule that he not act in a Sodomite manner the other party may not act spitefully, but must give a benefit that costs the other party nothing.

XCII. Mishnah-Tractate Baba Batra 10:5

A. HE WHO PAID PART OF A DEBT WHICH HE OWED AND WHO DEPOSITED THE BOND WITH A THIRD PARTY, AND SAID TO HIM, “IF I HAVE NOT GIVEN YOU WHAT I STILL OWE THE LENDER BETWEEN NOW AND SUCH-AND-SUCH A DATE, GIVE THE CREDITOR HIS BOND OF INDEBTEDNESS,” IF THE TIME CAME, AND HE HAS NOT PAID, R. YOSÉ SAYS, “HE SHOULD HAND IT OVER.” AND R. JUDAH SAYS, “HE SHOULD NOT HAND IT OVER.”

1. I:1: What is at issue between the conflicting authorities?

XCIII. Mishnah-Tractate Baba Batra 10:6A-D

A. HE WHOSE WRIT OF INDEBTEDNESS WAS BLOTTED OUT — WITNESSES GIVE TESTIMONY ABOUT IT, AND HE COMES TO A COURT, AND THEY DRAW UP THIS CONFIRMATION: “MR. SO-AND-SO, SON OF SO-AND-SO-HIS BOND OF INDEBTEDNESS WAS BLOTTED OUT ON SUCH-AND-SUCH A DAY, AND MR. SO-AND-SO AND MR. SUCH-AND-SUCH ARE HIS WITNESSES.”

1. I:1: Tannaite complement: What is the formula of the attestation of a faded bond?

a. I:2: Illustrative case.

2. I:3: Tannaite complement: Lo, if a creditor came and said, “I have lost my bond of indebtedness,” even though they said, “We are the witnesses, we wrote and signed the document and gave it to him,” they do not rewrite the document for him. Under what circumstances? In the case of bonds of indebtedness which the creditor can use to collect the debt twice. But in the case of deeds of purchase and sale, a deed that omits the clause pledging property may be rewritten.

a. I:4: Clarification of a detail of the foregoing.

l. I:5: Clarification of I:4.

b. I:6: Why not then right a proper deed pledging the seller’s lands for the one who pleads he lost his deeds and wants a duplicate, giving the seller protecting him against having to pay the buyer twice, should the latter produce two deeds a document that says, “All deeds that are produced against this land are invalid except one bearing this date”?

c. I:7: How do they write the document that enables the holder to establish his claim upon his land and yet prevents him from seizing the land of others?

I. I:8: Illustrative case

d. I:9: Further amplification of the original proposition.

XCIV. Mishnah-Tractate Baba Batra 10:6E-I

A. HE WHO HAD PAID OFF PART OF HIS DEBT — R. JUDAH SAYS, “HE SHOULD EXCHANGE THE BOND FOR ANOTHER ONE, IN WHICH WHAT IS NOW OWING IS SPECIFIED.” R. YOSÉ SAYS, “THE CREDITOR SHOULD WRITE HIM A RECEIPT.” SAID R. JUDAH, “IT TURNS OUT THAT THIS ONE HAS TO GUARD HIS RECEIPT FROM RATS.” SAID TO HIM R. YOSÉ, “THAT’S GOOD FOR HIM, SO LONG AS THE RIGHT OF THE OTHER PARTY HAS NOT BEEN DAMAGED.”

1. I:1: Said R. Huna said Rab, “The law does not accord with either R. Judah or R. Yosé, but the court tears up the bond and writes him another bond, bearing the original date.”

a. I:2: Provision of information to which reference is made in the foregoing.

I. I:3: Appendix to the foregoing.

II. I:4: As above.

III. I:5: Further information on the preparation of bonds.

XCV. Mishnah-Tractate Baba Batra 10:7A-T

A. TWO BROTHERS — ONE POOR, ONE RICH — AND THEIR FATHER LEFT THEM A BATHHOUSE AND AN OLIVE PRESS — IF THE FATHER HAD BUILT THEM TO RENT THEM OUT — THE RENT IS HELD IN COMMON. IF HE MADE THEM FOR HIS OWN USE, LO, THE RICH ONE SAYS TO THE POOR ONE, “YOU BUY SLAVES, AND LET THEM BATHE IN THE BATH HOUSE.” OR: “YOU BUY OLIVES, AND COME AND PREPARE THEM IN THE OLIVE PRESS.”

TWO WHO WERE IN THE SAME TOWN — THE NAME OF ONE WAS JOSEPH B. SIMEON, AND THE NAME OF THE OTHER WAS JOSEPH B. SIMEON, THEY CANNOT PRODUCE A WRIT OF INDEBTEDNESS AGAINST ONE ANOTHER, NOR CAN A THIRD PARTY PRODUCE A WRIT OF INDEBTEDNESS AGAINST EITHER ONE OF THEM.

1. I:1: This composition takes up its own problem but is inserted because our Mishnah-passage is included in its analytical repertoire.

B. IF AMONG THE DOCUMENTS OF ONE OF THEM IS FOUND A WRIT OF JOSEPH B. SIMEON WHICH HAS BEEN PAID OFF, THE WRITS OF BOTH OF THEM ARE DEEMED TO HAVE BEEN PAID OFF.

1. II:1: The operative consideration is that the writ is found. But if none had been found, a bond could be presented against one of them. Yet we have learned in the Mishnah: nor can a third party produce a writ of indebtedness against either one of them.

C. WHAT SHOULD THEY DO? LET THEM WRITE DOWN THE NAMES OF THE THIRD GENERATION AND IF ALL THREE GENERATIONS' NAMES ARE ALIKE, LET THEM WRITE A DESCRIPTION.

AND IF THE DESCRIPTIONS ARE ALIKE, LET THEM WRITE, "PRIEST."

1. III:1: A Tannaite statement: if both of them were priests, let them enter the names of prior generations.

XCVI. Mishnah-Tractate Baba Batra 10:7U-W

A. HE WHO SAYS TO HIS SON, "THERE IS A BOND OF INDEBTEDNESS AMONG MY DOCUMENTS WHICH HAS BEEN PAID, AND I DO NOT KNOW WHICH ONE OF THEM IT IS" — ALL OF HIS BONDS ARE DEEMED TO HAVE BEEN PAID OFF. IF TWO WERE FOUND APPLYING TO A SINGLE DEBTOR, THE LARGER ONE IS DEEMED TO HAVE BEEN PAID, AND THE SMALLER ONE IS NOT DEEMED TO HAVE BEEN PAID.

1. I:1: Said Raba, "If he said, 'A bond belonging to you is in my hands is paid off,' the larger one is regarded as the one that was paid off, the smaller one not. If he said, 'The debt you owe me is paid,' all his bonds are regarded as paid off."

XCVII. Mishnah-Tractate Baba Batra 10:7X-DD

A. HE WHO LENDS MONEY TO HIS FELLOW ON THE STRENGTH OF A GUARANTOR MAY NOT COLLECT FROM THE GUARANTOR:

1. I:1: Why doesn't the guarantor of the note have to pay off?

2. I:2: How on the basis of Scripture do we know that the guarantor is responsible for the debt that he has guaranteed by a mere verbal agreement but no act of acquisition?

3. I:3: Said Amemar, "The question of the responsibility of the guarantor for repaying a debt he has guaranteed is subject to dispute between R. Judah and R. Yosé."

B. BUT IF HE HAD SAID, "LO, I LEND TO YOU ON CONDITION THAT I MAY COLLECT FROM WHICHEVER PARTY I WISH," HE MAY THEN COLLECT FROM THE GUARANTOR. RABBAN SIMEON B. GAMALIEL SAYS, "IF THE DEBTOR HAS PROPERTY, ONE WAY OR THE OTHER, HE SHOULD NOT COLLECT FROM THE GUARANTOR."

1. II:1: Said Rabbah bar bar Hannah said R. Yohanan, "This statement applies only in the case in which the debtor possesses no property; but if the debtor possesses property, no payment may be exacted from the guarantor."

2. II:2: Said R. Huna, "If someone said, 'Lend him some money, and I'll be guarantor,' 'Lend him and I'll pay you back,' 'Lend him and I'll be liable,' or 'Lend him and I'll give it back to you,' all of these formulations serve as guarantees. But if he said, 'Give him money and I'll be unconditional guarantor,' 'Give him and I'll repay you,' 'Give him and I'll be liable,' or 'Give him and I'll give it back to you,' all these express the relationship of unconditional guarantee." The question was

raised: What if he said, “lend him and I’ll be unconditional guarantor,” or “Give him and I’ll be guarantor”?

a. II:3: Example of the usages of the various formulations.

b. II:4: A concrete case on the working of the law governing the guarantor.

c. II:5: As above.

d. II:6: As above.

C. AND SO DID RABBAN SIMEON B. GAMALIEL SAY, “HE WHO WAS GUARANTOR FOR A WOMAN AS TO HER MARRIAGE SETTLEMENT, AND HER HUSBAND DIVORCED HER — IN THE CASE OF A DIVORCE LET THE HUSBAND VOW NOT TO DERIVE BENEFIT FROM HER, LEST THEY MAKE A CONSPIRACY TO DEFRAUD THIS ONE OF HIS PROPERTY, AND THE HUSBAND THEN REMARRY HIS WIFE:”

1. III:1: Example of how such a fraud might be carried out.

2. III:2: Another way in which fraud may or may not be carried out: “A dying man who sanctified all his property to the temple but said, ‘I have a mana belonging to Mr. So-and-so’ which is to be paid to him out of the consecrated property is believed, in the presupposition that a person does not engage in a conspiracy against the sanctuary.”

a. III:3: As above: Secondary amplification of the rules governing the illustrative case. Said Rabbah, “A dying man who said, ‘I hold a maneh belonging to Mr. So-and-so,’ and his heirs claimed, ‘We paid it off,’ — they are believed. If he had said, ‘Give a maneh to Mr. So-and-so,’ and the heirs said, ‘We have paid it off,’ they are not believed.”

l. III:4: As above: Raba raised the question: “A dying man who conceded that he owed a debt — what is the law?”

XCVIII. Mishnah-Tractate Baba Batra 10:8

A. HE WHO LENDS MONEY TO HIS FELLOW ON THE SECURITY OF A BOND OF INDEBTEDNESS COLLECTS WHAT IS OWING TO HIM FROM MORTGAGED PROPERTY. BUT IF HE HAD LENT TO HIM ON THE SECURITY OF WITNESSES, HE COLLECTS ONLY FROM UNINDENTURED PROPERTY:

1. I:1: Said Ulla, “By the law of the Torah, all the same are a loan confirmed by a bond and one that is made verbally — the creditor may collect from mortgaged property. How come? The encumbering of the debtor’s property derives from the law of the Torah; every debt carries with it a pledge of the debtor’s property in favor of the creditor. And why, therefore, have sages said: if he had lent to him on the security of witnesses, he collects only from unindentured property? Because of the possible loss to prospective purchasers of the debtor’s property if what they buy is subject to a prior lien.”

2. I:2: Continuation of the foregoing problem: Both Rab and Samuel say, “A loan made on the testimony of witnesses and not secured by a bond may not be collected from either the heirs or from subsequent purchasers of the debtor’s

property. How come? The encumbrance of the debtor's property does not derive from the law of the Torah."

3. I:3: Said R. Pappa, "The decided law is: A loan made on the testimony of witnesses and not secured by a bond may be collected from the heirs but may not be collected from subsequent purchasers of the debtor's property."

B. IF HE PRODUCED AGAINST HIM THE DEBTOR'S NOTE OF HAND AS EVIDENCE THAT HE OWES HIM MONEY, HE COLLECTS FROM UNINDENTURED PROPERTY:

1. II:1: Rabbah bar Nathan addressed this question to R. Yohanan: "If one's handwriting in the debtor's note of hand was authenticated in a court of law, what is the rule? Does this now qualify as a bond?" He said to him, "Even though one's handwriting in the debtor's note of hand was authenticated in a court of law, he collects only from unindentured property."

C. HE WHO SIGNS AS GUARANTOR BELOW THE SIGNATURE OF BONDS OF INDEBTEDNESS — THE CREDITOR COLLECTS ONLY FROM UNINDENTURED PROPERTY:

1. III:1: Said Rab, "If the guarantor appears before the signatures on the bond, the debt may be collected from encumbered property; if after the signatures, it may be recovered from unencumbered property only."

D. A CASE CAME BEFORE R. ISHMAEL, AND HE RULED, "HE MAY COLLECT FROM UNINDENTURED PROPERTY." SAID TO HIM BEN NANNOS, "HE COLLECTS NEITHER FROM MORTGAGED PROPERTY NOR FROM UNINDENTURED PROPERTY." HE SAID TO HIM, "WHY?" HE SAID TO HIM, "HE WHO SEIZES SOMEONE BY THE THROAT WHO OWES HIM MONEY IN THE MARKET, AND HIS FELLOW CAME UPON HIM AND SAID TO HIM, 'LET HIM GO' — THE LATTER IS EXEMPT FROM HAVING TO GUARANTEE THE LOAN, SINCE IT WAS NOT IN RELIANCE UPON HIM THAT HE HAD LENT THE DEBTOR THE MONEY IN THE FIRST PLACE. BUT WHO IS THE GUARANTOR WHO IS LIABLE TO PAY IF THE DEBTOR DOES NOT DO SO? ONE WHO SAYS, 'LEND HIM MONEY, AND I'LL PAY YOU BACK'— HE IS LIABLE. FOR IT WAS IN RELIANCE UPON HIM THAT HE HAD LENT THE DEBTOR THE MONEY IN THE FIRST PLACE." SAID R. ISHMAEL, "HE WHO WANTS TO GET SMART HAD BEST GET BUSY WITH COMMERCIAL LAW. FOR YOU HAVE NO SPECIALTY IN THE TORAH GREATER THAN THOSE LAWS. FOR THEY ARE LIKE AN EVER-BUBBLING SPRING. HE WHO WANTS TO GET BUSY WITH COMMERCIAL LAW HAD BEST SERVE AS DISCIPLE OF SIMEON B. NANNOS."

1. IV:1: Even though R. Ishmael praised Ben Nannos, the law is in accord with Ishmael's position.

2. IV:2: The question was raised: in the case of strangling (He who seizes someone by the throat who owes him money in the market, and his fellow came upon him and said to him, 'Let him go'), what is the law in the view of R. Ishmael?

3. IV:3: Said R. Judah said Samuel, "A guarantor, even in the situation of strangling, who was forced to enter into a legal obligation, takes responsibility for paying the debt."

Points of Structure

1. DOES BABYLONIAN TALMUD-TRACTATE FOLLOW A COHERENT OUTLINE GOVERNED BY A CONSISTENT RULES?

Mishnah-tractate Baba Batra's Talmud is enormous, and that fact makes all the more impressive the uniformity that governs throughout. While enriched with sizable composites not addressed to Mishnah-exegesis, the tractate in the aggregate is organized around a systematic commentary to the Mishnah. That is why the Talmud-tractate follows a coherent outline; at remarkably few points were we unable to account for the position and purpose of a complete composition, one with a beginning, middle, and end. I can identify few, if any, such compositions that do not relate to the composite of which they form a part, and I can point to not a single composites without a clear purpose in the tractate's large-scale constructions. The outline I was able to construct followed a simple order: topic sentence, ordinarily a sentence of the Mishnah-tractate, at some points a subject or proposition not supplied by it; analytical discussion of the topic-sentence; propositions generated by the topic-sentences. Where the compilers wish to provide both analysis and illustrative cases, the order is, first, analysis, then illustration.

2. WHAT ARE THE SALIENT TRAITS OF ITS STRUCTURE?

The outline of the Talmud-tractate follows the outline of the Mishnah-tractate, but parts company from the Mishnah-tractate in two ways. First, important statements of the Mishnah-tractate are not analyzed at all. These prove few, perhaps proportionately less consequential than in other tractates, though I have not systematically assessed that matter. Second, important propositions not set forth in the Mishnah-tractate are examined, and significant topical composites are inserted without regard to the Mishnah-tractate's program but in addition to it. The rules that the outline reveals present no surprises. In examining any sentence of the Mishnah or of a comparable Tannaite document, [1] the compilers first discuss the formulation, authorities, or scriptural foundations for the Mishnah's or other Tannaite document's statement. Then [2] secondary augmentation will begin, whether through an extension of the rule to other cases, or an investigation of the implicit principle of the rule and its intersection with other types of cases altogether. Following comes [3] the consideration of Tannaite formulations of rules that pertain in theme or problem or principle, and these will be subjected to the same sequence and type of analytical questions that have already been brought to bear upon the Mishnah.

3. WHAT IS THE RATIONALITY OF THE STRUCTURE?

We proceed from the particular — the Mishnah's rule — to the general. We first deal with the details of the particular, then we move outward to theoretical considerations. We deal with rules accorded Tannaite origin or sponsorship, first found in the Mishnah, then found in the Tosefta (not so firm a rule), and finally given a signal of Tannaite but not found in a compilation of Tannaite statements now in our hands (e. g., Tenno rabbanon, Tanné and the like). That we deal with a clearcut and consistent principle of compilation derive proof from a variety of striking facts. The first is, no composition or composition devoted to other-than-Mishnah-exegesis stands at the head of a large-scale composite

devoted to a Mishnah-paragraph. The second is still more remarkable. All extraneous compositions and composites that the compilers have introduced take positions that are subordinated to the labor of Mishnah-exegesis, and, one way or another, link to passages that serve for the clarification or amplification of the Mishnah. As we shall see, we take up a considerable corpus of writings that were formulated for a purpose other than Mishnah-exegesis, but none of these is parachuted down, lacking all relationship to materials fore or aft, ordinarily the former. Third, the systematic order of types of compositions and composites does not vary and always takes as its task the coherent amplification of the Mishnah and its law.

4. WHERE ARE THE POINTS OF IRRATIONALITY IN THE STRUCTURE ?

These are the compositions and composites that do not take up the task of Mishnah-commentary: III.C, IV.D, IV.F, V.C, V.D, V.G, V.H, V.I, V.J, V, IV.G, VIII.B, XV.B, XX.B, XXV.B, XXX.E, XXXI.C, XL.E, XL.F, XL.G, XL.H, XL.I, XL.J, XL.K, L.C, L.E, L.F, L.G, L.H, L.I, LII.C, LIV.E, LXII.B, LXIV.B, LXIV.H, LXV.C, LXVI.C, LXVI.D, LXVII.C, LXVII.D, LXVIII.B, LXVIII.C, LXVIII.D, LXXIII.D, LXXVII.C, LXXVIII.D, LXXX.C, LXXXII.B, LXXXII.E, LXXXII.F, LXXXVIII.C.

Points of System

1. DOES THE BABYLONIAN TALMUD-TRACTATE SERVE ONLY AS A REPRESENTATION OF THE MISHNAH-TRACTATE OF THE SAME NAME?

The answer is a qualified negative. Most of the tractate is devoted to the twin-tasks of Mishnah-exegesis and the amplification of principles of law implicit in the Mishnah's cases or rules. But some Mishnah-statements are bypassed. And, as indicated just now, we do have a variety of free-standing compositions and even composites that have not been formulated in response to the work of Mishnah-commentary, on the one side, or exposition of law, on the other. To these we now turn.

2. HOW DO THE TOPICAL COMPOSITES FIT INTO THE TALMUD-TRACTATE AND WHAT DO THEY CONTRIBUTE THAT THE MISHNAH-TRACTATE OF THE SAME NAME WOULD LACK WITHOUT THEM?

In the following I indent the entries that carry forward in large-scale composites the theme or problem or proposition of the Mishnah, and I focus upon those composites that treat topics not relevant to the Mishnah; further, I underline items that fall into neither category.

I.D: The sizable composite about dismantling synagogue buildings, shading over into the distinct composite on the Temple of Herod. The discussion of dismantling synagogue buildings is fully articulated; it has no relationship I can discern to the context defined by the Mishnah.

I.E: The Temple that Herod Built.

III.C: The introduction at the Mishnah, III.B, of the consideration of assumptions as to facts where we cannot prove the facts leads to a secondary exercise on the presumptive rights signified by established usage. The composite, while autonomous, is situated in a relevant context.

IV.D: Once we deal with forcing neighbors to contribute to the common defense, the special rules that pertain to sages are worked out; sages represent an exception to the Mishnah's rule.

IV.F: Philanthropic obligations that apply to residents of a town, shading over into a discussion of how the funds are collected and distributed, remains well within the established framework of the exposition of common obligations of citizens of a community. This is a massive composite with its own interests, but viewed whole, it remains within the classification of a secondary topical supplement to an exposition of the Mishnah. Its insertion here is not jarring, though its dimensions and full articulation certainly are not to have been predicted on the basis of comparable insertions.

V.C: The composite on prophecy and sagacity is inserted whole because of the casual reference at V.B.II.3 to the status of a statement of a prophet as having no legal standing. Then the exposition takes up the subject in its own terms; but the six items are scarcely more than a long footnote.

V.D: Special problems here do not vastly change the face of the Mishnah-exposition.

V.G: Dividing up Sacred Scriptures, V.F, to which the Mishnah makes reference, draws in its wake an enormous exposition about the rules of joining, and dividing, Sacred Scriptures. This carries us forward to the correct order of the books of Scripture, and that continues with

V.H: who wrote various books of Scripture.

V.I: The composite on Job. is added because V.I invites further discussion of that subject. So the first three items of this composite pursue the systematic exposition of the theme, and the penultimate one is an add-on,

V.J: as is the final item, the theme of Abraham, often compared to Job. and treated as Job's counterpart. This continues the foregoing, these latter two items being footnotes to the foundation-set.

VI.G: This is inserted because it intersects with the interests of the Mishnah to the exposition of this it is attached.

VIII.B: The discussion of the rights and rules of shop-keeping invites the secondary exposition of rules governing limitation on competition. The connection is at the opening item, which is in detail an appropriate amplification of the Mishnah's principle, but the exposition of which shades over into the larger issue treated here.

XV.B: The basic theme here is the four winds and what each brings, and that surely forms a valid amplification of the Mishnah's interest in keeping noxious odors out of town. The ubiquity of God's presence certainly is not a topic introduced by an explanation of how we must keep carrion, graves, and tanneries away from a town. We can readily see how the gloss of the opening item, which does amplify the Mishnah's rule, yields a secondary point on the meaning of "constant," and once we are told that only God's Presence is "constant," the rest follows.

XX.B: This is a massive compilation of cases that illustrate the general principles of the Mishnah on settling conflicting claims.

XXV.B: The set on Benaah is introduced because it glosses a detail of the prior composite; but it is free-standing. It makes a variety of points, and the whole holds together only around the named authority.

XXX.E: This important compilation is tacked on because it makes the point that, in mourning for the Temple, one does not fully stucco his house but leaves a bare spot, which intersects with a detail of the foregoing. But the composite stands on its own and in no way serves to amplify a detail let alone a principle pertinent to the Mishnah.

XXXI.C: The meaning of the language used in selling real estate carries forward the Mishnah's interest in interpreting the language that describes commercial transactions of sale.

XL.E: The composite of sailors' and other travellers' tales begins with those of Rabbah bar bar Hannah, moving on to

- XL.F: other travellers' tales, yielding an interest in
- XL.G: sea monsters in general, and Leviathan in particular,
- XL.H: bearing a brief insertion on the character and sources of the waters of the sea,
- XL.I: then reverting to the theme of Leviathan again.
- XL.J: Since Leviathan serves as the meal for the Messianic banquet, the theme of the coming of the Messianic age once more intrudes.
- XL.K: This item reverts to the Mishnah's topic and problematic.
- L.C: Interest in just weights and measures shades over into an exposition of the penalty for falsifying weights and measures.
- L.E: The same theme as above is worked out here.
- L.F: The same theme as above is worked out here.
- L.G: From one form of unjust market practices, we move on to the next, which is, price manipulation and hoarding.
- L.H: Once the theme of market crises enters, we turn to the correct response to shortages, which is not migration from the Land of Israel. That introduces the case of Ruth's family, which migrated because of famine.
- L.I: From famine we move on to plenty.
- LII.C: The theme of the Mishnah invites a free-standing complement of important information.
- LIV.E: As above, this item simply provides information invited by the Mishnah's own topic.
- LXII.B: The problem of the Mishnah's rule is here extended by introducing some further details.
- LXIV.B: As above.
- LXIV.H: As above.
- LXV.C: The theme of the Mishnah, how others inherit the estate of someone who does not have sons, explains the introduction of the composite on dying without sons and what it means. It is a sign of divine wrath.
- LXVI.C: The fact that on the fifteenth of Ab, the tribes were permitted to intermarry, which forms the background for the problem of the Mishnah's case, accounts for this and the next entry.
- LXVI.D: As above.
- LXVII.C: The general theme of the Mishnah, the disposition of the birthright, the division of an estate among the sons, is amplified by the case of Jacob and his sons.
- LXVII.D: As above: the special claim of the firstborn of a priest and other special cases of inheritance.
- LXVIII.B: A secondary problem, how we deal with special problems of inheritance, explains the intrusion of this small st.

LXVIII.C: Here is another special problem on inheritance, namely, the father's right to deprive the firstborn of his special portion.

LXVIII.D: This is a formal intrusion, based on a shared formula, and I see no substantive reason for inserting the entire composite except the one that accounts for its intersection with the immediately preceding item — a substantive intersection, bearing in its wake a formal intrusion.

LXXIII.D: This composite does not amplify the particular law of the Mishnah but it does pursue its main theme and interests.

LXXVII.C: The Mishnah's own interests invites the addition of this autonomous composite.

LXXVII.D: As above.

LXXX.C: This brief appendix does not greatly affect the context in which it is introduced; it is nothing more than a secondary exposition of a tangential theme.

LXXXII.B: The Mishnah's own interests invites the addition of this autonomous composite.

LXXXII.E: Once we deal with gifts of real estate and movables, we turn to the question of the status of a slave: how is he classified?

LXXXII.F: The matter of gifts shades over into a discussion of the form of gifts, with special attention to gifts that are made in writing.

LXXXVIII.C: The Mishnah's principle is illustrated by a distinct case.

3. CAN WE STATE WHAT THE COMPILERS OF THIS DOCUMENT PROPOSE TO ACCOMPLISH IN PRODUCING THIS COMPLETE, ORGANIZED PIECE OF WRITING?

When we examine the program of our Mishnah-tractate and compare it with the topics of the composites that the compilers introduced on their own, not in response to the task of Mishnah-exegesis, we can readily reconstruct their reading of the Mishnah. Eliminating the numerous free-standing composites that serve to amplify the Mishnah's own propositions or introduce principles to reshape the Mishnah's topics, what topics do we find our Talmud's framers have added on their own? The single most obvious insertion is their attention to the special rights and status of the sages themselves. But that is only the starting pint. Beyond lie the items on the familiar list of historical-Messianic and transcendent themes: the Temple of Herod; prophecy in the present age; the dimensions of the various books of Scripture and their correct order and their authors; Job and Abraham; mourning for the Temple; travellers' tales, shading over into a large-scale composite on Leviathan and on the Messianic age; remaining in the Holy Land at all costs and famine and plenty.

Now with this simple and compelling result in hand, we have little difficulty in answering the question, what did the compilers of the Talmud find lacking in the Mishnah's repertoire of cases and principles? What they missed in the Mishnah was attention to precisely those issues that the Mishnah-tractate ignored, which is, the historical-Messianic context in which the everyday conflicts over inheritances and estates, property and land, and the conduct of the civil order took place. It is as though the compilers of the Talmud wished to remind those engaged in the secular and everyday matters on which this tractate centers that in the end God will resolve the mundane issues taken up here. History

intrudes on the eternal present of home and family, inheritance and estates, the continuities of the private life. A public world intervenes, one for which the Temple on the one side, and Scripture on the other, form the media and provide the motive. So what makes our Mishnah-tractate insufficient — its very success in disposing of the everyday problems of property and conflict over property, cheating customers and overreaching in prices for example — forms the program of the compilers of the Talmud when they work on their own.

Their expansion of the Talmud's boundaries far beyond the limits of Mishnah-exegesis now proves purposive and turns out to make its own comment on the Mishnah, once that the Mishnah's exegetes in no way can have conceived. Specifically, the inclusion of a range of topics omitted by the Mishnah, the sometimes quite jarring introduction of themes entirely out of phase with what is being discussed — from stuccoing a house to leaving off stucco in memorial to the destruction of the Temple, for example! — leave no doubt in our minds concerning the compilers' perception of the Mishnah-tractate. And how they wished us to conceive the Mishnah-tractate's topics and concerns, the dimensions in which they wished to recast these matters, the perspective they proposed to introduce — these form the particular statement of the Talmud's compilers. What counts, what really counts in the perspective of eternity, is precisely what is omitted by the Mishnah's program, and, furthermore, demands its proper place in any consideration of what the Mishnah's framers have set forth as their principal message for the civil order.