

X

BAVLI BABA MESIA CHAPTER TEN

FOLIOS 116B-119A

10:1

- A. [116B] A house and an upper story belonging to two people that fell down —
- B. the two of them divide the wood, stone, and mortar.
- C. And they take account of which stones are more likely to have been broken [and assign them to the likely owner of them].
- D. If one of them recognized some of the stones belonging to him,
- E. he takes them,
- F. but they count as part of his share in the reckoning.

- I.1** A. *Since the language is used, And they take account of which stones are more likely to have been broken [and assign them to the likely owner of them], it follows that it is possible to find out whether the house fell through pressure or through shock. But if that is the case, then, as to the opening clause, why rule, the two of them divide the wood, stone, and mortar? Rather, let us see: if it fell through a shock, then what is the remnant of the upper story was broken; if it was through pressure, then what is part of the lower portion was damaged. [Freedman: if the lower part of the house received a shock like that of a battering ram, it may be assumed that the broken stones are of that portion. If the shock was evenly distributed, as in a wind, then the broken stones are of the upper story, since they had a greater distance to fall].*
- B. *The rule is necessary to cover a case of the house's falling by night.*
 - C. *But then in the morning let us examine the ruins [Freedman: if it fell through pressure, it will be on its site, whereas if a shock overthrew it, the materials will be strewn at a distance].*
 - D. *We deal with a case in which the site had already been cleared.*
 - E. *Then let us find out who cleared it away and interrogate them.*
 - F. *We deal with a case in which public workers had cleared it away and then gone on.*

- G. *Then let us find out in which party's domain the stones are located, and the other party will be subject to the rule, He who lays claim bears the burden of proof?*
- H. *The rule is necessary to cover a case in which the ruins are located in a courtyard subject to joint ownership or in the public way [which neither owns].*
- I. *And if you prefer, I shall rule: partners in such cases are not so meticulous with one another.* [Freedman: since the house belongs to both, even if they have separate courtyards, neither objects to the other's making use of his. Possession in such a case does not prove ownership.]

II.1 A. If one of them recognized some of the stones belonging to him, he takes them, but they count as part of his share in the reckoning:

- B. *What does that party claim? If he agrees, then the rule is self-evident. If the other party does not concur, then why should this one have the right to take them?*
- C. *Rather, we deal with a case in which the other party said, "I really don't know."*
- D. *May we then say that this ruling refutes the position of R. Nahman? For it has been stated:*
- E. *If someone says to another, "You have a maneh of mine in your possession," and the other says, "I don't know" —*
- F. *R. Huna and R. Judah say, "He is liable."*
- G. *R. Nahman and R. Yohanan say, "He is exempt from liability."*
- H. *The answer to this supposition accords with what R. Nahman said elsewhere, where there was a dispute between them involving the taking of an oath. Here too what is at issue is a dispute between them involving the taking of an oath.* [Freedman: the plea was such that he should have taken an oath, and being unable to do so, since he has said, "I do not know," he must pay instead. But in the case at hand, when A claims money and B says, "I don't know," there is no liability to an oath, so B is free of all liability."]
 - I. *What would be an example of a dispute between them involving the taking of an oath?*
 - J. *It is in accord with what Raba said, for Raba said, "If someone says to another, 'You have a maneh of mine in your possession,' and the other says, 'All you have in my possession are fifty zuz [which I owe you], but as to the rest, I don't know' — since he cannot take an oath, he must pay the whole sum that is claimed."*

III.1 A. ...but they count as part of his share in the reckoning:

- B. *Raba considered ruling that this refers to his share of the broken materials, from which it follows that, since he has said, "I don't know," his position is weakened substantially.*
- C. *Said to him Abbaye, "To the contrary, the position of the other is weakened substantially, for since he knows only that these belong to him but has no information on the other, he should be entitled to no more than these, and the other party should get the rest."*
- D. *But, said Abbaye, "...but they count as part of his share in the reckoning refers to his share of the stones that are unbroken."*
- E. *If so, what good has he gotten from his claim of knowing what is his?*

- F. *It has to do with the very wide bricks or the well-kneaded clay* [Freedman: the whole materials that he recognizes as his own may be superior to other unbroken materials].

The issue of I.1 derives from a close reading of the Mishnah, and at issue is the clarification of the case to which the Mishnah's rule can refer. II.1 does the same and then proceeds to the implications of our Mishnah's reading of a claim, "I don't know," for another case in which the same claim occurs; what we have then is a broadening of the scope of the rule to the principle behind it. III.1 clarifies the Mishnah once more. So the whole forms a treatise on the clarification and the amplification of the Mishnah's statements.

10:2

- A. **A house and an upper story belonging to two people —**
B. **[if the floor of] the upper room was broken,**
C. **and the householder does not want to repair it,**
D. **lo, the owner of the upper story goes down and lives downstairs,**
E. **until [the other] will repair the upper story for him.**
F. **R. Yosé says, "The one who lives below supplies the beams, and the one who lives above supplies the plaster."**

I.1 A. [if the floor of] the upper room was broken — to what extent?

- B. Rab said, "Over the greater part thereof."
C. Samuel said, "For four handbreadths."
D. Rab said, "Over the greater part thereof — but not only four handbreadths, since one can live partly downstairs and partly upstairs [but when only four handbreadths are broken through, what he has lost is the space only for a single utensil, so he can claim in the lower part of the house only that much space]."
E. Samuel said, "For four handbreadths — since one cannot live partly downstairs and partly upstairs."
F. *What is at issue here? If the landlord has originally said to him, "I rent you this upstairs," lo, it is gone. And if he simply had said, "I rent you an upstairs," then let him rent another.*
G. *Said Raba, The ruling is necessary to cover a case in which he had said to him, 'This upstairs, which I rent to you, so long as it is standing, go up there; but when it comes down, you may also come down to live on the ground floor.'*
H. *If so, then why bother to say so!*
I. *Rather, said R. Ashi, "We deal with a case in which he had said to him, 'This upstairs, which is on top of this room, I am renting to you.' Thus he had made a commitment for a room for the upstairs."*
J. *This accords with what Rabin bar R. Ada said R. Isaac [said], "There was a case in which someone had said to another, 'I am selling you the hanging vine that is over this*

peach tree,' and the peach tree later on was uprooted [so the vine lost its trellis]. When the case came before R. Hiyya, he said to him, 'You are bound to put up a peach tree for him so long as the vine still is alive.'"

- I.2** A. *R. Abba bar Mamel raised the question, [117A] "When the tenant takes up residence downstairs, does he live there by himself, as had formerly been the case, or do both of them dwell there, since the landlord can plead, 'I did not rent it to you so that you should then evict me'?"*
- B. *"If you rule, both of them may live together there, then does the tenant, when he uses the downstairs, enter it by way of the doors downstairs, or only through the roof? Do we rule, the arrangement must be as it was to begin with; just as then he came in by way of the roof, so now he comes in by way of the roof? Or perhaps the tenant can plead, 'I agreed to ascend, but not to go up and then go down.'*
- C. *"If you rule that he can say to him, 'I did not agree to go up and then go down,' what of the two stories, one on top of the other? If the upper one was broken through, he can certainly go downstairs and live in the lower one. But if the lower one was broken through, can he go upstairs and live in the upper room? Do we say that the landlord can plead, 'You agreed to whatever is called "ascending," [whether a greater or a lesser height]? Or perhaps he agreed to one ascent but not two?"*
- D. *These questions stand.*

II.1 A. **R. Yosé says, "The one who lives below supplies the beams, and the one who lives above supplies the roofing:"**

- B. *To what does **roofing** refer?*
- C. *R. Yosé bar Hanina said, "Reeds, thorns, and clay."*
- D. *Said R. Simeon b. Laqish, "Boards."*
- E. *But there is no conflict between these two explanations. One master refers to the practice of his locale, and the other to his.*

II.2 A. *[In the same condominium] these two people lived, one on top, the other below. The plaster [of the ceiling between the two floors] broke, so when the one on top washed with water, it dripped down and caused damage to the one downstairs. Who has to make the repairs?*

- B. *R. Hiyya bar Abba said, "The one on top has to make the repairs."*
- C. *R. Ilai in the name of R. Hiyya bar Yosé said, "The one on the bottom makes the repairs."*
- D. *The mnemonic that serves the foregoing is the verse, "And Joseph was brought down to Egypt" (Gen. 39: 1) [Joseph/Yosé is the one who requires the one on the bottom to make the repairs.]*
- E. *May we then say that R. Hiyya bar Abba and R. Ilai engage in the same dispute as R. Yosé and Rabbis? The one who has said that the one on top has to make the repairs maintains that it is incumbent on the one who causes the damage to desist causing damage, and the one who says that the*

one on the bottom makes the repairs takes the view that the one who is injured has to stop being the victim.

- F. *But do you take the view that at issue between R. Yosé and rabbis is the matter of damages? Lo, we have heard that they hold the opposite opinion. For we have learned in the Mishnah: **They keep a tree twenty-five cubits from a town, and in the case of a carob or sycamore, fifty cubits, whether above or on the side. If the pit was there first, he must cut down the tree, but the pit owner must compensate him. If the tree was there first, he need not cut it down. If it is doubtful which came first, he need not cut it down. R. Yosé says, “Even if the pit was there prior to the tree, he need not cut it down, for the one digs in his own, property, and the other plants in his own ground”** [cf. M. **B.B. 2:7A-G, T. B.B. 1:12A-E**]. Therefore it follows that R. Yosé takes the view that the one who is injured has to stop being the victim, and rabbis maintain that it is incumbent on the one who causes the damage to desist causing damage.*
- G. *So it it can be maintained that [Hiyya and Ilai] have a dispute in reference to principles at issue between R. Yosé and rabbis, it concerns that which is at issue there. In that case, concerning the Mishnah-paragraph before us, in what regard is there a dispute between R. Yosé and rabbis?*
- H. *They differ concerning the strengthening of the roofing. Rabbis maintain that the plaster will strengthen the ceiling and the one down below has to provide it, and R. Yosé takes the view that the plaster levels the depressions [between the wood beams, to make it possible to walk on the beams] and the one up above has to provide it.*
- I. *Is that the case? And lo, has not R. Ashi said, “When I was at the household of R. Kahana, we said, ‘R. Yosé concedes in the case of his arrows [e.g., when one washes his hands and water drips down, the injury proceeds directly from above, as when a man shoots arrows, so Yosé concedes that the one who causes the injury must stop it . So how can Hiyya require the one down below to repair the ceiling at all? (Freedman)].”*
- J. *The sense is that the water stopped and only later on dripped down [Freedman: the place for washing was not directly over the broken portion but dripped down only later on. That is not direct and immediate injury.]*
 I.1 glosses the Mishnah-paragraph. No. 2 then penetrates into the deeper issue: what kind of case can produce this ruling. Then, No. 3, we have a set of theoretical questions, all of them pointing to ambiguities in the matter, none of them resolved. II.1 proceeds to the same sequence, first, an explanation of the language of the Mishnah, then an interesting theoretical question on the extent of responsibility for damages that is assigned to the injured party.

- A. A house and an upper story belonging to two people which fell down —
- B. [if] the resident of the upper story told the householder [of the lower story] to rebuild,
- C. but he does not want to rebuild,
- D. lo, the resident of the upper story rebuilds the lower story and lives there,
- E. until the other party compensates him for what he has spent.
- F. R. Judah says, “Also: [if so,] this one is [then] living in his fellow’s [housing]. [So in the end] he will have to pay him rent.
- G. “But the resident of the upper story builds both the house and the upper room,
- H. “and he puts a roof on the upper story,
- I. “and he lives in the lower story,
- J. “until the other party compensates him for what he has spent.”

- I.1** A. [117B] Said R. Yohanan, “In three passages R. Judah has repeated for us the rule that it is forbidden for someone to derive benefit from somebody’s else’s property. *The first statement of that position of his is in the Mishnah passage at hand. The next is in that which we have learned in the Mishnah: He who gave wool to a dyer to dye it red, and he dyed it black, or to dye it black, and he dyed it red — R. Meir says, “The dyer pays him back the value of his wool.” And R. Judah says, “If the increase in value is greater than the outlay for the process of dyeing, the owner pays him back for the outlay for the process of dying. And if the outlay for the process of dyeing is greater than the increase in the value of the wool, the dyer pays him only the increase in the value of the wool” [M. B.Q. 9:4G-K]. And what is the third? It is as we have learned in the Mishnah: He who paid part of a debt that he owed and deposited the bond on the remaining sum 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” [M. B.B. 10:5A-E].”*
- B. *Why [does it follow that Judah holds that it is forbidden for someone to derive benefit from somebody’s else’s property]? Perhaps when R. Judah takes the position that he does here, it is only because there is blackening of the walls [Freedman: the new house loses its newness because the tenant is living there, so the house owner is sustaining a loss, and that is why the tenant has to pay rent]; as to the case of the dyer who was supposed to dye the wool red but dyed it black, the reason is that he has violated his instructions, and we have learned in the Mishnah: Whoever changes [the original terms of the agreement] — his hand is on the bottom [M. B.M. 6:2E-F]. And as to the third case, the one who has paid part of his debt, here we deal with a come-on, and we infer from this case that R. Judah takes the position that in the case of a come-on, there is no transfer of title.*

I.2. A. *Said R. Aha bar Adda in the name of Ulla*, “If the owner of the lower story [of the condominium] wants to change the building materials in the house, from hewn to unhewn stones, he is permitted to do so; if he wants to change from unhewn to hewn stones, he is forbidden [literally: they listen to him, they do not listen to him, and so throughout]; if he wants to change from whole bricks to half bricks, he is permitted, from half to whole, he is forbidden; if he wants to make a ceiling of cedar, he is permitted, of sycamore, he is forbidden; if he wants to cut down on the number of windows, he is permitted, to increase them, he is forbidden; if he wants to elevate the story, he is forbidden, to cut it down in height, he is permitted. [Freedman: if he wishes to make an alteration that strengthens the lower story and adds to its weight, so that it can better bear the burden of the upper story, he is permitted. But he may not weaken it.]

B. “If the owner of the upper story wants to change from unhewn to hewn stones, he is permitted, from hewn to unhewn, he is forbidden; to half-bricks, he is forbidden, to whole bricks, he is permitted; if he wants to make a ceiling with cedars, he is forbidden, with sycamores, he is permitted; if he wants to increase the number of windows, he is permitted; to diminish them, he is not permitted; to elevate the upper story, he is not permitted, to cut it down, he is permitted. [He may weaken the upper portion, lessening the burden on the lower, but may not strengthen it and so increase the weight on the lower portion.]”

I.3. A. *What if neither party [can afford to rebuild]?*

B. *It has been taught on Tannaite authority:*

C. If this party has not got funds to rebuild, and that party does not have funds to rebuild, the owner of the upper story has no claim on the land.

D. *It has been taught on Tannaite authority:*

E. R. Nathan says, “The owner of the lower story takes two thirds of the land, and the owner of the upper story, one third.”

F. But others say, “The owner of the lower story takes three parts, and of the upper, one part.”

G. *Said Rabbah*, “Seize firmly to R. Nathan’s ruling, for he is a master of civil law and has penetrated into the depths of the law. By how much does the upper story impair the value of the house overall? By a third [since the duration of the lower portion is lessened by one third on account of the weight of the upper; the owner of the upper story has a right to a third of the ground (Freedman)]. Therefore he gets a third of the land.”

I.1 can have served the other two passages as well, or as poorly, as it treats the one before us; it was composed for a study of Judah’s principles, not of the Mishnah-passage. No. 2 makes an important point, clarifying the Mishnah-paragraph’s law by extending the principle contained therein. No. 3 does the same, since it raises a secondary question that deserves attention. So Nos. 2, 3 deal with our Mishnah in the context of its law, while No. 1 addresses our Mishnah in the setting of its authority. The whole then is shaped as Mishnah-exegesis of one sort or another.

10:4

- A. And so too: An olive press which is built into a rock,
- B. and a garden is on top of it [on its roof, above],
- C. and [the roof] was broken —
- D. lo, the owner of the garden [has the right to] go down and sow the area below,
- E. until the other party will rebuild vaulting for his olive press.
- F. The wall or the tree which fell down into public domain and inflicted injury —
- G. [the owner] is exempt from having to pay compensation.
- H. [If] they gave him time to cut down the tree or to tear down the wall,
- I. and they fell down during that interval,
- J. [the owner] is exempt.
- K. [If they fell down] after that time, [the owner] is liable.

10:5A-N

- A. He whose wall was near the garden of his fellow, and it was damaged [and fell down] —
- B. and [the owner of the garden] said to him, “Clear out your stones”
- C. but the other said to him, [118A] “They’re yours!” —
- D. they pay no attention to [the latter].
- E. [But if] after the other party had accepted [the ownership of the stones] upon himself,
- F. [the original owner of the wall] said to him, “Here’s what you laid out! Now I’ll take mine!” —
- G. they do not pay attention to [the former].
- H. He who hires a worker to work with him in chopped straw and stubble,
- I. and [the worker] said to him, “Pay me my wage,”
- J. and [the employer] said to him, “Take what you’ve made for your wage!” —
- K. they do not pay attention to [the employer].
- L. But [if,] after [the worker] had accepted [the proposition),
- M. [the employer] said to him, “Here’s your salary, and now I’ll take mine!” —
- N. they do not pay attention to [the employer].

I.1 A. [if the floor of] the upper room was broken — [to what extent]?

- B. Rab said, “Over the greater part thereof.”
- C. Samuel said, “For four handbreadths.”
 - D. Rab said, “Over the greater part thereof — but not only four handbreadths, since one can sow partly above, partly below.”
 - E. Samuel said, “For four handbreadths — one cannot sow partly above, partly below.”

- F. *Both [the dispute above, at 116B and the present dispute] are necessary, for had we derived the rule only in regard to a dwelling house, we might have concluded that it is in particular with reference to a dwelling house that Samuel has taken his position, since people do not ordinarily live partly here, partly there, but in respect to sowing, it is quite common for someone to sow a bit here and sow a bit there. So I might have supposed that in the present case, he concurs with the position of Rab. And if the rule had been stated in connection with only the present case, I might have supposed that it is in particular in the present case that Rab takes the position that he does, but in the other, I might have said that he concurs with Samuel. So it was necessary to specify his position in both cases as well.*

II.1 A. [If] they gave him time to cut down the tree or to tear down the wall, and they fell down during that interval, [the owner] is exempt. [If they fell down] after that time, [the owner] is liable:

B. How much time is allowed by the court?

C. Said R. Yohanan, “Thirty days” [T. **B.M. 11:7G-H**].

III.1 A. He whose wall was near the garden of his fellow, and it was damaged [and fell down] — and [the owner of the garden] said to him, “Clear out your stones” but the other said to him, “They’re yours!” — they pay no attention to [the latter]. [But if] after the other party had accepted [the ownership of the stones] upon himself, [the original owner of the wall] said to him, “Here’s what you laid out! Now I’ll take mine!” — they do not pay attention to [the former].

B. *Since the final clauses states, “Here’s what you laid out!” it stands to reason that it is the owner of the garden who has removed the rubble. Then the operative consideration is that he has cleared away the rubble. It must follow that if he had not cleared away the rubble, the rule would not be the same and the rubble would not belong to the garden owner]. But why should this be the rule? Let his field effect ownership in his behalf! For R. Yosé b. R. Hanina said, “A person’s courtyard effects ownership in his behalf, even without his knowledge and consent.”*

C. *That rule applies only in a case in which the original owner wishes to accord rights of possession to him, but here his intent is only to evade him. [Freedman: he does not really want the garden owner to have the bricks but seeks to evade his responsibilities by telling him to clear them away and keep them for himself, thinking that he will claim them later on. Therefore unless the other actually takes advantage of the offer, the bricks remain his.]*

IV.1 A. He who hires a worker to work with him in chopped straw and stubble, and [the worker] said to him, “Pay me my wage,” and [the employer] said to him, “Take what you’ve made for your wage!” — they do not pay attention to [the employer]. But [if,] after [the worker] had accepted [the proposition], [the employer] said to him, “Here’s your salary, and now I’ll take mine!” — they do not pay attention to [the employer]:

- B. *It was necessary to teach both cases [that the Mishnah-paragraph treats here,] for had we been given only the first case, but the other said to him, “They’re yours!” — they pay no attention to [the latter], the operative consideration is that the owner of the garden has no claim of a wage upon him; here however the worker has a claim of a wage, and I might maintain that the employer is obeyed, since people say, “From your debtor take even bran in payment of the debt.” Had we been told only the present rule, in the present case, But [if,] after [the worker] had accepted [the proposition],[the employer] said to him, “Here’s your salary, and now I’ll take mine!” — they do not pay attention to [the employer], the operative consideration is that the worker has the claim of a wage on him, but in the former instance, where there is no claim of a wage on the other, I might have supposed that the other is obeyed. So it was necessary to specify both cases.*

V.1 A. [When the employer offers the worker the rubble in payment of his wage], they do not pay attention to [the employer]:

- B. *But has it not been taught on Tannaite authority: “they do pay attention to him”?*
- C. *Said R. Nahman, “There is no contradiction between the two passages. Here [in the Mishnah’s rule] we make reference to his own work, there, to his neighbor’s [and if the laborer was working for a third party, he can be forced to accept the materials in lieu of wages (Freedman)].”*
- D. *Said Rabbah to R. Nahman, “What is the reason that if he is working on the employer’s own property, the employer is not heeded? Because the worker can say to him, ‘You are responsible for my wages.’ Then when he is employed by the neighbor, he can also say to him, ‘You are responsible for my wages. For it has been taught on Tannaite authority: He who hires a worker to work for him but then directs him to work on his neighbor’s property must pay the worker in full and then collect in turn from the owner of the property where the work was done to the value of the benefit that the other party has received.”*
- E. *Rather, said R. Nahman, “There is no contradiction between the two passages. Here [in the Mishnah’s rule] we make reference to his own work, there, to work on property that is ownerless.” [Freedman: Nahman maintains that if in behalf of his neighbor a person raises up an object that is ownerless, he acquires ownership of the object for himself. When for an employer a worker collects sheaves that are ownerless, he takes possession of them for himself and therefore the offer must be accepted.]*
- F. *Raba objected to R. Nahman, “What a worker finds belongs to himself. Under what circumstances? When the householder had said to him, ‘Weed for me today,’ ‘hoe for me today.’ But if he had said to him, ‘Work for me today,’ what the worker finds belongs to the householder.”*
- G. *Rather, said R. Nahman, “There is no contradiction between the two passages. Here [in the Mishnah’s rule] we make reference to his raising up what is ownerless, there, to a case of merely watching what is ownerless.” [If the worker was tying sheaves, having to lift them up, the employer acquires title to them, and he has to pay the worker. But if his work was only to keep watch, merely watching does not effect possession, and the employer can force him to accept the sheaves as his wages (Freedman).]*

- V.2. A.** *Said Rabbah, “Whether merely watching over that which is ownerless effects ownership represents a dispute among Tannaite authorities. For we have learned: **Those who guard the aftergrowth of the Sabbatical year are paid out of Temple funds.** [Freedman: A sheaf of the earliest barley crop was brought as a heave offering in the Temple, so too, two loaves made of the first wheat that ripens. They had to belong to the public and could not be property of any individual. People were hired and paid out of public funds to watch over a field of grain to see which sheaves ripened earliest. There was no sowing in the seventh year, so there could be only crops grown from seed that had fallen the previous year. This crop was ownerless, as is all seventh year produce, and the Tannaim now dispute whether the watchman had to accept payment of not.] **R. Yosé says, ‘He who wants has the right to volunteer and to serve as an uncompensated guardian.’ They said to him, ‘You say so, but then the grain does not come from what is publicly owned’ [M. Sheq. 4:6E-G]. Now is this not what is at issue: the initial authority takes the view that if one watches over a crop that is ownerless, he has acquired title to it, so if he is given a salary, it is acceptable, and if not, it is not acceptable, while R. Yosé takes the view that watching over what is ownerless does not effect title, so only when the community go and get the grain is title effected over that grain? And as to the language, ‘You say so, but then the grain does not come from what is publicly owned,’ this is its sense: ‘From what you say [that he does not have to accept a fee for his labor] and on the basis of our ruling [that watching over that which is ownerless confers title], the sheaf of first barley and the two loaves of bread do not derive from grain that belongs to the community!’”***
- B.** *Said Raba, “That is not the case. All parties concur that watching over what is ownerless does confer title. In the present case, what is at issue is whether we take account of the possibility that he will not hand over the grain wholeheartedly. Rabbis take the position that they pay him a wage, for otherwise we do take account of the possibility that he will not hand over the grain wholeheartedly. R. Yosé takes the view that we do not take account of the possibility that he will not hand over the grain wholeheartedly. And as to the statement, ‘you say...,’ this is the sense of what they said to him: From your statement and from ours, that we do take account of the possibility that he will not hand over the grain wholeheartedly, the sheaf of first barley and the two loaves of bread do not derive from grain that belongs to the community!”*
- C.** *Some say, “Said Raba, ‘All parties concur that watching over what is ownerless does not confer title. In the present case, what is at issue is whether we take account of the possibility of thugs. The first of the two authorities takes the view that rabbis ordained that the watchmen is paid four zuz, so that thugs will hear about it [namely, that the grain is being protected for use for the sanctuary] and keep away from it, while R. Yosé takes the position that rabbis made no such ordinance. [118B] And what is meant by “you say”? This is the sense of what they said to him: “From your statement and from ours, that we do take account of the possibility that he will not hand over the grain wholeheartedly, the sheaf of first barley and the two loaves of bread do not derive from grain that belongs to the community!””*

D. *And so too, when Rabin came, he said R. Yohanan [said,] “What is at issue is whether we take account of the possibility of thugs.”*

I.1 goes over a familiar item of Mishnah-exegesis. II.1 provides a trivial gloss, III.1, IV.1 more consequential ones. V.1 clarifies two conflicting versions of the rule, and that yields No. 2, a dispute on a principle that has no bearing on our cases at all.

10:50-X

- O. **He who brings out his manure to the public domain —**
P. **while one party pitches it out, the other party must be bringing it in to manure his field.**
Q **They do not soak clay in the public domain,**
R. **and they do not make bricks.**
S. **And they knead clay in the public way,**
T. **but not bricks.**
U. **He who builds in the public way —**
V **while one party brings stones, the builder must make use of them in**
W **And if one has inflicted injury, he must pay for the damages he has caused.**
X. **Rabban Simeon b. Gamaliel says, “Also: He may prepare for doing his work [on site in the public way] for thirty days [before the actual work of building].”**

I.1 A. *May we say that our Mishnah-paragraph does not accord with the view of R. Judah? For it has been taught on Tannaite authority:*

- B. **R. Judah says, “At the time of fertilizing the fields, a man may take out his manure and pile it up at the door of his house in the public way so that it will be pulverized by the feet of man and beast, for a period of thirty days. For it was on that very stipulation that Joshua caused the Israelites to inherit the land” [T. B.M. 11:8E-H].**
- C. *You may even maintain that he concurs with the Mishnah’s rule [that while one party pitches it out, the other party must be bringing it in to manure his field]. R. Judah concedes that if one has caused damage, he is liable to pay compensation.*
- D. *But has it not been taught in the Mishnah: If the storekeeper had left his lamp outside the storekeeper is liable [if the flame caused a fire]. R. Judah said, “In the case of a lamp for Hanukkah, he is exempt” [M. B. Q. 6:6E-F], because he has acted under authority. Now surely that must mean, under the authority of the court [and that shows that one is not responsible for damage caused by his property in the public domain if it was there under the authority of the court]!*
- E. *No, what it means is, on the authority of carrying out one’s religious obligations.*
- F. *But has it not been taught on Tannaite authority: in the case of all those concerning whom they have said, “They are permitted to obstruct the public way,” if there was damage done, one is liable to pay compensation. But R. Judah*

declares one exempt from having to pay compensation. *So it is better to take the view that our Mishnah-paragraph does not concur with the position of R. Judah.*

- I.2.** A. *Said Abbaye, “R. Judah, Rabban Simeon b. Gamaliel, and R. Simeon all take the position that in the case of all those concerning whom they have said, ‘They are permitted to obstruct the public way,’ if there was damage done, one is liable to pay compensation.*
- B. *“As to R. Judah, the matter is just as we have now stated it.*
- C. *“As to Rabban Simeon b. Gamaliel, we have learned in the Mishnah: **Rabban Simeon b. Gamaliel says, ‘Also: He may prepare for doing his work [on site in the public way] for thirty days [before the actual work of building].’***
- D. *“As to R. Simeon, we have learned in the Mishnah: **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 did damage, the owner is exempt from paying compensation if the stated measures have been observed’ [M. B.B. 2:2A-F].***”

I.3. A. *Our rabbis have taught on Tannaite authority:*

- B. **If the quarry-man has delivered the stones for building to a stone cutter, the stone cutter is liable. If the stone cutter had handed them over to a porter, the porter is liable. If the porter had delivered them to the bricklayer, the bricklayer is liable. If the bricklayer has handed them to the foreman, the foreman is liable. If after he had laid the stone upon the row it caused damage, all are responsible [compare T. B.M. 11:5F-K].**
- C. *But has it not been taught on Tannaite authority: “only the last is responsible and all the others are free of obligation”?*
- D. *There is no contradiction, the latter rule pertains to a case of workers who are hired [and paid by the week or day or hour, in which case each is exempt of responsibility as soon as the work leaves his hand], and the former refers to contracting [in which case each is responsible with the others when the stone is laid].*

I.1, to which No. 2 is attached, investigates the authority behind our Mishnah-passage, with the intent of seeing what further principles may come into play. No. 3 cites and clarifies a further authoritative rule, now deriving from Tosefta.

10:6

- A. **Two [terraced] gardens, one above the other —**
- B. **and vegetables between them —**
- C. **R. Meir says, “[They belong to the garden] on top.”**
- D. **R. Judah says, “[They belong to the garden] below.”**
- E. **Said R. Meir, “If the one on top wants to take away his dirt, there will not be any vegetables there.”**

- F. Said R. Judah, “If the one on the bottom wants to fill up his garden with dirt, there won’t be any vegetables there.”
- G. Said R. Meir, “Since each party can stop the other, they consider from whence the vegetables derive sustenance [which is from the dirt (E)].”
- H. Said R. Simeon, “Any [vegetables] which the one on top can reach out and pick — lo, these are his.
- I. “And the rest belong to the one down below.”

I.1 A. *Said Raba, “As to the roots, all parties concur that they are assigned to the upper garden’s owner. Where there is a dispute, it concerns the leaves. R. Meir takes the view that we assign the leaves to the roots, and R. Judah takes the view that we do not assign the leaves to the roots.”*

- B. *The two are consistent with views expressed elsewhere, for it has been taught on Tannaite authority:*
- C. “What grows from the trunk and roots is assigned to the land owner,” the words of R. Meir.
- D. And R. Judah says, “That which grows out of the trunk belongs to the tree-owner, and what grows out of the roots belongs to the land owner.”
- E. **[119A]** *But we have learned on Tannaite authority in connection with produce of a tree in the first three years after its planting:*
- F. “A tree that grows out of the trunk or the roots of a tree that has been chopped down is liable to the laws governing the produce of a tree in the first three years after it has been planted,” the words of R. Meir. R. Judah says, “A tree that grows out of the trunk is exempt, but if it grows out of the roots, it is liable” [T. **Orl. 1:4A-C**].

G. *Both versions of the opinions of the two authorities are necessary, for had we heard only the first version, we might have thought that it is in the first version only that R. Judah takes the position that he does, because at stake is merely property, but with respect to the status of produce of a tree in the first three years after its planting, which represents a prohibition [of the Torah], I might have taken the view that he concurs with the ruling of R. Meir. And if I had in hand only the ruling of R. Meir, I might have maintained that it is here in particular that he takes the position that he does, but in the other case he concurs with R. Judah. That is why both versions of the opinions of the two authorities are necessary.*

II.1 A. **Said R. Simeon, “Any [vegetables] which the one on top can reach out and pick — lo, these are his. And the rest belong to the one down below:”**

- B. Said the household of R. Yannai, “And that is on condition that he does not strain himself.”

II.2. A. *The question was raised by R. Anan, and some say, R. Jeremiah: “If one can reach the leaves but not the roots, or the roots but not the leaves, what is the law?”*

- B. *The question stands.*

II.3. A. Said R. Ephraim, the scribe, a disciple of R. Simeon b. Laqish, in the name of R. Simeon b. Laqish, “The law accords with the position of R. Simeon.”

B. They reported this before King Shapur, who said to them, “Put up a palanquin for R. Simeon.”

At I:1 we go through a familiar exercise. We compare the rulings here with those elsewhere, the bridge from the one to the other being an abstract principle of law. No. 2 provides a minor gloss, and No. 3, another.