

# VIII

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## BAVLI BABA MESIA CHAPTER EIGHT FOLIOS 94A-103A

### 8:1

- A. He who borrows a cow,
- B. and (1) borrowed [the service] of its owner with it,
- C. or (2) hired its owner with it —
- D. [or] (1) borrowed [the service] of the owner,
- E. or (2) hired him,
- F. and afterward borrowed the cow [too],
- G. and [the cow] died —
- H. [the borrower] is exempt,
- I. since it is said, “If the owner is with it, he shall not pay compensation” (Exo. 22:14).
- J. [94B] But [if] he borrowed the cow,
- K. and afterward (1) borrowed [the service] of the owner,
- L. or (2) hired him,
- M. and [the cow] died,
- N. [the borrower] is liable,
- O. since it is said, “If the owner is not with it, he shall certainly pay compensation” (Exo. 22:13).

- I.1 A. *Since the concluding part of the rule states, **or hired him, and afterward borrowed the cow [too]**, it follows that the first part of the clause, in which it is said, **with it**, means, with it literally* [Freedman: they are borrowed simultaneously].
- B. *But how can you find a case in which this can be done literally? For the cow is acquired through an act of drawing, while the owners through a stated promise.* [Freedman: When the owner says, “I lend you my personal services and my vow,” is himself is immediately at the service of the borrower, while the cow does not pass into his possession until he actually draws it.]

- C. *If you wish, I shall say, we deal with a case in which the cow is located in the courtyard of the borrower, so the act of drawing is not lacking.*
- D. *And if you wish, I shall say, the borrower says to him, "You yourself are not borrowed until the moment at which your cow has been borrowed."*

### **Systematic Exegesis of M. Shabuot 8:1**

**I.2.** A. *There at [M. Shabuot 8:1] we have learned in the Mishnah:*

- B. **There are four classes of bailees:**
- C. **(1) an unpaid bailee,**
- D. **(2) a borrower,**
- E. **(3) a paid bailee,**
- F. **(4) and a lessee.**
- G. **(1) [In the case of damage to the bailment], an unpaid bailee takes an oath in all [cases of loss or damage and bears no liability whatsoever] [M. 3:1].**
- H. **(2) [In the case of damage to the bailment], the borrower pays in all circumstances [of damages to a bailment].**
- I. **(3, 4) [In the case of damage to the bailment], the paid bailee and the lessee take an oath [that they have not been negligent]**
- J. **concerning [a beast which has suffered] a broken bone, or which has been driven away, or which has died [Exo. 22:9].**
- K. **But they pay compensation for the one which was lost or stolen.**

[The passage, M. Shebu. 8:2ff., continues in the following amplification: [If] one said to an unpaid bailiff, "Where is my ox?" (1) he said to him, "It died," but in fact it had been lamed, driven off, stolen, or lost, (2) "It was lamed," but in fact it had died, or been driven off, stolen, or lost, (3) "It was driven off," but in fact it had died, been lamed, stolen or lost, (4) "It was stolen," but in fact it had died, or been lamed, driven off, or lost, (5) "It was lost, "but in fact it had died, been lamed, driven off, or stolen, "I impose an oath on you," and he said, "Amen" — he is exempt [M. Shebuot 8:2]. "Where is my ox?" (1) and the bailiff said to him, "I have no idea what you're talking about" — but in fact it had died or been lamed or driven off or stolen or lost — "I impose an oath on you," and he said to him, "Amen" — he is exempt. (2) "Where is my ox?" He said to him, "It got lost" — "I impose an oath on you" — and he said, "Amen" — and witnesses testify against him that he had eaten it — he pays him compensation for the principal. If he conceded on his own, he pays compensation for the principal, the added fifth, and a guilt offering. (3) "Where is my ox?" he said to him, "It was stolen" "I impose an oath on you" he said, "Amen" — and witnesses testify against him that he had stolen it — he pays twofold compensation. [If] he confessed on his own, he pays the principal, an added fifth, and a guilt offering [but not twofold compensation (M. 5: 4)] [M. Shebuot 8:3]. (4) He said to someone in the market, "Where is my ox which you stole?" and he says, "I never stole it," but witnesses testify against him that he had stolen it — he pays twofold restitution. [If] he had slaughtered and sold it, he pays fourfold or fivefold restitution. [If] he saw witnesses [to what he had done] coming along and said, "I stole it, but I

never slaughtered or sold it,” he pays only the principal” [M. **Shebuot 8:4**]. He said to a borrower [M. **8:1A2**], “Where is my ox?” (1) He said to him, “It died,” but in fact it had been lamed or driven away, stolen, or lost — (2) “It was lamed,” but in fact it had died or been driven off or stolen or lost — (3) “It was driven off,” but it had died or been lamed or stolen or lost — (4) “It was stolen,” and in fact it had died or been lamed or driven off or lost — (5) “It was lost,” and in fact it had died or been lamed, driven off, or stolen — “I impose an oath on you” and he said, “Amen” — he is exempt [M. **Shebuot 8:5**]. “Where is my ox? “ — He said to him, “I have no idea what you’re talking about” — and it had in fact died or been lamed or driven off or stolen or lost — “I impose an oath on you” and he said, “Amen” — he is liable. If he said to a paid bailee or a renter [M. **8:1A3,4**], “Where is my ox?” (1) he said to him, “It died,” but in fact it had been lamed or driven off — (2) “It has been lamed,” but in fact it had died or been driven off — (3) “It has been driven off,” and in fact it had died or been lamed — (4) “It has been stolen,” and in fact it had been lost — (5) “It has been lost,” and in fact it had been stolen — “I impose an oath on you,” — and he said, “Amen” — he is exempt. “It died or was lamed or driven off,” and in fact, it had been stolen or lost — “I impose an oath on you,” and he said, “Amen” — he is liable. “It was lost or was stolen,” but in fact it had died or been lamed or been driven off — “I impose an oath on you,” and he said, “Amen” — he is exempt. This is the governing principle: Whoever [by lying] changes [his claim] from one sort of liability to another sort of liability, from one count of exemption to another count of exemption, or from a count of exemption to a reason for liability, is exempt. [If he changed his claim, by lying] from grounds for liability to a reason for exemption [from having to make restitution], he is liable. This is the governing principle: Whoever [falsely] takes an oath so as to lighten the burden on himself is liable. Whoever takes an oath so as to make more weighty the burden on himself is exempt (M. **Shebuot 8: 6**)].

- L. *What is the scriptural source for these classifications? It is as we have learned on Tannaite authority:*
- M. [With reference to Exo. 22:7-9: “If a man delivers to his neighbor money or goods to keep, and it is stolen out of the man’s house, then if the thief is found, he shall pay double. If the thief is not found, the owner of the house shall come near to God to show whether or not he has put his hand to his neighbor’s goods. For every breach of trust, whether it is for ox, ass, sheep, clothing, or any kind of loss thing, of which one says, ‘This is it,’ the case of both parties shall come before God; he whom God shall condemn shall pay double to his neighbor:” and Exo. 22:10-12: “If a man delivers to his neighbor an ass or an ox or a sheep or any beast to keep and it dies or is hurt or is driven away, without any one seeing it, an oath by the Lord shall be between them both to see whether he has not put his hand to his neighbor’s property; and the owner shall accept the oath and he shall not make restitution; but if it is stolen from him, he shall make restitution to its owner. If it is torn by beasts, let him bring it as evidence; he shall not make restitution for what has been torn;” and Exo. 13-14: “And if a man borrows anything of his neighbor and it is hurt or dies, the owner not being with it, he shall

make full restitution. If the owner was with it, he shall not make restitution; if it was hired, it came for its hire,”] the first section [Exo. 22:7-9] speaks of an unpaid bailee, the second, to a paid bailee, and the third to a borrower. [Freedman: the first states that the bailee is exempt from responsibility in the case of theft, the second, only in the case of the animal’s dying but not for theft; the third explicitly deals with borrowing.]

- N. *Now as to the third set’s referring to a borrower, there is no problem, since the matter is stated explicitly: “If a man borrows anything of his neighbor and it is hurt or dies, the owner not being with it, he shall make full restitution. If the owner was with it, he shall make restitution; if it was hired, it came for its hire.”*
- O. *But as to the first’s involving an unpaid bailee and the second a paid one, perhaps matters are reversed?*
- P. *It is more reasonable to assume that the second refers to a paid bailee, for lo, he is liable for both theft and loss.*
- Q. *To the contrary, the first refers to a paid bailee, since he has to pay double in the case of a false plea that the object was stolen.*
- R. *Nonetheless, the sanction of paying back the principal without the opportunity to exculpate oneself with an oath is a more severe penalty than having to pay double after taking a false oath. For the borrower, though all the benefit is his, pays only the principal [and his liabilities in this comparative scheme are the most severe].*
- S. *But is it the fact that all the benefit is the borrower’s? Does the borrowed animal not require food?*
- T. *The benefit is all his when the animal is located on the common [feeding from the public property].*
- U. *Still it has to be taken care of!*
- V. *Not where there is a town watchman.*
- W. *If you prefer, I may frame matters in this way: do not say “all the benefit is his,” but rather, “most of the benefit is his.”*
- X. *If you prefer, I may frame matters in this way: reference is made to the borrowing of utensils [which require no care and feeding].*

**I.3. A. [In the case of damage to the bailment], the paid bailee and the lessee take an oath [that they have not been negligent] concerning [a beast which has suffered] a broken bone, or which has been driven away, or which has died [Exo. 22:9]. But they pay compensation for the one which was lost or stolen.**

- B. *Now there is no problem as to the matter of theft, for it is explicitly written, “but if it is stolen from him, he shall make restitution to its owner.” But how do we know the rule in the case of loss?*
- C. *It is as has been taught on Tannaite authority:*
- D. *“but if it is stolen from him” — I know the rule only for the case in which it was stolen. How do I know the rule if it was lost?*
- E. *Scripture says, “but if it is stolen from him” — covering all circumstances.*
- F. *That proof affords no problems to him who maintains that we do not invoke the principle that the Torah speaks in the ordinary language of everyday life. But if*

*we do maintain that the Torah speaks in the ordinary language of everyday life, what proof is there?*

G. *In the West they say that it is adduced by an argument a fortiori:*

H. *if in the case of theft, which is close to being an accident, one has to pay restitution, in the case of loss, which is close to negligence, should he not all the more so have to pay restitution?*

I. *And the other party [who does not invoke the principle that the Torah speaks in the ordinary language of everyday life]? Even a matter that can be derived by an argument a fortiori Scripture makes explicit in writing.*

**I.4. A. [In the case of damage to the bailment], the borrower pays in all circumstances [of damages to a bailment].**

B. *Now in the case of an animal that is injured or that dies, there is no problem, since it is stated explicitly, "If a man borrows anything of his neighbor and it is hurt or dies, the owner not being with it, he shall make full restitution." But how do we know that the one who borrows the beast is liable to pay restitution in the case of the beast's being taken captive?*

C. *And should you claim that we should derive the rule from the law covering the beast's being injured or dying, I may reply, if the beast that is injured or dies, which is an accident, is to be foreseen, [and involves restitution], can you really say the same of the beast's being taken captive, which is an accident that is hardly to be foreseen!*

D. *Rather: here we find a reference to injury and death in the case of a borrower, and the same are mentioned in the case of the paid bailee. Just as in the case of the paid bailee, the beast's being taken captive is in the same category as the beast's being injured or dying, so in the present matter, the beast's being taken captive falls into the same classification.*

E. *But one may demolish that argument in the following way: what is particular about the paid bailee is that these factors are mentioned as causes of exemption from having to pay restitution. But can you say the same of the borrower, in which instance this serves as a reason for liability to having to pay restitution!*

F. *Rather, the answer derives in accord with the reasoning of R. Nathan.*

G. *For it has been taught on Tannaite authority:*

H. *[With reference to the verse, "If a man borrows anything of his neighbor and it is hurt or dies,"] R. Nathan says, "The word 'or' serves to encompass the case of the beast that is taken captive."*

I.. *But is the function of that "or" not disjunctive? For I might think that one bears liability only if the beast both is injured and also dies, and Scripture thus informs me of the opposite.*

J. *Now from the perspective of R. Jonathan, in what follows, that argument poses no problems, but from the perspective of R. Josiah, what is there to say?*

K. *For it has been taught on Tannaite authority:*

L. *"For every one who curses his father and his mother shall surely be put to death' (Lev. 20: 9).*

- M. “I know that the rule covers only one who has cursed both his father and his mother. How do I know that the rule is the same if he cursed his father without his mother, or his mother without his father?”
- N. “Scripture states, ‘His father and his mother he has cursed, his blood shall be upon him’ (Lev. 20: 9) — he has cursed his father, he has cursed his mother,” the words of R. Josiah.
- O. R. Jonathan says, “The opening part of the verse bears the implication either that he has cursed both of them simultaneously or that he has cursed one of them by himself, [95A] unless the Scripture explicitly states that it must be ‘together.’” [So the absence of an explicit “and” suffices to indicate that each is separate from the other. So in his view the “or” is not necessary, and the question stands.]
- P. *You may even say that the proof accords with the principle of R. Josiah. The “or” is unnecessary here for the purpose of disjoining the two, since it is a matter of logic: what difference does it make to me whether the beast is wholly killed or only partly killed [since the injury is equivalent to partly killing the beast]?*

- I.5. A. [In the case of damage to the bailment, the borrower pays in all circumstances of damages to a bailment:]** *how do we know that in the case of a borrower, one is liable to make restitution should the animal be stolen or lost? And should you say that we should derive the rule from the one covering its being injured or dying [“If a man borrows anything of his neighbor and it is hurt or dies, the owner not being with it, he shall make full restitution”], if in the case of the animal’s being injured or dying, in which case it is not possible to take the trouble to go and find the beast again, one has to make restitution, will you say the same in the case of theft or loss, in which case the bailee can take the trouble to go and find the beast? [Freedman: hence it may be argued that the owner must go and seek them, and the borrower is free of liability.]*
- B. *Rather, it is to be derived as in the following teaching on Tannaite authority:*
  - C. “If a man borrows anything of his neighbor and it is hurt or dies:”
  - D. I know only the rule covering the case of injury or death. How do I know the rule covering its being stolen or loss?
  - E. You may state the following argument *a fortiori*: if a paid bailee, who is exempt in the case of the animal’s injury or death, is liable if the animal is stolen or lost, one who borrows, who is liable in the case of the animal’s injury or death, surely should be liable in the case of the animal’s being stolen or loss.
  - F. And this, as a matter of fact, is an argument *a fortiori* that bears no refuting!
  - G. *What is the meaning of the claim, “And this, as a matter of fact, is an argument a fortiori that bears no refuting”? [Is there a refutable argument that the authority before us has in mind and can refute?]*
  - H. *Should you say, one may pose the following contrary argument: the distinctive trait of the paid bailee is that he must pay double compensation in restitution should he claim [falsely] that the beast was stolen by armed thugs, [which does not apply to the borrower, so the argument is null], nonetheless, the fact that the borrower is responsible for the principal is yet weightier.*



- I. *If you wish, I shall claim that the authority at hand holds that the armed robber is in the classification of a robber [who is not subject to the twofold payment because he acts in public] [so the contrary argument is irrelevant].”*
- I.6.** A. So [answering the question, *how do we know that in the case of a borrower, one is liable to make restitution should the animal be stolen or lost,*] we have found that a borrower is responsible for theft or loss. How do we know that he may be exempt from responsibility [in the case of theft or loss when the owner of the borrowed beast is present]? *And if you say that we should derive the rule from the case of the animal’s injury or death [“If a man borrows anything of his neighbor and it is hurt or dies, the owner not being with it, he shall make full restitution. If the owner was with it, he shall make restitution; if it was hired, it came for its hire,”]* the distinctive trait of the case of the animal’s injury or death is that it is an accident. [But that cannot be said in the case of theft or loss.]
- B. *Rather, derive the rule from the case of the paid bailee [who is exempt under the stated circumstances].*
- C. *And how do we know in the case of the paid bailee himself that that is the rule?*
- D. *Derive the extent of liability of the paid bailee from the extent of liability of the borrower: just as in the latter case, if the owner is present, one is exempt from liability, so here if the owner is present, one is exempt from liability.*
- E. *Now how has that proposition been adduced? Is it with an argument based upon shared traits and constructed by analogy [that is, just as the paid bailee and borrower are responsible for certain mishaps, so if the paid bailee is not responsible when the owner of the bailment is in his service, the same pertains to the latter (Freedman)]? But one can raise an objection just as we have already done, specifically, it is because in the one case one is responsible to make restitution in the case of an unavoidable accident [while that is not so in the other].*
- F. Rather, Scripture has said, *“And if a man borrows [anything of his neighbor and it is hurt or dies, the owner not being with it, he shall make full restitution. If the owner was with it, he shall make restitution....]”* The force of the “and” is to join the matter to the preceding subject in such wise that what has come before finds its full definition in what follows [and the “and” indicates that the provisions of each section in part at least apply to the other. Since the latter states that the borrower is exempt when the owner is present, the same is so for the paid bailee (Freedman)].
- G. *Nonetheless, the rule governing the borrower still cannot be derived from that of the paid bailee, since the analogy is subject to refutation.* The paid bailee is exempt in the case of theft when the owner is in his service because he also is exempt in the case of injury and death, but can you say the same of the borrower, who is liable in such cases?
- H. *So how do we know that if the animals is stolen or lost when it is under the charge of a borrower, he is liable? It is because we derive the law from that covering the paid bailee [as already proposed].*
- I. It suffices if [Freedman:] the conclusion of an a minori proposition shall be as its premise: just as if the animal is stolen or lost when in the charge of a paid bailee when the owner is present, the bailee is exempt from liability, so if the animals is

stolen or lost when it is in the charge of a borrower with the owner present, he is exempt from liability.

- J. *That argument serves quite nicely for one who accepts the principle that it suffices if the conclusion of an a minori proposition shall be as its premise. But for one who does not accept the principle that it suffices if the conclusion of an a minori proposition shall be as its premise, what is there to say?*
- K. Rather, Scripture has said, “And if a man borrows [anything of his neighbor and it is hurt or dies, the owner not being with it, he shall make full restitution. If the owner was with it, he shall make restitution....]” The force of the “and” is to join the matter to the preceding subject in such wise that what has come before finds its full definition in what follows, and what follows in what precedes.

**I.7.** A. *It has been stated:*

- B. If there is negligence on the part of a borrower while the owner of the beast is at hand —
- C. *there is a dispute between R. Aha and Rabina.*
- D. One said, “He is liable.”
- E. The other said, “He is exempt from liability.”
- F. *The one who maintains that he is liable takes the view that a Scriptural verse may be read to pertain to the subject that immediately precedes, but not to the subject that comes prior to that, so “but if the owner thereof be with it” does not refer to the unpaid bailee. Negligence as a cause of liability is not made explicit in connection with a paid bailee and with a borrower, so liability for negligence in the case of the paid bailee and borrower follows from an argument a fortiori from the unpaid bailee. But that there should be no liability when the owner is in service is not to be alleged even in respect to a paid bailee and a borrower [even though if there is an accident, the presence of the owner frees these classes of persons from liability]. Why not? Because when Scripture says in regard to the borrower and paid bailee, “If the owner was with it, he shall make not restitution; if it was hired, it came for its hire,” it refers to cases of liability that are explicitly listed.*
- G. *The one who maintains that he is exempt takes the view that a Scriptural verse may be read to pertain not only to the subject that immediately precedes, but also to the subject that comes prior to that, so that, when it is written, “but if the owner thereof be with it” it pertains also to the unpaid bailee.*
- H. *We have learned in the Mishnah: He who borrows a cow, and (1) borrowed [the service] of its owner with it, or (2) hired its owner with it — [or] (1) borrowed [the service] of the owner, or (2) hired him, and afterward borrowed the cow [too], and [the cow] died — [the borrower] is exempt, since it is said, “If the owner is with it, he shall not pay compensation” (Exo. 22:14). But there is no reference to the unpaid bailee [which proves that the service of the owner does not exempt him from responsibility where he would otherwise be responsible, which is to say, in the case of culpable negligence. That refutes the contrary view (Freedman).]*
- I. *But even on your reading of the matter, is a paid bailee mentioned [and all parties concur that he is exempt from liabilities if the owner is working for him]?*



*Rather, the Tannaite authority has made explicit reference only to those matters [95B] that Scripture itself mentions, but not what derives only from exegesis.*

- J. *Come and take note [of evidence to the contrary]: if he had borrowed the cow and borrowed the service of the owner, hired the cow and hired the service of its owner, borrowed the cow and hired the service of its owner, hired the cow and borrowed the service of its own, and the cow died or suffered a broken leg, even though the owner is available and ploughing in some other place, the one who borrowed or hired the cow is exempt [T. B.M. 8:20G-M]. Assuming that the Tannaite authority of this passage concurs with the view of R. Judah that one who rents out the beast is in the classification of a paid bailee, we see that this Tannaite authority does encompass what is derived by exegesis, and nonetheless omits reference to the unpaid bailee.*
- K. *[That proves nothing, for] who is the authority behind this passage? It is R. Meir, who takes the view that the one who rents out a beast is in the classification of an unpaid bailee, and he states the law covering the unpaid bailee, but the same applies to the paid bailee.*
- L. *If you prefer, I shall explain that the matter follows the version as it emerged from Rabbah b. Abbuha's reversal of the names when he taught: under what rubric does one who leases a beast pay? R. Meir said, "He is in the classification of the paid bailee." R. Judah said, "He is in the classification of the unpaid bailee."*
- I.8.** A. *[Responding to the question, If there is negligence on the part of a borrower while the owner of the beast is at hand,] said R. Hamnuna, "Under all circumstances, the borrower is liable — unless it is a cow, and the owner is ploughing with it [when in the bailee's service], or it is an ass, and he is driving it alone, or the owner is in the bailee's service from the time that the loan is made until the beast is injured or dies." Therefore he takes the view that the statement of Scripture, "but if the owner be with it" pertains to the entirety of the transaction.*
- B. *Raba objected, "...if he had borrowed the cow and borrowed the service of the owner, hired the cow and hired the service of its owner, borrowed the cow and hired the service of its owner, hired the cow and borrowed the service of its own, and the cow died or suffered a broken leg, even though the owner is available and ploughing in some other place, the one who borrowed or hired the cow is exempt [T. B.M. 8:20G-M]. Does this not mean, in some other type of work [which would refute Hamnuna's view]?"*
- C. *No, it means, on the same work as the animal was doing.*
- D. *Then how can it be elsewhere?*
- E. *He went along breaking up the ground ahead of the beast.*
- F. *But lo, since the second clause refers to working near the beast, the first should mean it was doing different work altogether. For the second clause states, If he borrowed the cow and afterward borrowed the owner, hired the cow and afterward hired the owner, borrowed the cow and afterward hired the service of the owner, hired the cow and afterward borrowed the service of the owner, and the cow died or suffered a broken leg, even though the owner is available and ploughing with that animal, the borrower is liable since it is*

said, “If the owner is not with it, he shall certainly pay compensation” (Exo. 22:13) [T. B.M.8:21A-I].

- G. *I will reply to you: both the first and the second clauses make reference to the beast's and the owner's doing the same sort of work. The first clause makes an important point, and the second likewise makes an important point. The first clause makes the important point that even though the owner is actually with the beast, and is not engaged on the same sort of work, since the owner was in service from the beginning of the loan to now, the bailee is not responsible. The second clause makes an important point, that even though the owner is with the beast, since the owner was not in service from the time of the loan, the borrower is responsible.*
- H. *But what's going on? If you say that the opening statement deals with work of a different sort from what the beast is doing, and the concluding clause speaks of work of the same sort, that indeed is an important and fresh point [which we should not otherwise have known]. But if you maintain that the opening clause and the concluding one both speak of the animal's and the owner's doing the same sort of work, then what sort of new point do you claim to be made here? Both parties are engaged in work of the same kind.*
- I. *And furthermore, it has been taught on Tannaite authority: since it is said, “And if a man borrows anything of his neighbor and it is hurt or dies, the owner not being with it, he shall make full restitution,” do I not also know that “if the owner was with it, he shall not make restitution”? Then what is the point of Scripture's saying, “if a man borrows anything of his neighbor and it is hurt or dies, the owner not being with it, he shall make full restitution”? It is to tell you that if he was with the beast at the time of the loan, it is not necessary that he be with him at the time that the beast's leg was broken or that it died. If he was with the beast at the time that it was injured or died, it is still necessary that he have been with him at the time of the loan.*
- J. *And there is a further Tannaite teaching: since it is said, “And if a man borrows anything of his neighbor and it is hurt or dies, the owner not being with it, he shall make full restitution,” do I not know that “if the owner was with it, he shall not make restitution”? Then what is the point of Scripture's saying that “if the owner was with it, he shall not make restitution”? It is to tell you that once the beast has left the domain of the lender, with the owner being in the service of the borrower, even if that was for a single hour, if the beast dies, the borrower is exempt from liability.*
- K. *Does this not refute the position of R. Hammuna?*
- L. *It does indeed refute his position.*
- I.9.** A. [With reference to the dispute of Josiah and Jonathan, “‘For every one who curses his father and his mother shall surely be put to death’ (Lev. 20: 9). I know that the rule covers only one who has cursed both his father and his mother. How do I know that the rule is the same if he cursed his father without his mother, or his mother without his father? Scripture states, ‘His father and his mother he has cursed, his blood shall be upon him’ (Lev. 20: 9) — he has cursed his father, he has cursed his mother,” the words of R. Josiah. R. Jonathan says, “The opening part of the verse bears the implication either that he has cursed both of them

simultaneously or that he has cursed one of them by himself, unless the Scripture explicitly states that it must be ‘together’”] *Abbaye accepts the premise of R. Josiah and explains the verses in accord with his principle, while Raba accepts the premise of R. Jonathan and explains the verses in accord with his principle.*

- B. *Abbaye accepts the premise of R. Josiah and explains the verses in accord with his principle:*
- C. “And if a man borrows anything of his neighbor and it is hurt or dies, the owner not being with it, he shall make full restitution.” *the operative consideration is that the owner was not with the beast on both occasions [the loan, the injury later on]. Lo, had he been with it on one and not on the other, he would have been exempt.*
- D. *And lo, it is written, “If the owner was with it, he shall not make restitution”?*
- E. *The operative consideration is that he was present on both occasions. Lo, if he had been present on one but not on the other, he would have been liable. And this is to teach you the following: if the owner was with the beast at the time of the loan, he does not have to be with him at the time of the injury or death; if he had been with him at the time of injury or death, to exempt the borrower from liability he still would have had to have been with him at the time of the loan.*
- F. **[96A]** *Raba accepts the premise of R. Jonathan and explains the verses in accord with his principle, as has been taught on Tannaite authority:*
- G. “[And if a man borrows anything of his neighbor and it is hurt or dies, the owner not being with it, he shall make full restitution.] If the owner was with it, he shall not make restitution” — *the operative consideration is that the owner was with the beast on both occasions [the loan, the injury later on]. And there is the further implication that had he been with it on one and not on the other, he would have been exempt.*
- H. And it is written, “And if a man borrows anything of his neighbor and it is hurt or dies, the owner not being with it, he shall make full restitution” — *the operative consideration is that the owner was not with the beast on both occasions [the loan, the injury later on]. And there is the further implication that had he been with it on one and not on the other, he would have been liable. And this is to teach you the following: if the owner was with the beast at the time of the loan, he does not have to be with him at the time of the injury or death; if he had been with him at the time of injury or death, to exempt the borrower from liability he still would have had to have been with him at the time of the loan.*
- I. *But may I reverse it? It stands to reason that the owner’s presence at the time of the loan is of greater consequence, since that is the moment at which the animal enters the domain of the borrower.*
- J. *To the contrary, the time at which the beast is injured or dies is of greater weight, since the borrower is liable for accidents.*
- K. *If there had been no loan, what sort of result would injury or death produce anyhow?*

- L. *If not for the injury or death, what sort of liability would the mere fact of the loan produce?*
- M. *Nonetheless, the responsibility undertaken through borrowing is weightier, since that is the moment at which the borrower becomes liable for feeding the beast.*

- I.10.** A. R. Ashi said, “Scripture has said, ‘And if a man borrows anything of his neighbor’ — but not his neighbor with the beast, then ‘and it is hurt or dies, the owner not being with it, he shall make full restitution.’ If his neighbor were present at the time of the loan, he would have been exempt.
- B. *“But then what is the point of the phrase, ‘If the owner was with it, he shall not make restitution’?”*
  - C. *“Without these clarifications, I might have thought that the language, ‘And if a man borrows anything of his neighbor’ is merely the ordinary manner of speech of Scripture [from which no conclusions as to the law are to be drawn].”*
- I.11.** A. R. Ammi b. Hama raised this question: *“If one has borrowed the beast with the purpose of committing bestiality with it, what is the law? Do we require that the loan accord with standard practice, and people do not borrow for such a purpose? Or perhaps the operative reason here is that the borrower derives pleasure from the loan, and here too he has pleasure [so the rule of Scripture applies here as well]?”*
- B. *“If one has borrowed the beast with the purpose of being seen with the beast, what is the law? To invoke the scriptural rule, we require a case in which there is monetary value, and that is present here? Or perhaps the kind of monetary value we require is the kind from which the borrower directly benefits, and that is not in play here?”*
  - C. *“If one has borrowed the beast with the purpose of work that is less than a perutah in value, what is the law? To invoke the scriptural rule, we require a case in which there is monetary value, and that is present here? Or perhaps the kind of monetary value we require is the kind that is worth at least a perutah, and that is not present in this transaction?”*
  - D. *“If one has borrowed two cows with the purpose of work that is worth one perutah in value, what is the law? To invoke the scriptural rule, do we say, consider the situation of both the borrower and the lender, and there is sufficient monetary value in the transaction? Or perhaps the operative criterion is the value of the work of the cows, and in this case, in the work of each of the two cows there is insufficient value?”*
  - E. *“If one has borrowed from two partners, one of whom lends himself in service to him, what is the law? Must all of the owners be in the service of the bailee, and that condition has not been met, or perhaps, he bears no liability for his half anyhow?”*
  - F. *“If partners have borrowed the cow, and the beast was lent to one of them, what is the law? Do we require that the whole of the beast go to the borrower, and that condition is not met here? Or perhaps for that half of the beast that has gotten the loan, there is no responsibility?”*

- G. *"If one has borrowed the beast from the wife and her husband pledges his service, what is the law?"*
- H. *"What if the woman borrows the beast, and the owner lends himself to the husband, what is the law? Is a title to usufruct equivalent to title to the principal itself or is that not the case?"*
- I. *Said Rabina to R. Ashi, "He who says to his agent, 'Go and lend yourself for service on my account together with my cow:' what is the law? Do we require the actual presence of the owner, which condition is not met, or perhaps, since a man's agent is equivalent to himself, that condition is met?"*
- J. *Said R. Aha son of R. Avia to R. Ashi, "The case involving the husband invokes a dispute of R. Yohanan and R. Simeon b. Laqish, and the case involving the agent invokes a dispute of R. Jonathan and R. Josiah."*

**I.12.** A. *"...The case involving the husband [what if the woman borrows the beast, and the owner lends himself to the husband, what is the law? Is a title to usufruct equivalent to title to the principal itself or is that not the case] invokes a dispute of R. Yohanan and R. Simeon b. Laqish:"*

B. *For it has been stated:*

C. [As to the requirement to present the first fruits of a field and to recite the Confession in their regard], he who sells [only] the usufruct of the field to his fellow —

D. R. Simeon b. Laqish says, "He brings the produce but he does not make the recitation."

E. R. Yohanan says, "He brings the first fruits and makes the Confession," *since ownership of the usufruct is tantamount to title to the field.*

F. R. Simeon b. Laqish says, "He brings the produce but he does not make the recitation," *since ownership of the usufruct is not tantamount to title to the field.*

**I.13.** A. *"...and the case involving the agent [ "He who says to his agent, 'Go and lend yourself for service on my account together with my cow:' what is the law? Do we require the actual presence of the owner, which condition is not met, or perhaps, since a man's agent is equivalent to himself, that condition is met?" ] invokes a dispute of R. Jonathan and R. Josiah:"*

B. *For it has been taught on Tannaite authority:*

C. "He who says to his major domo, 'All vows that my wife may make from now until I come back from such-and-such a place — you annul for her,' and he annulled such vows for her —

D. "might one suppose that the vows should indeed be regarded as nullified?

E. "Scripture states, 'He husband may confirm it or her husband may annul it' (Num. 30:14)," the words of R. Josiah.

F. R. Jonathan says, "We find in every passage [in the Torah] that [acts of] the agent of a person are equivalent to [acts of] the person himself."

**I.14.** A. *Said R. Ilish to Raba, "He who says to his slave, 'Go and lend yourself with my cow' — what is the law?"*



- B. *“That is a question to be raised both from the viewpoint of him who says that [acts of] the agent of a person are equivalent to [acts of] the person himself, and also from the viewpoint of him who says that [acts of] the agent of a person are equivalent to [acts of] the person himself.*
- C. *“From the viewpoint of him who says that [acts of] the agent of a person are equivalent to [acts of] the person himself, that rule pertains in particular to an agent who is subject to the same religious obligations as the person who appoints him agent, but a slave, who is not subject to the same religious obligations as the master, would not be subject to the rule. Or perhaps even in the the viewpoint of him who says that [acts of] the agent of a person are equivalent to [acts of] the person himself, that rule pertains to an agent, but not to a slave, for a man’s slave is as his master’s hand.”*
- D. *He said to him, “It seems reasonable to maintain that a man’s slave is as his master’s hand.”*

- I.15.** A. R. Ammi bar Hama asked, “In respect to the property of one’s wife, does the husband fall into the category of **[96B]** a borrower or a lessee?” [Freedman: It is assumed that the question is whether he is responsible as is a borrower or as is a hirer for accidents when working with his wife’s property in the category of that of which he enjoys the usufruct, but of which she bears ownership in such wise that the gain or loss is assigned to her; this is called plucking-property.]
- B. *Said Raba, “Your error comes from an excess of wit! If he is in the category of a borrower, then the property is in the class of that which is borrowed along with the service of the owner. And if he is in the category of a lessee, then it is still a case of a lease involving the presence of the owner.”*
  - C. *Then when does the question raised by R. Ammi b. Hama pertain? It is to a case in which one leased a cow from her and then married her. Does the husband fall into the category of a borrower or a lessee? Is he a borrower, so that the loan when the owner is in his service [after marriage, the wife is present along with the beast], so that the loan along with the service of the owner nullifies the prior arrangement of a lease not with the presence of the owner? Or perhaps he is in the status of a lessee, and the agreement of lease as it was still stands?*
  - D. *So what difference does it make? If he is a borrower, then the loan when the owner is in his service [after marriage, the wife is present along with the beast], so that the loan along with the service of the owner nullifies the prior arrangement of a lease not with the presence of the owner. And if he is a lessee, say that the new agreement has brought the owner into his service and abrogated the old lease that took effect without the owner’s being present in his service?*
  - E. *Rather, when R. Ammi b. Hama raised his question, it was in a case in which she leased a cow from someone and then was married to a third party. From the perspective of rabbis, who say, “The borrower of a beast that has been leased pays off the lessee [not the owner],” there is no problem; for this is assuredly in the class of a loan along with the service of the master. Where it is a problem it is in respect to the position of R. Yosé, who maintains that the cow is to be returned to the original owner **[He who rents a cow from his fellow, and then lent it to someone else, and it died of natural causes — let the one who rented it take an oath that it died of natural causes, and the one who borrowed it then pays***



**compensation to the one who rented it** because one who rents a cow is free from having to pay compensation in the case of natural death, but one who borrows without paying is obligated to compensate the owner even if the beast dies a natural death while in his possession. **Said R. Yosé, “How should this one do business with his fellow’s cow? But [the funds paid for] the cow are to return to the owner”** (M. B.M. 3: 2)], *and here what is the rule? Is he a borrower or a lessee?* [Freedman: From rabbis’; view in this case we consider only the husband’s relationship to his wife, and he therefore is not responsible for accidents. From Yosé’s perspective the borrower is referred directly to the first owner, who is not in his service. Is he a borrower, responsible for accidents, or lessee, not responsible. In return for the usufruct the husband is bound to ransom his wife if captured, and that liability may give him the rank of a lessee in relation to his wife.]

- F. *Said Raba, “The husband is in the class of neither a borrower nor a lessee, but rather, of a purchaser [who bears no liability at all].”*
  - G. *That ruling follows the statement of R. Yosé b. R. Hanina. For R. Yosé b. R. Hanina said, “In the council held at Usha sages enacted that if a woman died after she sold her property of which the husband enjoys the usufruct but the wife the gain or loss, her husband may retrieve the property from the domain of the purchaser” [so the husband is in the category of a prior purchaser].*
- I.16.** A. *R. Ammi bar Hama asked, “If the husband [has the right of usufruct] in his wife’s property [that had in fact been declared consecrated to the Temple, and made use of the property,] who is responsible for an [inadvertent] act of sacrilege [and has to bring the offering that is required on that account]?”*
- B. *Said Raba, “So who should be responsible for an act of sacrilege? Is it the husband? From his viewpoint, he is perfectly pleased to acquire a right to what is permitted, but not to what is forbidden! Is it the wife? But from her perspective she does not want the husband to make acquisition of even what is permitted [since his right of usufruct is by the law of the rabbis, not by her act of volition! She gave him nothing on her own.] Should the court be held responsible then [that conferred the right of usufruct on the husband]? But when rabbis ruled that the husband is in the category of a purchaser, that was only in respect to what is permitted, not what is subject to a prohibition!”*
  - C. *Rather, said Raba, “The husband is responsible for an act of sacrilege when he actually spends the money, just as, in general, when one takes money that has been consecrated and makes use of it as ordinary funds, [he is responsible from the moment that he has done so].”*
- I.17.** A. *The question was raised: “If the animal became emaciated on account of the work that it did, what is the rule?” [Do we hold the borrower liable for loss in the value of the beast?]*
- B. *Said to him one of the rabbis, and his name was R. Hilqiah, son of R. Avia, “Then is it to be inferred that if the beast died through the work, he is certainly responsible? Let him say to him, ‘It was not to put him under the marriage canopy that I borrowed the beast [but to work with it]!’”*
  - C. *Rather, said Raba, “It is hardly necessary to say that one is exempt from all liability if the animal became emaciated on account of the work that it did, but*

even if it died on account of work, he also is exempt from all liability, *'It was not to put him under the marriage canopy that I borrowed the beast [but to work with it]!'*”

- I.18.** A. *Somebody borrowed an axe from his neighbor, and it broke. The case came to Raba, who ruled, “Go and bring witnesses that you did not use it in any unusual way, and you will be exempt from liability.”*  
B. *But if there are no witnesses, then what is the rule?*  
C. *Come and take note: somebody borrowed an axe from his neighbor, and it broke. The case came to Raba, who ruled, “Go and give him back an axe of excellent quality.”*  
D. *Said R. Kahana and R. Assi to Rab, [97A], “Is that the law?”*  
E. *He shut up.*  
F. *And the law is in accord with the view of R. Kahana and R. Assi, “He returns the broken axe but then makes restitution to full value [that is, pays the difference between the value of the broken axe and the value of an unbroken one].*
- I.19.** A. *Somebody borrowed a bucket from his neighbor, which broke. When the case came before R. Papa, who ruled, “Go and bring witnesses that you did not use it in any unusual way, and you will be exempt from liability.”*
- I.20.** A. *Somebody borrowed a cat from his fellow. The mice formed a battalion against it and killed it. R. Ashi went into session and raised the question, “What is the rule in such a case? When the cat perished, it was on account of the work that it perished, or is that not the operative consideration?”*  
B. *Said R. Mordecai to R. Ashi, “This is what Abimi of Hagronia said in the name of Raba, ‘For a man whom a woman has killed, there is no consideration of judgment or a judge [since he is not a man].’”*  
C. *Some maintain that the cat ate up too many mice and got sick and died.*  
D. *R. Ashi went into session and raised the question, “What is the rule in such a case?”*  
E. *Said R. Mordecai to R. Ashi, “This is what Abimi of Hagronia said in the name of Raba, ‘For a man whom women have killed, there is no consideration of judgment or a judge,[for the cat ate up too many mice and got sick and died — since he is a sexual athlete and has killed himself through excess of activity].’”*
- I.21.** A. *Said Raba, “One who wants to borrow something from his fellow but be exempt from liability to make up the loss should say to him, ‘Could you give me a drink of water,’ which represents a loan along with the service of the owner.*  
B. *“But if the lender is smart, he will say to him, ‘Borrow it by threshing with it, and then I’ll give you a drink.’”*
- I.22.** A. *Said Raba, “Someone who teaches children, gardens, butchers, draws blood, or cuts hair — in all such cases, if they lend something while at work, the loan is in the category of one that is in service along with the owners.”*  
B. *Said Rabbis to Raba, “Master, you are on loan to us [to teach us].”*  
C. *He found that irritating, and said to them, “What you want to do is take away all my property [by taking loans from me and not having to be liable for damages].*

*To the contrary, you are on loan to me, for while I can move you along from one tractate to another, you cannot move me along from one to another.”*

- D. *But that is not the fact. For he was on loan to them during the Kallah-time, and they were on loan to him for the rest of the year.*
- I.23.** A. *Maremar bar Hanina leased a mule to the people of Be Hozai. He went out to help them load it up. Through negligence on their part it died. They came before Raba, who imposed liability on them.*
- B. *Said rabbis to him, “But this is a case in which there was negligence while the owner was present.”*
- C. *He paled.*
- D. *In the end it became clear that the owner had gone out to supervise the loading [and he was not in their service, so Raba was right after all].*
- E. *That then poses no problems who hold that if there is negligence while the owner was in service, there is no liability; that was why the sage paled. But in the view of the one who holds that under such circumstances there is liability, why ought he to have paled?*
- F. *It was in fact a case not of negligence but theft, and the beast died a natural death while the thief had it. When they came before Raba, he ruled that the thieves were responsible.*
- G. *Said rabbis to him, “But this is a case in which there was a theft while the owner was present.”*
- H. *He paled.*
- I. *In the end it became clear that the owner had gone out to supervise the loading [and he was not in their service, so Raba was right after all].*

The entire Talmud focuses upon the detail of Scripture that if there is a loan of a beast along with the owner of the beast, then the borrower is exempt from liability. But the mysteries of the passage — liability on what counts, conditions of service of the lender of the beast, and the like — account for a long and fully realized Talmud, certainly a fine case of the Talmud’s capacity to think abstractly about laws that, in concrete form, seem fairly straight-forward. In this case, we cannot maintain that it is abstract thinking that provokes the sustained amplification of the rule; it is the several scriptural verses, their classifications, comparisons, and contrasts, that make the discourse flow so smoothly and protractedly as it does. We start with Mishnah-exegesis, I.1, and move directly into the exegesis of the Mishnah in relationship to Scripture, I.2. From here, everything else moves outward. Nos. 3, 4, 5 systematically expound the clauses of our Mishnah-paragraph in relationship to Scripture, and No. 6 is continuous with No. 5. That the principles of Scripture-exegesis are always a consideration is introduced tangentially in the prior units, but at No. 6-7 is made explicit, so that in a very concrete way we see the connection between hermeneutics and law. No. 8 carries forward the prior issue, the interplay between the presence of the lessor of the beast and the conditions under which the beast was lost or injured. Now we come to a very subtle question as to how literally the conditions of Scripture are to be

taken. This once more asks the prevailing question of the exegetical compilations, are Scripture's details exemplary or definitive? Nos. 9 continues No. 8. What follows, Nos. 10ff., is a long sequence of secondary, quite theoretical questions, which serve to elucidate the several principles that have now been set forth. The arrangement therefore is entirely deliberate, in that we first go over the facts and principles, and then we spin out those interstitial cases that test the ingenuity of the exegete of the law. Nos. 11-17 propound these theoretical questions. Then we have some practical cases, illustrating how in concrete terms various theories come to bear. The cases, as usual, prove considerably less subtle than the theories behind them. A good case can be made on the basis of No. 20 that rabbis preserved their capacity to make jokes.

## 8:2

- A. **He who borrows a cow —**
- B. **[if] he borrowed it for half a day and hired it for half a day,**
- C. **[or] borrowed it for one day and hired it for the next day,**
- D. **[or] borrowed one [cow] and hired another —**
- E. **and [the cow] died —**
- F. **the lender says [D], (1) "The borrowed one died" —**
- G. **(2) "On the day [C] on which it was borrowed, it died" —**
- H. **[97B] (3) "At the time [B] that it was borrowed, it died," —**
- I. **and the [borrower] says, "I don't know" —**
- J. **[the borrower] is liable.**
- K. **The hirer [lessee] says, (1) "The hired one died,"**
- L. **(2) "On the day on which it was hired, it died,"**
- M. **(3) "at the time that it was hired, it died"**
- N. **and the other party says, "I don't know" —**
- O. **[the hirer] is exempt.**
- P. **[If] this party claims that the borrowed one [died],**
- Q. **and that party claims that the hired one [died],**
- R. **the one who rents it is to take an oath that the rented one died.**
- S. **[If] this one says, "I don't know," and that one says, "I don't know,"**
- T. **then let them divide [the loss].**

- I.1** A. *This rule [A-J] implies that* if someone says to another, "You have a maneh of mine in your possession," and the other says, "I don't know," the latter is liable to pay.
- B. *Then may we say that we have a refutation of R. Nahman? For it has been stated:*
- C. If someone says to another, "You have a maneh of mine in your possession," and the other says, "I don't know" —
- D. R. Huna and R. Judah say, "He is liable."
- E. R. Nahman and R. Yohanan say, "He is exempt from liability."
- F. *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.2.** A. *What would be an example of a dispute between them involving the taking of an oath?*

B. *It is in accord with what Raba said, [98A] 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.”*

**I.3.** A. *Along these lines, the first clause of our Mishnah would pertain when there are two cows, and the second, when there are three cows.*

B. *The first clause of our Mishnah [He who borrows a cow — [if] he borrowed it for half a day and hired it for half a day, [or] borrowed it for one day and hired it for the next day, [or] borrowed one [cow] and hired another — and [the cow] died — the lender says [D], (1) “The borrowed one died” — (2) “On the day [C] on which it was borrowed, it died” — (3) “At the time [B] that it was borrowed, it died,” — and the [borrower] says, “I don’t know” — the borrower is liable] would pertain when there are two cows: for he claims, “I handed over to you two cows, loaned for half a day and rented out for half a day, or loaned for one day and rented out for another, and both died during the time in which they were borrowed, and the other said, “One indeed did die then, but as to the other, I don’t know whether it was during the time that it was borrowed or during the time that it was rented out — since he cannot take an oath, he is liable to pay.*

C. *...and the second [the hirer says, (1) “The hired one died,” (2) “On the day on which it was hired, it died,” (3) “at the time that it was hired, it died”] and the other party says, “I don’t know” — [the hirer] is exempt. [If] this party claims that the borrowed one [died], and that party claims that the hired one [died], the one who rents it is to take an oath that the rented one died. [If] this one says, “I don’t know,” and that one says, “I don’t know,” then let them divide the loss], when there are three cows: for he claims, “I gave you three cows, two subject to borrowing, one that was rented out, and these three cows died while they were loaned to you,” and the borrower said to him, “Indeed so, the one that was borrowed is the one that died, but as to the others, I do not know whether it was the borrowed one that died and the surviving one that was rented out, or whether the rented out one that died, and the surviving one is the one that was on loan. Since he cannot take an oath, he has to pay.*

D. *And from the viewpoint of R. Ammi b. Hama, who maintains that all four bailees must be in a situation of partly denying and partly admitting liability [since the claim, “I do not know” does not constitute a denial, only a claim such as, “I returned that animal” or “I never received that animal” constitutes a denial,] the first clause of our Mishnah would pertain when there are three cows, and the second, when there are four cows.*

- E. *the first clause of our Mishnah* [He who borrows a cow — [if] he borrowed it for half a day and hired it for half a day, [or] borrowed it for one day and hired it for the next day, [or] borrowed one [cow] and hired another — and [the cow] died — the lender says [D], (1) “The borrowed one died” — (2) “On the day [C] on which it was borrowed, it died” — (3) “At the time [B] that it was borrowed, it died,” — and the [borrower] says, “I don’t know” — **the borrower is liable**] *would pertain when there are three cows: for he claims, “I handed over to you three cows, loaned for half a day and rented out for half a day, or loaned for one day and rented out for another, and all of them died during the time in which they were borrowed, and the borrower said, “As for one, the matter never happened [I never had that cow] as for the second, it did die while it was borrowed; as to the third, I don’t know whether it died when it was borrowed or when it was rented out” — since he cannot take an oath, he is liable to pay.*
- F. *and the second* [the hirer says, (1) “The hired one died,” (2) “On the day on which it was hired, it died,” (3) “at the time that it was hired, it died”] and the other party says, “I don’t know” — [the hirer] is exempt. [If] this party claims that the borrowed one [died], and that party claims that the hired one [died], the one who rents it is to take an oath that the rented one died. [If] this one says, “I don’t know,” and that one says, “I don’t know,” then let them divide the loss], *when there are four cows, for he claims, “I gave you four cows, three subject to borrowing, one that was rented out, and these three cows died while they were loaned to you,” and the borrower said [98B] to him, “As to the first, the loan never took place. Now as to the second, it is so that the one that was borrowed died; as to the other two, I don’t know whether it was one that was hired that died, and the one that is surviving is the borrowed one, or the one that was borrowed has died, and the surviving one is the one that was rented out. Since he cannot take an oath, he has to pay.*

**II.1** A. [If] this party claims that the borrowed one [died], and that party claims that the hired one [died], the one who rents it is to take an oath that the rented one died.

- B. *Why should there be an oath?* What that one claims this one does not concede, and what that one concedes, this one does not claim!
- C. Said Ulla, “It is through [Freedman:] superimposition of a supererogatory oath. For since this one says to him, ‘You must at least take an oath that it died of natural causes, and since you must take such an oath, you should take an oath also that the one that was hired is that one that died.’” [Freedman:Here the lender can plea, “Even on your own plea, you must still take an oath that it died naturally and not through your negligence.” Since the bailee has to take an oath, another oath is administered.]

**III.1** A. [If] this one says, “I don’t know,” and that one says, “I don’t know,” then let them divide [the loss].

- B. *Who is the authority for this ruling?*
- C. *It is Sumkhos, who has said, “Money that is subjected to doubt is divided between the claimants.”*



**III.2.** A. R. Abba bar Mammel raised the question, “What is the rule governing the case of a beast that is borrowed together with the owner’s service, and [while the beast was still in the domain of the borrower, he rented it for a further period, and at the time it was rented out, the owner was not in his service, as he had been when the initial loan was made], then the bailment was rented out without the owner’s service?”

- B. *“Do we rule that the act of borrowing is treated in isolation from the subsequent act of leasing the beast? Or perhaps the act of leasing the beast out serves to continue the case of the loan, since in any event the lessee is responsible for theft and loss [so by leasing the beast, the original borrower adds nothing to the liabilities that were incumbent on him, and since he is responsible as a borrower, his present responsibility simply continues the character of the original responsibility that he has undertaken (Freedman)]?”*
- C. *“And if you should maintain that the act of leasing the beast out serves to continue the case of the loan, what if he hired it out together with the owner’s service and then went and borrowed it [from that party] without the service of the owner? Shall we say that, in this case, we assuredly do not have the circumstance of borrowing included in the initial lease? Or perhaps, since it is partly connected to the original act, it is wholly connected to the original arrangement?”*
- D. *“And if you should maintain that since it is partly connected to the original act, it is wholly connected to the original arrangement, if one borrowed the beast with the owner’s service and then has gone and leased the leased out without the owner’s service, and then borrowed the beast from the lessee without the owner’s service? Does the borrowing then revert to its original status? Or does the act of leasing the beast out break the connection? And if it was hired with the owner’s service, then borrowed [without the owner’s service], then hired again [without the owner’s service], do we rule that the hiring reverts to the former status, or do we say that the act of borrowing in the middle of the transactions breaks the connection?”*
- E. *The question stands.*

The Talmud’s Mishnah-exegesis rapidly shades over into a discussion of the rules governing the imposition of oaths, which our Mishnah-paragraph treats as a detail *en passant*. I 2-4 concentrate on that matter. But it is equally clear that Nos. 2-4 have been worked out for the purposes of the exegesis of our Mishnah in particular, so we see that Mishnah-exegesis involves the broadest possible considerations. II.1 follows suit, again with special interest in oath-taking. III.1 is a brief amplification of the Mishnah, and III.2 ranges far afield.

### 8:3

- A. **He who borrowed a cow,**  
B. **and [the one who lent it out] sent it along with his son, slave, or messenger,**  
C. **or with the son, slave, or messenger of the borrower —**  
D. **and it died —**  
E. **[the borrower) is exempt.**  
F. **If the borrower had said to him, “Send it with my son,” “... my slave,” “...my messenger,”**

- G. or "... with your son," "... with your slave," "... with your messenger,"
- H. or if the lender had said to him, "Lo, I'm sending it to you with my son," "my ... slave," "My ... messenger" —
- I. or "... with your son," "... your slave," "... your messenger,"
- J. and the borrower said, "Send it along,"
- K. and he did send it along, but it died,
- L. [the borrower] is liable.
- M. And so is the rule as to returning the beast.

- I.1** A. [99A] and [the one who lent it out] sent it along with slave: but the slave is equivalent to his master [so why should the borrower be liable if it was the borrower who instructed the lender to send it that way, since the slave's equivalency to the master means that it is as though the slave never left the domain of the master]!
- B. *Said Samuel, "The rule speaks of a Hebrew slave, the body of whom the owner does not acquire."*
- C. *Said Rab, "You may even maintain that the rule speaks of a Canaanite slave. It is treated as though the borrower had said to the lender, 'Hit it with a stick and it will come to me.' [As soon as it leaves the domain of the owner, the borrower assumes responsibility.]"*
- D. *An objection was raised: He who borrows a cow and [the owner] sends it to him with his son or his agent, he is liable for what happens en route; if he sent it to him with his slave, he is exempt.*
- E. *Now in accord with Samuel's view, our Mishnah-paragraph refers to a Hebrew slave, while the extra-Mishnaic version speaks of a Canaanite servant [and the Canaanite servant is equivalent to the owner of the beast]. But for Rab there is a real contradiction here.*
- F. *Rab will say to you, "Do not say that it is as though the borrower had said to the lender, 'Hit it with a stick and it will come to me.' Rather, say, 'it is a case in which he has actually said to him, 'Hit it with a stick and it will come to me.'"*
- G. *For it has been said:*
- H. "Lend me your cow," and he said to him, "By means of whom [shall I send it]," and he said, "Hit it with a stick and it will come to me" —
- I. *Said R. Nahman said Rabbah bar Abbuha said Rab, "Once it has left the domain of the lender, if it dies, the borrower is liable."*
- J. *May we say that the following supports his opinion:*
- K. "Lend me your cow," and the other said to him, "By means of whom [shall I send it]," and he said, "Hit it with a stick and it will come to me" — Once it has left the domain of the lender, if it dies, the borrower is liable.
- L. *Said R. Ashi, "Here with what sort of case do we deal? With a case in which the cow was located in the courtyard of the borrower, which was within the courtyard of the lender. Therefore, when he sends it, it is certain that that is where it is going to go."*
- M. *If that is so, what is the point of this statement anyhow?*

N. *It is entirely necessary to state the rule, to apply to a case in which there are various passages. I might have supposed that the borrower does not depend on the coming of the beast, for it may just stand in a by path and not come. Therefore the rule tells us that he fully relies upon the cow to come.*

- I.2.** A. Said R. Huna, “He who borrows an axe from his friend, once he has chopped wood with it, he makes acquisition of it. If he does not chop wood with it, he does not acquire it.”
- B. *For what purpose [is the rule governing the axe and its use set forth]? Shall we say the acquisition has to do with unavoidable accidents? Then how does this rule differ from the one pertaining to the cow, for which the borrower is responsible from the time of the loan?*
- C. *Rather, it pertains to returning the axe. If the borrower has chopped wood with it, the lender cannot retract [and the axe now belongs to the borrower throughout the spell of the loan]. If he did not chop wood with it, the lender can retract.*
- D. *[Huna] differs from the view of R. Ammi, for said R. Ammi, “He who lends an axe belonging to the sanctuary has committed sacrilege, on account of the benefit deriving from the value of the good will that he has gained in lending the axe, and [the axe having been made secular by the act of the lender], the fellow is permitted to chop wood with it to begin with.” Now if the borrower does not effect acquisition of the axe until he chops wood with it, why has the lender committed sacrilege and why is his fellow permitted to chop wood with it to begin with? Let him simply return it and not effect acquisition of it and not commit sacrilege!*
- E. *And [Huna] furthermore differs from the view of R. Eleazar. For said R. Eleazar, “Just as sages instituted the requirement of effecting possession through an act of drawing on the part of purchasers, so sages instituted the requirement of effecting possession through an act of drawing on the part of bailees.”*
- F. *So too it has been taught on Tannaite authority: Just as sages instituted the requirement of effecting possession through an act of drawing on the part of purchasers, so sages instituted the requirement of effecting possession through an act of drawing on the part of bailees. And just as [99B] real estate is acquired through the exchange of money, a deed, and a formal act of taking physical possession [e.g., digging], so hiring is effected through the exchange of money, a deed, and a formal act of taking physical possession.*
- G. *Now [assuming that we speak of movables, and money does not effect the transfer of title of movables], what is “hiring” doing on this list?*
- H. Said R. Hisda, “The rule pertains to renting real estate.”

**I.3.** A. Said Samuel, “One who stole a cake of pressed dates, made up of fifty dates, which, if sold together, are forth fifty zuz less one, but if sold one by one, are forth fifty, [if he stole from secular property,] to an ordinary person he repays

*fifty zuz less one. [If he stole dates that had been consecrated,] to the sanctuary he repays fifty zuz and a fifth more. But that rule does not play if he does damage, in which case he does not pay the added fifth."*

- B. For a master has said, "'If someone eats unwittingly of the holy thing, [then he shall add a fifth to the value]' (Lev. 22:14). ['Eats'] excludes damaging the holy thing [to which the added fifth does not pertain]."
- D. *[Referring to A,] R. Bibi bar Abbaye objected, "Why to an ordinary person would he have to repay fifty less one? The other can say to him, 'I was planning to sell them one by one.'"*
- E. *Said R. Huna b. R. Joshua, "We have learned, **'the area of a seah in that field is assessed [M. B.Q. 6:2I].'**"* [Freedman: If an animal enters a field and eats part of the crops, the value of the crops itself is not assessed for damages, rather, the decrease in the value of selling a seah area in which damage has been done, and that will be less than the actual value of the crops; it follows that in respect to paying damages, a lenient attitude is taken.]
- F. *[Reverting to A:] May we then say that Samuel takes the view that the law that pertains to an ordinary person is not the same as the law that pertains to the Most High? But have we not learned in the Mishnah: **[If] one took a stone or a beam from what is consecrated, lo, this one has not committed an act of sacrilege. [If] he gave it to his fellow, he has committed an act of sacrilege. But his fellow has not committed an act of sacrilege. [If] he built it into the structure of his house, lo, this one has not committed an act of sacrilege — until he actually will live under it [and enjoys its use] to the extent of a perutah's worth. [If he took a perutah of consecrated money, lo, this one has not committed an act of sacrilege. If he gave it to his fellow, he has committed an act of sacrilege. But his fellow has not committed an act of sacrilege. If he gave it to a bath keeper, even though he did not take a bath, he has committed an act of sacrilege. For the bath keeper says to him, "Lo, the bath is open to you. Go in and take a bath"**] [M. Me. 5:4A-J]? In this regard, however, R. Abbahu in session before R. Yohanan stated in the name of Samuel, "That is to say that one who lives in a courtyard belonging to his fellow without the knowledge and consent of the other nonetheless has to pay him rent." [Therefore the same rule pertains to both the Most High and ordinary folk, for just as one has committed sacrilege by living under the beam, though the beam was built in unaltered, and a debt is owing to the sanctuary, so though nothing has been done to the courtyard, rent is owing. Then the same rule pertains to secular and sacred property.]*
- G. *But did not R. Yohanan say to him, "Samuel retracted that ruling."*
- H. *And how do you know that Samuel retracted that ruling, perhaps he retracted the other?*
- I. *No, it must have been the latter, in line with what Raba said, for Raba said, "Consecrated property that is utilized without the knowledge and consent of the Temple steward is in the status of property of an ordinary person that is used with the knowledge and consent of the owner [and the two types of ownership are not equivalent, so Samuel probably retracted the latter ruling, not the former]."*

**I.4.** A. *Said Raba “Porters who broke a barrel of wine belonging to a shopkeeper, which on a market day he can sell for five zuz, and on other days for four, if they return it to him on a market day, they return a barrel of wine; on other days, they return five zuz. That rule applies only if he has no wine for sale left, but if he has wine for sale, he should have sold that. And they deduct the payment for his trouble and the value of the tapping”*

The exegetical problem, I.1, is important and clarifies the principle behind the Mishnah-passage. But the treatment of the Mishnah is not detailed; of greater interest is the principle of ownership and transfer of title, which predominates throughout. That accounts also for the introduction of the problems deriving from the law of sacrilege: at what moment has property passed from the Temple's ownership to that of a private person, and that is the moment that sacrilege has been committed. No. 2 pursues the issue of transfer of title as well. No. 3 introduces the issue of sacrilege, for the reason given, and No. 4 is simply tacked on.

### 8:4

- A. [100A] He who exchanges a cow for an ass,
- B. and [the cow] produced offspring,
- C. and so, too: he who sells his girl slave and she gave birth —
- D. this one says, “It was before I made the sale,”
- E. and that one says, “It was after I made the purchase” —
- F. let them divide the proceeds.
- G. [If] he had two slaves, one big and one little,
- H. or two fields, one big and one little —
- I. the purchaser says, “I bought the big one,”
- J. and the other one says, “I don’t know” —
- K. [the purchaser] has acquired the big [slave].
- L. The seller says, “I sold the little one,”
- M. and the other says, “I don’t know” —
- N. [the latter] has a claim only on the little one,
- O. This one says, “The big one,”
- P. and that one says, “The little one”-
- Q. let the seller take an oath that it was the little one which he had sold.
- R. This one says, “I don’t know”
- S. and that one says, “I don’t know” —
- T. let them divide up [the difference].

**I.1** A. *Why should they divide the disputed property? Let us see in whose domain the beast or the child is located, and let the other party produce evidence, since he who proposes to extract property from another bears the burden of proof!*

B. *Said R. Hiyya bar Abin said Samuel, “The rule pertains to a case in which the calf is located in a meadow, or the maidservant on the market stand [so neither one is in the possession of either of the claimants].”*

- C. *Then let us assume that the ownership is vested in the original master, and let the other party produce evidence, since he who proposes to extract property from another bears the burden of proof!*
- D. *Lo, to whom is authorship of this Mishnah-paragraph to be assigned? It is Sumkhos, for he has said, "Money that is subject to doubt is to be divided [among the claimants] without the imposition of an oath [on either party]."*
- E. *Now I might concur that Sumkhos will take that position in a case in which both parties claim, "Perhaps it is mine," but would he take the same position when each party claims, "I am absolutely certain"?*
- F. *Said Rabbah bar R. Huna, "Indeed! Sumkhos said, 'Even in a case in which both parties express certainty about their rights of ownership, [an oath is taken to settle the conflicting claims].'"*
- G. *Raba said, "Indeed, when Sumkhos made the statement, it pertained to a case in which both parties claim, 'Perhaps it is mine,' but as to a case in which each party claims, 'I am absolutely certain,' [that statement of his] did not [apply]."*
- H. *Then repeat the Mishnah on Tannaite authority in the following language: **This one says, "Perhaps it was before I made the sale," and that one says, "Perhaps it was after I made the purchase"...***
- I. *We have learned in the Mishnah: **This one says, "I don't know" and that one says, "I don't know" — let them divide up [the difference].***
- J. *Now, from the viewpoint of Raba, since the latter clause speaks of a case in which the best claim that both of them are able to make for themselves is "perhaps," the former clause likewise must speak of a case in which each party claims, "perhaps." But from the perspective of Rabbah b. R. Huna, who has said, "Indeed! Sumkhos said, 'Even in a case in which both parties express certainty about their rights of ownership, [an oath is taken to settle the conflicting claims].'" if in a case in which each party claims, "I am absolutely certain," they still divide what is at stake, in a case in which each party says, "perhaps," is there any question [but that they should divide? So why should the Mishnah have included such an obvious fact?]*
- K. *If that is the argument, it is hardly very weighty. The second clause serves to clarify the first, specifically, so that you should not conclude that the first clause refers only to a case in which both sides plea, "perhaps," while where both contend, "certainly," that is not the rule. The latter clause presents the case of "perhaps" stated by both parties, from which it must follow that the first refers to a plea of certainty on the part of both parties, and even then, they divide what is at issue.*
- L. *We have learned in the Mishnah: **This one says, "The big one," and that one says, "The little one" — let the seller take an oath that it was the little one which he had sold.***
- M. *Now, as to the position of Raba, who has said, "when Sumkhos made the statement, it pertained to a case in which both parties claim, 'Perhaps it is mine,' but as to a case in which each party claims, 'I am absolutely certain,' [that statement of his] did not [apply]," that explains why he takes an oath.*



- N. *But from the perspective of Rabbah b. R. Huna, who has said, "Indeed! Sumkhos said, 'Even in a case in which both parties express certainty about their rights of ownership, [an oath is taken to settle the conflicting claims],'" why should the seller take an oath? Rather let them divide what is at stake.*
- O. *The rule is required to show that Sumkhos concurs in a case in which the oath applies on the basis of the law of the Torah, as we shall have to explain below.*

**II.1 A. If he had two slaves, one big and one little, [or two fields, one big and one little — the purchaser says, "I bought the big one," and the other one says, "I don't know" — the purchaser has acquired the big slave. The seller says, "I sold the little one," and the other says, "I don't know" — the latter has a claim only on the little one. This one says, "The big one," and that one says, "The little one" — let the seller take an oath that it was the little one which he had sold]:**

- B. *Why should he have to take an oath? What this party has claimed, that party has not conceded, and what that party has conceded, this one has not claimed!*
- C. *And furthermore, it is a case of "here it is" [when the seller admits the sale, he offers it to the claimant, and in such a case no oath is required].*
- D. *And furthermore, it is the law that oaths are not taken in the case of conflicting claims of ownership of slaves!*
- E. *Said Rab, "We deal with a case in which the demand is for money. The purchaser claims the money for an adult slave, the seller offers the money value of a minor slave; the value of a large field or the value of a small one [and this solves all three problems, since we have a concession and a claim concerning the same thing, the seller admits he owes the value of a minor but does not offer it, and at stake is not an oath concerning a slave but an oath concerning money.]"*
- F. *Samuel said, "We deal with a case in which the purchaser claims the clothing for an adult slave, and the seller concedes clothing for a minor slave, or the sheaves of a large field and those of a small one."*
- G. **[101B]** *But if you say at issue is clothing, then what this party has claimed, that party has not conceded, and what that party has conceded, this one has not claimed!*
- H. *It accords with R. Pappa, "When the cloth is on the roll. Here too, [it is not the actual garment that is subject to the dispute, but the amount of cloth] when it is on the roll, [and one says that it was cloth for a garment for an adult slave, the other, for a minor]."*
- I. *But this bothered R. Hoshaia: "Has the Mishnah-authority said anything about 'garment'? What he has repeated is 'slave'!"*
- J. *Rather, said R. Hoshaiah, "We deal with a case in which the claim was for a slave inclusive of his garment, a field inclusive of its sheaves."*
- K. *Still, you deal with a garment, with the result that what this party has claimed, that party has not conceded, and what that party has conceded, this one has not claimed!*
- L. *Said R. Pappa, "At issue is a claim that refers to cloth on the roll."*
- M. *This troubled R. Sheshet: "Is it the intention of the Tannaite authority to inform us of the rule, 'Movable property binds immovable property? But we have already*

*learned that rule in the Mishnah: [If one laid claim against him for utensils and real estate, and the other party conceded the claim for utensils but denied the claim for real estate, or conceded the claim for real estate and denied the claim for utensils, he is exempt from having to take an oath. If he conceded part of the claim for real estate, he is exempt from having to take an oath. If he conceded part of the claim for utensils, he is liable to take an oath.] For property for which there is no security imposes the requirement of an oath in regard to property for which there is security [M. Shebuot 6:3U-Z].”*

- N. *Rather, said R. Sheshet, “Lo, who is the authority for our rule? It is R. Meir, who has said, ‘The slave is in the status of movable property.’”*
- O. *Still, what this party has claimed, that party has not conceded, and what that party has conceded, this one has not claimed!*
- P. *[Our Tannaite authority] concurs with the reasoning of Rabban Gamaliel, for we have learned in the Mishnah: **If he claimed wheat and the other admitted to having barley, he is exempt. And Rabban Gamaliel declares him liable [M. Shebuot 6:3/O-P].***
- Q. *Nonetheless, we still have a case of “here it is” [when the seller admits the sale, he offers it to the claimant, and in such a case no oath is required].*
- R. *Said Raba, “In the case of the slave [that the other conceded], the seller [after the transaction] had cut off his hand; in the case of the field, he had dug pits, ditches, and cavities [so that, as a matter of fact, he is not offering what he has admitted; he would have to pay the difference in the value between the whole and the damaged property].”*
- S. *Lo, as to the view of R. Meir, have we not derived the fact that R. Meir holds the opposite view? For we have learned in the Mishnah: **[If] he stole a beast and it got old, slaves and they got old, he pays [compensation for them in accord with their value] at the time of the theft. R. Meir says, “In the case of slaves, he may say to him, ‘Here is what is yours before you!’” [M. B.Q. 9:2A-D].***
- T. *Now that poses no problem, in line with the exchange effected by Rabbah b. Abbuha. For he has repeated the Mishnah-teaching as follows: **R. Meir says, “He pays [compensation for them in accord with their value] at the time of the theft.” And sages say, “In the case of slaves, he may say to him, ‘Here is what is yours before you!’”** But here is the difficulty: how do we know that R. Meir takes the view that real estate is equivalent to chattel-slaves, so that, just as in the case involving a slave, an oath is imposed, so in the case of real estate, an oath is imposed? Perhaps it is in particular in the case of a slave that an oath is imposed, but not in the case of real estate?*
- U. *Do not let that possibility enter your mind. For it has been taught on Tannaite authority: “He who exchanges a cow for an ass, and [the cow] produced offspring, and so, too he who sells his girl slave and she gave birth — this one says, ‘It was in my domain,’ and the other remains silent — the former acquires ownership. If this party says, ‘I do not know,’ and that one says, ‘I do not know,’ let them divide it up. If this one says, ‘It was in my domain,’ and that one says, ‘It was in my domain,’ let the seller take an oath that it was in his domain that she gave birth, for all those upon whom in the Torah an oath is placed take an oath and do not have*

to make payment,” the words of R. Meir. And sages say, “Oaths are not administered in cases involving slaves or real estate.” *Now does this not yield the inference that R. Meir takes the view that oaths are administered in such matters as real estate?*

V. *But how? Perhaps they argue to him, “Just as you have conceded the law to us in the case of real estate [that no oath pertains], concede also in the case of slaves! For we have learned in the Mishnah: R. Meir says, “There are things which are tantamount to being in the ground but still are not deemed to be immovable property like the ground.” And sages do not concur with his view. How so? Ten fruit-laden vines I handed over to you” — and the other says, “They were only five” — R. Meir imposes an oath. And sages say, “Whatever is attached to the ground is like the ground” [M. Shebu. 6:6A-G]. And in this connection said R. Yosé b. R. Hanina, “At stake between them are grapes that are ready for vintaging. One master deems them as though they were already vintaged [Meir treats them as similar to the land, in that they are attached to the ground, but they are not like the land since they are regarded as already vintaged and thus detached and subject to an oath; this shows that for land itself, there is no oath (Freedman), and the other says they are not as though they were already vintaged.”*

W. *Rather, the matter must be treated as R. Hoshiaia does, and as to your question, “Is it the intention of the Tannaite authority to inform us of the rule, ‘Movable property binds immovable property? [But we have already learned that rule in the Mishnah: If one laid claim against him for utensils and real estate, and the other party conceded the claim for utensils but denied the claim for real estate, or conceded the claim for real estate and denied the claim for utensils, he is exempt from having to take an oath. If he conceded part of the claim for real estate, he is exempt from having to take an oath. If he conceded part of the claim for utensils, he is liable to take an oath. For property for which there is no security imposes the requirement of an oath in regard to property for which there is security (M. Shebuot 6:3U-Z)],” it is indeed necessary to make that point yet again, for otherwise I might conclude that the garment of a slave is in the classification of the slave himself, the sheaves of a field are in the classification of the field itself. Now we are shown that that is not in fact the case.*

**III.1 A.** This one says, “I don’t know” and that one says, “I don’t know” — let them divide up [the difference]:

B. *Lo, to whom is authorship of this Mishnah-paragraph to be assigned? It is Sumkhos, for he has said, “Money that is subject to doubt is to be divided [among the claimants] without the imposition of an oath [on either party].”*

C. *But consider the further clause: If this one says, “It was in my domain,” and that one says, “It was my domain,” let the seller take an oath that it was in his domain that the slave girl gave birth [T. B.M. 8:24].*

D. *Now in accord with Rabbah bar R. Huna, who said, “Indeed! Sumkhos said, ‘Even in a case in which both parties express certainty about their rights of ownership, [an oath is taken to settle the conflicting claims],” why should he take an oath? Let them divide it up!*

- E. *Sumkhos concedes that when an oath is imposed by the law of the Torah, e.g., the owner had cut off her hand, then an oath is required, in accord with Raba's treatment of the matter above.*

The discussion of the law of the Mishnah carries us away from the main point of the Mishnah's statement and toward the issue of when an oath is taken in a case of conflicting claims. But to begin with, we start with a question of evidence. I.1 asks the obvious question of why we simply do not invoke the facts of the matter, and we are told there are no determinative facts. Then, forthwith, the position of Sumkhos, that an oath should be taken, is brought to bear, and from that point to the very end, the issue of the oath predominates; then we refine and recast the law of when an oath is required, and that forms the center of discourse. II.1 reverts to exactly the same matter, as does III.1. While the discussion is protracted, it is cogent, beginning to end, and the introduction of rules from other tractates is entirely within bounds. The question is, can this discussion have been formulated around the issue, rather than the case of the Mishnah? Of course it can — as the very broad limits of discourse prove. But it is in response to the Mishnah and its language that the framer of the passage has set forth his disquisition, and the whole must be classified a highly sophisticated discussion of the rule through the medium of the Mishnah — neither exegesis of the Mishnah nor an essay on a problem, but a beautiful piece of interstitial writing, which succeeds in broadening the scope of the Mishnah-paragraph at hand and in focusing our attention on the deepest layers of thought contained therein. Here again, it is Talmud at its absolute best.

### 8:5A-F

- A. **He who sells olive trees for firewood and [before they had been chopped down], they produced fruit which yielded less than a quarter-[log] of olive oil to a seah —**
- B. **lo, this belongs to the owner of the olive trees [not to the owner of the land, who sold only the trees, not the ground].**
- C. **[If] they produced a quarter-[log] of oil for a seah,**
- D. **this one says, "My olive trees made it,"**
- E. **and that one says, "My ground made it" —**
- F. **let them divide it up.**
- G. **[If] the river overflowed one's olive trees and set them down in the field of his fellow [where they bore fruit],**
- H. **this one says, "My olive trees made it,"**
- I. **and that one says, "My ground made it"**
- J. **Let them divide it up.**
- I.1** A. *What circumstances can be in mind here? If we deal with a case in which he had stipulated, "Cut them down right away," then even a quarter-log of olive also should go to the landowner. If he had said to him, "Whenever you want, cut them down," then even a quarter-log of oil should also be assigned to the owner of the olive trees.*

- B. *No, in point of fact the rule is necessary to cover a case in which he had made no stipulation at all. In that case, as to less than a quarter-log, people are not going to care about that negligible amount, but people do care about a quarter-log.*
- C. Said R. Simeon b. Pazzi, "The quarter log of which they spoke **[101A]** is exclusive of expenses." [Freedman: after deducting the cost of gathering and pressing, there remains the value of a quarter log of oil per seah of olives.]

**II.1 A. [If] the river overflowed one's olive trees and set them down in the field of his fellow [where they bore fruit], this one says, "My olive trees made it," and that one says, "My ground made it" — let them divide it up:**

- B. Said Ulla said R. Simeon b. Laqish, "That rule pertains only to a case in which the trees were uprooted along with their clumps of earth and after three years [after they were swept away]. But during a period of three years, all is assigned to the owner of the olive trees, *for he may say to him, 'Had you planted them during the spell of three years, would you be eating the fruit?'*" [The fruit of a tree cannot be eaten within the first three years after planting, in line with Lev. 19:23. Within three years the finder has no claim at all, since it is only because of their own clumps of soil that the produce of the tree may be used and no benefit derives from the new soil (Freedman).]
- C. *But let the other say to him, "Had I planted the trees, I should have enjoyed the whole of the usufruct after three years. Now you are getting half with me!"* [Freedman: in virtue of this, he is entitled to half within three years too.]
- D. *Rather, when Rabin came he said [in the name of] R. Simeon b. Laqish, "That rule pertains only to a case in which the trees were uprooted along with their clumps of earth and after three years [after they were swept away]. But after a period of three years, all is assigned to the owner of the land, for he may say to him, 'Had I planted them, after three years should I not have had the entire usufruct?'"*
- E. *But let him reply, "Had you planted them, within the first three years you should have had no usufruct whatever. Now you should share half with me!"*
- F. *The reason is that the other may say to him, "If I had planted them, they would have been small, and I could have planted beets and vegetables under them."* [Freedman: But with your olive trees being large and with spreading roots, I lose the entire use of the soil.]

**II.2. A. A Tannaite authority repeated:**

- B. If one party said, "I wish to take away my olive trees," they do not pay any attention to him.
- C. *Why not?*
- D. Said R. Yohanan, "It is on account of [protecting the Jewish] presence in the Land of Israel."
- E. *Said R. Jeremiah, "For such a response, a [true] master is required."*

**II.3. A. We have learned there in the Mishnah: [He who leases a field from a gentile separates heave offering and tithes and then gives to him his rental from the tithed produce]. R. Judah says, "Also, he who sharecrops his father's field for a gentile separates tithes and then gives to him his portion from the tithed**

**produce” [M. Dem. 6:2A-B].** *They interpreted the passage in this way: “What is the meaning of his father’s field? A field in the land of Israel. And why do they call it his father’s field? It is a field of Abraham, Isaac, and Jacob. And Judah further maintains the position that a gentile has no rights of true possession in the Land of Israel in such wise as to exempt his property from the obligation to separate tithes from the crops. And [further] one who sharecrops is as one who rents at a fixed rent: just as one who rents, whether the field produces a crop or not, must tithe crops and pay him, because he is as though he repaid a debt, so too one who leases a field is in the position of settling a debt and so much tithe the crops first and then pay him.”*

- B. *Said R. Kahana to R. Pappi, and some say to R. Zebid, “But what about the following, taught on Tannaite authority: R. Judah says, ‘He who leases a field of his fathers from a gentile land-grabber has to tithe and then pay him what is owing of a percentage of the crop.’ Now why specify a land-grabber? Even one who is not a land-grabber has to be paid in the same way! So it must follow that, in point of fact, a gentile indeed has rights of true possession in the Land of Israel in such wise as to exempt his property from the obligation to separate tithes from the crops. And [further] one who sharecrops is not comparable to one who rents at a fixed rent: just as one who rents. And what is ‘a field of his fathers’? It is in reality a field that belong to this man’s fathers, and rabbis have imposed a sanction on him, because, since it is more precious to him than to others, he will go and lease it on such disadvantageous terms; but he would not accept it on such terms.”*
- C. *Then why impose a sanction on him?*
- D. *Said R. Yohanan, “It is so that he will keep it entirely within his own possession [because the terms are otherwise burdensome].”*
- E. *Said R. Jeremiah, “For such a response, a [true] master is required.”*

#### **II.4. A.** *It has been stated:*

- B. *he who without permission goes down into his neighbor’s field and plants a crop —,*
- C. *Said Rab, “They make an assessment [of what he owes], and his hand is on the bottom.” [Freedman: he is paid for the cost of planting or for the improvements, whichever is less.]*
- D. *And Samuel said, “They make an estimate of how much someone would want to pay to have this field planted.”*
- E. *Said R. Pappa, “But they have no real dispute. The one party [Samuel] speaks of a field that is suitable for planting [trees], the other of a field that is not suitable for planting.”*
- F. *Now this statement of Rab’s was not made explicitly, but was deriving by inference. For somebody came before Rab, who said to him, “Go and assess the value of the trees that he had planted.”*
- G. *He said to him, “I don’t want to [since I want to grow grain, not trees].”*



- H. *He said to him, "Go, make an assessment of what he owes, and his hand is on the bottom."*
- I. *He said to him, "I don't want to."*
- J. *Finally he saw him fencing the field and guarding it, so he said to him, "Now you have shown your real intention, that you want it. Go and make an assessment for him, and he shall now have the advantage."*

**II.5.** A. *It has been stated:*

- B. He who without permission invaded the ruin belonging to his fellow and rebuilds the house and then the other says to him, "I want my timber and stones" —
- C. R. Nahman said, "They obey him."
- D. R. Sheshet said, "They do not obey him."
- E. *An objection was raised: He who goes down into the ruin belonging to his fellow and built it up without permission, and when he leaves, the other says to him, "Give me back my timber and my stones" — they do not pay attention to him. Rabban Simeon b. Gamaliel says, "The House of Shammai say, 'He has the power to do just that.' And the House of Hillel say, 'They pay no attention to him'" [T. B.Q. 10:6A-E]. Shall we then say that R. Nahman has made his statement in accord with the position of the House of Shammai?*
- F. *He concurs with the following Tannaite authority, for it has been taught on Tannaite authority:*
- G. "They listen to him," the words of R. Simeon b. Eleazar.
- H. **Rabban Simeon b. Gamaliel says, "The House of Shammai say, 'He has the power to do just that.' And the House of Hillel say, 'They pay no attention to him.'"**
  - I. *What is the upshot of the matter?*
  - J. Said R. Jacob said R. Yohanan, [101B] "In the case of a house, they listen to him; in the case of a field, they do not listen to him."
  - K. *How come that is so in the case of a field?* It is on account of [protecting the Jewish] presence in the Land of Israel.
  - L. There are those who say, "It is on account of the depletion of the soil [for which the owner of the field is entitled to compensation]."
  - M. *What is at issue between the two explanations?*
  - N. *At issue is land outside of the Land [in which case the owner will be compensated for soil depletion].*

I.1 clarifies the case to which the rule of the Mishnah can refer, since the Mishnah's distinction seems rather odd. II.1 clarifies the Mishnah's rule and specifies what is under debate. The conflicting claims are spelled out. The whole, then, forms a fine piece of Mishnah-commentary; I see no deeper principles that turn the concrete case into an

abstract principle. Everything from that point on is put together because of the rather odd phrase at 2.E. No. 3 is joined to No. 2 via 3.G, and then No. 4-5 invoke the principle expressed therein concerning settlement of the land. Here is the result of an agglutinative process, in which the principles by which one composition is joined to another are entirely clear.

## 8:6

- A. **He who rents a house to his fellow [without a lease] —**
- B. **in the rainy season, from the Festival to Passover. he has not got the right to evict him.**
- C. **And in the dry season, [he may evict him if he gives] thirty days' [notice].**
- D. **And in the case of large towns,**
- E. **all the same are the dry season and the rainy season,**
- F. **[he must give notice of] twelve months.**
- G. **And in the case of stores,**
- H. **all the same are small towns and large cities,**
- I. **[he must give notice of] twelve months.**
- J. **Rabban Simeon b. Gamaliel says, "In the case of a store rented to bakers or dyers, [he must give notice of] three years."**

- I.1 A. *What characterizes the rainy season? It is that, when a person rents a house in the rainy season, he rents it for the whole of the rainy season. But the same may be said for the dry season — when one rents a house, it is for the whole of the dry season that he does so.*
- B. *But as to the rainy season, this is the principal reason: it is because at that time houses are not easy to find for rent.*
- C. *Then note what follows: **And in the case of large towns, all the same are the dry season and the rainy season, [he must give notice of] twelve months.** But then, if the term of the rental should come to an end in the rainy season, he has every right to evict him! And why should that be the case? Lo, at that time houses are not easy to find for rent.*
- D. *Said R. Judah, "The intent of the Tannaite teach is to explain that he must give him notice, and this is the sense of the passage: **He who rents a house to his fellow [without a lease] — in the rainy season, from the Festival to Passover. he has not got the right to evict him** unless during the summer he gave him notice of thirty days prior [to the eviction]."*
- E. *It has been taught on Tannaite authority to the same effect:*
- F. *When sages said "thirty days" and when they said "twelve months, they made that statement only in respect to his giving him notice. And just as the landlord has to give him notice, so the tenant has to give him notice.*
- G. *Otherwise he can say to him, "If you had told me in advance, I could have made the effort to find a good tenant for the house [and the other must pay damages]."*
- I.2. A. *Said R. Assi, "If the lease on the house encompassed a single day of the rainy season, the landlord cannot evict the tenant from the Festival to Passover."*
- B. *But lo, we have learned in the Mishnah: **thirty days.***

C. *This is the sense of his statement: "if a single day of the thirty days was in the rainy season, the landlord cannot evict the tenant from the Festival to Passover."*

Said R. Huna, "But if he wants to raise the rent, he may do so."

D. *Said to him R. Nahman, "This is like holding him by the balls to make him surrender his cloak! But the possibility of raising the rent pertains only if, in general, house rents are going up."*

**I.3.** A. *It is obvious that if the landlord's house fell down [and he had not given any notice to the tenant to leave], the landlord may say to the tenant, "You are no better than I am [and just as I could not have known that the house would fall down, so that I could not provide myself with other housing, the same is the case for you. The tenant therefore has to leave at the end of the year, since the fact that no houses are available operates now just as strongly in the landlord's favor, for he could not have known that his house would fall in (Freedman)].*

B. *If the landlord had sold the house, rented it, or given it to another, the tenant can say to the new owner, "You are no better than the one from whom you derive your right." [He, could not have evicted me, and neither can you.]*

C. *If he designated the house for his son [after the son's marriage], we look into the matter. If he had the possibility of giving him notice, he has to give him not, but if not, he may say to him, "You are no better than I" [and the tenant must leave].*

**I.4.** A. *Somebody bought a boat load of wine. He found nowhere to store it. He said to a certain woman, "Do you have a place for rent?"*

B. *She said to him, "No."*

C. *He went and betrothed her, and she gave him a place for storage. Then he went home, wrote out a writ of divorce, and sent it to her. She for her part went, hired porters for a fee to be paid out of the wine itself, and had the wine put out onto the street.*

D. *Said R.,. Huna b. R. Joshua, "'As he has done, so shall be done to him, his reward is on his head.' There is no question that, if it is not a courtyard that is available for rent in general [he has no claim whatsoever], but even if it is a courtyard that is available for rent, she may say to him, 'To anyone in the world I am prepared to rent it out, but to you I am not prepared to rent it out, because to me you are like a lion in ambush.'"*

**II.1** A. **Rabban Simeon b. Gamaliel says, "In the case of a store rented to bakers or dyers, [he must give notice of] three years."**

B. *It was taught on Tannaite authority:*

C. *It is because they encompass a great deal of space [so it is difficult to find adequate space for this kind of operation in a brief period of time, and ample notice must be given].*

I.1 again clarifies the Mishnah's rule. No. 2 then raises an ancillary issue. No. 3 sets up a set of theoretical cases, which clarify the residuary rights of a lease, e.g., if ownership changes, or if the circumstances shift. No. 4 has no bearing on any of this, but is a charming clarification of the way in which the law actually works, which is by what we should call common sense. II.1 then provides a minor gloss for the Mishnah.

- A. He who rents out a house to his fellow —
- B. he who rents it out is liable [to provide] (1) a door, (2) bolt, and (3) lock,
- C. and anything which is made by a craftsman.
- D. But as to anything which is not made by a craftsman,
- E. the one who rents the house makes it [for himself].
- F. Shit [left in a rented courtyard by cattle belonging to a third party] is assigned to the householder.
- G. The renter has a claim only on the refuse of an oven or stove alone.

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

- B. He who rents out a house to his fellow — he who rents it out is liable to provide doors, make windows, strengthen the ceiling, and supply supports for the joists. The tenant has to provide the ladder to get up to the loft, to make the parapet, fix a gutter spout, and plaster the roof.
- C. *They asked R. Sheshet, “And who provides the mezuzah?”*
- D. *Who provides the mezuzah! But has not R. Mesharshia said, “The mezuzah is the obligation of the one who lives in the house”?*
- E. *Rather, who must provide the place for fixing the mezuzah [e.g., a cavity to hold it]?*
- F. *Said R. Sheshet to them, “You have learned the rule as follows: **and anything which is made by a craftsman. But as to anything which is not made by a craftsman, the one who rents the house makes it [for himself].** Now as to this, it is not the work of a skilled craftsman, for it is possible for [102A] one to place it in a wooden tube.”*

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

- B. He who rents a house to his fellow — it is the obligation of the tenant to provide a mezuzah. But when he leaves, he may not take it in hand and leave. But if it is leased from a gentile, he must take it with him when he leaves.
- C. There is the case of one who take it with him when he left, and his wife and two children did he bury.
  - D. *Is the point of the case to contradict the [latter] rule?*
  - E. *Said R. Sheshet, “The story makes reference to the first of the two rules.”*

**II.1** A. **Shit [left in a rented courtyard by cattle belonging to a third party] is assigned to the householder. The renter has a claim only on the refuse of an oven or stove alone:**

- B. *What sort of case is before us? If we say that it is a courtyard that has been rented to the tenant, and that the oxen belong to the tenant? Then why is the dung the householder’s? Rather, is it a courtyard that has not been rented to the tenant, and oxen that belong to the landlord? Then it is obvious [that the shit belongs to the householder]!*
- C. *The rule is required to cover the case in which the courtyard belongs to the landlord, and the oxen come along from the outside [in which case their shit belongs to the landlord].*

- D. *This supports the view of R. Yosé b. R. Hanina, for R. Yosé b. R. Hanina said, "The courtyard that a person owns effects ownership in his behalf even without his knowledge and consent."*
- E. *An objection was raised: If someone said, "Whatever finds come into my courtyard today — may my courtyard acquire them for me!" he has said nothing whatsoever. But if what R. Yosé b. R. Hanina said were valid, "The courtyard that a person owns effects ownership in his behalf even without his knowledge and consent," then why has the man said nothing?*
- F. *With what sort of case do we deal here?* With a courtyard that is not subject to a fence [and that cannot effect possession].
- G. *Then consider the latter clause of the same passage [cited at E:] If word had gone out in town that he had found something, then his statement is a valid and effective one. Now if it were a courtyard that is not fenced in, even though word had circulated that he had found something, what difference would that make? Since word had spread, people kept away from the courtyard [recognizing that he owns it], and so it is as though it were fenced in.*
- H. *An objection was raised: the residue of that comes out of the oven and the stove, and what is caught from the air belong to the tenant, but the shit of the stable and the courtyard [not rented to the tenant] belong to the landlord. But if what R. Yosé b. R. Hanina said were valid, "The courtyard that a person owns effects ownership in his behalf even without his knowledge and consent," then why [if the tenant] catches the courtyard or stable shit from the air [before it falls to the ground] does it belong to him? Does not the air of the courtyard [acquire ownership for the landlord]?*
- I. Said Abbaye, "What we deal with here is a case in which he attached a utensil to the body of the cow."
- J. Raba said, "What is in the air and is not going to come to rest is not regard as at rest." [Freedman: The air above one's ground is treated as the ground itself in respect to an object that may enter it, only if the object will eventually come to rest on that ground. Here, however, though the dung passes through the air of the landlord's courtyard, it is not going to come to rest there on account of the utensil's of the tenant, and therefore the air does not effect possession for him.]
- K. *But is that so clear to Raba? Did he himself not raise the question? For Raba asked, "If one throw a purse by one door and it came out of another, is an object in the air, not destined to come to rest, regarded as though it were at rest, or is that not the case?"*
- L. *In that case, nothing is there to stop it; here a utensil is interposed [so it is clear that what is not going to come to rest is not deemed as though it has come to rest].*
- M. "but the shit of the stable and the courtyard [not rented to the tenant] belong to the landlord:" *Are both rules needed?*
- N. *Said Abbaye, "This is the sense of the passage: but the shit of the stable that is in the courtyard [not rented to the tenant] belongs to the landlord."*

O. Said R. Ashi, ‘That is to say, He who has rented out his courtyard without further stipulations does not mean to rent the stable therein.’

P. *An objection was raised: **Doves of the dovecot and doves of the upper room are subject to the law of sending forth, and are protected by the law against thievery, for the sake of good order** [[T. Hul. 10:13C-D]. But if what R. Yose b. R. Hanina said were valid, “The courtyard that a person owns effects ownership in his behalf even without his knowledge and consent,” then why not invoke in this case, “if a bird’s nest chance to be before you’ (Deu. 22: 6), then excluding one that is ready and waiting”? [The law pertains to wild doves, not when they are in your courtyard.]*

Q. *Said Raba, “As to an egg, when the greater part has come forth, it is subject to the law of sending away, but the owner of the court does not acquire title to it until it falls into the courtyard. So when the rule says, **Doves of the dovecot and doves of the upper room are subject to the law of sending forth**, the sense is that this is prior to the egg’s falling into the courtyard.”*

R. *If that is so, then why are they **protected by the law against thievery, for the sake of good order**?*

S. That refers to the mother [not the egg].

T. *If you prefer, I shall say that, in point of fact, reference is made to the eggs, and the operative consideration is that once the greater part of the egg has come forth, the owner of the courtyard has set his heart on them [and a stranger had better not take them for the sake of good order].*

U. And now that R. Judah said Rab said, “It is forbidden to take ownership of eggs so long as the dam is hovering over them, as it is said, ‘But you shall certainly let the dam go first, and only then take the young to you’ (Deu. 22: 6), “you may even say that the egg has actually fallen into his courtyard; but it is still subject to the law of sending away, since in any case in which the man himself may acquire it, the courtyard acquires it for him; but in any case in which he himself might not acquire it, then his courtyard also cannot acquire it for him either.

V. *If that is the case, then is the operative consideration that they are forbidden only **on account of good order**? If the stranger sends the dam away, it is nothing other than robbery [since once the dam is sent away, the eggs immediately fall into the possession of the owner of the courtyard]. If that is not the case, then she is to be sent away [before the eggs can be taken, so they are forbidden one way or the other].*

W. *We deal with a minor, who is not subject to the requirement of sending her away.*

X. But is what a minor done subject to the consideration of “**on account of good order**”?

Y. *Here is the sense of the passage: The father of the minor must return them **on account of good order**.*

Here is a case in which the commentary through graphics conveys the complexity of the composite, since the text, read as a sequence of



connected, cumulative statements proves simply gibberish. I.1, 2 supplement the rule of the Mishnah and add a minor detail. II.1 then goes on to another passage of the Mishnah, clarifying the situation to which the Mishnah's rule makes reference. But the real focus of interest is whether and how a person's courtyard effects title for him, and this requires the consideration of a variety of cases that permit us to test the position of Yosé b. R. Hanina on the matter. There is no reason to imagine that this handsome and sustained analysis has been made up in particular to serve to expand the Mishnah-paragraph before us.

## 8:8

- A. **He who rents out a house to his fellow for a year —**
- B. **[if] the year was intercalated [and received an extra month of Adar],**
- C. **it is intercalated to the advantage of the tenant.**
- D. **[If] he rented it to him by the month,**
- E. **[if] the year was intercalated,**
- F. **it is intercalated to the advantage of the landlord.**
- G. **M'SH B: In Sepphoris a person hired a bathhouse from his fellow for twelve golden [denars] per year, at the rate of one golden denar per month [and the year was intercalated].**
- H. **[102B] The case came before Rabban Simeon b. Gamaliel and before R. Yosé.**
- I. **They ruled, "Let them divide the month added by the intercalation of the year."**

**I.1** A. *Is the precedent cited to contradict the rule [A-C]?*

- B. *The passage contains a lacuna and this is its intended sense: And if he had said to him, "For twelve golden coins per year, a golden denar per month, let them divide it. **M'SH B: In Sepphoris a person hired a bathhouse from his fellow for twelve golden [denars] per year, at the rate of one golden denar per month [and the year was intercalated].** The case came before Rabban Simeon b. Gamaliel and before R. Yosé. They ruled, "Let them divide the month added by the intercalation of the year."*
- C. *Said Rab, "If I had been there, I would have assigned the whole of the added month to the landlord."*
- D. *What does he thereby intend to tell us? Is it that one takes as authoritative only the final statement in a transaction that leads to an agreement? Rab has already made that point. For R. Huna said, "They say in the household of Rab, 'If the agreed price is an istera, a hundred maahs, then a hundred maahs are due; if a hundred maahs, an istira, then an istera is what is due.'"*
- E. *Were that the only formulation of Rab's view, I should have reached the conclusion that in that case, the second formulation is meant to spell out the first; therefore we are informed that that is not the case. [But in the more generic formulation of the rule, in the present context, we realize his*

view encompasses a broader variety of cases, so that, when the two terms are contradictory, we simply follow the second that is used.]

- F. *And Samuel said, “[With reference to the decision of Simeon b. Gamaliel and Yosé,] We deal in that decision with a case in which the landlord comes to lay claim at the middle of the month, but if he should come and lay claim at the beginning of the month, the whole of the fee for the month is assigned to the landlord. Should he come at the end of the month, the whole of it is to the tenant.”* [Possession establishes title. If the landlord demands rent in the middle of the extra month, the tenant has the first half rent free; he pays for the second; the house belongs to the landlord, and ownership for the next half month is subject to dispute.]
- G. *But then does Samuel reject the view that one takes as authoritative only the final statement in a transaction that leads to an agreement?*
- H. *But lo, both Rab and Samuel maintain, “[In a case in which one says to the other,] ‘I am selling you a kor for thirty selas,’ he can retract even at the last seah. But if he says, ‘I am selling you a kor for thirty, at a sela per seah,’ then as the buyer takes each, he makes acquisition of it.”*
- I. *There, the reason is that he has taken possession, and here too, he has taken possession.*
- J. *And R. Nahman said, “[Freedman:] Land remains in the presumptive possession of its owner.”*
- K. *What does he thereby intend to tell us? Is it that one takes as authoritative only the final statement in a transaction that leads to an agreement? Rab has already made that point.*
- L. *He indicates that that is the rule even if the terms were reversed [because we rely not on the order only, but on the prevailing presumption.]*
- I.2.** A. *R. Yannai was asked, “If the tenant said, ‘I paid,” and the landlord said, ‘I didn’t get,’ who has to bring the proof?”*
- B. *But to what span of time does the dispute pertain? If it is within the term of the lease, we have learned the rule that pertains, and if it is after the term of the lease, we have already learned the rule. For we have learned in the Mishnah: **If the father of a firstborn died within thirty days of the son’s birth, the prevailing presumption is that the baby has not been redeemed, unless the estate can produce proof to the contrary that he has been redeemed. If it was after thirty days, the presumption is that the baby has been redeemed, unless they said that he had not been redeemed [M. Bekh. 8:6J-L].***
- C. *Now it is necessary to address a dispute that comes up on the day on which the term of the lease is completed. Is it commonplace for one to pay on the day that marks the end of the lease or is that not the case?*
- D. *Said to them R. Yohanan, “You have learned to repeat it [103A] in the following: **An employee [if he claimed his salary] within the stated time takes an oath [that he has not been paid] and collects his salary. [If] the stated time has passed [and he did not collect his salary], he does not take an oath and collect his salary [M. B.M. 9:11I-M].** [If there is a dispute between him and the employer on the last day, with the employer alleging that he has already paid*

*him,] it is the worker who swears [that he has not been paid and receives his wages. Though in general the defendant swears so as to be free of having to pay,] rabbis make an exception in this case, because an employer, who is preoccupied, may suppose he has paid one rather than another. But here the tenant is the one who is believed on oath [even though it is the day on which the lease expires.]”*

- I.3.** A. *Said Raba said R. Nahman, “Someone who rented a house to his fellow for ten years and wrote out a deed [lacking a date], and then said to him, ‘You have held on to the house for five years,’ is believed.”*
- B. *Said R. Aha of Difti to Rabina, “Then how do you deal with this case: someone lent a hundred zuz on the strength of a bond and the other said to him, ‘I have paid you half,’ is he also believed?”*
- C. *He said to him, “How are the cases comparable? There the function of the bond is to make certain there is repayment. Had he really repaid him, he should have written that fact on the bond or gotten a receipt. But here he can claim, ‘The reason I wrote the deed was so that you would not claim to own the field by uninterrupted usufruct.’”*
- I.4.** A. *Said R. Nahman, “One borrows something ‘in its good state’ for ever [Freedman: the lender states, ‘I lend it to you in its good state,’ meaning, as long as it is fit for its purpose, and so, even if he returns it, he can take it again whenever he needs it].”*
- B. *Said R. Mari, son of Samuel’s daughter, “But that rule applies only if he has formally effected acquisition from him.”*
- C. *Said R. Mari b. R. Ashi, “He has to return the handle to him [if the article is broken or damaged and unfit for its use, since it was not a gift but only a loan (Freedman/Rashi)].”*
- D.. *Said Raba, “If someone said to another, ‘Lend me a hoe for hoeing in this garden,’ he may hoe only in that garden. If he said, ‘for hoeing a garden,’ he may hoe any garden.’ ‘For hoeing gardens,’ he may hoe all his gardens and return only the handle.”*
- E. *Said R. Pappa, “One who said to his neighbor, ‘Lend me this well for irrigation,’ and it falls in, cannot rebuild it. [Freedman: the borrower cannot rebuild and claim that the well is lent to him for as long as he needs it, since he specified, ‘This well,’ and it is no longer the same when rebuilt.] But if he said, ‘Lend me the place for a well,’ he can continue sinking shafts on his land until he chances upon water. And it is required that he have formally made acquisition from him.”*

The analysis of the Mishnah’s rule rapidly wanders over into a broader field of analysis, namely, the interpretation of the language used in making agreements, a subject of on-going interest to the Bavli’s framers. We start with the obvious question of how the case pertains to the rule, I.1. But Rab’s observation forthwith precipitates an inquiry into the issue of how we read language; if several phrases are used, the operative one is the final one. This is worked out in the familiar way. Samuel interprets the relationship of the case to the rule in a different way, and this requires us to find out whether he differs from Rab’s principle. Nos. 2-5 then proceed to work on the broader problem, ignoring the specific case, all the more

so the rule that has led to the discussion. Here is an example of a logical progression from rule to case to broader principle. But as a matter of fact, M. 8:9 would have been better served by No. 4 than is M. 8:8, as we shall now see.

### 8:9

- A. He who rents out a house to his fellow,
- B. and [the house] fell down,
- C. is liable to provide him with [another] house.
- D. [If] it was a small house, he may not make it large.
- E. [If] it was a large house, he may not make it small.
- F. [If] it was a single-family dwelling, he may not make it a duplex.
- G. [If] it was a duplex, he may not make it a single-family dwelling.
- H. He may not provide fewer windows [than had been in the house which fell down] nor more windows,
- I. except with the concurrence of both parties.

- I.1** A. *To what circumstance does the rule pertain? If he had stipulated, "This house,": then when it falls down, he is exempt from any further obligation, and if he had said, "a house," without further stipulation, why can he not provide **two houses in place of one, or a large house in place of a small house?***
- B. *Said R. Simeon b. Laqish, "It is in a case in which he had said to him, 'The house that I am renting to you — the measure of its length is this and so.'"*
- C. *If that is the case, then what is the point?*
- D. *Rather, when Rabin came, he said R. Simeon b. Laqish [said], "It is a case in which he had said to him, 'I am renting to you a house like this one.'"*
- E. *Still, that is the case, then what is the point?*
- F. *Indeed, it was necessary to specify matters in this way, because the house that was shown as the model stood on a river bank. I might have thought, "What is meant by the language, 'like this'? It is a house on the river bank." Thus we are told that that is not what is at stake in such language.*

The clarification is limited to the language of the Mishnah itself.