

III

BAVLI BABA BATRA CHAPTER THREE

FOLIOS 28A-60B

3:1

- A. [Title by] usucaption of (1) houses, (2) cisterns, (3) trenches, (4) caves, (5) dovecotes, (6) bathhouses, (7) olive presses, (8) irrigated fields, (9) slaves,
 - B. and anything which continually produces a yield —
 - C. title by usucaption applying to them is three years,
 - D. from day to day [that is, three full years].
 - E. A field which relies on rain — [title by] usucaption for it is three years,
 - F. not from day to day.
 - G. R. Ishmael says, “Three months in the first year, three in the last, and twelve months in between — lo, eighteen months [suffices].”
 - H. R. Aqiba says, “A month in the first year, a month in the last, and twelve months in the middle, lo, fourteen months.”
 - I. Said R. Ishmael, “Under what circumstances?
 - J. “In the case of a grain field.
 - K. “But in the case of a tree-planted field [an orchard], [if] one has brought in the [grape crop], collected the olives, and gathered the [fig] harvest,
 - L. “lo, these [three harvests] count as three years.”
- I.1** A. Said R. Yohanan, “I heard from those who went to Usha that they would say, ‘How on the basis of Scripture do we know that the title by usucaption is secured after three years? *It rests on the analogy to be drawn from an ox that is an ox*

which is an attested danger. Just as in such a case, it is only after the ox has gored three times that it is removed from the classification of a harmless ox and declared to be an attested danger, so too, once the squatter has consumed the crop for three years is the field removed from the domain of the seller and assigned to the domain of the buyer."

- B. *And [if one should argue,] "Just as the distinctive trait of the ox that is an attested danger, the owner does not become liable for full damages until it has gored a fourth time, so here, too, the property is not going to be assigned to the squatter until the end of the fourth year," how are the two cases analogous in that regard? In that case, it is only from the point at which the ox has gored three times that it is assigned the status of an attested danger. [28B] But from that point, if the ox has not gored, what would the owner have to pay? But here, once the squatter has enjoyed the usufruct for three years, the field is assigned to his domain.*
- C. *[If the rule derives from the analogy drawn from the field to the goring ox,] then what about the following: a claim of ownership through usucaption even without a plea in justification [that the squatter bought it but has lost the deed] should be a valid claim of ownership through usucaption. But then how come we have learned in the Mishnah: **Any act of usucaption [along] with which [there] is no claim [that the property being utilized was originally purchased but the deed has been lost] is no act of securing title through usucaption [B. B.B. 3:3A]?***
- D. *What is the operative consideration here? It is that we maintain that if there is a justification, it is possible that the squatter is telling the truth, but if he himself makes no such plea, are we going to enter a plea for him?*
- E. *[To the analogy between the matter of usucaption and the matter of the ox that is an attested danger,] objected R. Avira, "But how about this case: if one protested [the squatter's possession of the field] not in the presence of the squatter, the protest should not be valid [but it is in fact a quite valid protest]! For just as in the case of the ox that is an attested danger, the warning concerning the ox's proclivities must be made in the presence of the owner, so here too the protest should have to be made in the presence of the squatter!"*
- F. *[The analogy holds, since in that case] Scripture explicitly states, "And it has been testified to its owner" (Exo. 21:29), but here, the operative principle is, "Your friend has a friend, and your friend's friend has a friend" [so news carries, and the owner should have known and protested in adequate time].*

- I.2** A. *Now from the perspective of R. Meir, who has said, “If there was a span of time between the gorings, the owner is liable, how much the more so if they are consecutive and simultaneous,” if someone enjoyed the usufruct of three crops on a single day, for example, figs that ripened in three distinct stages, would this not constitute a right of usucaption?*
- B. *Well, the analogy to the rule pertaining to the beast that is an attested danger must be precise: just as in the case of the ox that is an attested danger, at the time that the first goring took place, no second goring was in hand, so here, at the time that the first produce has been plucked, the second crop must not yet be on the scene.*
- C. *But if one ate the produce on three successive days, as in the case of the caperbush [in which case one fruit is still quite small when another may be plucked], should there not be a right of ownership through usucaption?*
- D. *Here, too, the second crop already is in existence at the time that the first is gathered, and it just goes on ripening [so the analogy is not exact]!*
- E. *Well, what if he gathered three crops in a span of thirty days, as in the case of clover [which is mowed three times a month], would there then not be a right of ownership through usucaption?*
- F. *Just how can we imagine such a case? Is it mowed as it grows? Then this is merely partial usufruct.*
- G. *Well, what if he gathered three crops in a span of three months, as in the case of clover [which is mowed three times a month], would there then not be a right of ownership through usucaption?*
- H. *Well, who is referred to when we speak of those who went to Usha? It is R. Ishmael, and in point of fact this is just what R. Ishmael maintains, as we have learned in the Mishnah: **Said R. Ishmael, “Under what circumstances? In the case of a grain field. But in the case of a tree-planted field, [if] one has brought in the [grape crop], collected the olives, and gathered the [fig] harvest, lo, these [three harvests] count as three years.”***
- I.3** A. *And how do rabbis [who reject Ishmael’s view that we derive the rule concerning usucaption from the analogy of the rule governing the ox that is an attested danger], how do they derive the rule that three years’ usufruct confers ownership via usucaption?*
- B. *Said R. Joseph, “There is a verse of Scripture: ‘Men shall buy fields for money and subscribe the deeds and seal them’ (Jer. 32:44). Now lo, the prophet is speaking in the tenth year of the rule of Zedekiah, and he is warning the people*

that they will go into captivity in the eleventh [so they will not use the fields for more than two years, so they'd better guard the title deeds (Simon)].”

- C. *Said to him Abbaye, “But perhaps he’s just giving them some sort of general good advice? [29A] For if you don’t maintain that position, then what sense is there of his further statement, ‘Build houses and dwell in them and plant gardens and eat the fruit thereof’ (Jer. 29: 5). That obviously is some sort of general good advice, and this, too, is some sort of general good advice. You may know that that is so, for lo, it is written, ‘And put them in an earthen vessel that they may keep for many days’ (Jer. 32:14).”*
- D. *Rather, said Raba, “[The operative consideration for the position of rabbis is not a verse of Scripture but rather the following thinking:] in the first year, someone will forbear, in the second he will forbear, but in the third, he will no longer forbear.”*
- E. *Said to him Abbaye, “If so, when the ownership of the land is restored to the original owner after two years, it should be restored without the produce [in the theory that the original owner has waived his rights]! But then how come R. Nahman said, ‘The land is restored, and the produce likewise is restored’?”*
- F. *Rather, said Raba, “In the first year, someone is not going to object, in the second year, he won’t object, but by the third year, he is going to object.”*
- G. *Said to him Abbaye, “Then what about the household of Bar Eliashib, who object even if somebody crosses their field? In their case, the right of usucaption could be exercised right off the bat [if they do not object]! And if you say that that is the case, you introduce a variable rule [instead of a consistent one]!”*
- H. *Rather, said Raba, “In the first year, someone takes good care of his title deed, and in the second likewise, and in the third year so, too, he takes care of it; beyond that point, he doesn’t take care of it.”*
- I. *Said to him Abbaye, “Then if someone protested the presence of a squatter not in the presence of the squatter, it should not constitute a valid act of protest, for the other could say to him, ‘Had you objected to me personally, I would have taken better care of my title deed!’”*
- J. *“The other may respond: ‘Your friend has a friend, and your friend’s friend has a friend’ [so news carries].”*
- I.4** A. *Said R. Huna, “The time span of ‘three years’ of which they have spoken in the Mishnah refers to a case in which the squatter took the crops in all three years successively.”*

- B. *So what else is new? Have we not learned in the Mishnah: **Title by usucaption applying to them is three years, from day to day [that is, three full years]**?*
- C. *What might you otherwise have said? That the three years of which the Mishnah spoke was meant to exclude abbreviated years [a few months in one year, the next full year, a few months in the third year], and that years that are not simultaneous are encompassed as well? So we are informed that that is not the case.*
- D. *Said R. Hama, "And R. Huna concedes that in a place in which it is the practice to leave fields fallow [utilizing the crops through a sequence of years that are not simultaneous still constitutes a valid claim of usucaption]."*
- E. *That's obvious!*
- F. *No, it is necessary to make that point. For in a case in which some owners leave fields fallow and others do not, and this man is one of those who do, you might suppose that, in this case, the squatter may say to him, "If the field were yours, you should have sown it." So I am informed that that is not the case, since the other may respond, "I cannot watch over a single field in a whole valley"; or, alternatively, "I like it this way, because it makes the field more productive."*

I.5 A. *We have learned in the Mishnah: [Title by] usucaption of (1) houses...is three years:*

- B. *But lo, while during the day it will be known if someone is living there, by night no one will know if he is living there [and Huna maintains that the occupation must be continuous]!*
- C. *Said Abbaye, "Who is going to know that someone lived in the house? It will be the neighbors, and the neighbors will know whether he has lived in it by night as much as by day."*
- D. *Raba said, "For instance, two witnesses may come and say, 'We rented it from him and we lived in it for three years, day and night.'"*
- E. *Said R. Yemar to R. Ashi, "But lo, these are not disinterested witnesses! For if they do not claim what they have said, we may well say to him, 'Go pay him rent for living in his house!'"*
- F. *He said to him, "Genuinely incompetent judges are the only ones who would do so [accepting evidence from people who have already paid the rent]. Are we not dealing with a case in which they come ready to pay the rent and want to know to whom they are supposed to pay it?"*

- I.6** A. *Said Mar Zutra, “If the claimant [the one who wishes to evict the squatter] says, let the other produce two witnesses to testify that the squatter lived in the house for three years, both day and night, his is a valid demand.”*
- B. **[29B]** *And [Mar Zutra] concedes that if the claimant of the property is a peddler who journeys from town to town, even though he has not made such a claim, the court makes the claim in his behalf.*
- I.7** A. *And R. Huna concedes in the case of a shop such as one in Mahoza that the three years of continuous residence, both day and night, is not required, because these are used by day and not by night.*
- I.8** A. *Rami bar Hama and R. Uqba bar Hama bought a slave girl in partnership. One master made use of her in the first, third, and fifth years, the other in the second, fourth, and sixth years. A claim against their title was issued. They came before Raba. He said to them, “How come you made such an arrangement? It was so that neither one of you would gain ownership by usufruct against the other? But just as you have no claim of usucaption against one another, so you also have established no claim of usucaption against the claim of outsiders to ownership of the slave!”*
- B. *“But that ruling applies only in a case in which there was no written bond between them to share the services, but if there were, it would be known” [and any third party claimant would have to make his claim before three years had passed, and since he did not do so, ownership through usucaption has been established (Simon)].*
- I.9** A. *Said Raba, “If one has enjoyed the usufruct of an entire field except for the area required for sowing a mere quarter-qab of seeds, he acquires ownership after three years of usufruct of the entire field except for that area.”*
- B. *Said R. Huna b. R. Joshua, “But that rule pertains only if the left-over area was suitable for sowing; but if it was not, it is acquired along with the rest of the field.”*
- C. *Objected R. Bibi bar Abbaye, “But what about the case of a rock? How is one going to acquire it through usucaption? Is it not going to be by putting his beasts there and laying out his crops there? Here, too, he should have established rights of ownership through keeping his beasts there or laying out his crops there.”*
- I.10** A. *Someone said to his neighbor, “What right do you have in this house?”*

- B. *He said to him, "I bought it from you and I have had the usufruct for the period required to establish ownership through usucaption."*
- C. *He said to him, "But the reason I never objected is that I was living in the inner room. [The house was never fully yours during the three years anyhow.]"*
- D. *The case came before R. Nahman. He said to him, "Go, prove you have had constant use of the house [for three years, without the claimant]."*
- E. *Said to him Raba, "But how can this be the ruling? He who lays claim against his fellow bears the burden of proof." [The man who claimed originally to own the house has to prove his case.]*
- F. *There is then a contradiction between rulings of Raba, as well as a contradiction between rulings of R. Nahman.*
- G. *For there was the case of [30A] someone who said to another, "I shall sell to you all of the property of Bar Sisin [that is, that I bought from Bar Sisin]." Now there was a piece of land that was called Bar Sisin's land. The seller said, "But this does not really belong to Bar Sisin, even though it is called Bar Sisin's land." [So that was supposedly excluded from the sale.] The case came before R. Nahman. He assigned the property to the possession of the purchaser of the rest of the land.*
- H. *Said to him Raba, "But how can this be the ruling? He who lays claim against his fellow bears the burden of proof." [The man who claimed bought this piece of property has to prove his case.]*
- I. *There is then a contradiction between rulings of Raba, as well as a contradiction between rulings of R. Nahman. [Simon: In the former case Raba decides in favor of the purchaser, Nahman in favor of the seller, and in the latter case Raba decides in favor of the seller and Nahman in favor of the purchaser.]*
- J. *There is no contradiction between the two positions of Raba. In the latter case the seller holds the right of possession, in the former, the purchaser.*
- K. *There is no contradiction between the two positions of R. Nahman. In the latter case the seller said he was selling the property of Bar Sisin, and this property is called Bar Sisin's, so he has to prove it is not Bar Sisin's. But here the one who claims to have established ownership through usucaption has to be treated as if he has produced a document of sale, so do we not say to him, "Prove your document is valid and you can retain ownership." [Simon: Here we can say to him, prove you have had*

unchallenged occupation; in both cases Nahman requires the party in possession to prove his right.]

I.11 A. *Somebody said to someone else, “What right do you have in this house?”*

- B. *He said to him, “I bought it from you, and I have had the usufruct for a sufficient number of years to establish ownership.”*
- C. *He said to him, “Well, I was overseas throughout that time, so I could not object.”*
- D. *He said to him, “Well, I have witnesses to prove you would come here thirty days a year.”*
- E. *“True enough, but on those thirty days, I was busy with my business.”*
- F. *Said Raba, “It can certainly happen for somebody to be preoccupied for thirty days.”*

I.12 A. *Somebody said to someone else, “What right do you have in this land?”*

- B. *He said to him, “I bought it from So-and-so, who said to me that he had bought it from you.”*
- C. *He said to him, “Don’t you concede, then, that [30B] this land once was mine, and you did not buy it from me? Evacuate the property, you have no claim against me.”*
- D. *Said Raba, “He has set forth a valid claim [since the man who claimed ownership through usucaption could not prove that the man from whom he bought the land actually owned it.]”*

I.13 A. *Somebody said to someone else, “What right do you have in this land?”*

- B. *He said to him, “I bought it from So-and-so, and I have had the usufruct for a sufficient number of years to establish ownership.”*
- C. *He said to him, “So-and-so is a robber.”*
- D. *He said to him, “Lo, I have witnesses to prove that I came and took counsel with you, and you said to me, ‘Go, buy it.’”*
- E. *“With the second party it was easier for me to go to court, with the first it was harder than with the other.”*
- F. *Said Raba, “He has set forth a valid claim.”*
- G. *In accord with whom is this ruling?*
- H. *It is in accord with Admon, as we have learned in the Mishnah: He who contests [another’s] ownership of a field, but he himself is a signatory on it [the documents of ownership] as a witness — Admon says, “He*

can claim, ‘The second [owner of the property] was easier for me, and the first was harder than he [for purposes of repossessing the field which in any case is mine].’” And sages say, “He has lost every right” [M. Ket. 13:6A-C].

- I. *Not at all, you may even maintain that Raba concurs with rabbis here. For in that case they may reject his claim because he has actually done something that weakens his allegation, but in this case he has said something but not done anything, and someone may easily babble without meaning a thing!*

I.14 A. *Somebody said to someone else, “What right do you have in this land?”*

- B. *He said to him, “I bought it from So-and-so, and I have had the usufruct for a sufficient number of years to establish ownership.”*
 C. *He said to him, “So-and-so is a robber.”*
 D. *He said to him, “Lo, I have witnesses to prove that the prior evening, you came and said to me, ‘Sell it to me!’”*
 E. *“What I was thinking was to buy the land that I already had a legal right to.”*
 F. *Said Raba, “It is not unheard of for someone to buy what he legally owns.”*

I.15 A. *Somebody said to someone else, “What right do you have in this land?”*

- B. *He said to him, “I bought it from So-and-so, and I have had the usufruct for a sufficient number of years to establish ownership.”*
 C. *He said to him, “Lo, I have a deed that I bought it from him four years ago.”*
 D. *He said to him, “Do you imagine that when I claimed that I have held it for the period sufficient to establish ownership through usucaption, I meant it was only for three years. I meant it was for many, many years.”*
 E. *Said Raba, “It is not unheard of for someone to refer to many, many years as the period sufficient to establish ownership through usucaption.”*
 F. *But that is the case only if the squatter had enjoyed the usufruct for seven years, so that his claim to usucaption through usufruct is prior to the deed [Simon: since he already had the use of the land for three years after the alleged purchase, his title was unassailable], [31A] but if it was for only six years, then there is no more effective protest than this. [Simon: The action of the original owner in selling the land after the occupier had been on it only two years, so that in reality he never acquired ownership through usucaption.]*

Cases and Problems of Establishing Ownership through Usucaption: Various Claims and how the Courts Dispose of Them

We move from the careful clarification of details of the rule given by the Mishnah to a sequence of cases that illustrate general principles on how courts sort out conflicting claims of usufruct.

- I.16** A. If one party says, “It belongs to my fathers,” and the other, “This belongs to my fathers,”
- B. *this one presents witnesses to prove that it had belonged to his father, and that one did the same to prove that he had had the usufruct for a period sufficient to establish ownership through usucaption —*
- C. Said Rabbah, “Why should [the squatter] lie? *If he had wanted, he could have said, ‘I bought it from you, and, furthermore, I have had the usufruct for a period sufficient to establish ownership through usucaption’!*”
- D. *Said to him Abbaye, “When there are witnesses, we do not invoke the argument of ‘why should he have lied anyhow.’”*
- E. *Then the squatter changed his plea, now saying, “Well, so it did belong to your father, but I bought it from you, and what I meant when I said it belonged to my father was that I was as secure in it as though it had belonged to my father.”*
- I.17** A. *[The question was raised:]* Is a litigant allowed to alter his plea in the course of a case, or is he not allowed to do so?
- B. Ulla said, “A litigant is allowed to alter his plea in the course of a case.”
- C. The Nehardeans say, “A litigant is not allowed to alter his plea in the course of a case.”
- D. *But Ulla concedes that in a case in which one said to the other, “It belonged to my father and not to your father, he is then not allowed to alter his plea in the course of a case and then claim, ‘It did belong to yours.’”*
- E. *And, further, [he concedes that] if when he is standing in court, he does not change his plea in any manner, but after leaving court he comes back and changes them, then the rule that one may be allowed to alter his plea in the course of a case does not apply. Why not? Because from some third party he has learned to change his plea.*
- F. *And Nehardeans concede that in a case in which he said, “It belonged to my father, who bought it from your father,” that he is then allowed to alter his plea in the course of a case.*

- G. *And, further, if someone made statements outside of court and then wants to plead in a manner inconsistent with those statements when he comes to court, he may do so. How come? It is entirely common for someone to be willing to reveal the full nature of his plea only in court.*
- H. *Said Amemar, "I am a Nehardean, but I take the view that a person is allowed to alter his plea in the course of a case."*
- I. *And the decided law is that a person is allowed to alter his plea in the course of a case.*
- I.18** A. This one says, "It belongs to my father," and that one says, "It belongs to my father" —
- B. *this one brings witnesses that it belongs to his father, and that he had enjoyed the usufruct for a period sufficient to establish ownership through usucaption, and that one brings witnesses that he had enjoyed the usufruct for a period sufficient to establish ownership through usucaption —*
- C. *said R. Nahman, "The evidence concerning usufruct cancels out the contrary evidence to the same effect, and the land is assigned in accord with the evidence that the father had held title to the land."*
- D. *Said to him Raba, "But this evidence has been confuted."*
- E. *He said to him, "Granted that it has been confuted in the matter of usufruct, [31B] has it been confuted with respect to the father's ownership of the land?"*
- F. *May we then say that Raba and R. Nahman are replicating the dispute of R. Huna and R. Hisda, in line with that which has been stated:*
- G. *Two pair of witnesses contradict one another —*
- H. *Said R. Huna, "This one may come and give testimony by itself, and that one may come and give testimony by itself."*
- I. *R. Hisda said, "Why in the world do I have to deal with mendacious witnesses?"*
- J. *May we then say that R. Nahman ruled in accord with the position of R. Huna, and Raba in accord with the position of R. Hisda?*
- K. *With the position of R. Hisda no party is in contention. Where there is a dispute, it is within the position of R. Huna. R. Nahman accords with R. Huna, and Raba takes the view that R. Huna took the position that he did only in a case in which there was evidence given in another case entirely, but here, where there is testimony in exactly the same case, he does not take that view.*
- L. *[If, in line with the ruling of Nahman,] the squatter produced witnesses to prove that the land had belonged to his father —*

- M. *Said R. Nahman, “We evicted him, we can bring him back in, and so far as any damage this may cause to the reputation of the court, we ignore it.”*
- N. *Objected Raba, and some say, R. Zeira, ““If two witnesses say the husband has died, and two say he has not died, two say the wife has been divorced and two say she has not been divorced, lo, this woman may not remarry, and if she has remarried, she also does not have to leave her second husband. R. Menahem b. R. Yosé says, ‘She must leave the second husband.’ Said R. Menahem b. R. Yosé, ‘Under what circumstances do I rule that she must leave the second husband? It is when witnesses came, and then she got married. But if she got married and then the contrary witnesses showed up, lo, this one should not go forth.’” [This is because if she did, it would bring into disrepute the court that permitted her to remarry.]*
- O. *He said to him, “Well, I was thinking of making a final decree in line with what I said. But now that you have refuted me, and R. Hamnuna in Sura has also refuted me, I am not going to carry out my plan of action.”*
- P. *But then he made a concrete decision in line with what he had originally thought of doing. Bystanders thought it was a mistake. But that was not so, for he relied upon truly mighty authorities, for we have learned in the Mishnah: [And so two men — this one says, “I am a priest,” and that one says, “I am a priest” — they are not believed. But when they give evidence about one another, lo, they are believed (M. Ket. 2: 7)]. R. Judah says, “They do not raise someone to the priesthood on the evidence of a single witness. Said R. Eleazar, “Under what circumstances? When there are those who raise doubt about the matter. But when there is none who raises doubt about the matter, they do raise someone to the priesthood on the evidence of a single witness.” Rabban Simeon b. Gamaliel says in the name of R. Simeon, son of the Prefect, “They raise someone to the priesthood on the evidence of a single witness” [M. Ket. 2:8]. Now, as a matter of fact, it would appear that what Rabban Simeon b. Gamaliel says is the same thing as R. Eleazar! And should you say that at issue between them is a case in which only a single witness raised doubt about the matter, and R. Eleazar takes the view that even a single witness suffices to raise doubt about the matter, [32A] while Rabban Simeon b. Gamaliel maintains that only if two witnesses come and testify do we have a sufficiently founded doubt to take action, did not R. Yohanan say, “All parties concur that a valid doubt about a matter may be raised only by two witnesses”? Rather, with what sort of a case do we deal here? It is one in which the father of the man was known to have been a priest, but a rumor circulated about the man that he was*

the son of a divorcée or of a woman who had undergone the rite of removing the shoe, on which account we removed him from the priesthood, but then one witness came and gave testimony that he really was a priest, and we reinstated him in the priesthood, but then two people came and testified that his mother really was a divorcée or a woman who had undergone the rite of removing the shoe. And then one more single witness came and testified that he really was a priest. All parties concur that the evidence of the two witnesses who attest to his authenticity as a priest is joined together [even though they do not testify in one another's presence]. But concerning what point do they disagree? It is whether or not we take account of, or disregard, disrepute that may be brought on the court if it changes its decision. R. Eliezer takes the view that once we have removed the man from the priesthood, we do not put him back into that caste, lest we bring disrepute on the court, and Rabban Simeon b. Gamaliel maintains that, just as we have removed from the priesthood, so we also may reinstate him, and we ignore any disrepute that this change of action may bring upon the court.

Q. *Objected R. Ashi, "If so, then why should [Eliezer] decline to reinstate the priest only if a single witness comes up at the end? Why not decline to do so even if two come together?"*

R. *Rather, said R. Ashi, "All parties concur that we do not take account of the disgrace to the court brought on by a changed decision. But at issue here is whether or not we join together otherwise disjointed testimony, and at issue is the same dispute as is conducted by the following Tannaite authorities, as has been taught on Tannaite authority: **The testimony of witnesses is confirmed only if they had been in the line of sight of one another. R. Joshua b. Qorha says, 'Even though this one was not in the line of sight of that one.'** Under no circumstances is their testimony confirmed unless both of them are heard at the same time. R. Nathan says, 'They hear out the statement of this party today, and when his fellow comes on the next day, they give a hearing to what he has to say as well' [T. San. 5:5F-I]."*

I.19 A. *Somebody said to someone else, "What right do you have in this?"*

B. *He said to him, "I bought it from you, and here is the deed."*

C. **[32B]** *He said to him, "It's a forgery."*

D. *He leaned over and whispered to Rabbah, "Well, it is true that it's a forgery, but I really did have a valid deed, but I lost it, so I thought it would be better to come to court with something rather than with nothing."*

- E. *Said Rabbah, “‘Why should he lie!’ If he wanted, he could have said, ‘It is a perfectly valid document.’”*
- F. *Said to him R. Joseph, “So on what are you going to rely? On this ‘document’? It’s no more than a sherd of clay.”*

I.20 A. *Somebody said to someone else, “Pay me the hundred zuz that I claim from you, and here’s the bond.”*

- B. *He said to him, “It’s a forgery.”*
- C. *He leaned over and whispered to Rabbah, “Well, it is true that it’s a forgery, but I really did have a valid deed, but I lost it, so I thought it would be better to come to court with something rather than with nothing.”*
- D. *Said Rabbah, “‘Why should he lie!’ If he wanted, he could have said, ‘It is a perfectly valid document.’”*
- E. *Said to him R. Joseph, “So on what are you going to rely? On this ‘document’? It’s no more than a sherd of clay.”*
- F. *Said R. Idi bar Abin, “The decided law accords with the position of Rabbah when it comes to real estate, and the decided law accords with the position of R. Joseph when it comes to ready cash. The decided law accords with the position of Rabbah when it comes to real estate, for the principle is, keep land in the hands of the present ownership. And the decided law accords with the position of R. Joseph when it comes to ready cash, for the principle is, keep cash in the hands of the present ownership.”*

I.21 A. *Somebody who had served as a surety for a borrower said to him, “Give me the hundred zuz that I paid the lender on your behalf, and here is your bond.”*

- B. *He said to him, “Hey, didn’t I pay you back?”*
- C. *He said to him, “Yeah, and didn’t you borrow the money from me again?”*
- D. *R. Idi [who had to decide the case] sent word to Abbayye, “What is the ruling in a case like this one?”*
- E. *Abbayye sent back word, “So what’s bothering you? You are the one who said, ‘The decided law accords with the position of Rabbah when it comes to real estate, and the decided law accords with the position of R. Joseph when it comes to ready cash,’ specifically, keep cash in the hands of the present ownership.”*
- F. *But that is the case only if the surety had said to the other, “After repaying, you once again borrowed money from me.” If, however, he claimed, “I returned it to you because the coins were worn or rusty,” the obligation to pay off the bond stands.*

- I.22** A. *The rumor circulated concerning Raba b. Sharshom that he was enjoying the usufruct of an estate belonging to minors. Said to him Abbaye, "Tell me the facts of the case."*
- B. *He said to him, "It was real estate belonging to an orphans' estate that was a mortgage for money the deceased owed to me that I have now taken over. And he owed me [33A] more money than that in addition. Now when I had the usufruct of the land for the span of time covered by the mortgage, I said to myself, 'Now if I give the real estate back to the orphans and tell them that I still have a claim on their father for more money, I shall be subject to the rule of the rabbis, 'Anybody who claims to recover money from an estate belonging to orphans has to support the claim by taking an oath.' Rather than doing that, I decided to hold on to the mortgage bond and continue to enjoy the usufruct of the land to the extent of the money that is still owed to me. Since, if I were to claim that I had bought the land, my claim would have been accepted, I am certainly going to be believed when I claim that they still owe me money."*
- C. *Said to him, "Well, as a matter of fact, you cannot claim that you bought the land, because the rumor in circulation says that it belongs to the estate. Go, give it back to them, and when they reach maturity, claim what is owing to you by them in a court of law [taking the oath]."*
- I.23** A. *A relative of R. Idi bar Abin died, leaving a date tree. [There was a dispute over ownership of the tree between Idi and someone else.] [Idi] said, "I am the nearer relative," and the other said, "I am the nearer relative." [The other seized the tree.] But later on, he admitted that R. Idi was the nearer relative. So R. Hisda assigned to the other ownership of the tree. [Idi] claimed, "Then let him pay me back for the usufruct that he has had from the time he seized the tree."*
- B. *Said R. Hisda, "Is this the man whom people describe as a great authority? On what basis do you claim ownership? On this man's admission. But he is the one who until now has been claiming that he was the nearer relative [so, since his claim was viable, all he has done is give you a gift]."*
- C. *Abbaye and Raba did not concur with this decision of R. Hisda: [33B] "Since he has concede the claim, he has conceded it [and has to pay the usufruct]."*
- I.24** A. *This one says, "It belongs to my father," and the other, "This belongs to my father,"*
- B. *this one presents witnesses to prove that it had belonged to his father, and that one did the same to prove that he had had the usufruct for a period sufficient to establish ownership through usucaption —*

- C. Said R. Hisda, "Why should [the squatter] lie? *If he had wanted, he could have said, 'I bought it from you, and, furthermore, I have had the usufruct for a period sufficient to establish ownership through usucaption'!*"
- D. *Abbaye and Raba did not accept this ruling of R. Hisda, on the basis of the fact that, when there are witnesses, we do not invoke the argument of 'Why should he have lied anyhow.'"*

I.25 A. *Somebody said to someone else, "What are you doing on this land?"*

- B. *The other said, "I bought it from you, and, furthermore, I have had the usufruct of the real estate for a period of time sufficient to establish ownership through usucaption."*
- C. *The defendant went and produced witnesses that he had enjoyed the usufruct for two years [but had none for the third].*
- D. *Said R. Nahman, "The real estate reverts to the claimant and the produce as well."*
- E. *Said R. Zebid, "If his plea had been, 'I was working the land for produce only [as a sharecropper],' however, he would have been believed. For did not R. Judah say, 'Someone who takes a pruning knife and rope in hand and says, "I am going to collect dates from the tree of So-and-so, who has sold them to me," is believed'? The reason is that no one has the gall to enjoy the usufruct if it did not belong to him. Now, as a matter of fact, might one not invoke the same consideration with respect to the real estate as well?" [Simon: If the occupier pleads, I bought it from the claimant," his word should be accepted, because he would not have the gall merely to grab the land.]*
- F. *Well, if someone claims real estate, we say to him, "Show us your deed of sale."*
- G. *Why not the same of the produce?*
- H. *Because people don't draw up deeds of sale for produce!*

I.26 A. *Somebody said to someone else, "What are you doing on this land?"*

- B. *The other said, "I bought it from you, and, furthermore, I have had the usufruct of the real estate for a period of time sufficient to establish ownership through usucaption."*
- C. *The defendant went and produced a single witness that he had enjoyed the usufruct for three years.*
- D. *The rabbis before Abbaye considered ruling that this runs parallel to the case of the bar of metal that was settled by R. Abba. For somebody grabbed a bar of metal from his fellow. He came before R. Ammi. R. Abba was in session before*

him. The plaintiff brought one witness to prove that the man had grabbed the bar from him. The other responded, "Well, it is true that I grabbed it, but the fact is that it was my own property that I grabbed."

- E. Said R. Ammi, [34A] "How should the judges decide this case? As to paying compensation, there are not two witnesses against him. As to declaring him free of paying compensation, there is at least one witness against him. Should he take an oath? But he admits he grabbed the bar of metal, and, since he admits that much, he is in the classification of a mere robber."
- F. Said to him R. Abba, "He is to be classified as one who is obligated to take an oath but is not able to do so, and the rule is, whoever is obligated to take an oath but cannot do so has to pay."
- G. Said to them Abbaye, "Well, do you really think the cases are parallel? In that case, the purpose of the witness is to damage the case of the defendant, so that, if another came along with him, we should make the accused give up the article. But here in the case of the land, the purpose of the witness is to sustain the claim of the defendant, so that, if there were another witness, we should confirm for the defendant title to the land." [Simon: Since the witness is in support of the occupier, he cannot be made to pay for the produce, but he might take an oath to confirm his claim in regard to the produce, though in the absence of two witnesses to prove his right, he would have to return the land.] A case parallel to that of R. Abba would be one in which a single witness [testifies that the defendant has had the usufruct] for two years, in which the plaintiff wants compensation for the produce." [Simon: Here the witness is against the occupier, since he testifies that he occupied it only two years and not three, and if another made the same statement, he would have to pay; hence he is under obligation to deny the statement of one witness on oath. But he cannot do so, since he admits he has eaten the produce for two years, so he has to pay.]
- I.27** A. [34B] There was a river boat about which two men were quarreling. This one says, "It is mine," and that one, "It is mine."
- B. One of them came to court and appealed to them, "Hold on to it until I produce witnesses that it is mine."
- C. Do we attach the boat or not?
- D. R. Huna said, "We attach it."
- E. R. Judah said, "We do not attach it."
- F. [The court did attach the boat.] The man went and did not find witnesses. He asked the court to release the boat, so that the stronger would possess it.

- G. *Do we release the boat or not?*
- H. *R. Judah said, "We do not release it."*
- I. *R. Pappa said, "We release it."*
- J. *And the decided law is that we do not seize it, but in a case in which it has been seized, we also do not release it.*

- I.28** A. This one says, "It belonged to my father," and that one says, "To my father" —
- B. *Said R. Nahman, "Whoever is the stronger may grab it."*
 - C. *So what is the difference between this case and the one involving two deeds [of sale or gift, relating to the same real estate] bearing the same date, [35A] in which case Rab said, "Let them decide it," and Samuel said, "It is a case settled by the judges at their own discretion"?*
 - D. *[In a case in which the entirety of the evidence consists of the deeds], there is no possibility that further evidence will emerge, but here, there is the possibility that further evidence will emerge [so that the one who grabbed the property may be forced off it].*
 - E. *And how is this different from the case of which we have learned in the Mishnah: 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 before I made the sale," and that one says, "It was after I made the purchase" — let them divide the proceeds. [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. This one says, "I don't know" and that one says, "I don't know" — let them divide up [the difference] [M. B.M. 8:4]?*
 - F. *In that case, [35B] the one party had a monetary interest in the article in dispute, and so did the other, but in this case of R. Nahman, if the property had belonged to one of them, then it had never belonged to the other, and vice versa.*
 - G. *Said the Nehardeans, "As a matter of fact, if an outsider came along and grabbed it, the court does not remove it from his possession [since it may not belong to either one of the present claimants], for R. Hiyya formulated as a Tannaite rule, 'One who steals public property is not classified as a thief.'"*

- H. *R. Ashi said, "He most certainly is classified as a thief, and what is the sense of, 'is not classified as a thief'? He is not subject to making restitution [and not knowing to whom he should give the property, he cannot make atonement]."*

II.1 A. Title by usucaption applying to them is three years, from day to day [that is, three full years]:

- B. *Said R. Abba, "If the claimant of a piece of real estate should help the one who holds the land to lift a basket of produce onto his shoulders, that constitutes evidence in favor of the presumption that the land belongs to the squatter."*
- C. *Said R. Zebid, "If he pleads, 'I gave him use of the land as a share cropper with a right to the produce, but I did not assign him ownership of the land,' he is believed. But that is the case only if the statement is made during three years of usufruct, but if it is afterward, that is not the case."*
- D. *Said R. Ashi to R. Kahana, "If he gave him use of the land as a sharecropper for more than three years, what was he then supposed to do?"*
- E. *He said to him, "He ought to have registered a protest within the three year period. For if you do not concur in that view, then what is to be said about the so-called mortgage in the manner of Sura, which contains this stipulation: 'On the termination of these years, this land shall be given up without payment.' If the mortgagee suppresses the mortgage bond and then claims he has bought the land, shall we say his plea is to be accepted? Would rabbis make a rule that would expose the one who gives the mortgage to an unfair loss? But as a matter of fact, he can protect himself by registering his protest within three years, and in this case too, all he has to do to protect himself is to register his protest within three years."*

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

- B. *Said Raba, "But if the Israelite said, [36A] 'The gentile told me he had bought it from you,' he is believed."*
- C. *But is there a case in which if a gentile had made a statement, he would not be believed, while if an Israelite made it in the name of a gentile, he is believed?*
- D. *Rather, said Raba, "If an Israelite said, 'The gentile bought it from you in my presence and sold it to me,' he is believed, for if he had wanted, he could have claimed, 'I bought it from you.'"*

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

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

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

B. *So, too, it has been taught on Tannaite authority:*

C. He who had the usufruct of a field in the classification of fruit in the first three years after planting, or produce of the Seventh Year, or mixed seeds, does not thereby have a valid claim to ownership through usucaption.

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

B. *Said Raba, "But if it was in the 'collar of Mahoza' [Simon: a fertile valley where the grain was so abundant that cattle was fed within it], this does constitute the basis for a claim of ownership through usucaption."*

C. *Said R. Nahman, "Occupation of a field full of cracks does not constitute the basis for a claim of ownership through usucaption."*

D. *Occupation of land that yields no more than the seed sown in it does not constitute the basis for a claim of ownership through usucaption.*

E. *Members of the household of the exilarch do not establish ownership through usucaption of what is ours, and we do not establish ownership through usucaption of what is theirs.*

III.1 A. [Title by] **usucaption of...slaves:**

B. But are slaves subject to acquisition by through usucaption at all? And has not R. Simeon b. Laqish said, *"Ownership through usucaption does not pertain to living beings [things that are kept in folds, young animals liable to stray (Simon)] at all?"*

- C. Said Raba, "The meaning is, they are not subject to transfer of ownership through usucaption immediately after use, but they are subject to transfer of ownership through usucaption lasting for three years."

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

B. *So what else is new?*

C. *Not at all, it was necessary to cover the case of an infant that has a mother. What might you have thought? We should take account of the possibility that the mother of the infant has brought it into the house. So we are informed that the mother will not abandon her child.*

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

B. And has not R. Simeon b. Laqish said, "Ownership through usucaption does not pertain to living beings at all"?

C. *The case of goats is exceptional, because they are handed over to a goatherd* [Simon: and therefore if they are found on someone else's property, it is presumed that he has bought them].

D. *But lo, they are left by themselves morning and night [when they go by themselves to and from their owner]!*

E. *In Nehardea there are lots of thieves, so goats are delivered from hand to hand.*

IV.1 A. **R. Ishmael says, "Three months in the first year, three in the last, and twelve months in between — lo, eighteen months [suffices]." R. Aqiba says, "A month in the first year, a month in the last, and twelve months in the middle, lo, fourteen months":**

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

- C. *But do you take that view with respect to the position of R. Aqiba? Then what difference would a whole month [in the first and third year] make to him? [36B] Even one day also should suffice! So no, both parties concur that the act of ploughing does not fall into the category of usucaption, such as to transfer ownership, and what is at issue between them is whether fully-grown or only partially grown crops are required. [Simon: Ishmael requires a full crop, which takes three months, and Aqiba requires only a partially grown crop, for which one month is sufficient.]*

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

- B. Ownership through usucaption is not conferred through the act of ploughing.
- C. Some say, "Ownership through usucaption is conferred through the act of ploughing."
- D. *Who are "some say"?*
- E. *Said R. Hisda, "It is R. Aha, in line with that which has been taught on Tannaite authority: If one ploughed a field fallow in one year and sowed it for two, or even ploughed it fallow for two years and sowed it one, this does not confer ownership through usucaption. R. Aha says, 'It does confer ownership through usucaption.'"*
- F. *Said R. Ashi, "I have consulted all the principal authorities of the generation, and they said to me, 'Ploughing a field fallow, lo, this confers ownership through usucaption.'"*

IV.3 A. *Said R. Bibi to R. Nahman, "What is the operative consideration behind the view of those who say that ploughing a field fallow confers ownership through usucaption?"*

- B. *"It is that someone will not ordinarily see someone else plough his field and remain silent."*
- C. *"What is the operative consideration behind the view of those who say that ploughing a field fallow does not confer ownership through usucaption?"*
- D. *"The other will say, 'the more he ploughs, the better for me.'"*

IV.4 A. *The people of Pumbedra sent word to R. Nahman bar R. Hisda, "May our lord instruct us: does ploughing a field fallow confer ownership through usucaption, or does ploughing a field fallow not confer ownership through usucaption?"*

- B. He said to them, "R. Aha and all the principal of the authorities of the generation rule, ploughing a field fallow, lo, this does confer ownership through usucaption."

- C. *Said R. Nahman bar Isaac, “What good is it to count up names of authorities? Both Rab and Samuel in Babylonia, and R. Ishmael and R. Aqiba in the Land of Israel, have ruled, ploughing a field fallow does not confer ownership through usucaption.”*
- D. *The views of R. Ishmael and R. Aqiba are expressed in the Mishnah ruling before us. What is the source of our knowledge of the position of Rab?*
- E. *It is in line with what R. Judah said Rab said, “This view [that the period of usucaption for a field that is not irrigated is not three full years but either eighteen or fourteen months, however long it takes for three crops to grow], is the position of R. Ishmael and R. Aqiba, but sages say, ‘The usucaption affecting it is for three full years, from day to day.’ And what is excluded by the language, ‘from day to day’? Is it not to exclude the field plowed fallow?”*
- F. *What is the source of our knowledge of the position of Samuel?*
- G. *It is in line with what R. Judah said Samuel said, “This view [that the period of usucaption for a field that is not irrigated is not three full years but either eighteen or fourteen months, however long it takes for three crops to grow], is the position of R. Ishmael and R. Aqiba, but sages say, ‘The right of ownership through usucaption is gained only when the squatter has gathered in three crops of dates, culled three vintages of grapes, and picked three crops of olives.’”*
- H. *What is at issue between the formulation of Rab and that of Samuel?*
- I. *Said Abbaye, “At issue between them is the case of a young date tree” [Simon: which produces three crops in less than three years; Rab would not accept that, Samuel would].*

V.1 A. Said R. Ishmael, “Under what circumstances? In the case of a sown field. But in the case of a tree-planted field, [if] one has brought in the [grape crop], collected the olives, and gathered the [fig] harvest, lo, these [three harvests] count as three years”:

- B. *Said Abbaye, “On the basis of what R. Ishmael has said, we may infer that, from the viewpoint of rabbis, if someone has thirty trees in a field planted ten to a bet seah, if he enjoys the usufruct of ten in one year, ten in the next, and ten in the third, lo, this constitutes a valid claim to ownership through usucaption. [37A] For did not R. Ishmael say that usufruct of one kind of crop may confer ownership*

through usucaption to the entirety of the field? Then here, too, one set of ten trees can confer presumptive title to the others and vice versa.

- C. *“But that is the case only if the other twenty did not produce a crop in the other two years, but if they did produce a crop in the other two years and the man did not take it, he does not thereby establish the claim of ownership through usucaption. And that is the case only if the trees of which he did take the produce are spread around the field [since if he takes the produce of ten in one bet seah, this is counted as a field by itself and confers no right to the rest (Simon)].”*

V.2 A. If this party established ownership through usucaption of the trees, and that party established ownership through usucaption of the land —

- B. Said R. Zebid, “This one has acquired title to the trees, and that one has acquired title to the land.”
- C. *Objected R. Pappa to this proposal, “If so, then the owner of the trees will have no footing in the ground whatsoever, so the owner of the ground can instruct him, ‘Cut down your tree and take it and be gone!’”*
- D. Rather, said R. Pappa, “This one has acquired title to the trees and half of the ground, and the other to half of the ground.”

V.3 A. *It is obvious that* if one has sold the field but left the trees for himself, he has a right to a piece of ground for the trees. And even within the perspective of R. Aqiba, who has said, “One who sells does so in a liberal spirit,” *that is the case with reference to the sale of a well or a cistern, which do not impair the soil* [Simon: there is therefore no danger that he will at some future time be called upon by the purchaser of the field to remove the well, hence it does not occur to him to reserve the ground around it for himself], *but in the case of trees, [37B] which do impair the soil, he would assuredly reserve the necessary soil around the trees for his own ownership. For if he did not do so, the owner of the ground can instruct him, ‘Cut down your tree and take it and be gone!’”* There is, however, a dispute in the case of one who has sold the trees but left himself the ground, *in which case R. Aqiba and rabbis differ. In the view of R. Aqiba, who has said, “One who sells does so in a liberal spirit,” the purchaser owns that ground; in the view of rabbis, he does not.*

- B. *In the view of R. Aqiba the purchaser owns that ground even in the view of R. Zebid, who has said that the purchaser is not entitled to the ground. For that is the case only where there were two purchasers, since one may say to the other, “Just as I have no share in the trees, so you have no share in the dirt.” But here, the seller interprets the terms of the sale in a liberal spirit.*

C. *In the view of rabbis the purchaser does not own that ground even in the view of R. Pappa, who has said that the purchaser is entitled to the ground. For that is the case only where there were two purchasers, since the purchaser of the ground may say to the other, "Just as the seller sold in a liberal spirit to you, so he sold in a liberal spirit to me." But here, the seller will interpret the terms of the sale in a niggardly spirit.*

V.4 A. *The Nehardeans say, "If the thirty trees [V.1.B: if someone has thirty trees in a field planted ten to a *bet seah*, if he enjoys the usufruct of ten in one year, ten in the next, and ten in the third, lo, this constitutes a valid claim to ownership through usucaption] are planted close together [but which are going to be transplanted later on] then collecting their produce does not serve to confer ownership through usucaption."*

B. *To this proposition Raba objected, "But what about the case of a row of clover — how is ownership through usucaption to be gained there? [Simon: this is planted closely and is transplanted]."*

C. *Rather, said Raba, "If one sold them closely planted, the purchaser has no claim on any of the soil."*

D. *Said R. Zira, "The dispute follows the lines of the following dispute between Tannaite formulations: **A vineyard which is planted by [intervals of] less than four cubits — R. Simeon says, '[It] is not [considered] a vineyard.'** And sages say, '**[It is considered] a vineyard.'** And they [sages] regard the middle [rows] as if they are not [there] [M. Kil. 5:2]."* [Simon: Similarly in regard to the trees, rabbis look upon the middle ones as nonexistent and therefore if the owner sells them, the purchaser acquires the soil around them; Raba follows Simeon.]

V.5 A. *The Nehardeans say, "If someone sells a palm tree to someone else, the purchase acquires the soil under the tree from the base to the outer limit [of the roots]."*

B. **[38A]** *Objected Raba, "But why cannot he say to him, 'What I sell to you is sold in the way in which a garden crocus is sold [which is pulled up after ripening, leaving the soil to the owner of the field]. So pull up your garden crocus and away with you!'"*

C. *Rather, said Raba, "That is the case only when he may explicitly enter such a plea."*

D. *Said Mar Qashisha b. R. Hisda to R. Ashi, "So if someone sells a tree the way one sells a plot of garden crocus, what is he to do?"*

- E. *“He has to register his protest in three years. For if you do not maintain that that is the case, then in the case of the so-called mortgage in the manner of Sura, which contains this stipulation: ‘On the termination of these years, this land shall be given up without payment.’ If the mortgagee suppresses the mortgage bond and then claims he has bought the land, shall we say his plea is to be accepted? Would rabbis make a rule that would expose the one who gives the mortgage to an unfair loss? But as a matter of fact, he can protect himself by registering his protest within three years, and in this case too, all he has to do to protect himself is to register his protest within three years.”*

I.1-3 begin with a proof from Scripture’s analogy for the fact taken for granted in the Mishnah’s rule. No. 4 proposes a fundamental qualification of the application of the rule. No. 5 carries us forward to the next clause of the Mishnah’s opening rule, working within the principle introduced at No. 4. Nos. 6, 7, with a case at No. 8, carry forward Huna’s basic interest. No. 9 introduces yet another principle in the basic rule of the Mishnah, qualifying the Mishnah’s rule and refining it. No. 10 then presents a case further to clarify the basic principle at hand, and Nos. 11-15 follow suit. No. 16 proposes a theoretical problem in the form of a case. No. 17 raises a question subsidiary to the foregoing. No. 18 resumes the formal traits of No. 16 and therefore represents a theoretical question in the form of a case. (Were it a case, the passage would begin with the different formula, “a certain....”) No. 19, by contrast, provides us with a case, continuous with the interrupted sequence. Nos. 20-23 follow suit. No. 24 then reverts to the format of the theoretical case, shifting language for the description of the case-problem. Nos. 25-26 follow the form of the concrete case. Nos. 27-28, 29 select the theoretical-case-problem form. II.1, 2-6 do not seem to me to address the particular statement of the Mishnah, but only to continue the more general exposition of how the law is applied. III.1 raises a fundamental question concerning the rule of the Mishnah. No. 2 illustrates the foregoing. Nos. 2, 3 complement the foregoing. IV.1 attends to what is at issue in the dispute of the Mishnah. No. 2 then complements the theme of the foregoing, and Nos. 3, 4, No. 2. V.1 clarifies the issues of the Mishnah, discovering a position inferred to the contrary of the stated one. No. 2 introduces the issue of how we assign the appurtenances of a field subject to ownership through usucaption. This issue may be raised in the context of issues of ownership, without reference to usucaption at all, for example, the sale of the trees to one party, the sale of the field to another; hence in the present context the composite beginning at No. 2 and extending through No. 3, cannot be classified as Mishnah exegesis. Nos. 4+5 gloss V.1 as indicated.

3:2

- A. There are three regions so far as securing title through usucaption [is concerned]: Judah, Transjordan, and Galilee.
- B. [If] one was located in Judea, and [someone else] took possession of his property in Galilee,
- C. [or] was in Galilee, and someone took possession [of his property] in Judea, it is not an effective act of securing title through usucaption
- D. unless [the owner] is with [the squatter in the same province].
- E. Said R. Judah, “They specified a period of three years only so that one may be located in Ispamia, and one may hold possession for a year, people will go and inform [the owner] over the period of a year, and he may return in the third year.”

- I.1** A. *What is the operative consideration of the first of the three Tannaite authorities [who treats the three regions as free-standing]? If he takes the view that a protest registered by the owner not in the presence of the squatter is validly registered, then it should be valid even if the owner is in Judea and the squatter in Galilee, and if he takes the view that a protest registered by the owner not in the presence of the squatter is not a valid one, then it should be invalid even if both parties are located in Judea!*
- B. *Said R. Abba bar Mammel said Rab, “In point of fact he takes the view that protest registered by the owner not in the presence of the squatter is validly registered. And our Mishnah rule refers to a time in which there is a lapse of communication.”*
- C. *And how come that he made explicit refers to Judah and Galilee?*
- D. *In this way he informs us that [38B] when conditions are not otherwise spelled out, we take for granted that there is a lapse of communication between Judea and Galilee.*
- I.2** A. Said R. Judah said Rab, “The right of ownership through usucaption is not conferred upon the property of a fugitive.
- B. *“When I stated this ruling before Samuel, he said to me, ‘But does he [the fugitive] really have to register his objection in the presence of the squatter? [The fugitive cannot do this.]’”*
- C. *Then what is it that Rab proposed to tell us? That a protest registered not in the presence of the squatter is invalid? But Rab himself has maintained that a protest registered not in the presence of the squatter is valid!*

- D. *Rab proposes to set forth the operative consideration behind the rule of our Mishnah paragraph, even though he himself does not take the view that is given here.*
- E. *And there are those who present the matter in this way:*
- F. Said R. Judah said Rab, "The right of ownership through usucaption is conferred upon the property of a fugitive.
- G. *"When I stated this ruling before Samuel, he said to me, 'That's obvious! For does he [the fugitive] really have to register his objection in the presence of the squatter? [The fugitive cannot do this.]'"*
- H. *Then what is it that Rab proposed to tell us? That a protest registered not in the presence of the squatter is valid? But Rab has already made that point one time.*
- I. *Rab proposes let us know that even if one stated his protest before two persons who themselves cannot bring the report of the protest to the squatter [themselves being ready to go abroad], that still would constitute a valid act of protest.*
- J. *For said R. Anan, "To me personally was it stated by Mar Samuel that if one registered his protest before two persons who can go and report to the squatter what has taken place, this is classified as an act of protest. If he made the protest before two men who cannot go and report it to the squatter, that does not constitute a valid act of protest."*
- K. And Rab?
- L. *"Your friend has a friend, and the friend of your friend has a friend" [so the report will travel one way or the other].*
- I.3** A. *Said Raba, "The decided law is that the right of ownership through usucaption is conferred upon the property of a fugitive. An act of protest stated not in the presence of the squatter constitutes a valid act of protest."*
- B. *Do these two rulings not contradict one another?*
- C. *The latter speaks of one who flees by reason of bankruptcy, the former, by reason of manslaughter. [Simon: A fugitive on account of debt does not mind that his location is known, so he will not refrain from making a protest, but a fugitive on account of manslaughter will not do this, for fear lest he may be discovered.]*
- I.4** A. *What is the valid formulation of a protest against usucaption?*
- B. *Said R. Zebid, "[If he said], 'Mr. So-and-so is a robber,' that does not constitute a validly stated protest. If he said, 'Mr. So-and-so is a robber, because he has grabbed my property as an act of robbery, [39A] and tomorrow I am going to sue him,' that is a validly formulated protest."*

- C. *If the plaintiff said, "Don't tell him," what is the rule?*
- D. *Said R. Zebid, "Since he told them not to tell him, [that is not valid]."*
- E. *R. Pappa said, "Don't tell him, but you can tell anybody else you want. Then: your friend has a friend, and his friend has a friend."*
- F. *If the ones before whom he registered the protest say, "We won't tell him" –*
- G. *R. Zebid said, "He has made it explicit: 'We will not tell him.'"*
- H. *R. Pappa said, "What they said is, we won't tell him, but we're going to tell other people. Then: your friend has a friend, and his friend has a friend."*
- I. *If he said to them, "Don't say a word about this" –*
- J. *R. Zebid said, "He has made it explicit: 'Don't tell anybody.'"*
- K. *If they said to him, "We won't say a word about it," R. Pappa says, "This is not a valid protest, because they have told him in so many words, 'We are not going to say a word.'"*
- L. *R. Huna b. R. Joshua said, "If somebody is not responsible for something, he may well blurt it out without a second thought [so they'll tell, and it is valid]."*

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

- B. Objected Raba to R. Nahman: **"Said R. Judah, 'They specified a period of three years only so that one may be located in Ispamia, and one may hold possession for a year, people will go and inform [the owner] over the period of a year, and he may return in the third year.' Now if we assume that one may make a protest not in the presence of the squatter, why should the man have to come back? Let him stay right where he is and make his protest!"**
- C. *What R. Judah is doing there is just giving good advice that he should go home and take possession of his land and of his produce.*
- D. *Now since Raba objected to R. Nahman, it would seem to follow that he does not take the position that a protest not in the presence of the squatter constitutes a valid protest, but has not Raba stated quite explicitly that a protest not in the presence of the squatter constitutes a valid protest?*
- E. *This was after he had learned the view from R. Nahman.*

I.6 A. *R. Yosé b. R. Hanina found the disciples of R. Yohanan. He said to them, "Did R. Yohanan state before how many persons a protest must be registered?"*

- B. *R. Hiyya bar Abba said, "R. Yohanan required a protest to be registered before two persons."*

- C. R. Abbahu said, "R. Yohanan said, A protest must be stated before three persons."
 - D. *May we say that the difference between these two answers concerns what Rabbah b. R. Huna said, for said Rabbah bar R. Huna, "Any disparaging remark made before three persons [39B] is not subject to the charge of slander [since this is not something said behind the person's back, since if three people hear it, it will certainly come back to the person about whom it is said, hence it is not said behind his back, such as is the case with slander]." Now the one who says it may be said before two persons does not concur with the opinion of Rabbah bar R. Huna, and the one who said it must be before three concurs with what Rabbah bar R. Huna said.*
 - E. *No, not at all. All parties concur with the position of Rabbah bar R. Huna, but here, what is at issue? The one who says it must be said before two takes the position that if a protest is not said before the squatter, it does not constitute a protest, and the one who says it must be before three maintains that a protest that is not stated before the squatter is a valid protest.*
 - F. *If you prefer, I shall say, all parties concur that a protest that is not before the squatter nonetheless is a valid protest, but here, this is what is at issue: the one who says it must be before two takes the view that what we require is (mere) testimony [such as two are qualified to present], and the one who says it must be before three takes the position that we require the matter to be broadly circulated.*
- I.7** A. *Giddal bar Minyumi had an occasion to register a protest against a squatter on some land of his. He came across R. Huna and Hiyya bar Rab and R. Hilqiah bar Tubi, who were in session, and he registered his protest before them. A year later he again came to register his protest. They said to him, "You do not have to do it. Said Rab, 'Since a landowner registered his protest in the first year, he does not have again to register it once again.'"*
- B. *And there are those who say, said to him Hiyya bar Rab, "Since a landowner registered his protest in the first year, he does not have again to register it once again."*
- I.8** A. *Said R. Simeon b. Laqish in the name of Bar Qappara, "But he has to register his protest every three years."*
- B. *R. Yohanan considered this proposition: "But does a robber ever get a title by means of an ongoing seizure of the land?"*
- C. *Do you really mean a robber? Rather, say, "Can one who is similar to a robber ever get a title by means of an ongoing seizure of the land?"*

D. Said Raba, "The decided law is that the owner has to register his protest every three years."

I.9 A. Bar Qappara repeated as a Tannaite statement: "If the owner protested, then did the same a second and a third time, if it is on the basis of his original claim that he made his protest, the usucaption does not transfer title, but if not, then it does." [Simon: If he says on the first occasion, "So-and-so is robbing me of my field," and on the second, "So-and-so has only taken this field from me on mortgage, not purchased it," this being a virtual admission that his first plea was false, neither plea is accepted, and the squatter keeps the land.]

I.10 A. Said Raba said R. Nahman, "One registers the protest in the presence of two witnesses, **[40A]** and he does not have to instruct them, 'write it down.'

B. "A notification [that a gift or sale one is making is against his will and he intends to annul it when he can] is to be in the presence of two witnesses, and he does not have to instruct them, 'write it down.'

C. "The admission of a debt is to be in the presence of two witnesses, and [they are to write it down] only if he instructs them, 'write it down.'

D. "An act of transfer of ownership by means of the exchange of a cloth is to be carried out in the presence of two witnesses, and he does not have to instruct them, 'write it down.'

E. "The confirmation of the signatures of witnesses to deeds is to be accomplished by a court of three persons."

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

B. *After he raised this question, he reverted and worked it out in the following manner: "In point of fact, it is not equivalent to the action of a court. And here, what is the operative consideration that [they are to write it down] only if he instructs them, 'write it down'? It is because in an act of transfer of ownership, it is assumed that the action is to be recorded in writing unless there are instructions to the contrary [Simon: because by using the procedure the transferor shows he is really anxious to make the transfer, since the exchange of the cloth in itself closes the transaction]."*

- I.12** A. *Rabbah and R. Joseph both say, “We put into writing notification [that a gift or sale one is making is against his will and he intends to annul it when he can] only in the case of a defendant who does not pay attention to the ruling of the court.”*
- B. *Abbaye and Raba both say, “It may be written down even against such as you and me.”*
- I.13** A. *The Nehardeans say, “Any notification [that a gift or sale one is making is against his will and he intends to annul it when he can] [40B] that does not have written in it, ‘we [signatories] are fully informed that Mr. So-and-so is acting under duress’ is not a valid notification.”*
- B. *What sort of notification [that a gift or sale one is making is against his will and he intends to annul it when he can] is at issue here? If it is one pertaining to a writ of divorce or a gift, why should the witnesses have to certify, since the writ states what is pretty obvious [for otherwise why should someone say so anyhow?] If it pertains to a sale, did Raba not say, “We do not have a notification [that a gift or sale one is making is against his will and he intends to annul it when he can] written in the case of a sale”?*
- C. *In point of fact we deal with one that pertains to a sale, and Raba concedes that such a writ of notification may be issued in a case such as the following:*
- D. *There was an orchard that someone mortgaged to another for a period of three years. After the other had had the usufruct for the three years required to establish ownership through usucaption, he said to the borrower, “If you sell it to me, well and good, but if not, I will hide the mortgage and say that I purchased it outright.” In a case such as this, a declaration of action under duress may be issued.”*
- I.14** A. *Said R. Judah, “On the strength of a deed of gift that is written privately we do not collect what is claimed.”*
- B. *What is the definition of a deed of gift that is written privately?*
- C. *Said R. Joseph, “One in which the donor said to witnesses, ‘Go, hide out and write it out for him.’”*
- D. *There are those who say, said R. Joseph, “One in which the donor did not say to the witnesses, ‘Go, find a place in the street or in some public spot and write it out there.’”*
- E. *So what difference does it make [which version is followed]?*

F. *At issue between them is a case in which the donor told the witnesses to write the document, without specifying where they should do it. [Simon: According to the first version, the writ is valid, according to the second, not.]*

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

B. *Said R. Pappa, ‘This opinion attributed to Raba was not explicitly stated, but it was inferred from a case, which is as follows:*

C. *“Someone wanted to betroth a woman. She said to him, ‘If you write over to me all of your property, I shall be yours, and if not, I shall not be yours.’ He went and wrote over to her all of his property. His eldest son came to him and said, ‘What is to become of me?’ The man said to witnesses, ‘Go, seclude yourselves in the South End [a suburb of Mahoza (Simon)], and write out [an assignment of my property] to [my son].’ The case came before Raba. He said to them, ‘This party has not acquired possession of the estate, and that party has not acquired possession of the estate.’ Now the bystanders drew the conclusion that the operative consideration was that it was a case in which one writ of notification [that a gift or sale one is making is against his will and he intends to annul it when he can] can serve in regard to another. But that is not the fact. In the case at hand, the circumstances themselves demonstrated that the assignment of the property to the woman was made under constraint. But here [where the second assignment is not made under constraint], it is obvious that the giver wants the latter to gain possession of the property, not the other” [Simon: as is shown by the fact that the deed of gift is written in secret].*

I.16 A. *The question was raised: [41A] If the donor does not make articulate his wishes as to where the writ of notification [that a gift or sale one is making is against his will and he intends to annul it when he can] is to be written, what is the rule?*

B. *Rabina said, “We do not take account of that fact.” [Simon: We do not suppose that the donor meant that the writ was to be written in secret, so it is a valid document.]*

C. *R. Ashi said, “We do take account of that fact.” [Simon: We do suppose that the donor meant that the writ was to be written in secret, so it is not a valid document.]*

D. *And the decided law is that we do take account of that fact.*

I.1 introduces an important issue into the interpretation of the Mishnah paragraph. No. 2 then goes its own way, introducing an issue that amplifies the application of the Mishnah's principle, but the Mishnah paragraph before us contributes to the interpretation of what is set forth, which turns out to provide an exegesis of the Mishnah's rule itself. No. 3 continues No. 2. No. 4 then contributes a fundamental fact, required for the full grasp of the Mishnah's rule; but the position hardly leads to the conclusion that the item is entered as Mishnah commentary. No. 5 reverts to the issue that has recurred, now, several times, and No. 6 continues the general exposition of the correct manner of entering a protest. No. 7 provides a case relevant to the issue at hand. Then No. 8 addresses the same issue, now in the form of a general rule. Nos. 9, 10+11-13, 14+15-16, a distinct composite, continue to set forth rules pertinent to the common theme. But these compositions and composites do not serve as Mishnah commentaries; they have been worked out to set forth rules on a given theme and attached here because of their obvious relevance to the specific statements of the Mishnah.

3:3A-H

- A. Any act of usucaption [along] with which [there] is no claim [on the property being utilized] is no act of securing title through usucaption.
- B. How so?
- C. [If] he said to him, "What are you doing on my property,"
- D. and the other party answered him, "But no one ever said a thing to me!" —
- E. This is no act of securing title through usucaption.
- F. [If he answered,] "For you sold it to me," "You gave it to me as a gift," "Your father sold it to me," "Your father gave it to me as a gift" —
- G. Lo, this is a valid act of securing title through usucaption.
- H. He who holds possession because of an inheritance [from the previous owner] requires no further claim [in his own behalf]. [Simon: He cannot be expected to know how his father came by the property.]

- I.1** A. [Any act of usucaption along with which there is no claim on the property being utilized is no act of securing title through usucaption:] *so what else is new!*
- B. *Not at all, for what might you otherwise have supposed? This land was really sold to the man, and he had a deed and lost it, and the reason that he makes the plea that he does is that he thinks if he says he bought the land, he will have to show the deed of sale. [We make no such supposition.] It might be imagined that we should make a statement to him that maybe he had a deed and lost it, on the*

principle: "Open your mouth for the dumb" (Pro. 31: 8). So we are informed that that is not the case.

- I.2** A. *A flood took away a field belonging to R. Anan, when a dam burst. He later on went and rebuilt the fence, but he did so on land that belonged to his neighbor. The neighbor came before R. Nahman, who ruled, "Go, restore the land."*
- B. *"But lo, I have established ownership to it through usucaption [and he did not protest forthwith]."*
- C. *He said to him, "On whose authority do you make that statement? On the authority of R. Ishmael and R. Judah, who maintain that if one effects usucaption in the presence of the owner who does not protest, this constitutes effecting title forthwith. But the law does not follow their opinion."*
- D. *He said to him, "But lo, he renounced title, because he came along and helped me build the wall!"*
- E. *He said to him, "It was an act of renunciation made in error. You yourself, if you had known the land was his, would never have built the fence on it. Well, just as you didn't know the facts of the case, so he, too, did not know the facts of the case."*
- I.3** A. *A flood took away a field belonging to R. Kahana, when a dam burst. He later on went and rebuilt the fence, but he did so on land that did not belong to him.*
- B. **[41B]** *The neighbor came before R. Judah, and the other went and produced two witnesses. One of them testified, "He encroached on the land of the other to the extent of two rows," and the second testified, "He encroached on the land of the other to the extent of three rows."*
- C. *He said to him, "Go, compensate him for two rows of the three."*
- D. *He said to him, "In accord with whom is this ruling [that we take account of that about which two witnesses agree]?"*
- E. *He said to him, "It is in accord with R. Simeon b. Eleazar, as has been taught on Tannaite authority: Said R. Simeon b. Eleazar, 'The House of Shammai and the House of Hillel do not differ concerning two groups of witnesses, one of which says that the loan is for two hundred zuz, the other of which says that it is for a hundred. For within the frame of two hundred zuz a hundred zuz is encompassed. Concerning what do they differ? It is concerning a single group of witnesses. For the House of Shammai say, "The testimony is divided [since one witness cannot be right, so there is only a single witness at hand, and the claim is null]."' And the House of Hillel say, "Encompassed in the claim that two hundred zuz are owing is*

the claim that one hundred zuz [a maneh] are owing [and so there is valid testimony as to the smaller of the two sums].”””

- F. *[Kahana] said to him, “But I can present you with a letter from the West [the Land of Israel] that rules that the decided law does not follow R. Simeon.”*
- G. *[Judah] said to him, “Well and good, my decision stands until you produce the letter.”*

- I.4 A. *Somebody in Kashta dwelt for four years in an upper room. The householder came and found him there. He said to him, “What in the world are you doing in this room?”*
- B. *He said to him, “I bought it from So-and-so, who bought it from you.”*
- C. *The case came before R. Hiyya. He said to the squatter, “If you have witnesses that the man from whom you bought the room lived here for even one day, I will declare you the owner, but otherwise I won’t.”*
- D. *Said Rab, “I was in session before my beloved [uncle, Hiyya], and I said to him, ‘But won’t someone sometimes buy and sell something on one and the same night?’ I noted, however, that he concurred in a case in which the squatter claimed, ‘The man from whom I bought the house bought it from you in my very presence,’ the man’s claim is accepted, since if he had wanted, he could have put forward the much stronger claim, ‘I myself bought it from you.’”*
- E. *Said Raba, “The position in line with the ruling of R. Hiyya stands to reason, since the Mishnah states explicitly: **He who holds possession because of an inheritance [from the previous owner] requires no further claim [in his own behalf].** It is the further claim that is not required of him, but he most certainly has to produce proof.”*
- F. *Maybe the Mishnah’s intent is to say that he does not have to make a plea or bring proof? Or if you prefer, I shall say, a purchaser is different from an heir, because he will not likely have handed out money for nothing [unless he made sure he had bought it from the original owner; hence even if we say that an heir has to bring proof that the father occupied the land, the purchaser from a third party does not have to bring similar proof (Simon)].*
- I.5 A. *The question was raised: If the prior owner was seen on the property [Simon: taking its measurements] what is the rule? [Simon: Does this constitute proof that he sold it?]*
- B. *Said Abbaye, “That’s precisely the point!” [That is adequate proof, since he was measuring what he was selling.]*

C. *Raba said, "Someone may very well go out and measure his field and yet not sell it!"*

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

B. Said Rab, "But all of the purchases have to have been attested by a deed [in which case they are likely to have become known to the original owner, but if there is no deed, the original owner may not have thought he had to file a protest]."

C. *Does this bear the implication that Rab takes the view that while the writing of a deed will become broadly known, the sale in the presence of witnesses is not going to become broadly known? But has not Rab himself stated, "He who sells a field in the presence of witnesses [without a deed] may nonetheless collect what is owing to him from mortgaged property owned by the delinquent purchaser"!*

D. *In that case, the purchasers [42A] have caused the loss to themselves.*

E. *Anyhow, did Rab ever make such a statement? And have we not learned in the Mishnah [which Rab cannot be thought to have contradicted]: **He who lends money to his fellow on the security of a bond of indebtedness collects what is owing to him from mortgaged property. [But if he had lent to him on the security of] witnesses, he collects only from unindentured property [M. B.B. 10:8A-B]**?* And should you maintain that Rab enjoys the status of a Tannaite authority and hence may differ from another Tannaite statement, lo, Rab and Samuel both explicitly stated, "He who lends money on the strength of merely oral testimony to that fact may not collect the debt either from the heirs of the estate or from purchasers of that property"!

F. *Are you really proposing to compare the rule governing a loan and the rule governing a sale! When someone borrows money, he does it in secret, so that the value of his own property may not go down [when people may suspect he may be forced to sell], but if he sells land, he does so in a very public way, so that people may know about it [and come to bid on it].*

I.7 A. *Our rabbis have taught on Tannaite authority:*

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

- C. *Would this not bear the implication that when someone purchases real estate, it becomes known? But then the following contradicts that premise: If the squatter held the property in usucaption in the presence of the father [the original owner] for one year and in the presence of the son and heir for two, the father for two and the son for one, lo, this constitutes a valid act of securing title by usucaption. If one held the property in usucaption in the presence of the father for one year, the son for one year, and a later purchaser for one year, lo, this constitutes a valid act of securing title by usucaption [T. B.B. 2:8A-E]! Now if it should enter your mind that the purchase of real estate becomes broadly known, then there can be no protest more powerful than the fact [that the son sold the land] [and if it is not a protest, the reason must be that people didn't know about the sale]!*
- D. *Said R. Pappa, "When that Tannaite formulation was set forth, it referred to a case in which the son sold all his fields without specifying anyone in particular." [Simon: The occupier can plead that he understood that the sale did not include the field in question and therefore did not constitute a protest; but if he specifically sells that field, this constitutes a protest, because the sale is bound to come to the knowledge of the squatter, and the usucaption then confers no title to ownership.]*
- I.1 explains why the Mishnah has to tell us a rule that is obvious. Nos. 2, 3, 4 provide pertinent cases. No. 5 introduces a speculative question, and No. 6 continues the theoretical expansion of the law. No. 7, a Tannaite amplification of the Mishnah's rule, serves to supplement the foregoing.

3:3I-T

- I. (1) Craftsmen, partners, sharecroppers, and trustees are not able to secure title through usucaption.
- J. (2) A husband has no claim of usucaption in his wife's property,
- K. (3) nor does a wife have a claim of usucaption in her husband's property,
- L. (4) nor a father in his son's property,
- M. (5) nor a son in his father's property.
- N. Under what circumstances?
- O. In the case of one who effects possession through usucaption.
- P. But in the case of one who gives a gift,
- Q. or of brothers who divide an estate,
- R. and of one who seizes the property of a proselyte,
- S. [if] one has locked up, walled in, or broken down in any measure at all —

T. Lo, this constitutes securing a claim through usucaption.

- I.1** A. **[42B]** *The father of Samuel and Levi repeated as a Tannaite statement: “Partners...are not able to secure title through usucaption, and still less craftsmen.”*
- B. *Samuel repeated as a Tannaite statement: “Craftsmen are not able to secure title through usucaption, but partners are.”*
- C. *And Samuel is consistent with positions announced elsewhere, for said Samuel, “Partners are able to secure title through usucaption against one another, and may give evidence in behalf of one another, and may serve one another as paid guardians of common property.”*
- D. *In the burial cave of the household of R. Zakkai, R. Abba raised a contradiction to R. Judah, “Did Samuel really say, ‘Partners are able to secure title through usucaption against one another’? And has not Samuel said, ‘A partner is in the status of one who has entered a property [Simon: is regarded as having freedom of entry into the whole of the joint property] with permission to do so’? And is this not to say, ‘Partners are able to secure title through usucaption against one another’?”*
- E. [He said to him,] *“There is really no contradiction. In the one instance it is a partner who has taken position of the whole of the field, in the other, one who has taken possession of part of the field.”* [Simon: The partner has taken possession only of the better half, and his claim is that a division has been effected, and that this half belongs to him.]
- F. [Then which kind of partner may achieve ownership through usucaption and which not?] Some say one thing, some another. [Simon: Some say that by taking possession of the whole field, the partner acquires ownership through usucaption, because it is not usual for the other partner to allow this, and that by taking possession of one half, even the better half, he does not acquire ownership through usucaption, because one partner will often allow the other to do this several years running. Others say that by taking possession of the whole, a partner does not acquire ownership through usucaption, because it is the custom of joint owners that each should occupy the whole property several years running, but by taking possession of one particular half, he does acquire ownership through usucaption, because the presumption is that had the field not been divided he would not have confined himself to this particular half.]
- G. *Rabina said, “In both cases it is a partner who takes possession of the whole of the field, but there is still no contradiction, for in the one case he speaks of a field*

that is subject to division on demand, and in the other case it is a field that is not subject to division on demand [if one or the other partner objects].” [Simon: In a field that may be divided on demand, possession of such a field confers ownership through usucaption, since, as there is space for both, one partner is not likely to allow the other to occupy the whole for several years running. In a plot too small to allow sufficient space to each, in this case it would be natural for each partner to work the whole plot several years running, and therefore possession of the whole does not constitute a title of ownership.]

I.2 A. *Reverting to the body of the foregoing:* Samuel said, “A partner is in the status of one who enters a property with permission to do so.” [Simon: A partner is regarded as having freedom to work the whole of the joint property.]

B. *What in point of fact does he now tell us that we otherwise would not know?* That a partner is not able to secure title through usucaption? *Then why does he not say in so many words that a partner is not able to secure title through usucaption?*

C. Said R. Nahman said Rabbah bar Abbuha, “It is to say that the partner may take his share of the mature produce of the field that is not meant to be planted just as he would in a field that is meant to be planted.” [Simon: If a man plants another man’s field without the latter’s permission, he is entitled to the whole of the mature produce, but only on condition that the field was meant to be planted; otherwise he can recover no more than his outlay. If he has the consent of the owner, he takes the whole of the produce in any case. Samuel tells us that the partner in this respect is on the same footing as the sharecropper who works the field with the owner’s consent.]

I.3 A. “And partners may give testimony concerning one another”:

B. **[43A]** *Why should this be the case? Are they not interested parties?*

C. *With what sort of a case do we deal here? It is one in which the one who gives testimony in writing declares to the other, “I in the future shall have no claim whatsoever on this field.”*

D. *So if he supplies such a deed, what difference does it make? And has it not been taught on Tannaite authority:* He who says to his fellow, “I have no claim whatsoever on this field, and I have no involvement with it, and my hands are utterly removed from it” has said nothing whatsoever!

- E. *With what sort of a case do we deal here? It is one in which the other actually acquired title from him.* [Simon: We are assuming here that the other partner obtained from him a formal transfer.]
- F. *So if he actually acquired title from him, what difference does it make anyhow? The other still can still keep the field safe for his own creditor.* [Simon: If A has borrowed money from C on the security of his share in a field and then makes over his share to his partner B, it is to his interest that the field should be recognized as belonging to B rather than to any other person, so that C may seize the mortgaged part of the field in consideration of the debt, and A will thus be saved from becoming a defaulter. Hence if B's title to the field is contested, A is an interested party and cannot give evidence in B's favor, although he has himself formally renounced all share in the field.] *For said Rabin bar Samuel in the name of Samuel, "He who sells a field to his fellow [even] without accepting responsibility cannot give evidence as to the title of the latter, since he may want to keep it safe for his own creditor."*
- F. *With what sort of a case do we deal here? It is one in which he has accepted responsibility [to make up a loss should it be incurred].*
- G. *Responsibility in what regard? Should we say that it is responsibility in general, all the more so he would prefer to be dealing with his partner [and he is an interested party]!*
- H. *Rather, it is responsibility that devolves upon him in regard to his own debt.* [Simon: In this case if he does not wish to become a defaulter, he must either pay his creditor or compensate his partner; hence it makes no difference to him whether the land remains in the hands of his partner or not, and therefore his evidence is admissible.]
- I. *Anyhow, if the partner renounces his interest in the property, is this an actual act of renunciation? Has it not been taught on Tannaite authority: The townsfolk whose scroll of the Torah was stolen from them — the thieves are not judged by the judges of that town, nor is testimony presented by the men of that town [all townsfolk having a share in the scroll and therefore being interested parties]? Now why should that be the case? If the proposed procedure were valid, let two of them abandon their share and try the accused?*
- J. *The case of a scroll of the Torah is different, because it is there to be read [for the benefit of all, whether they own it or not].*

- K. *Come and take note:* He who says, “Pass out money to the poor people of my town — he is not to be judged by judges of that town, and evidence concerning him may not be presented by men of that town. *Now why should that be the case? If the proposed procedure were valid, let two of them abandon their share and try the accused?*”
- L. *Here, too, we deal with a case [in which the donation was for the purpose of] purchasing a scroll of the Torah.*
- M. *Come and take note:* He who says, “Pass out money to the poor people of my town — he is not to be judged by judges of that town, and evidence concerning him may not be presented by men of that town.
- N. *Now do you honestly believe that if the poor get something from the man, all of the judges of that town are disqualified? Rather, I should say what you mean is, he may not be judged by judges who derive from the poor of that town, and evidence may not be presented in his regard by poor people of that town. Now why should that be the case? If the proposed procedure were valid, let two of them abandon their share and try the accused?*
- O. *Here, too, we deal with a case [in which the donation was for the purpose of paying the share of the poor for] purchasing a scroll of the Torah. And why are they called “the poor”? Because, so far as a scroll of the Torah is concerned, all are classified as poor.*
- P. *Or, if you prefer, I shall say that the formulation intended to speak of people who actually were poor. And the particular poor people to whom reference is made are the ones whose support is the responsibility of the judges.*
- Q. *Then what sort of case can be involved? If there is a fixed impost for the poor, let two of them pay off what is assigned to them and then try the case [since there is no interest remaining for them in this matter]. So we must assume that there is no fixed impost for the poor.*
- R. *Or, if you prefer, I shall say, there is a fixed impost, and the rich still have an interest in the maneh that is given to the poor, since then there will be a surplus.*
- I.4** A. “...May serve one another as paid guardians of common property”:
- B. **[43B]** *Why should this be the case? Is this not a case in which the act of guardianship takes place in the very presence of the owner?*
- C. *Said R. Pappa, “It is a case in which he said to him, ‘You keep watch for me today, and I shall keep watch for you tomorrow.’”*

I.5 A. *Our rabbis have taught on Tannaite authority:*

- B. If someone has sold to someone else a house or a field, he may not give testimony for him concerning it, since he bears responsibility to him to make it up if the title proves false [should a third party successfully claim ownership of the house or field he has sold]. If he sold him a cow or a cloak, he may give testimony for him in regard to such things, since he does not bear responsibility to him to make it up should someone else claim ownership and retrieve the object.
- C. *What is the difference between the former and the latter?*
- D. *Said R. Sheshet, "The first case deals with the following situation: Reuben stole a field from Simeon and sold it to Levi, and Judah came along and contested the title of Levi. Simeon may not go and give evidence to support the claim of Levi, thinking that if he holds onto the field, it will be easier for him to recover it."*
- E. *Well anyhow, once he has given evidence for Levi [affirming Levi's title to the field], how in the world is he ever going to get it back from him anyhow?*
- F. *What he says in court is this: "I know that this field does not in fact belong to Judah."*
- G. *Well, if he has enough proof to recover the field from Levi, why can't he recover it from Judah?*
- H. *What he is thinking is, "It's easier for me to deal with the second party [Levi] than with the first part [Judah]."*
- I. *Or, if you prefer, I shall say, that both Simeon and Judah have witnesses to prove their title to the field, and rabbis have ordained that in a case such as that, the land is confirmed in the possession of the one who presently has possession of it [Simon: and if the land is once assigned to Judah, Simeon will not be able to recover it from him; hence if Judah claims it from Levi, from whom Simeon can certainly recover, Simeon must not give evidence against him].*
- J. **[44A]** *[If we are dealing with stolen land, however,] then are state the rule with reference to the thief. [Simon: Simeon must not testify to the title of Reuben himself if it is challenged by a third party; the rule in fact should be stated thus: if a man wrongfully seizes a house or a field, the original owner must not testify on his behalf, because the thief is responsible to him for it.]*

- K. *The reason is that he wanted to state in the concluding clause: If he sold him a cow or a cloak, he may give testimony for him in regard to such things, since he does not bear responsibility to him to make it up should someone else claim ownership and retrieve the object. For in this case of actually selling the object, in particular, then the conditions are met that one give up on getting the object back and also a change of ownership; but if the robber does not sell the article, in which case the original owner may still recover it, he may not give evidence. On that account, selling is inserted in the first clause.*
- L. *Well, even in the second clause, granted that the original owner gives up hope of getting the article itself back, he surely has not given up hope of getting back the money [and remains an interested party].*
- M. *The rule is required to deal with a case in which the robber has died, as we have learned in the Mishnah: **He who steals [food] and feeds [what he stole] to his children, or left it to them — they are exempt from making restitution. [But if it was something which is subject to a mortgage, that is, real estate, they are liable to make restitution] [M. B.Q. 10:1A-C].***
- N. *Then why not assign the rule to speak of the case of the thief's heir? [Simon: In this form, if a man robs another of a house and bequeaths it to his son, the original owner cannot testify...if he robs him of a cow and bequeaths it...].*
- O. *That would pose no problem from the perspective of him who said, "The ownership of an heir of a thief is not equivalent to the ownership of a purchaser from a thief [Simon: the inheritance does not constitute change of ownership, and the heir is liable so long as the article stolen in his possession and the original owner has not given up hope of recovery, and therefore the owner would be an interested party even in the case of a cow], but from the perspective of him who says that the ownership of the heir of the thief is the same as the ownership of the purchaser from a thief, what is to be said?*
- P. *Furthermore, there was this problem that occurred to Abbayye with reference to the considerations of "he is responsible for it," or "he is not responsible for it." What the passage should read is*

rather, “because it may be recovered by him” or “because it cannot be recovered by him.”

- Q. *Rather, it is to be explained in accord with that which said Rabin bar Samuel in the name of Samuel, “He who sells a field to his fellow [even] without accepting responsibility cannot give evidence as to the title of the latter, since he may want to keep it safe for his own creditor.” And that is in particular in the case of a house or a field, but as to a cow or a cloak, then there is no issue [44B] that if he sells them without having declared them security to the creditor, the creditor has no lien on them, for they are movable, and movables cannot be mortgaged to a credit, and even if the debtor gives a written promise to pay “with the coat on his back,” that is binding only so long as that is actually there but not if they are not there; but even if he declared them to be security, the creditor has no lien on them [and therefore the seller can testify on behalf of the purchaser (Simon)].*
- R. *What is the reason for the latter? It is in line with what Raba said, for said Raba, “If one has declared his slave security for a debt and then sold the slave, the creditor can seize him in satisfaction of the debt; but if he declared his ox or ass security for a debt and sells it, the creditor cannot seize the ox or ass in payment of the debt. What is the difference between the one and the other? In the case of using the slave as security, that becomes generally known, but in the case of using the ox or the ass as security, that does not become generally known.*
- S. *But should one not take account of the possibility that the seller has mortgaged to the creditor movables along with real estate, for said Rabbah, “If the seller mortgaged to another movables along with real estate, the lender acquires a lien on the land and also on the movables” — and said R. Hisda, “But that is the case only if he wrote in the deed the words ‘this bond is no more than an assurance and not part of the draft of the deed’!”*
- T. *With what sort of a case do we deal here? For example, one in which the seller sold the cow or garment on the spot after he had acquired it.*
- U. *But why not take account of the possibility that here the seller has given the creditor a bond on movables that he will acquire*

afterward, and may we not derive from that the rule that if someone gave a bond on movables that he would acquire later on, and then acquired such movables and sold them or acquired them and bequeathed them, the creditor has no lien on them?

- V. *This rule was required only to deal with a case in which the witnesses say, “We know as fact that this man never owned any land at all.” [Simon: In this case the movables cannot be mortgaged, and there is no objection to the seller’s giving evidence on behalf of the purchaser.]*
- W. *But has not R. Pappa said, “Even though rabbis have said, ‘He who sells a field to his fellow without taking responsibility for making it up should field be seized by his creditor, and his creditor comes and seizes the field — the purchaser cannot recover the price of the field from him. But if it is found that the field in fact did not belong to him, he can recover’”? [Simon: Hence if the cow or ass is claimed from the purchaser by a third party who proves that it was stolen from him, the purchaser can recover from the seller, and it is therefore to the latter’s interest that it should remain in his possession, and he cannot testify on his behalf.]*
- X. *Here with what sort of a case do we deal? With a case in which the purchaser identifies the ass he bought as the foal of an ass belonging to the seller. [Simon: This is tantamount to an admission on his part that the animal or garment did belong to the seller, and after such an admission he cannot claim restitution from him.]*
- Y. *And R. Zebid said, “Even if it should turn out that it is not his, it does not return to him, because he can say to him, ‘That is exactly why I sold it to you without a guarantee of any kind.’”*

I.6 A. *Reverting to the body of the foregoing [at Q]: Said Rabin bar Samuel in the name of Samuel, “He who sells a field to his fellow [even] without accepting responsibility cannot give evidence as to the title of the latter, since he may want to keep it safe for his own creditor.”*

B. *Now what sort of a case can be before us? [45A] If he has other property, then the creditor can seize that, and if he has no other property, then what advantage does he get from the land that remains in the hands of the purchaser*

[Simon: because even if the purchaser has to give up the land, the seller has no assets from which he can obtain restitution]?

- C. *In point of fact, we deal with a case in which he has no other property, and the reason is that the seller does not want to fall in the class of “the wicked man who borrows but does not repay” (Psa. 37:21). [Simon: The seller is anxious if possible not to be a defaulter.]*
- D. *In the end, in respect to the purchaser, he still does fall in the class of “the wicked man who borrows but does not repay” (Psa. 37:21).*
- E. *Well, what he says is, “That is precisely why I sold it to you without a guarantee” [Simon: so that if it is taken from you, I shall not be called a defaulter, even if I do not make restitution].*

I.7 A. *Raba announced, and some say, R. Pappa, “Those who go up to the Land of Israel, or who go down to Babylonia, [know]: ‘If an Israelite sells an ass to another Israelite, and a gentile comes along and seizes it from him [as stolen property], it is the legal requirement that the first help him rescue it [Simon: by persuading the gentile that it is not his; if a Jew forcibly seized it, the seller does not have to help the purchaser, for the Jew can summon the Jew for assault, even if the ass rightly belonged to him]. And we have made that rule only if the purchaser does not recognize that the ass is the foal of the seller, but if he can recognize that the animal is the foal of the ass of the seller, he need not get involved. And we say that only if the non-Jew does not take the saddle along with the ass, but if he takes the saddle along with the ass, we do not make that rule.’”*

- B. *Amemar said, “Even if all of these conditions are not met, he need not help him. Why not? Because he knows that the ordinary gentile is a thief: ‘Their*

mouth speaks vanity and their right hand is a right hand of falsehood' (Psa. 144: 8)."

II.1 A. Craftsmen...are not able to secure title through usucaption:

- B. Said Rabbah, "That rule applies only where the owner handed over the objects to the craftsman in the presence of witnesses. But if he had handed over the materials not in the presence of witnesses, since he can say to him, 'The transaction never took place anyhow,' if he should say to him also, 'It is in my possession by reason of purchase,' he [the craftsman] is believed." [Simon: The essential point is whether the article was originally transferred in the presence of witnesses, and it makes no difference whether the owner has or has not seen it in the hands of the craftsman.]
- C. *Said to him Abbaye, "If so, then even if the transaction takes place in the presence of witnesses, [the same rule should apply], since he can say to him, 'I returned it to you,' should he say to him, 'It is in my possession by reason of purchase,' he [the craftsman] is believed."*
- D. *Said to him Rabbah, "Do you really suppose [45B] that he who entrusts an article to another in the presence of witnesses — the other does not have to return it in the presence of witnesses? [Simon: Only on this supposition would the plea that he has bought it be valid, this plea itself being only a modified form of the plea, 'I returned it to you.'] Perish the thought! Rather, he who entrusts an article to another in the presence of witnesses — the other does have to return it in the presence of witnesses."*
- E. *Objected Abbaye, "If one saw one's slave in the possession of a craftsman, or his cloak in the possession of a laundryman, and said to him, 'What's this doing with you,' [and the other said,] 'You sold him to me,' 'You gave it to me' — the latter has said nothing at all. If he says, 'It was in my presence that you told So-and-so to tell him or give it to me,' his statement is valid. What differentiates the first from the second ruling?"*
- F. *Said Rabbah, "The second ruling speaks of a situation in which the slave or garment turns up in the hands of a third party, who says to the claimant, 'It was in my presence that you told So-and-so to tell him or give it to me.' Since, if he had wanted, he could have entered the claim, 'I bought it from you,' when he says to him, 'It was in my presence that you told So-and-so to tell him or give it to me,' his statement is confirmed and he is believed."*
- G. [Reverting to Abbaye's introduction of the rule:] *"Now, in any event, the formulation of the first of the two statements says that the claimant sees the*

article in the domain of the craftsman. Now how are we to imagine the case? If there are witnesses, then what difference does it make to me that he saw the object, let him simply bring the witnesses and recover possession of his property? [Simon: Since according to Rabbah the craftsman cannot plead that he returned it unless he had witnesses to that effect.] So is it not a case, then, that there are no witnesses, and when the claimant saw the object, he seizes it" [Simon: which shows that seeing the object is the essential point, not the delivery in the presence of witnesses].

- H. *"Not at all. In point of fact the article has been handed over in the presence of witnesses, but it is also a case in which the claimant sees the object in the possession of the craftsman."* [If the craftsman is not to have ownership through usucaption, then the object must be handed over in the presence of witnesses, and the claimant also must see the object in the domain of the craftsman (Simon).]
- I. *"But lo, you are the one who has said, 'He who entrusts an object with his fellow in the presence of witnesses must fetch it in the presence of witnesses.'"*
- J. *He said to him, "I take it back."*
- K. *Raba objected to Abbaye's position in support of Rabbah, citing the following: "He who hands over his cloak to a craftsman for mending — the craftsman claims, 'You stipulated a payment of two,' and the other says, 'I stipulated a payment for you of only one,' then let the one who lays claim on the other produce proof [and no oath is imposed], then, so long as the cloak is in the possession of the craftsman, the obligation to bring proof is in the hands of the householder. If the craftsman handed it over to him at the proper time, he may take an oath and collect his fee. If the proper time has passed, then let the one who lays claim on the other [the craftsman] produce proof [and no oath is imposed]. Now how shall we imagine the case at hand? If there are witnesses, then let us see what the witnesses have to say! [46A] So is it not a case in which there are no witnesses. And yet it is stated as the Tannaite rule that the craftsman is believed; since if he wanted, he could say to him, 'It is in my domain by reason of purchase,' he is also believed when he says that he has bought it" [Simon: even though it has been seen in his possession, as Rabbah ruled in the case above].*
- L. *"No, in point of fact there are no witnesses, and this is a case in which the plaintiff did not see the object in the domain of the workman [and there is no inference to be drawn one way or the other]."*
- M. *Objected R. Nahman bar Isaac [to the position of Rabbah], "Craftsmen...are not able to secure title through usucaption. Lo, a craftsman is the one who*

cannot secure ownership through usucaption, but there is another who can secure ownership through usucaption. *Under what conditions? If there are witnesses [who saw the object handed over], then why should another party be able to secure ownership through usucaption? So the rule pertains to a case in which there are no witnesses, and it is taught nonetheless, **Craftsmen...are not able to secure title through usucaption.** Does this not refute the proposal of Rabbah?"*

N. *Indeed, this does refute the proposal of Rabbah.*

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

B. If from the workshop of the craftsman one's garments are mixed up with the garments of someone else, lo, this one may make use of them until the other party will come and claim them. If they were mixed up with someone else's clothing at the house of a mourner or at a party, by contrast, he may not make use of them, but simply puts them away until the other party comes and claims them.

C. *What is the difference between the first and second cases?*

D. Said Rab, "I was in session before my uncle, and he said to me, 'It is not uncommon for someone to say to a craftsman, "Sell my garment for me."'" [Simon: Hence it is possible to suppose that the tailor by mistake sold another man's coat and then gave that other man one to go on with until he should recover it, and since the tailor acted knowingly, the other may use it.]

E. Said R. Hiyya b. R. Nahman, "This rule applies only if the coat was handed over by the craftsman himself, but as to its being handed over by his wife and children, it does not apply to them. And, further, it applies only if the craftsman said to him, 'Cloak,' without further specification, but if he said to him, 'Your cloak,' *then that rule does not apply, since it is not in fact his garment at all.*"

II.3 A. *Said Abbaye to Raba, "Come, and I'll show you how the Pumbeditans deceive people! Someone will say to his tailor, 'Give me back my cloak.' The other will say, 'What in hell are you talking about!' The other then says, 'Well, I've got witnesses who saw it with you.' 'Well, that was a different coat, and not the one you're talking about.' 'So bring it out and let's see it.' 'Most certainly I'm not planning to produce it.'"*

B. *Said Raba, "Well, he gave him a good answer"* [when he said he knew nothing about the matter, and not to plead that he has bought it, since then the fact that it or one like it has been seen in his possession would militate

against him (Simon)]. **[46B]** *For it has been taught on Tannaite authority: The owner must have seen it in the hands of the craftsman*” [Simon: and since he has not seen it, and the witnesses do not know that the one they saw was the same, he cannot invalidate the other’s plea that he knows nothing about it.]

C. *Said R. Ashi, “If the owner is smart, he will make him give him a look at it by saying to the tailor, ‘The reason you won’t produce the coat is that I owe you money, isn’t it? So why not produce it and have it valued, so you can take what is yours, and I can take what is mine?’”*

D. *Said R. Aha b. R. Avia to R. Ashi, “The other can say to him, ‘I don’t need an evaluation on your part, it already has been evaluated by people before you’”* [Simon: “and I know it is not worth any more than the sum you owe me”].

III.1 A. ...Sharecroppers...are not able to secure title through usucaption:

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

C. *Said R. Yohanan, “The rule pertains to sharecroppers by inheritance.”* [Simon: They take the whole produce for three or more years and then give the entire crop to the owners for the same number of years.]

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

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

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

B. *R. Joseph was then in session before him. He said to him, “This is what Samuel said: ‘A sharecropper may testify to the title of the employer.’”*

C. *But has it not been taught on Tannaite authority: He may not give testimony?*

- D. *There is no contradiction, the one speaks of a case in which there is a crop on the land, in the other, there is none.* [If there is a crop on the ground, then if the land is assigned to the claimant of the field, the sharecropper will lose his share, so he is an interested party, but if there is no crop on the land, he does not care who owns it, since he can always find employment (Simon).]

III.5 A. *Our rabbis have taught on Tannaite authority:*

- B. A surety to a man's loan may testify on behalf of the man whose loan he has guaranteed. *But that is the case only if the borrower has other land besides what is subject to the contrary claim.*
- C. A lender may testify on behalf of a borrower. *But that is the case only if the borrower has other land besides what is subject to the contrary claim.*
- D. The first purchaser of land may testify on behalf of the second purchaser of the same land [Simon: A sold land to B and other land to C, and C's title is contested by a third party; B may testify on behalf of C]. *But that is the case only if the defendant has other land besides what is subject to the contrary claim.* [Simon: If a creditor has a lien upon land that his debtor has sold, he must seize first the land that the debtor has sold last. In this case, if A's creditor is authorized to seize land that he has sold to others, he cannot seize the land sold to B until he has first seized the land sold to C. Hence if more land has been sold to C than that actually claimed from him, B is not an interested party and may give evidence on his behalf. Similarly, B may give evidence on behalf of A himself if he possesses other land besides that which is being claimed from him.]
- E. **[47A]** As to a go-between [Simon: a man who receives money from a lender to convey to a borrower on condition that the lender may recover from either at his option] —
- F. *There are those who say, "He may testify [on behalf of the borrower]," and there are those who say, "He may not."*
- G. *Those who say, "He may testify [on behalf of the borrower]" maintain that he is in the status of a surety.*
- H. *And there are those who say, "He may not" take the view that he prefers to have in his possession land of both classifications [medium and inferior, the creditor being entitled to recover from land of medium quality], so that the creditor may have the option of seizing either* [Simon: if the borrower's medium quality land is claimed and he loses his case, then the creditor will certainly come on to the go-between for his money, whereas if he keeps his land, the creditor still has the choice of distraining either on him or on the go-between. Hence the go-between

has an interest in the borrower's keeping his land and therefore must not testify on his behalf].

- III.6** A. Said R. Yohanan, "While **a craftsman cannot secure title through usucaption**, the son of a craftsman may secure title through usucaption. While **a sharecropper cannot secure title through usucaption**, the son of a sharecropper may secure title through usucaption. Neither a robber nor the son of a robber may secure title through usucaption. But the son of the son of a robber may secure title through usucaption."
- B. *How then is such a case to be imagined? If any of the above come on the strength of the claim of their fathers, then even those, too, should have no possibility of securing title through usucaption. And if they do not come on the strength of the claim of their fathers, then even the son of the robber also should be able to gain ownership in the specified manner.*
- C. *Well, [Simon: they do base their claim to title on the possession of their fathers], the rule is required to deal with a case in which witnesses say, "In our presence he [the claimant] admitted to him [that he had sold the land to him." In the other cases [the son of the craftsman or of the sharecropper, the grandson of the robber] there are grounds to claim, "They are telling the truth," while in the case of the robber, even though the claimant admits that he sold the land to the father, we still do not believe him.*
- D. *That is in accord with R. Kahana, for said R. Kahana, "If he had not admitted this, the other would hand over him and his ass to the official in charge of the corvée."*

III.7 A. Said Raba, "Sometimes even the grandson of the robber also cannot achieve title through usucaption. *What for instance? For instance if he came to claim the title to the land on the basis of his grandfather's possession of it [and not the father's].*"

III.8 A. *What is the definition in this context of a robber?*

- B. Said R. Yohanan, "For example, one who is assumed to have gotten the field by robbery."
- C. And R. Hisda said, "For example, those of a certain family known to us who kill people over money."

III.9 A. *Our rabbis have taught on Tannaite authority:*

- B. **A craftsman cannot secure title through usucaption. If he left off his craft, however, he then may secure title through usucaption. A sharecropper**

cannot secure title through usucaption. If he abandon his calling as a sharecropper, he may then secure title through usucaption.

- C. **A son who took his share in his father's estate, a woman who was divorced — lo, they are in the status of anybody else [T. B.B. 2:5A-F].**
- D. *Well, I can understand why it was necessary to specify the case of a son who took his share in his father's estate, for it might have entered your mind to suppose that the father might have consented to his occupying the land [and therefore made no protest, so he cannot establish ownership through usucaption], and we are therefore informed that that is not the case. But how come we require specification concerning a woman who was divorced? That's obvious!*
- E. *Not at all, it is in fact required [47B] to attend to the case of a woman whose status is unclear [she is both divorced and not divorced], in line with the statement of R. Zira. For said R. Zira said R. Jeremiah bar Abba said Samuel, "In any case in which sages have classified a woman as divorced and not divorced, her husband remains obligated to provide food for her." [Simon: We might therefore think, but for the ruling above, that she can have no usucaption in her husband's property, as any land she may occupy was assigned to her for her maintenance. That is not the case.]*

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

- B. *So what does he propose to tell us that we did not already know? We have after all a Tannaite statement along these lines in the following: [If] one purchased a property [first] from the usurping occupant and [then] went and [also] purchased it from the householder, his purchase is null. [If he purchased it first from the householder and then went and purchased it from the usurping occupant, his purchase is confirmed] [M. Git. 5:6D-F].*
- C. *His purpose is to exclude the position of Rab, for said Rab, "This rule pertains only if the original owner said to the purchaser, 'Go and occupy the field and acquire title to it. But if it was with a deed, the other has acquired title to the field.' So [Huna] informs us that the law accords with the position of Samuel, who said, "Even if it was with a deed too, he has not acquired title to the field, unless the original owner gives him a lien on the rest of his property [in which case we know for sure that this is a willing transaction and not under duress]."*

- D. *And R. Bibi completes the statement of Huna] in the name of R. Nahman, “While the robber has no title to the land that he has seized, he does have title to the money that he may have paid in consideration of the land. [When the original owner recovers the field, he has to refund the money.] Under what circumstances is this the case? In a case in which witnesses said, ‘In our presence we saw him counting out the money to the original owner. But if their testimony merely consisted of the statement, [We heard the original owner] concede that he had received money,’ the robber cannot recover the money.*
- E. *That is in accord with R. Kahana, for said R. Kahana, “If he had not admitted this, the other would hand over him and his ass to the official in charge of the corvée.”*

- III.11** A. [We pursue the question of coerced sales:] *Said R. Huna, “If they hang someone until he [agrees to go along and so] makes a sale, his sale nonetheless is valid. How come? Because whenever somebody sells something, if he did not need to make the sale, he would not have done so [so under all circumstances it is under compulsion [since he needs the money], and even so, what he has sold is validly sold.”*
- B. *Yeah, but isn’t there a difference between when his own situation makes someone do it, and when someone else makes him do it? Rather, it is in accord with that which has been taught on Tannaite authority: [48A] “If his obligation is a burnt offering...he shall offer it a male without blemish” (Lev. 1: 3) — this teaches that they can force someone to bring an offering [that he has vowed to give].*
 - C. *Might one suppose that this is even against his will?*
 - D. *Scripture states, “of his own free will” (Lev. 1: 3).*
 - E. *How so?*
 - F. *They force him until he says, “Yes, I want it.” [Even if the consent is under duress, it is still consent.]*
 - G. *But maybe that case is exceptional, since someone after all will be glad to have atonement made for him through this offering? Rather, we have to turn to the continuation of the passage for the relevant point: So, too, in the case of issuing a writ of divorce to a woman, they force him until he says, “Yes, I want it.”*
 - H. *But maybe that case, too, is exceptional, since it is after all a religious duty to obey the instructions of sages!*
 - I. *Rather, it stands to reason that even while under duress, he reached the conclusion to sell [and he loses nothing, so he’s happy with the outcome].*

- J. *Responded R. Judah on the basis of the following: “A writ of divorce imposed by a court — in the case of an Israelite court, it is valid. And in the case of a gentile court, it is invalid. In the case of gentiles, they beat him and say to him, ‘Do what the Israelites tell you to do,’ and it is valid [M. Git. 9:8]. Now why should this be the case? In that case too, why not invoke the conception that, while under duress, he reached the conclusion to issue the writ of divorce [and he loses nothing, so he’s happy with the outcome].”*
- K. *Lo, it has been stated in this regard: Said R. Mesharshayya, “As a matter of the law of the Torah, even one that has been imposed by a gentile court is valid, and what is the reason that they have said, ‘In the case of a gentile court it is invalid’? It is so that every women will not go and throw herself at a gentile so as to free herself from the domain of her rightful, Israelite husband.”*
- L. *Objected R. Hamnuna, “[If] one purchased a property [first] from the usurping occupant and [then] went and [also] purchased it from the householder, his purchase is null [M. Git. 5:6D-E]. Now why should this be the case? In that case, too, why not invoke the conception that, while under duress, he reached the conclusion that he wanted to sell the property after all.”*
- M. *Lo, it has been stated in this regard: Said Rab, “That rule applies only in a case in which he said to him, ‘Go, take possession and acquire title, but if he actually gives him a written deed, the other becomes the rightful owner of the property.’” But from the perspective of Samuel, who has said, “Even if he gave him a deed, the other has not acquired title, what is to be said?*
- N. *Well, Samuel concedes that in a case in which the other paid money [the sale is valid].*
- O. *And from the perspective of R. Bibi, who completes the statement of Huna] in the name of R. Nahman, “While the robber has no title to the land that he has seized, he does have title to the money that he may have paid in consideration of the land,” what is to be said?*
- P. *Well, R. Bibi’s is a mere opinion, and R. Huna did not find himself compelled to accept that opinion.*

III.12 A. *Said Raba, “The decided law is this: if they hung him so he sold the property, his sale is a valid one. But that pertains only in the case of [48B] a field that is not then defined further, but if it was with reference to ‘this field,’ that is not the case. And even in the case of a sale of ‘this field,’ that is the case only if he has not counted out the money received in payment, but if he counts out the money, the sale is a valid one. And even in the case of ‘this field’ and even if he did not*

count out the money, the sale is invalid, only if it was not possible for him to avoid the sale somehow or other, but if he had a chance to avoid the sale some way or other and did not do so, then the sale is still valid."

- B. *As a matter of fact, the decided law is that in all cases, the sale is a valid one, even if the language "this field" should be used, for lo, the betrothal of a woman is in the same classification as the purchase of "this field," and yet, Amemar has said, "If they hung a woman and she consented to betrothal, the act of betrothal is a valid one."*
- C. *Mar b. R. Ashi said, "In the case of a woman, it is absolutely certain that the act of betrothal is null, for the man has behaved in a highly inappropriate manner, on which account rabbis treat him in a highly inappropriate manner and declare his act of betrothal to be null, stripping him of his act of betrothal."*
- D. *Said Rabina to R. Ashi, "Well, that would pose no problem in a case in which the act of betrothal was effected by a money payment, but what is to be said if the act of betrothal took place through an act of sexual relations?"*
- E. *He said to him, "Rabbis have declared his act of sexual relations to be a mere act of fornication [lacking all legal weight]."*

- III.13** A. *Tabi hung Pappi on a tree, so he sold him his land. Rabbah bar bar Hannah signed as a witness to both the notification that the sale was made under duress and the seller plans to get it back when he can, and he also signed as witness to the deed of the sale of the field. Said R. Huna, "Someone who signed as a witness to the notification has signed in good faith, and one who signed as a witness to the deed likewise has done the right thing."*
- B. *Yeah — how do you want it? If it was right to sign the notification, then it was not right to sign the deed of sale, and if it was o.k. to sign the deed of sale, then it cannot have been o.k. to sign the notification!*
 - C. *This is the sense of the statement that he made: "If it were not for the notification of the forced sale, the someone who signed the deed of sale as a witness would have done the right thing."*
 - D. *R. Huna is consistent with reasoning that he has adopted elsewhere, for said R. Huna, "If they hung someone and he consequently sold, the sale is a valid one."*
 - E. *Well is that so! And did not R. Nahman say, "Witnesses to a bond who said later on, 'We wrote the bond [Simon: given by the borrower to the lender] only as a kind of come-on' [Simon: an assurance given to a debtor who signed a bond without receiving money that the creditor would not enforce*

it unless he actually lent him the money] [49A] are not believed. If witnesses to a deed of sale said, ‘We only wrote it as a notification,’ they are not believed”? [The bond then is still valid.]

F. *That is the case when the statement is merely verbal, because a verbal statement cannot nullify a written deed, but if they wrote a deed, then one deed can nullify another [and here we have the notification in writing prior to the act of sale].*

III.14 A. *Reverting to the body of the prior statement:* Said R. Nahman, “Witnesses to a bond who said later on, ‘We wrote the bond [Simon: given by the borrower to the lender] only as a kind of come-on’ [Simon: an assurance given to a debtor who signed a bond without receiving money that the creditor would not enforce it unless he actually lent him the money] are not believed. If witnesses to a deed of sale said, ‘We only wrote it as a notification,’ they are not believed.”

B. And Mar b. R. Ashi said, “If they said, ‘We wrote the bond only as a kind of come-on’ [Simon: an assurance given to a debtor who signed a bond without receiving money that the creditor would not enforce it unless he actually lent him the money] they are not believed. If witnesses to a deed of sale said, ‘We only wrote it as a notification, they are believed. *How come?* The notification is quite routinely committed to writing, while the come-on is not routinely committed to writing.”

IV.1 A. A husband has no claim of usucaption in his wife’s property:

- B. *So what else is new! After all, since the husband has every right to the produce of the wife’s field, we maintain that he was merely enjoying the usufruct of the field [and could not thereby establish ownership through usucaption anyhow]!*
- C. *Not at all,* the ruling is necessary to cover a case in which the husband had written a document to the wife: “I have no claim whatsoever over your property” [so he has no usufruct of her fields, and hence if he does enjoy the usufruct, this might stand as evidence of ownership through usucaption. So we are told that that is not the case].
- D. *So even if he had written such a statement to her, what difference would it have made? And has it not been taught on Tannaite authority:* He who says to his fellow, “I have no claim whatsoever on this field, and I have no involvement with it, and my hands are utterly removed from it” has said nothing whatsoever?

- E. *In the household of R. Yannai, they responded, “Our Mishnah paragraph speaks of a case in which he writes such a document for her while she is still betrothed, and this accords with the position of R. Kahana, for said R. Kahana, [49B] ‘As to an inheritance that comes to someone from some other source, one has the right to stipulate up-front that he will not inherit it.’ This further accords with that which Raba stated, for said Raba, ‘Whoever says, “I do not accept the ordinance made in my behalf by sages of this sort” — they listen to him.’” [So when someone says, “I have no claim on this property,” this can apply to property that will accrue in the future but is not yet in his hands, for example, the produce of the field of the betrothed woman, which the husband will get only after marriage (Simon).]*

IV.2 A. *What is the sense of sages of this sort?*

- B. *The answer accords with what R. Huna said Rab said, for said R. Huna said Rab, “A woman has every right to say to her husband, ‘I will not rely on you for maintenance, and I will not work for you.’” [This is a regulation that would in general serve the wife, so she has the right to stipulate that she does not accept it.]*

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

- B. *Well, there really is an answer to this question. Lo, in connection with this Mishnah paragraph it has been said, said Rabbah bar R. Huna, “The rule is required with specific reference to three fields that are assigned to the wife, one that the husband wrote into her marriage contract, [50A] one that was set aside for her as surety for the payment of the marriage contract, and a third that she brought him in with her dowry, and for the monetary value of which he has accepted responsibility to her. Now, with reference to the property the sale of which is null, which of the three classifications just now listed is the one to be excluded? Shall we say it is to exclude the remainder of the husband’s property [pledged as security for the payment of her marriage settlement]? All the more so in this case would she say that she was humoring her husband, since he might become angry*

with her and say to her, 'You have set your eye on a divorce or on my death.' [Simon: If the husband sells any part of his property that is not so particularly mortgaged to her and she refuses to confirm the sale, he may accuse her of desiring this part to remain in his possession because she is looking forward to his death or a divorce from him and does not wish to part with a security for her marriage contract; thus she has a motive for consenting, so as not to estrange her husband; hence this is obviously not the kind of property excluded from the rule stated.] *Then what would be excluded [so the purchase is valid if bought first from the husband and then from the wife] would be property of which the husband enjoys the usufruct. [The husband enjoys the usufruct and does not have to make up any loss or deterioration.]* But has not Amemar stated, 'If either the husband or the wife sold off the property the usufruct of which is assigned to the husband, the sale is null.'" [He cannot sell it, because it belongs to her, and she cannot sell it, because he enjoys the usufruct.]

- C. *Well, when that statement of Amemar was made, it referred to a case in which he sold the property and died, and then she came and retrieved it from the purchaser, or she sold it and died, and he then came and retrieved it from the purchaser. And that is in accord with the ordinance of the rabbis in accord with R. Yosé bar Hanina, for said R. Yosé bar Hanina, "In Usha they made the following ordinance: a woman who sold off property of which the husband enjoys the usufruct and then died — the husband may retrieve the property from the domain of the purchaser."*
- D. *In point of fact, it would involve a case in which both of them sold off the land to a third party, or the wife sold it to the husband, and then the sale would be valid. [This answers the question with which we started, since the wife sells to the husband the property of which he enjoys the usufruct, and that the sale is valid; she cannot plead she was merely humoring him.]*
- E. *And if you wish, I shall give an alternative explanation, specifically, Amemar made his statement within the premise of R. Eleazar, for it has been taught on Tannaite authority:*
- F. He who sells his slave but stipulated with the purchaser that the slave should continue to serve him for thirty days —
- G. R. Meir says, "The rule of 'one or two days' ['If a man smite his servant with a rod and he die under his hand, he shall be surely punished; nevertheless if he continue a day or two he shall not be punished, for he is his money' (Exo. 21:20-21)] pertains to the first purchaser, since the slave remains 'under him,' but the second party is not subject to the rule of 'one or two days' ['If a man smite his servant with a rod

and he die under his hand, he shall be surely punished; nevertheless if he continue a day or two he shall not be punished, for he is his money' (Exo. 21:20-21)], since the slave is not 'under him.'"

H. *R. Meir takes the view that possession of the increment is equivalent to possession of the principal* [here: the labor of the slave, the slave himself; Meir holds that the one who disposes of the labor of the slave is in the position of the owner (Simon)].

I. R. Judah says, "The second party [the purchaser] is subject to the rule of 'one or two days' ['If a man smite his servant with a rod and he die under his hand, he shall be surely punished; nevertheless if he continue a day or two he shall not be punished, for he is his money' (Exo. 21:20-21)], since at that point the slave is 'his money,' and the first party [the seller] is not subject to the rule of 'one or two days' ['If a man smite his servant with a rod and he die under his hand, he shall be surely punished; nevertheless if he continue a day or two he shall not be punished, for he is his money' (Exo. 21:20-21)], since the slave is not 'his money.'"

J. *He takes the view that possession of the increment is not equivalent to possession of the principal.*

K. R. Yosé says, [50B] "Both parties are subject to the rule of 'one or two days' ['If a man smite his servant with a rod and he die under his hand, he shall be surely punished; nevertheless if he continue a day or two he shall not be punished, for he is his money' (Exo. 21:20-21)], since in the case of the one, the slave remains 'under him,' and in the case of the other, he is 'his money.'"

L. *So he is in doubt whether or not possession of the increment is not equivalent to possession of the principal. Where there is a matter of doubt in a capital case, the more lenient ruling is imposed.*

M. R. Eleazar says, "Neither party is subject to the rule of 'one or two days,' the purchaser because the slave is not yet 'under him,' the seller because the slave is no longer 'his money.'" [Simon: This can be taken by Amemar as proof that the wife cannot sell without the husband; it could hardly be taken by him as proof that where both agree to sell, their action is still void.]

N. *And said Raba, "What is the verse of Scripture that sustains R. Eleazar's position? 'He shall not be punished, for he is his money' (Exo. 21:21), meaning, he must be wholly his own."*

V.1 A. A husband has no claim of usucaption in his wife's property:

B. But did not Rab state, "A married woman has to protest [the usucaption of her property by a third party]? *Now against the usucaption of what classification of*

person does she have the obligation to register her protest? Should I say that it is against a third party [other than her husband]? But did not Rab state, "One cannot establish ownership through usucaption in the case of the property of a married woman"? So at issue must be against her husband! [So from Rab's perspective the husband does have a claim of usucaption in his wife's property.]

- C. Said Raba, "Indeed the statement of Rab does mean that the protest has to be against the usucaption of the husband, in a case, for example, in which the husband dug in the field pits, ditches or caves." [Simon: He thereby spoils the field, which he can do only if he is the legal owner; if the wife does not protest, he gets title through usucaption.]
- D. Yeah, well didn't R. Nahman say Rabbah bar Abbuha said, "No title through usucaption can be gained through the evidence of having done damage to the property"?
- E. *State the matter in this manner:* "The rule of usucaption does not apply where there is damage." [Simon: The ordinary rule is to confer title through usucaption after three years of possession, but if the squatter is allowed to damage the field without protest from the owner, this gives him title through usucaption at once.]
- F. *If you prefer, I may say, has it not been stated in this connection: R. Mari said, "Smoke would be an example of damage," and R. Zebid, "A privy"?* [Other damage, such as digging pits, confers title through usucaption (Simon).]
- G. [Dealing with the same problem that Raba has addressed,] R. Joseph said, "In point of fact, Rab's statement that a married woman has to register a protest pertains to occupation of her fields by outsiders. And the case in question would be one in which someone had enjoyed the usufruct of the property for a span of time while the husband was alive and also for three years after his death. *Since he could have claimed, 'I bought it from you,' if he merely says, 'You sold it to him and he sold it to me,' his claim is accepted.*" [Simon: Hence if she does not want him to obtain title through usucaption, she has to protest within the specified time limit.]

V.2 A. *Reverting to the body of the prior text:* Said Rab, "One cannot establish ownership through usucaption in the case of the property of a married woman."

- B. **[51A]** But the judges of the exile have said, "They can establish ownership through usucaption in the case of the property of a married woman."
- C. Said Rab, "The decided law is in accord with the position of the judges of the exile."

D. *Said R. Kahana and R. Assi to Rab, "Did the master retract his opinion?"*

E. *He said to them, "It stands to reason that I refer to a case such as the one that was described by R. Joseph."*

V.3 A. Nor does a wife have a claim of usucaption in her husband's property:

- B. *Well, what's so surprising about that! Since the husband has to maintain the wife, we take for granted that if she enjoys the usufruct of a field, she is merely deriving her maintenance from it!*
- C. *No, it was necessary to state this rule to deal with a case in which the husband has designated some other property for her support.*

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

- B. *Not at all. We infer that, if she brings proof, it is valid if it is a deed of gift, but not a deed of sale.*

V.5 A. *Said R. Nahman to R. Huna, "The master was not with us last night at the Sabbath limit, when we were saying some pretty fine things."*

- B. *He said to him, "What were these fine things that you were saying?"*

C. *"He who sells a field to his wife — she has acquired ownership of the field. And we do not invoke the argument that the husband may claim that he just wanted to get the wife to show whether she had any other funds besides those of which he was informed."*

- D. *"Yeah, well, what else is new?! Take away the money, and she still acquires title to the field by means of a deed! [Simon: If he gives her a deed of sale without taking money, he obviously is not trying to find out whether she has any other assets, since she becomes legal owner even without handing over any money.] Have we not learned in the Mishnah: **Property for which there is security is acquired through money, writ and usucaption. And that for which there is no security is acquired only by an act of drawing from one place to another** [M. Qid. 1:5A-B]?"*

- E. *He said to him, "Well, has it not been stated in that connection: Said Samuel, 'That rule pertains only in the case of a deed of gift, but as to a deed of sale, transfer of title takes place only when the purchaser will hand over the cash?'"*
- F. *"Yeah, but didn't R. Hamnuna refute that statement of his: 'Writ: how so? if the seller wrote on a parchment or on a potsherd, themselves of no intrinsic value, 'My field is sold to you, my field becomes your property,' it is deemed to have been sold or given by deed'? [So the deed confers ownership, even prior to the transfer of funds.]"*
- G. *"Well, as a matter of fact, R. Hamnuna refuted his own allegation. For he added: 'That rule pertains to a case in which someone sold the field because it was really worthless'" [the money therefore hardly matters, but this would not ordinarily be so (Simon)].*
- H. And R. Ashi said, "The seller really wanted to transfer the field as a gift and to give it over to him, and the reason he made the transfer in the form of a deed and in the language of a sale is so as to strengthen the hold of the donee to the title of the field."

V.6 A. [To the allegation, "He who sells a field to his wife — she has acquired ownership of the field"] *an objection was raised*: If one borrowed money from his slave and then freed him, from his wife and then divorced her — they have no claim against him. [Simon: Even if he gave them a bond against his property.] *What is the operative consideration here? Is it not that we say, "His intent was to find out whether or not they had any concealed assets?"*

- B. *These cases are exceptional, because someone would not want to place himself under the rule, "the borrower is a slave to the lender" (Pro. 22: 7) [Simon: hence if we can explain the action in some other way, we do].*

V.7 A. R. Huna bar Abin sent word: "He who sells a field to his wife — she has acquired title to the field. **[51B]** Nonetheless, the husband enjoys the usufruct."

- B. But R. Abba, R. Abbahu, and all the principal authorities of the generation have said, "It was his intention to give it to her as a gift, and he wrote out a deed of sale only to secure for her the title to the field." [Therefore he does not enjoy the usufruct.]
- C. [To the allegation, "He who sells a field to his wife — she has acquired ownership of the field"] *an objection was raised*: If one borrowed money from his slave and then freed him, from his wife and then divorced her — they have no claim against him. [Simon: Even if he gave them a bond against his property.] *What is the*

operative consideration here? Is it not that we say, "His intent was to find out whether or not they had any concealed assets"?

- D. *These cases are exceptional, because someone would not want to place himself under the rule, "the borrower is a slave to the lender" (Pro. 22: 7) [Simon: hence if we can explain the action in some other way, we do].*

V.8 A. Said Rab, "He who sells a field to his wife — she has acquired title to the field. Nonetheless, the husband enjoys the usufruct. If he gave it to her as a gift, she has acquired title to the field, and the husband does not enjoy the usufruct."

- B. And R. Eleazar said, "All the same are both modes of conveyance. She has acquired title to the field, and the husband does not enjoy the usufruct."

C. *R. Hisda made a practical decision in a case in accord with the position of R. Eleazar. Rabban Uqba and Rabban Nehemiah, sons of the daughter of Rab, said to R. Hisda, "Now is the master going to abandon the decision of the greater authority and act in accord with the position of the lesser authority?"*

D. *He said to them, "Well, as a matter of fact, I am acting in accord with the position of the greater authority. For when Rabin came, he said R. Yohanan said, 'All the same are both modes of conveyance. She has acquired title to the field, and the husband does not enjoy the usufruct.'"*

V.9 A. Said Raba, "The decided law is this: He who sells a field to his wife — she has not acquired title to the field. Nonetheless, the husband enjoys the usufruct. If he gave it to her as a gift, she has acquired title to the field, and the husband does not enjoy the usufruct."

B. *These two rules in fact do not contradict one another. The one speaks of a case in which the wife had concealed assets [and the husband just wanted to find out whether she did, so she does not acquire title], the other a case in which she had no concealed assets.*

C. For said R. Judah, "If she had concealed assets, she has not acquired title to the field, if she did not have concealed asserts, she has acquired title to the field."

V.10 A. *Our rabbis have taught on Tannaite authority:*

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

- D. If he has taken a pledge from a slave, he should return it to the slave, but if he died, he should return it to his master.
- E. **[52A]** If he has taken a pledge from a minor, he should invest it for him, and if he dies, he should give it back to his heirs.
- F. In all cases in which they have said when they were dying, "It belongs to Mr. So-and-so," one should act in accord with what he has explained. Otherwise, he should follow his own discretion.

V.11 A. *When the wife of Rabbah bar bar Hannah was on her deathbed, she said, "These jewels belong to Martha and his daughter's family."*

- B. *He came before Rab. He said to him, "If you believe her, then do what she says, and if not, then use your own discretion."*
- C. *There are those who say, this is what he said to him, "If in your view she has that much money, then do what she says, and if not, then use your own discretion."*

V.12 A. If he has taken a pledge from a minor, he should invest it for him, and if he dies, he should give it back to his heirs:

- B. *What is the definition of an investment?*
- C. R. Hisda said, "A scroll of the Torah."
- D. Rabbah bar R. Huna said, "A date palm, the fruit of which he can eat."

VI.1 A. **...Nor a father in his son's property, nor a son in his father's property:**

- B. Said R. Joseph, "That is the case even if the son left the father's roof."
- C. Raba said, "If the son left the father's roof, then that is not the case."

VI.2 A. *Said R. Jeremiah of Difti, "R. Pappa made a practical decision in a case in which the son left the father's roof, not in accord with the ruling of Raba."*

- B. *Said R. Nahman bar Isaac, "R. Hiyya of Hormiz Ardeshtir reported to me that R. Aha bar Jacob in the name of R. Nahman bar Jacob reported to him that if the son left the father's roof, the rule of the Mishnah does not apply [and they can establish usucaption against one another]."*
- C. *The decided law is this: The son left the father's roof, they can establish ownership through usucaption against one another.*
- D. *So, too, it has been taught on Tannaite authority:*
- E. If the son left the father's roof or the wife was divorced, they are classified as complete outsiders [vis-à-vis the father or the husband, and may establish ownership through usucaption].

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

- B. [In a situation in which several half-brothers, sharing the same father but having different mothers, live together in the same household, and] one of the brothers did business as major domo, if there were deeds and bonds in circulation in his name, and he said, "They are mine, having come to me from the estate of my mother's father" —
- C. Said Rab, "The burden of proof is on him."
- D. And Samuel said, "The burden of proof is on the other brothers to bring proof."
- E. Said Samuel, "Abba [Rab] concedes to me that if he died, the burden of proof is on the brothers [for his children and heirs are not going to have the required proof, knowing nothing about their father's business]."
- F. *Objected Pappa to this allegation, "Now do we ever enter a plea for an estate which the deceased himself could not have entered in his own behalf? And didn't Raba take away from an estate a pair of shears for clipping wool and a book of lore that were claimed from them, even though the claimants did not present proof [that they had lent the deceased these objects], since these are things that are very commonly borrowed and lent out? [52B] This he did in accord with the message sent by R. Huna bar Abin, 'Things that are very commonly borrowed and lent out that are found in someone's possession, if the man pleads that he has bought them — he is not believed.'"*
- G. *Well, that's a problem.*

- VI.4** A. [In a situation in which several half-brothers, sharing the same father but having different mothers, live together in the same household, and one of the brothers did business as major domo, if there were deeds and bonds in circulation in his name, and he said, "They are mine, having come to me from the estate of my mother's father," said Rab, "The burden of proof is on him":] said R. Hisda, "That is the case only if the brothers are not divided up as to their meals, but if they eat separately, the one who holds the document may say that he saved up money from his food allowance."
- B. *How in the world will he ever prove such a claim?*
 - C. Rabbah said, "The proof will be through witnesses' testimony."
 - D. R. Sheshet said, "The proof will be through the confirmation of the document itself [the signatures of the witnesses being examined and found genuine]."
 - E. *Said Raba to R. Nahman, "Lo, you have the view of Rab and lo, one of Samuel, lo, you have one of Rabbah, and lo, one of R. Sheshet. So in accord with whom does the master concur?"*

- F. *He said to him, “Well, as a matter of fact, I know a Tannaite formulation of the law, for it has been taught on Tannaite authority: [In a situation in which several half-brothers, sharing the same father but having different mothers, live together in the same household, and] one of the brothers did business as major domo, if there were deeds and bonds in circulation in his name, and he said, ‘They are mine, having come to me from the estate of my mother’s father,’ the burden of proof is on him. So, too, a woman who was in charge of the management of a household, and deeds and bonds were in circulation in her name, and she said, ‘They are mine, having come to me from the estate of my father’s father or of my mother’s father,’ the burden of proof is on her.”*
- G. *Why “and so, too”?*
- H. *What might you otherwise have supposed? In the case of a woman, since it is a matter of pride for her if people say that she is in charge of the estate of her orphaned children and would not rob them [the burden of proof would be on the plaintiffs]. So we are informed that that is not the case.*

VII.1 A. **Under what circumstances [does the rule of three years of usufruct being required for acquisition of title]? In the case of one who effects possession through usucaption. But in the case of one who gives a gift, or of brothers who divide an estate, and of one who seizes the property of a proselyte, [if] one has locked up, walled in, or broken down in any measure at all — lo, this constitutes securing a claim through usucaption:**

- B. *But are all these others whom we have mentioned also not in the classification of squatters [who would effect ownership through usucaption]?*
- C. *Good point! In fact the Mishnah paragraph is flawed, and this is how it should read: Under what circumstances? In the case of a suit for title through usucaption which is accompanied by a valid claim, for instance, the seller says, “I did not sell it,” in which case the squatter has to plead, “Well, the hell you didn’t, because I bought it!” But in the case in which the possession through usucaption needs no such plea to support it, for instance, someone who got a gift or brothers who divided an inheritance or someone who took hold of the property of a proselyte [who has no heirs], in which case nothing more is required than to establish ownership — [if] one has locked up, walled in, or broken down in any measure at all — lo, this constitutes securing a claim through usucaption.*

VII.2 A. R. Hoshaia repeated as the Tannaite formulation with reference to the version of tractate Qiddushin of the household of Levi: “If the buyer does anything at all

so as to set up a door or make a fence or an opening in the presence of the seller, this would constitute a valid action of acquiring title through usucaption.”

- B. *Are we then to infer, that is so if it was done in his presence, but not if it was not done in his presence?*
- C. *Said Raba, “This is the sense of the statement: If the act is done in his presence, he does not have to say to him, ‘Go, perform an act of usucaption, and acquire title.’ [53A] But if it was not done in his presence, then he does have to say to him, ‘Go, perform an act of usucaption, and acquire title.’”*

VII.3 A. Rab raised the question, “As to a gift, what is the law?”

- B. *Samuel said, “So what’s bothering friend Abba? If in the case of a sale, in which case the purchaser has handed over money, if the seller says to him, ‘Go, perform an act of usucaption, and acquire title,’ it is a valid transaction, and if not, it is not, would that not be required all the more so in the case of a gift?!”*
- C. *Well, Rab takes the position that someone who gives a gift does so in a liberal spirit [so the required formula is not necessary under these circumstances].*

VIII.1 A. [In any measure at all:] how much is in any measure at all?

- B. *The answer accords with Samuel, for said Samuel, “If one built an existing fence upward to ten handbreadths [the minimum height to partition a field], breached a fence so that someone can go in and come out through it, lo, this constitutes an act of usucaption.”*
- C. *As to this fence, how are we to imagine it? If we should say that beforehand, people could not go over it, and now also they cannot go over it, then what has he accomplished in raising it? So it must be one that, to begin with, people could climb over, but now they cannot climb over. But then he has done quite a lot [and not merely in any measure at all].*
- D. *So we have to say that to begin with people could climb the fence easily, and now they can climb it only with difficulty.*
- E. *As to this breach in the wall, how are we to imagine it? If we say that to begin with people could go through it, and now, too, they can go through it, what has the man done to warrant a claim of usucaption? But rather, to begin with they could not go through it but now they can go through it? But then he has done quite a lot [and not merely in any measure at all].*
- F. *So we have to say that to begin with people could go through the fence with difficulty and now they can go through it easily.*

IX.1 A. [And of one who seizes the property of a proselyte:] said R. Assi said R. Yohanan, “[If in the estate of a deceased proselyte] someone gained some advantage by putting a pebble there or by taking a pebble away, lo, this constitutes a sufficient act of usucaption.”

B. *What is the sense of this “putting” or “taking”?*

C. *If we should say that he put a pebble there and so stopped water from overflowing the field [and damaging the field (Simon)], or he removed a pebble and so allowed water to run off the field, all he has done is what someone does who chases a lion from his neighbor’s field [that is, it is merely a good deed, which anyone is expected to do, and hardly an act of selfish usucaption]!*

D. *Rather, he put a pebble there to conserve the water or removed it to make a passage for the water [and so substantially improved the field].*

IX.2 A. And said R. Assi said R. Yohanan, “If a deceased proselyte’s estate is made up of two adjacent fields, with a boundary between them, if one has established title through usucaption of one of them, so intending to acquire title thereby, he has acquired title only to that field; **[53B]** but if he did so intending to acquire title to both of them, he has acquired title to that one but not the other; if he did so with the idea of becoming owner only of the other [his action is null so] he has not acquired title even of that one.” [One cannot acquire ownership without the deliberate intention of doing so (Simon).] [The intervening strip nullifies any consideration of treating the fields as joined for the purposes of usucaption, even when the proper intentionality is in play.]

IX.3 A. R. Zira raised this question: “If one has performed an act of usucaption with the intention of acquiring title to that field, the boundary strip, and the other field, *what is the law? Do we say that the boundary serves both this field and that, so forming the whole into one, in which case he acquires the entire property, or do we say that the boundary stands unto itself and the two fields themselves are distinct?*”

B. *The question stands.*

IX.4 A. R. Eleazar raised this question: “If one has performed an act of usucaption with the intention of acquiring title to both fields, *what is the law? Do we say that the boundary strip serves as the bridle to the land* [Simon: If someone buys ten horses and takes hold of the bridle of one, he becomes owner of all ten, so if we compare the boundary to a bridle, possession of it should confer ownership of both fields], *so he acquires title, or perhaps this is treated as distinct and that is treated as distinct?*”

B. *The question stands.*

IX.5 A. Said R. Nahman said Rabbah bar Abbuha, “Two rooms, one inside the other, [Simon: one of which can only be reached through the other] — if one performed an act of usucaption in the outer room intending to acquire title to that room, he has acquired that room; if the intent was to acquire that room and the inner room, the outer room has he acquired, but to the inner room he has not acquired title; if it was to acquire title to the inner room, then even the outer room he has not acquired. If he performed an act of usucaption in the inner room intending to acquire title to it, he has acquired title to it; if the intention was to acquire title to it and to the outer room, he has acquired title to them both. If his intention in the act of usucaption performed in the inner room was only to acquire title to the outer room, even title to the inner room he has not acquired.”

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

B. *How come?*

C. *The first party merely left some bricks on the property [the building not having been completed].*

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

B. And how much whitewash or mural is involved?

C. Said R. Joseph, “A cubit.”

D. Said R. Hisda, “But that must be in the door area.”

IX.8 A. *Said R. Amram, “This is something that R. Sheshet said to us, and he further presented us with proof for it from a Tannaite formulation, namely: He who spreads out mattresses on the floor of the estate of a proselyte [and slept there] acquires title to the property. How did he further present us with proof for it from a Tannaite formulation? It is in line with that which has been taught on Tannaite authority: How is a slave acquired through an act of usucaption? If the slave fastened the shoe of the man or undid it, or if he carried his clothing after him to the bath house, or if he undressed him or washed him or anointed him or scraped him or dressed him or put on his shoes or lifted him up, the man acquires title to the slave. Said R. Simeon, ‘An act of usucaption of this kind should not be greater than an act of raising up, since raising up an object confers title under all*

circumstances.” [Simon: Sheshet compares the ground to a slave in the matter of service.]

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

B. *This is the sense of his statement:* If the slave lifted up his master, the master acquires title, but if the master lifts up the slave, the master does not acquire ownership of the slave. Said R. Simeon, “An act of usucaption of this kind should not be greater than an act of raising up, since raising up an object confers title under all circumstances.” [Simon: If the master lifts up the slave, this action also confers ownership.]

IX.10 A. *Said R. Jeremiah Biraah said R. Judah, “Someone who [54A] threw vegetable seeds into the crevices of the land of a proselyte — that action does not secure title through usucaption to the land. How come? At the moment he threw the seeds he did not bring about much improvement of the property, and the improvement that took place on account of the growth of the seeds came about on its own.”*

IX.11 A. *Said Samuel, “Someone who stripped the branches off a date tree — if his intention was to improve the tree, he has acquired title, but if his intention was to get food for his cattle, he does not acquire title to the tree. So which is which? If he took the branches from this side and from that side, then his intention was to improve the tree; but if he trimmed the branches from one side only, then his intention was only to get fodder for his cattle.”*

IX.12 A. *And said Samuel, “One who cleared sticks from a field — if his intention was to improve the soil, he acquires title to the field [this being an act that confers title through usucaption (Simon)], but if his intent was only to get firewood, he does not. So which is which? If he took the big ones and the little ones, then his purpose was to prepare the soil, but if he took the big ones and left the little ones, then it was merely to get firewood.”*

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

merely smoothed out the high points or leveled up the low points, we know that his intent was only to clear away a threshing floor."

IX.14 A. *And said Samuel, "One who brought water into a field, if he does so to irrigate the field, he acquires title through usucaption, but if it is only to bring in the fish that is in the water, he does not acquire title through usucaption of the field. How do we know this? If he makes two sluices, one to let the water in, the other to let it flow out, we know that he wants the fish; but if he makes one sluice, then we know that his principal intent is to irrigate the field."*

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

IX.16 A. *Said Rab, "He who draws a figure on the property of a deceased proselyte acquires title to it."*

B. *For Rab acquired title to the garden that came to belong to the household of Rab only by drawing a figure on it.*

IX.17 A. *It has been stated:*

B. *A field that has a boundary marked on all sides —*

C. *Said R. Huna said Rab, "Once one has dug up one spadeful of it, he has acquired title to the whole of it."*

D. *And Samuel said, "He has acquired only the spot that he has turned up alone."*

E. **[54B]** *And as to a field that does not have a boundary marked on all sides — how much does he acquire [Simon: by one stroke of a spade]?*

F. *Said R. Pappa, "The length of the furrow made by a pair of oxen, there and back."*

IX.18 A. *Said R. Judah said Samuel, "As to the property of a gentile, lo, they are in the classification of the wilderness. Whoever is the first to seize them through an act of usucaption has acquired title to them."*

B. *How come? In the case of a gentile [in accord with his law], as soon as the money comes to his hand, he gives up ownership of the land. But an Israelite acquires ownership only when the title reaches his possession. Therefore: lo, they*

are in the classification of the wilderness. Whoever is the first to seize them through an act of usucaption has acquired title to them.

C. *Said Abbayye to R. Joseph, "Now did Samuel really make this statement?! And did not Samuel say, 'The law of the government is valid, and the king has said that law is acquired only through a deed'? [So the description of the law imputed to Samuel does not confirm to the state of the actual law that the government enforces.]"*

D. *He said to him, "Well, I don't know anything about that [allegation concerning the royal law]. But there was a case in Shepherd City, in which an Israelite bought land from a gentile, and another Israelite came and dug up a little of the land [so acquiring ownership of it through usucaption], and when the case came before R. Judah, he assigned ownership of the land to the latter party."*

E. *He said to him, "Well, are you talking about Shepherd City? There the fields belonged to people who hid out and would not pay the royal land tax, so the government decreed, 'Whoever pays the land tax [here: the Israelite who did the digging] can take over the usufruct of the land [for which he pays it].'"*

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

B. *He [Huna] said to him [Nahman], "What's in your mind? Are you thinking about what Samuel said, namely, As to the property of a gentile, lo, they are in the classification of the wilderness. Whoever is the first to seize them through an act of usucaption has acquired title to them? [55A] Then the master should also act in accord with the further teaching of Samuel, for said Samuel, 'He has acquired only the spot that he has turned up alone.'"*

C. *He said to him, "In that matter I accord with our tradition."*

D. *For said R. Huna said Rab, "Once one has dug up one spadeful of it, he has acquired title to the whole of it."*

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

B. *And so, too, were R. Abin and R. Ilai and all our rabbis in agreement with that same ruling.*

- IX.21** A. Said Rabbah, *“These three matters were reported to me by Uqban bar Nehemiah, the exilarch, in the name of Samuel: (1) The law of the government is valid, [and the king has said that law is acquired only through a deed]; (2) the rule of the Persians concerning acquisition of a field through usucaption is that it takes forty years; and (3) property that is purchased from rich landlords who buy up land by paying the tax on it, the sale is a valid one. But that is the case only when it comes to paying off the land tax on the field; but if they got the land by paying the poll tax levied on the owners, then buying it from the landowners who have acquired the land through paying the delinquent taxes is not a valid transfer of title, since the poll tax pertains to not the land but the person.”*
- B. R. Huna b. R. Joshua said, *“Even barley in the jar is subject to seizure in payment of the poll tax.”*
- C. Said R. Ashi, *“Said to me Huna bar Nathan, ‘Amemar found this problematic, since if this were so, you have annulled the right of the firstborn to inherit a double portion. For the entirety of the estate would then be classified as “prospective property”’* [not actually possessed by the landowner but only prospectively part of his estate once the land tax has been paid on it, the land otherwise being liable to government seizure on account of the poll tax, and hence the father’s estate would not be actually his at the time of death, but would be due to become his when it pays the tax; the first born receives a double portion only of the actual assets of the father, not those that are going to accrue later on (Simon)]. And, as a matter of fact the firstborn does not take a double portion of what is prospectively part of the estate of the deceased as he does of what is now actually part of the estate. [So by this rule, there is no property that belongs wholly to the estate, since all of it is at risk to the land tax.]”
- D. *He said to him, “If so, the same would apply to the land tax just as well!”* [Simon: This also renders all assets “prospective” instead of “actual,” and there would be no distinction between the land tax and the poll tax, but Amemar accepts such a distinction.]
- E. *So what is there to say? The father is assumed to have paid the land tax and then died [leaving the land fully his own domain], and so, too, with the poll tax, we assume that the father pays it*

prospectively and only then dies [so there is property that is fully unindentured].

- F. *Said R. Ashi, “Said to me Huna bar Nathan, ‘I asked the scribes of Raba, and they told me that the decided law is in accord with R. Huna b. R. Joshua.’ But that is not really the case. In that case what they said was merely self-serving.” [Simon: To put themselves into the right, because they themselves had made out such deeds.]*

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

IX.23 *A. [With reference to the problem, if a deceased proselyte’s estate is made up of two adjacent fields, with a boundary between them,] said R. Assi said R. Yohanan, “A boundary and a cistus hedge serve as partitions in property belonging to a deceased proselyte, but not for purposes of setting aside the corner of the field or for determining the issue of uncleanness.”*

- B. *When Rabin came, he said R. Yohanan said, “Even for the purposes of setting aside the corner of the field or for determining the issue of uncleanness.”*

C. *As to the matter of the corner of the field, what is the point?*

- D. *It is in line with that which we have learned in the Mishnah: And these [landmarks] establish [the boundaries of a field] for [purposes of designating] peah: (1) a river, (2) pond, **[55B]** (3) private road, (4) public road, (5) public path, (6) private path that is in use in the hot season and in the rainy season, (7) uncultivated land, (8) newly broken land, (9) and [an area sown with] a different [type of] seed [M. **Pe. 2:1A-B**].*

E. *And as to the matter of uncleanness, what is the point?*

- F. *It is in line with that which we have learned in the Mishnah: One entered the valley during the rainy season — and the uncleanness is in a certain field, and he said, “I walked in that place, but I do not know whether I entered that particular field, or whether I did not enter [it]” — R. Eleazar declares clean. And sages declare unclean [M. **Pe. 6:5**].*

G. *As much as you can multiply doubts and doubts about doubts — in connection with private domain, it is unclean; in connection with public*

domain, it is clean. How so? One entered an alley, and (1) the uncleanness is in the courtyard — it is a matter of doubt whether he entered [the courtyard] or whether he did not enter — (2) uncleanness is in the house — it is a matter of doubt whether he entered or whether he did not enter — (3) and even if he did enter — it is a matter of doubt whether it was there or whether it was not there — (4) and even if it was there — it is a matter of doubt whether it contains sufficient bulk or whether it does not contain sufficient bulk — (5) and even if it does contain a sufficient bulk to convey uncleanness — it is a matter of doubt whether it is uncleanness or whether it is cleanness — (6) and even if it is uncleanness — it is a matter of doubt whether he touched it or whether he did not touch — his matter of doubt is deemed unclean. R. Eliezer says, “A matter of doubt concerning entry is deemed clean. A matter of doubt concerning contact with that which is unclean is deemed unclean” [M. [Toh. 6:4](#)].

- H. [Continuing B:] “In regard to the Sabbath, the specified partitions do not form a valid dividing line.”
- I. Raba said, “Even as to matters of the Sabbath, they do. *For it has been taught on Tannaite authority:* If one carried out from private to public domain a half-fig and then went and carried out another half-fig in a single spell of unawareness, he is liable. If it was in two spells of unawareness, he is exempt. R. Yosé says, ‘If it was in a single spell of unawareness in a single domain, [\[56A\]](#) he is liable; if it was in two domains, he is exempt.’”
- J. And said Rabbah, “And that is the rule only if between the two public domains is there a place such that, if one carried something from either domain into such a space, one would be liable to a sin offering [that is, private domain], but if there is only neutral ground in between, that is not the rule.”
- K. Abbaye said, “Even neutral ground would be covered by the law, but not if there is only a block of wood [that is, less than ten handbreadths high and four broad, which would not divide the domains].”
- L. Raba said, “Even a block of wood.”
 - M. *And Raba is consistent with a viewpoint expressed elsewhere, for said Raba, “The definition of ‘domain’ in regard to the Sabbath is the same as the definition of ‘domain’ in regard to a writ of divorce.”* [Simon: If someone transfers his courtyard to the wife and then throws her writ of divorce into it and it lands on a block of wood, she is not divorced, the block not being deemed to be

included in the courtyard he has transferred to her. Here, too, he is not penalized.]

- X.24** A. [Reverting to: “A boundary and a cistus hedge serve as partitions in property belonging to a deceased proselyte, but not for purposes of setting aside the corner of the field or for determining the issue of uncleanness,” with respect to the issue of uncleanness,] if there is there no boundary or a cistus hedge, *what is the rule?*
- B. R. Marinos explained in [Eliezer’s] name, “All that bears the name of a given field is included in that field.”
- C. *So what does that mean?*
- D. *Said R. Pappa, “It would be everything that would be covered when people referred to ‘the field of So-and-so’s well.’”*

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

- B. *What is the meaning of “a cistus hedge”?*
- C. Said R. Judah said Rab, “It is the hedge which Joshua used to mark out the boundaries of the land of Canaan for the Israelites.”

IX.26 A. And said R. Judah said Rab, “[At Joshua 15-19] Joshua enumerated only the towns that were on the borders.”

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

- B. *So what does this eliminate?*
- C. *It is to exclude the areas of the Kenites, Kenizites, and Kadmonites.*
- D. *It has been taught on Tannaite authority:*
- E. R. Meir says, “The Nabataeans, Arabians, and Salmoeans.”
- F. R. Judah says, “Mount Seir, Ammon, and Moab.”
- G. R. Simeon says, “Ardiskis, Asia, and Aspamia.”

I.1 presents a dispute on the content of the law, and this leads to a considerable secondary development of opinions introduced in the context of that dispute, Nos. 2-4. No. 5 then expands on materials included, if only tangentially, at No. 1. No. 6, supplemented by No. 7, then reverts to materials important in the foregoing.

II.1 places limits on the application of the law of the Mishnah. No. 2 complements the Mishnah's rule with a Tannaite statement on the same theme. No. 3 supplements the foregoing. III.1 provides yet another clarification of the way in which the Mishnah's generalization is to be qualified. Nos. 2, 3, follow suit. No. 4 then amplifies the law, and No. 5 provides a Tannaite complement to No. 4. No. 6 reverts to the program of Nos. 2-4, providing further qualifications to the rule of the Mishnah. Nos. 7, 8 gloss No. 6. No. 9, glossed by No. 10, carries forward the established program. Nos. 11-14 continue the theme of No. 10, sales under duress, a protracted sequence of footnotes to a footnote. IV.1 asks, once more, a fundamental question of how the Mishnah's rule has told us something that we otherwise would never have known. No. 2 is a light gloss of the foregoing. No. 3 follows up on the implications of the rule of the Mishnah. V.1 clarifies the rule of the Mishnah in light of an intersecting principle of law. No. 2 footnotes the foregoing. VI.1 explains why the rule before us is substantive and not a mere formality. No. 2 asks a familiar question, in line with IV.3. No. 3 continues the theme of No. 2, and Nos. 4-6+7 provide footnotes to No. 3. No. 8, complemented by Nos. 9, 10, carries forward the general theme of transactions between husband and wife, at best an appendix to the Mishnah's topical repertoire. VII.1 presents an important qualification to the applicability of the rule of the Mishnah. No. 2 supplements No. 1. No. 3 provides a distinct rule, which is of course topically relevant, but hardly required for the amplification of the Mishnah's statements, only its theme; and No. 4 continues No. 3. VIII.1 works out an important clarification of the wording and rule of the Mishnah. No. 2 clarifies the Mishnah in yet another manner. No. 3 glosses No. 2. IX.1, X.1 continue the process of Mishnah glossing. No. 2 continues the program of No. 1, and sets the stage for its own talmud, which goes forward at Nos. 3, 4, 5. Then No. 5 commences a secondary expansion on the established principle, in terms of new types of cases altogether; the subsidiary sequence goes on through Nos. 8+9, 10-23; No. 24, continued by Nos. 25, 26+28, then reverts to No. 2. This entire sequence flowing from No. 2 clearly has no relationship to Mishnah exegesis, but formed an aggregate on its own prior to inclusion here.

3:4

- A. [If] two were testifying for another party that he has enjoyed the usufruct of the property for three years,
- B. and they turn out to be false witnesses,
- C. they must pay to [the original owner] full restitution (Deu. 19:19).
- D. [If] two witnesses [testify] concerning the first year, two concerning the second, and two concerning the third —
- E. [56B] They divide up [the costs of restitution] among themselves.
- F. Three brothers, and another party joins together with [each of] them—

- G.** o, these constitute three distinct acts of testimony,
H. and they count as a single act of witness when the evidence is proved false.

I.1 A. *The Mishnah paragraph does not accord with the view of R. Aqiba, for it has been taught on Tannaite authority:*

- B. Said R. Yosé, “When my father, Halafta, went to R. Yohanan b. Nuri to study the Torah — and some say, when R. Yohanan b. Nuri came to study Torah with my father, Halafta — he said to him, ‘Lo, if someone had the usufruct of a piece of ground for one year in the presence of two witnesses, for a second year in the presence of two others, and for a third year in the presence of two others, what is the law?’
- C. “He said to him, ‘Lo, they have supplied evidence sufficient to accord to the squatter ownership through usucaption.’
- D. “He said to him, ‘So that’s what I say too, but R. Aqiba differs in this matter. For R. Aqiba would say, “A matter shall be established by two witnesses” (Deu. 19:15) — and not half of a matter”’ [T. **B.B. 2:10A-C**].

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

- B. *May I say that it is to eliminate evidence in a case in which one witness says, “There was one hair on her back,” and the other, “There was one hair in front [in the case of establishing the puberty signs for a girl]”? But that would constitute not only “half a matter” but also “half a testimony”!*
- C. *Rather, it serves to eliminate a case in which two say, “There was one hair on her back,” and two say, “There was one hair in front.” [Simon: But not where different witnesses testify to different years, each year being regarded as “a whole matter.”]*

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

- B. *Objected to this proposition R. Nahman, “Then what about this case: one witness says, ‘He had the usufruct in the first, third, and fifth years of the sabbatical cycle,’ and the other witness says, ‘He enjoyed the usufruct on the second, fourth, and sixth years.’ In such a case, too, would we award title by reason of usucaption?”*
- C. *Said to him R. Judah, “Yeah, well what kind of parallel do you think you have fabricated anyhow? In your case the year to which one witness refers is not even*

the same as the one to which the other witness refers, but in my case both witnesses are talking about the same year. And how come we pay no attention to the discrepancy between wheat and barley? Because people can very well ignore the difference between wheat and barley.”

II.1 A. Three brothers, and another party joins together with [each of] them — lo, these constitute three distinct acts of testimony, and they count as a single act of witness when the evidence is proved false:

- B. **[57A]** *A document had signatures of two witnesses, one of them deceased. The brother of one who was still alive came with another witness to validate the signature of the deceased. Rabina thought of deciding that this case was covered by the rule of the Mishnah paragraph concerning three brothers, each of them joined to the same witness. [Simon: Here, too, one brother joins with one man as witness to a bond, and the other with another man in testifying to the validity of a signature.]*
- C. *Said to him R. Ashi, “But the cases really are not comparable. In the case in which the evidence of the brothers is accepted, three-fourths of the money would not be assigned on the basis of the brothers’ testimony, but if we allow this man to testify, then three-quarters of the money will be assigned on the evidence of the brother.”*

I.1 identifies the authority behind our Mishnah’s rule. No. 2 provides a talmud to the foregoing. No. 3 amplifies the application of the Mishnah’s rule. II.1 gives us a differentiation between our case and a possible parallel, another form of Mishnah amplification.

3:5

- A. **What are [usages] that are effective in the securing of title through usucaption, and what are [usages] that are not effective in the securing of title through usucaption?**
- B. **[If] one put (1) cattle in a courtyard, (2) an oven, (3) double stove, (4) millstone, (5) raised chickens, or (6) put his manure, in a courtyard —**
- C. **this is not an effective mode of securing title through usucaption.**
- D. **But [If] (1) he made a partition for his beast ten handbreadths high,**
- E. **and so, too, (2) for an oven; so, too, (3) for a double stove; so, too, (4) for a millstone —**
- F. **[If] (5) he brought his chickens into the house,**

G. or (6) made a place for his manure three handbreadths deep or three handbreadths high —

H. Lo, this is an effective mode of securing title through usucaption.

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

B. Said Ulla, “Any action that would be effective to secure title for the property of a deceased proselyte [who has no valid heirs] is effective in securing title through usucaption; any that would not be effective to secure title for the property of a deceased proselyte would not be effective in securing title through usucaption.”

C. *Objected to this proposition R. Sheshet*, “But is this a suitable generalization? Lo, there is the case of ploughed land, three years of usucaption of which would secure title in the case of a proselyte’s land, but would not secure title in the case of an Israelite’s land. Lo, there is the case of usucaption of the usufruct, which in the case of an Israelite’s property would confer title, but in the case of a proselyte’s property does not confer title.”

D. Rather, said R. Nahman said Rabbah bar Abbuha, [57B] “*Here we are dealing with a courtyard held in partnership, [and, explaining the distinction], the partners would have no objection to his keeping things there, but they would object to his making a partition.*” [Simon: Hence if he makes a partition and they do not object, this confers title through usucaption, but so long as there is no partition his using the courtyard constitutes no securing of title through usucaption, though it would in the case of an outsider.]

E. *Well, would the jointholders really not object to one’s stationing things out there? And lo, we have learned in the Mishnah: partners who prohibited themselves by vow from deriving benefit from one another are prohibited from entering the common courtyard. R. Eliezer b. Jacob says, “This one enters the part which is his, and that one enters the part which is his.” And both of them are prohibited from setting up a millstone and oven there, or from raising chickens [M. Ned. 5:1A-C]!*

F. Rather, said R. Nahman said Rabbah bar Abbuha, “*Here we are dealing with an open space behind the houses, [and, explaining the distinction], the partners would have no objection to his keeping things there, but they would object to his making a partition.*”

G. *R. Pappa said, “Both in point of fact deal with a courtyard held by jointholders, and there are those who would protest and there are others who would not*

protest. When the matter concerns money, we impose the more lenient view [so we assume people do not mind someone's keeping animals there, and since they do not mind, they also do not object, and doing so would not constitute title through usucaption (Simon)], but where it has to do with a prohibition on religious grounds [a vow], we impose the more stringent ruling" [others will object to his standing in the courtyard, and if they permit him to do so and he does so, he derives benefit and violates his vow (Simon)].

- H. *Rabina said, "Well, in point of fact, we deal with a case in which people are not particular [so the vow, too, would not be broken by keeping things around the courtyard or standing there], but here whose opinion is set forth? it is that of R. Eliezer, as has been taught on Tannaite authority: R. Eliezer says, 'One who has taken a vow not to gain benefit from someone else is forbidden to take from him even a makeweight [of some negligible amount].'"*

Composite of Benaah-materials

I.2 glosses the foregoing, and carries in its wake a set of compositions in which Benaah is cited.

- I.2** A. Said R. Yohanan in the name of R. Benaah, "In all matters jointholders in a courtyard may object to one another's exception, except for their doing laundry in the courtyard, for it is not proper that Israelite women should suffer degradation by reason of doing laundry in public."
- I.3** A. "The righteous one is he who shuts his eyes from looking upon evil" (Isa. 33:15) —
- B. Said R. Hiyya bar Abba, "This refers to someone who refrains from staring at women when they are out doing the laundry."
- C. *So how can we imagine such a possibility, one way or the other? If there is some other way to get where he is going, then he is a wicked man for walking that way anyhow. And if there is no other way, then he does so under constraint!*
- D. *Well, as a matter of fact, there is no other way, but even so, he has the obligation to hide his eyes from them.*
- I.4** A. R. Yohanan asked R. Benaah, "As to the undergarment of the disciple of a sage, how long should it be?"

- B. "It is any in which his bare skin does not protrude from underneath."
- C. "As to the cloak of the disciple of a sage, how long should it be?"
- D. "It is any in which his undergarment does not protrude from underneath by more than a hairbreadth."
- E. "What about the upper garment of a disciple of a sage?"
- F. "So long that not more than a handbreadth of the undergarment protrudes."
- G. "How should the table of a disciple of a sage be set?"
- H. "Two-thirds covered with a cloth, one-third uncovered, for dishes and vegetables; and the ring [from which the table top is hung when not in use] should be outside [on the uncovered part (Simon)].
- I. *But lo, it has been taught on Tannaite authority: Its key should be on the inside?*
- J. *There is no contradiction, the one case speaks of when there is a child at the table [so the child cannot play with it, hence it is kept outside], in the other, we speak of a case in which there is no child at the table;*
- K. *Or we may say that in both cases there is no child, but there is also no contradiction, for in the one case, there is a waiter at the table [so it is kept inside, lest it get in his way (Simon)], and in the other, there is no waiter.*
- L. *Or if you like, I shall say that both speak of a case in which there is a waiter, and there still is no contradiction, in the one case, we speak of the day [when there is sufficient light for the waiter to avoid the thing], in the other, the night.*

I.5 A. The table of an Israelite who is not a disciple of a sage is comparable [58A] to a hearth with pots all about.

I.6 A. How is the bed of a disciple of a sage to be set up?

- B. It is any underneath which are only sandals in the hot season and shoes in the rainy season.
- C. And one of an Israelite who is not a disciple of a sage is comparable to a packed storeroom [a mess].

I.7 A. *R. Benaah would mark out caves [containing corpses]. When he came to the cave of Abraham, he found Eliezer, Abraham's servant, standing before the entrance. He said to him, "What is Abraham doing?"*

- B. *He said to him, "He's sleeping in Sarah's arms, and she is gazing at his head." He said to him, "Go, tell him Benaah is standing at the entrance."*
- C. *Abraham said to him, "Let him come in, everybody knows that there is no ardor in this world."*
- D. *He went in, looked over the cave, and went out again.*
- E. *When he came to the cave where Adam is buried, an echo came out saying, "You have seen the likeness of my likeness, but my likeness itself you may not see."*
- F. *"Well, I need to survey the cave."*
- G. *"The measurement of the inner one is the same as that of the outer one."*
- H. *Those who maintain that there was one chamber above another say that the answer was, "The measurement of the lower one is the same as the measurement of the upper one."*
- I. *Said R. Benaah, "I discerned Adam's two heels, and they were like two orbs of the sun."*

I.8 A. Compared with Sarah, everybody else is like a monkey to a human being, and compared with Eve, Sarah was like a monkey to a human being, and compared with Adam, Eve was like a monkey to a human being, and compared with the Presence of God, Adam was like a monkey to a human being.

B. *The beauty of R. Kahana was a pale reflection of the beauty of Rab, that of Rab, of that of R. Abbahu, that of R. Abbahu, of that of Jacob, our father, and that of Jacob, that of Adam.*

I.9 A. *A certain Magus would go rummaging among the graves. When he got to the grave of R. Tobi bar Mattenah, he [Tobi] grabbed his beard. Abbayye came to him and said, "By your leave, leave him alone."*

B. *The next year he again came and grabbed him by his beard, and Abbayye again came and asked the deceased to leave the Magus alone, but the deceased did not let him go until Abbayye had to bring scissors and cut off the Magus's beard.*

I.10 A. *Somebody said, "I leave a barrel of dust to one of my sons, a barrel of bones to the next, a barrel of fluff to the third."*

B. *They hadn't the slightest idea what he meant, so they asked R. Benaah. He said to them, "Do you have any land?"*

C. *"Yup."*

D. *"Do you have any cattle?"*

- E. *"Yup."*
- F. *"Do you have any cushions?"*
- G. *"Yup."*
- H. *"So that's what he meant."*

- I.11** A. *There was a man who heard his wife say to her daughter, "Why don't you be more discrete about your love affairs? I have ten children, and only one of them is from your father."*
- B. *When he was dying, he said to them, "All of my property is to go to one son." They didn't know which one he meant, so they asked R. Benaah.*
 - C. *He said to them, "Go, knock at the grave of your father until he gets up and tells you which one of you he means."*
 - D. *So they all went to do so, but the one who really was his son did not go. R. Benaah said, "The whole estate belongs to that one."*
 - E. *So they went and reported him to the state, saying, "There is among the Jews someone who extorts money from people without witnesses or any other evidence."*
 - F. *So they took him and threw him in jail.*
 - G. *His wife came and said, "I had a slave, and some people have chopped off his head, skinned him, eaten the meat, filled the skin with water, and given disciples of sages water to drink from it, and they didn't pay me the price or the rent."*
 - H. *They didn't know what to make of such a story, so they said, "Let's get the wise men of the Jews, and he will tell us."*
 - I. *They called R. Benaah, and he said to them, "She means a goat skin bottle." They said, "Since he is such a wise man, let him sit in the gate at the tribunal and judge cases."*
 - J. *He saw an inscription over the gateway: "Any judge who is sued in court is not worthy of the name of judge."*
 - K. *He said to them, "If that is so, then anybody in the street come come and sue the judge and disqualify him. What it should say, obviously, is 'Any judge who is sued in court and against whom judgment is laid down is not really a judge.'"*
 - L. *They therefore added, "But the elders of the Jews say, 'Any judge who is sued in court and against whom judgment is laid down is*

not really a judge.’” He saw another inscription, “At the head of all death am I, blood; at the head of all life am I, wine.”

M. *[But, he said,] “If someone falls from a roof or date tree and is killed, is this death from too much blood? And if he is dying, do they give him wine to drink? Not at all. What it should say is this: ‘At the head of all sickness am I, blood, at the head of all medicine am I, wine.’”*

N. *They emended the plaque: “But the elders of the Jews say, ‘At the head of all sickness am I, blood, at the head of all medicine am I, wine. Only where there is no wine are drugs needed.’”*

O. *Over the gateway of Cappadocia is written: Anpaq, anbag, antal.” And what is an antal? It is the same as a fourth log to which the Torah makes reference.*

I.1 asks the obvious exegetical question in behalf of the Mishnah’s rule. No. 2 then forms a supplement to No. 1, based on the subsidiary issue raised in the prior exposition of the Mishnah. No. 3 then carries forward the proposition of No. 2, and Nos. 4+5-6 is tacked on for thematic reasons. Then we have a set of Benaah-materials, tacked on because he is cited in the earlier composite, Nos. 7-11.

3:6A-F

- A. The right to place a gutter spout does not [impart title through] usucaption [so that the spout still may be moved], but the place on which it discharges does impart title through usucaption [so that the place must be left for its present purpose].
- B. A gutter does [impart title through] usucaption.
- C. An Egyptian ladder does not [impart title through] usucaption, but a Tyrian ladder does [impart title through] usucaption.
- D. An Egyptian window does not [impart title through] usucaption, but a Tyrian window does [impart title through] usucaption.
- E. What is an Egyptian window? Any through which the head of a human being cannot squeeze.
- F. R. Judah says, “If it has a frame, even though a human being’s head cannot squeeze through, it does [impart title through] usucaption.”

I.1 A. *What is the meaning of the statement, The right to place a gutter spout does not [impart title through] usucaption [so that the spout still may be moved], but*

the place on which it discharges does impart title through usucaption [so that the place must be left for its present purpose]?

- B. Said R. Judah said Samuel, “*This is what it means*: While there is no established right to keep the gutter pipe at one particular end of the gutter [so that if one has permitted another to keep the pipe overhanging the yard for three years without protest, that does not mean the other has a permanent right to do so, because it is not a fixture that anyone is particular about, and therefore not protesting means nothing (Simon)], but right to permanence is established for the gutter pipe to be placed at one end or the other.”
- C. R. Hanina said, “There is no permanent right of ownership associated with the gutter pipe [the owner of the roof does not own it], so that, if the owner of the courtyard finds it too long, he can shorten it; but there is a permanent right to the place where it is located, so that the owner of the courtyard cannot order it removed if he should want to do so.”
- D. R. Jeremiah bar Abba said, “There is no permanent right associated with the gutter, so that if the owner of the courtyard wants to build under it, he may do so, but there is a permanent right to its place, so that if the owner of the courtyard wants to remove it completely, he may not do so.”

- I.2 A. **[59A]** *We have learned in the Mishnah: A gutter does [impart title through] usucaption. Now from the perspective of those who maintain the first two views just now set forth, there are no problem, but from the perspective of him who maintains that the right to place a gutter spout does not [impart title through] usucaption means,* There is no permanent right associated with the gutter, so that if the owner of the courtyard wants to build under it, he may do so, *what difference does it make to the owner of the gutter* [Simon: for why should the owner of the gutter have a permanent right to the extent that he should be able to object to the owner of the courtyard’s building under it, and why in any case should he raise such an objection]?
- B. *Here we deal with a gutter of stone. The owner of the gutter can then say, “I don’t want my stonework to be weakened”* [by a building carried on underneath (Simon)].

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

I.4 A. *It has been stated:*

- B. R. Oshaia said, "The owner of the courtyard may object."
- C. R. Hama said, "He may not object."
- D. *He went and asked R. Bisa. He said to them, "He may validly objected."*
- E. *In this regard Rami bar Hama recited the verse, "The threefold cord is not easily snapped" (Qoh. 4:12). This refers to R. Oshaia, son of R. Hama, son of R. Bisa.*

II.1 A. **An Egyptian ladder does not [impart title through] usucaption, but a Tyrian ladder does [impart title through] usucaption:**

- B. *What is the definition of an Egyptian ladder?*
- C. *The household of R. Yannai say, "It is any that does not have four rungs."*

III.1 A. **An Egyptian window does not [impart title through] usucaption, but a Tyrian window does [impart title through] usucaption:**

- B. *How come there is an explanation of what is an Egyptian window but not of what is an Egyptian ladder?*
- C. *Because in the latter case there was the intent of including the dissenting opinion of R. Judah.*

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

- B. But R. Ilai said, "Even if it is above four cubits from the floor, one cannot establish title through usucaption, and the owner of the courtyard has every right to raise an objection."
- C. *May we then say that what is at issue here is whether or not we may impose by law the most petty rights that someone can claim [meaning, those from which there really is no benefit to the claimant of the rights, which he demands merely to provoke the other], for one authority maintains that the court indeed will enforce trivial and obnoxious rights, and the other maintains that that is not the case?*
- D. *Not at all, for all parties concur that the court will indeed enforce trivial and petty rights, but this case is exceptional, for the owner of the courtyard can say to the other, "Sometimes you can put a stool underneath and stand on it and see into my courtyard."*

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

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

I.1 clarifies the language of the Mishnah. No. 2 continues the exegesis. Nos. 3-4 complements the foregoing. II.1, III.1, IV.1+2, 3 present routine Mishnah exegeses.

3:6G-J

G. A projection [if it extends] a handbreadth [or more] does [impart title through] usucaption,

H. [59B] and concomitantly,] one has the power to protest [its being made].

I. [If it projects] less than a handbreadth, it is not subject to [imparting title through] usucaption,

J. and one has not got the power to protest [its being made].

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

B. *Now what can that possibly mean?*

C. Said Abbaye, "This is what it means: if one has gained permanent right through usucaption to the width of a handbreadth with a length of four, he thereby obtains through usucaption the permanent right to the use of a space the width of four."

II.1 A. [If it projects] less than a handbreadth, it is not subject to [imparting title through] usucaption, and one has not got the power to protest [its being made]:

B. Said R. Huna, "This rule [one has not got the power to protest] pertains only to the owner of the roof, indicating that he cannot prevent the owner of the courtyard from using it [even though it is his property, because at any time the owner of the courtyard can tell him to remove it (Simon)], but the owner of the courtyard can object to the owner of the roof's using the space."

C. And R. Judah said, "Even the owner of the courtyard may not register a protest against the owner of the roof."

D. *May we say that at issue between them is whether the overlooking someone's property constitutes solid damage, with one party maintaining that it does, the*

other not? [Simon: The owner of the courtyard can be overlooked from the spar by the owner of the roof, but not vice versa.]

- E. *Not at all, all parties concur that it is regarded as destructive, but this case is exceptional, for the one may say to the other, "You know, I really can't do anything on this spar, all I can do with it is hang things on it, and when I do, I'll turn my face away."*
- F. *And the other party?*
- G. *"Sometimes you'll get frightened and not turn away."*

I.1 complements the law of the Mishnah as indicated. II.1 conducts exegesis of the Mishnah by investigating the application of the law and the principle therein.

3:7A-G

- A. **A person should not open his windows into the courtyard of which he is one of the jointholders.**
- B. **[If] he purchased a house in another courtyard [which adjoins the one in which he is living],**
- C. **he may not make an opening into the courtyard of which he is one of the jointholders.**
- D. **[If] he built an upper story on his house, he should not make an opening for it into a courtyard of which he is one of the jointholders.**
- E. **But if he wanted, he may build a [new] room inside of his house,**
- F. **or he builds an upper story on top of his house,**
- G. **and he makes an opening for it into his house.**

- I.1 A. **[A person should not open his windows into the courtyard of which he is one of the jointholders:]** *why specify that it is in particular a courtyard in which one is a jointholder that he may not open windows? Even into a courtyard belonging to his fellow he may not do so!*
- B. *Well, the sense is, it goes without saying, thus: it is not necessary to specify that one should not open a window in the courtyard of his neighbor, but even into a courtyard of which he is a joint holder, he may not do so. For we might have thought that he could say, "Well, all you have to do is take some steps to preserve your privacy from me in the courtyard."*
- C. *And now we are informed that the other may reply, "Up to now I had to take steps to guard my privacy only in the courtyard, but if you make this window, I'm going to have to watch out even in my house as well."*

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

- B. There was the case of someone who opened windows onto a courtyard of which he was a jointholder. The case came before R. Ishmael b. R. Yosé. He ruled, “My son, you have validly established title through usucaption, you have validly established title through usucaption [and may keep the windows where they are].”
- C. The case came before R. Hiyya, who said, “You went to the trouble of opening the windows, now go to the trouble of closing them.”

I.3 A. Said R. Nahman, **[60A]** “For closing a window, if one does it and none protests, that is forthwith a right established through usucaption, for it would be quite extraordinary for someone to have his light shut off and keep silent.”

II.1 A. **[If] he purchased a house in another courtyard [which adjoins the one in which he is living], he may not make an opening into the courtyard of which he is one of the jointholders. [If] he built an upper story on his house, he should not make an opening for it into a courtyard of which he is one of the jointholders:**

- B. *How come?*
- C. It is because he will increase the traffic too much in the courtyard [the added rooms will be let out].
- D. *Then note what follows: But if he wanted, he may build a [new] room inside of his house, or he builds an upper story on top of his house, and he makes an opening for it into his house. Here, too, isn't he going to increase the traffic in the courtyard?!*
- E. *Said R. Huna, “What is the meaning of room? It means that he divided a room into two. And what is the meaning of an upper story on top of his house? It means, he makes a balcony.”*

I.1 provides a good clarification of the Mishnah's intent in providing the cited detail. No. 2 adds a Tannaite complement. No. 3 supplements the Mishnah's rule from another angle. II.1 explains the operative consideration of the Mishnah.

3:7H-O

- H. One should not open up in a courtyard of which he is one of the jointholders a doorway opposite the doorway [of another resident],**
- I. or a window opposite [another's] window.**
- J. [If] it was small, he should not enlarge it.**
- K. [If it was] a single one, he should not make it into two.**

- L. But he may open into the public domain a doorway opposite [another's] doorway [in the public domain],
- M. or a window opposite [another's] window [in the public domain].
- N. If it was small, he may enlarge it.
- O. If it was a single one, he may make it into two.

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

- B. Said R. Yohanan, "Said Scripture, 'And Balaam lifted up his eyes and saw Israel dwelling according to their tribes' (Num. 24: 2). What did he see? He saw that the doorways of their tents did not exactly face one another. He said, 'These are worthy to have the Presence of God rest upon them.'"

II.1 A. **[If] it was small, he should not enlarge it:**

- B. *Rami bar Hama considered maintaining, "If the door is four cubits wide, he should not make it into one of eight cubits width, because that would give him the right to eight cubits in the courtyard, but he could divide a door of eight cubits into two of four cubits each [for in the yard he would not increase his space by so doing]."*
- C. *Said to him Raba, "The other party can say to him, 'I can keep my privacy from you if you have a small door, but not if you have a big one.'"*

III.1 A. **[If it was] a single one, he should not make it into two:**

- B. *Rami bar Hama considered maintaining, "If the door is four cubits wide, he should not make it into two doors of two cubits width each, because that would give him the right to eight cubits in the courtyard, but he could divide a door of eight cubits into two of four cubits each [for in the yard he would not increase his space by so doing]."*
- C. *Said to him Raba, "The other party can say to him, 'I can keep my privacy from you if you have one door, but not if you have two.'"* [Simon: Because if one door is closed, the other may still be open.]

IV.1 A. **But he may open into the public domain a doorway opposite [another's] doorway [in the public domain], or a window opposite [another's] window [in the public domain]:**

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

I.1 finds a scriptural warrant for the Mishnah's rule. II.1, III.1 conduct a theoretical experiment on the Mishnah's rule.

3:8

- A. They do not hollow out a space under the public domain —
- B. Cisterns, ditches, or caves.
- C. R. Eliezer permits,
- D. [if it is so strong that] a wagon can go over it carrying stones.
- E. They do not extend projections and balconies over the public domain.
- F. But if one wanted, he brings in [his wall] into his own property and then projects [a balcony].
- G. [If] one has purchased a courtyard, and in it are projections and balconies, lo, this one retains his right [to keep them as they are].

I.1 A. *And rabbis [vs. Eliezer, who hold that one may not do so]?*

B. *Sometime the surface may thin out and none may notice.*

II.1 A. **They do not extend projections and balconies over the public domain:**

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

C. *He said to him, “But the master also has one.”*

D. *“In the case of mine, the people who live in the alleyway tolerate it. In the case of yours, it projects over the public domain, and who is there to give consent in the surrender of the rights of the public?”*

II.2 A. *R. Yannai had a tree that overshadowed the public way. Somebody also had a tree that overshadowed the public way. Some passersby objected to the latter, and they objected to it. The case came before R. Yannai, who said to him, [60B] “Go away now but come back tomorrow.”*

B. *During the night he sent and had his tree cut down. On the next day he came before him. He said to him, “Go, cut it down.”*

C. *He said to him, “But the master also has one.”*

D. *He said to him, “Go, see. If mine is cut down, cut down yours, if mine is not cut down, don’t cut down yours.”*

E. *To begin with what was [Yannai] thinking, and at the end what was he thinking?*

F. *To begin with he thought that the bypassers were pleased to be able to sit in the shadow of the tree. But when he realized that they objected, he had it cut down.*

G. *Why didn’t he say to him, “You go cut down yours, and then I’ll cut down mine?”*

- H. *It was on account of what R. Simeon b. Laqish said, for said R. Simeon b. Laqish, “First adorn yourselves, then adorn others’ (Zep. 2: 1) — trim yourselves and then trim others.”*

III.1 A. But if one wanted, he brings in [his wall] into his own property and thence projects [a balcony]:

- B. *The question was raised:* If one drew back his wall and does not let any beams project, what is the law about his projecting beams later on [or has he given up his right to do so by drawing back into his property and at first not projecting beams outward to his property line]?
- C. R. Yohanan said, “While he has drawn back the wall, he may still project beams.”
- D. R. Simeon b. Laqish said, “Once he has drawn back the wall, he cannot later on project beams outward.”
- E. *Said R. Jacob to R. Jeremiah bar Tahalipa, “I shall explain it to you. As to projecting a beam, all parties concur, both maintaining that it is permitted to do so. Where there is a point of difference it concerns bringing the walls back to their original position. But, as a matter of fact, the statement was made in reverse order, namely: R. Yohanan said, ‘He may not restore the wall,’ and R. Simeon b. Laqish said, ‘He may restore the wall.’*
- F. “R. Yohanan said, ‘He may not restore the wall,’ on account of the position of R. Judah, for said R. Judah, ‘A path between two fields over which the public has established a right of way may not be damaged’;
- G. “And R. Simeon b. Laqish said, ‘He may restore the wall,’ *since in the case of the path to which R. Judah makes reference, that is because there is no ample space for an alternative route, but here there is amply space available.*”

IV.1 A. [If] one has purchased a courtyard, and in it are projections and balconies, lo, this one retains his right [to keep them as they are]:

- B. Said R. Huna, “If the wall fell down, one may go and rebuild it.”
- C. *An objection was raised:* People are not to stucco or decorate or paint houses. If someone buys a house that is stuccoed or decorated or painted, lo, it remains as is [he may keep it that way]. But if it falls down, he may not rebuild it in that way!
- D. *When it comes to a religious prohibition, the rule is different. [Here the matter only concerns causing damage or preserving established rights.]*

IV.2 A. Our rabbis have taught on Tannaite authority:

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

- C. R. Judah says, "If he mixed in sand, lo, this makes the cement stony [Simon], so it is forbidden, but if he uses straw, it is permitted."

The Destruction and Restoration of the Temple

Because of the reference, in the clarification, to restoring the wall, we are given a long sequence of references to what may or may not be kept in good shape, in light of the destruction of the Temple. The composite is parachuted down, the key joining language being, "So this is what the sages have said: 'one may stucco a house but should leave a bare spot.'"

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

- B. When the Temple was destroyed a second time, there multiplied in Israel abstainers [*perushim*/Pharisees], not eating meat or drinking wine. R. Joshua engaged with them, saying to them, "My children, how come you are not eating meat or drinking wine?"
- C. They said to him, "Should we eat meat, from which offerings were made on the altar, and now the rite is no more, and should we drink wine, which they would pour out in libations on the altar, and which now is no more?"
- D. He said to them, "Well, then bread we should now eat, for the meal offerings are now null."
- E. "Still, there is produce."
- F. "Produce we should not eat, for the rite of the first fruits is annulled."
- G. "Still, there is other produce."
- H. "Water we should not drink, for the water libation is annulled."
- I. That shut them up.
- J. He said to them, "My children, come, and I shall tell you how things are. Not to mourn at all is hardly possible, for the decree has already been made. To mourn too much also is not possible, for a decree cannot be made that the majority of the community as a whole cannot endure: 'You are cursed with a curse, yet you rob me of the tithe even this whole nation' (Mal. 3: 9). So this is what the sages have said: 'one may stucco a house but should leave a bare spot.'"
- K. How much?
- L. Said R. Joseph, "A square cubit."
- M. Said R. Hisda, "By the door."
- N. [Joshua continues:] "Someone may prepare a complete banquet, but he should leave out some small thing."

- O. *What's that?*
- P. Said R. Pappa, "The entree of salted fish."
- Q. [Joshua continues:] "A woman should put on all her jewels, but should leave off one or two."
- R. *What's that?*
- S. Said Rab, "She should not remove the hair on the temple."
- T. [Joshua continues:] "For it is said, 'If I forget you, Jerusalem, let my right hand forget, let my tongue cleave to the roof of my mouth, if I do not remember you, if I do not put Jerusalem above the things I most cherish' (Psa. 137:5-6)."
- U. *What is the meaning of* the things I most cherish?
- V. Said R. Isaac, "This refers to burnt ashes that we put on the head of a bridegroom."

IV.3 A. *Said R. Pappa to Abbaye, "Where is it put?"*

- B. "Where you put on the prayer boxes containing verses of Scripture: 'To appoint to them that mourn in Zion, to give them a garland for ashes' (Isa. 61: 3)."

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

IV.5 A. *It has been taught on Tannaite authority:*

- B. Said R. Ishmael b. Elisha, "From the day on which the house of the sanctuary was destroyed, by rights we should decree for ourselves not to eat meat or drink wine. But a decree may not be made for the community at large unless the larger part of the community can endure it.
 - C. "And from the day on which the wicked kingdom took over, issuing against us fierce and harsh decrees and nullifying the Torah from us and religious duties as well and not allow us to come together for the celebration of the end of the first week of a son's life [on which circumcision would take place]" — some say, "the salvation of the son" — by rights we should make a decree for ourselves not to get married or to have children. But then the seed of Abraham, our father, would become extinct on its own.
 - D. "So leave the Israelites alone. It is better that they should err but not deliberately violate [what the law should require of them]."
- I.1 explains the position of the Mishnah's anonymous ruling. II.1 explains through a case why there is no possibility of consenting to projections over the public way. No. 2 goes over the same ground. III.1, continued by No. 2, raises a subsidiary

question, dependent upon the Mishnah's rule but not required for the explanation of that rule. IV.1 begins with a clarification of the rule of the Mishnah. The remainder is explained above.