

I.

BAVLI BABA MESIA CHAPTER ONE

FOLIOS 2A-21A

1:1-2

1:1

- A. Two lay hold of a cloak —
- B. this one says, “I found it!” —
- C. and that one says, “I found it!” —
- D. this one says, “It’s all mine!” —
- E. and that one says, “It’s all mine!” —
- F. this one takes an oath that he possesses no less a share of it than half,
- G. and that one takes an oath that he possesses no less a share of it than half,
- H. and they divide it up.
- I. This one says, “It’s all mine!” —
- J. and that one says, “Half of it is mine!”
- K. the one who says, “It’s all mine!” takes an oath that he possesses no less of a share of it than three parts,
- L. and the one who says, “Half of it is mine!,” takes an oath that he possesses no less a share of it than a fourth part.
- M. This one then takes three shares, and that one takes the fourth.

1:2

- A. Two were riding on a beast,
- B. or one was riding and one was leading it —
- C. this one says, “It’s all mine!” —
- D. and that one says, “It’s all mine!” —
- E. this one takes an oath that he possesses no less a share of it than half,
- F. and that one takes an oath that he possesses no less a share of it than half.
- G. And they divide it.

H. But when they concede [that they found it together] or have witnesses to prove it, they divide [the beast's value] without taking an oath.

I.1. A. What need do I have to repeat in the Mishnah,

B. this one says, "I found it!" —

C. and that one says, "I found it!" —

D. this one says, "It's all mine!" —

E. and that one says, "It's all mine!"?

F. Let the Tannaite authority repeat only a single [plea].

G. It is only a single [formulation] that the Tannaite authority has repeated:

H. "this one says, 'I found it and it's all mine....' and that one says, 'I found it and it's all mine....'"

I. Then let the Tannaite authority repeat [the plea], "I found it," and I shall [naturally] know the fact[that the litigant has claimed], "It's all mine"!

J. Had the Tannaite authority [repeated the formulation solely as,] "I have found it," I might have reached the conclusion, "What is the sense of, 'I have found it'? 'I saw it, even though it did not actually come into my hands. Through merely seeing the object, I have effected acquisition of it.' [Daiches: The term I found it might have been explained as denoting, 'I saw it,' the mere seeing of the garment entitling him to claim it as his possession.]"

K. The Tannaite authority [has formulated the rule in the language of] "**It's all mine!**" to indicate that merely by seeing the object, the man has not made acquisition of it.

L. But can you really maintain that the sense of "I have found it" must be "I saw it"?

M. Now lo, Rabbanai has said, "'and you find' (Deu. 22: 3: 'and so shall you do with any lost thing of your brother's, which he loses and you find').— [that is to say,] that it has come into his possession."

N. Indeed so, when Scripture says, "and you find," the sense is, that it has come into his possession."

O. Nonetheless, [in the passage at hand,] the Tannaite authority has employed the [commonplace and] prevailing usage.

P. [And, in accord with that usage, once] one has seen [an object], he takes the view, "I have found it," so that even though the object has not actually come into the man's possession, [he supposes that merely because][he has seen the object, he has effected possession of it.

Q. The Tannaite authority [has formulated the rule in the language of] "**It's all mine!**" to indicate that merely by seeing the object, the man has not made acquisition of it.

R. Then let the Tannaite authority repeat [the plea], "It's all mine" and he then need not repeat in the passage the wording, "It's all mine"!

S. Had the Tannaite authority [repeated the formulation solely as,] "It's all mine," I might have reached the conclusion that in general, when the Tannaite authority uses the language, "I have found it," the sense is that merely by sighting an object in general, one has acquired possession of it.

- T. *He has formulated matters in the language of, “**I have found it,**” and then gone and formulated the passage further, “**It’s all mine,**” so that, from this repetition we should draw the conclusion that merely by the act of sighting an object, one has not acquired possession of it.*
- U. *But can you really maintain that it is only a single [formulation] that the Tannaite authority has repeated, namely, [“this one says, ‘I found it and it’s all mine....’ and that one says, ‘I found it and it’s all mine....’”]? [Up to this point in its analysis of the Mishnah, the Gemara has sought to establish that the first two clauses, “I found it,” and “All of it is mine,” are two necessary features of a single, integral unit, dealing with one particular case. The Gemara now proceeds to attack this basic assumption and asks, Can you say that the Mishnah in its two opening statements is teaching one particular case with one particular claim? Surely the wording indicates that the Mishnah is referring not to one but to two separate and distinct cases.]*
- V. *Lo, The Tannaite authority has repeated matters in the language, “This one says...and that one says...”*
- W. [thus:] **this one says, “I found it!” —**
- X. **and that one says, “I found it!” —**
- Y. **this one says, “It’s all mine!” —**
- Z. **and that one says, “It’s all mine!”**
- AA. *Said R. Pappa, and some attribute the statement to R. Shimi b. R. Ashi, or assign it to Kadi, “The initial case involves an object that has been found, the succeeding one, a case of purchase and sale.*
- BB. *And both of these cases had to be addressed individually.*
- CC. **[2B]** *For if the Tannaite authority had repeated the rule only concerning the case of a conflict over an object that has been found, I might have reached the conclusion that it is specifically in the case of an object that has been found that rabbis have imposed the requirement of taking an oath, since each party might allow himself to lay claim, saying, “My fellow loses nothing if I go and take possession of the object and split the object with him, [since the other never owned the garment to begin with and paid nothing for it]. But in the case of a dispute over who has purchased a given argument, where there can be no such calculation, I might say that [sages have] not imposed [the requirement of an oath.]*
- DD. *And if the Tannaite authority had repeated the rule only concerning the case of conflict over an object that has been purchased [in which both parties claim to have purchased the same thing], the reason that rabbis have imposed the requirement of taking an oath in such a case in particular is this: the litigant may permit himself to lay claim, saying, “My fellow has paid for the object, and I can go and pay for the object. Now that I need it, I’ll grab it, and let the fellow go and take the trouble to buy another object.” But in the case of a dispute over an object that has been found, in which case such reasoning will not apply, I might say that that is not the rule. Accordingly, it was necessary [to impose the same rule in the case of a conflict over an object that has been purchased].*

- EE. *But in a case of an object that has been purchased, then [why should there be such a conflict between two equally valid claims, without evidence available to settle matters]?*
- FF. *Just see from whom [the seller] has accepted the money [and when he indicates who paid for the cloak, we know the resolution of the conflict].*
- GG. *Not at all, the [oath is] required in a case in which the seller has taken money from them both, one of them willingly, one of them under constraint, and we do now know from whom it was taken willingly, and from whom under constraint.*

I.2. A. *May one claim that the Mishnah-passage before us [in requiring the taking of an oath to settle the matter] does not accord with the principle of Ben Nannos.*

- B. **For Ben Nannos has said, “How is it possible that this party and that that party should be brought into the state of taking a false oath?” (M. Shebuot 7: 5)** [Daiches: For does not Ben Nannos express surprise at the decision of the Sages to impose oaths on disputants one of whom is bound to swear falsely?] [The reference is to M. **Shebuot 7:1A, C: These are the ones who take an oath and collect what is owing to him:...a shopkeeper concerning what is written in his account book. M. Shebuot 7:5: A shopkeeper concerning what is written in his account book — how so? It is not that he may say to him, “It is written in my account book that you owe me two hundred zuz.” But if the householder said to him, “Give my son two seahs of wheat,” “Give my worker change for a sela,” and he says, “I already gave it to him,” and they say, “We never got it” — the storekeeper takes an oath and collects what is owing to him, and the workers take an oath and collect what they claim from the householder. Said Ben Nannos, “How so? But these or those then are taking a vain oath! Rather, the storekeeper collects what is owing to him without taking an oath at all, and the workers collect what they claim not to have received without taking an oath.”]**
- C. [The case before us may accord] *even with the principle of Ben Nannos* [who will not impose an oath in a case in which it is clear one or another party will be taking the oath falsely].
- D. *In the case to which Ben Nannos refers [in stating his principle], there is most assuredly going to be a false oath.*
- E. *But in the present case, there is the possibility of claiming that there is no false oath.*
- F. *One may say that the two of them at the same instant raised up the object [and thereby effected possession of it, so both can be telling the truth].*
- I.3. A.** *May one claim that the Mishnah-passage [in requiring the taking of an oath to settle the matter] before us does not accord with the principle of Sumkhos (Symmachus)?*
- B. *For if it were to accord with Sumkhos, has he not said, “As to money that is subject to doubt [and therefore contested ownership], that money is divided without the taking of an oath”?*
- C. *But then what [alternative do you propose? Is it that the Mishnah-passage before us accords with the principle of] sages [vis à vis Sumkhos]?*

- D. *Lo, they have maintained, He who proposes to take away [the property of another] bears the burden of bringing proof of the validity of his claim. [So they too will not concur that an oath will serve to settle the issue here.]*
- E. *Now if, as a matter of fact, you introduce the position of sages [vis à vis Sumkhos], in that case, in which both parties have not seized hold of the property that is disputed, rabbis indeed rule, He who proposes to take away [the property of another] bears the burden of bringing proof of the validity of his claim.*
- F. *But in this case, in which both parties have seized hold of the property that is disputed, they indeed will divide the object upon the taking of an oath.*
- G. *But if, on the other hand, you maintain that [the Mishnah-passage at hand] accords with the principle of Sumkhos, [we may formulate matters in this way and so demonstrate the contradiction between his principle and the ruling before us]:*
- H. *If in such a situation, in which both parties have not in fact seized hold of the disputed object, they are to divide the object without the taking of an oath, here, in which both parties have seized hold of the disputed property, is it not an argument a fortiori [that they should divide the object without taking an oath! Accordingly, the present ruling cannot accord with the position of Sumkhos.]*
- I. *You may even take the view that the Mishnah-passage before us accords with the principle of Sumkhos.*
- J. *When Sumkhos took the view that he did, it is in the situation in which each party is uncertain [as to the facts of the matter, so neither of them can be made to take an oath], but in a case, such as this one, in which both parties express certainty about their rights of ownership, he would take a different view. [Steinsaltz: Summakhos stated that property the ownership of which cannot be decided is divided between the claimants without an oath in a case of ‘perhaps and perhaps,’ where neither claimant was present at the time of the incident, and neither maintains with certainty that his claim is correct, but each maintains: ‘The other claimant cannot bring more convincing proof than I can, and perhaps the item is mine.’ But in a case of ‘certain and certain,’ where both claimants are positive in their claim that the disputed object is theirs, Summakhos did not state that the item should be decided without an oath. Thus even Summakhos may agree that in the case discussed in our Mishnah, which is a case of ‘certain and certain,’ where both claimants are positive that the garment is theirs, they divide it only after each claimant has sworn that no less than half the garment is his].*
- K. *And in the view of Rabbah bar R. Huna, who stated, “Sumkhos said, ‘Even in a case in which both parties express certainty about their rights of ownership, [an oath is taken to settle the conflicting claims], what is there to be said?’*
- L. *You may even maintain that in such a case, it is still in accord with the view of Sumkhos. When Sumkhos took the view he did, it was in a case in which there would be a loss of money.*
- M. *But does that view not yield an argument a fortiori [which will prove that Sumkhos does not accord with our Mishnah-paragraph]? If in the case to which reference is made, a loss of money to one party is involved, and a loss of money to the other party is equally involved, [3A] and, further, one may maintain that the whole of the disputed item may belong to one party, and one may maintain that the whole of the dispute item may belong to the other party, and, in such a*

case, Sumkhos has adopted the principle, “As to money that is subject to doubt [and therefore contested ownership], that money is divided without the taking of an oath,” *here* [in the case of the Mishnah’s rule], *in which case there is no question of a loss of money to either party, for one may rule that the disputed property belongs to both parties* [and so may be divided without an oath taken by either one], *is it not an argument a fortiori* [and hence the Mishnah cannot accord with Sumkhos, who will have the property equally divided without the taking of an oath]!

N. *You may, indeed, still hold* [that the Mishnah-passages accords with the principle of] *Sumkhos*. *This oath* [of which the Mishnah speaks] *is imposed only by the authority of the rabbis* [and not on the authority of the Torah. There are then two kinds of oath, and when Sumkhos avoids imposing an oath, as in the cases just now discussed, it is an oath on the authority of the Torah. The distinction between the two kinds of oaths permits us to allow that, in the present case, Sumkhos would concur that an oath is invoked, while in the cases of which he speaks elsewhere, it is not invoked. The difference then vitiates the argument *a fortiori*.]

O. *And that accords with the view of R. Yohanan, for said R. Yohanan*, “This oath [to which our Mishnah-passages refers] happens to be an ordinance imposed only by rabbis, so that people should not go around grabbing the cloaks of other people and saying, ‘It’s mine!’”

I.4. A. *May one claim that the Mishnah-passages* [in requiring the taking of an oath to settle the matter] *before us does not accord with the principle of R. Yosé?*

B. *For if it were to accord with R. Yosé has he not said*, [Two who deposited something with one person, this one leaving a *maneh* [one hundred zuz], and that one leaving two hundred zuz — this one says, “Mine is the deposit of two hundred zuz,” and that one says, “Mine is the deposit of two hundred zuz” — he pays off a *maneh* to this one and a *maneh* to that one, and the rest is left until Elijah comes. Said R. Yosé,] “If that is the case [that one may take an oath and (merely in that way) acquire possession of property subject to dispute], then what does a liar lose? But let everything be left until Elijah comes [and settles matters]”? [M. **B.M. 3:4F-G**].

C. *But with whom then may we say the passage accords? Is it with the possession of rabbis vis à vis R. Yosé? But since rabbis* [vis à vis R. Yosé] *have said*, “**Let the remainder [of the property under dispute in the cited passage] remain until Elijah comes [and settles matters],**” *lo*, [the cloak in the Mishnah-paragraph before us is in the status of] the remainder [in the case under discussion, for it is subject to doubt] [and so the position of sages vis à vis Yosé would be the same as that of our passage. Our passage then does not conform to the viewpoint of the sages who disagree with Yosé, since they would argue that the garment should be left with the court rather than divided between the claimants (Steinsaltz)].

D. *How now! If you have invoked the position of rabbis in that other case, in which the money at issue assuredly belongs to one of the two parties, so that, in that case, sages have ruled*, “**Let the remainder [of the property under dispute in the cited passage] remain until Elijah comes [and settles matters],**” *in the present case, in which there is the possibility of claiming that it belongs to both of the claimants, rabbis would* [reasonably] *take the position that it should indeed*

*be divided upon the taking of an oath. But if you take the position that the passage before us accords with R. Yosé, [that is quite a difficult view, for] if in the case [of M. **B.M. 3:4**], where it is certain that each claimant beyond doubt is entitled to a maneh, R. Yosé has said, “**Let the remainder [of the property under dispute in the cited passage] remain until Elijah comes [and settles matters],**” in the present case, in which one may claim that the cloak belongs to only one of the two parties, is it not an argument a fortiori [that the property should be left in the custody of the court and not divided by means of an oath].*

- E. *[To the contrary,] you may even maintain that the Mishnah-paragraph represents the view of R. Yosé. In that other case, there most assuredly is a liar. But here, who will say with certainty that there is a liar? I should claim that the two of them at one and the same moment raised up the cloak. Or in that other case, R. Yosé imposed an extrajudicial fine upon the liar so that he would be impelled to confess his deceit, while here, what loss is incurred that would impel the deceiver to confess? [He will incur no loss if he forfeits the garment.]*
- F. *That argument suffices for the case of an object that has been found [to which the two lay claim], but what is there to be said about the case of an object that has been purchased [and subject to dispute as to who has paid for it]?*
- G. *But the initial answer [Daiches: that in the other case one claimant is certainly fraudulent, while in our case both may be honest] is the better one.*

I.5. A. [With reference to M. Shebuot 7:5, cited above, **A shopkeeper concerning what is written in his account book — how so? It is not that he may say to him, “It is written in my account book that you owe me two hundred zuz.” But if the householder said to him, “Give my son two seahs of wheat,” “Give my worker change for a sela,” and he says, “I already gave it to him,” and they say, “We never got it” — the storekeeper takes an oath and collects what is owing to him, and the workers take an oath and collect what they claim from the householder. Said Ben Nannos, “How so? But these or those then are taking a vain oath! Rather, the storekeeper collects what is owing to him without taking an oath at all, and the workers collect what they claim not to have received without taking an oath,”] *whether with regard to the position of rabbis or to that of R. Yosé, [who concur that the liar should not profit from his lying], in the case involving the storekeeper, at which it is repeated, **the storekeeper takes an oath and collects what is owing to him, and the workers take an oath and collect what they claim from the householder,** how is that case to be differentiated from this one, in that there we do not rule, let the money be taken from the householder [who certainly owes it to either the storekeeper or the workers, who were to be paid in kind through their purchases at the company store], and **Let the remainder [of the property under dispute in the cited passage] remain until Elijah comes [and settles matters]?*****

- B. *For lo, in that case, [one or another of the parties to the dispute] most certainly is a liar!*
- C. *Say: in that case, here is the reason [for the ruling as it is given]: the storekeeper may say to the householder, “I was your agent in this matter and have carried out your mission. What business have I to do with the worker [who claims not to have been paid]? Even though he may take an oath to me, even when he takes an oath,*

he is not credible to me. You were the one who laid your trust in him, for you did not say to me, 'Only in the presence of witnesses are you to pay him off.'" ["You were the one who trusted the worker, now you are the one who has to be penalized if he takes the oath."]

- D. *And along these same lines the worker may say to the householder, "I did my work for you. What business do I have with the storekeeper? Even though he takes an oath to me, he is not credible to me."*
- E. *Therefore both claimants are to take oaths and collect what is owing from the householder.* [Daiches: It would thus be wrong to make either party forfeit the amount claimed. As the shopkeeper and the employees have had no direct dealings with each other and have entered into no mutual obligations, they may regard each other as entirely untrustworthy and refuse to believe each other even on oath.] [In that way we differentiate the case cited in connection with Ben Nannos from the case at hand involving Yosé. The two cases have nothing to do with each other, by reason of differing circumstances.]

I.6 A. *It has been taught on Tannaite authority by R. Hiyya:*

- B. [One person claims,] "You have a *maneh* [a hundred *zuz*] of mine in your possession."
- C. The other says, "I have nothing belonging to you whatsoever in my possession."
- D. And witnesses testify concerning him that he has in his possession fifty *zuz* —
- E. he pays over to him fifty *zuz*, and then takes an oath concerning the remainder of the money, [that is, the other fifty *zuz*. Daiches: The evidence of the witnesses places the defendant in the same position as his own admission of part of the claim would have done.]
- F. [And that disposition of the case is] so that his own confession should not have greater weight than the testimony of witnesses, [who] by reason of an argument *a fortiori* [impose upon the defendant the requirement of taking an oath]. [Daiches: If the defendant's partial admission necessitates his taking an oath concerning the remainder of the money under dispute, the evidences of the witnesses regarding the partial debt should at least have a similar effect.]
- G. *Now our Tannaite authority has repeated as follows:*
- H. **Two lay hold of a cloak — this one says, "I found it!" —and that one says, "I found it!" —**
- I. *now here, since [the man] is holding [the cloak], we are in the position of witnesses [that he is in possession of the cloak].*
- J. *What this one is holding is his, and what that one is holding is his.*
- K. *And yet it is repeated, "Let him take an oath."*
- L. *Now what purpose is there in adding, "[and that disposition of the case is] so that his own confession should not have greater weight than the testimony of witnesses, [who] by reason of an argument a fortiori [impose upon the defendant the requirement of taking an oath]"?*
- M. [The reason that that argument is required is as follows: you might say that in the case of the partial admission of a claim,] *the All-Merciful [through the Torah] has imposed an oath on him.*

- N. *That is for the reason enunciated by Rabbah.*
- O. For Rabbah has said, “On what account has the Torah imposed the requirement of an oath on one who confesses to only part of a claim against him? It is by reason of the presumption that a person will not insolently [deny the truth about the whole of a loan] in the very presence of the creditor [and so entirely deny the debt. He will admit to part of the debt and deny part of it. Hence we invoke an oath in a case in which one does so, to coax out the truth of the matter.]” [Daiches: In the case of one who restores a lost article to its owner, he is believed without an oath, even if the owner maintains that only part of the loss has been returned to him by the finder.]
- P. *Now in our case, the claimant would liked to have denied the entire claim, and the reason that he did not do so is that one will not act insolently.*
- Q. **[3B]** *Now this party would like entirely to have confessed the whole claim, and the reason that he has not confessed it is that he wanted to put him off for a time, thinking that when I have the money, I will pay him off.*
- R. *So the All-merciful has assigned an oath to that party so that he will confess to the entire loan.*
- S. *But as to the testimony of witnesses, this argument does not pertain.* [The defendant denies the whole claim, and if he is dishonest, he may also be ready to perjure himself (Daiches).]
- T. *I consequently would have supposed that there would be no requirement here for an oath. The argument a fortiori then teaches that, to the contrary, [an oath is required].*

I.7 A. *What in fact is that argument a fortiori?*

- B. If what he says on his own volition, [that is to say, the partial admission of a claim], which cannot impose upon him liability to pay out money, does impose upon him the requirement to take an oath,
- C. the testimony of witnesses, who do have the power to impose upon him the obligation to pay out money, [for that testimony obliges the man to pay out money in accordance with their testimony that he owes a third party] — is it not a matter of reason that they should also impose upon him the obligation to take an oath? [That is the argument *a fortiori* to which reference is made above.]
- D. But is it the fact that what he says on his own volition does not impose upon him the requirement to pay out money? Now lo, [it is the fact that] the concession of a defendant is equivalent to the testimony of a hundred witnesses [Steinsaltz: the admission of a litigant in monetary matters is considered as strong as the evidence of a hundred witnesses.]
- E. *What is the meaning of the word “money” [used above at B]? It means, an extra-legal fine [Daiches: the admission of an offence for which a fine is imposed renders the offender free from such a penalty by virtue of his confession. Steinsaltz: The point of the statement is that in all cases where the Torah imposes a fine, if the defendant voluntarily admits his guilt, he is not required to pay the fine.]*

- F. [This now revises our understanding of the argument *a fortiori*, as follows:] If what he says on his own volition, [that is to say, the partial admission of a claim], which cannot impose upon him liability to pay out a fine, does impose upon him the requirement to take an oath,
- G. the testimony of witnesses, who do have the power to impose upon him the obligation to pay a fine, is it not a matter of reason that they should also impose upon him the obligation to take an oath? [That is the argument *a fortiori* to which reference is made above.]
- H. But [there is a particular power that his own statement has, which explains why what he says about himself will impose upon himself an obligation, while what witnesses say about him cannot impose an obligation — hence vitiating the argument *a fortiori*. That particular power possessed by his own statement but not by witnesses is as follows:] what he says of his own volition has the power to impose upon him the obligation to bring an offering [in line with Lev. 5:9], but will you say the same of what witnesses say about him, which does not have the power to impose upon him the obligation to bring an offering? [If he contradicts witnesses, he does not have to bring an offering. For a wrong he has committed unaware but then discovered and confessed he brings an offering; but if other people say that he has committed that wrong, he does not. The argument *a fortiori* falls away when we can impute to what he says about himself greater power than what others say about him, and that we have now done.]
- I. *That poses no problem, for R. Hiyya accords with the opinion of R. Meir, who has said, “Witnesses have the power to impose upon a person the obligation to bring an offering. And this is by reason of an argument a fortiori.”*
- J. *For we have learned in the Mishnah: **If two witnesses say, You have eaten forbidden fat,” and he says, “I did not eat it,” R. Meir declares him liable, and sages exempt him from the offering. Said R. Meir, “If two have the power to bring upon him the death penalty, which is strict, will they not impose upon him through their testimony the obligation to bring an offering, which is a lenient penalty?? They said to him, “What if he should choose to say, ‘I did it deliberately,’ [in which case he is exempt from a sin offering, and the witnesses cannot contradict him]?” [M. Keritot 3:1G-J].***
- K. Rather, if what he says of his own volition, which has the power to impose upon him a guilt-offering — [Daiches: “Does not a person’s own mouth carry more weight than witnesses, in that it can oblige him in a case of confession after denial on oath to bring a guilt offering?” Daiches refers to Lev. 5:20-26).
- L. a guilt-offering is just another offering!
- M. Rather, if what he says of his own volition, which has the power to impose upon him the obligation to pay the added fifth [If someone denies a monetary claim and takes a false oath and then admits his guilt, he has to repay the money and offer a guilt offering brought on account of theft and

added a fifth to the money he restores and pay that over the claimant. If witnesses testify to his guilt and he does not admit his guilt, he is not obliged to pay the added fifth. Then a person's own admission is stronger than the evidence against him brought by witnesses, and the argument a fortiori is null (Steinsaltz).]

- N. *That poses no problem, for R. Hiyya concurs with the view of R. Meir, who, just as by appeal to the argument a fortiori imposes an obligation upon him to bring an offering, so by appeal to the argument a fortiori also imposes upon him the obligation to bring the added fifth.*
- O. Rather: what he says of his own volition, which is not subject to contradiction and is not subject to the consideration that the testimony may derive from a conspiracy of perjurers, [and on that account, what he says of his own volition likewise may impose upon him the requirement to take an oath for that part of the claim that he continues to deny,] will you say the same of the testimony of witnesses, which after all is assuredly subject to the contradiction and is subject to the consideration that the testimony may derive from a conspiracy of perjurers.
- P. [It must follow that the argument a fortiori is not the one we have just now proposed. Rather,[] *it comes from the case of a single witness:*
- Q. If a single witness, who has not got the power to impose upon him the requirement to pay out money, does have the power to impose upon him the obligation to take an oath, witnesses, who do have the power to impose upon him the obligation to pay out money, surely should have the power to impose upon him the obligation to take an oath.
- S. [No, there are special capacities inherent in the testimony of a single witness that do not apply to the testimony of two witnesses, specifically] if a single witness, who imposes the obligation to take an oath only for that part of the disputed property concerning which he testifies, [4A] will you say the same of witnesses, since the oath that they impose concerns that which the defendant has denied. [Daiches: "Therefore the inference from one witness to several witnesses does not hold good. As long as it can be shown that there is one aspect from which the case that it treated as the minor for the purpose of the argument a fortiori can be regarded as major, the inference may be objected to as illogical.]
- T. *Rather, said R. Papa, "The argument derives from the subordinated oath imposed by the testimony of a single witness. [Daiches: "attached oath." Daiches explains: "As the evidence of one witness causes an oath to be imposed upon the defendant, a second oath is also imposed upon this defendant if another claim not included in the evidence is raised against him in regard to which, if it stood alone, no oath would have been imposed."]*
- U. But what is particular with respect to that subordinated oath on account of the testimony of a single witness is that the requirement to take one oath draws in its wake the requirement to take yet another oath.
- V. But will you say the same of the effect of the testimony of two witnesses, which has the effect of imposing the requirement of making the payment of money [but not the requirement of taking another oath]?

- W. The case of evidence that he has given on his own volition will prove the contrary. [Daiches: The case of partial admission where the oath is taken though there is no oath to carry it.]
- X. But the distinctive trait of testimony that he gives of his own volition is that is not subject to contradiction.
- Y. The testimony of a single witness will prove to the contrary, for it is subject to contradiction and does impose upon the man the requirement of taking an oath.
- Z. The distinctive trait pertaining to the testimony of a single witness is that it is only concerning that about which the testimony has been given that the oath is imposed. But will you say the same of the effect of the testimony of two witnesses, in which case it is concerning that which the defendant has denied that the oath is imposed.
- AA. The evidence given by the man of his own volition will prove the contrary — and the wheel has turned full circle.
- BB. The distinctive trait of this case is different from the distinctive trait of the other, but what the cases have in common is that the oath comes about because of a claim against the defendant and a denial on his part. So I introduce the case [by analogy] of the witnesses, for it is on account of a claim and a denial that the witnesses enter the case and an oath is imposed [and likewise in the case at hand].
- CC. But the common trait of the two cases is that the defendant has not been marked as a habitual liar. But will you say the same in a case in which witnesses are present, in which instance the man has been labeled as a habitual liar [since two witnesses are present to prove that he has lied!]?
- DD. But has the man been marked as a habitual liar at all? And has not R. Idi b. R. Abin said R. Hisa said, “One who denies a loan remains valid to give testimony concerning a bailment. If he has denied holding a bailment, he is invalid for giving testimony”?
- EE. *But this is the way in which the challenge to the argument should be framed:*
- FF. What the two matters have in common is that neither one of them is subject to the law covering a conspiracy of perjury. But will you say the same of the case of two witnesses, who are a matter of definition are subject to the law governing a conspiracy of perjury.
- GG. *That poses no problem, since R. Hiyya does not assign any weight to the law governing a conspiracy of perjury. [Steinsaltz: Hiyya claims that there is no substantive difference in the laws of perjury between the testimony of a single witness and that of two witnesses. The fact that a single witness, if found guilty of perjury, does not suffer the penalty he planned to impose on the defendant, whereas two or more such conspiring witnesses do suffer this penalty, is not sufficient reason to make a profound distinction between the two cases. What they have in common, that in both cases the testimony of the single witness and that of the two witnesses is cancelled out, is much more important.]*

- I.8** A. *Rather, when the statement was made that a Tannaite authority has taught [along these same lines,] as the view of R. Hiyya, are the two cases comparable at all?*
- B. *In [the case introduced by Hiyya], the lender has witnesses [to half of the amount claimed as the loan], but the borrower has no witnesses that he does not in fact owe [the other half of the loan], for if he had witnesses that he did not owe him anything, R. Hiyya would not have imposed the requirement of an oath at all.*
- C. *But here, just as we [who see that both parties are in possession of the cloak], give testimony for the one party, so we give testimony for the other party!*
- D. *And even so, the parties are subjected to an oath.* [This would show that the oath is not imposed because of a partial admission, but is merely instituted by the rabbis as said above, and that is quite a different matter from the oath imposed by Hiyya (Daiches).]
- E. *But when the statement was made that our Tannaite authority has the same view as R. Hiyya, reference was made to another statement that R. Hiyya made.*
- F. For R. Hiyya said, “[If one party claims,] ‘A *maneh* [a hundred *zuz*] belonging to me is in your possession,’ and the other says, ‘You have in my possession only fifty *zuz*, and here it is [they’re yours]’ —
- G. “the latter is liable [to take an oath].”
- H. *What is the reason? “They’re yours” is comparable to the case of one who concedes part of a claim.*
- I. *The Tannaite authority of our Mishnah-passage then teaches the same lesson: **Two lay hold of a cloak — this one says, “I found it!” —and that one says, “I found it!”** —*
- J. *And lo, in the present case since each party to the dispute holds onto the garment, we, for our part, are witnesses, so the part that is in the possession of each one is tantamount to the claim [concerning the part that he does not hold], “It’s yours,”*
- K. *And yet, the rule is then repeated: **let him take an oath.*** [Steinsaltz: The part of the garment we are going to award to each litigant is already in his possession and is no longer being claimed, so it is like that part of a debt that is made available to the lender to take back. Nonetheless, the Mishnah teaches that each claimant must take an oath. The implication is that even if a litigant uses the expression, “Here it is” with reference to part of a claim made against him, he is still liable to take an oath with reference to the part of the claim he denies, in accordance with R. Hiyya’s ruling.]
- L. But R. Sheshet said, “[If one claims,] ‘They’re yours,’ he is exempt from the requirement of taking an oath.”
- M. *What is the reason? Since he has said to the other, “Here it is,” those fifty *zuz* that he has conceded to him are as though they were already in the possession of the lender. But as to the other fifty *zuz*, lo, he has conceded nothing. Hence there is no case of his having conceded part of a claim [and denied part. One part of the claim is distinct from the other, the fifty *zuz* that have been conceded being deemed as though transmitted.]*
- N. *But our Mishnah-paragraph then poses a problem for R. Sheshet [since the litigants are in a position similar to the case at hand].*

- O. *R. Sheshet would say to you, "The rule of our Mishnah-paragraph represents an ordinance imposed on rabbinical authority.*
- P. *And the other party [opposed to Sheshet's view]?*
- Q. *[He will claim as follows:]Indeed so, it is an ordinance imposed on rabbinical authority. Nonetheless, if you take the view that on the authority of the Torah, the statement, "Here they are" imposes liability for an oath, when the rabbis ordained an oath, it was along the lines of the principle of the Torah itself.*
- R. *But if you take the view that, on the authority of the Torah, the statement, "Here they are" does not impose liability for an oath, then the rabbis have required an oath that has no parallel in the Torah! [That is unthinkable.]*
- S. *It was objected: [4B] [When the plaintiff presents a promissory note for] selas or denarii [without a specified figure as to how much is owing,]*
- T. *the creditor says, "Five,"*
- U. *and the borrower says, "Three" —*
- V. *R. Simeon b. Eleazar says, "Since the borrower has conceded part of the claim, let him take an oath."*
- W. *R. Aqiba says, "He is in the status only of one who returns lost property and is exempt from having to take an oath." [Daiches: "Selas would really mean two, the minimum number to which the plural could be applied, and if the debtor says three, he admits more than there is evidence for. The third sela is therefore like a restored loss, in connection with which no oath can be imposed.]*
- X. *Now, nonetheless, it has been repeated on Tannaite authority, R. Simeon b. Eleazar says, "Since the borrower has conceded part of the claim, let him take an oath." The reason is that he said, "Three," Lo, had he said "two," he would have been exempt. Now this is a deed that he concedes is valid, and it is equivalent to "Here you are," and it shows that one who claims "Here you are" is exempt from having to take an oath. [That contradicts the position of Sheshet at K.]*
- Y. *No, in any event I may say to you that if someone concedes that he owes two, he nonetheless is liable to take an oath. And the reason that the Tannaite authority has specified three is simply to exclude the position of R. Aqiba, who has said, "He is in the status only of one who returns lost property and is exempt from having to take an oath." In so framing matters, the authority informs us that one he is in the status of one who has conceded part of a claim, and such a one would be liable to take an oath.*
- Z. *If so, the language, R. Simeon b. Eleazar says, "Since the borrower has conceded part of the claim, let him take an oath" is inappropriate, and what is required is, "He also must take an oath."*
- AA. *Rather, in point of fact one who concedes two is exempt from having to take an oath, and one who claims, "Here they are" is liable to take an oath.*
- BB. *But our case differs from the other, for the bond supports the claim of the debtor [that only two selas are owing, since the document says only selas, which means, two];*
- CC. *Or, further, it is because he had a mortgage deed covering real estate, and oaths are not imposed in the case of a denial of a mortgage on real estate. [Daiches:*

Seeing that “two” is corroborated by the written document, no oath can be imposed, either in a case of denial or in one of admission, because the document puts the debtor’s landed property under a bond, and...no oath is administered in connection with mortgaged property. But when the debtor says “three,” the dispute about the remainder as well as the admission of the third sela concerning something that is not mentioned in the document, and which does not therefore affect the debtor’s landed property.]

- DD. *There are those who raise an objection from the latter clause of our passage: R. Aqiba says, “He is in the status only of one who returns lost property and is exempt from having to take an oath.”*
- EE. *The reason is that he said, “Three,” but if he had conceded only two, he would have been liable to take an oath, and lo, a bond the validity of which one concedes is tantamount to a claim of “here they are.” That shows that a claim of “here they are” imposes the liability to an oath!*
- FF. *Not at all, I should say to you that in the case of an admission of two, he also would have been free of the obligation to take an oath, and the reason that the Tannaite authority of the passage has formulated matters in such a way as to specify three is solely to exclude the position of R. Simeon b. Eleazar, who has said, ““Since the borrower has conceded part of the claim, let him take an oath.”*
- GG. *The framer of the passage so informs us that he is in the status of one who returns a lost object, and is exempt from having to take an oath.*
- HH. *That stands to reason that with the admission of the debt of two one has to take an oath, then how could R. Aqiba have eliminated the requirement of the oath in the case of an admission of a debt of three selas?*
- II. *[The debtor] would be able to formulate the following deceitful claim: “If I concede a claim of two, I shall have to take an oath. I shall therefore concede that I owe three, so that I shall be in the status of one who restores a lost object and be exempt from having to take an oath.”*
- JJ. *Accordingly, the clear implication is, if he concedes a debt of two, he also must be exempt from having to take an oath.*
- KK. *[Since Hiyya maintains that the offer of “here they are” is tantamount to a concession of part of the debt so an oath is required, why should two not require an oath? That then poses] a problem to R. Hiyya as well!*
- LL. *[In the case of a writ that says, selas] the rule is different, for the bond of indebtedness supports the claim [so he does not have to take an oath; the exemption has nothing to do with an alleged similarity to the admission, “Here they are.”]*
- MM. *Alternatively, it is because we have a case of a mortgage lien on real estate, and denial of a mortgage on real estate is not handled by means of imposing an oath.*
- NN. *Mar Zutra, son of R. Nahman, objected [to the position of Sheshet], “**If one laid claim against him for utensils and real estate, and the other party conceded the claim for utensils but denied the claim for real estate, or conceded the claim for real estate and denied the claim for utensils, he is exempt from having to take an oath. If he conceded part of the claim for real estate, he is exempt from having to take an oath. If he conceded part of the claim for***

utensils, he is liable to take an oath. [For property for which there is no security imposes the requirement of an oath in regard to property for which there is security]' [M. **Shebuot 6:3U-Z**].

- OO. "[Why is the defendant exempt from having to take an oath when the claim involves both land and utensils?] *The reason is that in such a situation of both utensils and real estate, the real estate is not subject to the taking of an oath.*
- PP. *But where the claim involves utensils along with other utensils, just as with real estate and utensils [when the defendant responds, 'Here they are before you,'] he is liable [to take an oath].*
- QQ. "Now under what circumstances? Is it not a case in which he has said to him, 'Here is yours before you'? Then the implication is that one who says, 'Here is yours before you [thus conceding part of the claim] is liable to take an oath. [Sheshet has held that the claim 'Here they are' does not impose liability to an oath."
- RR. *No, in any event I may say to you that in the case of a claim on this set of utensils and on that set of utensils, one is equally exempt from the obligation to take an oath.*
- SS. *And the reason that the Tannaite authority has repeated the case of utensils and real estate is so as to convey the inference that if one has conceded a claim to part of a set of utensils, he is liable to take an oath even as to the land that is involved in the overall action.*
- TT. *What then does he propose to tell us? Is it the law [Daiches:] of extension of obligation [so that if an oath is required in connection with one part of a claim, we extend the obligation to take an oath also to other parts of the same claim, inclusive even of real estate, which ordinarily, on its own, is not going to precipitate the requirement of taking an oath].*
- UU. *But we have learned that law on Tannaite authority: **Property for which there is no security imposes the requirement of an oath on property for which there is security** [M. **Qid. 1:5D**]. [Daiches: When claims arise simultaneously in regard to both kinds of chattels, and an oath is due regarding the movable ones, it is extended also to the immovable ones.]*
- VV. *Here that point is principal, while there it is tangential.*
- I.9 A. [5A]** *And as to the position of him who has said, "The claim of 'Here is yours before you' is exempt from the requirement of taking an oath, 'why is it necessary to invoke a Scriptural verse to demonstrate that land is exempt from the law of an oath? Lo, all real estate falls into the category of 'Here is yours before you'! [The land cannot be moved, so the creditor always has access to it.]*
- B. *Such a one would reply, "A verse is required to prove that is the case when the defendant has dug pits, ditches, or caves [so diminishing the value of the land], or in a case in which the plaintiff has laid claims for both utensils and real estate and the defendant has conceded the claim for utensils but denied the claim as to real estate." [A partial admission does not impose an oath on the disputed landed property, even though part of the one claim has been conceded.]*
- C. *Now come and take note of what R. Ammi b. R. Hama repeated on Tannaite authority: "[To be obligated to take an oath], four types of bailees have to deny*

part of a claim and to concede part of a claim: [1] an unpaid bailee, [2] a borrower, [3] a paid bailee, [4] and one who rents the use of an object [British: a hirer].” *Now how shall we understand this ruling? Is it not equivalent to the plea, “Here is yours before you”?* [Daiches: “The partial admission can only refer to the animal which the bailee admits to have in his possession, and which he is ready to return to the owner. This is like saying, ‘Here it is,’ and yet the bailee has to swear!”]

- D. *No, [the ruling speaks of a case in which] the plaintiff has said to the bailee, “I handed over to you three cows, and all of them have died on account of your negligence!” And the other responds, “One I never took over at all, one died accidentally, and one died through negligence, for which I am quite prepared to pay compensation to you.” This is not equivalent to a case of “Here is yours before you” at all.*
- E. *Come and take note of what the father of R. Aptoriqui taught on Tannaite authority with reference to the first statement of R. Hiyya: [One person claims,] “You have a maneh [a hundred zuz] of mine in your possession.” The other says, “I have nothing belonging to you whatsoever in my possession.” And witnesses testify concerning him that he has in his possession fifty zuz — is it possible to imagine that he is to take an oath covering the remainder of the claim? Scripture states, “for any manner of lost thing, whereof he says that it is his” (Exo. 22: 8) [the admission, “that it is his” then covers part of the claim but not the whole of it] — it is on account of the admission that he makes of his own volition that you impose upon the defendant the obligation to take an oath, and it is not on account of the testimony of witnesses that you do so.*
- F. *Then the Mishnah-passage before us contradicts the position just now attributed to R. Hiyya!*
- G. *R. Hiyya enjoys the authority of a Tannaite figure and so is perfectly able to differ with the position of the Mishnah, [representing as it does the view of some other authority of the same standing].*
- H. *But lo, he has adduced in evidence a verse of Scripture! [The contradiction is real, since Scripture itself now stands contrary to the position outlined in our Mishnah-paragraph, at least as we have read it in invoking the analogy of the testimony of witnesses on the one side, the actual evidence in the form of the disputed cloak in the hands of the two claimants, on the other.]*
- I. *That evidence deriving from a verse of Scripture pertains to one who admits part of the claim [which is not the case in our Mishnah-passage].*
- J. *And as to the father of R. Aptoriqui? [Daiches: How can he apply the text to exclude the case where witnesses give evidence?] He would say to you, “Scripture refers to ‘it’ and to ‘this.’ One serves to deal with the case of one who concedes part of a claim, the other to a case in which witnesses are present with respect to part of the claim, indicating that, in such a situation, the defendant is exempt from the obligation of having to take an oath.*
- K. *And the other party? [R. Hiyya will respond,] One deals with the case of a defendant who concedes part of the claim, the other, to one who concedes the claim to the same kind of object as is demanded by the plaintiff. [In cases such as these, an oath is required.]*

L. *And the other party? [the father of R. Aptoriqi will respond,] He does not concur in the position concerning one who concedes part the claim to the same kind of object as is demanded by the plaintiff. Rather, he takes the view of Rabban Gamaliel. For we have learned in the Mishnah: **If he claimed wheat and the other admitted to having barley, he is exempt. And Rabban Gamaliel declares him liable [M. Shebuot 6:3/O-P].***

I.10. A. *The case of a shepherd: everyday people would hand over to his guardianship cattle, doing so in the presence of witnesses. One day, they handed the beasts over to him without securing witnesses to the transaction. He ultimately claimed, "The transaction never took place.*

B. *But witnesses came and testified against him that he had eaten two of the beasts [that is, converted them to his own use].*

C. *Said R. Zira, "If the initial ruling of R. Hiyya is invoked, then the shepherd will have to take an oath regarding the remainder [Daiches: for when the denial is partly contradicted by witnesses Hiyya imposes an oath].*

D. *Said to him Abbaye, If so, would he take an oath at all? Is he not simply a robber, pure and simple?" [The case of Hiyya is not relevant here at all. For, as Daiches explains: Hiyya's law refers to a debt or pledge which the defendant denies, not because he has misappropriated it or used it for himself but because he does not find it convenient to repay or replace it just then and intends to do so later. He therefore cannot be regarded as a robber.]*

E. *He said to him, "It is the plaintiff that I meant would have to take an oath. [In that way he would collect what he claims is owing to him.]*

F. *But even if we do not invoke the case of R. Hiyya, should we not impose the obligation of an oath on the plaintiff, in line with the view of R. Nahman?*

G. *[The case is as follows:] "You have a maneh belonging to me in your possession."*

H. *"You have nothing in my possession whatsoever."*

I. ***He is exempt from having to take an oath [M. Shebu. 6:1J-K].***

J. *And R. Nahman said, "We impose upon him the oath of inducement." [Daiches: Although no oath is to be imposed on the defendant who denies the whole claim, an oath deriving from the authority of rabbis is imposed upon him so as to induce him to admit the truth, as it is assumed no one will sue another without cause.]*

K. *R. Nahman's provision of an oath is a mere ordinance, [5B], and we are not accustomed to adding one such ordinance to another. [Daiches: The rabbinical provision that when the defendant is likely to commit perjury, the plaintiff swears and receives payment, cannot be added to the provision which imposes a rabbinical "oath of inducement" (where no biblical oath is due). The "oath of inducement" can only be given in cases where in ordinary circumstances a biblical oath would be imposed.]*

L. *But why not take account of the simple fact that he is a shepherd, and R. Judah said that in general, a shepherd is unfit to take an oath! [Why take*

the trouble to disqualify the shepherd on ground that he is actually proved to be a robber, as Abbayye has said?]

- M. *That objection is null. The case [to which Judah] refers involves a shepherd who feeds his own flock [on other peoples' grounds, and so commits robbery by letting them trespass]. Abbayye deals with a case in which the hired shepherd tends other peoples' flocks [and has no reason to trespass].*
- N. *If you do not take that view, how in the world could we ever hand over beasts to any shepherd? For lo, it is written, "You will not put a stumbling block before the blind" (Lev. 19:14). [Daiches: It is wrong to put temptation in the way of one who is likely to succumb to it.]*
- O. *The presumption is that someone will not sin without some benefit to himself.*

II.1. A. ...this one takes an oath that he possesses no less a share of it than half, [and that one takes an oath that he possesses no less a share of it than half, and they divide it up]:

- B. *Is it concerning the portion that he claims he possesses that he takes the oath, or concerning the portion that he does not claim to possess? [Daiches: "The implication is that the terms of the oath are ambiguous. By swearing that his share in it is not "less than half," the claimant might mean that it is not even a third or a fourth (which is 'less than half'), and the negative way of putting it would justify such an interpretation. He could therefore take this oath even if he knew that he had no share in the garment at all, while he would be swearing falsely if he really had a share in the garment that is less than half, however small that share might be].*
- B. *Said R. Huna, "It is that he says, 'By an oath! I possess in it a portion, and I possess in it a portion that is no less than half a share of it.'" [The claimant swears that his share is at least half (Daiches)].*
- C. *Then let him say, "By an oath! The whole of it is mine!"*
- D. *But are we going to give him the whole of it? [Obviously not, there is another claimant, also taking an oath.]*
- E. *Then let him say, "By an oath! Half of it is mine!"*
- F. *That would damage his own claim [which was that he owned the whole of the cloak, not only half of it].*
- G. *But here too is it not the fact that, in the oath that he is taking, he impairs his own claim? [After all, he here makes explicit the fact that he owns at least half of it. What happened to the other half?]*
- H. *[Not at all.] For he has said, "The whole of it is mine!" [And, he further proceeds,] "And as to your contrary view, By an oath, I do have a share in it, and that share is no less than half!"*

II.2. A. Now, since this one is possessed of the cloak and standing right there, and that one is possessed of the cloak and is standing right there, why in the world do I require this oath?

- B. *Said R. Yohanan, "This oath [to which our Mishnah-passage refers] happens to be an ordinance imposed only by rabbis,*

- C. “so that people should not go around grabbing the cloaks of other people and saying, ‘It’s mine!’” [But, as a matter of fact, the oath that is imposed in our Mishnah-passage is not legitimate by the law of the Torah. It is an act taken by sages to maintain the social order.]
- D. *But why then not advance the following argument: since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*
- E. *In point of fact, we do not advance the following argument: since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking, for if you do not concede that fact, then how is it possible that the All-Merciful has ruled, “One who has conceded part of a claim against himself must take an oath as to the remainder of what is subject to claim”?*
- F. *Why not simply maintain, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*
- G. *In that other case, [the reason for the denial of part of the claim and the admission of part is not the intent to commit fraud, but rather,] the defendant is just trying to put off the claim for a spell.*
- H. *This concurs with the position of Rabbah. [For Rabbah has said, “On what account has the Torah imposed the requirement of an oath on one who confesses to only part of a claim against him? It is by reason of the presumption that a person will not insolently deny the truth about the whole of a loan in the very presence of the creditor and so entirely deny the debt. He will admit to part of the debt and deny part of it. Hence we invoke an oath in a case in which one does so, to coax out the truth of the matter.”]*
- I. *For you may know, [in support of the foregoing], that R. Idi bar Abin said R. Hisda [said]: “He who [falsely] denies owing money on a loan nonetheless is suitable to give testimony, but he who denies that he holds a bailment for another party cannot give testimony.”*
- J. *But what about that which R. Ammi bar. Hama repeated on Tannaite authority: “[If they are to be subjected to an oath,] four sorts of bailees have to have denied part of the bailment and conceded part of the bailment, namely, the unpaid bailee, the borrower, the paid bailee, and the one who rents.”*
- K. *Why not simply maintain, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*
- L. *In that case as well, [the reason for the denial of part of the claim and the admission of part is not the intent to commit fraud, but rather,] the defendant is just trying to put off the claim for a spell.*
- M. *He reasons as follows: “I’m going to find the thief and arrest him.” Or: “I’ll find [the beast] in the field and return it to the owner.”*
- N. *If that is the case, then why should one who denies holding a bailment ever be unsuitable to give testimony? How come we don’t just maintain that the defendant is just trying to put off the claim for a spell. He reasons as follows: “I’m going to look for the thing and find it.”*
- O. *When in point of fact we do rule, He who denies holding a bailment is unfit to give testimony, it is in a case in which witnesses come and give testimony against him that at that very moment, the bailment is located in the bailee’s domain, and he*

fully is informed of that fact, or, alternatively, he has the object in his possession at that very moment.

- II.3.** A. *But as to that which R. Huna has said [when we have a bailee who offers to pay compensation for a lost bailment rather than swear it has been lost, since he wishes to appropriate the article by paying for it, (Daiches)], “They impose upon him the oath that the bailment is not in his possession at all,” why not in that case invoke the principle, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*
- B. *In that case also, he may rule in his own behalf, I’ll give him the money. ”*
- C. *Said R. Aha of Difti to Rabina, “But then the man clearly transgresses the negative commandment: ‘You shall not covet.’”*
- D. *“You shall not covet” is generally understood by people to pertain to something for which one is not ready to pay.*
- E. **[6A]** *But as to that which R. Nahman said, “They impose upon him [who denies the whole of a claim] an oath of inducement,” why not in that case invoke the principle, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*
- F. *And furthermore, there is that which R. Hiyya taught on Tannaite authority: “Both parties [employee, supposed to have been paid out of an account set up by the employer at a local store, and store-keeper] take an oath and collect what each claims from the employer,” why not in that case invoke the principle, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*
- G. *And furthermore, there is that which R. Sheshet said, “We impose upon an unpaid bailee [who claims that the animal has been lost] three distinct oaths: first, an oath that I have not deliberately cause the loss, that I did not put a hand on it, and that it is not in my domain at all,” why not in that case invoke the principle, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*
- H. *It must follow that we do not invoke the principle at all, since such a one is suspect as to fraud in a property claim, he also should be suspect as to fraud in oath-taking?*
- II.4** A. [Explaining why the oath is required, we have an explanation alternative to that of Yohanan in what] Abbayye said, [namely,] *“We take account of the possibility that the plaintiff may intend to lay claim for repayment of a defunct loan.”* [Daiches: A litigant may deem himself entitled to an article found by his opponent, on the ground that the latter had borrowed money from him a long time ago and had forgotten about it. Such a litigant would not hesitate to plead that he had found the garment, or that it was all his, in the hope that at least half the value of the garment would be awarded to him. Hence the need for an oath.]
- B. *If that is the case, then let him keep the cloak without taking an oath at all?*
- C. *Rather, the reason is, “We take account of the possibility that the plaintiff may intend to lay a doubtful claim for repayment of a defunct loan.”*
- D. *But do we not maintain that one who maintains possession of property on account of a matter of doubt also is subject to doubt as to an oath that he may take?*

E. *Said R. Sheshet son of R. Idi, "People keep far from taking an oath by reason of doubtful claims, while they do not keep far from holding on to property even though their right to it is subject to doubt. What's the difference? You can give back the money, but you can't give back the false oath!"*

II.5. A. *R. Zira asked, "If in our very presence, one of the litigants seized the object, what is the law?"*

B. *Under precisely what circumstances? If the other party remained silent, then he obviously has conceded the claim, and if he objected, then what ought he have done?*

C. *The question concerns a case in which at first the other party remained silent, but then he went and objected. What then is the ruling? Is it that, because he did not object, he has conceded the claim of the other? Or perhaps, since he did indeed protest later on, it made manifest the reason that, when he remained silent to begin with, it was because he assumed that the rabbis saw the incident [so he did not have to intervene on his own behalf anyhow]?*

D. *Said R. Nahman, "Come and take note: [With reference to the rule of our Mishnah-paragraph, the following clarification is offered:] 'Under what circumstances [does the oath suffice]? When both parties are holding on to the cloak. But if the garment is produced by only one of them, then the [other party to the claim is in the position of] one who propose to lay claim on the property of his fellow and bears the burden of providing evidence to substantiate his claim.' Now under what circumstances [do we have a case in which one claimant produces the garment]? If we say that it is as just now stated [one of the litigants held the garment and presented it in court], then that is perfectly self-evident! Rather it is a case in which one party has seized the object in our very presence." [That brings us back to the original question.]*

E. *No, with what sort of situation do we deal here? It is, for instance, a case in which the two of them came before us, holding on to the garment, and we instruct them, "Go and divide it up," and they went forth. Then they came back, with one of them holding onto the garment. One party said, "He conceded it to me," and the other party said, "It was for a fee that I handed it over to him [and he has not paid me]."*

F. *We instruct them, "Up to this point, you called him into question as a thief, and now you went and handed over the garment to him without having witnesses at hand?!"*

G. *If you prefer, I shall explain the matter [of the item cited by Nahman, D.] as stated earlier:*

H. *One of them was holding it, the other was hanging on to it. In a case such as this, even Sumkhos, who has said, , "As to money that is subject to doubt [and therefore contested ownership], that money is divided without the taking of an oath," will assuredly concur that merely hanging on to the cloak is null [and this is not in the category of money subject to dispute].*

I. *If you take the view, "If one of them seized the disputed object before our very eyes, we retrieve it from him," if he declared it consecrated [to the upkeep of the Temple], it is not deemed to fall into the status of consecration.*

- J. *If you take the view, "If one of them seized the disputed object before our very eyes, we do not retrieve it from him," if he declared it consecrated [to the upkeep of the Temple], without seizing it, what is the law?*
- K. *Since a master has said, "A mere verbal declaration as to the Most High is equivalent in effect to an actual act of handing an object over to an ordinary person," do we compare the act of consecration to an act of seizure?*
- L. *Or perhaps, in the case at hand, nonetheless, the offending party has not actually seized the object, and it is written, "And if a persona shall sanctify his house to be holy" (Lev. 27:14), [from which it follows,] just as his house falls into his domain, so anything that falls into his domain [is covered by the rule,] then excluding this cloak, which does not fall into his domain?*
- M. *Come and take note of the case of [6B] a certain bath house concerning which two people contended, one saying, "It's mine," and the other, "It's mine." Then one of them went and consecrated it.*
- N. *[On that account] R. Hananiah, R. Oshaia, and the other rabbis avoided the place.*
- O. *Said R. Oshaia to Rabbah, "When you go over to R. Hisda's in Kifri, ask him about the case."*
- P. *When he came to Sura [en route], said to him R. Hamnuna, "The matter is covered by an explicit teaching of the Mishnah: **In respect to matters of doubt regarding firstlings, all the same being a first-born of man and a first-born of beast, whether these are clean or unclean, he who proposes to take away property from his fellow bears the burden of proof [M. Tohorot 4:12].** And in this matter it has been taught: Such beasts [that may or may not be in the status of firstborn and therefore are subject to the claim of ownership by a priest] are forbidden as to shearing and use in common labor.*
- Q. *"Now here, if a priest should seize the firstling, we do not grab it back from him, on the principle, he who proposes to take away property from his fellow bears the burden of proof. And if the priest did not seize the beast in such a category, such beasts [that may or may not be in the status of firstborn and therefore are subject to the claim of ownership by a priest] are forbidden as to shearing and use in common labor." [Daiches: The animal is thus regarded as holy even when the Israelite is in possession, which would show that the sanctification by the litigant without seizing it takes effect, if we say that the seizing of the disputed articles entitles him to keep it.]*
- R. *Said Rabbah to him, "As to the sanctification that affects the firstling, I may reply to you that even if the priest should seize the beast, they do retrieve the beast from the priest, and even so, the beast is forbidden as to shearing and use in common labor. The reason is that sanctification that takes effect on its own [without an act on the part of a person to declare the thing sanctified] is in a different category [being independent of any action on the part of the priest; the beast if a firstling is sacred from birth. There is no comparison then to the sanctification of an object that a person has consecrated (Daiches)].*

- S. *Said R. Hananiah to Rabbah, "It has been taught on Tannaite authority in support of your view: Sheep that have been used to redeem the firstlings of asses subject to doubt go into the corral to be tithed. [Daiches: The sheep that is used to redeem the doubtful firstling of an ass may be kept by the Israelite. He is under no obligation to give it to the priest, for the latter is in the position of a claimant who has to prove his claim, if the priest claims the sheep from the Israelite, he has to prove that the doubtful firstling is a real firstling. Such sheep are liable to be tithed.]*
- T. *"Now if you take the view that, if a priest should seize the firstling, we do not grab it back from him, why in the world would such sheep go into the corral to be tithed? Would it not result that this one was exempting the rest of his property [from the obligation of the tithe] by means of property that in fact belongs to a priest [who has a claim on the sheep]?"*
- U. *Said to him Abbaye, "[In fact the passage cited by Hananiah in support of Rabbah's view that the priest has no right to a doubtful firstling or its substitute is valid, and] if it is on account of that consideration [where liability of an animal to tithing is] subject to doubt, it does not support the master's [Rabbah's] position. For with precisely what case do we deal? A case in which the farmer has only nine beasts plus that one [that is subject to doubt as to its status]. However you see matters, [the Israelite is justified].*
- V. *"If the farmer is obligated to tithe, he has done it correctly, but if he is not obligated to tithe [the tenth sheep not being his property but the priest's], then nine are not subject to the tithe. [The farmer has not taken away anything belonging to the priest.]"*
- W. *Then said Abbaye, "What I said is nonsense, for in a case of doubt, there is no tithing anyhow.*
- X. *"For we have learned in the Mishnah: **If one of those that had already been numbered jumped among the ones that had not been numbered, lo, these are exempt [M. Bekh. 9:7I].***
- Y. *"Now if you take the view that a beast that is subject to doubt nonetheless has to be tithed, he ought to tithe the rest of the beasts anyhow. However you see matters, [the Israelite is justified]. If the farmer is obligated to tithe, he has done it correctly, but if he is not obligated to tithe, he is exempt from the obligation of tithing by reason of the correct act of numbering the other beasts. For Raba has said, 'A correct act of numbering the beasts in the corral exempts them from the obligation of being tithed.*
- Z. **[7A]** *"What then can you say? When Scripture speaks of 'the tenth,' it means a beast that is beyond doubt the tenth, and not a beast that may or may not be the tenth. Here too Scripture speaks of 'the tenth,' meaning a beast that is beyond doubt the tenth, and not a beast that may or may not be the tenth."*
- AA. *Said R. Aha of Difti to Rabina, "What matters of doubt are present? If we say that what is at issue is a matter of doubt affecting firstlings, 'And the*

tenth shall be holy' (Lev. 27:32), and not one that has already been made holy — so that cannot be the case at all.

BB. *"But rather it is a matter of doubt as to a lamb that has been used for the redemption of a firstling of an ass, the status of which is subject to doubt, and this accords with the position of R. Nahman.*

CC. *"For R. Nahman has said Rabbah b. Abbuha has said, 'An Israelite who has ten firstlings of an ass subject to doubt in his domain separates on their account ten lambs and tithes them, and they then belong to him. [Daiches: They are not holy, and as the priest has no absolute right to the (on account of the doubt as to the primogeniture of the asses), the Israelite may retain possession of them.]"*

DD. *What was the ultimate decision on the bath-house?*

EE. *Come and take note of what R. Hiyya bar Abin said: "There was a case in the court of R. Hisda, and R. Hisda laid it before R. Huna, who settled it on the basis of what R. Nahman said: Any property that cannot be regained through legal action [is not subject to dedication to the Temple, since one may consecrate only what is his own possession, so that] if one has consecrated it, it does not fall into the status of consecration."*

FF. *Then if the property can be regained through legal action, if one has consecrated it, does it does fall into the status of consecration even if he has not actually retrieved the property from the other?*

GG. *And has not R. Yohanan said, "In the case of property that has been stolen, of which the actual owner has not despaired recovery [so that the thief has not yet secured legal possession of the stolen property], neither party can consecrate it, this one [the thief] because it does not belong to him, and that one [the original owner] because it is not actually within his domain."*

HH. *Are you thinking that we deal with a movable bath house [that would be subject to the foregoing ruling]? We deal in this case with a bath house that is immovable, and where it can be regained through court action, it remains within the domain of the claimant [who dedicated the property, when he can prove he actually owns it].*

II.6 A. *It has been taught on Tannaite authority by R. Tahalipa, the Westerner, before R. Abbahu: "[If] two people are holding on to a cloak, this one takes the portion that his hand reaches, and that one takes the portion that his hand reaches, and the rest is divided equally."*

B. *R. Abbahu made a gesture and said, "But that is only upon taking an oath."*

C. *Then as to our Mishnah-paragraph, in which it is taught that they divide the cloak equally, and in which it is not taught that this one holds up to the point at which his hand reaches, how should we find a case in which that rule applies?*

D. *Said R. Pappa, "It is a case in which they are holding on only to the fringes."*

E. *Said R. Mesharshia, "That implies that as to a kerchief, if the seller grasps a piece three by three fingers, he has made the sale valid under the rule, 'And he gave it to his neighbor.' The part that he continues to hold is deemed cut off, and the buyer then acquires the article that he has sold."*

- F. *And how is this case different from the one to which R. Hisda referred, for R. Hisda said, "If the writ of divorce is in the wife's hand, and a rope in the husband's hand, of the husband can retrieve the writ of divorce out of her hand by the rope, she is not divorced, but if not, she is divorced." [If the writ still is in the husband's hand, even by a rope, it is not delivered over to the wife; here by contrast, if the threads are still in the seller's hand, that does not impede the transfer of the property. Hence we want to know the difference between the two cases.]*
- G. *There we require a complete act of cutting off, which is obviously not present, while here we require an act of handing over, and lo, such an act has been carried out.*

II.7 A. Said Raba, "If the cloak was gold-embroidered, they divide it up."

- B. *That's obvious!*
- C. *No, it was necessary to make the rule explicit for a case in which the gold was located right in the middle.*
- D. *That too is self-evident!*
- E. *No, it was necessary to make the rule explicit for a case in which the gold was nearer to one than another of the litigants.*
- F. *What might you have supposed? That one might say to the other, "Divide it up this way [lengthwise]." So we are informed that the other may reply, "What makes you suppose it should be divided that way? Divide it the other way [so we both get half the gold]."*

II.8 A. *Our rabbis have taught on Tannaite authority:*

- B. "Two were holding on to a bond —
- C. "the lender says, 'It's mine and fell from me and I found it.'
- E. "The borrower says, 'It's yours, but I paid it off' —
- F. "let the bond be confirmed by its signatories [verifying their signatures]," the words of Rabbi.
- G. Rabban Simeon b. Gamaliel says, "Let them divide it up."
- H. If it came into the possession of a judge, he may never again produce it.
- I. R. Yosé says, "Lo, it remains subject to the presumption pertaining to it [that it is valid, and the creditor may demand return of the document and collect on the strength of it]."

II.9 A. [Analyzing the passage just now cited,] a master has said, "'let the bond be confirmed by its signatories [verifying their signatures]'" — *and may the lender then collect on the strength of the bond the whole of the debt confirmed therein?! Does not the master concur with our Mishnah-paragraph: **Two lay hold of a cloak...?***

- B. *Said Raba said R. Nahman, "In a case in which the document is confirmed [in court, with the witnesses verifying their signatures and the judges the endorsement,] all parties concur that the two litigants are to divide the contested sum. Where they differ is in a case in which the document is not confirmed in court.*

- C. *“Rabbi takes the view that if the debtor concedes that he has written a bond, nonetheless it is necessary to confirm the signatories, and, if it is confirmed in court, then the contested sum is divided, and if it is not confirmed in court, there is no division at all. What is his reasoning? It is a mere sherd [if the document is not confirmed in court, and has no value whatever]. For, under these conditions, by what testimony is the bond validated anyhow? It is by the testimony of the borrower — who also maintains that he has paid!*
- D. *“And Rabban Simeon b. Gamaliel takes the view that in the case of one who concedes in the case of a bond that he has written it, it is not necessary to confirm the document, and even though it is not confirmed, the litigants divide the contested sum.”* [Daiches: Even if the bill is not endorsed, the borrower cannot plead that he has paid the debt when the lender produces the document. The validity of the document does not depend on the plea of the borrower to that extent. Hence they divide the amount.]

II.10 A. If it came into the possession of a judge, he may never again produce it.

- B. **[7B]** *What difference does it make that the document has fallen into the hands of a judge in particular? [Why should the same rule not apply whoever finds the bond?]*
- C. *Said Raba, “This is the sense of the statement: ‘And a third party who found a bond that had fallen into the hand of a judge’ — that is, when the bond has a legal endorsement, — ‘may never again produce it.’* [The bond cannot be given to the creditor or to the debtor unless the ownership of the document is cleared up by evidence (Daiches).]
- D. *And it is not only that when the bond bears no legal endorsement that it is not to be returned to the claimant, in which case it could be assumed that it was written to secure a loan that never happened, but even when it bears a legal endorsement as having been verified in court [it is not to be returned], because of the possibility that the loan may have been paid off.*

II.11 A. R. Yosé says, “Lo, it remains subject to the presumption pertaining to it [that it is valid, and the creditor may demand return of the document and collect on the strength of it] —

- B. *“And we do not take account of the possibility that it has been repaid.”*
- C. *And is it the fact that R. Yosé does not take account of the possibility that the loan has been repaid?*
- D. *And has it not been taught on Tannaite authority: If in the marketplace one has found a marriage-contract, when the husband concedes [that it is valid and has not been paid off], the finder returns the bond to the wife. If the husband does not concede that it is yet to be paid off, the finder is not to return it either to this party or to that party.*
- E. R. Yosé says, “If she is still with the husband, the finder is to return the bond to the wife. If she was widowed or divorced, the finder is not to return it either to this party or to that party. [We do take account of the possibility that the document has been paid off, and that is why it is returned to neither party.]
- F. *Reverse the reading, as follows:*

- G. “If it came into the possession of a judge, he may never again produce it,” the words of R. Yosé.
- H. And sages say, “Lo, it remains subject to the presumption pertaining to it [that it is valid, and the creditor may demand return of the document and collect on the strength of it].”
- I. *If that is the case, then the position of the rabbis here contradicts that of the rabbis elsewhere* [Daiches: The view of the majority of the rabbis in the case of the lost marriage-contract, which the husband claims to have paid, and which the rabbis say must not be returned either to the husband or to the wife, contradicts their view with reference to the lost bill which has been legally endorsed, as according to the new, reversed rendering, the rabbis say that it retains its validity and must be returned to the claimant].
- J. *The rule concerning the bond of a marriage-contract wholly represents the position of R. Yosé, but there is a lacuna, and the passage should be read as follows:*
- K. If the husband does not concede the validity of the document and that it has not been paid, the finder should not return it to this party or to that party. Under what circumstances? In a case in which the wife has been widowed or divorced [and so expects to collect the sum specified in the contract]. But if she is still with her husband, then the finder should return the bond to the wife. For R. Yosé says, “If she is still with her husband, the bond should be returned to the wife. If she had been widowed or divorced, it is not to be returned to this party or to that party.”
- L. *R. Pappa said, “There is no need to reverse the formulation in the name of R. Yosé for that in the name of rabbis. R. Yosé has made his statement only within the premises of rabbis. But in his own view, even if the wife should be widowed or divorced, we still do not take account of the possibility of the bond’s having been paid off. But for your part, you should concur with me nonetheless that if she is still with her husband, the finder should return the bond to the wife, since under any circumstances it is not now subject to collection anyhow!”*
- M. *“[In this fabricated exchange,] rabbis say to him, ‘But say he had handed over to her bundles [of valuables] and she has held on to them!’ “* [Daiches: In order to save his wife the trouble of litigation after his death, the husband gave her money or valuables while he was still with her, to be appropriated by her when the marriage-contract comes due.]
- N. *Rabina said, “No, in any event do reverse the first [formulation. Daiches: The revised version is really the correct one, and there is no contradiction between the views of the majority of the sages.] Their reason is that in this case we take account of the possibility that there are two marriage contract-bonds in being. [Daiches: Their decision in the case of the lost marriage-contract, contested as invalid by the husband, which the rabbis say must not be returned, is on account of the concern that the husband may have given the wife a duplicate after the loss of the original document. The meaning of the words, “when the husband does not admit” would be that the husband pleads that the lost document should not be returned to her because he had given her another document; she could when widowed produce both of them in succession to claim payment from his heirs. But so far as actual payment by the husband is concerned, the rabbis would ignore such*

a plea, because when a bill is paid it is usually taken back and torn up.] *And R. Yosé does not take account of the possibility that there are two marriage-contracts.*”

- II.12** A. [As to the statement of Simeon b. Gamaliel, “Let them divide it up,”] said R. Eleazar, “The division of the takes place when both litigants hold on to either the form of the bill or the operative part, but if one holds on to the form and the other to the operative part, one takes the form, the other the operative part [and they do not divide the money that is at issue at all].”
- B. But R. Yohanan said, “Under all circumstances do they divide the contested sum up, and even if it is the case that one holds on to the form and the other to the operative part.”
- C. *But has it not been taught on Tannaite authority: “This one takes the portion that his hand holds, and that one does the same”?*
- D. *It was indeed necessary to make the present rule explicit as well, for a case in which the operative part of the document is located at the middle.*
- E. *Then why say so [since Eleazar obviously takes the same view? So who will have differed?]*
- F. *It was indeed necessary to make the present rule explicit as well, for a case in which the operative part of the document is located nearer to one or another of the claimants. You might have supposed that one party could say to the other, “Divide it this way,” and we are informed that the other has the right to reply, “Why this way? Do it the other way.”*
- G. *Said R. Aha of Difti to Rabina, “As to the position of R. Eleazar, who has said, “if one holds on to the form and the other to the operative part, one takes the form, the other the operative part,” why bother? Does he need the document to stop up a bottle? [It is not worth anything else!]*
- G. *He said to him, “It is for the purpose of an estimation of the value: we make an estimate of how much a document that bears a debt is worth compared to one that does not bear a date. With a bond that bears a date, one may collect a debt from mortgaged property [if the debt was incurred prior to the mortgage, it is senior and may be collected from that property], while with a bond that bears no date, a debt may not be collected from mortgaged property. Then one pays the difference [in the value of the two documents].*

- II.13** A. [With reference to the statement of Simeon b. Gamaliel,] “Let them divide it up,” *cited earlier refers to the value of the bond.*
- B. *For if you do not take that view, then, how will you make sense of the law, **Two lay hold of a cloak?***
- C. *Here too do they actually divide the cloak? Then they make it useless!*
- D. *There is no difficulty at all: [8A] for the garment would still be usable for children.*

- II.14** A. And as to that which Raba said, “If it was a gold-embroidered cloak, they divide it up” — *would they actually cut up the garment too [rather than dividing the value thereof]? They would make it useless!*

- B. *There is no problem, for it would still be useful to princes [that is, the children of kings would wear a gold-embroidered cloak].*
- C. *And lo, as to that which we have learned in the Mishnah: **Two were riding on a beast, [or one was riding and one was leading it — this one says, “It’s all mine!” — and that one says, “It’s all mine!” — this one takes an oath that he possesses no less a share of it than half, and that one takes an oath that he possesses no less a share of it than half. And they divide it. But when they concede [that they found it together] or have witnesses to prove it, they divide [the beast’s value] without taking an oath],***
- D. *do they divide the animal in halves as well? If so, they will ruin it completely.*
- E. *To be sure, if it is a clean animal, they can cut it up and use the meat for food, but what about an unclean one? They would simply destroy any value accruing to it.*
- F. *But the sense must be, they divide it up as to the value, and here too, they must divide up the disputed objects as to their value.*

- II.15** A. [With reference to the decision that if two people have picked up an ownerless object, they can keep it, with each taking half of the value, the other having the other half,] said R. Ammi bar Hama, “That is to say, ‘He who raises up an object that has been found for his fellow — his fellow has acquired possession of it.’ *For if you should imagine that his fellow has not acquired possession, [the cloak] should be treated as though this part were lying on the ground, and that part were lying on the ground, and neither this party nor that party should acquire possession of it. [Daiches: From the point of view of each claimant the other person’s half would have to be regarded as if it were still lying on the ground. But such an acquisition does not constitute legal possession, because the law demands that we must acquire possession of the whole article in order to obtain title thereto. Consequently if a third person came and snatched the garment, neither of the two could dispute his right to claim at least half.]*
- B. *“But does the law not bear the implication, ‘He who raises up an object that has been found for his fellow — his fellow has acquired possession of it’ [Daiches: and it is assumed that in our Mishnah-passage each person, when picking up the garment, intended that the other person should have half of it, and in this way the two have acquired the garment]?”*
 - C. Said Raba, *“In point of fact I may say to you, ‘He who raises up an object that has been found for his fellow — his fellow has not acquired possession of it.’ But as to the case at hand, here is the reason for the ruling: since the party takes possession for himself, he also takes possession for his neighbor [that is, having acquired part of the object for himself, he acquires part for his neighbor].*
 - D. *“You should know that, if someone said to his agent, ‘Go and steal for me,’ and the agent stole, the man is exempt of liability, while partners who together stole an object are collectively liable.”*
 - E. *“What is the reason [for the second ruling]? Is it not that we say, ‘since the party takes possession for himself, he also takes possession for his neighbor’?”*
 - F. *That proves the proposition.*

- G. *Said Raba, "Now that you have reached the position that we do treat as valid the argument ['since the party takes possession for himself, he also takes possession for his neighbor'], a deaf-mute and a person of sound senses who raised up an object that has been found, since the deaf-mute has acquired possession of the object, the person of sound senses also has acquired possession."*
- H. *Now one may readily grant that the deaf-mute has made acquisition, because a person in command of his senses has raised up the object for him, but how does a person of sound senses effect acquisition in the contrary case? I have then to conclude that the deaf-mute effects possession [through the act of the person of sound senses], while the person of sound senses does not effect possession [through the act of the deaf-mute].*
- I. *Then where does the argument apply, 'since the party takes possession for himself, he also takes possession for his neighbor'?*
- J. *Since two other deaf-mutes would acquire an object they had found by lifting it up, this one acquires it as well.*
- K. *But what's going on? When you take the position that one who raises up an object for his fellow has acquired possession of it for his fellow, that ruling applies to a case in which the act of raising up has been with the full knowledge and consent of his fellow. But here [where a normal person is involved,] where he has raised up the object with his own full knowledge and consent, he still has not made acquisition of the object, so can he effect possession of the object for others? [Daiches: The end which the normal person has picked up for himself and for the deaf-mute has been rightly acquired, so far as the deaf-mute is concerned, for the latter benefits by the right of the rational person to acquire the garment and by his own right to claim his own possessions. But the normal person suffers from the disability of the deaf-mute, in so far as the right conceded to the deaf-mute to own property extends only to his own person and does not include the right to acquire property for someone else. Therefore the end which the deaf-mute has picked up, when considered in relation to the normal person, must be regarded as if it had not been picked up at all. Thus the question arises: how does the normal person acquire the garment?]*
- L. *Rather, I should say,"Since the party in full possession of his senses has not acquired possession, the deaf-mute has also not acquired possession."*
- M. *And should you say, "What is the difference from the case of two deaf-mutes?" I should reply to you, "There rabbis have made an ordinance that they should be given the right of effecting acquisition so that they should not come to quarrel. But here, the deaf-mute will reason, 'If the person of sound senses cannot make acquisition, shall I make acquisition?'"*

II.15 A. *Said R. Aha son of R. Ada to R. Ashi, "As to the conclusion drawn by R. Ammi bar Hama, to what portion of the Mishnah-passage does he refer?*

- B. *"If it is from the passage, 'Two lay hold of a cloak,' in that case, this is what the party claims: 'The whole of it is mine, for I raised up the whole of it,' and the other party claims, 'The whole of it is mine, for I raised up the whole of it.'"* [Hence R. Ammi's inference, "He who raises up an object that has been found for his fellow — his fellow has acquired possession of it" simply does not pertain here. The claim of each party to have raised up the whole cloak for his own possession precludes such a concession.]
- C. *"He therefore has derived his point from this clause: This party claims, 'The whole of it is mine,' and that party claims, 'The whole of it is mine,' — but then why do I need further statement of the matter? The intent then must be to indicate: 'He who raises up an object that has been found for his fellow — his fellow has acquired possession of it.'"*
- D. *But have we not already concluded that the initial clause of the passage is the one that deals with the disposition of an object that has been found, while the second clause [from which you wish to derive the stated principle] in fact deals with a dispute over who has purchased an object?*
- E. *Rather, the principle derives from the second clause of the Mishnah-paragraph: This one says, "It's all mine!" and that one says, "Half of it is mine!"*
- F. *Why do I need this additional material? It must be to make the following point: 'He who raises up an object that has been found for his fellow — his fellow has acquired possession of it.'*
- G. *But how do you know that this clause deals with a case of the disposition of an object that has been found? Perhaps it deals with the case of an object that has been purchased? And should you then respond, "If it deals with a dispute over the possession of an object that has been acquired, what point is there to make thereby?" in fact it is necessary to include that detail. For it might have entered your mind to maintain that the one who said, "Half of it is mine" is to be treated as one who simply returns a lost object and should not have to take an oath at all. Thus we are informed that such a one is suspect of deceit, thinking, "If I say the whole of it is mine," I'll have to take an oath, so I'll say this and so be in the position of one who merely returns a lost object and be free of having to take an oath."*
- H. *Rather, [R. Ammi derives the principle, "He who raises up an object that has been found for his fellow — his fellow has acquired possession of it,"] from the following passage:*
- I. **Two were riding on a beast, [or one was riding and one was leading it — this one says, "It's all mine!" — and that one says, "It's all mine!" — this one takes an oath that he possesses no less a share of it than half, and that one takes an oath that he possesses no less a share of it than half. And they divide it] —**
- J. *Why do I need this additional material? It must be to make the following point: 'He who raises up an object that has been found for his fellow — his fellow has acquired possession of it.'*
- K. *But perhaps the intent is to yield the inference that one who rides also makes acquisition [of the beast by doing so]?*

- L. *Rather, it is from the following and concluding part of the passage: **But when they concede [that they found it together] or have witnesses to prove it, they divide [the beast's value] without taking an oath.***
- M. *Now under what conditions does this rule pertain? If it is to a case of a dispute over the purchase of an object, does this have to be made explicit? [Obviously not!]*
- N. *Rather is it not pertinent to the case of the disposition of an object that has been found, and it yields the inference, "He who raises up an object that has been found for his fellow — his fellow has acquired possession of it."*
- O. *And Raba would say to you, "Since he has effected acquisition for himself, he has effected acquisition for his fellow."*

III.1. A. Two were riding on a beast, [or one was riding and one was leading it — this one says, "It's all mine!" — and that one says, "It's all mine!" — this one takes an oath that he possesses no less a share of it than half, and that one takes an oath that he possesses no less a share of it than half. And they divide it. But when they concede that they found it together or have witnesses to prove it, they divide the beast's value without taking an oath.]

- B. *Said R. Joseph, "R. Judah said to me, [8B], 'I have heard from Mar Samuel two cases: 'If one party is riding on the beast and the other leading it, one has acquired possession and the other not,' and I do not know to which of the two [the stated decision applies].'"*
- C. *But how does the matter unfold? If we say that one case involved a man who was riding on the beast by himself, and the other a man who was leading the animal on his own, is there any authority who maintains that one leading the beast has not effected acquisition by his action?*
- D. *But if there is the possibility of anyone's maintaining that one of the two parties has not acquired ownership of the beast, it concerns the one who was riding on it. [Daiches: If Samuel gave his decisions regarding two separate cases, in one of which a man claimed to have acquired an animal by riding on it, and in the other a man claimed to have acquired an animal by leading it, and in each case another person came along and pulled the animal away in order to acquire it for himself, the expression of doubt by R. Judah as to which of the two cases either decision was meant to apply to, would accordingly have implied that he was not certain whether leading, or pulling, an animal is a legitimate way of acquiring it. He could not have been in doubt on leading the animal; that is an accepted way of acquiring a beast. But riding on an animal need not constitute a legitimate way of taking possession of it.]*
- E. *One therefore has to say that the doubt concerns a case in which one is riding while another is leading the beast. What troubled him is whether or not riding takes precedence, because the rider holds the beast, or whether pulling is the better way, because the beast moves guided by the man's action [Daiches: and causing the animal to move is the correct method of acquiring it].*
- F. *Said R. Joseph, "R. Judah said to me, 'Let us see, for we have learned in the Mishnah: **He who leads a pair of animals of different kinds incurs the forty lashes. And he who sits in a wagon drawn by a pair of animals of different***

kinds incurs the forty lashes. But R. Meir exempts the one sitting in the wagon from the forty lashes [M. Kil. 8:3A-C].

- G. *“Now since Samuel had reversed matters and repeated the passage as follows, ‘And sages declare exempt the one who sits in the wagon...,’ it follows that one who is riding on his own has not effected acquisition, and, all the more so, a case in which one is riding while another is leading the beast.”*
- H. *Said Abbaye to R. Joseph [his master], “Now many times you have told us this matter commencing with ‘let us see,’ but you have never told it to us in the name of R. Judah!”*
- I. *He said to him, “Nonetheless [it is his]. And we also remember saying to him, ‘How can you settle the question in the case of one who is riding a beast by appeal to the case of one who is sitting in a wagon, since the one who sits in the wagon is not holding the reins, while the one who rides on the animal is holding the reins?’ And he said to me, ‘Rab and Samuel both maintain that by holding the reins of the beast, one has not effected acquisition of the beast.’”*
- J. *Some record the exchange as follows:*
- K. *Said Abbaye to R. Joseph, “How can the master settle the issue concerning one who is riding on the beast by appeal to the analogy of one who is sitting on a wagon pulled by a beast, for the one who is sitting in the wagon is not holding the reins, and the one who is riding is holding the reins?”*
- L. *He said to him, “This is what Idi repeated concerning the matter: ‘By holding the reins one has not acquired possession.’”*

III.2 A. *It has also been stated:*

- B. *Said R. Helbo said R. Huna, “[In buying a beast] from his fellow, by means of taking over the reins, one has acquired possession. In the case of finding a lost beast or acquiring the estate of a proselyte [who has no heirs], [merely by taking over the reins] one has not acquired possession of the beast.”*
- C. *What is the sense of the word for rein [mosirah]?*
- D. *Said Raba, “Idi explained it to me by analogy to the usage of the same root in the phrase, ‘a man gives something to his fellow’ [in which the word for give uses the same letters].”*
- E. *Now one certainly has acquired the beast when it is bought from his fellow, who hands the beast over to him, but in the case of the beast that one has found or taken over from the estate of a proselyte who has no heirs, who has handed the beast over to him, that he should effect possession of it?*
- F. *The following objection was raised:*
- G. **Two were riding on a beast, [or one was riding and one was leading it — this one says, “It’s all mine!” — and that one says, “It’s all mine!” — this one takes an oath that he possesses no less a share of it than half, and that one takes an oath that he possesses no less a share of it than half. And they divide it. But when they concede that they found it together or have witnesses to prove it, they divide the beast’s value without taking an oath.] Who stands behind this teaching? Should I propose that it is R. Meir, in his view, if one is sitting on the wagon, he has acquired possession of the beast, so if he is**

riding on beast, can there be any issue? [He cannot take the view that if one was riding and the other leading the beast, there is any doubt about the disposition of the matter. The rider gets the beast.] Is it not then the position of rabbis, [who do not see that sitting on the wagon has effect, but who hold that riding is consequential; so riding is a way of acquiring the beast]. And that then yields the rule that riding on the beast effects acquisition.

- H. *[No, the case at hand does not yield that rule, for] with what sort of case do we deal here? It is one in which the riding is guiding the beast by his spurs [riding on the beast and directing it with movements of his feet].*
- I. *Then how is that different from leading the beast?! [Thus the Mishnah formulates the same thing twice when it says, **one was riding and one was leading**].*
- J. *There are two modes of leading the beast [Daiches: although 'riding' is a form of 'leading, it was necessary to refer to riding or leading and so to indicate that the two actions are equally valid; otherwise one might suppose that riding is more important and award the animal to one who claims to have acquired the beast by riding on it].*
- K. *What might you have said? Riding takes precedence, for lo, he is both leading the beast and also holding on to it? Thus the contrary view is inferred [that leading and riding are equal].*
- L. *Come and take note:*
- M. **Two who were dragging a camel or leading an ass, or one of them was dragging it and the other leading it [9A] — by this means, they have effected ownership of it. R. Judah says, "Under no circumstances has possession been effected until the act of dragging applies to the camel and the act of leading to the ass [T. Baba Mesia 1:3]."** *Nonetheless, the passage has framed matters in this way: "or one of them was dragging it and the other leading it," which bears the implication, "dragging and leading" do effect acquisition, while merely riding on the beast does not.*
- N. *No, the same law applies also even to riding, and the reason that the framer of the passage has used the language, "or one of them was dragging it and the other leading it," is to exclude the view of R. Judah, who has said, "until the act of dragging applies to the camel and the act of leading to the ass." Thus the framer of the passage informs us that even if matters are reversed, acquisition has still been effected.*
- O. *If that is the case, the actions should be combined in a single formulation, as follows: Two who were dragging or leading, whether a camel or an ass.*
- P. *There is one aspect that [makes that combination impossible, since one of the actions mentioned does not] effect possession in the case of one of the animals, [for] some say it is dragging in the case of an ass, and some say, it is leading in the case of the camel.*
- Q. *And there are those who find the proof [that riding does not serve as a means of acquiring the animal by appeal] to the conclusion of the passage: "by this means, they have effected ownership of it."*
- R. *"By this means" serves to exclude what other means? Is it not to exclude acquisition by riding on the beast?*

- S. *No, it is meant to exclude acquiring the beast by reversing the stated actions [and dragging the ass or drawing the camel].*
- T. *If that were the intent, then what we have is nothing other than the position of R. Judah!*
- U. *The difference between the position of the anonymous conclusion and R. Judah lies in one aspect by which acquisition cannot be acquired.*
- V. *And some say it is dragging in the case of an ass, and some say, it is leading in the case of the camel.*
- W. *Come and take note:*
- X. *If one was riding an ass and the other was holding on to the reins, this one has acquired possession of the ass, and that one has acquired possession only of the reins. That rule proves that the act of riding on the beast effects acquisition of the beast.*
- Y. *[Not at all:] Here too we have a case of the rider's guiding the beast with his spurs.*
- Z. *If that is the case, then why should the rider not acquire the reins as well?*
- AA. *Say: This one acquires the ass and half of the reins, and the other has acquired the other half of the reins.*
- BB. *Now I can understand why the rider has effected possession of the half of the reins that go to him, for he has deliberately picked them up. But as to the one who is merely holding on to the reins, how has he effected possession of his half of the reins? [Daiches: An ownerless object can be acquired only by one who removes the whole of it, so how can the person that holds the reins attached to the ass said to have acquired any part of the reins?]*
- CC. *Then I should state the passage: This one has acquired the ass and the whole of the reins, while the other has acquired only what he actually has in his hand.*
- DD. *How now! [How come the rider has ownership of the reins?] If you propose to apply the rule, "He who raises up a lost object for his fellow — his fellow has acquired possession of it" — that rule pertains to a case in which he has raised up the object with the full knowledge and consent of the fellow. But in this case, the man has lifted up the reins in his own behalf. Then if he has not acquired it by his action, how can he enable the other to acquire it at all?*
- EE. *Said R. Ashi, "[Frame matters as follows:] 'This one has acquired the ass and its halter, and that one has acquired what he is holding in his hand [namely, that part of the lead], and the rest of the accoutrements have not been acquired either by this party or by that party.'*
- FF. *R. Abbahu said, "Matters may remain as originally formulated ['this one has acquired possession of the ass, and that one has acquired possession only of the reins'], and since the one who holds the reins can pull on them with strength and take hold of the other end as well [the one holding the reins has acquired that part of the disputed property]."*
- GG. *Now what R. Abbahu has said is simply ridiculous! For if you do not hold that view, then in the case of a cloak that is lying partly on the ground and partly on a pillar, and one person came along and raised up half from the ground, and another person came along and lifted up the half that is on the pillar — here too is it the*

case that the first one acquires the whole, the second acquires nothing, in the principle that the first party has the power to tug on the cloak and bring the whole of it to him? [But that is manifestly contrary to the law!] So what R. Abbahu has said is simply ridiculous!

HH. *Come and take note:*

II. R. Eliezer says, “The act of riding when done in the field and the act of leading when done in the town effect acquisition [of a wandering beast].”

JJ. [That rule proves that the act of riding on the beast effects acquisition of the beast.] *[Not at all:] Here too we have a case of the rider’s guiding the beast with his spurs.*

KK. *If that is the case, then riding is the same as leading.*

LL. *There are two distinct modes of leading the beast [one by the lead, the other by spurs].*

MM. *If that is so, then what is the point of implying that the riding in the city does not effect acquisition?*

NN. Said R. Kahana, “It is because people do not ordinarily ride a beast in town.”

OO. *Said R. Ashi to R. Kahana, “Then if one raises up a purse on the Sabbath — and people do not commonly raise up purses on the Sabbath — is it the case that here too, he has not effected acquisition of the purse? [That is not the law; he has acquired the purse, even on the Sabbath, by lifting it up.] Here too, what he has done, he has done, and he has effected acquisition of the beast [even by riding it in the city, where people do not usually do that].*

PP. *“Rather, we deal with a case of a commercial transaction, in which case, the seller has said to the buyer, ‘Effect acquisition of the object in the way in which people usually do so.’ [9B] so that if the buyer rides on the animal in the open street, he has effected acquisition of the beast, or if he is an important person [who would ride a beast even in the city, by reason of preserving his dignity and not leading an beast through the crowded streets], he has effected acquisition of it, or the buyer is a woman, who acquires it by riding on it even in town, or the buyer is a shameless person [who would ride on a beast anywhere, without regard to rank or circumstance].”*

III.3 A. *R. Eleazar raised the following question: “He who says to his fellow, ‘Draw this beast so as to effect acquisition of the trappings that are on it [but not the beast, which has not been sold],’ what is the law?”*

B. *Does the language, “so as to effect acquisition,” bear the instruction, “acquire”?* [The language used by the seller, “so that you may acquire,” does not convey direct authorization, such as the buyer must receive so that he can acquire the trappings.]

C. Rather: “Draw this beast and acquire the trappings that are on it.”

D. [Eleazar continues:] *“What is the law here? Does the act of drawing the beast serve to effect transfer of ownership of the trappings or is that not the rule?”*

E. *Said Raba, “If he said to him, “‘Acquire the beast and acquire the utensils,’ does he in any event acquire the utensils? The beast is in the status of a movable courtyard, and a movable courtyard does not serve as an arena for transfer of possession to the purchaser. And should you say that the act takes place when the*

beast strands still, lo, it is the law that in any case in which something when moving does not serve as a suitable arena for the transfer of rights of ownership when the same is at rest it likewise does not serve as a suitable arena for transfer of rights of ownership."

- F. *The law pertains when the animal is tied up.*
- G. *Said R. Pappa and R. Huna son of R. Joshua to Raba, "Then what about this case: if one was traveling in a boat and fish jumped and fell into the boat, in this case too do we invoke the principle that the boat is in the status of a movable courtyard, which does not serve as an arena for transfer of possession?"*
- H. *He said to them, "A boat is really at rest; it is the water that moves it along."*
- I. *Said Rabina to R. Ashi, "Then what about the following case: if one was traveling along in public domain, and one threw a woman's writ of divorce into her bosom or into her sewing basket," in this case too [do we invoke the principle that the basket is in the status of a movable courtyard, which does not serve as an arena for transfer of possession,] so that she is not divorced? [That is contrary to the law!]*
- J. *He said to them, 'The basket is really at rest, and she is walking along underneath it [like the water with the boat, so the basket is in the status of an immovable courtyard]."*

The presentation of the Mishnah-paragraph on the part of the Bavli begins at I.1 with the analysis of the way in which it is formulated. The premise of the Bavli is that the Mishnah's framers do not repeat themselves, so that if there is what appears to be repetition, it is to make a point, e.g., deal with a case that for some reason differs from the initial one. The Talmud's second task, I.2-4+5, after its work on literary-critical reading of the language of the Mishnah, is to analyze the principles implicit in the passage before us. At least some authorities do not think an oath should be imposed in a case such as ours. For one thing, how can we impose an oath on two parties, when one of the parties is going to be a liar? We thereby entrap the liar and invoke upon him dire consequences, which follow from taking a false oath. II.1 raises a fundamental exegetical problem in the reading of the Mishnah-statement. II.6 introduces the issue that preoccupies the Mishnah-exegetes to the very end, which is, the principles of effecting acquisition of title to objects one finds or seizes. That issue, implicit in the Mishnah's own statement, is laid out and thoroughly examined through the end of the treatment of III.3. Here is a fine case in which law shades over into jurisprudence — and jurisprudence into philosophical ethics. The wisdom of the exegetes is shown in the following Mishnah, which works on precisely the issue of how title to a lost object is effected; so the upshot is to link the Mishnah-rulings to a single, profound problem of legal theory. Not only so, but we immediately note that the details of the law give way to a theoretical inquiry that requires attention to an entirely distinct legal topic.

1:3

- A. **[If] one was riding on a beast and saw a lost object,**
- B. **and said to his fellow, "Give it to me,"**
- C. **[but the other] took it and said, "I take possession of it"-**

- D. [the latter] has acquired possession of it.
- E. If after he gave it over [to the one riding on the beast], he said, “I acquired possession of it first,”
- F. he has said nothing whatsoever

- I.1. A.** *We have learned in the following Mishnah-paragraph: One who picked some produce designated as peah and said, “Lo, this is for so-and-so, that poor man” — R. Eliezer says, “He has acquired ownership on behalf of the poor person.” But sages say, “Let the householder give the produce to the first poor person to be found [since householders cannot determine how peah is distributed]” [M. Peah. 4:9A-C].*
- B. Said Ulla said R. Joshua b. Levi, “The cited dispute concerns the case of a rich man’s [gleaning] for a poor man, *for R. Eliezer takes the view that [1] since if the rich man wants, he can declare all his property ownerless and gain for himself the status of a poor person, so that the peah-offering of which he claims to dispose is suitable for him anyhow, [2] since he may effect possession for himself, he also may effect possession for a poor man, while sages take the position that while we may invoke one such argument of “since,” [“since if the rich man wants...since he may effect possession for himself”] but we do not invoke two of them.*
 - C. “But if it is a poor man’s gleaning for a poor person, all parties concur that he has made acquisition in behalf of the poor man, since he has the right to take the gleanings for his own property and then to dispose of them as he wishes.”
 - D. Said R. Nahman to Ulla, “But then let the master take the position that there is a dispute also in the case of one poor person’s acquiring possession for another poor person, for, in regards to property that has been lost and found by someone, all persons are in the status of poor people [the lost object being in the status of gleanings, and since anyone, rich or poor, who finds the lost object may keep it, all persons are deemed poor vis à vis the lost object].”
 - E. “But we have learned in the Mishnah: [If] one was riding on a beast and saw a lost object, and said to his fellow, “Give it to me,” [but the other] took it and said, “I take possession of it” — [the latter] has acquired possession of it. Now if, in effect, you maintain that there is a dispute affecting the donation by a poor person to a poor person [of gleanings], [10A] then in accord with whom is our ruling? It is in accord with rabbis [vis à vis Eliezer]. [Daiches: Rabbis do not admit the argument, “Since the person who picked up the article for the rider if he had wished could have picked it up for himself, he may also confer possession of it upon his neighbor. The latter therefore can rightly retain the article if he wishes to do so.] But if you maintain that there is a dispute, also, concerning the case of a rich man’s [gleaning] for a poor man, while in the case of a donation by a poor person to a poor person [of gleanings], there is no dispute, but all parties concur that the poor man has effected acquisition for the other poor man, then in accord with whom is the Mishnah-passage at hand? It can be neither rabbis nor R. Eliezer.” [Daiches: For it would appear from our Mishnah that one cannot ordinarily acquire an object for someone else, and the only way in which one can confer upon the other the right of possession is by handing the object over to him.]

F. *He said to him, “Our Mishnah addresses a situation in which the person who picked up the article claimed to have done so first. And that stands to reason, for the concluding passage says, ‘If after he gave it over [to the one riding on the beast], he said, “I acquired possession of it first,” he has said nothing whatsoever. Why do I have to introduce the language of ‘first’ in the concluding clause? It is obvious that even if he had not said ‘first,’ he would have meant ‘first’! It must follow that in the first case he had said ‘first,’ and the wording of the second clause clarifies the first: in the second case he said ‘first,’ but in the initial case he did not claim that he had ‘first’ lifted up the object. [Daiches: The person who picked up the object maintained that he took possession of it for himself right at the beginning. The second clause indicates that even if he claimed to have picked it up for himself straightaway, his plea is not accepted, for by handing over the article to the rider, he made it clear that he originally meant to acquire it for the other.]*

I.2 A. *Both R. Nahman and R. Hisda say, “‘He who raises up a lost object for his fellow — his fellow has not effected ownership of the object.’ What is the reason for that ruling? You have a case of one who seizes a debtor’s property on behalf of a creditor, thus causing loss to the debtor’s other creditors, and one who seizes a debtor’s property on behalf of a creditor, thus causing loss to the debtor’s other creditors has not effect acquisition in that manner.” [The one who lifts up the property for someone else does not gain and deprives others of the chance of acquiring the object. That is the analogy to the case of someone who acquires a debtor’s property in behalf of a creditor, not benefiting for himself but depriving others of a chance to recover their money. The creditor in whose behalf the man has seized the property has not asked the man to do so, so the intervention is illegal and infringes on the rights of other creditors (Daiches).]*

B. *Raba objected to R. Nahman, “‘What a worker finds belongs to himself. Under what circumstances? When the householder had said to him, ‘Weed for me today,’ ‘hoe for me today.’ But if he had said to him, ‘Work for me today,’ what the worker finds belongs to the householder.’” [How is this case different from the foregoing?]*

C. *He said to him, “The case of the worker is different, because his hand is deemed tantamount to the hand of the householder [so whatever he does he does as the agent of the householder, and that is why he makes acquisition]”*

D. *But did not Rab say, “‘A worker can retract [the conditions of his employment], and even half way through the day’?”*

E. *He said to him, “So long as the worker has not retracted on the original conditions of his labor, his hand is deemed tantamount to the hand of the householder.”*

F. *And if he did retract, then another consideration applies:*

G. *It is written, “For to me the children of Israel are slaves, they are my slaves” (Lev. 25:55), meaning, “and they are not slaves to slaves.”*

I.3 A. *Said R. Hiyya bar Abba said R. Yohanan, “He who picks up a lost object for his fellow — his fellow has acquired ownership of the object.”*

- B. *And if you introduce the contrary view of our Mishnah-passage, it deals with a case in which the man said to him, "Give it to me," but he did not say to him, "Acquire rights of ownership in my behalf."*

The issue of effecting acquisition in behalf of another party, introduced as the given of our Mishnah-paragraph, is worked out in relationship to other cases in which the same principle occurs. The focus of I.1, however, is on M. Peah 4:9, not on our Mishnah-paragraph. The issue then is the exegesis of that other passage, specifically, how the several possibilities introduced by the distinction between rich man and poor man vis à vis gleanings, belonging to the poor alone, are worked out. The discussion intersects with our Mishnah-paragraph only at 1.E. But, I, we see that our passage, as much as the one in M. Peah, is clarified. I.2 pursues the clarification of rulings pertinent to our case. Now the consideration is a quite fresh one. If one seizes lost property for another party, not for himself, on what basis does he acquire ownership for the other? Surely we have a parallel to someone who deprives others of an advantage without gaining any for himself, and that is deemed gratuitous and null. I.3 deals with the same issue, and its precise reading of our paragraph's language is entirely well-founded. So, in all, even though we begin far beyond the limits of our tractate, in point of fact the discussion vastly enriches our grasp of what is before us.

1:4A-B

- A. **[If] he saw a lost object and fell on it, and someone else came along and grabbed it,**
- B. **this one who grabbed it has acquired possession of it.**
- I.1.A. Said R. Simeon b. Laqish in the name of Abba Kahana Bardela, "The four cubits surrounding a person [deemed to constitute his private domain, wherever he may be located] effect acquisitions in his behalf.' *What is the reason for that rabbinical ordinance? Rabbis ordained the law in that way so that people would not come to blows.*"
- B. *Said Abbaye, "R. Hiyya bar. Joseph objected on the basis of a rule deriving from the tractate of Peah."*
- C. *Said Raba, "R. Jacob bar Idi objected with a case deriving from the tractate of Neziqin."*
- D. *Said Abbaye, "R. Hiyya bar. Joseph objected from the tractate of Peah: **If a poor person harvested part of the produce designated as peah, and threw it over the remainder of the produce designated as peah, in order to claim ownership of the whole, he is entitled to no part of the produce designated as peah for ownership cannot be established in this manner. If he fell upon the produce designated as peah or spread his cloak over it, in order to establish ownership of this produce, although he has properly attempted to claim ownership of the produce, they remove it from him, since each poor person is entitled to only as much produce as he actually harvests. This same rule applies to the collection of gleanings and forgotten sheaves (M. Peah. 4: 3).***
- E. *"Now if you maintain that 'the four cubits surrounding a person [deemed to constitute his private domain, wherever he may be located] effect*

acquisitions in his behalf under all circumstances,' then let his four cubits effect acquisition for him."

- F. *In this matter with what kind of a case do we deal? In which he has not made the explicit declaration, "I take possession."*
- G. *But if the rabbis have ordained the matter, even if he has not made the explicit declaration, "I take possession," what difference does that make?*
- H. *Since he has fallen upon the grain, he has given a full statement of his intention of the matter. It was through his act of falling that he proposed to effect possession of the gleanings, but through the four cubits that in any event effect possession he did not choose to effect possession.*
- H. **[10B]** *R. Pappa said, "When rabbis ordained the rule of four cubits, it pertained only in general, to public domain, but they made no such ordinance covering a privately owned field. And even though the All-Merciful accorded to the poor person a right within that field, it was the right only to walk in the field and glean the corners. But the All-Merciful did not accord the right to regard the property as his own courtyard. [So the cases are different, and no such objection can be raised.]*
- I. *Said Raba, "R. Jacob bar Idi objected with a case from the tractate of Neziqin: **If he saw a lost object and fell on it, and someone else came along and grabbed it, this one who grabbed it has acquired possession of it.***
- J. *"Now if it were the fact, as you say, t 'the four cubits surrounding a person [deemed to constitute his private domain, wherever he may be located] effect acquisitions in his behalf under all circumstances,' then let his four cubits effect acquisition for him."*
- K. *In this case what are the circumstances? It is a case in which he did not make the statement, "I shall make acquisition of that object."*
- L. *But if the rabbis have ordained the matter, even if he has not made the explicit declaration, "I take possession," what difference does that make?*
- M. *While, on the one side, when he fell on the object, he made clear his intention by falling upon it that he wished to make acquisition of it, but as to doing so with the four cubits that are assigned to him, he did not make it clear that that is how he wished to acquire it.*
- I.2.** *A. R. Sheshet said, "When sages made the ordinance [concerning the four cubits], it pertained to a side street which is not crowded.*
- B. *"But as regards a main artery, which may be crowded, no such ordinance was made by rabbis.*
- C. *But the language at hand is, "under all circumstances"?*

- D. “Under all circumstances” *was meant to encompass only the sides of the public way.*

A Further Saying Attributed to Simeon b. Laqish-Abba Kahana

- I.3 A.** Said R. Simeon b. Laqish in the name of Abba Kahana Bardela, “A minor-girl does not have [the right to acquire an object through] a courtyard that belongs to her, nor does she have the right to effect acquisition through the four cubits assigned to her. [Daiches: If she is married, the husband cannot divorce her by throwing a writ of divorce into her courtyard or into the space within four cubits of her person.]”
- B. And R. Yohanan in the name of R. Yannai said, “She does have [the right to acquire an object through] a courtyard that belongs to her, and she does have the right to effect acquisition through the four cubits assigned to her.”
- C. *Concerning what principle do they differ?*
- D. *One master [Yohanan-Yannai] takes the view that [when Scripture refers to her] ‘hand’ [Deu. 24: 1: he writes a writ of divorce and puts it into her hand,” meaning, into her domain] it encompasses a courtyard, so that, just as her ‘hand’ effects acquisition in her behalf, so her courtyard does the same.*
- E. *The other authority [Simeon b. Laqish-Abba Kahana] by contrast maintains that the reason that her “courtyard” effects acquisition in her behalf is that it is encompassed within the category of her agency, and, just as she has not got the power to appoint an agent to act in her behalf, so she also has not got the power to effect acquisition through property that she may own.*
- F. *Now is there any authority who actually takes the view that the right of effecting acquisition accomplished by one’s courtyard is on the grounds that the courtyard falls into the classification of one’s agency? And has it not been taught on Tannaite authority: “If the theft be found at all in his hand” (Exo. 22: 3) —*
- G. I know only that the law pertains when the theft is located in “his hand.”
- H. How do I know that the same rule applies if it is found on his roof, in his courtyard or in his corral?
- I. Because Scripture states, “if the theft be found at all” — wherever it may be found.
- J. *Now if you imagine that hat the right of effecting acquisition accomplished by one’s courtyard is on the grounds that the courtyard falls into the classification of one’s agency, then we have found a case in which there is a legal agent able to accomplish a sinful act for a person, while it is the established principle for us that there is no legal agent able to accomplish a sinful act for a third party. [Daiches: If one commits an illegal act on the instruction of someone else, the guilt rests upon the one who does the act, not on the one who gave instruction.]*
- K. Said Rabina, “*Under what circumstances do we invoke the principle, ‘there is no legal agent able to accomplish a sinful act for a third party’? It is a case in which the agent is liable to obey the law that covers that act. But in the case of a courtyard, in which instance the conception of being prohibited for the act involved, responsibility lies not with the agent but with the one who initiates the action.*”

- L. *Then what do you do with the following case: He who says to a woman or a slave, "Go and steal that for me" — since these classes of persons are not subject to the law against stealing, if they should do so, does responsibility devolve upon the one who initiates the deed here too?*
- M. *Let me reply: a woman and a slave really are responsible for stealing, but now, however, they have nothing with which to pay [and that is the only reason that they do not bear responsibility for stealing; it is not that they are to begin with not responsible for an act of theft].*
- N. *For we have learned in the Mishnah: [A slave and a woman — meeting up with them is a bad thing. He who injures them is liable, but they who injure other people are exempt. But they pay compensation after an interval:] if the woman is divorced or the slave freed, they do become liable to pay compensation [M. B.Q. 8:4D-H].*
- O. *R. Sama said, "Under what circumstances do we invoke the principle, 'there is no legal agent able to accomplish a sinful act for a third party'? It is a case in which if the agent wants, he does the deed, and if not, he does not do the deed. But in the case of a courtyard [where the stolen animal is found], in which instance it has no choice but receive whatever someone puts there, responsibility lies with the one who initiates the action."*
- P. *What is the difference between these two explanations?*
- Q. *The difference is the case of a priest who said to an Israelite, "Go and in my behalf effect the sanctification of a divorced women," or a man who said to a woman, "'Go and round the corners of the hair of a minor" [contrary to Lev. 19:27, though a woman is not subject to the prohibition expressed in the second half of that same verse, "neither shall you mar the corners of your beard"].*
- R. *So far as the formulation of him who said, "It is a case in which if the agent wants, he does the deed, and if not, he does not do the deed, the one who initiated the action is not liable," here too, if he wants, he does what the man said, and if not, he does not do what the man said who initiated the action.*
- S. *So far as the formulation of him who said, "It is a case in which the agent is liable to obey the law that covers that act, the one who initiates the act is responsible," here too, since the woman is not subject to the obligation [expressed in the cited verse] responsibility lies not with the agent but with the one who initiates the action."*
- T. *Now [resuming the analysis broken off at E], is there any authority who does not take the view that the right of effecting acquisition accomplished by one's courtyard is on the grounds that the courtyard falls into the classification of one's agency [hand]?*
- U. *And has it not been taught:*
- V. *"And he shall put it in her hand" (Deu. 24: 3).*
- W. *I know only that the law pertains when the writ is placed "in her hand."*

- X. How do I know that the same rule applies if it is found on her roof, in courtyard or corral?
- Y. Because Scripture states, “he shall put...” — wherever it may be put.
- Z. *Now as to the delivery of a writ of divorce, no one really differs from the view that that the right of effecting acquisition accomplished by one’s courtyard is on the grounds that the courtyard falls into the classification of one’s agency [hand]. Where there is a difference of opinion, it concerns making acquisition of a lost object.*
- AA. *One party takes the view that [11A] we derive the rule covering a lost object’s being acquired] from the rule covering a writ of divorce’s being acquired, and the other authority does not take the view that we derive the rule covering a lost object’s being acquired] from the rule covering a writ of divorce’s being acquired.*
- BB. *But if you prefer, I shall say in the case of a female minor, no one differs from the proposition that we derive the rule covering a lost object’s being acquired] from the rule covering a writ of divorce’s being acquired. Where there is a point of difference it concerns a male minor.*
- CC. *One party takes the view that we derive the rule governing a minor male from the rule governing a minor female, and the other party takes the view that we do not derive the rule governing a minor male from the rule governing a minor female.*
- DD. *And if you prefer, I shall say, one authority deals with the one case, the other with the other case, and there is no difference between them at all.*

This entire composition was worked out in response to concerns other than those dictated by the exegesis of our Mishnah-rule, since there is scarcely a point at which our Mishnah-paragraph contributes, let alone requires the discourse for clarification of the points made here. All our paragraph contributes is an illustrative case. That would suggest a fair amount of composition went on without the slightest interest in Mishnah-exegesis. Then what is at stake? It is the status of the four cubits that sages have fabricated as surrounded a person and constituting private domain possessed by that person. These are supposed to effect acquisition in his behalf, as much as he may do so through an action on his own part, e.g., reaching out his hand and raising up an object. Then two cases are introduced in this regard, one from Mishnah-tractate Peah, the other from our Mishnah-paragraph. Abbaye’s problem is solved fairly easily. No. 2 completes I.1. Then I.3 moves on in its own direction, and here there really is no point of intersection with our Mishnah-paragraph at all. Yet the composition as a whole holds together quite well, and the reason is Abba Kahana’s interest in the medium of acquisition through the space immediately adjacent to oneself. Now at stake is the status of a minor-girl, and the dispute, introduced at No. 3Aff., is worked out entirely in a balanced way, in its own terms.

1:4C-I

- C. [If] he saw [people] running after a lost object —
- D. after (1) a deer with a broken leg, (2) pigeons which could not fly,
- E. and he said, “My field has effected possession for me,”
- F., it has effected possession for him.

- G. [If] (1) the deer was running along normally, or (2) [if] the pigeons were flying,
H. and he said, “My field has effected possession for me,”
I. he has said nothing whatsoever.

- I.1. A. Said R. Judah said Samuel, “But that rule [M. 1:4C-F] applies only when he was standing beside his field [on the spot].”
B. *But should his field not effect acquisition in behalf [even if he is not standing there]?*
C. For R. Yosé b. R. Hanina said, “The courtyard of a person effects possession in his behalf even not with his knowledge and consent.”
D. *That opinion pertains* to a courtyard that is guarded [e.g., enclosed with a fence], but in the case of a courtyard which is not guarded, if he is standing beside his field [the law of the Mishnah] pertains, and if not, it does not pertain.
E. *And whence do you derive the rule that that opinion pertains* to a courtyard that is guarded [e.g., enclosed with a fence], but in the case of a courtyard which is not guarded, if he is standing beside his field [the law of the Mishnah] pertains, and if not, it does not pertain?
F. *For it has been taught on Tannaite authority:* If one was located in town and says, “I know that a sheaf of grain that I have in the field has been forgotten by the workers. It should not fall into the category of the forgotten sheaf [left for the gleaners, Deu. 24:19])” — might one suppose that that sheaf should not fall into the category of a forgotten sheaf? Scripture states, “And you have forgotten a sheaf in the field” (Deu. 24:19), meaning, it is in the field that you have forgotten, and not in town.
G. *Now this very formulation of matters presents problems. You have said,* “might one suppose that that sheaf should not fall into the category of a forgotten sheaf? *which bears the implication that it certainly should be deemed a forgotten sheaf.*
H. *And then the Gemara swings back with:* “And you have forgotten a sheaf in the field” (Deu. 24:19), meaning, it is in the field that you have forgotten, and not in town. Therefore under these conditions it does not fall into the classification of a forgotten sheaf.
I. *Rather, is this not the sense of the matter:* “in the field...” means, it was forgotten to begin with [while the householder was still in the field], and on that account it falls into the category of forgotten sheaf. If it was remembered and then forgotten, it does not fall into the category of a forgotten sheaf.
J. *What is the reason?* *If he is standing by the field, it is in the category of his courtyard, and it therefore effects acquisition in his behalf,*
K. *but if he is in the town, even if he remembered it but only at the end forgotten it, it does fall into the category of the forgotten sheaf.*
L. *What is the reason?* *Because the man is not there so [the field] does not effect possession of it.*
M. *But why draw conclusions from the case at hand? Perhaps it is simply a decree of Scripture [for this case in particular]: if he is in town, it should fall into the category of the forgotten sheaf, and if he is in the field, it*

should not fall into the category of the forgotten sheaf, but Scripture has said, “You will not go back to fetch it” (Deu. 24:19), serving to encompass a sheaf that has been forgotten by the householder when he is in town.

- N. *The cited clause of the verse is required to classify the commandment as negative [and therefore cannot be utilized to prove this other proposition].*
- O. *If that were the case, Scripture should have said, “You will not take it.” How come Scripture states, “You will not go back to fetch it”? That statement serves to encompass a sheaf that has been forgotten by the householder when he is in town.*
- P. *Nonetheless, the formulation before it serves another purpose, in line with that which we have learned in the Mishnah: **A sheaf which a farmer forgot in front of himself is not subject to the restrictions of the forgotten sheaf, [for he can gather it when he harvests that part of the row], but a sheaf that he forgot behind himself is subject to the restrictions of the forgotten sheaf, because it falls under the law, “When you harvest in your field and have forgotten a sheaf, you shall not go back to fetch it” (Deu. 24:19). This is the general principle: Whatever sheaf is under the law, “You shall not go back” is subject to the law of the forgotten sheaf, but what is not under the law, “You shall not go back,” is not subject to the law of the forgotten sheaf [M. Peah. 6:4G-L].***
- Q. *Said R. Ashi, “Scripture has stated, “It shall be for the stranger]” (Deu. 24:19) —serves to encompass the sheaf that has been forgotten [by the householder when he is located in town].”*

- I.2.** A. *And so too did Ulla say, “But that rule [M. 1:4C-F] applies only when he was standing beside his field [on the spot].”*
- B. *And so too did Rabbah bar bar Hana say, “But that rule [M. 1:4C-F] applies only when he was standing beside his field [on the spot].”*
- C. *The following objection was raised by R. Abba to Ulla: “**There was the case involving Rabban Gamaliel and the elders, traveling on a ship when the time for removal of the agricultural gifts had come, requiring their transfer to their proper recipients. Said Rabban Gamaliel, ‘The tenth I intend to measure out and designate as first tithe is given to Joshua [who is a Levite], and the place in which it is located [11B] is rented to him. The other tenth which I intend to remove and designate as poor man’s tithe is given to Aqiba ben Joseph, who will make it available to the poor, and the place in which it is located is rented to him’ [M. M.S.5:9C].** Now were R. Joshua and R. Aqiba located at the side of the field of Rabban Gamaliel? [Obviously not. So why should it be a requirement that a person’s field effects acquisition only when he is physically located at the spot?]”*
- D. *[Ulla] said to [Rabbah bar bar Hana], “It appears that this disciple of rabbis that people do not really study their tradition.”*
- E. *When [Rabbah bar bar Hana] came to Sura, he said to them, “This is what Ulla said and this is what I replied to him.”*

- F. *One of the rabbis said to him, “Rabban Gamaliel effected acquisition in their behalf on the foundation of movables and thereby afforded to them ownership of the real property.* [Daiches: The leasing of the ground on which the tithes were lying enabled Joshua and Aqiba to acquire the tithes, not because the ground acted for them as their hand or agent, but because of the principle that movable property that cannot be pledged as security to a lender may be acquired together with immovable property, which can be pledged as security to a lender, by means of the payment of the purchase price of the immovable property. Rabban Gamaliel could therefore have leased to Joshua and Aqiba and other piece of ground, with the same effect so far as the acquisition of the tithes is concerned. Even movable property which is received as a gift can be acquired in the same way.]
- G. *R. Zira accepted this explanation. R. Abba did not accept it.*
- H. *Said Raba, “It was quite proper that Abba did not accept the explanation. For did they not have a cloth by which to acquire from Gamaliel the tithes as a transaction of exchange?”* [Why should they have had to pay Gamaliel for the lease of the ground anyhow?] But, as a matter of fact, the enjoyment of the right [to distribute tithes to whomever one wishes] is not deemed [to have] monetary value that is acquired in a process of exchange, and, along these same lines, too, the enjoyment of the right [to distribute tithes to whomever one wishes] is not deemed [to have] monetary value that is acquired in a process of acquisition along with immovable property. [Daiches: In the same way and for the same reason the tithe could not be acquired by means of the payment of the purchase price for immovable property. But it could be acquired in the way in which an ownerless object is acquired by one in whose premises it is placed, and for this reason the method employed by Gamaliel, as originally interpreted — by leasing his ground on which the tithe was lying — was correct.]
- I. *But that is not the case. As to the gifts that are given to the priest, Scripture [Deu. 26:12] uses the term, “giving.” A transaction involving transfer of ownership through an exchange [e.g., transfer of the handkerchief] involves a commercial transaction. Transfer of movable property through immovable property is a transaction in which the act of “giving” applies.* [“Giving” excludes selling, “exchange” involves selling. The acquisition of movable property, even when it is received as a gift in association with immovable property, is valid and is not a sale; that method then may be employed in reference to tithes. (Daiches).]
- J. *R. Pappa said, “When the will and intention of a third party bestow ownership on the recipient, it is a different case.* [Daiches: Where the recipient does not acquire ownerless goods by his own action, but has them conferred upon him by the owner, as in the case of Gamaliel. In such a case, there is no need for the recipient to be standing by the side of the field, as laid down by Ulla and others in regard to the case of our Mishnah.]
- K. *“And how do you know this? From that which we have learned in the Mishnah: [If] he saw [people] running after a lost object — after (1) a deer with a broken leg, (2) pigeons which could not fly, and he said, “My field has effected possession for me,” it has effected possession for him.*
- L. *And R. Jeremiah said in the name of R. Yohanan, “And that law applies when he could run after them and catch up with them [in the field].”*

- M. *And R. Jeremiah asked, "And as to a gift, what is the law?"*
- N. *R. Abba bar Kahana accepted this distinction [implied in the question, and answered,] "Even though if he ran after them he could not catch up with them [his field still acquires them for him]."*
- O. *What is the reason? Is it not because a case in which the will and intention of a third party bestow ownership on the recipient [as at J] is different, [and so too the case involving Gamaliel is different and poses no problem as to the original stipulation].*
- P. *Said R. Shimi to R. Pappa, "Lo, there is the case of the writ of divorce, which is one in which the will and intention of a third party bestow ownership on the recipient, and yet Ulla has said that [if the husband throws the wife's writ of divorce into the wife's house or courtyard, she acquires the writ of divorce, only if] she is present in the vicinity of the house or the courtyard. [So the proposed distinction is not valid so far as Ulla is concerned.]*
- Q. *The case of the writ of divorce is to be distinguished from ours, for it is valid even when issued and delivered against the woman's will.*
- R. *R. Sheshet son of R. Idi objected, "But is that not an argument a fortiori? Now if the writ of divorce, which can be issued against the woman's will, is validly delivered into and acquired by means of her house or courtyard only when she is standing right there but if not, it is not validly delivered, is it not an argument a fortiori that the same stipulation should apply to a gift, which is given only with the knowledge and consent of the recipient?!*
- S. *Rather, said R. Ashi, [12A] "[Shimi and Sheshet are right, and a different consideration serves to distinguish a writ of divorce and a gift.] The courtyard of a person serves to effect acquisition in his or her behalf because it is encompassed by the term 'hand,' and is no less effective than one's agent. Now as to the matter of the delivery of a writ of divorce, which involves a disadvantage to the wife, one may not be forced to suffer a disadvantage except when one is present for the occasion, while as to a gift, which is to one's advantage, people may accord an advantage to someone even not in one's presence."* [Daiches: In both cases the ground on which the object is placed acts as the recipient's agent, whether the recipient is present or not. When the recipient has no knowledge of the action, the agency is valid only if the action yields an advantage or benefit to the recipient. Where the action results in a disadvantage, it has no validity. Therefore in the case of a gift the recipient's ground acquires it for him whether he is aware of it or not. But in the case of the bill of divorcement thrown into the wife's house or courtyard against her will, the agency of the premises is not effective because the result would be a disadvantage to her, and in such a case the premises could only act for her if she is present and aware of what is happening.]

I.3. A. *Reverting to the body of the preceding:*

- B. **[If] he saw [people] running after a lost object — after (1) a deer with a broken leg, (2) pigeons which could not fly, and he said, “My field has effected possession for me,” it has effected possession for him.**
- C. And R. Jeremiah said in the name of R. Yohanan, “And that law applies when he could run after them and catch up with them [in the field].”
- D. *And R. Jeremiah asked, “And as to a gift, what is the law?”*
- E. *R. Abba bar Kahana accepted this distinction [implied in the question, and answered,] “Even though if he ran after them he could not catch up with them [his field still acquires them for him].”*
- F. *Raba raised the question, “If one tossed a purse into this door, and it went out through the other door, what is the law? Do we maintain that even if an object flying through the air does not come to rest, it is as though it has come to rest? Or is that not the case?”*
- G. *Said R. Pappa to Raba, and some say it was R. Ada bar Mattenah to Raba, and some say it was Rabina to Raba, “Is that not covered in our Mishnah-paragraph: ‘[If] he saw [people] running after a lost object — after (1) a deer with a broken leg, (2) pigeons which could not fly, and he said, “My field has effected possession for me,” it has effected possession for him.’ And R. Jeremiah said in the name of R. Yohanan, ‘And that law applies when he could run after them and catch up with them [in the field].’ And R. Jeremiah asked, ‘And as to a gift, what is the law?’ R. Abba bar Kahana accepted this distinction [implied in the question, and answered,] ‘Even though if he ran after them he could not catch up with them [his field still acquires them for him].’”*
- H. *He said to him, “You have raised a case involving rolling objects, but such objects are different [from a purse that is flying through the air], since they are deemed tantamount to having come to rest.”*

The subterranean question surfaces again: the theory of acquisition, or how a person makes his own property that, to begin with, belongs to someone else or is ownerless. One conception is that one’s field or courtyard serve as an extension of his or her hand and so can make acquisition. But — and this analogy is not pursued — just as one is on the scene when his hand effects the transfer of property into one’s own domain, so does one have to be at the scene when one’s property does so? No. 1 has Samuel offer that stipulation in the case before us, and the discussion of the Mishnah-passage then is infused with that one consideration. The contrast between the two cases of the Mishnah is essentially ignored, though that distinction clearly is important to the framer of the Mishnah, with his careful balance of the two cases to make that one point. So here again we see how little the generative issues of the Mishnah define for the framers of the Talmud the program of thought and inquiry. What that means is that, while the document takes the form of a commentary, it is substantially something other than a commentary. Samuel’s thesis is spelled out in No. 1, with an appeal to a parallel case, Fff. The case is fully spelled out. No. 2 then introduces the same stipulation as Samuel has supplied, and the second

parallel case is carefully investigated. The focus upon these parallels once more shows that the exegesis of our Mishnah-paragraph is really not what has provoked the discussion at all; at best we may say that the exploration of the metaphor of “the hand” has made it possible for the rather substantial and free-standing inquiry to be joined with our Mishnah-paragraph; but it surely could have stood at a Talmud for Mishnah-tractate Peah, if there were one. No. 3 then addresses a piece of material utilized in No. 2. And now that treatment really does intersect with our Mishnah-paragraph.

1:5

- A. (1) Things which are found by his minor son or daughter,
 - B. (2) things which are found by his Canaanite slave boy or slave girl,
 - C. (3) things found by his wife —
 - D. lo, they belong to him.
 - E. (1) Things found by his adult son or daughter,
 - F. (2) things found by his Hebrew slave boy or slave girl,
 - G. (3) things found by his wife whom he has divorced, even though he has not yet paid off her marriage settlement —
 - H. lo, they belong to them.
- I.1** A. Said Samuel, “On what account have they ruled, ‘What a minor finds belongs to his father’? The reason is that when he finds something, he runs it over to his father and does not hold it back in his own possession.”
- B. *Does that then imply that Samuel holds the theory that by the law of the Torah a minor has not got the power to effect acquisition of an object on his own account?*
 - C. *But has it not been taught on Tannaite authority:*
 - D. He who hires a worker — his child may glean after him. But if it is as a sharecropper so that the worker gets a half, third, or fourth of the crop as a wage, the child may not glean after him. [The worker receives part of the crops and is not in the category of a poor man, so his child is not eligible to glean.]
 - E. R. Yosé says, “One way or the other, his child and his wife may glean after him.” [The son and wife are held to be autonomous of the worker and are still in the class of the poor, so they may gather the crops.]
 - F. And Samuel has said, “The law accords with the view of R. Yosé.”
 - G. *Now if, to be sure, you take the view that [by the law of the Torah] a minor has got the power to effect acquisition of an object on his own account, when the child gleans, it is for his own account that he does the gleanings, and the father acquires possession from him. But if you maintain the view that [by the law of the Torah] a minor has not got the power to effect acquisition of an object on his own account, when the child gleans, it is to begin with for his father’s account that he gleans. Now his father is in the category of a wealthy man, so how can his wife and child glean after him?*
 - H. *[When Samuel made the statement that he did,] Samuel stated the reasoning of the Tannaite authority who is before us, but that is not the position that he himself takes.*

- I.2.** A. *And is it the position of R. Yosé that by the law of the Torah a minor has got the power to effect acquisition of an object on his own account?*
- B. *And has it not be taught in the Mishnah: **Something found by a deaf-mute, idiot, or minor is subject to the rule against stealing, in the interests of peace.** R. Yosé says, “It is stealing beyond any doubt [and not merely in the interests of good social order]” [M. Git. 5:8G-H]. [Therefore the object found by a minor is fully possessed by him, and not merely assigned to him to as a concession.]*
- C. *But R. Hisda has said, “**It is stealing beyond any doubt** [so far as Yosé is concerned] only on the authority of scribes [but not by the law of the Torah]. At stake is the possibility of the court’s removing the object from the possession of the minor.”*
- D. *Said Abbaye, “The field is treated as though the last of the gleaners had gone through, so that the poor themselves have ceased to give thought to it, with the expectation that the son of that one is going to gather the remaining gleanings. [That explains why the son may glean after the father.]”*
- E. *Said R. Ada bar Mattenah to Abbaye, “Now can a man tie a lion in his field so that the poor will see it and run away?” [Daiches: If the only reason that the son is permitted to gather the gleaning is that his presence serves to keep the poor away, although he is not legally entitled to glean in the field, it is like placing a wild beast in the field in order to frighten the poor people away, which is wrong.]*
- F. *But, said Raba, **[12B]** “They have treated the one who has no right to take possession like one who has such a right. [The child has no right to glean after the father, but is given that right.] Why so? Because the poor people themselves are happy with such an arrangement, so that, when they are hired out, their children also can glean after them.”*
- I.3.** A. *[Samuel’s view that the reason the Mishnah-paragraph assigns an object found by a minor to the father is that the minor has no right of possession] differs from that of R. Hiyya b. Abba.*
- B. *For R. Hiyya b. Abba said in the name of R. Yohanan, “When the Mishnah refers to an adult, it is not actually to an adult, and when it refers to a minor, it is not actually to a minor, but an adult is one who eats at his father’s table is deemed a minor, and a minor who does not eat at his father’s table is held to be an adult.”*
- II.1** A. *...things found by his Hebrew slave boy or slave girl, [things found by his wife whom he has divorced, even though he has not yet paid off her marriage settlement] — lo, they belong to them.*
- B. *Why should that be the rule? Should the servant not be in the status of a hired hand? And it has been taught on Tannaite authority: What a worker finds belongs to himself. Under what circumstances? When the householder had said to him, “Weed for me today,” “hoe for me today.” But if he had said to him, “Work for me today,” what the worker finds belongs to the householder.*
- C. *Said R. Hiyya bar Abba said R. Yohanan, “Here [in our Mishnah-passage] we deal with the case of a worker with such skill as to be able to pierce pearls, whom the master does not wish to use for any other work.” [Daiches: The master would therefore not wish him to interrupt the work in order to lift up a found object, the*

value of which would seldom exceed the value of his work, so that if it does happen that the servant lifts up a valuable object, the master can only claim compensation for the time in which he interrupted his work in order to acquire the object.]

- D. *Raba said, "We deal here with the case of one who raises up the lost object as part of his act of work."*
- E. *R. Pappa said, "For instance, the householder hired him to collect lost objects, e.g., to work in a meadow that has been flooded with fish [after the water receded. Then picking up the lost objects is in the nature of the job-description anyhow.]"*

III.1 A. [...or slave girl:] What sort of slave girl?

- B. *If it is one that has produced puberty signs, what is she doing working for him [since upon attaining puberty, she is freed anyhow]? And if she has not produced puberty signs, if her father is alive, the lost object that she has found belongs to her father, and if she has no father, she ought to have been released when her father died anyhow.*
- C. *For R. Simeon b. Laqish has said, "A Hebrew slave girl has acquired from the domain of her master possession of herself [as a free woman] upon the death of her father. That is the result of an argument *a fortiori*."*
- D. *But is it not the fact that that argument of R. Simeon b. Laqish was refuted?*
- E. *Perhaps, but then does not the law of the Mishnah provide a further refutation of the same argument?*
- F. *No, not at all, the father is yet alive, and when the language is used, **lo, they belong to them**, it serves to exclude the claim of the master.*

IV.1 A. things found by his wife whom he has divorced, even though he has not yet paid off her marriage settlement — lo, they belong to them:

- B. *If he has divorced her, it is perfectly obvious [that she keeps what she has found; the husband has no further claim].*
- C. *With what sort of a situation do we deal here? With a case in which the divorce of the woman is subject to such doubt that she is deemed both divorced and not divorced.*
- D. *For R. Zira said Samuel said, "In any case in which sages have said a woman is deemed both divorced and not divorced, her husband remains liable to support her."*
- E. *What is the reason for the rule that rabbis have laid down that the objects that a wife finds belong to him? It is so that there should not be ill-will on his part for her. Here it is self-evident that the husband most certainly has ill-will toward her [so there is no reason to assign him objects she finds and he forfeits all claim to whatever she finds (Daiches)].*

The interest of the Talmud seems to be more precisely focused upon the issues of the Mishnah-paragraph than earlier passages. Now we want to know the reason for a ruling. But then the implications of that reason have to be explored. As soon as we ask about those implications, we have to deal with the case that we deem analogous and therefore affected by the principle that has been adduced in explanation for our case. And once we have worked on that problem, in I.1-3.

II.1, III.1, IV.1 provide a verbatim inquiry into the terms at hand and into the reasons for the rulings. There is some ambiguity that has to be cleared up in all three cases.

1:6

- A. [If] one found bonds of indebtedness,
- B. “if they record a lien on [the debtor’s] property, he should not return them.
- C. “For a court will exact payment on the strength of them.
- D. “[If] they do not record a lien on property, he should return them,
- E. “for a court will not exact payment on the strength of them,” the words of R. Meir.
- F. And sages say, “One way or the other, he should not return them.
- G. “For a court will exact payment on the strength of them.”

- I.1** A. *What are the details of the case with which we deal here? If we say that it is a case in which the debtor concedes that the debt is due, then, even if the bonds record a lien on the debtor’s property, why should the finder not return them? Lo, the debtor has conceded the claim anyhow.*
- B. *And if the debtor does not concede that the debt is owing, then even if the bonds do not record a lien on the debtor’s property, why should the finder ever return them? Even though the plaintiff may not collect from mortgaged property, from unencumbered property, nonetheless, he may collect [on the strength of the newly-found bond]!*
- C. *In point of fact, we deal with a case in which the debtor concedes the validity of the claim, but here, the reason for not returning the bond is this: we take account of the possibility that the bond was written for securing the loan in Nisan, but the loan was not actually made until Tishri [six months later]. The result will be that the lender later on may come and unlawfully seize property from those who have purchased it during the interval between the writing of the bond and the actually making of the loan [and that purchase was perfectly legal and also is not subject to the indenture of the bond at all].*
- D. *If that is the operative consideration, then for all manner of bonds that come before us, we should take account of the same possibility!*
- E. *All other bonds have not been made suspect, but these have come under suspicion [since the bond was not properly attended to and was lost, so that on the face of it, no one valued it].*
- F. *Then how about the following: **They write a writ of indebtedness for the borrower, even though the lender is not with him, but they do not write a writ for the lender, unless the borrower is with him [M. B.B.10:3E-F]?***
- G. *Now to begin with, how may we write such a document? Should we not take account of the possibility that the bond was written for secure the loan in Nisan, but the loan was not actually made until Tishri [months later]. The result will be that the lender later on may come and unlawfully seize property from those who have purchased it during the interval between the writing of the bond and the actually making of the loan [and that purchase was perfectly legal and also is not subject to the indenture of the bond at all].*

- I. Said R. Assi, “[13A] [The Mishnah refers to] deeds of transfer for lo, he has pledged himself [Daiches adds:] that his property would be at the disposal of the lender from the date given in the note].” [Daiches: by which the borrower transfers to the lender his property from the date of the document, so that the lender is entitled to seize property sold by the borrower after that date, whether the loan has actually been granted or not].”
- J. If that is the case, then how explain the Mishnah-passage, which teaches: **if they record a lien on [the debtor’s] property, he should not return them?** This passage has been interpreted to speak of a case in which the debtor concedes the validity of the loan, and it was on account of the consideration that we take account of the possibility that the bond was written for secure the loan in Nisan, but the loan was not actually made until Tishri [months later]. The result will be that the lender later on may come and unlawfully seize property from those who have purchased it during the interval between the writing of the bond and the actually making of the loan [and that purchase was perfectly legal and also is not subject to the indenture of the bond at all].
- K. Now why should one not return the bond? Let us take note of the matter. If we deal with deeds of transfer, lo, he has pledged himself [Daiches adds: to let the lender have the property from the date of the deed]; if it is not a deed of transfer, then of what need we take account anyhow? For lo, you have said, “If the borrower is not present, we do not write such a bond anyhow”!
- L. Said to him R. Assi, “Even though they are not deeds of transfer, in our Mishnah’s rule, we deal with a document that has fallen and so has been brought under suspicion, so we take account of the possibility that it might have been written even in the absence of the lender.”
- M. Abbaye said, “The witnesses on the bond acquire possession of the property for him by means of their signatures, and that is so even if it is not a deed of transfer.”
- N. The reason he says so is that he finds troublesome [R. Assi’s version, in the following aspect:] since you have said that, in the case of a bond that does not serve to acquire possession to the lender, if the borrower is not present, they do not write such a document, we do not account of the possibility that it might have been written even in the absence of the lender. But lo, we have learned in the Mishnah: **[If] he found (1) writs of divorce for women, (2) writs of emancipation for slaves, (3) wills, (4) deeds of gift, or (5) receipts for the payment of marriage settlements, lo, he should not return them. For I maintain that they were written out, but [then] the one [who is answerable] for them changed his mind and decided not to hand them over [M. B.M. 1:7].** Now, even though he changed his mind, what difference does it make? Lo, you have already stated, “The witnesses on the bond acquire possession of the property for him by means of their signatures, and that is so even if it is not a deed of transfer.”
- O. That statement applies to a case in which [the documents] reached [the creditor’s] possession [Daiches: even if the creditor received the document at a later date, his right to the property is conceded from the date of the

document; but if the document was cancelled and was never handed over to the creditor, the latter has no right to the debtor's property], *but in a case in which they have not come into his possession, that rule does not apply.*

- I.2.** A. Now we explained the Mishnah's statement, **[If] one found bonds of indebtedness, if they record a lien on [the debtor's] property, he should not return them,** to refer to a case in which he debtor concedes the validity of the loan, and it was on account of the consideration that we take account of the possibility that the bond was written for secure the loan in Nisan, but the loan was not actually made until Tishri [months later]. The result will be that the lender later on may come and unlawfully seize property from those who have purchased it during the interval between the writing of the bond and the actually making of the loan [and that purchase was perfectly legal and also is not subject to the indenture of the bond at all], then, far as R. Assi is concerned, who has said that the matter refers to bonds that transfer ownership, the passage at hand then refers to bonds that do not transfer ownership, just as we have said. But as to Abbaye, who has said, "The witnesses on the bond acquire possession of the property for him by means of their signatures, and that is so even if it is not a deed of transfer," what is to be said in explanation of our Mishnah-paragraph? [Daiches: Why should the documents not be returned, since their validity from the date of the witnesses' signatures could not be questioned anyhow?]
- B. *This is what Abbaye will reply to you: As to our Mishnah-passage, this is the reason: we take account of the possibility that the debt may have in fact been paid off, and a conspiracy between the lender and borrower may have been planned [with the borrower dropping the document because he had already paid the debt, and then he conspired with the lender to retrieve from purchasers of the borrower's land the property they had purchased, on the claim that the debt has not been paid; then the borrower and lender will split the property].*
- C. *And, in the view of Samuel, who has not taken the view that we take account of the possibility that the debt may have in fact been paid off, and a conspiracy between the lender and borrower may have been planned, what is to be said? If he takes the view of R. Assi there will be no problem, for he has said that the Mishnah refers to deeds that transfer ownership, and when deeds may be returned, they are those that do not transfer ownership. But if he takes the view of Abbaye, who has said, "The witnesses on the bond acquire possession of the property for him by means of their signatures, and that is so even if it is not a deed of transfer," what is to be said in explanation of our Mishnah-paragraph from the perspective of Samuel?*
- D. *Samuel interprets the Mishnah to speak of a case in which the debtor does not concede that the bond is a valid one.*
- E. *If that is the case, then even when the bonds do not record a lien on the debtor's property, why should one ever return them? Granted that one may not collect from indentured property, still, he can collect [illegally, with the discarded bond] from property that is not indentured!*
- F. *Samuel takes a position entirely consistent with his views elsewhere, for Samuel has said, "R. Meir would maintain, 'In the case of a bond that does not record a*

lien on the debtor's property, one may not collect on the strength of such a bond either from indentured property or from property that is not subject to indenture.”

- G. *Then why should the bond ever be returned [if one cannot collect from one kind or the property or the other? Of what good is the bond at all?]*
- H. Said R. Nathan bar Oshaia, “It is so that the lender can use it for a stopper for his jar.”
- I. *Then why not return it to the borrower* so that he can use it for a stopper for his jar?
- J. *It is the borrower himself who [13B] has said that the transaction never took place.”*

I.3. A. Said R. Eleazar, “[Contrary to I.1.C.] the dispute in our Mishnah [between Meir and sages] concerns a case in which the debtor does not concede the debt at all.

- B. *“For R. Meir takes the view that in the case of a bond that does not record a lien on the debtor's property, one may not collect on the strength of such a bond either from indentured property or from property that is not subject to indenture.’ Rabbis, on the other hand, hold that while he cannot collect from encumbered property, he may exact payment from unencumbered property.*
- C. *“But when the borrower concedes the validity of the document, all parties concur that one should return the bond. For we do not take account of the possibility that the debt may have in fact been paid off, and a conspiracy between the lender and borrower may have been planned [with the borrower dropping the document because he had already paid the debt, and then he conspired with the lender to retrieve from purchasers of the borrower's land the property they had purchased, on the claim that the debt has not been paid; then the borrower and lender will split the property].”*
- D. And R. Yohanan said, “The dispute concerns a case in which the debtor does concede the validity of the bond.
- E. *“For R. Meir takes the view that in the case of a bond that does not record a lien on the debtor's property, one may not collect on the strength of such a bond either from indentured property or from property that is not subject to indenture.’ Rabbis, on the other hand, hold that while he cannot collect from encumbered property, he may exact payment from unencumbered property.*
- C. *“But when the borrower does not concede the validity of the document, all parties confer that one should return the bond. For we do take account of the possibility that the debt may have in fact been paid off, and a conspiracy between the lender and borrower may have been planned [with the borrower dropping the document because he had already paid the debt, and then he conspired with the lender to retrieve from purchasers of the borrower's land the property they had purchased, on the claim that the debt has not been paid; then the borrower and lender will split the property].”*

I.4. A.. *There is a teaching on Tannaite authority in accord with the position of R. Yohanan and in contradiction to the position of R. Eleazar in one aspect, and a contradiction to the position of Samuel in two aspects.*

- B. *“If one has found bonds that record a lien on [the debtor's] property, even though both parties concede [that the bond is valid], one should not return them either to*

this party or to that party. If they do not record a lien on the debtor's property, then, when the debtor concedes that the bond is valid, one may return it to the lender, but if the debtor does not concede the validity of the document and the fact of the loan, one should not return the bond either to this party or to that party," the words of R. Meir.

- C. For R. Meir would maintain, "In the case of bonds that record a lien on the debtor's property, one may collect the debt from encumbered property, while if they do not record a lien on the debtor's property, one may collect from unencumbered property."
- D. Sages say, "All the same are this case and that: one may collect the debt from encumbered property [whether or not a lien is included in the bond]."
- E. *Now this passage contradicts the position of R. Eleazar in one aspect, for R. Eleazar has said that in the view of R. Meir, a bond that does not include a lien on the debtor's property may not be used to collect the debt from either encumbered property or unencumbered property, while here, as we see, the formulation is that whether in the view of R. Meir or in the view of rabbis, we do not take account of the possibility that the debt may have in fact been paid off, and a conspiracy between the lender and borrower may have been planned [with the borrower dropping the document because he had already paid the debt, and then he conspired with the lender to retrieve from purchasers of the borrower's land the property they had purchased, on the claim that the debt has not been paid; then the borrower and lender will split the property]."*
- F. *Now the formulation of the passage on Tannaite authority maintains, by contrast, that in the case of a bond that does not contain a lien on the debtor's property, then one may not collect, but from unencumbered property one may indeed collect the debt [on the strength of such a bond]. And lo, it has been taught, whether from the viewpoint of R. Meir or in the view of rabbis, we do take account of the possibility that the debt may have in fact been paid off, and a conspiracy between the lender and borrower may have been planned [with the borrower dropping the document because he had already paid the debt, and then he conspired with the lender to retrieve from purchasers of the borrower's land the property they had purchased, on the claim that the debt has not been paid; then the borrower and lender will split the property].*
- G. *But are these not two points [and we said that the cited passage contradicts Eleazar on one point, not two]? [14A]*
- H. *They are one point, not two, since a single consideration pertains to both views. Because R. Eleazar says that the dispute in our Mishnah-paragraph pertains to a case in which the debtor does not concede his debt, he interprets the passage in the way that he does. [Daiches: The reason that Eleazar finds himself in disagreement with the cited passage in the two points is that he interprets the Mishnah to refer to a case in which the debtor does not admit the debt; it follows that the document, on the view of Meir, does not entitle the lender to exact payment even from unencumbered property, and when in consequence, Eleazar has to add, 'But when the debtor admits the debt, all agree that the document should be returned,' he explains that 'we are not afraid that the debt may already have*

been paid and a fraudulent agreement reached.’ So the two conclusions derive from the same premise.]

- I. *A contradiction to the position of Samuel in two aspects:*
- J. *One is the same as has already been set forth with reference to R. Eleazar, for lo, like him, he interprets the Mishnah-paragraph to speak of a case in which the debtor does not concede the validity of the loan.*
- K. *And the other is that Samuel has said, “If one has found a deed of transfer [which gives the creditor the right to seize the debtor’s property, without regard to the date of the actual loan, as explained earlier] in the market place, he should return it to the owner, and we do not take account of the possibility of the debt’s already having been paid off. Now the aspect of the teaching at hand that constitutes a refutation of Samuel’s position is this: “even though both parties concede [that the bond is valid], one should not return them either to this party or to that party.” Hence we do take account of the possibility that the debt has already been paid off [and that the borrower and lender have formed a conspiracy], and all the more so in this case in which the borrower does not concede the validity of the document do we take account of the possibility that the loan has already been paid off!*
- L. *Said Samuel, “What is the reason for the position of rabbis [Daiches: who maintain that a document which contains no clause mortgaging the debtor’s property entitles the credit to exact payment even from encumbered property]? They take the view that leaving out the lien in the bond is merely a scribe’s error [and every note of indebtedness is assumed to have a mortgage clause. No one is going to lend money without security. If the note lacks such a clause, it was the scribe’s mistake.]”*

I.5. A. *Said Raba bar Iti to R. Idi bar Abin, “And did Samuel actually take that view? But has not Samuel said, ‘As regard improvement of the field, [the claim to the] best property, and mortgaging a debtor’s property, it is necessary for the scribe to take counsel [with the seller of the field] [asking when he draws up a deed of sale of land whether he is to insert clauses dealing with guarantees given to the buyer in case the land is seized by the seller’s creditors, and making clear the buyer’s claims to compensation for improvements made by him in the land; to the best portions of the seller’s land as indemnity to the buyer; and to the seller’s property generally as security against loss through seizure by the seller’s creditors. For all this the seller’s consent is required. How can the omission of the mortgage clause in a document ever be deemed a mere scribal error! (Daiches)].”*

- B. *Shall we then say that the authority who stated the one position of Samuel is not the same as the authority who stated the other position assigned to him?*
- C. *No, there really is no contradiction. Here we deal with a note of indebtedness, where we assume that no one is going to give money without adequate security.*

- D. *In the other case [where the scribe has to take counsel with the seller of the field], we deal with a commercial transaction of the sale of the field, when someone may buy land for a day.*
- E. *For example, Abbuha bar Ihi bought an attic from his sister. A creditor came and seized it from him. He came before Mar Samuel. He said to him, "Did she write a lien in the bond [allowing you to collect from encumbered property]?"*
- F. *He said to him, "No."*
- G. *He said to him, "If so, go in peace [you have no case; you did not ask for a guarantee to be written in the deed of sale]."*
- H. *He said to him, "Now lo, you are the one who has maintained that omission of a lien is merely a scribal error!"*
- I. *He said to him, "That opinion applies to bonds covering loans, but as to bonds covering the transaction of the sale of a land, people may well buy land for a day [without writing in the necessary clauses, and hence it is not a scribal error that has led to the omission of the clause]."*

I.6 A. *Abbaye said, "Reuben who sold a field to Simeon with a guarantee [against seizure by Reuben's creditors], and a creditor of Reuben came and went and seized the field from [Simeon] — the law is that Reuben may go and sue the creditor, and the creditor cannot say to Reuben, 'I have no business to do with you.' For Reuben may say to the creditor, 'What you seized from Simeon comes back on me [since I shall have to refund the purchase money. I am concerned with the action against Simeon and can stop you from seizing his land because of my counter-claim]."*

- B. *Some say, "Even if the field is sold without a guarantee, for [Reuben] may say to him, 'I don't want Simeon to have a complaint against me.'"*
- C. *And said Abbaye, "Reuben who sold a field to Simeon without a guarantee [against seizure by Reuben's creditors], and claimants came forth, contesting Reuben's title to the field and right to sell the land — Simeon may retract on the sale prior to his taking possession of it, [14B] but once he has taken possession of the land, he has not got the right to retract on the sale. For Reuben may say to Simeon [in declining to cancel the sale], 'You went and bought a bag that is sealed with knots. [You agreed to the sale without examining my title, and you have to live with it.] Now you've got it!'"*
- D. *At what point is the act of taking possession complete? When the buyer has set foot on the landmarks.*
- E. *Some say, "Even if the field had been sold with a guarantee also, [Simeon may not retract on the sale], for Reuben may claim, 'Show me the document that legalizes the seizure of the field and then I shall pay you back the purchase price. [I don't have to refund your money until the court has given a decision on the legality of the seizure and given you a right to have your money returned (Daiches).]"*

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

- B. *One who sells a field to his fellow, and the field turns out not to belong to him —*

- C. Rab said, "The buyer has a claim both for a refund of his money and also for compensation for improvements [e.g., the crop he has lost, or improvements he has made in the field.]"
- D. Samuel said, "He has a claim for a refund for his money but not for compensation for improvements he made in the field."
- E. *The question was addressed to R. Huna, "If in the sale agreement, the seller made it explicit that in such an eventually, the improvements would be compensated for, what is the law? Is the operative consideration in Samuel's mind that the seller has not made explicit his pledge to compensate for improvements, but here, the seller has made that clause explicit? Or perhaps the operative consideration in Samuel's mind is that, since in point of fact the seller had no land to sell, money paid to the buyer in compensation for improvements would seem to be usury? [Daiches: As the seller had no right to the field, the transaction was entirely invalid, and there was no sale. The money handed over to the seller could therefore only be regarded as a loan, and when the seller returns to the buyer a larger sum than the purchase price paid him, it appears like interest on the money.]*
- F. *R. Huna said to him, "Yes and no," since the matter was not solidly in hand.*
- G. *It has been stated:*
- H. Said R. Nahman said Samuel, "He has a claim for a refund for his money but not for compensation for improvements he made in the field — even though the seller made explicit that he would compensate for improvements should the purchaser lose the field.
- I. *"What is the operative consideration? Since the seller had no land to sell, it is a profit on his money that the buyer would be receiving."*
- J. *Raba objected to R. Nahman [on the strength of the following Mishnah-paragraph: **They do not exact from mortgaged property an indemnity for produce consumed or for improvements made on land or for the maintenance of a widow or daughters for the good order of the world [M. Git. 5:3A-B].***
- K. *It is from mortgaged property that people do not exact the indemnity, lo, from unencumbered property, they do.*
- L. *And in that Mishnah-paragraph it was explicitly stated: **improvements made on land.***
- M. *Does this not then refer to the case of purchasing property from a con-man? [Daiches: The purchaser improved the property, then the original owner got it back. The buyer then can collect the purchase price from the seller's encumbered property, even if this property was sold after the purchase of that field, for as long as the deed of sale contains a guarantee clause the claim involved has priority. The compensation for the improvement can only be collected from unencumbered property, as at the time when the deed of sale was written, and the guarantee clause inserted, no one knew what the compensation for improvements would amount to, and it is not in the interests of the public to allow such claims. This shows that the buyer is entitled to compensation for improvements from the seller, who had no title to the land.]*

- N. *No, the rule addresses the case of land seized by a creditor. [Daiches: The seller was entitled to sell the land, but the seller's creditors were entitled to seize the property, in which case the buyer is entitled to return of money spent on improvements, and if he receives a larger amount than the price he paid for the field, it does not appear like interest on a loan, as the original sale was valid, and the return of the field then is a new transaction.]*
- O. *If the passage speaks of land seized by a creditor, then note the opening part of the passage: **They do not exact from mortgaged property an indemnity for produce consumed...** Now if the rule refers to land seized by a creditor, does the creditor consume the produce of the property? Had not Samuel stated, "A creditor collects his debt from an improved field," meaning, only from an improved field but not from the produce of the field? It is therefore obvious that the passage speaks of a transaction with between a con-man and his mark, and, further, since the first part of the Mishnah's rule speaks to the case of a con-man and his mark, the second part of the passage also speaks of a con-man and his mark.*
- P. *How so? This one speaks of one matter, that of the other.*
- Q. *But have we not learned in the following teaching on Tannaite authority? As to collecting indemnity for improvements of the land, how so? Lo, if one has stolen a field from his fellow, and lo, it now is removed from the latter's possession, when the victim collects, he collects the principal from encumbered property, and the compensation for the improvements he collects from unencumbered property.*
- R. *Now how is this to be interpreted? If we say that it is as given, then does the con-man claim compensation from anybody? [Obviously not!] The passage therefore must refer to a case in which one has stolen a field from his fellow and sold it to a third party, who made improvements on it. [The court requires the buyer to return the field to the rightful owner. The buyer may also demand compensation for the value of the improvement. The buyer then collects the value of the improvements from the seller, who had no title to the field, and that contradicts Nahman's view (Daiches).]*
- S. *[Nahman] answered him, "If you had not solved the problem by explaining that the ruling speaks of a field that has been unlawfully acquired, you might as well have solved the problem by saying that the passage speaks of a field that has been seized by a creditor after it was improved by the buyer [in which case there is no point of relevance to the issue at hand]."*
- I.8** A. *Come and hear: as to exacting an indemnity for use of the produce of a field, how so?*
- B. *Lo, if one has stolen a field from his fellow, and lo, it is seized from the possession of the defrauded buyer, when when he collects compensation, he collects the principal from encumbered property and the compensation for the utilization of the produce he collects from unencumbered property. Now how is this to be interpreted? If we say that it is as given, then does the con-man claim compensation from anybody? [Obviously not!] The passage therefore must refer to a case in which one has stolen a field from his fellow and sold it to a third party, who made improvements on it. [Daiches: The rightful owner does not have to pay for the produce of the field, except for the buyer's expenditures in keeping the*

field; the rightful owner has every claim to the produce. The buyer is entitled to compensation from the person who sold him the field unlawfully, and from him the buyer can claim the value of the field as well as the value of the produce, which he may collect from unencumbered property — again a contradiction to the view of Nahman.]

- C. *Said Raba, “With what sort of case do we deal here? With the case of one who stole a field from his fellow, when the field was full of produce, and who ate the produce and then dug in the field pits, ditches, and hollows. The victim of the theft comes to collect the principal, which is paid out of encumbered property. When the victim collects the value of the produce, he collects from unencumbered property.”*
- D. Rabbah bar R. Huna said, “It refers to a case [15A] in which land-grabbers seized the field. The victim of the theft comes to collect the principal, which is paid out of encumbered property. When the victim collects the value of the produce, he collects from unencumbered property.”
- E. Raba does not state matters in the manner of Rabbah bar R. Huna, because the passage says, “lo, he has to give it up again,” *meaning, in court*. [Daiches: The con-man, who stole the field, is in possession of the field and is forced to give it up as a result of court intervention. We cannot assume that land-grabbers have stolen it.]
- F. And Rabbah bar R. Huna does not state matters as Raba does, because the language used, “he has to give it up again,” *refers to the field in its original condition [and not full of holes]*.
- G. *R. Ashi said, “The passage can refer to both situations, for example: one has stolen the field from his fellow when the field was full of produce and consumed the produce. He then sold the field. [The field is then restored to the original victim.] When the purchaser comes to collect from the thief, he collects the principal from encumbered property. When the original victim comes to collect, he collects the value of the produce from unencumbered property.”*
- H. Whether to the position of Raba or to the position of Rabbah bar R. Huna, it is in the status of an unsecured loan [a loan agreed upon only verbally. The claim of the victim is not based on any document, so the payment the robber has to make in compensation for the property is in the status of repayment of a loan granted without a note (Daiches)], and an unsecured loan may not be collected from encumbered property at all!
- I. *With what sort of case do we deal here? It is one in which the robber stood trial in court and only then sold the field*. [Encumbered property can be seized by the seller’s creditor, because he has written evidence for the claim, consisting in the court action.]
- J. *If that is the case, then compensation for the produce also [should be paid out of encumbered property]!*
- K. It is a case in which he stood trial in court as to the principal, but not called to court as to the produce.

- L. *How is such a matter settled? [Daiches: how could it be said with certainty that cases would arise where a person who acquired a field wrongfully would be tried for seizing the field itself but not for appropriating its produce?]*
- M. *It is the general practice that when the man lays claim, it is first of all for the principal. [Only then he adds to his claim.]*

I.9 A. *But does Samuel take the view that if one purchases a field from a con-man [[and then loses the field and recovers the original investment], he has no claim for compensation for improvement made in the field? And lo, Samuel said to R. Hinena bar Shilat [who was a scribe,] “Consult the seller, when you draw up a deed of sale, and write, ‘...best property, improvement, and produce [into the deed].’” Now under what circumstances does this counsel pertain? If it is to a creditor [who claims the field for payment of his debt,] does he have a right to produce? And has Samuel not said, “A creditor collects improvements,” meaning, improvements he collects, but compensation for produce he does not collect. Rather, is it not the case of one who has purchased a field from a con-man? [Daiches: The formula then provides for compensation in respect of the improvement made by the buyer in the field. How then could Samuel have said that the person who has bought a field from a robber and has to return it to the rightful owner cannot claim compensation for the improvement he made in it?]*

- B. *Said R. Joseph, “With what sort of case do we deal here? It is, for instance, one in which the robber owns land [and will repay with real estate, not cash. The additional amount paid for the improvement does not appear as usury given for borrowed money.]”*
- C. *Said Abbaye to him, “Now is it permitted to borrow a seah of brain and to repay with a seah of grain when someone has real property? [Certainly not. Such a deal smacks of usury, since the price of the grain varies.]”*
- D. *He said to him, “That speaks of the case of a loan, but here we have the matter of a sale [to which considerations of usury do not apply].”*
- E. *Some record the matter as follows: said R. Joseph, “With what sort of case do we deal here? It is, for instance, one in which there was a formal act of acquisition [the seller pledged himself to be immediately responsible to the buyer for improvement (Daiches).] [Daiches: The payment for the increase included in the guarantee becomes thus due from the moment of the sale and is no longer regarded as usury.]*
- F. *Said Abbaye to him, “Now is it permitted to borrow a seah of brain and to repay with a seah of grain when someone has real property? [Certainly not. Such a deal smacks of usury, since the price of the grain varies.]”*
- G. *He said to him, “That speaks of the case of a loan, but here we have a formal act of acquisition [to which considerations of usury do not apply].””*

I.10 A. *Reverting to the body of the text: Samuel said, “A creditor collects his debt from an improved field:”*

- B. Said Raba, “You may know that that is what the seller writes for the buyer in the deed: *‘I shall confirm, satisfy, clear, and perfect these purchases — them, the gains resulting from them, improvements to be made in them, and I shall stand as surety for you, and this purchaser agrees to it and accepts it’*” [Daiches: the seller undertakes to satisfy all claims against the property and to be responsible for any loss the buyer may sustain because of previous claims against the property or for any other reason. The guarantee refers to ‘produce and improvement’ as well as to the original value of the property sold. As the seller is thus responsible to the buyer, the creditor enforces his claim against the property acquired by the buyer and the produce it has yield, and then the latter seeks redress from the seller.]
- C. *Said R. Hiyya bar Abin to Raba, “Then how do you deal with the case of a gift, in which the donor inscribes no such language? Here too is it the case that a creditor who has a previous claim to the donated property may not retrieve improvements?”* [Daiches: since there is no guarantee given by a donor as regards previous claims against the property given away, the recipient is not entitled to compensation from the donor, and if the former loses the improvements he has made in the property, he has no redress. For this reason the creditor of the donor ought not to be entitled to the improvement made by the recipient, and the loss would be the latter’s and not the debtor’s.]
- D. *He said to him, “Indeed so.”*
- E. “But [why should a person who receives a gift be more protected against loss than a person who pays for what he gets, and] does a gift confer [upon the recipient] greater right than a sale [on the purchaser]?”
- F. He said to him, “It most certainly does.”

I.11 A. *Said R. Nahman, “The following teaching on Tannaite authority sustains the view of Mar Samuel, though our colleague, Huna, interprets it to speak of a different case entirely.*

- B. *“For it has been taught on Tannaite authority: ‘He who sells a field to his fellow, and lo, it is removed and handed over to another claimant, [the buyer] when he collects [compensation from the one who originally sold it] collects the principal from encumbered property and the value of the improvements that he has made he collects from unencumbered property.’ [That is certainly Samuel’s position, for Samuel said, “A creditor collects his debt from an improved field.”]*

- C. *“But our colleague, Huna, interprets it to speak of a different case entirely. He holds, specifically, that it speaks of one who purchases a field from a robber.*
- D. *Another teaching on Tannaite authority maintains: he who sells his field to his fellow, who improved the field, and a creditor came and seized the field [in payment of a debt incorrect by the seller of the field], when the purchaser collects indemnity, if the value of the improvements is greater than the original cost of the improvements, he collects the improvements from the original owner of the land, and value of the improvements to the field from the creditor, but if the cost of the making the improvements to the field was greater than the value of the improvements, he may collect from the creditor of the one who originally sold the field only the cost of making the improvement corresponding to the value of the improvement. Now how does Samuel interpret that rule? If it refers to one who purchases a field from a robber, the first part of the rule presents a problem to him, for Samuel has said that one who purchases a field from a robber has no right to indemnity for improvements that he has made to the field. And if it is a case of a creditor, then there is a contradiction as to both the initial and the concluding rules. For Samuel has said, “A creditor collects his debt from the improvement made in the field by the buyer.”*
- E. *If you will, I shall explain that the purchase is made from a robber, for instance, one who possesses property [to repay the fraud], or, also, where there was a formal act of acquisition [as earlier explained, at the time of the sale]. If you prefer, I shall explain the matter with reference to a creditor. But there still is no contradiction. In the one case we deal with an improvement [15B] which has matured, and is ready to be carried away, while in the other case, the reference is to an improvement which has not yet matured and is not ready to be carried away. [Daiches: We deal with a case in which the improved produce of the field is nearly ready to be harvested, so that, although it is still attached to the field, is regarded as ripe fruit, the cost of production of which the creditor has to refund.]*

- F. *But lo, there are cases every day in which Samuel orders the collection of debts even from improvements that have reached maturity and are ready to be carried away.*
- G. *There is no contradiction. In the one case the creditor claims from the seller an amount equal to the combined value of the land and the improvement [and in such cases Samuel does not award the buyer the expense of his improvement, as the creditor is entitled to the full repayment of the debt due to him from the seller (Daiches)], and the other speaks of a case in which the creditor claims from the seller an amount equal to the value of the land alone, in which case the creditor compensates the buyer for the value of his improvement and sends him on his way.*
 - I. *That reading of matters poses no problems to one who says when the buyer has money to pay the seller's debt, he cannot dismiss the creditor [by paying him the money. The creditor still can seize the land if he wants it rather than the cash as settlement of the debt. The creditor has a prior claim to the land (Daiches)]. But in the view of one who maintains that if the purchaser of the property has the money, he can dismiss the creditor and keep the land, why cannot he simply say to the creditor, "If I had the money, I could have dismissed you from the entire property. Now that I don't have enough money, give me a piece of ground that is worth the value of my improvement."*
 - J. *Here with what sort of a case do we deal? It is a case in which the seller made the field a stipulation saying [to the creditor], "You shall receive payment only from this."*

- 1.12** A. [If] the buyer knew full well that the field did not belong to him [who sold it[] and bought it nonetheless,
- B. Rab said, "He can claim compensation for the purchase price of the field, but not for the value of the improvement. [The sale of the field was illegal, and the buyer never really acquired it. He cannot be expected to claim compensation for improving a field that he did not own anyhow.]"
 - C. And Samuel said, "Even a claim for compensation for the money he laid out he does not have."

- D. *What is the point of the dispute? Rab takes the view that the purchaser, knowing that the seller had no land to sell him, decided to give him the money merely as a deposit.*
- E. *Then why not say to him explicitly that it is for a deposit?*
- F. *He thought that he would not take the money on such a stipulation.*
- G. *And Samuel takes the position that if someone knows that the seller really does not own any land, he has decided to hand over the money simply as a gift.*
- H. *Then why not say so up front?*
- I. *It would be embarrassing to the "seller" of the land to have the arrangement subject to that stipulation.*
- J. *Now lo, this same point of dispute between the two authorities has already been fully exposed.*
- K. *For it has been stated: He who betroths his sister [and accepts the betrothal money that is paid for that purpose] —*
- L. *Rab said, "The money is returned [to the prospective groom, since the brother has no claim on the money]."*
- M. *Samuel said, "The money is a gift."*
- N. *Rab said, "The money is returned. A person knows that an act of betrothal is of no effect when he carries it out in behalf of his sister, and the groom has made the decision to hand over the funds as a mere deposit."*
- O. *Then why not say to him explicitly that it is for a deposit?*
- P. *He thought that he would not take the money on such a stipulation.*
- Q. *Samuel said, "The money is a gift. A person knows that an act of betrothal is of no effect when he carries it out in behalf of his sister, and the groom has made the decision to hand over the funds as a gift."*
- R. *Then why not say so up front?*
- S. *It would be embarrassing to the "seller" of the land to have the arrangement subject to that stipulation.*
- T. *Both disputes are required to be set forth [and a single exposition of the dispute would have proved insufficient.] For if the dispute had been expressed only in the one case [where the buyer knew that the field did not belong to the seller], it is in particular in such a case, because people do not ordinarily give gifts to strangers, but in the matter of the sister, we might suppose that he concurs with Samuel. And if the dispute had been expressed only in the other case [the betrothal by the brother], we might have thought that it is only in that sort of case that Samuel rules the money is not to be returned [for the same consideration just now expressed], but as to the other case, we might suppose that he would concur with Rab. Accordingly, it is necessary to make matters explicit in both cases.*
- U. *Both in the view of Rab, who deems the money to form a mere deposit, and in the view of Samuel, who has held that the money is regarded as a gift, as to the field itself, by what right does the person who has given the money go and utilize the fruit thereof? [The person who handed over the money cannot imagine that he is entitled to take possession of the field and make use of its produce. If he did so, it would show he meant to buy the field with the money, and not knowing the law,*

he assumed the sale is valid anyhow. Both authorities therefore must have reasons other than the ones just now given (Daiches).]

- V. *He takes the view, "I shall go down into the field and work it and eat the produce, just as he [who wrongfully acquired the field] would have done, and when the rightful owner of the field comes and claims it, my money will be treated as a deposit" — within the theory of Rab, who says it is deemed a deposit — "or as a gift" — in the view of Samuel, who says it is held to be a gift."*

W. *Said Raba, "The decided law in this case is that the buyer is entitled to a refund of the purchase-price and also to the value of the improvement, and even though it was not made explicit in the indemnity clause in the deed of sale. If the buyer knew that the field did not belong to the seller, but bought it nonetheless, the buyer is entitled to a refund of the purchase price but not to the value of the improvement. The omission of an indemnity clause is deemed a scribal error, both in bonds of indebtedness and also in deeds of sale."*

I.13 A. *Samuel asked Rab, "If the robber who sold the field went and bought it from the original owners, what is the law?"*

- B. *He said to him, "What is it that the first party has sold to the second [the robber to the purchase who bought the field from it]? It is every right that the former might subsequently acquire to the field. [Daiches: When the robber sold the field, he made over to the buyer any right that the robber might subsequently acquire in regard to the field, and therefore the robber has no right to claim the field from the person who bought it from him. It is assumed that the robber only bought the field to legalize the sale to the person who bought it from him.]"*

- C. *What is the reason [Daiches: for the robber to secure the property for the buyer]?*

- D. *Mar Zutra said, "It is pleasing to him not to be called a robber."*

- E. *R. Ashi said, "It is pleasing to him to restore his good name."*

- F. *What is the difference between the two explanations?*

- G. *At issue is a case where the buyer died. In the opinion of Mar Zutra, that he did not want to be called a robber, [16A] lo, the buyer has died [and won't be around to call him names]. And in the opinion of R. Ashi, who said, "It is pleasing to him to restore his good name," it would apply even now, for the robber would want to restore his good name even with the children of the buyer."*

- H. *Rather, at issue is a case in which the robber died. In the opinion of the one who said that he did not want to be called a robber, lo, he has died [so it hardly matters any more]. As to the view of him who says that he wants to restore his good name, here too, even though he is dead, he surely wants to restore his good name.*

- I. *Still, in the end, his children will be called "sons of a robber"!*

J. *Rather, at issue between them is a case in which the robber handed over the field as a gift. In the opinion of R. Ashi, who said, "It is pleasing to him to restore his good name," it would apply even now, even a gift would present an occasion in which he would want to restore his good name. But in the opinion of Mar Zutra, that he did not want to be called a robber, he can always say to the recipient, "What in the world have I stolen from you?"*

- I.14** A. *It is obvious that [if someone stole a field and sold it,] then sold it to another person or bequeathed it to his heirs or gave it away as a present [and then bought it from the original owner, we must assume that in buying the field] he did not intend to secure the field for the first buyer. [Daiches: If the robber sold the field a second time or disposed of it in some other way after selling it to the first party, it is obvious that his subsequent action in buying the field from the original owner was not due to a desire to secure the field for the first buyer and must have been prompted by a different motive. The first buyer would not then be entitled to keep the field, which would legally belong to the person to whom it was subsequently sold, given, or bequeathed.]*
- B. *If the field came to him as an inheritance [in that he was heir of the person from whom he had stolen the field, so he has become the rightful owner of the field], it is an inheritance that has reached him on its own, and he is not the one who has troubled himself to acquire it.*
- C. *If he collected the field in payment of a debt, we examine the case. If the original owner had other land and the robber said, "I want this land," it was with the intention to secure it for the first buyer. If not, we assume he just wanted to get his money back through repayment through real property.*
- D. *If the original owner handed over to him [the thief] as a gift the field that had been stolen, there is a dispute between R. Aha and Rabina.*
- E. *One said, "A gift is in the status of an inheritance, for lo, it has reached him on its own and he is not the one who has troubled himself to acquire it."*
- F. *The other said, "A gift is in the status of a commercial transaction, for if the recipient had not stake the trouble to ingratiate himself to the donor, he would not have given him the property as a gift. That is why he want to the trouble of ingratiating himself to him, so that he would vindicate his good name [for the new owner, to whom he had sold the stolen field]."*
- G. *And up to what point does the thief wish to vindicate his good name? [Daiches: up to what stage in the proceedings do we assume that in buying the field from the original owner, the robber intended to secure its possession for the person to whom he sold the field unlawfully?]*
- H. *Said R. Huna, "Until the buyer of the field is called to court [as the original owner, from whom the field was stolen, now is going to reclaim it]." [Daiches: As the latter's reputation is thus lost, it cannot be said that he bought the field from the original owner in order to vindicate his honesty.]*
- I. *Hiyya bar Rab said, "Until the buyer holds in hand the court decree [that entitles him to seize the property of the thief]."*

- J. *R. Pappa said, “Until the time for announcing [the public auction of the robber’s property] has commenced.”*
- I.15** A. *R. Ammi bar Hama objected [to the decision, that when the robber bought the field from the original owner, he intended to secure possession of it for the person to whom he had sold it unlawfully, and therefore the latter’s purchase has now been legalized]: “Now how has this purchaser acquired the field? He has acquired it only with a deed, but this deed is a mere scrap of paper of no account [since the robber did not own the field when he drew up the document and had no right to sell it].”*
- B. *Said Raba to him, “It is a case in which the buyer accepts the word of the robber. Since the robber gets pleasure from the fact that the buyer has said nothing to him but trusted in him implicitly, the robber makes the effort to acquire the field for the buyer and confer upon him rightful ownership of it.”* [Daiches: We assume that the robber bought the field from the original owner because he appreciated the confidence placed in him by the person to whom he sold the field unlawfully and who did not question the robber’s right to sell it. That is why he wanted to legalize the sale.]
- C. *R. Sheshet raised a question based on the following passage: “If someone says, ‘What I shall inherit from father is sold to you, what will come up in my trap is sold to you’ — he has said nothing at all. ‘What I shall inherit from father today is sold to you, what will come up in my trap today is sold to you’ — his statement is valid [T. Ned. 6:9].”* [Daiches: In the first case, at the time of selling the property, it did not yet belong to the seller, and the sale is not made legal by what happens after the sale. This contradicts the view that when a robber bought the field after selling it unlawfully, he intended to sell his future rights and this legalizes the sale.]
- D. *Said R. Ammi bar Hama, “There is the man, and there is the refutation [for the proposed proposition]!”*
- E. *Said Raba, “I see the man, but I most certainly do not see the refutation! In the case before us, the buyer has relied upon the seller, there, he did not; here he relied upon the seller, that he would go and make the effort and provide the field so that he would not be called a thief, but there, he did not rely on him [to do what he said, since he realized that, at that moment, the potential heir or hunter had nothing to sell anyhow].”* [Daiches: In Sheshet’s case the person to whom the goods to be acquired were sold had no occasion to rely on the seller, since it did not depend upon the seller whether he would ultimately acquire the goods or not.]
- F. *They sent word to R. Abba bar Zabeda. He said to them, “This does not have to be taken inside. [The question is not to be pursued by the sages.]”*
- G. *Said Raba, “This most certainly does have to be taken inside — to the innermost chambers! In the case before us, the buyer has relied upon the seller, there, he did not.”*
- H. *There was a case in Pumbedita, and that very question was raised [that R. Sheshet had asked].*

- I. *R. Joseph said to them, "This does not have to be taken inside. [The question is not to be pursued by the sages.]"*
- J. *Said to him Abbaye, "This most certainly does have to be taken inside — to the innermost chambers! In the case before us, the buyer has relied upon the seller, there, he did not."*
- K. *What is the difference between the first and the second clauses [of the passage cited by R. Sheshet]?*
- L. Said R. Yohanan, "As to the concluding clause, **'What I shall inherit from father today is sold to you,'** the statement is because the sale is being made on account of the honor owing to his father [so as to give him a decent burial], and as to **what will come up in my trap today is sold to you' [16B]** — the statement is because of the need to support himself. [The sale is valid for good reason, but these reasons do not apply to the opening clauses at all.]"

1.16 A. Said R. Huna said Rab, "He who says to his fellow, 'The field that I am buying, — when I shall have bought it, is bought for you as of this moment' — the other has acquired possession of the field [as soon as the seller has bought the field from the original owner, it is the property of the buyer and the seller ends the transaction (Daiches)]."

B. Said Raba, "It stands to reason that the decision of Rab is correct when it pertains to a case in which the seller speaks of any field in general, *but if the seller refers to "this field" in particular, that statement would not be right, for who knows whether the owner of the field will sell it at all?* [Therefore the person to whom the statement is made cannot take the statement seriously, since the other party may not accomplish anything. The sale to the second party is therefore not deemed done when the particular property has been purchased.]

C. "By God! Rab's statement pertained even to a case in which the seller had said, 'this field.' *For Rab presented the law in accordance with the position of R. Meir, who said, 'A man may convey ownership to another party of something which has not yet come into existence.'*

D. "*For it has been taught on Tannaite authority:* He who says to a woman, 'You are betrothed to me after I convert to Judaism,' '...after you convert to Judaism,' '...after I am emancipated,' '...after you are emancipated' '...after your husband dies,' '...after your levirate connection performs the act of removing the shoe with you [and so frees you of the levirate bond],' '...after your sister dies [and it becomes legal for you to marry me]' —the woman is not deemed betrothed.

E. "R. Meir says, 'She is deemed betrothed.'

F. "Now lo, a woman in context is in the status of a field, and, said R. Meir, 'She is deemed betrothed.'"

1.17 A. Said Samuel, "He who finds a deed of transfer in the marketplace should return it to the owner.

B. "*For if the operative consideration were that the deed should not be returned because it may have been written for the purpose of a loan which was not consummated, lo, the borrower pledged himself [to let the lender have the*

property in any case (Daiches)], and if the operative consideration for not returning the document is that the debt may already have been paid, we do not take account of the possibility that the debt has been paid, for if it were the case that it had been paid, then they would have made a tear in the document.”

- C. Said R. Nahman, “When I was around six or seven, my father was among the scribes who worked at Mar Samuel’s court, and I remember very distinctly that they would make the following proclamation: deeds of transfer found in the market of Nehardea are to be returned to their owners.”
- D. Said R. Amram, “We too have learned in the Mishnah: **...or any document which is prepared in a court, lo, this one should return [M. B. M. 1:8A-B].** It follows that we do not take account of the possibility that the debt has been paid.”
- E. Said to him R. Zira, “The cited passage of the Mishnah speaks of documents that contain decrees of the court that confirm the creditor’s right to belongings taken from the debtor and of documents that authorize a creditor to search for the debtor’s belongings and seize them wherever they are located. These are not documents concerned with repayment. [So the cited rule is not pertinent to our issue.]”
- F. Said Raba, “But is it the fact that these are not documents concerned with repayment? But lo, the Nehardeans have ruled, ‘Property assigned to a creditor in valuation returns to the debtor [if the debtor pays] over the next twelve months.’”
- G. And Amemar has said, “I come from Nehardea and take the view that property assigned to a creditor in valuation returns to the debtor without limit of time.” [Whenever the debtor pays, he can get his property back. So the question of repayment arises in the case of deeds of assignment, since the debtor may have had his property restored when he paid his debt. In returning the documents to the creditor we give him the power to seize the debtor’s property once again (Daiches).]
- H. Rather, [when the Mishnah says that we return deeds of assignment,] said Raba, “There, the reason is as follows: we take the view that the debtor himself has caused the loss for himself, for at the time he paid off the debt, he should have torn up the document, or, alternatively, he should have had another bond written to permit him to recover his property, as, within the strict law, the creditor does not have to return the property. It is only on the grounds of, ‘And you shall do what is right and good in the sight of the Lord’ (Deu. 6:18) that the sages have required the creditor to return the property at all. It follows that the debtor is as though buying the property anew and should ask for a deed of sale to be written.
- I. “But as to a bond of indebtedness, what is there to be said? ‘At the time he paid off the debt, he should have torn up the document’? I reply to this: the creditor may have put him off by telling the debtor, ‘I’ll give it to you tomorrow, I don’t have it with me just this minute,’ or the creditor may have kept it back until he was repaid for the fee of the scribe [which he had paid].” [Daiches: The debt may thus have been paid even though for some reason or other the creditor did not return the note to the debtor, and this would then preclude the return of the note to the creditor.]

- 1.18 A. Said R. Abbahu said R. Yohanan, “He who in the marketplace finds a bond covering a debt, even though it contains the endorsement of the court, should not return it to the owner.”
- B. *“Now in a case in which there is no endorsement of the court on the bond, there is no question [that one should not return the document to the owner. For there is the possibility of claiming, ‘It was written to secure a loan, but the loan was never made.’ But even in a case in which there is an endorsement of the court on the bond, which means that the document is confirmed, one should not return the document to the owner, for we take account of the possibility that the debt already has been paid.”*
- C. *R. Jeremiah objected to R. Abbahu’s ruling: “ or any document which is prepared in a court, lo, this one should return [M. B. M. 1:8A-B].”*
- D. *He answered him, “Jeremiah, my son, not all documents produced by a court are equivalent. Our Mishnah-passages deals with a case in which the debtor is a confirmed liar.”*
- E. *Said Raba, “And on account of the debtor’s being a confirmed liar on one occasion do we have to assume that he will never again pay his debts?”*
- F. *Rather, said Raba, “The Mishnah-rule deals with a document that contains a decree of the court confirming the creditor’s right to belongings appropriated from the debtor or with one that authorizes the creditor to search for the debtor’s belongings and to seize them wherever they are located, and that accords with R. Zira’s interpretation stated earlier.”*
- 1.19** A. *Now since we have raised the issue of the confirmed liar, let us say something about that matter.*
- B. For R. Joseph bar Minyumi said R. Nahman said, “If the court said to the debtor, ‘Go and give him [what you owe him],’ [17A], and he later on said, ‘I have already paid him off,’ he is believed. If the lender comes to court and asks to have a decree written [allowing him to seize the borrower’s property for the collection of the debt], they do not write it and hand it over to him. On the other hand, if the court said to the debtor, ‘You are obligated to give him what you owe him,’ and he later claimed, ‘I have paid,’ he is not believed. Then if the lender comes to court and asks to have a decree written [allowing him to seize the borrower’s property for the collection of the debt], they do write it and hand it over to him.” [In the first case the debtor has taken an oath of inducement. In the second, he is not allowed to do so. The plaintiff may take the oath and receive payment (Rashi/Daiches).]
- C. *R. Zebid in the name of R. Nahman said, “Whether the court said to the debtor, ‘Go and give him [what you owe him],’ or whether the court said to the debtor, ‘You are obligated to give him what you owe him,’ if he claimed, ‘I have paid him off,’ he is believed. Then if the lender comes to court and asks to have a decree written [allowing him to seize the borrower’s property for the collection of the debt], they do not write it and hand it over to him. If, then, we can distinguish between the two wordings of the matter, it is in the following way:*
- D. “If they said to him, ‘Go and give him what you owe him, and the debtor said later on, ‘I paid him off,’ and witnesses give testimony that he did not pay him off

[Daiches: witnesses give evidence to the effect that following the order issued by the court, the plaintiff demanded payment from the defendant in their presence and was refused; as a consequence it is assumed that, having defied the order of the court in the presence of witnesses, the defendant is not likely to have paid later in their absence, and he is not believed if he later pleads, 'I have paid'], then he is a confirmed liar as to that debt.

- E. "[If the court decreed,] 'You are obligated to pay him,' and he later claims, 'I paid him,' and witnesses give testimony that he had not paid, and he then says again that he did pay, he has not been confirmed as a liar in regard to that transaction.' *What is the reason? He was just trying to put him off, wanting to gain time until sages could consider their decision more carefully [and change their minds].*"

I.20 A. Said Rabbah bar bar Hana said R. Yohanan, "[If one party claimed,] 'You have a *maneh* of mine in your possession,' and the defendant says, 'You have nothing at all in my possession,' and witnesses give testimony that he does indeed have something of the plaintiff's in his possession, but then the defendant went and said, 'I paid it off to you,' he is a confirmed liar as to that transaction."

- B. *Such as the case with Shabbathai, son of R. Merinus: He wrote over to his daughter-in-law in her marriage-contract a cloak of fine wool and pledged himself to that item. Her marriage-contract got lost. Shabbatai said to her, "The matter never happened that way." Witnesses in the end came and said, "Indeed, he wrote it over to her." In the end he claimed, "I paid her off." The case came before R. Hiyya, who ruled, "He is a confirmed liar as to that particular cloak."*

Composite of Statements with the Formula, Said R. Abin said R. Ilaa said R. Yohanan

I.21 A. Said R. Abin said R. Ilaa said R. Yohanan, "'If one owed an oath to another and said, 'I already took the oath,' and witnesses give testimony that he did not take the oath,' he is confirmed as a liar as to that oath.'"

- B. *This decision was reported to R. Abbahu, who said to them, "It stands to reason that the ruling of R. Abin pertains to a case in which the obligation to the oath involved a court action, but if he imposed the required to take the oath upon himself, he is believed, for that is how people act [declining to do under pressure what they are quite willing to do of their own accord]."*

C. *When they brought this back to R. Abin, he said to him, "I too was speaking of a court case."*

- D. *It also was stated as follows: Said R. Abin said R. Ilaa said R. Yohanan, "'If by the action of a court one owed an oath to another and said, 'I already took the oath,' and witnesses give testimony that he did not take the oath,' he is confirmed as a liar as to that oath.'"*

I.22 A. Said R. Assi said R. Yohanan, "He who in the marketplace finds a bond of indebtedness in which an endorsement of the court is written, as well as bearing the date of that very day, he should return it to the owner.

- B. *"For if the consideration of not returning it is that it was written for a loan that never took place, lo, the document contains the endorsement of the court, and if the consideration for not returning it is that it may already have been paid off,*

does a debt contract on a given day get paid off on that very day? That is surely not a possibility that is to be taken into consideration."

- C. *Said R. Zira to R. Assi, "Did R. Yohanan make any such statement? But lo, you are the one who has made the following statement in the name of R. Yohanan: A note that was given for a loan that has been repaid cannot be used for the purpose of recording another loan, for the obligation incurred through the first loan has already been annulled.*
- D. *"Now under what circumstances does this rule apply? [When was the note to be used again?] If it is to be on the following day or on any later date than the one given in the note, why include as an explanation, 'for the obligation incurred through the first loan has already been annulled'? Derive the the note from the fact that it is pre-dated [the second loan was made on the day after the date that is stated in the note; the note if applied to the second loan then has been predated and is invalid]. For we have learned on Tannaite authority: **Pre-dated bonds are invalid [M. Sheb. 10:5B]**. But is it not a case of a note that was to be used a second time on the day on which it was originally written?"*
- E. *He said to him, "Did I say to you that people never pay on the same day? What I said to you is that it is not common for people to pay of a loan on the same day."*
- F. *R. Kahana said, "[The document is to be returned to the owner] when concedes [that he has not paid]."*
- G. *If that is so, why did the rule have to be made explicit [since there is no reason not to return the bond to the creditor]?*
- H. *You might have said, the debtor really did pay the debt, and the reason that he has said, "I didn't pay it," is because he wants to have the note returned to the creditor so he can borrow on it again and save the scribe's fee later on. Therefore we are informed that under such conditions the lender himself would not permit it, for the lender might think that rabbis may hear of the matter and cause him to lose his money [since an antedated bond is invalid, and the second loan later on would not be collected on the strength of this bond].*
- I. *How does this case differ from the following, which we have learned in the Mishnah: **If one found bonds of indebtedness, "if they record a lien on the debtor's property, he should not return the , for a court will exact payment on the strength of them. If they do not record a lien on property, he should return them, for a court will not exact payment on the strength of them,"** the words of R. Meir. And sages say, "One way or the other, he should not return them, for a court will exact payment on the strength of them" [M. B.M. 1:6]. And this rule has been interpreted to deal with a case when the debtor concedes the validity of the bond, but the bonds are not to be returned because of the possibility that the bond was written for a loan that was to take place in Nisan, but the loan did not take place until Tishri, and the creditor may then come and illegally seize land purchased by people in good faith from the debtor between Nisan and Tishri. Now we do not invoke the reason, "If so, the lender himself would not permit it," but he would say, "Write another bond for Tishri," for the lender might think that rabbis may hear of the matter and cause him to lose his money [since an antedated bond is invalid, and the second loan later on would not be collected on the strength of this bond].*

J. *The two cases are to be distinguished, for in the case in the Mishnah, since the lender would profit by seizing property sold by the debtor between Nisan and Tishri, he would be happy to say nothing. But here, there is no benefit to the lender, since the note was only now written, so what advantage would accrue as to seizing property sold in the interval? [None at all!] Therefore the lender will not want to use a note a second time, if the obligation has expired when the first loan on the strength of that note has been paid off.*

I.23 A. Said R. Hiyya bar Abba said R. Yohanan, “Whoever makes a plea after the action of a court has been decreed **[17B]** has said nothing.” [Daiches: The plea of the defendant in such an action that he has discharged his obligation cannot be accepted unless it is corroborated by witnesses or other legal evidence.]

B. *How come? Every act of a court is treated as though it constituted a document put into the hand of the claimant.*

C. [Since an action of a court would include a marriage-contract,] said R. Hiyya bar Abba to R. Yohanan, “But is this not the clear implication of our Mishnah-passage: **If a woman produced a writ of divorce and a marriage contract is not attached to it, she collects the sum owing in her marriage contract. But if she produced a marriage contract and a writ of divorce is not attached to it, and if she claims, “My writ of divorce is lost,” or the husband claims, “My quittance is lost,” lo, these parties may not collect what they claim [M. Ket. 9:9A-D].**”

D. *He said to him, “I am the one who lifted the sherd for you, so then you found the pearl underneath.”*

E. *Said to him Abbaye, “And what pearl did you find there? Perhaps in the Mishnah-passage he has cited we deal with a place in which people do not usually write out marriage-contracts, so the writ of divorce serves the purpose of the marriage-contract, but in a place in which people usually do write out a marriage contract, the law would be as follows: if she can produce her marriage-contract, then she may get paid, but if not, she may not get paid [since the husband can claim that he has already paid or demand that she give up the document, since if not, she may again demand payment a second time]”*

F. *Then Abbaye reversed himself, saying, “What I said really is null. For if you take for granted that the Mishnah speaks of a place in which people do not ordinarily write out marriage-contracts, while in a a place in which people usually do write out a marriage contract, the law would be that if she can produce her marriage-contract, then she may get paid, but if not, she may not get paid, then how would a woman widowed after betrothal but prior to the consummation of the marriage ever exact payment? If it were by the evidence of witnesses who confirm that the husband has died, the heirs could plead, ‘she was already paid,’ and if you say, ‘the heirs can make such a plea,’ then what have the sages accomplished by their provision [of a marriage contract at all as soon as she is betrothed? She could never collect on it anyhow.]”*

G. *Said Mar Qashisha son of R. Hisda to R. Ashi, “Now how do we know in any event that a woman who has been widowed after betrothal but prior to the consummation of the marriage has a right to a marriage contract at all?”*

- H. *“If we say that that provision derives from the following Mishnah-passage: **If she was widowed or divorced, whether at the stage of betrothal or at the stage of a consummated marriage, she collects the full amount [M. Ket 5:1C], perhaps that rule pertains to a case in which a marriage-contract has been written out for her. And if you say ; ‘What is the point of saying so,’ I can answer, ‘It is in order to indicate that we reject the opinion of R. Eleazar b. Azariah [M. Ket. 5:1D: R. Eleazar b. Azariah says, ‘If she is widowed or divorced at the stage of the consummated marriage, she collects the full amount. If it was at the stage of betrothal, the virgin collects only two hundred zuz, and the widow a maneh, for the husband wrote over any additional sum] only on condition of consummating the marriage.’ It was necessary to make the matter explicit that that is not the case. It can also be shown that the Mishnah passage refers to a case in which a marriage-contract is actually written out, for lo, it says, she collects the full amount. Now if you contend that that case is one in which the husband has written out a marriage-contract, we can understand why the Mishnah uses the language, she collects the full amount. But if you take the view that the Mishnah deals with a case in which the husband has not had a marriage-contract written out, [18A] why should the Mishnah use the language, she collects the full amount? She has a claim on a maneh or two hundred zuz and no more.”***
- I. *And what about that which R. Hiyya bar Ami taught on Tannaite authority: If the betrothed wife of a priest [in a union which has not yet been consummated] dies, he is not to enter the state of a mourner, nor does he contract uncleanness on her account, and so too, should he die prior to consummation of the marriage, she is not to enter the state of a mourner, nor does she contract uncleanness on his account. If she should die, he does not inherit her estate. If he dies, she does collect her marriage-settlement.*
- J. *Now can it be objected, this speaks of a case in which the betrothed man has written her a marriage-contract? And if you say, then what then does the passage teach, it is necessary to make that provision explicit, If she should die, he does not inherit her estate.*
- K. *So Abbaye has turned to the body of the Mishnah in reversing himself, arguing as follows: “If it has entered your mind that we deal here with a place in which people do not usually write out the marriage-contract, with producing the writ of divorce there having the same effect as bringing out her marriage-contract, we still could question that argument with this question: does a writ of divorce refer to such figures as ‘a hundred zuz’ or ‘two hundred zuz’? And if you maintain, since rabbis have enacted that putting forth the writ of divorce entitles the woman to exact payment, it is as if such figures were written in it, still, one could object: then let the husband bring the plea, ‘I have already paid it off.’ And if you argue that we could say to him, ‘So if you paid it off, you should have made a tear in the writ of divorce,’ they could reply, ‘She did not let me tear it up, since she maintained, I want to keep it to prove I am free to remarry.’ And if you ask, ‘We could say to him, ‘then you should have torn it up and have inscribed in it, ‘this writ of divorce has been torn by us not because it is invalid but to prevent it from being used for the purpose of exacting payment a second time,’ one could reply,*

does anyone who exacts payment do so only in a law court [which would recognize such a document]?” [Daiches: It is only when payment is made in a court of law that one can expect the document to be endorsed in the way suggested, but people do not always pay their debts in court. So that even if it be admitted that the mere production of the writ of divorce entitles the woman to demand payment of the amount of the marriage-settlement just as if the amount were stated in the bill, one still could not maintain that the husband would not be believed if he pleaded, ‘I have paid already,’ seeing that he has good reason for not having had destroyed the bill of divorcement on payment. It must therefore be assumed that the reason why payment of the writ of divorce can be enforced against the plea of the husband is that it is based on an enactment of the courts and in accordance with the statement of R. Yohanan.]

This rather protracted treatment of the Mishnah-paragraph goes its own way, but the exposition of the principle — returning bonds of indebtedness — remains cogent from beginning to end. What happens is that the issue at hand is treated within the context of other, intersecting considerations, so that the theme of the Mishnah precipitates a rather complicated construction, as a variety of principles are joined together. But the basic issue emerges at the very outside, I.1.A, the condition of the debt. If it has been paid or the debtor concedes the debt, then why not return the bonds? If not, then we return them? In dealing with that question, we want to watch out for postdated bonds. Once I.1 has introduced that matter, No. 2 proceeds to take account of the result, a secondary expansion of the foregoing. And No. 3 is continuous with No. 2, No. 4 with No. 3, and No. 5 with No. 4. That these form subdivisions of a sustained and unfolding discourse seems to me beyond doubt. I.6 moves on to the consideration of the disposition of a property that has been subjected to a lien in payment of a debt. Reuben owed money. He sold a field to a third party. A creditor of his went and seized the field from the third party. Reuben may sue the creditor who has seized the field. That basic case, which is connected to the Mishnah-paragraph by reason of the rule concerning whether or not a bond has a lien written into it, governs much that follows. I.7 proceeds to a correlative issue — selling a field that one does not own. The first issue is whether the buyer, in recovering his funds, has a claim both for the principal and also for compensation for improvements, e.g., the crop that he has lost in losing the field inclusive of the crop he has planted. The issue at hand concerns the improvement of the field, the lost crop. This same issue of the compensation for encumbered property, on the one side, and consumption of the produce of the field, on the other, animates a sequence of cases. Then we proceed to ask, why would we return or not return a deed of transfer? This issue, correlative with the concerns of the Mishnah-paragraph, is worked out in terms of operative considerations. The little group at the end is inserted whole because I.22 intersects with our Mishnah’s issue.

1:7

- A. [If] he found (1) writs of divorce for women, (2) writs of emancipation for slaves, (3) wills, (4) deeds of gift, or (5) receipts for the payment of marriage settlements,
- B. lo, he should not return them.

C. **For I maintain that they were written out, but [then] the one [who is answerable] for them changed his mind and decided not to hand them over.**

I.1. A. *The reason given [for not returning a writ of divorce] is that the one [who is answerable] for them changed his mind and decided not to hand them over.*

B. Lo, if he had said, "Give them over," they hand them over, and even though that is a long time later on. [We do not take account of the possibility that it is a different writ of divorce, lost by some other person, in which the names just happen to coincide with the found document's.]

C. *An objection was raised from the following: He who is bringing a writ of divorce and lost it — if he found it on the spot, it is valid. And if not, it is invalid [M. Git. 3:3A-C].* [Therefore we do take account of the possibility that it is a different writ of divorce, lost by some other person, in which the names just happen to coincide with the found document's.]

D. *Said Rabbah, "There is no contradiction. In the one case [in which we do not return the document after any appreciable interval] we speak of a place in which caravans pass by commonly [so that a random sample may produce more than one document with the same names as the one that has been lost], in the other, a place in which caravans do not pass by commonly [and we therefore are not likely to come up with two writs with the same exact names.]*

E. And even in a place in which caravans pass by commonly, the rule applies only in a case in which it is established that two persons bearing the same name, e.g., Joseph son of Simeon, are located in that town. *For if you do not hold that position, there is a contradiction between two teachings in the name of Rabbah.*

F. *For there was the case of a writ of divorce that was found in the courthouse of R. Huna, in which it was written, "At Shavire, a place located by the canal Rakis." Said R. Huna, [18B] "We take account of the possibility that there are two towns bearing the name Savire."*

G. *Said R. Hisda to Rabbah, "Go and investigate that matter. In the evening session, R. Huna will ask you about it." He went out and investigated and turned up the following teaching in the Mishnah that is pertinent to the case: ...any document which is prepared in a court — lo, this one should return [them] [M. B.M. 1:8A-B]."* [Daiches: The endorsement of the court shows that the transaction referred to in the document has been completed, so that the apprehension that the person who authorized the document to be written may have changed his mind and refused to complete the transaction does not arise. As the writ of divorce referred to by R. Huna was found in the rabbi's court house, it must be assumed that it was lost after it was dealt with by the court and that therefore it must be treated like a document endorsed by the court.]

H. *Now lo, the court of R. Huna is in the category of a place in which caravans pass by commonly. And lo, Rabbah maintained that the document was to be returned. Therefore it must follow that the rule applies only in a case in which it is established that two persons bearing the same name, e.g., Joseph son of Simeon, are located in that town, but otherwise it does not apply.*

I. *In accord with this position, Rabbah made a decision in a practical case involving a writ of divorce that turned up in flax in Pumbedita.*

J. *Some say that it was a place in which flax was on sale, but it was a locale in which two persons bearing the same name were not known to be located, even though caravans commonly passed by the spot; others say that it was the place where the flax was steeped, and even though two persons with the same name were known to be situated nearby, still, caravans did not commonly pass by. [The lost writ was found in a place in which only one of the two conditions was met and he ordered it returned to the wife, who therefore was deemed divorced.]*

I.2. A. *R. Zira compared a Mishnah-passage with a corresponding Tannaite teaching outside of the Mishnah and pointed out a contradiction between them, which he then harmonized: “We have learned in the Mishnah, **He who is bringing a writ of divorce and lost it — if he found it on the spot, it is valid. And if not, it is invalid** [M. Git. 3:3A-C].*

B. *“That has now to be contrasted with the following Tannaite teaching not included in the Mishnah: ‘**If in the marketplace one has found a writ of divorce for a woman, when the husband concedes its validity, it is to be returned to the wife, but if the husband does not concede its validity, one should return it to neither this one nor that one**’ [T. Baba Mesia 1:7A-C]. Now on Tannaite authority, it has been taught, ‘when the husband concedes its validity, it is to be returned to the wife’ — and even after a considerable interval!”*

C. *R. Zira explained the contradiction in the following way: “In the one case [in which we do not return the document after any appreciable interval] we speak of a place in which caravans pass by commonly [so that a random sample may produce more than one document with the same names as the one that has been lost], in the other, a place in which caravans do not pass by commonly [and we therefore are not likely to come up with two writs with the same exact names.]”*

D. *Some say, “And that is the case only when it is established that two persons known to have the same name live in the same locale, in which case we do not return the writ of divorce,” following the position of Rabbah.*

E. *Others say, “Even though it is not established that two persons known to have the same name live in the same locale, the writ is not returned to the wife,” in contradiction to the position of Rabbah.*

F. *Now there is no problem in explaining why Rabbah did not rule in the way that R. Zira did, since, so far as he was concerned, he preferred to raise the question of the contradiction that apparently separated the two Mishnah-passages. But why did R. Zira not see matters as Rabbah did [and concur that there was an apparent contradiction between the two Mishnah-passages]?*

G. *R. Zira would respond to that question as follows: “Is it expressly stated in our Mishnah-passage, ‘...but if he said to them, “Hand it over to her,” they hand it over to her — and even after a considerable interval’? Perhaps this is the sense of the passage: ‘...but if he said to them, “Hand it over to her,” they hand it over to her [only on the spot, but not after a long time], just as we assumed at the outset.”*

H. *Now in the view of the one who says that in R. Zira’s view, in a place in which caravans pass commonly, the document is not to be returned, even if it is not established that two persons of the same name live in that locale, and that he therefore differs with Rabbah, what is the point at issue?*

- I. *Rabbah takes the view that when the Mishnah teaches, ...any document which is prepared in a court — lo, this one should return [them] [M. B.M. 1:8A-B], it deals with a document that happens to turn up in court, and a court is in the category of a place in which caravans commonly pass, so, it must follow, the operative consideration is that that is the case only if it is established that two persons of the same name live in that locale, one should not return the writ, [in which case both conditions are met]. But if it is not established that two persons of the same name live in that locale, one indeed does return the writ.*
- J. *And R. Zira will respond, “Now does the Mishnah-passage state, ‘...any document which is prepared in a court that happens to turn up in court’? What is stated is simply, ...any document which is prepared in a court — lo, this one should return [them] [M. B.M. 1:8A-B]. And under any circumstances the passage speaks, therefore, of one that is located outside of court.”*
- K. *Said R. Jeremiah, “[The Tannaite teaching found outside of the Mishnah that rules, ‘If in the marketplace one has found a writ of divorce for a woman, when the husband concedes its validity, it is to be returned to the wife, but if the husband does not concede its validity, one should return it to neither this one nor that one] deals with a case in which witnesses testify, ‘We signed only a single writ of divorce in the name of Joseph b. Simeon.’ [Daiches: Only in such a case is the rule that the writ is to be returned.]”*
- L. *If that is the case, then what is to be inferred [from the instruction that the writ is to be returned]? [That is perfectly obvious.]*
- M. *What might you have ruled? That one should take account of the possibility that by some freak accident the names of the husband and of the witnesses on one writ coincide with the names of the husband and the witnesses on another writ? In this statement we are told that that is not the case.*
- O. *R. Ashi said, “[The Tannaite teaching found outside of the Mishnah that rules, [If in the marketplace one has found a writ of divorce for a woman, when the husband concedes its validity, it is to be returned to the wife, but if the husband does not concede its validity, one should return it to neither this one nor that one] deals with a case in which the husband says, ‘There is a hole beside such-and-such a letter on the document,’ and specifically by a particular letter. But if he says, ‘there is a hole’ without further specification, that is not the rule.”*
- P. *R. Ashi was puzzled as to the status of distinguishing marks [that is, as to the validity of a claim to lost property when someone describes the article’s traits in detail], not knowing whether that rule derives from the authority of the Torah or from that of scribes.*
- I.3.** A. *Rabbah bar bar Hanah [19A] lost a writ of divorce in the school house. [When it was found,] he said, “If the consideration of distinguishing traits pertains, then I have one pertinent to it; if the operative consideration is that I recognize it, then I am able to recognize it.”*
- B. *They gave it back to him. He said, “I do not know whether they returned it to me because of he consideration of distinguishing traits, in which case they take the view that distinguishing traits form the principal consideration in returning a lost object by reason of the authority of the*

Torah, or whether the operative consideration was that I recognized it, on which account they returned it to me, in which case was that because of my status, in particular, as a disciple of rabbis, while in the case of an ordinary person, that would not be the rule.”

- I.4. A.** *Reverting to the body of the preceding [at I.2/O]: If in the marketplace one has found a writ of divorce for a woman, when the husband concedes its validity, it is to be returned to the wife, but if the husband does not concede its validity, one should return it to neither this one nor that one.*
- B. *Nonetheless, the Tannaite authority maintains, when the husband concedes its validity, it is to be returned to the wife.*
- C. *But should we not take account of the possibility that it was written for delivery in Nisan and not delivered to the woman until Tishri, and in the interval from Nisan to Tishri he husband may have gone and sold the produce of the fields belonging to the wife, so she may come and, unlawfully, seize the produce on the strength of the writ of divorce that had been written in Nisan [but not taken effect until delivery in Tishri].*
- C. *That position poses no problems to him who says, Once the husband has considered divorcing the wife, he has no further claim on the usufruct of fields belonging to her. But how is the passage to be explained in accord with the position of one who says, The husband has the rights to the usufruct until the moment of the actual delivery of the writ of divorce?*
- D. *[The answer is as follows:] When she comes to seize the produce, we say to her, “Produce proof as to when the writ of divorce actually reached your possession.”*
- E. *Now how is a writ of divorce different from a bond of indebtedness, concerning which we have learned in the Mishnah: [If] one found bonds of indebtedness, if they record a lien on [the debtor’s] property, he should not return them [M. B.M. 1:6A-B]. And we interpreted the passage to speak of a case in which the debtor conceded the validity of the debt, and the consideration at issue was that the the bond was written for a loan in Nisan but the actual loan was made only in Tishri, and the creditor might then unlawfully seize land purchased by third parties in the interval between Nisan and Tishri. In such a case too let the documents be returned, and when the creditor comes, say to him, “Bring proof as to when the bond of indebtedness actually came into your possession.”*
- F. *By way of reply: here, with respect to the writ of divorce, it is the purchaser from the husband of the fruit deriving from the wife’s property who will come and lay claim, saying, “The reason that rabbis had her writ of divorce given back to her is so that she should not be left as a permanent widow [lacking a writ of divorce permitting her to remarry]. But now that she is the one who has come to seize the produce of her property that I bought from her husband, let her go and prove, on the basis of the evidence, when the writ of divorce actually came into her possession.” But with respect to a bond of indebtedness, the purchaser is not going to come and claim that kind of proof. He will reason, “Since*

rabbis have returned to him the bond of indebtedness, it is self-evident that the reason that they had the document returned to him was so that the creditor could seize the property that the debtor sold.” This proves that rabbis ascertained [that the creditor was legally entitled to seize the debtor’s sold property (Daiches)], and that the bond of indebtedness came into the hand of the creditor before I purchased the land.

II.1 A. ...writs of emancipation for slaves:

- B. *Our rabbis have taught on Tannaite authority: **If in the marketplace one found a writ of emancipation for a slave, when the master concedes its validity, he should return it to the slave. If the master does not concede its validity, he should return it neither to this party nor to that party** [T. **Baba Mesia 1:7D-F**].*
- C. *Now, in any event, when the master concedes its validity, he should return it to the slave — but why not take account of the possibility that he had it written in Nisan but did not hand it over until Tishri, and the slave may then have gone and made purchases of property between Nisan and Tishri, and the master may have gone and sold the property, and the slave may produce the writ of emancipation, in which the date of Nisan is inscribed, and go and unlawfully seize the property from those who have purchased it from the master.*
- D. *That produces no problems for him who says that it is a considerable advantage for the slave to leave the domain of the master and go forth to freedom, and, further, in line, also, with the view of Abbaye who has said, “The witnesses on a document effect possession for him by signing their names to the document” [and as soon as the document is signed, it is valid]. So it would be quite proper [for the slave to buy property as soon as the document is signed].*
- E. *But in line with the view of him who says, “It is a considerable disadvantage for the slave to leave the domain of the master and go forth to freedom,” what is there to be said?*
- F. *When he comes to seize the property, we say to him, “Bring proof when the writ of emancipation actually came into your possession.”*

III.1 A. ...wills, deeds of gift:

- B. *Our rabbis have taught on Tannaite authority: What is the formula of **wills**? “This shall be established and executed” so that, if when the writer dies, his property is going to go to Mr. So-and-so.*
- C. *What is the formula of **deeds of gift**? A document in which it is written, “As of this date, but taking effect when I die.”*
- D. *Does it then follow that if, in the document, it is written, “As of this date, but taking effect when I die,” then the recipient effects possession of the gift, but if not, he does not effect possession?*
- E. *Said Abbaye, “This is the sense of the passage: What is the gift of a healthy person that is equivalent to a gift in contemplation of death? in that the donee acquires the right of possession only after the death of the donor? It is a document in which it is written, “As of this date, but taking effect when I die.”*

- III.2. A.** *The reason that these documents are not to be handed over is that the donor has not said, "Give." But if he had said, "Give," then the document is valid and the gift is to be made.*
- B. *An objection was raised to that position: If one found wills, mortgage-deeds, or deeds of gift, even though both parties concur that they are valid, one should return them neither to this party nor to that party. [And this is without regard to whether or not he said, "Give."]*
- C. *Said R. Abba bar Mamal, "There is no contradiction. [19B] The one [Mishnah-passage] refers to a gift made by a healthy person, the other to a gift made in contemplation of death. Now as to our Mishnah, which, by implication, maintains that if the person who lost the document says, 'Give it,' it is to be handed over, refers to a gift made in contemplation of death, who can retract. For what can give us pause? That he may have originally had the document written for one party and then changed his mind and not handed it over to him and then may have had a deed written for another party and actually handed it over to him, but now he has made up his mind not to give it to him after all? If he had given it to the latter in the status of a gift made by a healthy person, the latter suffers no loss when the donor changed his mind, for when two documents are set forth, the one bearing the later date confers possession, as he has retracted the earlier one. If, on the other hand, he gave it to the latter when the donor was in the status of one who was dying [so it is a gift in contemplation of death], the latter suffers no loss, for the last person acquires the gift, the donor having withdrawn it from the former [following Daiches throughout].*
- D. *"But the other [at IV.1.B], which takes the view that even if both parties concur that the document is valid, the document is not to be returned to either one, deals with a healthy person. Such a person cannot retract the gift. Why not return the document? We say, 'Perhaps the donor, who had it written originally for this party, changed his mind and did not give it to him; he wrote another document for someone else and gave it to him; now he has decided not to let him have it, and he argues as follows: I cannot withdraw the gift from him. So I'll tell the judges that I gave it to this person, and they will return the document to him, and when he produces the earlier document, he will be entitled to the gift after all.' We therefore say to the donor, 'We cannot assign the document to this person, for it may be the fact that you wrote it for him but did not give it to him, and you gave it to someone else and have now changed your mind once more. If you have not really given it to a different person and you want to give it to this person, just write out another deed of donation and hand it over to him. For if you earlier did give the document to some other person, he will suffer no loss because of the new document, as the person who holds the document with the earlier date in any event will be entitled to the gift.'*
- E. *R. Zebid objected to this entire line of argument: "But lo, both the Mishnah-paragraph and the other deal with wills [and not deeds of gift]!"*
- F. *Rather, said R. Zebid, "Both of the statements of law deal with gifts in contemplation of death, but still, they do not contradict one another, for one deals with the donor himself [who is yet alive when the document is found and who orders it to be given to the person named in it], the other with his heir [after the*

father has died; the son claims the document]. Our Mishnah, which takes the view that if he said, "Give," they hand it over, refers to the dying man himself, since he has the power to retract if he wishes. So we take the view that even if he had given it to a third party, we do not cause any loss to that person when the donor changes his mind, for if both the first and the later document are produced, it is the later one that is valid, the first withdrawn. But the other teaching, which holds that even if both parties concede the validity of the document, it is not to be returned to either one, speaks of the concession on the part of the son and heir. The reason the document is not returned is this: we say, perhaps the father wrote it for this party and changed his mind and did not give it to him, and after the father's death, the son wrote up another deed for another party and gave it to him, but now he has decided not to let him have it, and he argues, since I cannot legally withdraw the gift, I will tell the judges that my father gave it to this person, and they will give the document to him and we shall go and take the gift away from the other, since this person will now be legally entitled to it, and both of us will split the profit. So we say to the son, 'We cannot give the document to the person you have named, since it may be the case that your father wrote it for him but did not give it to him, and then you gave it to someone else instead and have now changed your mind. If you are telling the truth in claiming that your father gave it to him, then go and write him another deed. Then, even if you father did not give it to him and you wrote it over to a different person, that other person will suffer no loss, for if the first and the second document are produced in court, the first is valid anyhow. [Following Daiches throughout].' [Daiches: he two documents have been written by the son, who is healthy, the owner of the first will be entitled to the gift, and the second document is null.]

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

- B. If one finds the receipt for the payment of a marriage settlement, when the wife concedes it is valid, one returns it to the husband. If the wife does not concede that it is valid, one should return it neither to this party nor to that party.
- C. *Now, in any event, when the wife concedes its validity, he should return it to the husband — but why not take account of the possibility that he had it written in Nisan but did not hand it over until Tishri, and the wife may then have gone and sold the value of her marriage-settlement to a third party for some consideration, and when the husband produces the receipt, showing the document was written in Nisan, he may unlawfully seize property from those who bought the value of the marriage-settlement in the interim.*
- D. *Said Raba, [20A] "This ruling [that we do not take account of that possibility] bears the inference that the position of Samuel is valid. For Samuel has said, 'He who sells a bond of indebtedness to a third party and then renounces the debt — the debt is deemed renounced [and does not have to be paid to the purchaser of the bond by the original debtor]. And even the heir to the bond has the right to renounce the debt.'"*
- E. *Said Abbaye, "Even if you take the view that the position of Samuel does not hold good, with what sort of a case do we deal here? It is a case in which the document of the marriage-settlement is produced by her. [This proves that the*

wife has not sold the property covered by the document, since if she had sold that property, the buyer would have taken possession of the document as well].”

- F. And Raba said, “If we take account of the availability of the document that sets forth the marriage-settlement, then take account of the possibility that there are two such documents!”
- G. And Abbaye said, “First of all, we do not take account of the possibility that there are two such documents covering the marriage-settlement, and, furthermore, a receipt for settlement of such a claim is valid from its date [the date the document was written, not the date on which the document was delivered; even if the debt had been sold in the interval, the buyer has no claim, so there is no support here for Samuel’s ruling (Daiches)].”
- H. Abbaye is consistent with views expressed elsewhere, for he has said, “The witnesses to a document by signing the document acquire what is covered by the document for the person for whom it is written.”

The initial interest is in ironing out contradictions between our rule and another one. At issue is whether we take account of the possibility that a writ of divorce has not been written for the particular occasion for which it is to be used — same husband, same wife, and no other; if that is not the case, then the writ is null. I.1, 2, 3 complete the investigation, which, as usual, is thorough and definitive. II.1 reverts to the exposition of the Mishnah’s details, and, it turns out, precisely the point of interest at II reappears. The entire composition is coherent and moves in a very logical progression; there is scarcely a point that is not necessary for the exposition of the underlying problem, which is, how the courts may avoid fraud achieved through forged documents, conveniently found on the street.

1:8

- A. [If] one found (1) documents of evaluation, (2) letters of alimony, (3) deeds of halisah rites or (4) of the exercise of the right of refusal, (5) deeds of arbitration, or any document which is prepared in a court,
- B. lo, this one should return [them].
- C. [If] he found them [wrapped up] (1) in a satchel or (2) a case,
- D. (3) a bundle of documents, or (4) a package of documents,
- E. lo, this one should return [them].
- F. How many are in a package of documents?
- G. Three tied together.
- H. Rabban Simeon b. Gamaliel, “[If one found a document which involved] a single individual who borrowed from three persons, he should return it to the borrower.
- I. “[But if the document concerned] three borrowers from a single individual, he should return it to the lender.”
- J. [If] he found a document among those belonging to him, and he does not know what it is,
- K. let it lie there until Elijah comes.

L. If [however] there were postscripts [notes of cancellation] along with them, let him act in accord with what is written in the postscripts. [Daiches: One must abide by the contents of the notes.]

I.1 A. What is the definition of **deeds of arbitration**? Here [in Babylonia] it has been explained as [Daiches:] “documents containing records of pleadings.”

B. R. Jeremiah said, “[Such a document records:] ‘This party chose for himself that one, and that party chose another.’”

II.1 A. **or any document which is prepared in a court, — lo, this one should return [them].**

B. *For there was the case of a writ of divorce that was found in the courthouse of R. Huna, in which it was written, “At Shavire, a place located by the canal Rakis.” Said R. Huna, [20B] “We take account of the possibility that there are two towns bearing the name Savire.”*

C. *Said R. Hisda to Rabbah, “Go and investigate that matter. In the evening session, R. Huna will ask you about it.” He went out and investigated and turned up the following teaching in the Mishnah that is pertinent to the case: ...any document which is prepared in a court — lo, this one should return [them] [M. B.M. 1:8A-B].* [Daiches: The endorsement of the court shows that the transaction referred to in the document has been completed, so that the apprehension that the person who authorized the document to be written may have changed his mind and refused to complete the transaction does not arise. As the writ of divorce referred to by R. Huna was found in the rabbi’s court house, it must be assumed that it was lost after it was dealt with by the court and that therefore it must be treated like a document endorsed by the court.]

D. *Said R. Amram to Rabbah, “How does the master solve a problem concerning a religious prohibition [e.g., the validity of a writ of divorce] on the basis of a ruling covering a matter of civil law [documents concerning commercial transactions]?”*

E. *He said to him, “Babbler! The Mishnah refers in the same context to **deeds of halisah rites or (4) of the exercise of the right of refusal!**”*

F. *The cedar column of the college split down the middle [in protest to such uncivil manners]. This party said, “It split on my account,” and the other, “It split on my account.”*

III.1. A. **[If] he found them [wrapped up] in a satchel or a case:**

B. *What is a satchel? Rabbah b. b. Hanah said, “A small bag.”*

C. *What is a case? Rabbah bar Samuel said, “A case used by old people” [Daiches] [cf. T. Baba Mesia 1:14].*

IV.1 A. **a bundle of documents, or a package of documents:**

B. *Our rabbis have taught on Tannaite authority:*

C. *How many documents add up to a bundle of documents? Three rolled together.*

D. *And how many documents add up to a package of documents? Three tied together.*

E. *Does that imply that the distinguishing mark is a knot? [Must there be a knot to characterize the package of documents?]*

- F. *Not at all, for lo, R. Hiyya taught on Tannaite authority: "Three rolled together."*
- G. *If that is so, then the package of documents is the same as a bundle of documents!*
- H. *In the case of a bundle, each document is placed on top of the other and then the whole is rolled up.*

V.1 A. [Supply: **How many are in a package of documents? Three tied together.**] *[When announcing the find,] what does the finder identify [as what he has turned up]?*

- B. *The number of documents.*
- C. *Then why specify "three" when the same rule would apply to a find of two documents?*
- D. *Rather, it is in accord with what Rabina said, "'He says he has found coins [without specifying the number, and the one who has lost the money has to identify how many coins he has lost].'"*
- E. *Here too, he announces the fact that he has turned up documents.*

VI.1 A. **Rabban Simeon b. Gamaliel, "[If one found a document which involved] a single individual who borrowed from three persons, he should return it to the borrower."**

- B. *For if it should enter your mind that they belong to the three lenders, then how did the documents happen to be brought together?*
- C. *Perhaps it was that all of them went with their documents to the clerk of the court to have them endorsed.*
- D. *But they already were endorsed!*
- E. *But perhaps they were dropped by the clerk of the court?*
- F. *People do not leave endorsed documents with a clerk!*

VII.1 A. **"[But if the document concerned] three borrowers from a single individual, he should return it to the lender."**

- B. *For if you should imagine that they belong to the borrowers [who got the documents back after paying off the bond], what are the documents doing together?*
- C. *Perhaps the people mentioned in the documents as borrowers went to the same clerk to have them written [and the clerk lost them after writing them; no money was ever lent on the strength of these documents]?*
- D. *There were written in three distinct hands.*
- E. *And perhaps the borrowers went to the clerk of the court to have them endorsed?*
- F. *The lender gets the endorsement, not the borrower.]*

VIII.1 A. **If [however] there were postscripts [notes of cancellation, which specifies that under certain conditions, e.g., the payment of the debt] the contract is cancelled] along with them, let him act in accord with what is written in the postscripts. [Daiches: One must abide by the contents of the notes.]**

- B. *Said R. Jeremiah bar Abba said Rab, "A note of cancellation that is produced by the lender [not the borrower], even if written in his own hand, is regarded as a joke and invalid.*

- C. *“And that is the rule not only in a case in which it is written in the handwriting of a scribe, in which case one may claim, ‘the scribe happened to meet the lender and wrote the note [so the lender could have it ready when the borrower would call to pay and ask for a receipt that the loan has been paid off],’ but even if it is in his own handwriting [and there is no reason that the lender should have written such a receipt before the borrower had paid his debt], it is still invalid. The lender was thinking [in writing the receipt], ‘Perhaps the borrower may come this evening and pay me, and if I do not give him the note of cancellation, he won’t pay me the money. So I’ll write it now, and when he brings me the money, I’ll give it to him.’”*
- D. *We have learned in the Mishnah: **If [however] there were postscripts [notes of cancellation, which specifies that under certain conditions, e.g., the payment of the debt] the contract is cancelled] along with them, let him act in accord with what is written in the postscripts.***
- E. *That is in line with what R. Safra said, “That was found among torn documents,” so here too, it was found among torn documents.” [Daiches: The bill to which the cancellation relates was found intact among torn documents, which shows that the cancellation is genuine, as otherwise the bill would not have been placed among the torn notes of indebtedness. That is why we treat it as a valid document and act in accord with what is written in the note of cancellation.]*
- F. *Come and take note of the following case: If among one’s documents a note stating, ‘the bond of Joseph b. Simeon is paid off,’ and there are two debtors with that name, the notes of both are deemed paid off. [This too conflicts with our Mishnah’s rule.]*
- G. *That is in line with what R. Safra said, “That was found among torn documents,” so here too, it was found among torn documents.”*
- H. *Come and take note of the following case [which suggests that a note of cancellation produced by the lender is valid and not invalid, as we have suggested just now]: “We take an oath [even though a note of cancellation has been found among the lender’s documents and is deemed valid] that our father has not given us instructions or said anything to us, and that we have not found any note among his documents to the effect that this note has been paid off” —*
- I. *That is in line with what R. Safra said, “That was found among torn documents,” so here too, it was found among torn documents.”*
- J. *Come and take note: A note of cancellation that bears signatures of its witnesses is to be corroborated by its witnesses [this is a note of cancellation held by a lender, who denies having been paid, and that is proven by the fact that the borrower did not surrender the note to the lender. The lender is not believed if the witnesses who signed the note testify that they signed it though they could not testify that the debt has been paid. Otherwise the lender is believed. This proves in any case that a note of cancellation in the possession of the lender is considered valid (Daiches)].*
- K. **[20A]** *We ask the witnesses to tell us whether or not the debt has been paid [and this does not contradict the principle just now laid down. Only if the witnesses attest that they saw the debt being paid is the lender not believed; then the note is valid. Otherwise we believe the lender and the note is invalid.]*

- L. *Come and take note:* A note of cancellation that bears signatures is valid [even if the lender holds it].
- M. *What sort of witnesses? They are the ones that attest to the confirmation of the document in court.*
- N. *That is a reasonable conclusion, for the final clause states, ...and one that bears no witnesses is invalid.*
- O. *Now what can be the sense of “and one that bears no witnesses”? If we say that there are no witnesses inscribed on the document at all, does the rule have to make the fact explicit that it is invalid?! But are these not that attest to the confirmation of the document in court?*

- VIII.2.** A. *Reverting to the body of the text cited above:* A note of cancellation that bears signatures of its witnesses is to be corroborated by its witnesses.
- B. If it does not bear signatures of witnesses, or if it is produced by a third party, or if the text of the document is located below the signatures of the notes of indebtedness [the cancellation is written on the note of indebtedness below the signatures], it is valid.
 - C. ...if it is produced by a third party — *it is valid, for lo, the lender has placed trust in the third party.*
 - D. ...or if the text of the document is located below the signatures of the notes of indebtedness — *it is valid, because if it had not been paid, the lender would not have invalidated the note.*

If the Talmud were principally a commentary to the Mishnah, the treatment of the present Mishnah-paragraph would form the model for the entire document. But for the chapter that concludes here, this is not the norm but the exception. The exegetical character is blatant.