

# IX.

## BAVLI BABA MESIA CHAPTER NINE

### FOLIOS 103A-116A

#### 9:1

- A. He who leases a field from his fellow [as tenant farmer or sharecropper],
  - B. in a place in which they are accustomed to cut [the crops], he must cut them.
  - C. [If the custom is] to uproot [the crops], he must uproot them.
  - D. [If the custom is] to plough after [reaping and so to turn the soil], he must plough.
  - E. All is in accord with the prevailing custom of the province.
  - F. Just as they split up the grain, so they split up the straw and stubble.
  - G. Just as they split up the wine, so they split up [103B] the [dead] branches and reed props.
  - H. And both [parties to the agreement] must provide reed props.
- I.1** A. *A Tannaite authority repeated:* in a locality in which people are accustomed to cut off the crops, one has not got the right to uproot them; to uproot them, one has not got the right to cut them off, and either party may prevent the other [from diverging from the usual practice].
- B. “to cut off the crops, one has not got the right to uproot them.” *for lo, he may say, “I want the field to be manured with stubble,” and the other may claim, “It is too much work to uproot the plants.”*
  - C. “to uproot them, one has not got the right to cut them off.” *[the landlord] can say, “I want my field to be cleared of stubble,” and the tenant can say, “I need the stubble [for my cattle, and I don’t want it to stay in the ground].”*
  - D. “and either party may prevent the other.” *why bother to make this point?*
  - E. *The sense is, “what is the reason,” namely, “what is the reason that in a locality in which people are accustomed to cut off the crops, one has not got the right to uproot them? and vice versa? It is because either party may prevent the other.”*
- II.1** A. [If the custom is] to plough after [reaping and so to turn the soil], he must plough:

- B. *That's obvious!*
- C. *No, it was necessary to make the point that in a place where people do not weed while the grain is standing, and the lessee went and weeded it, I might have thought that he can plead, "I weeded it so as not to have to plough later on." Therefore we are taught that that condition has to be stipulated at the outset.*

### **III.1 A. All is in accord with the prevailing custom of the province:**

- B. *What is it that "all" is meant to encompass?*
- C. *It is meant to encompass that teaching that rabbis have stated on Tannaite authority:*
- D. **[He who leases a field from his fellow and there were trees in the field,] in a place in which people are accustomed to rent out trees along with the field, lo, they are deemed to belong to the lessee. And in a place in which people are accustomed to rent out trees by themselves, lo, they belong to the lessor [T. B.M. 9:4A-F].**
- E. **in a place in which people are accustomed to rent out trees along with the field, lo, they are deemed to belong to the lessee — that is perfectly self-evident!**
- F. *The rule is required to cover a case in which everyone ordinarily leases fields for a third share, while he went and leased it for a quarter share. I might have thought that the lessor can plead, "I charged you a lower rental in the assumption that you would have no share in the produce of the trees." Therefore we are informed that such a stipulation should have been made at the outset.*
- G. **And in a place in which people are accustomed to rent out trees by themselves, lo, they belong to the lessor — that is perfectly self-evident!**
- H. *The rule is required to cover a case in which everyone ordinarily leases fields for a quarter share, while he went and leased it for a third share. I might have thought that the lessor can plead, "I paid you a higher rental in the assumption that I would have a share in the produce of the trees." Therefore we are informed that such a stipulation should have been made at the outset.*

### **IV.1 A. Just as they split up the grain, so they split up the straw and stubble.**

- B. *Said R. Joseph, "In Babylonia the custom is not to give the straw to the sharecropper."*
- C. *What difference does it make?*
- D. *If there is someone who does give it, that is his own generosity, and he does not thereby establish a precedent.*

### **IV.2. A. Said R. Joseph, "The lowest, middle, and top layers, and thorn stakes, must be provided by the landowner; the shrubs, by the tenants.**

- B. *"This is the governing rule: whatever is required to mark the boundary line of the field must be supplied by the landlord; whatever is required for additional protection of the crop must be supplied by the sharecropper."*
- 3. A. *Said R. Joseph, "The mattock, shovel, bucket, and hose must be furnished by the landlord; the tenant must cut the dikes."*

### **V.1 A. Just as they split up the wine, so they split up [the [dead] branches and reed props.**

- B. *What are the canes for?*

C. *Said the household of R. Yannai, "Smooth canes, used for propping up vines."*

**VI.1** A. **And both [parties to the agreement] must provide reed props.**

B. *What is the point of this statement?*

C. *The framer of the passage supplies the reason for the rule, specifically, "what is the reason for the rule that they split up [the [dead] branches and reed props? It is because both [parties to the agreement] must provide reed props.*

All I see here is Mishnah-commentary, pure and simple. The systematic, orderly, and routine character of the Talmud's Mishnah-commentary hardly requires comment.

## 9:2

A. **He who leases a field from his fellow,**

B. **which is an irrigated field,**

C. **or an orchard field —**

D. **[if] the water source went dry,**

E. **or the trees were cut down,**

F. **[the tenant] may not deduct [the damages] from the rental.**

G. **If he had said to him, "Lease me this irrigated field," or ". . . this orchard field,"**

H. **and the water source went dry,**

I. **or the trees were cut down,**

J. **[the tenant] may deduct [the damages] from the rental.**

**I.1** A. *What is the imagined situation to which this rule pertains? If it is a case in which the principal source of water dried up, then why cannot the tenant reduce the rent? Let him say, "It's a catastrophe for everybody [and you too must share the loss]"?*

B. *Said R. Pappa, "We deal with a case in which the smaller canal dried up [that supplied that field], so that the landlord] can say to him, [104A] 'You ought to have brought up the water in buckets.'"*

**I.2.** A. *Said R. Pappa, "The first two Mishnah-paragraphs pertain to cases in which there is either a fixed rental lease or a lease based on a percentage of the crop, but in the later Mishnah-paragraphs in the chapter, the rules that apply to a percentage lease do not apply to a fixed rental, and those that apply to a fixed rental do not apply to a percentage lease."*

**II.1** A. **If he had said to him, "Lease me this irrigated field," or ". . . this orchard field," and the water source went dry, or the trees were cut down, [the tenant] may deduct [the damages] from the rental:**

B. *Why should that be the rule? Let the landlord say to him, "What I meant to tell you was simply the name of the field in general [but I never guaranteed the source of the water]." Has it not been taught on Tannaite authority: He who says to his fellow, "I am selling you a bet kor," even though the field can hold only a letekh, it is a valid sale, because he has sold him only a place using its generic name; that is so, on the condition that it is called a kor-field. "I am selling you a vineyard," even if it contains no vines, it is a valid sale, because he has sold him only a place using its generic name; that is so, on the condition that it is called a*

*vineyard-field. "I am selling you an orchard," even if it contains no pomegranates, it is a valid sale, because he has sold him only a place using its generic name; that is so, on the condition that it is called an orchard-field. Thus we see that he may validly claim, "What I meant to tell you was simply the name of the field in general." So here too, he may validly claim, "What I meant to tell you was simply the name of the field in general [but I never guaranteed the source of the water]."*

- C. *Said Samuel, "There is no real contradiction. In the latter case [covered by the Tannaite statement], this is a statement from the lessor to the lessee, in the Mishnah's case, the statement came from the lessee to the lessor. If the lessor stated it to the lessee, it is simply the generic name of the area, but if the lessee said it to the lessor, it is meant to make the transaction specific to these conditions."*
- D. *Rabina said, "Both cases refer to a case in which the lessor made the statement to the lessee. But once he says, 'This field,' it means we are dealing with a situation in which he is standing right there. Then why tell him that it requires irrigation? The sense is, 'a field depending on irrigation as now in existence [with the water flowing to the field without having to be carried into it].'"*  
I see only Mishnah-amplification, with little secondary expansion or attention to broadly-pertinent abstract principles.

### 9:3

- A. **He who [as a sharecropper] leases a field from his fellow and then lets it lie fallow —**
- B. **they make an estimate of how much [the field] is suitable to produce,**
- C. **[and the tenant] pays [that amount] to [the landlord].**
- D. **For thus does he write to him [in the writ of occupancy or lease],**
- E. **"If I let the field lie fallow and do not work it, I shall make it up to you at its highest rate of yield."**
- I.1** A. R. Meir would base rulings on the interpretation of common speech. *For it has been taught on Tannaite authority:*
- B. **[He who as a sharecropper leases a field from his fellow and then lets it lie fallow — they make an estimate of how much the field is suitable to produce, and the tenant] pays that amount to the landlord. For thus does he write to him in the writ of occupancy or lease,] "If I let the field lie fallow and do not work it, I shall make it up to you at its highest rate of yield" [T. Ket. 4:10A-C].**
- C. R. Judah would base rulings on the interpretation of common speech. *For it has been taught on Tannaite authority:*
- D. **R. Judah said, "A man brings in behalf of his wife all the offerings that she owes, even if she ate prohibited fat, or even if she desecrated the Sabbath, for thus does he write for her in her marriage contract: 'And obligations that you owe will be mine from before up to now'" [T. Ket. 4:11A-D]/**
- E. Hillel the Elder would base rulings on the interpretation of common speech. *For it has been taught on Tannaite authority:*

- F. The Alexandrians would betroth a woman, afterward someone else would come along and grab her right out of the market. Such an incident came before sages, and they considered declaring the children to be mamzers. Hillel the Elder said to them, “Show me the marriage contract of your mothers.” They showed them to him, and written in it was the following language: “When you will enter my house, you will be my wife in accord with the law of Moses and Israel” [but not before that time, on the strength of which he decided that they were not subject to prior transactions and the children were not mamzers] [T. Ket. 4:9A-F].
- G. R. Joshua b. Qorha would base rulings on the interpretation of common speech. *For it has been taught on Tannaite authority:*
- H. **“He who lends money to his fellow should not exact a pledge that is more valuable than the debt. For thus does the borrower write to him in the bond: ‘You will be paid from my property, from property that I acquire from before up to now’”** [T. Ket. 4:12].
- I. *Now the reason that he may claim the value of the pledge is only because that is what he wrote. Had he not written this language, he would not have had title to the pledge.*
- J. But has not R. Yohanan said, “If one took a pledge from the debtor and returned it to him, and then the debtor died, the lender may seize the pledge from his children”? [It is not regard as movable property of an estate, which the creditor cannot seize. This proves that he has a title to the pledge even without the written proviso (Freedman)].
- K. **[104B]** *The writing of the clause has the effect of weighing against depreciation* [so that if the value of the pledge depreciated, the creditor is assured he will receive full value as at the time he returns it, and can seize other objects of the debtor in order to get what is owing (Freedman)].
- L. R. Yosé [the Galilean] would base rulings on the interpretation of common speech. *For it has been taught on Tannaite authority:*
- M. **In a place in which they collect the marriage-contract as a loan, they collect it as a loan. When it is the custom to double the actual sum in the writing of the marriage-contract, they collect only half** [T. Ket. 4:13A-B].
- N. *The Neharbelai people would collect a third [of the actual amount, the sum having been trebled].*
- O. *Maremar would give the husband the power to collect even the addition.*
- P. *Said Rabina to Maremar, “But has it not been taught on Tannaite authority, When it is the custom to double the actual sum in the writing of the marriage-contract, they collect only half?”*
- Q. *There is no contradiction, in the one instance, an act of possession was carried out, in the other not* [so in the former case the husband had acquired title to the whole (Freedman)].
- I.2.** A. *Rabina incised in the marriage-contract of his daughter a larger amount than he was actually giving.*
- B. *The other party said to him, “Then let us effect possession from you.”*

- C. *He said to him, "If there is an act of taking possession, then there is no language of doubling the amount, and if there is a language involving the doubling of the amount, then there is no act of taking possession."*

**I.3.** A. *Someone once said, "Give four hundred zuz to my daughter as her marriage contract."*

- B. *Sent R. Aha, son of R. Avia, to R. Ashi, "Does the four hundred zuz mean the actual dowry, so in the contract eight hundred are to be written, or is it four hundred zuz to be written, which are the real sum of two hundred zuz?"*

- C. *Said R. Ashi, "Let us see. If he said, 'Give her four hundred zuz, which are eight hundred,' or did he say, 'Write for her four hundred zuz, which are two hundred'?"*

- D. *Others say, said R. Ashi, "Let us see. If he said, 'For her marriage-contract, it is four hundred zuz, which are eight hundred,' or if he said, 'For her marriage-contract, a hundred zuz, which are two hundred.'"*

- E. *But that is not so. Whether he said "for her marriage contract" or "in her marriage contract," it means four hundred that are written, which are two hundred in fact, unless he used the language, "Give her," without further qualification.*

**I.4** A. *Someone once leased a field leased a field from his fellow and said, "If I do not cultivate it, I will give you a thousand zuz."*

- B. *He left a third of it uncultivated. Ruled the Nehardeans, "It is right and proper that he should give him three hundred thirty-three and a third zuz."*

- C. *Raba said, "It is a mere come-on, and a come-on does not effect acquisition."*

- D. *But in Raba's view, how does this case differ from that which is covered in the Mishnah's statement, "If I let the field lie fallow and do not work it, I shall make it up to you at its highest rate of yield"?*

- E. *In that case there is no exaggeration, but here, since the man stated such a ridiculously large sum, it was meant as mere exaggeration [and is not taken seriously].*

**I.5** A. *Someone once leased a field for sesame but sowed it in wheat, and the wheat appreciated to the value of sesame.*

- B. *R. Kahana considered ruling, "He may give him a deduction from the percentage that is due because of the lesser leaching of the soil [since sesame takes more out of the soil than wheat does, and the crop lost nothing in value, and the profit was the same, but the soil was less exhausted than it would have been]."*

- C. *Said R. Ashi to R. Kahana, "People say, 'Let the soil become exhausted, but not the owner'" [Freedman: he should have carried out his contract and not jeopardized the owner's receipts; he cannot make a deduction now].*

**I.6.** A. *Someone once leased a field for sesame but sowed it in wheat, and the wheat appreciated to more than the value of sesame.*

- B. *Rabina considered ruling, "Let him give the tenant the increase in value [so that the lessor gets his share only of the value of the sesame crop that might have come up, rather than the wheat that has come up]."*



- C. *Said R. Aha of Difti to Rabina, "Now was the tenant the sole cause of the higher yield, and did the earth contribute nothing? [Both contributed, both share as before]."*

### **Collection of Sayings of Raba on Trading Agreements**

- I.7** A. *The Nehardeans said, "A trading contract [by which an investor gives a trader money to invest on their joint behalf, with the investor taking a greater share of the risk, the trader a greater share of the profit, e.g., half the profit but two-thirds of the loss, or a third of the profit but half the loss, being assigned to the investor, thus avoiding the appearance of usury] is classed partially as a loan, partially as a bailment. Rabbis made the contract in such a way that it is equally satisfactory to the lender and to the borrower"*
- B. *Now that you have said that it is classed partially as a loan, partially as a bailment, if the trader wants to use the money to buy beer with the part that is the loan, he may do so.*
- C. *Raba said, "[Not at all, for] that is precisely why it is called a trading contract, for he may say to him, 'When I gave you the money, it was to do business with it, and not to drink beer with it.'"*
- D. *Said R. Idi bar Abin, "And if the trader dies, the funds are treated vis à vis his estate as movables [the half that is a loan is movables, not subject to seizure for debt, and the investor loses his money]."*
- E. *Raba said, "[Not at all, for] it is called a trading contract, for if the trader should die, it is not classed as movables vis à vis his estate."*
- I.8.** A. *And said Raba, "If there are one trading agreement and two bonds, the loss is assigned to the creditor. [105A] If there are two trading agreements and one bond, the loss is assigned to the debtor."* [Freedman: If the investor invests two bales of goods and draws up one bond, if there is a loss upon one and a profit on the other, it is all counted as one investment and he gets a third of the net profit upon both. If he draws up a separate instrument for each, he bears half of the loss incurred on one and gets a third of the profit on the other, and so is at a disadvantage. If two trading agreements were arranged on different dates but record in one note, the upshot is the opposite and to the investor's disadvantage.]
- I.9** A. *And said Raba, "If someone accepted a trading agreement from his fellow and lost money on it but made good the loss by special effort and had not yet told the investor of the loss, he cannot say to him, 'Deduct the loss that took place,' because the other can say, 'You took the trouble of making up the loss so as to avoid the reputation of being a loser.'"*
- I.10** A. *And said Raba, "If two men accepted a trading agreement with one another and made a profit, and [prior to the terminal date of the agreement] one said to the other, 'Come, let's make the division,' and if the other said to him, 'Let's reinvest and make more,' it is only right that he may prevent the termination of the agreement. If the one claims, 'Let me have half the profits,' the other can say, 'The profit is mortgaged for the principal,' and if he says, 'Give me half the profits and half the principal,' he can say, 'the parts of the trading agreement are interdependent.' If he says, 'Let's divide the profit and the principal, and if you*

*incur a loss, I will bear it with you,' he can answer, 'No, the luck [‘star’] of two will be better than the luck of one.’”*

I.1-4 are a sustained commentary to the cited passage of the Tosefta; the whole is inserted here only because it opens with a verbatim citation of our Mishnah-passage. II.1ff. is organized around the rulings of Raba, which accounts for the inclusion of both what is relevant, No. 1, and what is not, which is everything else.

#### 9:4

- A. **He who leases a field from his fellow and did not want to weed it,**
- B. **and said [to the landlord], “What difference does it make to you? I’m going to give you the rental anyhow!” —**
- C. **they pay no attention to [his claim].**
- D. **For the [landlord] has the right to say to him, “Tomorrow you’re going to leave this field, and it’s going to give me nothing but weeds!”**
- I.1 A. *If the tenant should say, “I’ll plow it for you later on,” the landlord can say, “I want good wheat.”*
- B. *If the tenant should say, “I’ll buy you good wheat from the market,” the landlord can say, “I want wheat from my own soil.”*
- C. *If the tenant should say, “I’ll weed for you the area that would serve for your share,” the landlord can say, [Freedman:] “You’ll bring my land into disrepute [if it is overgrown with weeds].”*
- D. *But have we not learned in the Mishnah, “Tomorrow you’re going to leave this field, and it’s going to give me nothing but weeds!” [Does that reply not serve for all these cases anyhow?]*
- E. *He can answer him, “Once the bung of the jug has fallen, it can’t be put back [and even if you plow later on, the roots will have taken root and cannot be entirely removed].”*

The entire Talmud serves to clarify the situations covered by the rule of the Mishnah. This is to be classed as routine Mishnah-commentary.

#### 9:5

- A. **He who leases a field from his fellow,**
- B. **and it did not produce [a crop],**
- C. **if there was in it [nonetheless sufficient growth] to produce a heap [of grain],**
- D. **[the lessee] is liable to tend it.**
- E. **Said R. Judah, “What sort of measure is ‘a heap’?**
- F. **“But: if [the field yields only] so much [grain as had been] sown [there, for re-seeding next year, he is liable to tend it].”**
- I.1 A. *Our rabbis have taught on Tannaite authority:*
- B. **He who leases a field from his fellow, and it did not produce [a crop], if there was in it [nonetheless sufficient growth] to produce a heap [of grain], [the lessee] is liable to tend it. For thus he writes in the lease: “I shall plow, sow, weed, cut, and make a pile of grain before you, and you will then come and take half of the grain and straw. And for my work and expenses, I shall take the other half” [T. B.M. 9:13A-D].**



**I.2** A. And how much is meant by **sufficient growth] to produce a heap [of grain]**?

D. Said R. Yosé b. R. Hanina, “Enough to set up the winnowing fan in it.”

E. *The question was raised: “What if the winnowing fan protrudes from both sides?”*

F. *Come and take note: said R. Abbahu, “For my part, I had an explanation from R. Yosé b. R. Hanina, ‘Enough so that [Freedman:] the receiver does not see the sun.’”*

G. *It has been stated:*

H. Levi said, “It is three seahs of wheat.”

I. *The household of R. Yannai say, “Two seahs.”*

J. Said R. Simeon b. Laqish, “The two seahs of which they spoke exclude expenses.”

### **Further Definitions of Volume and Other Fixed Measures**

**I.3.** A. *There we have learned in the Mishnah:*

B. **Wild olives and grapes —**

C. **the House of Shammai declare susceptible to uncleanness.**

D. **And the House of Hillel declare insusceptible to uncleanness [M. Uqs. 3:6D-F].**

E. *What is meant by “wild olives”?*

F. Said R. Huna, “Thieving olives [the ones that take water and care but in the end yield little oil].”

G. *Said R. Joseph, “And what verse of Scripture sustains that view? ‘Also the thieves of your people shall exalt themselves to establish the vision, but they shall fail’ (Dan. 11:14).”*

H. *R. Nahman b. Isaac said, “It is from here: ‘if he beget a son that is a robber, a shedder of blood’ (Eze. 18:10).”*

I. *And what is the volume of oil of such negligible volume that the olives are classed as “thieving olives”?*

J. *R. Eleazar said, “Four qabs per loading [up the beam of the olive press. If the olives then do not yield more than four qabs, they are so classified].”*

K. *The household of R. Yannai say, “Two seahs per loading of the beam.”*

L. *But they really do not differ. The one speaks of a locale in which they put one kor into the press at a time, the other, where they put three kors into the press at a time.*

**I:4** A. *Our rabbis have taught on Tannaite authority:*

B. **[105B] [The Zab and the clean person who] climbed up on a tree which was shaky, or on a branch that was shaky on a firm tree, [the clean person, having been on an object that has been shaken by a person afflicted by flux, such as is described in Lev. 15] [M. Zab. 3:1G-H]**

- C. *What then would be a tree that was shaky?*
- D. The household of R. Yannai say, “Any tree the roots of which lack sufficient strength for a quarter-qab to be hollowed out of it.”
- E. *And what is a shaky branch?*
- F. Said R. Simeon b. Laqish, “[Freedman:] that which is hidden in the grip of the hand.”

**I.5** A. *There we have learned on Tannaite authority:*

- B. **He who walks through a grave area on stones that he cannot move, on a man, or on a strong cow, is clean. He who walks through a grave area on stones that he can dislodge, on a weak man, or on a weak cow, is unclean [M. Oh. 18:6A-B].**
- C. *What is the definition of a weak man?*
- D. Said R. Simeon b. Laqish, “[Freedman:] any one whose knees knock together because of the weight of the rider on him.”
- E. *What is the definition of a weak cow?*
- F. The household of R. Yannai say, “Any one on which the weight of the rider causes the cow to drop pieces of shit.”

**I.6** A. *Said the household of R. Yannai, “For the purposes of prayer and for phylacteries, the limit of a burden is four qabs.”*

- B. *What is the context in which the limit is specified as to prayer?*
- C. *It is in line with that which is taught on Tannaite authority:*
- D. He who is carrying a burden on his shoulder and the time for reciting the Prayer has come — if it is a weight of less than four qabs, he throws it over his shoulder and recites the Prayer. If it is of four qabs’ weight, he puts it on the ground and then says his prayer.
- E. *What is the context in which the limit is specified as to tefillin?*
- F. *It is in line with that which is taught on Tannaite authority:*
- G. If on one’s head one was carrying a load, and had tefillin on his head as well, if the phylacteries are crushed on the burden, it is forbidden; if not, it is permitted.
- H. And what is the weight of the burden that is in mind?
- I. Four qabs.

**I.7** A. *R. Hiyya taught on Tannaite authority:*

- B. He who is carrying out loads of manure on his head and has his tefillin on his head, lo, this one should not put them off to the side nor put them on his

loins, because that would be disrespectful; but he must bind them on his hand where he normally puts the tefillin of the arm.

C. In behalf of the household of Shila they said, "Even their wrapper may not be placed on the head as a burden while one is wearing tefillin."

D. *And how much [a burden on the head is forbidden if one is wearing tefillin]?*

E. *Said Abbaye, "Even a sixteenth of a Pumbeditan weight."*

**II.1** A. **Said R. Judah, "What sort of measure is 'a heap'? But: if [the field yields only] so much [grain as had been] sown [there, for re-seeding next year, he is liable to tend it]:"**

B. And how much is required for re-seeding?

C. R. Ammi said R. Yohanan said, "Four seahs to a kor of land."

D. R. Ammi in his own name said, "Eight seahs to a kor."

E. *An old man said to R. Hama son of Rabbah bar Abbahu, "I'll explain the difference to you. In the time of R. Yohanan, the land was fertile, and in the time of R. Ammi, it was poor."*

**II.2.** A. **There was have learned in the Mishnah: As for wind that has scattered sheaves over an area from which gleanings have not been collected, with the result that it is not clear what produce belongs to the householder, and what produce belongs to the poor — they estimate how much of the field's produce is likely to be subject to the restrictions of gleanings and the householder gives this amount of the produce to the poor. Rabban Simeon b. Gamaliel says, "He gives to the poor the amount of produce that is thrown to the ground when sowing the field" [M. **Peah. 5:1D-F**].**

B. *And how much is the amount of produce that is thrown to the ground when sowing the field?*

C. *When R. Dimi came, he said R. Yohanan [said], and some say, it was in the name of R. Yohanan, "For qabs per kor."*

D. *R. Jeremiah raised the question, "Is it per kor that is sown or per kor that is harvested? And if it means for a kor that is sown, is it a kor that is sown by hand or by oxen?"*

E. *Come and take note: when Rabin came, he said in the name of R. Abbahu in the name of R. Eleazar — others say, in the name of R. Yohanan, "Four qabs per kor of seed."*

F. *But the question is, is it a kor that is sown by hand or by oxen?"*

G. *That question stands.*

I.1-3 cite and gloss the Tosefta's treatment of our Mishnah-paragraph. The remainder of that unit would lend strong support to the opinion of those who characterize the Talmud of Babylonia as disorganized and lacking a well-crafted program of exposition, were it not for the simple fact that the whole forms a conglomeration of autonomous compositions on the problem of defining various

quantities to which discrete passages of the Mishnah or other Tannaite teachings make reference. Once we realize that in fact the opening unit forms an integral part of this essay on quantities, we understand that the whole was formulated within its own, clear logical principle of agglutination and then inserted here for obvious reasons. True enough, we have something other than sequential exposition of passages of the Mishnah. But the principle of forming the composite is perfectly clear and there is no problem in understanding why the framer of the Talmud has selected the passage for inclusion here.

## 9:6

- A. **He who leases a field from his fellow,**
- B. **and locusts ate it up,**
- C. **or it was blighted —**
- D. **if it is a disaster affecting the entire province,**
- E. **he may deduct [the damages] from his rental.**
- F. **If it is not a disaster affecting the entire province,**
- G. **he may not deduct it from his rental.**
- H. **R. Judah says, “If he had leased it for a [fixed] cash payment, whether or not [it was a disaster affecting the entire province] he may not deduct [the damages] from his rental.**

**I.1** A. *What is the definition of a disaster affecting the entire province?*

B. *Said R. Judah, “For example, if the greater part of the plain [where that field was located] was subjected to blast.”*

C. *Ulla said, “For example, if four fields on all four sides were blasted.”*

**I.2.** A. *Said Ulla, “In the West they raised this question: “If one furrow was blasted over the entire length? If one furrow was left unblasted over the entire length? If pits lay between [the blasted area]? If they were separated by a field of fodder? [106A] If a different cereal separated the blasted area? If wheat different seed from barley? If others were smitten by blasting and his crop by mildew, or others by mildew and his by blasting? What is the law?”*

B. *These questions stand.*

**I.3.** A. *If the landlord had said to the tenant, “Sow it with wheat,” but he went and sowed it with barley, and then the greater part of the plain was blasted and his barley was blasted. What is the result? Do we rule, “He may plead, ‘If it were sown with wheat, it also would have been blasted?’ Or perhaps he can say to him, ‘If you had sown it with wheat, through me would have been realized this verse: ‘You shall also decree a thing and it shall come about for you’ (Job. 22:28)’?”*

C. *It stands to reason that the landowner may say to him, “If you had sown it with wheat, through me would have been realized this verse: ‘You shall also decree a thing and it shall come about for you’ (Job. 22:28).”*

**I.4.** A. *If all of the fields belonging to the landlord were blasted, and this one also along with them, but the greater part of the plain was otherwise not blasted, what is the ruling? Do we rule, “Since the greater part of the plain was not blasted, he may take no deduction? Or perhaps, since all of this man’s lands were blasted, he can*

say to him, "This came about because of your bad luck, since, after all, all your fields have been blasted"?

- B. *It stands to reason that the landowner may say to him, "If it were on account of my bad luck, something would have remained untouched: 'For we are left but few of many' (Jer. 42: 2)."*

**I.5.** A. *If all of the fields of the tenant were blasted, along with the greater part of the plain, and this field also was blasted with them, do we then rule, "Since the greater part of the plain was blasted, he may make his deduction"? Or perhaps, since all his fields were blasted, the tenant can say to him, "It is because of your bad luck, since, after all, all your fields have been smitten"?*

- B. *It stands to reason that he may say to him, "It is due to your bad luck." Why so? Here too, if he should say to him, "If it were on account of my bad luck, something would have remained untouched: 'For we are left but few of many' (Jer. 42: 2)," the other may reply, "Had you been worthy that something should remain to you, something of yours would have survived."*

- C. *An objection was raised: [With reference to estimating what is owing on a field of possession that has been sold and that the seller wishes to redeem, which must remain in the purchasers possession for at least two years], if it was a year of blast or mildew or the Seventh Year or years like those of Elijah [drought], those years are not included in the count [of the two years].*

- D. *Now the Tannaite authority makes reference to blasting and mildew, deemed comparable to the years of Elijah. Just as in the years of Elijah there was no crop at all, so here too, there should have been no crop at all. But if there were some crops elsewhere, the purchaser is credited as having enjoyed a year's harvest, and we do not invoke the principle that it was a disaster affecting an entire province.*

- E. *Said R. Nahman bar Isaac, "That case is different, for Scripture says, 'According to the number of years of the harvests he shall sell to you' (Lev. 25:15), meaning, years in which, in the world at large, there is a crop."*

- F. *Said R. Ashi to R. Kahana, If that is the case, then the Seventh Year should count [in the number of years that the purchaser has enjoyed the field,] since there is a crop abroad [if not in the Land itself]!"*

- G. *He said to him, "The seventh year is removed from the count by a decree of the king."*

- H. *Said Mar Zutra son of R. Mari to Rabina, "If that is the case, [when someone sanctifies a field of possession, Lev. 27:16-19, and wishes to redeem it and has to pay a yearly rate from that point to the jubilee,] there too the Seventh Year should not be counted [in the rate to be paid], so why have we learned in the Mishnah: **He must pay a sela and a pundion per year [M. Ar. 7:1I]?**"*

- I. *He said to him, "The Seventh Year is to be differentiated, because it is suitable for spreading out fruits [to dry, and some use can be made of the land in the seventh year, since Scripture did not specify "years of harvests" in this connection (Freedman)]."*

**I.6.** A. [As to the rule that a deduction may be made when there is a blight affecting the entire province,] said Samuel, "That rule applies only if the tenant sowed the field

and the crop sprouted but the locust ate it up; but if he did not sow the field at all, that is not the case. *For the landowner may say to him, 'If you had sowed the field, through me would have been realized the verse, "They shall not be ashamed in the evil time, and in the days of famine they shall be satisfied" (Psa. 37:19).'*

- B. *R. Sheshet raised an objection: "A shepherd who was keeping his flock, but left his flock and went into town, and a wolf came and tore a lamb, or a lion came and trampled one — they do not say to him, 'If you had been there, you would have saved it.' Rather, they make an estate of him. If he had been able to save the lamb, he is liable to make restitution, but if not, he is exempt. Now why should that be the rule? Why can he not say to him, 'If you had been there, through me would have been realized the verse, "They shall not be ashamed in the evil time, and in the days of famine they shall be satisfied" (Psa. 37:19)?"*
- C. *The reason is that he can answer, "If you have been worthy of having a miracle done for you, it would have happened anyhow, just as in the case of R. Hanina b. Dosa, whose goats brought in bears pierced by their horns!"*
- D. *But let him reply, "True enough, I may not have been worthy of a truly formidable miracle, but I was, as a matter of fact, worthy for some sort of minor miracle!"*
- E. **[106B]** *That is a problem.*

- I.7. A.** *One Tannaite teaching states, [the tenant] must sow the field a first time and a second, but not a third [if there is a blight, he has to resow the field, and if he does not do so, he can make no deduction even on account of a widespread affliction. But he does not have to do it yet a third time.]*
- B. *Another Tannaite teaching states, [the tenant] must sow the field a third time but not a fourth.*
- C. *There is no contradiction among these rulings, for the one represents the view of Rabbi, the other, Rabban Simeon b. Gamaliel.*
  - D. *the one represents the view of Rabbi, who has said, through two occurrences a presumptive pattern is established;*
  - E. *the other, Rabban Simeon b. Gamaliel, who has said, a series is established by three occurrences.*
- F. *Said R. Simeon b. Laqish, "The rule pertains only to a case in which one sowed the field and it sprouted and then the locusts ate the crop. But if he sowed the field and it did not grow at all, the landlord can say to him, 'Keep on sowing the field during the additional period of sowing.'"*
  - G. *How long does that go on?*
  - H. *Said R. Pappa, "Until the sharecropper leaves the field and a certain constellation appears overhead."*
- I. *An objection to that view was raised on the basis of the following: Rabban Simeon b. Gamaliel in the name of R. Meir says, and so did R. Simeon b. Menassia say in accord with his view: "[Explaining Gen. 8:22], the second half of Tishri, Marheshvan, and the first half of Kislev is seed-time; the second half of Kislev, Tebet, and half of Shebat are the winter months. The second half of Shebat, Adar, and the first half of Nisan are the cold months. The second half of Nisan, Iyyar, and the first half of Sivan is harvest time. The second half of Sivan, Tammuz, and*



the first half of Ab are summer. The second half of Ab, Ellul, and the first half of Tishri are the hot months.” R. Judah counted these periods from the beginning of Tishri, and R. Simeon from Marheshvan. *Who gives the most lenient ruling of all [by starting the seasons late and giving the latest time for sowing seed]? It is R. Simeon, and yet he does not extend the sowing season that far!*

- J. *There is no problem, the latter speaks of a field leased for early sowing [of wheat and rye], the former, a field leased for late sowing [barley and pulse, sown in Adar].*

**II.1 A. R. Judah says, “If he had leased it for a [fixed] cash payment, whether or not [it was a disaster affecting the entire province] he may not deduct [the damages] from his rental:”**

- B. *Someone rented land for sowing garlic by the bank of the Malka Saba canal, on terms of a money rental. Then the Malka Saba canal was dammed up [so there was not enough water to grow garlic]. When the case came before Raba, he ruled, “It is not commonplace for the Malka Saba canal to be dammed up; this is a disaster affecting the entire province; go, take a deduction.”*
- C. *Rabbis protested to Raba, “But have we not learned in the Mishnah: If he had leased it for a [fixed] cash payment, whether or not [it was a disaster affecting the entire province] he may not deduct [the damages] from his rental?”*
- D. *He replied to them, “There is no one who takes into account the opinion of R. Judah in this matter.”*

Once we have glossed the Mishnah, I.1, we develop a variety of secondary, interstitial questions, which yield some clarifications of how we sort out differing pleas. These extend through No. 5. No. 6 then clarifies the meaning of “a blight affecting the region overall.” No. 7 once more addresses a detail to enrich the rule of the Mishnah. II.1 then glosses the Mishnah by telling us that the minority-opinion does not register.

## 9:7

- A. **He who leases a field from his fellow**
- B. **[in return] for ten kors of wheat a year,**
- C. **[if the field was] smitten [and produced poor-quality grain],**
- D. **[the tenant] pays him off [from produce grown] in [the field].**
- E. **[If] the grain which it produced was of good quality,**
- F. **he [has] not [got the right to] say to him, “Lo, I’m going to buy [your grain] in the marketplace.”**
- G. **But he pays him off [with produce grown] in [the field].**

**I.1 A.** *For a fee of several kors of barley, somebody leased a field to grow fodder. Once the crop of fodder was grown [in thirty days], he went and re-plowed the field and sowed it with barley. The barley was blighted. R. Habiba of Sura on the Euphrates sent word to Rabina, “What is the rule in such a case? Do we or do we not compare the case to the one covered by the law, [if the field was] smitten [and produced poor-quality grain],[the tenant] pays him off [from produce grown] in [the field]?”*

B. *He sent word to him, "How make such a comparison? In the case of the Mishnah, the soil did not carry out the mission of the owner, but here it did carry out the mission of the owner."* [Freedman: In the case in the Mishnah the field had been leased for barley and the barley had been smitten; the landlord must accept the rent out of the crop. Here the fodder, for which it had been rented, had not been affected, and the field had never been leased for barley; so the tenant must supply good barley, as he had promised to do.]

**I.2.** A. *Somebody leased a vineyard from his fellow in exchange for ten barrels of wine. The wine [produced by the grapes of the vineyard] turned sour. R. Nahman considered ruling, "This is along the lines of the Mishnah: [if the field was] smitten [and produced poor-quality grain],[the tenant] pays him off [from produce grown] in [the field]."*

B. *Said to him R. Ashi, "How make such a comparison? In the case of the Mishnah, the soil did not carry out the mission of the owner, but here it did carry out its mission. [since it did produce wine, so the tenant has to provide good wine]."*

C. *But R. Ashi concedes in the case of grapes that became wormy or a field the sheaves of which were blighted [that the landlord has to accept payment out of the crop of the vineyard or the field, which has produced what it was supposed to].*

Both cases clarify the application of the law of the Mishnah by comparing it to cases at hand.

## 9:8

A. **He who leases a field from his fellow**

B. **to sow barley in it**

C. **may not sow it with wheat.**

D. **[If he leased it to sow] wheat,**

E. **he may sow it with barley.**

F. **Rabban Simeon b. Gamaliel prohibits [doing so].**

G. **[If he leased it to sow] grain he may not sow it with pulse,**

H. **[to sow] pulse, he may sow it with grain.**

I. **Rabban Simeon b. Gamaliel prohibits [doing so].**

**I.1** A. *Said R. Hisda, "What is the scriptural basis for the ruling of R. Hisda? As it is written, 'The remnant of Israel shall not do iniquity nor speak lies; neither shall a deceitful tongue be found in their mouth' (Zep. 3:13)."*

**I.2** A. *An objection was raised [to the rule of M. 9:8D-F]: **The collection of alms for Purim must be distributed on Purim. And the collection of alms for a given town must be distributed in that town. They do not investigate too closely to see whether or not the poor are deserving. But they buy calves for the poor and slaughter them, and the poor consume them. And what is left over should not fall to the fund for charity. "Out of funds collected for Purim a poor person should not make a strap for his sandal, unless he so stipulated in the council of the citizens of that town," the words of R. Jacob stated in the name of R. Meir. But Rabban Simeon b. Gamaliel [107A] imposes a lenient ruling in this matter. [The passage continues: But they should be used only for food for the holiday.] R. Meir says, "He who borrows money from his***

**fellow to purchase produce with it should not purchase utensils with it. If he borrowed money for the purchaser of utensils, he should not buy produce with it, for he thereby deceives the lender.” (T. Meg. 1:5A-K)]**

- D. *Said Abbaye, “The reason of R. Simeon accords with the position of the master [Rabbah b. Nahmani], who has said, ‘If one wishes to let his land become sterile, let him sow it one year with wheat, the next with barley, one year lengthwise, the next crosswise. [Freedman: Therefore if he leased it for wheat, he may not sow it with barley, in the opinion of R. Simeon b. Gamaliel, lest wheat have been sown there the previous year.]’ But that is the case only if one does not plow after the harvest and again before sowing. If he does so, there is no harm.”*

**II.1 A. [If he leased it to sow] grain he may not sow it with pulse, [to sow] pulse, he may sow it with grain. Rabban Simeon b. Gamaliel prohibits [doing so]:**

- B. *R. Judah repeated the law to Rabin, “‘If one rented a field for grain, he may sow it with pulse.’”*
- C. *He said to him, “Lo, we have learned in the Mishnah: [If he leased it to sow] grain he may not sow it with pulse.”*
- D. *He said to him, “That is no contradiction. The one is our version [here in Babylonia], the other applies to them [those in the Land of Israel].”*

**Other Sayings of Judah to Rabin b. R. Nahman**

**II.2. A. Said R. Judah to Rabin b. R. Nahman, “My brother Rabin, “Cress that grows among flax is not subject to prohibition by reason of robbery. Those that stand at the borders of the field are forbidden.**

- B. *“But if it has hardened enough for sowing [and is fully grown], even that which grows among flax is subject to prohibition by reason of robbery. How come? Because what has been lost is already lost [and causes no further damage now (Freedman)].”*

**II.3. A. Said R. Judah to Rabin b. R. Nahman, “My brother Rabin, “Some of these [fruits] of mine are really yours, and yours are really mine. People whose land abuts, with a tree that stretches on both sides, customarily assign the tree to the field where the roots tend.”**

- B. *For it has been stated:*
- C. *As to a tree that stands on the boundary line between two fields —*
- D. *said Rab, “The part that stretches to this side is assigned to this side, and the part that stretches to that side is assigned to that side.*
- E. *And Samuel said, “They divide up the produce.”*
- F. *An objection was raised:*
- G. *As to a tree that stands at the border between two fields — let the owners of the two fields divide the produce.*
- H. *This refutes Rab.*
- I. *From the perspective of Rab’s position, Samuel interpreted the rule to speak of a case in which the tree takes up the whole breadth of the boundary [the roots, or branches overspreading the entire boundary].*
- J. *If that is the case, then what can the rule possibly tell us [that we did not already know]?*

- K. *It was necessary to deal with a case in which [Freedman:] the weight overhangs in one direction.*
- L. *Still, what can the rule possibly tell us [that we did not already know]?*
- M. *What might you have conceived? That one of the owners can say, "Divide it [so that you take the produce facing your field, and I['l take the produce facing mine]."* So we are informed that the other may say to him, "What makes you prefer to divide it that way? Divide it this way!"

**II.4.** A. Said R. Judah to Rabin b. R. Nahman, "My brother Rabin, don't buy land near a town."

- B. For said R. Abbahu said R. Huna said Rab, "It is forbidden for someone to stand over his neighbor's field when the crop is fully standing [so as not to cast an evil eye on the crop through his envy]."
- C. *Is this really so? But lo, R. Abba met the disciples of Rab and asked them, "What did Rab have to say about these verses of Scripture: 'Blessed shall you be in the town and blessed shall you be in the field, blessed shall you be when you come in and blessed shall you be when you go out' (Deu. 28:3, 6)."*
- D. *And they said to them, "This is what Rab said: "'Blessed shall you be in the town: that your house should be near the synagogue. "...and blessed shall you be in the field:" that your property should be near town. "...blessed shall you be when you come in." that when you have sexual relations you may never find that your wife is in doubt as to whether or not she is in her menstrual period; "...and blessed shall you be when you go out:" that your those that come forth from your loins should be like you."*
- E. *And R. Yohanan said to them, "This is not what he said. Rather: "'Blessed shall you be in the town:" that a privy may be near your table,' but as to a synagogue, he [said] nothing."*
- F. *Now R. Yohanan is entirely consistent with views expressed elsewhere, for he has said, "There is a reward in the steps [that one takes to walk to the synagogue]."*
- G. [Continuing E, Yohanan's report of Rab's treatment of the cited verses:] "'...and blessed shall you be in the field:" that your property should be divided, a third in grain, a third in olives, and a third in vines. "...blessed shall you be when you come in and blessed shall you be when you go out:" just as you came into the world without sin, so may your going out of the world be without sin."
- H. **[107B]** *There is no contradiction [between the versions of Rab's opinion], since the latter statement speaks of a field surrounded by a wall and a hedge [then one wants the field near town], the former when not [then it is better to have it away from other people]."*

**II.5.** A. "May the Lord remove from you all sickness" (Deu. 7: 5):

- B. Said Rab, "This refers to the evil eye."
- C. *Rab is consistent with views expressed elsewhere.*
- D. *For Rab went up to a cemetery, did what he did, [and] and said, "Ninety-nine people die of the evil eye, and one of natural causes."*

- E. And [of the verse, “May the Lord remove from you all sickness” (Deu. 7: 5)] Samuel said, “This refers to the wind.”
- F. *Samuel is consistent with views expressed elsewhere, for he said, “All [death] is on account of the wind.”*
- G. *But what about those that the state puts to death?*
- H. *As to those too, if it were not for the wind, one could make an ointment for them and they would survive.”*
- I. [Of the verse, “May the Lord remove from you all sickness” (Deu. 7: 5)] R. Hanina said, “This refers to the cold.”
- J. For said R. Hanina, “Everything is in the hand of Heaven, except for cold drafts: ‘Cold drafts are in the way of the arrogant, he who is careful shall be far from them’ (Pro. 22: 5).”
- K. [Of the verse, “May the Lord remove from you all sickness” (Deu. 7: 5)] R. Yosé b. R. Hanina said, “This refers to excretions.”
- L. For a master has said, “Excretions of the nose and ear in large volume are bad, in small volume are beneficial.”
- M. [Of the verse, “May the Lord remove from you all sickness” (Deu. 7: 5)] R. Eleazar said, “This refers to the gall.”
- N. *So too it has been taught on Tannaite authority:*
- O. The word “sickness” [in the verse] “May the Lord remove from you all sickness” (Deu. 7: 5)] refers to sickness caused by the gall. Why is it called by the Hebrew word for sickness? Because it renders sick the entire human frame.
- P. Another explanation: it is called by the Hebrew word for sickness because eighty-three types of disease [the Hebrew letters for the word for sickness bear the numerical value of eighty-three] derive from the gall, and all may be prevented by eating one’s morning bread with salt and drinking a pitcher of water.

### **Other Sayings on Cold, then on the Importance of Breakfast**

- II.6.** A. *Our rabbis have taught on Tannaite authority:*
- B. Thirteen things were said about breakfast [literally: bread in the morning]: it saves one from heat and cold, from winds and demons; it puts wisdom into the innocent and gives one a victory in a lawsuit; it makes one able to study and teach Torah; it allows one to have his opinions heeded and to hold on to his learning; he who eats breakfast does not perspire; he desires his wife and does not lust after other women; breakfast kills worms in the intestines.
- C. Some say, “It also drives out jealousy and brings in love.”
- II.7.** A. *Said Rabbah to Raba bar Meri, “What is the source of the saying, ‘Sixty runners sprint but can’t catch up with someone who eats breakfast’? Also the saying of rabbis, ‘Get up early and eat breakfast, in summer because of the heat, in winter, because of the cold’?”*
- B. *He said to him, “It is written, ‘They shall not hunger nor thirst, neither shall cold nor sun smite them’ (Isa. 49:10). ‘...neither shall cold nor sun smite them’ — why not? Because ‘They shall not hunger nor thirst.’”*
- C. *He said to him, “You derive the lesson from that verse, but I derive it from this one: ‘And you shall serve the Lord your God and he will bless you*

bread and your water' (Exo. 23:25). 'And you shall serve the Lord your God:' this refers to reciting the Shema and saying the Prayer. 'and he will bless your bread and your water:' this refers to a bread with salt and a pitcher of water. Then: 'And I will take sickness away from the midst of you' (Exo. 23:25)."

## **Miscellany on the Disposition of Land Subject to Subject to Common Ownership or to Conflicting Claims**

### **Obligations to the Common Good, Preemption of Property and Related Matters**

- II.8.** A. *Said R. Judah to R. Ada the surveyor, "Do not treat surveying contemptuously, because every single bit of land is suitable for planting garden saffron."*
- B. *Said R. Judah to R. Ada the surveyor, "You may treat lightly the four cubits on the canal banks, but the ones on river banks don't measure at all."* [People could not sow within four cubits of the border of a canal so as not to damage the banks, and these were marked off. The ones on the river banks were treated in the same way. These did not have to be surveyed at all (Freedman).]
- C. *R. Judah is consistent with positions expressed elsewhere, for R. Judah said, "The four cubits on the banks of the canal belong to the estate owners served by the canal, and those on the banks of a river are public domain."*
- II.9.** A. *R. Ammi proclaimed, "[All vegetation] on the shoulder-breadth of the barge-paths on both sides of the river cut down [and keep clear the path needed by the barge-pullers]."*
- B. *R. Nathan bar Hoshai had sixteen cubits cut down. The people of Nashronia came and beat him up.*
- C. *[In condemning under eminent domain as much as sixteen cubits] he thought that it was equivalent to the public way. But he was in error. Only in the case of the public road is that much space required, but here the space that is required is only what suffices for pulling the ropes; therefore only the full shoulder-width of the barge-path suffices.*
- II.10.** A. *Rabbah bar R. Huna had a forest by the river bank. They said to him, "Will the master cut down the trees?"*
- B. *He said to them, "Let the landowners above and below my property first clear their land, and then I'll cut down mine too."*
- C. *How could he have acted in such a way? Is it not written [that one must act in the public interest], "Gather yourselves together, yes, gather" (Zep. 2: 1), meaning, in the view of R. Simeon b. Laqish, "First adorn yourself, and then let others adorn themselves likewise."*
- C. *In the case at hand the other forests were the property of the household of Field-Marshall Parzaq. That is why he said, "If they cut down theirs, I'll cut down mine, and if they don't cut down theirs, why should I cut down mine? For if they still can pull on their ropes, they have space for walking, [108A] and if not, they cannot walk there anyhow [so why should I bother]?"*



- II.11.** A. *Rabbah bar R. Nahman was going along in a boat. He saw a forest on the river bank. He said to them, "Whose is it?"*
- B. *They said to him, "It belongs to Rabbah b. R. Huna."*
- C. *He cited the verse, "'Yes, the hand of the princes and rules has been chief in this trespass' (Ezra 9: 2)."* He said to them, *"Cut it down, cut it down."*
- D. *Rabbah bar R. Huna came along and found the forest cut down. He said, "Whoever cut it down — may his branches be cut down!"*
- E. *They say that for the rest of the life of Rabbah bar R. Huna none of the children of Rabbah b. R. Nahman survived.*
- F. *Said R. Judah, "While everybody, even orphans, must contribute to pay to repair holes in the walls, rabbis don't have to do so. Why not? Because rabbis don't need protection. But as for paying for digging wells, even rabbis are obligated. That is the case only if the people do not go out in bands [to dig the well on their own]. But if they do so, then rabbis are not obligated, because ditch-digging is not appropriate to the honor owing to them."*
- II.12.** A. *Said R. Judah, "As to dredging the river, the ones living down below must help the ones living up above, but the ones living up above don't have to help the ones living down below. And in regard to rain water, the reverse is the rule."*  
 [Freedman: If there are obstacles on the upper parts of the river, the water flow is adversely affected for the lower too. But there is no profit for the upper inhabitants to clear the lower portions, for the greater the ease with which the water runs downwards, the less water is left for them. With regard to the need of draining rainwater from roads and the like, those on the upper reaches must aid the lower, because if the water down below is not carried away, the upper will not drain off; but those living below have no benefit in the draining of the town situated at the upper reaches of the river.]
- C. *So too it has been taught on Tannaite authority:*
- D. *In a case in which five gardens draw water from a single well, if the well is damaged, all must help the upper field; so the lowest must aid the rest; but he must repair by himself.*
- E. *So too if five courts run off their water into one dike and the dike is damaged, all have to help the lowest with the repairs; the highest must assist all the others, but he must repair by himself.*
- II.13** A. *Said Samuel, "One who takes possession of the wharfage of a canal may be impudent, but they do not evict him [since Persian law assigns land to whoever pays the land tax for the property. If someone paid the tax, he could hold that land.]"*
- B. *Nowadays, when the Persians inscribe in the deed, "Possess [the field on the river bank] so far as the depth of water that reaches up to the horse's neck," he is evicted [since the landowners may fence their fields away from the canal, but the canal banks belong to them and no one can seize it].*
- II.14** A. *Said R. Judah said Rab, "One who seizes land that is located between fields belonging to brothers or partners may be impudent, but they do not evict him."*

- B. *But R. Nahman said, "They do too evict him. But if the operative consideration is only because of the right of preemption, he may not be evicted."*
- C. *The Nehardeans say, "Even if the operative consideration is only because of the right of preemption, he may be evicted. For it is said, 'And you shall do that which is right and good in the sight of the Lord' (Deu. 6:18)."*

- II.15** A. *If someone came and asked his advice [the advice of a neighbor who has the right to preempt a piece of property] and said, "Shall I go and buy it," and he said to him, "Go and buy it," is it or is it not necessary for him to acquire possession of the land from the other [confirming that the other has given up his right of preemption]?*
- B. *Rabina said, "It is not necessary for him to acquire possession of the land from the other [confirming that the other has given up his right of preemption]."*
  - C. *The Nehardeans say, "It is necessary for him to acquire possession of the land from the other [confirming that the other has given up his right of preemption]."*
  - D. *But the decided law is that it is necessary for him to acquire possession of the land from the other [confirming that the other has given up his right of preemption].*
  - E. *Now that you have ruled that it is necessary for him to acquire possession of the land from the other [confirming that the other has given up his right of preemption], if one did not effect acquisition of the entitlement but bought the field, if it rises or falls in value, it is in the ownership of the abutting neighbor.*
  - F. *If he bought it for a hundred zuz and it is now worth two hundred, we make an estimate: if the original seller would have sold it to anyone at the lower figure, the abutting neighbor pays the buyer a hundred zuz and takes over the land. But if not, and if it was a special favor to the buyer, he must pay him two hundred zuz and then he may take it.*
  - G. *If he bought it for two hundred and its value fell to one hundred, they at first considered that the abutting neighbor can say to him, "I sent you for my benefit, not for my hurt." [Freedman: the buyer has involuntarily become the neighbor's agent for purchase, and the latter can repudiate his act and insist on receiving the land at its market value.]*
  - H. *But Mar Qashisha ["the elder"] son of R. Hisda said to R. Ashi, "This is what the Nehardeans say in the name of R. Nahman, 'There is no plea of fraud in connection with real estate' [and the neighbor must pay the price that was paid by the buyer]."*

- II.16** A. *If someone sold a griva of land in the middle of his estate, we examine the case:*
- B. *if the land is of the best or of the worst quality, the sale is confirmed. [108B] But if not, then it is a mere evasion. [Freedman: If A buys a small piece of land in the middle of B's estate, he immediately becomes a neighbor to the surrounding estate, just as C, the original neighbor on the outer side, If the land bought by A is distinctly inferior or superior to the rest, it is natural that it should be sold separately, and the sale is genuine. But if it is just the same, then it is a mere fiction to make A the neighbor of B and therefore C retains his rights of preemption.]*

- II.17** A. *A gift of land is not subject to the law of preemption.*

- B. *Said Amemar, "If the donor had deeded [Freedman:] security of tenure ['in case it is seized for the donor's debt, another piece of land will be supplied], it is subject to the law of preemption. If one has sold all his property to a single purchaser, the law of preemption does not apply [Freedman: because the purchase might refuse to buy the rest if he must give up any portion thereof]. If one sold the land to the original owner, the law of preemption does not apply. If one buys land from or sells it to, a gentile, the law of preemption does not apply. If one buys land from a gentile, it is because the purchaser can say to the abutting neighbor, 'I have driven away a lion from your boundaries.' If he sells land to a gentile, it is because the gentile is not subject to the law, 'You shall do that which is good and right in the sight of the Lord' (Deu. 6:18). Still, the seller is excommunicated until such time as he accepts responsibility for any damages that the gentile may cause."*
- C. *A mortgage is not subject to the law of pre-emption.*
- D. *For said R. Ashi, "The elders of Mata Mehasia said to me, 'What is the meaning of the word for a mortgage? It is that the mortgage remains with the mortgagee [with the same Hebrew letters used in the words for mortgage and abide]. And what is the practical result of this fact? It has to do with pre-emption.'"*
- E. *If one sells property that is far from his home to buy property that is near, or sells inferior property to buy better property, the law of preemption does not apply [Freedman: since the seller may suffer through the delay, and no privilege is given to one that entails a disadvantage to another].*
- F. *If real estate is sold to pay the poll tax, alimony, or funeral expenses, the law of pre-emption does not apply.*
- G. *For the Nehardeans have said, "To pay the poll tax, alimony, or funeral expenses, real estate may be sold without a prior public announcement [of the sale, for open bidding]."*
- H. *A sale of real estate to a woman, an estate, or a partner [for the same reason] is not subject to the law of pre-emption.*

- II.18** A. *If the choice is a sale to neighbors in town or neighbors in the country, the former take priority. [Freedman: if A is selling a field and B is his neighbor in town, having a house next to his, while C is a neighbor of a field belonging to A but not of that which is up for sale, so that neither is a neighbor of the field to be sold, priority must be given to the urban neighbor, B. This does not refer to preemption at all.]*
- B. *If the choice is between a neighbor [not located near the field up for sale] and a disciple of a sage, the latter takes precedence; if the choice is between a relative and a disciple of a sage, the latter takes precedence.*
- C. *The question was raised: what is the ordering of precedence as between a neighbor and a relative?*
- D. *Come and take note: "Better is a neighbor who is near than a brother who is distant" (Pro. 27:10).*

- II.19** A. *If one offers well-formed coins and the other full-weight coins, the law of pre-emption does not apply.*

- B. *If the coins of the abutting neighbor are bound up, and those of the purchaser unsealed, there is no right of pre-emption.*
- C. *If the neighbor says, "I will go and make the effort and bring money, we do not wait on him." But if he says, "I will go and bring money," we consider the proposition. If he is sufficiently substantial to be able to go and bring the money forthwith, we wait on him; if not, we do not wait on him.*
- D. *If the land belongs to one party and the buildings on the land to another, the former can stand in the way of the latter [who cannot sell the buildings to a stranger, if the land-owner wants to buy the buildings for himself], but the latter cannot stand in the way of the former.*
- E. *If the land belongs to one and palm trees on it to another, the landowner can stand in the way of the tree-owner, but the tree-owner cannot stand in the way of the landowner.*
- F. *If someone wants to buy the land to build houses, and the abutting neighbor wants the land for planting, building houses takes precedence, and the law of pre-emption does not apply.*
- G. *If there is a rocky ridge or a grove of young palm trees between the fields, we look into the matter: if the abutting neighbor can get in there even with a single furrow [so the separation is not continuous], then the area is subject to the law of pre-emption, but if not, it is not.*
- H. *If one of four neighbors, on fore sides of a field, stopped the other,s the sale remains valid; but if all come together, the field is to be divided diagonally* [Freedman: because the main reason of the right of pre-emption is that it is cheaper to cultivate two adjoining fields than two separate ones, as a long continuous furrow can be ploughed and sown in a single operation].

I.1 provides a scriptural basis for the Mishnah's rule. II.1ff. form a large and odd mélange. We know why the whole has been inserted. It is because II.1 is explicitly relevant to our Mishnah, and the next two items are joined because all three of them were put together within the R. Judah-Rabin—"My brother, Rabin" formula before insertion in the present position. So there can be no doubt that the composite before us is put together in accord with a program other than the one that has predominated in our tractate, which is, Mishnah-commentary. The reference to Rab at II.4 then opens the way to the long discussion of Rab's interpretation of the cited passage of Deuteronomy. No. 5 then continues with Rab's reading of another verse, and what follows is continuous. So while the whole is framed within a different theory of conglomeration from the one that we have found paramount, we can make sense of how each unit has been joined to the one fore and aft, and the whole then has been parachuted down here. Were the Talmud to have been framed out of units made up within the principle of conglomeration operative through II.4ff., it would be a very different document, overall, from what it is. But any conception that the Talmud is simply thrown together, or that it does not follow principles of conglomeration and composition that we are able to discern, is false. We can readily identify and classify diverse types of discourse — cogent sentences, formed into intelligible paragraphs for the sake of communicating thought — that appear in our document and show how each has had its own pre-history of formation and composition and then

conglomeration, yielding, in the end, what is before us: a somewhat protracted and run-on composite that moves this way and that, without any clear purpose, but with very clear connections from one step to the next. It is surely a deft editorial hand, on the part of the compositor, who commences with Deu. 7:5 and ends with Exo. 23:25). What about No. 8ff.? The theme is now the disposition of land near the boundary of property, and that, of course, forms a natural continuation of Nos. 2-3. Without the long, intervening portion, we should have had a sustained inquiry into a single topic. So we must suppose that No. 4 and its entire composite of materials was put together in the process of forming Nos. 1-3; Nos. 8ff. formed a separate composite, linked with Nos. 1-3 prior to their insertion into our Talmud. The one thing then that is clear is that nothing of unit II was composed or formed into a composite in response to our Mishnah, beyond the opening unit; but that brief paragraph, framed though it was in dialogue with our Mishnah's rule, was written up as part of a program of forming these "my brother, Rabin"-compositions and then composing the composite as a whole. This produces the interest at No. 9 in the marginal ground at the sides of the canals. That accounts for tacking on No. 10. No. 11 continues the subject of forests and land on the river bank. Nos. 12, 13 stay with the subject of marginal land. No. 14 continues the foregoing, now asking a subordinate question. No. 15 is continuous with No. 14, as Freedman's explanation makes clear in context. The consideration of the law of preemption continues at No. 16. I cannot explain why No. 17 is tacked on, if as Freedman maintains, pre-emption is not at stake. But No. 18 reverts to the issue of pre-emption, so, in context, No. 17 should as well, and that would explain its inclusion in context.

## 9:9

- A. [109A] He who leases a field from his fellow**
- B. for a period of only a few years**
- C. may not sow it with flax.**
- D. And he has no [right] to [cut] beams from a sycamore.**
- E. [If] he leased it from him for seven years,**
- F. in the first year he may sow it with flax.**
- G. And he has [every right] to [cut] beams from a sycamore.**

- I.1** A. Said Abbaye, "To cut beams from a sycamore he has no right, but to the improvement of the sycamores [that takes place during his rental] he has every right [and the increase in their value is assessed and assigned to him]."
- B. And Raba said, "Even to the improvement of the sycamores he has no right."
- C. *An objection was raised:* He who leases a field from his fellow — they make an assessment for him. *Does this not mean that* they make an assessment for him as to the improvement of the sycamores?
- D. *No, the meaning is that they make an assessment for him as to the vegetables and beets.*
- E. *If it is a case of the vegetables and beets, let him just pull them up and go on his way!*
- F. *We deal with a case in which the market place has not yet come.*

- G. *Come and take note: He who leases a field from his fellow and the Seventh Year comes along — they make an assessment for him as to the Seventh Year. Does the advent of the Seventh Year then remove the land from the lessee? Rather, repeat in this language: He who leases a field from his fellow and the Jubilee Year comes along — they make an assessment for him as to the Jubilee Year. Still, does the advent of the Jubilee Year then cancel a leasehold? Scripture merely forbade a sale in perpetuity, [but not a lease for a specified number of years]! Rather say as follows: He who purchases a field from his fellow and the Jubilee Year comes along — they make an assessment for him as to the Jubilee Year. Now should you say, here too they make an assessment for him as to the vegetables and beets, in the Jubilee Year, these are treated as ownerless. Rather, does this not mean that they make an assessment for him as to the improvement of the sycamores?*
- H. *From the perspective of Raba's views, Abbayye explained the cited passage as follows: "The case is different, for Scripture has said, 'Then the house that was sold shall go out in the year of Jubilee' (Lev. 25:33). What is sold is to be returned to the original owner, but not the improvements."*
- I. *Then let us derive the law from that rule [in accord with Raba, rather than Abbayye]!*
- J. *There you have a real sale, while the Jubilee is a revocation of the prior sale on the part of the Monarch. [Freedman: only what Scripture explicitly states is to be returned, which is to say, what is purchased, but not the improvements. In the case of a lease the return follows a human agreement. In Raba's view, it goes back as is, including the improvements.]*
- I.2.** A. *R. Pappa leased a field to grow fodder. Some young trees sprouted in the field. When he was going to return the field, he said to the owners, "Give me the value of the improvement [constituted by the trees]."*
- B. *Said R. Shisha b. R. Idi to R. Pappa, "Then if you had leased palm trees and they got thicker during the period of the lease, would the master then also have demanded the value of the improvement?"*
- C. *He replied to him, "In that case I should not have acquired the field for that purpose, but in this case I leased the field just for that purpose."*
- D. *With whom does his position accord? It is in accord with the view of Abbayye, who has said, "To the improvement of the sycamores [that takes place during his rental] he has every right [and the increase in their value is assessed and assigned to him]."*
- E. *You may even maintain that he is in accord with Raba. In that case the lessee suffers no loss [if the sycamores improve], while here there is a loss.*
- F. *But the lessor may say to him, "How did I cause you a loss? Was it through the area that was diminished from the ground in which I could have grown fodder? Then take the value of the fodder that would have grown in that area and go your way."*
- G. *The other may say, "But I would have used the area to grow garden saffron."*



H. *He may reply, "So you have placed on display your original plan, which was to take away what you sowed and depart. So take your saffron and go. Your only claim is to the value of the wood."* [Freedman: By answering, "I would have sown it with saffron," you have shown that you would have planted something that can be entirely removed when grown, and not something that, while the stock remained, would show you a profit on its improvement, as would be the case with young palm trees. So now regard these trees as though they were saffron and you had to take them away completely, so you have no other claim but for the value of the timber.]

**I.3.** A. *R. Bibi bar Abbaye leased a field and surrounded it with a ridge, from which sorb bushes grew. When he handed the field back [at the end of his lease], he said to the owner of the field, "Pay me for the improvements that I brought about [namely, the bushes]."*

B. *Said R. Pappi, "Because you come from the town of Mulai, you talk words that are full of nothing [the latter phrase using the same consonants as the name of the town]! Even R. Pappa said what he did only in a case in which there has been a loss, but here, what loss [e.g., in the utilization of the field you leased] have you suffered?"*

**I.4.** A. *R. Joseph had a garden [who leased a field from him]. The man died and left five sons-in-law. R. Joseph said, "Up to now there was one, now there are five. Up to now they did not depend on one another to do the work and so they caused me no loss, but now they will, and therefore they are going to cause me losses."*

B. *He said to them, "If you take the improvements that are due to you and go your way, well and good, but if not, I am going to evict you and not pay you for the improvements."*

C. *For R. Judah — others say, R. Huna, others say, R. Nahman, said, "If a gardener died, his heirs may be evicted without payment of the value of the improvements."*

D. *But that in point of fact is not the rule.*

**I.5.** A. *There was a gardener who said to them, "If I cause a loss, I will quit." He did cause a loss.*

B. *Said R. Judah, "He is to be evicted without payment for the improvements."*

C. *R. Kahana said, "He may be evicted but he is to be paid for the value of the improvements."*

D. *But R. Kahana concedes that if he had said to the landlord, "If I cause loss, I shall quit without payment for the improvements," then he is to be evicted without payment for the improvements.*

E. *Raba said, "That is a mere come-on, and a come-on does not accord rights of ownership."*

F. *But in Raba's view, how does that case differ from the following, which we have learned in the Mishnah: "If I let the field lie fallow and do not work it, I shall make it up to you at its highest rate of yield" [M. 9:3].*

G. *There he is paying for the loss that he has caused, while here it suffices to make a deduction for what he has spoiled, and the rest must be handed over to him [which is to say, the value of the bushes].*

- I.6.** A. *Ronia was the gardener of Rabina. He caused loss. He evicted him. The case came before Raba. He said to him, "See, master, what he has done to me."*
- B. *He said to him, "He acted quite properly."*
- C. *He said to him, "Lo, he gave me no warning."*
- D. *He said to him, "It is not necessary to give a warning."*
- E. *Raba is consistent with views of his expressed elsewhere, for Raba has said, "Kindergarten teachers, gardeners, butchers, cuppers, [109B] and town scribes are deemed to be subject to a perpetual admonition [and do not need an ad hoc warning prior to dismissal for cause]. The governing principle is this: in the instance of any irrecoverable loss, workers are as though they were subject to perpetual admonition."*
- I.7.** A. *A certain gardener said to them, "Give me the value of the improvements that I have made to the leasehold, since I want to go up to the Land of Israel."*
- B. *The case came before R. Pappa bar Samuel, who said to them, "Give him the value of the improvements that he has made."*
- C. *Raba said to him, "Is he the only one who has brought about the increased value of the property, but not the soil? [Freedman: surely the owner of the property is entitled to at least half.]*
- D. *He said to him, "What I meant to say to you was 'half of the value of the improvements.'"*
- E. *He said to him, "Up to this point the householder took half and the gardener half. Now [that he is leaving, with the work unfinished], he has to give a share to a hired hand paid as a sharecropper in addition!"*
- F. *He said to him, "What I meant to say to you was, 'a quarter of the value of the improvements.'"*
- G. *R. Ashi supposed that this meant a quarter, which is to say, a sixth [of the whole value of the improvements]. For said R. Minyumi, son of R. Nahumi, "In a place in which the gardener takes half of the profits and a hired hand paid as a sharecropper a third of the profits, if the garden wants to quit the job, he is given his share of the profits and sent off. The share is so computed that the employer sustains no loss. If then you assume that he meant a quarter of the residue after paying off the hired hand, that is a sixth of the whole, and that poses no problems. But if you say it means a quarter in actuality, then the employer loses a twelfth."* [Freedman: If the profits are six denars, the gardener and employer would each get three. But now a hired hand paid as a sharecropper must be engaged, and he gets a third of the net profits, two denars. If the gardener gets a quarter of the whole, one and a half denars, and the employer gets two and a half, a twelfth of the whole less than his due; but if he is given only a quarter of the residue, of seven denars, the employer is still left with his full share.]
- H. *Said R. Aha b. R. Joseph to R. Ashi, "But let the gardener say to him, 'You give your share to the hired hand, and I shall take my share and do what I want with it.'" [Freedman: even if the gardener should receive a quarter, not a sixth, the employer stands to lose nothing, for the gardener*

can tell him to entrust the remaining three-quarters to a hired hand, who will receive a third of it for his work, and a half of the whole will still be left for the owner. Thus:  $\frac{1}{3} \times \frac{1}{4} \times 6 = 1 \frac{1}{2}$ , which is the share of the hired hand;  $\frac{1}{4} \times 6 = \frac{3}{2} = 1 \frac{1}{2}$ , half of the whole, which is the share of the employer.]

- I. *He said to him, "When you reach your studies in the subject of the slaughter of Holy Things [tractate Zebahim], come and ask me your questions."*

**I.8.** A. *Reverting to the body of the discussion just now completed: said R. Minyumi, son of R. Nahumi, "In a place in which the gardener takes half of the profits and a hired hand paid as a sharecropper a third of the profits, if the garden wants to quit the job, he is given his share of the profits and sent off. The share is so computed that the employer sustains no loss."*

- B. *Said R. Minyumi, son of R. Nahumi, "The gardener gets half of an old vine-trunk [which can be sold for fire wood]; if the river flooded it, he gets a quarter."* [Freedman: The gardener wishes to quite in the middle of the lease. The aging of the vine is natural and it is understood that when the trunk no longer bears fruit, it will be treated as the rest. The flood is not assumed, so the case is considered as though the gardener had suddenly left the property.]

**I.9.** A. *Somebody left a vineyard with his fellow as a pledge for a span of ten years, but the vine aged after five [and no longer produced fruit].*

- B. *Abbaye said, "The trunks are classified as produce."*

- C. *Raba ruled, "The trunks are classified as principal. Land must be bought with the proceeds of the wood, and the creditor enjoys the usufruct of the land."*

- D. *An objection was raised: [to Abbaye's position] If a tree was mortgaged, with the creditor enjoying the usufruct for some years, after which the tree would revert to the debtor without further payment, and then] the tree dried up or was cut down, both parties are forbidden to make use of it. What is to be done? The tree must be sold for lumber, and land must be bought with the proceeds, and the creditor takes the usufruct. Is it not the case that the tree's withering is equivalent to its being cut down, so that, just as being cut down refers to the proper time, so the withering is anticipated at the proper time? Yet it is taught, The tree must be sold for lumber, and land must be bought with the proceeds, and the creditor takes the usufruct. That then proves that the lumber is treated as principal [as Raba has said].*

- E. *To the contrary, "cut down" is classified along with "withered," so just as "withering" may take place before the anticipated time, so "cutting down" may take place before the anticipated time [and the analogy does not yield the rule adduced at D].*

- F. *Come and take note: If the wife inherited superannuated vineyards and olive trees, [110A] let them be sold for wood, and land be brought, and the husband will enjoy the usufruct [M. Ket. 8:5F-H].* [Freedman: this proves that

they rank as principal, for if they were comparable to produce, the husband would get the produce directly, not through the purchase of the counterpart to a bond.]

- G. *Revise the passage to read, “and they got old,” [thus: **If the wife inherited vineyards and olive trees, and they then prematurely grew old.** The cases then are not comparable. Even Abbaye concurs that in such a case the timber is not treated as produce, since this event was not to be anticipated.]*
- H. *If you prefer, I shall say, have we not referred the passage to a case in which the plants came to her as a n inheritance in a field that did not belong to her, so that the entire principal is destroyed [if the husband uses it; but the principal must remain hers. Freedman: but if she had inherited them in her own field or vineyard, the husband could sell them for timber and use the proceeds without reinvesting them, for the soil is still left for the wife. The dispute of Abbaye and Raba refers to such a case. Land and the trees were pledged. But if only trees, the field not belonging to the debtor, then Raba will agree that they rank as principal, not as produce.]*

**I.10.** A. *A certain bond was written with the time-span specified as “years” without further stipulation. The creditor said, “It meant three years.” The debtor said, “It meant two years.” The creditor went ahead and made use of the usufruct of the field [anticipating the ruling of the court].*

- B. Whose claim is accepted?
- C. *R. Judah said, “Real estate is confirmed in the possession of its owners.” [Freedman: since there is a dispute about the third year, we presume that it belongs to the debtor, since he is its known owner, unless there is proof to the contrary, and therefore the creditor is forced to repay the value of the usufruct.]*
- D. *R. Kahana said, “The produce is confirmed in the possession of those who have had the usufruct.” [The onus of proof lies on the plaintiff, the debtor, since the creditor has already taken it (Freedman).]*
- E. *And the law accords with the position of R. Kahana, who has said, “The produce is confirmed in the possession of those who have had the usufruct.”*
- F. *And lo, we have in hand the principle that the law accords with R. Nahman in matters of civil law, and he has said, “Real estate is confirmed in the possession of its owners.”*
- G. *That ruling in general pertains to a case in which the facts are not going to be sorted out, but here we deal with a case in which the facts of the matter are going to be sorted out, and a court is not to be bothered to rule twice on the case. [Freedman: if the return of the usufruct is ordered, witnesses may attest that the intended period was three years, and the matter will come to court again.]*

**I.11.** A. The creditor says, “The mortgage was for five years,” the debtor says, “It was for three” —

- B. *He says to him, “Produce your bond,” and the other says, “The bond has been lost” —*
- C. *said R. Judah, “The creditor’s allegation is accepted. Since he could have pleaded, ‘I bought the land outright [for three years of usufruct establish a*

*presumption of ownership in the absence of a deed of sale], [he has claimed less than he could have, and his claim is accepted].”*

- D. *Said R. Pappa to R. Ashi, “R. Zebid and R. Avira do not concur with this position taken by R. Judah. How come? This bond was instituted to be collected [that is, in the form of the usufruct; without the bond, the debtor could have evicted the creditor to begin with]. So the creditor presumably took excellent care of it. But now he is suppressing the bond, thinking, ‘I will enjoy the usufruct for two more years.’”*
- E. *Said Rabina to R. Ashi, “Then what about the case of the mortgage of the kind that is written in Sura, in which this language is written: ‘At the end of such-and-such a number of years, this estate shall leave the mortgagee’s possession without further payment.’ Now here, if the creditor hides the mortgage deeds and pleads, ‘I have bought it,’ will he then be believed? Would rabbis have made a rule such that loss would result in such a case?”*
- F. *He said to him, “In that case, rabbis may the rule so that the owner of the land would pay the land-tax and dig drainage ditches around the field. [True ownership will always be known, since the actual owner is doing the work.]”*
- G. *“What then would be the rule which has no ditches or is not subject to the land tax?”*
- H. *He said to him, “He ought to have protested [declaring that the land had not been purchased by the creditor].”*
- I. *“And if he did not protest [declaring that the land had not been purchased by the creditor]?”*
- J. *“Then he is the one who has brought about the loss that he has suffered.”*

- I.12.** A. A share-cropper says, “I went down to work the field for half the profits,” and the landlord says, “I brought you into the property for a third of the profits” — who is believed?
- B. R. Judah said, “The householder is believed.”
  - C. R. Nahman said, “All follows the local custom.”
  - D. *It was taken for granted that there was no dispute, since the one spoke of a situation in which the the sharecropper took half the crop, the other, a locale in which the sharecropper took a third of the crop.*
  - E. *But R. Meri, son of the daughter of Samuel, said to them, “This is what Abbaye said: ‘Even in a place in which the sharecropper takes half of the crop, R. Judah differs. He has said, “The householder is believed,” since if he wants, he may claim, “He is my hired hand” or “my gleaner,” “and ‘don’t owe him a share of the crop at all].”’”*
- I.13.** A. If the estate claims, “We have made the improvements [and the creditor of the deceased has no claim on the increased value of an estate effected by the heirs],” while the creditor pleads, “Your father made them” — who is required to bring proof?
- B. **[110B]** *R. Hanina considered ruling, “The land remains in the presumed ownership of the estate, so the debtor bears the burden of bringing proof.”*



- C. *A certain old man said to them, "This is what R. Yohanan said: 'The burden of proof lives on the estate. Why is that the case? Since the land is available to be seized in payment for the debt, it is treated as though it were already seized, so the burden of proof lies on the estate.'"*
- D. *Said Abbaye, "We also have repeated the matter on Tannaite authority: [They keep a tree twenty-five cubits from a town, and in the case of a carob or sycamore, fifty. Abba Saul says, 'In the case of any sort of tree that produced no fruit, fifty cubits.' If the town was there first, one cuts down the tree and pays no compensation. And if the tree came first, one cuts down the tree but pays compensation.] And if it is a matter of doubt whether this came first or that came first, one cuts down the tree and pays no compensation [M. B.B. 2:7A-G]. Thus, since the tree is available to be cut down, we say to him, 'Bring proof and take what is owing to you.' Here too, in the case of the mortgage-bond, since the land is available to be seized in payment for the debt, it is treated as though it were already seized, so the burden of proof lies on the estate."*
- E. *Then the estate brought proof that they had made the improvements. R. Hanina considered ruling, "When we satisfy their claims [for compensation for the increased value], it is through the provision of real estate that we meet their claims [land equal in value to the worth of the increase in the land that they have brought about]."*
- F. *But that is not the case? In fact it is through a cash payment that their claims are satisfied.*
- G. *That accords with what R. Nahman said, for R. Nahman said Samuel said, "In three instances an assessment of the value of improvements is made and compensation is paid in cash, and these are they: the debt paid by the first born to another son of the same father; the debt of the creditor of the widow who has collected her marriage-settlement, when she pays to the estate; and the debt of creditors to those who have bought a property [then seized from them in collection of the original seller's debt]."* [In these three instances, if the land has been improved by the firstborn, the widow, or the purchaser of a property that has been seized, the compensation is in cash. The case of the firstborn, who gets a double portion of the estate, is this: the division of the estate was not made immediately but some time after the death of the father. Both the firstborn and the other son effected improvements on the whole estate. When the firstborn takes his double share, he has to pay for the part of the joint improvements to which he is not entitled. An assessment is made, and he pays the ordinary sum for it, not in additional ground but in cash. When the widow seized the estate to satisfy her marriage-settlement or the creditor his claim, and the heirs after the deceased's death had improved the land or the purchaser had improved the land, those who get the land must pay compensation for improvements, and this is in cash, not real estate (Freedman).]
- H. *Said Rabina to R. Ashi, "Does this then imply that, in Samuel's opinion, the creditor who seizes land has to return the value of the improvement to those who bought the land [from the debtor, and have now lost it to the debtor's creditor]? But does the purchaser of that land have any claim on the value of the*



*improvements he has made? And has not Samuel said, 'The creditor [of the original owner, the debtor, who has sold the land] collects the value of the improvements [and the purchaser from the debtor has no claim on his work].' And if you should say, 'There is no problem, for the one ruling refers to improvement affecting what is carried [the produce], the other to one that does not affect what is carried [the produce], [that is, an increase in the value of the crop, as against an increase in the value of the land, which reverts to the creditor when he seizes the land],'* is it not the fact that in cases that came up from day to day, Samuel collected even from the increase in value that affected what is carried [the produce]?!"

- I. *[He said to him,] "There is no difficulty, for in the one case the value of the land encompassing its improvement is claimed, and the other involves no claim for the value of the land and its improvement [the initial debt not reaching that larger figure].*
- J. *But if the claim does not encompass the value of the land and its improvement, you maintain that the creditor must pay the purchaser for his improvements and may then evict him. And that position is fully in accord with the view of one who maintains that even if the purchaser has the money, he cannot pay off the original seller's creditor [but must surrender the land]. On the other hand, on the view of the one who maintains that if the purchaser has the funds, he can pay off the creditor with the funds and keep the land, why can he not claim, "If I had had the money, I would have paid you off from the whole estate. Since I have no money, give me a griva of land in any field that is worth at least the value of the improvements that I have made to the land." [Why should he lose everything?]*
- K. *Here we deal with a case in which the original debtor had treated this field as a specific form of repayment of the debt, saying, "Payment of what is owing to you shall come only out of this field." [Everyone then concurs that the purchaser cannot retain a piece of the land as repayment for his improvements.]*

The general theme is the rights of sharecroppers and lease-holders to utilize the leased property, on the one side, and the obligations of landlords to compensate sharecroppers for permanent improvements, on the one side, and an increase in value of the property not compensated by a share of the crop, on the other. I.1 begins with a clarification of the Mishnah. This involves a dispute among Raba and Abbaye on whether or not the sharecropper is compensated for an increase in the value, during his leasehold, of trees permanently located on the property. There follow a series of cases on the leaseholders claim for payment for improvements to the property, e.g., the growth of permanent crops such as trees. The issue is the conflicting claims: "I could have used the property for a profitable enterprise," as against, "The gain is negligible and not to be compensated." But the more general theme is paying the sharecropper for work that he has done on the property that leaves a permanent gain to the landlord. The cases run through Nos. 2, 3, 4, 5, 6, 7-8, 9, which continues the topic of No. 8, the status of aged trunks of vines, 10, 11, 12, and 13. I see a general congruity among the various cases, which is the interest in the compensation for improvements. Then if what we have is a case-book, the cases in the aggregate do serve to enhance our grasp of the principle upon which the details of our Mishnah-paragraph depend. Then

the entire composition, while somewhat run on and not wholly focused upon Mishnah-exegesis, does hold together well and set forth a nuanced picture of the operative principle of equity.

### 9:10

- A. **He who leases a field from his fellow**
- B. **for one septennate**
- C. **at the rate of seven hundred zuz —**
- D. **the Seventh Year counts [in the] number [of years].**
- E. **[If] he leased it from him for seven years at the rate of seven hundred zuz,**
- F. **the Seventh Year does not count [in the] number [of years].**

### 9:11

- A. **(1) A day worker collects his wage any time of the night.**
- B. **(2) And a night worker collects his wage any time of the day.**
- C. **(3) A worker by the hour collects his wage any time of the night or day.**
- D. **A worker hired by the week, a worker hired by the month, a worker hired by the year, a worker hired by the septennate —**
- E. **[if] he completed [his period of labor] by day, collects any time that day.**
- F. **[If] he completed his period of labor by night,**
- G. **he collects his wage any time during the rest of that night and the following day.**

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

- B. How on the basis of Scripture do we know, **A day worker collects his wage any time of the night?**
- C. “[You shall not oppress your neighbor or rob him.] The wages of a hired servant shall not remain with you all night until the morning” (Lev. 19:13).
- D. And how on the basis of Scripture do we know, **and a night worker collects his wage any time of the day?**
- E. “[You shall not oppress a hired servant who is poor and needy]...you shall give him hire his hire on the day on which he earns it, before the sun goes down” (Deu. 23:14-15).
- F. *Might I say that the reverse is the case [the night worker must be paid during the night that he does the work, in line with Lev. 19:13, and the day worker by day, in line with Deu. 23:15]?*
- G. Wages are to be paid only at the end of the work [so the fee is not payable until the work has been done].

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

- B. From the inference to be drawn from the verse, “The wages of a hired servant shall not remain with you all night until the morning” (Lev. 19:13), do I not know that it means, “until morning”? Then why does Scripture specify, “until the morning”?
- C. It serves to teach that one violates the law only on the initial morning.
- D. *What is the situation from that point onward?*
- E. Said Rab, “He violates on the count of “You shall not delay payment.”

- F. *Said R. Joseph, "What verse of Scripture sustains that view? 'Do not say to your neighbor, Go and come again, and tomorrow I will give, if you have it with you' (Pro. 3:28)."*

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

- B. **He who says to his neighbor, "Go and hire workers for me" — neither party then is subject to violation of the commandment, "The wages of a hired servant shall not remain with you all night until the morning" (Lev. 19:13) [T. B.M. 10:5F].**
- C. [The reason is that,] in the case of the former, he did not hire them, [111A] and in the case of the latter, the work for which the wages are owing was not done for him.
- D. *Now how can we imagine such a case? If the agent had said to them, "Your wages are incumbent on me," then the worker's wage is incumbent on him. For it has been taught on Tannaite authority: He who hires a worker to work for him but then directs him to work on his neighbor's property must pay the worker in full and then collect in turn from the owner of the property where the work was done to the value of the benefit that the other party has received.*
- E. *The rule is necessary to deal with a case in which the former said to them, "Your wages are incumbent on the householder."*

**I.4. A. Judah bar Maremar would say to his major domo, "Go and hire workers for me, and say to them, "The householder is responsible for your wages.""**

- B. Maremar and Mar Zutra would hire workers in behalf of one another.
- C. *Said Rabbah bar R. Huna, "The market-men of Sura do not violate the rule, 'The wages of a hired servant shall not remain with you all night until the morning' (Lev. 19:13). They know that they rely upon the market day [and it is implicit that the work is to be paid only then and not before the market day]. But on the count of 'You shall not delay payment' they most certainly are in violation."*

**II.1 A. A worker by the hour collects his wage any time of the night or day:**

- B. *Said Rab, "An hourly worker who works by day may collect his wage all day long. An hourly worker engaged by night can collect his wages all night."*
- C. *Samuel said, "An hourly worker by day collects his wages all day long, and an hourly worker by night collects his wages all night long and all the following day."*
- D. *We have learned in the Mishnah: A worker by the hour collects his wage any time of the night or day, and that refutes Rab!*
- E. *Rab can respond, "The language is to be interpreted disjunctively, in the following way: an hourly worker by day collects his wages all day long, an hourly worker by night collects his wages all night long."*
- F. *We have learned in the Mishnah: A worker hired by the week, a worker hired by the month, a worker hired by the year, a worker hired by the septennate — [if] he completed [his period of labor] by day, collects any time that day. [If] he completed his period of labor by night, he collects his wage any time during the rest of that night and the following day.[and that refutes Rab!]*
- G. *Rab can respond, "What we have is a dispute among Tannaite authorities. For it has been taught on Tannaite authority: 'An hourly worker hired by day collects*

his wages all day long. An hourly worker who works by night collects his wages all that night,' the words of R. Judah. R. Simeon says, 'An hourly worker by day collects his wages all day long, an hourly worker by night collects his wages all night long and all the following day.'"

**II.2.** A. In this connection they have said: **He who holds back the wages of a hired hand transgresses on account of five negative commandments, because of not oppressing (Lev. 19:13), because of not stealing (Lev. 19:13), because of the verse that says, "The wages of a hired worker will not abide with you all night until morning" (Lev. 19:13); "you shall give him hire on the day he earns it before the sun goes down, because he is poor" (Deu. 24:15) [T. B.M. 10:3A-C].**

B. *But those that pertain to the day do not pertain to the night, and those that apply to the night do not pertain to the day [so how are there five that would apply to a single action]!*

C. *Said R. Hisda, "Reference is made to the general category of hiring."*

**II.3.** A. What is the difference between oppressing and robbery?

B. *Said R. Hisda, "'Go and come again,' 'go and come again' — that is oppression [deferring payment that will some day be made]. 'You indeed have a claim on me, but I'm not going to pay' — that is out and out robbery."*

C. *R. Sheshet objected, "What is the kind of oppression on account of which Scripture imposed the obligation to bring a sacrifice [Lev. 5:20, 25: "If anyone sins and commits a breach of faith against the Lord by deceiving his neighbor in a matter of deposit or security or through robbery or if he has oppressed his neighbor...he shall bring his trespass offering to the Lord"]? It must be a matter that is comparable to a bailment, in which one has made a denial in a matter of property."*

D. *Rather, said R. Sheshet, "'I have already paid you' — that is oppression. 'You indeed have a claim on me, but I'm not going to pay' — that is out and out robbery."*

E. *Abbaye objected, "What is the kind of oppression on account of which Scripture imposed the obligation to bring a sacrifice [Lev. 5:20, 25: "If anyone sins and commits a breach of faith against the Lord by deceiving his neighbor in a matter of deposit or security or through robbery or if he has oppressed his neighbor...he shall bring his trespass offering to the Lord"]? It must be a matter that is comparable to a bailment, in which one has made a denial in a matter of property."*

F. *Rather, said Abbaye, "'I never even hired you' — this is oppression. 'I have already paid you' — that is robbery."*

G. *And in R. Sheshet's view, what is the difference between "oppression" and "robbery," that he has objected to the one but not the other [Freedman: for the same exegesis that refutes Hisda's definition of "oppression" refutes his of "robbery" too]!*

H. *He will say to you, "'Robbery' refers to a case in which he first robs him and then repudiates liability."*

- I. *If so, even in the case of “oppression,” there may be a subsequent repudiation of the debt* [Freedman: Hisda’s definition of oppression may be correct; privately he put him off repeatedly, but when sued, he denied liability]?
- J. How now! There [in the case of robbery] it is written, “If anyone sins and commits a breach of faith against the Lord by deceiving his neighbor in a matter of deposit or security *or through robbery* or if he has oppressed his neighbor....” *That bears the implication that to begin with, he had conceded the claim to him. But in regard to “oppression,” is it written, “...or by means of oppression”?*
- K. *What is written is “or has oppressed his neighbor,” which bears the meaning, “he has already oppressed him” [and then denied liability when the worker asked to be paid].*
- L. Raba said, “‘Oppression’ and ‘robbery’ are the same thing, and why did Scripture distinguish among them? To indicate that two negative commandments are violated [by misconduct in this regard].”  
We have a combination of Mishnah- and Scripture-exegesis, and the composition holds together nicely. I.1 works through Tannaite exegesis that link Scripture to the rule of the Mishnah. No. 2 proceeds along the same lines. No. 3 then turns to Tosefta’s amplification of the Mishnah, and this works equally well. No. 4 ends with a pertinent case, illustrating the foregoing. The dispute between Rab and Samuel concerning the interpretation of the law of the Mishnah, II.1, then clarifies a detail. II.2 reviews a statement of the Tosefta, and II.3 proceeds to investigate the different words that are used in Scripture. I see no movement beyond the limits of the received documents — Scripture, the Mishnah, the Tosefta.

## 9:12

- A. **All the same are a fee to be paid to a human being, a fee to be paid for use of a beast, and a fee to be paid for the rental of utensils:**
- B. **[each is] subject to the rule, “In his day you shall give him his fee” (Deu. 24:15).**
- C. **[each is] subject to the rule, “The wages of a hired worker will not abide with you at night until the morning” (Lev. 19:13).**
- D. **Under what circumstances?**
- E. **When [the worker] has laid claim [on his wages].**
- F. **[If] he did not lay claim [on his wages], [the employer] does not transgress [the biblical requirement].**
- G. **[If the employer] gave him a draft on a storekeeper or money changer,**
- H. **[the employer] does not transgress [the biblical requirement].**
- I. **An employee —**
- J. **[if he claimed his salary] within the stated time**
- K. **takes an oath [that he has not been paid] and collects his salary.**
- L. **[If] the stated time has passed [and he did not collect his salary],**
- M. **he does not take an oath and collect his salary.**
- N. **But if there are witnesses that he had [in fact] laid claim [for his salary],**
- O. **lo, this one takes an oath and collects his salary.**

- P. **A resident alien is subject to the rule, “In his day you shall give him his fee” (Deu. 24:15) [since Deu. 24:14 refers to the alien].**
- Q. **But he is not subject to the rule, “The wages of a hired worker will not abide with you all night until morning.”**
- I.1 A. [With reference to the statement, **A resident alien is subject to the rule, “In his day you shall give him his fee” (Deu. 24:15) [since Deu. 24:14 refers to the alien]. But he is not subject to the rule, “The wages of a hired worker will not abide with you all night until morning”]** *who is the authority behind the rule at hand? It is not the initial Tannaite authority, who interpreted the language, “of your brethren,” nor is it R. Yosé b. R. Judah.*
- B. *To what is reference made in the foregoing sentence?*
- C. *To the following, taught on Tannaite authority [with reference to “You shall not oppress a hired servant who is poor and needy, whether he is one of your brothers or one of the sojourners who are in your land within your towns; you shall give him hire on the day he earns it, before the sun goes down, for he is poor and sets his heart upon it; lest he cry against you to the Lord and it be sin in you” (Deu. 24:14-15):]*
- D. **[111B] You shall not oppress a hired servant who is poor and needy, whether he is one of your brothers:”** this excludes others.
- E. “or one of the sojourners:” this refers to the righteous convert.
- F. “who are in your land within your towns:” this refers to a this refers to one who eats carrion [a resident alien].
- G. I know from the statement at hand that the law pertains only to the wages of a human being. How do I know that the law encompasses also fees paid for the rent of a beast or utensils?
- H. Scripture says, “...in your land,” referring to everything that is in your land.
- I. And in regard to all of these [that is Israelite, proselyte, animals, utensils,] those who hold back wages violate on every count.
- J. In this connection, they have said: **All the same are a fee to be paid to a human being, a fee to be paid for use of a beast, and a fee to be paid for the rental of utensils: [each is] subject to the rule, “In his day you shall give him his fee” (Deu. 24:15).**
- K. And each is subject to the rule, “The wages of a hired worker will not abide with you all night until morning” (Lev. 19:13).
- L. **R. Yosé b. R. Judah says, “A resident alien is subject to the rule, ‘in his day you shall give him his fee,’ but he is not protected by the rule, ‘The wages of a hired worker will not abide with you all night until morning’ (Lev. 19:13). In regard to the fee paid for renting animals and utensils, only the rule, ‘You shall not oppress...’ applies” [T. B.M. 10:4C-D].**
- M. Now [reverting to the question, with reference to the statement, **A resident alien is subject to the rule, “In his day you shall give him his fee” (Deu. 24:15) since Deu. 24:14 refers to the alien. But he is not subject to the rule, “The wages of a hired worker will not abide with you all night until morning”]** *who is the authority behind the rule at hand?*



- N. *It is not the initial Tannaite authority, who interpreted the language, "of your brethren," since for him, the resident alien presents a problem [for in his view, all injunctions apply to the resident alien, but our Mishnah does not concur];*
- O. *nor is it R. Yosé b. R. Judah. then the fee paid for the rent of animals and utensils presents a problem.*
- P. *Said Raba, "This Tannaite authority is the one of the household of R. Ishmael. For the Tannaite authority of the household of R. Ishmael repeated as follows:*
- Q. *"All the same are a fee to be paid to a human being, a fee to be paid for use of a beast, and a fee to be paid for the rental of utensils: [each is] subject to the rule, "In his day you shall give him his fee" (Deu. 24:15). And each is subject to the rule, "The wages of a hired worker will not abide with you all night until morning" (Lev. 19:13). In regard to the wages to be paid to a resident alien, one is subject to the law, "In his day you shall give him his fee" (Deu. 24:15), but is not subject to the rule, "The wages of a hired worker will not abide with you all night until morning" (Lev. 19:13)."*
- R. *What is the reasoning of the initial Tannaite authority, who has interpreted the verse "of your brethren" as he has [to exclude others]?*
- S. *He derives the rule by analogy to the reuse of the word "hire," [at Deu. 24:14 and then also at Lev. 19:13. Deu. 24:14 says, "You shall not oppress a hired servant who is poor and needy, whether he is of your brethren or of the strangers that are in your land within your gates." That extends the injunction concerning the wages of a resident alien, animals and utensils. By analogy to the foregoing, Lev. 19:13, "The wages of him who is hired you shall not keep back with you until morning" refers to an Israelite, a resident alien, animals and utensils (Freedman).]*
- T. *And R. Yosé b. R. Judah does not derive the rule by analogy to the reuse of the word "hire," [at Deu. 24:14 and then also at Lev. 19:13].*
- U. *Granting that he does not do so, still, one should still be liable to the law, "In his day you shall give him his fee" (Deu. 24:15) should apply to the fee paid for the rental of beasts and utensils.*
- V. *A Tannaite authority repeated:*
- W. *R. Hananiah said, "Scripture says, 'you shall give him his hire on the day he earns it, before the sun goes down, for he is poor and sets his heart upon it, lest he cry against you to the Lord and it be sin in you' (Deu. 24:15). This pertains only to those who can become poverty-stricken or get rich, excluding beasts and utensils which cannot poverty-stricken or get rich."*
- Y. *And as to the initial Tannaite authority, how does he treat this same proof?*
- Z. *He requires that verse to show that the poor take precedence over the wealthy [should an employer owe a salary to people in both categories and has enough for only one, he pays the poor first of all].*
- AA. *And R. Yosé b. R. Judah?*
- BB. *He derives that rule from, "You shall not oppress a hired servant who is poor and needy" (Deu. 24:14-15).*
- CC. *And the initial Tannaite authority? [Should he not derive proof from the same passage?]*

- DD. *One of the verses serves to show that the poor man takes precedence over the rich man, and the other serves to give the poor man priority over the needy. [The needy asks for what he needs, the poor man is too proud to do so (Freedman).]*
- EE. *And it is necessary to prove both propositions on the basis of Scripture, for if we had derived only the lesson concerning the needy, that would be the case only because he is not ashamed to demand his wage from the employer, but as for the wealthy man, who is ashamed to demand his wages from the employer, I might say that [the needy does not take precedence]. And if we were given the rule only in regard to the wealthy, I might think that that is the rule because the wealthy worker is not in dire need of the funds, but as for the needy, who does have a real need, I might argue that that is not the case. So it was necessary to provide two verses, each to cover a situation not entirely congruent to the other.*
- FF. *And our Tannaite authority in either case has a problem. Which way can he go? If he accepts the proof based on an analogy between the two uses of the word “hired,” then even a resident alien should be covered by the law, and if he rejects that proof, then how does he know that animals and utensils are covered by the law?*
- GG. *In point of fact, he does not accept the proof based on an analogy between the two uses of the word “hired.” But [in respect to Deu. 24:15, “You shall not oppress a hired servant who is poor and needy, whether he is of your brethren or of the strangers that are in your land within your gates”] for Scripture also says, “The wages of him who is hired you shall not keep back with you until morning” (Lev. 19:13). [The effective language is “with you.”] The wages that fall under the category of “with you” are subject to the law [even animals and utensils, and since the rule is the same as Deu. 24:15, what that verse is covered as well].*
- HH. *If so, then even the resident alien should be covered by the law!*
- II. *Scripture has said, “you shall not oppress your neighbor,” — your neighbor, but not the resident alien.*
- JJ. *If so, then even the rental fee for a beast or utensils should be excluded!*
- KK. *But lo, it is written, “with you” [=GG].*
- LL. *Then how come you include the fee paid for animals and utensils, but you exclude the fee paid for the salary of a resident alien? [Why not reverse matters?]*
- MM. *That inclusion of the fee paid for animals and utensils is quite reasonable, for they fall into the category of property belonging to “your neighbor,” while the salary of a resident alien does not fall within that category.*
- NN. *And as to the initial Tannaite authority, who interpreted the language “of your brethren,” how does he interpret the language of “your neighbor” [Freedman: since the inclusion of animals is deduced from the use of “hired” in the two analogous passages]?*
- OO. *He requires that clause to demonstrate that which has been taught on Tannaite authority:*
- PP. *“You will not oppress your neighbor” — excluding an Amalekite.*
- QQ. *An Amalekite? That rule derives from “of your brethren”?*
- RR. *One reference serves to permit oppressing him, the other, to permit holding on to what has been stolen from him. And both are required. For had we learned the*

*rule that it is permitted to hold on to what is stolen from him, the reason would be the Amalekite has not worked for him, but as for oppressing him by not paying his salary, I would have thought that such an action is not permitted. And if we were told that one is permitted to oppress him by withholding his wages, that may be because his wage has not yet reached his possession, but as for robbery, I would have thought that it was not permitted to retain property in that category. So both specifications are required.*

- SS. *And as to R. Yosé b. R. Judah, how does he interpret the following verse: “The wages of him who is hired you shall not retain all night until the morning” [Freedman: since he does not agree that “with you” extends the law to the fee paid for renting animals and utensils]?*
- TT. *He interprets it in accord with the view of R. Assi.*
- UU. For R. Assi said, “Even if the employer hired the worker only to vintage a single cluster of grapes, he is subject to the law, ‘...shall not abide all night....’” [Even the most negligible sum is subject to the law.]
- VV. *And the other authority [who reads “with thee” in his own way]?*
- WW. *He derives the rule from the verse, “and sets his life upon it”, which bears the implication, anything for which he risks his life [even vintaging a single cluster is included].*
- XX. **[112A]** *And the other authority?*
- YY. *He requires that clause in line with what has been taught on Tannaite authority:*
- ZZ. “And sets his life upon it:”
- AAA. On what account did this man climb up on the ladder, hang himself from the tree, and risk death for himself? Was it not so that you would pay him his wages [so withholding a salary is like taking a life].
- BBB. Another teaching:
- CCC. “And sets his life upon it:” whoever holds back a worker’s salary is as if he takes his life from him.
- I.2. A.** [With reference to the verse, “And sets his life upon it:” — whoever holds back a worker’s salary is as if he takes his life from him,] R. Huna and R. Hisda:
  - B. One said, “The life of the robber.”
  - C. The other said, “The life of the victim.”
  - D. *He who says that it is the life of the robber refers to the verse, “Do not rob the poor because he is poor nor oppress the afflicted in the gate” (Pro. 22:22), followed by, “For the Lord will plead their cause and spoil the soul of those who spoiled them” (Pro. 22:23).*
  - E. *He who says that it is the life of the victim refers to the verse, “So are the ways of every one who is greedy of gain; he takes away the life of its rightful owner” (Pro. 1:19).*
  - F. *And as to the other party too, is it not written, “he takes away the life of its rightful owner” (Pro. 1:19)?*
  - G. That is, of its present owner.
  - H. *And as to the other party too, is it not written, “and spoil the soul of those who spoiled them” (Pro. 22:23)?*

- I. *That gives the reason for the rule: why will he spoil the soul of those who spoiled them? Because they took their lives ["he takes away the life of its rightful owner" (Pro. 1:19).*

**II.1 A. Under what circumstances? When [the worker] has laid claim [on his wages]. [If] he did not lay claim [on his wages], [the employer] does not transgress [the biblical requirement]:**

- B. *Our rabbis have taught on Tannaite authority:*  
C. "The wages of a hired hand will not abide all night."  
D. Might one think that that is the case even if the worker did not demand his wages?  
E. Scripture says, "...with you...", meaning, with your knowledge and consent.  
F. Might one think that that is the case even if the employer does not have the money [so that he still violates the law]?  
G. Scripture says, "...with you...", meaning, only if the wages are in hand with you.  
H. Might I think that the prohibition applies even if one **gave him a draft on a storekeeper or money changer**?  
I. Scripture says, "...with you...", meaning, but not if one **gave him a draft on a storekeeper or money changer**.

**III.1 A. [If the employer] gave him a draft on a storekeeper or money changer, [the employer] does not transgress [the biblical requirement]:**

- B. *The question was raised: may the worker go back to the employer or not [if the shopkeeper did not provide the goods? Has the employer carried out his obligations, or is there recourse]?*  
C. R. Sheshet said, "He does not have recourse."  
D. Rabbah said, "He has recourse."  
E. *Said Rabbah, "How do I know it? Since it is taught, [the employer] does not transgress [the biblical requirement], from which it follows that that is the case only if there is no violation of the law, but he can return to the employer for his salary."*  
F. *And R. Sheshet said, "What is the meaning of [the employer] does not transgress [the biblical requirement]? He is no longer within the framework of infringing on the law [of paying within the set time, having attempted to do so]."*

**III.2. A. They asked R. Sheshet, "Does or does not the rule, 'The wages of a hired hand will not remain with you all night' apply also to a contract? [If the employee was not engaged by the day but contracted to do a piece of work, what is the law?]" Does the craftsman acquire possession of the object on which he is working by reason of the improvement in the value of the utensil, on which account what is owing to him is in the category of a loan, or does not the craftsman not acquire possession of the object on which he is working by reason of the improvement in the value of the utensil, on which account what is owing to him is in the category of wages?"**

- B. *Said to them R. Sheshet, "He does violate the law."*  
C. *But has it not been taught on Tannaite authority:*  
D. "He does not violate the law"?

- E. *That refers to a case in which he gave him a draft on a shopkeeper or a money changer.*
- F. *May we say that the following supports the position of R. Sheshet:*
- G. He who gave his cloak to a craftsman, the latter finished it and informed him — [if] even after the passage of ten days [the householder has not picked up the garment and paid for it,] he does not violate the law, “You shall not keep all night.” But if the craftsman delivered the cloak to the householder even in the middle of the day, as soon as the sun has set upon it, the householder is guilty of transgressing the law, “You shall not keep all night.”
- H. *Now if you take the position that the craftsman acquire possession of the object on which he is working by reason of the improvement in the value of the utensil, on which account what is owing to him is in the category of a loan, on what count is he guilty of transgressing the law?*
- I. *Said R. Mari b. R. Kahana, “The rule pertains to the task of removing the wooly surface of a thick coat [and that is not considered an improvement at all, so here the craftsman does not acquire possession of the garment].”*
- J. *Then why did he give the garment to him? Surely it was to soften it, and that constitutes improving the garment.*
- K. *The rule is required to cover the case of his hiring him for stamping [and flattening the cloth], with every act of stamping to be charged at the rate of a maah [so the contract did not cover the whole piece of work, but only the amount of work done, step by step].*

**IV.1 A. [112B] An employee — [if he claimed his salary] within the stated time takes an oath [that he has not been paid] and collects his salary. [If] the stated time has passed [and he did not collect his salary], he does not take an oath and collect his salary:**

- B. *As to an employee, how come rabbis ordained that he is to take an oath and collect his wages? [Usually, the one who takes an oath does so so that he will not have to pay money, not so that he will collect money.]*
- C. *Said R. Judah said Samuel, “Laws of exceptional importance were repeated here.”*
- D. *Were these laws? Were they not ordinances?*
- E. *Rather, Said R. Judah said Samuel, “Ordinances of exceptional importance were ordained here.”*
- F. *“...exceptional importance...” implies that there are also those that are inconsequential!*
- G. *Said R. Nahman said Samuel, “Permanent ordinances were ordained here. Specifically, while the taking of the oath ordinarily would be incumbent on the householder, rabbis took away the oath that pertained to the householder and assigned it to the worker, for the sake of the worker’s livelihood.”*
- H. *And for the sake of the worker’s livelihood shall we cause a loss to the householder?*
- I. *The householder himself prefers the worker to take an oath and be paid, so that workers will be glad to be employed by him.*

- J. *But the worker himself will prefer that the householder take an oath and be exempt, so that he should give him work.*
- K. *The worker has to find workers.*
- L. *The workers have to find work.*
- M. [The operative consideration is this:] the employer is preoccupied with the numerous workers [and may have lost track of whom he has paid].
- N. *If that is the operative consideration, then pay the worker without requiring him to take an oath?*
- O. *It is so as to reassure the employer.*
- P. *Then let the employer pay in the presence of witnesses?*
- Q. *It's too much trouble.*
- R. *Then let him pay in advance.*
- S. Both of them prefer credit [the employer may not have the money, the worker may lose it in the field].
- T. *If so, then even if the dispute concerns a stipulated amount, the same rule should apply. But why has it been taught on Tannaite authority, "If the craftsman says, "You stipulated a payment of two," and the other says, "I stipulated a payment for you of only one," then let the one who lays claim on the other produce proof [and no oath is imposed]?*
- U. *The wage that is stipulated is certainly going to be remembered full well.*
- V. *If so [referring to S], then even if the set time has passed, he should be believed [without taking an oath]. But how come we have learned in the Mishnah: **[If] the stated time has passed [and he did not collect his salary], he does not take an oath and collect his salary?***
- W. The prevailing assumption is that a householder will not violate the law against holding back wages.
- X. But lo, you have already said that the employer is preoccupied with the workers [and may have lost track of whom he has paid]!
- Y. *That consideration pertains only before the time of the obligation to pay has arrived. **[113A]** But once the time of the obligation to pay has come, he makes a point of the matter and remembers it.*
- Z. Then is the worker going to violate the law against robbery? [Surely not! If we assume the employer must have paid, because he will not violate the Torah, we should assume the worker will not violate the law of the Torah and therefore the worker should be believed.]
- AA. *In the case of the employer, two presumptions work in his favor, while in the case of the worker, only one.*
- BB. *In the case of the employer, two presumptions work in his favor: one, that he is not going to violate the law, "It shall not remain...", and the second, that the worker is not going to permit him to delay paying the wages.*
- CC. *while in the case of the worker, only one. specifically, the one just now stated.*
- V.1 A. But if there are witnesses that he had [in fact] laid claim [for his salary], lo, this one takes an oath and collects his salary:**



- B. *But still he demands the money now in our very presence [so what difference does it make that he demanded payment before, in the presence of other witnesses]?*
- C. Said R. Assi, “The meaning is that he demanded payment within the set time.”
- D. *But maybe after that time but before now, he paid him?*
- E. Said Abbaye, “He demanded it throughout the set time.”
- F. And is this [provision of an oath] for all time [Freedman: can we really say that whenever the worker demands payment, even years later, he will be believed on oath since he has witnesses that he once demanded the money, during all the set time]?
- G. Said R. Hama bar Uqba, “[The privilege of taking an oath applies only] for the period following the day of his claim [Freedman: if he was a day worker, hired for Monday, he must be paid between Monday evening and Tuesday morning. If he has witnesses that he claimed his money during the whole of that period, he is believed on oath from Tuesday morning until evening, but not later].”

The enormous construction at I.1, supplemented by No. 2, allows us to review the three possible positions on the issue treated in our Mishnah. If the Talmud were composed as essentially an exegesis of Scripture, or of Scripture’s treatment of various laws, then this would nicely approximate what most of the document would give us. The sustained analysis of the scriptural foundations for rules, the insistence that all rules derive from Scripture — these traits of mind hold together a protracted and quite cogent discussion. II.1 goes through a familiar exercise. Here, while we have proofs of the propositions of the Mishnah, we do not have a sustained discussion of a protracted and systematic order, a real “Talmud,” like the foregoing. The difference seems to me clear: the one is an episodic proof of a proposition of the Mishnah, the other is a highly analytical and profound inquiry into the workings of Scripture vis à vis the law at hand, a very different thing in quality, not merely in quantity. III.1 clarifies the law of the Mishnah. Here the role of Scripture again is subordinated, since Scripture has not provided the generative problematic of the discourse. IV.1 is a discourse of a quite different character, since the point is not the rule but the comparison of the rule to the prevailing norm. Ordinarily the norm is that the one who does not want to pay takes the oath; here the one who wants to be paid does. The exposition is unusually clear and full, a fine Talmud indeed. V.1 provides an important clarification of the law of the Mishnah.

### 9:13A-H

- A. **He who lends money to his fellow should exact a pledge from him only in court,**
- B. **And [the agent of the court] should not go into his house to take his pledge,**
- C. **as it is said, “You will stand outside” (Deu. 24:11).**
- D. **[If the borrower] had two utensils, [the lender] takes one and leaves one.**
- E. **And he returns [his] pillow by night, and plough by day.**
- F. **But if [the debtor] died, [the creditor] does not return [the objects] to the estate.**
- G. **Rabban Simeon b. Gamaliel says, “Even to [the borrower] himself he returns [the object] only for thirty days.**

H. **“After thirty days [have passed], he may sell [the objects], with the permission of the court.”**

I.1 A. *Said Samuel, “The agent of the court may forcibly seize the object, but he may not enter to take the pledge.”*

B. *But have we not learned in the Mishnah: **He who lends money to his fellow should exact a pledge from him only in court?** It must follow that the court does indeed exact the pledge from the debtor!”*

C. *Samuel will say to you, “I should say, ‘he may forcibly seize the object outside the house only through the authority of the court.’ And that is the logical interpretation, for lo, the conclusion of the same passage reads, **he should not go into his house to take his pledge.** Now who is meant? If we say that it is the creditor, we have already derived that rule from the opening clause. Hence the only subject of that sentence can be the agent of the court.”*

D. *If that is your argument, it hardly follows, for this is the sense of the passage: **He who lends money to his fellow should exact a pledge from him only in court,** —from which it is to be inferred that the pledge may be exacted only through the court. But the creditor himself may not seize a pledge outside, so that **he should not go into his house to take his pledge.***

E. *Objected R. Joseph, “No man shall take a mill or an upper millstone for a pledge, for he would be taking a life in pledge’ (Deu. 24: 6). Lo, other things may be taken in pledge. ‘You shall not take a widow’s garment in pledge’ (Deu. 24:17). Lo, other things you may take in pledge. *By whom may this be done?* If we say that it is the creditor, lo, it is written, ‘When you make your neighbor a loan of any sort, you shall not go into his house to fetch his pledge; you shall stand outside, and the man to whom you make the loan shall bring the pledge out to you’ (Deu. 24:10-11). *Is it not then the agent of the court?*”*

F. *R. Pappa son of R. Nahman before R. Joseph explained the matter, and some say it was R. Pappa son of R. Joseph before R. Joseph, “In point of fact, Scripture does speak of the creditor, and the point is that if he does so, he violates two negative injunctions.”*

G. *Come and take note: since it is said, “you shall stand outside,” do I not know that “the man to whom you make the loan shall bring the pledge out to you”? Then why does Scripture make such a statement? “The man” serves to encompass the agent of the court. Does that not mean then that he is in the category of the debtor? [So the agent of the court and the debtor can go into the house to take the pledge, and that would refute Samuel’s position.]*

H. **[113B]** No, it means that the court officer is in the category of the creditor.

I. *Come and take note: “When you make your neighbor a loan of any sort, [you shall not go into his house to fetch his pledge; you shall stand outside, and the man to whom you make the loan shall bring the pledge out to you’ (Deu. 24:10-11)] — Scripture speaks of the officer of the court.*

J. You maintain that Scripture speaks of the officer of the court. But perhaps it refers only to the creditor?

K. When Scripture says, “you shall not go into his house to fetch his pledge,” lo, the creditor is addressed. So how shall I interpret the phrase, “If you take your

neighbor's garment as a pledge," Scripture must be speaking of the officer of the court.

- L. *The matter is subject to a dispute among Tannaite authorities, for it has been taught on Tannaite authority:*
- M. An officer of the court who comes to exact a pledge should not enter the house of the debtor to take the pledge but he stands outside, and the other brings out the pledge to him, as it is said, "you shall stand outside, and the man...."
- N. *And another teaching, also on Tannaite authority, states:*
- O. A creditor who comes to exact a pledge should not enter the house of the debtor to take the pledge but he stands outside, and the other brings out the pledge to him, as it is said, "you shall stand outside." But an officer of the court who comes to exact the pledge, lo, that one may go into the house and exact the pledge.

**I.2.** A. One must not take as a pledge things with which one prepares food. And to a rich man one leaves a couch, a couch and a mattress, and to a poor man, a couch, a couch and matting. That is for him, but as to his wife and sons and daughters, one need not leave such things. Just as an assessment is made for a debtor so also is the same in the case of valuations. [One has to leave the debtor enough to make a living. If one vows one's valuation, a poor man's means are assessed and the valuation is reduced.]

B. *To the contrary, [since the rule as given in connection with valuations, not loans,] the law of assessment is written with respect to valuation, so express the matter in this way:* Just as they make an assessment for valuations, so they make an assessment in the case of a debtor.

**I.3.** A. The master has said, "And to a rich man one leaves a couch, a couch and a mattress, and to a poor man, a couch, a couch and matting."

B. *For whom are these provided? Should we say that they are for "his wife, sons, and daughters," lo, you have said, "That is for him, but as to his wife and sons and daughters, one need not leave such things." Rather, this and that are for him, so why two?*

C. *One is for eating, the other is for sleeping.*

D. *That is in line with what Samuel said, "For all ailments I know the cure, except for these three: eating bitter dates on an empty stomach; girding one's loins with a wet cord of flax; and eating bread but not walking four cubits after eating [before going to sleep]" [Freedman/Rashi: so one has to 'have a couch for dining placed four cubits distant from the sleeping couch].*

**I.4.** A. *A Tannaite authority recited before R. Nahman, "Just as they make an assessment for valuations, so they make an assessment in the case of a debtor."*

B. *He said to him, "If we go so far as to sell his property, shall we make an assessment for him [to leave him enough money to buy these things]?"*

C. *But do we sell his property? Have we not learned in the Mishnah: **And he returns [his] pillow by night, and plough by day?***

D. *The Tannaite authority's statement in accordance with the view of Rabban Simeon b. Gamaliel is what he had repeated before him, and this is what he said*

to him, “Now, if, in accord with the view of Rabban Simeon b. Gamaliel, we go so far as to sell his property, shall we make an assessment for him [to leave him enough money to buy these things]?”

- E. For we have learned in the Mishnah: **Rabban Simeon b. Gamaliel says, “Even to [the borrower] himself he returns [the object] only for thirty days. After thirty days [have passed], he may sell [the objects], with the permission of the court.”**
- F. Now how do you know that, when Rabban Simeon b. Gamaliel made his statement, what he meant was that one makes an outright sale? Perhaps his meaning is this: up to thirty days, one must return it to him as it is; afterward, one returns only what is fitting for the debtor, while what is not fitting for him may be sold [so Simeon may concur that we exempt some part of the pledge]?
- G. But if you take the view that Rabban Simeon b. Gamaliel takes that position, then there will be nothing that is not going to be fitting for the debtor.
- H. For Abbaye has said, “Rabban Simeon b. Gamaliel, R. Simeon, R. Ishmael, and R. Aqiba all take the position that every Israelite is in the status of a prince.”
- I. Rabban Simeon b. Gamaliel, as we have learned in the Mishnah: **On the Sabbath they do not clear away] arum or mustard. Rabban Simeon b. Gamaliel permits moving arum, because it is food for ravens that may be in the house [as ravens are kept in royal palaces for sport, hence Israelites are in the classification of princes] [M. Shab. 18:1G-I].**
- J. R. Simeon, as we have learned in the Mishnah: **Princes on the Sabbath anoint themselves with rose oil on their wounds, since it is their way to do so on ordinary days. R. Simeon says, “All Israelites are princes” [M. Shab. 14:4G-H].**
- K. R. Ishmael and R. Aqiba, as we have learned in teaching on Tannaite authority: If one owed a thousand zuz and wore a garment worth a hundred manehs, they take that off him and dress him in a garment appropriate for him. Now a Tannaite authority speaking for R. Ishmael and a Tannaite authority speaking for R. Aqiba repeated, “Every Israelite is worthy of such a garment.”
- L. Now, as to our initial conception, that the debtor was allowed to hold on to what was fitting for him, while what is not fitting for him is sold, as for a pillow and a bolster, to be sure, there can be articles of inferior quality that will do him, but as to a plow, what is there available anything? [Nothing inferior is available.]
- M. Said Raba bar Rabbah, “[The rule pertains to] a silver strigil” [Freedman: a flesh scraper or brush; Simeon b. Gamaliel rules that after thirty days it must be sold and an inferior one bought, and the creditor gets the change.]
- N. To this statement R. Haga objected, “But let the creditor say to him, ‘You are not my responsibility in particular [that I have to provide you with such objects]!’”
- O. Said Abbaye to him **[114A]**, “To the contrary! he is indeed his responsibility, since it is written, ‘And to you will be the act of righteousness’ (Deu. 24:13) [so the creditor does bear particular responsibility for the debtor who owes him money].”

**I.5.** A. The question was raised: what is the law as to making an assessment for a debtor? Do we indeed derive the law governing an assessment in the case of

*poverty, pertaining in the present context, from the law governing valuations or not, basing our comparison on reference in both pertinent verses to poverty?* [“And if your brother grows poor, then you shall relieve him” (Lev. 25:37); valuations: “But if he is poorer than your estimation...according to the means of him who vowed shall the priest value him (Lev. 27: 8). Freedman: Hence, just as the means test is applied in the latter case, exempting the one who has taken the vow from his full obligations, so is the rule in the former case.] *Or do we not do so?*

- B. *Come and take note of the following: Rabin sent word in his letter, “I have asked all my masters, and no one has said a thing to me. But this is the question that I raised [which answers the problem at hand]: ‘He who says, “Lo, incumbent on me is a maneh for the upkeep of the Temple house,” what is the law as to making an assessment of his resources [so that, if he cannot pay, we leave him things he needs]? [Reporting on the matter, the letter continues,] R. Jacob in the name of Bar Peda and R. Jeremiah in the name of Ilfa say, ‘That question is settled by an argument a fortiori from the case of a debtor, for if a debtor, to whom the pledge is returned, is not accorded an assessment, then in regard to what has been consecrated, where the pledge is not returned, surely there should be no assessment!’ And R. Yohanan said, ‘What is written is, “When a person shall make a vow by your valuation shall the persons be for the Lord” (Lev. 27: 2). [The same law then applies to both a vow and a valuation.] Just as in the case of valuations, they do make an assessment, so in the case of what has been consecrated, they do make an assessment.’”*
- C. *And the contrary party [Jacob]?*
- D. *That argument serves to set forth the rule governing the judgment of a limb in accord with its value: just as in valuations, a limb is judged according to its critical value, so in a vow to consecrate something, the importance of the limb is the governing consideration [so that if one vows the valuation of his head or heart, then his whole value is vowed, since life depends on it; likewise, if one vowed the value of his heart to the sanctuary, the same rule is invoked.*
- E. [Now reverting to our question, what is the law as to making an assessment for a debtor?] an assessment should be made for a debtor by an argument a fortiori from the rule governing valuations: [Contrary to the argument given above, if a debtor, to whom the pledge is returned, is not accorded an assessment, then in regard to what has been consecrated, where the pledge is not returned, surely there should be no assessment,] if in the case of valuations, in which the pledge is not returned, they make an estimation of one’s needs, in the case of a debtor, when the pledge is returned, surely they should make an assessment of his needs [and provide for that]! Scripture states, “But if he be poorer than your estimate,” meaning, “he, but not a debtor.
- F. *And the contrary position [that of the authority of our Mishnah, who maintains, **But if [the debtor] died, [the creditor] does not return [the objects] to the estate,** which shows that it always is returned to the debtor and so certain objects are assessed as vital and exempted from seizure (Freedman)]?*
- G. This bears the meaning that the rule applies only if he remains in his condition of poverty from the beginning to the end of the transaction.

- H. In the case of a vow to consecrate something, let the pledge be returned, on the basis of an argument a fortiori built upon the case of the debtor:
- I. if a debtor, for whom no assessment is made, gets back the pledge, then in the case of what has been consecrated, where an assessment is made, surely the pledge should be returned!
- J. Scripture says, “When the sun goes down, you shall restore to him the pledge that he may sleep in his cloak and bless you [and it shall be righteousness to you before the Lord your God]” (Deu. 24:13).
- K. This then excludes the case of what has been consecrated, for which no blessing is required.
- L. But does it not? And has it not been written, “And you shall eat and be satisfied and then bless the Lord your God”(Deu. 8:10), so even God requires a blessing of man]!
- M. Rather, Scripture says, “and it shall be righteousness to you before the Lord your God” (Deu. 24:13). — referring to one who requires righteousness [justification], excluding then that which has been consecrated, which does not require righteousness.

**I.6.** A. *Rabbah bar Abbuha came upon Elijah, standing in a cemetery of gentiles. He said to him, “What is the law as to making an assessment [of the debtor’s needs] in the case of a debtor?”*

B. *He said to him, “We derive the law governing an assessment in the case of poverty, pertaining in the present context, from the law governing valuations , basing our comparison on reference in both pertinent verses to poverty. In respect to valuations it is written, ‘But if he is poorer than your estimation...according to the means of him who vowed shall the priest value him (Lev. 27: 8). In respect to poverty, it is written, ‘And if your brother grows poor, then you shall relieve him’ (Lev. 25:37).”*

C. **[114B]** He further asked, “How do we know that if one is naked, he should not designate a portion of the crop as priestly ration [“heave offering”]?”

D. He said to him, “As it is written, ‘...so that he see no unclean thing in you’ (Lev. 23:15).”

E. *He said to him, “Aren’t you a priest? How come you’re standing in a cemetery [and so contracting corpse uncleanness]?”*

F. *He said to him, “Haven’t you repeated the laws of cultic cleanness? For it has been taught on Tannaite authority: Rabbi Simeon b. Yohai says, ‘The graves of gentiles do not impart corpse-uncleanness, as it is said, “And you, my flock, the flock of my pastures, are men” (Eze. 34:31) — you are classified as man, and gentiles are not classified as man [in the context of imparting corpse uncleanness, Num. 19:14, ‘when a man dies in a tent].”*

G. *He said to him, “I can barely hold my own in four of the divisions of the Mishnah, shall I hold my own in all six?”*

H. *He said to him, “Why is this so?”*

I. *He said to him, “I am in need.”*



- J. *He took him and brought him into the Garden of Eden. He said to him, "Take off your cloak, pick and take some of these leaves." He gathered them and took them off.*
- K. *As he was leaving, he heard someone say, "Who else [while yet in this life] is ever again going prematurely to consume his portion in the world to come, as has Rabbah bar Abbuha."*
- L. *He scattered and threw the leaves away. Nonetheless, since he had brought them in his cloak, it has absorbed their scent, and he sold the cloak for twelve thousand denars, which he passed out among his sons-in-law.*

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

- B. "And if he is a poor man, you shall not sleep in his pledge; when the sun goes down, you shall restore to him the pledge, that he may sleep in his cloak and bless you" (Deu. 24:12-13):
- C. *so if he is wealthy, you may sleep in it.*
- D. *What is the sense of this passage?*
- E. *Said R. Sheshet, "This is the sense of the passage: "And if he is a poor man, you shall not sleep with his pledge in your possession," but if he is wealthy, you may do so."*

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

- B. He who lends money to his fellow has not got the right to exact a pledge from him, but he is not liable to return it to him, and he violates all of these laws ["And if he is a poor man, you shall not sleep in his pledge; when the sun goes down, you shall restore to him the pledge, that he may sleep in his cloak and bless you" (Deu. 24:12-13), and "you shall return it to him by the time that the sun goes down" (Exo. 22:25)].
- C. *What is the sense of this passage?*
- D. *Said R. Sheshet, "This is the sense of the passage: He who lends money to his fellow has not got the right [himself] to exact a pledge from him, but if he did exact a pledge from him [through an officer of the court], he is liable to return it to him. '...and he violates all of these laws' refers to the last clause [if he did not return the pledge...]."*
- E. *Raba said, "This is the sense of the passage: He who lends money to his fellow has not got the right [himself] to exact a pledge from him, but if he did exact a pledge from him [through an officer of the court], he is liable to return it to him. When is this the case? If he took the pledge not at the time that the loan was made. But if he took the pledge at the time that the loan was made, he is not liable to return it to him. '...and he violates all of these laws' refers to the first clause."*

**I.9.** A. *R. Shizbi repeated on Tannaite authority before Raba, "you shall return it to him by the time that the sun goes down" (Exo. 22:25) —this refers to the garments used by night. '[And if he is a poor man, you shall not sleep in his pledge;] when the sun goes down, you shall restore to him the pledge, [that he may sleep in his cloak and bless you]' (Deu. 24:12-13) — this refers to the garments used by day."*

- B. *He said to him, "What do I need by night with a garment used by day? And what do I need by day with a garment used by night?"*
- C. *He said to him, "Should I then suppress this version?"*
- D. *He said to him, "This is the sense of the passage: 'you shall return it to him by the time that the sun goes down' (Exo. 22:25) —this refers to the garments used by day, which may be handed over as a pledge by night.. '[And if he is a poor man, you shall not sleep in his pledge;] when the sun goes down, you shall restore to him the pledge, [that he may sleep in his cloak and bless you]' (Deu. 24:12-13) — this refers to the garments used by night, which may be seized as a pledge by day."*

**I.10.** A. Said R. Yohanan, "If someone took a pledge of the debtor, [returned it,] and the debtor died, may he seize it from the estate?"

- B. *And objection was raised:* said R. Meir, "Since a pledge is taken, why is it returned anyhow?"
- C. *Why is it returned? The All-Merciful has said that it should be returned!* Rather, since it is returned, **[115A]** why should it be taken again as a pledge [since what does the creditor gain in such a procedure]?
- D. It is so that the Sabbatical Year should not remit the debt, and so that the pledge should not be classed as movable property in the possession of the estate.
- E. *So the operative consideration is that he went and took the pledge back. But if he had not taken the pledge back, then that would not be the rule* [and it follows that the pledge would be classified as any other movable property of the estate, which cannot be seized to pay the deceased's debts, and that refutes the position of R. Yohanan above, 104A: R. Yohanan said, "If one took a pledge from the debtor and returned it to him, and then the debtor died, the lender may seize the pledge from his children." It is not regard as movable property of an estate, which the creditor cannot seize (Freedman)].
- F. *Said R. Adda bar Mattena, "Do you not then have to revise the matter? Then this is how to do so:* Since a pledge is taken, why is it returned anyhow? It is so that the Sabbatical Year should not remit the debt, and so that the pledge should not be classed as movable property in the possession of the estate."

**I.11.** A. *Our rabbis have taught on Tannaite authority:*

- B. "When you make your neighbor a loan of any sort, you shall not go into his house to fetch his pledge. You shall stand outside" (Deu. 24:10-11) — you may not go into his house, but you may go into the house of the one who has made himself a surety for the loan.
- C. And so Scripture says, "Take a man's garment when he has given surety for a stranger, and hold him in pledge when he gives surety for foreigners" (Pro. 20:16).
- D. And further: "My son, if you have become surety for your neighbor, have given your pledge for a stranger; if you are snared in the utterance of your lips, caught in the words of your mouth; then do this my son, and save yourself, for you 'have come into your neighbor's power: go, hasten and importune your neighbor. Give your eyes no sleep and your eyelids no slumber; save yourself like a gazelle from the hunter, like a bird from the hand of the fowler" (Pro. 6:1-5).
- E. If you owe him money, pay him; if not, bring many of your friends around him [Freedman].

**I.12.** A. Another interpretation [of the verse, “When you make your neighbor a loan of any sort, you shall not go into his house to fetch his pledge. You shall stand outside” (Deu. 24:10-11)] — you may not go into his house, but you may go into his house to collect for portage fees, payment for hiring asses, the bill for the inn, and the bill to pay the service of artists.

B. Might I suppose that the same is so even if these fees due for service were transformed into a loan?

C. Scripture states, “When you make your neighbor a loan of any sort.”

The basic program of our Talmud is to clarify the rule of the Mishnah in line with the pertinent requirements of Scripture. That paramount motif is introduced at the outset, at I.1. No. 2 introduces a quite interesting problem, requiring attention to both Scripture and the Mishnah. How do we compare provision made for one who pledges a valuation, with special attention to whether or not we allow someone the necessities of life when we collect in behalf of the Temple what he has vowed or pledged, with provision made for the debtor? Here Scripture has introduced both classes of persons and the consideration that is paid to the necessities of each. How, then, do we proceed? No. 2 simply announces what is going to be treated. No. 3 then clarifies the initial statement of the matter. It is at No. 4 that the issue is joined, and, further, that we read the Mishnah’s formulation in light of the issue at hand, and Scripture’s in relationship with the Mishnah’s. No. 5 carries forward the same theme, comparing the two categories. No. 6 is tacked on for obvious reasons, that is, for 6.C, and then the rest proceeds in its own directions. At No. 7 we revert to the clarification of the pertinent verse of Scripture. No. 8 then introduces a pertinent Tannaite rule that is, on the face of it, incomprehensible, and No. 9 proceeds along the same lines. No. 10 goes its own way, with a problem that does not continue the foregoing, but reverts to materials of interest at B. B.M. 104A-B. I cannot say I understand why this composition has been introduced here. No. 11, by contrast, continues from No. 9’s series, and No. 12 is continuous with No. 11.

### 9:13I-J

**I. From a widow, whether poor or rich, they do not take a pledge,**

**J. since it is said, “You will not take a widow’s garment as a pledge” (Deu. 24:17).**

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

B. **“From a widow, whether poor or rich, one has no right to take a pledge, [since it is said, ‘You will not take a widow’s garment as a pledge’ (Deu. 24:17),” all the same are a poor one and a rich one],” the words of R. Judah.**

C. **R. Simeon says, “From a poor widow one has not got the right to exact a pledge. But from a rich widow one takes a pledge and does not give it back night by night, lest this one start coming and going to her house and give her a bad name” [T. B.M. 10:10A-F].**

D. *Does this version bear the implication that R. Judah does not draw conclusions based on the reasoning of Scripture, while R. Simeon does [since the former*

applies the law to all classes, the latter identifies the reason of the rule and exempts from the scope of the law those to whom it does not apply (Freedman)]?

- E. *But lo, we have heard as a tradition the opposite positions assigned to each, as it has been taught on Tannaite authority [better: we have learned in the Mishnah]:*
  - F. **“Neither shall he multiply wives to himself” (Deu. 17:17)** [Bavli omits: — only eighteen.]
  - G. **R. Judah says, “He may have as many as he wants, so long as they do not entice him to abandon the Lord [Deu. 7:4].**
  - H. **R. Simeon says, “Even if there is only one who entices him to abandon the Lord, lo, this one should not marry her. If so, why is it said, ‘He should not multiply wives to himself? Even though they should be like Abigail [1Sa. 25:3]” [M. [San. 2:4E-I](#)].**
  - I. *In point of fact, R. Judah does not draw conclusions based on the reasoning of Scripture, but the case before us is to be differentiated from the norm, since Scripture is explicit about the operative consideration, “Neither shall he multiply wives to himself and his heart shall not turn away” (Deu. 17:17).*
  - J. *Thus, why “shall he not multiply wives to himself” It is “so that his heart shall not turn away.”*
  - K. And R. Simeon?
  - L. *Since as a general rule we do draw conclusions based on the reasoning of Scripture, Scripture ought to have written simply, “Neither shall he multiply wives to himself,” and we should not have required the language, “and his heart shall not turn away” (Deu. 17:17). For I should on my own have known the reason that he must not have too many wives, which is that “his heart shall not turn away.”*
  - M. *So why did Scripture make explicit, “his heart shall not turn away”? Even though they should be like Abigail [1Sa. 25:3]” he should not marry her.*
- The Talmud focuses on the hermeneutics of the authorities before us, underlining the broader implications of their reading of Scripture in relationship to the law. Mishnah-commentary is not at issue here.

### 9:13K-O

- K. **He who seizes millstones transgresses a negative commandment, and is liable on the count of taking two distinct utensils,**
  - L. **since it is said, “He shall not take the mill and the upper millstone as a pledge” (Deu. 24: 6).**
  - M. **And not concerning a mill and the upper millstone alone did they speak,**
  - N. **but concerning any utensil with which they prepare food,**
  - O. **as it is said, “For he seizes a man’s life as a pledge” (Deu. 24: 6).**
- I.1** A. Said R. Huna, “If one has seized as a pledge the lower millstone, he is subjected to a flogging on two counts, one on the count of the lower millstone, the other on the count of ‘For he seizes a man’s life as a pledge’ (Deu. 24: 6). For seizing as a pledge the lower and the upper millstones, he is flogged on three counts: one on the count of the lower millstone, the second on the count of the upper millstone, and the third on the count of ‘For he seizes a man’s life as a pledge.’”

- B. And R. Judah said, "If he seized as a pledge the lower millstone he is flogged on one count, if he took the upper millstone he is flogged on one count, if he took both the lower and the upper millstones he is flogged on two counts only. 'For he seizes a man's life as a pledge' (Deu. 24: 6) **[115B]** *refers to other matters altogether.*"
- C. *Now may we say that Abbayye and Raba differ on the same matter on which R. Huna and R. Judah differ?*
- D. For Raba said, "If one ate the paschal lamb raw [half roasted] he is flogged on two counts, on the count of eating it raw ['do not eat of it raw nor boiled with water but roast in fire'], and on the count of 'but roast with fire' (Exo. 12: 9). If he ate it boiled, he is flogged on two counts, one on the count of eating it boiled, the other on the count of 'but roast with fire' (Exo. 12: 9). If he ate it raw and boiled, he is flogged on three counts, because of eating it raw, because of eating it boiled, and on the count of 'but roast with fire' (Exo. 12: 9)."
- E. Abbayye said, "They do not administer flogging on account of a prohibition that is merely drawn from the implication of Scripture."
- F. *May we then maintain that Abbayye has made a ruling in accord with the principle of R. Judah, and Raba in accord with that of R. Huna?*
- G. *Raba will say to you, "My statement accords even with the position of R. Judah. R. Judah made his ruling in that case only because 'for he takes a man's life' does not necessarily refer to the nether and the upper millstones in particular, so 'For he seizes a man's life as a pledge' (Deu. 24: 6) refers to other matters altogether. But in the present case, for what purpose is the language, 'but roasted in fire,' included? It is only to encompass a negative commandment [over and above the positive requirements implicit in not eating it raw or boiled]."*
- H. *And Abbayye will say to you, "My statement accords even with the position of R. Huna. R. Huna made his ruling in that case only because the language, 'For he seizes a man's life as a pledge' (Deu. 24: 6) forms **[116A]** an additional commandment [certainly required against seizing any article employed in the preparation of food (Freedman)]. And since it is additional, it pertains as much to the lower and upper millstones as well. But in the present case, the language, , 'but roasted in fire,' is not an addition, for it is required in connection with that which has been taught on Tannaite authority: 'When one is obligated to carry out the commandment, "Arise and eat the meat roast," one also is liable to carry out the commandment, "Do not eat of it raw," and when one is not subject to the commandment, "roast," one also is not subject to the commandment, "Do not eat of it raw."'"*

**I.2. A.** *There is a Tannaite teaching that accords with the principle of R. Judah:*

- B. **If one has taken as a pledge a pair of scissors belonging to a barber, or a yoke for cows, he is liable on account of this part of the rule by itself and on account of that part of it by itself, [since it is said, "You shall not take the lower millstone and the upper millstone as a pledge" (Deu. 24: 6). Just as a mill and an upper millstone are distinctive in that they constitute two distinct**

**utensils that do work as one, and one is liable on account of this part by itself and on account of that part by itself, so he who exacts as a pledge two utensils that do work as one is liable on account of this part by itself and on account of that part by itself] [T. B.M. 10:11A-F].** But if he takes in pledge each part separately, he is liable on only one count.

C. *There is a further Tannaite teaching:*

D. **If one has taken as a pledge a pair of scissors belonging to a barber, or a yoke for cows, might one suppose that he is responsible on only a single count?** Scripture states, “You shall not take the lower millstone and the upper millstone as a pledge” (Deu. 24: 6). **Just as a mill and an upper millstone are distinctive in that they constitute two distinct utensils that do work as one, and one is liable on account of this part by itself and on account of that part by itself, so he who exacts as a pledge any utensils that do work as one is liable on account of this part by itself and on account of that part by itself] [T. B.M. 10:11A-F].**

**I.3.** A. *There was a man who seized as a pledge a butcher’s knife. The case came before Abbayye, who said to him, “Go, return it to him, because it is a utensils with which people prepare food, but then come back to court in connection with the debt.”*

B. *Raba said, “It is not necessary to come back to court in connection with the debt, but he can claim the debt up to the value of the pledge [Freedman: even without witnesses or a bond. The creditor can have claimed in the first place that he had bought the pledge. Now he is believed concerning the debt, up to the value of the pledge.]”*

C. *And does Abbayye not concur? How does this ruling differ from the one in the case of the goats that ate husked barley, in which the owner came, seized the goats, and laid a large claim for the damages they had done, and Samuel’s father ruled that he can claim compensation up to the value of the goats [since the injured party can have claimed that he had bought the goats from the owner]?*

D. *In that case we do not deal with something that people ordinarily lend or lease, while in this case, it is something that people ordinarily lend or lease*

E. *For R. Huna bar Abin sent word, “As to things that people commonly lend or lease out, if someone claims, ‘I have bought them,’ he is not to be believed.”*

F. *But does Raba not accept that conception? Lo, Raba ordered an estate to hand over scissors for woolen cloth and a scroll of lore, and these are things that are ordinarily lent or leased out!*

G. *Raba will say to you, “These too, since they are objects that depreciate in use, people are particular about them and do not lend them out.”*

The issue of I.1 is along the lines of the reading of the prior Mishnah-paragraph. No. 2 carries forward the same matter. No. 3



is relevant to the theme of the Mishnah-paragraph, but not to its exegesis in relationship to Scripture.