

II.

BAVLI BABA MESIA CHAPTER TWO

FOLIOS 21A-33B

2:1

- A. Which lost items belong to the finder [finders-keepers], and which ones is he [who found them] liable to proclaim [in the lost-and-found]?
- B. These lost items are his [the finder's]:
- C. “[if] he found (1) pieces of fruit scattered about, (2) coins scattered about, (3) small sheaves in the public domain, (4) cakes of figs, (5) bakers’ loaves, (6) strings of fish, (7) pieces of meat, (8) wool shearings [as they come] from the country [of origin], (9) stalks of flax, or (10) tongues of purple — lo, these are his,” the words of R. Meir.
- D. And R. Judah says, “Anything which has an unusual trait is he liable to proclaim.
- E. “How so?
- F. “[If] he found a fig cake with a potsherd inside it, a loaf with coins in it.”
- G. R. Simeon b. Eleazar says, “Any new merchandise [lacking an identification mark] he is not liable to proclaim.”
- I.1** A. [if] he found pieces of fruit scattered about: how much?
- B. Said R. Isaac, “A qab of fruit within four cubits.”
- C. *How so? If the fruit is scattered about as it would have had it simply fallen, then even more than a qab should belong to the finder, and if the produce is so situated as to indicate someone has deliberately put it down, then even a smaller quantity [than the volume defined by R. Isaac] should belong to the finder!*
- D. *Said R. Uqba bar Hama, “It is with the remnant of produce gathered on the threshing floor [Daiches: where the traffic soon destroys any distinguishing mark by which the sheaves might be identified] that we deal. In the case of a qab of produce scattered over four cubits, which is quite a bother, people will not take the trouble to come back and collect, so the owner abandons his right to it. If it is less than this, he will take the trouble to come back and collect and take away, and he will not give up his rights of ownership to it.”*

- I.2.** A. R. Jeremiah raised this question: *“What is the law if one finds a half-qab spread over two cubits? Is the reason that, should we find a qab of fruit within four cubits belongs to the finder, it is quite a bother, so people will not take the trouble to come back and collect it, with the result that the owner abandons his right to it, and in the case of two cubits spread over two cubits, since it is not a lot of trouble to collect, someone will not abandon his right to that amount of produce? Or perhaps the operative consideration is that that volume of produce is not worth much, and so too, in the case of a half qab spread over two cubits, since it is surely not worth very much, one gives up his rights of ownership to it?”*
- B. *“What about two qabs over eight cubits — what is the law? As to a qab of produce spread over four cubits, the reason is that gathering the produce is quite a bit of trouble, and all the more so in the case of two qabs spread over eight cubits, since the trouble of gathering the fruit is still more considerable, one will give up his right of ownership to it? Or perhaps the operative consideration is that the volume of fruit is not worth much, but two qabs spread over eight cubits, since the volume of fruit is considerable, one will not give up ownership to them?”*
- C. *“A qab of sesame seeds spread over four cubits — what is the law? Is the operative consideration governing a qab over four cubits because that volume of produce is inconsequential, but sesame seeds, since they are of considerable value, one is not going to give up so easily? Or perhaps the operative consideration is that it is quite a bit of bother to collect the produce in the first case, all the more so with sesame seed, since it is an enormous amount of trouble to collect them, one will give up ownership of them?”*
- D. *“A qab of dates in four cubits, a qab of pomegranates in four cubits — what is the law? The reason governing a qab of produce in four cubits is that such a volume is inconsequential, and since a qab of dates or of pomegranates in four cubits is likewise inconsequential, one will give up ownership, or perhaps the operative consideration is that it is a great deal of trouble to collect the qab of produce, but in the case of a qab of dates spread over four cubits or a qab of pomegranates spread over four cubits, since it is not all that much trouble to gather them up again, one will not give up his rights of ownership?”*
- E. *What is the final ruling? The question stands.*

- I.3** A. *It has been stated: [21B] As to the issue of whether or not the expectation that an owner of an object will give up hope of recovering his lost article [so that he gives up ownership and the finder may keep the object] constitutes [an act of giving up ownership and so] abandonment. [Daiches: anticipated abandonment of the hope of recovering a lost article; if an article is found before the loser has become aware of his loss, and the circumstances are such that the loser would have abandoned the hope of recovering the article had he known that he lost it] —*
- B. Abbaye said, *“This does not constitute an act of abandonment [of the object, and the finder does not effect acquisition of it; it remains the property of the original owner].”*
- C. Raba said, *“It is an act of abandonment.”*
- D. In regard to an object that bears a distinguishing mark, *all concur that the expectation that an owner of an object will give up hope of recovering his lost*

article does not constitute an object that has been abandoned. And that is the case even though later on we hear from the owner himself that he has given up hope of recovering the object, it still is not deemed an act of abandonment, because at the moment at which the finder took possession of the object, the owner had not given up hope of finding it. We take for granted that when the owner realizes he has lost the object, he will not give up hope of getting it back, but takes for granted, “I can recognize it by a distinguishable trait, so I shall lay claim on the basis of the distinguishable trait and get it back.”

- E. *If, on the other hand, the lost article should be found [Daiches] in the intertidal space of the seashore or on ground flooded by a river, even though it bears a distinguishing trait, the All-Merciful has assigned ownership to the finder, as we shall explain in due course.*
- F. *Where the dispute just now cited pertains is in regard to that lacks a distinguishing mark.*
- G. *Abbaye said, “This does not constitute an act of abandonment [of the object, and the finder does not effect acquisition of it; it remains the property of the original owner],” because the owner does not know that he has lost it.”*
- H. *Raba said, “This does constitute an act of abandonment, for when the owner does find out that he has lost it, he will give up hope of finding it again. He will reason, ‘I have no distinguishing mark on it.’ It is as of the moment that he lost it that he has given up hope of recovering it.”*
- I. *Come and hear: **pieces of fruit scattered about — lo, these are his.** Lo, here is a case in which he did not know that he had lost the object [thus supporting the position of Raba].*
- J. *Said R. Uqba bar Hama, “Here we deal with what was gathered on the threshing floor, so the owner is well aware that he has lost the object.” [This is not a case of anticipated abandonment, since the owner knew immediately that he was not getting his produce back. The dispute therefore does not pertain.]*
- K. *Come and hear: **...coins scattered about — lo, these are his.** Lo, here is a case in which he did not know that he had lost the object [thus supporting the position of Raba]. Why should this be the case? Lo, he did not know that he had lost the money.*
- L. *There too it is in line with what R. Isaac said, “A person commonly checks his wallet every few minutes” [so it is certain that, if he lost the money, he knew it almost immediately, and here too we do not have a case of anticipated abandonment]. Here too, “A person commonly checks his wallet every few minutes.”*
- M. *Come and hear: **...cakes of figs, bakers’ loaves, strings of fish, pieces of meat, wool shearings [as they come] from the country [of origin], stalks of flax...— lo, these are his.** Why should that be so? Lo, here is a case in which he did not know that he had lost the object [thus supporting the position of Raba].*
- N. *Here too, these objects are heavy, so he surely knows that he lost them.*
- O. *Come and hear: **...or tongues of purple — lo, these are his.** Why should that be so? Lo, here is a case in which he did not know that he had lost the object [thus supporting the position of Raba].*

- P. *Here too, since these things are very valuable, he checks every few minutes, in line with the statement of R. Isaac.*
- Q. *Come and hear: He who finds money in synagogues or school houses or in any place where people congregate, lo, they belong to him, since the owner will despair of them.*
- R. *Lo, here is a case in which he did not know that he had lost the object [thus supporting the position of Raba]. It is in line with what R. Isaac said, "A person commonly checks his wallet every few minutes" [so it is certain that, if he lost the money, he knew it almost immediately, and here too we do not have a case of anticipated abandonment].*
- S. *Come and hear: **At what point are people [in general, not only the poor, to whom the gleanings are assigned as their property] permitted to take the gleanings of a reaped field [now deemed ownerless property]? When the stoop-workers have completed their run through the field [M. Peah 8:1].** The question was raised, What is meant by the stoop-workers? R. Yohanan said, "Old people, who walk leaning on a stick." R. Simeon b. Laqish said, "The last of the gleaners."*
- T. *Now why should this be the rule? Even though the poor of that particular locale have given up hope of finding more grain [and so abandoned this property of theirs, that is the gleanings], still, there are poor folk of other places, who have not yet abandoned their hope of finding gleanings in this field [of which they may not even be informed? [That proves that ownership is transferred in anticipation of the abandonment of the owner, just as Raba maintains.]*
- U. *One may reply, since there are people here in this locale, poor people elsewhere give up hope right away, assuming that the poor people of that place will already have gleaned the field. [So it is not a case of ownership transferred in anticipation of the abandonment of the owner.]*
- V. *Come and hear: **If one found harvested figs in the road, even if they were found beside a field full of harvested figs, and this also holds true for a fig tree that overarches the road, and on which he found figs — the figs are permitted under the law that defines stolen property, and they are exempt from the law of tithes. But in similar cases concerning olives or carobs, they are subject to the law of tithes [and are not deemed ownerless property] [M. Ma. 3:4A-F].***
- W. *Now, from the perspective of Abbayye, the opening rule poses no problems at all, for, since these are valuable goods, a person is constantly checking to see where they are; not only so, but figs commonly drop.*
- X. *But the concluding clause poses a problem to the position of Raba, for it is taught, **But in similar cases concerning olives or carobs, they are subject to the law of tithes [and are not deemed ownerless property]!** [The owners have not given up hope of recovering the olives and carob beans; they do not usually drop, and the owner is not aware of the loss. Even though he finds it out later on and will give up hope, it is only an anticipated abandonment that applies at the time when the produce is found and taken; hence anticipated abandonment is not valid, and that contradicts Raba's position.]*

- Y. Said R. Abbahu, “The case of the olive is different, since its appearance proves [its distinctive character], and even though olives drop to the ground, people know where they belong and who owns that spot.”
- Z. If so, even the initial clause of the rule poses a problem:
- Y. Said R. Pappa, “When a fig drops to the ground, it gets dirty [and the owner will abandon it at once].”
- Z. Come and take note: **A thief who take from one party and gave to another, so too a robber who [by force and in the owner’s presence] took from one party and gave to another, [22A] and also if the Jordan river should take property from one party and give it to another, what has been taken has been taken, and what has been given has been given. [The initial owner forthwith gives up hope of getting his property back, and the ownership is immediately vested in the recipient] [T. Ket. 8:4A-D].**
- AA. Now with regard to the the case of the robber or the Jordan river, the initial owner sees what has happened and despairs of getting his property back [so we do not have a case of anticipated abandonment]. But as to a thief, has the owner seen what he has done and given up hope of recovering his property forthwith?
- BB. R. Pappa explained that the case refers to an armed robber. [The larceny is done in the open, and the despair and abandonment are immediate.]
- CC. If so, this is nothing different from a thief!
- DD. There are two types of thief.
- EE. Come and take note: **If the river carried off someone’s beams, timber or stones and left them in a neighbor’s field, lo, they belong to [the neighbor], because the original owner has given up hope of getting the property back [T. Ket. 8:4E-F].**
- FF. Now the operative consideration is that the original owner has given up hope of getting the property back. Lo, if that is not the case, then that is not the case.
- GG. With what sort of case do we deal here? A case in which the original owner has the power to recover the property [and so there is no issue of anticipated abandonment at all, and hence no contradiction to Raba’s view].
- HH. If that is the case, then look at the conclusion of the passage. **If the owner was pursuing his property as it flowed down the river, or if he was in some other place and did not know about the flood, lo, this remains in the possession of the original owner [T. Kel. 8:4G].**
- II. Now if we deal with a case in which the owner can recover the property as you claim, then why specify that the owner is running after the property? Even if not, the law should pertain.
- JJ. With what sort of case do we deal here? A case in which the original owner can save his property only by considerable effort. If the owner is running after the property, then he has not despaired of recovering it, but if he does not do so, then he clearly has despaired of recovering it.
- KK. Come and take note: **How does one validly separate heave-offering from produce without the knowledge and consent of the owner? If one went down into his fellow’s field and gleaned produce and separated heave-offering from it without permission, if the owner of the field is apprehensive of robbery,**

that which the other has separated is not valid heave-offering; but if he is not apprehensive of robbery, that which he has separated is valid heave-offering. How does one know whether or not the owner is apprehensive of robbery? When the householder came and found him and said to him, “Go to the fine produce and glean there,” if there was there fine produce, the householder meant what he said and thus he is not apprehensive of robbery; but if not [if there was no fine produce] — lo, this one is apprehensive of robbery [and his comment was a sarcastic one]. If the householder should glean and add to what the other has already gleaned, either way, he is not apprehensive of robbery [T. Ter. 1:5A-I].

- LL. *Now why should it be the rule that if there was there fine produce, the act of separating heave-offering is valid? At the moment at which the other separated the heave-offering, the owner did not know it [so the anticipated knowledge is the same as actual knowledge, and anticipated abandonment should be deemed as valid as real abandonment, contrary to Abbayye’s view].*
- MM. *In reference to the opinion of Abbayye, Raba explained the rule to speak of a case in which the owner appointed the other as his agent. [His action is therefore always valid.] This surely is a reasonable supposition, for lo, if the other had not been appointed the agent of the owner, then how could the heave-offering that the other separated validly be construed heave-offering at all? And lo, the sense of “you,” in the scriptural verse, “And you also” (Num. 18:28) is meant to encompass your agent, thus indicating, “just as what you do must be with your full knowledge and consent, so what your agent does must be with your full knowledge and consent.” Therefore with what sort of case do we deal here? It must be one in which the other was appointed as agent. He had said to him, “Go and separate heave-offering.” But he had not specified, “Separate the heave offering from this portion,” and ordinarily the owner designates the heave offering from middling grain, but when he got there, he gave the heave-offering from the best quality. When the householder came and found him and said to him, “Go to the fine produce and glean there,” if there was there fine produce, the householder meant what he said and thus he is not apprehensive of robbery; but if not [if there was no fine produce] — then the produce designated as heave-offering by the agent is not in that status at all.*
- I.4** A. [Amplifying this last case:] *Amemar, Mar Zutra, and R. Ashi happened by an orchard belong to Mari b. Issaq. His share-cropper brought them dates and pomegranates and offer them to the visitors. Amemar and R. Ashi ate them, but Mar Zutra did not.*
- B. *Mari b. Issaq in the meantime arrived and found them. He said to his share-cropper, “Why did you not bring to the rabbis some of the better produce?”*
- C. *Said Amemar and R. Ashi to Mar Zutra, “Now why did the master not eat? And has it not been taught, ‘if there was there fine produce, the householder meant what he said, so that the produce separated is in the category of heave-offering’?”*
- D. *He said to them, “This is what Raba said, ‘The consideration of ‘you should have gone and taken better ones’ is valid only with regard to the case of heave-offering, because the owner of the field is happy to carry out his religious duty in*

such a manner. [So he may have meant what he said.] But in this case, it is merely a matter of courtesy [and does not bear the sense of consent for what the agent has done].”

- I.5 A.** [Reverting to the sequence of cases broken off at 1.MM:] *Come and take note: If the dew is still on the produce and the owner of the produce is pleased by that fact, lo, the rule “if water be put” (Lev. 11:38) applies. If it dried off, even though the owner was pleased that it had been there, [22B] the produce does not fall under the rule, “If water be put” [and is not susceptible to uncleanness] [cf. T. Makh. 3:1].*
- B. *Is the reason not that we do not invoke the principle that since the owner is pleased now, it is as though he had been pleased to begin with [and along these same lines, we do not endow anticipated abandonment with retrospective effect, contrary to the position of Raba].*
- C. *No, that case differs from ours, for in that case Scripture is explicit, “if one puts water,” which means, only when the man puts the water on [but not retrospectively, that is the watering that makes the produce become susceptible to uncleanness].*
- D. *If that is the case, then what about the first case [If the dew is still on the produce and the owner of the produce is pleased by that fact, lo, the rule “if water be put” (Lev. 11:38) applies]? [The owner here is aware that the dew is on the produce when it is still there.]*
- E. *That is in line with the thinking of R. Pappa, for R. Pappa pointed out the following contradiction: “It is written, ‘If one puts water’ but we read the letters as though they said, ‘if water be put’ (Lev. 11:36, 38). How so? The sense is that we require that ‘water’s being put’ should be equivalent to ‘one’s putting on water.’ Just as putting is only done with the knowledge and consent of the one who does it, so when water is put on the produce, to be effective it must be put with the knowledge and consent of the person who is concerned. [Daiches: and if the knowledge that the dew descended upon the produce comes after the event, the produce is made capable of becoming unclean only if the owner is pleased with the event — if the produce is still moist].”*
- F. *Come and take note: R. Yohanan said in the name of R. Simeon b. Yehosedeq, “How do we know that it is permissible to acquire as one’s own a lost object that the river has swept away? As it is written, ‘And so shall you do with his ass, and so shall you do with his garment, and so shall you do with every lost thing of your brother’s which he lost and you have found’ (Deu. 22: 3). If an object has been lost to him and found by someone else [then it must be returned to him], excluding a case in which the object has been lost to him but not found by someone else.”*
- G. *Now an object that may not be held by the finder is governed by the same law as an objected which may be held by the finder: just as the object that may be held by the finder may be kept whether or not it has a distinguishing trait, so an object that may not be held by the finder is forbidden whether or not it has a distinguishing mark [and there is reason to conclude that the owner is not even aware of the loss at the time of the loss, even though when he became aware he would abandon hope of getting it back].*
- H. *This is a decisive refutation of the position of Raba.*

I. *The law accords with the position of Abbaye [Daiches:] in cases indicated by the initials Y ' A L K G M.*

I.6 A. *Said R. Aha son of Raba to R. Ashi, "Now since Raba has been refuted, how come we eat dates that have been shaken down from the tree by the wind?"*

B. *He said to him, "He forthwith abandons them because of the vermin and creeping things that eat them."*

C. *"And what about the dates from trees belong to orphans, who have not got the power to abandon such things [since full ownership in their property is not vested in them]?"*

D. *He said to him, "We do not take for granted that pretty much every piece of property belongs to owners!"*

E. *"And if it is known to belong to orphans? or if the tree is surrounded by a fence?"*

F. *He said to him, "Then the dates that fall off the tree in the wind really are forbidden."*

II.1. A. **...small sheaves in the public domain — lo, these are his [the finder's]:**

B. *Said Rabbah, "And that is the rule even when they bear a distinguishing trait."*

C. *It follows that, in Rabbah's view, a distinguishing trait that can be blotted out is null. [Daiches: when the lost object is small and lies where there is traffic, it is likely to be trodden on, so that the identification mark may disappear].*

D. *Raba said, "The rule in the Mishnah pertains to a case only in which there is no distinguishing mark, but as to something that bears a distinguishing mark, one is liable to announce [his discovery and look for the loser]."*

E. *It follows that, in Raba's view, a distinguishing trait that can be blotted out is effective.*

F. *There are those that present the matter as a free-standing dispute:*

G. *A distinguishing mark that can be blotted out —*

H. *Rabbah said, "It is null."*

I. *Raba said, "It is effective."*

II.2. A. ***We have learned in the Mishnah: ...small sheaves in the public domain...lo, these belong to the finder. But small sheaves in private domain — lo, these is he liable to proclaim.***

B. *Now how are we to imagine the case? If the sheaves do not have a distinguishing mark, then even though found in private domain, what is there to announce [e.g., what characteristics can be described, there being none]? Then is it not a case in which the sheaves have a distinguishing mark, and lo, it has been taught on Tannaite authority, ...small sheaves in the public domain...lo, these belong to the finder. It follows that a distinguishing mark that can be blotted out is null, and that is a refutation of the position of Raba.*

C. *Raba may reply to you, "In point of fact, we deal with a case in which there is no distinguishing trait, and, as to your question, 'even though found in private domain, what is there to announce?' — he may at least announce the place at which the sheaves were found."*

- D. And Rabbah said, “The location in which an object is found is not in the category of a distinguishing trait.”
- E. *For it has been stated:*
- F. As to the location in which an object is found —
- G. Rabbah said, “It is not in the category of a distinguishing trait.”
- H. And Raba said, “It is in the category of a distinguishing trait.”
- I. *Come and take note: ...small sheaves in the public domain...lo, these belong to the finder. But small sheaves in private domain — lo, these is he liable to proclaim.* And as to large sheaves, whether located in public or private domain, they must be taken and proclaimed.
- J. *Now how does Rabbah explain this rule, and how does Raba do so?*
- K. *Rabbah explains the rule in accord with his theory of matters, and Raba in accord with his.*
- L. *Rabbah explains the rule in accord with his theory of matters:* The announcement concerns the distinguishing trait [which always will characterize large sheaves of grain].
- M. *...and Raba in accord with his:* The announcement concerns the location of the sheaves when they are found.
- N. *Rabbah explains the rule in accord with his theory of matters:* The announcement concerns the distinguishing trait [which always will characterize large sheaves of grain], and the reason that small sheaves in public domain belong to the finder is that **[23A]** they are trodden down [and the distinguishing trait will be obliterated]; on private property the finder has to take them and proclaim he has found them because they will not have been trodden down. And as to large sheaves, whether located in public or private domain, they must be taken and proclaimed *because on top of such as these there is no treading.*
- O. *...and Raba in accord with his:* The announcement concerns the location of the sheaves when they are found, and the reason that small sheaves in public domain belong to the finder is that they are pushed along [Daiches: and moved about by the traffic and so do not remain where they were dropped], and as to those in private domain, one is liable to proclaim having found them because they are not pushed along. And as to large sheaves, whether located in public or private domain, they must be taken and proclaimed, *for, since they are heavy, they are not going to be pushed around.*
- P. *Come and take note: bakers’ loaves — lo, these belong to the finder.*
- Q. Lo, as to those of the householder, he is liable to proclaim [having found them].
- R. *What is the operative consideration as to those of the householder? It is because they bear a distinguishing trait, so one certainly will know that the bread belongs to one or another, so, without regard to whether the loaves are found in public domain or private property, one is liable to proclaim having found them.*
- S. *Therefore a distinguishing mark that is likely to be blotted out falls is effective, and that is a refutation of the position of Rabbah.*
- T. *Rabbah will reply to you, “As to the operative consideration in that case, it is because people are not to ignore food [found in the public way; it is not to be*

allowed to go to waste]. [Daiches: Therefore loaves of bread will not be trodden on but will be picked up as soon as they are noticed.]

- U. *But lo, there are gentiles [who will not observe that rule]*
- V. *Gentiles are afraid of witchcraft [and that is why they will pick up food found in the street anyhow].*
- W. *But there are cattle and dogs [who will bypass the food]?*
- X. *The Mishnah speaks of a situation in which cattle and dogs are not common.*
- Y. *May we say that the dispute between Rabbah and Raba on the effect of distinguishing traits follows the lines of a dispute among Tannaite authorities?*
- Z. **And R. Judah says, “Anything which has an unusual trait is he liable to proclaim. How so? [If] he found a fig cake with a potsherd inside it, a loaf with coins in it.”**
- AA. *Then it is to be inferred that the first authority of the dispute at hand takes the view that lo, these belong to the finder [even though they have a distinguishing trait]. [Meir assigns the figs to the finder, without regard to whether or not they bear a distinguishing trait.]*
- BB. *The cited authorities maintain that a distinguishing trait that may have come about accidentally [as much as one put in deliberately, e.g., a potsherd inside a fig-cake] is deemed a validly-distinguishing trait, and, further, they people may well bypass food found lying on the ground. Then is it not concerning the issue of a distinguishing trait that may be blotted out that they differ, with one authority taking the view that that is not regarded as an effective distinguishing trait, and the other holding that it is a distinguishing trait?*
- CC. *Said R. Zebid in the name of Raba, “If you should suppose that the initial authority takes the view that a distinguishing trait that may be blotted out does not fall into the category of a valid distinguishing trait and that people may well bypass food found in the street, then why should one have to proclaim the discovery of small sheaves belonging to a householder that are found in the public domain? [There is no reason for him to take that view whatsoever.]”*
- DD. *Rather, said R. Zebid in the name of Raba, “All parties to the dispute in the Mishnah concur that a distinguishing trait that is apt to be blotted out nonetheless falls into the category of an effective distinguishing trait, and, further, that people do bypass food found in the street. But here what is at issue is a distinguishing trait that may have come about on its own [and may not therefore mark the object as one that the owner has distinguished and can readily identify], for the first of the two authorities takes the view that a distinguishing trait that may have come about on its own is not deemed a distinguishing trait at all, while R. Judah maintains that such is a valid distinguishing trait.”*
- EE. *But Rabbah would then say to you, “All parties concur that a distinguishing trait that is apt to be blotted out is null, and, further, that people do not ordinarily bypass food. In the present case what is at issue is the standing of a distinguishing trait that may have come about on its own. The first authority takes the view that it is not effective, and R. Judah holds that it is indeed a valid distinguishing trait.”*

- FF. *There are those who report the matter as follows: they reason that all parties concur that a distinguishing trait that may have come about on its own is indeed an effective distinguishing trait, and, further, that a distinguishing trait that is apt to be blotted out is not effective. Then is it not concerning whether or not people ordinarily bypass food that they differ? The first party holds that people do so, and the second, that they do not do so.*
- GG. *Said R. Zebid in the name of Raba, "If you should suppose that the initial authority takes the view that a distinguishing trait that may be blotted out does not fall into the category of a valid distinguishing trait and that people may well bypass food found in the street, then why should one have to proclaim the discovery of small sheaves belonging to a householder that are found in the public domain? [There is no reason for him to take that view whatsoever.]"*
- HH. *Rather, said R. Zebid in the name of Raba, "All parties to the dispute in the Mishnah concur that a distinguishing trait that is apt to be blotted out nonetheless falls into the category of an effective distinguishing trait, and, further, that people do bypass food found in the street. But here what is at issue is a distinguishing trait that may have come about on its own [and may not therefore mark the object as one that the owner has distinguished and can readily identify], for the first of the two authorities takes the view that a distinguishing trait that may have come about on its own is not deemed a distinguishing trait at all, while R. Judah maintains that such is a valid distinguishing trait."*
- II. *But Rabbah would then say to you, "All parties concur that a distinguishing trait that is apt to be blotted out is null, and, further, that people do not ordinarily bypass food. In the present case what is at issue is the standing of a distinguishing trait that may have come about on its own. The first authority takes the view that it is not effective, and R. Judah holds that it is indeed a valid distinguishing trait."*

II.3 A. *Said R. Zebid in the name of Raba, "The governing principle in respect to the disposition of lost-and-found is this:*

- B. *"Since the loser has said, 'Woe is me for the loss,' he will despair of recovering his property [and therefore finders-keepers]."*
- C. *And R. Zebid in the name of Raba, "The law is that, in the case of in the case of small sheaves that are found in the public domain, lo, these belong to the finder. If they are found in private domain, if they appear to have been dropped accidentally, lo, these belong to the finder. If they appear to have been laid down deliberately, the finder must take them and proclaim having found them. And in both public and private domain, these rules pertain to an object that lacks a distinguishing trait. But as to an object that bears a distinguishing mark, there is no distinction between public and private domain, or between whether the object appears too have fallen or to have been put down carefully. Under all circumstances one is liable to proclaim [what he has found]."*

III.1 A. **[23B]** **strings of fish:**

- B. *Why [does the finder get to keep them]? The knot on the string surely serves as a distinguishing trait [for identifying them].*
- C. *The law pertains to a fisherman's knot, which is commonplace.*
- D. *And why should not the number of fish on the string serve as a distinguishing trait?*
- E. *The Mishnah speaks of a fixed number of fish [that is, the number of fish that fisherman ordinarily tie onto a single string; there is nothing unusual in that number].*

III.2. A. *People asked R. Sheshet, "As to the number of fish, does that constitute a distinguishing trait or not?"*

- B. *Said to them R. Sheshet, "You have learned as follows: If one has found utensils of silver, copper, tin or lead, or any other sort of metal, lo, one is not to return such as these, unless one indicates some sort of a mark or states the weight. Now since the weight constitutes a distinguishing mark, so the number also should be regarded as a distinguishing mark."*

IV.1 A. **pieces of meat, [wool shearings [as they come] from the country [of origin], stalks of flax, or tongues of purple — lo, these are his]:**

- B. *Why [assign them to the finder]? Let the weight of the meat serve as a distinguishing trait?*
- C. *We deal with a case in which the weight of meat in this category is uniform.*
- D. *Then let the piece of meat itself supply a distinguishing mark, e.g., whether the meat comes from the neck or loin of the beast?*
- E. *Has it not been taught: on Tannaite authority If one has found pieces of fish, a piece of fish that has been bitten, one has to announce the find. Barrels of wine, oil, grain, dried figs, and olives belong to the finder. [So the traits of the meat should supply distinguishing marks.]*
- F. *With what sort of a case does that rule deal? It is a case in which there is an identifying mark in the cut.*
- G. *For instance, Rabbah bar R. Huna would cut pieces of meat into triangles.*
- H. *You may derive evidence from the fact that the passage speaks of [cut pieces as they they were] like fish that have been bitten.*
- I. *That is indeed decisive.*

IV.2. A. *The master has stated, "Barrels of wine, oil, grain, dried figs, and olives belong to the finder."*

- B. *And lo, we have learned in the Mishnah: **jars of wine, or jars of oil — lo, these is he liable to proclaim [M. Baba Mesia 2:2].***
- C. *Said R. Zira said Rab, "The Mishnah-paragraph refers to sealed barrels."*
- D. *Then the cited passage refers to open barrels.*
- E. *But open barrels have been opened deliberately [and having been left open, are unfit for use; the person who has left the barrels in the open knows that he has incurred the loss. [So there is no issue here.]*
- F. *Said R. Hoshai, "The passage deals with barrels that were stopped up [but not sealed. There is no distinguishing mark, though the wine remains suitable.]"*

- G. *Abbaye said, "You may even maintain that both passages deal with sealed barrels, and there is no contradiction. The Mishnah-paragraph speaks to the period prior to the opening of the cellars [when the sale and delivery of barrels of wine begin; barrels are left unsealed; if a seller sealed a barrel and sold it, the seal then is a distinguishing trait], and the Tannaite teaching refers to the period after the opening of the cellars [when all barrels are in the same condition]."*

IV.3. A. *There was the case of R. Jacob bar Abba, who found a barrel of wine after the opening of the cellars.*

- B. *When he came before Abbaye for a ruling, he said to him, "Go, take it for your own use."*

IV.4. A. *R. Bibi asked R. Nahman, "Does the location of a found object constitute a distinguishing trait or not?"*

- B. *He said to him, "Lo, you have learned on Tannaite authority: "Barrels of wine, oil, grain, dried figs, and olives belong to the finder.' Now if you take the view that the location of an object would constitute a distinguishing trait, then the finder should have to announce the location of the object that has been found!"*

- C. *Said R. Zebid, "Here with what sort of a case do we deal? With barrels found on the river bank [which is hardly a distinguishing trait, since that is where barrels are ordinarily unloaded from the boats, so knowing where the barrel was found would not serve as an identifying mark for the loser to get his wine back]."*

- D. *Said R. Mari, "How come rabbis have ruled, the river bank does not constitute a distinguishing trait? For we say to any claimant, 'Just as has happened to yours, so it may have happened to your neighbors'."*

- E. *Some have it as follows: said R. Mari, "How come rabbis have ruled, the river bank does not constitute a distinguishing trait? For we say to any claimant, 'Just as has happened to yours, in this place so it may have happened to your neighbors' in this place.'"*

IV.5. A. *Someone found pitch in a winepress. He came before Rab, who ruled, "Go, take it for yourself."*

- B. *He saw that the finder hesitated, so he said to him, "Go and share it with my son, Hiyya."*

- C. *Does that then imply that Rab took the view that the location of a find cannot serve as a distinguishing trait?*

- D. *Said R. Abba, "The reason is that the owners have despaired of recovering their lost property, since weeds had grown up on it [and the pitch had been there for a long time and so had been abandoned]."*

V.1 A. **R. Simeon b. Eleazar says, "Any new merchandise [lacking an identification mark] he is not liable to proclaim."**

- B. *What is the meaning of "new merchandise"?*

- C. *Said R. Judah said Samuel, "New utensils, which one has not yet come to recognize." [Daiches: since they have not been long in use, they cannot be properly recognized when seen again.]*

- D. *What would constitute circumstances to which such a definition would apply? If we refer to a case in which the new merchandise bears a distinguishing trait, even*

though the merchandise has not been so long in use that they can be readily recognized on sight, what difference does it make? And if they do not bear a distinguishing trait, then even though the merchandise has been so long in use that they can be readily recognized on sight, what difference does it make?

E. *In point of fact, we deal with merchandise that lacks a distinguishing mark. At issue is whether such objects are to be returned to a rabbinical neophyte, who will recognize the utensils by sight. If we deal with a case in which the merchandise has been in use sufficiently long so that he is going to know what is his, then we restore the merchandise to him. If the merchandise has not been in hand sufficiently long to be recognized on sight, so he cannot be certain to recognize what is his, we do not give the merchandise back to him.*

F. *For said R. Judah said Samuel, "In these three matters, people will conceal the truth: a tractate, a bed, [24A] and hospitality." [If you ask someone whether he knows a given Talmud-tractate, he will say no, even though he does. People are not explicit as to sexual matters. Someone is not to give details as to a host's hospitality so as not to get others to come and seek the hospitality of the same host.]*

G. *So what?*

H. *Said Mar Zutra, "At issue is returning to a claimant an object merely because he claims to recognize it. If we know of a person that he will shade the truth only in these three matters, we restore the object to him, but if we know that he will shade the truth in other matters too, we do not return it to him."*

V.2. A. *Mar Zutra, the pious, had a silver goblet stolen from his possession in a hotel.*

B. *He saw a disciple wash his hands and dry them on someone else's shirt, and said, "This is the one. For he is not fastidious about other people's property.*

C. *He confronted him, and the other confessed.*

V.3. A. *It has been taught on Tannaite authority: R. Simeon b. Eleazar concedes that in the case of new utensils that are familiar to the eye, one has to proclaim having found them.*

B. *And what are such new utensils that are not familiar on sight, which one is not obligated to announce having found?*

C. *For example, poles of needles, knitting needles, bundles of axes. [T. Baba Mesia 2:1A-C].*

D. *When is that the case that they are permitted [without further ado]? When one has found them one by one.*

E. *But if he found them two by two, he is liable to make proclamation [T. Baba Mesia 2:1G].*

V.4. A. *What are poles? Rods. And why are they called poles? Because an object on which people hang things is called a pole.*

B. *That is in line with the following: one leaf on a branch.*

V.5. A. *So did R. Simeon b. Eleazar say, "He who rescues something from the mouth of a lion, wolf, or bear,*

B. *"or from a riptide in the sea or a sudden surge of a river,*

- C. “and he who finds something in a large plaza or camp-ground or any area where crowds congregate —
- D. “lo, these are deemed forthwith to be his,
- E. “for the owner despairs of ever getting it back” [T. **Baba Mesia 2:2A-E**].

- V.6** A. *The following question was raised: when R. Simeon b. Eleazar made this statement, did it pertain only to places in which the majority of the population is Canaanite [and unlikely to return lost objects to their rightful owners], but in a locale in which the majority of the population is Israelite, he would not [take the same view, that the owner would despair of getting his property back], of perhaps his view applies also to a place in which most of the population is Israelite?*
- B. *If you should maintain that that would pertain also to a locale in which the greater part of the population is Israelite, then do rabbis differ from him or do they not differ?*
 - C. *And should you maintain that they differ, then they would certainly differ where the majority are Israelites, but would they differ where the majority are gentiles?*
 - D. *And if you should take the position that they differ even where the majority are gentiles, does the law accord with his opinion of not?*
 - E. *And if you hold that the law accords with his position, is it in particular where the majority of the population is Canaanite, or might that be the case also when the majority of the population is Israelite*
 - F. *Come and take note: he who finds money in synagogues or school houses or in any locale in which crowds congregate, lo, these belong to the finder, because the owner despairs of getting his money back.*
 - G. *Now of whom have you heard that we follow the status of a majority [Daiches: that in the question of whether a found article is to be returned depends on considerations relating to the majority of the people who frequent the place where the article is found]? It is R. Simeon b. Eleazar. And one must therefore infer that even in a case in which the majority of the population is Israelite also [his statement applies].*
 - H. *Here with what sort of case do we deal? With coins that are scattered about. [In that case even sages will concur that the owner gives up hope of getting his money back.]*
 - I. *If the case involves coins that are scattered about, why emphasize that it is a place in which people congregate? Even in a place in which people do not congregate [the law would be the same].*
 - J. *Rather, we deal with a case in which the coins are bound up in a bundle, but in this ruling, with what sort of case do we deal? In a case involving meeting houses of Canaanites.*
 - K. *Perhaps so — but how in the world can we speak here of “study houses”?*
 - L. *We speak of study houses of ours in which gentiles take up residence [e. g., as guards].*
 - M. *Now that you have come to that, we may even speak of synagogues of ours, in which pagans have taken up residence.*

- N. *Come and take note: If one found in it something that was lost, if the majority of the population is gentile, one does not have to proclaim that fact. And if the majority was Israelite, one has to proclaim that fact. [If it was half and half, one has to proclaim that fact] [M. Makh. 2:8A-D].*
- O. *Now of whom have you heard that we follow the status of a majority [Daiches: that in the question of whether a found article is to be returned depends on considerations relating to the majority of the people who frequent the place where the article is found]? It is R. Simeon b. Eleazar. And one must therefore infer that it is in a case in which the majority of the population is gentile that [his statement applies].*
- P. *When R. Simeon b. Eleazar says that the rule stated by him applies, it concerns a place in which the majority are gentiles, but not in which the majority are Israelites.*
- Q. *[Not at all!] This represents the view of rabbis.*
- R. *Then derive from the case the position that sages concur with R. Simeon b. Eleazar in a locale in which the majority of the people are gentiles!*
- S. *That represents the position of R. Simeon b. Eleazar, even in a case in which the majority of the population is Israelite. But in this instance with what do we deal? With money that was concealed. [Daiches: in this case it was not lost at all, and if the majority were Israelites, the finder would have to announce it].*
- T. *If it was concealed money, then what in the world has the finder to do with it? Have we not learned in the Mishnah: **[If] he found a utensil in a dung heap, if it is covered up, he should not touch it. If it is uncovered, he takes it but must proclaim [that he has found it] [M. Baba Mesia 2:3D-F].***
- U. *It is in accord with what R. Pappa said, "The passage speaks of a garbage dump which is not ordinarily cleared away, but the owner changed his mind and determined to clean it up. Here too we make reference to a garbage dump which is not regularly cleared away, but the owner decided to do so."*
- V. **[24B]** *And if you prefer, I shall propose that we have before us the position of rabbis [and it is not a case in which money was concealed]. [Daiches: It is wrong, however, to conclude from this that rabbis agree with Simeon b. Eleazar where the majority are gentiles, as their decision does not mean that the article belongs to the finder.]*
- W. *For does the passage say, "Lo, they are to be assigned to the finder"? All the passage states is, "He does not have to announce having found them," that is, he leaves the find where it is, and when an Israelite comes and can tell the distinguishing mark, he is given the find.*
- X. *Come and take note, for R. Assi said, "If one found a barrel of wine in a town in which the greater part of the population is gentile, the barrel of one is permitted as an object that has been found, but it is prohibited as to Israelite use [since wine that has been touched by gentiles is unsuited for Israelite use, in the expectation that it has been used for a libation]. If, however, an Israelite came along and identified the barrel by a distinguishing trait, it is permitted for Israelites to drink [and assigned] to the one who found it [as his property]." [Daiches: the owner proves to be a Jew, so the prohibition relating to wine used for libation does not*

arise, and the majority of the inhabitants of the place are gentiles, who do not return lost objects, so the owner is assumed to have despaired of recovering the lost goods.] *In accord with whom is this ruling? It accords with the opinion of R. Simeon b. Eleazar [who takes account of the status of the majority]. The passage then implies that when R. Simeon b. Eleazar made his statement, it concerns a locale in which the greater part of the population was gentile, but in a locale in which the greater part of the population was Israelite, he would not take that position.*

- Y. *No, in point of fact, I may reply, R. Simeon b. Eleazar takes the same position in a case in which the majority is Israelite, but R. Assi concurs with him in one case [where the majority are gentiles] and differs from him in another [where the majority are Israelites].*
- Z. *Then, when he states that the wine may not be used for Israelite benefit but is permitted to the one who has found it, what is the purpose of such a ruling? [Why bother to let someone keep what he cannot utilize anyhow?]*
- AA. *Said R. Ashi, "It has to do with the utensil [he can use the utensil in which the wine was held but cannot drink the wine or sell it for benefit]."*
- V.7** A. *A certain man once found four pennies tied up in a cloth and tossed into the Biran canal. He came before R. Judah, who ruled, "Go and make a proclamation [of what you have found, rather than simply keeping the find]."*
- B. *But is this not a case involving a tidal estuary?*
- C. *The Biran canal is in a different category, since it holds obstacles [e.g., nets to catch fish], the owner will not despair of finding his property.*
- D. *Nonetheless, the larger part of the population is gentile. That proves the law does not accord with R. Simeon b. Eleazar.*
- E. *Even were the entire population gentile, the Biran canal still is a special case, for Israelites are the ones who have dammed it up, and Israelites are the ones who dredge it. Since Israelites dam it up, we may assume that it was an Israelite who lost the money, and since Israelites are the ones who dredge it, the loser of the money did not despair of getting it back.*
- V.8** A. *R. Judah went and followed Mar Samuel in the whole-meal sellers' marketplace. He said to him, "If one found here a purse, what is the law?"*
- B. *He said to him, "Lo, these belong to the finder."*
- C. *"If an Israelite came and gave a distinguishing mark [in claiming the purse], what is the law?"*
- D. *He said to him, "He is liable to return it."*
- E. *"Both? [Surely the rulings contradict!]"*
- F. *He said to him, "That admittedly imposes a requirement that is beyond the limits of the law."*
- G. *That is in line with the case of Samuel's father, who found asses wandering in a desert, and return them to the owner after a full year.*
- H. *It was beyond the limits of the law.*

- V.9** A. *Raba went and followed R. Nahman in the leather-workers' marketplace. Some say it was the marketplace of the sages. He said to him, "'If one found here a purse, what is the law?'"*
- B. *He said to him, "Lo, these belong to the finder."*
- C. *"If an Israelite came and gave a distinguishing mark [in claiming the purse], what is the law?"*
- D. *He said to him, "Lo, it still belongs to him."*
- E. *"But lo, the loser is standing and protesting!"*
- F. *"He is in the status of one who stands and protests that his house has fallen down or that his ship has sunk in the sea."*
- V.10** A. *A vulture grabbed meat in the market it and dropped it in the palm grove of Bar Marion. He came to Abbaye for a decision, and Abbaye ruled, "Go, take it for yourself."*
- B. *Now the majority of the population in that place is Israelite, so the ruling implies that the law accords with the position of R. Simeon b. Eleazar [that we take account of the demographic profile of the area].*
- C. *Even if the majority of the local population is Israelite, the case of a vulture is different, since it is in the category of the sea-tide [and if something is lost in the tide, the owner despairs of getting it back].*
- D. *And lo, did not Rab say, "Meat that has disappeared from sight is forbidden [since we do not know what might have happened in the interval before it is recovered]"?*
- E. *In this case, he was standing and watching [the vulture].*
- V.11** A. *R. Hanina found a slaughtered kid on the road between Tiberias and Sepphoris, and sages permitted it to him.*
- B. *Said R. Ammi, "They permitted it to him on the count of its being a found object., and it was in accord with the position of R. Simeon b. Eleazar; and also because of the correct mode of slaughter, and that ruling was in line with the opinion of R. Hanina, son of R. Yosé the Galilean.*
- C. *"For it has been taught on Tannaite authority [in Tosefta's text]: **If one's chicken was stolen and he came and found it slaughtered, or if one's beast was stolen and he came and found it slaughtered,***
- D. ***"R. Hanania, son of R. Yosé the Galilean permits,***
- E. ***"and R. Judah prohibits.***
- F. ***"Said Rabbi, 'The opinion of R. Hanania son of R. Yosé the Galilean is preferable in the case of his finding the carcass inside his house, and the opinion of R. Judah is preferable in the case of his finding the carcass in the rubbish heap' [T. Hul. 2:5A-E].***
- G. *"Now since sages have permitted the meat on the count of proper slaughter, it must have involved a locale in which the majority was Israelite, and that yields the inference that the law accord with the position of R. Simeon b. Eleazar even when a majority of the population is Israelite."*
- H. *Said Raba, "The case involved a locale in which, while the majority of the population was gentile, the majority of the slaughterers was Israelite."*

V.12 A. R. Ammi turned up slaughtered pigeons on the road between Tiberias and Sepphoris. He came for a decision to R. Assi, and some say, to R. Yohanan, and some say, to the school house.

B. They said to him, "Go, keep them for yourself."

V.13 A. R. Isaac the blacksmith once found balls of string used for making nets. He came for a decision to R. Yohanan, and some say, to the house of study.

B. They said to him, "Go, keep them for yourself."

The analysis of the Mishnah-paragraph gives way to a much more abstract and theoretical inquiry into the traits of populations, and how the disposition of lost objects is determined by those traits. The discussions rest on several premises. First, merely because an object is lost, that does not mean whoever finds it has a legitimate right of ownership to it. Only when the original owner gives up hope of recovering the object is the object deemed ownerless, and at that point one who finds the object gains the right of ownership over it. There are, also, premises on the traits of populations. Jews make the effort to return lost objects, in conformity with the law of the Torah not to steal, but gentiles do not do so. Jews, of course, keep the cultic laws, and gentiles are not expected to. The progression of exegesis of the Mishnah systematically works out these larger conceptions. I.1-2 deal with our estimate of when people despair of recovering property or for other reasons give up their rights of ownership. We then turn to a rather interesting secondary issue, which concerns whether what we anticipate is going to happen is treated as though it already has happened (is the acorn in the classification of the oak?). If we expect the owner of an object is going to despair of getting his property back, do we anticipate that decision and assign rights of ownership to whoever finds the object, even prior to the owner's reaching the conclusion that he will never see it again. The long and sustained inquiry, associated with the names of Abbaye and Raba, is fully satisfying and shows us how, in the idiom of its choice, the Talmud spells out the range of possibilities on both sides of the principle. II.1ff. then turns to yet another free-standing question, which is the status of distinguishing traits that are associated with objects. Clearly, our Mishnah-paragraph's cases involving objects that lack such traits. The original owner knows he cannot identify the property as his; so he will give up ownership of it. Then the order of inquiry is deliberate and necessary for a well-crafted composite. Only when we have dealt with anticipated abandonment do we turn to reasons for such anticipation of despair. In general, then, we first introduce the principle in abstract terms, then turn it into a basis of exegetical inquiry, a very logical order. The alternative would require us to intuit the issue of hermeneutics as revealed only case by case, a much less accessible medium of thought — though, as a matter of fact, the Mishnah's interior logic of discursive thought! The Talmud reverses matters, and wisely so, I think. V.1 proceeds to Simeon's statement. Here we build on the preceding units, since we commence with an interest in distinguishing traits. We deal with intersecting principles, both the ones already set forth and the new consideration of the general traits of a random sample of a population, on the one side, or a situation, on the other. I cannot imagine a better order for the exposition of intersecting but distinct abstract principles than the one before us. Here is one

of the many passages at which we are tempted to conclude, before us is the most perfect of all possible talmuds.

2:2

- A. **And which ones is he liable to proclaim?**
- B. **[If] he found (1) pieces of fruit in a utensil or a utensil as is, (2) coins in a purse or a purse as is, [25A] (3) piles of fruit, (4) piles of coins, (5) three coins, one on top of the other, (6) small sheaves in private domain, (7) homemade loaves, (8) wool shearings as they come from the craftsman's shop, (9) jars of wine, or (10) jars of oil —**
- C. **lo, these is he liable to proclaim.**

(Note: from this point, Soncino's translation and commentary are credited to H. Freedman, cited hereinafter as Freedman)

- I.1 A. *The operative consideration is that one has found pieces of fruit in a utensil ...or coins in a purse...*
- B. Lo, if the produce is in front of the utensil or the money in front of the purse, lo, these belong to the finder.
- C. *Our Mishnah-paragraph thus coincides with that which we have learned on Tannaite authority: If one found a utensil with pieces of fruit in front of it, a purse with coins in front of it, lo, these belong to the finder. If part of them were in the utensil and part on the ground, part in the purse and part on the ground, he is liable to make proclamation [T. Baba Mesia 2:8].*
- D. *Objection was raised on the strength of the following: If one found an object that has no distinguishing mark alongside one that does have a distinguishing mark, he is liable to make proclamation.*
- E. **If the owner of the object with the distinguishing mark came along and took that which clearly belonged to him, [Tosefta: this person also will have made acquisition of the similar object that does not have a distinguishing mark] [Bavli:] the finder is entitled to the object without a mark [T. Baba Mesia 2:9A-D].**
- F. *Said R. Zebid, "There is no contradiction, the first of the two teachings refers to a cask or flax, the latter, to a basket and fruit." [Freedman: The cask is identifiable, but not the flax, so to the basket and the fruit. Had the flax fallen out of the cask, some would have remained therein, so it is assumed that they were lying together by chance and the flax belongs to the finder. Fruit can easily roll out of its basket entirely and therefore the fruit in both locations is assumed to belong to the same person.]*
- G. *R. Pappa said, "Both passages refer to a basket and fruit, but there is no contradiction between the two teachings. The latter refers to a case in which something was left in the container, the former, nothing was left therein.*
- H. *"If you prefer, I shall explain that both teachings refer to a case in which nothing is left in the original container, yet there still is no contradiction between them. In the latter case the basket's mouth is turned toward the fruit, in the former, it is not.*

- I. *"If you prefer, I shall explain that both teachings refer to a case in which nothing is left in the original container, and to a case in which the mouth faces the fruit, and still there is no contradiction between them. The first of the two teachings speaks of baskets with rims, the second, without."*

II.1 A. ...piles of fruit, piles of coins:

- B. *This bears the implication that the number of lost objects constitute a distinguishing mark.*
- C. *[No,] repeat the version as, "a pile of fruit."*
- D. *Then it bears the implication that the location constitutes a distinguishing mark.*
- E. *[No,] repeat the version as, "piles of fruit."*

III.1 A. ...three coins, one on top of the other...:

- B. *Said R. Isaac, "In towers, that is, on condition that the coins form a pyramid."*
- C. *So too it has been taught on Tannaite authority: **If one has found coins arranged in pyramids, he is liable to make proclamation. If he found them scattered about, he is not liable to make proclamation. And how many coins in a pile add up to a tower? Three coins, one on top of the other [T. Baba Mesia 2:7A-B, E-F].***
- D. *Now there is a contradiction in the body of that statement. On the one side: **If he found them scattered about, he is not liable to make proclamation. Therefore, if they overlap, he is liable to make proclamation.***
- E. *On the other side, **If one has found coins arranged in pyramids, he is liable to make proclamation. Therefore, if they overlap, lo, they belong to him.***
- F. *As for as the Tannaite authority before us is concerned, so long as coins are not arranged in a pyramid, they are deemed scattered.*

III.2 A. Said R. Hanina, "The rule of the Mishnah pertains only to a case in which the coins bear the mint-marks of three kings [reigns]. But if all are of the mint mark of the same king, the finder is not obligated to proclaim his find."

- B. *Now to what circumstance does this qualification pertain? If the coins are arranged in pyramids, even if all belong to a single reign, the rule should apply, and if they are not arranged in pyramids, then even if they pertain to three distinct reigns, the finder should not have to make proclamation.*
- C. *Therefore if the statement cited above has been made, it must be in the following form: "The rule of the Mishnah pertains only to a case in which all coins belong to a single reign, but are of three different sizes."*
- D. *And what would be such a case? When they lie in a pyramid, the largest is at the bottom, the next-size in the middle, and the smallest on top, which indicates that they were set that way intentionally. But if they are all of one king and all of the same size, then even if they form a single pile, they belong to the finder, since we assume that it was by mere chance that they fell in this manner.*
- E. *But R. Yohanan said, "Even if all belong to a single monarch, the finder still has to proclaim his find."*

III.3 A. What does one proclaim? The number.

- B. *Why then must it be three coins [and not two]? Even if they were two, one should also have to proclaim the find.*

C. *Said Rabina, “He announces simply, ‘coins.’”*

III.4 A. R. Jeremiah raised the following question: “If they were laid out in a circle, or in a row, or in a triangle, or as a ladder, what is the law?”

B. *From the following statement, we may solve at least one of these problems:*

C. *R. Nahman said Rabbah bar Abbuha said, “In the case of any pile of coins in which, should one stick a tooth-pick, one can take them all at one time, one is liable to make proclamation [so coins arranged as a ladder that one finds must be proclaimed].”*

III.5 A. R. Ashi raised the following question: **[25B]** “If they are arranged in the manner of a Hermes’ way-mark, what is the law?”

B. *Come and take note of what has been taught on Tannaite authority: If one found coins that are scattered, lo, these belong to him. If they are arranged as stones of a way-mark for Hermes, he has to make announcement. And this is how the stones of a Hermes way-mark are arranged: one at each side with a third resting on the bottom two.*

III.6 A. *Our rabbis have taught on Tannaite authority: He who finds a sela in the market place and his fellow claims it, saying, “The one I lost is new,” “it is of the reign of Nero” “it is of the kingdom of such-and-such” — he has said nothing at all. For a distinguishing mark does not apply to a coin. And not only so, but even if the person’s own name is written right on the coin, lo, it nonetheless belongs to the one who finds it [T. Baba Mesia 2:10A-H].*

B. *For one can always claim, “He has spent that one, and this one belongs to someone else.”*

The treatment of this Mishnah-paragraph is somewhat desultory, by comparison to the wonderful disquisition on the opening rule. We begin, I.1, with a rather routine comparison of two pertinent Tannaite rulings. The disharmony is smoothed out. The treatment of the following clauses, in II.1, III.1-2, follows suit. III.3 presents a qualification that carries forward III.2. III.4, 5, 6 contain nothing surprising.

2:3A-F

A. **[If] behind a fence or a hedge one found pigeons tied together,**

B. **or on paths in fields,**

C. **lo, this one should not touch them.**

D. **[If] he found a utensil in a dung heap,**

E. **if it is covered up, he should not touch it.**

F **If it is uncovered, he takes it but must proclaim [that he has found it].**

I.1 A. *What is the operative consideration [for the prohibition of M. 2:3A-C]?*

B. *[Since these are guarded places,] we invoke the principle that these are places in which people hide things, and if one takes them, their owner has no means of identifying them. One therefore has to leave them be, until the owner comes and takes them.*

C. *But why so? Is the knot itself not a distinguishing mark?*

- D. *Said R. Abba bar Zabeda said Rab, "We deal with a case in which they were tied by their wings. Everybody ties them up that way."*
- E. *But then let the location where they are found serve as a distinguishing mark?*
- F. *Said R. Uqba bar Hama, "We deal with a case in which they can hop about."*
- G. *But if they can hop about, then they must have come from somewhere else and should be permitted [so why deny them to the finder]?*
- H. *One may, indeed, suppose that they have come from somewhere else, but one may also suppose that someone hid them there, so it is a situation in which we do not know whether or not the objects have been deliberately located where they are,*
- I. *and R. Abba b. Zabeda said Rab said, "In every case of a situation in which we do not know whether or not the objects have been deliberately located where they are, to begin with one should not take such objects, but if one has taken the objects in such a location, he need not return them."*

II.1 A. [If] he found a utensil in a dung heap, if it is covered up, he should not touch it. If it is uncovered, he takes it but must proclaim [that he has found it]:

- B. *An objection was raised from the following: **If one has found an object on a dung-heap, he is liable to make proclamation, for it is usual for things on the dung-heap to be cleared out** [T. **Baba Mesia 2:11A-C**].*
- C. *Said R. Zebid, "There is no contradiction between the two statements. One statement speaks of casks and cups, the other to knives and forks. One must not touch casks and cups [since these cannot have been thrown away by accident], but as to knives and forks, one must take and announce that one has found them [since they may have been thrown there by accident]."*
- D. *R. Pappa said, "Both passages refer to casks and cups, but there is no disharmony. One statement speaks of a dung heap that is commonly cleared away, the other to one that is not regularly cleared away. [In the first one has to proclaim the find, in the other, he must not touch.]"*
- E. *But a dung-heap that is regularly cleared away will have an object that has been deliberately disposed of. Rather, we deal with a dung-heap that is not regularly cleared away, but policy changed so one did clear it away.*
- F. *Now with respect to the view of R. Pappa, there is no problem, for it is on account of that consideration that it is said, **for it is usual for things on the dung-heap to be cleared out**. [His distinction is the same as the one that is made explicit.]*
- G. *But as to the view of R. Zebid, what is the point of saying, **for it is usual for things on the dung-heap to be cleared out**?*
- H. *It is because in the normal disposition of dung-hills small objects are cleared out [and that explains the disposition of the knife and fork, which are to be taken and proclaimed].*

The mode of amplification is brief and routine. I.1 gives us the operative principle. This leads to the comparison of diverse cases within the same principle. II.1 moves on to the contrast between two apparently contradictory rules, with a secondary expansion. There are no surprises here.

2:3G-M

- G. [If] he found it in a pile of debris or in an old wall, lo, these belong to him.
- H. [If] he found it in a new wall,
- I. if it is located from its midpoint and outward, it is his.
- J. If it is located from its midpoint and inward, it belongs to the householder.
- K. If he had rented [the house] to others,
- L. even [if he found it] in the house,
- M. lo, these are his.

I.1 A. [As to M. 2:3G, [If] he found it in a pile of debris or in an old wall, lo, these belong to him, so the finder does not have to announce his find,] a Tannaite authority said, “because the finder can say to him, ‘These derive from the Amorites [of days of yore].’”

- B. *And do only Amorites then hide things, and don't Israelites do so?*
- C. *No, it was necessary [26A] to make that consideration explicit for the case of a very rusty spot.*

II.1 A. [If] he found it in a new wall, if it is located from its midpoint and outward, it is his. If it is located from its midpoint and inward, it belongs to the householder:

- B. *Said R. Ashi, “The position of a knife is determined by its handle, the position of a purse by its straps.” [Freedman: If a knife is found in a wall cavity, if the handle points inwards, it belongs to the owner of the house; outwards, it is assumed to ‘have been placed there by a passer-by.]*
- C. *Now as to the Mishnah-passage, when it states, if it is located from its midpoint and outward...from its midpoint and inward, do we have to determine whether the handle or the straps point outwards or inwards?*
- D. *The Mishnah-passage speaks of tow-cotton or bar metal.*

II.2. A. A Tannaite authority stated, “If the hole in the wall is filled by the object, the finder and the householder divide the object.”

- B. *That is self-evident.*
- C. *It was necessary to state the rule to cover the case when the hole slopes down to one side. I might have supposed that the article had slid down. So I am informed that that is not the rule.*

III.1 A. If he had rented [the house] to others, even [if he found it] in the house, lo, these are his:

- B. *But why should that be the case? Let the object be assigned to the last tenant. Have we not learned in the Mishnah: Money that was found before cattle dealers — throughout the year, it is deemed money in the status of second tithe. If it is found on the Temple mount, it is assumed to be unconsecrated money. If it is found in Jerusalem during a pilgrim festival, it is assumed to be money in the status of second tithe, but at all other times of the year it is deemed to be unconsecrated [M. Sheq. 7:2A-E]? And in this connection said R. Shemaiah bar Zeira, “What is the reason that governs? Since the marketplaces of Jerusalem are ordinarily swept every day.” Therefore we take as*

our assumption that the former coins have gone their way, and these are new ones. Here too what was there before [from earlier occupants] has gone its way, and this derives from the most recent occupant.

- C. Said R. Simeon b. Laqish in the name of Bar Qappara, "It would refer to a case in which the owner had rented the house to three people at the same time [so any tenant that lost it would have given up hope of returning and finding it]."
- D. Does that yield the result that the law accords with R. Simeon b. Eleazar [**"for the owner despairs of ever getting it back"**] even when the greater part of the population is Israelite?
- E. Rather, said R. Menassia bar Jacob, "It would refer to a case in which the owner had rented the house to three gentiles."
- F. R. Nahman said Rabbah bar Abbahu [said], "Even if you maintain that the case involves renting the house to three Israelites, what is the operative consideration? [It is not that the law follows Simeon b. Eleazar, but rather, that] the one who lost the object will despair of recovering it, thinking, 'Since no one else but these were with me, and I said to them any number of times to return to me [what I may lose], and they have returned nothing to me, now are they going to return the thing to me? If they had planned to return it to me, they would already have done so, and now that they have not returned it to me, it is because they intend to steal the object.'" [Freedman: These are special circumstances, in which the loser may despair of the return of the object, but the law does not ordinarily follow Simeon b. Eleazar.]
- G. Now R. Nahman is consistent, for R. Nahman has said, "If one saw a coin **[26B]** fall from one of two people, he is liable to return it.' What is the reason? The one who dropped it does not despair of recovering it, for he reasons as follows: 'Since nobody else was with me except for this one, I'll grab him and say to him, "you are the one who took it from me."'" 'But if it involved three people, he is not liable to return it.' What is the reason? The one who dropped it does despair of recovering it, for he reasons as follows: since there were two other people with me, if I grab one of them, he will say, "I did not take it," and the other one will say the same.'"
- H. Said Raba, "As to the ruling, 'But if it involved three people, he is not liable to return it,' that applies to a case in which the coin is not worth a perutah for each one of the three. But if it is worth a perutah for each one of the three, he is liable to return it. What is now the operative consideration? I may reason that they are a partners and therefore do not abandon it."
- I. Others say, "Raba said, "Even if it is worth only two perutahs, he must return it. Why? I may reason that they are a partners and one may have renounced his share in favor of the other [so only two people are involved after all]."

III.2. A. And furthermore said Raba, "If one has seen a coin fall and has taken it prior to the owner's despairing of returning it, having the intention of stealing it, he transgresses all of these commandments: 'You shall not rob' (Lev. 19:11), 'You shall return them' (Deu. 22: 1), 'And you may not hide yourself' (Deu. 22: 3).

- B. “And even if he returns it after the owner has despaired of recovering it, *it is in the class of a gift that he has given him, while the prohibition that he has violated remains.*
- C. “If he has taken it with the intention of returning it, but after the owner has despaired of recovering it, he intends to steal it, he violates the commandment, ‘you shall restore them’ (Deu. 22: 3). If he waits until the owner despairs and then takes the coin, he violates only the law, ‘you may not hide yourself’ (Deu. 22: 1).”
- D. And furthermore said Raba, “*If one has seen a zuz fall from his fellow in the sand and finds and takes it, he is not obligated to return it. How come? The one who lost it despairs of recovering it, and even if he is seen to bring a sieve to sift the sand, his reasoning may be merely, ‘Just as I dropped something, so someone else may have lost something, and I’ll find it.’*”

The glossing goes forward at I.1, II.1, III.1, with some amplifications at II.2, III.2. The contrast with the opening treatment of the same Mishnah-chapter is striking.

2:4

- A. **[If] he found [utensils] in a store, lo, these are his.**
- B. **[If a utensil was located] between the counter and the storekeeper, it belongs to the storekeeper.**
- C. **[If he found them] in front of the money changer, lo, they are his.**
- D. **[If he found them] between the stool [of the money changer] and the money changer, lo, these belong to the money changer.**
- E. **He who purchases produce from his fellow,**
- F. **or sent produce to his fellow,**
- G. **[if] he found coins among the produce, lo, these are his.**
- H. **If there they were bound together, he takes [the money] but proclaims [that he has found it].**

- I.1** A. Said R. Eleazar, “Even if the money is located on the table [they belong to the finder].”
- B. *But we have learned in the Mishnah, [If he found them] in front of the money changer, lo, they are his. Lo, if they are located on the table, they belong to the money changer.*
- C. *Then let me invoke the concluding clause: [If he found them] between the stool [of the money changer] and the money changer, lo, these belong to the money changer. Lo, if they are located on the table, they belong to the money changer.*
- D. *But [that conclusion is so absurd we have to maintain] there are no implications to be drawn from that language at all.*
- E. *Then whence does R. Eleazar derive his position?*
- F. *Said Raba, “The formulation of the Mishnah passage posed a problem to him. How come you have formulated matters in the language, [If he found them] between the stool [of the money changer] and the money changer, lo, these belong to the money changer? Rather, repeat the statement in this language: on*

the table, or , 'if one finds the article in a money-changer's shop,' just as the opening clause states, [If] he found [utensils] in a store, lo, these are his. Hence, it must follow, 'Even if the money is located on the table [they belong to the finder].'"

II.1 A. He who purchases produce from his fellow, [or sent produce to his fellow, if he found coins among the produce, lo, these are his. If there they were bound together, he takes the money but proclaims that he has found it].

- B. Said R. Simeon b. Laqish in the name of R. Yannai, "The rule pertains only to the case in which **[27A]** one has purchased produce from a merchant. But if one buys from a householder, he is liable to return what he has found."
- C. *And so did a Tannaite authority repeat before R. Nahman,* "The rule pertains only to the case in which one has purchased produce from a merchant. But if one buys from a householder, he is liable to return what he has found."
- D. Said R. Nahman to him, "Now did the householder himself thresh the grain? [Are there no other possibilities on assigning the source of the money? A worker can have lost it.]"
- E. *He said to him, "Shall I delete it?"*
- F. *He said to him, "No. Rather, interpret the teaching to speak of a case in which one threshed the grain with his male and female gentile slaves [and if they lost money, it belongs to the master anyhow]."*

The glossing and clarification continue; there is no sustained interest in uncovering principles that extend to other cases altogether.

2:5

A. Also a garment was covered among all of these things [which one must proclaim, listed at Deu. 22: 1-3: "You shall not see your brother's ox or his sheep go astray and withhold your help from them; you shall take them back to your brother. And if he is not hear you or if you do not know him, you shall bring it home to your house, and it shall be with you until your brother seeks it; then you shall restore it to him; and so you shall do with his ass; so you shall do with his garment; so you shall do with any lost thing of your brother's which he loses and you find; you may not withhold your help"]].

B. [So] why was it singled out?

C. To use it for an analogy, to tell you:

D. Just as a garment exhibits distinctive traits, in that it has special marks of identification, and it has someone to claim it,

E. so for everything which has special marks and which has someone to claim

F one is liable to make proclamation.

I.1 A. What is the sense of "in all these things"?

- B. Said Raba, "In the encompassing phrase, '**so you shall do with any lost thing of your brother's.**'"
- C. *Said Raba, "How come Scripture specified 'ox,' 'ass,' 'sheep, and 'garment' [at Deu. 22: 1-3]?"*
- D. *"All these had specifically to be named. For if Scripture had referred only to garment, I might have concluded that the rule pertains to a case in which there is*

the possibility of attestation of the garment or if the garment bears distinguishing traits on its own. But as to an ass, if there is attestation of the character of its saddle, or if the saddle bears distinguishing traits, [but not the ass itself], we are not obligated to return it the ass. So Scripture specified the ass, indicating that even if the ass is recognized only by the distinguishing traits, [one still has to return the beast].”

- E. *Why has Scripture made explicit refers to the ox and sheep?*
- F. *In the case of an ox, even the shearing of the tail, and in the case of the sheep, even the shearings [must be returned, and not only the beast itself].*
- G. *Then let Scripture refer only to ox, indicating that even the shearing of its tail must be returned, and the rule for the shearing of a sheep would then be derived by an argument a fortiori!*
- H. *Rather, said Raba, ““‘ass’ is mentioned in connection with the pit [Exo. 21:33: “and if a man shall open a pit...and make an ox or an ass fall therein...”] in accord with the position of R. Judah and ‘sheep’ mentioned in connection with returning a lost article in accord with the position of all authorities are insoluble problems [in that we do not know why Scripture has found it necessary to make these specific items explicit].” [Freedman: Rabbis maintain that the maker of the pit is not responsible if man or utensils fall in, and when Scripture speaks of ‘ox,’ the meaning is, ‘ox’ not man, ‘ass,’ not utensils. Judah holds that one is responsible for utensils. Then why mention ‘ass’? That is the insuperable difficulty in connection with ‘ass’ in connection with ‘pit,’ and the other is as just now stated.]*
- I. *But why not maintain that the reference to “sheep” is meant to encompass the return of the dung?*
- J. *Dung is deemed ownerless property [in that the owner of the beast despairs of getting the dung back].*
- K. *But then perhaps the reference is to indicate the law of distinguishing characteristics [indicating that these serve to impose the duty of returning the beast to the rightful owner, who, because the beast can be identified, does not give up ownership of it]?*
- L. *For the question is whether the rule concerning distinguishing characteristics as means of proving ownership derives from the authority of the Torah or the authority of rabbis. Scripture then specified “sheep” to indicate that even on the strength of distinguishing characteristics one must return the beast, and, it follows, the validity of distinguishing characteristics derives from the authority of the Torah.*
- M. *I may reply as follows: since the Tannaite authority refers to the validity of distinguishing characteristics when he speaks of garment, it follows that mentioning sheep has no bearing on the validity of distinguishing characteristics, for the Tannaite formulation is as follows: **Just as a garment exhibits distinctive traits, in that it has special marks of identification, and it has someone to claim it, so for everything which has special marks and which has someone to claim one is liable to make proclamation.***

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

- B. "...so you shall do with any lost thing of your brother's, which he loses and you find" (Deu. 22: 3) — this excludes a lost article worth less than a perutah.
- C. R. Judah says, "'...and you find it...:' excluding a lost item that is worth less than a perutah."
- D. *What is at issue between these two derivations of the same rule?*
- E. *Said Abbaye, "They differ as to the implications of the texts. One authority derives the rule from 'which he loses,' and the other authority derives it from, 'and you find it.' "*
- F. *As to the authority who derives the rule from "which he loses," what does that authority do with the word, "and you find it"?*
- G. *He requires that to make the point of Rabbanai, for Rabbanai has said, "'and you find it' means, 'the object must come into his possession.' "*
- H. *As to the authority who derives the rule from "and you find it," what does he do with the word "which he loses"?*
- I. *He requires it to make the point of R. Yohanan, for R. Yohanan has said in the name of R. Simeon b. Yohai, "How do we know that, in the case of a lost object that the river has swept away, such an object is permitted? Scripture says, 'so you shall do with any lost thing of your brother's, which he loses and you find.' The sense is, that which is lost from him but found by someone else [is subject to restoration], thus excluding this object, which is lost by the other but not found by anybody else.' "*
- J. *And how does the other authority derive the rule given in the name of Rabbanai ["'and you find it' means, 'the object must come into his possession']?*
- K. *From "and you find."*
- L. *And the other — how does he derive the teaching of R. Yohanan?*
- M. *From "from him"?*
- N. *And the other?*
- O. *"from him" bears no implications whatsoever.*

I.3 A. *Said Raba, "The loss of a perutah that subsequently depreciated to less than that value is what is at issue between [Judah and rabbis, 2.A-B]:*

- B. *"The one who derives the rule from 'which he loses' sees this as a loss [to begin with, therefore to be restored], and the one who derives the rule from 'and you find it' sees this as insufficient [to constitute a loss and therefore not to require restoration to the original owner]."*
- C. *Now in the view of the one who has said, "which you shall lose" — surely "and you have found it" must apply, but here there is no finding [since the perutah-measure has not been met]!*
- D. *Rather, at issue between them must be the loss of a coin worth less than a perutah that subsequently appreciated.*
- E. *The one who said, "and you shall find it" maintains that there is now something of sufficient value to require restoration, but he who says, "which you shall lose" will deny that there is anything of sufficient value.*

- F. *And as to the view of the one who has said the rule derives from, “and you find it,” lo, we require that the condition be met involved in the phrase, “which you lose,” but that is not at issue here.*
- G. *Rather, at issue between the two exegetes is the case of a perutah that appreciated, depreciated, and went and appreciated again.*
- H. *The one who has said that the rule derives from “which you will lose” holds that that condition has been met, and the one who derives the rule from “and you find” imposes the condition that the requisite value pertain to the lost object from the moment that it is lost until the moment that it is found.*

I.4 A. *The question was raised: is the validity of distinguishing characteristics [as the criterion for the return of lost objects] ordained by the Torah or only on the authority of rabbis?*

B. *What difference does the answer make?*

C. **[27B]** *At issue is whether or not it is necessary to return a writ of divorce of a woman merely on the strength of distinguishing characteristics. If you maintain that the law rests upon the authority of the Torah, then such a writ [which severs the tie between a man and a woman] is to be returned, while if you maintain that it is only on the authority of rabbis, when rabbis made that ordinance, it would have pertained only to matters of property, but not to matters that are prohibited of an other-than-material character [such as sexual relations between a married woman and some man other than her husband, such as will follow if the woman is deemed divorced on the strength of this writ, which has been lost and then returned to her on the strength of the identifying marks].*

D. *Come and not the following: **Also a garment was covered among all of these things [which one must proclaim, listed at Deu. 22: 1-3: “You shall not see your brother’s ox or his sheep go astray and withhold your help from them; you shall take them back to your brother. And if he is not hear you or if you do not know him, you shall bring it home to your house, and it shall be with you until your brother seeks it; then you shall restore it to him; and so you shall do with his ass; so you shall do with his garment; so you shall do with any lost thing of your brother’s which he loses and you find; you may not withhold” [So] why was it singled out? To use it for an analogy, to tell you: Just as a garment exhibits distinctive traits, in that it has special marks of identification, and it has someone to claim it, so for everything which has special marks and which has someone to claim one is liable to make proclamation.***

E. *The Tannaite authority in fact had in mind to stress that there must be a claimant, the validity of distinguishing characteristics is mentioned only tangentially.*

F. *Come and take note: even if the ass is recognized only by the distinguishing traits, [one still has to return the beast].”*

G. *I may reply, “because of witnesses who attest to the ownership of the saddle [the ass is returned].”*

H. *Come and take note: “and it shall be with you until your brother shall seek after it and you shall return it to him” (Deu. 22: 2) — Now would it enter your mind that*

one should give it back to him before he comes looking for it? But it is your duty to examine him to find out whether or not he is a fraud. *And is this not going to be by means of identification marks!*

- I. *No, it is by means of witnesses [that he really owned the lost object].*
- J. *Come and take note: **They derive testimony concerning the identity of a corpse [so proving that a man has died so his wife may remarry] only from the appearance of the whole face with the nose even though there are signs of the corpse's identity on his body or garments [M. Yeb. 16:3A-B].** This proves that it is not on the authority of the Torah that we take account of distinguishing characteristics.*
- K. *I reply as follows: the proposed identification marks in respect to the body were that it was short or tall [but these apply to anybody], and as to the clothing, we take account of the possibility that they were borrowed.*
- L. *If we take account of the possibility of borrowing, then why return an ass because of the distinguishing trait of the saddle of an ass?*
- M. *I will respond as follows: do not ordinarily borrow saddles, because they chafe the ass.*
- N. *[Following MSM, Freedman deletes: If you prefer, I shall reply as follows: the garments bore distinguishing characteristics of color, whether they were white or red.]*
- O. *Then what of the following teaching on Tannaite authority: [If a messenger bearing a writ of divorce loses the writ and then finds it] tied up in a purse, money bag or ring, or if he found it among his household utensils, even long afterward, the writ is valid. Now if you maintain that we take account of the possibility of borrowing, why is it valid? Let us take account of the possibility of borrowing here too!*
- P. *I will reply: a purse, wallet, and signet ring are not things people lend, a purse and money bag because people are superstitious about such matters, a ring because one can commit forgery with it. [So here there is no possibility of borrowing.]*
- Q. *May we then suppose that the issue at hand was under dispute among Tannaite authorities? [For it has been taught:] Testimony as to the identity of a corpse does not derive from a mole [on the face]. And Eleazar b. Mahabai says, "Testimony as to the identity of a corpse does derive from a mole [on the face]."*
- R. *[Is it not the case that at issue here is the validity of distinguishing characteristics [as the criterion for the return of lost objects] ordained by the Torah or only on the authority of rabbis?] The first authority takes the view that the validity of distinguishing characteristics [as the criterion for the return of lost objects] is ordained only on the authority of rabbis, and Eleazar b. Mahabai maintains that the validity of distinguishing characteristics [as the criterion for the return of lost objects] is ordained by the Torah.*
- S. *Said Raba, "All authorities take the view that the validity of distinguishing characteristics [as the criterion for the return of lost objects] is ordained by the Torah. But here what is at issue is a mole that is common to one born at the same hour and therefore under the same planetary influence. One authority maintains*

that a mole is going to be common to those born at the same hour and under the same planetary influence, and the other takes the position that a mole is not going to be commonplace for those born at the same hour and under the same planetary influence.”

T. *If you like, I shall argue that a mole is not going to be commonplace for those born at the same hour and under the same planetary influence. But here at issue are distinguishing characteristics that may change after death. One authority holds that distinguishing characteristics are likely to change after death, and the other authority holds that distinguishing characteristics are not likely to change after death.*

U. *If you like, I shall argue that all authorities concur that distinguishing characteristics are not likely to change after death. They further concur that the validity of appeal to distinguishing characteristics derives only from the authority of rabbis. Here what is at stake is whether a mole is a suitable distinguishing characteristic, for one authority takes the view that a mole is a suitable distinguishing characteristic, and the other takes the position that it is not.*

I.5 A. *Said Raba, “Should you conclude that the validity of appeal to distinguishing characteristics is not derived from the Torah [vs. 4.T], then how come we return a lost article relying upon distinguishing characteristics? It is because one who finds a lost article is satisfied that the article should be handed over on the strength of distinguishing characteristics, so that, should he lose something, the same will happen to him and he will get his property back on the strength of distinguishing characteristics.”*

B. *Said R. Safra to Raba, “Now can someone do himself a favor through property that is not his own?! But the reason is as follows [following Freedman’s translation:] The loser himself is pleased that it should be returned to any claimant on the strength of identification marks. He knows full well that he has no witnesses; therefore he argues to himself, ‘Everyone does not know its perfect identification marks [Freedman: even if others have seen and can generally describe it, they cannot give a minute and detailed description], but I can state its perfect identification marks and take it back.”*

C. *Then how about the following, which we have learned in the Mishnah: **Rabban Simeon b. Gamaliel, “[If one found a document which involved] a single individual who borrowed from three persons, he should return it to the borrower. [But if the document concerned] three borrowers from a single individual, he should return it to the lender” [M. Baba Mesia 1:8H-I].***

D. *Is the borrower then so happy that the bond is returned to the lender?*

E. *He said to him, “It is a matter of reasoning. **[If one found a document which involved] a single individual who borrowed from three persons, he should return it to the borrower, since the documents are found together in the debtor’s possession, not the creditor’s, so the debtor is the one who must have dropped it. [But if the document concerned] three borrowers from a single individual, he should return it to the lender,***

because they are likely to be found in the possession of the creditor, not of the debtors.

- F. **[28A]** *Then what about the following that we have learned on Tannaite authority: [If] he found them [wrapped up] (1) in a satchel or (2) a case, (3) a bundle of documents, or (4) a package of documents, lo, this one should return [them] [M. Baba Mesia 1:8C-E]. Is the lender then so happy that the bond is returned to the borrower?*
- G. *Rather, said Raba, “The validity of appealing to distinguishing characteristics in returning a lost object rests upon the rule of the Torah. For it is written, ‘and it shall be with you until your brother shall seek after it and you shall return it to him’ (Deu. 22: 2) — Now would it enter your mind that one should give it back to him before he comes looking for it? But it is your duty to examine him to find out whether or not he is a fraud. Is that not by means of identification marks?”*
- H. *That proves the point.*

I.6 A. *Said Raba, “Should you propose that the validity of appealing to distinguishing characteristics in returning a lost object rests upon the rule of the Torah...”*

- B. *Should you propose? But you have just proved that the validity of appealing to distinguishing characteristics in returning a lost object rests upon the rule of the Torah for one can spell the matter out as we have just now stated.*
- C. [Raba now continues:] *“If there are two sets of distinguishing characteristics [presented by two claimants who both demand the return of the object], let the object be left in custody.*
- D. *“If one party presents an account of distinguishing characteristics and another brings witnesses as to his ownership, let the lost beast be given to the one who brings the witnesses.*
- E. *“If one party gives an account of distinguishing characteristics and the other distinguishing characteristics plus a single witness, the single witness is dismissed as they he were not present, and let the object be left in the court’s custody.*
- F. *“If one claimant brings witnesses as to the weaving of the object [that he wove it], and the other party brings witnesses that he has dropped the object, let it be handed over to the one who has witnesses that he has dropped the object, for we enter the claim that the weaver has sold it to the other, and it has fallen from some other person.*
- G. *“If one party correctly states the length and the other the breadth, it is to be given to the one who states the length, since it is possible to guess about the breadth when the owner is standing and wearing it, but the length cannot be guessed at.*
- H. *“If one party states the length and breadth and the other party the total of the length and the breadth together, let it be given to the former.*

- I. “If different claimants give the length, breadth, and weight, respectively, it goes to the one who knows the weight.”
 - I.7** A. “If the husband states the distinguishing traits of a writ of divorce and the wife does too, it is to be given to her [for if the wife had not actually received the writ, she would not have known its distinguishing traits].”
 - B. *What would be the distinguishing traits of the document? If it is by length or breadth, perhaps the wife saw it while he was holding it.*
 - C. *Rather, it has a hole at the side of a certain letter.*
 - D. If the husband can identify the distinguishing traits of a ribbon with which the writ of divorce was tied and the wife does to, it must be given to her.
 - E. *What would be the distinguishing traits of the document? If it is by color, whether white or red, perhaps the wife saw it while he was holding it.*
 - F. It must be by length.
 - G. If the husband said it was found in a valise, and she says the same thing, it must be given to him.
 - H. *How come? The wife knows that whatever the husband has he puts in a valise.*

While seeming to undertake a close reading of the Mishnah, our framers have given us a discussion of broad and principled concerns. They draw our attention to the foundation in the Torah of the law of returning a lost object, reading the exact words and specifying the implications of each, I.1, 2. This yields a secondary expansion, No. 3. No. 4 asks a secondary question. Now that we have established that one must return the lost object if one can, is the rule that we respond to a claim based on a claimant’s knowledge of distinguishing characteristics likewise based upon the Torah’s authority or is this only an ordinance of scribes or rabbis? The authors immediately specify what is at stake in the answer, and a mark of the power of our ultimate framers is that, at the very end, we revert to precisely that issue. That is a sign that our passage has been very carefully crafted, with principles uniformly applied that guide our framers to place matters where they do, this before that, this after that.

2:6

- A. **And for how long is one liable to make proclamation [of having found a lost object]?**
- B. **“Until his neighbors are informed about it,” the words of R. Meir.**
- C. **R. Judah says, “Until three festivals [have gone by].”**
- D. **“And for seven days after the final festival, so that one may have three days to go home and three days to come back and one day on which to proclaim [that he has lost the object].”**
- I.1** A. *It has been taught on Tannaite authority: neighbors refers to the neighbors of [the owner of] the lost property.*

- B. *Now what is the meaning of the neighbors of [the owner of] the lost property? If we say that the sense is, neighbors of the owner of the lost property, then if they know who lost the object, let them go and bring it back to him. Rather, the sense must be, neighbors of the locale in which the lost property was found.*

II.1 A. **R. Judah says, “Until three festivals [have gone by. And for seven days after the final festival, so that one may have three days to go home and three days to come back and one day on which to proclaim that he has lost the object]:”**

- B. *Objection was raised from the following: On the third day of Marheshvan they pray for rain. Rabban Gamaliel says, “On the seventh day of that month, the fifteenth day after the festival, so that the last Israelite returning home may reach the Euphrates river” [M. Ta. 1:3A-C].*
- C. *[Judah thinks it takes three days to get home, while Gamaliel thinks it takes fifteen, but,] said R. Joseph, “There is no contradiction. The one speaks of the time in which the first Temple stood, the other of the time in which the second Temple stood. Of the time of the first Temple, when the Israelites were very numerous, as it is written, ‘Judah and Israel were many, as the sand which is by the sea in multitude’ (1Ki. 4:20), that long a period was necessary [since there were many, scattered communities]. But in the time of the second Temple, when the Israelites were not so numerous, as it is written in their regard, ‘The whole congregation together was forty two thousand three hundred and sixty’ (Ezr. 2:64), they did not require all that much time to return home.”*
- D. *Said Abbaye to him, “But lo, it is written, ‘So the priests and the Levites and the porters and the singers and some of the people and the Nethinim and all Israel dwelt in their cities’ (Neh. 7:73). And since that was the case, the opposite reckoning seems more reasonable, namely, in the time of the first Temple, when the Israelites were very numerous, the people formed groups for travel, so caravans were readily available to travel whether by day or by night, so they did not require all that much time to get home, and three days were sufficient. But in the time of the second Temple, when the Israelites were not all that numerous, and people did not form groups for travel, so caravans were not readily available to travel whether by day or by night, they required much more time to get home.*
- E. *Raba said, “There is no difference between the conditions prevailing in the first and the second Temples. Rabbis did not wish to impose too much bother on the one who undertook to return a lost object.”*

II.2 A. *Said Rabina, “[Our Mishnah-passage] bears the implication that when one makes an announcement, what he announces is the loss of a garment [and who claims it must present information on distinguishing characteristics]. For if you suppose that the discovery of a lost article was announced [without further information], one would have to add yet another day to the process, so that one may examine his possessions.*

- B. *“It follows that [our Mishnah-passage] bears the implication that when one makes an announcement, what he announces is the loss of a garment .”*
- C. *It indeed follows that that is the fact.*

- D. *Raba said, “Even if you maintain that it is the lost object that one announces, Rabbis did not wish to impose too much bother on the one who undertook to return a lost object.”*

II.3 A. [With reference to the statement, **R. Judah says, “Until three festivals have gone by], our rabbis have taught on Tannaite authority:**

- B. On the occasion of the first festival [of proclaiming that one has made a find], one states, “This is the first festival [in the required sequence].” On the occasion of the second festival, one states, “This is the second festival [in the required sequence].” On the occasion of the third festival, however, one states the matter without further specification.
- C. *Why should this be the rule? Let him announce, “This is the third festival.”*
- D. *It is so that one should not confuse it with the second festival.*
- E. *But the second festival also [28B] may be mistaken for the first!*
- F. *In any event, the third is still to come [and no harm is done]*

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

- B. **At the outset whoever found a lost object would make proclamation for three successive festivals and after the final festival for seven days so that one may have three days to go home and three days to come back and one day on which to proclaim that he has lost the object [M. Baba Mesia 2:6C-D].**
- C. **After the Temple was destroyed they made the rule that one should make proclamation for an object that has been found for thirty days. [Bavli: ...that proclamation should be made in the synagogues and school houses].**
- D. **And from the time of danger onward [Bavli: when the grabbers became many], they made the rule that one should merely inform his neighbors and relatives and acquaintances and townsfolk, and that suffices [T. Baba Mesia 2:17].**
- E. *What is the meaning of when the grabbers became many?*
- F. *Those who maintain that lost objects belong to the government.*

II.5 A. *R. Ammi found a purse containing money. A certain man saw that he was frightened. He said to him, “Go, take it for yourself, for we are not Persians, who take the view that lost objects belong to the government.”*

II.6 A. *Our rabbis have taught on Tannaite authority:*

- B. there was a stone for making claims in Jerusalem. Whoever had lost something went there, and whoever had found something did the same. The finder went and announced [that he had found something], and the loser went and set forth the distinguishing traits of the object and got it back.
- C. It is with reference to this stone that we have learned in the Mishnah: **Go and see whether the stone for making claims has been covered up with water [M. Ta. 3:8].**

Nearly the whole composite addresses the exegesis of the Mishnah and Tosefta’s complementary materials.

2:7A-D

- A. [If a claimant] has described what he has lost but not specified its special marks, one should not give it to him.
- B. And as to a [known] deceiver, even though he has specified its special marks, one should not give it to him,
- C. as it is said, “Until your brother seeks concerning it “(Deu. 22: 2) —
- D. until you will examine your brother to find out whether or not he is deceiver.

I.1 A. *It has been stated:*

- B. R. Judah said, “It is the lost article that one proclaims.”
- C. R. Nahman said, “It is the garment that one proclaims.”
- D. R. Judah said, “It is the lost article that one proclaims,” *for if you take the view that it is the garment that one proclaims, we must take account of the possibility of deceit.*
- E. R. Nahman said, “It is the garment that one proclaims,” *for we do not take account of the possibility of deceit, for otherwise there is simply no end to the matter.*

I.2. A. *We have learned in the Mishnah: [If a claimant] has described what he has lost but not specified its special marks, one should not give it to him:*

- B. *Now if you say that one announces the lost article, there is no problem, for thus we are taught that, even though he says that it was a garment, since he does not specify its distinguishing characteristics, the garment is not returned to him.*
- C. *But if you maintain that one proclaims the find of a garment, then if the finder says it was a garment and the claimant says, “yes, it was a garment,” is it necessary to make it explicit that the object is not returned unless he specifies the distinctive traits of the garment? [Under these conditions, it is self-evident that if a claimant] has described what he has lost but not specified its special marks, one should not give it to him.]*
- D. *Said R. Safra, “No, what he proclaims is that it is a garment that he has found. The finder says he has found a garment, the claimant submitted information on the distinctive traits of the garment he has lost. [That is precisely the case to which the Mishnah-passage addresses itself.]*
- E. *“What is the sense, then, of but not specified its special marks? He did not specify its most distinguished distinctive traits. [What he says are its traits can pertain to any garment.]”*

II.1 A. *And as to a [known] deceiver, even though he has specified its special marks, one should not give it to him, [as it is said, “Until your brother seeks concerning it “(Deu. 22: 2) — until you will examine your brother to find out whether or not he is deceiver]:*

- B. *Our rabbis have taught on Tannaite authority:*
- C. *At first whoever came along and could give a good description of the distinctive traits of an object would take it. When deceivers became many, they made the rule that the claimant would have to give a good description of*

the distinguishing traits of the object that he claims but also bring proof that he himself is no deceiver [T. B. M. 2:16A-C]. [Bavli: They made the rule that they should say to him, “Go, bring witnesses that you are not a deceiver and then take the object.”]

- II.2** A. *This is in line with the following case involving the father of R. Pappa. He lost an ass, which others found. When he came before Rabbah bar R. Huna, he ruled, “Go and bring witnesses that you are not a fraud and then take your ass.”*
- B. *He went and brought witnesses. He said to them, “Do you know him to be a fraud.”*
- C. *They said, “Yes.”*
- D. *He said to them, “Am I a fraud?”*
- E. *They said to him, “We meant you are not a fraud.”*
- F. *Said Rabbah son of R. Huna, “It is pretty reasonable to suppose that no one is going to bring witnesses to his hurt!”*

The treatment of the Mishnah-passage is entirely exegetical, first clarifying language, then supplementing the sense of the passage. There is no theoretical substrate that sustains discourse.

2:7E-K

- E. **Any sort of thing which is able to perform labor and which eats [is to be kept by the finder and is to] perform labor and [in exchange is allowed to] eat.**
- F. **And something which does not perform labor but which [nonetheless has to be] fed is to be sold,**
- G. **as it is said, “You will return it to him” (Deu. 22: 2).**
- H. **Pay attention to how to return it to him!**
- I. **What is the rule covering the proceeds?**
- J. **R. Tarfon says, “Let [the finder] make use of them. Therefore, if something happens to them, he is liable to make them up.”**
- K. **R. Aqiba says, “He should not make use of them. Therefore, if something happens to them, he is not liable to make them up.”**

- I.1** A. [With reference to the rule, **Any sort of thing which is able to perform labor and which eats [is to be kept by the finder and is to] perform labor and [in exchange is allowed to] eat,**] is this to go on forever?
- B. Said R. Nahman said Samuel, “It is for twelve months.”
- C. *So too have we learned on Tannaite authority:*
- D. **Any sort of thing which is able to perform labor and which eats, for example, a cow or an ass, performs labor and in exchange is allowed to eat for twelve months. From that point forth, he turns them into cash, which he deposits. As to calves and foals, he tends to them for three months, but then may sell them and put the money aside. As to geese and cocks, he does so for thirty days and then sells them and puts the money aside [cf. T. Baba Mesia 2:20].**
- E. Said R. Nahman bar Isaac, “A chicken is in the same status as a large beast.”

- F. *So too have we learned on Tannaite authority: As to chickens and large beasts, one takes care of them for twelve months. From that point onward, one turns them into money and lays it aside. As to calves and foals, one tends them for thirty days. From that point onward, one turns them into money and lays it aside. As to geese and cocks and anything that takes a more work than their reward, one takes care of them for three days. From that point onward, one turns them into money and lays it aside.*
- G. *The ruling concerning calves and foals contradicts the earlier version, and so too do the rulings on geese and cocks.*
- H. *There is no contradiction, since the ruling concerning calves and foals speaks in the one case of grazing animals, in the other to those that require feed-stuffs* [Freedman: in spring and summer, when the animals graze on natural pasture, they are to be kept for three months, but in winter, when feed has to be brought for them, thirty days suffice].
- I. *Nor do the rulings on geese and cocks contradict: the one refers to big, the other to small ones* [Freedman: small ones need more attention and are kept only three days].

II.1 A. And something which does not perform labor but which [nonetheless has to be] fed [is to be sold, as it is said, “You will return it to him” (Deu. 22: 2). Pay attention to how to return it to him!]

- B. *Our rabbis have taught on Tannaite authority:*
- C. “And you shall return it to him” (Deu. 22: 2) — see to how you return it to him, so that a calf may not be fed to other calves, a foal to other foals, a goose to other geese, a cock to other cocks. [Freedman: if a number of these is found, it should not be necessary to sell one to provide food for the others, but as soon as they cease to earn their keep they must all be sold.]

III.1 A. What is the rule covering the proceeds? R. Tarfon says, “Let [the finder] make use of them. Therefore, if something happens to them, he is liable to make them up.” R. Akiba says, “He should not make use of them. Therefore, if something happens to them, he is not liable to make them up”]

- B. *The dispute concerns only the case in which [29A] the finder did make use of the proceeds. If he had not made use of it, all concur that if the proceeds should be lost, he is not culpable in any way.*
- C. *Would this ruling then not refute the position of R. Joseph?*
- D. *For it has been stated: One who serves as guardian of a lost object —*
- E. *Rabbah said, “He is in the category of an unpaid bailee.”*
- F. *R. Joseph said, “He is in the category of a paid bailee.” [In this case, if the money is lost, he has to make it up, and that contradicts the rule of our Mishnah-passage.]*
- G. *R. Joseph may reply to you as follows: “As to theft and loss, all concur that he is responsible [to make up the loss of the proceeds, as a paid bailee would be responsible]. Where there is a dispute, it concerns only in the case of an unavoidable accident, for which a borrower bears responsibility. R. Tarfon takes the position that rabbis have accorded him the right to make use of the money, so he is in the category of a borrower in respect to the proceeds, and R. Akiba takes*

the position that rabbis did not permit him to make use of the proceeds, and therefore he is not in the status of a borrower in respect to the proceeds."

- H. *If that were the case, then as to the use, by R. Aqiba, of the word, **therefore**, why should he frame matters in that way? Now if you concur that the difference between R. Tarfon and R. Aqiba concerns theft and loss, there is no problem, and hence it is taught, **R. Aqiba says, "He should not make use of them. Therefore, if something happens to them, he is not liable to make them up,"** for I might take the view that he is in the status of a paid bailee, following the position of R. Joseph, and also responsible for theft and loss, and so we are informed, **"therefore, if something happens to them, he is not liable to make them up."** That is to say, now that you have maintained he should not make use of the deposited proceeds, then he is not in the status of a paid bailee and therefore is not liable in the cases of theft or loss. But if you take the view that all parties concur in the matters of theft and loss, that he is liable, but differ only in the matter of unavoidable accepts that affect only a borrower, then what is the sense of the word **therefore** that R. Aqiba has used? The Tannaite authority would have done better to say, **R. Aqiba says, "He should not make use of them."** I should then have surmised that, since he must not make use of the proceeds, he also is not in the status of a borrower and is not responsible to make up the loss. So, once more, what is the sense of the word **therefore** that R. Aqiba has used?*
- I. *It is on account of the word **therefore** that R. Tarfon has used [— and for that reason alone!]*
- J. *So what is the point of R. Tarfon's using the word **therefore**?*
- K. *This is the sense of what he has said: Since rabbis have permitted him to make use of the proceeds, it is as though he has actually done so [even if he did not utilize the deposited funds], and he is liable to make up the money should it be lost.*
- L. *But lo, the passage at hand is explicit: **if something happens to them** [so how can the passage pertain to accidents that cannot be avoided]?*
- M. **[29B]** *The answer accords with the view of Rabbah, for Rabbah said, "The sense of 'they were stolen' is that it was by armed robbers; the sense of 'they were lost' is that his ship sunk at sea [both unavoidable occurrences]."*

III.2 A. Said R. Judah said Samuel, "The law accords with the position of R. Tarfon."

III.3 A. Rabbah had in hand some money belonging to an estate. He came before R. Joseph and asked him, "What is the ruling as to making use of the funds?"

B. He said to him, "This is what R. Judah said Samuel said, 'The law accords with the position of R. Tarfon.'"

C. Said to him Abbaye, "But has it not been stated on this matter, 'Said R. Helbo said R. Huna, "That ruling pertains only to money received as the purchase price of a lost article, since he took the trouble [to look after it for a time before he sold it, so he has the right to use the money], but not as to the money that was itself lost and found, and this money is in the status of money that was lost and found"'"?"

- D. *He said to him, “Go your way. They have not allowed me to permit you to use the money].”*

I.1 clarifies the rule and language of the Mishnah-paragraph; II.1 proceeds to the next clause; No. 3 then moves to the end, in an orderly progression. III.1 moves beyond the narrowest exegetical program, but, even here, once we introduce the dispute of Joseph and Rabbah, we are drawn back to a close reading of the language and sense of the Mishnah-paragraph at hand. Consequently, even here we do not embark on a journey far beyond the limits of our rule, e.g., how the principle at hand fits with cases elsewhere to which it pertains, or other pertinent principles. III.2, 3 then go together in completing the excellent exposition, in a profound and searching way, of the paragraph before us.

2:8

- A. **[If] he found scrolls, he reads in them once every thirty days.**
B. **If he does not know how to read, he [at least] unrolls them.**
C. **But he should not [commence to] learn [a subject] in them to begin with, nor should someone else read alongside him.**
D. **[If] he found a piece of clothing, he should shake it out once every thirty days,**
E. **and spread it out as needed —**
F. **but not to show off.**
G. **Of utensils of silver and of copper one makes use —**
H. **for their own good**
I. **but not to wear them out.**
J. **Utensils of gold and of glass he should not touch until Elijah comes.**
K. **[If] he found a sack or large basket or anything which he would not usually pick up,**
L. **lo, this one does not [have to lower himself and] pick it up.**
I.1 A. Said Samuel, “He who finds *tefillin* in the marketplace sells them for money forthwith and sets the money aside.”
B. *Objected Rabina, “[If] he found scrolls, he reads in them once every thirty days. If he does not know how to read, he [at least] unrolls them. Rolling them is what he is to do. Selling them and holding on to the proceeds is not what he must do.”*
C. *Said Abbaye, “Tefillin you can buy at Bar Habu’s store [that is, any corner grocery store, so they are easy to get, so the owner loses nothing if they are sold and the proceeds handed back] — scrolls are rare and hard to get.”*
I.2 A. *Our rabbis have taught on Tannaite authority:*
B. He who borrows a scroll of the Torah from his fellow — lo this one should not lend it to a third party. He opens it and reads in it, condition that he **not [commence to] learn [a subject] in them to begin with, nor should someone else read alongside him.**
C. So too, he who deposits a scroll of the Torah with his fellow — the other unrolls it every twelve months, opens it and reads in it.

- D. But if it is in his own interest, it is forbidden to do so.
- E. Sumkhos says, "In the case of a new one, it is to be every thirty days, in the case of an old one, every twelve months."
- F. R. Eliezer b. Jacob says, "All the same are this and that: it is to be once every twelve months."

I.3. A. A master has said: He who borrows a scroll of the Torah from his fellow — lo this one should not lend it to a third party.

- B. *How come it is only a scroll of the Torah? Any other object would also be under the same rule, for said R. Simeon b. Laqish, 'Here Rabbi has taught that a borrower may not turn himself into a lender, nor may a renter rent to another.'*"
- C. *It was necessary to make the matter of the scroll of the Torah explicit, for what might you otherwise have said? It is pleasing to someone that a religious duty may be carried out through the use of his property by a third party. Thus we are taught that that consideration is not operative.*

I.4. A. He opens it and reads in it, [condition that he **not commence to learn [a subject] in them to begin with, nor should someone else read alongside him**]:

- B. *That's obvious! Why else borrow it from him?*
- C. *It is made explicit only in the context of the second clause: **on condition that he not commence to learn [a subject] in them to begin with, nor should someone else read alongside him.***

I.4. A. So too, he who deposits a scroll of the Torah with his fellow — the other unrolls it every twelve months, opens it and reads in it.

- B. *What business does he have with that scroll [in using the bailment in his own interest]?*
- C. *Furthermore, "But if it is in his own interest, it is forbidden to do so" — lo, you have said, "the other unrolls it every twelve months, opens it and reads in it"!*
- D. *This is the sense of the passage: If, when he is unrolling it, he opens and reads in it, that is permitted, but if it is on his own account that he has opened it, it is forbidden to do so.*

I.5. A. Sumkhos says, "In the case of a new one, it is to be every thirty days, in the case of an old one, every twelve months." R. Eliezer b. Jacob says, "All the same are this and that: it is to be once every twelve months."

- B. *As phrased, R. Eliezer b. Jacob's statement is the same as that of the initial Tannaite authority!*
- C. *Read his statement as follows: R. Eliezer b. Jacob says, "All the same are this and that: it is to be once every thirty days."*

II.1 A. **But he should not [commence to] learn [a subject] in them to begin with, nor should someone else read alongside him.**

- B. *Objection was raised as follows: He may not read in it a passage and then repeat it, nor may he read in it a passage and then translate it. He may not open in it more than three columns at one time, more than three read out of the same scrolls.*
- C. *Thus two may do so [contrary to the statement of the Mishnah].*

- D. *Said Abbayye, “There is no conflict. Here we speak of a single subject, there of two. [Freedman: two people may not read the same subject, because each pulls the scroll to himself, but they may read two different subjects in different columns, as each concentrates on his own.]*

III.1 A. [If] he found a piece of clothing, he should shake it out once every thirty days,

- B. *Does that then imply that shaking out is good for a garment?*
C. *But has not R. Yohanan said, “One who has a professional weaver in his house shakes out his garment every day [because the fluff caused by the weaving necessitates it.” [So shaking is done only because it is necessary.]*
D. *I will reply: shaking every day is hard on the garment, doing it once in thirty days is good for the garment.*
E. *If you prefer, I shall say: there is no contradiction, here we speak of shaking by one person, there [Yohanan] by two.*
F. *If you prefer, I shall say: here we speak of shaking by hand, there, with a stick.*
G. *If you prefer, I shall say: here we speak of wool, there of flax [beating harms wool, but not flax].*

III.2. A. Said R. Yohanan, “A cup of witchcraft, but not a cup of tepid water.”

- B. *That statement applies only to a metal cup, but as to an earthenware one, there is no objection.*
C. *And even to a metal cup there is no objection unless the water is unboiled, but if it is boiled, there is no objection.*
D. *And even if it is unboiled and in a metal cup, there is no objection if one tosses spice wood into the brew.*

III.3. A. And said R. Yohanan, “He to whom his father leaves a lot of money who wants to lose the fortune should dress in linen garments, use glassware, hire workers and not supervise them.”

- B. *“dress in linen garments:” Roman linen.*
C. *“use glassware:” white glass.*
D. *“hire workers and not supervise them:” interpret [30A] this statement to speak of workers with oxen, who can cause a major loss.*

IV.1 A. ...and spread it out as needed — but not to show off:

- B. *The question was raised: what is the rule if doing so served both the requirement of the object but also the interest of the one who has found it?*
C. *Come and take note: **and spread it out as needed** — for the need of the object — yes, but not for the convenience of the finder.*
D. *Then note the conclusion of the same passage: **but not to show off.***
E. *It is forbidden to spread out the found objects only if it is to show off [which serves only the finder], but if it serves the interest of both the object and the finder, then there is no objection.*
F. *Therefore from the cited passage, there is no drawing of pertinent inferences.*
G. *Come and take note of the following:*

- H. If it is for one's own convenience, one should not spread it out upon a couch or a frame, but he may do so if it is for the maintenance of the object. If guests came by, he should not spread it out upon a couch or a frame either for his own convenience or for the maintenance of the object. [He may then not use the object for the mutual benefit of finder and loser.]
- I. *That case is different, for he may destroy it either through the evil eye [brought on by the envy of a guest] or through thievery [brought on by publicity concerning the valuable find].*
- J. *Come and take note of the following:*
- K. If he took [a heifer that he had found] into the team and it accidentally did some threshing, it is fit [for use in making atonement for murder by an unknown party in line with Deu. 21: 1-9, even though the heifer has to be one that has not been worked with and that has not drawn a yoke]. If it was so that the heifer would suck and thresh, it is unfit.
- L. *Now here is a case in which the beast has been used for both the convenience of the farmer and also the maintenance of the best, and yet it has been taught that it becomes unfit.*
- M. *That case is different, from Scripture has stated explicitly, "which has not been worked with" (Deu. 21: 1f.), meaning, under all circumstances.*
- N. *If that is the case, then even the opening rule [should likewise be that the heifer is made unfit, that is, if he took [a heifer that he had found into the team and it accidentally did some threshing, it is unfit].*
- O. *It is parallel only to the case of which we have learned in the Mishnah: **If a bird rested upon [a red cow that is otherwise suitable for being burned in preparation of purification-water, Num. 19: 1ff., and that is not to be used for any sort of labor], it remains valid. But if a male mounted it, it is unfit [M. Par. 2:4].***
- P. *What is the scriptural basis for this rule? It accords with the explanation of R. Pappa, for R. Pappa said, "If Scripture had written the word in the passive, 'work was done with...', and we read the word in precisely that way, I should have concluded that even if work was done with the beast entirely en passant, [the beast would be unfit, so that even if a bird rested on it, the beast could no longer serve], and if Scripture wrote the letters in the active form and we read them that way, I should have concluded that the beast is rendered unfit only if the man himself does work with it. But now that it is written in the active form but we read the word in the passive form [worked, worked with], we require a case in which the beast is worked with that is similar to a case in which the owner actively works with the beast. Just as if the owner works with the beast, it is clearly a case in which that conforms to his wishes, so if the beast is worked with, it must be a case in which the matter accords with the owner's wishes. [The inquiry yields no final answer, since this case also is not probative.]*

V.1 A. Of utensils of silver and of copper one makes use — for their own good but not to wear them out. Utensils of gold and of glass he should not touch until Elijah comes:

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

- C. He who finds wooden utensils uses them so that they may not rot.
- D. **As to copper ones: one may use them for hot liquids but not in the fire, because it wears them out. As to utensils of silver, one may make use of them for cold but not for hot liquids, because hot liquids blacken them. Of shovels and axes one makes use with something soft, but not something hard, because that damages them. As to utensils of gold or glass, one is not to touch them until Elijah comes. And just as you specify these rules with regard to a lost object, so these rules apply with regard to a bailment [T. Baba Mesia 2:22A-J].**
 - E. *What business does someone have with a bailment anyhow?*
 - F. Said R. Ada bar Hama said R. Sheshet, "In the case of a bailment, the owner has gone overseas."

VI.1 A. [If] he found a sack or large basket or anything which he would not usually pick up, lo, this one does not [have to lower himself and] pick it up:

- B. *What is the scriptural foundation for this rule?*
- C. *It is as our rabbis have taught on Tannaite authority:*
- D. "And you shall hide yourself" (Deu. 22: 1) — there are occasions on which you do hide yourself, and there are occasions on which you do not hide yourself.
- E. How so? If a priest was riding along and the object was located in a grave yard, or if one was an elder and it is not appropriate for him to do so, or if one's own work was more valuable than that of the other —
- F. thus it is said, "And you shall hide yourself" (Deu. 22: 1).
- G. *Now, among the examples just now given, for which one of them was the explicit instruction of this verse of Scripture required?*
- H. *Should we say that it involves a priest and an object found in a graveyard, it is perfectly obvious that the one involves an affirmative action, the other an act of restraint as well as an affirmative action [the priest is not to contract corpse uncleanness, and he is to remain cultically clean], and where you have an affirmative action in the balance with an act of restraint as well as an affirmative action, the latter overrides the former.*
- I. *Moreover, we do not set aside a prohibition merely on account of monetary considerations.*
- J. *If, furthermore, the verse is necessary for the case in which one's own work was more valuable than that of the other, that case comes under what R. Judah said Rab said.*
- K. *For R. Judah said Rab said, "but that [30B] there will be no poor among you" (Deu. 15: 4) — this teaches that your own requirements take precedence over those of any other person."*
- L. *Rather, the verse is necessary for the case of an elder, in which it is not appropriate for him to do so.[e.g., to lead the beast home].*

VI.2 A. Said Rabbah, "If he hit the beast, he is liable to take care of it."

- B. *Abbayye was in session before Rabbah, and saw some goats standing there. He took a clod and threw it at them. Said he to him, "You have now become liable to take care of them. Go and return them."*

VI.3. A. *The question was raised: if it is appropriate to return the beasts in the field but not in the town, what is the rule? Do we say that a fully-effected act of returning the beasts is required, and since it is inappropriate for him to return the beast in town, he is under no obligation to do a thing, or perhaps in the field at any rate he is obligated to return the beast, and since he has incurred the obligation in the field, he bears the obligation to do so in town too?*

B. *The question stands.*

VI.4. A. Said Raba, "In any case in which one would lead back his own beast, he must lead back his fellow's as well,

B. "and in any case in which he would go and unload and reload his own beast, he must go and unload and reload his fellow's beast as well."

VI.5. A. *R. Ishmael b. R. Yosé was going along the road. He met up with someone carrying a load of wood. The man put the wood down, rested, and then said to him, "Help me lift them up."*

B. *He said to him, "What is it worth?"*

C. *He said to him, "Half a zuz."*

D. *So he gave him the half-zuz and declared the wood ownerless property.*

E. *The other made acquisition of the wood, he gave him another half-zuz and again declared the wood ownerless property.*

F. *Since the man was going to do so a third time, he said to him, "I have declared it ownerless property for the whole world except for you."*

q G. *But in such a case is the property indeed deemed to be ownerless? Have we not learned in the Mishnah: **The House of Shammai say, "An act declaring property ownerless only for the poor is valid.***

H. ***And the House of Hillel say, "An act of declaring property ownerless is valid only if it is for the poor but also for the rich, as is the rule that governs in the year of release [M. Pe. 6:1, M. Ed. 4:3].***

I. *Now as a matter of fact R. Ishmael b. R. Yosé did declare the property to be ownerless so far as the entire world was concerned, and he put him off by mere words.*

J. *Now — as to the point of the story — R. Ishmael b. R. Yosé was an elder, and it was surely inappropriate for him to help the other take up his load.*

K. *R. Ishmael b. R. Yosé acted beyond the requirements of the law.*

VI.6. A. *For R. Joseph has taught on Tannaite authority, "'and you shall show them the way in which they must walk, and the work that they shall do (Exo. 818:20) —*

M. *"'and you shall show them' — this refers to the house of their life.*

N. *"'the way' — this refers to acts of compassion.*

O. *"'in which they must walk' — this refers to visiting the sick.*

P. *"'in which' — this refers to burying the dead.*

Q. *"'and the work' — this refers to the strict requirements of the law.*

R. *"'that they shall do' — this refers to acts that go beyond the strict requirements of the law."*

- VI.7.** A. A master has said: “‘in which they must walk’ — this refers to visiting the sick.”
- B. *But that is the same thing as acts of compassion.*
- C. It is necessary to make the matter explicit only with reference to those of one’s own age group.
- D. For a master has said, “A visitor from a person of one’s own age group takes away a sixtieth of one’s illness, *and nonetheless, such a one must visit the sick.*”
- E. “‘in which’ — this refers to burying the dead.
- F. But that is the same thing as acts of compassion.
- G. It is necessary to make the matter explicit only with reference to an elder for whom it is inappropriate.
- H. “‘that they shall do’ — this refers to acts that go beyond the strict requirements of the law.”
- I. For R. Yohanan said, “Jerusalem was destroyed only because the rule that applied there was the strict rule of the Torah.”
- J. *Should they then have made judgments in accord with the opinion of [Freedman:] untrained arbitrators?*
- K. *Rather, frame the matter in this way:* “because the rule that applied there was only the strict rule of the Torah, and they did not go beyond the strict requirement of the law.”

The treatment of the Mishnah-paragraph imposes limits upon the entire Talmud before us; there is, once more, no broad theoretical issue that is explored, nor are the boundaries of the subject-matter traversed on any account. I.1 introduces an ancillary case, augmenting our Mishnah-passage, and II.1-5 do the same; the next units of the Mishnah are given a rather low-level amplification at III.1 and IV.1, respectively; the issues that are raised seem at best tangential. The same is to be said throughout.

2:9

- A. **What is lost property?**
- B. **[If] one found an ass or a cow grazing by the way,**
- C. **this is not lost property.**
- D. **[If he found] an ass with its trappings upset,**
- E. **a cow running in the vineyards,**
- F. **lo, this is lost property.**
- G. **[If] one returned it and it ran away, returned it and it ran away,**
- H. **even four or five times,**
- I. **he is liable [to continue to] return it,**
- J. **since it is said, “You shall surely bring them back [to your brother]” (Deu. 22: 1).**
- K. **[If] he lost [work] time [to the value of] a sela, he may not say to him, “Give me a sela.”**

- L. But he pays him a salary [for his lost time] calculated at the rate paid to an unemployed worker.
 - M. If there is a court there, he may stipulate before the court [for compensation for lost time].
 - N. If there is no court there, before whom may he make such a stipulation?
 - O. His own [welfare] takes precedence.
- I.1** A. *Now were all those examples already given not in the class of lost property [that the definition given at M.2:9A-F is required]?*
- B. *Said R. Judah, "This is the sense of the passage: What is the governing principle of lost property for which one bears responsibility? [If] one found an ass or a cow grazing by the way, this is not lost property, and the finder bears no responsibility for this case. [If he found] an ass with its trappings upset, a cow running in the vineyards, lo, this is lost property, and the finder bears responsibility for this case."*
- I.2.** A. Does the definition [if one found an ass or a cow grazing by the way] apply without time-limit? [Freedman: Can one say that no matter how long an animal is seen grazing by the way it was intentionally placed there?]
- B. R. Judah said Rab said, "That is, for three days."
 - C. *How can we envision the case at hand? For if he sees the beast by night, then even if it is grazing for an hour, that is a mark that it is lost, and if it is seen by day, then even for longer than three days, it may not be lost at all?*
 - D. *The law is required to deal with a case in which the beast is seen either before daybreak or at twilight. If that is for three days, we assume that it is only by chance that it has gone forth at unusual hours; if it is for more than three days, we assume that it is actually lost.*
 - E. *It has been taught on Tannaite authority along these same lines: If one has found a garment or a spade [31A] in the piazza, or a cow running in the vineyard, lo, this is deemed to be lost. If it was a garment on the side of a wall or a spade on the side of a wall or a cow grazing in the vineyard, these are not assumed to be lost. If it is for three days running, lo, this is assumed to be lost objects.*
- I.3** A. **If one saw water flowing along, he is liable to dam it up [T. Baba Mesia 2:28A].**
- B. Said Raba, "'and so you shall do with all lost things of your brother's' (Deu. 22: 3) — this encompasses the loss of real estate [by a flood]."
 - C. *Said R. Hananiah to Raba, "It has been taught on Tannaite authority in support of your view: If one saw water flowing along, he is liable to dam it up [T. Baba Mesia 2:28A]."*
 - D. *He said to him, "If it is on such grounds, then there is no support for my view. For to what case does that law pertain? To a case in which there are sheaves in the field."*
 - E. *"But if there are sheaves in the field [that will be soaked and lost], why is it necessary to make the rule explicit?"*
 - F. *"It was necessary to make the rule explicit when the sheaves still need the soil. I might have thought, since they still need the soil, they are in the status of the*

earth itself. [Therefore, contrary to the hypothesis proved at B, they would not have to be saved.] Thus we are informed that that is not the case.”

- II.1 A. [If] one found an ass or a cow grazing by the way, this is not lost property. [If he found] an ass with its trappings upset, a cow running in the vineyards, lo, this is lost property.**
- B. *There is a contradiction in the body of the stated rule. Specifically, you have stated, [If] one found an ass or a cow grazing by the way, this is not lost property. It is a case, then, in which the ass or cow is grazing by the way that we do not classify as lost property. Lo, if it was running on the way or if it was a cow running in the vineyards, lo, this is lost property.*
- C. *But then examine the concluding statement: [If he found] an ass with its trappings upset, a cow running in the vineyards, lo, this is lost property. It is the case, then, in which it is running among the vineyards that it is lost property. Lo, if it is merely running on the way or grazing among the vineyards, this then is not lost property.*
- D. *Said Abbaye, “‘His companion testifies concerning him’ (Job. 36:33) [and likewise, we derive the sense from the context]. The Tannaite authority has referred to **grazing by the way**, in which case **it is not lost property**, and the same rule pertains to grazing in the vineyards. The Tannaite authority has referred to **a cow running in the vineyards**, in which case **lo, this is lost property**, and the same rule pertains to running on the way as well.”*
- E. *Said to him Raba, “If the hermeneutical principle derives from the verse, ‘His companion testifies concerning him’ (Job. 36:33) then let the Tannaite authority refer to the lesser aspects of the case, and the graver ones will follow a fortiori. Let him refer to the case of running on the way, indicating that that would fall into the classification of lost property and all the more so, running in the vineyards. Likewise, let him teach the case of grazing among the vineyards, which does not fall into the classification of lost property, and all the more so grazing in the way.”*
- F. *Rather, said Raba, “There is no contradiction between the two cases in which there is running. In the one case, it is facing the field, in the other, it is facing the town. [If it is running toward the town, it must have been set in that direction and is not lost; if it is running toward the field, it is lost (Freedman).] There is no contradiction between the two cases in which there is grazing. The one speaks of the loss of the beast itself, the other of the loss of the field. Now when the Tannaite authority teaches, **[If] one found an ass or a cow grazing by the way, this is not lost property**, lo, if it is grazing among the vineyards, it is lost property, for at issue is the loss of the field. And when the Tannaite authority teaches, **grazing by the way**, in which case **it is not lost property**, lo, if it is grazing among the vineyards, it is lost property, for at issue is the loss of the field. And when the Tannaite authority teaches, **a cow running in the vineyards, lo, this is lost property**, lo, if it is grazing among the vineyards, it is not in the classification of lost property as to the loss of the beast itself, for when it is running among the vineyards, it gets torn, but when feeding among the vineyards, that is not the case.”*

- G. *Granting that it will not be torn, still, one should eject it on the count of its causing a loss of the soil!*
- H. *At issue is the vineyard belong to a gentile.*
- I. *Then one should expel it because the beast itself will be lost, since the gentiles will kill it.*
- J. *At issue here is a locale in which a warning is given to the owners before such an actions is taken.]*
- K. *But perhaps the warning in general terms has already been given in respect to this beast.*
- L. *If that were the case, then since the owner has not taken care of the beast, it is a self-inflicted loss [and third parties bear no responsibility to prevent it].*

III.1 A. If one returned it and it ran away, returned it and it ran away, even four or five times, he is liable to continue to return it, since it is said, “Bringing them back, you shall surely bring them back to your brother” (Deu. 22: 1).

- B. *One of the rabbis said to Raba, “May I not interpret the verse, ‘Bringing them back —’ one time, ‘...you shall surely bring them back’ — two times?”*
- C. *He said to him, “ ‘Bringing them back — even a hundred times is implicit. ‘...you shall surely bring them back’ — I know only that one is to bring the beast back to his household. How do I know that one has to restore the beast to his garden patch or to his ruins? Scripture says, ‘...you shall surely bring them back’ — under all circumstances.”*
- D. *Under what circumstances?*
- E. *If the garden or ruins are guarded, then that is self-evident [that these are appropriate places for the restoration of the wandering beast to the owner’s possession]. If they are not guarded, then why are they appropriate at all?*
- F. *Indeed, they are guarded, but in this way we are informed that we do not require the knowledge and consent of the owner to deposit the beasts in the garden or ruin that is guarded.*
- G. *This accords with the view of R. Eleazar, who has said, “Every act of returning an object must be done with the knowledge and consent of the owner, except for returning a lost object, in which case the Torah has made provision for a large variety of appropriate acts of returning [including returning the beast to the guarded garden or ruin of the owner, even though the owner does not know that the beast has been left there].*

Composite of Cases in which the Duplicated Verb-Root Is Assigned Exegetical Meaning

- III.2.** A. “[If you chance to come upon a bird’s nest in any tree or on the ground, with young ones or eggs and the mother sitting upon the young or upon the eggs, you shall not take the mother with the young;] sending, you shall send [the mother free, but the young you may take to yourself]” (Deu. 22: 6-7):
- B. *Might I say, “‘sending’ — one time, ‘you shall send’ — two times”?*
 - C. *He said to him, “‘sending’ — even a hundred times is implied. ‘...you will send’ — I know only that that is the case when the purpose is for an optional action [e.g., for food]. How do I know that even if the purpose is for a commanded*

action such as the offering of a leper in his purification rite, one still should send away the mother and not take it? Scripture says, ‘you shall send’ — under all circumstances.”

III.3. A. *One of the rabbis said to Raba, “May I not interpret the verse [‘Rebuking, you shall rebuke your brother’ (Lev. 19:17)] in this way: ‘Rebuking — one time, you shall rebuke your brother — two times?’*

B. *He said to him, “‘Rebuking’ — even a hundred times. ‘...you shall rebuke your brother’ — I know only that the rule pertains to the master’s rebuking the disciple. How do I know that it applies also when the disciple has to rebuke the master? Scripture says, ‘...you shall rebuke your brother’ — under all circumstances.”*

III.4. A. *“[If you see the ass of one who hates you lying under its burden, you shall refrain from leaving him with it,] helping, you shall help him to lift it up” (Exo. 23: 5):*

B. *I know only that that is the case when the master is there with the beast. How do I know that the rule applies even when the master is not there with the beast? Scripture says, “helping, you shall help him to lift it up” — under all circumstances.*

III.5. A. *“You shall not see your brother’s ass or his ox fallen down by the way and withhold your help from them; helping, you shall help him to lift them up again” (Deu. 22: 4):*

B. *I know only that that is the case when the master is there with the beast. How do I know that the rule applies even when the master is not there with the beast? Scripture says, “helping, you shall help him to lift them up again” — under all circumstances.*

C. *Now why was it necessary for Scripture to treat explicitly both the matter of unloading the beast and also loading the beast?*

D. *Both were required to be made explicit. For had Scripture referred only to unloading, I might have concluding that since the heavy burden causes suffering to the animal and financial loss, one is to help, but as for loading up, in which case there is neither the suffering of the beast nor the financial loss to be taken into consideration, I might have thought that one does not have to help. If I had been told the rule only concerning loading the beast, I thought that that is because it is remunerated work, but as to unloading, which is not paid, I would have thought one does not have to help. So both cases had to be made explicit.*

E. *And as to the position of R. Simeon, who takes the view that even the loading up is to be done without remuneration, what is to be said?*

F.. *In R. Simeon’s view, the verses are not explicit [in reference to unloading and to loading, and with only one verse, I would have taken the verse to return to the one or the other but not to both actions, so both still are needed (following Freedman)].*

G. *Now why was it necessary for Scripture to treat explicitly both the matter of unloading the beast and also loading the beast and also to make explicit the matter of returning the lost object?*

H. *It was necessary to make the several matters entirely explicit, for if the All-Merciful had referred only to these two considerations, the reason one must get*

involved is the anguish of both the owner and the beast, but as to the lost beast, which may cause anguish to the owner but not to itself, the law would not pertain. If we had been given the law about helping to restore the lost beast, I might have supposed that the reason is that the owner is not with the beast, [31B] but where the owner is with the beast, as with the loading and unloading, I would have supposed one need not get involved]. So both had to be made explicit.

III.6. A. “He who smote him, dying, shall surely die” (Num. 35:21):

- B. I know only that the law applies to the form of death that is decreed in Scripture for him.
- C. How do I know that if you cannot inflict upon him the death penalty that is provided by Scripture, you are permitted to put him to death through any form of the death penalty that you have at your disposal?
- D. Scripture says, “He who smote him, dying, shall surely die” (Num. 35:21) — under all circumstances.

III.6. A. “Smiting, you shall surely smite the inhabitants of that city with the edge of the sword” (Deu. 13:16):

- B. I know only that the law applies to the form of death that is decreed in Scripture for him.
- C. How do I know that if you cannot inflict upon him the death penalty that is provided by Scripture, you are permitted to put him to death through any form of the death penalty that you have at your disposal?
- D. Scripture says, “Smiting, you shall surely smite the inhabitants of that city with the edge of the sword” (Deu. 13:16) — under all circumstances.

III.7 A. “Returning, you shall surely return the pledge to him when the sun goes down” (Deu. 24:13):

- B. I know only that the rule pertains when the pledge is exacted from the borrower within the domain of the court. What about a case in which the pledge is not exacted within the domain of the court?
- C. Scripture says, “Returning, you shall surely return the pledge to him when the sun goes down” (Deu. 24:13) — under all circumstances.

III.8 A. “If, taking a pledge, you take to pledge your neighbor’s garment, you shall deliver it to him by the time that the sun sets” (Exo. 22:25):

- B. I know only that the pledge must be returned if the creditor exacted the pledge with the sanction of the court. How do I know that that is the case even if the pledge was not exacted with the sanction of the court?
- C. Scripture says, “If, taking a pledge, you take to pledge your neighbor’s garment, you shall deliver it to him by the time that the sun sets” (Exo. 22:25) — under all circumstances.
- D. And why give both cases?
- E. One refers to garments worn by day, the other to garments worn by night.

III.9 A. “Opening, you shall open your hand to your brother, to your poor” (Deu. 15:11):

- B. I know that that is the rule for the poor of your own town. How do I know that the rule applies to the poor of another town?

- C. Scripture says, “Opening, you shall open your hand to your brother, to your poor” (Deu. 15:11) — under all circumstances.

III.10 A. “Giving, you shall surely give him” (Deu. 15:10):

- B. I know only that one must give a large sum.
C. How do I know that a small sum also is to be given?
D. Scripture says, “Giving, you shall surely give him” (Deu. 15:10) — under all circumstances.

III.11 A. “Furnishing him, you shall furnish him liberally” (Deu. 15:14):

- B. I know only that if the household of the master has been blessed on account of the slave, that one must give a present. How do I know that even if the household of the master was not blessed on account of the slave, a gift must be given?
C. Scripture says, “Furnishing him, you shall furnish him liberally” (Deu. 15:14) — under all circumstances.
D. And following the opinion of R. Eleazar b. Azariah, who holds, “If the household has been blessed for the sake of the slave, a present must be given, but if not, then the present need not be made,” what is the sense of “Furnishing him”?
E. In this case Scripture used language in an ordinary way.

III.12 A. “And lending him, you shall surely lend him sufficient for his need” (Deu. 15: 8):

- B. I know only that when the other has nothing and does not want to support himself from charity, that Scripture makes explicit that the donation must be deemed only a loan.
C. But if he does have property and does not want to support himself from it [that is, by consuming his capital], how do I know that you are obligated to make a loan to him?
D. Scripture says, “And lending him, you shall surely lend him sufficient for his need” (Deu. 15: 8) [— under all circumstances.]
E. *And in accord with the position of R. Simeon, who takes the view that if one has money and does not want to support himself with it, one is not obligated to support him, what is the sense of the duplication in “And lending him, you shall surely lend him sufficient for his need” (Deu. 15: 8)?*
F. In this case Scripture used language in an ordinary way.

IV.1 A. **[If] he lost [work] time [to the value of] a sela, he may not say to him, “Give me a sela.” But he pays him a salary [for his lost time] calculated at the rate paid to an unemployed worker.**

B. *It was taught on Tannaite authority: But he pays him a salary [for his lost time] calculated at the rate paid to an unemployed worker.*

C. *What is an unemployed laborer?*

D. *Said Abbaye, “As a labor who is unemployed in the particular craft from which he has been disrupted [by having to restore the lost article].”*

V.1 A. **If there is a court there, he may stipulate before the court [for compensation for lost time. If there is no court there, before whom may he make such a stipulation? His own welfare takes precedence]:**

- B. *Issur and R. Safra formed a partnership. R. Safra went and in the presence of two persons divided the stock without Issur's knowledge. When he came before Rabbah son of R. Huna [to confirm the division of the property and dissolve the partnership,] he said to him, "Go and bring the three witnesses before whom you made the division. Or [32A] two out of the three [to say that there had been three present], or at least two witnesses that you divided in the presence of three other witnesses."*
- C. *He said to him, "How do you know that this is the rule?"*
- D. *He said to him, "Because we have learned in the Mishnah, **If there is a court there, he may stipulate before the court [for compensation for lost time. If there is no court there, before whom may he make such a stipulation? His own welfare takes precedence.**"*
- E. *He said to him, "Are the cases really parallel at all? In that case you take property from one party and hand it over to another party, so we require a court of three members, but here, in which I am taking only what belongs to me anyhow, it is sufficient to show that I made a fair division, so two should suffice. You may know that that is the case, for we have learned in the Mishnah, **A widow may sell her deceased husband's estate without the presence of a court of three witnesses [M. Ket. 11:2A].**"*
- F. *Said Abbaye to him, "But has it not been stated in that connection, said R. Joseph bar Minyumi said R. Nahman, 'A widow does not require the court made up of experts, but she does require a court made up of ordinary fellows.' [So the cases are really parallel.]"*

The clarification of the Mishnah-paragraph, I.1, 2, gives way to the work of complementing the rule, I.3. Then, II.1, we examine the language of the Mishnah-paragraph and show that it bears contradictory implications, but these can be ironed out. Since III.1 turns to the exegesis of Scripture, a large, well-crafted block of materials concerning a principle of exegesis, namely, the meaning of the intensive verb, represented in English by me as "bringing...you shall bring back...", and the like. The entire composite was worked out before it was inserted in the present passage; it is formally uniform and beautifully articulated. It points to a layer of composition and composite-making prior to the redactional work that, over all, has predominated in our Talmud. IV.1, V.1 then proceed to complete the exposition of our Mishnah-paragraph.

2:10

- A. **[If he found it loose] in a stable, he is not liable [to return] it.**
- B. **[If he found it] in the public domain, he is liable to take care of it.**
- C. **And if it was a graveyard, [and if he was a priest or a Nazirite] he should not contract corpse uncleanness on its account.**
- D. **If his father said to him, "Contract corpse uncleanness,"**
- E. **or if [under normal circumstances] he said to him, "Don't return it,"**
- F. **he should not obey him.**
- G. **[If] he unloaded it and loaded it up again, unloaded it and loaded it up again,**
- H. **even four or five times,**

- I. he is liable [to continue to do so],
- J. for it is written, “You will surely help with him” (Exo. 23: 5).
- K. [If] he went and sat down, and said, “Since the religious duty is yours, if you want to unload it, go unload it,”
- L. the other is exempt [from doing a thing].
- M. For it is written, “With him.”
- N. If the owner was old or sick, he is liable.
- O. It is a religious duty enjoined by the Torah to unload the beast, but not to load it up.
- P. R. Simeon says, “Also: to load it up.”
- Q. R. Yosé the Galilean says, “If there was on the beast more than its proper load, he is not obligated to [the owner],
- R. “since it is said, ‘Under its burden’ —
- S. “a burden which it can endure.”

I.1 A. [If he found it loose in a stable, he is not liable to return it:] Said Raba, “The stable that is under discussion here does not cause the animal to stray but also is not guarded.

B. “It does not cause the animal to stray, since it is stated, **he is not liable [to return] it**. *And it is not guarded, since it is, nonetheless, necessary also to frame matters in the language, he is not liable [to return] it.*

C. “Now if it were to enter your mind that it was guarded, since, if he finds it outside, he takes it inside [into the stable, and that suffices], but if he finds it inside, is it necessary to make it explicit that he is not bound to return it? It must follow that the stable is unguarded.”

D. *That is decisive.*

I.2 A. [If he found it loose] in a stable, he is not liable [to return] it.

B. Said R. Isaac, “But that is on condition that it is standing within the town boundary. It follows that if he finds it in the street, even within the town boundary, he still has to return it.”

C. *Others refer the matter to the concluding clause, [If he found it] in the public domain, he is liable to take care of it:*

D. Said R. Isaac, “But that is on condition that it is standing outside of the town boundary. It follows that if he finds it in a stable, even outside the town boundary, he does not have to return it.”

II.1 A. And if it was a graveyard, [and if he was a priest or a Nazirite] he should not contract corpse uncleanness on its account. If his father said to him, “Contract corpse uncleanness,” or if [under normal circumstances] he said to him, “Don’t return it,” he should not obey him.

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

C. How do we know that, if his father said to him, “Contract corpse uncleanness,” or if [under normal circumstances] he said to him, “Don’t return it,” he should not obey him. one should not obey him?

- C. As it is said, “You shall fear every man his mother and his father and keep my Sabbaths: I am the Lord your God” (Lev. 19: 3) — you all are obligated to honor me.
- D. *The reason given by Scripture is that All-Merciful has written, “and keep my Sabbaths.” Were it not for that, I should have thought he should pay attention to him. But why should that be the case? For lo, he one side we have the statement of a religious duty involving an act of commission, and, on the other side, one involving an act of restraint. as well as one of commission Where you have the intersection of both types of religious duties, an act of commission does not come and override the requirement of an act of restraint involving also an act of commission! [Why then rely only upon the explicit statement of Scripture?]*
- E. *It was necessary to rely upon Scripture. For it might have entered your mind to maintain that the honor owing to father and mother are comparable to the honor owing to the Omnipresent, in line with this verse, “Honor your father and your mother” (Exo. 20:12) alongside “Honor the Lord with your substance” (Pro. 3: 9) [thus likening the two religious duties], therefore one should obey the father under the specified conditions. We are thus informed that he should not obey him.*

III.1 A. It is a religious duty enjoined by the Torah to unload the beast, but not to load it up. R. Simeon says, “Also: to load it up.”

- B. *What is the sense of the words, but not to load it up?*
- C. *If I were to claim, the meaning is, “not to help him load up at all,” what is the difference between the act of unloading, concerning which it is written, “You shall surely help him” (Exo. 23: 5), and the act of loading up, concerning which it also is written, “You shall surely help him to lift them up again” (Deu. 22: 4)?*
- D. *The sense is this: It is the religious duty decreed by the Torah that one help unload without collecting a fee, but not to help load without collecting a fee, rather, only upon payment of a fee.*

IV.1 A. R. Simeon says, “Also: to load it up” — without collecting a fee.

- B. *Thus we have learned on Tannaite authority, as our rabbis have taught: Unloading is to be done for free, but loading up for a fee.*
- C. R. Simeon says, “Both this and that are to be done for free.”
 - D. *What is the scriptural basis for the position of rabbis? If you think that the rule is in accord with the opinion of R. Simeon, the All-Merciful ought to have made reference to unloading and not required an explicit reference also to loading up the beast, and I should then have drawn the conclusion, “If unloading the beast, which does not involve inflicting anguish on animate creatures and does not involve a loss of money, is an obligation, loading the beast, which does involve anguish to animate beings and loss of money, should surely be required! So for what purpose has the All-Merciful made reference to that matter? It is to indicate to you, Unloading is to be done for free, but loading up for a fee.*
 - E. *And what is the scriptural basis for the position of R. Simeon? It is because he does not find the verses explicit [in the manner in which sages read them].*

- F. *And as to the view of rabbis, how come the verses are not explicit? Here it is written, “If you see the ass...lying under his burden” (Exo. 23: 5), while there, “You shall not see your brother’s ass or his ox fall down by the way” (Deu. 22: 4), meaning, both they and their load are cast on the road [and reloading requires assistance].*
- G. *And R. Simeon? “fall down by the way” in his mind refers to the animals, with the load still on them.*

- IV.2** A. *Said Raba, [32B] “On the basis of the position of both authorities, we may infer that the concern for the anguish of animals is a law based on the authority of the Torah. For even R. Simeon took the position that he did [that unloading, as much as loading, requires explicit reference in Scripture] only because the verses are not articulated. But if they were, we could have reached the conclusion on the basis of an argument a fortiori [that one is bound to unload].” And on what grounds? Surely it would be on the grounds of the anguish of animals. [Freedman: If one is bound to load, though no suffering is involved, how much the more is one bound to unload.]*
- B. *But perhaps the operative consideration is the financial loss, with the following argument in consequence: if in the matter of loading, which does not involve financial loss, one is obliged, in the matter of unloading, which does involve financial loss, how much the more so is one obliged!*
- C. *But is it the fact that there is no consideration of financial loss in the matter of loading the beast? Might we not deal with a case in which, in the interim, the man may lose his market, or thieves may come and grab whatever he has there?*
- D. *Rather, the you may know that the consideration of the anguish of animals rests upon the authority of Scripture derives from the later clause of the same Mishnah-paragraph, which says the following:*
- E. **R. Yosé the Galilean says, “If there was on the beast more than its proper load, he is not obligated to [the owner], since it is said, ‘Under its burden’ — a burden which it can endure.”**
- F. *Does this not imply that in the view of the anonymous authority, one is indeed obligated to help? And what would the reason be? Is it not the consideration of the anguish of animals, a consideration deriving from the authority of the Torah?*
- G. *Perhaps what is at issue between them is not the consideration of the anguish of animals but rather the meaning of “under its burden,” with R. Yosé taking the view that “under its burden” means, a burden that it can stand, and sages maintaining that we do not interpret the phrase “under its burden” at all.*
- H. *Furthermore, you may know that the consideration of the anguish of beasts is not based on the authority of the Torah, since the opening clause states, [If] he went and sat down, and said, “Since the religious duty is*

yours, if you want to unload it, go unload it,” the other is exempt [from doing a thing]. For it is written, “With him.”

- I. *Now if you take the view that the consideration of the suffering of the beast derives from the authority of the Torah, what difference is it going to make whether or not the owner joins in helping the animal?*
- J. *In point of fact, the consideration of the animal’s suffering derives from the authority of the Torah. Now do you think that “exempt” means utterly exempt? The sense is, exempt from doing the work without payment, but obligated to help for payment.*
- K. *Here is the meaning of what the All-Merciful has said: when the owner helps, one must serve without payment, but when the owner does not help, one must help only for payment; but in any case, the consideration of the suffering of the beast derives from the authority of the Torah.*
- L. *May I say that the following supports the view [of Raba, “On the basis of the position of both authorities, we may infer that the concern for the anguish of animals is a law based on the authority of the Torah”]:*
- M. *One must get involved with the condition of a beast belonging to a gentile as much as one belonging to an Israelite.*
- N. *Now if you take the view that the consideration of the suffering of animals derives from the authority of the Torah, it is on that account that one must get involved with the suffering of the gentile’s as much as of the Israelite’s beast, but if you say that the consideration of the suffering of animals is not on the basis of the authority of the Torah, then why must one get involved with the suffering of a gentile’s beast as much as of an Israelite’s?*
- O. *There the consideration is concern for hatred. And that explanation is entirely reasonable, for it is further taught, If it was carrying wine that is forbidden [as having served as a libation for an idol], one is not obligated to help.*
- P. *Now if you take the view that the consideration of the suffering of animals does not derives from the authority of the Torah, it is on that account that one is not obligated to get involved in this case, but if you say that the consideration of the suffering of animals is on the basis of the authority of the Torah, then why must one get involved?*
- R. *The sense is this: he has no obligation to load the beast with forbidden wine.*
- S. *Come and take note of the following: In the case of a beast belonging to a gentile, which carries a load belonging to an Israelite, “you may forbear” [Exo. 23:5: “If you see the ass of him that hates you lying under his load and you would forbear to help him, you shall surely help him” — here, you shall forbear!].*
- T. *If you say that the consideration of anguish of animals derives from the authority of the Torah, why is it the case that “you may*

- forbear”? Surely, “you will surely help him” is the applicable clause.
- U. *In point of fact, the consideration of anguish of animals derives from the authority of the Torah, and at stake here is loading up the beast.*
 - V. *Then consider the further clause, In the case of a beast belonging to an Israelite bearing the load of a gentile, “you will surely help him”! But if it is a matter of loading up, why apply the phrase, “you will surely help him”?*
 - W. *The operative consideration is the convenience of the Israelite.*
 - X. *If that were the case, then the same should apply in the initial clause!*
 - Y. *The initial clause speaks of an ass driver who is a gentile, the second, an ass-driver who is an Israelite.*
 - Z. *On what basis make such an assumption? In general the man follows his own ass [so if the first clause speaks of an ass belonging to a gentile, the driver is a gentile, and the same in the second].*
 - AA. *Then both parts of the clause, and you would forbear to help him, and also the second part, you shall surely help him, speak of unloading!*
 - BB. *He said to him, “What authority is this? It is simply R. Yosé the Galilean, who takes the view that the consideration of the animal’s suffering is not on the authority of the Torah.”*
 - CC. *Come and take note: **If one’s friend needs help in unloading and one’s enemy needs help in loading, it is one’s religious duty to help the enemy first, so as to subdue his evil inclination [T. B.M. 2:26: to break his heart].***
 - DD. *Now if you take the view that the concern for the suffering of the beast is on the authority of the Torah, helping the other should take precedence!*
 - EE. *The consideration of subduing his evil inclination is more weighty.*
 - FF. *Come and take note: **The enemy of whom they spoke is an Israelite enemy, not an enemy from among the nations [T. B.M. 2:26D].***
 - GG. *Now if you take the view that the concern for the suffering of the beast is on the authority of the Torah, what difference does it make whether the beast belongs to an Israelite or a gentile enemy?*
 - HH. *Do you think the passage in the Tosefta speaks of the enemy referred to in Scripture? It speaks of the enemy mentioned in the above-cited statement [and so the authority of the Torah is not at issue].*
 - II. *Come and take note of the following [33A]: “If you see the ass of him who hates you lying under its burden” (Exo. 23: 5):*
 - JJ. *“lying” — but not an animal that is just lazy;*

- KK. “lying” — but not standing;
- LL. “under its burden” — but not if it has been unloaded;
- MM. “under its burden: — a burden under which it can stand.
- NN. *Now if you take the view that the concern for the suffering of the beast is on the authority of the Torah, what difference does it make whether the beast is lying or is just lazy, is lying or standing?*
- OO. *Lo, who is the authority of this passage? It is simply R. Yosé the Galilean, who takes the view that the consideration of the animal’s suffering is not on the authority of the Torah.*
- PP. *That is certainly a reasonable supposition, for lo, the Mishnah is so framed in the language, since it is said [at LL], ‘Under its burden’ — a burden which it can endure.”*
- QQ. *And of whom have you heard who takes the position just now stated? It is R. Yosé the Galilean.*
- RR. *That proves the point [concerning the passage cited at II-MM].*
- SS. *But can you really assign the passage to R. Yosé the Galilean, since the further clause states, “under its burden” — but not if it has been unloaded.”*
- TT. *What is meant by “unloaded”? If we say that if has not been unloaded, there is no obligation at all, lo, it has been written, “You shall surely help to lift them up again” [Deu. 22: 4, meaning, reloading] so the sense is, if it is unloaded, there is no obligation to help load it without payment but only for remuneration. And who holds this view? It is rabbis.*
- UU. *As a matter of fact, it is R. Yosé the Galilean, but in the matter of loading the beast he accepts the position of rabbis.*

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

- B. [“If you see the ass of him who hates you or his ass going astray, you shall bring it back to him. If you meet the ass of one who hates you lying under its burden, you shall refrain from leaving him with it, you shall help him lift it up” (Exo. 23:33-34):]
- C. “If you see” — might one think it is even from a distance? Scripture states, “If you meet your enemy’s ox or his ass going astray, you shall surely bring it back to him.”
- D. If the language, “if you meet” is used, might one think you actually have to bump into him?
- E. Scripture says, “If you see.”
- F. And what comes under consideration? It is “seeing” that involves “meeting,” which the sages estimated as a distance of two fifteenths of a *mil*, which is the same as a *ris*.

IV.4 A. *It was taught on Tannaite authority:* And he must accompany it for a parasang.

- B. Rabbah bar bar Hana said, “But he receives payment for doing so.”
- Predictably, I.1, 2 work on the language of the cited sentences of the Mishnah. II.1 and III.1 complement the passage with other Tannaite opinion. The real

action begins with Raba's interest in the authority for rules concerning the protection of animals: Torah or scribal. Raba wishes to maintain that all authorities concur that it is the authority of the Torah which is at stake. The anonymous voice of the Talmud then argues to the contrary. The repertoire of prior materials, the available verses and exegeses thereof, a variety of opinion — all play their role in the thorough and systematic investigation of the question. The further clarifications are routine.

2:11

- A. [If one has to choose between seeking] what he has lost and what his father has lost,
- B. his own takes precedence.
- C. [If he has to choose between seeking] what he has lost and what his master has lost,
- D. his own takes precedence.
- E. [If he has to choose between seeking] what his father has lost and what his master has lost, that of his master takes precedence.
- G. For his father brought him into this world.
- H. But his master, who has taught him wisdom, will bring him into the life of the world to come.
- I. But if his father is a sage, that of his father takes precedence.
- J. [If] his father and his master were carrying heavy burdens, he removes that of his master, and afterward removes that of his father.
- K. [If] his father and his master were taken captive,
- L. he ransoms his master, and afterward he ransoms his father.
- M. But if his father is a sage, he ransoms his father, and afterward he ransoms his master.

I.1 A. *What is the scriptural source of this rule [“his own takes precedence”]?*

- B. Said R. Judah said Rab, “Said Scripture, ‘Except that there shall be no poor among you’ (Deu. 15: 4). Your own takes precedence over anybody else’s.”
- C. But said R. Judah said Rab, “Whoever treats himself in such a way will end up in such a condition [of poverty].”

II.1 A. [If] his father and his master were carrying heavy burdens, he removes that of his master, and afterward removes that of his father.

- B. *Our rabbis have taught on Tannaite authority:*
- C. “The master of which they have spoken is the one who taught him wisdom, not the master who taught him Scripture or Mishnah,” the words of R. Meir.
- D. R. Judah says, “It is anyone from whom he has gained the greater part of his learning.”
- E. R. Yosé says, “Even someone who has enlightened his eyes in his repetition of a single Mishnah-paragraph — lo, this is his master” [T. **Baba Mesia 2:30D-F**].
- F. *Said Raba, “For example, R. Sehorah, who explained to me the meaning of the words that stand for a certain utensil [at M. **Kel. 13:2**].”*

II.2. A. *Samuel tore his garment as a mark of mourning for one of the rabbis, who had merely taught him the meaning of the phrase, one of the keys goes into the duct as far as the arm pit and the other opens the door directly* [M. Tam. 3:6E].

II.3. A. Said Ulla, “Disciples of sages who are located in Babylonia stand up in respect to one another and tear their garments in mourning for one another.

B. “But as to returning a lost object, in a case in which there is a choice between his father [and his master], he goes first of all in search of his master only when it is his principal teacher.”

II.4. A. *R. Hisda asked [his teacher,] R. Huna, “What is the law governing the case of a disciple whom the master needs [on account of education received from others, of which the present master is ignorant]?”*

B. *He said to him, “Hisda, Hisda! I don’t need you, you need me!”*

C. *For forty years they bore a grudge against one another and would not call on one another.*

D. *R. Hisda observed forty fasts because [on his account] R. Huna felt that he had been humiliated, and R. Huna observed forty fasts because he had suspected R. Hisda [of disrespect].*

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

B. R. Isaac bar Joseph said R. Yohanan: “The decided law accords with the position of R. Judah [at II.1.D].”

C. R. Aha bar R. Huna said R. Sheshet: “The decided law accords with the position of R. Yosé [at II.1.E].”

D. *But has R. Yohanan made such a statement? And did not R. Yohanan say, “The decided law follows the anonymous Mishnah’s position [and not that of a named authority]. And we have learned in the Mishnah: “His master is the one who taught him wisdom”?*

E. *But what is the meaning of “wisdom”? It is “the greater part of his learning.”*

Composite on the Merit of Learning Various Components of the Torah

II.6. A. *Our rabbis have taught on Tannaite authority:*

B. Those who are occupied with study of Scripture — it is a meritorious quality that is not all that meritorious.

C. ...with the Mishnah — it is a meritorious quality on account of which reward is gained.

D. ...with the Gemara — you have no greater meritorious action than that.

E. And one should always pursue study of the Mishnah more avidly than study of the Gemara.

F. *Now there is a contradiction among these statements. First you say, “...with the Gemara — you have no greater meritorious action than that,” and then, “And one should always pursue study of the Mishnah more avidly than study of the Gemara.”*

G. Said R. Yohanan, [33B] “In the time of Rabbi was this Mishnah-teaching set forth [that it is better to study Gemara than Mishnah], on which account everybody gave up studying the Mishnah and

followed the Gemara. hen he taught them, ‘And one should always pursue study of the Mishnah more avidly than study of the Gemara.’”

- II.7.** A. *How on the basis of Scripture was the lesson derived [that “one should always pursue study of the Mishnah more avidly than study of the Gemara”]?*
- B. *It was as R. Judah b. R. Ilai expounded, “What is the meaning of the verse of Scripture, ‘Show my people their transgression, and the house of Jacob their sins’ (Isa. 58: 1)?*
- C. *“‘Show my people their transgression:’ — this refers to disciples of sages, for whom an unwitting error is deemed tantamount to a deliberate sin [since they should know better].*
- D. *“‘and the house of Jacob their sins:’ — this speaks of the ignorant, for whom a deliberate sin is deemed tantamount to an unwitting error.”*
- E. *That is in line with what we have learned in the Mishnah: **R. Judah says, “Be attentive in study, for an error in study is tantamount to a deliberate action” [M. Avot 4:13].***

- II.8.** A. *R. Judah b. R. Ilai expounded, “What is the meaning of the verse of Scripture, ‘Hear the word of the Lord, you who tremble at his word: “your brethren who hate you and cast you out for my name’s sake have said, ‘Let the Lord be glorified that we may see your joy,’” but it is they who shall be put to shame’ (Isa. 66: 5)?*
- B. *“‘Hear the word of the Lord, you who tremble at his word:’ this speaks of disciples of sages.*
- C. *“‘your brethren said:’ to masters of Scripture.*
- C. *“‘who hate you:’ this refers to masters of the Mishnah.*
- D. *“‘and cast you out for my name’s sake:’ to the ignorant.*
- E. *“Now, should you say their hope is destroyed, their future null, Scripture says, ‘Let the Lord be glorified that we may see your joy.’*
- F. *“Lest you suppose that Israel shall be ashamed, Scripture says, ‘but it is they who shall be put to shame:’ idolators will be shamed but Israel will rejoice.”*

The exegesis of the Mishnah begins, as is often the case, with the denial that the Mishnah’s law is free-standing and the insistence that it rests upon the written Torah, so I.1. II.1 moves on to the next clause of choice and complements it with an appropriate passage from another Tannaite compilation, and this other statement then is subjected to a close reading. II.2-5 amplify the cited passage in one way or another. II.6-7 then move onward to supplementary material. No. 8 concludes with the predictable eschatological reference, a nicely chosen item, since it flows out of No. 7.